

PROVINCIAL JUDGES

Journal

DES JUGES PROVINCIAUX

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THE CANADIAN ASSOCIATION OF
PROVINCIAL COURT JUDGES

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JUGES DE COURTS PROVINCIALES



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In Lighter Vein

ON AN EVALUATION*

To bow and scrape may be my lot
Before a real Judge, which I'm not:

With quivering pen and majestic ken,
Elizabeth Two has created you —

MY LORD!

O GOD!

To shed the blue and don the red
In another day would've swelled the head:

In present times, noblesse oblige
Requires Lords (and Ladies please)

To accept with grace their higher call
And leave their cheques in my front hall.

D. B. Overend

*(The author of this poem has a friend who sat in the County Court before it was merged with the Supreme Court. He calls it "Whimsical Doggerel". Incidentally, the friend's name is Ken.)

☆☆☆

An immigrant, who had come to Canada
several years before, stood in court, accused of
a minor offence.

"Is there anyone in this town who can vouch
for your character and integrity?" the judge
asked.

Stuck for an answer, for he was one of the very
few persons of his national origin in the area,
he turned and saw the Mountie for that region.

"Your Honour, the Mountie can vouch for
me."

The Mountie was stunned.

"Why," he told the judge, "I never before saw
this man. I don't even know him."

"Now, your worship, that must say something
for my character! I've lived here for 15 years and
the Mountie doesn't know me yet."

That was good enough for the judge and the
man went free.

☆☆☆

A careless angler was arrested for catching
32 trout, 20 more than the law allows.

"How do you plead?" the judge asked him.

"Guilty," the fisherman replied.

"\$25 and costs," the judge decreed.

"I'll pay it gladly," the defendant told the
judge, "and could I have several topics of the
court record, as well, to show my friends?"

☆☆☆

Un avocat, chargé, de défendre un au-
tomobiliste impliqué dans une collision, télé-
phone à un des témoins oculaires mentionnés
par le rapport de police.

«Qui était le fautif? demande-t-il. — Je ne
saurais pas dire, répond le témoin. Il se sont tam-
ponnés en même temps.»

☆☆☆

The defendant stood before the judge in a
western Canada courtroom back when horses
were more popular than cars.

"Gentlemen of the jury," the judge intoned,
"this man is accused of stealing a horse. But
this court demands that he have a fair trial. I want
you to listen to the testimony that is presented
here today before deciding if he is guilty. And
I want you to remember that there is a Supreme
Being Whose knowledge transcends all, a mer-
ciful God Who watches over us all. And," the
judge concluded with a frown, "you can be sure
He isn't going to be deceived by any bloody
horsethief!"

☆☆☆

President's Page

Corrigendum

In the June 1990 issue, Volume 14, No. 2,
paragraph 3 of the President's Page the follow-
ing statement appears:

New legislation in Manitoba specifically
provides for evaluation of the judiciary.

This is incorrect. A suggestion to that effect
was indeed the substance of a recommendation
by the Manitoba Law reform commission but so
far it has not been incorporated into the
province's legislation.

Dans l'édition de juin 1990, c'est-à-dire le
volume 14, numéro 2, la déclaration suivante
paraît au paragraphe 3 de la page du président
à l'égard de la province de Manitoba:

Dans cette province, l'évaluation de la
magistrature a été prévue par une nou-
velle loi mise en vigueur.

En fait, c'est incorrect. Dans son rapport de
1989, la Commission de réforme du droit du
Manitoba a recommandé d'adopter telle dispo-
sition. Pourtant, jusqu'à maintenant ça n'a été
adopté comme partie du droit de la province.

AVIS

ACJCP

Assemblée 1991

Holiday Inn/Crowne Plaza
City Centre, Toronto, Ontario

11 - 14 septembre 1991

«Nous Attendons Votre Participation»

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Editorial Page

The 1990 Annual Conference of our Association is now history. As you are already aware, this year the conference was held at Quebec City and the *conférence des juges du Québec* acted as host for the event.

In our view, it is impossible to imagine the warm sense of satisfaction that must have been felt by Juge Louis Rémillard, chairman of the organizing committee and his colleagues, for the tremendous success of the conference. Since 1974, the inaugural year of our Associations' Annual conference, there have been at least 17 such events. It seems that the quality of the conferences improves each year. The explanation for that must be as one says about good wine, "it improves with age." Our perception of the matter, having discussed the Conference with many delegates, is that this year is no exception.

We realize that in saying that, there is a risk of sounding like a broken record, however what can one say except to tell the truth!

In our opinion, the *Conférence des juges du Québec* as well as Judge Rémillard and his organizing committee deserve the most sincere congratulations for the hard work they have done. Without doubt Quebec City is one of the most beautiful cities in Canada, and it was only fitting that the Conference take place at the beautiful *Chateau Frontenac*.

The delegates had a very enjoyable time. Apart from the accommodations, which were perfect, the educational and social programmes proved to be excellent while the hospitality was unsurpassed anywhere in Canada.

We are looking forward with anticipation to the next time around in Quebec in about 10 years!

Meanwhile, the 1991 Annual Conference will take place in Toronto. We are sure it will also be a memorable event, and we would urge you to attend if at all possible.

M. Reginald Reid
Editor-in-Chief

Le congrès annuel de notre association pour 1990 s'est achevé. Comme vous savez déjà, cette année le congrès a eu lieu à Québec et *la conférence des juges du Québec* s'est agi comme hôte.

De notre point de vue, c'est impossible d'imaginer le sentiment chaud de la satisfaction que M. le juge Louis Rémillard, Président du comité organisateur et ses collègues, auront du se sentir à cause de succès de l'événement. De 1974, l'année inaugurale du congrès de notre association, on a mis en scène au moins dix-sept de telles événements. Il nous semble que la qualité de ces Congrès s'améliore chaque année. L'explication doit être comme on dit en anglais concernant le bon vin: «il s'améliore avec l'âge.»

D'après ce que nous avons appris, après avoir discuté ce sujet avec beaucoup de congressistes, nous sommes convaincu que cette année n'est aucune exception.

On se rend compte d'en disant cela, on risque d'être regarder comme un disque cassé, mais qu'est ce qu'on peut dire excepté raconter ce qui est la vérité!

A notre avis, *la conférence des juges du Québec* ainsi que M. le juge Rémillard et son comité organisateur méritent les félicitations le plus sincère pour leur travail fort. Sans doute, Québec est un des plus belles villes du Canada et il n'était qu'approprié que l'assemblée a eu lieu à l'hôtel magnifique, le *Château Frontenac*.

Les congressistes ont eu une expérience très agréable. En dehors du logement, lequel était parfait, les programmes éducatif et social se sont avérés excellents, tandis que l'hospitalité était non surpassée n'importe où au Canada.

Nous attendons la prochaine fois au Québec environ dix ans avec plaisir!

En attendant, en 1991 le congrès annuel aurait lieu à Toronto. Nous sommes certain que ça sera aussi un événement mémorable. Nous vous exhorterais d'assister à cette assemblée si possible du tout.

M. Reginald Reid
Rédacteur en chef

of the American states of recognizing and retaining an expert appointed by the court to assist the court on highly technical matters. Such a measure would not prevent the parties from calling such expert witnesses as they choose; what it would ensure is that the evidence of those experts in all its detail and sophistication would be appreciated by the court. In my view, it is time at least to consider amending our rules of procedure to permit appointment of an expert to assist the court in cases of great complexity.

In other cases, where the facts and inferences are within the realm of common, properly instructed, understanding, there can be no better guide than that laid down in the early cases:

- where the judge and jury can understand, let them decide;
- where matters go beyond the understanding of the judge and jury, let the parties call experts to enlighten them;
- in all cases, distinguish between the facts, which must be proved in the ordinary way by admissible evidence, and inferences from those facts, which may sometimes call for learned, expert opinion.

If we adhere to these rules, we cannot go far wrong.

CAPCJ	NOTICE	CONVENTION 1991
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	Details will be forthcoming	
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cisms to which I have referred.

I disagree at this point to make a confession. I have long suspected — believed is too strong a word — that if the world is not unfolding in an orderly Hegelian progression of thesis-antithesis — resolution, it at very least may be marked in cycles. To this, the law of evidence is no exception. From an era when expert evidence was regarded with suspicion — perhaps too much suspicion — we have moved to an era where it has become the most important part of many lawsuits. But having peaked at the top of the cycle, there are signs that we are retreating, at least a little, from litigation by experts.

Courts are rebelling at the spectre of expert evidence in domains of common sense. Thus the Supreme Court of Canada in *R. v. Phillion* (1977) 33 C.C.C. (2d) 535 S.C.G., rejected expert polygraph or “lie-detector” evidence, reaffirming the exclusive right of the judge and jury to determine the credibility of witnesses. Thus too the courts in this province, in the cases to which I referred at the outset, have become increasingly critical of expert reports which are based on unproven assumptions of fact; of reports which unnecessarily purport to resume evidence apparent to the jury; of reports which forget the distinction between fact — the domain of the judge and jury — and inference — the proper turf of the expert; of reports which presume to direct the judge and jury on the ultimate issue in the case. The old danger — so clear to our predecessors at the beginning of this century — of ceding the impartial role of the judge and jury to partisan experts paid by one litigant or other, has once again been perceived as imminent, and our courts are reacting against it.

What then is to be done? The first answer is that counsel must take more care in instructing the expert witnesses they retain. Care must be taken to ensure that the subject of the report is truly one on which an expert can assist the court — and area of expertise beyond the realm of common experience. Care must be taken to ensure the facts — proven and unproven — are distinguished from inferences. In this exercise, the hypothetical question — an almost forgotten adversarial art — is *sans pareil*. An expert report that lumps facts which the judge and jury may or may not accept indiscriminately with inferences based on those facts, as though all are worthy of the same credence, is likely to be tossed out of court on the ground that it is calculated to mislead. In the area of psychiatric evidence, hearsay and hearsay upon hearsay may be admissible in the context of the expert's report, but beyond that peculiar realm, counsel should beware.

Above all, experts must restore the court's faith in them by reaffirming their objectivity. An

expert who contests too obviously for one side or the other loses his or her credibility. He reduces himself to the status of a hired gun, nothing more. I believe — a belief reinforced by witnessing many impressive and impartial contributions by experts in my role as presiding trial judge — that an expert, even though retained by one side or the other, can retain his or her integrity and credibility with the court, even though it may on occasion mean giving an answer which may hurt the side who is paying him. The expert must always bear in mind that regardless of who is paying him, his duty is to tell the truth, his role to assist the court. If he does less, he will fail his duty to the court and, in all probability, his obligation to his client.

Will this be enough? My answer is that an expert, retained by one side or the other, can ethically do no more. At the same time, while recognizing the limitations on an expert retained by a litigating party, we should be prepared to consider the need for an *impartial* expert assistance to the court.

The reality is that in an increasingly complex and technical world, courts are more and more called upon to decide questions of staggering technical complexity. The domains of engineering, computer science, medicine and many more, increasingly come before the court. There can be no decision without understanding. But how to acquire the proper understanding? Experts retained by each side may assist, but the judge may still find himself or herself uncertain on particular points.

Wigmore, for all his scorn of traditional limitations on expert evidence, recognized the dangers and inadequacies inherent in partisan expert witnesses, retained by one side or the other. It was imperative, he said, that a method be found of securing to the court *unbiased* experts. The remedy, he concluded lay in bringing the expert into court free from any committal to either party, any partisanship. The key was that the expert must not be paid by either party and must not be summoned by either party into the court, in Wigmore's mind.

We have toyed with similar ideas in our jurisdiction. Assessors may sit on technical cases to aid the judge, as was done in *Morrison-Knudsen et al. v. B.C. Hydro (No. 1)* (1978) 85 D.L.R. (3d) 186 (B.C.C.A.); *Morrison-Knudsen et al. v. B.C. Hydro (No. 2)*, [1978] 4 W.W.R. 193 (B.C.C.A.). Special referees may be retained, although the law seems to decree that they must sit as judicial officers: *Norton v. Norton*, unreported, February 2, 1989, Vancouver Registry No. CA004604 and CA004796 (B.C.A.A.). If I may be so bold as to suggest, the time may have come in British Columbia that we adopt the approach which has been taken in England and in many

News Briefs

ONTARIO

Court Reform

Phase I of the reform of the courts of Ontario came into effect on September 1, 1990. The implementation of Phase I means significant changes to the system, particularly with the creation of the new Ontario Court of Justice. The new court consists of two divisions: Ontario Court (General Division) and Ontario Court (Provincial Division). Until Phase II is implemented some time in the future the court system will function as follows:

COURT OF APPEAL

- severed from the trial courts
- jurisdiction unchanged

ONTARIO COURT OF JUSTICE

ONTARIO COURT (GENERAL DIVISION)

- combines existing High Court, District Court and Surrogate Court (federally appointed judges)
- responsible for criminal and civil trials; some appeals; family jurisdiction for divorce, custody, support and property division, and Small Claims Court
- all jurisdiction of the Ontario Court (General Division), including motions, will be exercised by judges. Masters who currently hear motions in certain counties will continue to do so, although no new masters will be appointed.
- judges will be organized into eight regions to parallel the eight administrative regions announced in December 1988 for Courts Administration staff and Crown attorneys
- a chief justice and eight regional senior judges will be appointed
- Civil Rules Committee will be requested to devise new rules to expedite hearing of civil cases up to \$15,000, or more

Divisional Court

- continues to hear appeals and judicial reviews
- all General Division judges are members

- judges will sit in all eight regions (currently sit primarily in Toronto)

Small Claims Court — Implementation expected by end of 1990

- to operate as a branch of General Division
- due to monetary jurisdiction increase, more matters will be dealt with expeditiously and without the need for lawyers
- claims up to \$3,000 can be heard by deputy judges, who are lawyers who sit as part-time judges
- claims between \$3,000 and \$5,000 will be heard by judges of General Division (note: provincial judges who now preside over Small Claims Court will continue to be available to hear cases up to \$5,000)

ONTARIO COURT (PROVINCIAL DIVISION)

- amalgamates Provincial Court (Criminal Division), Provincial Court (Family Division), Provincial Offences Court
- unified court with functional specialization in criminal and family matters
- all existing provincial judges will continue to exercise present jurisdiction
- justices of the peace will continue to hear most provincial offences matters
- judges will be organized into eight regions to parallel the eight administrative regions announced in December 1988 for Courts Administration staff and Crown attorneys
- appointment of Chief Judge and eight regional senior judges for a five-year term
- Chief, Associate Chief and senior judges of the existing Provincial Court will retain their titles and salaries
- young offenders cases will, over time, be heard by family court judges

COURT MANAGEMENT

- regional courts management advisory committees will be established. They will be made up of the Regional Senior Judge of the Ontario Court (General Division), Regional Senior Judge of the Ontario Court

(Provincial Division), Regional Director of Courts Administration, Regional Crown Attorney, two lawyers who practice in the region and others, including members of the public.

Appointments

The following appointments to the Ontario Court were made in time for the implementation of Phase I of the court reform:

- His Honour Judge Charles D. Anderson for Brockville, effective August 15, 1990.
- His Honour Judge Eric S. Lindsay for Toronto effective September 1, 1990.
- His Honour Judge Brent S. Knasan for Toronto effective August 15, 1990.
- His Honour Judge J. Rhys Morgan for Toronto effective August 15, 1990.

New Senior Judge appointments for eight new areas:

- Northwest Region (Thunder Bay)
His Honour Regional Senior Judge Raymond J. Walneck
- Northeast Region (Sudbury)
His Honour Regional Senior Judge Gerald Edward Michel
- East Region (Ottawa)
His Honour Regional Senior Judge Brian W. Lenox
- Central East Region (Newmarket)
His Honour Regional Senior Judge John D.D. Evans
- Toronto Region (Toronto)
Her Honour Regional Senior Judge Mary L. Hogan
- Central West Region (Brampton)
His Honour Regional Senior Judge W. Donald August
- Central South Region (Hamilton)
His Honour Regional Senior Judge Grant A. Campbell
- Southwest Region (London)
His Honour Regional Senior Judge Harry Momotiuk

NATIONALLY

The Annual Convention of the Association took place in Quebec City from September 12 to 15, 1990.

This year honorary membership was conferred upon:

The Honourable Fred Hayes of the Ontario Court (General Division); and

His Honour Judge Kenneth Crowell, Provincial Court of Nova Scotia.

Both judges have made a lasting contribution to the well-being of this Association.

The following reports were filed in writing at the Annual Meeting:

While there was no formal written report of the Constitution Committee, it will be recalled that at last year's Annual Meeting notice was given that the Constitution would be sought to be amended having the effect of requiring honorary members to pay their own expenses at Annual Meetings. This year a motion to that effect was **DEFEATED**.

PRESIDENT'S REPORT by Judge Ron Jacobson

During 1989-90, the aim of our Executive Committee and myself as President was to establish a firm foundation from which the Canadian Association of Provincial Court Judges can carry out its proper role in the administration of justice. The CAPCJ must discharge its traditional roles, while meeting constantly expanding new challenges and obligations. One way is to make meaningful and valuable contributions at the federal, provincial and territorial levels with governments, their agencies, and other outside organizations, such as the Canadian Bar Association.

The CAPCJ concept and the changing emphasis on our role was outlined in **The Journal**, Vol. 13, No. 3, June 1989. To ensure judicial independence and to promote the proper administration of justice, the factors that we have tried to encourage since last September are:

- a. to emphasize the importance of continuing judicial education under our own Canadian Judicial College and in co-operation with the Canadian Judicial Centre.
- b. to create and maintain an effective working relationship with all governments, but in particular with the federal Department of Justice, in the consultative process, as a reliable "resource" based on our judges' institutional experience, and as an informed "advisor" based on our courts' fundamental role in the administration of justice. This approach required us to establish effective and efficient channels for communication and co-operation.

In the same case, the Supreme Court of Canada also accepted Wigmore's denunciation of the ultimate issue rule.

The fallacy of this doctrine is, of course, that, measured by the principle, it is both too narrow and too broad. It is too broad, because, even when the very point in issue is to be spoken to, the jury should have help if it is needed. It is too narrow, because opinion may be inadmissible even when it deals with something other than the point in issue. Furthermore, the rule if carried out strictly and invariably would exclude the most necessary testimony. When all is said, it remains simply one of those impracticable and misconceived utterances which lack any justification in principle...

Other cases confirmed the demise of the ultimate issue rule. Davey, C.J.B.C. tried to revive it in *R. v. Lupien*, but the Supreme Court rejected his bid *R. v. Lupien*, [1970] S.C.R. 263, (1969), 9 D.L.R. (3d) 1:

It is true, as Davey, C.J.B.C., points out in his dissent, that the answer which the psychiatrist was expected to give "comes too close to the very thing the jury had to find on the shoal of evidence." I do not think this is a valid reason for rejecting the evidence.

The notion that experts should be confined to first-hand facts and technical inference was also demolished in this century. The hypothetical question was no longer necessary. Ritchie, J., speaking for the Supreme Court in *R. v. Bleta*:

Provided that the questions are so phrased as to make clear what the evidence is on which an expert is being asked to found his conclusion, the failure of counsel to put such question in hypothetical form does not of itself make the answers inadmissible.

Ritchie, J. went on to say that it was within the power of the judge to insist that the questions be put in hypothetical form.

While not insisting on the *form* of the hypothetical question, the court in *Bleta* maintained a clear line between facts — to be proven otherwise — and inference or opinion, which was the proper domain of the expert. But that distinction was undercut by the tendency in subsequent cases to receive second-hand, i.e., inadmissible, facts, through experts.

This occurred in the domain of psychiatric evidence. The courts were there faced with evidence which was blatantly based on hearsay — what the subject, usually the accused, said about himself on critical questions of his behaviour, or

worse yet, what other sources said he said about himself. In *Wilbrand v. The Queen*, [1967] 2 C.C.C. 6, the Supreme Court of Canada accepted such evidence, provided it was founded on recognized psychiatric procedures. This was confirmed in *R. v. Lupien*, [1970] S.C.R., 263, (1969), 9 D.L.R. (3d) 1 and *R. v. Abbey* (1982) 43 N.R. 30. It was always subject to the arguably ineffectual rider that the fact the opinion was based on second-hand information which would have been inadmissible in court could go to weight and the admonition that the judge must explain to the jury that the expert opinion was no better than the facts on which it was based.

By the 1980s the law had travelled a great distance indeed from its ery suspicion of the dangers of expert evidence. Experts were allowed to testify on any subject, regardless of whether it was within the understanding and experience of the judge and jury. Experts were allowed to go beyond expert opinions and permitted to summarize complicated or ambiguous sets of facts. The hypothetical question was no longer to be insisted upon. And, in perhaps the most serious incursion on the traditional view, expert witnesses were to be allowed to testify and base their conclusions on what was admitted to be hearsay and inadmissible evidence subject only to the rather ineffectual admonition that care should be given to the "weight" the evidence should be given.

Newly freed from its old constraints, expert evidence burst on the courthouse scene with a startling vigour. The age of the expert had truly arrived. Increasingly, great portions of trials, simple and complex, were consumed by expert testimony. Litigation became not only a contest on the facts and the law, but a battle of experts. Each side raced to retain the best experts in the field before their opponent could hire them. Experts vied to put in longer and more learned reports. This occurred, not only in fields where a real assistance was required by the court — and they are many — but in situations where one would have thought a reasonably intelligent judge and jury could have made up their own minds. Perhaps the apotheosis of the expert revolution in this small corner of the world arrived when in a falling-down-the-steps case on Granville Mall an expert was flown all the way in from Ireland. His expertise? The fine art of falling down the steps.

I should not be taken as condemning expert witnesses. As will become apparent later in my remarks, I view the expert witness as indispensable in the complex world of modern litigation. My point is not that experts should not be called, but the much more modest contention that in our zeal we have perhaps on occasion overstepped the bounds of need and common sense, an overstepping that has given rise to the recent criti-

specialised knowledge, and the witness's statement of opinion cannot be of any help to the court. Such evidence is superfluous because it can only inform the court of that of which it is already aware.

This tended to limit the reception of expert evidence to truly technical or esoteric subjects.

As the Supreme Court of Canada said more recently in *R.v. Abby* (1982), 43 N.R. 30:

An expert's function is precisely this: to provide the judge and jury with a ready-made inference which the judge and jury, *due to the technical nature of the facts, are unable to formulate*. An expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. *If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of the expert is unnecessary.*

Another limit on expert evidence which was sometimes expressed in the early cases was that the expert should testify only on matters of opinion. The main function of the expert was seen as drawing inferences which the lay person could not. The expert could not give evidence as to any facts at issue in the case except those which he had personally observed in the course of his investigation. He was permitted to refer to texts and learned works because such fell within the area of inference: *R. v. Anderson*, (1914) 22 C.C.C. 455 (Alta. C.A.) But the only facts on which he could testify were those he had personally observed. This gave rise to the hypothetical question, at one time the hallmark of expert evidence, which put to the witness facts which hopefully would be proved by other legitimate means.

A third limit on expert evidence laid down in the early cases is that experts could not testify as to the conclusions falling within the purview of the judge or jury — the ultimate issue rule. This rule, despite its difficulty of application, was tenaciously followed for a time. Thus if the issue in the case was whether the defendant was negligent, the expert was not allowed to say that in his opinion he was negligent. The expert was to be confined strictly to technical matters of fact and not to enter on the question of what inferences should be drawn from those facts. The reason for this was clear — the courts, recognizing the ease with which an expert opinion could be unreflectively adopted, were determined that experts should not usurp the sacred prerogative of the judge and jury to decide the outcome of cases. The courts, not the experts, must decide the cases.

There was good reason for the limits which the early practice imposed on expert evidence. All of these limits rest on the fundamental proposition that it is the judge and jury who have been sworn to render a true and just decision. The expert has no such responsibility. Moreover, the judge, or judge and jury, are neutral and unbiased. The expert witness, by contrast, is typically a partisan. These truisms remain as valid today as they were when the rules governing expert evidence were first laid down.

In recent times, however, the limits to which I have been referred have been severely eroded. Wigmore took on the proposition that expert evidence should be confined to matters of technical inference beyond the power of the judge and jury with vigour — the theory of exclusion of supererogatory evidence. The Supreme Court of Canada accepted his reasoning in *R. v. Graat* (1982) 31 C.R. 289:

Wigmore refers to the theory that wherever inferences and conclusions can be drawn by the jury as well as by the witness, the witness is superfluous, the theory being that of the exclusion of supererogatory evidence.

Wigmore uses strong language in discussing the "usurp the function of the jury" theory (para. 1920). The phrase, he says, is made to imply a moral impropriety or a radical unfairness in the witness's expression of opinion. He says [at p. 18] that:

"In this aspect the phrase is so misleading, as well as so unsound, that it should be entirely repudiated. It is a mere bit of empty rhetoric."

The author continues [at pp. 18-19]:

"There is no such reason for the rule, because the witness, in expressing his opinion, is not attempting to 'usurp' the jury's function; nor could if he desired."

The result was that expert witnesses would no longer be confined to matters truly requiring expertise, but would assume a role as general summarizers of the evidence as well. In *Graat*, the court accepted cross' statement that:

When, in the words of an American judge, "the facts from which a witness received an impression were too evanescent in their nature to be recollected, or too complicated to be separately and distinctly narrated", a witness may state his opinion or impression. He was better equipped than the jury to form it, and it is impossible for him to convey an adequate idea of the premises on which he acted to the jury:

- c. to recognize that while each province and territory "has its own legal, social economic milieu and identity", there is also a constitutional and factual identity with the whole of our country — Canada! Regional and national differences must be both promoted and reconciled.
- d. to maintain an awareness on the part of everyone who is concerned with the administration of justice that they recognize and remember the necessity of protecting the three essential elements of judicial independence established by the Supreme Court of Canada in *Valente*:
 - (1) Security of tenure,
 - (2) Financial security, and
 - (3) Institutional independence with respect to matters of administration bearing directly on the exercise of judicial function
- e. to create an effective bilingual voice in both official languages at all national functions and operations of the CAPCJ

It has been a long hectic year. We have achieved some success but we have also suffered some disappointment. Nevertheless, everyone has done their best! I am proud, and I feel very fortunate to have worked with so many fine outstanding people during my year as your President. To all of them, but especially to you the judges from across Canada, I want you to know how much I appreciate, and have enjoyed the opportunity to serve on your behalf.

Following the annual conference in Edmonton it appeared that the programs of our Canadian Judicial College would progress most effectively. Judge Campbell had been assigned to spend 50% of his time as Director of both the Canadian Judicial College and the Western Judicial Education Centre. We were optimistic that the WJEC Gender Neutrality Initiative (a proposed two year study) would be approved, funded, and be under way by January 1, 1990. It was also our hope that he could utilize the achievements of the WJEC projects for the benefit of the Canadian Judicial Centre. Unfortunately, Judge Campbell's assignment was changed; the WJEC Workshop Series were threatened; the necessary funding did not come through for the gender initiative and, for various reasons, protracted discussions had to be carried out with the Canadian Judicial centre. The Atlantic Regional seminar was not held in 1990.

All of this created a crisis. Nevertheless, through the goodwill and assistance of many others, as well as his own determination, Judge Doug Campbell persisted in his endeavours with success and solutions were found for most of

the problems.

As a consequence the WJEC Lake Louise Workshop was unique and outstanding. The theme will be carried forward to Yellowknife, N.W.T. in July, 1991. The necessary funding is in place for a one year Gender Neutrality Initiative study under the direction of Judge Gary Cioni. The results will be the focal point for the 1991 WJEC Workshop and probably the foundation for a national conference in 1992.

While we were in Edmonton, I fully briefed the Deputy Attorney General for Alberta on the CAPCJ. Shortly after, he was appointed to the Court of Queen's Bench. His successor was not named until early 1990.

As we left Edmonton, several provinces were expected to legislate new compensation formulas for salaries and pensions. While there have been advances in some provinces, there was disappointment in others. On top of it all, we learned of the proposed federal "cap" on pensions. Clearly, we have a long way to go in order to ensure proper "financial security" at the provincial court level.

Thus, as the meeting in Edmonton concluded, it seemed that our main thrust was to meet with the federal Department of Justice for the purpose of having the federal government substantially increase its contribution to our association in accordance with the discussions held at Ottawa in January, 1989. Such a financial increase was vital, and is still very important, if the CAPCJ is to become fully effective in all of its endeavours.

Accordingly, our Executive Director renewed our submissions, and on November 28, 1989, I wrote a lengthy letter to the then Minister of Justice, The Honourable Doug Lewis emphasizing the necessity of meeting and consultation with our organization. Eventually the responsibility of a reply fell to Paul Lordon, General Counsel, Judicial Affairs and Administrative Law Policy in the Department of Justice. He has confirmed our role and recommended a new funding process for the CAPCJ.

Our association is restricted in its progress and activities because it does not have a Secretariat, nor a full-time staff to assist in planning and implementing policy. Most of that heavy responsibility falls on one person, the Executive Director. Associate Chief Judge Keith Libby has been a constant source of guidance, support, inspiration and a valued critic. In addition to his values and hard work, through his knowledge of the CAPCJ he has been our "corporate conscience". Words are contributions. His accomplishments are too often hidden, or not even realized, because of the excellent job he does. Thank you Keith!

The Constitution stipulates that the "President... shall at the Annual General Assembly make a report of the Associations' activities during the President's tenure of office". This year's report will be a review of the President's activities with a general over-view of association activities. The details of those activities will come from the association minutes and special reports of Committee Chairpersons.

During the past year I have visited most provincial associations during their annual conferences. I have also met personally with many executive officers from the provinces and territories under various circumstances. Unfortunately, I could not attend the annual meetings in Newfoundland, Prince Edward Island, New Brunswick, Yukon and the North West Territories.

However, I did get to three Atlantic provinces. I had a lengthy meeting with Judge Gerry Fitzgerald in Charlottetown. He and Chief Judge Thomson confirmed their interest in the support for the National Association. At their request, Prince Edward Island is still very much a member of the CAPCJ.

During the same trip, the New Brunswick Association arranged for me to meet and have lunch with Wayne Chapman, Q.C., the incoming President of the Canadian Bar Association. He indicated his personal approval of the unified court principles.

During the Nova Scotia meeting, Judge Bruce Le Grow discussed Newfoundland concerns with me. Associate Chief Judge Libby represented the CAPCJ at the New Brunswick meeting this July.

Other travel and activities in relation to the CAPCJ were:

1. **October 10, 1989 - Calgary**

The Canadian Judicial Centre organized a meeting for organizations active in judicial education including The Canadian Judicial Council, the Canadian Institute for Advanced Legal Studies, The Canadian Institute for the Administration of Justice, and the CAPCJ. The results were:

- a. Development of a Master Calendar for all judicial activities.
- b. The **Bulletin** is circulated to all Canadian judges
- c. The CAPCJ can be proud of its high educational standards and achievements.
- d. The objective of the organizations is to avoid duplication and to gain maximum benefits from the resources available to all levels of the judiciary.

2. **October 20-21, 1989 — Quebec City**
Conference des juges du Quebec

- a. This was a well organized conference, with a large attendance.
- b. Chief Justice Claude Bisson received a standing ovation from the judges for his public support of the Cour du Quebec and its search for financial security.

3. **October 26-28, 1989 - Winnipeg, Manitoba**

- a. The Manitoba Government and its Attorney General, Jim McRae, set a positive example with its new provincial court legislation and by honouring the spirit of the new system even before the legislation was enacted.

On Saturday, following the Conference, Judge Norton and I met with Sheldon Pinx, CBA Liaison Officer to the CAPCJ. A broad range of subjects was covered.

- c. Continuing judicial education is given a top priority within the Manitoba provincial court system through a series of two-day seminars.

4. **November 23-25, 1989 - Vancouver**
Annual Conference of The Provincial Judges' Association of British Columbia

- a. The Attorney General announced that under the "Access to Justice" program, judges and the courts would be able to take advantage of the latest technological developments such as personal computers, and the government would make the justice system "more accessible, more understandable, more reliable, more relevant and more efficient."
- b. As a result of a special retirement policy, B.C. might appoint 35 new judges in 1990.

5. **December 15, 1989**

I directed Judge Campbell to carry out an extensive review and make projections for the future of the CAPCJ Canadian Judicial College.

6. **December, 1989**

It took three days to conduct a cross-country telephone check with the Officers, Provincial Reps and Chairmen as to the possibility of holding a new judges program in British Columbia; to obtain approval of the policy that host provinces could hold their annual conferences in conjunction with the CAPCJ Annual Conference; an update on education matters; to receive local news; and to exchange season's greetings.

The Role of the Expert Witness*

by the Honourable Madam Justice B. McLachlin

I begin with a simple question. **What is the role of the expert witness?**

Simple, you say. He is retained by one party or other. On that party's instructions, he prepares a report. He comes to court. And he testifies. The judge or jury believes him, or they choose not to. He gets a not unpleasant fee. And that, with any luck, is the end of the matter, until next time, when the process is repeated.

Yet of late, that is often not the end of the matter. With increasing frequency, courts seem to be criticizing expert reports and rejecting expert evidence: *Sengbusch v. Priest* (1987) 14 B.C.L.R. (2d) 26 (B.C.S.C.); *Mazur v. Moody* (1987) 14 B.C.L.R. (2d) 240 (B.C.S.C.) - McEachern, C.J.S.C. (as he then was); *Emil Anderson v. B.C.R. (No. 1)* (1987) 15 B.C.L.R. (2d) 28 (B.C.S.C.); *(No. 2)* (1987) 17 B.C.L.R. (2d) 357 (B.C.S.C.) - Macdonald, J.; *V.C.C. v. Phillips, Barratt and Others*, unreported, B.C.S.C., Vanc. Reg. No. C850765, Sept. 4, 1987; (1987) 20 B.C.L.R. (2d) 289; (1988) 26 B.C.L.R. (2d) 296. On jury trials in particular, inordinate amounts of time seem to be consumed of late in argument and rulings about whether this expert report or that is admissible.

What, we must ask ourselves, has gone wrong?

The answer, in my opinion, is that we have forgotten the proper and traditional role of the expert. We are asking and permitting expert witnesses to do things which trench on areas which were once closed to them. The result is difficulties of the sort to which I have referred.

Permit me to make my point by way of brief historical exiguous.

For hundreds of years, society, government and the law regulated themselves without much recourse to the opinions of those from other disciplines.

In matters of family and conscience, the church was the expert. In matters of state, politicians and civil servants regulated affairs. And when it came to the law, judges had no difficulty in assuming they were uniquely equipped to decide what rights people had, when they had been infringed, and how much the victim should get.

There is little in the law reports concerning ex-

pert evidence before the late nineteenth century. In the increasingly technical world of the industrial revolution, situations began to arise where counsel submitted to the judge, always with great deference, that some aspect of the case involved matters of such technical difficulty that the judge should be offered the assistance of an expert. The judges in question responded with suspicious caution. Between the lines if not in them one senses that the proposal that experts be introduced into the trial process was regarded as an intrusion on the proper sphere of the judges. This caution is exemplified by the view taken by Taylor, whose 1906 *A Treatise on the Law of Evidence* at p. 63 says:

The testimony of skilled witnesses is perhaps that which deserves least credit with a jury. These usually speak to opinions and not to facts; and it is often really surprising to see the facility and extent to which views can be made to coincide with wishes or interests. Skilled witnesses do not, indeed, wilfully misrepresent what they think: but their judgments have often become so warped by regarding the subject from only one point of view, that they are, in truth, not capable of forming an independent opinion even when they would conscientiously desire to do so. Being zealous partisans, their belief becomes synonymous with the Apostle's definition of Faith, "the substance of things hoped for, the evidence of things not seen." Lord Campbell once said, "Skilled witnesses come with such a bias on their minds to support the cause in which they are embarked, that hardly any weight should be given to their evidence."

The traditional caution of the courts with respect to expert evidence was reflected in strict limits which the judges laid down on the use of expert evidence.

First, the view was taken that expert evidence could be admitted only on matters where the judge or jury could not draw the proper conclusions or understand what was at stake without expert assistance. Cross on evidence, 3rd edition, reflects this view when he says (p. 360):

There is also a class of case in which evidence of opinion is excluded because the subject under inquiry does not call for

*Text of an address given by Justice McLachlin to the Canadian Trial Lawyers Association on March 10, 1989 while she was Chief Justice of the British Columbia Supreme Court. Madam Justice McLachlin has since been appointed a Justice of the Supreme Court of Canada. The article is reproduced here with permission.

In practice one must apply by letter setting out his or her qualifications and including a reasonably comprehensive curriculum vitae, whereupon an interview will be set up with the Judicial Council at one of its regularly scheduled meetings. If the Council feels the applicant is suitable for appointment, the name will be forwarded to the Attorney General of Alberta for inclusion on a list maintained by that Minister of those approved for consideration. Thereafter, appointment from the list is completely discretionary and will be upon approval by the Lieutenant Governor-in-Council, in effect the Provincial Cabinet.

Appointment to the Provincial Court is until age 70 and the appointee may only be removed for incompetence, improper conduct, neglect of duty or inability to perform his duties. Notwithstanding this, the Attorney General does retain the power to designate the place at which the judge shall have his residence, but this does not affect the judge's jurisdiction which is throughout Alberta and in any division of the Provincial Court.

Appointment as a supernumerary judge is for a term of up to two years. The Lieutenant Governor-in-Council makes these appointments also, but this time on the recommendation of the Attorney General and on terms and conditions agreed on by the judge and the Chief Judge and approved by the Attorney General. To be qualified for appointment the applicant must be at least 60 years of age and have served as a judge for at least 10 years, although there is provision for waiver of these requirements by the Lieutenant Governor-in-Council.

There is not, nor has there ever been, a Deputy Chief Judge for the province. Rather, the Chief Judge receives such administrative assistance as he needs from Assistant Chief Judges, who see to the day-to-day functioning of the Court in various regions of the province.

There are at present six such judges in the Criminal Division and one each in the Family and Youth and the Civil Divisions. Those in the Criminal Division reside and sit as follows (regions in parenthesis): Edmonton (Edmonton City), Edmonton (Edmonton Rural), Grande Prairie (Northern), Red Deer (Central), Calgary (Calgary), Lethbridge (Southern). In addition to their usual judicial duties these judges are responsible for assignments within their regions and other administrative duties associated with the operation of the Provincial Court. As the Attorney General has by statute the power to prescribe the times and places of court sittings, these latter obligations necessarily involve working closely with the local court administrators to ensure optimum use of available court time and proper staffing. The positions of Chief Judge and Assistant Chief Judges are tenured appointments terminating upon resignation, retirement or removal for cause.

In common with the provincial courts of many provinces, the Provincial Court of Alberta is engaged in an ongoing effort to establish and maintain its independence from government. This is not a question of rebuffing direct attempts at interference with court proceedings, but rather one of convincing the politicians that a properly independent court should be insulated from the potential for control which is inherent in a system which permits the executive branch of government, largely at its whim, to control the residence of its judges, the times and places they must sit and the salaries and benefits they will receive. Though progress on these issues and others related to them is slow and erratic, by and large relations with government are cordial, if not always friendly, and there continues to be hope that eventually disagreements will be resolved in a manner satisfactory to both sides. In any event morale within the Court is generally good and its stature and reputation among the public remains high.



7. **January 7-19, 1990 - Quebec City**
During the French language training course there were three meetings:
 - a. re 1990 Conference - Judges Ken Page, Yvon Mercier, Louis Remillard and myself
 - b. re Canadian Judicial Centre and the interests of the CAPCJ and its members
 - c. re 8th United Nations Congress on the Prevention of Crime and Treatment of Offenders — Department of Justice representatives discussed with me the CAPCJ consultative role and we made plans for a consultative meeting in Ottawa.
8. **January 21-26, 1990 - Ottawa**
 - a. I attended the CJC Caseflow Management Seminar during which Judges Darlene Wong of Edmonton and Senior Judge Charles Scullion outlined two different, but effective caseflow management techniques.
 - b. There were several conferences with Justice Marshall and Paul Lordon covering many topics including:
 - (1) Canadian Judicial Centre and the Western Judicial Education Centre
 - (2) my letter to the Minister of Justice, dated November 28, 1989 requesting meetings and consideration of a 17 point agenda.
 - (3) new federal funding format for the CAPCJ
 - c. Secretary of State - Bilingual Contract. I reviewed with Denis Cuillerier our role and the necessity of appropriate bilingual services contract. As a result, he subsequently met with Judge Libby to finalize matters.
 - d. January 25 - meeting with the Honourable Pierre Blais, Federal Solicitor General concerning our consultative role.
9. **January 30, 1990 - Lethbridge**
Brief meeting with John Jennings, President of the Canadian Bar Association
10. **March 2, 1990**
At the request of the western Chief Judges, I wrote to the Canadian Judicial Centre suggesting that Judge Campbell remain as Director of the WJEC half-time, and that the other half he work in Western Canada as an assistant CJC Director.
11. **March 12, 1990 - Edmonton**
A thorough briefing meeting was held with Neil McCrank, the new Deputy Attorney General for Alberta and Jack Klinck representing the Province, Chief Judge Wachowich, Judge Dolores Hansen (APJA

Vice-President) and myself prior to the national Deputy Ministers meeting in Dorval. We reviewed the roles of the Chief Judge and APJA in Alberta, the APJA relationship to the CAPCJ; the CAPCJ organization, funding, roles and responsibilities, (including education, the Canadian Judicial Centre and the WJEC).

12. **Friday, March 30, 1990 - Ottawa**
Consultative briefing of CAPCJ representatives and Department of Justice officials on selected topics for the 8th United Nations Congress on the Prevention of Crime and Treatment of Offenders. Specific responsibilities for our judges were as follows:
 - a. Juvenile Justice
Judge Kirkland
 - b. Independence of the Judiciary
Judge Bobowski
 - c. Domestic Violence
Judge Kirkland
 - d. Continuing Judicial Education
Judge Campbell
 - e. Sentencing and Alternatives to Incarceration
Judge Davis
 - f. Role of Lawyers & Prosecutors
Juge Mercier
 - g. Computerization of the Administration & Criminal Justice System
Judge Thomson
 - h. Corruption
Judge Jacobson

This consultative process was very positive and beneficial for both the Department of Justice and ourselves.

13. **March 30 - April 6, 1990 - Val Morin, Quebec**
CAPCJ New Judges Training program under Juge Andre St. Cyr:
 - a. I participated as host at the CAPCJ President's Reception; as a resource, a worker and as a student.
 - b. Canadian Judicial Centre and CAPCJ concerns were discussed with Justice Marshall, and Judges Grenier, Libby, saint-Cyr, Campbell and myself.
 - c. The WJEC and the Atlantic Regional Seminar was discussed with some of the Chief Judges.
 - d. April 5. A liaison Conference with the Chief Judges at Val David was attended by Associate Chief Judge Libby, Judge Grenier and myself. It was decided that:
 - (1) The New Judges Program to continue at Far Hills in 1991
 - (2) No special New Judges Program to be held in B.C.

We also discussed:

- (1) The role of the Canadian Judicial Centre and its cost of operation
- (2) The Atlantic Regional Seminar and alternate programs in the Maritime provinces

14. **April 6-8, 1990 - Montreal**
CAPCJ Spring Executive Committee Meeting

- a. Special guests were Anne Marie Krahn, Assistant Deputy Minister of Justice for Civil Law and Paul Lordon. The next day Justice Marshall outlined the activities of the Canadian Judicial Centre.
- b. A new meeting format was introduced. After all reports were presented, the meeting adjourned for Provincial Judges caucus and the Budget Committee discussions.
- c. Judge Pamela Thomson was elected as the Assistant Executive Director.
- d. The President and Executive Director, but not the provincial reps were directed to submit a monthly report to all members of the Executive Committee including Chairpersons.

15. **April 21-29, 1990 - Halifax, Charlottetown, St. John, and Halifax**

- a. Prince Edward Island — discussions with Chief Judge Thompson and Judge Fitzgerald during which both confirmed the need for, and their interest and support for the CAPCJ
- b. New Brunswick — luncheon meeting with Wayne Chapman, Q.C., incoming President of the CBA to discuss unified court concepts with some judges from St. John
- c. Halifax, 25-28 April: Nova Scotia Provincial Judges Association semi-annual conference and educational seminar:
 - (1) Panel discussed unified court concepts.
 - (2) The Nova Scotia Barristers' Society made strong proposals for judicial evaluation.
 - (3) Judge Grenier and I met with Professor Bill Charles, Chairman of the Nova Scotia Court Structure Task Force to discuss unified court concepts and systems.

16. **May 11-18, 1990 - Lake Louise, Alberta**
CAPCJ Western Judicial Education Centre 1990 Workshop, combined with the Alberta Provincial Judges Association annual education seminar.

Commencing with:

- a. a day-long instruction session for resource persons, this multi-phase seminar dealt with:
 - (1) Aboriginal issues
 - (2) Gender issues
 - (4) New law
- b. At my request, but thanks to the ingenuity of Judge Campbell, most of the CAPCJ officers were present as resource persons. The students represented all provinces. This broad representation by jurisdiction and respective association officers, together with CAPCJ officials allowed us to hold several important meetings:
 - (1) CAPCJ — Senior Judge Scullion and Judge Davis will form a committee to study "Judicial Evaluation". Regional developments and the CJC were also discussed.
 - (2) Canadian Judicial Centre, Canadian Judicial College, WJEC: a special meeting attended by Mr. Justice W.A. Stevenson, Justice Marshall, the six western chief judges, Judges Page, Grenier and myself reached the following decisions:
 - (a) The western Chief Judges confirmed their commitment to the WJEC and will make the necessary arrangements to have Judge Campbell continue as its director.
 - (b) Justice Marshall is to finalize and submit his "Marshall Plan" to the CAPCJ.
 - (c) On behalf of the CJC Judge Grenier is to meet with associate Chief Judge Libby to finalize the CAPCJ/CJC memorandum of understanding, and the practical implication of the "Marshall Plan".
 - (d) Judge Page and Justice Marshall are to get further information concerning the costs of a CJC Associate Director, and Judge Page will make recommendations to get away from the present "secondment system" the costs of which are borne by single provinces.
 - (e) Action is to be completed as soon as possible with final discussions if any, to take place in Quebec at the CAPCJ annual conference.
 - (3) CAPCJ New Judges' Program financial discussions with Judge Saint-Cyr and Associate Chief Judge Libby.
 - (4) Telephone conferences with Judges Remillard and Mercier and

Court Act, S.A. 1971, c. 86 ("the Act"). Its Judges exercise, for the province of Alberta, those criminal law powers given to provincial court judges by the *Criminal Code* and other federal legislation, as well as the innumerable quasi-criminal powers created by the province in such legislation as the *Highway Traffic Act*, the *Liquor Control Act* and the *Wildlife Act*. It is also formally designated by the Act itself as a "youth court", as that term is used in both the provincial and federal *Young Offenders Acts*.

In family matters the Court exercises reciprocal enforcement of maintenance functions and may also enforce alimony and maintenance orders made by the Alberta Court of Queen's Bench. It may also make and enforce its own orders for the custody of and access to children prior to divorce. There is jurisdiction in child welfare and domestic relations, though this is defined and regulated by specific governing statutes rather than by the *Provincial Court Act* itself.

The Act does, however, deal directly with the Court's civil jurisdiction which is limited thereby to claims for debt and/or damages (including damages for breach of contract) not exceeding \$4000.00. This jurisdiction is itself subject to provisos that the claim not bring into question the title to land or the validity of any devise, bequest or limitation. Nor can the action be grounded in malicious prosecution, false imprisonment, defamation, criminal conversation, seduction, breach of promise or marriage or in replevin. The defendant may not be a judge, justice of the peace or peace officer if the claim involves things done by him in the execution of his duties, nor may the plaintiff be a local authority or school board if the claim is for the recovery of taxes "...other than taxes imposed in respect of the occupancy of or an interest in land that is itself exempt from taxation."

Although the legislation establishes divisions of the Court, this occurs in fact only in Edmonton and Calgary, the two main urban centres. In each of these places there are four (4) judges who sit exclusively in the Civil Division and eight (8) who sit exclusively in the Family and Youth Divisions. In Calgary the separation among the divisions is even more marked at present by reason of the fact that each is housed and sits in a separate building. In the rest of the province judges sit in all divisions as the occasion demands. This is especially so when on circuit to the smaller centres where one's day might begin with youth court at 9:30 A.M., followed by the regular criminal docket and trials, and finishing with a small claims trial interrupted perhaps by a temporary wardship application slipped in during adjournments. In Lethbridge, Medicine Hat, Red Deer and Grande Prairie one of the

judges is appointed to sit *primarily* in the Family and Youth Divisions, though I am informed that that judge usually spends a significant portion of his time in the Criminal Division also.

That division, consisting at present of 81 sitting judges, is by far the largest division of the Court. The distribution of these judges and the manner in which they perform their duties gives to the Provincial Court its unique personality as both local court and circuit court. Typically, one or more judges, the exact number depending on the size of the community and the area it serves, reside in one central location ("the base point"), sit there part of the time and from there travel to smaller centres ("circuit points") at regular pre-set times. The number of circuits per month will depend on the size of the circuit point and the volume of work it customarily produces. The number of trips each month will in its turn determine how the work of the various divisions will be set for hearing, remembering that in any event the same judge will exercise his jurisdiction in all divisions. In very small centres where the court visits infrequently, all types of cases will customarily be set for the same day. Where the court sits two or three times per month, a specific day may be set aside for the hearing of civil matters only or for family matters. In practice it is usually left to the judge serving a particular circuit point to arrange these matters in the way which best suits him.

Using the system outlined above, there are provincial judges resident in 19 different communities throughout the province, including Edmonton and Calgary, and they preside over regularly scheduled sittings of the Court in 100 municipalities throughout the province.

The appointment of judges to the Provincial Court of Alberta is governed by the *Provincial Court Judges Act*, S.A. 1981, c. P-20.1 as amended. That Act makes provision for the appointment of a Chief Judge, a Deputy Chief Judge, and one or more Assistant Chief Judges in addition to puisne and supernumerary judges. The exact number of judges to be appointed is left to the discretion of the Lieutenant Governor-in-Council and no qualifications for appointment are specified in the legislation save the requirement of Canadian citizenship. There is also provision made for a Judicial Council which has among its duties the task of considering proposed appointments and reporting its recommendations to the Attorney General. It is widely believed that this group will not recommend anyone for appointment who is not a lawyer with at least 10 years at the Bar and who has not yet reached the age of 40 years, but any such guidelines are internal to the Council itself and not contained in the legislation.

Court Profile*

THE PROVINCIAL COURT OF MANITOBA

by Judge Arnold J. Connor

The Provincial Court of Manitoba is comprised of 38 judges, 29 of whom reside in Winnipeg and 9 of whom reside in various rural centres in the Province. In addition, there are 2 supernumerary judges, 9 part-time judges and 1 hearing officer. Four of the judges are female and one judge is aboriginal. Two of the judges are capable of hearing matters in both official languages.

The Court is headed by a Chief Judge and two Associate Chief Judges, all of whom are appointed for indefinite terms.

Legislatively, the Court is divided into a Criminal and a Family Division, with 28 judges appointed to the Criminal Division and 10 judges appointed to the Family Division. However, in 1984, a Unified Family Court was established in the Province of Manitoba with jurisdiction in domestic matters in the City of Winnipeg being in the Court of Queen's Bench. In rural areas, Provincial Judges have concurrent jurisdiction with the Court of Queen's Bench in domestic matters (except divorces). Because of the change in 1984, for all practical purposes, the distinction between the Criminal Division and the Family Division has disappeared with all Provincial Judges exercising jurisdiction in Criminal, Youth and Family matters. In criminal matters, we exercise all jurisdiction (without juries) save those matters reserved for a superior court of criminal jurisdiction in s. 469 of the Code.

Two very recent changes have been added to our Provincial Court Act.

Judges of our Court may now only be appointed after recommendation by the Judicial Nominating Committee. The seven person committee is composed of the Chief Judge, 3 lay persons, a judge of the Provincial Court, a person designated by the President of the Law Society of Manitoba and a person designated by the President of the Manitoba Branch of the Canadian Bar Association. The Committee, when advised that an appointment is to be made, must advertise for applications and nominations of candidates and may invite persons to make application. The Committee must evaluate and may

interview candidates. Following its evaluation, the Committee must provide the Minister of Justice with a list of not fewer than 3 and not more than 6 different candidates that the Committee recommends as qualified for appointment. The appointment must be made from the list of candidates recommended by the Committee.

The second important addition of The Provincial Court Act is the establishment of a Judicial Compensation Committee. This Committee, commencing in 1990, is to be established once every two years to review, determine and report on the salaries and benefits payable to judges including pensions, vacations, sick leave, travel expenses and other allowances.

The Committee consists of a person designated by the Judges of the Provincial Court and 2 persons, one of whom shall not be a civil servant, designated by the Minister of Justice. The legislation provides that the Minister must table the report submitted by the Committee in the Legislature within 30 days of its receipt. The report must then be referred to a standing committee of the Legislature within 30 days, which standing committee must report to the Legislature within a further 60 days. The Legislature must then vote on the report of the standing committee and the government must implement the report in accordance with the vote of the Legislative Assembly.

Needless to say, these 2 changes of The Provincial Court Act have been warmly received by the Provincial Court of Manitoba.

At present, the government has under review the composition and functions of our Judicial Council and we look forward with anticipation to equally enlightened legislation.

The judges of our Court have an Association (Manitoba Provincial Judges Association) to which all judges of the Court belong.

THE PROVINCIAL COURT OF ALBERTA: A PROFILE

by Judge Peter Ayotte

The Provincial Court of Alberta was first established as a court of record by the *Provincial*

meetings for the purpose of having the Minister of Justice attend the annual conference in Quebec City.

- (5) In a series of discussions concerning the Atlantic Region it was decided that upon their return to the Maritime provinces Judge Perusse, assisted by Judge Fowler would take definite steps to reorganize the structure.

17. May 22-26, 1990 - London, Ontario Association of Provincial Criminal Court Judges of Ontario

- a. Ian Scott, Attorney General for Ontario, reported on the progress of his plans for a unified court in Ontario. He acknowledged that there would be difficulty with Phase II and challenged all provincial court judges to prove by way of performance and participation their worthiness and competency, especially by working more closely with the Canadian Bar, the provincial law Society and local Bar Associations.
- b. The Honourable Fred C. Hayes, now a judge of the District Court, an old CAPCJ member, friend, and long contributor to the success of our New Judges' Program (as discussion leader and teacher on the topic "Conduct of a Trial") was made an Honorary member of the Ontario Association. Fred, and his wife, Betty were the centre of a moving and meaningful expression of gratitude and appreciation.
- c. In a telephone conference with The Honourable Judge Harry Keenan, he alerted us to problems in respect of errors and omissions liability and major or disaster medical insurance coverage.

18. May 31 - June 2, 1990 - Saskatoon, Saskatchewan

This was the first joint meeting of the Saskatchewan Provincial Court Judges' Association and Law Society of Saskatchewan in 25 years. The Judges, in conjunction with the Continuing Legal Education Society have produced an excellent video for new lawyers at an exceedingly low cost. Now, they are looking at new challenges.

19. June 15, 1990

At a federal, provincial, territorial meeting of Ministers Responsible for Justice agreed to establish a working group chaired by New Brunswick (Elaine Doleman) which will propose methods of promoting gender equality in the justice system. There is also to be

a national conference on women in the justice system. Susan Christie, Senior Policy analyst, Policy Directorate, department of Justice, has been contacted by Judge Campbell. He has made tentative bookings at Chateau Lake Louise from April 29 to May 3, 1992 on behalf of the WJEC Committee on Gender Neutrality.

20. June 18, 1990

The Minister of Justice invited the CAPCJ to participate in the review being undertaken with respect to the General Part of the Criminal Code.

21. August 15, 1990- Chicoutimi

Taking advantage of the large number of provincial/territorial court judges (many of whom are active in their provincial associations and the CAPCJ) in attendance at the French language training course, we held a special session to review the agenda for the National Conference and to discuss the process by which provincial court judges are selected by the Board of the Canadian Judicial Centre as assistant directors.

22. September 5-8, 1990 - Kananaskis

The Alberta Provincial Judges' Association Annual Conference.

From the foregoing review, from the reports presented at this meeting, from the records of our association, and hopefully from your personal knowledge, the 1989-90 activities of the CAPCJ can be summarized as follows:

- a. Continuing judicial education programs conducted by our judges and their associations were effective and worthwhile in each jurisdiction and nationally. The New Judges program was excellent and well under budget. The WJEC continued to lead the way in innovative programming and in the study of gender issues in the judicial system. Although the Atlantic Regional was not held, effective action was taken to create a new structure and positive attitudes. The theme and education component of this year's annual conference, "The Judge in the Twenty-First Century" emphasizes the need for vision, dedication and common purpose in the judiciary.

Especially through the efforts of Judges Page, Hayes and Carey, our courts and our association were well represented on the Board of the Canadian Judicial Centre. Judge Grenier as an Assistant Director continued to make a substan-

* (Editor's Note: In February of this year a project was commenced aimed at capturing in writing a profile of the Provincial/Territorial Court as it presently exists in Canada. The method adopted was to enlist the assistance of Provincial Editors with each supplying a brief article on the court in his/her jurisdiction. Due to the nature of the project it seemed appropriate to publish it serially. In this edition we include articles from three jurisdictions. They appear, not in any particular order or sequence, and others will appear in future editions.)

tial contribution to that Centre's activities.

- b. We have partially established effective channels of communication with the federal Department of Justice. In particular, we place trust and confidence in Paul Lordon, General Counsel for that Department, because of his constant and competent advice and co-operation. Unfortunately, we did not get the opportunity to work directly with the Minister. There is still much to be done in creating and maintaining an effective working relationship with the federal government. We should also explore the possibility of meeting with the deputy Ministers of Justice from all governments on a regular basis.

We also have strengthened, or developed more effective channels for communication and co-operation with:

- (1) The Chief Judges
- (2) The Canadian Judicial Centre
- (3) The Canadian Bar Association
- (4) The Commonwealth Magistrates' and Judges' Association
- (5) The Secretary of State re bilingual services
- (6) Other organizations concerned with judicial education

Our consultative role as a resource or "advisor" has been called upon by the federal government in respect of the following issues:

- (1) The 8th United Nations Congress on "The Prevention of Crime and Treatment of Offenders"
 - (2) Sentencing, Corrections and Conditional Release
 - (3) Review of the General Part of the Criminal Code
 - (4) Gender neutrality issues in the judicial system
- c. Each province and territory has strong and effective leadership in their associations. We need to get some of the newer judges working nationally as well. Court structure reform in the various provinces must be monitored closely. The public interest must come first.
- d. The issues of judicial independence are very much a matter of real concern. Judge Bobowski has been extremely busy in preparing papers for the 8th UN Congress and has almost completed a cooperative study of basic UN principles with those of the CAPCJ, and actual

provincial/territorial legislation. Unfortunately some provincial reps have not yet responded to him.

The concept of judicial evaluation (especially of provincial court judges) appears to be gaining interest outside the judiciary. Costs and methods of actual implementation and administration must be addressed, as well as to ensure that there is no interference with the independence of the judiciary.

The issues of compensation for the judiciary and the supply of resources to the courts are far from being resolved.

- e. With the financial assistance of the Secretary of State, we look to next year as being the time when our association can effectively work in both official languages. We especially hope that the first step will be to make the **Journal** a bilingual production.

Fulfillment of the CAPCJ concept and vision, and the achievement of our objectives, comes not only from the association itself, nor from the Executive Committee, but from the combined efforts of all of our judges working together in their own associations, and particularly from working with so many other people outside our court and the CAPCJ.

In addition to the days spent "on the road", most of the associations' business is conducted by the officers by telephone, mail and FAX. All of this requires extra time. Accordingly, the assignments and schedules for our judges who hold key national and provincial positions must be reasonable and allow adequate time for such activities.

Unfortunately, during the past year, we were short of judges in Alberta and the government delayed in making new appointments. Often there just wasn't the time nor the opportunity to do things as I wished. However, it was my colleagues in southern Alberta, especially in Lethbridge who often had to give up Chambers time so I could get away. Special acknowledgement and appreciation must be accorded to Chief Judge Wachowich who made it possible for me to get to Ottawa for one week in January; and again for the period March 30 to April 6 for the meeting in Ottawa. The New Judges' Program at Val Morin and the Executive Committee meeting in Montreal (which also afforded substantial financial savings to the association). Other judges throughout Alberta also volunteered to sit for me. For all of this support and assistance, I express my deepest appreciation and thanks. Your actions speak louder than words.

- iv) Forms of intimidation as it relates to the independence of the judiciary.
- v) Encouraging and channeling a flow of information so that the inherent secrecy of corruption offences can be overcome.

The third matter for consideration by the Committee was a project by the Chairman to prepare a comparative study of the standards of independence and impartiality in each province or territory. In March of 1990, I wrote each provincial representative to provide me with their standard supported by statute where applicable. I wish to thank the provincial representatives from British Columbia, Alberta, Manitoba, New Brunswick, Newfoundland, Nova Scotia and Yukon who provided me with replies. In addition to the above provinces, I included provisions from the proposed Ontario legislation, however, that now appears to be on hold. I would greatly appreciate responses from the remaining provincial representatives so as to complete the Study. A copy of the said Study to date with amendments was sent to each provincial representative.

All of which is respectfully submitted.

REPORT OF THE FAMILY & YOUTH COURT COMMITTEE by Judge D. K. Kirkland, Chairperson

Present Membership:

Judge D. K. Kirkland	Chairman
Judge W.G.W. White	Past Chairman
Judge M. Durand	Quebec
Judge I. Lampert	New Brunswick
Judge P.M.B. Linn	Saskatchewan
Chief Judge H. Lilles	Yukon
Judge L. Beaulieu	Projects Chairman

In addition to these committee representatives, a number of committee "friends" remain active participants in committee activities.

No formal committee meetings were conducted throughout the year because of extensive travel arrangements necessary. Consultation on numerous matters was carried out by telephone and mail correspondence.

On November 1, 1989, correspondence was received from the headquarters of the International Association of Juvenile and Family Court Magistrates confirming our committee as the Canadian national affiliate of that Association. Lucien Beaulieu is the Secretary General of the Association and memberships are provided for four members of the Committee.

In late November, the Chairman received correspondence from Marcel A. Laniel, the Canadian Co-ordinator to the 8th United Nations Congress to be held in Havana, Cuba in August,

1990. Consultation documentation was received together with a request for presentation on two subjects at a pre-conference meeting scheduled for March, 1990. On March 30th, the Chairman attended the meeting and provided a written and oral presentation as requested. Both were well received.

The Chairman attended the meeting of the Executive and Provincial representatives at Montreal on April 7th and 8th.

A request was received from Michel Vallée, Director of Programme Evaluation, Department of Justice, for our committee's response to a number of questions with respect to enforcement of support and custody orders. This material was forwarded to committee members for response. In July, a formal detailed response was forwarded to Mr. Vallée from the Chairman.

In April, the Department of Justice authorized the Chairman to attend the annual meeting of the International Association of Juvenile and Family Court Magistrate to be held in Turin, Italy in mid-September. Full funding was offered by the federal department and the invitation was accepted by the Chairman.

As a result of telephone discussions with Mary Anne Kirvan, policy advisor in the Justice Ministry, it was learned that further **Young Offenders Act** amendments are being formulated. Through discussions with our Projects Chairman, Lucien Beaulieu, it is hoped that a formal seminar can be arranged in 1991 similar to that held in December 1988 at Montreal.

In the meantime, Mary Anne has agreed to attend our proposed meeting on September 12th to present, review and receive input on the current amendment situation. All committee members have been advised and hope to attend.

Pursuant to a request from Brenda Stoneham, Chairperson of the Interdisciplinary Project on Domestic Violence, our Committee is now on the mailing list for future materials.

In summary, our Committee is healthy and looking forward to an active year ahead.

It now appears that our Association will require the Committee to again involve itself in keeping abreast of arguments in support of or in opposition to amalgamation so that the Provincial Judges can present an appropriate assessment of their position. The Committee is still under the impression that the Provincial Judges support amalgamation so long as there is no reduction in any benefits to which they are presently entitled.

There have been no substantive changes in any of the Federal Statutes under consideration by the Committee since the report presented at the semi-annual meeting.

I wish to again request the Chairmen of the Provincial Committees, who are also studying proposed legislation, to forward any findings of such Committees which relate to the Canadian Association to the Committee on the Law.

May I, in closing, thank the President, and Judges Paradis, Handrigan, Scullion, Norton, Cumming, Allen, Overend, Curran, Coward, Merredew, Allard, Stroud and others who have answered various inquiries, for their cooperation.

Respectfully submitted,

**REPORT OF THE COMMITTEE
ON JUDICIAL INDEPENDENCE
by Judge E. S. Bobowski, Chairperson**

At the annual meeting in Edmonton, Alberta in September, 1989, His Honour Judge Ronald Jacobson, President of the Canadian Association of Provincial Court Judges, appointed me as Chairman of the Committee on Judicial Independence to replace His Honour Judge Hiram Carver who has performed yeoman's service to the Association. It is with some trepidation that I head this Committee in light of the success that Judge Carver has had. I thank him and His Honour Judge Robert A. Fowler for remaining on the Committee in a consultative capacity. I also thank His Honour Judge Russ Merredew for coming on as a member of the Committee.

The Committee's first consideration was Part II of the Statement of Principles dealing with special writs. At our last meeting in Edmonton, the matter was tabled to the next meeting of the provincial representatives and the Committee has received no further word regarding the tabling motion.

The Committee's second consideration was a request from President Judge Ronald Jacobson to determine how the Consultation document issued by the Department of Justice Canada for the 8th United Nations Congress in the Prevention of Crime and the Treatment of Offenders affected the independence of the

Judiciary. A copy of that report is annexed hereto.

At the Consultative Meeting in Ottawa on March 30, 1990 we were advised that the basic Principles on the Independence of the Judiciary is an attempt by the United Nations to formulate Principles for all nations. Initially it was proposed that there would be 47 Principles but that was pared down to 20, which excluded the items listed in the last paragraph of my report.

In regards to Judicial Independence, Canada acts as an honest broker among the nations. The Canadian domestic standards are far in excess of what most United Nations jurisdictions have. The United Nations are in a developmental stage with regard to the Principles and are striving for uniformity among all nations. This is a first go around for the United Nations and Mr. Piragoff indicated that the Department of Justice would be seeking input from the Canadian Association of Provincial Court Judges as to how our Principles applied domestically could be applied internationally. His main concern was how that should be implemented. It was suggested that this could be accomplished through dissemination of information and judicial education. A further suggestion was that our Statement of Principles be made available at the Canadian booth at the Congress and if any Nation desired a copy of same, an address be provided whereby they may request a copy.

Subsequently, President Jacobson received and forwarded to me a "Draft Manual on Practical Measures for Anti-Corruption efforts" which will be reviewed at the Congress meeting in Cuba, August 27 to September 7.

In the Introduction of the Manual it is stated:

"The objective of this manual is to serve as a starting point, as an initial orientation, providing some guidance to the public authority charged with responsibility for dealing with official corruption. That responsibility may confront a legislator or a policy-maker concerned with achieving crime-free implementation of a government programme or function, as well as the law enforcement, judicial or prosecuting authority charged with responding to the threat of corruption in other agencies or within the criminal justice itself."

Some of the specific items mentioned in the Manual are:

- i) Investigating all forms of corruption in the courts and judiciary.
- ii) Conflicts between official duty and private self-interest.
- iii) Political contributions.

There is another special person who deserves recognition and praise for making my life much more pleasant and happy. My wife, Mariette, has accompanied me on most of my travels. Not only has she been wife and companion, but has often acted as medical adviser, secretary and interpreter (especially in translating my articles into French for **The Journal**). Thank you very much Mariette, you've made me very happy and proud and my life much easier!

No monetary remuneration or honorarium is paid to the President. However, the President receives something far more valuable from having served in office. It is more than the experience and lessons learned from good and bad events. In part, it is sharing the challenge and vision, and working with others to accomplish meaningful goals. Most important however, is meeting and enjoying the friendship and achievements of highly respected colleagues. Mariette and I are rich from values of our friends with whom we have found so many meaningful good times:

What is a friend?
One who is LOYAL,
One who CARES,
One who is TRUSTWORTHY,
One who is HONEST, and
One who is FUN TO BE WITH

Thank you very much for your friendship!
You've made it a great year for us!

All of which is respectfully submitted,

**RAPORT DU PRESIDENT
par juge Ron Jacobson**

Au cours de l'exercice 1989-1990, le Comité exécutif et moi-même avons tenté d'établir des bases solides sur lesquelles l'Association canadienne des juges de cours provinciales (ACJCP) pourra remplir ses obligations relatives à l'administration de la justice. De nos jours, l'ACJCP doit effectuer ses tâches traditionnelles, tout en faisant face à de nouveaux défis et obligations qui changent constamment. Nous tentons entre autres de nous assurer une collaboration importante et précieuse aux échelons fédéral, provincial et territorial, avec les gouvernements, ainsi que les organismes gouvernementaux et extérieurs, tels que l'Association du Barreau canadien.

La raison d'être et le rôle changeant de l'ACJCP sont résumés dans le numéro de juin 1989 de **The Journal**, vol. 13, n° 3. Dans le but de garantir l'indépendance du corps judiciaire et de promouvoir l'administration appropriée de la justice, nous avons tenté, depuis le mois de septembre dernier:

- a. De mettre l'accent sur l'importance d'une éducation juridique constante sous les auspices de notre Collège canadien de la magistrature, en collaboration avec le Centre canadien de la magistrature.
- b. De créer et maintenir une relation de travail efficace avec tous les gouvernements et en particulier, dans le processus consultatif, avec le ministère de la Justice du Canada. En effet, le ministère de la Justice est une ressource fiable, si l'on se fie à l'expérience du système de nos magistrats, et un conseiller éclairé, comme en témoigne le rôle fondamental de nos tribunaux dans l'administration de la justice. Cette démarche a exigé que nous établissions des voies de communications et des modalités de collaboration efficaces et rentables.
- c. De reconnaître que, si chaque province et territoire se sont dotés de leur propre milieu et identité juridiques, sociaux et économiques, il est impossible de négliger l'identité de fait et constitutionnelle qui existe dans l'ensemble du Canada, notre pays à tous. Il convient à la fois de promouvoir et de réconcilier les différences nationales et régionales.
- d. De faire en sorte que tous ceux qui s'intéressent à l'administration de la justice gardent en mémoire la nécessité de protéger les trois éléments essentiels de l'indépendance du corps judiciaire, tels que déterminés par la Cour suprême du Canada dans l'affaire **Valente**:
 - (1) Droit au maintien dans les lieux
 - (2) Sécurité financière
 - (3) indépendance du système en ce qui concerne les questions administratives qui ont un rapport direct avec l'exercice de la magistrature.
- e. D'assurer toutes les fonctions et opérations nationales de l'ACJCP dans les deux langues officielles.

Nous venons de vivre une année pleine de surprises. Nous avons connu certains succès, mais nous avons également subi des revers. Néanmoins, tout le monde a fait de son mieux. Je tiens à exprimer la fierté et le bonheur que je ressens d'avoir eu l'occasion de travailler avec un si grand nombre de personnes remarquables au cours de l'année où j'ai exercé la présidence. À tous, et particulièrement à vous, magistrats partout au Canada, je désire communiquer le plaisir que j'ai eu à servir en votre nom.

À la suite de la conférence annuelle d'Edmonton, il semblait que les programmes de notre Collège canadien de la magistrature avancer-

aient très rapidement. Le juge Campbell avait vu affecter 50 pour cent de son temps comme directeur du Collège canadien de la magistrature et du Western Judicial Education Centre (WJEC). Nous entretenions l'espoir que le projet proposé sur la neutralité des sexes du WJEC (une étude de deux ans) serait approuvé, financé et mis en oeuvre au 1^{er} janvier 1990. Nous espérons en outre qu'il pourrait se servir du succès des projets antérieurs du WJEC à l'avantage du Centre canadien de la magistrature. Malheureusement, l'affectation du temps du juge Campbell a été changée; les séries d'ateliers du WJEC ont été menacées; le financement nécessaire au projet de neutralité des sexes ne s'est pas matérialisé et, pour diverses raisons, il a fallu procéder à des discussions en profondeur avec le Centre canadien de la magistrature. Le séminaire régional de la région de l'Atlantique n'a pas eu lieu en 1990.

Cette situation a débouché sur une crise. Néanmoins, grâce à la bonne volonté et au concours de nombreux autres intervenants, et à sa propre détermination, le juge Doug Campbell a persisté et a réussi à solutionner la plupart des problèmes qui se sont manifestés.

En conséquence, l'atelier du WJEC qui s'est tenu au Lac Louise a été un succès retentissant. Le thème de cet atelier sera poursuivi en juillet 1991, à Yellowknife, dans les Territoires du Nord-Ouest. Le financement nécessaire est maintenant disponible pour une étude d'un an sur le projet sur la neutralité des sexes, sous la direction du juge Gary Cioni. Les résultats de cette étude seront le sujet de l'atelier de 1991 du WJEC et constitueront probablement la base d'une conférence nationale en 1992.

Pendant que nous étions à Edmonton, j'ai mis au courant le Procureur général adjoint de l'Alberta des activités de l'ACJCP. Peu de temps après, il a été nommé à la cour du Banc de la Reine. Son successeur n'a été nommé qu'au début de 1990.

Au moment où nous quittons Edmonton, on s'attendait à ce que plusieurs provinces légifèrent sur de nouvelles formules de compensation pour les salaires et les pensions. On a enregistré des progrès dans certaines provinces, mais on a été déçu dans d'autres cas. En outre, nous avons été mis au courant du plafond que le gouvernement fédéral proposait d'imposer sur les pensions. Il est évident qu'il nous reste beaucoup de chemin à parcourir avant que ne soit garanti le degré approprié de sécurité financière à l'échelon des cours provinciales.

Ainsi, au moment de la conclusion de la réunion d'Edmonton, il semblait que notre objectif principal était de rencontrer les fonctionnaires du ministère de la Justice du Canada pour les

convaincre d'accroître la contribution du Ministère à notre association, conformément aux discussions tenues à Ottawa en janvier 1989. Il est vital que nous obtenions cette augmentation de fonds pour que l'ACJCP réussisse à mener à bien toutes ses entreprises.

En conséquence, notre directeur exécutif a renouvelé nos soumissions et le 29 novembre 1989, j'ai écrit une longue lettre à Doug Lewis, ministre de la Justice à l'époque, l'enjoignant à nous rencontrer et à entamer des consultations. La responsabilité de la réponse a été finalement dévolue à Paul Lordon, Avocat général, Affaires judiciaires et Politique de droit administratif, ministère de la Justice. Il a confirmé notre rôle et a recommandé un nouveau processus de financement de l'ACJCP.

Le progrès et les activités de notre association ont été retardés parce que nous n'avons pas de secrétariat, ni de personnel à plein temps pour aider à la planification et à la mise en oeuvre de nos politiques. Les tâches sont en grande partie dévolues à une seule personne, soit le directeur exécutif. Le juge en chef adjoint Keith Libby a été une source constante d'inspiration et de soutien, un guide et un critique précieux. Outre ses valeurs personnelles et son travail acharné, sa grande connaissance de l'ACJCP a été essentielle pour notre organisme. Les mots ne suffisent pas à décrire sa valeur et ses contributions. Ses succès sont trop souvent relégués à l'arrière-plan, voire aux oubliettes, précisément à cause de l'excellent travail qu'il effectue. Merci, Keith!

Notre constitution stipule qu'à l'assemblée générale annuelle, le président doit présenter son rapport des activités de l'association au cours de la période où il a exercé la présidence. Dans le rapport de cette année, je passe en revue les activités du président, et je donne un aperçu général des activités de l'association. Les détails de ces activités proviennent des procès-verbaux des réunions de l'association et des rapports extraordinaires des présidents des comités.

Au cours de l'année qui vient de s'écouler, j'ai visité la plupart des associations provinciales dans le cadre de leurs conférences annuelles. J'ai également rencontré en personne de nombreux agents de l'exécutif des provinces et des territoires à plusieurs occasions. Malheureusement, je n'ai pas pu assister aux réunions annuelles de Terre-Neuve, de l'Île-du-Prince-Édouard, du Nouveau-Brunswick, du Yukon et des Territoires du Nord-Ouest.

J'ai toutefois pu visiter trois provinces maritimes. J'ai eu une longue rencontre avec le juge Gerry Fitzgerald à Charlottetown. Le juge en chef Thomson et lui-même ont confirmé leur in-

REPORT ON THE JOURNAL by Judge M. R. Reid, Editor-in-Chief

Since the last annual report, in September 1989, things at the office of the journal have progressed normally, that is to say, without any eventful problems.

During the past year, we have published four quarterly issues more or less on time, but certainly regularly, if not exactly according to schedule and within our budget. The results of our work at the Journal are very public in that we continue to serve an international audience. We have strived to keep the Journal and its contents interesting, relevant and current and it is hoped you the reader have found it so.

We would like to extend an expression of gratitude to all of the Provincial Territorial editors who have kept us informed of local news, to all of our contributors for their feedback and original articles as well as to the office-staff and printers, all of whom cooperated fully to make the year a success.

Pour l'information de tous mes collègues je voudrais dire qu'on cherche toujours des articles et d'autres information afin de les publier dans le journal au but de la garder aussi intéressant, pertinent et courant que possible.

Si vous en avez, ou même des suggestions pour s'améliorer la qualité de Journal, sinon des articles, je vous prie de les expédier tout de suite au rédacteur pour sa considération.

With a continuation of the kind of commitment we have witnessed during the past year, there is no doubt the Journal will continue to fulfil a vital role in keeping members informed on the affairs of our Association.

Respectfully submitted;

REPORT OF THE COMMITTEE ON THE LAW by Judge Thomas B. Davis, Chairperson

For the past few years, the Committee on the Law has requested suggestions from Judges for topics to be considered and studied. In 1990, the Law Reform Commission of Canada and the Federal Department of Justice have published Report #31 as a proposal for the complete revision of the Criminal Code and an information package on Sentencing, Corrections and Judicial Releases that will be of great interest to the Judges of the Provincial Courts in Canada. Since both of these publications are available as a basis for consultation with the Federal Government, the Committee on the Law will require substantial input from the members of the Association if it is to effectively speak on behalf of the Provincial Judges.

We now have a major opportunity for Judges to express their views on proposed legislation with which they will be working, before it has been proclaimed in force.

A thorough analysis will require a time commitment which is beyond the capacity of the Committee. I am therefore recommending that the Committee be expanded substantially, so that units can be formed to do studies of parts of the proposed amendments before then meeting as a full Committee, to formulate a position that can express the opinions and recommendation of the Provincial Courts.

Having done only an initial investigation into the types of legislation that may possibly result in the evaluation of Judges, I agree with the President that a study for the purpose of informing our membership on this developing topic should be done by a separate Committee.

Our President, Ronald Jacobson, has notified the Minister of Justice that our Association will answer her invitation to consult with her Department at the earliest possible time the Department may so wish.

The Committee not only intends to discuss proposals with the senior officials of the Justice Department, but also to make submissions and representations to any Parliamentary Committee dealing with any point of law on which the Committee or the Association has formed any specific opinions.

Our duty is not to influence the legislators in making the law but, as persons who have the first contact with the interpretation of the law, we can form a valuable service by pointing out any technical defects or procedural problems that can be observed prior to the implementation of the legislation.

With this in mind, we again ask each and every member of the Association to submit opinions, criticisms and recommendations on any legislation to the Committee.

AMALGAMATION OF COURTS

With such recent opposition to the amalgamation of the Court being expressed by the Ontario Branch of the Canadian Bar Association, following and supporting the Ontario Advocates' Society and the Ontario Lawyers' Association, we now must revise our position. No opposition was expressed or noted by Provincial Judges to such amalgamation, so the Committee has been of the opinion that it had no reason to formally take objection to the plans of the Ontario Government and the proposals from the Law Reform Commission.

Western Workshop, Alberta:

The *Western Workshop, Alberta*, held May 12th to 18th, at the Chateau Lake Louise, was the second in a series of judicial education meetings for Provincial and Territorial Court Judges from Western and Northern Canada, concentrating on raising the awareness of judges to the social context in which judicial decision making takes place. As with the first Workshop held in Vancouver (the *Western Workshop, Vancouver*) in 1989, emphasis was placed on the justice system's service to aboriginal people and women.

The six-day Alberta meeting was attended by seventy-five Provincial and Territorial Court Judges and ten federally appointed Judges from across Western and Northern Canada. In addition, the Alberta Provincial Judges' Association used the Workshop as its Spring Seminar and, accordingly, fifty Alberta judges attended for two days in addition to the group who attended throughout.

The evaluations show that the program was generally well received. I am pleased to say that the effort had a great deal of support in planning and execution. In particular, the following organizations contributed to the budget:

The Law Foundations of British Columbia, Alberta, Saskatchewan, Manitoba, Yukon and the Northwest Territories

The Provincial Courts of British Columbia, Alberta, Saskatchewan, Manitoba and the Territorial Courts of Yukon and the Northwest Territories

Department of Justice, Department of the Secretary of State, Ministry of the Solicitor General, and Ministry of Health and Welfare, Canada

Ministry of Attorney General, Ministry of Native Affairs, and Ministry of Solicitor General, British Columbia

Department of Justice and Department of Social Services, Northwest Territories

Justice Institute of British Columbia

Forensic Psychiatric Services, British Columbia

British Columbia Institute on Family Violence

The Law Society of Alberta

The Canadian Bar Association, Alberta Branch

The Faculties of Law of the Universities of Alberta and Calgary

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Planning is underway for the third Western Workshop, the *Western Workshop, Yellowknife*, to be held June 23rd to 29th, 1991 at the Ex-

plorer Inn, Yellowknife, N.W.T. We intend to apply for funding using the same formula as for the Alberta meeting. It is important to mention, however, that in addition to hopefully attracting the same sponsors as for the previous Workshops, the Territorial Government of the Northwest Territories is giving major support to this undertaking. Chief Judge Bob Halifax, Chief Judge of the Territorial Court of the Northwest Territories, is taking a very active part in the planning of the Yellowknife meeting which is shaping up to be an outstanding event.

Judicial Education Program on Gender Neutrality in Decision Making:

There will be an important addition for the Yellowknife Workshop. While the Vancouver and Alberta Workshops stressed the need for judges to be familiar with issues of gender equality, there is a definite need to focus more attention on this very important topic. I am pleased to advise that The Alberta Law Foundation has approved our application for a grant of \$125,000 for the preparation of a comprehensive judicial education program on the need for gender neutrality in decision making. The program, under the direction of Judge Gary Cioni, Provincial Court of Alberta, will be produced on a problem-based learning model and will involve the use of written and video materials introduced by specially trained judicial faculty and resource people. The program will be presented for the first time at Yellowknife and thereafter will be made as widely available as possible.

Advisors Meetings:

The Advisors to the WJEC are the Provincial Court Education Chairpersons, Deans of Law and the Continuing Legal Education Directors in Western Canada. In addition, the Chief Judges of Western and Northern Provincial and Territorial Courts are patrons and strong supporters of the organization. The Advisors and Chief Judges met in Vancouver in January to approve the plans for the Alberta meeting. At a meeting of the Advisors, including the Chief Judges, held May 16th at Lake Louise, the concept of the Yellowknife meeting was approved. At the same meeting there was strong approval for the idea that, to supplement and complement judicial education available on legal issues, as a priority the WJEC should continue to develop programs on the social context in which judicial decision making takes place.

I am pleased to offer the above report. Judicial education for Provincial and Territorial Court Judges continues to be a major commitment of the Association, which ensures that the quality of programming is maintained at the highest level.

térêt et leur appui envers l'association nationale. À leur demande, l'Île-du-Prince-Édouard demeure membre de l'ACJCP.

Au cours du même voyage, l'association du Nouveau-Brunswick a organisé un déjeuner à mon intention en compagnie de Wayne Chapman, C.R., le nouveau président de l'Association du Barreau canadien. Il m'a assuré de son appui personnel à l'égard du principe de la magistrature unifiée.

À l'occasion de la réunion en Nouvelle-Écosse, je me suis entretenu avec le juge Bruce Le Grow des préoccupations de Terre-Neuve. Le juge en chef adjoint Libby a représenté l'ACJCP à la réunion du Nouveau-Brunswick en juillet dernier.

Voici la liste des autres déplacements et activités relatifs à l'ACJCP:

1. Calgary, le 10 octobre 1989

Le Centre canadien de la magistrature a organisé une réunion des organismes actifs dans le domaine de l'éducation juridique, dont le Conseil canadien de la magistrature, l'Institut canadien d'études juridiques supérieures, l'Institut canadien d'administration de la justice, et l'ACJCP. Voici ce qu'il a été conclu au cours de cette réunion:

- a. Élaboration d'un calendrier principal de toutes les activités du corps judiciaire.
- b. Distribution du **Bulletin** à tous les magistrats canadiens.
- c. L'ACJCP peut être fière de ses normes élevées en matière d'éducation et de ses succès dans ce domaine.
- d. Les organismes tentent d'éviter le dédoublement et de tirer profit le plus possible des ressources disponibles à tous les niveaux du corps judiciaire.

2. Ville de Québec, les 20 et 21 Octobre 1989

- a. C'était une conférence bien organisée, dont l'auditoire était nombreux.
- b. Les magistrats présents se sont levés pour applaudir le juge en chef Claude Bisson pour son appui public de la Cour du Québec ainsi que ses travaux en vue de la réalisation de l'objectif de la sécurité financière.

3. Winnipeg, Manitoba, du 26 au 28 octobre 1989

- a. Le gouvernement du Manitoba et le Procureur général de cette province, Jim McRae, ont donné le bon exemple en adoptant la nouvelle loi relative à la cour provinciale et en honorant dans

l'esprit le nouveau système avant même que la loi n'entre en vigueur.

- b. Le samedi suivant la conférence, le juge Norton et moi-même avons rencontré Sheldon Pinx, agent de liaison de l'ABC avec l'ACJCP. Nous avons discuté d'une vaste gamme de sujets.
- c. Le système juridique du Manitoba accorde la priorité la plus élevée à une éducation juridique soutenue, par le truchement d'une série de séminaires de deux jours.

4. Vancouver, du 23 au 25 novembre 1989

Conférence annuelle de l'association des juges provinciaux de la Colombie-Britannique:

- a. Le Procureur général a annoncé qu'en vertu du programme d'accès à la justice, les juges et les cours seraient capables de mettre à profit les développements technologiques les plus récents, tels que les ordinateurs personnels, et que le gouvernement rendrait le système juridique davantage accessible, compréhensible, fiable, pertinent et efficace.
- b. À la suite de l'entrée en vigueur d'une directive spéciale relative à la retraite, la Colombie-Britannique pourrait nommer 35 nouveaux juges en 1990.

5. Le 15 décembre 1989

J'ai mandaté le juge Campbell pour procéder à un examen en profondeur du Collège canadien de la magistrature et d'élaborer des projections sur son avenir.

6. Décembre 1989

Il a fallu trois jours pour mener une consultation téléphonique dans tout le pays avec les agents, représentants provinciaux et présidents des associations sur la possibilité d'instituer un programme relatif aux nouveaux juges en Colombie-Britannique; d'obtenir l'approbation de la politique visant à habiliter les provinces hôtes à organiser leurs conférences annuelles conjointement avec celles de l'ACJCP; de procéder à une mise à jour sur les questions éducatives; de recevoir les nouvelles locales; et d'échanger des vœux des Fêtes.

7. Ville de Québec, du 7 au 19 janvier 1990

Trois réunions ont eu lieu pendant le cours de français:

- a. sur la Conférence de 1990 — les juges Ken Page, Yvon Mercier, Louis Rémillard et moi-même;

- b. sur le Centre canadien de la magistrature et des intérêts de l'ACJCP et des ses membres;
- c. sur le 8^e Congrès des Nations Unies sur la prévention du crime et le traitement des contrevenants — j'ai discuté avec des représentants du ministère de la Justice du rôle consultatif de l'ACJCP et nous avons dressé les plans d'une réunion consultative à Ottawa.

8. Ottawa, du 21 au 26 janvier 1990

- a. J'ai assisté au séminaire du Centre canadien de la magistrature sur la gestion du flot des cas, au cours duquel le juge principal Darlene Wong d'Edmonton et le juge principal Charles Scullion ont décrit deux techniques très différentes de gestion du flot des cas, mais tout aussi efficaces l'une que l'autre.
- b. J'ai rencontré le juge Marshall et Paul Lordon à plusieurs reprises, pour discuter de nombreux sujets:
 - (1) le Centre canadien de la magistrature et le Western Judicial Education Centre;
 - (2) ma lettre au ministre de la Justice en date du 28 novembre 1989, dans laquelle j'exprimais la nécessité d'une réunion et de la discussion d'un ordre du jour de 17 articles;
 - (3) une nouvelle structure fédérale de financement de l'ACJCP.
- c. Secrétariat d'État — contrat bilingue. Je me suis penché avec Denis Cuillier sur notre rôle et la nécessité d'un marché approprié de services bilingues. Nous avons ensuite rencontré le juge Libby pour clore cette question.
- d. Le 25 janvier — rencontre avec le Solliciteur général du Canada, l'honorable Pierre Blais, concernant notre rôle consultatif.

9. Lethbridge, le 30 janvier 1990

Brève rencontre avec John Jennings, président de l'Association du Barreau canadien.

10. Le 2 mars 1990

À la demande des juges en chef de l'Ouest, j'ai envoyé une lettre au Centre canadien de la magistrature, dans laquelle je suggérais que le juge Campbell continue d'occuper à mi-temps le poste de directeur du WJEC, et que l'autre moitié de son temps soit affectée dans l'Ouest du Canada en qualité de directeur adjoint du Centre canadien de la magistrature.

11. Edmonton, le 12 mars 1990

Réunion d'information en profondeur avec

Neil McCrank, nouveau procureur général adjoint de l'Alberta et Jack Klinck, représentant de cette province, le juge en chef Wachowich, le juge Dolores Hansen (vice-présidente de l'APJA) et moi-même, avant la réunion des Sous-ministres nationaux à Dorval. Nous avons passé en revue les rôles du juge en chef et de l'APJA en Alberta, la relation de l'APJA avec l'ACJCP, le financement, les rôles et les responsabilités (dont l'éducation, le Centre canadien de la magistrature et le WJEC).

12. Ottawa, vendredi, le 30 mars 1990

Séances d'information et de consultation pour les représentants de l'ACJCP et des fonctionnaires du ministère de la Justice sur des sujets choisis pour le 8^e Congrès des Nations Unies sur la prévention du crime et le traitement des contrevenants. Voici la liste des tâches précises dévolues à nos magistrats:

- a. Justice pour les juvéniles
Juge Kirkland
- b. Indépendance de la fonction judiciaire
Juge Bobowski
- c. Violence au foyer
Juge Kirkland
- d. Éducation juridique continue
Juge Campbell
- e. Détermination de la peine et solutions de rechange à l'emprisonnement
Juge Davis
- f. Rôle des avocats et des procureurs
Juge Mercier
- g. Informatisation de l'administration et du système de justice pénale
Juge Thomson
- h. Corruption
Juge Jacobson

Ce processus consultatif a produit des résultats très positifs et très bénéfiques, tant pour le ministère de la Justice que pour l'ACJCP.

13. Val Morin, Québec, du 30 mars au 6 avril 1990

Programme de formation des nouveaux juges de l'ACJCP, sous la direction du juge André Saint-Cyr:

- a. J'ai participé à titre d'hôte, de personne-ressource, de travailleur et d'étudiant à la réception du président de l'ACJCP.
- b. Les juges Marshall, Grenier, Libby, Saint-Cyr et moi-même avons discuté des préoccupations du Centre canadien de la magistrature et de l'ACJCP.
- c. Discussions avec certains juges en chef du WJEC et du Séminaire régional de l'Atlantique.
- d. Le 5 avril, j'ai participé, avec le juge en

The program was an outstanding success. We are indebted to Judge Saint-Cyr for his hard work and dedication in producing a first class judicial education effort. It has been decided that the program for 1991 will be held again at the Far Hills, April 12th. to 19th, 1991. I am pleased to report that Judge Saint-Cyr has agreed to act as coordinator.

The Atlantic Regional Seminar:

Judge George Perusse of New Brunswick is this year's site Chairperson. Extensive discussions were held in the Atlantic Region this spring in an effort to decide upon the best time to hold this year's meeting. A unique problem encountered in scheduling the meeting for 1990 related to the fact that Nova Scotia was scheduled to have two judicial education conferences in the spring and, accordingly, would only be able to send a token delegation to the Atlantic Regional. Problems were identified with holding the program in the summer and fall, and consequently the decision was taken within the Region to defer the 1990 Seminar, with the next to occur perhaps in April 1991.

On July 3rd, a meeting was held in Moncton, New Brunswick, chaired by Judge Perusse and attended by Judge R. Fowler, Newfoundland, Judge P. Curran and Judge M. Stewart, Nova Scotia and Judge Keith Libby, Executive Director of the Association. I am pleased to report that an outcome of the meeting was an agreement to devise a plan to establish an ongoing framework for the continuation of the Atlantic Regional Seminar.

8th United Nations Congress:

A consultative meeting at the invitation of the Department of Justice took place in Ottawa on March 30th. The purpose of the meeting was to consider Canada's position on a wide range of criminal law topics, in preparation for the Congress to take place in Havana, Cuba in August, 1990.

I was pleased to attend the meeting together with other Association Executive members and offered suggestions on how our Association might contribute to judicial education on the international scene.

As an observer, and to assist with the planning of the program for the next Seminar, Judge Perusse attended the Western Workshop, Alberta (mentioned below) to consider the judicial education work being done in Western and Northern Canada.

Canadian Judicial Centre (CJC):

We have continued the effort this year to work with the Canadian Judicial Centre towards improving the quality of judicial education for Provincial and Territorial Court Judges. While I have nothing specific to report, I can say that we will strive to ensure that Provincial and Territorial Judges continue to receive the best education programming possible.

WJEC Programming:

Delivery of Reasons Program:

Programs have been held as follows:

1) Edmonton, October 23rd and 24th, attended by ten judges and funded by the Law Foundation of Alberta and Chief Judge Wachowich, Chief Judge of the Provincial Court of Alberta.

2) Vancouver, December 11th and 12th, attended by nine judges and funded by Chief Judge Diebolt, Chief Judge of the Provincial Court of British Columbia.

We plan to continue to offer this highly successful program which has been produced ten times for judges in Western and northern Canada. The next program is scheduled for Saskatoon, October 30th and 31st.

Cross-Cultural Education Program for Judges: and Aboriginal People on Vancouver Island:

On March 10th and 11th, a meeting was held at Parksville, Vancouver Island, between seven judges and twenty-five native leaders primarily representing the southern part of the Island. The meeting was facilitated by the South Island Tribal Council, the Native Law Program at the University of British Columbia, and the WJEC. The meeting resulted in a greater understanding of how to more effectively deal with aboriginal people who come in contact with the justice system. In addition, many of the participants attended the *Western Workshop, Alberta* to show by example what can be done to promote cross-cultural understanding.

A "second phase" meeting is planned to occur in Parksville, November 30th to December 2nd, between the same individuals as the first, but with the important addition of representatives from other components in the justice system. Next year, we hope to facilitate a similar cross-cultural experience for both justice system professionals and native people on the North and West Island.

dépendance du corps judiciaire.

Il reste encore beaucoup à faire pour résoudre les questions relatives à la rémunération des magistrats et à la disponibilité de ressources dans les tribunaux.

- e. Grâce au concours financier du Secrétariat d'État, nous espérons que notre association commencera dès l'année prochaine à fonctionner entièrement dans les deux langues officielles. Nous espérons en particulier que la première étape sera de faire de la revue **Journal** une publication bilingue.

L'accomplissement des principes et de la vision prônés par l'ACJCP et de ses objectifs n'est pas seulement le résultat des efforts de l'association elle-même, ni de son comité exécutif, mais des travaux de tous nos juges travaillant de concert au sein de leurs associations respectives, et plus particulièrement en collaborant avec de nombreuses autres instances à l'extérieur des tribunaux et de l'ACJCP.

Outre les journées passées à voyager, la grande majorité des activités de nos associations consiste en des conversations téléphoniques placées par nos agents, ainsi que des envois par courrier et télécopieur. Toutes ces activités exigent du temps supplémentaire. Par conséquent, il faut être raisonnable lorsqu'on attribue des tâches à nos magistrats qui détiennent des postes clés à l'échelon national et provincial, et aménager leurs calendriers en conséquence.

Malheureusement, nous avons manqué de juges en Alberta au cours de l'année qui vient de s'écouler, et le gouvernement de cette province a tardé à en nommer de nouveaux. Il s'est produit à plusieurs reprises que nous n'avons eu ni le temps ni l'occasion de procéder comme je le souhaitais. Cependant, ce sont mes collègues dans le sud de l'Alberta, plus particulièrement à Lethbridge, qui ont souvent dû céder de leur temps de cabinet pour me permettre de me libérer. J'aimerais remercier et honorer d'une manière toute spéciale le juge en chef Wachowich, grâce auquel j'ai pu passer une semaine à Ottawa en janvier, puis de nouveau du 30 mars au 6 avril pour la réunion qui a eu lieu dans cette ville; enfin, j'ai pu assister au Programme de formation des nouveaux juges à Val Morin et à la réunion du comité exécutif à Montréal (qui a également permis à l'association d'économiser des sommes importantes). D'autres juges partout en Alberta se sont également portés volontaires pour me remplacer. Je tiens à vous exprimer ma gratitude la plus profonde et mes remerciements les plus sincères. Vos actions sont plus éloquents que toute parole.

Je désire remercier de tout coeur une autre personne toute spéciale, qui m'a facilité la vie et l'a rendu plus agréable. Il s'agit de ma femme,

Mariette, qui m'a accompagné au cours de la plupart de mes déplacements. Elle est non seulement mon épouse et ma compagne, mais elle a également souvent agi à titre de conseillère médicale, de secrétaire et d'interprète (en particulier, elle a traduit des articles du **Journal** en français). Merci beaucoup, Mariette, tu m'as rendu fier, heureux, et tu m'as beaucoup facilité la vie.

Le Président ne reçoit ni rémunération ni honoraire. Cependant, il obtient quelque chose de beaucoup plus précieux en retour de son service. C'est plus que la somme d'expérience et de leçons qu'il a tirées des bons et mauvais moments. En partie, c'est le partage des défis et de la vision, et le travail avec d'autres en vue de l'accomplissement d'objectifs importants. Cependant, ce qui est le plus important, c'est de rencontrer des collègues distingués, de jouir de leur amitié et de partager leurs succès. Mariette et moi-même nous sommes enrichis des valeurs que nous ont communiquées nos amis avec lesquels nous avons connu de si bons moments:

Qu'est-ce qu'un ami?
C'est une personne LOYALE,
Une personne ATTENTIONNÉE,
Une personne FIABLE,
Une personne HONNÊTE
Une personne AVEC QUI IL FAIT BON ÊTRE.

Je vous remercie de l'amitié que vous m'avez accordée!
Vous nous avez permis de vivre une année fantastique!

Rapport soumis respectueusement

REPORT ON THE CANADIAN JUDICIAL COLLEGE by Judge Douglas R. Campbell, Director

I am happy to report that the College and the WJEC have had a very successful and active year.

College Programming:

New Judges' Program:

This important College program was delivered again this year at the Far Hills Inn, Val Morin, Quebec, under the capable direction of Judge Andre Saint-Cyr, Cour du Quebec. The experience which was held March 30th to April 6th, was attended by fifty-six judges and had the benefit of thirty-one faculty. The program was very broad and covered many important topics including judicial ethics, judgement writing, defences in criminal law, the Charter, contempt of court, search warrants, transfer applications under the Young Offenders Act, and sentencing of the aboriginal offender.

chef adjoint Libby et le juge Grenier, à une conférence de liaison avec les juges en chef à Val David. Il a été décidé que:

- (1) Le programme de formation des nouveaux juges se poursuivra à Far Hills en 1991.
- (2) Aucun programme particulier pour les nouveaux juges ne sera institué en Colombie-Britannique.

Nous avons également discuté:

- (1) du rôle du Centre canadien de la magistrature et de ses frais d'exploitation;
- (2) du Séminaire régional de l'Atlantique et des programmes de rechange dans les Provinces maritimes.

14. Montreal, du 6 au 8 avril 1990

Réunion du printemps du comité exécutif de l'ACJCP:

- a. Les invités spéciaux étaient Anne-Marie Krahn, sous-ministre adjoint de la Justice, Droit Civil et Paul Lordon. Le lendemain, le juge Marshall a résumé les activités du Centre canadien de la magistrature.
- b. On a inauguré une nouvelle structure pour les réunions. Suivant le dépôt de tous les rapports, la séance a été ajournée pour le caucus des juges provinciaux et les discussions du comité du budget.
- c. Le juge Pamela Thomson a été élue au poste de directeur exécutif adjoint.
- d. On a mandaté le président et le directeur exécutif, mais pas les représentants, à soumettre un rapport mensuel à tous les membres du comité exécutif, y compris le président.

15. Halifax, Charlottetown, St. John, et Halifax, du 21 au 29 avril 1990

- a. Île-du-Prince-Édouard — discussions avec le juge en chef Thompson et le juge Fitzgerald, au cours desquelles ces derniers ont confirmé la nécessité de l'ACJCP, ainsi que leur intérêt et leur appui envers notre organisme.
- b. Nouveau-Brunswick — déjeuner avec Wayne Chapman, Q.C., nouveau président de l'ABC, et certains juges de St. John, au cours duquel nous avons discuté du principe de la magistrature unifiée.
- c. Halifax, du 25 au 28 avril: conférence semi-annuelle des juges provinciaux de la Nouvelle-Écosse et séminaire éducatif:
 - (1) Les membres de la tribune ont

traité du principe de la magistrature unifiée.

- (2) La Nova Scotia Barristers' Society a fortement suggéré que l'on procède à une évaluation du corps judiciaire.
- (3) Le juge Grenier et moi-même avons rencontré le professeur Bill Charles, président du groupe de travail de la Nouvelle-Écosse sur la structure des tribunaux, et nous avons discuté du principe de la magistrature unifiée et des systèmes qui s'y appliquent.

16. Lac Louise, Alberta, du 11 au 18 mai 1990

Atelier de 1990 du Western Judicial Education Centre de l'ACJCP, combiné avec le séminaire éducatif annuel de l'Association des juges provinciaux de l'Alberta.

- a. Débutant par une séance de formation d'une journée pour les personnes-ressources, ce séminaire à plusieurs volets a traité:
 - (1) des questions relatives aux autochtones;
 - (2) des questions d'égalité des sexes;
 - (3) de la nouvelle loi.
- b. À ma demande, mais grâce à l'ingéniosité du juge Campbell, la plupart des agents de l'ACJCP ont assisté en qualité de personnes-ressources. Toutes les provinces étaient représentées par des étudiants. Nous avons pu organiser plusieurs réunions importantes, parce que toutes les provinces étaient représentées tant par des étudiants que par les agents de l'association, et parce que les représentants de l'ACJCP ont participé:
 - (1) ACJCP — Le juge principal Scullion et le juge Davis formeront un comité pour étudier la possibilité de procéder à un examen du corps judiciaire. On a également traité des développements régionaux et du Centre canadien de la magistrature.
 - (2) Centre canadien de la magistrature, Collège canadien de la magistrature, WJEC: réunion extraordinaire à laquelle ont assisté le juge W.A. Stevenson, le juge Marshall, le six juges en chef de l'Ouest, les juges Page et Grenier et moi-même. Il a été décidé ce qui suit:
 - (a) Les juges en chef de l'Ouest ont confirmé leur engagement envers le WJEC et ils prendront les dispositions nécessaires pour que le juge Campbell continue à en assumer le poste de directeur.
 - (b) Le juge Marshall doit achever son

- «Plan Marshall» et le soumettre à l'ACJCP.
- (c) Le juge Grenier doit, au nom du Centre canadien de la magistrature, rencontrer le juge en chef adjoint Libby pour achever le protocole d'entente entre l'ACJCP et le Centre canadien de la magistrature, et les répercussions pratiques du «Plan Marshall».
- (d) Le juge Page et le juge Marshall doivent recueillir des renseignements supplémentaires sur les coûts relatifs à la création du poste de directeur adjoint du Centre canadien de la magistrature, et le juge Page formulera des recommandations visant l'abandon du système de mutation temporaire, dont les coûts sont défrayés par les provinces seules.
- (e) Les activités doivent être achevées le plus tôt possible; le cas échéant, les discussions finales devront avoir lieu à Québec lors de la conférence annuelle de l'ACJCP.
- (3) Discussions sur le financement du programme de formation des nouveaux juges de l'ACJCP avec le juge Saint-Cyr et le juge en chef Libby.
- (4) Conférences téléphoniques avec les juges Rémillard et Mercier et réunions en vue d'inviter la ministre de la Justice à assister à la conférence annuelle, qui aura lieu à Québec.
- (5) Au cours de discussions sur le Séminaire de la région de l'Atlantique, il a été décidé que dès leur retour aux Maritimes, le juge Pérusse, aidé du juge Fowler prendront les mesures finales pour réorganiser la structure du Séminaire.
- 17. London, Ontario, du 22 au 26 mai 1990**
L'Association des juges des cours criminelles provinciales de l'Ontario
- a. Ian Scott, Procureur général de l'Ontario, a parlé de l'avancement de ses travaux visant la magistrature unifiée en Ontario. Il a reconnu que des difficultés surgiraient au cours de la Phase II et a mis tous les juges des cours provinciales au défi de démontrer leur valeur et leur compétence, par leur rendement et leur participation, plus particulièrement en collaborant plus étroitement avec la Barreau canadien, la société de droit provinciale et les associations de barreau locales.
- b. L'honorable Fred C. Hayes, qui est maintenant juge de la Cour de district, ancien membre de l'ACJCP, et un ami qui contribue de longue date au succès de notre Programme de formation des nouveaux juges (en qualité d'animateur de discussions et de professeur du cours «Déroulement du procès») a été nommé membre honorifique de l'Association de l'Ontario. Fred, et sa femme Betty, ont été le centre d'une expression de gratitude et d'appréciation émouvante et significative.
- c. Au cours d'une conférence téléphonique, le juge Harry Keenan nous a mis au courant du problème des responsabilités d'erreur et d'omission et de l'assurance médicale contre les maladies graves et les désastres.
- 18. Saskatoon, Saskatchewan, du 31 mai au 2 juin 1990**
Il s'agissait de la première réunion conjointe de l'Association des juges des cours provinciales de la Saskatchewan et de la Law Society of Saskatchewan depuis 25 ans. Conjointement avec la Continuing Legal Education Society, les juges ont produit un excellent vidéo à l'intention des nouveaux avocats et ce, à un coût extrêmement bas. Il envisagent maintenant de nouveaux défis.
- 19. Le 15 juin 1990**
Lors d'une réunion des ministres responsables de la Justice aux échelons fédéral, provincial et territorial, ces derniers ont consenti à former un groupe de travail présidé par Elaine Doleman, du Nouveau-Brunswick, qui proposera des façons de promouvoir l'égalité des sexes dans le système juridique. On organisera également une conférence sur les femmes dans le système juridique. Le juge Campbell a contacté Susan Christie, Analyste de politique principale, Direction générale de la Politique, ministère de la Justice, et a fait des réservations provisoires au Château Lac Louise du 29 avril au 3 mai 1992, au nom du Comité du WJEC sur la neutralité des sexes.
- 20. Le 18 juin 1990**
La ministre de la Justice a invité l'ACJCP à participer à l'examen en cours des Dispositions générales du **Code criminel**.
- 21. Chicoutimi, le 15 août 1990**
Tirant profit du grand nombre de juges des cours provinciales et territoriales présents au cours de formation en français (dont un bon nombre sont des membres actifs de leurs associations provinciales et de l'ACJCP), nous avons organisé une séance extraordinaire pour examiner l'ordre du jour de la Conférence nationale et discuter du processus par lequel les membres du con-

seil d'administration du Centre canadien de la magistrature choisissent les directeurs adjoints parmi les juges des cours provinciales.

22. Kananaskis, du 5 au 8 septembre 1990
Conférence annuelle de l'association des juges des cours provinciales de l'Alberta.

Nous pouvons résumer comme suit les activités de l'ACJCP pour l'exercice 1989-1990, en nous fondant sur l'examen susmentionné, les rapports soumis à la présente réunion, les dossiers de notre association et, nous l'espérons, vos connaissances personnelles:

- a. Les programmes de formation juridique continue entrepris par nos magistrats et leurs associations ont connu de succès et été bénéfiques dans toutes les provinces ainsi qu'à l'échelon national. Le Programme de formation des nouveaux juges était excellent et il a coûté beaucoup moins cher que prévu. Le WJEC a continué de jouer le rôle de leader en matière de programmes innovateurs et d'étude des questions d'égalité des sexes dans le système juridique. En dépit du fait que le Séminaire régional de l'Atlantique n'ait pas eu lieu, on a pris des mesures efficaces en vue de créer une nouvelle structure et favoriser les attitudes positives. Le thème et la composante éducative de la conférence annuelle de cette année, «Le magistrat au 21^e siècle» met l'accent sur le besoin qui existe au sein du corps judiciaire de se donner une vision, de faire preuve de dévouement et de définir des objectifs communs.

Nos tribunaux et notre association ont été bien représentés au Conseil d'administration du Centre canadien de la magistrature, plus particulièrement grâce aux efforts des juges Page, Hayes et Carey. En sa qualité de directeur adjoint, le juge Grenier a continué d'apporter une contribution importante aux activités de ce Centre.

- b. Nous avons partiellement réussi à établir des voies de communications efficaces avec le ministère fédéral de la Justice. En particulier, nous plaçons nos espoirs et notre confiance en Paul Lordon, avocat général de ce ministère, à cause de ses conseils toujours judicieux et de sa collaboration constante. Malheureusement, nous n'avons pas eu l'occasion de travailler personnellement avec la Ministre. Il reste beaucoup à faire pour établir et maintenir une relation de travail efficace avec le gouvernement fédéral. Il convient

également d'étudier la possibilité de rencontres à intervalles réguliers avec les sous-ministres de la Justice de tous les gouvernements.

Nous avons également raffermi nos voies de communications et de collaboration avec:

- (1) les juges en chef;
- (2) le Centre canadien de la magistrature;
- (3) l'Association du Barreau canadien;
- (4) la Commonwealth Magistrates' and Judges' Association;
- (5) le Secrétariat d'État, au sujet des services bilingues;
- (6) d'autres organismes qui s'intéressent à l'éducation juridique.

Le gouvernement fédéral a fait appel à notre rôle consultatif à titre de ressource ou d'organisme-conseil à l'égard des questions suivantes:

- (1) le 8^e Congrès des Nations Unies sur la prévention du crime et le traitement des contrevenants;
- (2) la détermination de la peine, le système correctionnel et les libérations conditionnelles;
- (3) l'examen des Dispositions générales du **Code criminel**;
- (4) les questions d'égalité des sexes au sein du système juridique.

- c. Toutes les associations provinciales et territoriales sont dirigées avec fermeté et efficacité. Nous devons amener un certain nombre des nouveaux juges à oeuvrer également à l'échelon national. Il convient de surveiller de près la réforme de la structure des tribunaux dans les diverses provinces. L'intérêt public doit avoir la priorité sur toute autre considération.

- d. On se préoccupe beaucoup des questions touchant l'indépendance du corps judiciaire. Le juge Bobowski a été très occupé à rédiger des études pour le 8^e Congrès des Nations Unies; il a presque terminé une étude comparative des principes essentiels des Nations Unies par rapport à ceux de l'ACJCP, ainsi que des lois territoriales et provinciales. Malheureusement, certains représentants provinciaux ne lui ont pas encore communiqué leurs données.

Le principe de l'évaluation du corps judiciaire (plus particulièrement des juges des cours provinciales) semble gagner de l'intérêt à l'extérieur de la magistrature. Il faut se pencher sur les coûts et méthodes de mise en place et d'administration, et s'assurer qu'il n'existe aucun obstacle à l'objectif d'in-