

**Speech Given by Chief Justice Marc Noël at the
Barreau de Montréal’s Opening of the Courts
September 6, 2018**

Chief Justices, Associate Chief Justices, Honourable judges of all courts, Mr. Bâtonnier, members of the Barreau de Montréal, distinguished guests.

Thank you, Mr. Bâtonnier Synnott, for the opportunity given to me to speak this morning. In light of the theme for this year’s Opening of the Courts, I cannot help but recall that it was your brother, when he was Bâtonnier three years ago, who was “at the forefront”. In fact, he was the first one to give us the floor on the occasion of this important gathering of Montreal’s legal community. We are ever grateful to him for that.

I am speaking to you today on behalf of four of the five courts established under section 101 of the *Constitution Act, 1867*, namely the Federal Court of Appeal, the Federal Court, the Court Martial Appeal

Court, and the Tax Court of Canada. Those courts are comprised of nearly 100 judges, 150 if we include designated judges, one third of whom are civilians called upon to sit in Quebec, primarily here, in Montreal.

Those courts, which I call the national courts for lack of a better description, play a growing role in the lives of Canadians and Quebecers. For example, the Federal Court alone has more than doubled in size over the past 20 years and now comprises some 50 judges and prothonotaries. It is truly an honour and a privilege for me to be able to report on some of our activities before this annual gathering of the Montreal legal community.

I first wish to express, on behalf of Chief Justice Crampton, Chief Justice Bell and myself, our support for the idea of renovating the Lucien-Saulnier building and returning it to its legal purpose. Being a large-scale project that would require a considerable investment of public funds, the decision to proceed with that project does not fall to the

judges. Only political will involving the two levels of government and the City of Montreal can enable it to be carried out. But who can bear to witness the steady deterioration of a building that was the crowning glory of the last century; and what an opportunity this is for our elected officials to join forces to recreate the legal forum and bring Quebec's judges of all jurisdictions together under the same roof.

We, the Federal Courts, see this as an opportunity for us to become even closer with Quebec's legal world. Yet, that closer link with Quebec's legal community can also grow in a different way. One of those ways is to make the Federal Courts more accessible to Quebec litigants.

Much is said about bijuralism in substantive law, but less in procedural law. Since the Federal Courts are pan-Canadian courts, it is not easy to develop rules of procedure that are familiar to everyone, and it must be acknowledged that our rules, as effective as they are, draw more from those found in the common law provinces, especially

Ontario. Added to this is the fact that, despite considerable effort, the training provided by the faculties of law in Quebec regarding the Federal Courts and our rules of procedure continues to be insufficient, and is non-existent in some cases.

The outcome, to put it bluntly and simply, is that a good many Quebec lawyers do not feel comfortable when called to appear before the Federal Courts, with the consequence that they tend to avoid us, sometimes to the detriment of their client's interests. Clearly, the lack of familiarity with our rules can hinder access to justice. An experienced practitioner, now a chief justice, told me last year that he would take great care to ensure that his professional liability coverage was up to date every time he had to appear before us.

That seemingly wide-spread discomfort led me, along with Chief Justice Crampton, to consider whether we could bring us closer to Quebec's legal culture in terms of procedure. For that purpose, we have formed a working group that will look into the potential of permitting in

certain disputes arising in Quebec, the use of rules of procedures that are more in line with the *Code of Civil Procedure*, with the objective being to facilitate access to the Federal Courts by creating a more user-friendly procedural framework. Naturally, as the English expression so aptly says, “the devil is in the details” and we need to ensure that, through this exercise, procedure continues to be a servant of substantive law. But it is well worth the effort.

The working group will be chaired by Justice Richard Boivin of the Federal Court of Appeal, who will be assisted by Professor Denis Ferland of the Université Laval. Among the members, the Honourable Dominique Goulet will bring us the perspective of a Superior Court judge. Mr. Claude Joyal will act as representative of the Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould. Mr. Éric Hardy had been designated to represent the Barreau du Québec, but the Minister pulled the rug out from under us last week by appointing him a judge of the Superior Court. The Barreau du

Québec will have to designate a replacement for him soon in order not to delay the first working meeting scheduled for October 11.

In the same vein as developing closer relationships with the provincial courts, Chief Justice Crampton and I recommended to the federal government that section 10 of the *Federal Courts Act* be amended to allow the Superior Courts to use Federal Court judges as deputy judges, as needed, in the same way that we currently use Superior Court judges as deputy judges in the Federal Courts.

That reciprocity, in addition to optimizing the use of judicial resources, would resolve a thorny problem involving national security. The current system leads to the bifurcation of procedures when information likely to compromise national security becomes relevant to the outcome of a trial, whether civil or criminal. Our proposal would enable judges who are properly trained for that purpose to combine their roles as Superior Court and Federal Court judges, thereby eliminating the unfortunate constraints of the current system.

Changing topics and turning briefly to court performance and efficiency, the statistics indicate a constant flow of activity for the national courts over the last five years.

For the 2017-2018 judicial term, the Federal Court had more than 2,400 sitting days, with 300 in Quebec, mainly here in Montreal.

The Tax Court had close to 1,400 sitting days nationally, with 158 being held in the province of Quebec.

As for the Federal Court of Appeal, it held 175 sitting days across the country, including 26 here in Montreal.

Lastly, the Federal Courts renew themselves over the years through the replacement of judges who are called upon to retire. Among the recent appointments, there is the Honourable Sébastien Grammond, who became a Federal Court judge in November to replace the Honourable Simon Noël, who elected to become a supernumerary judge. I also mention the appointment of Ms. Alexandra Steele, a practitioner with Robic, who replaced Prothonotary Morneau, who retired last spring. I

am taking this opportunity to congratulate Prothonotary Morneau and publicly thank him for his 22 years of dedicated services to the Federal Courts.

In keeping with the adage that the best speeches are often the shortest, I will end my statements here by thanking the Bâtonnier of Montréal for once again giving us the floor on the occasion of this important ceremony. The judges that I am representing are very grateful to you for that. Thank you.