

Luncheon Address

The Honourable Eric CLINE*

Please allow me to express the regrets of Premier Roy Romanow, who, I may say in all honesty, would much rather be here with you than attending to another matter which has arisen.

I suppose my first order of business is to welcome all of you to Saskatoon which, in addition to its other charms, is my home town! So I'm delighted to have you visit our city. I trust your time here will be both pleasant and productive, and that you will have ample chance to enjoy Saskatchewan hospitality. But I should give you a word of warning : There's a law on the municipal books that makes it illegal here to catch a fish with your bare hands. So think twice about ordering that sushi.

Now, I see that the title of this conference is "Justice To Order — Adjustment To Changing Demands." This is a timely and vital topic, not just for those of us in the legal profession, but beyond it into government and indeed into society, because justice for all Canadians is a major component of government's relationship with its citizens, and an important contributor to the legitimacy of government.

In the implied contract we have with our citizens, they give up their coercive power to the state in exchange for the assurance that coercive power will not be used against them unless they violate the covenant. For this contract to be morally binding, and indeed for it to be effective at all, the administration of justice must be seen and understood to be fairly and equitably applied to all, and fairly and equitably accessible to all. No one is likely to surrender his or her coercive power willingly in a situation where it might be applied against them arbitrarily or unfairly.

This concept, the equal application and accessibility of law, seems fairly straightforward, but it is complicated by the realities of a pluralist society like Canada. What do I mean by that? Well, pluralist government has to reconcile the need to create a community while refereeing between competing visions and needs of different groups — different regions, different ethnocultural backgrounds, and so on. In the same way, a pluralist justice system has to find a way to administer justice in a uniform way that also addresses the differences among Canadians. A government must find ways to deliver services efficiently and effectively, I would argue that the justice system needs to do the same, and indeed that is what this conference is all about.

* Finance Minister of Saskatchewan, Regina.

These challenges get more complicated still when we look at our society's constant fluidity — a society where the only constant is endless change. Your challenge — the theme of your conference — is how to respond to the changes in your environment, how to work together and co-ordinate your efforts, to meet the constantly shifting demands being placed upon the justice system. We commend you for your efforts.

I see you living up to the maxim enunciated by Roscoe Pound, the former Dean of Harvard Law : *The law must be stable — but not stand still.*

And now, a few words about the challenges as we see them. I know that you have a comprehensive agenda for addressing these issues, and I don't want to try to touch on every panel and plenary topic on the agenda. I'll just touch on what I see as some key challenges to equitable accessibility, which, as I said, is fundamental to belief in the justice system and therefore to the legitimacy of the state.

First, I believe we need to be cognizant of the problem of rising transaction costs in the administration of justice. Elsewhere in government, and across the private sector, the trend is to reducing labour costs, but the justice system, not just here in Canada but all over the world, has been an "island of resistance" to that trend — often with deleterious effects for the system and the people it wants to serve.

There is the old saying that "*justice delayed is justice denied,*" and it seems to me that "justice priced out of reach" is similarly denied.

Next, there is the phenomenon of "mystification" that surrounds and pervades the justice system, and again impedes the access to the law for ordinary people. By this, I mean the arcana of language and process, which prevents average citizens from feeling as though they can fully participate in creating solutions that are suitable to their needs.

Third, and perhaps most important, there is a lack of adaptive mechanisms to allow the justice system to reflect the cultural realities of the clients involved.

This is especially true in aboriginal communities, a very serious challenge to the justice system that has been identified here at your conference. The problem, as I see it, is that the system does not at its root adhere to the principles of pluralism. The lawyers and judges wear the trappings of English courts from centuries ago; and the language, as I've said, is arcane and often incomprehensible to the citizen. In a word, for too many of our citizens, it is an alien system, a system with which they often have no connection.

The great trial lawyer Clarence Darrow once said, "*Laws should be like clothes — they should be made to fit the people they are meant to serve.*" I know that this concerns people like you, the stewards of our legal process, more than anyone.

So — there are the challenges :

- rising costs;
- "mystification" in the system;
- and the lack of cultural connection — all related, of course.

So, what do we do about it? Well, I note with great optimism that you are discussing several promising avenues here this weekend : Alternative Dispute Resolution, Administrative Tribunals, mediation, and such things as using traditional aboriginal justice mechanisms like sentencing circles in dealing with some aboriginal offenders.

These alternative methods have great promise, if ways can be found to integrate them into the framework of existing litigation methods. So we look forward to reading your conclusions.

However, I want to "shift gears" at this point, to offer an example from our experience to suggest that workable methods can be found to meet the needs of citizens who felt to some degree alienated from their government. This example comes to us from outside the justice system, being related to the sphere of economic development. But I think the lessons hold.

About three years ago, a group of our northern municipalities and communities approached our government, expressing their desire to participate more fully in the long-term economic planning for the north. The resulting initiative was called "New North," and it has been a success. Before the New North, most of the economic development plans for the north had been designed and implemented from outside the region. As you well might imagine, citizens and communities of the north wanted to have some influence on these fundamentally important decisions, but they faced many obstacles similar to those I mentioned earlier in regard to the justice system :

- costs — attending in the centres of decision-making has associated costs;
- mystification — the arcana of government officialdom can be no less daunting than in a courtroom;
- and alienation — many of these citizens did not feel comfortable in the government *milieu*.

So they approached us with this proposal, and worked with us to overcome these obstacles. We addressed the cost issue, and to some extent the alienation question as well, by going to them, and having our meetings "in their back yard." We tried to reduce the mystification of the process by holding round-table discussions in plain talk.

In the result, we managed to establish committees for economic development, health care, education, housing and recreation. Through the ongoing "round-table" process, we have reached a number of useful agreements. Earlier this year we agreed to work with them on a "Northern Strategy," identifying strategic economic opportunities;

to work with Ottawa on a development agreement; and to establishing a Northern Development Board, involving all stakeholders, to implement the strategy.

Friends, to me, this process has been an excellent example of pluralist government. We used communitarian values of consultation and participation to build consensus — and to give these people and their communities a voice in their future, and just last month, the process continued with our Justice Minister consulting with New North on establishing a Northern Justice Strategy to complement steps taken in other areas.

Briefly, Minister Nilson discussed such issues as :

- the image of the RCMP and sensitivity to the northern communities it serves;
- legal aid issues;
- young Offenders;
- and bill C-68, among other justice issues.

I think this model may prove to have application in other areas — including the areas you are discussing here. In sum, this process is bringing the government to the street, as it were.

"Taking it to the street" in the administration of justice is also paying dividends in U.S. cities experimenting with "community policing." In an article in the October 3rd issue of *The Economist*, there is mentioned a successful experiment in Boston, Massachusetts, in which the police have become almost like social workers — they counsel young people, provide tutoring, and even help clean up graffiti!

Community values work. Perhaps they can work for us as we attempt to meet the ideal of a justice system that is accessible to all and is seen as fair and equitable by all.

The eminent legal scholar Vincent C. MacDonald, the Dean of Dalhousie Law School, once said, quote, "*You don't enact good laws — you grow them.*" He rightly saw, as so many of us do, that the law is an organic thing, changing and adapting to its environment. I think it's safe to say that the same is true of justice systems — that they are not so much created as grown, nurtured by people like you, in places like this. It is by open and frank discussion of these vital issues that the law, the system, will grow and adapt to meet the needs of Canadians.

I wish you well during all your deliberations here, and I invite you to return to Saskatchewan any time you can for a visit — but maybe you'll want to come back in the summer. Whatever the season, we'd love to have you. Thank you all very much, and best wishes to each and every one of you.