

New rules of evidence would favor Crown, lawyer charges

By MARINA STRAUSS

A federal Government draft plan to change rules of evidence in Canadian courts tips the balance unfairly against accused people, the Canadian Bar Association's chairman of criminal justice has warned.

The proposals, intended as the basis of legislation expected to be introduced in Parliament next spring, were drawn up mainly by Government officials and Crown attorneys and favor their side in a courtroom, says lawyer Greg Brodsky of Winnipeg, who has reviewed a copy of the evidence rules.

"It was written by Crown attorneys, for Crown attorneys, with no eye to improving the administration of justice," Mr. Brodsky said in an interview last week. "There's no need for it."

Edwin Tollefson, a senior Justice Department official who headed the task force that drew up the new rules, agreed that certain provisions give

the Crown some advantages over the defence. But Mr. Tollefson said that other modifications restore a balance.

The Uniform Evidence Act, which would replace the Evidence Act as well as sections of the Criminal Code and common law provisions, was approved last summer by a group of senior federal and provincial officials, as well as a small number of academics, lawyers and judges' representatives, all delegates to the Uniform Law Conference of Canada. Mr. Tollefson said he expects that provincial governments will also adopt the proposals for their jurisdictions.

Mr. Tollefson confirmed the bar association's complaint that it was not consulted over the past three years in the revision of the evidence rules. (Association officials said they received the draft on their own initiative.) However, the Uniform Law Conference delegates who endorsed the proposals last summer included bar association members, Mr. Tollefson said.

A key point of contention for the bar association is the recommendation that the judge must be satisfied "on the balance of probabilities" that a statement from an accused person was obtained voluntarily, and not through threats or inducement. Currently, the judge must be satisfied beyond a reasonable doubt that the statement was made voluntarily.

Mr. Tollefson countered: "It really doesn't make a lot of difference. . . . A judge will automatically require more than just the merest proof" when dealing with a serious matter. "It may be subjective, but I think it is realistic."

The proposals would also allow the Crown attorney to comment on the accused's failure to testify in his own defence, something that is not permitted now. This, Mr. Brodsky argued, would instantly make the defendant appear as if he or she had something to hide, and was guilty.

"I act for a lot of natives, and they

don't want to testify," Mr. Brodsky said. "They don't give a good impression in court, or they're shy (and take a long time to express themselves clearly). That is aggravating for a jury."

"It should not be on the accused's head to prove that he shouldn't have been arrested or shouldn't be going to prison."

The proposed rules, however, prevent an accused from being questioned about past convictions unless the accused has given evidence against a co-accused or had been involved in perjury or fraud. The proposed rules would allow the Crown to cross-examine the defendant about any perjury or fraud convictions within the previous seven years. If the defendant has testified against a co-accused, he can be cross-examined about any previous record to establish his credibility, or lack of it. These provisions, Mr. Tollefson said, are an improvement for the defence.

The association also opposes a proposal to do away with the need for corroborative evidence, that is, independent facts that tend to support a witness's testimony against an accused. Instead, the legislation would require the judge to warn a jury if evidence is coming from a witness who was an accomplice of an accused, or if the evidence was coming from a witness who had been convicted of perjury, or if the accused was charged with treason, high treason or perjury on the basis of only one witness's evidence.

"There would have to be an instruction to the jury that it's dangerous to rely on evidence of one witness" because it's a question of one person's word against another's, Mr. Tollefson said.

The proposals would compel the defence to give a week's notice of the intention to present alibi witnesses. "I think it's unfair to make me expose all my defences in advance," thus giving

the Crown time to prepare a rebuttal, Mr. Brodsky said. (The federal official countered that the Crown needs that preparation time.)

"I'm not suggesting there are no holes at all in the act," Mr. Tollefson said. "Only experience will tell whether we've done a good job or not."

He said that one modification that would benefit the accused is the acceptance of confidentiality of a statement communicated by an accused to a physician during a court-ordered psychiatric examination, unless the accused has put his or her mental condition at issue.

Justice officials still want to change some provisions in the proposals on the Cabinet's right to refuse to disclose information on the grounds of national security, defence or Cabinet confidentiality. The courts, rather than the politicians, should have a greater say in determining what should be withheld, Mr. Tollefson said.



Antonio Sanna with the three people he rescued. From the left: Kimberly Dove, her mother, Loretta, and sister, Retta.

Man rescues woman, 2 children

Antonio Sanna was yanked out of sleep early yesterday by a woman's screams for help.

In the next 15 minutes, he ran up eight flights of stairs, shoved a fire hose through the mail slot of a burning apartment and doused the fire, helped break down the door and pulled Loretta Dove and her two children from the inky smoke.

Two Scarborough firemen found Gary Dove, the woman's husband, slumped unconscious by the phone in the kitchen.

Mr. Dove was in poor condition in the burn unit of Scarborough General Hospital last night. Mrs. Dove and her two daughters, Kimberly and Retta, were released after being treated for smoke inhalation.

"The room was full of smoke," a shaken Mrs. Dove said in an interview yesterday.

When she opened the bedroom door to find Mr. Dove, who was in the living room, "all I could see was red in the hallway and the smoke was unbearable."

Outside, "you could see nothing in the hall," Mr. Sanna, a 30-year-old unemployed carpenter, said in an interview yesterday afternoon. "It was the same as being blindfolded."

A neighbor on an outside balcony handed Mrs. Dove wet towels through the bedroom window. "Things I didn't even think of, they did for me," she said.

It took "30 or 40 seconds" for Mr.

Sanna, two neighbors and two firemen to break down the door.

"I went inside, I opened the balcony door. You could see nothing. I asked, 'Where are you?' and they said, 'We are in the bedroom.'"

"I felt very bad — I felt trapped by the fire."

He pulled the two girls out, their mother followed and firemen John Tiffin and Bill Lewis found Mr. Dove.

"He did an excellent job," Scarborough fireman Gary Kirtson said in an interview.

But Mr. Sanna brushed aside the hero label.

"At the moment it was like nothing. I didn't know what I was doing," he said. "It was like a dream,

you know. After a while it hits you — it feels impossible."

"I did whatever I could do, that's it. I don't think anybody could call me a hero."

But he wondered why the other people in the Midland Avenue building didn't hear Mrs. Dove's cries. "You know, I don't think the people give a damn. It doesn't cost anything to check."

Mrs. Dove spent yesterday sifting through \$18,000 worth of damage in her apartment. "From what the firemen told me, it was careless smoking. What an awful thing."

"Tony got my kids out. He's not a really good friend, but he's a good neighbor."

Suicides by 4 women linked to lack of space at emergency shelters

By SHERI LECKER

The shortage of emergency housing in Toronto, particularly for homeless women, has led to the suicides of four women in the past four months, says a staff member of a Toronto hostel.

Jay MacGillivray of Nellie's Hostel for Women said Saturday that the four women, ranging in age from 25 to 45, were "distressed and in despair" when they could not find places to live. She said they had all spent time at Nellie's but eventually were driven to commit suicide.

"It is the feeling of the staff, in knowing these four women, that their deaths were directly linked to a lack of supportive, affordable housing," Miss MacGillivray said.

Most of the inexpensive boarding houses for low-income people in Toronto have been torn down or renovated. The remaining facilities have been filled since September. As it becomes more difficult to find shelter, the situation worsens, particularly for women, Miss MacGillivray said.

"It's always the women who have the less amount of money. And usually they have the kids."

In Toronto, where there are an estimated 994 emergency housing spaces for men and 134 for women and children, the staff at Nellie's is turning down more than 10 requests a day.

Lisa Steele, a staff counsellor at Interval House on Huron Street, said the housing shortage also depends on how landlords respond to potential tenants who are women.

"If they've got a choice between an employed male and a mother and children on welfare, who are they going to choose? Usually, it's the employed man."

Interval House gives priority to women in physically dangerous situations but, on the rare occasions when

the hostel's 22 spaces are not filled, single women in need of housing are accepted.

Most hostels limit accommodation to one or two weeks, but they have been extending the period because the homeless have nowhere else to go.

Anne Miller, a counsellor at Street Haven, said the hostel on Pembroke Street has been flexible with the rule and it depends on the individual's circumstances.

"If we can't help them here, we don't know for a fact, but we've been told that the girls will walk the streets all night or sit in an all-night restaurant."

Miss MacGillivray said she has known people who will sleep in the underground garage at City Hall, in subway stations, Union Station and all-night donut shops. She said sometimes they will break a window to get arrested. "That's the kind of indignities they suffer."

Staff at the Fred Victor Mission on Queen Street East are used to having a full house each night. "The situation is not new for us. We've been (filling) 120 beds every night for at least two years, if not longer," said Paul Webb, supervisor of the men's hostel.

Sigvard Hagglund, director of The Salvation Army's hostel for men on Sherbourne Street, could not estimate how many people have been turned away, but he thinks the rate has been higher this year. He attributed the increase of homeless to the higher unemployment rate and a lack of affordable housing.

Mr. Hagglund said he sends the overflow to All Saints Church at Dundas and Sherbourne streets. The weekend drop-in centre at the church received funds from Metro Toronto Council in October to stay open all week, enabling about 250 people to find shelter on its floor each night.

Former mental patients won't be moved to home

By CHRISTIE McLAREN

Ontario's Ministry of Health has agreed not to send psychiatric patients discharged from Toronto's Queen Street Mental Health Centre to live at a private retirement home in Ajax, Ont., after all.

However, it is unclear why that decision was made.

A ministry co-ordinator says the rest home is making room for an influx of retired people. The rest-home owner says he has a moral commitment to his retired residents to accept only people who will be compatible with them. Other ministry sources say the rest home will not provide the rehabilitative care the psychiatric patients need.

The rest-home plan — only two weeks old — was part of the ministry's promise to provide short-term housing for about 100 discharged patients by this winter.

By Dec. 10, between 30 and 40 people were to be placed in Ballycliff Lodge retirement home, which costs \$28.95 a person a day. By mid-January another 60 patients are supposed to be housed in two buildings at Whitby Psychiatric Hospital.

However, three of the first 10 patients sent to Ballycliff did not integrate with the rest of the residents at the home and were returned to Queen Street, Ivan Irwin, a co-owner of the lodge, said in an interview yesterday. "As far as we're concerned, it's a retirement home. . . . We asked for as many of the older (patients) as possible," Mr. Irwin said. "We have a moral commitment to the people we already had in there. The people (patients) have to be compatible with the people we already had."

He said Ballycliff will keep the seven middle-aged discharged patients it has now, because they are mixing with the old people, and take

three more. "We're not going to take 30."

However, it is uncertain whether the ministry will find another 30 beds to fill the gap left by Ballycliff.

"I think our first priority would be to use the facilities at the Whitby cottages," Judi Orlicky, psychiatric services co-ordinator for the ministry's psychiatric hospitals branch, said in an interview yesterday.

Mrs. Orlicky said she would reassess how many more beds are needed after Ballycliff and the ministry write a new contract this week.

The ministry's decision to send patients to Ballycliff and Whitby has received strong criticism from a

community group, which wanted to provide housing and rehabilitative programs for 30 discharged patients for \$34 a person a day. The ministry rejected the plan as too expensive.

"Our perspective is that this was never a good solution and that it appears that it's going to almost be a total failure," Mary Stern, a member of the Supportive Housing Coalition of Metro Toronto, said in an interview yesterday.

It will cost the ministry far more in the long run to house patients outside of Metro Toronto, she said. At Whitby alone, "they're going to have to renovate the buildings, they're going to have to provide transportation to and from Queen Street and they're going

to have to hire staff."

The coalition is a non-profit organization of health agencies dedicated to providing housing and support for discharged patients who need help coping with life outside the hospital. Its members "may want to reopen discussions with (the ministry) about short-term solutions," Miss Stern said.

Provincial legislation says Ballycliff must give one hour of personal care to each of its residents a day. Mr. Irwin said Ballycliff provides "over and above that."

A ministry employee, who asked not to be named, said that after talks this week with Ballycliff, the ministry determined that the lodge's operators would not provide programs for the discharged patients without receiving more money.

Asked whether any staff experienced in psychiatric care has been hired for the psychiatric patients, Mr. Irwin said some of the nurses that work in an adjoining nursing home have some psychiatric experience and some new staff members were hired this fall. He said he could not provide figures.

No special programs have been offered to the psychiatric patients, he said. They are expected to join in bowling, playing cards, movies and crafts with the elderly residents.

Mr. Irwin rejected a suggestion that the ministry has stopped sending psychiatric patients to Ballycliff because the rest home would not provide special programming.

"This is not a big deal. We've been looking after people for years," he said.

Mr. Irwin also said the home's owners make less profit than if they put their money in a savings account. "We're not making that much money, but at the same time we sort of feel we're doing something for humanity."

Tenants take free rent after landlord overbills

Steven Smith, a University of Toronto student, will be living rent-free in his apartment for the next 3½ months.

Mr. Smith is one of 13 tenants of an apartment building on Earl Street in Toronto entitled to repayment because Ontario's Residential Tenancy Commission determined that the owner of the building, 431606 Ontario Ltd., collected \$11,700 in excess rents since May of last year.

The commission ruled that renovations made by the owner after buying the building were necessary in order to meet city building standards, but did not exempt the owner from the rent review process.

Under Ontario's rent review law, the maximum landlords can raise rents is 6 per cent a year unless they

appear before a commissioner to justify a larger increase. The \$11,700 to be repaid is the amount of the rent increase beyond the province's ceiling.

Five of the tenants still living in the building have chosen three to five months of free rent for their repayment. Eight former tenants are seeking a cash reimbursement.

Sean Goetz-Gadon, a community legal worker who represented the tenants before the commission, said reimbursements for the eight former tenants have been delayed by the commission's inability to enforce payment.

Should the owner refuse to comply with the commission's order, the tenants may have to take their claims to the Ontario Supreme Court, Mr. Goetz-Gadon said.

Cheers for Christmas and New Year's . . . for every Occasion

Atlantis Crystal is Perfect

Atlantis Crystal

Atlantis crystal from Portugal, offers an exceptional selection of designs to satisfy your individual taste in stemware. A complete range of sizes, from goblets to liqueurs to tumblers are now available. For a limited time, eight of our "Atlantis" crystal patterns are now being featured with extra special savings. Make your selection now.

	Sugg. Reg.	Feature		Sugg. Reg.	Feature
Faro	\$27.95	\$16.75	Lotus	35.95	22.95
Evora	\$26.95	17.75	Pillar	39.95	22.95
Azores	25.95	16.75	Castelo	25.95	16.75
Montalegre	28.95	18.75	Lisbon	27.95	17.75

Goblets, Claret, Sherris, Liqueurs, Champagnes, Old Fashioneds, Hiballs

You know us for our China Discover us for our Crystal

WILLIAM ASHLEY

50 Bloor St. W.
Toronto, Canada M4W 1B5
We are open Monday through Friday
Special Holiday Hours

964-2900
Orders over \$45.00
From Eastern Toronto Area
Inland Phone Orders Filled