Bar to Bar to Bench: a Memoir

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CONTENTS

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PROLOGUE

My purpose in writing this memoir is to provide a brief background of our family and to a greater extent, the history of my personal involvement. Every family has a history and knowledge of the generations which it encompasses. History does not have to be a recitation of worldwide events already covered in textbooks and libraries. The history, about which I write in early 2000, deals with living in a small town in New Brunswick, then in Timmins, a gold mining town in Northern Ontario, and later in Toronto as a Justice of the Supreme Court of Ontario, and finally past retirement activities.

My grandchildren were fascinated when my mother at age 100, would describe to them her early years living on a farm and attending a one room school house with pupils from grades up to and including grade 8; her reaction to the first time she saw a motor vehicle and how the horses and cattle stampeded when the horn was blown; her description of the clothing worn by women and particularly the fancy hats; how boys graduated from short pants to long trousers and achieved status as young men when, on formal occasions, they discarded caps for hats. These events aroused their curiosity about their family heritage. It has been said, "If you are not interested in history at some level, you are not interested in your family."

My family is important to me. I am proud of them. My paternal grandparents, John Henry Evans and Mary Brophy, and my maternal grandparents, Daniel McDade and Mary McDermott, were of Irish ancestry and last summer as I stood on the most easterly point of Newfoundland looking over the seeming endless expanse of the Atlantic Ocean, I was filled with emotion and admiration for my courageous ancestors. They left their homeland and families seeking what they hoped

would be a better life. The extent of their success may be reflected in their descendants.

This memoir cannot encompass all the important and interesting events but a selection of remembrances that highlighted my life, episodes that I hope my family will find to be interesting as well as informative.

One can never adequately thank their parents, siblings and others for their love, sacrifice, guidance, patience and ever-helping hand in time of need. I dedicate this memoir to them, my wife, Zita (d. 1994), our children, Tom, John, Greg Jr., Rory, Mary, Kerry, Brendan, Cathy and Erin, grandchildren, and great grandchildren, all of whom shared in the joys and sorrows, successes and difficulties which all families experience.

With love and affection,
Dad.

MY EARLY YEARS

I am Gregory Thomas Evans. I was born to Thomas and Mary Ellen Evans (nee McDade) on Friday, June 13, 1913 at McAdam New Brunswick. My brother, Joseph, was two years older and over the following years our family increased by the addition of Mary Blanid, Gerard, Agnes Teresa, Daniel and Austin. The only unusual event surrounding my birth was the failure to register it. One may speculate about the reason, but I am satisfied that it was an oversight which created a few interesting situations until corrected on August 28, 1947. The fact that I was married with four children at that time prompted me to confirm my existence with the Department of Vital Statistics.

Greg in 1918 age 5

My father was born at McAdam on August 3, 1886. The youngest son of the eight children born of the marriage of John Henry Evans and Mary Brophy, solemnized at Bathurst N.B. on December 1, 1876.

John Henry was born on August 15, 1836 in County Limerick, Ireland and immigrated to Canada in 1850 after spending four years in Newfoundland and Prince Edward Island. Mary Brophy was born May 31, 1852 in Newfoundland, the eldest daughter of seven children born to John and Catherine Brophy (nee Bransfield). The Brophy family left Ireland and settled in Bathurst N.B. circa 1850.

My father operated his own grocery store and meat

market. He had a grade 8 education supplemented by self-improvement courses from LaSalle Extension College in Chicago. He was a kind and generous man with a wonderful sense of humour. A sports enthusiast, his main interests, apart from fishing, were baseball and boxing. He had a quick wit, a friendly disposition and was well respected among his peers.

My Mother and Father's wedding, August 15, 1909

My mother was a graduate of Fredericton Business College. The photograph of her graduation class indicates that few women in the later years of the last century considered a career in the business world. She stated that not only was she the youngest in the class, but also that she had obtained the highest marks. Her children never doubted her claims, but we did remind her, in a joking manner, that she made this disclosure when she was over 90 years old and there were no members of her class alive to dispute the issue. Her passionate belief in education and the fact that she could do mental arithmetic at age 100 made believers of even her most skeptical great grand child.

My maternal grandparents were Daniel McDade and Mary McDermott, who were married on September 25, 1878. Their parents arrived in the Kingsclear area of New Brunswick from Ireland in 1827 and 1835. My mother was the eldest of three sisters and had four older brothers. The community in which they lived is known as New Market and they were farmers. I am

not aware of the County in Ireland from which they emigrated, but believe it to be either Cork or Limerick.

A few years ago in conversation with a priest from Ireland, who had a parish in Florida, I was asked whether my Irish ancestors were "one boaters" or "two boaters." I told him that these terms were new to me, so he explained that one boaters usually had sufficient money to travel directly to the "Boston States" while two boaters, who were en route to America, would be dropped off at the nearest landing, usually Newfoundland or Prince Edward Island and then had to take a second boat to Upper or Lower Canada. While I have great sympathy for the hardships which my grandparents must have endured, I am eternally grateful that they lacked the funds to be "one boaters" and put down their roots in New Brunswick.

My mother's mother died when she was 12 and my grandfather's sister, Aunt Kate, came over from Ireland to assist in bringing up the family. Grandfather McDade died in July 27, 1919. He is the only grandparent of whom I have any recollection. John Henry Evans died on October 14, 1908 and his wife died May 4, 1913 from smoke inhalation from a fire which a few days earlier destroyed the family home, my father's store, an ice cream parlor and the apartment in which my parents and brother Joe resided.

All my father's sisters, except Martina, died relatively young from pulmonary tuberculosis, then called consumption, leaving numerous children in the care of surviving spouses, none of whom remarried. Father's brothers played no part in my life. Henry took off at an early age for the United States; Charles was killed in a train accident while employed by the Bangor and Aroostock Railway. I saw Fred on one occasion before he went to the U.S. His wife and daughter visited our home once when living in Maine. Brother Joseph visited the family frequently.

McAdam was a Divisional Centre for the Canadian Pacific Railway. In January, 1885, the St. Croix

Courier, a weekly newspaper published in St. Stephen described McAdams entry into the twentieth century as follows:

"McAdam Junction is soon to part with a feature which has made it famous all over Canada and the United States. It has long been famous as a village without a street and a highway leading to the outside world. It has recently become a separate parish of York County and now proposes to lease from the C.P.R. the old abandoned railway from McAdam to Vanceboro (Maine) and use it for a highway road…" (a distance of 5 miles).

The early settlement located in the southwestern corner of N.B. was called City Camp because of the number of logging camps in the area. In 1876 the name was changed to McAdam Junction in honour of John McAdam (1807-1893) a prominent lumberman who represented the area in both the Provincial and Dominion Parliaments. In later years, the community was known simply as McAdam and was officially incorporated as the Village of McAdam in 1966.

The St. Croix River, which forms part of the International Boundary between Canada and the U.S., provided ready access for the export of logs and lumber to Europe. There was considerable local trade and commerce across the border by the residents of the two communities and generally custom officers "turned a blind eye" if the merchandise was for personal consumption or use.

The river was crossed by a highway across a dam where my dad frequently took Joe and me fishing and a railway bridge about ½ mile south for passengers and freight destined for the Maritimes and to the ports of Saint John and Halifax for shipment overseas. During World War I, it was the gateway through which military personnel and supplies from Upper Canada and the U.S. were channeled. In 1917 it gained international notice when a German spy was apprehended before he could achieve his purpose of blowing up the bridge.

He had arrived by submarine and landed on the coast of the Bay of Fundy. His lack of a Yankee accent and his foreign style clothing aroused suspicion and he spent the rest of the war as a guest of the U.S. Government.

One of my great regrets is that I never knew any of my grandparents. When I was younger, it never occurred to me to ask my father about his father's life in Ireland and later in Newfoundland and Prince Edward Island, where he apparently lived for short periods before settling in McAdam. The records of the parish of McAdam state that John Evans was "Overseer of the Poor" which I assume was a sort of volunteer welfare officer. His employment was with the C. P.R. in some capacity. His wife, Mary Brophy, ran a boarding house which provided employment for their daughters.

My mother was more family–oriented since most of her siblings remained in New Brunswick and she had a fund of stories of her early years but little information about her parents except that her mother died when she was in her early teens and her father's sister, Ellen, who was unmarried, became the *de facto* mother.

Her father, Daniel, was a farmer in Newmarket, York County in New Brunswick. Several relatives were also farmers in the surrounding areas. McDermott, Fenney, Burgoyne, Murphy, Foley, and Donnelly were common family names.

None, apart from my mother, lived to see their grandchildren grow up – an experience which I have enjoyed very much. Having a large family has problems, but they fade away with the passage of time and I have had the opportunity to see new branches of my own family develop in a world which is quite different from the one in which I grew up. They develop their own personalities and characters as they strive to mature in a society in which the virtues of honesty and integrity are often ignored.

My first recollection of my early years was the burning of our home on November 22, 1916. I remember sitting on a trunk in a neighbor's home watching the flames

and men running with buckets of water. I did not have my shoes so someone gave me a pair which were much too big and I could not walk very well in them.

In September, 1917, Joe, who stammered badly, started school. My dad took him and I went along. When I was told that I could not return after the noon recess, I was disappointed as I had taken my slate and chalk. The following year I was 5 years old and since there was space available, I was allowed to stay. My educational career had begun. Twenty-one years later, in 1939, I would be living in Ontario, a graduate of Osgoode Hall and eager to begin my legal career.

Joe in 1915

McAdam had become a major rail centre by 1900 and the C.P.R. built a beautiful station to meet the needs of the travelling public. It was built of local granite, similar in design to the chateau like C.P.R. hotels across Canada, with all the amenities including a large dining room, a lunch counter, spacious waiting rooms and a newsstand operated for 40 years by my mother's sister, Sarah, who was "Aunt Sadie" to me and to most of the community. A very special lady without whose encouragement and financial support a

Aunt Sarah in 1907

college education for me would have been impossible.

The station was my second home. About 16 passenger trains passed through McAdam daily – long distance trains headed for Toronto, Montreal and Boston and local trains to St. Stephen, St. Andrews, Saint John, Woodstock and Edmunston.

Special trains carried immigrants from Europe and harvest trains transported Maritimers to the wheat fields of Western Canada. During war times, troop trains took soldiers to overseas embarkation ports. All trains stopped at McAdam for servicing, changing of steam engines and crews. Over 40 sets of tracks provided a marshalling area for the heavy volume of freight which moved through the railroad yard on a 24-hour schedule.

The heavy traffic required a support staff of approximately 850 employees. Many were skilled mechanics, electricians and carpenters. The last passenger trains ceased operating in 1981. Trucks took over the bulk of freight. Employees were retired and railroading became history in McAdam.

The huge McAdam railway station and hotel

The C.P.R. station will always remain a place of a million memories as it was the focal point of my earliest years – a place where I watched trains from Montreal and Boston drop off passengers on their way to towns and cities in the Maritimes. Some wealthy Americans and Canadians from Upper Canada, as my father called Ontario, and Montreal came in their private railway cars. To me it was the crossroad of the world. When you are 7 years old, your imagination knows no boundaries and your dreams no parameters. The ribbons of steel, stretching to the horizon in four directions; the steam engines, puffing and belching smoke, pulled the passenger cars filled with tourists and businessmen; the double header freight trains, with the strange names of American railways painted on the box cars, snorted and clanged as they moved through clouds of steam. When I waived to the engineer and he responded by blowing the engine whistle, my day was made – life was good!

The railroad tracks bisected the village into unequal areas of population. Our home was adjacent to the tracks in the smaller area and provided a close up view of the huge steam engines pulling long strings of box cars with names of foreign railway companies and passenger trains with sleeping and dining cars displaying the names of cities and towns far removed from N.B. The smaller engines which handled the branch lines and distributed freight cars in the marshalling yard were of lesser interest unless they involved carloads of potatoes. In order to keep the cargoes from freezing, charcoal heaters were installed in each car serviced by a man referred to as "Potato Bug" who lived in one car. His living area was a small space in the centre of the car with wooden barriers retaining the loose potatoes surrounding him. Occasionally the "Potato Bug" was asphyxiated when the barricades broke or the heaters overturned.

Christmas trees were exported on flat cars with posts. It became a means of smuggling liquor into the

United States at a time when the Volstead Act was in force and rum running was big business, controlled by the Mafia. Customs inspectors would remove some trees and then run iron rods through the load. Occasionally these spot checks discovered a cache of 5-gallon tins or sometimes only loose bottles. Once a car was suspected, it was moved to a rail siding to await the Inspectors. The local populace was well aware of the practice and would remove some of the trees and all of the illegal liquor before the Inspectors arrived. I happened upon this particular situation and decided it was an easy way to obtain a Christmas tree. I also picked up a bottle of liquor. On my way home, I became concerned about the situation and sold the bottle for 25 cents. When I explained the situation to my father, he lectured me at some length about stealing from the C.P.R. Later, I wondered whether his concern was the Christmas tree or my lack of business sense.

The end of World War in November 1918 was a memorable event. Damaged boxcars had been collected and a huge stuffed effigy of "Kaiser Bill" was placed on top. I had seen the display in the afternoon, but was not permitted to visit the bonfire and had to be content with viewing the flames from my bedroom window. It was a spectacular fire.

Aunt Sadie's newsstand saved me from doing many household chores. I would pick up the N.B. papers from the train arriving from Saint John at 6 p.m., run to the newsstand and sell them prior to the trains departing for Saint John, St. Stephen and Woodstock. After those trains left, there was no passenger traffic until 9:30 p.m. when the Montreal and Boston trains arrived. Passengers waiting for those trains and local visitors were the only interruptions to my reading of newspapers from Saint John, Fredericton, Toronto, Montreal and occasionally Boston as well as sport magazines, detective stories, Saturday Evening Post, etc. It is an addiction which I continue to practice.

The weekend editions of the Montreal Star and the

Toronto Star had many interesting features. The former provided French lessons – a language which I grew to appreciate and which later on, my Acadian friends, with their characteristic patience and humor, helped me to speak in a reasonably understandable manner. Ontario was an unknown province to many Maritimers whose out of province visits were usually to Montreal and Boston. A photograph of the Royal York Hotel, described as the largest hotel in the British Empire, was prominently displayed in waiting rooms at the railway station. Every August, signs advertising reduced rail fares to the Canadian National Exhibition at Toronto were placed on display. I don't believe many people in our area attended. If they did, I never heard of it.

Toronto was known as "Hogtown". A W.A.S.P. community, controlled politically and commercially by a group of wealthy families who exerted intense care and effort to monitor and protect the privileged position which they had inherited. That situation still existed when I entered Osgoode Hall but had radically changed 30 years later when I was appointed to the High Court of Justice. Immigration from foreign countries and from other provinces greatly increased the population and infused it, almost unconsciously with a new, more generous attitude and a greater appreciation and understanding of other cultures, languages, and religions.

Today, Toronto is recognized as one of the great cities of the world in which the previous barriers inhibiting a person's normal development or the realization of natural desires have, to a large extent disappeared.

Newsagents who sold newspapers, magazines, etc. on "harvest trains" were not the usual vendors, but received free transportation to Western Canada for their services. A supervisor accompanied them. He set up shop in a baggage car and sold to the newsagent who then sold goods to the passengers. I had helped the supervisor on a couple of trips and was asked to

make the trip on a Friday night. I eagerly accepted, as I was aware of the routine. On previous occasions, the train going West and the train from Montreal going east would meet at a prearranged station. The trunks containing unsold supplies in the baggage car would be transferred and we would climb into hammocks until 8 a.m. when the train arrived at McAdam in time for me to go to school. I had arranged with a friend, Paul Rosebush, to help me on our Friday night trip. However, our train was delayed, the meeting place was cancelled and we were on our way to Montreal. On arrival about 7 a.m. we had the baggage trunks transferred to the next train going east at 6 p.m. – turned over the proceeds of the trip to the ticket agent who provided us with a pass for our return trip.

I had been in Montreal on previous occasions and was familiar with the area around Windsor Railway Station so we started our tour by having breakfast at a coffee shop at the Mount Royal Hotel and then went to a movie which included several vaudeville acts which one would never see in McAdam.

We passed a barbershop and I decided to treat my rather shaggy head to a big city haircut. When the cutting and the clipping finished, the barber said, "Would you like a singe?" I had no idea what a "singe" was and expected some sort of liquid to keep my hair in order so I said, "Yes". The barber then lit a candle and proceeded to burn the ends of my hair and said, "Now we will give you a shampoo." My ever increasing concern – not about my hair- but whether I would have enough money to pay for this experience forced me to tell the barber not to bother about the shampoo. I paid him for his efforts and left for Windsor Station. My hair was a mess – little balls appeared to be hanging from each hair – obviously I needed a shampoo, so we headed for the men's room at Windsor station and applied generous amounts of a green liquid soap and hot water. The treatment was effective as far as the hairballs were concerned but my scalp was sensitive for

weeks afterwards. A couple of sophisticated 14 year old boys returned home on Sunday, eager to relate our experiences in Montreal.

McAdam was a good town in which to grow up. It had baseball, tennis, skating, hockey, fishing and basketball readily available to spectators or participants. The citizens included 2 Italian section workers, Charlie and Jimmy, and 1 Chinese who operated a laundry, and led a very secluded existence. The remainder were almost 100% English, Scottish or Irish. The latter consisted of approximately 40 families.

Every major religious denomination had a church – Anglican, Methodist, Baptist, United, Presbyterian, Catholic and a fundamentalist group who appeared each summer and held open confessions to the delight of other congregation members who hurried from their own evening services to share the most recent scandalous revelations of their neighbours.

A mixed marriage was a calamity for both families – some avoided the ceremony- and remained unreconciled until in due course a grandchild changed the situation.

In McAdam, there were no black people, no Jewish people and no native people. I was not aware of any racial discrimination until I went to University and learned that some C.P.R. employees who had transferred from Montreal named Savoy, White, Sheppy, Rosebush and Carroll were actually Savoie, LeBlanc, Champoux Des Rosiers, and Carriere.

In general, there was no apparent religious discrimination. There were no signs saying "No Irish" or "No Catholics" may apply. However, apart from Kate Morrissey, there were no Catholic teachers, no Catholic school principals and very few Catholics in supervisory positions with the C.P.R. Perhaps everyone was happy with the status quo.

McAdam being so close to the United States made us aware of American political activities. In 1928 Alfred Smith, the governor of New York and a prominent

Catholic was nominated by the Democratic Party as their candidate for the Presidency. This brought the bigots out of the bushes shouting anti-Catholic slogans and warning that if Smith were elected, the Pope would take up residence in the White House. The Klu Klux Klan which normally confined itself to the U.S., suddenly emerged in border communities. Their K.K.K. symbol appeared on freight cars and public buildings and rumours spread that a local "chapter" had been formed by a group of prominent local citizens. It caused some concern which was exacerbated when a huge cross was burned on a hilltop, clearly visible to most of the community.

Smith was defeated and the furor abated but latent hostility was aroused and for a few years things were not quite the same. The ecumenical spirit which prompted the Catholics to assist in building the roof on the "stone" church in 1925 and which allowed me to play hockey on the United Church Tuxus team was over. My father was of the view that a "lunatic fringe group" and not prominent citizens were involved. The problem disappeared when the depression days resulted in cut backs at the village's only employer. Seasonal layoffs were normal occurrences but permanent loss of jobs was not expected. Usually employees expected to work until retirement.

Local merchants operated on a credit basis to accommodate the bi-monthly pay schedule of the C.P.R. In early 1930, the company provided "market passes" to its employees enabling them to shop in Saint John and have groceries, etc. shipped home by train free of charge. Customers paid cash in Saint John and looked for credit in McAdam for items which they had overlooked. The permanent layoffs contributed to the closure of many local stores including my father's. It was a serious financial blow to our family and a crushing experience for my father who was fortunate in obtaining part time work in low paying jobs with the C.P.R. as he said "because I could read and write."

The depression became worldwide. International trade came to a virtual stand still. Canada being dependent on export of natural resources had no markets. The Maritimes and the wheat producing Western Provinces no doubt suffered the most. Unemployment was rampant while governments strove to stem the tide.

McAdam being a railroad centre and a port of entry to the United States became a drop off spot. Every freight train disgorged groups of men, young and old, looking for work or so discouraged that they just drifted aimlessly from place to place. Welfare and local social services that we now have did not exist and the migrants had to exist on the charity of those in the community, many of whom were existing near the poverty line. Despite the existence of permanent "hobo" camps in close proximity to built-up areas, I do not believe that the incidence of serious crime increased. Most were decent people, uprooted from their homes and families by circumstances beyond their control. Suicides were not uncommon. Some died of untreated illnesses and were buried in unmarked graves.

The Canadian Government established work camps in various areas. Those fortunate enough to be accepted were housed in hastily built bunk houses, were provided with meals and, as I recall $10.00 per month, most of which they were expected to send home to their families. It certainly was not Canada's finest hour.

In contrast, the United States Government under President Roosevelt established the Civilian Conservation Corps (C.C.C.) with camps along the Maine-New Brunswick border for younger men. It had the appearance of a military base with dormitories, a dining hall and a recreation centre. They also had an athletic budget. Around 1932 a local baseball team, of which I was a member, made 2 visits. We played 7 innings, lost both games and enjoyed the dinners. Much of their work was planting trees, clearing brush for campsites and cleaning up around the lakes and

rivers. That part of Maine is a Mecca for sportsmen with thick forests, countless lakes and streams and an abundance of fish and game. It is the eastern end of the Appalachian mountain range which extends into New Brunswick.

Our baseball group of about 15 also included a 6-piece dance band. We traveled in a rather nondescript convey – a Ford touring car with side curtains, an old McLaughlin Buick sedan which had survived a fire minus its roof, and a truck, with a stake body, of uncertain age and ancestry. There were several small community halls in the area and with tickets costing $.25 for males and females admitted free, a reasonable audience was usually available. A pianist, along with a drummer, a trumpeter, a couple of saxophonists, a banjo player and occasionally an accordionist provided the musical background for the vocalist who couldn't sing like Rudy Vallee and didn't look like him, but who could sing the same songs. After one disastrous effort to play the drums, I was the unanimous choice to sell tickets and apply an ink stamp to the wrist of purchasers. The ball team disbanded when the group in the truck left early, stopped at a grocery store, and when the owner was otherwise engaged, someone lifted the whole stack of bananas off the hook and forgot to pay. Anyway, it was time for me to return to University.

The education arrangements in McAdam were simple. If you lived on my side of the tracks, you went up to grade IV at the two-room school up on the hill. After that, you went to the school adjacent to the High School. I liked my first schoolhouse as it was close to home and I found the huge granite boulders which sat on the ground fascinating. The teacher had told us that when the "ice age" was over, the rocks remained as a souvenir of its passage.

Each teacher taught 2 grades with 35 to 40 pupils. After a few months in Grade 4, the class size was reduced by sending 12 over to the other school. The teacher, Miss Reed, was not happy to see us and the

feeling was mutual as we were not accustomed to being shouted at and given detentions which meant washing the black boards and cleaning up.

In due course we progressed to Grade 5 and encountered our teacher, Kate Morrissey for the first time. It was an experience that was to last until the end of Grade 6. She was an excellent teacher, but a strict disciplinarian with a firm belief in the use of the strap. Her family operated a boarding house next to our home, so I got special attention in the discipline department. Our desks had an ink well in the right hand corner. Gertrude Thorburn, who sat in front of me, had long auburn hair, which she kept fluffing up as I bent over my desk – pulling it did not have the desired effect, so I stuck some in the ink well with disastrous results – the ink began to move up her hair and the next time she ran her hand through it, all hell broke loose. Gertrude cried, the class broke into laughter and Kate brought her favorite weapon into action with more than the usual vigor on my hands.

Around this period, the Governor General, Lord Byng of Vimy, and his wife paid a visit to N.B. and came to McAdam. A school holiday had been previously announced and students participated in the program. Our class had won a physical exercise contest and was selected to be introduced personally to the Vice Regal couple. The leader of the group was the tallest student, and I being the shortest, was the last in line. When my turn came, I was so fascinated by the swallowtail coats and the high silk hats worn by some local officials, that I completely forgot Lady Byng after shaking the hand of her husband. This breach of official protocol was quickly remedied when the teacher directed me back to Lady Byng. My act of lèse-majesté was duly recorded by the official photographer and displayed in the window of White's Drug Store for several months.

In Grades 7 and 8 we had our first male teacher who insisted on mental arithmetic for the first period every Monday. My mother had an old book from her

business college days which demonstrated methods of quick calculation. My access to it together with my experience selling papers, candy, magazines and cigarettes at my Aunt Sadie's newsstand gave me a decided advantage over my classmates. Algebra was a breeze, but Latin was a disaster. However, I had no difficulty in passing the provincially mandated High School Entrance Examinations.

At this stage of our education, we faced an election – in some cases it was a directed one – academic, commercial or vocational. No matter which stream was selected, there was some exposure to the others. I learned to type with the keys covered with rubber caps. Carpentry was a frustrating experience. The saw went off line, the blade of the plane was never straight and I had more glue on my hands and clothes than on the wood. Mr. Douglas was the teacher, a kind and patient man. Each pupil had to have a completed item for the home and school show at the end of the term. I had completed the top and base of a flowerpot pedestal which was my project, but had difficulty with the 4 support braces. I was working away the day before the show when Mr. Douglas decided to help me by using the supports which had been used as a model and applying the necessary glue and screw nails. To my great surprise and considerable embarrassment, I was awarded third prize. That masterpiece of the cabinetmaker's artistry occupied a prominent position in our home for years.

The principal, Mr. Skene, had grades 10 and 11. Mr. Tippetts in grade 9 had introduced us to geometry, physics and chemistry. Our French teacher was a young woman with a pronounced British accent who was one chapter of the French grammar ahead of the students. Julius Caesar, his division of Gaul into three parts completed, passed into our history as we struggled to understand Cicero and his lengthy orations. Foreign languages were not a mode of communication in McAdam.

I think it fair to say that while our exposure to

languages and sciences was rather superficial, we did get a good grounding in history, English and mathematics. We also had a course in "civics" a subject with which my children and grandchildren appear to be completely unaware. We learned about government at all levels and because of our proximity to the State of Maine had some knowledge of the American political system. We read newspapers and were quizzed on current affairs. Classes in First Aid were provided by C.P.R. instructors who were winners in the Company's Cross Canada Competition.

Graduation day in June 1929 arrived. I had my first made-to-measure suit. Mr. Williamson, the tailor, had a measuring tape on the doorframe which started five feet from the floor. As he was filling out the order form for Tip Top Tailors in Toronto, he stood me at the tape. I was just under five feet and weighed around 90 pounds. The suit cost $19.95 plus $5.00 extra for a second pair of trousers. In our class photo, my feet barely touched the floor. I was ready for graduation at which I received a prize - $5.00 gold coin – for chemistry and physics. Then it was off to Fredericton to write the provincial matriculation exams. Students from smaller communities were at a disadvantage. Larger centers had teachers who were specialists. I believe I was the only one from my class who wrote the exams as I intended to go to University. In some I obtained a passing grade, but not in French and Latin.

During that summer, I returned to St. Andrews for a few weeks and was a caddy at the Algonquin Golf Course owned by the C.P.R. With a couple of friends, we lived in a tent which we pitched near Indian Point. The 18-hole course was a long championship course while the 9-hole course was rather short. We had to be approved by the caddy master and unless you were specifically requested by a player, you were on a first come basis. The fee for the caddy was 75 cents and 40 cents for the shorter course. Usually, the players gave you a tip, the amount of which depended upon his

success and your ability to locate balls driven into the rough or the water hazards.

On a couple of occasions, I caddied for the Honourable Marguerite Shaughnessey who was the daughter of Lord Shaughnessey, one of the founders of the C.P.R. She travelled in her private railway car from Montreal and spent the season in St. Andrews at her summer home "Tipperary." She was an early morning golfer and a good one. Mrs. Carine Wilson, who later became Canada's first woman senator and a delegate to the United Nations, was another for whom I sometimes caddied. Some years later, I was president of the Timmins University Club and she accepted our invitation to be our first guest speaker. She was a kind and gracious lady.

One hot afternoon, I was with an American foursome. My golfer had a huge leather bag stuffed with a club for every occasion, a sweater, rain jacket and a flask of liquor which he resorted to frequently. He was a slugger rather than a hitter. From tee to green, he was seldom on the fairways and would complain to me when I had trouble finding his ball. No carts of any kind were allowed and when the game finished, so was I. He paid me $.75 – no tip. As I walked away he called me back and said "I can't use these" and handed me three large 1 cent coins – almost the size of our present day "loonie." As soon as he turned to go into the clubhouse, I threw the three pennies over it. Someone complained and I was suspended for two days. However, I was permitted to work the practice area where a customer would hit a bucket of balls and your job was to retrieve them. I got along well with the caddy master who loaned me a few clubs so that I could play the nine-hole course late in the day. He also selected boys whom he considered respectable enough to attend dances at the casino. This was part of the hotel complex. Many guests arrived with their teenage daughters and there was a shortage of male teenagers at the dances, so we were conscripted. The requirements were

simple – look presentable and don't go off the property with the guests or the female staff. A free buffet lunch made the deal attractive. The girls also knew how to get off the property without attracting attention. These evenings generally led to an invitation to play tennis on the special clay courts. Life was pretty good despite the lack of money.

In those days, the radio was the most important entertainment medium. Foster Hewitt made the hockey games come alive on Saturday night, while Amos and Andy and Jack Benny provided humorous entertainment on Sunday evening. Motion pictures were silent and in black and white. A pianist with one eye on the screen played appropriate music. The interior walls of the Orange Hall were covered with tin and distorted the sound when "talking movies" arrived.

Bill Lawson's barbershop was an interesting place. Mugs of soap and brush were prominently displayed with the owners' name embossed in gold. Before the telephone was in common use, Bill would wave an apron to signal my father that it was time for his daily shave. He would leave the store in charge of anyone sitting around and cross the railway tracks to keep his appointment.

A grocery store was more than a place to shop. It was a gathering place to catch up on the news and no doubt gossip. Service stations were places you went to when you needed gas. Usually there was one pump. The gas was pumped from an underground tank into a glass tank on top of the surface pump and then discharged into the motor vehicle. The glass tank held ten gallons with figures from 1 to 10 on a rod inside the tank. If the customer wanted less than 10 gallons, a bit of guesswork was involved. The oil was checked, the windshield washed, and if requested, the tires were checked. The service man even thanked you as you paid 25 cents per gallon.

My interest was railroading. Passenger trains had their place but they could not compete with the freight

trains. The engines chugged slowly out of the yard gathering up speed as they hit the main line. Then came the box cars. From different railways, hopper cars filled with coal or sand, flat cars with heavy machinery or empty, and finally the caboose, or van, served as an office, kitchen and sleeping quarters for the crew. It had a stove, bunks, table, chairs and the most interesting part was the cupola, a dome addition to the roof, with glass on four sides and benches. I had climbed up in the cupola many times when the train was not operating, but once my father, Joe and I were going to fish at a stream 30 or 40 miles away and the conductor put us in the van. Joe and I headed for the cupola. It was an event to remember. I don't remember much about the fishing, but I do recall waiting anxiously for the train to return in the evening when we got another chance to play the part of the rear end brakeman.

The soda fountain in the local drug store or restaurant was a gathering spot for young people. It played a role in our social history and when the juke box was added, singing and dancing were additional attractions. I don't' know when the soda fountain disappeared, probably about the same time as the 7 cent lemon coke – but sitting down on a stool and twisting around the counter to order a banana split or a "tin roof" sundae to the present day teenager is a quaint notion of long past generations.

Today, a car in every garage, phones, T.V. screens, electric dishwashers, and a host of electric appliances are common place. Pagers and cell phones accompany children to school; bank tellers resort to adding machines for the smallest deposits; business offices overflow with fax machines, computers, printers and duplicators; voice mail, email and other sophisticated means of communication replace direct contract. Conventional wisdom claims all these modern inventions improve efficiency in the home and in the workplace, however, the increase in stress level and the proliferation of therapists and psychiatrists makes

one wonder whether the quality of life has improved.

New Brunswick is a paradise for hunters and fishermen. Movie stars, baseball heroes and famous political figures were frequent visitors. Jack Dempsey, Babe Ruth and their entourages spent time in the area and since all trains stopped in McAdam, they emerged to stroll on the station platform to the stares and applause of the local citizens. In early October 1929, American and Canadian stockbrokers haunted the telegraph office as they waited for train accommodations to take them to their offices where some of their associates were jumping from windows or hanging or shooting themselves in corporate washrooms. The impact of a collapsing stock market adversely affected all aspects of the economy. Fear and insecurity stalked the country creating a panic of proportions previously unknown in our country. It was a tough time for everyone, however it demonstrated a resurrection of the pioneer spirit of generosity, charity and neighborliness, which characterized the early settlers of Canada. It brought cohesiveness to the nation – a feeling that to some extent "I am my brother's keeper."

There were two incidents in my early years which precluded me from contemplating either farming or fishing as a future career. My mother's brother, James McDade, lived on the family farm at New Market about 30 miles from my home with his wife, Aunt Nellie, and a growing family. A few friends and I had been picking blue berries and on the journey home came upon two steam engines along with several empty boxcars, parked on a railway siding. Assuming that they were abandoned, we used the windows in the cabs and the headlights of the engines for target practice. Rocks had no effect on the glass. We raided a nearby section man shack which had a plentiful supply of iron nuts and bolts and these proved much more effective. A few days later, the C.P.R. police were making inquiries which convinced me that I should visit my cousins. As it turned out, I should have stayed home. My father

paid $16.00 which represented my share of the damages and when I next ventured near the newsstand, the police officer placed me in the immigration detention cell for a couple of hours to reflect upon my crime.

Never having been around a farm, I did not know how to milk a cow, was afraid of the huge farm horses and had no contact with farm implements or machinery. My education began. Loose hay, which had been mowed and raked into stacks, was thrown into the hay wagon and taken to the barn to be hoisted to the haymow in the attic. A large fork, attached to a thick rope, was driven into the hay and lifted to the ceiling of the barn through a series of pulleys until it became engaged in a metal track running the length of the haymow. A horse supplied the energy to activate the operation. My job was to drive the horse after attaching the other end of the rope. This required the loose end of the rope to be placed on a large metal hook, forming part of the gear of the horse's harness, with the pulling part placed over the top in what was called a "cat's paw." When my uncle yelled – I had no trouble hearing him as his children claimed he could be heard in the adjacent concession – I started the horse. The rope tightened, up went the fork and the hay to become engaged in the metal track and dropped in the haymow. I unhooked the rope and repeated the operation several times until the wagon was empty. The next day it rained. I was introduced to a grinding stone which I turned while my uncle sharpened the teeth of the mowing machine blade. I was busy counting the teeth and was horror stricken when the last one was reached and he turned over the blade to do the other side.

I had survived several days without incident when my luck changed. I attached the "cat's paw" incorrectly. The loose end of the rope slid through the hook before the fork engaged the track. The fork and hay dropped almost impaling my uncle. I never made that mistake again.

Several days later I was riding the mowing machine

near the apple orchard. Everything was fine until the horse stepped on a hornet's nest and headed for the barn. I was endeavoring to control the horse and pull up the cutting blade at the same time. My efforts were unsuccessful. The blade was down, the horse scattered a flock of chickens before stopping at the barn door. Several chickens lost their legs. We had a change of diet for a few days, so in some respects, the damage which I caused was minimized and my possible future as a farmer ended.

My holiday time in St. Andrews was interrupted by an unforgettable experience. A friend, whose father owned a fishing boat invited me to take a trip. We left before dawn, the fog was heavy, rain was falling, the navigation bells were ringing and the foghorns were wailing. I expected everything would be better when the boat cleared the harbour. I had never been on the ocean before and it was 40 years before I ventured out again which was another mistake. As we reached the fishing grounds, the boat was bouncing around like a tennis ball. Added to the former problems was the shrieking of the sea gulls and the smell of fish. I was clutching a rope with my head over the side of the boat. I thought I was going to die. After a couple of hours I was hoping I would. In early afternoon my agony ended. We reached port. I think I thanked them for the trip and I'm sure I refused the fish which they offered. My future I was firmly convinced belonged on terra firma.

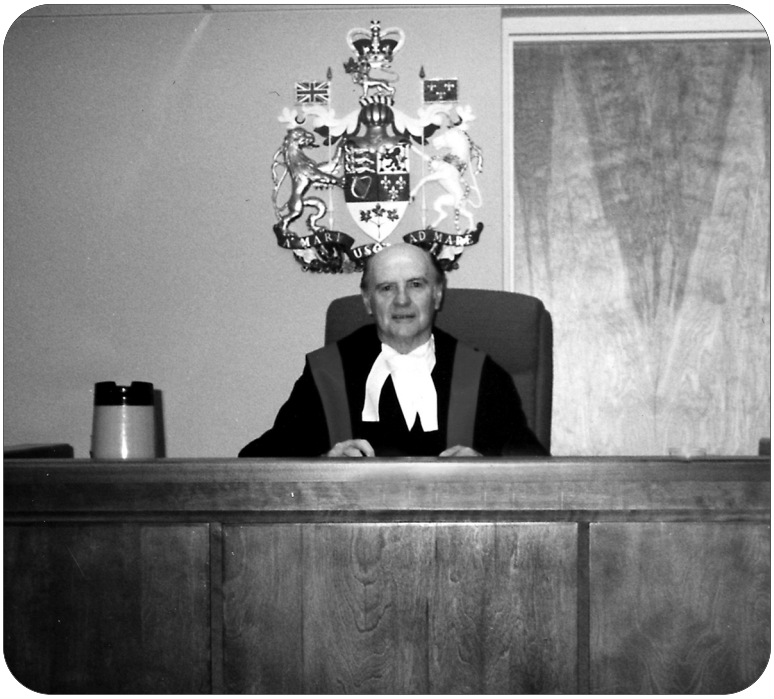
Sports played an important part in my life. My dad subscribed to a weekly sports paper and had a great interest in baseball and boxing. The play-by-play description over the radio and, prior to that, by telegraphy of the World Series and the heavyweight title matches generated great enthusiasm. Every small community along the border had a baseball team and a group of vociferous supporters. The relative abilities of Babe Ruth, Roger Hornsby, Joe Cronin, Lefty Grove and the Pittsburgh Pirates outfield of the Waner

brothers, Paul and Lloyd and Kiki Cuyler were subject to much debate.

Canada had its own sports heroes, Johnny Miles of Sydney Mines won the Boston Marathon Percy Williams of Vancouver won the 100 and 200-yard dashes as the Olympic games; and Charles Gorman of Saint John won the gold medal in speed skating. The six team National Hockey League was staffed almost entirely with Canadians, King Clancy of the Toronto Maple Leafs, and Howie Morenz of the Canadiens, became hockey legends. Tennis emerged from private clubs to public courts and international matches which provided a forum for men, and more recently women players, to achieve fame and fortune. Games were activities in which young people participated and older people were spectators.

The Toronto Varsity Grade Hockey Team won the Olympic gold medal without loosing a game. Two members of that team later became close friends, Dr. Lou Hudson, of Timmins and Grant Gordon to whom I was articled while at Osgoode Hall.

I played all sports, including speed skating competitions, except basketball, where my lack of height created problems in getting the ball in close proximity to the basket. My coordination was good and I never walked where there was room to run. Enthusiasm for a sport will never replace natural ability however it does allow one of lesser talent to achieve a better than average level of proficiency. I was competitive and at university was fortunate to have coaches who taught me the fundamentals of baseball and hockey and used my foot speed and good coordination to obtain a position on the university teams.



Brother Joe in Court

FAMILY

Having six siblings, there was the usual quota of arguments. But our parents always told us that "no matter what happens, your family will always be there for you." Perhaps because they said it so often, it became a self-fulfilling prophecy. Nevertheless, I have always found it to be true. Over the years, we have borrowed from one another to create our own family traditions. I have tried to impress upon my own children the advice I received from my parents. I think they agree that it has merit.

As a child, Joe developed a stammer, particularly when speaking to strangers. We traveled to Calais, Maine to visit a speech therapist every two weeks for several months. I went along to answer questions and order lunch. He also followed some routines recommended by the Bogue Institute of Indianapolis, Indiana. I was hoping that we might get a trip to the Indy Races but financial concerns eliminated that experience. Joe had no trouble talking with friends and later on when he became involved in politics, everyone was his friend. Once I complained to our mother that Joe had become a "non-stop talker" and she, always defensive, replied, "Well, he didn't talk very much during his first 20 years."

Joe was a Rhodes Scholarship candidate in 1932 and every candidate was asked to write a short essay. He never expected that he would be required to read it before the selection committee and had included words starting with "s" and "t" which always caused him problems and were normally excluded from his vocabulary. When I asked him about the event, he said, "I told the committee I had a stammering problem but I would do the best I could." He also said that the exercise was a disaster from the start when he endeavored to explain what his problem was. While he did not get the scholarship, I think it was a turning point in his life. He had

the courage to face a high profile committee and read his essay which contained words which highlighted his problem. A few months later, he was elected class valedictorian and we made certain that his address did not contain words that would cause him problems. I think I felt the stress more than he, as I did not attend the graduation exercises. Our mother said, "He was just wonderful." Don Duffie advised me that his first sentence almost blew the doors off the auditorium, but he then settled down and gave an excellent address. Later he enrolled in the University of New Brunswick Law School in Saint John and taught mathematics to the university students who were located there after the fire.

After graduation, he came to Timmins, worked for a short time underground at the McIntyre, then became an insurance agent, served several terms as Councillor and Mayor of Timmins and finally was appointed a Family Court Judge in North Bay. Joe was a kind and compassionate person, a patient listener with a good understanding of community and family values – attributes which made him a competent and well-liked member of the judiciary.

It was understood by our family that not everyone would be able to attend university at the same time. The depression was still on. When Joe finished Law School in 1936 I started Osgoode Hall. Blanid finished her nursing course, tied with Diane Vienneau (Christopher) for first place on the Registered Nurses Exams for the Maritimes; and came to St. Mary's Hospital in Timmins. By rare coincidence Diane and Blanid met for the first time in Timmins and still maintain a close relationship. When I was called to the Bar in June 1939, Agnes who had finished high school came to Timmins and became my stenographer. Gerard was already at St. Josephs University and on graduation came to Timmins and worked underground at the Coniarium Mine until he enlisted in the army. Dannie, who decided on a career in medicine after

St. Josephs and St. Francis Xavier, obtained his M.D. at the University of Ottawa. Austin started at St. Josephs but decided the army was less restricted and went overseas. During vacations, Dannie worked at the Delnite Mine. Six of the seven members of our family were working in Timmins at one time and Austin joined us for some months after the war until he left for Red Lake to begin his career as a salesman for Simpsons. The Evans invasion of Timmins was complete. Gerard was the last to leave Timmins in 1996. The City provided a good living for all our families.

Joe retired from the Family Court and died in 1988. Survived by his widow, Annette, son Michael, daughters, Suzanne, Mary-Lou, Jo-Anne, and Teresa. His eldest son, Gregory, predeceased him.

Gerard joined my law practice upon graduation from Osgoode Hall after the war. He had an outstanding

Shaking Lt. Gerard Evans' hand is General Bernard Montgomery just before he decorated him with the Military Cross in Catanzaro, Italy

war record and was awarded the Military Cross. Upon retirement, he moved to Burlington where he died in 1996. His widow, Joan, died in 1999, leaving three sons, Gerry, Donald and David and six daughters, Ann-Marie, Jane, Christine, Maureen, Sharon and Sheila.

Dannie graduated in medicine and practiced as a surgeon in St. Catharines until his recent retirement. He and his wife, Betty, have four daughters, Nancy, Ann, Mary Ellen and Janet, and a son, Mark.

Austin and his wife, Rita, reside in London. They have no children but contend with a host of nephews and nieces.

My sisters, Blanid and Agnes, who contributed much to our families, are widows. Blanid and James had two daughters, Mary Helen and Ann, and a son, Jim. Agnes and Hugh contributed two daughters, Rosemary and Cathy, as well as five sons, Joe, Jim, John, Brian and Tom.

UNIVERSITY

In September, 1929, I was off to St. Joseph's University at Memrancook about 20 miles from Moncton, in the Tantramar Marsh area. This is the heart land of Acadian culture, populated by French speaking people some with Irish surnames, who have lived there for over 300 years during a part of which England and France waged war for control of the area. This tenacious will to exist as a community survived their expulsion by the British to Louisiana and along the eastern seaboard of the United States. Their return to the area is immortalized in the story "Evangeline." While they show a common language with "Les Quebecois" there are differences in their customs, history and attitude. They remain a proud, but constantly increasing minority in an officially bilingual province where their contribution is recognized and respected.

The University was founded in 1864, prior to Confederation and before the railways were built. Father F. X. LaFrance, the parish priest at Memramcook opened a school in 1854 with his brother Charles and Miss Mary O'Regan. The students were Acadian, Irish and English boys and girls. Lack of finances forced the school to close in 1862. Fr. LaFrance continued his efforts and after convincing Bishop Sweeny of the need, the latter arranged with Rev. Charles Moreau, Vicar General of the Congregation of Holy Cross in New York to take over the parish and establish a college.

On October 10, 1864, the school opened with Fr. Camille Lefebvre in charge. This was also the date of the opening of the Quebec Conference which was to play an important part in the history of Canada. When you reflect on the situation, one must appreciate the problems which confronted these early educators. Starting a school, near the center of New Brunswick, far removed from every means of communication, would

appear to be an unsupportable objective. However, the obstacles were surmounted and the college always maintained a forward position. Even the disastrous fire in 1933 which destroyed everything except a part of a new chapel and Lefebvre Memorial Hall was just another obstacle to be overcome.

It was to this area that a modest college was founded in 1864 through the efforts of Father Camille Lefebvre C.S.C., the parish priest of the village and the Bishop of St. John, Rt. Rev. John Sweeney. The aim of the founders was to establish an institution for Catholic education at which both the Acadians and their English-speaking neighbors would find and develop, their intellectual and spiritual cultures. Over time, it became St. Joseph's University and following a catastrophic fire in October, 1933 classes resumed in St. John and Moncton until the following September when a new building was available on the same site. Later, the University moved to Moncton where it became the Université de Moncton and is now basically a French university.

I had learned from my brother who had attended the college the previous year that the discipline was rather rigorous. There were three institutions – each about 15 miles apart. Mt. Allison University, Dorchester Penitentiary and St. Joseph's. The rumor around the school was that our rules of discipline were the most onerous. Your whole day was planned from 6 a.m. to 9 p.m. – chapel, study hall or classroom, except for meals, and short recesses. The pass mark was 65%. Students from most high schools were placed in a preparatory class to be followed by four years of undergraduate study. As I had the necessary matriculation exam marks in some subjects, I was allowed to take some university courses and some preparatory classes, including a special French class. There was one basic curriculum with minor exceptions. French speaking students had their own curriculum and apart from chemistry labs and the philosophy classes which

were taught in Latin, our contacts were outside the classroom.

The special French class was intended for Acadian students whose reading and writing skills in French were deficient. Several students were from the "Republic of Madawaska" an area comprising parts of Quebec, Maine and N.B. which was farming and lumbering country. They had as much difficulty taking French dictation as I and had less knowledge of grammar. Our professor was an American from Louisiana. If you could provoke a discussion on the expulsion of the Acadians, you could relax for the entire period. The textbook, Histoire du Canada, was written from a different perspective than my high school English history book – the battle of the Plains of Abraham had different victors – perhaps an explanation of our "Two Solitudes."

Joe and I were allocated to a dormitory with about 150 beds. Private rooms were reserved for students in the two final years. You were awakened by a supervisor blowing a whistle which sounded as loud as that of a steam engine. All the windows were then opened allowing a breeze of almost hurricane strength to hasten us to chapel and then to study hall and later breakfast.

The best that can be said for the food is that it was plentiful and apparently nutritious as in my five years there my height increased seven inches and my weight 25 lbs. The menus each week were the same except for Sundays and holidays when you were occasionally pleasantly surprised. The bread from the college bakery was excellent and sufficed if you didn't like the regular fare.

The number of Irish students was small and as a result our classes had a good rapport with our professors, all of whom were members of the Congregation de Ste. Croix (C.S.C.), the same religious order which today operates Notre Dame University in the United States. They were dedicated teachers. Fathers Francis Cashen, John Brown, William Maloughney, Harold Murphy and

Bill McGinnis were excellent communicators and did not always adhere to the strict disciplinary rules of an earlier generation preferred by the Quebec trained priests.

The student complement was approximately 60% Acadian, 25% Quebecers and the remainder English speaking Canadians and Americans. The students from Quebec had a tendency to form a separate group, except those who had some familiarity with the English language. However, the Acadians bridged the gap. Students from Quebec were mainly interested in learning English while the English speaking were there to obtain a University B.A. degree. Many graduates became priests while others became teachers, doctors, lawyers and businessmen.

Growing up in McAdam, I had no exposure to Acadians or Quebecers until I went to St. Joseph's. However, I was anxious to learn French and associated with students who were interested in English. The result was that they became quite proficient in English while I struggled to learn sufficient French to understand what the French professor was talking about.

In the recreation area, there was a four-foot wide rectangular boardwalk where students exercised and associated with one another. I was quite naïve and eager to learn French. I asked a more senior Irish student what was the proper response to a friendly greeting from a French-speaking priest. He said, "bis mon queue." I proceeded on my way and when he smiled, I assumed it was because of my accent. A few days later, when walking with an Acadian student, we met a trio of priests and I replied to their salutation with my newly learned response. They passed on and my friend, who was choking with laughter, explained that my response was "kiss my ass." Not wanting to get expelled, I located one of my victims and started to apologize. He said, "This is a trick played on a new student almost every year. We are not offended. We expect that your language will become more refined. And, by the way, your accent was not bad."

The annual cost of our education, including room, meals and laundry, was minimal. Had it been otherwise, a university education would have been beyond the reach of my parents and many other families. Limited family incomes were a common factor which did much to influence our grudging acceptance of many inconveniences and out-moded disciplinary practices. I spent five years of my life at St. Joseph's. They were my formative years and I am grateful to my professors and to the university administration for their positive impact on my later life.

Sister Marie Leonie C.S.C. became associated with the new school shortly after its foundation and formed a new community known as "The Little Sisters of the Holy Family." In their humble, and often unrecognized way, they contributed to our education. Our main contacts with them were at the infirmary and the laundry. If you claimed to be sick, they gave you an aspirin and some type of mineral oil. If you returned the next day, they sent you to the local doctor. Your laundry was sent to them on Saturday and returned to your bed the next Saturday cleaned, pressed and repaired. A rumor persisted that if you sent over a button with neck size attached, you would get back a shirt. Like most religious sisters of the era, they worked unnoticed and unheard. Today sisters have correctly assumed a most important position in the religious community and more particularly at the university level.

Although lectures and study hall occupied much of our time, there were cultural organizations. La Société Saint Jean Baptiste, St. Patrick's Society and Saint Cecilia Society which embraced the members of the other two who expressed an interest in music.

Any student of the college will recall "La Société Bilingue" and its director and founder, Father Louis Guertin, a one time president and revered member of the faculty. It was his inspiration to form a single society of French speaking and English speaking students to enable them to become proficient in both languages.

The society was formed in 1900. Fr. Guertin was decades ahead of the Federal Bi-Lingual Commission, one member of which, Father Leger, was a former student. At each commencement exercise, three French and three English graduates participated in "La debat bilingue" Joseph Charles Doherty, the perennial class leader, Richard Coughlin and I represented the English.

Each student spoke for three minutes in each language. Whether our combined efforts advanced or deterred the cause of bilingualism may be questioned, but to those who were fortunate enough to participate, it gave an appreciation of the benefits to be derived from exposure to another language and culture.

Sports occupied much of our spare time. Handball courts, a gym, a rink, tennis courts, baseball diamonds and football fields provided outlets for surplus energy. Unless a student had medical reasons, participation of some type was mandatory. Most of the competition was intra mural, although baseball and hockey teams from Moncton and the surrounding area played against our senior team.

Prior to the 1932-33 hockey season, we began seeking admission to the N-B Intercollegiate League. Our biggest problem was our college administration. Finally, with the support of Fr. Cashen and Fr. McGinnis, the administration relented and we were welcomed to the league by the Universities of New Brunswick and Mount Allison. Don Duffie, who later became a Rhodes Scholar, a lawyer, a priest and a university president and I were the main student advocates. I played right wing while Duffie was the manager. In earlier years, we had played in our rink against the Moncton Red Indians, a Junior League team, whose members included Gordon Drillon, later a Toronto Maple Leaf star and Claude Bourque, a one time Montreal Canadien's net minder.

Playing in other rinks which had much larger ice surfaces was a mixed blessing. Our team was fast skating,

which compensated for our lack of weight, but our reserve bench was handicapped by our relatively small student body. However, it was a start which was successfully built upon in later years.

Our varsity baseball team had two of the best pitchers in the Maritimes, Edward Dinsmore and Copie LeBlanc, both of whom had distinguished careers in senior leagues. I was a member of the team for two years during which my defensive abilities as a left fielder helped compensate for my less than imposing batting average. I don't remember ever hitting a home run, but was a frequent recipient of walks, which combined with excellent foot speed on the bases, contributed to the success of our team.

Edgar Nadeau of Port Daniel, P.Q. was the reigning tennis champion until he was awarded a Rhodes Scholarship and enrolled at Oxford University. We frequently played together and I rarely won, except when he tired or perhaps allowed me to win and thus encouraged me to return the next day for another lesson. His lessons and his departure assured me of a high ranking in subsequent years.

The Acadian students controlled the handball courts, while the Irish ruled the basketball court. They remained spectator sports as far as I was concerned.

During the Easter exams in my second year I passed out as my oral Latin exam began. My next clear recollection is going home with Mother after being checked out by the local doctor. My classes were over for the term. Because of the high incidence of tuberculosis among my father's sisters, I was subjected to a series of chest x-rays which proved negative. Bed rest was prescribed along with a diet of liver and liver capsules. The meat was almost raw. I have never knowingly eaten liver since. There was some consideration about going to a sanitarium to which my father strenuously objected. He said his sisters had gone that route and came out in a casket. Finally, a few weeks after more x-rays and blood samples, the treatment ended

and I enjoyed an extended summer vacation. It was enhanced when the college advised that I would be granted agrotat standing and allowed to enter the third year.

The philosophy courses in the Junior and Senior years were taught in Latin from textbooks written in Latin. A few were reasonably conversant with the archaic language, which still survived in some academic circles, however I was not one. Fortunately, one of the professors would frequently explain the issues in either English or French. In the final year theses were studied. At the exam, ballots were placed in a box and a blind selection was made by a student. Most of us were praying that it would be number three – De Creatio Mundi – The Creation of the World, which was the shortest. Fortune smiled upon us. Number three was pulled from the box. It was the one with which I was most familiar. I proceeded to write in Latin the main issues which I had memorized and developed them partly in English and partly in Latin, without concern for grammar or sentence structure. The only grades were pass or fail. I obtained a pass mark and never uttered or wrote another Latin phrase until I attended Osgoode Hall Law School.

In September, 1933 I returned with high hopes of a successful year after a summer of better than average employment, plenty of baseball and tennis and enough dancing and entertainment. My height and weight had increased sufficiently that I no longer resembled an anorexic jockey. Then disaster struck. About 8 p.m. on Friday, October 30 a fire broke out in the recreation hall of the College on the ground floor of the large main building, a four storey stone structure, which contained the dining hall, kitchen, classrooms and administration offices on the first floor. The second floor included study halls, classrooms, offices and an extensive library. The third floor was occupied by faculty members and some senior students. The dormitories were on the top floor.

A large brick addition to the administration building had been completed the previous year and housed a magnificent chapel, acclaimed as the most beautiful in the Maritimes, a museum, another library, classrooms and a few student rooms, one of which I occupied. The chapel contained a beautiful main altar and 14 side altars and expensive works of art. Fortunately, all students and many faculty members were in the chapel when the fire was discovered. Smoke was seeping into the chapel from the main building and it was obvious that exit through that area was impossible.

Father Cashen, a native of Cape Breton, took charge of the evacuation. He was a commanding figure. The discipline, of which we often complained, made possible an orderly exodus of the students down a winding stairway without incident. They went to the village church and when it was threatened, marched across the marsh to the railway station.

Some students who had rooms in the new wing attempted to rescue some of their belongings. I had just reached my desk and in the smoke was searching for some money I had recently received from home. I had located a gold pocket watch of my father's when a huge boiler exploded shattering windows and forcing my hurried departure. I didn't locate the money, but I did obtain the watch, my only material souvenir of a catastrophic event. As the roof of the main building collapsed, we realized that flames had also engulfed the infirmary, the bakery, and a group of farm buildings and was threatening buildings several hundred yards across the highway. We formed groups to remove documents and books from the Provincial Bank before that building was destroyed along with some nearby residences. A high wind, later estimated at 50 mph, fanned the flames which ignited buildings one mile away across the marsh. The whole village was threatened. Fire departments from Moncton and the surrounding area arrived, but an inadequate water supply handicapped their efforts.

The C.N.R. arranged a special train which took a majority of the students to Moncton and Saint John. Some of us remained until morning when residents of Moncton took us to their homes. Dr. Landry, whose sons Pierre and Paul were students, took me to his home where I stayed for a couple of days and then went home after making a visit to the college. It was almost impossible to appreciate the damage which had occurred in a few hours. It was a scene of total devastation. Only the Memorial Building which housed the theatre and the chemistry and physics laboratories remained.

A few senior students were discussing matters with their professors. Our problems were insignificant when compared with theirs. Their private libraries, research papers in preparation for further academic degrees, all their personal belongings, even their homes, were in ruins.

Within a couple of weeks we were notified that classes for the University would resume. The first and second years in Saint John, while the third and final years would be located in Moncton at the recently completed Essex Street school. Students would be required to find their room accommodations although a registry was set up to provide assistance. That information only increased my fear that I would be unable to return to school.

My father was unemployed, brother Joe was at U.N.B. Law School, sister Blanid was a nursing student at St. Joseph's hospital in Saint John and there were three siblings at home. My mother, who had survived many crises, did not intend the present one to interfere with my education. As usual, Aunt Sadie was prepared to dip into her modest savings and some essential clothing was purchased. Joe was hired as a math teacher for the students who had been moved to St. John, so his more pressing financial demands were being met. The big problem to be resolved was my room and board for the remaining months of the school year. Classes had resumed at Moncton and I was still at home when

Fr. Cashen contacted me and after explaining my situation he said he would look into the matter. Almost immediately, he advised me that Mr. and Mrs. T. J. Leger would take me into their home and the question of payment could be deferred until after graduation. This generous offer was a turning point in my life. They took me into their home and treated me like a member of their family. To them, I owe an ever-lasting debt of gratitude.

Mr. Leger, who was a leader in the Acadian community, in association with A. Leger, were the proprietors of T and A Leger Hardware, a large retail outlet in Moncton. He and his wife, Yvonne, had five children. Eugene was married, while Arthur was a student at the college; Antoinette, Huberte and Dollard lived at home.

Mr. and Mrs. Leger at their Golden Wedding anniversary

What had appeared to be a lost year became one of the most memorable in my life. The food and accommodation were far superior to that provided at the college. I had the same freedom as I enjoyed at my own home in a family atmosphere where the parents were ideal role models. Mr. Leger was bilingual, and while his wife understood English, she was hesitant in speaking it. The understanding was that French would be spoken at dinner when all the family was present, but I was assured that I would not go hungry because of my lack of facility in their native language. Mrs. Leger was a gourmet cook and I was introduced to many Acadian delicacies. She was a vivacious, motherly type lady in contrast to her husband who was a quiet, patient man with a delightful sense of humor. I could not have imagined a better home, nor a family that was more congenial. Antoinette and Dollard are the only remaining members of the family and with them I maintain a close relationship.

Our intercollegiate hockey games continued in Moncton with the disadvantage that practices were impossible as our goaltender, Cy McManus, and other members of the team were taking their courses in Saint John. The results were predictable. I believe we won only one game of the six played, but as a lightweight, fast skating team provided a creditable performance. Fr. Cashen, who always had taken an interest in athletics, was the coach and his efforts and hockey knowledge contributed to our success. Don Duffie was the manager and one of those instrumental in our team obtaining entry into the Maritime Intercollegiate League.

Moncton Hawks had won the Allan Cup, the trophy indicating supremacy among Canadian Senior Amateur Hockey. There was some question as to their amateur status, but no doubt as to their hockey ability. Many of the players were imports from other provinces which created a surplus of senior hockey talent. The Moncton Red Indians Club held the Maritime Junior Championship. I and six other members of the

University team joined the Acadians, a junior team coached by George Carroll. He was one of the seven brothers who formed a hockey team when a "rover" was the extra player. We won the Moncton championship, but lost 2 – 1 to Bathurst in the Maritime playoff. During the series with the Red Indians, the age eligibility of the contestants was required to be established. Birth certificates were requisitioned. My brother Gerard's birth certificate was forwarded in error, but it was accepted although he was five years younger. I did not realize for several years that the error resulted because my birth had never been registered. In fact, I was not registered until August 28, 1947 when I was 34 years old.

This mix-up caused a problem when the manager of the Young Rangers Hockey Club of Toronto spoke to me after the playoffs. He assumed that I was 15 and about to graduate from high school. He explained that there were plenty of educational facilities in Toronto and suggested that I try out with his team. When I explained that I was 20 and about to graduate from University, he quickly lost interest and referred me to a team manager in Ottawa. As a 15 year old I apparently showed some ability, but as a 20 year old, I was not very impressive.

Many of my group played in the Industrial and Mercantile leagues. These were weekly games and much more physical than Junior or Intercollegiate. The first time that I stepped on the ice as a centre man, my opponent cross-checked me across the face and fractured my nose. I never saw the puck being dropped and was helped off the ice with blood streaming from my nose and my opponent heading for the penalty box. It was my introduction to a different style of hockey – always be prepared to expect the unexpected. Among college teams, a penalty for a flagrant breach of the rules usually resulted in your own coach keeping the offender on the bench after the penalty expired. A reminder that hockey was a sport, not a guerrilla war.

Playing for Lane's Bakery was a fun game. Very little physical contact and an opportunity to learn stick handling and puck control. Many of the players on each team were seniors and overage juniors and each of us received a number of vouchers, which could be redeemed at the sponsor's store. Frequently, I sold mine, at a discount, to a boarding house operator and made enough to attend the dances on Saturday night at the Y.M.C.A.

The publication of a University paper and a yearbook by the students had been discussed for years without much success. However, we thought this year was somewhat unusual. We wanted a class souvenir and at the same time express our thanks to the administrators whose prompt action made possible the continuation of our final year of studies. We also wanted to acknowledge our debt to the citizens of Moncton and express our sincere thanks to those who received us into their homes for a period of seven months spent amid comforts and luxuries not usually associated with the grind of college life. The result was that an editorial and management board, composed of Joseph Doherty, Donald Duffie, Emile Fournier, Francois Plourde, Adrian Richard and I produced "Ave Atque Vale" (Hail and Farewell) a bilingual souvenir issue with the cooperation of other students and faculty members. We recognized that it was an experiment, but hoped that it would stimulate future classes to produce a paper and a yearbook more worthy of our university.

All of my brothers attended St. Joseph's and later followed careers in law, medicine and business. The only degree granted by the University during that period, was a Bachelor of Arts degree. The curriculum provided limited exposure to the sciences and was concerned mainly with the humanities. The focus on a classical education, coupled with small classes and a faculty dedicated to teaching, furnished a forum for debate and dialogue. This intellectual program had as its objective a sound philosophy of life which formed the

basis for continued development of one's intelligence by concentrated study in special professions or vocations.

The standard by which a school should be judged is the reputation and character of its graduates. Are they highly regarded by their peers who are in a position to know and do they demonstrate a strong moral fiber in their adult lifestyle?

On May 18, 1964 at the 100th anniversary of the university, I was the recipient of an honourary doctorate in philosophy from the University of Moncton as were Lieutenant Governor O'Brien, Hon Jean Lesage, Premier of Quebec, and Raymond Bousquet, the French Ambassador to Canada. Doctorates in Education were presented to Msgr. Lussier, Rector Université de Montreal and Dr. A. M. Sormany of Edmundston. The Federal Minister of Fisheries, the Hon. Hedard Robichaud received a doctorate in Commerce and Chief Justice Bridges, Chief Justice of the Supreme Court of New Brunswick received a Doctor of Laws degree. To be included in this distinguished group was a great honour. To add further pleasure to the occasion, my eldest son, Thomas received his B.A. degree the same day as a member of the University of Moncton's first graduation class and I made the presentation to him. It was only when I was introduced was I aware that I was representing the former English graduates of the University.

Fr. Vanier was President during my student days. He was a very able administrator and responsible for the early resumptions of classes after the fire. Fr. Louis Guertin was involved with the school for over 50 years and served several terms as President. His interest was the advancement of bilingualism among students and the development of oratorical skill, a very patient man with a good sense of humor and much respected by the students.

The French students were the principal participants in the choir, orchestra and band. Every new student had a compulsory trial performance with the choir. My

solo test confirmed that I had not inherited my father's vocal talent and I was appointed an assistant to the librarian, a most welcome transfer.

Our school year commenced in early September and continued until mid June with three weeks vacation at Christmas. Saturday was a school day. Most Wednesday afternoons were free as were the religious feast days and public holidays. School breaks were unheard of and you were not allowed to leave the campus area without permission. After being in residence for a year or so, you found ways to circumvent this childish restriction.

Jobs during the Christmas vacations were usually with the C.P.R. shoveling snow from the railway tracks, the various buildings, including the station. The pay was 25 cents per hour and if you were called out at night to clear out the switches, the pay was the same; however, you were guaranteed four hours even if the job was completed in less time.

Employment in the summer was much more difficult. The depression required that men with families be given priority on any road construction or maintenance in the town. A provincial statute "The Statute Labour Act" allowed taxpayers to do work in lieu of cash payment of property taxes. Most homeowners who were gainfully employed would appoint a substitute to work on their behalf. The homeowner paid the substitute and the tax collector credited the taxpayer's account for the hours worked at 25 cents per hour. We tried to get our proxies signed during the Christmas holidays for the following summer and then hoped that there would be enough work scheduled for the proxies to be used.

The summer after graduation I worked with a crew building a new road. The trees and brush had been cleared from the right of way and next came the removal of the large granite rocks. The pneumatic drill was a great invention, but prior to putting it in action, a hole for the blasting explosive was started with a hand drill and a sledgehammer. I held the drill which was

rotated after each blow. I was always polite to the man who wielded the hammer as I valued my head and my hands. The fact that he was a regular church going Baptist was a comforting thought, as I knew it was most unlikely that he would have a morning hangover.

After the hole was complete, it was filled with dynamite, tamped down and a cap with a length of fuse inserted in the explosive. The three drillers and their helpers would each light two fuses with a wood match and then run for shelter. Loading the dynamite charge always gave me a headache, but running for cover after lighting the fuses helped to clear my head. After the smoke cleared, the smaller pieces of broken rock were placed on a "stone boat" or sled and pulled off the right of way. I drove the horse that pulled the boat, but had some difficulty in getting the horse to take the route I wanted to take. After a few days, I accepted the fact that the horse was smarter than I, which no doubt accounted for the difference in pay. A horse was paid more than the laborer.

My contract time on that project expired and I was transferred to another road job on the road to Vanceboro, Maine. It was the right time to move as a premature explosion at the previous site caused the death of Mr. Embleton, the road supervisor and injured one of the employees. After an investigation, a battery-operated device was made mandatory for rock blasting.

My new road boss disliked anyone who could read and write and a college graduate was at the top of his hate list. The new job involved clearing ditches along the highway as well as culverts under the highway. All debris was deposited in a dump truck. Being the most recent addition to the crew, I was appointed "head man" on the culvert-cleaning brigade. It did not carry the same "perks" as the Dean's list at University. The culverts were not the present day corrugated steel type, but four foot lengths of rather fragile concrete having a diameter of three feet which had a tendency to pull apart or break down near the center of the highway.

The clearing process was simple; use the long handle shovel as far as it would reach and then the "head man" crawled in with a small shovel and pushed the junk back to his fellow workers who waited with shovels encouraging me to move further. Profanity was the mode of communication and I soon acquired a rather modest vocabulary. Many workers scorned the four letter words so common today in favor of a more descriptive and colorful language which was made more effective when accompanied by a well-directed stream of tobacco juice.

Although my advancement up the economic ladder remained static, I was introduced to a variety of job opportunities, none of which I liked and had decided to seek employment elsewhere. The eloquent speaker at our graduation had assured us that education was the passport to a new world. As I followed the horse and the stone boat for a few weeks, my vision of that new world was rather obstructed. I was rapidly being driven to the conclusion that my future must be beyond a different horizon. The boss helped me to decide when he advised that the hourly rate was being cut to 20 cents from 25 cents for unmarried workers. Matrimony for a five-cent differential did not appear sufficiently attractive, so I quit and deprived the boss of the pleasure of firing me.

EMPLOYMENT IN TIMMINS

I was aware that my father's sister wanted to spend a month in New Brunswick and had invited me to Timmins to look for employment. On Wednesday, August 1st, 1934, I left McAdam. Railway fares were cheap - $12 to North Bay, $15 to Winnipeg with stopovers allowed and a 90-day return limit. I spent Thursday in Montreal and took the overnight train to Ottawa where I had arranged an appointment with the manager of a hockey club. He was obviously disappointed by my size and assessed my enthusiasm for hockey as outstanding, but my ability was more modest. He and I met with the manager of the sports department at Freeman's store, near the Chateau Laurier and the proposal made was that I could start work on October 15th at $18 a week and if I made the team, I would keep the job. This arrangement did not appear too promising, so I left on the night train for North Bay en route to Timmins. Travelling at night avoided hotel expenses, but three nights was becoming uncomfortable.

Arriving at North Bay, I changed to the Temiskaming and Northern Ontario Railway. I soon realized that the initials T.N.O. meant "Time No Object". We stopped at every station. Cobalt was often referred to as a booming mining area and when the train stopped I got out to look around. I should have stayed on the train. Houses were boarded up; rusty boilers and piles of rock littered the landscape which was interrupted at irregular intervals by caves dug into the hillsides. The only resemblance to a mining town was a couple of partially demolished head frames. My geography text was out dated. The boom was now a

bust. Curiosity mixed with fear accompanied me the rest of the journey. If Cobalt looked so devoid of activity, what would Timmins be like? On Saturday, August 4th I was to find out.

My aunt, Martina, met me at the station and we went to the Lady Laurier Hotel where I met her husband, Pete Lacroix for the first time. Both had previously worked for several years in Montreal at the Windsor Hotel where she worked as a dining room supervisor and he as a chef. The hotel had 14 rooms and catered to commercial travelers although during the winter months a couple of rooms were rented for extended periods. Renovations, to include beverage rooms, were in the process of completion. I had a room in the hotel which had the advantage of being close to my work and the disadvantage of being too close.

A Liberal Government under Mitchell Hepburn had recently been elected in Ontario after having spent many years in the political wilderness. One of their political promises during the election campaign was to make beer and wine available to the general public in hotel premises. In order to obtain a licence from the government, the hotel operators had to comply with a multitude of rules and regulations concerning the hotel premises as well as the hours of sale, minimum age of customers, separate rooms for men and for ladies and male escorts. It was agreed that I would work around the hotel until my Aunt returned and then look for other employment. Experienced miners were paid $4.86 per day plus a bonus based on the production of their crew. Shaftmen had a higher wage scale while the inexperienced miner received $3.24 per day and no bonus.

The population of Timmins in 1934 was about 11,000 with another 4,000 in the neighboring communities of Schumacher and South Porcupine. It was a gold mining area with head frames dotting the horizon and slag heaps defacing the landscape. Having viewed mostly forests for 200 miles after leaving North Bay, I

was surprised by the almost total absence of trees in Timmins. Later I learned that this was part of the Laurentian Shield, a rock formation which extended in an East-West direction for over 100 miles. Farming was carried on south of the area and logging to the north.

The town was laid out in small blocks with streets named after trees (long gone) running North and South and avenues with numbers running East and West. From the railway station, the land sloped west to the Mattagami River which flowed North to James Bay, a part of Hudson's Bay. The Hollinger Mine was the main employer and many homes were rented by their employees. Top management lived on the mine property, middle management on the "hill," mine captains and underground bosses further away and the miners in small, square, flat-roofed houses with siding resembling heavy tar paper in alternate red and green colors. The population was cosmopolitan; English, French-Canadian together formed the majority, with Italian, Polish, Finns and more recent immigrants from Central Europe comprising the remainder. I had no previous contact with such a diverse group, but not bringing any ethnic or social baggage with me, I had no difficulty integrating into my new community.

On opening day, the Lady Laurier was crowded with patrons. Pete arranged for off duty police to be present when the hotel opened for business. We had three waiters, Archie Lemire, Charlie Dubeau and Len Wadsworth; the latter was the middleweight champion of Canada while the others were well known local boxers. They were rarely challenged. I looked after the cash register and dispensed bottled beer while Pete was running the three draft beer taps. Bottled beer was $.20 and a 12-ounce stein of draft was $.10. We had a thirsty crowd of miners including a contingent of Cape Bretoners who were challenging one another as to who could drink the most. The police would allow a customer to enter only when someone left. The waiters bought trays of draft and bottles from me and sold to

the customers. Apart from the noise and the clouds of tobacco smoke, the opening day was uneventful. The Liquor Licence Board required beverage rooms to close between 5 p.m. and 7 p.m. on the theory that patrons would go home for dinner. This proved ineffective as they would load the table with beer and remain there, with the premises locked, until 7 p.m. when service was restored. Every month there were new regulations and directives until finally the hours were set at 10 a.m. to midnight and the number of beers on the table restricted.

The next day, a Saturday, started off in a normal fashion. My aunt had left for her holiday and Pete arranged a dinner for seven to eight local politicians and businessmen. I was sent to the liquor store to purchase a supply of Mumm's Champagne and Guinness's Stout to supplement the several wines for the gourmet meal. The dining room was upstairs over the beverage room. About 10 o'clock one of the guests requested me to call two taxis. When they arrived, it was apparent that the dinner was a success as some of the guests had difficulty negotiating the stairway. Pete did not appear, so I assumed that he was cleaning up the room. Two barrels of draft were finished and I was working on the third when I realized that it was almost empty. An extra barrel was available so I went upstairs to get Pete as I had never been shown how to tap a barrel and neither had any of the waiters. The host had survived the party and was in bed and showing every indication that he was there for the night. As I feared, the barrel emptied and I proceeded to tap the extra barrel. The rod going into the barrel had a space of about an inch at the bottom and I assumed that when the rod pushed the cork into the barrel that somehow the cork would fit in that space and I could remove it by pulling the rod out of the barrel. It did not occur to me that the cork should stay in the barrel. I was wrong. I pulled the rod out and a gallon or more of beer exploded in my face. Before I was able to ram the rod

back into the barrel and tighten the clamps, the taproom was raining beer and I was soaked. Finally, the bar closed, I headed for the shower and my clothes went to the laundry. That is the closest I have ever come to having a beer. Our clientele was a mixed crowd – businessmen – miners – salesmen and unemployed men from various provinces looking for work in the gold mines. The employment practice of the mines required the completion of a personal history which was placed on the company file. Hiring took place at 6 a.m. on different days each week at the Hollinger and the McIntyre. Most weeks a few names were called. If you were present, you were hired. If you were not present, your application was rejected and you had to seek work elsewhere. I attended at both mines on several occasions and finally concluded that my name would never be called for work underground. I then applied for surface work in the assay office, the refinery or some clerical job. I was advised if an opening became available, I would be informed. The call never came. In retrospect, I was fortunate. If I had found work that I liked, I probably would have stayed at a mine.

As time went on, I realized that running the bar was probably as profitable as other jobs. I understood also that it was a means to continue my education. My dream of medical school was abandoned. It was a five-year course and I settled on law, a three-year course. Brother Joe had completed his law course at U.N.B. and found few openings in New Brunswick. I considered that Ontario provided better opportunities, so after two years in a bar, my application to Osgoode Hall Law School was accepted. Dean Kester, K.C., the most prominent Timmins lawyer signed my "articles of clerkship."

OSGOODE HALL

My arrival at Union Station in Toronto for my first visit got off to a bad start. The only hotel that I was aware of was the Royal York so I had reserved a room for a couple of days until I found other accommodation. My taxi driver obviously surmised that I was a stranger to Toronto when I asked him to take me to the Royal York. He drove me around several blocks and deposited me at the hotel and charged $6.00. The next morning I looked out the window and saw the Union Station across the street. I knew that I was in Hogtown. A small town young man had encountered his first big city entrepreneur.

Osgoode Hall is a beautiful building; however, I did not find most of the lectures interesting. It seemed that most students were either the son or nephew of a lawyer. There were only three women students. Your name and father's name and occupation were posted on a bulletin board in the lobby. I felt that I was intruding on the "Family Compact." Some students had completed a law course at the University of Toronto and tossed around a few Latin maxims with evident familiarity. I had expected to obtain an articling position work with Mr. Kester's Toronto Agent, Arthur Slaght K.C. but was unsuccessful. After a few attempts, I gave up and spent most of my free time at Criminal trials in the City Hall Court House. Lectures were from 9 to 10 a.m. and 4:30 to 5:30 p.m. Frequently I would be late for the afternoon class because a trial was in progress and I would slip in a door at the back of the classroom and take an empty seat. Shortly before Christmas, I received a note from Dean Falconbridge to attend at his office. I thought that the school had found an articling position for me and was shocked when he inquired whether I planned to write the upcoming examinations or was I merely auditing the occasional lecture. Until then I was

unaware that the lecturers were taking attendance at class. I explained the situation and pointed out that I had attended all the morning lectures and sat in the seat assigned to me. He agreed that was correct. The fact that I was the first student from St. Joseph's to enroll at Osgoode seemed to cause him some concern and he said "I will discuss the matter with the Vice Dean, Dr. MacRae." The next couple of days were rather difficult. Then Dr. MacRae called me to his office. He had previously been Dean at Dalhousie Law School and was familiar with some of my former professors. He said that I could write the exams, but to make sure that I attended class regularly and sat in the seat assigned to me. I was very grateful for his assistance and never missed one of his lectures in the History of Law although I found the subject quite boring.

Many of the lecturers were local lawyers carrying on a busy practice and frequently their lectures were cancelled or postponed because of court duties. Cecil Wright was full time and a brilliant teacher. He was known as "Caesar" with a quick mind and a satirical sense of humour. John J. Robinette, who later became known as Canada's most outstanding counsel, had recently been called to the Bar and brought current legal trials into the classroom. He was my favourite teacher and later acted as my Toronto agent and as co-counsel in a notorious murder case in Cochrane.

My scholastic record at Osgoode, unlike my University record, was less than outstanding. Being out of school for two years and forced absences because of illness were contributing factors, but I had difficulty in adjusting to a new teaching method which seemed to be preoccupied with memorizing a host of decided cases, many of which seemed remote and only tangentially relevant to the issues involved. The results of the first term exams were published in late January and I had barely scraped through on Dr. Wright's subject on which I thought I had done quite well. In fact,

I finished my paper long before most of my classmates. I was told that I could ask to have my paper re-read. A couple of days later, I was called to Dr. Wright's office. He had my paper before him and there were six questions worth 16 or 17 each. He said "On Question one, your mark was 10. I think I was generous. On Question two you had 11. The more realistic mark should have been 9." I became alarmed that if he read further, I would not have a pass mark, so I advised him that I was satisfied and that I understood. I just wanted to get away. However, escape was not going to be so easy. He continued, "I re-read your entire paper which was unusually brief with few cases cited and little discussion." I did not dare interrupt him. Then came the criticism with more than a touch of sarcasm. "You have been at law school for less than six months and in your paper you have given answers to questions which have concerned legal scholars for many decades. I didn't want answers, I wanted discussion on both sides of the issues involved." I thanked him for his assistance and left duly chastened hoping that he was not going to re-mark my paper. The experience was a revelation. I had a better idea how to write his exams and was convinced that I would never be a legal scholar. I thought I was being trained as a lawyer to whom clients would come with legal problems seeking solutions. My duty would be to define the issue and after research reach a conclusion and advise the client of the result without providing all the legal details upon which I based my opinion. Clearly, the process would have to be placed in abeyance until my exams were completed and I was called to the Bar.

Students were inclined to associate with undergraduates of their former universities. Newman Hall was the centre for Catholic students and I soon became involved in the activities of Newman Club and a member of the Executive. It was there that I met Justin Mallon, Maurice Coughlin, Tom Odette, Tom Brett, John French, John McCabe and others. The women

students of St. Joseph's and Loretto Colleges were members of the Club and contributed greatly to its success. It became my home although I did not reside there.

Quite by accident, I obtained an articling position in February. A former customer of the hotel in Timmins, Mr. Bannerman was living in a Toronto Hotel for several months while engaged in some stock promotions. The owner had recently died and his widow had no hotel experience. They were fruit farmers from the Niagara area who had come into possession of the hotel as a result of a foreclosure action. She complained to Mr. Bannerman that the profit from the beverage sales was considerably less since the death of her husband. Mr. Bannerman asked me if I would discuss the problem with the widow. I agreed to do so as he assured me that he was doing some legal work with a Toronto firm and would arrange an appointment for me. The widow was being robbed by the manager of the beverage rooms who explained to her that while a barrel of draught beer contained 2,000 ounces, there was considerable spillage and the return at $.10 for a 10 ounce glass averaged $16.00 a barrel. In fact, the average should be $24.00 as a glass received about eight ounces. The manager and staff were replaced. I checked the books every Sunday for 18 months until the hotel was sold and was paid $3.00 per week plus dinner on Sunday. An additional benefit was the occasional ticket to Maple Leaf Gardens for hockey or boxing.

Mr. Bannerman took me to meet Grant Gordon at White, Ruel and Bristol, a very prestigious law firm with close links to the Progressive Conservative Party. The fact that Grant Gordon and my friend, Dr. Lou Hudson had been teammates on the Olympic winning Varsity Grads hockey team was no doubt helpful. The firm was located in the Imperial Bank Building on the Southeast corner of King and Bay. In addition to the partners Peter White Sr., Gerard Ruel and Everet Bristol, the other lawyers were Grant Gordon, Norman

Phipps, Fred Beck, Tom Moss, Robert Armstrong and Peter White Jr. who had been called to the Bar a couple of years previously. I enjoyed my association with the firm and maintained contact with the younger lawyers until the death of Peter White Jr., the last survivor, a few months ago.

The usual practice was to pay first year students $1.00 per week with an annual increase of $1.00 in the succeeding two years. That practice was not in force at White, Ruel and Bristol. The three other articling students were much more affluent than I and suggested that I approach Mr. White Sr. and explain that possibly the firm was not aware of the common practice. Another error in judgment. He informed me that students used to pay to article with well known firms and that the custom should be re-instituted. The only good result of the interview was that he finally knew my name. My only previous encounter with him was in the elevator. It was snowing heavily and not having any headgear, a sizeable amount had accumulated on the top of my rather bushy hair. As we exited the elevator at the same floor, he looked at me and said, "Do you work here?" When I replied, "Yes," he said, "Get a hat!" The next day I bought a hat at a second hand clothing store on Queen Street which lasted the next two years and which I wore only while going up in the office elevator on snowy days.

As the junior among the students, I soon got my turn in the collection department. One client, a book company, had many delinquent accounts and most had failed to respond to several letters from my predecessors. I asked Grant Gordon what I should do and was told to take 20 files, write a final letter, and then file a claim in the Division Court (Small Claims Court). I did so and when no defences were entered, a default judgment was signed. A few days later, Mr. White called me to his office and asked if I was presently in charge of collections. I replied that I was and then I learned that one of the defendants against whom a default

judgment was obtained was none other than a former Conservative Premier, George S. Henry. Just another day at the office. I was too afraid to ask whether Mr. Henry had paid the judgment.

My first year at Osgoode had some interesting events. A mock parliament was held at Simpson's Arcadian Court. It was an imitation of the opening session of the House of Commons with Ken Blair as Prime Minister of the Liberal Party and R.A. Bell, Leader of the Progressive Conservative Opposition. I was selected to second the motion to adopt the Speech from the Throne – 2 minutes in English and 1 minute in French. The event attracted a large group of students as well as many members of the public including a number of politicians. The main political parties had student associations and some of these members later became members of the legislature and parliament.

Student elections were held and I was elected representative for the second year class. Much of my support came from members of the Newman Club. The vote was split among several candidates who represented Ontario Universities and I was a surprise winner. There were certain advantages attached to the position, the main one being the exchange of free tickets to the annual dances of the many faculties of the University of Toronto. These were generally "white tie" affairs. Fortunately, a cousin was the manager of an exclusive men's wear store and he provided me with the proper attire.

At the time "coming out" parties for debutante daughters of the wealthier members of Toronto society were quite common. The parents of the debutantes wanted to make certain that her dance card was filled and that there were an excess of young men available to demonstrate her popularity. Frequently there would be invitations to the Newman Club and fraternity members. They were interesting affairs, the food was plentiful and it provided an opportunity to see society at its best or worst. On one occasion, the debutante

daughter invited a few members back to her home – her nominal escort for the evening had passed out earlier at the dance and I became the substitute. Her father was a well known surgeon with a beautiful home in the Forest Hill area. More food and a punch of uncertain ingredients were available, but I opted for coffee. The daughter disappeared into the kitchen to make the coffee. After waiting some time and no coffee having appeared, I ventured into the kitchen and discovered that the basket in the percolator was full of coffee beans. The charming young lady was obviously not too familiar with the kitchen.

My social life in Timmins was rather restricted because of the long hours which I worked so my arrival in Toronto provided ample opportunity for improvement. My first rooming house was on Sussex Street. Douglas Fleming, Gerald MacPherson and Claude Goodison, three dental students, along with two students at the Ontario College of Education, and Jack, a 40 year old salesman who had access to a company car, were the other tenants. Hugh, who was registered at some school, but worked in a stockbroker's office, was a frequent overnight visitor occupying any spare bed or chesterfield. He was always broke and unable to pay his room rent yet he was always attending some social function with various attractive young women who would call for him in a car or taxi. He was a charming, good natured 30 year old with faultless manners, a wide circle of acquaintances, and a colossal amount of self confidence. Hugh was fun to be with, although on a few occasions his activities created possible problems for his associates. We usually had dinner at the "Campus Coffee Shop", a student hang out, close to our rooming house, where the food was inexpensive. One evening we were four at the table when Hugh joined us and said "Dinner is on me. I just made a hit at the race track." After dinner, he picked up our several meal tickets, herded us out of the restaurant, while he carried on a conversation with the cashier.

Outside, Hugh threw the meal tickets in the trash can and explained, "The cashier is an old friend of mine and I promised to take her out next week."

One Saturday night, around midnight, Hugh telephoned Jack, our salesman, and asked to be picked up at a Chinese restaurant on Elizabeth Street. Jack asked me to go with him. We arrived at the restaurant. Jack went in and I stayed in the car. Suddenly Jack came running out, followed by Hugh and two friends. They jumped in the car and took off leaving two or three Chinese shouting and yelling on the sidewalk. Hugh explained that the group had been overcharged and had argued unsuccessfully with the owner so when Jack arrived, one of the group pushed the cash register to the floor and ran out. Jack worried for weeks whether his company car would be identified, and he refused any further requests to provide transportation to Hugh.

A final episode had more serious consequences. Goodison had invited a girl friend from Oakville to a party at the King Edward Hotel sponsored by the dental society. She was bringing a friend and I completed the foursome. Goodison's friend worked for the bus company and the plan was that they would catch the late bus to Oakville. We ran into Hugh in the hotel lobby and he volunteered to drive the girls to Oakville, so we all piled into his rented car. After leaving the girls, we started back along Highway 2 with Goodison and I in the front seat with the driver. Hugh was overtaking every car on the highway until he pulled out to pass and found another car coming in the opposite direction which went off the road and rolled over in a ditch. Our car went off the highway at the entrance to a gas station and continued for several hundred yards coming to rest among a bunch of trees and a wire fence. The door on my side flew open and I wound up with my head through the fence. Goodison was temporarily knocked out while Hugh had struck his face on something which resulted in two black eyes for several weeks. The car which we were attempting to pass had stopped and the

driver and I took a lady from the car in the ditch to a nearby house as she had a serious cut to her forehead. Her male driver was unhurt.

The police arrived shortly afterwards and we were taken to the Port Credit Police Station. The drivers of the three cars involved claimed that a fourth car – a big black one – going at an excessive rate of speed had caused the accident. I did not recall a fourth car and did not dispute it, as I was probably half asleep at the time. The police took statements from the drivers and no mention was made about the lady in the car which went into the ditch. A newspaper item a few days later referred to the driver of the car in the ditch as a Toronto welfare officer and our driver as Maurice – a mutual friend – instead of Hugh. It further stated that no one had sustained any serious injuries. Hugh had borrowed the licence as his was suspended.

When I arrived at the law office on the following Monday, I was explaining to Peter White, Jr. how I got the bump on my head and the black mark around my neck, and about the woman in the other car. Peter had a ready explanation. "The welfare officer is probably married and the woman was not his wife."

I concluded that my further association with Hugh would be a distant one. The wire burn around my neck was a reminder. He was certainly an entertaining character whose activities, if totally recorded, would make an interesting story.

During my second year at the law firm, Grant Gordon asked me to do some research on a litigation file involving a personal injury action which the firm was representing, as best I can recall, the Halton Agricultural Society. The plaintiff was a lady from the Milton area where the trial was to be held. She had been injured when struck by a horse during a race at the local fair grounds. The woman was represented by Frank Regan. Peter White Sr. and Grant Gordon represented the Society and Marie Wilson represented A. E. Wilson, the insurers. I carried the brief cases. The

Honourable Charles McTague presided over the trial.

The confrontation started immediately after the jury had been empanelled. Mr. Regan explained that he was acting for a local woman who was injured as the result of the negligence of the defendant Society, represented by an array of brilliant counsel headed by the famous Peter White, K.C. of Toronto. He also advised that it would be necessary for him to request the Court to grant frequent recesses as his client required rest periods as the result of her serious injuries.

Mr. White, who quite obviously had little respect for Mr. Regan, protested vigorously and pointed out that the plaintiff had not provided certain documents requested at the Examination for Discovery. Mr. Regan searched through his brief case and handed over several pieces of paper, none of which the defence had requested. Then Mr. Regan asked for a recess and paraded his client and a lady friend in front of the jury on her way to the rest room. Further objections from Mr. White – reply from Mr. Regan and rulings from the Bench that the "parade" should not take place until the jury had been removed to the jury room.

The case dragged on for three days as Mr. Regan called a host of poorly prepared witnesses to the stand: doctors, nurses, surveyors, eye witnesses, members of the plaintiff's family, some neighbours to attest to her lack of mobility and failing health since the incident. Mr. Regan was continually putting leading questions to his witnesses, incorrectly repeating some of their evidence, and reading in certain favourable extracts from the Discovery while omitting explanatory portions.

Mr. White did not win his reputation as an excellent advocate by granting any favours to an opposing counsel. A series of objections interrupted the evidence of every witness. The Judge would caution Mr. Regan and explain the proper manner of obtaining the evidence of his own witnesses.

As customary, the evidence of the various eye witnesses was inconsistent and occasionally contradic-

tory, particularly after Mr. White completed his cross-examinations.

The racetrack had an outside fence with a grandstand as well as a wood fence on the inside of the fence. This latter fence had an opening part way down the homestretch with a double set of hinged wood gates to permit entry to the infield of the merry-go-round and the various rides and booths associated with local country fairs. The gates, which were lower than the fence, were open to permit entry by the public but were intended to be closed during races. This was the final day of the fair with a large crowd in attendance. The races were about 45 minutes apart with considerable pedestrian traffic between the grand stand and the booths and concessions in the infield.

Whether the gates were closed properly or not was an important issue on which the evidence varied from wide open to securely closed. The injured woman stated that she was not watching the race as she was busy arranging a quilt display on the counter outside her booth and was unaware of what caused her serious injuries. When Mr. Regan started his examination in chief after a few preliminary questions, he asked, "How old are you?" She quietly replied "42". Mr. White was on his feet, with a hand cupped to his ear, asking, "What was the answer to that question?" The witness repeated "42". Mr. White, who knew his way around court rooms in county towns stated, "I'm surprised – you look much younger than 42." Her immediate reaction was one of pleasure. He immediately seized the advantage that he had acquired, sympathizing with her as she testified as to her broken ankle and a back injury resulting in a kidney problem. He congratulated her on the testimony of her neighbours as to her excellent reputation in the community; her volunteer work in charitable organizations; her devotion to her three children as indicated by her presidency of the local parent teacher association. The witness continued to smile and graciously acknowledged his comments. I

thought for a moment that he was going to ask her out for dinner. As she stepped down from the witness box, he thanked her and held the gate open as she walked briskly and erectly to her seat in the audience part of the court room. It was not until later that I recognized what a sly old fox Mr. White was. He had minimized the quantum of damages being sought by treating the opposing witness with courtesy. It was a lesson in advocacy that I never forgot.

On Friday afternoon, Mr. Regan closed his case and Mr. White called a couple of witnesses and then advised the Court that he has only one more witness who would be available on Monday. He explained that the witness was "Dude" Foden, referred to in racing circles as the "Gentleman Jockey", who was riding the horse during the race which gave rise to the incident upon which the litigation was based. On Monday, I was so eager that I arrived at Mr. White's home before he had breakfast. He invited me to join him. He was not much for conversation at that hour, but said that I should always take time for breakfast and not eat chocolate bars instead as I had been doing the last few days.

When Mr. Foden stepped up to the witness box at the opening of Court, the reason for his "nickname" was obvious. He was a real fashion plate – shirt, tie and suit properly coordinated; a small man as befitted his profession, and a tanned face with "crow's feet" around his eyes. The only unusual item was the size of his hands. As he reached for the bible to be sworn, his right hand looked as if he was wearing a glove.

Mr. White went through the usual preliminary questions and then established his reputation as a jockey who rode on the major race tracks in Canada and the United States. His appearance at a county race was as a favour to a trainer who wanted to test a young horse in a competition. He was an impressive witness, confident, well spoken and well aware that he was a celebrity in a small town.

Mr. White, like other good advocates, was a consum-

mate actor. The jury expected to be entertained and a bit of rhetoric with a touch of flamboyance was in order. He did not disappoint his audience which filled the courtroom. The drama of the courtroom was an attraction much appreciated in that earlier era when the public could see justice in action instead of reading or hearing about the trial from the viewpoint of some jaded columnist or biased spokesperson of some special interest group whose opinion is based on media information.

Counsel set the scene for the witness. The afternoon of the race was a beautiful sunny holiday – Labour Day – the grandstand was filled with well dressed men escorting attractive, beautifully attired ladies, many carrying colourful parasols to protect them from the sun. The music of the merry go-round, the solicitations of the pitchmen at the carnival tents, and the noise of hundreds of conversations contributed to the festive occasion. Suddenly a bugle sounded. The noise gradually subsided – people hurried into the grandstand from across the infield in search of a place to view the race.

The witness agreed that the description of the scene was accurate.

The following dialogue took place between the witness and counsel.

Mr. White: As the bugle sounded bringing the horses to the post, how was your horse behaving?
Fedon: A bit skittish but under control
Mr. White: What was your position?
Fedon: There were 7 horses. I was in position #3.
Mr. White: I want you to take your mind back to the races and recall events as they occurred.
Fedon: Yes, Sir.
Mr. White: The horses are in position. The started announces, “They’re at the Post.” then the gun sounds and the crowd shouts “They’re off!”
Mr. White: How was your start?
Fedon: A little slow. The horse was excited.
Mr. White: What position were you in?

Fedon: I was running in 6th spot with 2 out in front, 4 in a group and 1 trailing.

As Mr. White continued to have Foden describe the race they were both in a semi-crouched position – so was I – and the jury were leaning forward in their chairs. It was a life-like presentation.

Mr. White: As you approached the first turn, what was your position?

Fedon: I was in 5th position – third horse from the rail.

Mr. White: You are now in the backstretch. The crowd is yelling. What is your position?

Fedon: I'm running 4th.

Mr. White: How is your horse?

Fedon: Settling down and picking up the pace.

Mr. White: Have you used the whip?

Fedon: Not yet.

Mr. White: As you enter the final turn, what is the situation?

Fedon: I'm now near the rail running 3rd and looking for an opening to pass the No. 2 horse.

Mr. White: How is your horse?

Fedon: My horse wants to run. We need an opening.

Mr. White: You are now entering the home stretch. Tell us what the situation is?

Fedon: The two lead horses drift away from the rail and I used my whip to shoot through the gap ahead just as the second horse moved nearer to the gap to overtake the lead horse.

Mr. White: Then what happened?

Fedon: The gap was closing. I was putting the whip to my horse when suddenly it spooked and ran through an opening in the fence into the infield.

Mr. White There was no opening in the fence. He jumped the fence!

The Court was in an uproar, both counsel shouting and the judge trying to restore order. Court was recessed.

When Court resumed Fedon was back in the witness box after the Judge had disallowed Mr. White's application to have Fedon declared an adverse witness and the examination continued.

Mr. White: When is the last time you were at this racetrack Fedon? (no longer Mr. Fedon.)
Fedon: I was down there this morning before Court.
Mr. White: And who was with you?
Fedon: I was there with Mr. Regan.
Mr. White: Pointing his finger at opposing counsel, he shouted, "Do you mean that Mr. Regan?"
Fedon: Yes, sir. We didn't talk about the case. I just wanted to view the scene.

I believe that Mr. White correctly assumed that some improper event occurred but he was so surprised and angered by the admission that he almost had a stroke.

The Jury retired and Court resumed with Mr. White arguing unsuccessfully for a mistrial as well as a motion for contempt.

The addresses of counsel and the Judge's charge to the jury caused no excitement. After deliberation for about an hour, the jury returned with their verdict – "Judgment for the Plaintiff in the amount of $3,500 and costs."

The damages assessed would appear to be ridiculous when compared to present day awards, but it must be viewed in a proper context. The annual salary of the Judge was about $9,000, beer was 20 cents a bottle, cigarettes were 25 cents a package, and chocolate bars were 5 cents.

No appeal was taken.

Mr. White was a Bencher of the Law Society and there was some discussion about filing a complaint against Mr. Regan, but it was not pursued.

During my second year at Osgoode, alterations were made to the Lady Laurier Hotel. The beverage

rooms were enlarged and additional guest rooms added. I no longer resided at the hotel and obtained a room with Mr. and Mrs. Edward Hunt. They were of Irish background from the Ottawa Valley. The Eganville weekly paper was their "letter from home" and I soon became familiar with the area and with friends of the Hunts, most of whom were Irish Catholics. Several Polish families had established the Village of Wilno near Mount St. Patrick. Wilno claims to be the first Polish settlement in Ontario. I'm not too sure that the two groups had much in common apart from religion. When an Irish Catholic married a Polish Catholic, it was referred to as a "mixed" marriage. My very pleasant association with the Hunt family continued until they died years later in St. Catharines. They were people to be remembered and whose friendships I cherished.

Around examination time in my second year, the "walnut size" lump in my left armpit enlarged to the size of a lemon. A few years earlier, I had consulted a Timmins doctor about the problem and he removed my tonsils. I had always heard medicine was not an exact science. The lump remained and I had a sore throat. The rumour was correct.

When I returned to Timmins, I consulted my friend Dr. Lou Hudson as the lump had increased in size. He made an incision and recommended that I see a specialist in Toronto, Dr. R. I. Harris, who was a friend of his. Dr. Hudson was aware of my financial situation. If I did not work during the summer, I would not be able to return to Osgoode for my final year… He made arrangements with Dr. Harris that I would have the surgery performed at the Toronto General Hospital a few days prior to the opening of the school term.

The incision made by Dr. Hudson had not healed and required a daily change of dressing. Fortunately, my sister, Blanid, who was a nurse at St. Mary's Hospital in Timmins, was available for the requisite nursing attention.

It was a busy summer. The enlarged capacity of the beverage rooms made more waiters necessary. Every month it seemed there were new regulations from the Liquor Control Board – different size glasses, new type of washing compound, change of hours and more inspections. More hotels in the area had been granted beverage room licences and frequent meetings of the hotel keepers became necessary. I became the unofficial secretary of the Association and one of my more important duties was to contact all the members when I learned that the hotel inspector was to pay a visit. He always made a reservation at our hotel.

On one occasion, the Association decided to give the inspector a present, I collected $20.00 from each hotel keeper and gave them a receipt for their donation. A cheque was forwarded to the inspector. A short time later my uncle received a call from the inspector regarding the gift. Apparently one of the hotel keepers who had some difficulties with the inspector had forwarded his receipt for the $20 donation to the Liquor Control Board in Toronto. I was given a number of $20 bills to be given to the hotel keepers in exchange for the receipt which they had received from me a few weeks earlier. My instructions were clear. "No receipt, no money." All but one of the hotel owners gave me their receipts in exchange for $20. That unfortunate individual quickly negotiated a sale of his hotel premises. There are some business transactions which should be concluded without leaving a paper trail when dealing with government employees I was advised by the inspector.

Most patrons of beverage rooms behave the same as when they are shopping for groceries or at Canadian Tire. Occasionally some get out of line. The bar closed at midnight and the customers were expected to vacate the premises shortly thereafter. One night after a hockey game at the arena two blocks away, the beverage room was jammed and there were several arguments about the result of the game and the decisions of the referee.

Our custom was to turn the side lights off and on a couple of times as an indication that it was time to leave. The response was minimal so I came out from behind the bar into the beverage room and pulled the switch which turned out all the lights. My intention was to push the switch back on after a few seconds but before I did so, one of the customers threw a bottle which flew past my head and struck a large framed print of a Cunard ocean liner on the wall beside me. I got the lights on in a hurry with glass from the picture crashing to the floor. Extra waiters had been hired because of the hockey game. One was Paddy Williams, a veteran of the British Navy and the Merchant Marine, who promptly grabbed a bottle by the neck and stood in the centre of the floor, challenging the bottle thrower to come forward. A 250 pound Paddy with fire in his eyes and a bottle in his hand was a terrifying sight. The room cleared promptly and I hired Paddy on the permanent staff.

In early September, I returned to Toronto and was operated on by Dr. Harris, who removed all the glands from my left armpit and side, which were infected with tuberculosis. The hospital stay which I expected would be two or three days extended to fourteen days because of some unanticipated complications. Every other day, Dr. Harris, Dr. Bruce Tovee, his assistant, and a group of medical residents trooped into the large ward at Toronto General Hospital to view the surgery. They were holding a clinic with Dr. Tovee in charge most of the time. He was aware that law school had started, but I was instructed that I should go home for three or four weeks to recuperate. I spent the weekend with Justin Mallon at his parents' cottage on Centre Island and on Monday gave the medical certificate to a secretary at the law school and went home to McAdam with my left arm strapped to my side. I had never realized the problems which disabled people have in getting dressed until I tried to button my shirt and tie my shoes before exiting the Pullman car in the morning. My

railway pass and $4.00 provided me with a berth from Montreal.

I returned after a couple of weeks as I was concerned about my missed lectures and arranged to borrow the notes of a fellow student over the Christmas holidays as I had decided to go to Timmins for a few days to ascertain whether Mr. Kester would hire me; have my check-up by Dr. Harris and try to catch up on the lectures which I had missed.

My future employment was soon finalized. Mr. Kester had been unable to satisfactorily terminate his association with his partner. My law firm in Toronto was not hiring any of the articling students on a permanent basis, but did offer me a salary of $25 per week and 40% of the business which I brought into the firm. The offer was for a year, at which time the matter would be reviewed. While I could survive on the basic salary, I would never be able to attract any personal clients for the firm. No other options being available, I decided to open my own office in Timmins and hope for the best. My younger sister, Agnes, would graduate from high school with a commercial certificate in June, so I would have a secretary whose salary would be very flexible. I knew that she was anxious to join her other siblings in Timmins, even though our Dad thought we should all return from Upper Canada to New Brunswick.

Dr. Harris was satisfied with my progress and recommended that I attend at his office for x-rays and examinations twice before the end of the school year, and then annually for a couple of years. I had become concerned about his medical account, but he said, "Don't worry about it. We can discuss it after you are in practice for a time." Since I had no income, I did not push the issue. I did not see Dr. Harris personally until June, 1941, although I had kept my appointment with his office. For the first time since my initial interview and examination, he took time to have a discussion with me. He asked what type of legal work I was doing

and when I told him I was doing criminal and civil litigation and anything else that a client wanted, he said, "Do you do any free legal work for people who need help and cannot afford to pay?" I assured him that I did. He replied, "When you have done free legal work worth $500, consider your account paid." This gracious gesture was quite unexpected. I suspect that it resulted from my association with his friend, Dr. Lou Hudson.

In order to reciprocate, in part, for his generosity, whenever I had an accident case that required serious surgery for my client, I had the local doctor refer the client to Dr. Harris.

I did not see Dr. Harris again until 1943 under circumstances which were most unusual. When war was declared in 1939, I expected that I, like other young men, would wind up in the armed forces. Motivated in part, by patriotism, but more likely by the fact that all my friends were joining up and it looked like a chance to see the world, I had applied to the Air Force and been rejected as soon as my medical history was disclosed. I was in Category E. The Navy was not interested in me. The fact of having had T.B. was as frightening as having Aids today. Finally, as time passed and the hostilities were no longer "a phoney war", I thought I might find a place as a legal officer in the Judge Advocates General's Branch. A telephone call to my friend, Ralph Lister in Fredericton, who was an officer in the Carleton and York Regiment, had the same result, but it later led to my brother Gerard joining the regiment.

I received another invitation from His Majesty, the King, to attend at the Horse Palace in Toronto for a further medical exam. After a couple of days, I was told that a further medical was required. By this time, I was fed up with the inefficiency of the army which kept me walking around the Exhibition grounds in a partially undressed state. Finally, I'm before the Chief of Medical Staff, who looked me over, checked the

incision in my left side and said, "You're a lawyer from up North, Sudbury." I said, "I'm a lawyer from Timmins." He replied, "I'm Dr. Harris. I recognize my stitching. You can put on your clothes and go home." I had not recognized him in an army uniform.

After some delay while the usual paper work was completed, my short stay in the army was over and I returned home to sell Victory Bonds and defend army personnel, including American Air Force members stationed near Kapuskasing and involved in The Dew Line Defence Project.

The Sergeant who drove me from the Exhibition Grounds to the Transportation Building on Front Street, to pick up my travel warrant said as he dropped me off, "You won't be needed, unless there is an invasion."

PRACTICE IN TIMMINS

As a young boy working at Aunt Sadie's newsstand, I was fascinated by the travellers who patronized the business although contact with them was generally limited. In the hotel, there were hundreds of regular customers from all walks of life–some of whom I came to know quite well: commercial travellers, beer salesmen, businessmen, miners, prospectors, prostitutes, high graders, unemployed men from across Canada seeking jobs, and some who had given up hope of finding one. The effect of the world-wide black economic cloud that began with the stock market crash of October, 1929, and lead to the depression which was to plague people for the next ten years created a new group in our society. They were members of an ever-increasing group who desperately wanted to work but for whom no work was available. A hotel beverage room became a sort of social centre where strangers became friends and exchanged confidences well knowing that in a few days or weeks, they would part most likely never to see one another again. A camaraderie developed and the smile on the face of a successful job hunter brightened, at least temporarily, the usual gloom and gave hope that tomorrow would be the lucky day for his friend. The good wishes extended were honest and sincere from men whose pockets held a few coins.

I was fortunate to view and participate in these situations which provided an education which no university can teach. You have a tendency to believe that your own life has been difficult until you learn of the struggles which confronted others and how they battled to survive. A few years later, when I became a lawyer, many of those customers became my clients.

My two-year post-graduate course in the beverage room passed quickly when I was accepted as a student-at-law at Osgoode Hall. My previous dream of being a surgeon was derailed by my financial situation. I did not enter law school because I wanted to be a lawyer, but because I was totally disenchanted with my present employment. Later I became fascinated with criminal jury trials and skipped lectures whenever possible to attend them in Toronto Old City Hall.

After my Call to the Bar in June, 1939, I opened my office in Timmins. I was aware that I had very little experience, but I was confident that if I worked diligently, and treated clients properly, that I would develop a good practice. It never occurred to me that I would not be successful.

In retrospect, I know now how little law I knew then. My early clients were very kind and trusting individuals. Timmins was the only community in Ontario of which I had any personal knowledge and where I had a few friends. I had hoped to be employed by Mr. Kester, but when no opening was available, I resolved to open my own law office.

Opening a law office in 1939 was at best a risky venture with a world war increasingly imminent, but I had no other prospects of employment and had no funds to move out of Timmins. It was a sink or swim situation. If I could not succeed in law, I would find some other career to utilize my education.

I practised in widely specialized areas of law. I took on any case that any client, between North Bay and Hudson's Bay, would entrust to me. Some clients were extremely courageous, and in retrospect, a few perhaps foolhardy. They had a common denominator – lack of funds.

Affordable office space was limited, so I chose a bachelor apartment in the Sky Block on Pine Street and with some second-hand furniture, including an ancient roll top desk and an old fashioned typewriter, my law office was open for business. My sister, Agnes, had

completed high school with a commercial diploma and became my extremely competent, if poorly paid, secretary and receptionist. The apartment had a small kitchen and the duties of the secretary included the preparation of lunch for herself, me, and our brother, Joe, who had returned from New Brunswick and was employed by Northern Life Insurance. Our "gourmet" lunch was occasionally interrupted by a client, who was promptly offered a cup of coffee while the dining room was rearranged.

In later years, the recollection of that early period has been a constant source of humorous anecdotes. Blanid and Gerry were steadily employed and their signatures enabled me to get a bank loan.

My first experience in seeking a bank loan was rather interesting. I was moving to a larger office and required additional furniture. My request was for $500. I finally obtained $300, with two guarantors, to be repaid in three months. The manager bolstered my self-confidence by assuring me that I was opening a law office in the wrong town at the most inappropriate time. He impressed upon me that in granting me a loan, he was breaching the standing practice of the bank and if I failed to pay on time, he would be subject to censure from head office.

I left with $300, feeling fortunate that I had not been required to donate a pint of blood. I repaid the loan in two months with a loan of $500 from another bank with only one guarantor and no suggestion that the manager's future employment depended upon my prompt payment of the new loan.

Roy Thomson, later Lord Thomson of Fleet, became a client and explained his philosophy about borrowing from banks as follows:

"Borrow enough so that the bank is concerned about cutting off your credit; then the bank is worried. There is no point in you worrying about the same problem, so carry on with your business and let the bank worry."

I never had the courage to follow his advice, but as I watched his progress from a radio salesman to a multi-millionaire owner of radio and television stations, I admired his determination to achieve his dreams.

Roy Thomson was an unusual person. He was born in Toronto in 1894. His parents were poor and his education was limited. However, he was confident of his ability to become a wealthy man and made no effort to conceal his ambition. He was a workaholic and earned his reputation as a penny pincher. In his personal life, he carried frugality to the extreme always giving the appearance that he had slept in his clothes. His cheerful, friendly attitude and his ever-present smile made him a super salesman as he toured the northern part of the province selling car parts, refrigerators or radios.

I met him in the summer of 1937 upon my return to my hotel employment after my first year at Osgoode Hall. His cheque for his hotel accommodation was refused by the Bank of Nova Scotia and I had to wait until he returned the following week when he apologized for the error which he claimed the bank had made, paid the amount owing and picked up his cheque. My boss warned me not to accept any cheques from radio station CKGB employees.

In the early years of World War II, I was travelling to Toronto by train, as was Roy Thomson. There were no Pullman cars as they were required elsewhere. It probably did not make any difference as neither of us could have afforded such luxury.

I was doing some legal work for Roy and in payment, my professional card was printed in the Timmins Press. In fact, it was still there when I was appointed to the Supreme Court in 1963. During the evening, he was busy reading financial reports while I was engrossed in the "Life of Marshall Hall", the brilliant British counsel and judge. The train stopped at North Bay so we went for a walk on the station platform. Roy said, "I almost died in this town." I thought he meant that he had suffered an accident or a serious illness.

However, he explained that he had been defeated when he ran for Mayor. If he had won he would be expected to stay for two or more years and would likely have abandoned his dream of becoming a millionaire. When we returned to the train, he continued reading and making notes on envelopes. He stated that the only way to make a lot of money was to control a monopoly like a bank or a railway. As the train pulled out of the station, the lights were dimmed. Roy, because of his poor eyesight, had to put away his fascinating reports and settled down to dream, no doubt, of future millions.

Years later, when he obtained a charter to operate commercial television in Scotland and made his oft quoted remark, "I have just been granted a licence to print money." I thought to myself that Roy had finally obtained his monopoly.

Around 1940, Jack Kent Cooke, who was a soap salesman, was hired by Roy to manage the Stratford Station. He was an articulate, attractive young man about 15 years younger than Roy, but possessed with the same desire to make a lot of money in a hurry. They became close friends and partners in several enterprises. Roy had the ideas and the financial contracts, while Jack was the super salesman whose aggressive manner and hard-nosed business tactics made money for both, but few friends for Jack. Roy was a careful dealmaker who dealt fairly, knowing that he might want to make further deals with the same party. Jack's attitude was quite different. He believed in extracting every possible advantage from those with whom he dealt. In time, this highly successful combination ended. Roy had made Jack a partner in several deals, but when Jack entered into a lucrative management contract and excluded Roy, their close association ended.

The ambitious student applied the financial knowledge taught by his mentor and died recently a billionaire. Both men sought to purchase the Globe & Mail which was the newspaper prize that Roy always dreamed of

owning, but were unsuccessful. Some years later, after Roy's death, his son, Kenneth, became owner of the Globe & Mail. The Thomson family has recently disbanded their newspaper empire, but have retained a very minor interest in the Globe & Mail. Perhaps a fitting memorial to the humble man who reached a position beyond his most fantastic dreams.

After Cooke left Thomson, he went to California seeking a television licence. American citizenship was a requirement. Usually a five-year residence in the U.S. was a prerequisite. Cooke sought to have the waiting period abridged by being sponsored by a group of politicians. A Timmins merchant who had on one occasion physically ejected Cooke from his business premises, prepared a petition addressed to the President of the United States beseeching him to grant immediate citizenship to Cooke. The petition was soon oversubscribed.

At one time, Cooke was the publisher of Liberty magazine. He and Charlotte Whitton, then a social worker and later Mayor of Ottawa, were charged in Manitoba with contempt arising out of an article in the Liberty written by Whitton with respect to the adoption of Native children by American citizens. Roy Thomson and his ever-faithful and competent financial adviser, Sydney Chapman, were in my office when Thomson received a phone call from Cooke explaining that he and Whitton were about to be arrested and wanting to know what he should do. Thomson was enjoying the situation and replied, "Make the police drag you away in handcuffs and make sure that you have a photographer on hand." He then turned to us and said, "What a cover that would make on the next issue of Liberty, Jack and Charlotte in chains!"

My first office was in the same building as one of the offices occupied by Thomson's modest media empire and I frequently provided advice on minor legal matters.

There are many anecdotes concerning Thomson's

legendary carefulness in handling his money. In his early years in Timmins as he struggled to operate the "Timmins Press" and Radio Station CKGB, his parsimony was dictated in part by necessity. As his financial position improved, he continued his penny-pinching policies as many ex-employees are aware. In his newspaper, news was secondary to advertising. Amateur singers competed with a limited recording library and local advertising until CKGB joined the CBC to complete the daily schedule.

Thomson was busy expanding his empire through the purchase of small newspapers and radio stations which he staffed with a seemingly endless supply of talented young men who were prepared to work for minimum wages in order to gain experience. Many later occupied important positions in the media world. The inexperienced young men who aspired to improve were assisted by older experienced employees who worked their way from the larger cities to small centres and ultimately became employees in the Thomson empire. Most were talented but incapable of maintaining steady employment because of alcohol or burnout. I knew many of these people who trained a host of young reporters in the Thomson school of journalism. The late Peter Gzowski was a highly successful graduate of that school. A few years ago, I was interviewed by him on "Morningside" when we reminisced about Timmins in the middle '50s when he covered police court sessions where I was practicing criminal law and the Lady Laurier Hotel across from the Press Building where reporters relaxed and where I in an earlier era had been employed.

Radio stations which Thomson either started or acquired became a profitable revenue producer in the small centres where he has a virtual monopoly on commercial advertising. This fast growing new method of media communication was a magnet for young men at a time when unemployment was high and a steady job even with low wages highly desirable.

The skills acquired in Timmins, Stratford, Val d'Or, Kirkland Lake, North Bay and other Thomson stations led to outstanding careers for many Thomson alumni throughout Canada and the United States.

Roy Thomson had a vision and was a super salesman. He had the ability to secure financial support from individuals and institutions not noted for their charitable behaviour and to convince a small group of competent employees to share his dream. He was a prodigious worker, always worried that he would not live long enough to see his dream fulfilled. After becoming a multi-millionaire, and with money flowing in from investments in North Sea oil, Scottish TV and British newspapers, he achieved recognition beyond any heights of his early ambition when Queen Elizabeth bestowed upon him the title Lord Thomson of Fleet.

Jack Dalton Sr. operated a bus service to the various mines in the greater Timmins area. He was a real pioneer whose foresight and business acumen made him very wealthy and whose occasional eccentric behavior earned him a prominent position among the interesting characters who lived in the area. One incident was a source of continuing satisfaction to him.

A young priest had recently arrived in town and was walking near the bus stand when he was approached by a man who begged him for some change. It was a winter day and the beggar was in shirtsleeves, a vest and without a winter coat or jacket. He also had on his head a hat which was no doubt popular in the previous century. The priest listened to his story about being evicted from his room and gave him a dollar bill. The beggar thanked him profusely and stated that his generosity would be returned a hundred fold. The following Sunday, an envelope addressed to the priest was stuffed with bus tickets, and placed in the collection basket, with a note signed by Jack Dalton which read, "I made it 200 fold to be sure."

He was one of my early clients, a rather impatient client wanting his work done immediately and com-

plaining that lawyers charged too much. The bus line had numerous employees and with union activity increasing at the mines, in due course, the employees of the bus line applied for certification. He stormed into my office with the documents, which had been served on him, in pieces. When I explained that the law required him to post a copy of the application in a prominent place and that he had to meet with the union organizer, he became almost apoplectic and left after explaining that unions were run by communists for the benefit of some employees who were troublemakers; that he wanted nothing to do with unions; that he was going to immediately fire those employees whom he considered to be the troublemakers and that I was to "get rid of the union".

I arranged with the union organizer to get a copy of the tattered documents which had been left with me and arranged for a meeting with Jack Dalton Jr. to discuss future plans. We both knew that if his father attended a meeting with the union it would last about five minutes so we convinced his father that he should not attend the meeting which I explained was to deal with preliminary matters.

The meeting took place in the office of the bus line a few days later. Two union officials and one of Dalton's employees met with Jack Jr. and myself. The union presented a list of demands including the wages, benefits, hours of work, etc., and included a requirement for better washroom facilities and a lunchroom. My position was to record their demands and advise that I would discuss them with my client and arrange for a meeting the following week.

The union group had just left the office when Dalton Sr. burst out of a broom closet where he had been hiding during the meeting. Neither Jack Jr. nor I had any knowledge that his father was in the closet. He was angry that we had not thrown the union leaders out when they stated their demands and had plenty to say – much of it unfit to print – about the employee who

complained about the lack of a lunchroom and the inadequacy of the washroom.

Dalton Sr. believed in free enterprise and the intervention of a union in the business which he had started and managed successfully would never be acceptable.

I frequently placed mortgages for him on homes of miners. The amounts were usually a few thousand dollars and payments would be made to an account in a local bank. One homeowner, who had a mortgage or charge as it was referred to in our judicial area, had fractured his leg while playing in a pick-up hockey game. He was a miner and had no earnings or insurance during his convalescence and had phoned me to request a suspension of payments for a few months. I thought that Dalton Sr. would agree. Instead he said the miner had no business playing hockey; that he wanted his payments when due or he would foreclose. I was arranging a loan elsewhere when I received a visit from Dalton Sr. who required me to give him "a paper showing the loan as paid in full." I prepared the Cessation of Charge. It was duly completed and he took it with him. As I was about to obtain a replacement loan for the miner, I asked Dalton Sr. if the miner had paid off the loan. His reply was not unexpected. "None of your damn business." The following day, the miner's wife came in with the Cessation of Charge and told me that Dalton Sr. had arrived at their home when the family was having dinner and said that they would be required to vacate their home in 10 days. He then left the envelope with the discharge document in it and told them to bring it to me. She thought it was an eviction notice and told me how upset the family were after Dalton Sr. left. I explained that they would not be required to make further payments and that the loan was paid in full. Her response was "It is a wonderful gift and quite unexpected in view of the shock we received last night."

Later when I sent Dalton Sr. a bill for my fees, I received a not unexpected reply, "You should not ask

to be paid – you should consider it as a charitable contribution to a hard-working miner who had an unfortunately accident. You will not be repaid one hundred fold." I never did get any bus tickets. John Dalton Sr. was a character – tough, hard to work for and with a streak of compassion which he would deny existed.

In due time, I moved to larger premises in the same building. Business was improving. Eric Lamminen and Floyd Corner, who were classmates, arrived a short time later. Neither was interested in court work. Eric, because of serious physical disabilities, and Floyd was more interested in real estate. On his first court appearance, Floyd had the misfortune to have a poor case and an impatient Judge. When he arrived at the changing room, he said, "I'll sell you my gown as I don't plan to do any more court work." Floyd left for the Toronto area after a few months, while Eric remained for several years until his death in a car accident. He was very much involved in gold prospecting and was very successful. My last civil case prior to my appointment to the Court in 1963 was on behalf of Eric's widow and his estate. He died in a motor vehicle accident. Despite his disabilities and ill health, he fulfilled his dream and became a lawyer.

The local Bar association had about twenty members. The acknowledged leader was Sam Caldbick, the Crown Attorney, who also had a busy civil practice. He was an outstanding lawyer to whom I always turned for advice when confronted with an ethical problem. The Attorney General's office frequently appointed him to prosecute in other areas of the province. He was an excellent role model. Later his son, John, joined him and subsequently became a Provincial Court Judge.

Other members of the bar included Bill and Rudd Langdon, S. C. Platus, Herman Moscoe, William Shub, Joe Lieberman, Armand Cousineau, Messrs. Sauve, Lacourcière, McCurdy, Lafrance, Brown, Forbes, MacDonald, and Stan Gardner (Later a Provincial Court Judge), and Kester.

John Forbes was rather eccentric–he wore rubbers most of the year, had no telephone or secretary, and no electric lights in his office. His desk was next to a window and when it became dark, he closed his office. Most of his clients were prospectors who frequently had work, but infrequently had money to pay legal fees.

Dean Kester did most of the important criminal cases and had great success. He had a drinking problem, not uncommon in the north, which led to his death at an early age.

Our local magistrate was Seigfrid Atkinson. He came to Canada from England when he was 16 years old and while he had no formal legal training, he was appointed to the Bench in 1908 and served for over fifty years. It was not uncommon for laypersons to serve as Magistrates, particularly in Northern areas of the Province. What was uncommon about Atkinson was his common sense and the fact that he was familiar with Canadian and English Court decisions and had a good understanding of the rules of evidence. He tried over 180,000 cases. Very few appeals were taken from his decisions and the great majority were unsuccessful. He conducted a "no nonsense" court. When he had heard sufficient argument, he had the habit of flicking a lock of hair at the back of his head. If you disregarded that warning and continued to argue, you could expect a scathing rebuke from the Bench.

In one of my early appearances before him, I made the mistake of standing up after he had sentenced my client to what I felt was too long a term. He said, "Did you have something more to say?" When I said, "Yes", he replied, "I never reduce the sentences I impose. I only increase them." I promptly sat down and never made the same mistake again.

In Timmins, the Court sessions usually had a full house. Three middle-age ladies regularly occupied a front seat and became known as the "Knit and Pearl Club" because they brought their knitting with them. It

was not unusual for them to phone in after an interesting trial to compliment or criticize me on my efforts.

A criminal trial has a wide public appeal in smaller centres – part curiosity and part entertainment – it may not be the only show in town, but it is the cheapest and the actors are known to the audience. In larger centres only the more notorious attract a full house. Most Canadians have little knowledge of our criminal justice system and its operation. Unfortunately, American television and other foreign media are the sources of their information. We have a good system of justice – it is not perfect, but it is far superior to the American style.

Some law professors, editorial writers and intellectually stunted talk show hosts continually criticize the manner in which our judicial appointments are made. They prefer the American style of popular election for a specific term with fundraising campaigns for many courts. In the Supreme Court of the United States, nominees for appointment are subjected to an investigation by the Senate to ascertain their views on political issues rather than their character or legal knowledge. I have been a member of the American Judges Association for many years and served two terms on their Board of Governors. This association has convinced me that most American Judges find fundraising and electioneering distasteful and should be confined to those seeking political office.

The biography of Justice Lewis F. Powell Jr., who served on the Supreme Court of the United States from 1971 to 1987, by John C. Jeffries Jr., his former law clerk, reveals some of the political manoeuvring which accompanies the nomination and confirmation of Judges of the Supreme Court, Mr. Jeffries is a graduate of Yale and University of Virginia Law School and is a Professor at the latter. The biography was published in 1994 by Charles Scribner's Sons, MacMillan Publishing Company.

As a result of my hotel employment, I had a ready and willing clientele, mostly semi-professional people –

operators of unlicensed liquor who provided a 24-hour take-out service, fallen away vestal virgins who had acquired an interest in the more material things of life, along with their financial booking agents and chaperones. There were a few entrepreneurial speculators who saw no valid reason for all the gold ore in the mines to be processed through the company mills so they assisted the refining process by removing high-grade ore before it reached the mill.

This interesting and lucrative business referred to as "high grading" was not officially endorsed by the local Chamber of Commerce, but in dollar value, it was probably the largest secondary industry. Some of the mining fraternity considered this operation highly unethical; it lacked the sophistication of the "bucket shops" flourishing on Bay Street, promising a gold mine in every acre of moose pasture. Some miners, however, held to the belief that God had placed the gold in the ground for all to share and in view of the low wages and high health risks involved, a small bonus was a permissible and legitimate benefit.

High grading exists only in gold mining areas. Gold is removed from a mine in various ways depending on the ingenuity of the miner. Usually he receives very little money for his efforts. From these miners it goes to a refiner, then to a courier and finally, outside the country.

The refining process is simple. The gold bearing rock is crushed into a powder-like mix of rock and gold and melted down in a crucible with a flux, usually borax. A Quebec heater with a coke fire produced the necessary heat. Gold being heavier than rock, sank to the bottom of the crucible. The rock and gold are easily separated with a gold "button" being the result.

The buttons are picked up by couriers and other middlemen or women. During the war, a German submarine is said to have surfaced in the St. Lawrence River to receive a shipment. I was involved in the defence of a case in which gold travelled from Timmins

to Casablanca with the assistance of an American Ferry Command pilot.

Locally, a group would meet in a certain location to fix the price of the stolen gold. It was substantially less than quoted on the stock exchanges of Toronto, New York and Hong Kong. The price was subject to fluctuations depending on the supply and was considerably lower prior to Christmas and summer vacations when high grading activities increased substantially.

The life of a miner was a precarious one. Apart from the risk of injury, the miserable wages and the lack of pensions, there was always the fear of silicosis. The constant exposure to rock dust during underground operations damages lungs and many died at an early age with tuberculosis of the lung stated as the cause of death. This medical determination prevented a successful claim for benefits under the Workman's Compensation Act. Silicosis until recently was not recognized as a compensable disease. Miners who could not pass the chest x-ray test were let go. They could not qualify for compensation and the recommendation of the W.C.B. that they were eligible for "light duties" was a cruel joke in the absence of such type of work in the mining industry. In view of the enormous profits accruing from the miners' efforts, it is understandable, even if not lawful, that the temptation which the miner faced every work day would, on occasion, overcome his normal moral scruples.

In 1939, the only legal assistance provided to indigent people was on a voluntary basis with the exception of murder cases when the Provincial Government, in an excess of generosity, provided an honorarium of $20 per day. The lawyer was required to attend Court at his own expense. Since the Criminal Assizes were held at Cochrane, some 70 miles from Timmins; the retainer was not a profitable one. The local bar association accepted its responsibility and no murder case was undefended. It had developed a practice that the more recent members took on the cases.

Within a few months of opening my office, I was the recipient of this less than bountiful practice. The preliminary hearing took only a few hours and the case was sent on for trial. The accused was remanded in custody to the district gaol at Haileybury, some 150 miles from Timmins. No travel allowance was provided, so contact with my client was limited. The ever-helpful Crown Attorney, Sam Caldbick, loaned me a copy of the evidence at the preliminary and in a few weeks, the trial began.

Having sat through a murder trial at Toronto in which the accused was defended by the father of Roy McMurtry, the present Chief Justice of Ontario, I had some idea of the procedure and a limited knowledge of the law applicable to the situation. After the committal for trial, I was concerned that my client was a candidate for the scaffold. The penalty on a conviction for murder was execution by hanging. This barbaric, inhumane method of punishment was still in vogue during the 25 years I practised law. The oft-quoted reason for its retention was that it was a deterrent. There is no statistical or other support for that proposition; however, it is most certainly a deterrent for the particular victim of society's desire for vengeance.

The jury selected was, I hoped, sympathetic to a client defended by a very inexperienced lawyer. The Crown's case was presented quickly and I thought my cross-examination, if not brilliant, was adequate. I was gaining more confidence in my case as I proceeded with the defence. The charge arose from a fight in a bootlegger's establishment which spilled out into the street. My client, who was as skilled with his feet as his hands, had knocked his opponent down and proceeded to kick him. The police had been called. The victim, who was not involved in the fight, was leaving the bootlegger's to avoid any problems and without any comment or provocation. My client struck him, knocking him against the curb, fracturing his skull, causing his death the next day.

The accused's explanation was that he had seen the victim in the bootlegger's and thought that he was coming to the assistance of the man with whom he was fighting. He struck out to protect himself and had no intention to kill or cause grievous bodily harm. The death resulted from the impact with the curb. The blow struck was of a defensive nature.

My client had no previous criminal record. He expressed his sincere regret over the unfortunate unanticipated result and made no attempt to avoid responsibility. I thought that my examination in chief of the accused and his two eyewitnesses was reasonably good. The Crown objected a few times when I became enthusiastic and put leading questions to my witnesses. The presiding judge finally reminded me that I was not a witness to the incident and should not prompt the witnesses.

Prior to the trial, I thought an acquittal was a possibility. After the Judge gave his charge to the jury I knew that possibility no longer existed and was happy to hear the jury's verdict "Not Guilty of Murder but Guilty of Manslaughter with a recommendation for mercy". The jury took a charitable view of the situation and the Judge imposed a lenient sentence. The trial and the preliminary hearing lasted four days. Some weeks later, I received a cheque for $80 from the Government. While it was not a financially rewarding exercise, it was an educational experience.

A murder trial in the days when a conviction resulted in the death sentence was a very stressful experience for the lawyer and his family. There was always the fear that you might have done something or failed to do something in the course of the trial that resulted in a conviction and the imposition of the death penalty.

Early in my career, in a case in which I was not involved, I was seated at the counsel table when a jury returned with a guilty of murder verdict. Immediately, a strange quietness invaded the courtroom; the strained faces of the jurors indicated the stress which they had

undergone while reaching their verdict; a muffled cough or two arose from the audience as though they were embarrassed to be participants in this dramatic tableau; the shuffling of feet by the accused and his counsel as they stood when the judge in a quiet, controlled voice spoke the archaic words of the death sentence concluding with "…and may God have mercy on your soul". I could feel the hair rising on the back of my neck as my body slid further down in my chair. Court recessed for a period – the jurors and the spectators left the Courtroom.

Later, as our case proceeded, the Crown Attorney and I were summoned to the Judge's Chambers to be advised that, in error, the date pronounced for the hanging was a Sunday and it was necessary to reconvene the Court to correct the error.

The counsel for the accused had returned to his hotel room with a couple of friends and was attempting to drown his disappointment. At first he did not believe the bailiff who went to advise him of the situation and request his return to the Court. Finally, the Crown Attorney convinced him that his attendance was essential and the Court was reassembled.

The Judge, visibly upset by the situation, (the Clerk of the Court had given him a calendar for the previous year) apologized to the accused and his counsel. The latter, who by this time, had some difficulty in standing, muttered, "My client has no objection to any day you select." A new date for the carrying out of the sentence was appointed.

A few days later, I was retained to appeal the conviction. Never having been to the Court of Appeal in Toronto, even as a spectator, I sought the assistance of my friend, Arthur Martin, Q.C., who argued the appeal and was successful in obtaining a new trial on the basis that the identification evidence was insufficient to support the conviction.

The charge resulted from the killing of a customer during a bank hold-up. The robber was wearing a mask

and escaped in a car parked adjacent to the bank. Several bank employees, including the manager, as well as some customers, gave identification evidence. The teller, who handed over the money promptly fainted, the Manager grabbed a gun to shoot the robber, but forgot to release the safety catch, the licence plate number which he relayed to the police was incorrect, and the colour of the car and its make varied as the witnesses testified. It was the normal chaos to be expected in a situation of this nature.

The new trial proceeded with much of my cross-examination directed to the frailty of the identification evidence. The Crown closed its case on Friday afternoon, and the Court was adjourned until Tuesday as the Thanksgiving holiday intervened. On Saturday evening, I had a call from the Sheriff that my client had gone berserk and torn up the plumbing in his cell.

I went to Cochrane early the next morning and contacted a local doctor to see what could be done. It was not possible to give my client a needle with an anaesthetic drug so some tablets were crushed up in milk which I fed him through the cell bars. A short time later, he was unconscious and was removed to a padded cell. I was hoping that he might improve sufficiently over the weekend that he could appear in Court at which time, I would advise the Court that I did not propose to call evidence and the trial could continue. When I returned on Monday to check the situation, it was obvious that the trial would not continue. The Crown Attorney and the presiding Judge were informed. On Tuesday, a psychiatrist was present and examined the accused who, although he was reasonably bilingual, was now speaking only in French. No court interpreter was presently available. A police officer volunteered, but I objected and it was finally agreed that I would do the translating which was very brief. When the accused saw me with my court gown on, he thought I was the priest who visited him in the gaol at Haileybury. I translated the doctor's questions properly,

but omitted any non-relevant portion of the response. It was obvious that my client was no longer fit to stand trial. Court resumed. The medical doctor, the police and the psychiatrist testified and the appropriate decision was made. The accused, securely strapped to a stretcher and well guarded by police, was transported to the mental hospital at Penetang. I was not to see him again for almost two years, when he was returned to Cochrane for a third trial.

The third trial was relatively short. Whatever treatment my client received while in custody caused a loss of memory for substantial periods of his life. He had no recollection of previous trials or of events around the time of the robbery. He did not testify. The defence was still the lack of identification, and the testimony of the eyewitnesses was even more uncertain than on previous occasions. He was acquitted after a few hours of deliberation.

The following day, a Saturday, my client appeared at my home just as I was driving my wife downtown to go shopping. He wanted to borrow $50. I told him to go down to an office I had in my basement where a couple of my children were playing. My wife's sister was looking after a couple of younger children upstairs. I expected that I would drop my wife off and pick her up later after cashing a cheque to get some funds for my client. However, my wife was buying carpets and wanted my opinion. We looked at a display of carpets and I was getting concerned about getting my client off to Montreal so I suggested that I come back later. She finally asked me who the man was that I told to wait at the house.

When I explained who he was, she said, "You mean that you left that man who was acquitted of murder yesterday with my children and my sister?" We returned home promptly. The boys were fascinated by their new friend who was showing them card tricks and everything else was in order. I gave the client $50 which he promised to pay as soon as he got a job. My wife said

she was too upset to prepare dinner, so we all went to a restaurant.

About two years later, my former client arrived in Timmins with a new car (I had an old one) and said that he had not forgotten the loan and that he would pay it and also a generous fee for my legal efforts as soon as the car was paid for. I guess he has never paid for the car, as I have never heard from him since. It happens, not infrequently, in criminal law – if the client is convicted, your efforts were not worth much and if he is acquitted, then, of course, the Crown really had no case against him and your services were not necessary for his acquittal. I came to know a very successful Toronto lawyer whose practice was restricted to Magistrate's Court. His advice as to fees was "Get them when they have tears in their eyes."

Jurors in Cochrane usually reached a verdict much more quickly than in other judicial centres, influenced no doubt by the Spartan accommodation provided for them. They were always sequestered in murder trials in the Court House and slept on mattresses, six in the grand jury room and six in the petit jury room. Hotel accommodation was limited and usually reserved by lawyers, police and other witnesses.

Annual complaints to the office of the Attorney General were acknowledged and forgotten. A similar situation in Toronto would have resulted in vigorous protests in the media. Fortunately, about the time that women became eligible to sit, as jurors, two motels had been built. Some years later, when I was Chief Justice, I received a phone call from a newly-appointed judge who was presiding over a criminal assizes at Cochrane, a town he probably had never heard of and certainly never visited. There were several women on the jury and all were assigned to separate rooms in a nearby motel. The judge had been informed by a sheriff's officer that one bed had not been slept in and he wanted to know if some inquiry should be made. I advised him that since no juror was complaining, he

should concern himself with counting heads not beds.

When the Grand Jury was still a part of the judicial process, the courtroom was usually crowded with jurors, witnesses, and spectators when the presiding judge delivered a charge to the members of the Grand Jury. That address varied from one hour to two or three hours. Some judges began by stating how privileged they were to be in the community and then abused the privilege by giving a long, dull dissertation on the historical background of the jury system starting with the Magna Carta, the great Charter of England when personal and political liberty was wrested from King John in 1215.

The Clerk of the Court had, with great solemnity, advised the assemblage that they were to remain quiet, "under pain of imprisonment". When the lengthy discourse was concluded the nearby beverage rooms were invaded where most remained until the start of the Juryman Dance at the Orange Hall. This annual event, the origin of which is lost in history, was an outstanding social event according to local gossip. Lawyers were not invited. The next morning as the jury was being empanelled, the Crown "stood aside" a number of prospective jurors whose appearance indicated a "rough" time the proceeding night.

1939 was not the best to start a law practice in Timmins. World War II was approaching – gold mining would be declared a non-essential industry and miners were diverted to base metal mines in Sudbury. I remained because Timmins was the only town in Ontario where I had friends and besides, I could not afford to move. The choice is simple when there is no other practical alternative.

The County Law Library was in the District Court House at Cochrane. I had never searched a title so when my first real estate deal was to close, I visited the land titles office, the Clerk's office and the Sheriff's department. The Master of Titles was J. Agapit Clermont, who advised me that documents would not be accepted

unless they were stapled from back to front. This advice was not repeated and improperly stapled documents were promptly returned without any reason stated. I did my own agency work and became familiar with his other idiosyncrasies. The Sheriff was John D. MacKay, a highly respected pioneer, who ran a very efficient courthouse. The Clerk of the Court and Registrar was W. L. Warrell who taught me practical matters with respect to filing of documents, etc. I asked, "Does everything get filed in your office?" His reply was "Everything that will go through the door to the vault." The District Judge was His Honour John B. Caron, a dignified bilingual Ontarian who had a long and distinguished career on the Bench. All of these people were helpful in advancing my career by providing me with advice which I requested on many occasions.

Over the years, J. A. A. Duranceau, who had been a Crown Attorney, retired, and Charles Wilson, became Master of Titles. Frank Donahue became Sheriff and Howard Warrell succeeded his father. Rene Danis was appointed to succeed Judge Caron and on his appointment to the High Court of Justice, Duranceau became the District Judge.

Judicial centres in Northern Ontario were in areas classified as Districts rather than Counties as in the rest of Ontario and the Court Houses were more modern than many others in Southern Ontario. One handicap for lawyers engaged in criminal law was the absence of a district gaol. Haileybury was the site of combined gaol for the Districts of Cochrane and Temiskaming. Clients who were committed for trial on a charge of murder could expect to remain in custody for several months until the next Assize Sitting in the Fall or Spring. Bail on a murder charge was never granted until the late 1950's. Haileybury is about 150 miles from Timmins with most of the highway unpaved until years after the end of World War II.

During that period, I frequently made visits to my incarcerated clients by train, leaving Timmins at

6:00 p.m. and arriving at Haileybury about 10:30 p.m. The governor of the gaol was very accommodating and I could spend as much time as I wished with my client while I awaited the arrival of the train around 3:30 a.m. to get home around 8:00 a.m. The $20 stipend from the Department of the Attorney General was ridiculous, but I do not recall anyone accused of murder not being represented by counsel. It was Legal Aid at its worst – and at its best.

The members of the local Bar cooperated with one another and demonstrated a high standard of professionalism. Miners who formed the great majority of our clientele were poorly paid and accordingly legal fees were low compared to southern Ontario. "Pro bono" work particularly in the criminal law field was very common and restricted to a few of us while others contributed their time to civil matters.

Lawyers in smaller communities almost as a matter of course became involved in the activities of the communities in which they lived. I became President of the Timmins Lions Club and subsequently a Counsellor of Lions International. I was an active participant in various legal, community, church and political activities including founding Chairman of O'Gorman High School, President of the Ontario English Catholic Education Association, Member of the Attorney General's Advisory Committee on the Administration of Justice and a Member of the Ontario Legal Aid Committee.

In 1953, I was appointed a Queen's Counsel by a Conservative government, an award which in view of my former presidency of the local Liberal Party was unexpected, but much appreciated. In 1960, I became President of the Ontario section of the Canadian Bar Association and the following year a Bencher of the Law Society of Upper Canada. These positions would not have been possible without the support of lawyers in Northern Ontario.

Lawyers who engage in civil litigation or in criminal law were aware that their clients had limited financial

resources. They could not afford to indulge in delaying motions and applications which were a standard practice with many law firms in the large centres of Ontario. Opposing Counsel made admissions of fact to avoid calling unnecessary witnesses and in criminal cases, both Crown and Defence made adequate disclosure. There was no attempt to surprise your opponent by hiding a witness until the day prior to trial. Notices to produce and affidavits on production were only required when out of the area lawyers were involved. Adjournments of trials and delays in responding to pleadings were commonplace and never abused. A walk from Bay Street to Osgoode Hall does not compare with a 120 mile drive to Cochrane even in the summer.

There was a high degree of trust among our legal colleagues which I have always considered to be the corner stone of professionalism. Courtesy and civility were practiced and any departure from that standard by visiting lawyers and Judges on circuit was greatly resented. The District of Cochrane had only two District Court Judges during my 25 years of practice. There are obvious problems appearing before the same Judge on a regular basis – errors in law and evidentiary rulings, once made, are never corrected without an appeal to the Court of Appeal, which in a low income area are rarely taken because of the cost involved. The presence of Supreme Court Judges, on circuit, was normally a pleasant event except for a Judge who, at the opening of court with a substantial list on the docket, advised Counsel that he would be leaving Wednesday at 4:00p.m. as there was an important case awaiting trial before him in Toronto. Apparently an overnight train trip and the absence of Royal York style hotel accommodation was sufficient reason to inconvenience numerous local lawyers and witnesses. After a repeat performance a few years later, the local bar concluded that his attitude was unlikely to improve and when the circuit guide – the famous red book – indicated he was

assigned to Cochrane, local cases were not set down. The judicial arena was left to Toronto counsel, one of whom advised me that humility was not one of his Lordship's most recognizable virtues.

Several requests to the Provincial Government to provide courtroom facilities for the trial of non-jury civil cases in Timmins were routinely ignored until Chief Justice McRuer became involved. He had spent considerable time in Timmins as one of the counsel on the Feldman arbitration and had presided over several murder trials at Cochrane. The Council chambers in the Timmins town hall in which the Magistrate's Court was held became available on a limited basis and later facilities were obtained over a local funeral parlour. This caused some embarrassment for one judge, when retiring to his Chambers, opened the wrong door and found himself in a room where caskets were being displayed.

In 1963, more suitable facilities were acquired. I attended the formal opening and presided over one of my early trials in the new Court House.

At one Non-Jury Sittings at Cochrane, the court docket contained an unusual number of divorce cases represented by most members of the local bar wearing trousers of various colours. The Judge, a senior member of the Court, had never presided over a civil list in Cochrane. He was known to be critical of the sartorial appearance of counsel and the present group obviously offended his fastidious nature and merited a lengthy, harsh rebuke.

Later that evening in the hotel bar, there was unanimous approval of the criticism and a suggestion that immediate remedial action be taken. The Judge had granted the divorces and one of the happy litigants who operated a fashionable men's wear shop, offered to provide striped trousers at a very reasonable price. A measuring tape was obtained, the tailor took the measurements with the lawyers standing on a table in the bar room, congratulating one another that the

local bar would be the best dressed in the province.

As I watched an unsteady tailor measure a succession of equally unsteady lawyers, I wondered if the trousers would fit the purchasers.

A few months later, at the next Non-Jury Sittings, several members of the bar appeared resplendent in their new attire. My opposing counsel was a senior, well-known member of the insurance bar from Toronto, wearing trousers, bright blue in colour. He later became a member of the High Court of Justice. I asked a local colleague, who had an interest in the proceedings, what he thought of the trial. He replied, "I was waiting for the Judge to throw that Toronto fellow out of Court – coming into our Courtroom without striped trousers."

In 1963 St. Thomas University conferred upon me the degree of Doctor of Law (LL.D.), *honoris causa* and I delivered the Baccalaureate address. In the same year, I was elected a director of the Canadian Scholarship Trust Foundation and appointed a Judge of the Supreme Court of Ontario.

My years of practice in the criminal courts and as a judge in criminal trials has convinced me that the hub around which the wheel of justice revolves is the judge who presides over the trial of an accused person.

The public mind has been conditioned by newspapers, movies and television to believe that those who practice criminal law have a social status equivalent to their clients. Law schools do little to alter that perception. They preach the sanctity of human life and liberty but fail to properly prepare those students who elect to participate in the protection of those basic human rights in the criminal court rooms.

Recent reviews of murder convictions in which an accused who has served years in gaol has been found not guilty have fostered the criticism that there is something seriously wrong with our judicial system. Unquestionably there have been errors but the fact that justice ultimately prevailed is a tribute to the system. The judicial system has provided the proper

mechanism to do justice; however, as in every human institution, those who make the decisions are fallible and absolute perfection cannot be guaranteed. When compared with other nations, we have no reason to be ashamed.

The worst period during a murder trial was those hours when a jury was deliberating on the evidence. You wonder whether you had overlooked something. The stress increases as the time of deliberation extends.

In my experience, men with serious criminal records seldom confide in their lawyers. They tell a story which they hope will convince the lawyer of their innocence and once he is convinced, they expect that he will be able to convince the jury. If you appear skeptical, they will have a different story at the next interview. After being "conned" a few times early in my career, I became increasingly cautious of my client's protestations of innocence until I had knowledge of the information which the police had in their possession. The psychology of the criminal is better left to the experts.

The statutes which define the criminal law are in general, plain and uncomplicated, and to the uniformed, should make the task of a judge presiding over a criminal trial free from difficulty. In theory, it may appear so, but actually, it does not always work out in that easy manner; not when you are dealing with the life or liberty of a human being and also endeavouring to safeguard the public. Usually the judge has considerable latitude in the sentence to be imposed. There is only one question to be resolved – "What sentence in this particular case will do justice to the accused and to the community?"

MARRIED LIFE AND CHILDREN

On October 1, 1941, I married Zita Callon, the daughter of Thomas Callon and Zita Arbour at St. Joan d'Arc Church, Roncesvalles Avenue in Toronto. The wedding reception was at the Old Mill in Etobicoke.

Zita had four brothers, Ted, Cyril, Tom and Pat and two sisters, Elena and Dolores. She was 21 and I was 28. We had been going out for over a year and since my legal practice was growing, and the prospect of my call up for military service was most unlikely, we decided that there was no point in delaying.

Zita was an attractive, out-going young woman, involved in a variety of social and athletic activities. Her engaging personality attracted a host of friends and admirers and I felt very fortunate when she agreed that we were compatible enough that we should share our lives together. We did not have many worldly goods, but we did not consider our matrimonial venture to be a gamble.

Our wedding trip to the Maritimes included a few days at Lake Placid, New York, and in the State of Maine. The weather was favourable with the autumn colours enhancing the beauty of the mountainous countryside. Prior to departing from Bangor, I had the oil changed in the new Studebaker which Joe and I owned jointly. Unfortunately, the mechanic failed to properly replace the oil plug and by the time we reached McAdam, the engine sounded more like a tractor. My return to my hometown was not a quiet event.

My mother had arranged a party in order that all the family friends and neighbours could meet the young woman from Upper Canada, who had joined the extended Evans family. The favourable comments that

followed made it clear that she had passed the critical inspection with which many Maritimers' view 'city people' from away. Her outgoing manner and friendliness guaranteed immediate acceptance.

It was not possible to have the car repaired in McAdam so we drove to Fredericton after being assured by the Studebaker dealer that the repairs would be done promptly. My brother, Dannie, came with us and they went to a movie while I waited at the garage while the mechanic took the engine apart. After several hours, he explained that my new model car was somewhat different from the earlier models and that parts had to be ordered from Saint John. He assured me that the repairs would be concluded the following day. He was a day late in his estimate, but the repairs were made so we took off for Moncton and dropped Dannie at the University at Memramcook where he was a student.

A few days later, we picked up Louis Doiron, who had attended our wedding and continued on to visit his family in Moncton. Louis was an interesting person, with the manners of a diplomat and the vocabulary of an English student. His formal education was limited, however, a "keen observer of people and his addiction to crossword puzzles – in both English and French – enabled him to feel at home in any surrounding.

In addition, he was always the best-dressed man in the group in which we associated in Timmins. Over the years, we remained in contact until his death in Moncton a few years ago. On one occasion when he was living in Quebec, he phoned to ask me if I would be available to give a talk to a convention of sales people at the Chateau Montebello. He was a member of the Executive of the organization, and had volunteered to provide a speaker at their closing dinner. I did as he requested. Louis introduced me to a much larger group than I had expected, in words which were not entirely accurate, but always flattering. The next afternoon, when driving me to the airport in Ottawa, he

said, "The members of the association didn't believe me when I said I would get a Chief Justice as our speaker. You gave a great speech and I was re-elected to the Executive for a three-year term."

The summer before he died, I took him on a trip around southern New Brunswick with stops at McAdam, St. Andrews and across the U.S. border into Maine. Although his medical problems were serious, he never complained during my several visits to see him in hospital. A few days prior to his death, he phoned to tell me that his days were numbered and not to come to his funeral as he had arranged to be cremated and that the Canadian Legion was looking after everything. Louis had been a "tail" gunner in the R.C.A.F.

On our return through Quebec to Timmins, we moved into a four-room apartment in the Italian section known as Moneta, over a grocery store owned by Mrs. Giovanelli. Most of our furniture was second-hand, purchased from Emile Brunette, the Mayor of Timmins, who had built a new home which he completely refurnished. My friend, Louis Doiron, was then a salesman for Simpson's and provided much of the new furniture. Our apartment was a comfortable one with an ever-willing landlady.

My father-in-law thought that a dog would be a welcome addition to our household. It arrived when I was engaged in a trial at Cochrane. The dog, a large one of uncertain parentage, had a large mouth and a full complement of teeth. He regarded me as an intruder and would growl whenever I passed near him. I was of the view that a good place for a dog was on any farm some distance from my home. Every evening, we had to take the dog for a walk. He never missed a hydrant or a telephone pole on either side of the street. The snow came early that fall and was plentiful. The dog enjoyed bounding over the snow banks on to the streets quite oblivious to any traffic while I kept pulling on a lengthy leash to which the dog paid little attention. Zita had a much better rapport with our canine houseguest,

who after all, was a gift from her father. I became reconciled, but never happy, with the situation.

One afternoon in the spring, Zita took the dog for a walk when she encountered another lady exercising her dog. I don't believe the dogs had ever met before and apparently there was no time for a formal introduction. The dogs took an instant dislike to each other and a fight ensued with both dogs escaping from their leashes. Some male onlookers broke up the battle and in due course, the dogs were returned to their respective owners.

When I returned from my office, Zita was busy attending to the dog. She had been knocked down during the fracas and as she had recently become pregnant, it was a matter of some concern. It appeared to be a propitious time to return the gift dog to her father. When Zita agreed, it did not take me long to have the dog in a crate and at the Express Office.

About 10 years elapsed before we had another dog. We had six children and those who could talk wanted a dog. I arrived home one evening and "Skippy" was the centre of attention. The children were aware of my lack of enthusiasm – another mouth to feed was all I needed! The matter was put to a vote and I lost – the boys were to look after the dog and everyone would be happy. A few days later, a small house was deposited in our backyard – it had insul brick shingles and siding and was insulated. This was Skippy's home – everything except running water and electric lights. To the best of my knowledge, the dog never spent a night in his fancy home. Soon a basket, blankets, dog chains, bones, toys and other paraphernalia from the veterinarian's office appeared in the basement room which I used as an office – a baby carriage had preempted the room on the main floor which I previously occupied.

I frequently worked a few hours after dinner at my office downtown. It became part of my household duties to let "Skippy" out to run around the yard, and water the hedge. He usually would run back in the

house when called. However, when the winter arrived, he wanted to play. I was not a willing participant in this activity and after a time, I would go to bed only to be awakened by loud barking at the back door. In order to remain on friendly terms with my neighbours, I would go to the rescue.

One night, dressed in slippers and housecoat, I went to the back door, but the dog wanted to play. If you have ever chased a dog, in your night attire, around a yard filled with about three feet of snow, you will appreciate the situation. Ultimately, after you have lost a slipper in the soft snow, the dog runs into the basement through the door which was left open, before you can locate your slipper. The children had long forgotten their promises to look after the dog's requirements and I was becoming increasingly annoyed at my inability to out-guess the dog on our nighttime playtime. However, rescue arrived unexpectedly. Prior to Zita entering hospital for another addition to our rapidly increasing family, she had arranged to have the yard cleaned and the winter debris carted away. Mr. Roy, whom I shall always remember with gratitude, was busy throwing the accumulated winter mess into his truck. His 7 year old son was playing with Skippy, who was on a long leash. The boy said, "I like your dog." I told him he could have it if his father was agreeable. I was only in the house a few minutes, when the boy knocked on the door and said, "My Dad says it is okay for me to have the dog." An opportunity like this does not happen every day; so I hastened to check with Mr. Roy, who said he was happy with the arrangement. In less than an hour, the dog, dog house, basket, bones, toys, and other items were gone. The dog was going to a good home. I believe it was about a week before any of the kids enquired as to Skippy's whereabouts.

In the interval, Kerry, our fifth son, and sixth child, had arrived at St. Mary's Hospital. It was March 17, 1950. The excitement over another brother made the loss of Skippy easier to accept although years later,

when a family feud broke out in a road hockey game, it was suggested that I made a questionable deal.

My lack of affection for dogs arose from an incident when I was in my first year of high school, during a baseball game. A ball was hit into the outfield and bounced over the fence into the yard of a home adjacent to the ball diamond. I had some misgivings when chasing the ball, as I was aware that the owner had a bull dog names "Stubby" who was known to be very protective of his turf. I jumped the fence, grabbed the ball and was on my way back, when "Stubby" raced out from under the veranda and bit my upper thigh, tearing a strip off my pant leg. An injection by the doctor reinforced my attitude towards dogs.

Thomas was born July 29, 1942 and John arrived on February 5, 1944. Prior to his birth, we considered renting a larger home. I was doing some work for a Toronto-based insurance company including the management of an apartment building, and the supervision of several properties which were in default of their mortgage payments. I also placed mortgages on Timmins' properties for the company.

I was aware that a home in a good neighbourhood was for sale for cash. The war had made houses a glut on the market in our area as miners were moved to Sudbury, where local mines were declared essential industries in the production of various metals required for the war effort. In a discussion with the President of the insurance company, regarding the declining price of real estate, I mentioned the particular house as an example and he said, "Why don't you buy it?" When I explained my financial position to him, he replied, "I will arrange a mortgage for whatever amount you require on easy repayment terms." I realized that this was an offer that I could not refuse, so we phoned the sales agent and confirmed the deal. I did not discuss the matter with Zita, as I wanted it to be a surprise. It certainly was, but the reaction was far different than I had anticipated or hoped for. I obtained the key to the

house, which had been vacant for several months, and on the pretext that a dining room suite was for sale, I persuaded her to enter the house. It was winter, the place was cold, the lights were dim, the wallpaper was dark and the heavy drapes were closed. Before I could say anything, Zita said, "This house is like a tomb." We looked at the dining room furniture, which we agreed was too large for our present apartment. The time was not appropriate to tell her that she was a co-owner of the "Tomb".

The house was one which I had visited on many occasions, as I was a friend of the previous owner and had arranged with him to purchase a few articles of furniture, including the large dining room suite, which would not fit in the apartment to which he had moved. My problem was how to explain to my wife. I waited until the transfer was registered and the certificate of ownership issued in our joint names. She looked at the document and said, "Where is the house and how are we going to pay all that money to the insurance company?"

She was satisfied when I explained how we could pay for the house and why it was that I did not discuss the purchase with her, but the house itself was another matter. In fact, the house was too large for our then requirements. When my friends asked what I was going to do with such a big house, I replied, "Fill it." Little did I realize that my off-hand comment would be realized in a very short time! Some years later, it became necessary to add a large addition to the upstairs. It was always referred to as the "dormitory" and contained six single beds, dressers and clothes closets.

Our other children arrived in relatively short order – Gregory, Jr. October 8, 1945; Rory April 24, 1947; Mary, our long-awaited daughter July 29, 1948, Kerry March 17, 1950; Brendan May 5, 1951 and Catherine December 8, 1953. We thought that our family was complete and were surprised, but not disappointed when our third daughter, Erin, arrived on April 21, 1961.

We referred to the first four children as "The Rhythm Boys". All of our children were planned – as soon as a pregnancy was confirmed, we began planning for their immediate future. Zita was a wonderful mother and a great organizer. The children were her main focus in life and while she had domestic help, being a mother is a full-time job. My main contribution was washing the dishes. One Christmas, I gave myself a present – the first domestic electric dishwasher in Timmins.

A large family requires considerable work and supervision, most of which was provided by my wife. However, we usually found time for a short winter holiday with her mother and sister, Elena, taking control of the household. The Ontario Branch of the Canadian Bar Association held mid-winter meetings, which we attended and then continued on to Florida, Nassau, Cuba or other warm locations. The winters were cold and long in Timmins, so a break during February was much appreciated.

We had purchased a cottage at Lake Sesekenika, about 75 miles from our home. It was well built and comfortable although lacking some of the conveniences of home. The property was approximately ten acres, in the centre of an island of 40 to 50 acres. The water was deep and cold at the dock and I had built a fenced in area, commonly referred to as the "pigpen" to keep our young children from drowning.

One of my jobs was to keep the fast-growing bushes from swallowing up the cottage. I became reasonably proficient with a scythe and bush hook although the children were kept in the cottage to avoid the possibility of decapitation. We frequently invited other couples to our rustic retreat, as the fishing was excellent.

The cottage season is rather short in that part of Ontario. On one occasion, we planned to spend the May 24th holiday, only to discover that ice covered much of the lake. After several years, we had become tired of transporting groceries, water and children a mile

up the lake in a boat with an engine that was difficult to start. We considered selling the cottage.

One Sunday, as we were coming down the lake with a boat full of children, I ran over a rock, knocking the engine off, and causing the boat to almost capsize. The decision was made. Zita said, "I'm not going up to that lake again." And she didn't. The two older boys and I made a couple of trips, however, we felt that we would look for a cottage in Southern Ontario.

After renting for a couple of season in Muskoka, we purchased our present summer home in 1954 near Orillia on Bass Lake.

The trip from Timmins to Bass Lake with an ever-increasing family and a young woman, Raye, to assist Zita, was an adventure in itself. We finally decided that the family would remain at the cottage during the summer vacations and I would commute as often as possible either by train or car. The only advantage of the arrangement was that I had an opportunity to catch up on my legal practice. Zita had attended school in Orillia and was familiar with the area. As the children grew older, trips to Toronto and Buffalo became regular summer events. The purchase of the cottage was a fortuitous event. After the family moved to Toronto in 1964, it was more readily accessible and continues to be the site of family gatherings. Since my most recent retirement (as my children refer to it), I have spent a greater period of time there under the gentle supervision of my daughter, Erin, who resides a few doors away and my son, Greg Jr., who is a partner in an Orillia law firm.

Several of the children when teenagers, worked at the Provincial Park on Bass Lake or in Orillia. When living in Timmins, our next door neighbour was the Honourable Wilfred Spooner, the Minister of Lands and Forests in the Provincial Legislature, who provided employment for several of my sons in the Young Rangers Program at various Provincial Parks. It was not an act of political patronage, but his desire to have a

quiet summer. In return, I tried to restrain my road hockey athletes from ruining his hedge and lawn during the winter months.

With our numerous children, transportation was becoming a problem. A large three-seater station wagon appeared to be the answer, however, the third seat faced the rear of the vehicle and it was impossible in winter to heat the space occupied by the rear passengers' feet. A solution presented itself shortly. One of my clients, a car dealer, had ordered a vehicle for an undertaker which was intended to transport six pall bearers. The delivery was delayed. The customer cancelled and my client was stuck with a vehicle for which there was no readily available market. We concluded a mutually satisfactory deal and I had a vehicle which as one of the children said "Had a window for everyone". The middle seat folded up providing space for a mattress which we used on long trips.

Travelling with children is always an adventure. The more children and the length of the trip, creates additional problems. The car is scarcely out of the driveway when some one asks, "Are we there yet?" and every hour on the eight-hour trip from Timmins to Orillia, there would be regular or emergency stops.

One August we decided to visit my parents in New Brunswick with a stop in Worchester, Massachusetts, to visit my brother, Dannie and his wife, Betty, and their first born, Nancy. The weather was over 90 degrees. The traffic was heavy, the children were restless and after having been lost several times, I was becoming more than normally frustrated. A trip of this nature was more like an invasion of a foreign country. We finally arrived at our hotel about 9:00 p.m. The street was full of parked cars, so I double-parked at the front of the hotel and proceeded to take each child to the sidewalk with the admonition, "Stay there until I get our bags out." I could see the doorman and a bell hop on the front steps of the hotel as I moved to the back of the car and I heard the doorman say, "Don't tell me he has

more of them in the trunk!" It was the only humourous incident of the day.

Next morning, we paraded to the hotel cafeteria for breakfast. I told Tom and John to get food for themselves as well as Greg and Rory and I would meet them at the check-out. I was busy getting food for some other members of the family and when I got to the check-out, there was no sign of Tom or John. They had ducked under the rail separating the food display from the eating area. As I tried to explain the situation to the cashier, I could see four hungry boys demolishing their breakfasts. Finally order was restored and the first crisis of the day was over.

A woman at a nearby table was explaining to Zita that the attractive woman at the corner table was the actress, Joan Bennett, who was appearing in the summer theatre production of the play "I Spy". That evening, when we came down for dinner, Greg was leading our group to a table which we had reserved when he saw Joan Bennett and immediately started to shout, "There's the spy. There's the spy." Ms. Bennett was quite amused by the incident and since the Korean War was on, I was relieved that no gun carrying, trigger-happy member of the National Rifle Association had opened fire.

Later, Zita went shopping and took Mary with her, while I took the rest to a nearby park, where they played around until lunch. I purchased six hot dogs and six cokes at a nearby booth and herded the children into the car while I went in search of a newspaper. On my return to the car, I was engrossed in the news of the day when a voice from the back of the car said "Does Brendan ever like his hot dog!" He was about 15 months old and to date his restricted diet had not included hot dogs. As I wiped the ketchup from his face, I was expecting a stomach eruption, but he just gave a large burp and went to sleep. Fortunately he had only licked the hot dog. During the preceding days of our trip, I had been serving six hot dogs or hamburgers

to the children for lunch. I had forgotten that Mary was having lunch elsewhere. My suggestion to the boys that they should not mention this incident to their mother was obeyed for a few days until the danger of an upset stomach had passed.

As the family increased in number and size, we became a two car family. The "hearse", as the children referred to it, was disposed of to a rural undertaker. We have had many other vehicles over the years, but the one best remembered is the "hearse". At every family gathering, some incident in which it was involved is remembered particularly the time when the brakes failed as we drove down a hill into Bangor, Maine, through a busy intersection into a garage parking lot.

Timmins had several service clubs. Early in my legal career, I joined the Lion's Club which was the most active in community activities. I became President and served as a District Governor covering a large area of Northern Ontario and Quebec.

While this association required a substantial investment in time, it enabled us to make new friends in various communities. It also provided opportunities to attend international conventions in New York and San Francisco. The latter was really the event of a lifetime with over 20,000 in attendance, including many from Canada who supported the successful nomination of Walter Fisher as the first Canadian President of Lion's International. The Timmins Club organized a group of 60 couples from various communities and we traveled by train from Toronto across the United States to San Francisco, where we stayed five days and then resumed our journey to Seattle, took a ferry to Victoria, B.C. and then to Vancouver. Through the cooperation of the railways, the sleeping cars and their porters stayed with us during the entire journey by rail. We visited Banff for two days and spent a day in the capital city of each western province. A boat trip from Port Arthur to Port McNicol and then by train to Toronto concluded our expedition. That 30 day journey was a memorable

experience. The side trips to the Grand Canyon and Los Angeles and the hospitality which we enjoyed wherever we went will be long remembered. The Canadian Clubs were wildly cheered by the spectators as we paraded with the Canadian flag and our prize winning band. San Francisco must have many ex-patriot Canadians judging by the welcome we received.

The following year, we held a convention in Timmins for members and spouses from Ontario and Quebec, at which the attendance was approximately 1,000. The event was a huge success. To many, a visit to Northern Ontario meant Muskoka or North Bay to the more adventurous traveler. Fortunately, the weather cooperated and the citizens of Timmins were most generous in providing accommodation in their homes to our visitors. A beneficial side was a better appreciation by the Department of Highways that our one northern highway required miles of paving instead of pot holes in rough gravel roads.

Zita was a caring, wonderful mother who had a very definite impact on our children and instilled in them a strong work ethic and a deep sense of social responsibility. They were always her first priority. The love and affection which she showered upon our six sons and three daughters later extended to our 21 grandchildren. Each was a special individual to be encouraged and protected.

Her unexpected death, following minor surgery, on February 24, 1994 was a severe shock to our family. The loss of a mother is the one irreplaceable link in the family circle.

Our married life was full of pregnancies and births and their accompanying concerns and joys as we struggled to achieve a reasonably high standard of living for our children. There were disappointments, obstacles to overcome and human problems to be resolved. A good home life, a sincere love, a good education and the knowledge that we were always available was the legacy we hoped to leave to our children.

Both Zita and I were members of large families and enjoyed children. We recognized that each child had an impact not only financially but on our way of life. We were family-oriented and the inconveniences and even difficulties which all parents face when raising a family are the same irrespective of the number of children. While the needs of the children were paramount and they shared in our vacations and trips, we always found time for annual holidays away from them.

Zita was protective of our children and attached to our home which was the centre of our social life. My contribution to the household operation was much more limited but I did share in the upbringing of our children as they progressed from babies to teenagers and college students. Parenting includes much more than financial assistance. It requires active participation in school and extra-curricular activities, discipline when necessary, praise when warranted and support when the result is failure.

One advantage of having a number of children is that you are never alone as you grow older. The grandchildren add further interest and excitement as they develop in an age vastly different from my own.

SOME INTERESTING CASES

Feldman v. Finkelman - Arbitration

Alexander Feldman, together with his brothers, Abraham and Louis, and his sister, arrived in Canada from Russia around 1880 and settled in a community known as Krugersdorf, near New Liskeard in Northern Ontario. It was a farming area and many of the residents, like the Feldman's, were Jews.

With the discovery of gold in the Porcupine area around 1910, the Feldmans moved north. Hymen Finkelman, who had married their sister, became involved in the various business enterprises carried on under the Feldman name. Farming was abandoned in favour of lumbering. Alexander Feldman was an astute businessman and the recognized head of the family who negotiated contracts with mining companies, notably the Hollinger. The business operations were highly successful and in due course, expanded to include Feldman Timber, Feldman Lumber, Feldman Motors, Feldman Mercantile and associated incorporations. The share holdings in the various companies were held in equal shares by the three brothers and their sister. On her death, her husband, Hymen Finkelman, became owner of her shares and was elected secretary of the several companies with Alexander as President.

Like many family corporations, problems arise as children of the founders reach maturity and obtain employment in the family corporations. In the early 1940's a crisis occurred and local lawyers became involved on behalf of Finkelman on one side and his

brothers-in-law on the other. The immediate problem involved the refusal of Finkelman to sign as secretary for a loan which had been negotiated with a Toronto Mortgage Corporation. An earlier than usual spring break-up left thousands of logs in the bush and their value would be greatly depreciated unless they were brought out to the company mill. Negotiations were stalled and Finkelman's lawyer was ill and was unable to continue. Hymen's son, Walter, who was in charge of Feldman Motors, requested my opinion concerning the retaining of Mr. Wegenast, K.C. of Toronto as a replacement. Since he was the author of the current authoritative textbooks on companies, I endorsed his suggested appointment and Mr. Wegenast arrived a few days later in Timmins.

I was impressed with Mr. Wegenast not only because he was a distinguished lawyer and author but also by his old fashioned mannerisms and attitude. He said that he would take over the case with me as his local agent upon proper notice being given to the former solicitor and payment of any outstanding fees. He advised that Ms. Margaret Hyman, an associate, would be assisting him. Further conversation with Walter and Hymen followed, but I was not a party to it. Before leaving, Mr. Wegenast said that he would send me some documents in a few days.

In due course, the documents arrived with a letter giving me express instructions. The main document was a lengthy "Agreement to Arbitrate" with a covering letter requesting the Feldmans to execute the documents prior to 3:00 p.m. I was required to deliver the documents to the Feldman lawyer at 10:00 a.m. and return to his office to pick them up at 3:00 p.m. I was to acknowledge receipt of his letter at 9:00 a.m. and phone again at 3:30 p.m. to advise whether the Feldmans had signed all the required documents. The documents had been sent to me by special delivery and I had the opportunity to read them the evening prior to their delivery to the Feldmans' solicitor. My opinion

was that the Feldmans would never sign and I indicated this to Mr. Wegenast when I phoned at 9:30 a.m. His response was "Young man, you never know what is in the mind of the other party. Attend at the solicitor's office promptly at 3:00 p.m. and phone me as directed in my letter to you."

I was at the lawyer's office early. As I sat in his waiting room, the conversation emanating from the private office confirmed my previously expressed opinion that the documents would not be executed and I was somewhat deflated when shortly after 3:00 p.m., their solicitor handed me the file and confirmed that the documents had been executed. When I phoned Mr. Wegenest, he refrained from saying "I told you so." And after checking the documents with him, he said, "Make sure you mail them tonight. I will write you further shortly."

In a few days, Mr. Wegenast was back in Timmins, roaming around the lumber camps, making notes and visiting other corporate operations. Auditors were now involved. An Arbitration Board had been established comprising A. V. Waters K.C. of Cochrane, a very capable lawyer as Chairman, George Lister, an appraiser and valuator of Toronto, and P.C. Finlay, K.C. of Holden, Murdoch law firm in Toronto. Mr. Finlay was Secretary and Counsel to Hollinger Consolidated Gold Mines in Timmins. Roy Kellock, K.C. of Mason, Foulds law firm, now represented the Feldman interests. Mr. Wegenast had great respect for Alex Feldman and was preparing notes on his early history in Ontario which were typed in my office. I believe that both were anxious for an early settlement, but the involvement of others precluded such a sensible termination of what had now escalated into a family feud. Long past incidents of a minor nature were resurrected and magnified; disagreements among the Feldman families added unnecessary fuel to the fire.

Being of Irish background, I was aware of the intransigence displayed by the Irish when a perceived insult to a long dead ancestor lives on in the present

day recollection of a grandchild who has no knowledge of the circumstances giving rise to the incident, but I did not realize that it was equally prevalent in other racial backgrounds.

The hearings proceeded but the participants changed. Mr. Wegenast died and Ms. Hyndman retained J. C. McRuer, K.C. (later Chief Justice of the High Court). Mr. Kellock was appointed to the Supreme Court of Canada, and was replaced by Mr. Mason of the same firm. Upon the appointment of Mr. McRuer to the Bench, Everett Bristol, K.C. was retained. He was a senior partner of the firm with which I articled as a law student. Mr. Alexander Feldman died and the operation of the various businesses fell under the control of the male children of the founders. The commercial and forestry businesses which Alexander Feldman built and controlled were split up and never achieved the success which they had previously enjoyed.

My contribution to this lengthy arbitration was not very important, but I learned considerably from those excellent lawyers with whom I was associated. The final settlement could and should have been concluded much earlier. Family feuds are very expensive.

Another local industry was "bootlegging" sometimes referred to as "the operation of unlicensed premises for the sale of liquor". It was not unusual for that illicit business to be combined with a bawdy house, but more "refined" establishments were conducted on separate premises.

When the afternoon shift at the mine finished at 11:00 p.m. and the beverage rooms closed at midnight, many miners sought to quench their thirst elsewhere. Today, they are referred to as "after hours clubs" and are inclined to violent behaviour.

Some operators of the unauthorized liquor outlets were former miners who had contracted silicosis; were unemployment and without a pension. It provided a living for the householder and his family. Licensed

premises were restricted to the sale of beer or wine (with meals) while their competitors dispensed all types of alcoholic beverages. These "Mom and Pop" outlets were rarely subject to police investigation.

Immediately west of Timmins, across the Mattagami River, was the unorganized area of Mountjoy, policed by the Ontario Provincial Police. It was the preferred location for the above unlawful activities.

Joe Brisebois

One of my earlier clients was Joe Brisebois, a frequent patron of the hotel where I worked. He prided himself on conducting a respectable business where the liquor served was the same as the label on the bottle and the price was reasonable. He was an interesting character. He appreciated that his activity was contrary to law, but contended that the law was unreasonable and discriminated against the citizen who wanted to buy a couple of drinks instead of a bottle from the Liquor Control Board. Joe Brisebois had a policy which he strictly enforced. "No women were admitted to his home." It was a small bungalow resting on wooden pylons to protect against the annual spring flooding from the river.

Liquor was rationed during the war. However, Joe B. circumvented that restriction by having friends make purchases for him. The usual charge when arrested was "illegal possession of liquor" which resulted in a fine, which Joe considered a sort of licence.

Shortly before Christmas one year, he was charged with "Keeping for sale" which meant a three-month gaol term as well as a Court Order prohibited the occupant of the premises from having any liquor on the designated premises. I entered a plea of guilty and was able to get the usual sentence reduced to two months. However, the usual order of prohibition for one year was imposed.

On his release, Joe called in to see me and wanted to know whether the restriction applied only to the house in which he was living when the offence occurred. I assured him that it did. A few months later, Joe was charged with a breach of the Order of Prohibition.

His defence was that the Order applied to a house on X Street when he in fact now lived on Y Street.

During the winter, Joe had this home placed on skids and pulled to a vacant lot on the street behind the street on which the house had previously been located. The back door now became the front door with a different house number.

The magistrate dismissed the charge and commented on Joe's ingenuity while warning him that any further moves might have a different result.

R. v. Gillies

While most people appreciate that an accused person is presumed innocent and is entitled to be defended by counsel, there are occasions when the public is aroused by publicity particularly when children are the victims and forget these basic principles of criminal law.

Walter Gillis was a dispatcher for a taxi company working from midnight to 8:00 a.m. He was a steady worker, quiet and not well educated. His wife, Mabel, was an attractive young woman who was outgoing and liked to party. They had four children – the eldest 5 years old and one a few months. Before midnight, Walter left for work. Mabel had not returned, but Walter presumed that she was at a beverage room with some friends and when it closed, she would be home. He was unaware that she had developed an association with a soldier who was on leave and that she would spend the night with him and not come home. It was during the winter and the fire in the stove went out. The children were cold and got an electric hot plate which they brought to their bed and covered it with a blanket. A fire started in the bed covers filling the small apartment with smoke and the four children suffocated.

When their bodies were discovered by the fire department, the baby was face down on the straw mattress in the crib while the other children were on the floor against the locked door leading to the outside.

The smoke was so intense that outlines of three children were clearly discernible on the linoleum floor covering. The skin across the nose of these children was broken as they pushed against the bottom of the door in search of air.

The accused parents were allowed to attend the funeral of their children under police escort. The publicity aroused the public and snowballs and rocks

bounced off the cars escorting them to the graveyard. Crowds attended every court hearing and I received a few phone calls complaining that I was defending them. There was no disagreement on the facts, so I defended both. I knew Walter, having done some work for his employer. I felt sorry for him as he really cared for his children and would never have left them if he had known his wife was with a man. I gave that man a hard time in the witness box – he was boastful and arrogant. As he left the witness box and passed behind my chair, he whispered, "Some day I'll break your neck." I never saw him again.

The Jury convicted both of "failing to provide the necessaries of life" and they were each sentenced to three years.

While the wife was morally guilty, I was of the opinion that she was not legally guilty, as she did not expect the husband to leave if she were not home. However, the jury had a different view.

It is easy to criticize the conduct of these parents, but when all the circumstances are considered, one must have some sympathy for them. There was evidence that they loved their children and they provided for them as best they could on his very modest salary. That the wife became infatuated with a soldier who had money to entertain her is not unusual considering her lack of social life.

Neither blamed the other for the situation which led to the loss of their five children. When sentence was being pronounced, the wife fainted and court was recessed. Later I learned that she was pregnant. Both were paroled at an early date and left with their baby to start a new life in another province. It was my worst case.

R. v. Lister

Among the 25 persons accused of murder whom I defended, five were women – two were convicted of manslaughter, and three acquitted. The likelihood of a woman being sentenced to death in Northern Ontario was quite remote. The victims were usually husbands with histories of domestic violence.

The defence tactic was to portray the accused as a respectable wife and mother (which she frequently was) who was subjected to a life of insults and physical abuse by her husband (of which there was usually evidence). I always had the accused woman testify in her defence although I rarely called a male accused to give evidence if the evidence necessary for his defence could be obtained through other witnesses. Whenever possible in this type of case, I would not call evidence in order to have the last address to the jury.

I always made it plain to the client in any criminal case, that the conduct of the trial was my decision. On one occasion, an accused wanted to change the written instruction which he had given me. I prepared another document stating that he was testifying, contrary to my advice. I also suggested to him that it was his neck, not mine, that was in jeopardy. He accepted my advice and was acquitted. He reminded me that the Crown had no case.

My wife and I were in Banff returning from a trip to California with a group of Lions Club members from Ontario, when my office called to advise that Ann Lister was charged with the murder of her husband, Ted, and she wanted to retain me.

Both were friends of mine and were well known in the Timmins area. Ann was a local girl and a prominent athlete. Ted was from Toronto and his ability as a hockey player provided him with employment at the McIntyre Mine. Both were very intelligent, highly

popular among their peers, and the parents of two children, a boy and a girl, both teenagers. The daughter was a junior figure skating champion with a promising future career.

Ted became the manager of the McIntyre Arena, a sports complex with facilities for hockey, figure skating, curling and bowling. In addition to an auditorium for social events, there was a restaurant of which the hostess played a significant part in the ensuing domestic dispute which culminated in the homicide.

Ted was killed by a single shot from a high-powered rifle which Ann had purchased a few weeks previously at a local hardware store. She stated that it was to be a birthday gift for her husband and obtained instructions from the clerk as to the method of operation.

The children had left the day before for Toronto. Ted was packing for a trip to Sudbury where the hostess was now residing. Ann positioned herself with the rifle in the hallway upstairs and as Ted responded to her call, she shot him as he emerged from a bedroom into the hallway. She then attempted suicide by shooting herself in the abdomen. The bullet passed through her body without striking any vital organ and after a few days in hospital, she was taken into custody at the local gaol.

It is always difficult to defend a person whom you have known for many years and when the charge is murder, the task is more onerous, especially when the victim is also a friend. Her family was made aware of the situation and wished to retain me. We had no knowledge of their domestic problem and a motive was not apparent until later when the fingerprints on the gun were identified.

When Ann was sufficiently recovered from her operation, she gave a statement to the police which was subsequently admitted at trial despite my objections. It was a story of marital discord which had existed for some time, but which was not common gossip in the community. When she became aware of her husband's

affair with the hostess, she threatened violence to the latter who promptly left for Sudbury. Her request to her husband to terminate the affair was unsuccessful and she realized that their marriage was over and that he was leaving.

Ann was a proud, independent person and a very difficult client. She was convinced that she had a right to protect her marriage and to take any steps necessary to do so. She was determined to expand on the statements already given to the police when she testified. An event, which I hoped, would never arise. After three days of Crown evidence, I told her I was trying to get the Crown to accept a plea to manslaughter. She refused until I convinced her with the assistance of her daughter that if she testified, a conviction for murder was a strong possibility.

The plea was accepted and the accused sentenced to a term of three years. In a relatively short time, she was released and died of a brain tumour.

I believe it is highly possible that her condition, which was not discovered until shortly prior to her death, was a factor in driving a normally stable, family-oriented mother to an act of violence which destroyed her husband and adversely affected the children of whose accomplishments she was so justly proud.

Re: Vandebelt

My most notorious murder case never got to trial. The victim was a young nurse, Valaire Vandebelt, from Toronto, who was working at the local hospital in Cochrane. Roger Gauthier and Rocco Sisco, two young single men from the town were charged with her murder after her body was found in the middle of a raspberry patch near a cottage owned by the family of one of the accused. She had been strangled either manually or by a red belt found around her neck.

Because the victim was from Toronto, "Jocko" Thomas of the Toronto Star covered the story. The fact that John Robinette, Canada's most celebrated lawyer, was retained by the accused, Gauthier, no doubt contributed to the media frenzy.

I had been retained by Rocco Sisco. Mr. Robinette had been one of my lecturers at Osgoode Hall and I was happy to be associated with him because of the intense publicity and the numerous expert witnesses involved.

In the Vandebelt case, the evidence at the Preliminary Hearing was entirely circumstantial. The two accused men and the victim, along with two other nurses and the husband of one, were at a cottage owned by Sisco at Silver Queen Lake. There was a minimum of drinking, a barbeque and dancing. At 2:30 a.m., the party broke up. Sisco and Gauthier planned to stay overnight to go fishing. The deceased said she did not have to work that day and would stay overnight. There was some discussion among the women but the deceased decided to stay. The car in which they had driven to the cottage was left on the highway some distance from the cottage. The group left, but reconsidered the situation and returned to the cottage to see if the victim had changed her mind. The two men were at the cottage, but there was no sign of

the victim, so they assumed that she had taken another route to the car and left. Gauthier went with them and they returned to Cochrane. Her body was found in the midst of a large area of raspberry canes the next day. The local pathologist, Dr. Smith, concluded after a post mortem examination, that a fractured skull was the cause of death. A later examination in Toronto by a criminal pathologist established the cause of death as strangulation. The hyoid bone was crushed.

Mr. Robinette argued that his client had no opportunity to commit the offence while my main submission was that there was a lack of motive. Both accused had given statements denying their guilt and their statements as to the facts were confirmed by the witnesses who testified.

The body of the victim was discovered by two young boys. It would appear from the location of the body that she was most probably killed in the vicinity of the raspberry patch and then thrown over the top into the middle of the patch as the berry canes leading to the body were intact.

The Magistrate concluded that the evidence was not sufficient to commit either young man for trial. From my earlier and subsequent appearances before that particular magistrate, I am convinced that the presence of John Robinette and the argument that he advanced, was an overriding factor in his decision.

The mystery surrounding the young woman's death still remains although local gossip cast suspicion on a local businessman which was never confirmed.

The case had been investigated by the Criminal Investigation Branch of the Ontario Provincial Police from Toronto. A special prosecutor from the Office of the Attorney General was in charge of the prosecution which was rather unusual, along with senior staff members from the Forensic Laboratory. Normally the very competent local Crown Attorney, Sam Caldbrick, would prosecute and there would be an exchange of information between the Crown and the defence

lawyers. Disclosure was an accepted practice in our area, but such a sensible arrangement was foreign to the legal bureaucrats in Toronto. The Court House gossip was that the Crown must have an airtight case as special prosecutors only appeared in county towns when the police had two eyewitnesses to the homicide and a written confession from the accused.

One such occasion occurred in my early years. Mr. Dean Kester, a very good local lawyer, appeared for the accused who was charged with the rape and murder of a farmer's wife and the attempted murder of her husband. Mr. Cecil Snyder, the Senior Deputy Attorney General was the prosecutor. He was a heavyset man with a loud voice and an ego which greatly exceeded his abilities. His condescending attitude was demonstrated before court began by shouting at the bailiff positioned at the rear of the courtroom to bring him a pitcher of water. The bailiff did not move so the prosecutor told the Sheriff to fire the bailiff and replace him in the courtroom. The court bailiffs were usually veterans of World War I and this particular one had heard very little since being wounded at the Battle of Vimy Ridge. A murder trial in a county town attracts a full audience and their displeasure with the overbearing attitude of the special prosecutor was quite evident.

The case proceeded and the evidence was overwhelming. The husband, who had been shot, identified the accused. The forensic evidence established the fingerprints of the accused on the stock of the rifle and that the bullets extracted from the bodies of the victims were fired from the rifle. Other evidence placed the accused in the vicinity of the farm on the day of the homicide as well as the presence of blood on his clothing and a quantity of money alleged to have been taken from the husband.

The defence was insanity. His lawyer had little assistance apart from the evidence of the family of the accused and a couple of their neighbours that the accused was of less than average intelligence; had a

violent temper and was considered unemployable. The police officer who took a statement from him stated, "I have known the accused for years – I don't think he is insane, just subnormal."

While defence counsel was addressing the jury, the Crown objected, stating that the defence had misstated a bit of evidence. There was a few minutes delay while the reporter consulted his notes. The Judge agreed that there was a misstatement but that it was of little consequence. Kester apologized and continued with his address quite obviously upset by the interruption. A few minutes later, Snyder was on his feet again objecting to some matter on which he was overruled. Kester than said to the Judge, "Your Lordship, I have pleaded cases in this Court for over 25 years but this is the first time that I have been interrupted by Crown Counsel during my address to the jury."

Snyder again interrupted saying, "We do it all the time in Toronto."

Kester who was still standing, said, "We in the north are not responsible for the lack of manners and common courtesy in Toronto."

As Snyder started to rise again, His Lordship said, "Haven't you had enough Mr. Snyder. Please sit down."

The jury brought in a verdict of guilty with a recommendation for mercy. The recommendation, I believe, was the jury's way of indicating their dissatisfaction with Crown Counsel.

The accused was hanged a few months later.

N. v. N. – Divorce

I learned early the risk involved in being retained by a Toronto lawyer who was unknown to me, when I was asked to act as counsel in a divorce case to be heard in Cochrane.

The usual grounds for divorce were either perjury or adultery. The former, I suspect, was relatively common in Southern Ontario – but Northern Ontario still preferred adultery.

The case was open and shut, according to the Toronto lawyer, who claimed that he couldn't attend because he had three appeals in the Court of Appeal. I later learned that he could not have located that Court without a guide. The client and the witnesses would meet me at the court house in Cochrane.

The plaintiff wife had no personal knowledge of the alleged adultery. The witness was a part-time rural postman who had delivered mail to the husband for several months at the home of Mrs. Jones. He had been in the house on several occasions and testified that, in his opinion, Mrs. Jones was living with the plaintiff's husband as he was the only man around the house. Bill Gale, the former Chief Justice, was the trial judge – he was very fond of corroboration in cases involving adultery – some claim he required motion pictures – that is not exactly true, but if you had only still pictures, he wanted them in colour. He invariably questioned the witnesses with considerable vigor. He asked the postman, "Did anyone else live there?" To my surprise and consternation, the witness said, "Oh yes, Mrs. Jones' sister, Julia." My Toronto correspondent had not deemed it necessary to inform me of this situation. A few more probing questions from the bench and the witness wasn't too sure of the alleged adulterous relationship, and was only interested in escaping from the witness box.

I requested an adjournment until later in the week, which was granted after an uphill battle.

My office located two woodsmen who had lived in the house for several weeks in the winter preceding the trial and who claimed to be aware of the sleeping arrangements in the Jones' household. The witnesses arrived at Cochrane at 9:30 a.m. I gave them their conduct money and requested their return at 2:00 p.m. when Gale, C.J.O. had agreed to continue the trial. At 2:00, both witnesses were in bad shape from their morning visit to the local beverage room.

I called the first witness – he staggered to the box. Gale C.J.O. immediately started to question him. He told his story about the defendant husband and Mary Jones, and also about Julia, the sister.

He was sure that Mary and the defendant husband occupied the same room for several weeks while he lived at the Jones' household.

Gale C.J.O. pursued the matter. "How do you know the defendant husband isn't sleeping with Julia?"

The witness replied, "You ain't never seen Julia."

The Judge decided that he didn't require the other witness who was slumped over in the front seat of the courtroom with his wool cap perched precariously on his head.

A decree nisi was granted and I resolved never to take another "sure" case from Toronto counsel.

R. v. X – Rape Case

On one occasion when Chief Justice McRuer was presiding over the Assizes at Cochrane, a young man who was charged with rape appeared without counsel. I was in the Court House interviewing a client charged with "Motor" manslaughter when the Sheriff advised me that the Judge wanted to see me in his chambers. Our conversation was rather brief. The Chief Justice was incensed that the young man's lawyer, who appeared at the preliminary hearing and had been paid for his services, had refused to further represent him. The Chief Justice said "This man requires counsel to defend him." I replied "Yes, your Lordship." He continued, "I am appointing you to defend him and the trial will commence at 2:00 o'clock this afternoon."

When you have other cases on the list for trial, it is unwise to protest, so I replied in the affirmative and had a new client.

The alleged offence occurred in a small village in the western part of the district when the teenaged daughter of a local businessman was attacked as she left the skating rink. My client had apparently been stalking her and had wrestled her down behind a snow bank. The weather was about –30°F. I obtained the Crown Attorney's transcript of the evidence given at the preliminary hearing and interviewed the accused during the lunch hour. The Hearing had been presided over by a magistrate who was not a lawyer and had no legal training. He worked on the principle that the accused must be guilty or he would not have been arrested. The local Crown for the area had long ago given up on trying to instruct the Magistrate on the rules of evidence. The defence lawyer after a few futile efforts objecting to the admissibility of some of the evidence, gave up and a flood of irrelevant and immaterial evidence was allowed, including a highly prejudicial statement

by the accused obtained through improper police interrogation. In the current politically correct language, the accused would be characterized as "socially deprived and intellectually challenged". A teenage witness testified that he was a big, overgrown kid who was short "a couple of bricks".

The victim's shouts alerted many in the rink who testified as to the wrestling match in the snow; the temperature and the heavy clothing worn by the accused and the victim. Some had not given evidence at the preliminary and I was being very cautious in cross-examination. Finally, the Chief Justice, who was never accused of being an overly patient judge, said, "Mr. Evans, you do not appear to be very well prepared for this case." I was both surprised and angry but finally pointed out that I was unfamiliar with the case; that he had appointed me as counsel earlier in the day, and that I had not had time to learn the facts of the case. He replied "Quite so, quite so – you should have requested more time to prepare. Court will now adjourn and resume tomorrow at 10:00 a.m."

Later in the day after a discussion with the Senior Crown Attorney, who had little prior knowledge of the case, it was agreed that the victim would give her evidence and the situation then reviewed.

Following her evidence which did not support any serious sexual offence and the evidence of the police officer, (the Crown did not proffer the improperly obtained statement), I, with the consent of the accused, offered to plead guilty to attempt to commit a sexual assault. The Crown accepted the plea and the Judge directed the jury to convict on the lesser charge. The accused had been in custody for some months and was sentenced to time served.

I was well acquainted with Chief Justice McRuer as I had acted as a junior counsel with him on a lengthy arbitration case – Feldman and Finkelman – which went on for many months in the early 1940's. I also had several murder cases before him, none of which

resulted in a murder conviction. He was an excellent lawyer with a sound knowledge of law and the rules of evidence, but on occasion, was overly forceful in expressing to a jury his view as to the proper verdict in the case being tried. Some jurors resented his approach and by their verdicts, demonstrated their disapproval.

In 1963 when I was appointed to the High Court, McRuer was still the Chief Justice. He was not a very approachable person but he was respected by his fellow judges. As a new appointee, I rarely sat in Toronto during my first few months. However, on one occasion, I encountered the Chief Justice in the corridor near his Chambers. He asked me how I was enjoying my work. I replied that I was encountering legal problems that had never arisen in my practice in Northern Ontario. He said, "I am sure that you have but work hard and you will do fine. If I had not thought so I would not have recommended your appointment." He then disappeared into his Chambers. I think that I expressed my thanks although I am not sure as I was very surprised by his statement. To be quite honest, I often wondered how the Minister of Justice came to appoint me. Northern Ontario was not a fertile ground for judicial appointments to the Supreme Court of Ontario, as most members were recruited from the Bar of Toronto and other communities in close proximity.

R. v Clara Irene St. Cyr

The St. Cyr case in 1948 was an interesting one. On March 4th, Mrs. St Cyr, a 32 year old mother of six children between the ages of 3 and 12, was charged with the murder of her husband, Jerome, age 34, by striking him in the throat with an axe as he was sleeping.

When the police arrived, the only light bulb functioning was in the kitchen. According to the evidence of two of the oldest children, there was a long history of marital discord and abuse of their mother by the father. Many of the altercations arose from the failure of the victim to provide food and clothing for the children and fuel to heat the house, which was little more than a tarpaper shack.

There was evidence of excessive drinking by the husband on the evening prior to his death and a violent argument over the failure to bring home food for the family instead of liquor for himself.

The children's testimony of the events was graphic and startling and when the accused completed her testimony, women in the courtroom were weeping openly. She stated that soon after her marriage at 19, her husband occasionally physically abused her, but she did not report the situation because of his children.

However, on March 31, 1947, and again on October 30, 1947, she wrote letters to the Timmins Police Department, but no action was taken. The Superintendent of the Children's Aid Society was not contacted and testified that he was unaware of the family's existence until after the murder. Mrs. St. Cyr went to the police station and wanted to lay a charge of assault against her husband and was informed that a witness would be required but when she returned with her son, Robert, age 12, she was informed that the boy was too young to be a reliable witness and refused to take any action. Whether the failure to take action was influenced by

the fact that Mrs. St. Cyr was an aboriginal or by the then current belief of some male dominated police departments that domestic assaults should not be processed through the criminal courts unless physical evidence of serious bodily injury was clearly demonstrable, is not clear.

The local press and radio provided plenty of information about the gruesome axe killing; the comments of relatives and neighbours of complaints and denials as to the manner in which the family lived and the conduct of the father were very much in the public view and I wanted to get the case on for trial at the earliest Criminal Assizes. Normally, the Criminal Assizes were held for the District of Cochrane, in which Timmins is located, at the Town of Cochrane, some 70 miles distant, in March and November. Those accused of murder were confined to the district gaol in Haileybury approximately 140 miles distant and release on bail, at that time, was not an option. The practice of criminal law because of the location of the gaol and the Court House was not only very inconvenient, but expensive, especially "pro bono" cases when payment was usually restricted to court time.

Mrs. St. Cyr had given a statement in writing to the police acknowledging that she had killed her husband by striking him with the blood stained axe found at her home. I was aware of her letters to the police and their more recent refusal to accept her oral request to take action. The Crown Attorney agreed to expedite matters so that the trial would commence at the Assize on March 21, 1948.

The preliminary hearing took place on March 9th before Magistrate Atkinson and concluded the same day, which was not unusual. The Magistrate expected both Crown and Defence Counsel to proceed expeditiously and counsel who appeared before him regularly were well aware that lengthy examinations and cross-examinations would be quickly terminated. Once he was satisfied that there was sufficient evidence to

commit the accused for trial before the High Court of Justice, any additional evidence was unnecessary. You were always aware that he was in control of the Court. He always acted in a very judicial manner and never permitted efficiency to interfere with justice.

The trial began on March 21st and Clara Irene St. Cyr took the witness stand on March 25th – three weeks after being charged with the murder of her husband.

The courtroom in Cochrane was crowded and for the first time in my experience, with a very large number of women. Perhaps this resulted from the developing change in the social environment which asserted that wife abuse was no longer a forbidden topic for discussion in polite society or legal circles. At the time of this homicide, there was no local support system if the battered woman left home and since few worked outside the home, they had no financial resources.

She was a rather pathetic figure showing visible signs of the harrowing experience and the years of poverty which she related to the jury. She described the argument about lack of food for the evening meal for the children; the blows which she received when she refused to go to bed with him; being physically forced on to the bed and tied down while being raped and subjected to other sexual indignities which she detailed with tears streaming down her sunken cheeks.

She explained that the children were in the adjacent room and that after her husband had fallen asleep, the eldest son, Robert, cut the bonds, freeing her from the bed. She testified that in the darkness, she grabbed a stick and struck her tormentor several blows around the head. One of the children ran to a neighbour's home, the police arrived with flashlights and she realized that the weapon she used was an axe.

Robert and one of his sisters testified. Their evidence corroborated much of the mother's evidence and provided information as to the lack of food and clothing for the family.

After ninety minutes of deliberation, the Jury returned a verdict of "not guilty" and Mrs. St. Cyr was released immediately from custody.

Shortly after the trial, her children, who had been in the custody of the Children's Aid Society, were returned to her and the family moved away from the Timmins area.

In 1998, I received letters from the two oldest daughters thanking me for my assistance to their mother who had recently died and bringing me up to date on their siblings. They have been successful in overcoming a tragedy about which they said their mother expressed sincere regret.

R. v. Konowalchuk

On May 6, 1955, the Ontario Court of Appeal delivered a unanimous decision quashing the conviction of Steve Konowalchuk on a charge of having in his possession gold bullion in violation of s.424(1)(c) of the Criminal Code.

This decision was a vindication of an argument which I had advanced on several previous occasions only to have it rejected by the Court.

Section 424(1)(c) required an accused person found in possession of gold ore or bullion to prove his lawful right to possession of the same. This meant that an accused person, in effect, had to prove his innocence – it was a reverse onus situation which was corrected after the Charter of Rights was enacted.

Section 424(5) provided that no prosecution under s.424(e) should proceed until an Order in Council had been passed. On May 17, 1910, such an Order was passed and the section came into force in Ontario and Quebec.

In 1938, s.424 was repealed and a new section substituted with some changes. However, no Order in Council was passed to bring the new section into force and accordingly, there could be no conviction. There could be no life to the new legislation unless a new Order in Council was passed.

My earlier efforts were rejected mainly because the section had been in force since 1910 in its present form and no conviction had been successfully appealed.

As part of my community activities, I gave lectures to the Timmins Police Department on the Criminal Code. During the course of my research, I found a reference to s.424 in a "Manual for Police Officers" prepared by Clifford Magone, a long-time member of the Attorney General's Department and an expert in constitutional law in which he questioned the validity

of the section. I was always eager to get a case before the Court of Appeal, but did not have a client with sufficient funds to undertake an appeal.

Mr. Konowalchuk according to the evidence upon which the Jury convicted in the trial court, had sold a quantity of high-grade gold ore to an undercover Ontario Provincial Police Officer who paid with marked bills. The facts were certainly not favourable and I advised my client that the only possible defence was one that I had argued unsuccessfully several times. I told him that a conviction was most probable, but there might be a chance if an appeal were taken. He was prepared to finance an appeal so, I suggested that I contact my friend, Arthur Martin Q.C., to take the trial and the appeal along with me.

At trial, Mr. Martin advanced the same argument later presented before the Court of Appeal. Not surprisingly, the local Provincial Court Judge before whom I had previously argued this point, rejected his submission. I hasten to add that Arthur Martin's argument was much more convincing than my previous efforts. The sole point at issue was "Did the absence of a new Order in Council, subsequent to he revision of s.424 in 1938, invalidate the conviction?"

When Mr. Martin stated to the Court of Appeal that he had searched and found no such Order in Council and Chief Justice Pickup replied, "If you have not found one, I am satisfied that none exists.", I knew the appeal would be allowed although several weeks passed before the judgment was issued.

After the appeal was filed, following conviction on November 26, 1954, I was retained on a number of high-grade cases. It was a real battle to obtain adjournments pending the decision of the Court of Appeal. However, after convincing Magistrate Atkinson, the magistrates in two other jurisdictions, where cases were pending, followed suit. Regina v. Konowalchuk is reported in Vol. 21 Canadian Criminal Cases p.165 (May 6th, 1955).

The success of this appeal provided me with considerable local notoriety but it was short lived as the Federal Government moved swiftly to amend the legislation closing the loophole. Personally, I had considerable satisfaction knowing that my persistence had been rewarded.

The result of the decision of the Court of Appeal was to invalidate all convictions under the section since 1938. Those serving terms of imprisonment were released and charges laid prior to the revision of the Criminal Code, effective April 1, 1955 were withdrawn by the Crown.

One of my clients against whom a charge of illegal possession of gold ore had been laid on March 31st, a 17 year old miner, escaped conviction by the fact that his arrest was made on March 31st at 11:30 p.m. and the amendment became effective at 12:01 a.m. on April 1, 1955.

Konowalchuk was convicted on November 26th, 1954. His appeal was allowed and conviction quashed in a judgment delivered on May 6, 1955. The appeal was argued some weeks earlier. The revision to the Code was effective on April 1, 1955. Obviously the Crown authorities moved quickly after the appeal was argued and prior to the release of the Court of Appeal decision. All together, I had 16 charges either dismissed or withdrawn as a result of the decision. Unfortunately, the fees were small, but the satisfaction was great.

JUDICIAL CAREER

The phone rang as I arrived home for lunch on October 31st, 1963. "Are you Gregory Evans?" the operator asked. I assured her that I was. She then said, "Please hold, the Honourable Lionel Chevrier wishes to speak with you."

Phone calls from Cabinet Ministers were not regular occurrences in my life so I waited with mounting curiosity. "I have the honour to inform you that an Order-in-Council has been passed today appointing you a Justice of the High Court of Justice for Ontario. I hope you will accept." said the distinctive cultured voice of the Minister. After stammering out my thanks, I asked whether I could have time to consider the matter. The Minister indicated that he would hold while I reviewed the pending momentous change in my life. I told him that I had a more extended period in mind and it was finally agreed that the announcement would be made the following Tuesday, unless I advised him prior to that time that I was unable to accept the appointment. He gave me a phone number to call.

My wife, Zita, was upstairs putting Erin, the youngest of our nine children, to bed for her afternoon nap. As I was awaiting her return to the kitchen, a host of conflicting thoughts flooded across my mind. Could I afford to leave a profitable legal practice for the modest salary of a Supreme Court Judge? Did I want to uproot my family from the small town of Timmins which had been extremely generous to us, for the large metropolitan City of Toronto? Was I prepared to abandon the free wheeling life style of a Northern Ontario lawyer which I enjoyed for the more conservative social and professional life which a judicial position would no doubt entail?

Reg Pope, my close friend as well as my accountant, and his wife, Graye, had planned a trip to Sarnia with

Zita and me over the weekend, so I knew that we could discuss our financial situation as well as other related matters.

The next few days were anxious ones. When you practice in a small town in Northern Ontario, you don't spend much time dreaming about a possible appointment to the Supreme Court of Ontario and I was surprised that I was being considered for a judicial post. However, I was aware that a professional obligation required the acceptance of such offer unless there existed strong valid reasons to refuse. My brother, Gerry, and the other members of our firm, were quite competent to look after the interests of our clients. Zita, who had lived her high school years in Toronto, was as usual, prepared to accept a move.

She was aware that our children, once they finished university, would not likely return to live in Timmins. That was a common pattern among our friends and neighbours because career opportunities were limited in mining areas.

Over the weekend, we had plenty of time to discuss the situation and agreed that I should convey my acceptance to the Minister on Monday afternoon. However, the Minister anticipated my answer. I had planned to have lunch with my brother, Austin, and when I phoned him, he said, "You have been appointed a Judge of the Supreme Court and the local paper wants an interview."

Northern Ontario was not a fertile area for those aspiring to judicial office. There had been only one other appointment to the High Court since Confederation. I telephoned my parents and, after explaining to my father that it was a judicial appointment and not a judge at an agricultural fair, he offered his congratulations and concluded by commenting, "Anything can happen in Upper Canada." He was a committed Maritimer.

On our return from Sarnia, we stopped over in Toronto. Chief Justice McRuer advised me that John

Brooke and I would be sworn in within the next couple of weeks. It was understood that I would not be required to move my family to Toronto until after the end of the present school year.

George Cartwright, the knowledgeable and genial head usher became my guardian and adviser as arrangements were made for court gowns, books, a credit card, new licences for our cars and a host of other details.

After ten days at home, I was back in Toronto to meet with Dana Porter, Chief Justice of Ontario, and head of the Court of Appeal. He explained to me that since the Order-in-Council appointing me had a number prior to that appointing John Brooke, I had to choose my chambers before John. That was my first intimation that seniority in the judiciary was as important as in any labour union.

I had appeared as counsel before most of the trial judges and some members of the Court of Appeal. All were very gracious in the welcome extended to me. I was back in Osgoode Hall where I was a law student from 1936 to 1939. The section occupied by the law school at that time was a small part of the magnificent structure which was to be my business address for the next 25 years. As it turned out, it was a much happier place than my recollection of my student days.

The swearing-in in mid-November was a formal affair with my family and several friends from Timmins and Toronto attending. The courtroom was filled with a full compliment of judges on the dais. My three-year old daughter, Erin, had been anxiously scanning the robed judges, trying without success to locate me. She broke up the solemnity of the occasion by shouting, "There's my Dad." as I began the customary remarks required by a new judge. She claims that was her first moment of fame.

My first reaction after being sworn in was a feeling of isolation from the real world. The theory then prevailing among my judicial confreres was that judges

should be insulated from practically every aspect of normal living so that their objectivity would not be imperiled. Being accustomed to the more casual, free-wheeling life-style of Northern Ontario, I had considerable doubt whether I would ever be comfortable in this foreign environment, where everyone spoke in hushed tones, looked serious and wore dark clothing, including a homburg hat; some even carried a cane with a silver handle.

I made a few concessions to my new position. On court days, I wore a black suit with striped trousers and bought a homburg that I carried in my hand whenever possible. But I refused to get involved with a cane.

I traveled by train to my first court assignment at Port Arthur. It was a non-jury sitting and since I knew several of the counsel appearing, it was a relatively uneventful start to my judicial career. Seated at the dais, instead of pleading before it, was a new experience made pleasant by the cooperation of the Bar. The traditional Bar Dinner set a standard which was seldom equaled in my visits around the province. A new recruit to the court can expect to preside over Assizes and Sessions in communities around the perimeter of the Province which was preferable to Weekly Motions or Divorces in Toronto.

I thought I had made an acceptable accommodation to the sartorial requirements of the judicial office to which I had been appointed. I expected that on weekends I was on my own. That dream was shattered abruptly one Saturday morning when I was hurrying through the quiet corridors of Osgoode Hall on my way to the library. (I thought I should discover its location in case I wanted to do some light reading.)

I was feeling rather liberated, dressed in beige slacks and a multi-coloured sports jacket. Unfortunately, I encountered two of my older colleagues who regarded me with ill-concealed displeasure, if not open hostility. Finally, one said "Is the Woodbine open?" I don't think I ever wore that jacket again in public. It was obvious

that the time was inopportune for a palace revolution.

Bora Laskin and I were appointed to the Court of Appeal on August 20, 1965 to fill the vacancies created by the retirement of Colin Gibson and Wilfred Roach. Gibson had been a former Federal Cabinet Minister while Roach had been a member of the High Court and was recognized as an outstanding jurist with a sound knowledge of the law and a no-nonsense approach to his judicial duties. Having appeared before him as a trial lawyer, I was well aware of his abilities and while I was filling the position which he had vacated, I appreciated that my contribution to the Court would never equal his.

Laskin had been an outstanding law professor at Osgoode Hall and the University of Toronto. An internationally recognized expert in Constitutional Law, he also brought to the Court a wide-ranging knowledge of many other areas of law and the ability to express his opinions in a clear, concise manner. Some of his legal writing, on occasion, had been critical of Court of Appeal judgments written by his new colleagues. Chief Justice Porter, a very gentlemanly individual, exercising the diplomatic skills acquired during his years as a politician, made certain that Laskin for some months did not sit on a panel with a judge whose decision he had vigorously attacked. After a time, any latent animosity disappeared and Laskin was accepted and recognized as a great addition to the Court.

I had been appointed to the High Court on October 31st, 1963 after having practiced law in the Timmins area and since my Call to the Bar in 1939. The Court of Appeal was not a forum with which I was familiar and I had no great desire to join it. However, I accepted with some trepidation, but with the knowledge that by not being on circuit, I could play a more important role in helping my wife bring up our 9 children. I remained on the Court until December 30, 1976, when I was appointed Chief Justice of the High Court of Justice.

The Supreme Court of Ontario, both Trial and Appellate Divisions, revered seniority of appointment with as much zeal and respect as the most ardent trade unionist. Your number on the appointment roll determined your choice of Sittings in the Trial Division and your position on the Court of Appeal panels, your Chambers selection and even the number of your motor vehicle license plate!

The composition of the Court of Appeal following my appointment comprised four former Trial Judges: Schroeder, Wells, McLennan and myself, and six appointed directly from the legal profession, Chief Justice Porter, Aylesworth, MacKay, McGillivray, Kelly and Laskin. Laskin was the first Jew to be appointed while I joined Kelly in the two positions available to Catholics. How and why such allocations were made was never a matter of public discussion, but for years the practice had been followed and continued until the Court was substantially increased.

Despite our varied backgrounds, the Court operated efficiently and harmoniously with the senior members, by their choice, assuming more than their share of the judgment writing and the delivery of oral judgments from the Bench. My first sitting with Schroeder on a panel presided over by Aylesworth, was a memorable experience. I had known Walter Schroeder as a practicing lawyer who, in the only case in which we were opponents demonstrated that he came into the arena well prepared to do battle and that no "quarter" could be expected.

My only knowledge of John Aylesworth was acquired from Trial Judges whose decisions had been reversed and from comments of trial counsel who referred to him as "Black Jack". Needless to say I prepared as best I could for the eventful day.

We were hearing criminal appeals. After each appeal, we retired to a room behind the Court Room. As the junior member, I was last off the dais and had barely closed the door to the conference room when

Aylesworth barked at me: "What do you say?" I started to explain my position when he interrupted, "I didn't ask you that – do we dismiss the appeal or not?" I said rather hurriedly "Dismiss". We marched back into Court and Aylesworth dismissed the appeal in a few well-chosen words. Obviously Schroeder had communicated his concurrence to Aylesworth in some manner that escaped me. The same procedure was followed the next day and I was beginning to think that they were waiting for me to make the decision and they went along. However, Aylesworth, on the third morning, explained: "I always ask the junior member first as I don't want him to be influenced by Schroeder."

These two were brilliant Judges – Aylesworth with an incisive mind; a good grasp of the applicable law and an extraordinary ability to deliver a brief, extemporaneous judgment.

Schroeder was a legal scholar with a tremendous capacity for work and the ability to deliver a lengthy oral judgment. Aylesworth would occasionally tease him, "Walter, don't cover the waterfront. Leave something for another court."

I shall always remain grateful to John and Walter, who appreciated my inexperience in appellate work and provided assistance whenever requested. They were quite different in personality, John with a rapier wit; devastatingly sarcastic with ill-prepared counsel; quick to form an opinion but prepared to be convinced otherwise. Walter was thorough and at times ponderous; almost unshakeable once he had formed an opinion. The law was his life. Together, they formed the foundation of a Court that became recognized as the finest appellate Court in Canada.

One disadvantage in being on a panel with either of them was their insistence on delivering almost all the oral judgments, although you were expected to contribute to the discussions prior to judgment. This procedure did not prepare one who, in due course, would ultimately preside over a panel.

Aylesworth was an accomplished lawyer and took delight in deflating pompous lawyers who advanced specious arguments, unsupported by any authority other than their own. In many ways, apart from occasional intemperate outbursts, he was the model of what a judge should do in reaching a decision – that is, demonstrate the ability to put aside preconceptions, open the mind to argument by all parties, ignore one's own prejudices so that the judgment can be as informed, as dispassionate and as wise as humanly possible.

Schroeder was the leader of the Ottawa Bar when appointed to the High Court. He was blessed with a prodigious memory, a high degree of intelligence, and a good command of language. To him, the Courtroom was a forum for intelligent discussion. He did not suffer fools gladly. Indeed he was not inclined to suffer them at all. His effect on lawyers who were unprepared in presenting arguments ranged from intimidation to terror. His standards were high and he expected the same from counsel. Despite his unpopularity with some sections of the Bar, the profession generally had great respect and admiration for his exceptional legal knowledge and his judicial integrity. Those who knew him outside the courtroom appreciated his unfailing courtesy and that he was appreciably more humane and approachable than his courtroom manner sometimes indicated.

Jim McLennan was a very popular trial judge who was appointed to the Court of Appeal in 1961. His early death in 1969 created an unusual situation. He, Aylesworth and I had heard a lengthy appeal by the Crown, from the acquittal by a County Court Judge, sitting without a Jury, of a disbarred lawyer who was involved in a stock manipulation which the Crown alleged was illegal. The case had a long history, including at least one abortive trial. The transcripts were voluminous and the arguments seemed endless. Judgment was reserved. Each member of the Court

assumed responsibility for certain areas of the appeal which resulted in many discussions and conferences.

Finally we agreed on the final draft. Our unanimous decision was that the Crown appeal should be allowed; the acquittal set aside and a conviction registered. It was also decided, In view of the history of the case, that sentence would be imposed by the Court of Appeal.

At our scheduled meeting the next day, we were advised that Justice McLennan had died earlier in the morning. The reasons for judgment signed by Aylesworth and myself were issued and a date for the sentence fixed. The issue as to jurisdiction to proceed was raised and I was delegated to do the necessary research. Our decision was that since the two remaining judges were unanimous, the decision could stand and that as the sentencing was a separate proceeding, a replacement judge could be added to the panel for the imposition of sentence. Accordingly, Schroeder was selected and the sentence imposed.

Dalton Wells was a compassionate, well-liked trial judge who was never at ease in the Court of Appeal and was happy to return to the Trial Court as Chief Justice of the High Court. In appearance, he was the prototype of the public's picture of the perfect judge. A genial, friendly face framed by a head of thick white hair. He carried himself in a dignified fashion and always spoke in a quiet, unhurried manner. Organization was not one of his stronger attributes; however, it did not seriously detract from his many other positive qualities.

Bill Gale became Chief Justice of the High Court on July 1st, 1964 following the retirement of J. C. McRuer. On October 31st, 1965, he was elevated to the Court of Appeal and later, in September 1967, following the death of Dana Porter, became Chief Justice of Ontario. The appointment of Bill Gale as Chief Justice of Ontario was a fortuitous choice. His period as a lawyer was short but exceptional while his success as a puisne judge on both Courts and as Chief Justice of the High

Court, provided the background for a meteoric career which I believe to be without parallel in Canadian judicial history.

Gale earned the reputation as a brilliant lawyer during his relatively brief period at the Bar, prior to his appointment to the Bench, while only 40 years of age. He had sound judgment and the ability to attract others to his point of view. As a Chief Justice, he displayed flexibility by listening attentively as issues were debated. He had patience but ultimately the decision would be the result that Gale wanted.

Off the Bench, Bill Gale was a most gregarious person whose amiable manner created a wide circle of friends, particularly among the profession. He enjoyed being the centre of attention and was the repository of a fund of anecdotes with which he delighted his audience. He never allowed facts to detract from an interesting story. One which he particularly enjoyed repeating involved a female client of mine who was the plaintiff in a divorce action to be heard in Cochrane – the jurisdiction in which the defendant husband and the witnesses resided.

A change of venue having been obtained, the plaintiff, a very attractive waitress at a Toronto cocktail bar, took the overnight train to Cochrane. Gale and the Court Reporter were on the same train and were at a table for four in the dining car when my client arrived and was seated across the aisle. She had never been on a train overnight and had prepared herself for the trip with a bottle of liquor, which she had sampled prior to dinner. Thus fortified, after some conversation across the aisle, she asked if she might join their table as she did not like to eat alone. Her request was met with an immediate invitation.

After ascertaining that Gale and the reporter were going to Cochrane, she confided that she was going there also for the purpose of getting a divorce. Then Gale, after ascertaining that her home was in Toronto, asked whether a change of venue had been obtained to

which she replied: "I guess so – anyways, my lawyer has it all "fixed'". Gale said: "That is interesting. Who is your lawyer?" "Evans." was the reply. "Do you know him?" she asked, "I've heard of him." Gale responded.

After some further conversation, my client said: "What do you gentlemen do? Gale replied, "We are with the government." She replied: "I knew it must be something important since you are wearing striped pants and a black jacket."

The next morning I was at the station with the investigator who was the main witness and had met the client whom I knew only by correspondence. Quite obviously she had indulged rather generously from her bottle and I suggested to the investigator that he take her to the hotel for breakfast and have her at the Court House in a couple of hours. The local Sheriff was escorting Gale to the taxi and as he passed, we spoke to each other. My client asked if I knew him, and I said: "He is Justice Gale." Her rather anxious response was, "Oh my God, I saw him on the train… he isn't going to be judging my case is he?" I assured her that he would be the presiding Judge which served to increase her anxiety.

Later at the Court House, I had only a few minutes with my client before her case was called. I knew nothing about the dinner on the train. Although I seldom took divorce cases except those involving army personnel, and while I was aware that the Judge was one who demanded strict proof of the alleged adultery in strict compliance with the rules of practice. I was surprised at the difficult preliminary questions he raised.

Finally I was allowed to proceed with the oral evidence. The husband was living with a woman in Timmins with whom he had a child. The investigator and a neighbour confirmed the domestic situation. I had delayed calling my client until the final witness. She nervously approached the witness box and dropped the Bible as she was being sworn. In my examination she told of her infatuation and brief marriage; her

husband's sudden embarkation to England; his letters telling her that the marriage was a mistake, as he had been engaged to a woman in Timmins and wanted a divorce so he could marry her, as she was pregnant with his child. The plaintiff agreed that the marriage was a mistake and was agreeable to a divorce. I covered collusion, connivance, condonation and other requirements and sat down.

Gale began a rigorous cross-examination with my client who was becoming increasingly panic stricken with every question. She was wearing a hat with two ornaments each topped by a bead – somewhat like an antenna – as she was leaving the box after being dismissed, the Judge recalled her and asked, "Since your marriage, have you ever committed adultery?" Everything was quiet – the hat antenna was beating rapidly. I anxiously wondered whether she understood the question or was counting the occasions, when she looked at Gale and said, "Judge, I've never done anything like that in my life." Judgment Nisi was granted. My client returned to Toronto after providing some interesting information about her dinner on the train, which Gale later confirmed.

Bill Gale loved a party and since I lived not far from him, I became his designated driver. His expressed intention was to go early so that we could leave early. We did go early, but I do not recall every leaving a party with him before the house cleaners arrived to clean up the hall.

At the time of Gale's appointment as Chief Justice of Ontario, and for several months thereafter, he presided over the Texas Gulf trial. Aylesworth took charge of the Court of Appeal. His disappointment at being twice passed over as Chief Justice of Ontario was understandable, however, the manner in which he accepted the reality of the situation gained for him, the respect of his colleagues.

The remaining members of the Court when I joined and who aided my education in this new forum were

Fred MacKay, George McGillivray and Arthur Kelly.

Fred had a practical approach to the law. Aylesworth referred to it as "Grey County law." He had been a former police officer for a short period and practiced in Owen Sound. He was very helpful to lawyers appearing for the first time in the Court and following the judgment he would frequently invite them to his chambers to review their efforts.

George was a quiet, gentlemanly person, a long time in-house counsel for the Toronto Transportation Commission, whose frequent comment in the Conference Room after a lengthy and largely unproductive day was, "How come there are so many more horses' asses than there are horses?" He was a quiet compassionate man who avoided the spotlight.

Arthur was highly regarded by the legal profession; a past President of the Canadian Bar Association, the son of a former Supreme Court Judge, and skilled in corporate and commercial law. He had a great interest in younger members of the Bar and many unsuccessful counsel benefited from his encouragement and advice. A tremendous worker and an excellent jurist, he made a substantial contribution to the Court.

Although no one is free from preconceptions or immune to prejudices, the conscientious judge struggles against them by giving careful and sincere consideration to the arguments of both parties, and by avoiding premature closure of the mind. From my perspective as a member of the Supreme Court for 25 years, I am convinced that the vast majority of our judges may properly be characterized as conscientious protectors of the public trust implicit in their oath of office.

I have always been favorably impressed with the fact that despite varying ages, cultural differences, religious persuasions and ethnic backgrounds, judges throughout Canada demonstrate a high standard of ethical behavior and bring to their deliberations a desire to do justice to the litigants through decision arrived at honestly and impartially. The fact that

judgments are not always unanimous indicates that each judge exercises his own independent opinion in reaching a conclusion, which forms part of the Court judgment.

In 1962, while a lawyer, St. Thomas University conferred upon me an LL.D. degree *honoris causa* and I delivered the Baccalaureate address.

In 1965, the Université de Moncton conferred upon me the degree of doctor of Philosphy (Ph.D.) *honoris causa* and in 1980 His Holiness, Pope John Paul II appointed me Knight Commander of the Order of St. Gregory the Great (K.C.S.G.)

Following my retirement as a Judge, I was honoured by an appointment to the Order of Ontario (O.Ont.), and later made a Member of the Order of Canada (C.M.).

AMERICAN JUDGES ASSOCIATION

For some years prior to my appointment to the Bench in 1963, I had attended several meetings of the American Bar Association, the American Association of Trial Lawyers and the International Association of Trial Lawyers. In 1966, I was invited, along with Justice Schroeder, to attend the annual American Appellate Judges Seminar at New York University Law School. Judges from each State attended with senior judges and professors, including Justice William Brennan of the Supreme Court of the United States. Brennan, a very friendly and affable man, lived with many of us in the student residence and shared many evenings discussing ways to improve access to justice for the ordinary man.

In 1981, I joined the American Judges Association, served as a member of their Board of Governors for several years and conducted annual conventions on two occasions at Toronto. Both conventions were highly successful and for the huge majority of attendees, their first visit to Canada. Having been born in New Brunswick, five miles from the American border, and with American newspapers and magazines readily accessible, I was quite familiar with the geography and politics of their country while to my American colleagues, Canada was really a foreign country. Canadian newspaper, radio and television are filled with news of happenings in our neighbouring country but it would take a catastrophe of mammoth proportions or a scandal involving a high profile Canadian citizen to warrant more than passing mention in the American media.

I continue my membership in their association and occasionally remind them that while they have appropriated the name “American”, there are a considerable

number of Mexicans and Canadians living on the North American continent. This nation of hospitable, generous and charitable people with whom we share so much in common would be better understood, appreciated and respected throughout the world if the attitude of isolationism and protectionism which their governments maintain were relaxed.

The conventions in Toronto were a surprise to my American colleagues and they were enthusiastic about the cleanliness of our city and their ability to walk about the streets in the evening in safety.

As the only Canadian member, I was the Chairman of the convention committee and with the assistance of Shelly Rockwell, a very competent and experienced secretary in the office of the Association, we succeeded in conducting two highly interesting and financial rewarding meetings. I was awarded the "Jack Bennett" award for my contribution to the Association.

I attended conventions in many American cities including Hawaii, Alaska and major communities in continental U.S.A. Judges, at least when off the bench, are congenial and gregarious individuals. Canadian Judges have limited opportunities with other confreres outside their own jurisdictions. The situation is slowly improving with conferences for training new judges, the merger of Federal Courts, the direction provided by the Canadian Judicial Council and sabbatical leaves.

Many American Judges prefer our system of judicial appointment over their elected system. Some complain that a well-qualified lawyer would never become a judge if his or her political affiliations did not coincide with that of the majority of the voters in the judicial district. They dislike campaigning for funds, term limits and political interference. Even federal Judges appear to be subjected to such interference when we recall the lobbying of Cuban refugees in Miami to delay the return to the father of his young son who had miraculously survived an ill-fated attempt by his mother to seek refuge in America. The notorious presidential

election in Florida and the attempts by the opposing counsel to find courts whose members shared the same political views as their respective clients did not add prestige to any court including the Supreme Court of the United States. To many it appeared that the independence of the judiciary was compromised by political partisanship and judicial advisors.

I was on holiday in Florida during the election and was surprised and dismayed by the multiplicity of legal motions, trials and appeals which involved all levels of the State of Florida judiciary and finally the interference of the Supreme Court of the United States which in a split decision concluded that George Bush Jr. was properly elected the President of the United States.

A major problem with the appointment of Judges to the Supreme Court of the United States is the new and dangerous criteria set by the Senate for confirming the appointment of Judges who will shape the direction of American law for the next generation. It should be possible to get qualified judges confirmed without the nominees having to pledge in advance that they will prejudge hot button issues like abortion, capital punishment, and immigration quotas the way the majority of the Senate want them prejudged. Ideology rather than competence would be the litmus test for appointment which would destroy the fundamental principle that the judiciary should be independent. Judges are not appointed or elected to impose their personal ideologies but to enforce laws passed by elected representatives including the Constitution of the United States. Judges are not appointed to express their own views or settle political issues but to apply the law.

Canadian judges have rarely, if ever, been criticized for using the law to impose personal ideologies or to exercise political favoritism. The recent attempt by liberals in the media and academia to label judges as either right or left has led to the descriptive term "conservative judicial activism" and "liberal judicial activism". The terms do not apply to the presumed

political views of the judges but to their approach to the law in their decisions. Either form of activism is contrary to the rule of law. The law is not static and must change to meet the changing circumstances and conditions in our society. Conservative judges are usually judges who stick to the law as written. Liberal judges are those who recognize that circumstances change in society and are prepared to take remedial action to correct a situation which is unjust.

The term judicial activism is frequently erroneously applied in this situation without any consideration of the legal basis for such remedial action. It is only when Judges play fast and loose with the meaning of words in legislation that it is properly characterized as judicial activism and a great danger to the rule of law.

MEMBERS' CONFLICT OF INTEREST ACT

The *Members' Conflict of Interest Act, 1988* was passed by the Ontario Legislature a few weeks prior to June 13, 1988, the date of my retirement from the High Court of Justice as required by the Judges Act. The Honourable Ian Scott, Q.C., the Attorney General for Ontario, asked me if I would consider becoming the Commissioner as provided in the legislation. It was not anticipated that it would be a full-time position. I was quite agreeable as the Marshall Report was nearing completion and I was not ready to retire entirely from the workforce.

In due course my appointment as Commissioner under the *Members' Conflict of Interest Act* was confirmed by Order in Council. The next few months were rather hectic. Following the completion of the Marshall Report, I was asked by the then Premier of Nova Scotia to assess the compensation due to Donald Marshall and his parents for his wrongful conviction and subsequent eleven-year period of imprisonment. The duties of the Conflict of Interest Commissioner were much more demanding than previously anticipated and required an office and a full-time staff. Fortunately, Ms. Lynn Harris, who had served as my secretary during my later years as Chief Justice, became available and under her capable direction, the office was soon operating in an efficient manner.

Ontario was the first province to enact such legislation and it soon became apparent that substantial amendments were required if the desired effects of the legislation were to be achieved.

The purpose of the legislation is to provide greater certainty in the reconciliation of the private interests of the members of the Legislature and their public duties so that they may discharge their public duties in a manner which demonstrates their impartiality and which will confirm public confidence in their individual integrity and promote respect and confidence in the Legislature.

The members are required to make a complete financial disclosure to the Commissioner. This process is an invasion of the individual's usual right to privacy. A further imposition is the requirement in some instances that the members of the Executive Council must dispose of some assets, and in other cases, that a management trust be created to hold the particular assets. The Trustee must be approved by the Commissioner.

It is desirable that the Legislature be comprised of individuals with broad experience and expertise in various diverse facets of public life. The administration of the legislation must be sufficiently flexible so as not to exclude competent citizens from seeking public office. Accordingly, the information in the disclosure forms must be treated by our staff with the highest degree of confidentiality. Members must be satisfied that in dealing with our office, there would be no breach of that trust. Upon completion of eight years in office, no member had complained. A good rapport had been established with the members without which the legislation would be ineffective.

There is a great need of ethical awareness in our society. Ethical problems in government at all levels have increased because of the growing complexity of government. The widespread negative image of public officials has contributed substantially to public concern. Public attention has also focused on business, journalism, sports, legal and medical professions and other areas of Canadian society as to the manner in which their activities are carried out.

There is a great demand for openness in business and in government. Accountability has become a priority in decision-making by public agencies, labour unions and self-regulating organizations. Lobbying of public authorities has become so ingrained in our political system that unless it is regulated and restricted, the corrupt practice of influence peddling will become the normal manner of conducting business.

Following extensive amendments to the *Members' Conflict of Interest Act*, it was replaced with the *Members' Integrity Act, 1994* which was proclaimed in 1995. The primary purpose of integrity legislation is to provide a standard of conduct for members against which an ever-increasingly cynical and suspicious press and public may measure their behaviour in office.

Ethics has been described as the moral strength to do what we know is right and to not do what we know is wrong. There may be occasions when a person acts improperly because of lack of knowledge or lack of attention. Normally, however, that quiet, insistent voice of conscience, inherent in each of us, sings in harmony on the vast majority of moral issues.

The Integrity Act title was chosen not only to reflect an increased jurisdiction, but to accentuate the positive and eliminate the negative connotation associated by the public with the term "conflict of interest'. The new Act is concerned with more than the financial affairs of the members and encompasses their personal conduct. It also adopts those customs and procedures that have developed since the enactment of the Conflict of Interest legislation and which have been designated as Ontario parliamentary conventions.

Examples of these conventions include the prohibition against members of the executive appearing as advocates or supporters before any provincial agency, board or commission under their particular jurisdiction. It also prohibits members and their staff from communicating with members of the judiciary, court officials or police officers with respect to

matters involving the discharge of their official duties.

The two principles paramount in all aspects of parliamentary government are openness and fairness. While the fostering of personal interest in a socially acceptable manner is a natural right, the problem arises when one individual's right impinges upon that of another person. These competing rights create a confrontation to be settled by agreement, arbitration or judicial decision. This is not a conflict of interest situation because no ethical issue is involved.

However, when a person is elected to public office, he or she becomes a trustee to safeguard the rights of the public and when the member's personal interest adversely affects the public's interest, the responsible, honourable member will resolve the situation in favour of the public, not because there is legislation but because his or her conscience, shaped by training, education and life experience, will direct the individual to do that which is morally correct. No legislative code of conduct will restrain the member, who lacks the requisite moral integrity, from violating the code but adequate supervision and a proper range of penalties will remind them that there is a price to be paid for misconduct.

Integrity legislation sets a standard of conduct against which the behaviour of the member is to be measured by the public and the ever-increasing cynical and suspicious media. It may not appease the more rabid critics, but it will serve as a source of satisfaction to the member whose conduct is under attack to know that it is the same standard by which his or her peers are also judged.

Government is a big business and like other large corporations requires a statement of corporate values and accepted conduct with an independent officer to monitor activities to guarantee that the 'walk' matches the 'talk'. Self-congratulatory platitudes without openness and accountability no longer satisfy the public.

In October 1995, I appeared, along with other

provincial Ethics Commissioners, before the Special Joint Committee on a Code of Conduct for Parliamentarians. It was my second appearance and while we had an attentive audience, I was left with the impression that the members, while realizing that there were problems, did not enthusiastically embrace the idea of any restrictive legislation. I do not believe that any democratic government, in the present climate of public opinion, can long delay the enactment of legislation to establish standards of ethical conduct for members with an independent commissioner reporting directly to the Legislature or Parliament. Proper legislation protects the members, the various political parties and the public which they represent and more importantly democracy itself.

From 1992 to 1996, I served as a member of the Conflict of Interest Commission for the Northwest Territories. The Commissioner of the various provinces and the federal government held an annual meeting at which matters of common interest were discussed.

In 1993, I gave a lecture on judicial ethics at a seminar for County and Municipal judges at Oxford, Mississippi and later was a lecturer at a Conflict of Interest Symposium in Trinidad. This conference had a large attendance of delegates from neighbouring islands and South American countries. It was a weeklong session as a part of the activities organized to celebrate the 25th anniversary of the independence of Trinidad and Tobago. The President and many members of the government participated in the various forums. The celebration concluded with a brilliant fireworks display at a soccer field below the hotel where the delegates and others were being entertained. The hotel was built into the side of a mountain with the rotunda entrance at the top and the various levels numbered in reverse order. The invitees were an interesting mixture of races, indicating the long time acceptance of racial intermarriage. The invitation stated: “Dress – Ladies, gowns; Gentlemen, elegantly casual”. My host recommended

that I purchase a more colourful shirt and leave my necktie at my hotel.

During one of the discussions, I was surprised to learn that while Trinidad and Tobago was no longer a British colony, appeals from their highest court could still be taken to the Privy Council in London. When I inquired why this practice continued after Independence, the Chairman of the Conflict Commissioner, who was a Judge, said "Their decisions bring finality to difficult cases – and besides, it doesn't cost us anything." A lawyer, also on the Commission, out of the presence of the Judge, stated "We don't think some of the local judges are competent and in addition, a trip to London in the spring is most pleasant."

Delegations from several foreign countries attended at our office seeking information with respect to the Ontario legislation. We provided them with copies of our annual reports and explained our practice and procedures. Some have made return visits and have communicated with us regarding problems in their homelands.

In 1997, I retired as Commissioner and was replaced by the Honourable Robert Rutherford, a former colleague on the High Court of Justice. In February, 2001, he resigned and I was asked by an all-party committee of the Legislature if I would become Interim Commissioner until a new Commissioner was appointed. A new Commissioner, under the Act, could not be appointed while the Legislature was in recess, so I accepted the interim appointment until September, when the Honourable Coulter Osborne, the former Associate Chief Justice of the Court of Appeal was appointed.

On June 29, 2001, the Legislature amended the Legislative Assembly Act, "to provide an arms' length process to determine members' compensation" (MPP Compensation Reform Act, 2001). The Integrity Commissioner was appointed to determine such compensation.

When the matter was first raised with me, I understood that I would be required to make a recommendation with respect to salaries. The Act, however, required that I review the present salary and determine the salary appropriate to the position.

In 1995 and 2000, different Commissions were retained by the government to review members' salaries. Both Reports recommended increases but were not acted upon. I had some concerns as to the constitutionality of the legislation as being an improper delegation of authority. However, after researching the question and obtaining an independent legal opinion, I was satisfied that the delegation of power was within the jurisdiction of the Legislative Assembly.

While I am satisfied that the acceptance of this undertaking did not compromise the integrity of the Office of the Integrity Commissioner, I do not believe that it enhances the reputation of the Office with either the public or the members.

The Report is dated August 27, 2001 and was subsequently delivered to the Speaker as required by the Act.

I remind myself that I determined what I believed to be a proper salary for the position. I had no control over the competence of the individuals whom the electors vote to fill the position.

Today's focus on ethics had its foundation when the American defence industry was besieged with claims of fraud against the government. Insider trading in stocks and manipulation of the market by unscrupulous traders provided greater impetus to the desire for ethical codes in business and government. Voluntary rules have not proved satisfactory and resort must be had to legislation. The more recent examples of corruption in the stock markets have had disastrous consequences for investors. Strict enforcement of legislation which provides for substantial fines, prison terms and recovery of money improperly obtained is necessary. Harsh penalties are mandatory if corruption is established.

The term "business ethics" is an oxymoron. Voluntary compliance frequently amounts to no control. Business and government are pushed by public opinion to remedy the present situation.

The world-wide problem of political corruption requires controls if level playing fields are to be provided for those nations involved in international trade. The governments of many developing nations in which democracy has never flourished depend for their political survival on a military supported dictatorship whose leaders loot the national treasury to support extravagant lifestyles. The natural resources of their countries are targets for unscrupulous foreign business people who demonstrate a complete lack of business ethics, as they exploit the native people by bribing the leaders to sell their natural resources and assets.

In our modern Canadian society, with its varied cultures and social backgrounds, it cannot be assumed that all citizens share the same ethical and moral traditions. While all civilized people support the moral absolutes, there are differences in the way we approach problems which arise in our daily lives. We are not all fashioned in the same mould. Home training, education, tradition and life experiences to a great extent shape the pattern and direction of our ethical conduct. Each generation is exposed to different media influences which create changes in moral and ethical behaviour, and therefore it becomes necessary to review the framework within which political institutions must operate. The standards of today are not the standards of yesterday, nor will they be the standards of tomorrow. Each must reflect the values espoused by present day society.

Ethics is a personal discipline. Dignity and self-respect should be important factors in reaching a decision on issues in which ethics and integrity are involved. The ethics of excellence are best demonstrated by action rather than speech.

There exists in our society today an intense feeling

of insecurity; a sense of lost direction and an attitude that destroys ambition and fosters the development of characteristics and behavioural patterns which are inimical to our normal way of life. Canada is a wonderful country and the only people who fail to appreciate the richness of its natural resources and its many cultural advantages are those fortunate enough to live within our borders. The vital force which animated our forefathers to carve a nation out of a wilderness seems to have lost its drive and become dormant. Something has happened to youthful enthusiasm to seek new opportunities; to challenge a declining work ethic and to fully utilize the superior education and skill training which they possess. Governments should not be expected to provide support for all contingencies in life; however, citizens are entitled to receive from those whom they elect to office honest and efficient government coupled with strong leadership which will channel our natural and human resources in a direction which will benefit our country. Anyone can become a politician but the mantle of statesmanship is reserved for that rare individual who combines intelligence, integrity, and vision with a sense of purpose and commitment to do that which is necessary to enable our province and our country to grow and prosper. The position is always open to the proper candidate.

MARSHALL INQUIRY

The Royal Commission on the Donald Marshall, Jr., Prosecution was an interesting and educational project. It lacked the intensity of a criminal trial but it had the same objective – a search for the truth – involving the freedom and reputation of a citizen against the power of the State.

The Lieutenant Governor in Council of Nova Scotia on October 28th, 1986 established The Royal Commission on the Donald Marshall Prosecution. The Commissioners were Alexander Hickman, Chief Justice of the Trial Court of Newfoundland, Chairman; Lawrence Poitras, Associate Chief Justice of the Superior Court of Quebec and myself.

We were empowered to inquire into, report our findings and make recommendations respecting the investigation of the death of Sandford William Seale on the 18th – 29th day of May, 1971; the charging and prosecution of Donald Marshall, Jr. with that death; the subsequent conviction and sentencing of Donald Marshall, Jr. for the non-capital murder of Sandford William Seale for which he was subsequently found to be not guilty, and such other related matters which the Commissioners consider relevant to the Inquiry.

Marshall was a member of the Mi'Kmaq tribe while Seale was a black male. Both were 17 years old. By coincidence, they met around midnight at Wentworth Park in Sydney, Nova Scotia and shortly thereafter encountered Roy Newman Ebsary and Jimmy MacNeil. A short conversation among the group took place and Seale was stabbed by Ebsary. After three trials, Ebsary was convicted of manslaughter and sentenced to 3 years, later reduced by the Court of Appeal to 1 year. On September 29th, 1986, the Supreme Court of Canada refused his application for leave to appeal.

The principal task of the Commissioners was to determine why Marshall was wrongfully convicted and to make recommendations that would hopefully avoid future miscarriages of justice. However, the circumstances surrounding the matter required a review of the role of police and Crown prosecutors in the criminal justice system; procedures to ensure more equitable treatment of Black and Natives in the criminal justice system; and new mechanisms to deal with cases in which there are bona fide allegations of wrongful conviction.

The following is a Digest of Findings and recommendations of the Commission:

"The criminal justice system failed Donald Marshall, Jr. at virtually every turn from his arrest and wrongful conviction for murder in 1971 up to, and even beyond, his acquittal by the Court of Appeal in 1983. The tragedy of the failure is compounded by evidence that this miscarriage of justice could – and should – have been prevented, or at least corrected quickly, if those involved in the system had carried out their duties in a professional and/or competent manner. That they did not is due, in part at least, to the fact that Donald Marshall, Jr. is a Native.

These are the inescapable, and inescapably distressing, conclusions this Royal Commission has reached after sifting through 16,390 pages of transcript evidence given by 113 witnesses during 93 days of public hearings in Halifax and Sydney in 1987 and 1988; after examining 176 exhibits submitted in evidence during those hearings; after listening to two-and-one-half days of presentations by experts on the criminal justice system's treatment of Blacks and Natives and on the role of the office of Attorney General in that system; and after examining five volumes of research material prepared for the Royal Commission by leading academics and researchers.

The Royal Commission on the Donald Marshall, Jr., Prosecution was not established, however, just to

determine whether one individual was the victim of a miscarriage of justice, or event to get to the bottom of how and why that miscarriage occurred. The Nova Scotia Government, which appointed this Royal Commission on October 28, 1986, also asked us to "make recommendations" to help prevent such tragedies from happening in the future.

As a result, our final Report contains not only findings of "fact" concerning the Marshall affairs, but also specific recommendations dealing with everything from the role of police and Crown prosecutors in the criminal justice system, ways to ensure more equitable treatment of Blacks and Natives in the criminal justice system, and new mechanisms to deal with cases in which there are allegations of wrongful conviction.

There are two subjects, however, about which we are making no specific recommendations. These involve the issue of whether any criminal charges should be laid as a result of our findings, and the issue of whether Donald Marshall should receive additional compensation as a result of the Commissioner's conclusions about his wrongful conviction and imprisonment.

In the case of the former, it is our view that the function of a public inquiry is not to determine criminal responsibility, but to inform people about the facts of the matters under consideration. Decisions of Canadian courts confirm that this is the usually correct and appropriate position for a Royal Commissioner to adopt. We have also concluded that, because we accepted from the outset that the parties in the Marshall affair, both of whom were presented by solicitors during the negotiations, had agreed on a compensation settlement, and since we heard no evidence about the adequacy of the amount agreed to, we are not now in a position to recommend that Marshall should receive addition compensation. However, as a result of our examination of the process by which the compensation was negotiated, we can say that since the process itself was so seriously flawed, Government should now

re-examine the amount paid in light of our findings.

Shortly before midnight on May 28, 1971, Donald Marshall, Jr., a 17-year-old Micmac, and Sandy Seale, a 17-year-old black, met by chance and were walking through Wentworth Park in Sydney when they met two other men, Roy Ebsary, 59, a former ship's cook, and James (Jimmy) MacNeil, 25, an unemployed labourer.

Following a brief conversation, Marshall and/or Seale tried to "panhandle" Ebsary and MacNeil. That simple request – the kind most of us have encountered at one time or another – triggered a deadly over-reaction in the drunken and dangerous Ebsary. "This is for you, Black man", Ebsary said, and stabbed Seale in the stomach. He then lunged at Marshall, cutting him on the arm. Although Marshall's wound was superficial, Seale died less than a day later.

The Commissioners have found that Seale was not killed during the course of a robbery or attempted robbery. Seale, who came from a strict family and was expected home before his midnight curfew, had enough money to catch a bus home. We heard no evidence during our hearings to indicate that he had ever been involved in any criminal activity. Although Marshall had had a few brushes with the law, they were of a minor nature and did not involve theft. Roy Ebsary, on the other hand, had a reputation for violence and unpredictable behaviour, and had previously been convicted on a weapons charge involving a knife.

In our view, Seale and Marshall, who barely knew one another, would not have had the time or the inclination to plan a robbery in the few moments between their accidental meeting and the stabbing. According to the evidence we heard, they didn't even initiate the fateful conversation with MacNeil and Ebsary that ended in the stabbing.

The four Sydney police officers who initially responded to the report of the stabbing – Constables Leo Mroz, Howard Dean, Richard Walsh and Martin MacDonald – did not do a professional job. They did not cordon off

the crime scene, search the area or question witnesses. In fact, none of the four officers dispatched to the scene even remained there to protect the area after Seale had been taken to the hospital. We found their conduct entirely inadequate, incompetent and unprofessional.

The same can be said of the subsequent police investigation directed by the Sergeant of Detectives John MacIntyre. MacIntyre very quickly decided that Marshall had stabbed Seale in the course of an argument, even though there was no evidence to support such a conclusion. MacIntyre discounted Marshall's version of events partly because he considered Marshall a troublemaker and partly because in our view, he shared what we believe was a general sense in Sydney's White community at the time that Indians were not "worth" as much as Whites.

Regardless of the reasons for his conclusions, MacIntyre's investigation seemed designed to seek out only evidence to support his theory about the killing and to discount all evidence that challenged it.

The most damning evidence against Marshall came from two teenaged "eyewitnesses", Maynard Chant, a 14-year-old who was on probation in connection with a minor criminal offence, and John Pratico, a mentally unstable 16-year-old whose psychiatrist later testified that he was known to fantasize and invent stories to make himself the center of attention.

Shortly after Seale died, both youths gave statements to MacIntyre. Chant, although he had seen nothing, generally corroborated Marshall's version of events, while Pratico claimed to have seen two men running away from the stabbing scene. A few days later, however, they both gave contradictory second statements to MacIntye. Practico claimed he had seen Marshall stab Seale during an argument. Chant said he had also heard the argument and seen the stabbing. He placed a "dark-haired fellow" – presumably Practico – in the bushes near where the stabbing took place.

None of this, as we now know, was true. The

information in these second statements came from Pratico and Chant accepting suggestions John MacIntyre made to them. His attempt to build a case against Marshall that conformed to his theory about what had happened went far beyond the bounds of acceptable police behaviour. MacIntyre took Practico, an impressionable, unstable teenager, to a murder scene, offered the youth his own version of events and then persuaded Practico to accept that version as the basis for what became Practico's detailed and incriminating statement. MacIntyre then pressured Chant, who was on probation and frightened about being sent to jail, into not only corroborating Practico's statement, but also into putting Practico at the scene of the crime. MacIntyre's oppressive tactics in questioning these and other juvenile witnesses were totally unacceptable.

Largely because of the untrue statements MacIntyre had obtained, Donald Marshall, Jr. was charged on June 4, 1971 with murdering Sandy Seale.

While the perjured evidence of Chant and Pratico did prove damning in court, we have concluded that Marshall's wrongful conviction resulted as well from the failure of others – including both the Crown prosecutor and Marshall's own defence counsel – to discharge their professional obligations. The Crown prosecutor, Donald C. MacNeil, should have interviewed the witnesses who had given contradictory statements. He did not. He should also have disclosed the contents of those earlier inconsistent statements to the defence. He did not.

Marshall's defence counsel, for their part, failed to provide an adequate standard of professional representation to their client – C. M. (Moe) Rosenblum and Simon Khattar, who had access to whatever financial resources they required, conducted no independent investigation, interviewed no Crown witnesses and failed to ask for disclosure of the Crown's case against their client. Even though, prior to the trial, they were aware that some witnesses had provided

earlier statements, they made no effort to obtain them.

During the course of the trial, the trial judge, Mr. Justice Louis Dubinsky, made several errors in law. The most serious of those was his misinterpretation of the *Canada Evidence Act* which prevented a thorough examination of Pratico's dramatic recanting of his statement against Marshall outside the courtroom. The cumulative effect of all of this was that Donald Marshall, Jr. was convicted and sentenced to life in prison.

Just ten days after Marshall's conviction, however, Jimmy MacNeil came forward to tell police that he had seen Ebsary stab Seale. At the request of the Sydney City Police Department and the Department of Attorney General, the RCMP looked into MacNeil's allegations, but the officer in charge of that investigation, in his own words, "botched" it.

Inspector Alan Marshall did not demand to see the Sydney City Police Department's entire file on the Seale case, did not interview Ebsary, Marshall, Chant or Pratico, and did not even speak to Jimmy MacNeil, except briefly in connection with the taking of a polygraph test. Instead, he relied almost exclusively on the results of those polygraph tests, on what MacIntyre himself had told him about the case, and on his own innate faith in the workings of the criminal justice system. Based on an incompetent and incomplete investigation, Inspector Marshall filed a report that claimed to be "a thorough review of the case", and concluded that Marshall had stabbed Seale.

The fact that MacNeil had come forward with this new and potentially important information was not disclosed to Marshall's defence counsel nor to the Halifax Crown counsel assigned to handle Marshall's appeal of his conviction. As a result, this information was never presented to the Court of Appeal. If it had been, we believe it is all but inevitable that a new trial would have been ordered.

This, however, is not the only important issue that was not brought to the attention of the Court of Appeal.

Neither Marshall's counsel nor Crown counsel raised the issue of the trial judge's erroneous rulings. And the Court of Appeal, which we believe had a duty to review the complete trial record to ensure that all relevant issues were argued, did not identify the significant errors. We believe that the trial judge's error were so fundamental that the Court of Appeal would inevitably have ordered a new trial if it had been aware of those errors. Unfortunately, however, these issues were not raised by counsel or identified by the Court of Appeal and Marshall's appeal was denied.

Despite that, the case resurfaced on a number of occasions after the failure of the appeal. In 1974, for example, Roy Ebsary's daughter, Donna confided to a friend that she had seen her father washing what appeared to be blood from his knife on the night of the murder. When she and the friend went to the Sydney City Police Department with this information, however, they were told by one of the key officers in the original Marshall investigation, Detective William Urquhart, that the case was closed. We believe Urquhart had a duty to pass this information on to his superior officer who in turn would have had an obligation to pass it on to the Crown. The Crown, for its part, would have then had an obligation to provide it to Marshall's counsel, who could have pursued the matter further.

In the end, Marshall's innocence only became apparent as the result of an almost accidental series of coincidences. While in prison in 1981 Marshall learned that Ebsary had admitted killing Seale. On the basis of that information, Marshall's new lawyer, Stephen Aronson, following his own review of the matter, asked police in January 1982 to reopen the case.

Although the RCMP offices assigned to the reinvestigation, Staff Sergeant Harry Wheaton and Corporal James Carroll, were initially skeptical of Marshall's innocence, they did what Inspector Marshall had not done in 1971 – they conducted a painstaking, professional investigation. They not only interviewed all of

the appropriate witnesses – including Maynard Chant, John Pratico, Roy Ebsary and Marshall himself – but they also gathered the physical evidence that indicated that Ebsary's knife had been used to stab Sandy Seale.

This is not to suggest that we believe everything about the 1982 investigation was handled well. We believe the RCMP officers should not have suggested to Marshall during their interview with him in Dorchester Penitentiary that Marshall had better tell them a story they could believe or they would leave and never return, or that they believed "there was something else going on in the park other than just a casual walk through the park to catch a bus".

That led Marshall who, it must be remembered, had spent 11 years in jail unsuccessfully protesting his innocence, to go along with what he already knew was Roy Ebsary's version of events – that the stabbing had occurred in the course of an attempted robbery.

Marshall's statement, which we believe would not have been regarded as voluntary and therefore would not have been admitted into evidence in court if Marshall were on trial, was used to devastating effect against him during the later Court of Appeal Reference hearing. We have also concluded that Harry Wheaton, like John MacIntyre, became blinded by his own assumptions during the course of his investigation by restricting their efforts to interview key members of the Sydney City Police Department.

In fact, we believe the RCMP's own sensitivity to its relations with the Sydney City Police Department and the Department of Attorney General was at the heart of its failure to fully pursue the investigation of the Sydney City Police Department's role in the Marshall case.

Wheaton's creditability as a witness was further tarnished when, during his testimony, he made a number of unsolicited comments about matters that were unrelated to the work of this Commission and which cast unwarranted aspersions on the reputation of an individual.

Nonetheless, it is fair to say that the investigative work by Wheaton and Carroll did lead directly to Justice Minister Jean Chrétien's decision to refer the Marshall case to the Nova Scotia Court of Appeal for hearing and determination. While we believe that the Court of Appeal could have been an appropriate forum to examine why Marshall had been wrongfully convicted, we have also concluded that the decision to hold the reference under what was then Section 617(b) [now Section 690(b)] of the *Criminal Code* instead of Section 617(c) [now Section 690(c)] precluded such a wide-ranging examination.

We find it regrettable that the federal Justice Minister was influenced in this decision by the views of the Chief Justice of Nova Scotia, Mr. Justice Ian MacKeigan, who expressed "real concern over whether [a reference under Section 617(b)] would work." As a result of this decision, Marshall was not only put in the position where he was required to provide his own innocence, but the issue placed before the Court was narrowed to the simple question of whether Marshall was guilty or innocent of the charges against him.

We have serious concerns with certain aspects of the Reference hearing and the decision itself.

Mr. Justice Leonard Pace, who was the Attorney General of Nova Scotia at the time of the original Marshall trial and appeal, should not have sat as a member of the panel hearing the Reference. {It is important to note that the Commission asked to question members of the Court of Appeal about this and other matters relating to the Reference hearing and decision, but they declined to testify before us on the grounds of judicial immunity. The courts upheld their refusal to testify, and so our comments about the Reference are based only on the information available to us from the court records and Chief Justice MacKeigan's letter of transmittal to the Justice Minister.)

While the Court did quash Marshall's conviction and enter a verdict of acquittal, it also inexplicably

chose to blame Marshall for his wrongful conviction. We have concluded that the Court's conclusion in this regard represented a serious and fundamental error. The Court used the evidence before it – as well as information that was never admitted into evidence – to "convict" Marshall of a robbery with which he was never charged, and concluded, in our view erroneously, that Marshall had "admittedly" committed perjury. The Court's further suggesting that Marshall's "untruthfulness… contributed in large measure to his conviction" was not sustained by the evidence before the Court.

At the same time, the Court did not deal with either the significant lack of disclosure by the Crown prior to Marshall's original trial, or the reasons for the perjured "eyewitness" testimony, nor did it deal with the trail judge's error in limiting the cross-examination of Practico.

We have concluded that the Court's decision amounted to a defence of the criminal justice system at the expense of Donald Marshall, Jr. in spite of overwhelming evidence that the system itself had failed.

The Court of Appeal's gratuitous comments about Marshall's responsibility for his own conviction and its conclusion that any miscarriage of justice was more apparent than real played a critically important role in Marshall's negotiations with the Department of Attorney General for compensation for his wrongful conviction. The Supreme Court of Canada commented on this influence in the course of its 1989 decision on judicial immunity. Within the Department of Attorney General, the Marshall case was not handled with the care and respect for fairness that it demanded.

Much of the blame for this must rest with Deputy Attorney General Gordon Coles. He failed to recognize the unique and tragic aspects of the Marshall case, and effectively prevented his Department from treating Marshall with the appropriate respect or fairness.

When Coles did take action in the Marshall case, those actions were often inappropriate. For example, he

should not have engaged in unilateral correspondence with counsel to the Campbell Commission, the Royal Commission which the Province had appointed to determine appropriate compensation for Marshall. Also, he should not have urged Crown prosecution Frank Edwards to take no position with regard to Marshall's guilt or innocence when Edwards appeared before the Court of Appeal Reference hearing.

Although Edwards must be commended for his refusal to back down from his position that he would urge the Court to acquit Marshall, he too acted improperly in arguing that the criminal justice system was in no way responsible for Marshall's wrongful conviction at a time when he knew such a position was not supported by facts.

That argument, as we noted above, was adopted by the Court of Appeal and became an important factor in determining the amount of compensation paid Marshall. We believe that the Province's reliance on those comments – as well as the failure of senior officials within the Department of Attorney General to instruct their negotiator to treat the Marshall case as a unique situation rather than simply another civil dispute to be settled as cheaply as possible – made the compensation process itself flawed and unfair. We believe, as we stated earlier, that the Government should now reconsider the issue of compensation in light of the facts as we have found them.

Neither the Court of Appeal's decision nor the settlement of the compensation issue put to rest public concern about the Marshall case. Shortly after the Supreme Court of Canada turned down an appeal by Roy Ebsary – who had been convicted of manslaughter in 1985 after three trials – the Government of Nova Scotia appointed this Royal Commission in October 1986 to look into the matter and to make recommendations to the Governor in Council."

RECOMMENDATIONS

Having dealt with the facts of the Marshall case from the time of the stabbing in Wentworth Park in 1971 up to our appointment more than 15 years later, we now turn our attention to an examination of the lessons to be learned from what happened to Donald Marshall, Jr.

In the process of investigating the specifics of his case, we were confronted with a number of more general but no less troubling questions. Was the original Sydney police investigation inadequate, incompetent and unprofessional because the police were inadequately trained? Because they were poorly managed? What should be the role of the Crown prosecutor, defence counsel, and officials in the Department of Attorney General in ensuring the "justness" of the criminal justice system? Should the Attorney General be responsible for both the provincial policing function and the administration of justice? Is the criminal justice system inherently biased against minorities and the poor? Should there be specific mechanisms in place to deal with allegations of wrongful conviction and imprisonment? We approached these issues from a number of different perspectives.

During our hearings, we examined the way in which the criminal justice system treated certain high profile individuals who were the subjects of criminal investigations. We compared their treatment with that accorded Donald Marshall, Jr. and used that examination as a basis to assess whether the system treats all citizens equally.

We also commissioned respected researchers to provide us with a broader perspective on such complex issues as minorities and the law, and the respective roles of the police and Crown prosecutors within the criminal justice system. We also examined the office of the Attorney General, the chief law officer of the Crown.

To provide us with an even wider cross section of

expertise and advice, we convened a special consultative forum to which we invited lawyers, academics, social workers, community activists and other experts from across Canada and the United States. During two-and-one-half days of discussions and workshops, these individuals offered helpful comments on the especially complex issues of racism and the Crown prosecutor's pivotal role in seeing that justice is done in an adversarial legal system."

MARSHALL COMPENSATION

On the 22nd day of March, 1990, His Honour The Honourable Lorne O. Clarke, Administrator of the Government of the Province of Nova Scotia, by and with the advice of the Executive Council of Nova Scotia, saw fit pursuant to the *Public Inquiries Act,* to appoint me, The Honourable Gregory T. Evans, Q.C., to recanvass the adequacy of the compensation paid to Donald Marshall, Jr., in light of what the Royal Commission on the Donald Marshall, Jr., Prosecution (The "Marshall Inquiry") found to be factors contributing to his wrongful conviction and continued incarceration, as indicated in Recommendation #8 of the Report of the Marshall Inquiry, and to determine any further compensation which is to be paid as a result.

I was directed in making my inquiry, determination and recommendation to the Governor in Council, to have regard to Recommendations 4, 5, 6, and 7 contained in the Marshall Inquiry Report and to report to the Governor in Council my findings, determination and recommendations.

Recommendations 4, 5, 6, 7 and 8 are as follows:

No limit on compensation amount

We recommend that there be no pre-set limit on the amounts recoverable with respect to any particular claim or any particular aspect of a claim.

Factors to be considered

We recommend that any judicial inquiry be entitled to consider any and all factors which may have given rise to the wrongful conviction, imprisonment or the continuation of imprisonment.

Legal fees and disbursements

We recommend that appropriate legal fees and

disbursement incurred by or on behalf of the wrongfully convicted person be paid as part of the inquiry's expenses.

Report to the public

We recommend that the inquiry report become a public document.

Marshall compensation

We recommend that Government recanvass the adequacy of the compensation paid to Marshall in light of what we have found to be factors contributing to his wrongful conviction and continued incarceration.

Following my appointment, W. Wylie Spicer was appointed Commission Counsel and a meeting was held in Halifax on February 6 with Mr. Spicer, Ms. Anne Derrick, representing Donald Marshall, Jr., and Mr. Jamie Saunders representing the Province of Nova Scotia. Mr. D. William MacDonald, Q.C., Deputy Attorney General for Nova Scotia, also attended. The purpose of the meeting was to discuss the procedure to be followed and to establish a tentative agenda.

On March 25 and 26, a further meeting was held with counsel in Halifax at which it was agreed that since all counsel involved in the present Inquiry had acted as counsel in the Marshall Inquiry, and since I had been a member of that Inquiry, together with the Chairman, Chief Justice Alexander Hickman, and Associate Chief Justice Lawrence Poitras, that the findings set out in Volume 1 of the Report of that Inquiry would form the factual basis for the present Inquiry. Ms. Derrick would be permitted to adduce such additional oral evidence as she may be advised. Other counsel retained the right to cross-examine such witnesses. It was understood that while the examinations would not be conducted in the normal adversarial manner, all counsel were entitled to dispute any evidence introduced before this Inquiry. Documentary evidence would be filed later with written argument to follow and limited oral argument to be heard on May 8, 1990.

The May 8 meeting was postponed to May 31 to

permit counsel to introduce and to dispute actuarial evidence as to loss of earnings and as to future rehabilitative treatment. The actuary and the psychologist were questioned on their reports at a discovery examination and, on consent, a transcript was filed as a separate sealed exhibit.

Oral evidence was heard at public hearings on April 2 and 3. In-camera hearings were heard on April 4 and 5. On the latter date, at the request of all counsel, I examined Donald Marshall, Jr., in the absence of counsel. His evidence was transcribed, and along with all the other evidence, has been reviewed by me.

…

The reason for recanvassing the compensation already paid to Donald Marshall, Jr. results from the finding in the Marshall Inquiry Report that the process by which compensation was originally determined was flawed, and that the compensation awarded was restricted to Marshall's period of confinement in prison without taking into consideration the factors which put him in penitentiary and retained him there for eleven years.

The Marshall Inquiry made the following comments with respect to the flawed process:

The Commission did hear extensive evidence on the process by which compensation was eventually granted. Despite the intention of the Ministers involved, the process was not fair. Marshall's emotional state following 11 years in prison was such that he simply wanted to get the matter over with. It is our view that the final outcome was most significantly influenced by the findings and comments of the Court of Appeal in the Reference. The conclusion that Marshall was involved in a robbery and the opinion that Marshall had 'contributed in large measure to his conviction' provided the Crown with a strong basis for keeping any compensation as low as possible.

We have concluded that there was no robbery, and that there was a gross miscarriage of justice which can in no way be blamed on Marshall. We do not know if the compensation negotiations would have reached a different result had the

facts as we have found them been available to those concerned.

Notwithstanding the release by Marshall, we believe it would be most unjust should that settlement be allowed to stand without any further consideration of its fairness based on the facts as now known. Accordingly, we recommend that Government recanvass the adequacy of the compensation paid to Donald Marshall, Jr. in light of what we have found to be the factors contributing to his wrongful conviction and continued incarceration.

The Marshall Inquiry further commented on the quantum of the award and the facts which were not considered in determining the award:

The Government viewed the $270,000 as compensation for the period of time Donald Marshall, Jr. spent in jail. It did not take into consideration any negligence or wrongdoing that may have put him there or kept him there. Notwithstanding that, Marshall was asked to – and did – sign a full release of any and all claims which he might have had against the Crown. The monies paid to Donald Marshall, Jr. do not in any way purport to compensate him for the inadequate, incompetent and unprofessional investigations of Sandy Seale's murder by John MacIntyre and the Sydney Police Department; the inadequate representation he received at the hands of his counsel; the failure of the Crown Prosecutor to disclose the inconsistent statements of key witnesses; the failure of the Attorney General's Department to disclose their knowledge of Jimmy MacNeil's coming forward in November 1971; and the incompetent reinvestigation by RCMP Inspector Marshall in November 1971 – non of which relates to the period Marshall spent in jail.

It has been more than five years since Donald Marshall, Jr. was awarded compensation. However, it was only with the release of the Marshall Inquiry Report and the apology by the Province of Nova Scotia that Donald Marshall, Jr. can be said to have been vindicated. Having been found innocent in 1983, he was said to have contributed in large measure to his own conviction. This was an indignity which Donald Marshall, Jr. carried with him until this year.

Counsel for the Province of Nova Scotia has advised me that the Government accepts that the period from the decision of the Court of Appeal in May 1983 to February 1990 is also a relevant period which I may consider in awarding compensation.

Subsequent to oral argument being made on May 31, 1990, the Canadian Judicial Council convened in Halifax to hear evidence concerning the conduct of five Judges of the Nova Scotia Court of Appeal who had heard the Marshall Reference case in 1982. At these Judicial Council hearings, counsel acting for three of the Judges, on their behalf, accused Donald Marshall, Jr. once again of lying at his Trial and of being, at least in part, to blame for his own conviction, conclusions emphatically rejected by the Marshall Inquiry. These accusations received extensive media coverage. Counsel for Donald Marshall, Jr., as a consequence of these accusations, filed with me a copy of the submissions made by counsel for three of the Judges. I am asked to consider those submissions as forming part of the damages still being inflicted on Donald Marshall, Jr. I have reviewed his comments, but I do not consider that they are relevant to this Inquiry. Regrettably, they have adversely affected Donald Marshall, Jr. and his family by reviving memories of a tragic and traumatic experience which they believed and hoped had finally been laid to rest.

...

The Current Compensation Scheme in Canada

Canada ratified the *International Convenant on Civil and Political Rights* and the *Optional Protocol to the Covenant* on August 19, 1976. The *Covenant* is a binding obligation in international law upon the federal and provincial governments.

Article 14(6) of the *Covenant* provides as follows:

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has

been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

In Canada, the only method whereby an individual who has been wrongfully convicted and imprisoned can be compensated is through an ex gratia payment by the Crown. Public attention has recently been focused on this lacuna in Canadian law with the result that the matter was considered at a Federal-Provincial Deputy Ministers Conference in 1985 and a Task Force set up to consider the issue. In their Report they examined redress mechanisms in foreign jurisdictions, looked at Canadian compensatory schemes, highlighted a number of significant issues and suggested a number of options whereby a wrongfully convicted and imprisoned person could be compensated.

In March 1988 at a meeting in Saskatoon of Federal and Provincial Justice Ministers, the Federal/Provincial Guidelines relating to compensation for persons wrongfully convicted and imprisoned were adopted. In addition, the Federal Government announced that it would pay 50% of the cost of compensation awarded in accordance with these Guidelines to persons who had been wrongly convicted. A copy of these Guidelines is included as Appendix 4 to this Report.

The fact remains, however, that there is in Canada no legislative mechanism to provide compensation to those who have been unjustly deprived of their freedom. It is in this context that I must reassess the compensation already paid to Donald Marshall, Jr. This compensation must also be fashioned in light of the request made by Counsel for Donald Marshall, Jr. that compensation paid to him and to his parents be in the form of a structured settlement to the fullest extent possible.

Counsel for the Government of Nova Scotia has indicated that the Government is in full agreement with

the proposal made by counsel for Donald Marshall, Jr. that the award be in the form of a structure.

Compensation in General

Compensation is comprised of two major components: reparation for financial losses suffered, whether past or future, as a result of the wrongful imprisonment (known as pecuniary loss) and an amount of money intended to alleviate the consequences of the wrongful imprisonment (known as non-pecuniary loss). This latter component, in the traditional setting of a person injury case, addresses such questions as pain and suffering caused, for instance, by the loss of a limb. It is necessarily arbitrary since money is obviously not a true replacement.

Assessment of pecuniary loss is often based on actuarial calculations of income lost, based on a person's career pattern, age, physical condition, etc. If the victim is well-established in a career, this exercise can have some hope of accuracy. If the victim is young, however, it is naïve to place reliance on lost income calculations based on a career not yet begun.

Money for non-pecuniary loss should be forward looking, to provide consolation to the victim with which he can continue his life. It must consider the individual situation of the victim, and in the context of wrongful imprisonment, this aspect of a claim should recognize the fact that the wrongdoer may be the Government itself, or those associated with the judicial system – the very people in whom we must all place our trust in order for our democratic society to function fairly.

The Claims

The following claims have been submitted for consideration in this case:

Donald Marshall, Sr. and his wife, Caroline

Pecuniary

Non-Pecuniary

Donald Marshall, Jr.
Pecuniary
Past loss of income
Future Loss of Income
Cost of future care
Non-Pecuniary
Derivative Claim

MR. AND MRS. DONALD MARSHALL, SR.
Pecuniary Losses

All counsel agreed that the pecuniary losses of Donald Marshall, Jr.'s parents should be assessed at $55,023.18. This amount was arrived at by estimating the cost of visits by Donald Marshall, Jr.'s parents to Dorchester and Springhill to visit their son, the costs of accommodation associated therewith, telephone and various other expenses incurred during the eleven years of this incarceration.

Mr. And Mrs. Marshall are entitled to interest on this principal amount. Since the claim was incurred over the eleven year period of Donald Marshall, Jr.'s incarceration, it is appropriate to calculate the interest by averaging the Chartered Bank 90-day deposit rates in force over that eleven year period and then dividing that average by two. This method recognizes the fact that the entire loss was not incurred completely at one time. The information provided to me was that the rate over that eleven year period on 90–day deposits was 9.84, half of which is 4.92 per cent. Interest on the principal amount at this rate over eleven years is $29,777. Interest for the remaining eight years (from 1982 to 1990) should be at the full rate since the expenditures had been fully made by the Marshalls by 1982. The information provided to me was that the Chartered Bank 90-day deposit rate average for the years 1982 to 1990 was 9.7 per cent. Interest on the principal amount at that rate amounts to $42,697.98. The total amount of interest, I therefore find to be $72,475 which, added to the principal amount, produces a total amount for pecuniary loss of $127,498.18.

Non-pecuniary Losses

This part of the claim is to compensate the parents of Donald Marshall, Jr. for the years of anguish, anger and frustration which they suffered with such dignity whilst their son was in prison. I may have had some difficulty in concluding that the parents of Donald Marshall, Jr. were entitled to compensation for this loss, bearing in mind the terms of the Order-in-Council, but Mr. Saunders removed any such doubt when he advised that the Government of Nova Scotia urged me to favourably consider such an award. I repeat part of Mr. Saunders' submission on this point with which I am in full agreement:

There can be no doubt that they suffered immeasurably by virtue of their eldest son's arrest, conviction and incarceration.

Feelings of uncertainty, sorrow, anger, frustration and loneliness must have been their constant companions.

Yet it is a measure of their strength, love and spiritually that they never despaired. They refused to give up hope. They imparted that support and strength to their son by visits and phone calls whenever they could manage.

As Grand Chief, Mr. Marshall held a position of the highest responsibility and respect. As a proud man, he kept his feelings to himself. He was unable to share the burden of shame he felt with others.

He and his wife depleted their own savings, or borrowed from others, in order to visit their son in prison. Personal recollection indicates that either Mr. or Mrs. Marshall, Sr. was in attendance every day during the public hearings held in Sydney. Their support for their son was unwavering. Fortunately, he has had, and will continue to have, their help, tolerance and guidance.

The evidence discloses that in the year following Donald Marshall, Jr.'s incarceration, his father's business suffered. Work dropped off. They were the victims of crank calls. He had to unlist their telephone number with the obvious result that their business was adversely affected. This is compensable. There is no evidence to what degree it suffered but we recommend it be taken into account by the Commission in

determining an appropriate lump-sum award to Mr. and Mrs. Marshall.

The following excerpts from the testimony of Mr. Marshall, Sr. demonstrate directly the suffering endured by both he and his wife:

Mr. Marshall, did Junior's conviction and imprisonment have an effect on your ability to do your job as Grand Chief?

That's very, very hard to describe. It was very hard for me to face any public gatherings, even to my people, because myself, personally, I have a feeling that, you know, the people say to me now, in my mind, people saying that, 'There he is. His son killed somebody. There he is himself.' So it was really hard for me to face my people.

…

Mr. Marshall, was Junior's conviction regarded as a disgrace to you and your family?

I would say, yes.

In his submission, Mr. Saunders suggested that I might find some guidance in arriving at a quantum for this portion of the award from the fatal injuries cases, and the awards given therein, in respect of damages suffered by family members following the death of a love one. While these cases have been of some assistance to me, they are significantly different inasmuch as Donald Marshall, Jr. is now back with his family.

Having reviewed all the material before me, I find that $25,000 is an appropriate amount to recommend as a joint award to Mr. And Mrs. Marshall for their non-pecuniary losses.

Mr. and Mrs. Marshall are entitled to interest on the sum of $25,000. I find that their suffering lasted throughout the period of their son's incarceration, and indeed, right up to the present time. Accordingly, and as explained earlier, the interest rate should be set at 4.8 per cent or one-half of the 90-day rates for the period 1971-1990. This generates an interest amount of $22,871.25 for a total of $47,871.25 for non-pecuniary losses.

I shall deal later in this Report with the request

made by Mr. And Mrs. Marshall that as much of their award as possible be placed in a structure.

CLAIMS OF DONALD MARSHALL, JR.

Pecuniary Losses

At the time Donald Marshall, Jr. was charged with murder in June 1971, he had been out of school for merely a year. He had been helping his father in the latter's drywalling business, but it is very difficult to say whether he would have made a career of it. As a result of his years in prison, I accept that he is now partially disabled from holding a 9 to 5 job. To what extent that disability is a result of the prison experience is an impossible question to answer. Also interfering with Donald Marshall, Jr.'s ability to work is his substance abuse problem. Once again, how much of that disability has been caused by his prison experience and the way he has lived since being released from prison must remain an imponderable.

I have concluded that it is not appropriate to try to assess the pecuniary loss of Donald Marshall, Jr. either past, present or future by the use of the actuarial material provided to me. I refer to the comments of Dickson, J. of the Supreme Court of Canada, in Andrews v. Grand & Toy Alberta Ltd. (1978), 893 D.L.R. (3d) 452 (SCC) at p. 458:

The apparent reliability of assessment provided by modern actuarial practice is largely illusionary, for actuarial science deals with probabilities, not actualities. This is in no way to denigrate a respected profession, but it is obvious that the validity of the answers given by the actuarial witness, as with a computer, depends upon the soundness of the postulates from which he proceeds. … actuarial evidence speaks in terms of group experience. It cannot, and does not purport to, speak as to the individual sufferer…

This problem is exacerbated when the claimant is a youth. In this case, notwithstanding the best efforts of counsel, the material filed is simply too speculative to be of much assistance.

Nor do I intend to assess the degree to which Donald Marshall, Jr. is disabled from working based on the psychologist's report submitted to me. Once again, I find that this material is too speculative.

Instead, I believe that the appropriate way to deal with the pecuniary losses of Donald Marshall, Jr. is to recognize that, by some method, he should be provided with an income which will allow him to live his life with dignity. I have concluded that an income of $1,875 per month indexed at 3 percent per year will produce such a result. Later in this Report, I deal with the way in which such an income will be generated.

Donald Marshall, Jr. has a substance abuse problem. That fact is admitted. The evidence is uncontradicted that in order for him to be able to live a productive life, he must overcome this problem. It would also seem to be the case that at this moment, Mr. Marshall, Jr. is unlikely to immediately seek out treatment and rehabilitation. It is, nevertheless, clear that it would be appropriate to set aside an amount of money which could be drawn upon by him should he decide the time had arrived for him to seek rehabilitation.

I, therefore, recommend that the Government of Nova Scotia undertake to provide a sum not to exceed $50,000 to cover necessary expenses for the treatment and rehabilitation of Donald Marshall, Jr. at a recognized treatment center, to be chosen by him. The accounts for treatment are to be forwarded directly to the Government agency appointed to deal with the matter. Transportation and other proper expenses are to be forwarded to the same agency.

At some point, Donald Marshall, Jr. should take the initiative to seek professional assistance in his rehabilitation. The continuing publicity concerning his tragedy makes any consideration of immediate treatment most unlikely. However, these monies should not be made available in perpetuity. I, therefore, recommend that the fund be available to him provided that treatment commences within five years from the date of this Report.

Early treatment and complete cooperation will enhance his opportunity not only for a longer life, but for a better quality of life.

It was submitted by counsel for Donald Marshall, Jr. that the rehabilitation and treatment award should be given to him whether he participated in a program of rehabilitation or not. This argument flies in the face of well recognized legal authorities and must be rejected.

Non-Pecuniary Losses

There is no medium of exchange for happiness. There is no market for expectation of life. The monetary valuation of non pecuniary losses is a philosophical and policy exercise more than a legal or logical one… No money can provide true restitution.

(per Dickson, J. in Andrews v. Grand & Toy Alberta Limited. Supra, at p.475-6.)

Money, however, is the only way known to the law to compensate a person for non-pecuniary losses.

As a victim of wrongful imprisonment, Donald Marshall, Jr. suffered at the hands of the judicial system itself. This very institution in which we pride ourselves so greatly, failed him grievously.

The types of losses which a person suffers as a result of wrongful imprisonment have recently been identified in a paper by Professor H. Archibald Kaiser, *"Wrongful conviction and Imprisonment: Towards an End to the Compensatory Obstacle Course",* Windsor Yearbook of Access to Justice, 1989, many of which were considered by the New Zealand Royal Commission in the Arthur Allan Thomas case, which will be referred to later:

loss of liberty;
loss of reputation;
humiliation and disgrace;
pain and suffering;
loss of enjoyment of life;
loss of potential normal experiences, such as starting a family or social learning in the normal workplace;

other foregone developmental experiences, such as education or social learning in the normal workplace;

loss of civil rights;

loss of social intercourse with friends, neighbours and family;

physical assaults while in prison by fellow inmates and staff;

subjection of prison discipline, including extraordinary punishments imposed legally (the wrongfully convicted person might, understandably, find it harder to accept the prison environment), prison visitation and diet;

accepting and adjusting to prison life, knowing that it was all unjustly imposed;

adverse effects on the claimant's future, specifically the prospects of marriage, social status, physical and mental health and social relations generally.

Professor Kaiser continues with the following apt commentary:

Surely few people need to be told that imprisonment in general has very serious social and psychological effects on the inmate. For the wrongfully convicted person, this harm is heightened, as it is hardly possible for the sane innocent person to accept not only the inevitability but the justice of that which is imposed upon him. For the person who has been subjected to a lengthy term of imprisonment, we approach the worst case scenario. The notion of permanent social disability due to a state wrong begins to crystallize. The longer this distorting experience of prison goes on, the less likely a person can ever be whole again. Especially for the individual imprisoned as a youth, the chances of eventual happy integration into the community must be very slim.

Mike Grattan, who was convicted in 1971 and sentenced to life imprisonment for a murder committed when he was 15 years old, and who served approximately eleven years in Dorchester Penitentiary and the Springhill Correctional facility gave a graphic description of prison life. He and Donald Marshall, Jr. served time in the same institutions and knew each other very well. His description of grey walls, grey cement floors, grey bars, grey cell doors, grey-faced people and grey

food, is indicative of the custodial setting in which an air of fear and tension continually existed. Punishment in the form of solitary confinement, loss of visiting rights and recreational privileges was a constant possibility. Violence among inmates flared up on the slightest provocation, real or imagined, and resulted in beatings, stabbings and deaths. Drugs, alcohol and weapons were a part of this noisy, cold and frightening place with searchlights flashing intermittently and the ever-pervasive smell of sweat and ammonia. His evidence reveals that prisoners live without privacy, subject to rules which govern their every hour, where strip searches and confinement in segregation are common occurrences. This was "home" to Donald Marshall, Jr. for eleven years – a life without freedom, without hope and without dignity.

It must not be forgotten that Donald Marshall, Jr. suffered these indignities as a Native person. He suffered the loss of his ability to use his language in prison because of the fact that he was Native. He may have lost the opportunity to become Grand Chief of the Micmac Nation due to his incarceration. The evidence indicates that the Micmac community is very close knit and that Donald Marshall, Jr. would have suffered in the extreme by being wrenched away from the community as a youth.

As found by the Marshall inquiry, many of the wrongs that were inflicted on Donald Marshall, Jr. were inflicted by the Government or by those charged with the administration of the judicial system in the Province of Nova Scotia. These are legitimate items which I may take into account in assessing the amount of money to be recommended as an award to Donald Marshall, Jr. for his non-pecuniary loss.

All counsel have referred to the "Trilogy: cases of Andrews, Teno, and Thornton, in which the Supreme Court of Canada determined that a limit of $100,000 was appropriate for the most serious non-pecuniary loss. The Federal –Provincial Guidelines set a limit in

the same amount. The Marshall Inquiry recommended that there be no pre-set limit and the Government of Nova Scotia accepted that recommendation. Subsequent cases in the Supreme Court of Canada decided that inflation is a proper factor to be considered and the limit is now in the vicinity of $200,000. I am not bound by this limitation, nor do I consider that the rationale which led to the limitation is applicable in this case, although the judgments do provide assistance in understanding the nature and purpose of a non-pecuniary award.

In the New Zealand case of Arthur Allan Thomas, who was convicted of murder and later granted a free pardon, a Royal Commission awarded him approximately $250,000 Canadian, without any award for interest, as compensation for non-pecuniary loss. Thomas was 32 years old at the time of conviction and spent nine years in prison. Without attempting to make a comparison, I point out that Donald Marshall, Jr. was in custody for eleven years from age 17 to 28. This is probably the most important period of a person's life, during which decisions on the future are formed and steps taken to advance them. These are years which can never be relived or replaced.

The primary objective of damages is to compensate the victim. Ability to pay is irrelevant in the quantification of pecuniary losses once the evidence is available to establish the actual monetary loss sustained. In a non-pecuniary situation, the loss cannot be quantified. There is no dollar figure which can replace lost years, lost opportunities or compensate for the injury sustained by the victim. I can only recommend an amount as solace which is fair and reasonable in the unusual circumstances of this tragic miscarriage of justice.

After assessing all the above factors, I recommend that the appropriate additional amount to be awarded to Donald Marshall, Jr. for his non-pecuniary losses, inclusive of interest, is $382,872. Of this amount, $225,000 represents the principal with the remaining $157,872 being interest calculated on the following

basis. The losses incurred commenced in 1971 and continue to the present. Accordingly, and consistent with the manner in which interest has been calculated in other portions of this Report, the appropriate interest figure is 4.8 per cent. For the years 1971 to 1984, this generates interest in the amount of $140,400. In 1984, Mr. Marshall, Jr. received $173,000 and, therefore, for the remaining six years, interest should be calculated on the balance of the principal not yet paid, being $52,000. The amount of interest generated on this principal amount (calculated on 50% of the 90-day rate of 11.18 per cent for the years 1984-1990) for six years is $17,472 ($2,912 a year), for a total interest amount of $157,872. From this total must be deducted $183,000, of which $173,000 was received as a result of the first compensation process in 1984, and the remaining $10,000 payment made recently upon my recommendation. In making this deduction, I am applying the total amount of the interest ($157,872) and $25,128 of the principal to this reduction. The net amount of the award to Donald Marshall, Jr. for non-pecuniary losses is, therefore, $199,872, all of which is to be considered principal.

THE DERIVATIVE CLAIM

It has been argued by counsel for Donald Marshall, Jr. that part of the award of compensation to Donald Marshall, Jr. should be in the form of monies to be paid to the Grand Council of the Micmac Nation in trust. These monies would be used to establish and operate a Native Survival Camp for Micmac children, the idea being that the Camp would seek to retain and strengthen Native culture in Micmac children. It is suggested by counsel that Donald Marshall, Jr. would like to work at such a Camp.

I agree with counsel that the evidence before me is clear that Donald Marshall, Jr. has a particular ability to work with young children and that he has expressed an interest in being able to work at such facility.

With the experience and information gained as a Commissioner on this Inquiry and on the Marshall Inquiry, I agree with counsel that the concept of a Native Survival Camp is a worthwhile project and would no doubt assist in strengthening Native cultural values amongst Micmac children in Nova Scotia.

Notwithstanding my own support for such an idea, I cannot find authority in the Order-in-Council constituting this Inquiry whereby I could recommend such an award as part of compensation to Donald Marshall, Jr. I am being asked by this request to recommend an amount to finance a project in which Donald Marshall, Jr. will be involved as a part of his rehabilitation and as reparation to the Micmac community. I have already recommended compensation to him in the form of a substantial down payment and also by way of an income to entitle him to live with dignity. I have also recommended payment to him for his non-pecuniary losses which are intended to alleviate the consequences of his wrongful imprisonment. A further recommendation is that monies be set aside to facilitate his future substance abuse treatment and rehabilitation. In my view, I have recommended fair and adequate compensation to Donald Marshall, Jr. to the full extent permitted by the terms of the Order-in-Council. The request to fund the Grand Council to set up a Survival Camp falls outside the scope of my authority, and I do not recommend it.

In concluding this aspect of the award, I do note that part of the material filed with me includes the summary of the response of the Government of Nova Scotia to the Marshall Inquiry Recommendations. It is clear from reviewing this response that the Government of Nova Scotia is sensitive to the fragile position of the Micmac culture. The Government seems well disposed to responding to these concerns of the Micmacs. There is a rising consciousness among Canadians throughout the entire country that we have been less than generous and understanding towards

aboriginal people, particularly in recognizing that they possess their own culture, languages and a way of life that has survived for centuries under difficult conditions and that it is worthy of preservation. The ceremonial drum is sounding a new era for aboriginal people whose leaders are developing educational programs and political strategies designed to bring to the attention of the public that they have been deprived of their ancestral lands, their cultural heritage and Native lifestyle. The leaders are creating a new confidence among their people; fostering an appreciation of the beauty of their own distinctive heritage; and instilling in them a firm resolve to play a more important role in the future of Canada.

A survival camp project should be a cooperative endeavour involving participation by governments, Micmacs and interested citizens. The amount required to fund the operation is relatively modest, and with the guidance and experience of the Elders of the Micmac community, the project could serve as a symbolic bridge between the Native and the White communities. In particular, in the Government's response to the involvement of Micmacs in the justice systems, there is a clear indication of the Government's readiness to establish pilot projects to assist in eradicating difficulties encountered by Micmacs in dealing with the justice system. The request for funding for the Cultural Survival Camp might be properly directed to the Government. This Compensation Inquiry cannot be used as a means to solve issues other than the provision of proper compensation to Donald Marshall, Jr.

…

RECOMMENDATIONS

The Claims of Mr. and Mrs. Donald Marshall, Sr.

The total recommended award to Mr. and Mrs. Donald Marshall, Sr. is $174,265.27. Of this amount, $94,242.09 is comprised of interest on the principal amounts awarded.

I recommend that an immediate payment be made to Mr. and Mrs. Marshall of $94,242.09.

I further recommend that an annuity be purchased by the Government of Nova Scotia in the amount of $80,023.18. This annuity is to be jointly in the names of Donald and Caroline Marshall, or survivor, to be indexed at the rate of 3% per annum and to pay the amounts set out on the dates specified in Appendix 5, annexed hereto, with a minimum guarantee of ten years.

Claims of Donald Marshall, Jr.

I have previously recommended as an award to Donald Marshall, Jr. for his non-pecuniary losses, the principal amount $199,872, (being $382,872, with the deduction for the $183,000 already received). I recommend that this sum be paid to Donald Marshall, Jr. either as a lump sum or, at his option, all or any portion of $199,872 may be added to the annuity to be purchased by the Province of Nova Scotia herein referred to.

Chief Justice Alex Hickman, Trial Court, Supreme Court of Newfoundland and Labrador, Associate Chief Justice Lawrence Poitras of the Supreme Court of Quebec, and The Honourable Gregory T. Evans

I further recommend that the Government of Nova Scotia undertake to provide a sum not to exceed $50,000 to cover necessary expenses for the treatment and rehabilitation of Donald Marshall, Jr. at a recognized treatment center, to be chosen by him. The accounts for treatment are to be forwarded directly to the Government agency appointed to deal with the matter. Transportation and other proper expenses are to be forwarded to the same agency.

I further recommend that the Province of Nova Scotia purchase an annuity for Donald Marshall, Jr., which annuity will generate a monthly income of $1,875. This amount is to be indexed at the rate of 3% per annum and is to be guaranteed for the life of Donald Marshall, Jr. The amounts payable are set out on the dates specified in Appendix 6, annexed hereto, with a minimum guarantee of thirty years, by which time this annuity will have paid in excess of one million dollars to Donald Marshall, Jr.

My Report was submitted to His Honour The Lieutenant-Governor of Nova Scotia in June, 1990.

CANADA - U.S. FREE TRADE AGREEMENT

On December 30, 1988, I was appointed on the recommendation of John C. Crosbie, Minister for International Affairs to the Roster for Extraordinary Challenge Committees established under the Canada – U.S. Trade Agreement. My friend and former colleague, Bud Estey, was also appointed to the Roster, along with three other retired Canadian Judges.

The stated purpose was to provide for binding bi-national panel dispute settlement in anti-dumping and countervail duty cases.

The American Government made similar appointments. In addition, both governments appointed members to dispute settlement panels to deal with the disputes which arose in the normal course of business. The Extraordinary Challenge Committee was intended to deal with more serious cases.

The procedure followed was the appointment of one panelist by each government and those panelists would select, by chance, another panelist. In the two cases in which I was involved, the third panelist was a Canadian. The first was resolved in favour of the Canadian position by a unanimous vote, while the second, by a split decision, was also in favour of Canada. In both situations, the American government appealed and either disregarded the decisions or introduced new legislation to defeat the result of decisions. I considered the process to be a waste of time in view of the American reaction to an unfavourable result and refused a re-appointment to the Committee.

The two American retired judges with whom we sat were well informed and highly respected jurists and I very much enjoyed my association with them.

When dealing with trade disputes between the United States and Canada under the Free Trade agreement, the issues were to be considered by a bi-national panel. Only under exceptional circumstances was the decision of the panel to be reviewed by the Extraordinary Challenge Committee of which I was a member. The problem is that the United States considers every adverse decision by the original panel to be wrong and gives them the right to resort to the Extraordinary Challenge Committee.

The mechanisms were enshrined in the Free Trade Agreement because Canadians wanted relief from the political pressures at work in Canadian-U.S. trade regulations while the Americans did not want to relinquish authority over imports to a bi-national body.

The issue before the Extraordinary Challenge Committee was whether the contracting parties will be held to honour the bargain they struck and to accept the adjudications by which they have agreed to be bound.

Appeals of decisions of a panel could end up being used whenever a resentful agency objects at complying with an adverse panel decision or whether domestic political pressure is marshalled against the decision.

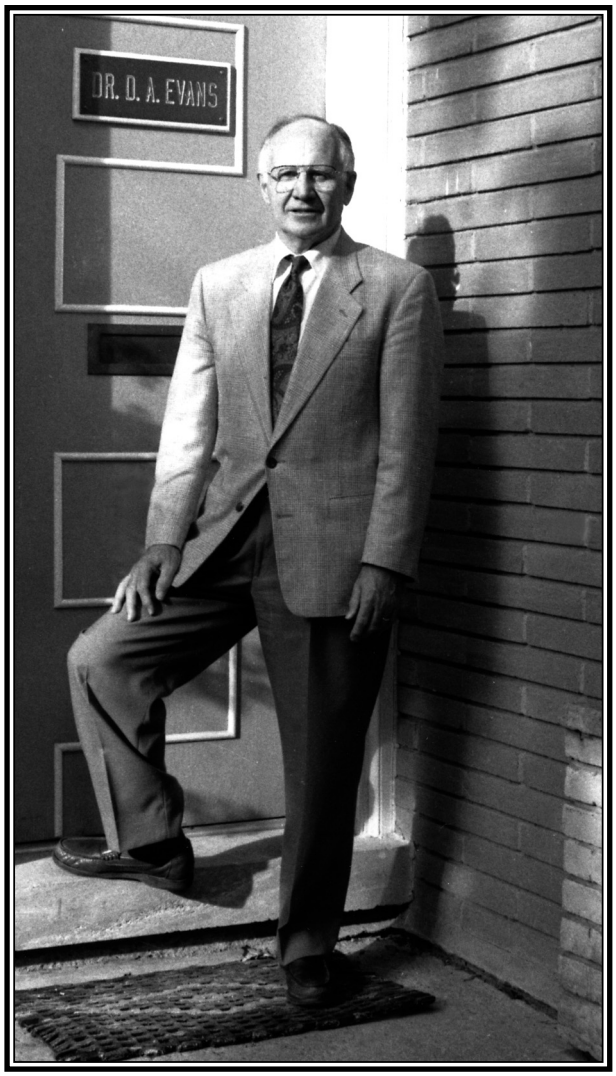
The Canadian position was that conducting an unprecedented review of the panel's decision would violate and politicize the dispute settlement mechanism if the panel's decision was not upheld. A result unfavourable to the United States is almost immediately reversed by legislation supported by lobbying groups whose interests will be affected.

The American government has a great reluctance to become involved in any international organization unless it can exercise control. The recent refusal to join the International Crimes Commission is the most difficult to understand. Their position is that if an American soldier committed a crime in a foreign country he would be tried by a foreign court. They overlooked the provision that the foreign court would only have

jurisdiction if the American Court failed to deal with the matter within a period of twelve months.

American foreign policies appear to be determined by lobbyist groups who exert pressure on the legislators to influence protective legislation for the benefit of those whom they represent.

There is no doubt that Canada depends upon free trade with the United States. It is our best customer. We have natural resources which the Americans lack and they drive hard bargains to acquire what they need. American capital controls most of our resources and large manufacturing industries. Regrettably it is a trend which seems to be growing at an ever-increasing rate.



My brother, Dan

DIONNE QUINTUPLETS

In the spring of 1935, I had learned from one of the regular guests at the hotel that the firm for which he worked was interviewing candidates for a position as a travelling salesman. The interview was to take place in North Bay where he lived. I travelled with him to North Bay; had my interview as did five or six others, and was told that the company was seeking a more mature person, preferably one with a car. Another of the unsuccessful applicants who did have a car, and I, had lunch together and he asked me if I wanted to see the Dionne Quintuplets. I was anxious to do so and we proceeded to the small hospital where they were living across from their parents' home. There were several other visitors present. The babies could only be seen at certain times through a window of the hospital while wrapped up and held by nurses.

The weather was cold and miserable. One of the five was ill and the two nurses each held two babies whose faces were scarcely visible above their protective clothing.

I was to see them again in 1937, after finishing my first year at law school. I was hitch-hiking and contacted a friend, a desk clerk at the King Edward Hotel, who told me a couple from Michigan were planning to visit the Quints the next day. This was their first visit to Toronto and they were happy to have a guide. The route was over to Yonge Street and straight up Highway 11 to Callander with a profusion of signs directing you to "Quintland". The surroundings were quite different from my previous visit. There were souvenir stands, a paved road and a greatly enlarged building in which the children were living. A police officer directed the

visitors along a platform where the five children could be seen through a large window. Some of them were riding "kiddie cars". We were told not to make any noise so as to attract the attention of the children who were unable to see you through the one-way glass which had some sort of a fine wire mesh protecting it. I was amazed at the change in the children – they were very healthy looking – if somewhat overweight – playing around in identical play suits and being supervised by two women who I assumed were part of the staff.

I was also amazed by the respectful manner in which a large crowd viewed the scene. A small group of French speaking nuns were quietly reciting the rosary a short distance away from the window. Men from different walks of life were removing their hats; there was no disorder. One might say, "It was as quiet as a church." There was something reverential about the scene as though the visitors were viewing a miracle. In many ways, it was a miracle that five tiny children, born in primitive surroundings, had survived to reach the age of four. I was aware of the disharmony between the parents of the Quints and the Provincial Government. French newspapers, which I obtained occasionally, decried the enforced separation of the Quints from their parents and siblings, while the English media supported the actions of the government in protecting the children from exploitation by American entertainment promoters and unscrupulous entrepreneurs. That they survived their early years must, in part, be attributed to the generosity and support of the Canadian people. The Quints arrived during the dark days of the depression and the common interest, which focused on them, provided a window of hope and encouragement.

In 1998, the Government of Ontario accepted their claim for compensation and awarded the three surviving sisters $1,000,000.00 each and a similar amount to one who had died leaving children. One had died earlier unmarried.

Following the settlement which was approved by their solicitors, Clayton Ruby, and their public relations agent, the Quints expressed concern about the handling of their financial affairs during their guardianship by the Government and by their deceased father with whom their relations had been acrimonious in the extreme. By a rare coincidence, I was privileged to meet the Dionne's in May, 1998.

While on vacation in Florida, Premier Mike Harris, required me to investigate the financial dealings of the respective guardianships and report the results directly to the Dionne sisters. He told me that a financial settlement had been concluded and a comprehensive release had been executed waiving any further claims against the Provincial Government, its agents, employees, etc. On that understanding, I accepted the offer and a week later returned to Toronto and commenced my investigation.

I arranged to meet with the Dionne sisters at their home in Montreal, along with their public relations agent and a son of one of the sisters. Mr. Ruby also attended, along with a television crew. I had no expectation, but offered no objection to the TV and the lawyer, although I did not see how it would assist in my investigation. It was soon obvious that any interview with the sisters alone was unlikely at that time. I was aware that a reception was planned for them at North Bay and, on being advised by them of the date, I said that I would confirm, in writing in a few days if I were able to attend. On return, I confirmed my attendance and stated that I wished to discuss certain matters with them.

After the meeting in Montreal, I retained a forensic accounting firm and proceeded to read everything that I could locate concerning the Quints, including biographies of former Premier Mitchell Hepburn and newsprint articles of their early years. Many published articles by social workers and writers were available as well as movies and TV programs. As I continued with

this interesting research, it soon became obvious that those advising the Quints did not appreciate the limited extent of my mandate. Many of the requests which I received from them related to allegations of negligence against government employees and others who were protected by the release executed at the time of the settlement. Other requests were simply not relevant.

At the meeting in North Bay, it became evident that I was never going to meet alone with the sisters with whom I had no difficulty in communicating during our brief meeting in Montreal. It became increasingly clear to me that their group of advisers expected additional payment from the government. They were not prepared to recognize that the releases which had been executed by the sisters and negotiated by their solicitor, foreclosed them from further claims or compensation. Under the circumstances, I concluded that I could not continue with my investigation. I advised the sisters in writing and requested the Attorney General to cancel my mandate. I advised the Dionne sisters personally that I did not feel that I should continue. They graciously accepted my decision. Certain media reports by journalists who were ignorant of the terms of my mandate also aggravated the situation.

I very much regretted the decision which I felt compelled to make. The Dionne sisters are kind and gentle women who are not in the best of health. Their lives have not been easy and they have reached a time when they require security and compassion. When I spoke with one of them alone in their garden in Montreal, I expressed the hope that they would obtain competent financial advice with respect to the compensation which they had received. There was no suggestion that it was inadequate, but she stated, "It would have been nice if we had received it earlier." I agreed with her comment.

It is exceedingly difficult in 1998/99 to look back and try to reconstruct life in the mid 30's and early 40's. I had the advantage and the disadvantages of living in

Northern Ontario during that period and had a close association with the leaders of a Franco-Ontarian Association who had a great interest in the Dionne Quintuplets and their welfare. I am quite confident that my investigation would have been complete and fair had personal access to them not been denied to me.

The Attorney General acceded to my request and a Judge of the Superior Court replaced me. As required, her report has been provided to the Dionnes and the Government. The contents of the report have not been released by the Dionnes. I doubted that further compensation would be recommended in view of the complete release signed by them. However, in fact, the Ontario government did contribute a substantial sum in their names to a charitable organization for the welfare of children in which they expressed an interest, but no further compensation was awarded to the Dionne sisters.

My mother on her 100th birthday - June 8, 1987

EPILOGUE

When I reflect upon my life, I realize how fortunate I have been in having so many people who have assisted me. Our family household might be termed a triumvirate – mother, father and mother's sister, Aunt Sadie – all providing support and direction. Mother was an exceptional woman, capable of meeting any challenge and there were many in the depression years after World War I. She was born on a farm in an area where educational facilities were limited but her determination to obtain a higher education took her to the Fredericton Business School and a business career at a time when that profession was almost exclusively a male preserve. With marriage to my father, who had a Grade 8 education and operated a grocery store and meat market, she brought her business knowledge and introduced him to "home schooling". Together the business provided a better than average income for a rapidly growing family.

Our Dad was a kind, generous and friendly person with a quick wit and a ready smile. He had a Ford car when there were very few in the community, which was a Canadian Pacific Divisional Centre. Most of the residents were C.P.R. employees and had free passes to nearby towns, which may explain the lack of vehicles, but there was also the fact that highways were impossible for most of the year. A trip to villages in the State of Maine – the border was five miles away – was an expedition. A blown tire was not unusual. The wheel would be removed, the inner tube removed from the tire; a patch cemented on the tube and the process was reversed. The usual plan was to return home before dark as the lighting system was never too reliable.

In the many times when there were blown tires, faulty lights, broken fan belts or slides into a ditch, I cannot recall my father ever losing his temper. He was

easy going and quite content to let our mother be the disciplinarian.

Aunt Sadie was that one person in a million who is loved by everyone. She operated a newsstand in the C.P.R. station for 40 years. For many years, I was her helper which meant that I escaped many household duties in the evening. She was our second mother, always pleasant, unless you interfered with her afternoon nap, by throwing a ball against the house near her bedroom and as protective of 'her' children as our mother, but considerably less strict. When the depression was at its worst in the late '20s and early '30s, and our father's store closed and he was unemployed, her income was extremely vital. Without her financial assistance, I and my six siblings would not have been able to obtain the education and training which we did.

My four brothers and two sisters were contributing members to our family cooperative. The three older brothers, each in turn took "working sabbaticals' from their university education to financially assist one another. Our two sisters were also involved. Agnes correctly claimed that she was the most competent and lowest paid legal secretary in Timmins while Blanid's pay cheque from St. Mary's Hospital frequently came to rest in the family fund. The two youngest brothers quickly learned that there was a cost to higher education and accepted without question the limited assistance from the family fund. Perhaps it is because of our early dependence on one another that we have remained a very close knit family. We share each other's successes and problems, secure in the knowledge that support is always available.

CURRICULUM VITAE

THE HONOURABLE GREGORY THOMAS EVANS

Born June 13, 1913 at McAdam, New Brunswick.

Education:

	Elementary and Secondary - McAdam, New Brunswick
1934	St. Joseph's University - B.A.
1939	Graduated from Osgoode Hall Law School
1963	St. Thomas University - LL.D. (Hon.)
1964	Université de Moncton - Ph.D. (Hon.)
1991	York University - LL.B.

Career:

1939	Called to the Bar of Ontario
1939 to 1963	Senior Partner in the law firm of Evans, Evans, Bragagnolo, Perras & Sullivan, with offices in Timmins, Cochrane and Kapuskasing, Ontario
1953	Appointed Queen's Counsel
1963 to 1965	High Court of Justice, Supreme Court of Ontario
1965 to 1976	Court of Appeal, Supreme Court of Ontario
1976 to 1985	Chief Justice of the High Court of Justice, Supreme Court of Ontario
1981 to 1985	Vice-Chairman, Canadian Judicial Council
1985 to 1988	Supernumerary Judge
1987 to 1990	Commissioner, Royal Commission on the Donald Marshall, Jr. Prosecution
1988 to 1997	Integrity Commissioner, Ontario (formerly Commission on Conflict of Interest, Ontario)
1989 to 1994	Member of Extraordinary Challenge Committee (Canada-United States Free Trade Agreement)
1990	Commissioner, Royal Commission on Compensation for Donald Marshall, Jr.

1992 to 1996	Conflict of Interest Commissioner, Northwest Territories
1998	Appointed to investigate Dionne Quintuplets Trust
1998 to 2004	Mediations and Arbitrations
2001	(March to September) Interim Integrity Commissioner, Ontario

Activities:

1942	President, Timmins Cochrane Law Associations
1942 to 1963	Timmins Lions Club – Served as President, District Governor, International Counsellor
1959 to 1963	Chairman, O'Gorman High School
1961	President, Ontario English Catholic Education Association
1961 to 1963	Bencher, Law Society of Upper Canada
1962	Vice-President, Canadian Bar Association, Ontario Branch Ontario Legal Aid Committee
1978 to 1989	Vice-President, Canadian Institute for Advanced Legal Studies – Cambridge Lectures
1981	Appointed Knight Commander of the Order of St. Gregory the Great
1984 to 1991	Governor, American Judges Association
1991 to 1994	Treasurer, American Judges Foundation
1994 to date	Honourary President, Association in Defence of the Wrongfully Convicted
1995	Awarded the Judge Burnett Trophy for outstanding contribution to the American Judges Association in sponsoring the 1988 and 1996 annual conventions in Toronto
1996	Awarded Order of Ontario
2000	Awarded Member of the Order of Canada

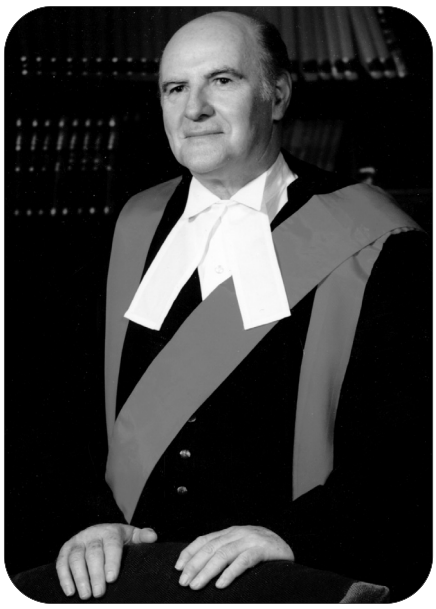
Photo Section: Family

Kerry, John, Greg, Jr., Mary, Cathy, Rory, Tom, Brendan in 1955

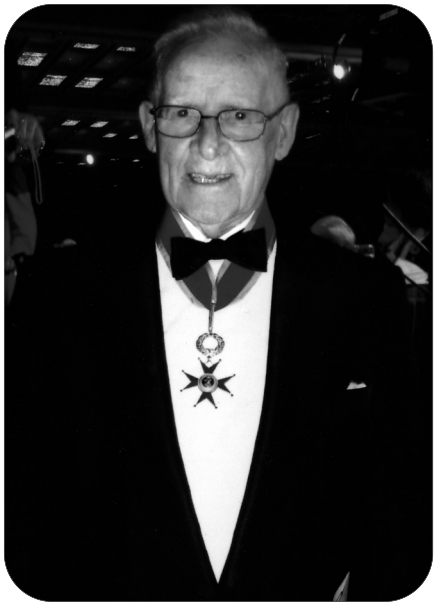
Left to right: Back row - Rory, Tom, John, Greg, Jr.;
Middle Row - Zita, Cathy, Greg;
First Row - Brendan, Mary, Kerry in 1957

Left to right: Back row - Cathy, Mary, Tom, Rory, Greg Jr., John, Kerry, Brendan;
First Row - Greg, Erin, Zita in 1964

Left to right: Back row - Brendan, John, Rory, Mary, Greg. Jr. Tom, Kerry; Front Row - Erin, Greg, Zita, Cathy in 1984



Brother Joe in Judge's robes



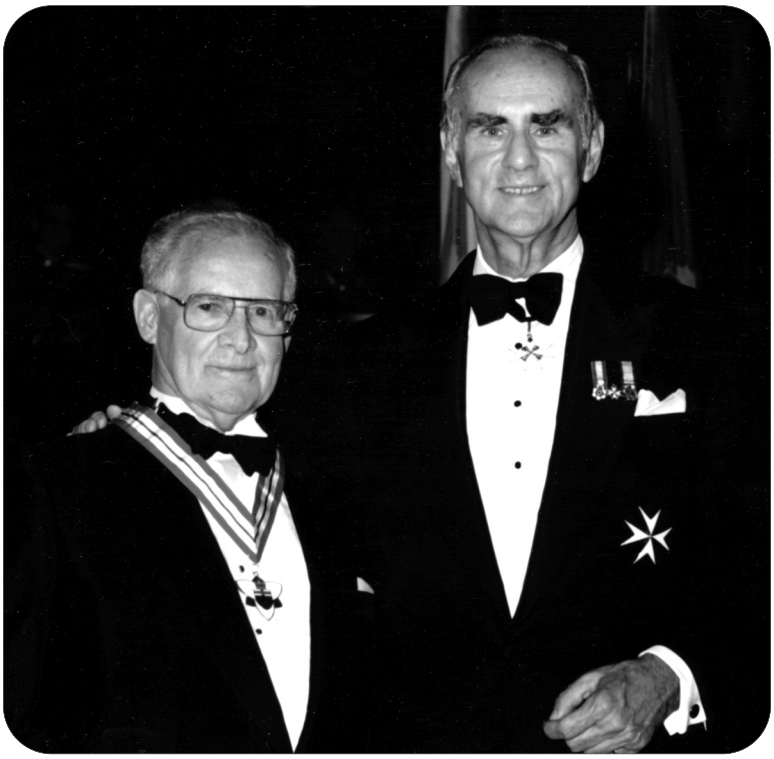
Greg wearing the Order of St. Gregory

Greg and Zita in 1992

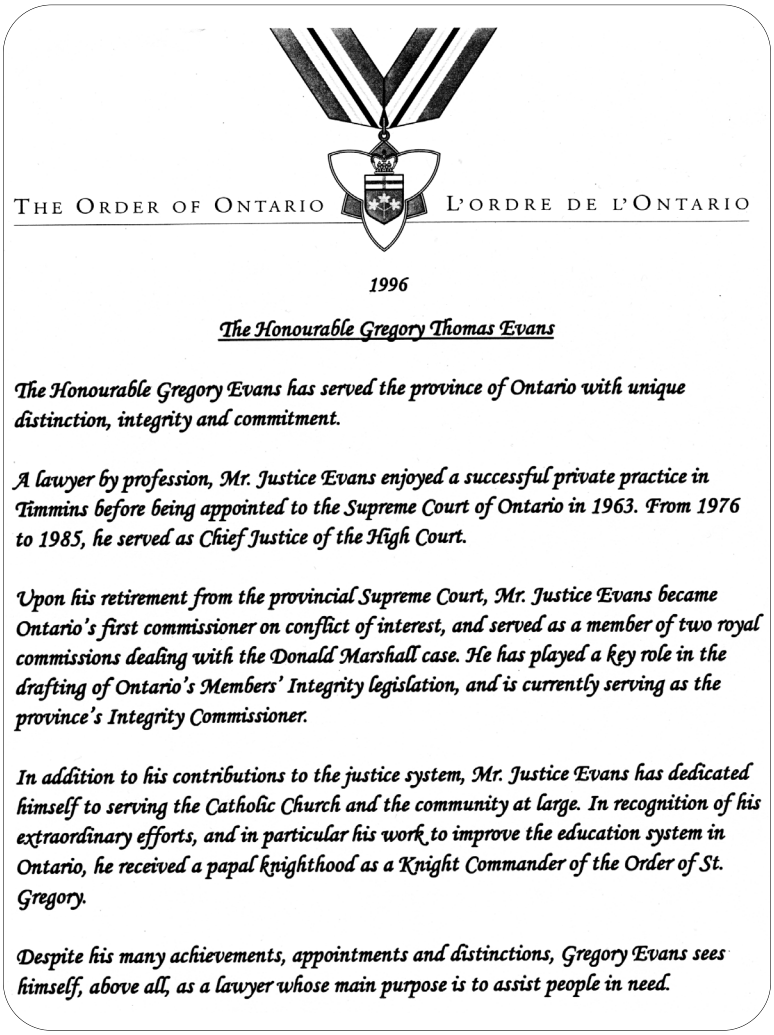
Photo Section: Career

Greg in 1960,
President, Ontario Section of the Canadian Bar Association

Greg in 1988 as the Ontario Integrity Commissioner



1996 Order of Ontario presented by Lt. Gov. H. Jackman



THE ORDER OF ONTARIO L'ORDRE DE L'ONTARIO

1996

The Honourable Gregory Thomas Evans

The Honourable Gregory Evans has served the province of Ontario with unique distinction, integrity and commitment.

A lawyer by profession, Mr. Justice Evans enjoyed a successful private practice in Timmins before being appointed to the Supreme Court of Ontario in 1963. From 1976 to 1985, he served as Chief Justice of the High Court.

Upon his retirement from the provincial Supreme Court, Mr. Justice Evans became Ontario's first commissioner on conflict of interest, and served as a member of two royal commissions dealing with the Donald Marshall case. He has played a key role in the drafting of Ontario's Members' Integrity legislation, and is currently serving as the province's Integrity Commissioner.

In addition to his contributions to the justice system, Mr. Justice Evans has dedicated himself to serving the Catholic Church and the community at large. In recognition of his extraordinary efforts, and in particular his work to improve the education system in Ontario, he received a papal knighthood as a Knight Commander of the Order of St. Gregory.

Despite his many achievements, appointments and distinctions, Gregory Evans sees himself, above all, as a lawyer whose main purpose is to assist people in need.

1996 Order of Ontario

1995 - Justice David Griffiths' Retirement Dinner

2001 Order of Canada with Governor General Clarkson

The Honourable Gregory Thomas Evans, C.M., O.Ont.
Toronto, Ontario
Member of the Order of Canada

He has had a long and distinguished career in the legal profession. A trial lawyer for more than 20 years in northern Ontario, he later served on the highest trial and appeal courts of his province, notably as Chief Justice of the High Court of Ontario. Honorary President of the Association in Defence of the Wrongly Convicted, he is an ardent advocate for justice and fairness in the judicial process. Appointed Ontario's first Integrity Commissioner, he played an important role in the development of the Members' Integrity Act.

The Order of Canada official notice