

**WILLIAM A. MCGILLIVRAY (1918-1984)\***

MORRIS C. SHUMIATCHER\*\*

The quality of William Alexander McGillivray that shines through all the nuances of his many-sided life by which he will be remembered in the hearts of those who knew him longest and loved him best was the empathy he felt and freely expressed for the men and women he worked and played with, no less than for those whose causes he championed.

There are some who think lawyers to be clinicians who view mankind as a seigniorage of specimens to be examined and cross-examined, dismantled and dissected, vested or divested as occasion might require, ultimately to be dismissed and so dissolve and disappear.

If such there be, McGillivray was not of that ilk. He literally lived his client's cause. When preparing for trial, the facts of his case entered every pore of his skin and he knew them more precisely and understood them better than the parties who had experienced them, his client included.

The justice of his client's case was his steadfast vigil. When he became my counsel on appeal and read portions of earlier proceedings, he proclaimed to the world his sense of outrage at the prosecutor's machinations and at certain of the trial judge's rulings and directions. As we worked over the evidence, McGillivray, again and again, would say, "When I think of what they did, I can't sleep. I just can't sleep at night!"

Great as were his energy and industry, his conscience and his sense of fairness and right were greater yet. These were the gifts that shone through his labours as counsel and that set him apart from all of his contemporaries.

To the sense of injustice that he felt, McGillivray was capable of reacting with passion. At trial, the facts, served and savoured with sweet reasonableness generally sufficed. But he could also bring guts and gust into the court room and they rang the bell of truth and they carried the day.

McGillivray, the law student, was not much different. He scoffed at the idea that a man could renege on his promise to sell his neighbour a piece of land simply because there was no wax seal or red wafer attached to the agreement. He was exhilarated by the legal concept that although your neighbour lives a thousand miles away, you have a duty to consider him and not injure him if he might be affected by what you do or not do.

To McGillivray the lawyer, even a suspicion that an injustice had been done to his client was enough to fire his brain to find a path or blaze a trail for right and reason to prevail. And he was indefatigable in his purpose.

He had enough fire in his belly to burn up the sins of the world, but he also had enough sense in his head to keep an extinguisher at his side to cool it.

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\* William A. McGillivray was Chief Justice of the Alberta Court of Appeal from December, 1974 until his death, December 16, 1984.

\*\* Dr. Morris C. Shumiatcher was a close friend and classmate of the late Chief Justice.

It was his involvement in humanity, the common human touch, if you will, that made McGillivray so great a lawyer and so wise a judge.

After all is said and done and written and read, there really exists no guarantee of justice — neither in constitutions, nor statutes, nor bills of rights, nor charters of freedom — save in the character of the judge. That is why, in an age that has come to pay homage to statutes and statistics and governmental committees and commissions and orders, rules and regulations, it is well to remember that in the end it becomes the duty of the judge to make of each of these, for all who are affected by them, a stumbling block or a stepping stone.

Death came to Bill McGillivray peacefully as he slept, the gift God reserves for his special friends. It was a final affirmation that his life, dedicated to the perpetuation of an even-handed, kindly-seasoned measure of justice had fulfilled the expectations of the companions of his law school days, the “Lexnovans” as we called ourselves. That intuition, over forty years ago, was that there never would be a better lawyer or a more steadfast friend than Bill McGillivray.

To him, in sadness now we say:

“Good-night, sweet prince,  
And flights of angels sing thee to thy rest.”