

Joseph Alphonse Valin Ontario Francophone Judge, 1895

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Article abstract

After Confederation, the provinces administered justice but the dominion government appointed judges. In 1894 Ontario's Mowat government passed legislation to create Nipissing judicial district. It was then up to the Dominion government to appoint a judge. By early 1895, the Bowell administration issued an order-in-council and the new judge was waiting in the wings. But the perfunctory Royal assent never occurred. Bowell reneged. In a matter of days, the Premier abruptly reversed course and appointed someone else. What grounds may have precipitated such an unusual change of position? Was it partisan pressure, fresh revelations, a response to a crisis or political strategy? Was it a bold move that signaled a new direction? Or was it a balm to quiet unrest or a need to satisfy aggrieved followers and gain support? Those are challenging questions that will be canvassed in this article.

JOSEPH ALPHONSE VALIN

Ontario Francophone Judge, 1895

by Nestor Prisco

Introduction

There's a somewhat familiar maxim in the legal profession: Law is the only game where the best players get to sit on the bench. How they do when they get there may be debatable. No preparation or judge school precedes an appointment in our country yet lawyers have a reasonably good understanding of what is expected from personal experience. We make instant judges from the lawyer pool. It usually happens quietly and then descends abruptly into obscurity. The good news is that, on balance, we enjoy a justice system that respects the rule of law. Socrates cautioned that four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.

It is the Crown's prerogative to appoint judges. That function devolves to the Cabinet. Those seeking consideration follow a structured procedure. Nominees are vetted to filter out the unfit. Experience matters, but talent wins. Once recommended by an advisory selection

committee, the nominee makes an approved list. That is where the fun begins. To go forward, one needs a champion, a political heavyweight who can move the nominee up the ladder.

There are qualifications. Good character is a must. Other indispensable qualities receive corresponding consideration. The Minister of Justice sometimes looks for candidates with specific skills to fill positions in larger centres. For example, there may be a need for expertise in certain areas, such as criminal law, administrative law or taxation. Candidate selection may also hinge on those more predisposed to back government policy. One never knows what goes on in Cabinet deliberations unless you're in it. Even then it can be a mystery.¹ The best player to sit on the bench may be the one who can adapt to judicial life.

Ottawa lawyer Joseph Alphonse Valin represented an atypical, federally appointed judge in 1895. Selection of a francophone for a judicial posting in Ontario signified a watershed decision in its

¹ Supreme Court of Ontario Judge Larry Pennell, former Solicitor General, surprised Nipissing District Court Judge Fernand L. Gratton when he revealed that Judy LaMarsh almost scuppered his appointment when it reached the Cabinet table. LaMarsh and Gratton were classmates, both called to the bar in 1950.

Abstract

After Confederation, the provinces administered justice but the dominion government appointed judges. In 1894 Ontario's Mowat government passed legislation to create Nipissing judicial district. It was then up to the Dominion government to appoint a judge. By early 1895, the Bowell administration issued an order-in-council and the new judge was waiting in the wings. But the perfunctory Royal assent never occurred. Bowell reneged. In a matter of days, the Premier abruptly reversed course and appointed someone else. What grounds may have precipitated such an unusual change of position? Was it partisan pressure, fresh revelations, a response to a crisis or political strategy? Was it a bold move that signaled a new direction? Or was it a balm to quiet unrest or a need to satisfy aggrieved followers and gain support? Those are challenging questions that will be canvassed in this article.

Résumé: *Après la Confédération, les provinces administraient la justice, mais le gouvernement fédéral nommait les juges. En 1894, le gouvernement Mowat de l'Ontario a adopté une législation visant la création du district judiciaire de Nipissing. C'était alors au gouvernement du Dominion de nommer un juge. En 1895, l'administration Bowell a publié un décret et le nouveau juge attendait en coulisses. Par contre, la sanction royale, symbolique et superficielle, n'arrivait pas. Bowell est alors revenu sur sa décision. En quelques jours, le premier ministre avait changé d'avis et nommé quelqu'un d'autre. Quelles raisons ont pu précipiter cet insolite changement d'avis? Était-il question de pression partisane, de nouvelles révélations, de réponse à une crise ou encore d'une stratégie politique? S'agissait-il d'un geste audacieux qui signalait une nouvelle direction? Ou bien était-ce une tentative d'apaisement et une nécessité afin d'obtenir le soutien de partisans lésés? Voilà des questions sur lesquelles nous nous pencherons dans cet article.*

time. Prime Minister Mackenzie Bowell sent a thirty-eight-year-old lawyer with eleven years experience to New Ontario. He chose Valin over forty-nine-year-old Cornelius O'Neill from Chatham, in legal practice for seventeen years. His appointment represented a breakthrough victory for Franco-Ontario. It undercut the forces of Orange and Protestant Ontario. Would it be seen as a risky measure or a bold move at a time when Bowell needed political backing in the worst way?

This paper examines the turbulent period and presents a hypothesis to illuminate the selection of Valin for the Provisional Judicial District of Nipissing over a previously confirmed candidate.

An Ottawa newspaper captured the flavour of the political infighting that attended the selection of Nipissing's first judge in 1895: "Few men have overcome the barriers, vicissitudes and trials leading to fame in Canada and especially Ontario than Mr. Joseph A Valin."² Undertones of passionate dissension accompanied the selection of Joseph Alphonse Valin as Nipissing's inaugural district court judge. The decision was overshadowed by a divisive constitutional question that posed a dilemma of more immediate importance and necessity. The recently formed Bowell ministry was in the midst of a major crisis, the Manitoba Schools Question. Having his followers wrangle over a judicial of-

² "Judge Valin Now", *Ottawa Daily Press*, 11 March 1895.

face acutely detracted from the compelling imperative to unite the troops for the battle in Manitoba. The resolve to go with Valin was a gutsy move by a Prime Minister struggling to cater to divergent factions in his ministry.

The Dominion government fell into disarray after John A. Macdonald's death in 1891. By 1895, the Liberal-Conservatives were running low on consensus builders when they reached out to aged and weary Senator MacKenzie Bowell, a parliamentarian without a seat in the Commons. Despite his call to duty, it was a formidable task to place on someone with a limited hold on his party. Some felt that Bowell had already lost his fastball. The party of Macdonald missed the energy promised by the late Sir John Thompson. Bowell faced an overwhelming issue and discordant caucus in a time that called for a stronger figure who could circle the wagons and restore harmony.

Political maneuvering at the eleventh hour altered the game plan for the newly created Provisional Judicial District of Nipissing in 1895. At Confederation, the administration of justice was assigned to provinces whereas appointment of Superior, District, and County judges resided with the Dominion government.³ This statutory duality prescribed an indispensable role for both levels of government. The Mowat government did its part in 1894 when it passed legislation to create the Nipissing judicial district effective 1 January 1895. It was then up to the Do-

minion government to appoint a judge.

By early February 1895, the Bowell administration had made its choice; the order-in-council (OIC) had been issued and the new judge was waiting in the wings. It only needed Royal assent, a perfunctory formality. But it never made it to that stage. For obscure reasons, Bowell reneged. In a matter of days, the Prime Minister abruptly reversed course, issued a second OIC for the same position and appointed someone else.

What grounds could have precipitated such an unusual change of position? Was it partisan pressure, fresh revelations, a response to a crisis or political strategy that motivated a retraction? Was it a bold move that signaled a new direction? Or was it a balm to quiet unrest, hit the sweet spot with aggrieved followers and gain support? Those are challenging questions that will be canvassed in the paragraphs ahead.

Political Landscape.

Oliver Mowat narrowly won the provincial election of 26 June 1894 and formed the government. To woo voters, Mowat made much of his accomplishments in strengthening New Ontario. He cited enticements for settlers, aid to railways to open up the back country, extending colonization roads, construction of roads and bridges, aid to poor schools, substantial public works investments and policies that located 22,000 people in the back country on Free Grants.⁴

³ See Sections 92(14) and 96, *The British North America Act, 1867*.

⁴ *A Condensed Record of the Mowat Government Showing Eighteen Years of Wise Economy, Eighteen Years of Beneficent Legislation*, ([S.l.: s.n., 1890), microform.

The election saw the dramatic rise of intolerant special interest groups, some whom attached themselves to the main parties. The Protestant Protective Association (PPA), for example, “was an anti-Catholic group, associated with the Orange Order. It campaigned against the rights of Catholics and French-Canadians, and argued that Roman Catholics were attempting to take over Ontario.”⁵ The rise of anti-Catholic and anti-French sentiment spilled over into the politics at the Dominion level.

In Nipissing, Mattawa’s John Loughrin easily retained his seat in the provincial legislature. Following his victory, he turned his attention to the contest for county town and the appointment of district court officers. Division courts that disposed of summary cases existed and their clerks and bailiffs were in place. The spoils system put Liberal supporters in the forefront for district court jobs. He consulted North Bay lawyer Arthur George Browning about deserving candidates seeking appointment for the various positions. Browning, president of the Nipissing District Liberal Association, formed at Loughrin’s nomination meeting in May 1894, chose to become crown attorney. As sheriff, Loughrin selected Charles Varin, reeve of Bonfield Township since 1886. Varin, age forty-five and an active Liberal supporter, had a background in lumbering and, at one time, operated a general store. With a \$500 salary, he topped up his handsome annual in-

come with fees of office. For district court clerk, Loughrin turned to the established and connected Bourke family. He chose Thomas Bourke, age twenty-three, son of North Bay’s first mayor John Bourke, a staunch Liberal, half brother to former MLA Thomas Murray, and proprietor of the North Bay Electric Light Company.

The CPR opened up Nipissing in 1882; steady growth in population, commercial activity, and homesteading followed along the groundbreaking rail line that penetrated the lonely wilderness. Pioneers quickly formed settlements and elected township councilors who established a framework for local government. In Dominion elections, eligible male voters living in surveyed townships cast ballots for candidates in the Renfrew North riding. With the incorporation of the towns of North Bay, Mattawa and Sudbury, residents yearned for their own political representation. Nipissing voters could do better than rely on infrequent visits and occasional stopovers by the MP for Renfrew. Numerous appeals finally hit home and Ottawa agreed to provide a seat in the Commons for Nipissing (c. 11, S.C. 1892). Passage of an Act entitled *Representation of the House of Commons* assented to 1 April 1893 delineated the electoral district of Nipissing.⁶ The welcome news sealed the deal and invigorated political discussion in the district. The door opened for local and district political associations to organize and get ready for the next general election.

⁵ Ontario general election, 1894, Wikipedia.org. https://en.wikipedia.org/wiki/Ontario_general_election,_1894.

⁶ 56 Victoria, Chapter 9, 1893, 61.

Judicial Rumbblings

A question in the House of Commons swiftly stoked interest among contending lawyers anxious for judicial consideration. In a debate where notice was given to make a financial allowance for a judicial position, Sir Richard Cartwright rose to enquire: "For which judicial district is this appointment?" In response, Sir John Thompson replied: "for Nipissing district, which has just been created by the Provincial Legislature."⁷ Unbeknown to many, it was already 'game on' for a number of lawyers who aspired to a place on the bench. Bullish opportunists and party faithful led the pack by petitioning their MPs, cabinet ministers and premier. The government received over fifty applicants for the position.⁸

James Henry Burrirt⁹, Pembroke barrister jumped on the news that deputations from Nipissing had approached Oliver Mowat to create a judicial district. He had in 1891 declared his enthusiastic pursuit for the position in a letter to John A. Macdonald. Burrirt was called to the bar in November 1871 and practised continuously in Pembroke. At age forty-four, he had "invariably taken his own briefs as counsel at *Nisi Prius* with average success". He ended his appeal

with the obligatory self-endorsement of political loyalty to Macdonald's party:

I respectfully desire to apply for the office.

Mr. White can speak otherwise as to my character and fitness for the office. As you are no doubt aware, I have always supported the Liberal-Conservative Party; my first vote having been given to Sir Francis Hincks, when a candidate for North Renfrew.¹⁰

Burrirt demonstrated a determined drive to secure the position after Macdonald's death. He told a newspaper reporter that Sir John Thompson promised him the judicial appointment for the new judicial district of Nipissing. The Hon. Peter White, Speaker of the House of Commons and MP for North Renfrew, would have moved Burrirt's supplication to that level.¹¹

Gossip about potential candidates seeking the position continued. A Toronto newspaper singled out P.H. Drayton, local lawyer and former alderman as "likely" judge in Nipissing. When asked about the news, Drayton responded: "I cannot say anything about it and I'm surprised to see it in print."¹²

J.A. Orr, editor of the *Sudbury Journal*, followed the race for the Nipissing judgeship with considerable interest. He saw John O'Meara of Ottawa as a front-runner.¹³ The following week, Orr reported that J.H. Burrirt, Pembroke and

⁷ House of Commons Debates: Sir John Thompson, 17 July 1894, 6241.

⁸ *Perth Courier*, 25 May 1894.

⁹ As Grand Master of the Grand Lodge of Canada A.F. & A.M., in the Province of Ontario, Burrirt laid the cornerstone of the Methodist Church in North Bay 20 June 1906. Judge H.D. Leask participated in the ceremony as acting deputy grand master. See Proceedings: Grand Lodge of A.F & A. M. of Canada, 1906.

¹⁰ Letter to Right Hon. Sir John A. Macdonald, 28 May 1891, *LAC*, MG26-A, Vol. 503, pp. 253036-253037, microfilm reel C-1808.

¹¹ *Perth Courier*, 25 May 1894.

¹² *The Evening Star*, 11 February 1895.

¹³ *Sudbury Journal*, 14 February 1895.

Toronto lawyer P.H. Drayton (Drayton & Dunbar), who evidently spoke French fluently,¹⁴ figured prominently in the contest.

Speculation surrounding a judge for Nipissing ended 19 February 1895 when the cabinet introduced an OIC appointing Irish Catholic barrister Cornelius John O'Neill from Chatham. How was he selected? Do we see the invisible hand of Sir Frank Smith steering his nomination?¹⁵ If not outright support, the decision plainly carried Smith's approbation.

John A. Macdonald called Smith to the Senate in 1872 for his shrewd business sense and reputation as a force within the Irish Catholic community. During his time in Cabinet from Macdonald to Bowell, Smith became a broker for Irish Catholic rights.¹⁶ Smith was an advocate of the rights of Irish Catholics and lobbied for the appointment of Irish Catholics to patronage positions.¹⁷

Political leaders canvassed widely before filling a vacancy on the court. John A. Macdonald made sure to consult local MPs in patronage matters.¹⁸ In O'Neill's case, Archibald Campbell held the Kent

riding for the Liberals. While he may have silently approved of O'Neill, his views in patronage matters were politically inconsequential. The party in power maintained closer advisers. Macdonald frequently consulted Christopher Robinson for guidance about suitable candidates for judicial appointments in Ontario.¹⁹ As a prominent member of the bar who, among others, prosecuted Louis Riel, Robinson's counsel informed the judicial patronage process.²⁰ Robinson declined a judicial appointment since "leading lawyers saw salaries and prestige on the bench too low."²¹ For the Nipissing vacancy, Bishop O'Connor of Peterborough, whose diocese included Nipissing, would also have had something to say to Sir John Thompson and Bowell about prospective candidates in his domain.²²

Who was John O'Neill? He came to Chatham as a child when his father, Thomas O'Neill, took a job as a teacher. In 1868, O'Neill also began as a Catholic schoolteacher in Chatham and surrounding area. With his eye on a more lucrative career, he turned his attention to law in 1872 when he began as a clerk with Mag-

¹⁴ *Ibid.*, 21 February 1895.

¹⁵ *Globe*, 11 November 1895.

¹⁶ Mark McGowan, "Sir Frank Smith", *Dictionary of Canadian Biography*, Vol. XIII, University of Toronto/Université Laval, 1994-2015. http://www.biographi.ca/en/bio/smith_frank_13E.html.

¹⁷ Frank Smith, *Wikipedia.org*. [https://en.wikipedia.org/wiki/Frank_Smith_\(Canadian_politician\)](https://en.wikipedia.org/wiki/Frank_Smith_(Canadian_politician)).

¹⁸ Peter B. Waite, "Chartered Libertine? A Case Against Sir John Macdonald and Some Answers," *MHS Transactions*, Series 3, Number 32, 1975-76.

¹⁹ Patrick Brode, "Robinson, Christopher (1828-1905)," in *Dictionary of Canadian Biography*, vol. 13, University of Toronto/Université Laval, 2003 http://www.biographi.ca/en/bio/robinson_christopher_1828_1905_13E.html.

²⁰ *Ibid.*

²¹ *Ibid.*

²² In 1934, Bishop David Scollard, Diocese of Sault Ste. Marie, obstructed the Nipissing appointment of Henri St. Jacques, Ottawa lawyer.

istrate Michael Houston's firm.

Following his call to the bar in 1878, he joined William Douglas. O'Neill mentored students under articles and took them in as partners beginning with Thomas Scullard (called 1888), J.M. McWhinney (who abandoned law), and Ward Stanworth (called 1894). In August 1884, at age thirty-seven, O'Neill married twenty-five-year-old Eliza Jane McBrody from Pickering.

O'Neill obviously impressed the Minister of Justice and survived the scrutiny that attends the evaluation of judicial candidates. He was a person of good character, and sufficiently talented to earn recognition as "a noted classical scholar." His ability to speak three languages, acknowledged intellect, as well as his civic and volunteer engagement embellished his portfolio and advanced his resume. In politics, he served for six years as president of the Liberal-Conservative county association. O'Neill qualified on all fronts—political ties, cultural background, and ability—and presented a resume that would be difficult to dispute.²³

O'Neill stood to become the second

judge from Chatham going to the bench. Walter McCrea preceded him in 1871, resigning his seat in the Senate to accept a judgeship in Sault Ste. Marie.²⁴

The contest was over. The vanquished folded their tents and returned to their day jobs. Or was it? The turmoil surrounding Manitoba Schools continued to plague the Bowell administration. It was all hands on deck for crunch time. A Toronto newspaper article carried a headline, "Wanted at Ottawa. Premier Bowell telegraphs for Sir Frank Smith to attend cabinet meeting."

An urgent appeal resounded for Smith to attend Cabinet the following day (Saturday) to consider the Manitoba school case. The tension in Ottawa mounted as reporters swarmed Parliament Hill working their sources to uncover government plans to deal with the big issue.²⁵

The pressing Cabinet meeting proceeded as scheduled March 9th. It seems Smith failed to attend.²⁶ The meeting featured a breathtaking turn in the Nipissing judicial appointment file. Bowell announced the government was appoint-

²³ John Rhodes, *Chatham This Week.com*, 2 February 2009.

²⁴ Matthew Wilson K. C., "The Kent Bar", 1917, p 13. *Kent Historical Society – Papers and Addresses*, Chatham, Ontario, 1917.

²⁵ *The Evening Star*, 8 March 1895.

²⁶ Sir Frank Smith's attendance at Cabinet "always meant action." At the same time, *The Globe* cited examples "that an order in Council no longer carries that weight or commands that respect which it formerly did." The article goes on to say: "Indeed, a gentleman living in Chatham, Ontario, was last summer appointed a Judge by order in Council, but he never got it. It was intercepted before it received the signature of the Governor-General, or cancelled after it had been signed, and another gentleman, Mr. Valin, of Ottawa, was appointed in the office. First, the Cabinet decided to appoint the Irish Catholic barrister from Chatham, and they did appoint him. Then they decided to appoint a French-Canadian. Unfortunately the district of Nipissing called for only one Judge, and consequently, both orders in Council could not remain in force. Sir Frank Smith must have been present when the first order was passed and absent when the second one was put through." "At the Capital", *Globe*, Monday 11 November 1895.

ing Joseph A. Valin of Ottawa as district judge, Provisional Judicial District of Nipissing. Confirmation was tabled by way of OIC Number 1895-0725 issued that day. Within eighteen days, Bowell had appointed two judges for Nipissing each with an OIC awaiting the governor-general's signature. Almost immediately, Bowell jolted into reverse by withdrawing O'Neill's OIC and dispatching Valin's; it was approved 13 March 1895. Bowell, former Grandmaster Orange Lodge of North America, opened himself up to certain opprobrium when he appointed Valin, a French Canadian Catholic to an Ontario judgeship. Had he exposed himself to a maelstrom?²⁷

Aside from potential hostility that might attend his appointment, Valin represented an appropriate fit for Nipissing. There were not many francophone lawyers practising in Ontario and, of those, none exceeding Valin's qualifications. Napoleon Belcourt might have been an exception. He became a member of the Quebec bar in 1882 and was called in Ontario in 1884 along with Valin. Belcourt had Liberal leanings and later enjoyed a distinguished political career in the Senate, public life, and as an outspoken advocate for French Canadian causes. Supporters saw Valin's selection as a triumph that prevailed over preju-

dice, entitlement and doctrinaire beliefs. Despite his suitability for a post in New Ontario, prevailing opinion favoured English Protestants for judicial patronage positions. To several intolerant factions, French-speaking judges had no place outside Quebec. Orange Ontario erected an invisible wall around their exclusive fiefdom to repel French Catholic insurgents and their elected representatives guarded and reinforced those barriers.

Like Jackie Robinson in the next century, Valin was the ideal candidate to overcome the "racial segregation barrier" and sufficiently adept to moderate virulent criticism from sectarian quarters. He possessed ample legal heft and poise to weather any oncoming discriminatory reaction. He comfortably bridged the divide between English and French. His mixed parentage, father French, mother Irish, turned out to be an asset. His fluency put him at ease in any setting and he mixed well within both cultures. He had proven scholastic abilities. In his professional career, he earned a fair reputation for being "genial and witty," and "has the happy faculty of being able to adapt to circumstances."²⁸ Demonstrating diversity, he married Mary Wagner in Toronto, daughter of Jacob P. Wagner, and a prosperous contractor of German heritage as well as father of overachieving

²⁷ The Orange Lodge strongly opposed Roman Catholics. When a vacancy occurred in Peterborough County following the death of Judge E.C.S. Huycke, the Loyal Orange Lodge cautioned R.B. Bennett about appointing a Roman Catholic in his place. In a letter to Prime Minister Bennett 19 July 1934 "the over two thousand Orange men and women of Peterborough county most emphatically protest against any such Roman Catholic appointment... and serve notice that we will use every influence against the Government and its candidate at the next Dominion election. (T)he feelings of the members of the Orange Association are no longer to be trifled with." Letter to Prime Minister Bennett, 19 July 1934, *LAC*.

²⁸ "Judge Valin Now", *Ottawa Daily Press*, 11 March 1895.

offspring. Jacob Wagner built the stately Rossin House hotel and the massive Central Prison for the Ontario government.²⁹ Ironically, the former penitentiary is known today as Liberty Village.

Valin unquestionably married well. That same insight carried over to his professional career. He had confidence in his ability to compete and achieve success. His French Canadian patrons believed he had the right stuff to make a symbolic breakthrough. They viewed his posting in Nipissing as a strategic triumph. The turmoil brought on by the county town election provided good cover for his arrival. He eased in without fanfare. There was no appetite for a fight from pioneers preoccupied with establishing roots in a new land. North Bay had elitist elements that might have posed a problem but they warmed to him without objection. In town elections, voters leaned towards ability over religion in selecting municipal candidates. In a turn of events, Catholic civic contenders in North Bay failed to get elected in 1895 but that was attributed to the fight over liquor outlets and disquiet about competency of incumbent councilors.

Valin was born at Ottawa in 1857 to Hyacinthe Valin and Sarah Dunn. Hyacinthe was an early lumberman in the Ottawa area. For seven years, young Valin attended Montreal College, operated by the Sulpician Fathers, where he studied classics. Following his time in Montreal,

Valin proceeded to Toronto where he began his legal studies at Osgoode Hall. At law school, he gained recognition by earning a 2nd scholarship in 1882 behind classmate A. Carruthers and graduated with the highest honors in 1884.³⁰

He and future Pembroke lawyer John G. Forgie articulated with the firm of McCarthy, Osler, Plumb and Creelman. His principal in that law firm was D'Alton McCarthy, a leading Conservative MP. During his time in Ottawa attending parliament, persuasive colleagues may have recommended Valin for employment in his law firm.

McCarthy, an Irish Protestant, campaigned for English rights and was known for his anti-Catholic and anti-French convictions. Are we to attribute Valin's acceptance in the law firm to his Irish heritage or his political connections? Or did his scholarship trump his religion and ethnicity? In the Manitoba Schools dispute, McCarthy railed against separate schools that taught in French only by teachers unfamiliar with the English language. Following his call to the bar in December 1884, Valin returned to Ottawa where he formed a partnership with A.A. Adam and established his office at 25 Sparks Street. When Adam left the partnership, Valin and W.J. Code formed Valin and Code at the same downtown Ottawa location. Valin carried on a general practice attracting both French and English clients while playing an active

²⁹ George Maclean Rose, *A Cyclopaedia of Canadian Biography: Being Chiefly Men of the Time. A Collection of Persons Distinguished in Professional and Political Life; Leaders in the Commerce and Industry of Canada, and Successful Pioneers*, Volume 1, 1886. https://books.google.ca/books?id=uMAOAAAAYAAJ&vq=jacob+p+wagner&source=gbs_navlinks_s.

³⁰ *Canada Law Journal*, 1 February 1883, 46.

role in the emerging Carleton County Law Association.³¹

Valin and Adam profited by positioning themselves on the right side of politics. That connection returned dividends. An influential group of thirteen Conservative MPs and twelve senators led by Simon Labrosse, M.P. for Prescott, petitioned The Honorable John Thompson, Minister of Justice, to provide them with “a modest and fair share of the patronage of your department.” Letters written by Archbishop Duhamel, Sir Hector Langevin and Sir Adolphe Caron backing Valin and Adam enhanced their solicitation for government largesse. Labrosse’s petition emphasized their unwavering support for the Conservative Party and that they commanded “a good deal (sic) of influence amongst their compatriots.”³² The underlying requirement for patronage appointments was a record of service to the party. The petition recommending Valin and Adam recognized the necessity of satisfying that condition by emphasizing their “unwavering support.” The petition lacked any reference to their ability or qualifications since party service remained the key determinant that overrode other considerations. The influential parliamentarians who endorsed Valin recognized his political promise and emerging force of personality. For a young lawyer, that level of attention elevated his profile and brought him within the orbit of the Ottawa elite.

Bowell’s Dilemma

The Nipissing judgeship became a festering topic that landed abruptly on Bowell’s plate after the unexpected death of Sir John Thompson. While Charles Hibbert Tupper became minister of justice in the government of Sir Mackenzie Bowell, the groundwork to fill the Nipissing position began during Thompson’s tenure as prime minister and minister of justice. Cornelius O’Neill had the inside track when Thompson approved the appointment of a fellow Catholic in Ontario. As minister of justice, Tupper inherited the file and raised the matter in Cabinet. While it remained the prime minister’s call to make patronage appointments, the official document came from the Privy Council “on the recommendation of the Minister of Justice.”

Peter White had a proprietary interest in the judicial appointment. As MP for Renfrew North, his jurisdiction extended to surveyed townships in Nipissing district. He had ample opportunity during formal and casual events in Ottawa to discuss matters that affected his entire jurisdiction. In the small political orbit that existed in that period, White had unrestricted access to ministers and power brokers.

White had already scored a victory in late January when Bowell appointed an Ottawa Valley lawyer in his riding. That came when Thomas Deacon, Renfrew North MLA from 1871-1879, received

³¹ Christopher Moore Editorial Ltd 2003, The Ontario Legal Alphabet, *Law Times*. <http://www.christophermoore.ca/legalhistory.htm>.

³² S. Labrosse et al, *LAC*, RG 13-A-2, Mikan No. 1322679, 1887/09-1888/01.

his call as junior judge of Renfrew County. On the Renfrew bench, he joined his brother John Deacon already senior judge in the county.

Bowell faced diverse factions in his administration including some who felt he was weak and performing a caretaker role. The tension in the party from the Manitoba issue affected political decision-making and brought government to a standstill. The division erupted on cultural and religious grounds. His Quebec members sided with Manitobans who were stripped of their separate schools whereas Ontario Protestants applauded the decision. The Orange Order, anti-French and anti-Catholic, opposed remedial legislation to reinstate separate schools. With Bowell in power, they had a direct pipeline to his office. What was he to do?

The ongoing debate placed his government in crisis mode. In this heated atmosphere, party members who believed Nipissing was ripe for a francophone posting leaned on Bowell. They played up Valin's service to the party, ability, and academic achievement; his suitability for a region with a large francophone population; and that he blended easily with both cultures. They gave assurance that his appointment would be favourably received in Nipissing. It would attract support for Liberal-Conservatives anxious to win in the new riding of Nipissing.

Bowell Favours Valin

The groundwork for the Nipissing position began during the Thompson incumbency. In February 1895, an OIC

was issued appointing Cornelius O'Neill. Undeterred by the news, unyielding opponents refused to admit defeat and presented a wall of opposition. Led by aggrieved francophones—elected members from Ontario and Quebec, senators, clergy—similar to the petitioners assembled by MP Simon Labrosse, they zealously promoted Valin. They argued for representation given that New Ontario had a significant francophone population. Under steady pressure, Bowell heard their representations and reopened the Nipissing file. He was astute enough to see the benefit of collaboration. Burdened by the unresolved Manitoba Schools Question, Bowell knew that O'Neill's appointment had no payback in his bid to maintain a hold on his party. Was it was time for a political oil change? Facing a conundrum, he saw a moment of opportunity and advanced a compromise. O'Neill became a pawn in a strategic trade-off to placate a restless caucus. Bowell needed help and O'Neill no longer had traction. There was more upside to go with Valin and appease a critical segment of his supporters. A vociferous lobby group argued that Nipissing had demographic similarities to Quebec. By bending to his Quebec members, Bowell could make a statement about his willingness to understand the importance of recognizing francophone concerns. Above all, the French community wanted a victory. Manitoba aside, Bowell revealed that a fervent Orangeman could overcome personal conviction and submit to a reasoned argument based on the merits. In a bid to avoid a possible shipwreck, Bowell delivered

what the moment demanded.

Valin's Stellar Performance

The men who shape the destinies of the North must be men of energy, vision, versatility, with a passion for the wild, a capacity to cope with the new, the unexpected, the untried, gifted with a will to essay and to conquer.³³

Joseph Valin overcame hurdles yet brought energy and promise to his new position. His formidable task to jump-start a new judicial district seemed to foreshadow Kurt Vonnegut's dictum that, "The triumph of anything is a matter of organization." And that's what he set out to do. Nobody prepared a place for him. He found himself on his own; he began without direction or assistance from neighbouring judges; the court had no chief judge until the 1960s. The ball was in his court. At the mature age of 38 and driven by a determined force of will, he ardently laid the foundation for Nipissing's intermediate court at a pivotal stage of its development.

His first job was to establish his presence. To do that, he had to compete with a feverish referendum. He encountered a veritable "hornet's nest," in the form of a county town election involving North Bay, Mattawa and Sturgeon Falls. Wisely remaining neutral, he made Sudbury his temporary residence pending a decision. There he presided in a solid brick, two-storey court house, described as "commodious and substantial" and opened

in March 1893.³⁴ He immediately took over from stipendiary magistrate William Doran and held Saturday court in Sudbury. Doran would continue to assist in the district at the direction of Valin. After a six-month stay and two tense elections, he moved to North Bay, the victorious county town. The animosity attending the struggle for county town status presented an impediment in his drive to unify the judicial district.

From his home base in North Bay, Valin travelled "by dog-sled and canoe to conduct courts in the outlying early settlements of New Liskeard and Hailybury" to preside in Division Court.³⁵ His inaugural court of the General Sessions in North Bay commenced 12 November 1895. To organize the district and get courts running, he encountered obstacles. Often isolated, he made do in an emerging district without colleagues to consult and supportive organizational fallback. He sought solace from a small yet obliging North Bay bar that consisted of A.G. Browning, J.M. McNamara, A.W. Aytoun-Findlay and P.A.C. LaRose. David Dunlap in Mattawa, and Sudbury lawyers M.C. Bigger, H.D. Leask and F.F. Lemieux rounded out the young Nipissing bar. Valin inherited inexperienced court officers who took time to tutor. Sheriff Charles Varin and district court clerk Thomas Bourke both entered their unfamiliar duties with eagerness yet relied on Judge Valin to provide direction and schooling to get them going. The

³³ J. B. MacDougall, *Building the North*, Toronto, 1919, 107.

³⁴ *Sudbury Journal*, 16 March 1893.

³⁵ *Globe*, 1 April 1935.

North Bay district court house lacked accommodation for a judge's chamber. For fourteen years, he occupied an office off site at the Ferguson Block until, in 1909, an addition to the court house provided two judges' chambers, cramped attic book and storage rooms, and open space next to the chambers.³⁶ Valin presided in a second floor, multi-function auditorium, heated by a wood burning stove, that functioned alternatively as courtroom, political meeting place, dance hall and first town council chambers in 1891. The 1888 court house and lock up, designed by accomplished government architect Kivas Tully, evolved into a detention centre for the vast Judicial District of Nipissing. The entire main floor housed the district jail with upstairs living quarters for the jailer and family.

The situation Valin faced was in keeping with the state of the town.

Outside the wooden fence that surrounded the court house, horses with rigs were hitched up ready to navigate the muddy ruts that served as town roadways. The local traveller relied on the combined entrepreneurial resources of the blacksmith and the stable owner to facilitate travel about the community and beyond.

North Bay was gradually converting to masonry construction in place of log buildings and drafty shacks that sprung up to form crude dwellings. Those early homes featured a root cellar, garden, chicken coop, and shed to shelter cows,

pigs, and horses. Pioneers depended on a steady supply of eggs, milk, pork, and chicken to feed their families. The hardy settlers struggled to overcome disease and unsanitary conditions. The town had no hospital. Sickness had scarce remedies. Childbirth took place at home. Dr. Archibald McMurchy and Dr. James B. Carruthers met the medical needs of district residents at their home or office examining room and sent more acute cases by train to Mattawa General Hospital.

Joseph Valin is Nipissing's longest serving District Court judge. When selected a guardian of the Dionne quintuplets, the *Globe* described him "as one of the most colourful figures in Northern Ontario."³⁷ His term in office might have ended on his seventy-fifth birthday in 1932. However, he was asked to stay on pending selection of a replacement. He retired in 1934 with the appointment of Thomas Battle. Over a span of thirty-nine years, he presided over a vast territory that extended north to James Bay and which is now carved up into the districts of Nipissing, Sudbury, Temiskaming, and Cochrane. When he started, he relied on his two favourite horses, brought from Ottawa, and the CPR to reach outlying court locations. Towards the end of his career the automobile had become the new horsepower although he never owned or drove a car. To attend his northern courts, he often travelled by canoe and stagecoach in a region largely inaccessible and dominated by

³⁶ In 1943, at Judge Plouffe's direction, the unfinished space became the court house legal library. The interior walls were lined with finely crafted oak shelves extending from floor to ceiling.

³⁷ *Globe*, 1 April 1935.

rocks, lakes, and forests. The journey to Lake Temiskaming was adventuresome prior to the construction of the T&NO Railway. To reach Haileybury and New Liskeard, he travelled by CPR to Mattawa and then took the Moccasin Line to Kippewa where he boarded a steamer for the voyage up the lake. Despite extensive travel in rugged conditions, Valin gladly accepted his home territory.

His judicial workload presented a mixed schedule. Aside from his office duties and trial courts, arbitrations, and courts of revision, references and election recounts filled Valin's calendar. In 1900, Judge Valin acting for the Pembroke Electric Light Company and Judge Mosgrove of Ottawa, acting for the town, met in Pembroke and selected Judge Senkler of Perth as the third arbitrator in the Electric Light Company purchase arbitration.³⁸ A protracted arbitration in 1909 involved a dispute dating back to 1898. The Sturgeon Falls Separate School Board claimed entitlement to one-half the local taxes paid by the local pulp company. Counsel G.A. McGaughey appeared for the separate school, J.M. McNamara for Sturgeon Falls and George Franklin McFarland acted for the public school.³⁹ McGaughey and McNamara both served as North Bay mayor in their time. Judge Valin found in favour of the

separate school trustees.⁴⁰

Valin conducted an election recount shortly after coming to North Bay. It concerned the reeveship of the town with Robert Rankin and Alexander R. "Sandy" Morris as candidates. At the 1896 town election, Rankin defeated incumbent Morris by two votes. Judge Valin confirmed Rankin's election following a review of the ballots.⁴¹ He held his next recount in the 1908 Dominion election between George Gordon and Charles McCool. The returning officer declared Gordon elected by twenty-one and the recount sustained that result. His last recount had to do with the 1925 Dominion election between former mayor and town founder John Ferguson and E.A. Lapierre of Sudbury. Ferguson petitioned for a judicial review and after three days of rigorous scrutiny, Lapierre's election as the successful Liberal candidate was confirmed.⁴²

When Sudbury and Temiskaming judicial districts were created out of Nipissing, an OIC named Valin the first judge in each jurisdiction.⁴³ He established a reputation as a fair arbiter with good judgment. He got to know a wide range of citizens, mixed comfortably throughout the district, and made friends easily. Mary Wagner Valin established her presence in the Presbyterian Church while he and his

³⁸ *Perth Courier*, 17 August 1900.

³⁹ *Toronto Star*, 20 August 1909.

⁴⁰ *Perth Courier*, 15 October 1909.

⁴¹ *The Nugget*, 8 January 1924.

⁴² *The Nugget*, 7 November 1932.

⁴³ J. J. Kehoe for Sudbury (1908) and Henry Hartman for Temiskaming (1913) became the permanent judges.

two sons attended St. Mary's on the Lake. Valin played an active role in his church. He lent his name and prestige to public and private causes. He teamed up with local banker L.P. Snyder, CPR Ticket Agent D.J. McKeown, Crown Attorney Browning, and barrister John Michael McNamara, to promote and expand the North Bay Public Library. The library started out in temporary quarters on Main Street and later at the town hall. Recognizing that inadequate arrangement, he helped launch a drive to establish a freestanding building. Browning later praised Valin for "obtaining the Carnegie Library gift" for the town in 1914. He cut the ribbon at the opening ceremonies for North Bay's King Street arena in 1936. Following his retirement, Valin served as a guardian for the Dionne Quintuplets. Community leaders sought him out as a sounding board and intermediary in their frustrations with Bishop David Scollard. Among his entreaties with Scollard, at the urging of leading parishioners, Valin played a key part in the founding of St. Vincent de Paul Parish in North Bay. In his dealings with his bishop, he acted discreetly without inflaming tensions between the Irish Scollard and his francophone flock. Disaffected parishioners appealed to him when they felt aggrieved with Scollard. He carried out that role without antagonizing the Protestants.

James Klock won the Nipissing election of 1896 for the Conservatives even though Laurier swept to power. Did

Bowell's selection of a francophone for Nipissing alter the political outcome of the 1896 federal election? Valin played no active role in the election and had no vote. There is no indication that his appointment made a visible electoral difference. His selection received the welcoming commendation of *La Sentinelle*, the only French newspaper in the region. The *Sudbury Journal* pronounced the potential political import of his appointment when it declared,

The appointment of Mr. J. A. Valin of Ottawa to the Judgeship of Nipissing, is a tribute to the growth of French Canadian influence in the district. There are over 7,000 voters on the Dominion list, more than half of whom are 'French-Canadians.'⁴⁴

An instance of tension between the races arose during the contest for county town. In an appeal for support from French-speaking male voters, the Mattawa election committee campaigned with material designed to evoke strong feelings among its followers. To disparage North Bay, the committee declared that Mattawa was home to a majority French-Canadian population, whereas three quarters of the population of North Bay consisted of English and "protestants fanatique."⁴⁵ The bitter language of the campaign described the demeaning treatment the committee claimed one encountered in North Bay.

Vous êtes respectés à Mattawa, à North Bay on vous insulte à tout instant et on vous traite comme des serviteurs et des esclaves, on déteste notre belle langue française, et

⁴⁴ "Nipissing's Judge", *Sudbury Journal*, 21 March 1895.

⁴⁵ *La Sentinelle*, 5 Juillet 1895.

en voici une prevue. Si vous parlez français à North Bay, on vous répond ironiquement: "Talk white".⁴⁶

Valin's arrival placed him in a significant position of influence recognizing his intellectual capacity, public stature, and sufficiently gifted personality to assuage relations between the English and *les Canadiens français*. He performed this unofficial calling effortlessly through his willingness to engage with prominent townspeople to promote public ventures. Shortly after taking up residence in North Bay, he served as the honorary president of the popular West Nipissing Arts and Agricultural Society. There he joined a directorate of dynamic citizens representing all parts of the district who organized an annual exhibition in Sturgeon Falls.⁴⁷

In the 1896 federal election in Nipissing, Liberal-Conservative Klock obtained sixty-two percent of the ballots cast to defeat Reform candidate James Conmee. In the final count, Klock soundly defeated Conmee throughout the riding showing particular dominance in the townships starting from east of Mattawa to the boundaries of Sudbury. While both candidates split the vote in the town of Sudbury, Conmee's only sign of strength appeared west of Sudbury.⁴⁸

To what may we attribute Klock's decisive victory? One might argue that Klock was a local candidate whereas Conmee was a non-resident brought in

from Port Arthur to contest the Nipissing election. The man from Klock's Mills operated extensive lumber operations in the region and lived in a multi-cultural setting. Conmee had served as alderman and mayor of Port Arthur and currently represented Algoma West in the Ontario Legislature. Klock's victory inevitably relied on support from a wide spectrum of voters including French Canadians. Those voters obviously approved of the Liberal-Conservative government. Many invariably endorsed Klock and the administration for appointing Valin. The extent of that support remains a moot point beyond the scope of this narrative.

Valin's groundbreaking appointment made him the first French Canadian District Court judge in Ontario. Nipissing continued to have francophone judges since that time except for Irish Catholic Thomas Battle who served from 1934-1936. Laurier named Harry Darling Leask junior judge in 1903 but subordinate to senior Judge Valin.

There is no indication that Valin actively sought the appointment in Nipissing. It came to him as "a surprise and at first he was inclined to decline the honour for the reason that he was comfortably settled in Ottawa."⁴⁹ After sufficient deliberation with influential friends, he gave way to persuasion. His inspiration may have stemmed from the challenge to open up a new district with a large Franco-Ontarian population. The love

⁴⁶ *Ibid.*

⁴⁷ *Sudbury Journal*, 16 January 1896.

⁴⁸ *Sudbury Journal*, 6 August 1896.

⁴⁹ *The Nugget*, 7 November 1932.

of nature and outdoor life in the district appealed to him. For that reason, he selected a home on the shores of Lake Nipissing and later Trout Lake. Once installed in Nipissing, he joined a hunt club in Wahnapiatae, spent each winter participating in numerous regional curling bonspiels,⁵⁰ and took every opportunity to walk with his dogs. He declined an opportunity to return to Ottawa ten years later citing attachment to his new home and reluctance by his family to move away from North Bay.

A political compromise brought Joseph Alphonse Valin to New Ontario and the Provisional Judicial District of Nipissing. He stepped forward to accept the appointment at the urging of friends to advance French Canadian participation in the mainstream of Canadian life. Valin overcame censure on racial grounds. His favourable reception in Nipissing affirmed that the pioneer population had no appetite for engaging in the entrenched bigotry practised in Old Ontario. If his backers saw him as a torchbearer capable of fulfilling a mission, he measured up to their expectations. Can we say he was a “good judge”?⁵¹ I leave that equivocal subject for more learned hands. Any determination is beyond the

scope of this narrative. However, if that includes doing what was expected of him, he more than met that goal. He single-handedly got judicial services off the ground through skillful direction and diplomacy. He transformed the former limited jurisdiction of inferior courts in Nipissing to county court standards. Aside from his judicial functions, he participated willingly when called upon to add his influence in the life of the community. By any measure, Valin effectively fulfilled his mandate and proved he was a logical choice for Nipissing.

The Nipissing compromise that selected Valin represents a significant moment in conventional patronage policy. Did it open the door for Franco-Ontarians or was it one and done? In July 1900, Laurier appointed Albert Constantineau of Ottawa and L’Orignal as junior judge for Prescott Russell, home to a predominant francophone population.⁵² With that singular gesture, Laurier failed to appoint another French-Canadian judge in Ontario. Philip Girard writes that Laurier “did no better than the Conservatives... [who] had appointed the scholarly Valin in 1895.”⁵³ By 1912, the French had only one senator, Napoleon Belcourt, and two county and district judges: Valin and

⁵⁰ “The veteran Judge Valin who has piloted rinks to victory since the International Association was first organized has been playing up to his best form, being a consistent winner, and has started a class and is giving lessons to a number of the players, among whom are Tom Begg, Bill Martyn, Bob Miller, Tom McKee, and a number of others. The class is growing rapidly”. “Sporting News, Curling Notes, *The Northern Patriot*, 1916.

⁵¹ See John W. Morden, “The ‘Good’ Judge”, Law Society of Upper Canada, March 2004. http://www.lsuc.on.ca/media/hon_john_morden_the_good_judge_mar0504.pdf.

⁵² *The Toronto Daily Star*, 28 July 1900.

⁵³ Philip Girard, “Politics, Promotion and Professionalism: Sir Wilfrid Laurier’s Judicial Appointments”, in *Essays in the History of Canadian Law: A Tribute to Peter N. Oliver*, edited by David H. Flaherty.

Constantineau.⁵⁴ Up to that point, both political parties resisted fervent appeals to appoint francophones to meaningful public positions. They were hindered by strong anti-French sentiment in Ontario and frustrated by adverse legislation like Regulation 17. Northern Ontario waited until 1923 when Mackenzie King appointed Jean Baptiste Thomas Caron judge in Cochrane.⁵⁵ It seemed tolerable to select a Franco-Ontario lawyer for posting in heavily francophone jurisdictions. King appointed L'Original lawyer and parliamentarian Edmund Proulx like Sudbury in 1929.⁵⁶ Prime Minister Bennett refused to appoint a francophone when he selected Irish Catholic Thomas Battle to succeed Valin in 1934. He chose

Battle over Henri St. Jacques of Ottawa who seemed certain to receive the appointment.

The reluctance of political leaders to promote French Canadians for the bench illustrates the futile struggle they experienced following Confederation. French Canadians faced uncompromising barriers that stifled reasonable efforts to achieve due consideration and acceptance for government patronage in Ontario. It underlines the stranglehold that opposing forces like the Orange Order, fraternal groups, and entrenched bodies exerted over the body politic. The compromise in 1895 remains a milestone for those who campaigned for French Canadian participation in the judicial life of Ontario.

⁵⁴ *Toronto Star*, 25 January 1912.

⁵⁵ *Porcupine Advance*, 4 April 1923.

⁵⁶ *The Nugget*, 13 September 1929.