A parent's self help guide

A guide to recording your own court hearing

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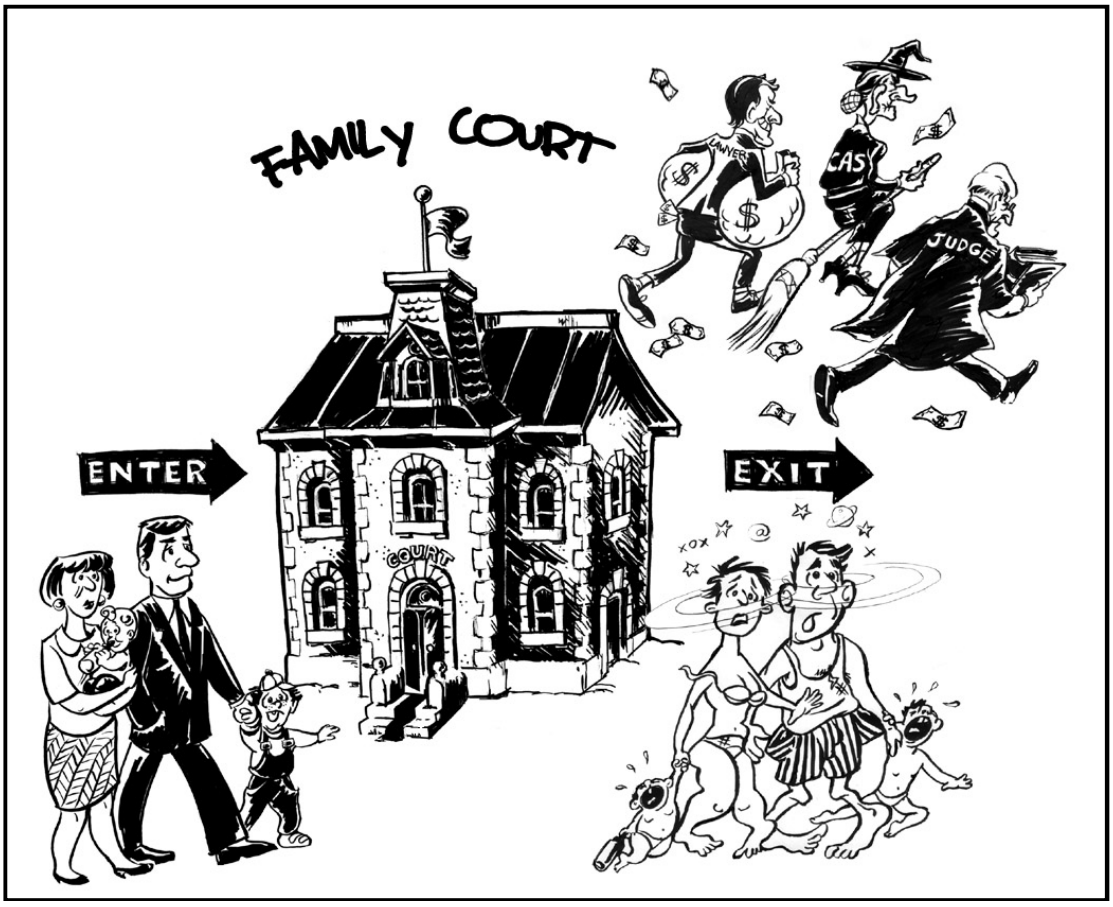
To survive the gauntlet of the legal and law enforcement system and to do your part to help make the system more accountable, the first thing you need to understand is what the criminal, family courts and the child welfare protection system is all about!



Don't let this happen to YOU!

Learn how to protect yourself from the criminal, child protection/family court racket by educating yourself and your children about how to FIGHT BACK!

A guide to recording your own court hearing in Ontario

By Mike March, Canadian Justice Advocate

Background

In recent years there have been a growing number of complaints from those attending courts about the lies, deceptions cover-ups and unlawful activities that are going on in family courts and inside court buildings. It is well recognized by many Canadians, including high ranking Canadian authorities and even some judges, that perjury in family court is rampant and that this crime often goes unpunished in family court. Ontario Justice, Mary Lou Benotto, once stated this before a public audience attending the Advocates Society conference in Nassau, Bahamas.

Malicious comments and lies are often made in the courtroom by judges, lawyers or their clients which ultimately causes a lot of harm to children and their families. Even some judges step over the line and make comments which are clearly biased, mean-spirited or have racial overtones. Some judges act in a manner or say things that are clearly unbecoming of their position as a judge. Family courts which involve child protection matters seem to be especially worse as they are generally closed hearings so the public rarely gets to witness what is really going on. Matters have become so bad that many citizens and even some lawyers are speaking in terms of outright corruption of the court system, including corruption by many of the judges.

In one case, a Toronto area lawyer reported that a Judge in the Ontario Court of Justice made remarks in court which had racial overtones, which were directed towards one of the racial minority groups in the Province. The lawyer was shocked that the judge would make such a comment. After the court hearing, the lawyer went to the court's administration office to order a copy of the court transcript. While the lawyer was ordering the court transcript other lawyers who were in the courtroom room at the time of the judge's comments, including opposing counsel, approached him and quietly warned the lawyer that it would be unwise for the lawyer to order this transcript and to pursue the matter any further. The lawyer was given the distinct impression to just leave this matter alone. The lawyers in the court knew that what the judge had said in court was wrong and if word of this got out to the ethnic community, that this would create problems for the judge. The lawyer went ahead and ordered the transcript anyway but the transcript took much longer than was normal. When the lawyer inquired with the court reporter as to why the transcripts were taking so long, the lawyer was told that the judge had to approve the transcripts before they were released. The lawyer did eventually get the transcripts but found that the racially motivated comments by the judge did not appear on the official transcript. The lawyer did not pursue matters further because the lawyer was fearful of the backlash by those in power at the court which would literally force the lawyer out of business. The lawyer's comments were to the effect that the lawyer would be "blackballed" and would likely not fare well with clients in that court again.

In another case, a parent from Burlington, Ontario reported that when he ordered court transcripts for his court hearing because of inappropriate comments made by the judge and the opposing counsel that two sets of transcripts from two separate days were lost by the court. Not one, but two sets! The court reporter said that she had been instructed to turn over her audio tapes of the court proceedings to the Attorney General's office which she did. While in the care of the Attorney General's Office of Ontario, the audio tapes mysteriously disappeared. The court reporter stated that for many years up until that time that it had been the practice of court reporters to keep their

own tape recordings and to be responsible for them. In the many years of her working as a court reporter, not one of her own court tapes had ever been replaced. According to the court reporter, it was only when the Attorney General's Office started to take the tapes from the reporters for central storage did this problems of "missing" tapes begin.

In yet another case, another parent, after ordering transcripts from an Ontario court and convinced that the transcripts had been altered, insisted that the audio tape recordings taken by the court reporter be listened to and compared against the accuracy of the transcript. The parent reported that during the meeting in which the audio tape was listened to, the tape ended but then suddenly a few seconds later started playing the same section of tape that was already heard previously. It was clear to the parent that the tape had actually been taped over a second time and that certain sections of the tape had been removed electronically during the editing process. The parent reported that when this discrepancy was brought to the attention of the court reporter, that the court worker clearly was embarrassed to see that the parent had discovered the alteration on the tape. The parent was told that a copy of the tape could not be given to anyone and the parent was promptly ordered out of the office where the meeting had occurred.

Recently, complaints have been heard about people entering court buildings being searched and told by court staff that it is illegal to bring a tape recorder into the court. Some court houses have even gone so far as to mislead people by posting signs at the entry to courtrooms which lead people to believe that audio recording is not allowed by anyone except by court staff. Most court security staff appear to be totally unaware of a party's right to electronically record their own court hearing and appear to have been told that it is illegal for anyone to bring recording devices into the court. In reality, there is no law banning this, only that members of the public cannot record when they are in the court. It is becoming the practice of more and more people these days to carry personal recording devices with them to record notes and memos. It is also recognized under Ontario's Courts of Justice Act that members of the press also have the right to record court proceedings for the purpose of supplementing their notes.

Enough stories have been reported in recent years, which raises many serious questions about the openness, accountability, reliability, accuracy of the current method of allowing court agents and the Attorney General's Department to totally control all aspects of record keeping in the court. Many Canadians, including some members of the legal profession feel that those citizens who are involved in the court system can no longer rely on the courts and the Attorney General's office to maintain an accurate and reliable record of what was said and done in the court. Complaints abound as well as to the costs of obtaining transcripts which raises questions as to the ability of the court system to provide this service to the public at a reasonable cost. Many Canadians, including members of the law society feel that judges should not have the authority to "approve" transcripts or to even be allowed to review transcripts before they are released.

This document, which first released in December of 2004 and has been edited a number of times since then, was written with a focus on helping people involved with the court system to understand their rights and to know how to record their own court proceedings. Citizens who audio record their own court hearing can significantly improve the chance of justice in the court. This document is based on provisions of the Ontario Courts of Justice Act of Ontario which gives parties in court the right to audio record their own court hearings. A copy of the Act has been attached to this document. The author of this document believes, as do many other Canadians, that the reasonable use of audio recording of court hearings by participants in court hearings will significantly improve openness and accountability and increase the public's trust in the administration of justice.

Using a recording device will increase accountability and ultimately Justice in the courtroom

One way in which you, as an individual can make all parties in the court more accountable and prevent the likelihood of court transcripts being altered is by recording your own court hearing using your own personal recording equipment. Another significant benefit in recording your own court hearing is that you can review the proceedings immediately after the court and can start preparing arguments for the next court whereas it may take a considerable amount of time to obtain hard copies of the official court transcripts. In Ontario, section 136(2)(b) of the Courts of Justice Act for Ontario gives every citizen of Ontario or their solicitor the right to audio record their own court hearing for the purposes of supplementing their notes. Persons in other provinces should check into the legislation relating to recording court proceedings, to see if similar legislation exists in their province.

If similar legislation does not exist in other jurisdictions outside of Ontario, citizens are urged to take political action to introduce legislation to enshrine such rights in the law.

Why the courts and the lawyers don't want you to record your court hearings

Not all judges and lawyers are against the use of personal electronic recorders in the courtroom. Some judges and lawyers have gone on the record as acknowledging the right of parties to record their own court hearings. Some judges have made orders to that effect. Although there are some learned and respectable judges and lawyers who readily allow individuals to record their own court hearings, unfortunately, there are too many judges and lawyers who will do everything within their power, including obstructing justice, to violate the rights of citizens to record their own court hearings. On September 14, 2010, one Ontario citizen, Mr. Mike Wheeler, from Chatham, Ontario was arrested for attempting to use a recording device to audio record his own court hearing. Attached in the appendix of this document is a copy of the charges laid against this man.

The reason why so many judges don't want parties to record their own court hearings is simple – recording devices make it virtually impossible for those involved in the court, especially judges and unethical lawyers, to alter official transcripts and in some cases even the actual recordings. Judges often make inappropriate comments in court which would not reflect favourably upon them if exposed to the public. Virtually all lawyers don't like recording equipment because it makes it too easy for any party to expose them when they are incompetent or acting unprofessional.

Another significant factor is that most lawyers have a fear that if they argue on your behalf to have the proceedings recorded with your own recording device, that the judge will view the lawyer as the person responsible for teaching the client about recording and the lawyers knows that judges don't want this. Because of this, many lawyers are fearful that they will get blackballed in court by the judge in the future and that they will lose their cases in the future. Just like many citizens, lawyers are afraid of their own legal system and the absolute power that judges have that can literally be used to put a lawyer out of business. This is why most lawyer will tell you no when it comes to recording with some going so far as to tell you that they will not be your lawyer if you insist that they argue the issue of recording in court. Honest and principled judges and lawyers who are confident of their work and who have nothing to hide should have no objection to you recording your own hearing.

Understanding your rights

Every person who appears before a court in the Province of Ontario has the right to record his/her own court hearing in an unobtrusive manner. The Law is quite clear. Under section 136(2)(b) of the Ontario Courts of Justice Act, citizens have the right to audio record their own court hearing. It reads:

"nothing prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22)."

Even child welfare protection courts which are generally closed to the public are must allow audio recording by a party or their solicitor. In the appendix of this document is a copy of Section 136 of the Courts of Justice Act.

The right for a party to audio record their own court hearing for the purpose of supplementing their notes was reaffirmed by the former Chief Justice W.G.C. Howland. After faithfully serving the people of Ontario for approximately 20 years as the Chief Justice of Ontario, in a bold and decisive decision on April 10, 1989, Chief Justice Howland issued a historic Practice Directive to all Ontario Courts which reaffirmed the right of the citizens of Ontario to audio record their own court hearing under Section 136(2)(b) of Ontario's Courts of Justice Act. In his directive to the courts in Ontario Justice Howland ordered, ***"Subject to any order made by the presiding judge as to non-publication of court proceedings, and to the right of the presiding judge to give such directions from time to time as he or she may see fit as to the manner in which an audio recording may be made at a court hearing pursuant to s. 146 [now s. 136] of the Courts of Justice Act, the unobtrusive use of a recording device from the body of the courtroom by a solicitor, a party acting in person, or a journalist for the sole purpose of supplementing or replacing handwritten notes may be considered as being approved <u>without an oral or written application to the presiding judge.</u>"***

Justice Howland's directive to his fellow jurists and to all court administrators was clearly intended to bolster the public's respect for the administration of Justice by promoting greater openness and transparency in the courts of Ontario.

This photo of W.G.C. Howland was taken sometime in the 1930's before he was called to the Ontario Bar in 1939. During his career Justice Howland strongly believed in transparency in the administration of Justice and was passionate about protecting the rights of the citizens of Ontario

No judge can act in any manner or make a ruling in his/her court which violates the law. The Courts of Justice Act is the Law and even judges must obey the law with their rulings. Should a judge act outside of the Law once presented the legal arguments before him/her, the judge would lose his/her jurisdiction in the court and has opened themselves up for a potential lawsuit. Making an error in judgement is one things but outright breaking the law is something totally different. Once it can be shown that a judge has maliciously and knowingly made an order which violates a

law, the judges loses his/her jurisdiction and can be sued for damages like anyone else. If a judge has to make a ruling based on legislation which is vague or not clearly defined, then the judge must make his/her ruling based on what the intent of the Legislation was and also to take into consideration the Principals of Fundamental Justice. Fairness and Justice must be allowed to prevail in court and all decisions must support the advancement of Justice. Allowing a person or their solicitor to record the court proceedings for the purpose of supplementing their notes, is clearly promoting the concept of procedural fairness, which would be in accordance with the Principles of Fundamental Justice. Even Ontario's former Attorney General, Michael Bryant, has called for more transparency in the courts.

Although this document has been written specifically in reference to Ontario's Courts of Justice ACT, the principles of recording in the courts may be successfully argued before any court, in any jurisdiction, provided enough research is obtained to support arguments before the court. The Principals of fundamental Justice must be reflected in every decision by each and every judge. Recording a hearing for the purpose of supplementing a party's notes can and should be argued as a tool which promotes justice by allowing people to be able to manage their court matters more effectively.

Recording case conferences and settlement conferences

Recording case conferences and settlement conferences should be given slightly different consideration. You can choose to be a bit more flexible in these proceedings, depending on how strongly you want to stand up for your rights and for the principles of Justice.

Technically, **anytime** that you are before a judge or a Justice of the Peace where **arguments** are being presented to the Judge or the Justice of the Peace and where the judge is listening to the arguments from the parties for the **purpose of making an Order**, you are technically in what is called a "***court hearing***" and the Courts of Justice Act should prevail.

However, a conference is technically not a "court hearing" and although the parties generally go into a courtroom to conduct their conference, technically the room is not a "courtroom" and is therefore just a room in a public building.

A conference is nothing but a meeting held in private but technically becomes a "court hearing" as soon as the judge listens to any sort of argument for the purpose of making a court order within the conference. The same rights to record your hearings as allowed under the Courts of Justice Act can apply to case conferences and settlement conferences as well. The Courts of Justice Act refers to recording your own court "hearing" without being specific to a public hearing or a private hearing.

The significant difference between a "hearing" in a regular court and a "hearing" before a judge in a case conference or settlement conference is that in a case conference or settlement conference, the judge cannot make an Order in regards to any of the major issues that are before the court. Court orders relating to issues before the court must be given in an open, public court. Remember, the main purpose of a conference is to intimidate the parties involved to settle matters without the court having to issue an Order.

Often court clerks and staff will tell you that case conferences and settlement conferences are not courts in an attempt to mislead you to think that the regular laws which apply to the open courts do not apply in these "conferences". They may also try to tell you that they want to promote confidentiality so that parties will negotiate in better faith. This is all a bunch of hogwash of course

to make you believe what they want you to believe so that you will not record the conference. Anytime you are before a judge and the judge is in a position to make an order, you are in a court hearing, so don't be fooled into thinking otherwise. If workers try to block you or if the judge refuses to allow you to record your hearing, then follow the same complaint process described later in this document for open courts.

At most case conferences, there are court reporters. Anyplace where there is a court reporter to record proceedings, then you should have the right to record your hearing for the purpose of supplementing your notes. Waiving your rights to record the conference it usually one of first opportunities you have to play "chicken" with those in court. If you blink first by giving up your rights to record, then you have sent the message that you will back down in the future when confronted. If on the other hand, you draw the battle lines early at a case conference stage of the game, then those in the system will know that they are up against a determined adversary who will insist on his/her rights.

If you want to catch the court off guard about you recording the conference and to set the stage for it to be acknowledged that the conference is a form of a hearing just ask the following questions to the judge at the beginning before you state that you are going to record the proceedings:

1) ***Your honour, is it possible that any court orders might come as a result of arguments heard at this proceeding today?*** The judge will have to say yes to this question because he/she knows that court orders can come from a conference hearing.

2) ***Your honour, if the possibility exists for you to make an Order, will you be allowing arguments from the parties about the issues?*** The judge would have to acknowledge that he/she will allow arguments.

At this point you have got the court to acknowledge that arguments can be heard and that a court Order could be issued. Then you state to the court:

"Your honour, seeing as you have acknowledged that the potential exists that you might issue an order from these proceedings and that you have acknowledged that parties will have the opportunity to present arguments before you. I would therefore state that this court hearing, although it may be called a "conference" is technically a court hearing with the only difference in that it is being conducted in the absence of members of the public. I would therefore argue that my rights to record my court proceedings as granted under the Courts of Justice Act apply to these proceedings as well and I am insisting that the my legal rights under the Courts of Justice Act be respected by this court."

Don't let court workers get you into a debate before the judge comes into the court. Court workers will try to get you to back down so that the judge will not be put on the spot. ONLY the judge has the authority to listen to this argument and if the judge refuses to allow you to record, you have the grounds for a judicial complaint and they know it.

Don't let your lawyer convince you to waive your rights about using a recording device to maintain accurate notes

When it comes to recording your own proceedings in the court, one of the last people you should put total faith in, is any lawyer, sometimes even your own! Your own lawyer may try to tell you not to record your hearings, because the judge won't like it. If your lawyer advises you in this manner it is the first sign that your lawyer does not know the Courts of Justice Act very well and/or

may be very well afraid of having himself/herself recorded in the court. As far as the judges disliking recordings, your lawyer is definitely right about that. Most judges definitely don't like it for reasons previously explained. Your lawyer may go so far as to try to put pressure on you to not record your hearings and he/she may even threaten to drop you as a client. But if you want to do what is the best interest of you and your children, you should demand accountability and refuse to yield to these types of threats and intimidation, even if they come from your lawyer. The recording your court proceedings will help to ensure maximum accountability b all participants of the Court.

When your lawyer tells you that it is not a good idea to tape record in court, this is your lawyer's way of trying to intimidate you not to exercise your rights. The lawyer may be more concerned about the judge getting upset at the lawyer because the court likes the lawyers to have control over their clients without it making look like it is the court that is the one violating people's rights under the law. Remember, most lawyers want to support the system and by keeping the judge as unaccountable as possible and by keeping tape recordings out of the court, this is one way of protecting the judges and lawyers.

Always insist that audio taping be done and if you have a lawyer, insist that your lawyer argue this before the court. An honest, ethical and competent judge should have no objections to you tape recording your court matter and an honest, competent and confident lawyer should have no problems in following your instructions to argue for your right to tape record your court.

Attached to this article is a sample letter that you might use to send to your lawyer in regards to your instructions to the lawyer for audio recording in your hearings. This should be used if your lawyer give initial indications that he/she is not willing to support your legal rights to audio record your court hearings.

Equipment to use

Section 136(2)(b) of the Courts of Justice Act states that audio recording in the court by the parties must be done unobtrusively. To minimize the possibility of the court rejecting your right to record your proceeding for this reason, keep your audio recording equipment small and simple.

Ideally, the recording equipment should be small and simple to set up and operate between recesses in the court without having to interrupt the court to change batteries or recording media. Although the old style pocket tape recorders can serve this purpose, old style tapes generally only last up to 30 minutes to one hour per side before the tape has to be changed over. Most of the newer digital recording equipment offers many advantages over tape technology. Digital equipment has indexing and times recorded so it is very easy to find specific portions of recordings. Digital recording equipment is also silent.

Digital audio recording devices similar to the one shown to the left will produce high quality recordings when used for either room or telephone conversations. Most of the digital audio recording devices can record for many hours without having to change batteries. Recorders like this can record an entire day's proceedings without any disturbance to the court. These types of digital recorders are also good for use in recording meetings with lawyers, social workers or when your children meet with workers at your home. During multi-day trials, the recorder memory must be emptied to allow more recordings. It is advisable to purchase a recorder with a built in USB download port to allow instant transfer of files into a home computer.

Shown BELOW is the Zoom H2 professional recording device. While more expensive, this device is excellent for recording in the court as it allows installation of separate microphones and yields professional quality recording.

When you do go into court with the intent of recording your hearing, you must be prepared to present your arguments. If you are in an Ontario court, you should have a copy of the Courts of Justice Act, ready to show the judge and a copy of the Practice Directive of Justice Howland. When using recording equipment, one should use a good quality recording device and a professional quality microphone that will effectively pick up the voices in the room. The recorder can be positioned in the front of the court, in an area where the court reporter takes notes. Try to place the microphone up high so that it is in the line of sight of all those who will be speaking before the court. The recording equipment should be located so that it can be operated with the least amount of distraction for the court. The court should not have to be interrupted by changing of tapes or the repositioning of equipment, while the court is in session.

The bottom line is that when all parties know that you have your own recording, there will be a greater sense of accountability by what all parties say in court.

Be prepared for court security staff

If you are attending a hearing where there may be court security guards at the entrance to the court building, you may find that security officers may try to stop you from taking your recording device into court. While security staff are required to uphold the law, most of these security officers know nothing about the Courts of Justice Act and have been misled by their superiors into believing that recording in the court building or in hearings is not allowed. Unfortunately, many of these security officers have been misinformed by their superiors who toe the line at the "off the record" instructions from judges behind closed doors to keep recording devices out of the court building. Remember, that court buildings are public buildings and as long as you are not violating the law or putting people at risk, then you are allowed to bring whatever reasonable and unobtrusive equipment you wish into the building.

If you are challenged at any time by security officers, then politely ask them if they are familiar with the courts of Justice Act and ask them if there are aware that court participants have the right to record their hearing. **Have your copy of the Courts Of Justice Act with you to show them and also have a copy of the Practice Direction by Chief Justice of Ontario, W.G. C. Howland dated April 10, 1989.** In most cases, simply by telling them that you plan to tape record your hearing and show them that you have the right to do so will end resistance by security staff. However, some security staff members may get aggressive when you try to inform them of your rights and may try to abuse their power and authority by intimidating or threatening you. After showing them your copy of the Courts of Justice Act and the Direction of Practice by Chief Justice Howland, then ask them to show what written instructions they have which say they are to keep people from bringing recorders into the court. Also give to them the brochure, **"Recording your court hearing is your right in Ontario"** and advise them that as officers of the court, they are obligated to respect the laws of Ontario.

Be sure to note what they say to you and get their badge numbers. If they refuse to allow you to pass with your recorder then simply ask them to summons their supervisor and then discuss the issue with the supervisor present. Have a copy of the Courts of Justice Act ready to show to the supervisor and a copy of the Court Watch Article about Justice Czutrin of the Hamilton Court as well as the brochure, **"Recording your court hearing is your right in Ontario."** If the Supervisor refuses to let you pass then signal to one of your witnesses to come to your side and then ask the supervisor to take you to his/her superior. Be sure not to go alone but take your witness with you. Never go alone with court security as some citizens have reported being verbally assaulted and physically roughed up by court security staff once behind closed doors at the courthouse. In some cases it has been reported that court security officers have claimed that they were assaulted and have turned around to lay charges. It's all part of the thug mentality with police officers at some of the courthouses.

Note: In situations where you will have to pass through security at the entrance to the court building with a recording device in your presence, it is always advisable to have a support person(s) with you a short distance wither in front or behind you who does not appear to be travelling with you. The support person(s) can act as witnesses should security guards try to intimidate or harass you at the entrance to the court. Security officers who get pushy with the public for no reason should be fired and between you and your witness, you may very well be able to embarrass the court and get some of these rude and ignorant court security officers fired or severely reprimanded for their unlawful actions.

Don't be fooled by those misleading signs posted at the court building regarding recording in the court

Some courts have become so paranoid about people recording what goes on inside of the courtroom and in the court building, that some courts have gone so far as to post misleading signs at the entry to the court buildings or courtrooms which are worded in such as way as to mislead people to believing that NO persons are allowed to record proceedings in the courtroom. As this document points out, persons do have the right in some Jurisdictions such as Ontario, to audio record their own court hearing. Members of the media also have the right under law to bring recorders into the court for the purposes of supplementing their notes. So don't be fooled by these signs and be prepared to complain about them if you see them posted at any court building. If you see any signs posted you should sent a complaint to the Attorney General's office, your MPP and also send a copy to Canada Court Watch. Canada Court Watch will also send a letter out to the Attorney General's Office and to the MPPs if a formal complaint is lodged with them from a citizen.

Don't be fooled by court clerks to giving up your rights!

Another barrier that you will encounter will be the court staff such as the court clerks, court recorders and court officers. These are the persons who generally sit at the front of the court to record proceedings or to assist the judge. There is usually one person with suit with a Province of Ontario markings who will be seen sitting at the side of the court or going into and out of the court. Many times if these staff persons see you bring your recording device out, they will tall you to put it away and tell you that this is not allowed. Unfortunately, these court staff people don't even know the law and don't know your rights. They have been taught by their superiors to tell people that they cannot record in the court without their superiors ever telling them of your legal rights under the law. Always remember that court staff have no authority in the courts to tell you to do anything in the public courtroom. Legally, they have no more authority to tell you what to do than another citizen off the street.

Only a judge has authority as to what you can do and cannot do in the courtroom and even then the judge must remain within the law and respect the rights of citizens under the law. If challenged by any of the staff in the courtroom then simply advise them that you have the right to record your hearing under the Courts of Justice Act and give them one of the brochures published by Canada Court Watch called "Recording Your Court Hearing is your Right in Ontario". Tell the worker that you are willing to argue the issue with the judge when he or she arrives in the courtroom. At that point, staff are likely to back off and go back to report to the judge. Staff are not used to being challenged and in most cases are just trained to bully people around. Unfortunately, too many of these staff people forget that they are public servants and are supposed to be serving the citizens of Ontario, not acting as private informers and thugs for the judge by taking an adversarial role against the citizens.

Don't bring up the issue of recording in the court unless you are challenged

When you go to the front of the court at the start of your hearing, just simply take out your recording device, quickly turn it on so that it will begin to record immediately and then place it on the front of the table where you or your solicitor may be seated. If you have a recording device you

may chose to keep it out of sight and record your court proceedings covertly. Remember, the law says that the recording one's own court hearing must be done in an unobtrusive manner, so simply do it in this manner.

If you decide to place the recording device exposed on the table, do not ask or inform anyone. Remember, this is your **right** under the law and the law states that you must record unobtrusively. It is important that you turn the recording device on right away so that you can record anything that may be said in the court by the judge or any other lawyers during your hearing about the recording device. If there are any objections to you using your recording device, then it is import to record who it is who first makes objections about your recording device and also if the judge orders you to turn it off. If anyone objects you should just simply say that you are exercising your rights under the Courts of Justice Act section 136(2)(b) which gives participants the right to record their own court hearing. Once you say this, then nobody should object any further. If they do, then be prepared to argue your case before the court.

Using a hidden recording device as back up

Some citizens have reported that they have taken two recording devices into the court. They hide one recording device on their person which is recording while they bring out their other recording device to put in front of the court. In the event that the open recording device is seized by the court, then the hidden recording device will capture all of the action to support a complaint to the authorities. While some may claim that this is illegal, on the other side of the argument one must ask themselves what is one supposed to do when the authorities themselves refuse to respect your rights and refuse to obey the law themselves. In such a case an individual's personal conscience must be his/her guide. The great social rights advocate, Dr. Martin Luther King gave this advice to his fellow citizens fighting for their rights and freedoms:

> ***I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law.***
> ***- Martin Luther King Jr. -***

Understanding the legal arguments about recording for use in court

Remember that the right to record your own court hearing for the purpose of supplementing your notes applies to all courts including criminal, family and civil court. In order successfully argue your right to audio recording your court hearing, you must be prepared to argue for your right to do so. You must have a copy of Section 136 of the Courts of Justice Act with you and you should fully understand and be familiar with the wording of the legislation. If you are in family court, then bring in the Ontario Family Law Rules which cover the "Primary Objective" of the rules. The only reason you are allowed to record is for the purposes of supplementing your notes, so therefore this intent must be clearly stated to the court and that this is your main reason for wanting to record the hearing. An example presentation is outlined below.

Whatever you do, **do not** ask for the court's permission to record your hearing because when you ask for permission, you have in effect, surrendered your rights under legislation and transferred jurisdiction to the judge based on his/her discretion. If the judge tells you that he/she does not give you permission to record then you must accept the judge's decision because by asking for the

judge's permission beforehand, you have left the decision up to the judge. Always indicate to the court that you are **exercising your right under the Law**. If the judge does not want you to record the hearing and violates your rights, then ask the judge on the record to explain why he/she is refusing to allow you to exercise your clearly legislated rights under the Law.

Example presentation by self represented litigant

Your honour, I would like to inform the court that I would like to exercise my right as outlined under section 136 of the Courts of Justice Act to record these court proceedings using my own recording equipment for the purposes of supplementing my notes. I find it very difficult, if not impossible at times, to be able to write notes and to still focus on what is being said in the court at the same time. I have my own personal recorder here with me here (show the court the recorder) and would like to position it at the front of the court near the court reporter where it will reasonably pick up audio conversations of these proceedings. It will not take any more than about one minute to position my recorder in the court. I have a copy of the Courts of Justice Act with me, if your honour would like to confirm view the applicable section of the act. (Hold the Court of Justice Act in your hand to show the judge) In addition to this your honour, I would like to read a Practice Directive issued by the Chief Justice of Ontario to the courts on the issue of recording which clearly demonstrates that I am automatically permitted to record my own court proceedings." **(At this point begin to read the practice directive of Justice Howland below)**

Recording of court proceedings by a solicitor, a party acting in person or a journalist

Subject to any order made by the presiding judge, as to non-publication of court proceedings, and to the rights of the presiding judge to give direction from time to time as he or she may see fit as to the manner in which an audio recording may be made at a court hearing pursuant to s. 146 [now s. 136] of the Courts of Justice Act, the unobtrusive use of a recording device from the body of the courtroom by a solicitor, a party acting in person, or a journalist for the sole purpose of supplementing or replacing handwritten notes may be considered as being approved without an oral or written application to the presiding judge.

After reading the above from the practice direction, continue on, ***"Clearly, your honour, the practice directive from Chief Justice Howland which I just read shows that I should be permitted the use of a recording device without having to make oral or written arguments this issue before the court. I have a copy of this for your honour and opposing counsel to read if you will kindly permit. (Have copy of Practice Direction from Justice Howland ready to pass to judge and to opposing counsel. If judge agrees to accept the document then give a copy to judge and to opposing counsel)***

The judge may try to stop you from speaking to keep your argument off the official record, but tell the judge that this issue is important and that it will only take less than a minute to finish reading it into the record. If the judge still cuts you off and orders you to stop speaking, then tell the judge,

"Your honour, may I pass a copy of the practice direction from Justice Howland to you for you to read?"

Depending on which direction matters go, at this point the judge may still possibly attempt to argue the issue of recording with you although a wise judge should yield at this point. Remember that judges do not want what they say to appear on the official court record so they will try to avoid arguments. The Practice Direction of former Chief Justice Howland makes this quite clear and will open the judge up for a judicial complaint if he violates the common sense Practice Direction of Justice Howland. That is why the judge will likely try to cut you off and prevent your statements from going on the court record. By showing the judge a copy of the practice direction issued by former Chief Justice Howland, you should not face any further opposition by the court. If you do still meet further resistance by the judge after the judge has been informed, the judge is breaking the law and violating your rights under the law! But be ready to continue arguing if this is what the judge seems to want to do and use the points below to argue your case.

Remember, court officials, including the judge, generally do not want recorders in the court and will attempt to challenge you at every possible opportunity to get you to back down from recording. You must however, remain firm and be ready to argue the following additional points during your arguments. Be sure to keep this list of arguments with you and be prepared to deflect any argument that will be presented against you in court. The judge only needs one argument which you do not respond to which the judge will use against you to justify his/her decision to keep you from recording in the court. So carefully review the list of arguments and be prepared to argue any argument that may be thrown in your way. You can be sure many arguments will be used against you. Arguments you may need to use include:

1) That you find it difficult to follow and keep notes of the proceedings and that tape recording will allow you to supplement your notes without distracting your attention from court matters. That listening to the tapes at the end of the day as a way to supplement your notes, that this will help you to respond and to prepare materials for the next court appearance.

2) That you will not be using your recording in any other official manner other than to supplement your own notes in the court. That the tape recording will not be given to anyone who is not a party to the proceedings.

3) That other judges have permitted recording in the family court. Refer as just one example to the Court Watch Report regarding Justice Czutrin of the Hamilton Court who admitted he had erred in blocking a parent's right to tape record. Have a copy of this document to give to the court. If you have any other documents or letters which support tape recording in the court, then have them ready to show in addition.

4) That recording your court proceeding will help you to supplement your notes in a cost effective and timely fashion and allow you to better protect your legal rights and those of your children. Tape recording in the court will make justice affordable in your specific case.

5) That you have heard that lawyers or parties representing themselves in court often present oral evidence to the court which goes beyond the materials served upon the court, so sometimes the only record of addition evidence being brought before the court would be what was recorded. Having a recording of any additional material brought before the court will allow you to quickly recall materials not found in the court documents.

6) That Ontario Justice Mary Lou Benotto has reported that perjury is rampant in family court and that supplementing your notes with a recorder will help you to identify any perjured evidence which may be brought before the court. **[have a copy of her speech which is attached to this document available for the court]**

7) That having to purchase transcripts will be burdensome and that the recording will help direct you which portion of the day's proceedings would be helpful to your case which would allow you to narrow down the portions of transcripts that would be most helpful.

8) That obtaining transcripts can take a long time and create delays which will make it more difficult for you to review information while it is fresh in your mind and that anything which delays the process of justice is contrary to the administration of Justice **[have a copy of the exhibit letter in which a citizen of Ontario was complaining to the Attorney General of Ontario about the length of time it was taking to get the transcripts]**

9) That it was clearly the intent of legislation to allow citizens to record their own court proceedings and that it would be a violation of the intent of legislation and the Principles of Fundamental Justice to deny a person the right to record. That the Attorney General of Ontario has expressed his concern that the justice system be as transparent and accessible as possible. Tape recording will help ensure transparency and allow you better access to justice by giving you quicker access to information. **[have the exhibit newspaper article about the Attorney General wanting fewer barriers between courts, media]**

10) That you would be willing to share your recording with any other party by providing a copy of the recording to the opposing parties as soon as you can arrange to have a copy made.

11) That you have heard that in some other court cases that court transcripts have been lost or accidentally destroyed by officials with the court system and that by keeping a recording of the hearings will help to ensure that you have some record of the day's events to refresh your memory or to support what witnesses in the room may recall of the proceedings.

12) That you understand that the purpose of audio recording is to supplement your notes only and that the tape recordings will be strictly for your own use and that you understand that your tape recording cannot be used in lieu of official court transcripts.

13) That recording of the proceedings promotes the "primary objective" of the family law rules specifically in that:

    a) It will save time and expense of the party

    b) It will save time and expense for the court by eliminating the need for transcripts and the time it will take for transcripts to be prepared.

    c) Will promote fairness by allowing the party to accurately review what was said in court at the end of the day, while other facts are still fresh.

If you have a lawyer representing you in court, then you can instruct your lawyer to inform the court of your intention to record the court in a similar manner as you would argue yourself. Be prepared for some resistance from your lawyer because few lawyers want recorders in the court. Recorders make the judges and the lawyers very nervous and rightfully so. If your lawyer refuses to argue your right to record your hearings, then you should consider firing him/her.

Example presentation by a lawyer representing a litigant

Your honour, my client has instructed me to inform the court that (he/she) would like to exercise (his/her) right as outlined under section 136 of the Courts of Justice Act to record these court proceedings using (his/her) own recording equipment for the purposes of supplementing (his/her) notes. My client has indicated that (he/she) finds it difficult, if not impossible to be able to write notes and to keep up with what is being said in the court at the same time. My client has (his/her) personal recorder with (him/her) today which I have here (lawyer should show the judge the recorder) and my client would like to position (his/her) recorder at the front of the court, near the court reporter where it will reasonably pick up audio conversations of these proceedings. It should not take any more than about one minute to position and set up the recorder in the court. My client has provided me with the applicable section of the Courts of Justice Act, if your honour would like to review the applicable legislation. (The lawyer should hold the Court of Justice Act in his/her hand so that it is visible to the judge and be ready to pass it to the judge upon request) In addition to this your honour, I have also have a Practice Directive from Chief Justice Howland which also shows that my client is automatically permitted the use of a recording device without having to argue this issue before the court. (Have copy of Practice Direction from Justice Howland ready to pass to judge)

Again, the lawyer must be prepared to use the same additional arguments (1 - 6) as listed previously for self represented litigants.

The only aspect of the wording of the Courts of Justice Act that the judge or the lawyers may try to use against your argument is the wording in the Act which states, "in the manner that has been approved by the judge". If you read this clause in the Act very carefully, at no time does not give the Judge the discretion to stop you from recording your hearing.

In fact the Practice Direction of former Chief Justice of Ontario, William Goldwin Carrington (W.G.) Howland (born March 17, 1915; died May 13, 1994) makes it clear that the issue of audio recording one's own court hearing should not have to be argued. This clause only gives the Judge the discretion to approve the manner in which the recording can be done. The judge must, therefore, allow recording in some form as long as it is unobtrusive. If the judge tries to put some conditions as to the manner of how the tape recording is conducted, which in effect make the recording useless, then again, you must argue that having restrictions placed on the recording have the effect of rendering it of limited use in supplementing your notes, and therefore not in accordance with the intent of legislation or the Principles of Fundamental Justice.

If the judge or the lawyers in the court keep using this argument then bring copies of pages from various dictionaries with you into the court and be prepared to show the judge. Some definitions from dictionaries are as follows:

Definition of the word "manner" found in various dictionaries

1. a way of doing or being (from the Collins Concise Dictionary)
2. **noun 1** a way in which something is done or happens. (Oxford English Dictionary)
3. Mode of action; way of performing or effecting anything; method; style; form; fashion. (Webster's dictionary)

4. A way of doing something or the way in which a thing is done or happens. See Synonyms at method. (American Heritage Dictionary)

You may explain to the judge that legislation was written at a time before the appearance of modern day recording devices and that at one time, bringing in a bulky tape recorder to the courtroom could be a very cumbersome situation involving wires and reel to reel tapes. With the appearance of miniature recorders, it is clear that recording can be done easily and unobtrusively and therefore not require any approval by a judge as to the "manner" in which the recording is to be done.

This is an example of a typical tape recording device that was considered as state of the art at the time that Section 136 of the Courts of Justice Act was made law. Tape recorders at that time were heavy, bulky, required a table to sit on and line voltage electrical cords in order to operate. This is why judges needed some discretion as to "manner" as to where equipment was to be placed in the courtroom so that it would not create a physical obstruction in the courtroom.

When section 136 of Ontario's Courts of Justice Act was made law, tape recorders were bulky and heavy as shown in the photo. Tape recording equipment at that time required bulky microphone and power cords and in most cases had to be wheeled into a room on a table with wheels and require a person to operate the equipment. For these reasons, judges were given the discretion in the Act as to "the manner" in which recording was done to allow them to decide as to where to locate equipment in the room so as to not interfere with the court hearing. Electronic recording equipment today is small and silent and requires no operator and therefore the "manner" in which the recording is done in the court, no longer relevant.

If the judge still says no to your rights under the law, then you or your lawyer MUST state to the judge, **"for the record your honour, could you provide me with a written ruling on this matter and your reasons for not allowing recording"**. You must ask the judge to put his/her ruling on the court record so that you now have proof of the judge violating the law. Once you have this in writing, then you can use this to go public. By asking the judge to put their reasons on the record and to make a ruling, this forces the judge to put their decision on the court record as to why he/she is refusing to allow you to exercise your rights to record your hearing. Rulings are also made available immediately at the end of the court. A copy of this ruling should be obtained immediately after the court. Armed with the judge's written ruling and a copy of the Courts of Justice Act, a person has the evidence for a damning complaint letter about the judge and a possible appeal of the case. It can be also argued that by denying a person the ability to obtain accurate notes of a court proceeding, in effect is denying the person the ability to argue their matter before the court in the most effective manner.

If the judge denies putting his/her ruling in writing, then you must be ready to file a judicial complaint against the judge and to go public with your complaint.

Additional supporting information from the Ontario family law rules

While Ontario's Courts of Justice Act applies to all the courts, Family Court Rules have been developed for Ontario which are intended to help family courts run smoothly. If you are in family court there is a section of the rules which adds yet another argument to favour audio recording in the courts.

Clause 2 (2) (3) (4) of the family law Rules describes what is referred to as the "Primary Objective", "Dealing with cases Justly" and "Duty to promote the Primary OBJECTIVE). Below is a copy of this section from the family law rules which is current at the time of the publication of this document.

Under the Primary Objective of the Rules 2(2), the rules of the court **must** be applied to ensure that cases are dealt with justly with (a) to (d) being some of the criteria under the term "justly." Clause 2. (4) clearly states that the court IS REQUIRED to apply the rules in order to promote the "Primary Objective." Audio recording in court can be further supported by referencing (a) and (b).

Under (a) it can be argued that audio recording in court promotes fairness by allowing a party to more accurately take notes in court and to allow the party to review the notes from the court at the end of the day while recollection of events in the court is fresh.

Below is a copy of the Primary Objective from Ontario's family law rules.

PRIMARY OBJECTIVE

2. (2) The primary objective of these rules is to enable the court to deal with cases justly. O. Reg. 114/99, r. 2 (2).

DEALING WITH CASES JUSTLY

2. (3) Dealing with a case justly includes,

(a) ensuring that the procedure is fair to all parties;

(b) saving expense and time;

(c) dealing with the case in ways that are appropriate to its importance and complexity; and

(d) giving appropriate court resources to the case while taking account of the need to give resources to other cases. O. Reg. 114/99, r. 2 (3).

DUTY TO PROMOTE PRIMARY OBJECTIVE

2. (4) The court is required to apply these rules to promote the primary objective, and parties and their lawyers are required to help the court to promote the primary objective. O. Reg. 114/99, r. 2 (4).

Under 2.(b) it can be argued that recording in court saves time and expense because of the following:

a) That audio recording allows the party to review accurate notes of the hearing as soon as he/she gets home that day which saves time.

b) That audio recording saves the court's time because the party does not need to order transcripts which can take weeks if not months to obtain from the court reporter.

c) That audio recording saves expense again because transcripts will not be needed by the party (except for an appeal) thus saving expenses of the court.

d) That audio recording will save expenses because the party will not have to order very expensive transcripts which many are unable to afford.

Argument that Practice Direction of Justice Howland is no longer applicable in Ontario's family courts

Some family court judges may try to argue that under Ontario's Family Law Rules that the Practice Directive of Justice Howland is no longer applicable. This argument holds no weight although some sections of the Family Law Rules may seem to suggest this.

While it is true that the Family Court Rules were introduced after Justice Howland's Practice Directive in 1989, the introduction of the Family Law Rules should not overrule the underlying principle of justice that Justice Howland's Practice Directive relied upon which was to ensure fairness in the court. Even without the use of Justice Howland's Practice Directive, it can be argued that even the current Family Law Rules clearly support the same principle of justice which is to support fairness in the court and to save time and expense. In reality, Justice Howland's Practice Direction was nothing more than a clarification of a principle which has always existed in law and still exists today – the issue of fairness which is part of what is referred to as natural justice.

1.0 MATTERS NOT COVERED IN RULES

1.(7) If these rules do not cover a matter adequately, the court may give directions, and the practice shall be decided by analogy to these rules, by reference to the *Courts of Justice Act* and the Act governing the case and, if the court considers it appropriate, by reference to the Rules of Civil Procedure. O. Reg. 114/99, r. 1 (7).

OLD PRACTICE DIRECTIONS, ETC.

1. (12) Practice directions, notices, memoranda and guides that were issued before these rules take effect no longer apply. O. Reg. 114/99, r. 1 (12).

Getting the other side on board with recording with you <u>might</u> make things easier

In most cases, when arguments arise in court, they will usually come from the opposing lawyer who will claim to represent his/her client's wishes. In general, most lawyers don't want what they say in court to be recorded. If you are able to reasonably communicate directly with the opposing side then ask them if they would like to have a recording of the hearings. If you can get the opposing side to agree to this, then this makes it even that much more difficult for the judge to oppose the request as both sides are in agreement on this issue. Judges will rarely oppose the position of both sides if they are in agreement on some issue. Remember, however, that the opposing lawyer will not likely want the court hearings recorded, and they may not inform their client of the actual reason why they are opposed to having the proceedings recorded. The lawyer may go so far as to convince his/her client that they should take a position against recording. If you think the other party might be agreeable to taping but his/her lawyer is not, then you may have to approach the other side directly and bypass his/her lawyer. In reality, tape recording the court hearing is of benefit to both sides by helping ensure that the judge and the lawyers act more professionally. Tape

recording captures the tone of the discussions and arguments in court, something which written transcripts can never achieve.

Notify opposing counsel ahead of time of your intent to record your court proceeding

Another way in which to strengthen your argument before the court (or lessen arguments against you) would be to send out a letter to the opposing lawyer prior to any court proceedings, advising them that you intend to record the court proceedings as it is your right under the Courts of Justice Act. You can ask for their position on this matter.

Most lawyers will argue against recording in court but are likely to be uneasy if they have to state their position in writing outside of the court. Lawyers know that if you get them on the record as being opposed to recording, that their own words may be used against them later. In some cases, their opposition to recording may even cause them to lose clients in the future. Attached to this document is a sample letter which may be of use to you. This letter will notify the opposing lawyer of your intent. Be sure to send the letter by fax so that you will have a receipt of your transmission. If you do notify the opposing lawyer of your intent then you should also advise them to bring their own recording device as well for their client's notes.

Under some circumstances, you may not wish to inform the opposing lawyer ahead of time of your intent to record in court as this will give the opposing lawyer a chance to inform the judge behind the scenes of your intentions and to give them a chance to prepare to fight you when you show up in court. Instead, you may prefer to catch both the lawyer and the judge off guard which could result in them making some ridiculous oral arguments in an attempt to keep you from recording in court. When you have witnesses in the court, some of them may hear and write down some of the priceless comments made by the lawyer or the judge which of course can be used as the basis of a complaint later or possibly the grounds for an appeal. You should decide which approach is best suited for your particular case.

Having witnesses in court will add influence as well

Always remember as well that having witnesses in court taking notes during your hearing is very helpful as well. Often, when the judge sees witnesses in the court, he/she knows that these people are potential witnesses to what was said in the court and the conduct of the judge. Witnesses should come into the court armed with pencils and pad and should make notes during the hearing. The only time that witnesses may not be allowed will be during case conferences or settlement conferences but during conferences, the judge cannot make a ruling on the issues before the court anyway.

Invite the news media to be present if possible

Just as having witnesses in the court, having members of the media present in the court will also help to ensure justice. Generally, it may be difficult to get the mainstream media attend court because most members of the mainstream media find family court matters too time consuming and complicated and difficult to write about. If there is Court Watch organization in the area, or any other community-based organization in the area which helps citizens in the area, you may attempt to get someone from one of these organizations to attend court. Presence of the media can be most effective as the judges and lawyers know that the media has the ability and knowledge to expose any injustice they see occurring in the court.

Understanding the term, "Principles of Fundamental Justice" will help

The foundation upon which the issue of recording one's own court hearing rests is the principle of fundamental justice. It can be helpful to understand what justice really means. Fundamental justice is defined in Wikipedia as follows:

Fundamental justice is a legal term that signifies a dynamic concept of fairness underlying the administration of justice and its operation, whereas **principles of fundamental justice** are specific legal principles that command "significant societal consensus" as "fundamental to the way in which the legal system ought fairly to operate."[1] These principles may stipulate basic procedural rights afforded to anyone facing an adjudicative process or procedure that affects fundamental rights and freedoms, and certain substantive standards related to the rule of law that regulate the actions of the state (e.g., the rule against unclear or vague laws). The degree of protection dictated by these standards and procedural rights vary in accordance with the precise context, involving a contextual analysis of the affected person's interests. In other words, the more a person's rights or interests are adversely affected, the more procedural or substantive protections must be afforded to that person in order to respect the principles of fundamental justice.[2] A legislative or administrative framework that respects the principles of fundamental justice, as such, must be fundamentally fair to the person affected, but does not necessarily have to strike the "right balance" between individual and societal interests in general.[3]

The term is used primarily in Canadian and New Zealand law, including in the Canadian Bill of Rights and the Canadian Charter of Rights and Freedoms. Fundamental justice, although closely associated with, is not to be confused with the concepts of due process, natural justice, and Wednesbury unreasonableness.

What to do if the Judge refuses to allow you to exercise your right to record your court hearing

There is always the chance that you will encounter some hard-nosed, stubborn judge who will not give a damn about your rights under the law. Some judges only care having total control over any record of what is said in the court as this is one way in which they can protect themselves and maintain unaccountability. If a particular judge absolutely refuses to allow you to record your hearing, then depending on how much courage you have, you may consider the following steps:

1) The fist course of action is to request that in light of the judge's failure to respect your rights, that you ask the judge to hear an oral motion to allow you to record the court proceedings. You would simply say to the judge the following,

   "Your honour, for the record I am requesting that you hear an oral motion to allow my to electronically record my court hearing today"

   Forcing the judge to hear your motion will put your request on the official record and force both the judge and the opposing lawyer to put their arguments on the record. This is very risky for the judge because this puts all the arguments on the record and makes it almost impossible for the judge to have the court records altered to hide the significant arguments that a motion would create in court. The judge likely knows that there are no successful arguments to prevent you from recording your hearing and that it would be very embarrassing to both the judge and the lawyer to go on record as opposing you. In most cases the judge will say "no" to your request to hear a motion as the risks to the judge and the lawyer would be too

great to have a record of their arguments. In some cases, a more reasonable judge may allow arguments. Note that some persons have been successful in getting judges to make orders to allow recording of their court proceedings. Examples of judges who have allowed recording are Superior Court of Justice judge, Mr. Justice Craig Perkins of the Newmarket Court in the case of C.S. v. M.S. and Superior Court of Justice judge Madame Kendra Coates of the Milton, Ontario court.

2) If the judge refuses to allow your motion and you have the courage to stand up for your rights, you can advise the judge immediately in court, that their failure to uphold the Law violates your rights and that you are going to file a judicial complaint against the him/her. You should advise the judge that he/she is obligated to adhere to the law and to ensure that all people are allowed to exercise their rights. You should advise the judge that by him/her violating your rights to record your hearing, that the judge has breached his/her duty as a judge and as such has lost his/her jurisdiction over the court. You should then demand that the judge immediate ***"recuse"*** himself/herself from the case and that the matter should be moved to be heard before another court. The term "recuse" means to:

> ***"Disqualify (as oneself or another judge or official) for a proceeding by a judicial act because of prejudice, conflict of interest or loss of jurisdiction."***

3) Alternatively, if you do not have the courage to challenge the judge's authority in open court as outlined in (1), then you may proceed with your court hearing and hope for the best. You can be sure however, that you will not have the same protection as you would with your own recording device.

4) Immediately after the court hearing you should file a formal complaint to the Judicial Council, giving specific reference to the Court of Justice Act and including a copy of the judge's ruling. You should ask that the judge be removed from your case.

5) Have any of your witnesses in the court, also file judicial complaint letters. A sample letter is included with this document. Be sure to give your witnesses this document, together with the attached Courts of Justice Act so that they can be informed witnesses. Remember, part of getting witnesses into the court is to educate and inform. You want your witnesses to complain because they can see the injustice themselves and not just because they are a friend or associate.

6) Also provide copies of your complaint to organizations which can circulate your complaint to each and every Member of the Provincial and Federal Parliament. If enough public complaints are directed to the politicians then changes to legislation will eventually be made, which would make it common to have recording devices used. Hopefully, at some time in the future, the use of videotape will be mandatory. Groups in Canada such as the Canada Court Watch at http://www.canadacourtwatch.com are advocating to have the courts provide copies of the court proceedings on audio tape immediately at the end of each court hearing rather than having to wait for court reporters to process transcripts and obtain permission of the judge to release them. Organizations such as Canada Court Watch also maintain a database of judge's who have attempted to obstruct justice by trying to stop recording in their court. It is important that agencies such as this be notified so that the interests of the public can be protected.

The importance of having personal witnesses in the court, cannot be over-emphasized. If you are going to challenge the judge, then you are well advised to have as many witnesses present in the

court who are willing to file complaints against the judge as well. Chances are if you have enough credible witnesses in court, the judge may just back down and allow you to record without objection.

Remember, if you want to maximize justice in your case and if you wish to contribute justice for others in your community, then be ready to fight for your right to record your own court hearing and which will help ensure that judges, lawyers and court reporters will be held accountable for their actions.

What to do if the Judge decides to reserve his/her decision regarding the issue of recording

Some judges who don't have any backbone may attempt to reserve (put off till later) their decision in regards to recording in the court. If a judge tries to pull this silly stunt, then he/she is either 1) corrupt and wants to hide what is said in court or 2) has no backbone and is unable to make decisions on his/her own or 3) has limited knowledge of the Law or 4) is trying to shake off any witnesses that you might have in court or 5) is just plain incompetent and an imbecile.

If some judge tries to reserve the matter of recording in the court after you have given the argument listed in this document, then this judge deserves to have a judicial complaint made against him/her to wake the judge up. The public should also be notified of this judge's action. Most laypersons off the street can read the arguments listed in this document and understand them. If some judge who makes in most cases a salary far above executives in this country cannot rationalize these arguments before a court that they have charge of, then this judge is not to bright.

Under no circumstances should the judge proceed ahead with matters before the court, once you have asked for a ruling on tape recording. Be careful if the judge adjourns the court matters to another date, because you may find yourself before a different judge who may try to move your matters ahead because he/she did not know about your request at the last court to record the proceedings. The same judge may attempt to proceed ahead at the next hearing while not bringing up the subject of your request to record at the prior court. Whatever you do, don't fall for this judicial sneaky trick.. A sample presentation to the court on this issue could be as follows:

> ***"Your honour, until you have made a ruling on the recording of these proceedings, it would not be appropriate and not within the principles of fundamental justice for this court to proceed on hearing the other matters before it before the court has ruled on the issue of recording. The whole purpose of me exercising my right to record my own court hearing is to promote the fundamental principles of Justice as outlined in the arguments that I have previously given the court. Would your honour like to call a short recess to consider this matter before proceeding further?"***

In some cases, the judge, may adjourn the whole court matter and set another date for your court matters to resume. This move by the judge is an indicator that the judge is hoping to try to find some way to stop you from recording. In this case the judge will likely speak to other judges and try to find case law in an attempt to take away your right to recording. Quite often as well, if a judge sees that there are witnesses in the room, the judge might be hoping that further delays may discourage some of your witnesses from returning to the court. Most judge know that many witnesses have limited ability to keep coming back to court so adjourning mattes may sometimes

get rid of what most judges consider to be pesky witnesses and sources of a potential judicial compliant.

Any judge who adjourns the decision to allow recording is very much deserving of a complaint and if you do not complain, you are only encouraging the judge to continue to violate the rights of others. Even if a judge reserves his/her decision, make a complaint. The Courts of Justice Act is just too clear for any competent judge not to be able to understand it.

What to do if the opposing lawyer argues against you exercising your right to record your court hearing

In many cases, the opposing lawyer will argue against the use of audio recording equipment in the hearing. Often the opposing lawyer will bring it to the judge's attention that the other party has a recording device. If you find that the opposing lawyer attempts to prevent you from exercising your right to record your hearing, then you should use the arguments contained in this document before the court. After arguments are heard in the court, file a complaint against the lawyer to the Law Society of Upper Canada. Also file a complaint with the Canada Court Watch as well. If a local Court Watch group is located in your area, they likely will maintain a list of local lawyers who have acted inappropriately or unprofessionally and will place that lawyer on that group's "do not recommend" list. Arguing against a citizen who is attempting to exercise his/her rights to record their own court hearing under section 136(2)(b) of the Courts of Justice Act would be considered as unethical behaviour for a lawyer. As an officer of the court, a lawyer is supposed to support the administration of justice, not make justice more difficult for the citizens.

What to do if your own lawyer refuses to argue to allow you to audio record your court proceedings

In many cases, your own lawyer may refuse to argue recording your court matter. If your lawyer refuses and if the lawyer is a lawyer you would prefer to continue working with, then advise the lawyer that you are instructing him/her or her to argue this issue in court. The lawyer MUST follow your instructions, otherwise the lawyer is violating his/her oath as a lawyer and can be disciplined for this if you file a complaint along with the evidence to prove your instructions to the lawyer. If your lawyer refuses to argue this issue, then you can fire your lawyer and sue your lawyer for all costs related to having to go to a new lawyer and to have the new lawyer familiarize themselves with your case. To set your lawyer up for a lawsuit, you would be advised to record your conversation with the lawyer or better still, send your lawyer a fax with your written instructions with a request for the lawyer to respond. Most lawyers know that if they formally reject your formal instructions, then they have violated their Oath as a Lawyer and could be help liable for damages. As referred to earlier in this document, a sample letter has been attached which will show how to instruct your lawyer on the record regarding audio recording.

If the opposing lawyer also works for a law firm then a complaint letter can also be sent off to the senior partners of the law firm, advising them of the lawyers failure to uphold the law. In some cases, Crown Attorneys working for the government are part time court officials and at other times work for an established law firm outside of the court system.
If all efforts to get your lawyer to cooperate fail, then you should fire your lawyer and file a complaint with the Law Society and with any local Lawyer referral service agency that might cover your geographical area.

What to do when court security staff have interfered with your attempts to bring your recording device into the court

In addition to the judges and lawyers sometimes mistreat people and violate their rights, you may find that you were treated rudely or unlawfully by some court security officers who attempted to keep your recording device out of court even after you have informed them of your lawful right to record your hearing. If you encounter security staff who are interfering with your rights to bring in a recording device, then be prepared to file a complaint with the Attorney General's Office and again copy your complaint to all local organizations such as the Canada Court Watch. A copy of your complaint should also be sent to every Member of the Provincial Legislature. Be sure to include the badge numbers of those security officers who were responsible for harassing you.

What to do if you see misleading signs posted at the court building regarding audio recording in the court

If you see any signs which appear to be misleading about recording in the court, then you should file a complaint to the Attorney General and copy your complaint to Canada Court Watch. You should have a witness with you to see the signs who could also testify as to the signs. Sometimes, the court staff may remove the signs when a complaint is lodges and claim that the signs were removed a long time ago or were never posted in the first place. A sample complaint letter has been attached to the appendix of this document. It would also be helpful to arrange to have your complaint letter sent out to all the members of Parliament complaining about this. Some organizations can assist in distributing your complaint to the appropriate places.

When you see these signs at the courthouse you should question staff and ask that the signs be removed. Also help educate those at the courthouse by passing out copies of the brochure, "***Recording your court hearing is your right in Ontario***" and also the article, "of an article written by justice advocate Vernon Beck, "***It's time for the legal establishment to end its disrespect to one of Ontario's greatest jurists, former Ontario Chief Justice W.G.C. Howland***"

Going public with your complaint helps change the system

It is important that you must complain when your rights are being violated. While sending your complaints to the Law Society, the Judicial Council or the Attorney General may have some value, you must always remember that most of these bodies are self regulated and in most cases more interested in protecting the lawyers, judges and workers associated with the court system than they are about protecting you. When complaining it is important that you contact organizations such as the Canada Court Watch to ensure that your complaint will get as much public exposure as possible. Take the time to find out what organizations are in your area that can assist you to circulate your complaint to as many citizens as possible.

Those in the system are worried about the public's perception of the court system and want to minimize damage to the reputation of the system. Every time a judge, lawyer or anyone else associated with the court system violates your rights, you should be taking your complaint to your member of provincial and federal parliament. Change will occur only after many people bring their complaints forward.

Everyone who has a complaint about tape recording should make an appointment with his/her Member of Parliament and bring this to the attention of your local Member of Parliament.

What to do if legislation in your area does not specifically allow personal recording of your court hearings

As pointed out earlier, this document has been written based on Ontario's Courts of Justice Act, which does allow the citizens of Ontario the right to audio record their own court hearings before an Ontario court under Section 136(2)(b) for the purpose of supplementing their notes. The law in Ontario makes sense. No honest person, including a judge, should object to persons being allowed to record their own court hearings for the purpose of supplementing their notes.

If you are living in a geographical area outside of Ontario where legislation does not exist which gives you the right to record your own hearing then you should still argue this right before any court you may happen to appear before. You can still use laws from other jurisdictions as an argument in another court and still use the same arguments outlined in this document. All courts are bound to promote the general principals of Justice which includes accountability and openness. Remember, if there is no law that forbids you from recording in the court, then you have the right under section 7 of the Charter to record in order to provide security for yourself. In a free and democratic society people are supposed to be able to do anything which does not violate the rights of others.

If the court in your area tries to resist the reasonable use of recording equipment then you should approach your elected representatives for the purposes of implementing legislation similar to Ontario that will ensure the rights of citizens to record their own court proceedings. It may be helpful to join up with citizen groups who advocate for accountability in the court system, such as Court Watch and to push for legislative changes.

On line video reference materials

There are a number of stories found in the public domain which relate to the use of audio recording devices in the courtroom. Below are just some video references in the public domain which relate to the issue of audio recording in the courts.

http://www.vimeo.com/1858526

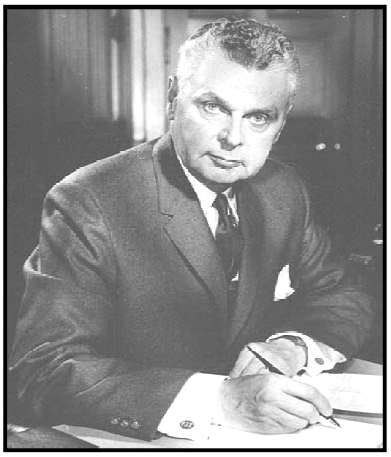
http://www.vimeo.com/1773283

Closing

Unless opposition by court officials to citizens recording their own court hearings is stopped, the issue of audio recording in the courts will no doubt further polarize and alienate the people from Canada's system of justice. In these days of miniature and inexpensive personal recording devices, it should be everyone's right to record their own court hearings in the courts to help ensure justice. Every citizen should fight to protect this right and to challenge any opposition by judges and lawyers at any time and in any place.

After all, if court officials have nothing to hide, then why should they be so afraid of recording?

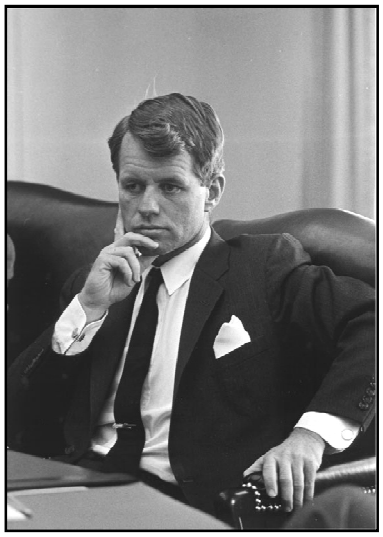
The late Senator Robert F. Kennedy from the United States of America spoke about the importance of each and every person standing up. His words are universal and apply to all those who consider themselves free people. The late Prime Minister of Canada, John Diefenbaker, also gave a stern warning to Canadians about protecting their rights and freedoms. Quotes from both of these great statesmen can be read below.



We must vigilantly stand on guard within our own borders for human rights and fundamental freedoms which are our proud heritage.....we cannot take for granted the continuance and maintenance of those rights and freedoms.

- John Diefenbaker 1895-1979 -

(Canada's 13th Prime Minister from 1957 to 1963)



Few will have the greatness to bend history itself, but each of us can work to change a small portion of events, and in the total of all those acts will be written the history of this generation. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope... and crossing each other from a million different centers of energy and daring those ripples build a current that can sweep down the mightiest walls of oppression and resistance.
Capetown, South Africa June 6, 1966.

Senator Robert F. Kennedy 1925-1968

Robert Kennedy is the brother to John F. Kennedy, the 35th President of the United Sates of America 1961-1963.
www.jfklibrary.org/r060666.htm

Always remember

Every time that you stand up for your rights and insist on promoting transparency and accountability in the courts by arguing to audio record your own court hearing, or advocate for laws to promote the use of personal recordings in the courtroom to supplement your notes, you are helping to change a small portion of events in history which will contribute to the improvement of the administration of justice for the benefit of all children and families in your community and in our nation, As Former Prime Minister Diefenbaker said as well, you are helping to protect human rights and fundamental freedoms in Canada by standing up against the oppression and secrecy of the courts.

Appendix

1) **Practice Direction – Justice Howland – April 10, 1989 which states that persons in court are to be allowed to audio record their court proceedings without having to argue the issue before the courts.**

2) **Sections 135 & 136 of the Courts of Justice Act (1 page)**

3) **News article - Canada Court Watch Report – Justice Czutrin backtracks on recording in court (2 pages)**

4) **Sample letter to opposing counsel regarding their position on recording the court proceedings**

5) **Sample letter to a person's own counsel regarding instructions to the lawyer to recording further court proceedings.**

6) **Sample Judicial Complaint letter by a party to a proceeding regarding a judge who refuses to allow audio recording during a court hearing.**

7) **Sample Judicial Complaint letter by a witness who is a member of the public in court regarding a judge who refuses to allow audio recording during a court hearing.**

8) **Sample letter to Attorney General re misleading signs posted at the court in reference to recording in the court.**

9) **Sample letter to the Member of Parliament to complain about the court refusing to allow you to record your court hearing.**

10) **Actual complaint letter from one parent to the Ontario Judicial Council which shows the kind of problems that citizens face with transparency and accountability in the courts.**

11) **Legal article: Ethics in Family Law by Ontario Justice Madame Mary Lou Benotto. In this article Madame Justice Benotto states during her speech that perjury is rampant in family court and that it often goes unpunished.**

12) **Newspaper article: Attorney General wants fewer barriers between courts, media**

13) **Exhibit: Copy of actual letter to Attorney general re transcripts taking too long to obtain**

14) Report: Justice and the Media – A report to the Attorney General of Ontario with references to the personal recording of court proceeding by individuals.

15) Case Law – May 4, 2009 – Ottawa Superior Court of Justice – Justice Cunningham. These are the transcripts from the actual court hearing in which Justice Cunningham reaffirms the validity of Section 136 of the Courts of Justice Act and states that recording in the court is permitted and further goes on to state that the unobtrusive use of Blackberry devices to send and receive text messages in the court is permitted as long as they are unobtrusive and operate silently and are not a distraction to the court.

16) Sample bail conditions for false charges – This document is one of the only known examples where charges were laid against a citizen of Ontario for attempting to exercise his rights under section 136(2)(b) to record his own court hearing. (1 page)

17) Copy of letter sent to the Attorney General of Ontario, Chris Bentley, regarding the wrongful arrest and detention of a man who attempted to exercise his rights to audio record his court hearing as permitted under Section 136(2)(b) of Ontario's Courts of Justice Act.

18) Copy of an article written by justice advocate Vernon Beck, "It's time for the legal establishment to end its disrespect to one of Ontario's greatest jurists, former Ontario Chief Justice W.G.C. Howland"

A Guide to Recording Your Own Court Hearing

Appendix 1

(3) Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,

(a) where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;

(b) in connection with any investitive, naturalization, ceremonial or other similar proceeding; or

(c) with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

(4) Every person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than $25,000 or to imprisonment for a term of not more than six months, or to both.

REFERENCE: See also s. 95.

R. v. Squires (1992), 11 O.R. (3d) 385, 78 C.C.C. (3d) 97, 18 C.R. (4th) 22 (C.A.).

Section 136(1)(a)(ii) is a violation of s. 2(b) of the Charter, but is justifiable under s. 1.

Walker v. York Finch Hospital (1993), 15 C.P.C. (3d) 23 (Gen. Div.).

The showing on television or otherwise of a videotape of an examination of a witness before trial under Rule 36 is prohibited by this section.

PRACTICE DIRECTION

RECORDING OF COURT PROCEEDINGS BY A SOLICITOR A PARTY ACTING IN PERSON OR A JOURNALIST

Subject to any order made by the presiding judge as to non-publication of court proceedings, and to the right of the presiding judge to give such directions from time to time as he or she may see fit as to the manner in which an audio recording may be made at a court hearing pursuant to s. 146 [now s. 136] of the *Courts of Justice Act*, the unobtrusive use of a recording device from the body of the courtroom by a solicitor, a party acting in person, or a journalist for the sole purpose of supplementing or replacing handwritten notes may be considered as being approved without an oral or written application to the presiding judge.

The foregoing Practice Direction was approved by the Ontario Courts Advisory Council on April 10, 1989.

W. G. C. Howland
Chief Justice of Ontario

RULES

DOCUMENTS PUBLIC—Sealing documents—Court lists public—Copies

137.—(1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

A Guide to Recording Your Own Court Hearing

Appendix 2

Sections 135 & 136 of the Courts of Justice Act (Ontario)

Public Access

Public hearings

135. (1) Subject to subsection (2) and rules of court, all court hearings shall be open to the public.

Exception

(2) The court may order the public to be excluded from a hearing where the possibility of serious harm or injustice to any person justifies a departure from the general principle that court hearings should be open to the public.

Disclosure of information

(3) Where a proceeding is heard in the absence of the public, disclosure of information relating to the proceeding is not contempt of court unless the court expressly prohibited the disclosure of the information. R.S.O. 1990, c. C.43, s. 135.

Prohibition against photography, etc., at court hearing

136. (1) Subject to subsections (2) and (3), no person shall,

(a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,

(i) at a court hearing,

(ii) of any person entering or leaving the room in which a court hearing is to be or has been convened, or

(iii) of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;

(b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or

(c) broadcast or reproduce an audio recording made as described in clause (2) (b). R.S.O. 1990, c. C.43, s. 136 (1).

Exceptions

(2) Nothing in subsection (1),

(a) prohibits a person from unobtrusively making handwritten notes or sketches at a court hearing; or

(b) prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22).

Exceptions

(3) Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,

(a) where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;

(b) in connection with any investitive, naturalization, ceremonial or other similar proceeding; or

(c) with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

A Guide to Recording Your Own Court Hearing

Appendix 3

CANADA
COURT WATCH REPORT

Published by the Canadian Citizen's Free Press - By the Citizens and for the Citizens of Canada

Selected editions posted electronically at: http://www.canadacourtwatch.com

HAMILTON JUDGE G. CZUTRIN BACKTRACKS WHEN CHALLENGED ABOUT TAPE RECORDING IN FAMILY COURT!

By Mike March, Hamilton Court Watch – Sept 17, 1998

Hamilton Court Judge G. Czutrin, after admitting previously that he erred, backed off from an earlier decision and ruled that a Hamilton father who had not seen his children for 8 years could tape-record his own proceedings. He also said that the father be allowed to take the tape home. At the previous hearing, both the judge and the opposing lawyer, attempted to impede the legal right of the father to tape-record his court hearing. The judge had previously ordered that the tape be kept at the courthouse and that the father not be allowed to take it home. In today's hearing, those barriers were effectively removed.

However, in a second motion before the court by the same father, when the judge was asked to rule on a simple request to allow the father to see his children, the court could no make a decision and deferred its ruling to a later date. The father even pleaded with the court to let him have access to his children agreeing to supervised access until matters went back to court again.

During arguments against the father about the taping issue, the opposing lawyer, Ms. Linda Henry of Hamilton, Ont. seemed somewhat short of words. She tried to argue that she found placement of a small hand held mini-cassette recorder on the podium obtrusive. Seemingly, in a desperate bid to grasp for straws, she told the court that the tape recorder may accidentally get pushed off the podium and broken and because the tape recorder was not her property she did not want to be responsible for possible damage.

Court Watch spoke to members of the public who attended court. One person told Court Watch Observers "it was a shame what went on in there today. I see a father, who had been prevented by the courts from seeing his children for eight years, asking only to see his kids, as recommended in an assessment. And yet, the thing the lawyer and the court considered most important was to try to keep this poor guy from taping his hearing. To the courts and the lawyers, the children seemed irrelevant. When it comes to reuniting these children with their father, the court could not make a decision, even when the father offered to have supervised access as a condition. In the end they told this poor guy to come back to court again. He has been forced to go to court for the past eight years as if in a revolving door. How much more hell is the court going to subject this poor family to. These judges cannot even get to the heart of the issue, make a simple decision and do what is right.

Ms. Henry, the lawyer for the mother, refused to comment to reporters and the mother was not in attendance in the court.

Continued on page 2

Hamilton Judge Backtracks - Continued from page 1

The father in the case, Mr Yasar Sharif, said: " This whole exercise was a sham and a waste of taxpayer's money and a further example of how the courts have no respect for the rights of Canadians and no interest in protecting families. Look at how much time and resources have been wasted. These lawyers and judges know the law. They should have known all along that it is permissible to tape record in the court, so why do they fight so hard to prevent it. What do they have to hide? All I want is to see my children and all they want to do is to keep tape recorders out of the court and keep me from seeing my children. They know that it is wrong to keep children separated from their parents and yet they continue to promote it."

"I came to Canada many years ago with nothing and I worked hard to become successful with hopes of raising my children in this country. Before I got involved in the courts, I had a successful business and contributed to the economy of this country. I came to Canada believing that Canada was a free country with just courts and fair laws. Unfortunately I have found out that there is little justice for ordinary people in family court. The courts are arenas where lawyers and judges play legal games which destroy families while they get rich and maintain their power over ordinary Canadians. Although the system itself has been designed to be fair, many of those judges and lawyers have lost touch with their own people and it is the children who are playing the ultimate price."

Mr. Sharif showed credible documents which supported the fact that he was a good father and that the children wanted to see him, including a favourable report from an assessor. Other documents showed that the mother with the knowledge of her lawyer, had violated previous Access Orders. She also continued to employ tactics designed to alienate the children from their father. Previous hearings in Hamilton failed to address the issue of the mother breaking court orders. Judge Czutrin said in court that he had not read the documents concerning the welfare of the children in their entirety.

Many of those in the court said that it was a shame what the courts are doing to families. Another parent who came to the court to support the father stated how his family felt that the Hamilton Court seemed very much against families and routinely separates children from their parents and support parents who knowingly force parents out of their children's lives. "The Hamilton Court has a reputation for this type of activity" he said.

It is ironic that while the Judges and the lawyers go home to be with their children, Mr. Sharif, like many other non-custodial parents, is left with only a hope, that one day the court will deliver justice that his family so rightfully deserves. Until then, he'll continue to bravely fight those in the system that he feels are bias and unaccountable to Canadians.

PLEASE HELP STOP ABUSE OF OUR CHILDREN & FAMILIES

Most of us know of someone in our community whose family has been ravaged by our Family Court system. False allegations, lies, deceptions, and poor decisions by judges are destroying the children of divorce, who are stuck in the middle. Please copy this report and pass it on to as many of your friends, neighbours, relatives and co-workers as possible. It is only through awareness in our community of getting to know the truth about how our family court system is destroying our families that the destruction will be stopped. Call, write and fax your member of the Federal and Provincial government and demand that he/she support government initiatives to take family matters out of the adversarial court system.

HOSTILE PARENTING IS CHILD ABUSE!

Granting sole custody to one parent so that one parent can act in a vindictive manner, often denying the child's right to love and attention by the other parent is child abuse.

Call your local M.P and demand that shared parenting be implemented in law to stop this needless abuse of children by vindictive spouses

Shared parenting will also eliminate much of the needless litigation in court which will save families and taxpayers hundreds of millions of dollars.

980917

HELP BRING
JUSTICE
BACK IN TO OUR COURTS!

HELP MAKE
LAWYERS
ACCOUNTABLE TO OUR COMMUNITY!

Call your local M.P. and M.P.P. and demand that he/she support legislation designed to make it a criminal offense for anyone to make false allegations or for lawyers to counsel clients to make them.

A Guide to Recording Your Own Court Hearing

Appendix 4

Sample letter to send to opposing counsel in advance of arguments being presented in court to record in the court hearing.

Sent by Fax to (XXX) XXX-XXXX – 1 page(s)

Date Here

XXXX Xxxxx Xxxxx Ave.
Xxxxxxxxx, Ontario
XxX XxX

Ms. Xxxxx Xxxxx
XXXX Xxxxxxxxx Xx
Xxxxxxxxx, Ontario
XxX XxX
Tel: (XXX) XXX-XXXX
Fax: (XXX) XXX-XXXX

Dear Ms. Xxxxx

RE: Audio recording of court proceedings

It is my intent to present arguments to the court which will allow me to unobtrusively record any further court hearings, including case conferences and/or settlement conference hearings. Under section 136 of the Courts of Justice Act, I believe that I have the right under the Law to record my own court hearings.

If you think that a copy of an audio recording of any of the court proceedings would be helpful to you or your client, then I would be willing to provide you with a copy of the recording for whatever my cost is to have the information copied on to a computer disk. I will not object should your client also wish to record the court hearing using his/her own equipment.

Could you please advise me of your position on this matter, and whether you intend to oppose or unopposed my right to record my court proceedings? If you are opposed to this, please provide your reasons in writing, so that we can minimize the time required to argue this before the court.

Your response in writing, by fax this week, would be greatly appreciated. Your response can be sent by fax to (XXX) XXX-XXXX.

Yours truly,

XXXX XXXXXX

A Guide to Recording Your Own Court Hearing

Appendix 5

Sample letter to your own lawyer giving instruction regarding audio recording your own court hearings

Sent by Fax to (XXX) XXX-XXXX – 4 pages (including attachments)

Date Here

XXXX Xxxxx Xxxxx Ave.
Xxxxxxxxx, Ontario
Postal Code

Mr. Xxxxx Xxxxx, Barrister and Solicitor
XXXX Xxxxxxxxx Xx
Xxxxxxxxx, Ontario
Postal Code
Tel: (XXX) XXX-XXXX
Fax: (XXX) XXX-XXXX

Dear Mr. Xxxxx

RE: Audio recording of court proceedings

I would like to be able to record any of my further court hearings, including case conferences and/or settlement conferences. Under section 136 of the Courts of Justice Act, I believe that I have the right under the Law to unobtrusively audio record my own court hearing.

I would request that you, as my solicitor, take the necessary steps to ensure that my rights under the law to audio record my court hearings are protected and respected. I would request that you should be prepared to argue this issue before the court if necessary. I have attached a copy of section 136 of the courts of Justice Act and an article from Canada Court Watch which would support arguments for audio recording in the court.

If you believe that by offering a copy of the audio recording to the opposing council would be helpful in getting the other side's consent to audio recording, then I would ask that you approach the other lawyer and make this offer in writing and ask for the opposing council's response.

Your response in writing, by fax this week, would be greatly appreciated. You can send your response by fax at (XXX) XXX-XXXX.

Yours truly,

XXXX XXXXXX

Attachments:
Copy of Section 136 of the Courts of Justice Act
Copy of Canada Court Watch Report regarding Justice Czutrin

A Guide to Recording Your Own Court Hearing

Appendix 6

Sample judicial complaint letter by a party to the Ontario Judicial Council for judge who refuse to allow audio recording during a court hearing. This letter could also be used for a complaint to the Canadian Judicial Council for a federally appointed judge.

[The Date Here]

[Your name]
[Your address]
[City/Town], [Province]
[Your postal Code]
Tel: (XXX) XXX-XXXX

The Ontario Judicial Council
P.O Box 914
Adelaide Street Postal Station
31 Adelaide St. E.
Toronto, Ontario M5C 2K3
Fax: 416-327-2339

Dear Sirs/Madames

RE: Judicial Complaint – obstruction of justice by Mr. Justice Xxxxxx of the Ontario Court of Justice, University Ave, Toronto, Ontario.

I would like to file a formal judicial complaint against Mr. Justice Xxxxxx of the Ontario provincial court at 393 University Ave in Toronto, Ontario. The grounds for my complaint are:

1) That Mr. Justice Xxxxxx failed to uphold the law and protect my rights in his court, specifically those granted under Section 136 of the Courts of Justice Act which gives persons the right to audio record their own personal court hearing.

2) That by refusing to allow me exercise my rights under the Law, Justice Xxxxxx has obstructed justice and has violated his sworn oath and duty as judge.

3) That by showing such a blatant lack of knowledge and respect of the application of section 136 of the Courts of Justice Act, Justice Xxxxxx has brought the administration of Justice into disrepute.

On [court date], I was a party appearing before Justice Xxxxxx in the Ontario Court of Justice at 393 University Ave., Toronto. In the court, I indicated to Justice Xxxxxx that I wished to exercise my right to unobtrusively record my own court hearing for the purposes of supplementing my notes. I had a small hand-held audio recorder which I wanted to simply place in view of the court so that after the court, I could review what was said so that I could be in the best position to continue on with my case and to defend my rights and those of my children. Unfortunately, Justice Xxxxxx refused to allow me to record the hearing as permitted under Section 136 of the Courts of Justice Act.

It seems quite clear from the wording of section 136 from the Courts of Justice Act that the legislators intended to protect the rights of citizens to audiotape their own court hearings for the

purposes of helping them. I cannot imagine how Justice Xxxxxx could interpret this section of the Courts of Justice Act in any other way except as a tool to assist those appearing before the court.

While court transcripts can be ordered, it certainly does not seem fair to force me to purchase official court transcripts at great expense when I can simply obtain the same information with my own recording device and in addition not have to wait to get them. It sometimes takes days or sometimes weeks to get court transcripts so why should so much time and court resources be tied up for the purposes of allowing a person to more closely review what went on in a particular court hearing.

What also concerns me about relying strictly on court transcripts is that I have seen correspondence which would indicate that court transcripts have been permanently lost by court staff and therefore it would appear to be some question as to the security surrounding court transcripts.

In regards to recording in the courtroom, I believe that most Canadians would take the position that those in a courtroom who have nothing to hide should have no fear of any the parties recording the court hearing. I am curious to know just what Justice Xxxxxx is so afraid of that would cause him to obstruct my rights in this area.

To avoid the problem I encountered from being repeated in other courts, I would most respectfully request that the Judicial Council or the powers responsible, to put out a memorandum to the judges to clarify this issue and to remind them that they **MUST** not interfere with a party's request to audio record their own court hearing if the party is doing it in a reasonable manner.

In light of this complaint, I would also kindly ask that the Judicial Council advise Justice Xxxxxx that he should recuse himself from hearing any court matter before him where I may be a party at the hearing.

A response in writing would be most appreciated.

Yours truly

your signature here

[Your name typed here]

cc: various provincial and federal members of Parliament
Canada Court Watch

A Guide to Recording Your Own Court Hearing

Appendix 7

Sample judicial complaint letter by a witness in court to the Ontario Judicial Council for judge who refuse to allow another citizen to audio record their own court hearing. This letter could also be used for a complaint to the Canadian Judicial Council for a federally appointed judge.

[The Date Here]

[Your name]
[Your address]
[City/Town], [Province]
[Your postal Code]
Tel: (XXX) XXX-XXXX

The Ontario Judicial Council
P.O Box 914
Adelaide Street Postal Station
31 Adelaide St. E.
Toronto, Ontario M5C 2K3
Fax: 416-327-2339

Dear Sirs/Madames

RE: Judicial Complaint – obstruction of justice by Mr. Justice Xxxxxx of the Ontario Court of Justice, University Ave, Toronto, Ontario.

I would like to file a formal judicial complaint against Mr. Justice Xxxxxx of the Ontario provincial court at 393 University Ave in Toronto, Ontario. The grounds for my complaint are:

1) That Mr. Justice Xxxxxx failed to uphold the law and protect the rights of a citizen in his court, specifically those granted under Section 136 of the Courts of Justice Act which gives citizens the right to audio record their own personal court hearing.

2) That by refusing to allow the citizen in court exercise his/her rights under the Law, Justice Xxxxxx has obstructed justice and has violated his sworn oath and duty as judge.

3) That by showing such a blatant lack of knowledge and respect of the application of section 136 of the Courts of Justice Act, Justice Xxxxxx has brought the administration of Justice into disrepute.

On [court date], I was a witness in the court presided over by Justice Xxxxxx in the Ontario Court of Justice at 393 University Ave., Toronto. In the court, I witnessed a citizen indicate to Justice Xxxxxx that (he/she) wished to exercise (his/her) right to unobtrusively record (his/her) own court hearing for the purposes of supplementing (his/her) notes. The citizen had a small hand-held audio recorder which (he/she) wanted to simply place in view of the court so that after the court, the citizen could review what was said for the purpose of defending (his/her) rights and those of the children. Unfortunately, Justice Xxxxxx refused to allow the citizen to record the hearing as permitted under Section 136 of the Courts of Justice Act.

It seems quite clear from the wording of section 136 from the Courts of Justice Act that the legislators intended to protect the rights of citizens to audiotape their own court hearings for the

purposes of helping them. I cannot imagine how Justice Xxxxxx could interpret this section of the Courts of Justice Act in any other way except as a tool to assist those appearing before the court.

As a citizen of Ontario, the actions of this judge have only caused me to wonder what it is that this judge was so afraid of that he could not even allow another citizen to audio record (his/her) own court hearing. I get the sense that this judge is afraid of being held accountable.

As a citizen of Ontario, I fully support the right of citizens to audio tape their own court hearings. In fact, I would be in support of bringing video cameras into the court, which would provide even greater protection to all those in the court.

A response in writing would be most appreciated.

Yours truly

your signature here

[Your name typed here]

cc: various provincial and federal members of Parliament
Canada Court Watch

A Guide to Recording Your Own Court Hearing

Appendix 8

This is a sample letter to be used by citizens who see misleading signs posted at the court building regarding the use of recording devices in the court. This letter has been based on circumstances in Ontario which give citizens the right to record their court hearings.

The date here

The Honourable Mr. Michael Bryant, Attorney General of Ontario
720 Bay Street, 11th Floor
Toronto, ON
M5G 2K1

Dear Minister

RE: Misleading signs posted at the Xxxxx, Ontario courthouse

I would like to file a complaint regarding what I consider as false and misleading information being posted at the courthouse in Xxxxx, Ontario.

On December 11, 2004, I noticed a sign posted at the entry to the court which read, "recording devices are strictly prohibited in the court or in any court building"

I am aware that under section 136 of the Courts of Justice Act, citizens have the right to bring and use recording devices in court under certain limitations. It is also my understanding that members of the press can record in the court as well. Clearly the Law allows for those outside of the court staff to bring recording devices into the court and that there are limitations only some limitations on the recording of court proceedings.

As this sign appears to mislead the public about the nature and intent of the law, I would request that you, as the Minister responsible for protecting the interests of the public, order that this sign be removed from the above noted courthouse. I would also appreciate receiving a copy of your memorandum to this court instructing them to remove this misleading sign.

Yours truly

(Your signature here)

Xxxxx Xxxxxxxxxxx (Your name printed)

cc: Canada Court Watch

A Guide to Recording Your Own Court Hearing

Appendix 9

Sample letter to a Member of Provincial Parliament regarding the refusal of the court to allow you to record your own court hearing.

[Date]

[Your address]
[City/Town and Province
[Postal Code]

[Name of MPP]
Queens Park, Ontario
[Postal Code]

Dear MPP

Re: Violation of the law by Justice [Name of Judge] in family court on [Date]

On Monday January 2, 2005 I was refused my rights under the Ontario Courts of Justice Act to unobtrusively tape record my own court hearing in family court. Attached to this letter for your reference is a copy of the Courts of Justice Act. Section 136 of the ACT specifically states the following:

> **(2) Nothing in subsection (1),**
>
> **(a) prohibits a person from unobtrusively making handwritten notes or sketches at a court hearing; or**
>
> **(b) prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22).**

Recording the court hearing has many benefits and assist in the Administration of Justice. Recording allows citizens to review their matters in court almost immediately after they come out of court and it helps parties to recall those details that were argued verbally but which were not written in court documents. Sometimes transcripts can take weeks to obtain making it difficult and in some cases impossible, to obtain a record of the hearing before the next court date. Recording also helps citizens in that they can be more specific in ordering official transcripts of certain sections of the hearing. This helps reduce costs and lessens the burden on the system which in turn reduces the burden on taxpayers.

In my court, I took my own personal recorder into the court which would have taken no more than a minute of the court's time to set up and to put in place, It would have been unobtrusive and not caused any disruption to the court. Yet, the judge refused to allow me to record.

I thought that the laws in the Province are supposed to be obeyed, especially when one is in a court of Law. If the judges can't be expected to uphold the law and to protect citizen's rights,

then our laws are not worth the paper they are written on. I was under the belief that it was supposed to be the politicians who made the laws, not the judges.

As a member of Parliament, I would kindly request that you address this issue with other members of Parliament to see what action that Members of Parliament can take to ensure that the citizens of Ontario have the rights to unobtrusively record their own court hearing without having to argue this in court every time. Possible a suggested information sheet could be made up by the Attorney General's Office which would explain to people how they can record their own court hearing in a manner that would be acceptable to the courts without question.

A court is already a scary place for most citizens, so the courts should be doing what they can to accommodate simple requests of citizens, not making matters more difficult for the citizens of Ontario as would appear to be the case now.

Your response in writing would be appreciated.

Yours truly

A Guide to Recording Your Own Court Hearing

Appendix 10

Actual Judicial Complaint letter

Note: This letter is a copy of the actual text from a complaint letter sent to the Judicial Council. Information about the parent who wrote this letter has been removed from this document because this case involves a child protection matter and under the law, information which would identify the child cannot be published.

December 27, 2004

Mr. Xxxxx Xxxxx
XXX Xxxxxxxxxx Rd.
Toronto, Ontario
XxX XxX
Tel: (416) XXX-XXXX
Fax: (416) XXX-XXXX

The Ontario Judicial Council
P.O Box 914
Adelaide Street Postal Station
31 Adelaide St. E.
Toronto, Ontario M5C 2K3
Fax: 416-327-2339

Dear Sirs/Madames

RE: Judicial Complaint against Justice James P. Nevins of the family court at 47 Sheppard Ave. Toronto, Ontario

I would like to file a formal judicial complaint against Justice James P. Nevins of the provincial court at 47 Sheppard Ave. W. in Toronto, Ontario. My complaint concerns what I feel was his most unprofessional conduct as a Judge at my court hearing on Dec. 31, 2003 which I believe has had significant influence in my son being terrorized by agencies associated with the court system and his relationship with his father being forcefully terminated contrary to his best interest and his clearly stated wishes. As a result of Justice Nevins's incompetence and bias, I am also concerned of the possibility that my son may have been forced to undergo a circumcision at 12 year of age contrary to his clearly stated wishes and religious beliefs.

On December 31, 2003, I appeared before Justice Nevins in a matter where I was fighting the Jewish Family and Child Services for what I feel was the abduction of my son as part of a scheme to forcefully take my son from my custody and to return him into the custody of his Jewish mother and to force my son to submit himself into the Jewish religion contrary to his clearly stated wishes.

Although the incident in the Sheppard Ave. W. court involving Justice Nevins which I describe below happened almost a year ago, I have not filed a complaint against Justice Nevins up until now because since that time I have been cautioned over and over again by lawyers and others who are involved in the court system that complaining about Justice Nevins would greatly prejudice my case if I was to file a complaint against him. Some lawyers have said that they would not take on my case if I chose to exercise my rights to file a complaint. Many who know the family court system

have said that I will never see my child again if I file a complaint against a judge and that "the system" will "get even" with me for speaking out to protect my son.

I have been warned that I won't be able to prove my claims of Justice Nevins's conduct and that by complaining I would only worsen my position before the court and only harden the resolve of those government funded agencies responsible for physically and emotionally abusing my son, to hide the abuse they have caused him Because of the many family court horror stories that I have read about involving abuse of power and authority by children's aid agencies and the Children's Lawyer's Office, I must admit that I have been fearful of the court system to complaint up until now. However, I have reached a point where I feel that the actions of Justice Nevins and the actions of other agencies associated with the court have put me in a position where I have nothing else to lose. I have not seen my son in over a year. The last thing my son said to me and his friends at the last event we were at together, was to help him come home with his dad and to help protect him from the abuse by Jewish Family and Child Services, the Office of the Children's Lawyer and the Ragesh Group home where he was been terribly abused for a long period of time. It has become absolutely clear to me that the Justice system has totally failed my 12-year-old son and that the legal aid lawyers who have worked for me up to this time have been grossly ineffective. Because of Justice Nevin's previous actions which appear to have abused the administration of Justice and would appear to be biased in favour of the children's aid society, I am very fearful of this judge and do not feel that he can ever be fair as a judge towards me or my child.

Based on my experience with the family court system, it appears to me that the amount of money one has is a significant factor in the pursuit of Justice when one is up against a children's aid agency which has almost unlimited power and resources behind it, all funded by the Provincial Government. A parent's ability to obtain Justice seems to be very limited when using Legal Aid as Legal Aid lawyers are unable to put in the amount of hard work that is required into mounting an effective defense. Money simply is not there under Legal Aid for the hours needed. On the other hand, lawyers with a children's aid agency, have unlimited taxpayer's funds at their disposal and will go to any extent to protect their workers, even when they have done wrong. The case of the Reverend Dorian A. Baxter v. the Durham Children's Aid Society is a good example of abuse of power and authority by a provincially funded children's aid agency. In that court case, the judge found the children's aid society guilty of malicious prosecution, incompetence, negligence and blackmail.

Referring back to the incident on Dec 31, 2003 which is the main subject of this complaint letter, I wish to report the following abuse of the Administration of Justice by Justice Nevins:

On December 31, 2003, at the end of my court hearing (I was representing myself), the clerk at the front of the court announced that the court was ended as is usual practice. However, Justice Nevins did not get up and exit the courtroom as is the practice with most judges in most courts. Justice Nevins continued sitting at the bench and was handling the papers in front of him after the microphones had been turned off and everyone was cleaning up and getting their coats on ready to leave. Shortly after the court was closed and the microphones were turned off, Justice Nevins summoned the lawyer from the Office of the Children's Lawyer, Adam McIvor, over to his bench and in a quiet tone of voice, which clearly appeared to be an attempt not to be overheard by others in the court, spoke to Mr. McIvor direct off the court record. Being at the front of the court myself

while packing up, I could overhear what Justice Nevins was saying to Mr. McIvor. What I heard was shocking. I overheard Justice Nevins instruct the children's Lawyer that he was to send the message to my son that his father did not like him anymore and to tell my son that his father did not want to see him anymore. The judge's instructions to the children's lawyer were clearly intended to mislead my son into thinking that his father had given up the fight in court to free him and that his father did not love him or want to see him anymore. After being ignored and put down earlier in the short court hearing by Justice Nevins, I felt totally powerless to say anything in this judge's domain.

At that point, the children's lawyer, Mr. Adam McIvor, appeared somewhat taken back and uncomfortable by the instructions from Justice Nevins. Looking a bit startled, Mr. McIvor said to Justice Nevins, "Your honour, you want me to tell this to Howard?" Justice Nevins, then said to the children's lawyer, "Yes, and if you have problems saying this then tell the boy the judge said it" while touching his both hands to his chest to point at himself. Mr. McIvor then departed the room. Of course, none of what transpired between the judge and the children's lawyer was on the record or recorded because it occurred after the court reporters had stopped recording the court and everyone was busy packing up and trying to get out of the court because it was New Year's Eve.

Since that court date, I have not seen or heard from my son. My son clearly has stated that he wants to see his father and has reported being threatened and intimidated by his children's lawyer and Adam McIvor of the Office of the Children's Lawyer. It is my belief that my son has been mislead to thinking that his father does not love him and that his father has given up fighting for him in court. The Office of the Children's Lawyer and the Jewish Family and Child Services have been effective in cutting off all communication between my son and all those who my son trusts, including his friends. My son reported being threatened with a knife by his Jewish mother if he did not do what the Jewish Family and Child workers were telling him to say to his lawyer. The school principal at my son's previous school wrote a letter barring my ex-wife from coming on school property because she had threatened other children at my son's school. Other eye witnesses have testified of seeing my son's mother physically abuse my son.

Prior to this court date, my son made it very clear to me and to others that he was being threatened and coerced to go along with the Jewish Family and Child Services by his children's lawyer, Adam McIvor, and that he did not trust his children's lawyer. Attached to this complaint letter is a letter from my son which he sent to a child and family advocate asking for help. Yet, while my son was pleading for help to save him from abuse by the children's lawyer, he was denied a new lawyer by the Children's Lawyer's Office, even though he requested one.

I have also included with this letter, copies of three private videotaped interviews with my son formatted on to DVD which were taken by a third party agency prior to him being kidnapped by the Jewish Family and Child Services. My son discloses horrendous abuse by the Jewish Family and Child Services and the Ragesh Group home agency, including sexual abuse, as well coercion and abuse by the Office of the Children's Lawyer. In these interviews my son clearly disclosed being threatened and coerced by the Office of the Children's Lawyer prior to Justice Nevins telling this same lawyer on December 31, 2003 to lie and coerce my son yet again. My son has disclosed that he has been threatened with circumcision at 12 years of age as part of a plan to force him to submit himself into the Jewish faith which his mother is a member of. My son has disclosed on video tape that he does not want his body mutilated by the Jewish Family and Child Services and he does not

want to be forced against his will into the Jewish religion. Yet, it seems that after he has disclosed these things that he has been made to conveniently "disappear" by the Jewish Family and Child Services with the assistance of the Office of the Children's Lawyer and with the further support of Justice Nevins on December 31, 2003.

I am a Holocaust survivor myself who barely managed to escape with my life from Hitler's solders who were trying to execute me and other children when I was a young boy. I can clearly relate to what I see is happening to my son now as a result of the abuse of power and authority by this children's aid agency because I experienced a similar experience being taken from my parents by the Germans and scheduled to be executed. It seems to me that these agencies are doing to same thing to my son as Hitler did which is to take him away from his loving parent and then to threaten coerce and brainwash him into submission and compliance. In this case, rather than it being the Nazis abusing their power, it is the Jewish Family and Child Services which is abusing its power to force my son into compliance with the Jewish faith. What the Canadian court system and the Children's Aid Society is now doing to my child is in my mind no less a crime than what Hitler did to many children in Germany during the war. I can speak of this because I am one of those Holocaust children who survived those atrocities during the war under the Nazi regime of Hitler.

Based on my experiences before Justice Nevins, I am thoroughly convinced that Justice Nevins has determined that he is going to support the position of the Jewish Family and Child services and obstruct my ability to seek justice for my son without giving proper weight to the evidence before him. I verily believe that Justice Nevins is biased in favor of those agencies who often work closely with the family court system.

Although I know that I can offer no substantial proof to my complaint about Justice Nevins except one witness in the court who saw Justice Nevins and the children's lawyer speak to each other after the court had ended, I have decided to file my complaint for the record anyway. The family justice system and Justice Nevins have put me in a position where I have had the one most precious thing in my life, my child, stripped from me and as a loving and devoted father I literally have nothing left to lose now. The Children's Aid Society and the Family Court system have put my back up against a wall, violated my rights and my child's rights and have maliciously taken my child from me. At the very least, I would ask that the Judicial Council take steps to ensure that Justice Nevins not be allowed to have anything to do with my case at all. I don't trust this judge at all and I believe that it would be a further miscarriage of Justice for Justice Nevins to force himself upon my case at any future court hearing again.

What further disturbs me is that on one of my previous hearings, I saw Justice Nevins conversing in a friendly and joking manner with the lawyer with the Jewish Family and Child services after the court had ended. On yet another occasion, I observed the lawyer from the Jewish Family and Child services walk back into the courtroom from the hall after the courtroom and been cleared and when I opened to the door to look inside, I saw the lawyer with the Jewish Family and Child Services conversing with Justice Nevins alone in the courtroom. It would appear that these informal chit-chats between Justice Nevins and some of the lawyers after the court has closed are not just isolated incidents. Based on just my own observations, the actions of Justice Nevins do not look good and reinforce the perception that Justice Nevins has some special relationship with the Jewish Family

and Child Services and/or lawyers in general. I thought that the administration of Justice was supposed to not only be unbiased, but **APPEAR** to be unbiased.

In addition, I have heard from sources having knowledge of the court system at 47 Sheppard Ave, that others in the community, including some lawyers, have expressed concerns about transcripts of court hearings being altered at the Sheppard Ave. W. court. I have heard that it is practice for Judges to review and approve transcripts before they are released to the parties who order them. This practice of judges checking things before they are released causes one to question the integrity of judges and the integrity of the justice system itself. Why do judges have to read and approve transcripts before they are released? Do the judges not trust the court reporters to record the proceedings correctly? Why do the taxpayers of the Province have to pay a judge's salary for the time it takes to check a written transcript with what is on the court's audio tape. What is said on the record should clearly be written as said and the record should stand and no party, not even a judge, should have special privilege to review the transcripts before being released to anyone who has ordered them.

To prevent such situations as I have described happened in my court, I would suggest that it be a **strict written policy** that once a court hearing ends that the judge **MUST** leave the courtroom as is currently the case in most court hearings and to not do so would be judicial misconduct. The court should remain in session with court reporters on duty and recording proceedings until the judge is completely finished and has exited the courtroom. The court reporter's tape should record the judge leaving the court. An added protection to prevent wrongdoing in the court would be to have the courts install video surveillance cameras in the courtrooms at the front to provide visual evidence to back up transcripts taken by court reporters. Video cameras in the courtroom would help provide an additional level of protection to all parties, included judges and members of the public and help improve the public's confidence in the court system. The procedure of court reporters being relied on record the proceedings in court clearly has it flaws and too open to abuse by the judges and those having sole control of the tapes and the transcripts. All steps should be taken to give the public the appearance of transparency in our family court system.

My 12-year-pld son, who is **not** Jewish has indicated during an interview with a third party prior to all these happenings, that it is his desire **not** to be forced into the Jewish faith and that he would rather follow the Christian faith. My son has been physically, sexually and emotionally abused while under the care and control of the Jewish Family and Child Services. These abuses appear to me and to many others to me to be part of an evil plan by the Jewish Family and Child Services to assist my son's Jewish mother take total power and control of the child and to force the boy to be a follower of the Jewish faith. During one videotaped interview my son reported that he did not want to be Jewish because of all the physical and emotional abuse he has suffered at the hands of Jewish Family and Child Services. He indicated that he could not in good faith want to be part of a group of people that had tortured him so much, both physically, sexually and emotionally.

In this matter involving my son, there has been a terrible abuse of power and authority by the Jewish Family and Child Services and the Office of the Children's Lawyer. I believe that the Administration of Justice has been grossly perverted by those two agencies. The rights of my son to the security of his person under the Canadian Charter have been grossly violated. It is absolutely

astounding that such abuse of power and authority is allowed to happen here in Canada under the shady veil of "child protection."

I would ask that the Judicial council investigate my complaint against Justice Nevins and at the very least inform the court at 47 Sheppard Ave W. to have the court coordinator ensure that Justice Nevins is not scheduled to act as judge in my case or for him to have anything else to do with my court file. I would also request that the court be asked not to have a Jewish Judge hear my case because I believe that the Jewish Family and Child services and its lawyers hold considerable influence within the family court system and that this may cause a Jewish judge to be biased in favor of the Jewish Family and Child Services.

I would also most respectfully request that the Judicial Council or the powers responsible, to put out a memorandum to the judges, making it mandatory that they **MUST** exit the court after every court hearing once it has been announced before the body of the court that the court has ended. The kind of abuse of power that Justice Nevins exercised that day in court must never be allowed to happen in any court in this country. The practice where a judge can continue sitting in a courtroom after a hearing has ended and to enter into private discussions with lawyers for one side, must be stopped.

Yours truly

Xxxxx Xxxxx
(a loving father stripped of a relationship with his son by the Ontario's family court system

Attachments and enclosures

Letter from my son to child advocate telling that he does not trust the Office of the Children's Lawyer

Three (3) video interviews (on DVD) of my son disclosing abuse by Jewish Family & Child Services and general systemic abuse resulting from failure of the courts and abuse of power and authority by a children's aid agency.
June 28, 2003 (70 minutes)
July 12, 2003 (43 minutes)
August 15, 2003 (37 minutes)

A Guide to Recording Your Own Court Hearing

Appendix 11

Ethics in Family Law:

Is Family Law Advocacy a Contradiction in Terms?

Presented to the Advocates' Society Conference in Nassau, Bahamas
2 December 1995

by Mary Lou Benotto

The best barometer of the fear and derision of a society is humour. There is always an element of truth in humour. Thus, we should take heed at the descending quality of lawyer jokes which truly bottom out when it comes to divorce lawyers. It is the basis for this fear and derision, the kernel of truth in the humour that I will address. That unhappy underbelly of our practice which generates justifiable hostility in the public and for which we must take responsibility. For we are the architects of a system that, at best, does not work to resolve domestic disputes and, at worst, is highly destructive to the fabric of society - the family.

THE LITIGATION TRADITION

For Canadians born in 1960, the likelihood of divorce is 33 percent. For those born in 1970, the likelihood is 40 percent (Statistics Canada). Over three-quarters of Canadians are married. Many more are involved in common-law relationships which give rise to legal rights and obligations. So the chances of encountering the judicial system on relationship breakdown are high.

If you are unlucky enough to encounter the system you will find there is no model for divorce outside the context of the adversarial system, so inevitably husband and wife become adversaries. Litigants and lawyers do what is expected: they fight. The problem is that most people, regardless of the anger and hurt, do not want to fight. They want it over. But the forces of our litigation culture, our training and our comfort level in an adversarial practice move the family (lest we forget it still is a family) inexorably away from settlement until irreversible damage is done.

The techniques perfected in other areas of litigation are being rolled into the family law courtroom. Inflated claims, speculative legal theories and scorched earth tactics are a routine part of counsel's arsenal. Think of what this does to an ongoing relationship.

Walter Olson, in his book, *The Litigation Explosion,* said:

The unleashing of litigation in its full fury has done cruel grave harm and little lasting good. It has helped sunder some of the most sensitive and profound relationships of human life: between the parents who have nurtured a child...and those whose life and well-being are entrusted to their care....It seizes on former love and intimacy as raw materials to be transmitted into hatred and estrangement.

This is particularly troubling when those who used to look to the Church, religious advisors or sheer force of tradition for rules to live by now expect the Courts to resolve the most profound and intimate of issues.

THE SHIFT IN SOCIAL VALUES

This dovetails with another disturbing tend which, in the view of many, threatens to undermine the moral fabric of society. It is the popular culture of refusing to accept responsibility. Alan Dershowitz calls it "the abuse excuse."

An article in *Psychology Today,* cited a survey of mothers in 1924 asked to choose three traits they wished their children to develop. Half chose "loyalty to the church," 45 percent chose "strict obedience," 31 percent chose "good manners." If you are older than forty, this was the world your mother was born to. By contrast, in 1988 these qualities were overwhelmingly rejected in place of "independence" and "individual happiness."

This seemingly innocuous shift in values has established roots from which a new moral code is flourishing. It is one in which an individual's rights exist without reference to responsibility. We are in danger of becoming, in the words of Charles Sykes: "a nation of victims." In his book, aptly titled *The Decay of the American Character,* he chronicles how we have forgotten the concept of responsibility. It is socially acceptable to portray oneself as a victim."

We are seduced into a state wherein we absolve ourselves from all responsibility for bad actions. A corollary to this is the concept that disease applies to behaviour rather than merely biology. Since disease is caused by forces beyond our control, no moral responsibility can attach to us for bad actions.

Dr. Stanton Peele, in his book, *The Diseasing of America,* says bad behaviour has become an illness. We are therefore not guilty, just sick. Lawyers especially love this. We have:

- The case of a district school employee fired for consistently turning up late for work successfully suing his employer because he is a victim of "chronic lateness syndrome." (School District of Philadelphia v. Friedman, No. 2073 C.D. 7 April 1986, Pennsylvania Commonwealth Court)

or this:

- An FBI agent is fired for embezzling $2,000 from the government. He took the money to Atlantic City and lost it all. The Court reinstated him because his affinity for gambling with other people's money is a handicap and thus protected under federal law. (Rezza v. United States Department of Justice et. al. No. 87-6732, 12 May 1988, U.S. District Court, Eastern District of Pennsylvania)

or this:

- A man in Wisconsin is turned down for a job as a park attendant because of his long criminal record of exposing himself in public. He successfully sues on the basis that he is being discriminated against because he has only exposed himself in libraries and laundromats, not in public parks. (Mike Royko, "Wisconsin Puzzle Solved in a Flash," *Chicago Tribune,* 7 April 1988)

THE RESULTS IN FAMILY LAW

Family law litigation has now embraced and enhanced these innovations which develop their own character borne of the uniqueness of the domestic relationship. In my opinion, the worst results are found in four areas:

1. abuse allegations
2. the ugly affidavit
3. the winner-loser syndrome in custody cases
4. the use of delay for strategic advantage

ALLEGATIONS OF ABUSE

Domestic violence is abhorrent. I have never found a judicial officer who treated physical cruelty with anything but the seriousness it deserves. However, the term "abuse" has been diluted beyond all proportion. There is scarcely a separated spouse who does not believe that he or she was in an abusive relationship. Abuse is a powerful term. But it is routinely used to describe shouting, badgering, voice raising, walking away when angry. Think for a minute about your private relationship. So as not to raise a bald allegation, the particulars given of the marital discord become very detailed. This leads to the problem of the affidavit.

THE UGLY AFFIDAVIT

The nature of a family law case is that the interim motion is often the most important single event in the proceeding. In the last five years, the number of motions in family law has increased by 150 percent. (Ministry of the Attorney General)

Evidence is presented by affidavit. Human nature is such that it is far easier to lie on paper than in the witness box. As stated in the *Ontario Civil Justice Review, First Report,* (p. 272) the single greatest complaint about lawyers by members of the public was with respect to the damage to family relationships caused by the allegations in these affidavits - where, it is widely acknowledged, perjury is rampant and, moreover, goes unpunished.

As barristers, we worry lest an allegation go unanswered. We therefore respond in kind and this continues the snowball on its course down that treacherous hill.

WINNER-LOSER SYNDROME

Nowhere is the effect of the litigation process more devastating than in a custody dispute. As stated by Robert McWhinney,

The terror, for parents of a court-ordered custody determination, is not the staggering fees, or the shame of one private intimacy or indiscretion after another being exposed in affidavits, or the confusing punishment of cross-examination; nor is it the fear of losing custody per se. The real terror is that, in the possibility of losing the right to parent their own child, they might thereby ultimately, lose their relationship with their child: the experience of loving their child, of influencing and helping and knowing their child.

The loss of custody relegates one parent to inferior status, diminishes the person's importance in the child's life. Where men lose custody of their children, they are more inclined to drift away from the child. This is not necessarily out of mean-spirited motives but the result of the ongoing and irreversible hurt inflicted during the proceedings, proceedings in which the issue was: who is the better parent. What could possibly touch one's soul more? The custodial parent then often becomes, in effect, a single parent - most often working full time. So in the end, the child is the real loser.

The effect of custody disputes on children is devastating. To again quote Mr. McWinney (p. 101):

The majority of children regard the loss of a parent as the single most negative aspect of separation and divorce. Children also worry that if their parents can stop loving each other, they could surely stop loving them as well; and parental custody battles seldom persuade a child that he or she is greatly loved.

DELAY

If one is concerned only with the narrow adversarial approach to family law, then it is fair to say that delay will, in most cases, benefit one party to the detriment of the other. Our system encourages this:

- orders for pre-judgment interest are not routine;
- retroactive orders are difficult to obtain;
- status quo is an important feature in custody cases;
- the recipient of a low interim support order, who is frugal and foolish enough not to go into debt before trial will be met with the argument that she (as recipients are usually women) clearly does not need more.

Recently in motions court I heard a lawyer arguing that no interim child support should be ordered because then the wife would have no incentive to settle the case. I found this more appalling than did the Judge, which told me that it had probably been heard often before. Starving children for tactical gain not only earns us a bad reputation, it passes a legacy of hate throughout the family.

There is also the emotional strain and increased legal costs which are suffered by the whole family. Remember that money is never "awarded" but merely re-distributed within the family. Thus, by definition, the family can never be better off after divorce.

WHERE WE GO

We have a responsibility to restructure the system to afford an opportunity to give the public what it wants - an early, fair settlement.

All the statistical studies of our courts confirm that less than 3 percent of cases actually proceed to trial. Why, then, are we operating a system that caters to that 3 percent and not to the 97 percent? There are over 600 rules and subrules we practice by, three deal with settlement, the rest deal with getting to trial. The emphasis in family law should be reversed. Efforts should be directed to the timing of the settlement, education of the litigants, and early intervention and resolution.

But there remains the problem of tactics. As long as these tactics work even once in a while, they will continue to be used. We have an ethical imperative to change our tactics. We in the Advocates' Society strive to the leaders in the profession. So it is up to us. We change ourselves and then by example, others will follow. Especially if we enlist the help of the judiciary with our convincing arguments that these tactics cannot be rewarded.

Also, I have always believed that the most effective tool to implement behavioural change is the order for costs. Not because of the money, but because of the message.

Our system must promote negotiated settlements by enforcing them. It is of critical importance, where compliance with future arrangements is necessary, that parties themselves design the parameters of the regime. Those who practice in the area of family mediation have know this for years.

The law does not necessarily reward those who negotiate co-operative settlements. Recently, the Supreme Court of Canada (L.G. v. G.B., Supreme Court of Canada, SCJ. No. 72) dealt a blow to the sanctity of separation agreements by holding that, on a variation application, an agreement is only one factor - albeit an important one - but only one to be considered. Furthermore, the ability of parties to negotiate on their own without counsel is all but discouraged. It is much easier to set aside an agreement where one party was not represented. The paternalistic view is that no one who signs away a right without calling in a lawyer could possibly have understood what he or she was doing. The public infers from this that our legal system is organized to encourage the use of its own service.

SUMMARY

In summary, we must provide the public - not just our clients, but our friends and families - with a model for the civilized, cooperative reorganization of the family unit and finances on relationship breakdown.

It is not good enough to say, "this is not my job, my job is to achieve the best result for my client, not to achieve a fair result." We are part of a system on which good, decent people rely. We are the custodians of their trust. We must make available dignified, civilized ways to have family disputes resolved. We must, in short, provide a new model for divorce. We cannot be part of the destruction of the social framework and deny responsibility for the social problems that result.

We may not leave the situation better than we found it, but at least we will not leave it worse.

Mary Lou Benotto was appointed to Ontario's General Division bench in May, 1996

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A Guide to Recording Your Own Court Hearing

Appendix 12

THE Review

Ontario Attorney General wants fewer barriers between courts, media

The Niagara Falls Review – Monday January 17, 2005

Toronto (CP)

Its time to break down the barriers between Ontario's justice system and the media to make the province's courts as open to the public as possible says Attorney General Michael Bryant.

"My chief concern would be to ensure that the justice system is as transparent and as accessible as possible," Bryant told the Canadian Press in an interview.

"We have a legal system inherited from the 18th century, operating in the media spotlight of the 21st century."

There's a long tradition of openness in Ontario courts and transparency in their deliberations, but Bryant admits few people actually attend courthouses any more to watch a trial, but instead rely on newspaper, radio and TV coverage.

"That's where Canadians learn about their justice system," he said. "It's not by sitting in the courtroom. It's by watching a newscast."

"There's no doubt in my mind that members of the public find it very odd that you can take pictures of someone heading into a court but not in the courtroom," he added.

However, he stopped short of endorsing the idea of putting television cameras in the provincial courts, fearing it "might turn some lawyers, and perhaps even judges, into more of a grandstanding mode."

Bryant also said that there are risks to exposing police officers and victims of crime on television, but said the idea of cameras in courts is a debate worth having.

"Some say that the worst thing that ever happened to the legislative assembly (of Ontario) was they brought in cameras, and the debate went from very serious into nothing but rhetoric,: said Bryant.

"On the other hand, I personally started politics in a legislature full of cameras and can't imagine it otherwise."

A Guide to Recording Your Own Court Hearing

Appendix 13

February 10, 2005.

[redacted]
[redacted] Blvd.
Toronto, Ontario
[redacted]
Tel. Home: 416-[redacted]
Work: 416-[redacted]
Fax Home 416-[redacted]

The Honourable Michael Bryant, Attorney General of Ontario
720 Bay St, 11th Floor
Toronto Ontario
M5G 2K1
Tel : 416-326-2220
Fax : 416-326-4016

Dear Minister

RE: Unacceptable length of time in obtaining transcripts from the court reporter in the matter of the Crown v. [redacted] – Ontario Court of Justice at 1911 Eglinton Avenue East, Toronto. Receipt No. 145097; 145098; 145099.

I would like to express my concern about the length of time it has taken to obtain copies of court transcripts for my court hearings and to request your assistance in obtaining the transcripts that I ordered 6 weeks ago relating to my criminal trial.

On December 15, 2004, I ordered transcripts for three court dates which I attended. These dates were September 14th, 15th and 16th 2004. Attached, are copies of receipts that I paid in advance to order the transcripts. I paid $120 in advance.

About a week after I placed my order. I got a call from the court telling me that the transcripts were ready for pick up. However, when I went to the court on December 30th to pick up my transcripts, only the transcript for my hearing on September 16, 2004 was ready for me. The transcripts for September 14th and 15th were not ready and no explanation was given as to why these were not ready at the same time. I was most interested in the transcripts for the 14th and 15th as a number of statements were made by the judge and the Crown Attorney which I felt were helpful to my defense.

It has been six weeks since I ordered the transcripts and still have not received them. The transcripts I am seeking are quite short and likely are only a few pages for each day. They are important for my defense.

One court reporter I spoke to told me that before I can receive my transcripts that the judge must review them and approve them and that this might be the reason why my transcripts are taking so long. Could you please confirm if it is, or is not, the practice of the court reporters to allow judges to review transcripts before being released to the parties who order them?

I am trying to move my case ahead but my inability to obtain transcripts from the court in a reasonable period of time is delaying the course of justice in my matter.. It should not take so long to have the official transcripts ready. Most parties who are before the court are fully occupied with defending themselves and certainly should not have to repeatedly calling the court for something as basic as transcripts. The administration of Justice should not be slow.

Your written response would be most welcomed.

Yours truly

[redacted]

[redacted]

Attachments:
Copy of receipts dated December 15, 2004 (1 page)
Copy from Official Court Reporter, only for the date of: 16 Sept. 2004 (1 page)

A Guide to Recording Your Own Court Hearing

Appendix 14

Panel on

Justice and the Media

Report to the Attorney General for Ontario

August 2006

Panel on

Justice and the Media

Report to the Attorney General for Ontario

This report is available online at
www.attorneygeneral.jus.gov.on.ca/english/about/pubs/pjm
or
www.paneljusticeandmedia.jus.gov.on.ca

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The Honourable Michael J. Bryant
Attorney General for Ontario
Ministry of the Attorney General
720 Bay Street, McMurtry-Scott Building
Toronto, Ontario
M5G 2K1

Dear Mr. Attorney,

In January 2005, you announced the creation of a panel on justice and the media and issued a challenge to the seven of us: define the challenges and appropriate roles of the media in a 21st century justice system.

To this end we convened our first meeting, approved our terms of reference (please see Appendix A), called for submissions and created a public website.

The journalistic community came out in force: large and small, broadcast and print. So did all parts of the legal community: judges, police, lawyers, administrators. As panelists we were both impressed and distressed by what we heard. Some of the testimony was dramatic: a gentle man mourning his brother who killed himself after public airing of charges later withdrawn; a young reporter facing a criminal record because he didn't know the law of contempt; an angry children's advocate who showed us a section page picture of the central figure in an adoption case – a little girl, posed nearly unclothed. Other stories we heard were infuriating, some inspiring, and some almost comic. But we also heard many inspiring stories of intelligence, professionalism and compassion.

We were universally struck by the time, dedication and effort taken by those organizations and individuals who appeared before us and who wrote to us, and we have listed their names in Appendix B. They clearly took the objects of your initiative seriously and they are willing to continue working to the fulfillment of those objects. The frank exchange of ideas, the high quality of writing and the passion with which arguments were made gave us a greater understanding of the issues.

We learned many things, but two are fundamental:

1. the current system doesn't work as well as it should;
2. there is a keen desire from all sides to improve the operations and understanding between the justice system and the media.

Our report gives you our recommendations on the work that needs to be done. We also feel it is important that you understand the philosophical context within which the recommendations have been crafted.

In particular, you asked us if the roles and responsibilities of those involved reflect values that are suitable for a 21st century relationship.

Our answer is yes.

The founding principles of journalism: verification, independence, fairness, calling to account; and the fundamental principles of justice: presumption of innocence, open courts, equity – need no revision. They are the hallmarks of our democracy and the basis of our civilization. Our society has changed, and so has our technology. But the values of our journalism and our justice system can and must embrace these changes.

To accomplish that, we appreciate the need to carefully balance interests which some times appear to conflict. This is not an easy or simple process. The changes in our society and our technology have accelerated the necessity for clarity and fresh thinking.

Public confidence in our justice system is essential. If we are to have in Ontario the very highest standards, we believe some significant changes are in order. Too often we heard tales of a system whose rules have been applied unevenly and of journalism based on inadequate knowledge.

Mr. Minister, we asked you if there were any issues we could not examine. You replied in the negative. We have taken you at your word.

Our goal is that Ontario's justice system and the media should set the standards for excellence worldwide.

Our overriding vision is the following:

> Ontario's justice system and the media should set the standard for excellence and leadership, in both form and practice, for fair trials, open courts, respect for privacy, communications between the justice system and the media, informed reporting and public education.

In coming to this vision statement, the Panel articulated five underlying principles that have informed our discussions and helped frame our recommendations.

1. Openness: The administration of justice must be open. This means open access by the media and the public to court proceedings and court records, subject only to restrictions imposed by law.
2. Access: Procedures regarding access to information must be clear, consistent and timely.
3. Education: A high degree of information, understanding and education across the two professions is essential.

4. Equal yet independent players: The justice system and the media should not be perceived as partners, but rather as a relationship of equals. Each should respect the other's role in a constitutional democracy.
5. Respect for privacy rights: The privacy rights of children, victims of crime and other vulnerable people must be respected by both the media and the justice system.

The Panel respectfully asks the Attorney General to endorse this vision and the principles that accompany it.

Such support would be an important signal to both the justice system and the media who interact with it on a daily basis.

As you will see, our recommendations flow naturally from the principles enumerated above. We would like to add that the Panel has arrived at a consensus on all our recommendations. We believe they form an appropriate and modern balancing of the interests at stake.

We would also like to thank both you and the government for taking the initiative to delve into this important area. Our work would not have been possible without the tireless and dedicated efforts of Ministry staff led by Linda Kahn.

Finally, it has been a pleasure and honour to serve on this Panel.

Yours respectfully,

Chief Paul Hamelin
Past President, Ontario Association of Chiefs of Police

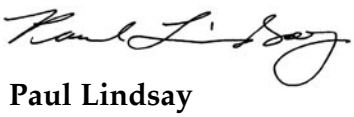
Justice James MacPherson
Court of Appeal for Ontario

Ralph Steinberg
Past President, Criminal Lawyers' Association

John Honderich
Former Publisher, Editor and Reporter for the Toronto Star

Trina McQueen
Broadcaster and Journalist, Professor of Broadcast Management, Schulich School of Business, York University

Benjamin Zarnett
Past President, The Advocates' Society



Paul Lindsay
Assistant Deputy Attorney General, Criminal Law Division, Ministry of the Attorney General

August 2006

EXECUTIVE SUMMARY

The Panel on Justice and the Media has made 17 recommendations to improve operations and understanding between the justice system and the media. It has based its recommendations on the following vision and principles:

Vision

Ontario's justice system and the media should set the standard for excellence and leadership, in both form and practice, for fair trials, open courts, respect for privacy, communications between the justice system and the media, informed reporting and public education.

Principles

Openness

Access

Education

Equal yet independent players

Respect for privacy rights

The Panel's recommendations address the following issues:

Openness:

- access to court records;
- use of tape recorders;
- cameras in the courtroom;
- media facilities at the courthouse;
- media lock-ups;
- affordable access to court records.

Education:

- increasing knowledge across the two professions;
- public education.

Electronic Age:

- notification of publication bans;
- electronic access to court records;
- online media guide;
- public justice-media website.

Ongoing Activities:

- justice-media liaison committee;
- press conferences/public commentary;
- *sub judice* contempt rule and shield law.

The Panel believes that the implementation of these recommendations, individually and collectively, will promote further development of the justice-media working relationship and improve the quality of justice reporting to the public.

I. OVERVIEW

Approach

The Panel sought, and received, information and opinions on many sides of the issues before it: some emphasized the right to a fair trial; others, the rights of a free press; still others, the balancing of competing interests of the public's right to know and privacy interests.

Much of the dialogue focused on ways that these two pillars of a modern society – the justice system and the media – can and should co-exist.

The Panel was also informed by legislation, case law and policies in Ontario and Canada (please see Appendix C). It heard of the special needs of children at risk, victims of crime and other vulnerable individuals interacting with the justice system.

It was apparent that the "current reality" is one with a certain amount of doubt and with outcomes that are frequently dissatisfying. The "preferred future" might be characterized by greater trust, with outcomes that are respectful to each other, leading to greater confidence in the administration of justice.

The Panel's report focuses on bridging the gap between current reality and a preferred future. In writing this report and making its recommendations, the Panel has aimed for a balanced approach that:

- considers the many dimensions of the public interest;
- recognizes that professionals in both "solitudes" have legitimate functions to play in a modern society;
- respects the significance of individuals and individual events in the justice system;

- keeps in mind that the cumulative impact of justice reporting is not about a single case, charge or encounter but rather the extent of the public's confidence in the administration of justice;
- acknowledges the effect of the electronic age on justice reporting.

Using this approach, the Panel has developed an overarching vision statement with accompanying principles that together form the basis for advancing understanding between the media and the justice system. Specific recommendations that address many aspects of systemic change – strategy, structures, people, systems and culture – are developed in chapters on Openness, Education, the Electronic Age and Ongoing Activities.

Each chapter includes recommendations on issues followed by a discussion of those issues.

Vision

The Panel's vision is that:

> **Ontario's justice system and the media should set the standard for excellence and leadership, in both form and practice, for fair trials, open courts, respect for privacy, communications between the justice system and the media, informed reporting and public education.**

Principles

The Panel builds on that vision statement by articulating the five principles or values that have informed its discussions and underlie its recommendations.

1. Openness: The administration of justice must be open. This means open access by the media and the public to court proceedings and court records, subject only to restrictions imposed by law.
2. Access: Procedures regarding access to information must be clear, consistent and timely.
3. Education: A high degree of information, understanding and education across the two professions is essential.
4. Equal yet independent players: The justice system and the media should not be perceived as partners, but rather as a relationship of equals. Each should respect the other's role in a constitutional democracy.
5. Respect for privacy rights: The privacy rights of children, victims of crime and other vulnerable people must be respected by both the media and the justice system.

II. OPENNESS

In this chapter the Panel addresses:

- *access to court records;*
- *use of tape recorders;*
- *cameras in the courtroom;*
- *media facilities at the courthouse;*
- *media lock-ups;*
- *affordable access to court records.*

Access to Court Records

RECOMMENDATION #1: ACCESS TO COURT RECORDS

(a) The Panel recommends that the Ministry of the Attorney General adopt policies and procedures to enhance public access to court proceedings, to information about pending court cases and to documents filed in court, consistent with the principles of openness discussed in this report and the other recommendations in this report.

(b) The Panel also recommends that the Ministry of the Attorney General take steps to ensure the consistent application of those policies and procedures throughout the Province.

The Panel also notes that:

- the policies and procedures should be sent to all court offices;
- training should be provided to relevant ministry staff;
- the policies and procedures should be available to the public on the Ministry's public website and also available on staff intranet sites.

Issue:

The loudest theme the Panel heard was the importance – and lack – of openness in the justice system. The problem in this respect is revealed most clearly by:

- uneven access to court records across Ontario's courthouses;
- unclear procedures regarding media enquiries in courthouses.

Sometimes, but not always, these differences have a large centre/small centre split.

What the Panel heard:

The difficulties that reporters frequently encounter in finding and accessing information about a case was a source of considerable frustration to presenters from the media.

For example, the Toronto Star, echoed by Sun Media Corporation, said: "Our primary concern is the growing obstacle that journalists in this province are experiencing gaining access to court documents … Public documents are being withheld … with little, or inconsistent, explanations as to why. Timely reporting is difficult …."

Some highlights of presentations, both oral and written, to the Panel include:

- Procedures for accessing court files are inconsistent. They vary from courthouse to courthouse and from court staff to court staff.
- Procedures to access information in the courthouse are frequently unclear. Reporters can spend too much time looking for either the information or for court staff to question.
- Few or inconsistent explanations are given when court documents are denied.
- Excessive delays are encountered in providing court documents – or reporters are forced to initiate formal applications.

Discussion:

An environment has grown over the years where the availability of records is often neither timely nor accessible.

Court records are instrumental tools of justice reporting. An environment where access is uneven or unjustifiably denied is not acceptable. The problems of lack of clarity and uneven practices need careful attention so as to improve operations on a practical, day-to-day basis.

The Panel strongly believes that Ontario has a great opportunity, and a great need, to improve both the reality and appearance of an open system. In keeping with the vision and principles the Panel suggests above, the Panel believes that a strong and consistent message needs to be conveyed to all in the justice system to embed "openness" as a value that can be applied as a practice daily in the justice system.

The Panel notes that a directive was developed by the Ministry of the Attorney General's Court Services Division in the fall of 2005 with the stated goal of bringing together existing policies and procedures and having them catalogued in one place.

There are examples elsewhere in Canada where clear and coherent policies regarding access to court records are made available and implemented for all court staff, including New Brunswick, Manitoba and Saskatchewan.

The Panel would also make reference to the Superior Court of Justice's Media Handbook – a Reference Guide. It is the Panel's understanding that the guide is being updated, but its commitment to set out the relevant statutes, case law and administrative information is undoubtedly useful.

Use of Tape Recorders

Recommendation #2: Use of tape recorders

The Panel recommends that as a general principle tape recorders be permitted in the courtroom by lawyers, persons acting in person and journalists for the purposes of accuracy. Accordingly, the Panel recommends that:

(a) s. 136 (2) (b) of the *Courts of Justice Act* be amended to permit the unobtrusive use of tape recorders at a court hearing without prior approval of the judge;

(b) in the interim, the use of tape recorders as now permitted by s. 136 (2) (b) of the *Courts of Justice Act* and the Practice Direction of Chief Justice Howland dated April 1989 be publicized by appropriate signage in all courtrooms.

Issue:

Although the *Courts of Justice Act* [s. 136 (2)] indicates that tape recorders may be used unobtrusively for note-taking purposes by lawyers, parties acting in person and journalists with authorization from the judge, Ontario courts are inconsistent in their practice of allowing tape recorders in courtrooms. This inconsistency of practice has persisted

notwithstanding that in April 1989 the then Chief Justice of Ontario issued a Practice Direction stating that:

> Subject to any order made by the presiding judge as to non-publication of court proceedings, and to the right of the presiding judge to give such directions from time to time as he or she may see fit as to the manner in which an audio recording may be made at a court hearing pursuant to s. 146 [now s. 136] of the *Courts of Justice Act*, the unobtrusive use of a recording device from the body of the courtroom by a solicitor, a party acting in person, or a journalist for the sole purpose of supplementing or replacing handwritten notes may be considered as being approved without an oral or written application to the presiding judge.

What the Panel heard:

The Canadian Newspaper Association reflected on the problem:

> Although unobtrusive tape-recording has been available for several decades, and is accepted practice in other jurisdictions, Ontario courts are inconsistent in how they view use of tape recorders even as fact-checkers. It is difficult to understand how something that improves accuracy in court coverage can be forbidden.

Nevertheless, the Panel heard anecdotally of at least one court location that posted signs prohibiting such use and that practices were inconsistent across the province.

The Canadian Newspaper Association suggested "…that the courts [should] permit the presence of tape recorders in court rooms as an aid to ensuring accuracy in court coverage unless a judge has a clear and unambiguous objection on the grounds of interference with the administration of justice." This was supported by the Ontario Community Newspaper Association, the Ontario Association of Broadcasters and Metroland Printing, Publishing and Distributing.

Discussion:

The Panel's research showed that tape recorders have been incorporated into court practices in other jurisdictions. In British Columbia, for example, while the Supreme Court of B.C. has a general policy prohibiting tape recorders in courtrooms, under certain conditions it allows accredited journalists to bring tape recorders into the Court to help them report the proceedings accurately. Certain conditions must be met, including:

- the use of recording devices cannot be disruptive to the proceedings;
- such use cannot impose an additional expense on the court;
- such use must be for verification of journalists' notes only, and not copied or used for broadcast purposes.

It remains at the judge's discretion to exclude the devices for part or all of a case. The tape recorders can be used only in courtrooms, not other areas of the courthouse. A committee of journalists oversees the accreditation process.

In Manitoba, journalists can use tape recorders for verification purposes without making an application. They are not permitted to broadcast those recordings.

The Panel agrees that there is a need for clarity about the legitimate use of tape recorders in the courtroom. There are standards for this elsewhere in Canada and indeed in several court locations in Ontario itself.

Cameras in the Courtroom

Recommendation #3: Cameras in the courtroom

The Panel recommends that:

The *Courts of Justice Act* should be amended to permit cameras for proceedings in the Court of Appeal and Divisional Court, and for applications or motions in the Superior Court of Justice and the Ontario Court of Justice, where no witnesses will be examined at the hearing, subject to the discretion of the panel or judge, which discretion should be exercised recognizing the primacy of openness.

Further, on those unusual occasions where witnesses are called to testify in any of the above appeals, applications or motions, cameras for such proceedings would be permitted where the presiding judge, the parties and witnesses agree.

The Panel defines "cameras" as including television and still cameras. Note that the *Courts of Justice Act* does not define the word "camera," and s. 136 uses the following wording:

> 136 (1) Subject to subsections (2) and (3), no person shall,
>
> (a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise….

Issue:

Television cameras are generally forbidden access to Ontario courts, and Ontario has not recently addressed this issue in a proactive way. There are strongly held views on the matter; and the Panel faced the question of open courts and public access on one hand; and security, privacy and standards of justice on the other.

What the Panel heard:

The law on the question is governed by s. 136 of the *Courts of Justice Act*, which generally prohibits the use of cameras in courtrooms – unless an exception is made by the judge under one of the following conditions:

- where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;
- in connection with any investitive, naturalization, ceremonial or other similar proceeding; or
- with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

The Panel heard from, among many others, two of the most passionate advocates on each side of this debate, namely, Dan Henry, counsel for the CBC and an executive on the board of "Ad IDEM" (Advocates in Defence of Expression in the Media), who supports cameras; and David Lepofsky, counsel with the Ministry of the Attorney General, lecturer and writer, who opposes cameras in the absence of a strong consent rule applying to all parties.

Arguments supporting Mr. Henry's point of view include:

- Television is the primary source of news for Canadians:
  - Excluding cameras from the court deprives citizens of easily available first-hand knowledge of a fundamental expression of our democracy and our civilization.
- Television can educate the public:
  - Particularly in a multi-cultural society, television may increase understanding of the values and tenets of the legal system.
  - American television is widely available and watched in Ontario. Citizens here have no viewing access to their own courts, but can watch the full activities of a foreign justice system.
- Television may open trials to public scrutiny:
  - Knowledge that a trial may be televised could encourage witnesses and other participants to prepare and testify better.
  - Potential witnesses viewing a trial might be encouraged to come forward to contradict misleading testimony.
  - A televised trial could enhance the perception of the fairness of the trial and the sentence.
  - A well-informed public might participate more fully in the justice system.

- Television can provide a full record of proceedings:
  - Modern television cameras are small, virtually noiseless and need little additional light.
  - The courts are the last closed expression of democracy. Parliaments, legislatures, elections and public hearings are all available by television for use by citizens, by educators and by history.

Arguments supporting Mr. Lepofsky's views include:

- Television may affect the behaviour of trial participants:
  - Witnesses may be reluctant to testify, may look and act differently, may embellish their testimony or alter it after seeing television.
  - Jurors might feel pressure, which could affect their judgment.
  - Lawyers could be tempted to "grandstand" or change their conduct of cases.
- Television highlights or news clips might be damaging to justice:
  - Re-broadcast and nightly analysis of trials provide a feedback loop that permits trial participants to become aware of public reaction, which could have a prejudicial effect.
  - Television may focus on sensational cases, which could diminish the dignity of the courts and foster disrespect.
- Television could inhibit access to the courts:
  - Victims may be reluctant to report crimes and testify; parties to civil disputes may refrain from bringing actions or may settle actions disadvantageously rather than face television exposure.
- Television could jeopardize the safety and privacy of trial participants:
  - There could be acts of revenge against witnesses, jurors, lawyers, judges, clerks and enforcement officers.
- Television could create additional costs:
  - Courtrooms may have to be adapted, and, because of the potential for jury contamination there could be longer, more costly jury sequestration.

Of course, these arguments, though framed as a debate between Mr. Henry and Mr. Lepofsky, were advanced by many other groups. In fact, nearly everyone who appeared before the Panel had something to contribute on this subject – and the opinions were not always the expected ones.

Discussion:

The debate over television in the courts is a passionate one, and is largely informed by the particular experience and ideas of the discussants. Although there has been academic interest in the issue, and conflicting articles, the Panel understands that, in the absence of a true control group, there can be no absolute knowledge whether television does or does not affect courtroom behaviour.

In the discussion of television in the courtroom, reference was often made to the now routine televising of public inquiries. More than 80 Canadian public inquiries have been televised. Many of these inquiries have concerned explosive public issues: for example, allegations of child abuse in the Mount Cashel scandal. Yet, the televising of these inquiries seems to be accepted by all who view or participate in them. However, the Panel was told, the inquiries consider issues of public interest, not the personal actions considered by the courts. As well, at a public inquiry, an individual's personal liberty is not at stake.

The Panel sought guidance from practices both across Canada and abroad.

Provinces such as British Columbia, Nova Scotia and Manitoba allow cameras in some courtrooms with prior permission of the court. In Newfoundland, cameras are allowed into a courtroom up to the time the judge enters. In other words, the media may film participants in the courtroom before the trial begins, but may not record the proceedings.

In British Columbia's Provincial Court, media wishing to televise or broadcast all or part of the proceedings in a particular case must apply to the presiding judge. The judge, who may use the B.C. Supreme Court's *Policy on Television in the Courtroom* and *Guidelines for Television Coverage of Court Proceedings* as a guide, may grant the application if he or she finds it is in the public interest and that to do so will not:

- affect the right of the accused to a fair trial;
- cause discomfort to any witness;
- interfere with any privacy rights that may override the public interest in televising the proceedings;
- have the potential effect of deterring witnesses in any future similar cases;
- cause additional expense to the Court; or
- otherwise potentially hamper the ongoing administration of justice in relation to Provincial Court proceedings.

The Canadian Judicial Council (CJC) has long expressed its concern with the impact of televising court proceedings on witnesses, jurors and trial court proceedings generally. Originally applied to all courts, the CJC first modified its position to exempt the Supreme Court of Canada, and in 2002 also exempted all appellate courts from this position. Its concern is now focused on trial court proceedings.

At the federal level, the courtroom proceedings of the Supreme Court of Canada are televised by the Canadian Parliamentary Affairs Channel (CPAC). It is possible to obtain a video of proceedings.

Internationally, there are a number of jurisdictions that permit cameras in courtrooms under certain conditions. For example:

- In the U.S., in 2001, all of the states had some provision for live or taped media coverage of court proceedings (television cameras, still photographers, still cameras and audio systems). Most permit the judge to decide if cameras will be allowed in a given case. Almost all courts require that media personnel allowed in the court must provide access to its video transmissions and its pictures to others requesting such access. All states that permit television, radio and photographic coverage of courtroom proceedings have adopted rules or guidelines governing such coverage.
- The supreme courts in eleven states regularly broadcast or webcast their hearings (Alaska, Connecticut, Florida, Indiana, Michigan, Missouri, North Dakota, Ohio, Vermont, Washington and Wisconsin).
- In the United Kingdom, the present law prohibits taking photographs, including television, film or video, in court or broadcasting any sound recording made in court. In November 2004, the Department for Constitutional Affairs issued a consultation paper, *Broadcasting Courts*, to encourage full public debate of the issues as it considers whether to permit broadcasting court proceedings. A pilot scheme for filming cases in the Court of Appeal ran for three weeks in the Royal Courts of Justice in November 2005. Filming was for research purposes only and not for broadcast to the public.

In the end, the personal views of the Panel members on the issue of television in the courts were diverse. However, our recommendation is unanimous. All Panel members believe in open courts and wish to see Ontario set the highest standards for public access. Nevertheless, it is clear to all of us that the great majority of the groups who participate in the justice system have grave and important concerns about television. A recommendation to amend the current restrictions on televising trials would not be acceptable.

We also believe that most of the concerns expressed to us apply to those proceedings in which witnesses are testifying orally. For appeals, motions and applications, where there are no such witnesses, the benefits of openness derived from televising proceedings outweigh the concerns. In such cases, televising should be broadly permitted. The court should always have discretion to exclude television, but only after giving due consideration to the value of openness. Where witnesses will testify at the hearing of an appeal, motion or application (a rare event) television should be allowed when the parties, witnesses and court agree.

For reasons similar to those which relate to television broadcasts, the right to use still cameras in courtrooms should be permitted in the same circumstances as televising is permitted.

Some may see this as a small step. We do not think so. Televising these proceedings will bring an entire body of legal argument and judicial process before the cameras, in some of the most important cases heard by our courts.

The people of this province will have an opportunity to be eye witnesses to important aspects of the justice system in action. Whether they watch for inspiration, education or even entertainment, they will be observers of a historic process, which is a critical element of our democratic system.

Media Facilities/Facilitating the Media at the Courthouse

Recommendation #4: Media facilities at the courthouse

The Panel recommends that:

(a) A staff media contact person should be identified for each court location so that media always know whom to contact when there are questions or disputes between the media and the staff in the courthouse.

(b) A room or location should be dedicated for the use of the media in each major courthouse and in other court locations wherever possible.

(c) There should be reserved seating for the media in courtrooms.

Recommendation #5: Media lock-ups

The Panel recommends that the Court of Appeal provide the media with the opportunity to view major decisions immediately prior to their release to the public through mechanisms and procedures such as lock-ups.

Issue:

The media, with short deadlines to meet, often spend much unproductive time and energy in the search for answers from the courts and from prosecutors. In addition, media reporting often operates without benefit of legal context. These difficulties can hamper the complete and accurate reporting of cases.

What the Panel heard:

Reporters told the Panel that they often have trouble finding the person with the authority to release documents in the courthouse. They also feel inconvenienced by the absence of a room in which to do their research.

In the vein of improving complete and balanced reporting, the Panel heard about practices in both other courts and in provincial ministries or departments that might be helpful models for Ontario's justice system to adopt.

The Supreme Court of Canada has an Executive Legal Officer, a lawyer, who handles:

- pre-session briefings to highlight cases;
- briefings on judgments on appeal;
- events similar to lock-ups, based on a protocol with the Press Gallery – these are off the record, and the protocol is posted through the Media portal on the Supreme Court's website;
- all media requests and requests for interviews.

That person is also secretary to the Court's media relations committee, comprising three justices of the Court, the Registrar and the Executive Legal Officer. Media are invited to participate in meetings.

The current Executive Legal Officer of the Supreme Court, Nancy Brooks, indicated to the Panel that in her opinion, attitudes have changed with direction coming from the Chief Justice and others that courts should be open public institutions and it is important for media to understand the case it is covering. The philosophy is to improve accuracy so that the judgment, its rationale and underlying issues can be explained to the media.

In England and Wales, the Lord Chief Justice announced that he was creating a communications office to support judicial office holders as of April 2005.

> The reason I am establishing this office is to increase the public's confidence in judges…In the past judges have been very well supported in our communications needs by successive Lord Chancellors who have generously made the facilities of their departmental press office available to us. However, I have been aware for some time that the judiciary needs to expand its communications base more widely, from a relatively narrow focus on media relations to a more comprehensive information service for the public as a whole. Although our relationship with the media remains important, a major element of the work of the new communications office will be to provide the public with a sound understanding of how judges operate.

Provincial prosecution models were also instructive. The Panel heard from Nova Scotia and British Columbia. Though structured differently, in both cases the prosecutions' communications role was independent of the Ministry of the Attorney General.

- Nova Scotia has an independent Public Prosecution Service (PPS), which reports directly to the Legislature rather than to the Attorney General. The Nova Scotia Public Prosecution Service has a director of communications (a former journalist). This position was established after the Westray Inquiry. The present director is responsible for internal communications, external stakeholder relations, media relations, issue management and crisis management. She sits at the PPS management table and has built trust and credibility with Crowns.
- In B.C., the role of Communications Counsel was established in 1998 for the Criminal Law Branch of the Ministry of the Attorney General. The role is set out under the *Crown Counsel Act* and is distinct from the ministry's communications. The Criminal Law Branch position includes public education, training and helping trial and appellate counsel respond to the media. The communications counsel's message may not always coincide with that of the ministry's communications – but the two entities have a good relationship that respects the role of the other.

The Panel has been advised that media reaction to the Communications Counsel's role in B.C. has generally been positive. As can be imagined, some reporters appreciate the convenience while others, especially those working on a particular case, would prefer direct contact with the trial counsel.

The individuals to whom the Panel spoke, from the Supreme Court of Canada, Nova Scotia and British Columbia, observed that in their opinions accuracy in reporting has improved with explanations of context.

The Panel also heard from the Ontario Association of Chiefs of Police and the Police Association of Ontario which pointed out that most police services boards now work with professionally trained media relations officers. Sometimes these are police officers; sometimes they are civilians. At all times these individuals must operate within a legislative framework.

The Panel heard from a representative of Ontario's Ministry of the Attorney General about its current communications policies and practices. The Ministry is quite aware of the role that timely, accurate information to the public via the media plays in enhancing confidence in the justice system.

The Panel was advised that the Ministry's model of media relations is based on a single point of contact. This model is used to provide information in a setting where the Ministry has dozens of field offices and approximately 6,000 employees, many of whom are in court and unavailable. Communication with the media is through the Ministry's media spokesperson. Individual Crowns may speak to the media if they wish to according to specified protocol and with the assistance of the Ministry's media spokesperson. The media spokesperson may also facilitate the work of the media by telling journalists where they can get further information.

The approach is based on a desire to ensure the proper administration of justice and the integrity of all matters before the courts, to ensure the accused's right to a fair trial is never compromised, to provide for the protection of and sensitivity to the needs of the accused, and to support the concept of open courts.

Media enquiries include criminal, civil, family justice, victims' services, court services, policy and corporate services. The Ministry receives about 2,000 calls per year, typically about a specific case, access to court documents or courthouse-specific information.

Regarding Crowns who work on criminal cases, the Crown Policy Manual for Ontario's Crown prosecutors includes a policy on Media Contact by Crown Counsel. That policy says:

> Public confidence in the administration of criminal justice is enhanced by the availability of appropriate and timely information concerning cases and the criminal process. However, public statements by Crown counsel should not compromise the public's perception of their impartiality and ability to function as public servants with quasi-judicial responsibilities…Crown counsel are agents of the Attorney-General and local Ministers of Justice. As a result of their quasi-judicial status, Crown counsel are required to deal with the media and the public differently than defence counsel.

Neither the Minister nor any individual Crown can speak about substantive matters relating to cases before the courts.

There are occasions where matters are addressed by the Crown or the Minister at the appropriate time, i.e., after the matter has been spoken to in court. The Ministry spokesperson can help Crowns who are unfamiliar with speaking to the media.

Discussion:

While the role of the Ministry's single spokesperson remains crucial for timely feedback to the media, there still seem to be areas where basic information could be expedited to reporters at courthouses.

The Panel encourages an environment that accommodates points of contact in the courthouse more conveniently. This would strengthen the ability of the media to do its job in a more thorough way. As well, a lock-up providing the media with an opportunity to review an important decision of the Ontario Court of Appeal before its release to the public (as the Supreme Court of Canada often provides) would enhance accurate reporting.

Affordable Access to Court Records

Recommendation #6: Affordable access to court records

The Panel recommends that the Ministry of the Attorney General set the cost of photocopying records with the primary goal of ensuring reasonable, affordable access to the public and the media of court records. Copies of Informations, Indictments and judicial interim release documents in criminal proceedings should be made available expeditiously to accused persons or their counsel free of charge by ordinary mail or at the court office. Photocopy services should be available on site for this purpose.

Issue:

The costs of photocopying court records in Ontario are significantly higher than in most other jurisdictions in Canada. The rates are steep in absolute terms as well as in relative terms.

What the Panel heard:

The Ministry of the Attorney General explained to the Panel that copying fees are prescribed under the *Administration of Justice Act* for each level of court. The fee for non-certified copies is $2 per page ($1 per page in Small Claims Court). The fee for certified copies is $3.50 per page ($4 in the Superior Court of Justice and the Court of Appeal).

The Canadian Association of Journalists (CAJ) was among those who criticized this fee, pointing out that the fee for accessing and copying court records for one research endeavour can run into the hundreds of dollars. "We submit the fee represents a significant and unjustifiable financial burden on journalists and the public."

Discussion:

The CAJ produced an inter-provincial cost comparison, indicating that viewing fees can run from $0 in some provinces to $10 (in Alberta, Saskatchewan and New Brunswick) to a high of $32 in Ontario. The per-page copy fees range from $0.25 in Prince Edward Island to $1.00 in Alberta and British Columbia to $2.00 in Ontario, Quebec and Newfoundland.

The Panel believes that the fee structure for photocopying is out of line with other jurisdictions and is excessive and that it requires adjustment.

III. EDUCATION

In this section the Panel addresses:

- *increasing knowledge across the two professions;*
- *public education.*

Increasing Knowledge Across the Two Professions

Recommendation #7: Continuing professional education

The Panel recommends that the Attorney General actively facilitate learning opportunities for professional organizations on justice-media topics using a range of venues and variety of formats, including conferences, online learning and mentoring.

In this respect, the Panel commends organizations such as the Radio-Television News Directors Association, the Advocates' Society and Legal Aid Ontario for their proposals to develop justice-media educational programs and suggests that the Attorney General take advantage of their offers of assistance.

Recommendation #8: Post-secondary professional education

The Attorney General, together with media and legal organizations, should encourage the inclusion of justice-media education in the curricula of law and journalism schools, and promote joint dialogue.

Issue:

The Panel found that an information gap and lack of understanding exist between some participants in the justice and media professions. Each would benefit from a greater understanding of the professional principles that guide, and the challenges that face, the other.

Some expressions of the tension between the two roles will sound familiar:

- The right to a fair trial may be compromised by naming suspects in the press, through pre-trial media coverage that may influence jury neutrality, and by "trying cases" in the press and on the courthouse steps.
- Freedom of the press may be compromised by publication bans and other restrictions on information.
- Judicial independence may appear to be compromised if members of the bench give interviews about a case.
- Freedom of the press may be compromised if journalists are compelled to name their sources of information. On the other hand, justice may be hindered if the credibility of the source cannot be evaluated.
- Independence of the press may be compromised if they are used by police to aid their investigations, either by publicizing requests for information or witnesses, or as informants.

The Panel believes that this situation has made it difficult for the two professions to see solutions in a more positive way.

What the Panel heard:

The Panel heard many endorsements of continuing professional education as a way to build bridges between justice and the media. Learning events are already taking place in some arenas. There are opportunities for a more consistent and thorough approach, one that builds on good practices within Ontario and elsewhere.

There are some noteworthy examples of educational opportunities, among them:

- The Ontario Association of Chiefs of Police Conference, September 2004, dealt with topics such as, "The Changing Face of Communications for Police Services in Ontario"; and "Media Relations and Communicating with Diverse Communities."
- In the spring of 2005, the University of Western Ontario Law School and the Public Information Committee of the Canadian Judicial Council sponsored a conference designed to enhance the knowledge of journalists about the Canadian

judicial system. The Council produced a very valuable "Glossary of Basic Legal Terms and Concepts for Journalists," and conference participants also received an outline of the Canadian justice system.

- Also in the spring of 2005, the Law Society of Alberta and the Court of Queen's Bench in that province sponsored a seminar called, "The Media and the Law: Delivering the Message: Is the Public Well Served?" Topics raised included who should control the disclosure of information? What will new technology bring in the courtroom? And how well is the public informed by the justice system and the media?
- In 2001, the Canadian Judicial Council joined with the Canadian Institute for the Administration of Justice in developing and piloting a one-day workshop on the media's role in the justice system held on Prince Edward Island. The workshop was attended by approximately 100 reporters, editors, producers, students, judges, lawyers and court officers.
- Subsequently, in 2004, the Canadian Judicial Council's Public Information Committee reported on two events that explored media issues, one held in Manitoba and another in Alberta as noted above.
- In 2004 and 2006, the Criminal Law Division of the Ministry of the Attorney General held a panel at its Spring Conference for Crowns on the Crown Policy on Media Contact and approaches to various scenarios.
- The Canadian Bar Association's annual Canadian Legal Conference featured Ian Hanomansing as its keynote speaker in the summer of 2005. He spoke about how the legal system and journalists can work cooperatively to "help people better understand what's happening in the courts."
- In the spring of 2006, the Ontario Court of Justice and the Ontario Conference of Judges addressed the media-law relationship at their conference called "Judging in an Open Age."

"In the past," as Tracey Tyler of the Toronto Star and others reminded the Panel, "the faculties of law and journalism at the University of Western Ontario offered an annual, two-week program in law for journalists…In addition, Justice David Cole of the Ontario Court of Justice teaches a 12-week course on sentencing and penal policy at the University of Toronto Faculty of Law," which has been attended by journalists and is amenable to shortening.

Ms Tyler pointed out that, "[s]entencing, in particular, is an important subject for journalists. It's a hot button issue. Stories about sentencing are the source of many people's information or misinformation about the justice system."

Some presenters offered suggestions. For example, Legal Aid Ontario made an offer to the Panel:

> With a client's and/or a lawyer's permission, Legal Aid Ontario would be happy to assist the media with tracking down and telling compelling human-interest stories… By working together, partners in the justice system and the media can develop a lasting relationship. There is an interest for both parties to maintain and build on these relationships – media get access to expert resources and contacts to help them tell stories that their audience cares about; and the justice system gets a chance to tell a more complete and accurate story of how it contributes to a healthy society. By telling a variety of stories, instead of just the stories that provoke fear and anger, we can both help the public to gain a better understanding of the justice system and how it works.

Similarly, the Radio-Television News Directors Association proposed assisting with education design and delivery, saying that:

> [We are] willing to assist the panel in the development of "Legal 101" professional development type sessions to educate the media on judicial procedures and offer a better understanding and impact of bans – statutory, discretionary, etc.

The Advocates' Society made the additional suggestion that:

> …organizations, like the [Advocates'] Society and Criminal Lawyers' Association [could consider providing] the media with names of advocates in different practice areas…from whom they can obtain information on legal and procedural issues on a no attribution basis. This option could exist in tandem with the creation of legal education programs for the media, developed by counsel in partnership with the media.

Discussion:

The Panel found some attractive instances of joint education in the United States. The most ambitious of these is the U.S. National Center for the Courts and Media. It was formed in 2000 by the U.S. National Judicial College, in collaboration with the Reynolds School of Journalism at the University of Nevada.

The Center's goals include providing quality instruction to judges and court personnel about the media's role in reporting on legal activities and the same for journalists regarding ways to better ensure accuracy in justice reporting.

The Panel was impressed by media representatives' recognition that they could benefit from more education on justice system principles and procedure in order better to report on it.

Consistency is the key here. Though the Panel has heard examples of educational opportunities, they are sporadic and ad hoc. Instead, these topics should be part of the learning curricula of major providers of education in the justice and media arenas.

The Panel also notes that in addition to face-to-face and electronic education, there are more experiential methods of adult learning that could be employed, such as internship exchanges, site visits or study tours and job-shadowing opportunities.

Of course, educating the next generation of professionals is critical as well. In this regard, there are examples of student education especially at the country's journalism schools. For example, Professor Klaus Pohle of Carleton University's School of Journalism told the Panel that Carleton offers a second-year media and law course on issues such as defamation, privacy law, publication bans and journalism law/ethics. In courses on reporting skills, students cover trials to learn what they can and cannot do.

Media courses in law schools deal with the legal issues around dissemination of information and the regulation of information providers. While topics may include defamation, privacy and publication bans, they appear to be targeted to students who wish to practise entertainment law, for example, more than understanding the role of the media in the justice system.

The law school course most applicable to media-court understanding is offered at the University of Toronto, Faculty of Law, where David Lepofsky from the Ministry of the Attorney General teaches a course on Freedom of Expression and Press. The course explores a broad range of theoretical and practical issues, including the clash between freedom of the press to report on court proceedings and the accused's right to a fair trial free from prejudicial activity.

Public Education

Recommendation #9: Public education

The Panel recommends that the Ministry of the Attorney General encourage and support the Ontario Justice Education Network to further develop its materials and outreach on the relationship of the justice and media systems.

Issue:

There is a need for greater public understanding about the justice system. The lack of awareness can have many effects, most importantly on public confidence: first in the administration of justice, and equally on the media's ability to report in an unbiased way.

What the Panel heard:

CTV captured the issue of public knowledge when it pointed out that there is little understanding of the role of the justice system, and of the roles and responsibilities of its stewards.

The County and District Law Presidents' Association (CDLPA) encouraged the Panel to consider community education and in that vein to look at the Ontario Justice Education Network (OJEN) as a vehicle for doing so. "There is a need for broad based public education and informed debate at the community level," CDLPA advised.

Discussion:

The Panel believes that the Ontario Justice Education Network could be very helpful in advancing public education on the respective roles of, and the relationship between, the justice system and the media in society.

OJEN is a collaborative network of organizations and individuals who work together on provincial and local levels to promote understanding, education and dialogue, supporting a responsive and an inclusive justice system. Its mandate reflects its suitability to this kind of work:

> With hundreds of volunteers including judges, lawyers, Crown attorneys, court managers and staff, educators and community representatives, OJEN facilitates opportunities for students and others to develop understanding of our justice system.

Among OJEN's programs are: "Courtroom to Classrooms" and online learning resource tools including one called, "Values of the Justice System," for Grade 10 Civics classes.

Education is a cornerstone of any system-wide improvements. The Panel hopes that the recommendations in this chapter will constitute an investment in the future of justice-media relations.

IV. ELECTRONIC AGE

When the Attorney General indicated that "[w]e have a legal system inherited from the 18th century operating in the media spotlight of the 21st century," the Panel believes he was referring largely to the underutilization of technology to enable progress.

This chapter addresses a variety of opportunities to enhance the justice system using 21st century tools. The topics addressed are:

- *notification of publication bans;*
- *electronic access to court records;*
- *online media guide;*
- *public justice-media website.*

Notification of Publication Bans

RECOMMENDATION #10: NOTIFICATION OF PUBLICATION BANS

The Panel recommends that the Ministry of the Attorney General and the judiciary establish an electronic notification system for discretionary publication bans to provide basic information in a timely manner.

Issue:

The issues concerning publication bans focus on the frequency with which they are issued and the manner in which people are – or are not – notified.

What the Panel heard:

Problems expressed to the Panel regarding publication bans included:

- the perception by the media is that "[t]here are too many automatic and routine publication bans, implemented without any discussion of their necessity in the circumstances, breeding the belief that publication bans generally are normal and desirable, rather than exceptional and only to be used when proven justifiable." (CBC)
- the sense that notification of bans can be last minute thus causing confusion for the media; or "[t]he content of notice to the media, when given, is often inadequate to permit the media and its counsel to make an informed decision as to whether to intervene." (Ad IDEM)

Concern was especially expressed regarding s. 486 of the *Criminal Code* which allows for a ban if "there is a real and substantial risk that the victim, witness or justice system participant would suffer significant harm if their identity were disclosed." This topic has become the subject of an interim policy on court files and documents under section 486 Publication Bans (Bill C-2 to amend s. 486 as of November 2005) from the Ministry's Court Services Division, saying that:

> Court files and documents subject to publication bans under sections 486.4 (1), (2), and (3) and 486.5 (1) or (2) of the *Criminal Code* are not accessible to the public without judicial direction. Before permitting members of the public to access court files or documents, court staff must ensure that a section 486 publication ban has not been noted on the information.
>
> Members of the public who require access to court files or documents under section 486 publication bans must make an application to the court.

The Ontario Association of Chiefs of Police also weighed in on this subject:

> …[I]ssues around how we [the police] manage information, for example, around a publication ban ordered by the courts, challenge us to balance the need of the public to "know" with the very real possibility that the demands of the public or media for details of a crime could impact the delivery of justice. It is an area which requires more discussion between police, the media and the courts to find the right balance, always keeping in mind that the delivery of justice should be paramount in such considerations.

A representative of the Ministry of the Attorney General pointed out that Crowns must approach such decisions through the lens of the best practices of the administration of justice, the fair trial interest of the accused and the fair trial interest of the public, in accordance with the *Charter*. While there are legitimate grounds for publication bans, the real issue is how the bans are written. In addition, the representative said, regimes such as those that exist in some jurisdictions to provide electronic notice of publica-

tion bans (see below) do not always suit the quick pace of a prosecutor's life, where an Assistant Crown may receive a case the day before and realize a publication ban is needed.

In response to a question from the Panel as to whether Crown Attorneys should be more aggressive in fighting against publication bans and advocating openness, the Ontario Crown Attorneys' Association made the point that this goes to the role of the Crown as a local minister of justice. The Crown has to determine what is in the best interest of justice, focusing on ensuring a fair trial.

A chart summarizing some pro's and con's may be helpful. It is adapted from Chief Justice Lamer's ruling in *Dagenais v. Canadian Broadcasting Corporation* (please see Discussion below):

Ordering bans may:	**Not ordering bans may:**
• limit freedom of expression	• maximize the chances of individuals with relevant information hearing about a case and coming forward with new information
• prevent the jury from being influenced by information other than that presented in evidence during the trial	• prevent perjury by placing witnesses under public scrutiny
• maximize the chances that witnesses will testify because they will not be fearful of the consequences of publicity	• prevent state and/or court wrongdoing by placing the criminal justice process under public scrutiny
• protect vulnerable witnesses (e.g., child witnesses, police informants, victims of sexual offences)	• reduce crime through the public interest of disapproval of crime
• preserve the privacy of individuals involved in the criminal process	• promote the public discussion of important issues
• maximize the chances of rehabilitation for young offenders	
• encourage the reporting of sexual offences	
• save the financial and/or emotional costs to the state, accused, victims and witnesses of the alternatives to publication bans (e.g., delaying trials, changing venues)	
• protect national security	

While it is clear that the trial or application judge retains the discretion to provide notice, some members of the media felt a sense of confusion or fear when trying to figure out publication bans. The more overriding concern, expressed by some members of the media, is that basic information about a case falls beyond the reach of the media, sometimes for no good reason.

Both the Canadian Bar Association and Ad IDEM have promoted principles for publication bans imposed at the discretion of the judge. These include: the importance of reasonable and timely notice to the media of applications for discretionary publication bans, opportunities for the media to make representations before such bans are issued and easy access to written records of such bans (as well as sealing orders, etc.).

Discussion:

There are two kinds of publication bans: those mandated in the *Criminal Code* and other legislation – for example, precluding the disclosure of the identity of a minor – and those imposed at the discretion of the judge. Much of the concerns relate to applications for discretionary publication bans.

From one perspective, while the media may be viewed as the public's watchdog of the activities of the courts, their right of access and right to publish should not interfere with the administration of justice or an individual's right to a fair trial.

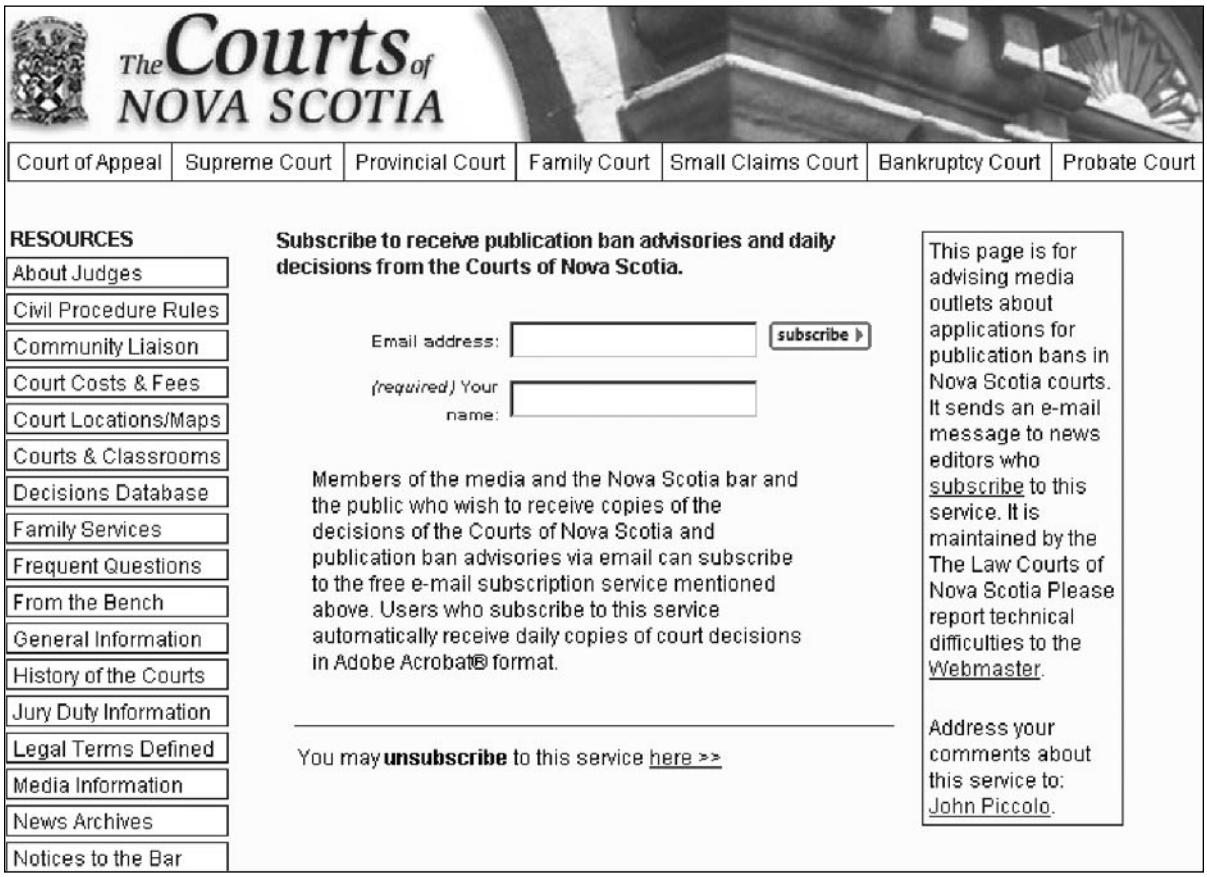
The landmark ruling in *Dagenais* by the Supreme Court of Canada in 1994 establishes that members of the media have standing to be heard and to raise objections in open court when a party requests that a judge impose a discretionary ban. Representatives of the media should be given reasonable notice and the opportunity to make submissions on an application for a publication ban.

The *Dagenais* ruling articulates the tests that judges should apply when considering an application for a common law ban or discretionary statutory ban. As described in Alberta Justice's Prosecution Pointer on Publication Bans, the test for a common law publication ban is that:

- the ban is necessary in order to prevent a real and substantial risk to the fairness of the trial because reasonably available alternative measures will not prevent the risk;
- the salutary effects of the publication ban outweigh the deleterious effects.

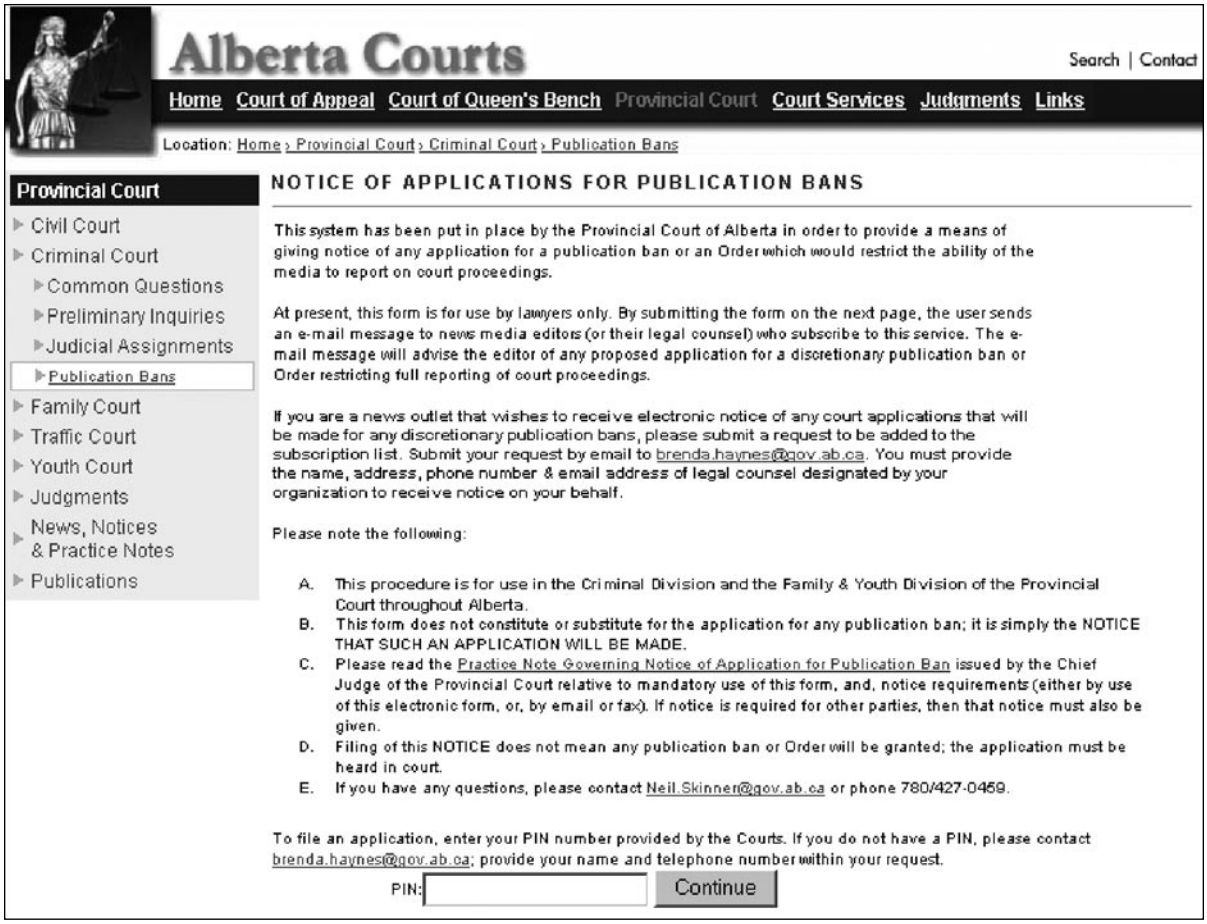
How have jurisdictions approached the notification issue? We find two examples in Nova Scotia and Alberta:

- Nova Scotia notifies the media of requests for, and the issuance of, publication bans. The Courts of Nova Scotia maintain a free email subscription service to advise media, members of the bar and the public of upcoming publication ban applications. Subscribers also receive daily copies of court decisions. Those wishing to apply for a publication ban complete an application form directly on the Courts website. Submitting the form sends an email message to subscribers notifying them of the application for a publication ban.



Screenshot: Courts of Nova Scotia – Subscribe to Publication Ban Advisories

- Similarly, in Alberta's Provincial Court, a media representative who wishes to receive electronic notice of any court applications that will be made for discretionary publication bans may register as an "interested party." To do so, however, the media representative must name a member of the Law Society of Alberta to receive the notice on their behalf, and provide a current email address for that member. Electronic notification is mandatory.



Screenshot: Alberta Courts – Notice of Applications for Publication Bans

British Columbia has also launched a publication ban notification pilot project, including a subscription/notification process regarding discretionary bans.

The Supreme Court of Canada's schedule of hearings, available on its website, includes a note where a publication ban is in effect. (It is also possible to subscribe to SCC emailed news releases.)

The Panel suggests that the appropriate officials in Nova Scotia, Alberta and British Columbia should be consulted for advice on how best to establish and operate such a system.

Electronic Access to Court Records

Recommendation #11: Electronic access to court records

The Panel recommends that the Ministry of the Attorney General and the judiciary ensure that, where practical, reasons for judgment and docket information of Ontario courts are available online.

Issue:

Electronic access to court records raises concerns such as the protection of privacy, accuracy and currency of information. It also calls into focus the principle of open courts.

What should Ontario's approach be?

Discussion:

The Panel notes practices in other jurisdictions. For example:

- In the U.S., Public Access to Court Electronic Records (PACER) is an electronic public access service that allows users to obtain case and docket information from U.S. Federal Appellate, District and Bankruptcy courts, and from the U.S. Party/Case Index. It is a fee-based service available over the Internet.
- The Supreme Court of Canada's website includes: case information, hearing schedules and notes re publication bans, news releases, bulletins, recent judgments and published judgments.
- British Columbia's Ministry of Attorney General and the B.C. judiciary have recently introduced Court Services Online. This service allows the media and the public online access to a variety of information.
- A partial sampling of other provincial courts indicates that most (though not all) provide judgments online. Nova Scotia and Alberta provide access through their courts; Saskatchewan through the Law Society of Saskatchewan. The Court of Appeal in Alberta also provides hearing lists and electronic filing.
- In Ontario, the Court of Justice and Superior Court provide access to their decisions via a link to CanLII. The Court of Appeal posts its judgments on its website.

In 2003, the Judges Technology Advisory Committee (JTAC) of the Canadian Judicial Council (CJC) prepared a discussion paper on issues arising from electronic access to court records and docket information.

The discussion paper certainly elicited lively debate, including responses from the

Canadian Newspaper Association, Ontario Bar Association and Law Society of Upper Canada. Some of this debate was highlighted to the Panel.

The JTAC discussion paper came to 33 conclusions, generally finding that, while privacy rights are certainly critical, the right to open courts usually outweighed the right to privacy.

The Panel is aware that the CJC will be issuing more specific guidance on access to court records, which will merit careful review and attention.

Online Media Guide

Recommendation #12: Online media guide

The Panel recommends that the Ministry of the Attorney General, in conjunction with justice and media representatives, develop an online Ontario justice system guidebook for the media.

Issue:

Information for the media about their rights, responsibilities and resources is fragmented and sometimes not available at all.

Discussion:

With respect to media guidebooks, there appear to be few comprehensive versions that are easily accessible, at least online.

The most highly developed media guide is in Nova Scotia. The draft Media Guidelines, which have been approved by judges in the Supreme Court and Court of Appeal, are posted on the Courts of Nova Scotia website and include information on policies in five major categories: access to courthouses and courtrooms; access to court documents; court records; media-related rules; and bans on publication.

Manitoba and B.C. courts also have media guides on their websites:

- Manitoba has a page on its website that gives some information about how to contact the media relations officer, Court policies affecting media coverage (cameras and audio recording equipment), access to court records and release of court judgments. The Manitoba Courts post an online dictionary of legal terms.
- B.C.'s Provincial Court has a "News and References" page that includes its media access policy with information about televising or broadcasting Court proceedings. Also listed are news releases, appointments and relevant articles.

A sampling of courts in U.S. states identified some media guides, including those in Tennessee, Wisconsin and Maryland.

Some courts in Australia and New Zealand also have media guides.

One of the recommendations of the Canadian Journalism Foundation's Bench-Bar-Media Communications Working Group (1996–1999) was for the development of introductory-level guidebooks on justice reporting for journalists, lawyers and judges. These guidebooks should include an introduction to each other's terminology and information on practices and procedures.

The Panel believes there is much value in an online media guide.

Public Justice-Media Website

Recommendation #13: Public justice-media website

The Panel recommends that the Ministry of the Attorney General and the justice-media committee (as described in Recommendation 14) should establish a public website to provide information on:

- the roles of all participants in the justice system;
- the structure of the justice system;
- the media's role in relation to the justice system;
- hyperlinks to docket information and judgments of Ontario Courts;
- public access to the justice system;
- other learning tools as are already available on the Internet.

This would be an enduring demonstration of the culture shift that Ontario is embarking upon with the initiatives suggested above.

Technology offers the justice-media relationship many opportunities. There are always cautions to consider but the Panel believes the recommendations presented here offer a balanced approach.

V. ONGOING ACTIVITIES

This chapter addresses three topics:

- *the importance of ongoing dialogue and problem solving;*
- *the need for continuing vigilance regarding statements in press conferences and other public forums;*
- sub judice *contempt rule and shield law.*

Establishing an Ongoing Justice-Media Liaison Committee

RECOMMENDATION #14: JUSTICE-MEDIA LIAISON COMMITTEE

The Panel recommends that the Attorney General establish an ongoing committee to:

- provide stewardship for the consideration of the Panel's recommendations;
- oversee the development of public information and opportunities for dialogue including a public justice-media website (as described in Recommendation 13);
- serve as an ongoing mechanism for identifying and solving issues that arise between justice and the media;
- identify evaluation indicators related to both the process of the committee and its outcomes.

Representation in the ongoing committee should include government, the judiciary, legal and police organizations and media organizations.

Issue:

The creation of the Panel resulted in a large number of issues being raised by interested groups and individuals who welcomed the opportunity to bring them to the Panel's attention.

A permanent venue has not existed before. The range of recommendations needed to improve current operations and understanding is proof of the importance of regular dialogue, issues identification and problem solving.

What the Panel heard:

Many written and oral presentations made to the Panel called for a mechanism for communication, consultation and problem solving.

There are instances in the past where representatives of justice and/or media organizations have come together to tackle problems and address opportunities on a time-limited basis.

In the late 1990s, a committee examined comments to the press in criminal prosecutions. The committee was convened by the Chief Justice of Ontario, the Hon. Charles Dubin, the president of the Criminal Lawyers' Association, Bruce Durno, and the Assistant Deputy Attorney General of Criminal Law, Michael Code. The committee comprised justice representatives, including prosecution, defence and police. The committee produced a draft protocol regarding media statements for all involved in the administration of criminal justice (please see Appendix D).

While the content of the protocol is important, the protocol also makes the valuable suggestion that an advisory group be established to oversee its implementation and to field suggestions for revisions. The committee also emphasized its educative role.

In the late 1990s, the joint Bench-Bar-Media Communications Working Group, coordinated by the Canadian Journalism Foundation, conducted a "survey of the attitudes and perceptions of members of the news media, judiciary and government" to reporting on justice issues.

The recommendations that emerged related to education and training, procedural and administrative improvements and bench-bar-media relationships.

The suggestions of this committee were valuable and indeed are mostly reinforced by this Panel's findings. Again, what is pivotal to the Panel is the proposal of an ongoing structure to facilitate problem solving and education.

Discussion:

The Panel's research points to the existence of other media-bar-bench liaison committees that allow for discussion and debate.

Nova Scotia has a Media Liaison Committee that is composed of members of the bench and media representatives. The committee meets regularly to discuss issues of mutual concern and reporters are encouraged to contact its members to raise matters for consideration.

In the United States, the National Center for the Courts and Media provides a neutral forum "to foster discussion about the inherent tensions between the right to a fair trial, as guaranteed in the Sixth Amendment of the U.S. Constitution, and the First Amendment right of the free press to conduct its work largely unfettered by governmental restrictions." As well as providing education and training, its goals include working with judges and journalists to help improve media access to public information and to continuously explore and solve relationship issues.

The members of the Panel have lived the axiom that process is sometimes outcome. Through its deliberations, members have come to a better understanding of the issues that separate and unite the institutions at hand and to realize the value and the potential of an ongoing committee. The Panel believes that the Attorney General has the opportunity to commit to the enduring importance of the justice-media relationship by establishing a permanent liaison committee.

If the Attorney General does choose to make that commitment, then a critical part of the strategy for implementing this report would be to establish an ongoing forum to serve as the steering committee for implementation.

Press Conferences/Public Commentary

Recommendation #15: Press conferences/Public commentary

The Panel recommends that, as it is important that all participants in the justice system be scrupulous in the making and reporting of comments, both before and after arrest, that might affect fair trial interests, the 1998 document called, "Protocol Regarding Public Statements in Criminal Proceedings," be revived and referred to the committee set out in Recommendation 14.

Issue:

Participants in press conferences need to be ever vigilant about the sometimes inflammatory manner in which information is conveyed to or by the media, which can be harmful to the administration of justice and to individual rights.

This issue was identified mostly in the context of police press conferences. While this was not a regular practice, it was brought to the Panel's attention. Many media presenters had a favourable view of dealing with the police. Furthermore, there is no doubt the media has a role to play in a community when a tragedy occurs. The objective is for all parties to be careful.

What the Panel heard:

The manner in which police and the media report information to the public is critical to ensuring fair trials and protecting privacy rights. The Panel heard of one press conference where comments made by the police went well beyond the communication of information and into the realm of opinion and were deemed acutely prejudicial to the accused person's right to the presumption of innocence. At the same time, examples were also discussed in which interviews of victims and potential witnesses by members of the media and other media reporting or commentary during the course of an investigation or trial may have had the same potential effect.

Bob LeCraw, a man whose brother James committed suicide after widely publicized charges were subsequently withdrawn, gave the Panel some practical advice about balancing the right to privacy with the public right to know: take away the inflammatory language during press conferences; ensure that press releases and conferences are not coupled with calls for increased resources; have protocols that direct police to name individuals as suspects but not as criminals; and, at the very least, the withdrawal of charges should be given as wide publicity as the arrest and charge.

The *Police Services Act* says that it is the responsibility of Police Services Boards to establish policies respecting disclosure of personal information, and that the purpose of disclosure includes keeping the public informed about the law enforcement, judicial or correctional processes about that individual.

Regulation 265/98 as amended to O. Reg. 297/05 under the *Act* also addresses what personal information about an individual may be disclosed by the police. This information includes their name, date of birth and address, the offence with which he or she is charged, the outcome of any judicial proceedings, the procedural stage of the justice process and the date of release from custody.

The role of police in the relationship with the media may be further complicated by the fact that other justice partners are more restricted in speaking in public.

There is some indication that the police have become more media savvy than others in the justice system. Many have dedicated resources to media relations and communicating with the public. "There is a very real perception," the Ontario Association of Chiefs of Police (OACP) says, "that the justice system sees itself as being independent from public scrutiny in ways that the police and media can't be."

The Ontario Association of Chiefs of Police pointed out that:

> [R]eluctance to provide information leads to a thirst for information by the public and the media that wrongly falls to police to address… Our police services are being put in positions where they are expected to answer for and even defend court decisions and government policies in relation to the carriage of justice. This should not be the role of a community's police service.

The OACP went on to say that the police are taking a proactive role in providing accessible information with the help of technology, e.g., community-alert websites. The audience is the public, not reporters.

The OACP indicated that while television portrays police work as fast, it is in fact tough slogging work. That slow timeframe can fly in the face of fast-paced media deadlines.

The role of Crowns vis-à-vis the media has been outlined in Chapter II above. The role of the bar generally is set out in the Law Society of Upper Canada's *Rules of Professional Conduct*, namely that:

> 4.06 The lawyer and the administration of justice:
>
> (1) A lawyer shall encourage public respect for and try to improve the administration of justice….
>
> 6.06 Public appearances and public statements:
>
> (1) Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.
>
> (2) A lawyer shall not communicate information to the media or make public statements about a matter before a tribunal if the lawyer knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

Discussion:

The Panel believes that the answers lie in work already started, namely the "Protocol Regarding Public Statements in Criminal Proceedings." This was brought to the Panel's attention by the Criminal Lawyers' Association and was developed by the Dubin Committee noted in the section above.

The guideline was approved by representatives of the prosecution, defence and police and included provisions against making "…an extrajudicial statement concerning a criminal matter that is before the courts awaiting trial or appeal, or where a warrant has [been] issued if it is reasonable to expect that the statement: i) will be disseminated by means of public communications; and ii) will have a substantial likelihood of materially prejudicing the criminal trial." The protocol went on to enumerate the conditions under which lawyers and police officers may state information for public dissemination, without elaboration.

The guideline was not formally implemented, however, and the Panel believes it ought to be.

Policies and practices need stewardship to be maintained and refreshed over time. The Panel believes this recommendation will go a long way towards serving those purposes.

Sub Judice Contempt Rule and Shield Law

RECOMMENDATION #16: SUB JUDICE CONTEMPT RULE

The Panel recommends as a general principle that all appropriate steps be taken to provide greater clarity to journalists as to what they can publish prior to and during the trial.

RECOMMENDATION #17: SHIELD LAW

The Panel recommends that the Ministry of the Attorney General conduct further policy analysis of the legal issues involved in shield laws. This research should be done with a view towards the Ministry setting out the issues and declaring its direction.

Issues:

The media's right of access is not absolute, particularly if it interferes with the administration of justice and a person's right to a fair trial. Judges have the power to control proceedings that are *sub judice* and, in the case of such interference, can impose limits on the media's access to information and/or ability to inform the public. Violation of those imposed limits can result in prosecution for contempt of court. Contempt at common law may arise where pre-trial publication of information interferes with the administration of justice.

The subject of shield laws – the protection or non-protection of the confidentiality of journalists' sources – garnered much attention in 2005 in the United States. The Panel recognizes it as an emerging issue in Canada as well.

What the Panel heard regarding the Sub Judice *Contempt Rule:*

Three presentations to the Panel addressed the importance of the *sub judice* contempt rule and adherence to it.

The Association of Law Officers of the Crown said that:

> Government representatives must be particularly mindful of complying with the *sub judice* rule (where a matter that is under judicial consideration or in court and not yet decided must not be commented on). They must also be careful to comply with…the *Freedom of Information and Protection of Privacy Act*, judicially ordered publication bans, judicially sealed records…[as well as]…rules of solicitor client privilege…and…Rules of Professional Conduct.

AIDWYC (Association in Defence of the Wrongly Convicted) is concerned about the trend away from a respect for the *sub judice* contempt rule to protect the fair trial rights of an accused from prejudicial media accounts. The media has the potential to greatly influence the public, including those who may serve as jurors in criminal trials. As a result of the decline in use of *sub judice* contempt power, the media now frequently contains information and commentary about the accused which could have drawn a contempt citation 15-20 years ago. This information can prejudice the fair trial rights of the accused.

The Criminal Lawyers' Association also expressed its concern about the erosion of the *sub judice* rule, especially with respect to the expanding scope of police press conferences. It suggested that media characterizations of the exclusion of evidence sometimes suggest that juries are tricked by the exclusion of evidence, instead of explaining the legal rationale for such trial rulings. The Criminal Lawyers' Association cited increased costs (for example, through changes of venue of trials), lengthier trials, miscarriages of justice and disrespect for the judicial system as consequences of failing to explicitly outline the proper parameters of justice reporting.

What the Panel heard regarding Shield Law:

Several presenters addressed the issue of the shield law. PEN Canada said that it strongly endorses the ruling of Madame Justice Mary Lou Benotto of the Ontario Superior Court who, on January 21, 2004, wrote in part:

> Inherent in the concept of confidentiality is the ability of the media to protect the identity of the source. The evidence establishes that sources may "dry-up" if their identities were revealed. Without confidential sources, many important stories of considerable public interest would not have been published. Confidential sources are essential to the effective functioning of the media in a free and democratic society…
>
> To compel a journalist to break a promise of confidentiality would do serious harm to the constitutionally entrenched right of the media to gather and disseminate information…
>
> …the eroding of the ability of the press to perform its role in society cannot be outweighed by the Crown's investigation…
>
> Often the more explosive the story is, the greater the risk to the informant if he or she is exposed.
>
> [*R. v. National Post*, 2004 CanLII 8048 (ON S.C.)]

PEN Canada urged the Panel "to recommend amendments to appropriate provincial and/or federal statutes to provide immunity from prosecution for journalists and authors who wish to protect the confidentiality of sources for their stories, based on the model that appears to work successfully in several states of the United States."

The CBC added that:

> Journalists perform a constitutionally-mandated function. A free and independent press requires freedom to collect information, which government may not want collected, and present it in a way that ensures the public is able to get access to the truth. At present in Ontario, there is no statutory protection for journalists performing their work, though there is recognition by the Supreme Court that a journalist/source relationship is one that deserves protection, and there is a common law "newspaper rule" that protects a journalist's sources at the discovery stage of civil litigation against the journalist… Many jurisdictions have adopted general shield laws for journalists.

Discussion:

The Panel advises against the erosion of the *sub judice* rule. Guidance on its application would greatly assist journalists. At the same time, when journalists are operating within specified rules of the court, they should be able to do so without fear.

VI. CONCLUDING REMARKS

The Panel on Justice and the Media is encouraged by the journey it has taken. It has learned from the people it heard from and it has benefited from the enthusiastic desire of all parties to improve both operations and understanding.

The Panel thinks that positive change in the working relationship can be achieved through its recommendations:

Openness:

- access to court records;
- use of tape recorders;
- cameras in the courtroom;
- media facilities at the courthouse;
- media lock-ups;
- affordable access to court records.

Education:

- increasing knowledge across the two professions;
- public education.

Electronic Age:

- notification of publication bans;
- electronic access to court records;
- online media guide;
- public justice-media website.

Ongoing Activities:

- justice-media liaison committee;
- press conferences/public commentary;
- *sub judice* contempt rule and shield law.

Through its deliberations, the Panel has sought to achieve a balanced approach to its recommendations. The media and justice systems are both complex and busy. The proposals made here are meant to promote increased effectiveness and efficiency.

APPENDICES

APPENDIX A – PANEL ON JUSTICE AND THE MEDIA TERMS OF REFERENCE

1. Purpose

The Ontario Panel on Justice and the Media will suggest ideas for improving understanding and operations between the media and the justice system. It will do so by presenting suggestions, best practices or guidelines.

2. Objectives

The relationship between the justice system and the media is in need of review to consider ways and means to modernize it while still respecting the appropriate roles and responsibilities of each.

The challenges of a 21st century relationship include:

- To determine if the **roles and responsibilities** of those involved reflect values that are suitable to a modern justice and media environment – with careful regard for legitimate functions and necessary standards;
- To identify ways to **improve mutual understanding** between participants in the justice system and those working in the media;
- To encourage broad **public access to information** about justice beyond those individuals who are directly involved in cases;

- To look at the **underlying policies and practices** in both sectors to see that they optimally reflect values that respect justice, the media and the public;
- To consider the unique issues and opportunities presented by conducting the business of justice and communications in an **electronic age**;
- To address **special requirements** when dealing with the justice system and children and communities at risk.

3. Members of the Panel

The Ontario Panel on Justice and the Media was established by Attorney General Michael Bryant in January 2005 with the intention of bridging the gap between the media and the justice system. The Panel brings together members of the media and participants in the justice system. The Panel includes:

- Chief Paul Hamelin, Past President, Ontario Association of Chiefs of Police;
- John Honderich, Former Publisher, Editor and Reporter for the Toronto Star;
- Paul Lindsay, Assistant Deputy Attorney General, Criminal Law Division, Ministry of the Attorney General;
- Justice James MacPherson, Court of Appeal for Ontario;
- Trina McQueen, Broadcaster and Journalist, Professor of Broadcast Management, Schulich School of Business, York University;
- Ralph Steinberg, Past President, Criminal Lawyers' Association;
- Benjamin Zarnett, Past President, The Advocates' Society.

APPENDIX B – LIST OF PARTICIPATING ORGANIZATIONS AND INDIVIDUALS

The Panel wishes to thank all the individuals and organizations that made oral and/or written submissions. Organizations were often represented by several spokespeople. Names of individuals who spoke to the Panel on behalf of organizations have not been listed unless they made separate submissions to the Panel.

Ad IDEM (Advocates in Defence of Expression in the Media)
The Advocates' Society
Association in Defence of the Wrongly Convicted
Association of Law Officers of the Crown
Bindman, Stephen, former legal affairs journalist
British Columbia, Ministry of Attorney General, Criminal Justice Branch
Brown, Barb, Hamilton Spectator
Canadian Association of Journalists
Canadian Broadcast Standards Council
Canadian Broadcasting Corporation
Canadian Newspaper Association
County and District Law Presidents' Association
Court of Appeal for Ontario
Criminal Lawyers' Association
CTV
Duncan, James L.
The Globe and Mail
Harper, R. John
Law Society of Upper Canada
LeCraw, Robert
Legal Aid Ontario
Makin, Kirk, The Globe and Mail
Metroland Printing, Publishing and Distributing Ltd.
Nova Scotia Public Prosecution Service, Communications Branch

Ontario Association of Broadcasters

Ontario Association of Chiefs of Police

Ontario Bar Association

Ontario Community Newspapers Association

Ontario Conference of Judges

Ontario Crown Attorneys' Association

Ontario Ministry of the Attorney General:

- Communications Branch
- Court Services Division
- Criminal Law Policy Branch
- Crown Law Office-Criminal
- Justice Sector Freedom of Information & Protection of Privacy Office
- Office of the Children's Lawyer
- Ontario Victim Services Secretariat

PEN Canada

Pohle, Professor Klaus, School of Journalism, Carleton University

Police Association of Ontario

Radio-Television News Directors Association

SUN Media Corporation

Superior Court of Justice

Supreme Court of Canada, Executive Legal Officer

Toronto Star

Tyler, Tracey, Toronto Star

Valentine, Dave

APPENDIX C – SOME CRITICAL LEGISLATION, CASE LAW AND POLICIES

The legislation, case law and policies that inform the justice-media relationship include:

- *Canadian Charter of Rights and Freedoms*
- *Canada Evidence Act*
- *Freedom of Information & Protection of Privacy Act*
- *Courts of Justice Act*
- *Administration of Justice Act*
- Pivotal legal decisions, e.g., *Dagenais, Mentuck, MacIntyre, Vickery*
- Ministry of the Attorney General Crown Policy Manual

The Panel heard from the Ministry of the Attorney General about the special needs of children in the justice system. The Office of the Children's Lawyer represents children, for example, in custody/access proceedings before the courts. The point was made that the media must be ever mindful to uphold the spirit of privacy laws with respect to children in the justice system: not to make identities known through "other" means of identification; to be aware of the impact of reporting not only on the child but also on his/her siblings.

In another presentation by the Ontario Victim Services Secretariat, the Panel heard the concerns that victims commonly express about the media with respect to real or perceived violations of privacy, and misrepresentation or inaccurate reporting.

It was observed that victims have also expressed that media coverage can reduce their sense of isolation and allow them to regain their voice.

The Panel also heard from the Canadian Newspaper Association on a point supported by the Ontario Community Newspapers Association and the Ontario Association of Broadcasters that:

> There are already sufficient legislative and other restrictions upon the media that are intended to protect children, victims and other vulnerable people. There is no need to add an administrative layer of protection on top of that currently available in law.
>
> The trial judge always has the discretion to protect sensitive/ private matters and the courts have developed protocols and guidelines for redacting information.

This balance was expressed well by the Ontario Bar Association:

> Privacy and open access to the justice system and freedom of expression (including freedom of the press) are all fundamental rights in a free and democratic society. None is absolute, nor are they mutually exclusive. An appropriate balance must be struck when weighing these competing interests.

It is against these backdrops, that is, a vision statement and set of principles and some overarching considerations, that the Panel has set out its recommendations.

APPENDIX D – PROTOCOL REGARDING PUBLIC STATEMENTS IN CRIMINAL PROCEEDINGS

DRAFT, APRIL 1998 ("DUBIN COMMITTEE")

In recent years, there has been a substantial expansion in public and media attention to criminal proceedings. This has led to increased demands for information from counsel, police and public officials regarding cases. There is a need for clear guidelines and education for all involved in the administration of justice to emphasize established and fundamental principles.

It is important that the public, including the media, be informed about cases in which a warrant has been issued or are before the courts. The administration of justice benefits from such public scrutiny. It is also important that an accused's right to a fair trial not be hindered by inappropriate public statements made before the case has concluded. Fair trials are fundamental to a democratic society. Accordingly, it is in the public interest that guidelines be established to ensure that accurate information regarding cases is made public in a timely and appropriate manner without jeopardizing a fair trial or causing public officials, lawyers, and police officers to violate their professional obligations.

I. PURPOSE:

The primary purpose of these guidelines is educational. They are to assist lawyers, police officers and public officials to have a common guideline for public statements regarding cases in which a warrant has been issued or is pending before the courts.

It is acknowledged that nothing in the guidelines:

a) limits the jurisdiction of the Court, the Attorney General or the public to initiate contempt proceedings in matters covered by the guidelines;

b) limits the jurisdiction of the Attorney General or Solicitor General or the Law Society of Upper Canada;

c) limits or interferes with the rights and privileges enjoyed by members of Parliament or the Provincial Legislature.

II. GUIDELINES

The following guidelines have been approved by representatives of the prosecution, defence and police and are provided to assist in responding to press requests for information and press releases.

a) A lawyer, police officer or public official should not make an extrajudicial statement concerning a criminal matter that is before the courts awaiting trial or appeal, or where a warrant has issued, if it is reasonable to expect that the statement:
   i) will be disseminated by means of public communication; and
   ii) will have a substantial likelihood of materially prejudicing the criminal trial.

b) Without limiting the generality of a), a statement ordinarily is likely to have the effect referred to in a) when it relates to:
   i) the character, credibility, reputation, criminal record of the accused or of a witness; (great caution should be exercised regarding the dissemination of information regarding other pending charges);
   ii) the existence or contents of any confession, admission or statement made by the accused or the accused's refusal or failure to make a statement;
   iii) the possibility of a plea of guilty to the offence charged or to a lesser offence;
   iv) the performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests;
   v) opinions concerning guilt or innocence of the accused, the evidence or merits of the case.

c) Notwithstanding a) and b), a lawyer, police officer or public official may state for public dissemination, without elaboration:
   i) the general nature of the criminal charge or of the defence, including the fact that the accused is presumed innocent and denies the charge or charges;
   ii) information already contained in the public record in the proceedings in question that is not the subject of any judicial or statutory publication bans, such as the *Criminal Code* publication bans relating to evidence and exhibits at the bail hearing or the preliminary hearing;
   iii) the name, age, residence of the accused (in limited circumstances the occupation and family status of the accused) except where such information would identify the victim or complainant in violation of a *Criminal Code* prohibition on such identification;
   iv) the identity of the victim or complainant where such identification is not prohibited by the *Criminal Code*;
   v) the fact, time and place of the arrest, the charges, date and place of first court appearance;
   vi) the identity of the investigative agency and the length of the investigation;

vii) where the accused has not yet been arrested and a warrant has been issued, any information necessary to aid in the apprehension of that person or to warn the public of any danger the accused is reasonably expected to present, but no more information than is necessary to these two limited purposes;

viii) a request for assistance in obtaining evidence and information necessary to the prosecution or the defence.

d) While a criminal matter is pending trial no lawyer, police officer or public official shall make unsubstantiated out-of-court criticisms of the competence, conduct, advice or motivation of another lawyer, police officer, public official or of the judge involved in the matter.

e) Notwithstanding d), a lawyer, police officer or public official, may and should communicate reasonable suspicions of professional or judicial misconduct to the Law Society of Upper Canada, to the Canadian Judicial Council, to the Ontario Judicial Council, the Attorney General of Canada, the Attorney General of Ontario, Solicitor Generals, or the appropriate chief of police, for investigation, even though the suspicions may not yet be fully substantiated.

III. THE ADVISORY COMMITTEE

a) The Advisory Committee will monitor the guidelines, receive and make recommendations for amendments, assist in providing interpretations and explanations of the guidelines when requested, mediate when requested and most important, assist in educating the public, media, lawyers, police and public officials regarding the guidelines and their objectives.

b) The Advisory Committee will receive requests for assistance or advice from the Attorney General, the Solicitor General, police officers, police boards and police departments.

c) The Advisory Committee shall be composed of a representative from:

Attorney General – Ontario

Solicitor General – Ontario

Federal Department of Justice

Law Society of Upper Canada

Press

Public (to be appointed by Chief Justice)

Police

IV. LIST OF PARTICIPANTS IN PROTOCOL [not listed]

APPENDIX E – BIBLIOGRAPHY (With Selected Websites)

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Selected Websites

Canada

Alberta Courts	*http://www.albertacourts.ab.ca/*
British Columbia Courts	*http://www.courts.gov.bc.ca/*
BC Court Services Online	*http://www.ag.gov.bc.ca/courts/cso/index.htm*
British Columbia Law Institute	*http://www.bcli.org/*
Canadian Association of Broadcasters	*http://www.cab-acr.ca/*
Canadian Association of Journalists	*http://www.caj.ca/*
Canadian Bar Association	*http://www.cba.org/*
Canadian Forum on Civil Justice	*http://www.cfcj-fcjc.org/*
Canadian Institute for the Administration of Justice	*http://www.ciaj-icaj.ca/*
Canadian Judicial Council	*http://www.cjc-ccm.gc.ca/article.asp?id=5*
Canadian Newspaper Association	*http://www.cna-acj.ca/*
CanLII	*http://www.canlii.org/*
CBC	*http://www.cbc.ca*
CBC "TV on Trial"	*http://www.cbc.ca/tvontrial/*
Correctional Services Canada	*www.csc-scc.gc.ca*
Department of Justice, Newsroom	*http://canada.justice.gc.ca/en/news/*
Federal Court of Canada	*http://www.fct-cf.gc.ca/*
Law Courts Education Society, BC	*http://www.lawcourtsed.ca/index.cfm*
Law Society of Upper Canada	*http://www.lsuc.on.ca/about_en.jsp*
Manitoba Courts	*http://www.manitobacourts.mb.ca*
New Brunswick, Courts	*http://www.gnb.ca/cour/index-e.asp*
Newfoundland and Labrador, Provincial Court	*http://www.justice.gov.nl.ca/just/Provincial_court/*
Nova Scotia, Courts of	*http://www.courts.ns.ca/*
Ontario Association of Chiefs of Police	*http://www.oacp.on.ca/*
Ontario Courts (Guide to)	*http://www.ontariocourts.on.ca/english.htm*
Ontario Ministry of the Attorney General	*http://www.attorneygeneral.jus.gov.on.ca/*
Prince Edward Island, Courts	*http://www.gov.pe.ca/courts/*

Quebec, Justice	*http://www.justice.gouv.qc.ca/english/accueil.asp*
RCMP	*http://www.rcmp-grc.gc.ca/*
RCMP – BC – Media Relations	*http://www.rcmp-bcmedia.ca/index2.jsp*
RCMP – Ontario	*http://www.rcmp-grc.gc.ca/on/index_e.htm*
Saskatchewan, Courts	*http://www.sasklawcourts.ca/*
Supreme Court of Canada	*http://www.scc-csc.gc.ca/*

United States and other jurisdictions

American Journalism Review	*http://www.ajr.org/*
Australia, Federal Court	*http://www.fedcourt.gov.au/*
Australia, High Court	*http://www.hcourt.gov.au/*
Columbia Journalism Review	*http://www.cjr.org/*
Conference of State Court Administrators (COSCA)	*http://cosca.ncsc.dni.us/*
Courtroom 21 Project	*http://www.courtroom21.net*
Courtroom Information Project	*http://www.courtroominformationproject.org/*
Court Technology Forum	*http://www.courtechforum.com*
Criminal Justice Journalists	*http://www.reporters.net/cjj/*
Crown Prosecution Service	*http://www.cps.gov.uk/*
Media Liaison Guide	*http://www.cps.gov.uk/publications/communications/appomanual.html*
Delaware State Courts	*http://www.courts.state.de.us/*
The Freedom Forum	*http://www.freedomforum.org/about/default.asp*
Indiana Courts	*http://www.in.gov/judiciary/*
Institute for Justice and Journalism, USC Annenberg	*http://www.justicejournalism.org/*
Journalism.org	*http://www.journalism.org/*
Knight Institute for Specialized Journalism (Maryland)	*http://www.knightcenter.umd.edu/*
Maryland Judiciary	*http://www.courts.state.md.us/*
Maynard Institute for Journalism Education	*http://www.maynardije.org/*
Media Law Resource Center	*http://www.medialaw.org*

Medill School of Journalism, Northwestern University, Chicago; with its *On the Docket* page	*http://www.medill.northwestern.edu/medill/* *http://docket.medill.northwestern.edu/*
National Center for Courts and Media	*http://www.judges.org/nccm/*
National Center for State Courts	*http://www.ncsconline.org/*
National District Attorneys Association	*http://www.ndaa-apri.org/index.html*
National Institute of Justice	*http://www.ojp.usdoj.gov/nij/*
New South Wales, Australia, Lawlink	*http://www.lawlink.nsw.gov.au/Lawlink/Corporate/ll_corporate.nsf/pages/LL_Homepage_index*
New Zealand, Ministry of Justice	*http://www.justice.govt.nz/*
North Carolina, Courts	*http://www.nccourts.org*
Online Journalism Review	*http://www.ojr.org/*
PACER (Public Access to Court Electronic Records)	*http://pacer.psc.uscourts.gov/*
Poynter Institute, St. Petersburg, Florida	*http://www.poynter.org/*
Reporters Committee for Freedom of the Press	*http://www.rcfp.org/*
Tennessee, Administrative Office of the Courts	*http://www.tsc.state.tn.us/*
Victoria, Supreme Court (Australia)	*http://www.supremecourt.vic.gov.au*
Wisconsin, Courts System	*http://www.courts.state.wi.us/*
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A Guide to Recording Your Own Court Hearing

Appendix 15

Information #

SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

LARRY O'BRIEN

****

RULING ON USE OF RECORDING DEVICES

BEFORE THE HONOURABLE JUSTICE D. CUNNINGHAM
On May 4, 2009, at Ottawa, Ontario

****

CHARGE: S.121(1)(d) CCC
S. 125(b) CCC

****

APPEARANCES:

S. Hutchison — Counsel for the Crown

M. Edelson — Counsel for the Accused

Table of Contents

SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

Transcript Ordered: May 4, 2009
Transcript Completed: Ma7 4, 2009
Counsel Notified:

R vs O'Brien

R U L I N G

CUNNINGHAM, J. (Orally):

Again, let me express my appreciation to counsel for their assistance in this somewhat novel issue.

As I indicated earlier, anything I rule upon today on the issue of Blackberries or other such devices will apply to this trial and should not be taken as a broad policy statement for this Court.

As I stated, jury trials may present a whole set of different problems, and perhaps more challenging issues, but that is for another day.

I agree with Mr. Hutchison that I need not treat this as a constitutional issue. This really goes to my power to control the process in an exercise of my discretion.

Section 136(2)(b) of the Courts of Justice Act is quite clear, that nothing in subsection 1 prohibits a journalist, indeed anyone else mentioned therein, from unobtrusively making an audio recording in a manner approved by the

judge. It is also for the purpose of supplementing or replacing handwritten notes.

What we are talking about here is instant text transmission to the blogosphere, but that is the world in which we live.

I recognize the concerns that have been registered; the distractions that may affect the court proceedings, the incompatibility of these devices with court equipment, but most significantly, the "genie in the bottle" concern that has been registered.

Even if I were to accept the 20-minute delay as proposed by the amicus curiae, I am not sure that it would have the desired affect.

I do not need to consider whether such a lag would offend Dagenais Mantuck test. In my view it would not because I am satisfied that what the amicus proposes is not a ban. But again, that is for another day.

I am simply not persuaded that exercising my discretion in that way would have any practical affect; in other words, I simply cannot see how a 20-minute delay could satisfy the concerns that have been registered.

I also recognize that some private information or protected information could inappropriately be

disclosed but I am afraid that is a risk I will have to take, recognizing as I do, the caliber of counsel I have before me in this case.

So subject to my being satisfied as to the practical concerns, that they can be alleviated, Blackberries or such devices will be permitted so long as any texting is done in an unobtrusive way and does not affect the running of the trial.

They will be operated as silently as the devices permit and if problems develop later on, I will deal with them.

I should note that these devices are to be used for text or receiving purposes only so long as this does not interfere with the court proceedings. Needless to say, cell phones are not to be used for receiving or calling and I am sure I do not need to say that the use of any camera or video equipment on these devices is prohibited.

THE HONOURABLE JUSTICE CUNNINGHAM

SUPERIOR COURT OF JUSTICE

Certificate of Transcript
Evidence Act, subsection 5(2)

I, Andrea Johnstone, certify that
This document is a true and accurate
Stenographic transcription of the recording of
R vs O'Brien in the
Superior Court of Justice
Held at 161 Elgin Street
Ottawa, Ontario
Taken from Recording No.
Courtroom #36
Which has been certified in Form 1
To the best of my skill and ability.

May 5, 2009
Date:

Andrea Johnstone
A.L. Johnstone,
Certified Court Reporter

Note* **Pursuant to subsection 5(3) of the Transcription Manual, 2003, "*A transcript prepared from a sound recording must be certified by the person who prepared the transcript.*"**

A Guide to Recording Your Own Court Hearing

Appendix 16

Southwest Region | CKPS | CK10029698

RECOGNIZANCE ENTERED INTO BEFORE OFFICER IN CHARGE
ENGAGEMENT CONTRACTÉ DEVANT UN AGENT RESPONSABLE

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO

Under Section 149(2) of the *Provincial Offences Act*
Aux termes de l'article 149(2) de la Loi sur les infractions provinciales

Form / Formule 134
Courts of Justice Act
Loi sur les tribunaux judiciaires
R.R.O. / *R.R.O.* 1990
O. Reg. / *Règl. de l'Ont.* 200

I, **Charles Michael WHEELER (DOB: 1966/01/16)**
Je soussigné(e),

of **393 Scottsdale Dr., Guelph, ON**
de

understand that it is alleged that I have committed / *comprends qu'il est allégué que j'ai commis*

Unlawful Use of Recording Device at a Court Hearing, contrary to S. 136(1)(a) Courts of Justice Act

(set out substance of offence / *indiquer l'essentiel de l'infraction*)

In order that I may be released from custody, I hereby acknowledge that I owe $ **200.00** (not more than $300,
Afin de pouvoir être mis(e) en liberté, je reconnais devoir $ *(au plus 300 $,*
no deposit or sureties are required) to Her Majesty the Queen, which may be collected in the same manner as money owing under a judgement of the Superior Court of Justice if I fail to appear as hereinafter required.
nul dépôt ou nulle garantie ne sont exigés) à Sa Majesté la Reine. Cette somme peut être recouvrée de la même manière que s'il s'agissait d'une somme d'argent due aux termes d'un jugement de la Cour supérieure de justice, si je fais défaut de comparaître de la façon dont je suis requis(e) ci-après.

I acknowledge that I am required to appear in the Ontario Court of Justice
J'admets être requis(e) de comparaître devant la Cour de justice de l'Ontario

at **21633 Communication Rd., RR #5 Blenheim, Ontario** **1**
à (address / *adresse*) (courtroom / *salle d'audience*)

on the **10** day of **November / novembre**, yr. **2010**, at **10:00 p.m. / après-midi**
le *jour de* *an* *à* (hour / *heure*)

and to appear thereafter as required by the court, in order to be dealt with according to law.
et de comparaître par la suite chaque fois que le tribunal l'exigera pour y être traité(e) selon la loi.

Dated at **Chatham, Ontario**
Fait à

this **14** day of **September / septembre**, yr. **2010**
le *jour de* *an*

(Signature of Defendant / signature du défendeur)

Cst. Michael CURRIE #1012
(Officer in Charge / *agent responsable*)

Chatham-Kent Police Service
(station, etc. / *poste, etc.*)

NOTE: Section 154 of the *Provincial Offences Act* is as follows:

154 (1) The recognizance of a person to appear in a proceeding binds the person and the person's sureties in respect of all appearances required in the proceeding at times and places to which the proceeding is adjourned.

(2) A recognizance is binding in respect of appearances for the offence to which it relates and is not vacated upon the arrest, discharge or conviction of the defendant upon another charge.

(3) The principal to a recognizance is bound for the amount of the recognizance due upon forfeiture.

(4) The principal and each surety to a recognizance are bound, jointly and severally, for the amount of the recognizance due upon forfeiture for non-appearance.

REMARQUE : *L'article 154 de la* Loi sur les infractions provinciales *se lit comme suit :*

154 *1) L'engagement à comparaître dans une instance lie la personne qui l'a consenti et ses cautions à l'égard de toutes les comparutions exigées au cours de l'instance, aux date, heure et lieu fixés pour la reprise de l'instance après un ajournement.*

2) L'engagement est exécutoire à l'égard des comparutions relatives à l'infraction qu'il vise et n'est pas annulé par l'arrestation, la libération ou la déclaration de culpabilité du défendeur à l'égard d'une autre accusation.

3) La personne que consent un engagement est tenue de payer le montant de l'engagement exigible au moment de la réalisation.

4) La personne que consent l'engagement et chacune de ses cautions sont tenues solidairement de payer le montant de l'engagement exigible au moment de la réalisation pour défaut de comparaître

FOR INFORMATION ON ACCESS TO ONTARIO COURTS FOR PERSONS WITH DISABILITIES, CALL 1-800-387-4456 TORONTO AREA 416-326-0111

POUR PLUS DE RENSEIGNEMENTS SUR L'ACCÈS DES PERSONNES HANDICAPÉES AUX TRIBUNAUX DE L'ONTARIO, COMPOSEZ LE 1-800-387-4456 RÉGION DE TORONTO 416-326-0111

A Guide to Recording Your Own Court Hearing

Appendix 18

It's time for the legal establishment to end its disrespect for one of Ontario's greatest jurists, former Ontario Chief Justice W.G.C. Howland

By Vernon Beck – December 13, 2011

William Goldwin Carrington Howland (March 17, 1915 – May 13, 1994) was a respected lawyer, judge and the former Chief Justice of Ontario.

Born and raised in Toronto, Justice Howland attended Upper Canada College in his earlier years and graduated from the University of Toronto in 1936.

Shortly afterwards he attended Osgoode Hall to study for his law degree and afterwards was called to the Bar of Ontario in 1939.

In 1975, Howland was appointed a Judge to the Court of Appeal, Supreme Court of Ontario and two years later was appointed as the Chief Justice of Ontario where he remained in this position until his retirement in 1992.

This photo of Howland was taken sometime in the 1930's before he was called to the Ontario Bar in 1939.

Justice Howland believed in transparency in the administration of Justice

Throughout his active legal career, Justice Howland gained widespread recognition for his strong belief in the rule of law and his dedication to the advancement of the administration of justice for the benefit of all.

After faithfully serving the people of Ontario for approximately 20 years as the Chief Justice of Ontario, in a bold and decisive decision on April 10, 1989, Chief Justice Howland issued a historic Practice Directive to all Ontario Courts which reaffirmed the right of the citizens of Ontario to audio record their own court hearing under Section 136(2)(b) of Ontario's Courts of Justice Act which even today reads, ***"nothing prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22)."***

Justice Howland's directive to his fellow jurists and to all court administrators was clearly intended to bolster the public's respect for the administration of Justice by promoting greater openness and transparency in the courts of Ontario.

In his Directive to all courts, Chief Justice Howland ordered Ontario's courts to stop harassing the citizens of Ontario in respect to audio recording and to respect the right of the citizens granted under section 136(2)(b) of Ontario's Courts of Justice Act to audio record their own court proceedings using their own audio recording devices without having to make oral or written arguments before the presiding judge.

Howland's Directive stated, ***"Subject to any order made by the presiding judge as to non-publication of court proceedings, and to the right of the presiding judge to give such directions from time to time as he or she may see fit as to the manner in which an audio recording may be made at a court hearing pursuant to s. 146 [now s. 136] of the Courts of Justice Act, the unobtrusive use of a recording device from the body of the courtroom by a solicitor, a party acting in person, or a journalist for the sole purpose of supplementing or replacing handwritten notes may be considered as being approved without an oral or written application to the presiding judge."***

The only discretion that judges were to have under the Courts of Justice Act was with the ***manner*** in which citizens before the court could audio record their own court hearings.

Back at the time when the Courts of Justice Act was made law, recording devices were bulky, heavy and required power cords in order to operate, so it was not unreasonable for judges to be given some discretion with the ***"manner"*** of recording so that equipment and power cords could be physically located in a manner so as to not obstruct court proceedings.

Many at the time considered Justice Howland's directive to the courts as one of his most notable contributions to promoting transparency in the courts and protecting the rights of self represented individuals before the courts in Ontario.

Over his career, Justice Howland made so many notable contributions to society and the advancement of the administration of justice that two years after he issued his historic practice directive to the courts about audio recording, he was awarded the Order of Ontario in 1991, and a year later in 1992, the Order of Canada.

Howland received many awards and honours during his career including international recognitions as the National President of the United Nations Association in Canada.

Many in the legal system have lost sight of the true purpose of the law

Tragically today, many in the legal system do not even know who Justice Howland is or know of his great contributions to the legal community and to the people of

Ontario and of Canada during his career.

In spite of former Chief Justice Howland's notable contributions to the administration of justice, many judges, lawyers and court administrators, outright defy and make of mockery of Section 136(2) of the Courts of Justice Act by misleading and routinely threatening the citizens of Ontario who attempt to exercise their rights under the law. Some examples include:

- **In Hamilton, Ontario, a judge permitted a self represented party to audio record but ordered that the tape recorder be surrendered to court staff at the end of the court hearing until the resumption of proceedings at the next scheduled court proceeding.**
- **In London, Ontario, a citizen was arrested, handcuffed right in the courtroom and taken out like a criminal when he brought his recording device into the court to supplement his notes in his own hearing. The man was later released and charges dropped after the Crown Attorney admitted that the man was wrongfully arrested and detained.**
- **A number of citizens have reported being harassed and threatened at the Brampton, Ontario court. Self represented citizens were turned away and told to return their audio recording devices back to their vehicles.**

There are many examples over the past decade where the citizens of Ontario have been threatened and intimidated by courthouse security forces and by judges over the simple right to audio record.

In spite of the fear of recording devices by many jurists some such as Justice Craig Perkins and Justice Backhouse have in the past respected the law and allowed recording in their courts.

Even today, signs posted by the Attorney General at most courthouses continue to intentionally mislead the public by stating that recording devices are prohibited but conveniently do not inform the public of their rights under section 136(2)(b) of the Act.

Police officers at some courthouses are routinely misdirected about the law by senior court administrators and instructed that recording devices are banned and to not allow the devices in the courtroom.

Rather than upholding the law and protecting the citizens as they are supposed to do, many police officers are mindlessly breaking their oath and helping those administering the courts with an iron fist to obstruct justice and to violate the lawful rights of the citizens.

By misinforming and harassing the citizens of Ontario the legal establishment is in effect bringing disrepute to the Administration of Justice and tarnishing the reputation and good work of former Chief Justice Howland who made it very clear when he was in charge that the rights of the citizens of Ontario under law was not to be obstructed by anyone, not even the judges.

Signs that positive changes are coming

With the advancement in personal recording technology, the discretion of a judge over the "manner" in which a recording is done in the courtroom has become redundant in today's world.

Digital recorders are very tiny and unobtrusive, silent, will record for hours without changing batteries and have microphones built right in to them.

High quality recordings can be obtained just by placing the device on the table in front of the parties.

Recently, on December 6, 2011 I attended the Huntsville, Ontario court to hear a case involving a self represented person who was in court against a senior Crown Attorney.

Outside of the courtroom door was one of the same signs posted at most courthouses intended to mislead the public which states that audio recording was prohibited but with no mention of Section 136(2)(b) of the Act.

However, in spite of the shamefully misleading sign posted at the courtroom door, I was pleasantly surprised inside when The Honourable Justice George Beatty refused to accept the lame objections of the senior Crown Attorney from Muskoka, Ted Carlton, and made it clear that the right of the self represented parties under Section 136(2)(b) of the Courts of Justice Act to audio record the proceeding would be respected in his court.

Compared to some of the shenanigans that other judges and lawyers have displayed in the courts over the issue of audio recording, it was refreshing to see Justice Beatty give his unwavering respect to the law and to protect the rights of a citizen before him.

In light of what appears in recent years to be a renewed resistance to audio recording in the courts and the revelation that official court transcripts are being tampered with, the importance of recording devices for accurate note taking is even more important.

The Attorney General should immediately order that all of the misleading signs at the courthouses should be ripped down and effective steps taken to stop the blatant obstruction of Justice to the Courts of Justice Act.

Justice Howland knew back in 1989 what was just for the citizens of Ontario and he set the example by acting decisively on behalf of the people of Ontario.

Even today, the good name of Justice Howland lives on. Students who achieve excellence in their law studies are given generous scholarships though the Hon. William G. C. Howland Award of Excellence Entrance Scholarship fund which has been made possible through a gift from the estate of the late Justice Howland.

It's time for judges, lawyers, court workers and all in the legal establishment pay their due respect to Justice W.G.C. Howland as well as to the people of Ontario by following Justice Howland's lead to make the courts more open, transparent and affordable to the citizens of Ontario.