

ROY McMURTRY — RENAISSANCE MAN

Hugh Segal

With his retirement as Chief Justice of Ontario, another phase of Roy McMurry's unique career comes to an end. At every stage — as an Ontario cabinet minister, Canadian high commissioner to London and finally as the top-ranking federal judge in Ontario — McMurry has championed a diversity of causes, all of which advanced equality rights. In this fond appreciation, Hugh Segal looks back on the remarkable career of one of the most outstanding public figures of our time.

Avec le départ à la retraite du juge en chef de l'Ontario, Roy McMurry, c'est une autre étape d'une carrière unique qui arrive à son terme. D'abord ministre du gouvernement ontarien, haut-commissaire du Canada à Londres puis premier juge fédéral de sa province, Roy McMurry a partout défendu une variété de causes qui toutes ont fait progresser les droits à l'égalité. L'hommage que lui rend ici Hugh Segal retrace les temps forts de la carrière d'une des personnalités les plus remarquables de notre époque.



On the surface, a black South African going into a voting station to cast a ballot, a French-speaking Ontarian being pulled over for speeding somewhere near North Bay, a blind Torontonion wandering into a Second Cup Café for a double espresso, a gay couple being married in a British Columbia city hall and a minority allophone choosing a school for his children in west end Montreal might not have much in common. They would be separated by wide expanses of geography, culture, education, experience and even lifestyle. They would not necessarily have anything in common with a couple sorting out the division of marital property in leafy Rockcliffe, or a child being represented in a difficult custody case in a courtroom in Thunder Bay. But they would be similar in one rather remarkable common point of reference. All of their lives would have been affected for the better by the work of the amateur and talented painter who supplemented his painting career by being a lawyer, an MPP, an attorney general, a high commissioner to London and Ontario's Chief Justice — namely, R. Roy McMurry. He has crammed more public service careers into his 75 years than any four other people, any one of those careers sufficient to be the pinnacle of a lesser person's life work.

As he steps down as Chief of the Ontario Court of Appeal, this particular retirement is no doubt a transition to more contributions in the future. But the Ontario we know and understand, and the Canada of which it is unconditionally a part, have been changed by the efforts of Roy McMurry in ways this milestone helps us all better under-

stand. While he did not, like Wilberforce, campaign to end one injustice — that of slavery — and succeed after decades of frustrating and hard work to pursue other more minor causes, McMurry in his political and judicial life to date took aim at a series of injustices — some small, some large — but all defined by an absence of fairness, of social justice and of an adequate reflection of the Canadian ideal.

Whether it was as a young activist in the Eglinton Mafia (urban Tories in the 1960s in north end Toronto desperate to modernize and make more reflective of today the Conservative Party of John Diefenbaker) working with Dalton Camp to democratize the federal Conservative Party, helping the Davis and Lawrence forces unite within the Ontario PC Party after the close-run Davis victory at the convention of 1970, or fighting decades later as Canada's high commissioner in London, at Whitehall and in the corridors of Westminster to support Brian Mulroney's firm stance against apartheid in the face of a less-than amused Thatcher administration, Roy McMurry was and remains a constant crusader to ensure the framework of decency and progress his view of politics and humanity always embraced.

To have worked with Roy McMurry in government, whether in agreement or otherwise, was to watch the marvellous integration of passion, loyalty, determination, humour and competitive instinct crest in one human being. His loyalty to Premier Bill Davis in Ontario, whom he served as attorney general from 1975 to 1985, was boundless. They were U of T Varsity football players together, and few lost

causes engender more loyalty and esprit de corps than that. (His time as CFL chair, after politics and before the judiciary, was surely further proof of his loyalty to the three-down Canadian game in its darkest hour!) As attorney general, in the 1970s and 1980s, however, he took very seriously the role in the British tradition of being the Queen's attorney, and not normally subject to day-to-day partisan or cabinet deliberative processes or considerations. As the premier's legislative secretary during the minority government period from 1975 to 1981, I would often wake up to a *Toronto Star* headline occasioned by a McMurtry

declaration on anything from violence in hockey, to the creation of bilingual courts and translation of all statutes, to a blind persons' rights act prohibiting for all time any restaurateur from keeping a blind patron and his or her guide dog out of his facility.

It is not that these matters did not at some time receive full cabinet and ultimately legislative approval in the Ontario of that decade; it was just that the policy was announced as policy somewhat ahead of any of those events having transpired! But, as was always the case with Roy McMurtry, a few antacids with the morning papers were a small price to pay for leadership

he was determined to show, and which in the end, was the right leadership on difficult issues of the time.

And while a life as a lawyer who had as one of his clients the Toronto Police Association, and as Ontario attorney general, high commissioner to London and Chief Justice of Ontario does not, on the face of it, imply the career path of a dramatic revolutionary, the truth of the matter is that few of the masked street insurgents who show up for every G8 or WTO meeting could aspire to achieve the kind of radical change McMurtry either invented, made happen or assisted toward realiza-



IRPP Photo

Ontario Chief Justice Roy McMurtry shares a platform with the University of Alberta's Yasmeen Abu-Laban at an IRPP conference on cultural diversity and belonging in October 2005. Former IRPP president Hugh Segal (left) writes of McMurtry's unique contribution to building a tolerant society, in three decades as a politician, diplomat and jurist.

tion. Establishing the rights of children to their own legal representation, and the rights of the francophone minorities outside Quebec and the English minorities inside it to constitutional guarantees and to actual bilingual court

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capacity outside Quebec, were initiatives he led, for and within Ontario. The whole framework of family law, where rights as between spouses with respect to property are presumed to be absolutely equal, was not in place until he championed that reform as Ontario's attorney general.

The fact that four of the nine justices of our Supreme Court are women and that we have seen a massive ramp-up of the female role in our senior judiciary has a lot to do with appointments he made in his early years as attorney general of Ontario — like that of Rosalie Abella to the Family Court in Ontario decades ago. Much of the support within the Ontario cabinet for Ontario's expansion of the French language education system to offer kindergarten through grade 13 was sustained for Premier Davis by Roy McMurtry and the late Tom Wells (minister of education for many years). Ontario's leadership in reforming the Human Rights Code to reflect fairness for various minorities, including those defined by sexual orientation, was led jointly by McMurtry and the minister of labour in charge, the brave and humane Robert Elgie.

Because of his background on the street as a lawyer and policeman's advocate, I should not have been surprised that during the constitutional engagement that led up to the patriation of the

Constitution with the Charter of Rights, a quarter of a century ago, Roy McMurtry, who was doubling as attorney general and solicitor general for a short period, would have, in his latter role, appeared in Ottawa before a federal par-

liamentary committee to express concerns about the Charter and some of the undue problems it might create for appropriate law enforcement exigencies! But as the Davis government was firmly in favour of the Charter, it was actually quite surprising!

Clearly McMurtry was not backing away from his support in principle for the Charter, but he was also putting on record the kinds of concerns relative to lawful and necessary police work that parliamentarians and framers of early drafts had to understand. His intent was, as always, quite pure, and his purposes no less than noble. But the aggravation he caused in the process was substantial.

There is this common strain to his life's work. If Barry Goldwater suggested that extremism in defence of liberty is no vice, McMurtry's credo might well have similarly been "Aggravation of one's friends and colleagues in defence of social justice is also no vice," as he defended marital rights of women, the rights of French-speaking Canadians to trials in their own language, or the rights of the gay community to absolute equality. It always struck me as one of the great and unifying ironies of our time that not long before Mr. Justice McMurtry presided over a judicial panel that made the historic same-sex marriage ruling in Ontario, Barry Goldwater, as a retired senator and former presidential candidate, was appearing before Phoenix

City Council to argue for leaving the gay community alone to live their lawful lives untroubled by moralistic hyperbole from city ordinances and bylaws. It's the sort of thing that confirms the core decency of even Conservatives and conservatives who, while in very different parts of the spectrum, share a common regard for the real context of freedom.

And while the lone-wolf aspect of many of his initiatives seems inimical to politics as a team sport, the truth was and is that McMurtry's very nature is one of team building. I very much remember how, after the Davis government was returned with a manageable but attenuated minority in 1975, McMurtry brought together all the lawyers in the legislature, from all parties — including Margaret Campbell, who defeated him in his by-election setback of 1974 — for a working dinner just to break down some of the animosities or hostilities that can often build up between people who are otherwise of good will. Or the constructive work he did with Roy Romanow and Jean Chrétien, across the country and in the final days in Ottawa on the periphery of the actual negotiations of the constitutional round that resulted a quarter of a century ago in patriation and the Charter of Rights and Freedoms. Was he out ahead of his caucus colleagues at Queen's Park? Yes, but usually on issues and rarely if ever on ambition. He entered the lists far too late for the Tory leadership succeeding Davis in 1985 and literally had to be pushed and pulled. And while he gathered delegates quickly, the time lag in favour of the other candidates was simply too large to overcome. Arguably the best candidate in the field, he finished a distant fourth on the first ballot.

Yet the detour to diplomatic work in the United Kingdom, his engagement on behalf of Mulroney on the apartheid issue in London and his subsequent return to prominence as a senior leader

in the judiciary allowed McMurtry to return to his roots — roots that made him a far more engaged opponent of discrimination and systemic unfairness to the most vulnerable, as opposed to a glad-handing politician. And that agenda of fairness to the most vulnerable expanded widely in terms of his reach and impact in ways less likely to have been as effective had he remained in elected political life. His present agenda is as Chief Justice heading toward retirement (as opposed to a retiring chief justice — Roy McMurtry has never been retiring about anything).

The McMurtry legal legacy embraces issues as critical to our way of life such as urban poverty and its impact on the work of the police and the courts; the increase because of both costs and diminished legal aid funds in unrepresented litigants in both criminal and civil proceedings; justice educa-

tion in our schools about how the system actually works; increasing the breadth and depth of pro-bono law work; youth at risk; and the way the system deals with Aboriginal communities and individuals, both urban and rural. And he has done all this within the constraints around what one can say and do as a member of the judiciary.

Those anticipating his retirement from the bench with some trepidation and those who have watched and admired his career (even when we have disagreed with his views from time to time) should rejoice at the liberation his formal retirement will afford for him to engage on issues that have been, for almost two decades, off limits for a member of the judiciary to address altogether. In that sense, Mr. Justice R. Roy McMurtry (or, as he was called by Red Tories, francophone

rights advocates and equality proponents for many years, “Our Roy McMurtry”) is about to be unleashed, unrestrained and undiminished by either diplomatic or judicial protocol.

The debate on the issues of fairness, inclusion, poverty, making room at the family table for all, and the balance between civil liberties and national security is about to be strengthened by his unbound intellectual presence. And, as has been the case for every other part of his remarkable career, friend and foe, opponents and allies will all be stronger for it, as will the Ontario and the Canada he has served and loved with such passion.

Senator Hugh Segal, former president of the IRPP, was legislative secretary and associate secretary of cabinet for federal-provincial affairs during most of the years Roy McMurtry was attorney general in Ontario.



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