

## Manifest Justice: A Biographical Sketch of Chief Justice Brian Dickson

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### I. INTO THE SPOTLIGHT

SHORTLY AFTER R.G.B. DICKSON was appointed to the Supreme Court of Canada in 1973, I was asked to contribute a biographical essay about him to the Osgoode Hall Law Journal. I titled the piece "Unobtrusive Justice"<sup>1</sup> to emphasize one of its principal themes: that Mr. Justice Dickson had, up to that point in his career, operated most effectively behind the scenes, or, at any rate, in a low-profile mode.

Looking again at Dickson's career seventeen years later, I have opted for a title with a quite different message: "Manifest Justice." The new title does not signify any resiling on my part; I still think the thesis of the earlier article was essentially correct. I believe, indeed, that Dickson's capacity for unobtrusive persuasion and management continued to provide a basis for much of his success during his years on the Supreme Court of Canada. There has been a change, however. It can no longer be said, as it could in 1973, that "little . . . has been written about Mr. Justice Dickson," or that he is "an almost complete stranger to the general public, and even to many of the legal profession." Brian Dickson can no longer be described as an "unobtrusive" agent of justice.<sup>2</sup> When Dickson retired from the Supreme Court of Canada at the end of June, 1990 there was a flurry of media attention; and even a perfunctory search of newspaper and periodical indexes for the years preceding his retirement discloses that he had become a remarkably high-profile jurist by at least the time of his

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<sup>1</sup> (1974) 12 Osgoode Hall L.J. 339.

<sup>2</sup> *Ibid.*

appointment as Chief Justice of Canada in 1984.<sup>3</sup> Some indication of his latter-year prominence may be found in the fact that while he had been awarded one honorary university doctorate prior to his elevation to the Supreme Court of Canada, he held sixteen of them at the time of his retirement.<sup>4</sup> In part, no doubt, this growth in prominence can be attributed to the importance of the offices he held as Justice of the Supreme Court of Canada and as Chief Justice of Canada, but there was more to it than that. It is evident that the public image Dickson projected in the later years of his career was the result, in part, of his conscious decision to "go public."

Before I attempt to examine this change of approach, however, it may be helpful to offer a brief sketch of Dickson's pre-Supreme Court life and career.<sup>5</sup>

## II. CHILDHOOD AND EDUCATION

DICKSON WAS BORN IN YORKTON, Saskatchewan, in 1916. Christened Robert George Brian, he has always been known as Brian by his family and friends, and in recent years he has usually dropped the given names for professional purposes as well. His father was a peripatetic bank manager, whose frequent transfers took the family to several prairie towns while Brian and his brother were small. Regina was their home during most of Brian's school years, however. His mother, who had been one of the earliest female graduates of Trinity College, Dublin, was ambitious for her sons. Brian was a studious boy, and under his mother's stimulus he was very successful at school. He claims to have been only about twelve years old when, fascinated by mock trials that were staged by his Boy Scout troop, he decided to become a lawyer. He never wavered in that career objective

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<sup>3</sup> He was so well known by then that as *Maclean's* magazine reported immediately after his elevation, "Dickson's promotion won virtually unanimous approval from judges and lawyers across the country..." (30 April 1984) 14.

<sup>4</sup> D.C.L. St. John's College 1965; LL.D., University of Manitoba 1973; LL.D., University of Saskatchewan 1978; LL.D., University of Ottawa 1979; LL.D., Queen's University 1980; LL.D., Dalhousie University 1983; LL.D., York University 1985; LL.D., University of British Columbia 1986; LL.D., University of Toronto 1986; LL.D., Laurentian University 1986; LL.D., Yeshiva University 1987; LL.D., McGill University 1987; LL.D., Carleton University 1988; D.C.L., University of Windsor 1988; LL.D., Mount Allison University 1989; LL.D. Brock University 1990.

<sup>5</sup> This section of the paper is drawn from "Unobtrusive Justice," *supra*, note 1, with a few additions and modifications.

thereafter, although it was to be a long time before he acquired extensive courtroom experience.

About the time that Brian graduated from high school, his father was transferred to Winnipeg, where Brian enrolled at the University of Manitoba. The minimum entrance requirement for the Manitoba Law School was the completion of two years of the Bachelor of Arts program, and as soon as he had finished Second Year Arts, he registered at the Law School, and entered articles of clerkship with the Winnipeg law firm of Scarth, Guild and Honeyman.

It was 1934 — the depth of the great Depression that wrought world-wide economic devastation, and dealt especially cruelly with the Canadian prairies. Life was not easy for a law student. Although the price of most commodities was low, tuition fees at the Manitoba Law School had actually been increased to offset reduced enrollments. To earn enough to meet both tuition costs and living expenses was extremely difficult. Salaries paid to articulated students were either nominal or non-existent, and part-time employment was hard to find. The Depression left indelible marks on the personalities of many Canadians. In some it bred a permanent sense of defeat; in others it led to an attitude of excessive caution. To a few who, like Brian Dickson, were able to meet its challenges successfully, the Depression provided motivational momentum. When asked by the writer to identify the source of his restless ambition, Dickson pointed without hesitation to the Depression.

### III. FIRST EMPLOYMENT AND WORLD WAR II

WHEN HE GRADUATED FROM THE MANITOBA LAW SCHOOL in 1938 Brian Dickson was awarded the University and Law Society Gold Medals for the highest standing in his class. Even that fact was not enough to ensure him employment in the profession of his choice, however; when he completed his service under articles the following year, he was forced by the scarcity of legal openings to take a position in the investment department of the Great-West Life Assurance Company.

Not long after an even wider wedge was driven between Dickson and the practise of law by World War II. Joining the Royal Canadian Artillery, Dickson was sent overseas in 1940. The same industry and competence that he had displayed as a law student won him rapid promotion and in 1943 he was returned to a staff post in Canada with the rank of Major. This enabled him to marry his fiancée, Barbara Sellers, but he was not content to serve in Canada when all the action

was in Europe. Eventually, by agreeing to return to the rank of Captain, Dickson was successful in obtaining another overseas posting. He served with distinction during the early part of the Normandy invasion, and was mentioned in dispatches. Then, during the battle of Falaise Gap, he was severely wounded when American bombers attacked the wrong target. Dickson has often remarked on the role luck has played in his life, and he was indeed lucky to survive the Falaise tragedy. Medical assistance was scarce, and he lay unattended, along with many others, for a long time. According to anecdote, he was eventually recognized by a medical officer from Winnipeg and given priority treatment. He lost a leg as a result of his injuries, but if the anecdote is correct he, and Canada, might have lost infinitely more.<sup>6</sup>

#### IV. LAW PRACTICE

IF IT WAS LUCK that brought Brian Dickson back to Winnipeg, it was skill and drive that did the rest. When he returned to civilian life in 1945, he was asked to join Aikins, MacAulay, Loftus & Co., one of Winnipeg's most prominent law firms. Professional success came swiftly. A powerful intellect, a talent for organization, compulsive work habits, and a gift of good judgment soon made him a much sought-after legal advisor to the business community. His company directorships eventually included the Imperial Bank of Canada, Federal Grain Limited, Bristol Aircraft, and TransAir Limited. Dickson was very active in professional organizations, serving as President and Life Bencher of the Law Society of Manitoba, Honorary Treasurer of the Canadian Bar Association, and a member of the Manitoba Bar Association Council. He was appointed Queen's Counsel in 1953.

On the personal side, a happy marriage produced four children and an active social life. Refusing to be hampered by the loss of his leg, Dickson followed a number of outdoor pursuits (swimming, duck hunting, horseback riding) and operated a hobby ranch. He and his family travelled widely. No doubt through the influence of his partner John A. MacAulay, who was a renowned art connoisseur, the Dicksons began an art collection, which grew to contain important paintings by artists of the French Impressionist and Canadian Group of Seven schools.

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<sup>6</sup> J. Simpson, "Ready for the Challenge" *The [Toronto] Globe and Mail* (20 April 1984) 6.

## V. COMMUNITY SERVICE

THE WORK THAT DICKSON DID over the years for cultural, philanthropic and social service organizations was too extensive to record fully. He served on the boards of the Winnipeg General Hospital, the Winnipeg Foundation, the Sellers Foundation, the North American Wildlife Foundation, the Dafoe Foundation, and the Winnipeg Art Gallery. He acted as Chancellor of the Anglican Archdiocese of Rupertsland (legal advisor for the prairie region of the Anglican Church of Canada), and as Chairman of the University of Manitoba's Board of Governors. In all these posts his influence on the affairs of the organizations in question was great, though usually exercised by quiet persuasion rather than by open confrontation.

Three of Dickson's contributions to public service — his Presidency of the Manitoba Red Cross Society in 1950, his Chairmanship of the Manitoba Civil Service Commission for several years, and his membership on the Board of Trustees of the Manitoba Law School during the final years of its existence — deserve special attention because of what they reveal about his values and his style.

In 1950, at the request of his partner, John A. MacAulay, who was national Chairman of the Canadian Red Cross Society, Dickson agreed to act as Manitoba Chairman of the organization. He had been assured that the assignment involved little more than attendance at a few meetings during the course of the year. In early May, while he was in Ottawa for a meeting of the National Council of the Red Cross, he received word from Winnipeg that the flooding caused by abnormally high spring run-off levels on the Red and Assiniboine Rivers had reached very serious proportions, and that the Red Cross would be called upon to play a large role in assisting flood victims. Dickson flew home immediately, arriving in time to represent the Red Cross at an emergency conference held in the Premier's office at 2:00 a.m., May 7, to create a co-ordinated organization for dealing with what by then was recognized as a major disaster. It was agreed at that meeting that while the armed forces would undertake primary responsibility for dike building and other direct forms of flood fighting, the Red Cross would be responsible for all relief work, as well as for providing food, coffee, and other creature comforts to the tens of thousands of military and volunteer flood fighters toiling on sandbag dikes. To accomplish this mammoth task, the Manitoba Red Cross Society had only one full-time employee and a handful of voluntary workers. Brian Dickson undertook that night to assume leadership of the Red Cross operations on a full-time basis for the duration of the

emergency, and he did not return to his law office for the next six weeks. Drawing heavily upon his military experience, he created an organization of some 4,000 volunteers which carried out large scale relief and service functions with remarkable speed and efficiency. Although many thousands of Manitobans were assisted in one way or another by this Red Cross operation, very few of them even knew of the existence of the man whose vitality and organizational genius made it work.

In 1953 Dickson accepted an appointment as Chairman of the Manitoba Civil Service Commission. The Commission had been created a few years previously in an attempt to remove from the political arena the hiring and firing of civil servants and the determination of their conditions of employment. The Commission was to be chaired by a person independent of the government, and was charged with supervising government hiring and promotion practises, making recommendations with respect to senior civil service appointments, pay scales, and other employment terms within the civil service, and hearing appeals from dismissals of government employees. Although he devoted one afternoon every week or ten days to meetings of the Commission over the next five years, Dickson refused to accept the salary that went with the Chairmanship, for fear that it might somehow be thought to compromise the independence of the position. He had little cause for concern about criticism on that account, however; the Civil Service Commission during Dickson's Chairmanship carried out its responsibilities effectively, and with unquestionable judicial detachment.

About the time his term of office with the Civil Service Commission expired, Dickson was named to the Board of Trustees of the Manitoba Law School. At that time, the School, which was operated jointly by the University and the Law Society, offered part-time instruction only. Although they attended classes every weekday morning during the school term, law students were required to work in law offices as articulated clerks for the balance of the day, as well as during the summer months. While the School had a small full-time faculty, most instruction was provided by members of the practising bar.

In most other parts of Canada this pattern of legal education had been supplanted by full-time university study, followed by a period of practical experience in law offices, but most Manitoba lawyers preferred to retain the system under which they themselves had been trained. However, Brian Dickson and others had their doubts. They knew that the quality of instruction offered by law firms to their articulated students varied greatly from office to office, and that the

pressure of articling duties left students little time to digest the masses of information hurriedly fed to them during the morning lectures. As one of the school's former lecturers, Dickson knew the difficulties that the exigencies of a thriving practice placed in the path of a part-time teacher. Like a growing number of other Manitoba lawyers he found himself having to acknowledge that in the realm of legal education Manitoba might not have as much to offer as many other provinces.

Shortly after joining the School's Board of Trustees, Dickson quietly sounded out some of the students for suggested improvements, and urged the Board to take remedial action. The first step, approved by the Board only a few months after Dickson's appointment, was an increase in the full-time faculty. From then until his resignation from the Board of Trustees in 1964, Dickson was probably the most influential force on the Board. As the controversy over the merits of concurrent articling heightened, he took no public part in the debate, but his quiet insistence on higher quality led to a series of improvements, culminating in the eventual abolition of concurrent articling. He pressed for the appointment of more full-time professors, and resisted the proposal that such additional staff should be enlisted from the ranks of retired judges. He prompted the trustees to provide better salaries and staff benefits, and he persuaded them to take a generally more liberal approach as well to other expenditures designed to improve the School's program.

It was during Dickson's term as President of the Law Society of Manitoba that the Society set up a committee to advise on the future of legal education in Manitoba. While his personal role in that development is difficult to document, it is unlikely that its occurrence during Dickson's term of office was merely co-incidental. When the Committee produced a very cautious recommendation, calling for the retention of concurrent articling during most of the program, but for full-time study in the first year, Dickson urged the Board to implement the proposed change rapidly. At the same time, however, he contacted the Law Society of Upper Canada, which was refusing to accept Manitoba graduates into its Bar Admission course, to learn whether this change, together with the other improvements that had been made, would satisfy the Ontario admission requirements. On learning that Ontario would withhold recognition until Manitoba established an entirely full-time LL.B. program, the Board of Trustees decided, without even waiting to see the results of the full-time first year experiment, to obtain Law Society and University approval for a three year full-time LL.B. program, to be followed by articling and Bar

Admission training. Since the cost involved was thought to be too great for the Law Society to bear, it was agreed to terminate the 50-year-old co-operative agreement between the University and the Law Society, and to create a Faculty of Law within the University of Manitoba. It was another unmarked monument to the career of a remarkable behind-the-scenes lawyer.

One of the few types of community activity in which Dickson seems never to have participated to any significant degree is politics. Although he is generally supposed to have been a Liberal, and while his wife's family had been supporters of the Conservative Party, financially and otherwise, there is little evidence of any interest in political partisanship on Dickson's part. In fact, there are stories of resentment among more actively partisan Liberal lawyers that Dickson's 1963 appointment to the Manitoba Court of Queen's Bench was not bestowed on someone to whom the party was more deeply in political debt.

After his appointment to the bench, Mr. Justice Dickson continued to make extensive extracurricular contributions to the community. Indeed, he undertook several new positions on the boards of social and cultural organizations (partly, he says, to escape the isolation of the judicial cloisters). For example, he served with great distinction as Chairman of the Board of Governors of the University of Manitoba during a rather vexed period of that institution's history. However, the most important aspect by far of Dickson's career between 1963 and 1973 was his work on the Manitoba Court of Queen's Bench and the Court of Appeal.

## VI. COURT OF QUEEN'S BENCH

ONE OF THE MANY MYTHS to which the legal profession clings, no matter how often it has been proved wrong, is that in order to be an effective trial judge it is necessary to have had extensive experience as trial counsel. When Dickson was first appointed to the bench, many Manitoba lawyers expressed the opinion that it was a mistake to have selected a person with so little previous courtroom exposure. While his inexperience in this regard is sometimes exaggerated — he had shown himself to be a skilled advocate in many appearances before various regulatory boards and commissions — it is true that he was not very familiar with the work of trial courts, certainly not in criminal matters. This inexperience hampered him very little, however. Within a short time the comments heard among the practising profession about his performance as a trial judge were uniformly favourable. He



acquired the requisite knowledge of procedural and evidentiary rules quickly, and from the beginning he displayed a firm and even-handed courtroom demeanour. Even criminal trials were taken in stride; in fact, Dickson developed a special love for the drama of the jury trial, and acquired a reputation for the fairness and lucidity of his jury charges.

Looking back on Mr. Justice Dickson's published judgments as a trial judge yields several impressions. First, one is struck by their sheer number. The primary reason for this is that Dickson brought with him to the bench an enormous appetite for work. It may also be explained in part by the fact that Dickson seems to have striven harder than most trial judges to express his reasons for judgment in a form that law report editors would regard as publishable. In fact, his first few reported decisions seem, in retrospect, to have involved such straightforward problems that they did not really merit written reasons for judgment at all.<sup>7</sup>

This leads to a second impression: that Dickson was concerned from the beginning to influence posterity. That he should apparently have courted the attention of the law reports and through them of the legal profession may seem inconsistent with Dickson's previous aversion to publicity, but it is entirely compatible with his lifelong desire to play a role of influence in the outcome of events.

A third impression is of a judge impatient with technicalities and determined to reach just solutions to the problems brought before him, even if this required some judicial creativity in interpreting the applicable law. In the early years this desire to arrive at a solution that common sense would approve occasionally produced decisions that were questionable in law. In *Re Shields and City of Winnipeg*,<sup>8</sup> for example, Dickson held that the *Mechanics Lien Act*<sup>9</sup> did not apply to work done by private contractors on public streets. While this conclusion was unexceptional in light of the wording of the statute and the fact of Crown ownership of all streets, the reasoning employed to reach the conclusion — that "public policy" would not permit any other result — was dubious at best. In *Machray v. Zionist Labour*

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<sup>7</sup> See, for example, *Northern Messenger & Transfer Ltd. v. Fabbro* (1964), 45 D.L.R. (2d) 73 (Man. Q.B.); *Shriner v. Mularski* (1964), 45 D.L.R. (2d) 558 (Man. Q.B.); *LeClerc v. LeClerc* (1964), 45 D.L.R. (2d) 770 (Man. Q.B.).

<sup>8</sup> (1964), 47 D.L.R. (2d) 346 (Man. Q.B.).

<sup>9</sup> R.S.M. 1954, c. 157.

*Organization*<sup>10</sup> an incorporated association which had no power to hold land entered a contract to purchase certain land, paying a deposit of \$5,000. Later, the organization refused to complete the transaction, and when sued for the difference between the purchase price and the amount the property was eventually sold for, it raised the defence of *ultra vires*, and counter-claimed for return of the deposit. Mr. Justice Dickson dismissed both the claim and the counterclaim. While that outcome may have been a reasonably equitable solution to the problem, it was based on a questionable holding that *ultra vires* may not be raised as a defence unless the parties can still be returned to their original positions. Even if that principle is correct, it is difficult to understand why, after holding that the parties could *not* be returned to their previous positions, he dismissed the plaintiff's action.

Cases like these were aberrations. Dickson normally displayed great skill, especially after his first few years on the bench, in achieving equitable results by means of orthodox legal techniques. The significance of cases like *Shields* and *Machray* is that they demonstrated, at a stage when Dickson was not quite so adept at disguising it, his result-oriented approach to judging.

## VII. MANITOBA COURT OF APPEAL

WITH HIS APPOINTMENT to the Manitoba Court of Appeal in 1967, Mr. Justice Dickson's productivity became even more impressive. He participated in more decisions and wrote more reasons for judgment, by a very wide margin, than any other member of the Court while he served on it. Even compared to the record of so prolific a judge as Chief Justice Samuel Freedman, Dickson's output was extraordinary. The secret of his ability to produce so much material so rapidly lay in two factors: (a) a very quick mind, and (b) a highly efficient method of operation, involving the dictation of tentative judgments as soon as he left the bench, while the material was still fresh in his mind, to be put into final form later.

Dickson's role on the Court of Appeal was by no means confined to writing reasons for judgment. His influence on his fellow judges seems to have been great. Here, as in much of his previous work, he proved to be a master of behind-the-scenes deliberations. In view of the large number of cases in which Dickson participated, the number of dissenting opinions he wrote is remarkably small. One reason for this was undoubtedly a reluctance to waste his energy on lost causes, but

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<sup>10</sup> (1965), 53 D.L.R. (2d) 657 (Man. Q.B.).

another was probably the fact that by seizing the initiative with a rapidly prepared draft judgment, and defending it convincingly in judicial conferences, he was often able to persuade his colleagues to see things his way.

In addition to all this, Dickson made a greater than normal contribution to the day-to-day administration of court business. In short, by the time of his elevation to the Supreme Court of Canada, few other judges played so influential a role in judicial matters within Manitoba.

My previous biographical essay referred to above examined the substance of Mr. Justice Dickson's Court of Appeal decisions, and attempted to draw some general conclusions.<sup>11</sup> Since it is not the purpose of this piece to deal with substantive law, I will simply outline the conclusions suggested by that survey. It revealed a number of significant contributions to the law of torts, with a slight leaning toward the plaintiffs' side, and with a display of impatience about "technical" arguments. In criminal matters, Dickson's Court of Appeal decisions seemed to be less liberal than his civil ones, though he was not as illiberal as most of his colleagues on the Court. In fact he displayed a tolerance that was remarkable for a card-carrying establishmentarian toward alternative lifestyles and sexual peccadillos. In labour law matters, he tended to agree with the union position more frequently than his colleagues did; in family law matters he appeared more concerned about the welfare of the children than the rights of their parents. On questions of civil liberties, Dickson was already beginning to stake out a firmly liberal position. On other constitutional questions, there was not sufficient evidence by the time he was appointed to the Supreme Court of Canada upon which to base a confident assessment of his position.

Overall, Dickson's Court of Appeal work confirmed the impressions created by his reported trial judgments, but some new characteristics were now evident as well. Thoroughness for example: to a greater extent than in his earlier judgments, Dickson could now be counted on to research his decisions exhaustively, both as to relevant cases and statutes, and as to any non-legal material that might be pertinent. On occasion, the research seemed to extend further than was really necessary for the decision, and one sensed a thirst to learn new things that sometimes transcended pragmatism.

Dickson's efforts to improve his facility in French may have stemmed from the same thirst. He has said that his desire to learn

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<sup>11</sup> "Unobtrusive Justice," *supra*, note 1 at 346ff.

French was provoked by an incident in 1955, when he found himself unable to give directions to a taxi driver in Quebec City. He began studying French as a result.<sup>12</sup> This early instruction, coupled with European travels, equipped him with a working knowledge of French, and when French instruction was made available to members of the bench by the Government of Canada, he eagerly took advantage of the opportunity to improve that knowledge. By 1973, he was reasonably adept in French.

Few of Dickson's early judgments had much literary merit; he said what had to be said plainly, and without flourish, and went on to the next matter. This was generally also true of his Court of Appeal judgments, but well-turned phrases and quotable epigrams were rather more common in his later judgments. In this respect, as in the case of his French language capability, there seemed to be a conscious self-improvement effort in progress.

Most of Dickson's Court of Appeal judgments displayed a fidelity to legal forms, though not much enthusiasm for them. It was alleged earlier that the reasoning of some of his first trial decisions had the appearance of being result-oriented. Although the process was not so obvious in his Court of Appeal judgments, the high correlation between his conclusions and those that would probably have been reached by tribunals composed of barbers or taxi drivers, was far from coincidental. He displayed a willingness to slip off the shackles of *stare decisis* when necessary, and his interpretation of both legislative and contractual language was inventive. Yet he usually worked within the latitudes permitted by orthodox legal techniques, and if they did not permit an outcome he would regard as equitable, he normally accepted that the matter was out of his hands. When discussing his attitude about fidelity to law with the writer in 1973, Dickson described it as a presumption in favour of justice. He started with a desire to reach a fair and equitable solution in each case, and did not abandon that goal unless it appeared that the law had placed an impassable hurdle in the way of its attainment.

## VIII. SQUIRE OF MARCHMONT

THE MOVE TO OTTAWA IN 1973 involved much more than a change of professional duties. It also meant a significant change in the personal lifestyle of Brian and Barbara Dickson. The focal point of their new

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<sup>12</sup> G. Fraser, "A Voice that Spoke for Human Values" *The [Toronto] Globe & Mail* (6 April 1990) A7.

life was a stately farm home called "Marchmont," a graceful old stone structure set on a huge expanse of lawns and forest overlooking the Ottawa River west of the national capital. Here the Dicksons created what one writer has described as "a place of serenity and beauty to serve as a counterpoint" to Dickson's "power and authority . . . at the pivot of public affairs."<sup>13</sup> Here they keep and ride horses, and raise fallow deer to inhabit their woods and graze in their fields. Here they entertain graciously and spend time with their children and grandchildren. Here, in a large wood panelled study, Brian Dickson wrote many of the judgments that increasingly brought him to the attention of the national legal profession and the general public. The writer quoted above compared Marchmont to the elegant country estates with which those other "reflective activists," Thomas Jefferson and George Washington, surrounded themselves in an earlier age. She referred to it as "both Dickson's private retreat and his work of art." One of his law clerks once commented that: "He's the only person I know who lives in a national park."<sup>14</sup>

Raising and riding horses was not a new recreation for the Dicksons; they had operated a farm with horses outside of Winnipeg for many years. But Marchmont gave them the opportunity to combine their outdoor interests and their residence. Now Dickson could indulge his love of riding immediately after rising (usually about 6:00 a.m.) every morning. According to his son, it became an almost invariable early morning ritual to ride his Morgan horse along the Ottawa river for 45 minutes or so, regardless of the weather or the time of year: "It can be the coldest, blusteriest, day, and he'll still be out on his horse."<sup>15</sup> Marchmont has many indoor delights as well, including the distinguished art collection that the Dicksons built under the influence of John MacAulay, and a piano at which Dickson occasionally pursues a love of music inherited from his mother.

Before the new judge could live at Marchmont, it was necessary to amend a statute which made it unlawful for him to do so. The *Supreme Court of Canada Act*<sup>16</sup> required judges of the Court to live within five miles of Ottawa. This was no doubt intended to prevent long distance commuting by judges, before the advent of automobile

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<sup>13</sup> S. Gwyn, "Country Comfort" *Saturday Night* (January 1985).

<sup>14</sup> M. Strauss, "Dickson Sets Course for Social Justice" *The [Toronto] Globe & Mail* (9 November 1985) A8.

<sup>15</sup> J. Hay, "The New Face of the Law" *Macleans Magazine* (30 April 1984) 14.

<sup>16</sup> R.S.C. 1985, c. S-26, s. 8.

transportation. At Dickson's urging, the Act was amended to expand the area within which judges may reside to a radius of 40 kilometres of the National Capital Region. This accommodates Marchmont.

All members of Dickson's staff had plenty of opportunity to get to know Marchmont. In addition to including the staff in his social life (an annual Victoria Day gathering of present and former law clerks and their families became a tradition, for example), Dickson often required their presence at his home in a working capacity. Always a compulsive worker, he seemed to drive himself harder than ever after his appointment to the Supreme Court of Canada. One of his colleagues there referred to him as a "work nut."<sup>17</sup> He worked twelve-hour days, including many weekends and much of the Court's summer vacation period. He told an interviewer in 1988 that he had not seen a movie in ten years, rarely went shopping, and seldom read a book about anything other than law.<sup>18</sup> Although a courteous and caring employer, he was almost as demanding of his staff as he was of himself. Secretaries, clerks, and other staff quickly learned that working for Brian Dickson was not a 9 to 5 job.

## IX. SUPREME COURT OF CANADA

THE URGE FOR SELF-IMPROVEMENT that was evident during the earlier stages of his career was no less insistent after Dickson's elevation to the highest court of the land. Finding that his first law clerk was a francophone, he resolved to work in French with that clerk, and he continued his study of the language over sandwich lunches. This effort resulted in his becoming the non-Quebec judge who usually sat on the panels which heard Quebec cases.<sup>19</sup> He worked harder than ever on his writing style, with the result that before long he was being praised for a rare clarity, thoroughness, and gracefulness of expression. References to academic writings proliferated in his judgments, though they were never allowed to obscure the line of reasoning. And a characteristic step-by-step method of developing analytical formulae began to emerge. At times it seemed that Dickson was as interested in producing pithy epitomes for digestion by future law students, as he was in deciding the cases before him.

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<sup>17</sup> "P.M. Names Dickson Supreme Court Chief" *The Winnipeg Free Press* (19 April 1984) 1.

<sup>18</sup> R. Corelli, "Here Come the Judges" *Maclean's Magazine* (11 January 1988) 32 at 34.

<sup>19</sup> Simpson, *supra*, note 6.

A person who still feels a need for self-improvement after reaching the highest level of his profession must have remained uncommonly flexible, receptive to new ideas, and prone to self-criticism. A former law clerk has publicly praised Dickson's "youthfulness of mind,"<sup>20</sup> and the present Chief Justice of Canada, Antonio Lamer, who was a colleague of Dickson's for many years, has commented that:

I think his greatest quality is that he's not locked into one position.<sup>21</sup>

An illustration of this characteristic can be found in the Supreme Court's famous "Four Case Trilogy" about damages in the law of torts. Dickson, who wrote the leading judgments in two cases of the original trilogy,<sup>22</sup> appeared to adopt in those decisions a certain approach to calculating the "discount rate" for assessing future losses. That approach attracted considerable criticism.<sup>23</sup> Two and a half years later, the Court decided *Lewis v. Todd*,<sup>24</sup> which is often referred to as the "fourth case of the trilogy." Dickson, again writing for the Court, adopted a substantially modified approach to the discount rate problem, which took account of the criticisms to which his earlier ruling had been subjected.

Although the substantive content of Dickson's judgments lies beyond the scope of this biographical sketch, a few generalizations about his years as an associate justice of the Supreme Court of Canada may be justified. The elegance of his writing style has already been alluded to. He dissented more frequently than he had in Manitoba, and he came to be identified with what the media dubbed the "L.S.D." (Laskin, Spence, Dickson) group of dissenters. A high proportion of those dissents involved questions of civil liberties, and by the time Dickson was chosen to replace Bora Laskin as Chief Justice of Canada in 1984 there is little doubt in the minds of those who knew his work that he was a cautiously activist libertarian, unmistakably concerned about the situation of women, native

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<sup>20</sup> *Ibid.*

<sup>21</sup> Strauss, *supra*, note 14.

<sup>22</sup> *Andrews v. Grand & Toy Alberta Ltd.* (1978), 83 D.L.R. (3d) 452 (S.C.C.); *Thornton v. Board of School Trustees of School District No. 57 (Prince George)* (1978), 83 D.L.R. (3d) 480 (S.C.C.). The third decision, in which Dickson concurred with Spence J., was *Arnold v. Teno* (1978), 83 D.L.R. (3d) 609 (S.C.C.).

<sup>23</sup> See, e.g., D. Gibson, "Repairing the Law of Damages" (1978) 8 Man. L.J. 637.

<sup>24</sup> (1980), 115 D.L.R. (3d) 257 (S.C.C.).

Canadians, the young, linguistic and ethnic minorities, and other under-empowered individuals and groups. The Supreme Court of Canada had not yet dealt with any cases under the new *Canadian Charter of Rights and Freedoms*,<sup>25</sup> but a tidal wave of *Charter* litigation was sweeping toward Ottawa. If the new Chief Justice had been chosen with the intention of ensuring that the Supreme Court would be led at that crucial time by someone sympathetic to *Charter* rights, as was widely supposed, a better choice would have been difficult to imagine.

## X. CHIEF JUSTICE OF CANADA

PRIME MINISTER TRUDEAU TOOK A RISK in appointing Dickson as Chief Justice. A convention had developed during the preceding thirty years that the Chief Justiceship should rotate between anglophone and francophone members of the Court. According to that convention, the replacement for Chief Justice Laskin, an anglophone, should have been a francophone. The senior francophone judge at the time was Mr. Justice Beetz. Not everyone accepted that a convention of linguistic alternation existed, but those who denied it did so on the basis of a competing convention that the position should be awarded to the senior judge, regardless of maternal tongue. The most senior member of the Court was Mr. Justice Ritchie. It turned out that Mr. Justice Beetz, whose health was not robust, was not interested in the position; and Mr. Justice Ritchie, who was just a year short of retirement, was not likely to provide the energetic leadership the Court would require when the *Charter* cases began to arrive. Brian Dickson, the Court's second most senior member, but with seven years' service remaining, had energy to spare, as well as a special gift for leadership. Although his mother tongue was English, he had acquired a remarkable facility in Canada's other official language. So the Prime Minister decided to run the risk of ignoring convention and appointed the person who seemed best suited for the job. He had no cause for regret; the appointment was warmly received almost everywhere, both without and within Quebec, and admiration for the new Chief Justice grew steadily throughout his tenure.

It was after his appointment as Chief Justice of Canada that Dickson seemed to decide it was time to step from behind the scenery into the spotlight. He did not seize the very first opportunity for

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<sup>25</sup> Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.



notoriety that presented itself, however. When he was posing for photographs with Mr. Trudeau and Governor-General Schreyer on the day of his appointment, the Prime Minister turned to Dickson and said, "If you want to scoop me, put a finger in your nose."<sup>26</sup> The Chief Justice declined the invitation. He had only been in office a short time, though, when, in an interview with a journalist, Dickson called upon judges to be more accessible to the news media, and suggested that perhaps television cameras should have a place in the courtrooms of the country.<sup>27</sup> He followed his own advice, and made himself available for media interviews to an unprecedented extent.

The Chief Justice also began to accept numerous invitations to address public gatherings, and he skilfully employed those opportunities to influence the behavior of the legal profession and of his fellow judges. On occasion, he seemed also to be attempting to influence public opinion. Many of these addresses found their way into print in law reviews and other periodicals.<sup>28</sup> Dickson's concern about educating the judiciary can also be seen in his role in the creation of the new Canadian Judicial Education Centre.

The new Chief Justice made several important addresses about the *Charter* before the Supreme Court had a chance to make any *Charter* rulings. These talks were unmistakably intended to communicate to the then sharply divided and sometimes recalcitrant lower courts that the final court of appeal (or at least its Chief Justice) was determined

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<sup>26</sup> J. Sallot, "Top Court Key to New Rights Under Charter, Dickson Says" *The [Toronto] Globe and Mail* (20 April 1984) 1.

<sup>27</sup> B. Gory, "Talk To The Press, Chief Justice Urges Judges" *The [Toronto] Globe and Mail* (29 August 1984) 1.

<sup>28</sup> See, e.g.: "The Forgotten Party: The Victim of Crime" (1984) 18 U.B.C. L. Rev. 319; "The Role of the Supreme Court of Canada" (1984) 4 *Advocates' Soc. J.* 3; "The New Accessibility at the Supreme Court" *The [Ontario] Lawyers Weekly* (5 April 1985) 8; "Remarks to the Call to the Bar Ceremony" (1985) 19 L. Soc. Gaz. 118; "The Path to Improving the Accessibility of the Law in Canada" (1985) 8:4 *Prov. Judges J.* 2; "The Rule of Law: Judicial Independence and the Separation of Powers" (1985) 9:3 *Prov. Judges J.* 17; "Legal Education" (1986) 64 *Can. Bar Rev.* 374; "Access to Justice" (1989) 1:1 *Windsor Rev. of Legal and Social Issues* 5.

In addition to speeches and articles, there were also a number of published interviews with the Chief Justice, such as: W. Monopoli, "Dickson Ponders Role of Court" *The Canadian Bar National* (May 1984) 3; C. Schmitz, "Chief Justice R.G. Brian Dickson" *The [Ontario] Lawyers Weekly* (27 July 1984) 14; G. Sturgess & P. Chubb, *Judging the World: Law & Politics in the World's Leading Courts* (Sydney, N.S.W.: Butterworths, 1988) at 393.

There were earlier publications as well, of course, but the increase in numbers following Dickson's appointment as Chief Justice was noteworthy.

to make the *Charter* stick.<sup>29</sup> They came close to constituting “judgment by after-dinner speech.”

Besides the importance of the *Charter*, Dickson’s topics covered a wide range of other legal concerns. A sample of Toronto *Globe & Mail* headlines during the first year and a half he was Chief Justice indicates the breadth of the issues addressed:

- “Top Court Key to New Rights Under Charter, Dickson Says”<sup>30</sup>
- “Talk to Press, Top Justice Urges Judges”<sup>31</sup>
- “Chief Justice Sees Courts at Centre in Debate on Social, Moral Values”<sup>32</sup>
- “Chief Justice Urges Cuts in Delays, Legal Costs”<sup>33</sup>
- “End Politics in Judgeships, Dickson Says”<sup>34</sup>
- “Chief Justice Discourages Mechanical Legalism”<sup>35</sup>

When the Supreme Court of Canada was finally in a position to make *Charter* rulings, Dickson’s influence was unmistakable. He wrote many of the leading decisions himself, and there seems little doubt that even when he did not do so, his leadership was pivotal in determining the direction taken by those early, often unanimous, and immensely significant *Charter* decisions.

One theme was constant in most of Chief Justice Dickson’s public addresses: accessibility to justice. On numerous occasions, from many angles, Dickson stressed the need to streamline and economize legal processes with a view to removing the barriers between ordinary citizens and swift, understandable and low-cost justice. And on this topic he did more than talk. His administrative skills, which he had already lent to the Court during the months of Chief Justice Laskin’s final illness, were turned to the large case backlog and other administrative problems being experienced by the Supreme Court of Canada. By the end of his stewardship the results of his many administrative reforms were impressive. By implementing procedural changes urged

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<sup>29</sup> See, e.g.: Address to Canadian Bar Association Mid-Winter Meeting, Edmonton, 2 February 1985 [unpublished]; “The Canadian Charter of Rights & Freedoms and its Interpretation by the Courts” (Address to the Princeton Alumni Association, Princeton, N.J., 25 April 1985) [unpublished].

<sup>30</sup> (24 April 1984) 1.

<sup>31</sup> (29 August 1984) 1.

<sup>32</sup> (26 April 1985) 1.

<sup>33</sup> (22 June 1985) M5.

<sup>34</sup> (22 August 1985) 1.

<sup>35</sup> (5 October 1985) A5.

by the Canadian Bar Association, the length of time allocated to each case was reduced, and the number of cases heard in a week was doubled. Dickson announced in October 1987 that the Court was hearing cases at almost twice its previous rate,<sup>36</sup> and two years later he disclosed that in spite of serious under-staffing the Court had "almost eliminated a case backlog that had plagued the Court for years."<sup>37</sup> Other important administrative improvements were also made. For example, a simultaneous translation system was installed, which greatly facilitated the hearing of cases in both French and English, and a previously experimental teleconferencing system for applications for leave to appeal was made permanent.

Even the timing of Chief Justice Dickson's retirement was influenced by his concern for Court efficiency. He chose to step down ten and a half months before his normal retirement date in order to make the transition to a new Chief Justice as smooth as possible. "In fairness to the Court and to my successor," he explained in a letter to Prime Minister Mulroney, "I have decided that I should not await that mandatory date and retire in the middle of a Court term, but rather that I should retire at the conclusion of the current term, that is to say, on June 30, 1990."<sup>38</sup> In a subsequent newspaper interview he elaborated:

"I've been thinking about this for months," Chief Justice Dickson said in an interview yesterday, adding that he concluded that by retiring now, he would give the Prime Minister the summer months to name his successor, fill a vacancy on the bench and let the new chief justice gear up for the new term in September.

"The idea of terminating in the middle of a term did not seem to me to be fair to my colleagues or to the institution because there's bound to be some considerable delay between the retirement and the appointment," he said. "To leave the court in the middle of a term without a chief justice struck me as being not fair to anybody."<sup>39</sup>

## X. CONCLUSION

PARADOXES ABOUND in the remarkable career of Chief Justice Brian Dickson. A man of compelling ambition, with both the thirst and

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<sup>36</sup> "Court Speeds Rate of Appeals" *The [Toronto] Globe and Mail* (28 October 1987).

<sup>37</sup> K. Makin, "Case Backlog Almost Gone, Dickson Says" *The [Toronto] Globe and Mail* (24 August 1989) A11.

<sup>38</sup> G. Fraser, "Chief Justice to Leave Before Retirement Age" *The [Toronto] Globe and Mail* (5 April 1990) A13.

<sup>39</sup> *Ibid.*

talent for leadership, he contrived to avoid the public limelight through most of his career, but stepped confidently onto centre stage when he perceived that his goals would be furthered by doing so. A corporation lawyer, with negligible courtroom experience, he came quickly to be regarded as one of Manitoba's most effective trial judges and displayed, when elevated to the Manitoba Court of Appeal and the Supreme Court of Canada, great sophistication about the realities of litigation. A man of wealth, a senior partner of one of the oldest and largest law firms in the Canadian west, and an active member of some of the most conservative segments of the Canadian commercial and social establishment, he exhibited on the bench astonishing empathy for the little person, impatience with the technicalities that impede justice, a tolerance for deviant ideas, and a generally liberal orientation. A pragmatic, result-oriented man of affairs, he achieved an uncommon level of elegance in both his written expression and his personal lifestyle. Perhaps it was the energy generated between the opposing poles of these and other Dickson paradoxes that powered his extraordinary career. Several observers described Dickson at the time of his retirement as "Canada's greatest Chief Justice." The only amendment I would propose to that description would be to delete the word "Chief."