FOREWORD

In the mid-1990s, it was suggested I should apply to become a trial judge in Ottawa. My main "qualification" was undoubtedly that I was bilingual.

I sought the advice of retired Chief Justice Brian Dickson, whom I had the privilege to assist at the time on a variety of matters he was engaged in following his retirement from the Supreme Court in 1990. He told me — as he had countless others — that being a trial judge in Manitoba was the "best job" he had ever had. But he added that he had been so long removed from the practice of law and the work of a trial judge, that it might be best if I sought the advice of John Sopinka, who had been appointed directly from the bar to the Supreme Court of Canada in 1988.

In some respects, this was a strange recommendation, since Justice Sopinka had never been a trial judge. But he had been an outstanding advocate in every forum open to a lawyer, including obviously trial courts. Chief Justice Dickson must have thought that Justice Sopinka could assist me to reconcile my ambitions as an advocate with the possibility of becoming a trial judge. So off I went to call on Justice Sopinka at his office in the Supreme Court building in Ottawa. Although I had never met Justice Sopinka and, of course, he had never heard of me, he was unfailingly affable and courteous during our interview. At some point in our conversation, I distinctly remember asking him why, given the outstanding reputation he had acquired as an advocate and the unequalled practice he had developed, he would have chosen to become a judge — even at the Supreme Court of Canada. It was an impertinent if not silly question, and I still can't believe it passed my lips! But without missing a beat, he replied: "You know Guy, when I was 10 years at the bar, I was nationally known, and by the time I accepted the appointment, I had basically done everything an advocate could do."

These words, which I recall clearly, were spoken softly, matter-of-factly and without any hint of arrogance. They stated a simple truth. John Sopinka, having mastered just about everything that could be learned as a trial and appellate advocate, went on to be a great judge whose life and judicial career were prematurely and tragically cut short. It is hard to think of a better teacher than Justice Sopinka about the conduct of the trial of an action even today, close to a quarter-century after his untimely passing.

Of course, as Ian Binnie noted in his foreword to the third edition of this book, the world of litigation has changed a lot since the book was first published in 1981. And, with the advent of the pandemic in 2020 and the ensuing use of myriad video "platforms" to replace in-person advocacy, the pace and scope of change has accelerated even beyond what Justice Binnie could have possibly imagined just

four years ago. Indeed, we are now engaged in a profound rethinking of the role of the trial in the justice system, as well as that of every participant in that system: litigant, judge, lawyer, government, and the public itself. Circumstances have forced us to consider a wholesale review of longstanding traditions and institutional practices we have hitherto taken more or less for granted for the purpose of resolving disputes between citizens, and between citizens and the state. The lack of practical access to justice, while a pressing concern since at least the time when Charles Dickens denounced it in his novels, has emerged as an intolerable problem which some hope that technology might solve.

It would be foolish, of course, to offer any predictions of what an appropriately reformed court system would look like by the time the next edition of this book appears. But, whatever the future holds, this new fourth edition, while attuned to the contemporaneous challenges litigation poses in the 21st century, most importantly preserves the timeless wisdom and experience that John Sopinka distilled when he wrote the first edition of his book. Regardless of the era and the tools available for the purpose, the trial of an action is always a complex and daunting challenge for the trial advocate, however experienced. This book, appropriately and wisely updated, offers the timeless guidance which all advocates seek and need. Reading it, one can sense John Sopinka's comforting presence emerging from its pages and settling down beside one — always ready to offer counsel when one is in need of reliable advice by way of trial preparation or in conducting the trial itself. I cannot recommend it highly enough.

Guy Pratte
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