

Interview with Cameron Harvey*

JESSE EPP-FRANSEN, RYAN TRAINER

I. INTRODUCTION & STUDENT EXPERIENCE AT OSGOODE HALL

Jesse Epp-Fransen (JEF): I thought we could move chronologically and begin with your experience as a law student at Osgoode Hall. What was legal education like for you as a student? Was it comparable to the program now? In many ways Robson Hall is modeled after the shift at Osgoode Hall, as Osgoode was modelled after Harvard. Manitoba had a three-year program in place between 1921 and 1926 under Dean Thorson before it reverted to the apprenticeship model. It was not until 1964 that Robson Hall moved back to the three-year program.

Cameron Harvey (CH): And we were the last school to move back to the full time program, which is ignominious in some ways. The re-adoption of the three year program was mostly as a result of Cliff Edwards¹ and Dale Gibson.² Dale Gibson was the *éminence grise* behind Cliff Edwards for all of Cliff's deanship. Anyway, what was it like at Osgoode Hall? I think it was considerably different there than what it is like here now. At Osgoode Hall, what I experienced was the same as what we had here from about 1964 through to the late 1970s. It was a much more professional law school than Osgoode and Robson Hall have become. In several ways, the program was geared mostly to preparing students to practise law. I would say almost

* Interview conducted by Jesse Epp-Fransen and Ryan Trainer. Cameron Harvey graduated from Osgoode Hall with an LL.M in 1966. He began teaching at the Faculty of Law, University of Manitoba on July 1, 1966. He has been Professor Emeritus since 2006 and continues to teach in the area of Private International Law.

¹ Cliff Edwards, Dean of Robson Hall 1964-79.

² Dale Gibson, Robson Hall faculty, 1959-88, 1990-91, and is Distinguished Professor Emeritus. For his interview, please see page 25 of this issue.

entirely. They were all hard law courses then. Students' attitude and culture were different too. We went to school with a shirt and tie and jacket—no casual dress—and of course, electronically it was much different. Everything was only available in hard copy and I very much remember after a class some of the students would literally run to the library to get their hands on the case reports that were discussed in class. Some students would hide the case reports in the stacks. It was very competitive. I do not know how competitive it is today, but it was certainly very competitive back then.

Osgoode Hall was located downtown and completely different from what it is now. The law school was in the same complex as the courts so you could go from class to the court and sit in to pass the time, just as Manitoba students did when we were in the law courts downtown. Being downtown, we were closer to the profession; again, the same could be said of the school here until 1970. The professional culture of the school, the curriculum, the dress code: all of it made for a much different experience. The class size at Osgoode at the time was slightly bigger than it has become here. There was a fairly high failure rate after first year as there was no limited enrollment as there is now. Almost anyone could get in and then they pared the class down, as we did until we had limited enrollment in the late 1960s.

II. EARLY YEARS TEACHING AT ROBSON HALL

JEF: How did you decide to move from Toronto to Winnipeg and why did you decide to start teaching rather than practice?

CH: I had a summer job for the three years I was in law school at a firm called Fraser Beatty.³ It's still in existence, but I don't know the name of it now. It was on Bay Street; for those days, it was one of the largest firms in the country with 32-35 lawyers. I worked there for three summers and then I articulated there. I did not have a good experience in terms of hands-on files. I was mostly writing memos, as were the rest of the students there, and so I was not attracted to the practice of law as a result of that experience. Maybe it was partly my own make up, too. While I was articling, I got an LL.M. at Osgoode. When I finished my articling, I got called to the Bar in Ontario, but before that had decided I was not going to practice. I was going to teach, so I sent out a letter to several law schools and this one offered me a job.

³ Fraser & Beatty was part of a number of mergers in the 1990s. In 2013, then-Fraser Milner Casgrain combined with Salans and SNR Denton to become Dentons.

Curiously, it was similar to the days of the old NFL in the 1940s and 1950s. The CFL was paying more for football players than the NFL and we got players like Jackie Parker because of that. Well, when I started here I was making \$500 more than I would have made at Osgoode. At Osgoode, they were paying first year teachers \$7000 a year and here they were paying \$7500; but that isn't what attracted me. What attracted me was that they offered me a job.

I had my interview at the same time as another fellow, Peter Freeman⁴. He only stayed a couple years and then he became a law librarian. I came out here for an interview in December of 1965 and was hired in the spring of 1966. When I started on July 1, 1966, the changeover from the Manitoba Law School to the Faculty of Law was just occurring. Peter and I were the last teachers hired by the old Manitoba Law School, but we began our teaching positions as members of the University of Manitoba, Faculty of Law.

I also distinctly remember being interviewed by the board of trustees of the Manitoba Law School. Among the members was E.K. Williams⁵ who was the second and last chairman of the board, and Brian Dickson who later became Chief Justice.⁶ I remember those two in particular. The other one was Lorne Campbell; he died just a few years ago after being the senior partner at Aikins. The only thing I remember about the interview—and it bemused me—is that Lorne Campbell asked me if I read comic strips and if so, which ones? What the hell did that have to do with anything? He was kind of a joker. Anyway, that is how I came here.

RT: You obviously answered the comic strip question correctly.

CH: I guess I must have. I came here thinking, "I am going to come here for a few years and then move on" but instead, I stayed a lifetime.

⁴ Peter Freeman graduated from the University of Manitoba with a BA and the University of Washington with an LL.B. He practiced law in Winnipeg and Brandon briefly before joining the Faculty of Law at the University of Manitoba from 1966-68. He later served the Supreme Court of Canada as its Chief Librarian from 1980-82 and was appointed Queen's Counsel in 1990.

⁵ Esten Kenneth Williams (1889-April 30, 1970) lectured at the Manitoba Law School from 1915-34 and was a former Chief Justice of the Court of Queen's Bench.

⁶ Brian Dickson, Manitoba Court of Queen's Bench 1963-1967, Manitoba Court of Appeal 1967-1973, Supreme Court of Canada 1973-1990.

JEF: You have already referred to the move; in 1970 Robson Hall moved to the Fort Garry Campus.

CH: Yes, over the Christmas break, as it was called then. We moved from the law courts to Robson Hall. Curiously, they did not officially open Robson Hall until September of 1970. Even though we went into operation here in January 1970, the actual opening was delayed until September because the building was not completely finished. It was functional, but it wasn't completely finished.

I came here in 1966 and by that time the decision had already been made to join the University of Manitoba. I was not here when the decision was made to become a Faculty of the University of Manitoba. Had I been here, I would have been one of those who would have opposed it. Unfortunately, United College, which later became the U of W, was simply a college of the University of Manitoba. Had it been a university, I think there would have been a good chance that we would have stayed downtown and relocated to what is now the University of Winnipeg Complex, because I think the draw was to become a faculty of a university. Dale Gibson, I am sure, was very much involved in that because he wanted to become more involved in the academic life of the University. Had there been the University of Winnipeg I think he would have been more attracted to the idea of staying downtown because of the attributes of being downtown, rather than joining the University of Manitoba, but that was not possible and so we came out here.

JEF: Well that was my next question. There was an article in *The Lawyers Weekly* in which you were quoted as saying (concerning the move to Fort Garry), "I don't think it was the right move because we lost the close contact we had downtown with the courts and the profession, and inevitably became a more academic institution."⁷ I am wondering if you could talk a bit more about the connections to the community we had, how that operated and how you have seen that change?

⁷ Christopher Guly, "Apprenticeship to academe: The history of law schools in Canada" (2010) 30:19 *The Lawyers Weekly* at 26. (Available online: <<http://www.lawyersweekly.ca/index.php?section=article&articleid=1255>>)

CH: When we were downtown, we were close to the law offices and some of the students would have jobs at those law offices during the school year that they would go to after classes or even between classes. We had the proximity to the courts. We lost all that.

III. LEGAL EDUCATION AND REFORM

JEF: Moving now to the university and into the teaching: you talked about the doctrinal law, the black letter law course being taught. Right now we have the three types of courses being taught: doctrinal, clinical, and perspective.

CH: Right, that switch-over happened in the early 1980s. Alvin Esau,⁸ and Phil Osborne⁹ were primarily responsible for that shift in curriculum. Phil was the Chairman of the Curriculum Committee at that time.

JEF: You emphasized the practical nature of legal education particularly at Osgoode.

CH: Well, practical I am not so sure. But in terms of teaching the academic law, the courses were generally set up towards the practice of law. We did not have courses like Intensive Criminal Law or Intensive Administrative Law, courses that were more “lawyering” courses. The approach to the law involved what is the law and not so much what should be the law; there was not much philosophical content. It was “this is what you are going to encounter when you practice.”

JEF: So how do you feel about that balance? Where in your perspective is the appropriate balance?

CH: I would ditch a lot of the perspective courses, quite frankly. Because in my view—and we are not unique in this way—law curricula across the country have become too much involved in “The Law and This.” I think the faculties of law—and I may be misinformed because I am not engaged in this as I once

⁸ Alvin Esau, Robson Hall faculty 1977-2010. He is a Senior Scholar. For his interview, please see page 257 of this issue.

⁹ Phil Osborne, Robson Hall faculty 1971-2012. He is a Senior Scholar.

was—are in danger of becoming simply another department of the Faculty of Arts, like the Carlton model. I don't know how many of them exist, but two or three universities have Law Departments in the Faculty of Arts and that is the direction I think in which faculties of law are going, unless the model developed by my former colleague Lee Stuesser,¹⁰ who was the Dean of Law at Lakehead University, takes off, and I would not be surprised if it does. But it will take a lot of time to take off. It is easy for him because he is starting from scratch, so he can hire the teachers that are interested in delivering the type of program he has there. The rest of the faculties of law are stuck with tenured teachers who cannot do what his curriculum requires to be done. So I don't know how the current faculties can transform themselves if that becomes the way to go. It is a big problem.

I certainly think he is on the right track because of two things. He is very much a person who believes in teaching at a law school, as opposed to research and publication. Research and publication has its place but I think it has eclipsed teaching. The primary concern of faculties when they hire staff is can the staff research and publish, as opposed to can they teach. I may be completely misguided here, but I think more and more staff are interested in research and publication and want to spend as little time as possible teaching. In the late 1980s and the 1990s, it was almost impossible to get a job as a faculty member because there just were no spaces. The people who were hired in the 1960s and 1970s were young enough; they were not going anywhere, so there were very few spaces. So the people who wanted to teach had to stay in graduate programs. Most of them came out with a doctorate, which is almost mandatory now to get a teaching position, but that meant they were people who were interested in research and publication. They had to publish in order to build up an *oeuvre* to get themselves a job. So, they are naturally of that bent and want to continue doing that, which is unfortunate. I published a lot in my day, but it was secondary to teaching. I am still teaching because I love to teach. The kind of stuff that I published was very much written for the profession. That is the way I set up a course syllabus. It is towards a practical application of what I am teaching. I think a lot of what is published, certainly the articles, is of very limited value, maybe read by half a dozen people. I think that a lot

¹⁰ Lee Stuesser, Robson Hall faculty 1988-2008, Lakehead University Dean 2012-June 30, 2015. For his interview, please see page 297 of this issue.

of what is written is useless in terms of the practice of law. That is my orientation; maybe that is “old-school.”

JEF: Returning to the issue of courses offered: a lot of the courses we have been talking about, in terms of the perspective, clinical, and doctrinal, are upper-year courses. The first-year courses look roughly the same as they were, at least in name. In 1968, the courses were Contracts, Torts, Legal Institutions, Criminal, and Property. Today, Constitutional Law has been included and Legal Institutions has become Legal Systems and Legal Methods. Legal Institutions is a course that you and Cliff Edwards created.

CH: Cliff Edwards taught the legal history part of Legal Institutions, which was entirely English legal history. I taught the rest of it and I have forgotten the content of it. There was some Manitoba content in there, and we taught things like statutory interpretation, but I cannot remember the rest of the course.

JEF: It also had things like how to read a brief and how to read a case. We get this now in Legal Systems. Professor Irvine teaches the English legal history.

CH: I guess if you get any lessons on equity at all, that is where you get it. Is there any statutory interpretation at all? Any construction of documents?

JEF: There is statutory interpretation in each of the black letter law courses but not a lot of construction of documents. Professor Irvine gave three lectures on Equity at the beginning of the year. Those were valuable lectures and the lessons we learned in those lectures keep coming into play in different classes. In 1970, you wrote about legal institutions in the *Manitoba Law Journal*.¹¹ The purpose for the course you wrote was to introduce students to the legal systems of Canada and particularly Manitoba, and that has remained the purpose. You do note that students seem to be reticent to engage with it, and I think in some ways we are still experiencing that today. Was that something you found shifted? Did students’ perspectives on legal institutions change?

¹¹ Cameron Harvey, “Why a course entitled legal institutions?” (1970) 4:1 Man LJ 201.

CH: No, it did not. It may be that I take some of the blame; maybe I was not able to engage the students. I would not consider myself to be among the elite teachers in this school during my time or even all time. The elite teachers of this school were Gerry Nemiroff¹², Phil Osborne¹³, Linda Vincent¹⁴, Jack London¹⁵, and Bryan Schwartz.¹⁶ The elite teachers engage you. I was not there in terms of being one of them so it was probably partially my fault that students did not take to legal institutions. It was a course that had a disparate group of topics rather than a connected theme throughout, and that was probably part of the problem, too.

JEF: Are there further reforms to Legal Systems that you would have like to have made but you did not get the chance to? Or to the curriculum in general?

CH: No, I could not say that, no.

JEF: From when you arrived until today, when did you feel it was closest to the ideal legal education or what you would like to see legal education being?

CH: The late 1970s, early 1980s. Jack London and Alvin Esau (I am not sure who else was on the Curriculum Committee)¹⁷ were responsible for getting the intensive courses into the curriculum. I do not remember them distinctly but I remember it was a long drawn-out battle at faculty council to hammer out the changes that occurred then. But when we had that lawyering cohort: that was probably the ideal time. There were those of us

¹² Gerald Nemiroff, Robson Hall faculty, 1968-2008. For his interview, please see page 135 of this issue.

¹³ Phil Osborne, Robson Hall faculty, 1971-2012.

¹⁴ Linda Vincent, Robson Hall faculty, 1973-2005.

¹⁵ Jack London, Robson Hall faculty, 1971-88, 1990-94; former Dean of Law at the University of Manitoba. Mr. London is now senior counsel at Pitblado Law. For his interview, please see page 191 of this issue.

¹⁶ Bryan P. Schwartz, Robson Hall faculty, 1978-present.

¹⁷ Curriculum Committee: Jack London, Robson Hall faculty, 1971-88, 1990-94. Alvin Esau, Robson Hall faculty, 1977-2010. Dale Gibson, Robson Hall faculty, 1959-88, 1990-91. Norm Larsen, Robson Hall faculty, 1982-84. Phil Osborne, Robson Hall faculty, 1971-2012. Bryan P. Schwartz, Robson Hall faculty, 1981-Present. Eleanor Andres, graduated from Robson Hall 1987. Steve Vincent, graduated from Robson Hall 1984.

who were not so happy with the perspective courses, because we saw presciently that these were going to be soft law courses. It is odd though; in the beginning, the students did not take to them either. Some of the courses had trouble drawing enough students; now they are some of the most popular courses.

JEF: This is the perspective courses, not the intensive courses.

CH: Yes. We had to keep adding perspective courses to some extent, to have enough for all of the students who wanted to take them, which, of course, dismayed those of us who were hard-core black letter law professionally oriented teachers.

JEF: At some point a certain number of courses were made requirements to promote writing skills, and the notion that those would be made requirements indicates to me that some students were resisting taking them.

CH: When the “Perspectives” category of courses was added to the curriculum, you had to take a perspective course in second year and in third year. Most of the students did not take more than they were required to take in the early years of the perspective course cohort. A main purpose of the courses was—as you suggest, and supported amongst certain members of the faculty—that students were not being required to write enough. Also, initially it was thought if they had this required seminar class, it would be small enough that students would be required to speak out even if they did not want to. As they did not have to speak out in other courses unless of course it was taught by someone like Gerry Nemiroff. Even Phil Osborne was not a classic Socratic teacher. A classic Socratic teacher gives you no information, just asks questions, which stimulate you to find out for yourself.

JEF: I had a professor for Contracts who went alphabetically through the list of students so you always knew when so and so was asked a question you better get ready because you were next.

CH: I continue to teach Private International Law, which used to be called Conflict of Laws. I persuaded the Curriculum Committee to change the course name because there are two types of international law, private and

public. Conflict of Laws is a bad name, but the books are always called Conflict of Laws even though it is not instructive. So to some extent, it was a marketing ploy. I do not call on students. I consider my teaching method the avuncular Socratic method. I ask you the questions and then I answer them for you.

IV. PERSONAL LIFE

JEF: You obviously love teaching, as you have said. You have taught for many years, what is it about teaching that you love?

CH: Well I love talking; strangely I like talking in a semi-controlled environment. I consider myself somewhat like Johnny Carson. He was reputedly an extremely shy individual but on the set, where he was in control, he was superb. I was not superb as I have said before, but in that controlled situation I just love to talk. I love to explain the law. But, if I had it to do all over again, I probably would not go into law. I drifted into law like so many students do with an arts degree. That was the case when I was young. But if I did go into law, I would not go into teaching because I just do not like the teaching situation as it now is evolving. What I would become is a crown prosecutor because crown prosecutors are on their feet more than any other litigator—more than defence counsel, certainly; way more than civil litigators. I like to be on my feet in a situation where I have some control. Otherwise probably I would become a veterinarian!

JEF: Why a veterinarian?

CH: My father was a surgeon and I disappointed my father in three ways. First of all, I did not go into medicine. Second, I married a Roman Catholic, and he was extremely anti-Roman Catholic because of his upbringing. His family was a Protestant family in rural, southern Ontario in a heavily Roman Catholic area so there was tension; and finally, I did not take up drinking scotch.

Unbeknownst to me at the time, I fulfilled a dream of my mother, of whom I have no recollection because she died before I turned two. In the 1920s, before she married my father, she was a legal secretary, aspiring to go to law school.

So, why a veterinarian if I did not follow my father into medicine? I spend a lot of my time now volunteering at a horse rescue ranch near Clandeboye, Manitoba. I have found I have a natural affinity for the animals. I find I am more interested in animals than humans. In terms of medicine, I could not care less about helping people out, but animals I have an affinity for. Maybe I could not be a veterinarian; I might be too squeamish. Are you squeamish about animals or people that are in trouble?

RT: Depending on the situation. A little blood is not a problem, but I am sure there are limits to what I could handle.

CH: In the interest of helping animals, I think I could get beyond it. What was the question?

JEF: Well you had mentioned the fact that you would become a vegetarian, sorry a veterinarian.

CH: Matter of fact, I am a vegetarian. I became a vegetarian when I turned 65—for philosophical reasons, not for health. I just decided I no longer wanted to eat any of my fellow creatures. My basic principle is I do not eat anything that has a face including snails and clams. I am an octo-ovo vegetarian so I eat milk and eggs.

JEF: How have you enjoyed that?

CH: I would not go back. The idea of eating meat is distasteful to me. Another thing I have tried recently is that I no longer listen to or watch or read the news. I am an obsessive daily walker. Sometime I accompany my partner, Linda Vincent, to the Reh-fit Centre where she attends exercise classes. I walk to The Forks, where she picks me up to go home. The other day, she turned on the news as we were driving down Waverley. To me, it was similar to a situation where someone, who did not know I was a vegetarian, presented me with meat. To listen to this crap news was similarly distasteful.

RT: During the school year I refused to put on the news. I have other things going on that are more important and there is nothing you can do about it.

CH: There is nothing you can do about it and it is boring. The local news is car crashes, murders, fires and things like that, and the international news is, at the least, depressing. Maybe it is depressing—period. It makes you anxious and you cannot do anything about it, so why bother being engaged?

The other thing I did four or five years ago is stop traveling. I do not have any need to see places like Angkor Wat or Machu Picchu. I am just not that kind of person who needs to actually see it. The news made me think of this because when you tell people, their reaction is usually: “What, you are retired and you don’t travel; what is wrong with you?” And similarly: “You don’t listen to the news? You don’t know anything about what is going on with the world? What is with you? And you are a vegetarian to boot?”

RT: I think it helps you to connect better at home.

CH: I am not engaged with the wider world though. I would have liked to have been on the bench and I could have been on the bench, I am sure—before the time where there was a selection committee set up, when appointments were made directly politically. Now you need to build a community engagement record to get on the bench, which is impossible for me because I am just not involved in the community at all. I am more a recluse than anything else. I don’t have many friends other than Linda Vincent, my best friend. But I think I would have made a good judge.

For 30 years, I was the chairman of the Land Value Appraisal Commission, which is the tribunal that decides how much compensation someone who has been expropriated is going to get if they cannot agree with the government compensation offer. I enjoyed those years, making decisions and writing the reasons for those decisions. I could have been a good judge, but if you do not buy a ticket you cannot win the lottery and I did not buy a ticket.

V. LAW REFORM COMMISSION

JEF: You were with the Land Value Appraisal Commission for thirty years. Now you are current Chair of the Manitoba Law Reform Commission.

CH: Yes, the President.

JEF: I would love to hear about some of the reforms that have been the most important to you. What was your greatest success, or something that you believe should have been taken up but was never taken up by the legislature or passed into law, a reform you would love to see?

CH: There have been three Presidents of the Law Reform Commission: Frank Muldoon¹⁸ was the first one (he was a federal court judge [from 1983-2001] but is now deceased); then Cliff Edwards; and I took over from Cliff in 2006. The Law Reform Commission has changed in the last number of years. It was a much bigger operation initially. I think it had about seven or eight legal counsel; now we just have one. The record of implementation of law reform commission reports has been very poor. Only in the 80s when Roland Penner¹⁹ was the Attorney General was there a good record of the law reform commission reports being implemented and that is because of his connection to the law school and to Cliff Edwards who was the President then.

Without preparing to answer the question, I cannot really answer it in terms of what is the best that we have done and what my regrets are. I can say, off the top of my head, that maybe the best report in terms of the one that makes me the happiest, is the Franchise report. They were already going to pass the Franchise Act, but I think we had a major influence as regards the act. So that was a real accomplishment of which I guess I can be somewhat proud of; although, it is not my area of law, so I did not contribute much substantively. I can tell you this: the best member I have in terms of contribution is John Irvine.²⁰ John Irvine has been on the Commission for a long time and, somewhat to my surprise, he is the best member of that Commission. He comes prepared to talk thoughtfully about the draft report that we are dealing with at a given meeting and no matter what the area of the law is, he has something really substantial to contribute. The commission would not be nearly as good as it is without John on it; there is just no question. John is one of those people who can talk about

¹⁸ Frank Muldoon (1930-January 9, 2013) was named Chairman of the Manitoba Law Reform Commission in 1970, which led to his appointment as vice-president and later president of the Law Reform Commission of Canada in 1977.

¹⁹ Roland Penner, Robson Hall faculty 1967-present.

²⁰ John Irvine, Robson Hall faculty, 1970-present.

any area of the law. Not quite as well as Trevor Anderson²¹ or Art Braid²², who stand out in my mind as colleagues I have known who can talk interestingly and substantially about any area of the law. It just amazes me. I do not know anything except the little areas that I teach.

RT: It is an amazing skill to have.

CH: Art Braid is one of those people who is just born with this genius that enables him to fairly quickly process whatever area of the law he is involved with and come up with something thoughtful. Trevor Anderson is extremely well-read and that would contribute to his ability to contribute but he also has that innate ability that I think you are either born with or are not. I am not born with it so I cannot talk to you about corporate law or any other area of the law other than succession, private international law, and agency.

RT: Trevor Anderson has a summer student working for him now, sorting through the newspaper clippings that Trevor has collected from I do not know how far back.

CH: From forever.

RT: That is what it looks like; he has boxes and boxes and so they are trying to compile all of them. I am assuming it will take quite a while.

CH: He just reads everything; well I should not say he reads everything. His reading has obviously got to be tailored but that is all he does, I think, is read. He used to do it more than he does now but he used to photocopy things he read on areas of law that he thought would interest us and put it in our mailboxes downstairs. He still gives me stuff on wills and estates even though I have not taught wills and estates for about ten years or more. What was the question that got me off on that?

RT: This was about your experience on the Law Reform Commission.

²¹ Trevor Anderson, Robson Hall faculty, 1971-2007. He is a Senior Scholar.

²² Arthur Braid, Manitoba Law School and Robson Hall faculty, 1964-2000; Dean, 1994-1999. Currently he is a Senior Scholar. For his interview, please see page 77 of this issue.

CH: Right, if you wanted any more on that, I would have to go and look at the annual report. Reports have mostly not been implemented, unfortunately. Really, it baffles me. Most of what the Law Reform Commission deals with is not controversial. It is not just the NDP; it is the Conservatives as well. It is not as if they have huge legislative agenda and they could not possibly add to it to get things through. It would add to their luster to put this on their agenda and pass an act. We did a report a few years ago, shortly after I came on board, about liability waivers that you have to sign when you go skiing or do this or that. Now that was controversial and maybe was not something that they want to pursue but that is very uncommon for a report of ours to be like that. We just passed a report on contributory negligence and joint tortfeasors, I mean, really good stuff that will never see the light of day.

We were engaged in a joint project with three other law reform commissions in Western Canada on the power of attorney and enduring power of attorney in the *Powers of Attorney Act*. Our act is out of date and it should be updated. So far, nothing. Manitoba passed, I think it was 1885, an act called *The Stable Keepers Act*. We published a report on it a few years ago and people would roll their eyes and wonder, "What the hell?" Other provinces had recently updated theirs and renamed it the *Animal Keepers Act* because there are no longer stables, but there are people who keep animals. The act applies to them and it always has, but our report will never be implemented. If it sounds like this bothers me, it actually really does not. It bothers some members of my commission more than me. I think my job as the Commission President is to get the Commission to publish good reports and after that it is out of my hands. It is in the hands of the legislature and if they do not care, fine. I will just keep doing my job, which is to produce good reports.

VI. LEGAL EDUCATION AS AN ACADEMIC PROGRAM

RT: You had mentioned that when you were at school at Osgoode, there was not as much focus on the philosophy of the law. One of the defences of law as an academic program that we have heard is that it allows students to think critically about the law and engage, not just with the law today, but with what the law will be in fifty or a hundred years from now. Do you agree with that approach?

CH: No, I do not agree with that approach to the law at all. And I suppose that makes me sound like a troglodyte to some people but I think that the law school, like the Faculty of Medicine, should be geared to the professional education of its law students, gearing them towards the practice of law. I do not know if the percentage has fallen over the years of students going that route. I think it is short-changing the students. I do not like the word practical; professional is the word I prefer. It is not teaching how to fill out forms; it is teaching students about thinking of the law in terms of its application to what they are going to be doing for the rest of their lives. For example, when I taught Wills and Estates, the course was set up as if you were preparing a will: from day one, when someone walks into your office and you open a file until the day you close that file. You should have done everything from drawing the will to administering the estate. In Private International Law, you would have been engaged in a matter of litigation that involved private international law issues.

It was simply talking about the law in terms of that professional application. If you looked at my syllabus compared to, say, *Feeney on Wills and Estates*, or looked at my syllabus on Private International Law compared to a textbook on conflict of law, you would see it set up completely differently. The books on conflict of laws or wills and estates are geared for practitioners, but they separate the topics so there is no continuum of the treatment of them from a practice point of view.

RT: I think you would find a receptive student audience to the idea that the academic nature of the current system is not equipping us best for practice.

CH: I understand that more than ever was the case; law firms have to teach the students how to practise the law. They basically have to teach the students all over again, or for the first time.

RT: Part of what we thought about going into this special edition was to reflect on the great transition in legal education fifty years ago from an apprenticeship model to an academic program. Given market pressures and educational reforms happening elsewhere, what would be the likelihood of returning to a more professionally-focused law school?

CH: Like I said earlier, it is going to be really difficult to make that swing back because the current staff is not capable of delivering that program. They are all like me (well, not all) with no practical experience and no interest in teaching a practice-oriented course.

RT: A recent Dean of the University of Saskatchewan said if the current Canadian law schools fail to provide practice-ready students, you will see new schools, such as Lakehead, popping up, that are geared towards producing practice ready students.²³

CH: I was the Associate Dean for fifteen years. I first started with Roland Penner and then Art Braid and then Harvey Sectar.²⁴ Of those three deans and of the deans I have worked with at the law school since 1960, Harvey Sectar is in a class by himself.

RT: It is no surprise he is Chancellor of the University now.

CH: Yes, it is no surprise; he is a wonderful person. I have said it before: he is the wisest person I have ever encountered. Not the most intellectually brilliant, but the wisest person.

RT: I think his experience at Ricki's Canada is indicative of his business acumen and administration skills.

CH: His father started the local chain, but Harvey took it national. Then he decided to sell and he was thinking, "What am I going to do with the rest of my life?" He decided to go to law school. All of his family thought, "You are crazy; you are too old." He was in his forties then. I think he sort of wrote the LSAT and did very well, of course. He comes to law school, and in first year Constitutional law, taught by Butch Nepon,²⁵ a full time faculty member at the time, Harvey had a brain aneurysm in class, and they carried him out on a stretcher. He has to drop out of law school; he comes back the following September, starts again, and finishes first in his class. All of us

²³ Christopher Guly, "The future of Canadian law schools", *The Lawyers Weekly* (8 October 2010), online: <<http://www.lawyersweekly.ca/articles/1266>>.

²⁴ Harvey Sectar, Robson Hall faculty 1999-2009.

²⁵ Butch Nepon, Robson Hall faculty 1969-1998.

oldies were rooting for him to win the gold medal, for us, which he did. Remarkable performance! And then, as a result of Art Braid's persuasion, Harvey threw his hat in the ring to succeed Art as Dean. The rest is history. He was a wonderful dean in terms of his wisdom, and his ability to raise money like no other dean has been able to do before or since. His only shortcoming—and Lee Stuesser, if you ever talk to him about Harvey Sectar, would say—was that he was not interested enough in the curriculum, in the academic side of things. By the way, I would add Lee to the list of elite colleagues in terms of teaching. As Dean of the Lakehead program, he believes very strongly that the prevailing emphasis in the law school should be teaching, not research and writing.

RT: He wrote an article in the *MLJ*, just before Lakehead opened its doors.²⁶ In it, he said, "If we are going to teach contracts, we are going to look at contracts." He said, "My students will learn the black letter law, but they will also see a contract, know how to write one, know how to read one, and know how to negotiate a contract."

CH: Curiously, when I was at Osgoode that was not the way it was taught. Maybe it was just my instructor but Contracts was taught principle by principle, not through practical application. So when it came time for the final exam, it was all problem questions, and I was thinking, "What the hell? What am I supposed to talk about?" I had all of these principles in my head and I had no idea how to apply them to the problem. Obviously, I was able to apply them well enough to get good marks. Obviously that is not the way to teach contracts.

Butch Nepon was in the first of the three-year program classes that commenced in 1964. When I started teaching in 1966, I was teaching admin law. That was a course that was taught in third year. It was being taught to both the first of the graduating classes of the three-year program and the last of the graduating classes of the four-year program. We had two graduating classes in 1966-67. I taught that course to each of them. Butch Nepon was in that class. He was the most brilliant law student I have ever taught; not the most brilliant person, but certainly the most brilliant law student. He did not participate in class, but he would get to the exam, start writing, and write continuously for the whole exam. The remarkable thing

²⁶ Lee Stuesser, "The Future for Canadian Law Schools" (2013) 37:1 *Man LJ* 163.

was: he would not only answer the question in terms of the law, he would answer the question in terms of sociology, or political science, or whatever other area may be involved in the answer. It would be a complete answer and it all just came flowing out of his head. He never thought about it, never made any notes. He never had to structure an answer. It was just a stunningly amazing performance. But he was incapable of practising law. I think I might have been capable, but he was just incapable. He did not have that mindset, but became a wonderful colleague. Unfortunately, he died prematurely of an abdominal aneurysm, and I miss him. I taught Administrative Law until the late 1980s and he taught Administrative Law, as well as Constitutional Law during that whole period when he was a member of the faculty. He was such a creative thinker. I am not a creative thinker. He would come into my office and run things by me and I would just marvel. It is like watching a hockey player or a soccer player doing something and you think, "How the hell did he do that?" He did not even want any feedback; he just wanted someone to bounce ideas off of. He had a very good sense of humour, which was helpful.

Another colleague whom I think of because I used to go walking with him, and unfortunately he died prematurely, was Barney Sneiderman.²⁷ Too bad he is not around because he taught two good perspectives courses. Law and Bioethics was the main one. He taught Criminal Law as well, a very worthwhile professor to encounter. He was the principal author behind the book *Law and Medicine*, along with Phil Osborne and John Irvine. I imagine Phil's book on Torts is darned good.

RT: It is very clear and well-structured.

CH: Now he is working on another edition of the Torts book. He has a stack of reports about four feet high. I have always picked areas of the law that are very small niches: *habeas corpus*, agency, and dependant's relief. My case numbers for the next edition of agency are very low. I could easily master an area of the law with 2500-3000 cases in total. I could never write a treatise on say, the law of contracts. I do not even think I could write a primer, an introductory book; it is just too big. I admire people who can. I am not Stephen Waddams, that is for sure.

²⁷ Barney T. Sneiderman, Robson Hall faculty 1971-2007.

RT: Waddams' book on contracts is obviously quite an undertaking.

CH: I do not know how much of that he does himself. He must have students to help him. I have never used a student to do research for two reasons. I remember sitting around a party and the topic of Criminology came up. I was taking Criminology taught by Martin Friedland, whom I remember very well because on the day that John F. Kennedy was assassinated, we were on a Criminology excursion at the three institutions at Kingston that then existed: Joyceville; Collins Bay; and the big house, Kingston Penitentiary (KP). KP was maximum security, Joyceville was medium, and Collins Bay was minimum. It was interesting to hear what the inmates of those institutions thought of the assassination of JFK. Some of them were normal reactions and some of them were very cynical. I had a sports car in those days as I do now. I had driven to Kingston in it and I drove back to Toronto with Martin Friedland. Anyway, at this party and one of the students who was doing research for him said that he made up the statistics he handed in for a book that Friedland was writing; that stayed with me. So, whether my classmate was joking or not, I could never trust a student from that day onward. Plus, I just cannot think that the students are competent enough in an area I am interested in. Whatever I ask of them, I will just have to do all over again. So why bother? I will just do it myself. My areas have not been big areas—2500 cases and not many articles to cope with that I could not do it myself.

JEF: Thanks so much Professor Harvey, we really appreciate it.

Interview with Janet Baldwin*

JESSICA DAVENPORT, RYAN
TRAINER

I. INTRODUCTION AND LAW SCHOOL EXPERIENCE

Ryan Trainer (RT): To start, I am going to try to jog your memory a little bit. You studied law at King's College, University of London; why did you decide to study law?

Janet Baldwin (JB): In those days, law in England was and still is a first degree, which meant I was very young when I was going to law school and when I started teaching. There was no such thing as career counselling, so it was not that anyone guided me towards law. Certainly it was not in the family. I was interested in debating, and logic, and I thought law would be interesting. In England, unlike here, law was not necessarily seen as a route to practice or not only seen as such. It is in a sense a general formation. I had other interests but many of them seemed less practical, such as linguistics. There were not many women in law school at that time, either as students or faculty, but there were some. I think things had changed on that front earlier in England than in Canada because of the war, with women entering professions that were previously perceived as male occupations. Although there were not many of us, there was a group of us.

RT: Since you have agreed to let me test your memory, do you remember how many women were in your class, even a rough estimate?

* Interview conducted by Jessica Davenport and Ryan Trainer. Janet Baldwin graduated with an LL.B from the University of London King's College in 1964 and an LL.M from the University of Illinois, after attending the University of Warsaw, Poland, from 1964-66. At the University of Manitoba, she served as a professor (1967-98) and as Associate Dean for four periods between 1982 and 1997, interrupted by maternity leaves. She was a Commissioner (2000) and Chairperson (2001-2007) of the Manitoba Human Rights Commission. She currently serves as Chair of the Hunger and Poverty Awareness Committee of Winnipeg Harvest and is a member of their Board (2008-present).

JB: I will take a guess. London University is different from many other universities because it is so very big, even the colleges are big. Now they have thousands in each year of law, but there were certainly hundreds when I was there. I would say somewhere between five and ten percent were women.

RT: Certainly more than here.

JB: Well, when I began teaching here in 1967, and I only remember three female law students, one in each year.

RT: Everyone else we have interviewed for this special issue received his or her law degree in Canada. Some of them went through the apprenticeship model, others through the system as it is now. What was the program like in England at the time?

JB: It was very much university-based. Although being in London, there were a lot of prominent members of the Bar who would do at least some teaching at the law faculty, which was harder to do elsewhere in England. One also had a lot more opportunity to go to the courts that were just down the road from where I studied. We did that a lot. But no, it was absolutely university-based.

RT: Art Braid¹ spoke in his interview about how the University of Manitoba would, on occasion, receive distinguished members of the British Bar. It must have been something else to have them work just down the street and stop by for lectures with some regularity.

¹ Arthur Braid, Manitoba Law School and Robson Hall faculty, 1964-2000; Dean, 1994-1999. Currently he is a Senior Scholar. For his interview, please see page 77 of this issue.