Distributed-Justice Solution for the Crisis in the Canadian Legal System

by Denis Rancourt / May 16th, 2017

SUMMARY: The Canadian legal system is in crisis. I describe the circumstances of the crisis, its features, and its large-scale causes. I propose a radical and complete solution in the form of a “distributed justice” model. The model is a wiki approach for judicial decisions, using small teams of decision makers chosen from a large pool of non-legally-trained jury-like contract employees. Prerequisites of the model are: dissolutions of the lawyer and judge monopolies; and complete transparency and public access to recordings at every stage.

Canadian courts have gone to hell. The Chief Justice goes on and on about a crisis in “access to justice”, without expressing any concrete solutions whatsoever. The family courts are an obscene nightmare, shredding families faster than we can make them. Lawyer fees are through the ceiling and lawyers cling to their monopoly like flies to shit. No justice, justice delayed and justice way-over-priced are now the norm.

Beyond the economic and resources issues, the courts themselves are exceedingly class-status biased, where trial-court judges systematically give deference to the most highly-paid liars from the most “prestigious” law firms, while showing contempt for ground-floor lawyers, and outright hatred for self-represented litigants.

I’m not exaggerating. I’m stating reality as it is. That is why my words may sound excessive. Reality is far beyond what most of us would like to believe.

I have been intensely observing the courts and administrative tribunals, from the inside, now for more than a decade, up to all levels of courts in the country, mostly as a litigant (both represented and not represented) and recently as a researcher for the Ontario Civil Liberties Association (ocla.ca). Here is a report I made in 2014[1]

Why do lawyers lie? First, because they are trained to lie. They are trained to present and defend a plausible “version” of the “truth” that best advantages the client. This is called “advocacy” or “trial advocacy”, and their work in doing so is concealed behind a wall of secrecy called “solicitor-client privilege”. Crown attorneys (state criminal lawyers) have a broader responsibility but they are nonetheless notorious hacks looking for convictions. Second, because they are handsomely rewarded for good lying. It’s that simple.

The judges never interfere with the lawyer lies. They guard themselves from vigorously testing these lies, or even from spelling them out clearly. That is called the “adversary system”, in which each side tells its best lies, which may or may not to be related to the truth. If the judges were to seek the truth, then they could be challenged as

showing “bias” and as misbehaving. In fact, their real and systemic bias requires them to stay clear away from the truth.

Why are judges biased? First, because they were trained and practiced as lawyers. Second, they were named because of subservience to political and systemic interests, beyond any other criterion. Third, their first concern is their own social status, especially within the legal profession. Fourth, there are punishments for rulings that offend hierarchical dominance, and rewards for rulings that support society’s dominance structure. The punishments include everything from vigorous viable appeals to gala-event gossip. The rewards include conference keynote talks, favourable academic reviews of decisions, and political promotions to higher courts and to high positions within a court.

Naturally, the higher the court, the more political are its decisions, often reversing the rare fundamentally correct and well-reasoned lower court rulings that “err” towards decency for the individual (I’m making a list).

In addition to all this, and as supported by all this, these boys (judges working with lawyers) continuously act to degrade the constitutional protections of the individual, by contributing a constant jurisprudential creep towards less and less individual rights, not to mention their central role actually drafting laws and advising in the creation of new laws.

Dwelling on the latter institutional damage to the fabric of society would take us beyond the scope of the present article, but there are many Canadian examples of judicial creativity in concocting “tests” for increasing numbers of newly carved-out classes of circumstances… (Another list.)

The said jurisprudential creep away from allowing individual autonomy and influence was brilliantly exposed, for example, in the seminal critical works of Alexander Aleinikoff in the USA, who coined the phrase “familiarity breeds consent”. This known tendency has now been joined by runaway legal-system degradation that accompanies the on-going assault against the working and middle classes in Western countries, in favour of globalized interests.

The economic assault is accompanied by more and more totalitarian control over the individual. Thanks to independent sources such as Wikileaks and a thriving alternative media (social media) network, and no thanks to academics and foundation-funded NGOs, the increasing socio-political totalitarianism is correctly perceived as the multi-tentacular work of the recognizable military-industrial-finance-propaganda complex that Eisenhower described before the propaganda component was fully integrated.[2] The current rapid increases in totalitarianism are driven at the highest level by loss of USA hegemony and the emergence of Eurasia and competing trade structures such as BRICS.

The crisis in the legal system is a predictable consequence of this sudden global shift, since our constitutional legal system was designed to stabilize a domestic society having significant post-depression and post-war individual freedoms (in the absence of present levels of paramilitary policing, surveillance, and enforcement), and is thus maladapted to the new dystopic reality. However, if individual rights are not defended and preserved, then there will be a true melt-down of Western society. So far, the legal system has refused to play its originally intended safeguard role, and has essentially accompanied the new impositions at breakneck speed. There are only a few valiant resistors (“activist judges”?) who are exceptions that prove the rule.[3], [4]

The features of the crisis are unmistakable, and include: a myriad of statutes that attack hard-earned classic civil rights and liberties (speech, privacy, autonomy), that directly attack constitutional rights without being refuted by

the judiciary, huge prison populations, overtly aggressive in-court judicial behaviour (Canada refuses to have in-court video cameras), unmanageable numbers of litigants, unprecedented trial delays, aggressive bail-judge practice, and increasing judicial bias (substituting for principled judicial discretion).

It is not an accident that the Chief Justice has made it a speaking-point fetish. The crisis is also causing cultural backlash that includes the "freemen on the land" phenomenon, a growing and visceral men's rights movement led by influential men's rights activists (MRAs)[5], and a growing number of incisive legal reform associations. The Lighthouse Project is emblematic and worthy of note.[6]

Well, I have a practical domestic solution. In three words: Dissolve the monopolies.

In this day and age, there are more educated persons in Canada than ever before, and they are all computer and research savvy. There are more and more self-trained litigants who do outstanding work.

The only reason that judges do not allow self-represented litigants to call on whatever help they choose is because that would put a burden on the judge to actually think about the law, rather than simply gauge party-status, based on known quantities that are the certified lawyers with their canned arguments.

Everyone now has access to the powerful legal search engine "CanLII", which is not behind a prohibitive pay wall. Everyone knows how to do a Google search. Everyone knows how to read, and can learn things on which their welfares depend.

There is no physical or technical reason that justice cannot now be distributed.

There are two monopolies that need to be broken.

The first anti-justice monopoly that needs to be removed is the lawyer monopoly. A litigant must bear the responsibility of his/her free choice of help or representation. Period. Then it is up to the judge to impartially impose standards of evidence, and to correctly rule on the evidence.

This means that a judge might not have both sides spoon feeding him/her the formulaic law, and it implies that a judge would need to know and research the law, in order to make a correct ruling that does not selectively ignore relevant law. What a concept, heh?

That is more work for the judge, which brings me to the second anti-justice monopoly that needs to be abolished: judges. All judges could be replaced by a network, and the network individuals do not need to be highly (over) paid tenured servants. "Judge" network individuals could be drawn from the general public (as with juries) and let loose, to a large extent.

This follows the original Wikipedia model of how editors create Wikipedia articles and make editorial decisions, except that in the presently overrun Wikipedia there are large numbers of secretly paid editors and the organization has steadfastly refused to enact policy against paid editorship[7],[8]

My idea is that "pool judges" would be impartially and transparently selected and transparently paid at a fair market price for the work. These pool judges would be selected at random from among general-population applicants, allowed to refuse to serve, and screened solely for overarching conflict of interest (such as financial or benefit "encouragement" from enthusiastic employers or special interest entities). As a result there would be retired and otherwise underemployed individuals, which is a good thing. Proportional rather than disproportionate social-status representation would thus be self-managed.

Working groups of small numbers of pool judges would make the decisions in individual cases. Their post-trial deliberations would be protected by privilege and made entirely public and accessible (we have the technology). The post-trial decision-conference would be recorded for the public and would have the judge team present the evidence and hash out their reasoning, all done transparently. Their draft written reasons and decisions would be allowed to be openly critiqued by all parties in the case and by interested observers prior to being finalized. Again, the entire process would be transparent and public.

The law is too important to leave it hijacked by career monopolies, but the prospects for change are dim. The reactionary legal establishment cares only about itself and vigorously opposes any movement towards a working and responsive model. This is clear even from the smallest efforts. For example, the lawyers vigorously fight against paralegals[9], and the judges will never voluntarily accept needed video cameras in the courtrooms.[10]

The fact that we have the dinosaur that we have, where actual justice is entirely possible in our present technological society, proves that the systemic imperative is dominance imposition.

The legal system's crass compliance with this imperative is causing it to come dangerously close to self-destruction. Will this proximity be enough? The history of the professional classes suggests not. The intelligentsia always goes along with even suicidal projects such as wars of global conquest.

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1. Rogue Courts in Canada Trample Self-Represented Litigants", by Denis Rancourt, September 29th, 2014, *Dissident Voice*. [↩]
2. Dwight D. Eisenhower national television address of January 17, 1961. [↩]
3. "Ottawa bail court a 'disgrace', justice of the peace alleges", March 15th, 2016, *Ottawa Citizen*. [↩]
4. "In challenge to Ottawa, judge refuses to impose mandatory sentence", February 13th, 2012, *The Globe and Mail*. [↩]
5. "*The Red Pill: A Feminist's Journey into the Men's Rights Movement*", USA documentary film by Cassie Jaye, 2016, Jaye Bird Productions. [↩]
6. "Feminism LOL", YouTube channel of Diana Davison. [↩]
7. "Wikipedia: Paid editing (essay)", accessed on May 16th, 2017, *Wikipedia*, and links therein. [↩]
8. "The Covert World of People Trying to Edit Wikipedia—for Pay", August 11th, 2015, *The Atlantic*. [↩]
9. "NSRLP Petition in support of the Bonkalo Report", by Margarita Dvorkina, accessed on May 16th, 2017, *Paralegal Society of Canada*. [↩]
10. "OCLA Petition 'Allow Cameras in Ontario's Courts' ", by Ontario Civil Liberties Association, April 11th, 2016. [↩]

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