

Remarks by
The Honourable Deborah E. Fry
On the occasion of her swearing in as
Chief Justice of Newfoundland and Labrador
St. John's, NL
September 10, 2018

To say I am overwhelmed would be an understatement. Thank you all for your kind and generous remarks. I only hope to be able to live up to the high expectations that each of you has expressed.

My first objective in preparing to make remarks today was to keep it short. However, the person on my right said ‘now do not forget this is your opportunity and maybe your only opportunity to speak to a good size audience who cannot leave – so make the most of it’!

First of all, I want to thank each and every one of you for taking the time to attend this special sitting of the Court. I was a bit worried about the turnout when a number of people mentioned that they had to overcome some anxious moments before daring to open the envelope from the Court of Appeal.

I want to thank their Honours for attending today. The Honourable Judy Foote as you all realize has earned a place in Newfoundland and Labrador history as the first woman to occupy the office of the Lieutenant Governor. As you may know, one of the duties of the Chief Justice is to act as Administrator and to perform the duties of the Lieutenant Governor in her absence. I stand willing and able to step in as Administrator as and when required but certainly hope that she will not require a stand in for Yoga or Tai Chi lessons on the lawn of Government House. I can only imagine what she has planned for the fall and winter.

As has been noted, I come before you today as the first woman to occupy the office of the Chief Justice of Newfoundland and Labrador. I acknowledge and am grateful for the confidence that the Minister of Justice for Canada and the Prime Minister have shown in me in making this appointment. This is a first for our Province and I recognize there are special responsibilities that come with this appointment. I will do my utmost to fulfill the role of Chief Justice.

The history of women involved in the law and judiciary is not well known in our province and as the first woman Chief Justice and, as a role model and mentor for young women and lawyers, I intend to ensure that more people come to know and understand the role and contribution of women to the development of the law and jurisprudence of this Province. Just quickly going back to 1928, only 90 years ago, women in Canada fought and won the right to be recognized as Persons for the purpose of being appointed to the Senate. The question asked of the Court was "Does the word 'Persons' in Section 24 of the [British North America Act, 1867](#), include female persons?" The unanimous answer from the Supreme Court of Canada was NO, but fortunately the Judicial Committee of the Privy Council of the House of Lords in England was still the highest Appellate level court for Canada and they determined that indeed women were “persons”.

The first woman called to the Newfoundland Bar was Louise Maud Saunders in 1933 and she was #183 on the Barrister's roll. At the time of my call in the spring of 1981, nearly 50 years later, I was #529 and there had been only 27 other women lawyers admitted between her call and mine.

With respect to the advancement of women lawyers to positions on the Bench, again this is modern history. The first woman to be appointed to the Supreme Court of Canada was Justice Bertha Wilson in 1982. In this Province, Justice Margaret Cameron was the first woman appointed to the Supreme Court in 1983 and she was also the first woman appointed to the Court of Appeal in 1992. The first woman appointed to the Provincial Court was Justice Kendra Goulding in 1989, who now sits on the Supreme Court bench. The first woman appointed as Chief of the Provincial Court in Newfoundland and Labrador was Chief Judge Pamela Goulding in 2015.

Today in Newfoundland and Labrador, the Court of Appeal has an equal composition of women and men justices. The Supreme Court Trial Division has 11 of 21 positions¹ held by women justices and the Provincial Court has 11 of 22².

To the pioneers and trail blazers, women who have fought for inclusion, freedom, human rights, legal and property rights, equality rights, freedom to make choices, political rights and so much more, you are a continuing source of inspiration.

I also acknowledge the Minister of Justice and Attorney General for Newfoundland and Labrador and thank him for his presence and his comments. This is a Minister who understands and respects the relationship and more importantly the separation between the legislative, executive and judicial branches and the importance of an independent judiciary. He has attended many of our judges' meetings and has established a solid, open and cooperative working relationship between himself, the Department and the judiciary. There are many opportunities where working together can produce mutually beneficial progress for the administration of Justice in this Province. Some recent examples include the passage of legislation which created the Court of Appeal of Newfoundland and Labrador as a separate court, independent from the Supreme Court of Newfoundland and Labrador; the acquisition of a new court house for the Family Division of the Supreme Court; the facilitation of the first broadcast of a hearing from the Court of Appeal by arranging the sharing of broadcast equipment; working with and seeking input from the Court in making a successful proposal to the Federal government to unify the Family courts province wide. Although much has been accomplished there is always more to do. I hope to have meaningful discussions which look at models of court administration that feature a greater degree of judicial autonomy in ensuring proper funding and staffing of courts, while preserving judicial independence and ensuring public accountability for moneys spent. I look forward to working with Minister Parsons and his staff in the same positive and productive way as my predecessor.

To the former Chief Justice of Newfoundland and Labrador, Derek Green, a sincere thank you for your generous remarks and so much more. Justice Green has not retired from the Bench but has moved to supernumerary status where he will continue to sit on the Court of Appeal, on a part time basis, and most importantly continue to provide his wise and sage advice to all. Justice Green was the Chief Justice who swore me in 2007 as a judge of the Supreme

¹ Not including Supernumeraries.

² Not including 4 Per diem Judges

Court. Who could have imagined that today, nearly eleven and a half years after my initial appointment, Justice Green and I would again sit on the same Bench together where he now presides over my swearing in as his successor.

The former Chief Justice has served this Province as a jurist for 26 years, and for nearly 18 of those years as Chief Justice of the Supreme Court and then the Court of Appeal. His legacy and contribution to the jurisprudence of this Province is immense and well documented by his many and (may I say) lengthy decisions. His grasp of the history of the law and his ability to convey it in a way that assists the reader understand the roots of our common law tradition, the constitutional and statutory development of the law and its application to issues of the day, are legendary. If we ever have a law school in this Province, he should without a doubt, be its first Dean. Despite the fact that we do not have a law school in this Province, he has served us well as a *scholar emeritus*.

Many will say the law is getting more complicated, cases are more complex, taking more time in Court and increasing the cost of legal services. I asked the former Chief why he thought this was so and this is how he explained it to me:

“A physician, an engineer and a judge (I think it might have been Justice Green) were arguing about whose profession was the oldest. The surgeon announced, Remember how God removed a rib from Adam to create Eve? Obviously, medicine is the oldest profession.

The engineer replied, But before that, God created the heavens and the earth from chaos, in less than a week. You have to admit that was a remarkable feat of engineering, and that makes engineering an older profession than medicine.

The judge smirked, and said, Who do you think created the chaos?"

Justice Green has contributed so much more than his jurisprudence and has worked for a long time in trying to tame the Chaos of the Law, however it was created. I remember when he was sworn in as Chief Justice of this Court in 2009, the goals he set for himself and the challenge he made to the Bench, the Bar and the government. Again slightly ahead of his time, he made access to justice a cornerstone of his tenure as Chief Justice. He commented on the barriers to justice and the lack of meaningful access to the courts, and therefore, to substantive justice for many litigants, the reasons for the rise of the self-represented litigant and the impact all of this had on the public's confidence in the fairness of our legal system. There have been many initiatives undertaken in the name of access to justice since that time.

One of those initiatives, here at the Court of Appeal, is the free Legal Assistance Clinic held monthly for self-represented litigants who want to appeal a decision of a lower court, whether it be criminal, civil or family. This Clinic provides appointments for a consultation with a volunteer lawyer who can provide legal advice about the self-represented litigant's appeal. Clinic lawyers provide summary advice and may assist in connecting the self-represented litigant to further legal services. While I have specifically commented on the Court of Appeal Legal Assistance Clinic, there are five other legal assistance clinics started since 2016. One hundred volunteer lawyers and articling students have provided 318 hours of pro bono service to the community in the last 18 months. Our Court is grateful for the contributions of the Bar in supporting this service.

Justice Green and I recently visited Her Majesty's Penitentiary where we visited all parts of Her Majesty's Penitentiary and met with staff, management and senior administration. We also met with the Inmate Committee to get their thoughts and feedback about how the Legal Assistance Clinic was working for those incarcerated self-represented litigants. As a result of our meetings at Her Majesty's Penitentiary, we were able to make changes that will enhance the Legal Assistance Clinic making it more accessible for those who wish to use the service.

We could spend hours and days speaking of the legacy of the former Chief Justice and perhaps on another occasion that will occur, but most of all, I think he will be remembered for his passion for fairness which he has demonstrated every day in so many ways.

I would like to publicly thank Justice Derek Green for his lengthy and dedicated service to the people of the province as Chief Justice.

Now to move on.

How did I get here?

I sometimes wake up at night and wonder the same thing... Well it has been a long and winding road.

My father and mother, no longer with us, lived and worked in Northern Saskatchewan when I was growing up. They came from medical missionary stock and, although I think the missionary values may have skipped a generation, I am grateful to them for their wise counsel. My dad was perhaps the first feminist I ever knew. I remember from a very early age his view, somewhat different than others of his generation, was that girls could do anything- he always said, "Dream Big and Work Hard". So when I was contemplating my future educational aspirations, he encouraged me to go to medical school. I was very worried about the long hours of study that would be required as my social life was extremely important to me. I was, after all, the social director of my high school! I can still hear him to this day telling me that no matter what was happening when he was attending med school, exams, classes whatever – he enjoyed a balanced social life, always taking every Saturday night off. I think he thought these would be words of encouragement. To me they were the words that clinched the deal – "only Saturday night- not nearly enough- no med school for me!!

Our children, Lesley and Matthew have been with me every step of my career and I mean that literally. Lesley attended my call to the Bar in early 1981 at six weeks of age, while Matthew was carted to and from Victoria, British Columbia to attend a National Association of Women and the Law Conference, just a few weeks after he was born. It was there that he was kissed by the Minister Responsible for the Status of Women for Canada. I don't know what he thought of it all, but I was mightily impressed and felt that he was marked for good. They experienced life with two busy lawyers as parents and a series of international caregivers. Today they each have very interesting careers and I am proud of both of them. They are bi coastal. One lives on the east coast and the other on the west coast of Canada. When I was first sworn in as a judge in 2007, it was Lesley who traveled from BC to be here and now that is reversed. I said back then that I thought I would finally have the last word in our family dynamic. But I will leave the final word on my role in our family life today to Lesley and I quote:

"Happy Mothers Day... Thank you for putting up with all of us ding- a -lings on a daily (and at times) hourly basis! Your patience knows no bounds, because we are constantly and consecutively annoying. I appreciate all you do. Thanks for not dropping us!"

Many of you here know my husband, John, and can appreciate the amount of love, support, tolerance and patience he has demonstrated while we have together raised a family, as each of us lost our parents and other family members, and have had a wonderful time travelling the world together. He actually told me he would like to say a few words here today and give you some insider information. For obvious reasons, that was vetoed. His sisters and some of their children are also sharing the jury box with my sister and her husband who have all enriched my life experiences. My cousin Evelyn is here from Alberta representing the Western Fry's as well as long time friends from Vancouver. Thank you to them all for being here today.

On the day I was sworn in as a Justice of the Supreme Court, I remember how honoured and humbled I was to have been provided with the opportunity to embark on a judicial career. On that day, I pledged to work hard, listen carefully and treat all people including lawyers and litigants with dignity and respect. I still today enthusiastically come to the court house fully appreciative of the opportunity I have to contribute to the development of the law, think creatively, hear from lawyers and their clients, work with self represented litigants, to develop and work with new and creative less adversarial ways to resolve disputes and to engage with dynamic colleagues in interesting and thought provoking discussions.

I have enjoyed working closely with my judicial colleagues on the Supreme Court. We have a strong and supportive Bench who work well together and we have all had the benefit of great leadership from a succession of Chiefs over the years. They are also a very musical bunch and I will miss the fun and social times we have shared over the years.

During the past eleven and a half years, I have tried every day to contribute to a workplace culture where all staff, including court officers, sheriff's officers, judicial assistants and legal officers feel valued and are provided opportunities to contribute ideas and suggestions to improve court services. I believe in developing a workplace culture where each and every person in the court feels they are part of the team.

Our court staff operate under a strong administrative team led by Chief Executive Officer, Shelley Organ, and here at the Court of Appeal by Registrar, Kathy Blake, who value excellence and it shows everyday in the way court staff interact with litigants and lawyers who use the services of the court.

The Family Division, where I have spent most of my judicial career, is a fast paced environment where many of the users of the court are under considerable emotional stress as their family situations unravel; where previously happy, loving parents and children find themselves in so much distress that they engage in such high conflict behaviours that even they cannot believe what has happened. They can be difficult to deal with due to the turmoil and distress that they are in. I have so much respect for the way in which the court staff find ways to guide and assist, with patience and kindness, those individuals who often are presenting at their worst. I feel privileged to have had the opportunity to work with such a fine group of judicial assistants, sheriff's officers, court officers and Administrator, Leah Pitcher.

At times, humour can be helpful in diffusing tense situations - I remember after a long day of applications, with every imaginable story being told, a gentleman told me that he needed to stop paying child support for his six year old son. Although I was little impatient at the end of the day, I asked why he would want to do that given the mandatory nature of the Child Support Guidelines. His answer was short and sweet- He said "Because my son is now my brother-in-law". I have to tell you it took quite a while to untangle that story.

My new role as Chief Justice is multifaceted. Being a leader among colleagues, of equal and independent status, requires tact, diplomacy and consensus building skills.

In addition to contributing to the development of jurisprudence in the province, the Chief has administrative responsibilities in terms of safeguarding the independence and promoting the accountability of the superior courts in the province. The Chief Justice, as head of the judicial branch, has an important interface with the provincial government, with both the executive and legislative branches.

As a member of the Canadian Judicial Council - comprised of Canada's 39 Chief Justices and Associate Chief Justices - I will have the opportunity to contribute to the functions of the Council which has significant responsibilities for administrative and substantive issues affecting the judiciary in Canada including allocation of funding for judicial education, discipline and accountability of judges to the population as a whole.

Decision-making is obviously a key function of the judiciary. My personal decision-making style is to gather facts, listen to all proponents and opponents, ask questions, challenge for accuracy and omitted information, consider implications and make a decision. Generally speaking, I have previously written for the litigants. I attempt to write in simple language and avoid heavy use of legal terms. Simplification in both oral and written judgments has been my goal. My objective and hope is that the person or persons appearing before me will understand how and why I reached the decision that will affect them.

Now, at the Court of Appeal, I will also write for the litigants but with a broader mandate. I will generally write as part of a group of three, no longer the sole decider. As some have advised me, now is the time to abandon the search for truth and instead begin the search for error. As a Court of correction, the jurisprudence of the appellate court has precedential value for the courts below and must serve as an interpretive guide to legal practitioners. The work of the appellate court can also serve to refine, review, clarify or establish a template for a principled approach to the application of the law in a specific area. But I also will remember that every decision I make has a human dynamic to it and that social context is important. As Theodore Roosevelt said: "Nobody cares how much you know, until they know how much you care."

So why does it take so long to get a decision? Well here is one explanation.

A lawyer passed on and found himself in Heaven, but not at all happy with his accommodations. He complained to St. Peter, who told him that his only recourse was to appeal his assignment. The lawyer immediately advised that he intended to appeal, but was then told that he would be waiting at least three years before his appeal could be heard. The lawyer protested that a three-year wait was unconscionable, but his words fell on deaf ears. The lawyer was then approached by the devil, who told him that he would be able to arrange an appeal to be heard in a few days, if the lawyer was willing to change the venue to Hell. The lawyer asked: "Why can appeals be heard so much sooner in Hell?" The devil answered: "We have all of the judges."

But seriously, there is an important balance that needs to be considered. Scheduling the appeal is one part of the equation but having the resources to deliver timely decisions is the other. For the past two years, the Court of Appeal has been at less than full complement. As I now step into the role of Chief, there are five regular sitting judges and two supernumerary or part time judges. This is a small court and it takes three judges to hear an appeal. The number of

appeals filed is increasing and for the first half of 2018 there was an increase of 40% over the same period in previous years. We continue to request the federal Minister's assistance in filling the judicial vacancy as soon as possible as it is having a direct impact on the operation of the court.

I have spent some time thinking about making the shift from being effective as a single judge to becoming effective as an appellate judge where judges work in panels. I am grateful to Justices Green and Welsh, in particular, and many others for the information and advice provided to me during the summer transition.

A few years ago at the Cambridge Lecture series, I was enthralled by the life story and presentation given by Albie Sachs, a former judge, an activist and a leading campaigner in the fight against apartheid in South Africa. He was appointed by President Nelson Mandela to the Constitutional Court of South Africa. I recently came across his comments and advice on sitting as an appellate judge.

He described effectiveness in terms of three general principles - civility, courage, and collegiality. *Civility*, he says, is not just good manners. It is respecting people with whom you differ, perhaps very sharply. It provides a framework in which one can discuss and debate without rancor. Civility is critical on the bench among the judges themselves and between a judge, counsel and witnesses. Judges, he emphasizes, owe a clear duty to citizens to maintain a framework of civility in the court.

He goes on to discuss the quality of *courage*, which he describes as following one's conscience and having the integrity and conviction to speak the truth as one sees it, even when it is inconvenient, even when it is embarrassing and unpopular, and especially with people one likes and respects. Going along simply to get along, he suggests, shows a lack of courage.

The third principle that he describes is *collegiality*, the capacity and willingness to engage with one's colleagues in a rational way toward common ground, without divisiveness and without ill will.

Although he was describing procedural justice and fairness within the internal operation of the court with his focus on civility, courage, and collegiality among judges, it seems to me that the same principles would also help to achieve procedural justice for litigants and other "clients" of the court.

Being a leader and a team member at the same time; being even handed and fair with respect to work load assignment; demonstrating dignity and respect for colleagues, litigants and the public; being approachable and willing to discuss issues of concern with frankness and openness; being the public face of the judicial branch in the Province and always demonstrating respect for the rule of law in both speech and actions will be my goals as Chief Justice.

Justice Tom Cromwell who recently retired from the Supreme Court of Canada said: "At the end of the day, the only thing that matters is whether you're convinced that you did the right thing. And sometimes people will agree with that; other times, they won't. The job of judging requires independence, impartiality and the courage to do what we think is the right thing every time."

I can only say: I concur.

Thank you so much for your attention and attendance.