

# Conference Wrap Up and Summation

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I work in an administrative agency, the Saskatchewan Human Rights Commission, trying to deliver a measure of justice each day. Sometimes, like the lawyer Beckett in the recent film, *Philadelphia*, I succeed in doing so, to my great satisfaction.<sup>1</sup> However, my involvement with the commission substantially reduces my time to sit back and reflect on broader issues of justice, a luxury I have enjoyed at this conference. So I wish to thank the organizers for inviting me to participate in these thoughtful and timely discussions. I also add that I agree wholeheartedly with the remarks by Andrew Sims about administrative agencies, except his point about their abundant resources. He could not have been referring to the Saskatchewan Human Rights Commission!

One way the public forms its perceptions of the justice system is by watching movies and television. As I listened to the conference speakers, I did not think about the continuing episode of *LA Law* otherwise known as the trial of O.J. Simpson, but the 1962 film, *To Kill a Mockingbird*. It spotlights one fundamental dilemma addressed by this conference. On the one hand, the justice system must reflect common values and respond to public concerns if it is to attract the public confidence and acceptance essential for its legitimacy. On the other hand, the justice system must also be the defender of the unpopular and the dissident, the bulwark against rule of the mob, the cool head in a storm of passion. A justice system that leans too far toward public sentiment risks losing its ability to provide sober deliberation on heated issues and to protect individuals (typically outsiders) from harsh vagaries of public opinion. The film emphasizes the gravity of not succumbing to popular opinion, of not equating justice with the majority's views. Atticus Finch (Gregory Peck) suffered insults, threats and other punishment for defending Tom Robinson, a black man wrongly accused of raping a white woman in a town thoroughly

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1. In *Philadelphia*, Beckett (Tom Hanks) is a bright young lawyer who sues his prestigious law firm for firing him because he has AIDS. Miller (Denzel Washington) acts as his counsel, and because of the case also experiences the satisfaction that Beckett reveals in the following conversation between him as plaintiff and Miller as his counsel :

Miller :           What makes you an excellent lawyer Andrew?  
Beckett :         I love the law.  
Miller :           What do you love about the law Andrew?  
Beckett :         It's that every now and again, not often but occasionally, you get to be a part of justice being done. It really is quite a thrill.

riddled with racial hatred. Today some people would likely chastise Finch for "political correctness" because he resisted the racist status quo of the American Deep South and tried to achieve justice in the courtroom for a member of a despised group. That Finch was unsuccessful only underscores the necessity of his actions and demonstrates the need for unremitting vigilance in the cause of justice.

This balancing imperative of the justice system — to protect the unpopular while retaining popular confidence and support — is one golden thread that ran through the conference discussions. The justice system, by upholding due process and furthering the rule of law, partially shields the outsider or the minority group from the angry public passions that may slowly simmer or suddenly flare up, fuelled by anomalous incidents or incendiary media coverage. The balancing imperative permeates your lives as judges, lawyers or participants in the justice system, and underlines the daily work of human rights commissions; we are obliged to strike a balance between universal values and cultural specificity, between responsiveness to peoples' different experiences and promotion of common standards. No one can avoid grappling with the challenge of building a system that hears everyone but doesn't degenerate into rabble-rousing noise.

Like Justice Sharpe, I heard some common themes emerging from the conference sessions. Rather than reiterate his eloquent summation, I will describe how the discussions proved the continuing value of three old aphorisms. For a profession with a healthy respect for the wisdom of the past, known in practise as the doctrine of precedent, it is gratifying to realize that learning of long-standing will assist in addressing problems exacerbated by modern technologies.

First, "for every complex problem there is always a simple answer and it is always wrong". Many people spoke directly and others more indirectly about the complexity of the justice system as they presented arguments rejecting simplistic solutions. Justice is a large and sprawling enterprise with many different parts, a diverse crew, and no single commander. It is at best inappropriate, and at the worst dangerous, to see parts of the enterprise in isolation from each other or to propose an ostensibly immediate and easy solution without fully considering the consequences for individuals and the system. If one string is pulled, the entire fabric changes shape, by a little or a lot. While several quick-fix ideas received favourable mention, for the most part the discussions were premised on the truth of this adage.

Second, "the tail shouldn't wag the dog". Many presentations raised the problems generated by the high profile case, the horrific tragedy that sends shock waves throughout the nation. No one disputes that these incidents demand the attention of all policy makers, from legislators to administrators and judges. A system is evaluated by the way it handles the unusual or unique case. But many people pointed out the overwhelming weight and magnitude of mundane legal matters. They stressed that legal procedures and institutions deal with thousands of cases each year of interest only to the involved individuals, and that the justice system is also measured by the way it handles disputes that never receive public attention. For example, several people emphasized the folly of allowing the theatrics of the O.J. Simpson trial to dictate Canadian policy on the broadcasting of court proceedings, or the controversy over Karla Homolka's plea bargain to determine the rules for prosecutorial discretion.

The third aphorism comes from Alexander Pope : "when you drink from the well of knowledge, drink deeply because a little bit of knowledge is a dangerous thing." It encapsulates people's thoughts on the problems caused by the pervasive misinformation, or complete lack of information, about the justice system by the public and, sadly, a vocal segment of the media. Many conference participants, some of whom were mentioned by Justice Sharpe, expressed a pressing need for open channels of accurate information.

Let me now take up the invitation issued by Ovide Mercredi. He asked that we consider what is not said and heard in the courtrooms and by the media. In the context of this conference, what topics did participants not address sufficiently? I wish to note three perspectives that merit closer examination in the future.

First, in identifying problems and designing their solutions, the differing perceptions of women and men involved in the justice system need to receive more sustained scrutiny. Gender disparities in the substance and process of law are illustrated by many recent films, including *The Accused*, *Thelma and Louise*, and the latest epic Western, *Unforgiven*, in which a group of women use extra-legal means to obtain appropriate punishment of wrong-doers after they conclude that the conventional legal system has not done them justice. The inadequate attention to gender issues, and the different positions of women and men within the justice system, was revealed to me during one workshop. In discussing a handout problem, many participants expressed dissatisfaction and opposition to the government's "zero tolerance" policy for persons charged with assaulting their partners (the social problem euphemistically referred to as domestic abuse). However, no one mentioned the reasons that compelled governments across the country to introduce the policy. Governments do react rationally in response to what they see as legitimate concerns of members of the public. Zero tolerance did not arise out of thin air. The concerns of victims, who are overwhelmingly women, that led to the zero tolerance policy were not given any recognition, let alone credence, even though they would have fruitfully contributed to a vital debate.

This example leads to a second area, already referred to by Justice Sharpe, that calls for more detailed study. A failure to take into account gender issues and perspectives typically also results in a failure to consider the family law branch of the justice system. As several participants reminded us, people's perceptions are shaped by their experiences. For many people — indeed, likely more than the number who have contact with criminal courts — their experiences with the administration of justice springs exclusively from interactions with family courts. These courts display rough gender parity in that women and men are involved in equal numbers, and discontent seems to arise equally from both genders, although for different reasons. In Saskatoon, recent demonstrations at the court house have been generated by perceived injustices in family litigation, not criminal trials, and the local paper frequently publishes letters expressing outrage or anxiety about decisions of the family courts. Moreover, this area is replete with myths (typically about bad mothers and victimized fathers) fed by the products of popular culture, from the stereotypes in the older drama film, *Kramer v. Kramer*, to the grotesque parental characters in the more recent comedy, *Mrs. Doubtfire*.

In addition to hearing more voices of women, and voices of women and men involved in familial disputes, we need to hear a third voice, that of poor people. Some

speakers addressed the economic dimensions of justice issues, such as Gil Remillard's reflections on accessibility problems, and Ovide Mercredi's description of the economic burden borne by Aboriginal people. Those of us implicated within the justice system, however, need to listen more often and with greater sensitivity. Poor people are alienated from the justice system. Perhaps I listen more intently for their voices after serving three years as chief commissioner because it is poor people, typically, who come to the commission's doors with their complaints of unfair treatment. They have nowhere else to go. They cannot afford another forum, such as a court, and often they cannot afford self help remedies. They want the commission to help them, but usually it cannot because its mandate or resources do not permit remedies for most of the injustices suffered by poor people.

The 1989 film, *A Dry White Season*, takes place in South Africa immediately after the Soweto riots. Ian Mackenzie (Marlon Brando) is a lawyer consulted by Ben du Toit (Donald Sutherland), an Afrikaner teacher who wants justice for Gordon Ngubene (Winston Ntshona), his black employee murdered by the South African police. When du Toit states that he wants justice to the full extent of the law, Mackenzie replies : "Well, I suppose justice and law could be described as distant cousins and here in South Africa they're not on speaking terms at all." That is not a comment we wish anyone to offer as an accurate summary of Canada. I worry about its increasing likelihood when I see poor people in the thousands trudge into administrative offices across the country, and so few of them receive assistance in their quest for justice. One message of the film is that when the inequalities and power imbalances within a society become enormous, when people become too uneven, to use David Lepofsky's words, vast injustices occur, and they occur within the justice system, not merely outside of it.

In *A Dry White Season* and *To Kill a Mockingbird*, the heroic lawyer working for justice is unable to deliver. Tom Robinson is shot to death, despite the actions of Atticus Finch; Gordon Ngubene is killed by torture, despite the efforts of du Toit and MacKenzie. Ben du Toit himself is destroyed in his quest for justice, despite the diligence of MacKenzie. I cannot present a similar pessimistic ending, however, for this conference offers much reason for optimism. The astute analysis and empathic erudition shown here will benefit Canadians greatly in the never-ending project of maintaining a justice system that serves all fairly and compassionately, and attracts widespread public support in doing so.