USE OF VIDEO RECORDINGS AND VIDEO LINKS BY COURTS AND TRIBUNALS

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Introduction

Litigation lawyers have been regrettably slow in accepting opportunities for innovative use of new technology. This is certainly the case with respect to their use of video recordings and video links in court and tribunal hearings.

More than a century ago, lawyers were slow to utilize photographs as a means of presenting evidence. At the trial in 1864 of a female accused of bigamy Willes, J., allowed a photograph of the alleged first husband to be put to a witness to prove the identity of the person mentioned in the marriage certificate.[1] Today Willes, J.'s advice to the jury sounds very pedantic:

> The photograph was admissible because it is only a visible representation of the image or impression made upon the minds of the witnesses by the sight of the person or the object it represents; and therefore is, in reality, only another species of the evidence which persons give of identity, when they speak merely from memory.[2]

His Honour's rationalization of the basis for admitting the evidence may in 1864 have been a brilliant analysis. In 1987 it seems surprising that the learned judge did not acknowledge the simple fact that a photograph could provide better and more useful evidence than an inevitably imperfect oral description by a witness of the

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1. *Regina v Tolson* (1864), 4 F. & F. 103, 176 E.R. 488.
2. Ibid. at 104 and 488 (respectively).

subject of the photograph.[3] In this paper a brief description will be offered of some uses and potential uses of video recordings in presenting evidence. It is also proposed to describe some possible uses of live video links for court and tribunal hearings.

Video Evidence

Video evidence[4] may be offered by means of replay to the court of recordings or live by means of video links. Some use of recordings has been made by courts and tribunals in Australia but virtually no use has been made of video links.

(a) PRESENT USE OF VIDEO RECORDINGS

Increased use of video cameras in security systems and for surveillance has resulted in more frequent replays during criminal trials of video recordings of events giving rise to the charges.[5] Not infrequently television stations whose cameras capture events on videotape are asked to produce the tapes to police investigators and to produce them at trials.[6] There is a topical example of this from abroad: the charges recently laid in Belgian courts against British soccer fans who rioted at the match last year in Brussels between Liverpool and Juventus were brought after the alleged offenders were identified on television camera footage. Presumably the tapes will be tendered in evidence at the trials.[7]

In the civil field, video evidence is becoming familiar in personal injuries actions. Little use appears to be made of video recordings

3 Contrast *Trezise v Stephenson*, [1968] S.A S.R 174, at 178, where Hogarth, J , in allowing surveillance film of a plaintiff to be admitted to prove he was malingering or exaggerating his injuries, stated: "It is a portrayal in graphic form of what the perfect witness might be able to remember and describe orally if such a perfect witness existed "

4 A useful comparative collection of decisions is contained in Goldstein, *Videotape and Photographic Evidence — Case Law & Reference Manual* (Western Legal Publications of Canada, 1986) The Manual is reviewed by J G. Starke, Q.C , in (1987), 61 A.L.J 204

5 An example of use of security recording is *Regina v Grimer*, [1982] Crim. L. Rev. 674, and an example of use of video recordings in surveillance is *Regina v McShane* (1978), 64 Crim App R 97 In *Taylor v Chief Constable of Cheshire*, [1986] 1 W.L.R. 1479, oral evidence from witnesses who had seen a security system video before it had been inadvertently erased gave evidence of what was on the tape and on appeal the resulting conviction was upheld

6 In *Senior v Holdsworth, ex parte Independent Television News Ltd*, [1976] Q B. 23, the Court of Appeal held that the High Court had inherent power to order production of equipment necessary to enable news film to be viewed by the Court

7 *Kajala v Noble* (1982), 75 Crim App R 149, is a similar case.

by plaintiffs but surveillance footage of the plaintiffs is regularly presented by defendants.[8] Apart from direct evidence by video recordings of facts in issue, video recordings are sometimes used to provide secondary evidence. Re-enactments or demonstrations of alleged crimes or accidents are not uncommon.[9]

Technical evidence from experts could often be made much more comprehensible to judge or jury if the expert gave it on video recording, in his laboratory or at an engineering site, rather than by oral testimony. The advantages of a view by the Court could be attained more conveniently this way. However it is not often done that way.

The presentation of video recordings in evidence is, in general terms, governed by the same rules as apply to evidence in the form of photographs, motion film and tape recordings.[10] Use of those other media has paved the way for video evidence, but even the former appear to have given rise to no new principles. In practice, proof of the authenticity of video recordings appears to have given rise to few practical problems.[11] A video recording will, generally, be discoverable and liable to production under a subpoena to produce documents.[12] If prepared for the sole purpose of use in proceedings it will be capable of being the subject of legal professional privilege.[13]

Rules of court generally do not contemplate that evidence taken by deposition be recorded on videotape.[14] It is possible that a

8. See *Trezise v Stephenson*, supra n. 3.

9. In *Regina v. Lowery and King (No. 3)*, [1972] V.R. 939, one accused voluntarily participated in a re-enactment of events and the Court of Criminal Appeal held that the film was admissible against him (see at 952). Contrast *Regina v Quinn and Bloom*, [1962] 2 Q.B. 245, and *Regina v. Murphy* (1972), 8 Can.Crim.Cas.(2d) 313.

10. *Regina v Maqsud Ali*, [1966] 1 Q.B. 688 at 701, per Marshall, J.; *Trezise v. Stephenson*, note 3 supra, at 178, per Hogarth, J.; *Taylor v Chief Constable of Cheshire*, note 5 supra, at 1484 et seq, per Ralph Gibson, L.J.

11. In *Kajala v Noble*, supra note 7 at 152, the B.B.C. provided at the hearing of a charge of breach of the peace a copy, but refused to provide the original, of a video recording broadcast on a television news bulletin. A Divisional Court comprising Ackner, L.J., and Wolf, J., (as each then was) considered the B.B.C. policy reasonable and, there being evidence that the tape admitted was an accurate copy, held it admissible. The Court specifically rejected a submission that the best evidence rule required production of the original. Compare *Regina v Narula*, [1987] V.R. 661.

12. For example, see Federal Court Rules, O. 15. O. 1, r. 4 defines "document" by reference to the *Evidence Act, 1905*, s. 7A(1) (C'th). It includes any tape or film from which sounds or images are capable of being reproduced.

13. *Grant v. Downs* (1976), 135 C.L.R. 674.

14 See for example Federal Court Rules, O. 24.

superior court could, in the exercise of inherent powers, order this to be done; however research has not unearthed any report of this being done in Australia.

(b) POSSIBLE ADDITIONAL USES OF VIDEO RECORDINGS

It seems likely that, with use of videos becoming more extensive, litigants and lawyers will more readily resort to capturing evidence on tape and seeking to use the tape in proceedings. Justice Willard Z. Estey of the Supreme Court of Canada, a notable proponent of the use of technology, has offered the opinion that, "the courtrooms of tomorrow will unquestionably harness the audio and video media to their fullest."[15] The most imaginative lawyer cannot foresee what advances in technology will be made which will be capable of use in the litigious process, even in the near future. However, some possible further uses of existing technology are already under study and only a little imagination is required to conceive of others worthy of examination.[16] Since most administrative tribunals conducting hearings are not obliged to adhere to the rules of evidence, it is likely that innovative uses of video evidence will be tested before such tribunals before being tried in courts. There will also be greater resistance from the legal profession and public opinion to any substitution of recorded evidence for live evidence in criminal trials than in civil cases.

Considerable savings in court time and litigation cost could, in any event, be achieved by more regular use of video recorded evidence in situations where courts have already admitted that sort of evidence. There appears to be considerable scope for use of recorded evidence taken on deposition. The traditional method of having the evidence recorded verbatim, in writing, before an appropriate person is unsuitable when the witness's credibility or evidence is challenged by a party other than the party by whom he is called. However, if his testimony is recorded on videotape, it should be possible for the judge at trial viewing a video of the witness giving evidence on deposition to make a proper assessment of the witness.

15. Op. cit., note 4 supra, foreword page *ix*.

16. Video recorded evidence appears to have been used in Canadian and United States courts in many more situations than in Australia — see generally Goldstein, op. cit., n. 4 supra.

Any proposal to allow regular use in criminal cases of video recordings of interviews with suspects and complainants will be contentious. It is noteworthy therefore that in a Criminal Justice Bill currently before the British Parliament there is provision for use of video recordings of interviews with children in cases of alleged child abuse, both physical and sexual. The effect of the provisions, in summary, is that a video recording of an interview of the alleged child victim taken in the course of an investigation into an alleged offence would not be admissible in evidence without the leave of the court, which would not be given unless the court considers the recording ought to be admitted in the interests of justice. In deciding whether to admit the recording, the court would be required to have regard to all the circumstances and, in particular, to two matters. The first is the contents of the recording. The second is the likelihood of unfairness to the accused resulting from its admission if the child does not attend to give oral evidence in the proceedings, or from its exclusion.[17] The proposal is revolutionary in that it would enable the court to admit direct oral evidence by a complainant, albeit recorded, without the accused necessarily having the right to cross-examine the complainant.[18] The Home Secretary is reviewing the Bill in the light of the parliamentary debates and public comment.

Video Linked Hearings

In each Australian jurisdiction the operation of courts and tribunals imposes a heavy cost on the community. Significant savings could be made if it were not necessary for participants in the hearing — judges or tribunal members, lawyers, parties, witnesses and court recording and security staff — to be present at the same time and at the same place. Recognizing this, the use of video-linked hearings is now under examination by several authorities with a view to reducing the cost to the community and the inconvenience to the individuals involved. The project which has been given the most publicity in Australia is the proposal to use video links

17. Cl. 16.

18. In the United States this might be unconstitutional: *State of New Jersey v Sheppard*, 197 N.J. Super. 411 (1984). See also *United States v. Benfield*, 593 F.2d 815, (1979) and *Powell v State of Texas*, 694 S.W. 2d 416 (Tex. App. 5th Dist., 1985).

for special leave applications to the High Court of Australia in civil matters. Another project is an investigation by the Victorian Government into the possibility of using a telecommunications network in the management of the courts of that State. In addition, brief reference will be made to the current legislative proposals of the United Kingdom Government for use of video links in relation to charges of physical and sexual abuse of children and in receiving the evidence of overseas witnesses.

(a) SPECIAL LEAVE APPLICATIONS TO HIGH COURT IN CIVIL MATTERS

The Chief Justice of the High Court, Sir Anthony Mason, announced on 15 September 1987, that applications to the High Court for special leave to appeal in civil matters will soon be heard by video link. His Honour stated that the success of this innovation will largely depend upon its acceptance by the legal profession.[19]

The Working Party

During 1986 a working party comprising representatives of the High Court, the Law Council of Australia, the Attorney-General's Department and Telecom investigated the feasibility of that use.[20] In the report delivered to the Court early in 1987 the working party concluded that the hearing of special leave applications in civil matters, which are generally of short duration, by video conference is both feasible and desirable. Finding that savings in cost and time for parties would be significant for cases originating in Adelaide, Brisbane and Perth, the working party recommended introduction of video conferencing for those three cities.

The Justices of the High Court have accepted the working party's recommendations and the proposal also has the support of the Attorney-General, the Honourable Lionel Bowen. Funds provided in the September 1987 Budget will enable the High Court

19. The Chief Justice reaffirmed this point in his State of the Judicature address on 20 September 1987.

20. The working party comprised Mr Gordon Shannon (Clerk of the High Court) as convener; Messrs Robert Meadows, David Searles and the writer (Law Council of Australia); Jim Carnsew (Attorney-General's Department) and Garry Coleman and Michael Richter (Telecom). The writer acknowledges the major contribution made by Mr Shannon in the preparation of the report of the working party.

to fit out a courtroom with the necessary infrastructure and commence video conferencing hearings in this financial year. It is hoped that a pilot test of the system may be possible before the 1987-'88 summer vacation commences.

The Proposal

Under the working party's proposal the Court would sit in Canberra to participate in the video conference hearing and counsel would attend at a Telecom Business Centre studio in either Adelaide, Brisbane or Perth. The system would be optional in that counsel for each party could separately choose whether to appear on camera or physically before the Court. The Court would view counsel on a television monitor in the courtroom and counsel would view the Court on a television monitor in the studio. Cameras in the studio would focus on a lectern from which counsel would address and cameras in the court would be focused on the bench. Monitors for the public to view proceedings would be available both in the court and the studio. While the working party devoted its attention to Adelaide, Brisbane and Perth, it saw no reason in principle why the same system could not operate from Hobart and Darwin when Telecom Business Centres are established in those cities.

The physical facilities which would have to be provided to enable the system to operate are few. In the High Court building cameras and monitors would have to be installed together with associated cabling and other equipment. In addition there would have to be established a two-way audio and video itinerant microwave link in line of sight between the High Court building and the Telecom transmission tower on Black Mountain in Canberra. The other requisites — transmission bearers and audio-video circuits for two-way communication between Canberra and the other cities and Telecom studios in those other cities — would be hired from Telecom for the hearings.

The working party estimated that capital expenditure of the order of $75,000 would be required to fit out the High Court building. The working party assumed that all other facilities would be hired for use. On the basis of a sitting day devoted to video conference hearings with one hour devoted to Adelaide cases, one and one half hours devoted to Brisbane cases and two hours devoted to Perth cases, the working party estimated total daily running costs of the system to be approximately $11,000. If each case heard took ap-

proximately 30 minutes, nine cases could be heard in a day at an average cost of about $1,227. The working party assumed that no additional staff would be required at the High Court to operate the system and that Telecom staff would provide any services necessary at the studios.

Advantages of the System

For litigants in the capital cities most distant from Canberra the availability of video conferencing facilities would provide significant potential cost savings. The legal representatives of those litigants could avoid the considerable inconveniences of travel and the unproductive use of time in travel. As a matter of principle, the availability of the video conference hearing is a significant step towards equalizing access to the Court by Australian litigants irrespective of where they reside or carry on business. Ancillary to that, video conferencing makes it more likely that the litigant may be represented by the lawyers of his choice and affords counsel in the different cities more equal opportunities to acquire experience before the highest court in the land.

The High Court programme regularly provides for sittings in Adelaide, Brisbane, Hobart and Perth for one week each year, providing there is sufficient business to warrant the attendance of the Court. The Court conducts sittings in Canberra in each of about nine months of the year. Special one-day sittings to hear applications for special leave to appeal are arranged alternately in Sydney and Melbourne on the last Friday of each Canberra sittings.

An applicant for special leave in Adelaide, Brisbane, Hobart or Perth could choose to wait for the next annual sittings of the Court in that city and, if special leave is granted, then wait for the next annual sittings of the Court in that city for the hearing of the appeal. Alternatively the applicant could accept the additional expense involved in having the special leave application heard in Canberra, Melbourne or Sydney. He might also choose to incur the further expense of having the appeal heard in another city.

Experience shows that the majority of applicants for special leave in civil matters from Adelaide, Brisbane and Perth are not prepared to accept the delays involved in having hearings in the city from which the case originates. Of 12 applications which originated in Brisbane during 1985 and which were disposed of at the time of the working party's review, three were heard in Brisbane and the remainder were heard in Melbourne, Sydney or Perth. Of nine

applications originating from Perth in the same year and dealt with before the review, only one was heard in Perth and the remainder were heard in Melbourne or Sydney. In 1985 there were 16 applications commenced in Adelaide and disposed of at the time of review. Seven were heard in Brisbane, Melbourne, Perth or Sydney. Of the remaining nine, seven were heard in Adelaide on one day. That day was not during the annual sittings of the Court in Adelaide. The Court moved to Adelaide a special leave sitting originally scheduled for Melbourne when it became apparent that most of the cases in the list originated from Adelaide. If that had not been done, only two of the 16 applications would have been heard in Adelaide.

The cost to an applicant to have an application for special leave heard in another city will depend on a number of factors. The greatest additional expense will normally be incurred if he retains solicitors and counsel from his home city. There will be the expenses of airfares, taxis, overnight accommodation, meals, and out-of-office or -chambers charges by the legal representatives. Law Council estimates provided to the working party indicated that if both applicant and respondent in a case from Brisbane engage a hometown solicitor and hometown junior and senior counsel, the additional expense to have the case heard in Sydney would be more than $2,700; and to have it heard in Melbourne would cost nearly $3,000 extra. The figures for Perth cases are more dramatic. On the same assumptions, the additional cost of the case being heard in Melbourne would be about $11,400, and in Sydney more than $12,000.

Economic comparison of video conferencing on the one hand and hearings away from the city of origin on the other hand is not straightforward. The cost of hearing an application by video conference will depend on the number of applications heard on the one day and the number of cities linked. The costs associated with hearing a case away from the city of origin also depend on things like the number of parties and whether all engage hometown legal representatives. However, it is submitted that in most situations there will be significantly less additional expense involved with a video conference than with transferring the hearing. Because the video conferencing system will be operated at public expense, the financial savings to the individual party to a special leave application using the system will always be significant.

Potential Use

From its examination of the numbers of special leave applications originating from Adelaide, Brisbane and Perth the working party concluded that it would be reasonable to expect about 50 applications per year originating from the three cities. Some of these would be heard at the annual sittings of the High Court in the cities.

It appears inevitable that there will be some counsel who will regard face-to-face appearance before the High Court as essential. The idea of talking to a camera, instead of a live audience, may be as difficult for some barristers as it is for some actors, even though an adjacent screen enables two-way visual communication. On the other hand, the costs saving of the video conference may be crucial to some applicants and respondents. In addition, the fact that the costs can be so saved may result in additional applications. Whatever their personal misgivings, counsel will be forced in many cases to regard it as their duty to use the video conferencing hearing.

Some of the speculation in assessing potential usage can be removed by reference to the experience in Canada. A system of video conferencing of applications for motions for leave to appeal to the Supreme Court of Canada in both civil and criminal matters has been in operation for more than two years. Over 180 applications have now been heard by this method.

A breakdown by province of the motions heard by the Supreme Court in the last two years is revealing[21]:

Province	1985-1986			1986-1987		
	Total	*Heard by video conference*		Total	*Heard by video conference*	
British Columbia	62	39	62.9%	54	32	59.3%
Alberta	61	30	49.2%	40	14	35.0%
Saskatchewan	28	9	32.1%	14	6	42.9%
Manitoba	26	9	34.6%	22	4	18.2%
Ontario	97	3	3.1%	111	1	0.9%
Quebec	114	0	0%	87	0	0%
Maritimes	29	3	10.3%	37	4	10.8%
Yukon and Northwest Territories	2	0	0%	2	1	50.0%
Total	419	93	22.2%	362	62	17.1%

21. The writer is indebted to Mr Guy Goulard, Registrar of the Supreme Court of Canada, for the data

The breakdown shows, in general terms, that the more distant the province from Ottawa (which is the only place where the Court sits) the more likely it is that a case originating in that province will be heard by video conference. While there was a reduction from 22.2% of cases heard by video conference in the first year to 17.1% in the second year, there could be a number of explanations for the reduction. The Supreme Court itself publicly encourages use of the facility.

In order to ensure that the High Court project succeeds, it will be necessary for counsel involved to adopt a positive attitude to the new means of communication. The Canadian experience strongly suggests that this will happen.

(b) VICTORIAN VIDEO LINK PROJECT

The Victorian Government is currently studying the possible use of video links as a means of reducing the cost of court administration.

The Government and the State Electricity Commission of Victoria have established a company, Vistel Ltd, which is establishing a private telecommunications network within the State for use by Government departments and agencies. The network incorporates both Telecom and private facilities and will use a variety of telecommunications links. Part of the network is to comprise high capacity links between the Melbourne Central Business District and major regional centres. One of the first steps taken by Vistel was to establish in June 1987 a link between Melbourne and Ballarat capable of being utilized for, among other uses, video-conferencing and facsimile services.

The Courts Management Division of the Victorian Attorney General's Department has, as an initial primary target, the use of video links for remand hearings.[22] The cost of transporting prisoners from prison to courts for regular remand hearings, involving as it does prison, police and court security staff, is considerable. Legislative amendments would be required before such a reform could be introduced. In principle, the proposal appears commendable, provided that in its implementation there are built

22. The writer is indebted to Mr Gil Brooks, General Manager, Court Services, of the Courts Management Division, for information on the Victorian Government proposals.

in appropriate safeguards to ensure that the rights of the accused and of the public are preserved in a form consistent with the observance of the traditional principles of the criminal justice system.

With a view to demonstrating to the courts and the legal profession that video links can provide a satisfactory alternative to face-to-face hearings, arrangements were made for a pilot hearing to be conducted by the Victorian Planning Appeals Board by video link. The case was heard on 27 July 1987 and involved a Ballarat farmer who objected to the Shire of Ararat establishing a rubbish tip on Crown land.

The Board sat in Collins Street, Melbourne, and had two video monitors before it. A third was available for observers. The farmer and departmental and Shire representatives appeared on one screen before the Board. The Board was able to control the splitting of images to fit more than one person on the screen. The other monitor before the Board was for maps and graphs which were referred to by the parties during the hearing. No witnesses were examined. However, the parties or their representatives made submissions to the Board on camera and there was dialogue between the Board and the parties' representatives. Prior to the hearing large documents had been delivered to the Board. However during the hearing short documents were transmitted by facsimile. During the hearing the Board saw video recordings of the rubbish dump site presented by the parties in Ballarat. The conduct of the hearing by this means appears to have been satisfactory to all concerned.

The next pilot hearing is proposed to be held in October 1987, and again will involve a link between Melbourne and Ballarat. Students from the Law School at Melbourne University will travel to Ballarat to conduct a series of moots involving examination of witnesses. The court will be presided over by a magistrate sitting in the Melbourne Magistrates' Court building.

(c) UNITED KINGDOM CHILD ABUSE AND OVERSEAS WITNESS PROPOSALS

In the Criminal Justice Bill referred to above, there are provisions designed to allow children giving evidence in child abuse cases to avoid some of the trauma involved in giving evidence in

court.[23] A witness under the age of 14 would be allowed to give evidence by video link before the Crown Court on indictment for specified offences involving physical or sexual assault. Leave of the court would be necessary before evidence could be given by video link. Leave would only be given if the court were satisfied that the video link allows evidence to be given in a way which allows all persons concerned in the case to see, hear and communicate with the witness.[24] So long as the accused, counsel, judge and jury can both see and hear the witness, the requirement would be satisfied, whether by two-way sound and vision or two-way sound and one-way vision.

A demonstration of the sort of hearing contemplated by the Bill, of which a video recording and photographs are available, reveals that there is equipment available which avoids some of the distractions that would be involved in the operation of television cameras by crews at the two venues.[25]

The impetus for the proposal to allow overseas witnesses to give evidence by video link, which is likely to be by satellite, came from concerns about difficulties encountered in criminal prosecutions in international fraud cases when witnesses refused to come to England to give evidence.[26] The use of the link would again be by leave of the court which could only be given if the same conditions applied as are required in the child abuse cases.

(d) OTHER POSSIBLE USES OF VIDEO LINKED HEARINGS

It is not difficult to think of other potential uses of video links by courts and tribunals. Whether the use of the medium would in each case be successful would be difficult to predict, and the cost of provision of the facility and by whom it would be borne would be critical.

In his State of the Judicature address on 20 September 1987,

23 The Home Office has issued a discussion paper on the proposals: "The Use of Video Technology at Trials of Alleged Child Abusers" (8 May 1987). See also J.R. Spencer, "Child Witnesses, Video-Technology and the Law of Evidence," [1987] Crim L.Rev. 76.

24. Cl. 21.

25. The writer is indebted to Mr Peter Bagshaw of Datapoint Corporation Pty Ltd for information on the demonstration.

26. H. Brooke, Q.C., "Video in Court", Counsel — The Journal of the Bar of England and Wales (issue dated Hilary 1987), 26.

Sir Anthony Mason foreshadowed the possibility of separation of the hearings of applications for special leave to appeal to the High Court in criminal cases from the hearing of the appeal itself. In Canada motions for leave to appeal in criminal cases are heard by video link.[27] In principle there seems to be no relevant difference between applications for special leave to appeal in civil and criminal cases. Some interlocutory applications in the High Court could conveniently be heard by video link. However, there are some practical considerations, such as the fact that the applications are often on short notice and, there being comparatively few such applications, it might not be economic. With improved technology and cheaper connections, it is not inconceivable that short appeals might be heard by video.[28] In the Federal Court, directions hearings and interlocutory applications, which are sometimes dealt with by telephone hook-up, could be heard by video link when there is no judge available in a particular place. Theoretically, the evidence of non-contentious witnesses could be taken by video link.[29]

The greatest practical use of video links potentially is by administrative tribunals. The Administrative Appeals Tribunal already conducts directions hearings and simple appeals by telephone hook-up, particularly for the benefit of appellants in country centres. When, in due course, appropriate telecommunications facilities become available, these proceedings would be much more effectively conducted by video link. Other tribunals conducting large numbers of relatively short hearings could similarly take advantage of the opportunities the new technology provides.

27. One such application was recently made from Kent, British Columbia, in person by a convicted murderer considered a security risk.

28. One practical difficulty is the fitting of a court of more than three judges in one screen. In Canada this has been done by splitting the image of the judges horizontally on the screen.

29. On 29 January 1986, Justice Estey, while conducting a commission of inquiry on banking operations in Canada relating to the failure of two Alberta banks, heard evidence from three witnesses in London by satellite link.

Conclusion

Justice Estey has stated:

> The ends of justice may well be served by material developments which enable the assembly and analysis of evidence in a timely and economic manner so as to reveal with accuracy the truth of the relationship between the parties. The countervailing need, of course, is to ensure that the whole of this process is carried out in a way that will as well serve the interests of justice and fairness.[30]

There are weighty public interest considerations which require that the legal profession closely and fairly examine proposals for extending the use of video recordings in court hearings. Video links appear to have great potential for extensive use in court and tribunal hearings. There are fewer difficulties with live links in ensuring that justice is done. The legal profession is likely to react to any proposals with caution. The profession will need to be vigilant to ensure that no excess of caution arises out of personal preference or unexamined opposition to change.

30. Op. cit., n. 4 supra, foreword page *viii*.