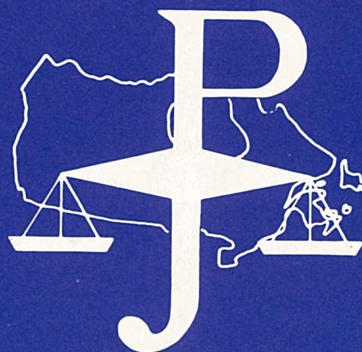
ISSN 0709-5319



PRINTED IN BRANDON BY LEECH PRINTING LTD

PROVINCIAL JUDGES Journal

VOLUME 5, No. 2

JUNE, 1981

President's Page
Page 1

Letter to the Editor
Page 3

In Brief
Page 4

Toward More Effective Justice
Page 10

A Study Tour of Barbados
Page 14

Judicial and Non-Judicial Conduct
Page 19

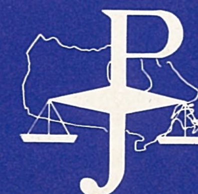
Creative Choice
Page 23

Other Views
Page 28

Northern Rice
Page 30

Book Review
Page 32

A PUBLICATION OF
THE CANADIAN ASSOCIATION OF
PROVINCIAL COURT JUDGES



THE CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES

Juge Jacques Lessard, President
Senior Judge Robert B. Hutton, First Vice-President
Judge Robert N. Conroy, Second Vice-President
Chief Judge James R. Slaven, Third Vice-President
Judge W. Chester S. MacDonald, Past President
Judge Marc Choquette, Secretary
Judge Douglas E. Rice, Treasurer and Executive Director

PROVINCIAL REPRESENTATIVES

Judge Edward Langdon, Newfoundland
Judge Hughes Randall, Nova Scotia
Judge Gaetan S. Bertrand, New Brunswick
Judge Bertrand Plamondon, Prince Edward Island
Juge Gill Fortier, Quebec
Judge C.E. Perkins, Ontario
Judge John Enns, Manitoba
Judge Robert E. Lee, Saskatchewan
Judge Lionel Jones, Alberta
Judge G.W. Lamperson, British Columbia
Chief Magistrate Barry Stuart, Yukon
Chief Judge James R. Slaven, North West Territories

COMMITTEE CHAIRPERSONS

Judge R.B. Wong, Education
Judge Clare Lewis, Convention 1981
Judge Guy Goulard, Family and Juvenile Courts
Judge Douglas E. Rice, Salary
Judge C.E. Perkins, Court Structure
Judge Robert Conroy, Constitution
Chief Judge Fred Hayes, Committee on the Law

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

Editorial communications are to be sent to The Provincial Judges Journal, Box 531, Brandon, Manitoba R7A 5Z4.

EDITOR-IN-CHIEF
Judge Rodney Mykle

EDITORIAL BOARD
British Columbia, Judge C.C. Barnett
Alberta, Judge A.W. Aunger
Saskatchewan, Judge R.J. Kucey
Ontario, Judge Douglas V. Latimer
Quebec, le Judge Andre Duranleau
New Brunswick, Judge Blake Lynch
Prince Edward Island, Judge Gerald L. FitzGerald
Nova Scotia, Judge R.J. McCleave
Newfoundland, Judge Ronald L. Jenkins
North West Territories, Chief Judge James R. Slaven

Canadian Association of Provincial Court Judges

EIGHTH ANNUAL MEETING

(in conjunction with the annual meeting of the Ontario Association of Provincial Court Judges, Criminal Division)

Royal York Hotel
Toronto, Ontario
September 15-19, 1981

Panel Discussions:
Financial Management for Judges
A View of the Bench from the Bar
Sentencing Youthful Offenders
Administration of Courts
Judicial Independence of the Provincial Bench

Participants and Guests:
Mr. Justice W. Howland, Chief Justice of Ontario
Mr. Justice James Jerome, Assoc. Chief Judge, Federal Court of Canada

Hon. Roy McMurtry, Attorney-General, Province of Ontario

Dean Watt, American National Judicial College

Frank Muldoon, President of the Law Reform Commission of Canada

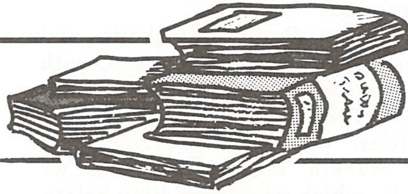
Arthur Maloney, Q.C.

Edward Greenspan

Receptions and Dinners hosted by the President of the C.A.P.C.J. and the President of the Ontario Provincial Judges (Criminal Division) Association, The Lieutenant-Governor of Ontario, and the Province of Ontario.

— Plan Now to Attend! —

Book Review



Reason for Judgment:

A Handbook for Judges and Other Judicial Officers

By Roman N. Komar

Butterworths, Scarborough, Ontario. 103 pages. $32.95

This slim volume is a Canadian "first", a valuable analysis and critique of Canadian judgment writing, containing well-organized suggestions for strengthening and giving vigour to judgments of all levels of the Canadian bench.

The author's confessed purpose is to say the least, ambitious: "The utterances and writings of judges are different . . . they can and sometimes do become great literature. It is the proposition of this book that this should indeed be so."

For those of us, however, who don't propose to make every breathalyzer judment rival *Paradise Lost* in scope, spirit and tone, the text may still provide useful guidance in the policy, style and mechanics of judgment presentation.

The book begins with a discussion of the policy, etiquette and ethics of judgment writing, canvassing issues such as: Should reasons be rendered? When should reasons be written, when oral? When, and how, to amplify oral reasons with a later written version? What is the propriety — and the procedure — of independent judicial research? When, and how, ought a judge to amend a transcript?

Many judges wonder whether judgment writing is an art or science. That issue is neatly covered by Mr. Komar, who diligently treats it as both.

The chapters on style (judgement writing as an art) provide valuable reminders of the idiosyncracies of the bench, comments on judicial criticism of the parties and of lawyers, and suggests further references and helps for those inclined to polish the stylistic quality of their decisions.

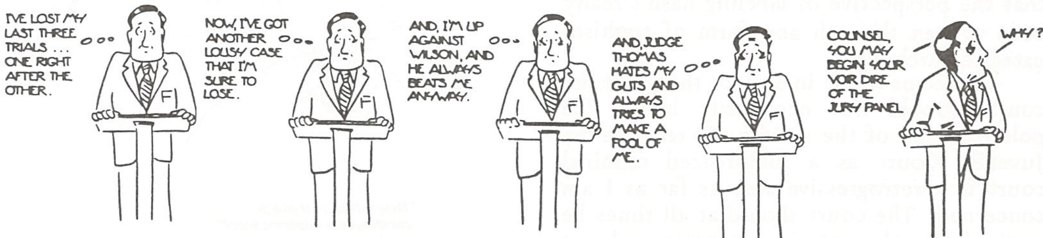
Perhaps, however, he shouldn't always be taken too literally. His suggestion that 'it is a sound rule of thumb that urges a judge to state the findings of fact as favourable as possible to the losing party' may apply nicely in civil matters, but the last time I tried it I almost inadvertently acquitted a rascal on a sure-fire Crown case. Every rule ought to be used with some discretion.

His discussion on mechanics and drafting (judgment writing as a science) ought to be required reading by every judicial officer. There is an interesting chapter on judgment introductions, whether factual, legal, narrative or "historical-academic". He talks about judgment organization, how to deal with the facts, how to present the legal issues, how, in short, to render a judgment in a concise but thorough manner.

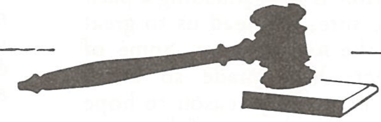
The volume is doubtless worth reading and re-reading, and is a most welcome introduction to a heretofore undernourished subject.

Following Mr. Komar's suggestions on judgment structure and organization may, in fact, result in judgments of clarity, precision, and - possibly - good literature.

R.H.M.



President's Page



by Judge Jacques Lessard

Preparations for our annual conference to be held in Toronto from September 15 to 18 have already begun, and I realize that in only a few months time my weighty responsibilities as President of the Canadian Association of Provincial Court Judges will come to an end.

Realizing that the requirements of the office were great, since my appointment I have been very active in carrying out my duties, devoting to them all the energy of which I am capable. But I do not wish to linger on the onerous aspect of the task; suffice it to say that the experience has been an extremely rich and rewarding one, and has largely compensated for the self-discipline required, the often painful difficulties that I have encountered and the numerous tasks to which I have had to address myself, all of which are outweighed by the knowledge of mission accomplished, within the limits of my modest capacities.

Throughout this term of office, in all circumstances, I have been guided by my awareness of the importance of our Association, and the great affection it elicits in all those who are proud to be part of it.

It is not only the knowledge of the part I have played in the realization of the ultimate goals of our Association that has given me such profound feeling of satisfaction. The many tours which have taken me to all parts of the country as well as the numerous meetings in which I have participated have forcibly brought home to me the strength of the fraternal ties among the judges, manifested by friendly cooperation and mutual esteem. In this regard, I would like to express my gratitude for the warm welcome I received at the various provincial conferences and the many seminars I attended.

I am extremely grateful to my Chief Justice for his kindness in making it possible for me to accept every invitation I received. It is through his good offices that I have had the great pleasure of meeting so many colleagues from other provinces. The cordial relations which I have maintained with them all have made a great impression on me; I am

Dans quelques mois à peine, alors que déjà s'amorce notre Conférence annuelle qui se tiendra à Toronto du 15 au 18 septembre prochain, prendra fin alors la lourde responsabilité que j'avais assumée de présider aux destinées de notre Association nationale des juges provinciaux du Canada.

Depuis ma nomination à la présidence et pour répondre adéquatement aux exigences inhérentes à cette fonction, j'ai dû me livrer à une activité intense en déployant toute l'énergie dont je pouvais disposer mais dont j'évite de vous en préciser la mesure afin de ne point flatter mon amourpropre.

Qu'il me suffise de vous dire que j'ai vécu jusqu'ici une expérience enrichissante et qui compense largement les peines que j'ai dû m'imposer, les difficultés parfois pénibles que j'ai rencontrées et les tâches nombreuses auxquelles il a fallu m'astreindre, tellement l'emporte la satisfaction du devoir accompli dans la limite, bien sûr, de mes modestes capacités.

Tout au long de ce parcours, et en toute circonstance, je n'ai point cessé de réaliser toute l'importance que revêt une association d'une telle envergure ainsi que l'attachement qu'elle suscite chez tous ceux qui se glorifient d'en faire équipe.

Il n'y a pas que cette seule participation de ma part à la réalisation des buts ultimes dont s'est tracée notre association qui a su m'apporter un sentiment de profonde satisfaction. En effet, les périples multiples qui m'ont conduit dans toutes les régions du pays ainsi que les recontres fort nombreuses auxquelles je me suis prêté me permettent d'attester avec force de l'existence chez les juges de liens confraternels qui se manifestent par une franche camaraderie et une estime réciproque.

A ce propos, je voudrais exprimer toute ma gratitude pour l'accueil chaleureux que l'on m'a réservé à l'occasion de ma présence à diverses conventions provinciales ou lors de ma participation à certains colloques.

Avec la complaisance de mon juge en chef, ce dont je lui sais gré, il m'a été loisible d'acquiescer à chaque invitation qui m'a été transmise, de sorte que j'ai eu le vif

equally touched by the solicitude expressed on my behalf.

Our Association is now pursuing a path which, I am quite sure, will lead us to great achievements in the near furture. Some of our major projects have made so much progress that we have every reason to hope we shall bring them to a successful conclusion.

This is the case for example with regard to our project for a unified criminal court; left in abeyance for some time, it is now being discussed and there are certain developments whose beneficial effects should not be long in making themselves felt. In addition to a right already exercised before a court of appeal to debate the constitutional aspect of the question, unanimity is becoming increasingly apparent with regard to this project; at the very least it is being viewed with greater comprehension. A study, ordered by the Quebec government, is now under way on the matter and it would seem that more rapid progress than we had hoped for is likely to take place.

The idea of a national college for training judges is truly beginning to take shape; already thought is being given to the means for establishing it. In the meantime, under the skilful direction of Judge Bud Wong, chairman of our education committee, advanced training programs for judges continue to increase in quality and diversity.

Furthermore, because of its many activities, our Association is becoming increasingly recognized as the organization most representative of the members of our profession, and our opinions are commanding attention and respect.

This, briefly, is my message to you on this, perhaps the last occasion I will have before we meet at the annual conference in September. I am looking forward to seeing as many as possible of you there.

I offer my greetings to all and look forward with pleasure to seeing you again in circumstances no less agreeable.

plaisir de cotoyer un nombre impressionnant de collègues de plusieurs provinces.

Les relations très cordiales que j'ai alors entretenues avec les uns et les autres m'ont vivement impressioné alors que j'ai été également touché par la sollicitude dont on a fait preuve à mon endroit.

Notre Association poursuit actuellement un cheminement qui, je vous en donne l'assurance, nous conduira dans un avenir prochain vers de grandes réalisations. Certains de nos projets d'envergure ont connu une impulsion telle qu'il nous est permis de fonder les plus grands espoirs.

C'est ainsi par texemple que notre projet d'unification des tribunaux des cours de première instance en matière criminelle, demeuré en veilleuse pendant un certain temps, a connu certains développements dont les effets bénéfiques ne sauraient tarder à se manifester. En plus d'un recours déjà exercé devantun tribunal d'appel pour en débattre l'aspect constitutionnel de la question, l'unanimité se fait de lus en plus autour de ce projet, ou du moins est-il perçu avec une plus grande compréhension. Une étude en cours ordonnée par le gouvernement du Québec sur ce sujet est susceptible, semble-t-il, de provoquer un déclenchement plus rapide que ce qu'il était permis d'escompter.

La conception d'un Collège national d'éducation pour les juges commence véritablement à prendre forme et déjà l'on songe aux mécanismes qui pourraient éventuellement en assurer son implantation.

Dans l'intervalle, et sous l'habile direction du président actuel de notre comité d'éducation, notre collègue, le juge Bud Wong, les programmes de perfectionnement offerts aux juges ne cessent d'accroître en qualité et diversité.

Par ailleurs et en raison de la manifestation de ses nombreuses activités, notre Association est de plus en plus reconnue comme l'organisme le plus représentatif de cette collectivité dont nous sommes du nombre, de sorte que l'expression de nos opinions commande respect et attention.

Voilà très brièvement le message que je voulais vous livrer, alors que c'est peut-être là la dernière opportunité qu'il me reste avant la convocation de la prochaine convention annuelle de septembre prochain, et à laquelle je vous invite cordialement à participer en plus grand nombre possible.

A tous, j'offre mes plus sincères salutations et anticipe du plaisir de vous revoir en d'autres circonstances non moins agréables.

are generally good.

In Frobisher Bay, Yellowknife and Inuvik there are formal courtrooms, with chambers, which are excellent, in Cape Dorset and Tuktoyaktuk we used new hamlet offices, which are very good, in Sanikiluag, Rankin Inlet and Aklavik we used rec halls, which might have been better.

Accommodation, with the one exception, ranged from adequate to excellent. The food, except for the meals that never were, ranged from good to surprisingly excellent. Some menus rivaled those of Toronto and Calgary. Fresh foods and fresh milk were scarce (except in Yellowknife), but there was variety and good preparation.

The greatest asset of the Arctic has to be the people. Everyone I met was an individual - some were characters. Each had a story to tell, if you took the time to listen. I found them to be genuine - and they expected that of others.

I look forward to going back, at least in 1983, if not before. On the second weekend, we contacted the management of the Yellowknife Inn, the second hotel, and Tourism. Prepatory plans are well under way. Dates are not yet fixed. Make a mental note, at least, to include Yellowknife - and more of the Northwest Territories - in your vacation plans for the Summer (June or July) of 1983.

Creative Choice

(Continued from page 27)

lawyer but fundamentally it leaves out the matter of resources.

It is in this area, indeed, that we have to go very far in order to really deal with the needs of children coming through the administration of juvenile justice. I am personally not at all happy with the suggestion put forth by the new legislation that the court is a stigmatic system and that children are labeled and that the court at all cost should be used as a last resort. On the contrary as I have inferred before the process of constructive experiential involvement of the child with the court structures could be a healthy situation and not necessarily a stigmatic and labeling one and that the perspective of labeling hasn't really been proven through any form of sophisticated research.

It seems to me in essence then that the courts should not necessarily be at the polarized end of the system. To relegate the Juvenile Court as a junior-sized criminal court is a retrogressive step as far as I am concerned. The court should at all times be part of the therapeutic processes and not merely deal with due process matters alone but inculcate also eighty percent of the case which is disposing of the matter in regards to the needs of the child. This is an area that I believe the legislation does not occupy a full time to. My fundamental belief is that legislation is only as good as those that interpret it and also that it is only a mere legal framework in which one must adorn it with the necessary resources in order for it to reach its ultimate fruition in terms of intent.

In conclusion our role today is to encourage a social and legal ethic, an ethic that abhors the imbalances and the inequities that we see happening to our youth going through the system of juvenile justice. I firmly believe that this ethic that we must attain has the one element that should prevail in any structure or service dealing with children and that element is humanism. The ability to feel, touch and dispense justice with compassion and sensitivity.

Humanism must be the matrix, the seedbed that must be nourished, if our legal and social structures are to flourish side by side in peaceful and productive coexistence with our ever changing youth.

And we should always ask ourselves "Is it well with our children — if it is well with a child, the well being of our community, the well being of our nations, and ultimately the well being of the world will be assured."

(The Perils of 1984 — continued from page 29)

Lord Salmon will no doubt, but without much hope of persuading the Lord Chancellor attempt to bring a statute of liberty to the statute book. His battle for freedom is, if not a lost cause, at least a much better one.

The Manchester Guardian

"Now which of these is considered a misdemeanor?"

Northern Rice

by Judge Douglas E. Rice

(The author is the Executive Director of the Canadian Association of Provincial Court Judges)

Before I left the Arctic, one of the promises I made to Chief Judge Jim Slaven was to write an article for the Association Journal relating some of my experiences during my three week working holiday. Since my experiences were mostly good, and, if not, at the least, humourous, it may be good for attendance at Convention '83.

I left St. Stephen on Sunday, March 22nd and returned on Monday, April 13th. During the intervening three weeks, I worked or (travelled) 15 working days, and in those days heard some 200 matters in some eight communities. In the process, I travelled some 13,500 air kilometers (in the North) by schedule and charter aircraft, missed six meals and lost 30 hours of sleep.

So much for statistics. Flying first to Montreal, I met with President Jacques Lessard on Sunday evening. Monday morning took me to Frobisher Bay on a Nordair 737 cargo-passenger aircraft, my first such experience. The rest of the Court party, consisting of the Clerk, Reporter, Crown Attorney and Duty Counsel arrived from Yellowknife that evening. Tuesday we did first appearances and started an attempted murder preliminary and adjourned at 11 p.m. Wednesday, we flew to Cape Dorset (by Twin Otter, charter) completed matters there and returned late that evening. Thursday we began at 8:30 and completed the preliminary and other matters by mid-afternoon. Time to pack and catch the scheduled Northwest Territorial Lockheed Electra to Yellowknife that evening - a five hour flight including a stop at Rankin Inlet.

Friday morning I sat in Yellowknife and in the afternoon, Jim showed me sights of Yellowknife. On Saturday, Jim and I met with the management of the Explorer Inn, a modern hotel, comparable to any Holiday Inn, and was where I was staying, and which will be the Convention Hotel in '83. On Sunday, we discussed Convention '83, including planning pre-conference and post-conference tours in N.W.T.

Monday I was off again East, travelling by a chartered Beechcraft Trade Wind, a six passenger job, with a Court party of five, plus a ton of baggage, and no washroom. Stops were made at Uranium City, Sask. and Churchill, Man., for fuel and other comforts, and arrived at Sanikiluaq in early evening. The only accommodation, a four room motel, had three rooms already occupied, so six of us, including one pilot, and the lady Clerk and lady Duty Counsel, had to share the remaining room, complete with honey-bucket and a water system that was not functioning.

Tuesday we completed our work here and continued on to Rankin Inlet. We finished here by Thursday morning and returned to Yellowknife. On Friday I had a full day in the Yellowknife Court, including taking part in the granting of Canadian Citizenship to seven new Canadians, conducted by Chief Judge Slaven.

I must observe that all the matters handled by me these first two weeks were Criminal Code and Narcotic Control Act cases. Less serious matters were dealt with by local Justices of the Peace, some of whom I met, and with whom I was impressed, by their knowledge of local conditions and the native population, and their good common sense.

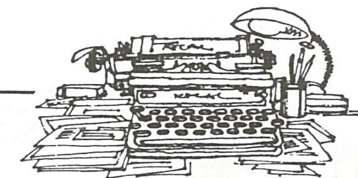
Week No. 3 took me to the High Arctic. Based in Inuvik, and there on Monday, Tuesday and Thursday, I travelled to Tuktoyaktuk on Wednesday and Aklavik on Friday. Here I ran into different matters in addition to those under the Code and the N.C.A. These included Territorial Ordinances (primarily liquor) and Family Court type cases.

As to the Court staff, I found the Court Clerks both essential and capable. They organized the Court, both physically and administratively, read the charges (I could not have pronounced the names), arranged payment of fines, prepared Probation Orders and Warrants and generally kept the Court functioning. In addition the Clerks "look after" the Judge at least, procuring airline tickets, making hotel reservations, arranging charters, ground transportation and solving the other 101 emergencies that arise daily.

I found the Court Reporters competent and obliging. Counsel, both Crown and Defense, were young, but showed a degree of competency that belied their time of experience. It often took some time to get all matters ready for Court, but when the time arrived, matters were handled smoothly.

Courtroom facilities in the Territories

Letter To The Editor



Dear Sir:

I read the article by Senior Judge Ian Dubienski of the Manitoba Provincial Court with interest but with some disappointment. After all the work and research, the results as stated in the article begged more questions than it tackled, and I can't see that it has advanced us much.

I guess this question has been a perennial problem for Judges since the days of Greece and Rome. It has certainly surfaced recently in B.C. – indeed it never really submerged.

The section of the B.C. Provincial Court Act that deals with the question is Section 8(1):

> "Subject to subsection (2) and section 9, a Judge shall devote himself exclusively to his judicial duties and shall not engage in any other occupation, profession or business."

Subsection 2 deals with assignment to other duties while on leave of absence. Section 9 deals with annual vacations.

This is essentially the same as the Manitoba legislation set out on page 6 of the article.

I believe that the provision only makes sense when viewed historically. Before 1969 we had municipally appointed magistrates. Many of them were laymen, and most were part-time. By the Provincial Court Act of 1969, those magistrates became Judges of the Provincial Court, which now come under the jurisdiction of the Province rather than the Municipalities. At that point, many Judges were still part-time and the parallel provision to the present section 8(1) was section 28:

> "(1) No Judge may act as a solicitor, agent or counsel in any cause, matter, prosecution or proceeding of a criminal nature, or in any case which by law may be investigated or tried before the Court.
>
> (2) No partner, business associate or articled clerk of a Judge may act in any cause, matter, prosecution, proceeding or case mentioned in subsection (1) that is to be tried or heard before the Judge."

In 1971, a category of full-time judges who were trained as lawyers was set up, and subsection (3) was added to section 28 as follows:

> "(3) No Judge in receipt of a full-time salary . . . shall either directly or indirectly engage in any occupation or business other than his judicial duties, but every such Judge shall devote himself exclusively to his judicial duties . . ."

In 1975, the B.C. Provincial Court Act was replaced. Part-time Judges were done away with, there were only full-time Judges and the present section 8(1) (see above) superseded the old section 28.

So viewed, the provisions for a Judge devoting himself full time to judging, and not engaging in any other occupation, profession or business, emerge as the vehicle for making the change from part-time to full-time Judges. As a code for the conduct of the full-time Judges, these provisions leave a lot to be desired.

Literally construed, and section 8(1) would mean that we should be judging 24 hours a day 7 days a week, except on vacation or otherwise assigned. Devoting oneself "exclusively" to one's judicial duties means, in plain English, not wasting time on such frivolities as eating and sleeping. And as for any hobbies or investments, those are definitely occupations, if not professions or businesses, so one can forget them too. As a code of conduct, the section misses the point. No one objects to a Judge, however full-time, devoting some of his energies to something else. If he didn't he'd go crazy.

I believe that the real point is conflict of interest. What people object to, and properly, is a Judge getting involved in some activity which will damage, or at least tarnish his objectivity as a Judge. I know full well that to draft a section based on this, one is going to have to be extremely general and the application to specific cases is going to be a constant problem. But I don't think that's any reason for not putting the section on a sound basis.

I have drafted a proposed replacement for our section 8(1) as follows:

(Continued on page 13)

THE WESTERN REGIONAL RIDES AGAIN

The Western Regional Educational Seminar sponsored by the C.A.P.C.J. was recently held at the Gull Harbour Resort, Hecla Island, in Manitoba.

The theme of the four-day seminar concerned forthcoming changes in juvenile and criminal law, and canvassed the Young Offenders Act, the Sexual Offences bill, the Uniform Evidence Act, the Charter of Rights, and included a brief preview of the Omnibus (Criminal) Bill.

Mr. Justice Fred Kaufman of the Quebec Court of Appeal was the keynote speaker, and other panellists and guests included Judge Omer Archambault of the Solicitor-General's Department, Eugene Ewaschuk and Daniel Prefontaine of the Department of Justice, Gordon Pilkey, Deputy Attorney-General for Manitoba, Graeme Garson, Chief Executive Officer of the Law Society of Manitoba, and representatives from the defence bar, probation services and Crown Attorneys' office.

A special presentation on child abuse, organized by Senior Judge Ed Kimelman, was made by Dr. Charles Ferguson, Douglas Yard, Counsel for the Children's Aid Society and Robert Richardson of the Child Abuse Team, C.A.S. to the judges of the family court in attendance at the seminar. All other sessions were held jointly with the criminal and family benches.

The 67 judges from the western provinces and the territories enjoyed the opportunity to study in depth the proposed changes in legislation which so directly affect the provincial court.

In an isolated, natural setting, the social activity, and the opportunity to make or renew friendships was, always, another enjoyable facet of the annual seminar.

Already, plans are under way for the 1982 seminar, to be held in Regina, under the direction of Chief Judge Ernest Boychuk and Education Chairman E.S. Bobowski.

PROTECTION OF CHILDREN FROM SEXUAL ABUSE

The federal government has appointed a committee on sexual abuse and exploitation of children and youths. The committee is to enquire into the incidence and prevalence in Canada of sexual offences against children and youths and to recommend improvements in laws for the protection of young persons from sexual abuse and exploitation. The committee is to report to the government within two years.

The Chairman of the committee is Dr. Robin F. Badgley of Oakville, Ontario, professor in the Department of Behavioral Sciences, Faculty of Medicine at the University of Toronto. Dr. Badgley was Chairman of the Committee on the Operation of the Abortion Law which submitted its report to the Minister of Justice in 1977.

Members of the committee are: Judge H.A. Allard, Alberta; Denyse Fortin, Paul-Marcel Gelinas and Lucie Pepin, Quebec; Dr. Elizabeth S. Hillman, Newfoundland; Norma McCormick, Manitoba; Madam Justice Patricia M. Proudfoot of the Supreme Court of British Columbia; Dr. Quentin Rae-Grant and Sylvia Sutherland, Ontario; and Doris Ogilvie, New Brunswick.

Mr. Chretien, the federal Minister of Justice, said there is an urgent need to amend the law on sexual offences which he tabled in the House of Commons on January 12, 1981 and which will be debated in the near future. He said the amendments in Bill C-53, which include special protection for children against sexual exploitation, were made in response to recommendations of the Law Reform Commission of Canada and other interested organizations.

The study is complementary to the introduction of these proposals. It will provide the Government with comprehensive information on the incidence and prevalence of sexual abuse and exploitation of children in Canada. Further amendments to the Criminal Code will be considered, if necessary, following receipt of the report and recommendations of the Committee.

The terms of reference of the committee are as follows:

or dissenting judges.

His last judgment before retiring as a Law Lord was given with a typical dissenting flourish. He was the only one of five Law Lords who supported Granada Television in its original refusal to reveal the identity of the British Steel Corporation employee who handed over 250 confidential documents. All the others said that British Steel was entitled to an effective remedy for breach of confidence.

Lord Salmon explains his opposition to his fellow Law Lords simply: "The question, to my mind, is that, whilst the press is putting forward information about the loss the public suffered as a result of the faults and obvious errors made by the corporation, then it is of great public importance that the public should recognise that their money has been lost because of the incompetence of the corporation, and that is the crux.

"The press and the media can't be forced to give the name of the informant and it's not for their own sakes but for the sake of the public. If they gave names there would not be any bloody informants."

Last week Lord Scarman, while Salmon was absent in the West Indies, moved for him an amendment to the Government's contempt bill. This would have given journalists the right to refuse to disclose the source of their information, except where national security or criminality was at issue. Another Law Lord angrily suggested that this would place journalists in a unique and privileged category.

During a radio interview, Lord Salmon had already described the contempt bill as "one of the most stupid pieces of legislation I could imagine," and criticised its apparent attempts to protect judges by ensuring that they could not be influenced by media comment. A concern to diminish or control government privilege and strengthen press freedom has been a governing concern throughout his judicial career.

He came to the High Court as a judge with little direct experience of criminal work. "I wasn't keen on criminal law. I'd had a commercial practice and I'd hardly done any crime. When Parliament came to sound out the Queen's Bench judges, there were only three of us who believed it was wrong to retain capital punishment."

Lord Salmon looks back with no nostalgia to his early days as an advocate, a time when the legal profession was even more amenable to manipulation.

On the whole, judges today are as good as they every have been in my lifetime," he says. "When I was a young man at the Bar, there were still quite a number of people appointed for purely political reasons," What reasons?

"Oh, when a man is no bloody good at all but very useful to the government. It' fair to say that during the last 30 years judges have been appointed to the High Court entirely on account of their ability and there was no sort of political notion about their appointments."

Lord Salmon was far more disturbed about 1984 and a hypothetical situation in which the Prime Minister and Lord Chancellor were members of a totalitarian government.

"That, to my mind, is one of the greatest perils facing us. It may turn out that George Orwell was right and that we shall have a totalitarian government in 1984 or thereabouts."

What makes Lord Salmon so fearful? "You only have to look abroad and you only have to look at what Wedgwood Benn said about creating 1,000 peers."

Was he then convinced that the House of Lords, with its permanent Conservative majority based on an overwhelming preponderance of hereditary peers, constituted a suitable second chamber?

"If you're asking me whether someone should have a vote there because he's son of a peer, I would say no. But I would also say that there are 30 to 40 of them who are very good indeed — David Windlesham, Carrington, for example.

He envisages a scheme whereby some of the hereditary peers would be elected to speak and vote. "Only about 150 of the 1,000 hereditary peers ever go near the place. I also think the majority of the life peers are very good."

More important than any such reform, he thinks that a statute of liberty enshrined in simple, easily understandable language is the proper bulwark. "The European Bill of Rights is a turgid and ambiguous thing. It says that it shall continue in existence until an Act is passed to reverse it, which means in effect that with a totalitarian government, it would be as much use as a sick headache."

The Salmon statute of liberty would empower judges to delete every bill which offended against its governing principles. "If we had a statute of liberty one could bring an action if an act were ultra vires."

A totalitarian government might then, he reckons, be tempted to repeal a statute of liberty and it might well succeed. But it would be clear to everyone what inalienable liberties were being sacrificed.

When he returns from the West Indies,

(Continued on page 31)

Other Views

JUSTICE IN CAMERA?

American television will start broadcasting real court cases from September, with judge, plaintiffs, defendants, and courtroom all paid for by two Hollywood producers.

To the producers, the series, The Peoples Court, is "great educative entertainment". To critics, it is another example of American television blurring the distinction between show business and reality.

The series, which has been sold coast-to-coast, uses litigants from the Los Angeles small claims courts, where disputes are limited to $750. Already, California has allowed litigants to hire a judge to hear cases outside the usual courts, in an attempt to speed up the painfully slow civil system.

Borrowing this procedure, TV producers auditioned six semi-retired judges before settling on Judge Joseph Wapmer, aged 61. The judge is the son of an actor and went into the law after abandoning an early ambition for the stage.

The defendants and plaintiffs were culled from court lists, auditioned by the producers and offered the chance of having their cases settled and at the same time receive a share in the $1,000 fee.

The most interesting of five pilot shows was called the Case of the Cartier Knockoff, in which a woman confined to a wheelchair sued a waitress for allegedly selling her three fake Cartier watches.

TV justice begins as the doors open into a courtroom with concealed cameras which the producers have built in a studio on Sunset Boulevard. There is a musical fanfare and an off-screen voice intones: "What you are about to witness is real."

Then bongo drums work up the suspense as the camera freezes on a face – "This is the defendant" – and then "This is the plaintiff" – as it freezes again. More bongos.

Evidence is given about how a Mrs. Dixon paid $75 each for the watches. But the denouement comes as Mrs. Dixon admits she knew a Cartier watch was worth over $1,000, and the waitress claims that she never said they were definiely Cartiers.

The silvery haired judge "retires" to consider the case, but in fact it is a break for commercials – beginning after a red-headed court "hostess" breaks in to ask: "Who do *you* think is guilty?"

Then the judgment: Mrs. Dixon's claim is denied on grounds of "caveat emptor" – let the buyer beware. The last scene shows the loser in tears.

The Manchester Guardian

THE PERILS OF 1984

Lord Salmon, the Law Lord who retired last summer, is worried about Britain in 1984. He fears that by then a totalitarian government will have taken over, while the judiciary – lacking the bulwark which a bill of rights could supply – would remain powerless to protest effectively or prevent the termination of individual liberty.

Would it really happen here? And how? At whose behest? Lord Salmon has his ready answer and his own *monstre sacre* – the "very dangerous" Mr. Benn, "The most dangerous thing at the moment is the ultimate Left of the Labour Party and it disgusts people like Healey and Callaghan."

He now provides a fresh verdict on democracy, in its limited English manifestation, and sees it frail, wilting, and susceptible to uprooting.

Those who do not know may be tempted to dismiss Lord Salmon as a typical retired judge, whose new found-freedom absolves him from political impartiality and allows the opportunity of given vent to doctrinaire anxieties of the kind found in most reaches of the Conservative Party. But they would be wrong.

Ever since he became the first Jewish judge to reach the Queen's Bench and the High Court since the late Lord Reading, the former Lord Chief Justice, Salmon has had a reputation as one of the minority of liberal

1. The Committee on Sexual Offences Against Children and Youths is appointed by the Minister of Justice and the Minister of National Health and Welfare to conduct a study to determine the adequacy of the laws in Canada in providing protection from sexual offences against children and youths and to make recommendations for improving this protection.
2. The Committee is asked to ascertain the incidence and prevalence of sexual abuse against children and youths, and of their exploitation for sexual purposes by way of prostitution and pornography. In addition, the Committee is asked to examine the question of access by children and youths to pornographic material. The Committee is asked to examine the relationship between the enforcement of the law and other mechanisms used by the community to protect children and youths from sexual abuse and exploitation.
3. The Committee will collect factual information on and examine Criminal Code sexual offences and offences under related laws which either expressly refer to children and youths as victims or which are frequently committed against children and youths.
4. In particular, the following matters are to be examined:
   (1) The elements of the offences with special attention to issues of age and consent and related considerations of evidence and publicity.
   (2) The incidence and prevalence of sexual offences against children and youths in Canada. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general.
   (3) Whether such offences are likely to be brought to the attention of the authorities; whether they are likely to be prosecuted and, if prosecuted, are likely to result in convictions.
   (4) The effectiveness of criminal sanctions and methods other than the application of criminal sanctions in dealing with the types of conduct involved in these offences.
5. The study is to be completed within two years from the time of establishment of the Committee, and its recommendations will be contained in a report which will be made public. Officials from the Departments of Justice and National Health and Welfare will be available for consultation and will provide any assistance the Committee may require for the purpose of facilitating its work.

JUDGE OXNER NEW PRESIDENT

Judge Sandra Oxner of the Provincial Court of Nova Scotia was elected President at the Canadian Institute for the Administration of Justic annual meeting in Vancouver. Judge Oxner previously served as Vice-President of the Institute. She is a former President of the Association of Provincial Court Judges. Judge Oxner is a national Council member of the Canadian Human Rights Association, a Director of the Atlantic Council of Association of Christians and Jews, a Returning Officer of the National Council of Women, a Governor of the Canadian Institute of Advanced Legal Studies and a member of the National Advisory Council of Female Offenders.

She was a member of the Executive Council of Commonwealth Magistrates' Association and was a Criminal Law Consultant for the Law Reform Commission of Canada. Judge Oxner replaces Mr. Justice R.E. Holland of the high Court of Justice of Ontario who served two years as President of the Institute.

Also appointed as Vice-President was Mr. Harvey J. Bliss, Q.C. of Toronto. Mr. Bliss served as a Director of the Institute in the past. He is a senior partner in the firm of Bliss, Kirsh in Toronto. Mr. Bliss is the Past Chairman of the National Council on the Administration of Justice, Past National Chairman of the Civil Litigation Section of the Canadian Bar Association, Former Lecturer in the Trial Practice at Osgoode Hall Law School and the Bar Admission Course.

M. le juge en chef Jules Deschênes of the Superior Court of Québec was elected Vice-President of the C.I.A.J. at its annual meeting in Vancouver.

Nommé juge en chef de la Cour Supérieure du Québec le 23 août 1973, M. le juge en chef Deschênes est aussi membre de la Société Royale du Canada depuis 1977, membre du Comité exécutif du Conseil canadien de la magistrature, Président du Comité de l'Association mondiale des juges sur l'expansion de la compétence de la Cour Internationale de Justice depuis 1977, membre du Conseil du

Centre de la Paix Mondiale par le Droit depuis 1980, Chevalier de l'Ordre de Malte depuis 1978, membre honoraire Phi Delta et Phi de l'Université McGill, Succursale Sir Wilfrid Laurier, membre du Conseil d'administration et du Conseil exécutif de l'Institute canadien d'études juridiques supérieures depuis 1978, membre de l'International Law Association, membre du Conseil International des Juristes, membre du Conseil Canadien de Droit International, membre de l'Association québecoise pour l'étude comparative du droit. M. le juge en chef Deschênes a publié recemment "L'école publique confessionnelle du Québec", Edition Fidées, Montréal 1980 et "Ainsi parlèrent les Tribunaux . . . Conflits linguistiques au Canada 1968-1980", Wilson et lafleur Ltée, 1980.

QUEBEC PENITENTIARY DRUG ABUSE STUDY RELEASED

The authority of federal penitentiary officers as law enforcement agents should be increased to allow them better control over the introduction of narcotics into institutions.

This was one of the key recommendations contained in a report presented a special committee which was establised by The Correctional Service of Canada's Quebec Region to study the problems of smuggling and use of drugs inside Quebec's four medium security institutions.

The committee also recommended that training sessions be held in all institutions to develop a greater awareness by staff of the drug problem and the means they have at their disposal or that they can develop to counter its growth.

Improved, more modern technology for detecting drugs and for gathering information on the methods of smuggling drugs into federal institutions and on drug traffickers was also recommended.

Stiffer penalties for those found guilty of smuggling drugs into institutions was also recommended by the committee.

Another key proposal is that a study group, composed of security specialists, be set up to review current directives and instructions dealing with drug smuggling and use in federal penitentiaries and to elaborate improved methods of search, detection, prevention, deterrence and correction to reduce and control the drug problem.

"All these actions should be combined with a special training program for inmates with drug and alcohol problems, the committee suggested."

The report is available on request.

Les pouvoirs dont disposent les agents des établissements pénitentiaires fédéraux en tant qu'agents de l'application des lois devraient être largis pour permettre une meilleure surveillance des stupéfiants qui sont introduits dans les établissements.

C'est là l'une des principales recommandations d'un rapport présenté au Solliciteur général du Canada, l'hon. Bob Kaplan, par un comité spécial créé par la Région du Québec du Service correctionnel du Canada et chargé d'étudier les problèmes de l'entrée illégale et de l'usage des drogues à l'intérieur des quatre établissements à sécurité moyenne du Québec.

"Le comité a aussi recommandé que des séances de formation aient lieu dans tous les établissements afin de développer, chez les membres du personnel, une conscience plus grande du problème de la drogue et des moyens dont ils disposents ou qu'ils peuvent élaborer afin de réprimer sa croissance", a anoncé M. Kaplan dans une déclaration faite aujourd'hui.

"On préconise en outre une technologie améliorée, plus moderne, pour déceler les drogues et recueillir de l'information sur les méthodes d'introduction dans les établissements fédéraux et sur les trafiquants de drogue."

Des peines plus sévères pour les personnes reconnues coupables d'avoir fait entrer de la drogue dans les établissements ont été aussi recommandées par le comitée.

Une autre proposition clé est qu'un groupe d'étude, composé de spécialistes de la sécurité, soit créé pour examiner les directives et instructions actuelles concernant l'introduction illégale et l'usage de drogues dans les pénitenciers fédéraux, et d'élaborer des méthodes améloirées de fouille, de détection, de prévention, de dissuasion et de correction afin de réduire et de maîtriser le problème de la drogue.

"Toutes ces mesures doivent s'accompagner d'une programme spécial de formation pour les détenus qui ont des problèmes relatifs à la drogue et à l'alcool," a suggéré le comité.

EXECUTIVE NOTES

The long-awaited Sentencing Handbook it is in its final stages, Ontario Chief Judge Fred Hayes told the June Executive meeting of the C.A.P.C.J., and ought to be ready for circulation by the annual meeting in

why it should be done in view of the complexity of modern behavioural problems.

What in essence can Juvenile Court Judges do for a learning disabled child who appears before him? In summary, firstly we must try to understand the frustration that the child is going through both in the community and in the courtroom experience.

Secondly, the Judge must be acutely aware of the child's problem and use the court's experience as a constructive not destructive component which invariably will have a major effect on the child's treatment program.

Thirdly, and most importantly, the Judge should be able to encourage and direct referral to the proper agencies in order to facilitate and bring about the remedial treatment programs needed in individual cases of learning disabled children.

Further, as indicated before, there must be a better and more equitable balancing of our budgets which deal with child care. For instance, in the field of learning disabilities wherein we should be giving more effort and more money and increasing our knowledge through research since we do not really know how successful or unsuccessful we are in many of our programs. When I speak of research I do not mean research used by vested interest through the use of statistics to self-perpetuate programs by obtaining more personnel for either the judiciary, law enforcements or treatment services. I mean that kind of research which is strictly dedicated to the best interests of the children. Consider the area of non-judicial diversionary practices by many welfare agencies and courts when dealing with children involved with delinquencies where the basic philosophy is that the court should be used as a last resort and that it is merely stigmatic and traumatic. These unconfirmed conceptions are unacceptable by myself. I therefore, suggest that concerted research be carried out to just begin to evaluate what effect or impact there really is upon a juvenile who could be charged but is not and does not go through the court system in comparison to that child or juvenile who is referred and who actually experiences constructive court processes and their attendant services. We might then just begin to discover a set of criteria by which we could determine which children should be considered for judicial or non-judicial procedures on a therapeutic as well as legal basis.

In this present day and age it is becoming more and more apparent that children have civil rights and civil liberties that will and should parallel them with their adult counter part. It seems to me that we should be giving them the right to treatment and the right to an education.

Many of our children in institutions or in foster homes are not getting the precise individualized care that they so badly need because of the specific qualitative lack of resources. How do you compensate children financially or emotionally who may be victims of unsophisticated treatment approaches? Imagine the irreparable damage we may be causing the child in a fractionalized and unco-ordinated system. I believe in the United States there have been law suits through class actions against governments and institutions for instances of cruel and unusual punishment where children are kept in limbo without proper treatment. We must ask ourselves this question, are we contributing to their neglect and delinquency? As interested people, professional and lay persons alike, let us not hide behind the concept that children can basically help themselves. If we accept the responsibilities to assist them we cannot opt out and leave the child in a kind of legal-social snakepit. Lack of resources is not a reasonable excuse – a child has a right to treatment and the taxpayer and parent alike have a right to know if this treatment is adequate.

As the lack of resources becomes known and made known to the community and the concept of the right to treatment services without discrimination is more widely accepted Juvenile Court Judges will be confronted with the child to the community because of the lack of resources. To deprive any citizen of his or her liberty upon the theory that confinement is for humane therapeutic reasons and then we fail to provide adequate treatment violates the fundamentals of due process in dealing with children.

FORTHCOMING LEGISLATION

We all are very acutely aware of the present Federal proposal for an act respecting procedures that will deal with young persons who commit offences against the Criminal Code and other Federal statutes. On the whole I find the statute progressive in many respects. The new statute however, simply restates the due process concept in clearer terms, a concept that I believe most of the juvenile court structures use in terms of protecting the legal rights of children such as a right to a full hearing and a right to a

(Continued on page 31)

THE BLACK MAGIC OF THE COURTS

Courts, and especially juvenile courts, by design and environment have a kind of black magic aura with the public as well as the child and the parents within the system itself. There unfortunately is always the omnipresent fear for everyone fears the traditional unknown. Pomp and glory are part of the everyday menu of judicial proceedings. The elaborate dais, the court personnel, social workers, the police add to this overall authority of the court.

The child or adult may see this only as a flurry of faces and this adds to this insular feeling of loneliness when attending court. This atmosphere is usually predominant in juvenile cases where the Judge sitting on a raised dais in most instances stares fixedly down on the young child possibly with learning disabilities who may be hyperactive who shifts nervously from foot to foot. Ceremony is important in this court but not to the point where it should stifle and block candid exchanges of opinion between the Bench and the child.

A Judge would have to be naive as well as optimistic to think that his dour presence itself will have any therapeutic effect on the juvenile. On the contrary anyone trained in the behavourial sciences will undoubtedly deny any healthy transition in the child's behaviour while in court. A child acquires a healthy attitude only through healthy relationships.

In a court room that is merely filled with austerity and indifference there is always the inherent danger of the opposite occuring. In many instances the juvenile is ill prepared for the traumatic appearance in court – especially a first offender. My experience with children in Juvenile Court has proven that a child blocks out these harsh realities and mysteries of the court and especially the demagogue on the dais. Appearance apparently is painful because society demands pain for crime. However, the Judge should be self-conscious of his need to contribute to the needs of the child and should not pontificate and paternalize on the rights and wrongs of life and law specifically.

It is important to remember that the courts environment in itself need not be inhibiting to a child's rehabilitation. The architectural environment can remain intact along with the robes and the dais. The court's design does not necessarily eliminate humanism, only those Judges with indifferent attitudes do. I believe the most drastic reform needed is in the Judge himself. No court however designed will ever rid itself of a child's aversion to it unless the dominant figure, the Judge, somehow emotes a warmth and understanding of the child's needs and has a unswerving belief in looking for good in all children which must be paramount.

The Judge must not hide behind the judicial cult of diffidence and admonish a child merely because it is his reputed duty for protection of society. A child in most instances sees through this fallacy and also the facade of the inept woodshed philosophy. Discipline is certainly a part of a Judge's decision making process but it must be fair and it must be consistent and certainly not hypocritical. Therefore an authoritarian institution such as a Juvenile Court must have a therapeutic effect on children. We must come to recognize and appreciate that it is not sufficient simply to impress the juvenile offender with the solemnity of court procedures. He is entitled to due process but he is also entitled to a form of judicial participation in dealing with his problems as well as with those of the parents. It is therefore necessary for the Judge to gain some insight into the processes of the offender's mind. Even the tension created by the court setting can be of great value for it can be used with sensitivity.

I am acutely aware that there is a school of thought which holds that a Juvenile Court should not concern itselfatall with such matters but to confine itself to the adjudication and the expounding of the law in relation to the offence and to the age of the offender. I disagree with this because this fundamentally ignores the primary issue that psychology and causation of behavioural problems is an integral part of the administration of justice and an understanding of which is essential to any effort at either prevention or cure.

WHAT CAN THE COURTS DO?

In summary then, the Juvenile Court belongs to the judicial system. It is to all intents and purposes firstly a court of law and not a social agency per se and is concerned with the rehabilitation of juvenile offenders. A Judge should have the highest available possible qualifications as regards both the law and knowledge of behaviour and interviewing techniques in order to perform his function with optimal efficiency. Historically these disciplines however have not been too complementary in the field of the administration of juvenile justice. There is no reason why this should not be done in the future and every reason

September.

A penultimate draft of the Handbook was circulated at the meeting, and won general approval from the executive members present. Chief Judge Hayes pointed out that the earlier "editorial" emphasis of the Handbook has been deleted, and the present draft deals with sentencing powers, and principles, with appropriate case references.

The loose leaf format of the Handbook will make updating easier, and the hope of the committee in charge of its preparation is that it will succeed in being of practical assistance to sentencing bodies across Canada.

Further stages of the Handbook project, which has been supported by the Department of the Solicitor-General, the C.A.P.C.J. and Canadian Chief Judges, will include a separate volume on services available in various provinces.

An Ottawa meeting in late June is expected to consider this latest draft of the Handbook.

In other business, it was reported that the Doner Foundation has approved a grant of $10,000 for the preparation of a report on the feasibility of a National Judicial College, under the auspices of the Canadian Institute for the Administration of Justice. A meeting is slated for October with all organizations affected by the proposed College, and the Association President has been authorized to attend to determine what role, if any, ought to be performed by the Association.

President Jacques Lessard noted the tremendous growth of the Association's Educational Secretariat in Ottawa in acting as a repository for research papers prepared for the Association, through its various conferences and seminars. A policy decision was made by the Executive that, although requests for papers by judges are encouraged (and, indeed, the response has been overwhelming) only one copy of each paper will be forwarded to judges making the request. Filling requests for multiple copies of any paper is likely to over-burden the Secretariat Office.

The President also reported that he has been in communication with Chief Judges with respect to the Deschenes study on the Independent Judicial Administration of Courts, under the auspices of the Canadian Judicial Council, and intends to report further when replies have been received.

Plans are advancing for both the 1982 and 1983 conventions, to be held in Saskatoon and Yellowknife, respectively. Judge Robert Conroy indicated that the 1982 convention will be held from September 14 to 18 at the Bessborough Hotel, under the chairmanship of Judge Richard Kucey. Chief Judge James Slaven of the North West Territories told the Executive that the Yellowknife convention would be fixed tentatively for July 26 - 29, at the Explorer Hotel. Judge Robert Halifax of Hay River has been named program chairman.

The question of reducing the number of mid-year Executive meetings to one was discussed, in view of rising travel costs which are resulting in a budgetary strain, but the matter has been adjourned for further discussion in September.

TORONTO CONVENTION APPROACHES

And from Judge Clare Lewis,
Convention '81 chairman,
we have this reminder:

"I wish to remind the members that the Eighth Annual Meeting of the Association will be held in Toronto at the Royal York Hotel from registration on Tuesday, September 15, 1981 until the closing breakfast of Judges and spouses on Saturday, September 19, 1981. It is anticipated that this may be the largest Annual Meeting in the Association's history. You may recall that it will be hosted by the Provincial Judges Association (Criminal Division) of Ontario. I am pleased to advise that 10 Judges of our Civil Division will be in attendance and 50 Judges of the Family Division have expressed interest in attending with their spouses.

"The proceedings will commence with the Presidents' Reception, jointly hosted by Judge Lessard, President of the C.A.P.C.J., and Judge Michel, President of the Ontario Criminal Division. The Spouses' Program is now well in hand and it, together with the amenities offered by Toronto, should afford interest to those attending with the Judges.

"Judges and Spouses will be received by the Lieutenant Governor of Ontario in his chambers at Queen's Park and they should enjoy the banquet and ball hosted by the Attorney General of Ontario to be held on Friday, September 18, 1981.

"All members will soon receive Notices of Intention for the Convention and it is most important to the Convention Committee that these be completed as soon as possible. Registration costs are $135.00 for Judges and $50.00 for spouses. Registration cards from the Royal York Hotel will be forwarded to the members and must be sent to that Hotel immediately upon receipt together with the first night's registration

cost of $60.00 to ensure accommodation. Space in that Hotel is at an absolute premium during our Convention and the Hotel has indicated that it will be ruthless in cut-off dates. No application for accommodation made later than 30 days before the Convention can be guaranteed. I do ask that all members planning to attend act quickly with respect to registration in the Hotel and notification of attendance, as requested.

"The Judges of Ontario are most pleased to be receiving their colleagues from across the country and hope that many of the Judges other than delegates will choose to attend."

SUCCESSFUL ATLANTIC REGIONAL

The Atlantic Regional Seminar, under the auspices of the C.A.P.C.J., was held at the Wandlyn Inn, Bridgewater, N.S. from May 31 to June 4.

Chaired jointly by Judges Hiram Carver and Joseph Kennedy, the seminar attracted 42 judges from Altantic Canada. Guests at the seminar include Mr. Justice Ritchie of the Supreme Court, who discussed recent decisions of that court, Robert Kaplan, the Solicitor-General for Canada, and Mr. Justice Angus MacDonald, of the Nova Scotia Supreme Court, who talked about sentencing guidelines.

Other items under discussion included independence of the judicary, rules of evidence, documentary evidence, business and banking records, and a fascinating panel with Mr. Justice MacDonald and Judge MacLellan of the Nova Scotia provincial bench on "Appeal Division – Trial Division: As We See One Another".

FORTHCOMING EDUCATION PLANS

At a recent executive meeting of the C.A.P.C.J. in Toronto, Judge R.B. Wong of Vancouver, the Education Chairman of the Association, reviewed a number of jointly-sponsored seminars and individual programs of the association.

A conference on "Sexual Aggression and the Law" will be held October 16 and 17 at the Four Seasons Hotel in Vancouver. This converence is sponsored by the Department of Criminology of Simon Fraser University, together with the Canadian Institute for the Administration of Justice and the C.A.P.C.J.

The aims of the conference are multi-disciplinary, in attempting to provide judges with an overview of the most recent research in the area of sexual aggression, to make researchers and potential expert witnesses more familiar with the legal context to which they might be asked to contribute information on assessment and treatment of sexual offenders, and to promote a greater degree of accuracy in the assessment of and prognosis for the dangerous sexual offender.

The overall goal of the conference is to make evidence, especially clinical evidence, more accessible to legal professionals charged with sentencing and other forms of disposition of the sexual offender.

Further information on the conference may be obtained from:

Sexual Aggression and the Law
Continuing Studies
Simon Fraser University
Burnaby, B.C. V5A 1S6

Judge Wong also indicated that the New Judges Program, to be held from October 28 to November 6, at the Park Lane Hotel in Ottawa, is also in its final planning stage, and that registrations are already arriving for the program with the majority of registrands to date from the province of Quebec.

Two seminars jointly sponsored by the Association and the Canadian Institute for the Administration of Justice are slated for 1982.

A Small Claims Seminar, from January 27 to 30, 1982 at the Hyatt Regency Hotel in Vancouver, will have the theme "Resolution of Small Claims Disputes in Canada".

This conference is an extension of the Conference on Small Claims Courts sponsored by the C.I.A.J. in Toronto in 1980.

Under the general chairmanship of Judge Edward O'Donnell of Surrey, B.C., the Canada-wide committee will be preparing a comprehensive look at the daily operation of small claims courts throughout the country.

In early April of 1982, a "Conduct of Bilingual Courts Seminar" will be held in Ontario, site to be determined. The program chairman is Judge Joseph Tarasofsky of Montreal, and further information on the program and registration is expected shortly.

Judge Wong also said that the Western Regional Seminar for 1982 will be held from March 28 to April 1 in Regina, Saskatchewan, under the chairmanship of Judge Ernest Bobowski of Yorkton. The site and dates of the Atlantic Regional Seminar will soon be determined.

diagnosed in school as having a learning disability or a learning problem there are no previous records sometimes available to assist the Judge in establishing a realistic treatment plan. The court therefore simply does not know which child has a learning difficulty and which does not.

Secondly, without appropriate training experience and proper testing devices the average juvenile court officer or probation officer cannot distinguish between a learning disability, a learning problem or simply acting out behaviour.

Third, the defensive and sometimes aggressive behaviour of the child exhibited in court or in interview with the court worker or probation officer sometimes prevents or blurs any communication and realization that a learning difficulty is present.

Fourth, most courts do not have clinical services available to provide the type of testing and diagnostic services required to determine the presence of a learning disability or problem.

Fifth, where clinical services are available to diagnose the problem treatment services are not often available to handle it.

Sixth, and most importantly, there is a pendulum swing towards punishment instead of treatment with respect to chronic juvenile offenders who amongst them I feel have a very high percentage of learning disabilities.

In other words the path of total reliance on punishment or containment is more like a super highway leading to a cow pasture. We should not be hysterically oriented to the fact that although we have some extreme problems chronically speaking in the field of delinquency that the answer is to exile these emergencies for expedient sake because we do not have an answer. This "Loss of Liberty" is becoming more predominant through provincial legislation and it is a backward step.

With these factors in mind one should look to what happens to this type of child when he or she is referred to the juvenile justice system.

WHAT HAPPENS TO THE CHILD?

The child with a learning disability comes to the juvenile justice system with usually a poorly developed self-concept. Much of his acting out behaviour is directly related to negative feelings about himself. The child will possibly see himself as a loser and his behaviour manifested outside and inside the court represents this kind of pessimism and doubt about himself. Usually once inside the juvenile justice system the child unfortunately receives basically in many instances the same treatment as he would if he had attended school without any remedial involvement.

As indicated court workers and Judges alike are handicapped by their lack of training and experience in diagnosing learning problems. Consequently the treatment of the child tends to be rather sporadic and based on deterrence and punishment and this of course reinforces his negative feelings and doubts about himself. The court usually lacks the testing and diagnostic services which the child should be referred to which could aid the Judge in obtaining realistic diagnosis to the child's problem in a short period of time.

It would be reasonable therefore to suppose that a high percentage of delinquents have learning problems to one degree or another but the treatment of these youngsters will be dependent on the proficiency and professionalism of those within the administration of juvenile justice. Measures should be taken to increase the effectiveness of the juvenile justice system in coping with individuals who have learning disabilities or problems.

For instance, clinical detection devices should be developed within the communities and court services to facilitate the early diagnosis of learning disabilities and problems. Further, in service training programs for the diagnosis and treatment of learning disabilities should be implemented for court and institutional staff including Judges, court administrators and others as well as professional staff including probation officers.

Treatment programs should be developed in the community for juveniles with learning disabilities that are referred to the court. Where this is not possible the same services should be offered within the structureof the court. What in essence has to be recognized is the need within the juvenile justice system for positive aggressive therapeutic approaches to dealing effectively with delinquents with learning disabilities and learning problems.

Now let me revert to the function of the Juvenile Court in relation to those children who appear before it who may or may not have learning disabilities. The Juvenile Court as indicated before is an institution that can play a certain therapeutic role and it can thus make a contribution to both the treatment and prevention of juvenile delinquency.

Justice and Delinquency Prevention Operations Task Force who prepared an Executive Summary in 1976. Put in very summary form the specialists on delinquency objected to the idea that any one cause accounts for a significant portion of delinquent behaviour. Regardless of the differences of approach the consultants virtually spanned the range of schools of thought and were in agreement on one point; that is one of the few things known for sure about delinquency is that its causes are multi-variate and complex.

Moreover it was stressed by this report that the importance of other causal factors has already been documented. Given what it already knows about the importance of poverty, the broken home, social disadvantage, cultural alienation, emotional disorders, socialization by delinquent peers, or any number of other variables, the argument that learning disabilities is a primary cause of a major part of delinquency problems seemed to them extremely dubious on the fact of it.

Nevertheless the important thing to remember is that we need not argue as to the major causal link of delinquency vis a vis learning disabilities except the fact that we have diagnosed it and it is primarily a question then of treating it. I think it is important to argue basically that learning disability is a critical catalyst of delinquency behaviour interacting in many instances with other potential causes. In essence I feel that research is warranted and that though studies are inconclusive there should be no moratorium on further consideration of the relationship. To me it is an untenable situation to adopt a wait and see attitude which is tantamount to foregoing systematic exploration of the relationship of learning disabilities to delinquency. Further, research projects should be set up in Canada especially at this time.

AREAS OF RESEARCH

If research is warranted one might ask what kind of research is needed?

One effort which could fit in with almost any form of funding is research to determine the incidents of learning disabilities among a few basic populations such as the chronic juvenile offender, the first time or perhaps status offender, (the incorrigible runaway) and the non-delinquent. The expense and size of this effort would depend on the precision with which the incidents need to be measured and the degree to which it is desired. The essential point is that the research be designed and executed in such a way as to provide statements of comparative incidents which can stand up to scrutiny.

The second effort which might be suitable would be an independent project or a demonstration project to test the value of diagnosing and treating learning disabilities as to the rehabilitation of serious juvenile offenders both in open and closed institutions.

A third priority research prospect may be based on a demonstration project to identify and treat learning disabilities in the elementary or pre-school phase with thorough follow-up research. These are only some of the areas of research potential but I believe it is of paramount importance to initiate this kind of involvement in order to alleviate the fears and prejudices of many professionals and lay people alike in this area of concern.

I have heard often from many sources that learning disabilities as a term has become encrusted with several connotations which have very little to do with the original concepts or its utility. Some people claim it is a "ktichen sink" term. Another might call it a "garbage can" concept. Some even attach learning disabilities as an essential political creation attached to the children in numbers in order to get school subsidies for special education programs. Some even say that kids are being labeled as learning disabled because it is a lucrative business which was the comment of some consultants I contacted.

My reaction to these comments is, so what? Basically as indicated, my studies have pointed out very conclusively that delinquency is multi-faceted and it is what the law says it is. Therefore we should be treating the problem on an individualistic basis and not be caught up by the prejudices of individual sociologists or statisticians. The fact is that we have a problem we should be treating and not looking for numbers but dealing with qualitative involvement therapeutically speaking.

What happens therefore to a child after he or she is referred to this juvenile justice system? One would expect that with the large numbers being referred most courts would be equipped to provide realistic diagnosis and treatment. Unfortunately this is not true.

SIX NEGATIVE FACTORS

There are at least six major factors which serve to prevent courts from establishing realistic diagnostic and treatment services for the child with a learning disability.

First, because a child was never

OPINIONS SOUGHT ON SEXUAL OFFENCES

[Following a meeting with the President of the C.A.P.C.J., Judge Jacques Lessard, and the President-elect Judge Robert Hutton, the newly-appointed chairman of the Committee on Sexual Offences Against Children and Youths, Professor Robin F. Badgley, has written to the Executive Director of the Association, Judge Douglas Rice, asking for the views of Association members on items of concern to the committee. At the last Association Executive meeting, it was decided that a co-ordinator from the Association would be appointed to have on-going contact with the committee. We urge all interested members of the provincial bench to contact the committee with their concerns and experience, as requested in the following letter. - Ed. Note]

Dear Judge Rice:

At a meeting with Judge Jacques Lessard and Senior Judge R.B. Hutton in Ottawa, the work was discussed of the then yet to be announced Committee on Sexual Offences Against Children and Youths. As the President and President-Elect of the Canadian Association of Provincial Court Judges, an offer of assistance was kindly extended to the S.O.A.C. Committee. It was suggested that by means of the Association's Newletter that your members be informed of the appointment of the Committee, its composition and its Terms of Reference.

Judge Lessard and Senior Judge Hutton also suggested that the S.O.A.C. Committee could refer to your members preliminary questions we might have together with an invitation to contact us directly with their comments. On behalf of the Committee, I would like to accept their invitation. I would appreciate your seeking the following information from your members, I have prepared a brief statement which it may be appropriate to include or adapt.

"The Committee's Terms of Reference refer to all Criminal Code sexual offences (rape, indecent assaults/acts, incest, etc.) against children and youths and to all offences under related laws which deal with related types of behaviour . This includes the Juvenile Delinquents Act and child abuse and neglect proceedings under the provincial Child Welfare Acts which are based on factual situations which might have disclosed sexual offences.

At the preliminary stage of its work, the Committee is interested in learning of relevant experiences you have had in dealing with these and other matters listed below, as well as in receiving any suggestions you have for particular matters for the study to examine, in order that the study design might benefit from these experiences and suggestions. Some offences, such as incest, may be met with infrequently. It is all the more important that we have as much information as possible on the circumstances and disposition of such cases.

At this stage the Committee is not actively seeking out the experience of those who have specialized in dealing with these offences, though communications from such specialities will be welcomed. We are trying to benefit from the experience and wisdom of the membership of your Association to ensure that the study will take into account as many facets of experience in these matters as possible.

The Terms of Reference ask us to pay special attention to issues of age and consent and related considerations of evidence and publicity. The following are examples of curcumstances which are of interest of the study. Cases where:

(1) the age of the victim is close to that of the accused and the victim agrees to the sexual activity.
(2) the victim appears to be older than he or she actually is.
(3) it is difficult to determine whether the victim has consented to the sexual activity.
(4) the testimony available is that of a child victim or other child witness and cases where it is difficult or impossible to obtain corroboration.
(5) there are important implications of publicity for the victim, witnesses or the accused.

Obviously the exercise of discretion plays an important role in all of the above, and the comments on this in relation to these matters would be appreciated.

The study is also asked to examine child prostitution and child pornography, as well as the question of access by children and youths to pornographic material. Those who had experience dealing with these matters and are willing to provide information on particular experiences or useful practical background information on these areas are invited to write to the Committee.

All sources of information provided to the Committee will remain confidential. No names or addresses need be provided to the Committee. Where necessary, clarification or

(Continued on page 18)

Toward More Effective Justice

by The Hon. Marc-Andre Bedard

The author is the Minister of Justice for the Government of Quebec. These remarks were made at the opening and closing of the Annual Meeting of the C.A.P.C.J. in Quebec City, and have recently been made available in English, as a result of widespread interest in their contents. Portions of the text were published – in French – in the March issue of the Journal, and the remainder of the French text follows the English version.

I am very pleased to have this opportunity offered me by your Association to come here and meet you on this, the occasion of your Annual Conference. In our respective functions, a common responsibility devolves upon us – that of constantly seeking improvement in the quality of justice and of its administration; it is a preoccupation that calls for concerted effort on the part of the executive and the judiciary alike, which, in my view, is achieved through constructive dialogue between the two branches.

Respect for each other's jurisdiction, I feel, must not be reflected in sterile compartmentalization, but rather by maintaining and even strengthening the links in the chain of communication between two upholders of the same cause, and a dialogue that is such as to promote the attainment of those two objectives I have just mentioned. It is in that perspective that I place my presence here today.

You come from all the provinces of Canada; you are in a position, then, to reflect not only the concerns common to the magistracy as a whole, but also those of particular relevance to your own provinces, the judicial organization differing a little sometimes from one province to another. For my part, I cannot address you on behalf of my colleagues from the other provinces; but I feel particularly honoured to be the first to benefit from the fruits of the discussions you have here during the next few days.

As another federal-provincial conference of Justice Ministers approaches, I consider it important to be able to receive from you the range of suggestions that come from your convention so that I can be in a position to discuss them with my colleagues.

I know that, in addition to other matters, at this point in time when everyone is talking about constitutional change, you are interested in seeing the very principle of the independence of the judicial power inscribed in a new constitutional pact. It goes without saying that the Gouvernement du Quebec is in complete agreement with the principle that holds that the judge is free of all constraint, of any fetters, when he is rendering judgment, and that the government has no objection to having this tenet espoused in a more formal manner because it already exists in custom and in fact.

In my capacity as Minister of Justice, I think it only normal that the laws and the Administration decisions be debated in the courts; that is, I believe, the very essence of our system which quite properly allows that sort of scrutiny by the judicial power, and thus firmly establishes the right of citizens to plead their case before the courts on any matter whatsoever. Our judicial system, moreover, provides that political initiatives are the preserve of the executive and that it is its duty to assume that responsibility in the public interest. I am of the opinion that there must be a sound balance between the three branches of power and that the vigour of these branches be such as to guarantee the quality of the legal framework of society.

The accelerated evolution of that society has imposed upon the legislator and the executive the need to produce an ever increasing number of statutory responses to adequately meet the expectations and needs of the population. The range of statutory instruments emanating from the National Assembly and the Administration has grown considerably and the nature of the legal recourses has followed that selfsame trend. It is not surprising, then, that such new law also brings in its train an increase in the number of proceedings before the courts; we are no longer in the days when only the Civil Code, the Criminal Code, and a few statutory laws had to be interpreted by the courts.

Therefore, the very role of the judge has been transformed, not in substance, but certainly in regard to the wide area he is called upon to adjudicate. The nature and the finality of the law he has to scrutinize have also evolved. The population, itself better informed, more demanding, has

Creative Choice

by Judge Herman Litsky

The author is a judge of the Family and Juvenile Division of the Provincial Court of Alberta in Calgary. This paper was delivered at a conference on learning disabilities in Toronto.

While I was at Oxford, England a few years ago as a Rapporteur at the 9th Congress of the International Association of Youth Magistrates it became very clear to me that there was an identity crisis amongst most of the three to four hundred Youth Magistrates, as they are called internationally, from some sixty countries and jurisdictions. Much of this identity crisis seemed to stem from very realistic universal factors. There is a definite trend today with many of our nations when dealing with youth problems to accentuate the concept of prevention and deflection from the court's processes and involvement. Many countries are fervently restructuring their courts or judicial administrations as in England, United States and Canada, even abolishing them as in Scotland. Thus we Judges are beginning to wonder in this particular specialized field of juvenile law what our future role will be with delinquents and some of us are beginning to fear the entrenchment of treatment systems upon our authority whittling away at our traditional structures.

This year over sixty thousand children will have been judicially processed through the revolving doors of the administration of juvenile justice. Charges will invariably range from motor scooters to murder and from possession of marijuana to shoplifting. In this procession we will invariably have covered a complexity of causes in relation to the needs of children one of which is of major importance, that is learning disabilities. One might ask what has learning disabilities got to do with delinquency? It is said that approximately 12% of the population is learning disabled. Most learning disabled seem to have problems in coping with school learning performance to such a degree that they become problem cases within the administration of juvenile justice. Some even indicate that at least 50% and perhaps even 80% of delinquents may be learning disabled. Learning disability is a basic factor in delinquency and could conceivably be certainly some of the raw material from which delinquency could be correlated or manufactured.

Why does a Juvenile Court Judge need to know about learning disabilities? Why should a Juvenile Court Judge bother himself with the premise of therapeutic processes when the framework of legal justice is primarily built around due process?

Personally I believe that the Juvenile Court in Canada is founded on the premise that delinquent children should be treated and rehabilitated, and treating and rehabilitating delinquents with learning disabilities require knowledge of what learning disabilities are and how to treat them so that rehabilitation is achieved.

Awareness and evidence that there is a relationship between any learning problem and delinquent behaviour has grown over three-quarters of a century and has accelerated rapidly in the last decade. Whenever a relationship is observed such a question naturally arises. Do learning disabilities generate delinquency or is poor learning a result of a delinquent's belligerent attitude towards teachers and school?

CAUSE FACTOR

Is there a causative link, major or otherwise between learning disabilities and delinquency? This is a topic of heated discussion in the United States at this particular time and certainly is one that has become more and more prevalent in the Provinces across Canada.

Personally I am completely convinced that there is a cause factor between learning disabilities and delinquency and that the area is yet not fully developed as to their relationship. In my position as a researcher for the International Association of Youth Magistrates at Oxford my findings of the causative factors indicated that they are multi-faceted and include a kaleidoscope of occurrences from technological environmental criteria to individual psychological disturbances.

In the United States the link between learning disabilities and juvenile delinquency was studied very extensively by the Juvenile

one judge available to lawyers.

The writer, recently heavily involved in discussions on a proposed merger of the courts, has heard much comment on the quality and ability of members of the bench. I was also impressed by a rebuttal comment of a fellow judge who remarked: "The standard of the Bench is merely a reflection of the Bar from which it comes." I think it is a fair comment.

On donning judicial robes, a lawyer does not suddenly acquire new standards of legal ability and experience. Most judges stand neither at the top nor at the bottom of the ladder of knowledge and expertise. They suffer the same faults and short-comings as other members of the legal profession.

The judge who recognizes weaknesses in himself as well as in others and who extends a spirit of charity and understanding usually is accorded a similar assessment.

In the moments of reflection, the writer has often been aware of the awesome power and authority which is his because of the position he occupies – a position that is almost impregnable.

Wise is the Judge who early learns and never forgets to use – and never abuse, his power and authority prudently and cautiously.

I have taken the liberty to borrow from a paper of Chief Justice Challies and Chief Justice Culliton some guidelines which all judges should find useful:

1. A judge should always be courteous and polite with members of the Bar, whether in discussion in Chambers, or in Court.
2. A judge should be particularly charitable and understanding with younger members of the Bar. Young members of the Bar should not look upon judges as persons apart, but rather as friends from whom they may readily seek counsel and advice.
3. While a judge must be firm and decisive, he should never be dominant, intolerant or arrogant.
4. A judge should be prepared to listen, even if at times this tries his patience.
5. A judge must be conscientious and industrious in his work. Counsel must feel that their submissions have been seriously and fully considered.
6. A judge should not feel that his own convenience is always the prime consideration.
7. A judge who never experiences a feeling of inadequacy may have arrived for himself at a happy state, but for others an unfortunate one.
8. A judge should be considerate of witnesses."

THE JUDGE AND TRIAL PARTICIPATION

During the short history of our judicial seminars, we have heard proponents of extreme views on the role of the judge during a trial. The spectrum ranges from those who feel no restriction to those who resist any intervention by way of questions to witnesses.

While it is an undisputed fact that we operate on the adversary system it is equally true that the pursuit of truth and justice is the reason for our being. The dividing line may be elusive but that is our function.

A difficult situation arises where there is a marked disparity in the experience or ability of opposing counsel. We may justify our silence and non-intervention by our adherence to the adversary system but is not justice and truth a superior criteria?

At times witnesses are in need of protection of the court to prevent abuse. There are also instances of obvious oversight thay may seriously affect the rights of a litigant. There has been judicial comment on the active judge who "descends into the arena." See *Yuill v. Yuill* (1945) 1 A.E.R. 183.

This opinion does not however establish a rule to definitely circumscribe the line beyond which the judge must not travel.

The question remains for discussion, if not for determination, whether the judge has the right or the duty to intervene to accomplish a proper determination of the right to rely on a mistake or an oversight of his opponent?

How many times have I told you to blurt out a confession before they inform you of your constitutional rights?

developed a more finely honed sense of criticism which is rooted in its greater involvement in the evolution of its own destiny. The examination it gives of every factor that will have an influence on everyday life has become more penetrating, and the courts, whose decisions shape its destinity, have not escaped its vigilance.

In short, it has become increasingly difficult to clearly distinguish the lines of demarcation between the traditional powers themselves and that of the supreme power, the common denominator of the three recognized branches, the power of the citizens. For example, the independence of the judicial power can no longer manifest itself in the isolation of those who exercise it from the other constituent elements of society. It is not so much the role of each that is called in question, but rather the way in which that role is assumed. The judge holds a very special place in the community, that of an arbiter; an arbiter who must remain on the sidelines, one whom the parties must look up to. It is a delicate role, that we all know. And it is important, it seems to me, that the magistracy contribute to the defining of its profile in the overall scheme of things. It is one of the challenges to which you will probably have to address yourselves on such occasions as the present convention. You are aware of the dimensions of the problem, and you can count on the cooperation of the other ruling bodies of our society to more firmly entrench, through the appropriate measures, the position which must be yours.

In Quebec, by recent amendments to the Courts of Justice Act, the legislator has sought to contribute concrete substance to the independence of judges. For example, the procedure of competitive appointment of judges abolishes arbitrary appointment by the executive. By that very act, the independence of the judge can be clearly perceived by the person answerable to the courts and his confidence in the magistrate's autonomy cannot be shaken by any obscure notion of just why that particular judge came to be appointed.

Further, the creation of a Conseil de la Magistrature (Council of Judges) and the drawing up of a code of ethics by the judges themselves can scarcely fail to improve relations between the judicial power and society.

From time immemorial, men have been trying to fix as precisely as possible the mission of the judge in relation to his fellow citizens, or in regard to other basic state institutions that civilizations have created for themselves. There has also been the problem of specifying the most suitable conditions for accomplishing that task, a task that by general acceptance has always been considered an extremely delicate one.

The difficulty lies in the very expectations people have with regard to the judge. Everyone wants him above the tumult and the shouting; yet, at the same time, occupying a prominent place in the evolution of society. Everyone wants him sufficiently withdrawn to maintain an objective viewpoint; yet still requiring from him a sensitivity to present day reality that will allow him to place events in the perspective of the moment. In other words, he personifies that paradoxical situation of the need to preserve the basic values of a society that is otherwise in a state of rapid evolution.

The matters you have been weighing over the past few days, and to which attention has been given by the media, have again brought out the complexity of the judge's role and the demanding responsibilities of that role.

Such subjective analysis is a public demonstration of your keen interest in the evolution of your role, and your compelling desire to define it in terms of the evolution of society.

This legitimate and fundamental exercise will further understanding of the means we must take in order to guarantee respect for the basic principle of the independence of the judicial power.

I already mentioned to you, at the commencement of your discussions, our concerns in that regard and called attention to certain measures we had introduced both to accentuate the independence of the judicial power and to assure judges of adequate conditions for the exercise of their role. As in everything, of course, there is always room for improvement and your suggestions will be welcomed in pointing the way to other reforms that should be considered.

Similarly, your knowledge of the administration of judicial tribunals and of the organization of courts of justice provides us with an indispensable insight into what reorganization should be undertaken to better serve those before the courts. Indeed, I have noted that your Association has shown a particular interest in that matter, as instanced by the suggestion to restructure courts with trial jurisdiction in penal matters. We have given very careful study to the well documented memorandum you drew up and also to the supporting documents which so precisely set forth the basis, the grounds and the advantages of

such a recommendation for unification in a single jurisdiction. We also very much appreciated that the legal opinions on the hypotheses of realizing that objective were submitted with the proposal.

I can assure you that the Gouvernement du Quebec has these very same objectives. The proposal of a single uniform jurisdiction over trial courts in penal matters is in line with our point of view. It is a means of bringing about more effective justice, one better suited to the needs and expectations of those before the courts. I endorse, therefore, the principles underlying the recommendation and I most highly commend the ways and means you suggest for giving effect to them. Indeed, an examination of that question is on the agenda for the interprovincial conference of Ministers responsible for the administration of justice, to be held at the beginning of November. And on behalf of the Quebec government, I intend to put the proposal of unification of courts exercising trial jurisdiction in penal matters to my colleagues from the other Canadian provinces.

The reasons underlying your recommendation are, I might add, of the same order as those which prompted us to favour the placing of all matters relating to family law under one and the same jurisdiction.

The Quebec Civil Code Revision Office in its report stressed the advantages accruing from the cohesion of family law and strongly urged that family law issues be treated all as a single package. The Quebec National Assembly during the forthcoming session will give study to a Bill dealing with all aspects of family law as a complete entity. Also, we shall have to establish a unified court which, under a single jurisdiction, can deal with all the issues which might arise in regard to family matters in order to provide greater coherence and much greater efficacity for those before the courts. In that perspective of truly comprehensive treatment, we shall have to provide the court with specialized complementary services.

We earnestly hope that that structure can be established quickly because the population is entitled to efficient and adequate services and should not have to witness the entire project being sidetracked because of constitutional snags.

My friends, I have no wish to unduly prolong this address. I do wish, though, in closing, to repeat to you our undertaking to continue in our goal of harmonious cooperation, and to thank you for the generous contribution which, by this convention, you have made towards the reforms we are all seeking in the administration of justice. It has been for all of us, and here I am also speaking for Premier Levesque, a very pleasant occasion to have you with us here in Quebec where you may be sure you will always be welcome.

De tout temps, les hommes ont tenté de situer le plus exactement possible la mission du juge par rapport à ses concitoyens, ou en regard des autres structures d'encadrement que se donnaient les civilisations. Puis il faillait définir les conditions les plus aptes à l'accomplissement de cette tâche qu'on a toujours convenu de considérer comme extrêmement délicate.

La difficulté repose sur les attentes mêmes que l'on entretient à l'endroit du juge: tous le veulent au-dessus de la mêlée, mais en même temps, éminemment lié à l'évolution de la société. Tous souhaitent qu'il ait le recult nécessaire à une observation dégagée, tout en exigeant qu'il soit sensible à la réalité présente afin de situer les évènements dans la perspective du moment. Bref, il incarne cette situation paradoxale d'avoir à préserver les valeurs fondamentales d'une socété par ailleurs en rapide évolution.

La réflexion à laquelle vous vous êtes livrés au cours des derniers jours et qui a été retransmise par les media, permet de rappeler la complexité du rôle des juges et les exigences des responsabilités qu'il assume.

Un tel examen démontre publiquement l'intérêt que vous portez à l'évolution de votre rôle, et la préoccupation qui vous anime de le définir en fonction de l'évolution de la société:

Cet exercice légitime et fondamental permettra d'éclairer les gestes qu'il nous incombe de poser en vue de garantir le respect du principe fondamental de l'indépendance du pouvoir judiciaire.

J'ai déjà eu l'occasion, au début de vos assises, de vous indiquer notre préoccupation à cet égard, et de vous rappeler quelques mesures que nous avions mises de l'avant tant en vue d'affirmer davantage l'indépendance du pouvoir judiciaire que d'assurer aux juges des conditions adéquates d'exercice de leur rôle. Tout demeure, bien sûr perfectible, et nous demeurons attentifs aux suggestions qui peuvent guider notre action.

De la même manière, votre connaissance de l'administration des tribunaux judiciaires et de l'organisation des cours de justice nous procure un éclairage indispensable lorsque des réorganisations s'imposent en vue de mieux servir le justiciable.

office at the earliest possible moment there is a tendency on the part of former partners or successors to continue to look to "the Judge" for advice and guidance on work in progress at the time of the appointment.

There are also inherently dangerous situations where the judge in disposing of his practice rents office premises and/or a law library to the purchasers of his practice. In the opinion of the writer this situation should be avoided because of the obvious suggestion of bias or interest in litigation involving the practitioners in that office.

One often speaks and hears of the loneliness of the bench but it is suggested that the appearance of impartiality necessitates a minimum of social contact, at least in public, with former partners and close friends of the legal profession.

It may truly be said that this is a high price to pay for participation in the judicial system but there are counterbalancing benefits.

THE JUDGE AND THE MEDIA

Some judges naturally attract the media while others, I suggest, deliberately set out to create quotable quotes and headlines. The active reporter is always looking for a story but the writer suggests that the bench should not be the source.

A reporter is not adverse to asking for an explanation of some particular decision or for an opinion on some legal subject of public interest. To grant such interviews or to experess such opinions may well bring the judge into the public arena and this should be avoided.

There seems to be an increasing number of invitations to judges to participate in the public forums discussing law oriented social legislation even under the sponsorship of government agencies. Again it is suggested that such participation is not advisable.

As a one-time reporter this writer recognizes the tendency to approach the Bench for "best-source" information. Even in a community where a media representative and a judge may be on a first name basis I decline to give any information even of the most innocent character to the press. To be non-communicative is a good way to avoid being misquoted or misrepresented.

THE JUDGE AND THE PUBLIC

It has already been suggested that today's society questions all institutions as never before. I think it is true that there are new attitudes and there is even a disillusionment with the administration of justice.

With more instant and complete exposure by the media the judiciary are not exempt from examination and critical comment.

We are almost defenceless against such criticism for we cannot reply in kind nor can we engage in public comment.

It is our responsibility though to be ever mindful of our position of trust and responsibility and to discharge our duties fairly and expeditiously. We must establish and maintain a higher standard, morally and legally, than we expect of others. We must demonstrate our respect for the legal system of which we are a vital part- earning rather than demanding respect.

THE JUDGE AND JUDICIAL ETHICS

Our common law is not codified and neither is our standard of judicial ethics. The need for such a Code of Judicial Ethics has long been a matter of dispute and debate.

Our Judicial Council now has the power and authority to deal with those of us who may stray from what may from day to day be considered an accepted norm.

There may be those who maintain that the accepted standard may change without notice and that we should have something similar to the American Canons of Judicial Ethics.

In opposition are those who suggest that every judge is aware of the standard of conduct expected of him.

Undoubtedly there is a middle ground for questions do arise and there are differences of opinion such as will arise in any discussion of this paper.

Regardless of the consensus of opinion, it is suggested that at least the question of judicial ethics should be aired regularly on occasions such as this to keep us in tune with the opinions of our fellow judges.

THE JUDGE AND THE BAR

Discussion has been directed to the above relationship outside the courtroom. But our principal role is played in our day to day relationship with the practicing members of the bar.

The quality of our judicial work may be gauged by the confidence and respect extended by lawyers who appear before us. This does not suggest that we are engaged in a popularity contest. This comment may have more significance to those of use who work in centres where there is more than

There are those who see the judge on the street dressed only in black overcoat and Homburg. These people just don't realize that a judge may be a person who wears a bright checked sports coat or plays street hockey with the kids.

A most frequent comment I heard after my appointment was to the effect: "You are too young. I though judges were old white haired men." Some do have white hair.

The fact remains that there is a public image of the judge – even though that image comes in countless varieties.

It is equally true that the image differs in relation to the size of the community in which the judge resides. If a judge is a single incumbent in a relatively small community and holds the office for many years, the incumbent may be recognized as "the Judge". In another area not impressed by such an office holder, the incumbent may be merely "Mr. Jones" who happens to be a Judge.

Regardless of the size and height of the pedestal on which he languishes, the judge is under constant public scrutiny and his habits and behaviour are part of the public domain.

Naturally, these comments may be expected to reflect the thoughts of one who labours in a relatively small community where it is impossible to have a completely private life. It will be left to others more qualified to relate this discussion to the judge in the large urban centres.

THE JUDGE IN THE COMMUNITY

Probably all judges would object to any imposed rules for personal conduct. What is proper and acceptable to one is often abhorrent to another. To refer to any specific activity the dividing line between those who approve and those who disapprove often appears to be whether a particular individual engages in such activity. For example all may disapprove of a judge holding any particular office or position except the holder of such position.

As it is difficult to make a silk purse of a sow's ear, it is equally unlikely to make a sober and sedate judge of a flamboyant, unconventional and activist lawyer. But sometimes changes must be made for I believe that the Judge is expected to project an image of stability, sincerity and security to protect and preserve the standards of justice which the public at large expects and respects.

We must not isolate ourselves from society but we must take care that our public relationships do not embarrass us in discharging our judicial functions.

I would not suggest, for instance, that we cannot maintain our participation in social or athletic activities. But the judge who is a "regular" at the club, who spends his evenings in the bar or at the games machine, may soon be a topic of conversation as to his fitness for judicial function.

It is not expected that a judge on taking office loses all interest in community activities or sterilizes his mind to social issues. He must of necessity still have opinions on civic matters and educational standards. But again he must guard against public positions that may appear to others to affect his impartiality. Lawsuits have a tendency to arise from the most unlikely situations and, although without experience, I would think that a charge of bias would be a most uncomfortable and embarrassing confrontation.

Section 37 of the Judges Act prohibits a judge from engaging in certain commercial activities but this does not suggest that he cannot participate in charitable, service or other public activities.

But where is the line to be drawn? Most educational or social service oriented institutions or activities now have some government involvement. Is it safe for a judge to be put in a position where he may be allied with some government or employee conflict?

Particularly in smaller communities it seems to be natural to seek the judge's participation in fund raising projects. In my view, a judge should never canvass or actively engage in a financial campaign. Sponsorship or patronage (non-political, that is) may be a different matter and is probably an individual decision with many factors to be considered.

THE JUDGE AND THE LEGAL PROFESSION

It is difficult for a judge in a small community and coming from a small firm to quickly and finally sever his professional ties.

It is a recurring problem to convince new appointees of the necessity of a speedy winding-up of his law office responsibilities. There never appears to be enough time for an orderly and complete transition from the office to the bench.

The position taken in this paper is that unless there is a final divorce from the law

Votre association a d'ailleurs marqué un vif intérêt cette question en suggérant notamment une restructuration des tribunaux exerçant leur juridiction de première instance en matière pénale. Nous avons étudié avec beaucoup d'attention le mémoire fort étayé que vous avez produit ainsi que les documents complémentaires qui exposaient avec rigueur, les fondements, les motifs, les avantages d'une telle recommendation d'unification dans une seule juridiction. Nous avons également hautement apprécié que des avis juridiques sur les hypothèses de réalisations de cet objectif nous soient soumis avec la proposition.

Je peux vous assurer que le gouvernement du Québec partage entièrement ces objectifs. Cette proposition, d'une juridiction unique et uniformisée en matière pénale de première instance rencontre nous vues; elle est un moyen de favoriser une justice plus efficace et plus adaptée aux besoins et aux attentes des justiciables. J'endosse donc les principes qui se dégagent de cette recommandation, et jestime de la plus haute valeur les modalités que vous suggérez. D'ailleurs, l'analyse de cette question est à l'ordre du jour de la conférence inter-provinciale des ministres responsables de l'administration de la justice qui se tiendra au début de novembre. J'entends, au nom du gouvernement du Québec, proposer à mes collègues des autres provinces canadiennes l'unification des tribunaux exerçant leur juridiction de première instance en matière pénale.

D'ailleurs, les raisons qui sous-tendent votre proposition sont du même ordre que celles qui nous ont amené à favoriser déjà l'unification au sein d'une même juridiction des matières relatives au droit de la famille.

L'Office de révision du Code civil du Québec, dans son rapport, insistait sur les avantages de la cohésion du droit familial et sur l'impératif d'un traitement global des questions reliées à la famille. L'Assemblée nationale du Québec étudiera au cours de la prochaine session un projet de loi traitant en un tout de l'ensemble des dimensions du droit de la famille; de plus, il nous faudra implanter un tribunal unifié, qui puisse, sous une même juridiction, traiter tout les cas qui peuvent se soulever en matière familiale afin d'assurer une meilleure cohérence et une plus grande efficacité pour le justiciable. La perspective d'un véritable traitement global, nous amènera à doter la cour de services complémentaires spécialisés.

Nous espérons vivement que cette structure puisse être implantée rapidement parce que la population a droit à les services efficaces et adéquats et qu'elle ne saurait souffrir des embûches d'ordre constitutionnel pour retarder ce projet.

Mes chers amis, je ne voudrais pas prolonger plus longtemps mes propos. Je tiens cependant à vous réitérer, en terminant, notre engagement de poursuivre une harmonieuse collaboration, et vous remercier de la généreuse contribution que vous avez apportée, par ce congrès, aux réformes que nous souhaitons tous dans l'administration de la justice. Il a été agréable pour nous et ne m'exprime également au nom du Premier Ministre Lévesque, de vous recevoir à Québec où vous serez d'ailleurs toujours les bienvenus.

Letter to the Editor — Cont.

"8(1) – Subject to subsection (2) and section 9, a Judge shall devote himself full-time, not part-time, to his judicial duties, and shall refrain from activities which conflict with them."

Having placed the section on a sound philosophical basis, we could then proceed to establish meaningful guidelines within our associations for what will and what won't be tolerated. The following ticklish problems have come up recently to my own knowledge:

(1) May a Judge teach, either law or any other subject? If he does, may he be paid for it?

(2) May a Judge be an executor for family, friends or ex clients? May he accept executor's fees?

(3) What are the permissible limits of a Judge's investments? May he invest in revenue property, and if so may he use all a landlord's rights or should he be circumspect?

(4) May a Judge write, either fiction or non-fiction, and what should be the limits of his subject-matter? May he be paid, by salary, flat fee, or royalty? (On this subject, there is a grand old tradition of English Judges writing detective stories – see Cyril Hare.)

(5) May a Judge be a member or officer of an association? If so, what limits should be placed on the type of association, sporting, political, cultural, public interest or whatever else?

I don't pretend to furnish answers, but until we can get a better section to consider them under, it seems rather pointless even to pursue the questions. And we know the questions have to be asked.

Yours truly,
P. d'A. Collings
Judge of the Provincial
Court of British Columbia
Vancouver, B.C.

A Study Tour of Barbados

by Assistant Chief Judge
A.G. Lynch-Staunton

The author is an Assistant Chief Judge of the Provincial Court of Alberta in Lethbridge.

Toward the end of February, I was asked by my Chief Judge, His Honour C.A. Kosowan, if I would take part in a study tour of Barbados, to which I agreed with some alacrity.

The tour was the result of arrangements made between Her Honour Judge Sandra Oxner, a Judge of The Provincial Magistrates' Courts of Nova Scotia, and His Worship, Mr. Frank King, Chief Magistrate of Barbados, both of whom are Council members of The Commonwealth Magistrates' Association. The purpose of the visit was to create a better liaison between the Judiciary of Canada and Barbados and to establish a joint study and inter-relationship program.

In preparation for the tour I did some reading, including the article entitled "Barbados Hospitality" by Judge A.F. James, which appeared in Volume 4, No. 2, June 1980 issue of the Provincial Judges' Journal, published by the Canadian Association of Provincial Court Judges. I also gathered together a few text books and papers on Sentencing, Judicial Interim Relief, Bail Reform and "The Right to Remain Silent".

On Friday, February 27, 1981, I departed Calgary, by Air Canada, accompanied by my wife, arriving in Toronto, and staying in the Constellation Hotel. A pleasant but uneventful trip.

On Saturday, my wife and I met Judge and Mrs. Tennant of Kerrobert, Saskatchewan, and Judge Tony Demong of Calgary. We departed Toronto, arriving at Grantley Adams Airport at 3:00 o'clock in the afternoon, after a pleasant flight. A magnificent view of the Island, framed in the startling blue of the Carribean and Atlantic, broken by white surf, greeted us as we descended.

We were met at the airport by His Worship Mr. Ephraim Georges and Her Worship Miss Marie MacCormack, both Magistrates, who had kindly arranged to whisk us through officialdom. We were then taken by motor car to newly opened accommodation at Worthing Court Hotel, owned and operated by Mr. and Mrs. Kenneth Simmons, the father and mother-in-law of Marie MacCormack. We found them truly a delightful couple who treated us with the utmost of friendly, relaxed courtesy.

Ken Simmons, like most Barbadians, is highly educated and rejoiced in regaling us with Churchillian anecdotes. Our accommodation was most attractive – like a mint penny – with bamboo furniture and blue appointments. After settling in we were served a delicious dinner of local fare including flying fish in a little outdoor dining room along side a swimming pool.

We were later joined by Chief Magistrate Frank King, his wife Joyce and two children, who had attended a wedding. My wife and I took to them immediately and enjoyed a relaxed family evening. We learned that the Barbadian Defence Force had, that afternoon, been presented with new Queen's and Regimental Colours by Her Royal Highness, Princess Margaret, and that the Canadian Military representative was Colonel Mike Calnan, an old friend from my Artillery days.

On Sunday, we arose early, mainly due to the efforts of an erratic rooster who crowed whenever the mood struck regardless of time or light. Depending on one's point of view he was termed a constant delight. Following a light breakfast Marie MacCormack picked up Gertie Tennant, my wife and I, and delivered us to St. Dominic's Roman Catholic Church. A new and attractive circular structure of local stone material, it was reasonably open to the elements by way of venetian blink-like slats high above with glass partitions. The beautiful trade winds blew right through.

The young priest, Father Dan, was a Robert Redford type, extremely articulate, from New York, with sunbleached blonde hair and an outgoing charming manner. His announcements were amusing, including a request for a modest three bedroom apartment and for someone returning to New York to mail a parcel of books for him on the mainland as postage from Barbados was prohibitive.

The attendants at Mass were black, including an assistant who led the singing of hymns unaccompanied, all garbed in sparkling white and scarlet vestments. Marie

Judicial and Non-Judicial Conduct

by Mr. Justice Richard Miller

The author is a judge of the Court of Queen's Bench in New Brunswick.

While it may fairly be said that the role of the judge has never been sacred or sacrosanct, it would not be inaccurate to suggest that in a day when almost all relationships are being questioned, the status and the stature of judges may be open to public examination as never before.

It may well be that there was a day when the mere donning of the judicial robe assured one of a copious quantity of wisdom, knowledge, stature and respect. If such was so, it was not in my time – or more precisely, not in my case.

Possibly it is imprudent to generalize on the role or status of a judge – the variables are many and diverse. But I suggest that it is a truth that today as never before, a judge is not annointed with stature and respect. He is more open to public scrutiny, appraisal and critical comment than ever before. I don's suggest that this is retrogressive per se.

While it may be questioned whether one is a product of his environment, surely it is without question that one is usually influenced by his environment. It has been said the role of a judge and his position in his community is influenced by the size and nature of the community he judicially represents. This may well be but the position taken in this paper is that there are certain fundamental standards which should be the norm for all who accept the benefits and the restrictions of judicial appointment.

It is also recognized that for every general rule expounded there is at least one expected and accepted exception.

In past seminars a cynical observer has noted that in discussions of accepted norms for judges one's approval of questionable attitudes or practice is usually determined by whether he is, in fact, the exception or the rule. In defence, it can be said that such a judge is at least a believer in his own principles.

It is said in some circles that this age is one of deteriorating moral standards. This may be so too but it also appears that it is an age when demands are increasing in number and intensity for a higher degree of integrity among its public servants. And we are public servants.

For some of us it may be unnecessary to discuss desirable attitudes of judicial conduct, for others it may be too late in that our habits and characteristics are too deeply implanted to expect change. But, on the premise that there might be hope for improved standards, it is intended to raise for thought and discussion some aspects of judicial and non-judicial conduct.

Because there has been little suggestion in Canada of judicial misconduct of wrongdoing, our smugness should not be a barrier to a frank and open examination of our conduct both on and off the bench. While we may be reticent about admitting the possibility of undersirable or questionable conduct by any members of our courts, it is becoming evident to some that the public is no longer in awe of the "untouchable" positions we occupy.

The Judicial Council is empowered to investigate complaints of certain non-judicial conduct and can recommend removal from office. While this power and responsibility has not yet been exercised, the very fact that the machinery exists indicates a new awareness that there is a need of constant vigilance to assure the continuance of the high level of integrity and competence which has permeated the Canadian judicial system.

In discussing the problems which face judges in judicial and non-judicial functions the intent is to follow a non-original pattern and consider the role of the judge on and off the bench.

It is patently apparent that there is no stereotype judge and there is no set pattern to be established for all to follow. It must be recognized, particularly in a non-judicial role, that the typical judge creates a different image in the minds of different people and in different communities.

enquired of ways and means of promoting greater co-operation and interchange between our respective Governments and the Judiciary. On departing, Sherman Moore, who is also Legal Advisor to the Barbadian Defence Force, drove Judge Demong and me to their Barracks where we met the Chief of Staff, Colonel Rudyard Lewis, who conducted us on a most interesting tour of the base, winding up with a drink in the Officers' Mess. Colonel Lewis, a graduate of Royal Military College, Sandhurst, had served for many years with the Jamaican Forces.

He indicated considerable rennovation was being done to the Fort, including the Officers' Mess. I indicated a suitable gift would be forthcoming from the Honorary Colonels of Edmonton, Alberta, of which I am Chairman, to mark the event.

In the evening we attended the Hotel's poolside party which was great fun. There was a group of North and West Country lads there for the cricket matches. We met more interesting people – a retired Boots Drugs executive, a British Airway marketing manager and some New York and Boston gentlemen, whom we would like to have gotten to know better. We had to leave early for a reception by The High Commissioner of Canada and Mrs. Roger at their residence, 11 Morningside, Pine Hill Rd., St. Michael, in honour of the visit of members of the Caribbean association for Latin American and the Caribbean. Another fine house with the customary wide exit to the garden, facing the main entry. There were pastel/beige furnishings with some interesting Canadian oils which were the Rogers' own, including the odd snow scene to remind them of what they sorely miss at times.

The residence is in a lovely garden setting with a semi-circular band of each Provincial and Territorial flag, surrounding a portion of the garden. A proud sight indeed. We met yet another interesting cross-section of people but this time many being Canadian. We returned to the Hotel with the Kings joining us by the pool where we listened to a 3-piece group entertaining us "bajan" style.

Saturday was our last day. In response to a request, I telephoned Mr. Henry Forde, the Attorney General, (who was about to leave the Island on business), whereupon we had a fruitful discussion concerning some proposals I will be making in the future.

After packing and paying our bills the Tennants joined us on the beach for final snapshots and a dip in the Caribbean. We then adjourned to the balcony for what food and drinks were left – not much. The five of us chatted about our impressions: The charming and scrupulously clean young girls in their school uniforms ranging from pale yellow seersucker dresses to red, yellow, green, blue, brown, orange or navy standard types; The equally well-mannered school boys in their uniform-like khaki-coloured shirts and shorts; The endless cane fields, heavy population and hundreds of little motor cars. The British influence is, of course, prevalent and Barbados comes honestly by its nickname "Little England".

Saying goodbye was sad as the Simmons and their staff have been so kind. Frank and Joyce King, Sherman and Edna Moore, (she is from Southern England), with little Nichol, stayed with us at the airport for an hour to see us off. They, and the others have been so kind and courteous that Mary and I know we have developed true and close friends.

A study tour of the Barbados – truly a memorable week in which my horizon has been broadened! My one all encompassing impression is that we in Canada, by comparison, are so fortunate and it behooves us to share in our good fortune. I most earnestly recommend that the Canadian Association of Provincial Court Judges, in conjunction with all provincial Associations, supported by the federal and provincial governments, seriously address their efforts for a closer supportive relationship with Barbados and indeed other Commonwealth Countries.

(In Brief — continued from page 9)

additional information may be sought by the Committee from corespondents through the association.

Correspondence or the citing of relevant cases should be sent to:

Robin F. Badgley
Chairman
Committee on Sexual Offences Against
Children and Youths
Suite 1500
10 King Street East
Toronto, Ont. M5C 1C3

I look forward to hearing from you, prospectively, to receiving the counsel of your association's members.

Sincerely yours,

Robin F. Badgley
Chairman

MacCormack, although a busy professional, as well as serving as a Magistrate – she is presently Registrar of the Supreme Court – picked us up and returned us to the Hotel.

Marie had been creating a suitable Sunday breakfast for her husband, David Simmons, a Member of Parliament and a leading member of the Bar. About 1:00 p.m. we rendezvoused at the King residence to commence one of the highlights of the visit – a picnic tour of the Island. Several couples, some with children, were waiting.

After some sorting out, and introductions, a small convoy took off over hill and dale to the opposite side of the Island. A word here of the driving – roads are narrow, often sunken (as in England) and the little cars just dash in and out avoiding, by a series of miracles, the pedestrian who confidently and sometimes carelessly ambles along without moving a foot. Driving is a succession of challenges – who will give way first. After a day of this we stopped flinching – great fun.

On our tour, Frank King kept up a steady commentary, explaining that the Island is divided into a number of parishes and naming them and pointing out various places of interest historically and otherwise. I was struck, as a first-time visitor, with the historical English influence which pervades everywhere particularly with regard to place names.

We stopped at a beautiful cliff-like height of land to witness an incredibly beautiful Atlantic Ocean view with varying shades of green to blue waters as far as the eye could see. On remarking as to the distance one could see, Frank King casually said "The next stop is Africa". Close to this place, Bathsheba by name, we came upon a fishing village and watched the local fisherman launch their boats into the surf. A fascinating sight to see even the little children frolicking in the sea like fish and quite at home.

Back into the vehicles and following some winding byways through sugarcane fields we came to Barclay's Park, a green-grassed and nicely-treed picnic area. Lots of young people about with the inevitable portable radio. Our hosts provided a first-rate lunch consisting of casseroles, fried chicken, barbecue porkchops, salads of all kinds accompanied by coconut milk and other delightful drinks with fruit juices. A most enjoyable and relaxing few hours.

It was here that I became acquainted with Magistrate Ephraim Georges and we engaged in lengthy philosophical, religious and humanitarian discussions (aided, I dare-say, by some excellent Barbadian rum). He had moved to Barbados shortly after the hurricane that completely levelled his home on the Island of Dominica – where he had been a Recorder – a fascinating but tragic tale in which he and his family lost everything.

After the picnic we drove through some most interesting country, viewing various points of interest including a dairy farm, a now-unused stone windmill and a sand quarry, eventually stopping at Farley Hill National Park. The great house at Farley Hill, now a "magnificent ruin" as the saying goes, belongs to an age much nearer to our own as opposed to the great plantation houses such as Drax Hall and Nicholes Abbey of the Seventeenth Century. The earliest part of the house, known originally as Grenade Hall, is thought to have been built in 1818. It came into possession of Joseph Lyder Briggs about 1850 who gave it to his son, Thomas Graham Briggs.

When Sir Graham Briggs married in 1857 he added the south wing, library, dining room, billiard room and several bedrooms and named it Farley Hill. Many of the Royal Family, including King George V, Edward VIII, Queen Elizabeth II, and His Royal Highness Prince Charles, have visited Farley Hill.

What a thrill to sit in the round summerhouse on the top of the hill overlooking vast fields of sugar cane, sloping down to the ocean's edge and to imagine the earlier days of sailing ships, pirates and slave music throbbing on hot nights. We continued our tour of the Island finally stopping for a wind-up evening party at the home of Frank King which culminated in a flat tire being discovered on the car owned by Ephraim Georges. Some hilarity followed with appropriate remarks, I gather, being made by yours truly. During the proceedings much goodwill pervaded whereupon it was time to depart. Mary and I retired quite worn out after a much enjoyed day.

On Monday we arose quite early as life is in full swing by 8:00 a.m. The morning was spent laying in some provisions and a quick trip to Bridgetown for an emergency purchase of a swim suit. The rest of the morning was spent in becoming acquainted with the beach and ocean. For the first time I felt I was really in the tropics with the postcard surroundings of white sand, palm trees, crashing white breakers and all shades of blue/green water. I swam but not too far as the undertow was strong.

After lunch we all departed for a courtesy call on the Canadian High Commis-

sioner Allen Rogers. We were somewhat early so took a short walk behind the grounds to an attractive older home with beautiful gardens – the residence of the Prime Minister. It was very hot but we were becoming climatized.

The meeting with the High Commissioner lasted the better part of an hour. He gave us an instructive version of his duties, activities and travels in the Caribbean as he is Canada's representative to many of the other islands. It was interesting that we were acquainted with so many in the foreign, diplomatic and military service whose paths had crossed his. On leaving, one of the secretaries warned the ladies to hold on to their purses as crime was on the upswing. We returned to a light meal of fruit, crackers and beer which was just right in the heat. The tradewinds made things bearable.

A stroll on the beach and an evening swim was cooling. Frank King kindly provided us with an educational kit which included a list of the Judiciary, a program of events, the organization of the Judiciary, a brief history of the participation of Barbados in the Commonwealth Magistrates' Association and an information booklet entitled "Things You Should Know".

On Tuesday, Judges Demong, Tennant and I met with the Magistrates of District "A" Bridgetown Jurisdiction and observed proceedings for the morning. I had the good fortune to be assigned to Frank King who was presiding in Criminal Court and was invited to join him on the Bench which I did. A most gracious introduction was made of me by him and equally cordial remarks of welcome were made by F.G. Smith, Q.C. and Sergeant Foster. Mr. Smith, a member of one of The Inns of Court, a former Attorney General and leading member of the Bar, told me that he counted among his friends the late Right Honourable John G. Diefenbaker, former Prime Minister of Canada, the Honourable John Turner, former Attorney General and Finance Minister of Canada, and Mr. Justice David McDonald of the Court of Queen's Bench of Alberta.

He also indicated having had the pleasure of presenting Mr. Turner for admission to the Bar of Barbados. Sergeant Foster, a most capable and articulate member of the Barbadian Police Force was present as Crown Prosecutor. I was able to respond with a brief address to the Court in which I expressed my appreciation to Magistrate King and gave a quick overview of my first impressions not the least of which was the fact of the high literacy rate, the smartness and deportment of the police and the form of their universal educational system.

The Magistrates Court is located in a high, old but imposing and substantial building located in a square crowded with people. Coupled with open windows and the hub-bub of the throng outside made it somewhat difficult to hear everything that was said.

Many matters were dealt with that morning including the taking of pleas, applications for adjournments, bail applications, the setting of trials and preliminary hearings and two trials involving assault and possession of a narcotic. It was all nostalgic as being similar to proceedings in the Provincial Court of Alberta.

The two striking differences I observed was that witnesses swear themselves by reading the oath or affirmation which is written on paper affixed to the stand and that court reporters are not employed with the presiding Magistrate being required to make copious and detailed notes.

Later we observed Magistrate Georges conduct a civil case (being a claim for damages and work done to an automobile), which claim was dismissed for lack of proof of jurisdiction in that the claimant failed to prove in which parish the cause of action arose. In an Island, some twenty miles long, I was startled that there would be a jurisdictional issue – but there it was.

At the conclusion of Court we toured the remainder of the Judicial buildings, observed Magistrate MacCormack in the performance of her duties as Registrar of the Supreme Court and met many of the staff in all Courts.

We had an opportunity of touring the Court library and meeting Mr. Justice Denys Williams, a puisne Judge of the Supreme Court, who was acting as Chief Justice in place of the Honourable Sir William Douglas, who was currently out of the Island sitting with the Judicial Committee of the Privy Council. I was hoping to renew my acquaintance with Sir William, having had the opportunity of escorting him at a showing of The King Tut Treasures in Toronto, while attending a Conference on Expeditious Justice in 1979. A press interview was arranged and a picture appeared in the Wednesday issue of The Nation, showing Judges Demong, Tennant and Lynch-Staunton flanking Magistrates King and Georges.

After a delightful late lunch at The Pelican, of native food, we returned to our accommodation in late afternoon with Frank King, who remained with us for a

lengthy discussion. It was obvious that he was disappointed that only three Judges were attending the study session.

However, aside from this aspect, we found much to talk about and many fruitful suggestions were made with regard to a much closer liaison between the Canadian and Barbadian Judiciary which I intend to pursue. During the early evening we went to the beach to watch the sunset – a red ball sinking fast into the horizon. At home such a sunset would have meant forest fires. After a swim and a light supper, we retired early.

On Wednesday, we met some of the other Judges of the Supreme Court, observed proceedings, including a motor vehicle negligence action and were received by Mr. Justice Williams in his Chambers, whereupon useful discussions took place concerning common problems and approaches. In the evening we attended a cocktail party at the residence of Marie MacCormack and her husband, David Simmons. Marie's home is beautiful – open right through from main door across a handsome foyer to wide steps down to a patio and large garden – all on the open Spanish style with fine furnishings. It seemed to be "out in the country" with neighbours a good distance away.

During the evening we spotted cane fires – deliberately set it was surmised. We met an interesting cross section of people some from the Canadian High Commissioner's Office, (including a young couple from Edmonton), members of the Bar, some people in Government, neighbours and other professional people. One of the guests, a school friend of Marie MacCormack, who had just returned to the Island after living in Calgary, drove us home.

Thursday morning being relatively free, I transacted some business, including a telephone call to an old friend, The Honourable Mr. Justice R. A. Cawsey of The Court of Queen's Bench of Alberta and formerly Chief Judge of the Provincial Court of Alberta, on behalf of Frank King. These two had met at a New Judges' course, sponsored by the Canadian Association of Provincial Court Judges, as well as at the Fifth Conference of the Commonwealth Magistrates' Association held in Oxford in 1979 and became good friends. For the balance of the morning we took advantage of a stroll and swim at the beach and lunched by the pool.

The afternoon was devoted to a discussion session with most of the Magistrates chaired by Frank King. Here I met Miss Sandra Mason, of the Juvenile and Family Court, a lady of great attraction, Mr. Dudley Johnson, a senior Magistrate of considerable charm and stature and an old friend of the Commonwealth Magistrates' Association, and Mr. Theodore Walcott, recently appointed and returned from London where he had practised for some years.

We were joined by His Honour Judge A. Douglas McLennan of the Provincial Court of Ontario (Criminal Division), an old friend of Frank King, who was vacationing in Barbados. Tony Demong presented a short paper on Judicial Interim Relief, while Ephraim Georges dealt with the topic "The Right to Remain Silent". A lively and informative discussion took place, with contribution by all in attendance.

It was quite evident there was unanimity on many subjects based on the British common law and the rule of "fair play". Toward the close of the session, I indicated my intention to make a concerted effort by approaches in many directions and to various agencies, including Government in order to secure greater liaison and assistance to the Magistracy. I left with Frank King, as a gift to the library, the text books and papers mentioned above.

In the evening we attended a cocktail party hosted by Frank King as Chief Magistrate of Barbados in honour of the visiting Canadian Provincial Court Judges, held at Poolside, Marine House, Christ Church which was simply delightful. Marine House is a large former hotel bought by the Barbadian Government which presently houses the Ministry of the Attorney General and other offices. A band shell-like area with a dance floor surrounded by a garden and immense pool makes a fine area for various functions such as band concerts, high school graduations, weddings and receptions. The canopies were excellent but included the hottest meatballs I have encountered. We met many distinguished and well-known people.

Friday was set aside as a free day which was devoted to shopping and sightseeing principally in Bridgetown. In the afternoon through the kindness of Sherman Moore, a lawyer with the Ministry of the Attorney General, I was driven to the Faculty of Law, University of West Indies, Barbados Campus at Cave Hill where I met James W. Ryan, Q.C., a visiting professor and legal consultant to the Ministry of the Attorney General. I remembered Jim when he was Legislative Counsel to the Government of the Province of Alberta, in the early 1950's in Edmonton.

After a tour of a very fine law library, we had a most useful discussion when I