

ALUMNI PROFILES: THE HON. BRIAN R.D. SMITH, Q.C. (LL.B.'60) (from *Law Faculty Newsletter*, Summer 1988)

by Frederick M. Irvine

Brian Smith was born and raised in Oak Bay where he attended Oak Bay High School. As a high school student he was very interested in sports, particularly soccer and basketball.

Following high school, Brian Smith attended Victoria College for two years, starting in the autumn of 1952. He then went on to UBC where he graduated in 1956 with a B.A. with combined honours in English and History. On completion of his B.A. he won a fellowship in Canadian History to Queen's University and obtained his M.A. in 1960. In the meantime he had enrolled in the Faculty of Law at UBC where he obtained his LL.B. that same year. During his period of study at Queen's University he became involved in campus politics and joined the Progressive Conservative Party. While a law student at UBC he was elected to the College Parliament and became its Prime Minister.

Brian Smith articulated in Vancouver, where he was called to the bar in 1961. He practised law in Vancouver for several years and then returned to Victoria in 1964 to join the firm of Pearlman and Lindholm, where he was a partner for many years. He chose to become a litigator and was a prosecutor in some cases and defense counsel in others. He handled a wide variety of criminal cases, including a number of murder trials.

He preferred criminal jury trials because of the involvement they provided him with people and life. He was involved in the establishment of the Faculty of Law at UVic and until recently was an adjunct professor and lectured on criminal law and Canadian constitutional history.

Brian Smith's political career began in 1969 when he was elected for the first of two consecutive terms as alderman of Oak Bay. In 1973 Oak Bay was undergoing a good deal of redevelopment and the City council was divided on the issue. Brian Smith ran for mayor in 1974 on an anti-major-development platform, defeating the three-term incumbent, Frances Elford. He served as mayor from 1974 until 1979 and looks back on that period with a great feeling of pride because of what was accomplished, the Oak Bay Recreation Centre being the foremost example.

Brian Smith considers local government to be a fulfilling end in itself which represents democracy's best value by constantly bringing forth high calibre people who, owing to the shortness of their terms of office, must keep in touch with the electorate. He believes that longer aldermanic terms would make municipal government less sensitive to the wishes of the public. He is also of the view that central plans developed by a planner will not work unless they accurately reflect and have been based upon community values and input.

Brian Smith was urged in 1977 by Bill Bennett to try provincial politics and to join the Social Credit Party. When Dr. Scott Wallace, the then Oak Bay-Gordon Head MLA, decided to step down in mid-term, Brian Smith tried unsuccessfully to win the Social Credit nomination, which went to Frank Carson. Mr. Carson failed to win the seat, losing to Vic Stephens, a Progressive Conservative. In the 1979 general election Brian Smith won the Oak Bay Social Credit nomination by acclamation and went on to defeat Vic Stephens. He continued as Mayor of Oak Bay until the scheduled election was held in late 1979 in order to avoid the necessity of a by-election to fill the Office of Mayor. He also continued his law practice (having in the interim left Pearlman and Lindholm).

His promotion to the Cabinet came with his appointment as Minister of Education on November 23, 1979. He held that position until August 10, 1982, when he was appointed Minister of Energy, Mines and Petroleum Resources. He was appointed to the post of Attorney General of the Province on May 26, 1983, which he held until he resigned in June, 1988.

Brian Smith was apparently the first of thirty-three Attorneys General of British Columbia to attempt to delineate publicly the duties of his office. In a paper delivered as the First Annual Hugh Allan MacLean Lecture at the University of Victoria on February 24, 1987 [reproduced in (1988) 46 *The Advocate*, pp. 255-262], he reaffirmed the principle that the exercise of the prosecutorial discretion should not be influenced by orders from a Prime Minister, the Cabinet, or anybody else. But that, according to Brian Smith, does not mean that the Attorney General should be politically neutral in the legislature or that he should refrain from partisan debate. That is because in Canada, unlike the United Kingdom, the Attorney General is a member of the Cabinet and must answer for the government of the day on all matters relating to the administration of justice in the province. He held the view that the position of Attorney General must remain a political position, albeit with particular sensitivity to non-political responsibility.

Brian Smith also revived the practice of having the Attorney General appear personally in court, something which had not been seen in this province since Gordon Wismer resigned the office of Attorney General in 1952.

Brian Smith appeared for the Crown in three criminal cases because issues of public policy were at stake and he was convinced that it was in the public interest that they be argued by the Attorney General.

While he has resigned from the Cabinet, Mr. Smith remains a member of the legislature, representing Oak Bay-Gordon

Head. Given his energy and his contributions to British Columbia he undoubtedly will continue to be heard from.