

**CANADIAN ASSOCIATION OF LAW LIBRARIES**

**46<sup>TH</sup> ANNUAL CONVENTION**

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**MY VISION FOR A BETTER CANADA**

**SOME DAY SOON**

When Ms. Peta Bates kindly asked me to speak to you today, I began wondering what I might say. Then, she reminded me of the Conference theme: "The Sky's the Limit." That got me thinking about the many reforms needed to improve our antiquated civil and criminal justice systems. Unlike America, Australia, and England, books and periodical literature on these subjects are in short supply in most Canadian Law Libraries.

Dr. Martin Luther King phrased his desire for change in a speech he gave in Washington D.C. on 28 August 1963 using the memorable words: "I have a Dream."

I too have a dream. But it would be presumptuous of me to borrow his phrase. Rather, my hope is that "some day soon" the following recommended reforms and others will rejuvenate our criminal and civil justice systems. So, I will express my dreams for reform using those three words: "some day soon."

Most of the recommendations apply to every common law province. A few may not. It is difficult to be 100% certain because comparable Canadian information is hard to come by.

## **1. Constitutional Change**

Some day soon, these Constitutional events will happen:

- Canada will convene a Constitutional Assembly to replace our 1867 Constitution that still exists as a statute of the United Kingdom Parliament.
- This new Constitution will define with precision the separate but equal three branches of government: legislative, executive and judicial.
- The head of the executive branch will not be a member of the legislative branch.
- Power will reside with the people and not the executive head of government.
- Provinces will have as much authority as possible on the principle that the more power given to local governments the more loyal the local population is to the nation.
- In particular, provinces will have the exclusive right to enact and administer general criminal laws.

## **2. Reorganization of Canada's Appellate Courts**

Someday soon Canada's new Constitution will reorganize its appellate court structure in the following ways:

- The Supreme Court of Canada's jurisdiction will be changed from being a general appellate court to an appellate court that deals only with constitutional issues.
- Final appeals involving non-constitutional issues will be decided by five to seven person provincial appellate courts.
- The more populated provinces will have one or more intermediate appellate courts where judges sit in panels of three.

### **3. Reforming Canada's Trial Court Systems**

Some day soon, trial courts will modernize their case processing methods in the following ways:

- Trial courts will have the Individual Calendar System of Case Management giving them the tools to process cases in a timely fashion under a compulsory Case Schedule.
- Case Schedules will issue shortly after the filing of an action. They will contain the name of the judge who will manage and try the dispute, the dates for completion of all pre-trial matters and the date of the trial.
- Trial judges will be appointed randomly by computer.
- Trial courts will publish Case Disposition Standards for civil and criminal cases making them more accountable to the public.
- Trial judges will no longer write lengthy academic treatises for publication to satisfy appellate court demands.

### **4. Changing the Relationship between Trial Courts, Appellate Courts and Legislators**

To better serve the public, someday soon trial and appellate courts will develop a more mature relationship with one another and with Legislators:

- Appellate and trial court judges will meet regularly and openly with elected legislators to discuss and promote reforms for the civil and criminal legal systems.
- The judiciary will no longer be under the control of the executive branch.

- Appellate courts' excessive control over the trial court process will diminish significantly.
- Legislators and rule makers will rejuvenate the democratic system of trial by jury in criminal and civil cases using modern jury practices and techniques.
- Senior appellate courts in each province will produce a set of criminal and civil jury instructions that trial judges can use without concern over their validity.
- Appellate and trial court judges will meet together regularly for the purpose of developing necessary reforms for their civil and criminal justice systems.

## **5. Trial Court Governance**

In those provinces where trial court Chief Justices have autocratic control over the judges, someday soon:

- Legislators will return the court to the original common law relationship of a Chief Justice being first among equals.
- Through their restored freedom of self government, trial judges will then reacquire their complete judicial independence
- Trial judges will then reassume their responsibility for recommending necessary reforms from the way judges administer their courts to the way their courts administer justice.

## **6. Freeing Trial Courts from Executive and Legislative Branch's Interference**

Some day soon the provincial executive and legislative branches will agree that:

- Litigant's access to civil justice systems should not be restricted because of excessive governmental fees designed to discourage their access to justice.

- Civil justice rule making authority should be taken from the executive branch and given to the judicial branch.

## **7. Establishing Judicial Support Systems**

Some day soon, the provinces will establish:

- A Centre for Canadian Trial and Appellate Courts that will act as their resource centre, collect statistics and investigate and recommend systemic changes.
- A Canadian Law Institute that will restate the common law from time to time for the purpose of consistency and will also act as a Commission for Uniformity by drafting model Codes of civil and criminal procedure, etc.

## **8. Conclusion**

Some day soon these two important events will happen:

- Canada's judicial and political hierarchy will open their minds to systems and procedures in more progressive common law jurisdictions.
- Once all these changes are in place, other jurisdictions will soon begin viewing Canada's Constitution and its judicial systems as the gold standards for others to follow.

Some day soon.

John C. Bouck  
Supreme Court of British Columbia (Retired)  
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