
The expanding role of the Justice of the Peace. (Feature on Civil Justice)

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"A Justice of the Peace is merely a lawyer who has been benched."

--Peter Bowal

Introduction

The system of courts and the judiciary in Canada are undergoing a significant transformation. Following a few recent decisions from the Supreme Court of Canada ruling how all Canadian judges must be compensated and that compensation periodically reviewed, cost-conscious governments are looking at ways to render the judiciary more efficient. In most courts, some form of judicial mediation before a trial is now mandatory in order to reduce the number and length of trials. Up to now, only the family courts were unified. In some cities, persons charged with domestic violence can be sent to a special court to move such cases through the system more quickly and with more effective dealing with the offender and family. Presently, there is talk across the land about creating other specialized courts (e.g. for drug offences) and there is a Bill before the Legislature in Alberta to merge both trial levels of the Provincial Court with the Court of Queen's Bench to eliminate one trial court. Discussions have even been held to determine whether new courthouses themselves should be public-private partnerships.

Another change is the increased use of court adjuncts like Masters in Chambers and Justices of the Peace. Masters handle a very large part of small pre-trial motions, freeing up superior court judges for trials. At the Provincial Court level, the role of the Justice of the Peace is being greatly expanded to free up Provincial Court judges in the same way.

This article outlines the historical development of the role of the Justice of the Peace (JPs) in the Canadian judicial landscape.

History

Justices of the Peace, since medieval times, have held formal and special sessions of court, issued warrants, interrogated witnesses and performed many lower judicial and administrative functions. The Crown appointment traditionally had few specific qualifications for employment.

The JPs had jurisdiction over misdemeanors, such as simple larceny, aggravated assault, and assault on officers of justice, women, and children, for which fines or imprisonment could be

imposed. Only the higher courts could order corporal punishment. JPs judged broad, simple matters dealing with small sums of money. The Canadian JPs followed the British model.

Until about a decade ago, anyone could be appointed a Justice of the Peace without possessing a legal education. The work was considered routine, such as signing criminal charges or setting court dates for accused persons. These lay JPs were not professionalized. They worked on call. They did not wear judicial robes. They did not mine the law reports for judicial precedent. They did not even sit in traditional courtrooms. Their relationship to the front line police in the community was likely too cozy to be truly independent. Since they came to the police station (or even police car) to sign documents, they were perceived as an extension of the police--in modern terms, rubber stamps for the police. Some referred to them pejoratively as the Justice of the Police.

Since the 1982 entrenchment of the Charter of Rights, in which article 11 (d) guarantees all accused persons "a fair and public hearing by an independent and impartial tribunal," the courts and governments came to realize that the office of the JP, who is a judge (albeit at the lowest level), had to be strengthened and made more independent of the police and government.

At the same time, government saw an opportunity to increase the workload of JPs, to offload to them some traditional functions of full time permanent judges. This would ultimately lead to--if not fewer full time permanent judges--more flexibility, lower cost and more JPs appointed to absorb the growth in need for lower end judicial services.

Therefore the perception of many people that the role of the JP as someone entitled to perform a quick civil (vs. church), legal wedding is an outdated one. Most JPs today do not spend much or any of their time performing weddings at City Hall--there are other officials, such as marriage commissioners, to do that--instead, they are busy as adjuncts to the Provincial Court in a wide variety of matters. They are more accessible to police and accused persons outside of regular courthouse hours, and they are a lower cost to government than full time, permanent judges.

Re-defining the Role of a JP

It is difficult to describe the role of the Justice of the Peace in Canada because the JP does a wide range of tasks, and these vary across provinces. Each province has legislation concerning many roles for JPs, any of which they may or may not actually do. Even where a JP has a role in the legislation, that work may be carried out in practice by another judicial officer in the hierarchy.

JPs primarily serve as utility judges, performing tasks that other judges do not do because they are routine, or because they take place outside of regular courthouse hours. JP shifts often cover twenty-four hour scheduling, including weekends. Police may need immediate action regarding a warrant and cannot wait until the courthouse opens for a judge to make a decision. Regular judges do not want to be on call in this way. JPs are usually paid less than other judges, and they can be appointed to serve part time for a specified shorter period of years.

They are more accessible to the public and less intimidating than other judges. This is an important positive first impression of the justice system. However, not all JPs see their role in the

justice system as crucial. In a study where JPs were interviewed, many described their role as a buffer, filter, facilitator, rubber stamp, and protector of the public peace. They also thought of themselves as executive assistants to judges, handmaidens to the police, and as judicial sponges absorbing the trivia from court dockets. These self-perceptions would have likely influenced the role they have played in the administration of criminal justice.

The Current Range of JP Duties

JPs' duties vary from province to province. In Ontario, JPs preside over criminal trials of summary conviction but are not allowed to issue peace bonds. The opposite holds true in British Columbia, where JPs do not preside over trials and do issue peace bonds. Within each province, there may be various categories of JPs, such as Sitting JPs and Presiding JPs. Sitting JPs in several provinces conduct trials in provincial and municipal regulatory offences. Traffic tickets form the largest proportion of these offences. If one is involved in the legal system at all, it is most likely to be in relation to this type of offence. In some provinces, the Sitting JP will hear evidence at trials for summary conviction and preside over trials at request of the Chief Judge. JPs in Nunavut are judges in their single-level trial court system.

Presiding JPs may conduct bail hearings, administer oaths, issue search warrants, emergency protection orders, warrants for arrest, summons, subpoenas, and orders for the apprehension of children under the child welfare legislation around the clock.

In all cases, largely because the accused person is representing himself, the JP will have to explain legal rights and obligations. In most cases, the average court visitor would today not be able to distinguish the JP from a Provincial Court Judge.

Some JPs are court officers with a tenuous judicial decision-making role--they work with and make decisions on court files in an administrative capacity. New Brunswick does not have Justices of the Peace at all. Prince Edward Island also has only regular civil service employees in the courthouses who provide JP-type services.

The duties of JPs may be administratively changed without amending the legislation. In Manitoba, senior court officials change the daily duties of JPs as required. A duty roster system operates in British Columbia ensuring the JPs time off from work as well as spreading out their coverage. In Ontario, the duty roster scheme was created partly to prevent police from JP-shopping. Although protected by the Constitution and legislation like the rest of the judiciary, JPs' independence is subject to more administrative control than other members of the judiciary.

Conclusion

JPs consider the evidence brought forth by police to lay charges. They issue powerful warrants of all kinds. They decide whether accused persons should be released pre-trial. They conduct the trials on a multitude of regulatory offences. This means that JPs are often at the forefront of the justice system. In most cases, the first independent decision maker an accused person will meet in the system, will be a JP. Because JPs do work that is inconvenient, routine, or off-hours for full time, permanent judges, they fill an essential role in the judiciary.

Since JPs have historically required no legal education, there have been recommendations over the years to diminish the jurisdiction of JPs. In Ontario, a JP released a sex offender who then murdered two women while on bail. A subsequent judicial inquest recommended limiting JPs to cases not involving sexual violence. Yet the Askov decision imposed time limits under which an accused person can be brought to trial and brought with it new pressures on the judicial system to expedite proceedings.

For the most part, Canadian governments, with a few exceptions, have professionalized and strengthened the role of the Justice of the Peace, by appointing only experienced lawyers to the office and expanding the range of work performed by them. They are bound full time to the standard Judicial Codes of Conduct. This has increased the stature of JPs and rendered them both a cost-efficient and practical alternative to appointing more regular full time judges.

Also, in doing so, these governments have created the first part time, term-limited judiciary in Canada. It will be years before the highest courts decide whether this new model for the judiciary, which does not guarantee financial security for the JP (and accordingly forces the JP to earn a living from other sources at the same time), is consistent with the constitutional constraint for an "independent and impartial tribunal."

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