

Address to the Rotary Club of St. John's
By
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Chief Justice of Newfoundland and Labrador
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Thank you for the invitation to share some insights and information about the Courts in Newfoundland and Labrador. As a member of this Rotary Club from 1993 to 2009, it feels a bit like coming home except for the change in location. I see many familiar faces but also new ones. I was a member of the Naturals Fireside Group and recall with great fondness the Rotarians I met, the friends I made and the important community work undertaken in the name of Rotary everywhere.

As you know, I am the new Chief Justice of the Province of Newfoundland and Labrador. The former Chief Justice has addressed your Club on a variety of significant topics such as the separation of the Courts from the other branches of Government, judicial independence, issues of Court administration, and aspects of the Province's unique legal history, judicial misconduct and challenges in providing meaningful access to justice for our citizens. So, as I am sure you realize, I was challenged to find some topic or topics that would not be a repeat of what you have heard before.

So I thought I would describe my new job.

What does a Chief Justice do?

The position of Chief Justice of the province is one of leadership both for the Court as well as the judiciary generally. There is no job description or legally-conferred power. It is often said that the Chief is simply the first among equals. That means I have no more legal authority with respect to deciding cases than does any other judge.

The former Chief Justice, Justice Green told me a story during transition about a judge who had been appointed Chief Justice of his Court. He received a phone call from a friend who said: "How are you enjoying holding the reins of power?" The new 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 direct authority, I have to administer and provide direction for the Court and perform all the other duties that come with the office. I act as Administrator of the Province when the Lieutenant Governor is absent, participate on the national stage through the Canadian Judicial Council in matters pertaining to the administration of justice generally, represent 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.

Oh and Yes I do have to sit and decide cases as well.

What about the Courts?

As you know, the Court system in the Province consists of three levels of Courts:

- (i) **Provincial Court** handles about 90% of all criminal cases and small civil claims up to \$25,000. There are Provincial Courts in 10 locations in Newfoundland and Labrador.
- (ii) **Supreme Court** handles trials of the remaining 10% of criminal cases, usually the most serious, such as murder and sexual assault. It is the only Court permitted to conduct jury trials. As well, the Supreme Court hears most civil claims and all matters of bankruptcy and challenges to government authority and decisions made by administrative tribunals. It has two divisions, a **Family Division** and a **General Division**. There are six locations in Newfoundland and Labrador.
- (iii) **Court of Appeal** hears most appeals in civil and criminal matters from the Provincial Court and the Supreme Court. It is the final Court of Appeal for the Province. There is one location. Only about 2 or 3 % of cases are appealed further to the Supreme Court of Canada.

I digress for a minute to speak about the physical condition and suitability for task, of each building. The Court of Appeal is located just down the street from the Supreme Court building, the iconic building on Water Street and Duckworth Street.

The Supreme Court was destroyed in the Great Fire of 1892. The state of the building was so bad that the Benchers of the Law Society actually seemed glad that it had been consumed in the fire noting in their 1893 minutes that the “total destruction of the Courthouse” had satisfactorily remedied the insufficiencies of the building.

The new and current Supreme Court on Duckworth Street was open for business in 1904 and still stands today. Much has changed since 1904.

The Court of Appeal building, not nearly so modern, sits on what was the former site of the Union Bank of Newfoundland building, which did survive the 1892 fire. This 1860 era building survived by virtue of the fact that the iron shutters on the windows prevented embers from entering the building.

I think it goes without saying that the 21st century requirements to provide for the increased number of judges, litigants, courtrooms and operations of the Court have changed dramatically from the late 1800’s.

Many of the Courthouses outside of St. John’s are newer and fit for purpose including the new Family Division Courthouse in St. John’s that opened in 2019.

How many Chiefs are there?

We have three. Each Court is headed by a Chief Justice or Chief Judge. As I already mentioned, I am the Chief of the Court of Appeal and also hold the title of Chief Justice of the Province of Newfoundland and Labrador.

The Federal Government appoints the Justices of the Supreme Court and Court of Appeal while the Judges of the Provincial Court are appointed by the Provincial Government. The Federal Government pays the salaries of the Supreme Court and the Court of Appeal Justices while the staff and operational funding for all Courts are provided by the Provincial Government.

Gender Balance

Today in Newfoundland and Labrador, the Court of Appeal, Supreme Court and Provincial Court all have an equal number of male and female Judges. The Provincial Court has 22 judges and two per diem or part time judges. The Supreme Court has 19 justices and nine supernumerary or part time justices. The Court of Appeal has six justices and two supernumerary justices. On most cases the Court of Appeal sits in panels of three, which is different from the other Courts where one judge sits alone on each case,

So what do I see ahead for 2020?

Filling Judicial Vacancies- the Jordan problem:

There are currently three vacancies at the Supreme Court and there have been for many months. We are hopeful, now that the Federal election is over, that the Federal Government will begin to fill the vacancies, which are significant all across Canada. Why is that a problem?

The Jordan decision of the Supreme Court of Canada has put tremendous pressure on the trial courts to conduct criminal trials within a specific period of time. The time lines are challenging and it is understandable that the Courts should be doing everything possible to expedite trials of accused persons. Because priority is being given by courts to manage criminal trials, civil trials and in certain areas, family trials have to wait even longer. There is frustration for all concerned – cases are more complex, more costly and taking longer in the courts. Add to that self-represented litigants who require extra time, assistance, explanations of the law along with fewer judges and you have an optimal opportunity for cases being stayed or dropped due to lack of timeliness, judicial burnout, and general discontent with fairness and access to timely justice.

As I have said, the law is getting more complicated, cases are more complex, taking more time in court and increasing the cost of legal services. You have heard my thoughts on why that is so. Here is another view:

A physician, an engineer and a judge 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 smiled and said, Who do you think created the chaos?

Unified Family Courts Expansion Province wide:

Currently there are two areas of the Province served by a specialized Family Court. On the east coast and the west coast of the Province all family matters are heard in the Supreme Court Family Division, effectively a one stop shop for all matters pertaining to family issues, including divorce, property division, custody, access, child and spousal/partner support, adoption and child protection to name the most common issues.

In other parts of the Island and Labrador, jurisdiction is divided between the Supreme and the Provincial Court. Child protection is heard in Provincial Court, while divorce and property matters can only be dealt with in Supreme Court. And then there is custody, access and financial support which can be dealt with in either Court.

It is quite confusing to explain and, more often than not, when you think you may only have a child support or spousal support issue and start in Provincial Court, you soon realize that somebody also wants the house, a share of the business or a divorce and now you are in two different Courts, possibly in two different locations.

Family Courts are places of high volume, high tension and emotion and stress among litigants, many self-represented.

At times, humour can be helpful in diffusing tense situations - I remember when I was sitting in Family Division, 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.

Specialized Family Courts and Judges benefit those seeking to resolve their family law matters. The Federal and Provincial Governments each have a role in making this happen and it has been committed to by both levels of Government. The expansion is expected to roll out in 2020 and will provide improved service for those needing access to a Family Court.

Memorial University’s decision on establishing a Law School:

The University Senate has endorsed the plan for a law school at Memorial and approval will be sought from the Board of Regents. The Law Society has issued a statement of support. Judges have long supported a law school for our Province. In particular, Justice Faour and Justice Green have been extensively involved in the feasibility study and providing input and advice to those working toward developing a possible curriculum.

A law school makes Memorial a full service University enhancing its already global reputation for excellence in a number of professional disciplines. (Only PEI and NL do not have a law school.)

It will attract scholars and students that will enrich the legal culture of the Province, which has one of the oldest and most unique justice systems in the common law jurisdictions in North America.

A law school provides opportunity for academic discussion, creative thought, debate, review, and advice on law reform in the Province.

A law school will promote access to legal education, legal research and activities supporting improved access to justice. For example, law schools often have student legal aid clinics.

There may be economic advantages in providing expertise and research into the development of Marine law, Natural resource law and Indigenous law.

It is not anticipated that graduates will overwhelm the market - we are under-resourced in rural areas of the Province and there are many career options for a law graduate.

Greater emphasis on Access to Justice and Modernizing communication:

Communication with the public:

The Court operates a Website, Twitter account, and has taken steps to enable electronic filing. All decisions of the Court of Appeal are available on the website. Dockets are available online. The Court participates in a Media Liaison Committee with the print, visual and radio media members to enhance understanding of and accurate reporting of matters before the courts.

Communication with Self Represented Litigants (SRL):

Courts have developed simplified information packages. There are SRL criminal status hearings, as well as legal education and legal resources provided to incarcerated individuals. The Court of Appeal operates a free legal assistance clinic staffed by pro bono lawyers.

Broadcasting Court:

We are working towards live broadcasting of Appeals - Current limitations are accessing appropriate equipment and the size of our venue. We have done a couple – our viewership is low. A good prescription for insomnia!!

Timely decision-making:

People may wonder sometimes why it takes so long to get a decision from the Court. 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."

The Court of Appeal set a goal last year to improve our turnaround times for getting decisions written and out to the litigants. We have cleared almost the entire decision backlog of older appeals and continue on a go-forward basis to meet our targets.

In conclusion, let me say that the job of judging requires independence, impartiality and the courage to do what we think is the right thing every time we make a decision.

Thank you for your attention.