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THE JUDICIAL SYSTEM OF CANADA

ERRICK F. WILLIS*

Fellow students and fellow North Americans. It has been suggested that I might speak to you today in regard to Canadian Courts and the Canadian Judiciary.

I am happy to accept this suggestion, but in doing so I wish to assure you that I am not here to recommend a change in your system because I do not have adequate information on American courts, and for all I know your system may be superior to that which now exists a few miles away in Canada.

Our Constitution is contained in the British North America Act of 1867 which was passed by the Parliament of the United Kingdom in London, England, and has been amended by that Parliament on several subsequent occasions at the request of the Canadian Government and Provincial Governments. The United Kingdom has indicated on several occasions that it would be quite willing to give Canada complete provision in order to amend its own constitution, but there are particular factions within Canada which prefer to have the power of amendment exercised by the United Kingdom rather than by the Canadian Government. The objection is based on a fear that perhaps the rights now enjoyed by the French speaking minority in Canada might be changed if the power of amendment rested entirely with the Canadian Government. It is however, a well established and a basic fact that many amendments have been made since 1867 and they have all been passed without question, on receipt by the United Kingdom Government in Great Britain of concurrent resolutions of the House of Commons and Senate of Canada requesting the amendments.

I pause to say that in Canada we have a House of Commons which corresponds with your House of Representatives and we have a Senate which must approve all legislation passed by the House of Commons.

Our Senate however, does not have the wide and important powers similar to your Senate and ours has the further weakness in that all Senators are appointed for life by the Federal Cabinet and a Senator is almost impossible to remove from office in our country, even though our Senate in Canada does not have the importance or the powers which the Senate of the United States possesses. The

* Speech delivered by the Honorable Errick F. Willis, Lieutenant-Governor of Manitoba to the Law Students of the University of North Dakota, September 30, 1960.

Senate in Canada at present is largely of the Liberal party, while our Federal Government has a large Conservative majority. This does not create difficulties in our country however, because our Senate seldom interferes with the House of Commons, it does seem reluctant to exercise the full powers of veto which it does possess. I suggest to you, I hope without offense, that your system of selecting and electing senators is vastly superior to that in Canada where senators are not elected but rather selected by the party in power, largely on the basis of services rendered.

Section 91 of our Constitution known as the British North America Act allocates exclusive powers to the Federal Government in twenty-nine different classes of subjects, not including matters now assigned exclusively to the legislatures of the provinces. These allocated Federal powers include trade and commerce, military defence, navigation, shipping, fishing, currency and coinage, banking, patents for invention, Indians, and criminal law.

Section 92 allocates a number of other classes of subjects to the Provinces including property and civil rights, the amendment of the Constitution of the Province except as regards the Office of Lieutenant-Governor, the borrowing of money on the sole credit of the Province, the provincial lands, hospitals, municipal institutions in the Province, local works, incorporation of companies, marriage, education, and in general all matters of merely a local and private nature within the province.

Other sections of the Constitution empower the Federal Government of Canada to appoint judges of all the superior courts and district and county courts. Judges are appointed and hold office during good behavior until 75 years of age, but are removable by the Federal Government on an order passed by the Senate and the House of Commons. One county court judge was removed from office in the history of Manitoba but to the best of my knowledge there has only been this one particular case. The county court judge in question made an order in connection with an estate and on appeal to the Appeal Court this order was thrown out. The county court judge then in a public statement cast doubts on the integrity and ability of the appeal court judges who had reversed his decision and he also claimed that these judges were creating one law for the rich and one law for the poor. The investigation was held by a superior court judge from another province who was appointed by the Federal Minister of Justice and after many days of taking evidence the county court judge in question was removed

from office on an order from the judge who conducted the inquiry. Provision is also made for the salaries, allowances and pensions of judges of the superior, district and county courts by the Federal Government. I pause to say that both the salaries and the pensions of judges are considered to be quite adequate based upon Canadian standards of living, and in general these positions are sought after by many of our leading citizens.

FEDERAL COURTS

The Government of Canada has established four Federal Courts.

The Supreme Court of Canada. This court has two jurisdictions, namely:

(1) The appellant jurisdiction shall have and exercise appellant, civil and criminal jurisdiction within and throughout Canada. It is the court of last appeal in Canada.

(2) Special jurisdiction. The court is also a court of first instance in important questions of law or fact touching (a) interpretation of the British North America Act, (b) the constitutionality or interpretation of any Dominion or Provincial legislation, (c) the powers of the Parliament of Canada or legislatures of the provinces and any other matter of a nature similar to the above with reference to which the Government of Canada sees fit to submit any question.

This court now consists of a Chief Justice and eight junior judges all of whom are appointed by the Federal Government. They hold office during good behavior and until they attain the age of 75 years. The Chief Justice is paid annually \$27,500 and the junior judges receive \$22,500.

The Exchequer Court. This court has exclusive original jurisdiction in respect of the following matters:

(1) Claims against the Federal Government for property taken for public purposes.

(2) Claims against the Federal Government for damages caused by the construction of public works.

(3) Claims against the Federal Government arising out of death or damage to personal property resulting from the negligence of servants of the Federal Government.

It also has concurrent jurisdiction with provincial courts in cases where relief is sought against any officer of the Federal Government for anything done or omitted to be done in the performance of his duty; in cases relating to applications for patents, copyrights, trade marks, or industrial designs or the impeachment or annulment

thereof; and in all actions or suits of a civil nature in which the Government of Canada is a plaintiff or petitioner.

The court consists of a president and four junior judges appointed by the Federal Government during good behavior or until they attain the age of 75 years. The president is paid \$18,500 and junior judges \$16,900.

Courts of Admiralty. The different provinces have Courts of Admiralty and they hear and determine claims relating to the use or hire of ships, carriage of goods, the necessary supplies to a ship and matters concerning ship salvage.

In general these Courts are presided over by a Superior Court Judge from one of the existing courts within the Province.

Provincial Courts. Each of the ten Provinces has its own courts consisting of an appeal court and a trial division. At the same time they also have county or district courts with jurisdiction limited by the provisions of the statute under which they are created. In Manitoba cases their civil jurisdiction is confined to cases where the amounts in dispute are \$1,000 or less. In some cases these county or district courts are authorized to receive appeals from lessor courts, such as small debt courts and juvenile courts.

While there are variations in different provinces because of population, in general their provincial courts are composed of the court of appeal consisting of a Chief Justice and four to nine junior judges and a trial court consisting of a Chief Justice and five to twenty junior judges. In general the district court or county court consists of from three to seventy judges. All county court and district court judges are paid \$10,500 per year. The Chief Justice of the Appeal Court and the Trial Court each receive the same salary, namely, \$18,500 per year. The junior judges on the Court of Appeal, also on the Trial Court receive the same salary, \$16,900.

In general, a judge may be removed from office by the Federal Government on a motion passed by the House of Commons and the Senate.

All Superior Court Judges cease to hold office on attaining the age of seventy-five years.

Every judge has to have at least ten years experience as a barrister of some one of the provinces of Canada.

There are also courts of inferior jurisdiction in all the provinces, such as, police courts, juvenile and family courts created under provincial statutes and staffed by judges and magistrates appointed and paid by the provincial governments.

In all cases judges are appointed by the Federal Government or

the Provincial Government and no judges in Canada are elected by vote of the people. I understand that some of your judges are elected by vote of the people and this is a change from the present Canadian system. In Canada the judiciary is held in the highest respect and there are seldom criticisms as to the character of the men who are selected, and it is considered a matter of political importance to select judges of the highest possible ability and integrity. There is always a fear of loss of votes in our public elections if a man selected for the position of judge is a man of mediocre ability. In very many cases a lawyer is happy to accept a judgeship even though it may not bring him a larger income than the one which he receives in private practice, but it does place him in a position of public importance if he is selected as a judge.

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While it is not directly within the limits of my speech on Canadian courts, nevertheless I think it is worthy of mention that our police force which assists the courts indirectly has features which are far from usual. The Royal Mounted Police operate from coast to coast within Canada and it is possible for towns and cities to employ these men to take care of their local needs instead of having a local policeman. This gives a local town excellent law enforcement and at the same time extends the coverage and size of the R.C.M.P. so that they can do a better job in catching a criminal in any part of Canada. Although employed by a local town an R.C.M.P. policeman is also subject to the orders of the R.C.M.P. headquarters within the Province in any case of emergency.

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In Canada, in general terms the legal education required for a lawyer is from six to eight years. Most law students take an Arts course of four years at the University first and then four years of law school which in most provinces can be taken concurrently with apprenticeship to a lawyer under articles for four or five years at which the law student receives practical experience and training in a law office. While there are variations in some provinces, in nearly all provinces a minimum of two years in Arts is required followed by four years at law school and also at least four years under articles working in the office of a practicing lawyer.

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Finally I should like to say that although I definitely make no recommendations to you or your country, nevertheless for our purposes in Canada our judiciary and our police system are considered by most people to be adequate for the needs of our country.