

## **Working Within the Dickson Court**

---

*James C. MacPherson\**

---

The topic of my remarks is Brian Dickson as Chief Justice of Canada as distinguished from his role as Chief Justice of the Supreme Court of Canada. The former role — the one I will address — involved relationships with many external constituencies of both an individual and institutional nature. I can list at least six sets of external relationships:

Governments, including the federal Department of Justice on matters concerning the administration of the Supreme Court of Canada, the Prime Minister with respect to the appointment and resignation or retirement of judges to the Court and with respect to the appointment of new chief justices of superior or federal statutory courts, and the Governor General because the Chief Justice of Canada serves as Deputy Governor General and because he also serves as chairman of the committee which advises the Governor General about potential recipients of the Order of Canada;

The Judiciary, including the Canadian Judicial Council, other Canadian judicial organizations, and relations with the highest courts in foreign countries;

The Bar, including barristers appearing before the Supreme Court of Canada, relations with the Canadian Bar Association and provincial law societies, and attendance at a wide variety of legal gatherings;

The Academic Community;

The Media; and

The Public.

---

\* Osgoode Hall Law School; Executive Legal Officer, Supreme Court of Canada (1985-87).

Time precludes a detailed consideration of all six of these sets of relationships; accordingly, I have chosen only three for my remarks today — the judiciary, the academic community and the media.

Before turning to these specific topics, however, I want to make one general comment about Brian Dickson as Chief Justice of Canada. The assumption of the chief justiceship by Justice Brian Dickson in 1984 changed his work and indeed his life. From 1963-1967, Dickson had been a trial judge of the Manitoba Court of Queen's Bench, a job that was, he once told me, his favourite. From 1967-1973 he served as a remarkably productive justice on the Manitoba Court of Appeal. From 1972-1984 he served as a puisne judge of the Supreme Court of Canada. In all of these positions, and for twenty-one years, law in general and legal cases in particular were the overwhelming focus of Brian Dickson's professional life. If you read his judgments from those years you form the strong impression that he worked very hard at them, he was good at judgment writing and that he was comfortable with hearing, deciding and writing his judgments. My guess would be that for twenty-one years Justice Dickson spent over ninety per cent of his time dealing with the cases before him.

That changed overnight in 1984 when Justice Dickson became Chief Justice of Canada. Overnight the nature of his workload was transformed. It was transformed *quantitatively*. My estimate would be that, as Chief Justice, he spent no more than fifty per cent of his time on law and cases. The other fifty per cent was divided equally, I would estimate, between administering the Supreme Court of Canada and performing the myriad duties associated with being Chief Justice of Canada.

The nature of Justice Dickson's workload was also transformed *qualitatively* in 1984. For all his years as a justice in Manitoba and Ottawa Dickson gave the impression of being a modest, scholarly lawyer — perfect qualities if you are a trial or appellate judge or a puisne judge of the Supreme Court of Canada. Becoming Chief Justice of Canada compelled Dickson to be visible, accessible and persuasive and to exhibit these characteristics not only as a judge but also as an administrator and as a major national and international public figure.

I believe that Dickson knew that his life would be very different if he accepted the chief justiceship. Accordingly, when I came to work for him early in his term as Chief Justice, what I saw was a man who took great care about the new components of his job. He was not scared about the huge responsibilities facing him. Nor was stress a problem even though the chief justiceship brought with it, on a regular basis, issues of great complexity, delicacy and moment. But it would

be wrong to say that Dickson was immediately comfortable with all of the aspects of his new position. What I saw during my two-and-a-half years with him was a progression — from great care with all of the components of the chief justiceship to growing and, ultimately, overwhelming competence in every facet of the job, to comfort with the position which, in time, freed him for the creativity and boldness which, in my judgment, made his tenure as Chief Justice one of truly remarkable accomplishment. Several other speakers at this conference saw progression in Chief Justice Dickson's jurisprudence as the years unfolded. I believe that there was a similar progression or growth in the non-jurisprudential, that is the administrative and leadership, components of the chief justiceship of Canada.

## I. THE JUDICIARY

CHIEF JUSTICE DICKSON'S LEADERSHIP of the Canadian judiciary was exhibited principally through his leadership of the Canadian Judicial Council. The mandate of the Council is "to promote efficiency and uniformity, and to improve the quality of judicial service, in superior and county courts and in the Tax Court of Canada." The Council is composed of all the chief justices and associate chief justices of the superior and federal statutory courts and a representative of the territorial courts.

The Council's mandate and composition give rise to two potential pitfalls. First, there is no place or role for the provincial courts in the Council's statutory scheme. Secondly, the Council is composed (with one exception) of chief justices and associate chief justices; there is no place or role for the more than seven hundred 'ordinary' superior and federal statutory judges. Chief Justice Dickson saw these two pitfalls clearly. At every opportunity he sought to reach out to these excluded constituencies and involve them in all matters which were, in his view, of interest and concern to all Canadian judges. He established excellent links, both formal and informal, with several associations of provincial court judges and with the Canadian Judges Conference, an organization representing superior and federal statutory judges which had been set up several years before because of a widespread perception that the Canadian Judicial Council was elitist and moribund.

Chief Justice Dickson felt that the Canadian Judicial Council had two different but related purposes. The first was to try to coordinate the judiciary in order to provide better justice. He forced the Council to examine an increasing number of substantive issues. One of the issues he regarded as exceptionally important was delay in the justice

system. During his term as Chairman of the Canadian Judicial Council the Council promulgated a guideline that all decisions should be made within six months of the hearing. Chief Justice Dickson also publicized the complaint process and procedures administered by the Council. He was not worried about greater public awareness of, and indeed resort to, the complaint process. In his final preface to the annual report published by the Council he wrote:

A continuing increase in the number of complaints put before us is also noteworthy. I do not regard this as bad news, because I do not believe it reflects a deterioration in the quality of judges. I believe the increase results, rather, from growing awareness of the justice system. Like other public institutions, the judiciary benefits in the long run from close scrutiny by the public it serves.<sup>1</sup>

The second purpose of the Council, in the eyes of the Chief Justice, was to improve the working conditions of the judiciary. He worked very hard at this. He established close relations with the chief justices of the highest courts in the United States, the Union of Soviet Socialist Republics, Australia and Austria. Part of his rationale for these relationships was to learn about the law and legal systems in these countries with a view to improving Canadian law and the organization and administration of the Supreme Court of Canada and to see if there were things he could learn generally about judicial organization, administration, salary, benefits and working conditions in these countries that might be useful if imported to the Canadian judicial scene.

Chief Justice Dickson also devoted a great deal of time and attention to judicial education. He attended many courses and seminars himself and he was instrumental in establishing the National Judicial Study Leave Fellowships which have enriched both the superior court judges who have received them and the law schools which the judicial fellows have attended. Most importantly, however, Chief Justice Dickson took a great deal of interest in and, in my opinion, was the driving force behind the creation of the Canadian Judicial Centre. He gave substantial support to Justice William Stevenson during the year he prepared the report which recommended the creation of the Centre and he took great care to appoint a founding board of directors for the Centre that was representative of all Canadian judges — geographically and by court level. The result is that today the Canadian Judicial Centre is a very important focus

---

<sup>1</sup> Canadian Judicial Council, *Annual Report 1989-90* (Ottawa: Canadian Judicial Council, 1990) at v.

for the continuing education of the Canadian judiciary. In 1989, for example, it mounted good courses on such traditional yet essential topics as case flow management and current criminal procedure and evidence and on innovative topics like United States constitutional law, and gender in the courtroom.

In summary, I believe that Chief Justice Dickson tried to do two things as leader of the Canadian judiciary — first, to lift judicial morale by improving their working conditions (*e.g.*, salaries, benefits and education), thereby inspiring Canadian judges to feel that they were part of a team engaged in a common, and very important, enterprise; and, secondly, to improve the delivery of judicial services in Canada. He felt that these two objectives were related and that the second would flow from the first. In my opinion, he was enormously successful in achieving both goals.

## II. ACADEMIC COMMUNITY

THERE WAS, throughout his entire judicial career, a very special relationship between Chief Justice Dickson and the Canadian academic community. As a puisne judge of the Supreme Court of Canada, Brian Dickson loved to read, to think and to write. In this process he devoured much of the literature produced by the Canadian legal academic community and drew upon it as he decided cases and wrote judgments. This did not change a bit after he became Chief Justice. On many weekends and during every holiday the Chief Justice's briefcase or suitcase would be filled with books and law review articles that he had come across or that were referred to him by his law clerks who were under instructions to watch the law reviews and bring good articles to his attention.

There were essentially three components to the relationship between Chief Justice Dickson and the Canadian academic community. The first was his use and citation of books and law review articles. More than any other judge in Canadian history, I believe Chief Justice Dickson was cognizant of the academic literature, valued it and thought it appropriate, therefore, to refer to it, and indeed attach authority to it in his judgments. Supplementing this use of the academic literature was his encouragement of the growth of that literature — for example, by taking a keen interest in the Supreme Court Law Review and by lending strong support to the efforts of Dr. DeLloyd Guth of the Faculty of Law at the University of British Columbia to create a Supreme Court Historical Review.

Secondly, throughout his judicial career, including his six years as Chief Justice, he regularly attended academic conferences and encouraged Canadian scholars, especially young scholars. Many, many young scholars, myself included, had the experience of a conversation with the Chief Justice at a conference or even a telephone call from the Chief Justice offering congratulations for a recent law review article. It was unsurprising, indeed entirely typical, of the Chief Justice in his dinner remarks last night to mention favourably a recently published book by a young University of Manitoba professor, Lee Stuesser. The effect of compliments, in his speeches, conversations at conferences and telephone calls, on young law professors was, in my opinion, both special and significant.

Thirdly, it is a singularly remarkable fact that of the twenty-seven clerks who have worked for the Chief Justice and are now employed (four more either continue to work for him or are pursuing further studies) twelve are full-time members of Canadian law faculties. When one considers that less than one per cent of the graduates of Canadian law schools become law teachers, the record of the Dickson clerks is nothing short of fantastic. It is, however, not surprising. The reason for the record is easy to discern — simple inspiration. The law clerks who worked with him saw a man whose life coupled scholarship and action. Twelve of them thought that an academic career might be the best way they could aspire to a similar type of career, a conclusion which, it should be noted, the Chief Justice vigorously encouraged.

### III. THE MEDIA

WHEN HE ASSUMED THE HIGHEST JUDICIAL OFFICE IN THE LAND, Chief Justice Dickson, although not accustomed at all to public visibility or media relations, had a clear view of the relationship he wanted to develop with the media. It was a view based entirely on instinct and common sense and incorporated the following simple propositional propositions: The work of the Supreme Court of Canada is important. Therefore the Canadian public should be informed about that work. The natural conduit between the Court and the public was the press. The Canadian press was, by and large, professional and competent. Therefore the Court should welcome media coverage of its hearings and decisions and he as Chief Justice should do everything in his power to lend support to that coverage.

In my opinion, Chief Justice Dickson, a somewhat shy and certainly modest lawyer and judge throughout his career, and a man with no previous experience with the media, was remarkably successful in

translating his simple, common sense propositions into very effective and valuable media attention to the Court and its work. He created an effective Court-Media Liaison Committee consisting of judges and senior administrators of the Court and leading journalists who regularly cover the Court. He authorized the construction of a state-of-the-art press room with video and audio hook-ups to the inner courtroom, comfortable and efficient desk space, outside phone lines and mail slots into which all of the factums relating to current cases and the recent decisions of the Court were placed. He inaugurated a system of prior notice of judgments so that the media would be prepared to cover important decisions of the Court. And he established the position of media relations officer, an internal person available to the media, on an off-the-record basis, to explain judgments to journalists under deadline pressure to report on the Court's recent decisions.

The result of these initiatives was, in my view, a significant growth, quantitatively and qualitatively, in media coverage of the Court. Indeed, during Chief Justice Dickson's term there developed a small but highly competent coterie of journalists with a Supreme Court of Canada 'beat'. All of this was reflected on a broader plane during the Chief Justice's last year by the adoption by the Canadian Judicial Council of a document entitled *Principles Governing Relations between the Judiciary and the News Media*, a document which reflects almost exactly Chief Justice Dickson's own view that judiciary/media relations should be characterized by respect, trust, a lack of wariness and, especially, openness.

#### IV. CONCLUSION

As Chief Justice of Canada, Brian Dickson was, in my opinion, very successful in a large and multifaceted set of relationships with many external constituencies. The reasons for this success were the same as those leading to his success as a judge, first in Manitoba and then in Ottawa — hard work and diligence, modesty and openness, and an overriding compassion for people, especially the disadvantaged, coupled with a talent for building on the good in institutions and in people. Ralph Waldo Emerson once remarked that “[a]n institution is the lengthened shadow of one man.” I believe that this sentiment applies to the relationship between the man Brian Dickson and the institution of the Supreme Court of Canada in the 1980s. The Dickson shadow will recede as new knowledge about and insights into the law develop and as the Chief Justice's successor, the very experienced,

personable and talented Antonio Lamer, puts his own imprint on the Court. But Chief Justice Dickson will leave a legacy which will never be extinguished.

I have occasionally been asked if I have one memory which stands out more than any other from my two-and-a-half years with Chief Justice Dickson. I do have such a memory. Yesterday you heard Professors John McCamus and Donovan Waters talk about *Sorochan v. Sorochan*<sup>2</sup>. They complimented the Chief Justice's development of the constructive trust doctrine in that case. Let me tell you about a completely different aspect of the *Sorochan* case. The case was on the Supreme Court list in the spring of 1986. Due to the Court's docket overload at that time (since remedied) it probably wouldn't have been argued until the spring of 1987. In late spring 1986, however, counsel for Mrs. Sorochan made an application for an 'early date' for the hearing, citing as his reason the terminal illness of his client. Although the court docket was then full, Chief Justice Dickson granted the application and literally stuffed the hearing into the last day of the 1985-86 term, namely June 28, 1986. At the conclusion of the argument, he returned to his chambers and announced that he had assigned himself the judgment. For the next three weeks, at a time when he must have been tired at the end of his first full year as Chief Justice, he worked incessantly to write the judgment in *Sorochan*. On July 31, 1986 — a most unusual judgment day — the Court handed down its decision. Mrs. Sorochan had won — and she was still alive. Only then did Chief Justice Dickson begin his summer vacation. To me, the *Sorochan* case — the good law and the humanity in the progress of the case — stands as testament to the man for whom I was so honoured to work. Chief Justice Brian Dickson was, quite simply, the finest person I have ever met.

---

<sup>2</sup> [1986] 2 S.C.R. 38.