



AGENDA

NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

LIVING AT THE MARGINS : JUDGING FAIRLY, JUDGING RESPONSIVELY

May 07-10, 2013

Fairmont The Queen Elizabeth, Montréal, Quebec
900 René Levesque Blvd West
Tel.: 514-861-3511

Start Time: 5:30 PM, Tuesday, May 07, 2013
Conclusion: 11:30 AM, Friday, May 10, 2013

COURSE DESCRIPTION

This Seminar is organized around the main theme of judging fairly and responsively when faced with difficult cases involving women living at the margins because of poverty, addictions or mental health issues. Sessions will focus on practical strategies for effective communication (including with self-represented litigants); understanding the contexts of vulnerable women; and problem-solving approaches at the disposition stage. Additional themes of contemporary relevance will be explored in other sessions including: the role, if any, that culture should play in judicial decision-making; equality debates in recent cases such as those involving prostitution, polygamy, and face coverings; and what it means to judge courageously when faced with contentious cases. A conversation between retired Supreme Court Justices Claire L'Heureux-Dubé and Marie Deschamps will be a highlight on the final morning.

PLANNING COMMITTEE

The Honourable Justice Freda M. Steel, Court of Appeal for Manitoba

The Honourable Danielle Côté, Associate Chief Judge, Court of Québec

The Honourable Justice Pepita Capriolo, Superior Court of Québec

The Honourable Justice Louise Charbonneau, Supreme Court of the Northwest Territories



AGENDA

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The Honourable Judge Nancy A. Flatters, Provincial Court of Alberta

The Honourable Justice Susan Griffin, Supreme Court of British Columbia

The Honourable Justice Lucie A. LaVigne, Court of Queen's Bench of New Brunswick

The Honourable Justice Janet E. McMurtry, Court of Queen's Bench for Saskatchewan

The Honourable Justice Petra E. Newton, Ontario Court of Justice

Professor Debra Parkes, University of Manitoba

Beth Symes, Symes Street & Millard Barristers and Solicitors

Professor T. Brettel Dawson, Academic Director, National Judicial Institute

Jillian Boyd, Senior Advisor, National Judicial Institute

TUESDAY, MAY 07, 2013

5:30 PM - 7:00 PM

Welcome Reception

L'Édific Ernest-Cormier

Co-Hosts

The Honourable Nicole Duval Hesler, Chief Justice

Court of Appeal of Québec
Montréal, QC

Salle des pas-perdus

The Honourable François Rolland, Chief Justice

Superior Court of Québec
Montréal, QC

The Honourable Élizabeth Corte, Chief Justice

Court of Québec
Québec, QC

6:00 PM

Remarks

The Honourable Nicole Duval Hesler, Chief Justice

Court of Appeal of Québec
Montréal, QC

The Honourable Danielle Côté, Associate Chief Judge

Conference Co-Chair & President of CCIAWJ
Criminal and Penal Division, Court of Quebec
Sherbrooke, QC

The Honourable Justice France Thibault

Court of Appeal of Québec
Québec, QC

WEDNESDAY, MAY 08, 2013

7:00 AM - 8:00 AM	Wellness Session: Yoga	Saint-Charles
7:00 AM - 9:00 AM	Breakfast	Beaver Club
7:00 AM - 9:00 AM	Registration	Saint-François Foyer
9:00 AM - 9:15 AM	Welcome to the Conference	Saint-François
	The Honourable Danielle Côté, Associate Chief Judge Conference Co-Chair & President of CCIAWJ Criminal and Penal Division, Court of Quebec Sherbrooke, QC	
	The Honourable Justice Freda M. Steel Conference Co-Chair Court of Appeal for Manitoba Winnipeg, MB	
9:15 AM - 9:25 AM	Welcome from the International Association of Women Judges	
	Introduction	
	The Honourable Justice Freda M. Steel	
	Presenter	
	The Honourable Justice Eusebia Nicholas Munuo President of the International Association of Women Judges (IAWJ) Court of Appeal of Tanzania, Dar es Saalam	

WEDNESDAY, MAY 08, 2013

KEYNOTE

9:25 AM - 10:15 AM **Fundamental Rights: A Resource for
Vulnerable Women Reflections from a Judge
of the European Court of Human Rights**

Introduction

The Honourable Danielle Côté, Associate Chief Judge

Presenter

The Honourable Judge Françoise Tulkens
Former Vice-President, European Court of Human Rights
Strasbourg-Cedex, France

10:15 AM - 10:30 AM **Health Break**

Tea Lounge

COMMUNICATING WITH VULNERABLE WOMEN

The process by which decisions are made and communicated can profoundly affect the way in which people appearing in court experience the judicial system. This is especially the case when social, cultural, economic or systemic factors create layers of vulnerability and when litigants are self-represented. This segment of the program will focus on successfully communicating with vulnerable women. First, we will examine situations involving women with mental health issues and the reaction such situations can provoke. We will then turn to communication strategies that judges can use when communicating with vulnerable litigants. We will apply the insights of problem-solving jurisprudence in this theme. We will end with a discussion of self-represented litigants and associated evidentiary challenges.

10:30 AM - 10:55 AM **Introduction to Vulnerability and Mental
Health**

Introduction

The Honourable Justice Susan Griffin
Supreme Court of British Columbia
Vancouver, B.C.

Presenter

Professor Suzanne Bouclin
University of Ottawa
Ottawa, ON

WEDNESDAY, MAY 08, 2013

10:55 AM - 12:15 PM **Communicating Successfully with Individuals with Mental Health Issues**

In this session, Dr. Kinley will review the types of strategies that can be used when communicating with individuals with mental health issues to ensure optimal outcomes in the courtroom. She will situate her presentation in the context of recent advances in brain science regarding the circuits involved in social relatedness, social intelligence and social behaviour. As part of her presentation Dr. Kinley will address the strategies that can be employed to help manage anxiety and create safety so as to ensure respectful and successful communications.

Introduction

The Honourable Justice Susan Griffin

Presenter

Dr. Jacqueline Kinley

Professor, Department of Psychiatry

Dalhousie University

Halifax, NS

12:15 PM - 1:45 PM **Law at Lunch: Linking Generations and Aspirations** **Beaver Club**

Law students from Université du Québec à Montréal, Université de Montréal & McGill University join us at lunch

1:45 PM - 3:45 PM **Effective Communication with Vulnerable Litigants**

(health break included)

This session will introduce participants to the principles of effective communication and engagement with vulnerable parties. Questioning, reframing and other active listening skills will be taught through demonstrations and interactive exercises. The importance of critical awareness and self-reflection in successful communications will be explored.

WEDNESDAY, MAY 08, 2013

Introduction

The Honourable Justice Susan Griffin

Presenters

Professor Michaela Keet

University of Saskatchewan
Saskatoon, SK

Professor Sarah Buhler

University of Saskatchewan
Saskatoon, SK

3:45 PM - 4:30 PM

Self-Represented Litigants and the Law of Evidence

What are the most common evidence errors by self-represented litigants, and what results from those errors? What help is available for self-represented litigants? How can judges help? What are the barriers to and limitations on judges helping? What aids are available for judges?

This session will address these and other questions involving self-represented litigants and the law of evidence.

Introduction

The Honourable Justice Susan Griffin

Presenter

The Honourable Justice Victoria Gray

Supreme Court of British Columbia
Vancouver, BC

5:00 PM - 5:30 PM

Reception

Tea Lounge

5:30 PM - 6:30 PM

Book Club

Saint-François

Feminism à la Québécoise, by Micheline Dumont.

Author introduced by The Honourable Justice Petra E. Newton, Ontario Court of Justice

THURSDAY, MAY 09, 2013

7:00 AM - 8:00 AM	Wellness Session: Walking Group	Main Lobby
	Walkers leave main lobby at 7:05 AM	
7:00 AM - 9:00 AM	Breakfast	Beaver Club
9:00 AM - 9:05 AM	Introduction	Saint-François
	The Honourable Justice Freda Steel	

DISPOSITIONS WHERE ADDICTION IS A FACTOR

Continuing with our broad theme of judging fairly and responsively, this segment addresses how to generate solutions that will respond to the circumstances of addicted women, many of whom will have children. We will consider bail and family orders (child protection). What can we learn from problem-solving jurisprudence and specific judicial initiatives across the country that can be applied in every court?

9:05 AM - 9:30 AM	Introduction and Overview to Problem Solving Skills and Practice
	Presenters
	The Honourable Judge Nancy A. Flatters Provincial Court of Alberta Calgary, AB
	The Honourable Justice Lucie A. LaVigne Court of Queen's Bench of New Brunswick Edmundston, NB
9:30 AM - 10:00 AM	The Criminal Context
	Presenter
	The Honourable Judge Karen Ruddy (by video-link) Territorial Court of Yukon Whitehorse, YT
10:00 AM - 10:30 AM	The Child Welfare Context
	Presenter
	The Honourable Justice Stanley Sherr Ontario Court of Justice Toronto, ON

THURSDAY, MAY 09, 2013

10:30 AM - 10:45 AM **Health Break** Tea Lounge

10:45 AM - 11:30 AM **Generating Solutions in Criminal Proceedings**

Presenter

The Honourable Judge Thomas J. Gove
Provincial Court of British Columbia
Vancouver, BC

11:30 AM - 12:00 PM **Generating Solutions in Family Law**

Presenter

The Honourable Justice Stanley Sherr

12:00 PM - 1:30 PM **Lunch**

[Box lunch to be available for those who want some fresh air]

12:00 PM - 12:45 PM **AGM CCIAWJ** Saint-François

[Box lunch to be available for those who will attend the meeting in plenary].

JUDGING CULTURE

From divorce proceedings, to criminal trials, to sentencing hearings, “culture” is increasingly being put at the forefront of legal proceedings. And yet, navigating issues of culture presents unique challenges for judges. Considering the issue of culture through one particular lens, that of the defence of provocation, this session will look more closely at “culture” and will consider what it is, how we talk about it, and what role, if any, it should play in legal decision-making.

1:30 PM - 1:45 PM **Introduction and Overview**

Chair

The Honourable Justice Louise Charbonneau
Supreme Court of the Northwest Territories
Yellowknife, NT

THURSDAY, MAY 09, 2013

Presenter

Professor Debra Parkes

University of Manitoba
Winnipeg, MB

1:45 PM - 2:00 PM

Dishonour, Provocation and Culture: Through the Beholder's Eye?

Professor Pascale Fournier will present the data from her article "Dishonour, Provocation and Culture: Through the Beholder's Eye?" In particular, she will examine the success rates of the defence of provocation in a sampling of Canadian cases and will discuss the implications of her findings.

Presenter

Professor Pascale Fournier

Holder of the Research Chair in Legal Pluralism and Comparative Law
University of Ottawa - Faculty of Law - Civil Law Section
Ottawa, ON

2:00 PM - 3:00 PM

Small Group Exercise: Provocation Defence

Facilitators

Professor Pascale Fournier

Professor Debra Parkes

3:00 PM - 3:15 PM

Moving Forward: Interpreting with Equality

Building off of the small group exercise, Prof. Parkes will examine what we can learn from the Supreme Court of Canada's 2010 decision in R. v. Tran, and what it might mean to interpret and develop the defence of provocation in a manner consistent with Charter equality rights.

Presenter

Professor Debra Parkes

3:15 PM - 3:30 PM

Health Break

Tea Lounge

THURSDAY, MAY 09, 2013

CHOOSING (OR LOSING IN) EQUALITY?

3:30 PM - 4:30 PM

Debate

What does it mean to view equality as a fulcrum right against which 'choice' and 'harm' is assessed? Does decriminalization of certain social practices enhance women's equality (by recognizing and removing them from secondary harms)? Does equality mean women and men should be free to choose certain social practices? Languages of 'choice' and 'freedom' (and culture) are gaining traction in the framing of equality cases. What do they mean and how do they square with jurisprudence and Charter values as articulated therein? Our point of departure will be recent cases where contrasting views of harm, choice, and equality have been presented (eg., prostitution, polygamy, common law marriage, and face coverings).

Moderator

The Honourable Justice Pepita Capriolo

Superior Court of Québec

Montréal, QC

Panelists

The Honourable Justice Sheilah Martin

Court of Queen's Bench of Alberta

Calgary, AB

Professor Nathalie Des Rosiers

General Counsel, Canadian Civil Liberties Association

Toront, ON

6:00 PM

Cocktail Dinatoire and Passing of the Banner Hochelaga 1
Silent Auction Opens

9:00 PM

Silent Auction Concludes

FRIDAY, MAY 10, 2013

7:00 AM - 8:00 AM	Wellness Session: Yoga	Saint-Charles
7:00 AM - 9:00 AM	Breakfast	Beaver Club
9:00 AM - 9:15 AM	Next year in Arusha - IAWJ Biennial 2014	Saint-François
	Presenter	
	The Honourable Justice Eusebia Nicholas Munuo	

JUDGING AND CHANGE

This session will include a conversation between retired Supreme Court Judges, The Honourable Claire L'Heureux-Dubé and Marie Deschamps. Our purpose is to examine the impact on them and other judges who take "the path less followed" in response to newer/expanded understandings of justice, fairness, social change and social inclusion. We will consider how extensively Justice L'Heureux-Dubé's dissents in particular have become law/have changed the law. Pushing against established bodies of legal principle can often entail a delicate balance of courage and resilience when those decisions are unpopular. The parameters of judicial method in providing structure and collegiality in providing support in the process of legal change will be considered and opened for discussion from the plenary group.

9:15 AM - 10:05 AM	Courage in Judging: A Conversation	
	Introduction	
	The Honourable Danielle Côté, Associate Chief Judge	
	Presenters	
	The Honourable Justice Marie Deschamps	
	Supreme Court of Canada, retired	
	Ottawa, ON	
	The Honourable Claire L'Heureux-Dubé	
	Supreme Court of Canada, retired	
	Québec, QC	

FRIDAY, MAY 10, 2013

10:05 AM - 10:30 AM **Going Where the Argument Leads: Legal Change Over Time**

Chair

The Honourable Danielle Côté, Associate Chief Judge

Presenters

Professor Marie-Claire Belleau

University of Laval

Québec, QC

Professor Rebecca Johnson

University of Victoria

Victoria, BC

10:30 AM - 11:15 AM **Experience and Evolution as a Judge: Reflection and Discussion**

Moderator

The Honourable Danielle Côté, Associate Chief Judge

Panel

The Honourable Justice Marie Deschamps

The Honourable Lynn Smith

Supreme Court of British Columbia, retired

Vancouver, BC

11:15 AM - 11:30 AM **Summation and Program Closing**
