

PROVINCIAL JUDGES'

Journal

DES JUGES PROVINCIAUX

Justice without wisdom is impossible / La justice sans la sagesse n'est pas la Justice. - Froude.

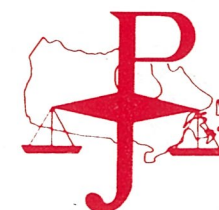
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Fall 1999 Automne

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**THE CANADIAN ASSOCIATION OF
PROVINCIAL COURT JUDGES**

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JUGES DES COURS PROVINCIALES**



**The Canadian Association of Provincial Court Judges/
L'Association canadienne des juges des cours provinciales
1998-1999**

Officers/Membres du bureau

PRESIDENT/PRÉSIDENT

Judge Cheryl L. Daniel
323-6th Avenue S.E.
Calgary, AB T2G 4V1
Tel: (403) 297-3157
Fax: (403) 297-5287
E-mail: c.daniel@gov.ab.ca

**1ST. VICE-PRESIDENT/
1^{ÈR} VICE-PRÉSIDENT**

Juge Louis A. Legault
Cour du Québec
Palais de Justice (#5.45)
1, rue Notre-Dame Est
Montréal, QB H2Y 1B6
Tel: (514) 393-2581
Fax: (514) 393-2065
E-Mail: legaultlouis
@hotmail.com

**2ND. VICE-PRESIDENT/
2^{ÈME} VICE-PRÉSIDENT**

Judge Kathleen E. McGowan
Ontario Court (Provincial Division)
80 Dundas Street
2nd. Floor - Unit E
London, ON N6A 6A5
Tel: (519) 660-3014
Fax: (519) 660-3024
E-mail: kathleen.mcgowan
@sympatico.ca

**3RD. VICE-PRESIDENT/
3^{ÈME} VICE PRÉSIDENT**

Juge D. Albert Lavoie
Provincial Court of Saskatchewan
220 - 19th. Street
Saskatoon, SK S7K 2H6
Tel: (306) 933-6682
Fax: (306) 933-8008
E-Mail:alavoie.justice
@sk.sympatico.ca

**PAST PRESIDENT/
PRÉSIDENT SORTANT**

Judge Patrick Curran
5250 Spring Garden Road
Halifax, NS B3J 1E7
Tel: (902) 424-8759
Fax: (902) 424-2212
E-mail: curranph
@ns.sympatico.ca

**SECRETARY-TREASURER/
SECRÉTAIRE-TRÉSORIER**

Judge Irwin E. Lampert
770 Main Street, Room 302
P. O. Box 5001
Moncton, NB E1C 8R3
Tel: (506) 856-2307
Fax: (506) 856-3226
E-mail: irwin.lampert
@gov.nb.ca

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

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

Editorial Communications are to be sent to:
Les editoriaux doivent être envoyés à:

Judge Garrett A. Handrigan
P. O. Box 339
Grand Bank, NF A0E 1W0
Tel: (709) 832-1450
Fax: (709) 832-1758
E-mail: garrett.handrigan
@nf.sympatico.ca

-and-

Juge Jacques R. Roy
Cour du Québec
410, rue de Bellechasse Est, bureau 4-223
Montréal, QB H2S 1X3
Tel: (514) 495-5840
Fax: (514) 864-4149
E-Mail: jasiro@videotron.ca

Committees / comités

BILINGUALISM/BILINGUISME

Juge Frederic Arsenault
Provincial Court
P. O. Box 5001
Bathurst, NB E2A 3Z9
Tel: (506) 547-2155
Fax: (506) 547-7448

-and-

Juge Thérèse Alexander
Provincial Court of British Columbia
6263 Deer Lake Avenue
Burnaby, BC V5G 3Z8
Tel: (604) 660-7147
Fax: (604) 660-4527
E-mail: talexander
@provincialcourt.bc.ca

CBA LIAISON/LIAISON AVEC L'ABC

Judge Nancy Orr
Provincial Court
P. O. Box 2290
Charlottetown, PEI C1A 8C1
Tel: (902) 368-6741
Fax: (902) 368-6743
E-mail: nkorr@gov.pe.ca

-and-

Justice Edward F. (Ted) Ormston
Ontario Court of Justice
60 Queen Street West
Toronto, ON M5H 2M4
Tel: (416) 327-6179
Fax: (416) 327-6003

CIVIL COURTS/COURS CIVILES

Judge J. J. Threlfall
The Law Courts
Provincial Court Judges' Chambers
4th. Floor, 1355 Water Street
Kelowna, BC V1Y 9R3
Tel: (250) 470-6811
Fax: (250) 470-6810
E-mail:

**COMMITTEE ON THE LAW/
COMITÉ SUR LE DROIT**

Judge Owen Kennedy
Provincial Court
4th Floor, Atlantic Place
St. John's, NF A1C 5V5
Tel: (709) 729-2482
Fax: (709) 729-6272

COMPENSATION/RÉMUNÉRATIONS

Judge Douglas McDonald
Provincial Court of Alberta
323-6th Avenue S.E.
Calgary, AB T2G 4V1
Tel: (403) 297-3156
Fax: (403) 297-5287
E-mail: d.mcdonald@gov.ab.ca
mcdonald@cadvision.com

CONFERENCE '99/CONFÉRENCE 1999

Juge Michel Babin
Palais de Justice, #R-205
300, boulevard Jean-Lesage
Quebec, QB G1K 8K6
Tel: (418) 649-3557
Fax: (418) 646-8417

**CONSULTANT: JUDICIAL INDEPENDENCE
AND MEDIA RELATIONS**

Judge Gerald Seniuk
220 - 19th Street E.
Saskatoon, SK S7K 2H6
Tel: (306) 933-6684
Fax: (306) 933-8008

**COURT STRUCTURE AND
JURISDICTION COMMITTEE**

Judge John G. MacDougall
Provincial Court of Nova Scotia
540 Prince Street
Truro, NS B2N 1G1
Tel: (902) 893-5840(Truro)
(902) 758-2936(Shubenacadie)
Fax: (902) 893-6119
E-mail: jmacdoug@istar.ca

**FAMILY AND YOUNG OFFENDERS/
FAMILLE ET JEUNES CONTREVENANTS**

Justice André L. Guay
159 Cedar Street,
2nd Floor, Suite 201
Sudbury, ON P3E 6A5
Tel: (705) 670-7250
Fax: (705) 670-7254

JOURNAL/JOURNAL Co-EDITORS

Judge Garrett A. Handrigan
P. O. Box 339
Grand Bank, NF A0E 1W0
Tel: (709) 832-1450
Fax: (709) 832-1758
E-mail: garrett.handrigan
@nf.sympatico.ca

-and-

Judge Jacques R. Roy
Cour du Québec
410, rue de Bellechasse Est,
bureau 4-223
Montréal, QB H2S 1X3
Tel: (514) 495-5840
Fax: (514) 864-4149

**JUDICIAL INDEPENDENCE/
INDÉPENDANCE DES JUGES**

Juge D. Albert Lavoie
220 - 19th. Street
Saskatoon, SK S7K 2H6
Tel: (306) 933-6682
Fax: (306) 933-8008
E-mail: alavoie.justice
@sk.sympatico.ca

LPAC REPRESENTATIVE

Judge J. Peter Coulson
Ontario Court of Justice
Memorial Building
41 Dundas Street West
Napanee, ON K7R 1Z5
Tel: (613) 354-5450
Fax: (613) 354-0380

**NATIONAL EDUCATION COMMITTEE/
COMITE NATIONALE SUR LA
FORMATION**

Judge Jean Lytwyn
Provincial Court of
British Columbia
14340-57th. Avenue
Surrey, BC V3X 1B2
Tel: (604) 572-2300
Fax: (604) 572-2301
E-mail:

**NATIONAL JUDICIAL INSTITUTE/
INSTITUT NATIONAL DE LA
MAGISTRATURE**

Judge Patrick Curran
Judges' Chambers
5250 Spring Garden Road
Halifax, NS B3J 1E7
Tel: (902) 424-8759
Fax: (902) 424-2212
E-mail: curranph
@ns.sympatico.ca

**PROFESSIONAL RESPONSIBILITY/
RESPONSABILITÉ PROFESSIONNELLE**

Judge Linda M. Giesbrecht
Judges' Chambers
Provincial Court of Manitoba
5th Floor, 408 York Avenue
Winnipeg, MB R3C 0P9
Tel: (204) 945-2082
Fax: (204) 945-0552

**PUBLIC RELATIONS/
RELATIONS PUBLIQUES**

Judge Patrick H. Curran
Judge's Chambers
Provincial Courts Building
5250 Spring Garden Road
Halifax, NS B3J 1E7
Tel: (902) 424-8759
Fax: (902) 424-2212
E-mail: curranph
@ns.sympatico.ca

- and -

Judge Kathleen E. McGowan
Ontario Court (Provincial Division)
80 Dundas Street
2nd. Floor - Unit E
London, ON N6A 6A5
Tel: (519) 660-3014
Fax: (519) 660-3024
E-mail: kathleen.mcgowan
@sympatico.ca

NEWS BRIEF / EN BREF

Alberta

Appointments/Nominations

Hon. Judge Joanne Helen Goss

Edmonton

(effective September 7, 1999)

Hon. Judge James Bryce Mitchell

Red Deer

(effective September 20, 1999)

Hon. Judge Norman Russell Hess

(effective September 20, 1999)

Hon. Judge Leonard Stephen

Mandamin

(effective September 30, 1999)

both at Calgary

British Columbia

Appointments/Nominations

Hon. Judge E. Jane Woodward

Williams Lake

Hon. Judge Paul R. Meyers

Vancouver

(both effective June 30, 1999)

Retirements/Retraites

Hon. Judge J. S. de Villers

(effective July 31, 1999)

Hon. Judge R. G. Skelhorne

(effective September 30, 1999)

Manitoba

Appointments/Nominations

Hon. Judge Sidney Lerner

Hon. Judge Lynn Stannard

(both effective August 4, 1999 and

both at Winnipeg)

New Brunswick

Appointments/Nominations

Hon. Judge Henrik G. Tønning

Hampton

(effective August 20, 1999)

Hon. Judge Yvette Finn

Tracadie-Sheila

(effective September 10, 1999)

Reinstated/Réintégréé Dans Ses Fonctions

Hon. Judge Jocelyne Moreau-Bérubé

(effective July, 1999 - by order of Mr.

Justice Jean-Claude Angers of New

Brunswick's Court of Queen's Bench)

Nova Scotia

Appointments/Nominations

Hon. Judge R. Brian Gibson

Dartmouth

(Appointed Associate Chief Judge of

the Provincial Court)

Retirements/Retraites

Hon. Judge R. B. (Reg) Kimball

(effective July 31, 1999)

Ontario

Appointments/Nominations

Hon. Mr. Justice Lorne Chester

Hon. Mr. Justice Richard Humphrey

(both effective July 12, 1999)

Retirements/Retraites

Hon. Mr. Justice Alan Baker

Hon. Mr. Justice John Robinson*

Hon. Mr. Justice Robert Runciman*

(all effective July 31, 1999)

(*continuing as *per diem* judge)

Provincial Representatives / Représentants Provinciaux

ALBERTA

Judge E. Darrell Riemer

Courthouse

Peace River, AB T8S 1T4

Tel: (403) 624-6106

Fax: (403) 624-6563

BRITISH COLUMBIA

Judge Brian MacKenzie

Provincial Court

850 Burdett Avenue

Victoria, BC V8W 1B4

Tel: (250) 356-1036

Fax: (250) 356-6779

MANITOBA

Judge John Guy

Provincial Court

5th Floor, 408 York Avenue

Winnipeg, MB R3C 0P9

Tel: (204) 945-0974

Fax: (204) 945-0552

E-mail: kbarton@gov.mb.ca

NEW BRUNSWICK

Judge Denis Lordon

Provincial Court

599 King George Highway

Newcastle, NB E1V 1N4

Tel: (506) 627-4016

Fax: (506) 627-4047

NEWFOUNDLAND

Judge John Rorke

Provincial Court

P. O. Box 68

215 Water Street

Atlantic Place

St. John's, NF A1C 6C9

Tel: (709) 729-6913

Fax: (709) 729-2161

NORTH WEST TERRITORIES

Judge Michel Bourassa

Judges' Chambers,

Territorial Court

P. O. Box 550

Yellowknife, NT X1A 2N4

Tel: (867) 873-7604

Fax: (867) 873-0203

NOVA SCOTIA

Judge Brian R. Gibson

200-277 Pleasant Street

Dartmouth, NS B2Y 3S2

Tel: (902) 424-2311

Fax: (902) 424-0677

E-mail:

ONTARIO

Justice Edward F.

(Ted) Ormston

Ontario Court of Justice

60 Queen Street West

Toronto, ON Canada

M5H 2M4

Tel: (416) 327-6179

Fax: (416) 327-6003

PRINCE EDWARD ISLAND

Judge Nancy Orr

P. O. Box 2290

Charlottetown, PEI

C1A 8C1

Tel: (902) 368-6741

Fax: (902) 368-6743

E-Mail: nkorr@gov.pe.ca

QUÉBEC

Juge Claude C.

Boulangier

Palais de Justice, #R-244

300, boulevard Jean-

Lesage

Québec, QB G1K 8K6

Tel: (418) 649-3492

Fax: (418) 646-8417

SASKATCHEWAN

Judge Bruce Henning

Provincial Court of

Saskatchewan

Fourth Floor

1815 Smith Street

Regina, SK S4P 3V7

Tel: (306) 787-9759

Fax: (306) 787-3933

YUKON

Judge Heino Lilles

Territorial Court

Judges' Chambers (J3E)

Box 2703,

2134 Second Ave.

Whitehorse, YK Y1A 2C6

Tel: (867) 667-5438

Fax: (867) 667-3079

E-mail:

tclilles@yknet.yk.ca

EDITOR'S NOTEBOOK/REMARQUES DE L'ÉDITEUR

In my last Notebook I told you about the mandate that I had received from the Executive to re-work the form and content of the Journal. The graphics of this edition may not prompt you to think that I have followed those instructions. If you pay attention only to the format, you are correct. The cover, the page size, the shape, indeed the whole layout of this edition, is consistent with what you have come to expect from this publication. But if you "look under the hood" you will see that a lot has changed. Less reliance is made on the scholarly materials that were the staple of the Journal. There is a lot more of what is going on behind the scenes with our judges in Canada.

I will tell you about the details of that in a moment, but first I want to note the involvement of my new co-editor, Juge Jacques R. Roy of Quebec. Jacques will introduce himself elsewhere in this edition. The particulars of how you may contact him are near here, just inside the front cover. In fact, Jacques was all queued up to get deeply into the last edition, but problems with the technology that we rely on, disrupted our collaboration at that time. Those snags



Dans le dernier numéro, je vous faisais part de mon mandat reçu de la direction de l'Association, à l'effet de revoir le format et le contenu du Journal. À première vue, sur le plan strictement visuel, il n'est peut-être pas évident que j'ai suivi ces directives à la lettre.

Effectivement, si vous ne tenez compte que de la présentation des articles, cette impression peut se justifier. La page couverture, le format des pages, la forme du document, bref l'ensemble de l'infographie du présent numéro sont certes des lieux communs pour les initiés du Journal. Mais, 'sous le capot', l'on peut constater l'ampleur des changements de fond apportés au niveau de la 'mécanique'. En effet, il y a moins d'articles 'érudits' qu'il n'y en avait couramment jadis. Par contre, l'on retrouve davantage d'informations sur ce qui se fait en coulisses de la scène judiciaire au Canada.

Je traiterai de cela plus à fond dans quelques instants, mais j'aimerais tout d'abord signaler la venue de mon nouveau collaborateur québécois à la rédaction, le juge Jacques R. Roy. Il se présente aux lecteurs dans un article que vous pourrez lire dans ce numéro. Les coordonnées pour le rejoindre se trouvent également 'au bout de vos doigts', à l'endos de la page couverture. En réalité, il était fin prêt à se joindre à la facture du dernier numéro du Journal, sauf que la technologie nous a jouée de vilains tours dont elle seule détient le secret, si bien que notre collaboration en a alors pris pour son rhume! Ces

not find enough time to enjoy the many hobbies that interest her. She loves to cook and have friends over for dinner and also to travel, because this transforms her. She would like to have more time to read. She also speaks of the overwhelming suffering in the world and adds that one way she feels she can personally evolve, is by sharing that suffering. She wishes to continue to evolve over time and to be part of the evolution towards a better world for mankind.

Gabriel Lapointe, a renowned criminal lawyer from Montreal, had this to say about the new judge: "Because of the important causes she has defended, the enormous challenges she has been able to meet, through her rich personality, Mrs. Westmoreland-Traoré has rightly earned her appointment to the judiciary. Moreover, it was more than time that in Quebec we had a judge selected from among the Black cultural community."

As deputy chief judge Jacques Lachapelle pointed out in his address: "This is a big day for Quebec. This is an historical event, a ray of hope... The Quebec Court today welcomes within its ranks the first Black woman... This is a moment to rejoice, a moment that marks a new era of plurality... a sign that we are getting closer to one another, a tangible symbol of the mutual acceptance of Quebecers of all origins for each other." Judge Hélène Lebel of the Superior Court in Montreal, a fellow student of Juanita's during her university years, said during the reception following the ceremony, that she admired her so much, and that because of her rich cultural background, remarkable intelligence and engaging personality, she embodies most radiantly the sense that our communities are coming together, a vibrant symbol of mutual acceptance.

passe-temps. Elle aime cuisiner et recevoir des amis et voyager car cela la transforme. Elle souhaite avoir plus de temps pour lire. Elle parle de trop nombreuses souffrances dans le monde et ajoute qu'une façon d'avancer personnellement c'est de partager des souffrances Elle souhaite continuer d'évoluer avec le temps et de faire partie de cette évolution vers un monde qui va en s'améliorant.

Me Gabriel Lapointe, réputé avocat criminaliste de Montréal dit de la nouvelle juge. "Avec les causes d'importance qu'elle a défendues, les défis de taille qu'elle a su relever, par sa riche personnalité, madame Westmoreland-Traoré mérite hautement sa nomination de juge. Par ailleurs, il était plus que temps au Québec qu'on ait enfin un juge provenant de la communauté culturelle noire."

Comme le soulignait le juge en chef adjoint Jacques Lachapelle dans son allocution de présentation de serment de Juanita. : « C'est un grand jour pour le Québec.. C'est un événement historique porteur d'espoir ..La Cour du Québec accueille dans ses rangs la première femme noire...C'est un moment de réjouissance qui marque une ouverture à la pluralité.. signe de rapprochements des uns vers les autres, symbole tangible de l'acceptation mutuelle des québécois et québécoises de toutes origines. » La juge Hélène Lebel de la Cour supérieure à Montréal, compagne d'université de Juanita dira lors de la réception suivant la prestation de serment. toute son admiration pour la nouvelle juge qui par sa culture profonde, son intelligence vive et sa personnalité attachante ne peut constituer un plus radieux signe de rapprochement, un plus étincelant symbole d'acceptation mutuelle.

have been ironed out and Jacques and I are "virtually" together. Do not hesitate to phone, fax, or e-mail either of us if you have something to say about or contribute to this publication. And now to the business at hand.

In the last edition you were given the first installment of "Athlete Judge" by Judge Vince Hogan of British Columbia. For those of you who were left dangling, resolution is at hand. Wait until you read the concluding segment before you decide who the guilty party is. Soon you will know "whodunit".

If the name Rubin "Hurricane" Carter does not ring any bells (pun intended!) for you now, it will after you read Judge Shupe's piece on "Lazarus and the Hurricane and Shupe". I will not say more than this: Rubin Carter, better known as "Hurricane Carter", was the No. 1 contender for the middleweight boxing crown in 1967 when he was convicted of murder. He served fifteen years in jail before being released in December, 1981. However, the article from Judge Shupe is only peripherally about Hurricane Carter. It is centrally about Lazarus ("Lesra") Martin, who grew up in the Brooklyn, NY, was inspired by Carter, and on May 21, 1999 was called to the British Columbia bar. If that intro doesn't hook you, I have failed in delivering it. The Shupe piece will not disappoint you.

problèmes sont maintenant choses du passé, et nous sommes maintenant tous deux enfin 'virtuellement' sur la même longueur d'onde.

Vous êtes tous et toutes cordialement invités à nous transmettre commentaires ou textes à publier, par téléphone, télécopieur ou message courriel. Et maintenant, passons au vif du sujet de mon propos.

Dans le numéro précédent, vous avez pu lire la première partie du récit « Athlete Judge », commis par le juge Vince Hogan, de la Colombie-Britannique. Pour ceux qui attendent anxieusement de connaître le dénouement, ils ne perdent rien pour attendre! Vous pourrez bientôt lire le dernier épisode avant de vous faire une meilleure idée du véritable coupable... et vous découvrirez l'identité de l'auteur du délit.

Si le nom Rubin « Hurricane » Carter n'a aucune résonance pour vous, il en aura après avoir lu le savoureux article du juge Shupe intitulé « *Lazarus and the Hurricane and Shupe* ». Je ne puis vous révéler que ceci : Rubin Carter, mieux connu sous le pseudonyme « Hurricane Carter », était le premier en lice pour le championnat de boxe des poids moyens en 1967, avant d'être trouvé coupable de meurtre. Emprisonné pendant 15 ans, il reprend sa liberté en décembre 1981. L'article du juge Shupe n'est toutefois qu'indirectement lié à cette histoire, et porte principalement sur un autre individu, Lazarus (« Lesra ») Martin, élevé à Brooklyn et fortement inspiré par la fougue dudit Carter, par ailleurs admis au barreau de la Colombie-Britannique le 21 mai 1999. Si cette introduction ne vous a pas alléché, alors j'aurai raté l'effet recherché. L'article du juge Shupe, quant à lui, ne vous laissera sûrement pas sur votre faim.

Juanita Westmoreland-Traoré was appointed to the Quebec Court in April of this year. She was described by Juge Bernard Grenier, her mentor, as a “a woman of heart, of reason and of principle”. She is also the first black woman to be appointed to that court. Her path to the bench was not as circuitous, or unlikely as was Lesra Martin’s to the bar, but it is no less interesting. Her fascinating story is here, a tangible result of my collaboration with Juge Roy. He brought it to my attention and it was clear to me that it is a story that should be told to all of you.

More compelling evidence of the positive contribution that Juge Roy is making to this publication may be found in other articles that may be found here: see, for example, the articles on or by Judge Legault, the President-elect of the Association, Judge Daniel, the current President, and Judge Antonio Lamer, who will retire as Chief Justice of Canada in January, 2000. All of these materials were procured or written by Juge Roy.

There is one more piece that is timely and noteworthy. Professor John McEvoy, of UNB Law School and the Canadian Bar Association (New Brunswick) Solicitor’s Journal, have given their permission to re-print an article written by Professor McEvoy, about the dismissal of Provincial Judge Jocelyne Moreau-Bérubé by the New

Madame la juge Juanita Westmoreland-Traoré a été nommée à la Cour du Québec au mois d’avril cette année. Son *mentor*, le juge Bernard Grenier la décrit notamment comme étant « une femme de cœur, de raison et de principes. » Elle est aussi la première femme de race noire à être nommée à ce tribunal. Son accession à la magistrature n’a pas été aussi contorsionnée, voire improbable, que la trajectoire suivie par M^e Lesra Martin pour arriver au barreau, mais n’est certainement pas dénuée d’intérêt. Vous pourrez lire ici l’histoire fascinante de son admission à la magistrature, ce récit étant un fruit tangible de la collaboration établie entre le collègue Roy et moi-même. Il a porté le tout à ma connaissance, et il était dès lors évident quant à moi aussi que cette histoire devait être partagée avec vous tous.

Vous trouverez également dans ces pages d’autres preuves irréfutables des bienfaits de la collaboration établie avec le juge Roy, notamment à la lecture des articles au sujet ou encore provenant du juge Legault, le président-désigné de l’ACJCP, de la présidente actuelle de l’Association, M^{me} la juge Daniel, et au sujet du juge Antonio Lamer, lequel prendra sa retraite comme on sait de ses fonctions de juge en chef du Canada en janvier de l’an 2000. Tous ces articles ont été soit obtenus, soit écrits, par le juge Roy.

Il y a aussi un autre article qui est à la fois opportun et digne de mention. Il s’agit d’un article écrit par M^e John McEvoy, professeur à l’Université du Nouveau-Brunswick, dont nous avons obtenu la permission de publier dans le Journal (en plus de la permission de la rédaction du journal des avocats de la section du Nouveau-Brunswick de l’Association du Barreau Canadien), au sujet du congédiement de la juge Jocelyne Moreau-Bérubé de la Cour provinciale de cette province, en raison de la décision rendue par le Conseil de

To be a judge, she recognises that one needs to be learned in the law and possess a good ability to understand. She would like to exercise her role as a judge with mercy and compassion. It appears necessary to her that, to apply the law in a just and equitable fashion, one must show understanding towards the people involved, and to try to achieve some sense of healing in the search for social peace. She also believes that it is important for people that come before the court have to a good understanding of their legal positions, the challenges that they face and the consequences and responsibilities they may have to assume. It is up to the judge to ensure that they have such an understanding. Our judicial system, she adds, is evolving towards accommodating the victims, and also by the ever-growing presence of representatives of various religious and cultural groups of various backgrounds.

Keeping some time to reflect on improving the lives of people!

In her first speech as a judge, Juanita whose strong commitment to social issues had been the focus of many of those who spoke before her, told the audience of the four objectives she had set for herself in her new functions as a judge. First of all, she intends to stick to her principles even if, as she stated with a glowing smile, that she would no longer be an activist, as if she had ever been one! She also would like to stay close to her community and to many communities while keeping an appropriate distance. She wishes to never forget the people’s quest and hope for justice. And finally, she wishes to be able to keep some time to reflect on the progress that has been made and the road that lies ahead to improve the lot of ordinary people.

At the end of our meeting together in her office, she admitted that she could

avec miséricorde, compassion. Elle emploiera le mot anglais «mercy» Il lui semble nécessaire en appliquant la loi de façon juste et équitable de faire preuve de compréhension envers les personnes visées et tenter de faire œuvre de guérison dans la recherche de la paix sociale. Il faut que les personnes face au tribunal aient une bonne compréhension de leur situation juridique, des enjeux et des conséquences et des responsabilités pour elles. Il appartient au juge de s’assurer de cette bonne compréhension. Notre système judiciaire, ajoute-t-elle est en voie d’évolution dans l’accompagnement des victimes et par la présence de plus en plus importante de représentants de multiples groupes religieux et culturels différents.

Garder du temps pour la réflexion sur l’amélioration de la vie des personnes!

Dans son allocution comme nouveau juge, Juanita dont l’engagement social marqué avait été souligné par les personnes qui ont pris la parole avant elle, a communiqué quatre objectifs qu’elle se fixait dans ses fonctions nouvelles. D’abord, elle entend demeurer fidèle à ses principes même si elle déclare, avec un sourire radieux qu’elle ne sera plus activiste, l’eût-elle jamais été. Elle veut aussi demeurer près de sa communauté et aussi de plusieurs communautés tout en gardant une distance appropriée. Elle désire ne jamais oublier la soif et l’espérance de justice des gens. Et finalement, elle souhaite garder du temps pour la réflexion quant au progrès fait et à faire pour améliorer les conditions de vie des personnes.

À la fin de l’entretien avec elle à son bureau où elle m’avait accueilli avec un radieux bienvenu, elle avoue ne pas s’adonner faute de temps à de multiples

She would be unstable if it were not for change

This ex-dean of the faculty of law of University of Windsor admits to feeling a certain instability in the absence of change. When she is reminded of the many fields and domains that she has walked through during the seasons of her distinctive career, she states that she has always been looking to satisfy her urge to create, to innovate. As she put it: "To live up to new challenges, that is what is gratifying for me. These new activities are really home for me. I am truly satisfied when I see things changing."

She admits that one of her piano teachers, Mrs. Violet States, also present at the ceremony, played an important role in her life. Mrs. States, a great musician in her own right, travelled to play in concerts in different cities. The young girl that Juanita was in those days, much adored by her white piano teachers, was introduced to the African culture by this Black musician that suggested to her to become a member of an African organization. While she was a law student, she was sent to Senegal in Africa, and then to Togo, as group leader. She says that she learned a lot about herself and felt more connected to herself. She had lost her mother at a very tender age. Then, at age six, she and her maternal grandmother went to British-Guyana to assist at what were believed to be during the last moments of her ailing great maternal grandmother's life. But she survived and is still believed to be alive... Juanita is very grateful to her father for his support in continuing her studies and for having encouraged her to master the art of playing the piano.

She is very conscious of the fact that one becomes a good judge only with time. However she approaches her new functions with a fresh serenity and a long preparation received while she held various important functions in the past.

avoue éprouver une certaine instabilité sans les changements. Quand on lui mentionne les multiples champs et plages qu'elle a parcourus à travers les saisons, elle dit que ce qu'elle recherchait en cheminant ainsi c'est de créer, d'innover : « Relever de nouveaux défis, c'est gratifiant pour moi. Je me retrouve dans ces activités nouvelles. Je suis satisfaite quand je vois les choses changer. » Elle confie qu'une professeure de piano madame Violette States, présente à sa prestation de serment a joué un rôle d'importance dans sa vie. Madame States, grande musicienne voyageait beaucoup pour donner des concerts dans diverses villes. La jeune Juanita choyée par ses professeures de race blanche s'ouvre à la culture africaine par cette musicienne noire qui lui suggère une participation à un organisme africain.. Elle ira en Afrique au Sénégal puis au Togo comme chef d'équipe quand elle est étudiante en droit. Elle apprend à se mieux connaître et se situer face à son environnement. Très jeune, elle avait perdu sa mère. Puis à six ans, elle se rend, avec sa grand-mère maternelle, en Guyane britannique pour les derniers moments de son arrière grand-mère maternelle. Cette dernière a survécu et vivrait encore.. Juanita voue une grande reconnaissance à son père notamment pour l'avoir soutenu à poursuivre des études et l'avoir incitée à maîtriser une discipline comme le piano.

Elle est bien consciente qu'on devient bon juge avec le temps. Mais elle aborde ses nouvelles fonctions avec une fraîcheur sereine et une longue préparation donnée par les importantes fonctions occupées par elle dans le passé. Pour être juge, il faut d'abord une bonne maîtrise du droit et une bonne capacité de compréhension, reconnaît-elle. Elle voudrait remplir son rôle de juge

Brunswick Judicial Council. Professor McEvoy has some interesting views on the "proportionality" of the disposition that the Council made of the complaints that it had received against Judge Moreau-Bérubé. What is there about justice being tempered by mercy and compassion that this piece tells us we should remember in our daily work?

If your appetite is whetted read on and it will be satisfied. Until the next time,....

la magistrature du Nouveau-Brunswick. M^e McEvoy y tient des propos intéressants quant au critère de la « proportionnalité » de la disposition de cette affaire par le Conseil après avoir pris connaissance des plaintes qui lui ont été adressées au sujet de la juge Moreau-Bérubé. Qu'est-ce que cet article peut nous enseigner quant à la mesure d'indulgence et de compassion qu'il nous faudrait retenir dans le cadre de l'accomplissement quotidien de nos fonctions?

Si vous salivez déjà à la lecture de ces quelques lignes, je vous invite à poursuivre la lecture de ce numéro du Journal. À la prochaine....

— — — — —
"Ne fais donc jamais de citations classiques: tu exhumas ta grand-mère en présence de ta maîtresse?"
-Léon-Paul Fargue-

— — — — —
"Il y a une espèce de méprise, très commune dans la nature, qu'il me semble n'avoir été vue que par Molière: c'est que les hommes ne se comprennent qu'à mesure qu'ils sont animés des mêmes passions."
-Stendhal-

— — — — —
"S'il n'y avait que trois hommes au monde, ils s'organiseraient; l'un ferait la cour à l'autre, l'appellerait Monseigneur et les deux unis forceraient le troisième à travailler pour eux: car c'est là le point."
-Paul-Louis Courier-

**YEAR 2000 PRESIDENT LOUIS A. LEGAULT:
DREAMS OF COLLEGIALLY
LOUIS A. LEGAULT, PRÉSIDENT POUR L'AN 2000:
RÊVE DE COLLÉGIALITÉ***

In earlier days, under the salt-tax and tallage, two types of income taxes levied on the working class, nobility paid their taxes with their blood. Their responsibility was to ensure, by taking up arms, the protection and defence of all the other inhabitants of the land against invaders. Nowadays, in the United States, as exemplified by the Kennedy family, high consideration is given to the service of fellow citizens actively committed to the political decisions taken in the land. The individual that shall be taking up office, on October 30th 1999, as the new president of the Canadian Association of the Provincial Court Judges (CACPJ), our colleague Louis A. Legault, has never been afraid over the many passed years to devote his time and himself to take care with generosity of the affairs of his fellow citizens as well of his colleagues.



They're twins!

As soon as he was born, Louis was called upon to open himself to others and learn fast that together with another person one can divide the tasks and multiply the pleasures. Indeed, Louis has a twin sister, Louise, who is currently a school principal. He was born in the West Island, two years after the end of the Second World War. In grade seven,

*By Judge Jacques R. Roy.

Jadis, au temps de la gabelle et de la taille, ces deux impôts frappant les classes laborieuses, les nobles versaient l'impôt du sang. C'était leur responsabilité par le service des armes d'assurer la protection et la défense des autres habitants de la cité contre les envahisseurs. De nos jours aux États-Unis, dans la famille Kennedy, on maintient en haute considération le service de ses concitoyens en s'impliquant activement dans les décisions politiques de la cité. Celui qui va entrer en fonction, le 30 octobre 1999, comme nouveau président de l'Association Canadienne des Juges de Compétence Provinciale (A.C.C.P.), notre collègue Louis A. Legault,

n'a pas craint depuis des années de donner de son temps et de sa personne pour s'occuper avec générosité des affaires de ses concitoyens ou de ses collègues.

C'est un jumeau

Dès sa naissance, Louis a du s'ouvrir à l'autre et apprendre qu'à deux on divise les tracas et on multiplie les plaisirs. Louis a une jumelle, Louise qui est actuellement directrice d'école. Il

*Par le juge Jacques R. Roy.

by many lawyers whom she had taught. In 1985, she became the first president of the Conseil des communautés culturelles du Québec. During her swearing-in many members of the Conseil were present and openly pleased and proud of her. Judge Robert Sacchitelle, from Quebec's Youth Court, who was present at the ceremony, said approvingly that "Juanita is a leader in Quebec".

Under Premier Bob Ray, the government of Ontario gave Mrs. Westmoreland the mandate to establish a commission for the purpose of managing the province's Employment Equity programs. The government of Ontario was then blamed for having appointed a Quebecker, as it was later also when David Levine was appointed Director General of a hospital in Ottawa. In 1995, after the province had made important progress on equal pay issues, Ontario Premier Mike Harris abolished the Employment Equity Commission, which served as a blueprint for Quebec's own Commission québécoise d'équité salariale. Judge Marykay Omatsu, of the Court of Ontario, Criminal Division (the first judge of Asian origin in Canada) came to know Juanita during those years while she was in Toronto. Judge Omatsu was in Montreal especially for the ceremony of her swearing in as a judge, and she said of Juanita, "with her wide experiment, she will continue to be a role model".

After leaving the Employment Equity Commission, Mrs. Westmoreland was appointed dean of the faculty of law of Ontario's University of Windsor, a function that she held right up until her recent judicial appointment. A smiling enthusiastic Black law student from the same university, that was present at the ceremony admitted that her passion for law and her desire to become a lawyer are rooted in her meeting with Mrs. Westmoreland.

enseigné la retrouvent avec joie, voire vénération. En 1985, elle devient la première présidente du Conseil des communautés culturelles du Québec. Durant sa prestation de serment Le juge Robert Sacchitelle de la Chambre de la jeunesse, présent à cette cérémonie, répète que "Juanita c'est une figure de proue au Québec." Le gouvernement ontarien du premier ministre Bob Rae donnera mandat à Me Westmoreland de créer une commission pour gérer les programmes d'équité de l'emploi. On reproche alors au gouvernement d'Ontario d'avoir nommé une québécoise un peu comme plus tard on le fera dans le cas de David Levine quand il sera nommé directeur d'un hôpital à Ottawa. En 1995, après d'importants progrès en matière d'équité salariale, le premier ministre Mike Harris abolit la Commission d'équité dont le modèle va servir d'exemple à la Commission québécoise d'équité salariale. La juge Marykay Omatsu de la cour criminelle d'Ontario, première juge d'origine asiatique au Canada a connu Juanita à cette époque à Toronto. Venue spécialement à Montréal pour la prestation de serment, elle déclare que Juanita : « with her wide experiment, will continue being a role model » Après sa sortie de la Commission d'équité, Juanita devient doyenne à la faculté de droit de l'Université de Windsor en Ontario, poste qu'elle va occuper jusqu'à sa récente nomination de juge. Une souriante étudiante de race noire de la même faculté de Windsor présente à la prestation de serment avoue que sa passion du droit et son désir de devenir avocate lui viennent de sa rencontre avec madame Westmoreland.

Serait instable sans les changements
L'ex doyenne de droit de Windsor

she headed off to the other university on Mount Royal, studying in French, with classmates, now judges Paul Grégoire, Gilles Cadieux, Ginette Durand-Brault, Lucien Roy, Yves Mayrand, André Saint-Cyr, Hélène Lebel and former Quebec premier, Daniel Johnson. As a condition of her admission to the Université de Montréal, she was required to pass a linguistic evaluation test, for which she received the results many months later during the Holiday Season, and after she had already completed her first semester of law studies. She said then that a linguistic test is useful to evaluate the general knowledge and abilities of a person, and not only their knowledge of a language...

Judge Jacques Lachapelle presented the new judge at the Montreal courthouse as she took her oath of office on Friday May 28th, during which she received two warm applauses. He confided a yet untold story dating back to Juanita's university days. She obtained a coveted nobility title when she was elected Miss Thémis of the Law Faculty. After receiving this distinction, she obtained her law degree and was called to the Bar in 1967. She then went on to pursue a doctorate in administrative law from the Sorbonne, in Paris, and came back with it and the man of her dreams, Ismaël Traoré, who later confided to me that the name Traoré is just as popular in Mali and in Guinea-Bissau as are the names Tremblay or Gagnon in the Saguenay! The couple has two sons, Bangaly and John Abbas, and Juanita cannot hide her pride for them.

Law Professor in Quebec and Dean of Law in Ontario

Juanita became a law professor at Université de Montréal and at Université du Québec. While she was receiving her training at Youth Court in May, before her oath of office and during her training in her new judicial functions, she was greeted with joy and nearly veneration

au temps des juges Paul Grégoire, Gilles Cadieux, Ginette Durand-Brault, Lucien Roy, Yves Mayrand, André Saint-Cyr, Hélène Lebel et de l'ancien premier ministre Daniel Johnson. Afin d'être admise à la faculté de droit de l'Université de Montréal, elle doit subir un examen de connaissances linguistiques dont elle recevra le résultat plusieurs mois plus tard aux vacances des fêtes quand elle a déjà terminé son premier semestre d'études en droit.. Elle dira qu'un test linguistique sert à évaluer les connaissances générales et les aptitudes d'une personne et non uniquement sa connaissance d'une langue proprement dite.. Celui qui présenta la nouvelle juge au palais de justice de Montréal lors de sa prestation de serment, vendredi le 28 mai, quand elle reçut deux ovations enthousiastes, le juge Jacques Lachapelle confia un fait inédit du temps de la vie d'université de Juanita. Elle y obtient alors « un titre de noblesse fort enviable puisqu'elle est élue Miss Thémis de la Faculté de droit. Après ce noble titre de distinction » elle reçoit son diplôme en droit et s'amène au barreau en 1967. Elle décroche ensuite un doctorat en droit administratif de la Sorbonne à Paris d'où elle revient avec l'homme de sa vie, Ismael Traoré qui me dira que ce nom Traoré est aussi populaire au Mali et en Guinée-Bissau que Tremblay ou Gagnon au Lac Saint-Jean. Le couple aura deux garçons dont Juanita n'est pas peu fière, Bangaly et John Abbas.

Professeure de droit au Québec puis doyenne de droit en Ontario

Elle devient professeure à l'Université de Montréal et à l'Université du Québec. Lors d'un séjour à la Chambre de la jeunesse en mai, avant sa prestation de serment, dans le cadre d'une formation dans ses nouvelles fonctions, des avocats à qui elle avait

there were three kids of his family to complete elementary school together; Louis and his sister, and their younger sister, Monique, today an actuary, who had jumped grades to catch up to them. When Louis reached the age of reason, his parents, still living today, immigrated to another part of the West Island in a rather francophone pocket within a rather anglophone village called Beaconsfield, namely in Beaufort, which used to be a fur trading post.

Louis full-heartedly took in his years at boarding school during college where he completed classical studies with the fathers of Sainte-Croix, who still today are the caretakers of one Montreal's most popular site, St. Joseph's Oratory. During those years, he made many discoveries in sports and cultural activities, in part because of the openness of his schoolmasters at the time. He is very grateful to his parents for having placed him permanently at the college where he lived so many glorious teenage years. It's during law school at McGill University that he met renowned Montreal lawyer and fellow student, Julius Grey, and also Michel Fleury, that he considers as a brother. His teachers were, among others, Judge Jean-Louis Beaudoin, currently serving on the bench of the Quebec Court of Appeal, and Judge Hugessen, currently at the Federal Court of Appeal. Today, he is the only lawyer of his *conventum* to become a judge.

Articling at the office of then-lawyer Pierre A. Michaud

Future lawyer Legault did his articling at the office of Desjardins & Ducharme, the same office where worked the future Chief Judge of Quebec's Court of Appeal, Judge Pierre Michaud. He then worked for legal aid in criminal law with future Judge André

est né dans la partie anglophone de l'île de Montréal, dans le West Island, deux ans après la fin de la deuxième guerre mondiale. En septième année à l'école, ils étaient trois de sa famille à terminer en même temps leurs études primaires: Louis et sa jumelle et leur jeune sœur, Monique, maintenant actuaire, qui "avait sauté des classes" pour les rejoindre. Quand Louis commence d'avoir l'âge de raison, ses parents qui vivent encore, immigrèrent dans une autre partie du West Island dans un îlot francophone au sein du village plutôt anglophone de Beaconsfield, appelé Beaufort, jadis poste de la traite des fourrures. Louis a vivement goûté ses années de collège comme pensionnaire durant ses études classiques chez les pères de Sainte-Croix qui animent toujours un des lieux les plus fréquentés de Montréal, l'Oratoire Saint-Joseph. Ces années de collège lui ont permis grâce à des maîtres ouverts de participer à des découvertes dans le domaine culturel et sportif. Il est reconnaissant à ses parents de l'avoir placé en permanence dans un collège pour y vivre les années glorieuses de son adolescence. C'est à l'Université McGill qu'il va étudier le droit avec comme condisciples Julius Grey, avocat réputé de Montréal et Me Michel Fleury qu'il considère comme son frère. Il aura comme professeurs, Jean-Louis Beaudoin actuel juge de la Cour d'Appel du Québec et le juge Hugessen maintenant à la Cour d'appel fédérale. De sa promotion, il serait le seul avocat à devenir juge.

Stagiaire au bureau de l'avocat Pierre A. Michaud

Le futur avocat Legault fera sa cléricature au cabinet Desjardins &

Duranleau and other colleagues who were later appointed to Montreal's Criminal Division. He later joined the office of Pouliot & Mercure with Pierre Verdy, currently on the bench of the Cour du Québec and also Jean Legault, now deceased Superior Court judge. He then decides to open up his own law practice and to establish a family within which three children are born. He also becomes fully immersed in numerous community outreach groups, community-based clubs, or other school-based organizations, and committees created by his professional order. As a young lawyer, he was soon appointed municipal judge and became very active in their association, the Conférence des juges municipaux. From 1986 to 1998, he is appointed the first representative of the Conférence des juges municipaux to the Conseil de la Magistrature du Québec. He sets up training courses for municipal judges, with guest appearances by big-name legal stars, such as Judge Claude Bisson, then chief judge of the Cour du Québec, and the Honourable Judge Antonio Lamer, of the Supreme Court of Canada. Under his chairmanship, the Conférence des juges municipaux tackles with rare conviction the subjects of judicial independence and judicial ethics. Along with his colleague Judge Gilles Cadieux, he actively participates in a working group set up by Quebec's Department of Justice to study the reform of municipal courts.

Louis A. Legault reshuffles luncheon seating arrangements

In May of 1990, he is appointed to the Cour du Québec, at Montreal's Criminal Division. From 1994 to 1997, he is president of the Juriclub, a social gathering for judges working at the Montreal courthouse, the "Palais de Justice". He brazenly reshuffles the

Ducharme, au bureau du futur juge en chef de la Cour d'Appel du Québec Pierre Michaud. Puis il va œuvrer à l'aide juridique en droit criminel avec le futur juge André Duranleau et d'autres collègues qui vont siéger plus tard à la Chambre criminelle de Montréal. Il se rend ensuite au cabinet Pouliot & Mercure où il rejoint Pierre Verdy, actuel juge à la Cour du Québec et Jean Legault, juge décédé de la Cour Supérieure. Il ouvre son propre cabinet d'avocat, fonde une famille regroupant trois enfants. Il plonge dans des activités d'aide à la collectivité dans des clubs sociaux ou des organismes scolaires ou des comités relevant de son ordre professionnel. Jeune avocat, il va bientôt devenir juge municipal et s'impliquer à fond dans la Conférence des juges municipaux. Il sera de 1986 à 1988 le premier représentant de la Conférence des juges municipaux à siéger au Conseil de la Magistrature du Québec. Il va organiser la formation des juges municipaux, avec des intervenants prestigieux comme le juge Claude Bisson alors juge en chef de la Cour du Québec et l'Honorable Antonio Lamer de la Cour Suprême du Canada. Sous sa présidence, la Conférence des juges municipaux va s'engager avec conviction dans les dossiers de l'indépendance judiciaire et de la déontologie. Avec son collègue Gilles Cadieux, il va participer activement au groupe de travail du ministère de la justice sur la réforme des cours municipales.

Louis A. Legault brise les tables

En mai 1990, il devient juge à la Cour du Québec à la chambre criminelle de Montréal. De 1994 à 1997, il est

JUANITA WESTMORELAND-TRAORÉ: A WOMAN OF HEART, REASON AND PRINCIPLE* JUANITA WESTMORELAND-TRAORE, FEMME DE CŒUR, DE RAISON ET DE PRINCIPES!*

When she receives me in her new office at the Montreal courthouse in late afternoon sometime in May, with her welcoming smile, she says to me repeatedly: "Welcome, you are welcomed to come in." Juanita Westmoreland-Traoré explained to me that since her appointment as a judge in mid-April her colleagues have told her those words so many times that she makes a point and it is a pleasure for her to offer those welcoming words to me.

Judge Bernard Grenier, sitting in Montreal's Criminal Division, had this to say about his colleague of whom he is the mentor. She is a new judge and he has known her since law school at the Université de Montréal: "Juanita was first of the class. She is such a soft and complete person, that convinces people by her heart and reasoning rather than by pounding her fists on a table. She is a woman of heart, of reason and of principle. She is calm, reserved and has great depth."

Juanita Westmoreland-Traoré is a daughter of immigrants from British-Guyana, known as Guyana since that country's independence in 1970. She was born in Verdun, a suburb of Montreal in 1942. She completed her elementary and high school studies in Montreal, in English. Then, after going to Marianapolis College, where she was elected president of the student association, instead of going to McGill,

*By Judge Jacques R. Roy.

Quand elle me reçoit dans son nouveau bureau du palais de justice de Montréal, dans cette fin d'après-midi de mai, avec un sourire accueillant, elle me répète "Bienvenu, soyez le bienvenu." Juanita Westmoreland-Traoré m'explique que depuis sa nomination comme juge à la mitan d'avril, des collègues lui ont tellement dit et répété ce mot de bienvenue qu'elle se fait un agréable plaisir de me le servir à son tour à mon arrivée chez elle.

Bernard Grenier, juge à la chambre criminelle de Montréal, dit de sa collègue dont il est le tuteur comme nouvelle juge et qu'il connaît depuis l'époque des études en droit à l'Université de Montréal: "Juanita, c'était une première de classe. C'est une femme douce et entière qui convainc par le cœur et la raison plutôt que par des poings sur la table. C'est une femme de cœur, de raison et de principes. Elle est calme, réservée et possède beaucoup de profondeur."

Juanita fille d'immigrants de la Guyane britannique, devenue Guyana depuis son indépendance en 1970, est née à Verdun près de Montréal en 1942. Elle fait ses études primaires et secondaires, à Montréal en anglais. Puis, au sortir du collège Marianapolis dont elle avait été élue présidente, au lieu de se diriger à McGill, elle s'inscrit en droit, en français, sur le Mont-Royal

*Par le juge Jacques R. Roy.

DÎNER DE JUGES!*

Quand je dis que trop de dîners d'avocats sont des prétextes à déblatérer sur le dos des absents, et que c'est encore pire pour un dîner de juges, je suis non seulement mal à l'aise mais, pire peut-être, je ne suis pas crû. Oh, non pas que je suis meilleur que les autres. L'occasion, l'herbe tendre, et je ne sais quoi d'autre m'incitent bien à médire aussi ou à calomnier. Dans la tourmente du moment il m'arrive de me laisser aller aussi. A force de le regretter, j'ai trouvé plus commode, pour le bien de mon âme, et pour éviter d'entendre ce que je n'ai pas à savoir sur autrui, de fuir la plupart du temps les dîners de juges. Les 'potinages' ne me manquent pas du tout, et encore moins tous ces manques de charité dont je suis témoin- et parfois acteur- à chaque fois ou presque que je joins une table de nos seigneureries. J'ai donc pensé que Courteline pourrait être un meilleur messenger, puisque nul n'est prophète en son pays. Et je cite:

«Il se retrouvait chaque soir avec des amis, Richepin, Auriol, Lajeunesse,

et quelques autres dans un grand café des Boulevards. Et bien entendu chaque fois que l'un deux quittait l'assemblée pour rentrer chez lui, ceux qui restaient parlaient de lui sans le ménager. Un soir qu'ils ne restaient plus que deux, Courteline et Lajeunesse, celui-ci, s'en allant, lui dit :

«Je ne suis pas mécontent de vous laisser seul. Au moins vous ne pourrez pas dire du mal de moi»

La jeunesse s'éloigne. Courteline, alors appelle le garçon et lui dit :

«Vous voyez ce monsieur qui s'en va, là-bas, c'est un con. «La difficulté provient évidemment du fait que ce texte pourrait laisser croire que je me préoccupe de ce que les gens disent de moi quand je ne suis pas là. Mais là n'est pas mon propos, on l'aura compris. Il y a cependant un os. Comment en effet raconter cette citation sans manquer d'égards sinon de charité à l'égard de Courteline. Que faire?»

*Par le juge Jean Claude-Gagnon.

seating arrangements of that select club of judges. He invites judges from all jurisdictions to leave their reserved tables and to eat together, to exchange their views and to listen together to widely acclaimed guest speakers. From 1991 to 1995, he chairs the CAPCJ's Committee on bilingualism. In 1996, he is elected third Vice-president of the Association, then second then first Vice-president for the 1998 –1999 term. In April 1999, he is appointed President of the Association, as had before been Judge Yvan Mercier, also from Quebec, and shall soon integrate his new functions in October during the Quebec Conference.

He is quite fond of having participated at the Canadian Judges Forum bringing together for the first time federal and provincial judges, in Edmonton, last August. He is an unconditional admirer of Chief Judge Antonio Lamer who unfortunately announced his resignation at that event. It is Chief Judge Lamer for whom "a judge is a judge is a judge" that communicated to him the joy and the pride of being a judge. Collegiality and solidarity, those are the major themes he will be advocating during his presidency. His wish is that all provincially appointed chief judges and puisne judges continue to work together now more than ever before in concertation with each other and in exchanging their views together on all matters touching the judicial world, following the cue of judges in Saskatchewan and Ontario. He proposes that judges talk about and talk together about intra-judicial independence. He would like to see a table that is always set, around which provincial as well as federal judges would exchange their views concerning judicial life in general, and also concerning specific issues, like training

président du Juriclub, organisme social pour les juges oeuvrant au palais de justice de Montréal. Il brise alors les tables de ce club sélect de magistrats. Les juges de toutes juridictions confondues quittent leurs tables réservées et mangent ensemble, se parlent et reçoivent le midi des conférenciers prestigieux. De 1991 à 1995, il préside le Comité sur le bilinguisme de l'A.C.J.C.P. En 1996, il est élu troisième vice-président de l'Association puis deuxième puis premier pour l'an 1998-99. En avril 1999, il accède à la présidence de l'Association comme le juge Yvan Mercier de Québec jadis l'avait fait et va occuper ses nouvelles fonctions en octobre lors du congrès à Québec. Il a vivement apprécié le Forum des juges canadiens réunissant pour la première fois juges fédéraux et provinciaux à Edmonton en août 1999. Il voue une franche admiration au juge en chef Antonio Lamer qui y annonçait alors malheureusement son départ. C'est monsieur le juge Lamer pour qui 'a judge is a judge is a judge' qui lui a transmis le plaisir et la fierté d'être un juge. Il entend faire de la collégialité et de la solidarité le thème majeur de sa présidence. Il souhaite que les juges en chef et les juges puînés de compétence provinciale continuent à travailler encore davantage ensemble en se concertant et en échangeant leurs vues sur le monde judiciaire comme on le fait notamment en Saskatchewan et en Ontario. Il désire qu'on parle et qu'on se parle entre juges de l'indépendance intra-judiciare. Il souhaite une table toujours dressée autour de laquelle se réunissent juges provinciaux et juges fédéraux pour

courses for judges, judicial independence, motivation for judges, the presence of judges within the community as participants expressing themselves on certain issues. He greeted with much enthusiasm the speech given by Judge L'Heureux at Edmonton on judicial independence in Canada. He opines that, if we were to regroup the various budgets of all the provinces and the federal government in the judicial field, we could focus those huge financial resources towards judicial training and development in Canada in a more coherent, dynamic and cost-effective way.

The new president of the CAPCJ dreams of a panCanadian Juriclub where judges from all horizons and all jurisdiction would come to one same table to talk about the citizens they serve and justice and other judges, for the betterment of men, women and children of our era.

échanger quant à la vie judiciaire en général, et notamment, quant au dossier de la formation des juges, à leur indépendance, à leur motivation, à leur présence dans la cité quant à certains débats dans lesquels ils doivent parler. Il se déclare enthousiasmé par l'allocution de madame la juge L'Heureux à Edmonton sur l'indépendance judiciaire au Canada.. Si on regroupait les divers budgets des provinces et du fédéral, dit-il, on pourrait dégager des sommes importantes pour la formation et le développement des juges au Canada d'une façon plus cohérente, dynamique et économique.

Le nouveau président de l'ACJCP rêve d'un Juriclub pancanadien où se réuniraient autour d'une même table les juges de tous les horizons et de toutes les juridictions pour parler de justiciables et de justice et de juges pour les hommes et les femmes et les enfants d'aujourd'hui .

— — — — —
"L'ironie n'est souvent que la pudeur de la tendresse."
-Etienne Rey-

— — — — —
"Chez beaucoup d'hommes, la parole précède la pensée. Ils savent seulement ce qu'ils pensent après avoir entendu ce qu'ils disent"
-Gustave Lebon-

— — — — —
"Tous les hommes sont frères et comme tels savent trop de choses sur leur compte réciproque"
-Joseph Conrad-

to satisfy the legitimate expectations of the public.

I urge you then to fully assume your responsibility to transform your associations and your courts into large forums and meeting places where we are capable of refining our words by our words and our actions the requirements needed to conform with the great ideals of truly democratic justice system.

And, I also urge that we all assume the responsibility of participating in our provincial association as well as in our Canadian association of provincial court judges to fully contribute in the redefinition and fine tuning of the conditions in which true judicial and intra-judicial independence can evolve. So that together we may live our collegiality and solidarity.

aussi dépendant de la confiance de sa magistrature dans sa mission, de la confiance de la magistrature dans sa capacité de répondre aux attentes légitimes du public.

Aussi, assumez votre responsabilité de faire de vos associations et de vos Cours de grands lieux de rencontres où nous raffinons dans la parole et l'action les exigences de la conformité aux grands idéaux d'un système de justice véritablement démocratique.

Et, de grâce, assumons cette responsabilité de participer à notre association provinciale et à notre Association Canadienne des Juges des Cours Provinciales pour contribuer à redéfinir et raffiner les conditions d'une véritable indépendance judiciaire et intra-judiciaire. Nous avons des collégialités et des solidarités à vivre. De grâce!

— — — — —
"There is no pleasure in having nothing to do. The pleasure is having lots to do and not doing it."
-Mayur Patel-

— — — — —
"Ces gens qui vous demandent des critiques veulent seulement des éloges."
-Somerset Maugham-

With transparency and an open mind, as each of us assumes hers and his responsibilities, acting in good faith, let us refine the requirements of our respective attributions and not hesitate to support our Associations and Chief Judges in the pursuit of our reflections, our visions and our needs. We must build these alliances, adapt them to the task at hand. We need the energy of each other, failing which our strength will only be weaker. To convince us of that, we may only remind ourselves of a country in the Caribbean where most of the judges on the front lines of the judicial system have no chief judge nor any professional association.

How is it possible not to state then that the existence of associations, judges and chief judges that respect the requirements of judicial independence, that are courageous and knowledgeable are not an essential ingredient to the establishment of an independent justice system that is called upon to apply impartially the rule of law. The democratisation of our associations and of our Courts must be seen as a way to protect against any derailment, complacency and blame that are all counterproductive as to the independence and legitimacy of the judicial authority. It is up to the judiciary to jointly and severally assume that responsibility towards making that vital professional space that are the associations and Courts and truly forums of solidarity and collegiality, discernment and emulation.

Our justice system not only needs to full confidence of the general public. It also is dependant on the confidence of the judiciary it its mission, the full confidence of the judiciary in its capacity

une occasion de développer auprès du plus grand nombre la relève de demain qui comprenne véritablement les enjeux de la crédibilité de l'autorité judiciaire.

Avec transparence et ouverture, chacun assumant ses responsabilités, chacun agissant de bonne foi, raffinons les exigences de nos tâches respectives et n'hésitons pas à soutenir nos associations et nos juges en chef de nos réflexions, de nos visions, de nos besoins. Nous avons des alliances à bâtir, à adapter. Nous avons besoin de la force l'un de l'autre au risque d'être affaibli. Qu'il suffise pour s'en convaincre de se rappeler un pays des Caraïbes dont une grande partie des juges de première instance n'ont ni Juge en Chef, ni association professionnelle.

Comment ne pas affirmer que l'existence d'associations, de juges et de juges en chef respectueux des exigences de l'indépendance judiciaire, courageux et éclairés ne constitue pas une condition essentielle à la mise en place d'un système de justice indépendant devant appliquer impartialement la règle de droit. La démocratisation de nos associations et de nos Cours constitue une mesure de protection contre les dérapages, complaisances et reproches qui heurtent l'indépendance et la légitimité de l'autorité judiciaire. Aussi, il appartient à la magistrature d'assumer conjointement et solidairement cette responsabilité de faire de cet espace professionnel que sont les associations et les Cours des lieux de solidarité et de collégialité, de clairvoyance et d'émulation.

Notre système judiciaire n'a pas que besoin de la confiance du public; il est

Judging a Judge

John P McEvoy
Faculty of Law, U. N. B.

On 15 April 1999, the Lieutenant Governor in Council removed Her Honour Jocelyne Moreau-Bérubé from office as a Judge of the Provincial Court of New Brunswick. The order-in-council automatically followed upon the recommendation of the New Brunswick Judicial Council by virtue of section 6.11 (8) of the Provincial Court Act, R.S.N.B., 1973, c. P-21, as amended by S.N.B. 1987, c. 45, s. 8 : "The Lieutenant Governor in Council shall, on receipt of the Judicial Council's recommendation... remove the judge from office."

The critical questions are whether the Judicial Council acted within its jurisdiction in making the recommendation to remove Judge Moreau-Bérubé from office and whether that recommendation was proportional to the misconduct. The matter is now under judicial review.

BACKGROUND

The incident which led to the removal from office of Judge Moreau-Bérubé occurred on Monday, 16 February 1998 when, sitting in Tracadie-Sheila, she made remarks from the bench during a sentencing hearing. Her remarks, which questioned the integrity of the population of her judicial district in the Acadian Peninsula [as translated and reported in the decision of the Judicial Council] were as follows:

If a survey were taken of the Acadian Peninsula of the honest people as against the dishonest

people, I have the impression that the dishonest people would win. We have now got to the point where we can no longer trust our neighbour next door or across the street. In the area where I live, I wonder whether I'm not myself surrounded by crooks. And, that is how people live in the Peninsula, but we point the finger at outsiders. Ah, we don't like to be singled out in the Peninsula. And it makes me sad to say this because I live in the Peninsula now. It's my home. But look at the honest people in the Peninsula, they are very few and far between, and they are becoming fewer and fewer.

On Thursday, 19 February 1998, Judge Moreau-Bérubé apologized in open court for her remarks.

Media reports concerning Judge Moreau-Bérubé's remarks led to a number of complaints to the Judicial Council. Following an investigation by the Chief Judge (per s. 6.6(3) of the Act), a three member inquiry panel was established to consider two formal allegations against Judge Moreau-Bérubé: that her remarks (i) constituted "misconduct" and (ii) rendered her unable to perform her duties per ss. 6.6(1), 6.9(10) and 6.11(1) of the Act. It should be noted that though the statutory language regarding "inability to perform duties" arguably refers to physical or mental infirmity, the phrase is not completed by the familiar "by reason of age or infirmity" as found in the former Judges Act, R.S.C. 1970, c. J-1, s. 30.

Counsel for the panel obviously considered the provision applicable when framing the allegations against Judge Moreau-Bérubé.

The inquiry panel majority, Justice Thomas Riordon and lay member Susan Calhoun, found that Judge Moreau-Bérubé committed judicial misconduct by her injudicious remarks but determined that, though deserving of sanction, her misconduct was not such as to render her unable to perform her judicial duties. The inquiry panel majority recommended that Judge Moreau-Bérubé be reprimanded and ordered to take additional judicial training. The third member of the panel, Judge George S. Pérusse, found no judicial misconduct in the remarks of Judge Moreau-Bérubé.

THE JUDICIAL COUNCIL

The Judicial Council decision of 9 April 1999 begins with an analysis of the jurisdiction conferred upon the inquiry panel by s.6. 11(1) of the Act:

6.11(1) After the formal hearing, the panel shall report to the chairman its findings of fact and its findings as to the allegations of misconduct, neglect of duty or inability to perform duties of the judge whose conduct is in question.

Construing this provision, the Judicial Council determined that the jurisdiction of the inquiry panel does not extend to recommendations as to the consequences of its findings i.e. the appropriate sanction. The Judicial Council held that it alone, per s. 6.11(4) of the Act, may make recommendations as to the consequences arising from the findings of the inquiry panel. This interpretation accords with the express wording of the legislation.

Freed from the recommendation of the inquiry panel as to sanction, the Judicial Council's consideration of the panel's report led it to recommend removal from office. The Judicial Council expressed the issue before it as being:

whether there is a reasonable apprehension that Judge Moreau-Bérubé would not be able to act in a completely impartial manner in the performance of her duties because of not being able to set aside the pre-conceived opinions and ideas that she expressed when making a determination based on the evidence in a given case.

The Judicial Council concluded that

a reasonable and well-informed person would conclude that the misconduct of the judge has undermined public confidence in her and would have a reasonable apprehension that she would not perform her duties with the impartiality that the public is entitled to expect from a judge.

Accordingly, the Judicial Council recommended removal from office.

COMMENT

The jurisdiction of the Judicial Council in relation to a report of an inquiry panel is found in s. 6.11(4) of the Act:

6.11(4) Based on the finding contained in the report and representations, if any, made [to it under ss. 6.11(3)], the Judicial Council may

(a) dismiss the complaint,

shall eventually be chalked up as a negative in the records of history. Everything finishes by coming out in the open. It takes a lot of courage and vision to practice this magnificent profession for women and men that is the office of judge, to take on our responsibilities within our associations and the Courts.

It is thus without hesitation that I invite all of you to contribute with all your heart to your provincial association and your Canadian association, just as well as you do to your Courts. I challenge all of you then to contribute to the reflection and the actions that shall be written in these history pages by all of us together. I pray all of you to come and defend with pride the Judiciary and our system of Justice. Evolution will necessarily come through the learnings that collegiality and transparency shall bring.

I urge you also to act with the same conviction, in renewed collegiality, within your Courts, the foremost and wide spaces where judges evolve with their peers and other puisne judges. **Nothing that evolves around the administration of justice and the judicial functions should remain estranged to us.** There lies the responsibility of our Associations, Chief Judges and puisne judges, in those shared responsibilities that are common to us and also distinct in our profession.

Our concern for instilling democracy and transparency within our organizations is paramount if we are to promote a true sense of belonging and shared awareness of the problems that we all face. It is a wonderful opportunity to instill in as many of our colleagues as possible that will take up the same challenge, the clear nature of what we face as it speaks to the credibility of the judicial authority.

justice. Toute inaction, tout refus de nous conscientiser et de nous solidariser et toute déresponsabilisation seront éventuellement condamnés par l'histoire. Toute finit par se savoir. Il en faut du courage et de la vision pour exercer ce magnifique métier de femme et d'homme qui est d'être juge et pour assumer nos responsabilités au sein des associations et des Cours.

Sans hésitation, je vous invite à œuvrer au cœur de votre association provinciale et de votre association canadienne et au cœur de vos Cours. Je vous mets au défi de contribuer à la réflexion et à l'action dans ces pages d'histoire qu'ensemble nous écrivons. Je vous sollicite de défendre avec fierté la Magistrature et notre système de Justice. L'évolution passe par l'apprentissage de la collégialité et par la transparence.

Avec la même conviction, je vous invite à agir dans une collégialité renouvelée de vos Cours, espaces premiers et vastes de rencontre des juges premiers parmi leurs pairs et des juges puinés. **Rien de ce qui touche à l'administration de la justice et la fonction judiciaire ne devrait nous être étranger.** Telle est la responsabilité des Associations, Juges en chef et Juges puinés dans ces responsabilités communes et particulières qui sont les nôtres.

Ce souci de démocratisation et de transparence de nos organisations demeure la clef pour favoriser un véritable sentiment d'appartenance et une conscientisation partagée des problèmes qui nous confrontent. C'est

care of its own, it must mind its own business...!

Success is not necessarily guaranteed, but if we all work together with perseverance and solidarity, we are on the right track for sure. Now more than ever, we must get a better handle on our respective roles, those of puisne judges, our professional associations and the chief justices so that we may continue our quest strengthened by the energy, the knowledge and the stringent requirements of the task at hand, looking to embrace the force and vision of those who bring us together to embrace a common project, a sense of collegiality where all judges shall find true and democratic space where they can focus their energy.

We must therefore examine openly the structures of our associations and of our courts to ensure that they are more and more in line with our goal that the judiciary participate in a meaningful way in the decision of our court. We must then strive for and live the collegialities within our associations, our courts and the Canadian judiciary as a whole.

Our duty is also to affirm our solidarity, to make it happen and not remain on the sidelines of the major debates on matters of principle, may they be in the provincial, Canadian or international arena, that affect the judiciary. Public interest is of the essence here. We have the duty to be totally informed and to act accordingly, thus bringing our own contribution into writing our own page of history into the books of justice. Any inaction on our part, any refusal on our part to become more aware and to show solidarity, any refusal to assume such responsibility

à informer le public et à dialoguer avec les différents intervenants du monde de la Justice. La Magistrature doit s'occuper de ses affaires, elle doit se mêler de ses affaires.

Le succès n'est pas à tout coup garanti, mais tous ensemble, avec persévérance et solidarité, nous sommes sur la bonne voie. Plus que jamais, nous devons mieux comprendre nos rôles respectifs, ceux des juges puinés, des associations professionnelles et des juges en chef pour qu'enfin nous cheminions forts, éclairés, exigeants, en besoin de la force et de la vision de ceux qui nous rassemblent au cœur d'un projet commun et d'une collégialité où les juges trouveront un espace réel et démocratique pour se concerter.

Il nous faut examiner de façon ouverte les structures de nos associations et de nos Cours pour qu'elles répondent de mieux en mieux aux impératifs d'une participation réelle de la magistrature aux décisions de Cour. Nous avons des collégialités à vivre, à inventer au sein de nos associations et de nos Cours et au sein de l'ensemble de la magistrature canadienne.

Nous avons le devoir d'affirmer notre solidarité, de la concrétiser et de ne pas demeurer insensibles aux grands débats de principe, qu'ils soient provinciaux, canadiens et même internationaux qui touchent la magistrature. L'intérêt public le commande. Nous avons le devoir de clairvoyance et le devoir d'agir pour contribuer notre page d'histoire de la

- (b) direct the chief judge to issue a reprimand to the judge with such conditions as the Judicial Council considers appropriate,
- (c) [re misconduct of the chief judge]
- (d) recommend to the Lieutenant-Governor in Council that the judge be removed from office.

Critical to the analysis in this comment are the opening words of the subsection:

"Based on the findings contained in the report and the representations... the Judicial Council may ...". Therefore, while the Judicial Council alone has jurisdiction to determine the consequences arising from the report of the inquiry panel, its determination must be "based on the findings contained in the report".

I interpret this to mean logically consistent with the findings of the inquiry panel. Accordingly, the key issue is whether the findings of the inquiry panel are logically consistent with the Judicial Council's recommendation that Judge Moreau-Bérubé be removed from office. Further, it must always be kept in mind that the right to a hearing before an independent and impartial tribunal is a constitutional right guaranteed by s. 11(d) of the Charter. Judicial free speech is not unlimited but exists to support the value of an independent and impartial judiciary.

The inquiry panel having found misconduct, the Judicial Council had three options under the Provincial Court Act, s.6.11(4) - to direct a reprimand by the Chief Judge; to direct a reprimand with conditions; and to recommend removal from office. It seems obvious

that these options are on a scale of consequences which become progressively more onerous depending on the level of incompatibility of the misconduct with the office of judge. By providing options, the Legislature implicitly recognizes that not all misconduct by a judge warrants removal from office - that is, misconduct so destructive of the office of judge that the person must be removed from office. Like termination in employment law, removal from office must be considered the death penalty for judicial misconduct.

As noted above, the Judicial Council determined that public confidence in Judge Moreau-Bérubé was undermined by her 16 February 1998 remarks and that a reasonable person apprised of all the facts would conclude that there is a reasonable apprehension of bias on the part of Judge Moreau-Bérubé in her dealings with any charges brought against any person from the "Peninsula". It may be questioned whether this determination by the Judicial Council is supported by evidence other than intuition. Surely, a well-informed reasonable person would consider the course of conduct of Judge Moreau-Bérubé in other cases involving accused from the Acadian Peninsula. It is not without significance that no complaint was filed by counsel or accused involved in the cases before Judge Moreau-Bérubé on 16 February 1998, nor in any other case before her, and that the actual complainants are "officious intermeddlers" who responded to media publicity, for example, local mayors, a university professor, a provincial politician, presidents of interest groups, etc. Finally, Judge Moreau-Bérubé issued a timely apology for her remarks.

The recommendation of Judicial Council that Judge Moreau-Bérubé be

removed from office is arguably not logically consistent with the finding of the inquiry panel that her conduct was not such as to render her unable to perform her duties as a judge per ss. 6.6(i), 6.9(10) and 6.11(1) of the Act. The inquiry panel itself considered the reasonable apprehension of bias test to determine whether Judge Moreau-Bérubé should be removed from office and concluded in her favour. That public confidence in her may be in doubt seemingly does not go to her competence to perform her judicial functions (except in the “Peninsula”) but rather creates an administrative problem of re-assigning her to another judicial district.

Provincial Court judges are appointed, per s. 6 of the Act, “during good behaviour and may be removed from office only for misconduct, neglect of duty or inability to perform his duties.” This statutory language is not unique to New Brunswick and, with variations, generally governs the tenure of all members of the judiciary in Canada.

Gerald Gall in *The Canadian Legal System* (4th ed.) (Toronto: Carswell, 1995) provides a helpful survey of instances in which judicial conduct has led to complaints to federal and provincial judicial councils. Some of the instances are of the most egregious and obvious conduct inconsistent with the judicial function, for example, soliciting a prostitute scheduled to appear before the judge; drunkenness; and discussing pending criminal cases with a known criminal. Other instances include various comments made by judges in the course of their duties or otherwise. Remarkably, Gall identifies only two instances in which a judge received more than a reprimand for injudicious comments.

In one instance, a Nova Scotia Provincial Court judge, relying on “biblical guidance, had been known to advise women that they should be subservient even to abusive husbands” (ibid., at 287). This course of conduct resulted in an order that the judge be removed from office.

In the second instance, a Court of Quebec judge was suspended “for remarking during a trial that ‘rules are like women, they are meant to be violated’” (ibid., at 289). The offensiveness of these remarks is obvious.

Construed literally, Judge Moreau-Bérubé’s comments do not reflect a biased opinion or discriminatory attitude towards any person or group of persons identifiable on a characteristic enumerated in the *New Brunswick Human Rights Code*, R.S.N.B. 1973, c.H-11, as amended except arguably on the basis of “place of origin”. Rather, her comments are directed at a discrete geographic community of which she is, albeit recently, a member. With great respect to those who may take a different view, the population of the Acadian Peninsula are not a “people” in the parlance of International Law and the fact that the majority population of the Peninsula is undoubtedly Acadian does not necessarily mean that Judge Moreau-Bérubé’s comments are directed at Acadians within the province. In addition, her words encompass persons within that community whether or not it is their “place of origin”. Neither the inquiry panel nor the Judicial Council explored the meaning of her words. Instead, they focused on the context of a negative public perception which included words of a similar import previously uttered by a provincial cabinet minister.

legal following whose role is such that it would be reasonable to anticipate that politics would not contaminate them, would not erase the hard disk on which are registered their knowledge and intuitions on judicial independence and the status and role of the judiciary. However, some of them give us reason to doubt that they are officers of justice and that they are acutely aware of their role as defenders of the institution, of the department they represent and whose name is synonymous of a higher virtue. It is therefore no wonder that some of us may be disillusioned. Luckily, on the up side, many of those ministers and deputy ministers profess that acute awareness of the existence of constitutionally guaranteed legal safeguards and govern themselves accordingly. So, the good news is that there IS hope!

The Canadian Bar Association and the Provincial Bars have defended judicial independence and the judiciary when it was unjustly under attack. They are knowledgeable and brave allies of the justice system. Whenever it was required, that association did not hesitate to defend the principles and values that make the lawyers committed to that association noble officers of justice. So there is hope there also!

Those various officers of justice are not the only ones to share the responsibility of defending and promoting judicial independence. As we know, the road leading to judicial independence will carry its lot of roadblocks, difficulties and reactionary if not adverse backlashes... It is up to us to learn how to inform the general public and to promote dialogue with the different people involved in the world of Justice. The judiciary must learn to take

droit, sont au menu pour fins de consolidation de leur popularité.

Il y a les ministres de la justice, les procureurs généraux et leur contentieux dont le rôle est tel qu’il est raisonnable d’anticiper que la politique ne les contaminerait pas, n’effacerait pas le disque dur de leurs connaissances et intuitions en matière d’indépendance judiciaire et de statut et rôle de la magistrature. Certains nous font douter qu’ils sont des officiers de justice et qu’ils ont une conscience aiguë de leur rôle de défenseur de l’institution, de ce ministère qui porte le nom d’une grande vertu. Et il y a là matière à désillusion. Pourtant, plusieurs ministres et sous-ministres démontrent une conscience aiguë des garanties juridiques constitutionnelles et agissent avec cohérence. Et il y a là raison d’espérer!

L’Association du Barreau Canadien et des Barreaux Provinciaux ont défendu l’indépendance judiciaire et la magistrature quand elle était injustement attaquée. Ils sont des alliés éclairés et courageux du système judiciaire. Partout où requis, cette association n’a pas hésité à défendre les principes et valeurs qui font des avocats engagés dans cette Association de nobles officiers de justice. Et il y a là une raison d’espérer!

Ces différents officiers de justice ne sont pas les seuls à partager la responsabilité de la défense et de la promotion de l’indépendance judiciaire. Ce chemin de l’indépendance judiciaire ne sera pas exempt d’embûches, de difficultés, et de contrecoups réactionnaires... Il nous faut apprendre

the cross-contamination of the stakes and the institutions by the logic applied in politics and by the politicians and those who dare go along with that game, would at last be put behind us, and that the judiciary should then move on and reflect and focus its actions elsewhere.

Some actually thought that, after the Supreme Court decision in that case, judges would recognize the indispensable, catalyst and unifying role of judges' associations and would adhere to them in large numbers. In fact, the Supreme Court of Canada had among other things strongly held that the CAPCJ and the Chief Judges had the responsibility to represent the judiciary's point of view. Others suggested that, because of that recognition, the associations might rather see a large dose of disinterestment and disengagement of their membership. Many thought then that the associations could at last devote their time and energy towards other challenges instead of on judicial independence.

The situation prevailing in many provinces today reminds us that such fights can just as well collectively unite judges then wear them out, collectively depress them and even divide and isolate them... In certain provinces, the governments state that they have enough financial resources to put judges and their associations in their place. For them, judges are just the same as other civil servants, paid by the State just as mercenaries, so then they have cooked up to consolidate their own popularity, collective and even personal attacks against judges, the same judges who are only applying with integrity the rule of law.

There are also the Ministers of Justice, Attorney Generals and their

Renvoi : *Juges de la Cour Provinciale (1997)*, 3 R.C.S. p. 3, certains auront cru qu'enfin la contamination des enjeux et institutions par la logique de la politique et par les politiciens et ceux qui se prêtent à leur jeu, allait enfin cesser et que la Magistrature devrait dorénavant et autrement, puiser ailleurs des lieux de réflexion et d'action.

Certains croyaient que suite à cet arrêt de la Cour Suprême, les juges reconnaîtraient le rôle indispensable, catalyseur et rassembleur des associations de juges et s'y engageraient résolument. La Cour Suprême avait, entre autres, affirmé avec force la responsabilité que l'A.C.J.C.P. et les juges en chef avaient de représenter le point de vue de la Magistrature. D'autres suggéraient que les acquis seraient alors tels que les associations pourraient connaître le désintérêt et le désengagement de leurs membres. Plusieurs espéraient qu'enfin les associations pourraient consacrer le temps des combats sur l'indépendance judiciaire à d'autres défis.

La situation dans plusieurs provinces nous rappelle que les combats peuvent aussi bien unir collectivement les juges que les épuiser, les déprimer collectivement et même les diviser, les isoler.. Il est des provinces où les gouvernements affirment qu'ils ont les ressources financières pour venir à bout des juges et de leurs associations. Pour eux, les juges ne sont que de simples fonctionnaires à la solde de l'état comme des mercenaires et les attaques collectives et même personnelles contre les juges qui ne font qu'appliquer avec intégrité la règle de

Neither the recommendations of the Judicial Council nor an order-in-council under the Act are protected by a privative clause. It is within the jurisdiction of the Judicial Council to determine the appropriate sanction "based on the findings" of the inquiry panel but again, that determination must be logically consistent with the findings of the panel. The Rule of Law requires no less. Otherwise, the choice of sanction by the Judicial Council is arbitrary and subject to caprice. It is also not without significance that the Judicial Council includes lay members in its composition and, accordingly, it may not be such a specialized tribunal that deference should be given in relation to its decisions on matters of law.

Judicial independence is one of the essential pillars of the temple of justice and it must be conceded that it is the members of the judiciary themselves, through their majority on the Judicial Council, who determined the fate of Judge Moreau-Bérubé. A clear message of disapproval was recommended by the inquiry panel in the form of a reprimand and an order for additional judicial training. That the Judicial Council substituted a recommendation for removal should be of concern to all New Brunswickers. Justice must also be tempered by compassion. Judge Moreau-Bérubé

was a relatively inexperienced judge having only two and one-half years experience on the bench at the relevant time. Her remarks reflect a sense of frustration in relation to the types of offences and offenders on her docket and, no doubt, were made at a time of fatigue. The recommendation of the inquiry panel was a fit and proper response.

That of the Judicial Council risks a chilling effect on judges in New Brunswick and across Canada. Attitudes are only hidden by self-censorship; they are changed by open discussion and proper training. By its recommendation, the Judicial Council has set the bar of judicial conduct at a high standard, indeed.

Note: In July, 1999, Mr. Justice Jean-Claude Angers of the New Brunswick Court of Queen's Bench quashed the decision of the Judicial Council to dismiss Judge Moreau-Bérubé. His decision is under appeal by the Judicial Council and the New Brunswick provincial government. Editor.

This comment first appeared in the Canadian Bar Association (N.B.) Solicitor's Journal - June, 1999. It is reprinted with the permission of the commentator and the editor or the Solicitor's Journal. Editor.

"Méfie-toi de ton premier mouvement , c'est le bon."
-Henri Becque-

Athlete Judge

Part 2*

"Your Honour, the Crown submits that the onus of proof, proof beyond a reasonable doubt which in every case must be found, the thread, the golden thread of blah...." Judge Taylor was staring off into the back of his courtroom, his face a complete enigma to the earnest young Crown Counsel, who seemed to be talking about something or other that might have something to do with the evidence that had just been presented. It was a complete mystery to Judge Taylor what the submission meant, but he remembered himself as a young lawyer and being almost shattered by confusion when appearing in front of judges. He was still pumped up from his morning workout, and full of good will; therefore he looked over at the young Crown periodically to give him encouragement, hoping that some sense might be made of this. Eventually, he decided that it must be a summary of how the Crown had proved its case; he really hadn't heard such a bunch of gibberish since his own first embarrassing submissions as a lawyer. He complimented the Crown and then let defence counsel start in. At least he would understand this pitch, for this defence counsel always made the same submission, in the same cases, about apparently the same accused who was a prisoner of some monstrous conspiracy, either engineered by the police, the state, or some unknown twist of circumstance. Brian Cummins' reputation for repetitious submissions was so well known among the local judges, that his nickname among them was "Hebrews 13,8" from the biblical injunction "Jesus Christ, the same yesterday, today and forever."

After listening to, or at least sitting quietly during the submissions, Judge Taylor paused for a brief time to phrase his judgment, and then after thoroughly denouncing the accused as "perhaps one of the worst liars to have ever mounted the witness box", he convicted the accused and wrapped up the sentencing.

Later in the hallway, the Crown approached defence counsel, much like pro wrestlers after a match, and sheepishly started talking. He couldn't believe how the trial had turned out. "I'm going to look like such an idiot on the appeal transcript. I told Judge Taylor that we didn't have a case, and to acquit, and he went ahead and convicted the accused anyway." "Oh don't worry" said Cummins, "there won't be any appeal. My client didn't even flinch — he's just glad to be walking out of here. Guilt or innocence isn't one of his concerns; I'd be surprised if he even remembered the events that led him into the stand." "Well, I never thought I'd win my first case when the judge convicted somebody over my objection." "You gotta be more direct

*by Judge Vince Hogan of the British Columbia Provincial Court. This is the second and concluding part of this story. Part 1 appeared in Volume 23, No.1, (Spring, 1999) at page 15.

Collegiality - Concept to Develop and Lifestyle to Strive For*

Des collégialités à conceptualiser et vivre*

In democracy, progress may not always be sustained, uninterrupted. The same goes for the small and the larger history of the Judiciary. History follows a course that is a positive evolution, an inexorable evolution. The main currents of the evolution of history that point towards progress in terms of refinement of the values and principles underlying judicial systems.

The arbitrary attacks by politicians waiting to control the judiciary has awakened its membership to the darker side that politics may sometimes have and shall have fostered a number of reflections and a certain awareness of the requirements of judicial independence on an individual as well as on an institutional basis.

Our needs then, either as to judicial ethics, training or independence, when put into such an historical perspective reminds us of how far we are coming from. The judiciary as well as all other interested parties is thus invited to become more aware of the new challenges we face!

After the Supreme Court of Canada's decision in the *Re: Provincial Court Judges (1997)*, 3 S.C.R., at page 3, some of us had thought that at last,

*By Judge Louis Legault.

Les progrès de la démocratie peuvent ne pas être soutenus, ininterrompus. Il en est de même de la petite et de la grande histoire de la Magistrature. Le cours de l'histoire suit une évolution positive, incontournable. Les lignes de forces de l'évolution historique vont dans le sens d'un progrès en terme de raffinement des valeurs et principes qui sous-tendent les systèmes judiciaires.



Les attaques arbitraires des politiciens visant au contrôle de la magistrature auront éveillé la magistrature aux réalités quelquefois sombres du pouvoir politique et auront permis de sains questionnements et une conscientisation des exigences de l'indépendance judiciaire individuelle et institutionnelle.

Ainsi, les attentes en déontologie, en formation et en indépendance judiciaire remises en perspective historique rappellent le chemin parcouru. À la magistrature et aux inter-venants de prendre conscience des nouveaux défis!

Après que la Cour Suprême du Canada ait rendu sa décision dans

*Par le juge Louis Legault.

IN A LIGHTER VEIN

Actual Signs

In the front yard of a funeral home, "Drive carefully, we'll wait."

On an electrician's truck, "Let us remove your shorts."

Outside a radiator repair shop, "Best place in town to take a leak."

In a non-smoking area, "If we see you smoking, we will assume you are on fire and take appropriate action."

On a maternity room door, "Push, Push, Push."

On a front door, "Everyone on the premises is a vegetarian except the dog."

At an optometrist's office, "If you don't see what you're looking for, you've come to the right place."

On a taxidermist's window, "We really know our stuff."

On a butcher's window, "Let me meet your needs."

On a fence, "Salesmen welcome. Dog food is expensive."

At a car dealership, "The best way to get back on your feet - miss a car payment."

Outside a muffler shop, "No appointment necessary. We'll hear you coming."

In a dry cleaner's emporium, "Drop your pants here."

On a desk in a reception room, "We shoot every third salesman, and the second one just left."

In a veterinarian's waiting room, "Be back in 5 minutes. Sit! Stay!"

At the electric company, "We would be delighted if you send in your bill. However, if you don't, you will be."

In a beauty shop, "Dye now!"

On the side of a garbage truck, "We've got what it takes to take what you've got."
(Burglars please copy.)

In a restaurant window, "Don't stand there and be hungry, come in and get fed up."

Inside a bowling alley, "Please be quiet. We need to hear a pin drop."

In a cafeteria, "Shoes are required to eat in the cafeteria. Socks can eat any place they want."

— Taylor pioneered the doctrine of reasonable guilt! In the greater sense, we're all guilty, that's his view, or at least he thinks all my clients are guilty!!"

While the lawyers pondered this odd situation, Judge Taylor changed out of his robes and drove off towards lunch at the local correctional institution. Once a year, he went to lunch with the corrections hierarchy, where, over the same institutional lunches the prisoners ate, he discussed with his fellow judges the problems and concerns of the administration. These lunches were a long-standing tradition. A former administrative judge had instituted them, on the basis that judges should at least have some knowledge, no matter how fleeting, of the pit that they daily cast their fellow human beings into.

Lunch was always followed by a tour, and a chance to speak with inmates, and guards that they came upon in the woodwork shops, the living quarters, and the various specialized handling units. Judge Sharon Wozney really didn't like these tours, as she had spent her working life in a nice orderly civil practice, and she just couldn't imagine ever having let any of these people, either prisoners or guards, into her waiting room. She was only partially joking when she confided: "Bill, I understand our admin judge is going to make us wear the electronic collar next; I've always wondered what it felt like to be an Elk in a wildlife study."

"You're right Sharon, being a prisoner is not far off from being a zoo animal. You get kept in cages, fed regularly, examined by the vet once in a while; people come to visit and pet you, bring you snacks. It's kinda grim when you think about it."

Bill was on a roll. "When I first started coming here as a lawyer, it used to make me feel wonderful just to get back out, and I was only a visitor. The guys I felt sorry for were the guards — they get all of the abuse of the prisoners from below and the bureaucracy from above. They used to consult me about their matrimonial and their small claims hassles while I was waiting for my real clients. One old guard told me 'At least the prisoners have hope!'"

While they walked along chatting, the Director decided to take the group on a short cut through the back of the medical station. "Oh hi, Judge Taylor," said a smiling inmate. "How are you Mr. Franklin", he replied, just a little inwardly unnerved at running into Jesse Franklin, a charming but occasionally bizarre and violent young man, whom he had just days previously detained for an assessment. Judge Taylor and Jesse had a pretty good relationship, (if you can call one human being locking up another repeatedly, "a relationship"), but if Jesse were off his meds and into his illness, he always greeted the judge in court, or on the street by shouting out at him: "I know you, You're the fucking judge". Today they just chatted.

As the tour continued on, Judge Taylor explained to everyone how Jesse Franklin often began their meetings, Judge Wozney started laughing. "Bill, you should be flattered when he calls you that. The lawyers usually call you the 'hanging judge' or even worse. Maybe you've been telling him about Viagra!"

Wally Choo was not enjoying his lunch. Low fat, high fibre, a weightlifters portion of both protein and carbohydrates, washed down with skim milk and two glasses of

water, it just didn't taste as satisfying as it should. Even the tofu desert couldn't lift him out of his confused mood; thinking about arresting a judge, was so exciting and so scary and so potentially troubling, that he twice stood up absentmindedly and walked out of his cubicle towards the chocolate bar vending machine. He could hear some of the other members enjoying their lunch, underneath the buffalo head in the lunch room, but today he had to think this over alone. He took 5 herbal medicine capsules to help him think clearly — he was amazed how they sharpened his thinking, and it was amazing, considering that they were almost pure caffeine with an exotic oriental name.

He knew that Judge Taylor was at the exercise club that morning because he had seen him there earlier, on a treadmill. The Judge lived just three blocks away, on the other side of the greenbelt; he wasn't around after the incident, and the drawing by the police artist looked rock solid. This wasn't just a circumstantial case, or maybe a mis-identification by a witness. He could see his career finally pumping up; on the other hand, this seemed just too easy. For some reason he remembered his first posting where one of the keeners in traffic got carried away and gave out speeding tickets to his commanding officer, and then to his own wife. "They were breaking the law; it was my duty to charge them, to enforce the law" this member had said, just before he got transferred, alone, to a small town, north of 60, with a lot of residential trailer parks. "What if this turned ugly" Wally thought, but comforted himself with "no pain, no gain" and "no guts, no glory", ideas which today seemed to sparkle with clarity. He decided to go pick up a uniformed member to help him make the arrest.

Heading out into the parking lot, he bumped into another constable, known for his enthusiastic arrests. "What's Up Choo Choo?" "Oh, just heading out to pick up a pervert." "I just got back from doing that; shit, they are all over the place. You know Jephson, the media guy, what a lucky dick. He was over holding a press conference in front of the new community policing office, across from Crazy Dwayne's New and Used, and with all the cameras around he spots some wacko across the street, buck naked, pants down to his ankles, bawling his drunken eyes out at the bus stop. Jephson goes over and this guy starts babbling, in front of the cameras about exposing himself over at some asshole gym to some woman, and about all the things he did. Man, I got called over to haul him in, and there were so many reporters I couldn't even slam his head into the cruiser door."

"What did this guy look like?", asked Wally, beginning to feel a little queasy. "Naked, real white, 50-60ish, I didn't find him that attractive." Wally turned around and started heading back into the station. "I thought you were going out for a pickup?" "No" said Wally, I think I'll just go inside for a while, maybe have a chocolate bar, think about my future." He paused; "I almost got myself transferred, but maybe I'll stay in town instead."

"Peter Mansbridge reporting for the National on Special Assignment." For the first time in a long time, Wally wasn't paying much attention to his idol. The sound of Mansbridge's voice was perfect, but Wally wasn't copying phrases or diction. Instead, he was concentrating on a jumbo family size bucket of fried chicken from the shop

of the Supreme Court of Canada on judicial independence.

In this issue, we will not be discussing the future of the Montreal Expos, nor the 'One Island, One City' plan for Montreal. Rather, we shall be paying tribute to Chief Judge Antonio Lamer through a piece written by our colleague, Judge Bernard Grenier; we shall talk about a judge's life with our colleague, Judge Jean-Claude Gagnon and share his favourite quotations. We will also learn about our colleagues, Judges Cheryl Daniel, Juanita Westmoreland and Louis A. Legault.

For our next issue, please forward us your thoughts on the materials that you like — and even on those that you may not like so much; send along your suggestions, your comments and best (or maybe not-so-good) wishes. Until then...



"Parler à un homme de lui-même; il vous écoutera pendant des heures"
-Disraeli-



"C'est pas parce qu'on n'a rien à dire qu'il faut fermer sa gueule."
-Michel Audiard-



"A fool bolts pleasure, then complains of moral indigestion".
-Minna Antrim-

de la Cour Suprême en septembre 1997 sur l'indépendance judiciaire.

Dans ce numéro, il ne sera point fait mention des Expos de Montréal ni du slogan "Une île, une ville." On vous parlera du juge en chef Antonio Lamer avec le collègue Bernard Grenier, d'un dîner de juges avec le collègue Jean-Claude Gagnon et de ses maximes, et des collègues Cheryl Daniel, Juanita Westmoreland et Louis A. Legault.

Pour le prochain numéro, parlez-nous de vous et de ceux et celles que vous aimez ou aimez moins; faites-nous part de vos suggestions, critiques et vœux pieux ou non.

'BIENVENUE AU QUÉBEC'*

In French, the word 'host' holds a double meaning. It is used to designate at the same time the person who receives someone as well as the person being received by the 'host'. Similarly, the welcoming words, 'Bienvenue au Québec', have a double meaning in French.

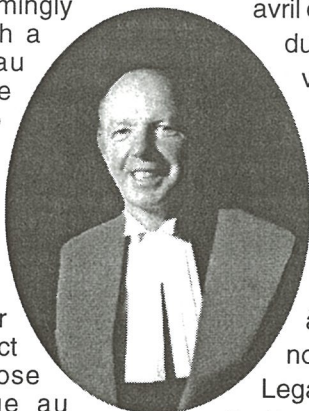
Last April, at a welcoming Northern Quebec lake resort, when our President Judge Cheryl Daniel charmingly also welcomed us all with a resounding 'Bienvenue au Québec', she meant by those words that she wanted to welcome to our Association all her colleagues from Quebec – one of whom is yours truly. She invited me to work with Judge Gary Handrigan as co-editor of the Journal. When our colleague and President-elect Louis A. Legault says those same words, 'Bienvenue au Québec', he will then be welcoming all our Canadian colleagues to the city founded by French navigator Samuel de Champlain, and wishing them a happy stay while at the Association's Conference held in Quebec this October.

As Judge Claude C. Boulanger, past President of the *Conférence des juges du Québec* put it recently, our Quebec colleagues are conscious of their indebtedness to their *consoeurs* and *confrères* from Atlantic Canada and Western Canada for their epic fight that resulted in the September 1997 decision

En français, du moins, le mot "hôte" comporte une double signification. Il désigne en effet autant la personne qui reçoit que celle qui est reçue par l'hôte. "Bienvenue au Québec" comporte aussi une double signification analogue.

Quand la présidente de l'Association, la juge Cheryl Daniel, en avril dernier, face à un souriant lac du Nord québécois, réitéra ses vœux de "Bienvenue au Québec", elle signifiait qu'elle voulait accueillir avec empressement tous ses collègues du Québec dont moi qu'elle invitait à travailler avec le juge Gary Handrigan à produire le Journal. Le nouveau président, Louis A. Legault, en disant "Bienvenue au Québec" souhaite que les collègues de tout le Canada vivent des jours heureux chez nous lors du congrès de fin octobre dans la ville de Samuel de Champlain.

Comme l'exprimait récemment l'ex président de la Conférence des juges du Québec, Claude C. Boulanger, les collègues du Québec sont conscients de leur dette à l'égard des juges de l'Atlantique et de l'Ouest du Canada pour leur lutte épique qui a donné la décision



*By Judge Jacques R. Roy

*Par le juge Jacques R. Roy

around the corner. Hot, greasy, succulent, he would have ordered double skin if he thought they had it. After he had checked on the details of the Media Man's suspect, and saw how close he had come to driving his career right down into a dumpster, he started shaking, and since then the only thing that had calmed him down was food. He'd sucked down about 8,000 calories since lunch, taking just enough time out to phone Karen du Park. As he sat stretched out in front of the TV, getting drunk on fat, he thought about their call. He hadn't given her any of the details; that would have been too hard on everybody. He merely had told her that a suspect was arrested.

"I know you were upset, but it's not likely you will ever have to come back for court; the guy is completely broken down and has been shipped out for a psych assessment. Probably we won't even proceed with charges; he's probably going to need a long stay."

"That's okay. I really don't have any confidence in the courts anyway. That story today about the Judge who acquitted that sex offender, when the victim identified the guy in court. That makes me so angry; it's just stupid."

Bill and Louise were watching some Judge on the news get dragged around a wrestling mat, by the throat, by the media.

"How was your hockey game tonight dear?" she asked with the same feigned interest she might bring to bear on a discussion of, say, Australian rules football. "Tremendous, even if we can't bodycheck. I always keep my head up, just like in the old days, never want to get nailed by the high stick that you didn't see coming." "Isn't that nice."

"That's been the approach I've taken to life. Keep your head up; nothing catches you by surprise. Don't want to be like one of the guys at the rink who skates around and never notices how easily you can get knocked down from out of the blue. Too bad that judge didn't keep his head up."

The TV was on in the lounge, as the remand prisoners in the forensic psych unit had the privilege of sitting up until 11, as they were the last unit to be put to bed for the night; not that anyone was actually watching it, as the pill cart was just going around. In the lineup, Jesse was happily talking to some new guy, who seemed pretty quiet. There was no need to be quiet like in the regular units; after all, everybody here had some special ideas. Jesse was doing a monologue on the place, a sort of inmates grand tour for this rather sad old dude.

"Hey, it's okay here. Just talk, talk, talk. Maybe we can trade medication one day, I'll show you how to do it." "Yah." "After you've been in for a few times, people know you. Judge Taylor came in and saw me today. You should have seen how impressed the evening staff was when I told them how he brought up four other judges to see me." "Don't know him."

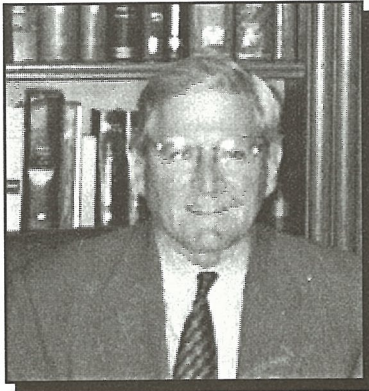
Jesse was having such a good time that when he got his medication he never even noticed that the staff had doubled up his anti-psychotics. *Continuing delusions*, said the chart.

Personal Reflections on the Retirement of Judge Lamer* Réflexions personnelles sur le départ du juge Lamer*

Last August, at the inaugural speech of the Canadian Bar Association's annual convention held in Edmonton, the Right Honourable Antonio Lamer announced he intended to retire at the beginning of January of the year 2000. He candidly admitted that he didn't feel that special "drive" anymore: he also added that the citizens had a right to expect that the Chief Justice of the Supreme Court of Canada shows enthusiasm in the execution of his duties. He therefore chose to leave the court nearly twenty years after his appointment to that office, nine and a half years of which he held the position of Chief Justice. All present at this announcement testified to the very touching and very dignified manner in which this event was presented.

Judge Lamer is a person that leaves no one indifferent. He has always been a very direct, without ever losing his trademark sense of humour. He is a very personable and interesting individual, blessed with a vivid intelligence and a somewhat uncommon sense of persuasion.

Antonio Lamer was admitted to the Bar of the province of Quebec in 1957. He practised Criminal law until he was



Lors de l'ouverture du congrès annuel du Barreau canadien qui avait lieu à Edmonton au mois d'août dernier, le très honorable Antonio Lamer annonçait son intention de prendre sa retraite au début de janvier de l'an 2000. Pour reprendre ses propres termes, le juge Lamer avouait ne plus avoir le feu sacré. Il ajoutait que les justiciables ont droit à ce que le juge en chef de la Cour suprême du Canada fasse preuve d'enthousiasme dans l'accomplissement de son travail. Il préfère donc quitter la Cour après presque vingt ans de service, dont neuf ans et demi à titre de juge en chef. Tous ceux qui ont assisté à cette annonce ont parlé du caractère très touchant et très digne de l'événement.

Le juge Lamer est un personnage qui ne laisse personne indifférent. Il a toujours eu son franc parler, joint à un sens de l'humour qui ne s'est jamais démenti. C'est un homme affable, intéressant et doté d'une intelligence vive et d'un sens peu commun de la persuasion.

Antonio Lamer a été admis au Barreau du Québec en 1957. Il a pratiqué le droit pénal jusqu'à sa nomination à la Cour supérieure du

*By Judge Bernard Grenier.

*Par le juge Bernard Grenier.

initiated by the Canadian Association of Provincial Court Judges.

Moreover, she has been able to establish across Canada relations with colleagues from all provinces and to share with them their analysis, their dreams and their challenges.

So these are just but a few of the accomplishments of her presidency in 1998-1999.

Truly, dear Judge Daniel, your Canadian colleagues from the Canadian Association of Provincial Court Judges have this to tell you: Mission accomplished and congratulations.

Your colleagues from Alberta can be very proud of their colleague and president, just as much as all your other Canadian colleagues.

We all deeply wish to continue benefiting from her professional attributes and her friendship.

Plus encore, elle a su établir à travers le Canada des relations avec les collègues de toutes les provinces et partager avec eux constats, rêves et défis.

Voilà quelques progrès et quelques une des réalisations de la présidence 1998-1999.

Véritablement, Madame la Juge Cheryl Daniel, vos collègues canadiens de l'Association Canadienne des Juges des Cours Provinciales vous disent : mission accomplie et félicitations.

Que vos collègues d'Alberta soient fiers de leur collègue présidente à l'instar de l'ensemble de vos collègues canadiens.

Faisons le souhait de continuer à bénéficier de son professionnalisme et de son amitié.

"Vivent les honnêtes gens! Ils sont encore moins canailles que les autres".
-Henri Becque-

"Au fait, je ne connais point d'ennui, de torpeur morale, qui ne cède à une démangeaison".
-Rodolphe Töpffer.

charming environment that all participants and Chief Judges alike have unanimously endorsed, training courses that are the first encounter fostering fraternal relationships with the new members of our Canadian judiciary. We must not also forget the training program offered on internet to judges from all over the country, adroitly organized by our colleague Judge Jean Lytwyn.

Our president also co-ordinated the major efforts towards consolidating, if not stabilizing, the financial resources with which the CAPCJ and other judges are able to benefit from translation services and simultaneous interpretation, and also securing more funding from the federal government for language training (the Beaulac decision).

During her term, a sub-committee on compensation was created with the goal to provide our association with a centralized Secretariat, capable of responding to questions fielded by all our member professional associations concerning their representations that before the triennial commissions and to provide statistical and analytic documents, including those used before other triennial commissions. All our provincial associations benefit from this initiative. Also, representations have been made so that the federal government, through the Federal Department of Justice and the Office of the Federal Commissioner for Judicial Affairs, respond increasingly to our needs in the areas of training and improving communications between our colleagues.

Our president also encouraged the wider use of our national counselling program for judges established with the Chief Judges Conference and the provincial associations, and partly

en chef : des cours qui demeurent une première occasion de rencontre combien fraternelle de la nouvelle magistrature canadienne. Et enfin une initiative de cours sur Internet auquel participent des juges de tous les coins du pays organisée par notre collègue Jean Lytwyn.

Madame la présidente a coordonné des efforts majeurs pour enfin consolider à défaut de stabiliser les ressources financières qui permettent à l'A.C.J.C.P. et aux juges de bénéficier de services de traduction et d'interprétation simultanée et pour que le Fédéral subventionne plus généreusement les cours de langue (arrêt Beaulac).

Sous sa présidence, un sous-comité de la rémunération a été créé qui vise à doter notre association canadienne d'un secrétariat capable de répondre aux questions de l'ensemble des associations professionnelles pour leurs représentations devant les commissions triennales et de fournir des documents statistiques et d'analyse, y compris ceux utilisés devant les autres commissions triennales. Toutes les associations provinciales en bénéficient. Des représentations ont été effectuées pour que le fédéral à travers le ministère de la justice et le commissaire fédéral à la magistrature réponde de mieux en mieux à nos besoins en matière de formation et de communication entre collègues.

L'utilisation par un plus grand nombre du programme national de consultation pour la magistrature mis en place avec le concours des juges en chef et des associations à l'initiative entre autres de l'Association Canadienne des Juges des Cours Provinciales a été encouragée par la présidente.

appointed to the Superior Court of the province of Quebec in 1969. Those who knew him then, when he was a lawyer, can testify to the fact that he was a very skilled barrister and that his integrity was beyond reproach.

In the middle of the '60s, he founded the Montreal Association of Defence Lawyers, as a "watch dog" organization to keep the authorities at bay against any temptation on their part to cause prejudice to the independence of the judiciary or to the rights of the accused. He was also a member of many committees, such as the board of directors of the Montreal bar's judicial assistance bureau. He was also a professor of Criminal law at the law faculty of the Université de Montréal.

In 1969, he was appointed to the Superior Court of the District of Montreal. Upon the invitation of the Chief Justice, he chaired the Criminal Division. Because of his acute sense of organization and efficiency, he considerably reduced the delays that were hampering criminal cases heard before judge and jury. To use a colloquial expression, he cleaned up shop in Montreal's Criminal Division.

At the end of 1971, he was appointed Vice-Chairman of the Law Reform Commission of Canada, freshly created by the federal government at the behest of then Justice Minister, John Turner. After serving his term as Vice-Chairman of the Commission, Judge Lamer was appointed Chairman of the commission at the end of the term of its first Chairman, the honourable judge Patrick Hartt, from Ontario.

The Law Reform Commission of Canada undertook sweeping reforms of various aspects of federal law, especially

Québec en 1969. Ceux qui l'ont connu à l'époque où il était avocat peuvent témoigner du fait que c'était un habile plaideur, et que sa réputation d'intégrité était impeccable.

Il a créé l'Association des avocats de la défense de Montréal au milieu des années 60, désireux d'en faire un chien de garde contre toute tentative des autorités de porter atteinte à l'indépendance judiciaire ou aux droits des accusés. Parmi les nombreux comités dont il a fait partie, mentionnons le conseil d'administration du Bureau d'assistance judiciaire du Barreau de Montréal. Il a également enseigné le droit pénal à la faculté de droit de l'Université de Montréal.

En 1969, il a été nommé juge de la Cour supérieure pour le district de Montréal. À la demande du juge en chef, il est devenu responsable des assises criminelles. Grâce à son sens aigu de l'organisation et de l'efficacité, il a réduit considérablement les délais dans l'audition des affaires devant juge et jury. Pour reprendre une expression populaire, il a fait le ménage aux assises criminelles de Montréal.

À la fin de 1971, il est devenu vice-président de la Commission de réforme du droit du Canada que venait de créer le gouvernement fédéral à l'initiative du ministre de la justice de l'époque, Me John Turner. Après avoir été vice-président de la commission, le juge Lamer en est devenu le président à l'expiration du mandat du premier président, l'honorable juge Patrick Hartt de l'Ontario.

La Commission de réforme du droit du Canada a entrepris une réforme en profondeur de divers aspects du droit fédéral, en particulier le droit criminel,

in the areas of criminal law, family law, and administrative law. The many working documents and reports published by the Commission over the years greatly influenced the evolution of law as we know it, particularly of criminal law. The importance of its works cannot be measured necessarily by the number of legislative changes that occurred because of them, but more in the evolution of mentalities and putting into question the fundamental principles upon which were based different areas of law that were subject to the scrutiny of the Commission.

In a flurry of decisions rendered by our courts, including the Supreme Court of Canada, judgements have been widely inspired by the documents produced by the Law Reform Commission in advancing the state of the law. One vivid example that comes immediately to mind is the case of Sault Ste-Marie, in which Chief Judge Dickson cited *verbatim* the Law Reform Commission on strict liability, thus creating three types of offences taking into account *mens rea*, namely criminal offences as such, strict liability offences and absolute liability offences.

Furthermore, the new section XXIII of the Criminal Code pertaining to sentencing is in part inspired by the work published by the Law Reform Commission. For example, this is prevalent when we look at the principles underlying the moderation in the use of imprisonment, as well as the listing of objectives and principles forming the basis for handing down sentences *per se*.

Judge Lamer has always been a strong proponent of all the reports and working papers published by the Commission between 1972 and 1978,

le droit de la famille et le droit administratif. Les documents de travail et les rapports publiés par la Commission au cours des ans ont eu une influence profonde sur l'évolution du droit, en particulier du droit criminel. L'importance de ces documents ne se mesure pas tant aux nombres de modifications législatives qu'à l'évolution des mentalités et à la remise en question des principes fondamentaux des diverses branches du droit auxquelles s'est attaquée la Commission.

On ne compte plus le nombre d'occasions où les tribunaux, y compris la Cour suprême du Canada, se sont inspirés des documents de la Commission pour faire avancer le droit. On peut penser à l'arrêt Sault-Ste-Marie dans lequel le juge en chef Dickson cite un texte de la Commission de réforme du droit sur la responsabilité stricte pour créer trois types d'infraction eu égard au *mens rea*, soit les infractions criminelles proprement dites, les infractions de responsabilité stricte et les infractions de responsabilité absolue.

De même, la nouvelle partie XXIII du Code criminel relative à la détermination de la peine s'inspire en partie des travaux de la Commission de réforme du droit. On peut penser entre autres au principe de modération dans le recours à l'emprisonnement, de même qu'à l'énumération des objectifs et principes sous-jacents à l'imposition de la peine.

Le juge Lamer a été partie prenante de tous les rapports et tous les documents de travail publiés par la Commission de 1972 à 1978, année de son accession à la Cour d'appel du Québec. Sa contribution aux réflexions et aux discussions au sein de la Commission s'est avérée essentielle,

have had to cope with her absence, an incredible super woman I am told by a usually well-informed source... We are very grateful to them also.

Without getting into the detail of all the accomplishment of the 1998-1999 term of her presidency, Judge Cheryl Daniel leaves us with a new and organised co-operation with the Canadian Judges Conference within the Canadian Judges Forum, the widespread use of internet and e-mailing for the executives' communications and day-to-day exchanges. Over the past few months, the responsibility of the review of the roles and responsibilities of puisne judges, Chief Judges and professional associations of judges, the consent of Provincial Chief Judges as participants in a sub-committee of the CAPCJ, the Chief Judges Council, is under the stewardship of university professor Carl Barr, an important development in the furtherance of concern that is also comprised of many other important issues pertaining to the relations between Chief Judges, professional association of judges and puisne judges, between themselves and governments.

The CAPCJ today boasts more open relations with the Chief Judges. Because of her initiatives and her commitment, our association is now engaged in a more open and enriching communication and dialogue with all those concerned within our justice system.

Our president is especially proud of the training tools we developed, such as the video and training kit on judicial independence prepared by the Forum of Canadian Judges and distributed by the CBA. And of the training program offered to new judges at Carling Lake, a

super-woman selon une source bien informée.. Nous leur en sommes reconnaissants.

Sans faire l'inventaire complet des réalisations de la présidence 1998-1999, madame la Juge Cheryl Daniel nous laisse entre autres comme acquis une collaboration nouvelle et organisée avec la Conférence Canadienne des Juges au sein du Forum des Juges Canadiens, l'utilisation de l'Internet et du courrier électronique pour les communications et échanges quotidiens de l'exécutif. Depuis quelques mois, la responsabilité de l'analyse des rôles et responsabilités des juges puinés, juges en chef et associations professionnelles de juges, du consentement des juges en chef provinciaux participant à un sous-comité de liaison A.C.J.C.P. – Conseil des juges en Chef, est conduite par un universitaire du nom de Maître Carl Barr, et c'est là un déblocage important d'un dossier qui comporte un nombre important de questions primordiales reliées aux relations entre les juges en chefs, associations professionnelles de juges et juges puinés, et entre eux et les gouvernements.

L'A.C.J.C.P. entretient désormais des relations plus ouvertes avec les juges en chef. Bénéficiant de ses initiatives et convictions, notre association est engagée dans une communication et un dialogue plus ouvert et enrichissant avec tous les intervenants du système judiciaire.

Notre présidente est particulièrement fière de ces moyens d'éducation que sont le vidéo et la trousse éducative sur l'indépendance judiciaire préparés par le Forum des juges canadiens et distribués par l'ABC. Et que dire des cours de formation offerts aux nouveaux juges à Carling Lake, un lieu qui enfin charme et fait l'unanimité chez les participants et juges

Judge Cheryl Daniel has been dedicated, spectacular and efficient. She is one of the judges that received the most acknowledgements of her peers at the convention of the Conférence des Juges du Québec. Not only because she wagered and won her bet of addressing herself in French in a highly appropriate manner, but also because of the conviction she showed as she voiced her dreams and plans for the Canadian judiciary. I would bet anytime that, everywhere in any province, when she met judges and representatives in the administration of justice, that she commanded admiration for her leadership, the clarity of her message, her courage and her loyalty for the supreme interests of the public and the judiciary, and that also, she has managed to forge unique friendships between judges and herself, our president. Judge Cheryl Daniel knows what she wants, and does not tolerate any compromises on principles, cowardice, fear, servility, discrimination and abuse of power. She presided with force and inspiration over the last year, the destiny of the Canadian Association of Provincial Court Judges. Her legend precedes her if one can call it that, if not her reputation of being fearsome held by those who operate on rumours and also by those whose behaviour she condemns, defusing any fear if one is willing to accept to come with her to the land of truth and transparency. She knows how to tell it as it is, and how to get things done. We are all in debt to her for having expressed the joy, the pride, the realities and the challenges of the Canadian judiciary.

As you can imagine, she devoted a great number of hours for the association and the judges and justice as a whole. Her husband, Rick Miller, and their children Jennifer and Michael

congrès de la Conférence des Juges du Québec à l'occasion de son congrès. Non seulement parce qu'elle a fait le pari et qu'elle l'a gagné de s'exprimer en français de façon plus que convenable mais également parce qu'elle disait avec force les rêves et les projets de la magistrature canadienne. Je ferais la gageure que partout dans toutes les provinces, auprès des juges et intervenants du domaine de la justice, elle commandait l'admiration pour son leadership, sa clarté de vue, son courage et sa loyauté aux intérêts suprêmes du public et de la Magistrature et qu'enfin, il s'y est créé des liens uniques d'amitié des juges avec notre présidente.

Madame la Juge Cheryl Daniel est une personne exigeante qui ne tolère pas les compromissions sur les principes, la lâcheté, la peur, la servilité, la discrimination et les abus de pouvoir.

Elle a présidé avec force et inspiration aux destinées de l'Association Canadienne des Juges des Cours Provinciales au cours de la dernière année. Ce personnage précédé par une légende, sinon une réputation redoutable pour ceux qui carburent à la rumeur et pour ceux dont elle dénonce le comportement, vous déboulonne une peur si vous acceptez de la rencontrer au pays de la vérité et de la transparence. Elle sait dire ce qui est et faire avancer les dossiers. Nous lui sommes tous reconnaissants pour avoir su dire le plaisir, la fierté, la réalité et les défis de la magistrature canadienne..

Vous aurez deviné qu'elle a engouffré des heures considérables au bénéfice de l'A.C.J.C.P. et de ses juges et de la justice toute entière. Son mari Rick Miller et ses enfants Jennifer et Michael ont dû composer avec l'absence de la juge Cheryl Daniel, une incroyable

the year he was appointed to Quebec's Court of Appeal. He has largely contributed to the thought process and discussions within the commission, and played an essential role, because of his experience, in depth knowledge of criminal law and capacity to sense what should be the focus of law reform. Undoubtedly, Judge Lamer's passage at the Law Reform Commission left an indelible mark on his vision of law and particularly of criminal law.

In 1978, Judge Lamer was appointed to the Court of Appeal of the province of Quebec. He sat on that bench until March 1980, when he was appointed to the Supreme Court of Canada.

Judge Lamer also left his mark at the Supreme Court of Canada, first as puisne judge as well as Chief Judge. His role as Chief Judge was bestowed upon him in July 1990, succeeding the honourable Brian Dickson in that function. The Supreme Court largely benefited from his organization and efficiency skills, helping to drastically reduce hearing delays as well as the length of deliberating before judgements were rendered. Even given the utmost importance and complexities of the cases heard by the Supreme Court, the court's decisions are generally given within six months after the cases have been heard, save in the case of particularly complex instances.

The proclamation in April 1982 of the Canadian Charter of Rights and Freedoms also had a profound effect on the environment in which the judges of the Supreme Court of Canada evolved since then. The highest court of the country has, from that time on, heard a great deal of cases involving the Charter, helping further construe its numerous dispositions and, in the process, therefore helping judges from lower

car il alliait expérience, connaissance approfondie du droit criminel et capacité de pressentir les orientations à donner à la réforme du droit. Nul doute que le séjour du juge Lamer à la Commission de réforme du droit a profondément marqué sa vision du droit, en particulier du droit criminel.

En 1978, le juge Lamer fut nommé à la Cour d'appel du Québec. Il y siégea jusqu'en mars 1980, date de son accession à la Cour suprême du Canada.

Le juge Lamer a marqué la Cour suprême du Canada, tant à titre de juge puîné qu'à titre de juge en chef. Soulignons qu'il est juge en chef depuis le mois de juillet 1990, alors qu'il succédait à l'honorable Brian Dickson. Il a fait profiter la Cour suprême de ses dons d'organisateur et de son sens de l'efficacité pour raccourcir les délais d'audition, de même que la durée des délibérés. En dépit de l'importance et des difficultés que présentent les dossiers entendus en Cour suprême, les jugements sont généralement rendus dans les six mois qui suivent l'audition, sauf pour les dossiers d'une complexité particulière.

L'entrée en vigueur, en avril 1982, de la Charte canadienne des droits et libertés, a profondément marqué le quotidien des juges de la Cour suprême du Canada. Le plus haut tribunal du pays a entendu un nombre considérable d'affaires découlant de la Charte, de façon à en interpréter les diverses dispositions et à baliser ainsi le travail tant des juges de première instance, que des Cours d'appel.

Le juge en chef a adopté à l'égard de la Charte une interprétation généreuse et libérale, soucieux de mettre de l'avant le respect des droits

courts, including courts of appeal set the proper parameters for their decisions.

The chief justice adopted towards the Charter a generous and liberal interpretation, in view of his general concern to put first and foremost the respect of all individuals' fundamental rights guaranteed in the Charter. To cite only a few of these decisions consider Vaillancourt, Re: Motor Vehicle Acts of B.C., various decisions pertaining to the right to counsel, In re Greffe, both Morales and Pearson decisions, Smith, Collins, and Stillman, and many other decisions where the influence of Judge Lamer was prevalent.

He also wrote the decision, for the Court, in Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island; where the notion of the judicial independence is widely explored and where the court imposes the creation of triennial committees specifically mandated to revise provincially appointed judges' salaries and other work-related issues.

May we just remind ourselves that the Chief Justice has many times stressed the crucial role of judges sitting on provincial courts for the administration of justice in Canada. For Judge Lamer, there is no second class justice in Canada. There is only justice delivered by judges from different jurisdictions who serve all the country's citizens. One of his favourite recollections as a lawyer was that he passed most of his time pleading and earning his living before the courts first in the line of fire. Some have blamed Judge Lamer and the Supreme Court of Canada bench in general to have taken an activist approach in their interpretation of the Charter. Those

fondamentaux de l'individu garantis par la Charte. On peut citer à titre d'exemple l'arrêt Vaillancourt, le Renvoi sur le Motor Vehicle Act of B.C., les diverses décisions relatives au droit à l'avocat, l'arrêt Greffe, les arrêts Morales et Pearson, l'arrêt Smith, les arrêts Collins et Stillman et tant d'autres décisions dans lesquelles l'influence du juge Lamer se fait sentir.

C'est également lui qui a rédigé, au nom de la Cour, l'arrêt dans le Renvoi relatif à la rémunération, à l'indépendance et à l'impartialité des juges de la Cour provinciale de l'Île-du-Prince-Édouard; qui traite abondamment d'indépendance judiciaire et impose la création de comités triennaux chargés de réviser les salaires et autres dimensions du travail des juges de nomination provinciale.

Rappelons pour mémoire que le juge en chef s'est fait fort de souligner à maintes reprises le rôle crucial joué par les juges de cours provinciales dans l'administration de la justice. Il n'y a pas au Canada, selon le juge Lamer, de justice de seconde classe. Il y a une seule justice rendue par des juges de diverses juridictions au service de l'ensemble des citoyens du pays. Il aime d'ailleurs dire qu'à l'époque où il était avocat, il passait la majeure partie de son temps et gagnait son sel devant les tribunaux de première instance.

Certains ont reproché au juge Lamer, et à la Cour suprême en général, d'avoir fait preuve d'activisme dans la façon d'interpréter la Charte. Selon les tenants de ce point de vue, une Cour, fût-elle la Cour suprême du Canada, devrait se contenter de trancher le débat qui lui est soumis et elle ne devrait pas faire de prospective. D'autres soutiennent que les tribunaux ne

The Honourable Cheryl Daniel: President of the Canadian Association of Provincial Court Judges, 1998-1999.* L'Honorable Cheryl Daniel: Présidente de l'Association Canadienne des Juges des Cours Provinciales, 1998-1999.*

On October 30th 1999, our colleague, Judge Cheryl Daniel, shall have completed her long obstacle course, that retching marathon that one year at the helm of our judicial ship faring through choppy and not so choppy waters over the year, following the footsteps and long traditions set by the presidents of our association over the last ten years, Judges Mercier, Scullion, Barnable, Bobowsky, McNamee, Rounthwaite, and Curran.



Cheryl Daniel has and remains a comet that came and went too fast. A heady person, determined, knowledgeable, driven, bright, a consummate advocate representing all judges, their lot, their dreams of forming an alliance, an enlarged partnership and of gaining recognition of their status as judges, a person who dreams working with judges totally independent of their governments. Someone with a strong urge to foster communications, dialogue with all members of the Canadian judiciary as well as within our provincial judiciary, with courtesy, firmness and respect. A person who is capable of being direct and always focussed on that big dream of attaining a level of administration of justice that is totally transparent, human and open to dialogue with all concerned.

*By Judge Louis Legault.

Le 30 octobre 1999, notre collègue, la juge Cheryl Daniel, complète cette longue course à obstacles, ce marathon épuisant qu'est une année de présidence à travers les flux et reflux du monde judiciaire, suivant en cela la longue tradition des présidents de la dernière décennie, les juges Mercier, Scullion, Barnable, Bobowski, McNamy, Rounthwaite, et Curran.

Cheryl Daniel a été et demeure une comète trop vite passée. Une personne de tête, déterminée, éclairée, fonceuse, brillante, plaideur combien articulée pour représenter les juges, leur situation et dire le grand rêve d'alliance, de partenariat élargi et de reconnaissance du statut des juges, rêve d'œuvrer avec des juges bien indépendants de leurs gouvernements. Une personne soucieuse de favoriser la communication, le dialogue avec toute la magistrature canadienne et au sein de notre magistrature provinciale, avec courtoisie, fermeté et respect. Une personne directe et toujours orientée sur le grand rêve d'une administration de la justice transparente, humaine et d'un dialogue ouvert avec l'ensemble des intervenants.

La juge Cheryl Daniel a été dédiée, spectaculaire, efficace. Elle fait partie des juges les plus applaudies au

*Par le juge Louis Legault.

long, long time. Lesra says, 'I was so scared because I knew it was just because of circumstance that I hadn't ended up there. If I hadn't met my Canadian family, I would have ended up there'. One of Lesra's brothers did.

Upon returning to Toronto, Lesra told his Canadian family they had to do something to help this man. They did. They began to work tirelessly with Carter's lawyers, who handled his case *pro bono* for ten years.

Bob Dylan's 1975 song, '**Hurricane, Hurricane**', had earlier brought attention to Carter's story. In 1976, Carter's three murder convictions were unanimously overturned. But when a new trial resulted in reconviction, Carter faded from the limelight.

A huge amount of work by everyone involved eventually led to a Federal District Court Judge overturning the second trial convictions in 1985. He ruled the prosecution committed 'grave constitutional violations' and that the convictions were based on 'racism rather than reason and concealment rather than disclosure,' and that his imprisonment had been 'a travesty.'

After more appeals by prosecution (all the way to the United States Supreme Court) and wins by the defence, the case was finally closed when all the indictments were dismissed in 1988.

Carter received no compensation. He moved to Canada. He makes his living giving motivational speeches, but his job is as executive director of the Association in Defence of the Wrongfully Convicted.

Lesra began his articles with Rick Peck, Q.C., and finished them with the Crown office in Kamloops. His fiancée was still at Dalhousie Law School. She graduated and they were married in May 1998. She articulated in Kamloops, passed her Bar Exams and will be called in September, 1999. She has been offered work at the same firm she articulated with. Lesra is working as a prosecutor with the Crown office in Kamloops. They intend to make Kamloops home. A wise choice.

The book '**Lazarus and the Hurricane**' is a compelling read. It is being made into a film, for release this fall. Directed by Norman Jewison, it stars Denzel Washington as Rubin Carter, and Vicellous Shannon as Lesra Martin. They all met on the set in February, 1999. Lesra said the scene he watched was so realistic it brought tears to his eyes.

The story is one of hope and promise. Rubin Carter is one of the most amazingly positive, ebullient and eloquent people I have ever met. He is a joy to spend time with. I hope to do more of that in the future.

"C'est étrange que certains commettent des délits quand il y a tellement de façons parfaitement légales d'être malhonnêtes."
-Georges Courteline-

proponents suggest that a court, even the Supreme Court of Canada, should restrain itself to decide on the issues before it and not extrapolate. Others have proposed that our courts should not be too conservative in their approach of issues stemming from the Charter, as it nearly necessarily brings us to go beyond the strict framework of the facts of any particular case.

It is not the purpose of this text to propose a simple answer to this question. The fact is that, the simple fact that the announcement of Judge Lamer's retirement has given way to the present philosophical debate shows to what extent he has left his mark in the interpretation in the Canadian Charter of Rights and Freedoms. So it seemed quite fitting that a reporter, commenting on the chief judge's decision to step down from the Court, referred to him as being a giant within our judicial world.

With Judge Lamer, the Supreme Court of Canada reached out to the media. The Chief Justice himself as well as some of his colleagues do not hesitate to give interviews to journalists, either from the written or spoken media, to explain how our judicial system works and what the role of the Supreme Court of Canada is.

With the departure of Antonio Lamer from the highest court in the country, the Canadian judicial world loses a first rate personality and a leader in his field, who has left no one indifferent throughout his long and fruitful career.

sauraient faire preuve de conservatisme dans la façon d'aborder un problème découlant de la Charte. Celle-ci amène quasi nécessairement à dépasser le cadre strict des faits d'une affaire particulière.

Il n'est pas du ressort de ce texte de proposer une réponse à cette interrogation. Le simple fait que l'annonce de la démission du juge Lamer ait donné lieu à ce débat philosophique démontre à l'envi qu'il a laissé sa marque dans l'interprétation de la Charte canadienne des droits et libertés. Il n'est pas étonnant qu'un journaliste, commentant la décision du juge en chef de démissionner, ait parlé de lui comme d'un géant du monde judiciaire.

Avec le juge Lamer, la Cour suprême s'est ouverte aux médias. Tant le juge en chef que certains de ses collègues n'hésitent pas à accorder des entrevues aux journalistes de la presse écrite et de la presse parlée, pour expliquer le fonctionnement du système judiciaire et le rôle de la Cour suprême du Canada.

Avec la départ d'Antonio Lamer du plus haut tribunal du pays, le monde juridique canadien perdra une personnalité de premier plan et de première importance qui, tout au long de sa carrière, n'aura laissé personne indifférent.

"La courbe de la criminalité a beaucoup décliné depuis la Genèse. Songez qu'à l'époque d'Abel et de Cain, il y avait cinquante pour cent d'assassins."
-Ducouret-Nègre-

LAZARUS and the HURRICANE and SHUPE*

It's a long journey from the Brooklyn Ghetto to Supreme Courtroom 5D, in Kamloops, with stops at Toronto, Halifax and New Jersey's Trenton State Prison, but Lesra Martin has made that journey. U.S. boxing champion, Rubin (Hurricane) Carter crossed the country to be in Courtroom 5D on May 21st, 1999, when Lesra, whom he calls his son, was called to the Bar and completed that journey.

Lesra had stumbled on the final leg of the journey and I helped him over the finish line. I assisted his counsel Christopher Hinkson, Q.C., in convincing the Law Society Credentials Committee to allow Lesra to rewrite the Bar Exams in two sittings (rather than the customary one sitting). I then mentored Lesra in civil litigation and family law; both of which he had repetitively failed. This time Lesra passed the Bar Exams with a 75% average. This is his story. It's an incredible one!

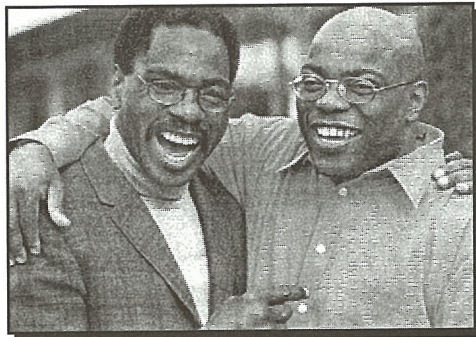
It begins when he was an illiterate teenager living in a New York ghetto with an impossible dream of becoming a

lawyer. His father had been a lead singer for a 1960's rock group, the Del Vikings, until a hard life of booze and cigarettes stole his voice. The family went from living in a well-to-do neighbourhood to social assistance in the ghetto, with two parents and seven children crammed into a small apartment. Lesra is called that because his parents could not spell his legal name, Lazarus.

In the summer of 1979, Lesra, then aged fifteen years, was doing a make-work job in an environmental protection agency lab in New York when opportunity came calling in the form of a group of Canadian entrepreneurs. They were researching a gas saving device. They were intrigued by the energy and jokes of the

rambunctious, precocious teenager, who spoke almost an entirely different language from theirs. Lesra still speaks black English when he talks to his siblings.

The Canadians were saddened by Lesra's dream, because the reality was that he was more likely to need a lawyer



(Rubin "Hurricane" Carter and Lesra Martin)

*By Judge T. W. Shupe of the B. C. Provincial Court.

than to become one. But they were people of strong social conscience and offered to help educate Lesra. They obtained permission from Lesra's parents for him to live with the group (five men, three women and a dyslexic teenager named Marty) in their house in Toronto. They taught Lesra to read. They took Lesra to a book sale in hopes of finding a story he could relate to. The cover of a book Rubin Carter had written from prison in 1974 called **'The 16th Round'** caught his attention. Lesra bought the book for twenty-five cents.

He started reading Carter's book that night. It was the first book Lesra had ever read. He said that '... all of a sudden the feeling of the language took control of me.' Lesra was deeply touched by the hardships and injustice of which Carter wrote. He was also devastated to learn that Carter was still in jail.

It was at that point learning began in earnest for Lesra. His tutor, Sam Chaiton, who would later co-write the best-selling book, **'Lazarus and the Hurricane'**, used **'The 16th Round'** to teach Lesra how to research. They reviewed Rubin Carter's history through newspapers and libraries. Lesra says Sam 'tricked me into learning'. Sam tutored Lesra and Marty in a schoolroom in the house from 9:00 A.M. to 9:00 P.M.

The schedule was set by Lesra, who was excited about learning, for the first time in his life. Lesra went from a grade two level to grade thirteen level in two years. He graduated as an Ontario scholar, meaning he was in the top percentage of students. He later graduated as an honour's student in anthropology from the University of Toronto. He began his Master's program at Dalhousie, but transferred to the law school there.



(Carter, Shupe and Martin)

But, before that took place, he contacted the man whose book started his education. He wrote to the boxer in the fall of 1979. Carter wrote back and that started a series of letters and phone calls. Lesra wrote and

asked if he could come for a visit and Carter responded 'no'. Carter wrote: 'The last thing I want to do is bring another soul in here when I'm trying so hard to get out there.'

Lesra did not get that letter in time. It was delayed in the prison mail room. So Lesra went to Trenton State Prison in January, 1980 and Carter agreed to his first contact visit in five years, simply because he knew when they told him he had a visitor that it had to be Lesra. The visit occurred in the prison's former death chamber.

Lesra was terrified and only stopped shaking when Carter hugged him for a