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PLEASE RETAIN
ORIGINAL ORDER

22-11

January 9th, 1935

The Honourable Grote Stirling,
Minister of National Defence,
OTTAWA.

PERSONAL AND CONFIDENTIAL

My dear Grote,

Please accept my thanks for your intimation that arrangements are in hand to inquire into a certain mental condition. I presume that whoever makes the inquiry will bear in mind that that which is to be considered is not whether the individual is totally incapacitated but whether he has been afflicted with a permanent infirmity disabling him from the due execution of his office. I referred to this on the second and fifth pages of my letter to you of December 15th.

If you are able to keep me posted as the matter progresses I would appreciate it. You will realize that once the appointment is made there will be very little time thereafter for me

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to wind up my affairs here. If, when the matter reaches the stage that it would appear that something will really materialize, you would drop me a line I could work to that end without it appearing that I was doing so. I am accustomed to doing things in a hurry but I would like, in fairness to my clients, to have as much time as possible to so deal with their affairs that another man could pick them up without great difficulty.

Kind regards,

Yours sincerely,

TGN/L.

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At Ottawa,
February 16th. 1935

C. L. Fillmore, Esq.,
Stipendiary Magistrate,
Court House,
Vancouver, B. C.

PERSONAL

My dear Fillmore,

I have been to Ottawa for about a month in connection with certain marketing schemes. They wanted me to stay here as solicitor for the Dominion Marketing Board but they would not pay me enough money.

Fortunately I escaped the cold weather at home which my Wife had the pleasure of enjoying by herself. I will hear about that when I get home. I hope to leave here sometime next week. This is a great life especially when one wants to try and get something through in a hurry. They have only the two well known speeds in the Departments here.

I have been much interested in observing the doings of our Walter. He is due here the first of next week. I believe that the Marketing Board has several nice sharp axes ready for him. He certainly

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didn't create a very favourable impression with them when he was here last.

I am glad that you liked Cromwell. I have two or three other books at home which I want you and McTaggart to read and will bring them down when next I come - if I ever get away from here.

I am glad that Judge Fisher has recovered, even though it ends certain slight aspirations which I myself had. I believe that he is a good fellow and a conscientious Judge.

I have discovered here a number of things of interest which I will discuss with you when next I see you.

I hope that Donald has mastered the Rule in Shelly's Case thoroughly. I believe that I have forgotten what it is.

Please give my best wishes to Mrs. Fillmore and tell McTaggart that I will return to him Napoleon when I get home. I enjoyed it very much indeed.

Good luck,

Yours sincerely,

TGN/L.

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March 11th. 1935

The Honourable Grote Stirling,
Minister of National Defence,
OTTAWA.

PERSONAL AND CONFIDENTIAL

My dear Grote,

The last word I have had about Judge Fisher is that while he is back on the Bench he is not doing any substantial work. He took two undefended divorce actions but apparently has not done anything substantial. When I am in Vancouver I will probably hear more about it. The medical report which Colonel Scott mentioned to me is such that I believe that Judge Fisher would take superannuation if it were indicated to him that he would be given the retiring allowance. If he does not, it would seem to indicate that political considerations are moving him. You have my memorandum as to the relevant provisions of the Judges Act. I would like to have heard something of the P.M.'s reaction to the medical report. Perhaps you will get an opportunity of discussing it with him shortly.

I enclose to you a cutting from the

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Vancouver Province with reference to Chief Justice MacDonald of the Court of Appeal. You will remember that the situation with regard to the Court of Appeal is that, due to age, the Chief Justice and at least one other are quite unfit for their duties. When you and I discussed these appointments before, I pointed out to you that I would like to get either appointment, the Court of Appeal being more desirable because of the fact that one would be concerned particularly with questions of law. The matter was covered in my letter to you of December 15th. The Court of Appeal is a five-judge court. All judges are supposed to sit at the same time and while four may sit, it means that in the case of an equal division of the Court, the appellant loses and does not get the advantage he should have with a Court of uneven number. DuMoulin can tell you of the situation which exists. In view of the mental and physical infirmities of the Chief Justice I imagine that the latest development means that he will not sit again more especially in view of the fact that under Section 24 of the Judges Act he has reached such an age that he can retire on an allowance equal to his salary as a judge. Judge Martin would be made Chief Justice and there would be a vacancy for the junior Judge.

If there is a vacancy arising out of

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Chief Justice MacDonald's illness I think that you would be willing to press my appointment. There has been a rumour that Judge Harold B. Robertson may go to the Court of Appeal from the Supreme Court. In such case the vacancy would be on the Supreme Court Bench. In view of past events I think that I should have first call on either appointment.

You will, I think, sympathize with my natural anxiety on the subject and will I hope at the same time understand that I do not wish to be importunate.

I have heard nothing further about the Water Street Commission.

Kind regards,

Yours sincerely,

TGN/L.

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July 1st. 1935

R.L. Maitland, Esq. K.C.,
Messrs. Maitland, Maitland, Remnant & Hutcheson,
Barristers etc.,
Royal Trust Building,
Vancouver, B. C.

PERSONAL AND CONFIDENTIAL

Dear Pat,

Did you ever write to the Prime Minister as you suggested that you would when I saw you in Vancouver last with reference to the situation with regard to the Court of Appeal? You will remember that there was a suggestion that the Chief Justice might be retired, there being then a vacancy either in the Court of Appeal or in the Supreme Court if, for example, Robertson were elevated to the Court of Appeal.

I wish that you as a friend would do everything you can on my behalf at the present time as a situation has arisen which makes the matter urgent to me. As you know, Mary has had for years great trouble with her eyes. When she Went to school at Shawnigan Lake she was permitted to read more than she should have and her eyesight suffered then. She

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has been go ng to Junior High School here and it has been a steady job keeping her up with her work, not reading too much and seeing that her eyesight does not suffer. She is now to go to High School and it is apparent that if she must have almost constant medical supervision over her eyes. She cannot get that here. In view of past experience we cannot send her to a boarding school. The result is that she must go to the Coast to High School and my wife must go with her. This means that the two boys will go as well. You can readily understand that under present conditions it is not reasonable for me to leave the practice which I have built up over the years here and start again in Vancouver. If nothing materializes in connection with the judicial appointment I will be here by myself while my family is in Vancouver. They will go this fall. My boys have reached an age when I should be with them a great deal more than in the past and it is not very pleasant to face a family break-up which may exist for a number of years unless something unforeseen happens.

You know the situation with regard to the Court of Appeal, - that the Chief Justice did not sit last Court and is not, I understand, sitting at the present time. You know also how unfair it is to litigants that there should be an opportunity for

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an equally divided Court. You know also that there are others who could be retired. As the Chief Justice is past the retiring age and is not fit physically or mentally, the only reason for retention of office by him until after the election would be a political one in addition to which I suppose he is anxious that Martin shall not be advanced.

You know the whole story. I now put the facts with reference to myself before you hoping that as a friend you will be able to assist and will assist to the utmost of your ability. You can, if you will, be most helpful with the Prime Minister by placing all the facts with regard to the Court of Appeal before him and urging that he take steps to deal with the matter along the lines which have been suggested. As you know, nothing will be done unless the matter is put forward strongly from here. Will you endeavour to see it through for me?

Kind regards,
Yours sincerely,

TCN/L.

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July 1st. 1935

The Honourable Grote Stirling,
Minister of National Defence,
OTTAWA.

PERSONAL AND CONFIDENTIAL

My dear Grote,

I don't know whether or not there have been any developments at Ottawa with reference to the Supreme Court Judgeships in this Province, but I do wish that you would do everything it is possible to do at this time if you are still so inclined. As you know, Mary has had, for years, great trouble with her eyes. We sent her to school at Shawnigan Lake and we found that without her mother's supervision she was permitted to read more than she should and we learned later that during her time there her eyesight became gradually worse. She has been attending the Junior High School here and has done quite well with her studies. Last year it was a steady battle to keep her from reading too much and at the same time to see that such reading as she might do was that which would help her in her school work. She now enters High School and in view of the condition of her eyes and the amount of study and home-work to be done, it will be necessary

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that her eyes have regular medical supervision. She cannot get that here and it is now apparent that she must go to the Coast to High School. In view of our past experience it is useless to send her to Boarding School and the result is that my wife must go with her. This means, of course, that the other two children will go as well. For financial reasons I cannot at the present time and under present business conditions leave the practice which I have built up over the years in the Okanagan and start all over again in Vancouver. If nothing materializes in connection with the Judicial appointment, I must remain here by myself while my family is at the Coast. They will go when the Fall term starts. You will realize that this is a situation which it is difficult for my wife or myself to face very cheerfully, especially in view of the fact that the boys are reaching an age when I should be with them as much as possible. Unless something unforeseen occurs the family would have to remain divided for a period of years.

I mentioned in a former letter that there was a suggestion in Vancouver that the Chief Justice of the Court of Appeal, who is not able to sit at the present time, was to retire and that Robertson of the Supreme Court Bench was to be appointed to fill his place, and that I was to take Robertson's place. Perhaps something could be done at this time either to carry out this suggestion or to have me appointed to the Court of Appeal.

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The Court of Appeal at the present time sits twice a year in Victoria and twice a year in Vancouver, each sitting occupying about six weeks. The Chief Justice did not sit during the last sitting in Vancouver in March and is not sitting during the current sitting in Victoria. He is well past the retiring age. He is quite ill and because of his age is not mentally sound. He is only one of several who are due to go very shortly.

I do not know whether or not this situation is known to the Prime Minister and the Minister of Justice. It should be. While the Chief Justice is absent, four Judges only are sitting in the Court of Appeal. This is not fair to litigants as there can be an equal division of the Court. On an equal division of the Court an appeal is always lost. There are several others on the Bench in almost the same condition as the Chief. The Judges in the Court of Appeal, as you know, are Chief Justice J. A. Macdonald, Martin, McPhillips, M.A. Macdonald and McQuarrie. In addition to Chief Justice Macdonald, Judges Martin and McPhillips of the Court of Appeal and Murphy of the Supreme Court are, I think, also due for retirement. Of the three, Martin is quite alert mentally and physically and it is likely that if the Chief Justice of the Court of Appeal retired he would become Chief Justice. There is no com-

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pulsory retirement of Judges except when a Judge is incapacitated or disabled from the execution of his office. I gave you the relevant reference to the Judges' Act before. There is no doubt but that the Chief Justice of the Court of Appeal is disabled and incapacitated from the due execution of his office. As he is past the retiring age and is not mentally capable, the only reason for his retention of office until after the election would be political or because he wished to keep Martin, whom he dislikes intensely, out of the position of Chief Justice.

There is no word as to Fisher. I do not think that he is taking any trials except undefended divorce actions. Maitland or Clark can confirm what I have said about the Chief Justice.

I have given you the facts with regard to my personal difficulties as the matter has become urgent to me now. Naturally I am anxious to have the appointment for professional reasons - the desire to work ahead in my law freed from the petty troubles of a country practice, the opportunity for study which is afforded, the hope that I will be able to hand down judgments which will reflect that study, and so on. Will you do your best on my behalf?

Kind regards,

Yours sincerely,

TGN/L.

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July 12th. 1955

R. L. Maitland, Esq. K.C.,
Messrs.Maitland,Maitland,Remnant & Hutcheson,
Barristers etc.,
Royal Trust Building,
Vancouver, B. C.

PRIVATE AND CONFIDENTIAL

My dear Pat,

Please accept my thanks for your very kind letter of July 4th. enclosing copy of letter which you have sent to Mr. Bennett.

When I was in Victoria I was talking to W.J. Whiteside and he told me that he had had dinner with the Chief Justice of the Court of Appeal, who is an old friend of his. He said that the Chief was quite gone mentally.

You say that you think that Gordon Sloan will co-operate as requested by Ottawa. Do you mean "if requested by Ottawa". Perhaps you could put in a word to Gordon Sloan at the right time.

Please accept my grateful thanks for your letter.

Yours sincerely,

TGN/L.

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July 12th. 1935

The Honourable Grote Stirling,
Minister of National Defence,
OTTAWA.

PRIVATE & CONFIDENTIAL

My dear Grote,

Maitland has written to me that he wrote to the Prime Minister with reference to the situation with regard to the Court of Appeal in this Province. I have just returned from the Bar Convention in Victoria. During the course of one of the sessions Mr. W.J. Whiteside K.C., who is an old friend of Chief Justice McDonald, told me that he had seen the Chief the day before at his home and that the Chief is quite gone mentally. Whiteside said that it was out of the question that he would ever sit again.

Lawyers from Vancouver say that Fisher, although sitting at the present time, is not mentally stable, that he wanders in his talk and so on.

The information which I gathered with regard to the Chief Justice and Fisher was simply in the course of general talk and not as a result of any inquiry on my part.

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The Court of Appeal is of course a very weak Court in view of the fact that both McQuarrie and McPhillips are to say the least, erratic.

The foregoing may be of some interest to you.

There is some relief out here as a result of Stevens' declaration of war as everybody thinks that it is well that he has finally declared himself. In the long run I think that the Prime Minister will have gained rather than lost as a result of the relief difficulties.

Hatfield and I were going over the riding about ten days ago but Hatfield was called to the Coast. Thereafter I had to go to the Coast and I just got back yesterday. I am going to get in touch with him in a day or so and we will get around and see if we can't stir up a little interest.

Dr. Patterson was up the Island and I didn't see him when I was in Vancouver. However, I have received a letter from him to-day on organization matters.

The weather is good and everybody seems busy. We have just had a visit from Booth and Hopper of the Marketing Board. I think that their trip will be of the greatest assistance in bringing about a better understanding between the Dominion Board and the Local Boards.

Kind regards,

TCN/L. Yours sincerely,

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MAITLAND, MAITLAND, REMNANT & HUTCHESON
BARRISTERS & SOLICITORS, ETC.

R. R. MAITLAND, LL.B. HON. R. L. MAITLAND, K.C.
S. J. REMNANT J. G. A. HUTCHESON
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September 18th, 1934.

PRIVATE and CONFIDENTIAL

T.G. Norris, Esq. K.C.
Barrister, etc.
KELOWNA, B.C.

Dear Tom:-

Tear this letter up after you have read it.

I am acting for the milk people, who, of course, are confronted with the old divisions, hates, and discord of some years ago.

We have drawn a scheme for submission to Ottawa in the hopes that it will be approved there and I also took the matter up with Pepler. From what I can understand K.C. as Minister of Agriculture is not even a good dentist. He is afraid to do anything and they have catapulted Pepler into this job, which he does not like and does not want. Pepler's attitude is that he does not see how the scheme can work in any Provincial scheme. He does not think the two Parliaments can join together and delegate power to one another and does not know for Provincial purposes how a levy can ever be imposed nor how pooling can ever be carried out. He does not think Section 10 of the Dominion Act is any good and he

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T.G. Norris, Esq. K.C. September 18th, 1934.

does not think Section 7 of the Provincial Act is any good, as they both amount to a delegation of power and he thinks that the only thing that can be done is a submission to the Dominion of a Dominion scheme and to the Province of a Provincial scheme. He said Haskins appeared before him with a Dominion scheme for approval and wanted an Order-in-Council approving it by the Province but that the Province will approve of nothing involving levies or pools and he asked Haskins to submit a Provincial scheme along this line. Haskins was to do it immediately but he is apparently like the new song "Everything you do, you do tomorrow". However, Haskins told him that it did not matter very much, because the farmers up there did not have any money to fight it and he could get it approved through the Provincial Government alone. The Provincial Government are bringing down a scheme or regulations, or something; they do not know, and I do not know, and nobody knows, but it will be interesting to look at when you see it gazetted. I have studied the Dominion Act until I have a headache and I have read every debate which took place in the House on it, which gave me a worse headache. I find it rather an involved thing to work out and open to all kinds of pot shots once the thing is in working order.

This is a gossipy letter, but it might include something that might be helpful or at least of interest to you.

Yours faithfully,

RLM/F.

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October 7th. 1935

Hon. G.H. Barnard,
Duvals,
Rockland Avenue,
Victoria, B. C.

PERSONAL

Dear Senator Barnard,

I have been campaigning for Stirling in the Boundary Country,-hence my delay in getting your letter which was received here on September 30th. It was very good of you to write to Stirling. The Grit papers have been endeavouring to stir up trouble in connection with the judicial appointment. It almost looks as if the Prime Minister does not intend to fill the vacancy. I believe that Stirling has made a recommendation but it seems that the whole matter is in the hands of the P.M. At the present time he is busy with his campaign and there has been no news whatever as to the appointment.

Politically everything looks fine in this part of the world and we hear good reports of all the Interior ridings except Cariboo. I have not heard much about Vancouver but we have not a great deal to lose there anyway.

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Again many thanks for what you have done.

Kind regards,

Yours sincerely,

TCN/L.

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