

Interview with Paul Chartrand*

BRYAN P. SCHWARTZ

I. INTRODUCTION

Bryan P. Schwartz (BPS): Just to give you a bit of background, Paul, a few years ago, I naively thought it would be a good idea to look back in the 1960s when we transitioned from being a practitioner law school to an academic law school. We used to deliver the program downtown and there were no academic law profs. We did this big change, and I interviewed people from those times—the first full time profs and students from those days—and it was always very interesting. As you might expect, we had no Indigenous voices in that project; there just weren't a lot of First Nations, Métis, and Inuit people going to law school at the time or in the profession. I thought that that was a missing dimension from the whole story of legal education in Manitoba. So, for this summer's project we want to interview a lot of the people who were there, the first wave of Indigenous people to enter the profession and participate in it, and you are our very first interview.

Paul Chartrand (PC): What's the subject of your interest as a project?

BPS: I guess the question is—as a matter of historical experience—what was the experience of the first group of Indigenous people who went to law

* Paul Chartrand is a prominent Indigenous lawyer with a long career focusing on respecting and advancing the rights of Indigenous Peoples. He was an advisor to the First Ministers Conferences on Aboriginal Constitutional Reform and the UN Declaration on the Rights of Indigenous People. Mr. Chartrand has held several high-profile positions including serving on Canada's Royal Commission of Aboriginal Peoples and Manitoba's Aboriginal Justice Implementation Commission. He is a member of the Metis community in St. Laurent. He received his Law degree from Queensland University of Technology in Australia and completed his Master of Laws at the University of Saskatchewan.

school? How did they respond to the challenge? Was it a welcoming environment, and now that it's 30 or 40 years later, what should we be doing different or better?

PC: You may or may not know that I didn't go to law school here.

BPS: Our criteria were people who went to law school here or people who have had an active role in the legal affairs in Manitoba, so you didn't have to be from here. You fit the second criteria.

PC: I am from here, but I studied elsewhere.

BPS: So, where did you come from? What community were you born in and where did you grow up?

PC: St. Laurent, where I live now.

BPS: Tell me a bit about that community, was that a distinctively Métis community at the time?

PC: Is the Pope Catholic?

BPS: I'm guessing...yes!

PC: It's definitely one of the oldest Métis communities and one that has, compared to all other communities in Manitoba, at least, been perceived as having maintained and retained its characteristics as a Métis community. That would be the opinion, for example, that is evident in the treatment of the community in Canadian Geographic Magazine, saying what I just said—that it is one of the distinctive Métis communities that has retained its character.

My family was one of the first five families that built houses there along the lake. We used to travel seasonal routes that included Fort Garry, what is now Winnipeg. We would cross Lake Manitoba up into Lake Winnipegosis for the winter trapping season. There was also buffalo hunting, while there was buffalo hunting. My understanding is that the last wild buffalo was sighted around the Souris River in 1870, so it disappeared a long time ago, but we can trace our relatives—I am speaking about my

family—by those old seasonal routes. So if you look at the Chartrands, and where they are found, you'll see St. Laurent; you'll see the other side of the lake, Lake Winnipegosis; and that is where the people stopped, that would be Duck Bay and Pine Creek. So, a lot of Chartrands in Pine Creek First Nation. Also, in Skownan, which is not too far from there, which used to be called Waterhen. There used to be a Hudson's Bay Company Post there, as well.

My namesake actually is well known in the mid-19th century. Jennifer Brown¹—you may or may not have heard about her—she is one of the foremost historians that has published a lot about Métis history. She sent me an extract from something quite rare, which is a journal of the Hudson's Bay Company Post at Waterhen, from the year 1850. She found it in a small collection somewhere in a little town in Washington State. Chartrand is spelt about five different ways, so you know that spelling is a pretty modern invention, and you know that standard spelling is a modern invention. These guys weren't very literate, so I had a kick out of reading the different ways they spelt Chartrand.

Up north as well, if you go to The Pas, for example, I have some cousins who live there; my late brother's god-father is from there. I grew up with stories about trapping all the way up to Cumberland House and people almost starving in the 1930s. My older brother and sister remember those days; they are in their 80s. We also have relatives down in the Qu'Appelle Valley; that also was one of the old historic travelling routes, an overland route. I think it went through Assiniboine and Fort Ellice and then down into Qu'Appelle Valley.

We also have relatives sneaking further down, in the Grasslands of South Saskatchewan. There is a well-known place there in the grasslands past Val Marie, Willow Bunch. There is a book written about it. There are some lost Chartrands out there too.

So, that is where we are, that is where the family is from, and St. Laurent is kind of the heart of it. It was also a mission centre for the Oblate priests;² it was the headquarters for the First Nations communities in that area and

¹ Jennifer S. H. Brown is a retired history professor, historian, anthropologist, and Director of the Centre for Rupert's Land Studies. She is a Professor Emeritus at the University of Winnipeg.

² The Oblates of Mary Immaculate (OMI) are a missionary religious congregation in the Catholic Church and has conducted missionary work in Western Canada since the mid-19th century.

so on. But anyways, I'll stop there because I can talk for five hours on the history of the family and the community.

II. IDENTITY

BPS: People reading this interview today will read it through a prism of all of the drastic changes that have taken place legally over the last twenty or thirty years—the '82 Constitution,³ the *Powley* decision,⁴ the *Blais* decision,⁵ and the *Daniels* decision⁶—how did you understand yourself and how did people understand you at the time in terms of ethnic identity? Did you think of yourselves as French Canadians, as Métis, as Indigenous peoples? If somebody had said, “What group do you belong to?” would there have been an obvious and common answer among your community?

PC: Michif is the way we say it, that's Métis. We knew that we were Michif people. We knew that there was a distinction between the store keeper, the post office guy, and the priest and the nuns, who were all outsiders. The church sponsored immigration from France in the early 20th century—if you've read the history you will know about this, St. Paul in Alberta, for example—and other places. The purpose was to inoculate our folks with a greater sense of devotion to the Catholic Church.

BPS: The language of the home: was it French? Was it Michif?

PC: I describe our language as a Michif speech. I have been influenced by the learning of linguists; I've spoken to a number of linguists. In fact, there is a linguist who is a foremost scholar of Métis language; he is focused on my home community, and his name is Robert Papen.⁷ He is from Saskatchewan, he is at UQAM, Université du Québec à Montréal, I think.

³ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11

⁴ *R v Powley*, 2003 SCC 43, 2003 CSC 43

⁵ *R v Blais*, 2003 SCC 44, [2003] 2 SCR 236

⁶ *Daniels v Canada (Minister of Indian Affairs and Northern Development)*, 2016 SCC 12, 2016 CSC 12.

⁷ Robert Papen is a retired linguistics professor at Université du Québec à Montréal (UQAM). His research includes study on the varieties of French spoken by French-speakers in Saskatchewan and by the Métis of Western Canada. He focuses particularly in Canadian French and contact languages such as Michif.

He's called our language a living linguistic museum. I call it archaic French. The language is by and large the French that was known across the West during the fur trade days. You'll know that French and the French presence preceded the English presence, and linguistically that still exists. I can tell you from personal experience that there is a lot of old French, with our own unique pronunciation in all of the Indigenous languages. I've spoken to people from Minnesota up to Yellowknife, and I can converse with the old people; we mumble around a little bit but there is a core of French understanding that we can all understand. But anyway, people iron out the reality of the complexity of our linguistic patterns. At home we say archaic French, fur-trade French. We use expressions that aren't used, say, by the Winnipeg-based, St. Boniface people. That is why Papen called it a living linguistic museum. There are some words; nobody knows where they come from—they are not English, they are not French, they are not Saulteaux, they are not Cree—but they are there, and we use them. Papen has been stumped by some of them. There is even a song, a song without words, and we don't know where it comes from, but people sing it.

The complexity is such that even at home, there is nothing uniform about the language. People are looking for uniformity. They want to make generalizations and reach general conclusions, but the reality defies that. Back in the day, when everybody spoke our way, you could tell people from the north side—our village was roughly three miles, all strung out—people from up there they say things this way; in the south, they say things this way, you can recognize family differences. The people in St. Ambroise just south, another old Métis community—you could tell if someone was from there. “Oh, you're talking like those people.” So, there are differences everywhere. What people generally call Michif is simply one pattern of speech that is spoken in some communities.

BPS: Alright, I am going to come back to that theme recurrently. I think in your writings—and we'll get into this in more detail—you have some frustration with the idea that there should be one single definition of Métis identity that is somehow determined legally and across the board. I think that your initial comments reflect some of that lack of comfort, that these efforts are not faithful to the actual complexity and diversity of experience. In the meantime, how did you end up getting interested in law? Did you want to be a lawyer? What was it about your background there that made you think “Gee, I think that going to law school would be fun?”

PC: I don't really know. I became a teacher; I didn't have any difficulties with schooling. Our teachers were nuns — missionary nuns — Les Franciscaines Missionnaires de Marie Immaculée, headquarters are in Quebec. I remember I skipped grade 4, and I still came first in grade 6. I did okay in school, and after that I went to teacher's college. I became a teacher and I taught at home. I taught at home for a few years and then I ended up teaching in Winnipeg, in St. James. I was teaching in high school; in high school, anybody can teach anything. I even taught economics in a college in Queensland one time. Anyways, I believe I was recruited to teach this course, a law course, in high school, and I found the subject interesting. Of course, I didn't know anything about it, but they give you a book, and say, "Read the book, and then teach it to the students." I think that is probably what germinated an interest in law.

Then, I moved to Australia and while I was there, I was really dissatisfied with life as a teacher; I found it very boring, very repetitive, and highly bureaucratized, and I didn't like that. I went to Queensland, and same thing, it was boring. There was a new law school opening up, at the time, Queensland Institute of Technology, QIT. They changed the name, QUT, Queensland University of Technology, as it's been for about 28 years now. I saw an ad for this law school and thought, "I am going to apply." In Australia, things are very different from here; they are very similar, but the differences are striking. There, you don't need to go through the LSAT, you don't need to take a previous university degree, and you go right out of high school. What they do is go according to your grades, your university grades. I threw my hat in the ring and I get this letter, "You're in. Accept within 7 days and if you don't, we will give your spot to someone else." Because at that time, there were no tuition fees, so you didn't have to pay anything, except buy the books or whatever. So, I ended up going through the first class.

BPS: What year would that be?

PC: 1977.

BPS: At that time, I am guessing there wasn't a real involved legal understanding of the rights of Indigenous people in Australia?

PC: No, no, no.

BPS: When you went through this, you were just a guy going to law school; there wasn't—I wouldn't think—lots of courses or discussion about Aboriginal or Indigenous issues or anything at that point?

PC: I encountered that only as a possible option to write a term paper in third year.

BPS: When I did my interviews on the history of the University of Manitoba Law School, it was just taken for granted that a lot of students would flunk out after first year. Now it takes a real effort to flunk, but it's hard to get in. So, you graduated with this, you did extremely well. Did you think of practising law in Australia?

PC: No. I went to law school with the intention of teaching it. I enjoy teaching; I've always enjoyed teaching. I said to myself, "I'm going to go to law school. I am going to do well enough that I can get an advanced degree so I can teach it." So that was my goal.

The first year I read every case. After the lecture, I would go to the library, line up all the law reports, and read every case. My favourite would have been a 100% exam at the end of the year: "Don't bother me; I'm just going to read the cases. Then you can ask me anything at the end of the year." That never bothered me, but different people have different attitudes about these sorts of things; that would have been my fond preference. Give me a 100% exam at the end of the year and don't bother me. So that is what I did for the first year, because I did not know the field and I wanted to know what I had to do to succeed and what I needed to do to get good enough grades to qualify for graduate school. I got top grades in every subject. But then after that, I like to think that I balanced things and I said, "Now I know how much work I have to do. I am not going to do this much work for four years." But, some of my friends did; they all wanted to win the gold medal. Nobody I know would have given a darn whether I won a gold medal or not. But, they wanted to win the gold medal; one of them had a nervous breakdown three weeks before exams, but they were very, very bright people.

So, that was going to law school. After that I balanced my studies because I was also in sports. I was named to two national teams in ice hockey

and in baseball. Ice hockey, of course, is very low calibre in Australia; most of the players are Canadians; I just played senior amateur hockey in Canada. Baseball is a different thing. That was a lot of fun. I can order up to five beers in the Japanese language because of my experience playing against the Japanese teams.

BPS: You were a pitcher?

PC: Yes, I was a right-handed pitcher.

BPS: This is not relevant to the interview, but I used to be a pitcher. Then I realized, “I am standing 60 feet away from this guy...”

PC: And 6 and ¼ inches.

BPS: ... I realized the ball could come straight back into my head, and after that I stopped pitching. Were you scared about the ball coming back at you?

PC: I wasn't scared; I got hit a few times.

BPS: And you still weren't scared?

PC: In real games, I haven't been injured seriously. I played on the Manitoba baseball team in the first Canada Summer Games in 1967, 1969. Pierre Trudeau opened them, I remember, and I was forced to shake his hand. Anyway, I got a line drive right here on my hand—you can see the seams here—the ball just cut the skin. Later I played with a team that won a national medal; I played with the Saskatoon Liners when I went to graduate school actually in 1983, I was 40-years-old, 39. We played in Sudbury I remember; we won the national bronze medal.⁸ First game that I started I got hit by a line drive in the thigh, so that put me out for a couple of days.

⁸ From the Saskatoon Sports Hall of Fame: “The Saskatoon Liners won the Saskatchewan major league championship, finished second in the Western Canada championships but, by beating the finalists, they qualified for the 1983 Canadian playoffs at Sudbury, Ontario”, where the team won the bronze medal. Online: <http://www.saskatoonsportshalloffame.com/class/2005/1977_84_saskatoon_liners.php>.

Herb Score⁹—you might not remember him, you were too young—Herb Score was hit in the neck. He was a major league pitcher and that was it for him. Someone else got really knocked out a couple of years ago, I think for the Cincinnati Reds, but it happens. That ball is really, really fast; you just gotta live on hope. Even third base is tough.

BPS: Australia has come a long way, but there was a time when socially there was a lot of anti-Indigenous discrimination in the general population. Did you somehow experience any of that? Did the mainstream Australian people see you as any different because you were Michif or something from Canada, or were you just another guy? How did that work?

PC: By and large there wasn't that much recognition or whatever. At that time, I didn't have much to do with the Indigenous people, simply because you couldn't see them. They weren't there; they weren't even in the city. There was no presence, especially in my life: university and sports. Like I said, the only thing I ever saw of Indigenous people in the law school curriculum was that topic that you could write an essay on. But as far as my own recognition, as I said before, if people commented or asked, they would perceive me as an Indian. There were people that would make comments on that, but the fascinating story is one of pure, unadulterated racism.

I was having a few beers with somebody at my place one time; he was a field manager for one of the teams in Brisbane. He was telling me about an umpire who told him this story about me, and it answers your question a bit. He said, "Do you know, the umpire told me, that 'that Chartrand is an Indian?'" And after that, he was committed to not being nice to me, because of that. I don't know how he put that, but then it struck me, "Wait a minute; that is the umpire that called a balk on me." Now, I know pitching; I never balk.¹⁰ That is the only time in my life, and I have pitched for many, many, many, many years; I was a top pitcher in Manitoba, ERA¹¹ of 0.91 in my last year, undefeated. So this guy called a balk on me. We won the game easily;

⁹ Herb Score (June 7, 1933–November 11, 2008) was an American Major League Baseball pitcher and announcer. In 1957, he was injured when he was hit in the face with a baseball.

¹⁰ In baseball, a balk is called if the pitcher commits an illegal action or motion before or during pitching.

¹¹ Earned Run Average is the mean of earned runs given up by a pitcher per nine innings pitched.

the team wasn't all that good that we played. I remember this game distinctly: they had a man on third. The one time in the game that they had a man on third, he called a balk on me, so the guy scores, because in the rules of baseball everybody advances one base. And the one time they had a runner on third base, he called a balk on me, and I didn't balk. So that answers your questions. That is the only, singular experience that has to do with outright racism, other than that no problems, people would just tease.

BPS: Right, you might have been exotic and interesting, but it wouldn't have been a negative thing.

PC: No, nothing really.

BPS: Did you teach in Australia in a university?

PC: After law school, I taught law, and I taught law in two different systems. I taught in my alma matter at QUT; I taught contracts and torts. I taught evening classes because, by that time, they set up a system where people could take the degree part-time. It became the largest law school in Australia, so there are all kinds of graduates of QUT now. I taught there a few times a week, and I also taught at—are you ready for this?—Kangaroo Point, College of Tertiary and Further Education (TAFE). It's a college system like Red River College.

BPS: Did they have a court there, at Kangaroo Point? Kangaroo Court?

PC: No, no court; but you can't miss what country this would be in. (Laughs) Like I tell my class, you don't have to believe anything I say, you can look it up. It would be like teaching at Red River College; I taught valuation law, business law, even a class in economics. What do I know about economics? A little bit, but not enough to really teach it.

BPS: You just have to stay one page ahead of the students, that's all.

PC: That's right. So that is what I did, then I came back.

BPS: You came back which year?

PC: I came back to Canada June 1982, from '74.

BPS: That was a pivotal time, 1982.

PC: Oh yeah, I was involved in the FMC's¹² from '84 on; missed the first one.¹³

BPS: So you were with which group? You were an advisor to the Métis National Council?

PC: Yes.

BPS: That was Harry Daniels¹⁴ who was the political leader at that point? Clem Chartier?¹⁵

PC: Well actually, it was Yvon Dumont;¹⁶ my cousin. Harry was a member, he was involved, but he wasn't in charge at the time. The president of the NCC, the Native Council of Canada, the precursor of CAP,¹⁷ was this Anishinaabe guy from Ontario, Smokey Bruyere.¹⁸ Then there was Jim Sinclair¹⁹ and Yvon; they were kind of the co-spokesmen for the MNC in '84-'87. The last one was held in April '87, wasn't it?

¹² FMC refers to the First Ministers Conference on Aboriginal Constitutional reform in the 1980s, mandated by section 37 of the *Constitution Act*, 1982.

¹³ Although the root of FMCs can be traced to the mid-1860s, the first Federal-Provincial Conference of First Ministers on Aboriginal Constitutional Matters was held on March 15-16, 1983.

¹⁴ Harry Daniels worked to have the rights of Métis People protected in the Canadian Constitution. He was president of the Native Council of Canada, and later of the Congress of Aboriginal Peoples.

¹⁵ Clement Chartier QC is a Canadian Metis leader; he has served as President of the Metis National Council.

¹⁶ Yvon Dumont was a founding member of the Native Council of Canada in 1972, the President of the Métis National Council from 1988 to 1993, and the Lieutenant Governor of Manitoba from 1993 to 1999.

¹⁷ The Congress of Aboriginal Peoples represents Aboriginal Peoples who live off Indian Reserves.

¹⁸ Louis "Smokey" Bruyere served as National Chief of the Congress of Aboriginal Peoples from 1981-1988.

¹⁹ Jim Sinclair (June 3, 1933-November 9, 2012) served as President of the Metis Society

BPS: The conferences stopped in '85 and then we fast-forwarded to the Meech Lake²⁰ round. Were you involved in the '82 controversy about whether Métis would be included in s. 35?²¹

PC: I was not personally involved because I was living in Queensland until June '82, but I have heard what happened from Harry Daniels, who was involved personally as the president of the NCC at the time.

BPS: Let's circle back to this whole issue of identity. There was the Native Council of Canada...

PC: At the time.

BPS: ...as well as the Métis National Council.

PC: There is a split in '83 that threatened litigation, and then Trudeau says, "Okay, you can come in."

BPS: That's certainly one of the many points which are continuing and will continue about this whole question of Métis identity. There are a lot of different approaches that you can have about Métis identity. There is the concept of the Métis as the descendants of the Louis Riel people, the mixed population from the traders and the Indigenous population. At the most general, there would be the view that the terms apply to anyone with mixed ancestry. There is the whole question about whether you are automatically a Métis because you are a non-status person. There are a lot of different theories; they are highly controversial. Did you have a theory or sense at the time in the early 80s about whether Métis should be defined and what the definition should be?

of Saskatchewan, National Chief of the Congress of Aboriginal Peoples from 1994-1996, and the President of the Congress of Aboriginal Peoples of Canada from 1996 until his death.

²⁰ The Meech Lake Accord was a proposed amendment to the Constitution negotiated in 1987, which ultimately failed.

²¹ *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (UK)*, 1982, c 11, s 35 recognizes and affirms the rights of Aboriginal peoples in Canada.

PC: I had some ideas, and I have fine-tuned those ideas over the years with experience and reflection. In my book, which I am slowly getting out, will be the full story. I always took the view that being a Métis person meant being a member of a family and a community. I was perplexed by the idea that one could claim an identity that I view as inherently social, based on DNA tests... I call them *Charter Métis*, those folks. Unfortunately, in Canadian constitutional law, we have to make room for a concept of race, because of s. 15.²² That concept, ought to have no room whatsoever for purposes of the question that you have asked. I would have thought that the concept of mixed ancestry and so on would have been properly debunked and cast into the dustbin of history so that we could have concluded that this notion belongs to the history of ideas; it does not belong to science, at least. It's racist. It's despicable. I would have thought that the learning of humanity would have progressed beyond that. I would have thought that people like Ashley Montagu,²³ who first wrote his book²⁴ after the Second World War, I think, would have done an adequate job of dealing with the intellectual content of this debate, but obviously not. There is nothing as sticky as an old myth, I think; you just can't get rid of this race notion. If being a Métis had anything to do with biology, I would have absolutely none of it, and I am happy to stand in opposition to it.

A couple of points. One, we shouldn't be looking at definitions. We must, in some way, tackle the task of constitutional identification; I'm not sure that we need definitions for constitutional purposes. My view is that to all those folks who say: "I am a Métis because I have this Indigenous ancestry," I say: "Well, that's not a social understanding of identity; I don't know what it is." It's a mystery to me.

However, let's look at justice and what justice demands. We look at the equality provision in the *Charter*, s. 15, and it says that if anyone is hard done by folks, by society, on account of some mysterious thing called race, then the governments already have a constitutional mandate to do good things for that person, to put him out of his social misery. So all those "DNA

²² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 15.

²³ Ashley Montagu was a British-American anthropologist who studied the relationship between politics and development with race and gender. Ashley is well known for his book entitled *Elephant Man: A Study in Human Dignity*.

²⁴ The book being referenced is *Man's Most Dangerous Myth: The Fallacy of Race*.

Métis,” the government already has the authority to create special programs for them.

So, a couple fundamental propositions which characterize my perception about who are the Métis in s. 35, *Constitution Act, 1982*. One is that Aboriginal peoples emerge from political action, not from biological action, which gets rid of the race idea. So, if we say that all peoples emerge out of political actions, and by that I mean, whatever is done by the exercise of free human will, that is political action. If that’s the case, it is not that difficult to find out who the Métis in s. 35 are. For one thing, we read the *Constitution* as a whole, so we say, “Who are the Métis?” Well, right away we see Métis in the *Manitoba Act*,²⁵ and it shows the whole history of s. 31... How did that come about? Political action! We got our official recognition in the best possible way; it was completely unambiguous recognition. The best means of recognition happens over the barrel of the gun, through a rifle’s scope. You see the military skirmishes that we had in our history; that’s recognition. If you shoot the other guys, you darn well know that they are not the same people. So, that is what distinguishes people: political actions. People have or do not have a collective capacity. They have a collective existence and that collective existence includes the capacity to identify common interests and to defend them. Those common interests are important enough that they defend them, and that is how a people emerges. All the best scholars, so far as I know, would agree with that. I am not aware of one scholar—help me out, maybe you’ve encountered one—I’m not aware of one scholar who ever concluded that there were Métis in Sault St. Marie before the *Powley* case; that was done by the anthropologist there. That was the first I’d heard of that. It is a very interesting case.

To me, it is simple. First of all, s. 35 is an open category; this is where the Court is wrong. There is no constitutional warrant for the idea of distinct tests for Métis rights. Where does that come from? They invented it, and it’s not necessary, either. You just have one test; they have three, as you know. You should rationalize that, something close to maybe what was said in *Powley*; that’s a big topic. In my view, we should have one test. If you’re an Aboriginal community, it doesn’t matter what you call yourself, you can call yourself Métis if you want. The question here is a constitutional question: “Do you fit within that constituted category of Métis?” Call

²⁵ *An Act to amend and continue the Act 32-33 Victoria, chapter 3; and to establish and provide for the Government of the Province of Manitoba, 33 Vict, c 3 (Canada).*

yourself whatever you want. But if you have Aboriginal rights, the Court has these tests to prove yeah – okay, there you go. But, you don't have to call yourself Métis; you shouldn't have to call yourself anything before the Court.

There is a little bit of discussion in that Newfoundland Métis case²⁶ about that, that that is the right approach. Even though Mr. Justice Phelan got it wrong in the *Daniels* case at trial; he thought that the case there said that they were Métis people. He never did. I went and looked at it again; this is not right. And it's not right. These people later went and changed their mind, "Oh, we're not really Métis; we are Inuit," you see. So, this is how things are nowadays. It's very strange but in my view s. 35 shouldn't require anybody to identify and tell the judges what their identity is; all you need to do is meet those substantial tests. Aboriginal rights or you're prejudiced under s. 15, so where is justice missing? It's easy then, to identify the Métis, by constitutional interpretation.

BPS: So, if I am understanding this right... the basic question is, in a particular case, the legal focus should be on whether you are a rights-bearing community. Your nature as a rights-bearing community would be that you are a historical community, you used or occupied land in a particular way, there is continuity, and then we don't really care what label we put on you; it's enough that you meet the test of being a rights-bearing community. The courts should not get involved in labelling people as a Métis, or an Indian or whatever. That should be contested outside of the courts; that is not for the state to decide.

PC: Exactly.

BPS: Okay. Of the *Powley* test, there was self-identification, community acceptance, and ancestry. I think that you object particularly to the whole ancestry business. That you can be Canadian without being of Canadian ancestry, you can marry, you can...

²⁶ *The Labrador Metis Nation v. Her Majesty in Right of Newfoundland and Labrador*, 2006 NLTD 119; *Labrador Métis Nation v. Canada (Attorney General)*, 2006 FCA 393.

PC: You can adopt people; you should be able to adopt people and belong into a family.

BPS: Yeah; why does an Aboriginal community have to be confined into some sort of line of direct descent?

PC: And why should the judges, appointed judicial civil servants, arrogate to themselves the mandate to decide, as a matter of law, who is a rights-bearing Aboriginal people. That has never been done before. That kind of recognition has been a prerogative of the executive arm of government, historically.

BPS: Of course, now that the courts have done it, there is a dialectical relationship between law and society. Once the courts start pronouncing that the *Powley* people are a Métis people, and so on, they will tend to use that terminology. and so on. You would rather that this was just left to ordinary political and social debate and not fixed and crystallized by the courts. I think I understand that.

PC: It's dangerous for First Nations that the courts are going to do the same thing. Why not? They are going to do the same thing to Inuit people, First Nations people; they are going to tell them who they are.

BPS: Thank you so much for working through this identity issue with us; that was an extremely interesting perspective to me. It's not that I came in with a fixed idea, just reading the literature I see so many different ideas.

III. TEACHING, SUPPORT PROGRAMS, AND POLITICS IN ACADEMIA

BPS: So, you were involved in the constitutional discussions in the early 80s, and you ended up teaching at the University of Saskatchewan, I believe. The teaching at any Canadian law school in the 80s... Saskatchewan was a national leader in many ways, I think, on Indigenous peoples. They

established the Centre;²⁷ they established the summer program.²⁸ But, what was the actual experience of Indigenous students in the 80s or 90s when you taught there? Did they feel comfortable going to law school? The teaching of law, and I guess, of course, that it would depend what Indigenous group you come from, there would be very many different experiences. You can set up a centre, you can change the curriculum, but what's your view about whether law schools at that time and now are adequately addressing whatever cultural challenges there are with accommodating their Indigenous students? Just an open-ended question. I note the work of the Saskatchewan summer pre-law program in this regard.

PC: I am aware of the origins of the program where the late Roger Carter²⁹ went around with Rodney Soonias³⁰ and talked to Sam Deloria³¹ at the University of New Mexico and created this thing; all of that I applaud, and I applaud the function of the Native Law Centre in assisting Indigenous people toward legal education. I applaud any effort, any program that assists Aboriginal people before their studies, and during their studies, for example, by tutoring.

The basic principle I think is that every law student must complete the same curriculum as everyone else. There should not be any other advantages such as giving extra time to complete exams. Everyone must be tested the

²⁷ The Native Law Centre of Canada was founded in 1975 by Dr. Roger Carter (see note 29). Its objective is to help promote access to legal education for Aboriginal peoples through Canada, support research opportunities on Aboriginal issues, and serve as a resource on Aboriginal legal issues.

²⁸ Program of Legal Studies for Native People is an eight-week summer course offered at the University of Saskatchewan that allows Indigenous students from across Canada to study Property Law before beginning law school in the fall. The course credit can then be transferred back to the student's law school, lightening up the load for first-year students.

²⁹ Dr. Roger Carter founded the Native Law Centre of Canada at the University of Saskatchewan while he was the Dean of the College of Law. The Centre was developed after studying the Centre in New Mexico, which was headed by Sam Deloria (see note 31). Dr. Carter was awarded the Award for Excellence in Race Relations by the Government of Canada in 1993 for his work in establishing the Centre.

³⁰ Rodney Soonias was a law student at the University of Saskatchewan who assisted Dr. Carter in the establishment of the Centre. He spoke at the opening of the Centre in January 1976.

³¹ Sam Deloria served as the Director of the American Indian Law Centre in Albuquerque, New Mexico for over 35 years.

same way. If students do not have a good enough command of English to complete a law school exam in the same time as everyone else, the obvious thing to do is to not allow them to enter law school, not to create bad feelings between students by giving some special privileges.

I will repeat it again because I think that this is a point that could be easily misunderstood. I applaud efforts to assist Aboriginal people to get into law school, to do whatever is necessary, to get all the experts together to help them in, to help them alongside, tutors and whatever but everyone should take the same course. If you're in court and the judges say, "We'll give counsel time to research this stuff," is the individual who has been receiving extra time to do exams to say "Excuse me, I got a little yellow certificate here, a yellow passport [to get special treatment]..."—Jean Valjean³² comes to mind—"I need an extra half hour over everybody else." Or, do you put something required on your shingle? You have to charge 30% less for your services. It doesn't make sense to me. I have been told that some law firms are reluctant to accept articling students who have been through the Aboriginal law program because they believe they are not as qualified as others.

BPS: Paul, I want to talk a little bit about how we have conversations, because you have given some very clear and controversial and well-considered opinions.

PC: I'm not in politics you see, so it doesn't matter.

BPS: You're still in academia. The question I am getting at, and we asked this when we did the interviews on the history of legal education, is—do we have an environment where people can have these candid, and open and searching conversations? Is academia a place now where people are so afraid of offending somebody that they just keep their mouth shut... to some extent, you have some license because you, yourself, are seen as a Métis person, and so you can express opinions where people wouldn't say, "Oh, Paul's being racist or insensitive." But do we have an environment, generally, where we can have this kind of conversation? I'm not saying that everybody has to agree with you—a lot will disagree. My concern is—does

³² Jean Valjean is the protagonist of *Les Misérables*, a novel written by Victor Hugo. In the novel, Valjean is issued a yellow passport identifying him as a former convict, resulting in life-long stigma despite being reformed after his release.

Canadian society in general, or academia in particular, have too many inhibitions about having difficult conversations about these kinds of issues?

PC: Alan Cairns,³³ the renowned political scientist, has an article in the *Saskatchewan Law Review* in which he discusses what he calls taboo subjects, certain subjects.³⁴ Alan was one of the first I believe to write about the recent surge of emotional or personal issues in scholarship which had been thought to be the province of rational or intellectual argument.

I have been surprised at the labels that have been put on new ideas that have been advanced as areas of legitimate scholarly inquiry. I have been surprised at the approach of a lot of scholars—many of them young, but I haven't done a study, so I don't know if it was mostly young people or not—but I have really been surprised. Why am I surprised? Because I find their attitude to be—the best word I can think of now is antagonistic and aggressive. Many writers now seem to want to dismiss or attack scholars with other views, not to convince them about the cogency of their own argument.

I don't think that there is any room for aggression, or taunting, or antagonism in universities. I still believe that a good society is a society in which its people are free to exchange ideas freely. Alan Cairns' taboo subjects suggest that there is a price to be paid for individuals who espouse ideas which are not popular. Who decides what is popular or not?

Canadian society has been undergoing some very significant changes in social organization and attitudes. Whose hand is on the moral rudder of the country, and how do we know what is the right thing to do? What are the relative roles of the family, or the state institutions and so on – seems to me that they are questions of fundamental importance, and it seems to me that they aren't being addressed openly and candidly nowadays. So, people should be tolerant, and a lot of young scholars appear to me to view their role as what is called in the newspapers “activists.” I've never known what an activist is; I really don't know how one would define an “activist,” but some people are characterized that way. “He is a university prof and an activist.” Perhaps the comment means the prof should be a politician? To me it sounds like it has a little bit of a pejorative connotation of some sort. I agree that there is a certain atmosphere that I don't like.

³³ Alan Cairns is a Canadian political science Professor Emeritus.

³⁴ Alan C Cairns, “Ritual, Taboo and Bias in Constitutional Controversies in Canada, or Constitutional Talk Canadian Style” (1990), 54 *Sask L Rev* 121.

BPS: I find this riveting, Paul. Thank you so much for doing this.