

Conference Co-Chair's Opening Comments

The Honourable Mr. Justice Nicholas W. SHERSTOBITOFF* and
The Honourable Madam Justice Gene Anne SMITH**

The 1998 C.I.A.J. Conference, held in Saskatoon, was designed to address a number of diverse concerns, all relating to growing demands for change or adaptation within the judicial system. This volume collects in written form the excellent contributions to the conference from distinguished scholars, jurists, and public servants from across Canada and abroad.

The stirring keynote address was delivered by the Honourable Mrs. Justice Mary Arden, D.B.E. Chairman, Law Commission for England and Wales. Mrs. Justice Arden noted current concerns in Great Britain closely paralleling those in Canada : increased constitutional powers for the judiciary, especially in the area of human rights, giving rise to calls for increased accountability and consequent concerns for judicial independence; increasing costs and delays in the judicial system accompanied by growth in the use of alternative means of dispute resolution; decreased resources for legal aid, giving rise to growing concerns about accessibility to justice and the need for procedural adaptations and flexibility to meet the needs of unrepresented clients; and the ever growing need for simplification of the law.

Discussion of the respective roles of courts and administrative tribunals began with a lively debate between Mr. J. Paul Lordon, Q.C., and Mr. Justice William Vancise as to whether administrative tribunals enjoy sufficient independence and adequate procedural protections to engender public confidence in their capacity to render justice. This was followed by a critical discussion of the current uncertainty in relation to the initial jurisdiction of administrative tribunals and labour arbitrators, and the scope of judicial review of such tribunals, in relation to issues of human rights, entitlement to health and welfare benefits, defamation and other torts claims and Charter issues. These issues arise out of recent decisions of the Supreme Court of Canada. Papers were contributed by Professor Nathalie Des Rosiers and Ms. Sheila J. Greckol, as well as Professor David Mullan, who argued eloquently for a reexamination of the issues of competing jurisdictions in these areas, and for resolving the issues on a less ad hoc or piece meal and more principled basis.

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The topic of the appropriate scope for judicial "policy making" began with an excellent theoretical overview by Professor Richard W. Bauman and commentary by the Honourable Roger P. Kerans, followed by a spirited debate as to the extent to which Canadian judges have or have not exceeded the appropriate role for judges in a constitutional democracy by Chief Justice Richard J. Scott, in defence of judicial activism, and J. Stuart Langford, on attack, with Professor Ian C. Greene contributing a fascinating scholarly analysis of the meaning of constitutional democracy and arguing for a wider role for judicial discretion as a necessary and widely misunderstood aspect of promoting the principle of mutual respect. This session began with an excellent summary of the issues and the positions by Judge Gerald T.G. Seniuk.

The growing role for Alternate Dispute Resolution was examined in papers delivered by the Honourable Roger P. Kerans, who offered a colourful challenge to some of the current claims that ADR is the necessary path to badly needed social and judicial reform, and also contributed an excellent description of some of the techniques now required to practice in this area; the Honourable Patrick T. Galligan, Q.C., who reviewed this area in light of new Ontario Rules requiring mandatory mediation in some civil cases and the new *Ontario Arbitration Act*, restricting judicial interference in consensual arbitrations; and Me Michele A. Pineau, extolling the virtues of "appropriate dispute resolution" and describing the role that can be played in this area by a "convenor and process consultant."

Ms. Isabel J. Schurman presented a challenging paper describing the role that must be played by judges and by Crown counsel, in the face of recent, dramatic and escalating cut backs in the availability of legal aid, to ensure fairness in the criminal trial process for unrepresented accused.

The intersections between domestic and international law in the commercial area where addressed by the Honourable Madam Justice Anne-Marie Trahan, who gave an overview of the work of UNIDROIT and Canada's special contribution to that work, and by Professor Ronald C. Cuming, who described his work in preparing a draft convention on international interests in mobile equipment.

The conference closed with a deeply moving and challenging session on the topic of justice for aboriginal peoples. Judge David M. Arnot, Federal Treaty Commissioner for Saskatchewan, introduced the panel on "Shared Responsibility and Accountability" by outlining the background for the current quest for special accommodation for Aboriginal concerns in the justice system. John D. Whyte, Q.C., Deputy Minister of Justice for Saskatchewan, and Professor Sakej Henderson offered partially competing analyses of the constitutional implications of the demands of legal pluralism and the potential for an independent Aboriginal system of justice.

The current crisis for Aboriginal people within the present justice system, and some hopes for institutional ways to address these problems, were described in three very inspirational accounts offered, respectively, by the Honourable Judge Jean Dutil, who has sat for many years in Inuit and Cree Communities in the Quebec Arctic and has spearheaded creative and successful innovations to give these communities more responsibility for victims and offenders, Assistant Commissioner Cleve Cooper, who described initiatives to accommodate the Aboriginal perspective by the RCMP, and the

Honourable Judge Mary Ellen Lafond, reflecting on the first nine months' of her experience as a newly appointed and the first Aboriginal Judge of the Saskatchewan Provincial court.

The collection here published also included the excellent lunch time addresses of the Honourable John T. Nilson, Q.C. Minister of Justice and Attorney General for Saskatchewan, and the Honourable Eric Cline, Minister of Finance for Saskatchewan, representing the Premier, who could not be present.

The final contribution is the closing address by the Honourable Mr. Justice W. Iam Binnie, most recent appointment to the Supreme Court of Canada. On the morning of Justice Binnie's address, the death of former Chief Justice Brian Dickson was announced. Justice Binnie adapted his comments to deliver a moving tribute to this distinguished Canadian jurist.

The conference wrap-up and summation was provided with wit and vigour by the Honourable Mr. Justice James M. Spence, President of CIAJ.