

ETHICS CENTRE LUNCHEON AT ALBANY CLUB, MAY 22, 2014

I WAS HAPPY TO ACCEPT THE INVITATION FROM MIMI MARROCCO TO SPEAK TO THIS DISTINGUISHED GROUP OF CORPORATE LEADERS ALTHOUGH I CANNOT CLAIM TO HAVE HAD ANY REAL EXPERIENCE IN THE BUSINESS COMMUNITY EXCEPT FOR BEING THE CHAIR AND CEO OF THE C.F.L. FOR TWO YEARS. IN THOSE DAYS THERE WAS SOME SCEPTICISM ABOUT THE BUSINESS ACUMEN OF THAT IMPORTANT CANADIAN INSTITUTION. IN FACT, WHEN I WAS APPOINTED, AIR CANADA'S ENROUTE MAGAZINE PUT ME ON ITS COVER WITH THE QUESTION "CAN ROY MCMURTRY SAVE THE SAD SACK CFL?" HOWEVER I BELIEVE SAD SACK NO MORE!

I WAS PLEASED TO HAVE THE OPPORTUNITY TODAY OF MEETING YOUR CENTRE'S EXECUTIVE DIRECTOR HELENE YAREMKO JARVIS. SHE IS THE NIECE OF THE LONG TIME ONTARIO CABINET MINISTER, THE LATE JOHN YAREMKO WHO WAS A GOOD FRIEND AND WHO SERVED WITH DISTINCTION IN THE CABINETS OF BOTH JOHN ROBARTS AND BILL DAVIS. I NOTE THAT MS. YAREMKO JARVIS IS ALSO A LAWYER, WHICH IS AN APPROPRIATE SEGUE INTO MY REMARKS, WHICH WILL BE RELATED LARGELY TO MY POLITICAL AND JUDICIAL CAREERS.

I WAS INTERESTED TO READ THE QUOTE FROM DAVID OLIVE IN THE BOOK "ETHICS AND GOVERNANCE" WRITTEN BY LEONARD BROOKS AND DAVID SELBY. AS MOST OF YOU WOULD KNOW, DAVID OLIVE WAS A FOUNDING

DIRECTOR OF THE CANADIAN CENTRE FOR ETHICS AND CORPORATE POLICY. THE FOLLOWING IS A BRIEF QUOTE FROM MR. OLIVE ON THE 10TH ANNIVERSARY OF THE CENTRE WHERE HE DESCRIBED THE CENTRE AS “PART OF THE VANGUARD AND CHALLENGE TO BE MORE AGGRESSIVE IN IDENTIFYING THE CHRONIC ETHICAL LAPSES AND THE CHRONIC ETHICAL ABUSES THAT STILL CHARACTERIZE TOO MANY ASPECTS OF BUSINESS LIFE. “IN MY OPINION THAT QUOTE COULD EQUALLY APPLY TO THE MANY CHALLENGES FACING OUR POLITICAL DEMOCRACY SIMPLY BY SUBSTITUTING THE WORDS “POLITICAL LIFE” IN PLACE OF THE WORDS “BUSINESS LIFE”.

THE ETHICS OF POLITICS OR THE LACK THEREOF HAVE BEEN THE SUBJECT OF MORE CONTROVERSY IN THE LAST TWO YEARS THAN PERHAPS FOR THE LAST TWO OR THREE DECADES. FOR EXAMPLE, THERE HAVE BEEN CONTROVERSIES RELATED TO SENATORS’ EXPENSES, THE RECENT RESIGNATION OF THE PREMIER OF ALBERTA, THE ENERGY PLANT’S CANCELLATION IN ONTARIO AND THE HIGHLY PARTISAN PROPOSED NEW FEDERAL *ELECTIONS ACT.*, AND THE INCREASINGLY ARBITRARY BEHAVIOUR OF THE PRIME MINISTER.

I WAS FIRST ELECTED TO THE PROVINCIAL LEGISLATURE IN 1975 AFTER SEVENTEEN YEARS AS A TRIAL ADVOCATE IN BOTH CRIMINAL AND CIVIL CASES. IT WAS ASSUMED THAT AN ADVOCATE WAS NOT SIMPLY A MOUTHPIECE FOR A PARTY OR PARTIES BEFORE THE COURT BUT WAS AN OFFICER AS WELL OF THE SAME COURT. THE ETHICAL ISSUES THAT ARISE IN THE ADMINISTRATION OF JUSTICE ARE MYRIAD. PERHAPS THE PRINCIPAL ETHICAL ISSUE FOR AN ADVOCATE IS TO REFUSE TO INTRODUCE EVIDENCE

THAT THE ADVOCATE KNOWS IS FALSE. AT THE SAME TIME THE ADVOCATE SHOULD NOT ATTEMPT TO (PERSONALLY) JUDGE THE GUILT OR INNOCENCE OF A CLIENT CHARGED WITH A CRIMINAL OFFENCE.

IN ANY EVENT WHEN I WAS ELECTED TO THE PROVINCIAL PARLIAMENT PREMIER DAVIS IMMEDIATELY APPOINTED ME AS THE PROVINCIAL ATTORNEY-GENERAL. I WAS OF COURSE VERY PLEASED GIVEN MY MANY YEARS IN THE COURTS AND I ALSO REALIZED THE CRUCIAL IMPORTANCE OF AN ETHICAL AND INDEPENDENT ADMINISTRATION OF JUSTICE TO A DEMOCRATIC SOCIETY. AN ATTORNEY-GENERAL IS TRADITIONALLY ALSO A MINISTER OF JUSTICE, AS JUSTICE IS THE PRINCIPAL GOAL OF THAT OFFICE.

MY FIRST SPEECH AS ATTORNEY-GENERAL CITED THAT THE PRINCIPAL CHALLENGE FOR THE JUSTICE SYSTEM WOULD BE ACCESS TO JUSTICE PROBABLY FOR MANY DECADES TO COME. ONE OF MY EARLY INITIATIVES WAS TO CREATE A PROVINCE-WIDE LEGAL AID CLINIC SYSTEM WHERE SALARIED LAWYERS WOULD ASSIST THE DISADVANTAGED IN PARTICULAR WITH LEGAL ISSUES RELATED TO POVERTY. WE HAVE ACHIEVED SOME SUCCESS IN CONFRONTING THE ACCESS TO JUSTICE ISSUES BUT THERE IS A LONG DISTANCE TO GO. IN RECENT YEARS I HAVE BEEN SOMEWHAT OUTSPOKEN ABOUT THE NEED FOR THE LEGAL PROFESSION TO REGARD ITSELF AS A HELPING PROFESSION AND NOT SIMPLY AS ANOTHER BUSINESS. IN THIS ETHICAL CONTEXT IT IS IMPORTANT THAT MEMBERS OF THE PROFESSION, PARTICULARLY THE YOUNGER ONES, ACCEPT THE ETHICAL RESPONSIBILITY OF TAKING ON CASES ON A PRO BONO BASIS.

THE ROLE OF AN ATTORNEY-GENERAL HAS AN IMPORTANT QUASI-JUDICIAL FUNCTION WHICH REQUIRES THAT PERSON TO BE SOMEWHAT INDEPENDENT OF CABINET. FOR EXAMPLE, THE DECISION TO PROCEED OR NOT WITH A PROSECUTION SHOULD NEVER BE DISCUSSED IN CABINET AS IT WOULD BE TOTALLY UNACCEPTABLE TO CREATE ANY IMPRESSION THAT A PROSECUTION IS IN ANY MANNER POLITICALLY MOTIVATED.

IN THIS CONTEXT ONE OF THE MOST CONTROVERSIAL DECISIONS THAT I HAD TO MAKE AS ATTORNEY-GENERAL WAS WHETHER OR NOT TO PROCEED WITH A PROSECUTION OF THE FEDERAL SOLICITOR GENERAL WHO HAD PUBLICLY ADMITTED TO FORGING A HUSBAND'S SIGNATURE TO A CONSENT FORM IN ORDER THAT AN ABORTION COULD BE PERFORMED ON THAT MAN'S WIFE WITH WHOM THE SOLICITOR GENERAL HAD HAD A BRIEF AFFAIR. THE SIGNATURE OF A HUSBAND WAS NOT REQUIRED BY LAW BUT WAS AN INTERNAL HOSPITAL REGULATION.

THE SOLICITOR-GENERAL ADMITTED TO HIS CONDUCT TO PRIME MINISTER TRUDEAU AND TO PARLIAMENT AS A CABINET MINISTER AS HE SUBMITTED HIS RESIGNATION. PRIME MINISTER TRUDEAU WAS ASKED IN PARLIAMENT IF HIS FORMER SOLICITOR GENERAL WAS GOING TO BE PROSECUTED FOR WHAT APPEARED TO BE A CRIMINAL FORGERY. THE PRIME MINISTER SIMPLY REPLIED THAT THIS WOULD BE THE RESPONSIBILITY OF THE ATTORNEY-GENERAL OF ONTARIO AS THE SUSPECTED CRIMINAL OFFENCE HAD OCCURRED IN OUR PROVINCE.

FOR ME THE ISSUE WAS AS MUCH AN ETHICAL ISSUE AS A LEGAL ONE. IT WAS OF GREAT CONCERN TO ME THAT A PROSECUTION WOULD RESULT IN THE IDENTIFICATION A WELL-KNOWN HUSBAND AND THE CHILDREN WHO WOULD BE PUBLICLY HUMILIATED BY AN EVENT TOTALLY UNRELATED TO THEIR BEHAVIOUR. THE SOLICITOR-GENERAL HAD ALREADY BEEN PUBLICLY HUMILIATED AND ANY CONVICTION FOR FORGERY IN THE CIRCUMSTANCES WOULD NOT LEAD TO ANY SIGNIFICANT PUNISHMENT.

THERE WAS NOT SURPRISINGLY HUGE PUBLIC INTEREST IN THE MATTER. MY CONCERNS WERE ALSO COMPLICATED BY THE FACT THAT ONTARIO AT THE TIME HAD A VERY GOSSIPY O.P.P. COMMISSIONER WHO COULD NOT BE RELIED UPON TO KEEP THE WOMAN'S FAMILY IDENTITY PRIVATE. I THEREFORE REQUESTED THAT THE TWO SENIOR OFFICERS IN CHARGE OF THE INVESTIGATION KEEP THE FILE STRICTLY PRIVATE. THIS CERTAINLY DID NOT PLEASE THE NOW LATE O.P.P. COMMISSIONER BUT THAT IS A TALE FOR ANOTHER DAY! IN ANY EVENT THE IDENTIFICATION OF THE FAMILY HAS REMAINED CONFIDENTIAL EVER SINCE.

THE OTHER SIDE OF THE ETHICAL DILEMMA WAS THAT IT SHOULD NOT APPEAR TO THE PUBLIC THAT A FORMER FEDERAL SOLICITOR GENERAL WAS BEING GIVEN SPECIAL TREATMENT AS A RESULT OF HIS FORMER SENIOR POLITICAL STATUS. FORTUNATELY FOR ME HE WAS A MEMBER OF THE FEDERAL LIBERAL PARTY AND NOT A CONSERVATIVE POLITICIAN.

THE INVESTIGATING OFFICERS WERE NOT IN FAVOUR OF A PROSECUTION IN

THE UNIQUE CIRCUMSTANCES OF THE CASE AND I MADE A LONG STATEMENT TO THE LEGISLATURE ABOUT MY DECISION NOT TO PROSECUTE . THE IMPORTANT ROLE OF PROSECUTORIAL DISCRETION HAD LONG BEEN A FUNDAMENTAL PRINCIPLE OF THE ADMINISTRATION OF JUSTICE IN CANADA. I WAS PLEASED TO LEARN LATER THAT MY STATEMENT TO THE LEGISLATURE WITH RESPECT TO THE PRINCIPLES OF PROSECUTORIAL DISCRETION WAS BEING USED IN THE CRIMINAL LAW COURSES OF MANY OF THE LAW SCHOOLS IN CANADA.

WHEN I BECAME AN ELECTED POLITICIAN IN 1975, I BELIEVED THAT POLITICS WAS A VERY KEY ELEMENT OF PUBLIC SERVICE AND AN HONOURABLE PROFESSION. HOWEVER, I DID HAVE SOME CONCERN ABOUT BEING ABLE TO ADEQUATELY SUPPORT MY LARGE FAMILY OF SIX CHILDREN ON A SIGNIFICANTLY REDUCED INCOME.

AS I REFLECT BACK OVER THE YEARS I BELIEVE THAT IT WAS THE RIGHT DECISION AS IT PROVIDED OPPORTUNITIES FOR A RANGE OF PUBLIC SERVICE WHICH WOULD NOT HAVE BEEN OTHERWISE AVAILABLE, WHICH INCLUDED BEING A SENIOR AMBASSADOR AND A CHIEF JUSTICE FOR A NUMBER OF YEARS.

THE DAVIS GOVERNMENT WAS A MINORITY GOVERNMENT BETWEEN 1975 AND 1981 AND THE PASSAGE OF LEGISLATION THEREFORE OF COURSE REQUIRED THE COOPERATION OF LEAST ONE OF THE TWO OPPOSITION PARTIES. IN THOSE YEARS THERE WAS A COLLEGIALITY THAT HAS NOT EXISTED FOR SOME YEARS IN MOST PROVINCIAL AND FEDERAL PARLIAMENTS AND CERTAINLY NOT IN

OTTAWA.

WHILE THERE WAS SOME TAUNTING AND BLUSTER ON BOTH SIDES OF THE LEGISLATIVE IT LACKED THE NASTINESS OF THE POLITICAL RHETORIC THAT GENERALLY EXISTS TODAY IN CANADA. THERE APPEARED TO BE A LARGELY UNSPOKEN UNDERSTANDING BETWEEN THE POLITICAL PARTIES THAT IT WAS IMPORTANT THAT ONTARIANS MAINTAINED CONFIDENCE IN ITS LEGISLATURE AND THIS FACT WAS CERTAINLY AN IMPORTANT PART OF THE POLITICAL ETHICS IN THAT ERA.

PERSONAL ATTACKS IN THE LEGISLATURE WERE RARE AND THE ATTACK ADS WHICH BECAME SO MUCH A PART OF THE U.S. POLITICAL CULTURE FORTUNATELY HAD NOT YET MADE THEIR WAY INTO CANADA.

THE TERM ‘WEDGE ISSUE’ ALSO HAD NOT YET FOUND ITS WAY INTO CANADA’S POLITICAL LEXICON. THE POLITICAL STRATEGY RELATED TO THE TERM IS THAT A GOVERNMENT CREATE POLICY THAT WILL DIVIDE THE VOTERS IN SUCH A WAY AS TO APPEAL TO ITS OWN SUPPORTERS EVEN IF IT IS STRONGLY OPPOSED BY THE MAJORITY OF THE VOTERS. THIS STRATEGY CAN BE VERY EFFECTIVE WHEN THERE ARE THREE MAJOR POLITICAL PARTIES AND A PARTY CAN FORM A MAJORITY GOVERNMENT WITH LESS THAN 40% OF THE SUPPORT OF THE ELIGIBLE VOTERS. IN ONTARIO THE HARRIS GOVERNMENT EMPLOYED THE STRATEGY QUITE EFFECTIVELY BY DEMONIZING THE TEACHING PROFESSION, PEOPLE ON WELFARE AND ACTUALLY QUESTIONING THE LEGITIMACY OF THE POLITICAL SYSTEM. IN OTHER WORDS IN HIS VIEW

GOVERNMENT WAS OFTEN A NECESSARY EVIL, AN OPINION WHICH MIGHT EVEN BE SHARED BY SOME PEOPLE IN THIS ROOM.

I RECALL THAT PREMIER BILL DAVIS WOULD REMIND THE MEMBERS OF ITS CABINET FROM TIME TO TIME THAT WE WERE ELECTED TO SERVE ALL OF THE PEOPLE OF ONTARIO NOT JUST THOSE WHO VOTED FOR US.

THIS APPROACH DID PRODUCE A HIGH LEVEL OF CIVILITY AND COLLEGIALLY IN THE LEGISLATURE AND MANY CLOSE AND LASTING FRIENDSHIPS WERE FORGED BETWEEN MEMBERS OF THE THREE DIFFERENT POLITICAL PARTIES.

DESPITE THE ETHICAL CHALLENGES FACING THE POLITICAL STRUCTURES OF CANADA, WHICH PROBABLY CAN NEVER BE COMPLETELY ELIMINATED, I STILL BELIEVE THAT CANADIANS ARE GENERALLY WELL SERVED BY THE QUALITY OF OUR POLITICAL SYSTEM. WE ARE FREE OF THE POLITICAL CORRUPTION AND VIOLENCE THAT EXISTS IN MUCH OF THE WORLD. HOWEVER WE CANNOT AFFORD TO BE COMPLACENT WHEN ONLY 60% OF THE ELIGIBLE VOTERS CAST THEIR BALLOTS IN THE LAST FEDERAL ELECTION AND A LOWER PERCENTAGE IN THE LAST PROVINCIAL ELECTION, THE LOWEST TURNOUTS IN CANADIAN HISTORY. THERE ARE NO POLITICAL GUARANTEES EVEN IN STABLE DEMOCRACIES AND WE ALL MUST REMAIN VIGILANT IN THE PROTECTION OF OUR DEMOCRATIC STRUCTURES.

I WOULD ALSO LIKE TO REFER TO ONE OF THE COMPLEX TROUBLING POLITICAL EPISODES THAT I HAVE BEEN CLOSELY IDENTIFIED WITH NAMELY THE PATRIATION OF OUR CONSTITUTION WITH AN ENTRENCHED CHARTER OF

RIGHTS IN 1982. THIS CONTROVERSIAL CHAPTER OF CANADIAN HISTORY HAS OFTEN BEEN CAST IN ETHICAL TERMS IN QUEBEC. ALTHOUGH THE QUEBEC SEPARATISTS HAVE BEEN RECENTLY POLITICALLY FRUSTRATED FOR THE PRESENT TIME, WE STILL HEAR FROM QUEBEC TERMS SUCH AS THE “NIGHT OF THE LONG KNIVES” AND OTHER TERMS SUGGESTING A BETRAYAL OF QUEBEC IN NOVEMBER 1981 WHEN THE AGREEMENT WAS MADE BETWEEN THE FEDERAL GOVERNMENT AND ALL THE PROVINCES WITH THE EXCEPTION OF QUEBEC. IT IS HIGHLY PROBABLE THAT SUPPORT FOR SEPARATION IN QUEBEC IS UNLIKELY TO DISAPPEAR.

WHILE I AM NOT SUGGESTING ANY RETURN TO THE CONSTITUTIONAL BARGAINING TABLE THE ISSUE OF QUEBEC’S POLITICAL ISOLATION IN 1981 AND 1982 WITH RESPECT TO THE PATRIATION OF OUR CONSTITUTION WILL REMAIN A HIGHLY SENSITIVE POLITICAL ISSUE.

WE IN THE GOVERNMENT OF ONTARIO WHO SUPPORTED THE TRUDEAU PATRIATION PACKAGE ONLY DID SO AFTER WE HAD BECOME CONCERNED THAT NO QUEBEC GOVERNMENT WOULD EVER ENTER INTO ANY AGREEMENT WITH THE REST OF CANADA SHORT OF REMOVING MUCH OF THE FEDERAL AUTHORITY IN QUEBEC. WE CAME TO THE CONCLUSION THAT EVEN THE FEDERALIST LIBERAL PARTY IN QUEBEC WOULD BE RELUCTANT TO AGREE TO ANY PATRIATION OF THE CONSTITUTION WITHOUT RESOLVING ALL OUTSTANDING ISSUES BETWEEN QUEBEC AND THE FEDERAL GOVERNMENT WHICH WOULD PROBABLY NEVER OCCUR. WE THEREFORE BELIEVED THAT IF DISAGREEMENT WAS INEVITABLE BETWEEN QUEBEC AND THE REST OF

CANADA IN RELATION TO PATRIATION IT WOULD BE PREFERABLE POLITICALLY TO HAVE THE DISAGREEMENT WITH A GOVERNMENT THAT WANTED SEPARATION RATHER THAN A PURPORTED FEDERALIST (QUEBEC) GOVERNMENT.

ALTHOUGH I WAS A LONG TIME SUPPORTER OF THE FEDERAL CONSERVATIVE PARTY, I HAVE BECOME INCREASINGLY DISAPPOINTED WITH THE POLICIES OF THE HARPER GOVERNMENT. IT APPEARS THAT ANY FEDERAL INSTITUTION THAT DOES NOT MARCH TO THE PRIME MINISTER'S DRUM BECOMES AN ENEMY. BY FEDERAL INSTITUTIONS I MEAN ANY PUBLIC OFFICIALS WHO HAVE RESPONSIBILITY FOR MAINTAINING A LEVEL OF ACCOUNTABILITY OF THE GOVERNMENT TO THE PUBLIC OF CANADA.

OVER THE PAST EIGHT YEARS, CANADA'S CHIEF STATISTICIAN; THE PARLIAMENTARY BUDGET OFFICER; THE GOVERNMENT'S NOW DEFUNCT ADVISORY COUNSEL ON THE ENVIRONMENT; ELECTIONS CANADA AND FORMER AUDITOR GENERAL SHEILA FRASER HAVE ALL COME UNDER THE CONSERVATIVE FIRE.

MORE RECENTLY AND VERY DISTURBING TO ONE AS A LONG TIME CHIEF JUSTICE IN ONTARIO HAS BEEN HARPER'S QUARREL WITH THE CHIEF JUSTICE OF CANADA, THE RT. HON. BEVERLY MCLACHLIN. THE CONTROVERSY HAS BEEN DESCRIBED BY THE MEDIA AS AN UNPRECEDENTED STRUGGLE NOT JUST WITH THE CHIEF JUSTICE BUT WITH THE CONSTITUTION OF THE SUPREME COURT OF CANADA ITSELF. ALTHOUGH THE MAJORITY OF THE JUDGES ON THAT COURT

HAVE BEEN APPOINTED BY HARPER HIMSELF.

AS WELL AS THE INSULTING BEHAVIOUR TO THE CHIEF JUSTICE OF CANADA BY THE HARPER GOVERNMENT THAT SAME GOVERNMENT IN ITS LAST BUDGET REDUCED THE FEDERAL JUSTICE DEPARTMENT RESEARCH BUDGET BY 20%. AT THE SAME TIME JUSTICE SPENDING HAS RISEN BY MORE THAN 30% AS CRIME STEADILY DECLINES. AS AN OPPOSITION MEMBER POINTED OUT IN QUESTION PERIOD LAST WEEK, IT SEEMS LIKE THE GOVERNMENT IS DOING TO JUSTICE WHAT IT HAS ALREADY DONE TO SCIENCE AND RESEARCH REPORTING IN GENERAL.

A RECENT REPORT FROM A HIGHLY RESPECTED INTERNATIONAL THINK TANK FOUND THAT “THE QUALITY PROVIDED BY THE GOVERNMENT OF CANADA HAS DETERIORATED” AND LAMBASTS THE HARPER ADMINISTRATION “FOR THEIR LACK OF COMMITMENT BOTH IN THE USE OF EVIDENCE IN ITS DECISION MAKING AND TO THE PROVISION OF HIGH QUALITY DATA.

IN MY VIEW THE FEDERAL GOVERNMENT’S APPROACH HAS GONE FAR BEYOND THE SIMPLY MAKING OF POLITICAL DECISIONS BUT HAS UNDERMINED THE ETHICAL APPROACH TO DECISION MAKING.

AS THE DISTINGUISHED POLITICAL COLUMNIST CHANTAL HEBERT HAS WRITTEN THAT “WITH THE PRESENT CONSERVATIVE FEUDS WITH INDEPENDENT OFFICIALS YOU GET A PATTERN OF A GOVERNING TEAM THAT HAS LITTLE TOLERANCE FOR THE CHECKS AND BALANCES TO PREVENT GOVERNMENTS USUALLY ELECTED WITH SUPPORT OF A MINORITY OF VOTERS

FROM ABUSING THE EXCEPTIONAL LATITUDE THAT IS GIVEN TO A
PARLIAMENTARY MAJORITY. IT IS MY OPINION THAT RESPECT FOR THESE
CHECKS AND BALANCES IS A FUNDAMENTAL PRINCIPAL OF ETHICS FOR ANY
GOVERNMENT.