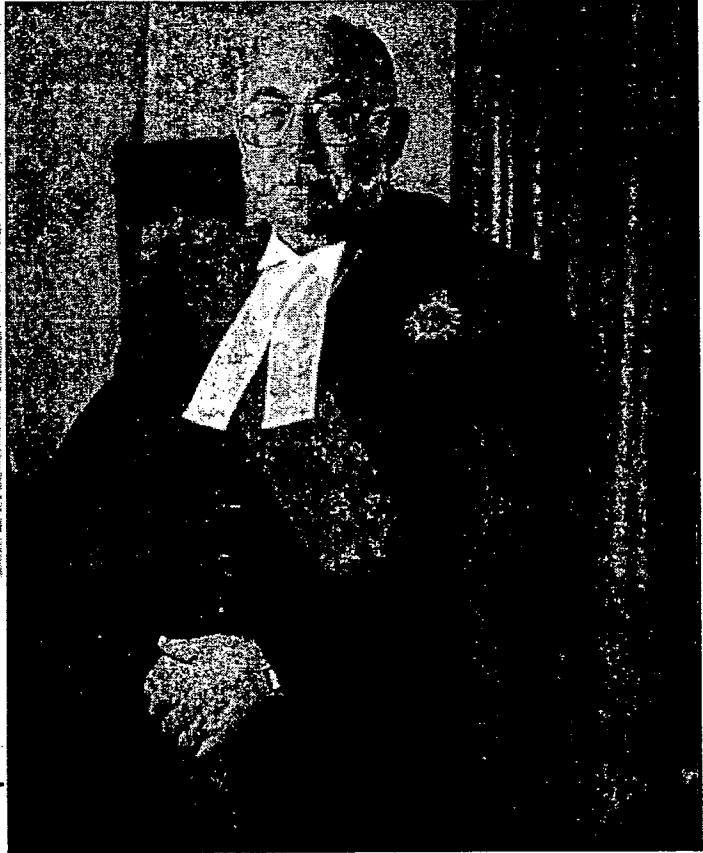


Stayshyn has seen good, bad and ugly

Now, after 25 years as a judge,
he is ready for semi-retirement

By Barbara Brown
Justice reporter
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Superior Court Justice Walter Stayshyn has seen a great deal of pain during his time on the bench. But there are bitter-sweet memories, too, and rare moments of genuine joy. Stayshyn, who turns 65 tomorrow, is going into semi-retirement now to become a supernumerary judge after nearly 25 years on the bench.

"I've seen a lot of tragedies in our courts and I've seen some very nice thing happen," Stayshyn said. "Judges share in all of that but we have to do it somewhat more quietly."

He recalled a case about 10 years ago held across the street at the old district courthouse. A man was charged with beating up his eight-year-old son. The defendant pleaded not guilty and so the judge-alone trial began with the Crown calling the boy to testify.

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"The young lad comes into the courtroom and goes into the witness box. And I'm just getting ready to question him as to whether he's capable of taking the oath, when he looks down to the prisoner's box.

"Now he hasn't seen his father in more than a year, and he yells: "Daddy. Daddy.' He jumps down and runs over to the prisoner's box and grabs his father."

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Stayshyn looked to the Crown attorney and shrugged. "What are you going to do?" he asked.

A recess was called. The case resumed 10 minutes later, the Crown lawyer advised he was withdrawing the charge. The trauma of forcing a boy to testify against a father he so clearly loved was more than anyone could bear.

Another case about a year also left a strong emotional impression and served to remind Stayshyn the courts not only punish, but sometimes provide protection to the most vulnerable.

This was an immigration hearing involving an Iranian man, his wife and four children who were subject to a deportation order, although their youngest son had been born in Canada.

Immigration department lawyers attended in force and insisted the family board a plane that night bound for Tehran. Stayshyn wasn't satisfied the feds had their paperwork in order and adjourned the matter to the next morning.

At about midnight, the couple managed to retain two lawyers who accompanied them to court the next morning and argued successfully to have the deportation ordered stayed, pending a review by the Federal Court.

The Department of Citizenship and Immigration opted about two weeks later to allow the family to remain in Canada. The immigration lawyers had attempted to persuade Stayshyn to expel the family first, then if the department changed its position later, they said the couple return to Canada.

"That's absolute nonsense," Stayshyn said in an interview. "Do you think they would get back here out of Iran?"

That old saw about a man's name being his destiny seems to have rang true in Stayshyn's case.

A Ukrainian immigrant by the name of Theodore Stayshyn and his wife Theresa decided to name their first son-born-Nov. 14, 1934-after a Hamilton man they greatly admired-Walter Tuchtie.

And so it was that Walter Theodore Stayshyn grew up in the city's east end hearing his mother and father talk about Tuchtie, who became a prominent lawyer and then Hamilton's senior provincial court judge.

Tuchtie died in 1980 at 74. He was also known for his participation in one of the city's most famous murder trials, the Evelyn Dick case, which arose from the discovery for the torso of her husband on Hamilton Mountain. As a lawyer, Tuchtie defended her father, Donald MacLean, who was also accused of the killing.

Stayshyn's father worked for International Harvester and he and two sisters, Elanor and Irene, enjoyed a happy, stable family life growing up in the Barton-Sherman area.

The judge recalls swimming in the bay with his boyhood friends when it was safe to do so. And he remembers racing to a corner store when he was 10. His mother had given him some coins to buy flags for Victory Day. A dog jumped over a fence and bit him on the rear-end, but Walter made it safely home with his flags in hand and celebrated with the rest of the city.

Stayshyn described himself as an average student at the former Central Secondary School, but said he was extremely enthusiastic on the basketball court and football field. A number of his boyhood pals and school chums, including lawyers Roger Yachetti, Bill Morris, Ed Orzel, Gerry Swaye, Stan Tick and Mike Baker; remain good friends today.

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Stayshyn graduated from Osgoode Hall Law School in 1961 and was called to the bar in 1963.

He articulated in the law office of the John Agro, a man whom Stayshyn also respected immensely and who was known in legal circles of his day as a courtroom warrior.

"To the day he died, I always called him "Boss," except when we were in court, and then I called him Mr. Agro," the judge said.

As a young lawyer starting out Stayshyn spent Mondays volunteering at a legal clinic for people who couldn't afford fees. There was no legal-aid plan in Ontario in those days and lawyers took turns dispensing free advice at the clinic. They would delegate lengthier matters to lawyers around the city, who agreed to accept cases on a pro bono basis.

One day, an attractive young blonde woman from the Junior League walked in to volunteer her services helping clients fill out their forms. "That young blonde two and a half years later became my wife. I called her my Expo('67) project," Stayshyn said with a grin.

The couple has two adult children, Katherine, a nurse, and Ted, who is a lawyer.

After 13 years of marriage, and while on vacation in Acapulco, Kathy began experiencing blurred vision and rapidly proceeded to lose sight in one eye.

It was the beginning of a crushing illness for Kathy, then 36, and for her husband and children as the family struggled to cope with her multiple sclerosis. The symptoms, including fatigue, joint pain, blurred vision and loss of control of limbs, were remissive in the early years.

But since 1989 they have increased steadily until Kathy is now in a hospital bed 22 or 23 hours a day. A healthcare aide came and stayed with Kathy until he returned at night.

Stayshyn had been a volunteer since he began practicing law, but his focus turned more toward health. His years of community service have included the Multiple Sclerosis Society, St. Joseph's Villa and the Hamilton-Wentworth District Health Council, of which he served a year as chairman.

As a supernumerary judge, Stayshyn will sit occasionally for several weeks at a time, but will work only a third of the year.

"Because of my wife's devastating illness, I'll be staying pretty close to home. In the spring, summer and fall I garden and I read. I have the Toronto Star and the Spectator on my driveway every morning by five o'clock in the morning.

Courthouse staff speaks affectionately of the judge and describe him as patient, considerate and good-natured.

Stayshyn thinks of himself as a people person and says he misses the contact with members of the community he used to enjoy in the corridors of the old courthouse, before the court moved across the street to the new high-security John Sopinka Courthouse.

Judges now travel to and from their chambers along private corridors that are not accessible to the public.

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"But being a people person, I miss seeing people and talking to them, getting their input on anything from sporting events to politics to general matters in the community. Here, unfortunately, it's only judges talking to each other because, other than our staff, we don't see anybody else."

In his 25 years of experience, watching juries grapple with difficult decisions on tough cases, Stayshyn said he has seldom been surprised by the verdict.

One exception was the Dec. 6, 1990 decision of the five women and seven men who acquitted Guy Ellul of the first-degree murder of his estranged wife, Debra Ellul.

The 31-year-old mother of three boys was found dead in a pool of blood in her Gurnett Drive home on Feb. 5, 1989. During the four-week trial, her then 44-year-old husband admitted to stabbing Debra, who sustained 21 wounds of varying size and depth.

Assist Crown attorney Toni Skarica—now Tory MPP for Wentworth Burlington—publicity stated he was mystified by the decision and appealed the verdict. But after poring over transcripts of the trial and Stayshyn's charge to the jury, the province's Crown Law Office could find no grounds from a Crown appeal.

The ministry lawyers said Ellul had had a fair trial and 12 members of this community found him guilty. The fact people didn't like the verdict was not a legal reason to appeal.

"The Ellul case left a definite impression," said Stayshyn. "It was a case I thought would have been resolved at an earlier stage, but it wasn't. And the jury came in with what in their view was a higher proper verdict, but which the dead woman's mother took strong exception to."

Debra Ellul's mother, Ruth Williams, demonstrated outside the old district courthouse for about 18 months, carrying a placard that read: Justice For Debra. In rain, snow and sub-zero temperatures, she marched outside the courthouse protesting the ministry's decision not to appeal the verdict.

"I don't second-guess juries," said Stayshyn. "Juries are 12 people off the street that hear the evidence and if you charge them properly, they make the decision they're entitled to make. If you don't charge them properly, the other side can appeal."

"Only one or two times in my life would I have decided, trying it alone, differently than that jury did. And in both cases, I said myself: Thank God I didn't have this case without the jury because I would have made a mistake and that would have been horrible."

"Ellul, for example, I thought he was guilty of manslaughter—not murder—but manslaughter, and so when the jury acquitted him, I thought, 'Thank God the jury was there.' Because they heard the same evidence I did and 12 of them thought he was not guilty."

"And had I convicted him, he would have gone to jail for a long time."

Canadian WHO'S WHO 2001

Stayshyn, Hon. Walter Theodore, B.A., LL.B.; judge; b. Hamilton, Ont. 14 Nov. 1934; s. Theodore and Theresa (Chary) S.; e. McMaster Univ., B.A. 1958; Osgoode Hall Law Sch., LL.B. 1961; called to Ont. Bar 1963; m. Katherine d. Emile and Olive Dubois 17 June 1967; children: Katherine Theresa, Walter Theodore (Ted); JUSTICE, SUPERIOR COURT OF JUSTICE, Ontario 1990- ; Local Admin. Judge, Judicial District of Hamilton-Wentworth 1996-99; read law with John L. Agro, Q.C. 1961-62; Assoc., Agro, Cooper, Zaffiro, Parente & Orzel 1963-64; Founding Partner, Borovich & Stayshyn 1964-75; Auditor Hamilton Law Assn. 1970-74; District Court Judge, Ont. 1975-90; Chrmn., Legal Aid Area Ctte., Hamilton-Wentworth 1973; Dir., Legal Aid 1974; Pres., Hamilton Lawyers Club 1974; McMaster Univ. Letter, Football (1958), Basketball (1958); Vice-Chrmn., Bd. Of Gov., Mt. Mary Acad. 1967-75; Hamilton-Wentworth Dist. Health Council & Extve. Ctte. 1986-92, Chrmn. 1989-90; Bd. of Trustees, St. Joseph's Villa Found. 1987-96; Chrmn. 1993-94; Chrmn. Hamilton Hospitals Joint Action Ctte. 1993-97; Hon. Chrmn. Hamilton-Wentworth Multiple Sclerosis Carnation Campaign 1994-95; Chrmn., Hamilton-Wentworth AIDS Steering Ctte. 1987-90; Mem., Ont. Dist. Court Judges Assn. (Dir. 1987); Cdn. Superior Court Judges Assn.; Ontario Superior Court Judges Assn. (Hall of Fame Sel. Ctte. 1985-96); Pres., Central South Superior Court Judges Assn. 1998-99; Past mem., several assns.; Roman Catholic; recreation: sports fan; Home: 114 Broadleaf Cres., Ancaster, Ont. L9G 3R8; Office: 721-45 Main St. E., Hamilton, Ont. L8N 2B7.