The Empire Club Presents

THE RIGHT HONOURABLE BEVERLEY MCLACHLIN, P.C., CHIEF JUSTICE OF CANADA

on

CANADA'S LEGAL SYSTEM AT 150: FOSTERING CANADIAN DEMOCRACY THROUGH AN INDEPENDENT JUDICIARY

June 3, 2016

Welcome Address by Dr. Gordon McIvor, President, Empire Club of Canada

Good afternoon, ladies and gentlemen. From the Arcadian Court in downtown Toronto, welcome, to the continuation of the 112th season of the Empire Club of Canada and the kick-off event in our Sesquicentennial Series celebrating Canada's 150th birthday. For those of you just joining us either through our webcast or our international podcast, welcome, to our meeting today. Before our distinguished speaker is introduced, it gives me great pleasure to introduce our head table guests to you.

HEAD TABLE:

Distinguished Guest Speaker:

The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada

Guests:

Mr. Noble Chummar, Partner, Cassels Brock and Blackwell LLP; Past President, Empire Club of Canada

Dr. Eric Jackman, President, Invicta Investments; Past President, Empire Club of Canada

Mr. Michael Kaplan, Managing Partner, Dentons

Mr. Gord McGuire, Associate, Adair Barristers LLP; Director, Empire Club of Canada

Mr. Nick McHaffie, Partner, Stikeman Elliott LLP

Dr. Gordon McIvor, Executive Director, National Executive Forum on Public Property; President, Empire Club of Canada

Mr. Stewart Sutcliffe, Chair, M&A/Private Equity Group, Toronto, Stikeman Elliott LLP

Mr. Michael White, President and CEO, IBK Capital Corp

Mr. William White, Chairman, IBK Capital Corp.; Director, Empire Club of Canada

Ms. Andrea Wood, SVP, Legal Services, TELUS; Past President, Empire Club of Canada

My name is Gordon McIvor. I am the Executive Director of the National Executive Forum on Public Property and the President of the Empire Club of Canada. Ladies and gentlemen, your head table.

I would like to acknowledge several of our Past Presidents who are in the audience today. We have actually never had—at least in my living memory—such a large gathering of Past Presidents in one room at the same time. There are nine of them with us today. If you would, Past Presidents, please, rise and be recognized: Tony Van Straubenzee, Nona Macdonald Heaslip, Catherine Charlton, John Koopman, Verity Sylvester, Peter Hermant, and, of course as mentioned, Eric Jackman, Andrea Wood and Noble Chummar. Ladies and gentlemen, these are the people that are the reason we are here.

We are also very pleased and honoured to have a group of students joining us today from the Law Practice Program at Ryerson University. Students, welcome.

Thank you to IBK Capital for sponsoring these student tables today.

Introduction

In celebration of Canada's 150th birthday and our first event in our Sesquicentennial Series, I would now, actually, like to ask our guest of honour to join me on stage with our sponsor of the Sesquicentennial Series, IBK Capital, represented by Bill White. And we will blow out the ceremonial candles on the ceremonial cake. I think we have one candle, no, two candles each. Are you ready? One, two, three!

Well done. Thank you very much. It is not out of the ordinary that one of Canada's oldest speaking clubs should get the leaders of our great national institutions. Very many people were surprised when Chief Justice Bora Laskin came to the Empire Club on March 12th, 1981, and was introduced as the first Chief Justice to ever stand at this podium. After all, every Prime Minister since Sir Robert

Borden had spoken at the Club, so why did it take so long for the Supreme Court to want to speak to the Empire Club, to the Canadian public? The answer may reside, of course, in the legendary discretion of those who have held the position, but Mr. Laskin was not going to abide by that thinking, and he had an important message that he wanted to get out to all Canadians, namely, that the Supreme Court, the highest court in the land and the final Court of Appeals in the Canadian justice system, where decisions are the ultimate expression and application of Canadian law, was basically unknown and completely misunderstood by the population that it represented. To make things even more serious, and what really pushed Chief Justice Laskin to want to address the Club was that he was seeing a lack of understanding on what the role of the court was extend right into Parliament itself. In that 1981 address entitled "What Everyone Should Know about the Supreme Court of Canada," he tackled the issue head on, and I am just going to quote briefly from that speech:

> What was dismaying to me as I watched and read about the constitutional proceedings that took place last year was the total misconception that so many ministers and first ministers had about the Supreme Court. They treated it in political terms and, fallaciously, regarded it as a federal institution on par with the Canadian Senate. Let me say, as forcibly as I can, that the Supreme Court is *not* a federal institution; it is a national institution, and its members are under no federal allegiance merely because they are federally appointed. Just as there is no federal allegiance, there is no regional allegiance and no political allegiance.

Now, our guest today has also faced those suffering from amnesia or perhaps authentic ignorance on the role of the Supreme Court as it relates to Parliament. She earned the deep respect of all Canadians by standing tough and reminding everyone of that fundamental truth that Chief Justice Laskin stated at this podium in 1981, that the Supreme Court is not a federal, but a national institution and that, while the checks and balances regulating it can be debated, what must stand at the centre of its integrity and efficacy is that the Government of Canada does not control its decisions nor directive on how to rule on the complex issues that come before it, many that are, in fact, at the centre of how we, as Canadians, live our lives.

We looked at one such issue only a few weeks ago here at this very podium when we looked at assisted dying and the various components of that very complex question.

This is the third time that Chief Justice Beverley McLachlin, the first woman to occupy her role, has visited our Club. Her first address was in 2001 and dealt with "Good Justice, a Global Commodity." She returned in 2007

and spoke about "Justice in the Courts and the Challenges We Face," a speech that contained a reference to our incumbent Prime Minister's father and his call to build a just society, and I quote from that speech, Madam Justice:

> Pierre Elliott Trudeau challenged Canadians to build what he called the just society. In the ensuing years, thousands of Canadians have worked to establish their visions of a just society. The centrepiece of Prime Minister Trudeau's vision of the just society was, as we know, the Charter of Rights and Freedoms, which was adopted in 1982 and whose 25th anniversary we will soon be celebrating. But whatever our political persuasion or our particular conception of justice is, there can be no doubt that Canadians today expect a just society. They expect just laws and practice and they expect justice in their courts.

It was a seminal moment at the Empire Club and is the reason that we wanted to invite the Chief Justice back this year to kick off the Empire Club of Canada celebrations around Canada's 150th birthday.

As we all get ready for the many special events that will occur in 2017, we cannot forget that what makes Canada truly great as a model of democracy around the world is this just society that Trudeau, Sr. called on us to build, a project that seems, in fact, to be taken up wholeheartedly by his son.

What is at the centre of a just society? Could it be that the laws that protect us and give us our rights are, in fact, at that epicenter? Could it be that, in fact, that is what makes us such a vibrant and great democracy? Chief Justice Beverley McLachlin will certainly be listened to today as she examines Canada's legal system at 150, fostering Canadian democracy through an independent judiciary. As we saw recently, this independence must still be fought for from time to time, and it is a fight worth winning as it is a fundamental building block of the great democracy that we built north of the 49th parallel.

Ladies and gentlemen, it is a great, great honour today to welcome back to our podium, the Chief Justice of the Supreme Court of Canada, Beverley McLachlin.

The Right Honourable Beverley McLachlan

Thank you, Gordon, for that wonderful introduction and reminding me about Chief Justice Laskin's first speech here and an important message he delivered. Truly, I feel that I am following in some very giant footsteps, even though I have been here three times myself. It is a great pleasure to be here, and merci beaucoup pour l'invitation.

Next year, as we all know, 2017, Canada will be 150 years old, and we just blew out the candles on the cake. It will be a time for celebration because we have truly

built—we and those who came before—a great nation. But, it is also a time to reflect on where we are as a people and where we are going. How does our nation emerge from its first century and a half? How robust are the institutions that sustain it? What can we do, each of us, to strengthen and sustain them for the decades that lie ahead?

Canada's democracy stands on three institutional pillars: Parliament, the legislative branch; the executive; and the judiciary. For the past 35 years, my passion and preoccupation has been with the third branch of Canadian governance, the judiciary. Today, as we stand on the cusp of our nation's 150th birthday, allow me to share with you my thoughts on the Canadian judiciary, past, present and future.

The past. It is important to understand the past, for if we do not, we cannot understand the present, much less the future. I would like to begin with a brief history of Canada's legal system, a history which I will divide into three chapters: Post-colonial; transition; and the modern era, which was ushered in by the *Constitution Act, 1982* and the adoption of the Charter.

First, the post-colonial period. We all know that in 1867, the British Parliament passed the *British North America Act,* the *BNA Act* and Canada was born. The new country was different from England. It was grounded in a written constitution, and it was a federation, with features alien to the mother country. But, in other respects, it mirrored the British model. Canada, like Britain, would rest on three pillars of governance: The legislative branch, comprised federally of the Senate and the House of Commons, and provincially in the legislatures; the executive branch, comprised of federal and provincial Ministers of the Crown; and the judicial branch, comprised of judges appointed federally pursuant to Section 96 of the *BNA Act*.

Like British judges, the judges of the new country of Canada would be independent. Judicial independence in England had been won only through a long constitutional struggle. On the one side stood the monarchs, who viewed themselves as the fount of law, and, of course, not unreasonably, if you are the fount of law, sought to control the judges. On the other side, stood jurists like Lord Coke, who maintained that the task of judges was to apply the law as they found it, not to do the King's bidding. These jurists took the view that to do justice between the parties in the cases that came before them, judges must be impartial, both in fact and in perception. And to be impartial, actual and perceived, they must have guarantees of independence, notably, fixed terms of appointment, fixed salary and security of tenure. The rule of law required no less, they believed. And the new nation of Canada inherited this belief and this system. Our first documents enshrined, by implication, the principle of judicial independence.

For 80 years after Confederation, Canada's legal system functioned as a pale shadow of England's legal sys-

tem. England's laws were more or less Canada's laws. To be sure, our Parliament passed its own laws and so did our legislatures in this post-colonial period. They were often, to be sure, uniquely Canadian, relating to our country's realities and federal status. But, the common law of England, private and public, was the common law of Canada, and Canada's judges applied English law. They looked at English precedents. They cited them continually. And just to be sure, there was no slippage, Canada's final court of appeal was the Judicial Committee of the Privy Council, sitting in Westminster on the banks of the Thames. The Supreme Court of Canada which, befitting its secondary status at the time, was not created until 1875, was just a stop, in most cases, on the way to London, when it was not bypassed altogether. Only in 1949, with the abolition of appeals to the Judicial Council, did the Supreme Court of Canada become Canada's final court of appeal, and our post-colonial period, as I like to term it, ended.

This brings us to the second period of the judiciary, which I call—I would like to find a better word, but I have not; perhaps, one of you can help—the transitional period. The post-colonial legal epoch that ended in 1949 was followed by this transitional epoch, in which Canada incrementally moved from an Anglo-centric legal system, to a system that was uniquely Canadian. Slowly, dependence on British sources weakened, and you can see this in the scholarly work of certain academics. And Canadian judges like Chief Justice Laskin and Chief Justice Dickson began to articulate Canadian perspectives on the principles and the statutes.

The transitional period culminated in 1982 with the *Constitution Act*, which repatriated the Canadian Constitution and introduced a constitutional bill of rights, the *Canadian Charter of Rights and Freedoms*. Henceforward, laws passed by our legislatures and actions of our executives would not only be required to conform to the division of powers in the 1867 *BNA Act*, they would also be required to conform to the Charter and other new guarantees, including the entrenchment of Aboriginal and treaty rights in Section 35 of the *Constitution Act* of 1982. Henceforward, it would fall to the courts to judge whether laws and executive actions conform to the strictures of the Constitution, and the addition of the Charter would have the effect of enhancing the role and importance of the judicial branch of governance. When citizens challenged the law, the constitutionality of the laws, the courts would have no choice but to decide those challenges. And when the challenges succeeded, as some of course inevitably would, Section 52 of the *Constitution Act* said that the law would be null and void to the extent of the inconsistency with the Constitution. The court, in the jargon of the day, would be seen to "strike down the law."

The transitional period that culminated in the adoption of the *Constitution Act, 1982,* in sum, I think saw three major changes in the Canadian legal system. I have already mentioned two: The Supreme Court's move toward

a unique Canadian jurisprudence and the enhanced role of the judiciary that came with the adoption of the Charter and other constitutional guarantees. The third development was political. In the lead-up to 1982—and this has been referred to already—the government of the day took as its goal the creation of a "just society." In an interview with the *New Yorker*, Prime Minister Pierre Elliott Trudeau described the goal in these words. He said this: "I've always dreamt of a society where each person should be able to fulfill himself to the extent of his capabilities as a human being, a society where inhibitions to equality would be eradicated. This means providing individual freedoms and equality of opportunity, health, and education, and I conceive of politics as a series of decisions to create this society."

We come to what I call the modern era, the era we are still in. The third chapter in Canada's legal history begins with the adoption of the Charter in 1982 and carries us forward to the present. It has been a turbulent period, replete with change and marked by tension, for the most part, healthy tension, I would maintain, between the judicial branch of governance and the legislative and executive branches. Some people raise charges of judicial activism. Others, by contrast, describe a process of dialogue between the courts and the other branches of government, in which laws found to be inconsistent with the Constitution by the courts are re-enacted in constitutional form by Parliament or the legislatures.

The *Constitution Act, 1982* confronted courts and the judges who sat on them with unprecedented challenges. I first became a trial judge in 1981, and I can tell you, personally, how challenged I and the judges around me felt at this new document. The traditional judicial tasks, adjudicating on the division of powers, interpreting statutes and applying and incrementally developing the law, were supplemented by an altogether new task: Putting flesh on the bones of a suite of new and broadly worded constitutional guarantees and devising constitutional remedies that made practical sense in the real world. It was hard work—intellectually and morally demanding. But, beyond that, it was delicate work. It required judges to balance interests and calibrate outcomes in a way that was both respectful of the role of elected legislators and administrators on one hand, and true to the country's constitutional guarantees on the other.

The Governor General, David Johnston, recently used the adjective "measured" in describing what is required of judges called upon to interpret the guarantees of the Charter and of Aboriginal and treaty rights that the *Constitution Act, 1982* introduced. I can think of no better term. It is not for me to judge how well or poorly Canada's judges have succeeded in this task. This much I can say: Canada's jurisprudence on these matters and others is increasingly referred to in other courts and increasingly influential in the world.

Have we achieved the goal of a just society announced almost four decades ago? The answer depends on

how one defines the just society. Are things perfect? Certainly not. Could there be less crime, less discrimination, less injustice? Certainly, yes. Yet, judged in terms of the former prime minister's criteria, an argument can be made that Canadian society is today a more just society than it once was—more egalitarian, more respectful of rights, more open to opportunity for all. If Canada is the second best country in the world, as a recent study concludes, its justice system and the rule of law has played a role in achieving that result.

This, in brief, is my story of Canada's judicial branch in its first century and a half. Against this background, let me turn to discuss some issues that I think will be preoccupying us in the future. I call them "Files for the Future."

Every observer of the justice system, no doubt, has his or her personal roster of the issues that will confront the system in decades to come. Here, for what they are worth, are my top—and I hasten to say incomplete—five.

The first one I call "Maintaining the Balance." The most fundamental challenge for the judiciary in the years to come, one without which I believe all other efforts will fail, is to maintain the proper constitutional balance between the judiciary on the one hand and the legislative and executive branches of government on the other. This is a task in which all branches of governance must engage. Each branch must understand its role and respect the roles of the other. Just as Parliament and Ministers of the Crown must respect the role of the courts and their independence, so must the judiciary respect the role of the legislative and executive branches. The constitutional framework of the country and the maintenance of rule of law demand no less.

The role of Parliament and the provincial legislatures is to make the law. They are preeminently suited to do this. Comprised of elected representatives of the people, they are close to the people and accountable to them at the ballot box. This said, Parliament's power to make laws is not boundless. In a constitutional democracy like Canada's, the laws must conform to the Constitution. While courts cannot shrink from the task of maintaining the guarantees of the Constitution, they must approach the laws adopted by Parliament and the legislatures with due deference for their preeminent law-making role and their ability to arrive at optimal solutions through debate and research. Such deference is particularly important on complex social and economic issues, and our court has repeatedly said so.

The role of the executive is to apply and enforce the law. The modern executive branch is a complex institution, extending far beyond Ministers of the Crown to a host of agencies and administrative bodies. Like the legislative branch, the executive branch must operate within the confines of the Constitution, as we have said in some of our decisions, reflect in their decisions the values of the Constitution. And, as with laws passed by legislative bodies,

the courts may be called upon to judge whether a particular action or decision does just that. And as with such laws, the courts show appropriate deference for expertise and mandate of administrative actors and agencies.

The role of the courts, the third branch of governance, is to adjudicate disputes that arise with respect to the law, including the country's highest law, the Constitution. In doing so, the courts must respect the role of the legislatures and the executive, and accord due deference where that is appropriate. But, at the same time, they must never shirk their role as the ultimate guardians of the Constitution and the rule of law.

Maintaining the proper balance between the legislative, executive and judicial branches of governance requires constant vigilance. Tensions are inevitable, and the temptation to stymie and suppress those perceived to stand in the way is ever present. We need not look far to find current examples of countries where once independent courts have been weakened or brought to heel by the executive or legislative branches of governance. The inevitable result is to erode public confidence in the impartiality of the courts. When this happens, disrespect for the law and for the rule of law cannot be far behind.

My second file, as I call it: "Judicial Appointments of Merit and Diversity." In Canada, governments, read the executive branch, appoint judges. We all know that. The federal government appoints the trial and appellate judges

of the Section 96 courts, as well as judges of the federal courts and the Supreme Court of Canada. The provincial governments appoint judges of the provincial courts, the successors to the former magistrates' courts.

Because judges must be independent and seen to be independent, they enjoy security of tenure. If the government could sack a judge, the public would rightly fear that the judge might trim her sail to fit the government's jib. The difficulty of removing judges for any reason short of serious misconduct or incapacity makes it vital that we appoint judges of high merit and ethical standing. Once appointed, a judge may sit for many years and affect untold lives in incalculable ways. It follows that we must ensure that every judge appointed is competent and possessed of good character and judgment. We must also assure that we appoint judges who can work in both official languages where this is required for the full and effective discharge of their duties. These requirements are sometimes cumulatively referred to as "merit."

In addition to these basic qualities that every individual judge and court must possess, appointments to the bench should reflect the diversity of the society they are called upon to judge. This is important to ensure that different perspectives are brought to the task of judging and to maintain the confidence of all Canadians in the justice system. Canada, with 36% women on the federal bench, is viewed as a leader in the appointment of women, although

some ask why the number is not even higher. We fare less well when it comes to judges from minority and Indigenous populations. Finding good candidates has been a challenge in the past due to under-representation of these groups in law schools and legal practice. But, that is changing. We can and should do better in the years to come.

Finally, Canada's courts must be able to offer their services to the public in both official languages where this is necessary and appropriate.

Canada's current government has announced its intention to review processes of judicial appointment. This is a critical venture, at a crucial juncture in our history. The result will impact the judicial system and the country for generations to come.

My third file is the "Right Governance Model," and you may not have thought much about this, but it is important. I refer to how courts govern themselves. Courts have to be independent. Yet, they also have to have courthouses, staff, and resources to perform the tasks essential to providing effective justice to the women, men and children of this society. The question is how to ensure judicial independence free from actual or perceived government influence in the face of the need of the courts to look to government for resources and support.

Canadian courts have traditionally been operated on what is called the "executive model" of court administration. Provincial governments, which are responsible for

court administration under the *BNA Act*, essentially, run the courts. Similarly, much of the responsibility for the administration of the Supreme Court and the federal courts falls to the federal executive. Administrative questions, from budgets to human resources, from infrastructure to the number of court clerks and sheriffs, as well as support services for judges, are ultimately in the hands of the government, the same government that is party to many of the cases that come before the courts. This is potentially problematic.

Some provincial governments, in consultation with the judiciary, have developed informal agreements designed to set out mutual expectations and responsibilities. Governments may delegate aspects of court administration to chief justices or consult to promote effective court operations. Such protocols may alleviate the conflicts inherent in the executive model of court governance. However, with governments under fiscal pressure, problems are surfacing more frequently in recent decades. Judges and courtrooms may find themselves underequipped and understaffed. Technology necessary to make justice more accessible, and incidentally reduce cost and delays in the long run, may be denied. Court fees may be pushed to levels inconsistent with ready access to the courts. In recent years, trials sometimes in some parts of the country have been unable to proceed because there were not enough court personnel in the courtroom—sheriffs, clerks.

In its 2006 report entitled "Alternative Models

of Court Administration," the Canadian Judicial Council, which I chair, the body responsible under the *Judges Act* for promoting efficiency and uniformity in the justice system across the country, noted widely held concerns about the shortcomings of the executive model of court administration, concerns shared in some cases by government officers. It concluded that the inability of courts to develop or administer budgets and direct court administration was having a negative impact on judicial services and was creating a situation where, in appearance if not reality, court funding and operations are at the mercy of the executive, the government, as the public sees it. When you consider that half or more of the cases before the court involve the government in some form as a party, you can see how this is potentially problematic in terms of how the public perceives the situation. In a world where the Crown and the government are a party, in many cases, it cannot be a good situation.

The common law world has witnessed a shift in recent years toward greater autonomy in court administration. Countries are moving or have moved to a judicial or judicial-executive partnership model. Recent reforms in England and Wales have increased judicial independence in the funding and management of courts through a partnership model of court administration. And since 2010, the Scottish Court Service has operated as a fully independent judge-led service without any power of a ministerial direction, a system inspired by the judge-led system in the Republic of Ireland. Similarly, the United States Supreme Court has long enjoyed administrative independence from government, with direct congressional oversight of the court's budgetary needs.

Scholar Graeme G. Mitchell predicts that in the 21st century, the administrative independence of the courts will be "the new frontier in matters of judicial independence." We need, I believe, to look at ways to ensure the proper funding and staffing of our courts, ways to help them move into this technological 21st century in which we live, while preserving judicial independence and ensuring public accountability for moneys spent.

My fourth file is access to justice, and you will not be surprised at that. I have spoken on it before. The courts belong to the Canadian people, and the Canadian people should be able to access them. It is as simple as that. The most advanced justice system in the world is a failure if it does not provide accessible justice to the people it is intended to serve.

We may think we are doing well in providing our citizens with access to justice. After all, we say we are one of the better countries in the world to live in. But, the 2015 Rule of Law Index of the World Justice Project ranks us only 18th on the front of access to justice, much higher on certain other fronts. As the National Action Committee on Access to Justice in Civil and Family Matters, headed by my colleague, Justice Cromwell, has made clear, challeng-

es abound. People avoid seeking legal advice, fearing the cost. Court proceedings are too expensive and often take too long. We may have a Cadillac justice for the elite and the people or the corporations who can afford it, but, too often, ordinary Canadians find themselves shut out of court or forced to go it alone without a lawyer. Courtrooms are filled with unrepresented litigants trying to navigate the system as best they can, increasing strains on the process and triggering yet further delays. Legal aid in many parts of the country is woefully inadequate.

Some, surveying the magnitude of the problems related to access to justice, use the word "crisis." I remain cautiously optimistic. Canadians are taking up the challenge of making access to justice a reality. The National Action Committee has brought governments, lawyers, judges and members of the public together to study strategies for access in civil and family matters. Other groups are engaged in improving access in other areas of the law. Across the country, attorneys general, the legal profession and legal academics are putting their collective shoulder to the wheel to make court processes—and this is important—more flexible and efficient. We have learned that one size all systems do not work and that ingenuity, aided by technology, goes a long way. Above all, we have learned that although the problem is polycentric and complex, with effort and intelligence, we can make a dent in it.

I believe we must meet the challenge of providing

access to justice to ordinary Canadians, if we are to maintain public confidence in the justice system. If people are excluded from the system, if they conclude it exists only to serve the interests of the government or the elites, they will turn away. Respect for the rule of law will diminish. Our society will be the poorer.

Number five, "Reconciliation." This is neither the time nor the place to canvass the legal issues that will occupy the judicial system in the decades to come, yet I would be remiss if I did not mention the overarching project of reconciliation between Canada's Indigenous peoples and other Canadians upon which our society as a whole is currently engaged. If we are not successful in this project, Canada will fall short of its potential, not only in matters of justice, but also on the economic and cultural fronts.

Over the past three decades, the courts have been involved in resolving legal issues central to the project of reconciliation. The work is not complete. How the three branches of government—legislative, executive and judicial—meet the task of finding reconciliation with the descendants of our First Nations will shape the country in the decades to come. My hope is that we meet this challenge with courage and determination, in the spirit of respect and magnanimity demanded by the honour which binds the Crown in all its relations with Canada's Indigenous peoples.

Let me conclude: In his book, *The Idea of Justice*, Nobel Prize–winning economist, Amartya Sen, argues that

a just society, which he also says is an economic successfully society, requires three things: First, it must possess just laws. Second, it must possess strong institutions. Third, it must achieve actual justice in the lives of its citizens.

By these measures, Canada is fortunate. We possess, for the most part, just laws, created by legislative bodies committed to Canadian values. We have strong institutions, not least a judicial branch that is independent, strong and respected in Canada and abroad. Finally, through our laws, our tribunals and our courts, we pursue justice in the lives of our citizens on-the-ground, actual justice. To be sure, we sometimes fail; we sometimes fall short, but when we do, we strive to correct the situation.

Just laws, strong institutions and actual on-the-ground justice in the lives of men, women and children. These are precious assets upon which our nation's future well-being depends. It is up to us to ensure that we maintain them as Canada marks its 150th anniversary. Thank you. Merci beaucoup.

Note of Appreciation from Nick McHaffie, Partner, Stikeman Elliott LLP

Thank you very much, Chief Justice, for your thought-provoking and insightful remarks that are an important reminder of the importance of the rule of law in creating, maintaining and improving a just society.

I start by noting that it is wonderful to be able to speak to you, knowing that I will not be receiving questions that point out the flaws in my submissions, but I do want to make reference to something that Justice Ruth Bader Ginsburg, of the United States Supreme Court, remarked in Vancouver when she was there in 2007, saying this: "Essential to the rule of law in any land is an independent judiciary, judges not under the thumb of other branches of government and therefore equipped to administer the law impartially [….] As experience in the United States and elsewhere confirms, however, judicial independence is vulnerable to assault. It can be shattered if the society law exists to serve does not take care to assure its preservation."

It has been wonderful and informative today to hear the perspective of someone who has been an important and leading voice in assuring its preservation for over 25 years—35 years in total and 25 years at the Supreme Court of Canada—at least since in *Mackeigan v. Hickman* in 1989, which I believe was within three weeks of your appointment to the Supreme Court of Canada, one of the very

first cases you sat on and one of the first that you wrote on, in which you preserved and strengthened judicial independence by ensuring that judicial officers were not subject to interrogation in a public inquiry for their decisions, their reasons for decision and that they maintain that independence. But, even at that time, as we heard today, 25 years later, you stress not only the importance of an independent judiciary, but the question of balance between that principle and the principle of parliamentary supremacy.

In order to protect the rights that are set out in the Charter to preserve the just society that is set up through our Constitution, having a judiciary that is respected, that is independent of government, is essential. Through the decisions such as *Mackeigan* through to a New Brunswick judge's reference in *Charkaoui*, you stress the importance of both the reality and the perception of an independent judiciary as a cornerstone of Canadian legal structures.

On behalf of Stikeman Elliott, IBK Capital, the Empire Club, everyone here listening in this room and elsewhere where they are listening, thank you for your remarks today, which serve as a valuable continuation of that discussion. Thank you.

Concluding Remarks by Dr. Gordon McIvor

Thanks very much, Nick. Thank you, a personal thank you, to you, Madam Justice, for accepting our invitation to open this series. Over the next year, we will be looking at some of the great institutions to Canada and what makes us great, and we thought you would just be an ideal way to kick off the series. Thank you so much for being here.

Thank you to our generous sponsors as well, IBK Capital Corp. for being our Sesquicentennial Series sponsor as well as our student table sponsor; Stikeman Elliott LLP for being our event sponsor; and, of course, Dentons for being our VIP sponsor today.

I would also like to thank the *National Post,* as our print media sponsor and Rogers Television, our local broadcaster. We would also like to thank Mediaevents.ca, Canada's online event space, for live webcasting and podcasting today's event. As most of you will know, that is how most people in the world now actually view Empire Club events. Follow us on Twitter at @Empire_Club. You can also follow us on Facebook, LinkedIn and Instagram.

Please, join us again in the next couple of weeks. In fact, we just booked Premier Brad Wall, the premier of Saskatchewan who will be at this very podium in this very room on June the 14th—actually our third premier this season.

Ladies and gentlemen, thank you, for your attendance today. This meeting is now adjourned.