

Remarks by
The Honourable J. Derek Green
Justice of the Court of Appeal of Newfoundland and Labrador
On the occasion of the swearing in of the
Honourable Deborah E. Fry
As Chief Justice of Newfoundland and Labrador
St. John's, NL
September 10, 2018

Welcome to this special sitting of the Newfoundland and Labrador Court of Appeal. This event is being held to record publicly the administration of the oath of allegiance and the oath of office to the Honourable Deborah Elizabeth Fry as Chief Justice of Newfoundland and Labrador.

This is an important and historic occasion.

My name is Derek Green and it is my honour and privilege, as the former Chief Justice, to have been asked to preside at this ceremony and to administer the oaths to our new Chief.

Before doing so, however, I wish to acknowledge and welcome to the Court a number of special guests.

It is a distinct honour for this ceremony to be conducted in the presence of Her Honour, the Honourable Judy Foote, Lieutenant Governor of Newfoundland and Labrador and His Honour Howard Foote. Your Honours, I extend a warm welcome to you. This is the first occasion for you as Lieutenant Governor to attend the swearing-in of a judge. We hope it will not be your last.

I also extend a special welcome to the Honourable Andrew Parsons Q.C., Minister of Justice and Public Safety and Attorney General for the province. Welcome, Mr. Attorney. We look forward to your remarks later in the proceedings.

I am also pleased to welcome Ms. Maeve Baird who is here representing the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, as well as Mr. Donald Anthony, president of the Law Society of Newfoundland and Labrador and Ms. Kellie Cullihal, president of the Newfoundland and Labrador Branch of the Canadian Bar Association. We will hear from each of them a little later.

Let me also recognize the Honourable Raymond Whalen, Chief Justice of the Supreme Court of Newfoundland and Labrador and the Honourable Pamela Goulding, Chief Judge of the Provincial Court of Newfoundland and Labrador.

It is, of course, always a pleasure to see retired judges and welcome them to a ceremony such as this. Their continuing interest in the affairs of the Court is appreciated. In this regard, I welcome the Honourable Clyde Wells, former Chief Justice of the province, the Honourable William Marshall, formerly of the Court of Appeal, and former justices of the Trial Division -

the Honourable Robert Wells, James Puddester, Seamus O'Reagan, Douglas Cook and Robert Hall.

And finally – and perhaps of the greatest importance of all (with all due respect to those I have already mentioned) – let me extend a warm welcome to members of Chief Justice Fry's family, friends and former colleagues, many of whom have travelled long distances to be here to give their enthusiastic support to our new Chief Justice. The guest list is too long to mention everyone but I must single out Chief Justice Fry's husband, John Clarke Q.C., their son, Matthew, who is living in Vancouver, their daughter, Lesley, and Chief Justice Fry's sister, Barbara, and her husband, Ron Riske, from Houston, Texas. Welcome all.

We will now proceed to the administration of the oaths to Chief Justice Fry. I will first ask the Registrar of the Court of Appeal to read the Minute of the Committee of the Privy Council appointing Justice Fry as Chief Justice. Thereafter, I will administer the oaths to her.

Madam Registrar, please read the Minute.

[The Registrar reads the Minute of Council appointing Chief Justice Fry]

I will now administer the oaths.

[Justice Green administers the oath of allegiance and oath of office]

Your Honours, Mr. Attorney General, Ms. Baird (representing the federal Minister), Chief Justice Whalen, Chief Judge Goulding, Mr. President, Madam President, judicial colleagues, members of the Bar, family and friends of Chief Justice Fry ...

By accepting her current office, Chief Justice Fry becomes the representative of a justice system dedicated to the rule of law in this province that has its roots over 400 years ago when Sir Richard Whitbourne held the first court of vice-admiralty in Trinity in 1615. She becomes one of a long line of Chief Justices who have presided over the superior court, commencing with John Reeves, the first chief justice who was appointed to that position in 1792, over 226 years ago. The basis of our court system today still reflects its roots in the Royal Charter of 1825. This very courtroom, which was opened in 1904, has seen the swearing-in of almost every Chief Justice for the past 114 years. The Court operates in the shadow of a great deal of history.

Indeed, today itself is a historic occasion since it marks the installation of the first female Chief Justice of Newfoundland and Labrador

This historical continuity that I have mentioned reminds us of the strength and constancy of the law and gives comfort that the rule of law, not of individuals, governs our lives and provides the bonds which keep our society together. It is important to remember that the office of judge, including that of chief justice, is more than the person occupying it at any point in time. This ceremony stands not only for the recognition and celebration of the appointment of a new chief justice but is symbolic of the fact that our judicial processes are solidly grounded and that our courts will operate not according to the "flavor of the month" but according to well-accepted conventions, processes and principles. The specific rules may change over time but the fundamentals of the system continue.

Chief Justice Fry now becomes the custodian of this system.

However, the installation ceremony of a new chief justice also provides an opportunity to look to the future and in particular to the challenges that face the courts in the twenty-first

century. A new Chief Justice will, no doubt, signal new ideas, new approaches and re-invigorated efforts to meet the existing challenges. This, therefore, is also a time for optimism and expectation.

We are fortunate to have in Chief Justice Fry a person who is very well-suited to address the challenges of her new office.

On May 25, 2007, I had the pleasure of administering oaths of office to then lawyer Deborah Fry as she was sworn in as a justice of the Supreme Court of Newfoundland and Labrador, Trial Division, as that Court was then known. Now, a little over 11 and a half years later, I have another very pleasurable opportunity to participate in a second ceremony involving, this time, the elevation of Justice Fry to the highest office in the province representing the judiciary.

In the intervening eleven years, Justice Fry has established herself as a jurist of the highest standard, commanding the admiration and respect of her judicial colleagues, the Bar and the public. The high esteem in which she is held, especially in the area of family law, is reflected on a national basis as well with academic commentators praising her for the way in which she does not shy away from dealing firmly and comprehensively with extremely difficult cases. For example, in the case of *Furlong v. Furlong*¹, a challenging high-conflict child custody case on which she sat very early in her career, commentators on Justice Fry's decision had this to say:

We note that this case arose in a Unified Family Court and it is an example of best practices at work. This was a case that needed early and prompt attention and it needed a strong hand by the Court to put out what started as a brush fire and was quickly becoming a raging forest fire. We give our kudos to Justice Fry and the Unified Family Court for dealing with this difficult case in an exemplary fashion.²

This comment makes the point that the manner in which she approaches her cases not only provides firm justice to individual litigants but also contributes to the good reputation of the court system of which she is a part. She has always been regarded as a fine representative of the judiciary generally.

This isn't the place to engage in a full review of Justice Fry's previous jurisprudence. It can be said, however, that her judgments have been marked, not only by a sensitivity to the fact that there are real people, not just an abstract principle, involved in and affected by each case, but also to the fact that the formulation and expression of principle leading to a judgment can often have reverberating effects beyond the case at hand. In my view, we have much more to hear from our new Chief Justice's pen (or word processor) in wise, thoroughly crafted future judgments that may have significant effects on the development and reform of the law for many years to come.

The position of Chief Justice of the province is, of course, one of leadership both for the Court as well as the judiciary generally. The ability to lead, however, does not come from the exercise of legally-conferred power. It is often said that the Chief is simply the first among equals. She has no more legal authority with respect to deciding cases than does any other judge. The story is told about a judge in the United States who had been appointed chief justice of his

¹ 2009 NLUFC 14

² Philip M. Epstein and Lena F. Madsen, "Epstein and Madsen's This Week in Family Law", *Fam. L. News*, 2009-23 (09 June 2009)

court. Several months later he received a phone call from a friend who said: “How are you enjoying holding the reins of power?” To which the chief justice replied: “At first I thought it was great – until I learned that the reins aren’t attached to anything!”

Yet, despite this lack of line authority, she must administer and provide direction for the Court and, as well, perform all the myriad other duties that come with the office: acting as Administrator of the province when the Lieutenant Governor is absent, participating on the national stage through the Canadian Judicial Council in matters pertaining to the administration of justice generally, representing the judiciary in dealings with government, especially in relation to funding and provision of up-to-date court facilities and also speaking for the Court to the media and the public in matters of public interest pertaining to the courts. To lead the Court, the Chief must rely on techniques such as engendering respect, showing dedication, patience and persistence, fostering an atmosphere of collegiality and cooperation and perhaps most importantly, by leading by example, in order to achieve her goals.

Chief Justice Fry brings to the office an array of talents and skills that will be of great assistance in fulfilling her duties effectively. She has demonstrated leadership throughout her legal career. As a lawyer, she spent most of her time in the public service. She represented the government in important litigation, including the *Dolphin Delivery* case where she raised a point about the application of the *Canadian Charter of Rights and Freedoms* to private litigation which had been overlooked by other counsel and carried the day on that very point. She was very much involved in denominational educational reform, governmental restructuring, labour relations issues relating to the Hibernia project and negotiations respecting major resource developments, to name just a few of the many important types of files she worked on.

Whenever there was a difficult file, she was likely involved. Her responsibilities took her from the big picture (such as appearing at the International Labour Organization in Geneva) to the local (but in her view no less important) picture (such as flying in a helicopter to Mary’s Harbour in Labrador to represent the province in a family law matter, and doing it while very pregnant).

She served in executive roles in the administrations of six premiers, held Deputy Minister positions in three government departments (and those were the big ones – education, health and labour) and most significantly held the position of Clerk of the Executive Council, the province’s most senior public service position (and incidentally was the first woman to hold that position). The experience gained in these roles will no doubt be a considerable asset in her dealings with government on behalf of the judiciary, the third branch of government, and also in providing administrative direction for the operation of the Court itself.

Shortly before her appointment as Chief Justice, she acted as the senior administrative judge in the Family Division of the Supreme Court and will therefore bring to the Court of Appeal her experience in administration in an institutional court setting as well.

But, in addition to all her skills as a jurist and administrator, Chief Justice Fry also brings an appreciation of the fact that a court is a human institution that requires not only interest in and sensitivity to the needs of litigants but also to the lives of her judicial colleagues and the administrative staff who daily try to work cooperatively to make the institution work.

In essence, what I am saying is that she is a “heck of a nice person.” I learned that personally a number of years ago. Some of you may not know but Chief Justice Fry grew up in

rural Saskatchewan. While attending school there, she became close friends with Michelle Green, a distant cousin of mine. I did not know of the whereabouts of Michelle and I didn't know the connection between Michelle and Chief Justice Fry. Many years later, when Michelle, then living in Perth, Australia, was researching her family tree, she contacted Debbie and inquired about the whereabouts of my father who reputedly had a son who was a judge. Putting two and two together, Debbie arranged for Michelle to meet my elderly parents and me when she visited Newfoundland. Her thoughtfulness in arranging these reunions is indicative of the type of person she is.

We in the Court look forward to working in a collegial atmosphere alongside a very caring Chief Justice who maintains a personal interest in the lives of those with whom she works.

We are lucky to have Deborah Fry to occupy the office of Chief Justice of the province. We will be well-served by her. In fact, it is only by a quirk of fate that we have her. She initially trained as a nurse. She planned to go to medical school but, following her return to Saskatchewan after travelling with my cousin Michelle, she discovered that she could not attend medical school because of a residency requirement which she did not meet because of her absence from the province travelling. So, rather than wait to reacquire residency status, she decided to go to law school instead. And the rest is history. But it was that fortuitous event that blocked her from entering medical school that has brought Deborah Fry to the office of Chief Justice today. Some disappointments do work out for the best.

Now, before concluding, I would like to take one further moment to make the following observation. This is perhaps the last time I will preside at a ceremonial event involving the Court. I want to record how much I have enjoyed serving as Chief Justice of the province for the last eight years. I hope this will be your experience as well, Chief Justice Fry. I wish to express my gratitude to former Lieutenant-Governors, ministers of justice, my colleagues on the bench, the staff of the Court, officials of the Law Society and Canadian Bar Association and members of the Bar who appeared before me for all their assistance, support and courtesy over the years. As Chief Justice Fry will soon find out, the office of Chief Justice cannot function in isolation; it needs the cooperation and support of all those with whom the person in the office interacts. If Chief Justice Fry is lucky to have the same degree of support as I have had, she will find her job much easier than it otherwise would be.

Finally, one further thank you. I am saving the best for last, so to speak. I want to express my sincere and loving gratitude to my wife, Susan, for her unfailing love and support over the 47 years of our marriage and, in particular, for supporting my decision to begin a judicial career and to accept the office of Chief Justice at considerable sacrifice to her, including putting some of her own career plans on hold. I will be forever grateful to her.

So, let me once again congratulate you, Chief Justice Fry, on behalf of my colleagues on the Bench and the staff of the Court. We look forward to a long and productive association.