

## A Tribute of Affection and Admiration

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*Trevor Anderson, Q.C.\**

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WE MEET IN THE MIDST OF A RARE, PERHAPS UNIQUE, EVENT in which jurists and scholars from across Canada have gathered, even ere his last judgment has been delivered, to do honour to a great judge and to offer the further and special tribute, which he will no less appreciate, of submitting to informed and candid study the contribution made to our law by him and by the Court he has served and led.

It must be unusual indeed that a judicial reputation falls so soon into the hands of these academic coroners of the law!

This is a national event, celebrating a career of national significance.

But I hope that our many distinguished visitors will forgive me, and not think it too provincial or even parochial, if tonight, in this place and in this company, numbering many old friends, I first speak of our retired Chief Justice as a person and as an outstanding Manitoban; for, even if he had not become a judge of the Supreme Court, or even indeed had never become a judge at all, he would have a large and lasting claim on the regard and gratitude of this province.

I had almost said, "his native province" — but must recall and concede that he was in fact born in Saskatchewan, a large and even flatter place west of here, known for the export of wheat, potash, and, in windy years, top soil and socialism. We do not begrudge Saskatchewan the distinction of being his birthplace; although one is tempted to apply the remark of Dr. Johnson, made of Scotsmen, that much may be made of them, if they be caught early enough.

And, indeed, it is to the Saskatchewan years that the Chief Justice acknowledges his debt for his early education. And also his first interest in the law, kindled in moot courts conducted by an imaginative scout master (probably because in Saskatchewan the troop could not find two sticks to rub together to make a campfire) and by discussions of law and politics with his friend's father, Murdo MacPherson, then Attorney General of the province.

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Nor must one overlook the importance of family and heritage. The Chief Justice has Irish, as well no doubt as respectable, antecedents. His father was born in County Down. His mother, a student of Latin and Greek, was one of the early women graduates of Trinity College Dublin, and her love of learning and sense of taste were to be a lifelong influence.

If one were bolder, one might quote a passage from Brendan Behan's play, *The Hostage*:

Pat: He was an Anglo-Irishman!  
Meg: In the blessed name of God, what's that?  
Pat: A Protestant with a horse.

I recall that some years ago a magazine writer, perhaps with more perception than imagination, after seeing the Chief Justice at Marchmount, his home in the Ottawa Valley, with its horses and deer, was reminded of an older, Anglo-Irish style of life; and indeed, there may be some resemblance of the Chief Justice to the great generals and proconsuls who have come from there — the integrity, the personal discipline, the selfless sense of duty — all rescued from austerity by a saving sense of the human and of the absurd.

It may be of interest, if only as a small footnote to history, to recall something of the early education in the law of one who was later to become a great Chief Justice of Canada.

The Manitoba Law School, when Brian Dickson enrolled in 1934, after two years in Arts, was an institution jointly run by the Law Society and the University of Manitoba through a board of management, then still chaired by the school's founder, Chief Justice Robson. After an earlier (and successful) venture, led by J.T. Thorson, into full-time legal education, it had reverted under financial pressure to the older model in which students attended lectures in the morning and, for four years (or five, if one did not have a prior degree) worked under articles in a law office afternoons and weekends.

As in all apprenticeship systems, some students received a first rate education through experience and others, perhaps more, were neglected or even exploited. Brian Dickson was fortunate in his principals, fondly remembered: Mr. Clare Scarth, a quiet solicitor of good judgment and extraordinary skill in drafting; Mr. C.K. Guild Q.C., a mercurial barrister of integrity; and Mr. Bert Honeyman, a bulldog counsel hostile to even a suggestion of settlement. Times were tough: the younger men in the firm received, with Dickson originally at the bottom, from \$50 a month to \$150 a month, and the man on \$150

supported a wife and three children. The articling student experienced the practice of the times: collections, tax sales and foreclosures.

At the law school, instruction was mainly by lectures based on standard texts: students worked through Anson on contracts, Underhill on torts and Beven on negligence, Snell and Maitland's lectures on equity. In constitutional law, later to become of some interest to this particular graduate, the assigned texts were Cameron on the Canadian Constitution and Lefroy and McWilliams' leading cases. Many of the courses were practically-oriented: there were four courses on civil procedure. The syllabus seems to reflect the concerns of the time: there were lectures on bankruptcy, farm liens, wages recovery and pawn brokers. It is perhaps a measure of the distance between today and that simpler era that the course on taxation was concerned with the power of government to tax and the *Income War Tax Act*.

The courses were given by sessional lecturers from the Bar and the small handful of full-time teachers. One was a young man from Portage la Prairie and graduate of Oxford, named C. Rhodes Smith. Later Brian Dickson was to go with him onto the Queen's Bench and then to follow and serve under him on the Court of Appeal. Curiously perhaps, Chief Justice Dickson recalls, they never on the bench spoke of those earlier days, nor was he made to feel a junior; Chief Justice Smith was younger by twenty to thirty years than his chronological age, and warmly included several generations within his own acquaintance and friendship.

This is still true; and I know it is a great pleasure to the Dicksons, as to us all, that Chief Justice Smith is with us this evening.

Legal education of those days was, as Chief Justice Dickson himself has said, much less demanding, sophisticated, and extensive than today. But at least it seems to have done him no irreparable harm; and, indeed, he flourished in it. He started a bit slow, winning only the 2d Isbister Prize (a majestic \$60); by third year, he was at the top of the class, winning both the prizes the school then offered, the first Isbister and the Carswell prize (\$40); and in third year he swept the board, walking off with the gold medal, the Alexander Morris Exhibition, the first Law Society prize and the Carswell prize, no doubt leaving behind classmates, if not envious, then at least impoverished.

He seems also to have found time for some extracurricular life, including service in 1936 as the business manager of the UMSU Dramatic Society; regrettably, there is no surviving evidence as to

whether he participated in that year's stage production, "Tobias and the Angels."

Notwithstanding this brilliant scholastic record, Brian Dickson did not, in the depressed circumstances of 1938, proceed immediately to the practice of his profession. For several years, he worked in the mortgage department of the Great West Life Assurance Co. It was only in 1940 that he was admitted to practice, before Adamson J.; and then, as was not uncommon in those days, as a barrister only, deferring his admission as a solicitor until 1954, when he was long since established in his profession.

But a few days before taking his Call, Brian Dickson had taken another, fateful step. When he graduated, Dean Laidlaw had quoted Lord Macmillan:

Law is much greater and nobler than the contents of any statute book, of any code, of any volume of judicial decisions. It is the guardian and vindicator of the two most precious things in the world, justice and liberty. . .

It was to be first in another forum that he defended those values. In 1940, he joined the Canadian Army, serving in England, then briefly as a staff officer with the infantry on the Canadian west coast. Then he negotiated his way back to England and, after D-day, in France, in August, 1944, he was wounded near the Falaise Gap. He was one of a remarkable number of "gunners" who later became judges; many of them seemed to retain the ability to sustain a rolling barrage from the Bench.

Back in Manitoba, he accepted the invitation of Col. Harold Aikins to join his firm and practised with Aikins, MacAulay, *et al.* for the next seventeen years. Colleagues of those days are with us tonight; perhaps after more libations they will disclose whatever secrets there may be to tell about the young lawyer Dickson. What I know is that within a remarkably short period, he was established and recognized as a leading commercial and corporate lawyer, trusted by the leaders of large enterprises, and himself a director or officer of major firms in lumbering, aviation and the grain trade.

He also compressed into those few years a simply extraordinary array of public and professional services.

He was president (and is now an honorary bencher) of the Law Society of Manitoba. He served on the law reform committee that preceded the modern Commission. He became active in the Canadian Bar Association — where his knowledge of French, and perhaps less often his more exotic acquaintance with Spanish, made him a popular host to distinguished visitors from other Bars. He would, I believe,

have become president of the Association, had he not answered, when he did, the call to judicial service. And he has always urged young lawyers to interest themselves in law reform and the larger concerns of the Bar, both to discharge a broader duty and to enlarge and enrich their own professional lives.

But the Bar was not the only community he served. Apart from his service to education, he was Chairman of the Manitoba Civil Service Commission and a member of the boards of the Winnipeg Foundation, the Winnipeg General Hospital, the Sellers Foundation, the Winnipeg Art Gallery and the Dafoe Foundation. An Anglican, he was for a decade Chancellor of the Diocese of Rupertsland. As a sometime Edmontonian, I am reminded of another prominent Anglican jurist, Mr. Justice Martland. When in practice, he came into his law firm library to find the two articling students — one a devout Catholic, the other of a staunch Presbyterian family — arguing the ultimate issues of theology. They appealed to his judgment: Did he think it was only as an Anglican that one could enter the Kingdom of Heaven? Pause. "Well, perhaps not," he said, smiling — "but no gentleman would go otherwise."

One day in particular Brian Dickson is unlikely ever to forget. He had agreed to be Chairman of the Manitoba Division of the Red Cross on the understanding this would entail one short meeting a month. On May 6, 1950, the floodwaters struck Winnipeg. He in effect left the office one afternoon and did not return for six weeks; working from the old Auditorium, he has recalled, he and his volunteers dealt with "evacuations and rubber boots and babies and boats . . . and 1,001 other things."

If one had limned a portrait of Brian Dickson, then R.G.B. Dickson Q.C., in 1962, it would have been flattering, but incomplete.

One might have thought him, it is perhaps fair to say, a highly competent, slightly conservative, lawyer, and a member in full standing of what then was coming to be called the Establishment; albeit an example of the highest virtues of the type, stamped by probity, dignity, and a strong sense of civic duty and *noblesse oblige*, to whom his profession and community owed much for service and leadership. But perhaps only those who knew him most closely were aware of the much deeper inner reservoir of thought, vision and capacity to lead on which he was soon to draw.

And then, in 1963, he became, to the surprise of some and perhaps himself, a judge. He regretted, he later said, severing long and agreeable associations with practice and business, but felt in the new

office the appealing prospect of a renewed and closer link with the spirit and creativity of the law.

Judges, said Mr. Justice Holmes, are naive, simple-minded folk, who need a touch of Mephistopheles. Mr. Justice Dickson of course lacked this somewhat satanic element but he did not come to the bench unacquainted with the ways of the world, and, as expected, soon became a strong commercial judge.

What perhaps was not so clearly foreseen was that he would, so soon, become a criminal trial judge of equal power, skilfully assisting juries and applying the law and settling sentences with marked humanity, insight, and respect for the dignity and rights of those enmeshed in the toils of the system.

He had some memorable, even spectacular, cases. In one, rather out of Perry Mason, the Crown's star witness confessed in the box to the crime.

In 1967, he was appointed to the Manitoba Court of Appeal. There he displayed, and perhaps developed, the capacities for thorough and fundamental review of the law and for its orderly and persuasive exposition that later so distinguished his opinions. His colleague and Chief has said Dickson J.A. was an outstanding judge, who never mistook the trivial and merely illustrative for the fundamental and enduring. That is testimony to be prized, coming from a judge of the stature of the Honourable Sam Freedman; and it gave enormous pleasure to the University, several years ago, when both these eminent jurists were installed as its first, and I think thus far only, honorary professors.

And then, recognizing a higher duty, we surrendered Brian Dickson to the nation. He went to Ottawa in 1973 to join the Supreme Court, of which he became Chief Justice in 1984.

The Supreme Court of Canada — I must remind its newest member, Mr. Justice Stevenson who has come to this seminar to collect all the good advice he can, and having fallen among academics, is no doubt finding it is offered in abundance — the Supreme Court has not always stood high in the esteem of the nation.<sup>1</sup>

Created in the 1870s, it was not only then subject to the Privy Council, but could be bypassed altogether by direct leaps to London. The first judges had no offices, but only a courtroom in the old

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<sup>1</sup> The early history of the Court is recounted in J.G. Snell & F. Vaughan, *The Supreme Court of Canada: History of the Institution* (Toronto: Osgoode Society, 1985) and further illuminated by G. Bale, *Chief Justice William Johnstone Ritchie* (Ottawa: Carleton University Press for the Supreme Court of Canada Historical Society, 1991).

Parliament Building. That did not much bother the judges, who spent as little time as possible in Ottawa, and had to be statutorily bludgeoned into residing there. Indeed, one of our honoured guests's special distinctions in history will be the "Dickson amendment" — the minor change in law that extended the area of required judicial residence far enough to encompass his farm in the valley.

Prime Minister Mackenzie said after one early sitting of the Court that two of the judges never opened their mouths but "they looked wise, which probably had the same effect as if they were wise." In 1879, a significant number of MP's thought \$57,000 per annum far too great a drain on the public purse and voted to extinguish the Court. In 1882, the Court was given new quarters — in refurbished stables which they had to share with the new national "picture gallery." The staff had to use ladders to reach the upper floor. The judges salaries, \$7,000, were left unchanged for years, and at one point in the 1880s, every judge was drawn nine months ahead. Their banker said "it is a risk — but it would be a greater risk to refuse." Worst of all, no one showed any interest in the Court's judgments — in 1880, there were no sales or subscriptions of the Supreme Court Reports in Manitoba and the North-West. Indeed, even then westerners suspected the Court of a central Canadian bias and preferred to put their trust in the cowboys and farmers of the Judicial Committee.

All that, of course, had altogether changed by 1973! The Court was a matured, influential, respected institution — a fine Court, of a traditional character.

But it stood on the eve before a new day — soon to have to meet new issues of consumers' rights, aboriginal claims, children's protection, environmental harms, and, of course, constitutional questions on which politically, and passionately, opinion was divided.

It is perhaps the tendency or temptation of every age to exaggerate the novelty and turmoil of its time; to feel, as Shelley did, that we are

the companions and forerunners of some unimagined change in our social condition or the opinions which cement it.<sup>2</sup>

In retrospect, in longer perspective, what so excited us may seem quite humdrum; especially in law, whose changes and concerns may

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<sup>2</sup> Cited, with other pertinent quotations I have borrowed, in M.E. Tigar, "20:20 Vision: A Bifocal View" (1990) 74 *Judicature* 89, a series of interesting observations on anticipation or prediction of the future of the U.S. judicial system.

prove to be by no means the most significant strands in our social history, and perhaps, in a truly civilized society, ought not to be.

And yet, unquestionably, and in a truly extraordinary measure, the Dickson years will be seen as a crucial time of change and challenge for the Court and for Canada. Great issues, affecting the fabric of the nation, came before the judges and called for, not only legal acumen, but statecraft and wisdom. It has been one of those rare periods of which historians will say of the Court, as was once said of a medieval jurist, that it

broke the mirror in which the law was accustomed to look at itself . . . and showed us the path.

The Charter of Rights and Freedoms conferred on the Court an ample and new jurisdiction, submitting to judicial determination the meaning and application of fundamental principles, only broadly and generally declared. And it fell to Brian Dickson, as Chief Justice, and to his colleagues, to do this.

In particular, theirs was the hard task of resolving cases in terms that were just to the parties, broadly enough expressed to give guidance to the courts and country, but not, explicitly or implicitly, cast prematurely in themes or theories or tests that in later and other cases would prove confining or inappropriate.

The Court did not have the luxury of being able to follow the exhortation of the Irish preacher, to walk the fine line *between* right and wrong.

How well the Court met this awesome responsibility is for others more learned and acute than I to judge. Various opinions will be expressed in this week's symposium. Some will be unsparingly critical; and praise now offered may be withdrawn, in later revisions.

Somehow, I think the Chief Justice will not mind. Like the great scholar he is, he knows that enduring ideas are tested, strengthened and refined in the forge of controversy; and that to the process, the anvil as well as the hammer are essential.

For myself, I think the Court has met its challenges very, almost astonishingly, well. It had the responsibility for decision, without the leisure for endless delay and discussion, and it has decided, with thought and vision, many matters of great moment.

But I speak tonight, not of the jurisprudence, but of the judge.

And I would mention, of many, but three points.

One is the leadership that, seizing the latent but real power of his office, he has given to the Court, as an institution, in adapting to the



stresses and demands of its enlarged jurisdiction and business: in devising its new procedures and organizing its work, pursuing new efficiencies, but always with a sensitive respect for the collegiality and tradition of the Court and never forgetting its essential and central purpose.

The second special feature of Mr. Justice Dickson's work I would mention is the quality of his judgments: thoroughly researched, deeply considered, and, above all, carefully organized and clearly written in a plain, 'Doric,' style to carry their meaning and conviction.

That, alas, has not always been said of all Supreme Court judgments. In a less collegial age, one judge of the Court described the productions of a brother judge as

long, windy, incoherent masses of verbiage, interspersed with ungrammatical expressions, slang and the veriest legal platitudes inappropriately applied.

And that was in a letter to the Prime Minister!

Closer to our own day, one of our greatest judges, holding the Crown not liable for failure of an army officer to prevent a soldier from firing a tracer bullet that started a fire, penned this immortal sentence:

Failure in relation to a duty undertaken or assumed directly toward the injured person becomes affirmative action in the obverse of actual conduct modified by the failure, and the actual conduct may be mere persistence in inaction. . .

It is said the trial judge who had been reversed carried this passage with him for the day when he could put it to the higher judge and ask for an interpretation.

William Faulkner was once similarly asked the meaning of a passage of a novel, and replied to the effect: "How would I know? When I wrote that, I was all corned up." A response not open to that respectable Baptist, Mr. Justice Rand.

It is predictable that judgments of an appellate tribunal will be *unpredictable*. One has sympathy for the young lawyer in A.P. Herbert's story who asked to be excused from costs on the ground that the judgment against him was an Act of God — "like earthquake, flood, hurricane, conflagration, or even widespread plague, if not a simple or minute bacillus" — and quite unforeseeable.

But they ought not to be *obscure*, if they are to give guidance to the lower courts and, to the people, education and even inspiration.

Which leads me to the third point: the respect felt for the Court by ordinary citizens. One can well understand the regard in which the

Court is held by other judges and by lawyers, able to appreciate its craftsmanship and vision. More impressive is the confidence in the Court, and in particular in the judgment and human decency of Chief Justice Dickson, that is shared by citizens at large. Even in the midst of deeply divisive controversies, where feelings run high, the Court's judgments are accepted without rancour as honest and impartial. There is a widespread sense, a conviction, that our interests and liberties have been safely trusted to hands of a wise, just and caring steward.

Even here in Manitoba (where, the Court told us, we had no statutory law and had been without it for nearly one hundred years):<sup>3</sup> a happy advance to a higher plateau of civilization from which the Legislature has since busily dragged us down again.

An ample subject invites ample comment, and one could not do justice to the achievement and distinction of our guest in a moment.

But I have gone on too long.

However, my remarks would be grotesquely incomplete if I did not mention, before this audience, which includes the President of the University of Manitoba and scholars from across Canada, one other matter — the Chief Justice's lifelong and deeply felt commitment to liberal and professional education.

Indeed, the only time that I recall his ever courting controversy, or being thought to approach even the verge of impermissible public comment, was when he spoke out strongly, in a convocation address, on the need for support of higher education. His remarks may have touched some guilty political consciences. I thought then, and think now, that they were entirely appropriate. If the head of our legal system, directed to subjecting the power and passions of the community to the governance of principle and reason and dependent on a body of professionals expected to be a learned, reasonable and reasoning element in the country, may not speak such essential truths, who may?

Certainly in his own life, he has directly served the cause of learning. He was a lecturer at the Manitoba Law School and a member of its board. He was one of those who led its transformation into a modern faculty. Later still, he served as chairman of this university's governors, never putting a foot wrong in days of student discontent that put many universities into some confusion and disarray. The Chief Justice leaves personal stories to persons "more anecdotal" than himself; but one characteristic tale, that has the ring

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<sup>3</sup> *Reference Re Manitoba Language Rights*, [1985] 1 S.C.R. 721.

of authenticity, stemming from those days is of his advice to a senior administrator troubled about relations with students: "For God's sake, go out and kick a football around."

As Chief Justice, and President of the Canadian Judicial Council, he began, and actively directed, new initiatives in judicial education.

And, as Chief Justice and judge, he forged new links with the law schools and in his own judgments, and in encouragement to counsel, has brought into the Court's consideration the best of Canada's mature and reflective legal scholarship.

Fittingly, we may describe him, as a man of the law, in words that Sir Francis Bacon used of the exemplary man of science:

Being gifted by nature with desire to seek, patience to doubt, fondness to mediate, slowness to assert, readiness to consider, carefulness to diagnose and set in order.

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Pray grant me one word more.

Brian Dickson's stature is the product of competence and character. But in every life, fortune too will play its part. He was lucky to be saved that day in France. And I have so far failed to mention the most fortunate occasion of his life: that day in 1943 when the young army officer, at home on leave, married Barbara Sellers of Winnipeg.

Every venture and triumph of life since has been theirs jointly. Mrs. Dickson's vivacity, kindness and distinction of mind delight all who meet her; and, with her judgment and values, have made the Dickson home and family the tranquil centre of their busy public life.

Chief Justice and Mrs. Dickson have been honoured many times these past few weeks. But I hope that for them, there may be some special pleasure in meeting here tonight, with old friends from Manitoba and colleagues and scholars from across Canada.

There is little we may add to what so many have better said before.

It is, after all, not easy to add honour to one who already holds almost every distinction from Doctor of Canon Law to membership in the Order of the Buffalo Hunt.

But certainly it is a pleasure for all of us gathered here to offer our own tribute of affection and admiration.

And it is now my great privilege, ladies and gentlemen, to offer to Brian and Barbara Dickson, on your behalf and that of the Faculty of Law, a gift, in token of this occasion and our deepest thanks and best wishes to them both.