



L'association Canadienne
des juges des cours provinciales

The Canadian Association
of Provincial Court Judges



AGENDA

CAPCJ NATIONAL EDUCATION CONFERENCE AND AGM

September 18-21, 2024

Sheraton Cavalier

612 Spadina Cres. E.

Saskatoon, SK

Conference e-Binder Link: <https://www.nji-inm.ca/nji/inm/ebinder.cfm?a=C5010703E10553C8DF723597A7A74BF7>

e-Binder Password: CAPCJ2024

The conference materials are also available on the CAPCJ Website: <https://judges-juges.ca/conferences-and-meetings/conference-2024-saskatoon-educational-materials/>

WEDNESDAY, SEPTEMBER 18, 2024

2:00 PM - 6:00 PM

Registration

Conference Foyer

7:00 PM - 10:00 PM

Opening Reception

Remai Modern

Please ensure that you bring your name tag lanyard with you as it contains a drink ticket and is your entry into the venue.

Bus leaves from the Sheraton at 6:45 p.m., stopping at the Delta on the way to the Remai. The bus will circle this route every fifteen minutes until 10:00 p.m.

9:30 PM - 1:00 AM

Hospitality Suite - Trivia & VR

Starlight Room

Trivia from 9:00 p.m. to 10:00 p.m.

Virtual reality from 10:00 p.m. to midnight.

THURSDAY, SEPTEMBER 19, 2024

8:00 AM - 12:00 PM

Registration

Conference Foyer

THURSDAY, SEPTEMBER 19, 2024

8:00 AM - 9:00 AM	Breakfast	Centre-East
9:00 AM - 9:10 AM	Opening Remarks	Centre-East
9:10 AM - 10:00 AM	Keynote Address	Centre-East
	Introduction	
	The Honourable Judge Lua Gibb Provincial Court of Saskatchewan Saskatoon, SK	
	Keynote Speaker	
	The Honourable Justice Michelle O’Bonsawin Supreme Court of Canada Ottawa, ON	
10:00 AM - 10:30 AM	Break	Conferenc Foyer
10:30 AM - 11:30 AM	Understanding and Applying Gladue in Canada	Centre-East
	<p>This panel has three First Nation judges who have sat in Saskatchewan Provincial Court and the Territorial Courts in either the NWT or the Yukon. Retired Judge Gerald M. Morin, who ran the Cree Court in Saskatchewan, will share his wealth of knowledge regarding how the information related to a person’s Gladue factors ought to be taken into consideration when sentencing an Indigenous offender. Judge Brass will speak about the Gladue Awareness Project sessions that were held in 2017-18 throughout Saskatchewan and will speak on what changes that may have occurred since those sessions were held. Judge Whitecloud-Brass will speak about sitting in a jurisdiction where Gladue Reports or reporting is not a common practice. These speakers will speak about the practical approaches that may be taken in consideration of the <i>Gladue</i> case in an effort to try to identify ways in which the goals of the <i>Gladue</i> case may be met within our respective courts.</p>	
	Chair	
	The Honourable Judge Lua Gibb	
	Presenters	
	The Honourable Judge Michelle R. Brass Provincial Court of Saskatchewan Regina, SK	

THURSDAY, SEPTEMBER 19, 2024

The Honourable Judge Stephanie Whitecloud-Brass
Territorial Court of the Northwest Territories
Yellowknife, NWT

Gerald Morin, O.C., K.C., I.P.C.
Provincial Court of Saskatchewan (retired)
Prince Albert, SK

11:30 AM - 12:30 PM

Mental Wellness Presentation

Centre-East

What happens to a judge when they step off the bench at the end of the day and resume “being human”, carrying with them all that they have heard, seen and read? Vicarious trauma is one of the leading causes of mental health challenges for judges. We will talk about how to manage our own mental health and how to best support our judicial colleagues. Because mental health exists along a continuum, we will learn how to check in with ourselves and access the appropriate strategies and/or supports to ensure our mental wellness.

Chair

The Honourable Judge Brad Mitchell
Provincial Court of Saskatchewan
Saskatoon, SK

Presenter

Retired Justice Anne-Marie Hourigan
Ontario Court of Justice

12:30 PM - 1:45 AM

Lunch

Conference Foyer

1:45 PM - 2:45 PM

More Than a Voyeur: Engagement with Indigenous Peoples in Street Lifestyles

Centre-East

This session examines the complexities and realities of Indigenous peoples who have been involved with, or are currently engaged in, street gangs and street lifestyles. Dr. Robert Henry will present on his nearly two decades worth of work on issues related to Indigenous street gang involvement. Through his research, he offers an understanding of Indigenous street gangs through a survivance lens and challenges theories of deviance which have primarily framed criminal justice approaches to Indigenous street gang activities. Within the panel, a

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fireside chat with former gang members from Saskatoon and Winnipeg will also occur. These discussions will both highlight the individuals' experiences and what they hope judges, lawyers, and others will take into consideration at sentencing and also offer perspectives on incarceration as a deterrent to gang involvement.

Chair

The Honourable Judge Nathan Forester

Provincial Court of Saskatchewan
La Ronge, SK

Presenter

Professor Robert Henry

Department of Indigenous Studies
College of Arts and Science
University of Saskatchewan
Saskatoon, SK

Panel Members

Chantel Huel

STR8UP

Nathan Ballantyne

STR8UP

Timothy Barron

4 Sacred Hearts

2:45 PM - 3:15 PM

Break

Conference Foyer

3:15 PM - 4:15 PM

**Autistic perspectives and insights on
criminal justice in Canada**

Centre-East

Have you ever wondered whether a person in your courtroom is autistic? Have you wondered what supports or information might benefit that person and the process? In this session, Stephanie Ehret and Mackenzie Salt discuss findings from their research with autistic adults in Canada about the criminal justice system. Through their work, they heard about a range of experiences, from those who had been in court as witnesses, were the accused, or work in the system. While autistic people are not more likely to be involved in criminal behaviour than others, through a variety of circumstances they are

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more likely to come in contact with the legal system. Here, Drs. Ehret and Salt will share a range of strengths and challenges in criminal justice policies and practices for autistic adults. They will offer recommendations for innovative and destigmatizing strategies to improve inclusion and accessibility and to expand trauma responsive capacities within the criminal justice system.

Chair

The Honourable Judge Brad Mitchell

Provincial Court of Saskatchewan
Saskatoon, SK

Presenters

Professor Stephanie Ehret

Department of Sociology
Trent University
Peterborough, ON

Dr. Mackenzie Salt

Postdoctoral Fellow
Department of Psychiatry and Behavioural Neurosciences
McMaster University and Autism Alliance of Canada
Hamilton, ON

8:30 PM - 1:00 AM

Hospitality Suite - Karaoke Night

Starlight Room

FRIDAY, SEPTEMBER 20, 2024

8:00 AM - 9:00 AM

Breakfast

Centre-East

9:00 AM - 10:00 AM

The Sexual Assault Quagmire

Centre-East

In this provocative talk, Professor Peter Sankoff will explain what a modern sexual assault trial looks like, and how these trials have become a major source of injustice for the accused, complainants and the system more generally. Drawing on his experience as counsel in these cases and as a law professor, Sankoff will explain exactly what is happening and why. After demonstrating the gravity of the problem, he will explore the impact changes to our trial process have had on the parties, the judiciary and the

repute of our system of justice. Finally, he will offer some solutions to the crisis, all of which focus on the need to compromise on the search for “perfect outcomes”.

Chair

The Honourable Associate Chief Judge Sanjeev Anand

Provincial Court of Saskatchewan

Saskatoon, SK

Presenter

Professor Peter Sankoff

Faculty of Law

University of Alberta

Edmonton, AB

9:00 AM - 10:00 AM

**Concurrent Civil Law Session: Wrongful
Dismissal**

West

Canadian employment law has changed significantly over the past few years. From termination clauses and restrictions on other contractual protections, to the high threshold required to dismiss an employee for cause, Canadian employers have an increasingly tough time before our Courts. Courts are also awarding larger reasonable notice periods and larger damages awards, increasing the potential liability employers face. Changes in our Courts, like the recent increases for the maximum civil claim amounts allowed in Alberta’s Court of Justice and Saskatchewan’s Provincial Court, have the potential to further change how employment law cases are litigated and decided. Howard Levitt discusses these changes and the future of employment law in Canada.

Chair

The Honourable Judge Jane Wootten

Provincial Court of Saskatchewan

Saskatoon, SK

Presenter

Howard Levitt

Senior Partner, Levitt Sheikh LLP

Toronto, ON

10:00 AM - 10:30 AM **Break** Conference Foyer

10:30 AM - 11:45 AM **Similar Fact Evidence** Centre-East

This session will review the law governing admissibility of similar fact evidence in Canadian criminal cases and explore some complications and areas of uncertainty. Professor Dufraimont will link the law on similar fact evidence to larger concerns about bad character evidence and trace the development of the current approach to similar fact evidence, laid out principally in *R v Handy*, 2002 SCC 56. Among the issues to be explored will be use of similar fact evidence across counts of an indictment, linkage evidence, collusion and the use of similar fact evidence to prove identity. The session will also include a participatory element, with scenarios drawn from the case law presented for discussion in small groups.

Chair

The Honourable Associate Chief Judge Lane Wiegiers

Provincial Court of Saskatchewan

Regina, SK

Presenter

Professor Lisa Dufraimont

Osgoode Hall Law School

York University

Toronto, ON

10:30 AM – 11:45 AM **Issues In Imposing Youth and Adult Sentences Under the YCJA** West

Professor Kelly and Associate Chief Judge Anand explore key issues facing judges in youth criminal cases as well as recent developments under the Youth Criminal Justice Act (YCJA). Matters pertaining to the imposition of youth sentences, such as the interpretation of the legislative gateways to custody, the validity of the statutory restrictions on deferred custody and supervision orders, and the varying appellate approaches to the sentencing of youth sex offenders are analyzed. In addition, the constitutional right to a trial within a reasonable time in the youth context and the special procedural safeguards associated with the taking of youth statements will be examined as will the distinctly unique judicial interim release regime for youth. Finally,

current and emerging developments involving the imposition of adult sentences on young persons will be discussed.

Chair

The Honourable Judge James Rybchuk

Provincial Court of Saskatchewan

Regina, SK

Presenters

The Honourable Associate Chief Judge Sanjeev Anand

Provincial Court of Saskatchewan

Saskatoon, SK

Professor Lisa Kelly

Faculty of Law

Queen's University

Kingston, ON

11:45 AM - 1:00 PM

Lunch

Centre-East &
West

1:00 PM - 2:00 PM

Cell Phone Searches Ten Years after *Fearon*

Centre-East

In *R v Fearon*, a narrow majority of the Supreme Court permitted cell phone searches incident to arrest with the caveat that police must meet several additional criteria, given the heightened privacy interests in cell phones. Ten years later, we will learn how those limitations have been applied and consider whether, as the minority predicted, they've proven indeterminate and inadequately protective of digital privacy.

Chair

The Honourable Judge Marylynne Beaton

Provincial Court of Saskatchewan

Regina, SK

Presenter

Assistant Professor Colton Fehr

College of Law

University of Saskatchewan

Saskatoon, SK

1:00 PM - 2:00 PM

Reflections on Bill C-92: An Act Respecting First Nation, Inuit and Métis, Children, Youth and Families

West

An Act respecting First Nation, Inuit and Metis children, youth, and families has impacted nationally the approach to child protection issues and the rights of Indigenous peoples affirmed by s. 35 of the *Constitution Act, 1982*. This ground-breaking piece of legislation and the Supreme Court of Canada's unanimous landmark decision upholding the validity of the legislation and the inherent rights of First Nations, Metis, and Inuit over the protection of their children will be discussed by Justice Stahl and Koren Lightning. This session will explore the impacts of the legislation in child welfare, the issues that are arising in its implementation, and how different jurisdictions have addressed the legislation through an update on the cases that have since considered the legislation.

Chair

The Honourable Judge Lua Gibb

Presenters

The Honourable Justice Dorinda M. Stahl

Court of King's Bench for Saskatchewan
Saskatoon, SK

Koren Lightning, K.C.

Legal Director
Wahkohtowin Law and Governance Lodge
Term Lecturer
Faculty of Law
University of Alberta
Edmonton, AB

2:00 PM - 2:30 PM

Break

Conference Foyer

2:30 PM - 3:30 PM

Expert Evidence

Centre-East

This session will review the law on expert evidence in Canadian courts and identify some challenging related issues. It will explain the development of the law from *R. v. Mohan*, [1994] 2 S.C.R. 9, to *White Burgess Langille Inman v Abbott and Haliburton Co.*, 2015 SCC 23, and beyond. Issues addressed will include the scope of expert testimony, expert bias, reliability of expert testimony, novel and contested science, the

distinction between hard science and soft science, the relationship between procedural rules and admissibility standards, the line between fact and opinion, litigation and participant experts, and the problem of weighing competing expert opinions. In the second part of the session, participants will engage in small group discussion of a detailed expert evidence scenario drawn from the case law.

Chair

The Honourable Associate Chief Judge Lane Wiegiers

Provincial Court of Saskatchewan
Regina, SK

Presenter

Professor Lisa Dufraimont

Osgoode Hall Law School
York University
Toronto, ON

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CAPCJ Website

Civil Law Session: Pure Economic Loss

Pure economic loss actually describes several different kinds of loss, some of which Canadian law treats as recoverable, some not. This presentation will canvass the three recognized forms of pure economic loss, explain the law regarding each, and (hopefully) make the subject as straightforward as possible.

Presenter

The Honourable Russell S. Brown

Vancouver, BC
(pre-recorded presentation)

3:30 PM - 3:45 PM

Final Remarks and Presentation on Next Year's Conference

Centre-East

6:00 PM - 11:00 AM

From Living Skies to Starry Nights

West-Centre-East

- Cocktails 6:00 PM
- Buffet Dinner 7:00 PM
- CAPCJ Honours 7:30 PM

- **Dance featuring The Stone Frigate Big Band to follow**

10:30 PM - 1:00 AM

Hospitality Suite

Starlight Room

SATURDAY, SEPTEMBER 21, 2024

9:00 AM – 12 :00 PM

CAPCJ Annual General Meeting

South