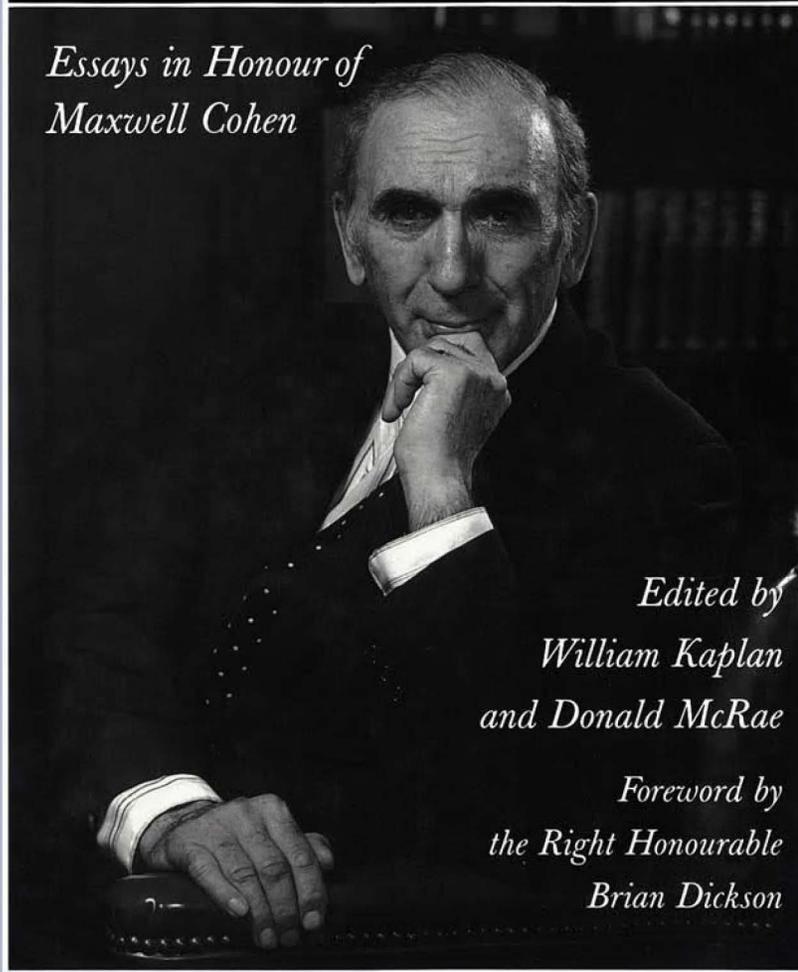


# Law, Policy, and International Justice

*Essays in Honour of  
Maxwell Cohen*



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## The Role of the Canadian Institute for the Administration of Justice in the Development of Judicial Education in Canada

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I agreed for two reasons to contribute an article to this book describing the role of the Canadian Institute for the Administration of Justice (CIAJ) in the development of judicial education. First, I have known Max Cohen for eighteen years and he and his wife have been good friends, so I am not only honoured but pleased to be able to join in celebrating his life. Second, although Cohen has not been associated with judicial education in Canada, he has been vitally interested in all aspects of legal education and it is thus appropriate to include an article on this particular corner of legal education. My article for the most part describes developments during the decade preceding the establishment of the Canadian Judicial Centre in 1987 (in 1991 renamed the National Judicial Institute), which is the subject of William Stevenson's article in this volume.

I was not one of the founders of the CIAJ, but on the very eve of the first meeting of the Board of Directors I was asked to be its first president. I suppose I was asked because I was a young, newly appointed judge with a demonstrated interest in continuing legal education, and the founders had high hopes of the institute's making an impact on judicial education. I occupied the position for three annual terms, and continued as a director and, more recently, as an honorary director. I continued to be closely associated with the administration of the institute until 1984, and have had a more distant acquaintanceship with its functions since that date.

I was appointed to the Trial Division of the Supreme Court of Alberta effective 1 January 1974. At the time there was no program

or seminar for new federally appointed judges other than the annual summer seminars. A week-long summer seminar for superior court judges had been operating since 1968. These seminars were organized at first by the federal government, but after 1971 the Canadian Judicial Council took over the task. The Council consists of the chief justice of Canada and the chief justices of the other federally appointed courts across Canada. The secretary, Pierre Chamberland, administered the seminars, and the first director was Dr Allan Leal, chairman of the Ontario Law Reform Commission. From 1973 onward the council organized similar annual week-long seminars for judges of county and district courts. In the 1980s, when one after another the provincial county or district courts merged with the superior court of the province, the separate county and district court seminars were discontinued.

My own experience enables me to speak of the superior court judges' seminars. I attended the 1975 seminar in July, in Regina. The program was excellent. It consisted of half-day lectures and seminar-type discussions featuring experienced judges and academics. The subjects included criminal law, evidence, family law, judicial ethics, and a perennial favourite – "Was I Right?" – which discussed a number of situations participants had encountered.

The seminars have had important functions apart from the direct benefits flowing from organized programs. Each summer the seminars are held in a different region of Canada, and the most important side-effect has been the opportunity afforded to judges from every province of Canada to meet one another. Many of the recently appointed judges who attended the 1974 seminar from eastern and central Canada, for example, had not previously spent time in the west. Many of the judges, while pursuing their earlier careers as lawyers, had not attended national conventions, whether of the Canadian Bar Association, political parties, or other organizations. For judges from Quebec, the opportunity to mix with judges from the rest of Canada was important, just as it was important for judges from the rest of Canada to meet colleagues from Quebec. The Quebecers did not mix much with the others, or vice versa, on a social basis, but then the Ontarians and the British Columbians stuck together too – and they did not suffer from "language fatigue" at the end of the day as some of the Quebecers must have. (The sessions at that time were all in English, without simultaneous translation.) These seminars have enhanced the consciousness among federally appointed judges that they share common problems, both legal and judicial, with judges of diverse backgrounds from other parts of

the country. The positive consequences of such contacts may be difficult to identify, but they have been significant.

The conception of what became the CIAJ originated with Professor Stephen Borins, then associate dean of Osgoode Hall Law School at York University. On behalf of the Canadian Judicial Council he served as the second director of the Canadian Judicial Seminar for superior court judges, from 1970 to 1974. In 1972 Chief Justice Gordon Cowan of Nova Scotia, chairman of the council's Education Committee, encouraged Borins to visit the Federal Judicial Center in Washington, DC, to attend a program for recently appointed federal district court judges.

One result of that visit was a decision by Professor Borins and Dean Harry Arthurs, of the same faculty, to develop the concept of the CIAJ as a body which might ultimately evolve into something like the Federal Judicial Center. Despite considerable disfavour among the chief justices who then formed the Canadian Judicial Council, support was forthcoming from Chief Justice Bora Laskin. A major source of encouragement came from Neil McKelvey, QC, of St John, New Brunswick, president of the Canadian Bar Association. (In due course he became one of two initial vice-presidents of the CIAJ.)

Arthurs and Borins committed funds from their faculty to the partial financing of the salaries of the director and associate director of the CIAJ, who they anticipated would be law professors. They invited two members of their faculty to accept appointment to those positions on a part-time basis: Allen M. Linden and Sidney J. Lederman, respectively. Arthurs and Borins applied successfully for a grant from the Donner Canadian Foundation: \$225,000, which was intended as seed money to finance the first three years of the institute's operations. The proposal they submitted asserted that the judicial system suffered from "serious stresses and strains" and delay, and that judges frequently receive "little or no judicial training or orientation." It added that "court officers and clerks, court registrars" and others who assist the courts in the administration of justice "have had little or no training for their responsibilities." The proposed CIAJ "would function as the educational, planning and research arm of the courts and administrative tribunals throughout Canada." It "should be an independent, but university-housed, non-profit corporation, interdisciplinary in scope, under the patronage of distinguished members of the judiciary, the legal profession, governments and members of the public and governed by a small Board of Directors." Emphasis was placed on the institute not being "a department of any government" and being "free from political constraints and

thus able to undertake and to promote projects upon considerations of their respective intrinsic merits."

The proposed functions of the institute were as follows:

- 1 It would conduct research into the administration of justice in the broadest sense. Such research would be conducted independently pursuant to the approval of the Board of Directors, or would be conducted independently on the basis of contracts obtained from those by whom specific research projects may be requested.
- 2 It would serve as an advisor to all branches of government and to the legal profession upon request.
- 3 It would conduct, on a national or regional basis, with regard to general or specific topics, educational programs for members of the judiciary of all levels and for members of administrative tribunals. Such courses and seminars, varying in length, would include courses and seminars for members of courts of specialized jurisdiction, such as, the Family and Juvenile Court, the Surrogate Court, the Bankruptcy Court.
- 4 The Institute would operate a school, and conduct refresher courses, for Court Executive Officers.
- 5 The Institute would serve as a central repository for statistical information from all courts and administrative tribunals in Canada.
- 6 The Institute would establish a Judges-in-Residence program which would involve judges serving as members of the Faculty of the Institute and also as scholars-in-residence at the host university.
- 7 The research conducted by the Institute would not be confined to administration of justice in any narrow sense. It would include, for example, research with regard to the legal profession such as the delivery of legal services, and research in the area of legal education.

In June 1974 the institute was incorporated under Part 3 of the Canada Corporations Act. The objects, as set forth in the application for incorporation, were as follows:

- 1 To develop and conduct, directly or by cooperation or consultation with others, programmes of research with regard to the administration of justice in Canada.
- 2 To be a central repository for statistical and other information from courts and administrative tribunals in Canada.
- 3 To acquire and assist in the acquisition and dissemination of knowledge with regard to the administration of justice in Canada.
- 4 To develop and conduct, and assist in the development and conduct, of educational programmes of all types in Canada for members of the judiciary,

for members of administrative tribunals and for those concerned in the administration of courts and administrative tribunals.

The first meeting of the Board of Directors was held in Ottawa in October 1974. It approved the by-laws, which were revised and improved a year later when the advice of a corporate solicitor, Gordon Thompson of Toronto, was obtained. A French version of the by-laws was also adopted in 1975.

At the first meeting, and a second held in Montreal in April 1975, much of the discussion centred on ways in which the institute could develop programs reflecting its objects. Leadership in this regard was furnished most significantly by the executive director, Professor Linden, and the associate director, Professor Lederman. They were particularly enthusiastic about the research functions of the institute, but that aspect falls outside the scope of this article. Suffice it to say that over the years the institute has had some moderate degree of success in organizing and financing research programs relating to such topics as the role of the judiciary, the administration of the courts, and the role of the chief justices.

At an early stage, the institute found that it could be of service to provincial court judges. The initiative came from Judge Sandra Oxner of Nova Scotia, who in 1974 became the first Education Committee chair of the newly formed Canadian Association of Provincial Court Judges. She and her chief judge, Andrew Harrigan, and some other provincial court colleagues met that year with members of the Education Committee of the institute. These members included that committee's chairman, Mr Justice Roy Matas, then a member of the Manitoba Court of Appeal, Chief Judge Fred Hayes of the Provincial Court of Ontario (Criminal Division), who had developed a vigorous education program in his own court, Associate Chief Justice James Hugessen of the Superior Court of Quebec, and Professor Lederman. As a result of that meeting, the CIAJ worked together with the Canadian Association of Provincial Court Judges in organizing a four-day Atlantic region education program, held in June 1975. Judge Oxner, in a recent letter to me, said: "It was a breakthrough in that it was the first time that provincial court judges from different provinces had come together and we felt it contributed a great deal to the uniformity of the administration of justice in Canada." The program included discussion of issues of law reform, social problems, and difficulties sometimes encountered by provincially appointed judges. An example of these problems was that encountered by the Newfoundland magistracy, who were often

housed in government accommodation immediately adjoining the offices of RCMP officers, thus adversely affecting the appearance of judicial independence.

The impact of the Atlantic seminar of 1975 on its participants was captured in an extract from the institute's first annual report:

The Institute, jointly with the Canadian Association of Provincial Court Judges, developed and conducted the first Atlantic regional educational programme for Provincial Court Judges at Mount Saint Vincent University in Halifax, Nova Scotia on June 2-5, 1975. Forty Judges, representing each of the Atlantic provinces, attended the seminar. Separate Criminal and Family Court programmes were conducted. The Judges were divided into small workshops and various topics in the area of Criminal Procedure, Evidence, Sentencing and Post-Conviction matters were considered.

To achieve a total immersion effect, the Judges lived together on campus, in student residences, ate their meals together, and were encouraged to engage in evening discussions in one of the lounges. As a result, a strong spirit of togetherness developed, fostering more active participation in seminar discussions.

The evaluation done at the end of the programme indicated that there was a real need for such a programme, enabling Judges to discuss, in an intensive way, far from the distractions of ordinary life, their everyday problems of judging. These Judges were also brought into contact with law reform commission and parole board personnel and others involved in different aspects of the judicial system, which assisted them to view their own work in a broader context. This is particularly necessary in sentencing, where the Judge must have some knowledge of the facilities and programmes available and the alternatives to sentencing, if he is to make a meaningful disposition. One of the serious problems facing many Provincial Court Judges is the fact of isolation in relatively small communities where they have neither other Judges nor law libraries to turn to for help. The experience of being in residence with forty other Judges for a week-long seminar programme has minimized their feelings of isolation and will assist them to perform their duties in future with more confidence and understanding.

Shortly thereafter a program for provincial court judges from the western provinces was held at Banff, Alberta. Its success was largely due to Chief Judge Allan Cawsey of the Provincial Court of Alberta.

In its first year the institute's potential was also recognized by the district court judges of Alberta, who invited the institute to organize a seminar for them in Red Deer in September 1975. The subject was jury trials; the district court judges had just been granted jurisdiction

to preside in jury trials in criminal court cases. Among the speakers were judges from Alberta, British Columbia, Ontario, and Quebec.

Judge Oxner was succeeded as Education Committee chairman of the Canadian Association of Provincial Court Judges by Chief Judge Larry Goulet of the Provincial Court of British Columbia. During his tenure the CIAJ collaborated with him and Judge Oxner (by then president of the association) in organizing the first national seminar for newly appointed provincial court judges. It was a ten-day seminar held in Kingston, Ontario. The program included the first "sensitivity" training to which new Canadian judges were exposed, such as the public's perception of the justice system and the responsibility of judges to visible minority groups.

Thereafter, to the regret of the institute, the Canadian Association of Provincial Court Judges found it was less expensive to use its own volunteers, rather than the institute's personnel, to organize regional and national seminars. However, the institute was happy to have had a part in shaping this type of program for provincial court judges.

During the institute's first year, its only members were its first directors. The directors were initially hesitant to open the door to membership on a broader basis, being uncertain where that might lead. During 1975 and 1976, the institute hosted a series of dinner meetings in Montreal, Toronto, Winnipeg, and Vancouver. The guests were prominent judges, members of the bar, academic lawyers, and lay people interested in the administration of justice. The object was to publicize the purposes and functions of the institute. During the same period, the first of what turned out to be annual national conferences, to coincide with the institute's annual members meetings, was held in February 1976 at Osgoode Hall Law School. These conferences have proved to be among the most successful of the institute's undertakings. The 1976 conference drew unexpectedly large registration: more than 300 people attended, including sixty judges, to consider the subject "The Canadian Judiciary." In 1977 the genuine interest shown by many of those who had attended the previous year's dinners and conference led the directors to open membership in the institute to all persons who applied and who were, in the opinion of the directors, interested in the administration of justice. The directors felt that only by broadening the membership could the goodwill engendered by the institute's activities be properly acknowledged.

The result in the past fifteen years has been that, without actively soliciting memberships on a mass basis, the institute has had a membership of several hundred (1111 in December 1992). Regular

members receive a newsletter twice a year, and the regular membership fee is modest (\$55). The most important variation in membership status originated in 1980, under the presidency of Judge Oxner. In that year the institute introduced a new category of "subscribing members," for an annual fee of \$100 (now \$110). The fees of several hundred (now 356) subscribing members have made an important contribution to the financial well-being of the institute, as have the life members (now 82). Many of the subscribing members are federally appointed judges whose fees are reimbursed by the Department of Justice under the provision for incidental allowances that came into effect by amendment to the Judges Act in 1980. Among the members are 578 federally appointed judges, many of whom are subscribing members. There are ninety-three judges who were appointed by provincial or territorial governments. Another important group of subscribing members are members of administrative agencies (now 122), whose interests the institute has served with dramatic success.

Over the years, the dropouts from regular membership have generally been replaced by new members (lawyers, judges, academics, members of administrative agencies, and so on). Members tend to learn of the institute's work through the conferences they attend, because of interest in the subject matter, or through attendance at the seminars for judges and others (especially seminars for members of administrative tribunals). Thus, one way or another, the institute has become an organization with reasonably broad membership support across Canada. A certain trust has developed among a large number of people that when the institute undertakes a project — whether in the field of judicial education or otherwise — it will achieve a high standard of performance.

An outline follows, listing the annual conferences, their locations, and their subjects, as well as a short commentary on the content of each. The attendance of many judges from the Superior Court of Quebec and from the Quebec Court of Appeal has made an important contribution to the maintenance of the institute's genuinely national character. Moreover, the papers delivered at many, but not all, of the conferences were published. For a number of years, publication was managed and supported by Carswell, law publishers, and on several later occasions with the similar support of Les Éditions Yvon Blais.

*1976, Toronto, Conference on the Canadian Judiciary*

This conference was jointly sponsored by the institute and Osgoode Hall Law School of York University. It was organized by the institute's first executive director, Allen W. Linden, qc. The papers delivered were published by Osgoode Hall Law School in hardback; such

publication was itself no mean undertaking, as the institute's management discovered in regard to the conferences held in subsequent years. The conference presentations covered a number of topics, and are as relevant to today's issues as they were to the judiciary of sixteen years ago: the independence of the judiciary (Professor William R. Lederman of Queen's University), the judge and the adversary system (Professor Neil Brooks of Osgoode Hall Law School), and the judge and court administration (Professor Garry D. Watson of the same law school). Chief Justice Jules Deschênes of the Superior Court of Quebec delivered an excellent paper on "the judge as lawmaker"; its content would be radically different in the era of the Canadian Charter of Rights and Freedoms. Ed Ratushny, then special adviser to the minister of justice of Canada, delivered an informative survey of recent developments in the appointment of federally appointed judges, supplemented by excellent comments by John J. Robinette, qc, of Toronto and Professor William H. Angus of Osgoode Hall Law School; this topic merits early and regular revisiting by the institute. English and American perspectives were brought to this first conference by Professor Gordon Borrie, who had been director of the Institute of Judicial Administration at the University of Birmingham, and by Paul Nejelski, then director of the Institute of Judicial Administration at New York University.

*1977, Toronto, Conference on the Canadian Court System*

This conference was again co-sponsored by Osgoode Hall Law School. The subjects discussed included the English court system (Dr Ian Scott, who was Professor Borrie's successor at Birmingham), the role of an appeal court (Professor Paul Carrington of the University of Michigan), the administration of the high volume of cases in provincial courts (Dean Frank D. Jones, qc, of the Faculty of Law of the University of Alberta), the role of the Federal Court of Canada in reviewing the decisions of administrative tribunals (Professor David Mullan of Dalhousie University), and "Are We Over-judicialized?" (Mr Justice Antonio Lamer, chairman of the Law Reform Commission of Canada). The concluding speaker, Dr J.A. Corry, former principal of Queen's University, spoke on "The People, the Judges and the Courts," and uttered a plea for greater public education in law as a method of strengthening the independence of the judiciary.

*1978, Ottawa, Administrative Justice*

This conference, held in January, made 1978 the only year in which two national conferences were held. This subject was chosen in an attempt, repeated in 1982, to demonstrate the institute's concern with

administrative justice. The concern bore more substantial fruit when seminars for members of administrative tribunals were organized on a regional basis in the late 1980s. The organization of such seminars had, by 1991, become a major part of the institute's work.

*1978, Edmonton, Conference on Expeditious Justice*

This conference was organized by a committee chaired by Mr Justice Matas of the Manitoba Court of Appeal. It looked comprehensively at pre-trial conferences in criminal and civil cases, eliminating or minimizing adjudication, new time-saving technology, efficient court management, improving criminal and civil procedure, expediting appellate justice, and the assumption of responsibility for delay. The proceedings were published. Among the papers was a study by Professor Shimon Shetreet of the Hebrew University of Jerusalem, "The Limits of Expeditious Justice." The sharing of ideas at that conference had some effect on delays across Canada, but many of the points made then could be made again today with much force.

*1979, Toronto, Conference on the Cost of Justice*

This conference was organized by a committee chaired by Mr Justice Richard E. Holland of the Ontario High Court. It considered alternatives to the formal justice system, whether the adversary system is cost-efficient, the trappings of justice, whether the appellate system is cost-efficient, the public support system, the costs of private delivery of legal services, prepaid legal services, efficiencies in private practice, and the use of computers. The concluding speaker was the Right Honourable Sir Robert E. Megarry, vice-chancellor of England.

*1980, Vancouver, Conference on the Trial Process*

The chairman of the organizing committee was Mr Justice H.E. Hutcheon of the British Columbia Court of Appeal. The theme was an appreciation of the trial process as a fact-finding process. Time was devoted to the public's perception of the trial process, the future of the rules of evidence, a number of specialized topics, and the psychopathology of the judicial decision-making process. The latter topic presented a double presentation by Judge Borins (by now a member of the County and District Court of Ontario) and his wife, Dr Elaine F. Borins, a psychiatrist. Whereas the 1978 and 1979 conferences had dealt with what might be called "public issues," this conference avowedly placed greater emphasis on matters of practical interest to judges and lawyers. The concluding address was delivered in memorable fashion by the minister of justice, the Honourable Jean Chrétien.

*1981, Halifax, Conference on Criminal Justice*

The chairperson of the organizing committee was Madam Justice Constance Glube of the Supreme Court of Nova Scotia. This conference attempted an in-depth assessment of contemporary criminal justice in Canada. It considered search, seizure, and arrest; the proposed new Evidence Code (which, as events proved, would be still-born); the role and influence of the prosecutor; the role of the justice of the peace; the role of defence counsel; sentencing; the juvenile trial; the use of the jury trial; pretrial conferences and disclosure; correctional techniques; alternative sentences; defences; and the future directions of criminal law.

*1982, Montreal, Judicial Review of Administrative Rulings*

The organizing committee was chaired by Mr Justice Marc Beauregard of the Superior Court of Quebec. This conference examined a number of problems of substantive law, including the development of judicial review in the common-law world, the grounds of judicial review, limitations on remedies, and alternative remedies. The speakers were a remarkable group of leading judicial, academic, and practising experts in the field. The concluding speaker was Chief Justice Jules Deschênes of the Superior Court of Quebec, who had been a strong supporter of the institute from its inception.

*1983, Winnipeg, The Charter after Eighteen Months*

Under the chairmanship of Mr Justice J.E. Wilson of the Court of Queen's Bench of Manitoba, this conference reviewed initial judicial experience with the Canadian Charter of Rights and Freedoms. Emphasis was placed on the emerging principles underlying the rights and freedoms guaranteed by the Charter. The featured speaker was Professor Paul Bender of the University of Pennsylvania, an early and thorough student of the Charter.

*1984, Ottawa, Law and Justice beyond 1984*

Co-chaired by Judge Rosalie Abella of the Ontario Family Court and Mr Justice Melvin L. Rothman of the Quebec Court of Appeal, the conference was inspired by Orwell's novel. The conference attempted to deal with the relationships between the individual, the state, and the justice system in a democratic tradition. The subjects included several that presented antithetical and sometimes chimerical challenges: the right to speak vs freedom from information; the right to life and death vs freedom from treatment; the right to equality vs freedom from majorities; the right to protection vs freedom from rehabilitation (the criminal law process); the rights of families vs

freedom from association. Also considered were the public expectations of justice, information, and accessibility to the public in regard to legal services; barriers to access to justice; and the roles of professionals in the justice system. The featured speaker, novelist Margaret Atwood, delivered an address on Justice in the Literary Tradition.

*1985, Toronto, Sentencing*

Co-chaired by Brian Crane, QC, of Ottawa and Mr Justice L.W. Houlden of the High Court of Justice of Ontario, this vexing subject was discussed by an outstanding array of speakers, such as Professor David Thomas of the Centre of Criminology at Cambridge University (who had also been on the program in 1981) and Professor Andrew Von Hirsch of the School of Criminal Justice at Rutgers University in New Jersey. The topics included discussion of whether the courts have failed in regard to sentencing, sentencing trends and principles, and sentencing reform in the United States and Canada.

*1986, Vancouver, Professional Responsibility*

This conference was chaired by Chief Justice Allan McEachern of the Supreme Court of British Columbia. The topics discussed included general trends in liability insurance, trends in professional liability, whether the ability to pay should be a factor in the determination of liability, whether the present state of professional liability in medical cases is contrary to good medical care, whether the courts have gone too far in attaching liability to lawyers and accountants, and whether contingency fees are in the public interest.

*1987, Montreal, Justice: Independence and Accountability*

Co-chaired by Mr Justice Maurice Lagacé of the Superior Court of Quebec and J. Vincent O'Donnell, QC, of Montreal, this conference focused on a defence of the independence of justice and the accountability of judges and members of administrative tribunals. Specific topics included the independence of courts and administrative tribunals, the status of members of administrative tribunals, and the independence of the lawyer and the notary. In regard to accountability, panels discussed ethics, discipline, quality control, and continuing education. There was also discussion of the increased role of the judiciary because of the Canadian Charter of Rights and Freedoms, the role of the press as critic, and the constitutional guarantee of freedom of the press.

*1988, Halifax, Law and the Environment*

Co-chaired by Dean Innis Christie of the Faculty of Law, Dalhousie University, and Mr Justice R. Macleod Rogers of the Supreme Court of Nova Scotia (Trial Division), this seminar faced the prospect that the present involvement of the courts and other legal processes in the regulation of activities which create a risk of harm to the environment may be expected to increase in the future. The specific topics were based on a hypothetical scenario involving the transportation of a hazardous substance by sea to Canada, its transshipment by rail or truck to a central Canadian manufacturing plant, its processing as a pesticide, and its release into a forest. Panelists addressed environmental legislation, common-law remedies and decision-makers, the management of toxic and hazardous risks, the judicial function in relation to transport at sea and on land, civil and criminal remedies after chemical spills, environmental impact assessments and judicial review, regulatory and civil issues in controlling herbicide and pesticide, and the role of the courts in Canada, the United States, and Great Britain. Dr David Williams (now Sir David), president of Wolfson College, Cambridge University, who had been among the speakers at the conference on Judicial Review of Administrative Rulings in 1982, spoke for Great Britain in the last session.

*1989, Kananaskis (Alberta), Discrimination in the Law and the Administration of Justice*

Chaired by Mr Justice John D. Bracco of the Court of Appeal of Alberta, this conference was held four years after the equality rights section of the Canadian Charter of Rights and Freedoms came into effect. The speakers included government officials, personnel from human rights commissions, lawyers, doctors, professors of law and other disciplines, and judges. The topics discussed included the history of discrimination in Canada, a critical survey of human rights legislation and commissions, the jurisdiction and effectiveness of remedies at the disposition of human rights commissions, issues related to litigation of discrimination cases, the definition of equality rights, and discrimination in a number of areas of the law – municipal and public utilities, remote and isolated communities, age discrimination, pay equity, gender discrimination, electoral laws, the disabled, health care, and visible minorities.

*1990, Toronto, Health Care, Ethics, and Law*

Co-chaired by Mr Justice Horace Krever of the Ontario Court of Appeal and Professor Bernard Dickens of the Faculty of Law and

Medicine, University of Toronto, this outstanding program featured medical practitioners and health-care experts. The topics discussed included ethical and legal implications of the allocation of resources; psychiatry, law, and the Charter; health care and the needs of the physically disabled and the elderly; health care and AIDS; legal implications of scientific and technological innovation in medical science – scientific uncertainty and legal proof; the effect of court judgments on the quality of medical practice; hospitals and the law; reforms of compensation for medical negligence; the law and the right to health care.

*1991, St Andrews-by-the-Sea, Work, Unemployment, and Justice*

Co-chaired by Madam Justice Margaret Larlee of the Court of Queen's Bench of New Brunswick and Michel Bastarache, president and CEO of Assumption Mutual Life Insurance Company, Moncton, the subject was appropriate to a time of mass unemployment in Canada. The speakers included government officials, members of administrative tribunals, professors of law and industrial relations, lawyers and judges. The topics discussed included the constitutional distribution of powers in relation to labour law, the economic and social impacts of discrimination, employment equity, wrongful dismissal, mandatory retirement, the Charter of Rights and employment, damages in employment and labour law, labour tribunals and judicial review, labour codes and standards, the duties of former employees, and free trade and deregulation.

*1992, Montreal, Culture, Justice and Law*

Chaired by Judge Michèle Rivet, president, Tribunal des Droits de la Personne, Quebec. Papers were presented on a diversity of subjects: historical, sociological, and anthropological dimensions of culture in Canada ("Lord Durham Revisited: The Struggle of Nations and Peoples for Survival within the Canadian State" and "Tendencies of Social Change in Canada"); the development of two distinct Canadian legal cultures ("Code Civil, Droit Commun?" and "Culture and the Common Law"); the constitutional protection of multiculturalism in Canada; cultural minorities and the administration of justice (their treatment in the media, faculties of law, policing, and administrative tribunals); arts and culture, including television and Canadian content; aboriginal legal culture and other issues relating to the administration of justice involving aboriginal peoples ("Cultural Considerations in Evidence and Decision-Making" and "Community Circle Sentencing").

Although these annual conferences have been designed not only for judges but for others interested in the administration of justice, the planners have always borne in mind that a substantial number of judges, particularly federally appointed judges, would be in attendance. Attendance by federally appointed judges has been encouraged by the Canadian Judicial Council's annual designation of the conference as one that is approved pursuant to section 22(2) of the Judges Act as "promoting efficiency, uniformity or improvement of the quality of judicial service in the courts." This has meant that the expenses of those federally appointed judges desiring to attend have been paid by the federal government. Such designation has not been automatic in recent years. The substance of the proposed program must be such as to satisfy the Canadian Judicial Council that the agenda will be of educational value to judges. Consequently, in considering the record of the Institute in the field of judicial education, these conferences must be taken into account along with the seminars that the institute has organized for judges exclusively.

Once the institute was under way, its Education Committee decided that, for both federally and provincially appointed judges, the existing annual seminars left something to be desired in terms of the needs of those persons who had been appointed only a matter of months. Moreover, these seminars were intended to satisfy a different need: that of judges who had at least a few years of judicial experience and could benefit from the opportunity to review principles and practice with "instructors" and colleagues who were also experienced. There was a need to devise a program cast at a level and with a perspective that would correspond to the sense of uncertainty and even discouragement felt by many new judges. These characteristics are not unusual in the case of new judges, especially those whose practice as lawyers has not taken them to court very much or, in some cases, not at all. A variation of the problem is that many newly appointed judges have had some or even a good deal of experience in civil litigation but none in criminal cases. New judges are also often faced with practical and ethical problems that arise from the transformation from lawyer to judge. They find it difficult to cope with the sudden sense of isolation they experience in comparison with the hurly-burly of the practice of law. No longer do they deal daily with the often intense and fast-flowing problems of clients, the administration of a law office, community activities, and responsible positions in the organizations of the profession. Frequently they find it difficult to come to terms with the increased social circumspection necessitated by the dignity and standards of judicial office.

And, however helpful the new judge's judicial "elders" may try to be, he or she is often sitting in court away from home for a week at a time in a smaller centre, where there is no other judge from whom to seek advice about the problems facing the new judge. Even the experience, usually quite new to the judge, of eating three meals a day alone and being alone in a hotel for a week can contribute to the "culture shock." It was felt, and experience has borne this out, that seminars for newly appointed judges would enable those from across the country to share their experiences and to carry out their duties more effectively in consequence.

The first such seminar was organized in 1976 by the institute on behalf of the Canadian Association of Provincial Court Judges. It was considered to be a success and was repeated in subsequent years, but without the assistance of the institute. In this instance, therefore, the institute served as an instrument for getting a judicial education program successfully under way and then, with some regret, having its "client" develop its own "in-house" means of carrying on with the program.

Meanwhile, Professor Linden was discussing with Chief Justice Nathan Nemetz of British Columbia, chairman of a special subcommittee of the Canadian Judicial Council, the feasibility of a seminar for new federally appointed trial judges. A study showed that there was definitely a need: as of August 1975, 34 per cent (thirty-nine judges) of the judges appointed by the federal government between 1 January 1973 and May 1975 had not yet attended one of the summer sessions. As for the remaining seventy-five judges who did attend a summer seminar, the average delay from time of appointment to attendance at a seminar was 11.27 months for superior court judges and 12.31 months for county and district court judges. Although Nemetz's subcommittee supported the initiation of such a seminar, he was unable to secure the approval of the Canadian Judicial Council as a whole. In a bold personal move, he asked the institute to organize a seminar in British Columbia for newly appointed judges in that province, and he invited newly appointed judges from other provinces to attend if they wished. As a result, such a seminar was held in Victoria in March 1976. It was attended by new judges from British Columbia and from other western provinces, as well as two from Ontario. Contemporaneously, a similar seminar was held for new French-speaking judges, under the auspices of the Superior Court of Quebec. In both cases the institute acted as the organizing agent. The success of these seminars was such that the Canadian Judicial Council, in its chairman's report dated 15 December 1976, claimed to have sponsored them. By the time that

report was prepared, the council had decided it would establish such a seminar nationally, using the institute as its instrument for the organization and administration of the seminars. The first was held in 1977, and seminars have been held annually since then. The institute has continued to act as the organizing instrument on behalf of the Canadian Judicial Council, even since the creation of the Canadian Judicial Centre. In recent years the chairman of the institute's Education Committee, Mr Justice James Carnwath of the Ontario Court (General Division), has been heavily involved in organizing these seminars. The Canadian Judicial Centre has itself organized regional seminars to provide assistance to judges who are appointed shortly after the annual national seminar has been held.

In 1980 the institute persuaded the Canadian Judicial Council that a need existed for a seminar designed to enhance the facility of federally appointed judges in the preparation of written judgments and to improve the quality of such judgments. The first Judgment Writing Seminar was held in July 1981, and such seminars have been held each July since then. The institute has continued to act as the organizing instrument of the seminars on behalf of the Canadian Judicial Council. The chairman of the institute's Judicial Education Committee, Mr Justice William A. Stevenson of the Court of Appeal of Alberta (a member of the Supreme Court of Canada 1990-2), led the organization of the first seminar and was largely responsible for its evolution in subsequent years. The "faculty" for these seminars in their early years consisted of American professors of English who had been involved in similar programs for American judges. From 1982 until the present, there has been a bilingual component of the program under the direction of Madame la juge Louise Mailhot, now of the Quebec Court of Appeal. With the passage of years, other Canadians were added to the list of instructors until Canadian "faculty" members assumed half of the instructional duties.

At the beginning of the 1980s the institute decided to launch a new series of seminars intended for both judges and lawyers. It was hoped to attract those who would be attending the annual conventions of the Canadian Bar Association held in August, and therefore the seminars were held immediately after the bar conventions. Attendance was not limited to those persons, and the composition of attendees has varied according to the subject matter but judges have always been among those attending. In the earlier years these two-day seminars tended to focus on law in a manner of direct value to the practising needs of lawyers and the duties of judges. More recently both the subject matter and the approaches to them have been of a more general scope. The precise function of these seminars

is constantly under review. The August seminars have been on the following topics.

*1981, Family Law*

Chaired by Judge Rosalie Abella, Provincial Court Family Division, Ontario. There were nineteen papers by eight judges and eleven academic lawyers and medical and other experts. The topics included alternatives to litigation, financial support, custody of children, and matrimonial property.

*1982, Evidence*

Chaired by the present author. There were fourteen papers by twelve judges, one lawyer, and the president of the Law Reform Commission of Canada (F.C. Muldoon, QC). The topics included character evidence, hearsay, evidence in sexual cases, eyewitness identification, issues in cross-examination, conspiracy trials, confessions, Crown privilege, voir dire, alibi evidence, and expert opinion evidence.

*1983, Criminal Law*

Chaired by Mr Justice Jacques Ducros, of the Superior Court of Quebec. There were seven papers by practising and academic lawyers. The topics included the Canadian Charter of Rights and Freedoms, evidence of electronic eavesdropping, and defences.

*1984, Remedies*

There were twenty papers by thirteen judges and six practising and academic lawyers.

*1985, Family Law*

Co-chaired by Mr Justice Guy H. Boisvert of the Court of Queen's Bench of New Brunswick and Judge Paul S. Niedermayer of the Family Court of Nova Scotia. There were twenty-four papers by nine judges, nine practising and academic lawyers, and four social workers.

*1986, The Art of Judging*

The co-chairmen were Mr Justice Allan Cawsey and Mr Justice Tellex W. Gallant, both of the Court of Queen's Bench of Alberta, and Associate Chief Judge Walder White of the Provincial Court of Alberta. The seven papers by four judges and three academic lawyers considered "A Look to the Future," "A Critical View of the Art of Judging," "The Art of Pre-trial," "The Art of Listening/Observation," and "The Art of Creating Law (Judicial Legislation)."

*1987, Legislative Drafting and Interpretation*

There were ten papers by one judge, five government lawyers, and the chairman of the Canadian Human Rights Commission.

*1988, The Future Role of Appellate Courts*

Co-chaired by Mr Justice Louis Lebel of the Quebec Court of Appeal and Professor André Tremblay of the Faculté de Droit, Université de Montréal. Panels of judges and lawyers considered the nature and function of a right of appeal, the organization and working of some Canadian appellate courts, the role of intermediate appellate courts in giving direction to the law, restrictions on the right of appeal to the Supreme Court of Canada, structural reform of superior courts, the creation of a national appellate court, the evolution of the role of appellate courts in criminal and sentencing matters, and access to appellate courts.

*1989, Technology, Law, and the Courts*

Co-chaired by Dean Peter V. Burns, QC, of the Faculty of Law at the University of British Columbia and Mr Justice Kenneth M. Lysyk of the Supreme Court of British Columbia. Panels of law professors, government officials, lawyers, and judges considered technology and the law of evidence and in the courtroom, legal and ethical issues, the use and misuse of computers, and the impact of computers on intellectual property laws. There were also demonstrations of many uses of computers and other technological advances.

*1990, Courts, Media, and the Law*

Co-chaired by Mr Justice Michel Monnin of the Court of Queen's Bench of Manitoba and Dean Roland W. Penner, QC, of the Faculty of Law, University of Manitoba. There were panels of media personnel, lawyers, law professors, and judges on freedom of expression and the right to privacy, fair trial vs the public's right to know, media coverage of judicial inquiries, and the tasks and role of a spokesperson for the courts.

*1991, Police, the Community, and the Administration of Justice*

Co-chaired by Mr Justice Del W. Perras of the Court of Queen's Bench of Alberta and Professor Patrick J. Knoll of the Faculty of Law at the University of Calgary. The seminar was attended by many senior police officers from forces across Canada, as well as a few judges, lawyers, and government officials. The topics discussed included the future of policing, policing family violence, minorities

and the police, aboriginal justice, the police and the Charter, the civil liability of the police, and street gangs.

The Canadian Charter of Rights and Freedoms became part of Canada's Constitution on 17 April 1982. Even before that date the institute began to plan a series of seminars on the Charter for federally appointed judges. The lead in this initiative was taken by Mr Justice Matas of the Manitoba Court of Appeal, who had been a member of the board since the institute's inception. He was assisted by a vigorous committee, among whose most active members were Professor Gerald Gall of the University of Alberta and Professor Dale Gibson of the University of Manitoba. An academic advisory committee was chaired by Professor Walter S. Tarnopolsky. After obtaining the endorsement of the Canadian Judicial Council, twenty-five judicial seminars were held across Canada during the autumn of 1982. They included four provincial court meetings (national, regional, and provincial) outside Quebec, and one seminar for each of the four divisions of the Provincial Court of Quebec. The institute also provided Charter programs for lawyers' meetings in four provinces and territories. Some of those who prepared papers and lectured appeared as lecturers at many of the seminars, at considerable personal inconvenience. These seminars performed an important service in giving the Canadian judiciary a reasonably informed appreciation of the Charter as a constitutional instrument and of many of its detailed provisions, particularly in regard to legal rights, that would soon become difficult issues in criminal trials.

The institute's temporary focus on the Charter was reinforced by the planning for the 1982 annual conference held in October in Winnipeg. The title of the program was "The Charter after Eighteen Months," and Mr Justice Matas again chaired the organizing committee.

Section 15 of the Charter, which guarantees equality rights, came into effect on 18 April 1985. Once again the institute met the special need created by this development by conducting a series of seminars for federally appointed judges in most of the provinces. The planning of these seminars was carried out by Mr Justice Charles Gonthier of the Superior Court of Quebec, as chairman of the Judicial Education Committee, and Madame la juge Alice Desjardins of the same court. Among the seminars were one for Atlantic provinces superior court and appellate judges, another for the Atlantic provinces provincial court judges, one for the judges of Quebec and French-speaking judges from Ontario, and seminars in each of the western provinces. As was the case with some other judicial education projects of the

institute, particularly those relating to the Charter, the financial support of the federal Department of Justice was of vital importance. It is worth noting that as early as February 1984 the seminars for recently appointed federal-appointed judges, organized by the institute on behalf of the Canadian Judicial Council, included a half-day component on the Charter.

In 1980 the institute organized a small claims court seminar, in keeping with its constant exploration of new constituencies for judicial education. The topics considered included the jurisdiction of such courts, experiments with diversion in Canada and the United States, the nature of the hearing (inquisitorial or adversarial), the applicability of the rules of evidence, limits on legal representation, appeal procedures, and execution and enforcement. A second such seminar was held in 1982. It was co-sponsored by the Canadian Association of Provincial Court Judges. The organizing chairman was Judge E. O'Donnell of British Columbia.

The objects of the institute, in referring to educational programs, specifically mentioned not only members of the judiciary but also "members of administrative tribunals." The development of programs for such persons was on the agenda of the institute once it had the foregoing programs for judges underway. The directors, like the framers of the objects of the institute, recognized that the network of federal and provincial administrative tribunals constituted an important domain in which the rights of citizens were determined. In time, as the possibility of developing such programs was explored, it became apparent that there had never been any occasion for members of federally appointed tribunals and agencies to meet to compare ways of doing things and the principles of procedure and conduct. Not even residents of Ottawa had done so. The same was true at the level of the provincial governments. A pilot project was carried out in the early 1980s on the initiative of Judge Sandra Oxner as president of the institute and with the assistance of Professor Innis Christie of Dalhousie University. After that, some time elapsed before a breakthrough occurred at both the federal and the provincial levels. The seminars held have been as follows, each for one day.

*April 1987, Hull*, chaired by Judge Rosalie Abella, by then chairperson of the Ontario Labour Relations Board. It was attended by members of thirteen federal tribunals.

*June 1987, Toronto*, for members of fifteen provincial tribunals.

*December 1987, the Maritimes*, for members of sixteen tribunals.

*January 1988, Alberta and NWT*, for thirty-one persons from fifteen provincial boards.

*February 1988, Manitoba*, for thirty-seven persons from seven provincial boards and four federal boards.

*April 1988, Saskatchewan*, for twenty-eight persons from fifteen provincial boards.

Another area in which the institute has been innovative relates to the process of drafting legislation and its interpretation. Judges, of course, are directly interested in the latter. There have been judges in attendance at the Conference on Legislation, organized for the institute by Professor Jean-Louis Baudoin in 1982, and at a series of seminars on legislative drafting and interpretation. The first of these, chaired by Mr Justice Hugessen (by then a member of the Federal Court of Appeal), was held in Ottawa in 1987. It was attended by 120 persons, including draft persons from the federal government and the governments of all provinces and territories. In 1989, again in Ottawa, 130 persons attended, including twenty-five municipal government lawyers who were attracted by a component on the drafting of municipal by-laws. In 1990, again in Ottawa, more than one hundred persons were in attendance. In 1991 a one-day seminar was held in each province for municipal government lawyers. In 1992 the institute sponsored a national seminar on "Legislative Drafting: International Perspectives."

Throughout its history, the institute has adhered to its original intention to be housed in a university. While the institute began its life at Osgoode Hall Law School of York University in Toronto, the board from the start recognized that that location might not be permanent. In response to an attractive invitation from Dean Frank D. Jones of the Faculty of Law at the University of Alberta, the institute's offices moved to Edmonton in 1978 and remained there until 1986. Then, in response to another generous initiative by the Faculty of Law at the Université de Montréal, supported by the Bar and the Notaries of Quebec, the institute moved its office to that university, where it is still housed. In each case the host university has supported the work of the institute by freeing faculty members from certain of their regular duties so they might devote part of their time to the institute's work.

Financing of the institute's judicial education endeavours has usually been through registration fees covering essentially break-even budgets which have included a small component dedicated to the

institute's overhead. The remainder of the overhead, after the first three years when the funding by the Donner Canadian Foundation was available, has been covered by similar overhead components in other activities including research grants, as well as by membership fees and grants by the federal Department of Justice, the Department of the Secretary of State, and other governmental and private sources. Financing of a nongovernmental organization such as the institute demands constantly changing and imaginative responses to genuine needs. The task of meeting those needs has not been easy.

#### CONCLUSION

Much credit for the introduction of judicial education must be given to the Canadian Judicial Council and the Canadian Association of Provincial Court Judges. Not long after they had entered the field, the CIAJ – a voluntary, nongovernmental organization – appeared on the scene. Its objects included judicial education, and its founders thought that much more could be done in this area in Canada. Their initiatives eventually evoked a warm and supportive response, in particular from the Canadian Judicial Council, on whose behalf the CIAJ served as the agent for the development and implementation of new and creative programs. The vital role of the CIAJ in judicial education, achieved by the early 1980s, helped it to establish its presence and relevance throughout the country. This reputation in turn enabled it to organize its research programs with greater confidence, in that it understood the "justice community" in Canada.

In regard to the education of judges in the strict sense (that is, leaving administrative tribunals aside), the institute has in a sense been a victim of its own success. One has the curious feeling that in the early 1980s some of the members of the Canadian Judicial Council, even those who had been closely connected with the institute's programs, became uneasy or restless about leaving so much development and administration in the hands of a voluntary society that had an independent Board of Directors not subject to the control of the Canadian Judicial Council. No matter how genuinely the institute reiterated in words and deeds that it was always the servant of the Canadian Judicial Council and respected its wishes in the content of seminars and conferences, there was a view among some of the chief justices that it would ultimately be better if some programs were created and undertaken by a body more directly responsible to the Canadian Judicial Council, or at least more governmental in nature. Perhaps it was felt that government financing, by both federal and provincial governments, would be more forthcoming if programs

were directly created and organized by an agency that was in some real sense a creature of cooperative parenting by the federal and provincial governments.

I am not qualified to comment on the decision that was taken to establish the Canadian Judicial Centre. Nor am I qualified to comment on the directions that have been taken by the centre since its creation. Let me nonetheless conclude with several points.

First, when judges are excited by the potential for judicial education, it is not surprising that some of them should be keen to develop a new mechanism for the delivery of services to their own constituency, without having to go through some extrinsic organization. This temptation is likely to be enhanced if the new mechanism appears to be able to attract greater government funding than was previously the case.

Second, there has in the past been a tendency in Canadian governments to prefer to have public service functions performed by government departments or agencies which are entirely subject to Treasury Board scrutiny and public audit. Public servants tend to be uneasy when functions they think could perfectly well be carried out by government departments or agencies are carried out instead by a private agency, even a non-profit one. These tendencies are currently being questioned in some political circles, but they have had an effect on recent developments in judicial education.

Third, when we are concerned about community service endeavours such as judicial education, the means to achieve such ends should be as far removed as possible from the atmosphere of government. A central agency such as the Canadian Judicial Centre, if it is established with the cooperation of all levels of government but is governed essentially by judges who themselves have security of tenure, may have the necessary distance between the agency and the government. The possibility remains, however, that such an agency may become too much like a government department: permanence and the assurance of perennial financial support, together with traditions of public service security of employment or, even if staff serve on fixed-term contracts, a sense of obligation on the part of management to renew such contracts in the absence of misbehaviour by the staff, may lead to stagnation and loss of creativity as the years go by. Contracting the execution of such community needs out to a private nonprofit agency is much less likely to run those risks.

Fourth, in a federal state such as ours it is a matter of concern if a voluntary national community service society such as the CIAJ has failed to secure support from one level of court – specifically, the provincial courts. Perhaps that failure occurred because, among pro-

vincial court judges, there was a sense that federally appointed judges had too much influence in the direction of the CIAJ. Whatever the reason for the failure, it may be that to secure the cooperation and participation of all levels of court in the development of programs of judicial education that are of countrywide importance (criminal law and procedure, family law, the Canadian Charter of Rights and Freedoms, and gender issues, for example), a fresh start was required by the creation of a central agency in which all levels of courts and both levels of government would feel they have an equitable share in decision-making and execution of functions. Perhaps that is the price that must be paid in a federal country where jurisdictions are guarded jealously.

Finally, there is no doubt that, by whatever means may be effective, it is desirable to enhance the degree of cooperation among various bodies which are involved in judicial education. If coordination and the satisfaction of other imperatives can be achieved only through some body such as the Canadian Judicial Centre, so be it. But that should not cause our society to ignore the value of voluntary initiatives or to forget the impressive history of such organizations as the CIAJ in the development of judicial education.

The wide variety of educational functions the institute has performed could scarcely have been anticipated by its founders. Perhaps the past is prologue. If so, the future holds promise of still more constituencies to serve and services to perform in the interest of enhancing the administration of justice by education of those whose functions place them at its centre.

#### NOTE

I wish to express my thanks in particular to Mr Justice Stephen Borins, Judge Sandra Oxner, Mr Justice Kenneth Lysyk, and Mr Justice James Carnwath.

1 The presidents of the institute have been:

- 1974–77 Mr Justice D.C. McDonald (Alberta)
- 1977–78 Mr Justice R.J. Matas (Manitoba)
- 1978–80 Mr Justice R.E. Holland (Ontario)
- 1980–82 Judge Sandra Oxner (Nova Scotia)
- 1982–83 Mr Justice Jacques Dugas (Quebec)
- 1983–85 Mr Justice W.A. Stevenson (Alberta)
- 1985–87 Mr Justice Charles Gonthier (Quebec)

- 1987-89 Mr Justice Horace Krever (Ontario)  
1989-91 Mr Justice K.M. Lysyk (British Columbia)  
1991-92 Mr Justice Robert Wells (Newfoundland)

The executive directors have been:

- 1974-78 Professor Allen M. Linden  
Professor Sidney J. Lederman (associate)  
1978-79 Professor Lyndon Irwin  
1979-82 Professor Gerald Gall  
1983-85 Professor Peter J. Lown  
1985-86 Professor Pierre-André Côté  
Professor Jean-Louis Baudoin (associate)  
1987-88 Hélène Dumont  
1988- Joyce Whitman

Assistants to the executive director have been Madeleine Smith (1974-78), Mariette Kathol (Dufresne) (1978-86), Claudette Racette (1986-88), and Christine Huglo-Robertson (1988-).