

President's Report – Fall Board Meetings – September 2022

As a result of several unforeseen circumstances and the impact of the Covid 19 pandemic, I have had the unique opportunity to serve two terms as the President of the Canadian Association of Provincial Court Judges (CAPCJ). As such, this is my second President's report at the Fall Board meetings and Annual General Assembly of CAPCJ.

During this time, most of our in-person meetings were cancelled and we conducted those meetings of the Association on a virtual basis. However, for the first time since the spring of 2019, the Executive met in-person with most of our Directors and Committee Chairs during our April 2022 Spring Board Meeting. At that time, I reported on my activities as your President to that date and in this report, I will highlight my activities as CAPCJ President during the second half of the 2021-2022 year.

Meetings with the Federal Minister of Justice, the Supreme Court of Canada and Provincial Associations

Following the Spring Board Meetings which were held in Montréal Québec in late April 2022, the Executive had arranged to meet with the Federal Minister of Justice, the Hon. David Lametti as well as Justice Suzanne Côté of the Supreme Court of Canada. Although we had initially planned to conduct those meetings in person in Ottawa, shortly before those meetings it was confirmed that those meetings would proceed on a virtual basis by videoconference. I want to thank our national Secretary, Wynne Anne Trahey for very quickly making alternate arrangements which allowed us to conduct those meetings virtually. During those meetings, we conveyed the key points of interest/concerns that we had canvassed during the Board meetings. There was a very cordial and excellent exchange of information with the Minister Lametti and Madam Justice Suzanne Côté.

In addition to those meetings, in late May, as President, I was able to bring the greetings of CAPCJ to the meeting of the Nova Scotia Provincial Judges Association during our education session at White Point, Nova Scotia and the meeting of the Ontario Association of Judges in Toronto. In early June, I was able to bring greetings of CAPCJ at the meeting of the New Brunswick Provincial Judges Association and thereafter, to attend the excellent education conference organized for all New Brunswick courts at St. Andrews, New Brunswick.

CAPCJ Comments on the Federal Proposal to Create a Miscarriages of Justice Commission

In late March 2022, I received a letter in my capacity as President of CAPCJ from the Federal Minister of Justice, the Hon. David Lametti, to provide the Association views on a report prepared by the Hon. Harry Laforme and the Hon. Juanita Westmoreland-Traore, concerning their recommendations to create a Miscarriages of Justice Commission. The Minister noted in his letter that the Commission was proposed to be a permanent independent body which would exercise investigative powers and interact with the judiciary in new and distinct ways, focused on the subject matter which is directly linked to the judicial role. For those reasons, he asked for

CAPCJ's perspective on any recommendations that would have a direct impact on the judicial role for the judiciary in general.

The initial timeframe for the CAPCJ response was the end of April 2022, but in exchange of correspondence with the Minister's office, given the timing of our Spring Board and other meetings, I indicated to the Minister that it would be greatly appreciated if the timeline for our feedback was extended. In fact, the Minister initiated our virtual meeting after the Spring Board Meetings, by stating that he was aware of my correspondence and graciously extended the timeline for CAPCJ feedback to the end of June 2022.

The report prepared by the two former Judges was over 200 pages with 51 recommendations, which included a short description of information received by the two Judges in relation to their specific recommendations. In order to provide a CAPCJ perspective on this important initiative, I forwarded the Minister's material to the Chair of the CAPCJ Committee on the Law and the Co-Chairs of the CAPCJ Access to Justice Committee. I want to thank Eric Tolpannen, Brenda Green, Todd Rambow and Rom Kwolek for their very thoughtful review of the report and its recommendations and their comments in relation to the Minister's request.

In addition to the feedback received from the CAPCJ committee chairs, I also advised the Minister that I would incorporate some personal perspective on the proposal, having previously conducted an investigation and report to the Minister of Justice in terms of an alleged wrongful conviction while I was Senior Regional Director of the Atlantic Region of the Federal Department of Justice.

My response to the Federal Minister of Justice on behalf of CAPCJ was forwarded to the Minister on June 27, 2022. In that correspondence, there were general introductory comments with respect to the overall proposal for the Commission and then specific comments with respect to several recommendations. On August 17, 2022, I received a letter from Minister Lametti thanking CAPCJ for providing comments on the consultation report to create the Miscarriages of Justice Commission. The Minister also appreciated the input from the CAPCJ committees and stated that CAPCJ's input was a "valuable contribution" to the government's priority of creating the Miscarriages of Justice Commission.

National Judicial Institute (NJI)

As mentioned in my prior President's reports, I was appointed by the Chief Justice of Canada, Richard Wagner, who is the Chair of the NJI Board of Governors to be the CAPCJ representative on that Board on March 10, 2021. In addition to being a member of the NJI Board of Governors, I was also appointed to be a member of the Provincial Court Funding Working Group which is co-chaired by Chief Justice Lise Maisonneuve of the Ontario Court of Justice.

Last year, the NJI Provincial Court Funding Working Group held meetings which ultimately resulted in a draft Memorandum of Understanding [MOU] between the Canadian Judicial Council, the Canadian Council of Chief Judges [CCCJ] and NJI with a view to securing dedicated seats for Provincial and Territorial Courts Judges at NJI programs. The draft MOU

was reviewed by the three parties and, earlier this year, rather than signing that draft MOU, the parties decided to implement the proposed terms and conditions of that MOU on a “pilot project” basis.

Chief Justice Maisonneuve explained that the rationale for proceeding with a “pilot project” would allow time for the parties of the MOU to determine how the pilot project, which would guarantee up to 175 seats at NJI programs for PCJ’s, was actually working. She advised that the CCCJ had developed a formula for allocating seats to PCJ’s at several key programs and that they have allocated seats for NJI programming through to the end of August 2022 is fully subscribed. Over these first few months, she advised the Board that the “pilot project” basis for implementing the MOU is on the right track and going well.

During the NJI Board meeting in May 2022, the Board of Governors were advised that NJI has made significant progress in opening a Montréal office and being able to deliver judicial education to judges in French. While it was made clear that NJI recognizes all the added benefits of in-person training sessions, the Covid-19 Pandemic and public health restrictions greatly impacted that service delivery model. However, NJI recognized the need to continue to deliver judicial education during the pandemic and quickly pivoted to develop online programs, webinars or podcasts on specific topics or some hybrid presentation of programs.

The Director of Digital Education highlighted some of those webinars, self-study programs and podcasts which cover a wide range of topics. As mentioned in my previous NJI report, PCJ’s are working with NJI to develop and present a series of on-line webinars, podcasts, or self study programs. As an example, I note that our Past President, Marco LaBrie has done a webinar on Internet child luring, which is available on the NJI website.

In addition, PCJ’s are also involved as a Judicial Advisory Committee in NJI’s development of a series of self-study on-line programs. The NJI self study course entitled “Anti-Black Racism Sentencing Considerations” is now available on the NJI website and in addition to myself, the other PCJ’s on its Judicial Advisory Committee are Judge David St. Pierre (BC) and Judge Jean Whalen (NS). The Board of Governors were also advised that NJI was planning to prepare a similar digital program covering **Gladue** Reports and the overrepresentation of indigenous peoples in jails as well as an Indigenous Law Bench Book.

Finally, I should also mention that, as part of the “pilot project” and from cost savings made from a previous cancellation of the Newly Appointed PCJ Skills Seminar, NJI will contribute the registration costs for up to 25 PCJ’s for a judicial training conference hosted by NJI in Ottawa, from October 30-November 3, 2022. The program is designed to be a “train the trainers” program and the theme of the conference will be “*Effective Judicial Education: Understanding Vulnerable Populations.*” The Canadian Judicial Council will be able to allocate up to 40 seats for federally appointed judges.

The NJI Fall Board of Governors Meeting will be held on October 25, 2022 and the NJI Spring Board of Governors Meeting will be held on March 16, 2023.

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CAPCJ Application to Intervene in Reference to the Quebec Court of Appeal

On July 7, 2022, by an Order in Council filed with the Court of Appeal of Québec, the Attorney General referred two questions to the Court for hearing and consideration. The first question related to whether, considering the responsibilities that **R. v. Jordan** places on courts regarding the observance of reasonable time limits in criminal matters, the Chief Justice of the Court of Québec can unilaterally decide in exercising the power conferred notably by section 137 of the *Courts of Justice Act*, to reduce the number of days on which the judges assigned to the Criminal and Penal Division sit, and then adding “which will have the effect of lengthening judicial delays?” The second question is: “In the affirmative, what are the limits on this power imposed by the responsibilities that **R. v. Jordan** places on courts of justice?”

The public notice of the Attorney General’s Reference to the Court of Appeal of Québec was issued by the Court of Appeal on July 14, 2022. The Court of Appeal determined that any other Attorneys General who may be interested in this reference had until August 22, 2022, to file a representation statement. The Court of Appeal also determined that any other intervention had to be submitted by written application of no more than five pages and filed in the Court of Appeal no later than August 26, 2022. The application had to set out the reasons for the intervention, any conditions of intervention and indicate whether the intervener wished to file evidence.

Having been made aware of this reference by the Québec Director, Judge Tétreault as well as the views in relation to that reference by our Québec colleagues, I forwarded notes to the Executive and the Chairs of both Judicial Independence committees for their comments in relation to whether CAPCJ should intervene in this reference at the Court of Appeal. The Judicial Independence – Financial Security committee recognized this as an issue of judicial independence but initially saw this as more an issue of judicial independence relating to Security of Tenure and Institutional Independence. The members of the Judicial Independence-Security of Tenure and Institutional Independence Committee were provided with an excellent background note which Judge LaBrie had prepared on the Reference and they exchanged their views on the issue with the Committee Chair. Thereafter, the Committee Chair, Judge McKimm provided the Committee’s feedback to the Executive Committee, which was further shared with the Board.

As a result of the timing of the feedback, in my opinion, there was simply not enough time to make plans for a virtual Board meeting to be arranged on short notice and still have sufficient time to instruct counsel to file an application before August 26, if the Board supported the motion to do so. As a result, I asked the Secretary to forward all correspondence to or from me in relation to the issue and whether CAPCJ should intervene at the Québec Court of Appeal. In those circumstances, the Executive Committee determined that the most expeditious way of resolving the key question for CAPCJ was by way of an e-mail vote by the Board.

I want to thank Judge Marco LaBrie for all his efforts to move forward on this important issue. He provided a comprehensive background note with respect to the key issues on this Reference. As questions or comments came in from Directors, Marco immediately replied to those questions or concerns to ensure that all Directors had all the information to make an informed decision on the motion to intervene. At the same time, I had asked Judge LaBrie to see whether the Power Law firm who had represented CAPCJ on other matters would be willing and able to file the intervention application by August 26 if the Board approved that motion. In very short order, the law firm confirmed that they would accept the mandate and would be able to meet that very tight timeline for that application. They also confirmed that, if they received the mandate to represent CAPCJ, they would stay within the financial limits that we had negotiated with them on previous applications.

On August 26, 2022, the five-page CAPCJ application for status as an intervenor on the Reference, which contained a brief affidavit signed by me as President that the facts alleged in the application are true, was filed at the Quebec Court of Appeal.

Meetings between the Executives of CCCJ and CAPCJ

As indicated in my previous President's reports, the CAPCJ Executive and the Executive of CCCJ have arranged to meet at a minimum of the two times a year. During our recent meeting on August 18, 2022, the agenda included a discussion around the CAPCJ national education conference in Halifax in September 2022 and updates on the Bromont New Judges program and the Niagara-on-the-Lake Skills Program.

With respect to the PCJ's attending NJI programs under the "pilot project" based upon the draft MOU between the Canadian Judicial Council, NJI and CCCJ, the Executive of CAPCJ was advised that the "pilot project" has been going well. Having said that, now that the parties have had an opportunity to see how the initiative has been applied for a period of time, it is anticipated that there will be a further meeting or meetings of the Provincial Court Funding Working Group to fine tune some of the details in the draft MOU.

In terms of information items discussed during the meeting, the Chief Judges wished to know whether CAPCJ had altered its position with respect to the recent update by the Canadian Judicial Council of its *Ethical Principles for Judges*. CCCJ is also studying the issue in noting that Newfoundland and Labrador as well as Québec have their own ethical principles for Judges. At this point, there has been no final decision made by the CCCJ and they would appreciate an update on CAPCJ's position on the CJC's *Ethical Principles for Judges*.

During the August 18, 2022 meeting, the key issue discussed with CCCJ related to the reference to the Québec Court of Appeal by the Attorney General of Québec with respect to the decision of the Chief Judge of the Cour de Québec to reduce the number of sitting days of judges assigned to the Criminal and Penal Division. Chief Justice Rondeau shared some of the background information with the CAPCJ Executive leading up to the Minister's decision to have the matter referred to the Québec Court of Appeal for a decision.

On behalf of CAPCJ, I was able to indicate to the CCCJ Executive, which includes Chief Justice Lucie Rondeau of the Cour de Québec, that as result of an e-mail vote by the CAPCJ Board on August 16, 2022, CAPCJ was of the view that the reference had clear implications for the judicial independence of the court, and that CAPCJ would be filing an application to intervene on the appeal. We advised CCCJ that we had canvassed the possibility of counsel representing CAPCJ and being able to file a request to intervene on or before August 26, 2022. As a result, immediately after the decision of the Board, CAPCJ instructed counsel to apply to intervene in the reference to support the position of the Chief Justice of the Cour de Québec.

During the meeting, we thanked Chief Justice Rondeau for including judges who conduct cases in French outside of Québec by inviting them to attend their virtual education sessions on sexual assault trial issues. The Chief Justice indicated that those sessions are offered in French without translation, but if the program is being offered virtually, she will let the organizers of the education programs know that judges who are conducting cases in French outside of Québec would welcome an invitation to attend those sessions.

In accordance with our MOU with CCCJ to continue ongoing dialogue on areas of mutual concern, our next meeting will be the traditional lunch meeting held around the CAPCJ annual conference. Since the 2020 and 2021 CAPCJ annual conferences were postponed due to Covid 19 considerations, the meeting in Halifax will be the first meeting to include all members of CCCJ and the CAPCJ Executive since September 2019.

Possible litigation against CAPCJ and the President

In May 2022, the Secretary received correspondence from a Judge who wrote a notice of intended action against CAPCJ, the CAPCJ President and the Judges Counselling Program's service provider [Morneau Shepell] for damages. After receiving that notice, the Treasurer notified CAPCJ's Insurer, and the President also communicated that notice of intended action to the legal department of the Insurer. Following those developments, on June 7, 2022, the Executive passed a motion that CAPCJ retain counsel to represent the Association and the President. CAPCJ has retained Bruce Outhouse Q.C. of Blois, Nickerson and Bryson, Halifax, Nova Scotia and he has been authorized to accept service of any statement of claim issued by or on behalf of the Judge in relation to this matter.

This potential litigation against CAPCJ and the President as well as any financial considerations with respect to the retention of counsel were discussed during the June 16, 2022 meeting of the Executive and the Board of Directors. Following that meeting, the Secretary

advised the Judge to forward any further correspondence or statement of claim to the CAPCJ counsel.

Executive Decisions with respect to CAPCJ Medal and CAPCJ Justice Award

The Secretary had issued a notice for the submission of nominations for both the CAPCJ Medal pursuant to the criteria and timeline outlined in the CAPCJ Handbook. The Executive Council received two nominations for this Medal and after reviewing the criteria for the award, nominated and presented its selection to the Board for approval at the Board meeting on June 16, 2022. The 2022 CAPCJ Medal which recognizes an exceptional contribution to CAPCJ over number of years has been presented to Justice Joe De Filippis.

Traditionally, the CAPCJ Medal is presented to the honoured recipient during the annual CAPCJ conference, however, when I advised Justice De Filippis that he would be awarded the CAPCJ Medal, I was informed that he would be out of the country at that time, and for that reason, the Medal has already been forwarded to him.

The Secretary also issued a notice for the submission of nominations for the CAPCJ Justice Award with a closing date for those nominations on July 16, 2022. The criteria for the award were outlined in the Secretary's notice. In response, the Executive Council received two nominations for this Award. The final decision for this Award is to be made by the CAPCJ Executive Council and, after reviewing the criteria for the Award and information provided in support of those nominations, the Executive Council determined that the 2022 CAPCJ Justice Award would be presented to Judge Laurie Halfpenny-MacQuarrie of Nova Scotia. I have advised Judge Halfpenny-MacQuarrie that she will be receiving this award and that it will be presented to her during the Halifax 2022 Annual CAPCJ Conference.

President's Correspondence to Newly Appointed Judges

During the previous five months, as in the past, the President has forwarded a "Welcome to CAPCJ" letter which contains an overview of the aims and purposes of our national Association. In addition, the President's e-mail includes an overview or "primer" of the important aspects of Judicial Independence, which may not be well-known by the newly appointed judges. In addition, I have provided the organizers of the New Judges Program at Bromont Québec with that primer to be included in the materials provided to the attendees of that program.

Concluding Remarks:

I want to thank my colleagues on the Executive, the Board and all of the Committee Chairs from each province or territory who have collectively contributed to CAPCJ's efforts to continually serve our members and to achieve the aims and purposes of our national Association. As evidenced by my President's report, you have all contributed to CAPCJ's efforts to provide helpful commentary or policy decisions on a wide range of issues in relation to our roles as Provincial and Territorial Court Judges.

I want to specifically thank our national Secretary Judge Wynne Anne Trahey for her incredibly dedicated service to CAPCJ and for the support that she has provided to me during my two-year term as President. It may not be apparent to all, but during these last two years, there were issues created by the pandemic and numerous other unique issues which had to be addressed in a timely manner by the Executive and the Board. As a result, during both years there were nearly twice as many meetings as are normally held during the year and Wynne Anne was required to make all the arrangements for those meetings. In addition to contributing to the discussions during those meetings, she was the person responsible for taking detailed minutes and then, as a bilingual Association, producing them in English and French for approval at subsequent meetings.

A recent example of Wynne Anne's dedicated service to CAPCJ, was her prompt handling of the e-mail exchange, motions and follow-up around the e-mail vote by the Board to approve a CAPCJ application to intervene in the reference to the Québec Court of Appeal. So, Wynne Anne, on behalf of your CAPCJ colleagues, I want to express our most sincere appreciation for your dedicated service to our national Association!

I would also like to specifically thank Judge Marco LaBrie, who when approached by me to serve a second term as Past President during this 2021-22 year, he immediately agreed to return to the Executive. He contributed throughout the year as a member of the Executive, meetings of the Board and as a Table Officer on committees. In all of those meetings or during any e-mail exchanges or conversations, his dedication to CAPCJ's aims and purposes were very apparent. So Marco, many thanks for all of your efforts to assist me and to contribute to the aims and purposes of CAPCJ.

Looking back over the last two years, there is no doubt that the Covid 19 pandemic created many unique challenges which had to be addressed by the Executive and the Board of Directors. One of those unique challenges was resolved by the Executive and the Board's decision to nominate me to serve a second term as your President. I am greatly honoured to have been accorded the unprecedented opportunity to serve in the capacity as your President for a second term. I look forward to continuing to work with all of you in the upcoming year in my new capacity as Past President of CAPCJ!