

**NOTES FOR AN ADDRESS DELIVERED BY THE
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OF THE SUPREME COURT OF NEWFOUNDLAND
AND LABRADOR, TRIAL DIVISION, TO THE
NEWFOUNDLAND BRANCH OF THE CANADIAN
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NEWFOUNDLAND HOTEL, ST. JOHN'S, NL**

JUDICIAL INDEPENDENCE AND THE FINANCIAL SUPPORT OF THE COURT

Today, I would like to give, as my address, a more elaborate version of the "state of the courts" comments which I made at the opening of the court last September. Alas, I cannot. Troubling developments require that I speak to you on another topic that I have no particular desire to address but about which my responsibility as Chief Justice requires that I nevertheless speak.

You know, going to the bench can be like entering a monastery, in more ways than one. Like Trappist monks, judges are no longer permitted to speak publicly. The sole exception for the Trappists is the abbot. The Chief Justice is to his or her court as the abbot is to his monastery: the one who must speak for the whole outfit.

And, while each monk is responsible for his daily devotions - as is each judge for the cases he or she hears and decides - it is the abbot (or the Chief Justice) who is responsible for the operation of the institution. That burden is mine, even if like the abbot, I'd prefer to be about my daily devotions.

Before getting into the specifics of my comments, however, I do wish to take this opportunity to express publically my appreciation to the Newfoundland Branch of the Canadian Bar Association for the interest which you have shown in the importance of promoting awareness of the notion of judicial independence and the role which judges and the courts play in a democratic society. The initiative taken by your association in bringing the program, "Judicial Independence: What it Means to You" into the school system is an important one and I hope that it will continue to be pursued and developed, perhaps in partnership with the Canadian Superior Court Judges Association and other bodies who also have an interest in this topic.

In addition, I would also like to express appreciation to your President, Ms. Janice Byrne, and your executive for the efforts that they have undertaken during the past year, through press releases and public comment, in raising the level of public discourse about the role of judges in controversial decisions and identifying the constraints under which they act. It is comforting to know that when judges and their decisions become the subject of public comment and criticism, there is a body like the Canadian Bar Association which is concerned to ensure that legitimate public criticism be informed and measured.

Let me turn now to the subject at hand. "Judicial Independence and Financial Support of the Courts" is my topic. It might just as well have been entitled "The Courts on a Shoestring". The two are closely related. To put it simply, court operations have expanded and financial support has been reduced. Everything is operating on a shoestring.

The thesis that I am putting forward today is that the manner in which the court is funded and administered does impact on judicial independence and that we - judges, lawyers and justice officials who are major stakeholders in the court system (indeed, I have said on other occasions we are the trustees of the system) - ought to be concerned about this. My proposition is that there are at least two aspects of court funding and administration that potentially impact on judicial independence, and hence on the ability of the court to fulfill its constitutional function properly. They are: first, the levels of the funding provided to the court to enable it to do its job; and secondly, the method by which funding levels are determined and administered.

The greater the degree of control, both financial, administrative and otherwise, exercised by the executive over the administration of the courts, and the more the courts do not receive sufficient funds to be able to do their job properly, the greater is the risk that judicial independence will be compromised.

In wading into this subject, I am, of course, aware that my remarks may be perceived as straying outside the realm of legitimate judicial comment and into the area of public policy, which is usually the domain of the executive branch of Government. Nevertheless, matters about which I propose to speak are, in my view, so closely connected with the proper operation of the court system that I believe it is my responsibility, as the “abbot” of the institution, to speak on behalf of the court of which I have the honour to hold the office of Chief Justice. Lest I be misunderstood, I am not purporting to assume a role of telling the Government of the day how or where to spend its limited resources or how to set its priorities for meeting competing social needs, I do regard it as my responsibility, however, to highlight the needs of the court system and to raise questions about how one should go about ensuring that the court system fulfills its proper function.

I suppose one might question the utility of engaging in a discussion of the spending of public money in light of the recent comments by the Premier about the very difficult financial situation which this province faces. In light of all of the other important claims on the expenditure of limited public funds, one might be tempted to throw up one’s hands in despair in the expectation that expenditure on the Supreme Court, which represents only 8/100ths of 1% of the total provincial budget, should receive very much attention. Nevertheless, one could say the same about any area of government expenditure which is dwarfed by the costs associated with the social demands for such major areas as health care and education. Indeed, as the Honourable John Crosbie pointed out in an article in last Saturday’s Telegram, 80% of total government spending is taken up by the budgets for

health, education and the public debt¹. Yet, I would suggest to you that it is just in such circumstances when discussion about the proper funding of other areas of government expenditure becomes all the more important, lest those other, but nevertheless significant, areas fall off the radar screen altogether.

Despite its relatively small claim, proportionately speaking, to the provincial budget, it is trite to say that in a democracy such as ours, it is absolutely essential to have a properly functioning, accessible, efficient and fair court system. Access to the court system is one of the bases of social stability so that disputes may be resolved by application of law rather than by force or other types of self-help by frustrated or disgruntled individuals who feel their views are not being heard and have nowhere else to turn. The provision of such a court system, of course, does not come without cost. Since judicial independence is a fundamental part of a properly functioning court system in a democracy such as ours, it can therefore be said that judicial independence also has a cost.

If things go as they have in the past, for reasons I shall explain shortly, we can anticipate further cuts to be made in the court system. Beyond a certain point - and we are very close to it - this would degrade and then impair the operations of the courts. That would undermine the right of citizens to have their cases heard in a reasonable time.

I hasten to add, I am not speaking about the situation of the judges. Supreme Court judges are appointed and paid by the federal government. They will continue to sit, hear cases and render decisions as best they can with the facilities available, whatever financial decisions are taken by the province. But, it is the province that pays for the court staff, buildings & supplies.

Here are some recent examples of where things are already starting to degrade.

- First, there is the Supreme Court Registry in Gander. Access to the registry is essential to conduct business through the courts, to commence an action, to defend an action, to review documents on file, a myriad of things. Last fall, the position of assistant deputy registrar - the senior position in the judicial centre - became vacant. Because of a general hiring freeze, the provincial government refused to fill the vacancy. Now, the registry must be closed when court is

¹John C. Crosbie, "Co-operation is the key to deficit reduction", The Telegram, January 24, 2004, p. A-11

sitting, as the two other court staff are often in court when it sits. What will happen if the assistant deputy registrar leaves in Grand Bank or Grand Falls-Windsor or Happy Valley/Goose Bay, for example? Will their registries close, as well, when the court is sitting?

- Second, there is the Unified Family Court based here in St. John's. The court counsellor position became vacant. Again because of the hiring freeze, the provincial government refused to fill the vacancy. Now, UFC operates even more shorthanded in seeking to counsel people going through the double stress of litigation, as well as family breakdown. And, what will happen if other positions in the social arm of the court become vacant?
- Third, there is the law clerk position in the Court of Appeal. There used to be two law clerks for the six judges. (In many courts of appeal, each judge has a clerk). With help of the two clerks, the court was able to clear up a serious backlog. One of the law clerk positions became vacant. If the government fails to fill that vacancy will the court's backlog rise again? And, what will happen when the second law clerk's position (which is a term contract position) becomes vacant?

Take these recent examples. Extend them across the system. What positions will become vacant next? Continued attrition will degrade, then impair the operation of the courts. Remember, I am not speaking about the self interest of the judges. That is not affected. What is affected is the ability of the courts to serve the public.

As I have said, two things interact here: first, what decisions are made affecting the financial and administrative support of the court; and second, how those decisions are made. Hovering over these specific questions is the general question as to how this impacts of judicial independence.

This is not the time for a general dissertation on the scope and importance of the notion of judicial independence. I know I am preaching to the converted. However, it is important to reflect for a moment or two on the notion of administrative independence as a sub-set of judicial independence.

We know from decisions of the Supreme Court of Canada that the notion of judicial independence encompasses both individual and institutional dimensions. Justice LeDain in the **Valente** decision put it this way:

"The relationship between these two aspects of judicial independence is that an individual judge may enjoy the essential conditions of judicial independence but if the court or tribunal over which he or she presides is not independent of the other branches of government, in what is essential to its function, he or she cannot be said to be an independent tribunal."²

The importance of administrative independence, as with all aspects of judicial independence, is that it is, as was stressed in the **Mackeigan** case, the underlying condition of judicial impartiality³. Chief Justice Lamer wrote in another case:

"The overall objective of guaranteeing judicial independence is to ensure a reasonable perception of impartiality; judicial independence is but a "means" to this "end". If judges could be perceived as "impartial" without judicial "independence", the requirement of "independence" would be unnecessary. However, judicial independence is critical to the public's perception of impartiality. Independence is the cornerstone, a necessary prerequisite, for judicial impartiality."⁴

It is fundamentally important, therefore, that judicial independence, both in its individual and institutional dimensions, be preserved and fostered. Institutional, or administrative, independence relates, as we are told in **Valente**, to matters of administration bearing directly on the exercise of the judicial function, including assignment of judges, sittings of the court and court lists and related areas such as the assignment of courtrooms and the supervision of administrative staff responsible therefore. It is fundamentally important, therefore, that the relationship between the court and the executive with respect to financial and administrative matters be such that these aspects of judicial independence be not put in a position where they could be compromised.

²**Valente v. The Queen** [1985] 2 S.C.R. 673 at 687

³**Mackeigan v. Hickman** [1989] 2 S.C. R. 796 at 826

⁴**R. v. Lippe** [1991] 2 S.C.R. 114 at 139

How then do these general principles impact on the operation of an accessible, effective and fair court system in this province?

Let us now come back, for a few moments, to the first of the issues I identified - the adequacy of the current level of financial support of the court and its implications for the required level of its operational responsibility. Remember, unlike hospitals which, if forced to, can decide to close beds or wards, the courts must remain open. We cannot refuse to accept statements of claim and indictments and we must provide a hearing within a reasonable time.

It is worth remembering that the court system we have today is very different in shape from that which existed 40 years ago. Recently, one of the court staff members showed me a Supreme Court calendar for 1964 which set out when, during the three terms of the court, civil and criminal cases would be heard. In those days, there were only two courtrooms and only seven days per month were allowed for civil cases and the same number for criminal cases. That meant that there were only 42 total sitting days per term for civil and criminal cases.

To anyone who practices in the court in St. John's today, there is, of course, a very different picture. Since 1964, there has been the merger of the District and Supreme Court, the creation of the Unified Family Court and a general increase in the number of courtrooms that are available. Even in the last year or two, we have created a much more functional courtroom number 6 in the St. John's courthouse and we have created a third courtroom of sorts at the Unified Family Court. The services provided by the court have expanded since 1995 to include pre-trial conferences and the provision of judge-assisted settlement conferences in 80% of all civil cases. Similar services are provided in the other five judicial centres throughout the province.

From the latest government Estimates⁵, it appears that the total cost of the provision of all of these justice services throughout the province is a little less than \$3.7 million. When one applies against that, the approximately \$1.3 million actually generated over the past year by the court in filing fees, estate administration and such other revenue sources as the extortionate \$1 per page photocopying fees, the net cost to the provincial government (excluding, of course, judges' salaries and related travel, which are paid by the federal government) is approximately \$2.4 million. That represents, as I have said, approximately 8/100ths of 1% of the total provincial government budget and it also represents only 2.6%

⁵Estimates 2003, p. 209

of the total Justice budget. For that amount, Supreme Court judicial services are provided throughout Newfoundland and Labrador either through resident judges in the various judicial centres or by circuits.

It is worth looking at the cost associated with other government administrative and quasi-judicial agencies:

Office of the Child and Youth Advocate	-	\$700,000
Office of the Auditor General	-	\$2,485,400
Office of the Citizens' Representative	-	\$413,300
Workplace Health, Safety and Compensation Review Division	-	\$700,200
Human Rights Commission	-	\$362,900
Labour Relations Board	-	\$635,700
Office of the Medical Examiner	-	\$458,300

Thus, for a little over three times the amount spent on the Office of the Child and Youth Advocate, for example, the Supreme Court provides justice services, using 75 employees, at eight locations throughout the province. It is also worth noting that the degree of control exercised by the Child and Youth Advocate, the Auditor General and the Citizen's Representative over their respective budgets, and hence the degree of administrative and managerial flexibility they have, is considerably greater than that exercised by the Supreme Court.

I make this comparison, not in any sense to denigrate the value of these other agencies or to criticize their operation, but simply to demonstrate that the court, in performing its fundamental constitutional function, gives good value for money to the citizens of this province.

The question all of us need to ask, however, is can the court, in the current fiscal environment, continue to maintain this service at its current levels and, in any event, is that service adequate or in need of enhancement?

Over the past 10 years, the court has increased the services which it has provided, in terms of the number of courtrooms available and additional services such as settlement conferencing, but has had to do it in the face of continuing fiscal restraint. In 1995, the total permanent staff on the Supreme Court was 93. Today the number is 75 - a 20% reduction. Over that time as well, there has been a 32% reduction in absolute terms in comparative

expenditures on transportation and communications, supplies, professional services, purchased services and property and equipment within the court system. I am told that over the same period, generally across government, expenditures (other than health) increased in absolute terms by about 12% while in health they increased by over 50%. Despite this the court is expected to continue to function on a daily basis notwithstanding the increased demands on it. For example, there has been over the past two years over a 40% increase in the number of proceedings commenced in the court. In addition, because of the changes in the nature and volume of the work, the court's support service staff have had to become more professionalized - their work can no longer be characterized as merely clerical. Yet, the budget allotted to the court has provided for virtually no professional development and training for court staff, especially administrators.

The increased demands on the system are beginning to take their toll, in terms of increased stress and decreased morale. Could it be that this is manifesting itself in increased usage of stress and sick leave? An alarming statistic is that the number of sick leave days taken by court staff in 2002-03 increased to 1029 from 440 in 1998-99 - a 134% increase.

It always amazes me how the system somehow manages to continue to operate when the chips are down. I have said before and I say it again, in many ways the system operates in spite of itself - mainly because of the dedication and commitment of the long serving staff who frequently "go the extra mile" without concern for the technicalities of job descriptions, to ensure that litigants get their day in court. How long, however, can one expect a system to operate on the goodwill of an overworked and underappreciated staff?

Now, often when one talks of spending money on the court, the image that is conjured up is of expensive oak paneling in courtrooms, quality furnishings and perks of office. I am not talking of those things. What I am concerned about is the things that really matter - basic things like enough staff in the Registry, photocopiers that work and proper training for staff.

No doubt, the reaction to the many legitimate claims for special consideration with respect to policies of fiscal restraint is that the government "has no money". Indeed, since I have held the office of Chief Justice I have heard that refrain uttered many times whenever I have suggested any initiative that might have, even indirectly, financial implications. Of course, the assertion that the government "has no money" is not technically correct. The government has an annual budget of over \$4.2 billion. What is really meant is that the government does not have enough money to do everything that is asked. That of course is always the situation. Have we ever heard of a government which has enough money to do everything it wants to do? The real issue, therefore, is not whether the government has

money but how it should set the priorities for the spending of the limited resources that it has.

Now, with respect to the importance of the court system in the setting of those priorities, it has often been said that "there are no votes in justice", presumably as a justification for placing justice issues low on the priority list when compared with the claims of such important expenditures as health and education.

Strictly speaking, of course, if the priority setting process simply involved making choices on the basis of operating rooms versus courtrooms, one would expect that in each such contest, operating rooms would invariably win out. On such an analysis, that would be a recipe always for failing to fund the courts. The matter, however, is not so simple. There are certain constitutional and legal constraints that require the government to engage in a different priority setting analysis.

It is an inescapable fact that the provision of courts for the adjudication and settlement of disputes between citizens and the state and between federal and provincial divisions of the state is an essential core element of government. Government in our province and country, indeed in every modern state, consist of three separate but complimentary functions - the legislative, the executive and the judicial. The legislature makes the laws. The executive implements them. And the judiciary adjudicates disputes in the interpretation and application of those laws. The courts are not a sub-unit of the Department of Justice. A democratic state as we know it requires all three functions. The courts have no privileged place among these three branches of government, but nor should they be discriminated against or overlooked in funding decisions.

The provision of each of those functions requires the expenditure of public funds. That is an inescapable reality. There is an irreducible minimum level of support without which an institution like a legislature, a Cabinet or a court system cannot function effectively and properly.

The House of Assembly must meet, debate and decide the laws. The executive - that is the Cabinet - must meet, deliberate and decide policies to implement those laws. The courts must hear cases to adjudicate the interpretation and application of those laws. All of this is so basic and fundamental that one might be forgiven for questioning why it needs to be said at all; yet, it is important to recognize that the performance of these basic functions does not happen unless practical measures are taken to give them effect.

The legislative chambers must be adequate to accommodate its members. There must be clerks to maintain its records and secretaries to support its operations. There must be persons to ensure its meetings are not disrupted. So, too, must it be for the Cabinet. As a body, it also cannot operate without proper administrative support in the nature of adequate staff, facilities and supplies. So too must it be for the courts. Staff and other necessities must not be denied to the House of Assembly, nor to the Cabinet. And, they must not be denied to the courts. Just as we need a properly functioning legislature and executive to ensure that we have potential for proper law making and good government, so also do we need a properly functioning court system to ensure the potential for accessible and timely justice for all citizens.

Basic needs must be met to carry out each of the legislative, executive and judicial functions. This is a constitutional imperative. The expenditure of public money to ensure the proper operation of the legislature, the cabinet and the courts falls into a different category of expenditure from all other expenditures no matter how socially necessary or desirable.

How then can we ensure that the irreducible minimum level of support for the courts is provided? That brings me to the second issue to which I have earlier referred - the method by which the level of funding is determined and administered.

Various models for court administration exist across Canada. This province operates under what has often been described as the “executive model”. The Minister of Justice, acting through his department, controls staffing and administration - everything except decisions like setting the court docket and assigning cases, which I decide.

In turn, the Minister and the Department of Justice are subject to the decisions of Treasury Board, which controls expenditures, staffing levels and administration across government. For all these purposes, the courts are treated as a sub-unit of the Department of Justice. What is done to the department is done to us. Why? Because in the eyes of the Treasury Board the courts are a sub-unit of Justice. Freeze staffing across government? Then, freeze it in the courts. Cut expenditures by x%? Then, cut the courts by that percentage, too. General decisions often apply to all units of government. If you want a dispensation, then you must apply. Such an application is looked upon with considerable scepticism and almost a breach of faith with respect to the restraint policy.

Now, that’s a problem. Applying to government for a dispensation from the general rules - because otherwise the court system will start to break down - is problematic because

government is the single largest litigator before the courts. The Crown is prosecutor in criminal cases, it is often defendant in civil cases and frequently it is a party in administrative law cases.

Who makes the decisions on behalf of the Crown? The Minister of Justice, supported by his department. Who else? Sometimes Treasury Board plays a role. Who is it the Chief Justice must seek to persuade to provide resources so the court can operate properly? The Minister of Justice, his department and Treasury Board.

Having said this, I must also say there is no actual interference with the independence of the judiciary. No doubt, everyone seeks to do the right thing, according to how they see their responsibilities. But, appearances are getting rather tangled. That should be avoided.

There is something unseemly about the Chief Justice having to seek financial favours from the government in order to ensure that the court continues to operate at the same time as it is supposed to be impartially adjudicating cases in which the government is involved. This point has been made by many others over the years. For example, the Hon. Michel Robert, Chief Justice of Quebec, who in fact in this context has been quoted as describing himself as the “Chief Beggar” instead of Chief Justice, put it this way:

"The current situation obliges Chief Justices to wheedle services out of the Department of Justice, which has to decide whether a request is reasonable. This is healthy neither for the Executive nor for the Judiciary."⁶

There may be other and better ways of doing all of this.

As I have already noted, the Executive model of court administration is not universally operative in Canada. Other models exist. For example, the Ontario Court of Justice - the equivalent of our Provincial Court - has negotiated an agreement with the Ontario Government which provides for greater and more flexible budgetary control by the court with the Chief Justice being responsible for effective and efficient management of the court, including human relations for staff under his direct control. A similar degree of fiscal flexibility is exemplified by the Alberta Court of Appeal which has achieved similar

⁶The Lawyer's Weekly, September 5, 2003, “Quebec’s Chief Justice will seek control of court administration”, p. 8

budgetary control without the necessity of the signing of a formal written agreement. There, the Court Registrar, in consultation with the Chief Justice, prepares three-year operational plans which include proposed budgets and the Chief Justice has control over budget expenditures through the Registrar. The Minister of Justice reports to the Legislature on the budget estimates and sets the overall court budget.

This is not the place to go into a detailed discussion of all of the various models of court administration that exist. Suffice it to say that there are others. For example, the new Federal Courts Administration Service Act, adopted by the Parliament of Canada sets up another new and interesting model for the Federal Court of Canada and the Federal Court of Appeal. Other models where there is a great deal of self administration by the court exist in the United States and Australia.

The executive model of the Newfoundland and Labrador type does have similar counterparts in some other provinces, for example in New Brunswick. But even there, mechanisms have been established for more formalized consultations between the executive and the court to determine the court's operating needs. As I understand it, in New Brunswick a court management committee composed of Chief Justices, the Deputy Minister and Assistant Deputy Minister meets and advises the Minister on court administration matters.

This question of the administrative and financial relationship with the Executive is a matter of concern right across this country. Each model has its difficulties; yet some may be better than others. They are all worthy of study. The Canadian Judicial Council is presently sponsoring a study into this very subject. The results of that study may be available within a year from now. It behooves all of us - judges, lawyers and justice officials - to consider the analysis contained in that study - and in other discussions of the subject - with a view to determining the best model for our local situation. The trick is to adopt an appropriate model which allows for proper levels of administrative support for the court in a manner that preserves judicial independence, while at the same time maintaining accountability for expenditure of public funds.

In considering these questions, we must, I suggest, ask ourselves the question: given the unique place of the courts in our democratic system of government, is it reasonable to expect that the proper funding of the court's basic needs will be properly considered and met in a system that treats the courts as just another sub-unit of a government department and subjects it to the same fiscal policies and budget-setting methodologies that it purports to apply to other aspects of government operations? Perhaps, just perhaps, there may be some more appropriate methodology that could be employed with respect to the determination and

satisfaction of the proper basic needs of the court.

I want to stress that I am not advocating complete unrestrained spending on the part of the court system without reference to the fiscal realities of the province. We are all aware of the Price Waterhouse report on the current fiscal situation. Measures to deal with that situation are, of course, for the legislature and the executive to decide. Nevertheless, whatever decisions are taken, the institutions of democracy - the House of Assembly, the cabinet and the courts - must continue to operate properly and effectively, no matter what the financial situation. Our constitution requires it. Our citizens need it. We are penny wise and pound foolish to seek any other course. What I am suggesting therefore is that focus on the funding of the court should be undertaken from a new and different perspective. There may be better ways to ensure that the courts are properly funded while at the same time preserving the important values that underlie the system and also taking into account the need for fiscal restraint.

So, what should be done in the immediate future? In my view, four things:

1. There must be an attitudinal change on the part of governmental officials, including Treasury Board, with respect to their understanding and appreciation of the role which the courts play in our democratic system and the necessity for sufficient basic funding to ensure they can perform their specific constitutional functions. By that I mean, recognizing that the Supreme Court is not simply a sub-unit of the Department of Justice, and recognizing that there should be different (not necessarily preferential) consideration given to how fiscal restraint and other policies should be applied to the courts, rather than treating the courts in the same way as other government departments and agencies.
2. There should be a commitment to close consultation on budget process for the court, separate from the Department, with a view to addressing some of the deficiencies that I have noted and with a view to getting input from the court as to the impact which proposed restraint measures might have on the court system. For example, if it were contemplated that filing fees should be substantially increased or courtroom usage should be charged back to litigants, those issues have an impact on access to justice, a matter with which the courts are directly concerned. They extend beyond simply fiscal ones.
3. A start should be made on the development of a long term plan for the accommodation of the courts in St. John's, with a view to achieving efficiencies in

this area. Even if we are ten years away from making such an idea a reality, the planning should start now.

4. Steps should be taken to commence a reconsideration of the appropriate model of court administration that should operate in this province so that the long term independence and financial health of the court system will be assured. I recognize that choosing an appropriate model of court administration is not an easy task. There are those who take the position that the sooner the courts can achieve administrative and financial autonomy the better. In my view, simply downloading responsibility for administration onto the shoulders of an already overworked court staff to deal with the fiscal realities within the existing inadequate budget is not a fix for our problems. The first thing that has to happen is a determination of what is the appropriate level of financial support that should be accorded to the courts. Once a proper level is identified, then such questions as administrative autonomy can be addressed in a serious way.

As a first step, therefore, we should be asking ourselves whether existing funding support is indeed appropriate. For example,

- is it appropriate not to continue to provide proper funding for law clerks in the Court of Appeal, thereby jeopardizing the gains made by that Court with respect to clearing up of its backlog of cases?
- (if I could speak out of self-interest) is it appropriate that the Chief Justice of the Trial Division not have at his disposal a law clerk - Virtually all other Trial Division Chief Justices in Canada have one- thereby requiring the Chief Justice to devote significant more time to matters of legal research relating to court administrative matters?
- is it appropriate for the Department of Works Services and Transportation to charge back the cost of court building maintenance to the Supreme Court without making provision in the court budget for the estimated cost of such items in the first place, thereby jeopardizing the ability of the court to provide other court services?
- is it appropriate for the Department to discontinue funding for the upkeep of all law report series (except the Nfld & P.E.I.Reports) in the Judges' Library for the Court of Appeal and the Trial Division and for it to supply textbooks

on the basis of provision of outdated editions when new editions are obtained (and retained) by the Department of Justice library, thereby jeopardizing the ability of the courts to properly research and apply the law?

- is it appropriate that when a lease of space like the Fagan Building is renewed at a higher rent by a decision arrived at presumably between the Department of Justice and the Department of Works, Services and Transportation, that the increased rent is just expected to be picked up out of the existing court's budget, thereby reducing the amounts available for other things such as supplies, travel and training, instead of increasing the court budget accordingly?
- is it appropriate to apply a government-wide hiring freeze to positions like the Assistant Deputy Registrar in a three person judicial centre, thereby jeopardizing the proper operation of the Registry?
- is it appropriate to continue to employ people in key positions in the court, as temporary employees (we have at least 8 of them - 10% of our workforce) rather than making them permanent, thereby jeopardizing the performance of vital court functions in the event that temporary positions are done away with or the persons occupying those positions move on to other jobs because of lack of job security?
- is it appropriate that the court not be provided with videoconferencing facilities to improve access to the court when money for such facilities for other government agencies, like Treasury Board itself, can apparently be found?
- is it appropriate that little or no money is made available for proper training of court staff, thereby jeopardizing their ability to respond to the increasing professional demands of their position, resulting from increased workloads and changes in court rules and procedures, when professional training appears to be provided for in many government departments?
- is it appropriate that the court not be provided permanent dedicated technical expertise in information technology and other fields so that the court can improve its systems and obtain statistical and other information about its operations so that appropriate cases can be made to the funding authorities for

the development of improved management systems?

- is it appropriate for a government-wide hiring freeze to be applied to the filling of a court counsellor position in the Unified Family Court, thereby jeopardizing the ability of the court to fulfill its social function in providing counselling and other social services to people suffering separation and divorce?
- is it appropriate to continue to reduce staff in the Registry without a proper analysis of what is required, thereby jeopardizing the ability of the court to continue to operate all courtrooms as demand requires?
- is it appropriate to continue to maintain a three tier system of family justice in the province with the Unified Family Court on the Avalon and Bonavista Peninsulas, a community based family justice service system on the west coast and in parts of central Newfoundland and nothing in the rest of the Province?

I could go on. These are but a few of the very basic and fundamental questions that must be answered before one can sit back with satisfaction and say that we have a court system that meets the minimal level of functioning capability that is required to provide an adequate system of accessible, effective and fair justice.

These are challenging issues. They do not admit of easy or overnight or knee-jerk solutions. They require careful analysis. The current Minister of Justice and Attorney General is, I am sure, also concerned about these matters. I had the pleasure of working with him for a significant number of years when we both served on the now defunct Newfoundland Law Reform Commission. I believe him to be a thoughtful and reform-minded individual. He and his government colleagues of course face many challenges that extend well beyond the court system to other aspects of justice such as policing and corrections. Yet I am hopeful that he will listen, and advocate on the court's behalf, so that its legitimate needs, to ensure its proper functioning and the preservation of judicial independence, will never fall off the radar screen.

There you have it. Those are my views. As Chief Justice of the Trial Division, my deep and abiding concern must always be that the court fulfills its responsibilities. The right of citizens to have their cases heard and decided within a reasonable time must not be denied. That is the reason why I have spoken to you on these matters today.

“Judicial Independence and Financial Support of the Courts”, as well as “The Courts on a Shoestring” have been two sides of the coin in my address. I have spoken on this topic because I feel that I must. I have spoken to the profession, because I expect you will understand. I hope government will understand, as well.

Thank you for listening.