

Surviving and Thriving in Today's Court of Queen's Bench

Prepared for: Legal Education Society of Alberta
7th Annual Law & Practice Update

Presented by:
Hon. Justice A.W. Germain
Court of Queen's Bench
Edmonton, Alberta

For presentation in:
Edmonton, Alberta
October 20th - 21st, 2017

SURVIVING AND THRIVING IN TODAY'S COURT OF QUEEN'S BENCH

[Speaking notes –check against delivery]

Comments presented to the registrants of the LESA, Annual law Review October 21, 2017 by the Honourable Mr. Justice Adam William Germain.

NOTE: The opinions expressed in this material are those of Justice Germain and may not represent the prevailing, or any view, held by other members of the Court of Queen's Bench.

A. THE GOAL AND THE CHALLENGE

'It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way –

Words, written in 1859 by Charles Dickens as he started *A Tale of Two Cities*, anchor my comments.

Lawyers and Law firms, like a court, or a garden, must continually renew. The *Clapham Omnibus* has given way to *Facebook* and *Twitter*. Circumstances change, courts, and the legal profession must adapt to that change.

We have recently gone through a very tough recession, for some -the worst of times – for others memories of other recessions that were much worse. For some the recession has not ended. How this recession affected your practice of law will depend on your type of practice, what area of the law you pursue, and where you pursue it. However, it is clear, that the old way of doing business in the courts must yield to a more modern pragmatic business approach. This includes the relationship between the bar and the courts. The resources we have will not stretch infinitely.

Nevertheless, let us return to Dickens!

Charles Dickens grew up in the impoverished middle of the 19th century in London and saw the class stratification, the circumstances of need and the conspicuous indulgence of the wealthy. All of this affected him- it became the cornerstone of his writings. However, Dickens was nearly not a writer.

When he was 14 years of age, he articulated to be a lawyer, but became bored with the law and its limitations. He then went into newspaper writing, got bored with that so, in 1829 he became a court reporter in the halls of Chancery. That did not last, but the richness of his imagination and his interest in ordinary men and women challenged him to write about the people he observed- many of them lawyers. His ability with words propelled him, for all time, into the literature of the world.

In many of Charles Dickens books, he writes about his disdain for lawyers and the court system. Over 150 years ago, he decries a lack of access to justice for those that need it most.

Has anything changed?

American Psychiatrist and author Robert Coles wrote in the *Virginia Quarterly Articles* in autumn 1983 an introspective about Charles Dickens and the law.

Coles writes:

Again and again lawyers figure in the penetrating enactments of ethical conflict which Dickens insisted on making a central element of his most important novels. of course, the issue is not just lawyers, but the law itself—its awesome, pervasive, perplexing, unnerving presence. The law still offers many of those caught in its exertions any number of frustrations, confusions, delays. Men, women, and children still find themselves irritated, then confounded, then outraged, and finally maddened by cases which affect them deeply, and seem to go on and on and on—maybe not for generations, , but long enough for particular children to suffer in extended custodial fights, and for particular workers and families to suffer while the responsibility for, say, dangerous environmental pollution is argued in court for months which become years.

Coles also opines that despite the legal harshness of these writings about lawyers; Charles Dickens himself had great respect for the law. Coles concludes his article with the following observation:

[Dickens] exhortation of a particular profession, the law, was meant to honor its possible role in our lives—at its best a bulwark against anarchy and a pointer in the direction of fairness.

Dickens also provided the anthem of our profession when he said: No one is useless in this world who lightens the burdens of another.

Alberta judges work daily to lighten the burden of others but we need the help of the profession to root out the systemic weaknesses that drag us down, reduce our volumes, and waste our time with repetitious re-hearings of the same issues. We as judges can and will do better if we can arm the Bar with the necessary tools and ideas to implement desirable change.

Our profession is constantly advised that both our contemporary courts and our contemporary legal profession are no longer in touch with the average person. Rather than bemoan this, I suggest that lawyers embrace this reality, challenge it, and change it. In this paper, I hope to present some modest ideas for change and how to improve your practice of law in the courts - surviving and thriving - as you go forward.

B. UNDERSTANDING THE COURT

No member of any profession will thrive and survive in their working environment unless they know and understand the environment. Some comments about the court become necessary.

1. What's our workload?

Our workload is heavy and lawyers should conduct their court practice with that recognition. In an analysis of the Judge /citizen ratio throughout Canada, Alberta has the fewest judges on a per capita