

**Remarks by Chief Justice J. Derek Green
on the passing of James J. Greene, Q.C.**

**Court House
St. John's, NL
November 28, 2014**

It is fitting that on a day when we welcome to the Inner Bar twenty new Queen's Counsel we also should pay tribute to another of Her Majesty's counsel learned in the law who has recently passed from our midst,

James Joseph Louis Greene, Q.C. passed away on November 4, 2014 after a distinguished career at the bar and in public life. When I was called to the bar in 1974, Greene Q.C. had already been practicing at the bar for over twenty years and was known as one of this province's most prominent and respected counsel. I had had the privilege of meeting him a few years before my call to the bar when I was a law student who had just won the Rhodes Scholarship. James Greene, a former Rhodes Scholar himself, was the secretary to the scholarship selection committee. He was the person who called me and told me I had been successful. I always associate him with the elation – and also a bit of anxiety and misgiving - I felt at that moment. He was particularly helpful to me, inviting me to his home, describing his experiences at Oxford and giving advice to this young man who was apprehensive at what the new academic adventure was going to bring. Because of that experience I have always felt a special regard for him.

Jim Greene was born in 1928 in St. John's, the son of Joseph Greene, a public accountant and auditor, and Marie Eugenie (Williams) Greene. He was educated at St. Bonaventure's College and the University of Notre Dame, Indiana, U.S.A before going to Oxford as Newfoundland's Rhodes Scholar in 1949, the year of Newfoundland's confederation with Canada. He studied law at Merton College, receiving his B.A. in Jurisprudence in 1951. While at Oxford he served as manager of the Oxford University Ice Hockey Team, which in those days was the terror of Europe, since virtually all its players were Canadians. (Canada in those days dominated the hockey world). He told me many years later that his lack of athletic prowess in hockey disqualified him from playing on the team and that his talents lay more, as he put it, "on the managerial side."

Following his graduation from Oxford, Jim read for the bar in London and was called to the Inner Temple in 1953. He returned to St. John's shortly thereafter with his wife, Cherry Anne Midwood, where he commenced the practice of law. His absence from Newfoundland had covered the early years of its life as a newly-minted province of Canada. The political life of the province was dominated by the province's first premier, Joseph Smallwood. After a few years James Greene felt drawn into politics, in opposition to the Smallwood government. He was elected to the House of Assembly in 1959 and served as Leader of the Opposition and Leader of the Progressive Conservative Party until 1966.

Those were tumultuous times in Newfoundland politics. During that time, the famous (or infamous, depending on what side you were on) I.W.A. loggers' strike occurred. Nothing like it

had ever occurred in the labour movement in the province before. The government regarded the I.W.A.'s presence as a direct challenge to its control of the province.

Inevitably, aspects of the dispute ended up in the courts. The AND Company sued the IWA local, several union officers and union members for trespass alleging the defendants broke in through a locked gate and entered one of the company's woods camps. The company sought and obtained an interim injunction. It was very close to Christmas 1958. Jim Greene was retained to represent the union. By the time he was engaged, the courts were ready to shut down for the Christmas recess. Greene fully appreciated that an injunction improperly granted or one drawn too broadly has the potential for upsetting the power dynamic in a labour dispute. He attended on Justice Dunfield and persuaded him to hold a hearing starting on Christmas eve so he could challenge the legality of suing the union as an entity. In the judgment he ultimately rendered, Dunfield referred to the unusual timing of the hearing, noting it was "a day when I have never heretofore known the Court to sit."¹ Such was the force of Greene Q.C.'s advocacy. Dunfield wrote a very learned judgment referring in great detail to the history of the development of labour law in England and specifically to a wide variety of precedents from the mother country. No doubt he was assisted greatly in his discussion by advocate Greene's familiarity with the English law from his days at Oxford. The injunction was lifted against the union, which the judge held was not a legal entity and could not be sued, and against the union officers (but not the named members).

As is well-known, the fight between the loggers unions and the paper company in central Newfoundland eventually mutated into a confrontation between Premier Smallwood and the union, personified by union organizer H. Landon Ladd. The government tried to undermine support for the union and ultimately passed legislation decertifying the union. The loggers continued to organize and would not back down. The atmosphere was tense. Premier Smallwood used all his oratorical skills to attack the union. In a speech on February 12, 1959 (regarded by some as one of his best oratorical flourishes), Smallwood painted the picture:

We think and the government and people of Newfoundland think that the IWA are the greatest danger that ever struck Newfoundland. It is not a strike they have started but a civil war... We see hate and suspicion and fear and force. This is what the IWA has set loose in Newfoundland.

How dare these outsiders come into this decent Christian province and by such terrible methods try to seize control of our province's main industry... spreading their black poison of class hatred and bitter, bigoted prejudice. How dare they come into this province amongst decent god-fearing people and let lose their dirt and filth and poison ... Every decent Newfoundlander should feel he has been made dirty by the presence of this wicked and mischievous body of reckless and irresponsible wreckers.

As Richard Gwyn described it, "With his rhetoric, Smallwood had swept the entire province into a frenzy against the outsider."²

¹ *Anglo-Newfoundland Development Co. Ltd. v. International Woodworkers of America, Local 2-254 et al* (1959), 17 D.L.R. (2d) 766 (Nfld. S.C.)

² Richard Gwyn, *Smallwood: The Unlikely Revolutionary* (Toronto: McLelland & Stewart Inc., 1968), p. 250.

Into this antagonistic and volatile atmosphere stepped James Greene, Q.C. I have dwelt on these events because I think it is important to appreciate the courage that Greene Q.C. showed in standing up and advocating for Ladd and the IWA throughout these events. In the true tradition of the advocate he did not shrink from the unpopular cause.

That was demonstrated dramatically when he took on the defence of Ronald Laing, a logger who had been charged with the murder of Constable William Moss during the Badger riot of March 10, 1959. As is well-known, the riot resulted from a violent clash between a large group of loggers and police who had been brought in from St. John's ostensibly to keep the peace. In the resulting melee, Constable Moss was struck in the head by a logger wielding a birch billet and died several days later. It was unclear who had struck the blow. Eventually when Robert Laing, who had wielded a piece of wood and hit someone that night, heard of Constable Moss's death he thought he was responsible, contacted the authorities and gave a statement which was characterized as a confession. Hanging was still the penalty for murder in those days. Greene and Austin Cooper of Toronto were retained to represent Laing. They formed the view that Laing had confessed to a murder that he did not commit. The person who Laing struck may have been someone else.

Greene travelled to Grand Falls for the preliminary inquiry, walking into the lion's den, so to speak. In those days, the evidence was not recorded or taken down verbatim. Instead, the magistrate simply wrote summaries of what he believed the evidence to be. The concern was that such a record would not be very effective for cross-examination of the witnesses at trial on prior inconsistent statements. Greene insisted that the evidence be taken down verbatim by a typist with a typewriter in court. The magistrate reluctantly agreed. This slowed the proceedings (they took three weeks, the longest preliminary ever held up to that point) but the result was a complete transcript of the exact testimony. I believe this was the first time in Newfoundland's legal history that a verbatim transcript at a preliminary had been prepared. Now, of course, that is the standard practice. We have James J. Greene to thank for that.

Austin Cooper, Greene's co-counsel, writing many years after the event, described how Greene's "skillful cross-examination" by short precise questions, pinned down each eyewitness to a specific story and established through them that another striker, not Laing, was holding a piece of wood over Moss just before he fell and that Laing was nowhere near him when he was struck.³ In Cooper's view, but for the fact that Laing had given a "confession", he would not have been committed for trial. Nevertheless, when the case went to trial in June of 1959, he was found not guilty. The jury was obviously willing to disregard the confession as mistaken, in favour of the eyewitness testimony that had so effectively been pinned down at the preliminary by Jim Greene months before.

Jim Greene entered elected politics 1959 shortly after the events involving the IWA had settled down. He took over leadership of the opposition progressive Conservatives when the former leader was defeated in the 1959 election and led his party in the 1962 election to an increased number of seats, though they remained in opposition. He was a vociferous opponent of

³ Austin Cooper, "A Deadly Strike in Badger, Pt. II"; <http://www.canadianlawyer.com/2088/A-deadly-strike-in-badger-Pt.II>.

the Smallwood government and spoke out forcefully many times about what he believed was an unhealthy political environment. For example, on February 13, 1962, he stated the following in the House of Assembly:

I have detected for some little time now and seen instances in many places of a fear coming over our people, a fear of many people in many walks of life that they cannot stand up publicly and take their place in the public life of this country, cannot make their voices known for fear of repercussion.⁴

In 1966 he resigned from active politics and devoted himself full time to his law practice. He practiced for many years with former Lieutenant Governor Hon. Fabian O’Dea and Edward Neary, Q.C., later Registrar of the Supreme Court. During his years in practice he mentored many lawyers, including, as has been noted, Chief Justice Orsborn. He had a reputation for always being available, approachable and friendly, particularly to young lawyers. Lawyers who had the fortune to work on a case in which he was involved, whether as junior counsel or opposing counsel, always came away having learned much about the practice of law, not only with respect to the substantive and procedural law itself but also how courtesy, respect and fair play could always be practiced without sacrificing vigorous advocacy in favour of one’s own client.

He was a great raconteur. He loved telling humorous anecdotes related to the law. One of his favourites which he has told many times but bears repeating even again: a young English barrister was sent by his senior colleague out on circuit on a criminal case. After trial, he sends a telegram to his senior saying “Justice has prevailed.” To which the senior responded immediately, “Appeal at once!”

And of course he loved poking fun at judges. I don’t know how many times I heard this one from him: Counsel appealed a judgment of Mr. Justice Kekewitch who had a reputation of consistently going wrong. Counsel for the appellant opened the case in the Court of Appeal by saying, “My Lords, this is an appeal from a judgment of Mr. Justice Kekewitch. There are, of course, other grounds of appeal.”

Greene Q.C.’s reputation as a skillful advocate meant that his services were always in demand for important cases. Amongst the ones in which he acted as counsel and which are now part of Newfoundland’s history were: the O.L. Vardy extradition case,⁵ the challenge to the constitutional validity of Newfoundland’s mining tax and mineral rights tax,⁶ Newfoundland’s intervention in the British Columbia offshore oil and gas reference relating to the Strait of Georgia,⁷ and the reference on the ownership of Newfoundland’s continental shelf.⁸ All of these cases ended up in the Supreme Court of Canada.

⁴ Quoted in Gwyn, *Smallwood*, pp. 283-284

⁵ *Vardy v. Scott*, [1977] 1 S.C.R. 293

⁶ *Newfoundland and Labrador Corporation Ltd. et al v. Attorney General of Newfoundland*, [1982] 2 S.C.R. 260

⁷ *Reference re: Ownership of the Bed of the Strait of Georgia and Related Areas*, [1984] 1 S.C.R. 388

⁸ *Reference re: Newfoundland Continental Shelf*, [1984] 1 S.C.R. 86

But perhaps the most satisfying case in which he was involved – at least from a political point of view – may have involved his representation, as lead counsel, of Edward Maynard in the “burned ballot” judicial recount case following the 1971 provincial election. It will be recalled that after the counting on election night, Maynard had received eight more votes than his opponent Trevor Bennett. Bennett had sought a judicial recount but when the ballot box for the polling station in Sally’s Cove was opened, it was empty, The returning officer had mistakenly burned the ballots following the original count. The recount could not be completed. Bennett then petitioned the Court to have the election declared void.⁹ Unlike previous elections in the province’s short history, the 1971 election was tight and every seat counted. The result in the case was critical to which party would form the government. Despite the inability to complete the recount because of the burned ballots, Greene Q.C. was able to persuade the Court that the election of Maynard should be confirmed. The result had momentous political implications. The government changed hands. And within a year another election had been called and the Progressive Conservatives, the party that Greene had always supported, formed a solid majority government, the first for that party in the province’s history.¹⁰

Throughout his career, James J. Greene Q.C. demonstrated the finest qualities that are associated with a top barrister: superb litigation and analytical skills; thorough knowledge of the law; interest in and support of his profession; public service; fidelity to the law and legal process; and respect for the institutions essential to the operation of the legal system. Despite his seniority at the bar and reputation, Greene Q.C. never let ego deter him from showing respect for the system of which he was so much a part. He was a gentleman of the first order. Although I was twenty years his junior, whenever he appeared in front of me, he always showed the respect that was due to the judicial office I held.

Jim was also able to combine law and politics in the best traditions of both professions.

His public service was not limited to the political sphere. He served on the boards of directors of major corporations and enriched the province through service on the Board of Regents of Memorial University, the Board of trade, the Duke of Edinburgh’s Award in Canada, the catholic Education Council, the Red Cross and the Kiwanis Music festival and many other bodies.¹¹

The people of the province have benefited greatly from having James J. Greene in their midst. We will all miss him greatly. In many ways, his career can be held up as a model for our new Q.C.s to emulate.

To his widow, Cherry Anne, his eight children, grandchildren and members of his extended family, we extend our condolences on their loss.

⁹ *Re Bennett* (1971), 2 Nfld. & P.E.I.R. 543 (Nfld. S.C.)

¹⁰ Jenny Higgins, “Changing Government 1971-72”, Newfoundland Heritage \Website, http://www.heritage.nf.ca/law/changing_gov.html

¹¹ Executive Council, Government of Newfoundland and Labrador, “Premier Davis Pays tribute to James Greene, Q.C.” <http://www.releases.gov.nl.ca/releases/2014/exec/1105n07.aspx>