MEDIA SPOKESPERSON FOR THE COURTS

A JOURNALIST'S POINT OF VIEW

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On April 19, 1990, the daily Le Devoir published a letter written by Me Marc Brière, a Quebec Labour Court judge. Breaking with a practice that disallows judges from making such public statements, the author used the letter to explain why he had called one of his judgements to the attention of a journalist[1]. He also commented on the reaction of several of his colleagues who had criticized his action, and explained his reasons for doing so. This incident, to which I will return later, represents a starting point for today's discussions. It highlights the fragile nature of the relationship between the judiciary power and the fourth estate; as well, since I will be dealing with the "role of the media spokesperson vis-à-vis the press", it allows me to pose the following question: Might the presence of such a spokesperson at the Labour Court have prevented Judge Brière from being put in an awkward situation? And if so, how should the future spokesperson behave in his/her relations with the press?

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[1] Veilleux vs. Urgence médicale Douillette - excerpt published by Le Devoir on March 10, 1990, and entitled "Moyens de pression et conflits de travail" (Pressure Tactics and Labour Conflicts).

1. Legal information and its deficiencies

Before answering these questions, I think we should review some basic notions, even if you are well aware of them:

- in our system, justice should be rendered publicly and with the greatest openness possible (the press can, except in special situations, attend trials and report on deliberations of the court or publish articles on judgements that seem to be the most relevant and interesting);

- freedom of the press requires that journalists respect the public's right to information when deciding what they write about (one judgement rather than another, one item rather than a dozen others); in doing so, they must not give in to any pressures that would jeopardize this freedom;

- the court, on the other hand, must ensure that its independence is protected. This causes many judges to avoid any contact with the press and, obviously, to refuse to comment on or interpret their judgements (judgements are held to be complete in themselves; in other words, they "speak for themselves").

In theory, this is all very nice and all these principles must be protected. But, in practice, the situation regarding legal information is far from perfect.

For example, with the current state of affairs, only a tiny portion of court decisions are ever reported on in the press. This is normal, since the press must choose what seems most relevant from a public interest point of view, and also because space and air time are limited. But the real problem, as Judge Brière put it, is the fact that, since journalists are buried under the "mass of paperwork that makes up such judgements", it is purely "by chance that the public hears about a given judgement", "a chance", he goes on to say, "that is more or less helped along by some journalist's zeal or the intervention of the parties or lawyers involved in the case".[2]

Here is another example: even the most competent journalists often need help in understanding a judgement and its implications, as well as in assessing its scope. When a detailed, complex decision is handed down shortly before the deadline for filing stories, journalists sometimes have less than an hour, not only to learn about the judgement but also to report on it. As a result, they risk either botching their work or using the first available interpretation.

Is this why on May 8, 1988, the former president of the Quebec Bar, Me Serge Ménard, made the following startling statement on the television program "Divergences" of Radio-Canada: "We, in the legal field, are convinced that what is reported (in the press) is completely distorted"?

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[2] Marc Brière, Glasnost judiciaire, op cit.

Is this why only three months later, in August 1988, the Special Committee of The Canadian Bar Association on Imprisonment and Release made a somewhat similar statement at a Montreal conference, saying that the media "was not realistic" in its handling of legal affairs.[3]

Journalists should question themselves in this regard and try to improve their reporting methods rather than simply ridiculing such statements; while they surely deserve to be qualified, they probably point to a very real problem.

On the other hand, the judicial system should be more open and should change some of its outdated practices. In light of this, although the task may be a difficult one, I am willing to bet that the advent of these new court spokespersons will help improve the situation. But, under what conditions?

2. Court spokespersons - the problems involved!

First, there is the problem of grasping a new concept. In preparing this speech, I spoke to lawyers, journalists and even judges, many of whom had reactions, such as: "But, only Chief Justices can speak for the courts" or "There aren't any court spokespersons other than the Chief Justices". I then told them that, to my knowledge, there were already at least two incumbent court spokespersons in Canada - Barbara Murphy at the Court of Queen's Bench here in Winnipeg, and Eugene Meehan at the Supreme Court of Canada.

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[3] Quoted by Rodolphe Morissette in Le -30-, the Quebec journalism magazine published by the Fédération professionnelle des journalistes du Québec (Professional Federation of Quebec Journalists), in February 1989.

After listing the problems inherent to such a task, most ended up by saying that it was probably a good idea.

However, leaving aside the "newness" of the idea, we must also consider some other more important factors.

Just as journalists understand, but nevertheless complain about the silence of judges, the presence of spokespersons, although appreciated at times, risks causing tension. This is because journalists will never trust intermediaries (be they press attachés, public relations agents, etc.) who try to act as a buffer and prevent them from directly contacting the players involved.

Journalists like to deal with people in authority. Spokespersons are classified as "consultants". In administrative terms, they would be called "staff" rather than "line" personnel. Journalists, I repeat, like to deal with people who act, who do something, or who make decisions, rather than people who simplly report on the boss's actions. Proof of this can be found in a survey[4] published in November 1988 by the Fédération professionnelle des journalistes du Québec and based on results of a poll conducted among its members. The first question dealt with the sources of information most preferred by journalists.

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[4] IMPACT Recherche (marketing and communication), study carried out on behalf of the Fédération professionnelle des journalistes du Québec in November 1988.

The survey clearly showed that journalists prefer to be in contact with the players involved (judges, lawyers, defendants and prosecutors all fit into this category) or to have access to documents. Some 70.2% preferred direct contact, while 25.3% preferred to have access to documents. In contrast, only 1.2% preferred to rely on intermediaries such as public relations consultants (the category to which court spokespersons necessarily belong) or press releases.

On the other hand (and this is no surprise), when journalists are asked what sources of information they least prefer, public relations consultants and press releases top the list at 36.2% and 22.2% respectively.

And so, right or wrong, journalists do not like press releases. Fortunately, in the judicial system, there is no question of publishing press releases to inform the public about the contents of a judgement. However, some judges, as was the case with Me Jules Deschênes when he was Chief Justice of the Superior Court in Montreal, prepare a summary of their judgements (one or two pages maximum) and make it available to the press. I know that journalists appreciated this practice. Many spoke to me about it. All insisted, however, that it should be the judge who writes the summary. But several note that many judges refuse to do so, citing lack of time. Some told me that if the practice of writing summaries were to spread, spokespersons would be unnecessary. Others, however, see this as an additional reason for hiring spokespersons: one of their tasks would be to convince judges to write summaries.

3. Limitations to the role of spokesperson

Obviously, spokesperson would have other things to do besides convincing judges to write summaries. Other duties would include:

- answering journalists' questions (giving them the information they need to understand a judgement without having to interpret it);

- bringing to their attention decisions with pedagogical or preventive implications and thus of obvious public interest (while being careful in selecting cases so as to avoid conflicts or rivalry among judges);

- ensuring that journalists have access to the documents they need (testimony, exhibits, etc.);

- intervening politely and with good judgement when errors of fact, etc., appear in a published article.

As you can see, court spokespersons would have to be very tactful indeed.

They would have to be effective communicators, without trying to be in the limelight; they would require some legal training and the ability to form an overview of a situation, as well as knowledge of the various media and how they work. They must be diplomatic and know how to cope with the egotism and competitive nature of judges, especially when deciding which judgements should be published.

In short, since such perfect human beings probably do not exist, it would be a matter of choosing the best possible candidate for the job. And experience shows that former journalists do not necessarily make the best spokespersons for such organizations.

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At the beginning of my speech, I said that justice had to be rendered publicly and with the greatest possible openness. Allow me, in closing, to bring to your attention two situations where such openness does not seem to be evident, two situations that increasingly worry legal reporters and that may be stumbling blocks for future court spokespersons.

- First, there is what we call "plea bargaining". According to Rodolphe Morissette of the Journal de Montréal, "most judgements (more than 80%) rendered today in the penal sector are plea bargained (secretly negotiated without any accepted guidelines), between the lawyers and rivals involved in the various cases; furthermore, these agreements are usually ratified by the judge without comment"[5].

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[5] Le -30-, February 1989.

- And second, there are the hearings of the disciplinary committees of Quebec professional corporations. These hearings have been open to the public since August 1, 1988. Journalists rarely cover these hearings. By the same token, as Michèle Ouimet put it in La Presse on April 30, 1990, "the disciplinary committees do little to help the media carry out their work. For example, few corporations publish a complete cause-list of hearings. This forces journalists to work in the dark, that is, they have to contact the 40 corporations regularly in the hope of finding an interesting hearing".[6] The daily The Gazette decided to take action and instituted court proceedings against the Bar.

  "Le juge", says the newspaper's lawyer, Me Marc-André Blanchard, "must do more than simply tolerate the presence of the media. He must ensure that everything is done to allow free access to the hearing rooms".

Obviously the press (which, after all, represents the public at such hearings) faces major obstacles, and it is far from certain that adding spokespersons would help to remove them.

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[6] Ouimet, Michèle, Little media coverage of hearings of disciplinary committees that do not publish cause-lists. La Presse, April 30, 1990.

But, let's get back to the initial issue: yes, it would be useful to have more spokespersons in the courts in order to avoid awkward situations such as that experienced by Judge Brière; yes, the journalists would appreciate working with these spokespersons provided they are competent, straightforward and clearly aware of the limits of their role.

On the other hand, I am afraid that their presence may provide yet another argument for individuals who are afraid of the press and who hide behind the principle of an independent judiciary to avoid talking with journalists. As Judge Marc Brière put it in a recently published book, "Justice is not a game of hide-and-seek" and "Judges must not use their obligation to be reserved as an excuse to maintain an irresponsible silence".[7]

As for myself, I would say, somewhat in jest, that talking to a journalist is not like talking to a minister. The independence of the judiciary would be better served by openness than by secrecy.

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[7] Brière, Marc, A bâtons rompus sur la justice... et le droit du travail, Wilson et Lafleur Ltée, Montréal, 1988.