

JEAN E.L. CÔTÉ: THE LAW STUDENT

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I am greatly honoured and pleased to take part in this remarkable tribute to Jean Côté, more so because it takes place under the auspices of the *Alberta Law Review*. I have known some of those who have brought the *Review* into being and it was three early members of its editorial board, at that time doing graduate work in England, who persuaded me to join the Alberta Faculty in 1962, something for which I have always been greatly indebted. I do not think any speaker can match the superb toast that was given to Justice Côté on his retirement by Chief Justice Fraser, but I might perhaps venture a few additional remarks on Jean Côté the law student from the point of view of one of his teachers. Do not mistake me — I never taught Jean Côté anything. The balance of payments was all the other way. Indeed, we suspected Jean came to classes with his lecture notes prepared on which he would occasionally make an approving tick in the margin when or if the professor had happened to make a useful point. And indeed that may have been so because it had been rumoured that he had this mysterious system of shorthand, probably of his own contrivance, with which he could make virtually verbatim summaries and records. Perhaps in his retirement, he might find further employment accompanying President Trump to meetings with Mr. Putin.

For those who are younger than myself, which is virtually everyone present, I should perhaps portray the scene of Jean's first adventures in the law. The University, of course, was very much smaller than it is now and a very informal and collegial place. The Law Faculty was composed of only six professors (myself the junior), and had no permanent habitation or home. The offices of the Faculty were in the second floor of the old Arts building (Bill Angus and I were in fact ensconced in cubicles in the Department of English). But the real beating heart of the law school was where the students were, which was on the one side of the lower floor of the Rutherford library, in the so-called "Reading Room," which served also as a clubhouse, a debating chamber, and a general assembly point for the boisterous, and I have to say, then almost exclusively male fraternity of law students. And a dark inner room into which no sane professor ever ventured, full of stacks and cubicles. Jean, I remember, greatly admired the classical grace of the neo-Georgian Rutherford building, and I recall how upset he was by the new Cameron library of whose architecture he disapproved. "All it lacks," he told me, "is a flashing sign at the top that says: 'Read Books. Read Books.'"

Jean was in second year when first we met — a member of a very capable class which included Walter Mis and also Fred Laux who contributed so much to the school later — and I was absolutely intimidated by the thought of all those sharpshooters just waiting to knock the new bird off his perch. I would have been petrified if I had known then of the extraordinary talents that Jean was to display. But in fact, Jean was throughout, as were his colleagues, never less than fully helpful and supportive. In class he would intervene only to contribute some useful point or reference to advance the discussion, to refocus us when we were getting off track, and never sought (though he could have) to embarrass a teacher or

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fellow student. He saved other and larger issues for discussion after class, and I came to conclude that those post-class discussions were some of the finest and most effective modes of education for me, as for the other students who joined in those discussions, which may, by the way, be one of the reasons why in this building today, the major classrooms have foyers in which such post-class discussions can be continued.

What most enduringly impressed me about Jean the student was that he could read. I mean really read. He could go through vast amounts of material with intense concentration, analyze the material as he went, connect the dots, keep large tracts of information under control, sort the dross from the gold, and then when he came to write something about it, he had mastered the work, excluded all the irrelevant, weak, and wrong points, gone straight to the pith and substance of the matter, and laid it out in direct terms that others could then understand and debate. His own writing was always plain and clear; there were flashes of wit and occasional striking similes or analogies but never any straining for effect. The eloquence and the elegance lay in the structure and lucidity of the writing. One saw that in his examination answers and even more in his essays.

I suspect much of that was due to his parents who loved literature and respected historical records and learning. But really, back then, it could really just seem that Jean had sprung intact from the brow of Zeus, fully formed and with the full armament needed for scholarship, practice, and adjudication. And matching and adding to those talents, and underlying them and mobilizing them, were his incredible energy and industry. And that, in turn, I believe, derived from his extraordinary passion for his subject. For most of us academics or practitioners, the law is something of a curate's egg: good in parts. But for Jean it seemed it was all good, or at least interesting, whether it was substantive or procedural, concerned advocacy or drafting, involved case law or statute. I remember Jean's excitement one day when he had come to tell me that he had discovered a wonderful old textbook called *Sinclair on Absconding Debtors*,¹ and I am sure he put it to use.

There is a story (I hope it is not apocryphal) that once when Jean was working for a spell in the law office, his supervisor got a call from the lawyer on the other side of the file and said, "About this draft you sent over for us to execute."

"Yes, is there anything wrong with it?"

"No, it's fine. In fact, it's magnificent. But in this lease for an office in a downtown building, do we really need these three pages on ditches and watercourses?"

That was characteristic of Jean's thoroughness.

In a sense, my theme today really should be how the future was prefigured by the past and how the child was father to the man, because all of those characteristics and qualities of Jean were soon manifested in the work that he did, in scholarship and in practice in the years to follow. How he managed to combine them all, I will never know. But it is remarkable that

¹ JS Sinclair, *A Practical Treatise on the Law of Absconding Debtors, as Administered in the Province of Ontario* (Toronto: Carswell, 1883).

as a second-year law student, he wrote an article on the foundational issue of the law for us: where did the law come from — the reception of English law in Canada, later supplemented by a further article, and an astonishingly complete table of statutes in force in Canada, which today is still the starting point at which to begin.² And as a student, he lacked no courage in tackling any subject. Quite early on, he dealt with the continuing issue of the relationship between law and equity, which I happened to notice on this visit to this campus, is also being dealt with in the current issue of that other great Alberta law school publication, *Canons of Construction*. And of course, we all know his contribution, along with Mr. Justice Stevenson, to the *vade mecum* of every Alberta practitioner and judge.³ But I do not intend this as a paean to judges and to Jean's intellectual powers in productive scholarship, impressive as they are. I just want to say something more about Jean, the person.

Perhaps the first thing one has to refer to is his appearance. Even in 1962, when all students dressed more respectably than today, Jean sometimes stood out for his formality. I can't recall whether he had by then adopted the Trumpian dark overcoat, but he did sometimes appear like a New England missionary among the cannibals. And, secondly, there was his kindness and generosity, not just back in the day sharing his work and ideas with other students, but later on sharing with others in the profession his advice, based on his own experience, on matters ranging from law, to legal practice, to the conduct of an office, to the organization of one's time. And then, of course, there was the extraordinary range of his interests. He is one of the most widely read people one could know. But as his friends know, he has always had a special interest in military strategy, the novels of Sir Arthur Conan Doyle, and cryptography and espionage. A very puzzling combination. But perhaps the answer to that puzzle lays in the simple fact that all those involve puzzles and so eventually involve the satisfaction of a message understood, a picture completed, a story concluded. That love of order, of details properly related, of theory shown in context, is, I think, admirably shown in one of Jean's lesser known works: the little chart that he prepared for the history of the Alberta Courts, in which he showed, as it were, the apostolic succession of every judge from the first time that judicial position had been created. It is elegant, simple, and complete.

I cannot conclude without at least one glancing reference to Jean's extraordinary, if not bizarre, sense of humor. A good joke, a witty saying, an outrageous pun may be met by the slap of the knee, a hearty guffaw (more like a hee-haw), and an almost incredible contortion of his elongated frame. But his most jubilant response, almost, one might say, a fiendish cackle, comes when there has been a successful execution of a long matured and imaginative practical joke. Beneath the dignity of those judicial robes, there lurked a magnificently juvenile mentality. I know that his law partners in the Edmonton bar know of many such manoeuvres, and I would not be surprised to be told that even in the law courts judges might hesitate to open the door without first looking up for a delicately poised bucket of water. But, what I remember from school, as a favourite recollection, was the morning Jean came in to the school chortling uncontrollably (he lived then with some friends in a house in Garneau). Apparently, about three that morning, a young woman who lived in the sorority house next door had called them up on the telephone to say: "I don't suppose you fellows would know

² JE Côté, "The Introduction of English Law into Alberta" (1964) 3:2 *Alta L Rev* 262.

³ William A Stevenson & Jean E Côté, *Civil Procedure Encyclopedia* (Edmonton: Juriliber, 2003).

anything about this, but our radiator seems to be playing Beethoven.” Another devilish plot fully carried out. Very well done, Jean. I hope the future will bring much more music and laughter.