

PROVINCIAL JUDGES

HIS HONOUR JUDGE J. MAHER

# Journal

DES JUGES PROVINCIAUX

VOLUME 13, NO. 3

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THE CANADIAN ASSOCIATION OF  
PROVINCIAL COURT JUDGES

L'ASSOCIATION CANADIENNE DES  
JUGES DE COURS PROVINCIALES





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## CHANGES?

New Provincial Representative?

Let the Executive Director and the Journal Editor know without delay!

New Compensation Terms?

Let Judge D.M. McDonald, Calgary know as soon as possible!

\* \* \* \* \*

## CHANGEMENTS?

nouveau(elle) représentant(e) de la province?

Je vous prie, informez le directeur exécutif aussi bien que le rédacteur en chef du journal sans délai!

nouveaux termes de la compensation/  
rémunération?

Informez m. le juge D. M. McDonald de Calgary le plus tôt possible!

## President's Page HIS HONOUR JUDGE J. MAHER

by/par Judge Ron Jacobson/M. le juge Ron Jacobson

"Something for everyone and everyone in something" was the way Judge Danny Abbott, 1989 CAPCJ Conference Education Chairman described the Edmonton program. That "theme" can also describe our activities for this coming year.

The annual conference in Edmonton was an outstanding success! Our appreciation and thanks go to the Alberta Association of Provincial Court Judges under President Bill Kerr and the Conference Committee under Judge Ken Plomp and his wife Fay. It was clear that many hours of planning and work were devoted to the project. Well done!

During the past year the CAPCJ under the effective leadership of Ken Crowell reassessed its role and responsibilities at national levels in "our expanding and demanding society". The Executive Committee's activities and the 1989 Conference program underlined the many obligations and challenges that Provincial Court Judges face.

Fulfillment of the CAPCJ concept and achievement of our objectives comes not from the Association itself, nor the Executive Committee, but from all of the members sharing the same vision, working together, and particularly from working with so many outside the CAPCJ.

After Pat Peacock, Past President of the Canadian Bar Association, spoke of the Bar's interest and efforts on behalf of the Provincial Courts, it was enlightening to hear from provincial representatives how much had been achieved from working closely with the CBA provincial sections. There is still much to be done, but what a fine start. We can optimistically look forward to new initiatives, especially at the provincial level.

Our Canadian Judicial College and the provincial associations are not only continuing with their traditional continuing judicial education programs, but enhancing them, and embarking on new ventures in varying degrees of shared responsibility with the Canadian Judicial Centre.

The Canadian Judicial Centre is becoming a significant partner in our continuing judicial education programs.

Thanks to the prompt response of The Court of Quebec, Judge Bernard Grenier, is very much involved with the Canadian Judicial Centre on a half-time basis. However, there is still a require-

Lors de la conférence qui s'est tenue à Edmonton dernièrement, le juge Abbott a décrit les activités de la conférence en ces mots: "De tout pour tout le monde"! Cette expression s'adresse également aux activités de l'Association des juges de la cour provinciale pour l'année qui vient.

Il va sans dire que la conférence d'Edmonton a connu un succès éminent. Nos remerciements les plus sincères s'adressent aux juges de l'association de l'Alberta sous la présidence du juge Bill Kerr ainsi qu'au comité responsable pour la conférence sous la direction du juge Ken Plomp et de son épouse Fay. Il va sans dire qu'il y ont tous mis plusieurs heures de travail.

Sous la compétence du juge Ken Crowell, l'A.C.J.C.P. a examiné son rôle et sa responsabilité au plan national tant aux besoins grandissants de notre société toujours croissante. Le thème de la conférence annuelle ainsi que les activités du comité exécutif ont souligné les obligations et défis divers dont font face les juges de la Cour provinciale aujourd'hui.

L'accomplissement des projets et des idées de l'association ne peut venir uniquement de l'association même ou de son comité exécutif, mais plutôt de tous ses membres, partageant le même idéal et les mêmes idées et en collaborant avec d'autres organismes partageant les mêmes vues.

Après que Pat Peacock, président sortant de l'Association du barreau canadien, a parlé de l'intérêt du Barreau ainsi que des efforts continuels de celui-ci envers l'A.C.J.C.P., il a fait bon d'entendre aussi des représentants régionaux dire combien nous avons bénéficié à travailler côte-à-côte. Il reste beaucoup à faire mais il va sans dire que c'est un bon début. Nous pouvons donc espérer de nouvelles initiatives, particulièrement au niveau provincial.

Notre Canadian Judicial College ainsi que notre Association ne continuent pas uniquement leurs programmes d'éducation permanente, mais continuent leur expansion et s'embarque dans des nouvelles avenues en travaillant étroitement avec le Canadian Judicial Centre.

Le Canadian Judicial Centre devient un partenaire de plus en plus important dans notre poursuite de l'éducation.

Nos remerciements vont à la Cour provinciale du Québec qui permet au juge Bernard Grenier

ment for full-time CAPCJ representation in Ottawa which must be resolved to our satisfaction. We still hope to see the original plan to have Judge Jean Marie Bordeleau also serve half time at the CJC in Ottawa implemented. Unfortunately, resolution of that problem is presently beyond our power and influence. Meanwhile, we appreciate Jean Marie's understanding and patience as he awaits the opportunity to be our co-representative.

The need for unified courts was anticipated by the CAPCJ in 1979. Now there is a clear trend, with the topic gaining its own momentum. The CBA has called for changes and improvements to the judicial system. The Ontario legislation has been a special catalyst, with other provinces starting to show considerable interest. Unified courts of themselves, are not the sole answer to the many problems society experiences with the administration of justice. Clearly, there is the need for change. It is not the judge's role to create policy, but the CAPCJ has a role as a "Resource" and as an "Advisor" at both federal and provincial levels. The CAPCJ must be continually involved in consultation in all aspects of the administration of justice.

At all times, however, we must bear in mind the caution, and sound advice of Mr. Justice Bill Stevenson, that as judges, we do not polarize the issues, that we not lose the confidence, respect and trust of the public, nor create hostility and diversion in the judicial system. By keeping a proper perspective, encouraging sound reasoning, maintaining effective channels of communication, and establishing good will, we can contribute to achieving the best court system for Canada.

Before closing, I wish to acknowledge the efforts and contributions of M. le juge Stephen Cuddihy, immediate past Director of The Canadian Judicial College. Stephen has been involved in all aspects of our new judges' training programs for over 10 years. His contributions have been great and his name is legend. Because of his new administrative responsibilities and commitments, he has resigned from the Canadian Judicial College, but will remain as an advisor. Thank you for your many years of dedicated service. We are looking forward to seeing you in Quebec in 1990.

de travailler maintenant à mitemps pour le Canadian Judicial Centre. Le poste demeure vacant à Ottawa pour un représentant à plein temps de notre association. Nous espérons que notre plan initial d'avoir le juge Jean-Marie Bordeleau à Ottawa se concrétisera aussi. Malheureusement, la solution à ce problème demeure en dehors de notre pouvoir. Entre-temps, nous remercions Jean-Marie pour sa patience et attendons avec impatience l'occasion d'être notre représentant.

Le besoin d'un système judiciaire unifié a été abordé par l'A.C.J.C.P. en 1979. C'est actuellement un sujet de conversation et le sujet devient de plus en plus intéressant. L'A.B.C. a suggéré que des changements seraient de mise afin d'améliorer notre système judiciaire. Le Gouvernement de l'Ontario a été un catalyseur, suivi par l'intérêt grandissant des autres provinces. L'unification des cours n'est pas la solution unique aux difficultés dont notre société est aux prises. Il est évident que nous devons y apporter certaines ratifications. Le rôle du juge n'est pas celui de créer des lois, bien au contraire, mais c'est celui de l'A.C.J.C.P. d'agir comme conseiller ou ressources auprès de nos gouvernements. L'A.C.J.C.P. doit continuer ses consultations dans tous les aspects de l'administration de la justice.

Il ne faut toutefois pas perdre de vue les sages conseils du juge Bill Stevenson à l'effet qu'en tant que juges, nous ne devons pas captiver le sujet, que nous ne devons pas perdre la confiance et le respect du public, ni créer de l'hostilité et de la division dans le système judiciaire. En gardant nos réseaux de communications ouverts et en établissant une bonne réputation nous pourrions contribuer à l'acquisition d'un des meilleur système judiciaire au Canada.

En terminant, j'aimerais souligner de dévouement et le travail du juge Stephen Cuddihy, directeur sortant de charge du Canadian Judicial College. Stephen s'est occupé de tous les aspects du colloque pour les nouveaux juges depuis les dernières années. Son nom est associé à l'excellente réputation et au succès retentissant de ce colloque. A cause de ses nouvelles fonctions administratives, il s'est retiré du Canadian Judicial College mais continue en tant que conseiller. Merci pour plusieurs années de dévouement et à bientôt à Québec en 1990.

looking mut that ever you laid your eyes on. "You mean to tell me that this cur that you have here is a thoroughbred police dog?"

"Yes, old dear, that's right," came the almost sincere reply. "Don't let the looks deceive you. He's in the Secret Service."

\* \* \* \* \*

"What's the charge against this man?" asked the judge.

"Drunk and disorderly, sir," responded the constable. "He was fighting with a taxi driver, sir."

"Bring in the taxi driver," ordered the judge.

"That's the trouble, your Honour," said the constable. "There wasn't no taxi driver."

## NOTICE

1990 CAPCJ CONFERENCE  
CHATEAU FRONTENAC  
QUEBEC, QUEBEC

September 12, 1990 - September 15, 1990

*"Plan your attendance now".*

### CONTACT:

Judge Louis Remillard  
Cour du Quebec  
300 boul. Jean-Lesage  
Quebec City, Quebec  
G1K 8K6  
Tel: (418) 649-3540



# In Lighter Vein

In many of our provinces the sea and the environment in general has traditionally played a significant role in our cultural life. In one such province moonshining was more prevalent in some regions than others. The reason was simple. On the south coast you were near a bountiful supply of liquor of foreign origin and on the east or west you were near the Liquor Control Board retail stores. In the remote north, however, you had to make your own "drop of stuff" or freeze to death in the cold, harsh Canadian winters. No one froze to death. Indeed, in one small remote community stills were as common as the kitchen stove. In fact, they were attached to the kitchen stove. At certain times of the year hardly anyone was gainfully employed, and for some unknown reason the respectable title of "Captain" was bestowed upon older members of this less-than-respectable community.

One day the local judge had occasion to go on circuit to this community to hear a case of moonshining, and on calling one of those old codgers to the witness stand enquired how he had come by the title of "Captain".

"Well, me Honour," began the old fellow, "the Captain in front of my name is just like the Honourable in front of yours; it don't mean a damn thing."

\* \* \* \* \*

After serving on the bench for more than 20 years, a Provincial Court Judge of much renown was retiring. At a dinner in his honour, many tributes were offered, some serious, others profound and still others, well . . . . .

For example, one longtime friend of His Honour rose and said "a fable is told in some countries that when a baby is born, its guardian angel bestows a kiss upon the child. If the kiss is on the brow, the child is destined to be an intellectual; on the eyes, it will be a great beauty; if it is on the fingers, it will be a great artist, etc... Now I'm not in a position to tell you where the angel kissed my friend, but you will all agree that he has done a fine job of sitting on the bench."

\* \* \* \* \*

"Do you suppose I'll have justice done me?" asked an anxious criminal of his attorney, a shrewd Kentucky lawyer.

"I'm afraid you won't," said the lawyer coolly. "I see two men on the jury who are opposed to hanging."

The policeman had just taken the stand.

"I could see him in the middle of the road on his hands and knees."

"But your Honour," interrupted the lawyer. "Just because a man is on his hands and knees in the middle of the road at twelve o'clock in the night is no indication that he is drunk."

"What the honourable gentleman says is quite true," agreed the policeman. "But the defendant was trying to roll up the white line."

\* \* \* \* \*

There was a family in one small community that lived what we might call close to nature. It was not at all uncommon to see coming out of the house a variety of livestock. Goats wandered through the kitchen, ducks came out and washed their feet in the nearby pond, and the horse spent one winter stabled in the living room. This condition went on for some time without the notice of the Health Department. It came to a head, however, when a family disagreement brought the couple before the judge.

"I got to divorce the wife, your Honour, and that's all there is to it," remonstrated the unhappy husband. "She insists on keeping a pet goat in the bedroom. Now, I allowed it at first, but the smell is beginning to get to me."

The judge shook his head in disbelief. "A goat in the bedroom? That doesn't sound too good to me. However, it ought not to be sufficient grounds for divorce. Why don't you open the windows to get rid of the odour?"

"Can't do that, sir," replied the gentleman. "All me pigeons would get out."

\* \* \* \* \*

Poor old Mrs. Murphy lived on the edge of the city. In fact she was near enough to the city to get the newspaper delivered to her door. She was also near enough to the city to get a visit from the odd burglar. This was what made her nervous. She decided that she would get a watchdog. So in the evening she scanned the paper's want ads for a suitable dog. One evening she alighted on an ad which delighted her. It read: "For sale thoroughbred police dog, price \$5.00." She responded to the ad by calling the telephone number listed, making arrangements to have the dog delivered the next day.

The next day a lanky, not so well-dressed gentleman, delivered to her door the rnanliest-

# Editorial Page

Another year in the life of our Association has come to a close with the completion of the 17th Annual Conference at Edmonton from September 12-16.

As everyone knows, each year our Annual Conference is hosted by a different province alternating between East and West. The provinces are now well into the second round of hosting and while the topics and emphasis over the past 17 years have changed, it is easy to see that the enthusiasm for the continuation of the work of our Association has not.

The conference in Edmonton this year must be considered to have been a huge success. Thanks to the work of Judge Ken Plomb and his committee the conference ran like clockwork from the opening reception to the closing banquet. The three-day educational programme was well organized and enthusiastically received; the social activities were immensely enjoyable; and the accommodations were without fault. But, then, the hospitality of Alberta, and Edmonton in particular, is unsurpassed anywhere in Canada.

The most difficult part to overcome after a conference such as that just held at Edmonton is getting back to work. However, it's back to work we are and it is certain the new Executive of the Association will carry on the task of achieving its goals and aspirations with the same vigour and drive as its predecessors.

Having witnessed first-hand the activities of the past year and having observed the performance of the outgoing Executive it is easy to sense that no challenge presented to the Association will be too great to overcome.

In any event, to the new Executive goes our sincere good wishes for a productive and fruitful year ahead. We look forward to the culmination of that year in the 18th Annual Conference in the beautiful city of Quebec in "la belle province" du Quebec in September 1990.

We hope you can see your way clear to attend.

**M. Reginald Reid**  
Editor-in-Chief

## Reminder

To all members of the Executive and  
Provincial Representatives

Executive Meeting  
Montreal

April 6, 7, 8, 1990

Hotel to be arranged

\* \* \* \* \*

## Rappel

À tous les membres de l'exécutif et les  
représentants des provinces

Réunion exécutive  
Montreal

6, 7, 8, avril 1990

l'hôtel sera aménagé



# Feedback

September 25, 1989

Editor-in-Chief  
Provincial Judges Journal

In your **News Briefs** of June 1989 (p.4) the article on salary adjustments for Ontario's Provincial judges states:

"In revising the salaries, the government took into account recommendations from last fall by the Ontario Provincial Courts Committee chaired by Gordon F. Henderson (the Henderson Report)."

I feel that this does not accurately reflect what the government of Ontario did. The words of Attorney General Ian Scott were that "The views of the Provincial Courts Committee on the proper levels of remuneration ... would be recognized as recommendations to be given the fullest consideration and very great weight by the government..."

I suspect that the majority of the Provincial Court Judges in this Province feel that the Ontario government failed to give "the fullest consideration and very great weight" to the

Henderson recommendation on salaries.

I believe that it would have been more accurate to say:

In revising the salaries, the government took into account recommendations made last fall by the Ontario Provincial Courts Committee, and then the government chose to ignore those recommendations.

The Henderson Report at page 64 quotes former Attorney General Arthur Wishart from **Hansard**, May 22, 1968 (twenty-one years ago), p. 3255, as saying that the salary of the Provincial Court judge "is going to be the same" as that of the County or District Court judge.

It appears that once again, in the tortuous salary dispute of the last 21 years, the Ontario government did just what it darn well wanted to do and nothing more. Period.

Yours very truly,

James P. Felstiner  
Provincial Judge

## A security gap\*

In Canada, people in custody have the right to talk to a lawyer before they appear in court. But lately at the old city hall courthouse in Toronto, a shortage of security officers to supervise these meetings has wiped away that right for some prisoners.

Last Friday, for example, one accused man had his bail hearing needlessly postponed for the weekend because he wasn't permitted to see his lawyer. What's fair about that?

This disturbing denial of a basic constitutional right is occurring at the same time as some judges at old city hall say their lives may be in danger because of inadequate security.

Indeed, the situation has deteriorated to the point where Ontario Chief Justice William Howland says "more and more worrisome disruptions" are occurring in courtrooms.

Attorney-General Ian Scott says security will be significantly improved when Queen's Park approves a controversial bill that passes the cost of court security from the province to municipalities.

Maybe so. But Scott has a duty to provide adequate courtroom security and protect constitutional rights. Surely, he doesn't intend to wait until bureaucrats sort out their squabbles and lawmakers make up their minds.

*\*From the Toronto Star, May 18, 1989*

## The Committee on the Law is Looking for Work

Have you found any defects in statutory law? Most lawyers and judges have periodically noticed that a particular problem being litigated doesn't quite fit into the scheme of existing legislation. Many have often said, that some statute should be amended because it doesn't cover a specific matter or provide a suitable remedy to a problem.

In the past, the C.A.P.C.J. has actively participated in the studies done in both the preparation of and the amendments to Federal Legislation. The committee has had less involvement in assessing proposed legislation in the past few years because the Federal Department of Justice has not supplied the association with subject matter for consideration before legislation has at least been prepared in draft form.

The department officials have been most satisfied with the earlier comments, proposals and recommendations made by the judges' association, and the officials of the department plan in asking the association for further input when legislation is drafted which will be dealt with by Judges of First Instance.

What effect will the proposed Victims of Crime Act have on your court?

The usual areas of concern, in which Provincial Judges originally dispose of the great majority of cases, are fields of Criminal, Youth and Family, Child Welfare, and to a lesser extent civil law.

The Committee on the Law recognizes the division of responsibilities between the legislative and judicial arms of the government and the need to avoid any appearance of trying to make laws or influence the legislative process. The judiciary can effectively assist the legislators by advising, sometimes in advance of the implementation of the legislation, on any potential procedural problems or any substantive omissions that might later be a problem to the court. In no way is such advice intended to diminish the power of the legislative branch of government.

All provincial court judges are now asked to review problems they have observed as a result of inappropriate or defective statutes and to submit the problems to the Committee on the Law. The committee can then review the problems, categorize them, try to make some recommendations on solutions and report to both the members of the association, through the Journal, and to the appropriate government employee or committee involved in administering the amendment of the legislation.

**Youth Court:** Have you encountered practical problems in

- (1) referrals to legal counsel,
- (2) delays in release hearings,
- (3) notices of requests for greater punishments,
- (4) receipts of or consideration of reports on interviews with victims,
- (5) lack of the provision for a conditional discharge,
- (6) terms of the transfer to adult court,
- (7) limitations on the number of hours of community service work,
- (8) medical or psychiatric assessments,
- (9) the lack of alternative measures,
- (10) authority of police officers to release after arrest,
- (11) extensions of time to comply with court orders,
- (12) appropriate facilities for custody of youths,
- (13) interprovincial transfers,
- (14) wilful non-compliance with court orders,
- (15) delays in service of notices, preparation of reports, obtaining court records, provision of counsel, or transfers of persons because of distances or isolation of communities,
- (16) orders or notices of disclosure,
- (17) locations of and types of custodial facilities and,
- (18) the admission of evidence or statements.

**Criminal Court** — Some of the members of our association have expressed frustration resulting from a lack of legislative power to deal with contempt and procedures under a contempt citation, remanding of persons for mental examinations for purposes other than to determine fitness to stand trial and other such omissions of power under the code.

Naturally, the judges, who deal with these statutes on a day to day basis, are the best source of information on problems that do occur. Do you feel comfortable with the present powers on remand orders or on sentencing for prison escapes?

Because the Federal Justice Department will soon be studying the proposals of the Law Reform Commission, it would be most helpful if the committee were to receive comments, suggestions and proposals on the items which may be of concern to you. The committee would then have some basis upon which to do its work.

Will you please therefore send a note on any subject you think should be considered by the committee to:

Judge Thomas B. Davis, Territorial Court  
P.O. Box 550, Yellowknife, N.W.T.  
X1A 2N4

Your interest and cooperation will be appreciated. Thanks.



# Book Review

## THE RIGHT TO COUNSEL

by Marie Finklestein  
Butterworths

Book Review by Judge A.W. Aunger  
Provincial Court of Alberta

The framework of the slim book consists of 4 chapters divided into: an introduction; the meaning of arrest and detention; the right to counsel; and the exclusion of evidence. This use of a simple frame work combined with bright, clear and unadorned writing, by an author who has a good grasp of the fundamentals, passes on to the readers of any discipline what is the current state and tendencies of *The Charter* to the right to counsel. Consequently those who are interested in the study of the applicability of *The Charter of Rights* to various situations have a broad outline of principles which shall be easily kept to date with subsequent cases.

The introduction briefly puts in context the historical reasons of the use and functions of defence counsel, with the old hue and cry method of apprehension of suspected criminals to the modern police forces begun by Robert Peel, and the evolution of the Bow Street magistrates. A specific comparison is made between the right to counsel on detention or arrest, in Canada and the United States.

Throughout the introduction and the following 3 chapters Mrs. Finklestein uses extensive notes giving explanatory comments which allows the reader of the text through his or her general legal knowledge to; firstly, compare particular sections of the *American Constitution* with the *Canadian Charter of Rights and Freedoms*, and, secondly, places the reader in a position to foresee beyond the given details of the leading case law to arrive at solutions to further problems on the exclusion of evidence using Sec. 24(2). Those notes raise curiosity about other legal points, many of which are covered by the comments at the end of each chapter — which is in contrast to some books that contain merely a stark citation, as see case x at page so and so; and thereby disdainfully dispense of the reader's interest and add nothing to knowledge.

I have mentioned the author looking ahead. One of these matters is a roadside demand constituting a detention within the meaning of Section 10(b) of the *The Charter*. This issue is now decided in *Hufsky v The Queen*, subsequent to the publication date of her book.

One however should have a caution on the

note at page 3-1 where the author argues "It should be noted that Article 5(2) of the *European Convention* requires that a person who is arrested be informed properly of the reasons for his arrest and of any charge in a language he understands. This requirement could arguably extend to s. 10(b) of the *Charter*, such that the police must have an interpreter available in a location where a significant proportion of the population does not understand the language of the majority."

If the principle is accepted the arrestee or detainee must be informed promptly (immediately) in a language he understands. Then, depending on the *locality* in Canada there will be numerous instances where the police will be unable to fulfill their duty. I point out I sit in a tourist town with a population of 5200. Some tours from non English-speaking countries contain up to 400 tourists. If "population" is to be read as "total number of inhabitants" and however fleeting, that proposed police duty, will become impossible to fulfill.

As to the second part of the proposal I ask what is meant by significant portion "of the population"?

Perhaps some guide or tendencies will be given when written reasons are delivered by the Supreme Court of Canada in *R v Mohl*, unreported May 25, 1989, which recently overturned the *Saskatchewan Court of Appeal* (34 C.C.C. (3d) 435.). In this 2 to 1 decision of *Mohl* the certificate of analyses of breath samples was excluded as the accused was too drunk to understand his right to counsel and therefore his constitutional rights were infringed. In a strong dissent **Wakeling JA** held that section 10(b) of *The Charter* creates an absolute right, then went onto apply Section 1 and 24(2), and decided the violation of the right did not bring the administration of justice into disrepute as the violation was not the fault of the police.

# News Briefs

## NEW BRUNSWICK

### Deaths

Judge Charles Blake Lynch, age 46, died July 7, 1989. Judge Lynch was one of the best known figures in New Brunswick law circles. He was a graduate of UNB where he was a noted athlete in football and baseball.

After graduation Judge Lynch served in private practice and also as a clerk of the New Brunswick Legislature from 1971 to 1978 when he was appointed to the bench.

Judge Lynch took a lifelong interest in his community. he also served his provincial association and the CAPCJ very well. In 1986 Judge Lynch was conference chairman for the CAPCJ Conference held at Saint John, N.B., an event fondly remembered by all who attended.

Judge Lynch will be missed in legal circles throughout Atlantic Canada.

To his family and relatives are extended our deepest sympathy.

## ONTARIO

### Appointments

Her Honour M. Wendy Robson, Cobourg, appointed to the Provincial Court (Family Division) effective July 7, 1989.

Judge Robson graduated from the University of British Columbia Law School, was called to the Ontario Bar in 1968 and since that time has worked almost exclusively in the family law area.

Her Honour Judge Marie Linhares de Sousa, Provincial Court (Criminal Division), effective July 4, 1989.

Judge Linhares de Sousa graduated from the University of Ottawa Law School and was called to the Bar in 1978.

His Honour Judge Kenneth Gordon Lenz, Provincial Court (Criminal Division) Simcoe, effective July 4, 1989.

Judge Lenz graduated from Osgoode Hall Law School and was called to the Bar in 1976. Prior to joining the Ministry of the Attorney General in 1982 as an Assistant

Crown Attorney in the County of Brant, Mr. Lenz was in private practice specializing in criminal, Civil and family law litigation.

His Honour Judge Rommell Gerard Masse, Provincial Court (Criminal Division), Ottawa, effective July 4, 1989.

Judge Masse graduated from the University of Windsor Law School and was called to the Bar in 1978.

### Retirements

His Honour Judge B.C. Thompson, Cobourg, effective April 30, 1989. Provincial Court (Family Division).

His Honour Judge A. Douglas McLennan, Provincial Court, (Criminal Division), effective August 24, 1989. Judge McLennan served from April 1, 1987.

His Honour Judge W. Leslie Camblin, Provincial Court (Criminal Division), effective May 24, 1989. Judge Camblin was appointed to the bench effective October 4, 1969. He was elected Honorary Life Member of the Association of Provincial Criminal Court Judges of Ontario on May 27, 1989.

### Deaths

His Honour Judge Thomas V. Wills, Belleville, July 2, 1989. Born April 9, 1901, Judge Wills was appointed effective December 1, 1944 and retired January 1, 1974.

Judge Wills was an Honorary Life Member of the Association of Provincial Criminal Court Judges of Ontario.

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His Honour Judge James William Butler, Richmond Hill, August 25, 1989. Judge Butler was born in Dover, England but immigrated to Canada at an early age.

For his entire working life Judge Butler was involved with the field of law serving first as a court clerk and from 1948 until his retirement in 1961 as a Provincial Court Judge.

Judge Butler was an Honorary Life Member of the Association of Provincial Criminal Court Judges of Ontario.

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His Honour Judge John Leslie Prentice, Toronto, August 25, 1989 at age 104.

Judge Prentice was a graduate of Osgoode Hall Law School in 1926. In 1938 he was appointed to the bench and retired in 1961 at age 75. After retirement from the bench he worked as a lawyer for a further 20 years before finally retiring in 1981.

Judge Prentice was an honorary Life Member of the Association of Provincial Criminal Court Judges of Ontario and is believed to have been the oldest retired member of any bench in Canada.

#### Ontario Association Notes

The following officers and committee members were elected for 1989-90 at the last meeting of the Association of Provincial Criminal Court Judges of Ontario:

President: Judge J Douglas Walker, London  
Past President: Judge C. Russell Merredew, Pembroke

First Vice-President (President-elect): Judge Stanley W. Long, Toronto  
Second Vice President: Judge Leonard T. Montgomery, Orillia

Treasurer: Judge William S. Sharpe, Milton  
Secretary: Judge Douglas V. Latimer, Milton

Executive Committee:  
Judge Jean M. Bordeleau, Ottawa

Judge Samuel E. Darroch, Toronto  
Judge Donald C. Downie, Kitchener  
Judge Donald A. Ebbs, Windsor  
Judge John D.D. Evans, Cobourg

#### Business Reports

At the Annual Meeting, the following reports of officers and committees were filed and adopted:

#### PRESIDENT'S REPORT EDMONTON, SEPTEMBER 16, 1989

by Judge Kenneth Crowell

This report brings to an end one of the most interesting and rewarding years of my life. To have had the opportunity to serve, and to visit so much of this wonderful country in which we have the privilege of working and living. Meeting old friends and making new acquaintances has made this busy past year a most rewarding event.

I have had the privilege of visiting the provinces of Newfoundland, Nova Scotia, New Brunswick, Ontario, Saskatchewan, Alberta, and British Columbia and wish to thank each of those

Judge Walter P. Hryciuk, Toronto  
Judge Gilles R. (Sid) Matte, Sudbury  
Senior Judge Raymond J. Walnech, Thunder Bay  
Judge Anton Zuraw, Hamilton

#### MANITOBA

#### Appointments

His Honour Judge John P. Gray, Winnipeg, effective June 1, 1989.

Her Honour Judge Judith M. Webster, Winnipeg, effective June 1, 1989.

#### NATIONALLY

#### Honorary Life Members

At the Annual Meeting held on Saturday, September 16, 1989 resolutions were passed conferring honorary life memberships upon two of our most distinguished and outstanding members.

In recognition of this contribution to the welfare of our Association over the past many years, resolutions were enthusiastically adopted conferring the honour upon:

His Honour Associate Chief Judge Ken Page of British Columbia, Past President of the CAPCJ, and

His Honour Chief Judge Constantine Kosowan of Alberta. Chief Judge Kosowan has been a great and true benefactor of the CAPCJ for many years and is well deserving of the honour bestowed.

#### RAPPORT DU PRÉSIDENT EDMONTON LE 16 SEPTEMBRE, 1989

par juge Kenneth Crowell

Ce rapport complète une des années les plus intéressantes et satisfaisantes de ma vie: d'avoir eu l'occasion de servir et de visiter autant de ce pays magnifique dans lequel nous avons le privilège de travailler et de vivre; renouveler d'anciennes connaissances et d'en faire de nouvelles a fait de cette dernière année occupée un événement exceptionnel.

J'ai eu le privilège de visiter les provinces de Terre-Neuve, Nouvelle-Écosse, Nouveau Brunswick, Ontario, Saskatchewan, Alberta et la Colombie Britannique et souhaite remercier cha-

agents have followed these courses and I am told that due to the rotation of personnel, a new series of courses will begin in 1989.

Also agents working in northern Quebec have to follow a one week course given each year. May I add that some natives are participating in these courses to give their points of view and to dialogue with the agents.

It is also in our plan that all the persons working with our Itinerant Court follow such a course.

5. Finally, those who have to work with natives

should care and be dedicated to what they are doing. I think our native brothers are very sensible to this aspect of our behaviour and can easily detect if we are honest and sincere.

These were the comments and recommendations I wanted to make to this Commission. I hope they will be of some help and I am ready to answer any question.

Thank you very much.

## AVIS

A.C.J.C.P. - Assemblée '90  
Le Château Frontenac  
QUÉBEC, QUÉBEC

12 - 15 septembre 1990

«Faites les plans pour votre présence  
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Pour plus d'informations, contactez:

Le président de l'Assemblée '90  
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authority, except in special cases. Court workers or para-legals and local constables under the supervision or counselling of legal aid lawyers and Crown attorneys would take care of the ordinary cases brought before the court.

1. The legal jurisdiction of the committee through their J.P. members could be from time to time revised according to their will, training, experience or other factors.

2. This jurisdiction could be over all band by-laws, municipal regulations, provincial summary conviction acts and also section XXIV of the Criminal Code.

They might at first hear only pleas of guilty but eventually hear trials and preliminary hearings. The local authority could always transfer to the ordinary court the cases they feel they cannot or do not want to hear.

The burden of taking decisions against one's own peers would be supported by a group and not only by one person. This way of doing things would correct most of the disadvantages of the J.P.'s system existing in some provinces or in the Territories.

The decision would be taken by the group and the J.P.'s would be there in fact to legalize according to our "white laws" the decisions of the whole group.

3. The members of the local judicial authority would also receive training in mediation and conciliation and would always decide themselves if a case submitted to them could be dejudicialized or not. A list of indictable offences could also be considered to be submitted to the local authority for mediation or conciliation.

For example, breaking and entering to steal twelve (12) ketchup bottles to make home brew is an indictable offence but why should I fly 1000 miles to hear that case. Local people could surely take care of such a crime.

In fact the local judicial authority would be in a position to imagine and find solutions which could be more adapted to native values.

4. I look forward to seeing when Quebec Court judges travelling in the North will be exchanging ideas and ways of doing things with "native local judicial authorities and will be acting as coaches on legal issues. Nowadays, nobody is farther from another than the distance of his telephone or his telecopier.

Some may say that such a system is too close to the white system and not taking the native values into enough consideration.

I do not think we should start from scratch but adaptation should work on both sides.

What is important is not the **system** we will adopt but to assure that native communities will regain **the social control** they have lost due to the changes they have known or suffered since the coming of Europeans in America.

Actually there is a vast consultation among the Crees in all their communities and we are expecting their proposals next month. Also we have obtained from the Government the necessary funds to implement immediately three (3) or four (4) pilot projects of "local judicial authority" or "justice committee."

Depending on the success of these experiments we hope that throughout the Province of Quebec, the native communities will themselves take on a great part of the administration of justice. The Department of Justice is actually preparing an intervention plan in all the native communities of Quebec. In the Province of Quebec, there are ten (10) different nations found in fifty three (53) different communities for a total of approximately 45,000 people.

I would like to conclude this address by giving some guidelines or principles we should bear in mind when trying to find new ways of delivering justice in native communities or towards individuals living in the cities.

These principles may appear evident but I think they are too often forgotten.

1. The laws or the system of laws of a group or a society reflects the values of this society and these values usually assure the social control over the individuals living in that society.

2. Our Euro-Canadian system, even if we think it is the best one, is not necessarily the one best adapted to the different native communities.

3. We should be prepared and especially the administrators and judges (especially Appeal Court judges in light of the Nakitarvik case, (1986) 26 C.C.C. (3d) 193), should be prepared to depart from too rigid principles mainly in sentencing and accept that some values may be different for different peoples.

4. We should always be careful that the persons involved in the delivery of justice in native communities are well aware of the usages, customs and history of natives in order to better understand their ways of doing and thinking.

Since 1983, the Quebec Provincial Police have organized for its members working in or near a native community "sensitization courses on native usages and customs". Up to now, 750

host provinces for the wonderful hospitality extended to me and to Avis.

During the year a very useful and productive meeting was held with the Department of Justice in Ottawa resulting in the paper "The Need For, And The Future Of The CAPCJ: The Changing Emphasis!" Hopefully this meeting and this document will be the foundation of dramatic changes in our Association, its goals and emphasis during the coming years.

In furtherance of the creation and growth of the Canadian Judicial Center under the able leadership of Past President Ken Page, a document was prepared and approved by both participating parties entitled: "CAPCJ Understanding With CJC".

This new relationship should assist in the general education of all Judges within Canada and act as a further incentive towards a unified Canadian Court system.

Education continues to be one of our major functions and I am pleased to report on the excellent quality and content of our three major education programs, namely, the Western Judicial College, The Atlantic Regional Education Conference and the New Judges Program. With the continuation and expansion of these programs plus the provincial programs under the sponsorship of provincial organizations, coupled with the training programs through CJC such as computer, films, papers and personnel, the Judges of today are continually exposed to increased and enhanced opportunities to better serve the public and the judicial process.

The CAPCJ Journal continues to be a useful and informative instrument in communication and hopefully its increased bilingual content will eventually lead to total membership of all Provincial Court Judges within our country.

Compensation is an ever present consideration. Several provinces have made substantial changes in this area and we must all continue our efforts to firstly eliminate any vestiges of the concept that Judges are civil servants and secondly to convince the various governments and the public of the importance of the work that is performed by Provincial Court Judges and that compensation should be equated with that of federally appointed judges.

Further to the compensation issue we are continuing to receive growing support from the Canadian Bar Association, the local branches of the Canadian Bar as well as Provincial Bar Associations. It is imperative that we encourage and foster these relationships in the coming years.

Many jurisdictions are giving serious consider-

cune de ces provinces pour la merveilleuse hospitalité offerte à Avis et à moi-même.

Pendant cette année une réunion très utile et fructueuse a été tenue avec le Ministère de la Justice à Ottawa avec, comme résultat, le document "Le besoin et le future de l'ACJCP: l'importance changeante!". Cette réunion et de document devraient être la fondation de changements importants dans notre association, ses buts et leur importance dans les années à venir.

Suite à la création et croissance du Centre Judiciaire Canadien sous la direction capable de notre ancien président Ken Page, un document a été préparé et approuvé par les deux participants nommé: "L'entente entre l'ACJCP et le CJC".

Ces nouvelles relations devraient assister l'éducation générale de tout juge au Canada et inciter à unifier le système Canadien des tribunaux.

L'éducation continue à être une de nos fonctions principales et je suis heureux de rapporter de l'excellente qualité et du contenu de nos trois programmes d'éducation, c'est à dire le Collège Judiciaire de l'Ouest, La Conférence éducationnelle de la région atlantique, et le programme pour les nouveaux juges. Avec la continuation et l'expansion de ces programmes ainsi que ceux, locaux, par l'entremise des organisations provinciales, et les programmes d'instruction par l'ACJCP tel que ordinateur, films, livres et personnels, les juges d'aujourd'hui sont exposés continuellement à de meilleurs occasions, plus nombreuses, de mieux servir le publique et le processus judiciaire.

La Journal de l'ACJCP continue à être un instrument de communication utile et instructif et avec espoir son contenu bilingue augmentant amènerait éventuellement tous les juges de la cour provinciale à être membre de notre Association.

La compensation est une considération toujours présente. Plusieurs provinces ont apporté des changements substantiels dans ce domaine et nous devons tous continuer nos efforts, d'abord, pour éliminer tout vestige que les juges sont des fonctionnaires et ensuite, convaincre les différents gouvernements et le publique de l'importance du travail qui est fait par les juges de la cour Provinciale et que la compensation devrait être égale à celle des juges nommés par le fédéral.

Suite à cette question de compensation nous recevons toujours un appui croissant de l'Association du Barreau Canadien, des branches locales du Barreau Canadien ainsi que des Barreaux provinciaux. Il faut absolument que nous



ation towards a unified Court system and we all look forward to changes in this area, such as those proposed by the Law Reform Commission, the province of Ontario and other agencies and jurisdictions.

In closing, I extend to my Executive my deep appreciation for their able support and encouragement, and to the general membership, my sincere thanks in having had the opportunity to serve as your President during the past year.

encouragions ces relations dans les années à venir.

## **ANNUAL REPORT CANADIAN JUDICIAL COLLEGE EDMONTON - SEPTEMBER 1989**

by Judge Stephen Cuddihy

At the annual meeting which took place in Halifax, in September of 1988, His Honour Judge Kenneth Crowell, President of the Canadian Association of Provincial Court Judges, appointed me as director of the Canadian Judicial College. He also appointed, according to article 11 of the Constitution, the four assistant directors as follows: His Honour Jean Louis Batiot, for the Atlantic Division, The Honourable André Saint-Cyr, for the Quebec Central Division, His Honour John Evans, for the Ontario Central Division, and His Honour Douglas Campbell, for the Western Division; Judge Campbell was also appointed by the executive as the chairman of the Western Judicial Education Centre.

I have been active in the education committee since 1979 and it was a pleasure for me to accept, for the first time, an official title. Regretfully however I had to advise the executive of our association that I could not act for more than one year in this office because of my recent appointment, on December 21, 1988, as senior administrative judge for the judicial districts of Terrebonne (St. Jerome), Joliette (Joliette) and Labelle (Mont-Laurier), in the Province of Quebec.

The activities of the Canadian Judicial College for the past year have been numerous.

I chaired once more the New Judges' Training Program and conference which was held for the fourth year, at the Far Hills Inn, in Val Morin, Quebec. This meeting took place from the 7th till the 14th of April 1989. Courses were dispensed for three divisions: criminal, family and civil (common law). The civil law courses are and will be held by the "Conseil de la Magistrature du Québec" since Quebec is the only Province which deals with the "Code civil". Fifty six participants attended the conference. The total cost

Plusieurs juridictions étudient sérieusement le système d'une cour unifiée et nous espérons tous des changements dans ce domaine tel que ceux proposés par la Commission de la réforme légale, la province de l'Ontario et autres agences et juridictions.

En terminant j'offre à mon exécutif ma profonde appréciation de son support et encouragement et à tous les membres mes remerciements sincères d'avoir eu l'occasion de vous servir comme président cette année.

## **RAPPORT ANNUEL DU CENTRE CANADIEN DE FORMATION JUDICIAIRE EDMONTON - SEPTEMBER 1989**

par Juge Stephen Cuddihy

À l'assemblée annuelle tenue à Halifax en Septembre 1988, Son Honneur le Juge Kenneth Crowell, Président de l'Association canadienne des juges des cours provinciales, m'a nommé administrateur du Centre canadien de formation judiciaire. Il a également nommé, conformément à l'article de la constitution, les quatre administrateurs adjoints: Son Honneur le Juge Jean-Louis Batiot, administrateur adjoint pour la division des Maritimes; l'Honorable Juge André Saint-Cyr, administrateur adjoint pour la division du Québec central; Son Honneur le Juge John Evans, administrateur adoint pour la division de l'Ontario central; et Son Honneur le Juge Douglas Campbell, administrateur adjoint pour la division de l'Ouest. Le Juge Campbell a aussi été nommé Président du Centre judiciaire de l'ouest de l'Association canadienne des juges des cours provinciales.

J'oeuvre depuis 1979 pour le comité d'éducation, et c'est avec plaisir que j'ai accepté, pour la première fois, un titre officiel. J'ai dû cependant, avec regret, aviser l'exécutif de notre association de mon départ comme administrateur du Centre canadien de formation judiciaire, en raison de ma nomination, le 21 décembre 1988, comme juge coordonnateur de la Cour du Québec, pour les districts judiciaires de Terrebonne (St-Jérôme), Joliette (Joliette), et Labelle (Mont-Laurier).

Les activités du Centre canadien de formation judiciaire ont été nombreuses.

J'ai présidé le programme pour les juges nouvellement nommés qui a eu lieu à l'Auberge Far Hills Inn, du 7 au 14 avril 1989. Au cours de ce programme, des cours ont été dispensés aux trois divisions soit la division criminelle, la division famille et la division civile (common law). Des cours de droit civil sont et seront donnés

is not considered by our judicial system, yet for some communities it is more serious and harmful than theft.

I could continue and give you many examples of the inadequacy of our system of law but it would be repetition of what has already been said and written on the subject. May I refer you to the studies of Professor Michael Jackson made on behalf of the Canadian Bar and called: "Locking up natives in Canada" and also to the recent report made by the Canadian Bar Association and called: "The Rights of Native People".

## **II. NEW PROPOSALS:**

Confronted with the dissatisfaction of native people towards our system, the increase of the criminality both with adults and juveniles, the persons involved in the delivery of justice in northern communities want to correct the situation and have proposed some solutions:

One solution is a proposal made by us in February 1985 and named: "Proposal for a more active participation of native peoples in the administration of Justice".

This proposal was first discussed with officials of the Department of Justice in order to receive an official approval before beginning negotiations with native communities.

The model we have proposed is similar to the alternatives measures found in the Young Offenders Act and the system would be administered by a justice committee composed of elders, women, young persons or others appointed by the members of the community.

In his report "Locking up natives in Canada", professor Michael Jackson has given a very good description of the system we have proposed.

"Those committees would have jurisdiction over a wide range of offences dealt with by the Circuit Court. This jurisdiction would be significantly greater than that which is exercised by native justices of the peace. The jurisdiction would, however, be conditioned upon the offence and the consent of the Crown prosecutor. In these respects the proposal bears many of the hallmarks of a diversion program although it would significantly extend the usual definition of diversionable offences. Under this proposal the justice committees would be able to develop their own procedures and be innovative as to the kinds of dispositions they might make in order to take into account the customs and social rules prevailing in the communities.

From the discussions with all of those who have collaborated in making this proposal, I have

come to realize how difficult it is for us (people with legal background) to leave to others some control over their own affairs. I can give you some examples:

a) Difficulty in losing control over the choice of the justice committee members.

b) Difficulty in taking off the hands of the Crown attorney the decision to refer a case to the justice committee.

c) Difficulty in accepting the absence of legally trained persons in the decision making process within the committee.

I think that our behaviour shows our "lack of confidence" in the ability of native people to look after their own affairs.

Nevertheless, may I say that the actual policy of the Department of Justice of the Province of Quebec is to give back to the native communities as much control as possible over their judicial affairs within the actual Canadian and Quebecois legal system.

Over a period of five (5) years, we hope that much of this objective will be achieved and we may realize that some amendments to our laws (federal and provincial) will be required to improve the social control of natives over their communities.

## **III. MY PERSONAL VIEWS AND SOME GUIDELINES:**

My personal view is that immediately, and without amending any laws, natives themselves are able to take care of the majority of crimes committed in their communities if we offer them support and permanent training.

Actually in our district, we can offer this support because the Department of Justice has, not very long ago, increased in a substantial way its budget for the northern circuit so that now we can count on more employees devoted to the delivery of justice in northern communities.

I foresee a system in which we could find in each community a group of people devoted to the administration of Justice which could be called: "the local judiciary authority".

This "local judiciary authority" would be composed of at least five (5) persons chosen by the community and some of these persons (one or two) would be appointed "Justices of the Peace".

This system would be very flexible, and as in Denmark's "local district courts", there should be no lawyers appearing in front of this local



"Under these circumstances, how can the defendant exercise the rights granted to him by the Criminal Code, namely, the right to call and interrogate witnesses, and the right to make full answer and defence. Such procedure amounts to harsh and unfair treatment and is tantamount to a denial of justice.

I am of the opinion that it would be unfair to the defendant and contrary to our concept of "fair play" to allow this process to continue. Consequently, I grant the motion to stay proceedings and hereby order that these proceedings be stayed."

#### **B) THE REPORT: "THE ADMINISTRATION OF JUSTICE BEYOND THE 50TH PARALLEL:**

After the case of Ittoshat, a Study Committee on the administration of Justice in Northern Quebec was created and in December 1972, this committee produced a report called **THE ADMINISTRATION OF JUSTICE BEYOND THE 50TH PARALLEL**. The main recommendations of this report were "the establishment of a circuit court whose duty it would be to bring justice to each community so that the native would no longer be required to move out of his environment whenever he had to stand trial, that native policemen be properly trained in order eventually to relieve the Quebec Provincial officers in the north; etc..."

In 1974, when I was named judge of the Provincial Court, I began to organize this circuit court. We first began to visit regularly the villages situated on the James Bay and Hudson Bay littorals, afterwards the Ungava Bay villages and recently the Cree villages situated inland.

#### **C) THE JAMES BAY AGREEMENT:**

We must not forget that in the meantime the James Bay Agreement was being negotiated and was finally signed on November 11th, 1975. This agreement repeated in a more extensive way the recommendations of the report I have mentioned previously.

So we have been experiencing the administration of Justice for 14 years as my first visit in the north was on October 22nd, 1974.

From the experience we must conclude:

1. In signing the James Bay Agreement, the Inuit and Cree peoples have signified their formal acceptance of the Canadian and Quebecois justice system. However we must conclude that this system does not correspond to the mentality of native people.

2. Our system is very complex and native peo-

ple often have difficulty in understanding the logic of our judicial system and its laws.

When a person pleads not guilty, for us this means that we want the prosecution to prove without reasonable doubt that a crime has been committed or that the accused persons wants more time to take a final decision as to the plea to offer. But very often for a native person, to plead not guilty is synonymous with telling a lie.

Natives readily admit their crimes. They are honest and frank. I have often teased legal aid lawyers by telling them we were teaching natives how to lie and to cheat, but I am now convinced that there is a great deal of truth in this statement. We are showing them a **game** that does not coincide with their mentality.

3. There is too much legality in our system. As an example, may I refer you to an experience we are actually having in a Cree village situated in the James Bay area.

For two years now lawyers have been discussing whether a "curfew by-law" enacted by the band council to prevent vandalism, breaking and entering and other crimes committed by kids below 16 years old, usually after 9h00 p.m., conforms with the Constitution or the Charter of Rights.

There are more than 50 cases actually pending in this village. The local constables are losing their authority because they can no longer enforce this by-law. Are we helping this community in discussing (with piles of arguments and papers) the constitutionality of this by-law or whether it is against the Charter of Rights?

What are we doing with the rights of the community to try to face and control their social problems?

Aren't we social nuisances to this community? What are we doing there?

Generally speaking the native population is not satisfied with the way we are administering justice in their communities.

a) The "fly in, fly out" system which we find in every part of Canada is suspect and is losing more and more of its credibility with natives.

b) Generally, court delays and the length of time required to settle a problem is not understood. They would like the problem to be settled more promptly.

c) Also, many problems cannot be dealt with by the actual system. If possession of drugs or narcotics is a criminal matter, sniffing glue, gas or other intoxicants is not a criminal matter and

to the association was \$43,441.59. All details have been forwarded to the executive director. I wish to express my thanks to the "Conseil de la Magistrature du Québec" and Judge Bernard Tellier for his continuous cooperation, the Honourable André Saint-Cyr, for his dedication in preparing the family program and Her Honour Pamela Thomson, for help in preparing the civil (common law) program. You will find annexed the three programs for your consideration.

I wish to note the attendance of the President of our association, our executive director and many chief judges from across Canada whose presence was of great importance to the success of the program.

It is of importance for you all to know that it was the 10th anniversary of my participation at the New Judges' Training Program with his Honour Judge Jean Marie Bordeleau. We have worked together for a decade of education of judges which was not in vain. I was sorry however that Jean Marie's appointment as associate director of the Canadian Judicial Centre did not come about. But that didn't change his dedication towards our program which he attended at my request. We are greatly indebted to his availability. The same could be said of others who have greatly contributed to the essential cause of education. What counts in essence are the results for the judiciary as a whole.

The New Judges' Training Program will take place at the Far Hills Inn, in Val Morin, Quebec, for next year from Friday the 30th of March 1990 to Friday the 6th of April 1990. The Honourable André Saint-Cyr has accepted to chair the program. It was also decided that there would be no civil program (common law) for 1990, as we usually carry on that program every two years.

The Atlantic Regional Education Conference took place in Truro, Nova Scotia, at Keddy's Inn, from the 26th to the 29th of April 1989. I wish to congratulate the co-chairpersons, their Honours Margaret Stewart, Joe Kennedy, Bud Kimble, James Williams, Jean Louis Batiot, of Nova Scotia, and Patricia Cumming of New Brunswick, for their efforts.

The Western Judicial Education centre sponsored the following events of the WJEC: 1) Delivery of Reasons seminar, held in Calgary, October 31st, and November 1st; 2) Delivery of Reasons seminar, held in Vancouver, December 19th and 20th; 3) Meeting of the Education Chairmen for British Columbia, Alberta, Saskatchewan and Manitoba, held in Vancouver, December 9th. Since that time, I am pleased to report that the Western Workshop Vancouver, which was held from June 24th to 29th, 1989, from all information was a great success. Much thanks from all judges must be conveyed to his Honour Judge Douglas Campbell and all

par le Conseil de la Magistrature du Québec, étant la seule province qui utilise le code civil. Le coût payé par l'association pour la semaine d'étude à Val-Morin a été de 43 441,59\$. Tous les détails de ces dépenses ont été soumis à notre directeur exécutif. Vous trouverez copies des trois programmes ci-annexées, lesquels ont été présentés lors de ce colloque.

Je désire souligner la contribution de l'Honorable Juge André Saint-Cyr et de Son Honneur la Juge Pamela Thomson, qui se sont chargés du programme de la famille et de la division civile (common law) respectivement.

La présence de notre président, Son Honneur le Juge Kenneth Crowell, de notre directeur exécutif, Son Honneur le Juge Keith Libby, et de plusieurs juges en chef du Canada, a contribué grandement au succès de cette semaine d'étude.

Je désire ajouter que Son Honneur le Juge Jean-Marie Bordeleau d'Ottawa a été invité afin de m'assister sur les lieux du colloque. Je désire souligner que depuis dix ans, le Juge Bordeleau et moi-même travaillons ensemble aux cours des nouveaux juges. J'ai regretté que la nomination de Jean-Marie au poste de directeur associé du Centre canadien de la magistrature ne se soit pas matérialisée. Ce contre-temps ne lui a pas enlevé son enthousiasme. Nous lui devons beaucoup de reconnaissance pour sa disponibilité. Je pourrais dire la même chose pour beaucoup d'autres juges qui ont grandement contribué à l'éducation des juges de notre association. La liste serait longue; ce qui compte, ce ne sont pas les titres, mais les résultats pour l'ensemble du judiciaire.

Les cours pour les nouveaux juges pour 1990 auront lieu à l'Auberge Far Hills Inn, à Val Morin, Québec, à compter du vendredi 30 mars jusqu'au vendredi 6 avril 1990. L'Honorable Juge André Saint-Cyr a accepté de présider le programme. Il a également été décidé qu'il n'y aurait pas de programme civil (common law) pour 1990 en raison de fait que ce dernier a lieu à tous les deux ans.

Je désire vous faire rapport également sur le séminaire de l'Atlantique qui a eu lieu au Keddy's Inn, dans la ville de Truro, Nouvelle-Écosse, du 26 au 29 avril 1989. Je désire remercier les co-présidents, leurs Honneurs Margaret Stewart, Joe Kennedy, Bud Kimble, James Williams, Jean-Louis Batiot, de Nouvelle-Écosse, et Patricia Cumming, du Nouveau-Brunswick, pour leur travail.

Le Centre judiciaire de l'ouest de l'Association canadienne des juges des cours provinciales a tenu plusieurs réunions sur les sujets suivants: 1) Rédaction des jugements: Calgary, Alberta, du 31 octobre au 1er novembre 1988.



those who actively assisted him.

As for our involvement with the Canadian Judicial Centre, some progress has been made more recently, and our executive is outlining the plans for the future.

2) Rédaction des jugements: Vancouver, Colombie-Britannique, les 19 et 20 décembre 1988. 3) Sentences: Vancouver, Colombie-Britannique, du 24 au 29 juin 1989.

De plus, une réunion des présidents des comités d'éducation des provinces de la Colombie-Britannique, Alberta, Saskatchewan et du Manitoba a eu lieu à Vancouver le 9 décembre 1988.

Son Honneur le Juge Douglas Campbell, et tous ceux et celles qui l'ont assisté méritent, de la part de tous les juges, nos remerciements sincères pour un travail bien accompli au cours de l'année 1989.

Quant à notre implication avec le Centre judiciaire canadien, des progrès ont eu lieu récemment et notre exécutif se charge actuellement des plans d'avenir.

## ANNUAL REPORT WESTERN JUDICIAL EDUCATION CENTRE EDMONTON, SEPTEMBER 16, 1989

by Judge Douglas R. Campbell

I am pleased to report that in the past year the Western Judicial Education Centre (WJEC) has been active in expanding its organizational structure and educational programming.

### Organizational Structure

The Deans of Law of the University Law Schools in Western Canada and the Continuing Legal Education Directors for each Western Province have this year joined as Education Advisors. The present members of the Advisory Board are noted below.

The expansion of the Advisory Board has allowed for greater strength in the planning of WJEC events. In addition, the endorsement that such prestigious members have brought to the group has given needed support in encouraging new funding for WJEC events. The guidance of all Advisors has been invaluable in planning and executing this year's events.

The Advisory Committee has met on 3 occasions in the last year:

- 1) the Provincial Court Advisors met in Vancouver on December 9th.
- 2) The Provincial Court Advisors met in Vancouver, together with the planning committee for the *Western Workshop, Vancouver* (mentioned below), on May 16th, 1989.
- 3) the full Advisory Committee met in Vancouver, at the time of the *Western Workshop, Vancouver*, on June 28th, 1989.

To take the benefit of the good work that has been done by the Continuing Legal Education

organizations across Canada, and also to contribute to these efforts where possible, I am pleased to report that I have joined, as an observer, the Association of Continuing Legal Education Directors and attended a meeting of that body in Vancouver on August 21st, 1989.

### Events

During the past year, the WJEC has sponsored the following events:

1) Delivery of Reasons seminar, held in Calgary, October 31st and November 1st, attended by 11 Alberta judges. Funding for the seminar came from the Law Foundation of Alberta.

2) Delivery of Reasons seminar, held in Vancouver December 19th and 20th, attended by 8 British Columbia judges. Funding for the seminar came from the Chief Judge of the Provincial Court of British Columbia.

3) *The Western Workshop, Vancouver*, a 6-day educational meeting for judges from across Western Canada, was held in Vancouver June 24th to 29th. Important particulars regarding the meeting are:

- a) The Workshop, attended by 52 judges, focused on the social context of selected sentencing issues, with particular attention given to aboriginal people and cases of sexual assault.
- b) Funding for the core costs of the meeting came from the Law Foundations of British Columbia, Alberta, Saskatchewan, Yukon and the Northwest Territories. The per diem expenses and accommodation costs of the judges in attendance were paid by the Department of Justice, Ottawa. The Chief Judges paid the travel expenses for their judges in attendance.
- c) I am very pleased to report that, judging from the evaluations completed by the judges who at-

## The Administration of Justice Among the Natives in Quebec L'administration de la justice parmi les autochtones du Québec

by/par: Judge/M. le juge Jean-Charles Coutu\*

(copy of an address to the Royal Commission on the Donald Marshall, Jr., Prosecution during a consultation in Halifax on November 24th, 25th and 26th, 1988).

Mr. Chairman,  
Mrs. Commissioners,  
Distinguished guests,  
Ladies and Gentlemen,

When I received a phone call from Ms. Suzan M. Ashley, the executive secretary of your commission, I immediately agreed to participate in the consultation carried out by your commission. Having been involved with natives for a long time, I am always interested in having discussions relating to this subject.

From what I understood at the beginning, I thought that we had only to meet and discuss in an informal manner the concerns we have in the day to day administration of Justice in native communities.

Afterwards, and certainly too late, I realized that I had to make presentation of 15 to 20 minutes before this commission and in perusing the list of the persons invited and seeing their titles and qualifications, I began to regret the decision I had taken all the more as since that time I have been obliged to be on the bench continuously. Nevertheless, (with my Quebecois accent), I will try to share with you my hopes and views which are the hopes and views of an old soldier who has been on the first line of fire that is: hearing cases in the first instance in northern communities for 14 years.

Actually I am the coordinating judge for the Itinerant Court of the district of Abitibi. Three other judges are also sitting in this northern circuit. (Here I show on a map where this district is situated).

This Itinerant Court serves a total of 21 villages all of them (except one) situated north of the 50th parallel. Eight (8) of these villages are in the Cree territory (if I may say so) and fourteen (14) are in the Inuit territory. I have been traveling and hearing cases in all these communities since 1974.

My remarks to you will be divided into three (3) parts.

First, for a better understanding of the orientation we want to give to the administration of Justice in Quebec's native communities, it is important to make a short historical survey of our implication in the Northern Quebec's native communities.

In the second part of my remarks, I will describe the different proposals made by all the parties involved in order to achieve a greater participation of the natives in the administration of Justice.

Finally, I will give you some of my personal views on the subject and some guidelines that I think should be taken into consideration by all those who are involved in the delivery of Justice to the native peoples be it in native communities or elsewhere in the country.

### 1. HISTORICAL SURVEY:

A) Before 1972, it does not seem that the Government of the Province of Quebec was very much concerned with the administration of Justice among native peoples.

When there were some cases involving native individuals, they were heard by the ordinary court where the court was sitting, usually the "chef-lieu" of the different judicial districts of the Province.

This was also true for those cases originating from the northern part of the Province called: "Nouveau Québec North of the 50th parallel". Those cases were heard in Montreal, Quebec City or Sept-Îles.

The first time the Department of Justice was made fully aware of the problems encountered by its northern native populations was probably at the issue of a case "REGINA vs ITTOSHA" reported at page 385, Criminal Report, new series volume 10. This judgment was rendered on January 14th, 1970 by Judge Malouf of the Quebec Sessions of the Peace.

Defendant Ittosha of Inuk descent had been arrested and brought down to Montreal, 1000 miles from his home, Great Whale River, on charges of causing a disturbance.

In the conclusion of his judgment, the judge stated:

\* (Note du rédacteur: Nous sommes redevable à M. le juge Jean-Charles Coutu de la Cour du Québec qui a soumis cet article pour publication dans le journal des juges provinciaux. L'auteur a fourni cet article en réponse d'une lettre par le juge C.C. Barnett de la Colombie Britannique concernant les autochtones lequel a paru dans le journal de mars 1989).



## Theme

"The Judge in the 21st century"

## Annual general meeting

Saturday, September 15, 1990 from 9:00 a.m. to conclusion

## General Program

(Appendix "A")

## Chief Judges Programme

(Appendix "B") (TO COME)

## Special Programmes

- Education  
(Appendix "C") (TO COME)
- Social and recreation  
(Appendix "D") (TO COME)
- Spouses  
(Appendix "E") (TO COME)
- Court of Québec Judges  
(Appendix "F") (TO COME)

## Committee

(Appendix "G")

## Budget

(Appendix "H")

## Accommodation

250\* rooms have been reserved at Le Château at rates of: \$140.00 per night, double or single. (No tax is applicable and there is no extra cost for children under 14 with their parents.) We have requested 50 more and expect a favorable answer shortly.

## Transportation

In the coming months, arrangements will be made with Air Canada or Canadian since both carriers offer special rates for conventions. The best overall proposition will be accepted and the participants will be informed in due time.

## Translation

Arrangements have been made to have simultaneous translation of all proceedings.

## Thème

"Le juge au 21e siècle"

## Assemblée générale annuelle

Samedi, 15 septembre 1990 de 9 H 00 à la clôture

## Programme général

(Annexe "A")

## Programme des juges en chef

(Annexe "B") (A VENIR)

## Programmes spéciaux

- Formation professionnelle  
(Annexe "C") (A VENIR)
- Activités sociales et récréation  
(Annexe "D") (A VENIR)
- Conjoints  
(Annexe "E") (A VENIR)
- Juges de la Cour du Québec  
(Annexe "F") (A VENIR)

## Membres du comité

(Annexe "G")

## Budget

(Annexe "H")

## Hébergement

250\* chambres ont été réservées au Château au prix de: 140,00 \$ par nuit, simple ou double. (La taxe ne s'applique pas et l'hébergement est gratuit pour les enfants de moins de 14 ans avec leurs parents).

\*Nous avons demandé 50 chambres additionnelles et attendons une réponse favorable prochainement.

## Transport

Au cours des prochains mois, des ententes interviendront avec Air Canada ou Canadian International Airlines (Lignes aériennes canadien international Ltée) puisque les deux transporteurs offrent des tarifs spéciaux pour les congrès. La meilleure offre sera acceptée et les congressistes en seront informés en temps utile.

## Interprétation

Des arrangements ont été conclus pour que tous les débats soient traduits.

tended, the meeting was a success.

4) In addition to the support given for the *Western Workshop, Vancouver*, the Law Foundations of British Columbia and Alberta shared equally in the costs of an office equipment purchase.

The Law Foundations mentioned above have become strong supporters of WJEC programs. This support is much needed and very appreciated. It is anticipated that the interest that has been shown by the Foundations in this year's programs will continue.

The Department of Justice, Canada, continues to be highly supportive of educational programs for Provincial Court Judges. This participation is invaluable.

## Future Plans

The following programs are planned for the coming year:

1) Delivery of Reasons seminar, to be held in Edmonton, October 23rd and 24th, to be attended by 10 Alberta judges. The Law Foundation of Alberta has agreed to supply funding.

2) Delivery of Reasons seminar, to be held in Vancouver December 11th and 12th, to be attended by 10 British Columbia judges. The Chief Judge of the Provincial Court of British Columbia has agreed to supply funding.

## COMPENSATION

Edmonton, September 16, 1989

by Judge Ron Jacobson

An updated Judicial Survey prepared by Judge Douglas McDonald of Calgary was filed. Judge McDonald has made heroic efforts to keep the survey current but this is not always easy since his data is only as reliable as that supplied by Provincial Representatives.

Copies of Judge McDonald's survey are avail-

## COMMITTEE ON JUDICIAL INDEPENDENCE EDMONTON, SEPTEMBER 16, 1989

By Judge Hiram J. Carver  
and Judge R.A. Fowler

## PART I

At the Annual Meeting of the National Association of Provincial Court Judges held at Saint John, New Brunswick, in September, 1986 a "Statement of Principles" as prepared by the Committee on Judicial Independence was adopted.

3) *The Western Workshop, Alberta*, to be held at the Chateau Lake Louise May 12th to 18th. The meeting will be open to Provincial Court Judges in Western and Northern Canada and will continue the program of the *Western Workshop, Vancouver*. The funding will come from the same sources as the Vancouver meeting.

4) An Initiative on Gender Neutrality, under the direction of the Advisors of the WJEC, is in the planning stage. A meeting of the working committee for the initiative, chaired by Professor Lynn Smith of the Faculty of Law, University of British Columbia, is planned for September 12th in Edmonton. The objective is to create a program of research and educational training for Western and Northern Canadian Judges on this highly important topic.

## The Canadian Judicial Centre

I am pleased to report that a good working relationship has been established with the Canadian Judicial Centre (CJC). The CJC is a co-sponsor of the Western Workshop programs. In addition, the Initiative on Gender Neutrality enjoys strong CJC support. This positive and productive relationship will be maintained.

## The Chief Judges

Chief Judges Josephson, Wachowich, Carey, Stephanson, Lilles and Halifax have been completely supportive of WJEC efforts over the past year and I am greatly indebted to them.

able from Provincial Representatives.

(Two notes of special interest on compensation matters were also reported at the Annual Meeting. In the future the Manitoba Judges will have their compensation set by an independent commission which will make recommendations binding on the Judges and Government subject only to negative resolution by the Legislature within a specified time. In New Brunswick something significant appears to be on the near horizon. — Editor)

At that meeting, your committee recommended that once adopted that our National Association embark on a program to have each one of the principles enacted into legislation in each of the provinces and the territories.

We would therefore recommend that this association seek the assistance of the Canadian Bar Association and the respective bar associations in each of the provinces and territories to have the following principles enacted into legislation:

1. In each province or territory there should be



constituted an independent Judicial Council to:

(a) hear and determine any dispute or complaint brought before it by or against a judge of the Provincial Court;

(b) to consider all proposed appointments to the Provincial Court and make recommendations on the suitability of the candidates for the judiciary.

There should be in place in each jurisdiction a procedure to give effect to its decisions and recommendations.

2. No person shall be appointed a judge unless he or she held membership at the Bar for at least ten years and no appointments shall be made except on the recommendation of the Judicial Council;

3. Judges of the Provincial Court shall be appointed on the basis of integrity, ability and experience;

4. Provincial Court Judges shall hold office during good behaviour;

5. The Provincial Court must have judicial control over the administrative decisions that bear directly and immediately on the exercise of the judicial function;

6. Provincial Judges shall devote themselves exclusively to their judicial duties and shall not engage in any other occupation, profession or business.

Your committee recommends that the following be added to this principle:

6. Provincial Court Judges shall not act as commissioners, arbitrators, referees, conciliators or mediators or assume any other similar role except they first have the approval of their Chief Judge and when they so act, that they shall not accept any remuneration except out of pocket expenses.

7. The salaries and basic benefits paid to Provincial Court Judges shall be adequate and appropriate to uphold the principle of judicial independence, be uniform across Canada, equal to the salary and basic benefits paid to and received by federally appointed trial court judges and be guaranteed by law;

8. Once the residence of a judge has been established, such residence shall not be changed except with the consent of the judge;

The Canadian Bar Association expressed some concern in supporting this principle. Your committee recommends that clause 8 as it now stands be deleted, and substituted in its place the following:

8. (a) A judge shall not be transferred from one jurisdiction or function to another, except at the direction of the Chief Judge and with the consent of the judge concerned which consent shall not be unreasonably withheld.

(b) In case of a dispute over the transfer of a judge either party may on fifteen (15) days notice refer same to the Judicial Council for resolution. The decision of the Judicial Council shall be final and binding on all parties.

(c) Where a matter is referred to the Judicial Council under clause 8(b) for a determination the successful party shall be reimbursed for all legal costs.

9. A Provincial Court Judge shall have the same immunity from civil proceedings as does a Judge of a Superior Court of Criminal Jurisdiction and shall be compensated for any costs incurred in maintaining such immunity;

10. The Provincial Court, including all support staff, while it is sitting, as well as the person of the judge and his or her family at all times shall be provided proper security.

Your committee recommends the following principle be added to our Statement of Principles to be known as Principle 11.

11. The Chief Judges of the Provincial Court shall be appointed during good behaviour or for a fixed term. If for a fixed term such term shall not be renewable.

Your committee further recommends that the following principle be added; to our "Statement of Principles" to be known as Principle 12.

12. Once a judge has reached the mandatory age of retirement that he or she may upon his or her request with the annual approval of the Chief Judge and upon such terms and conditions as the Chief Judge may direct continue in office as a full time or a part time Provincial Court Judge.

## PART II\*

### Special Writs:

Your committee makes the following recommendations with respect to Special Writs.

1. That our court should only be concerned when the matter or issue under consideration affects the court generally;

2. That counsel should be provided not to act for the judge involved but to pursue the principle involved;

\*(This part of the committee's report was merely tabled and was not adopted at this time — Editor.)

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## PRELIMINARY REPORT ON CONFERENCE '90 EDMONTON - SEPTEMBER 1989

by Judge Louis Rémillard

### Date and Place

September 12-15, 1990  
Le Château Frontenac  
Québec, Québec

**Note:** The Executive and Provincial Representatives are expected to arrive Monday, September 10, 1990, followed by the remaining delegates on Wednesday, September 12, 1990. Check out will be Sunday, September 16, 1990.

### Participants

a) CAPCJ: 300 judges (200 expected in 1989)  
b) Court of Québec: 100 judges (the chief judge will convene a meeting of all judges which will take place as part of the '90 Conference). (Of the 279 judges of the Court of Québec, 154 are members of the CAPCJ).  
c) Spouses and guests: 300 (150 expected in 1989)

## 1989-1990 EXECUTIVE COMMITTEE MEMBERS

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## RAPPORT PRÉLIMINAIRE SUR LE CONGRES '90 EDMONTON - SEPTEMBRE 1989

par juge Louis Rémillard

### Date en endroit

Septembre 12-15, 1990.  
Le Château Frontenac  
Québec, Québec

**Note:** Les membres de l'exécutif et les représentants des provinces sont attendus lundi le 10 septembre 1990. Les autres membres de l'Association arriveront mercredi le 12 septembre. Le départ se fera dimanche le 16 septembre.

### Congressistes

a) ACJCP: 300 juges (200 sont attendus en 1989)  
b) Cour du Québec: 100 juges (Le juge en chef convoquera une réunion de tous les juges qui se tiendra dans le cadre du congrès '90.) (Des 279 juges de la Cour du Québec, 154 sont membres de l'ACJCP).  
c) Conjointes et invités: 300 (150 sont attendus en 1989)



I will be contacting all the members of the Executive and the Branch presidents, bringing them up-to-date on the problems that face Provincial Court Judges throughout Canada. I would suggest that each representative of the Canadian Association should immediately contact the Branch Presidents and bring to their attention the suggestion of their President, Mr. John R.R. Jennings, that a Provincial Judges' Committee should be set up in each of the provinces. I would suggest that a member of the Executive of each of the provinces and territories should be appointed to liaise with the Presidents of the branches of the Canadian Bar Association. I have received nothing but good will and am assured that each member of the Executive and the Presidents of the Branch Associations will cooperate with us in the future. I may say that it is of utmost importance that we keep the Canadian Bar Association and the various branches on our side; they can be of great assistance in our continuing endeavours to improve the benefits of the Provincial Court Judges.

I would be pleased to hear from each of the representatives in the future what contact and what efforts each of the branches are making on our behalf so that I can bring it to the attention of the executive of the Canadian Bar Association, National. While in Vancouver I attended the annual meeting of the Canadian Judges' Conference and obtained the Report of the President to the Annual Meeting. They are continuing to attempt to have the federal government move on the recommendations of the Guthrie commission, and the President of the Canadian Bar Association, Mr. Patrick Peacock, at that time wrote to the Minister last April and appeared before the Minister of Justice to argue on behalf of the Federal Court Judges that the recommendations should be acted on. A copy of the report has been forwarded to Keith Libby and our President, Ken Crowell. Should any Judge wish to have a copy of this report would they please contact Keith Libby.

As you can see, the work of the Liaison Committee is ongoing and I believe that it is one that will be of benefit to the CAPCJ and all Provincial and territorial Judges in each province and territory. We must continue to bring to the attention of the governments involved the unjust treatment of the Provincial Court Judges.

All of which is respectfully submitted.

## 1989-1990 BRANCH PRESIDENTS

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3. That counsel should be provided at the discretion of the Chief Judge;

4. That counsel should be independent of government.

5. That counsel should be paid for out of the consolidated revenue funds of the province or territory;

6. That counsel's fee be subject to being taxed

## FAMILY & YOUTH COMMITTEE REPORT EDMONTON, SEPTEMBER 13, 1989

### by Judge Walder G.W. White

Since my report in April 1989 to this Committee, there have been few new developments in the work of the Family & Youth Committee. Attached to this report is a copy of the agenda for our meeting this afternoon.

Judge Lucien Beaulieu has arranged to publish papers from our December Y.O.A. conference in the name of the Canadian Association.

You will note that our next project will be in the pre-trial-mediation area. This will make it less likely that we will be competing for funds with the association, since there may well be other ministries than Justice that we can approach.

I also attach a list of the current membership of the committee. The designation "friends of the committee" allows participation of all provinces. Committee material is mailed to them and they are welcome to attend all meetings, but at their own expense.

It is my intention to discuss my own 2-year term as past chairperson at this afternoon's meeting and hopefully reduce it to one year.

It is also to be noted that I have circulated copies of the department of Justice's consultation paper on YOA amendments to committee Members and Friends of the committee. This afternoon at 2 p.m. a large number of Youth Court Judges have been invited to attend a consultation with Department of Justice Officials.

This will be my last Executive meeting, I wish to thank you all for the assistance you have rendered me and our committee. If it were not for your support of our committee, I am sure there would be a separate Canadian Family and Youth court association altogether, a step which I believe would be retrogressive.

May I also specially thank Keith Libby for his

by a Justice of the Supreme Court or by an official Taxing Master.

7. That our National Association act to have the above provisions enacted into legislation in each of the provinces and the territories.

All of which is respectfully submitted on behalf of the Committee on Judicial Independence.

consideration in dealing with us. We have not always agreed, but with his able help we have more than survived.

Some of his grey hair may be attributable to us and our December meeting — but he hung in there and we are grateful.

Respectfully submitted.

## Family & Youth Court Committee Membership September 1989

Committee members with one year term remaining  
Patricia Linn - Saskatchewan  
Heino Lilles - Yukon

Incoming members — two years  
Ontario nominee  
Quebec nominee  
New Brunswick nominee  
British Columbia nominee

Members leaving Committee  
Doug Campbell - British Columbia  
Robert Fowler - Newfoundland  
Kent Kirkland - Ontario  
Basil Danchyshyn - Quebec

Projects Chairman - indefinite  
Lucien Beaulieu

Past Chairman - 2 years  
Walder White - Alberta

Friends of the Committee  
Ted Andrews  
Robert Ferguson  
Bob Halifax  
Ed Kimelman  
Marshall Black  
Michel Jasmin  
Francois Godbout  
Jerry Paradis  
Hazen Strange



**JOURNAL REPORT  
TO THE ANNUAL MEETING CAPCJ  
EDMONTON, ATLA., SEPTEMBER 16, 1989**

by Judge M. Reginald Reid

Since the last annual report in September 1988 the Journal has continued to publish quarterly in accordance with its mandate.

We are attempting to keep the Journal current and topical which is not always easy with a quarterly publication.

The Journal is continuing to attract an expanded readership with additional copies going in the past year to Britain, Australia and Mauritius. Several educational institutions have also indi-

cated their use of our publication as a reference source.

At this time I would like to note publicly the untimely and tragic death of Judge Richard Kukey of Saskatchewan, a former Editor of the Journal who died in a traffic accident on November 1, 1988. Judge Kukey edited the Journal for over 3 years.

In closing, I would like to say that at the Journal we thank sincerely all of those persons who contributed material and ideas for publication during the past year and we urge everyone to continue that support so that the Journal can remain worthwhile.

Respectfully submitted.

**REPORT  
COMMITTEE ON THE LAW  
EDMONTON, SEPTEMBER 16, 1989**

by Judge Thomas B. Davis

In September 1988, on the recommendation of the President, the Committee was formed with Judge R. Harvey Allen from Saskatchewan, Judge Winston E. Norton from Manitoba, Judge Marc Vanasse from Quebec, Sr. Judge Charles Scullion from Ontario, Judge Gerald Fitzgerald from Prince Edward Island as members. Additional appointments of Chief Judge Heino Lilles from the Yukon and Judge Dennis Overend from B.C. were made during the year. As Chairman, I was most pleased to work with this Committee.

E.A. Tollefson, Co-ordinator, Criminal Justice Review of the Federal Department of Justice, has again confirmed that the Department is interested in hearing submissions from our Association on matters of concern. He intends to provide the Association with proposals being made by the Department for amendments to the Criminal Code, after the proposals have been suitably formulated. Although no proposals are yet available, the Committee is available for consultation to comply to his timetable.

The Federal Justice Minister has notified the Committee that the proposal to increase the jurisdiction of a Provincial Judge to that of a Federal Judge is not possible under the Code. He has suggested that the Government intends to consult with Judges and other groups after the Law Reform Commission releases its recommendations on a Unified Criminal Court.

Members of the Committee report that there is no uniform agreement by the Provincial Justice Departments on the possible amalgamation.

The Journal has published the Ontario proposal for the existing Provincial Court to become the Provincial Division of the new Ontario Court of Justice. It appears that some provinces

are considering the re-structuring of the judicial organizations. It has been determined by this Committee that the Association can be most effective if it were to study and consult on the expected recommendations of the Federal Law Reform Commission.

Many of the topics being studied by the Ontario Law Reform Committee, including driving prohibitions and license suspensions, firearm acquisition references, sentencing for prison escapes, mischief, 8 day remands, and probation following incarceration, were referred to us by Judge Paul H. Megginson.

Some of these topics are still under consideration by the Committee. The Committee also has on its agenda a referral to "Contempt of Court" and the procedure under citations or charges, and the study on how power could be obtained to allow a Court to order a mental examination in circumstances where consent is not provided.

The Committee had prepared a short questionnaire for publication in the Journal as a means of distribution to all member Judges in Canada. The purpose was to determine what concerns Judges have about the procedure and enforcement of the Criminal Code and the Young Offenders Act. The topic of the Ontario Court Reform pre-empted the questionnaire for this issue. The Committee, however, still wishes to receive submissions from various Provincial Committees and individual Judges for consideration and study.

The Committee has not met formally during the past year but has proceeded by way of correspondence and telephone conversations. It is anticipated that upon receipt of the Law Reform Commission's recommendations, the Committee will want to meet after having had an opportunity to review the specific proposals and to consider the effect of such proposals on the Judges in various Provinces.

Respectfully submitted.

**REPORT OF THE CIVIL COURTS COMMITTEE  
SEPTEMBER 16, 1989**

by Judge Pamela Thomson

1) The principal function is the civil component of the annual Judges' Training Conference. We had a small group but are proud of the programme, details of which are contained in the Report of the Director of the Canadian Judicial College (produced elsewhere in this issue). The next programme will be held in 1991. Copies of papers given earlier and suggestions as to a basic library were sent to registrants. I am also working on a 'Bench Book'.

2) I continue to receive requests for comments on various papers prepared by provincial law re-

form commissions, particularly the Alberta Law Reform Commission.

3) The other focus of this Committee has been pretrial mediation. Although of current interest to civil and family judges, it is also a skill which can be useful in the ever-growing number of pretrials in criminal matters. I am pleased that the topic will be the subject of a joint project of the Civil Courts Committee and the Family & Youth Committee.

4) I would like to thank the Education Chair of Conference '89 for ensuring that a component of the programme relates to civil division issues.

Respectfully submitted.

**REPORT OF THE  
CANADIAN BAR ASSOCIATION  
LIAISON COMMITTEE**

EDMONTON, SEPTEMBER 16, 1989

by Judge Charles Scullion

I am pleased to report that the following judges have agreed to assist me on the Canadian Bar Association Liaison Committee:

1. His Honour Judge Kenneth D. Page, British Columbia
2. M. le juge F. Beaudoin, Quebec
3. His Honour Judge Ron Jacobson, Alberta
4. Her Honour Judge Pamela Thomson, Ontario
5. His Honour Judge Kenneth Crowell, Nova Scotia (ad hoc)

In addition, I contacted all the representatives and the members of the Executive to assist me in contacting the individual Presidents of the Canadian Bar Associations, Provinces and Territories. Each person has been forwarded a copy of the material The Canadian Bar Association Brief to assist them with their representations to the provincial and territorial governments. I have received a brief from M. le Juge Beaudoin of Quebec that was presented to their Committee. I have also received a brief from Judge Crowell regarding the Nova Scotia Committee. A brief was presented to the Canadian Bar Association regarding the problems of the Canadian Association of Provincial Court Judges and the Canadian Bar Association agreed to assist the CAPCJ with their problems in the future.

The Ontario branch of the Canadian Bar Association has formed a Committee headed by Howard C. Rubel. This Committee is called the Provincial Judicial Committee and Mr. Rubel made a presentation on behalf of the Ontario Court Judges before the Ontario Committee on Justice. The Ontario Canadian Bar has formed

a network and has agreed to contact each member of the legislature to bring to their attention the problems of the Henderson Report, which lay dormant for approximately nine months in the Ontario Committee on Justice. The Henderson report is now before the Cabinet and again we will be calling on the Canadian Bar Association to assist us in bringing the problems that are outlined in the Henderson report to the members of the Cabinet.

I attended the Canadian Bar Association Conference in Vancouver, meeting many of the new Executive and Presidents of the Canadian Bar Associations, Provinces and Territorial Branches. I attempted to bring to their attention many of the problems of the Provincial Court Judges. I personally contacted John R.R. Jennings, who is the new President of the Canadian Bar Association for 1989-1990. Mr. Jennings is very sympathetic to the problems of the Provincial court and has agreed to address the new Executive and the new Presidents of the various Branches and suggest to them that they form a Provincial Judges' Committee in each of the Territories to assist the Provincial Court Judges. Mr. Jennings is well aware, having worked with the Canadian Federal Judges in the past, of the problems that judges have in speaking out when there are great difficulties in the system. The Committee that I suggest is one that would be a proactive, objective commentator on the Provincial Court systems, presenting briefs where it is necessary and speaking out in favour of the judges of the Provincial Courts when it is impossible for the judges to do so themselves. Again, a network system could be arranged in each province or territory similar to that in Ontario so that pressure could be brought to bear on the governments in an attempt to have remuneration and benefits increased to that of at least a District Court Judge. Attached to this report is a copy of the Executive Committee Members of the Canadian Bar Association and all the Branch Presidents of the various provinces and territories.