

The Justice of the Peace

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Purpose: Adjuncts to Provincial Court

Many Canadians have heard, seen, or appeared before judges in provincial or superior court. They occupy the most prominent place in the judiciary. These judges are, in some ways, the personification of our courts. Fewer Canadians will be as familiar with the role of the Justice of the Peace (also simply referred to as the "JP"), which exists in some form across the country.

To understand the position of the JP, it is important to know that the regular judges are aided in their work much in the same way that other professionals have specialized assistants. Dentists have hygienists for teeth cleaning and lawyers have paralegals to assist in preparing the documents for a transfer of land. These analogies are not completely transferable in all aspects to provincial court judges and JP's, but they help illustrate the adjunct function.

This adjunct judicial status also exists in the superior courts. There are judicial officers connected to the Court of Queen's Bench called Masters and Taxation Officers who have limited, defined power to make secondary decisions that are auxiliary to the principal judicial decision in the case. In the United States, a judicial class called "magistrates" assists federal district court judges by making interim rulings and trying minor issues.

JPs are part of the system of the administration of justice in the province. Under the Constitution Act, 1867 the right to legislate as to the appointment of JPs is given to the provincial legislatures.

JPs are themselves judges of the lowest rank, attached to Provincial Courts, who exercise limited and specific jurisdiction that is set out in legislation. The JP can be an individual of integrity in the community who is untrained in the law, but increasingly now is a qualified lawyer.

Historically, the JP status as judge was not well established in the law. The JP was in a category akin to a probation officer or clerk of the court. Now there is no doubt that the JP is a judge. Under the Charter, this status means that the JP, just like the more senior judges, is entitled to complete physical and financial independence from government and police.

Behind the Scenes

The work of the Justices of the Peace, as is true for other judges' work, is fully reviewable by higher courts for error. Because justice must not only be done, but also must be seen to be done, JP's can sometimes be seen working in open court. However most of the time they will be quietly working behind the scenes.

There are several reasons for this diminished visibility of the JP. Today JP's are accessible 24 hours of each day. This may mean being on call in rural areas or on shifts in urban areas. Most of their work currently is in the domain of criminal justice administration, where proceedings such

as bail hearings and warrants to search or obtain a blood sample are very time sensitive. Justices of the Peace decide on search warrants of various kinds, swear new charges, issue subpoenas or warrants compelling attendance and testimony of witnesses, and sign arrest warrants and summons for individuals accused of offences. JP's also accept guilty pleas and impose fines, make emergency protection orders, and conduct bail hearings and trials of provincial and municipal regulatory (summary conviction) offences.

These matters do not arise at the most convenient time and place for provincial court judges. Crime does not happen only during regular business hours. Around the clock availability for objective judicial decisions on the front line of crime and law enforcement is the essence of the current JP's role. If some legal document or hearing needs to be held, the police can often schedule it with a JP across the province, by way of the fax machine or telephone.

Under the law, many of these listed tasks are done *ex parte*, which means the application is often made by the police without notice to and input from the accused person. The JP's work is the first few steps for parties in the administration of criminal justice. The JP's decisions are important, but virtually never final. As a highly specialized low level judge, the JP, in the off hours, usually makes many quick decisions that can be appealed to a higher court. There is almost no spectator value in the JP's work.

Appointment and Accountability

Justices of the Peace are appointed in the same manner as Provincial Court Judges. The procedures for consultation, if any, with the bench, the bar and the public vary by province. The provincial cabinet ultimately makes the appointments, on the basis of merit. After that point, most legislation transfers supervision of the JP's to the Chief Judge of the Provincial Court and ultimately the provincial Judicial Council. The JP is bound by the same ethical rules of conduct that govern all other judges.

While Provincial Court Judges usually hold office during good behaviour to a mandatory retirement age of 70 or 75 years, JP's may be appointed for full time, part time, or ad hoc work for a fixed period of years, or to a specified retirement age. Some even hold the office at the pleasure of the provincial cabinet. As the position of Justice of the Peace continues to expand in Canadian courts, questions relating to judicial independence such as remuneration, and whether JPs can be appointed for fixed terms on an ad hoc basis will ultimately have to be addressed.

The powers of the JP are set out in legislation, including the federal Criminal Code. Since the busiest division of provincial court deals with crime, most JP's have been dedicated to serving in that area of the law. We have seen traffic court migrate to the less expensive and more flexible JP model to the point today where the JP has almost completely replaced the provincial court judge in traffic court. We can expect in the future that efficiency-conscious provincial governments may increase the scope of JP work on the civil side. An example may be to use the JP in mediation of small claims disputes, dealing with adjournments and other interim applications and even to preside over small claims trials.

Not Just Weddings Anymore

One can see that Justices of the Peace, while serving as lesser-known judges, have a wide set of important responsibilities on the front line of criminal justice. They exercise considerable discretion and their work affects millions of Canadians' constitutional rights.

The Justice of the Peace is one of the most flexible judgeships, particularly suited for 24 hour everywhere coverage where a prompt judicial decision is needed. Although they arguably face the most serious challenges to their judicial independence, provincial governments continue to increase JP statutory jurisdiction in an effort to built in more judicial flexibility and reduce judicial costs.

The office of the JP is becoming more professionalized and higher qualified as judicial responsibilities increase. In fact, it is ironical that while most Canadians think of the Justice of the Peace as someone outside of the church who officiates at weddings, few JP's actually perform that function now. The modern JP is foremost a judge, deserving of the title "Justice" for the role played in the Canadian legal system.

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