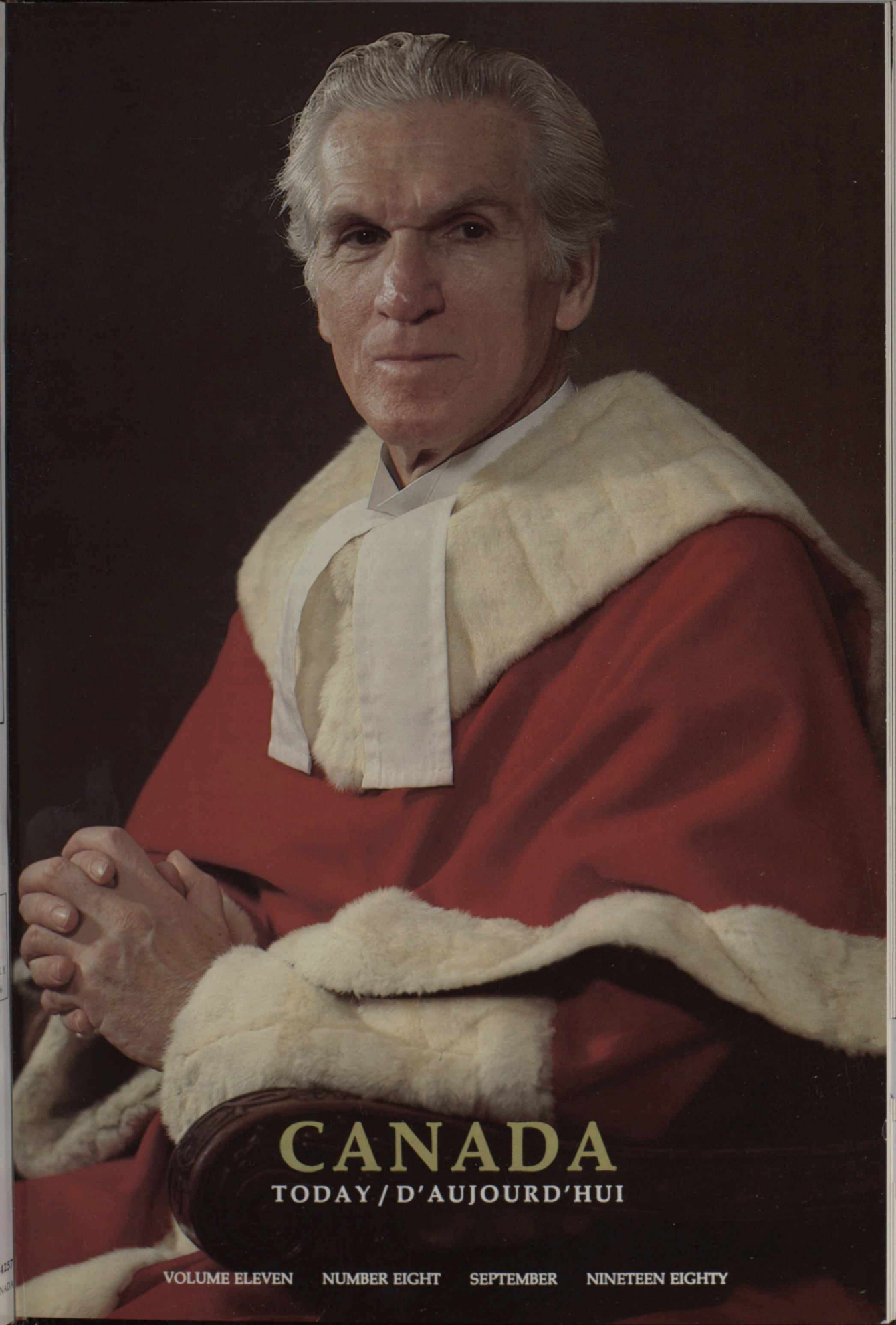

CANADA

TODAY / D'AUJOURD'HUI

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The Supreme Court Justices are from left to right, J. Chouinard, W. Estey, B. Dickson, R. Martland, Chief Justice Bora Laskin, R.A. Ritchie, J. Beetz, W.R. McIntyre and A. Lamer.

Justice

Circumstances and stresses of life differ in Canada and the United States, and the systems of justice differ too. Justice is not measured in terms of crime, convictions or sentences alone. It also involves, among other things, civil matters, basic rights and the grievances of the law-abiding.

In this issue of CANADA TODAY/D'AUJOURD'HUI we offer some general information on crime, courts and imprisonment in Canada, and on Canada's laws and lawyers.

Canada's Constitution

A constitution can be defined as the rules by which a state is governed.

The Constitution of the United States was written down by the founding fathers and has been amended as needed. Canada does not have a single, written document. The British North America Act, passed by the Parliament of Great Britain in 1867, is the framework of the Canadian constitution. The preamble of the B.N.A. Act calls for a constitution similar in principle to that of Great Britain. This means that its underpinnings include the Magna Carta, the Habeas Corpus Act and other fundamentals of British law, and that it relies on a body of legal customs and traditions. Each Canadian province also has its own constitutional documents and statutes.

The Supreme Court is composed of the Chief Justice and eight Puisne (associate) Judges. They are appointed by the Cabinet with the Governor General's approval.

Cover photo: Chief Justice of the Supreme Court, Bora Laskin.

The Courts, the Judges and the Justices

The United States has two distinct court systems—federal and state. In Canada the provinces have responsibility for the administration of justice.

State courts in the U.S. are concerned exclusively with the breaking of state laws and with civil suits. The federal courts are concerned with interstate crimes and those civil suits involving interstate commerce. They also hear cases appealed from state courts on constitutional grounds.

The federal Parliament of Canada establishes the Criminal Code and criminal procedure, but both civil and criminal courts are organized on the provincial level, and the provinces determine civil procedure. Civil cases are heard in various provincial courts, with the amount of money involved usually determining which one. Although the names and organization of criminal courts vary from province to province, they are all basically part of a three-tiered system: 1) magistrate's or provincial courts, 2) county or district courts, and 3) superior or supreme courts of the province. Ninety per cent of all criminal cases are handled in the magistrate's court without a jury.

The Canadian federal court hears cases brought against the federal government. The Supreme Court of Canada is the final appeal court for both civil and criminal cases.

The federal government appoints and pays the judges of the provincial higher courts as well as judges of the federal court and Supreme Court of Canada. Lower court judges, magistrates, justices of the peace and other court officers are appointed and paid under provincial laws.

In both countries the judiciaries are independent, and judges and justices are free from influence by members of the executive branch of the government. The methods of maintaining independence, however, are different. In the U.S. the federal judiciary is a separate and equal part of the government, on a par with the executive and legislative branches, and this arrangement is duplicated in the states. In Canada all governmental operations, including the administration of the courts, are controlled by parliaments, federal and provincial. The independence of the judiciary is embodied in the independence of the individual judge and protected through the practice of appointing judges for a secure term up to a fixed retirement age.

The judges in the higher courts remain on the bench until they reach the retirement age of seventy or seventy-five, unless they resign, become incapacitated, or are found guilty of severe misconduct. All judges are concerned only with adjudication.

In the United States judges control the hiring of courtroom personnel, and the courts are often served by a variety of non-judicial experts—psychiatrists, counselors, sociologists—while in Canada, where the judges cannot disburse funds or authorize salaries, the courts have resisted any great expansion of their auxiliary staffs.

Perhaps the most striking contrast may be found in the Supreme Courts of the two countries. The U.S. Supreme Court interprets the Constitution independently of the expressed or implied wishes of Congress. It may, in its wisdom, declare an Act of Congress unconstitutional and therefore void.

The Canadian Supreme Court, particularly in recent years, is more restrictive in the cases it hears and stricter in its interpretation of the established law. In the 1950s its area of interest underwent a considerable expansion; and cases involving the preservation of the environment, consumer protection, energy conservation and sex discrimination greatly added to its crowded docket. In 1960 Parliament passed an act specifying a Bill of Rights, and in 1974 it cancelled the automatic right of appeal that had been given to litigants in provincial cases involving $10,000 or more. This later move greatly reduced the crowded dockets, and observers assumed that the Court, like its American counterpart, would spend more time interpreting the constitution. This has not been the case.

In Canada only the federal and provincial governments have direct access to the Supreme Court, and private litigants may raise constitutional issues only with the permission of the lower courts. More importantly, most Canadian judges and justices believe that since they are part of a government in which Parliament is the "responsible" centre, it would be most improper for them to take activist roles. They believe, for example, that if Parliament had wanted a special emphasis on the Bill of Rights, it would have asked the provinces to adopt it as part of the constitution. (The Canadian Bill of Rights is an Act of Parliament and not entrenched in the constitution. Constitutional reform discussions currently taking place may eventually result in the inclusion of a Bill of Rights in a new constitution.)

The Canadian courts, including the Supreme Court, follow the practice of *stare decisis*—relying on precedents in reaching their decisions. While Canadian courts don't generally make law, they do have opportunities to interpret the law to cover the case at hand. The U.S. Supreme Court goes directly to the Constitution for inspiration.

Let's Count All the Lawyers

In the United States there is one lawyer for every six hundred persons, in Canada, one for every twelve hundred.

In all provinces except Quebec, lawyers may practice in the British fashion, as either barristers or solicitors, though the divisions are not formal, and almost all practice as both. A relatively small number function most often as barristers, spend-

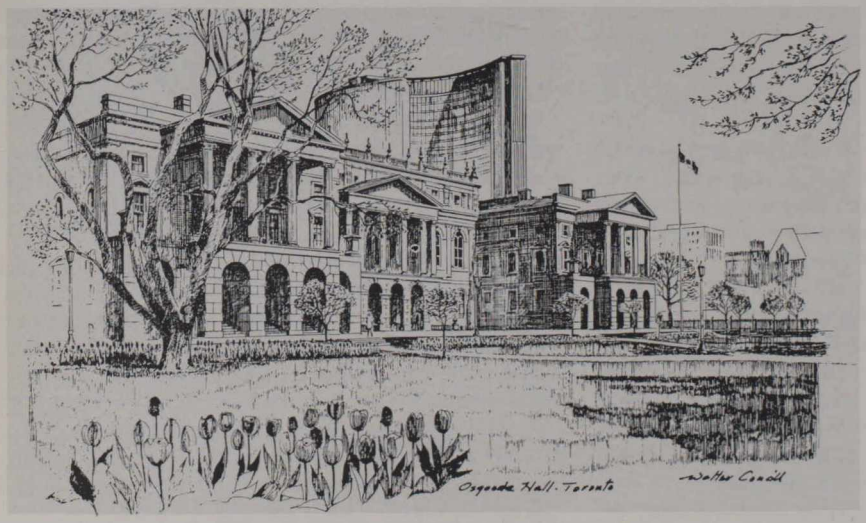
ing much of their time in court. Most lawyers spend their working hours as solicitors, drawing up contracts, writing wills and doing other desk jobs. In Quebec, where civil law is derived from the same sources as the Napoleonic Code, the profession is divided between advocates, those who perform the functions of both barristers and solicitors, and notaries, those who draw up papers. Notaries may appear in court only in non-contentious matters, such as adoption proceedings. Barristers or advocates of notable competence are designated by the honourary title of "Queen's Counsel" by the provincial governments and may put Q.C. after their names. A few Q.C.'s are appointed by the federal government.

As the number of lawyers in the U.S. has grown, so has the level of litigation. Between 1950 and 1977 civil suits, mostly suits for damages, increased by one hundred and twenty per cent, and criminal cases by forty-one per cent. Far fewer persons go to court in Canada.

One factor contributing to the difference is the greater accessibility of the U.S. courts. In the U.S. a large number of suits are filed by or on behalf of groups of people who are assumed to have a common grievance: anti-war organizations go to court to obtain information on defence spending, pro or anti-abortion groups sue to force or restrain the government from supporting abortion clinics, and neighbourhood groups sue to stop highway construction. A Canadian plaintiff must usually show that he has been damaged significantly and directly as an individual, and suits charging such things as patterns of discrimination are difficult to pursue. Recent rulings, however, have slightly enlarged the opportunities, and a number of class action cases have been heard.

Another factor is that American lawyers often work for contingency fees—if they sue successfully they receive a considerable part of the award, often a third or more. If they fail they receive no fee at all.

A Canadian wishing to sue someone for damages usually must agree to pay a fee no matter what the outcome. Certain types of cases, such as malpractice suits against doctors, are much less frequent in Canada, and the chances for success of those that are brought are not particularly bright. Some sixty-five per cent of lawsuits against doctors are dismissed before they reach the court, and of those that do get there, less than forty per cent are successful. In the United States, where juries have awarded plaintiffs damages in the hundreds of thousands of dollars, some physicians pay



Drawing by Walter Cousill of Osgoode Hall in Toronto, home of the Law Society of Upper Canada and the Supreme Court of Ontario. The law school was housed here from its founding in 1873 to 1968, when it was moved to the campus of York University.

In 1972 Campbell House, the third oldest structure in Toronto, was moved by the Advocates' Society 5,305 feet from Adelaide Street East to Queen Street and University Avenue.

annual insurance premiums as high as $35,000. The annual cost of membership in the Canadian Medical Protective Association, which insures its members against malpractice suits, is $250.

The Making of Barristers, Solicitors, Advocates and Notaries

Most provinces require potential lawyers to attend university for two years and law school for three. Successful students are then articled as apprentices under the supervision of a practicing lawyer for approximately a year. They also take special practice courses under the tutelage of the provincial Law Society. The Societies control admission to the profession and discipline wayward members.

The Elite

Canada's legal elite are found to a considerable degree in a score of large firms, each with dozens of lawyers.

They are primarily corporate lawyers, dealing in taxes and financing and other areas of corporate interest. An attorney may devote his full time to the law of computer leasing, for example, and another may specialize in applications to the Canadian Radio-Television and Telecommunications Commission. In the west there are specialists in oil, mining and natural resources law.

Most of the big firms avoid the courts, though some do have large litigation departments. Courtroom lawyers tend to regard themselves as a fraternity and in Ontario they have their special group, the Advocates' Society, founded in 1965. The Society bought the former home of Chief Justice Sir William Campbell of Upper Canada, built in Toronto in 1822, moved it from its original site to University Avenue across from Osgoode Hall and restored and furnished it with period pieces.

The top Ontario firms recruit many of their new members from the University of Toronto's Faculty of Law, Osgoode Hall and Queen's University. Major sources of new lawyers in Quebec are McGill and Laval; in the West, the big provincial universities.

The selection process is stern. Jack Batten, writing for *Saturday Night*, cites one year's screening at the Toronto firm of Osler, Hoskin & Harcourt as an example. Three hundred students applied for articling positions after graduation. The firm's students committee eliminated all those who had less than a B average, reducing the number to 153. The rest were then interviewed at length and ten were picked. Five of the ten were eventually invited to join the firm as associates and assigned a particular specialty: real estate, labour, estates, tax, corporation or litigation. All are lucrative, but the tax and corporation divisions are the most prestigious.

Crime

Crime rates in the United States are higher than those in Canada; the number of homicides per 100,000 population, for example, is four times greater. This could cause some Canadians (and some Americans) to believe that 1) most Canadians are better behaved, or 2) that the Canadian system is more nearly perfect, but neither assumption has much to do with reality.

Criminal offences in Canada are divided into summary conviction offences, indictable offences and dual procedure offences, where the prosecutor has the option of prosecuting by either summary conviction or indictment.

Indictable offences are tried by a more complex and formal procedure than are summary conviction offences. In the latter cases, the maximum penalties are a $500 fine or six months in prison or both. These, as well as some indictable offences, are tried in the magistrate's or provincial courts without a jury. In more serious indictable cases the defendant may choose to be tried by the magistrate/provincial judge alone, by a federally appointed county court judge alone, or by a county court judge with a jury.

The most serious cases, such as murder, rape or treason, must be tried by a judge of the superior court, usually with a jury.

The September Study

In 1967 the Law Reform Commission of Canada began the September Study, a five-year effort to determine the prospects of novice Canadian criminals.

The subjects were offenders convicted of their first serious crimes that September, a total of 2,071 persons. The heavy majority of the persons in the dock were male and under thirty; one-quarter were under nineteen. Most, not surprisingly, were from Ontario or Quebec, the most populous provinces. Slightly less than a fifth came from the prairies, a little more than a fifth from the Maritimes and British Columbia, and very few from the Yukon or the Northwest Territories.

Most committed non-violent crimes ranging from breaking-and-entering to white-collar fraud. One in seven committed a crime against another person, one in twenty a sexual offence.

More than forty per cent were given suspended sentences or otherwise released. Twenty per cent were imprisoned and five per cent fined. Most of those imprisoned received very short sentences; 31.4 per cent served only one day.

Most of the crimes against persons were relatively minor—common assault, assault causing

bodily harm and assault of a peace officer. Forty were convicted of more serious crimes: thirty-three of robbery, five of wounding, two of attempted robbery and one of manslaughter.

The persons given the heaviest sentences were those who committed sex offences. Seventy-five per cent of the sexual offenders were imprisoned, and one imprisoned sex offender in three was sentenced to two years or more.

The study followed the 2,071 persons for five years, primarily to see how many would be convicted of subsequent crimes and to see what, if any, connection there might be between reconviction (called recidivism) and the original sentencing. Of the whole group, 26.5 per cent (or 548) were convicted a second time in the five years.

Of the 1,412 novice offenders convicted of non-violent property offences in 1967, more than seventy per cent did not commit another indictable offence during the next five years.

Forty-four per cent of the property offenders who were imprisoned committed a second crime; only twenty-eight per cent of those who were not imprisoned did.

Only twenty per cent of the 287 persons convicted of crimes against persons were reconvicted, most for property offences. The recidivism rate was ten per cent higher for those who had been imprisoned than for those who had not.

The recidivism rate for sex offenders was markedly low. Of the 111 first offenders, only sixteen were convicted of new crimes in the five-year period, and only five committed additional sexual offences. Of course, some of the original offenders remained in prison throughout the five years.

Three Notable Criminals

Norman (Red) Ryan of Toronto. Canada's foremost storybook gangster robbed banks in the roaring twenties, was captured and sentenced to life imprisonment. In Kingston Penitentiary he became a celebrated success after renouncing his evil ways and embracing the virtuous life. Prime Minister R.B. Bennett intervened in his case, and he was released. After proclaiming his rehabilitation in a series of ghost-written front-page newspaper stories, he looked around for something to keep him busy. In 1936 he was shot and killed by police while holding up a liquor store in Sarnia, Ontario.

Albert Guay, of Quebec City. In 1948 he enlisted a jeweler accomplice to make a time bomb with which he planned to blow up a plane carrying his wife. It blew up but not on schedule, and the wreckage came down on land instead of in the St. Lawrence River. Experts noticed the distinctive smell of dynamite, and he and the jeweler were arrested, convicted and hanged.

Lucius "Christmas Time" Parmalee. The most persuasive forger Canada ever produced, he dressed up as a clergyman during the Christmas season and cashed large, bad cheques in the name of charity all over North America.

Norman (Red) Ryan

Albert Guay

The Ombudsman

In every province in Canada except Prince Edward Island, the Ombudsman, an independent officer who investigates the grievances of citizens, often provides a shortcut to justice.

The word and the idea originated in Sweden in 1809. Finland adopted the system in 1919, Denmark in 1953, and Norway and New Zealand in 1962.

Canadians became interested in the early 1960s, after two glaring examples of bureaucratic insensitivity. In 1963 a seaman with an excellent record was abruptly discharged from the Royal Canadian Navy without explanation. After questions were asked in Parliament, the government announced that the seaman's uncle had been a Communist Party candidate in a federal election and that his superiors had decided that he, therefore, was a Communist as well. Further investigation revealed that the candidate in question was not related to the seaman.

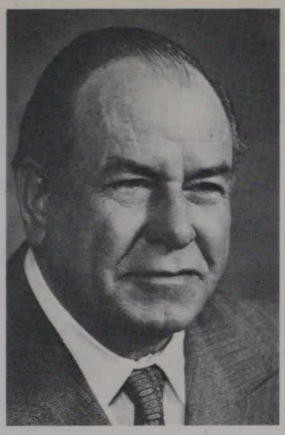
The next incident involved a man who had complained that his acquaintances believed him to be a Communist because the Royal Canadian Mounted Police refused to acknowledge that he had worked for them as an undercover agent. To protest, he entered the gallery of the House of Commons and threw a carton of cow's blood on the floor below. Two days later the Minister of Justice announced that he was considering recommending the appointment of a federal Ombudsman. In 1965 the government did refer the suggestion for study to a planned Royal Commission, but the Royal Commission was never appointed and nothing came of that.

The idea did, however, take hold in the provinces. Alberta and New Brunswick named Ombudsmen in 1967, Quebec and Manitoba in 1969, and Newfoundland, Nova Scotia, Ontario, Saskatchewan and British Columbia followed suit. In

each case the selectors have been careful to pick politically nonpartisan persons, and there have been some notable successes.

On the recommendation of the New Brunswick Ombudsman, a psychologically exhausted teacher who wished to retire six months early but who would have lost her retirement rights if she did, was retired early with a full pension.

In Alberta a man who had been beaten and robbed of $50 found that the recovered money, which had been used as evidence in the trial, had afterwards been transferred to a provincial revenue fund. The Ombudsman saw that the victim got it back. The Alberta Ombudsman discovered that some persons who had pleaded not guilty to crimes by reason of insanity had been held in asylums for over twenty years. He arranged reviews, and a number of inmates were found to have recovered their senses. In Quebec the Ombudsman found that a mentally ill youth who had committed no crime had been kept in prison for two years. He arranged his transfer to a psychiatric hospital.



Left, Donald R. Morand, Q.C., a former Judge of the Supreme Court of Ontario, was named Ombudsman for the province in 1979. Not all Ombudsmen are lawyers. The Reverend Randall E. Ivany, right, Ombudsman for Alberta, was a Canon in the Anglican Church in Edmonton.

A Case in Point—The Demeter Trial

To the lay person sitting in the courtroom, a Canadian criminal trial would seem indistinguishable from an American one. Most often the results are approximately the same, but sometimes they are not. The two systems have different rules, and evidence that is admitted in one court might not be admitted in the other. The 1974 trial of Peter Demeter for arranging the murder of his wife Christine, the longest in Canadian criminal court history, is a case in point.

*****

On July 18, 1973, the body of Christine Demeter was found by her husband in the garage of her home in Mississauga, Ontario. She was crumpled on the floor, face down, her skull crushed. The weapon had disappeared.

The husband, Peter, an upper-class Hungarian émigré, was a tall man of imposing appearance, wearing horn-rimmed glasses, always neat, conservatively but well-dressed. His father and his brother had been killed by the Russians in the fall of Budapest, and after escaping to Austria in 1956 he emigrated to Canada at the age of twenty-three.

He held a number of small jobs, learned English and in time accumulated $20,000 with which he started a construction company. The company prospered, and in 1967 he married Christine Ferrari, twenty-six, a sometime fashion model he'd met on a trip to Vienna.

Fourteen months later the Demeters were joined in America by another Vienna acquaintance, young Csaba Szilagyi. Before the day of Christine's death a great many bizarre things would occur involving the three of them.

Peter Demeter outside the London, Ontario, courthouse.

Peter Demeter and his lawyers, left, Joseph Pomerant and, right, Edward Greenspan.

Christine Demeter

The body was discovered by Peter one evening in 1973 as he and some friends were returning from shopping. He pushed a button, and the garage door went up like a theatre curtain to reveal Christine sprawled in a huge pool of fresh blood, her brains spilled on the floor.

It was soon established that Peter had been miles away when his wife's skull was crushed by some heavy instrument, but his manner, abusive and callous, aroused suspicions that would grow as time went by. ("Who would have thought Christine had so much brains?" he would jocularly ask acquaintances.)

Police Superintendent William Teggert ordered a wiretap put on Peter's home phone. Csaba Szilagyi was called in for questioning and told police that Peter had been plotting Christine's murder for years. Csaba agreed to help the police eavesdrop on Peter, and from then on he carried a concealed microphone whenever they got together.

The police were convinced that Peter was the guilty man. He had both the manner and the motive–he had persuaded Marina Hundt, a former Viennese girl friend, to join him in Canada, and he and Christine had insured each other's lives for $1 million each.

The police recorded hundreds of conversations.

Once, when Peter was under the false impression that Christine had had him watched by a private detective, he concluded that the surveillance, luckily, had been for only a limited time and purpose.

PETER: . . . I mean, Christine had me watched for a short time until she found out that I have no girl friend in Toronto.

CSABA: Yes.

PETER: . . . but in the completely neutral first days.

CSABA: (after a further exchange). How do you know, Peter that they haven't watched you in the last days?

PETER: Because I am at large and free . . .

Actually Christine had never had Peter watched. The idea had been planted in Peter's mind by Police Superintendent Teggert. Soon after this recorded exchange Teggert had Peter arrested and charged with having arranged his wife's murder.

At this point the Crown's whole case against Peter consisted of Csaba's statement that Peter had in the past contrived many bizarre plans for killing Christine and the not-quite-explicit recorded conversations. Peter was released on bail.

The taping continued.

Peter and his lawyers became aware of Csaba's duplicity only at the preliminary hearing when he took the stand for the prosecution and testified that for a period of nearly five years and a half, almost since the honeymoon, Peter had talked of murdering his wife and that he had asked him to help with the job.

The trial began on September 23, 1974, in London, Ontario. The first three weeks were filled with arguments concerning the tapes. Peter's senior attorney, Joe Pomerant, argued that they should not be admitted because they were unreliable—many of the conversations were unintelligible and most were obscure. Furthermore, the tapes of conversations between Peter and his attorneys violated the lawyer-client privilege. Pomerant also argued more forcefully that the integrity of the tapes had been destroyed when the thrifty police erased conversations they considered irrelevant in order to reuse the tapes.

Pomerant had one further fragile, but interesting, argument. Parliament had passed the Protection of Privacy Act after the tapes were made

but before the trial began. Had the Act been in effect when they were recorded, the making of them without a warrant would have been illegal. One must assume, however, that if the Act had been in effect, Teggert would have applied for and probably been given a warrant.

Pomerant also argued that the Act should be made retroactive, but not all libertarians would have agreed, for retroactive laws of any kind are fraught with peril. Justice Campbell Grant ruled on November 14, admitting the tapes into evidence, but by then the whole substance of the Crown's case had changed.

The police had found two new key witnesses. One, Ferenc Stark, had been turned up earlier by Defence attorneys who kept him under wraps. Stark was a small-time contractor who occasionally did building jobs for Peter. When Peter's attorneys found him, he told them that once, in 1971 or 1972, Christine had tried to enlist him in what was apparently a plot against Peter's life. They met by appointment, and she asked him to sell her a rifle (he was a hunter) and to provide her accomplice with an alibi. The accomplice apparently was Csaba Szilagyi. Stark told the lawyers that Christine had said to him, "I want your rifle and for you to say that you were with Csaba. I do have the money, three thousand dollars." Stark said he turned down the proposition without asking any further questions.

The Defence lawyers considered Stark a substantial witness, but they didn't know that the police had also found him and that he had told them the story about Christine's plot against Peter and another one as well. The second story was a stunner. Stark said that some time in 1972, after his meeting with Christine, Peter approached him and, ". . . he started to talk about his wife, how she is cheating on him and how miserable he is and he cannot stand it any longer." According to Stark, Peter asked him to arrange an accident and he finally agreed. He enlisted another Hungarian called Kasca or "the Duck." Peter was to send Christine to a vacant house he owned on Dawes Road to meet the Duck, who would pretend to be a prospective buyer. She would carry a roll of architectural plans which concealed the payoff money. The Duck was to take the plans and push Christine down the basement stairs, making sure she "didn't get up."

Instead, Stark said, the Duck met Christine, took the drawings and the money and left immediately. Christine returned to Peter, alive if slightly baffled. The Duck later phoned Stark and complained that the roll contained only $1,800 instead of the promised $3,000. He took the money and ran off to Hungary.

The Crown had also found Joseph "Foxy" Jones who said that he had driven the Duck to his rendezvous with Christine and that he'd later heard him reporting to someone named Frank (Stark's nickname) who was angry because ". . . he was supposed to do something he didn't do."

This new testimony was staggering to the Defence. As Peter read copies of Stark's statement, tears came into his eyes.

The Crown was changing its theory of the case in mid-stream. Defence lawyers argued that

Csaba Szilagyi

Marina Hundt

this put them at an impossible disadvantage, and they asked for a mistrial. The Judge ruled against them. He also, most significantly, revoked Peter Demeter's bail.

From then on the Defence fell apart. More new and confusing evidence would be uncovered, and a reasonable juror could conclude that both Peter and Christine had been plotting, but since it was Christine who was dead, Peter's plotting was the more significant.

It was established by independent evidence that Peter had indeed sent Christine to the house on Dawes Road on the night in question. The Duck would die in Hungary, but he first told the Hungarian police that though he had not been in Canada on the night of Christine's murder (a fact supported by a variety of documents, including his passport), he had gone to Dawes Road with Foxy where he had met Christine, and she had given him a roll of plans with some $1,800 wrapped inside.

The jury found Peter guilty.

The Defence appealed the verdict, offering three pieces of new evidence and arguing twenty-six points of law. The five appellate judges gave serious consideration to one piece of evidence—it clearly established that a minor witness had lied when he said he saw the Duck at an Ontario racetrack the day of Christine's murder—and to nine of the points of law. The most important of these was the contention that Justice Grant had erred when he failed to grant a mistrial after the Crown introduced new evidence in the middle of the trial. The appellate judges decided unanimously that he had not erred since "we are unable to say that [the time in which the Defence had to respond] was so short as to deprive the accused of a fair trial."

The tapes were, in the opinion of the appellate judges, the most convincing evidence against Peter. The possibility of his innocence "ceases to be a rational hypothesis when considered in the light of the appellant's statements in his taped conversations with Szilagyi," they ruled.

Mr. Innis and Mr. Wray

In most United States courts the tapes in the Demeter case would probably not have been admitted, but under Canadian law they properly were. Trial Justice Grant was bound by the Wray Decision.

In March 1968, a man named John Wray shot and killed a service station attendant near Peterborough, Ontario, in the course of a robbery. Some ten weeks later, in the spring of 1968, the provincial police arrested him. After he was questioned for nine hours, Wray confessed and gave police the location of the swamp where he had thrown the murder gun. The gun was recovered. At his trial the Defence contended that Wray's confession was not voluntary. The trial judge agreed and threw it out. Since there was no other evidence against Wray, the jury was obliged to acquit. The Canadian Supreme Court, however, reversed the decision. It decided that certain incriminating evidence should be admitted even if the manner in which it was obtained was not beyond criticism. A Canadian judge does not have the right to exclude admissible evidence on the grounds of unfairness to the accused.

The decision and similar rulings underscore a basic difference between courts in Canada and the United States. As George Jonas and Barbara Amiel, the authors of an excellent book on the Demeter murder, *By Persons Unknown*, point out: "While in the United States due process has been elevated to the point where strict observation of the accused's rights seems to have superseded most other considerations of justice, . . . Canadian courts during the same period have tended to put general principles second to the urge of not letting the guilty escape punishment."

In a recent decision the U.S. Supreme Court has somewhat qualified the general perception that any confession made without full warning and legal protection is automatically inadmissible in American courts.

In the case in question Thomas J. Innis of Rhode Island was charged with fatally shooting a taxi driver. The gun was missing, and while transferring the prisoner, one police officer said to another that there were a lot of handicapped children in the area. His companion replied, "It would be too bad if [one of them] would pick up the gun and maybe kill herself."

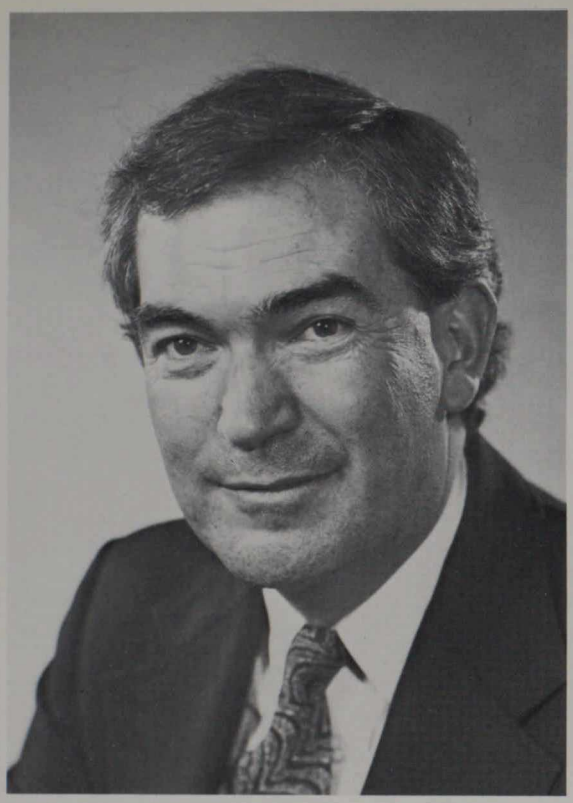
Innis then led the officers to where he had thrown the gun. He said he did it "because of the kids." He was convicted, but the Rhode Island Supreme Court threw out the conviction, saying Innis had the right to escape interrogation when he was not accompanied by a lawyer. The U.S. Supreme Court disagreed, saying the exchange in the paddy wagon was not an interrogation in terms of the famous 1966 Miranda decision.

Capital Punishment

The last executions in Canada, a double hanging, took place in 1962. Before that date, most death sentences were commuted to life imprisonment. The recent legislative history of capital punishment is given below:

1956 – The Joint Commission of the Senate and House of Commons on Capital Punishment recommended that capital punishment remain the mandatory penalty for the crime of murder.

1961 – Murders were classified as *capital* or *non-capital*. Capital ones included those that were planned and deliberate or committed during the commission of certain



Bob Kaplan, Solicitor General.
The Solicitor General has authority over federal prisons, parole and the Royal Canadian Mounted Police. The other federal law officer of the Crown, the Attorney General (currently Jean Chrétien), concentrates on enforcement and prosecution.

other crimes of violence, and the murder of police officers or prison wardens. The death penalty was mandatory. All others were classified as non-capital and carried the penalty of life-imprisonment. The penalty for a capital murder committed by someone under the age of eighteen was also life-imprisonment.

1967 – For a five-year period ending December 28, 1972, only murders of policemen or permanent employees of prisons were classified as capital.

1973 – The above amendment was extended to 1977.

1976 – Capital punishment was abolished. Two degrees of murder were established. The first includes planned and contracted murders; murders of police officers or prison employees; murders committed while committing or attempting to commit rape, kidnapping, or hijacking; and murders committed by persons already convicted of murder in the first or second degree. These require mandatory twenty-five years' imprisonment before parole. All others are of the second degree and require sentences of ten years (or more, according to the judge) before parole.

Canadian Public Opinion on Criminal Justice

(Abstracted from *Selected Trends in Canadian Criminal Justice*, published by the Solicitor General of Canada in 1979.)

The results of public opinion surveys carried out in the last decade are summarized below. The data may appear contradictory, but this is inevitable when poll data, which are superficial and can be misleading, are compared with the results of more in-depth surveys.

Concerns about Crime

When asked to select from a list, seven in ten Canadians rated crime and delinquency their second or third social concern, just after inflation and unemployment.

When asked to identify social problems without consulting a list, however, few persons mentioned crime and delinquency. In other surveys only one to three Canadians out of ten said they were fearful of being victimized by strangers or afraid to walk in their neighbourhoods at night.

Policing

Most Canadians felt very positive about the police, crediting them with positive personal and moral characteristics. While most people considered the police generally competent, they did not consider them as efficient in solving specific crimes. Those who had themselves been victims of crimes were the most critical, and many regretted having called the police because of the time and inconvenience involved in the prosecution of their case.

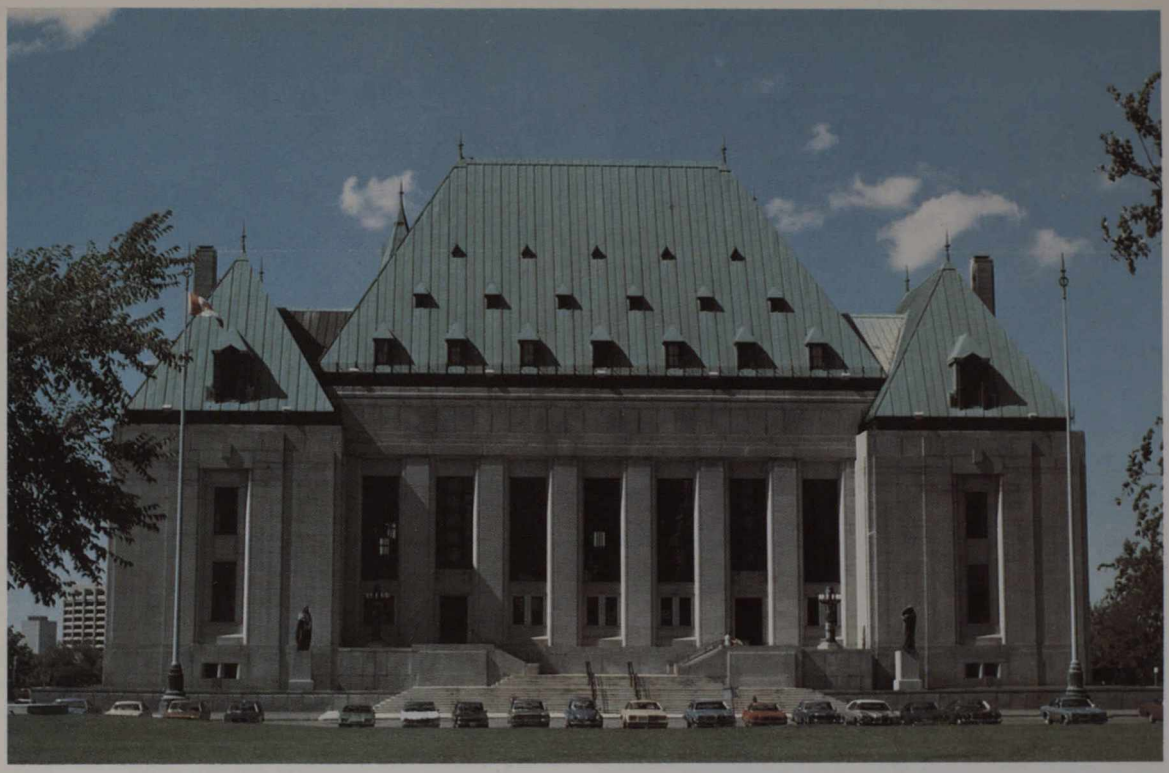
Sentencing Practices

Polls taken in 1966 showed that four in ten Canadians believed the courts did not deal harshly enough with criminals. Seven in ten held this opinion in 1979. The polls also indicated that the sentences Canadians believe to be appropriate are often very severe and are harsher than those actually handed down by the courts. In-depth studies, however, suggest that Canadians may be considerably more in agreement with present court practices than the more superficial polls indicate.

Aims of Sentencing

There is no clear agreement among Canadians about the preferred aim of sentencing or incarceration. A small majority, six in ten, said they personally favoured "rehabilitation," but thought that, in reality, the emphasis is on punishment. They seemed pessimistic about the impact of prisons, and many were critical of correctional measures designed to rehabilitate, particularly if they involved tools such as half-way houses, which would put "criminals" in residential communities.

PHOTO: NFB



The Supreme Court in Ottawa

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