



# Vox Judicia

May/mai 2007

CBA Judges' Forum/Forum des juges de l'ABC

## PRÉCIS

### À la fine pointe : des normes pour les preuves électroniques

par Sandra Potter

Le Conseil canadien de la magistrature (CCM) a donné son aval à un projet d'établissement de norme pancanadienne régissant l'échange et la présentation d'éléments de preuve sous forme électronique. La proposition de cette norme, fondée sur une directive de pratique émise par la Cour suprême de la Colombie-Britannique le 1<sup>er</sup> juillet 2006, a été précédée d'une série d'ateliers de consultations. Le projet sera d'abord implanté en Alberta, en Ontario et en Nouvelle-Écosse. On espère présenter au CCM une norme pancanadienne provisoire au cours de l'année 2007.

La norme contiendra des directives détaillées à l'intention des avocats, des avocates et des juges sur l'utilisation de la technologie dans les litiges civils et particulièrement sur l'échange des dossiers de communication préalable et la présentation d'éléments de preuve dans un procès sans papier. Les parties et leurs avocats n'auront plus à subir les retards et coûts associés aux procédures de communication préalable et à la présentation d'éléments de preuve électroniques au tribunal.

#### La directive de pratique

La directive de pratique traite notamment de l'utilisation de la technologie dans la préparation et la gestion de litiges civils, et de l'échange entre parties de données électroniques incompatibles. L'échange de renseignements électroniques dans un format convenu réduira les coûts et le chevauchement des tâches.

La directive de pratique comporte aussi d'importants volets philosophiques :

1. Elle est neutre sur le plan des logiciels. La directive ne vise que l'échange des données. Alors, toutes les parties sont libres d'utiliser le logiciel de leur choix.

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## The cutting edge: e-litigation standards

By Sandra Potter

### Introduction

The Canadian Judicial Council (CJC) has approved a project to establish a national standard for the exchange and presentation of evidence in electronic form. The proposed standard, which is based on the practice direction issued by the Supreme Court of British Columbia on July 1, 2006, was prepared after a series of consultative workshops. The first phase of the project involves Alberta, Ontario, and Nova Scotia, with other jurisdictions to follow. The goal is to have a national draft standard prepared for consideration by the Canadian Judicial Council in 2007.

The standard will provide detailed guidance on the use of technology in civil litigation for lawyers and judges, and, in particular, the exchange of discovery records and presentation of evidence in paperless trials. Upon the adoption of a national standard, parties and their counsel will no longer have to face long delays and costs associated with the discovery process and presentation of this electronic evidence in court.

### Background

The judiciary, lawyers, and litigation support were consulted, bringing the first phase of this initiative, which included a series of workshops from September 2006 until January 2007 and four drafts of the practice direction being made available for comment by the profession, to an end (visit <http://150.101.156.34/pdcanada> for more details).

### The practice direction

Reflecting changes in technology and the experience of the court over recent years, the practice direction provides guidance to parties in the use of technology for the preparation and management of civil litigation. It deals with the issue of the exchange of incompatible electronic data between parties to a proceeding, as receiving parties are often required to manipulate data before being able to use it. Exchanging electronic information in an agreed format will reduce costs and duplication of effort.

The practice direction has several key philosophical aspects.

1. It is software neutral. The practice direction is for exchange purposes only, so all parties, including judges, should be able to use any software they wish to. For example, one firm may have a sophisticated litigation support tool (e.g., Summation) whereas another may choose to use an electronic spreadsheet such as Excel or Lotus 1-2-3.
2. The practice direction is being released on a 'soft-start' basis: it's not a mandatory document, but offers a framework which can be applied in the event of technology being used in a matter. Section Two of the practice direction lists the circumstances (or "triggers") under which parties are encouraged to consider running a matter electronically.
3. The practice direction is intended to be a permissive document, one which encourages parties to work together. The purpose of the practice direction is to help

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## The cutting edge...

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parties consider and address the issues of electronic evidence management and exchange as early in the litigation process as possible in order to reduce duplication of effort, with its consequential waste of time and resources.

The practice direction also establishes a default standard for document exchange in Section Four. This default standard sets out the minimum standards required if the parties cannot agree. The default standards are based on inexpensive, universal formats and techniques that should not impose an unreasonable burden on parties or their practitioners, either in terms of cost or the technological skills required to comply with those standards.

The default protocols are well within the capabilities of most firms, and thus it can be anticipated that more sophisticated options will normally be agreed upon. In addition, the practice direction expressly provides that parties are **free to depart from the default standard** if they can agree (and are in fact encouraged to do so), but in the absence of an agreement, the default standard applies. The practice direction also contains appendices which will assist parties to comply, including:

### Appendix 1

A checklist of **technology** matters which

parties may use to identify technical options and issues that may arise at various stages of the proceedings.

### Appendix 2

A sample record identifying the **fields** to be used for the description of **records** in accordance with the default standard for affidavit of records pursuant to Rule 186.

### Appendix 3

Guidelines showing how the default **fields** should be populated and suggesting possible additional **fields** for the description of **discoverable records** in a **database**.

### Appendix 4

Glossary of terms.

## The way forward

The CJC's Judges' Technology Advisory Committee will take the practice directions to the CJC for consideration. Once passed by the CJC, the directions will be distributed to the individual jurisdictions for consideration by their appropriate body.

Hopefully, this work will lead to these directions being adopted as a national standard by the end of 2007.

*Sandra Potter is a director of Potter Farrelly & Associates in Australia and is engaged as a consultant by the CJC for the e-litigation project.*

## À la fine...

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2. Le document n'est pas exécutoire. Il propose simplement un cadre applicable aux causes où la technologie intervient.
3. La directive encourage les parties à travailler ensemble et à envisager la gestion et l'échange électroniques de la preuve dès le début du processus de litige.

La directive de pratique établit dans l'article 4 une norme par défaut pour l'échange des documents. Si les parties ne parviennent pas à s'entendre, cette norme établie en fonction de formats et techniques bon marché et universels régit les échanges entre les parties.

De plus, la directive de pratique précise que les parties peuvent délaisser d'un commun accord la norme par défaut. Elles sont d'ailleurs encouragées à le faire. En l'absence d'un tel accord, la norme par défaut sera appliquée.

### Les étapes futures

Le Comité consultatif de la technologie du CCM soumettra les directives de pratique au Conseil canadien de la magistrature. Une fois adoptées par le CCM, les directives seront distribuées aux différents ressorts, qui en feront l'étude à leur tour.

Nous espérons que ces travaux aboutiront à l'adoption d'une norme pancanadienne d'ici la fin de 2007.

*Sandra Potter, directrice du cabinet Potter Farrelly & Associates, en Australie, a été embauchée à titre de consultante par le CCM dans le cadre du projet sur l'utilisation de la preuve électronique.*

## IMPORTANT NOTICE: We need your e-mail address!

Until now, we have used regular mail to send *Vox Judicia* to all judges in Canada. Beginning next year, we will be moving to electronic distribution only.

We need your e-mail address in order to ensure that you continue to receive our newsletter. Your e-mail address will not be used other than for this specific purpose, and will not be shared outside of the CBA.

Please send your e-mail address to Gaylene Schellenberg, Staff Liaison for the Forum, at the CBA National Office, 1-800-267-8860, ext .139 or by e-mail at [gaylenes@cba.org](mailto:gaylenes@cba.org).

## AVIS IMPORTANT : Nous avons besoin de votre adresse électronique!

Jusqu'à maintenant, nous avons expédié *Vox Judicia* à tous les juges canadiens par la poste. À compter de l'an prochain, nous utiliserons exclusivement la distribution électronique.

Nous avons donc besoin de votre adresse électronique pour pouvoir continuer à vous expédier notre bulletin. Votre adresse électronique ne servira qu'à l'envoi du bulletin, et ne sera pas partagée avec des tiers à l'extérieur de l'ABC.

Veuillez communiquer votre adresse électronique à Gaylene Schellenberg, agente de liaison pour le Forum, au bureau national de l'ABC à 1 800 267-8860, poste 139, ou par courriel à [gaylene@cba.org](mailto:gaylene@cba.org).

# Message from the co-Chair



By Madam Justice  
Elizabeth Hughes

The junior co-Chair of the Canadian Judges' Forum traditionally writes the editorial for *Vox Judicia*, the Forum's newsletter. As the junior co-Chair, I am following in the footsteps of my predecessors, with perhaps one minor exception: I am also one of the two editors of the *Vox*.

Thus, this article will be about the Forum and its newsletter. For those of you who don't already know, the Canadian Judges' Forum was established in 1995 as a Conference of the Canadian Bar Association (CBA). Along with the National Judicial Institute, it is one of two organizations in Canada for both federally and provincially appointed judges. Judges who are CBA members are automatically members of the Forum.

The objectives of the Canadian Judges' Forum are:

- to promote the views and interests of judges within the CBA;
- to provide a means for judges to participate in the CBA which respects judicial independence;
- to provide a forum for the exchange of information and ideas amongst judges of all courts of record, and between judges and members of the bar; and
- to develop member services relevant to judges.

One of our means of fulfilling our objectives is the publication of this annual newsletter, which is currently mailed to all federally and provincially appointed judges. But our newsletter is different from most other newsletters now published by the CBA, in that it is one of two newsletters that are not distributed electronically. The Forum's Executive has discussed the possibility of electronic distribution of the newsletter for some time, but on each occasion, we voted to remain with the status quo. Many judges who are members of the CBA have not provided an e-mail address, and the CBA has even fewer e-mail addresses for those judges who are not members of the Forum. For this reason, the Forum opted to continue using regular mail, as we hope our newsletter will

reach all judges, whether or not they're members.

However, this past year the Executive decided to move to electronic distribution of our newsletter by 2008. Thus, we need you, our readers, to send us your e-mail address so that you may receive the newsletter in the future. Please send your address to the attention of the Forum's Staff Liaison at the CBA National Office, Gaylene Schellenberg, at [gaylenes@cba.org](mailto:gaylenes@cba.org) or 500-865 Carling Ave, Ottawa, ON, K1S 5S8. Your e-mail address will not be used other than for this specific purpose, and will not be shared outside of the CBA.

## So what else is new?

You'll see articles in this edition of the *Vox* that focus on new and emerging issues facing judges: infant mental health, e-litigation, and a new service provided by the Judges Counselling Program. You'll meet the Forum's new person in the spotlight – Justice Murray Sinclair of the Court of Queen's Bench of Manitoba – and read about what's new on the international development front

## PRÉCIS

### Message de la coprésidente

par Mme la juge Elizabeth Hughes

Pour ceux et celles d'entre vous qui ne le savent pas, le Forum des juges canadiens existe depuis 1995 à titre de conférence de l'Association du Barreau canadien (ABC).

Le Forum a pour objectifs :

- de promouvoir les opinions et les intérêts des juges;
- de fournir aux juges les moyens de participer aux activités de l'ABC tout en préservant l'indépendance de la magistrature;
- d'offrir une tribune qui favorise l'échange de renseignements et d'idées parmi les juges de toutes les cours d'archives ainsi qu'entre les juges et les membres du Barreau;
- de concevoir des services aux membres spécifiques pour les juges.

Ce bulletin annuel nous aide à réaliser nos objectifs. Il s'agit d'une publication différente de la quasi-totalité des autres bulletins de l'ABC puisqu'elle n'est pas distribuée par Internet. L'Exécutif a discuté à quelques reprises d'une éventuelle distribution électronique, décidant chaque fois de conserver le

of the CBA.

Another yearly event for the Judges' Forum is a Continuing Legal Education (CLE) program that we co-host with the International Commission of Jurists at the Canadian Legal Conference. This year's conference is in Calgary, and our CLE session, *Security in our Courthouses and Courtrooms*, features Quebec Superior Court Chief Justice François Rolland, former Royal Canadian Mounted Police (RCMP) commissioner Norman Inkster and former Canadian Security Intelligence Service (CSIS) director Reid Morden; our senior co-Chair, Judge Sheila Whelan, will moderate. Chief Justice Rolland deals with bomb threats on an all-too-frequent basis, and Mr. Inkster and Mr. Morden now work as security consultants. Undoubtedly, all judges and lawyers will be interested in this topical issue. Hope to see you there!

P.S.: Remember to send us your e-mail address.

statu quo parce que de nombreux juges ne nous ont pas fourni d'adresse électronique. Avec la poste, nous espérons que le bulletin parviendra à tous les juges, qu'ils soient ou non membres du Forum.

Cependant, à compter de 2008, le bulletin sera acheminé par courrier électronique. Nous vous demandons donc de faire parvenir votre adresse électronique à Gaylene Schellenberg du bureau national, à l'adresse [gaylenes@cba.org](mailto:gaylenes@cba.org) ou, par la poste, au 865, avenue Carling, Bureau 500, Ottawa (Ontario) K1S 5S8. Votre adresse ne servira qu'à l'envoi du bulletin.

Par ailleurs, le Forum des juges canadiens anime toujours une séance de FJP lors de la Conférence juridique canadienne, en collaboration avec la Commission internationale de juristes. La séance de 2007 portera sur la sécurité dans nos palais de justice et dans nos salles d'audience. Nous croyons que tous les juges et avocats s'intéresseront à ce thème.

Nota : n'oubliez pas de nous acheminer votre adresse électronique.

# Changes to appointments process risk politicization of the judiciary



By J. Parker MacCarthy,  
Q.C.  
CBA President

Respected Canadian constitutional expert Peter Russell has said it best. He speaks of the federal government's new judicial advisory committee process as

“pointing in the direction of transforming the committees into ideological certifying bodies rather than bodies responsible for identifying the most qualified candidates for the judiciary.”

Indeed, tinkering with judicial independence is dangerous at the best of times, and we are presently far from the best of times.

Until last November, each of the 16 federal judicial advisory committees was composed of seven members – one from the federal judiciary, three selected directly by the federal minister of justice, and one each recommended by the attorney-general, law society and CBA Branch all in the particular province or territorial jurisdiction. The goal was to reach decisions about recommended judicial candidates by consensus. Because the federal justice minister was allowed only three appointments out of a committee of seven, he could not control the recommendation phase of the appointments process for partisan or ideological purposes.

Committees would provide the minister with a list of “highly recommended” and “recommended” candidates. The minister had the final say on who was appointed to the bench, but advisory committees were still key, since they identified the pool of candidates from which the minister would choose. This appointment process was based largely on a 1985 CBA report on the method of appointment of judges (the McKelvey Report). Its recommendations placed a premium on the merit selection of candidates. The process was adopted by the Mulroney government in 1985, and garnered the respect of the legal profession and the Canadian public.

Since November, all has changed. The then-minister of justice changed both the composition of the committees and the process

for recommending candidates. These changes were made without consulting with or receiving submissions from those groups who have long supported the recommendation process. The changes risk politicizing the appointments at the expense of excellence.

In a nutshell, the justice minister has increased the number of committee members that he appoints from three to four, and disallowed the vote of the committee's judicial member except in case of a tie. This gives the minister's appointees the majority of votes on the committee. According to media reports, partisans are already beginning to fill the ranks of the committees. In addition, there will be no longer be a category of

“highly recommended” to single out the most qualified and suitable candidates. This potentially opens the door to easier appointments for those who are minimally qualified to sit on the bench, but who might have an ideological bent consistent with that of the government of the day.

The minister of justice will also appoint a representative from the ranks of law enforcement. This is hardly surprising, although including any designated group on these committees is dangerous. Should police be selecting the judges who society calls upon to act as a check and balance on their special powers?

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## PRÉCIS

### Le ministre risque de politiser les nominations judiciaires

par J. Parker MacCarthy, c.r.  
Président de l'ABC

Peter Russel, l'expert en droit constitutionnel, a fort bien résumé la situation. Selon lui, les nouveaux mécanismes de nomination judiciaire tendent à « transformer les comités consultatifs judiciaires en organismes de certification idéologique, plutôt qu'en organismes responsables d'identifier les meilleurs candidats et candidates à la magistrature ».

Jusqu'en novembre dernier, ces comités consultatifs étaient formés de sept membres – une ou un représentant de la magistrature fédérale, trois membres nommés par le ministre fédéral de la Justice, et trois représentantes et représentants provinciaux ou territoriaux nommés par le Procureur général, le Barreau et la Division de l'ABC (un chacun) dans chaque ressort.

Cette formule avait pour objectif d'en arriver à des recommandations unanimes. Parce que le ministre n'avait que trois représentants au sein des comités de sept membres, il ne pouvait pas avoir le contrôle sur la phase de recommandation à des fins partisans ou idéologiques.

Les comités présentaient au ministre des listes de candidats « recommandés » et « fortement recommandés ». Le ministre avait bien sûr le dernier mot, mais les comités consultatifs définissaient le bassin de candidats soumis au ministre.

Depuis novembre, tout a changé. Le ministre de la Justice d'alors a modifié sans consultation la composition des comités (quatre membres nommés

par le ministre au lieu de trois) ainsi que le mécanisme de recommandation (en permettant au juge du comité de voter seulement en cas d'égalité des voix). Ces changements risquent de politiser les nominations aux dépens de l'excellence.

Les représentants du ministre ont désormais la majorité des voix dans ces comités. Par ailleurs, en éliminant la mention « fortement recommandée », le ministre facilite les nominations de personnes possédant des compétences minimales, mais une idéologie semblable à celle du gouvernement en place.

Le ministre nommera aussi un représentant des forces policières. Il s'agit d'une mesure dangereuse. En effet, les policiers devraient-ils sélectionner des juges susceptibles de devoir faire contrepoids à leurs pouvoirs spéciaux?

Cette situation est préoccupante. En revanche, ce qui nous inquiète le plus en tant qu'organisation juridique, c'est l'impact des changements sur la crédibilité de la magistrature aux yeux du public.

À la lumière de cette controverse, certains proposent de boycotter les comités. D'autres préféreraient une contestation judiciaire. À l'ABC, nous croyons qu'il est plus facile d'œuvrer à l'intérieur du système.

Ainsi, nous continuerons de défendre les nominations selon le mérite et de travailler à renforcer la confiance du public en une magistrature impartiale et indépendante.

## Changes...

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The current government is pushing for mandatory minimum sentences for a range of offences, and tougher sentencing by judges in general. The prime minister told the House of Commons “we want to make sure that we are bringing forward laws to make sure we crack down on crime and make our streets and communities safer. We want to make sure that our selection of judges is in correspondence with those objectives.”

Our overriding concern as a legal organization is the impact on the public credibility of our judiciary. When individuals appear before our courts, they have a right to expect an unbiased, impartial, and independent trial.

In light of the controversy, some have recommended a boycott of the new committee process. Others have suggested a court challenge. Let me say that it is much easier to work from within the tent than from outside it. We at the CBA remain committed to the merit selection process, and will continue to work hard to bolster greater public confidence in an impartial, independent judiciary.

In Canada, we have excellent judges. A 2006 opinion poll by Léger Marketing shows respect for judges ranked them near the top of the Canadian professions, in seventh place. Internationally, Canadian jurisprudence continues to be cited in decisions of superior courts across the Commonwealth countries and in the U.S.

I see these as positive signs of respect. They are based on the calibre of the judges appointed to date, their independence, and their commitment to the rule of law. An independent bar and judiciary are critical to our democracy and the rule of law. Anything that creates a perception of a loss of judicial independence will place the integrity of and respect for our legal system at risk.

## Call for Nominations

The Canadian Judges' Forum is now accepting nominations for three positions on its Executive Committee for the 2007-2008 term: one Secretary-Treasurer and two Members-at-Large. The term of office for each position is one year, commencing Sept. 1, 2007. The Secretary-Treasurer will become Vice-Chair in the 2008-2009 term and co-Chair in the 2009-2010 term.

The Executive Committee is responsible for the overall operation and direction of the Forum's activities. The duties of the Secretary-Treasurer include preparing minutes of meetings and liaising with National Office staff concerning financial matters. The Members-at-Large assist the Executive in carrying out the Forum's mandate.

The criteria for nomination include participation and interest in the Form's activities, gender and regional representation, and representation from different levels of court. Elections for the three positions will take place at the Judges' Forum's annual meeting, Monday, Aug. 13, 2007 from 10:45 a.m. to 12:15 p.m. during the Canadian Legal Conference in Calgary. Nominations or requests for information about the nominations process should be forwarded to Gaylene Schellenberg, Judges' Forum Staff Liaison, 500-865 Carling Ave., Ottawa, ON, K1S 5S8, tel: 1-800-267-8860 ext. 139, fax: (613) 237-0185, e-mail: [gaylenes@cba.org](mailto:gaylenes@cba.org). Nominations must be received in writing by Aug. 1, 2007.

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## Appel de candidatures

Le Forum des juges canadiens accepte présentement les candidatures aux trois postes de son Comité exécutif pour l'année 2007-2008. Une secrétaire-trésorière ou un secrétaire-trésorier et deux membres seront élus pour un mandat d'un an débutant le 1er septembre 2007. La secrétaire-trésorière ou le secrétaire-trésorier accèdera à la vice-présidence en 2008-2009, puis à la coprésidence en 2009-2010.

Le comité exécutif est responsable de la direction et du fonctionnement des activités du Forum. Le secrétaire-trésorier a notamment la tâche de préparer les procès-verbaux des réunions et d'assurer le lien avec le bureau national concernant les questions d'ordre financier. Les deux autres membres ont des responsabilités plus générales.

Les candidats et candidates seront jugés sur leur participation et sur l'intérêt porté aux activités. On tiendra aussi compte d'autres critères : équilibre hommes-femmes, représentation des régions et des différents échelons de tribunaux. Les élections auront lieu lors de l'assemblée annuelle du Forum, le lundi 13 août 2007, de 10 h 45 à 12 h 15, dans le cadre de la Conférence juridique canadienne à Calgary. Pour soumettre une candidature ou obtenir un renseignement, veuillez communiquer avec Gaylene Schellenberg, au Forum des Juges, 865 rue Carling, bureau 500, Ottawa (Ontario), K1S 5S8; par téléphone au 1-800-267-8860, poste 139; par télécopieur au (613) 237-0185 ou par courriel à [gaylenes@cba.org](mailto:gaylenes@cba.org).

# Dans une école près de chez

## VOUS...

Par *Sophie Bourque, j.c.s.*

Il existe à la Division du Québec de l'ABC, depuis 10 ans déjà, un formidable programme réunissant chaque année des milliers d'étudiant et d'étudiantes, des jeunes avocats et avocates et des juges. L'actuel juge en chef de la Cour supérieure du Québec, François Rolland, en est l'instigateur et le programme a bénéficié depuis sa création des efforts inlassables d'un tout nouveau collègue à la Cour supérieure et ancien président de la Division, Mark G. Peacock, ainsi que du président 2006-2007 de la Division, Me Louis Brousseau. Les juges Pierre-C. Gagnon de la Cour supérieure et Louis A. Legault de la Cour du Québec, ont aussi fait un travail considérable de coordination.

Le *Programme d'appels simulés en matière de chartes* s'adresse aux étudiant et étudiantes de 4<sup>ème</sup> secondaire, et leur permet, à travers la préparation et l'audition d'un appel simulé à la Cour suprême d'une question reliée aux Chartes des droits et libertés, de démystifier le système judiciaire, de se découvrir des qualités de plaideur et d'apprivoiser les rouages de la vie démocratique dans notre société. L'ABC-Québec, le Forum des juges et depuis peu, le Tribunal des droits de la personne collaborent à ce programme.

Cette année, trois commissions scolaires et six collèges d'enseignement privés, soit 35 écoles, ont adhéré au programme. D'abord développé auprès de la Commission scolaire anglophone Lester B. Pearson, il a depuis été aussi présenté dans des commissions scolaires francophones. Il est donc offert tant en anglais qu'en français et étend ses tentacules dans les régions de Montréal et de Québec. Environ 1800 élèves y ont participé au cours de l'année 2006-2007.

Le programme couvre cinq périodes d'enseignement et tout se passe à l'école. Son moteur reste indéniablement l'interaction avec le professeur, auquel, lors d'une mini-formation préparatoire avec un avocat, on explique la documentation préparée par l'ABC-Québec. Il s'agit d'une documentation de près de 70 pages, rédigée en langage clair et accessible à des gens qui ne sont pas juristes de formation. Elle est révisée annuellement, et offerte dans la langue d'enseignement. Cette information permet au professeur d'expliquer à ses élèves l'origine, le rôle et les champs d'application des chartes.

Cette partie du programme couvre deux ou trois périodes d'enseignement.

Après cette formation théorique, les élèves préparent la simulation de l'audition de l'appel à la Cour suprême. C'est l'enseignant qui choisit la cause qui sera plaidée. Les dossiers proposés par l'ABC-Québec, ont tous été plaidés devant la Cour suprême, et portent sur un sujet d'intérêt pour les jeunes, soit la fouille corporelle d'un élève par un directeur d'école, le port du kirpan à l'école, le mariage entre conjoints de même sexe et la publicité de l'industrie du tabac. D'autres dossiers sont en cours d'élaboration grâce à la collaboration du Tribunal des droits de la personne.

Pour la préparation de l'appel, un jeune avocat ou une jeune avocate expliquent aux élèves les règles du débat contradictoire, en mettant l'accent sur les particularités d'une audition où il est question des chartes. La classe est divisée en trois équipes: les « pour », les « contre » et les « juges ».

La dernière période est celle de l'audition de l'appel. L'audition a lieu à l'école et peut même se passer en présence d'un public enthousiaste, composé d'élèves d'autres classes et même de parents. À cette occasion, un « vrai » juge rencontre alors les élèves juges, et leur explique les règles de base de leur nouveau rôle. La règle de l'impartialité suscite le plus de curiosité et de commentaires. L'appel est par la suite plaidé et les juges se retirent pour délibérer et rendre leur verdict dans les minutes suivantes.

Cette année, plus d'une trentaine de juges bénévoles des tribunaux de toute juridiction, de la Cour du Québec à la Cour d'appel, se seront rendus dans les écoles. Le juge Louis A. Legault de la Cour du Québec ne tarit pas d'éloges pour le programme. Il estime qu'il s'agit « d'une occasion de développer l'intelligence de l'esprit et de l'âme et l'ouverture des jeunes sur des questions de valeurs fondamentales et ce, pour que la société soit meilleure, plus ouverte et plus solidaire ». « Ce programme permet aux jeunes de comprendre que nous avons tous un rôle à jouer dans une société libre et démocratique », considère-t-il. « Ils comprennent que le pouvoir judiciaire est le chien de garde du pouvoir législatif et du

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## PRÉCIS

### In a school near you

*by Sophie Bourque, S.C.J.*

For the last 10 years, CBA's Quebec Branch has organized an exceptional program that reaches thousands of students, young lawyers and judges every school year. Initiated by Chief Justice of the Quebec Superior Court François Rolland, helped along by Mark G. Peacock, former president of the Quebec Branch and newly appointed Superior Court Judge, and Louis Brousseau, current president of the Quebec Branch, and co-ordinated by Pierre-C. Gagnon, Superior Court judge, and Louis A. Legault, of the Court of Quebec, the program simulates Charter appeals with the participation of 4<sup>th</sup>-year high school students.

With the co-operation of the Judges' Forum and the Quebec Human Rights Tribunal, the CBA-Quebec program helps students understand the judicial system, discover talents for advocacy and come to grips with democracy. This year, three school boards and six private colleges, 35 schools in all, joined the program which was originally developed in English for the Lester B. Pearson School Board. It is now presented in English and French, and has expanded throughout the Montreal and Quebec City regions.

The program starts with a training session for the teacher, who has to assimilate 70 pages of documents with the help of a lawyer. Then students are asked to prepare the mock appeal to the Supreme Court. The teacher chooses from cases submitted by CBA-Quebec. All are current and have been litigated in the Supreme Court: body searches by a school principal, the wearing of kirpans in school, gay marriage, and advertising by the tobacco industry. A young lawyer joins the students to prepare the appeal, and the class is divided into three groups: the pros, the cons, and the judges.

Finally, the appeal is heard (in the school) in the presence of students and even parents after a real judge has explained the basic rules of the court to the student judges. The jury then retires and renders its verdict a few minutes later.

This year, more than 30 judges volunteered their time to visit the schools. According to Justice Louis A. Legault, of the Court of Quebec, this program provides "an opportunity to develop the intelligence of mind and soul and openness among the youth on issues of fundamental values." Through this program, he says, young people may better understand that they have a role to play in a free and democratic society. They also realize that the judiciary is the watchdog of Parliament and government, and that a judge is not there to be popular or unpopular.

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## CAPCJ 2007 Annual Conference

The Canadian Association of Provincial Court Judges (CAPCJ) will hold its 2007 conference in Vancouver, Sept. 26-29, 2007. But CAPCJ won't be alone; along with those who attend as CAPCJ members, we are currently expecting about 140 B.C. judges, 110 Alberta judges, 35 Saskatchewan judges and 125-200 judges from the American Judges Association.

The conference will open with a welcoming reception on Sept. 26. The educational part of the conference will feature judges Rosalie Abella and Ruth Bader-Ginsberg in an opening plenary session. The rest of the conference will be just as inviting and interesting, with events every evening, including a huge banquet on Sept. 29.

*Vox Judicia* is produced by the CBA's Judges' Forum. We invite your comments.

*Vox Judicia* est publié par le Forum des juges de l'ABC. Vos commentaires sont les bienvenus.

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## Dans une...

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pour pouvoir exécutif et qu'un juge n'est pas là pour être populaire ou impopulaire ». D'autre part, ajoute le magistrat, le contact avec le juge, permet aux jeunes d'humaniser les intervenants du système judiciaire et de voir qu'on « ne vient pas de Mars ou de Vénus ».

Le juge John H. Gomery de la Cour supérieure a lui aussi participé au programme. Cette année, il s'est rendu au Collège Sainte-Marceline, institution d'enseignement pour filles seulement. Dans ce milieu, sommes toutes inhabituel pour le magistrat, il y a découvert avec plaisir l'énergie des étudiantes, leur optimisme et les idées nouvelles qui les habitent. De timides au départ, les étudiantes s'avèrent particulièrement déterminées et combatives lorsque vient le temps de plaider. Il considère qu'il retire autant de son contact avec ces jeunes qu'elles ont appris de leur participation au programme.

Le juge Pierre-C. Gagnon de la Cour supérieure agit aussi comme « repêcheur » de juges. Il constate qu'il est rare qu'un juge ou une juge ne désire pas répéter l'expérience. Lui-même a participé à plusieurs auditions simulées et ne compte pas se priver d'y retourner. Au fil des ans, il a pu constater à quel point le programme est adapté à la réalité scolaire et combien il est apprécié, tant par les élèves que les enseignants, surtout qu'il est livré « clef en main ». À l'heure d'une importante réforme pédagogique au Québec, le programme répond naturellement à l'exigence qu'une activité touche plusieurs domaines de compétences dites « transversales ». Grâce au programme, le jeune développe des

## In a school...

*continued from page 6*

Justice John H. Gomery, of the Superior Court, also got involved this year. He found that he had learned as much from contact with youth as they had learned from their participation in the program.

Justice Pierre-C. Gagnon, who "drafts" judges for the program, had found that only rarely do they refuse to make repeat appearances. He also says that the program is well adapted to reality and appreciated by both teachers and students. Young people develop verbal skills and increased awareness of their responsibility as citizens. Some discover real advocacy skills and begin reflecting on their future. The young lawyer who assists them becomes a role model and a source of inspiration.

The program has multiple benefits. It increases awareness among these future responsible citizens and allows young lawyers to get involved in their community and have privileged contacts with a judge at a *pro bono* event. Judges get the chance to keep in contact with the lifeblood of the country. The program also demystifies the justice system for young people, who can then better understand and accept it.

compétences en histoire, en expression orale, se sensibilise à son rôle de citoyen ainsi qu'aux aspects concrets des libertés individuelles. Certains se découvrent de véritables talents de plaideur et amorcent une réflexion sur leur avenir. Le jeune avocat ou la jeune avocate qui les assiste lors de la préparation de l'audition représente généralement un modèle à suivre, une bonne source d'inspiration.

Voilà donc un programme dont les bénéfices sont multiples. Il fait en sorte que les jeunes deviennent de futurs citoyens responsables et sensibilisés, il permet à de jeunes avocats et avocates de s'impliquer dans leur communauté et aussi d'avoir un contact privilégié avec un juge dans le cadre d'une activité *pro bono*. Il permet aussi au juge de garder contact avec les forces vives de notre société et permet de démystifier notre système de justice. Que demander de plus? Peut-être seulement qu'il soit offert dans une école près de chez vous? Si le cœur vous en dit, vous savez maintenant qui appeler. C'est avec plaisir que l'ABC-Québec le mettra à votre disposition.

# In the best interests of the infant

By Evelyn Wotherspoon, M.S.W.,  
Carla M. Atkinson M.D. FRCPC,  
Susan Rafaat M.Sc., R.SLP,  
June Pirie, M.N., and  
Brenda Miles, Ph.D. C. Psych.

Infants are a unique challenge for courts and family law professionals charged with protecting their legal rights and acting in their best interests. The basic need of every infant for a secure attachment relationship with a primary caregiver, the importance of maintaining cultural roots, and the primacy of biological family sometimes come into conflict. The rapid pace of development in the early years adds urgency to the deliberations.

Determining where and how the child's best interests will be served requires a balancing of these issues, with no one aspect necessarily taking priority over another. Since placement decisions will have a profound and enduring impact on the mental health and development of some of our most fragile children, and since many cases involving these children make their way before the courts, it is essential that judges, in particular, be knowledgeable about possible mental health implications as they deliberate cases involving infants.

Research suggests that judges are often

influenced by the expressed views and wishes of children and by the testimony of expert witnesses.<sup>1</sup> Since infants cannot express their wishes, the courts might be asked to consider the advice of experts to help determine where the best interests might lie. Unfortunately, infant mental health expertise is only sporadically available across North America.<sup>2</sup>

Given that most children's mental health programs do not begin offering services until children reach five or six years of age, mental health experts with whom the courts are most familiar typically work with older children. They might have little direct experience with preschool children, particularly with children under three.

## What is infant mental health?

The (U.S.) National Center for Infants, Toddlers and Families defines "infant mental health" as the capacity of a child, from birth to age three, to experience, regulate, and express emotions, form close and secure interpersonal relationships, explore their environments, and learn. Infant mental health and development are intertwined.<sup>3</sup> Infants who are not doing well emotionally tend to lag behind their peers in achieving developmental milestones. Unfortunately, infants have limited ways of

expressing their distress and their cues are often misunderstood by caregivers and professionals who might have a different frame of reference. Disturbances in the attachment relationship, for example, can have a role in the diagnosis of "failure to thrive."<sup>4</sup> A baby described as having a "difficult temperament" could have a regulatory disorder.<sup>5</sup> Severe deprivation can produce "autistic-like" symptoms in young children.<sup>6</sup> Probing questions from the bench will help to determine whether the child's condition has a treatable mental health component, and how that might influence his best interests.

The very notion of infants experiencing mental health problems is a disquieting one. We don't like to think that infants grieve or despair over the loss of a loved one. We would rather believe small children quickly forget traumatic events in their lives. We tend to view infants as more resilient. While it is true that infants can – and do – recover from early setbacks, recent findings on brain development suggest that the younger the child is, the **more** vulnerable they are to adverse experiences – not less.<sup>7</sup>

Even among children who suffer severe hardships, only about half will develop major psychopathology.<sup>8</sup> Why do some infants thrive in spite of misfortune while others do not? What questions should be addressed as the

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## PRÉCIS

### Dans le meilleur intérêt des enfants en bas âge

Par Evelyn Wotherspoon, Carla M. Atkinson, Susan Rafaat, June Pirie et Brenda Miles

Les enfants en bas âge constituent un défi unique pour les tribunaux et les professionnels, professionnelles du droit de la santé, qui ont pour mandat de protéger leurs droits juridiques et d'agir dans leur meilleur intérêt. Le besoin fondamental de chaque enfant de développer une relation stable avec un parent, l'importance de protéger les racines culturelles et la primauté de la famille biologique peuvent parfois s'opposer. En outre, le rythme rapide de développement dans la petite enfance ajoute à l'urgence du débat.

La détermination de la manière d'assurer le meilleur intérêt d'un bébé exige d'équilibrer ces considérations, sans qu'un volet domine les autres. Comme les décisions sur les placements d'enfants auront un impact profond et durable sur la santé mentale et le développement de certains de ceux qui sont les plus fragiles, et comme plusieurs causes dont ils sont l'objet cheminent devant les tribunaux, il est essentiel que les juges s'informent bien des conséquences de

procédures judiciaires en matière de santé mentale.

Des études suggèrent que les juges sont souvent influencés par les points de vue et les désirs des enfants, ainsi que par les preuves de témoins experts. Mais comme les bébés peuvent difficilement exprimer leurs volontés, les tribunaux pourraient être incités à demander conseil auprès d'experts et d'expertes pour déterminer le meilleur intérêt de l'enfant. Malheureusement, l'expertise en santé mentale d'enfants en bas âge ne se retrouve pas partout en Amérique du Nord.

Étant donné que la plupart des programmes de santé mentale pour enfants commencent à offrir des services quand un enfant a atteint l'âge de cinq ou six ans, les experts en santé qui comparaissent devant un tribunal travaillent surtout avec des enfants plus âgés. Ils ont eu peu d'expérience avec des bambins d'âge préscolaire, et en particulier avec les enfants ayant moins de trois ans.

La seule idée de problèmes de santé mentale chez les bébés est troublante. Nous n'aimons pas croire que les tout-petits sont chagrinés et désespérés après la perte d'un être cher. Nous préférons croire que les

nourrissons oublient rapidement les événements traumatiques dans leur vie. Or, des études récentes sur le développement du cerveau suggèrent que plus jeune est l'enfant, plus il est vulnérable aux traumatismes de la vie.

Après plus de 50 années d'études, les chercheurs et chercheuses ont compris que les enfants sont intensément sociables et qu'ils sont prêts dès la naissance à former un lien émotif avec un parent. Cet attachement sain est essentiel à la santé physique et émotionnelle, ainsi qu'au développement du cerveau. Il ne faut donc pas sous-estimer l'effet de la rupture de ce lien affectif, même quand le parent n'est pas parfait.

Du point de vue de la santé mentale, les enfants en bas âge qui sont soumis à une peur ou à des stress persistants, et les enfants qui n'ont pas un parent attentif et dévoué, peuvent être considérés comme étant davantage à risque. Les bébés qui connaissent plusieurs placements sont aussi à risque. Quand ces facteurs se regroupent, comme c'est souvent le cas, la probabilité de problèmes de santé mentale et de comportement augmente de façon exponentielle. Les enfants dans un milieu social à risque sont

*suite à la page 9*



court considers their best interests?

## The importance of attachment

After more than 50 years of study, infants are understood to be intensely social beings: they're born ready to form a close emotional tie to a primary caregiver. A healthy attachment relationship is crucial to the infant's physical and emotional health and is vitally important for brain development.<sup>9</sup> Even when caregiving isn't perfect, the grief a baby suffers when this emotional bond is impaired or severed should never be underestimated. Infants who cannot rely on a consistent, responsive attachment figure suffer emotionally as well as physically.

The quality and consistency of early caregiving is the most reliable buffer against the effects of adversity, especially for those infants exposed to multiple social or environmental risks.<sup>10</sup> Maternal engagement and responsiveness in infancy, for example, are better predictors of subsequent cognitive and linguistic performance than socio-economic status.<sup>11</sup>

The link between language development and emotional health is significant. Since language is our means of social communication and building relationships, and since the roots of language acquisition and emotional regulation are the same, it is not surprising that psychiatric disorders are more common in language-disordered children.<sup>12</sup> When a child's primary attachment figure is emotionally unavailable, or

## Dans le...

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extrêmement sensibles à tout risque additionnel.

Les adolescents et les adolescentes ayant vécu dans un climat familial difficile ont 100 fois plus de chances de manifester des problèmes sévères de comportement, comparativement aux enfants provenant d'environnements familiaux plus sereins. Selon une seconde étude, les enfants exposés à au moins quatre facteurs de risque (p. ex. compétence parentale, sécurité du lien affectif, milieu social à risque, facteurs congénitaux) ont 34 fois plus de chances d'avoir besoin un jour des soins d'un psychiatre.

La relation entre les risques et les résultats n'est pas un rapport clair de cause à effet. La capacité de rebondir devant l'adversité n'est pas linéaire, mais le produit d'une interaction fluide entre nature, environnement et occasion favorable. Ces risques initiaux produisent des conséquences en santé mentale, surtout quand les enfants sont exposés à plusieurs facteurs de risque durant les périodes critiques pour le développement du cerveau, et notamment avant l'âge de trois ans.

when the attachment relationship is disrupted, babies are more vulnerable to a cascading series of events including cognitive and language delays, emotional regulation difficulties, and so on.

## The importance of accumulating risk factors

From a mental health perspective, infants who experience persistent fear and stress, infants with congenital problems, and infants who don't have a responsive, engaged caregiver are at an elevated risk.<sup>13</sup> Certainly, babies who experience multiple placements are at significant risk as well. However, when these risk factors cluster together, as they often do, the likelihood of mental health and behavior problems escalates along a steep exponential curve.<sup>14</sup> Infants in high-social-risk environments are extremely sensitive to any additional risk.<sup>15</sup>

The likelihood of severe multiple problem behaviors, for example, increased by a factor of 100 in one study of adolescents with high rates of family adversity when compared with those who experienced relatively few.<sup>16</sup> A second study found that children exposed to risks in four or more domains (such as parental competence, security of attachment, high social risk environments, and congenital factors) were 34 times more likely to have a psychiatric diagnosis such as attention deficit disorder, conduct disorder or oppositional defiant disorder. Children vulnerable in only one of these domains were "extremely unlikely" to have a diagnosable condition.<sup>17</sup>

The number of risk and protective factors to which a child is exposed, the age of onset, and the duration of that exposure appear to offer the best explanation for why some children fare better than others despite seemingly comparable initial conditions.<sup>18</sup> The relationship between risks and outcomes isn't a linear, cause-and-effect relationship. Resiliency isn't a fixed characteristic, but a fluid interplay between nature, environment and timing. These initial risk conditions have predictable mental health consequences, especially when young children are exposed to multiple risks during sensitive periods of brain development – many of which occur in the first three years.<sup>19</sup>

## Questions judges should ask about high-risk infants

In cases of infants who are exposed to maltreatment or high conflict within a family, judges should consider the mental health and developmental status of the baby, especially when they appear to be exposed to multiple risks. In some U.S. jurisdictions, judges have

used tools such as checklists to gather pertinent information, spot problems, and make decisions about placement, services, visitation and permanency.<sup>20</sup> We consider the following questions useful:

How is the baby doing emotionally **and** physically?

*Is the baby reaching her developmental milestones? Is she gaining weight? Is she alert and responsive to caregivers? Can she be soothed? Can observers offer educated feedback about the quality of caregiver/infant interactions?*

Who has been providing day-to-day care for this child?

*Does the baby have one special person providing day-to-day care to whom he can become attached and who will be a permanent fixture in his life? Some infants have multiple caregivers and little predictability. This might be a workable arrangement for infants who are otherwise thriving, but can seriously compound the burden of risk for a vulnerable child.*

Does the child have consistent medical care, including routine developmental screening? *More than half of children in foster care experience a developmental delay<sup>21</sup> and these children are more likely to remain in care long-term.<sup>22</sup> Developmental delays are closely linked to school failure and behavior problems. Since the gateway to specialized services in most Canadian communities starts with a family physician, it is important that infants at risk have a consistent medical home.*

Do counsel and the parties have access to infant mental health services?

*The best chance of improving the odds for infants at risk is early intervention from programs with specific training in infant mental health, and not just child development. Infant mental health experts can come from a range of disciplines, such as child psychiatry, pediatrics, nursing, social work, and psychology.<sup>23</sup>*

## Conclusion

A family court hearing represents a pivotal opportunity to identify and address the mental health needs of infants. Infant mental health treatment resources and specialists need to be more accessible to our high-risk families across the country and to the courts who serve them.

*The authors, except for Dr. Miles, are all from the Collaborative Mental Health Care Program, Calgary Health Region. Dr. Miles is the director of infant mental health promotion at Toronto's Hospital for Sick Children.*

*For works cited, please see [http://www.cba.org/cba/newsletters/vox-2007/vox\\_notes.aspx](http://www.cba.org/cba/newsletters/vox-2007/vox_notes.aspx)*

# Activités spéciales à la Conférence juridique canadienne & Expo 2007 Calgary (Alberta) - Du 12 au 14 août 2007

## Réception du Forum des juges

Le dimanche 12 août 2007  
(détails à venir)  
Invité spécial :  
M. le juge Murray Sinclair

## Assemblée générale annuelle de l'ACJCS

Le dimanche 12 août 2007  
Réunion du Conseil : 7 h 30 - 11 h  
Assemblée générale annuelle :  
11 h - 12 h (midi),  
suivie d'un déjeuner

*Hôtel Fairmont Palliser*

Le programme du Forum des juges canadiens, organisé conjointement avec la Commission internationale de juristes, compte de nouveau parmi les activités principales de la Conférence juridique canadienne.

Après le programme, le Forum tiendra sa réunion d'affaires annuelle.

## FJP : La sécurité dans nos palais de justice et salles d'audience

Le lundi 13 août 2007  
9 h 15 - 10 h 45

*Telus Convention Centre  
Salle Macleod B*

Des incidents survenus ici et ailleurs ont accru l'intérêt envers la sécurité dans les tribunaux.

Le juge en chef de la Cour supérieure du Québec, François Rolland, et un ancien commissaire de la GRC, Norman Inkster, discuteront de la situation actuelle et future de la sécurité dans nos palais de justice et salles d'audience.

Animée par Mme la juge Sheila Whelan (coprésidente du Forum des juges).

## Réunion d'affaires du Forum des juges

Le lundi 13 août 2007  
10 h 45 - 12 h 15

*Telus Convention Centre  
Salle Glen 202*

**\*Nota :** tout juge inscrit à la Conférence juridique canadienne peut participer à la réception du Forum et au programme de FJP. Pour de plus amples détails consultez la brochure de la CJC. N'hésitez pas non plus à participer à la réunion d'affaires du Forum au terme du programme de FJP.

## Journée des juges

Le mardi 14 août 2007  
7 h - 18 h

## L'évaluation de l'impact environnemental des sables bitumineux - La frontière réglementaire

Le groupe de spécialistes invités

traitera des évaluations de l'impact environnemental dans le contexte des sables bitumineux de l'Alberta. Les participants et participantes verront aussi comment ces exploitations peuvent influencer la planification de projets et l'évaluation de l'impact environnemental, de manière générale.

Ce programme, réservé aux juges, comprend une visite aux opérations de Syncrude à Fort McMurray, (Alberta), par avion.

Également au menu : un déjeuner à Fort McMurray et une présentation sommaire des aspects juridiques de l'exploitation des sables bitumineux.

Le nombre de sièges dans l'avion nolisé est limité. Les réservations seront acceptées selon le principe « premier arrivé, premier servi ». En raison des contraintes d'espace, seuls les juges peuvent participer à ce programme, moyennant un frais supplémentaire.

## CCIAWJ Conference

The Canadian Chapter of the International Association of Women Judges (CCIAWJ) will host its next national conference and annual general meeting in Toronto, Nov. 28-30, 2007.

This emerging issues conference, organized in partnership with the National Judicial Institute, will follow the theme "Why Gender Still Matters." Watch for more information, including the venue and agenda, on the CCIAWJ website (accessible through Judicom). All judges are invited to attend.

Membership forms are available on the website. Alternatively, Justice Julie Dutil of the Quebec Court of Appeal, the Chapter's membership co-ordinator, may be contacted at [jdutil@judicom.gc.ca](mailto:jdutil@judicom.gc.ca).

## Conférence de la SCAIFJ

La prochaine conférence nationale et assemblée générale annuelle de la Section canadienne de l'Association internationale des femmes juges (SCAIFJ) aura lieu à Toronto, du 28 au 30 novembre 2007.

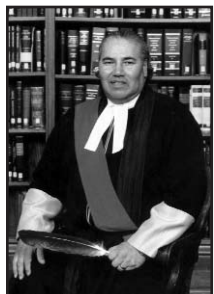
Organisée en partenariat avec l'Institut national de la magistrature, cette conférence sur les nouveaux enjeux aura pour thème *Why Gender Still Matters*. D'autres renseignements suivront sur le site Web de la SCAIFJ (auquel on peut avoir accès via Judicom). Tous les juges sont invités à participer à la conférence.

Vous trouverez les formulaires d'adhésion sur le site Web. On peut aussi communiquer avec la coordonnatrice du recrutement de la Section, Mme la juge Julie Dutil, de la Cour d'appel du Québec, à [jdutil@judicom.gc.ca](mailto:jdutil@judicom.gc.ca).

# In the spotlight

## Justice Murray Sinclair

By Justice John Menzies



One of the true benefits of being a member of Canada's judiciary is the opportunity to work with incredibly talented and capable individuals. I would like to take the opportunity to introduce someone who fits that description exactly:

Justice Murray Sinclair of the Court of Queen's Bench in Winnipeg.

Justice Sinclair was appointed to the Court of Queen's Bench in 2001. Although I knew Justice Sinclair as an acquaintance prior to that time, only after his appointment in 1988 to the same court in which I preside did I really come to know and appreciate this remarkable individual.

Although not yet an elder in the aboriginal community, Justice Sinclair has all the attributes and characteristics one would expect an elder to have: he speaks with knowledge and understanding, and there is a quiet authority in his presence and demeanour. When Justice Sinclair is being serious, his comments are well-thought-out and balanced. As a friend, he is open, kind, and displays a strong sense of humour.

### History in the making

A member of Peguis First Nation, Justice Sinclair's background reflects the history of many of Manitoba's Aboriginal Peoples. Justice Sinclair's great-grandfather was Louis Simard, a lumberjack from Quebec who moved to eastern Manitoba to work in the forests north of Pine Falls. Justice Sinclair's great-grandmother was a member of the Hollow Water First Nation.

Louis was a devoted member of the Catholic Church, and as a result, their children were brought up in a strict Catholic tradition. The family decided that Justice Sinclair's grandmother would grow up to be a nun. As a result, she was sent to a Catholic residential school at Fort Alexander, Man. at the age of five, never to return home.

Justice Sinclair's grandfather, from Norway House, Man., was of Cree descent. He began

working on the boats transporting goods back and forth between Norway House and Winnipeg. Eventually, he settled on what was then known as St. Peter's Reserve, just north of Selkirk, Man., in the Nettley Creek area. Justice Sinclair's grandfather's first wife died, leaving the grandfather with the care of two children.

A devoted Anglican, Justice Sinclair's grandfather went to see the local Anglican minister to ask for help in finding a wife. Despite searching the area, there was no available Anglican woman, so the minister approached the local Catholic priest to see if he could assist.

Once again, they couldn't find a suitable candidate, so the priest referred Justice Sinclair's grandfather to the residential school at Fort Alexander. Both the minister and the priest provided letters of reference for Justice Sinclair's grandfather. Arriving by horse and buggy at the school, he was introduced to the woman who would become his wife.

As was to be expected in dealings with the churches, Justice Sinclair's grandfather had to make certain promises in order to receive his wife: all of their children would be raised as Catholics, Justice Sinclair's grandfather would either have to convert to Catholicism or, at the very least, attend his church on a weekly basis, he was not to interfere with the raising of the children in the Catholic faith, and at least one of the children must be dedicated to serving the church.

### The early years

However, none of the couple's children were prepared to dedicate their lives to the Catholic Church. In 1952, at the age of one year, the future Justice Sinclair – Murray – went to live with his grandparents. As none of the couple's children had grown up to serve the church, Murray was chosen as the child who would fulfill that obligation. Thus, as Murray grew up, he was prepared and educated to be a priest. He attended church services a number of times each week and served as an altar boy.

When Murray became a teenager, he decided that he did not want to be a priest. Upon entering Grade 10, each student was required to choose whether they would follow the university entrance stream or the stream for those students not interested in attending university.

## PRÉCIS

### Pleins feux sur le juge Murray Sinclair

par M. le juge John Menzies

La possibilité d'œuvrer aux côtés d'individus talentueux et capables compte parmi les grands avantages de la magistrature. Je veux prendre cette occasion pour vous présenter une personne à qui cette description va comme un gant : M. le juge Murray Sinclair, de la Cour du Banc de la Reine à Winnipeg.

M. le juge Sinclair est membre de la Première Nation Peguis, mais ses antécédents sont à l'image de plusieurs des nations autochtones du Manitoba. Son arrière-grand-père, un bûcheron émigré du Québec au Manitoba, s'appelait Louis Simard. Son arrière-grand-mère était membre de la Première Nation Hollow Water.

La religion a joué un rôle important dans la vie de ses grands-parents. Louis était un catholique dévoué; il a donc élevé ses enfants selon les règles strictes de l'Église de Rome. Quant à sa grand-mère, sa famille avait décidé qu'elle deviendrait religieuse. Ils l'ont inscrite à un pensionnat catholique à Fort Alexander (Manitoba), à l'âge de cinq ans. Elle n'est jamais revenue à la maison.

Son grand-père d'origine crie et de confession anglicane travaillait sur des bateaux transportant des biens entre Norway House et Winnipeg. Il s'est installé à la réserve St. Peter's, au nord de Selkirk. Quand son épouse est morte, le laissant seul avec deux enfants, il est allé voir le ministre anglican de l'endroit et lui a demandé de l'aider à trouver une épouse. Comme aucune femme anglicane n'était disponible, le ministre anglican s'est adressé au prêtre catholique, qui n'a trouvé personne.

Il lui a toutefois recommandé d'aller visiter le pensionnat de Fort Alexander, où on lui présenta la femme qu'il allait épouser. Il a toutefois dû consentir à des compromis, y compris celui d'élever ses enfants dans la foi catholique.

À l'âge d'un an, en 1952, le futur juge Sinclair est allé vivre chez ses grands-parents. Étant donné qu'aucun de leurs enfants n'était entré au service de l'Église, ils ont choisi Murray comme candidat à la prêtrise. Ainsi durant son enfance, Murray Sinclair allait à la messe quelques fois par semaine. Il était enfant de chœur. À l'adolescence, le jeune Sinclair a décidé que la prêtrise ne l'intéressait pas et qu'il allait fréquenter l'université.

Sa grand-mère a consenti à ce changement de cap, mais seulement après qu'il ait promis d'apprendre quelque chose d'utile à la société. Alors qu'il était enfant, sa grand-mère l'avait convaincu qu'elle

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## Justice...

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At that time, in order to choose the university entrance stream, students were required to produce a letter from their parents indicating their intention to have their children attend university. Murray approached his grandfather to get the letter, and was immediately referred to his grandmother. There was no choice: Murray had to tell his grandmother he wanted to attend university rather than be a priest. Fortunately, his grandmother did provide him with a letter to attend the university entrance stream, but only after he promised he would go to university to become something useful to society.

Undoubtedly, Justice Sinclair's grandparents had a monumental effect on his life. Justice Sinclair once confided that as a young boy, his grandmother convinced him she had the ability to watch him even when they weren't together. She convinced him that she would always know when he had done right and when he had done wrong, and emphasized it was important he conduct himself in a proper fashion at all times, because she was watching him. Although she died over 30 years ago, Justice Sinclair says he still believes his grandmother is watching him to ensure that he behaves properly to this day.

### The rise of law

From an early age, the law played an instrumental role in Justice Sinclair's life.

While Justice Sinclair's family was living on St. Peter's Reserve north of Selkirk, the federal government decided to move the band from just north of Selkirk to the current location at Peguis First Nation on Fisher River, some 120 kilometres north on the banks of Lake Winnipeg. Justice Sinclair's grandfather refused to move, and as a result, he and members of his family were enfranchised or stripped of their Indian status. The people of St. Peter's Reserve were relocated, the reserve was terminated, and those that remained behind were given individual title to their land. Justice Sinclair's mother was also a member of the Fisher River First Nation.

However, at that time, as the law stood under the *Indian Act*, after Justice Sinclair's father lost treaty status, Justice Sinclair's mother lost her treaty status as well. It wasn't until 1985, following the passage of Bill C-31 by the federal government in response to the implementation of the *Canadian Charter of Rights and Freedoms*, that Justice Sinclair and his family regained that status. The courts had found that the law discriminated against aboriginal women by removing their Indian status if they married

a non-treaty-status male.

An avid participant in volleyball, basketball, badminton, and track and field, Justice Sinclair was named the Selkirk High School athlete of the year upon his graduation in 1968. He went on to study physical education for two years at the University of Manitoba before returning home to help care for his grandmother after his grandfather's death. During this period, he worked as the director of administration at the Selkirk Friendship Centre.

In 1972, he was elected the vice-president of the Manitoba Métis Federation. Through the Federation, he began to meet influential politicians, and developed a relationship with Howard Pawley, then the member of the legislative assembly for Selkirk and minister of northern and native affairs, and who would later become the premier of Manitoba.

In 1973, Pawley was named attorney general and offered Justice Sinclair a job as his executive assistant. After the death of his grandmother in 1975, Justice Sinclair returned to university, and graduated from the University of Manitoba law school in 1979. He articulated in Selkirk, and was called to the bar in 1980. From 1981 to 1983, he was in-house legal counsel for the Four Nations Confederacy. In 1983, he moved into private practice with the offices of Skwark, Meyers in Winnipeg. In 1987, he moved to the partnership of Cherniak and Allen in Winnipeg. In 1988, he was appointed as the associate chief judge of the Manitoba Provincial Court (he held that position until 2001, when he was appointed a puisne judge of the Court of Queen's Bench of Manitoba).

### From bench to inquiry

Justice Sinclair was sworn as the associate chief judge on March 3, 1988. These were tumultuous times between Manitoba's Aboriginal Peoples and the provincial government. A criminal trial into the death of Helen Betty Osbourne, a young aboriginal woman, had just ended, with only one of the four accused, who were non-aboriginals, convicted. Manitoba's Aboriginal Peoples saw this as a failure of the justice system. Just four days after Justice Sinclair was sworn in as associate chief judge, J.J. Harper, a young aboriginal leader, was shot on March 7, 1988 in an altercation with Winnipeg police.

On March 8, 1988, the provincial government called an election, and, as part of the campaign, struck the Aboriginal Justice Inquiry in response to concerns of the Aboriginal Peoples. Together with Associate Chief Justice A.

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## Pleins feux...

*suite de la page 11*

saurait toujours s'il avait fait le bien ou le mal. Il devait donc bien se comporter en tout temps, parce qu'elle le surveillait. Même si elle est morte il y a plus de 30 ans, M. le juge Sinclair croit toujours que sa grand-mère le surveille.

### L'importance du droit

Le droit a influencé la vie de Murray Sinclair à un très jeune âge. Pendant que sa famille demeurait à la réserve St. Peter's, au nord de Selkirk, le gouvernement fédéral a décidé de déménager la réserve à son emplacement actuel, quelque 120 km au nord sur les rives du lac Winnipeg. Son grand-père a refusé de déménager et a perdu, ce faisant, son statut d'Indien inscrit visé par les traités. Les membres de la famille Sinclair ont dû attendre jusqu'en 1985, après l'adoption du projet de loi C-31, pour retrouver ce droit dont ils avaient été privés.

Amateur de volley-ball, de basket-ball, de badminton et d'athlétisme, Murray Sinclair a été nommé athlète de l'année lors de l'obtention de son diplôme d'études secondaires en 1968. Il a étudié l'éducation physique à l'université, mais après deux ans, est retourné à la maison pour s'occuper de sa grand-mère après le décès de son père.

En 1972, il a été élu vice-président de la Fédération des Métis du Manitoba. Par l'intermédiaire de cette dernière, il a commencé à rencontrer d'influents politiciens et politiciennes, dont Howard Pawley, alors député de la circonscription de Selkirk et ministre des Affaires autochtones et du Nord. M. Pawley deviendra plus tard premier ministre du Manitoba. En 1973, Howard Pawley a été nommé Procureur général; il a alors demandé à Murray Sinclair de devenir son chef de cabinet.

Après la mort de sa grand-mère en 1975, Murray Sinclair a repris ses études universitaires, mais à la faculté de droit cette fois. Après l'obtention de son diplôme en 1979, il a effectué son stage à Selkirk et a été admis au Barreau en 1980. De 1981 à 1983, il était conseiller juridique de la Confédération des Quatre Nations. Après quatre années en cabinet privé, il a été nommé en 1988 juge en chef adjoint de la Cour provinciale du Manitoba, poste qu'il a occupé jusqu'en 2001, quand on le nomma juge puîné de la Cour du Banc de la Reine du Manitoba.

En 1988, de sérieux incidents judiciaires et policiers – l'acquittement de trois des quatre accusés dans l'affaire du meurtre de Helen Betty Osbourne, une jeune femme autochtone, et la blessure par balles d'un jeune chef autochtone lors d'une altercation avec des policiers de Winnipeg – ont eu pour effet de mettre à rude épreuve les rapports entre Autochtones et Blancs de la province.

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## Justice...

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Hamilton, Justice Sinclair was appointed co-chair of the Inquiry. The Inquiry's report was presented in September 1991, and its recommendations continue to have ramifications to this day.

Justice Sinclair describes the Aboriginal Justice Inquiry as having been both challenging and time consuming. It was so different from the normal routine of a sitting judge, he says, he found it difficult to return to his role as a judge following its conclusion.

As a result of the Inquiry's report, fundamental changes have been made to Manitoba's child welfare system, to the provision of services within jails and prisons for Aboriginal Peoples, and to how Aboriginal Peoples are dealt with before the National Parole Board. Parole boards are now assisted by aboriginal elders, and there are Elders working with the prison system to assist aboriginal offenders in coping with custodial sentences and rehabilitation.

In 1995, the federal government appointed a Royal Commission on Aboriginal Peoples. The Commission adopted many of the recommendations as set out in the Aboriginal Justice Inquiry. Both Saskatchewan and Alberta struck similar commissions on dealing with aboriginals within the justice system, and they, in turn, adopted many of the Aboriginal Justice Inquiry's recommendations.

One of the Inquiry's indirect effects was the amendment of the *Criminal Code of Canada*, specifically s. 718.2(e), which stipulates that an offender's aboriginal background must be taken into consideration by a court in fashioning the appropriate sentence. As well, the Supreme Court of Canada referred to the Inquiry's recommendations in the landmark decision *R. v. Gladue* [1999] S.C.J. No. 19, which radically altered the fashion in which courts deal with aboriginal offenders.

The federal government also closely consulted the Inquiry's report during the creation of the territory of Nunavut, in the hope of fashioning a government that could work efficiently with the aboriginal society that it was intended to govern.

### The legacy

The Aboriginal Justice Inquiry is one of the more monumental undertakings that Justice Sinclair has been responsible for in his career, and is a monument to the capabilities and hard work of this particular individual.

In a characteristically thoughtful moment, when asked what it was like for an aboriginal person to work within the Canadian judicial system, he said it would be difficult for him to assess how the judicial system has affected him until after his retirement. He did say he would like to think he had more of an impact on the system than the system had on him, but acknowledged that the opposite was probably true.

Justice Sinclair says he is not the same person he was when he graduated from law school in 1981, and that his career in the judiciary was not the career he envisioned for himself when he undertook the practice of law.

Justice Sinclair continues to be involved in aboriginal society, as well as fielding numerous requests to speak to various organizations in order to assist them in adapting their procedures in order to better provide services to the aboriginal community.

In his adult years, Justice Sinclair has made an effort to learn and adopt the traditions of his grandmother's Ojibway heritage. He is a third-degree member of the Midewiwin Society, a traditional society within the Ojibway Nation, and, along with his wife, is a keeper of the traditional instructions and teachings of the Midewiwin. His Ojibway name is Mizanagezhik – "One who speaks of pictures in the sky" – and he is a member of the Fish Clan.

Murray and his wife, Katherine Morrisseau-Sinclair, have been together since 1981. Katherine is a member of the Long Plains First Nation who was born and raised in the Crane River/Dauphin area of Manitoba. They have three children: the eldest, James, is a PhD candidate in the field of literature at the University of British Columbia; their second child, Dene, is an events co-ordinator with Travel Manitoba, and Gazheek, the youngest, is a student in computer technology at Red River Community College. Like her father, Gazheek is an exceptional athlete; she was named the 2005 Manitoba junior fastball player of the year and was a member of the 2006 Canadian junior fastball championship team.

Much more could be said about Justice Sinclair, but I hope this article has given you an insight into the type of person he is, and the qualities that he brings to the judiciary.

## Pleins feux...

suite de la page 12

En mars 1988, le gouvernement provincial déclencha des élections et dans le cadre de sa campagne, forma une commission d'enquête sur la justice autochtone avec MM. les juges Hamilton et Sinclair à la coprésidence. À la suite de cette enquête, le Manitoba a modifié son régime d'aide sociale à l'enfance, ses services aux Autochtones dans les prisons et le traitement des Autochtones devant la Commission nationale des libérations conditionnelles qui associe maintenant des aînés autochtones aux prises de décisions.

Le gouvernement fédéral a aussi modifié le *Code criminel* pour obliger les tribunaux à tenir compte du contexte autochtone dans l'établissement des peines. D'autre part, la Commission royale sur les peuples autochtones du gouvernement fédéral devait par la suite adopter plusieurs des recommandations de la Commission d'enquête coprésidée par M. le juge Sinclair. Ce dernier continue aujourd'hui de participer aux activités de la société autochtone et accepte de nombreuses invitations comme conférencier des communautés autochtones pour les aider à améliorer leurs services. Il a aussi tenté de s'initier aux traditions Ojibway de sa grand-mère et de les adopter.

Murray Sinclair est marié à Katherine Mousseau-Sinclair depuis 1981. Celle-ci est membre de la Première Nation Long Plains et originaire du Manitoba elle aussi. Ils ont trois enfants : James, l'aîné, est candidat au doctorat en littérature à l'Université de Colombie-Britannique; le second, Dene, est coordonnateur d'événements à l'Office de tourisme du Manitoba; et la plus jeune, Gazheek, étudie en informatique au collégial.

Quand on lui demande de parler de sa présence comme Autochtone au sein du système judiciaire canadien, M. le juge Sinclair répond qu'il devra attendre sa retraite et prendre du recul avant de formuler un jugement. Quand il regarde ce qu'il était lors de l'obtention de son diplôme de droit en 1981, il se dit qu'il n'est plus vraiment la même personne.

# Canadian judges provide support for Jamaican justice system review

By Salman Haq, Canadian Bar Association

Four Ontario judges are lending their diverse and expert knowledge to help improve the Jamaican justice system. Justice Robert Blair of the Court of Appeal, James Chadwick, formerly of the Superior Court of Justice, and two members of the Court of Justice, Peter Griffith and Debra Paulseth, are members of a Canadian advisory committee that is supporting the work of the Jamaican Justice Reform Task Force. The task force is now in the midst of a nine-month review that will produce recommendations designed to modernize the Jamaican justice system. Six other Canadian lawyers and legal specialists also sit on the committee.

The task force, struck in November, includes 27 Jamaicans from diverse segments of society, including individual members of the public, academia, court administrators, judges, magistrates, lawyers, prosecutors, police, and government ministries. The task force is being supported by Jamaica's Ministry of Justice and the Canadian Bar Association's International Development Committee.

Although various attempts have been made to improve Jamaica's justice system — both through local initiatives and with international assistance — this is the first time that the process has actively engaged all key stakeholders in a comprehensive review. Jamaican officials recognize that for reforms to be truly effective the entire system needs to be assessed and a cohesive, broad-ranging strategy to modernize the justice system needs to be developed and implemented.

The project includes separate research,

consultation, and communication programs. The research component includes research and option papers, working groups, court observation studies, and surveys.

The consultation program is designed to gain input from key stakeholders, including the public, while the communications aspect of the project will share information widely throughout the country. Most importantly, the review is being carried out by Jamaicans themselves, with key assistance from Canadians. Experience has shown that without local ownership, legal and judicial reform projects are bound to fail.

The judges were among those who visited Jamaica last fall and saw first-hand the challenges and problems confronting the Jamaican justice system, says Andrejs Berzins, former chief Crown attorney for Ottawa and current member of the Task Force's management group. "We wanted our Canadian participants to be able to see their Jamaican colleagues in their work environment," explains Berzins, "and thus be able to see for themselves what the positive aspects and the failures in the system are."

More information on the project can be found online at <http://www.cba.org/jamaicanjustice/index.htm>.

## PRÉCIS

### Des juges canadiens participent à l'examen du système de justice jamaïcain

Par Salman Haq, Association du Barreau canadien

Ces jours-ci, quatre juges ontariens — Robert Blair, James Chadwick, Peter Griffith et Debra Paulseth — prêtent leur expertise au groupe de travail sur la modernisation du système de justice de la Jamaïque. Six autres avocats et spécialistes juridiques du Canada siègent aussi au comité consultatif, dont sont membres les quatre juges.

Formé en novembre 2006, le groupe de travail comprend 27 Jamaïcains et Jamaïcaines de toutes les couches de la société — membres du public, universitaires, administrateurs, juges, avocats, procureurs, policiers et fonctionnaires. Le groupe de travail reçoit le soutien du ministre de la Justice de la Jamaïque et du Comité de développement international de l'Association du Barreau canadien.

Des programmes de recherche, de consultation et de communication font aussi partie du projet de réforme. L'élément le plus important de la démarche, c'est qu'elle est faite par les Jamaïcains eux-mêmes, avec bien sûr l'assistance de Canadiens et de Canadiennes. L'expérience a démontré que les réformes du système de justice entreprises par des étrangers et étrangères aboutissent invariablement à un échec.

Pour de plus amples renseignements sur le projet, consultez le <http://www.cba.org/ABC/IDP/programs/jamaica.aspx>

## Conférence annuelle 2007 de l'ACJCP

La Conférence 2007 de l'Association canadienne des juges de cours provinciales (ACJCP) aura lieu à Vancouver, du 26 au 29 septembre 2007. En plus des membres de l'Association, nous y attendons environ 140 juges de la Colombie-Britannique, 110 de l'Alberta, 35 de la Saskatchewan et de 125 à 200 de l'American Judges Association.

La Conférence commencera par une réception d'accueil le 26 septembre. Amorçant le volet éducatif de la Conférence, Mesdames les juges Rosalie Abella et Ruth Bader-Ginsberg participeront à la plénière d'ouverture. Le reste de la Conférence sera tout aussi intéressant avec des activités tous les soirs, y compris un grand banquet le 29 septembre.

# The new Judges Trial Support Service

by Mr. Justice Albert Clearwater

Unfortunately, Canadian judges are, from time to time, exposed to cases involving extreme acts of violence, injury or death. These cases often involve lengthy trials, prolonged exposure to graphic, disturbing evidence, and intense media and public scrutiny. All of this can significantly increase stress levels, both for the judge and his or her family.

The Judges Counselling Program (JCP), in conjunction with our current service provider Shepell-FGI, has developed a specialized support program for judges assigned to difficult trials. The support service can be accessed through Shepell-FGI's Care Access Centre by calling either of our current 1-800 numbers – 1-800-268-5211 (English) and 1-800-363-3872 (French). As with other JCP services, this service is voluntary and confidential.

The service includes an intake phase, a pre-trial support phase, a trial support phase, and a post-trial support phase.

A judge who has received one of these assignments may contact Shepell-FGI's Care Access Centre and a senior clinician will be assigned to contact the judge and arrange an initial consultation. During the pre-trial support phase, a counsellor will meet with the judge and discuss the personal and familial challenges that may arise from the upcoming trial. The judge will be supplied with information on the support services available, both for the judge and his family. An assessment of the circumstances, performed with the judge and family members, leads, in turn, to the development of a support plan made up of specific strategies. The plan will take into account the preferences of the judge and the family, the particulars of the trial (including anticipated duration), and any other relevant matters.

The counsellor will be available during the trial to meet regularly with the judge and the family, and will continue to assess the stressors and provide coaching on strategies for managing them. During the post-trial support phase, the counsellor can provide psychological and emotional debriefing, if

needed, and subsequent follow-up if necessary.

The support service will be provided by a select group of specifically trained Shepell-fgi counsellors. Sufficient flexibility has been built into the program to provide services in locations acceptable to the judge and family, possibly outside of regular office hours, if necessary.

Further information may be obtained from any of the director representatives in each province and territory on the JCP's advisory board, or from its current president, Mr. Justice Tom Melnick of British Columbia. Your inquiries will, as always, remain confidential, unless you direct otherwise.

The JCP wishes to thank the administrative and financial assistance provided by the Office of the Commissioner for Federal Judicial Affairs (for federally-appointed judges) and the financial assistance provided by the chief judges and/or the applicable attorneys-general/ministers of justice of each province and territory for this new service.

*Mr. Justice Clearwater is a judge with the Court of Queen's Bench of Manitoba and a past president of the JCP.*

## PRÉCIS

### Un nouveau service du Programme de consultation pour la magistrature

par M. le juge Albert Clearwater

Parfois, les juges canadiens sont malheureusement exposés à des causes relatives à des actes de violence extrême, à des blessures ou à des morts. Ces causes entraînent fréquemment de longs procès, une exposition prolongée à des preuves graphiques et perturbantes, et une surveillance intense des médias et du public. De telles situations peuvent augmenter de façon appréciable le niveau de stress du juge et de sa famille.

Le Programme de consultation pour la magistrature (PCM), conjointement avec notre fournisseur actuel de services, Shepell-FGI, a conçu un programme spécialisé de soutien pour les juges assignés à des procès difficiles. Ces juges peuvent s'adresser à ce service offert bénévolement et en toute confidentialité en composant le 1 800 363-3872. Le soutien est offert avant, pendant et après le procès.

Après une consultation initiale, la ou le juge désireux de se prévaloir du programme de soutien recevra des renseignements complets sur les services offerts, tant pour lui que pour sa famille. Une évaluation des circonstances est suivie de l'élaboration d'un plan de soutien avec des stratégies conformes aux préférences du juge et de sa famille, et tenant compte de toute autre question pertinente.

Une conseillère ou un conseiller pourra rencontrer le juge et sa famille régulièrement durant et après le procès. Pour obtenir de plus amples renseignements, il faut passer par la représentante ou le représentant de sa province au conseil consultatif du PCM. On peut aussi s'adresser au président actuel, M. le juge Tom Melnick, de la Colombie-Britannique.

# Events of special interest at the 2007 Canadian Legal Conference & Expo, Calgary : Aug. 12-14, 2007

## Judges' Forum Reception

Sunday, Aug. 12, 2007 (details to be confirmed)  
Special Guest: Justice Murray Sinclair

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## CSCJA Annual General Meeting

Sunday, Aug. 12, 2007  
Council Meeting: 7:30 a.m. — 11 a.m.  
Annual General Meeting: 11 a.m. — 12 p.m., followed by lunch  
Fairmont Palliser Hotel

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The Judges' Forum CLE program for Calgary will continue its tradition of being one of the main events at the Canadian Legal Conference. As in past years, the 2007 program is a joint program with the International Commission of Jurists. Following the program, the Forum will hold its annual business meeting.

## CLE: Security in our Courthouses and Courtrooms

Monday, Aug. 13, 2007  
9:15 a.m. — 10:45 a.m.  
Telus Convention Centre,  
Macleod B Room

This always-popular session will focus on security in our courthouses and courtrooms.

Security is an important issue for all judges and lawyers. Incidents in Canada, the United States and other troubled areas of the world have heightened interest in the issue of security and, as a result, have led to upgrades in court security in some locations. In Canada's courtrooms, security varies greatly with geography and jurisdiction. This panel will discuss the state of courthouse and courtroom security in Canada today, explore issues for the future, and examine court security from an international perspective.

Quebec Superior Court Chief Justice François Rolland, former Royal Canadian Mounted Police (RCMP) commissioner Norman Inkster and former Canadian Security Intelligence Service (CSIS) director Reid Morden will each bring a unique perspective to the discussion. Chief Justice Rolland, who has begun an initiative to increase the level of security in Quebec courthouses, has dealt firsthand with bomb scares at the Montreal courthouse, while Inkster and Morden, aside from their backgrounds in law enforcement, currently act as consultants on security issues. The Hon. Judge Sheila Whelan, co-Chair of the Judges' Forum, will moderate the discussion.

## Judges' Forum Business Meeting

Monday, Aug. 13, 2007  
10:45 a.m. — 12:15 p.m.  
Telus Convention Centre,  
Glen 202 Room

**\*Note:** All judges registered for the Canadian Legal Conference are welcome to attend the Forum's Reception and CLE program. Look for further details in the Canadian Legal Conference brochure, and feel free to also come to the Forum's business meeting immediately after the CLE program.

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## Judges' Day

Tuesday, Aug. 14, 2007  
7 a.m. — 6 p.m.

The Canadian Superior Court Judges' Association and the CBA Judges' Forum present:

## Alberta Oil Sands — Up-Close and In-Perspective

This program involves a trip to Fort McMurray, Alta., by airplane. On arrival in Fort McMurray, attendees will board buses for a tour of Syncrude, an oil sands facility. After the tour, we will return to Fort McMurray for lunch and a legal primer to oil sands development and continuing issues. Issues to be discussed include:

- sources of provincial ownership and jurisdiction and the impact of the Natural Resources Transfer Agreements;
- the acquisition, nature, and duration of oil sands tenure, including the environmental impact assessment process;
- royalty structure;
- air quality regulations; and
- waste allocation and water disposal issues.

Presenters:

Ray Hansen, Q.C., general counsel, Syncrude Canada Ltd.  
Dean David Percy, Q.C., dean, Faculty of Law, University of Alberta  
Dr. Moin Yahya, professor, Faculty of Law, University of Alberta  
Dr. Joseph Doucet, Enbridge Professor of Energy Policy, Faculty of Business, University of Alberta

**\*Note:** There are a limited number of seats on the charter airplane and reservations will be on a first-come, first-served basis. As space is limited, this program is available only to judges. There is an additional registration cost to attend this program.