

The Daily Experiences of a Judicial Justice

A Personal Perspective

A Submission to the 2016 JCC

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Introduction

It has been my experience that compensation commissions receive scant information relating to some of the profoundly personal experiences that a Judicial Justice encounters in course of carrying out their public trust. As such, I offer up a few my own.

Dealing With the Unrepresented Accused

Given that over 75,000 persons appear in court and by video before Judicial Justices (averaging 3,000 per Judicial Justice), we have been recognized as the “*face of the court*”. Presiding over a trial where the disputant / accused is unrepresented by counsel can be very arduous.

For new Canadians the setting and the process may be totally alien to any life experience they have had. For other disputants, their view of the trial process is tainted by representations they have seen in various media. Their approach to cross examination in particular, may range from the “Perry Masonesque” to the “Monty Pythonesque”.

I must be constantly explain / clarify the procedural aspects of the proceedings for their benefit. Most disputants are not even familiar with the concepts of “*presumption of innocence*” or the onus on the Crown to prove their case “*beyond reasonable doubt*”. Rather than try and explain the defence of “*due diligence*”, I will glean from the evidence before me whether or not this is a live issue and if necessary ask the disputant to elaborate further on the steps they took to avoid committing the alleged offence.

New Canadians are often the most intimidated by the proceedings, and the hardest to communicate with in terms of court proceedings. They sometimes fear that a conviction will adversely impact their status in Canada, or that a conviction for a regulatory offence will give them a record that will affect their ability to travel freely across borders.

Reducing legal terms to “plain English” is of little assistance to those who have limited or no English language skills. Since interpreters are not readily available, it was often necessary to adjourn trials to another day, something which in and of itself was a difficult concept to explain to the disputant before me.

I recall a man of Middle Eastern descent who attended for a trial and sat at the back of the courtroom watching as the police prosecuted various Motor Vehicle Act violation tickets. When his matter was finally called, he came forward and was asked if he understood the charge on the ticket and how he wished to plead to the matter. In reply, he said that he was not going to waste the courts valuable time and wished to plead guilty.

He further stated that what he had witnessed in the courtroom had profoundly affected him. Had he not seen it for himself, he would not have believed that a police officer could be held accountable, and would have to prove their case before an independent judicial officer. Up until then the concept had been entirely foreign to him.

In the course of any given year, I would conduct hearings for as many as three thousand disputants. Given this volume, it was only natural from a statistical point of view that I dealt with a significant number of people from society's fringes, as well as those who are in a fragile state of mind. Towards the end of a long sitting day, mental fatigue sets in and you tend to drop your guard so to speak, especially if you are just dealing with an 'apparent' straightforward guilty plea. There is no such beast.

A woman attended court one day to deal with a couple of parking tickets but her English was very poor. They were marked up on the record of proceedings as being for disposition by way of a guilty plea and no interpreter had been ordered to assist her with submissions. Rather than inconvenience her by asking that she return on another day when an interpreter could be available, I first suggested that we try to muddle through and she nodded in agreement.

Through tears and sobs she was able to relate to me that she got these tickets for "overtime parking" on the street adjacent to Children's Hospital, on consecutive days. I dreaded hearing the answer to the question that I then posed to her – *Did you have a child in the hospital?* She replied in the affirmative, and that the child had died. As a parent / grandparent, I felt like I had been punched and for a moment I turned my chair away to compose myself before granting her an absolute discharge and expressing my deepest condolences.

On another occasion, a woman took the stand to give evidence in relation to an allegation of "disobey a red light". She bluntly stated that not only did she see the red

light, she had no intention of stopping for it at the time. The Crown prosecutor asked why she was saying what she did.

“My husband was having a heart attack beside me and I couldn’t wait for an ambulance. He didn’t make it to emergency”.

She then produced a death certificate and broke down on the witness stand. I immediately asked the Crown if they thought that it was in the public interest to continue with the prosecution. The Crown entered a stay of proceedings.

Assisting disputants with mental health issues required a great deal of delicacy so as not to give them the impression that the Court was being condescending in any way to their condition, while at the same time considering the balance between the nature of the charge and the public interest in continuing the proceeding.

I recall one case in particular, where I was reviewing my files before court and found one of them to be very thick. On closer inspection I found a 25 page single spaced submission outlining reasons, both personal and legal, as to why the ticket should be dismissed. Essentially, the Swiss Secret Service were pursuing the disputant, and had planted a tracking device in the crown of one of his molar teeth at some point when he had dental work done. Signals were then beamed to a satellite from this device in order to keep track of his whereabouts.

The disputants attached *curriculum vitae* showed multiple degrees in the sciences and physical engineering. His work history showed that he had been employed by many prestigious engineering firms in Europe and North America, but never for a period of more than a year. His address indicated that he now resided in the impoverished heart of the downtown eastside.

When I called the matter in court I asked the prosecutor to review the disputants’ submission with a view as to whether the Crown felt that there was sufficient merit in the ‘legal argument’ to warrant a stay of proceedings. I then engaged the disputant in some discussions pertaining to procedures and plea options. In short order the Crown indicated that they had ‘*found a defect*’ in the information and withdrew the charge.

Search Warrants and Judicial Interim Release Hearings

When not assigned to court duties, I am called upon to deal with the liberty interests of accused persons seeking bail, or to safeguard the privacy interests of citizens who may be subject to applications by the state to search their homes. Judicial Justices carry out as many as 20,000 hearings in the course of a year, and consider over 8,000 search warrant and production order applications.

In the course of carrying out these duties I am regularly exposed to horrific details that are difficult to put aside. Applications for search warrants in relation to the sexual exploitation of children sometimes contained photographic exhibits. Others contained shockingly explicit detail – such as the details of a website which allows its' private members to view live sexual abuse of children “on demand”.

Search warrants (and many bail hearings) often contain a litany of horrific physical injuries suffered by victims and are a sad testament to the human condition. What drives a mother to murder her new-born child? What motivates a father to sexually assault a six month old infant?

It makes for grim reading to note in an ITO that police officers had to escort young children out a second floor window of their home in the middle of the night so that they didn't have to witness their murdered mothers corpse on the stairway.

The struggle to maintain ones composure can be particularly difficult when dealing with the mentally ill, some of whom have attempted “suicide by cop” in the course of their arrest – some have even implored the officer having conduct of the hearing to do them the favour.

How do you shake the image of a disturbed accused, who douses his elderly mothers' lap dog in gasoline and sets it alight; causing the dog to leap onto her, resulting in fatal burns?

As a parent and grandparent, I find that Youth bail hearings can test my judicial composure to the limit. One disturbed youth provided a statement wherein he cold-bloodedly related how he planned to kill both his parents by an act of arson, resulting in him being placed in the care of his grandmother. He then planned to smother her with a pillow so that he could live off the inheritance and insurance payout from the murders.

All of these scenarios may play out with little or no warning, both in traffic and bail court, as well as in the course of reading search warrant applications. Judicial Justices are mutually supportive and we cope as best we can by “debriefing” during the day if

there is any down time. Nonetheless, the “vicarious trauma” flowing from many of these events will remain with some us for the rest of our lives.

Thank you for your consideration

Gerry Hayes, Judicial Justice