

THE LAW AND LAWYERS IN THE 80'S*

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It must be seldom that one judge has a Chief Justice as his press agent whether in Manitoba or anywhere else and that he also should have the president of the section of the Canadian Bar Association as his cheerleader. As Mr. Smordin related, my wife and I have taken the precaution of breeding two sons, one is a minister of religion and the other is a member of the Bar and thus as is typical of lawyers we have backed both sides. One will help us with God and the other with Mammon.

Ladies and gentlemen, you come to hear a lecture by an English lecturer. An English lecturer has been defined as a diabolical invention for mystifying what was clear and confounding what was intelligible. The audience for an English lecturer is usually largely composed of sufferers from bronchitis. In my country the beginning of the the lecture is usually followed by a failure of the primitive electronic equipment with which we decorate our aged buildings and thenceforward the lecturer is largely inaudible to the relief of all concerned. But now, in this spacious building in this bustling and purposive city at the time of autumn, tranquility, apart from a wind which I knew existed in the month of September before, with an apparently healthy audience and one which is, as I trust, sympathetic, in a lecture hall which would arouse the envy of every dean of law in Europe, and I imagine arouses the envy of every other dean of law in Canada, let us have what I hope we will enjoy and what Pepys would have called "a good, honest, and painful sermon". I say a sermon for I owe debts of gratitude which I shall endeavour to discharge by a lecture over which I have laboured. Gratitude to the University of Manitoba, the Foundation, for the honour of delivering this lecture, for the hospitality which has been extended to my wife and me, to Mr. and Mrs. Graeme Haig who put up with us for the last two days, to the Chief Justice to whom I am indebted in many ways, not least for his advertisement in the newspaper, and to the many members of the Canadian Bar Association for the encouragement and support which they have given us — I can only imagine that the lapse of four years must have dulled their memories — and my gratitude to you, the audience for having turned up and resisting the temptations of television and football.

At the turn of what has been a turbulent decade, in a turbulent century, I propose to talk this evening about some of the problems which are bound to trouble the law and the lawyers during the next decade. Although my practising legal experience is derived wholly from England, I know as a result of attending conferences of the Canadian Bar Association at Winnipeg and Halifax, and as a result of playing host to judges and lawyers from Canada who visit England, that we share common legal problems which reflect the difficulties and complexities of the late 20th century's civilization of which our respective legal systems form part. There are four kinds of problems which I propose to discuss. The first category of problems which face lawyers in general, and judges in particular, in the 1980's may be called the problem of the remedy. In the criminal law and in some branches of the civil law, the remedies available will be and remain largely

* The sixteenth annual Manitoba Law School Foundation Lecture delivered in Robson Hall at the University of Manitoba on September 15, 1980.

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inadequate. In criminal cases, the judge has power to discharge, to fine, to order community or other services to be performed, and in the final analysis to imprison. In exercising that power, the judge is concerned with the future of the criminal and the protection of society. In that respect, the approach of the judge is different from the approach of the psychiatrist who advised the thief to take things quietly. Unless during the 1980's there is a substantial decrease in the incidence of crime and a substantial improvement in the facilities provided for the treatment of criminals, the courts of England, and I apprehend also of Canada, will be overburdened with work, the quality of the administration of justice will be under strain, and the problem posed to the judge of dealing adequately with sentencing will be and remain insoluble. In the year 1978, there were 2½ million serious offences committed in England and Wales, roughly 2½ for each member of the province of Manitoba. The majority involved theft. Forty-one and a half percent of known offences were cleared up, though not necessarily by trial and conviction, and this is a relatively high rate of detection. But it is still a sobering thought that over half of the crimes were not detected. Typically, I imagine it even happens occasionally in Winnipeg, a motorcar disappears and is never seen again. Nearly half a million people were found guilty of a serious offence and over 60 per cent pleaded guilty. It is another sobering thought that may be matched in Manitoba that if the numbers pleading not guilty were to increase significantly it is difficult to see how the courts could cope. Already the interval between charge and trial varies from 6 to 20 weeks and longer in some complicated cases. Sixty-five thousand people were sent to prison and that is not a large proportion of those found guilty. And yet, our prisons in fact accommodated 45 percent more prisoners than the numbers they were designed to accommodate and over 60 percent of the prisons were constructed before the year 1900. It is true that over 80 percent of our university buildings were constructed before the year 1700 but we have always provided better accommodation for our prisoners than we have for our undergraduates. It is clear from these figures that already the administration of justice in relation to crime is under great strain. A decrease in that crime rate must depend partly on the economic future of the country during the 1980's because, despite propaganda to the contrary, poverty and idleness do breed crime. A decrease in the crime rate must also depend on the discipline practised and preached by parents and teachers. There is a long term price to be paid which we are now paying for neglecting or spoiling children, just as there is a price which was once paid for cruelty to children.

There are similar problems of inadequate remedies with regard to civil actions particularly matrimonial causes. If current trends persist, then one marriage in four which was celebrated in England in the 1970's will end in divorce in the 1980's. More than 60 percent of divorced couples have children under the age of 16. And a majority of the 150,000 divorces each year will involve questions concerning the custody of children and the division of matrimonial property. These questions of what to do with the children of a broken marriage and how to divide matrimonial property can only be satisfactorily solved if both parties to a divorce are reasonable, something which is asking the impossible, and they are both trying to do what is best for the children as opposed to thinking that each wishes the best

for the children and that the other party to the divorce is as black as can be painted. This also is a problem of society. Until there is adequate employment and until there is some improvement in education and parental responsibility, inadequate children will become inadequate parents and will breed more inadequate children. The modern child murders both his parents and pleads for mercy on the ground that he is an orphan.

The matrimonial disputes which fall to be decided by the courts are cases where the parties fail to agree and where everyone else has failed and by everyone else I mean the friend, and the doctor, and the priest, and the social worker, the lawyer and the psychiatrist, and the witch doctor. And inevitably where they have all failed, they are cases for which the judge cannot provide an ideal solution. It has been said, and will no doubt be said again throughout the 1980's, that matters of this kind, that is to say the future of children and the division of matrimonial property, should not be left to a judge to decide. No doubt any judge, whether of England or Canada or elsewhere, will be glad to be relieved of the responsibility. But the fact of the matter is that there is no one else at the end of the road. There is only the judge. And at the end of the road the judge is the only person who has the experience, the authority and the detachment to reach a decision which cannot be ideal, but a decision which may be inescapable after all the facts have been elicited and all the parties have been examined with that careful attention which is the abhorrence of all social workers and the delight of all lawyers.

This first problem, the problem of the inadequate remedy, can only be solved or kept in check by a general improvement in social standards leading to less crime and less divorce and by the expenditure of money and providing facilities for the deterrence of crime and for the guidance of individuals at odds with themselves and their neighbours. Hence the unpopularity of lawyers because they demand a change in attitude and they also demand the expenditure of money at a time when no matter which country is approached the cry is for economy and economy falls easiest on social services and on the provision of legal services; at least, so it is in my country.

The second category of problems which will face the lawyers and judges in the 1980's may be called the problems of decision making. Until the second half of the twentieth century, decision-making was a reasonably relaxed exercise; the criminal was not very clever, juries believed in justice but were not bigoted on the subject and they were inclined to be merciful. It remained for the judge to deliver a moral lecture and pronounce sentence and one never knew which was the worst for the criminal. The civil law, that is to say the solving of disputes between individuals, consisted of an evolving sensible body of rules which regulated contracts and defined torts, upholding the liberties of gentleman and rights of property, but treating every citizen as a gentleman and assuming that property was universally distributed despite the facts to the contrary. The Victorian judge who said that his idea of heaven was sitting in court all day and playing cards all night knew that he was on to a good thing. But now in the 1980's, the ascertainment of facts is complicated by the assistance of electronic equipment and the ascertainment of the law is complicated by international repercussions.

As to the ascertainment of facts, every lawyer is aware of the tyranny of the photocopying machine. I was concerned with an appeal last term which involved — and only involved — a short question, the construction of a single-page document which admittedly had been signed by all parties. Nevertheless, on the appeal, which was only in form an interlocutory appeal, the correspondence, affidavits, and papers which were produced and to which reference was made exceeded 850 pages. In another case I heard in the Court of Appeal, the appeal arose out of a collision at sea. In the middle of the night two ships sailing peacefully in opposite directions with only the China sea for manoeuvre overcame apparently insuperable difficulties and succeeded in colliding notwithstanding that they had seen one another on the radar screen when they were 18 miles apart. I don't say that radar caused the accident, but I do say that the collision would never have occurred without the assistance of radar which persuaded one ship to turn to port and the other to turn correspondingly to starboard and persuaded both ships to adopt relative rates of speed which eventually led them to colliding and causing extensive damage. Not only was the accident caused by electronic aids, it took several days in court to establish the facts and the liability because all the scientific aids had to be understood and considered whereas in the old days it would all have turned on the examination and cross-examination of the usual inarticulate and probably dead sleepy steersman in either vessel. As to complications in deciding the law, the 1980's will increasingly be an era of international conventions adopted by diverse national legislatures. I make no complaint. The world is now so small that we must all be bound by the same rules even though it is inevitable that then nobody understands what the rules are. If a Canadian buys a ticket in London from a French airline for a flight in an aircraft manufactured in the United States in order to voyage between Venezuela and Peru, he must be assured of his rights if the airplane descends in Ecuador or he loses his camera in Bogota. The same rights must accrue to an Englishman who buys a similar ticket for a similar unmentionable purpose in Toronto. International conventions require judges of many countries to harmonize their respective and different methods and results of interpreting and construing documents. The problem of decision-making thus becomes more subtle and more complicated.

This has its humorous side. I can illustrate this from a recent case in which the facts were extremely simple and everybody was terribly earnest and the decision went to the House of Lords. A lorry carrying whiskey from Scotland, which you would expect, to Iran, which you would not expect, was travelling through England en route when the lorry driver stopped for a cup of tea and, of course, left the lorry unguarded. Surprise, surprise! When he returned, the lorry and the whiskey had vanished. It was admitted that the owner of the lorry who was carrying the whiskey was liable to the owner of the whiskey for negligence in carrying and losing the whiskey. Because the whiskey had not been taken out of England, the owner of the whiskey became liable to pay customs duty amounting to the Sterling equivalent of \$ 40,000.00. Such are our present taxation requirements. You may think that at common law, left to our own devices, we would have found that the damages which the lorry owner was liable to pay to the owner of the whiskey included the \$ 40,000.00 which the owner of the whiskey was compelled to pay because the whiskey had disappeared. But

the relationship between the owner of the whiskey and the owner of the lorry was not governed by common law, that was far too simple and old-fashioned, but by the convention and the contract for the international carriage of goods by road, and that was in two versions, French and English. The English version had been made part of English law by the appropriate English statute. That convention only made the lorry owner liable for, and I quote, of course in English, "a charge incurred in respect of the carriage of goods." The question was whether the customs duty of \$ 40,000.00 was a charge incurred in respect of the carriage of whiskey. This, it was agreed, was a difficult problem. To help solve the conundrum, two of the members of the Court of Appeal dared to look at the French version of the convention and, having looked, the light dawned and they knew exactly what it meant. When the case went to the House of Lords, one member of their august assembly doubted the propriety of an English judge looking at the French version when the English parliament had only incorporated the English version. In any event, the learned law lord did not regard his own knowledge of the nuances of the French language as any reliable guide to the meaning of the convention. Lord Denning in the Court of Appeal had decided with typical relish that there was a gap in the convention which could be filled by judicial decision following his Lordship's definition of the continental method of interpretation.

Lord Wilburforce, in the House of Lords, was doubtful about the helpfulness of continental methods of interpretation and indeed he illustrated this graphically. He said

The assumed and often repeated generalization that English methods are narrow, technical and literal, whereas continental methods are broad, generous and sensible, seems to me insecure at least as regards the interpretation of international conventions. We have our share of technical decisions but I do not know that this is greater than other jurisdictions can claim. This convention has been accepted by more than 20 states, some of them close to English ways of thought. I cannot credit them all, or some average of them, with recognisably superior or even different methods of interpretation. We should of course try to harmonize interpretation but on this very convention courts of six other countries have produced 12 different interpretations of similar provisions. So uniformity cannot be reached by that road. To base our interpretation of this convention on some assumed and unproved interpretation which other countries are supposed likely to adopt is speculative as well as masochistic. The cases show that there is no universal wisdom available across the Channel on which our insular minds can draw.

In the end the majority of the House of Lords reached the conclusion which you must accept, and may applaud, that the lorry owner was liable to pay the excise duty which would not have been payable if he had looked after the lorry and the whiskey. The case illustrates the problem of decision-making, a problem with which you in Canada will be more familiar and more adept than we are, including, as it does, the problem of reconciling different languages and different legal systems. But, alas, if there is no universal wisdom across the Channel, so there is no universal wisdom on either side of the Atlantic.

This second problem, the problem of decision-making, can only be alleviated by a conscious effort away from complication and towards

simplification. We are trapped within a maze of words and a mass of machinery. There is no short or easy answer to this problem. There is only a painful process of educating ourselves to cope with science and technology.

The two problems with which I have just been dealing are problems which concern the conduct of society. The third problem concerns the organization of society. It is the problem of power and of the duty of the law and lawyers in the 1980's to illuminate and enforce the boundaries of power. In this field, the courts are called upon to consider the exercise or purported exercise of powers claimed by the legislature or by the executive or by corporations. And in this field, the judges, whether they like it or not, are dragged willy-nilly towards the areas of political controversy. In Canada, you have long been familiar with the role of judges in interpreting statutes which define the powers exercisable by legislatures, although for many years you left it to the British to do it for you. Between 1867 and 1890, decisions of the Privy Council strengthened the view that the *British North America Act 1867* gave the principal role in the affairs of Canada to the federal Parliament, a theory which I understand is not universally held in Canada at present. In the 1890's, under the influence of Lord Watson, the powers of the provinces were found to be more extensive. In the first decade of the 20th century, the pendulum swung back in favour of the federal Parliament. In the 1920's, Lord Haldane expressed the view that the federal Parliament could deal with trade and commerce but only in an emergency. And in the 1930's, the Privy Council faced with air navigation and broadcasting, which were unheard of in 1867, found that they were matters for the federal Parliament but at the same time declared invalid important legislation of the Canadian government dealing with unemployment.

The ending of appeals to the Privy Council only transferred the problems from the Privy Council to the Supreme Court of Canada as the final arbiter. Judging from some of the reports that I have read in the last four years, that court is still bravely trying to reconcile the federal power under s. 91 of the *Act* to make laws for the peace, order, and good government of Canada with the power of each province under s. 92 to make laws in relation to matters of a local or private nature in the province. In England, we have had no such problem. The courts have not considered any possible limitation on the powers of the Westminster Parliament since the 17th century rejection of the divine rights of kings and the theory of natural law. But those somnolent days are numbered. The *European Community's Act, 1972* directed the courts to give effect to enforceable community rights some of which may not be consistent with the provisions of English statutes. And if and when the *Bill of Rights*, of which Lord Scarman and others have argued, is enshrined in the British constitution, then British judges must by force follow the circumspect path trodden by the Supreme Court of Canada while avoiding no doubt the broad motorway traversed by the Supreme Court of the United States.

In dealing with the exercise of power by the executive as opposed to the exercise of power by the legislature, the English Courts have been sometimes timid and sometimes robust in performing the function of restraining an excessive power or an abuse of power and there is no doubt that problems of this nature will arise in the next ten years as they have arisen in the past.

The existence of the problem is not attributable, despite some theory to the contrary, to any inherent defect in the democratic system or to any ill will on the part of ministers, civil servants, or local authorities, but to the inevitable ambiguity of language when applied to different circumstances and to the necessary spate of legislation which controls our activities. It is a sobering thought that in its first year in office, an English Conservative government dedicated to simplicity and non-intervention enacted some 60 statutes which, if simplicity and non-intervention were their characteristics, must necessarily have accomplished nothing. In the complicated world of the 1980's it is inevitable that the executive should be armed with powers and discretions in order to provide for the unforeseeable and to achieve flexibility and fairness. In the exercise of those powers and discretions, it is inevitable that cases will arise in which some mistake is made or some authority misconceived. The position of the courts on this issue is clear in principle although doubtful in practice. It has been summarized by Lord Denning with regard to both statutory powers and prerogative powers. In his usual habit of clothing everything with its right historical background, Lord Denning said "that several times in our history the executive have claimed that a discretion given by the prerogative is unfettered and they have claimed that a power given by statute or by regulation is unfettered. On some occasions the judges have upheld these claims of the executive, notably in the ship money case in 1637." In parenthesis, it is one of the endearing characteristics of Lord Denning that one always gets the impression that he was actually there when the ship money case was decided. He continues,

And in one or two cases during the Second World War and shortly after it Judges have done so of late. The House of Lords has shown that when discretionary powers are entrusted to the executive by statute the courts can properly examine the exercise of those powers so as to see that they are used properly and not improperly or mistakenly. By mistakenly I mean under the influence of a misdirection in fact or in law. Similarly, when discretionary powers are entrusted to the executive by the prerogative in pursuance of treaty-making powers the courts examine the exercise of them to see that they are not used improperly or mistakenly.

That is a quotation from the case which enables half the student population to fly from Canada to England and from England to Canada at about one tenth of the price that used to be charged. It is the case of *Laker Airways v. Department of Trade*, a case in which the Department of Trade, having for years prevented any air fares on the Atlantic being reduced, were finally routed by Lord Denning and the other members of the Court of Appeal. It is surprising how many things are said to be impossible and how many rules are said to be enforceable until Lord Denning comes along and sweeps them away, rightly sweeps them away, with the three words "why ever not."

There was a simple illustration, in which again Lord Denning was concerned, of intervention by the courts in the year 1976. By statute in England, any citizen who has a television set must purchase a licence issued by the Home Office lasting one year and expressed to be revocable by the Home Secretary. It is to provide the funds at least one-tenth of the funds which are supplied by advertising in this country. In early 1975 the Home Office announced that, as from the 1st of April, 1975, the fee for the licence

would be increased from £ 12.00 to £ 18.00. As Lord Denning said

Consequently, this gave many people who already held a licence a bright idea. Towards the end of March they took out a new licence for the then existing fee of £ 12.00. This would overlap their old licence by a few days but the new licences would last them for nearly the next twelve months. So they would save the extra £ 6.00 which they would have had to pay if they had waited until the first of April, 1975.

There was nothing unlawful whatever in their trying to save money in this way. "But," said Lord Denning disapprovingly, "the Home Office was furious." They said, "we are not going to let you get away with it in this way. You must pay up the extra six pounds or we will revoke your new licence", and they carried out their threat. The Court of Appeal held, although the Home Secretary was given an apparently widest power to revoke a licence, he had not properly exercised that power and the Court of Appeal were not going to allow him to do so. Said Lord Denning,

If the licence is to be revoked, the minister would have to have a good reason to justify it. If the licensee has done something wrong, he has given a cheque which was dishonoured, or broken the conditions of the licence, the minister could revoke it. But when the licensee has done nothing wrong at all, I don't think the minister can lawfully revoke the licence and, if he should revoke it without giving a good reason, or for no good reason, the courts can set aside that revocation and restore the licence. It will be a misuse of the powers conferred on him by Parliament and these courts have the authority and the duty to correct the misuse of power by a minister or his department no matter how much he may resent it or warn us of the consequences if we do.

And there is always, I would add, an inevitable resentment.

In the 1980's I have little doubt that similar problems will arise and that the courts on both sides of the Atlantic will be asked, and will sometimes feel constrained to decide, that the executive has crossed the boundaries of power. The right and duty of the courts to restrain the misuse or abuse of power is not restricted to the executive. It extends to all inferior courts and domestic tribunals and extends also to corporations. In this field the English courts have been involved, and I think again in the 1980's may well again be involved, unwillingly in the struggle to define the powers and functions of trade unions in English society. On the one hand, Parliament has recognized that trade union functions can be frustrated by the enforcement of laws which apply to individuals. On the other hand, Parliament, under different political persuasions, from time to time changes its mind with regard to the form and scope of the immunities which require to be granted to trade unions to enable them to function properly. Whenever the courts are obliged to construe legislation which deals with trade unions, their decisions are bound to be unpopular with one side or the other. It may be that is why our salaries are guaranteed by Act of Parliament and why we cannot be dismissed without a motion passed by both Houses of Parliament, an event which I believe has never taken place. In the most recent case, Lord Scarman protested at open-ended expressions by which Parliament failed to make its meaning clear when defining trade union powers. He implored that the draftsmen should be bold and tackle his problems head-on. If he is to put a limitation on immunities let him do so by limiting the heads of tortious liability. If he is to strengthen the availability of interlocutory relief in in-

dustrial relations let him include clear guidelines in the statute. You will observe another call for clarity. If he is to limit blacking or picketing the statute must declare whose premises may or may not be picketed and how far the blacking or picketing may extend. Open-ended expressions will bring the judges inevitably into the industrial arena exercising a discretion which may well be misunderstood by many and which can damage confidence in the administration of justice. I have no doubt that judges, Canadian as well as English, say amen to that at some time or another in the 1980's.

As a footnote, let me draw attention to a recent claim for immunity which may cause further difficulty in the 1980's. It is the emotive subject of press freedom and exemption from the disclosure of the sources of information obtained by the press. It is unfortunate that cases of great principle are often decided in circumstances when the merits are likely to raise the blood pressure of a good many judges and individuals. In the case I have in mind, confidential documents were extracted by an employee of the British Steel Corporation and handed over to Granada Television and were then damagingly used in a television program during a bitter industrial dispute from which we are still suffering. British Steel brought an action against Granada to discover the name of the treacherous employee of British Steel who had stolen and handed over the documents to Granada. There was no defence to this action save the plea that the press and other media including television were immune from the law which compels the discovery of the name of a wrongdoer. The claim to press immunity stems from the need for information to become available to the press and thus to the public. The Court of Appeal and the House of Lords held that there was no immunity for Granada in the circumstances of the case having regard to the behaviour of the employee and the behaviour of Granada. The courts have been roundly abused by the press and by some politicians who, ignoring the merits in the conduct of Granada, argue that there is an absolute immunity for the press. The public, the judges, academics and everyone else are agreed that there is a need for some press immunity but it is necessary that that immunity should be defined by Parliament, that it should be given limits which Parliament thinks proper. When that immunity has been granted, the courts will then operate and uphold the immunity as given. At the same time, Parliament and the public must remember that we have the balance, on the one hand, of the right of the public to know through the press and, on the other hand, the right equally of the public to be protected against misuse of knowledge by those organs of the press which are incapable of resisting a headline or perceiving their own prejudices.

This third problem, the problem of power, lies at the heart of the individualistic society which still finds favour with the great majority of English and Canadian citizens. The structure of that society requires an umpire who will ensure the observance of boundaries of power determined by democratic governments and by common law precedents. The only possible umpire is the judge and, like all umpires, his decision renders him unpopular from time to time. This is not a problem to be solved but a problem to be faced. The only way of solving the problem will be to destroy the present democratic society and the present organization of society. Before doing that one must have regard to the authoritative announcement made last

week by the Chinese government that at least 175,000 persons had been wrongly convicted under a regime which does not recognize the independence of the judiciary and has a system which does not require an umpire because the result of the game is always decided before it is begun.

The fourth and final problem which will oppress us during the 1980's is the problem of administration. In some ways this is the most dangerous and intractable problem we have to face. If the administration of justice is too slow, too costly, and to inefficient, then injustice will be perpetrated, public confidence will be eroded, and the system under which the judiciary are the umpire will be bound to be torn down. I have already mentioned the weight of criminal cases and the burden which it imposes on the legal machine. The same difficulties will be found in Canada but there are two striking differences in administration, differences which we in England would do well to ponder, although I understand that in Canada you are tempted to turn back towards us. In Canada, a very small number of accused persons, amounting in the latest year that I saw at less than one thousand, were tried by jury and, in England, there were over fifty thousand. The late Lord Justice James and a committee recommended that trial by jury should be restricted to graver offences but this curtailment of the Englishman's right to trial by jury raised a storm of protest and is still being debated. The other difference is that in Canada minor crimes are dealt with by a single provincial judge sitting alone, whereas in England minor crimes are dealt with by benches of unpaid lay magistrates. Whether the Canadian system is cheaper and more efficient, as I believe it to be, and whether it gives rise to equal or greater satisfaction, which I also believe, are matters on which the researchers have so far been silent.

The same overloading of legal administration occurs in civil cases. In England, over 2 million civil cases are instituted every year. Most of these are mere debt-collecting exercises and only about 3 per cent come to trial. But of those which are tried, 80 per cent take between two and four years between the cause of action and the judgment. As the Chief Justice of Manitoba observed in a disciplinary case reported this year, a lawyer cannot be in two places at once. I would only add that in England, at any rate, most of them make a very brave attempt to be in at least three places at once. The pressure of civil cases is increased by deliberate legislation which has the effect of multiplying sources of dispute. Again I turn to the Chief Justice of Manitoba and I observed that his court was compelled to consider and compelled to decide that a pregnant school teacher was not entitled to maternity leave because she was not an employee but a member of a profession. I don't for a moment doubt the accuracy of the result. I merely marvel that the courts of Canada and also the courts of England should be compelled to examine such minute differences as occur in matters of this kind. They all stem from the tide of legislation which compels us to split hairs from Monday to Friday instead of once a week.

There are two reasons, and only two reasons, why the burden of criminal and civil litigation has not yet caused a breakdown of our legal system. The first reason is, although students may not accept this, that the law is certain enough to enable nearly all cases to be disposed of without any court appearance or with only a short court appearance. The second reason,

and again all students may not accept this, is that the legal profession is sufficiently knowledgeable and well-trained to enable lawyers to advise their clients to settle, and clients do settle on terms which approximate to the result which the law and the judges are likely to reach. Unless the law is reasonably certain and unless the lawyers are reasonably well-trained to know what is likely to happen, the tide of cases which appear before the judge must inevitably rise until it drowns the whole system.

This fourth problem, the problem of administration, can only be solved if the judges and the legal profession recognize that justice is half administration and only half law and if they are ready to pursue policies which allow experiments in the interest of speed and efficiency. We can pay too high a price for an over-elaborate system which in theory but not in practice produces perfect justice. If the rules of practice and procedure, proof and evidence, obstruct the administration of justice, as I think they do in England in many cases, then those rules must be simplified. All the problems which I have mentioned depend for their solution or containment on the preservation of certainty in the law administered by a body of impartial, moderate and predictable, judges and on the maintenance of adequate numbers of lawyers well trained in matters of principle and practice. That is not a very exciting thesis but I believe it to be sound. The foundation for the maintenance of an adequate and respected Bench and for the maintenance of an adequate and respected profession of lawyers must begin with the universities and law schools. That again is not an exciting proposition but I believe it to be true. But it is because of that that I have been glad to share with you some of the problems which I foresee in the future for both Canada and England. The next ten years will see an elaboration of rights and duties, a complication of domestic and international regulations, and a pressure of events and numbers and wealth which will present a great challenge to our legal system. We shall need to streamline the administration of justice without impairing the certainty, the expertise, and the public confidence which enable disputes to be resolved fairly and without bitterness. Unless we succeed in that task, we shall imperil the independence of the judiciary and fail to satisfy the assertion of a municipality of individual rights which are both the pride and the penalty of our present way of life and our system of government will be in danger. At present our system may creak and in the next ten years we shall have to see whether it goes on creaking or whether it will capsize. Thank you.

