

Convocation Address - Lakehead University

Saturday, May 28, 1983

Mr. Chancellor,
Mr. President,
Members of the Board,
Members of the Senate,
Members of the Faculty,
Members of the Graduating Classes,
Parents and Friends:

I was highly honoured by this University last year when it gave my name to the Faculty of Education Building. It is a badge of pride which a local boy -- and I still consider myself a native of the Lakehead -- must regard as almost an ultimate University distinction. Unfortunately, illness prevented me from coming to last year's Convocation. Despite this, the University proceeded to affix my name to a building which reflects my deep involvement in education for well over thirty years. As best as I can atone for my last year's absence, I express today my deep appreciation for an imperishable memorial. What pleases me most, something which all of you here must know, is that I am able to enjoy the plaque on the Faculty of Education Building and hope to see it from time to time over a long span of years.

My intimate association with Universities had to terminate once I became a Judge. Like other social

and economic institutions, no less than political institutions, Universities had become enveloped in litigation which beset them from time to time, either at their instance or at the instance of faculty and students. There have been quite a number of cases which reached the Supreme Court of Canada relating to faculty issues, for example, challenged dismissals, or to student issues, for example, termination of status because of various kinds of misbehaviour.

When I was invited some years ago to accept the honour of the Chancellorship of Lakehead University, I ascertained that I would not be a member of the Board of Governors, nor a member of the Senate and would occupy a purely ceremonial position. Were I to be involved in University policy, I would, according to my code of judicial behaviour, have been precluded from taking the post.

This is merely one illustration of an enlarged network of public issues that Judges must eschew. As the range of probable litigation has grown, so too has the involvement of Judges in social, economic and political institutions been reduced. In my own code of behaviour, it has never been permissible for Judges to take any public stand on public matters. They have ample freedom of speech when addressing themselves to judicial issues in cases that come before them in their Courts.

It is, I think, of considerable importance that members of the public, including students such as those of you in this room, should appreciate the scruple which must attend judicial operations. The range of issues with a legal dimension has grown over the years and their number will now increase under the new *Charter of Rights and Freedoms*. Freedom of speech has a limited meaning for Judges; they must confine themselves to such utterances as come from their reasons for judgment; they are not free to roam public assemblies and expatiate on public issues. This endangers their impartiality and their integrity, both of which must be preserved to maintain public confidence.

I have spoken on this question before and I shall not fail to continue to do so. Judges, however bright, however knowledgeable on public affairs, cannot bring their judicial office into a public forum by participating in public affairs. Their choice of a vocation has meant, in my view, a deliberate choice to leave public affairs alone and let others -- and there are many others -- to deal with them.

There are some special exceptions from this principle of abjuration. Judges may be appointed by a federal or provincial government to act as commissioners of inquiry, for example, as members of a Royal Commission,

or of other types of inquiry, but it is understood that their duty as commissioners is to conduct the assigned inquiry, to submit their findings or report to the particular government and then to keep quiet. It is not for a Judge conducting a government-assigned inquiry to pursue it; once his duty done with the inquiry, the Judge is *functus*, finished, and must leave it to the government to decide what action if any to take on it. This has been the rule generally followed, although I cannot say that it has not been occasionally breached but that has been in years gone by and not very often in recent years.

This brings me back to a central theme. I have mentioned the attributes of impartiality and integrity; but underlying these is judicial independence. Independence of the judiciary has several aspects. It means in the first place that we, the Judges, are not civil servants. We do not take orders from the Government or from any member of the Government, be he Prime Minister or other member of the administration. Not every country in the world -- very few I believe -- can boast of their independence of Government control or Government directives. Indeed, with so much Government, so much parliamentary involvement in people's everyday affairs, the Government and Government agencies are one of our chief consumers of judicial services. Crown agencies, Crown servants, parliamentary bodies are frequently

brought before the Court to answer any excess of powers which they assume to exercise. It would be strange, indeed, if the very Courts which adjudicate on the limits of their authority were subject to their direction.

Some years ago, my monthly pay cheque contained a statement of a 35-hour work week. Apart from the insult of so limited a work span -- it is about half correct -- it placed us in the same category as civil servants. I protested vociferously and had this designation removed from our pay cheques.

Independent as we are, in carrying out our duties, in determining how to deal with legal issues, we cannot, of course, fix our own salaries. Here we have to bow to overriding principles of responsible government. That is not to say that we leave the size of our salaries to Parliament alone. Ultimately, this is so but we have and do make representations and expect to be treated fairly. There is no thought, no likelihood, however, of a strike. We have an overriding public duty to protect the judicial system, to see that it is not made powerless or even diminished by friction.

Joined to judicial independence and supporting it is security of tenure. Once we are appointed, we enjoy a protected position, and are liable to removal only for misbehaviour. We are not subject to removal at the whim

of Government, as is the case with many public servants. Our guarantee of security enables us to exercise our judicial duties without fear or favour. We are no less secure than are University faculty who have reached a tenured position and enjoy protection accordingly.

We cannot, of course, be blind to the extent to which financial support, translated into decent working environments and adequate human resources, play an important role in our ability to manage our affairs with minds free to concentrate on our respective pursuits. The erection of a new Court House, like the erection of a new University building or facility, is thus a welcome aid to our work; and to the extent that our governments provide them as needed, they reinforce our independence and the recognition by government of the importance of that independence.

Principles which the judiciary in our democracy espouse are no less precious in the operation of Universities. Just as Judges cherish independence and search for objectivity, so too do Universities. While the independence may have the same connotation for Universities as it has for Judges, objectivity has a different connotation for the University. This may be said to be merely a matter of the different character of our respective pursuits. The principle is not thereby impaired. The University is able to reach out for facts, by experiment in the natural sciences,

by inquiry and sampling in the social sciences, and to assess their significance, their relevance to what has been undertaken and to come to conclusions, sometimes very tentative ones, on the basis of the collected materials. Courts and Judges do not reach out for the facts, but must take them as properly presented by lawyers for the litigants. None the less, they fall to be assessed and weighed for their cogency and, that being done, Judges are able to apply the law, some Judges doing so more creatively than others. Neither the Judge nor the University professor is expected to be opinionless, but what is expected of each is fidelity to the materials to which they respectively apply their judgment.

There is another common characteristic of Universities and Courts to which I would refer. They are, public institutions, not, of course, in any sense of control of their day-to-day activities, but in the sense of providing educational and judicial services for the benefit of the public. Moreover, this benefit is the greater as Universities enhance our stock of knowledge and as Courts and Judges are sensitive to social considerations in their interpretation and application of legal doctrine.

The day-to-day impact of judicial decisions, especially those of the Supreme Court of Canada, upon members of the public is, I venture to think, of a different order

than the slower, more occasional breakthroughs in knowledge emanating from Universities, and calls for an information service on a continuing basis. In my opinion, the public's right to know what is going on in our Courts is no less important than its right to know what is going on in our democratic legislatures and in our responsible governments. Courts in a federal system, when dealing as they frequently do, with issues of public law are part of our governmental machinery. Their decisions in the areas of constitutional law and of administrative law bear directly on governmental power and on governmental policy, both at national and at provincial levels. This is especially true of the Supreme Court of Canada which has a critical role in these areas of public law. It has also a critical role in a related area, that of the criminal law, a branch of the law in which civil liberty questions frequently arise, one where the Court measures the extent or the degree to which individual rights are protected under or against the criminal procedures and sanctions of the Canadian Criminal Code.

Here then is a Court which has the final word on constitutional interpretation, a Court whose judgments have an important impact on the operations of administrative tribunals throughout Canada, and a Court which has the duty of seeing that the presumption of innocence, that regularity and fairness, are safeguarded in the administration of the criminal law.

The public significance of this role is undeniable. It is not only the immediate parties to any piece of litigation which ends up in the Supreme Court of Canada who are affected by the Court's decision. Each decision has an eddying effect, flowing out to all other Courts in Canada and establishing norms of conduct for individuals, for corporations, for governmental bodies, even for Parliament and for provincial Legislatures, according to the nature of the litigation and of the scope of the decision bringing it to an end.

How then are members of the public to be made aware of the currents of judicial decision, especially the decisions of Canada's highest Court which are the most authoritative? Very few can attend the hearings of a case, although our Courts are open to the public; very few can be expected to seek out the reasons for judgment in any one or more cases, although these are available as public documents and are published in various series of law reports. Lawyers, of course have a professional and bread-and-butter interest in the decisions, and must consider them in the carrying on of their practices. So too, do law schools, their professors and students, take up the decisions as part of legal education. Learned journals and periodicals publish articles and commentaries, assessing decisions, placing them in particular contexts, relating them to previous decisions on the same or connected matters, seeking

perhaps to distil a general principle from a collection of decisions. The articles and comments do not stop at being merely explanatory; they may be and are entitled to be critical, although praise is equally acceptable. The matters dealt with by the Courts are so often central to important values of our society that the decisions must be publicly examined, publicly explained, publicly re-judged, the hope being that this will be done by informed assessors.

In our democratic society, we have recognized that the public right to know is best assured through commercial news gathering agencies which we have, by extension, endowed with the freedom of speech which is one of the highest social values that we claim and cherish as individuals. It is through these agencies that a wide range of information, touching government operations, touching economic and social issues, touching human behaviour, touching the arts, literature, science, entertainment, sporting events, touching achievements and catastrophes (and, as well, comments on and assessments of these materials) is made known to the general public. How does the law fare in this company? I regret to say not very well, even in our largest mass circulation newspapers, and equally poorly in radio and television. The course of a trial, especially say, a criminal trial that provides some drama, by reason of the offence or of the offender, is often followed in our news media much more avidly

than the course or the result of an appeal. There is entertainment value in the trial that involves simply factual reporting, and not the kind of difficult assessment and appraisal of decisions that come from a provincial court of appeal or from the Supreme Court of Canada. There is no visual human drama in the course of the appeal hearing, only the oral arguments of counsel. Yet the long-run consequences of an appeal decision are more important for an informed public opinion on the law of this country than the short-run entertainment or curiosity value that is produced by the course of a dramatic trial.

This is a large issue, too large to pursue in detail today. It is sufficient to say now that there has been improvement and I hope it continues.

I have thought it useful to speak as I have about the role of the judiciary as an important public institution of which University students certainly should be informed.

May I thank the University for this opportunity to address this assembly, and express again my appreciation to it for the honour that it has done me on more than one occasion and certainly this morning.

Bora Laskin