

# **ONTARIO JUSTICE EDUCATION NETWORK**

## **SECOND CHANCE SCHOLARSHIP REMARKS BY THE HONOURABLE R. ROY McMURTRY CHIEF JUSTICE OF ONTARIO OCTOBER 3, 2002**

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Mr. Chair, justices, Chief Justice, members of the bar, ladies and gentlemen.

Thank you very much for your kind and generous introduction. It is indeed often difficult to appreciate how many years have passed since my entry into the legal profession. As Joe Clark stated in a recent speech at Osgoode Hall describing something that had happened a very long time ago when, in his words, "Roy McMurry was young".

I would like to salute the community unity alliance for their important race relations initiatives in supporting the development of the potential of ethno cultural groups in our society. In particular, their mentoring of young people and the providing of educational opportunities represents a vital contribution to the whole community.

I am indeed flattered by the presence of each and everyone here this evening and I would also like to thank everyone here for their support of the second chance scholarship of which I am proud to be a patron. It is a vital community initiative and I should like to congratulate Rick Gosling and his colleagues in the Community Unity Alliance for the educational opportunities that they are providing for many vulnerable young people. For example, the first recipient of a second chance scholarship is now on the Dean's List at the University of Guelph.

When we speak of second chances, all of us here tonight, particularly those in the justice system, know that many young people have not even enjoyed a first chance. In an

increasingly depersonalized society, the principle and reality of a helping hand is something that we all must continue to support.

This evening's splendid gathering is also a celebration of our rich diversity, the wealth of our pluralism. The Ontario of today has, of course, changed greatly in recent years with the result that the pluralistic character of Ontario and Canada has become a fundamental fact of our nationhood.

Canadians should take much pride in the fact that so many people of diverse racial, ethnic, cultural, and religious backgrounds have chosen and will choose Canada as their home. I have often stated that there are really two broad categories of Canadians, namely people like myself who can be described as Canadians by chance or accident, in that we were born here, and those Canadians who made the conscious and deliberate decision to choose Canada as their home. This choice often demanded great courage in facing the challenges of a different culture, language, and a sometimes hostile climate. I think Canadians should reflect more frequently on the respect that is due to those who made that choice and who, in so doing, have helped make ours a truly remarkable country, despite our ongoing challenges.

However, it is most regrettable that this sense of respect is not shared by all our citizens. Recent reports of the Canadian Human Rights Commission have warned of an increase in racism in Canada. It is therefore required that each of us continue to commit ourselves to strengthening the relatively fragile fabric of our pluralistic society.

While Canada has long been thought of as a nation of immigrants, apart from our indigenous peoples, it was only about 30 years ago that the term race relations began to be expressed in public.

Indeed, as the Attorney General for Ontario, I recall meeting with the Lord Chancellor in Britain 25 years ago to discuss the issue of race relations and he expressed his view that the best way to deal with racial issues was not to talk about them.

At that time, I had become the Chair of the first Ontario Cabinet Committee on Race Relations - the first ever to be established in Canada. Twenty-five years ago, I asked Dr. Ubale to do a report on South Asian community-police relations and his report became an important guide for police education. I am very pleased that Dr. Ubale is with us this evening.

We encouraged the creation of Mayors' race relations committees throughout Ontario. A race relations division of the Human Rights Commission was also created with Dr. Ubale as its first commissioner. On the law enforcement side, we gave special attention to the activities of such racist organizations as the western guard whose leaders were convicted and jailed. In an important case, the Court of Appeal agreed with our legal submissions that any assault that was motivated by racism should be treated more severely in sentencing. It was only some years later that the Criminal Code of Canada was amended to reflect this principle.

I was able to persuade the Ontario Cabinet that an official policy statement on race relations was required from the Government of Ontario. The policy statement was developed and displayed in thousands of public places, including classrooms, throughout the province.

I was rather pleased when I learned that my activities had come to the attention of the Ku Klux Klan whose leader, visiting Toronto from Louisiana, delivered the following letter to my Attorney General's office:

Mr. McMurtry:

*This letter is in protest against your anti-white policies, which have been in direct opposition to the interests of the white Canadian population and indeed the white population of the North American continent.*

*Specifically, you have sought to destroy the sacred right of freedom of speech for white Canadians. Secondly, you have instructed your subordinates to apply the law unequally to white youths involved in racial incidents. Thirdly, you have betrayed your race and nation by your subservience to international Zionism and the state of Israel.*

*Take heed that your nefarious anti-white activities are being monitored and recorded by our international Klan movement. If you persist in your treacherous activities against the white race, I can assure you that there can only be grave consequences.*

*In the name of the White Race David Duke, Grand Wizard*

While a climate of better understanding has developed in Ontario during these past two decades, there is still much work to be done, many challenges to be faced and much vigilance required.

At the same time, we must recognize that all the laws in the world and all the human rights codes, count for little if individual citizens are not prepared to make a personal commitment to tolerance, to understanding, and above all to fighting intolerance and bigotry at every opportunity.

My many years as a lawyer, Attorney General, and as a Chief Justice, have made plain for me this palpable truth: the law alone is not enough to protect those who are a different colour, or those who profess a different religion. The law will never be enough, by itself, because there is no legislature in the world capable of legislating ultimate principles. You cannot legislate to what degree a man must love his neighbour, nor even that he must not hate him. It is, I think, true of tolerance as it is of liberty, that, in the words of justice learned hand: "...it lies in the hearts of men and women; when it dies there, no constitution, no court, no law can save it; no constitution, no court, no law can even do much to help it; but while it is alive, it needs no constitution, no court and no law to save it".

But merely because no law can stamp out discrimination, it is equally true that it will flourish the more for lack of any laws against its flourishing. And so I come to what I perceive to be the responsibility and challenge of the law -- namely, to ensure that whatever prejudices may lie in the hearts of men and women, they are not translated into actions that offend the basic principle that except in self-defence it is wrong to hurt another person.

This year is, of course, the 20th anniversary of the implementation of the Canadian Charter of Rights and Freedoms and the Charter has encouraged our society to

examine and re-evaluate our institutions, practices and procedures through the lens of multicultural fairness as illustrated by this passage from a recent decision of the Supreme Court of Canada:

*Canada is not an insular, homogeneous society. It is enriched by the presence and contributions of citizens of many different races, nationalities and ethnic origins. The multicultural nature of Canadian society has been recognized in s. 27 of the charter. Section 27 provides that the charter itself is to be interpreted in a manner that is consistent with the preservation and enhancement of the multicultural heritage of Canadians. Yet our judges must be particularly sensitive to the need not only be fair but also to appear to all reasonable observers to be fair to all Canadians of every race, religion, nationality and ethnic origin.*

In addition to their adjudicative function, courts at all levels have been hard at work administratively to ensure a more inclusive and sensitive justice system. Race relations training is now a major theme of judicial education. All courts in Ontario have societal issues committees which look at ways in which the courts can address the issue of racism and its perception in the context of the judges' role in the administration of justice.

I have been speaking on the role of the administration of justice in relation to our pluralistic society and I would like for a few moments to reflect on the fundamental challenge of providing access to justice for our many citizens who are faced with very serious barriers. While Ontario has long established what has been regarded as the best

legal aid system in Canada, it is now facing major funding and other problems. It is not appropriate for me to enter the tariff debate at this time but I do recognize that the quality and integrity of our criminal justice system requires that well qualified lawyers continue to provide representation through the legal aid certificate program.

As the cost of legal representation in criminal and civil litigation is beyond the means of a large percentage of our citizens, the major challenge in the years ahead will be related to access to justice issues. We also face the reality that no government will ever be able to provide a sufficient level of funding to address the needs either through the certificate or through legal aid clinics.

In view of this reality, I have been involved in the creation of Pro Bono Law Ontario which was incorporated this past spring. The response of the legal profession has been thus far very encouraging. Lawyers are volunteering in the provision of legal advice through visiting legal aid clinics and other existing community initiatives and law firms are beginning to create pro bono programs as a structured element in their legal practices. The need for legal assistance is often most acutely experienced by the newer immigrants and this reality is, of course, recognized by Pro Bono Law Ontario. I am, therefore, particularly impressed by the number of lawyers in the South Asian community who have volunteered their services.

We must recognize that the principle of access to justice is an important pillar of a democratic and unified society. The reality of poverty while regrettably part of the diversity of any nation must always command our concern. The fabric of our society can often be somewhat fragile and it is therefore essential that all of us remain vigilant in the

provision of access to justice, in the support of individual rights and in the strengthening of the dignity of our fellow citizens.

It also should be pretty obvious that our courts alone will never be able to produce a social order based on caring, compassion and social justice. While our courts are a vital cornerstone of our free and democratic society, they can only deal with the results of social disorder and not its causes.

In conclusion, I believe that we have gathered together this evening because we all share a concern for social justice as well as justice under law. We believe in the rule of law and not the law of the jungle. We believe that while the poor and friendless may often be out of political fashion, we know that they are never without human needs. We also know that the poor and vulnerable may live in a free country but that it is often difficult for them to feel free.

Again, thank you all for your attendance here this evening and particularly for your support of the second chance scholarship.