

God Speed and God Bless

*Brian Dickson**

Dean Penner, Chief Justice Lamer, Mr. Attorney, Professor Anderson, honourable members of the judiciary, learned symposium participants, colleagues, ladies and gentlemen.

As always, it is wonderful for Barbara and me to be back in Winnipeg. I am particularly warmed and touched by the fact that this symposium is being sponsored by the Legal Research Institute, the Faculty of Law of the University of Manitoba, the Manitoba Bar Association, the Law Society of Manitoba, the Province of Manitoba and the Law Reform Commission of Canada. In particular I would like to thank Dean Penner and those associated with him in organizing this symposium and in bringing it to such splendid fruition.

Both Barbara and I thank you, all of you here, and in particular all the participants in the symposium — unfortunately too numerous to name personally (the number is itself a great honour to me) — who took time away from other duties and endeavours to be here.

It seems only fitting that the school which put me on my way down the legal path (or should I say “up the legal path”?) should now take stock of their handiwork. I can only hope that I have met their expectations and been worthy of the medal which the Faculty awarded me so long ago when I was a student.

Although I couldn't immediately find a job in the legal field upon graduation, even with that medal in my hand, I am proud to be a University of Manitoba alumnus, proud to be back.

I am honoured to be the subject of review, and scrutiny — perhaps roast — at this symposium. I admit to only you, however, and only now, that the title “Dickson Legacy” was somewhat disconcerting. My first reaction was that there had been a premature reading of my will, and that news reports of my recent death (personal or judicial) had been greatly exaggerated.

In terms of judicial demise, you may know that s.27(2) of the *Supreme Court Act* gives “retired” judges six months to complete judgments they had sat on at appeal, and I have over another two

* The following is a transcript of Chief Justice Dickson's speech concluding the testimonial dinner held in his honour on 19 October 1990.

months left. So while today you may be tossing me bouquets, you may next week be throwing brickbats.

I thank Trevor Anderson for his overly kind remarks. He is surely an example of the fine educators we have here now at the Faculty of Law. But not *only* now — you have a long tradition of legal excellence at this Law School. I remember my former professors with great fondness: Rhodes Smith (later Chief Justice of Manitoba and still going strong), Tom Laidlaw, and Pete Tallin. We law students then went to school in the morning, worked in a law firm every afternoon and till noon on Saturdays and all summer long. What for? Not for the money — \$11.00 a month (less income tax of course — but no G.S.T.). The education of Canada's future lawyers was then, and is now, an important process which serves as a basis for the continuation of our legal system. Indeed, without the dedication of those teaching at law schools across Canada, the legal process would grind to a halt. Educating individuals about the law is not an easy task. It is not simply a matter of presenting the student with a body of case law and a number of statutes, but, rather, the student must be taught how to think, how to consider the common law along with the statutory rules, and how to apply the law carefully, sometimes intuitively, and, hopefully, with an abundance of common sense. I understand that students are told to hammer the law into the Court if they don't have strong facts on their side, hammer the facts if they don't have the law — and if they have neither facts nor the law, then just hammer the table.

The student is not being taught a subject, but rather a craft, a way of thinking. An example (and *only* one example — there are very *many* more in your faculty here) which I came across in reviewing a book publisher's advance material is one of your younger rising stars, Professor Lee Stuesser (a Manitoban who, on his way back home from Harvard spent two years in Ottawa), whose book *An Advocacy Primer* has just been published. Writing and teaching are not easy, and I admire greatly those who choose to write and those who choose to teach.

Equally, legal research institutes here and elsewhere in the country play an important role in exploring the philosophy and the finer, and indeed basic, points of both law and the rule of law, as seen and interpreted by our courts.

I am reminded of the story of a biographer engaged to write a family history. He asked about Uncle Archie, the black sheep of the family, who had gone to the electric chair for murder. The resourceful biographer was, of course, an ex-lawyer. He said, "I can deal with it.

I'll just say your Uncle Archie occupied a chair of applied electronics at one of our leading government institutions. He was attached to his position by the strongest of ties. His death came as a true shock." Having been on the hot seat the last two days, I know the feeling.

There is the further story of the lawyer who was applying for insurance. Among the many questions on the application was the one which read, "Is your father still alive? If deceased, please state the cause of death." Unwilling to reveal his father had been hanged for cattle rustling, he answered, "Father deceased. He died while taking part in a public ceremony when the platform gave way."

No matter how I may phrase it, I feel I was fortunate to become Chief Justice of the Supreme Court of Canada at a most exciting time in Canada's constitutional and legal development. Until 1975, the bulk of cases in numerical terms heard by the Court were private law disputes between individual citizens, rather than between the government and citizens, or between governments themselves. The Court was, until then, obliged to hear all appeals in civil cases with a monetary value greater than \$10,000. Since then, the Court has had control of its own docket, with the exception of appeals as of right in criminal cases.

It was hoped by the creators of the Court that its comprehensive and integrated jurisdiction would promote greater uniformity in Canadian law. With the advent of the *Canadian Charter of Rights and Freedoms*, the focus of the Court has once again shifted, and now more than ever, we are seeing that uniformity emerging. The *Charter* is a document of which Canadians can be proud. It has changed the way in which the judiciary views cases. It has changed, and this is no overstatement, the way *society* views *itself*: as an evolving whole, as a "living tree".

The guarantee of individual rights and freedoms is strong, premised as it is on the fundamental principles of a free and democratic society. Protection of the individual from arbitrary treatment in the criminal process, protection of freedom of expression and religion, and protection against unreasonable search and seizure: these are some of the fundamental guarantees of any real society, in this case, our Canadian society. They can also be found in similar documents such as the American Bill of Rights. But our *Charter* also includes provisions relating to mobility rights, language rights, minority education rights, the rights of aboriginal people, equality of the sexes, and a general recognition of Canada's rich multicultural heritage, not simply a melting pot on the U.S. model.

These other provisions, additional but without being "add-ons", manifest a distinctly Canadian social experience, one marked by a recognition of cultural identity, as well as an awareness of the importance of equality in a multicultural confederation.

Charter rights are not, however, absolute, and not necessarily static. Therein lies the greatest challenge to our courts — achieving a balance between individual rights and collective rights. Section 24 prevents the courts from bringing the "administration of justice into disrepute," while section 1 permits limits of *Charter* rights only if shown to be reasonable and "demonstrably justified." These limits entrust the courts with responsibility to ensure that collective rights do not infringe too greatly upon the individual, yet allow society to function in an acceptable and appropriate manner.

La Charte a eu pour effet de donner à la Cour suprême du Canada une plus grande visibilité auprès du public canadien qui comprend peut-être mieux maintenant, non seulement le processus judiciaire (aux niveaux de première instance et d'appel), mais aussi les préceptes fondamentaux de notre société. Les tribunaux à tous les niveaux en retirent aussi quelque chose car, grâce à *La Charte*, ils ont eux-mêmes acquis une meilleure connaissance de la manière dont notre société fonctionne et de ce qui est nécessaire pour garantir le maintien des valeurs démocratiques et sociales que nous chérissons tant.

There is an internal and external aspect to the practice of law I wish to emphasize. The internal aspect for lawyers is that despite the increasing cost of the business of the practice of law one must be ever on guard not to let commercialization replace professionalism — you must retain your sense of your individual legal personality and your faith in the ultimate mission of your calling. The external aspect — the other side of the coin — is our special obligation to ensure that the less fortunate have access to the legal system and justice — the cost of legal advice should not put it beyond the reach of have-nots and have-littles who claim the protection of the law.

While I am honoured that this symposium bears my name I personally cannot, will not, even *begin* to assume any more credit than the other justices who sat on the Bench with me, throughout a truly progressive time for law development in Canada. This symposium is a tribute to them as much as to me. I speak, in particular, of the now Chief Justice of Canada, Antonio Lamer, here with us this evening. He was a law reformer, a President of the Law Reform Commission, a law reformer as justice on more than one court, and now Chief Justice of the Supreme Court of Canada. He will leave his own mark on Canadian law, both now and quite literally into the next century.

We on the Court had a tremendous backlog to get through over the last four or five years. Get through it we did, by extra hard work from all of our justices, and by extra sittings of the Court. We have so far cleared the way so that we are now not only "open for business," but open for "extra" business. If you inscribed your case at the beginning of this session, your appeal could be heard in two weeks. Few appeal courts work *that* fast.

I spoke a moment ago of the justices who sat on the Bench with me through my years. Tony and I sat on that Bench for many a long, legal hockey game. We often, as you know, played on the same "line," philosophically speaking. I hope we did not give too many bodychecks to our fellow justices. We were also benched now and then, in dissent, and we hope afterwards we scored a few slapshots.

But now it is time for this old captain to go back to the locker room and hang up the skates. It has been a great game. Quite literally, the match of our lives. It has been an honour and privilege to have played the part I played on my team. My game is almost over. The *team* continues. *That* is my legacy.

Thank you from me, and thank you from Barbara for a truly memorable evening which we shall forever cherish.

God speed, and God bless.

