

**COURTS ON TRIAL  
IN PURSUIT OF QUALITY  
AND EXCELLENCE**

A PAPER DELIVERED TO THE  
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## **COURTS ON TRIAL**

### **IN PURSUIT OF QUALITY AND EXCELLENCE**

#### **I. INTRODUCTION**

Almost every Canadian knows we are becoming a global economic community. It is no longer possible to succeed in business by simply producing a better product or providing better service than the competitor next door. Now, we must be better than every competitor in every other country. That stark fact is driving most Canadians to produce a higher quality of goods and services or risk insolvency.

Behind these economic reforms is a realization that the old structures of doing business are no longer adequate. Progressive companies and institutions understand that reorganizing the way in which they manage their affairs is the key to competitive success. Compared to 50 years ago, we now have a better educated work force. In turn Canadian customers expect a higher quality of goods and services than they received in the 1950's. No longer can a manager simply send written directives to the people on the factory floor and expect instant response in the form of improved quality and efficiency. If shoddy goods are put on the shelves they will remain there while customers go elsewhere. Today, it is necessary

to consult with the employees and carefully chart the needs of the customers. Anyone who neglects these truths will not remain in business for long.

By way of contrast, the organization of our court systems continues on in much the same way as it did in the early 1950's. First, a trial takes place in the superior court. Then there is an appeal to the provincial Court of Appeal sitting in three person panels. Finally, there is an appeal to the Supreme Court of Canada. Apart from a few rule changes here and there, the way in which a case is handled follows much the same path in 1990 as it did in 1950. Yet, there have been enormous changes in society in the last 40 years. In my submission the organization of the courts has failed to keep up with these changes.

Both court structures and court administration are mysterious subjects to the average lawyer or layperson. Little attention is paid to them by law reform commissions. Legislatures seem pre-occupied with other more pressing political issues. Ordinary judges and lawyers are too busy deciding cases and too busy trying them to pause and consider what structural and administrative changes are necessary.

Stagnation in our court structures and our methods of court administration arises partly because the justice system is a

monopoly. As there is no other place a citizen can go to get justice, the courts are not affected by competition. They can run their lists any way they like and ignore complaints if they so choose. It is also partly because judges and lawyers by their training tend to look backwards before deciding whether they should go forwards. Unless there is a precedent for a new idea it is a hard sell in the legal community. But clinging blindly to the concept of precedent in the administration of justice can stifle progress.

The theme of this paper is that courts should change with the times. They should be particularly sensitive to their monopolistic position. New ideas should be encouraged. Pilot projects should be tried. Courts should be restructured to serve the citizens more efficiently. In particular, judges, lawyers, legal academics and members of the community should consult with one another in an attempt to achieve the highest quality of justice at the lowest possible cost.

British Columbia can become the model of excellence in all aspects of the law. That includes our legislation, our judicial administration, our law schools and the proficiency of the legal profession. Every part of our legal system should be under continuous examination to see if it represents the best we can possibly do. Comparison with other jurisdictions is an essential

ingredient in this plan. We should not be too proud to borrow ideas from other court systems. While quantity is a major factor, it should not dominate the system as it now does in B.C. Rather, the quality of service should come first. Following are some ideas that may help achieve this goal.

Comments on the American method of court organization and court administration come from my own research and from personal interviews with American judges and lawyers. Since there are 50 separate states and 13 different U.S. Federal Court Circuits, it is impossible to accurately describe the whole of the American practice and procedure in a paper such as this. In other words, there may be variations between the states and the Federal Circuits that differ from my understanding of American practice and procedure.

## II. REORGANIZING THE CANADIAN COURT SYSTEM

The organization of our court structures is much the same as it was in the 1930's, except we have abolished appeals to the English Privy Council. To meet the challenges of the 1990's and beyond, we should restructure the jurisdiction and administration of our courts along the following lines.

## 1. The Supreme Court of Canada

The Supreme Court of Canada is no longer the court of last resort for almost all civil actions. Very few civil cases ever receive the necessary leave to appeal to the Supreme Court of Canada. Primarily this is because they do not raise issues of national importance. Besides that impediment they can be very expensive and time consuming appeals for those litigants who are not close to Ottawa. Despite the best intentions, the Supreme Court of Canada does not have the time to adequately supervise the development of Canadian civil law. At most, it can only hear cases that represent a very small sample of Canadian civil law. The idea that it would have the time to properly oversee the growth of the civil law in Canada comes from a much less litigious era.

We should recognize this reality and make provincial courts of appeal the courts of last resort for all civil litigation. To accomplish this goal, I recommend that:

- The Supreme Court of Canada should only hear appeals dealing with constitutional matters and the interpretation of federal statutes.
- There should be no right of appeal from provincial courts of appeal in civil matters.

## 2. Provincial Courts of Appeal

Practically speaking, provincial courts of appeal are the courts of last resort for almost all civil cases in Canada. Leave to appeal a civil action is rarely granted by the Supreme Court of Canada for the reasons set out above. Independently of one another and the Supreme Court of Canada, provincial courts of appeal are in fact shaping the civil law in their respective provinces. But they are doing so in panels of three. Sometimes, important legal principles are determined by a majority of two appeal court judges. That is an unsatisfactory structure for a court of last resort. Just as the Supreme Court of Canada does not sit in panels of three as a court of last resort, neither should provincial courts of appeal sit in panels of three on civil matters where it is the court of last resort.

- Provincial courts of appeal should be reconstituted so they are composed of a total of five or seven persons. These five or seven judges should sit together to hear all appeals.
- They should become the courts of last resort for all civil actions heard in provincial superior trial courts.



- Leave to appeal to this five or seven person body should be necessary for all appeals except in constitutional matters and the interpretation of federal statutes.

### 3. Intermediate Courts of Appeal

Under this scheme, there would be a limited right of appeal to the five or seven person provincial Court of Appeal. Therefore, an intermediate appeal court is necessary where one can appeal a trial decision as of right.

To meet this ideal, the superior court of each province should be composed of a Trial Division and an Appeal Division. This would give litigants at least one appeal as of right and another appeal by leave.

Therefore, I recommend that:

- Where the amount of litigation warrants, appeal divisions of the superior court trial courts should be established to hear appeals from the trial divisions.
- These intermediate courts of appeal should sit in panels of three.

- Their members should be drawn from the trial divisions for a three-year term. After serving this term, the judges would return to their respective trial divisions to sit as trial judges until their turn comes up again.

- In exceptional cases, there would be a right of appeal directly from the trial court by leave of the five to seven person appeal court.

### III. CIVIL PROCEDURE REFORMS IN BRITISH COLUMBIA

Following are three procedural reforms that should improve the administration of justice on the civil side of the law in British Columbia. One relates to Third Reading Chambers and the like, the second deals with a proposal to dispense with reasons for judgment in personal injury actions and the third recommends the adoption of the pattern jury instruction system for civil juries.

Despite advancements in modern business practices and legal procedural reforms in other jurisdictions, the way in which a case is presented by counsel to a British Columbia trial judge has changed very little in the past 100 years. I can only think of three things that have helped to improve the process. They are:

- (a) Instead of reading case law to the judge from the bound volume containing the published report, the photocopy machine now allows counsel to provide the trial judge with a photocopy of the case so the judge can more easily follow the argument.
- (b) Instead of filing one copy of a written exhibit, the photocopy machine now allows counsel to file several copies of each written exhibit so the judge or jury can have a copy of their own.
- (c) In addition to lengthy oral submissions, counsel occasionally submit a written outline or brief of their argument. My best estimate is that counsel present written chambers briefs in about 10% of all contested chambers applications: written trial briefs in about 5% of all civil trials and written closing briefs in about 3% of all trials.

To be sure, there have been many procedural changes that have reformed the process in getting to court. But, little has changed in the way we conduct a trial, once the trial actually starts. Notwithstanding the increased complexity of the law and the avalanche of litigation, judges and lawyers plod along in much the same way they did in the late 1800's. The following suggested

reforms are intended to bring this area of British Columbia practice into the 20th century before we arrive at the 21st.

# 1. Second and Third Reading Chambers

## (a) Introduction

We continue to search for a solution to the unsatisfactory method of handling contested application in Second and Third Reading Chambers. Litigants must now wait up to six months before they can get before a judge for the hearing of an application that is going to take longer than two hours. Where there are contested applications that may take less than two hours to present, counsel for the applicants often spend hours and sometimes days waiting around the courthouse before they can be heard. Many of these applications raise contentious and difficult issues for the presiding judge. They often take more judicial time to consider than the ordinary three or four day trial.

Almost all chambers applications in our court come to us in the form of an appeal. Since no witnesses testify, and all the evidence is by way of affidavit, a judge is not assessing credibility. There is no need to persuade the judge as to what witnesses the judge should or should not believe. Thus, argument

is confined to extracting the relevant facts from the affidavit material and applying the applicable law.

When counsel elect to rely on oral advocacy, most usually read from affidavits or from photocopies of cases and interpose a few comments. Too often, the submissions are inarticulate, disorganized and off the point. There is little room for eloquency on most chambers motions. Finally, the effectiveness of oral advocacy depends in large part on the note taking habits of the presiding judges or the ability of the judge to remember what was said. These can be weak reads for counsel to rely upon.

On the other hand, some counsel now present written chambers briefs. That happens in about 10% of contested applications. Because counsel has necessarily put more effort into his or her argument by adopting this technique, it is usually more to the point, better organized and hence more effective. But the trouble with the present informal method of written briefs is that they are not responsive to the argument made by the other side because briefs are not exchanged before the hearing.

Most chambers applications could be decided on the basis of written briefs without oral submissions. Except in special cases, there should be no need for counsel to appear. Nor should it be necessary for the chambers judge to sit in court. All of the

review could be done in the judge's private chambers during the week the judge is assigned to do that sort of work. There would be no necessity for Third Reading Chambers since this new method would cover applications set for hearing in that division.

With the assistance of law clerks, it is likely that this method would dispose of more applications than under the present system, and it would probably result in decisions of a better quality. At the same time, counsel would avoid the "dead time" now spent waiting to be heard.

There is Canadian precedent for this type of a process in the Supreme Court of Canada on motions for leave to appeal. At one time, all motions for leave to appeal were heard orally. But the press of litigation soon made that practice obsolete. The same thing is taking place with respect to long and complicated chambers applications.

Finally, we should recognize that the existing practice is a product of another era. As decision makers, judges are probably the last ones who entertain oral submissions from people seeking a ruling by laboriously writing down the points of the applicant in long hand and then typing up the result for the applicant to review and criticize.

In law firms and business, individuals seeking a ruling on an important matter from a decision maker, such as a senior law partner or a Chief Executive Officer, are usually asked to put their proposals in writing. What judges now do is akin to an articulated law student attending upon a senior partner with a legal opinion, sitting down across the desk from the senior partner and telling him or her to take notes of the student's views. The student then ends the meeting with a request that the senior partner organize the remarks of the student and put them in writing for the student to examine. That is essentially the way we now conduct our judicial affairs from day to day. It is obviously unacceptable and inefficient.

If we sat down today to write a set of rules, knowing what we do about these kinds of applications, it is doubtful we would recommend the present model.

Here is an outline of the new process as I see it.

**(b) Types of Applications**

In the beginning, the procedure should be confined to those applications that are consuming so much court time. While the following list will not look after every contested chambers application lasting more than two hours, I suggest it will be a substantial improvement over existing practices.

First of all the process would apply to the following types of proceedings, no matter how long they might take:

- (1) Rule 18 and 18A applications.
- (2) Petitions under a statute, such as setting aside a bylaw under the *Municipal Act*, applications under the *Judicial Review Procedure Act*, R.S.B.C 1979 c. 209, etc.
- (3) Applications for deciding a special case: Rule 33.
- (4) Proceedings on a point of law: Rule 34.
- (5) Applications for relief by way of a prerogative writ under Part 26 of the Criminal Code.



- (6) Any other long contested chambers matter transferred by the short list chambers judge when he or she believes the application is best resolved if governed by this procedure.

**(c) Time Limits for Hearing the Applications**

Instead of the usual two days notice, the rules would require 30 days notice to the other side.

**(d) Briefs**

Every such application would require a written brief of no more than 20 pages setting out the facts, the issues, the law and the remedy sought.

Respondents would have to file their material within 15 days of receipt of the material and brief of the applicant.

The applicant would have the right to reply with further material and a reply brief of no more than 10 pages, within 7 days of receipt of the respondents material and brief.

Because the parties should refer to all the relevant cases in their material, there will be no need for them to supply

photocopies of cases. Cases not mentioned in the brief could not be used on the application without the consent of the court.

Each of the parties would also be required to file a written record of the court documents they rely upon. As a result, there should be no need for the judge to search through the court file itself looking for affidavits, motions, pleadings, etc.

(e) Law Clerk Review - Bench Memo

We could provide a pool of two or three law clerks to review the material and briefs on each file as they are received. They would be appointed on a rotational basis for say two - three months. The law clerk could then write a Bench Memo explaining in one or two pages what the application is about together with a suggested solution.

In other words, it would be up to the law clerks to read the cases and see if they support the points alleged in the briefs.

(f) Trade Offs for the Profession

From the point of view of counsel, the major disadvantage over the present system is that there will be no opportunity for oral

argument, except on the election of the hearing judge. But giving up this right will yield the following advantages:

(i) There will be no need for counsel to appear in person unless requested by the reviewing judge. That will save a considerable amount of time now spent waiting around for applications to be heard.

(ii) Because the process will require responsive briefs, both sides will get to know the precise argument of the other side and have time to prepare an appropriate reply. At present, where oral or written arguments are presented at a hearing, neither side has notice of the precise position taken by the other until the words are spoken or the briefs are filed.

(iii) Applications can be brought at any time. Once the material is filed within the 30-day period, it is then before the court for decision. Counsel will not have to juggle their calendars in order to find a mutually agreeable date to attend an oral hearing. Nor will they have to go through the inconvenience of trying to get a hearing date by phone as is now the case for the more lengthy contested applications.

**(g) Judge Assignment - Work Done in Private Chambers**

Rather than have the chambers judge sit in court hearing these applications, the assigned judge would have the opportunity to examine the material in his or her chambers and make the necessary orders. With the kind of preparation required by the profession, and the help from the law clerks, it is likely that many of the applications could be disposed of by a two or three page memo/reasons.

When a judge assigned to the trial list has his or her case go down, for whatever reason, rather than face the prospects of a drawn-out chambers application, a group of such applications that do not require lengthy consideration could be sent to him or her.

These might include applications that the law clerks find are incomplete because of lack of evidentiary material, failure to follow a governing statute or procedural rule, etc. They would be the kinds of things that would only need a one-page memo from the judge. They could be specifically tagged by the responsible law clerks.

**(h) Incidental Rules**

Parties should be allowed to argue on notice before the Second Reading chambers judge why the time periods should be abridged or enlarged, why the matter should be heard without the necessity of filing briefs, etc.

A judge sitting in chambers should also have the right to direct that any application proceed according to these new rules, if the circumstances so require.

Other ancillary rule provisions may be necessary to accommodate the process. These might include the right of the judge to fix reasonable time limits for the hearing of any oral argument, etc.

On a trial basis, we might also consider whether the process should be restricted to only those applications set down for hearing in the Vancouver Registry. Most of the chambers delay is in Vancouver. It might not be fair to burden other centres with the procedure during its experimental stage.

**(i) Benefits to the Judge Over the Present System**

Here is a summary of the benefits that will likely accrue by adoption of this idea:

(i) Because the applications would be confined to matters that are very significant in the litigation process, they would demand the corresponding care and attention of the lawyers involved. This should reduce the frequency of applications involving "dump truck" presentations.

(ii) Along with the quality of the presentation, the quality of the decision of the judge should improve.

(iii) Since the judge will be able to examine the material without the pressure of a room full of lawyers and with the assistance of briefs and a law clerk's memo, the anxiety and irritation factor of chambers work should almost disappear.

**(j) Conclusion**

For years, counsel and judges have complained about the inefficient system we now have for hearing contested applications. Rules have been enacted that tinker with the practice but no fundamental reforms have been made. The dissatisfaction remains.

It is time to try something new. While this suggestion is not perfect, I submit that it is a measurable advance over the way we now manage these matters. Should the experiment fail, for one reason or another, we can always return to the old practice.

## 2. Writing Reasons for Judgment at the Trial Level

Historically, the majority of reported written reasons for judgment have been written by trial judges. This is because Courts of Appeal did not come into existence until well into the 1900's. For some time thereafter, trial judges "outwrote" appeal court judges, largely because there were more trial judges than there were panels of Court of Appeal judges. With the increasing length of judgments and the increasing number of appeal court decisions, most of the reported cases now come from courts of appeal and the Supreme Court of Canada. This means that almost all trial court judgments are lost to history. They are only of importance to the parties themselves.

Federal superior court trial judges in Canada do essentially the same kind of work as Federal trial judges in the United States. However, each U.S. Federal trial judge is assigned two law clerks with their own word processors. Trial judges in B.C. have access to one law clerk for every five judges. That one law clerk is not provided with a word processor. In addition, U.S. Federal trial

court judges receive extensive written trial and motion briefs from counsel to help them in their deliberations. Counsel also prepare the drafts of jury instructions. Very little of this kind of assistance is given to B.C. trial judges.

In the state courts system, U.S. state court judges do not usually write lengthy judgments. Even if they do, the reasons are not published. Nor are those reasons binding on judges of equal jurisdiction. Instead, counsel prepare a document called Findings of Fact and Conclusions of Law. That instrument replaces reasons for judgment and is usually prepared by counsel for the prevailing party. It is subject to settlement if the parties do not agree. The brief oral or written reasons of the trial judge are often not included in the appeal books. A U.S. state court of appeal is only interested in two things. First, was there evidence before the trial judge to support the findings of fact. Second, was the conclusion reached by the trial judge in accordance with the law. So long as the trial judge was right in the result, that is all that matters. How he or she got there is of no consequence.

Partly because of this procedure and partly because of the additional help from counsel, state court judges sit 46 weeks of the year deciding cases since they do not need reserve weeks to write judgments. The other six weeks are set aside for holidays. In B.C. however, trial court judges sit about 32 weeks of the year.



Apart from holidays of about four to six weeks, the rest of the time is spent writing judgments, although the exact practice varies from judge to judge.

Comparatively speaking, the British Columbia public and the legal profession lose access to the decision making power of a judge for about 14 weeks per year. With around 90 judges on the Supreme Court of British Columbia, that means about 1,260 weeks per year of judge decision making time is lost because of the practice of writing judgments at the trial level.

It is also worth remembering that judges are probably the only published writers who do not get the assistance of a trained editor. Words are written and comments are sometimes made that are unintentionally offensive to the public. Had a trained editor reviewed the writing, the mistake would have likely been caught. Given the resources available, it is a credit to the judges that so few of these remarks occur.

Nor does the present system have a very good track record for quality. About 35% of civil trial court judgments are reversed by the court of appeal.

Trial judges will not likely get more law clerks or editorial help. It is equally doubtful they will receive assistance from the

types of written briefs that U.S. counsel are expected to provide in the United States federal and state systems. If B.C. trial judges are to continue writing judgments, there is a good possibility that judges may need more than 14 weeks to carry out this responsibility. For example, in one province of Canada, trial judges only sit 23 weeks and write judgments the other 23, with 6 weeks of holidays. The 14 writing weeks given to B.C. trial judges came into being in the late 60's or early 70's when the pace of litigation was much slower.

The major fault with what we are doing now is that we make inefficient use of judge time and at the same time place inordinate demands upon the judges. There has to be a better way. Accepting reality, I submit that new rules should be enacted so that:

- Trial judges should no longer be expected to write judgments.
- Instead of written judgments at the trial level, the court should make use of the U.S. practice that accompanies the document called Findings of Fact and Conclusions of Law.

If we follow this course, trial judges can spend more time sitting in the courtroom making decisions and less time writing

judgments that are of no particular interest to anyone except the parties involved. The decision waiting time for litigants will decrease and the cost of administering justice will be less. Fewer new courthouses will be needed and fewer new judges will be necessary.

### 3. Pattern Jury Instructions in Civil Cases

In other papers, I have recommended the adoption of the pattern jury system for both civil and criminal jury trials. Often, civil trial lawyers complain about the encroachment of bureaucratic rules and procedures that tend to diminish the right to trial by a civil jury. But few members of the profession seem anxious to participate in the hard work that will probably rejuvenate the civil jury trial system: converting civil jury trials to the U.S. pattern jury instruction method. If this reform takes place, there will be far less of a burden placed upon trial judges hearing civil jury trials and hence far more enthusiasm for civil jury trials among the judiciary.

The pattern jury instruction process provides for the following:

- (a) A book of approved jury instructions drafted by a committee of the bench and bar. These instructions

recite principles of law and procedural instructions. They are not necessarily appeal proof nor must they be followed by the trial judge.

- (b) Initial responsibility for drafting the charge to the jury rests with counsel. Each counsel is required to prepare his or her own suggested set of instructions and submit them to the judge before the trial commences. Counsel may follow the pattern forms or suggest amendments to them in order to fit the particular case.
- (c) At the end of the trial, counsel may submit amended forms of instructions to comply with the evidence. The judge then settles the final form the instructions will take.
- (d) The judge does not have to instruct the jury on the evidence. That is the sole responsibility of counsel. As a result, the average charge to the jury only takes about 20 - 30 minutes to deliver.
- (e) When the jury retires to deliberate each juror receives a written copy of the charge.
- (f) Unless counsel request a particular form of charge in writing at the trial, they cannot later complain about the contents of the charge in the court of appeal.

These reforms will remove much of the drudgery a judge must assume when conducting civil jury cases. The process transfers a good deal of the responsibility for preparation of the charge onto the shoulders of counsel. Since counsel know far more about the case before the trial begins, this seems like a rational transfer of duties.

As the trial judge does not have to instruct on the evidence, the jury can receive a written copy of the charge to take with them to the jury room. Hence, they do not have to remember what the judge said when giving his or her oral instructions.

#### 4. Conclusion

These reforms will obviously require more work on the part of counsel than is presently the case. While it may add to the cost of litigation, in the long run it will probably end up reducing that expense. Better preparation by counsel has the effect of reducing the length of litigation and narrowing the contest to the real issues in dispute. It will also make lawyers better counsel.

In addition, the reforms will relieve the trial judge of doing work that is more properly the responsibility of counsel. Counsel have usually lived with the issues over a period of some months or years before they reach the courtroom. Yet a judge is supposed to

thoroughly understand them in the space of a few hours or a few days. Unless there is proper preparation by counsel, there is a real danger that the judicial solution will be imperfect.

Should these reforms be enacted, judges will be able to spend more time in court hearing applications and trials and less time doing work that is more appropriately done by counsel. The old way of conducting our affairs no longer fits a modern society.

American counsel have learned to master these techniques. So can the lawyers of British Columbia.

#### IV. MISCELLANEOUS REFORMS FOR CANADIAN TRIAL AND APPEAL COURTS

Here are three miscellaneous reforms that should be made to the justice system so that it will function within a modern environment.

##### 1. Form of Address

Superior court trial and appellate court judges are still referred to as "My Lord" and "My Lady." While those forms of address may have been appropriate in Canada 60 years ago they are no longer so. The nature of the Canadian population has changed.

Unlike England no other Canadians are referred to as My Lord and My Lady outside the judiciary. These titles tend to perpetuate a widely held and sometimes justifiable belief that the system of justice is out of touch with the average citizen.

Proof of this can be found in civil and criminal jury trials. Despite the fact that counsel refer to the judge as "My Lord" or "My Lady," most jurors just cannot bring themselves to use those words. Almost invariably they address the judge as "Your Honour."

We should adopt the more suitable title of "Your Honour." It is more contemporary and is the form of address used in Australia, including the High Court of Australia. The same applies to all the courts in the United States, including the Supreme Court of the United States.

## 2. Long Vacation

This is another anachronism held over from the English Rules of 1883 that we inherited. Today, there is no justification for closing down most of the court system during July and August. It is simply a matter of habit. We do not shut down most of the work in the hospitals or other services provided by government for two months of the year. Why should we close the courts? Canadians do not stop having legal problems in July and August of every year.

Therefore, I recommend that:

- The practice of closing the court to most forms of litigation during the months of July and August be abolished.
- Judges arrange their own vacations staggered over a 12-month period so as not to disrupt the flow of work.
- Judges should get six weeks of vacation each year apart altogether from any time necessarily spent writing judgments.

### 3. Television in the Court Room

Televising trials and appeals is not allowed in most provinces of Canada. Not every trial or appeal court judge necessarily agrees.

At the trial level, a trial judge is the person who is in charge of the courtroom during the course of any trial. He or she conducts the trial with the help of counsel. Thus, it is for the trial judge to decide whether television cameras should be allowed into the courtroom during the course of any trial. Of course, not every application to televise a trial should be allowed. nor should



there be rigid rules that must be followed in each case. Some witnesses may not want to be televised. Other witnesses should not be televised because of publicity restrictions in the Criminal Code. But these and other issues are ones that the trial judge can resolve.

The Supreme Court of Canada has apparently gone on record as supporting it in certain of its proceedings. Even the English Bar is recommending the use of television in the courtrooms. Most state courts in the United States have been doing it for some time. There have been few if any negative results. There is still some criticism of it on a case by case analysis but the general principle is widely accepted. Critics who said it would never work have been silenced. U.S. Federal courts are beginning an experiment with the use of television. It is time for trial judges in Canada to do the same. Panels of various appeal courts should have the same authority.

Therefore, I recommend that:

- Guidelines be established in cooperation with the bar and the television companies for the televising of courtroom proceedings.

- The decision whether to televise or not should be based upon the agreement of counsel and whether the court finds the purpose of the taping is appropriate.

## V. SUMMARY

Here is a brief summary of the proposals:

1. Civil Appeals to the Supreme Court of Canada should be abolished. Five or seven persons Courts of Appeal should be established in all provinces. They should be the courts of last resort in all provincial civil matters. British Columbia should have a seven person Court of Appeal.

2. The Supreme Court of British Columbia should be divided into two divisions: a Trial Division and an Appeal Division. Judges of the court may serve on the Appeal Division for three-year terms. There should be an appeal as of right from the Trial Division to the Appeal Division in all matters. Appeals to the seven person Court of Appeal in civil actions should be by leave. Judges of the Appeal Division should sit in panels of three.

3. A 30-day notice procedure should be instituted as a pilot project for lengthy contested chambers applications.

4. Another pilot project should be tried in personal injury actions whereby judges would not be compelled to deliver lengthy reasons for judgment. Reasons would be replaced by a document called Findings of Fact and Conclusions of Law as prepared by prevailing counsel.

5. To help preserve trial by a civil jury, the pattern jury instruction system should be instituted.

6. The form of address for all judges in the province should be "Your Honour".

7. Long vacation should be abolished and the courts should sit for 12 months of the year.

8. Guidelines should be established for allowing television cameras in the courtroom at the discretion of the presiding judge or judges.

## VI. CONCLUSION

These proposals are just a few suggestions dealing with reform of the courts and the court process in Canada and B.C. Many other judges and lawyers have their own law reform ideas. We

should get all of these out in the open for examination. Fresh initiatives should be encouraged. They can be tested through pilot projects. If found unsuitable we can always return to what was there before.

Effective reform of our legal institutions and legal process will only come about through encouraging the open expression of new ideas. Research and development is the cornerstone for building a more competitive economy in Canada. Listening to the consumer and those on the factory floor is the proven way to get better productivity and a higher quality of goods and services. We should apply those lessons to the administration of justice.

British Columbia has an excellent bench and bar. Its citizens expect, or should expect, a first-class justice system that serves as a model for others. We have the opportunity to achieve that goal through reorganizing the structure of the courts and reforming our methods of procedure and administration.

Experience proves that many of these comments can also be applied to the practice of law. If a law firm is not a pleasant place to work, it is usually because of its administrative structure and not because of conflicting personalities. Change the structure so that everyone is involved in the administrative decision making and you will soon reform the personalities.

Some judges and lawyers are attracted to the slogan: "If it ain't broke, why fix it?" That is one step away from saying: "Let's wait until it falls apart before we have a look at it." With respect, that viewpoint is misguided because it unintentionally reflects a willingness to tolerate mediocrity. Instead, we should pursue excellence. The public expects, or should expect, that the legal system in the province is the best one that judges and lawyers can devise.

Court practices, procedures and methods of administration should be under constant review. Every part of our legal system should be the subject of continual examination and comparison. We should never stop searching for better ways of administering our affairs. We can keep up with modern practices and we can become confident enough to try new techniques.

The Supreme Court of British Columbia can be the model of excellence and quality in all aspects of its operations. It can be the court that sets the standard for the rest of Canada. Experimenting with new procedural methods is one way of achieving that ideal. Not all of them will succeed. Some will fail. But through these failures we will learn.

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