**Adversarial and Inquisitorial Legal Systems**

Canada and most countries that derive their legal systems from the English model use what is called the adversarial legal system. The two great systems of law, the **common law** and the **civil law** systems, both have differing procedures when a case goes to trial. The two approaches are either adversarial or inquisitorial.

**The Adversarial System**

Our system of justice is based on the adversarial model. The **adversarial system** implies that two parties assume opposite positions in debating the guilt or innocence of an individual. In this scenario, the judge is required to be neutral at the contest unfolding before him or her. The role of the judge in this arrangement is to ensure the trial proceeds according to the procedural rules of trial or due process of law and that evidence entered is done so according to established rules and guidelines.

The basis of this approach in criminal matters in which two sides engage in debate and battle about the guilt or innocence of an accused and since each side wants to win, then the debate will foster a critical look at the issues and the calling of evidence to be examined by both parties. By engaging in this discourse, the truth should emerge as the judge watches on. This means that the roles played by the various court officers are very distinct. The defence counsel as one adversarial party gather the arguments to defend the client and attacks the credibility and worthiness of the evidence presented by the crown. The crown prosecutor puts forth the arguments on behalf of the crown or state and gathers and presents the evidence pointing that the accused has committed an offence. The judge is the referee and arbitrator on issues related to clarifying what the law is. The judge not intervene on any side except where procedural fairness is jeopardized by either party.

The evidence and witnesses that are called are left up to the two arguing parties, the defence counsel and the crown. The judge is not involved in what is presented to the court. If the crown wishes not to call certain evidence or individuals as witnesses even though it may help shed light on the case, the judge cannot intervene. This leaves the two parties in charge of the case and the direction it takes.

The advantages of the adversarial system include.

* the judge reserves comment until all evidence from both parties are heard.
* this makes the judge appear more neutral since judgement must be reserved until all the evidence is heard

The disadvantages of the adversarial system include

* the finding of evidence rests on the resources of the two parties which may be unequal
* parties only provide evidence favourable to their arguments

**The Inquisitorial System**

The **inquisitorial system** is the common procedural approach in most civil law jurisdictions.

In an inquisitorial system, a judge is involved in the preparation of evidence along with the police and in how the various parties are to present their case at the trial. The judge questions witnesses in depth and can even call witnesses to appear while prosecution and defence parties can ask follow up questions. The judge plays the central role in finding the truth and all the evidence that either proves the innocence or guilt of the accused before the court. The judge takes on the role of prosecutor and judge in the inquisitorial system. Some other major distinctions is that there are no jury trials in an inquisitorial system and a judge can compel an accused to make statements and answer questions. This differs dramatically from the common law and adversarial right not to take the stand in one's own defence.

**Article-The Adversarial System**

Trials in Canada are quite a bit like team games. The prosecutor and his aides face off against the defence lawyer and hers. The two sides are adversaries in a serious game with serious goals. The prosecutor, called the Crown, actually represents the people of Canada. The defence lawyer represents the accused. Their game skills are not stick handling or slam dunking but evidence and argument. The judge is the referee. He calls the off-sides and penalties, and sees that the adversaries stick to the rules of law and fair play.

Such, basically, is the adversarial system. The inquisitorial system, used in France and some other European countries, goes at the question of guilt or innocence quite differently. Here, instead of two adversaries going at each other, we have a judge/prosecutor/inquisitor (the names may differ) who assemble the evidence, interrogate the witnesses and make a judgement. More important cases in France are tried by a tribunal of several judges, and in major criminal trials there, a nine member jury is added to the tribunal. By being a referee, the judge in this system has become into an inquisitor, one who has much more responsibility for actually conducting the case.

Our system makes the adversaries responsible for digging out the facts on which a decision will be based. Canadian law works on the theory that the two opponents in a case, or their lawyers, will work harder than anyone else to produce evidence favourable to his/her side; no one else has as strong a motive. At the very core of the adversarial system, in fact, is the belief that the individual is responsible for preserving individual rights.

That is not to say that our method of trying cases by vigorous pro and con argument is perfect. In earlier days verdicts, both civil and criminal, usually favoured the client with the fattest wallet. The evidence might have suggested otherwise, but this client could afford the very best in lawyers, someone who could make mincemeat of anyone the other poor litigant could hire. With the arrival of legal aid, the situation improved, but was still skewed in favour of the wealthy.

Another way in which our system of adversaries may fall short lies in the law itself. Writing laws is not as exact a science as we would like to think, and laws are sometimes vague and ambivalent. This gives the judge a good deal of discretion in interpreting the law, which may or may not result in a biased verdict.

On most counts, though, we think the system of adversaries beats the system of inquisitors. We feel that the inquisitor has less incentive to probe for every shred of evidence, and that argument for and against leads to better justice than inquisition. On this brief summation, the defence rests.

(Adapted from *The Court Folder*, R/L Taylor Publishing Consultants Ltd., 1995.)