

On one occasion, Dave and I represented two accused in a case involving the theft of a safe from a commercial enterprise. This gave me the opportunity to observe Dave in court up-close. His style was folksy but not artificial or pandering. He was extremely persuasive and always on point.

Dave married Barbara Pye on January 10, 1981. Barbara joined the firm when she was 16, working with Mr. Branca. She became my secretary later on and was my secretary for 23 years. When she left to marry Dave, I said to Dave "it was okay the Christmas you took my turkey, but my secretary ... !"

Dave and Barbara had a great life together. They had many holidays at their place in Garden Bay. He was an ardent fisherman, even writing a book on mooching. This was not the only book he wrote. In 1993 Hancock House published a book of short stories by Dave, all about cases he had conducted. It was called *Good Lawyer Bad Lawyer*. Dave did not like the title, thought up by his publisher. It didn't make *The New York Times* bestseller list.

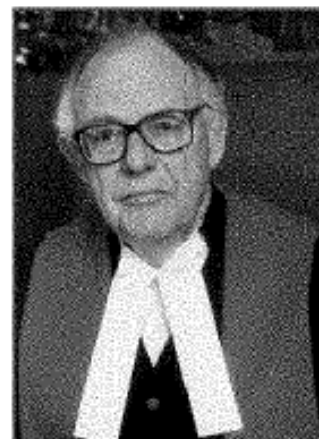
We will miss Dave. He was a great partner and a morally strong man. He is survived by his wife, Barbara, his sons Stephen (Mary) and Matthew (Karen), and his daughter Mary, as well as by his sister Erna Umer, many grandchildren, nieces, nephews and brother and sister-in-law Ken and Susan Robertson.

The Honourable Thomas R. Braidwood



The Honourable Montague Lawrence Tyrwhitt-Drake

Montague Lawrence Tyrwhitt-Drake passed away on May 15, 2015. "Monty", as everyone knew him, was born October 14, 1922, to Constance Leticia Lawrence and Brian Hallsey Tyrwhitt-Drake. Monty was appointed to the County Court of Victoria in 1962. He was a Diefenbaker appointment, though we jump ahead of ourselves.



Montague Lawrence Tyrwhitt-Drake came from a family line closely associated with the legal profession. His grandfather (also Montague Tyrwhitt-Drake) came to Canada from England with dreams of making it rich in the gold rush. He didn't, but instead had settled in Victoria by 1863.

He quickly became established in the community, representing British Columbia in the Legislative Council from 1868–1870. Admitted to practice in England in 1851, he was called to the bar in British Columbia in 1867. He went on to become Treasurer (now referred to as President) of the Law Society of British Columbia, serving from 1884 to 1889. Appointed Queen's Counsel in 1883, he was appointed to the bench in 1889, where he served until 1904.

Montague William Tyrwhitt-Drake married Joanna Tolmie, an established Victoria name, in 1862. Montague William Tyrwhitt-Drake and Joanna Tolmie's son Brian was the Registrar of the Supreme Court of British Columbia from 1900 to 1937. Brian saw active duty as 2i/c of the 103rd Battalion C.E.F. and went on to become the Judge-Advocate of the Canadian Corps. Brian married Constance in 1919, and returned to Victoria where Monty was born and spent his early years.

After graduating from Shawnigan Lake School, Monty began his studies at McGill University. About this time the Second World War broke out, Monty enlisted and was commissioned in the Black Watch (Royal Highland Regiment). Monty saw service in Western Europe, landing at Sword Beach on D-Day. He served in various units of the Canadian Army, eventually being promoted to the rank of Captain and appointed the Adjutant to the Fourth Battalion, Canadian Scottish Regiment (which, interestingly, included amongst its complement, Corporal Thomas J. Halbert, who went on to become the longstanding Registrar of the Supreme Court).

In the late spring of 1945, Monty was convalescing on the Belgium Coast when he met Nancy Lang, a charming Red Cross Ambulance driver and the daughter of D.W. Lang, K.C., of Lang Michener Day and Cranston (then a relatively small firm of 12 lawyers).

Monty returned from the war and, under the watchful eye of Dean George Curtis, graduated from U.B.C. in 1949. He then articulated in Vancouver to J.A. Campbell, K.C., and practised for a year in Victoria before being enticed away to practise with his father-in-law in Toronto. Monty did not enjoy Toronto, and he and Nancy returned to Victoria in 1953 where he ran, unsuccessfully, for election for the Progressive Conservative Party.

Upon his return, Monty struck out as a sole practitioner, but soon joined with Robert A. Wootton in the firm Manzer Wootton and Drake, in which firm he remained (in one form or another) until the firm was compromised by the loss of its senior partners to the bench, leaving Anna Wootton to complain that in continuing the firm practice she had been "widowed twice."

Monty's appointment to the County Court of Victoria was effective December 20, 1962. Tyrwhitt-Drake commented, "I was appointed by a government that was friendly to me." Despite his political background, he

quickly earned a reputation amongst the local bar for his kind manner, literate wit and for providing dignified and fair hearings. "He treated everyone as equal," said long-time Victoria Registrar Joanne Power in 1997, "He is a true gentleman."

After his appointment, Monty slowly stopped using "Tyrwhitt" in his name, as he said, "No one could spell it or pronounce it." Justice Drake's written judgments became recognizable for their style. He had an ability to sum up complex legal issues succinctly, and could pepper his reasons with Latin and French phraseology and references to history and the classics. In one instance, a young Victoria lawyer questioned the wording in one of Justice Drake's decisions. Drake responded: "Please refer to St. John's gospel, Chapter 19, Verse 22 (the authorized version)."¹

Drake's oral judgments were infamous amongst local counsel. Monty tended to mumble, and many a lawyer would leave the Courtroom only to turn to his learned friend and ask "What exactly did he say?" leaving the Court Clerk to determine what the outcome of the proceeding should be.

As his long-time friend, Jack Scott-Harston, Q.C., wrote, "Beneath all his amusing quips, often in ventriloquist fashion emerging side of mouth, there always lay much kindness and wisdom ... his humour may have cloaked great depth in what lies beneath."

His spiritual twin was the late Mr. Justice Kirke-Smith. Legend tells of their rivalry in a competition as to which of them could find and employ the longest word in the English language for inclusion in one or another of their Reasons for Judgment. Smith, J. won with "*floccinaucinihilipilification*," a word coined by Thomas Love-Peacock (1785-1866). This beat Monty's "*philothoeoparoptetic*."

Smith, J.'s word means 'the action of estimating as worthless,' while Drake, J.'s word was not contained in the Oxford English Dictionary. Despite the *Advocate's* entreaties, Drake, J. did not enlighten us as to its meaning, though it seemed to have something to do with being in favour with God.

Monty enjoyed the written word. He was known for his limericks. Upon being told that the abolition of the long vacation (it used to be the courts closed down for the summer) was being contemplated, he immediately penned the following to Kirke-Smith:

There was once an amiable *puisne*
Who was worked half to death every *juisne*
Said he, "If the Nation
Dislikes long vacation,
Vox populi, as usual, is *luisne*.

Monty used to write under the nom-de-plume 'Silenus' (companion and tutor to Dionysius) for the local newspapers. Silenus' articles were a mixture of social commentary, satire and wisdom. His long-time brother Hutchison, J. remained forever indebted to the enlightening law reports Monty used to write for the Victoria print media.

As a citizen, Monty was a Governor of Norfolk House School and active on the Boards of the Victoria Art Gallery and the Salvation Army. Monty's wide ranging interests found him equally at home fly fishing the rivers of the world, participating in "all things Jane Austen" and a myriad of activities in between.

When Monty retired from the bench in 1997, he did so as one of the Province's longest serving judges.

Monty is survived by Nancy, daughter Elizabeth, sons Monty and Guy, and grandchildren.

Richard Margetts, Q.C., and Maureen Abraham

ENDNOTE

1. "And Pilate answered, 'What I have written, I have written'."



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Vahan A. Ishkanian
Barrister & Solicitor

• Cell 250-508-6336 • Fax: 250-544-0728 • E-mail: vishkanian@wcbclawyer.com