

**Georges A Goyer, QC Memorial Award for Distinguished Service
Vancouver November 4, 2009**

First of all, I wish to express my gratitude for the very great honour of receiving the Georges A. Goyer Award. Regrettably, I did not know Mr. Goyer, but those who did describe him to me as a very good man, a skilled lawyer and a tireless contributor to the bar and to the law. So, as well as appreciation for being given this award, there is also a sense that I must live up to your confidence, and live up to the very high standard that Mr. Goyer established by his example.

In terms of thanks, I must also quickly add that the credit such an award implies must be shared with others on two fronts: on the professional front, there is not a single thing I have done that could have been accomplished without the support, assistance and encouragement of a very long list of very talented lawyers, mediators, support staff and other colleagues. I couldn't begin to name all the people who have taught me and helped me in 30 years of work as a lawyer. We are all embedded in a community of co-workers upon whom we depend and I have been uncommonly lucky in the quality and enthusiasm of the people I have been so fortunate to work with.

Similarly, on the personal front, I have had the immeasurable good fortune to be supported and sustained by my wonderful wife, Kathryn, and by my family and by my very good friends. I would never have had the energy to make a career if I had not first had my family and friends with whom to share the everyday challenges of living life.

And of course, my thanks also to those who nominated me; and my congratulations to Mr. Vertlieb whose company I am particularly pleased to share in this unique way tonight.

Much of my work as a lawyer has had to do with the question of access to justice and it is from that perspective that I would like to share with you, briefly, two thoughts.

The first has to do with the functions performed by the justice system. There are certain apparently straightforward ideas that just keep on getting deeper and more meaningful for me over time. One such idea was expressed very well in the *CBA Systems of Civil Justice Task Force Report* in 1996 as follows: "A fair, effective and accessible civil justice system is essential to the peaceful ordering and the economic and social well-being of our society". From one perspective this statement is perhaps obvious, and growing up in this country and working in this justice system it is understandable that we might tend to overlook or forget what a profound social accomplishment a viable justice system is. The effects of a working justice system are felt everywhere. It reaches into every corner of social and economic life, and its daily business is to contain forces that would otherwise certainly undermine civil society. Looking around the world today or looking back through history however, it is obvious that there is no God-given guarantee in any particular society that a viable justice system will always be there or that it will always work the way we think it should. So, we have to consciously appreciate what we have. In fact, one of the most important ways of preserving what we have is by appreciating, on the one hand, the strengths and on the other, the limitations of our legal institutions.

There are immense privileges that come with being a lawyer and part of the price for that benefit, part of the package, is that we are trustees. While we are in the system we are responsible for the system, and we are in a fiduciary relationship to the public who need and use the system. As such, we are obliged to keep a constant eye on the public interest and to critically assess the justice system's vulnerabilities, and the extent to which it is meeting its very challenging, yet crucial, social mandate.

The second idea has to do with one of these vulnerabilities – i.e. access – and with the importance of procedure, and procedural reform in addressing the access problem. It is probably correct to say that traditionally, procedure has taken a back seat to substantive law. Certainly in terms of what is taught, researched, written and argued about in this profession, the lion's share of time and attention goes to the substantive law. However, over the past decade or so, procedure has moved a little closer to the limelight. In part this is because there is a growing appreciation that the utility of the substantive law is undermined to the extent that we do not have practical mechanisms available to assert it. In this day and age, where virtually every common law jurisdiction in the world is, as a priority, wrestling hard with the problems of cost, delay and complexity in the courts, procedural innovation is increasingly seen as one promising response that can be made to the access to justice problem.

Procedure - broadly defined as the mechanisms by which substantive law is delivered - has become increasingly innovative in BC, as elsewhere. Looking at this jurisdiction over the last 10 years we see for example significant growth in mediation of personal injury, commercial, family and child welfare disputes; in judicial case management and judicial settlement processes, and in collaborative law. We also see concepts like proportionality formally taking root in our court rules. Looking even further, into the culture of the legal profession, we see that notions like interest-based negotiation, neutral evaluation, and problem-solving are gaining real currency, and shaping - or more accurately, reshaping - the way that lawyers think about and manage disputes. Arguably, the celebrated adaptability and responsiveness of the substantive common law is now being mirrored by its procedural adaptability. These innovations are not a full answer to all of our problems of course, but at the same time I believe that we have not yet come close to tapping their full potential.

Which is all to say, this is a challenging and immensely interesting time to be working in the justice system, and I consider myself most fortunate to be part of it.

M. Jerry McHale, QC