

# THE CANADIAN BAR REVIEW

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VOL. XXII

January, 1944

No. 1

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## FAREWELL CEREMONY

FOR

SIR LYMAN POORE DUFF, P.C., G.C.M.G.,

CHIEF JUSTICE OF THE SUPREME COURT OF CANADA,  
OTTAWA, CANADA, DECEMBER 15, 1943.

MR. E. PHILIPPE BRAIS, K.C.: May it please Your Lordships: As we all too well know, it is to-day that for the last time His Lordship the Chief Justice sits on this Bench. The President of the Canadian Bar Association, the Honourable R. L. Maitland, had of course hoped to be here in person to express the regrets of that body and its good wishes. His absence through illness brings me here, as Dominion Vice-President, to convey his regret and to act in his stead.

My Lords, the Chief Justice of this Court retires after a life ripe in good deeds and fruitful of judgments and decisions which will long continue to guide and direct the course of justice in this country.

Is it necessary for me in these troubled times to stress the importance of the proper administration of justice, of justice which has been called the product of civilization, but which has shown itself to be the very backbone of democracy? Whilst the first act of autocracy is always to lay a hand on the courts, we find conversely that the peoples of free lands seem under conditions of strife to rally around the blind goddess, trusting instinctively to her protection against all, yes even against themselves.

Of all the countries of the world, none is entitled to hold higher its head than our own. Justice as administered in Canada is truly a model of impartiality. From outside of Canada we hear nothing but praise of the high standard it has achieved and maintained. From within, at a time when factionalism and sectionalism are busy finding or endeavouring to find all manner

of remedies for war and post-war periods, when it is even suggested that the present economic structure should be abolished, when the abandonment of the country's charter is mooted, no one, nevertheless, suggests that our system of justice should be modified, that our courts have not fulfilled the needs of the land. They alone appear to one and all to be above reproach. Need one stress how priceless is this status?

So long as the courts are respected, so long will the processes of political evolution follow peaceful and safe channels. So long as every citizen knows that impartial justice will be meted out by the tribunals of his land, so long will he respect the authority which at all times must exist and must guide if civilization in its true form is to continue to live.

That Canada should enjoy this happy situation to-day is in a great measure due to the acknowledged ability, unchallengeable integrity, inflexible impartiality and, when needed, the courage of the judges who form the Bench of the Supreme Court of Canada. It is here, before the highest court of the land, that all citizens may come for decision of questions of importance affecting the rights of the one against the other—of the accused faced with the rigours of the law he is charged with having transgressed, of the individual who seeks redress against his government.

To err is human, but one has yet to hear of a case where it could be said that a judgment was coloured by personal or other improper motives. Better cannot be said of any court in any land.

The direction thus given, the example here set permeate all the tribunals of this country. This explains why Canadian justice is so highly regarded, why in press and public pronouncements in the country and outside our legal administration is declared to be surpassed by none.

My Lord Chief Justice you have graced this Bench for many years, you have aided its deliberations, you have doubtless directed many of its judgments. A very full measure of credit is due to you for the standing of Canadian justice to-day. Deep and sincere thanks are owed to you for the confidence and stability which it has assured and will assure to Canada.

My Lord, may I add another word? I recall my first appearance before this Court. I was younger then than to-day. Remembering that day, may I express to you, and to your colleagues as well, a word of appreciation on behalf of every young lawyer who has appeared before this Bench. No case has ever

suffered here through the inexperience of its pleader. No pleader has ever appeared here who has not been afforded full opportunity, indeed who has not been patiently guided and helped, to make a full demonstration of his case. The gratitude of those lawyers could never be voiced. To-day, as you are about to leave, on behalf of those to whom you have extended a kindly and guiding hand, may I say a sincere thank you.

My Lord, you have often honoured the Canadian Bar Association at its meetings; you assisted at its birth and helped to tutor it through infancy. If the Bench of Canada loses you to-day, the Bar Association will, I hope, always continue to count on your aid. That diminishes a little the farewell we take of the Judge.

My Lord, it is the fond wish of the Bar and of the citizens of Canada that you may enjoy long years of health and reap in retirement a just reward for your many years of public service.

Votre Seigneurie, permettez-moi d'ajouter un mot au nom de mes confrères de langue française.

Les judgments que vous avez rendus dans les causes concernant le droit civil de la province de Québec, font autorité, et sont suivis avec respect par toutes nos cours de justice. C'est que votre connaissance du droit de la province de Québec est la résultante de votre haute formation légale, et de la culture française que vous êtes si bien assimilée à l'instar de toutes les connaissances humaines. Inutile d'ajouter que mes collègues et compatriotes se joignent de tout coeur aux vœux que nous formulons aujourd'hui.

MR. AIME GEOFFRION, K.C.: May it please Your Lordships, may I be allowed to say a few words? I do not intend to repeat the remarks of my learned friend concerning the career of the Chief Justice, both as a puisne judge and as Chief Justice of this Court. I only want to add another comment on his public career. Those of us who have sat in the Privy Council have been able to appreciate his worth, apart from the extremely useful role from the point of view of Canada which he played in the Supreme Court of Canada. In London he has been largely instrumental in placing the representatives of the Canadian Bench on that body in a position of equality with any other member. His prestige and influence there were undoubted and that was noticed by everyone, both English and Canadian, who had anything to do with that body.

However, before sitting down I should like to trespass with a personal matter. Over forty years ago Canada was participating

with the British government in a reference with the United States before a commission set up to inquire into the boundaries between Alaska and Canada. The British government was represented by such eminent men as Sir Robert Finlay, Sir Edward Carson and Mr. Christopher Robinson, K.C., whose name is still well known in Canada. There were five juniors on that commission. One was Mr. F. C. Wade who has just died. Another was Mr. S. A. T. Rowlatt, who has since been made a member of the Privy Council. The third was Mr. Simon, later Sir John Simon, who is now Lord Chancellor. The fourth was Mr. Duff, who later became the Chief Justice of Canada, and the fifth was myself—I am the only plain one left.

For a few months we laboured to defend the northwest boundaries and frontier of Canada—not very hard labour. It was most interesting and pleasant work—not too hard, as I said—and considering our earning powers in those days, it was quite remunerative. However, the result of that association for me was a friendship that has lasted forty years, and of which I have always been very proud. I have been able to know the Chief Justice, not only as a public man but as a private individual. I admire him in the one capacity, I like him in the other. I can only say this in the sense that I am probably losing more than others by his departure. I wish him the long days of rest which he has so richly earned.

MR. C. F. H. CARSON, K.C.: My Lords, Mr. D. L. McCarthy, K.C., Treasurer of the Law Society of Upper Canada, regrets very much that he is unable to be here to-day. He has been a senior practitioner in this Court and he has asked me to say a word or two on his behalf.

This is the first occasion on which I have appeared in this Court when there has been no opposition. There is no dividing line to-day; from one part of the room to the other we all speak in unanimous voice.

Possibly my recollection of the days of the junior bar are somewhat fresher than those of Mr. Geoffrion and Mr. Brais. I think I can say to Your Lordship that the younger members of the profession in Canada have always held Your Lordship in affectionate regard because you have always received us with patience, courtesy and understanding. May I just add in conclusion that I desire to express the fullest and most sincere concurrence in what has been said by Mr. Geoffrion and Mr. Brais.

HON. MR. JUSTICE T. RINFRET: The members of this Court wish to associate themselves with the remarks that have just

been made on behalf of the Bar; and to join the expression of their sentiments towards the distinguished Chief Justice of Canada.

I feel very proud and honoured that it should be my privilege, as senior puisne judge, to speak on behalf of the Court and to add our tribute to those which are coming to our esteemed Chief Justice from all parts of Canada.

We have been his colleagues on the Bench. Personally I have had the invaluable advantage of being associated with him in the discharge of our judicial duties for nearly twenty years. We have had every opportunity of appreciating his great qualities and his unsurpassed ability.

After what has been said by the members of the Bar, it is hardly necessary for me to recall the great tasks undertaken by him at the Alaskan boundary conference in London, as final judge of appeal in conscription cases during the Great War, as chairman of the committee investigating the administration of railways in Canada or as royal commissioner in several other inquiries.

Perhaps it is not for us, members of the same Court, to speak of the Chief Justice as a judge. His long line of judgments dealing with the most important legal or constitutional questions will stand as a lasting testimony to his vast and sound knowledge.

It seems appropriate, however, that special mention should be made of his exceptionally long record of public service. He was first a judge of the Supreme Court of British Columbia and then, since 1906 or for a period of thirty-seven years, a member of the Supreme Court of Canada, of which he has been the Chief Justice since the month of March, 1933. During that time he has been sitting regularly as a member of the Judicial Committee of the Privy Council.

It would be idle to refer to the Chief Justice's devotion to duty. He has given practically his whole life to the application of the law and to the administration of justice. The application of the law, not as an affair of bare literal precepts but, if I may say so, as a social instrument used to preserve those principles which have brought civilization, which have grown with it and which have made modern life possible. As for his devotion to justice, it has been described as having "reached the dimensions and the intensity of a passion."

On another occasion the Chief Justice said that "The great reward to which a judge can look forward is the confidence and esteem of the profession." The Chief Justice can be assured that he enjoys that esteem and that confidence both from the Bar and from the Bench.

My Lord, the members of the Court over which you have been presiding with such dignity beg you to accept the assurance of their respect and their profound admiration.

Je n'entends pas répéter en français ce que je viens de dire à l'égard de notre juge-en-chef. Mais il convient, je crois, que j'ajoute quelques mots dans cette langue, ne serait-ce que pour souligner l'intérêt que notre juge-en-chef a toujours porté au droit français en vigueur dans la province de Québec. Il n'est pas trop de dire que Sir Lyman Duff a acquis dans ce domaine une autorité que lui reconnaissent les juges et les avocats de cette province; et que ses jugements dans les affaires de droit civil sont accueillis et acceptés avec le plus grand respect dans toute la Province.

D'ailleurs, ne peut-on pas dire de Sir Lyman Duff comme l'on disait autrefois chez les Romains qu'il possède la science de tous les arts et de toutes les grandes choses.

Les juges de cette Cour déposent à ses pieds l'hommage de leur haute estime et de leur respectueux attachement.

CHIEF JUSTICE, SIR LYMAN P. DUFF: It is far beyond my power of speech to express the feelings by which I am possessed on this occasion. I can aver, without affectation or exaggeration, that there is no body of men whose good opinion I value as I value that of the bar—the bar including, of course, the members of the judicial bench as well as those who are engaged in the active practice of the law.

You will not expect me to acknowledge that I am convinced of the accuracy of all the kind and complimentary things that have been said, but this I think I am entitled, without vainglory, to accept and do accept—that you, representing the bar of Canada, desire to testify in this public way that I have not been unworthy of the high distinction, the honour, and the responsibilities which attach to the station of one of His Majesty's judges, or to be a judge of the Supreme Court of Canada, or to discharge actively judicial responsibility as a member of that illustrious tribunal, the Judicial Committee of the Privy Council.

It is forty years (less ten weeks) since I became a judge of the Supreme Court of British Columbia. I make no secret of the pride which fills my heart in contemplating this manifestation of confidence and goodwill after that long tract of years under the fierce light which beats (and rightly so) upon His Majesty's judges.

It would not be ungrateful to my own inclinations to recall the bar as I know it when I came to this Court, or even as I knew it in those far-off days when I was a student-at-law. In those days

the father of Mr. McCarthy, whose absence we deplore, and the father of Mr. Geoffrion, were great and renowned in their profession, as well as in public life—men who read their histories in the nation's eyes. I will not dwell upon or even mention the names of the brilliant and attractive figures who from every part of Canada appeared and displayed their powers as advocates within these walls in 1906 when I came to this Court, or of my colleagues of that time or since.

Of my colleagues it would be impossible for me, as an individual, adequately to tell the obligation I owe to them for the support, the inspiration and the instruction which I have received from them in the discharge of my duties from the first moment I came here down to the present. In my official relations with my colleagues there has been an unbroken history of happy cooperation and as to our personal relations, the two have, of course, been intimately and necessarily interlaced. I have been the recipient of nothing but goodwill, kindness, confidence and generosity.

There is one particular aspect of that most agreeable part of my experience as a judge which I think I ought not to pass over without a special word. I have always felt that this Court, engaged as it is in administering and applying in practice rules of law founded on the principles of the two great systems of jurisprudence that divide the civilized world, the common law and the civil law, ought to be in a position of exceptional advantage in dealing with new problems that arise from time to time as the law adapts itself to novel conditions.

When I came to this Court I felt not a little concern (and in this I was not, of course, singular) as touching my responsibilities in relation to appeals from the province of Quebec. Primarily, of course, responsibility with regard to those appeals rests upon the judges appointed from that province. But no judge can entirely escape responsibility for any judgment in which he takes part, and I feel that I should on this occasion give expression to an acknowledgment of the sympathetic assistance and the instruction which I received from Sir Charles Fitzpatrick and Mr. Justice Girouard, who were the judges from Quebec from 1906 until 1911, in my first efforts to acquire some slight mastery of the principles of the law of Quebec. I must go a step further and say that from that time until the present I have been constantly under a debt to all my colleagues from Quebec for the generous manner in which they have made available their learning and experience to enable me to grapple with my difficulties.

It has been said that Lethe rolls between the bench and the bar, to quote a famous judge. In my case, as in his, the stream has been an exceedingly narrow one. I was, I think, when I became a judge in 1904 not at all conscious of any attenuation of the friendship which united me with my professional brethren. Since coming to Ottawa I have been the mark of so many friendly manifestations that I can truly say now I have never regarded the members of the profession in any other light than that which shines upon one's friends.

It is not possible, of course, for any judge to overstate the value of any assistance he has received from the bar. It is the fundamental principle of our system (although sometimes we are perhaps tempted to think that Parliament has forgotten it) that litigated disputes are decided and legal questions are settled in a proceeding in which each party to the controversy has presented his case by his chosen advocate in open Court. That is the method by which, under our system, justice is achieved, and it is mainly owing to the high and essential function of advocacy in the administration of justice that it has fallen to the members of our profession to lead the battle most conspicuously in a long series of stirring episodes in our constitutional history. It has been said, and rightly said, that if you follow the history of the struggle, or series of struggles, for constitutional liberty, you will emerge from that study with an assured conviction that no class and no profession has done so much to develop and to defend civic liberty as the profession of the bar. It would be impossible to compute what the Commonwealth owes to the priceless blessing of an independent bar.

From an independent bar you proceed to an independent bench, of which it is the indispensable condition. Security of judicial tenure is, of course, essential, but the independence of the judiciary connotes an idea which is much broader and much more fundamental than mere security of tenure. It implies not only that judges are free from actual interference in the execution of their duty by the executive or by Parliament; it implies also that in the administration of justice judges are not, in dispensing justice as between subject and subject or as between the Crown and the subject, affected by anything but the ascertainment of the law, the ascertainment of the facts upon proper evidence and an honest view of the deliverance which ought in justice to be made according to the law and the course of the Court, without regard, for example, to the personal opinion of the judge in relation to the merits of the law to which it is his duty to give effect.



For generations now we have taken this for granted. We have rested in perfect assurance on this subject of the independence of the judiciary; and one of the most important reasons for this assurance is that it has been the rule for centuries that His Majesty's judges are not civil servants, but are chosen from the members of an independent bar who, by the very necessities of their profession, have been trained in the capacity and in habits of detachment and, above all, have been trained to perform their duty as professional advisers, or agents, or advocates, with absolute loyalty to their clients regardless of any ulterior consideration.

Many people, I am afraid, do not realize that while loyalty to the interests of his client is his paramount obligation, a lawyer in the practice of his profession, in advising his clients, in conducting his client's business, and in advocacy, will seldom perform his duty with the highest efficiency unless he can grasp the point of view of those whose interests are or may be in conflict with the interests of his client. This capacity and these habits of detachment he brings with him to the bench, and he brings to the bench the robust honesty of the bar as well as a mind steeped in its great traditions.

And here I emphasize again the part the bar has played in the progress of constitutional liberty because, in the politic sense—from the point of view of the Commonwealth—justice and freedom are indissolubly united; and, you will permit me to say explicitly what I have already said by implication, the indispensable safeguards of both are an independent bench and an independent bar.

I have been dwelling on the past forty years. I feel constrained before the last word is said to recall that this period embraces perhaps the most critical years in the history of mankind. Twice the people of Germany within the short space of a quarter of a century, in each case with a concentration of military power theretofore unknown, challenged the very existence of human civilization. Twice the people of Great Britain and the peoples of the British Commonwealth of Nations and the British Empire were called upon to take up that challenge, to take their stand across the path of the powers of evil and to summon the world to defend the rights of mankind. Unhappily the end of the struggle has not yet come. But we know what its end inevitably will be. Those who fashioned a power of destruction of untold might with the hope that they could employ it to obliterate the rights and liberties of mankind and with the fell satanic design

to "shut the gates of mercy", they will be overwhelmed and annihilated. They will be overwhelmed and annihilated thanks to the vast reserves which the human race held and still holds of human fortitude, of human heroism and of devotion to the noblest human ideals.

When that supreme duty has been completely accomplished it may well be that in the succeeding years the profession of the law will be faced with problems more stubborn and more trying than those of the past—problems which can only be resolved justly and adequately by calling into play the highest endowments, moral and intellectual, of our profession, and an application of those endowments with a new and unequalled energy and fidelity. That the bench and the bar will prove equal to this test I am fully confident, and I am confident they will never forget that in our great social and political heritage, sanctified anew by human heroism and human self-sacrifice—in this great heritage our most precious, our noblest possessions are liberty and justice.

In the past His Majesty's judges in Canada, with the co-operation of the bar of Canada, have endeavoured to fulfil the great duties entrusted to them with fidelity, with zeal for the public service, and with firmness, impartiality and integrity, "in the fear of God and without fear of man". I know that in these virtues you will not fail in the time to come.

I thank you all for this manifestation of kindness, one of the most memorable of my life, the recollection of which I shall always cherish.