

PROVINCIAL JUDGES

Journal

DES JUGES PROVINCIAUX

Volume 17 - No. 2

Summer 1993 Été

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THE CANADIAN ASSOCIATION OF
PROVINCIAL COURT JUDGES

L'ASSOCIATION CANADIENNE DES
JUGES DE COURS PROVINCIALES



The Canadian Association of Provincial Court Judges /
L'Association canadienne des juges des cours provinciales

1992-1993

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The Provincial Journal is a quarterly publication of the Canadian Association of the 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.

Le journal des juges provinciaux est une publication trimestrielle de l'Association canadienne des juges des cours provinciales. Les commentaires et opinions qu'il contient ne peuvent être considérés comme l'expression officielle de la position de l'Association canadienne, sauf indication à cet effet.

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Formule d'inscription
Assemblée annuelle de L'A.C.J.C.P.
La Célébration de l'anniversaire 20ième

Hôtel Radisson Plaza - St. Jean, T-N

22-26 septembre 1993

Nom du juge _____

Nom de la cour _____

Adresse postale _____

Téléphone _____ Fax _____

Nom(s) de L'(des) invité(s) _____

Demandes ou besoins spéciaux _____

Logement à l'hôtel nécessaire _____ Chambre
nombre de nuits _____ simple (120 \$) double (120 \$)

Arrivée Date _____ Heure _____ Via _____

Départ Date _____ Heure _____

“Pour dire adieu petit déjeuner - dimanche, le 26ième septembre
de 8h00 à 10h00”.

Les réservations seront retenues jusqu'à 19h00 (heure locale) le jour de l'arrivée.
Les réservations pour les arrivées tardives ne peuvent être garanties qu'avec une
carte de crédit.

Nom de la carte _____ Carte no. _____

Date d'expiration _____

Cachet d'inscription : juges 300,00 \$ Invités 150,00 \$

Date limite d'inscription : 10 août 1993

Envoyez cette formule par la poste

ou par fax au : *juge Bruce leGrow*

Cour provinciale

35 Alabama Drive

Stephenville, NF

A2N 3K9

FAX: (709) 643-4022

La confirmation de vos réservations d'hôtel vous sera envoyée par
Hôtel Radisson Plaza

Registration Form

20th Anniversary Celebration C.A.P.C.J.

Radisson Plaza Hotel - St. John's, NF
September 22-26, 1993

Name of Judge _____

Name of Court _____

Mailing Address _____

Telephone _____ Fax _____

Name(s) of Guest(s) _____

Any special concerns or requests _____

Hotel accommodation required

Number of nights ____ Single (\$120.) Double (\$120)

Arrival Date _____ Time _____ Via _____

*Departure Date _____ Time _____

*Farewell Breakfast on Sunday, September 26, at 8:00 - 10:00 am

Reservations will be held until 6:00 PM on date of arrival. Late arrivals must be guaranteed by a credit card:

Name of Card: _____ Card No. _____

Exp.Date _____ Signature _____

Registration Fee: Judges \$300. Guests \$150.

Registration Deadline: August 10, 1993

Mail or Fax this form to: Judge Bruce LeGrow

Provincial Court

35 Alabama Drive

Stephenville, NF

A2N 3K9

FAX: (709) 643-4022

Confirmation of hotel accommodation will be sent to you by Radisson Plaza.

Editor's Notebook / Remarques du rédacteur

You will notice, if you haven't already, that this issue of the Journal is somewhat slimmer than usual and contains less French than recent issues. There is one explanation for both these variations. At the C.A.P.C.J. Executive Meeting in Montreal, some members introduced a notice of motion to amend the auditing requirements of the Association's constitution. Members must be given notice of any proposed amendment 90 days before the annual meeting. I was directed to do everything I could to have the Summer 1993 issue containing the notice delivered to the members by June 25, 1993. In order to meet that deadline I had to use material already at hand and ready to go.

There should be more time for preparation of the next issue, so size and language deficiencies should be overcome.

Pat Curran
Editor

**Deadline for submissions
for Next Issue
August 1, 1993**

Vous allez remarquer, si vous ne l'avez pas déjà fait, que ce numéro du Journal est plus mince que d'habitude et contient moins de textes en français que les derniers numéros. L'explication de ces deux changements est qu'à la réunion de l'exécutif de l'ACJCP à Montréal, certains membres ont introduit un avis de motion pour modifier la constitution de l'Association en ce qui concerne les conditions des vérifications. Les membres doivent être avisés de tout projet de modification 90 jours avant l'assemblée annuelle, on m'a demandé de faire tout ce que je pouvais pour inclure dans le numéro d'été de 1993 l'avis aux membres avant le 25 juin 1993. Afin de respecter cette échéance, j'ai dû utiliser des articles déjà finis et prêts à être publiés.

Nous devrions avoir plus de temps pour la préparation du prochain numéro, alors les problèmes de taille et de langue devraient être résolus.

Pat Curran
Rédacteur

**Date-limite pour nous
soumettre des articles pour
le prochain numéro:
le 1er août 1993**

Notice of Motion Amending the Constitution of the Canadian Association of Provincial Court Judge

Avis de motion d'une modification a la constitution de l'association canadienne des juges des cours provinciales

To: All members of the Canadian Association of Provincial Court Judges

NOTICE is hereby given that at the next Annual General Assembly of the Canadian Association of Provincial Court Judges to be held at the Radisson Plaza Hotel, St. John's, Newfoundland, at 10:00 a.m. local time, on Thursday, September 23, 1993, the following motion will be presented to be voted upon by the voting representatives present at that meeting.

"BE IT RESOLVED:

That the Constitution of the Canadian Association of Provincial Court Judges be amended as follows:

Article (5) of the said Constitution shall be deleted in its entirety, and the following shall be substituted therefor:

"(5) Review of Books of Account

(a) The books of account of the Association shall be reviewed annually by the Executive Committee of the Association in conjunction with a review by a certified public accountant or a chartered accountant or recognized equivalent, provided further that:

(i) upon a resolution passed by a majority of the provincial representatives at the mid-year executive committee meeting of the Association, or

Aux membres de l'association canadienne des juges des cours provinciales

LA MOTION suivante sera présentée à l'assemblée générale annuelle de l'Association qui sera tenue à l'Hôtel Radisson à St. John's, Terre Neuve, à dix heures, jeudi le 23 septembre, 1993:

"QU'IL SOIT RESOLU QUE:

La Constitution de l'Association Canadienne des juges des cours provinciales soit modifiée comme suit: L'article (5) de la dite Constitution sera radié entièrement, et ce qui suit sera substitué:

(5) L'EXAMEN DES LIVRES DE COMPTE

(a) Les livres de compte de l'Association doivent être étudiés chaque année par le comité exécutif de l'Association conjointement avec un examen par un comptable certifié ou un comptable agréé ou une personne ayant reçu une formation reconnue équivalente, pourvu que:

(i) à l'occasion d'une résolution approuvée par une majorité des représentants a une réunion du comité exécutif, ou

Samedi 25 septembre 1993

REPOS! JOURNÉE LIBRE

18h00-21h30

Réception & dîner donnés par la province de Terre Neuve & du Labrador, le conférencier invité sera le Premier ministre de la province

9h30-13h00

Passez la soirée à danser avec le Ducats Rock n' Roll Showband

1h00 -

Suite Hospitalité

Dimanche 26 septembre 1993

8h00-9h30

Petit déjeuner de départ
Venez nous dire Au revoir

PROGRAMME DES CONJOINTS

Jeudi 23 septembre 1993

9h00-15h00

EXCURSION A L'ILE BIRD

Vous irez en autobus du Centre des Conférences à la Baie Witless où des bateaux d'excursion vous attendront pour vous amener au refuge des oiseaux marins. Le refuge abrite des Milliers d'oiseaux marins, y compris le macareux. Peut-être l'équipage vous offrira-t-il de manière sympathique de pêcher la morue. Du saumon cuit au barbecue sera au menu du déjeuner.

Mettez des vêtements décontractés et chauds. Munissez-vous, si possible, d'un appareil-photo. Vous serez de retour bien avant la réception à la résidence du Lieutenant-gouverneur pour vous permettre de vous préparer.

Vendredi 24 septembre 1993

9h30-15h30

EXCURSION EN AUTOBUS MCCARTHY'S

Les autobus d'excursion quitteront la Centre des conférences et vous emmèneront Visiter la plus vieille cité d'Amérique du Nord et ses environs. Il y aura plusieurs arrêts aux endroits les plus importants de la ville. Préparez-vous à voir des sites fantastiques. On s'arrêtera pour le déjeuner au parc Bowering. Encore une fois, mettez des vêtements décontractés et n'oubliez pas votre appareil-photo.

Samedi 25 septembre 1993

9h30-midi

VISITE DU FLUVARIUM

Vous serez transportés du Centre des conférences au Fluvarium du parc Pippy. Après la visite du Fluvarium, vous pourrez marcher sur un sentier qui longe la rivière Rennie jusqu'à Winterholme où vous pourrez prendre un petit déjeuner de santé. N'oubliez pas de prendre des chaussures de marche ou de sport.

Conférence annuelle

22 - 26 septembre 1993
Hôtel Radisson Plaza
St. John's, Terre-Neuve

PROGRAMME PROVISOIRE

Mercredi 22 septembre 1993

14h00-19h00	Inscription des délégués et de leurs conjoints
19h30-20h30	Réception donnée par le Barreau de Terre-Neuve
20h30	Suite Hospitalité

Jeudi 23 septembre 1993

9h00 - 17h00	Continuation des inscriptions
9h15-10 h00	Cérémonie d'ouverture
10h00-midi	Assemblés annuelle de l'ACJCP
12h30-13h45	Déjeuner pour les juges Orateur invité
14h00-16h30	Programme de formation
17h00-18h00	Réception à la résidence du Lieutenantgouverneur
20h30	Suite Hospitalité

Vendredi 24 septembre 1993

9h15-midi	Programme de formation
12h15-13h45	Déjeuner pour les juges Orateur invité
14h00-16h30	Programme de formation
18h00-19h00	Suite Hospitalité
19h00-23h00	Mise en forme Pour le dîner "Soirée Terre-Neuve" Des plats traditionnels de Terre-Neuve seront servis: Jigs Dinner - Fish 'n' Brewis - Fish Cakes, etc. Après le repas vous entendrez le groupe Buddy Wasiname & the Other Fellers Vous devrez porter votre casquette Salt'n'Pepper qui sera comprise dans votre trousse d'inscription, pour être admis à cette soirée toute spéciale.
23h00	Suite Hospitalité

(ii) upon demand by any funding agency providing grants to the Association, the said books of account shall be submitted to the certified public accountant or chartered accountant or recognized equivalent for an audit in accordance with generally-accepted accounting principles.

(b) All reviews, audits and financial reports resulting from the financial review or from the audit, as the case may be, shall be completed in time for the next succeeding Annual General Assembly of the Association, and shall be made available to all members of the Association at the said Annual Assembly, or at any time thereafter."

I CERTIFY that this motion in writing was signed by three members in good standing with the Association, and was filed with me on the 2nd day of May, 1993.

DATED at Toronto, Ontario, this 5th day of May, 1993.

"Pamela A. Thomson"

(ii) à l'occasion d'une demande d'un agence qui subventionne l'Association, les livres de compte doivent être présentés ou au comptable certifiée ou au comptable agréé ou l'équivalent pour une vérification selon les principes généralement reconnus.

(b) Tout examen, vérification et rapport financier produit par l'examen ou par la vérification doit être achevé avant la tenue de chaque assemblée générale annuelle de l'Association, et doit être mis à la disposition de tous les membres de l'Association à la dite assemblée générale annuelle, ou par la suite."

JE CERTIFIE que cette motion par écrit a été signée par trois membres en règle de l'Association, et a été déposée avec moi le 2 mai, 1993.

Le 5 mai, 1993 à Toronto.

"Pamela A. Thomson"

CBA Liaison Committee Report / Rapport du comité liaison de l'ABC

*Judge David M. Arnot, Chair CBA Liaison Committee
Le juge David M. Arnot, président comité de liaison avec l'ABC*

I am pleased to report that the CBA Liaison Committee has been very active this year.

Much of the foundation for the committee's work had been laid well in advance of my arrival. Senior Judge Charles Scullion was instrumental in developing support in Ontario and nationally for an improved liaison between our two organizations. As you are aware, his hard work and persistent effort over the course of several years resulted in a resolution being put forward to amend the Canadian Bar Association Constitution to allow a chair for the President of the Canadian Association of Provincial Court Judges on the CBA National Council (the Orlando Resolution). For this work and his many other contributions to the Canadian Bar Association, Judge Scullion was recognized by the CBA-Ontario and awarded the Distinguished Service Award for 1992. The "Orlando" Resolution was passed at the CBA mid-winter meeting in February, 1993.

I feel the "Orlando" Resolution is the cornerstone in the foundation in a bridge-building process between our two organizations. The Canadian Association of Provincial Court Judges recognized that there would be a corresponding expectation to promote increased membership and increased participation by our judges in the Canadian Bar Association, Provincial Branches and the CBA National. I feel as an association we are prepared to meet that challenge.

I feel the judiciary completely recognizes and fully understands that there must be cooperation and dialogue between the Bar and the Court. Both bodies must be impartial and unfettered by each other. The

Je suis heureux de vous faire savoir que le Comité de liaison de l'ABC a été très actif cette année.

La plus grande partie du travail de base de comité avait été commencée bien avant mon arrivée, Le juge senior Charles Scullion a joué un rôle essentiel pour obtenir des appuis en Ontario et au niveau national pour l'amélioration de la liaison entre nos deux organisations. Comme vous le savez, grâce à son travail acharné et continu pendant plusieurs années, une résolution a été mise sur pied pour modifier la constitution de l'Association du Barreau canadien afin d'accorder un siège au Conseil national de l'ABC au président de l'Association Canadienne des juges des cours provinciales (la résolution d'Orlando). Ses travaux et ses nombreuses autres contributions à l'Association du Barreau canadien ont valu au Juge Scullion la reconnaissance de l'ABC-Ontario qui lui a remis un prix pour service distingués en 1992. La résolution d'Orlando a été adoptée à la réunion de la mi-hiver de l'ABC en février 1993.

Je pense que cette résolution est la pierre d'angle de la fondation du pont à bâtir entre nos deux organisations. L'Association canadienne des juges des cours provinciales reconnaît qu'on peut s'attendre en conséquence à promouvoir un recrutement accru de membres et une participation plus active de nos juges à l'Association du Barreau canadien tant au niveau provincial que national. Je pense qu'en tant qu'association, nous sommes prêts à relever ce défi.

Je pense que les juges reconnaissent et comprennent pleinement qu'il doit y avoir coopération et dialogue entre le Barreau et la cour. Ces deux corps doivent être impartiaux et indépendants l'un vis à vis de

Saturday, September 25, 1993
RELAX! YOU HAVE A FREE DAY

6:00-9:30 pm Reception & Dinner hosted by The Province of Newfoundland & Labrador, Guest Speaker will be the Premier

9:30 pm-1:00 am Dance the night away with the Ducats Rock n' Roll Showband.

1:00 am Hospitality Suite

Sunday, September 26, 1993

8:00-9:30 am Farewell Breakfast
Come and Say your Good-byes

SPOUSES' PROGRAM

Thursday, September 23, 1993

9:00 am-3:00 pm

BIRD ISLAND CHARTER

You will be transported by bus from the Conference Centre to Witless Bay where tour boats will be waiting to take you to the Seabird Sanctuary. The Sanctuary is home to thousands of seabirds including the puffin. The friendly crew may offer you an opportunity to jig cod. Barbequed salmon will be on the menu for lunch. Prepare to dress casually and warm. A camera is a must. You will return in plenty of time to prepare for the reception at Government House.

Friday, September 24, 1993

9:30 am-3:30 pm

MCCARTHY'S BUS TOUR

Tour buses will leave the Conference Centre and take you on a tour of North America's oldest city and the surrounding area. There will be a number of stops at significant locations throughout the city. Be prepared for some fantastic sites. There will be a stop for lunch at Bowring Park. Again dress casually and bring your camera.

Saturday, September 25, 1993

9:30 am-12:00

TOUR OF FLUVARIUM

You will be transported from the Conference Centre to the Fluvarium in Pippy Park. After touring the Fluvarium, there will be a walk along the Rennie's River Trail to a health breakfast at Winterholme. Make sure you pack your walking shoes or sneakers.

CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES

Annual Conference

September 22 - 26, 1993

Radisson Plaza Hotel
St. John's, Newfoundland

TENTATIVE AGENDA

Wednesday, September 22, 1993

2:00-7:00 pm	Registration of Delegates & Spouses
7:30-8:30 pm	Reception, hosted by The Law Society of Newfoundland
8:30 pm	Hospitality Suite

Thursday, September 23, 1993

9:00-5:00 pm	Registration Continued
9:15-10:00 am	Opening Ceremonies Annual Meeting, CAPCJ
12:30-1:45 pm	Luncheon for Judges Guest Speaker
2:00-4:30 pm	Education Program
5:00-6:00 pm	Reception at Government House
8:30 pm	Hospitality Suite

Friday, September 24, 1993

9:15am-12:00 noon	Education Program
12:15-1:45 pm	Luncheon for Judges Guest Speaker
2:00-4:30 pm	Education Program
6:00-7:00 pm	Hospitality Suite Pre-Dinner Warm-up
7:00-11:00 pm	"Newfoundland Night" Traditional Newfoundland Meals will be served: Jigs Dinner - Fish 'n' Brewis - Fish Cakes, etc. Following the meal you will be entertained by the group Buddy Wasiname & The Other Fellers You must be wearing your Salt 'n' Pepper cap which will be included in your Registration Kit, in order to gain admission to this special evening.
11:00 pm	Hospitality Suite

independence of the Bar is just as important as the independence of the judiciary. Both groups have to respect that principal and realize that it remains and must always remain; but that does not and should not prevent information and communication flowing between both groups, especially on the issue of the proper administration of justice where both parties have an obvious responsibility and a vested interest.

I have stated in the past that it seems to me that the traditional role of the Attorney General as spokesperson and protector of our Court is evaporating in many provinces. In most provinces, commissions have been established to deal with matters of judicial independence including salary and compensation issues. In some provinces, it is clearly demonstrated that the Attorney General is an advocate opposing our Court. I feel it behooves the members of this association to look to other constituencies particularly the Canadian Bar Association for support. I feel that an independent judiciary has a natural ally in an independent bar on certain issues, particularly, judicial independence. I feel that it is very much in the best interests of the Canadian Association of Provincial Court Judges to establish a closer working relationship with the Canadian Bar Association. "Judicial independence" should not be equated with "Judicial Isolation."

Our Court has a duty to be vigilante against infringement of judicial independence. Judicial independence is a concept that is continuing to evolve. Our organization must seek means to promote and protect that concept. It is a concept that we all agree is essential in a democratic society. However, it is continually demonstrated that politicians have difficulty in putting that theory into practice.

I have encouraged the representatives of the Canadian Association of Provincial Court Judges in each province and territory to continue their rapport with the members of the Provincial and Territorial Branches of the Canadian Bar Association.

l'autre. L'indépendance du Barreau est tout aussi importante que celle des juges. Les deux groupes doivent respecter ce principe et accepter qu'il demeure et doit toujours demeurer intact, mais cela n'empêche pas et ne devrait pas empêcher le flot d'information et de communication entre les deux groupes, spécialement en ce qui concerne une bonne administration de la justice où les deux parties ont une responsabilité évidente et un intérêt direct.

J'ai indiqué par le passé qu'il me semble que le rôle traditionnel de porte-parole et de protecteur de la cour assure par le procureur général est en train de disparaître dans de nombreuses provinces. Dans la plupart des provinces, des commissions ont été établies pour traiter des questions touchant à l'indépendance des juges, notamment des questions de salaires et de rémunération. Dans certaines provinces, le procureur général s'oppose à l'évidence à notre cour. J'estime qu'il est du devoir des membres de notre association de chercher de l'aide auprès d'autres organisations, particulièrement l'Association du Barreau canadien. J'estime qu'un barreau indépendant est un allié naturel d'un tribunal indépendant dans certaines questions comme notamment l'indépendance des juges. Je pense qu'il y va de l'intérêt supérieur de l'Association canadienne des juges des cours provinciales d'établir des relations de travail plus étroites avec l'Association du Barreau canadien. "L'indépendance des juges" ne veut pas dire "L'isolation des juges".

Notre cour a le devoir de se montrer vigilante à l'égard des empiétements contre son indépendance. Cette indépendance est un concept en cours d'évolution. Notre organisation doit chercher les moyens de promouvoir et de protéger ce concept. Nous sommes tous d'accord qu'il est essentiel à toute société démocratique. Cependant, il est continuellement démontré que les politiciens ont du mal à le mettre en pratique.

Our president, Judge Bobowski, is very much in favour of this work and has met and corresponded with Paule Gauthier, President of the Canadian Bar Association. She has been particularly encouraged by Judge Bobowski's outreach, and we are encouraged by her response.

In January, 1993, Judge Bobowski, Judge Lavoie (the Saskatchewan Provincial Court Judges' Executive), and I met with Cecilia Johnstone, Q.C., Vice-president of the Canadian Bar Association, R. Dennis Maher, Q.C., National Treasurer of the Canadian Bar Association and Patricia Haidenger-Bains, President of the Saskatchewan Branch of the Canadian Bar Association. I had met with Mr. Maher on two occasions prior to this meeting and accepted his invitation to meet with these individuals to discuss common goals and expectations. We discussed the need for recognition of the independence of the Bar and the judiciary. We spoke of the intangible benefits for both organizations. Some of the tangible benefits were outlined to us.

We indicated that we had appreciated the role and position taken by the Canadian Bar Association, Provincial Branches before the respective compensation commissions in each province. We noted that the judges have received support from the Canadian Bar Association in the past. We felt the Canadian Bar Association is worthy of our support and should be and is valued by the judges. Cecilia Johnstone thanked the Provincial Court judges for taking the initiative. In particular, she noted that as a result of the lead steps by our court, the Section 96 judges had made a similar request for amendment to the CBA Constitution for provision of a seat on the CBA National Council for themselves.

The meeting was very positive and it was clear to me that the Canadian Bar Association members were most enthusiastic and encouraged by our outreach.

J'ai encouragé les représentants de l'Association canadienne des juges des cours provinciales de chaque province et territoire à continuer d'entretenir des rapports avec les membres des sections provinciales et territoriales de l'Association du Barreau canadien.

Notre président, le juge Bobowski, est très favorable à ces travaux et a rencontré Paule Gauthier, présidente de l'Association du Barreau canadien, avec laquelle il a correspondu. Elle a été très encouragée par les ouvertures du juge Bobowski, et nous sommes, nous-mêmes, très encouragés par sa réponse.

En janvier 1993, la juge Bobowski, le juge Lavoie (représentant l'exécutif des juges de la Cour provinciale de Saskatchewan) et moi-même avons rencontré Cecilia Johnstone, c.r., vice-présidente de l'Association du Barreau canadien, R. Dennis Maher, c.r., trésorier national de l'Association du Barreau canadien et Patricia Haidenger-Bains, présidente de la section de la Saskatchewan de l'Association du Barreau canadien. J'avais déjà rencontré M. Maher a deux reprises avant cette réunion et j'avais accepté son invitation à rencontrer ces personnes pour discuter de nos aspirations et buts communs. Nous avons discuté du besoin de reconnaître l'indépendance du Barreau et celle des juges. Nous avons discuté des bénéfices intangibles que nos deux organisations pourraient en tirer et examiné certains des bénéfices tangibles.

Nous avons indiqué que nous avons grandement apprécié la rôle joué et la position prise par les sections provinciales de l'Association du Barreau canadien devant chaque commission provinciale sur la rémunération. Nous avons noté que les juges avaient reçu l'appui de l'Association du Barreau canadien par le passé. Nous pensons que cette association mérite notre appui, qu'elle devrait être et quelle est appréciée par les juges. Cecilia Johnstone a remercié les juges provinciaux d'avoir pris l'initiative, En particulier, elle a noté qu'à la suite de notre initiative, les juges de l'article

FOOTNOTES

1. The Badgley Committee Report, Sexual Offences Against Children (Ottawa: Minister of Supply & Services, 1984) Vol. 1 at page 175.
2. A Review of the Implementation of the Child Sexual Abuse Legislation in Selected Sites: **Studies on the Sexual Abuse of Children in Canada.** (Ottawa: Department of Justice Canada, Research Section, 1993).
3. Gail S. Goodman and Vicki S. Helgeson, **Child Sexual Assault: Children's Memory & The Law**, University of Miami Law Review, Vol. 40, 181 at p. 185.
4. Fisher, Ronald P. and Geiselman, R. Edward, **Evaluation and Field Implementation of the Cognitive Interview**, (Final Report for National Institute of Justice, grant #USDJ-85-IJ-CX-0053) unpublished 1987.
5. "Reliable & Fictitious Accounts of Sexual Abuse of Children", Journal of Interpersonal Violence, 2.1 (March 1987) 27-46
6. Supra, note 2.

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Geiselman, R. Edward; Fisher, Ronald P.; Firstenberg, Lisa; Hutton, Lisa A.; Sullivan, Steven J.; Avetissian, Ivan V.; and Prosk, Allan; "Enhancement of Eyewitness Memory", **Journal of Police Science and Administration.** Vol. 12, No. 1 (1984) pp. 74-80.

Geiselman, R. Edward; Fisher, Ronald P.; MacKinnon, David P.; and Holland, Heidi L.; "Enhancement of Eyewitness Memory with the Cognitive Interview", **American Journal of Psychology.** Vol. 99, No. 3 (Fall 1986) pp. 385-401.

Henderson, Douglas; "Statement Analysis Lecture", **Canadian Police College** (October 1989).

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- 2) May have few friends, rarely invites people home or talks on the telephone;
- 3) Depression or violent aggressiveness can be a sign of severe abuse.

Children: 13-17 years

- 1) Overt emotional or behavioural problems;
- 2) Rebellious behaviour, poor school performance academically, poor school behaviour, truancy;
- 3) Acting out against the law;
- 4) Use of drugs or alcohol;
- 5) Depression;
- 6) Suicide attempts or self-mutilation;
- 7) Promiscuity or prostitution;
- 8) Running away from home;
- 9) Psychomatic disorders including headaches, abdominal pain or hysterical behaviour.

The presence of one or more of these signs in the context of a complainant in a sexual assault allegation can be signs of abuse and therefore can be corroborative of the child's testimony.

CHILDREN & RECANTATION

The decision regarding the veracity of a child witness in a sexual assault allegation becomes daunting if the child recants the allegation at some point in the proceeding.

The agonizing question becomes was the truth the allegation or the recantation? In a study⁵ of 576 child sexual abuse complaints there were only 8 fictitious allegations or 1.4%. Other studies⁶ estimate the range at 2-5%. Factually, the vast majority of sexual abuse complaints are true. Why then do some children recant?

Secrecy: Child sexual abuse is by its very nature a secret offence. The perpetrators are often family members of the complainant. The disclosure causes disruption and upset in the family. Some children find the secrecy more palatable than the truth. Recantation is the easy way back to superficial peace in the family.

Denial: The disclosure is accompanied with emotional pain for the child. This pain combined with the pain it brings on the family can trigger a defence mechanism in children. Recantation may appear to be an effective and immediate block to that pain.

Lack of Support or Pressure to Recant: In some family situations the non-offending parent either doesn't support the child complainant (by claiming to disbelieve her) or actually puts pressure on the child to admit the allegations are false. This atmosphere can make withdrawal of the allegation look like a "port in a storm" to a child who is psychologically alone.

The stress surrounding the allegation certainly puts pressure on the accuser. If the case does proceed through the court system, the closer in time it gets to the court hearing the greater the stress level of the child. Hence, it should not be surprising that the likelihood of recanting (a return to a safe haven) increases.

Clearly recantation presents a problem in assessing credibility. However, an expert witness can often be of assistance in providing a plausible explanation for this phenomenon. That explanation combined with the possible motives for recantation provided by other evidence may be of assistance in determining which are the false recantations.

CONCLUSION

There are no magic formulas which can be administered to determine with 100% certainty whether any allegation of sexual assault is true. However, a consideration of the factors contained in this article may aid the reader in determining whether the evidence at hand is capable of belief to a moral certainty.

Judge Bobowski and Judge Scullion attended the Orlando meeting in February, 1993, to foster the passing of the resolution. Judge Bobowski has made the following comments to me:

"The mid-winter meeting of the Canadian Bar Association in Florida in February, 1993, was a forum where C.A.P.C.J. gained valuable exposure among people that we have to work with and know. I was on the speakers platform with the Chief Justice of Canada, the Minister of Justice, the Solicitor General and the President of the S.96 Judges Association. I was also able to meet informally with the Minister of Justice, Mr. Blais and the Solicitor General, Mr. Lewis and get to know them on a personal basis. This avenue of meeting with the Ministers has to be continued as it is extremely difficult to set up meetings with them in Ottawa.

"I was greatly impressed by Mr. Justice Laner in his dealings with the CBA. He indicated that certain issues concerning the Supreme Court of Canada were referred to the SCC liaison with the CBA and an opinion or report received which had the support of the CBA. Thus, automatically, Mr. Justice Lamer and the SCC have the support of 35,000 lawyers. A situation, which I submit would greatly enhance our efforts in dealing with our governments as suddenly the governments are looking at significant voting numbers."

"I also attended a meeting, at their request, of the CBA sponsored Legal Profession Assistance Conference. A more detailed report of LPAC and its objectives will be the subject of a separate report."

A strategy is developing whereby our President and the Canadian Bar Association President will write separate letters or perhaps a joint letter to each member of the Canadian Association of Provincial Court Judges encouraging the individual Judge to join the CBA. The CBA requested a mailing list and has offered to pay the mailing and translation costs for this project.

96 avaient fait une demande semblable de modification de la constitution de l'ABC pour pouvoir recevoir un siège au conseil national de l'ABC.

La réunion a été très positive et il était clair pour moi que les membres de l'Association du Barreau Canadien étaient très intéressés et encouragés pour nos ouvertures.

Le juge Bobowski et le juge Scullion ont assisté à la réunion d'Orlando en février 1993, pour appuyer l'adoption de la résolution. Le juge Bobowski m'a fait les commentaires suivants:

"La réunion de la mi-hiver de l'Association du Barreau canadien de février 1993 en Floride, a été un forum où l'ACJCP a gagné une notoriété précieuse auprès des personnes avec lesquelles nous devons travailler et que nous connaissons. J'étais sur le podium avec le Juge en chef du Canada, le ministre de la Justice, le Solliciteur général et le président de l'Association des juges de l'article 96. J'ai également pu rencontrer de manière informelle le ministre de la Justice, M. Blais et le Solliciteur général, M. Lewis, et apprendre à les connaître sur une base personnelle. Nous devrions continuer à utiliser ce moyen de rencontrer les ministres car il est extrêmement difficile de les rencontrer à Ottawa.

"M. le juge Laner m'a beaucoup impressionné par ses rapports avec l'ABC. Il a indiqué que certaines questions portant sur la Cour suprême du Canada avaient été référées au comité de liaison CSC-ABC qui avait préparé une opinion ou un rapport ayant l'appui de l'ABC. Ainsi, automatiquement, M. le juge Lamer et la CSC ont l'appui de 35 000 avocats. Une situation qui, je pense renforcerait grandement notre position dans nos rapports avec nos gouvernements qui prendraient soudain en considération la nombre important d'électeurs."

"J'ai également assisté à une réunion, à leur demande, de la conférence sur l'aide à la profession juridique organisée

It seems to me that we must establish and enhance CBA Liaison Committees in each province and territory.

British Columbia and Ontario are very interested and have proffered names of judges who would be willing to assist this committee with this work. I would appreciate having one judge from each province on the CBA Liaison Committee for purposes of better communication.

Mr. Stuart Langford, the editor of the Canadian Bar Association National magazine has offered to introduce a column written by judges in that publication. That offer has been accepted by our association and Judge Gerald Seniuk, a former journalist with the *Globe and Mail* has agreed to edit such a column. There are eight issues per year and each column has been allowed 700 words.

The Canadian Bar Association has invited the CAPCJ to participate in the 1996 Annual Meeting of the CBA in the week of August 20, 1996. This conference will occur in Vancouver, British Columbia, and will be a joint Commonwealth meeting. The Canadian Bar Association Constitution provides for a "Conference" as well as various "sections." It was suggested to us that our organization consider being a conference within the meaning of the CBA constitution. This allows for separate and independent meetings jointly or at the same time as the CBA Annual Meeting and could be a method of fostering our annual meeting on a regular and continuous basis.

The Canadian Bar Association has developed a draft 5-year plan for membership.

Judges currently constitute a small percentage of membership in the CBA.

The CBA membership sub-committee is seeking assistance from the National Tax subsection for advice, and if necessary, lobbying assistance on the issue of deductibility of fees. As well they are looking at the entire question of fees. There is a possibility that a separate category of membership for judges could be created to take away from any

par l'ABC. Un rapport plus détaillé de cette conférence et de ses objectifs feront l'objet d'un rapport séparé."

Nous sommes en train de mettre au point une stratégie qui vise à faire écrire à notre président et à celui de l'Association du Barreau canadien des lettres séparées ou peut-être une lettre conjointe à chaque membre de l'Association canadienne des juges des cours provinciales pour les encourager individuellement à devenir membre de l'ABC. L'ABC nous a demandé une liste d'adresses et nous a offert de payer les frais d'expédition et de traduction de ce projet.

Il me semble que nous devons établir et encourager des comités de liaison avec l'ABC dans chaque province et territoire.

La Colombie-Britannique et l'Ontario sont très intéressés par ce projet et ont suggéré le nom de plusieurs juges qui seraient prêts à aider notre comité dans ce projet. J'aimerais avoir un juge de chaque province au comité de liaison avec l'ABC pour faciliter la communication.

M. Stuart Langford, le rédacteur du magazine de l'Association du Barreau canadien nous a offert d'introduire dans sa publication une colonne écrite par des juges. Notre association a accepté cette offre et le juge Gerald Seniuk, ancien journaliste du *Globe and Mail* a accepté d'en effectuer la révision. Huit numéros paraissent chaque année et chaque colonne dispose de 700 mots.

L'Association du Barreau canadien a invité l'ACJCP à participer à l'assemblée annuelle de l'ABC de 1996 qui aura lieu durant la semaine du 20 août 1996 à Vancouver, Colombie-Britannique, et qui sera également une réunion conjointe du Commonwealth. La constitution de l'Association du Barreau canadien prévoit des "conférences" et diverses "sections". Il nous a été suggéré de prendre en considération la possibilité de devenir une conférence au sens de la constitution de l'ABC. Ceci permettrait des réunions séparées et indépendantes en conjonction avec l'assemblée annuelle de l'ABC ou en

- 3) (i) Recall the event backwards,
- (ii) Recall the event with memory jogging techniques, i.e., did the perpetrator look like someone else,
- (iii) Recount the event through someone else's eyes, i.e., a stuffed animal which was present.

The results indicated children who went through phase 1 and 2 had 18% better recall than the standard interview. The recall was 45% better if the children had been through a practice cognitive interview before the real cognitive interview. The older children recalled considerably more detail than the younger children. Children in grade 3 did not make more recall errors than children in grade 6.

Each style of interview affected the informational outcome. The backward storytelling technique added 44% more information which was 79% correct. The new perspective behaviour added 75% more new information which was 86% accurate.

Positive interviews elicited the most information with a 90.1% accuracy rate.

This study alone is convincing evidence of the value of good interview techniques being used during the first contact with the child. The manner in which a child has been interviewed is then another factor which can be considered in a credibility assessment.

The techniques used in the first interview when adopted in the second crucial interview, being the direct and cross-examination of the child in court, is likely to increase the accuracy of the child's evidence and thereby make the credibility of the child easier to discern.

SIGNS OF ABUSE

Physical evidence of abuse in the form of cuts and bruises is often not readily identifiable in child sexual abuse cases. There are, however, less obvious indicators of abuse which often present themselves. These

clues which, if observed, may be of assistance in credibility assessment tend to manifest themselves differently at different points in childhood. The behaviours which might be considered worthy of note are outlined below as they might be expected to appear at each stage of development (compiled by the American Prosecutors Research Institute).

Children: Age 3-5 years

- 1) Simulated sexual activity, i.e., with dolls, pets or other children;
- 2) Touching adult genitals or sexual talk;
- 3) Unaccountable knowledge of sexual acts and language;
- 4) Unusual questions or a different reaction to a known person;
- 5) Bedwetting, nightmares, thumbsucking;
- 6) Medical or psychosomatic symptoms including vaginal infections, bladder infections, stomach and headaches.

The child at this stage of development often discloses because a change in environment has made the child feel safe, i.e., the perpetrator has left the home.

Children: Age 6-10 years

- 1) Becoming withdrawn;
- 2) Nightmares;
- 3) Unaccounted for money or gifts
- 4) Depression
- 5) Aggressiveness;
- 6) Regression to behaviours of a younger age;
- 7) Change in relationships with peers;
- 8) Sexual behaviour which reflects the child's version of adult behaviour.

This is the age at which children learn about secrets and how to keep them.

Children: 10-13 years

- 1) Age - inappropriate behaviour such as acting or dressing older or younger than her actual age or associating with children older or younger;

If questions are repeated, children may change the answers thinking the first answer was wrong. Therefore, it is critical to rephrase repeated questions to ensure the information which is illicit is accurate.

It is important to appreciate that, although children may see the world from a different perspective, they can accurately recall, remember and retell incidents which happened to them if they are properly and carefully questioned.

QUESTIONING

Proper questioning of a child is vital at two different points in time in the legal process. The first time is during the initial disclosure the child gives to authorities. The second time is the actual testimony in court.

(A) Memory:

The human memory is not perfect but witnesses generally tend to try for accuracy. The presence of certain factors tends to assist a witness in giving reliable testimony as set out by Goodman and Helgeson:

“Testimony is more likely to be accurate when: the report concerns “central” information, such as salient actions; the event was relatively extended over time; the assailant was familiar to the victim, such as a known neighbour, relative or acquaintance; the event was repeated; and highly suggestive questioning did not occur.”³

The most common feature of children’s memories is to omit information rather than to augment. Therefore, careful questioning is essential to full disclosure of the events.

(B) First Interview:

The National Institute of Justice⁴ in the United States has conducted research in relation to effective methods of interviewing children to enhance the completeness and accuracy of their information. The main purpose of the study was to evaluate the effect a practice interview about an unrelated, staged event had on a child’s

recall ability during a subsequent cognitive interview about a matter under investigation. The children were given guidelines as to what was permissible during the interview. They were told it is acceptable to say:

- 1) I don’t know.
- 2) I don’t want to answer that question.
- 3) I don’t know what you mean.
- 4) If a question is repeated, it doesn’t mean you have to change your answer; just tell what you remember.

The interviewers were given instructions as to what was permissible during the interview. They were told:

- 1) To ask the child what happened.
- 2) To ask the child how they felt about what happened.
- 3) Not to use the words “pretend” or “imagine”.
- 4) Not to interrupt the child.
- 5) Not to prompt the child other than by saying what happened then.
- 6) To ask open-ended questions.
- 7) To allow a question to be answered before the next one is posed.
- 8) To pay attention to the child’s answers and not jump to conclusions.
- 9) To speak in a relaxed tone and use simple language.
- 10) To use positive phrasing, “Do you remember?” not “You don’t remember, do you?”
- 11) To praise the child’s efforts not the disclosure.

After the child reconstructed the story, she was asked to tell it again adding any little details which might have been previously left out.

The cognitive interview was divided into three phases:

- 1) Rapport building;
- 2) Reconstruction of the circumstances;

political stigma that may be seen by some judges as an impediment to membership.

The CBA has a mission statement which is as follows: The CBA mission is to represent the legal profession on a national and international level, to improve the law, the administration of justice and access to justice, and to encourage its members to expand their knowledge to hone their skills and to nurture high ethical standards.

The draft plan created by the CBA is based on seven goals, three of which are as follows:

The Fundamental Goal. Goal #1

That the CBA represent a substantial majority of Canadian jurists.

The Core Goal. Goal #2

Being relevant to the Canadian Legal Profession including lawyers, notaries, judges, teachers and students.

Goal #3

Having superior and cost-effective professional development and membership services.

As you can see, the Canadian Bar Association is very concerned about being relevant to Canadian jurists for mutual benefit and in the long term for the benefit of legal profession in general.

QUAERE:

1. What is the appropriate response by the Association considering the passing of the Orlando Resolution?
2. What methods do we use to implement that response?
3. What further steps does the executive recommend?
4. Should becoming a “conference” pursuant to the CBA Constitution be given active consideration by the long-term planning committee?

Respectfully submitted,

Judge David M. Arnot, Chair
CBA Liaison Committee

même temps qu’elle et pourrait également nous aider à avoir notre assemblée annuelle sur une base régulière et continue.

L’Association du Barreau canadien a établi un projet de plan de 5 ans pour le recrutement des membres.

Les juges ne représentent actuellement qu’une mince proportion des membres de l’ABC.

Le sous-comité sur le recrutement de l’ABC a demandé l’aide de la sous-section nationale sur les taxes pour recevoir ses conseils et, si nécessaire, exercer des pressions relativement à la déduction des honoraires. Ils examinent également toute la questions des honoraires. Il serait également possible de créer une catégorie séparée de membres pour les juges afin de supprimer toute coloration politique qui pourrait empêcher certains juges de devenir membres.

Les objectifs de l’ABC sont les suivants: La mission de l’ABC est de représenter la Profession juridique au niveau national et international, d’améliorer le droit, l’administration de la justice et l’accès à la Justice et d’encourager ses membres à étendre leurs connaissances afin d’améliorer leurs compétences et de protéger de hautes normes d’éthique.

Le projet de Plan établi par l’ABC repose sur sept objectifs dont trois sont les suivants:

L’objectif fondamental. Objectif #1
Que l’ABC représente Une majorité importante de juristes canadiens.

L’objectif essentiel. Objectif #2
Etre pertinent pour la Profession juridique au Canada notamment pour les avocats, les notaires, les juges, les professeurs et les étudiants.

Objectif #3
Disposer de services de développement professionnels et de recrutement des membres supérieurs et économiques.

Comme vous pouvez le voir, l'Association du Barreau canadien a très à coeur d'être pertinente pour les juristes canadiens afin de servir leurs intérêts mutuels, et à long terme de servir l'intérêt de la profession juridique en général.

QUESTIONS

1. Quelle est la réponse que l'Association devrait donner à l'égard de la Résolution d'Orlando?
2. Quelles méthodes devrions nous utiliser pour mettre exécution cette réponse?

3. Quelles autres mesures l'exécutif devrait-il recommander?
4. Le comité sur la planification a long terme devrait-il activement prendre en considération la possibilité de devenir une "conférence" conformément à la constitution de l'ABC?

Avec mes sentiments les plus respectueux

*Le juge David M. Arnot,
président Comité de liaison avec l'ABC*

News Brief / En Bref

ALBERTA

Appointments

*Her Honour Judge M. Joanne Burch
Edmonton Rural, Stony Plain
effective March 15, 1993*

*His Honour Judge Eric W. Petersen
Southern Region, Lethbridge
effective March 15, 1993*

*His Honour Judge Sydney E. Wood
Family & Youth Division, Edmonton
effective March 15, 1993*

ONTARIO

Appointment

*Her Honour Judge Deborah Austin
Southwest Region, Samia
effective December 1, 1992*

Federal Appointment

*Mr. Justice Peter A. Grossi
formerly of the Ontario Court
(Provincial Division)
to Ontario Court
(General Division), Toronto
effective April 2, 1993*

Notice From the Treasurer / Avis de la trésorière

RE: Travel to Annual Meeting

All Executive Committee members, Provincial Representatives and Delegates are reminded that the CAPCJ will not pay more than the lowest excursion rate air fare to St. John's available July 1, 1993.

Pamela Thomson

objet: Voyage à la réunion annuelle

Je désire rappeler à tous les membres du comité exécutif, aux représentants et délégués provinciaux que l'ACJCP ne remboursera pas plus que le tarif excursion le plus bas des billets d'avion pour le vol à St. John's du 1er juillet 1993.

Pamela Thomson

(A) Language Ability:

Children 5 years old and younger have limited vocabulary upon which to draw. Pronouns, tense and gender can be confused and mixed with one another. Although children in this age group tend to understand complicated questions, they often lack the ability to answer. Therefore, they may be better able to communicate their emotions or information through the use of drawings or demonstrations.

Short sentences using simple language, using names rather than pronouns and using simple tenses assist the child's ability to accurately communicate the facts.

(B) Cognitive Ability:

Children under 10 years old tend to interpret meaning literally. Their concept of time and its sequencing is in its developmental stages. Therefore estimation, by them, of days, weeks, months, seasons or years is not at an adult level. Children can most easily answer questions concerning central issues. Peripheral issues like describing an assailant physically are difficult as their concept of height, weight and age are developmentally immature.

Children's ability to understand "what", "where", "who", "when" and "why" develops incrementally. A child at three to four years of age has the ability to understand "what" and "where". The next stage of development is an understanding of "who". Finally, at 5 to 7 years of age the child can answer "when" and "why" questions but may still have difficulty in determining motivation especially of an assailant. These are the kinds of questions most frequently asked in court. Therefore, to ensure the best evidence is before the court, questioning must take into account this reality of the child's development.

Young children tend to be egocentric believing, for example, if they can't see you then you can't see them when their eyes are covered in a game of peek-a-boo. Their recounting of events which happened to them reflect this and may seem incongruent from an adult perspective. Because small

children believe they are the centre of the universe, they may not even realize that they not only have a sibling but are a sibling themselves.

Children under 10 years of age are often unable to analyze their own thoughts and therefore may not be able to assess how they felt at a particular time in the past. They may have difficulty as well in comparing their present feelings with their past feelings about an event.

Short-term memory develops over childhood, hence, the younger the child the harder to remember long and complex questions. This incremental development also inhibits their ability to compare and contrast.

To ensure the best evidence is obtained from a child, questions should be specific, i.e., Do you live in a house or a trailer? Time frame is best related to birthdays, Christmas or school year. Height questions are best related to taller than you, taller than your Dad, as tall as the bookcase and similarly with weight and age descriptions. Each question should address one idea at a time.

SOCIAL AND EMOTIONAL CONSIDERATIONS

Children, like adults, tend to regress and function developmentally at a lower level under stress. Stress can also manifest itself in a desire to please. Hence, the child may be induced to give answers to questions which he doesn't really know. It is therefore essential to obtain the best evidence from a child to make the environment within which he is being questioned a psychologically comfortable one, i.e., by allowing a favourite toy to be taken to the witness stand.

Children assume that adults tell them the truth, hence, they may agree to suggestions made to them when leading questions are put to them. It is not that children are more suggestible than adults, but they can be when their memory is weak or the questioner has authority over them. To obtain accurate information, it is important not to contaminate the child's evidence with false or speculative information.

OVERVIEW

C) Bill C-15 Review.

On January 1, 1988 Bill C-15 became law in Canada. Its use has been studied since that time in three sites across the country culminating in a report called, "Studies on the Sexual Abuse of Children in Canada—A Review of the Implementation of the Child Sexual Abuse Legislation"² published in February, 1993. The report documents three study sites: Alberta, Ontario and Saskatchewan. The first study site in Alberta included five geographical locations: Calgary, Edmonton and three rural areas. This study was then used as a model for two similar studies, one in Hamilton, Ontario; the other in Regina and Saskatoon, Saskatchewan.

The results can be briefly summarized as follows:

**BILL C-15
Review Summary**

- I Children over-represented the victims of sexual assault in the study sites.
- II Reporting range: 73/100,000 to 158/100,000.
- III Form of abuse:
 - a) genital fondling
 - b) oral sex
 - c) vaginal penetration of penis
- IV Common traits of victim:
 - a) tended to be female (70-80%)
 - b) tended to be under 12 years old (under 5 years old, 15-22%)
- V Common traits of perpetrator:
 - a) tended to be male (94%)
 - b) tended to be adult but with a high number under 18 years (29% Saskatchewan)
 - c) majority not related to victim (Edmonton 25%, Saskatchewan 16%, Hamilton 14%, Calgary 5%)
 - d) significant number were fathers or other relative (Saskatchewan 30% and Calgary 57%)

VI Common factors which directly affected the child's ability to testify:

- a) Physical harm as a component of the offence made testifying more difficult.
- b) The longer the period of time since the incidence, the more difficult to testify.
- c) The most stressful part of the testifying experience was cross-examination.
- d) The fewer strangers and the more supportive adults in the courtroom during the testimony, the easier the testifying experience.

VII False allegations ranged from 2-5%.

Factually, therefore, we cannot dispute that sexual assault is a serious problem in our society but how do we know whether the child witness in this allegation was, in fact, abused and therefore making a credible disclosure.

This paper is offered to assist in providing information which may be of benefit to anyone trying to determine the veracity of a child witness.

DEVELOPMENTAL STAGES

Humans develop their language and cognitive abilities primarily during their childhood. Therefore, it should not be surprising if a younger child cannot communicate as well as an older child or if an older child cannot communicate as effectively as an adult. Children may give answers which do not seem to logically follow or may say they don't know the answer to a question when they do. The explanation may be in the way the question is asked. Questions geared to the appropriate age and stage of the child's development can yield the accurate information. There is no reason to believe children are less-truthful than adults or are unable to distinguish fantasy from reality. The answer lies in understanding their development and applying this understanding to the questions they are asked and the answers that they give.

**C.A.P.C.J. 1993 Survey Salary
April 24, 1993**

	1991	1992	1993	Increase	% Change	% Fed.
BC	\$103000.00	\$107000.00	\$107000.00	\$0.00	0.00%	68.62%
ALTA	\$113964.00	\$113964.00	\$113964.00	\$0.00	0.00%	73.09%
SASK	\$90000.00	\$90000.00	\$90000.00	\$0.00	0.00%	57.72%
MAN*	\$88607.00	\$91274.00	\$90444.35	(\$829.65)	-0.91%	58.00%
ONT	\$124250.00	\$124250.00	\$124250.00	\$0.00	0.00%	79.68%
QUE	\$110000.00	\$113491.00	\$113491.00	\$0.00	0.00%	72.78%
NB	\$94614.00	\$94614.00	\$95560.00	\$946.00	1.00%	61.28%
NS	\$102100.00	\$102100.00	\$102100.00	\$0.00	0.00%	65.48%
PEI**	\$100256.00	\$102840.00	\$104374.30	\$1534.30	1.49%	66.94%
NFLD	\$90129.00	\$90129.00	\$90129.00	\$0.00	0.00%	57.80%
YUK***	\$98711.00	\$112179.00	\$112179.00	\$0.00	0.00%	71.94%
NWT	\$108000.00	\$109000.00	\$109000.00	\$0.00	0.00%	69.90%
Country	\$142800.00	\$150929.00	\$150929.00	\$0.00	0.00%	
Superior	\$147800.00	\$155929.00	\$155929.00	\$0.00	0.00%	
Supreme	\$175600.00	\$185258.00	\$185258.00	\$0.00	0.00%	

AVERAGE SALARY - PROVINCIAL COURTS			
	1991	1992	1993
	\$101969.25	\$104236.75	\$104374.30

* MAN. Note that Manitoba had a 3% increase in September of 93 (\$94,017.00), and has had a subsequent reduction of 3.8% bringing their salary to \$90,444.35.

** P.E.I. salary is the average of the other 11 jurisdictions, and is calculated as of April 1st each year.

*** YUKON..Salary should be \$114,423.00 but a 2% salary rollback (effective April 1st) has been announced which will have the effect of putting the 1993 salary back to that of 1992.

Congress 1993 / Congrès 1993

by Her Honour Judge P.A. Thomson, Executive Director, C.A.P.C.J.
par l'honorable juge P.A. Thomson directrice exécutive, A.C.J.C.P.

It was a pleasure and a privilege to attend Congress '93 entitled "The Role of the Judge in the New Canadian reality: Judicial Skills & Knowledge". This ambitious programme of our Western Judicial Education Centre brought together 300 of the 330 Western and Territorial Judges for 4 days of intensive lectures, seminars and workshops in areas as diverse as literacy, sentencing, witness demeanor, contract and tort law, mediation, the mentally challenged, child abuse and spousal assault. We even dipped into the complex areas of probability theory and fact finding.

In addition to we Judges, there was a group of Elders from British Columbia, Alberta and Saskatchewan who, in addition to opening and closing the Congress, offered insights and helped to create a tone for the sessions with their very presence.

The presentation of the Congress was surprisingly delightful with the use of theater, videos and innovative lighting. The debate on Judicial Independence, refereed by one of our colleagues, used humour to increase the impact of a serious subject. Speakers and leaders were articulate and challenging; the entertainment was first rate.

C'est avec plaisir que j'ai eu la privilège d'assister au Congrès 93 qui avait pour thème "Le rôle du juge dans la nouvelle réalité canadienne : les aptitudes et les connaissances judiciaires". Cet ambitieux programme de notre centre de formation judiciaire de l'ouest a réuni 300 des 330 juges de l'ouest et des territoires pendant 4 jours de conférences, séminaires et ateliers intensifs dans des domaines aussi variés que l'alphabetisation, l'imposition des peines, la conduite des témoins, le droit des contrats et de la responsabilité délictuelle, la médiation, les handicapés mentaux, les mauvais traitements aux enfants et les agressions contre les conjoints. Nous avons même abordé les domaines complexes de la théorie des probabilités et des enquêtes.

En plus des juges, il y avait un groupe d'Aînés de Colombie-Britannique, d'Alberta et de Saskatchewan qui ont ouvert et clos les travaux du congrès mais ont aussi fait quelques suggestions et aidé à créer par leur présence une atmosphère favorable pour les séances.

Les présentations faites au Congrès étaient, à notre surprise, charmantes, utilisant le théâtre, les vidéos et des éclairages tout à fait nouveaux. Le débat sur l'indépendance judiciaire, arbitré par l'un de nos collègues, s'est servi de l'humour pour renforcer l'impact d'un sujet très sérieux. Les orateurs et les responsables étaient clairs et stimulants; le spectacle était de première qualité.

The Child Witness and The Search for Truth

Susan C. Potts, Senior Crown Attorney (Sexual Assault Prosecutions)
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Disclaimer:

For presentation at the Conference of N.S. Provincial and Family Court Judges, Halifax, Nova Scotia, May 5-8, 1993.

The views expressed in this paper are those of the author and do not purport to represent an official position of the Nova Scotia Department of Justice.

April 16, 1993

INTRODUCTION

There is no doubt that one of the most difficult and onerous tasks in a criminal trial is that of determining the credibility of a witness. If the witness is a child complainant in a sexual abuse allegation giving evidence which is not corroborated in a material way, the task of assessing credibility becomes an agonizing dilemma.

It is a truism to say there are normally not eyewitnesses to offences of a sexual nature, corroboration therefore is likely to be less than complete. Physical evidence is frequently absent; opportunity evidence is merely circumstantial and psychological evidence is, at best, consistent with the allegations.

In the face of these realities, it is not surprising that "proof beyond a reasonable doubt" is a monumental burden.

OVERVIEW

A) The Badgley Report.

The statistics demonstrate the high incidence of child abuse in our society. The Badgley Report, 1984 provided an extensive study of child sexual abuse in Canada. Its findings are summarized as follows:

"About one in every two females and one in every three males have been the victims of unwanted sexual acts. About four in five of these incidents first happened to these persons when they were children or youths."¹

We can extrapolate from these findings therefore that one-half of the female population and one-third of the male population of this country have or will experience unwanted sexual acts in their lifetime.

OVERVIEW

B) Scared Silent.

In the fall of 1992 Oprah Winfrey, in a prime-time television program entitled, "Scared Silent", displayed the toll free telephone number for The Kids Help Phone. The Help Phone received 10,000 calls in the five days following the first airing of the program.

The data is being collated but the highlights are as follows:

(a) The majority of calls were from adults; among those were adult survivors of child abuse disclosing for the first time. (The age range of callers was 20-70 years.)

(b) Calls were received from adolescents who were either victims themselves or worried their friends were being victimized.

(c) Calls were received from adults who knew of abusive situations but had never reported them.

(d) Calls were received from sex offenders.

President-Elect Gerry Barnable summed up the Conference, reminding us that Provincial Judges have been educating themselves since the 1930's. We will continue to do so, and to meet the challenge of blending the community and Judges in educational endeavours. Many stereotypes have been put aside in the last years, but we must be aware that the concept of "zero tolerance" may result in overcorrection and the bending of the rules of evidence and of the concepts of onus of proof. These days are hard times to be a Judge; it is more and more difficult to work and to resist demands for instant solutions by cranky interest groups demanding instant action.

barreau d'admettre qu'il a consciemment ou inconsciemment accepté la "hiérarchie de perception" et de parler en notre nom. Nous contribuons peut-être à cette perception en acceptant les pressions imposées par les longues listes d'affaires auxquelles nous faisons face chaque jour par sens du devoir.

Le président élu, Gerry Barnable, a résumé la Conférence en nous rappelant que les juges provinciaux avaient assuré, eux-mêmes, leur formation depuis les années 1930. Nous continuerons à la faire et à relever le défi d'associer la collectivité et les juges dans des activités formatrices. De nombreux stéréotypes ont été écartés depuis les dernières années, mais nous devons garder à l'esprit que le concept de "tolérance zéro" peut entraîner des abus en matière correctionnelle et l'adaptation déraisonnable des règles de preuve et du concept du fardeau de la preuve. Ces jours-ci, il est difficile d'être juge; il nous est de plus en plus difficile de faire notre travail et de résister aux exigences de solutions instantanées proposées par des groupes de pressions impatientes exigeant des changements.

The W.J.E.C. - Another View

April 29, 1993

His Honour Judge Patrick H. Curran
Editor, Provincial Judges Journal
5250 Spring Garden Road
Halifax, Nova Scotia
B3J 1E7

Dear Judge Curran:

Re: Reflections of a Circuit Judge

I enclose for your consideration for publication several writings of mine.

You will notice that these writings do not fit into the usual pattern of submissions. They do, however, have something to say about a different, yet relevant, dimension of judicial activity: self-inquiry, cross-cultural sensitivity, and how one's personal recreational - creative pursuits (in my case photography) can bring an interesting focus on judicial activity.

Let's admit it. Our C.A.P.C.J. is made up of two levels of membership: those who have had the enviable experience of participating in seminars, congresses, and other educational delicacies served up by our Western Judicial Education Centre, and those who exist east of Manitoba - poor souls! So as not to cast pearls, some explanation is necessary for those Easterners.

In appreciation for the participation of various leaders, facilitators, and contributors at our educational functions, a few years ago the W.J.E.C. began to present "engraved" mugs to these people. From simple beginnings this gesture has taken on a life of its own. The enclosed poem "The Mug" was created from the "Seminar on Racial, Ethnic, and Cultural Equity" sponsored by W.J.E.C. in June, 1992 at the University of Saskatchewan in Saskatoon.

For that week-long seminar I also took over 500 photographs which are now a two volume permanent record of the

W.J.E.C. of the judicially historic event. The reports of their Honours Judge Douglas Campbell (Director, W.J.E.C.) and Judge Gerald J. Barnable (1st V.P., C.A.P.C.J.) in our "Journal" Volume 16 - No. 2 Fall - 1992 were, I would think, very difficult to do, given the limitations of publishing space, and the modesty of their Honours.

In my photographic record I report that Mr. Jules Browde, National Chairperson, Lawyers for Human Rights, Johannesburg, South Africa spoke:

"...in almost disbelief that this type of Seminar was taking place...prompting him to muse that this gathering could well be a first in continental North America - if not in the World."

It is always fruitful for us to ponder on how others see us. We ought not to confuse counting our blessings with counting our eggs. I understand that the Director of W.J.E.C. has received international enquiries (Australia and Europe) concerning the format of the Saskatoon seminar. And so, through education, our judicial world unfolds as it should - almost a shift in paradigm for some of us.

In my "Epilogue" to my photographic report I attempt to record the essence of the personal voyage that I was privileged to make at the June, 1992 Seminar in Saskatoon. What more can be asked of a seminarian?

Yours truly,

E.C. Diehl
Provincial Court Judge

Epilogue

I am profoundly grateful to the Saskatchewan Provincial Court Judges' Association and the Western Judicial Education Centre for inviting me to participate in the Seminar. I participated as a Seminarian to listen, to reflect, to learn; as a speaker on Racially-Initiated Crime; as an exhibitor of photographic art; and as a candid photographer to record as best as I could the impossible: the visible manifestation of an internal voyage of confirmation and discovery to do with things of the spirit.

My invisible mentor is the brilliant photographer Freeman Patterson from Shampers Bluff, New Brunswick. The title of his thesis for his master's degree in divinity from Union Theological Seminary was "Still Photography as a Medium of Religious Expression." Now a peripatetic professional photographer he is a renowned writer and lecturer. In "Photography & The Art of Seeing" - Key Porter Books, page 152 he states:

"The camera always paints both ways. In expressing the subject, you also express yourself... When you observe your subject matter carefully, you will find yourself caring about it, and through it expressing yourself quite naturally."

I have always cared about the judiciary. Because of the Seminar my circle of caring has now expanded to embrace seminarians beyond my immediate horizon. Patterson, I'm sure, would now say that I am capable of expressing myself "quite naturally" photographically.

Because of the Seminar I have learned to focus more clearly through my cultural filter; to see the spectra of racial, ethnic, and cultural variables more equitably in the human landscape; to broaden my peripheral vision more to the diversity of humankind; and to re-affirm that a polarizing filter can never capture the colourful image of the age-old ever-renewing hope of humankind: The Rainbow.

Eric C. Diehl
Melfort, Saskatchewan
November 26, 1992

THE MUG

From simple gesture of the heart
O'er time again did habit grow -
Familiar as a well-worn shoe.

By further habit repeat again,
Like laces tied with ne'er a ken,
It blossomed more by time's report
And expectation's full support.

Why not again? 'Twas always so!

And thus with custom firm in tow,
By smooth transition now enhanced,
There flowered from gesture born of chance
Through habits like we always wear,
A simple ritual,
Symbolic fun,
Encultured now,
We are as one.

Judge Eric C. Diehl
Provincial Court of Saskatchewan
Melfort, Saskatchewan
November 29, 1992

Atlantic Education Conference 1993 / Conférence de l'atlantique de 1993 sur la formation

by Her Honour Judge P.A. Thomson, Executive Director, C.A.P.C.J.
par l'honorable juge P.A. Thomson directrice exécutive, A.C.J.C.P.

It was a pleasure to represent your President at the 1993 Atlantic Conference held in St. John's and chaired by Judge Robert Fowler. The Conference is a joint project of the Provincial Judges' Associations of the Atlantic Provinces. The National Judicial Institute videos on child witnesses and child victims were presented in conjunction with panels.

We had "no holes barred" speeches from a local Crown Attorney and the Solicitor General, the Honourable Douglas Lewis. An excellent paper was given and circulated with respect to the effect of Section 7 on post-charge criminal procedure. I recommend it for every library.

The highlight, for me, was the participation of Mr. Rex Murphy in a panel on Judicial Independence. In addition to ethical, financial, political, and equitable independence he spoke of our "intellectual sovereignty". Government intrusion which affects what we are called to do is "immoral": "if the dignity of our offices is impaired then society is in trouble" because it has lost a position which is due respect. We deal with morality and "the trappings of office are merely to indicate the weightiness of what we are called to do" unless "conservative minds of slow speed" use their political position to "vitalize our independence". Other members of the panel spoke of "judicial apartheid" and of the necessity of the Bar to admit that it has consciously or unconsciously consented to the "hierarchy of perception" and to speak up on our behalf. Are we maybe contributing to the perception by bowing to the pressures of long lists out of a sense of duty to deal with the volume of cases listed each day.

C'est avec plaisir que j'ai représenté votre président à la Conférence de l'Atlantique de 1993 qui s'est tenue à St. John's et que le juge Robert Fowler a présidée. Cette conférence est un projet conjoint des associations des juges provinciaux des provinces de l'Atlantique. Des vidéos de l'Institut judiciaire national sur le témoignage des enfants et les enfants victimes ont été présentées dans le cadre de groupes de discussion.

Nous avons assisté aux discours directs et francs d'un procureur de la Couronne local et du Solliciteur général, l'Honorable Douglas Lewis. Un excellent mémoire a été présenté et distribué sur les effets de l'article 7 sur la procédure criminelle postérieure à la condamnation. Je la recommande pour toutes les bibliothèques.

La partie la plus intéressante pour moi a été la participation de M. Rex Murphy à un groupe de discussion sur l'indépendance des Juges. En plus des aspects éthiques, financiers, politiques et d'équité de cette indépendance, il a également parlé de notre "souveraineté intellectuelle". L'intrusion du gouvernement dans ce que nous sommes appelés à faire est "immorale": "Si la dignité de notre fonction est amoindrie, la société devra alors faire face à de nombreux problèmes" parce qu'elle aura perdu une position qui commande le respect. Nous devons faire respecter la moralité et "la pompe" qui entoure notre charge ne sert qu'à indiquer l'importance de ce que nous sommes appelés à faire" à moins que "des esprits conservateurs à courte vue n'utilisent leurs positions politiques pour "amoindrir notre indépendance". D'autres membres du groupe de discussion ont parlé d'un "apartheid judiciaire" et de la nécessité pour le