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Introduction of Allen Linden

Lewis N. Klar

I have the privilege and great pleasure of introducing our special guest for this symposium, the Honorable Allen M. Linden.

The topic for this symposium has focused on what the world can learn from United States tort law. It asks: “Does the World Still Need United States Tort Law—or Did it Ever?” The question that I would like to ask is a different one: “Does the World of Tort Law Still Need Allen Linden—or Did it Ever?” The answer to that question is simple and unequivocal—a resounding yes! The presence at this symposium of so many of the world’s leading tort scholars to pay tribute to Allen Linden is a testament to that.

Allen Linden has been a major force in tort law scholarship and thinking for a half-century. His passionate and unflagging belief in tort law’s ability to provide civil justice and compensation to victims of wrongdoings, and to act as an ombudsman for the weak against the more powerful, has been the hallmark of his long and distinguished career. He has to his credit a number of books, including his leading text, *Canadian Tort Law*, now in its eighth edition, a national casebook, now in its thirteenth edition, as well as many articles, law reform commission reports, important studies, and legal judgments.

Stephen Sugarman, in one of his very interesting articles, chronicles the recent ideological shift—the “flip flop”—in American tort law.¹ Once the darling of the right and an anathema to the left, tort law is now being perceived as a useful vehicle for liberal causes and an economic problem for conservatives who wish to see it curtailed.

Allen Linden is no flip flopper! His commitment to tort law and his belief in its vital role as an important piece in our complicated compensation puzzle have never wavered. They are as strong today as they were fifty years ago, when Allen first started publishing his important works.

But lest it be thought that Allen’s contribution to tort law has been limited to his advocacy on its behalf, one must note the number of important substantive academic works, in addition to his text books, which Allen has written. This includes the role of tort law as an ombudsman, the effect of

1. Stephen D. Sugarman, *Ideological Flip Flop: American Liberals Are Now the Primary Supporters of Tort Law*, in *ESSAYS ON TORT, INSURANCE, LAW AND SOCIETY IN HONOUR OF BILL W. DUFWA* (Hugo Tiberg & Malcolm Clarke eds., 2006).

statutory breaches on tort law claims, and studies on motor vehicle accident compensation schemes.

Every year before we begin studying the important English landmark case of *Donoghue v. Stevenson*²—the decomposed snail in the bottle of ginger beer case—which revolutionized the English common law of negligence, I read the following paragraph to my first-year tort law students. It was written on the occasion of the fiftieth anniversary of that important judgment. To celebrate the occasion, Allen Linden, with a group of fellow tort “crazies,” took a tort law tour of the world, visiting the sites of famous tort law cases, such as the pub in Paisley, Scotland, where May Donoghue drank from that bottle of ginger beer. Upon their return to Canada, the tourists published a symposium on *Donoghue v. Stevenson* in the *University of British Columbia Law Review*. The paragraph that I read can only have been written by one person—Allen Linden. Let me read you a brief extract:

In an article written on the 25th anniversary in 1957, Professor Heuston, then and still the editor of *Salmond on Torts*, suggested that on its 50th anniversary in 1982, the decision might be of little more than antiquarian interest, a mere “repository of ancient learning”, because he thought that tort law would likely be abolished and be replaced by a social insurance scheme by that time.

How wrong he was! As *Donoghue v. Stevenson* celebrates its 50th anniversary, it is not only alive and well, it is thriving, vigorous, lusty, youthful and energetic. For me, it is still and will remain like a seed of an oak tree, a source of inspiration, a beacon of hope, a fountain of sparkling wisdom, a skyrocket bursting in the midnight sky.³

I know that Allen Linden believes this as strongly today as he did in 1982 when he wrote it. Recent developments in Canadian tort law which have slowed, if not reversed, the growth of tort law and its ability to hold governments liable for their negligent acts evoke strong passion from Allen, as is evident in his recent writings. His commitment to tort law has never weakened.

I first met Allen in 1972 when I was a lecturer at Osgoode Hall Law School. Allen was a graduate of the University of Toronto (B.A. 1956), Osgoode Hall (LL.B 1960), and Berkeley (LL.M 1961, J.S.D. 1967), and taught at Osgoode from 1961 to 1978. I had studied law at McGill in the late sixties, which at that time was exclusively a civil law school. When the National program was introduced at McGill in 1968, I was required to study some common law subjects, one of which was tort law. Allen Linden was Mr.

2. *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.) (appeal taken from Scot.).

3. Allen Linden, *The Good Neighbour on Trial: A Fountain of Sparkling Wisdom*, 17 U. BRIT. COLUM. L. REV. 67, 67 (1983).

Canadian Tort Law, so when I arrived at Osgoode in 1972, he was the Common Law scholar who I was most interested in meeting. And meet him I did. He was, as he has always been, a warm, caring, and nurturing man, interested in the young academics, never aloof or distant, the quintessential “*mensch*.” We did not have to go seek him out or make an appointment. He made sure that he came down to the bowels of the law school to find us and introduce himself.

Allen left Osgoode when he was appointed a Justice of the Supreme Court of Ontario in 1978. He served as President of the Law Reform Commission of Canada from 1983 to 1990 and was appointed to the Federal Court of Appeal in 1990. Allen’s work as a Justice of the Courts, and as the President of the Law Reform Commission of Canada, meant he had less time to devote to his tort law scholarship. As a result, in 1980 I was fortunate to be asked by Allen to partner with him in the publication of *Canadian Tort Law: Cases, Notes and Materials*, which Allen had been writing since Dean Cecil Wright’s passing in the mid-sixties and which was then known as “Wright and Linden.” Our partnership and friendship began then and has continued strongly ever since. I remember with great pleasure the time we spent together in Ottawa and elsewhere working together on subsequent editions. The book is now in its thirteenth edition, and we were recently joined by Bruce Feldthusen in its publication.

I am sure many of you have had the good fortune of having had a special mentor and friend in your professional life—a person who has been able to inspire you, to guide you, to serve as a role model, to give you encouragement, to give you a needed push as you made your way through the jungles of academia, which is not always a friendly and supportive environment. For me that person was, and remains to this day, Allen Linden. For Allen, that role comes naturally, as he has always taken an interest in helping younger scholars, organizing conferences and seminars, and, in short, leading by example. But I was particularly fortunate, and for that I will be eternally grateful. We have not always agreed on every matter of tort law, and in fact in some areas have some pretty strong differences of opinion. But Allen has always listened to my views, respected them, and given me the opportunity to express and develop them.

So here we are now. Allen is retired from the Courts but still going strong at Pepperdine and in the world of tort law. He is like *Donoghue v. Stevenson*: “thriving, vigorous, lusty, youthful and energetic,” and I am sure will be so for a long time to come.

Ladies and gentlemen, it is my great honor to present you with Allen Linden.
