

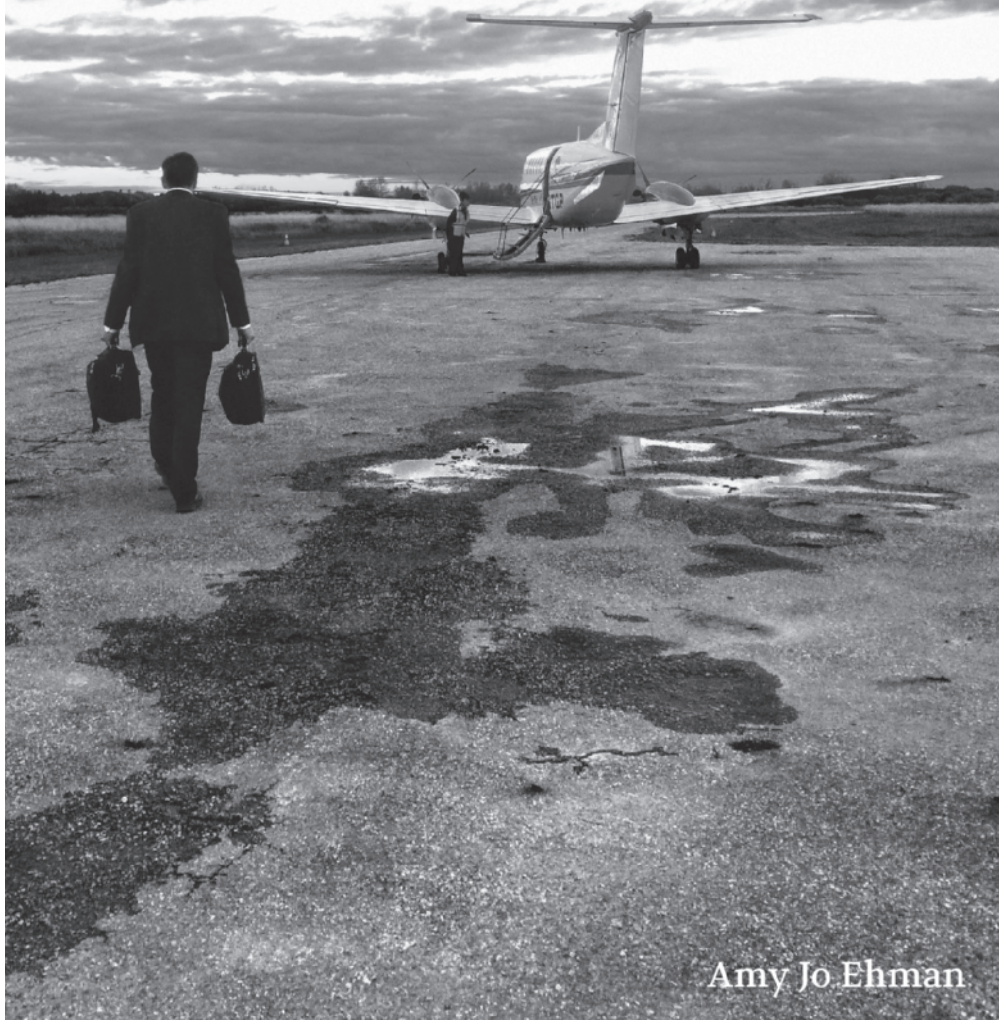
# The Evolution of the Provincial Court of Saskatchewan



Amy Jo Ehman



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## **Message from the President of the Saskatchewan Provincial Court Judges Association**

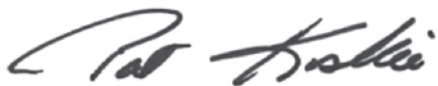
The Provincial Court of Saskatchewan was created 40 years ago by passage of *The Provincial Court Act, 1978*. To mark this milestone, the Saskatchewan Provincial Court Judges Association commissioned this book to chronicle the formation of the Court and its first forty years.

On behalf of the SPCJA, I would like to thank the author Amy Jo Ehman for bringing our history to life on the page, and also Dawn Blaus, who commenced the project with research, interviews and early drafts, and provided the excellent cover photo.

I would like to thank my colleagues Judge Murray Hinds and Judge Clifford Toth for their oversight of the project, as well as Provincial Court staff Deanna Kettering and Janet Funk for their help in preparing materials for this book.

The project was financed by proceeds from the Canadian Association of Provincial Court Judges conference hosted by the SPCJA in Regina in 2011. Printing costs were graciously provided by the Law Foundation of Saskatchewan. Thank you to everyone involved.

I would like to dedicate this book to all members of the Saskatchewan Provincial Court Judges Association who have served the court since it was created in 1978, and to all Provincial Court judges who follow in their footsteps. May they be as proud of their legacy as each decade passes as we are today. We must never take for granted the privilege of living in a free and democratic society governed by the rule of law.

A handwritten signature in black ink, reading "Pat Koskie". The signature is fluid and cursive, with the first name "Pat" and last name "Koskie" clearly distinguishable.

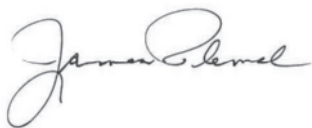
Judge Pat Koskie, President 2017-2018  
Saskatchewan Provincial Court Judges Association

## **Message from the Chief Judge of the Provincial Court of Saskatchewan**

As we look back on our history, we think of the dedicated judges and staff who served this Court over the years. We think of the many people and agencies who provided valuable services to this Court and, by extension, to the people of this province. Together, they have contributed immensely to fair and equitable outcomes for those who appear before us in Court, both in the past and into the future.

We are fortunate to live in Canada, where our democratic traditions foster a judiciary that is truly independent. We see, in our history, the evolution and reinforcement of those democratic principles. Our Provincial Court is a product of those rich traditions.

A great deal of work has gone into this book in an effort to share our story with the community at large. Thank you to those judges, current and retired, who provided their recollections and reflections on the past forty years of the Court, and to everyone whose contributions brought this project to fruition.

A handwritten signature in dark ink, appearing to read "James Leavelle". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Chief Judge  
Provincial Court of Saskatchewan

## Introduction

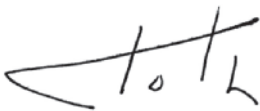
Institutional anniversaries are important. They are milestones at which we honour our history, celebrate our accomplishments, acknowledge those whose dedicated work made our successes possible and set goals for the future.

In 2018, the Provincial Court of Saskatchewan celebrates its 40th anniversary. Though relatively young, the roots of the Court run deep in our province – from the Territorial Courts to the police courts to Magistrates’ Court. The Provincial Court of Saskatchewan was created on these foundations as the modern and innovative “People’s Court” of today.

In some ways, the transition was not easy. The passage of the Canadian Charter of Rights and Freedoms in 1982 shifted the relationship between provincial courts and legislatures across the country. In Saskatchewan, judges of the Provincial Court led the fight for judicial independence and a clear separation of the pillars of democratic government – executive, legislative and judiciary. We are proud of that legacy.

As we celebrate 40 years of the Court, it is important to record our story while the personal and institutional memory still resides among us. Those who do not learn their history are bound to repeat it.

The reputation of the Provincial Court was built on the shoulders of the hard-working, thoughtful, and dedicated judges who served the Court in its first 40 years, dispensing justice in every corner of the province. This is their story.

A handwritten signature in black ink, appearing to read 'Toth', with a stylized flourish extending from the left.

Judge C.C. Toth



# **1. The Early Years**

## **Foundation of the Court**

“For me, I have only one more duty to perform, that is, to tell you what the sentence of the law is upon you. I have, as I must, given time to enable your case to be heard. All I can suggest or advise you is to prepare to meet your end, that is all the advice or suggestion I can offer. It is now my painful duty to pass the sentence of the court upon you, and that is, that you be taken now from here to the police guard-room at Regina, which is the gaol and the place from whence you came, and that you be kept there until the 18th of September next, that on the 18th of September next you be taken to the place appointed for your execution, and there be hanged by the neck until you are dead, and may God have mercy on your soul” ~ Judge Hugh Richardson, 1885<sup>1</sup>

With those words, spoken on the first day of August 1885, Judge Hugh Richardson, a stipendiary magistrate of the North-West Territories, authorized the execution of Métis leader Louis Riel. It was the mandatory sentence for the crime of treason. Earlier that day, a jury of six had returned to the crowded courtroom in Regina with a verdict of guilty. The jury recommended mercy. Judge Richardson could offer none.

Riel appealed to the Manitoba Court of Queen’s Bench and, following that, to the highest court of the land, the Judicial Committee of the Privy Council in London, England. Both appeals were denied. Queen Victoria wished for clemency, but the Prime Minister of Canada, John A. Macdonald, would not be swayed. On November 16, 1885, the sentence imposed by Judge Richardson was carried out on the grounds of the North-West Mounted Police barracks in Regina.

Judge Richardson presided over the trials of several other Métis men who fought with Riel in the North-West Resistance of 1885, as well as the trials of Chiefs Poundmaker, Big Bear, One Arrow, and Whitecap, who were charged with treason-felony for their activities

during the uprising. Chief Whitecap was acquitted, while the other chiefs were found guilty and sentenced to prison terms.

It may be argued the trial of Louis Riel, followed so keenly by the newspapers of Ontario and Quebec, was of such cultural and political importance that a verdict either way – guilty or not guilty – would have been appealed to a higher court. It was, without a doubt, the most prominent case heard by the stipendiary magistrates of the North-West Territories, the forerunner of what would become, almost a century later, the Provincial Court of Saskatchewan.

The first three stipendiary magistrates of the North-West Territories were appointed by the federal government in 1876. They were Hugh Richardson, a lawyer with the Department of Justice in Ottawa; Matthew Ryan, a lawyer in private practice in Montreal; and James Macleod of Toronto, a lawyer and senior officer of the North-West Mounted Police.

The position of stipendiary magistrate was created by an act of Parliament in May 1873. The same legislation, called the *The Act respecting the Administration of Justice, and for the establishment of a Police Force in the North West Territories*, also created the mounted police force. The first recruits of the North-West Mounted Police were mustered that summer, while it took almost three years for the federal government to appoint the first magistrates.

At the time, law and order on the western frontier was a pressing concern. Lawlessness flourished along the border with the United States as whiskey traders, horse thieves, wolf hunters, and outlaws came north from Montana with their firewater and firearms. The dwindling bison herds created fierce competition among those who hunted for food and for trade. The Hudson's Bay Company, which had long been the leading European authority on the land, was unwilling and unable to police wrongdoing beyond the boundaries of its own fur trade posts. There was, for the most part, no long arm of the law.

In 1871, an investigation commissioned by the federal government in Ottawa reported on this state of general unrest. The author of the report was Lieutenant William Butler, an army officer and adventurer from Ireland. After touring the area, Butler wrote that "the region of the Saskatchewan is without law, order,

or security for life or property; robbery and murder for years have gone unpunished; Indian massacres are unchecked even in the close vicinity of the Hudson Bay Company's poste, and all civil and legal institutions are entirely unknown."<sup>2</sup>

This situation, he concluded, "threatens at no distant day to give rise to grave complications; and which now has the effect of rendering life and property insecure and preventing the settlement of those fertile regions which in other respects are so admirably suited to colonization."<sup>3</sup>

Less than a month after the passage of the Act of 1873, those "grave complications" abruptly arose when a group of American whiskey traders made a bloody attack on a camp of Assiniboiné in what became known as the Cypress Hills Massacre. More than twenty Assiniboiné were killed, their murderers fleeing back across the border to the United States. News of the massacre reached Ottawa in August, and soon the first recruits of the North-West Mounted Police were heading west, among them officer James Macleod.

The Act of 1873 gave judicial powers to senior officers of the NWMP. They were, in effect, the law of the land. As such, they had the power to arrest an offender, sit as judge or jury, and following a conviction, cart the offender off to jail. While this may have been expedient (and cost-effective) on the wild frontier, it clearly challenged accepted notions of an independent judiciary, even by the standards of 1873.

Finally, in 1876, the federal government assigned the first stipendiary magistrates of the North-West Territories. The Act of 1873 set their annual remuneration at no more than \$3,000 plus travel expenses. They had jurisdiction throughout the territories and could hold court in any location as required. As such, they travelled widely – by canoe and horseback in summertime, dog sled and snowshoes in winter – holding court in all manner of buildings including the barracks of the NWMP. Though there remained a blurring of judicial and legislative functions, the appointment of stipendiary magistrates gave the appearance, if not yet reality, of a separation between the judiciary and the police.

Initially, stipendiary magistrates had jurisdiction to hear less serious offences. For example, they could hear summary cases with or without a jury on charges of assault, larceny, embezzlement,



and possession of stolen property not exceeding \$100, charges for which the maximum sentence was not more than two years in jail “with or without hard labour.”<sup>4</sup> If two stipendiary magistrates sat together, they could hear cases for which the maximum sentence did not exceed seven years’ incarceration. Crimes punishable by stiffer penalties were to be conveyed to the Court of Queen’s Bench in Manitoba, which was also the Court of Appeal.

Superintendent Macleod had resigned from the NWMP in early 1876 to take up his job as a stipendiary magistrate; however, he returned to the police force in July after he was offered the top job of Commissioner of the NWMP. As the senior officer, he held judicial duties as well. So, it was as both Commissioner and Stipendiary Magistrate that he attended the signing of Treaty 6 at Carlton House (Sask.) in 1876 and Treaty 7 at Blackfoot Crossing (Alta.) in 1877. This blending of police and judicial functions, though unthinkable now, was not uncommon at the time.

One of the first orders of business for the new stipendiary magistrates was to travel to Fort Livingstone, the capital of the North-West Territories (near present-day Pelly, Sask.) for the first sitting of the Territorial Council, the governing body of the vast land mass of north-western Canada, an area encompassing today’s Saskatchewan, Alberta, Yukon, Northwest Territories, and a portion of Nunavut. The stipendiary magistrates were *ex officio* members of the governing council. The first legislative session of the North-West Territories was held at Fort Livingstone in March 1877.

Among those present were Colonel Macleod and Magistrates Richardson and Ryan, as well as the first Lieutenant Governor of the territories, David Laird, and the clerk of council, lawyer Amédée Forget (later the first Lieutenant Governor of Saskatchewan). They passed a number of bills, including several ordinances regarding the “registration of deeds, control of infectious diseases, the protection of buffalo, the prevention of gambling, the prevention of forest and prairie fires, and the administration of justice.”<sup>5</sup> The magistrates on the council had both legislative and judicial functions – simultaneously making and interpreting the laws – a combination unseen in Canada today with its modern separation of legislative powers and the judiciary.

In the fall of 1877, the capital of the North-West Territories

was moved from Fort Livingstone to Battleford, where the Territorial Council met for the second time in the summer of 1878. Commissioner Macleod relocated with his troops to what is now southern Alberta, to the new headquarters of the NWMP at Fort Macleod (which he founded in 1874) in what was designated the Judicial District of Bow River.

Magistrate Richardson relocated to Battleford, seat of the Judicial District of Saskatchewan, where his family joined him from Ottawa. Magistrate Ryan remained at Fort Livingstone, seat of the Judicial District of Qu'Appelle. However, Ryan was dismissed from his judicial position in 1881 after an investigation found his conduct unbecoming a magistrate. At the time, stipendiary magistrates could be relieved of their duties at any time with no legislative provision for compensation or appeal.

(Though the allegations against Ryan remain somewhat vague, he was in constant conflict with the NWMP officer at Fort Livingstone. Indeed, he must have had a garrulous personality for Colonel Macleod to write of the first Territorial Council: "There are three members, Richardson, Ryan and myself. The two first do not speak to each other and Ryan does not speak to me! I have proposed a triangular duel to settle the matter."<sup>6</sup>)

In 1883, the territorial capital moved once again from Battleford to Regina. Magistrate Richardson and his family moved with it. A new stipendiary magistrate was appointed to the Judicial District of Battleford – Charles Rouleau, a Quebec-born lawyer and Ontario magistrate. In 1885, Judge Rouleau presided over the trial of those accused in the looting of Battleford (during which his own house was plundered) and in the Frog Lake Massacre, for which he passed death sentences on eight Aboriginal accused, precipitating the largest mass hanging in Canadian history.

In 1885, a fourth stipendiary magistrate position was created. Jeremiah Travis, a Harvard-trained lawyer from Nova Scotia, was appointed stipendiary magistrate for a new Judicial District based in Calgary. However, he was suspended the following year for overstepping his powers when he reversed the results of a civic election in which his preferred candidate for mayor did not win. He was replaced in the Calgary Judicial District by Judge Rouleau.

Over the years, amendments to the Act of 1873 expanded the

jurisdiction and responsibilities of stipendiary magistrates to include the duties of coroner, the adjudication of most civil cases, and, with the assistance of a justice of the peace, to try cases of the most serious penalties including the death sentence. In 1885, during the trial of Louis Riel, Judge Richardson was assisted on the bench by Justice of the Peace Henry LeJeune. Another amendment stipulated that a stipendiary magistrate must have been a barrister at law or legal advocate for five years; previously, the only legislated qualification was to be “fit and proper.”

In 1885, the title of “Judge” was conferred on stipendiary magistrates and they were given the same judicial powers as Provincial Court judges elsewhere in Canada. In 1887, the stipendiary magistrates were replaced by a new Supreme Court of the North-West Territories. Judges Richardson, Rouleau, and Macleod (who had resigned from the police force in 1880) were appointed to the Supreme Court.

The judges’ legislative duties were also changing. In 1888, the Council of the North-West Territories was replaced by an elected assembly. The first general election in the territories was held in June, electing twenty-two members to the assembly in Regina. Judges Richardson, Rouleau, and Macleod were appointed to the assembly as non-voting members. Their role was advisory only. They participated in debates, but did not vote on legislation. Richardson also served as acting Lieutenant Governor of the territories in 1897-98.

The stipendiary magistrates, particularly Judge Richardson, played a role in drafting and consolidating territorial ordinances and laws, and in drawing up the rules of procedure for the new legislative assembly. Many of those laws carried forward when Saskatchewan became a province in 1905. However, the three judges were not there to celebrate provincehood. Judge Richardson retired from the court in 1903 and moved back to Ottawa. Judge Macleod served on the Supreme Court until his death in Calgary in 1894. Judge Rouleau served the court until his death in 1901 while visiting family in Montreal.

The *Saskatchewan Act* of 1905 assumed, with little alteration, the judicial system of the North-West Territories. But change would soon come. In 1907, the Supreme Court of the North-West Territories



became the Supreme Court of Saskatchewan. It was both trial court and appeal court until 1918, when it was replaced by the Court of King's Bench and the Saskatchewan Court of Appeal.

At the same time, the province created two new judicial entities. The District Court was established in eight regional centres (Battleford, Cannington, Moose Jaw, Moosomin, Prince Albert, Regina, Saskatoon, and Yorkton). District Court judges were appointed and paid by the federal government. They adjudicated criminal cases without a jury and heard civil matters of a prescribed amount (up to \$300 in 1911). The District Court existed until 1981 when it merged with the Court of Queen's Bench.

The other judicial position created in 1907 was that of police magistrate, with one appointed for every city and town in the province. Police magistrates were required to be lawyers and members of the bar or, after 1913, police officers in good standing. They were obliged to keep a ledger recording every penalty and fine they imposed, which could be viewed by members of the community upon the payment of ten cents.<sup>7</sup>

Police magistrates had jurisdiction over a wide range of matters, from petty bylaw infractions to criminal offenses, and also adjudicated civil claims of a limited value and heard matters of family law and child protection. They held trials without a jury and conducted preliminary hearings in cases for which the trial would proceed in a higher court. However, their jurisdiction did not extend beyond their designated communities. Their courtrooms were usually located in the police station or council chambers; their salaries were paid jointly by the province and their communities. In many respects, they were akin to civil servants conferred with judicial powers, working closely with local police and town hall.

The first police magistrate appointed in Regina was 63-year-old William Trant, who seems to have had as many occupations as a cat has lives. Born in England in 1844, he received a scientific and technical education at the Mechanics' Institute of Leeds. He became a war correspondent, reporting on the Franco-Prussian War and the Paris commune of 1871, during which he was imprisoned as a spy and sentenced to death, making a narrow escape.<sup>8</sup>

In 1874-75, he accompanied the Prince of Wales (the future King

Edward VII, who subsequently abdicated) on a tour of India. He founded and edited a couple of newspapers in India and served with the Madras Volunteer Guards before returning to Europe to report from France, Ireland, Spain, Algeria, United States, and elsewhere. He published books on trade unions and financial reform.

In 1889, the adventurer Trant and his family immigrated to Canada and took a homestead at the English settlement of Cotham, northeast of Regina. He worked briefly at the *Regina Standard* and the *Regina Leader* (forerunners of the *Regina Leader-Post*) until 1904, when he took the bar exam and went into private law practice. (Since there was no law school in the territories, a university graduate could write the bar exam and become a lawyer after articling with a law firm for three years.<sup>9</sup>) He was a civic-minded fellow, organizing the Regina Agricultural Society, the Children's Aid Society, and an arts and science literary society. In 1907, he was appointed Regina's police magistrate.

Given his previous escapades, Magistrate Trant might be forgiven if he found some of his court cases a bit trifling. In October 1907, he heard the case of five bakers charged with short-changing the size of a loaf of bread (which was set by a Regina city bylaw at four pounds per loaf).<sup>10</sup> One of the bakers argued that his fancy bread should be treated the same as cake, which was exempt from the weight requirement. According to an article in *The Morning Leader*, Magistrate Trant adjourned the hearing on this point to consider if, in this case, bread could be considered cake.

Magistrate Trant held progressive views on two hot topics of the day: race relations and juvenile delinquents. When, in 1914, a special tax was proposed on Chinese-run laundries, he chastised the uncompetitive "white-livered-weakness" of non-Chinese laundry owners who had proposed the tax.<sup>11</sup> In 1911, he told a meeting of the American Prison Association convened in Omaha, Nebraska, that juvenile offenders should not be prosecuted but protected by the state.

"The child ought not to be 'tried' for anything. There should be no 'charging with an offence,' no committal, no sentence. . . [T]he affair is not the state versus Johnny, but the state for Johnny."<sup>12</sup> In this he was of a mind with Jean MacLachlan of Regina's Children's Aid Society, who, in 1917, became the province's first Juvenile Court

Judge. (Read more about Judge MacLachlan in Chapter 6 Women of the Court.)

Magistrate Trant served until 1915, when he was appointed the first Provincial Archivist of Saskatchewan. When he died in retirement in 1924 in Victoria, B.C., his obituary declared him “associate of princesses, statesmen, writers, scientists and. . . a close friend and intimate correspondent with George Bernard Shaw.”<sup>13</sup>

In 1927, Joseph Emile Lussier was appointed police magistrate for northern Saskatchewan. Born in Quebec, he came west in 1908 and landed a job as private secretary and articling student for Alphonse Turgeon, the French-speaking Attorney General of Saskatchewan. He wrote the bar exam in 1912. At the time of his appointment as police magistrate, he was practicing law in Prince Albert.

Unlike Magistrate Trant, whose jurisdiction encompassed that of one city, Regina, Magistrate Lussier’s territory extended across the northern half of Saskatchewan including the communities of Cumberland House, Ile a la Crosse, La Ronge, and Pelican Narrows. Over the next thirty years, he travelled this vast territory by every means possible – dog team, horseback, snowshoes, snowmobile, sternwheeler, scow, canoe, automobile, train, and bush plane – earning himself the nickname “Flying Magistrate of the North.” In 1956, he calculated to have travelled more than 1.25 million miles (two million kilometres) before losing count.<sup>14</sup>

Magistrate Lussier held court in a variety of facilities such as schoolhouses, church basements, trading posts, log cabins, and sometimes even in the great outdoors. In one of his favourite stories, he tells of landing near a forest fire on Lac La Ronge to hear the case of two men charged with hunting a moose, keeping only the best parts, and illegally tossing the carcass into the Churchill River. Thick smoke from the fire almost forced the plane back, and when they finally landed on the lake, the pilot kept the engine running just in case their getaway had to be quick.<sup>15</sup>

The magistrate held court on a rock by the lake, from where he could hear the roar of the fire and feel its heat. The two accused came out of the woods blackened with smoke. They plead guilty, were each fined \$10 with time to pay, and quickly returned to their job of fighting the fire.

In another incident, he and the pilot were flying home from



Pelican Narrows with a convicted prisoner on board when their plane was forced down by a winter storm. The three men spent four days and nights in makeshift shelters, eating what little food was onboard, and no doubt telling a few stories to pass the time, until the storm lifted and they could fly home to Prince Albert. In telling the tale, Magistrate Lussier recounted how the generous prisoner had shared his cigarettes.<sup>16</sup>

“Such a country calls for a hardy man, who can live on dried meat, pemmican and the unleavened, pan-fried bread called bannock. Such a man, northern residents say, is Mr. Lussier,” declared the *Saskatoon Star-Phoenix* in 1956.<sup>17</sup> The article also noted that rarely did the magistrate have assistance from a court reporter or other support staff: “When he’s back home there is a pile of office work for he’s his own secretary.”

Magistrate Lussier clearly loved his job among the people and the landscapes of northern Saskatchewan, as he told the *Star-Phoenix* reporter. “From the first, the North took a firm grip on me,” he said. “It means so much to bring the court to the North rather than the people to the south. It demonstrates justice in action to northern residents.”<sup>18</sup> He was known to use his discretion and fashion his judgments to local conditions, as noted in the Encyclopedia of Saskatchewan: “A progressive reformer, he often sat in court without gown, and relied on fines and community service instead of prison.”<sup>19</sup>

Magistrate Lussier retired in 1957. The following year, the government of Saskatchewan passed the *Provincial Magistrates Act*, changing the name of police magistrates to provincial magistrates, and extending their jurisdiction to the province as a whole. After half a century of very little change, it was the first of several major revisions to the court. The next major change came in 1964 with the creation of Magistrates’ Court.

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#### Footnotes

1. *Sessional Papers of the Dominion of Canada, Volume 12, Fourth Session of the Fifth Parliament of the Dominion of Canada*. Government of Canada, Ottawa, ON, 1886, p 225. Accessed online: <https://archive.org/stream/sessional20b47es1886cana#page/n7/mode/2up/search/225>

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3. Butler, 366.
4. Pateman, John. *Fort Pitt to Fort William*. Pateon Press, Toronto, ON, 2013, p 60.
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8. "Aged Writer Dies at Coast" *Winnipeg Tribune*. Winnipeg, MB, Sept. 5, 1924, p 6.
9. McConnell, W.H. *Prairie Justice*. Burroughs & Company, Calgary, AB, 1980, p 103.
10. "Bakers Fined for Short Weight" *Morning Leader*. Regina, SK, October 25, 1907, p 5. Despite the headline, the article states that "[Police] Chief Harwood did not press for the infliction of a penalty, and defendants were dismissed after a warning and payment of costs."
11. *Regina Evening Leader*. May 24, 1914, p 1. Quoted in Backhouse, Constance. "The White Women's Labor Laws: Anti-Chinese Racism in Early Twentieth-Century Canada" *Law and History Review* Vol. 14, No. 2 (Autumn, 1996), pp. 315-368. Accessed online: <https://www.cambridge.org/core/journals/law-and-history-review/article/white-womens-labor-laws-antichinese-racism-in-early-twentiethcentury-canada/22C5509283853D78CB1CD9017B33FEB0>
12. "Should Not Place Children on Trial" *Medicine Hat News*. Medicine Hat, AB, Oct. 20, 1911, p 3.
13. "Aged Writer Dies at Coast" *Winnipeg Tribune*. Winnipeg, MB, Sept. 5, 1924, p 6.
14. Franklin, Stephen. "Solomon of the Canadian Bush" *Milwaukee Journal*. Milwaukee, WI, June 9, 1957, part 4, p 2.

15. Ibid.
16. Ibid.
17. "Lussier of Prince Albert North's Flying Magistrate" *Saskatoon Star-Phoenix*. Saskatoon, SK, Nov. 27, 1956, p 17."
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## 2. Magistrates' Court

### A Court in Transition

“In the past eight years, we have seen the name changed from police magistrates to provincial magistrates and now to judges of the Magistrates’ Court. They have been provided with robes of office and authorized to wear them. Their salaries have been increased from about \$5,500 to \$12,000 annually, and the latter amount has been enshrined in the statute.” ~ Attorney General Robert Walker, 1964<sup>1</sup>

With those words, Attorney General and Minister of Justice Robert Walker welcomed twenty judges of the new Magistrates’ Court of Saskatchewan. It was January 3, 1964, in a ceremony at the Saskatoon Court House on Spadina Crescent. Today, it is the Court of Queen’s Bench, but when it opened in 1958 it served both levels of the court.

For the most part, the judges of Magistrates’ Court had been provincial magistrates under the previous judicial system. However, with the new legislation, they were afforded greater remuneration, job security, a “generous” pension (\$6,000 per year), and the prestigious title of Judge. They were also subjected to stiffer qualifications, and thus two of the previous magistrates did not qualify to become judges of Magistrates’ Court. Although a newspaper article on the swearing-in ceremony referred to the men of the court, there were two women among the first twenty judges of Magistrates’ Court.<sup>2</sup>

With *The Magistrates’ Court Act, 1963*, the province’s judges were organized into a formally constituted court, as opposed to a group of independent individuals akin to civil servants holding court in their cities and towns. As a requirement of appointment, judges of Magistrates’ Court had to have practiced law or served as a provincial magistrate for at least five years. Prior to the legislation of 1963, eligibility included five years’ service as a police officer, but that was dropped.

The requirement that prospective judges have legal training and



experience was welcomed by the legal community, where many had been calling for more rigorous qualifications. The implications were obvious at the time, as noted by Saskatoon lawyer Jacob Goldenberg, president of the Law Society of Saskatchewan, in a speech to the society in 1957. He pointed out that provincial magistrates with few qualifications could hear serious criminal cases and send offenders to prison for many years, while larger civil cases and property disputes were adjudicated at Court of Queen's Bench, where the judges were more highly educated and qualified.

"What is more important – personal liberty or property?" asked Goldenberg. "We have set up two distinct kinds of procedures for dealing with civil and criminal matters. Civil trials are presided over by a well-trained judge, and criminal matters may – and in some cases are – presided over by a man who has no training at all."<sup>3</sup>

Echoing Goldenberg's concerns, an editorial in the *Saskatoon Star-Phoenix* noted that magistrates heard more than ninety percent of criminal trials and had the power to impose any punishment short of the death penalty. Conversely, they received little or no judicial training, their salary was fixed by legislation at a rate so low as to be unattractive to the most qualified lawyers of the day, and they could be dismissed from their positions by the whim of government, further reducing the stability, independence, and general desirability of the job.<sup>4</sup>

*The Magistrates' Court Act, 1963* addressed these issues, to a point. It upped the level of judicial competence, doubled the salary, added a pension, and improved security of tenure. It also extended the age of retirement from sixty-five to seventy years. However, the salary of a judge of Magistrates' Court remained well below that of an experienced lawyer, and the Act did little to address the heavy workload of Magistrates' Court. Calls for reform continued.

This is not to say that judges of Magistrates' Court were universally unqualified. If anything, they were hard-working and dedicated professionals who gave up much in their personal lives in order to serve the court. Among them was Judge Eugene Lewchuk, a lawyer from Kerrobert who was appointed to Magistrates' Court in 1966. So urgent was the need for experienced judges that he was offered the position without even having applied for the job.

It began with an advertisement by the provincial government

looking for a lawyer to work on developing legislation. He wrote for more information about that position before making up his mind whether to apply. At the time, he had been practicing law in Kerrobert for about eight years. He felt it was time to either dig his roots more deeply in the community or set out for new opportunities.

“Out of the blue I got a phone call, and they said, ‘We got your letter, and how would you like to be a judge?’ I said, ‘Pardon?’ It caught me by surprise!”<sup>5</sup> He was given one hour to decide. He talked it over with his wife and decided to take the offer, a duty he performed for thirty-six years, from his appointment in 1966 to his retirement from the bench in 2002.

Judge Lewchuk was first appointed to the court house in Kerrobert, followed by Swift Current, and then Regina, travelling to hold court in many smaller communities – known as circuit points or country points – in the surrounding countryside.

Initially, the job came without instructions and without a clerk. He was expected to collect fines, complete and sign court documents, and carry out all other clerical functions of the court. With no office staff and no colleagues to show him the ropes, he developed his own schedules and practices.

“Nobody ever told me how to conduct court,” he recalls. “When I first started, I sat right through lunch. I thought I mustn’t inconvenience the public, since they’d come in for their trials. It finally dawned on me that it wasn’t really fair to the Crown prosecutor and the police because they also had to give up their lunch.”

The Provincial Court in Kerrobert had six circuit or country points. Early on, Judge Lewchuk determined never to travel through one of these circuit points without stopping to hold court. This meant he often presided at court in more than one community per day. With no judicial officers or clerks, he relied heavily on the local RCMP.

“The police always helped out,” he says. “Sometimes I’d have maybe one hundred ‘informations’ at a country point and have sometimes two country points in one day. I had to take the money and write out the receipts, and I would say to the RCMP – they always had three or four officers there – could one of you write up the receipts? I’m not ordering you to, but if you want to get out of here faster, it’d be one way of getting out.”

Security – or more accurately, the lack of it – was an issue in

the early courtrooms, particularly at the circuit points. Every now and then an individual would appear in front of Judge Lewchuk and challenge his authority. He recalled one accused who refused to rise when told to do so, but the judge cajoled him into standing as requested and the court carried on.

In another instance, the accused refused to answer the judge's request for a plea with anything other than profanity. Judge Lewchuk weighed his options. Laying a contempt charge would require him to fill out forms and court documents with the prospect of a future trial on the charge, while remanding the man for a week in custody might accomplish the same end with less time and paperwork. When a justice of the peace filled in for Judge Lewchuk the following week, the JP remanded the man for another week to let the judge deal with it. According to Judge Lewchuk, two weeks in custody was all the formerly foul-mouthed fellow needed to adopt a more cooperative attitude.

Such instances of antagonism and disrespect are a part of every judge's job; that Judge Lewchuk did not face more serious threats he credits to the civil atmosphere that prevailed in the circuit points of the day. "In the country, it was a different situation. When people came to court, it was often more like a conversation. They'd come up and shake your hand later and say 'Thank you, Judge.'"

However, that didn't stop him from worrying about the fines he collected while travelling the rural circuit. "I often carried enormous amounts of money. After being on the road for a couple of days, I'd have several thousand dollars on me. I was dealing with criminals and making change, and they could see my wallet was pretty heavy," he says. He worried about being robbed or losing the cash in a car accident or other unforeseen calamity. Eventually, he came up with a solution: he would deposit the money into his own account in the Credit Union and then write a cheque to the court to cover the amount.

His transfer to Swift Current in 1967 came with a significant perk: a clerk. He was still busy, holding court in Swift Current and its circuit points including Maple Creek and Assiniboia. However, he worried that perhaps he was not working hard enough compared to his judicial counterparts in the bigger cities. He asked his clerk to check into it and she reported back: in the previous year, he had presided over 9,500 cases and travelled 32,000 miles (51,500

kilometres). When he compared the numbers with those of his big-city colleagues, he concluded he was doing just fine as a country judge.

Court facilities at circuit points varied widely in both comfort and utility. The court building in Maple Creek was especially memorable to Judge Lewchuk. Whenever a train passed by on the railroad tracks nearby, the whole building shook, including the second-floor courtroom. And in wintertime, the judge and court staff often wore their mittens inside the courtroom because it was so cold. This was good preparation for Judge Lewchuk's eventual move to the court house in Regina. Accustomed to working weekends and late nights in chilly country points, he often worked weekends at his office in Regina – when the heat was typically turned down. Compared to some of the challenges he had faced in rural country points, it seemed a minor hardship to a seasoned judge. He brought his own space heater and carried on.

Judge Lewchuk's experience was not unique. Judges of Magistrates' Court were expected to carry heavy workloads with little assistance or guidance, and often in thankless and potentially dangerous circumstances. Some left the position after a few years when they realized what the workload entailed. One of those was Thomas Agnew, who served the court for five years before returning to private law practice in Prince Albert.

"I was appointed in 1965 and resigned in 1971, having covered the northern circuit during that time," Judge Agnew wrote in 1988. "The sittings sometimes went on into the small hours of the morning; there were no clerks in attendance and no assistance from the administration. The pay was a mere pittance to what it is today and if asked to do the same job today with what I now know I wouldn't touch it."<sup>6</sup>

Among the first judges of Magistrates' Court to take the oath of office in 1964 was Judge Edwin Zacharias Anderson. Known colloquially as E.Z. Anderson, he was appointed a provincial magistrate in Prince Albert in 1957 after having served with the British Colonial Service as Chief Magistrate of Nigeria. Judge Anderson was a vocal advocate for judicial reform, concerned that the court's broad jurisdiction and heavy workload would result in judicial burnout.

“Our magistrates are vested with wide and sometimes frightening power... from petty fines... to imposing sentences as severe as life imprisonment,” he wrote in 1961. “No magistrate should be expected to handle a case load of more than 200 to 250 cases per month [yet] most magistrates handle from 250 to 400... in one city court the number is approximately 1,100 per month.”<sup>7</sup>

Reform of Magistrates’ Court was slow to come, but eventually it could not be ignored. In 1973, Saskatchewan’s Attorney General Roy Romanow appointed retired Supreme Court of Canada Justice Emmett Hall to study the province’s court structure and make recommendations for its future evolution.

Justice Hall was well placed to conduct the review. He grew up in Saskatoon, studied law at the University of Saskatchewan, and served as Chief Justice of both the Court of Queen’s Bench and the Saskatchewan Court of Appeal before his appointment to the Supreme Court of Canada in 1962, where he sat for ten years. In 1961, he conducted a review of health services in Canada; his report in 1964 recommended the introduction of a nation-wide public health insurance scheme, which set the stage for the adoption of Medicare in Canada in 1968. He conducted a review of the education system in Ontario, and later, he led an inquiry into the national rail system, particularly as it pertained to the handling of prairie grain.

“His work was exceptional. We were lucky to get him to serve, not only for the substance of his proposals but he had, by that time, a national reputation of being an absolutely straightforward, honest broker,” recalls Romanow.<sup>8</sup> It is not surprising then, that Justice Hall’s *Report of the Survey of the Court Structure in Saskatchewan*, released in 1974, recommended sweeping changes to Magistrates’ Court.

Before setting out his recommendations, Justice Hall reviewed the purpose and function of the courts in general, the concept of the rule of law, and the related principle of judicial independence. He examined the hierarchy of the courts in Saskatchewan, which at that time included Magistrates’ Court, District Court, Court of Queen’s Bench, and the Saskatchewan Court of Appeal. He noted that judges of Magistrates’ Court, who were appointed by the provincial government, in comparison with judges of the other courts who were appointed federally, had much less judicial independence from the



government of the day. His recommendations set out to change this imbalance and create a more modern, independent, and respected provincial court.

Justice Hall noted the extensive legal jurisdiction of Magistrates' Court. On criminal matters, its jurisdiction was almost equal to that of the District Court and the Court of Queen's Bench. Judges of Magistrate's Court had absolute jurisdiction to try less serious summary offences, and with the consent of the accused, could hear most serious indictable offenses as well. Exceptions to this latter category were few, including treason, inciting to mutiny, piracy, murder, bribery of an official, and conspiracy to commit such crimes. On the civil side, judges of Magistrates' Court shared jurisdiction with the District Court to hear small claims up to a value of \$500.

Justice Hall also noted the "magnitude of the courts' work load" and its administrative costs, down to the penny. "The [magistrates'] courts handled 156,620 cases in the fiscal year 1973-74 consisting of criminal, civil and small claims. 72,131 of this total were voluntary payments. However, each case occupies some of a magistrate's time even if only counted in minutes. Total revenue from fines in the same period was \$3,456,397.74, with operating costs being \$860,210.76."<sup>9</sup> The judges' annual salary at the time was \$27,200.

Yet, as he remarked with disapproval, judges of Magistrates' Court often worked without a court clerk or administrative supports. "At the present time in most rural areas the Magistrate is Judge, Court Clerk, Reporter, Collector of Fines, Operator of the recording device and in some instances Janitor," he wrote in his report. "Of the many duties which such an official (court clerk) would undertake the collection of fines would be the most beneficial to the image of the court. To hear a judge impose a fine and costs and immediately see that judge receive the money from the individual and pocket the money is a repugnant sight."<sup>10</sup>

All in all, Justice Hall painted a picture of a busy, under-resourced, and underestimated court doing in many instances the same work as the federally-appointed judges of the District Court and Court of Queen's Bench. In doing so, his report confirmed what the legal community and the judges of Magistrates' Court had been saying for quite some time: that the jurisdiction and workload of the court made it imperative that its judges have similar knowledge,

qualifications, integrity, and independence as judges of the higher courts.

“With all this tremendous load of work and responsibility the Magistrates’ Courts are and have been treated throughout Canada, except in Quebec, more as a branch of the Civil Service than as a necessary and an important component of the judicial system,” Hall wrote.<sup>11</sup>

“I believe that it must be accepted that the average citizen regards the Magistrates’ Courts as the most important courts in the judicial hierarchy. Mention of the word ‘court’ immediately brings to the citizen the image of the Magistrates’ Court. It is the court he knows and in which some ninety per cent of all court proceedings involving the citizen are heard. It is also the most neglected court.”<sup>12</sup>

Though his *Report of the Survey of the Court Structure in Saskatchewan* was released in 1974, it took another four years of review and preparation before its recommendations resulted in the creation of a modern new court: the Provincial Court of Saskatchewan.

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#### Footnotes

1. “20 Magistrates become Judges” *Saskatoon Star-Phoenix*. Saskatoon, SK, Jan. 4, 1964, p 3.
2. Ibid.
3. “Which law is higher?” *Saskatoon Star-Phoenix*. Saskatoon, SK, June 25, 1957, p 13.
4. Ibid.
5. All quotes from personal interviews with Judge Eugene Lewchuk.
6. Agnew, Thomas. Letter to H.W. Goliath dated February 3, 1988, in possession of the court.
7. Anderson, E.Z. Quoted in an undated biography, in possession of the court.
8. All quotes from personal interviews with Roy Romanow, unless indicated otherwise.
9. Hall, Emmett. *Report of the survey of the court structure in Saskatchewan and its utilization done pursuant to order-in-council 474-73 dated April 6, 1973*. Government of Saskatchewan, Regina, SK, 1974, p 13.
10. Ibid, p 18.
11. Ibid, p 15.
12. Ibid, p 13.

### 3. Provincial Court

#### Elevating the Court in Saskatchewan

“The status of the Provincial Court has to be raised in the public estimation. Its true worth must, of course, come from the quality of its work; from a bench staffed with competent, knowledgeable judges of high personal integrity, with court experience and a knowledge of the law with the ability to apply it fairly and humanely. The judge must have an adequate salary and security of tenure – in other words, judicial independence to the same degree as federally appointed judges of the District Court.” ~ Justice Emmett Hall, 1974<sup>1</sup>

The *Report of the Survey of the Court Structure in Saskatchewan* by Justice Emmett Hall was welcomed by the Attorney General of Saskatchewan. Roy Romanow had appointed Justice Hall to conduct the review of the province’s court system in 1973, and he agreed with the recommendations in principle when the report was completed in 1974. Implementing those recommendations would take time, leadership, and money.

Key among the recommendations for the province’s court were: make it a court of record, secure proper facilities for conducting court, provide support staff, and appoint a Chief Judge. The province had already indicated its intention to add thirty-five positions in the form of court clerks to assist the judges and relieve them in the responsibility for completing paperwork, marking exhibits, swearing in witnesses, recording audio of court proceedings, collecting fines, and performing other administrative duties of the court. Justice Hall strongly endorsed this plan, the sooner the better.

On the subject of court facilities, he recommended an immediate halt to holding court in police buildings, emphasizing the need for “a clear separation of the police function from the adjudicative process of the court. Continuation of housing both the police and the courts in the same or adjoining buildings will delay recognition by the public of the fact that the courts are not in reality an arm of the police bureaucracy.”<sup>2</sup>

He emphasized that proper facilities would lift the court out of its “judicial ghetto”<sup>3</sup> and provide an atmosphere more amenable to serious, life-changing judicial matters. Among those facilities not acceptable for conducting court he listed church basements, dance halls, and “other premises which are virtually firetraps with no plumbing, erratic heating, no witness rooms, (and) poor acoustics.”<sup>4</sup>

He recommended new court houses in Prince Albert and North Battleford, and suggested that existing court houses should be used for court matters exclusively, moving other government services out.

Justice Hall pointed out a logical incongruity in the judicial system that gave a person convicted of a lesser or summary offence in Magistrates’ Court the right, on appeal, to have an entirely new trial at the District Court (a trial *de novo* or “do over”), while the appeal of a more serious indictable offense went straight to the Court of Appeal with no right to retrial unless ordered by the appellate court. Holding two trials for summary offences was, he said, an “unnecessary duplication of the judicial process in this era of a competent and legally trained bench.”<sup>5</sup>

He recommended ending this duplication and making the province’s court a “court of record” meaning its proceedings would be recorded (by audio machine or court stenographer) so that official transcripts could be produced as records of fact and evidence in appeal court, which was not common practice at the time.

As for the position of Chief Judge, it had been on the province’s books since 1967 but had never been filled. Justice Hall recommended the time had come to do so. A Chief Judge would oversee the day-to-day administration of the court and serve as a conduit between its judges and government officials of the day. In this role, Justice Hall felt the appointment of a Chief Judge was critical to advancing the administrative and judicial independence of the court as a whole. As for remuneration of a provincial judge, he recommended a salary equal to that of a federally-paid District Court judge, or \$52,000 annually.

“[T]he judge of the Magistrates’ Court must no longer be considered a civil servant and subject to the rules and regulations applicable to civil servants. This is not a reflection on civil servants. It is a recognition that the judge is part of another branch of

government, namely the judicial, not the administrative. There is this fundamental distinction to be recognized,” he wrote in his report.<sup>6</sup>

In his conclusion, Justice Hall acknowledged that all his recommendations could not be implemented immediately. However, he told Premier Allan Blakeney that his government must be prepared to direct more funding toward the court, and to defend this decision among the people of Saskatchewan. He wrote, “The ideal of living under ‘the rule of law’ cannot be achieved unless the people of the Province are prepared to support its Attorney General in the legislative and administrative reforms needed to achieve justice for all.”<sup>7</sup>

In January 1976, the first of Justice Hall’s recommendations to be implemented came with the appointment of Chief Judge Ernest Boychuk. As the first Chief Judge of Magistrates’ Court, it was his job to study Justice Hall’s report and determine the best means of implementing its recommendations for a modern, independent, professional court of the future. Ideally, it would be a court of record, properly staffed with court clerks, adequately paid, and administered at arms’ length of elected officials at the legislature in Regina.

Attorney General Romanow felt this appointment of Chief Judge was a perfect fit. Judge Boychuk had been named to Magistrates’ Court in 1967. In 1973, he became the province’s first Ombudsman, creating that new office from scratch. As Chief Judge, he was given responsibility for creating the administrative protocols and procedures of Magistrates’ Court, and to find means of elevating the status and respect of the court that both he and Justice Hall felt it soundly deserved.

“[His appointment] turned out to be a stroke of genius – and the cause of a lot of heartburn,” says Romanow.<sup>8</sup> “Ernie was aggressive, he was stubborn, he was intelligent, and his arguments were thoroughly thought out, which made him all the more difficult to deal with. He had a wonderful personality (and) a sense of humour which was disarming.

“His vision was that we would elevate the provincial judges, we wouldn’t call them magistrates, they would be the Provincial Court. We would provide garb with robes and colours and insignia which would signify the importance of the Court and the independence of



the Court. The hiring process would be – it can't be totally removed from the provincial government because Cabinet has to approve – but far removed from the practices of the past.”

The review and revision of Saskatchewan's court structure was just one initiative on Attorney General Romanow's plate. The New Democratic government of Premier Blakeney entered office in 1971 with an ambitious agenda of programs and reforms, much of which touched on the office of the Attorney General and the Ministry of Justice.

“Romanow pioneered more than his share of new initiatives. These included one of the first provincial human rights codes and accompanying human rights commission, a new ombudsman office to act as a public watchdog, an Indian constables' program with the RCMP... As well, he introduced the first provincial legal aid plan with full-time, salaried lawyers to provide the poor with access to criminal defence services throughout the province,” wrote historian Gregory Marchildon.<sup>9</sup>

With initiatives on a number of fronts, Romanow found the legal team in the Department of Justice competent but too small to handle the expanding workload. In addition, the department included few lawyers with Criminal Code experience, since most prosecution work at that time was contracted out to lawyers in private practice. Indeed, as a young lawyer, Romanow himself had cut his teeth on contract prosecution work in Saskatoon.

The practice of contracting lawyers in private firms to act as prosecutors made it difficult to implement broad policies with respect to prosecutions and sentencing, and resulted in varying levels of competence and commitment. It also raised the perception, real or imagined, that prosecutions were undertaken simply for the service fee. With the premier's blessing, Romanow began to expand his department in numbers and expertise, and to set the stage for a more dignified and professional court.

“This was an extremely activist period in justice reforms, centered around making sure the principles of independence and fairness and accessibility to courts would be the guiding rules, and that meant restructuring what we inherited virtually from top to bottom,” says Romanow. “We had to get the court elevated – get it into a position of apparent, in addition to real, authority. Give it

prestige not only for the validity and acceptance of their judgments by the public, but for very practical reasons as well, namely to make it attractive for people to apply to become a judge.”

Despite these lofty ambitions, an article in the *Regina Leader-Post* in September 1978, under the headline “Court changing name” declared that little would change when the new court came into being, stating, “When magistrate’s courts in Saskatchewan become the Provincial Court of Saskatchewan on Oct. 1, nothing will change but the name.”<sup>10</sup> According to the article, Chief Judge Boychuk said it was “merely an upgrading of the court” as was occurring in other provinces across the country at that time.

“Boychuk said over the years in Canada, magistrate’s court has been given more and more jurisdiction and is now handling 95 to 98 per cent of all criminal cases. He said the change in name and status of the court is simply a recognition of the fact that magistrate’s court judges are legally trained and qualified judges on a par with federally-appointed judges,” the article stated.

A few days later, on October 1, 1978, the Provincial Court of Saskatchewan came into being. The *Act respecting the Establishment of a Provincial Court for Saskatchewan* also created a Judicial Council, an arm’s length council to recommend the appointment of Provincial Court judges and hear grievances against them. The Judicial Council included the Chief Judge of Saskatchewan, Chief Judge of Court of Queen’s Bench, Chief Judge of Provincial Court, President of the Law Society of Saskatchewan, and other appointees.

With these changes, the province’s judges were no longer accountable to the Minister of Justice but to their Chief Judge, and they were no longer appointed at the discretion of elected officials but on the recommendation of a council of their superiors and peers.

The following day, the judges of Magistrates’ Court were sworn onto the new Provincial Court in a ceremony at the Regina Court House on Victoria Avenue. A photo of the judges in their robes appeared on page sixteen of the next day’s *Regina Leader-Post*.<sup>11</sup>

In the area of salaries, indeed nothing had changed. Despite Justice Hall’s recommendation, the salary of Provincial Court judges remained at \$40,000 as it had been in the final year of Magistrates’ Court. Change would come in time, and it would be painful for both the province and its judges.

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Footnotes

1. Hall, Emmett. *Report of the survey of the court structure in Saskatchewan and its utilization done pursuant to order-in-council 474-73 dated April 6, 1973*. Government of Saskatchewan, Regina, SK, 1974, p 15.
2. Ibid, p 16.
3. Ibid, p 16.
4. Ibid, p 17.
5. Ibid, p 23.
6. Ibid, p 20.
7. Ibid, p 60.
8. All quotes from personal interviews with Roy Romanow, unless indicated otherwise.
9. Marchildon, Gregory P. "Roy Romanow" in Gordon Barnhart, ed., *Saskatchewan Premiers of the Twentieth Century*. Canadian Plains Research Center, University of Regina, Regina, SK, 2004, p 362.
10. "Court changing name" *Regina Leader-Post*. Regina, SK, Sept. 26, 1978, p 50.
11. "Judges sworn in" *Regina Leader-Post*. Regina, SK, Oct. 3, 1978, p 16.

## 4. Judicial Independence

### Taking a Stand

“Judicial independence is to a judge like oxygen is to life, and at different times in the 1980s Provincial Court Judges across Canada began gasping for air.” ~ Judge Gerald Seniuk, 2013<sup>1</sup>

The 1970s were an exciting time for the legal community in Saskatchewan. The provincial government, under Attorney General Roy Romanow, introduced a number of reforms and initiatives to modernize the justice system and make it more responsive to the needs of the people. In 1973, the province created a system of legal aid. In 1975, it introduced a fine option program whereby poorer offenders could work off their fines rather than serve jail time. In 1978, it created the Provincial Court of Saskatchewan. The prospect of a modern, independent, accessible judiciary was welcomed by the province’s legal community and those who served as judges.

Judge Gerald Seniuk (later Chief Judge 2001-2007) remembers a sense of exhilaration and creativity in the air.<sup>2</sup> For two years, from 1975 to 1977, he worked as a legal aid lawyer at the new Community Legal Services Commission. In 1977, he was appointed a judge of Magistrates’ Court in Meadow Lake and transitioned to Provincial Court when it was created the following year. Talk was of accessible justice, restructuring the courts, and legal reform to bring the justice system closer to the people it served. To a reform-minded judge (and a former journalist), the government and the judiciary seemed to be on the same page.

Then, in the early 1980s, Judge Seniuk began to notice a change. The conversation stopped, replaced by a general unease. Federal and provincial governments seemed to shift their focus, he says. In Ottawa, Prime Minister Pierre Trudeau was pressing forward his plan to patriate the Constitution of Canada with the inclusion of a Charter of Rights and Freedoms, antagonizing many provincial premiers, including Saskatchewan’s Premier Allan Blakeney, who feared the Constitution, with an entrenched bill of rights, would

erode their legislative powers. Across the country, this debate was bitter and acrimonious.

In April 1982, Provincial Court judges in Saskatoon came to an impasse with the province over the issue of court security. The city had given notice its police officers would no longer be assigned to guard the courts – on the grounds they should be doing police work, not security detail – and would henceforth attend court only when required for official police duties such as escorting prisoners or testifying at trial. The province made no provision to replace them with alternate security personnel. It was, for everyone, a line in the sand.

For the judges, security was a crucial aspect of judicial independence, essential to doing their work without fear of intimidation or attack on themselves, the accused, witnesses, and others attending court. The issue was particularly visceral for Judge Robert Conroy, who had been attacked a few years earlier in a courtroom in Saskatoon. (Read more about this in Chapter 10 Security). Judge Conroy and Judge Brosi Nutting gave notice they would not hold court in the absence of security. When that day came to pass, there were police officers on official duties in Judge Conroy's courtroom, but there were no police officers present in Judge Nutting's courtroom. As he had forewarned, Judge Nutting declined to hold court in that circumstance.

That was a Friday in early April. By the following Monday, the issue had been resolved and police officers were once again providing security in the courtroom. It was a small but important victory for Provincial Court judges, but a harbinger of more strained relations to come. The sands shifted again later that month, on April 17, 1982, when the Canadian Charter of Rights and Freedoms was passed into law. Momentous change was coming to the legal and legislative corridors of Canada.

The Charter of Rights and Freedoms replaced the Canadian Bill of Rights of 1960. Whereas the Bill of Rights was a federal statute applicable to federal regulations and laws, the Charter was entrenched in the Constitution and, as such, applied to all federal, provincial, municipal, and territorial statutes across the country. All laws and regulations had to comply.

The Charter guaranteed certain rights to all Canadians including the right to free speech, the right to religious freedom, and the right

to equality under the law, free of discrimination based on sex, race, religion, age, etc. The legal rights included the right to life, liberty, and security of the person, the right not to be arbitrarily imprisoned or detained, the right to a timely trial, and the presumption of innocence until found guilty “in a fair and public hearing by an independent and impartial tribunal.”<sup>3</sup>

The Charter strengthened the rights of witnesses and the accused. Evidence collected by means that violated these rights and freedoms was to be excluded from court proceedings. Laws and regulations that violated the Charter were to be declared unconstitutional. To this end, the Charter gave authority to judges – in fact, gave them the responsibility – to evaluate the laws of the land to determine if the Charter had been contravened and, if finding so, strike down the law and determine a fit and proper remedy for those who had been wronged.

This profoundly changed the relationship between provincial governments and judges of the Provincial Courts, where almost all constitutional challenges began their path through the courts. It shifted judicial power from the elected officials who made the laws to the judges who could declare those laws invalid, and from police departments that collected evidence (and the Crown prosecutors who presented the evidence in court) to the judges who could disallow that evidence if the means of its collection was found to have violated the Charter rights of the accused.

Rulings by the Supreme Court of Canada ensured that Charter rights were evenly and justly applied across the country no matter who – or which political party – held power in each provincial legislature at the time.

This new dynamic created tension across the country. Judges felt overwhelmed. Governments felt undermined. “One of the Supreme Court of Canada justices said it was like you’d been writing with your right hand all your life, and now you were being asked to write with your left hand,” recalls Judge Seniuk. Even so, he says it was an exciting time to be a Provincial Court judge.

“It was exciting for the whole judicial system. You felt you were really contributing to this new growth of law,” he says. “Early Provincial Courts and their precursors were very constrained by the legal framework in which they worked. There was really no check



on government by the Provincial Court in any realistic sense until the Charter came in.”

Enforcement of the equality provisions of the Charter was delayed until 1985 to give all levels of government time to bring their laws and regulations into line. However, it did not take long after that date for conflicts to emerge. In their rulings, particularly when finding evidence inadmissible, judges often found themselves at odds with provincial officials – with the politicians, policy makers, Crown prosecutors, and police. Occasionally, those differences resulted in news headlines and public rebuke.

“Political figures both in power and opposition, spurred on by public clamour, indulge themselves in public criticism of judges and even demands for discipline,” remarked Saskatchewan-born Supreme Court Justice John Sopinka in 1997.”<sup>4</sup> To which Judge Seniuk added: “As alarming as such pressures are, they are all the more threatening when the attacks are led by Ministers of Justice or their deputies, the very legal officers that traditionally defended the judiciary.”<sup>5</sup>

This new role for Provincial Court judges highlighted and intensified their problematic relationship with provincial governments across the country. In Saskatchewan, as elsewhere, the judges were appointed and paid by the province, which set their salaries and determined other workplace conditions such as security, facilities, and administrative staff. The judges, through the Saskatchewan Provincial Court Judges Association (SPCJA), lobbied and negotiated on these matters directly with government officials.

To the judges, it began to seem quite troubling that a court with judicial powers separate and superior to those of the executive branch of government should have to appeal cap-in-hand to that government for a raise, creating a possible perception, whether real or imagined, that judges’ remuneration might be linked in some way to their rulings in court, i.e. rulings that favoured the popular or political point of view.

For the judges, this was a greater threat to their judicial independence than the issue of courtroom security. “You knew something was wrong. It was like the oxygen had gone out of the room,” recalls Judge Seniuk. “We would be dealing with the government on various issues and the question of salary would come

up. The leverage they had, their dismissive attitude, their references to the Charter. Some governments and some ministers of justice had trouble understanding the changes brought by the Charter and that judges had no choice but to follow the law.”

On April 26, 1982, nine days after the Charter of Rights and Freedoms was proclaimed in Ottawa, Saskatchewan’s New Democratic government of Allan Blakeney was swept out of office in a landslide election victory for the Progressive Conservative party of Grant Devine. Attorney General Roy Romanow lost his seat. The new attorney general and minister of justice was Gary Lane.

Saskatchewan’s Provincial Court judges began pressing Minister Lane to establish an arm’s length and independent process for determining matters such as salaries, benefits, court facilities, and support staff. At the time, the judges earned an annual salary of \$65,800 – the second highest among Provincial Court judges in Canada.<sup>6</sup> Their concern was not over salaries per se, but an independent means of setting their salaries and other budgetary items into the future.

Two judges in particular, Judge Nutting and Judge Richard Kucey, led this dialogue among their colleagues, raising the notion of collective action and responsibility in pressing for this reform. Not all Provincial Court judges were receptive to their message, being reluctant to take an activist role or wade into public debate. Most, according to Judge Seniuk, preferred to wait and see, hoping a future minister of justice would be more receptive to their concerns.

As the decade progressed, however, it became apparent to the judges this lack of understanding was not isolated to one minister, one government, or even one political ideology. Provincial Court judges across the country felt the same dearth of oxygen in their relationships with elected governments. It would take several years and a landmark ruling by the Supreme Court of Canada to establish and safeguard the principle of judicial independence in the Provincial Court.

In 1987, Judge Patrick Carey was named Chief Judge of the Provincial Court of Saskatchewan, replacing Chief Judge Cornelius Toews, who had resigned and returned to private legal practice. Prior to his appointment to the bench in 1984, Judge Carey had

been executive assistant to Minister Lane. His appointment as Chief Judge three years later was announced by Robert Andrew, the new attorney general and minister of justice.

That September, Chief Judge Carey met with the executive of the SPCJA to report on his communication with Minister Andrew on the topic of the judges' salaries, which had seen little movement since 1982. According to notes from that meeting, the salary of Provincial Court judges in Saskatchewan had fallen from second place among the provinces to ninth place.<sup>7</sup> Chief Judge Carey felt the government would act to correct this discrepancy. However, the executive members of the SPCJA, Judges Nutting and Kucey among them, were less optimistic. Judge Nutting stated his belief that morale among the judges was at an all-time low.

In November 1987, a bill to amend *The Provincial Court Act* was allowed to die on the Order Paper of the provincial legislature, and with it several amendments favourable to the SPCJA concerning judges' remuneration (including pensions and death benefits), judicial appointments, residency, and the powers of the Judicial Council. The bill was withdrawn from consideration after concerns were raised by New Democratic opposition MLA Robert Mitchell, ostensibly based on concerns raised by the judges. However, SPCJA president Judge Harvie Allan said he knew of no objections and had raised none himself.

Chief Judge Carey was blunt in his assessment to members of the SPCJA: "In case there is any doubt in anyone's mind, I have serious concerns that our struggle for all of the issues contained in the bill, plus those issues presently being discussed including salary negotiations, have suffered a critical set-back." One month later, the SPCJA hired Saskatoon lawyer Silas Halyk to act on its behalf in discussions with the provincial government.

The following summer, in June 1988, the executive of the SPCJA passed a resolution that it would consider the unprecedented step of taking the provincial government to court in its struggle to establish an independent process for setting judicial salaries and other matters pertaining to the operations of the court. The legal argument for the lawsuit was based on the Charter, which guaranteed in Article 11(d) the right to a "fair and public hearing by an independent and impartial tribunal."

At issue was whether the judiciary could be considered “independent and impartial” if it had to negotiate directly with government officials in order to seek a pay raise or other benefits for the court, at the same time that it was passing judgement on government laws and regulations. Even if individual judges performed their duties with impartial diligence, was there a public perception, real or imagined, that the court as a whole was not sufficiently independent from the elected government of the day?

In February 1989, Judge Nutting, as president of the SPCJA, wrote a memo to members of the association. In it, he indicated that he and Halyk had approached Robert Stromberg, a well-respected lawyer with political ties to the Devine government, to put forward the idea of an independent judicial commission based on a model recently established in Ontario, with judges’ salaries in Saskatchewan to be set at an average of Provincial Court judges’ salaries across the country.

In the same memo, Judge Nutting indicated the executive of the SPCJA was ready to proceed with legal action against the province if there was no progress after a meeting with government officials set for March.

Following the meeting in March 1989, Judge Nutting sounded cautiously optimistic in his message to members of the SPCJA. He relayed the news that Justice Minister Andrew was receptive and wished to speak about these matters with his counterparts across the country, as well as with members of the provincial Cabinet. However, when nothing materialized over the summer months, Judge Nutting wrote to Premier Devine in September 1989, advising him the judges were done waiting and would commence their legal action in November.

He wrote: “The Provincial Court Judges have experienced a loss of confidence in the bone fides of the Minister and to put the matter respectfully, but directly, we cannot await any further study or delay to a matter which, in our view, involves the independence of this Court.” By this time, the judges’ annual salary had risen to \$80,000 – still the second lowest salary among Provincial Court judges across the country.<sup>8</sup>

That October, Minister Andrew was shuffled out of the justice portfolio and Lane was returned to the post of attorney general

and minister of justice. Soon after, Minister Lane was quoted in a newspaper article challenging the judges to proceed with their lawsuit: “At some point in the development of the independence of the judiciary, the courts will have to rule... In my view, the sooner we get the issues resolved, the better off everybody is and the more confidence people will have in the system.”<sup>9</sup>

In the same newspaper article, Romanow, who was now sitting in the legislature as leader of the opposition New Democratic Party, warned of the potential for chaos and said the conflict verged on becoming a “constitutional crisis.” He also said the judges’ threat of legal action was “unprecedented in Canada, perhaps the Commonwealth” and asserted that “You can’t have a system of law and order in any province function where the judges are even feeling that there’s a danger of political influence, that simply can’t work.”<sup>10</sup>

As the SPCJA and its lawyer Halyk finalized the judges’ legal challenge, Judge Nutting composed a public statement about the lawsuit. He called a news conference for 4 p.m. on Friday, November 3, 1989, to explain the basis of the lawsuit to news reporters and to the public at large. However, he never delivered that message.

At 3 p.m., Judge Nutting informed a general meeting of the SPCJA that a last-minute deal with the province had been reached. The deal included formation of a judicial commission and an immediate \$10,000 salary increase to \$90,000. Judge Nutting indicated this deal did not achieve everything the judges had hoped for (for instance, the commission’s report would not be binding) but felt it was the best he could negotiate at the time.

In June 1990, *The Provincial Court Act* was amended to provide for the appointment of a three-person commission to inquire into and make recommendations regarding judicial salaries and benefits. Members of the commission were chosen by the provincial government. The first commission, chaired by University of Saskatchewan law professor Douglas Schmeiser, was appointed for a three-year period beginning October 1, 1990.

In its brief to the Schmeiser Commission, the SPCJA asked for an annual salary of \$135,500 in parity with that of District Court judges, with whom they felt an equality of workload and expectation of judicial independence. In the province’s brief to the commission, Minister Lane felt the current salary of \$90,000 was sufficient for

safeguarding judicial independence, and that any further salary increase should reflect “the Saskatchewan context and economic climate.”<sup>11</sup>

The Schmeiser Commission released its report in March 1991. It recommended an annual salary for Provincial Court judges of \$104,000 retroactive to the previous October based on an average of judges’ salaries across the provinces, with additional cost-of-living increases in the following two years. Among other measures, it recommended an extra \$7,000 for the Chief Judge and \$3,500 for the Associate Chief Judge, and a \$5,000 allowance for northern judges. It also recommended raising the qualifications for a Provincial Court judge from five to ten years’ experience as a practicing lawyer.

The provincial government ignored the Schmeiser Commission report. That May, at the annual general meeting of the SPCJA, its legal counsel Halyk gave a frank assessment as recorded in the minutes:

“The report was made and we thought it would go to the Legislature and be accepted. But with hindsight, you might now expect we got sucked in. I suspect if the report came back and the Minister liked it he would have told us we were stuck with it. Now, since it is not to his liking, he has not accepted it,” he said. “If we can get the process respected, much of the rest will follow. The money is a bit of a red herring. I think the fight has just begun.”

The provincial election of October 1991 offered the judges renewed hope. The New Democratic Party regained power in the legislature with Roy Romanow the new premier of Saskatchewan. The new minister of justice was Robert Mitchell. As noted in a summary prepared by the SPCJA’s lawyer in 1995, Minister Mitchell “held out the hand of friendship and reasonableness” to Provincial Court judges “and made plain his desire to correct the growing inequity of salary ranges.”

Romanow describes the province he inherited in the fall of 1991 as “dead broke.”<sup>12</sup> In the days and months to follow, government ministers cut their budgets and salaries, limited wage increases for civil servants, and eliminated hundreds of jobs. Taxes were increased and fifty-two rural hospitals were converted to care centres or closed.

A commission of inquiry, led by chartered accountant Donald



Gass, reviewed the province's books. His report painted a bleak picture. It calculated the province's debt as of March 31, 1991, at \$7.5 billion, double the amount estimated by the outgoing Devine government. The deficit for 1990-1991 was revised upwards from \$360 to \$975 million. Saskatchewan had the largest per capita debt and deficit in the country.<sup>13</sup> Premier Romanow asked the entire province to tighten its belt.

"The only way we could have any hope of getting public support for this was if the public perceived it was a crisis and everybody was paying their fair share," says Romanow of that time. "I'd entered politics with huge dreams of making changes, which I did during the Blakeney government. Now I was the premier and I wanted to do things to improve society, but I could not. I had become an accountant."

In this role of accountant, he and other government ministers travelled to Toronto and New York to meet with banking agencies to try to convince them not to lower Saskatchewan's credit rating, which would have the effect of raising the interest rate on monies borrowed to fund the near-bankrupt province. Pressure also came from Ottawa and Prime Minister Jean Chretien, who feared Canada's credit rating would be negatively affected if one province defaulted on its debt payments. At the time, the three largest public expenditures in Saskatchewan were health care, education, and interest payments on the debt.

Shortly after the election, the executive of the SPCJA met with the new minister of justice. According to notes from that meeting, Minister Mitchell said he agreed with the report of the Schmeiser Commission and would work toward its implementation, but due to fiscal austerity, he would need some time. He asked the judges for patience.

The judges entered 1992 cautiously optimistic. SPCJA president Judge "Ace" Chorneyko gave this assessment in his report to members that June: "My impression is that we now have an Attorney General who understands the concept, and the importance of judicial independence." He counselled patience and discretion, while acknowledging the province faced economic problems "which they are using as an excuse."

But by September, the judges' optimism was waning once again.

The new SPCJA president Judge David Arnot spoke at a general meeting: “The time has come for our Judges to take back control of our court from the government bureaucrats. This will require strong, positive, judicious action. The future integrity and independence of the court depends on it.”

At the same meeting, Judge Nutting reported on a conversation he had with Premier Romanow. He said the premier agreed in principle with the Schmeiser Report but balked at the cost of implementing its recommendations, estimated at \$2 million. Judge Nutting said he conveyed to the premier that the judges were prepared to sacrifice money for certainty; in other words, they would forgo a salary increase as per the Schmeiser Commission if the next commission’s report was respected and binding.

That September of 1992, two simmering issues came to a head, further highlighting the uneasy relationship between judges of the Provincial Court and officials of the government. In La Ronge, Judge Claude Fafard refused to attend a meeting with justice officials to discuss cost-saving measures at the northern court. He felt such measures were already impeding his ability to hold court where required in a timely fashion, such that the backlog of cases was unmanageable and getting worse.

In a letter to the justice department, Judge Fafard described in his own words the separate roles of government and the judiciary: “This is a judge’s function, to hear cases and make decisions, and to see to it that guaranteed rights are protected, including the right to trial within a reasonable time. Seeing to it that this is paid for is a function of the government, not a function of the judge.”

He suggested adding a clerk to the office in La Ronge and holding court more often, not less often, in order to reduce the backlog of cases. He advised that, as of January 1, 1993, he would book court days at northern circuit points as often as needed, adding: “If you want to cancel my flights, then do so and accept the political and public responsibility for doing so.”

Meanwhile, in Saskatoon, another showdown was brewing over the issue of court clerks. In June 1990, the SPCJA passed a resolution that “no proceedings shall be taken in the Provincial Court, by a Provincial Court judge, at a regularly scheduled court sitting save

and except that a duly-appointed court clerk is in attendance to perform his/her duties and to assist with proceedings.”

Initially, the resolution was to take effect a year later in 1991, giving the government time to assign more clerks. The deadline was extended for another year. However, by the fall of 1992, court clerks were still not assigned to Small Claims Court in Regina and Saskatoon. The SPCJA reaffirmed its resolution and two judges in Saskatoon, Judge Ronald Bell and Judge Robert Smith, gave notice they would not hold court as of October 1, 1992, without the assistance of a duly-appointed clerk.

When that day came – and no clerks – they adjourned court indefinitely. Their action was reported in the media. Interviewed by the *Saskatoon Star-Phoenix*, Justice Minister Mitchell agreed it was “simply not appropriate” for judges to perform their own clerical work, but added the province did not have the funds to hire more clerks at that time.<sup>14</sup>

A few days later, the deputy minister of justice, Brent Cotter, sent a letter to Chief Judge Carey urging him to assign different judges to Saskatoon’s Small Claims Court, advising that if court sittings did not resume the following day, the government would file a complaint with the Judicial Council of Saskatchewan.<sup>15</sup> Chief Judge Carey responded that any other judge so assigned would take the same position as Judges Bell and Smith, including the retired judges who provided relief services at the court.

On October 7, the Ministry of Justice lodged a complaint against Judges Bell and Smith with the Judicial Council of Saskatchewan accusing them of misconduct and neglect of duty. Both judges resumed court hearings without clerks pending the outcome of the Judicial Council’s review.

In early 1993, the judges and Minister Mitchell finally reached an agreement for the creation of an independent and binding judicial commission. The agreement was signed by the minister and SPCJA president David Arnot on February 5, 1993. It stated, “Whereas the Crown and the Judges agree that an independent judiciary is a cornerstone of a free and democratic society...” and set out the terms by which the commission would make binding recommendations on salaries and other financial benefits and non-

binding recommendations on workplace matters such as court staff, facilities, equipment, and security.

The commission would be convened every three years and consist of three members, one chosen by the government, one chosen by the SPCJA, and a chairperson amenable to both. The commission would report within six months of commencing its review and the government would implement its recommendations within ninety days.

The SPCJA agreed to forgo the monetary provisions of the previous Schmeiser Commission in exchange for this assurance of an independent and binding process going forward into the future. *The Provincial Court Act* was amended to set the terms in legislation. The Irwin Commission, named for its chairperson Saskatoon City Commissioner Martin Irwin, was appointed in July.

In speaking to this amendment in the legislature, Minister Mitchell noted the judges' willingness to forgo any salary adjustments they would have been due under the Schmeiser Commission, and quoted the Supreme Court of Canada on the issue of financial security and judicial independence: "The essence of such security is that the right to salary and pension should be established by law and not be subject to arbitrary interference by the executive in a manner that could affect judicial independence."<sup>16</sup>

The judges were optimistic yet apprehensive. So much so, they offered to meet with government officials to discuss the option of preparing a joint salary submission to the commission or providing a range of salaries both parties found acceptable, hoping from the outset the province's financial difficulties would not derail the process once again.

In a comprehensive briefing note for judges' eyes only, Judge Seniuk wrote, "We made it clear that we did not want the Minister or the government to be embarrassed and thereby jeopardize the process. Our offer was twice rejected with the closing words of the Deputy Minister being, 'We'll take our chances.'"

The Irwin Commission completed its report in December 1993. It recommended an annual salary for Provincial Court judges of \$108,000 based on an average of Provincial and Territorial Courts, with further cost-of-living increases in 1994 and 1995. Other financial details included a \$1,250 professional allowance per year

and extra funds to cover a required hike in contributions to the Canada Pension Plan.

However, Premier Romanow did not need to read past the salary recommendation to know he was in trouble. Though he believed in the principle of an independent judiciary, and he knew that Saskatchewan's Provincial Court judges were underpaid, he felt the province could not afford such a major salary catch-up at that time. It ran counter to the government's recovery plan, which required that all sectors of society hold the line, or even reduce the line, until the province's budget was back on more solid ground.

"I felt very strongly about the Provincial Court in the 1970s, and in a moment of crisis did not want to attack it in any direct way, but to demonstrate to the rest of society that all dimensions of society, no matter how independent and how important they were, were with us in this cause. That was the only way we were going to succeed," says Romanow.

"In my meetings with the judges, I tried to explain to them my predicament, and say to them, 'When everybody's taking a hit, that means you, too.' And their response was 'No' – and it was the correct response – 'Either you believe in an independent judiciary or you don't. What happened to the old days when you were building up the independence and the credibility of the court?' And they had a good point.

"I took this issue back to caucus and I said, 'Look we're going to have a problem here. The judges are going to be angry. They're going to take us to court. What do we do?' But they (the government MLAs) were trapped. They couldn't walk downtown in, say, Elrose or Eston, where their hospital is closed but their judge is going to get a [significant salary] increase."

The media made headlines of the salary provision of the Irwin Commission report, ignoring or downplaying the key issue of judicial independence. CFQC Radio declared "Saskatchewan Provincial Court Judges are in for an early Christmas present." Newspaper and radio columnists, as well as spokespersons for business and union interests, criticized a judicial salary increase of twenty percent while civil service salaries were held at 2.5 percent.

The justice minister was publically critical of the Irwin Commission report. He asked the commission to reconsider

its position on judicial salaries, which it respectfully declined. Meanwhile, the SPCJA prepared a statement in response which read, in part: “A Commission that is expected to start its work doing only what the government wants is not independent. A binding law that this government can refuse to obey is a sham.”

In a letter, Judge Seniuk, writing as the president of the SPCJA, appealed to Premier Romanow as “the legislator who fostered and developed this Court,” urging him not to backtrack on the progress he had made toward the principle of judicial independence. He wrote: “Your government can proudly claim for Saskatchewan the honour of being the first jurisdiction to have the foresight and the courage to respect that principle. Please do not forsake our rightful place in juridical history by now dishonouring that process.”

By its own law, the government had ninety days to implement the recommendations of the Irwin Commission. The judges could only wait and see.

Early in the New Year 1994, the Judicial Council of Saskatchewan ruled on the case of the two judges in Saskatoon, Judge Bell and Judge Smith, who had refused to hold court without clerks in their courtroom back in October 1992.

While the council rebuked both sides for their confrontational manner, it clearly came down on the side of the judges. Its written reasons, signed by Chief Justice of Saskatchewan Edward Bayda and Chief Justice Donald MacPherson of the Court of Queen’s Bench (Provincial Court Chief Judge Carey had recused himself from the matter), stated that “judges are judges and not clerks and no legislature or executive body has the power to convert them into something other than judges.”<sup>17</sup>

“If the issue is indeed a public one involving the judiciary as a group, institution, or branch of government, as we think it is, a distinctly uncomfortable inconsonance is the result when one begins to treat that issue as a disciplinary one as well, especially when culpability is aimed at only two members of the group. . . . Traditionally, judges as a group, an institution or a branch of government have had the right to take public positions on important matters affecting the administration of justice.”

That March, the province missed its ninety-day deadline to

implement the binding provisions of the Irwin Commission report. Instead, Minister Mitchell read a statement to the legislative assembly. He said the government's decision to establish a legally-binding commission had been a mistake. He said he would not implement the recommendations of the Irwin Commission's report. Instead, he announced the government would give the judges a salary increase of 2.5 percent and repeal the law that created the independent commission in the first place.

The minister stated, "[When] the application of those laws lead to an unconscionable result, government and legislatures must have the courage to act in the public interest and undo it."<sup>18</sup>

To the judges, this action was nothing short of draconian and a breach of a contract signed by Minister Mitchell and Judge Arnot in February 1993. The SPCJA responded with a public statement delivered by its lawyer Halyk: "The whole principle of government under the rule of law, in our view, has been sacrificed on the altar of political expediency. This is *not* a matter of the government changing a law, this is a matter of the government, having clearly broken the law, now passing another law trying to justify their breach.

"The Commission, having been asked to serve, performed their function ethically, honourably, and with all issues put fully before them. The members of the commission properly understood all issues before them. After having done their duty, they have been unfairly criticized by the government. The judges sincerely regret this unjustified attack on their integrity."

The following month, in April 1994, the government introduced Bill 46 to amend *The Provincial Court Act* to remove the provision for an independent judicial commission, effectively dissolving the Irwin Commission and nullifying its report. In the legislature, government MLAs argued the commission had "gone badly off the rails" by recommending an "absurd" salary increase.<sup>19</sup> Instead of appealing the matter to a court of law – asking judges to rule on the subject of judges' salaries – they argued it was more expeditious to simply repeal the law.

"[R]ather than having it fester along in the court system and affect the administration of justice, we are substituting the judgement of the legislature in this arbitration appeal process. This is not breaking our word or not breaking law, Mr. Speaker. This is seeking remedy



from an illogical settlement,” New Democratic MLA Pat Lorje stated in the Legislature in support of Bill 46.<sup>20</sup>

Bill 46 was soundly criticized by the opposition parties, whose censure focussed not on the principle of judicial independence or the salary provision, but on the perceived folly of creating an independent and binding commission in the first place, and then repealing the law by which it came to be. As Conservative MLA Gerald Muirhead put it, “Rather than admitting a mistake and accept the judgement of the public that would come with it, they have borrowed a page out of Orwell’s Nineteen Eighty-Four. Big Brother has decided the commission never existed.”<sup>21</sup>

Bill 46 was also denounced by the country’s legal community. The national president of the Canadian Bar Association, Cecilia Johnstone, wrote a letter to Minister Mitchell and Premier Romanow indicating the CBA’s vehement opposition to Bill 46, stating, “The potential negative ramifications of your course of action far outweigh any immediate political or financial gain.”

The president of the Saskatchewan branch of the Canadian Bar Association concurred, “We do not recommend or suggest any amendments to the proposed legislation as the precedent being set by Bill 46 is unacceptable to the Saskatchewan Branch of the Canadian Bar Association. We are in complete opposition to the Bill and are of the opinion that it should be withdrawn.”

If the government thought Bill 46 would prevent a long and bitter court case, it was wrong. In a news release issued by the Canadian Bar Association, Judge Seniuk affirmed that Saskatchewan’s Provincial Court judges were ready to take the matter to court: “It is our opinion this will be one of the most significant Canadian post-Charter cases on the constitutional requirements necessary to secure judicial independence from arbitrary Executive action.”

On May 2, 1994, Bill 46 passed into law. Two weeks later, Provincial Court judges filed their lawsuit in the Court of Queen’s Bench of Saskatchewan.

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#### Footnotes

1. Seniuk, Gerald. “Saskatchewan contribution to CAPCJ” *Provincial Judges Journal*, Vol. 36 No. 1, 2013, p 49.
2. All quotes from personal interviews with Judge Gerald Seniuk, unless indicated otherwise.

3. *Canadian Charter of Rights and Freedoms* Article 11(d). Accessed online: <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>
4. Sopinka, John. Address to the Ukrainian-Canadian Conference on Judicial Independence and Accountability, Kyiv, Ukraine, Oct. 2, 1997, quoted in Gerald Seniuk, "Judicial Independence and the Supreme Court of Canada." *Canadian Bar Review*, Vol 77, No 3 & 4, 1998, p 391. Accessed online: <https://cbr.cba.org/index.php/cbr/article/view/3762/3755>
5. *Ibid*, p 392.
6. Traynor, Dave. "Judges salary debate has lengthy history" *Saskatoon Star-Phoenix*. Saskatoon, SK, March 23, 1994, p 8.
7. All notes, memos, minutes, letters, legal documents, etc. prepared by and for members of the SPCJA are held in the private archive of the SPCJA.
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9. Wyatt, Mark. "Minister welcomes judicial showdown" *Regina Leader-Post*. Regina, SK, Oct. 28, 1989, p 1.
10. Traynor, Dave. "Lane welcomes court action to solve judges' concerns" *Saskatoon Star-Phoenix*. Saskatoon, SK, Oct. 28, 1989, p 3.
11. Whyte, John and Colleen Matthews. "The Judiciary" included in Howard Leeson, ed., *Saskatchewan Politics: Into the Twenty-first Century*. Canadian Plains Research Centre, University of Regina, Regina, SK, 2001, p 126.
12. All quotes from personal interviews with Roy Romanow, unless indicated otherwise.
13. Marchildon, Gregory P. "Roy Romanow" in Barnhart, Gordon, ed. *Saskatchewan Premiers of the Twentieth Century*. Canadian Plains Research Centre, University of Regina, Regina, SK, 2004, p 369.
14. Burton, Randy. "Province can't afford clerks, Mitchell says" *Saskatoon Star-Phoenix*. Saskatoon, SK, Oct. 2, 1992, p 2.
15. Letter from W. Brent Cotter to Chief Judge Patrick Carey re: Judges Bell and Smith and Small Claims Court, Oct. 6, 1992, from the private archive of the SPCJA.
16. Quoted from *Valente v The Queen* [1985] SCR 673
17. Reasons for Disposition in the Matter of a Complaint Against Judges Bell and Smith, Judicial Council of Saskatchewan, January 12, 1994, from the private archive of the SPCJA.
18. Traynor, Dave. "Provincial government ignores law" *Saskatoon Star-Phoenix*. Saskatoon, SK, March 23, 1994, p 1.
19. *Hansard*. Legislative Assembly of Saskatchewan, Regina, SK, March 30, 1994, p 1279.
20. *Ibid*, p 1279.
21. *Ibid*, p 1281.

## 5. Court Challenge

### The Judges go to Court

“There comes a point where, in seeing an honourable and just redress, you must give up appealing to those who will not listen. The long and difficult history of this case has been a bitter trail of empty promises and broken expectations... We say that no one really listened and no one really cared to listen. We sincerely hope the Government is listening now.” ~ Judge Brosi Nutting, 1989<sup>1</sup>

Judge Brosi Nutting penned those words in 1989 to deliver at a news conference announcing the judges’ lawsuit against the province over the principle of judicial independence. But the words were never spoken. The news conference was pre-empted by a last minute deal with the Progressive Conservative government of Grant Devine. Judge Nutting’s statement was never made public.

However, it was just as relevant, if not more so, five years later on May 18, 1994, when the judges’ lawsuit was filed against the New Democratic government of Roy Romanow. The matter of *Seniuk et al v Government of Saskatchewan* named as defendants the provincial government, the Minister of Justice, and Robert Mitchell in his personal capacity.

The named plaintiffs were executive members of the Saskatchewan Provincial Court Judges Association: Judges Gerald Seniuk, David Arnot, Edward Gosselin, and Albert Lavoie, on behalf of all judges of the Provincial Court of Saskatchewan. The lawsuit sought a declaration that Bill 46 to repeal the Irwin Commission was of no force or effect, and asked the court to order the minister of justice to honour the contract he made with Provincial Court judges back in February 1993.

The judges’ lawsuit was filed by Saskatoon lawyer Robert McKercher, who had replaced Silas Halyk as legal counsel for the SPCJA after Halyk withdrew from the file, preferring to make way for fresh legal counsel for the court battle ahead.

The irony of the lawsuit was not lost on the judges or political

watchers of the day. As attorney general, Romanow had been a champion of an elevated and independent court and, as such, had introduced the legislation that created the Provincial Court of Saskatchewan in 1978. He was premier of the province in 1993 when the legislation was amended, after a decade of debate, to establish an independent and binding judicial commission to determine judges' salaries and working conditions. Now his government faced a lawsuit and Constitutional challenge by the judges of the very court he had helped create.

Two judges quit the SPCJA in opposition to the lawsuit; however the remaining judges were united in their fight, says Judge Seniuk.<sup>2</sup> Those who had been reluctant to take public action throughout the 1980s and early 1990s now saw little alternative, he says. Though their lawsuit was often portrayed by others and the media as a dispute over salaries, the judges' primary and overriding aspiration was judicial independence free of the meddling hand of elected politicians and senior bureaucrats.

"[The lawsuit] was a first in the history of the judiciary as we knew it, in the history of the Commonwealth system. It was lauded by many, and unconscionable to some," says Judge Seniuk. "Eventually, the judges who felt the most dishonoured by the whole process of having to sue and being in the public over this, one by one, these judges felt there was no other choice. We're either independent or we're not."

That June at the SPCJA's annual meeting, judges from British Columbia, Alberta, and the Canadian Association of Provincial Court Judges gave updates on the fight for judicial independence in other jurisdictions across the country. In British Columbia, an amendment creating an independent commission was working its way through the legislature. In Alberta, Provincial Court judges were considering a lawsuit of their own. In Manitoba, the province had imposed a salary cut on Provincial Court judges equal to that imposed on government employees.

The president of the national Provincial Court Judges' association presented a cheque for \$10,000 toward legal costs of the Saskatchewan lawsuit. Members of the Association of Ontario Judges and the Ontario Family Law Judges Association committed \$200 each from 240 judges. Later that same meeting, a motion to

indemnify the four judges named on the lawsuit was carried by the membership.

On June 13, 1994, the provincial government filed its response to the lawsuit. Filed by its legal counsel Gerald Gerrand, the response was a Demand for Particulars specifically seeking the names all forty-plus judges who were a party to the lawsuit. It also asked the judges to state precisely how their judicial independence had been breached, and sought the specific allegations being made against Minister Mitchell in his personal capacity.

The judges' response, filed in September, said their case was based on both a public perception of lost judicial independence and an actual impairment of judicial independence. It asserted that all four elements of judicial independence had been breached (as set out by the Supreme Court of Canada in *Valente v The Queen* in 1985): security of tenure, financial security, institutional independence, and adjudicative independence.

As for the itemized particulars against Mitchell himself, these included his public criticism of the Irwin Commission report, his request that the commission reconsider its salary recommendations, his introduction of Bill 46 to void the commission, and his refusal to support the commission's report in public and in the Legislature "contrary to the contract, the legislation, and his constitutional duty"<sup>3</sup> and that he had breached his contract with the judges when "he promoted the rejection of the award with the general public and with the news media, without discussing the matter with the Plaintiffs" first.<sup>4</sup>

The government filed its Statement of Defence in October 1994. It denied that Bill 46 impaired the judicial independence of Provincial Court judges, asserting that the judges had not suffered financial harm or loss or, in the alternative, such loss was justified by the "economic exigencies prevailing in the Province of Saskatchewan to which all residents are subject" at the time.<sup>5</sup>

It asserted the government had legal authority to pass Bill 46 into legislation as it did. As for Mitchell, it stated that he did not act in his personal capacity but in his role as minister of justice and attorney general of Saskatchewan.

In May 1995, in a ruling from the Court of Queen's Bench, Judge Ronald Barclay struck the claim against Minister Mitchell in his personal capacity. The judges appealed.

As the lawsuit moved slowly through the court process, the judges found themselves facing challenges to their independence within their own courtrooms. Two cases in point:

On October 31, 1994, Provincial Court Judge Dennis Fenwick issued a judgment in the matter of *R v Murray Koskie*, an NDP cabinet minister charged with fraud and breach of trust. Koskie's lawyer, Morris Bodnar, argued that no Provincial Court judge could conduct the preliminary hearing for his client's charges since Koskie was a member of the government the judges were suing. Judge Fenwick, while not ruling on the bias itself, ruled that a reasonable person may indeed believe that such a bias could exist.

On December 20, 1994, Judge Nutting presided over the case of *R v David Allan Osachuk*, who was facing a charge of drunk driving. Osachuk's lawyer, Mark Brayford, argued the Provincial Court was not an independent and impartial tribunal, and that a reasonably informed person would believe it lacked the independence guaranteed his client by Article 11(d) of the Charter of Rights and Freedoms. He asked the judge to stay the charges. Based on this argument, Judge Nutting disqualified himself from hearing the case and did not rule on the matter of a stay.

The Crown appealed, successfully. In early January 1995, Judge Paul Hrabinsky of the Court of Queen's Bench issued a writ ordering the Provincial Court to make a decision in the Osachuk case, stating that "Provincial Court judges have a public duty and a legal duty to exercise their jurisdiction in the performance of their duties pending the outcome of their civil action."<sup>6</sup> This ruling put an end to Constitutional challenges by defence lawyers while the judges' lawsuit made its way through court.

At the annual meeting of the SPCJA in June 1995, updates from other provinces were not encouraging. In British Columbia, the legislature had rejected the recommendations of its provincial court commission. In Alberta, the judges' lawsuit was at the Court of Appeal. There was even talk in Alberta of introducing legislation for the election of Provincial Court judges. Legislation in both Manitoba and Prince Edward Island that reduced judges' salaries along with that of civil servants was reverberating in the courts.

Behind the scenes, Provincial Court judges in Saskatchewan

were taking encouragement from their supporters in the legal and academic community, including University of Saskatchewan law professors Howard McConnell and Doug Schmeiser (chair of the Schmeiser Commission), and political scientist Joe Garcea. Their understanding of judicial independence, the rule of law, and the role of the Charter bolstered the judges' resolve and fostered a broader conversation on the important legal principles at stake.

McConnell and Schmeiser were commissioned to prepare a report on the principles of judicial independence for the Canadian Association of Provincial Court Judges (titled "The Independence of Provincial Court Judges: A Public Trust"), which was shared across the country and subsequently translated into Ukrainian for the benefit of that nation's judiciary as it emerged from the Soviet sphere.

"Saskatchewan was viewed as a leader on this," says Judge Seniuk. "There was an energy in Saskatchewan, because we started early and had learned as we went along, so nationally we were looked to for some leadership."

In May 1995, Judge Nutting was appointed Chief Judge of the Provincial Court. That fall, Minister Mitchell contacted Chief Judge Nutting and the two met several times with a view to settling the lawsuit out of court. In his new position, Chief Judge Nutting no longer spoke on behalf of the SPCJA, but he could take proposals for settlement to the judges to seek their ratification. However, he advised the minister he would take no proposal to the members of the SPCJA until it had been ratified and approved by members of Cabinet first.

Before Minister Mitchell could follow through, he was shuffled out of the justice portfolio. In November 1995, John Nilson became the new minister of justice and attorney general of Saskatchewan. He and Chief Judge Nutting continued the dialogue toward a settlement. After several more meetings, the minister indicated he was prepared to take a proposal to Cabinet in mid-December.

Also that November, the Saskatchewan Court of Appeal ruled on the matter of removing Mitchell from the judges' lawsuit. The court allowed the appeal to the extent that it gave the judges time to amend their Statement of Claim to clarify their complaints against



the former minister. The court set a thirty-day time period to do so. This deadline was subsequently extended in the interests of not upsetting any potential settlement that was in the works.

However, by the end of January 1996, with no proposal yet before Cabinet, the judges decided to take their lawsuit that next step. The SPCJA filed its amended Statement of Claim with its detailed allegations against Mitchell. Suddenly, settlement was off the table.

Examinations for discovery began in June. Among the plaintiffs questioned were Judges Seniuk, Fafard, Chorneyko, Allan, Kim Young, Russel Rathgeber, and Diane Morris. Mitchell attended court for examination three times. Few doubted the judges' lawsuit was slowly headed to the Supreme Court of Canada. However, another case got there first.

By the end of 1996, disputes between Provincial Court judges and the governments of Alberta, Manitoba, and Prince Edward Island had made their way to the Supreme Court of Canada. Each one centred on the question of whether a government had power to arbitrarily lower judges' salaries, and if doing so compromised judicial independence such that it constituted a violation of the Charter right to "a fair and public hearing by an independent and impartial tribunal."

The case from Prince Edward Island was posed as a reference question by that province's government seeking the opinion of the Supreme Court on these issues. It became known as the P.E.I. Reference – short for *Reference re Remuneration of Judges of the Provincial Court [P.E.I.]*. The outcome of this case would affect them all. The SPCJA and the Government of Saskatchewan were among a number of interested parties from across the country granted intervenor status at the Supreme Court hearing that December in Ottawa.

At the hearing, the position of the SPCJA was presented by its legal counsel McKercher and his colleague Michelle Ouellette. Judge Seniuk recalls the passion and drama in the courtroom as these and other lawyers from across the country articulated the principles of judicial independence and the rule of law, knowing that whatever the outcome, it was constitutional history in the making.

"It wasn't our case but our voices were heard loud and strong,"

says Judge Seniuk. “To have all these people arguing so passionately and so intelligently was brilliant to hear. We all felt very fragile, with pressure coming from government, from some newspaper columnists, and from radio commentators. It was so important to us to be there.”

In the spring of 1997, while still awaiting a decision in the P.E.I. Reference case, the government of Saskatchewan again made an overture of settlement to the province’s judges. Though encouraged by the discussion, the judges refused to negotiate anything less than acceptance of the Irwin Commission report. According to Judge Seniuk:

“The government offered us money early on to settle, always just a little bit under what the commission gave us. It was negligible in terms of dollars, but the principle was huge. If we had taken it, we would really be selling out the commission process, and we absolutely would not do that.”

In June 1997, with the province’s financial picture improving, Minister Nilson finally offered the judges the outcome they had been fighting for. The province accepted the Irwin Commission and its report. As per the salary recommendation, the judges’ annual salary increased to \$107,000. In return, the judges agreed to forgo retroactivity, any cost of living increases, and all legal costs or damages as per the lawsuit, which was dropped. Paramount for the judges, the agreement preserved the independent and binding commission process.

For the judges, victory was bittersweet. Though relieved and happy to have conducted their lawsuit successfully and prevailed on the principle of judicial independence, there was no sense of triumphalism among them. “The judges felt backed into a fight they never wanted, but one they could not avoid,” says Judge Seniuk. “They were courageous and faithful throughout, but I was unprepared for the deep emotional relief many of them showed when it was finally over. I had not fully realized how hard this was on many of them as they stood their ground.”

In September 1997, the Supreme Court of Canada handed down its decision in the P.E.I. Reference case. It was the affirmation Provincial Court judges across the country had been waiting for. In the majority

decision, the Supreme Court affirmed that judicial independence was vital for Provincial Court judges given their heightened workload and the nature of the cases they adjudicated, particularly since the introduction of the Charter of Rights and Freedoms in 1982.

The Supreme Court directed the provinces to establish a process by which judges' salaries and other matters of remuneration and administration would be determined independently of governments and forbade any process that compelled judges, either individually or collectively, to negotiate directly with elected politicians or civil servants. It affirmed that judges' salaries could be reduced or frozen as part of an overall economic measure in difficult times, but only if reviewed independently of government. The ruling stated:

"[T]o avoid the possibility of, or the appearance of, political interference through economic manipulation, a body, such as a commission, must be interposed between the judiciary and the other branches of government. The constitutional function of this body would be to depoliticize the process of determining changes to or freezes in judicial remuneration. This objective would be achieved by setting that body the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature. Provinces are thus under a constitutional obligation to establish bodies which are independent, effective, and objective."<sup>7</sup>

The ruling affirmed that judicial independence is protected by Article 11(d) of the Charter of Rights and Freedoms, and that the expectation of judicial independence extends to the provincial courts: "The institutional role demanded of the judiciary under our Constitution is a role which is now expected of provincial courts. Notwithstanding that they are statutory bodies, in light of their increased role in enforcing the provisions and in protecting the values of the Constitution, provincial courts must enjoy a certain level of institutional independence."<sup>8</sup>

On the subject of judicial salaries, the Supreme Court said there must be "a basic minimum level of remuneration which is required for the office of a judge. Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation"<sup>9</sup>

Based on the P.E.I. Reference, cases still before the courts across

the country were adjudicated in the judges' favour, often with legal costs and retroactive back pay. In Saskatchewan, where Provincial Court judges first took their stand to court, the P.E.I. Reference was both vindication and reward. Despite the antagonisms behind the lawsuit, the two sides had settled their differences outside of court. The outcome of the P.E.I. Reference affirmed the solution reached with diplomacy and dignity by the SPCJA and the Government of Saskatchewan.

Following the Supreme Court ruling, Saskatchewan passed *The Provincial Court Act, 1998* with provision for an independent judicial commission, convened every three years, to make binding recommendations on salary and non-binding recommendations on other budgetary matters such as support staff, facilities, and equipment provided for the court.

Among the provisions of the settlement was that a statement be added to *The Provincial Court Act* affirming the independence of the Provincial Court of Saskatchewan and its judges. The affirmation was short and sweet, especially for those who had fought so long and hard for the principle it espoused: "The Legislative Assembly affirms the independence of the court and the judges."<sup>10</sup>

Judge Seniuk: "The Romanow government gave us the perfect commission like there had never been in the world. They believed in it as much as we did, until they had to pay for it. For me, one of the greatest tests of the sincerity of the government is that they were willing to put it into legislation in the first place."

Since that time, the authority and independence of every Provincial Court Commission has been respected and their reports have been accepted without dispute. The Ministry of Justice and the SPCJA enjoy a respectful and collegial relationship. The process works, and despite the animosity that propelled the issue forward in the 1980s, there is a legacy of which they can both be proud.

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#### Footnotes

1. Statement prepared by Judge Brosi Nutting, from the private archives of the SPCJA.
2. All quotes from personal interviews with Judge Gerald Seniuk, unless indicated otherwise.
3. *Seniuk et al v Saskatchewan*, Sask. Court of Queen's Bench, No. 3814 of 1994, from the private archives of the SPCJA.

4. Ibid.
5. Ibid.
6. *R v David Allan Osachuk*, Sask. Court of Queen's Bench, No. 3954 of 1994, from the private archives of the SPCJA.
7. *Refre Remuneration of Judges of the Prov. Court of P.E.I.; Refre Independence and Impartiality of Judges of the Prov. Court of P.E.I.* known as the "*P.E.I. Reference*". Supreme Court of Canada [1997] 3 SCR 3. Accessed online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1541/index.do>
8. Ibid.
9. Ibid.
10. *The Provincial Court Act, 1998*. Government of Saskatchewan, p 4. Accessed online: <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/P30-11.pdf>

## 6. Women of the Court

### Balance on the Bench

“I still remember all the palaver surrounding her appointment. Should a woman hold such a responsible position? How would she balance work and motherhood? At one point she decided to dye her hair blond and the *Star-Phoenix* devoted an entire column to it.” ~ Barbara Taylor, daughter of Judge Tillie Taylor, 2011<sup>1</sup>

No doubt, Barbara Taylor got a chuckle when she shared that anecdote at a memorial for her mother, Tillie Taylor, the first female magistrate in Saskatchewan, after her death in 2011 at the age of eighty-eight. The elder Taylor was appointed a provincial magistrate in Saskatoon in 1959. Though her appointment was deemed temporary at the time, she was subsequently named a judge of Magistrates’ Court in 1964 and of Provincial Court when it was created in 1978, serving twenty-eight years on the bench before her retirement in 1987.

At the time of her appointment, an article in the *Saskatoon Star-Phoenix* described thirty-seven-year-old Taylor as a young woman only recently called to the bar but nonetheless “steeped in legal tradition and associations” by virtue of her father, Jacob Goldenberg, and her husband, George Taylor, “both well-known and esteemed lawyers in this city.”<sup>2</sup>

What the article did not say is that young Tillie and George had been ardent communists in the 1930s and 1940s, and that she did not enroll in law school until after her husband became a lawyer, working as a secretary to support him and their two children.<sup>3</sup> She was the only female graduate in the University of Saskatchewan law class of 1956. Taylor began her legal career not in her father’s law firm but as a solicitor in the Saskatoon Land Titles Office, where she worked until appointed a magistrate.

At the time of her appointment, Taylor asserted in a newspaper article that “the question of sex was not a factor in the administration of justice” to which the newspaper reporter agreed, sort of:

“This is, of course, true. Nevertheless, it may be that women have something more to contribute to the scales of justice than have their male counterparts. In terms of chivalry alone, or to escape humiliation, men would prefer to reform themselves than face the judicial eye of a woman. If this were indeed so, a strong agreement could be made for placing women in all judicial posts, whether major or minor posts. In any event, Mrs. Taylor’s career as a temporary magistrate will be followed with more than ordinary interest.”<sup>4</sup>

However, it was not long after her appointment that Judge Taylor faced a less-than-chivalrous challenge to her authority when a Saskatoon lawyer and his client walked out of her courtroom, questioning her jurisdiction to adjudicate their case. They did so as she was delivering her decision, ignoring a direct order to stay put. She cited both of them for contempt of court. The following week, the two men publically apologized thus avoiding a fine, but they did not avoid her censure from the bench:

“There are very, very occasionally discourtesies in a court room and these are usually allowed to pass by the magistrate with a rebuke. I regret to say that in this case I find your action to be far and beyond a discourtesy and of such nature that it would be impossible for me to maintain authority in my court if I were to allow it to pass.”<sup>5</sup>

A social activist since her teenage years, Judge Taylor quickly observed the role that poverty played in the lives of many who appeared in her court. In 1964, as president of the local John Howard Society, and in conjunction with provincial correctional services, she toured jails in Saskatchewan to better understand why prisoners were incarcerated. During the two-month period of her study, she found that thirty-six percent of those in provincial jails – including more than eighty percent of female prisoners, almost all of whom were Aboriginal or Métis – were jailed because they could not pay their fines.<sup>6</sup>

“[O]ur jails are quite similar to the debtors’ prisons of Charles Dickens’ time,” she told the *Ottawa Citizen* in 1968. “They were really incarcerated because they were poor.” She noted the most common source of fines for first offences were traffic and drinking infractions. She also pointed out national prison statistics that two-thirds of inmates in federal penitentiaries had their first experience of incarceration while serving sentences in lieu of fines, prompting



reporter to write, “From provincial debtors’ prisons, they graduated to the big time.”<sup>7</sup>

In 1972, Judge Taylor was named chairperson of the new Saskatchewan Human Rights Commission, tasked with advancing the antidiscrimination provisions of the *Saskatchewan Bill of Rights*, the first legislation of its kind in Canada when it was introduced in 1947 by the government of Premier Tommy Douglas. The commission had powers to investigate allegations of discrimination and to have those cases heard by a newly-established Human Rights Tribunal rather than a court of law. In her leadership position, she helped inform the *Saskatchewan Human Rights Code*, which replaced the *Bill of Rights* in 1979.

In 1975, Judge Taylor reported on the early activities of the Human Rights Commission: “During the first years of operation, the Commission received 306 formal complaints, 433 informal complaints and 9,601 miscellaneous inquiries... [A] great deal of public interest has been aroused in our work.”<sup>8</sup>

Judge Taylor used her influence both on and off the bench to advance those rights. She advocated for prisoner education programs, recommended establishment of Legal Aid in Saskatchewan, and worked with the U of S College of Law to create better opportunities for Indigenous students in the study and practice of law. According to her daughter, “She was a prison reformer, peace campaigner, and a passionate supporter of the civil rights movement. In 1972, when she was fifty, she was made Chairwoman of the Saskatchewan Human Rights Commission, the first in Canada, and went on to mount a series of increasingly controversial campaigns for women’s rights, especially the right to abortion, and native Canadian rights.”<sup>9</sup>

In the early years, Judge Taylor’s only female colleague on the bench was Judge Mary Carter, who was appointed a provincial magistrate in Saskatoon in 1960. According to Judge Carter, there were two female students in her law class of 1947, whose presence she attributed to so many young men being away in World War II. She practiced law with her husband, Roger Carter (later dean of the U of S College of Law), until the birth of their first child in 1953.<sup>10</sup>

In 1960, the province established a dedicated family court in Saskatoon and recruited Judge Carter to serve as its first magistrate. According to her daughter Martha Carter, Saskatchewan Attorney

General Robert Walker came to their home in Saskatoon to personally offer her mother the job, initially part time. According to that account, “Walker told Carter that the salary attached to the position was so low that no man would take it, but thought that Carter, with her skills and background, would make a very suitable choice.”<sup>11</sup>

She accepted. A newspaper article announcing her appointment to the bench included a photo of Magistrate Carter with three of her four children, noting the eldest was at school.<sup>12</sup> (That child was Stephen Carter, who followed his mother’s footsteps and became a Provincial Court judge himself.) Though offered the position “no man would take” she reported experiencing no outward discrimination based on her gender, giving this answer to a national survey of female lawyers and judges in Canada:

“The nature of child bearing and rearing is such that a woman cannot plan a career exactly as a man can. If I were a man I would not be content to be a Judge of the Magistrates’ Court, because an ambitious and bright lawyer does not find it challenging enough or sufficiently well paid. But as the mother of not-yet grown-up children, it suits me very well. I dare say this same attitude exists in many women lawyers who take 9 to 5 jobs in government service or other less-demanding positions so they can be with their families a good deal of the time. It is a self-imposed discrimination.”<sup>13</sup>

As the family court magistrate, Judge Carter presided over several special courts including deserted wives court, child welfare court, juvenile court, and court for unmarried mothers, addressing issues such as desertion, mental and physical abuse, child neglect, juvenile delinquency, and family dysfunction arising from poor parenting and relationship skills. She advocated a community-based approach in providing resources for disaffected youth, young mothers, and families stuck in a cycle of poverty, and called for marital property reform for an equitable division of land, particularly farmland, in cases of divorce.

Judge Carter spoke frequently to civic organizations and community groups, to whom she did not sugar-coat her message. Speaking to a group of church women in 1970, she addressed a range of topics including teenage promiscuity and unwed mothers, noting “all races and professions are involved” and “I have never found strong religious belief to be a sufficient contraceptive.”<sup>14</sup>

At a meeting of the Rotary Club, asked if troubled youth might buy drugs at a controversial drop-in centre, she responded “Yes” but “It is no worse in the drop-in centre than in say some high school bathrooms.”<sup>15</sup>

In the same 1968 *Ottawa Citizen* article in which Judge Taylor made her statement about imprisoning people for being poor – likening it to the debtors’ prisons of Dickens’ time – Judge Carter shared her sympathies for poor and disadvantaged parents, expressing in her own words the old adage that the only difference between the rich and the poor is money:

“Middle-class parents can afford to hire babysitters when they go out partying. When the poor wish to do the same, they can’t afford both the babysitter and the party. Often, therefore, they call in the neighbor, neglecting to mention how long they may be gone. The neighbor, in due course, phones the police, who phone the welfare, who take the children into care. Yet often the only real neglect of children is this casual attitude to babysitters. There is no doubt that it’s bad for the children, but the pleasures of the poor would be very much expanded if they could afford sitters... The middle-class mother, who sometimes behaves just as badly, is never subject to investigation.”<sup>16</sup>

The article noted that Judges Taylor and Carter are “the only two women, as far as they know, who have such jurisdiction in Canada. . . between them (they) have 17 years’ experience on the bench. Among local lawyers and their brother judges, they have the reputation, according to one of their colleagues, of being ‘two of the most competent magistrates in the province.’”<sup>17</sup>

Although Judges Taylor and Carter were lauded as the first female magistrates, the first woman to hold a judicial post in Saskatchewan was Judge Jean Ethel MacLachlan, appointed a judge of Juvenile Court in Regina in 1917. As such, she followed shortly after the historic appointments in 1916 of Magistrates Emily Murphy and Alice Jamieson in Alberta, said to be the first two female magistrates in the British Empire.

Originally from Nova Scotia, Judge MacLachlan was professionally trained not as a lawyer but as a teacher and social worker. In 1910, she took a job with Regina’s Children’s Aid Society. After the sudden death of her boss, she replaced him in 1916 as both

head of the Children's Aid Society and superintendent of Neglected, Dependent and Delinquent Children, a provincial government position. In this latter she was supported by the Local Council of Women, which lobbied hard for her appointment after learning the government intended to offer the job to a less qualified man.<sup>18</sup>

The following year, she was named the first judge of a newly-created Juvenile Court, a post she held until her retirement in 1935. Though based in Regina, Judge MacLachlan travelled throughout the province to hear juvenile cases in the communities where the youth lived (except Saskatoon and Moose Jaw), claiming to travel more than 20,000 miles (32,000 km) every year.<sup>19</sup>

Judge MacLachlan was a strong advocate for rehabilitation over punishment, believing most delinquent children were "misguided innocents"<sup>20</sup> lacking proper discipline and supervision at home, preferring to "deal out heavy fines" to negligent parents rather than to punish their misbehaving children.<sup>21</sup> Observing that pregnant girls did not get so on their own, she lobbied the provincial government to add the offence of "sexual immorality" to the *Juvenile Delinquent Act*, which it did in 1924. She considered this one of the more serious offences, sending most of the "guilty" boys to Industrial School for rehabilitation.<sup>22</sup> For most other offences, she preferred a period of supervised probation.

For her use of probation, Judge MacLachlan was criticized by Regina's police chief as "far too sentimental"<sup>23</sup> and in 1924, a police magistrate in Saskatoon opined that a childless spinster – as was Judge MacLachlan – was not qualified to offer mothering guidance to children or their parents (but considered himself so qualified as a father).<sup>24</sup> Judge MacLachlan responded that she had more time for other peoples' children, having none of her own. These criticisms garnered strong rebuke from her supporters and child welfare advocates, who felt the solution to such criticism was to appoint more women to the courts.

When Judge MacLachlan retired in 1935, Regina lawyer Margaret Burgess was appointed Juvenile Court judge. In 1912, Judge Burgess was the first female to apply for admission in the Saskatchewan Law Society, which was denied because there was no provision in the *Legal Profession Act* for admitting women.<sup>25</sup> That was changed the following year, at which time she registered as an

articling student and was admitted to the bar in 1918. She served as a judge for three years, until 1938, when the Juvenile Court was disbanded as a cost-saving measure and she was reassigned to a different government job. Another woman would not be appointed to the bench in Saskatchewan until Judge Taylor in 1959 and Judge Carter in 1960.

In 1972, Judge Marion Wedge was appointed to the bench in Saskatoon, where she presided with Judge Carter at family court. The daughter of Supreme Court Justice Emmett Hall, Judge Wedge entered law school in 1958 as a mother of four. For many years, she was known as one of the “Three Marys” on the court along with Judge Carter and District Court Judge Mary Batten (later Chief Justice of the Saskatchewan Court of Queen’s Bench), as her obituary noted:

“They were three strong and determined women on a Court consisting almost entirely of men, and they were not only colleagues but close friends. All three were known to be no-nonsense but compassionate judges. And all three were devoted mothers as well as jurists.”<sup>26</sup> In 1986, Judge Wedge was elevated to the Court of Queen’s Bench.

In 1973, Justice Hall completed a review of Saskatchewan’s court system by recommending, among other things, creation of a pilot Unified Family Court in Saskatoon combining Magistrates’ Court, District Court, and Court of Queen’s Bench jurisdictions in family law. While introducing legislation in 1977 to create the Unified Family Court, Attorney General Roy Romanow praised Judges Wedge and Carter for handling family matters “humanely, sensitively, and correctly to law” in Magistrates’ Court:<sup>27</sup>

“They are judges who are part of the community in a more real way and judges who are more familiar with the help that various community and social organizations of the community can provide for a family in distress,” he told the legislative assembly.

Judge Carter was appointed to the new Unified Family Court. As such, she adjudicated all family matters she had adjudicated previously, with the addition of custody, adoption, and property division. A report on the pilot project recorded that she heard an average 73.9 actions per month in 1979 and 82.5 actions per month in 1980, indicating she was “severely overworked.”<sup>28</sup>

Her daughter related that Judge Carter was assaulted as a result of her work, when she was “maliciously shoved” in a shop, having been recognized by the brother of a farmer engaged in an acrimonious divorce in which the farm property was under division.<sup>29</sup> She was made a judge of the Court of Queen’s Bench in 1981.

In 1976, a designated family and juvenile court was created in Regina with Judge Raynell Andreychuk presiding. Prior to her appointment to the bench earlier that year, Judge Andreychuk was in private practice in Moose Jaw, where she served as a city councillor and volunteered for numerous organizations – as many as forty-two local, provincial, national, and international organizations according to a newspaper interview she did in 1977.<sup>30</sup> At the time of the article she had recently been appointed chancellor of the University of Regina.

Like her counterparts at family court in Saskatoon, she favoured alternative and non-adversarial approaches to family law matters, which she termed “non-destructive”<sup>31</sup> solutions for families in crisis. In the footsteps of Juvenile Court Judge MacLachlan, she favoured non-custodial measures for children and youth in trouble with the law, including programs that provided positive role models in young lives.

Though several years had passed since a newspaper reporter commented on the colour of Judge Taylor’s hair, the reporter interviewing Judge Andreychuk wrapped up the article in the *Leader-Post* by asking, apropos of nothing, “Is marriage in the future?” to which the judge replied, “I’m not against it, it’s just that it hasn’t happened yet.”<sup>32</sup> Judge Andreychuk resigned from the bench in 1985, joining the diplomatic corps and serving as Canada’s ambassador to Somalia and Portugal, and later as its representative on the United Nations Human Rights Commission, among other posts. In 1993, she was appointed to the Senate.

A more relevant question was asked by a reporter for the *Ottawa Citizen* in a Q & A with Senator Andreychuk in 2014: “Q. What prevents more women from being on the bench? A. It takes a long time to go through a profession, to gain a credibility to go through the judicial process to be appointed. We could go to a quota system (but) I don’t think that’s the way to go. Quotas bring their own resentment and difficulties. I want to change the culture. Your right to an occupation shouldn’t be (inhibited) by gender or anything.”<sup>33</sup>

By the 1990s, women were no longer being appointed to the bench for the designated purpose of overseeing family and juvenile matters; however their personal interests often lay in alternative approaches for groups who are recognized as disadvantaged or over-represented in the judicial system, as well as in establishing a more professional and efficient administration of the court.

For instance, in 1994, Judge Violet Meekma was appointed to the Provincial Court in North Battleford, where she championed the creation of a Domestic Violence Treatment Options Court, the first therapeutic court in Saskatchewan, to better assist the perpetrators and victims of family abuse, and to break the cycle of intimate partner violence. (Read more about this and other therapeutic courts in Chapter 7 Innovative Approaches.)

Judge Meekma says her opportunities in law were not hindered by her gender, though some of the accused appearing in her court might have wished it so: in a case of domestic violence, a man she had convicted of abusing his wife appealed on the grounds that he had a female lawyer and a female judge, inferring that neither could be impartial because of their gender.<sup>34</sup>

In 1998, Mary Ellen Turpel-Lafond was appointed to the bench in Saskatoon. A member of the Muskeg Lake Cree Nation, she was the first Indigenous woman appointed to the Provincial Court in Saskatchewan. She had a law degree from Osgoode Hall in Toronto, a Master's degree from Cambridge University in England, and a doctorate from Harvard Law School. At the time of her appointment, she was practicing law in Saskatchewan and Nova Scotia and lecturing frequently at universities across the country.

(The first Indigenous judge was Métis Kenneth Bellrose, appointed to the bench in Saskatoon in 1977. Two Métis women were appointed to the bench in 2018, Judge Mary McAuley and Judge Natasha Crooks.)

"I never in my wildest dreams believed I would one day become a judge," Judge Turpel-Lafond told an audience in Saskatoon shortly after her appointment, according to a newspaper article. "There are lots of barriers to accepting women into that role, as it is very male dominated. In fact, when I became pregnant with my daughter, Alphonsine, a very prominent chief, who will remain nameless, told me that, now that you're pregnant, you can stop working and take care of your baby, because that's what women are supposed to do."<sup>35</sup>



Instead, according to the article, she drew on her First Nations roots and teachings. “It is one of our traditions that there should be balance between men and women,” she told her audience. “This is a key message for First Nations women, especially young women. Cree women are not shrinking violets, and we should use this strength in the professional world.”

Judge Turpel-Lafond brought awareness to the court of the effects of Fetal Alcohol Syndrome (FAS) and challenged provincial government services to do a better job of supporting affected individuals, taking a vocal stand for which her rulings were both applauded and appealed. In 2006, she took a leave of absence from the Provincial Court to serve as British Columbia’s first Representative for Children and Youth, retiring from the bench in 2018.

Judge Turpel-Lafond’s focus on FAS ignited a similar awareness in Judge Carol Snell, who was appointed to the Provincial Court in Regina in 1999. Prior to her appointment, she was Director of Special Projects for the province’s Public Prosecutions Branch. In 2008, she was appointed Chief Judge of the Provincial Court of Saskatchewan, the first woman to fill that position.

As Chief Judge, she organized a unique province-wide video-conferencing seminar on FAS and FASD (Fetal Alcohol Spectrum Disorder) in 2012 for the training of judges and the collaboration of service providers in the community. (Read more about this initiative in Chapter 7 Innovative Approaches.) As such, video technology that was installed in the courts to facilitate remote court appearances (for example, from the far north or from jail) was used for educational purposes for the benefit of many in the judicial system including judges, lawyers, community advocates, and support personnel, whose collaborations in the field of FASD continue to this day.

Chief Judge Snell focussed her attention on advancing the efficiency and professionalism of court administration, particularly in response to changes in judicial practice initiated by the Canadian Charter of Rights and Freedoms. The ramifications of the Charter, and particularly Charter challenges in the courts, heightened the expectation for thorough and well-articulated decisions such that judges were more frequently choosing to prepare written decisions rather than deliver their decisions orally.

To this end, she introduced a uniform format for written rulings, engaging a central typist to assist judges with typing, formatting, and proof-reading. She also engaged a central librarian for e-filing and retrieving court cases and other legal resources. She introduced measures to improve the speed and efficiency by which cases moved through the court, in response to Charter guarantees and rulings of the Supreme Court that affirmed the right to a trial in a timely fashion. Documentation was standardized across the court.

“There are thirteen court locations which developed individually, without much cohesion, based on the leadership of the judges and support staff assigned to each one. None of these individual systems was better than another, but they weren’t consistent across the province. We introduced consistent practices and procedures for all thirteen court offices, so everybody is using the same format and the same documentation for their court records. This was in response to an increase in the caseload and the types of cases that are being decided in Provincial Court, largely as a result of the Charter,” explains Chief Judge Snell, who retired from the bench in 2015.<sup>36</sup>

“Judge Snell’s contributions go well beyond the boundaries of Saskatchewan,” says former Chief Judge Karen Ruddy of the Yukon Territorial Court, who served with Chief Judge Snell on the Canadian Council of Chief Judges.<sup>37</sup> “Her clarity of thought and attention to detail were invaluable to the Council. In particular, during her tenure, she spearheaded a major project on court performance, which explored the best ways in which to measure court performance with a view to improving court efficiency and quality of service, as well as access to justice. Despite her retirement, she has left a considerable national legacy, which continues to benefit judges in provincial and territorial courts across Canada.”

Though numbers fluctuate based on retirements and new appointments, about one-quarter of judges on the Provincial Court of Saskatchewan are female. This is considerably less than the general population or the number of women graduating from law school and pursuing a legal career. While the number of female judges has grown considerably over the years, few would disagree with the sentiment expressed in Regina almost a century ago: appoint more women to the court.

“We need that balance. We all have different approaches and life

experiences. We all bring something different to the job,” says Judge Meekma. “I think we should have closer to fifty percent female representation on the court. I’m sure there will be some hurdles, I don’t think we’re totally over them yet, but it is a goal and an expectation we can achieve.”

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Regina's first court house, 1885. *City of Regina Archive B-726. WikiMediaCommons*



NORTH-WEST LEGISLATIVE ASSEMBLY, 1886.

- |                            |                    |                   |                     |                      |
|----------------------------|--------------------|-------------------|---------------------|----------------------|
| 1. Lieut.-Governor Dewdney | 5. Hayter Reid     | 9. David F. Jelly | 13. Senator Perley  | 17. A. E. Forget     |
| 2. Judge Richardson        | 6. H. S. Cayley    | 10. Major Irvine  | 14. Chas. Marshall  | 18. Jimmie McAta     |
| 3. Judge Rouleau           | 7. Robert Crawford | 11. J. C. Secord  | 15. Owen E. Hughes  | (first page of House |
| 4. John G. Turiff          | 8. Jamee Ross      | 12. J. D. Lauder  | 16. Sam. Cunningham | x Lord Boyle         |

Legislative Assembly of the North-West Territories in Regina, 1886. Judge Hugh Richardson and Judge Charles Rouleau are second and third from the left. *Library and Archive Canada C-008019*



## New "Family Magistrate"



—Star-Phoenix Photo

**MRS. MARY CARTER**, newly appointed "Family Court" magistrate, with three of her four children. Left to right, Sarah, five; Michael, 10 months, and Martha, three. Stephen, seven, was at school when the picture was taken.

In 1960, Judge Mary Carter was appointed to family court in Saskatoon. Her appointment was somewhat of a novelty, being only the second female magistrate in the province (after Judge Tillie Taylor, appointed in 1959). Though initially part-time (family court sat on Wednesday and Friday), Judge Carter went on to a long full-time career at the Provincial Court and then Court of Queen's Bench, until her retirement in 1998. The caption of this newspaper photograph notes that Judge Carter's eldest child was at school when the picture was taken. He must have learned well – Stephen Carter also served as a Provincial Court judge from 1994 to 2014. *Saskatoon Star-Phoenix*, March 11, 1960, p 3.



### *Magistrates Assume Higher Role; Sworn In As Judges*



The first judges of Magistrates' Court, forerunner of Provincial Court, 1964. *Saskatoon Star-Phoenix*, January 4, 1964, p 3.



Leader-Post photo by Patrick Pettit

### **Judges sworn in**

More than 40 Saskatchewan judges were sworn in Monday as judges of the Provincial Court by Lt.-Gov. Irwin McIntosh (right) at a ceremony in the Regina Court House. The ceremony followed enactment of the Provincial Court Act which came into force Oct. 1. The act, passed at the last session of the legislature, is designed to bring into effect changes improving the status and

quality of the courts of Saskatchewan. They are based on recommendations by Mr. Justice Emmett Hall who was appointed in 1973 to review the province's court system. The act substitutes city and provincial magistrate's courts by a unified system of provincial courts and eliminates the distinction between magistrate judges and magistrates. (Leader-Post photo)

Swearing in the first Provincial Court judges, 1978. *Regina Leader-Post*, October 3, 1978, p 16.



The police station/Municipal Justice Building in Saskatoon, 1930s-40s, site of an attempted murder on a Provincial Court judge. *Saskatoon Public Library A-989.*



The historic court house in Wynyard, opened in 1928, is representative of the Colonial Revival style popular with Maurice Sharon, Provincial Architect 1916-1930.



The Meadow Lake Court House, opened in 2010, won an award of merit from the American Institute of Architects. It serves both Provincial and Queen's Bench Courts.



The court house in Estevan, opened in 1930, was one of the last court buildings of Provincial Architect Maurice Sharon and the scene of a bomb scare in 1998.





The Provincial Court House in North Battleford opened in 1996 after the historic court house in Battleford could no longer accommodate both Provincial and Queen's Bench Courts.



Regina's Provincial Court House, opened in 1985, was considered temporary at first but has since become a permanent seat of justice.



The court house in La Ronge was constructed in the 1970s for government offices, and was later modified to serve as the Provincial Court.

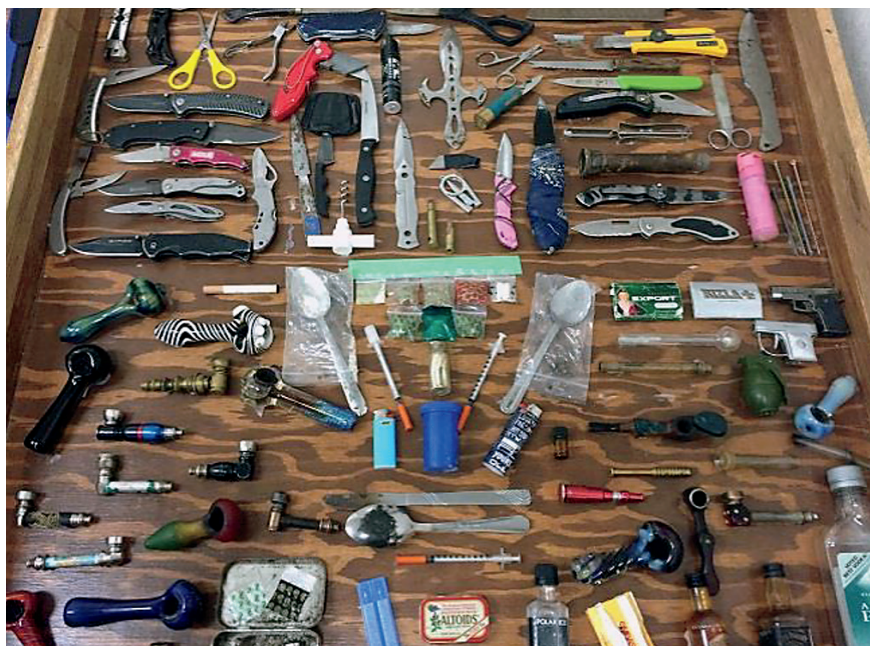


Prince Albert Provincial Court House, opened in 2001.





Deputy Sheriffs at security screening, Regina Provincial Court House, 2017.



Contraband items confiscated by security at Regina's Provincial Court House, 2017.



La Ronge court party returning from Deschambault Lake, 2014. (l-r) Legal Aid lawyer Erin Layton, Judge Sid Robinson, Crown Prosecutor Robert McKenzie (now Judge McKenzie), and pilot of the Bell 407 helicopter.



Twin Otter float plane being loaded dockside at Deschambault Lake for the La Ronge court party's flight home, 2016.





Meadow Lake court party in La Loche, 2017. (l-r) RCMP officers from La Loche detachment, Legal Aid lawyer Lee Douglas, Judge Miguel Martinez, Associate Regional Crown Prosecutor Derrel Brown, Crown Prosecutor Keltie Coupar, and court clerk Sheri McGilvery.



Staff of the Office of the Chief Judge in Regina, 2018. Sitting (l-r): Alana Chubak, Judge's Secretary; Janet Funk, Administrative Assistant; Lynne McNeill, Librarian. Standing (l-r): Deanna Kettering, Executive Administrative Assistant; Kathy Kozan-Langman, Judge's Secretary (retired); Amy Miller, Case Manager; Jan Whitridge, Registrar & Executive Legal Officer; Pat Gottselig, Executive Assistant to the Chief Judge; Jean Shemanski, Case Manager (retired).



Judge Inez Cardinal (right) and circuit court clerk Dalyce Taylor with their court vehicle in Melfort, 2018.



Judge Murray Hinds (left) and Judge Clifford Toth (right) with three graduates of Regina's Drug Treatment Court, 2017.



Judge Gerald Morin of Cree Court (centre) with Cree-speaking court clerks (l-r): Dwight McCallum, Carla Swan, Olive Cook, and Robert McCallum at the Provincial Court in Prince Albert, 2017.





Judges of the Provincial Court of Saskatchewan 1983. Seated (l-r): K. Andrychuk, W. Tennant, R. Conroy, A. McMurdo, Chief Judge E.C. Boychuk, C. Toews, E. Bobowski, E. Lewchuk, D. Fenwick, F. Diehl. Standing (l-r): T. Taylor, H. Goliath, C. Peet, M. Wedge, D. Arnot, R. Kucey, G. Seniuk, E. Gosselin, A. Muir, R. King, B. Nutting, L. Deshaye, A. Chorneyko, T. Ferris, B. Henning, E. McKay.



Judges of the Provincial Court of Saskatchewan 1987. Front row (l-r): L.P. Deshayre, H.M. Ketcheson, G.K. Fielding, P.M.B. Linn, J.R.O. Archambault, Chief Judge B.P. Carey, E.A. Lewchuk, W.B. Tennant, T. Taylor, A.C. McMurdo, G.C. King, G.R. Moxley. Centre row (l-r): D.E. Fenwich, H.J. Boyce, R.A. Rathgeber, H.W. Goliath, R.J. Neville, C.H. Peet, E.S. Bobowski, K.A. Andrychuk, H.D. Parker, A. R. Chorneyko, R. N. Conroy, G. T. Seniuk, R.J. Kucey, D.D. Orr, J.J. Flynn. Back row (l-r): D.M. Arnot, B.D. Henning, E.C. Diehl, E.R. Gosselin, T.W. Ferris, R.H. Allan, W.L. Meagher, A.J. Muir, R.E. Lee, P.G. Trudelle, J.B.J. Nutting, K.J. Young. Missing: K.E. Bellerose, C.R. Fafard, G.B. Shaner, L.J. Smith.



Judges of the Provincial Court of Saskatchewan 1997. Front row (l-r): J.A. Nightingale, R. H. Allan, B.D. Henning, L. P. Deshaye, Chief Judge J.D.J. Nutting, R.G. Bell, T.W. Ferris, E.C. Diehl, B. Goldstein. Second row (l-r): E.S. Bobowski, S.P. Whelan, B.L. Huculak, E.C. Schmieser, D. I. Morris, J.E. McMurty, L.A. Halliday, V.H. Meekma, D.M. Ebert, R.A. Rathgeber. Third row (l-r): G. T. Seniuk, L.J. Smith, H.W. Goliath, W.V. Goliath, G.R. Moxley, B.P. Carey, T.W. White, W.K. Tucker, D.A. Lavoie, R.G. Finley. Back row (l-r): K.A. Andrychuk, K.J. Young, E.A. Lewchuk, D.J. Kaiser, S.C. Carter, E. R. Gosselin, T.B. Bekolay, L.A. Matsalla, D.D. Orr, P.S. Kolenick. Missing: K.E. Bellerose, C.R. Fatard, D.E. Fenwick, G.C. King, G.B. Shaner.





Judges of the Provincial Court 2003. Front row (l-r): S.P. Whelan, C.C. Toth, L.P. Deshaye, M.D. Irwin, Chief Judge G.T.C. Seniuk, J.E. McMurty, T. W. Ferris, D. I. Morris, V.H. Meekma. Second row (l-r): D.M. Ebert, R. Weisgerber, E. Kalenith, M.E. Turpel-Lafond, B.D. Halderman, J.A. Nightingale, K.J. Young, D.A. Kaiser, D.A. Lavoie, G.M. Morin, B.D. Henning, A.M. Crugnale-Reid. Third row (l-r): G.A.J. Chicoline, T.W. White, R.J. Jackson, T.B. Bekolay, W.K. Tucker. Back row (l-r): P.S. Kolenick, H.W. Goliath, K.A. Andrychuk, E.S. Bobowski, S.I. Robinson, S.C. Carter, R.A. Rathgeber, R.G. Bell, C.A. Snell, B.P. Carey, G.R. Moxley, B.M. Singer.





Judges of the Provincial Court 2008. Seated (l-r): F. Daunt, D. Scott, M. Gordon, K. Young, L. Smith, Administrative Judge B. Henning, Associate Chief Judge C. Toth, Chief Judge C. Snell, Administrative Judge S. Whelan, Administrative Judge R. Jackson, Administrative G. Morin, B. Singer, V. Meekma, R. Weisgerber. Standing (l-r): J. Nightingale, L. Matsalla, B. Morgan, D. Bird, D. Kaiser, T. Ferris, T. White, P. Kolenick, J. Benison, M. Gray, R. Green, S. Loewen, S. Carter, K. Andrychuk, L. Dyck, S. Robinson, D.A. Lavoie, D. Arnot, P. Koskie, D. Bogdasavich, D. Kovatch, A. Crugnale-Reid, D. O'Halon, B. Huculak, E. Kalenith, D. Morris, M. Hinds. Missing: Associate Chief Judge M. Irwin, K. Bellerose, M. Brown, L. Halliday, Administrative Judge H. Harradence, W. Tucker.



Judges of the Provincial Court 2016. Front row (l-r): D. O'Hanlon, B. Henning, Associate Chief Judge M. Hinds, Chief Judge J. Plemel, Judge S. Anand, H. Harradence, M. Beaton, B. Morgan. Second row (l-r): K. Young, S. Schiefner, D. Bird, E. Kalenith, G. Morin, B. Bauer, P. Demong, S. Robinson, R. Lane, L. Halliday. Third row (l-r): V. Monar-Enweani, M. Marquette, J. McIvor, S. Metivier, K. Bazin, M. Martinez, I. Cardinal, M. Baniak, A. Crugnale-Reid, B. Tomkins, D. Scott. Back row (l-r): D. Kovatch, M. Gordon, L. Wiegers, R. Green, P. Reis, R. Jackson, K. Lang, D. Agnew, J. Rybchuk. Missing: F. Daunt, L. Dyck, M. Gray, P. Koskie, S. Loewen, B. Singer, C. Toth, B. Wright.

## 7. Innovative Approaches

### Initiatives in Restorative Justice

“Ours is a dynamic Court with a rich history of implementing alternative methods of delivering justice. Restorative justice principles motivated judges of this Court to initiate and institutionalize sentencing circles in the early 1990s, initially in northern Saskatchewan and quickly thereafter throughout the Province. Since then this Court has adopted a host of innovative methods of delivering justice more effectively.” ~ *A Submission to the Saskatchewan Provincial Court Commission*, 2008<sup>1</sup>

Statistics show that a significant number of prison inmates suffer from a mental illness, cognitive impairment, or both, and many are addicted to alcohol and drugs. Some come to court again and again on the same charges, including repeated breaches of curfews and orders to appear. This has led many in the judicial field to ask: Is the solution stiffer penalties, or a different approach? To lock them up for longer periods of time, or to address the issues that landed them in court in the first place?

Since the 1990s, Provincial Court judges in Saskatchewan have turned increasingly toward models of therapeutic and restorative justice, using their influence and compassion from the bench to address the underlying causes of criminal behaviour and recidivism in specific populations. These include drug-addicted offenders, offenders with mental and cognitive impairments, perpetrators of family and intimate partner violence, and Aboriginal offenders with their complex needs and circumstances.

The goal of therapeutic and restorative justice is to forgo traditional sentencing and try instead to make a positive and healthy impact on the lives of the accused. To give them the tools and motivation to alter destructive behaviours and, in cases of recidivism, commit fewer serious offences and spend fewer days in jail. In this problem-solving model, judges become agents of change within the jurisprudence of the law, guiding the judicial process from an

adversarial approach to one of collaboration, understanding, and holistic healing in the community.

These innovative approaches have several commonalities: offenders take responsibility for their actions by pleading guilty and participating in a process of education and healing; sentencing is delayed until that process is complete; community resources are marshalled for a multi-disciplinary and holistic approach; judges personally monitor compliance and progress toward tangible outcomes and offer participants their verbal and heartfelt encouragement from the bench.

“As a judge, you just can’t ignore the social turmoil in front of you. You have to look for better ways and for innovative approaches that can close the ‘revolving door’ of the judicial system. It’s incumbent upon us to try,” says Associate Chief Judge Murray Hinds who, since his appointment to the bench in Regina in 2007, has taken a lead role in supporting therapeutic courts in this province.<sup>2</sup>

In 2011, the Canadian Council of Chief Judges unanimously approved a resolution that it “endorses the principles and purposes of Therapeutic Justice and encourages their application in the courts whenever it is appropriate and feasible.”<sup>3</sup> Across the country, there are well over one hundred therapeutic courts focussing on various target populations including drug court, domestic violence court, mental health court, and sentencing circles. The following are representative of the therapeutic courts active in the Provincial Court of Saskatchewan.

### **Drug Treatment Court**

At the age of fourteen, Susan was experimenting with marijuana and mushrooms. At seventeen, she was a single mom using ecstasy, crystal meth, and crack cocaine. A decade later, she was hard core addicted, selling crystal meth to support her daily habit and living a life of drugs and crime. At thirty-four, she was under arrest, pregnant with her second child, and facing a slew of charges that, if convicted, would land her three or four years in prison. It was rock bottom. She felt complete despair.

Then she was offered another pathway – an opportunity to avoid jail time if she could follow a program, stay out of trouble, and get clean.



The offer was Regina's Drug Treatment Court, an innovative judicial process based on a principle of treatment rather than punishment, on healing within the community rather than behind bars.

Faced with the prospect of doing federal prison time and losing custody of her baby boy, Susan decided to give Drug Treatment Court a try. "I thought my life was ending, but this was actually the beginning," she says.<sup>4</sup>

Since graduating from Drug Treatment Court in 2014, Susan has rebuilt a life around her son, reconciled with her parents, made amends to her daughter, and found a job she loves working with at-risk youth. All in the time she would have spent behind bars, had Drug Treatment Court not intervened in her life. "I had nothing to lose and everything to gain," she says. "I think about how different my life might have been today had it not been for Drug Treatment Court and the faith that they had in me. I am forever grateful."

Drug Treatment Court has seen many similar successes since it was established in Regina in 2006. It was the first problem-solving court in the Queen City, the first drug treatment court in Saskatchewan, and one of only six drug treatment courts in the country. It grew out of a provincial initiative called Project Hope: Saskatchewan's Action Plan For Substance Abuse, which recommended ways to lessen the devastating impact of substance abuse on individuals, their families, and the community at large.

Drug Treatment Court also fulfilled a call for therapeutic approaches to justice as recommended in a 2004 report by the Commission on First Nations and Métis Peoples and Justice Reform. In 2009, a second Drug Treatment Court was established in Moose Jaw.

"We have had some amazing success stories," says Judge Clifford Toth, who led the establishment of Drug Treatment Court. "Some of our graduates have gone back to university and are now in social work and in nursing. Some are national spokespersons on topics like HIV and AIDS. Some are managers in their workplaces. Many of them volunteer in their communities. And every one of them would not have made it – and they say so quite loudly – but for the intervention of the drug treatment program."<sup>5</sup>

Judge Toth was in a unique position to push this initiative forward within the Provincial Court system. Prior to his appointment to the

bench in 1998, he worked eighteen years as a Legal Aid lawyer in Moose Jaw, witnessing almost daily the devastation that substance abuse wrought in the lives of his clients, yet feeling frustrated he could not do more to help them escape the grip of drug addiction and escalating conflicts with the law.

“My clients were almost all addicted to something or they were mentally ill or both. And I quickly realized that simply defending them on a specific criminal charge often didn’t do a lot of good,” he says. “If we couldn’t do more – if we couldn’t direct them somewhere for help or get them some kind of therapeutic programming – they inevitably faced more charges. Where does it end?”

He saw that incarceration, though necessary for serious and aggravated offences, is rarely the best answer for those whose moral judgement is impaired by addiction. “I think we all want a healthy society, but if you don’t allow someone the opportunity to make amends, we can’t heal those wounds. Simply removing someone from society for a period of time is seldom sufficient, in fact, it leaves much to fester and intensify.”

With his appointment to the bench (first in Estevan and then Regina), Judge Toth found he could open doors a Legal Aid lawyer could not. He joined a working group of community participants established to design and initiate a therapeutic drug court in Regina, which commenced as a pilot project in 2005 in a partnership of the Provincial Court, Saskatchewan’s Ministry of Justice and Ministry of Health, the Regina Qu’Appelle Health District, and Justice Canada. Regina’s Drug Treatment Court was officially launched the following year. It continues to be funded fifty-fifty by the federal and provincial governments.

Candidates for Regina’s Drug Treatment Court are typically under arrest and facing significant jail time should they be convicted as charged. The charges must be related to their drug addictions, but not profit-motivated drug trafficking nor offenses of a sexual or violent nature. Each case is evaluated and approved individually by the Crown prosecutor before being referred to Drug Treatment Court, where the accused voluntarily takes responsibility for bad behaviours and pleads guilty as charged.

Following the guilty plea, an agreed statement of facts is prepared and placed on file. The accused is then released from custody with

strict conditions that include regular and random drug tests, weekly court appearances, and daily attendance (Monday to Friday, 9 a.m. to 5 p.m.) in a healing program at Regina's Drug Treatment Centre for a required 240 hours of programming, which typically takes twelve to eighteen months to complete. During this time, participants receive related "wrap-around" services based on their individual needs such as housing, employment, and mental health counselling so they are less likely to relapse in the short term, and quickly brought back to the program if they do.

Once a week, participants appear before a judge in Drug Treatment Court to report their progress and setbacks from the week before, and to set intentions for the week ahead. Prior to this court appearance, the judge attends a pre-court conference with Drug Treatment Centre staff, the Crown prosecutor, and defence counsel (usually Legal Aid) to review each case individually. Was the participant engaged? On time? Clean and drug-free? What issues stand in the way of success? What behaviours without intervention are doomed to failure?

"Effectively, as a group, we plot how to keep this person engaged for the next week, one week at a time, by way of either reward, praise, or sanction," says Judge Toth. "Week to week, we try to get them slowly off drugs, or off multiple drugs, to less harmful drugs and smaller amounts of drugs. Eventually, they get to a point where they are abstaining over longer periods of time. Do they relapse? Yes, it's very easy for them to fall back into addiction and criminal behaviour. Our job is to anticipate and prevent that, if possible, and to draw them back into the program as effectively we can."

Following this pre-court conference, the judge addresses each participant individually in Drug Treatment Court. Here, in front of the judge, they are held accountable for their negative behaviours and applauded for their accomplishments. Though not customary in the day-to-day life of a court house, applause is standard practice in Drug Treatment Court as a sign of respect and appreciation for a job well done, even if in incremental steps. For the judges presiding over Drug Treatment Court, offering a round of applause was, at first, a surprisingly simple gesture, but they soon learned that praise is a stronger motivator for this cohort than the threat of jail time, as Judge Toth explains:



“In my first week of Drug Treatment Court, there was a young lady – she had done everything we asked of her, she was clean, she was engaged, she was positive – and I gave her a big round of applause. The next guy up, he had done nothing – just coasted, barely showed up – so I just told him to be seated, no praise or applause. His shoulders slumped, visibly slumped. The next week, he really tried, because he wanted me to acknowledge that he was trying. And I gladly did. That positive motivation coupled with proper counselling makes all the difference.”

On the flip side, those who fail to take the process seriously and diligently may face further sanctions including a period of remand custody, tougher bail conditions, stricter curfews, and/or community service. These measures serve to provide short-term correction and long-term incentive to get back on track.

Those who fail outright – who refuse to follow their program, who leave treatment, or who continue to use drugs – will invariably find themselves back in court on the original charges. Since they have already entered guilty pleas, their cases proceed directly to sentencing and, in most cases, a swift trip to jail. If the prospect of a lighter non-custodial sentence is the “carrot” that entices participants into Drug Treatment Court in the first place, the guilty plea is a corresponding “stick” of enforcement.

That was the case for David who, at the time of his arrest, was living a life of crime in order to pay for his \$1,000-a-day addiction to injected crystal meth. He had been arrested numerous times in the past, but it only served to make him a “more wily criminal” in his own words. “I was good at only two things: getting high and getting arrested,” he says.<sup>6</sup>

What’s more, he felt the judicial system had treated him as a worthless “scourge of the earth.” He had little respect for others and no respect for judges, lawyers, and the court. So when he was offered the opportunity to enrol in Drug Treatment Court in exchange for a reduced non-custodial sentence, he jumped at the opportunity with all the sincerity of a seasoned thief, which is to say, none.

“I, like many others, saw it as a way out of jail. I had no intention or desire to change my life or to stop using. The staff at Drug Treatment Court had something else in mind,” says David, whose story, along with that of Susan and other graduates of the program,

was included in a video recorded at an international conference on therapeutic courts, “Where Justice and Treatment Meet,” held in Regina in 2016.

Slowly, over the course of many weeks and months, David changed the way he thought about himself and his lifestyle. He began to examine his destructive behaviours, the harm he had done to himself, and the wrongs he had done to others, rebuilding family relationships and making true friendships outside a life of crime. He graduated clean and sober from Drug Treatment Court in 2015.

“I owe my life to the Drug Treatment Court program,” he says in the video. “Without it I would be dead or in jail. The program is a miracle and saves lives – at least mine.”

The experience of David and other graduates proves that Drug Treatment Court is not a quick fix. “The truth about addictions and criminality is that it takes a whole lot of work to change,” says Judge Toth. “When our potential clients realize what we’re asking of them, many of them would rather do the jail time and continue their addictive behaviours. That was my first shocker. Although it was desperately needed, it wasn’t taken up by everybody who needed it.”

Tanya did not make it through Drug Treatment Court the first time around. She had been living on the streets of Edmonton, working as a prostitute and shoplifting to feed her addiction to crack cocaine, when a kindly “trick” bought her a bus ticket home to Regina. Soon she progressed to intravenous drugs. Arrested on eighty criminal charges, she found herself before a judge in Drug Treatment Court. When that failed, she found herself in jail.

“It was a horrible experience,” she says. “And yet, when I got out I continued to use IV drugs.”<sup>7</sup> Arrested again, sick with hepatitis C, she was taken to Kate’s Place, a residence for women enrolled in Regina’s Drug Treatment Court. Operated by the Salvation Army, Kate’s Place offers a safe and secure residence away from the interference of pimps and friends still involved in drugs and crime. “They loved and nurtured me back to good health when no one else would, not even myself,” says Tanya. “I am so grateful for those ladies today.”

This time, she managed to stick with Drug Treatment Court, kicking her drug habit, finding a rewarding job, and regaining

custody of two children who had been removed from her care while she was in the grip of addiction. She also found support in her First Nations culture and the healing power of ceremony, the sweat lodge, and her Creator. “My time in Drug Court was tough,” she says. “The rules I had to follow helped, so did the drug screens, and of course the weekly court appearances with Judge Toth and Judge Hinds. I would like to say thank you to Drug Court and to everyone that helped me get here today. Hiy hiy.”

On graduation day, there is more applause in Drug Treatment Court. To graduate, participants must complete 240 hours of programming, be enrolled in school or working, and be drug free for at least three months. As a final step, they return to the courtroom for sentencing on their original charges, where the judge confers a non-custodial sentence in the form of probation or conditional discharge.

As a final gesture of support, the judge presents each graduate with a medal specially-designed to commemorate their successes and remind them that their hard work has many rewards in their own lives, in the fabric of their families, and in the heart of the community they call home. The medal reads “One Day at a Time.”

### **Domestic Violence Court**

The first therapeutic court in Saskatchewan was the Battlefords Domestic Violence Treatment Options Court (DVTO), established in 2003 at the Provincial Court in North Battleford. The initial goal of DVTO was to break the cycle of family violence without sending the offenders to jail. It also had the corollary effect of streamlining the case load so that fewer cases went to trial, while at the same time resulting in more convictions and fewer repeat offences.

Like Drug Treatment Court, those accused of family violence are given the option of a lighter non-custodial sentence if they accept responsibility for their actions, plead guilty as charged, and complete a program of therapeutic counselling. Eligible charges include assault, mischief, stalking, making threats, and breach of related court orders. Upon successful completion of the program, offenders receive reduced sentences ranging from an absolute discharge to a conditional sentence within the community, but not jail time.

As for the victims of relationship abuse, they receive appropriate protection and counselling from local agencies, regular updates on the progress of their files, and an opportunity to be heard in court without having to formally testify against intimate partners and loved ones. Experience has shown that victims whose abusers choose DVTO are more likely to cooperate with police knowing they will not be called to testify and that the offending family member will not, in all likelihood, be sent to jail.

The push to establish Battleford's DVTO came from Judge Violet Meekma, who was appointed to the bench in North Battleford in 1994. Before her appointment, she practiced family law in Prince Albert. As a judge, she soon grew frustrated by the number of domestic violence cases that clogged her court, with frequent adjournments and delays, but few convictions in the end. Without convictions, the accused were not compelled to take treatment and other therapeutic programs that could help address their underlying issues and end the cycle of family violence.

In the meantime, some accused re-offended and some victims were charged with obstruction or perjury for refusing to testify against their abusers. "If charges were laid, often the women would recant or not show up for court. Or the perpetrator wouldn't show up for court and we'd adjourn the case for several months and try again. And often the same thing would happen," says Judge Meekma. "The result was a lot of wasted court time with very few convictions, and without convictions, nobody received treatment. Nothing ever improved."<sup>8</sup>

At an Aboriginal law conference in Saskatoon, Judge Meekma learned about a domestic violence treatment court in the Yukon, as described by then-Chief Judge Barry Stuart of Yukon's Territorial Court. He described a court process in which the usual sequence of events was reversed so that sentencing did not take place until after treatment, encouraging the accused to engage in a therapeutic program in exchange for a less onerous sentence. Judge Meekma felt this could be the answer to the perplexing problem she saw weekly in her courtroom and which plagued her community year after year.

She was further motivated by research out of the United States that showed perpetrators of intimate partner violence who received appropriate counselling, along with periodic court review, were

much less likely to reoffend. This resulted in a substantial reduction of re-arrests and, by inference, fewer victims of violence seeking medical, psychological, and community services.

However, her first attempt at sparking a similar initiative in the Battlefords did not get far. She quickly won the support of the local RCMP (the detachment commander even organized the initial meetings) but mental health professionals were reluctant to take offenders into counselling before they had been convicted of an offence. “It ran counter to their protocols,” Judge Meekma says, “So that’s where it stumbled. We didn’t get anywhere with it then.”

Fast forward more than a year, to late 2002, when she received an encouraging sign from the lead psychologist at the men’s mental health treatment program in the Battlefords. He was willing to give it a try. Wasting no time, she suggested a meeting of the key players: the psychologist at the men’s program, social workers who counselled the victims of abuse, representatives of both the Crown prosecutor and Legal Aid, and her colleagues at North Battleford Provincial Court, Judges David Kaiser and Lloyd Deshayé.

Consequently, other local agencies joined the steering committee including child protection services, victim’s and women’s services, probation services, addiction services, the Aboriginal Courtworker Program, and the Department of Justice. With momentum growing, they worked quickly to establish protocols for the new court. The first sitting of Battleford’s DVTO was held in April 2003, just a few short months after that ground-breaking meeting.

The steering committee drew up a list of basic protocols for DVTO: a quick guilty plea, delayed sentencing until after treatment, monthly appearances before a judge in DVTO court, and a reduced non-custodial sentence upon successful completion of a therapeutic program. A smaller working committee was established to review each individual case and make recommendations to the judge. These recommendations are based on several factors including a risk assessment by a probation officer and the underlying personal needs of each offender.

“[T]he judges are still in charge of the conduct of the court, however the wishes of the committee as a rule are followed,” explains Judge Meekma in a program assessment she wrote in 2006. “Although in court the judge is still responsible for final decisions,

most interventions and outcomes are predictable in accordance with policy debated and agreed to at steering committee meetings.”<sup>9</sup>

After the initial guilty plea, the offender is released with bail conditions, one of which is no contact with the victim. This no-contact order may be lifted after completing one-third of the program, if requested by the victim and supported by the working committee. This milestone has the beneficial effect of encouraging compliance with the no-contact order while ensuring some treatment is completed before the victim and offender see each other again. “It’s a lot easier to keep people apart if they know there is some light at the end of the tunnel – that this isn’t going to be forever,” says Judge Meekma.

“We also must appreciate the reality that if the victim wishes contact and we make the terms too onerous, the condition may be breached by the parties,” she explains in her 2006 report. “Whatever the reason, whether out of fear, love, loyalty, financial insecurity, family pressure, childcare needs, or other factor, many of these victims will resume a relationship with their abusers. We must do everything we can to reduce the risk if and when that occurs.”<sup>10</sup>

Even in situations where the relationship ends, she says victims often prefer their offenders remain free of jail, able to work and pay child support. In other words, victims do not seek retribution as much as they seek help improving their family situations, whatever form that may take.

Once a month, offenders are required to appear before a judge in DVTO court to account for their progress, or lack thereof. Members of the working committee present progress reports on each participant, focussing on the good and positive aspects of individual efforts. “People just glow when they have a positive report,” says Judge Meekma. “They’re very pleased with their success when they hear someone talk about it in the courtroom. It’s good for the other accused to hear this, too. They support each other, and sometimes you even hear them speaking up for someone else in court.”

When participants fail to complete the DVTO program, they are sentenced on the charges to which they have already entered a plea of guilty. Because of that guilty plea, there is rarely a need for further adjournment and victims are not required to testify. “Right away we noticed a huge savings in court time,” says Judge Meekma.

“The benefits spread across the system. It also means that cases with a not guilty plea can proceed more quickly to trial.”

News articles touted the success of the DVTO program, which was expanded to Saskatoon in September 2005, and to Regina in March 2008. In its first five years, Battleford’s DVTO took in 437 participants of whom 367 were male and seventy were female.<sup>11</sup> In Regina, the domestic violence program enrolled 400 participants in its first six months, of whom three-quarters were male and one-quarter were female.<sup>12</sup> In Saskatoon, more than 900 participants entered the domestic violence program in its first year; by 2017, there were 150 participants enrolled in the program in any given week, with few repeat offenders.<sup>13</sup>

Judge Anna Crugnale-Reid of Regina’s Domestic Violence Court spoke to the *Regina Leader-Post* in December 2008: “We receive very glowing comments from a number of individuals that are participating in the program... I’ve been pleased to hear some of them recommending the program to others in the court and in fact I recall one fellow who told that court that he and his wife had been discussing the material that he’d been reviewing in the program and they had one question: Why wasn’t this material taught in schools? So that’s very positive and encouraging.”<sup>14</sup>

### **Mental Health and FASD Court**

It is Monday morning docket court. A steady stream of accused comes before the judge on new arrests and charges laid over the weekend, one appearing quickly after the other, some in custody and some not. Among their charges is the possibility of almost every offence in the Criminal Code. The docket court judge makes quick decisions, sending each case forward to the next step in the judicial process.

Who among these accused suffers from a mental illness or a cognitive impairment? Which of them live with the effects of a brain injury or Fetal Alcohol Spectrum Disorder (FASD)? How many are in this predicament because they suffer from cognitive disabilities or psychiatric conditions that bring them into conflict with society and the law?

According to data from Corrections Canada, ten percent of



incarcerated men suffer from a severe mental disorder and seventy-five percent have a personality disorder of some type (compared to just one percent and seven-and-a-half percent of the general population).<sup>15</sup> Studies estimate that ten to twenty-three percent of youth and adults in criminal justice populations suffer from FASD<sup>16</sup> and as many as forty percent may have a cognitive impairment.<sup>17</sup>

For many of them, these conditions overlap. And their numbers are rising, as noted by Corrections Canada: “in the past fifteen years there has been a considerable increase in the number of both male and female offenders with mental health problems presenting to the system and requiring mental health care.”<sup>18</sup> The closure of mental health and psychiatric institutions, without sufficient corresponding services in the community, prompted the Mental Health Commission of Canada to dub the nation’s jails and prisons as “the asylums of the 21st century.”<sup>19</sup>

In many instances, incarceration only serves to make their circumstances worse. Those with cognitive impairments (including brain injuries and FASD) are among the most vulnerable persons in jail, where they are often subjected to physical abuse, bullying, and coercion from other inmates. Mental illnesses are exacerbated, and returning to the streets after “doing time” is a no-win situation for those without housing, employment, family supports, or a firm and rational grip on reality.

The issue of effective sentencing and treatment of accused with FASD garnered attention and headlines as early as 1999 with several rulings by Saskatchewan Provincial Court Judge Mary Ellen Turpel-Lafond, who was appointed to the bench in Saskatoon the year before. Her rulings in youth court challenged the correctional system, the Department of Justice, and the Department of Social Services to provide better services for accused with cognitive impairments due to FASD, both in custody and as an alternative to incarceration. Though labelled a “judicial activist,” her voice from the bench raised the level of discussion and awareness of the unique needs of this target population and their interactions with the law.

In 2012, the Provincial Court of Saskatchewan held a first-of-its-kind educational forum on the effects of FASD in the judicial system with a seminar presentation in Regina that was broadcast to court houses across the province via video-conferencing technology.

In attendance were judges, lawyers, community workers, police officers, and representatives of First Nations agencies, victim services, corrections, and provincial government ministries including health, justice, social services, and education. Group discussions in each location were facilitated by Provincial Court judges to consider possible alternative responses at the local level.

Initiative for the seminars came from Chief Judge Carol Snell, the first female Chief Judge of the Provincial Court of Saskatchewan. “It was really quite remarkable what we were able to do in that one day,” she says. “Not only did we train people about FASD and how to respond to it in the court, we were also able to build a community response team in each of the communities where these sessions were held, so they could continue to deal with these people and their problems. As judges, we have to rely on the Crown, and more so on defence counsel and service providers, such as probation officers, to bring to our attention people with this issue, so we can take that into consideration in our courts”<sup>20</sup>

Following the seminar, in late 2013, Judge Sheila Whelan led formation of a Mental Health Support and Supervision Court (MHSSC) in Saskatoon, a collaborative and therapeutic court for those with mental illness, cognitive impairments, and FASD. Prior to her appointment to the bench in 1996, Judge Whelan worked as a Legal Aid lawyer in Saskatoon, where she became familiar with the effects of FASD and the ineffectiveness of incarcerating those disabled by FASD without corresponding supports.

“For a long time I had an interest in Fetal Alcohol Spectrum Disorder and its implications for the justice system. It became apparent to me over the years that we needed a new approach,” she says.<sup>21</sup> “But it wasn’t just about FASD, it was also about so many people with cognitive disabilities or other mental health concerns who were coming to court. Now the time was right to move forward. There was momentum, there was interest, and there was heightened public awareness. We took the initiative and pulled it together in about a year.”

At the same time, Judge Toth led the formation of a Mental Health Court in Regina. He had also felt frustrated in sentencing those with mental and cognitive impairments, often seeing the same accused repeatedly in his courtroom but lacking resources or time to address

each one individually. He recalls speaking with Crown prosecutors, Legal Aid defence lawyers, and staff at community agencies that support those with mental illness, cognitive impairments, and FASD. “I asked them, ‘Would you like to talk to me before I sentence your clients?’ The answer was a resounding yes,” he says. Based on this collaborative approach, the mental health court initiatives in both Regina and Saskatoon were established without additional funding from the ministry of justice.

Mental health court meets twice per month. Newly arrested persons who are known or suspected to have a mental health issue or cognitive disability are brought to this court, where time is taken to evaluate each one on a case-by-case basis, to understand how the impairment may have influenced the criminal behaviour, and determine what services in the community may help the accused get back on track to a safe and healthy lifestyle.

Prior to the court hearing, the presiding judge attends a pre-court case management conference with representatives of Crown and defence counsel (usually Legal Aid), health and social services, corrections, and community agencies that provide assistance and supports for those with mental illness, cognitive impairments, and FASD. In many cases, the accused are already known to them as clients. Together, they evaluate each case, determine the services needed, and make a plan that may include, among other things, supervised housing, proper medical diagnosis, substance abuse counselling, psychiatric assessment, and assistance with medications. Sentencing is delayed while these agencies work with their clients to arrange the care and supports required.

“So often these crimes are committed in a crisis,” says Judge Toth. “When these people are stable and supported in the community, they aren’t getting into this kind of trouble. So, if we can get them into services, and they are willing to respond, we can delay sentencing until we see how they are doing. It makes all the difference.”

To be eligible to appear at Mental Health Court, the charges must be related to mental or cognitive impairment. Driving offences, offences with mandatory minimum sentences, and offences that could result in federal penitentiary time are not eligible. The accused are asked to participate voluntarily. Few turn down the opportunity, says Judge Whelan.

“We told them, ‘We will support you if you agree to be supervised by us.’ We were not only supervising, we were also helping them get to the front of the queue and accessing existing resources,” she says. In one case, she recalls the accused mentioned in court that he and his dog were living in a garage warmed only by the ambient heat of the attached house. It was winter, so she asked a representative of Social Services if better accommodation could be found.

“This was especially important because the representative of Social Services was present that day to see if there really was a need to attend our docket court. The department clearly saw the need and committed to sending a representative thereafter,” says Judge Whelan. “We ran on motivation and inspiration. We took frequent breaks during the morning so people could get together and solve their concerns.”

In its first ten months, Saskatoon’s Mental Health Support and Supervision Court engaged 117 participants<sup>22</sup> of which eighty-eight were male and twenty-nine were female, with an average age of thirty-two.<sup>23</sup> There were a total of 2,529 offences including mischief, common assault, theft under \$5,000, uttering threats, and breach of a court or probation order – the largest category of offenses by far.<sup>24</sup>

In its first two years, Regina’s Mental Health Court engaged seventy-nine participants (sixty-eight men and eleven women), of which thirty-six cases were concluded by November 2015.<sup>25</sup> As in Saskatoon, the most prevalent charges by far were breaches of court or probation orders, including failure to appear in court when scheduled. Of those thirty-six individuals, five received short jail sentences, twenty-two received community-based sentences, and the remainder were either stayed, withdrawn, or sentenced to time served.<sup>26</sup>

“This is an incredible measure of success,” says Judge Toth. Future data collection may prove, as it has elsewhere in Canada and the United States, that participants in special mental health courts are significantly less likely to reoffend, and when they do, their offences are less severe and they spend less time in jail.

## **Sentencing Circles**

The first sentencing circle in Saskatchewan was held in 1992 in the northern community of Sandy Bay to determine an appropriate

punishment for two youths who had committed theft, according to Judge Sid Robinson, who participated in the circle as a Legal Aid defence lawyer.<sup>27</sup> Of course, this statement must be qualified: it was the first sentencing circle held within the jurisdiction of the Provincial Court of Saskatchewan. The concept of gathering in a circle to determine the remedy for bad behaviour has been a pillar of First Nations culture since ancient times. Whereas the court system focusses on punishing the law-breaker, traditional circles focus on accountability, rehabilitation, and righting the wrong.

The Sandy Bay sentencing circle was initiated by Provincial Court Judge Claude Fafard, who was based in La Ronge and regularly conducted circuit court in communities throughout the north. Appointed to the bench in 1975, Judge Fafard had grown frustrated with a judicial system in which northern offenders were punished time and again without addressing the underlying issues that precipitated their harmful behaviours, nor provided an opportunity for making amends and healing within the communities they had wronged.

Given these perceived shortcomings of the judicial system, he got in touch with Yukon Territorial Court Judge Barry Stuart, who had pioneered the use of sentencing circles in a courtroom setting. Based on their conversations, Judge Fafard decided to give sentencing circles a try.

In Sandy Bay, the two youths had stolen the prize money for a popular canoe race. “My two clients stole the purse money and blew it,” recalls Judge Robinson, who was acting as their defence lawyer. “We needed a test case in Saskatchewan that wasn’t too difficult, and these two kids fit the bill. Everybody was mad at them but it wasn’t the crime of the century, so Judge Fafard thought it would be a good case for a sentencing circle.”

(Interestingly, Judge Robinson, was also a victim of the crime, given that he and his wife had entered the canoe race. “I was in a bit of a conflict because I spoke as a lawyer and then I spoke as a victim, too,” he says, “but I wasn’t really a victim because we were one of the slowest teams, so we weren’t in the money.”)

At the time, there were no formal guidelines for conducting a sentencing circle within the court system. The first circles in Saskatchewan were organized by members of the community

based on their traditional knowledge and the needs of the court.<sup>28</sup> The circle included the accused, the victim, their families, Crown and defence counsel, elders, police, other interested members of the community, and the presiding judge. Moving around the circle, discussion focussed on the root causes, community healing, and making amends, until a consensus emerged from which the judge could render a formal ruling in the case.

In some instances, the local committee conducted a sentencing circle in Cree without the judge in attendance (for cases referred to the committee by the court), and presented the recommendation to the judge later for sentencing. In some instances, like that first case in Sandy Bay, the circle included more than one accused if they were implicated in the same incident. These adaptations served to increase community confidence in the justice process and helped move cases forward more quickly in those communities in which the judge came for circuit court just once or twice a month.

“You can’t punish a community into functioning as a community, as a peaceful community. It’s got to be a healing process... [I]f we work things out right in a sentencing circle and it turns into a healing circle, we have at least made a good beginning to resolving the conflict that was placed before us in that particular case.”<sup>29</sup>

Judge Fafard spoke those words in September 1993 at a conference on Aboriginal people and the justice system organized by the University of Saskatchewan College of Law in Saskatoon. By fall 1994, he had conducted about twenty sentencing circles in Sandy Bay and several more in the northern communities of Pelican Narrows and Cumberland House. The types of cases included assault, assault with a weapon, arson, and theft under \$1,000. By spring 1995, about one hundred sentencing circles had been held in Saskatchewan, of which sixty were conducted in northern communities by Judge Fafard.<sup>30</sup>

Speaking in 1994, Judge Fafard said he always accepted the recommendations of the sentencing circle.<sup>31</sup> As a participating lawyer, Judge Robinson observed: “I expect the final result in each case was similar to what Judge Fafard might have come up with on his own, but the results were definitely more of a consensus than the decision of Judge Fafard alone.”<sup>32</sup>

Over time, a set of guidelines and procedures for conducting



sentencing circles began to emerge, some of which was formalized by Judge Fafard in 1995 in his landmark decision *R v Joseyounen*. In that case, the accused requested a sentencing circle, which the judge denied, primarily because the assault was so serious and the injured victim unable to participate. But in denying the request, Judge Fafard articulated a set of seven factors to consider when deciding if a sentencing circle is an appropriate means of resolving a case. The seven factors are:<sup>33</sup>

1. The accused must agree to be referred to the sentencing circle;
2. The accused must have deep roots in the community in which the sentencing circle is held and from which the participants are drawn;
3. There are elders or respected non-political community leaders willing to participate;
4. The victim is willing to participate and has been subjected to no coercion or pressure in agreeing to do so;
5. The court should try to determine beforehand, as best it can, if the victim is subject to battered women's syndrome. If she is, then she should have counselling and be accompanied by a support team in the circle;
6. Disputed facts have been resolved in advance;
7. The case is one for which a court would be willing to take a calculated risk and depart from the usual range of sentencing.

These seven factors outlined in *R v Joseyounen* have been generally accepted by higher courts and have thus guided the establishment of hundreds of sentencing circles in Saskatchewan and Canada since that time. Though the great majority have been conducted in Aboriginal communities and for Aboriginal offenders, there is no prohibition on non-Aboriginal accused requesting a sentencing circle if these factors are met.

"In my experience, no two communities run sentencing circles in exactly the same way," says Judge Linton Smith, who participated in hundreds of sentencing circles in communities in

southern Saskatchewan.<sup>34</sup> Appointed to the bench in 1979, Judge Smith developed a keen interest in First Nations history and culture, participating in sweat lodge ceremonies and forming a bond with Aboriginal communities. Prior to his appointment, he served as the first full-time Legal Aid lawyer in Saskatchewan (as the first director of the Saskatoon Legal Assistance Clinic), where he came face-to-face with the impacts of poverty, residential schools, and inequalities in the Canadian justice system. Given these interests, both cultural and legal, he was eager to introduce sentencing circles in southern Saskatchewan soon after they had been used successfully in the north.

“My model is that the community should design the sentencing circle,” he says. “Judges should go as invited guests to learn from the community what its position is with respect to the person who has done wrong. The judge retains the ultimate power to make the final decision, but it should be a cooperative process right up to that point.”

In keeping with his position as an “invited guest” he does not wear his judge’s robe to the sentencing circle, preferring jeans and cowboy boots instead. However, he does assume a respected position within the circle, sitting at a point farthest from the door, beside the elder from the community who is chairing the circle. The accused sits closest to the door, with community members, victims, families, and legal counsel occupying the circle in between.

In most instances, he says, discussion moves clockwise around the circle four times: the first round includes introductions, the second round focusses on general problems in the community, the third round focusses on the specific circumstances of the accused, the consequences of his or her actions, and an outcome that could affect rehabilitation and restore good relations with the victim and the community. In the final round, the judge reviews the recommendation, hears feedback from participants and, if agreed by Crown and defence counsel, imposes the sentence reached by the consensus of the circle. If either Crown or defence lawyers did not agree with the consensus, Judge Smith adjourned the case to hear formal legal arguments on sentencing back in the courtroom.

He notes that circle sentencing is not expressly intended to avoid jail time. Sometimes the community determines that a period of incarceration is the just and necessary sentence. However, some

sentences are unusual in the context of the Criminal Code. In one novel example provided by Judge Smith, a sentencing circle at Okanese First Nation recommended the accused help raise bison on the community pasture and, from the first bison slaughtered, make a traditional robe for the elders. Judge Smith accepted this recommendation as part of his formal sentence in the case.

In another sentencing circle held on Piapot First Nation, near Regina, the accused was a teenager who stole a car in cahoots with a group of young offenders dubbed by the media the Oldsmobile Gang. During the sentencing circle, the victim expressed her empathy for the young accused and her desire that he not be sentenced to custody. Judge Smith was able to accommodate this wish in his sentencing disposition. However, despite a strong focus on the principles of restoration and rehabilitation, there is no guarantee either will be achieved by a sentencing circle.

“Sentencing circles are not a magic wand,” he says. “They don’t magically change peoples’ lives. But people who have been through a sentencing circle tend to commit fewer crimes, and when they do commit crimes, those crimes tend to be less serious than they were before.”

Aside from the restorative nature of sentencing circles, Judge Smith believes they are imperative given the historical content of the treaties signed by First Nations and the Crown. Among other things, the treaties addressed the administration of justice on treaty lands.

“When we signed the treaties, we promised each other – the white treaty people and the Aboriginal treaty people – that we would participate as partners in the administration of justice in this area,” says Judge Smith. “What’s important is not so much that the sentencing circle might be a better way to find the correct sentence for an individual, but that it is a way of showing we are indeed prepared to participate as partners under the treaty and share the duty for justice as we said we would when those treaties were signed.”

Though sentencing circles remain an innovative alternative within the Provincial Court system, they have been used less frequently in recent years. This may be attributed, in large part, to a level of “burnout” in communities that have supported so many sentencing circles in the past. Community members participate as

volunteers, without compensation or significant supports from either provincial or federal governments. As such, the time and effort required to conduct sentencing circles, often followed by a period of monitoring and assisting the offender within the community, have taken a toll on participation levels.

“People are just worn out,” says Judge Smith. “It’s incumbent upon governments to supply some kind of supports to the community, such as people to work in these communities to help them comply with the commitments they make in the sentencing circle. Like everywhere else, it tends to be the same people who volunteer over and over again. They need help to sustain that level of commitment.”

In the north, Judge Robinson also blames “burnout” for a waning interest in circle sentencing. It is also a burden on the court, he says, when a minor offence may take half a day or a full day to conclude via sentencing circle, when the judge could adjudicate the same case in an hour or less in regular court. While the judges are willing, time constraints upon the court are a serious concern. He recommends more government supports for local justice committees and more frequent use of sentencing circles without the presence of a judge.

“It’s a sentencing circle outside of court, and I see nothing wrong with that. In most cases, I would accept the recommendation of the circle,” says Judge Robinson. As such, it is akin to a joint sentencing submission by Crown and defence lawyers, with participation of the community in the process. “The more we can divert out of the court system the better,” he says.

Despite the challenges, sentencing circles have been adopted across Canada as a legitimate means of resolving conflicts and injecting the principles of reconciliation and healing into the court system based on those first test cases in northern communities. As stated in the *Encyclopedia of Saskatchewan*:

“These cases, and the hundreds of circles that were held in the Saskatchewan Provincial Court throughout Saskatchewan, had a great impact across Canada. They were influential in persuading the Parliament of Canada to enact provisions for the adoption by the Supreme Court of the principles of restorative justice. In no small part due to the work of those small Aboriginal communities throughout northern Saskatchewan, restorative justice came to benefit Canadians everywhere.”<sup>35</sup>

## Cree Court

The accused takes his seat. It is his first appearance on a charge of assault. From the bench, Judge Gerald Morin turns to the young man and asks: “Kinothe Nehyawan akachee Akanashemon?” Do you speak Cree or English?<sup>36</sup>

This is Cree Court, the first bilingual Cree-English Provincial Court in Canada. Established in 2001, it serves the primarily Cree communities of Sandy Bay, Pelican Narrows, Whitefish First Nation, and Ahtahkakoop First Nation. From its home base at the provincial court house in Prince Albert, the Cree Court team (including judge, court clerk, Crown prosecutor, and Legal Aid defence lawyer) visits these distant northern communities on a rotating circuit, providing legal counsel and dispensing justice in the language of the accused, witnesses, and victims of crime.

“People who see their own language being legitimized by the court will have, I believe, more respect for the justice system,” says Judge Morin.<sup>37</sup> “But more importantly, it facilitates communication. Imagine being able to give your testimony in your own language, being able to explain your circumstances in your own words, being able to understand the decision of the court without guessing exactly what it means. It gives additional credence to the process.”

The concept of Cree Court was first proposed in the mid-1990s by Judge Fafard, who introduced sentencing circles in the court in 1992. Since many of the accused in northern communities speak Cree more fluently than English, he felt they would be less alienated and better served by court proceedings conducted in their mother tongue. The goal, as with sentencing circles, was to better understand the underlying causes of destructive and anti-social behaviours and, when possible, favour rehabilitation and healing over incarceration.

At the time, there was a growing legal imperative for innovative approaches such as Cree Court. In 1996, the federal government amended the Criminal Code of Canada to require that judges consider sentencing options other than incarceration for Aboriginal offenders. In 1999, the Supreme Court of Canada, in its decision *R v Gladue*, affirmed this principle. The *Gladue* ruling asserted that such remedial measures are “designed to ameliorate the serious problem of overrepresentation of Aboriginal people in prisons, and

to encourage sentencing judges to have recourse to a restorative approach to sentencing.”<sup>38</sup>

In 1999, Judge Fafard presented the concept of Cree Court to provincial Minister of Justice John Nilson, who approved the initiative. The next step: appoint a Cree-speaking judge to establish and conduct Cree Court. At the time, Judge Morin was in private legal practice in Prince Albert. As a member of the Peter Ballantyne Cree Nation and raised in Cumberland House, he was fluent in English and Cree. Prior to studying law, he earned a degree in Social Work and served as a probation officer in northern communities. Initially, he declined the appointment to Cree Court; however, in 2001 he accepted the challenge and was appointed to the bench in Prince Albert. Appointed in January, he held the first session of Cree Court that October.

In Cree Court, proceedings are conducted in Cree or English (or a mix of both) as spoken by the accused, witnesses, and victims of crime. Judge Morin switches effortlessly between the two. Bilingual court clerks act as interpreters as needed for Crown and defence counsel who do not speak Cree. “I do not make it regimented that if you start in Cree you must stay in Cree. I go back and forth as they do,” says Judge Morin. “That type of rapport is so meaningful to people, we cannot underestimate it.”

As a result, there is an easy flow between languages depending on who is speaking and what is being said. For instance, the English words “guilty” and “not guilty” are often heard in Cree Court, as they are commonly understood by everyone. However, as Judge Morin explains, the meaning of those words in English and Cree is not exactly equivalent – the Cree word for guilty has a broader meaning, as if saying “I am a guilty person” rather than admitting culpability for a single act.

“There are certain legal words people will not necessarily know because they don’t use them every day in that context, so I will take time to explain it and then go back to that word,” he says. “It takes a few extra minutes to do that, but so what? To me, what is most important is communication.”

His style is tough and probing. He looks the accused in the eye and asks: Why did you do this? What is at the bottom of your behaviour? Why should I give you a chance? Judge Morin says this straight



talk is more customary in Cree than in English, which allows him to understand the unique circumstances of the accused and impose a penalty that addresses the root causes of the wrongdoing while providing some solace to those who have been wronged.

He also brings to bear his personal and cultural understanding of the long-lasting impacts of residential schools, the colonial reserve system, and systemic racism. “I understand it perfectly. My father and my uncles went to residential school. My father was sexually assaulted in residential school. I have empathy and understanding for what a person goes through in terms of anger issues, substance abuse, lack of respect for others and self. I understand the people who appear in front of me,” he says.

At the end of the day, it is not uncommon to hear the words “hiy hiy” in Cree Court, even when the accused has been sentenced to serve time. It means “thank you” in Cree. “So often I hear thank you,” says Judge Morin “Are they thanking me because of the sentence? Or because I humanized the process? Because I talked to them, really listened to them, answered their questions, so they could understand why I gave them that sentence.”

### **Saskatchewan Provincial Court *en français***

In 1980, a Francophone priest known to “*avoir le pied pesant*”<sup>\*</sup> was issued a speeding ticket by the RCMP. Father André Mercure of North Battleford demanded a trial in French.

Provincial Court Judge Lloyd Deshayé ruled that Mercure could speak French at court, but the judge could use an interpreter. The case was appealed to the Supreme Court of Canada, which upheld the ruling of Judge Deshayé on that point.

In response to the Supreme Court ruling, the government of Saskatchewan passed the *Language Act* in 1988 affirming the right of an accused to speak French at court and to have his or her statements recorded in French, while the judge may use the services of a translator. The Act also required translation of the rules of Provincial Court into French.

However, for offences under the Criminal Code of Canada (as opposed to a provincial statute such as the *Traffic Act*) the accused has a statutory right to a trial in either official language. Though little requested, the Provincial Court of Saskatchewan must be prepared to conduct trials in French when required.

“Under the Criminal Code, the accused has a right to a trial or preliminary hearing by a judge who speaks French and can render a decision in French. Therefore, we should have at least two judges who are ready and capable of conducting a trial in French at any given time,” says Judge Marylynne Beaton, who, along with Judge Lloyd Stang and Chief Judge James Plemel are French-speaking jurists on the Provincial Court.

In order to maintain their skills and stay abreast of French-language legal terms, French-speaking judges from primarily Anglophone provinces such as Saskatchewan attend intensive French-language training twice-yearly in New Brunswick. Judge Beaton also attends as an instructor. French-speaking court clerks, Crown prosecutors, and Legal Aid lawyers are available to perform their duties in French when required.

Which is not often. According to Judge Beaton, there are six or fewer Criminal Code cases conducted in French in the Provincial Court of Saskatchewan each year; a larger number of traffic offences are heard in French. She says the accused who request French-language proceedings are primarily from Quebec or recent immigrants from Francophone countries. Though not required by law, she will hear a provincial violation such as a speeding ticket in French if she is available to do so.

That might satisfy Father Mercure, who was well known to Judge Beaton when she was a youth attending events in the Fransaskois community. “And, yes,” she says, “he was known to have a heavy foot behind the wheel.”

\* “to have a heavy foot” Gareau, Laurier. “Le Cas Mercure” Musée Virtuel Francophone de la Saskatchewan, *Revue historique* Vol. 11. No. 3, March 2001. Accessed online:

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## 8. The Civil Side

### Access to Justice in the People's Court

“Small claims court is generally recognized as ‘the people’s court.’ In small claims matters, parties are often unrepresented and must complete materials and represent themselves. As such, access to justice for prospective parties is of utmost concern.” ~ *Small Claims Court Review Project Consultation Paper*, Department of Justice, 2014<sup>1</sup>

It was a six-day trial with four key witnesses, one lawyer, and a plaintiff who represented himself, dealing with numerous statutes and extenuating circumstances including the statute of limitations, laws of negligence and good faith, immunity of Crown corporations, various Acts of government, operations of the Gardiner Dam, water flows, and even the weather – with a 25-page carefully written decision in favour of the defendant. Provincial Court Judge Robert Jackson concluded by commending both parties for their thorough and professional conduct in court.

In many ways, the case of *Lemisko v Saskatchewan (Water Security Agency)* in 2016 was unique in both circumstances and the laws that applied. But it also represents standard practice in Small Claims Court, where no two cases are alike and the range of applicable laws is extensive and complex. Whereas the Criminal Code is contained primarily in one tome, the substantive law relevant to Small Claims Court could fill a small library.

Though the damages in the Lemisko case far exceeded \$30,000, the maximum value for Saskatchewan’s Small Claims Court, the two parties agreed to limit the action to that amount so it could be heard in Provincial Court rather than Court of Queen’s Bench. In other words, given the option, the parties chose to take advantage of the less formal, less time consuming, and less expensive forum of adjudicating their lawsuit in “the people’s court.”

Ten percent of all cases filed at the Provincial Court in Saskatchewan are matters of civil law in which one “civilian” entity

makes a claim or lawsuit against another. Most of the remaining ninety percent of files are based on offences under the Criminal Code (indeed, the vast majority of all criminal matters in Saskatchewan are handled in Provincial Court). A small number of cases at the court relate to other legislation such as traffic violations, consumer protection, family and child services (such as child apprehensions), and occupational health and safety.

Despite the high percentage of criminal cases, the criminal element in society is relatively small. For most law-abiding Canadians, the more likely point of contact with the judicial system is not the criminal courts but a matter of civil law – including breach of contract, shoddy workmanship, unpaid invoices, consumer protection, tort claims (such as those based on negligence, misrepresentation, and personal injury), insurance disputes, restitution arising from unjust enrichment, etc. The rise of modern urban society in the 20th century has seen a corresponding increase in civil disputes and lawsuits into the 21st century.

This increase presents an ongoing challenge for the Provincial Court of Saskatchewan where all small civil claims are heard. In 2013, there were 1,854 civil claims filed with the court. In 2016, there were 2,769 claims – a rise of 50 percent over three years.<sup>2</sup> The number of claims in 2017 was 2,860. At the same time, the maximum monetary value of a small claim doubled between 2006 and 2016 (from \$15,000 to \$30,000), increasing the time, complexity, and “stakes” of litigating in Small Claims Court.

The challenge is further augmented by the expanding demands of claimants who are not fully literate, who are not fully fluent in English or French, who do not fully understand the law, and/or who enter the process without legal counsel, in other words, those who choose to represent themselves. These factors put additional pressure on the Provincial Court – from the clerks who assist claimants with the paperwork, to the mediators who attempt to find resolution, to the judges who adjudicate these claims – all while advancing the principles of a “people’s court” accessible to everyone despite financial means or formal knowledge of the law.

“Civil court is a busy court. As the world gets more complicated, there is more frustration and more interactions that end in financial disputes. We see the effects of that in Small Claims Court,” says



Judge Paul Demong, who oversees Regina's Small Claims Court.<sup>3</sup> Prior to his appointment to the bench in 2012, he practiced civil law for close to three decades, primarily as in-house counsel at Saskatchewan Government Insurance (SGI). Last year, Regina's Small Claims Court received some 700 claims, for which Judge Demong conducted about one hundred trials lasting in duration, on average, from four hours to four days.

In 2014, the Ministry of Justice launched a review of the province's Small Claims Court as part of its Justice Innovation Agenda with the goal of improving access to justice through "cheaper, faster, citizen-centred dispute resolution."<sup>4</sup> This was in keeping with recent decisions of the Supreme Court of Canada affirming that access to justice is one of the primary issues confronting the Canadian judicial system today. Following that review, the province passed *The Small Claims Act, 2016*, an important step in the evolution of small claims law in Saskatchewan.

Saskatchewan passed its first legislation governing small claims in 1913, which separated the adjudication of small claims from that of larger civil disputes. *The Small Debts Recovery Act* of 1913 set the upper limit of a small claim at \$50. It also expanded access to a "judge" by allowing small claims to be adjudicated by either a District Court judge, a police magistrate, or a justice of the peace. The cost for filing a small claim and receiving a judgment was set at 35 or 50 cents, depending on the level of the court.<sup>5</sup>

Though it was the first such legislation in Saskatchewan, the idea of establishing special rules or special courts to settle smaller claims dates back at least 400 years, to early 17th century England. The first civil court in Canada was established in Upper Canada (today's Ontario) in 1791. The purpose of these special courts was to provide a "practical, cheap, and expedient alternative" to the regular court system.<sup>6</sup> One of the guiding principles, then as now, is that a smaller claim should cost no more to litigate than the claim itself is worth.

At first, these civil courts were primarily concerned with debt collection, but over time the range of claims expanded greatly. The maximum monetary limit for a small claim also expanded over time. In Saskatchewan, the monetary limit of a small claim increased from \$50 in 1913 to \$100 in 1915, \$200 in 1959, \$500 in 1978, \$5,000

in 1989; \$10,000 in 2005; \$15,000 in 2006; \$20,000 in 2007; and \$30,000 in 2016. Claims of greater value are heard by the Court of Queen's Bench.

*The Small Claims Enforcement Act* of 1959 simplified the process further, making it easier to file a claim and issue a summons requiring a party to appear at court. It also advanced the concept of dispute resolution by which two parties could seek the assistance of the court in settling a dispute without the protocols of a formal trial. *The Small Claims Act, 1997* affirmed the notion that small claims be unhindered by formal rules and procedures, so that no proceedings "are to be considered invalid for informality if there has been substantial compliance with this Act."<sup>7</sup>

A major review of *The Small Claims Act* was undertaken in 2003-05 resulting in twenty-three recommendations, many of which were incorporated as amendments to the legislation. Chief among them was provision for a mandatory case management conference to attempt to resolve disputes before going to trial, and when cases cannot be resolved in whole or in part, a provision that judges may give directives to the parties so that trials proceed quickly and efficiently.

A second comprehensive review in 2014-15 focussed on the principle of access to justice and dispelling the "default expectation" that disputes are primarily resolved by a trial. It noted that trials are "expensive, time consuming, and can cause emotional distress to parties" and while a trial "may be appropriate in the resolution of some disputes, it should not be the ultimate goal."<sup>8</sup> Following that review, a new *Small Claims Act* was passed in 2016.

"In the last ten years, access to justice has become the byword," says Judge Demong. "In Small Claims Court, access to justice demands that people have a convenient way of resolving their matters, objectively, in a timely and cost-effective fashion, unbridled by unduly complex and complicated procedures.

"Sometimes access to justice means *not* going to trial, and by that I mean, getting the assistance you need to resolve your dispute without the anxiety and uncertainty of presenting your case to a trial judge. Let's face it, trials are stressful. You might not like the outcome. It is preferable, in most cases, to solve the dispute yourselves with the assistance of the court."

A key provision of *The Small Claims Act, 2016*, which came into

force on the first day of 2018, is the authorization of a “questioning model” whereby the judge may ask pertinent questions in order to clarify any ambiguity and “to ensure that the facts, and the case of each party, are fully before the court.”<sup>9</sup> This is particularly useful when parties to the case – either the plaintiff, the defendant, or both – represent themselves in court without the benefit of a lawyer to guide them.

“There has always been a tension in the law as to whether and to what extent a judge should step into the fray of a legal dispute. This provision legislates in favour of a more inquisitorial style of judging which allows the court to assist those litigants who may not fully understand the impact of failing to ask the right question, or failing to elicit the appropriate information,” explains Judge Demong.

This is in contrast to the Court of Queen’s Bench, where civil cases are subject to numerous rules and procedures that preclude use of a “questioning model” by the presiding judge. In fact, while hearing appeals, some judges of the Court of Queen’s Bench have admonished judges of the Provincial Court for asking questions during civil trials. Such an admonition was made against Judge Darryl Bogdasavich, who preceded Judge Demong at Regina’s Small Claims Court. Appointed to the court in 2002, Judge Bogdasavich conducted well over 1,100 small claims trials during his eleven years on the bench.

“The truth is, justice will not be done unless the judge participates in this way. We have and need that flexibility,” says Judge Bogdasavich.<sup>10</sup> “This statutory provision in the new Act overrules any Queen’s Bench decisions that may have hamstrung a small claims judge from doing that. I think this is one of the most significant improvements in the *Small Claims Act*, because it guarantees the right of judges to continue to do so.”

Other adaptations to Small Claims legislation include a requirement that defendants file a written reply giving their side of the dispute before the case management conference, and it also gives judges greater leeway to award costs to successful parties and, by converse, to sanction bad behaviour and meritless lawsuits. By an earlier amendment, court clerks are required to assist the parties in filing a claim (unless instructed otherwise by a judge). The required forms with simple instructions are now available online.

In 2011, Regina's Small Claims Court launched a pilot project whereby the mandatory case management conference may be conducted by a legally-trained justice of the peace rather than a judge. These JPs have broad authority to make orders as necessary to give effect to the settlement agreements reached by the parties, or in the absence of a settlement, prepare the matters for trial by a judge.

Since legislation stipulates a judge cannot conduct a pre-trial mediation conference and hear a trial for the same case, the use of JPs has allowed Regina's Small Claims Court to manage its caseload with one dedicated judge. Having proved its worth, this innovation has been introduced to other courts such as Prince Albert, where the caseload warrants, and Estevan, where there is only one Provincial Court judge.

In another innovation, in 2012, the Provincial Court in Saskatoon introduced a simplified process for adjudicating claims valued at \$5,000 or less. These claims proceed immediately to case management conference, and if they cannot be resolved, are set for trials of four hours' duration. The pre-trial mediation judge clarifies the valid points of law and supporting evidence, which helps the trial judge to keep the proceedings focussed and within the allotted time. Initially introduced as a pilot project, this simplified stream has become an integral part of Saskatoon's Small Claims process.

As noted above, the last decade had seen a dramatic increase in the number of small claims filed in Saskatchewan. This sudden jump may be attributed primarily to two factors: an economic boom followed by a downturn in the economy, precipitating more unpaid invoices and financial disputes, and to the increasing value of a small claim.

The maximum value of a small claim is set by the provincial government based on consultations with the legal and judicial community. By increasing this value, the goal is to stream more cases away from the Court of Queen's Bench to the Provincial Court, so they may be adjudicated with the less formal, less time-consuming, more cost effective, and more conciliatory approach of Small Claims Court. This frees the higher court to adjudicate the more complex and costly cases, while expanding access to justice for claimants on the lower end of the scale and for those who wish

to represent themselves at court. As the value of lawsuits increases, so does the definition of a “small” claim.

“It now sits at \$30,000. No fair-minded person would say that’s a small claim. It’s not. For most people, that’s a significant amount of money,” says Judge Jackson in Saskatoon.<sup>11</sup> Prior to his appointment to the bench in 2001, he was partner in a law firm focussing primarily on civil law, during which time he argued cases at the Supreme Court and lectured on civil law at the University of Saskatchewan. As the province’s largest city and business hub, one-third of all small claims in Saskatchewan are filed at the Provincial Court in Saskatoon.

“As the dollar value goes up, so does the number of parties to a claim, the complexity of the issues, the amount of materials and documents submitted to the court, and the matters of law that must be considered,” says Judge Jackson. “To call it a ‘small claim’ is almost a misnomer and doesn’t match what the court deals with today.”

In 2017, the Saskatchewan Provincial Court Judges Association in its submission to the Provincial Court Commission (known as the Prosser Commission for its chairperson, Saskatoon lawyer Leslie Prosser), described the unique role of Provincial Court judges (PCJ) and the mandatory pre-trial case management conference (CMC) in the following paragraphs:<sup>12</sup>

“118. The Small Claims PCJ must wear different hats to accommodate the challenges of Small Claims, including that of educator (about the formal process and proceedings), mediator (facilitating settlement discussions between the parties at a CMC), and advocate (eliciting necessary evidence from the parties at trial) while still remaining impartial.

119. The role of the PCJ is not simply to hear and decide, but rather to discern the legal issues involved, determine relevant legal principles, facilitate understanding among litigants in an attempt to help negotiate a resolution, and deal with litigants who are often emotional and who potentially raise security concerns.

120. Most litigants at the Provincial Court are self-represented which presents its own set of challenges for the PCJs. Some are

only partially literate. Many are not familiar with the law, are leery and suspicious of the process, and are oftentimes lacking in their understanding of the English language. Qualities such as humility, compassion, and, invariably, extraordinary patience and a keen understanding of the human condition are the “soft skills” that a PCJ must demonstrate, in all aspects of his/her diverse roles, on an ongoing, regular, day-to-day basis.”

Despite the rise in the number of small claims, and a corresponding increase in complexity, there has been no corresponding increase in the number of Provincial Court judges in Saskatchewan to hear those claims. This prompted the SPCJA to state in its submission to the Prosser Commission:

“Overall, the Civil Division of the Provincial Court provides a simple, relatively inexpensive, expeditious and user-friendly forum for members of the public who, but for the jurisdiction exercised by the Court, would effectively have no access to civil justice. The Small Claims Court works extraordinarily hard to deliver the Government’s promise of affordable access to justice to the people of Saskatchewan to resolve civil disputes so as to allow for the practical, timely and cost-effective resolution of issues.”<sup>13</sup>

Case in point: In a courtroom in Regina in 2014, the parties to a lawsuit sought a ruling in a financial dispute that involved the technicalities of shareholder and contract law. On the one side was an investor who wanted his money back, on the other was a group of scientists who were unfamiliar with the complex law of debtor and creditor. To return the money now, they said, would undermine their project.

“They had dedicated at least ten years to the development of a new jet engine which might revolutionize air and space travel,” says Judge Demong, who ruled in favour of the investor in *Rupcich v Atlantis Research Labs*. “The lead defendant, a PhD scientist, was not prepared to concede that the loan should be considered as such. He felt it should be subject to the technicalities of a shareholder’s agreement and not payable until far into the future. He pointed out that defending the matter was more difficult than he originally expected, after all, he said, ‘It’s only law, not rocket science.’”



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Footnotes

1. *Small Claims Court Review Project Consultation Paper*. Department of Justice, Government of Saskatchewan, Regina, SK, 2014, p 1. Accessed online: <https://www.lawsociety.sk.ca/media/105242/SmallClaimsReview2015.pdf>
3. All quotes from personal interviews with Judge Paul Demong.
4. *Small Claims Court Review Project Consultation Paper*, p 1.
5. Wernikowski, Noah. *A Brief History of Saskatchewan's Small Claims Court*. April, 2016, p 7.
6. Wernikowski, p 5.
7. *The Small Claims Act, 1997*. Queen's Printer, Government of Saskatchewan, Regina, SK, effective Feb. 16, 1998, p 22. Accessed online: <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S50-11.pdf>
8. *Small Claims Court Review Project Consultation Paper*, p 1.
9. *The Small Claims Act, 2016*. Publications Saskatchewan, Government of Saskatchewan, Regina, SK, 2016, p 18. Accessed online: <http://www.publications.gov.sk.ca/freelaw/documents/English/Statutes/Statutes/S50-12.pdf>
10. All quotes from personal interviews with Judge Darryl Bogdasavish.
11. All quotes from personal interviews with Judge Robert Jackson.
12. *Submission on behalf of the Saskatchewan Provincial Court Judges Association* to the 2017 Provincial Court Commission, p 38-39. From the private archive of the SPCJA.
13. *Ibid*, p 40.



## 9. Facilities

### Court Houses Past and Future

“This courthouse, with simple and understated massing, has a grand presence that belies its small size, with handsome proportions and confident composition. The material palette is appropriate for its place in a snowy northern environment... The jury recognizes the dignity this building achieves with minimal expression.” ~ The American Institute of Architects Academy of Architecture for Justice, 2011<sup>1</sup>

A new Provincial Court House opened in Meadow Lake in 2010 to much praise and appreciation, including from the American Institute of Architects Academy of Architecture for Justice, whose jury gave the court house a citation of merit for its efficient design, secure operations, comfort, and dignity befitting a judicial building in a small northern community with a wide rural reach.

The new court house replaced an aging facility that was inadequate from the start – an addition to a provincial office building that lacked space, security, and physical separation from the government of the day. In contrast, the new court house in Meadow Lake represents the future, a “jewel” of a building with modern stone and woodwork, a sunny vaulted atrium, prisoner and public security, judicial safety and independence, and undeveloped space to accommodate future expansion.

In addition to the Provincial Court, the new facility also accommodates the Court of Queen’s Bench which, to that date, did not sit in Meadow Lake. Matters from northwest Saskatchewan set for Queen’s Bench, such as jury trials and civil claims, were heard at the court house in Battleford, a considerable distance in both kilometres and culture from the northern primarily-Indigenous communities served by Meadow Lake. In this it was a step back in time, to when the first historic court houses in Saskatchewan were constructed to accommodate both levels of the court.

Significantly, the design is also a major step forward. It reflects

a shift in the workload, authority, and risks inherent in the role of the Provincial Court, which has expanded greatly in the past forty years – in the range of matters, the seriousness of offences, the value of civil claims, and the sheer number of hearings. New court houses reflect these advanced expectations, workload, and responsibilities of the court.

The success of the court house in Meadow Lake was not the result of a fortuitous architectural design or a one-off stroke of forward planning. It represents more than a year of research and study, culminating in a three-volume report on court facilities and security in Saskatchewan completed in 2001. The report outlined best practices and recommendations for all court facilities in the province, whether they are older historic court houses, converted office buildings, multi-use community facilities, or the modern efficient court houses of the future.

“The historic court houses were designed to be landmarks in their communities, but they often lack the space and security features we look for today,” says Provincial Court Judge Bruce Henning, who led the court facilities review. “The new court house in Meadow Lake is a civic landmark, but it’s also a very good facility. There’s room for a jury trial and also substantial undeveloped space for future expansion. This might not be needed for twenty years or forty years, but it’s a one-hundred-year kind of building, representing the jewel in the crown of what a court house should be, based on modern current practices.”<sup>2</sup>

The genesis of the Saskatchewan Courts Facilities and Security Review Committee and its three-volume report began in 1998 during the first binding review of judges’ remuneration and working conditions by the Provincial Court Commission (known as the Bundon Commission for its chair, Chartered Accountant Robert Bundon). Judge Henning made a submission to the commission on behalf of Provincial Court judges outlining their concerns with the buildings in which they work, noting the many “inadequate, unsafe, overstretched, and overcrowded court facilities” throughout the province.

The report of the Bundon Commission, released in 1999, determined these issues were too complex for it to reach a conclusion, but recognized the importance of the discussion and recommended

a formal study of Provincial Court facilities. This recommendation was supported by the Saskatchewan Provincial Court Judges Association and the Government of Saskatchewan. The extensive terms of reference for the study included:<sup>3</sup>

- Examine all Provincial Court facilities in the province;
- Develop standards for court facilities in which Provincial Court judges work and preside over court matters;
- Identify facilities that meet these standards and those that do not; identify the required modifications; and prioritize those modifications as immediate needs, intermediate needs, and longer-term needs, with time recommendations in each category;
- Identify and prioritize court locations that require new facilities;
- Develop security standards for all facilities where Provincial Court is conducted, including internal and perimeter security, i.e. security within the building and at all entry points to the building;
- Develop security assessment criteria and standards for the personal safety of judges away from court facilities and at their homes;
- Prepare a report with its findings and recommendations, and present it to the Provincial Court Commission, i.e. the Bundon Commission.

The formal study was soon underway, led by Judge Henning on behalf of Provincial Court judges. Appointed to the bench in early 1978 (when it was still Magistrates' Court), Judge Henning knew many of the province's court houses well, for both their charms and detractions. With the support of Provincial Court Chief Judge Gerald Seniuk, Judge Henning began the process of forming a review committee to follow the terms of reference and prepare a report.

Initially, the committee included Provincial Court judges and representatives of the provincial government. However, shortly into the process, Judge Henning was contacted by Chief Judge Frank Gerein of the Court of Queen's Bench. "He said he wanted to be involved in the review as they also had problems with some court facilities," says Judge Henning. "We then approached the Saskatchewan Court of Appeal (based in Regina) and Chief Judge Edward Bayda. He said they did not have facility issues but they supported the process."

The review committee comprised three judges from the

Provincial Court (Judges Henning, Delores Ebert, and David Orr), two judges from the Court of Queen's Bench (Judges George Baynton and Eugene Scheibel), the head of Court Services (representing support staff), and two representatives of Saskatchewan Property Management Corp., which managed provincially-owned buildings including court houses. A representative of Chief Judge Bayda sat as an ex officio member of the committee.

In the fall of 2000, the review committee travelled the province, touring the court house in each of the thirteen permanent Provincial Court communities (Estevan, La Ronge, Lloydminster, Meadow Lake, Melfort, Moose Jaw, North Battleford, Prince Albert, Regina, Saskatoon, Swift Current, Wynyard, and Yorkton) and visited many of the facilities used for circuit court in surrounding communities. The tour included court houses used exclusively by the Provincial Court, those used jointly by the Provincial Court and the Court of Queen's Bench, and those used solely by the Court of Queen's Bench. All told, committee members travelled approximately 9,000 kilometres throughout Saskatchewan by airplane and automobile.

In addition to their research and observations, the review committee also invited comments from other users of the court such as Crown prosecutors, defence lawyers including Legal Aid, court support staff, other judges, and government officials associated with justice and the courts.

One year later, in the fall of 2001, the *Report of the Saskatchewan Courts Facilities and Security Review Committee* was presented to the Bundon Commission, which reconvened for this purpose. At that hearing, the provincial government accepted the report and recognized its recommendations as guiding principles for the future.

The report was comprehensive. It included an inventory of all court houses in the province with floor plans, blueprints, and photographs; itemized deficiencies of each facility; recommended standards for building design and security; and sample drawings for four types of courtrooms (jury trials, non-jury trials, docket court, and sentencing circles), as well as a jury room, judge's office, administrative workspace, and public waiting areas. Building standards included details such as flooring, interior woodwork, and exterior finishes.

"We put a lot of effort into the review and made a large number



of recommendations,” says Judge Henning. “Everything was laid out so that an architect designing a court house would not be starting from square one. The basic elements for function, confidence, and security are all there.”

In its introduction, the report addressed the philosophy of modern court house design and the role it plays in the administration of justice: “The public perception of the judiciary, the courts, and the justice system as a whole, is based primarily on what individual members of the public observe when they come into contact with a judge performing his or her duties in one of the specific court facilities in the province. If the facility does not look like a Court, does not appear to have some degree of permanence, does not provide a safe and efficient working environment, or does not permit the proceedings to be conducted in a dignified and respectful fashion, the image of the judiciary, the courts, and the justice system as a whole is undermined.”<sup>4</sup>

Recommendations in the report flowed from this basic philosophy, addressing issues such as security, comfort, respect, independence, and physical design. For example, the report recommended that every court facility have private rooms where lawyers can meet their clients and where vulnerable witnesses can await their moment in court without fear or intimidation. It said judges need a private area to leave their personal belongings and to compose judgments (even if, in some circuit court points, that might be a classroom or a kitchen). On a more personal matter, the report stipulated that judges and judicial staff should have washrooms of their own.

Speaking to circuit courts, the report stated that facilities must be clean, adequately heated and ventilated, and brightly lit, with proper fire escapes, well maintained washrooms, and sufficient electrical outlets for modern court technology. It called for comfortable seating for members of the public who may need to sit for considerable time before their matters are complete. Among other things, it recommended that court no longer convene in basements.

On the subject of court security, the report recommended, among other things, that every courtroom have a properly constructed prisoner’s box and that prisoners be accompanied at all times by “well trained, physically fit, and properly equipped security personnel.”<sup>5</sup> It stated that police or security officers must be in attendance whenever

court is convened, be it in a court house or a circuit court, and that judges' offices be accessible only to authorized persons.

The report described three key elements or "circulation systems" within the court house which ensure that prisoners, members of the public, and judicial personnel do not cross paths on their way to and from the courtroom. This involves three independent corridors through the building based on the following considerations:

First, there must be a secure and private entrance for judges and court staff by which they can enter the building and proceed to their offices and courtrooms without encountering accused persons or members of the public. This assures the independent movement of judges and reduces their exposure to aggressive and inappropriate behaviours.

Second, there must be a secure entry for persons in custody by which they can be escorted into the court house privately and safely, and holding cells in which they can wait without fear of contact with enemies or compromising influences. Male and female prisoners are kept separate, as are adult and youth. There must be means of bringing them from the holding cells to the courtrooms without encountering public users of the building.

Third, the public area of the court house must be safe and spacious, with private meeting rooms and comfortable seating. There must be one entryway for members of the public, with ample space for the implementation of security measures such as airport-type screening machines or manual screening procedures when and wherever warranted.

In effect, these measures ensure that witnesses and victims are not subject to violent outbursts, acts of intimidation, or threats from prisoners. Judges and court staff may enter their courtrooms without elbowing through crowds and public seating galleries. For prisoners and their escorts, this separation reduces the opportunity for contact with adversaries or associates in public areas of the court. For security staff, it offers a single public entryway where screening can be undertaken for detection of contraband items such as weapons, alcohol, and drugs.

"All modern court houses are designed with these three circulation systems. The older court houses were not, but they looked really nice. The challenge is to bring them up to modern standards within those old

walls,” says Judge Henning. Currently, the only permanent Provincial Court facilities in Saskatchewan that meet these criteria are those in North Battleford, Prince Albert, Regina, and Meadow Lake.

“The newer court houses are not opulent, but they convey a sense of quality and respect,” Judge Henning explains. “They are not government offices, and should not look as such, but places where serious and difficult matters take place. When people come to testify, they need to see it’s not a casual place where you can say whatever comes off the top of your head, but a place of serious consideration and judgement. Peoples’ lives are changed. They should feel that sense of gravity and decorum in their surroundings.”

The *Report of the Saskatchewan Courts Facilities and Security Review Committee* identified four types of buildings serving as Provincial Courts:

- Historic court houses such as those in Estevan, Humboldt, and Swift Current;
- Modern purpose-built court houses like that in Regina, Meadow Lake, North Battleford, and Prince Albert;
- Court houses located within or attached to provincial government office buildings such as those in La Ronge, Melfort, and Moose Jaw;
- Temporary multi-use facilities whose main purposes are not for court, usually rented by the court for a few days per month, including the many community halls, band offices, town council chambers, arenas, and other shared facilities in smaller communities where Provincial Court judges hold circuit court.

The new court house that opened in Meadow Lake in 2010 was the first facility designed and constructed based on the recommendations of the review committee report. New court houses in North Battleford and Prince Albert, opened in 1996 and 2001 respectively, were informed by many of the ideas in the committee’s report, but not the report itself. These two facilities help to tell the story of court houses in Saskatchewan and their evolving capacity to meet the changing demands of workload, security, and judicial independence.

The historic court house in Battleford was commissioned in 1907 and opened in 1909, just as the young province of Saskatchewan was evolving and expanding the Territorial Court system inherited when

it became a province in 1905. The historic court house in Moose Jaw also opened in 1909, making these the two oldest court houses still serving as such in the province (both now used solely by the Court of Queen's Bench). Like other court houses of that era, the court house in Battleford is a handsome building designed to serve as a landmark in the community and convey the serious gravity of the judicial proceedings within. For many years, it served both levels of the court.

As space became cramped, the court house was linked to the historic Land Titles Building next door, which provided extra space for offices, meeting rooms, and a law library. In 1980, the court house was designated a national historic site; however, it was fast becoming too small to accommodate both Provincial Court and Court of Queen's Bench. In 1996, a new Provincial Court House opened across the river in North Battleford.

In Prince Albert, the historic court house "on the hill" opened in 1927, replacing the old Territorial Court House built in the 1850s. The new court house was designed by Maurice Sharon, the province's official architect from 1916 to 1930, who designed thirteen court houses in Saskatchewan, many of which are still used for this purpose (including Estevan, Humboldt, Melfort, Prince Albert, Shaunavon, Swift Current, Weyburn, Wynyard, and Yorkton).<sup>6</sup>

However, it was a municipal court facility, constructed by the city of Prince Albert, where Judge Henning began his judicial career when he was appointed to the bench in 1978. When he needed to discuss staffing, he contacted the city manager. "I called him up and we met for coffee," he recalls. "I made the case for increasing a half-time position to two half-time positions, and he agreed. He said, 'We support the court, and we get all the fines you impose, so we'll do that for you.' That's how things got done back then. It would be unheard of for a judge to do that today."

During a building boom in the 1980s, the province built an office tower in Prince Albert with a shopping mall on ground level and government offices above. Known as the McIntosh Building, the Provincial Court moved onto the fourth floor. "As you can imagine there were all sorts of security issues," says Judge Henning. "At the time, there was still the view that Provincial Court judges were civil servants, so it was considered just fine that the Provincial Court

move into a government building. Yes, it was a modern, clean, and spacious building, but it was wrong in principle for the independence of the court.”

By the time the court moved into the McIntosh Building, Judge Henning had transferred from Prince Albert to the Provincial Court in Regina. However, the old court house in Regina was reaching the end of its lifespan. Known as the Municipal Justice Building, it was constructed in 1930 as the city’s police station. Like other police stations of that era, there was a courtroom in the building. In 1977, the police moved out, but the building continued to serve the Provincial Court until 1985, the year the current Provincial Court House opened in Regina.

Regina had already seen several court houses come and go. The first court house was constructed in 1884, the year after Regina became the capital of the North-West Territories. It was in this court house that Louis Riel was tried in 1885 by Judge Hugh Richardson. It was replaced by a substantially grander court house in 1894. Shortly afterwards, the court house of 1884 burned down. The court house of 1894 stood until 1965, the year the Court of Queen’s Bench opened in Regina.

Initially in 1985, Regina’s Provincial Court House was considered a temporary facility to relieve the immediate inadequacies of the Municipal Justice Building. Plans were to lease the building until a permanent Provincial Court House was constructed. However, the facility proved so satisfactory – while other court houses were identified as more pressing priorities – the building was purchased by the province and continues to serve as Regina’s Provincial Court to this day.

One aspect of its success was the inclusion, from the start, of three key “circulation systems” as described in the 2001 report of the Saskatchewan Courts Facilities and Security Review Committee. Undeveloped space provided room for expansion, including new courtrooms designed for special courts, pre-trial meetings, and video conferencing. The main lobby was sufficiently large to accommodate the installation of airport-style security screening in 2008. Upgrades were subsequently made to the interior fit and finish of the building, such as the furnishings, woodwork, and flooring, so it conveys the character and dignity of a permanent court house.

The report of the facilities review committee gave special attention to the Provincial Court in Saskatoon, which is neither historic nor purpose-built, possessing neither old-world charm nor modern court house design. The report prioritized this court house for replacement. (Read more about the Saskatoon court house in Chapter 10 Security). The report also prioritized new court houses for La Ronge, Lloydminster, Meadow Lake, and Melfort, of which only Meadow Lake has been undertaken to date.

As for the circuit courts, the report recommended remedial measures for some, and the immediate disuse of others. Gone are the days when judges held court in dark basements, uncomfortable classrooms, and country halls barely heated in wintertime. Since the report was completed in 2001, the number of circuit courts in the province has declined from seventy-seven to sixty-one for reasons of safety, suitability, and workload.

The review is ongoing. A permanent committee was established with representation of all three courts and provincial government departments including Central Services (formerly the Saskatchewan Property Management Corp.), the Department of Justice, and as needed, the Department of Finance. The facilities and security committee meets regularly to discuss issues as they arise and to press forward the modernizing agenda as time and finances allow.

While the report's seventy-five recommendations address specifics of court house safety, security, comfort, and design, they are at heart meant to elevate the status and dignity of the Provincial Court in the estimation of the public it serves, to reinforce it as a place of reason and civility, where disputes are resolved fairly and efficiently, and the essential process of justice is maintained. As a civic landmark, the court house symbolizes this historic duty and affirms the independence of the judiciary and its unique constitutional role in a democratic society.



### **Respecting Communities**

Early in his judicial career, Judge Gerald Morin conducted Cree Court in the basement of a church in Sandy Bay. One day, he arrived for court only to discover the community had been holding a wake in the church basement. The coffin had been rolled into a back room for the duration of court.

He was not pleased. “I said, that is not happening again. It was very disrespectful,” says Judge Morin. He gave instructions that, in the future, he should be notified if a wake is scheduled and court could be moved to another facility or another day. “Now we are in a hall in Sandy Bay and it’s much better,” he says.<sup>8</sup>

Sometimes the court location changes on short notice due to unforeseen events such as maintenance issues or a fire. At White Fish First Nation near Big River, Judge Morin says the court venue changed several times over the years. “Sometimes, we’d leave a note on the door. I’d say to police, don’t charge anyone with failing to appear. Maybe the wind blew the note away. Who knows?”

### **Adequate Facilities**

When he first held court at the circuit point in Kamsack, Judge Pat Koskie used the same washroom facility as the general public, which was in a state of disrepair with a broken door and damaged urinals.

“So, I was in the stall, and someone came into the room and started pounding on the door. He says, ‘Don’t send my kid to jail!’ I didn’t respond, and when I came out that person was gone. I knew who it was but I pretended I didn’t.”<sup>7</sup>

Court resumed without further incident. Since then, the court facility in Kamsack has been renovated and the judge and court staff now have a separate washroom facility at their disposal.

## Cold Cases

Judge Robert Conroy was appointed to the bench in Meadow Lake in 1965, which included circuit courts in a number of small towns in the surrounding countryside. In 1973, he transferred to Provincial Court in Saskatoon:<sup>9</sup>

“When I first came to Saskatoon, I made a comment that was met with disbelief by some of my fellow judges there. I said that when I travelled to circuit courts in the wintertime, I always took at least three or four ballpoint pens with me, particularly in the early days of the court.

I would write with one until it was too cold to write anymore, then I’d put it in my pocket and take out a warm one. At many of these little halls, someone would go over earlier and turn the heat up an hour before court. But sometimes when it was -40 that wasn’t long enough to heat the place.

I remember in Pierceland the heater was in the middle of the room. When we started in the morning, the prosecutor and the judge and the clerk and so on, we would all have our chairs within three feet of the heater, and as it warmed up we’d gradually push our chairs a little farther away. Sometimes they forgot to put the heat on. I can remember going to Green Lake and having court when it was -33 in the courtroom.

At Turtleford one time, we finished court, and just as the door locked behind us – and neither of us had a key – these two Aboriginal fellows showed up late for court. It was -20 that day. The RCMP officer said we’ll just have to tell them to come back next week.

I said, that’s not fair, there’re ten people who didn’t show up for court today and they lived in town. These guys walked across the river to get there, which was quite a ways, and it was *cold*.

We couldn’t get back inside so we held court on the street. I put my books on the trunk of my car and the officer put his books on the hood of his car, and he declared court open. Then he turned to the one fellow and said, ‘Court is open. Take off your hat.’ We all had a good laugh at that. It always paid to have a sense of humour.”

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Footnotes

1. “Merit – Meadow Lake Courthouse” *Justice Facilities Review*. The American Institute of Architects Academy of Architecture for Justice, Washington, D.C., 2011, pg. 38. Accessed online: <https://network.aia.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=937a3e11-9ccb-8ba1-d054-b9ce0a810e95&forceDialog=0>
2. All quotes from personal interviews with Judge Bruce Henning.
3. “Saskatchewan Courts Facilities and Security Review Committee Report” 2001, from the private archives of the SPCJA.
4. Ibid.
5. Ibid.
6. “Sharon, Maurice William” Biographical Dictionary of Architects in Canada 1800-1950. Accessed online: <http://dictionaryofarchitectsincanada.org/node/1296>
7. All quotes from personal interviews with Judge Pat Koskie.
8. All quotes from personal interviews with Judge Gerald Morin.
9. All quotes from personal interviews with Judge Robert Conroy.



## 10. Security

### Keeping Courts Safe

“There was a clear container of what appeared to be gasoline and several (I believe four) packages of penny matches with a cigarette running through the top of the package. From previous arson training I recognized these as a type of mechanical delay that is used in arsons... The Court House was evacuated and secured.” ~ RCMP officer’s notes, 1998<sup>1</sup>

It was June 3, 1998, around five o’clock on a Wednesday afternoon, and the RCMP officer who wrote those words had been alerted to what looked like an improvised incendiary device in the basement furnace room of the court house in Estevan. The room smelled of gasoline. After evacuating the building he called the RCMP Bomb Disposal Unit and the Estevan fire chief. That evening, the suspicious items were removed without injuries.

Two weeks later, RCMP laid a charge of placing an explosive device with the intent to cause serious harm, death, or property damage, and issued a Canada-wide warrant for their suspect. However, that suspect had crossed the border into the United States, where he was also wanted for making death threats against judges and police. He was arrested by U.S. federal agents in Tucson, Ariz., in August.

Had the device ignited in the furnace room, it might have caused serious injuries and badly damaged one of the province’s historic court houses. Opened in 1929, it was the last court house designed by Maurice Sharon, Saskatchewan’s official architect from 1917 to 1930. Built in a Colonial Revival style, it features a stately entryway, tall rounded windows, a high roof with pretty dormers and a domed cupola, and exterior finishes of locally-made brick accented with Tyndall stone.

Security measures were not first and foremost in early court house design. Of greater concern in those days was the architectural grandeur befitting a judicial building, a landmark in the community,

and a visible “expression of the new province’s independence and confidence” in a grand and prosperous future.<sup>2</sup> Today, the court house in Estevan is one of the few historic court houses in Saskatchewan still serving both Provincial Court and the Court of Queen’s Bench.

No one person or court case appeared to be the target of the incendiary device in Estevan, clearly demonstrating that all who walk within a court house are vulnerable to those with grudges and violent impulses who walk the hallways of justice on the other side of the law. Though attacks on the judiciary are extremely rare, they are not unimaginable. In early 2018, RCMP charged a man with carrying a loaded handgun to circuit court in the town hall in Hudson Bay. The arrest was made without incident and the motive was unclear.

These incidents illustrate the challenge inherent in safeguarding the range of facilities that serve the Provincial Court – from historic court houses like that of Estevan and Swift Current, to courts in government office buildings such as in Moose Jaw and La Ronge; from large and busy standalone court houses as in Regina and Saskatoon, to the many circuit points where court is held a few times per month in shared facilities such as town halls, band offices, school rooms, and curling rinks. Safety measures are implemented as threats arise, and no one safety measure fits all.

“Judges are the face of the judicial system. If someone wants to blame the system for their ‘predicament’ they often blame the judge who sat at the front of the courtroom and heard their case,” says Judge Bruce Henning, who for many years served as Provincial Court administrative judge for matters of facilities and security.<sup>3</sup> “As judges, we don’t come to work every day in fear for our safety, but when we are threatened, or face that potential, we take it very seriously.”

Judge Linton Smith faced the first threat to his personal safety shortly after his appointment to the bench in 1979, while presiding over Provincial Court in the old Municipal Justice Building in Regina. The accused in a criminal case came to court with a number of his associates who did not take kindly to the ruling of the judge. There was no police or security presence in the courtroom, which was a common occurrence at the time. However, a panic button had been installed at the judge’s dais.



“They were dangerous people. I was told later by police that between them, they had taken lives,” says Judge Smith.<sup>4</sup> “They started to come at me. One of them grabbed a water jug, and it wasn’t plastic in those days, it was made of glass. They came around the lawyer’s table toward me. Things got tense quite quickly so I pushed the panic button.”

The panic button rang at the desk of the commissionaire, who alerted police. After a few anxious moments, an officer appeared at the door of the courtroom with his hand on his holstered sidearm. He called for calm, defusing the situation without pulling his weapon, and the aggressors backed down. Court was adjourned for the day.

Later, Judge Smith thanked the young officer for his courage and presence of mind. “He said, ‘That’s what I’m paid to do.’ Then he told me he had taken the time to empty his gun before he came into the courtroom, so if he was overcome, these guys would not be able to use his gun to shoot anybody. That was *real* courage,” says Judge Smith, who for reasons of security and personal interest earned a Black Belt in karate while serving on the bench.

On another occasion, Judge Smith was asked by police to wear a bullet-proof vest to court. This was based on information there would be an attempt to free a violent prisoner who was appearing in his court that day. According to this intelligence, associates of the prisoner were planning to rise up from the public gallery, grab the judge, and use him as a bargaining chip to free their friend. Fortunately, for reasons unknown, the incident did not occur.

Though relieved, Judge Smith was startled by a grim discovery: “When they searched the courtroom afterward, they found a .22 caliber pistol round under the seat where the guy in question had been sitting. Was it left as a warning? Or did it simply fall out of the pocket of someone who had a perfectly legal right to go target shooting? We will never know.”

However, he was yet to face the most serious threat to his personal safety and that of his family after presiding over the case of a particularly uncooperative prisoner. Judge Smith relates that “One night, two police officers came to my house. Apparently, this guy had put out a contract on me. They told me he was high up in the gangs and he had blueprints of my house.”

In the following days, Judge Smith’s residence was outfitted

with an alarm system, exterior motion lights, and a safe room. The safe room was built into a walk-in closet in the master bedroom, complete with a steel door and independent telephone line. Extra precautions were put in place for his daughter attending elementary school.

“We had an escape plan and our neighbours had to be warned,” he says. “It seemed unfair to me that because of my job, my wife and daughter should have to take precautions and to live with that. It hung over us for quite a while, and honestly, it still does.”

As a chilling side note, the Smiths had recently moved. The blueprint obtained by the gang was for their previous home. The new owners of that house were also notified by police. Perhaps for this reason, there was no attempt to carry out the contract, but the impact of the threat against one Provincial Court judge had nonetheless rippled out into the community that he served.

In the 1970s, the Municipal Justice Building in Saskatoon was also the scene of a brazen attack on a judge – one of the only premeditated attempts to take the life of a judge in a court facility in Canada. Like the Municipal Justice Building in Regina, the old Municipal Justice Building in Saskatoon opened in 1930 as the headquarters of the city police, including the police court.

“It was an old classic courtroom that looked like it came out of a 1920s movie, with theatre seating and all the walnut-coloured oak woodwork,” recalls Judge Robert Conroy.<sup>5</sup> “This fellow was in the prisoner’s box down to my left. I sat on a raised dais with a short wooden fence between us. He came out of the prisoner’s box, jumped over the fence, and came at me with a knife. I got a hold of his wrist and held him back but his knife got close enough to cut my face a couple times. It happened that fast.”

Judge Conroy was no stranger to the potential danger inherent in his job. Appointed to Magistrate’s Court in Meadow Lake in 1965, he was responsible for conducting circuit court in the surrounding communities of Glaslyn, Goodsoil, Green Lake, Loon Lake, Pierceland, Spiritwood, St. Walburg, and Turtleford, in addition to his home court in Meadow Lake. He drove to these circuit points alone over isolated and sparsely-travelled roads.

“There were no clerks in those days,” he says. “The judge did it all. I recorded everything. I endorsed all the documents. I took the

money [for fines] and I wrote the receipts. I marked the exhibits, took custody of the exhibits, and took them with me when I left at the end of the day. As for security, there was none.”

The judge’s office was on the second floor of the old court house in Meadow Lake. To reach the courtroom, he had to walk through the main lobby of the building, into the courtroom via the public doorway, and up through the seating gallery to his dais at the front. “Imagine the potential for trouble in that,” he says.

In later years, the configuration of this court house in Meadow Lake was modified, adding a level of separation for the judge by allowing him to enter the courtroom without passing through public spaces. This was achieved by turning a storage room at the back of the building into an alternate entryway to the courtroom. However, to get to this storage room, the judge had to brave the weather in his robes, as Judge Conroy explains: “From your office, you went out onto the fire escape stairs, walked down from the second floor, walked around to the back of the building to this storage room, and from there into the courtroom.”

As an avid photographer and marksman (also a competitive target shooter and firearms instructor), Judge Conroy enjoyed travelling solo down country roads, often straying off the beaten path to appreciate the scenery or to practice target shooting. Sometimes he stayed overnight at his cottage at Greig Lake. “I always had a camera and a fishing rod with me in the car, and I always had a rifle in the trunk. These were the advantages of being a one-man show. I could stop and go as I pleased,” he says.

One day, an RCMP officer walked into his office in Meadow Lake and handed him an application for a permit to carry a handgun. The officer was concerned for a country judge travelling alone – often with hundreds of dollars in collected fines in his briefcase – especially one who liked to take isolated back roads through the countryside. After he received the permit, Judge Conroy began to carry a handgun in his car while travelling his extensive circuit route, wearing it beneath his robes in court. He never used it for defensive purposes, having never felt his security seriously threatened as a country judge.

However, he did not have a handgun beneath his robes the day a prisoner tried to take his life in a courtroom in Saskatoon. Judge

Conroy had transferred from Meadow Lake to Saskatoon in 1973, where for several years he conducted docket court on the second floor of the police station, a.k.a. the Municipal Justice Building. Judge Conroy and this particular prisoner were well known to each other. He had sent the man to jail on three previous occasions. Back in court again on charges of theft and stolen property, the accused was hoping to see Judge Conroy on the bench.

Unbeknownst to police, the prisoner had smuggled a knife into the police station by concealing it in his boot. Once in the prisoner's box, he charged at the judge. A police officer sitting beside the court reporter lunged at the prisoner, who took off through the courtroom and out the door, where he was quickly apprehended by police. Judge Conroy took two shallow cuts to the face, for which he was treated at the hospital (he did not require stitches but did receive a painful tetanus shot). He returned to his court later that morning, where several people were waiting patiently for their matters to be heard.

After the incident, the accused told police he had intended to kill the judge, for which he was given an additional charge of attempted murder, later reduced to assault, and sentenced to prison time – but not by Judge Conroy, who was recused from hearing the case.

When he returned to work the following Monday, the judge found the courtroom had been altered over the weekend, increasing the height of the wooden barrier between the prisoner's box and the judge's dais. It serves as an example of the ad hoc modifications made within older court houses as issues of security began to present themselves with greater urgency in the 1970s and early 1980s.

By this time, Provincial Court judges were readily expressing their concerns over court house safety. The nature of their job was rapidly changing. New judicial policies and amendments to the Criminal Code had expanded the range of matters heard at Provincial Court, such that judges were presiding over a wider range of offences, conducting more bail hearings and trials on more serious crimes, and adjudicating civil cases of greater value and acrimony. Add to that the increasing prevalence of gangs, drugs, weapons, and contempt for authority – all factors that raised the heat on security issues at the court.

In April 1982, the issue of security, or lack of it, reached a

crisis point in Saskatoon when Judge Conroy and his colleague, Judge Brosi Nutting, threatened to shut down the court in the old Municipal Justice Building. The police department had moved out of the building into a new police station next door, but no other security detail had been assigned to replace them at the court. (Read more about this incident in Chapter 4 Judicial Independence.) The situation was quickly resolved and the judges continued to hold court, although, notes Judge Conroy, “permanent changes were still some time coming.”

In the mid-1980s, the Provincial Court in Regina and Saskatoon finally moved out of their aging Municipal Justice Buildings into large standalone court facilities. In Regina, it was a new office building configured from scratch to serve the court. In Saskatoon, it was an existing office building adapted into a court house. When that lease expired, the Provincial Court moved into another repurposed building in Saskatoon – the unlikely combination of an office block and an automobile dealership. At the time, both these court houses were considered temporary facilities until purpose-built court houses could be constructed. However, they have since been purchased by the province and are still in use today – with varying degrees of efficiency.

Because Regina’s court house was empty when leased, the interior was designed from square one to include a key safety feature of all modern courts: three separate and independent “circulation systems” for judges and court staff, prisoners and their escorts, and the general public. However, this was not possible in Saskatoon, where the combination of two separate buildings made it significantly more difficult to create three fully functional and independent circulation routes throughout the court house.

For instance, in Saskatoon, some courtrooms do not have secure access for prisoners, requiring their movement through public spaces. The irregular nature of amalgamated hallways – moving from administrative offices in the former office block to courtrooms in the former auto showroom – is odd and confusing. Judges unfamiliar with the layout have found themselves “lost” and passing through busy public hallways while trying to wend their way to court. As well, the holding cells are insufficient for the number of prisoners appearing in court, raising concerns over prisoner-on-prisoner assault and workplace stress.

In 2001, the report of the Saskatchewan Courts Facilities and Security Review Committee identified the Provincial Court in Saskatoon as an immediate priority for replacement: “There are severe security concerns as well as an overall inadequacy of the size of the court facility. Caseloads continue to increase in Saskatoon. . . The concerns regarding security in the Provincial Court in Saskatoon involve real risks to the health and safety of detainees and detention area staff. These concerns have urgent and immediate priority for address in the Provincial Court.”<sup>6</sup> It remains so.

In the mid-1980s, the provincial Department of Justice established a security group to assume responsibility for security at the Provincial Courts in Regina and Saskatoon, the two busiest court houses in the province. Deputy sheriffs were hired to provide security screening, monitor public spaces, escort prisoners through the building, stand guard in courtrooms, etc. Since these deputy sheriffs were, for the most part, former police officers, no further training was deemed necessary. When new Provincial Courts opened in North Battleford in 1996 and Prince Albert in 2001, deputy sheriffs were assigned to those court houses as well.

In 2007, a training program for deputy sheriffs was introduced, making it possible to hire people not previously employed as police officers. Training includes many of the same skills taught in police academy such as the use of firearms, tactical communications, passive restraint techniques, and self defence, as well as knowledge of criminal activities such as drug smuggling and gang rivalries. At the time of publication, there were 116 deputy sheriffs serving the three levels of court in Saskatchewan, and their number is growing.

Over time, deputy sheriffs are assuming more duties at more court houses. For instance, their duties have expanded to include prisoner transport to and from incarceration and the courts within their communities. Prisoner transport is expanding further to include transfers between communities, for example, from the correctional facilities in Prince Albert to courts in other cities in the province.

“Currently the RCMP does that, however they feel it’s not a policing function, and they are supported in that by Public Safety Canada. In fact, we are the only province in Canada that still uses the RCMP to transport prisoners, so we are moving away from that,” says Ralph Martin, head of court security in Saskatchewan.<sup>7</sup> Martin



was an RCMP officer for thirty-three years and a member of the File Hills First Nations Police Service for six years before joining the division of court security at the Department of Justice in 2014. He says the future goal is to assign deputy sheriffs to all thirteen permanent Provincial Courts in the province and, eventually, at every circuit point while court is held.

In 2008, airport-style security screening was installed at the Provincial Courts in Prince Albert, Regina, and Saskatoon, including walk-through metal detectors and x-ray screening for purses and bags. Portable screening devices and hand wands are available for use at other court houses and circuit points as required during high-risk court cases for which security is a concern. Since installing metal detectors and x-ray screening, deputy sheriffs have confiscated all manner of weapons and potential weapons including knives, guns, brass knuckles, pool balls in socks, screwdrivers, scissors, and bear spray, as well as drugs, drug paraphernalia, and alcohol. In fact, says Judge Henning, it is not unusual to find knives and drugs in the large flower planter outside the main entrance of the Provincial Court building in Regina, presumably stashed there by those who realize at the last minute they will be screened by armed sheriffs as soon as they enter the door.

According to Martin, criminals often view the court house as a point of opportunity to smuggle drugs into the correctional system. For example, he cites instances in which prisoners attempt to collect drugs hidden by accomplices in public washrooms, which is particularly worrisome at circuit points where there is only one public washroom, and where members of the public are not screened upon entering the building. As well, accused arriving at court knowing they will be sentenced to serve time in jail for their offences often attempt to smuggle drugs into the court house by concealing them in their clothing and body cavities.

“Prisoners attempting to bring in drugs is a huge challenge for us,” says Martin. “Their motivation is strong. Sometimes they’re forced to do it out of threats to a family member, or it’s a gang thing – their status is raised in the gang if they smuggle in drugs – or it’s the simple cash value of the drugs. The methods by which they attempt to get drugs into the institution is only limited by their imagination.”

Video conferencing technology, now common in many courtrooms, is reducing these risks. As fewer prisoners are transported through communities, it minimizes the risk of escape, conflict with the public, and contact with associates and contraband on the outside. Video conferencing reduces the amount of travel from northern communities and travel during winter weather. It also relieves legal counsel of the necessity of coming to the court house, as they may represent their long-distance clients via video technology from their offices. As a corollary benefit, bail hearings and procedural matters conducted by video conference tend to take less time, thereby freeing the courts for other matters and moving these cases more quickly toward resolution.

“There’s always a threat that somebody will do something irrational,” says Martin. “Courts are by nature adversarial. Unfortunately, there’s always two sides, whether it’s criminal court or domestic family matters or civil claims. Emotions get going. People do occasionally reach out to do harm. We can’t predict what will happen next, but we do take it very seriously.”

Late one the evening in the spring of 2017, a backpack placed outside of Saskatoon’s Provincial Court burst into flames, causing a small explosion that damaged an entryway and left a black scar on the sidewalk. A few days later, a suspect made his first appearance in that same court house charged with placing an explosive device with the intent to cause serious harm, death, or property damage. In news reports, it was suggested he may have set the explosive device in hopes of delaying his day in court on another matter. His arrest was made after he allegedly called the police station threatening to come back again and finish the job.<sup>8</sup>

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#### Footnotes

1. Block, Sgt. Del. “Re: Explosive Fire Bomb at the Estevan Court House June 3, 1998.” Police notes, Estevan, Sask., June 10, 1998. Accessed online: <http://www.parrhesia.com/cj/30.pdf>
2. “Moose Jaw Court House National Historic Site of Canada” *Canada’s Historic Places*. Accessed online: [http://www.pc.gc.ca/apps/dfhd/page\\_nhs\\_eng.aspx?id=750](http://www.pc.gc.ca/apps/dfhd/page_nhs_eng.aspx?id=750)
3. All quotes from personal interviews with Judge Bruce Henning.
4. All quotes from personal interviews with Judge Linton Smith.
5. All quotes from personal interviews with Judge Robert Conroy.
6. *Saskatchewan Courts Facilities and Security Review Committee Report*.

Submission to the Bundon Commission, 2001.

7. All quotes from personal interviews with Ralph Martin.
8. Menz, Kevin. "No plea yet in courthouse explosion case" *CTVNews*, Saskatoon, SK, April 12, 2017. Accessed online: <https://saskatoon.ctvnews.ca/no-plea-yet-in-courthouse-explosion-case-1.3366628>



## 11. Circuit Court

### A Day in the Life of a Country Judge

“We take pride in the fact that we go to all corners of the province. We take the court to the people where they live, rather than asking them to come to us.” ~ Judge Pat Koskie, 2017<sup>1</sup>

Judge Gerald Morin packs a healthy lunch, folds his robes into a leather satchel along with his bench book and overnight gear, and heads to the airport. It is a frosty spring morning in Prince Albert. Daylight is softly rising on the horizon as the charter plane lifts off and veers northeast over lakes and forest to the community of Sandy Bay, a distance of 340 kilometres as the crow flies.

During the hour-long flight, Judge Morin shares a joke and small talk with his fellow passengers – the court clerk, Crown counsel, and Legal Aid defence lawyer who serve Cree Court. They make this commute to Sandy Bay about four times times per month. However, on this particular morning, they leave the airport at Sandy Bay and travel by court van another seventy kilometres to the community of Pelican Narrows, which does not have a suitable airport of its own. It is the first Tuesday after the first Monday of the month, the day scheduled for docket court in the arena in Pelican Narrows.

Later that day, the members of Cree Court will drive another 125 kilometres to Flin Flon, Manitoba, the nearest community with a suitable hotel to spend the night. In the morning, they will return to Pelican Narrows for a day of scheduled trials. Then back to the airport at Sandy Bay and a flight home to Prince Albert. It makes for long days.

The next morning, Judge Morin and the members of Cree Court rise early and do it all again. The day is scheduled for docket court in the hall in Sandy Bay. Court begins on time, but there’s no saying when it will end. The busiest docket of his tenure as a Provincial Court judge was in Pelican Narrows and saw 132 accused with a total of 400 offenses, wrapping up close to 9 p.m. His longest court day – a preliminary hearing for murder – ended with his judgment at

1 a.m. The pilot waits on standby with a two-hour notice when it is time to pick up the Cree Court team and take them home.

On alternate weeks, Judge Morin conducts Cree Court at Ahtahkakoop First Nation and Whitefish First Nation, a drive of eighty-five kilometres and 115 kilometres respectively. On Fridays, he works in his office or attends court as needed at his home base in Prince Albert. (Read more about Cree Court in Chapter 7 Innovative Approaches.)

“It’s hard on the body,” says Judge Morin, who was appointed to the bench in Prince Albert in 2001 in order to establish Cree Court in Saskatchewan. He was diagnosed with diabetes after serving a decade on Cree Court. That accounts for the healthy lunches he packs for “road trips” in order to avoid less healthy choices in small-town restaurants. “It’s a hard circuit,” he says. “I choose it because I like being out of the office. I like being in the communities. I respect my language and I love the law. But the long hours, flying in rough weather, it takes a toll.”

In all his hours in the air, he has seen some rough weather but no close calls. This may be attributed to the skill of northern pilots and to his zero tolerance for taking risks. “I tell the pilots, don’t ever turn around and ask me if you should try landing. That’s your job. Because I will never turn to you in a courtroom and ask what I should do on a decision. I make it clear that we don’t take chances, so it’s their decision not mine.”

Judge Morin belongs to a busy cohort of Provincial Court judges known colloquially as “road warriors” for the long hours they spend on the road (and in the air) bringing justice to distant and rural parts of the province. In this, they are keeping the tradition of country judges dating back to the first stipendiary magistrates of 1876, and following the footsteps of the “Flying Magistrate” Joseph Emile Lussier who clocked more than 1.25 million miles in thirty years of dispensing justice across the north.

While today’s judges no longer travel by canoe or dog sled, they still spend countless hours en route to conduct court in smaller communities near and far. Two-thirds of all Provincial Court judges travel to hold court on a weekly basis, and the other one-third most likely did so at some point in their judicial careers. In Saskatchewan, there are thirteen “home base” Provincial Courts which serve sixty-



one circuit court points in surrounding communities too small to warrant a full-time court of their own, but large enough to warrant the regular services of a travelling judge.

“We cover a large area,” says Judge Pat Koskie, who was appointed to the bench in his hometown of Yorkton in 2004. “When you’re on the road, you get up early, pick up your clerk, and drive. If you have a long day in court, then you have a late drive back. That’s just how it is.”

Yorkton has two rural circuits: a southern circuit that includes Broadview, Esterhazy, Melville, and Moosomin, and a northern circuit that includes Canora and Kamsack. These circuit points serve a number of First Nation communities including Cote, Cowessess, Keeseekoose, and Ochapowace. Three judges share these duties, rotating every six months between the northern circuit, southern circuit, and their home base at the court house in Yorkton. The closest is Canora at fifty kilometres; the farthest is Moosomin at 165 kilometres.

“The thing about being a ‘road warrior’, for lack of a better word, is the repetition. After a year or two on the road, you are just beat,” says Judge Koskie. While on circuit court duty, he packs a permanent court-on-the-road kit which includes his bench book, some spare shirts, and his judge’s robe, as well as textbooks on matters of law that commonly arise. And a smart phone, of course. New technologies have made it easier to work away from the office and on the road.

“That wasn’t the case when I started,” he says. “If you were in, say, Broadview or Moosomin, you didn’t have much access to anything but a phone, and the cell coverage wasn’t great. Basically, you had your wits and your bag, and whatever resources you thought you needed that day. As technology has changed, we have a lot more access to our library and to our office supports, so we’re a little less isolated on the road than we used to be.”

Despite the long hours and many kilometres behind the wheel, “road warriors” like Judge Koskie believe it is important to take the court outside the major centres to the people where they live – to the accused, who are more likely to attend court, to the victims and witnesses, who are not burdened by extra time and distance, and to the community at large, where citizens observe a dynamic and responsive court at home in their communities.

“We understand this to be the people’s court,” says Judge Koskie. “It’s a big province. This is the balance we must strike in providing access to justice. It’s an important principle that we take seriously that we take the court, within some limits, to the people where they live.”

No two circuit court communities are the same, having different facilities, different levels of engagement, different cultures and personalities. For instance, says Judge Koskie, at Broadview, on the Trans-Canada Highway, he sees a greater number of charges related to traffic and drug violations, while at Esterhazy, a mining town, he sees more charges fueled by alcohol and animosity between mine workers from around the world.

“They had their own fight club in the camp, which got out of hand and charges were laid, so that’s not something you’re going to find everywhere,” he says. “In some places, there is a greater distrust of judges and the court process. Without weighing whether it’s warranted or not, it’s a fact we have to deal with. The important thing is to be genuine in your approach. Everyone deserves respect.”

For forty years, Judge Sid Robinson carried the same ethic into the communities of northern Saskatchewan, first as a Legal Aid lawyer and then as a Provincial Court judge based in La Ronge. As a lawyer, he participated in the first sentencing circles in Saskatchewan conducted by Judge Claude Fafard. (Read more about sentencing circles in Chapter 7 Innovative Approaches). Appointed to the bench in 2000, Judge Robinson has seen little change in the challenges facing a northern judge.

“Ninety-five percent of what I do is alcohol-related, which is pretty depressing,” he says.<sup>3</sup> “The population hasn’t really changed, and I’m not sure the problems have changed that much either, but there’s more policing now, so there are more charges laid and more work for the court. Alcohol is behind almost all the problems that I see. If you took the alcohol away, I’d be out of a job.”

Provincial Court in La Ronge serves two fly-in circuit courts: a far northern circuit including Black Lake, Fond du Lac, and Wollaston, and an eastern circuit to Creighton, Cumberland House, Deschambault Lake, and Southend. Two judges share the workload, each taking a circuit as well as conducting court in La Ronge and the nearby community of Stanley Mission. They switch circuits

at the start of the year to maintain workload balance. As northern judges, they are in the air two or three days a week, usually returning to La Ronge at night for lack of suitable accommodation in most communities of the north.

Court is held in English with Cree and Dene interpreters as needed. That is, when the interpreter is not in court on charges of his own. "There's one interpreter from Black Lake, a Cree fellow in his fifties, who did time in the pen for shooting a police corporal. Our rule is, as long as he doesn't have any current charges pending against him, we can use him as an interpreter. He's very good, and he understands the justice system inside out. But if he drinks too much, he gets into trouble," says Judge Robinson.

Rarely was his own safety threatened, and never did it come to a physical confrontation. "If someone is angry it's usually at their lawyer, sometimes the prosecutor, but rarely with the judge. They generally don't blame us for their predicament," he says.

"I had a case one time in Pelican Narrows where I sentenced a guy and he escaped. He just ran out of the courtroom. Well, the police left the courtroom after him and all the people left the courtroom to see what was happening, and I was left with twelve prisoners and my court clerk. So I said to these guys, If you stay I'll give you bonus points. And they all stayed."

(As for the police officer who was shot, he was not seriously hurt. The accused was shot, too, by a special constable, but was also not seriously injured. Fortunately, the incident ended without further tragedy. However, according to Judge Robinson, the story was related to new constables for many years as a warning that events can escalate in unpredictable ways.)

That is not to say security is a not an issue, as violence is unpredictable. But for the most part, as with most country judges, Judge Robinson is a friendly and integrated member of his community. "In the city, judges can generally walk in and out of court and not talk to anybody, but in the north and rural communities, we're more visible. I always make a point of visiting with one or two people that I know. I've had guys stop at my place for tea who I've actually sent to jail. I don't see it as a huge problem. They're just coming for tea, not to party."

As an avid outdoorsman, Judge Robinson coaches a cross-country

ski team and races sled dogs. He is often spotted walking his team of dogs in the community. “It gives me an ‘in’ with northerners,” says the judge. “If you’ve got a dog team you can’t be that bad.”

Judge Michelle Marquette faces the same work and community balance since her appointment to the bench in Wynyard in 2014, which serves the circuit court points of Punnichy, Rose Valley, and Wadena. Her ties to the community run deep. She lives on the family farm where she grew up at Kelvington, which is close to Rose Valley and Wadena. Before becoming a lawyer, she worked as a community health nurse at Yellow Quill First Nation near Rose Valley, and later practiced law with offices in Wadena and Kelvington.

One day in her courtroom, the accused – a fellow she had known for many years – referred to her informally as Michelle. She kindly asked him to call her Judge Marquette at court, although Michelle would be fine if they happened to meet at the local Co-op store.

“People recognize me as a member of the community and most are very respectful of that,” she says.<sup>4</sup> “They know I can’t talk to them about certain things outside of court, but that doesn’t prevent me from chatting with them after court, especially with the youth, because I want them to know I am concerned for them as a member of the community, not just as a judge.

“In Rose Valley, it’s particularly helpful that I know a lot of people there, they remember me from when I was a nurse, and I can identify with them. As a judge, I’ve been welcomed with open arms, which I’m very appreciative of.”

When travelling to Rose Valley and Wadena, Judge Marquette drives directly from her home on the farm, meeting the court clerk at the circuit court venue. When conducting court in Punnichy, she travels to Wynyard first, picks up the clerk, and continues on her way, the two of them taking turns at the wheel. Occasionally, she conducts small claims case management mediation in Melfort (and vice versa, since each court location has only one judge, and judges do not conduct both mediation and trial for the same case).

The farthest distance she travels is 155 kilometres to Punnichy and the shortest, given that she lives nearby, is forty kilometres to Rose Valley. She has two offices, one at home on the farm and one at the court house in Wynyard. She is generally on the road four days a week.

Apart from court, she travels regularly to Rose Valley and Punnichy for meetings of the local justice committees, also attended by the chiefs and counsel, front line workers, community professionals, and members of the RCMP. If conversation turns to specific cases before the court, she excuses herself from the room. She also holds special court hearings as circumstances arise outside of regular court days. She has come to expect the unexpected.

“I try to be accommodating. Most people who come before the court are facing a crisis, and I want to be understanding of the families, of the victims, and the accused, as well as their lawyers. There are a lot of cogs in the wheel, and we are all trying to accomplish the same purpose. At the end of the day, we all want to live in safe communities where everyone is respected and gets the services they need. It’s idealistic, but wouldn’t it be nice if we were so successful we worked ourselves out of a job?”

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#### Footnotes

1. All quotes from personal interviews with Judge Pat Koskie.
2. All quotes from personal interviews with Judge Gerald Morin.
3. All quotes from personal interviews with Judge Sid Robinson.
4. All quotes from personal interviews with Judge Michelle Marquette.





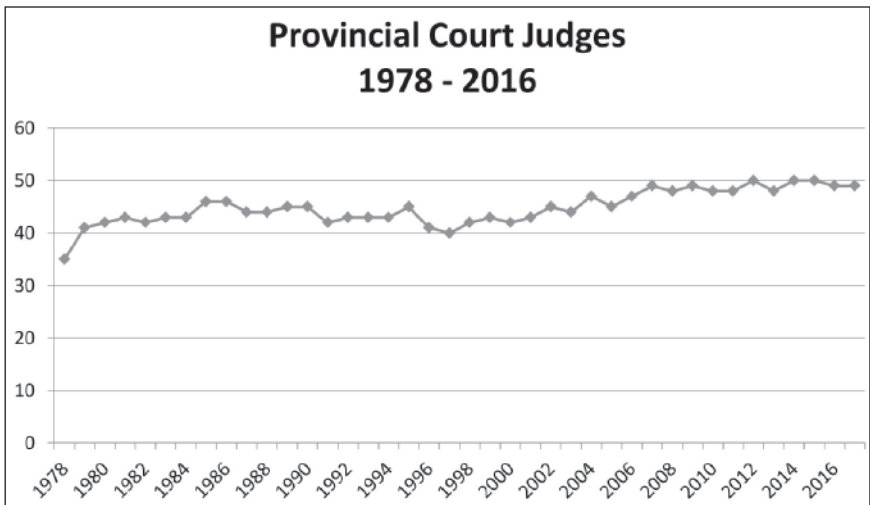
## 12. Our Story in Numbers

### Forty Years and Counting

**40** Years since the enactment of *The Provincial Court Act, 1978*.

**98** Judges have previously served on the Provincial Court of Saskatchewan between 1978 and 2018, of which **81** were men and **17** were women.

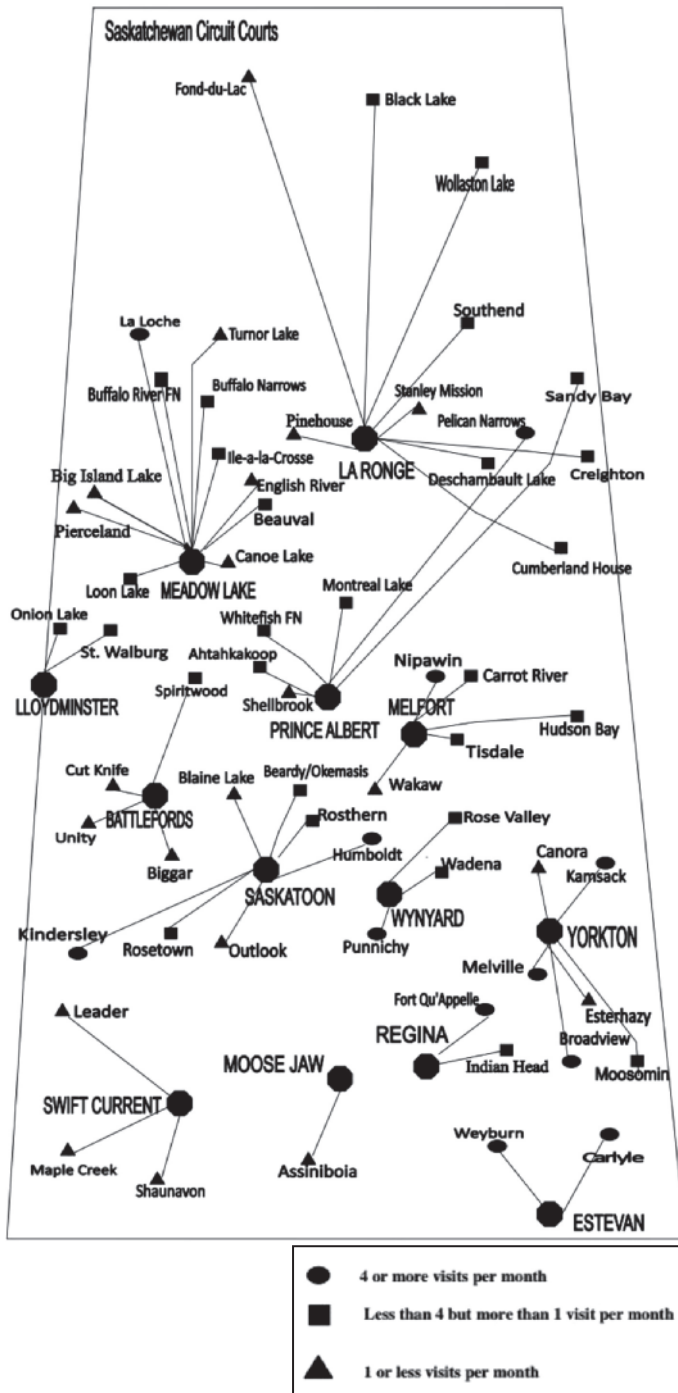
**48** Judges currently serve on the Provincial Court of Saskatchewan, of which **32** are men and **16** are women.



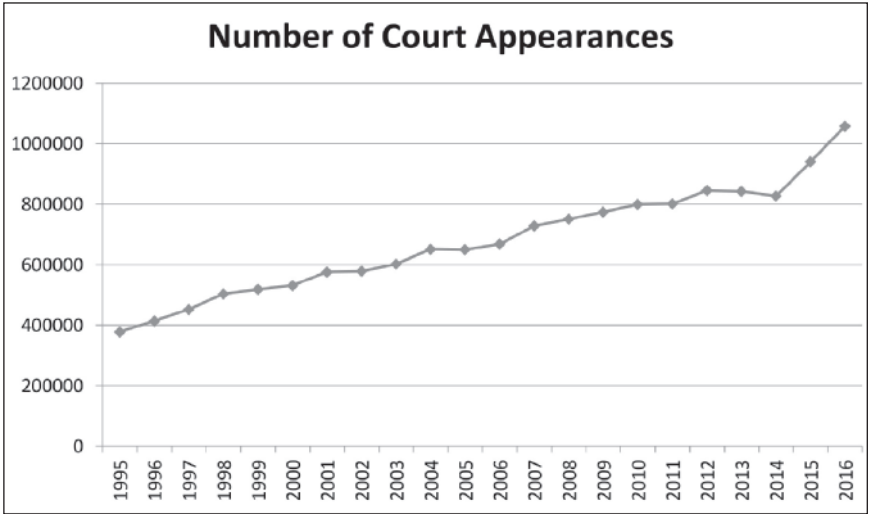
The Provincial Court has **13** permanent judicial centres:

Battlefords, Estevan, La Ronge, Lloydminster, Meadow Lake, Melfort, Moose Jaw, Regina, Prince Albert, Saskatoon, Swift Current, Wynyard, Yorkton.

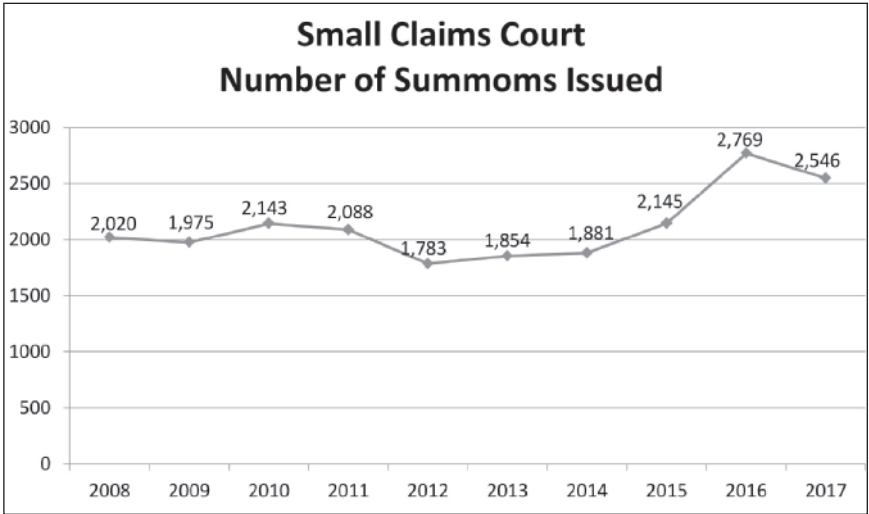
There are **61** circuit court points throughout the province: Carnduff, Carlyle, Weyburn, Assiniboia, Shaunavon, Maple Creek, Leader, Fort Qu'Appelle, Indian Head, Broadview, Moosimin, Esterhazy, Melville, Kamsack, Canora, Punichy, Watrous, Outlook, Rosetown, Kindersley, Blaine Lake, Beardsley/Okaneenasis First Nation, Rosthern, Humboldt, Rose Valley, Wadena, Wakaw, Tisdale, Hudson Bay, Carrot River, Nipawin, Shellbrook, Ahtahkakoop First Nation, Spiritwood, Whitefish First Nation, St. Walburg, Onion Lake First Nation, Loon Lake, Pelican Lake, Big River, Montreal Lake, Cumberland House, Creighton, Deschambault Lake, Pelican Narrows, Sandy Bay, Stanley Mission, Beauval, English River First Nation, Ile-a-la-Crosse, Buffalo Narrows, Pierceland, Big Island First Nation, Buffalo River First Nation, La Loche, Buffalo Narrows, Pinehouse, Southend, Wollaston Lake First Nation, Stony Rapids, Fond-du-Lac.



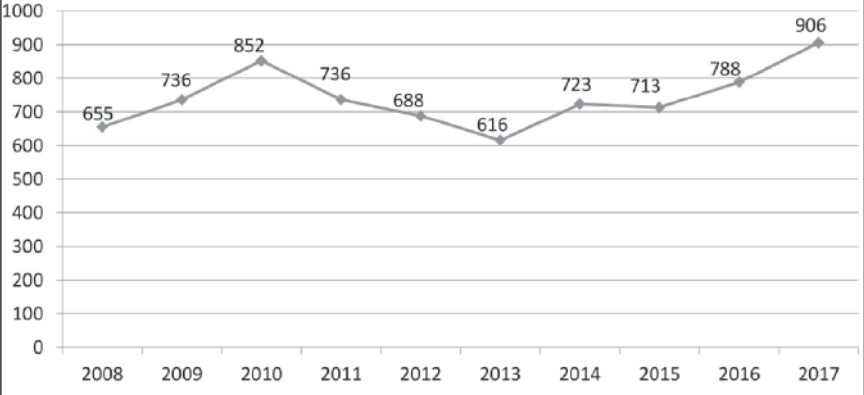
The Provincial Court is a busy place dealing with Criminal Code, federal, and provincial offences. There were **1,057,951** court appearance in 2016, an increase of **180%** since 1995.



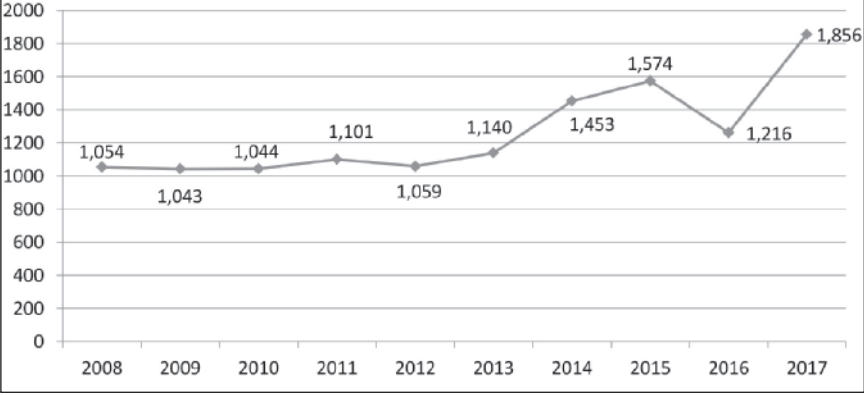
The Small Claims Court is also a busy court:



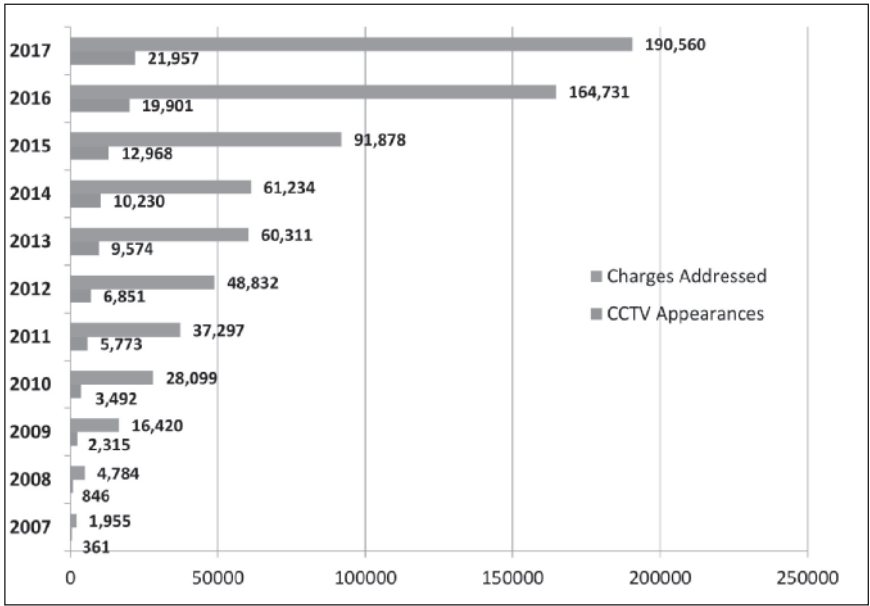
**Small Claims Court  
Number of Judgments Prepared**



**Small Claims Court  
Number of Case Management Conferences**



Closed Circuit TV (CCTV) was introduced to the court in 2007 and rapidly increased in use. In 2017, there were **21,957** court appearances via Closed Circuit TV addressing **190,560** individual charges:



There have been **7** Chief Judges of the Provincial Court since 1978:

- Judge Ernie Boychuk (1978-1982)
- Judge Cornelius Toews (1982-1987)
- Judge Patrick Carey (1987-1995)
- Judge Brosi Nutting (1995-2000)
- Judge Gerald Seniuk (2001-2007)
- Judge Carol Snell (2008-2014)
- Judge James Plemel (2015 – present)



There have been **6** Associate Chief Judges of the Provincial Court since 1978:

Judge Bruce Henning (1998-2002)

Judge Janet McMurtry (2002-2005)

Judge Carol Snell (2005-2007)

Judge Clifford Toth (2008-2014)

Judge Martin Irwin (2008-2014)

Judge Murray Hinds (2015 – present)

There have been **26** Administrative Judges of the Provincial Court since 1978:

Judge Harvie Allan

Judge Sanjeev Anand

Judge Bruce Bauer

Judge Marylynne Beaton

Judge Ronald Bell

Judge Lloyd Deshayé

Judge Thomas Ferris

Judge Hugh Harradence

Judge Bruce Henning

Judge Murray Hinds

Judge Martin Irwin

Judge Robert Jackson

Judge Earl Kalenith

Judge Pat Koskie

Judge Albert Lavoie

Judge Patricia Linn

Judge Janet McMurtry

Judge Violet Meekma

Judge Barry Morgan

Judge Gerald Morin

Judge O'Hanlon

Judge Gerald Seniuk

Judge Carol Snell

Judge Clifford Toth

Judge Mary Ellen Turpel-Lafond

Judge Sheila Whelan

**3** judges are able to conduct court in French:

Judge Marylynne Beaton

Judge Lloyd Stang

Chief Judge James Plemel

**2** judges are able to conduct court in Cree:

Judge Gerald Morin

Judge Mary McAuley

There has been **1** Executive Legal Assistant to the Chief Judge's Office:

Jan Whitridge

There has been **1** Librarian serving the Court:

Lynne McNeill

There have been **13** employees of the Office of the Chief Judge since 1978:

Jesse Bebe

Dorothy McIvor

Alana Chubak

Amy Miller

Janet Funk

Jean Shemanski

Pat Gottselig

Pat Smith

Deanna Kettering

Lynn Young

Lynn Kovatch

Sharon Zerr

Kathy Kozan-Langman

There have been **22** Clerks of the Court (Legal Internships) since 2006:

### **Regina**

Kathy Hodgson-Smith (2008-2009)

Melissa Schrader (2009-2010)

Andrew Davis (2010-2011)

Carolyn Manness (2011-2012)

David Zeggelaar (2012-2013)

Colton Fehr (2013-2014)

Leif Jensen (2014-2015)

Christoph Meier (2015-2016)

Lorne Fagnan (2016-2017)

Jessica Nixon (2017-2018)

Catriona Kaiser-Derrick (2018-2019)

### **Saskatoon**

Anna Flaminio (2006-2007)

Jessie Buydens (2007-2008)

Itemobong Umoh (2010-2011)

Ammy Murray (2011-2012)

Victoria Smith (2012-2013)

Christina Abbott (2013-2014)

Tom O'Hara (2014-2015)

Linh Le (2015-2016)

Steven Larocque (2016-2017)

Janyne Laing (2017-2018)

Jayme Anton (2018-2019)

The Saskatchewan Judges Association (SJA) was formed in 1963.

There are **12** past presidents of the SJA:

Judge Edwin Anderson (1963)

Judge Leslie Bence (1963-64)

Judge Robert King (1964-65)

Judge Joseph Flynn (1965-67)

Judge Joseph Policha (1967-69)

Judge Tillie Taylor (1969 -71)

Thomas Schollie (1971-73)

Gerald Fielding (1973-75)

Judge Robert Conroy (1975-77)

Omer Archambault (1977-79)

Robert Lee (1979-81)

Marion Wedge (1981-83)

There have been **34** presidents of the Saskatchewan Provincial Court Judges Association since it was formed in 1983:

Judge Heinrich W. Goliath (1983-1985)

Judge Lloyd Deshayé (1985-1986)

Judge Kasmer Andrychuk (1986-1987)

Judge Harvie Allan (1987-1988)

Judge Richard Kucey (1988-1989)

Judge Brossi Nutting (1989-1990)

Judge Ernest Bobowski (1990-1991)

Judge Anys Chorneyko (1991-1992)

Judge David Arnot (1992-1993)

Judge Gerald Seniuk (1993-1994)

Judge Albert Lavoie (1994-1995)

Judge Ed Gosselin (1995-1996)

Judge Eric Diehl (1996-1997)  
Judge Ronald Bell (1997-1998)  
Judge Terrance Bekolay (1998-1999)  
Judge Bruce Henning (1999-2000)  
Judge Peter Kolenick (2000-2001)  
Janet Janet McMurtry (2001-2002)  
Judge Les Matsalla (2002-03)  
Judge Martin Irwin (2003-2004)  
Judge Tim White (2004-2005)  
Judge Earl Kalenith (2005-2006)  
Judge David Kaiser (2006-2007)  
Judge Gerald Morin (2007-2008)  
Judge Sheila Whelan (2008-2009)  
Judge Stephen Carter (2009-2010)  
Judge Lorna Dyck (2010-2011)  
Judge Doug Kovatch (2011-2012)  
Judge Murray Hinds (2012-2013)  
Judge Stan Loewen (2013-2014)  
Judge Barbara Tomkins (2014-2015)  
Judge Dan O'Hanlon (2015-2016)  
Judge Don Bird (2016-2017)  
Judge Pat Koskie (2017-2018)  
Judge Inez Cardinal (2018-2019)

**12** Judges have served for **30** years or more:

Judge Bruce Henning – 40 years\*

Judge Claude Fafard – 39 years

Judge Eugene Lewchuk – 36 years

Judge Kasmer Andrychuk – 35 years

Judge Tom Ferris – 35 years

Judge Gerald Fielding – 35 years

Judge Kenn Bellerose – 34 years

Judge Joseph Flynn – 34 years

Judge Linton Smith – 34 years

Judge Kim Young – 32 years\*

Judge Dennis Fenwick – 30 years

Judge Edward Gosselin – 30 years

\*Still in active service

**9** Judges of the Provincial Court were appointed to the Court of Queen's Bench:

Judge Mary Carter (1978)

Judge Marion Wedge (1987)

Judge Omer Archambault (1995)

Judge Patricia Linn (1996)

Judge Guy Chicoine (2003)

Judge Janet McMurtry (2005)

Judge Darin Chow (2013)

Judge Jeffrey Kalmakoff (2015)

Judge Daryl Labach (2015)

#### **4** Judges were brothers:

Judge Ben Goldstein (1992-00) and Judge Sam Goldstein (approx. 2003-09)

Judge John Tucker (1973-86) and Judge Wilfred Tucker (1994-2010)

#### **2** Judges were mother and son:

Judge Mary Carter (1960-1978) and Judge Stephen Carter (1994-2014)

#### **2** Judges were father and son:

Judge Anton Demong\* (1967-1977) and Judge Paul Demong (2010 – present)

\*Judge of Magistrates' Court appointed to Provincial Court of Alberta

#### **2** Judges were uncle and nephew:

Magistrate Tom Agnew (1965-1971) and Judge Doug Andrew (2009 – present)

#### **2** Judges are brothers-in-law:

Judge Sid Robinson (2000-2018) and Judge Gerald Morin (2001 – present)



**1** Judge has been appointed to the Senate of Canada:  
Judge Raynell Andreychuk

**1** Judge has served as Treaty Commissioner for Saskatchewan:  
Judge David Arnot

**1** Judge served as British Columbia's representative for Children and Youth:  
Judge Mary Ellen Turpel-Lafond

**2** Judges served as Provincial Ombudsman:  
Judge Ernie Boychuk  
Judge Barbara Tomkins

**3** Judges served as Chair of the Human Rights Commission:  
Judge Tillie Taylor  
Judge Donna Scott  
Judge David Arnot

# Appendix 1

## Current Judges of the Provincial Court of Saskatchewan (as of June 1, 2018)

### **Chief Judge J.A. Plemel**

#### **Regina**

Associate Chief Judge M.J. Hinds  
Administrative Judge M.T. Beaton  
Judge A.M. Crugnale-Reid  
Judge P. Demong  
Judge L.A. Halliday  
Administrative Judge B.D. Henning  
Judge K.A. Lang  
Judge P.A. Reis  
Judge J.F. Rybchuk

#### **Estevan**

Judge L. Wiegers

#### **La Ronge**

Judge R. Mackenzie  
Judge M.C.R. McAuley

#### **Lloydminster**

Judge K.J. Young

#### **Meadow Lake**

Judge M. Baldwin  
Judge M.F. Martinez  
Judge J.E. McIvor

#### **Melfort**

Judge I. Cardinal  
Judge L. Stang

#### **Moose Jaw**

Judge D.J. Kovatch  
Judge D. Rayner

#### **North Battleford**

Administrative Judge B. Bauer  
Judge L.D. Dyck  
Judge D.J. O'Hanlon

### **Prince Albert**

Judge E. Kalenith  
Judge F.M.A.L. Daunt  
Judge H.M. Harradence  
Judge R. Lane  
Judge G.M. Morin  
Judge S. Schiefner

### **Saskatoon**

Judge S. Anand  
Judge Q.D. Agnew  
Judge M.M. Baniak  
Judge N.D. Crooks  
Judge M. Gray  
Judge R.D. Jackson  
Judge B.M. Klause  
Judge S. Metivier  
Judge V. Monar Enweani  
Judge B.G. Morgan  
Judge M. Penner  
Judge D.C. Scott  
Judge B. Wright

### **Swift Current**

Judge K.P. Bazin

### **Wynyard**

Judge M. Marquette

### **Yorkton**

Judge R. Green  
Judge P.R. Koskie  
Judge D. Taylor

## Appendix 2

### Past Judges of the Provincial Court of Saskatchewan (1978-2018)

ALLAN, R. Harvie – 1979-1998	GOLDSTEIN, Samuel – 2003-2009 <sup>+</sup>
ANDREYCHUK, Raynell – 1976-1987*	GOLIATH, Hank – 1973-2006
ANDRYCHUK, Kasmer – 1973-2008	GOLIATH, Wally – 1983-1999
ARCHAMBAULT, J.R. Omer – 1969-1995†	GORDON, Margaret – 2007-2016
BEKOLAY, Terrance – 1992-2007	GOSSELIN, Edward – 1979-2009
BELL, Ronald – 1989-2008	HALDERMAN, Barrett – 1999-2005
BELLEROSE, Kenn – 1977-2011	HUCULAK, Bria – 1992-2013
BENCE, Leslie – 1957-1980	IRWIN, Martin – 1998-2014
BENISON, James – 2003-2009	KAISER, David – 1996-2014
BIRD, Donald – 2006-2017	KALMAKOFF, Jeffrey – 2009-2015†
BLAIS, R.J. – 1975-1978	KETCHESON, Hugh – 1983-1993
BOBOWSKI, Ernie – 1980-2004	KING, Robert – 1961-1985
BOGDASAVICH, Darryl – 2002-2013	KING, Gerald – 1972-1997
BONNYCASTLE, W. – 1967-1986	KOLENICK, Peter – 1996-2017
BOYCE, Howard – 1969-1994	KUCEY, Richard – 1978-1988
BOYCHUK, Ernie – 1967-1987	KUZIAK, Myron – 2002-2010 <sup>+</sup>
BROWN, D. Murray – 2007-2009	LABACH, Daryl – 2009-2015†
CALDWELL, T.D.R. (Bobs) – 2003-2006 <sup>+</sup>	LAVOIE, D. Albert – 1988-2016
CAMPBELL, William – 2012-2013	LEE, Robert – 1965-1996
CAREY, B. Patrick – 1984-2007	LEWCHUK, Eugene – 1966-2002
CARTER, Stephen – 1995-2014	LINN, Patricia – 1986-1996†
CARTER, Mary – 1960-1978**†	LOEWEN, Stan - 2007-2017
CHICOINE, Guy – 2002-2003†	MacKAY, Estelle – 1977-1985
CHORNEYKO, Anys – 1976-1996	MATSALLA, Leslie – 1995-2014
CHOW, Darin – 2012-2013†	McLEAN, Stuart – 1969-1983
CONROY, Robert – 1965-1994	McMURDO, Arthur – 1960-1995
DESHAYE, Lloyd – 1975-2004	McMURTRY, Janet – 1995-2005†
DIEHL, Eric – 1978-1998	MEAGHER, Wilfrid – 1982-1991
DIRAUF, Hans – 2002-2010 <sup>+</sup>	MEEKMA, Violet – 1994-2012
EBERT, Dolores – 1996-2009	MORRIS, Diane – 1992-2010
FAFARD, Claude – 1975-2014	MOXLEY, Ross – 1979-2003
FENWICK, Dennis – 1977-2007	MUIR, Alistair – 1972-1991
FERRIS, Tom – 1977-2012	NEVILLE, Raymond – 1965-1992
FIELDING, Gerald – 1960-1995	NIGHTINGALE, Jeremy – 1993-2012
FINLEY, Robert – 1987-2001	NUTTING, J. Brosi – 1979-2002
FLYNN, Joseph – 1960-1994	ORR, David – 1987-2007
GOLDSTEIN, Benjamin – 1992-2000	PARKER, H. Donald – 1965-1994
	PEET, Clifford – 1976-1985
	POLICHA, Joseph – 1957-19

RATHGEBER, Russell – 1985-2004  
 ROBINSON, Sidney – 2000-2018  
 SCHMEISER, Ellen – 1992-1998  
 SCHOLLIE, Thomas – 1965-1978  
 SENIUK, Gerald – 1977-2008  
 SHANER, Gordon – 1978-2001  
 SINGER, Barry – 2002-2016  
 SMITH, Linton – 1979-2013  
 SMITH, Robert – 1989-1995  
 SNELL, Carol – 1999-2017  
 TAYLOR, Tillie – 1960-1987  
 TENNANT, William – 1976-1991  
 TOEWS, Cornelius – 1982-1987  
 TOMKINS, Barbara – 2009-2017  
 TOTH, Clifford – 1998-2017  
 TRUDELLE, Paul – 1984-1992

TUCKER, John – 1973-1986  
 TUCKER, Wilfrid – 1994-2010  
 TURPEL-LAFOND, Mary Ellen –  
 1998-2018  
 WEDGE, Marian – 1973-1987†  
 WEISGERBER, H. Rosemary –  
 1998-2010  
 WHELAN, Sheila – 1996-2014  
 WHITE, Timothy – 1994-2013

\*Appointed to the Senate

\*\*Appointed to the District Court

†Appointed to the Court of Queen's  
Bench

+Appointed as Relief Judges;  
approximate dates

## Notes

## Notes

## Notes



The Provincial Court of Saskatchewan was created in 1978. It was the modern evolution of a court system in Saskatchewan dating back to its territorial days, and a progressive advancement in the dignity, jurisdiction, and autonomy of the court. But the path forward was not easy. The introduction of the Canadian Charter of Rights and Freedoms in 1982 changed the relationship between provincial governments and judges of their Provincial Courts, leading to a string of legal battles across the country that began in Saskatchewan and culminated in a landmark decision of the Supreme Court of Canada affirming the principles of judicial independence and the rule of law. Today, those early challenges are the bedrock on which was built a caring, dynamic, and independent “people’s court” that honours its past and meets the challenges of the future.

This publication was commissioned by the Saskatchewan Provincial Court Judges Association, with the support of the Law Foundation of Saskatchewan, to mark the 40th anniversary of the Provincial Court of Saskatchewan.

About the author: Amy Jo Ehman is an award-winning author of three previous books of history and food culture including *Saskatoon: A History in Words and Pictures* and *Out of Old Saskatchewan Kitchens*. She lives in Saskatoon.

