

The Honourable William Arthur Esson

I remember clearly his steeped fingers, his shy smile and his occasional sly chuckle, so it is with a heavy heart that I write once again in these pages about my friend, William Arthur Esson.* Bill died on July 14, 2016 and is survived by his beloved wife of 58 years, Margaret, his two children, John and Catharine (the beginnings of a line of lawyers), their respective partners, Mary Ainslie, Q.C., and David Crosby, and his namesake grandson, Will.



Bill was born in Vancouver in 1930 and was brought up in the East End where his father had a bakery. He attended Grandview Elementary, Laura Secord, Britannia High School and the University of British Columbia, grad-

* Thanks to Mr. Justice Jon Sigurdson and several of his colleagues on the bench who made very helpful contributions to this obituary. The errors, omissions and infelicitous phrases are, of course, mine alone.

uating in 1953 with an Arts degree. After a hard year at the family bakery, Bill retreated to UBC law school in 1954 and graduated with an LL.B. in 1957. He served his articles with Cecil Merritt, V.C., at the firm later known as Bull Housser.

After 21 years practising as a barrister at Bull Housser, Bill was persuaded by newly appointed Chief Justice McEachern to accept an appointment to the Supreme Court of British Columbia in February 1979. To mark that occasion, I wrote in this magazine:

Lawyers in British Columbia today share a quiet feeling that all is well in a world that would choose William Arthur Esson to be a judge. Justice is truly served by the appointment of this gentle and graceful man to our Supreme Court.

On June 30, 1989, after he had served four years on the trial court and six years on the Court of Appeal of British Columbia, Bill was appointed Chief Justice of the Supreme Court of British Columbia and again I noted the occasion in these pages:

The appointment of William Arthur Esson to be Chief Justice of the Supreme Court of British Columbia after ten years in the judicial vineyard (at first on the valley floor and then lately on the greener appellate slopes) is well deserved and will serve us well. The qualities of patience and compassion, clear thinking and uncommon good sense that were noted in these pages at the time of his original elevation to the bench have earned him the respect of the bench and bar in the performance of his judicial duties in the trial and appellate courts. He was, it is truly said, born to the task.

Bill resigned as Chief Justice in 1996 after seven years on the job and this time David Roberts, the long time editor of this magazine, assigned himself the task of commenting in these pages on Bill's retirement. At (1996) 54 Advocate 683, he summed up Bill's judicial career in these words:

As we look back on his career, we note that his judgements and his reasons for judgment were characterized by a strong streak of common sense, much compassion and understanding of the frailties of those he judged and a unique ability to write lucid, literate, sometimes even eloquent and often scholarly judgments.

Roberts went on to support his assessment by examining in detail some of Bill's best known judgments, including *Robitaille* and *Vogel* (both of which were decided in Bill's first four years on the bench). In further support of Roberts' view of Bill's written judgments, we have it on good authority that Vice Chancellor Megarry had Bill's decision in *Vogel* on his bedside table and said it was "a cracking good read"!

Many of the judges of his court think that the high point of his time as Chief were not his scholarly judgments or the miracle of a successful

merger of the County and Supreme Courts, but rather his 1993 engagement on behalf of the court with the Clayquot Sound logging protesters and their lawyers and ministers of the Crown. After the protesters were sentenced to 45 days in prison by Supreme Court judges for disregarding a court injunction order, there were what Chief Justice Brenner described some years later as "noisy protests surrounding the Clayquot Sound trials with intemperate and injudicious commentary from some cabinet ministers and lawyers for the protesters." Three New Democratic Party cabinet ministers (two of whom were lawyers) and a back bencher wrote an open letter to their constituents favouring the protesters' cause and saying that it was the court and not the Crown that initiated the proceeding against the protesters.

Bill travelled to Victoria, convened the court on his own motion and issued an extraordinary public statement in which he said:

Judges do not as a rule speak publicly except in reasons for judgment. Within the last week, however, much confusion has been created by a flood of comment about these proceedings. The confusion seems to be deepening and I therefore conclude that the time has come to follow the advice of a revered predecessor in this office, the late J.O. Wilson, which was to this effect: when there is a threat to the integrity of the court which cannot otherwise be met, the chief justice should climb on his bench and make a statement. The current confusion is such threat.

I refer first to the assertion by some persons, including ministers of the Crown, that the proceedings were commenced and are being conducted by the court. The fact is that the proceedings for contempt launched in July were begun and have been conducted by counsel from the ministry of the Attorney General. They have done so in the proper discharge of a responsibility, which traditionally attaches to the office of Attorney General. The Attorney and senior officials of his ministry have, I understand, made that point in radio interviews within the last few days.

After setting out the history of contempt proceedings in the province, Bill said this:

Throughout our history, but with increasing frequency in recent years, there have been periods of a surge in incidents of public disorder. At such times, there is frequent recourse to injunctions and to contempt proceedings. Through it all, the judges of the court must continue to do their best to hold an even hand, often in circumstances of extraordinary stress. We would rather be doing other things. We accept with such fortitude as we can muster the sometimes vigorous, often ill-informed criticism of our decisions and procedures which come from people caught up in the emotions of the day. But we are entitled to expect better from political leaders and lawyers and are distressed to see some of them joining in critical comments relating to proceedings which are ongoing.

The headline in *The Vancouver Sun* was "Chief Justice Flays Cabinet Ministers"!

David Roberts, in his piece on Bill's retirement as Chief Justice, joined *The Vancouver Sun* in thinking that Bill would return to the trial court as a puisne judge, but to their journalistic chagrin, Bill was reappointed to the Court of Appeal where he served, with one break, until his compulsory retirement at age 75 in 2005.

The one break in his service on the Court of Appeal was the year he spent as a "reserve judge" on the British commission of inquiry into the 1972 Bloody Sunday massacre in Northern Ireland.

A special joint sitting of the Court of Appeal and Supreme Court of British Columbia was held on October 27, 2005, in the words of then Chief Justice Finch, "... to recognize Mr. Justice Esson on his pending retirement and upon his wonderful record of service to the law, to the courts, and to the public of British Columbia for over 26 years."

Among the many laudatory words spoken on that occasion were those of Mr. Justice Bruce Cohen who was quoted by the late Chief Justice Donald Brenner:

The words attached to his tenure as Chief Justice can be summed up as a gentleman, wise counsel, even-handed, fair, outstanding legal mind, all delivered with compassion and humour. Behind his relaxed manner and warm smile is a down-to-business intelligence, a leading jurist who has led by example of his deep commitment and dedication to the principles of his professional career.

After his retirement from the bench, Bill rejoined his old firm as associate counsel for some time but eventually retired again to his West Vancouver home. Unfortunately, the onset of age-related health issues prevented Bill from enjoying fully the pleasures of having finished his working life.

William Arthur Esson will be long remembered, with his steeped fingers, his shy smile and occasional sly chuckle, as one of our finest judges, truly born to the task.

Hamish Cameron