



ON THE FRONT COVER

ALLAN E. McEACHERN, C.J.B.C.

By the Hon. Lloyd G. McKenzie, Q.C.

A lawyer who graduated with him from UBC in 1950 told me: "I never would have got through law school without McEachern's notes." That voluntary confession, apart from its refreshing candour and expression of gratitude, illuminates not only the note-taker's generous spirit but also his instantaneous comprehension and ability to record unfolding events quickly in a legible hand. Those skills have come in handy ever since.

The man is prodigious. If there is a better word it eludes me. He is no Leonardo, because he speaks no Italian and has designed no helicopter, but despite these shortcomings he shares with Leonardo the dominant gene of creativity. Because of that generative force, high productivity is second nature.

Allan E. McEachern (hereinafter called AEM) has done many things that Leonardo did not. A few of his accomplishments will be catalogued here. To detail all of them would take volumes. That task is above my pay scale and the deadline draws near.

Every once in a while we all get a negative ego boost, as when AEM phoned Fred Messenger, the director of Judicial Administration and possessor of all knowledge worth knowing on matters administrative. AEM told Fred that he had just been appointed Chief Justice of the Supreme Court of British Columbia. Fred's spontaneous response was: "You must be joking."

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(In a similar vein was the opening sentence in a "congratulatory" note I received from Alex B. Macdonald, then Attorney General: "I was astonished to read you have been appointed to the Supreme Court of B.C.")

While performing all his exalted tasks, AEM remains a man of the soil. Hands-on knowledge of lawn mowing, weeding and growing annuals from seed is part of his repertoire. The gardening guru of all courts past, present and future is Patrick D. Dohm, A.C.J.B.C.S.C. When you get past all those initials you find a green thumb that walks like a man. PDD is the soul of generosity and particularly generous in dispensing advice horticultural and horological. He has about an equal number of roses and clocks. Discreetly hidden from view in his garden PDD keeps a natural product that inspires his dahlias to produce gorgeous blooms. In a reversal of the usual order of things, AEM, the appellate judge, appealed to PDD, the trial judge, for a donation of this magical substance. A Saturday morning treat for the burghers of Shaughnessy was to witness AEM, accompanied by PDD, wheeling a redolent wheelbarrow of the stuff the three blocks between their abodes, looking like refugees from a Constable farm scene.

Everyone knows of AEM's zest for work. In his 30 years as Chief Justice, in both guises, he has produced more than 1,500 reasons for judgment, most of which have taken him into the troubled waters of human conflict and misery.

Judges have to be diviners of truth, but even he lacks the divine touch required to find the absolute thing. That besetting frailty is universal. Every trial and appeal is a contest between opposing contentions. Truth does not proclaim itself like a peal of bells; it must be distinguished from contradictory voices. The judge has to find a path through glorious uncertainties. It is backbreaking and mind-bending work. You know I am going to say that AEM has steadfastly performed that task day in and day out.

Each year he has made 10 or so public speeches, none tossed off extemporaneously and none lacking in serious thought and high humour. He had no speech writer or teleprompter.

He gave his latest speech in March at the Notable Speakers breakfast held from time to time by the UBC Law Alumni Association. Over 200 learned breakfasters gave rapt attention and sustained applause.

His topic was "Unfinished Business". Looking back over his career as a lawyer, trial judge and appellate judge, he expressed regret that some ambitions had not been realized, such as creating a paperless court to conform with this electronic age.

He is the "cyber judge". The popular perception of a judge is of an old and cranky male, overindulged and remote from the realities of everyday life. That assessment may not be 100% hokum but it gets close.

AEM has been keen to counteract that misconception by his use of modern technology to communicate directly with the public. In 1997, he created the *Legal Compendium*, which explains the institution of the law in its many facets, including the function of the judiciary, the organization of the courts, the criminal law, the *Charter* and the multiple forms of civil actions. This project, accomplished

with the assistance of chosen helpers, consumed about 18 months of evening and weekend work. In June 1999, the text was published in three large loose-leaf binders (to allow for frequent revisions) and posted on the Internet Web site of the British Columbia courts. It provides layers of information about the legal system in our province. As of March 15, 2000, the *Legal Compendium* had received 26,621 hits from interested viewers.

Stemming from and complementing this effort, the Chief Justice's Home Page came onto the Web site in January 2000. This provides a forum for people to ask specific questions about the law and legal issues and to receive AEM's response. About 40 e-mail inquiries arrive every month. As of March 15, 2001, he had posted 122 responses and as a garnish added 22 comments on subjects of public interest.

Illustrations of his responses are these two recent postings on the same topic.

Response No. 118, March 5, 2001—"Appointment of Judges"

I have received a question from a student asking a number of questions about judicial appointments. In general, I can say that the appointment process is fully set out in the court's *Legal Compendium*, particularly chapters 3 to 7. The *Compendium* can be reached by hitting the "*Legal Compendium*" button at the courts' web site: <<http://www.courts.gov.bc.ca>>.

There is no waiting list for judicial appointments, except that anyone wishing to be appointed must apply and be screened for approval. Then appointments are made only when there is a vacancy in the established complement of a court. This is all explained in the *Compendium*.

The salaries of judges are set from time to time by Parliament (for federally appointed judges) or the Legislatures (for Provincial Court judges). The salaries of federally appointed judges are presently being revised by a Bill that has been introduced into Parliament, but is awaiting passage. Judges' salaries seem quite high to some people, but they are low compared to the earnings of senior lawyers in major urban centres and at large firms.

I am asked whether there are advantages and disadvantages to judicial life. The main advantage is independence and interesting work. I don't think there are any particular disadvantages, except possibly the absolute requirement that judges devote themselves exclusively to the performance of their judicial duties to the exclusion of all business and other pursuits.

Response No. 122, March 8, 2001—"More on Judicial Appointments"

I am asked to comment on the role of the judicial advisory committees in the various provinces that report to the federal Minister of Justice on the qualifications for appointment to federally appointed courts. I have explained this process in the *Legal Compendium*, chapters 2 to 6, which viewers can access at: <<http://www.courts.gov.bc.ca>>.

I am specifically asked how effective this "screening" is. My answer is that it is very effective, largely because the committees include both a judge and some very high profile lawyers who know all the candidates. In addition, the other members, who include lay members, make their independent inquiries about every candidate. It is notable that this system makes it impossible for the appointing authority (the Minister of Justice) to fill the courts with political appointees, even if he or she wished to do so. Any such candidate would have to satisfy the Committee that he or she is qualified for appointment in addition to any political values the candidate may have.

I was asked how deep the committee probes, and mention is made of financial statements. I do not believe financial disclosure is required in the application, but the members

of the committee would know if there is a problem. Candidates are asked, before an appointment, to disclose any matter that might raise a question about the candidate.

As I mentioned in the *Compendium*, no candidate has been appointed in British Columbia since this system was initiated in the late '60s without screening committee approval.

I hope this answers the question.

The Home Page is unique in this country. How can the senior judge of this province be more "in touch"?

In 1996, as chairman of the Judge Computer Committee, AEM arranged for all reasons for judgment of the Court of Appeal and Supreme Court to be available at no cost to the public on the Internet as part of the Judgment Data Base. The Court of Appeal judgments also contain a summary, to the great delight of the media. Before that only the Supreme Court of Canada provided such a service and recently other provinces are moving in the same direction.

Another concept was born in 1984 while AEM was dining with John Bouck, Josiah Wood and Henry Hutcheon, all judges of his court. The idea surfaced that young practitioners should be encouraged to adhere in practice to the highest standards of professionalism in all of its manifestations. From this conversation emerged the Inns of Court programme, in which each week during two annual terms 11 judges from the two courts and an equal number of senior practitioners as group leaders meet with 25 lawyers who have been out of law school for five years or so to gather around a big table at the Law Courts Inn. At each session there are different group leaders. Between 5:30 and 7:00 p.m., a free-ranging discussion ensues on matters ethical, marital, practical, topical, oratorical, comical, animal, mineral and vegetable. The young lawyers are asked to externalize their trial experiences, frustrations and dilemmas, such as the bad time given them by a senior practitioner. Sometimes it is a question of coping with a difficult client or deciding whether to complain to the Law Society about the appalling misbehaviour of an opposing lawyer. The discussion covers a lot of bumpy ground. Following this, dinner is shared at tables of eight.

The concept borrows something from the London dinners in the Inns of Court, which magically transform law students into barristers. That is a special kind of English alchemy. Our Inns of Court go farther and offer an opportunity for practical problems to be shared and discussed in an informal and congenial atmosphere and good advice to be given. The spectre of exams does not loom. AEM has been the programme's central force.

A tribute to Chief Justice Allan McEachern is planned as a celebration dinner for April 11, 2001, at the Law Courts Inn, to which all former and current group leaders and participants are invited. In the language of the invitation, it is in "recognition and appreciation of the Chief Justice's 17 years of leadership, commitment and dedication" to this invaluable programme.

Frank C. Kramer has been the executive director throughout. Financial sponsorship is provided by the Vancouver Bar Association.

Edison turned on the lights. Other enlighteners created the computer and downsized it from room size to lap size. AEM saw its potential early, equipped

himself with the necessary hardware and software and beat a daily path to Level 5A of the Law Courts, where dwell the computer wizards. What they knew he learned and continues to learn every day.

As Chief Justice in turn of each court, he has been a constant member of the Canadian Judicial Council. For many years he chaired the Judicial Conduct Review Committee. In itself this is an arduous and delicate task to be performed by judges judging judges.

To the astonishment of his colleagues, a comprehensive report of each council meeting is delivered to them within a day or two of each meeting. On the returning plane, as others relax, eat, drink or sleep, he types his report into his laptop.

William Rogers McIntyre, my former law partner, ascended from that blessed state through our Supreme Court and Court of Appeal to the Supreme Court of Canada. He was appointed to the highest court on the same day that AEM was named to the trial court. At his welcoming ceremony in Ottawa, WRW was surprised and delighted to see AEM in the audience. He had made this special trip at his own expense.

In an earlier day, the highest accolade a man could be given was to be called a scholar, a gentleman and a judge of good whiskey. While AEM possesses the first two qualifications in generous measure, he fails the ultimate test because he has never imbibed. However, as befits his convivial nature, he will happily be part of a gathering at the bar and enjoy himself thoroughly with only a diet Coke in hand.

He showed athletic prowess in rugby, high diving and swimming, among other pursuits. During school vacations, he was a lifeguard at Kitsilano Beach. At a later stage, he had indoor work as Commissioner of the Canadian Football League. He is an avid fan of many sports and an enthusiastic and skilled sailor. His wife, Mary Newbury, is his crew. They know our B.C. waters.

AEM's latest major commitment is to convene in Vancouver between May 9 and 11, 2001, the 1701 Conference to celebrate the 300th anniversary of the *Act of Settlement*, enacted at Westminster, which gave statutory recognition to the concept of judicial independence. That novel principle spread through the common law world to be enshrined in both the Canadian *Constitution* and that of the United States. Theretofore judges held office at the pleasure of the Crown, and when the Crown was displeased the judge could be summarily dispossessed of his office or even his head. The new regime assured the rule of law, not the rule of the monarch; it guaranteed judicial tenure during good behaviour and made Parliament responsible for judicial salaries.

AEM hopes through this conference to raise public consciousness of the importance of judicial independence. Among participants will be leading judges, prestigious lawyers from various parts of the world and outstanding academics from the United Kingdom, the United States and Canada.

My grade one teacher remained a valued friend during her lifetime. When he was very young, AEM attended her school but was never in her class. When she was very old, I asked her if she remembered him, and she said: "Oh, I do, that little boy with the wonderful smile." That smile retains its radiance.

To add a personal note, Allan's late wife, Gloria, lived to see their two daughters, Jean and Joanne, grow up, marry and establish happy families with devoted husbands and give six grandchildren for grandfather to indulge. Now that Madam Justice Mary Newbury has joined the fold, there is added promise of fair seas ahead.



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