

THE HONOURABLE WILLIAM LEGH WALSH

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The period from January 28, 1857 to January 13, 1938, is the span of the lifetime of William Legh Walsh, successively, a most distinguished counsel in Canadian courts (1904-1912), a Judge of the Supreme Court of Alberta (1912-1931), Chancellor of the Anglican Diocese of Calgary (1927-1931), and Lieutenant-Governor of Alberta (1931-1936). His lifespan saw his native Canada develop by slow stages from the colonial status it occupied at the date of his birth in 1857 into a fully autonomous nation which in recent years is achieving the full development of its potentialities.

The ideal development of body and mind—*the mens sana in corpore sano*—is exemplified in the career of "Daddy Walsh" as he came to be lovingly known to a host of friends throughout his long life. His tall, straight, alert and manly figure, his bright eye and elastic step even when well past the threescore year mark are characteristics well remembered by all who knew him in his later years in Edmonton, as well as his great dignity, his keen sense of humor and his intense interest in all public affairs, religious and political.

During his boyhood and young manhood in Simcoe, Ontario, he lived the normal, typical life of a youth in the last decades of the nineteenth century. He was a member of the Simcoe cricket team, a game which in those days had a tremendous following for both spectators and players; he also was a better than average tennis player, a game which fortunately has retained among the youth of today some, though not all, of its popularity. He was also throughout the greater part of his life an ardent curler and, as intensely interested in the rugged game of lacrosse as we are today in that equally rugged game of rugby football.

In later years, he maintained his naturally fine physique by an ardent adherence to the game of golf, which he took up soon after going to Calgary. The way in which he became interested in the game is an amusing story. The late Judge and a friend of his, Bill Georgeson, a well-known Calgarian, met one evening in 1912 at the Ranchmen's Club. Neither had previously had any experience with golf but, this notwithstanding, they decided on a contest for a wager of five dollars; this a gratified Judge ultimately pocketed boasting thereafter of never having lost a golf game. His love of the game persisted throughout his life. He was a charter member of the Calgary Golf and Country Club, its president in 1919-20, a distinction he shares with many distinguished men. He donated the handsome Walsh Trophy in 1924 which in Alberta golf circles is still a prized trophy.

NOTE: This is the first of a series of articles on Alberta judges, the second of which will appear in the next issue.

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William Legh Walsh left Simcoe in 1874 at the age of seventeen to become an articled student-at-law at Ontario's Osgoode Hall in Toronto. It is interesting to take our minds back to the public and secondary schools of those days supplemented for the lawyer by a system of legal education which had not then attained its high degree of present-day excellence; one wonders whether the development of so many first rate intellects under this system, such as that of the subject of this article, was not due to the degree of self-reliance inculcated by the subjects and methods of study in the lower schools, and again upon the emphasis upon personal application in professional schools. The late W. N. Tilley, distinguished Canadian counsel, always maintained that the system of service under articles was the best method by which a young man should begin his mastery of the law. One of the men of great intellectual power whom the system produced was Walsh J., who became well known throughout Canada as an able counsel and gifted judge, especially in the trial of criminal cases.

He was admitted to the Law Society of Upper Canada as a solicitor in 1879 and as a barrister in 1880. Returning to Simcoe, he became a junior partner in the firm of Ansley, Slight and Walsh. The quality of the man is shown by the fact that within two years of his call he became a partner of that great Canadian legal and political figure D'Alton McCarthy practising at Orangeville, Ontario, the firm name being McCarthy, Walsh and Hughson. With that firm he remained until 1890 from which year until 1910 his name appears as practising at Orangeville either alone or in partnership with a brother-in-law, J. N. Fish, under the firm name of Walsh and Fish. In fact, in 1900, at the age of 43, he opened a practice at Dawson City in the Yukon Territory two years after the opening of the Klondike gold rush. Perhaps he intended to return to Orangeville, but the call of the West—fortunately for the West—became too strong for him: as for so many others of us from Eastern Canada, it was;

Not by Eastern windows only
When twilight comes, comes in the light.
In front the sun climbs slow how slowly
But Westward look, the land is bright.

In 1903 he was appointed a King's Counsel and from this date on his name appears in the reports of cases tried as counsel in the Yukon and North-West Territories. It was as a member of the bar of the North West Territories that in 1904 he opened the last phase of his career as a distinguished counsel in partnership with M. S. McCarthy, a nephew of his former Orangeville partner, who came West in 1904.

He also played a conspicuous part in the formation of the Law Society of Alberta. The first Ordinance respecting the legal profession in the North-West Territories had been passed by the Lieutenant-Governor-in-Council, December 18th, 1885. From that time until the incorporation of the Law Society of the North-West Territories by Ordinance 21 of September 19, 1898, the practice of law in the Territories was controlled by the Government which collected fees from advocates, as they were called, who were entitled to practise in the Territorial Courts. Then, in September 1898, the Law Society

of the North-West Territories was incorporated by ordinance. On the rolls of this Law Society of the Territories listing advocates entitled to practise, the name William Legh Walsh appears as Number 217. His name is preceded and followed on that roll by those of many great lawyers who like him achieved distinction in their profession.

In 1907, the Law Society of Alberta was incorporated and Walsh Q.C. was a charter member because he was one of "the persons who on the coming into force of this Act are enrolled as advocates of the North West Territories and are resident in the Province of Alberta." From this time on the advocates were known as Barristers and Solicitors. He was one of the first Benchers of the Society and continued activity in this office until April 3rd, 1912 when he was appointed to the bench of the Supreme Court of Alberta.

Prior to his appointment to the Bench, his last major assignment as counsel was presenting the Province's case in the celebrated case of *The King v. The Royal Bank of Canada* which in its stages through the courts still makes interesting reading, political as well as legal.

As a member of the Bench, Mr. Justice Walsh was a model judge. His career was characterized by Bacon's admonition "to walk in the light that men might see that no particular turn or end led him but a general rule". He was not the over-speaking Judge whom Bacon has described as "no well-tuned cymbal". He had the grace to sit in silence even for days at a time not attempting "first to find that which he might have heard in due time from the bar". Never did he attempt to show quickness or conceit in cutting off evidence or counsel too short, or to prevent information by questions thought pertinent. He possessed in an eminent degree the qualities which Bacon has described as the ideals for a Judge "to direct the evidence; to moderate length, repetition or impertinency of speech; to recapitulate, select and collate the material points of that which has been said; and to give the rule or sentence".

Lawyers who were privileged to appear before him will agree that the words just quoted contain a just description of the conduct of Walsh J. on the bench, and many of us recall the very kindly and sympathetic attitude displayed by him to the young counsel first finding his feet in Court and especially was this so when he was giving his judgment against you.

The late Judge always considered that of the many cases over the trials which he presided the most dramatic was the Picariello—Lassandro murder trial. The two accused Emilio Picariello and Mrs. Florence Lassandra were tried and convicted of the murder of Provincial Constable Steve C. Lawson at Coleman, Alberta.¹ Leading respectively for the Crown and the defence were two of Alberta's most distinguished counsel, A. A. McGillivray, K.C. and J. McKinley Cameron, K.C. McKinley Cameron was led in this Appeal by one of our great Canadian counsel Aimé Geoffrion, K.C. So far as the case bears on the judicial capacity of Walsh J. it is interesting to read the judgment of Mignault J. who said:

¹ (1910), 3 Alta. L.R. 480, 4 Alta. L.R. 249, 3 W.W.R. 994

² (1923), 1 W.W.R. 645; Supreme Court of Canada, [1923] 1 W.W.R. 1477

In expressing my entire concurrence in the reasons for judgment of my brother Anglin, I desire merely to add that never, in my short experience on the Bench, has the charge of a trial Judge been subjected to a closer scrutiny and a more searching criticism than that of the learned trial Judge in the present case. Obviously it never was intended that the Judge should deliver a lecture on the law to the jury; all that he can or should do is to give them such explanation of the law applicable to the evidence as will enable them to properly discharge their important duty. In doing so, it is not to be expected that the trial Judge will use technical language, nor would it be reasonable to weigh expressions in his address as is done in the case of pronouncements of the Courts or disquisitions of writers on the law. Measured by the proper test, I think the learned trial Judge's charge with what he added to it, sufficiently instructed the jury, in view of the evidence, on the differences between murder and manslaughter and the defences which the prisoner's counsel had endeavoured to substantiate by cross-examining the Crown's witnesses.

Mr. Justice Walsh's interest in politics and public affairs commenced prior to his coming West. He was elected Mayor of Orangeville for three terms and was a Conservative Candidate in the Federal Election of 1895 in the Cardwell constituency. This was the Manitoba School Election which, on the issue of The Remedial Bill defeated the government of the successors of Sir John A. MacDonald and swept Sir Wilfred Laurier into power, dashing the hopes for a political career of the 38-year-old Conservative candidate for Cardwell.

He was defeated for the Mayoralty of Dawson City and, in what is now an amusing story he lost the Federal nomination for the Dawson City riding in a Federal By-Election held in 1902. Recognized as the leading counsel in the Yukon Territory and a citizen of great popularity, it seemed certain that Walsh Q.C. was assured of the Conservative nomination. It is related that at a meeting of the Conservative executive, a few friends of the late Joe Clarke (afterwards in 1919, 1920, 1935, 1936 and 1937 Mayor of Edmonton and the moving spirit behind the Clarke Stadium project) attended and suggested an open nominating convention to be attended by all political parties. Despite the cognomen of "Foxy Grandpa" which had been tacked on him and stuck throughout his life, the prospective Conservative candidate and his advisers fell for the suggestion. Then, as the story goes, Joe and his friends packed the convention and secured the nomination for Clarke.

He made one more attempt to give to the province the benefit of his powers. He was a candidate for the Legislature in 1906 in a by-election unsuccessfully contesting the vacancy in the riding of Gleichen, occasioned by the elevation to the bench of the late Mr. Justice Stuart for many years an eminent Alberta Appeal Court Judge and also for many years the Chancellor of the University of Alberta. In 1931 Walsh J. retired from the Bench to become the Lieutenant Governor of Alberta, an appointment which was the culmination of an interest in public affairs which characterized him throughout his life. He held the office of Lieutenant Governor until 1936 and maintained a keen interest in the public affairs of Alberta particularly the legislation introduced by the Government which resulted in his successor, Lieutenant-Governor Bowen, reserving for the signification of the Governor General's pleasure three Bills passed by the Legislature in the third session of the year 1937. The Governor in Council, pursuant to Section 55 of the Supreme Court Act, referred these Bills to the Supreme Court of Canada for its opinion as to their constitutional validity. The opinion of the Court resulted in the disallowance of all three Bills

From his retirement in Victoria, B.C., the late Judge wrote for publication a reasoned opinion adverse to the power of the Province to enact The Credit of Alberta Regulation Act. The opinion is noteworthy as indicating the approach of his mind to such public questions. He wrote:

I have written this article because I have neither seen nor heard of any reasoned argument either for or against the validity of this Act. So far as my observation goes its proponents have contented themselves with simply saying that it affects only property and civil rights in the province, and so it is quite valid, while its opponents simply say that it is banking legislation and therefore ultra vires of the province and both sides leave it at that.

This legislation and its disallowance are matters of grave public concern. It is in the public interest that the power of the legislature to enact it should be discussed calmly, intelligently, and without prejudice. I have put forward the very strong view that I hold as fully and clearly as I am able to, and I hope quite dispassionately that someone who holds the other view will do the same.

Honored by his fellow citizens to a degree that falls to only few men, death came to William Legh Walsh at Victoria, January 13, 1958 in the 81st year of his life. To the gratification of his fellow Albertans he had chosen Calgary and Alberta, the scene of his distinguished labors as his burial place. Following the simple and profoundly moving funeral service in the Anglican Pro-Cathedral of the Redeemer, he was buried within sight of the magnificent and awe-inspiring panorama of mountains and foothills which is Calgary's greatest natural heritage.

Under the dark and starry sky
Dig the grave and let me lie
Gladly I lived and I gladly die
And I lay me down with a will.

This be the verse you grave for me
Here he lies where he longed to be
Home is the sailor, home from the sea,
And the hunter home from the hill