THE ADMINISTRATION OF JUSTICE IN THE
THREE HIGHER CRIMINAL COURTS OF VANCOUVER

by

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ABSTRACT

The object of this study is to explain the organization of law courts and allied matters relating to the administration of justice in the three higher criminal courts of Vancouver:

1. The County Court Judge's Criminal Court.
2. The Supreme Court.
3. The Court of Appeal.

Most of the material for this study was obtained through interviews with the judges and staff of these courts. In the past the administration of justice has hardly been considered a subject by legal writers as evidenced by the paucity of literature in the Canadian field. Some writers have included the system of courts but necessarily could not give it much space; others presumed that the reader was acquainted with the subject.

The study outlines the jurisdiction of these three courts, including the functions of the judges and staff attached to them. The study also outlines the process of trials originating in the Magistrate's Court and culminating in the three higher courts.

Finally, some general conclusions and recommendations are made regarding some of the inadequacies now existing in these three courts.

The writer's sincere impression, having had a legal background, is that the social worker needs a knowledge of the present administration of justice, how it really works, and what criticisms and suggestions have been made to improve it.

Law treated as sacrosanct, isolated from the society it serves, must succumb to a more modern approach. To some extent, this means that lawyers, social workers and other people concerned with the administration of justice must look critically at its present structure. Only through knowledge and mutual endeavor by those involved with the administration of justice can the rights of individuals appearing before the courts be protected. It is hoped that this study will arouse some interest and that others will carry out extensive research in this area in the near future.
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CHAPTER I

THE NATURE OF THE ADMINISTRATION OF JUSTICE

1. Some Conceptions on Administration of Justice

The major purpose of government is the maintenance of law and order and the administration of justice. The administration of justice is largely a function of the courts, which interpret and enforce the law and the rights of parties under it. Other agencies involved in the administration of justice are the police, prisons, and probation and parole services.

Nowhere more than the courts does government touch the life of the people more intimately and nowhere is it more important that the governing process reflect efficiency and common sense. Indeed, if we seek to preserve free government in Canada we must make the administration of justice a concomitant of good government. The nature of the task has been well stated by Roscoe Pound:

"Let us think of the administration of justice as a great task, or rather a great series of interrelated tasks within a judicial framework. The problem of law is not one of abstract harmonizing of human wills, it is one of concrete securing or realizing of human interests."

The administration of justice may be defined as the maintenance of right within a political community by means of the force of the State, and through the instrumentality of the State's judicial tribunals.

By definition, then, the law consists of the authoritative rules which judges apply in the administration of justice, to the exclusion of their own free will and discretion. For good and sufficient reasons the courts which administer justice are constrained to walk in predetermined

paths. They are not strictly at liberty to do that which seems right and just in their own eyes. They are usually bound by precedent and an authoritative creed which they must accept and act upon. The law, is therefore, the wisdom and justice of the community, formulated for the authoritative direction of those to whom the community has delegated its judicial function. Justice is the end, law and its administration are merely the instruments and the means by which justice is carried out.

2. **Historical Determinants Rooted in the English System**

Canadian law and its administration, except as modified by statute and those portions of law in the Civil Code of Quebec, has a historical development related to the English courts where much of the Canadian statute law is based directly on the statute law of England. Canadian criminal law, although it has been codified for over 80 years, follows closely the English law on which it is founded. Any report of cases decided in any one of the Canadian provinces (except Quebec) or an Appeal to the Supreme Court of Canada, illustrates the basic principles, generally supported by the citation of English authorities.

That the law of Canada should have been so closely modelled on that of England is only natural. Our development as an important commercial and industrial country has taken place largely during the last 70 years. England has been a leader in commerce, industry and world trade for centuries and so has developed a system of law governing these great fields of activity which Canada adopted as its own model since Confederation. The Judicial Committee of the Privy Council, or the final court of Appeal in all civil cases until 1950 and in all criminal cases until 1931, was a powerful agency in maintaining and influencing the close similarity between the legal system in Canada and England, and in establishing mature and tested rules and principles which have been adopted by Canada to suit its special needs.
It is right, however, that the legal connection with England in the administration of justice be severed. Canadian courts have reached a period of autonomy, and are no longer in the adolescent stage. But Canadians continue to acknowledge and use the English model of justice to their advantage.

Justice Rand of the Supreme Court of Canada stated:

"Thus it is seen, by a course of empirical modifications, we have exemplified the basic methods of common law development from England; distrusting logic in itself has left to experimental reason the task of giving formulation to the ever growing needs of people in a legal framework of friendship, mutual respect, and a transcending allegiance to newly arising conceptions of civilization."1

In passing, it can also be stated that the principal differences between the administration of justice in Canada and the United States have sprung from differences in attitude and outlook of their respective people. The differences have been shaped by the divergent pressures of the political and economic history, most decisive of which has been the fact that Canada, in contradistinction, was granted independence from Great Britain without revolution.

3. The Division of Law

In order to make clearer the administration of justice, it is necessary to consider the two divisions of law, civil and criminal.

By definition, Popple states a crime is an act or mission prohibited by the superior power in a state under penalty of fine, imprisonment or other punishment.2 Further, by corollary, civil cases, mean that

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part of a country's law which is not criminal. The dichotomy here is really criminal and non-criminal, so that civil cases must be distinguished by setting the boundary of the criminal law. This division of the law into civil and criminal gives us the only two categories for the administration of justice, where as a general rule civil cases are dealt with by one hierarchy of courts and criminal cases by another.

Any attempt to define a crime in terms of acts or omissions leads to considerable difficulty. If for instance, the driver of one car recklessly comes into collision with another car, damaging it and injuring the driver, we find that the same act of reckless driving is a crime under the Criminal Code and also a tort (civil wrong independent of contract). The distinction, then, is not necessarily between acts, but between legal proceedings that are brought, either civil or criminal. If proceedings against the reckless driver are aimed at punishing him, then these proceedings are criminal, whereas proceedings that aim at compensating the injured person are civil. Criminal proceedings, usually called a "prosecution" cannot (with certain exceptions) result in any pecuniary gain to the person injured. Therefore, most criminal acts are also civil wrongs. When the act is both a crime and a civil wrong, there is no reason why both a prosecution and a civil action should not be brought. The proceedings, however, will be quite different, coming before a separate hierarchical structure of courts.


The federal distribution of legislative power and responsibilities in Canada is one of the facts of life in the many important social, political, economic and cultural problems of Canada. Over the whole range of actual and
potential law-making the constitution distributes powers and responsibilities by two lists or categories of classes — one list for the federal parliament and the other for each of the provincial legislatures.¹

In the realm of criminal law under the British North America Act the federal parliament is given power under Section 91 (Class 27):

"The Criminal Law, except the Constitution of Courts of Criminal jurisdiction, but including procedures in Criminal matters."

Thus the procedural aspects of criminal law, as well as the substantive law are within the exclusive competence of the federal government.

The provinces, under Section 92 (Class 14), have exclusive control over:

"The administration of justice, in the province, including the Constitution, Maintenance and Organization of Provincial Courts, both of Civil and Criminal Jurisdiction, and including Procedure in Civil Matters in these Courts."

Thus, the criminal law, in its widest sense is reserved for the exclusive authority of the federal government and the administration of it in the provincial sphere. In the main, the Criminal Code of Canada, defines the powers as laid down by the federal government but no doubt this plenary power given by Section 91 (27) of the B.N.A. act does not deprive the provinces of their right under Section 92 (15) of affixing penal sanctions to their own competent legislation, such as in the case of provincial penalties under liquor, traffic, and municipal acts.

This supplementary power of affixing penalties to legislation does, at times, create some overlapping and ambiguity in the area of criminal law.

¹ British North America Act, 1867, 30 & 31 Victoria, C.3, Section 91 & 92.
Justice Rand defined a crime constitutionally as follows:

"A crime is an act which the law, with appropriate penal sanctions, forbids; but as a prohibition, is not enacted in a vacuum. We can properly look for some evil, injurious, or undesirable effect upon the public interest which the law is directed. That effect may be in relation to social, economic or political interests; and the legislature has in mind to suppress the evil and to safeguard the interest threatened."  

In essence, whenever an act is considered a crime the federal government must put it to a test to consider whether it falls under the scope of its criminal law power, otherwise the province will have exclusive jurisdiction.

5. Structural Analysis of the Courts of Canada.

As previously indicated, the division of law into civil and criminal matters are dealt with in separate hierarchical court systems. In order to get a general conception of these courts, the total Canadian court system, both criminal and civil, will be reviewed prior to an analysis of the administration of the three higher criminal courts in Vancouver — the Supreme Court, County Court Judge's Criminal Court, and the Court of Appeal.

The Supreme Court of Canada, which was established in 1875, is the highest court in the land. All courts beneath it are bound by its decisions on appeal. It exercises appellate jurisdiction in all causes, civil and criminal, that originate in any of the courts of the ten provinces.

The next court, which is the highest court in the respective provinces, is the Court of Appeal. These courts also hold appellate jurisdiction in all civil and criminal cases where appeals from this court go to the Supreme Court of Canada.

Next, in descending order and forming the base of the national pyra-

mid of courts are the various provincial courts beginning with the Supreme Court of each province to the County Courts to a variety of minor or inferior courts. In civil cases the line of descending order is distinct and uniform (see Appendix I). Also in civil cases, the only federal court that has been created by parliament is the Exchequer Court, from which appeal normally lies to the Supreme Court of Canada (see Appendix I). There is no concurrent jurisdiction between the provincial courts and the Exchequer Courts. The Exchequer court is a specialized tribunal in which all cases involving the federal government are considered.

In criminal cases, the structure of the court system is somewhat different as it descends from the Court of Appeal of the province. This structure is determined by the nature of the crime and the election the accused may make as to which court he prefers to be heard in (see Appendix II). This area will be discussed in more detail at a later stage but at this juncture it may be stated that it is quite conceivable that the County Court and the Supreme Court in criminal matters could have equal jurisdiction unlike those cases considered civilly where the Supreme Court is superior to the County Court.

For a nation organized on a federal basis the Canadian court system is a relatively simple one. The judicial lines of descending order on appeal are clear cut from the higher to the inferior courts.

6. The History of the British Columbia Judicial System

(a) Before Confederation

The researcher for the "beginning of things" relating to the administration of justice in the region west of the Rocky Mountains finds himself, somewhat to his surprise, in the city of Montreal at the opening of the last
century. The courts of Upper and Lower Canada were given jurisdiction to try persons accused of crime in the Indian territories north and west of the two Canadas. Trials took place in Montreal and Toronto, but the annals are silent as to the exercise of jurisdiction by the Canadian courts in any case beyond the Rockies.¹

In 1849 the Crown was empowered to make provision for the administration of justice on Vancouver Island and to establish courts with such jurisdiction in matters civil and criminal and, subsequently, judges were appointed. In 1853 the governor of Vancouver Island undertook to establish the Supreme Court of Civil Justice. There are no published reports of litigation in those early days, and there are only occasional glimpses of judicial trials. The early settlers seemed to be in constant feud with the officers of the Hudson's Bay Company, and the nature of many court cases were libel proceedings and unfair practices.

Meanwhile, the rush of gold-seekers to the upper reaches of the Fraser River had necessitated the establishment in 1858 of a new colony on the mainland. In 1859, Governor Douglas constituted the Supreme Court of Civil Justice of British Columbia and ordained that it should have complete cognizance of all pleas whatsoever, and jurisdiction in all cases civil as well as criminal arising within the colony of British Columbia.

For 36 years, Sir Matthew Begbie, "The hanging Judge", was the most outstanding figure in the judicial history of the West at this time. It is difficult to overrate the worth of his service to the administration of justice to this province. Holding court with more or less regularity on the Lower Mainland, first at Fort Langley, later at New Westminster, he journeyed

from time to time into the mining camps of the interior with his prophetic legal books slung behind him on horseback. He was, indeed, the first circuit court judge in criminal assizes. He seemed to intuitively have appreciated the spirit of the West and to have known just where to draw the line between licence that is seemingly inseparable from life in mining and logging camps and the lawlessness that is the duty of courts to suppress. Lawlessness he did suppress, and with a thoroughness which made his name synonymous with law and order throughout the province.

On November 17, 1866, the two colonies were united under the name of British Columbia. The two courts, however, were not at once amalgamated. In 1869, the name of the island court was changed to the Supreme Court of Vancouver Island, and its Chief Justice was to be known as the Chief Justice of Vancouver Island, while the mainland court was to be known as the Supreme Court of the Mainland of British Columbia, and its judge was to be styled the Chief Justice of the Mainland of British Columbia. The two chief justices were empowered to act for each other on request. Provision was also made that upon the death or resignation of either of them the two courts should be merged into one and that the surviving or continuing Chief Justice should be the Chief Justice of British Columbia. In the following year, the contemplated merger took place.

(b) After Confederation

This was the position when British Columbia entered Confederation on July 20, 1871. The Supreme Court of British Columbia possessed the usual wide jurisdiction of a superior court at common law and in equity. Until 1879 the judges had had almost complete control of the court's procedure, being expressly empowered to make "Rules of the Court". In 1879 the provincial legis-
lature took from the judges the power and conferred it upon the Lieutenant-
Governor-in-council.

At the same time they made provision for dividing the province into
judicial districts, a decentralizing measure which, as the judges complained,
would send some of them into banishment to remote sections of the interior.

It may be added that to this day the procedure and practice of the
Courts in British Columbia are in the hands of the Lieutenant-governor-in-
council, subject of course to any express provision the legislature may from
time to time see fit to make.\(^1\) This decentralizing policy embarked upon in
1879 has had no real practical function, since the various federal govern-
ments have refused to recognize the right of a province to affix conditions
to the place of residence of the judges, whose appointments rest with the
federal authorities under the British North America Act.

As early as 1860, provision was made for Magistrates courts through-
out the province for rendering the administration of justice in minor crim-
inal cases for "more speedy and certain justice." In 1866, local magistrates
also held courts for the recovery of small debts, and from this has gradually
grown the present system of Small Debts Courts.

In 1867, the English acts respecting county courts were adopted in
British Columbia so far as applicable, and this policy has been followed to
the present time. County Court practice as well as Supreme Court practice,
as previously indicated, follows in the main the English model.

In 1907, the work of the Supreme Court had so increased in volume
that it was deemed necessary to establish a Court of Appeal for the province.
Theretofore, the judgments of single judges were subject to review before
the full court, comprised of not less than three other judges of the Supreme

\(^1\) IBID, p. 394.
Court. Appeals from the various county courts were also heard by the same tribunal. However, with the establishment of the Court of Appeal as a distinct court, the judges of the Supreme Court of British Columbia dealt with cases in their jurisdiction, with appeals from their court going to the Court of Appeal.

At the present time, therefore, the courts of the province in the order of authority are as follows:

1. The Court of Appeal of British Columbia, consisting of the Chief Justice and 8 Puisne (Junior) Justices who are called "Justices of Appeal". It has general jurisdiction throughout the province as an appellate court only holding court in Vancouver and Victoria.

2. The Supreme Court of British Columbia, consisting of a Chief Justice and 14 Puisne (junior) Justices who are called Judges of the Supreme Court. It has, like the Court of Appeal, general jurisdiction throughout the province but holds court in the nine county districts at various assizes, although its central site is Vancouver.

3. The County Courts of which there are nine in British Columbia are composed as follows:

1. The County Court of Victoria.
2. The County Court of Nanaimo.
3. The County Court of Vancouver.
4. The County Court of Westminster.
5. The County Court of Yale.
6. The County Court of Cariboo.
7. The County Court of Prince Rupert.
8. The County Court of East Kootenay.
9. The County Court of West Kootenay.
(see Appendix III for map outlining county districts).

4. Small Debts Courts in the various county districts.

In addition to these regularly constituted courts there are magistrates and justices scattered throughout the 9 judicial or county districts.
exercising jurisdiction under the Criminal Code of Canada as well as the provincial Summary Conviction Act.
In order to envisage the administration of justice in the higher courts in Vancouver, it is first necessary to have some knowledge of the Magistrate's Courts, both from an administrative and procedural aspect. It is necessary to understand how various charges of crimes against an accused are channelled from this judicial focal point to either the County Court Judge's Criminal Court, Supreme Court, or Court of Appeal.

It is not the purpose of this study to analyze in great detail the administration of this court. Yet, it is important to realize that justice is meted out more in this judicial medium in Vancouver than the three other criminal courts put together. Approximately 90% of all criminal cases in Vancouver are tried and concluded in the Magistrate's court.

1. The Magistrate's Court in Vancouver

The judiciary of this court in the Vancouver area consists of a senior magistrate and 8 junior magistrates. The magistrates are appointed by the Lieutenant Governor in Council and are paid their salaries by the City of Vancouver. There are 8 courts functioning every day - 5 criminal courts and 3 traffic courts. Recently, night courts have been introduced and to date have proved to be quite successful in facilitating the administration of justice.

Other than the senior magistrate, all the magistrates move from court to court on a rotation basis about every 2 months. Court commences usually at 9:30 a.m. with the overnight offenders heard first. On Saturday morning, there is only one court.
In addition to these courts, 2 by-law courts sit on Wednesday afternoon, and the magistrates attend these courts. The by-law offences which come up in these courts include almost every by-law offence except traffic.

Another court, known as the Private Prosecution Court is also held on Wednesday afternoon. Cases under the Dominion Tax Act and under special federal statutes, are taken by private prosecutors appointed by the particular government offices dealing with the matter to handle the cases. Also included in that court are certain other prosecutions, as for example, under the Dentistry Act which is a provincial statute.

2. The Prosecutor in the Magistrate's Court

The role of the prosecutor in the police courts is primarily to see that all the facts, whether they are for or against the accused, are either put before the court or made available for counsel to do so. It is not unusual for cases to be discussed in considerable detail with defense counsel, each exchanging evidentiary facts in order to facilitate the flow of justice by developing the crux of the legal case to be heard. Ideally, the prosecutor must do his best to ensure the fairest possible trial for those who are accused. It is not enough that justice be done; it must also appear to be done.

The office of the City Prosecutor includes 17 lawyers, all employed by the City of Vancouver. The City Prosecutor's staff handles not only all cases coming before the Magistrate's court but also handles all criminal prosecutions in the County Court Judge's Criminal Court in the County of Vancouver. Further, 2 of the staff are engaged exclusively at the Vancouver Family and Children's Court.
Every crime that is committed in Vancouver has its investigation; consequently every case that involves a charge against an accused goes through the hands of the prosecutor. The most serious cases are usually brought to one of the prosecutors by the police for advice on various phases of the investigation where necessary. Subsequently, the prosecutor interviews the witnesses and finally prosecutes the case in the first instance in the police court.

For further clarification in the area of criminal prosecution the Attorney-General's department has to be considered. The Attorney-General is the chief law enforcement officer in the province. His staff consists of the Deputy Attorney-General, a General Counsel, Inspector of Legal Offices, Legislative Counsel, Departmental Solicitor and several assistant solicitors and one or two assistant Departmental Solicitors.

The Attorney-General is not in any way responsible for the Vancouver Police Court prosecutors, nor are the prosecutors responsible to him in the administration of their work. But it is also obvious that since the Attorney-General is the chief law enforcement officer in the province, the Vancouver prosecuting office look to him for assistance and instructions in difficult cases.

If the Attorney-General decides that something is to be done by way of prosecution, he communicates with the prosecutors who handle the case in a collaborative fashion. It is the function of the Attorney-General's department to administer the prosecution of criminal cases throughout the province, except where cities retain their own full time prosecutors. Under the Attorney-General's department come the policing of the province in conjunction with the Assistant Commissioner of the R.C.M.P. The Attorney-General's
department covers the prosecution of trials in County Courts but an arrange­ment has been made between the province and the city for the work to be done by the city prosecutor's office.

The Attorney-General, as will be discussed in detail at a later stage, is also responsible for all assize courts prosecutions (jury trials in County Court Judge's Criminal Court and the Supreme Court) as well as the Court of Appeal.

3. The Police Court Clerk

The police court clerk has a position comparable to the registrar of the higher criminal courts. His function is to see that all documents for all cases prosecuted in the police court are properly entered and set up for that purpose and are correctly brought before the court during the hearings, and that other documents are properly made up and put before magistrates for signature after the hearing. They are then forwarded to other courts where this is necessary, or filed in such a way that years and years later, they can be produced and results checked if necessary.

His staff for the criminal courts consists of approximately 20 people. They comprise clerks and court reporters during the sittings of the Magistrate's Courts and make up lists for the court hearings. On the staff as well are cashiers to take fines and bail set by the courts. There is also a justice of the peace on duty 24 hours a day, so that charges may be laid, and for the fixing of bail and for the releasing of prisoners.

4. Police Administration of Vancouver

Police administration in Vancouver as an important concomitant of the administration of justice is conducted under the control of the Board of Police Commissioners which consists of the Mayor, and 3 commissioners. The
police commission employ the police department, the police court clerk and his staff, and the city prosecutor and his staff. Salaries are paid by the City of Vancouver from budgets submitted by the Board of Police Commissioners.

Vancouver is policed by approximately 800 officers. The administration is composed of the Chief of Police, Deputy Chief, Superintendent of the Detective Branch, Uniform Branch, and Traffic Department. Under these men are Inspectors; 2 with the Traffic Department, 3 with the Criminal Investigation Department, and about a dozen in the Uniform Branch. Under each of these Inspectors who work shifts policing the city 24 hours a day, are sergeants, and under the sergeants are constables and detectives.

In addition to the general divisions mentioned, there are squads: gambling, morality, liquor, stolen auto, second-hand, fraud, cheques, missing persons, burglary, homicide and robbery.

The Traffic, Detective and Uniform divisions receive work through the Report Centre. The Traffic Office handles all matters of traffic, such as accident reports, inquiries relating to traffic, and the laying of charges in traffic matters. Each Detective Branch is responsible for investigation of serious crimes and the Uniform Branch generally supervises the city and handles the cases which do not require too much investigation. Each of these branches come to the prosecutor for advice.

5. The Procedural Process of Criminal Charges in the Magistrate's Court

As indicated, all criminal cases come before the magistrate in the first instance. All criminal cases, that is all those that are outlined under the Canadian Criminal Code, any federal or provincial statute, or any by-law in the city where an offence has been committed within the jurisdiction of the City of Vancouver, whether it is a parking offence or a murder charge,
commences in the Magistrate's court. Similarly with other jurisdictions, the original hearings or appearances are held here. There are certain exceptions, but they are quite rare.

Here is the heart and nerve centre of the criminal legal process in which medium the case is fully determined or channelled to a higher court depending on the nature of the crime, whether indictable or summary conviction.

In all criminal matters appearing before the Magistrate it is of the utmost importance to differentiate between summary conviction offences and indictable offences since each classification involves a different approach to which court the accused will be heard in. Generally speaking summary conviction offences are those of a less serious nature than indictable ones. As the name implies, summary conviction offences are dealt with in a rather speedy manner without having to go through a long form of various court hearings to the County Court Judge's Criminal Court or Supreme Court.

In many instances, a knowledge of the procedural process involved in the administration of justice is extremely important when an accused's liberty is at stake. Frequently, many cases can be lost on procedural errors; the lack of judgment on the part of defence counsel as to what court the case should be heard in could be detrimental to his client.

With this background of the Magistrate's court the writer will attempt to outline the jurisdictional processes available to an accused appearing before the Magistrate on a summary conviction or indictable offence. (Refer to Appendix IV for it's structural analysis).
The procedure may be broken down into five categories:

1. **Summary Conviction Offences under By-Laws and Provincial Statutes (see Appendix IV).**

The provisions of the Summary Convictions Act of the province sets out in detail, all the procedural points which arise in connection with the prosecution of such summary conviction offences. All municipal by-laws, and all provincial statutes such as the Motor Vehicle Act, the Government Liquor Act and the Social Assistance Act are dealt with in this category.

The accused has no election to be heard in another court. The Magistrate's Court has exclusive jurisdiction. The accused is brought before the magistrate by summons or warrant. The charge is read to him and he pleads guilty or not guilty. If he pleads not guilty, the Crown calls its witnesses. The prosecutor examines his witnesses one by one and then the accused or his counsel has the right after the prosecutor to cross-examine them. At the conclusion of the Crown's case, the defence calls his witnesses which are examined by him and then cross-examined by the prosecutor. After the evidence is in, the defence counsel then addresses the court (Magistrate's) in an effort to secure an acquittal for his client. As a matter of practice, the prosecutor very seldom replies. After the defence has made it's argument, the magistrate then acquits the accused or convicts him.

If the accused has been convicted, he has a right to launch an appeal. In the City of Vancouver the appeal lies to the County Court. There are two types of appeal; one, by trial de novo (a new trial) to the County Court, or secondly, by stated case (on apoint of law) to the Supreme Court. From these courts, the case can be further appealed to the Court of Appeal of British Columbia on a point of law only, not on the facts of the case.
(2) **Summary Conviction Offences under Part 24 of the Criminal Code of Canada and other Federal Statutes (see Appendix IV)**

Cases such as common assault, vagrancy, unlawful assembly, indecent exposure, come under this category.

The procedure in court is practically the same as the procedure under the provincial summary conviction offences No. (1). There is no right for the accused as to how he will be tried and must be tried by magistrate. The right to be tried by jury has gone through a long historical process and eventually divested itself from this category.

Appeals, similarly, are taken the same way to the County or Supreme Court and ultimately to the Court of Appeal, if necessary.

(3) **Indictable Offences Triable Summarily under Section 467 of the Criminal Code of Canada (see Appendix IV)**

There are certain indictable offences that are triable like the summary conviction offences in 1 and 2 categories. At one time in history, every indictable offence was triable by a magistrate with the consent of the accused. This has, over the years, been modified. Now those offences listed in Section 467 such as theft under $50.00 and assault are triable within the absolute jurisdiction of the magistrate just like summary conviction offences. The accused has no right to choose his mode of trial.

The appeal, if there is one, for all indictable offences, whether under this section or not, is to the Court of Appeal of British Columbia.

(4) **Indictable Offences which are Triable with the Consent of the Accused. (see Appendix IV)**

The next class of indictable offences are those which are triable with the consent of the accused. This includes offences such as robbery, forgery, theft over $50.00, and perjury.

In actuality the accused has the right to elect one of three modes
of trial. The accused has the right to elect to be tried by the magistrate he first appears before, a County Court judge in his criminal court, or by a judge and jury (Supreme Court).

If the accused elects to be tried by the magistrate or by a County Court judge, it is important to note that they have the same powers in sentencing as a judge and jury in the Supreme Court. For example, in a charge of breaking and entering a dwelling house a magistrate or a County Court judge, if elected for trial by the accused, may sentence to life imprisonment just the same way as a judge in the Supreme Court.

A hypothetical case under this indictable category will serve to demonstrate the right of election to either of the three modes of trial by the accused. The accused comes before the magistrate on the day of his election. The charge is read to him, following which, after the magistrate has explained the charge, the accused is given the election. It is this: "You have the option to elect to be tried by a magistrate without a jury or you may elect to be tried by a judge without a jury or you may elect to be tried by a court composed of a judge and jury. How do you elect to be tried?"

It is the magistrate's duty to explain that election to the accused so he will understand it, following which he is then asked as to how he wishes to be tried. If the accused decides to be tried by the magistrate and states so, he is asked to plead guilty or not guilty. If he elects to be tried by magistrate and pleads guilty, the facts of the case are given to the magistrate who then hears anything the accused may say in mitigation of sentence, and then he either sentences the accused or calls for a report on him by the Probation Service, especially if the accused is a first offender.

If the accused elects to be tried by the magistrate and pleads not
guilty, the trial proceeds as in any other case appearing before a magistrate.

If the accused is convicted and is sentenced, he has the right to appeal to the Court of Appeal as in all other indictable offences, both as to conviction or to sentence. Similarly the Crown has the right to appeal if he is acquitted, to the Court of Appeal.

If the accused elects on the charge to be tried in a higher court (County Court Judge's Criminal Court, or by a judge and jury in Supreme Court), a preliminary hearing before the magistrate is held. A preliminary hearing is nothing more than an investigation into the facts upon which an information and complaint has been laid for an indictable offence. The principal object is holding it to ascertain whether there is a prima facie case against the person charged before a Court having a higher authority than that of the magistrate.

The following is a short summary of what happens during a preliminary hearing in Magistrate's court:

1. Magistrate takes his seat.
2. Reads charge to the accused.
3. Swears the witness for prosecution.
5. Witness is cross-examined by defence counsel.
6. Magistrate reads "statement" of accused, if any.
7. Magistrate asks accused if he wishes to say anything in answer to it.
8. Accused asked if he wishes to give evidence by himself or by witnesses.
9. Accused and witness give evidence and are cross-examined by prosecution.
10. After all evidence is in, the Magistrate commits for trial to a higher court if there is sufficient evidence to support the case. He then gives the accused his right of electing his court again.
11. Commitment to the higher court is signed and handed to the police.
12. Depositions and exhibits sent to the Clerk of the Court.
13. Committal reported to the Deputy Attorney-General.

Usually, the Magistrate, in all probability will commit the accused
for trial because charges are not laid without careful thought by police officers and the prosecution. The evidence in the preliminary enquiry does not have to be conclusive for conviction but merely sufficient to warrant the accused in going before the court and letting a judge with jury, or judge without jury, to decide.

(5) **Indictable Offences Triable only by a Judge and Jury.**

(see Appendix IV)

The next category of indictable offences are those which are triable only by a judge and jury. These offences are set out in Section 413 of the Criminal Code and include the most serious offences such as treason, sedition, murder, and rape. In every one of these offences, although the original hearing must be held before a magistrate, the trial is always held before a judge and jury. In these instances, a preliminary hearing is also held.

By way of summary of what has been considered it should be noted that the following matters have been dealt with:

1. Summary conviction cases under provincial statutes and Part 24 of the Criminal Code that are dealt with a Magistrate only.

2. Three types of indictable offences.

(a) those dealt with under Section 467 of the Code where the accused has no right of election and must be tried by magistrate.

(b) those offences under Section 413 of the Code where the accused again has no right of election but must be tried before a judge and jury.

(c) all the rest of the indictable offences in which the accused has the right to be tried by the Magistrate if he desires or by a County Court Judge without a jury or whether he wishes to be tried by a judge with a jury. In the latter two instances, the accused has a preliminary hearing and then is committed to the higher courts.

In conclusion, it is extremely important to realize that the smallest
traffic case and most serious murder charge commence their judicial process in
the Magistrate's Court. The evidence and procedure in either trial is equally
important in carrying out the due process of law and the administration of
justice in terms of an accused's liberty. On the whole the rules of evidence
and procedure in criminal cases are meant to protect the accused and in most
instances competent counsel is a necessary prerequisite for justice. The
accused who is not legally represented in the Magistrate's Court, and is not
sufficiently acquainted with criminal procedure, can be at a distinct disad­
vantage although the Magistrate, as part of his judicial role, will advise
the undefended accused in procedural areas.

This description reflects a relatively complex system in the admin­
istration of justice. Many laymen have lamented the complexity of it at times,
but it must be remembered that precedent for this system of justice has been
established over hundreds of years for one function alone -- to protect the
liberty of the individual. But this philosophy, of course, should not mask
its deficiencies.

Possibly in this connection one could not do better than refer to
Viscount Sankey, Lord Chancellor of England in 1935 when he said:

"It must be remembered that the whole policy of English
criminal law as being to see that in the case of the
prisoner every rule in his favor is observed and that
no rule is broken so as to prejudice his chances of
being fairly tried. The sanction for the observance of
the rules of evidence in criminal cases is that, if they
are broken in any case, a conviction may be quashed. It
is often better that one guilty man should escape than
the general rules evolved by the dictates of justice for
the conduct of criminal prosecutions should be disre­
garded and discredited."

6. Bail

The granting of bail pending trial is a most instrumental factor in
the administration of justice. Since an accused is presumed innocent until convicted, and since the object of keeping him in custody until the trial is to ensure he being present at the trial, careful deliberation by the magistrate is of prime importance. Thus all the circumstances must be taken into consideration in deciding whether an application for bail will be allowed or dismissed. In so many cases it has been held that bail should be considered in the light of the following factors:

1. the nature of the accusation.
2. the nature of the evidence supporting the accusation.
3. the severity of punishment which the conviction might entail.

It is said that since there are certain crimes which are not likely to be repeated pending trial, there should be no general objection to bail being granted. But this type of crime does not include housebreaking which can be repeated and frequently is repeated by the accused with criminal records for such offences.

Another matter which should be considered in the granting of bail is whether or not the accused has any defense. In cases where a person is caught in the act or where there is some strong or cogent evidence against him, but there has been delay in the trial, it has been held that bail be granted.

In questions of appeal of a case from the conviction of a magistrate, great consideration must be given to the accused's previous record. Many magistrates deem it inadvisable to release a man on bail pending appeal, especially in serious offences.

When a magistrate has decided on taking bail in which he is authorized to do so, it is usually desirable that he fix a sum having regard not only to the circumstances of the case, but also with regard to the means of
the accused in being able to put up the amount set. In essence, bail should not be prohibitive and should be kept within reach of the accused.

In bail, the accused enters into a recognizance (a formal promise) with or without sureties in such amounts that the magistrate sees fit. In practice the magistrate usually asks the prosecution if they oppose bail, and if there is objection bail is seldom granted. Generally, the prosecution gives very little reason for this objection. The fact that a person accused of theft has not helped the police to recover the stolen property is an excellent reason, from the police point of view, for opposing bail.

If bail is refused by the magistrate or where bail is fixed but the Crown is not satisfied, an application may be made to a judge of the Supreme court to allow bail or vary the amount of bail fixed by the magistrate.
CHAPTER III

THE THREE HIGHER CRIMINAL COURTS IN VANCOUVER

1. The Jurisdiction of the Three Courts

The County Court Judge's Criminal Court of Vancouver is a court of record of inferior jurisdiction for the County of Vancouver. It is a creature of provincial statute and has the lowest importance in terms of jurisdiction in comparison with the other courts. Unlike the other courts, the County Court’s jurisdiction must be proved at a criminal trial, since it is not a superior court which has jurisdiction anywhere in the province and is not restricted to a particular judicial county.

As previously indicated, there are 9 judicial counties or districts, each of which has a County Court which has original jurisdiction in civil and criminal matters, but only within its own judicial boundaries. It hears cases of an indictable nature where the accused has the right of election to be tried by a judge without jury which is the County Court Judge's Criminal Court. It also has appellate jurisdiction in summary conviction offences in cases appealed from Magistrate's Court. (See Appendix IV).

The Supreme Court of British Columbia, the next court in the judicial ascendancy, is the highest trial court in the province. It is a superior court of record and its jurisdiction is constituted by statute. Unlike the County Court, it has plenary jurisdiction in any part of the province in all types of case, whether civil or criminal, except those criminal cases which are to be heard in the first instance by a Magistrate. (See Appendix IV). Similar to the County Court, it has original jurisdiction; that is, it can

1. County Court Act, Revised Statutes of British Columbia, 1960, c. 81.
hear cases in the first instance. Since it has plenary jurisdiction and can hear cases arising in any of the 9 judicial counties, it is necessary for the Supreme Court to try cases in these counties. This is carried out by the method of "assize courts", that is, judges of the Supreme Court go on circuit throughout the province on a regular basis and hold court in a particular county at a particular time. There are no Supreme Court judges, per se, resident in the area outside of Vancouver and Victoria, thus necessitating these scheduled circuits.

The Court of Appeal of British Columbia is also a superior court of record and as such has plenary jurisdiction in all matters, both civil and criminal coming before it in the province. It is also established by statute but the distinct difference between this court and the other courts in the province is that it has no original jurisdiction. It cannot hear a case in the first instance and has only appellate jurisdiction, hearing cases that are being appealed from the lower courts.

Appeals lie to the Court of Appeal:

(a) from every verdict by a Supreme Court assize.
(b) from every verdict by a Magistrate's Court.
(c) from every verdict by a County Court Judge's Criminal Court.
(d) on any point of law appealed from the County Court under the Summary Convictions Act (see Appendix IV).

2. **The Judges of the Three Courts**

(a) **Their appointment, salary, tenure, etc.**

There are presently 16 County Court Judges appointed for the province of British Columbia, 5 of whom are resident in Vancouver and admini-}

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1. **Court of Appeal Act**, Revised Statutes of British Columbia, 1960, c. 82.
ing justice in the County of Vancouver in both civil and criminal cases. This group is composed of a senior County Court judge and four junior judges.

In the Supreme Court of British Columbia, there are 15 judges. They consist of a Chief Justice, styled "The Chief Justice of the Supreme Court", and 14 puisne (junior) justices. The Chief Justice and the other judges of the court have plenary power to hear cases in any part of the province as circuit court judges in assize courts.

The Court of Appeal, the highest provincial court, consists of a Chief Justice, who is styled "The Chief Justice of British Columbia", and 8 puisne (junior) justices. The Chief Justice of British Columbia has rank and precedence over all other judges of the courts in British Columbia. The Chief Justice of the Supreme Court has rank and precedence next after the Chief Justice of British Columbia; the Justices of the Court of Appeal have rank and precedence next after the Chief Justice of the Supreme Court and between themselves according to their seniority of appointment. Next come the judges of the Supreme Court in seniority of appointment.

The appointment and the control of the judges of these three courts is governed by the Judge's Act, a federal statute. All the judges of these 3 courts are appointed federally by the Governor General and their salaries are set uniformly across Canada. By statute, they must have at least 10 years of practice as a barrister in the province before the appointment.

At present, a County Court Judge receives a salary of $16,000.00 annually from the federal government. The provincial government also allocs to each County Court judge an honorarium of $1,000.00 each year. It is interesting to note that although salaries have doubled since 1952, there has

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been no noticeable increase in the number of County Court Judges, especially in the Vancouver area. Recently, there has been one additional appointment but his duties will not involve the judicial tasks of a full-time judge. Unlike the Supreme Court judges, the County Court Judges do not travel outside their jurisdiction and, generally speaking, are not entitled to travelling expenses except those approved by the Attorney-General of the province.

The annual salaries of the Court of Appeal for British Columbia and the Supreme Court of British Columbia are as follows:

(a) The Chief Justice of British Columbia. $25,000.00
(b) A justice of the Court of Appeal. $21,000.00
(c) The Chief Justice of the Supreme Court. $25,000.00
(d) A judge of the Supreme Court. $21,000.00

The provincial government also allots annually a $1500.00 honorarium to the Chief Justices and $1000.00 to the other judges of both courts.

It is interesting to note that salaries in 1952 for the Chief Justices and the judges were $16,000.00 and $14,400.00, respectively. Since then, the appointments in each court have doubled, unlike the static situation on the County Court level.

Travelling allowances are provided for a judge of the Court of Appeal or Supreme Court in attending court at either one of the Cities of Victoria or Vancouver unless he resides in either of them. Travelling costs are also allotted to Supreme Court judges who go out on circuit.

All judges of the 3 courts, on resignation after 15 years service or at the compulsory retirement age of 75, receive an annuity not exceeding 2/3 of their salary based on the last year's salary of their service.

A judge who is found by the Governor-in-Council, upon the report of
the Minister of Justice of Canada, to be incapacitated or incompetent in the execution of his duties, can be removed. The judge concerned, however, is given reasonable notice to defend his position. He or his counsel can cross-examine witnesses and can bring in evidence on his behalf. In questions of removal, the case is usually heard by a commission made up of one or more judges of the Supreme Court of Canada or of the Exchequer Court of Canada. It is indeed a rarity, however, that a judge is ever removed under these circumstances.

A judge may take a leave of absence but, if it is longer than 30 days he must obtain the approval of the Lieutenant Governor-in-Council. A judge must devote himself exclusively to judicial duties. He cannot become directly or indirectly a manager of any corporation or business. He cannot act as an arbitrator or commissioner without the consent of the Lieutenant-Governor-in-Council. If appointed, he receives no remuneration as an arbitrator or commissioner except for transportation and living allowances.

(b) The distribution of work in the three Courts

Criminal cases appearing before a County Court judge in Vancouver are allocated by a judicial schedule called the "rota". This rota is prepared by the senior County Court Judge who distributes the work load to the junior judges and himself on a two week rotation basis. That is, each judge will involve himself with a particular classification of case for two weeks such as criminal jury trials, criminal non-jury trials, criminal appeals from summary conviction offences, or chamber matters. After the two week period terminates, the judges rotate the classifications or categories of cases and each judge receives a new one. Hence the term "rota" is derived, meaning "to rotate".
As well as each County Court Judge being allocated a case category, all the 5 judges in Vancouver (County of Vancouver) are responsible for all civil cases that appear in their jurisdiction and these are distributed amongst them depending on the pressure of work in criminal cases. It must be remembered that all criminal cases take precedence over civil cases in order to safeguard the liberty of the individual. All County Court judges must take their turn in adjudicating cases in the Powell River Court House, since the County of Vancouver is responsible for this newly formed court district on the mainland.

In addition to the aforementioned responsibilities, the senior County Court judge has the added task of hearing two other classes of cases: one, if there is the necessity of a recount after an election, and two, in the event of a medical inquiry, he acts as chairman in a professional complaint.

Early in 1964, because of the growing pressure of work in the Supreme Court, the provincial government transferred to the County Court the jurisdiction to try criminal offences, except capital cases, by way of jury trial. This, naturally, will also increase the work load of the County Court judges. One County Court judge indicated that it is imperative that at least another judge be appointed to handle this additional burden in Vancouver. He indicated that Vancouver is the second largest judicial county in Canada but has had only one judge added to its number in the 40 years he has served as a police magistrate and County Court Judge.

With this recent delegation to the County Court, it now means an accused who elects jury trial might appear in either the County Court or Supreme Court on all but major offences, such as murder, treason, or rape.
Legal spokesmen state the accused appearing before a Magistrate does not have a choice of courts when he chooses to elect to be tried by a judge and jury, but is arraigned in either the County Court or Supreme Court, according to the pressure of work.

This matter of delegating the jurisdiction of the Supreme Court to the County Court in jury trials has not yet been constitutionally substantiated and at present one of the Supreme Court judges of British Columbia is determining the legal validity of this action introduced by the provincial government. At the present time, however, jury trials are going on in the County Court and 5 months out of this year has been allotted for them.

As in the other two courts, the County Court sits continuously hearing cases except for the long vacation (July and August) plus Christmas and New Year, except for emergency situations.

The work load in the Supreme Court is also allocated by means of a "rota". In this instance, the Chief Justice of the Supreme Court of British Columbia distributes the work amongst the 14 judges and himself, much the same as in the County Court. Most of the judges alternate their main duties between Victoria and Vancouver, the centres of most trials held in the Supreme Court of British Columbia in both civil and criminal cases. In addition to trials held in Vancouver and Victoria, the Supreme Court judges go out on circuits to the various county districts, holding assizes, each judge alternating with the other in order to cover the counties adequately and regularly. The Attorney-General of the province fixes the date for the sitting of an assize court in any county district. The trial is usually held in the town of the county district where there is a Supreme Court registry.
For many years the City of Vancouver had two assizes, one in the spring, the second in the fall. Now, the assizes in the Vancouver area are continuous because of the great number of cases. As in the County Court, they run through the year except for the long vacation, and even then, some judges work through the summer months. Similarly, assizes held in the interior of British Columbia have increased greatly. The Yale County circuit (Kamloops, Vernon, and Penticton) used to have a judge come from Vancouver once a year to hear accumulated cases. Now judges take their turn in continuous rotation in order to cover these areas.

The distribution of work in the Court of Appeal of British Columbia follows in similar fashion as in the other two courts. Here, the Chief Justice of British Columbia assigns daily duties to the 8 judges as well as taking his judicial rounds. There are 3 divisions (or sections) of the Court of Appeal, 2 in Vancouver and 1 in Victoria. All appeals to this court from anywhere in the province are heard in these 3 divisions. Although the Court of Appeal is not as heavily pressed as the Supreme Court in the overall work load, nevertheless, at least two of the divisions go on continuously in the Vancouver area, with the Victoria division used as an expediency when the two divisions in Vancouver are working at capacity.

Unlike the Supreme Court of British Columbia, more time is spent in criminal matters than in civil, and for this reason, most criminal appeals take place in Vancouver in order to facilitate the appearance of the accused, since security facilities are not adequate in Victoria to detain those appealing a conviction or sentence while in prison and not out on bail. In order to handle some overflow of cases, both civil and criminal, there is at least one judge resident in Victoria.

The judges of the Court of Appeal preside over a case in a quorum
of three in ordinary appeals, civil or criminal, with the majority (two of the three) carrying the decision. In serious cases under appeal such as murder or rape, a quorum of five, with the majority of three, is used. A quorum of three judges alternate between Victoria and Vancouver to cover all three divisions. Conceivably, there could be appeals going on in all three divisions concurrently, involving all nine judges of the Court of Appeal. The Court of Appeal judges do not go out on circuits; all cases are heard in Vancouver or Victoria, with their quorum of judges alternating by means of a judicial schedule prepared by the Chief Justice.

3. The Administrative Staff of the Three Higher Criminal Courts in Vancouver.

The administrative staff of the Vancouver Court district is a highly efficient and integral part of the administration of justice. Lawyers and judges alike rely heavily on the everyday routine of the clerical staff. Without their knowledge and assistance, justice would become an empty platitude.

All members of the administrative staff are civil servants employed by the provincial government and attached to the Department of the Attorney-General. All are governed by the Civil Service Act of the Province. The Lieutenant-Governor-in-Council establishes court registries in all the 9 judicial districts in British Columbia at such places as he thinks it would be more efficient to carry out the administrative duties of the courts. In the district of Vancouver, there is one court registry situated in the Vancouver Court House. Other districts throughout the province have one or more registries, depending on the geographical location of towns and population in these districts.

The clerical staff is managed by a Court Registrar appointed by
the Lieutenant-Governor-in-Council (see Appendix V) for the County of Van-
couver. The Registrar, who is a barrister, exercises certain quasi-judicial
functions, both statutory and upon reference from the judges of the three
courts in both civil and criminal matters. His office is responsible to the
Inspector of Legal Offices who in turn is responsible directly to the Attorney-
General of the province. A good deal of the Registrar's duties and powers are
delegated to his staff.

Just below him in line is the Deputy Registrar who is also a barris-
ter whose function is to assist the Registrar in any matter he may so dele-
gate to him. Next, in the administrative structure, comes the Administrative
Officer, whose function is to account for funds paid into court and the prep-
eration of statistical data for provincial and federal departments relevant
to the administration of justice in Vancouver. Reporting to the Administra-
tive Officer is the Chief Clerk who supervises the various clerks working in
both civil and criminal departments.

In addition to the staff of the Vancouver Court registry there is
a Sheriff's Office and Court Reporter's Office (see Appendix V). The per-
sonnel involved in these two areas do not come under the responsibility of
the Court Registrar, but are appointed separately as civil servants and as
such are directly responsible to the Attorney-General.

The Sheriff is an officer of both the County and Supreme Court who
is required to obey and carry out the lawful orders of these courts and the
judges. He attends and keeps order in criminal trials and serves all civil
processes, executes writs and warrants, and empanels juries for civil and
criminal trials. The Sheriff's Office is composed of the Sheriff, Deputy-
Sheriff, two Junior Sheriffs and 10 Sheriff's officers. In criminal trials,
the Sheriff is an officer of the court in criminal assizes held in Vancouver, and the Deputy-Sheriff is an officer of the court in County Court criminal matters.

The Court Reporter's Office in the Vancouver Court Registry is the busiest area. The duties of an official reporter is to attend and transcribe all the evidence at every trial in the Supreme Court, whether civil or criminal, every criminal trial in the County Court, and when required by the presiding judges, in the Court of Appeal. The official reporter also attends every examination for discovery, and every preliminary hearing of an indictable offence and every criminal appeal to the County Court. There are 15 official Court reporters including the Chief Reporter in the Vancouver district - all are civil servants responsible to the Attorney-General. The Chief Reporter assigns official reporters to the various courts and also sends some of them to outlying districts of the province when judges of the Supreme Court are on circuit in Assize Courts.

The Official Reporter uses either a mechanical shorthand machine called the "stenotype" or uses the regular method of writing shorthand. All reporters take dictation between 150-250 words per minute, the speed depending on the celerity of the witness's statements and the experience of the lawyer. After the trial, the court reporter dictates his shorthand onto a tape which is then transcribed by a secretary.

Along with this regular staff in the administrative structure there are various secretaries attached to the judges of the three courts who are also civil servants. In the Court of Appeal, there is a private secretary for the Chief Justice. There are two other secretaries that act in a pool for the remaining Appeal Court judges. The secretary handles all personal corres-
respondence, screens all calls and visitors. She also types judgments from notes that have been prepared by the judges of the Court. In the Supreme Court, similarly, the Chief Justice retains a secretary for his own duties while there is a pool of 4 secretaries covering the duties of the remaining judges. On the County Court level there is 1 secretary serving all the 5 County Court Judges.

Finally, there is also attached to these three Courts, ushers. These elderly gentlemen are "judicial valets" attending to the miscellaneous requests of the judges as well as escorting the judge in and out of the trial room.

4. The Clerks of the Three Criminal Courts

As indicated, there are various clerks attached to the civil or criminal aspects of the administration of justice. The writer will only deal with those clerks whose duties are mainly of criminal nature but it is important to remember that the Court Registrar is responsible for all clerical activities that are carried on his registry, whether civil or criminal.

No evaluation of the administration of justice in the three higher criminal courts could be complete without a careful analysis of the function and responsibilities of the Clerk in each of these courts. These Clerks have no legal training but an adequate formal education is a prerequisite plus a very thorough and special knowledge of practice and procedure in criminal law. This cannot be acquired except through many years of experience. No license or certificate is required by the Clerk but he must have special aptitudes and abilities to exercise sound judgment and a great deal of tact in dealing with a large number of lawyers who seek to appear before these courts.
It would be a most difficult task, as discovered in interviews with them, to evaluate the day by day activities of these clerks, tasks which are so varied and specialized, that even many lawyers of long standing in criminal practice rely heavily on their knowledge of procedure.

Generally speaking however, the County Court Criminal Clerk, who also acts as clerk in appeals to the County Court from summary convictions, receives and records all documents and exhibits. These documents require special processing in accordance with the Criminal Code of Canada and established procedure. In addition, the County Court Criminal Clerk functions as a clerk in all County Court jury trials involving those cases that have been delegated by the Supreme Court.

Similarly the Clerk of the Supreme Court (Criminal Assizes) has sole responsibility for the efficient operation of this court. He has care and custody of all criminal exhibits and records and issues documents pertaining to legal proceedings. In addition he supervises the County Court Criminal Clerk.

The Clerk of the Court of Appeal (criminal) has a most varied and senior position. Inclusive of the processing of documents in reference to appeals, he makes careful statistics every two months showing the disposition of each appeal. These lists are delivered to all the Appeal Court judges, Supreme Court judges, and the County Court judges in the Vancouver area. Copies are sent to Victoria and New Westminster Registries and to the wardens in the various penal institutions of the province.

In order to classify some of the main functions and responsibilities of these three clerks in their respective criminal courts, a questionnaire was separately completed by them. (See Appendix VI).
In evaluating the questionnaire it can be stated that the clerks are most versatile and efficient and have almost complete control of their respective courts, clerically speaking. Although they have no real signing authority and are responsible to their supervisors and the judges, they work with a great deal of delegated discretionary authority. As noted by question 12 of the questionnaire, any error made by a lawyer or judge in a document and overlooked by the clerk could conceivably result in serious delay in justice and adversely affect the rights of parties. In general, the three clerks issue all processes, arraign prisoners, record verdicts, judgments and proceedings, enter appeals, file convictions and orders, and perform all ministerial acts necessary to carry out the administration of the courts. Every clerk is authorized to take and administer oaths, and give verification respecting the service or attestation of any process of the Court.

The answers further revealed that there are some administrative deficiencies, however. There are no staff meetings and there seems to be a lack of definitive procedural policies outlined in manual form. So much of their procedure is constantly changed and adapted by the province and the judges, that only the three clerks of the courts and their assistants seem to have any complete grasp of the practices and procedures, much of which is unwritten. The Registrar has indicated that his policy is to shift his personnel and not to "pigeon-hole" them, but from observation it appears that only the most qualified enter into the criminal aspect of clerical work and must remain for several years before they can show any great efficiency in carrying out their tasks. The three clerks made no comment as to the cramped facilities they work in. All three conduct their activities in a
small room which not only includes the clerical paraphernalia of their courts, but they also share this area with the Clerk of the Admiralty Court.

5. The Probation Officer of the Three Higher Criminal Courts

The probation officer, as an appointee to the court from the Department of the Attorney-General, is another highly essential member of the administration of justice (see Appendix V). His duties are as equally, if not more important, than the clerks of the criminal courts. Upon conviction, the court knows the character of the crime and as such has weighed the evidence to bring about a conviction. But to render a sentence it must know the character of the criminal. In this respect the probation officer renders a pre-sentence report to the court.

The pre-sentence report, which is basically a social history of the individual involved, is to the judge as an x-ray is to the surgeon. No physician would prescribe a treatment without a diagnosis and yet difficulty is still encountered in the courts in getting some judges to make use of the pre-sentence report. This hesitation is not so prevalent in the Vancouver area, either on the Magistrate of higher criminal court level, especially in instances where a first offender is involved. This is an enigma more peculiar to the rural areas where probation has not as yet developed to a satisfactory level.

Probation in the criminal courts has two main facets: the pre-sentence report and supervision. After a finding of guilt is registered, the court may order a pre-sentence report before pronouncing sentence. Fortunately, the Supreme Court, County Court, and Court of Appeal in criminal cases make fairly good use of the probation officer in the Vancouver district. One judge of the Court of Appeal indicated he rarely decides on an appeal from sentence of a lower court unless a pre-sentence report has been prepared,
especially in instances where first offenders are involved. It is very
doubtful whether any court would refuse the request of defence counsel for
such a report. At the same time, it is disturbing to note from observation
and discussion with other lawyers that many practicing criminal law lawyers
are not too familiar with such a professional resource. Others merely have
a hazy conception of their function and relevancy.

The pre-sentence report supplies guidance to the probation officer
for the conduct of the probation period as well as assisting the court to
reach an equitable and just disposition. One common fallacy is the proposi-
tion that only matters advantageous to the convicted person should appear
in the report. All possible facts pro and con should be entered into such a
report for precisely the same reason all facts are entered during the trial.

Any thing of an adverse nature to the convicted person must be
made known to him before sentence is passed so that he may have the opportuni-
ty of questioning such material if he desires. Any procedure less than this
brings the administration of justice perilously close to "star chamber" jus-
tice. The material in this report is in the general nature of character
evidence and therefore does not have to be proved with the same weight as
evidence leading to conviction or acquittal; it is, however, essential that
it should be open to cross-examination. Copies of the report are given to
the Crown counsel and counsel for the accused, as well as the Bench in order
to agree or disagree with its content.

The trial court now decides whether it will order the convicted
person fined, incarcerated, or placed on probation. In the Court of Appeal,
the pre-sentence report may be used to vary the sentence appealed from. If
the accused is placed on probation the passing of sentence is "suspended" and
the convicted person signs a recognizance to abide by such conditions as the
When a person is released on probation the second facet comes into play, namely, supervision. This supervision is probably the most exacting of all Social Work practise because it undertakes Social Work in an authoritarian setting. If the probationer abides by the terms of his recognizance, there is no difficulty; if he violates a term, the probation officer has a mandatory duty to report such violation to the court. It then rests with the court whether or not the probationer will be charged with a violation.

One probation officer is usually allocated by the Probation Service to serve the three higher criminal courts in Vancouver; by comparison, the Magistrate Courts are served by 8 probation officers. The following is a break-down of the number of pre-sentence reports prepared for the three higher criminal courts in Vancouver between the years 1960 - 1964:

Table A

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<td>32</td>
<td>27</td>
<td>30</td>
</tr>
</tbody>
</table>

* Source - Provincial Probation Service

By comparison, an official of the Provincial Probation Service indicated to the writer that the Vancouver Magistrate Courts average between 500 and 600 reports a year. These figures coincide with the fact that most criminal cases are dispensed with in the lower courts. Further, in appeals from sentence to the Court of Appeal, many of the cases have had pre-sentence
reports prepared in the lower court. In these instances a further report is not usually requested by the Court of Appeal; the report of the lower court is merely transferred with the transcript of evidence in the case.

Nevertheless, there is still some evidence that a paucity of reports are being prepared for the Supreme and County Courts. Table A clearly indicates a decline since 1960 in Court of Appeal pre-sentence reports. Some court officials explained that cases in these courts are of a more serious nature, which for some inexplicable reason seems to minimize the need for reports in determining sentence. It is the writer's contention, however, that much depends on the attitude of the judge and whether he has confidence in the competence of the Probation Service and understands its purpose.

Under Section 638 of the Criminal Code, an accused is eligible for suspended sentence and probation if he has had no previous convictions. He is also eligible in cases where there has been one previous conviction but that it took place more than 5 years before the time of the present offence or for any offence which is not related in character to the present conviction. To a great extent, this section has minimized the possibility for many offenders to be placed on probation. But even if an accused is not eligible for probation, it should not negate the need for a report. Judges and counsel alike should realize that it is not solely the function of a probation officer to prepare a report for the purpose of recommending probation; his function as an officer of the court is also to assist the judge in determining a sentence which would be most fair to the individual as well as act as a deterrent for further offences.

A pre-sentence report is an integral factor in determining sentence, and without a report, the judge can be at a disadvantage in sentencing the offender.
6. The Role of the Prosecutor in the Three Higher Criminal Courts

At the very outset, it must be indicated that the purpose of a prosecutor appearing in any trial court is not to obtain conviction in criminal proceedings. Nor, in any case, should it be permitted even to appear that such is his aim. It is essential that this be kept uppermost in the mind when one considers the wide discretionary powers he has in the legal process of instituting, conducting and discontinuing proceedings in criminal cases. His prime purpose is to present all the facts fairly, both for and against the accused in order for the trial court to make a just decision in the matter concerned. His function is a matter of public duty which should exclude any notion of winning or losing a case.

The British North America Act of 1867 provides that criminal law, except the constitutions of the criminal courts, but including the procedure in criminal matters, is within the legislative field of the Dominion, that is, federal authority. The provinces, on the other hand, and this of course involves the provincial Attorney-General and prosecutor, have the responsibility for the administration of justice in the province. The Attorney-General of Canada has the regulation and conduct of all litigation for or against the Crown or any public department, in respect of any subject within the authority or jurisdiction of Canada. But, as it has been indicated, the administration of criminal justice is a provincial matter, and therefore falls within the responsibilities of the provincial Attorney-General and the prosecutor.

It is not intended that the discretionary powers of the Attorney-General, and of the individual prosecutor are such as to be capable of being made an accommodating instrument, if discretion is used for convictions sake alone. The nature of the office of the Attorney-General requires that politi-
cal, personal and private consideration shall be set aside so far as the exercise of the discretionary power which is inherent in his office is conceived. This discretion must be exercised solely upon grounds calculated to maintain, promote and defend the common good.

In determining whether a prosecution should be launched and carried through to a determination of the merits, prosecuting counsel must consider society as a whole. He must keep in mind the standard of proof required in a criminal case. Failure to do this would result in an injustice to the person who has been put on trial in the form of insufficient evidence. The standard of proof, where the evidence is not wholly circumstantial, is that the accused must be proved guilty beyond a reasonable doubt. So to commence a prosecution or permit it to continue in the face of these requirements where the evidence forthcoming is not so, would be a "fishing expedition" by the prosecutor in the hope that sufficient evidence would somehow turn up during the trial.

Generally speaking, the prosecutor has no greater legal rights than any other barrister. He is but another integral part in the administration of justice in the three higher criminal courts in Vancouver (see Appendix V). Some people claim the prosecutor may be the "thirteenth" jury man. This is probably overstating the case, but some writers have considered this not so stark an exaggeration.\(^1\) Further, political patronage can play a formidable part in the appointment of prosecutors as indicated by one County Court judge.

In the City of Vancouver, the Attorney-General's Department appoints prosecutors to the three higher criminal courts. The Magistrate's court uses

prosecutors retained by the city. In practice, the provincial government pays a stipend to city prosecutors to conduct cases in the County Court Judge's Criminal Court, including cases of appeal from Magistrate's Court. Otherwise the government, in actuality, makes appointments to only the Supreme Court criminal assizes, and the Court of Appeal. Most of the prosecutors appointed to these two higher criminal courts are in private practice and do considerable defense work in their own right.

With respect to appointment of crown counsel in criminal assizes, the Attorney-General usually appoints a senior and junior counsel on a 2 month's basis to handle all the criminal cases appearing in the Vancouver area. In all, over a period of ten months, he appoints 5 senior and 5 junior counsel at two month intervals. The junior and senior counsel work together or individually depending on the nature of the case, the experience of counsel, and the pressure of work. Senior counsel appointed to the Supreme Court assizes are paid $100.00 for each day in court, while juniors are paid $50.00 for each day in court. In addition, a $50.00 flat fee for preparing cases is also paid to each counsel. In the opinion of one prosecutor, this flat fee in preparation of cases is much too low and has not been changed for a great number of years. For instance, in preparation of murder cases, the preliminary work outside of court may take somewhere between 40-50 hours and yet counsel would receive the maximum flat rate of $50.00.

Only one crown counsel is appointed to the Court of Appeal, also on a 2 month's basis, alternating with other counsel over this 10 month period.

The crown counsel, however, in the Court of Appeal is retained on a higher stipend than in the Supreme Court. He is usually paid $100.00 for
each day in court and is allowed $10.00 for each order drawn. It is conceivable that a crown counsel in the Court of Appeal could be involved in six to eight appeals in one court day.

Most counsel appointed as prosecutors in any of the two criminal courts usually begin their training as junior counsel, and when they improve their skill are promoted to the senior position. There is an element of political patronage, but on the whole, those who are appointed are fully qualified for these positions.


<table>
<thead>
<tr>
<th>Year</th>
<th>Total Persons Tried</th>
<th>Found Guilty</th>
<th>Found Not Guilty</th>
<th>Proceedings Stayed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>65</td>
<td>26</td>
<td>22</td>
<td>17</td>
</tr>
<tr>
<td>1962</td>
<td>82</td>
<td>52</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>1963</td>
<td>114</td>
<td>59</td>
<td>23</td>
<td>32</td>
</tr>
<tr>
<td>1964</td>
<td>103</td>
<td>47</td>
<td>26</td>
<td>30</td>
</tr>
</tbody>
</table>

* Source - Vancouver Court Registry.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Persons Tried</th>
<th>Found Guilty</th>
<th>Found Not Guilty</th>
<th>Proceedings Stayed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>44</td>
<td>25</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>1962</td>
<td>68</td>
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<tr>
<td>1963</td>
<td>89</td>
<td>48</td>
<td>25</td>
<td>16</td>
</tr>
<tr>
<td>1964</td>
<td>99</td>
<td>42</td>
<td>32</td>
<td>25</td>
</tr>
</tbody>
</table>
Table D

Court of Appeal (Criminal)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Cases Heard</th>
<th>Appeals Allowed from Sentence</th>
<th>Appeals Allowed from Conviction</th>
<th>Dismissed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>470</td>
<td>140</td>
<td>47</td>
<td>283</td>
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<tr>
<td>1962</td>
<td>447</td>
<td>93</td>
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<tr>
<td>1963</td>
<td>525</td>
<td>127</td>
<td>39</td>
<td>359</td>
</tr>
<tr>
<td>1964</td>
<td>445</td>
<td>118</td>
<td>17</td>
<td>310</td>
</tr>
</tbody>
</table>

* Source - Vancouver Court Registry

The above tables do not include cases where offender pleads guilty or where a case is abandoned before trial or appeal.

In analyzing the tables one may question the relatively minimal number of criminal cases dealt with in the Supreme Court and County Court Judge's Criminal Court. There are two important reasons for this situation. Firstly, as indicated before, 90% of all criminal cases are tried in the Magistrate's Court, whether of summary conviction or indictable nature. Secondly, criminal cases form only a small part of the judge's work load in both courts. Civil actions are by far the most onerous task, especially in the Supreme Court. For example, in 1964, figures obtained from the Vancouver Court Registry indicated a new high in civil actions where 4000 were commenced in the Supreme Court. In the same year, 3741 civil actions were commenced in the County Court. Of the 4000 civil actions in the Supreme Court, over 800 reached the trial stage; similarly over 700 went to trial in the County Court of Vancouver. Further, the judges of the Supreme Court hear matters in Divorce and Matrimonial Causes which totalled 1350 in 1964.
Inclusive to all this, hundreds of non-litigious orders are made by both courts ranging from administration of estates to bankruptcy.

In the Court of Appeal, Table D clearly indicates the reverse situation to that evidenced in the other two courts. Here the proportion of criminal appeals to those of civil are much higher where, for example in 1964, 445 criminal appeals were considered in comparison to only 55 civil appeals in the same period. On the whole, the work load of the Court of Appeal, statistically speaking, is relatively lighter than the other courts. However, the principles of law enunciated by judges in the Court of Appeal in respect to cases appearing before them must be judged carefully as they become patterns of precedent to be followed in future cases by the lower courts. In many instances several weeks elapse, especially in civil cases, before a written judgment is handed down by them.

8. The Vancouver Court House — "The Edifice of Justice"

One cannot discuss the administration of justice in Vancouver without considering the physical plant in which it operates. To one who has roamed through its corridors as a member of the legal profession it is vividly clear that this "edifice of justice", symbolized by the lions of justice on its front steps, has not kept up with the times in terms of structural convenience. Doing justice does not only depend on dispensing justice according to the due process of the law, but it may also be dependent on the court room design where the uncomfortable and austere environment may compress the public's thoughts to incorrect aspects of the administration of justice.

Then, too, it must not be forgotten that the administration of justice is dependent in a large measure upon the work done outside the court room. There must, therefore, be adequate provision made for accommodation
for court officials, such as clerks, court reporters, sheriffs and secretaries, as well as the judiciary. A registrar or a clerk in a crowded office cannot be expected to do faultless work and when filing arrangements are not properly laid out, the chances in files being mislaid are greatly increased.

There must not only be adequate and comfortable space for the administrative staff but also for the public. There must be adequate facilities in the way of waiting rooms and examination rooms for witnesses or clients. There must be proper provision for separating the jury from the public and the rooms to which juries retire should be comfortable and soundproof enough so as to be segregated from the main court room. Juries are fallible and so the austerity and severity of its quarters could possibly affect the verdict.

Consideration must be given to the acoustics in a court house. Trials under our system of law are vive voce proceedings and are held in public. Therefore, while it is essential for the judge, jury, and counsel to hear every word that is spoken, very often by persons whose enunciation is not always perfect, it is equally important for the public to hear the evidence, also.

The present Court House in Vancouver may be considered in the light of the previous statements. (See photograph 1). The Court House was first built in 1911 during the Bowser government at a time when it was so roomy that it could also house several government departments. It was on October 9th, 1911, that the new building was informally opened to the public and the first court sittings were held. Later that year, the Duke of Connaught, then Governor-General, declared the building open at a ceremony attended by thousands. The building was what is now the Georgia Street Wing. The Robson Street Wing, connected by an overpass, was opened two years later.

Until then, the city's Court House was at Victory Square in a build-
ing since demolished. Before that, the Court House was on Water Street near Carroll, then the center of a young and bustling city.

Vancouver's present Court House, which occupies a full city block bounded by Georgia, Howe, Robson and Hornby, was in its early days also the headquarters for a number of government departments other than the justice division. Since then, these departments have been removed and the court house is used entirely by the various law divisions, civil, criminal, probate, and admiralty. It also includes the Land Registry of Vancouver.

The Court House was not too well designed in the first place. It is a beautiful building of Romanesque granite but is not in the least functional for present needs. There has been a good deal of renovation within the last ten years to keep up with the growing number of cases but with little success. The Court House has an awe-inspiring rotunda which takes up a great deal of space that could conceivably be used for clerical staff accommodation.

As the population grows, so does the administration of justice. Litigation and crime have their own mounting graphs, just like home building and business or anything else in a growing population. The Court House, in the words of one high official, "Has done a good job. But when it was built, there were 4 judges. Now there are 30."

The present building holds 11 court rooms, 3 of which are used primarily for criminal trials in the 3 higher courts. Each judge of the 3 courts has his own private chambers.

The court rooms are fairly spacious but convey the antiquated symbolisms of a by-gone judicial era. The furniture, carpets, and hangings which are still very evident today were obtained from Liberty's in London 50 years ago.

One striking characteristic is the box-type structure called the
"prisoner's dock" in the County Court Judge's Criminal Court and Supreme Court. The very appearance of this enclosure belies the fact that in it sits a man who is presumed innocent in the eyes of his peers. The Supreme Court's "dock" is even more sinister in that a flight of stairs lead down from it directly below the court's floor to a cell area where the prisoner is detained in the event he has to be held overnight.

In addition to the court rooms and the judges' private chambers, the Court House provides accommodation for its administrative staff, both civil and criminal. The clerks of the three criminal courts are located in one room which is fairly congested. There are some facilities for witness rooms for the County Court and the Supreme Court but no facilities are maintained in the Court of Appeal. The Vancouver R.C.M.P. Detachment acts as the chief custodian for prisoners brought to trial and has its offices in the Court House, also. The accused appearing in these higher courts has no facilities except for the cells under the Supreme Court, unless he is returned to the Vancouver Police Station, Oakalla Prison Farm, the B.C. Federal Penitentiary, or when he is out on bail.

In respect to jury accommodation, there is only one main jury room which leads out from the Supreme Court. It is small and quite inconvenient. (See photograph 5). There are no facilities for jurors in the event the trial takes a few days and thus accommodation has to be provided for them in a nearby hotel.

There are two libraries situated in the Court House; the Law Society Library and the Judges' Library. The Law Society Library contains over 20,000 law books and retains a staff of two full time librarians with a part time assistant, all employed by the Law Society of British Columbia. The Library is available for lawyers during trials and also lawyers have ready
access to it in preparation of cases. The Library ranks very high with other law libraries across Canada. The Judges' Library is used exclusively by judges for any judicial preparation in adjudicating cases. It has a content of 5,000 books.

The Court House and the property it is on is owned by the Provincial Government. The costs of prosecuting criminal trials are defrayed by the Provincial Government, also. The costs include fees for Crown counsel and ancillary costs such as preparing court documents, examining witnesses before a trial, and paying jurymen.

No better explanation of the Court House's inadequacies could be given than to quote the acrid admonitions of a leading Vancouver barrister who has for many years tried cases in the various civil and criminal courts:

"The old Court House is hopelessly inadequate to its present demands. About 95% of the significant litigation in British Columbia goes on in the building but the building represents about 5% of the facilities for such litigation. Commodious court facilities have farsightedly been built all over British Columbia since the war -- except in Vancouver. Often there are not enough court rooms to handle the business of the day. Public hearings must take place in the judge's office. There is no place for many witnesses to sit and wait to be interviewed. Juries deliberate in dirty cramped quarters or around an old stenographer's desk in some oversize closet. Judges are doubled up in their offices or stuck in some musty garret.

The civil servants, who perform in the building with incredible cheerfulness and efficiency, do so in positively Pickwickian surroundings. The ever growing law library has long ago spilled out into the corridor. The tired elevators have no future. The barristers accommodation: 197 skinny lockers for 1100 barristers jammed in a room, 25' x 40'; one 8' x 8' "john" housing one, each, 50 year old sink, urinal and toilet (with seat falling off) to the same 1100 stalwarts.

Hundreds of thousands of dollars have been transferred into the old Court House in the past decade in a futile attempt to keep the patient alive. The old girl is now supersaturated. If the building is retained, hundreds of thousands more will be spent in the next decade to simply maintain it

against the ravages of time."

He further indicated that the building design is hopelessly inefficient. Its original design embodies all the practicality the 15th century had to offer. It is not and cannot be ventilated, heated, lighted or sound-proofed effectively or economically. It is a dirty building; this is not the criticism of the janitorial staff --its age, construction and design simply put cleanliness, sweetness and light beyond reach.

Present considerations are that an annex to the Vancouver Court House will probably be built across the street, just south of the present site. Already this property is being levelled and has been purchased from the city by the Provincial Government. An annex may not be the answer, however. It must be remembered that the population served by the Court House will double in the next 15 years. This fact indicates that the annex can only be a temporary facility and that there is need for an entirely new Court House.

Lengthy studies have been made by Committees of the Law Society of British Columbia, judges, and the Vancouver Bar Association. All have recommended a new Court House, but so far these recommendations have not borne fruit.

To conclude the evaluation of the Court House this leading barrister offers his solution to the problem:

"To the general public - go and look for yourself, have a good poke around, serve on a jury, have a lawsuit if necessary. Look at the new terrazzo floor in the entrance and then look at all the other floors. Consider if your money is being efficiently spent - your tax money and your legal fees. Consider if you are getting top quality justice."  

1. Ibid, p. 19.
CHAPTER IV

THE PROCESS OF TRIAL IN THE THREE HIGHER CRIMINAL COURTS

1. The County Court Judge's Criminal Court.

The process of trial in this court is substantially the same as that held before a Magistrate in the lower court and thus there is no need to re-iterate the procedure which has been outlined in Chapter II. It has been seen that cases tried before a magistrate, and in this case before a County Court Judge, involve offences of an indictable nature of which the accused had a right of election to be heard before a Magistrate, County Court judge without jury (County Court Judge's Criminal Court), or judge and jury (Supreme Court). In the latter two instances, the accused has a preliminary hearing and then is committed to the higher court in accordance with his election.

The County Court, since the recent delegation by the Supreme Court of its criminal jurisdiction, can also hear criminal jury trials. The procedure here is also substantially the same as in the Supreme Court which will be discussed next in detail.

2. The Supreme Court (Criminal Jury Trials).

The process of trial by jury will be outlined in its entirety as it truly exemplifies the system of British justice so well known and adopted, with some slight modifications, on the North American continent. It is the foundation of the judicial process in the administration of justice. For this reason alone, trial procedure and practice in this court should be made evident to the reader who inevitably deals with the court in one capacity or another in his lifetime.
(a) **Time and Date of Trial.**

As indicated, jury trials have precedence over other trials; accordingly, defence counsel and the accused are expected to be ready to proceed on the date and at the time stipulated by Crown counsel, who fixes a date for the various trials. The usual starting time is 11 a.m. but, in certain cases, the judge, or Crown counsel, fixes the starting time for any particular trial, or any particular day of the hearing at 10:30 a.m.

(b) **Calling of Case.**

By the time the case is scheduled to commence, the Sheriff will have checked the jury panel to ensure that all are present or that the absentees are accounted for, and he will have the jury seated in the Courtroom. He then escorts the judge into Court. As soon as the judge indicates that he is ready, the clerk of the Court reads the indictment. The Attorney-General authorizes Crown counsel to act as his agent in preferring Indictments, and quite often Crown counsel will lay a new indictment in place of the charge which was before the Court at the preliminary hearing, or in place of the indictment which the Attorney-General has forwarded with the brief.

(c) **Reading of Charge.**

The Clerk of the Court then reads the charge (or charges, as the case may be) to the accused and takes his plea.

(d) **Empanelling the Jury.**

If the accused pleads "Not guilty" the Clerk of the Court then addresses the accused, even if the accused is represented by counsel, and advises him that the names he is about to call are the names of the jurors, and that if the accused intends to challenge any of the jurors, he must do so before
they are sworn. This statement to the accused follows a standard form and either is read or is stated from memory.

If the accused is not represented by counsel, the judge, at this time, explains, generally, to the accused his rights regarding challenge as set out in Section 538 and following sections of the Code.

The Clerk of the Court then begins to select the names of the jurors by picking cards from a box, each card bearing the name and number of a juror. Before commencing to call the names, the Clerk advises the jury panel that, as each name is called, the person called should answer his (or her) name and come to the front of the Courtroom. In the Assize Court, the Clerk generally calls 12 to 20 names. They line up shoulder to shoulder around the counsel table. Once there is a sufficient number of jurors called to the front of the Courtroom, the Clerk begins to recall the names in the order in which they were called originally. As each name is called, defence counsel (or the accused if he is not represented by counsel) must indicate whether he accepts or rejects that particular juror by stating "Content" or "Challenge". If the defence accepts a juror by saying "Content", Crown counsel then indicates whether he will accept or reject the juror by stating "Content", or "Stand aside".

The number of challenges which any accused may have in any particular case is set out in Section 542 of the Code. If two or more accused are jointly charged and tried, each accused is entitled to the same number of challenges as he would have had if he had been tried alone. For example, if the accused would be entitled to twelve challenges if tried alone, he still would be entitled to the same number if tried jointly. Accordingly, if there are two men charged jointly with the same offence, and if this offence would entitle each of them to twelve challenges, they will have a total of twenty-
four challenges. The usual procedure is for defence counsel to agree among themselves regarding the challenges. Generally, one defence counsel will agree to exhaust his challenges before the other defence counsel uses any of his.

Crown counsel may stand aside up to forty-eight prospective jurors. Generally, Crown counsel will stand aside all those people who have served on the immediately preceding jury in order to avoid working any undue hardship on any particular person.

If the jury is not empanelled by the time the Clerk has recalled most of the names of the people who are in the front of the Courtroom, he will call further jurors to the front of the Courtroom.

If a juror is challenged, the Sheriff, or the Sheriff's officer, immediately directs him to return to his seat in the Courtroom. If Crown counsel stands him aside, the Sheriff directs him to stand at the other side of the Courtroom. As soon as the jury is empanelled, the Sheriff directs those standing aside to return to their seats.

(e) Choosing the Jury Foreman.

Some judges instruct the Clerk to request the members of the jury to pick a foreman as soon as the twelve jurors have taken the oath. Other judges inform the jurors that in a few moments he will be adjourning the Court in order that they may hang up their coats and hats and give messages to the Sheriff, and that while they are doing this, they should choose a foreman. In the Assize Court, the foreman sits in the front row in the chair nearest the front of the Courtroom.

If the jury select a foreman as soon as they are empanelled, the foreman moves to his seat. The Clerk then re-reads the indictment and puts the prisoner in charge of the jury, quoting or reciting from memory a standard statement.
If the jurors choose their foreman during the adjournment, the Clerk does not re-read the charge and put the prisoner in charge of the jury until the resumption of the Court.

(f) **Balance of Jury Panel.**

As soon as the jury is empanelled, and those jurors who were stood aside return to their seats, the judge generally informs the jury that he will be having a short adjournment in order that they may hang up their coats and hats and give messages to the Sheriff for delivery to their families or employers. He will point out that they will not be kept together during any adjournments and that they will be free to return to their homes at the conclusion of every day's hearing except in serious cases. He will point out, also, that they must not discuss the case with anyone while the case is in progress and that they must decide the case solely on the evidence which they hear in the Courtroom. If the foreman has not already been chosen, the judge will tell the jury that they are to choose their foreman while the Court is adjourned.

The judge will then ask Crown counsel when the balance of the panel should return. As soon as Crown counsel has advised the Court when he requires the jury to return, the judge will direct the Sheriff to announce the date and time in open Court and will then announce an adjournment for ten or fifteen minutes.

(g) **Trial.**

After the adjournment, or after the accused has been put in charge of the jury (if the jury did not choose their foreman until the adjournment), the Crown counsel makes his opening address to the jury. The length of the address and the extent to which Crown counsel discusses the facts which he
proposes to adduce in evidence will depend on the nature of the case and its complexity. Some Crown counsel advise the jury of the name of each witness, but indicate mainly what the evidence will be. Crown counsel should not mention any evidence to the jury which he knows will be contentious and may not be admissible, as, for example, inculpatory (incriminating) statements by the accused.

At the conclusion of Crown counsel's opening address, he calls the witnesses who are to testify. If any counsel has any objection to any evidence which is being introduced and wishes to submit an argument as to the admissibility of the evidence, he should ask that the jury be excluded during the argument. If Crown counsel seeks to introduce inculpatory statements by the accused, he suggests to the judge, just as the witness is about to get to this part of his testimony, that the jury be excluded in order that the judge may rule on the admissibility of the evidence. After the jury retires to the Jury Room, the Crown proceeds to call witnesses in the trial within a trial. At the conclusion of the testimony of the witnesses called by the Crown the judge advises the accused that he has the right to testify on the trial within a trial and to call witnesses as to that aspect of the case. If the accused, or his counsel, indicates that he does not wish to give evidence or call witnesses, the judge will ask for submissions by counsel as to the admissibility of the statement.

At the conclusion of the Crown's testimony, defence counsel may make a Motion for a directed verdict. This Motion, of course, is made in the absence of the jury.

If defence counsel does not make such a Motion, or if the judge rejects his Motion, defence counsel must then indicate whether he intends to call evidence or not. If he elects to call evidence he may, if he wishes,
make an opening statement to the jury along the same lines as that made by Crown Counsel. Whether defence counsel makes an opening statement depends on defence counsel and the nature of the case. There is no set practice.

(h) **Addresses by Counsel.**

At the conclusion of the case, counsel addresses the jury. If defence counsel has called any evidence, he must address the jury first. If he does not call any evidence, Crown counsel must address the jury first. Theoretically, Crown counsel has the right of reply, but in practice this right is never exercised.

Neither counsel should express an opinion during his address as to the guilt or innocence of the accused, nor should he dwell on the law. His main function is to discuss the evidence and suggest the inferences which could and should be drawn from the evidence. Of course, it is necessary in many cases for him to refer to the law generally, but only insofar as it assists the jury to understand counsel's submission on the interpretation of the evidence.

Judges try to arrange the addresses so that one follows the other, since it is not really fair that counsel should address the jury and that his adversary should have an opportunity to address the jury on the following day.

(i) **Judge's Charge.**

At the conclusion of the two addresses of counsel, the judge will charge the jury, outlining the evidence of the case and the nature of the verdict they may consider. In complicated cases, many judges prefer to have an opportunity to consider his notes overnight before charging the jury, or at least for one or two hours.
At the conclusion of the judge's charge, he directs the jury to retire, but not to consider the case until such time as he had had an opportunity to hear submissions from counsel in the jury's absence. As soon as the jury has retired to the Jury Room, the judge asks counsel if they have any submissions. There is no set practice as to which counsel he asks first, though very often judges ask Crown counsel first. At this time, either counsel may make a submission to the judge regarding his instructions on the law and on the facts, or the absence of instruction on law and on facts. It is for the judge to decide whether he will recall the jury and direct in accordance with the request of counsel. If he decides not to recall the jury, he will so advise counsel at the end of counsel’s submission and he will instruct the Sheriff or his officer to go into the Jury Room and tell the jury they may commence their deliberations.

(j) **Adjournments throughout the Trial.**

Generally, the judge will adjourn for ten minutes or so after each hour of the trial in order to give the jury a rest. At the close of the hearing each day the judge generally directs the jury not to discuss the case with anyone.

If the jury retires to deliberate at any time relatively near the luncheon adjournment or the afternoon adjournment, the judge directs the Sheriff to enquire whether they will want lunch or dinner, as it takes about an hour to obtain this for the jury.

(k) **Exhibits.**

Exhibits are entered numerically, except those which are to be marked for identification. These are marked with a letter for identification.

When photographs are filed as exhibits, the Crown generally produces
10 copies of the photograph - one for the file, one for the judge, one for Crown counsel, one for defence counsel and six for the jury. One of the photographs is marked with the number, say, for example (1) and Crown counsel asks that the Registrar mark the nine remaining copies (1a), (1b), etc. The same procedure is followed with other documents and papers of which there is more than one copy, for example, maps or fingerprint charts.

 Generally, if an accused is convicted, the judge will remand him in custody for sentence, although he may, of course, sentence immediately or he may allow his bail to continue and release him pending the imposition of sentence.

3. The Court of Appeal.

The process of hearing an appeal in the Court of Appeal is less complex than the process evidenced in the traditional trial by jury. An appeal, in essence, is described as being a rehearing of the case, but this is a very misleading term. The Court of Appeal does not actually hear the case again in the sense of listening to witnesses. The evidence that is considered is in the form of a transcript prepared by a court reporter from the lower courts. It is these transcripts and the procedure to be outlined herein that make up the process of a hearing in the Court of Appeal.

In the case of an appeal from sentence, for example, an appellant wishing to vary or reduce his sentence, the appellant must obtain leave from a single Appeal Court judge. In practice, he appears before the judge in his private chambers with counsel, if represented, about an hour before the appeal hearing. The Appeal Court judge then screens the nature of the appeal by looking at the evidence in the transcript along with a pre-sentence report prepared by a probation officer. If there is sufficient justification
to hear the case in open court, the judge in his discretion will grant leave to appeal. The hearing of the appeal then takes place before a quorum of three judges of the Court of Appeal, or in serious cases such as murder, before a quorum of five judges. It has been common practice since 1959 for many sentenced to prison to launch an appeal within the 30 day limit from conviction as a matter of routine since the period of their original sentence continues to run although they are appealing the case. In prior years the original sentence, if appealed, would run from refusal or dismissal of the appeal. This invariably "clogs" the schedule of the Court of Appeal with criminal appeals, many by "jailhouse lawyers", without justification according to the opinion of one judge. It has been estimated by one judge of the Court of Appeal that 50 per cent of the cases appealed from sentence have no merit at all, especially in instances where the convicted person appears without counsel. One judge indicated, however, that if an appeal appears to be extremely frivolous, they have increased the sentence to act as a deterrent for other offenders launching similar frivolous appeals.

The process of trial is fairly simple whether it is an appeal from conviction or sentence. The appellant, or his counsel, indicates to the court the nature of his appeal, giving grounds (reasons) why it is being sought. These grounds have, before the hearing, been distributed amongst the judges and the respondent (Crown Counsel). Similarly Crown Counsel has distributed his material indicating why the appeal should be dismissed. The grounds of appeal may be based on matters of fact or points of law which the appellant will attempt to indicate were settled erroneously in the court below. Counsel does this by referring to particular areas in the transcript of evidence of the lower court. After outlining the reasons for appeal, the counsel for the appellant then cites principles of law from cases to corrobor-
ate his argument.

When the appellant's argument is completed the quorum of judges will query any portion of the appellant's argument by questioning his counsel or directing him to a portion of the transcript and requesting further clarification. At the end of the appellant's submissions, the judges usually have a "whispering" conference in open court amongst themselves. At this juncture, they may not accept further argument and dismiss the appeal indicating the appellant's case did not warrant further deliberation.

In most instances, however, the respondent (Crown Counsel) makes his reply to the appellant's case in similar fashion, outlining his argument why the appeal should be dismissed and substantiating his position by legal precedents and principles.

At the end of both presentations of argument the court may then reserve their decision, especially in cases involving complicated points of criminal law. However, the usual practice is to dispense with the hearing the same day, as the prisoner is rarely out on bail in criminal cases in the Court of Appeal, thus making it necessary to come to a just decision as quickly as possible. However, it has been known that certain decisions in this court have been reserved a month or more because of complicated law.

The judge on hearing the appeal may:

(a) Allow the appeal by acquitting the person, if it is an appeal from conviction. Seldom is one acquitted to go free as in England; in most instances the verdict of the lower court is quashed, and a new trial is allowed.

(b) Allow the appeal from sentence and reduce it accordingly if it was too harsh in the first instance.

(c) Dismiss appeals.
(d) Refuse to allow an appeal and also substitute an even higher sentence, if so warranted by the judges.
1. General Conclusions and Recommendations

The principle theme the writer has endeavoured to exhibit throughout the study is to bring an air of wholesome analysis to the present administration of justice in Vancouver. In essence, the study has indicated that law and its administration have a sound traditional development related to the English system primarily due to historical ties in commerce and industry during the past 70 years. Similarly, the hierarchical structure of the courts is a relatively simple and practical system which has been developed from the English model. The study surveyed the administration of justice in the Magistrate's court, outlining how all criminal cases are channelled from this judicial focal point to the three higher criminal courts. The procedural processes to the higher courts indicated a rather complex system, although it was indicated that much of its complexity was developed over hundreds of years for one function alone, the protection of the individual before the courts.

In specifically evaluating the three higher criminal courts the study indicated certain inadequacies which invariably affect the administration of justice and ultimately, the individual. For a concluding summary the writer will review these main areas and make certain recommendations.

(a) The beginning of any substantial charge in the present administration will necessitate a critical look at some of its judicial anachronisms in the light of modern realities. Because of the daily pre-occupation with the administration of justice there is a tendency to regard the present
structure sacrosanct. As evidenced by this study, the Court House, the physical plant of the administration of justice in Vancouver, has outlived its usefulness. The total administration suffers because of inadequate facilities both for court personnel and litigants alike. The legal long vacations of July and August is another thorn in the side of good administration. This holiday was originally adapted to the requirements of an earlier era where the work load of judges was less demanding. At the present time civil and criminal cases cannot be handled adequately during this period because of this procedural restriction. Further, traditional pomp and austere and complex procedure in the courts do very little to promote the due process of the law. A critical study of the traditional practises now existing is certainly needed.

(b) The present study has indicated that there is an extremely heavy work load of civil and criminal cases carried by the 15 Supreme Court judges. This has been alleviated to some extent through recent legislation by delegating criminal jurisdiction to the County Court in trying cases where an accused elects to be tried by a judge and jury. It is recommended, however, that a still better apportionment of the cases between the two courts be considered where equal powers be given to the County Court judge, notwithstanding the fact that many of the Supreme Court judges, when interviewed, were not in accord with this proposition. Decentralization of the Supreme Court's jurisdiction to the County Court judges in each of their respective districts outside of Vancouver would certainly eliminate the need to send Supreme Court judges out on criminal assizes. This would invariably allow them to concentrate on only those criminal cases appearing in the Vancouver jurisdiction, thus facilitating the process of trials and eliminating
much of the delay and backlog of work.

(c) It has been indicated in the study that the clerks of the three higher criminal courts are highly efficient personnel, working quite independently with wide discretionary duties. However, as a framework for further changes, the administration must take a long and searching look at the procedural policies carried out by the clerical staff. The questionnaire completed by the three criminal clerks for this study revealed that there are no staff meetings and a lack of definitive procedural policies outlined in manual form. Much of the procedure that has been introduced or amended is unwritten and known only by the criminal clerks. There is also a tendency on the part of the administration of the Court Registry to "pigeon hole" various clerks, thus restricting their learning experiences to either the criminal or civil fields of law.

It is recommended that orientation or training course be developed for all clerks in the Court Registry with staff meetings made compulsory in order to involve the total clerical staff in the administrative process. Further, modern management methods of public administration could be introduced to assist the flow of clerical work in the court.

(d) As previously stressed, the probation officer has an important function in the preparation of his reports for the Court. What is more important is that he is a vital link between the profession of Social Work and the administration of justice where his professional experience enable the judge in determining a fair sentence in each particular case. The court must have adequate information for the intelligent sentencing of convicted people. Unfortunately, as indicated in the study, many judges and counsel still do not fully appreciate the value of a good probation report and consequently
they are not utilizing this professional resource sufficiently. It is recom-
mended that the Corrections Branch of the Department of the Attorney-General
and the court administration cooperate in clarifying the important function
of the probation officer in the three higher criminal courts.

(e) Legal education has neglected some very important material in
respect to the appointment of judges. As a law student and lawyer, the writer
was expected to know something of the system of law courts and jurisprudence.
This invariably involved a historical and philosophical analysis but made
little reference to the importance of sentencing and its effect on the offen-
der. Judges, like lawyers, also are lacking this academic requisite. It is
recommended that a judge, when judicially appointed, be required to undertake
some orientation in the area of sentencing in criminal law. Further, a judge
should be given the opportunity of pursuing independent studies at a Univer-
sity of his choice with full expenses paid to evaluate judicial systems in
other countries. A criminal trial, properly conducted, is one of the best
products of our legal system, provided one walks out of court before sentence
is given; if one remains to the end, he may find it takes far less time and
enquiry to settle a man's prospects in life than it has taken to find out
whether he took a suitcase out of a parked automobile.

2. The Administration of Justice - Some Perspectives

Far too often the administration of justice is considered as if it
were a closed metaphysical system composed solely of lawyers and judges. It
is hoped that it is obvious by now from what has been reviewed that the admin-
istrative process of law is a complex of many elements. Certainly, one may
argue that the legal system appears to be a static model consisting of closed
rules. In many respects, this is true due to tendencies of the law toward
conservatism and rigidity. Yet, one must consider at the same time the nature
of the judicial process, the range of possible fact situations, the discretionary powers of judges and clerks alike, and the resultant impact of these on individuals in the courts. The inference usually conjured up by laymen that law is a static model is at times a most inappropriate conception of the legal system we live under.

It is misleading to infer that law is solely dependent on precedents and rules. Legal precedents and rules are not self-contained dogma. They represent clusters of vibrant ideas which enter into the administrative and judicial processes of law in the course of evaluating the merits of each case, and which, in turn, set standards for future cases. The administration of justice, like the legal rules in which it is expressed, is an open-ended system, and as such is ever expanding, contracting and reforming under the merits of each case it entertains and the society to which it is responsible. By analogy, this is what is referred to as the homeostatic balance in Social Work. Law and its administration have such a balance, also. Law is not a bundle of rules with rigid linguistic boundaries but an ever fluctuating and maturing system constantly self-evaluating and forming better patterns of maturity.

Yet, however flexible and functional the administration of justice may be there are indeed certain areas of it that require considerable revision. It is in these following areas that the administration of justice implants a poor public image that inevitably does injustice to the total perspective of the administration of justice.

(a) **Common Courtesy and the Court.**

In the County Court and Supreme Court in Vancouver, where the most serious of all criminal trials are held, one would expect the mantle of innocence and courtesy, which ought to cloak all men accused of crime, to be
clearly visible. Yet, in many instances this mantle is nowhere to be seen. Often, one of the chief reasons for its absence is the manner in which the man charged with a crime is presented to the court.

Throughout the trial, because of long established tradition, the man accused is accorded a "vantage point" in his own proceedings from an enclosed box-type structure labelled "the prisoner's dock". (see photographs 2 and 3). The very appearance of this enclosure belies the fact that in it sits a man who is presumed innocent in the eyes of his peers. Rather, it conveys the distinct impression that in it sits a most dangerous man who must be effectively confined for the safety of all around him. This "trial cell" is usually placed separate and apart from the counsel table, and is far enough away from the seats occupied by the jurors so that they will have a full view of this purportedly innocent man. To add to this "aura of innocence" sturdy sheriffs as well as the R.C.M.P. are in close attendance.

While many aspects of the administration can be sharply criticized, this is one feature of the system that is the epitome of injustice. In American courts the man charged is seated beside his counsel — so should it be in our courts in order to be fair and judicious.

Further, in a great number of cases, the man charged is not in a financial position to be released on bail prior to his trial. In these circumstances the accused is often seen handcuffed to an officer of the court while being escorted through the halls of the Court House in full view of the public.

Another aspect of courtroom procedure which greatly weakens the presumption of innocence is the loss of identity by the accused while a jury is being empanelled. Prospective jurors are paraded before the accused. The court clerk intones the following words of gentle introduction, "Prisoner,
look at the juror; juror look at the prisoner". The prisoner with his counsel can then accept or challenge the prospective member of the jury. In this area, it seems that courtesy and dignity in the possession of the law is plucked from the man's identity. In a brusque and austere manner the law seems to transform the man on trial, whose liberty is at stake, into "the prisoner", with all the unfortunate innuendoes it connotes.

The "cult of the robe" is another traditional prototype which bears criticism. It has been the opinion of lawyers that the average citizen is "scared stiff" when he walks into a court room and is faced with the judicial attire of both counsel and judge. The chances of discovering the truth, as one lawyer indicated, are diminished due to the witness being emotionally upset by the "strange language, unintelligible legal argument and costumes not dissimilar to that of Mandrake, the Magician".¹ In other words, the truth is more likely to come out in a relaxed and dignified atmosphere than in the strange and austere surroundings accentuated by gowned lawyers and judges. Appearing in business suits is already a practise in Magistrate's Court as well as in the chambers of judges. This, seemingly, could also be considered in the three higher courts.

No better summation of this problem could be made than Dr. Eliot Slater's statement:

"Pomp and spectacle do of course play a part in the process of life. There is no section of the community which does not make use of ceremony, on ceremonial occasions. But most professions put aside frippery, the chains, the hoods, the wands of office, when they get down to the daily tasks; and the way the legal profession clings to this sort of nonsense is anachronistic. It has a number of bad effects. By overawing the simple and inexperienced witness, it saps his confidence and increases his tendency to confusion. The

other victim is the judge himself who is seldom able to resist the suggestion, daily reinforced over the years, that he in his proper person is something above the common run of humanity."

(b) Appointment and Training of Judges in the Administration of Justice.

It is no secret that politics has a lot to do with the selection of judges. People are not surprised when year after year vacancies on the Bench are filled by faithful political party workers.

There is traditional practice of the federal government in power to hand out judgeships as plums to politically faithful members of the party. Race, religion, occupation and geographical location are also important factors; unfortunately these are sometimes more important than qualifications and competence.

A provincial survey was taken in 1952 of the political connections of lawyers who were later elevated to the Bench. Some very interesting material was revealed. Out of 26 judges appointed in British Columbia, 22 were more or less active supporters of the party in power at Ottawa at the time of their appointments; 2 were regarded as neutral and 2 were supporters of the opposition. In Alberta, in the same survey, all 22 appointed were regarded as supporters of the party in power, and in Saskatchewan all 33 were similarly qualified. Similar interesting figures were tabulated throughout the other provinces. The results are believed to be accurate enough to indicate that there is truth in the popular belief that the way for a lawyer

to become a judge is to support actively one of the major parties and hope that it will be in power at Ottawa when he is at his prime.

This is not to say that those lawyers appointed because of certain political affiliations are not competent judges; in fact, many have turned out to be quite outstanding. It is, however, evident that there is the danger in overlooking highly qualified people who would otherwise be excellent judges, except for the fact they were not of the same political faction at the time of appointment or do not take an interest in political life. All things being equal between two prospective appointees, it is more likely that the criterion of political affiliation would be the deciding factor. Certainly, it is evident that party politics should not be the basic criterion in determining appointment and that some equitable system should be devised in choosing the most qualified person.

Another area of contention is the previous experience of judges before being appointed to the Bench and its effect on the administration of justice. Since Confederation the federal government has appointed as judges many lawyers who have spent their lives doing the work of solicitors, some of whom have never acted as counsel in criminal matters. In many instances the appointee, having put on his robe, has found himself dealing with branches of criminal law and evidence of which he has retained only a faded memory from student days. The result is that for the first two or three years he is under a severe handicap and strain.

It has been suggested that arrangements be made for a newly appointed judge, before he assumes his duties, to sit on the Bench with an experienced judge, while he is presiding over criminal trials.\footnote{Chitty, T., "The Training of Judges", \textit{Chitty's Law Journal}, Volume 12, May, 1964, page 189.} After six
months of such experience and advice from the judges with whom he will have been sitting, he will have had at least a rudimentary training in the work of a judge. Nor would it be difficult to arrange that a new appointee to the Bench, before he assumes his duties, be given not only instructions by a senior judge, but also acquire special knowledge through courses in behavioural sciences, so necessary in determining sentences for an offender. Presumably, such a training course could be introduced by the Attorney-General, or perhaps be arranged by the Chief Justice of the Supreme Court and Court of Appeal.

Ideally, then, criminal justice should not call for overly complex and profound legal processes. It should not be a matter of mysterious taboos and traditions administered by a special class. In a democracy such as we profess to have, the administration of justice should be a matter of logic and good sense, designed to protect the individual from the excesses of the state and the state from the excesses of the individual.

Law is not a science, but a mixture of art, science, and philosophy with the emphasis on the infinite variations of human behaviour, human morality and social needs. It is, therefore, the direct concern of every person, professional and lay alike, to take an active and constructive part in making himself more knowledgeable with the administration of justice.
APPENDIX I

SYSTEM OF COURTS EXERCISING CIVIL JURISDICTION IN CANADA

CIVIL MATTERS

- Supreme Court of Canada
  - Exchequer Court of Canada
  - Court of Appeal
    - Supreme Court of British Columbia
  - Small Debts Court
- County Court
  - Civil Jurisdiction of Magistrate's & Family Courts.
SYSTEM OF COURTS EXERCISING CRIMINAL JURISDICTION IN CANADA

CRIMINAL MATTERS

I. Indictable Offences:

Supreme Court of Canada

Court of Appeal of B. C.

Supreme Court of British Columbia

Family & Juvenile Courts

County Court Judge's Criminal Court

Magistrate's Court

II. Summary Conviction Offences:

Court of Appeal

Supreme Court of British Columbia

Magistrate's Court

County Court
JURISDICTIONAL PROCEDURE IN VANCOUVER CRIMINAL COURTS

Criminal Code of Canada

Part 24 - Summary Convictions

- Common Assault
- Vagrancy
- Unlawful Assembly
- Creating a Disturbance, etc.

Trial Before Magistrate Only

- County Court
- Supreme Court (on law only)

Appeal

- Court of Appeal of B.C. (on law only)

Indictable Offences listed in Code Section 467

- Murder
- Rape
- Manslaughter
- Treason

Preliminary Enquiry

- Election by the Accused of the Three Modes of Trial

Trial before Magistrate Only

- County Court
- Supreme Court (on law only)

Appeal

- Court of Appeal of B.C. (on law only)

All Other Indictable Offences

- Robbery
- Forgery
- Abortion
- Perjury

Preliminary Enquiry

Government Liquor Act
Motor Vehicle Act
Social Assistance Act
Municipal By-law Act
Health Act

All Other Indictable Offences listed in Code Section, etc.

- Theft (under $50)
- Assault
- Possession of Stolen Property
- etc.

- Murder
- Rape
- Manslaughter
- Treason

Trial Before Magistrate Only

- County Court
- Supreme Court (on law only)

Appeal

- Court of Appeal of B.C. (on law only)
Appendix V

Administrative Staff of the Three Higher Criminal Courts in Vancouver

Attorney General

- Sheriff's Office
- Crown Prosecutor
- Secretarial Staff & Ushers for Judges of the three courts.

Inspector of Legal Offices

- Registrar of Vancouver
- Deputy Registrar
- Administrative Officer

Chief Clerk

- Court of Appeal Principal Clerk (Criminal)
- Supreme Court Senior Clerk (Criminal)
- County Court Judges' Clerk (Criminal)

Probation Officer

Court Reporter's Office
<table>
<thead>
<tr>
<th><strong>QUESTIONNAIRE</strong></th>
<th><strong>APPENDIX VI</strong></th>
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<table>
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<tr>
<th></th>
<th>County Court Criminal Clerk</th>
<th>Supreme Court Criminal Clerk</th>
<th>Court of Appeal Criminal Clerk</th>
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</thead>
<tbody>
<tr>
<td>1. List employees you supervise.</td>
<td>4 Junior clerks.</td>
<td>4 Junior Clerks, County Court Criminal Clerk.</td>
<td>2 Senior clerks. 1 Steno.</td>
</tr>
<tr>
<td>2. What instructions are given to those supervised?</td>
<td>None.</td>
<td>How to record and issue documents in County Court Criminal proceedings.</td>
<td>General instructions covering daily duties in Court of Appeal and dictation of all correspondence.</td>
</tr>
<tr>
<td>3. Who are your supervisors?</td>
<td>Supreme Court Criminal Clerk Chief Clerk, Registrar and Senior County Court Judges.</td>
<td>Chief Clerk, Registrar, and Chief Justice of Supreme Court.</td>
<td>Chief Clerk, Registrar, and Chief Justice of Court of Appeal.</td>
</tr>
<tr>
<td>5. Who checks your work?</td>
<td>No one - Initials of clerk indicate to Judge document is ready to sign.</td>
<td>No one - Initials of clerk indicates to judge document is ready to be signed by him.</td>
<td>No one - initials of clerk indicates to judge document is ready to be signed by him.</td>
</tr>
<tr>
<td>6. Do your duties include recommendations regarding the work of other employees?</td>
<td>No.</td>
<td>Yes.</td>
<td>No.</td>
</tr>
<tr>
<td>8. What standards have been established for your work?</td>
<td>Efficiency and accuracy important.</td>
<td>Efficiency and accuracy important.</td>
<td>Efficiency and accuracy important.</td>
</tr>
<tr>
<td>9. What decisions do you make without referring to a higher authority?</td>
<td>All decisions required in the operation of the Court.</td>
<td>All decisions required in the operation of the Court.</td>
<td>All decisions required in the operation of the Court.</td>
</tr>
<tr>
<td>County Court Criminal Clerk</td>
<td>Supreme Court Criminal Clerk</td>
<td>Court of Appeal Clerk</td>
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</tr>
<tr>
<td><strong>10. What kind of decisions are referred to a higher authority?</strong></td>
<td>Refer matters to a judge when witness or counsel not present at a designated time.</td>
<td>Proposed changes in regulations or court procedures are reviewed by the Registrar or the Chief Justice.</td>
<td></td>
</tr>
<tr>
<td><strong>11. Do you participate in staff meetings?</strong></td>
<td>No.</td>
<td>No.</td>
<td></td>
</tr>
<tr>
<td><strong>12. What kind of errors could be made in your work and what would be the consequence of these errors?</strong></td>
<td>1. Could neglect to make a notation in judge's diary; so judge would not be available in matter. 2. Could neglect to inform RCMP regarding criminal records which might necessitate adjournment of case. 3. Could lose exhibits of a case which might render an acquittal. 4. Could neglect to phone counsel regarding trial which would involve considerable loss of time. 5. Could overlook an error on any legal form or order which could lead to an acquittal or lesser sentence.</td>
<td>1. To lose or misplace an exhibit which could delay or hamper a trial. 2. To put incorrect information on assize court schedule, certificate of sentence, warrants of Committal or Conviction forms could delay justice. 3. Could neglect to phone counsel of trial date. 4. Could witness documents with incorrect date, which could cause undue delay or acquittal.</td>
<td>1. All orders and judgements must be completely correct as various prison authorities depend on them in interpreting court's direction. 2. In all criminal appeals, the rights of all parties could be adversely affected if errors were made.</td>
</tr>
<tr>
<td><strong>13. List the persons with whom you have personal contact as part of your job.</strong></td>
<td>1. Crown prosecutor - by personal interview and phone to set trial date and outline exhibits. 2. Judges - to set trial dates in person. 3. Lawyers - by phone and in person regarding trial dates. 4. Probation Officer - by phone and in person regarding pre-sentence report. 5. Warden at Oakalla, Haney &amp; B.C. Penitentiary - by phone confirming trial dates to facilitate transfer of prisoners. 6. R.C.M.P. - by phone ordering criminal records and to arrange for prisoners attending court.</td>
<td>1. Crown Counsel - by personal interview to set trial date and outline exhibits. 2. Judges - to set trial dates in person. 3. Lawyers - all matters pertaining to trial in person and by phone. 4. Probation Officer - by personal interview regarding pre-sentence report. 5. Warden at Oakalla, Haney &amp; B.C. Penitentiary - by telephone and mail confirming trial dates to facilitate transfer of prisoners. 6. R.C.M.P. - by personal interview regarding records and prisoners. (cont'd)</td>
<td>1. Judges &amp; Magistrates - by mail for reports and the results of appeal. 2. Legal Profession - personal interviews and telephone to arrange all matters to do with criminal appeals. 3. R.C.M.P. - personal interview and telephone to arrange for prisoners to attend court and to bring records. 4. Official in charge of Records Office, Oakalla, B.C. Penitentiary, &amp; Haney Correctional Institution - by telephone for information on prisoners. (cont'd)</td>
</tr>
<tr>
<td></td>
<td>County Court Criminal Clerk</td>
<td>Supreme Court Criminal Clerk</td>
<td>Court of Appeal Criminal Clerk</td>
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<tr>
<td>13. (continued)</td>
<td>7. Sheriff of Vancouver - by personal interview to advise of trials. 8. Official Court Reporters - by personal interviews regarding trials.</td>
<td>Information given about Criminal Trials and general procedures covered by the Criminal Code, Statutes, and Precedent. Press and radio are provided with information regarding trials.</td>
<td>Information given to public on appeal procedure of trials and their disposition.</td>
</tr>
<tr>
<td>14. Describe information given or received from general public in connection with your work.</td>
<td>No, but my opinion is considered by the Registrar or Chief Justice when rules are being revised.</td>
<td>No adverse comments.</td>
<td></td>
</tr>
<tr>
<td>15. Do you participate in formulation of policy and regulations?</td>
<td>Yes; Procedure and practices (forms) are explained to lawyers. It is also necessary to explain Summary Conviction Act and other Statutes to County Court Clerk.</td>
<td>No adverse comments.</td>
<td></td>
</tr>
<tr>
<td>16. Does your job require you to explain policies or regulations to others?</td>
<td>Yes; Frequently lawyers are assisted in completing various forms.</td>
<td>Yes; - Procedure and practices developed through the years are interpreted for lawyers.</td>
<td></td>
</tr>
<tr>
<td>17. What documents or correspondence do you sign?</td>
<td>No signing authority except by Registrar or Deputy Registrar.</td>
<td>Same.</td>
<td></td>
</tr>
<tr>
<td>18. List some abnormal working conditions.</td>
<td>Search for old records. Carrying criminal exhibits of various weights - outboard motors, cases of liquor, firearms.</td>
<td>At times it is necessary to search dusty records and to handle exhibits which could be dangerous, i.e. firearms, dynamite, acid and blasting caps.</td>
<td></td>
</tr>
<tr>
<td>19. List any suggestions for improving methods of work in your department.</td>
<td>No adverse comments.</td>
<td>No adverse comments.</td>
<td></td>
</tr>
</tbody>
</table>

No adverse comments.
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Canada: Judge's Act, Revised Statutes of Canada, 1963, c.8.


Photograph 1 - The Court House.
Photograph 2 - The County Court Judge's Criminal Court.
Photograph 3 - The Supreme Court (Criminal Assize)
Photograph 4 -- The Court of Appeal
Photograph 5 - The Jury Room
Photograph 6 - The Court Reporter's Office