

Tribute to:

HONOURABLE P. DEREK LEWIS Q.C.,

1924 to 2017

**Court of Appeal of Supreme Court of Newfoundland and Labrador
sitting as
Honourable J. Derek Green, Chief Justice of Newfoundland and Labrador,
with Justices Gale Welsh; Charles W. White; Michael F. Harrington, and Lois
R. Hoegg, Judges of Appeal**

Tribute from David C. Day, Q.C.

**Court of Appeal, 287 Duckworth Street, St. John's,
Newfoundland and Labrador**

**14 March 2017
(including subsequent minor revisions)**

To ever address the Supreme Court Bench from the Bar in this cathedral of Newfoundland and Labrador courts is challenging.

To speak here today is daunting.

Because, I do so to give tribute to the professional and public life of my mentor, master, employer and eventually, my law partner: Hon. Philip Derek Lewis, Q.C.

When he peacefully passed, on January 19, 2017 at St. John's, age 92 years, he had been a fully paid-up Barrister and Solicitor—in good standing—of Supreme Court of Newfoundland and Labrador for more than 68 years (15 October 1947 to 31 December 2015). He continuously practiced longer than any other lawyer, since the first was admitted to the Newfoundland Bar in 1826, and longer than most lawyers elsewhere who have ever been granted a law practice certificate by a Law Society. Lewis Q.C. continued to regularly maintain contact with his law firm's offices, at and near St. John's, until the day before he passed. By then, he was a Life Member of the Law Society (since 15 February 2016). His "enduring legacy", says Andrew Parsons, the Province's Minister of Justice and Public Safety and Attorney

General, is his “contribution to the legal community” and to “law and policy” in Newfoundland and Labrador.

To this day, his law chamber remains undisturbed. In one corner hangs his burnished silk gown, acquired on appointment as Queen’s Counsel in 1964. In another are gathered his first editions of *Halsbury’s Laws of England*, *Theobald on Wills*, *Chitty’s Forms of Civil Proceedings in the King’s Bench Division*, and *Wharton’s Law Lexicon: Forming An Epitome Of The Law Of England* (including statutes to end of 1848). In the oak credenza, behind the only desk he ever owned since commencing private law practice in 1947, is stored a flask of Lamb’s Genuine Amber Palm Breeze rum, to which he resorted each Christmas Eve, at 3 PM sharp, for a single drink—neat.

On the credenza rest his pipes and tobacco; which, several times, he rescued from confiscation by environmental police. Among the pipes is a Shell Briar by Dunhill of London; given him by a Supreme Court Justice, now deceased. This gift from a member of the Supreme Court Bench was regarded by Lewis, Q.C. as a trifle suspect. He investigated. He established, beyond reasonable doubt, two facts. They were, first: that the pipe had been purchased from Alteen’s of Corner Brook; and, second: that the pipe had been presented to the Justice by the Corner Brook Bar of

the Newfoundland Law Society while the Justice was visiting, or on circuit to, the west coast city on 20 October 1962.

To avoid confusion with another Philip Lewis already practicing law in Newfoundland, he professionally traded as P. Derek Lewis after admission to the Bar. Although both are now deceased, their respective law firms—Lewis, Sinnott, Fitzgerald, and Lewis, Day—continue to hold out their “Lewis” as senior name partner.

His ancestors have been traced to a great grandfather, Benjamin Lewis, in Wiltshire County, southwest England; where he traded as carpenter, grocer, bread maker, licenced victualler, and coffee house keeper. One of Lewis, Q.C.’s two siblings (both of them brothers) was Surgeon to Queen Elizabeth II; the other sibling was an accountant.

Native to St. John’s, P. Derek Lewis was a Feildian. He was graduated in 1941 from secondary school at Bishop Feild College, where he excelled in mathematics, French, and economics.

His formal education continued, from 1941 to 1943, at Memorial College; which he exited with a Diploma in Arts. Instead of next attending law school (as now required), he ‘read’ (that is, studied) law, from 1943 to 1947, at the chamber of St. John’s lawyer John B. McEvoy, K.C., a signatory to Terms of Union of Newfoundland with Canada. As a law student, in December 1944, his first legal drafting produced *The Constitution Of St. Andrew’s Rover Crew Of The 12th St. John’s Boy Scout Group*. He was admitted to the Bar, age 22 years, in ceremonies over two days; 14 and 15 October 1947. He is number 210 on the Barristers’ Roll.

He entered into numerous law partnerships; some with notable members of the Bar. They included: another Feildian, J. Douglas Cook, Q.C., as well as Gerald F. Lang, Q.C. and Fintan J. Aylward, Q.C.; all of whom were to become, and complete careers as, Justices of Supreme Court Trial Division; David H. Orr and Wynne-Anne Trahey, currently Judges of Provincial Court; Barry R. Sparkes, formerly Supreme Court Registrar; and Hon. John C. Crosbie, Q.C., later a Canadian government cabinet minister, and statesperson. He describes Lewis Q.C. as “a quiet but great legal mind”.

His law partnerships also included currently-practising Queen's Counsel and Supreme Court Masters, J. David B. Eaton and Glenda C. Best, and Queen's Counsel, Jean V. Dawe and Sandra M. Burke.

His most vital partnership, however, was formed in October 1961, when married to Grace French of Moreton's Harbour, Notre Dame Bay; the only marriage of each. For more than 55 years, she was his primary moral support, his principal confidante and his perceptive advisor.

Two days after returning from a brief honeymoon in England, Lewis, Q.C. was instructed to argue an application in Supreme Court before Mr. Justice Sir Brian E.S. Dunfield. He tasked his law clerk to gather and tab the casebooks to which he intended to refer. The clerk assembled and tabbed the casebooks at the Law Library; then in a Water Street Supreme Court building. Next morning, his clerk carried the tabbed casebooks, four in number, from the Library to a courtroom. Lewis, Q.C. cited them in his argument. They all proved irrelevant to the issue involved in the application. Justice Dunfield interjected: "Mr. Lewis. Need I remind you the honeymoon is over?" To which Lewis Q.C. replied, "Over it is, My Lord and so to, it appears, is my application." As the law clerk and Lewis, Q.C. afterwards walked back from the Court House to his Duckworth Street law chamber, he tactfully chided

his clerk—who had served him, part-time, since 14 years old—with the remark, “remember that counsel is always responsible for his case, even if he has clerks or students assisting him.” Lewis Q.C. never again mentioned that occasion—but his clerk (who later became a lawyer) never forgot it. A week later, the clerk learned that a lawyer, now deceased, was in the habit of surreptitiously relocating tabs in books after they had been assembled by or for other lawyers and left in the library for court next day. This knowledge infused the law clerk with *animus* toward the miscreant. Atone he must, for his misbehaviour that inconvenienced Lewis, Q.C. And, atone he did; although he never intended, and Lewis, Q.C. never knew.

About 15 years later, that lawyer selected and tabbed 11 casebooks in the same Law Library, late the night before scheduled to appear in Supreme Court. Next morning 11 tabbed casebooks were brought from the Library to a courtroom. There, the lawyer began argument, on behalf of plaintiffs, in an action to compensate for loss of goods at sea. He selected the first of what he thought were his tabbed casebooks. He began reading from an English King’s Bench decision. It involved a widower’s 1808 action to compensate for loss of his wife in a stage coach accident. For a moment, the lawyer figured he had mis-located the tab in that casebook. Then, he realized much worse: someone had replaced his 11 chosen casebooks with 11 tabbed others.

Lewis, Q.C. was industrious. He conducted a generalist's law practice. In so doing, he appeared in all courts of the Province, and in Exchequer—later, Federal—Court, and Supreme Court of Canada. Yet, the number of occasions he declined appointment to the Province's Supreme Court Bench exceeded, cumulatively, unsuccessful attempts by many others to reach that station.

Lewis, Q.C. was tactical. His command of court procedure and strategy, not infrequently, won a case despite applicable law being against his client. Senior Provincial Court Judge John L. Joy recalls ordeals of appearing in Supreme Court of Newfoundland, opposite Lewis, Q.C. Judge Joy describes him as a “great litigation strategist”, frequently equipped only with his “well-thumbed” 2,820-page 1924 edition of the *Annual Practice* of the United Kingdom's Supreme Court.

His mastery of court procedure sometimes did not suffice. For about ten years he litigated, on behalf of a bank, to recover loans to a rancher. Security for the loans was 900 bulls and cows, imported from Saskatchewan to Flying L Ranch in Winterland on the southern Burin Peninsula. Lewis, Q.C. was ultimately successful in gaining, for his client, the right to sell the security. He was, however, dismayed by the report of one of his law firm associates—his former clerk—despatched by Lewis, Q.C. to the Winterland ranch. Many of the security had vacated the ranch

and tumbled over cliffs; drowned in ponds; starved in bogs, or died in acts of procreation.

Lewis, Q.C. was concise. He was rarely known to send a letter exceeding one page. His written advocacy to Supreme Court of Canada are templates of brevity, clarity, and conviction. Although upwards of 40 pages were procedurally-permitted, one of his written submissions totaled five-and-one-half pages; another was confined to ten.

Lewis, Q.C. was pragmatic. His advice to lawyers on admission to the Bar—limited to seven words—was: “Get work, get it done, get paid.”

Lewis, Q.C. was committed. In spite of what Barrister James J. Smythe Q.C. calls the “crisis to crisis” of private law practice, Lewis, Q.C. found time to serve as a Bencher of Law Society of Newfoundland and Labrador from 1962 to 1978. And, from 1979, he was inaugural chair of Newfoundland and Labrador Law Foundation for 26 years.

Lewis Q.C. was not technically savvy. From commencing law practice in 1947 until his passing, he avoided audio and digital innovation. His only computer

afforded 20 pages of memory capacity. He dictated or hand-wrote, to legal assistants, every letter, every pleading and every other document he ever crafted. He was startled, in 2007, by the revelation from his last legal assistant, Kelly A. (Mahoney) Hall, who served him for about 18 years (1997 to 2015). She informed him that carbon paper was no longer mainstream among law office supplies—as it had been when Lorraine (Easton) Goosney served as his first secretary, also for about 18 years. His junior legal assistants, in the several years before he passed—Nancy Gulliver, Stephanie Noonan, and Bernice Blackwood-Day—had never heard of carbonated paper.

Lewis, Q.C. was a strategic social planner. Annual law firm Christmas parties he hosted acquired legendary status. Upwards of 120 attended. Lest neighbouring offices made warranted breach of peace complaints, not only lawyers were invited. The guest list included judges of Traffic, Magistrate's, Family, District and Supreme courts, court criers, correctional officers, court clerks, court secretaries, the High Sheriff, tip staffs, bailiffs, police (both Constabulary and RCMP), justices of the peace and 'lock up' wardens; some of them equipped with musical instruments, or imbued with crooning or cavorting talents.

Lewis, Q.C. was mellow. His sardonic humour infused conversations with legal colleagues and, sometimes, exchanges with judges in Court. He preferred reasoned oral argument to rhetoric. Never did a cross word pass between him and his surviving junior partner of 49 years.

Lewis, Q.C. was athletic. The Newfoundland and Labrador 100-yard record-holder, bailiff David ‘Snowy’ Carroll, regards him as an accomplished short-distance runner, despite his diminutive stature. In 1945, Lewis, Q.C. competed for Newfoundland at an international track and field meet. He devoted 33 years as President or Secretary of the Boy Scouts of Canada National Council or the Boy Scouts of Newfoundland; and several, as President of the Newfoundland Game Fish Protection Society. From about age 70, he absented himself from his law chamber on summer afternoons to prune and manicure the 27 acres, 3 roods and 1 perch of his summer residence grounds at Hogan’s Pond. Interred there is the only dependent of Lewis, Q.C.’s marriage to Grace: their Newfoundland Dog, ‘Sugar’.

Lewis, Q.C. was political. Although never a candidate, he chaired, or was senior advisor to, countless Liberal Party provincial and federal election campaigns in Newfoundland. His political colleague, Barrister Edward M. Roberts, Q.C., regarded him as a person of “unimpeachable integrity” in public life. As treasurer

of the Newfoundland and Labrador Liberal Association from 1968 to 1982, he formed a politically-intimate relationship with Premier Joseph R. Smallwood. Although exceptionally discreet, Lewis, Q.C. shared with me some details of Smallwood's political *modus operandi*. They were such, however, that I am treating them as confidentially as a client's privileged disclosures to a solicitor.

Successful though he was as a Liberal Party fund-raiser, he often remarked, "money does not win elections; you will win when the people are with you."

In the Liberal Federation of Canada he served as secretary from 1970 to 1975. Three years later, on 23 March 1978, Prime Minister Pierre Elliott Trudeau summoned him to the Senate of Canada. There, he maintained the best attendance record for 21 years; then, understandably, limiting his law practice. Far less astonishing—or deserving of confidentially—are his disclosures about Canada's twice Prime Minister. He allowed that Trudeau chose his middle name, Elliott, while a teenager, and once dressed as Santa Claus to meet his children in the Canadian Arctic.

When, occasionally, *The Globe And Mail* published excerpts from *Debates of the Senate* of Canada, Lewis, Q.C.'s wise, unvarnished contentions were among them.

Lewis, Q.C. was clever and meticulous. In 1984, he co-authored a report by a Special Joint Senate-House of Commons Committee of the Parliament of Canada on Reform of the Senate. Its sole term of reference was whether the Senate should be appointed or elected. Lewis, Q.C., privately, felt the Committee's mandate should, rather, have been whether Canada even needed a bi-cameral form of government. He also served on the Special Joint Committees addressing the 1987 Constitutional Accord, and the 1996 Bill C-110 (Constitutional Amendments).

He impressed his Senate colleagues as "the ultimate draftsman"; in preparing or contributing to reports of the seven Senate Committees and five Senate-House of Commons Committees he sat; two of them as chair.

Reflecting his advocacy style in private law practice, he was, in Parliamentary committees, said Senator Joyce Fairbairn, "a little like a terrier with a bone if he feels a witness [before a committee] or a colleague is ... evading an issue."

Lewis, Q.C. was shrewd. When his law chamber was at 272 Duckworth Street, St. John's, he often wished he could acquire a larger chamber. In mind he had the former headquarters of Reid Newfoundland Company, across the street at 261 Duckworth; built in 1864. One Saturday morning he observed, from behind his chamber curtains, a rival senior lawyer and a real estate agent engaged in animated discussion and measurement-making outside 261 Duckworth. By the time they departed the vicinity of 261 Duckworth, Lewis, Q.C. had made a telephone call and agreed his purchase of the property.

Debates of the Senate, on 25 November 1999, preserve a speech by Senator Edward M. Lawson. He alleged that Lewis, Q.C. was informed of a client's intention, on passing, to take everything with him. The client delivered envelopes containing \$100,000 cash to each of his physician, his clergyman and Lewis Q.C. with instructions they place the envelopes in his casket on his interment. That day, each of them deposited an envelope in the casket—as they had been instructed. Later, however, the physician confessed to Lewis, Q.C. having withheld \$25,000 from his cash envelope to cover needs of the hospital where he practiced. And, the clergyman revealed to Lewis, Q.C. having withheld \$40,000 from his cash envelope to meet costs of his physically-deteriorating church. Lewis, Q.C. chastised both for violating the obligation entrusted to them. Then, he added: “at least I was faithful to the

instructions; I placed, in the casket, my envelope containing \$100,000—by my personal cheque.”

Lewis, Q.C. was private and unpretentious. Recalled Senator Ethel Cochrane, he “presented a very quiet face to the public never looking for publicity for his ... contributions [to public life].”

Lewis, Q.C. was principled. Former Newfoundland and Labrador Supreme Court Chief Justice Clyde Wells, in recalling Lewis, Q.C.’s “remarkable career at the Bar [and] his diverse involvement in public life”, could not “think of a single occasion,” during professional contact with him over a half century, when they “parted with other than a feeling of goodwill and respect.” The Province’s former Trial Division Chief Justice David Orsborn, with compelling sincerity, related to me several years ago, “Derek Lewis is a gentleman”. And, more recently, Barrister Barry Learmonth, Q.C. recounted an episode of Lewis, Q.C.’s exceptional devotion to ethical practise in dealing with him, in the profession of law; ethical practise which Lewis, Q.C. regarded as being less common in the contemporary business of law.

Echoing former Chief Justices Wells and Orsborn, and Barrister Learmonth, Q.C., Manitoba Senator Sharon Carstairs recollected: “[H]e ... was ..., a very gentle

man. [H]e never felt ... need to use other people ... [to] climb ... over them in his search for success, because ... [he] believed that it was in helping others that his own life could be enriched.”

Lewis, Q.C. harboured fervent concern for the legal profession’s future. He particularly concurred with the first Francis Forbes Lecture remarks of Chief Justice J. Derek Green, in 2016, about burgeoning numbers of litigants who are not represented, and legal expense burdening litigants who are.

In 2015, a Degree of Doctor of Laws (Honoris Causa) was conferred by the Law Society of Newfoundland and Labrador on Lewis, Q.C.; recognizing his integrity, significant professional achievements, distinguished service, and contributions to the legal profession and the Province’s administration of justice and public life. In 2016, he was granted Life Membership by the Society.

These distinctions were initiated by Barrister Thomas J. O’Reilly, Q.C., who succeeds Lewis, Q.C. as most senior continuously-practising member of the Newfoundland and Labrador Bar (since February 1968). In February 2015, O’Reilly, Q.C., in addressing the Province’s Supreme Court after the passing of his own former law partner, Judge of Appeal John J. O’Neill, remarked that:

The measure of a man is not how many biographies are published about him or how many testimonials are given. Rather the measure of a person's legacy is not tangible at all. It is the principles that he set and how he lived those principles that are his legacy.

Likewise can be said of Lewis, Q.C.

Tributes from colleagues in the Senate of Canada, on Lewis Q.C.'s retirement from that place in 1999, speak likewise, to the legacy of this loyal Newfoundlander who opposed Confederation. "Right and truth. Duty and honour. Fairness and equity."

And permit me, Chief Justice Green, to add this:

"Mr. Lewis"—as I only ever addressed him: thanks for the lessons—the invaluable-instructive, tactical, strategic lessons on practicing law; and thanks for the memories—the enriching, indelible memories.

Tribute given by David C. Day, Q.C., a Barrister and a Master of Supreme Court of Newfoundland and Labrador; who was clerk, student, associate and, most recently, junior partner of Lewis, Q.C. at Lewis, Day law firm, St. John's and Portugal Cove-St. Philips.
