BICENTENNIAL OF THE SUPREME COURT OF NEW BRUNSWICK

(Notes for an address given by the Hon. Gerard V. La Forest
for the Court of Appeal of New Brunswick,
November 27, 1984)

Before hearing the cases set for today's sitting, it seems fitting to pause for a moment to take note that today marks an important milestone in the history of this court and, indeed, of this province. For it was precisely 200 years ago today, November 27, 1784, that the Governor in Council of this province established the Supreme Court of New Brunswick. The Royal instructions issued to Governor Thomas Carleton conferred upon him full powers, with the advice and consent of his Council, to erect, constitute and establish such and so many courts as he or they might think fit for the hearing and determination of all causes as well criminal as civil.

The importance attached by Carleton to the power thus conferred is evident from the fact that he and his council established the court within months of the creation of the province. It sat for the first time in February 1785 at Parr Town, now Saint John, presided by the first Chief Justice George Ludlow, whose portrait graces the walls of this courtroom. It moved to Fredericton in 1787. Significantly Carleton waited until 1786 to call a legislative assembly. While new laws were later to be established, the Supreme Court and the other courts functioned as they continue to this day by applying such of the laws of England as were suitable to our situation and condition. They could thus begin on a firm basis, but with all necessary room to adapt at the instance of both the legislature and of the court.

Carleton's instinct about the importance of establishing a judicial system at the earliest date was sound. There must be a forum where justice is meted out to those who have offended against society's values, w[illegible]e ensuring that no one shall be convicted and lose his liberty except in accordance with law. The people also have need for an impartial and unbiased arbitrator for the settlement of private disputes. But more, they have a need for a bulwark against government. Courts have as one of their foremost duties to restrain the power of government to those functions only that are justified by law. They ensure that we have a society under law.

There is another aspect of courts I would mention. Of the three branches of government — legislative, executive, and judicial — the judicial branch acts only when its powers and jurisdiction are invoked, when someone comes to it to redress a wrong. It cannot, like the executive or the legislative branch, initiate action. It acts at the behest of those who seek its assistance. So it is, as Alexander Hamilton underlined, the "least dangerous" branch of government.

Much has changed in the structure of the judicial system in this province over a period of 200 years. The Supreme Court itself now continues as two distinct courts — the Court of Queen's Bench, which bears cases at first instance, and this court, the Court of Appeal, which is confined to hearing appeals from the Court of Queen's Bench and the other courts and tribunals in the province. Subject to the few cases that can go to the Supreme Court of Canada, it is for most New Brunswickers the final Court of Appeal.

Un des changements des plus importants est qu'aujourd'hui, les causes sont entendues en français et en anglais afin que nous puissions servir toute la population. La tradition de nommer des francophones date de 1890 quand le juge Pierre Amand Landry fut nommé à la Cour Suprême. Mais ce n'est que récemment, environs dix ans passés, que la cour a commencé à fonctionné en français, bien que c'était assez rare avant les quelques dernières années. Aujourd'hui nous entendons de plus en plus de causes en français, un développement qui va certainement continuer.

But while much has changed, Carleton would perceive much that is the same,

because our court system has lasting value. We still have jurisdiction to hear the private claims of individuals as well as criminal law. But we continue to guard the underlying principles of our legal and political system against the executive and legislative branches of government, a function now significantly strengthened by the Charter of Rights and Freedoms. And in all cases we treat litigants as equals. All are equal before the law. The courts will continue to exercise these functions, but as before, only when someone seeks redress. We do not and should not have power to initiate action. The court must be a source of redress from power, but only when called on. Judicial power must be effective but it cannot itself get involved in the fray. So it remains an effective protection of our liberty, and still the least dangerous branch of government.