Notes for brief remarks on the 50th Anniversary of the Federal Court

Chief Justice Paul Crampton

Special "Virtual" Sitting of the Court
June 1, 2021
(Speech delivered in French and English)

The transformation of the Exchequer Court into what was to become the Federal Court began in earnest immediately following the general election in 1968.

An important goal of the newly elected government was the creation of a "just society."

The Federal Court was considered as having an essential role in carrying out that vision.

In short, the government wanted to recalibrate the balance between the average citizen and the state. To this end, it wanted to provide individuals with additional "recourse against bigness, remoteness, alienation [and] distance from the decision making power."

Three other critical objectives were identified by the Justice Minister of the day, the Honourable John Turner. These were:

> First, achieving greater consistency in judicial review of decisions of federal administrative tribunals across the country. This was to be achieved having by a single, itinerant, court to replace courts across the country that had been taking different approaches to important issues.
>
> Second, providing members of the public with a "one stop shop" in which to pursue and enforce claims involving matters having a national or interprovincial dimension.
>
> Third, rendering justice from coast to coast in both official languages, with judges trained in both the civil law system and the common law system.

These intellectual underpinnings of the Court remain as relevant and strong today as they were half a century ago.

Among other things, this is reflected in the continued growth of the Court's workload in the areas of administrative law, intellectual property law, national security law, aboriginal law, constitutional law and actions against the federal government – especially class proceedings, of which the Court now has over 80.

From a very small complement of eight judges in the Trial Division of the Federal Court of Canada, the Court has grown to a total complement of 55 (including prothonotaries). This number includes existing vacancies, but not the five new positions that will be filled when the Court is able to demonstrate the need for them. We anticipate that one of those new positions, the ninth prothonotary position, will be filled in the coming weeks.

As the Court's size and workload have expanded, it has evolved from a body that was all male, prior to Justice Barbara Reed's appointment in 1983, to having women constitute 42% of its existing complement.

This includes Associate Chief Justice Gagné, who is the first woman to hold the position of either Chief Justice or Associate Chief Justice of the Court or any of its predecessors.

The evolution of the Court has also resulted in a significant increase in its bilingual capacity. In addition to the members of the Court from Quebec, a dozen members of the Court from other provinces are able to hear cases in both official languages. And several other members are able to deal with applications written in those languages.

As we look to the future, it is with a sense of genuine optimism and anticipation. Just as our predecessors could not have predicted in 1971 where we would be today, we can only speculate about how the types of disputes we adjudicate and mediate today will be resolved in 50 years.

But the Court will not be a passive actor in the ongoing process of dynamic change. The Court is committed to being an active participant in the evolving legal ecosystem.

This is how the Court was able to successfully navigate the extraordinary challenges posed by the COVID-19 pandemic over the past 15 months. Instead of finding itself back on its heels, as others charted the way forward, the Court seized the opportunity to accelerate its transformation towards being much more digitally accessible and technologically advanced, as contemplated by its *2020-2025 Strategic Plan*.

As the country opens back up again in the coming months, it will be important for the Court to build on its recent achievements to continue to find new ways to facilitate access to justice.

In a nutshell, the challenge will be how to assist parties to get before a Judge or an Associate Judge, as our Prothonotaries will soon be called, much more quickly, for less cost and with less procedural or logistical difficulty.

Based on the feedback received in recent months, it is clear that there will continue to be a strong demand for in-person hearings in a significant range of matters.

However, it is also becoming increasingly apparent that there will continue to be a material demand for remote hearings in case management conferences, short motions and routine immigration applications for judicial review. I also anticipate greater use of hybrid hearings, for example, to reduce the costs associated with testimony by witnesses based in another country or province, or an inmate in detention.

As the Court looks to the future, it will be important to achieve greater regional representation and greater diversity. Put differently, the Court's complement needs to better reflect Canada's regions and its rich demographic mosaic, while continuing to be composed of people with exceptional legal skills. This will be essential to maintaining and promoting public confidence in the Court.

While the Court's flexible approach to where its members spend their writing weeks and weekends has greatly assisted it to attract excellent candidates from some parts of the country, the number of such candidates who are stepping forward in other parts of the country is far from ideal.

We understand that this is in part because of the travel burden. We have been able to alleviate that burden by giving judges who have been appointed from across the country more opportunities to sit in the cities or regions from whence they hailed. The post-pandemic demand for remote hearings in the types of short sittings I mentioned a moment ago will create additional opportunities.

However, the Court needs to remain firmly committed to its itinerant nature. Among other things, this is essential to ensuring that regional divergences in the Court's jurisprudence do not emerge. In my view, this will continue to be critical aspect of nurturing the Court as a strong national institution.

The same is true of the need to continue promoting a better understanding of the Court's jurisdiction and processes. Indeed, clarifying the Court's ability to provide certain types of remedies to the public is arguably also essential in this regard.

I will close by inviting you to conjure up John Lennon and imagine. Imagine a court that has a headquarters befitting of an important national institution.

Imagine a court that has moved out of commercial towers, into Crown-owned facilities situated closer to judicial precincts around the country. It's easy if you try.

Imagine a court that has greater administrative independence and a budget that permits it to fulfill the mandate envisioned by its founders. I wonder if you can.

Imagine the *Competition Tribunal Act* being repealed, and having a new chamber of the Court deal with applications from the Commissioner of Competition. The Chamber could even be a combined Competition and IP Chamber, or even a broader Commercial chamber, that included maritime law disputes.

Imagine other chambers of the Court, including national security, Aboriginal law, class proceedings and perhaps even chambers dealing with one or more new areas of jurisdiction that make sense to allocate to the Court. It isn't hard to do.

Imagine how a Court with such chambers could attract even more great candidates from across the country.

I hope some day you'll join us in helping to transform some of these ideas into realities.

Thank you.