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I retired from the Bench at sixty-three, after ten years as a trial judge and seventeen as an appeal judge. In Canada, judges are appointed for "life," which constitutionally ends at age 75. So why quit twelve years before I was required to do so? Therein lies a tale.

When we were young, my law partner and I decided that a stimulating lifestyle requires a career change every decade or so, and we both tried to do that. He did it by moving in and out of politics, but that was not for me. Because I had started my career as trial judge with the District Court and Queen's Bench in Alberta, the move from trial to appeal work when I was appointed to the Court of Appeal was like a career change for me, and I found both careers stimulating. But after seventeen years as an appeal judge, I was finding little in the way of new challenges. And it was learning as much as we could from new challenges to which my partner and I had committed ourselves long before.

I confess that I hesitated to consider any form of a retirement career. To return to a lawyer's career or to move to a different career after retirement would be to buck a strong tradition, one that held sway through generations for Canadian and British judges. Followed throughout the British Commonwealth, that limiting tradition was expressed this way by an Irish Court: "[W]ith security of tenure and fixed and adequate remuneration and pension, the practice of the profession of the law is abandoned [forever] by the person appointed."[1] Although it is in form addressed only to the

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1. *Re Solicitors Act and O'Connor* [1930] I.R. 623, 631.

situation of the judge who considers a return to the practice of law, the spirit of that decision would apply to his taking up any remunerated activity. And so it was in Canada: The Canadian tradition was that a retired judge grew roses, and little else.

Times change. Canadian judges do not continue to sit into their nineties today, as they did in my youth. When the Canadian constitution was amended in 1958 to require judges to leave the bench at seventy-five, that age was widely accepted as a fair line to draw between competence and senility. Fifty years later, better health has produced improved longevity, and many judges are keen to work after seventy-five. Moreover, Canadians have accepted the idea of burnout, and now permit judges who are as young as sixty-five to retire. It seems inevitable, then, that judges will increasingly plan to have post-retirement careers. This will raise many interesting issues, but I will address here only those that I encountered.

I had a good pension upon retirement, and was not uncomfortable, but having lived on a judge's salary since age thirty-six, I was certainly not rich. I decided in consequence that I should plan on a second career, and I started by trying to make a list of the activities that I would find most stimulating and for which I had some merchantable skills. Outside the law, it was an embarrassingly short list. Inside the law, and mindful of tradition, I thought of teaching and writing. I got into both, and enjoyed them, but they had limits.

When I started teaching, I immediately ran into the restraints any well-run law school would impose. I suppose they were all reasonable, but they were not for me. I did not want to move out of one institutional box into another. Writing, on the other hand, was fun. Not well paid, but fun. I wrote mostly about legal and judicial issues for the Comment page in newspapers.[2] I soon learned that the content would before very long become thin indeed if I was to keep this up on a regular basis, which was a daunting thought for me after years of mocking hack journalism and complaining about columnists who continue writing when they have nothing to say. I stuck it out for about

2. *See e.g.* Roger Philip Kerans, *Advice to the Next Chief Justice of Canada: Don't Overstay Your Welcome* A19 Globe & Mail (Canada) (Nov. 1, 1999).

three years, but then I realized that it was time to move on, although I keep my hand in still.[3]

Just before I retired, I had asked a lawyer friend for advice about a second career, and he immediately offered me a position at his large and successful firm. I had misgivings. In Canada, a retired judge now may return to law practice, but there are some restraints. In most provinces, he or she is not to appear before his or her former colleagues.[4] Some provinces have even more stringent rules. I was also intimidated by the Code of Ethics for retired Canadian senior officials, which then suggested that one have no business contacts for two years after leaving government service with people with whom one dealt in one's previous life.[5] It did not expressly apply to judges, but I thought it was a good guide. So I agreed to go to the firm on the condition that I never went to court and, for two years, never met with clients. The firm kindly agreed, and tried nevertheless to make use of me, mainly as an adviser to lawyers who were working in the real world of files and clients.

Many retired judges in Canada take positions like this, and they enjoy it. In the end, though, it was not right for me. I had many interesting experiences, and yet I found that I felt too much on the periphery of events, something that I was un-used to. I lasted five years, but I should have quit sooner.

Soon after I had retired, a lawyer had asked me to do a mediation. I had to confess that I knew nothing about it, and declined the proffered engagement, explaining that mediation had not existed when I practiced law the first time around. Not long afterwards, however, I came to know of a firm of mediators in Toronto, who mainly comprise retired judges. They invited me aboard and trained me as a mediator.

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3. *See e.g.* Roger P. Kerans & Kim M. Willey, *Standards of Review Applied by Appellate Courts* (2d ed. Juriliber Ltd. 2006).

4. *See e.g.* John Sopinka, *Must a Judge Be a Monk—Revisited*, 1996 U.N.B.L.J. 167, 173 (citing Saskatchewan's Legal Profession Act and New Brunswick's Law Society Act, and noting that "Saskatchewan forbids a former judge from appearing before a court in the province for one or two years depending on the length of judicial service," and that "New Brunswick imposes a waiting period of five years").

5. The restricted period appears now to be only one year. *See* Treas. Bd. of Canada Secretariat, *Values and Ethics Code for the Public Service* ch. 3 (as modified June 19, 2003), http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve1_e.asp (accessed Apr. 18, 2007; copy on file with Journal of Appellate Practice and Process).

Although I went into mediation more out of curiosity than anything else, I found that I seem to have a talent for it, and I have enjoyed this work as much as anything I have done in my life. The goal of mediation, of course, is a settlement agreement, and I get a tremendous sense of accomplishment when I see the parties sign the agreement that settles their differences after battling for years. The work is also very challenging, because I must deal with both counsel and client, and must try to open their eyes to satisfactory outcomes that they at first cannot see.

So here I am, ten years after leaving the bench, in business for myself at age seventy-four. I work out of my home office, communicating by email with my assistant and my lawyer-clients. I am on the road a lot, as I am called on to do mediations all around Western Canada. This is not something that would interest every retired judge I know, but I love it. And I think I may have an advantage over some other retired judges who might consider a mediation practice: I do not play golf, so I never have to worry about my professional commitments requiring me to cancel a tee time.