

ALUMNI PROFILES: THE HON. CHIEF JUSTICE ALLAN MCEACHERN (LL.B. '50)
(from *Law Faculty Newsletter*, Summer 1987)

It is late in the summer afternoon, hot and dusty in the day-long rush hour. Law Court security bars most undesirables, subduing even disrespectful traffic noise. The inner offices are cool and quiet. One recalls the suggestion that, where space is at a premium, the low sprawl of the Law Courts building is itself a cogent expression of power and authority. The same dynamic applies to the chambers of the Chief Justice of the Supreme Court of British Columbia. It is what interior decorators would rhapsodize as a "man's room," large and substantially furnished. The desk, built for Hunter, C.J., is the size of the average Vancouver lawyer's office. Suffice it to say it is comfortable and very much a workshop - the chambers of a very busy man.

The Hon. Mr. Justice Allan McEachern dresses modestly. Dignified and affable, he displays an innate courtesy that is neither contrived nor self-conscious. After a day of pressure and responsibility that would leave most men dozing fitfully in the nearest chair, he is alert and attentive, his answers discerning. Ordered points of discussion follow *seriatim*:

Why did you choose law as a career?

Upon reflection, I have some trouble pinpointing the reason. I recall an awareness, about Grade 5 or 6, a desire to be a lawyer, but I have no theory as to why and, at that time, I didn't really know much about law. I was the first one of my family to go into law. I've always enjoyed ideas, intellectual theory, and I did well in history and English. I had no real bias toward one branch of law until articles; then I developed a definite affinity for trial work and stayed with it.

What are your recollections of Law School?

We were given an excellent and very disciplined legal education (there were no course options), which furnished us with an understanding of legal principles that was very adequate. It was a good foundation for legal skills. There were no frills. An important point - the professors were without "causes"; they were middle-road legal educators and there was no digression into philosophical subdivisions of law. We were free to think for ourselves, to develop our own ideas. Today's generation might find such a regimen restrictive or boring, but in pre-TV/computer/world travel, it was an unfolding of universal ideas that was enjoyable and valuable. It taught one to think; it formed good work habits. I also remember good friendships, lasting friendships. At last year's Reunion [40th Anniversary] I noted that many colleagues welcomed the chance to go back; even if the physical surroundings had changed, the spirit had not. It is a good and valuable thing to maintain such connections. I am very proud of my class, the Class of '50, which produced many outstanding lawyers. [From this class, a quick reference to the judicial telephone directory produces three brothers in the Supreme Court, two in the Court of Appeal, about a half-dozen in County Court, and a dozen or so in the Provincial Courts.]

Looking back, would you follow the same path?

Yes. I feel a sense of surprise about time - like Henry Fonda in the movie *On Golden Pond*, if you recall the 80th birthday scene - "How'd I get here so fast?" The Law School, my legal education, provided me with an opportunity to spend a busy and exciting life - I wouldn't want it any other way.

What about life as a judge? Is there much of a difference from your former lifestyle, and is it a difficult adjustment?

There is such a myth about the "isolation" of judges. It is true that there are certain constraints - that one must have a certain consciousness of position - but this comes with the territory and is not, as such, onerous. For instance, I wouldn't attend a "roast," which is essentially an uncivilized procedure - especially in today's permissive milieu. There are things said which are simply not fit for a judge's ears in public. Yet I don't regard myself as leading a cloistered life - I agree that "Justice is not a cloistered virtue." Before, as a trial lawyer, I thought I had a good idea of what the Bench involved, yet the reality is much different from what I thought it was. There are acute pressures on one as a trial lawyer - on the Bench, those pressures increase and are chronic. The popular misconception is that "any lawyer can become a judge." The reality is that any *good* lawyer can eventually become a judge, if he has time. Law has become so intricate that unless one has time, takes time, to learn - for example, even ordinary things, details

about each trial - then one is at a great disadvantage, and this was not so 25 years ago. Now there are difficulties in every field of law that require intimate and detailed knowledge. Sitting in court listening to testimony is the least demanding part of the job. The real work begins after that.

Let's go back to lawyering for a moment. What makes a good lawyer?

A person who is not a bookworm, not a slave to legal work, but one who has good work habits, good judgment, and common sense. It is important to be disciplined, to do what has to be done at any given time, to get a case done with, and done properly. Some of today's young lawyers lack life experience; there is not enough time spent in the outside world, struggling with day-to-day problems. There are definite advantages to having worked in sawmills, in factories, on boats, to have been on strike, been out of work, etc. One has a sense that some young lawyers have not put in enough time in the non-legal world. One can't - shouldn't - generalize, but there seems to be a tendency for them to think that the world started the day they entered law school. Some haven't had their hands dirty enough. A good lawyer must understand human frailty, but instead one finds a tendency to be elitist. As a lawyer one has privilege; one must undertake, therefore, a reciprocal responsibility. There is a sense of "pass the LSAT, get into law school, and on *that*, one has it made." This is a false expectation. After getting through law school, after the exams, the classroom brilliance, come the real tests and this is where life experience counts, where other factors come into play. It is necessary to make sacrifices for success. One must work hard. Lawyers, young lawyers, are the greatest communicators ever, but it's necessary⁷ to know when to stop talking and get down to work. Hard work. One learns the principles of law in law school, but the truth, the truth of any given case, is hidden in the details. For example, the client tells a story, or a witness tells his story. If one accepts *this* as truth one can be out on the golf course by four every day. But if you want to test, measure, ask why, ferret out the truth, well, that puts a different complexion on the facts given. Finding the truth is like pulling teeth. There is too much assumed, and thus not enough precise thinking; the truth is not so available - it must be assembled.

Do these criteria apply to the Bench?

Yes, definitely; perhaps more so. Judging is much like lawyering, but with this difference - after the talking stops (unless the case is very simple, very straightforward), then the work begins. And it is very lonely, very precise work. There is much writing, but writing is always a lonely business, one that demands great precision. I enjoy the writing very much. Judicial writing cannot be out of the ordinary. Humour is not always welcome nor is it often appropriate, but there is room for individual style.

Do you have any comments on judging and the judiciary in general?

The law is, has become, very complex. And this is a development which we must try to resist. Say that I think law has become such a broad mosaic that the time may be near to recognize the increasing need for legal scholarship. There are diffuse thoughts, directions, patterns, in law. There is such a proliferation of judgments. Consider judges in two separate courtrooms, having a similar case and similar facts. Each of them reaches a different conclusion on those same cases because there is such a multiplicity of conflicting precedent. What is needed is a common data base, a single point so to speak, from which to go. If there were more certainty in the law, there would not be so many trials; litigation actually undertaken would proceed faster. There is a proliferation of texts and it is hard to speak of any aspect of the law with any certainty. Think of the developments since *Hedley Byrne*, a tortured course, indeed. And the number of cases - roughly 90 to 100 in the Supreme Court of Canada, 500 in the provincial Court of Appeal, over 1,500 in the Supreme Court (all this per year). One sees such quantity. Thus the law, while not out of focus, is certainly diffuse. It's hard to chart a clear path. Judges can't rationalize law in the context of individual cases - there is no time for this, and it may not be a good thing anyway. Again, a common data base is needed. Law professors, per se, don't help because they seem afraid to leave anything out. But this aside, we're tackling the problem of moving cases through the system, making it more efficient.

When you speak of more efficiency, I recall St. Thomas More whose efforts at streamlining the courts were not exactly welcome. How is all this being received?

Well, I hope not to meet a similar end! Nor do I expect sainthood! What has been most impressive is the help received from the Court staff. They have all worked along with us and with very encouraging results, results which

are a credit to all the judges and the staff. There has been much streamlining: the waiting period for court dates has been reduced from 24 to 14 months and, eventually, there is hope that these changes will also reduce the cost of litigation. We have a great responsibility in this matter. It is a continual fight which has been no easy task, but we must persist. And I stress again the need to sort out the diffusion of which I spoke. We are fortunate in having outstanding scholars here, some of whom serve now as judges. This is such a valuable resource of which we must take full advantage. It is very important, this emerging need for – how shall I say – legal academic/judicial scholarship, careful study and writing, that will bring more certainty and some form of rationalization to our legal process.

His personal routine? The Chief Justice always enjoys football games but (with amused regret that somehow lacks conviction) notes that he has not much spare time these days. Nevertheless, he feels it is important to maintain a balance by having some leisure and interests outside work. He would like more time for reading history and, generally, English literature but "there always seems to be something to write and one doesn't read too comfortably when there is writing waiting to be done." He walks about two miles every morning before work and does all the gardening at home – flowers and lawns. "No, I have no favourite flowers, just whatever grows well at the moment. This year it's snapdragons. I plant for colour, for brightness." As he speaks one recalls the observation by Evershed M.R.: "No doubt a garden is a pleasure - on high authority, it is the purest of pleasures" (*In Re Ellenborough Park* (1956) Ch. 131 [C.A.]).

The conversation moves to his colleagues, past and present. We tour the corridors, examining the gallery of judges' pictures. He has a lively and intimate knowledge of the history of British Columbia courts which he animates with many anecdotes. It is a narrative that deserves publication. Pausing before the tablets which record the judiciary, he again speaks of the many he remembers - "time moves so quickly." In a touching tribute to his colleagues, he notes that his own name is listed with the chief justices of the Supreme Court but not with Supreme Court judges. "They are such fine people, outstanding for their dedication and service. It would be an honour to be there with them."

L'envoi

Chief Justice McEachern returns to his office to gather the files he will need that evening. Half his working day is likely still ahead of him, yet he looks forward to it. He enjoys his work, however demanding. Most impressive is his profound sense of responsibility, tempered by keen humour and a clear but not cynical objectivity. One feels that matters judicial are in very capable hands.