

# TABLE OF CONTENTS

Books by John C. Bouck	xii
Foreword	xiii
Preface	xv
Acknowledgments	xx
Introduction	xxiii
CHAPTER ONE — CANADA’S CONSTITUTION	1
Introduction	1
Canada’s Constitution 1867 – 1982	2
Canada’s 1982 Constitutional Amendments – Repatriation Or Not?	7
The Responsible System Of Parliamentary Government	9
America’s System Of Responsible Government	12
Powers Of A Canadian Prime Minister	13
Federalism – Centralism Versus Local Control	20
Provincial Constitutions	23
A Constitutional Convention	23
Recommendations For Change	25
CHAPTER TWO — CANADA’S COURT SYSTEM	27
Introduction	27
Canadian Federal Courts	28
<i>The Supreme Court of Canada</i>	29
<i>The Federal Court of Canada and the Federal Court of Appeal</i>	32
<i>The Tax Court of Canada</i>	32
<i>Appointing Federal Court Judges</i>	33
Canadian Provincial Courts	33
<i>Provincial and Territorial Courts of Appeal</i>	33
<i>New Provincial Intermediate Appellate Courts</i>	34
<i>New Supreme Provincial Appellate Courts</i>	34
<i>Provincial Superior Trial Courts</i>	35

TABLE OF CONTENTS

*Chief Justices of Provincial Superior Trial Courts* . . . . . 37  
*Provincial Trial Courts* . . . . . 41

Merger Of The Provincial Trial Courts With  
The Superior Trial Courts . . . . . 42

Collegiality Between Trial And Appellate Courts . . . . . 44

Recommendations For Change . . . . . 46

*The Supreme Court of Canada* . . . . . 46  
*New Supreme Provincial Appellate Courts* . . . . . 46  
*New Provincial Intermediate Appellate Courts* . . . . . 47  
*Superior Trial Courts* . . . . . 48

CHAPTER THREE — CANADA’S CIVIL JUSTICE  
SYSTEMS . . . . . 49

Introduction . . . . . 49

Benefits Of A Civil Justice System . . . . . 50

Disharmony Between Rules Of Court And  
Their Administration . . . . . 54

*The Executive’s Attempts To Make The 1883 Rules Relevant* . . . . . 56  
*Practice Directions* . . . . . 58

Processing Civil Claims – The Master Calendar System . . . . . 59

Processing Civil Claims – The Individual Calendar  
System . . . . . 62

Mediation, Arbitration And Statutory Tribunals . . . . . 66

Selling And Delaying Justice . . . . . 69

Child Custody And Access Reports . . . . . 71

Recommendations For Change . . . . . 75

CHAPTER FOUR — CIVIL JURY TRIALS . . . . . 77

Introduction . . . . . 77

Benefits Of Civil Jury Trials . . . . . 78

The Decline Of Civil Jury Trials In Britain And Canada . . . . . 81

The Myth That Civil Juries Award Excessive Damages . . . . . 93

Canadian Appellate Court Bias Against Plaintiffs . . . . . 94

The Supreme Court Of Canada And The Rough Upper  
Limit Of General Damages In Personal Injury Cases . . . . . 96

TABLE OF CONTENTS

The Provincial Executive’s Hostility To Civil Jury Trials · · 101  
    *No Civil Jury Trials for Plaintiffs Suing Provincial  
    and Federal Governments* · · · · · 101  
    *The Executive’s Rules of Court Unrealistically  
    Limit the Right to a Civil Jury Trial* · · · · · 102  
    *Exorbitant Executive Fees Discourage Civil Jury Trials* · · · · · 104  
Other Civil Jury Reforms · · · · · 105  
    *Challenging Jurors For Cause* · · · · · 106  
    *Permitting Lawyers to Argue the Amount of General Damages* · 108  
    *Pattern Jury Instructions* · · · · · 108  
    *Motion for a New Trial – Variation of Damages Awards  
    by Trial Judges* · · · · · 110  
    *Questioning Jurors After the Trial* · · · · · 111  
Recommendations For Change · · · · · 112

CHAPTER FIVE — CANADA’S CRIMINAL JUSTICE  
SYSTEM · · · · · 115  
    Introduction · · · · · 115  
    Criminal Law Constitutional Errors · · · · · 116  
    Criminal Procedural Law · · · · · 119  
    Constitutional Options · · · · · 121  
    Recommendations For Change · · · · · 122

CHAPTER SIX — CRIMINAL JURY TRIALS · · · · · 123  
    Introduction · · · · · 123  
    The Right To A Trial With A Jury And The Process For  
    Getting There · · · · · 124  
    The Appellate Courts’ Criminal Jury Instructional  
    System · · · · · 125  
    The Appellate Court Standard For Ordering New  
    Trials Because Of Jury Instructional Errors · · · · · 129  
    Pattern Jury Instructions · · · · · 131  
    Canadian Criminal Jury Instruction Books · · · · · 133  
    Recommendations For Change · · · · · 136

TABLE OF CONTENTS

CHAPTER SEVEN — CANADA’S SENTENCING SYSTEM . . . 139

- Introduction . . . . . 139
- The Discretionary Sentencing System . . . . . 140
- The American Discretionary Sentencing System . . . . . 140
- The Canadian Discretionary Sentencing System . . . . . 141
  - Sentencing at the Trial Court Level* . . . . . 142
  - Review of Trial Court Sentences by Provincial Appellate Courts* . . . . . 147
  - Review of Provincial Appellate Court Sentences by the Supreme Court of Canada* . . . . . 149
  - Reform of the Existing Sentencing Process* . . . . . 149
- Probation, Conditional Sentences And Parole . . . . . 151
- American Sentencing Guideline Systems . . . . . 153
- Canadian And Other Nations’ Guideline Systems . . . . . 157
- Recommendations For Change . . . . . 160
  - Federal Criminal Law – Sentencing* . . . . . 160
  - Federal Criminal Law – Guideline Sentencing* . . . . . 160
  - Provincial Criminal Law – Sentencing* . . . . . 161

CHAPTER EIGHT — SELECTING, APPOINTING OR ELECTING CANADIAN JUDGES . . . . . 163

- Introduction . . . . . 163
- Selecting And Appointing Judges In Canada . . . . . 164
  - Provincial Court Judges* . . . . . 164
  - Superior and Federal Court Trial Judges:*
    - Superior and Federal Court Appellate Judges* . . . . . 165
    - Supreme Court of Canada Judges* . . . . . 168
    - Appointments of Chief Justices to Superior Provincial Trial and Appellate Courts and Federal Trial and Appellate Courts* . . . . . 170
- Criticism Of The Canadian Selection And Appointment Process . . . . . 171
- Selecting And Appointing American Federal And State Court Judges . . . . . 172

TABLE OF CONTENTS

*Selecting and Appointing Judges to the American  
Federal Court System* ····· 172

*Electing, Selecting and Appointing American  
State Appellate and Trial Court Judges* ····· 173

Selecting And Appointing Judges In Australia, England  
And Wales And New Zealand ····· 176

*England and Wales* ····· 176

*Australia* ····· 176

*New Zealand* ····· 177

Charter Issues And Appointments To The Supreme  
Court Of Canada ····· 178

*Reforming the Selection and Appointment Process  
for the Supreme Court of Canada* ····· 180

The Selection And Appointment Of Other Federally  
Paid Judges – Transparency ····· 182

*Provincial Courts – Selection and Appointment of Judges* ····· 183

Recommendations For Change ····· 183

  

Books ····· BK-1

Articles ····· ART-1

Statutes ····· ST-1

Cases ····· CAS-1