

Interview with Phil Fontaine *

B R Y A N P . S C H W A R T Z

I. INTRODUCTION

Bryan Paul Schwartz (BPS): You grew up in Sagkeeng,¹ and you were one of nineteen children?

Phil Fontaine (PF): No, I was one of twelve.

BPS: Twelve, yeah.

PF: Ten boys, two girls. I was the youngest boy, number ten, and then there were my two younger sisters. There are four of us left; an older brother, obviously, and myself, and my sisters Thelma and Audrey.

BPS: We don't need to discuss this if you don't want to relive it, but you are a survivor of the residential school system.

PF: Yes, I attended two residential schools. All of my siblings were residential school students, except for the two that died before they reached

* Interview conducted by Bryan P. Schwartz.

Phil Fontaine is an Indigenous leader and advocate. Throughout his life, Phil served as Chief of the Sagkeeng First Nation, as the Manitoba Regional Chief for the Assembly of First Nations and the Grand Chief of the Assembly of Manitoba Chiefs. In 1997, he became the National Chief of the Assembly of First Nations. Then, Phil became Chief Commissioner of the Indian Claims Commission (ICC) in 2001. After this, Phil was re-elected as the National Chief of the Assembly of First Nations in 2003 and 2006, becoming the first person to serve as National Chief for three terms. Phil has received a multitude of awards including the National Aboriginal Achievement Award, numerous honorary doctorates, the Order of Manitoba, and the Order of Canada. After completing his terms as National Chief, Phil has continued to advocate for Indigenous peoples through initiatives such as the Recognition2Action Campaign.

¹ Sagkeeng First Nation is located approximately 120 kilometers northeast of Winnipeg, on the Winnipeg River.

school age. Our mother and father attended the same residential school that I first attended. My grandmother on my father's side, my uncle and relatives attended the St. Boniface Industrial School,² which preceded the residential schools. So yes, there's a long history of residential school experience.

BPS: Did you have any sense that you were going to be a politician or leader in your community? You were a leader in your community, eventually you became a leader provincially and then nationally. Did you come out of your experiences thinking you wanted to be a leader?

PF: No, I had no thoughts in that regard. When I came out of residential school, I went to public school for grade eleven – and that was quite a culture shock for me. Going to a public school and interacting with white kids on a daily basis and seeing how they lived compared to my experience in residential school and my life on the reserve. Even though I grew up next to the town of Pine Falls³ it was so completely different and I had a very difficult time handling that. I struggled with these changes. The best thing that had happened in my life at that point was meeting these two young people that were involved with the Company of Young Canadians.⁴

I met them at a Pow-wow. My encounter with these two volunteers from the Company of Young Canadians occurred in 1966. At that point I was employed with the Highways Department of the Province of Manitoba as a Clerk in the store section. I figured, “this sounds pretty exciting”. I quit my job, I didn't have any money at the bank, and I had no savings, so a friend of mine and I hitchhiked to Ottawa. It was actually a wonderful chance meeting; it really opened up a new and different world to me. I hung around Ottawa for some time. I actually stayed at Justice Leonard Mandamin's⁵ apartment in Ottawa. He and Harold Cardinal,⁶ who was with

² St. Boniface Industrial School was a residential school in western Manitoba, open from 1891 to 1906.

³ Pine Falls was a community that has since amalgamated into the town of Powerview-Pine Falls, located in south eastern Manitoba.

⁴ The Company of Young Canadians (CYC) was a federally sponsored program designed to run independently from the federal government. It began in 1966 and attracted many young political activists. It was abolished in 1977.

⁵ Leonard Mandamin is a judge serving on the Federal Court of Canada.

⁶ Dr. Harold Cardinal (1945-2005) was a First Nations leader, scholar and lawyer. He played a key role in creating the National Indian Brotherhood and authored several

CUS (Canadian University Services), were sharing an apartment in Ottawa. My friend Frank and I had no place to stay. We had no money, so they took us in and that became my base of operation for a time. I persisted and I eventually ended up getting an opportunity with the Company of Young Canadians. They hired me not as a volunteer - that was what I wanted to be; a volunteer for two years where I would end up in a community of my choice to do community development related work. I was actually hired as a Project Developer. I ended up in Fox Lake⁷ in Northern Alberta. I was doing project development work. It was an incredible experience.

BPS: Going back to Ottawa, did it have any effect being in *the* political town in Canada and thinking that politics was a potential thing to get into? Or was it being with guys like Harold Cardinal?

PF: You see part of the story when I arrived in Winnipeg after high school, I was living a pretty aimless existence. I ended up in Winnipeg and took a course at the Manitoba Commercial College. It was a Bookkeeping course; there were three levels, junior, intermediate and senior accounting. I finished that and ended up back in my community for a bit. I came back to Winnipeg and I ended up being a trainee with the Department of Indian Affairs⁸ on Edmonton Street. From there, I lucked into a job as a clerk with the Province. Winnipeg was home for a while. Then I ended up in Ottawa with the Company of Young Canadians (CYC) and this new world kind of opened up before my very eyes.

BPS: Politics and public affairs?

PF: Yes. I remember being interviewed for a position with the CYC. I filled out this form and I remember noting that I was from the Fort Alexander Indian Band.⁹ The interviewer, a non-indigenous person, asked me “How many in your band?” thinking it was a musical group!

books on Indigenous-Canadian issues, most notably *The Unjust Society: The Tragedy of Canada's Indians* and *The Rebirth of Canadian Indians*. His qualifications enabled him to take part in negotiations over Indian policy.

⁷ Fox Lake is a community in northern Alberta on the Peace River.

⁸ The Department of Indian Affairs and Northern Development was created in 1966.

⁹ Fort Alexander is also known as Sagkeeng First Nation.

BPS: (Laughter)

PF: I said “it’s not that kind”. This is like a community (laughter) with two thousand or twenty-five hundred Indians in this band. That would be a big orchestra.

BPS: That’s a big sound.

BPS: Now when you say, “open up this world,” is that a world of doing community service work?

PF: Well, politics is about changing things, bringing about change, making things better and having the freedom to actually think and do things. There weren’t too many rules with the Company of Young Canadians. It was ‘do what you thought was good’, and I liked that. I was quite fascinated listening to these young white kids. They were all from pretty nice communities and nice families, and they would talk about these Russians spying on them because the Russian Embassy was not far from where they were. I didn’t spend much time thinking about why the Russians would be spying on the Company of Young Canadians because they were all pretty radical. In fact, two of the more senior people, Art Pape and Rick Salter,¹⁰ became lawyers. I thought, they are considered too bloody radical, even by the Russians! They became pretty big-time lawyers. They were the driving force with the Company of Young Canadians. Anyway, I liked what I was seeing, and I liked hanging out with these people; they were smart, well-educated, they came from good families. I thought there might be a future in that kind of work (community development). Community development was the up and coming thing in terms of investing in the “Indian problem,” the issues with the Indian communities. Community development was about supporting communities to do things for themselves, to take charge over their lives and I liked that. I liked the idea, so when I was up in Northern Alberta I was able to give a practical application to those notions. They weren’t well thought out, but what I understood in a superficial way was what intrigued me.

¹⁰ Arthur Pape and Richard Salter are founding members of Pape Salter Teillet LLP, a leading law firm in Indigenous law, with offices in both Toronto and Vancouver.

BPS: I'm just wondering where your skill-set came from. I mean this as a compliment; you seem to be a natural politician. You always had a sense that there are things people say and then there is what they really mean, what the game is behind the game. You have to know what you can take at face value and what is theatre. You have to accommodate some people and be forthright with other people. Did you have a role model or was it a natural talent that you have?

PF: Well, most of what played out in my life was learned by observation. It certainly wasn't through school. It wasn't because of my university because I wasn't well educated. Survival was a large part of my existence then and I learned very early on that it was best that I observe carefully and listen. The person that impressed me most was a fellow by the name of Dave Courchene Sr.¹¹ He was from my community. He was Chief. When I was a Project Developer with the Company of the Young Canadians he and I would come across each other. He was one of the very strong people in our community. He invited me to come home to Fort Alexander to help. He wanted to take our community in an entirely new direction, meaning that the affairs of the community were controlled by the community. He invited me to apply for this position that had just been created, Band Manager. Fort Alexander was going to be, and in fact became, *the* first Indian community to embark on this new process, this experiment on local control of Indian affairs, if I can describe it that way. I was hired. I was twenty-two years old as Band Manager and I worked with this guy. I think he had a grade eight level of education. He had been to the residential school. He was an incredible force, smart and tough. I would watch him take on Indian Affairs bureaucrats and he never gave an inch. He was as tough as anything and I liked that. I was involved with him in the revitalisation of, what was called, *The Association of Manitoba Indians*, I believe. The organization was developed to enable our people to get involved in the amendment process of the *Indian Act*,¹² remember that? 1949-51.

¹¹ David Courchene (1926-1992) was an activist, an advocate for Indigenous rights, and a politician. He was elected Chief of Sagkeeng First Nation and was the first Grand Chief of the Manitoba Indian Brotherhood (MIB), now known as the Assembly of Manitoba Chiefs. While he was Grand Chief, the MIB produced the landmark document entitled *Wahbung: Our Tomorrows*, the MIB's response to the Prime Minister's *White Paper*.

¹² The *Indian Act*, RSC 1985 c I-5, was passed in 1876. It served to define the term "Indians" and regulates band governance, Indigenous land-use, administrative structure relating to education and healthcare among many other things. It is a controversial piece

BPS: Yes, that was when people weren't thinking constitutionally, they were thinking of the *Indian Act*.

PF: That's right, amend the *Indian Act*. They did some good things like removing the prohibition that was imposed on us, the First Nations who were "Indians", from hiring lawyers to represent our people on land issues. Women were finally able to run for public office in our communities. I just learned this recently, but it also made it possible for government officials to alienate our lands much more easily than in the past. So anyway, Dave Courchene moves to revitalize this old organization and created the Manitoba Indian Brotherhood (MIB).¹³ That was the predecessor organization of the Four Nations Confederacy, the First Nations Confederacy and now the Assembly of First Nations Chiefs. He was the guy that made it happen, and I worked beside him. I was young. I had huge problems in parts of my life and he still trusted me. And that made me feel pretty good. I learned so much from this person.

BPS: You worked your way up from bureaucrat to Band leader to Provincial leader to National leader. I didn't know that you had been Band Manager before, but I can't imagine a more intense education in how politics work than being Band Manager because government at that level of First Nations community is so intense; a large part of the economy is dependent on Band Government. Everything is connected to government: education, social services, quality of life things like running water, roads. Everybody knows each other so it is extremely intense and you have to balance professionalism with personal and political – and you managed to do all that when you were twenty-two?

PF: I was a young guy.

BPS: Sheesh.

of Canadian legislation whose provisions have been constitutionally challenged several times in the courts.

¹³ Manitoba Indian Brotherhood (MIB) was an organization of First Nation leaders. The MIB now operates as the Assembly of Manitoba Chiefs, which represents 62 or the 63 First Nations in the province of Manitoba.

PF: Yeah. This wasn't so much because of my skill-set or my education. It had more to do with chance, luck and knowing Dave Courchene Sr. the way I did. Having this guy have enough trust and confidence in me, and giving me the opportunity to work with him, it was quite significant. It was a real moment in my life and it made a huge difference. That's how I got my start. He left. He was Chief while we were creating, re-creating the First Nations political organization. That became full-time for him. I stayed in Sagkeeng, and then joined him as his office manager. Then I went back and I decided to run for Chief. I was twenty-seven when I made the decision. I was nominated, still twenty-seven. I had my birthday and I was elected when I had just turned twenty-eight. I spent four years in Sagkeeng as a Chief. I think for the first time in our community's history we had a Chief elected by acclamation; I was acclaimed in my second term. Then I left and joined government, moved away.

BPS: Did you first start working with Jack¹⁴ when you were at the Band level or was that with the ANC? Jack was telling us about it...

PF: We first met at the start of Meech Lake.¹⁵ This was interesting because we were looking around for someone to assist our position. We had taken a position against Meech Lake but we wanted to be better and smarter about the position. We wanted to be able to articulate it in a way that Canadians would understand, especially Quebec. We didn't have a lawyer working for us at that point so one of the first groups, and indeed one of the first people to come and support the position taken by the Chiefs of Manitoba, was David Orchard.¹⁶ Remember that guy, David Orchard? He was one of the three or four contestants for the leadership of the Conservative party, the

¹⁴ Jack London received his LL.B from the University of Manitoba in 1966 and his LL.M from Harvard Law School in 1971. He is senior counsel at Pitblado Law in Winnipeg, MB.

¹⁵ The Meech Lake Accord was a proposed amendment to the Constitution negotiated in 1987, which ultimately failed. Indigenous groups opposed the amendments because they had not been represented in the negotiations.

¹⁶ David Orchard was a member of the Progressive Conservative Party of Canada. He is an author and political figure best known for his opposition to the Canada-US Free-Trade Agreement.

one that Peter McKay won.¹⁷ David Orchard's die-hard supporters made McKay's victory possible.

BPS: Oh, I didn't know that.

PF: Yeah. If he hadn't moved over to McKay and instead moved to Prentice¹⁸, Prentice would have been the leader. But anyway, we had one of our meetings and Orchard is there. We were talking about the need for lawyers. He said "I know a guy, just the right guy for you, in Winnipeg here. Jack London". And I had known about Jack London because he used to have an article in the paper. He'd have a column just about every week. I think it was in the *Free Press*.

BPS: He had a TV show, briefly, too.

PF: Yeah, that's right. We reached out to Jack through Orchard. Jack shows up at one of our early meetings and we're talking about our position and what we needed, and Orchard spoke up. Jack turned to him and said "And who are you?" (Laughs). That was the last we saw of David Orchard.

BPS: (Laughs)

PF: Jack took over completely at that point. We didn't need David Orchard because we had Jack, and Jack became our guy.

BPS: Ok, I am certainly going to spend some time on that story. To fill the period in between, you were acclaimed for your second term at your band and then you became...

PF: I joined the Federal Government in '76. What happened then is that the government introduced this policy of recruiting Indian leaders to senior positions in government. The idea was to effect change from within the

¹⁷ Peter MacKay was a candidate to succeed Prime Minister Stephen Harper as leader of the Conservative Party; however, Mackay did not seek the party's leadership.

¹⁸ The Honourable Peter Eric James (Jim) Prentice was the leader of the Progressive Conservative Association of Alberta and the 16th Premier of Alberta, serving from 2014-2015.

bureaucracy. There were three people who were recruited and all three became Regional Directors. Fred Kelly¹⁹ was appointed Regional Director.

BPS: That's Diane Kelly's²⁰ father, right?

PF: Uncle.

BPS: Oh, uncle.

PF: Yes, the younger brother to Diane's late father. Fred Kelly in Ontario, Harold Cardinal in Alberta, and I was brought on. I ended up in Ottawa for a few months, a couple months here in Winnipeg, and then moved to the Yukon as Regional Director there. So, the three of us were supposed to be the vanguard, the change agents, the prominent people. Fred left early on. He was brilliant. Fred is an absolutely brilliant individual. Harold Cardinal wrote two books and ended up with a PhD in Law. Interesting, you know, Harold gets appointed to the job. He goes to Alberta and he's got a senior executive team waiting for him because he was going to be the new boss. The first thing he did was he sent all of those senior people to the basement.

BPS: (Laughs)

PF: To the basement of this building, the Federal Government building in Edmonton! He brought in his own people. He said, "Now you'll know how it feels for our people". He ended up getting fired over that.

BPS: Oh, okay. It sounded like an innovative idea.

PF: Yeah, it was!

¹⁹ Fred Kelly is a citizen of the Anishinaabe Nation in Treaty 3 territory and served as their Grand Chief. He later became Ontario's Regional Director of the Department of Indian and Northern Affairs. He currently serves as an advisor to several First Nation organizations including the Assembly of First Nations.

²⁰ Diane Kelly is the former Grand chief of the Anishinaabe Nation in Treaty 3 territory. She is a lawyer and was appointed the Assistant Deputy Minister of Child and Family Services in 2015.

BPS: I was thinking that nowadays you have grievances and you get fired and it turns out in *those* days you'd have grievances and you'd get fired.

PF: That's right. He'd bring in pipe ceremonies in the morning. Sweet grass and sage. When they canned him they sent a guy from Ottawa to clean up the operation. He walked in and apparently he said "Oh gosh, what's this strange smell?" - the smell of sweet grass.

BPS: What did you learn or take away from being on the inside of the big bureaucracy? Was it revelations of the way bureaucrats think from the inside or did it just confirm what you always suspected?

PF: Well, when I had been Chief for four years I was a nasty, nasty S.O.B. I hated the bureaucracy. I hated the people I had to do business with. I despised them and I made no bones about it. It wasn't a secret. I know that whenever I ended up at the Regional Office they'd say "Oh gosh, here he is again". In fact, we were the first community in this province to get rid of the Indian agent. It was under my time. I remember the guy came to me one day and said, "Look, I don't feel very welcome here Chief. I think I'm going to leave." I said okay, and he left. That was the last time we actually had an Indian agent operating in our community. Up until that time they were a huge presence, not just in Sagkeeng, but in every First Nation community in the country.

I had this terrible attitude toward government officials. I don't know what came over me but I realized that it was a terrible waste of time and it wasn't respectful. It wasn't a nice way, or a good way to do business. I made a decision one day when the second most senior guy from the regional office here came to my community. I welcomed that gentleman to my, to our community, and we had a very productive meeting. When the senior guy from Ottawa came to our community to meet with me he knew, or I should say he learned, that this was it for me and I was looking for other opportunities. He invited me to join the government, and I did. So what did I learn? Well, I learned how business usually doesn't get done in a huge bureaucracy. Most importantly I learned how a bureaucracy, a large organization, is able to function. How it comes to formulating policy, how it implements policy at different levels of the bureaucracy and the interaction between the bureaucracy and Ministers. I paid careful attention.

I vowed that if I ever came into a position of power or authority I wouldn't behave the way these guys were behaving. Sometimes I slipped and I would behave the way they did because it was easy. It was much easier to move things along. I learned by observation. During my time in the Yukon, I decided to come and get a degree, and that's what I did. I spent a year doing that.

BPS: My late father-in-law was a graduate of five concentration camps and he said, throughout his life if someone hostile would approach him he could tell the difference between someone who was just spouting off and when someone was dangerous. Being in a position where survival depends on evaluating the threat level and what motivates people is a skill that he kept his entire life. Residential school survivors, I would think, would often acquire that kind of insight into who's for real, and so on.

I once asked a lawyer who does a lot of work with Indigenous people "how do Indigenous communities see the consultants, the bureaucrats who come through?" He said that there is so much history of chicanery and blarney. A consultant or government may not look skeptical, they may not be openly aggressive but the audience in the Indigenous community has seen this parade for a long time so they are actually quite trued in waiting to assess whether they believe you or not, and trying to figure out who is for real. Is that consistent with your experience?

PF: Oh yeah. I noticed that behaviour is very much conditioned on the audience. How these people would present themselves and how they would act out their roles, it was really quite interesting and quite fascinating. Some of them were wonderful at role playing. I know a guy who started off as a shops teacher and became an Assistant Deputy Minister; actually the most powerful guy in the Department of Indian Affairs. He rose through the ranks. He played everything to his advantage. I remember going to a meeting one time and he was an Indian agent, he obviously didn't know, right, he had no legal background. He kept talking about the statute of limitations - and that was to demonstrate that he knew the law. He kept referring to the statute of limitations, for whatever reason I don't know, it wasn't clear to me why. Maybe it was clear to the lawyer I was with at the meeting. We had people like this guy throughout the bureaucracy.

BPS: Sounds like it wasn't always pleasant. You had the ideal education to eventually become a leader yourself. You had seen life from inside your own community, you'd seen life from inside the bureaucracy, and you'd seen an incredible passing parade of different characters: the good, the bad, the ugly, the real, the phonies, the operators, the manipulators and like most people, individuals are a mix of everything. The ability to read people and read a situation and to figure out what the real game is, that is a skill that every effective leader has to have. To have the multi-faceted experience that you have, it sounds like it equipped you very well for when you became a leader yourself.

PF: I have been asked that many, many times. I believe that in my own life experience, meaning my work experiences, social situations and important issues that I have had the occasion to work on, a large part of my life has been good fortune. Luck. Talk about serendipity that has come before me. What I may have been able to demonstrate is that I knew when to strike; at least I think I did. I knew when to move and when to make a decision. I knew when to take risks. I was a risk-taker. In many situations, that played out well. We didn't win everything, but we won our share of battles. I would watch people that were around me and gosh, they were some of the most skilled people I've seen.

BPS: One of the things Jack said to us in his interview looking back on his career, was "It's like everything, it's all luck." His own career was extremely successful and he lived a lot of adventures with you. It's remarkable that you two worked together and you had these incredible achievements together, and when you look back on it you say you were *lucky* enough to meet the right people, right place, and right time. A lot of the things that seemed very adverse at the time turned out to be an education that assisted you later. Not that you would want to live through those experiences again, you certainly wouldn't. Some of the worst experiences actually prepared you for when you had a leadership position.

PF: I know some people who have been able to figure out their life from *here* to *there*, and they have planned their lives so they can get from here to that point. My life certainly hasn't been that linear in terms of its path, it's been all over the place. I've talked about my personal problems that were

part of my residential school experience,²¹ what I witnessed at home – when I say “at home” I don’t mean my family, I mean around the community. It created some very serious challenges in my life. I became a drunk and very dependent on booze and it compromised my life many, many times. It took me a long time to come to grips with that and I’ve been sober now for many years. Being sober was only one part of making things better, fixing things that had caused me all kinds of problems. It’s never been easy; I still get pretty down on myself after all these years. The school experience affected me in a profound way, but also bearing witness to my community and how people interacted was really a learning experience. You asked me earlier about role models and probably one of the most important if not *the* most important was my mother. She was the first Indian woman to be elected to Band council in June 1952. Our father had died that February, so mere months after the passing of our father she was elected to council. That was the first time that an Indian woman had been elected to council. I remember sitting at a council meeting with my mother in 1952, at the Band hall. We were up on stage. The council would meet on stage at the old Band hall and listen to the discussion there.

BPS: There’s a foundation named after your mother, isn’t there?

PF: No, an Aunt. But my mom received the coronation medal in ’52. Queen Elizabeth the Second. Interestingly enough I received the Jubilee, the Diamond Jubilee. I still have my mother’s medal. She was an incredibly powerful person. She never remarried. She looked after 10 children and it wasn’t easy. I learned a lot from her.

II. MEECH LAKE & OTHER INITIATIVES

BPS: Thinking of the remarkable cascades, converges and divergences of events, we come to Meech Lake where all of a sudden little Manitoba becomes the centre of Canadian history. I don’t think people, in retrospect, would ever be able to recall what it felt like at the time. People were saying that if the Meech Lake Accord didn’t go through the whole country would

²¹ Phil attended the Fort Alexander Indian Residential School in Sagkeeng, as well as the Assiniboia Residential School in Winnipeg.

break up. The epicenter ended up being Manitoba, to some extent Newfoundland but mostly Manitoba. Ultimately, the Meech Lake Accord did not pass because it was stopped here in little Manitoba. Phil Fontaine and the Assembly of Manitoba Chiefs are at the centre of that with Elijah Harper²² and Jack London. I was on a separate track because I was a leading academic critic at the time, but in my own way I was involved. I formulated some of the ideas like the Canada Clause²³ which eventually became central. It's just remarkable that we all ended up here in Manitoba. I wasn't the most important of course; I was just doing my academic thing. There was you, there was Jack London, there was me, there was Elijah Harper. It all took place in Winnipeg. You probably remember the tent village in front of the legislature in the last week of June in 1990. I was asking Jack about it and I understand that the objection was that the Meech Lake Accord was based on the old Canadian theory of the two founding nations and it didn't recognize the foundational nature of Indigenous people. That was the last time that anyone would even try that, after that all the recognition clauses the Canada clauses always put the Indigenous presence front and centre along with the bilingual realities and multiculturalism and so on.

Was the foundational objection that you weren't being recognized as a founding people, was this clear from the outset or was it something that came through a lot of debate? Or was it clear from the outset that this was a British-French thing and you were left on the outside.

PF: Well it was clearly the English-French thing because we were told "we'll deal with you guys later".

BPS: (Laughs) "Trust me."

PF: Yes. "We will deal with you guys later." We were active observers of the discussions in Ottawa. The Assembly of Manitoba Chiefs had

²² Elijah Harper (1949-2013) was an Oji-Cree politician, consultant and policy analyst from Red Sucker Lake, Manitoba, who played a significant role in the ultimate rejection of the Meech Lake Accord.

²³ The Canada Clause was a clause in the Charlottetown Accord that recognized Indigenous rights, sex equality, and Quebec as a distinct society within Canada. Section 23(1)(b) of the *Canadian Charter of Rights and Freedoms* is also referred to as the Canada Clause.

representatives that had undertaken a very careful watch of all of the proceedings and it became obvious that we had an opportunity to put a halt to things here, in Manitoba, but we needed someone who had the courage to say “no” when the matter was put to the legislature.

BPS: And that was Elijah standing up with the white feather in the Manitoba Legislative Assembly. I asked Jack about it and in some ways it’s a little easier for me because I’m an academic critic. I felt passionate about it, but I was not in a position of authority saying “no,” Elijah was. As I understand it he couldn’t have done it unless the Assembly of Manitoba Chiefs was solid. Did you feel that pressure when people were telling you “Oh come on, we’ll deal with you later, trust us, you’re breaking up the country, do you want Canada to break up over little Manitoba just because you didn’t get your piece of the pie?” What was it like to deal with that kind of pressure? You must have been told, “all these people say you’re wrong, all these intellectuals say you’re wrong, three major parties are in favour of it. All these people are promising you they’ll get to you later.” Did you feel that pressure and how did you see your way through it?

PF: Sure, there was pressure, but it was obvious to me and I’m sure to others, that the person who felt pressure was Elijah. I recall the first meeting I had with Elijah after I tracked him down up north and invited him to a breakfast meeting at the Charter House.²⁴ At that point we knew that we could take some pretty strong positions in opposition to the proposed accord. We had breakfast at the Charter house and Elijah’s concern wasn’t the Meech Lake Accord, it wasn’t the French-English issue and the fact that we were going to be dealt with after the French and English differences. He was worried about his nomination because there were a lot of rumours that he was going to have a challenger, and the challenger was George Hicks.²⁵

BPS: Oh, I didn’t know any of this.

PF: Yes. That was his main pre-occupation when we had breakfast. So I told him not to worry about that, we’d look after that. Our big issue was saying

²⁴ The Charter House was a restaurant in downtown Winnipeg, Manitoba.

²⁵ The Honourable George Hicks was the MLA for the Point Douglas riding in Winnipeg, Manitoba.

no to the accord. I don't know where the receipt went; we had the receipt at some point. Thirty-seven dollars and I don't know, ninety-one cents for breakfast? So Elijah said he would say no. But that was his big concern, he was afraid he would lose his nomination and he would no longer be a member of the Legislature.

BPS: One of the people we interviewed in the course of this program said that for her it was *the* turning point in the political status of Indigenous people in Canada because it was Indigenous people making a decisive intervention on the issue of fundamental national importance and standing up and ultimately making a difference. Certainly, the trajectory of constitutional talk has never been the same. You would never make a deal without making sure you have the sign off of First Nations or addressing their concerns. It was certainly the case in the Charlottetown Accord round. Did you have a sense at the time that it was that the Meech Lake episode was important in terms of the overall place of Indigenous people in Canadian politics?

PF: Well, it became that so many people took this as a fundamental issue. There were a number of moments where that was so obvious. The first, of course, is when we marched from Fort Garry where we were meeting, to the legislature. We wanted to witness the proceedings and the security people would not let us in. There was a huge battle there – torn sports jackets.

BPS: On the steps of the Legislature?

PF: Yeah. We couldn't get into it. They finally said, "just let them in" because the Chiefs were not going to take no for an answer. There was a big scuffle there. I remember late Chief Pascal Bighetty,²⁶ his sports jacket was torn. That said to us, "There is something happening here, this is really very important." And then, people started showing up at tent village, the peace village, by the hundreds.

BPS: I can remember being out there, it's still in my mind, all the people being out there in the last days of June.

²⁶ Chief Pascal Bighetty of the Mathias Colomb Cree Nation, near Pukatawagan.

PF: And then the press descended on the Manitoba legislature. Elijah became the focal point. But in all of this, the Chiefs, the province, were critical, they were essential. They were going to be absolutely steadfast in their opposition, and they made sure Elijah followed through on his commitment. I remember hundreds there, and the women all came forward with roses for Elijah. Elijah got to speak and he was in tears. He said that he loved Canada as much as anyone, but that Meech Lake wasn't right. That was quite a moment to be witness to that. Then the American guy, MLA from the North, Flin Flon I think, Jay Cowan...²⁷

BPS: I remember Jay, tall guy.

PF: Yeah, he took me aside after we'd been at this for a long time. There was a lot of pressure from the Manitoba Legislature, by Ottawa, by NDP, by Liberals, the Mulroney²⁸ government - to impress upon us that what we were doing was going to destroy the country, and that the right thing to do was to give in and say that we would accept the commitment that they would deal with us later. So we were just about at the end and Jay had taken me around the corner and he and I had a quiet chat, and he said, "Look Phil, you guys have won. You've won this battle. So why don't you just say yes now."

BPS: (Laughs). You've won, so lose?

PF: He said, "Look, the attention of the entire country is on you. You've made your points. Canadians are listening, provincial governments are listening, the federal government is listening, Parliament is listening. You've made significant headway, you've actually won." It was actually an emotional moment for me. It really came clear to me at that point what we'd actually accomplished. We had Aboriginal leaders coming to visit us, and coming here to support us, and people that were major Aboriginal leaders coming

²⁷ Jay Marine Cowan was an MLA for Churchill. He served as the Minister of Northern Affairs from 1981-83, Minister of Co-operative Development from 1983-88, Chairman of the Treasury Board 1983-86, Government House Leader 1986-88 and the Minister of Native Affairs in 1987.

²⁸ Brian Mulroney was the 18th Prime Minister of Canada. He was the leader of the Progressive Conservative Party in 1983, and Leader of the Opposition from 1983-84.

here to support Elijah and the chiefs of this province, First Nations. It was quite a time.

BPS: It is always going to be one of my regrets that I didn't get around to doing this project in time to interview Elijah. That would have been a great thing to have.

PF: He is a hero.

BPS: He is a hero. More generally Phil, I'll tell about some of the thoughts I've had for many years now, and a reason I am doing this project. I was talking to Ovide Mercredi once and he said that now that he was retired he was going to do some work, and maybe he was going to compile elder histories, and I said, "Ovide, did you ever think that maybe for the next generation people like you and Phil are going to be the elders, and if we don't get your stories we won't have them." So that is one of the reasons I am doing this project. By the way, is anybody working on a biography of you?

PF: I've had offers, but I've never been keen.

BPS: I know that there is a lot of painful stuff back there.

PF: I've never been interested. I am still too young I think. I've never thought of myself as an elder, but it struck me the other day when in Vancouver that maybe I am an elder now, though I don't think of myself as an older person. Today, at an event, someone referred to me as an elder.

BPS: The key test Phil is whether when you go to movies they give you the seniors discount without asking.

PF: Hey, you know where I use that. I use that at movies!

BPS: Yeah, you get two dollars off! You get snacks, you get some respect. There are pluses and minuses – sometimes you get two dollars off.

PF: I've never seriously considered it.

BPS: The period that you've lived through, I think essentially from now on people will go, "How did that happen? How did you go from, say, the White Paper under Trudeau to constitutionally protected rights, winning all those cases in the Supreme Court, self-government agreements? It's amazing. You couldn't have imagined it. I wouldn't think, Phil, when you started your career that later on all the things that happened did happen – section 35,²⁹ residential school settlements, the specific claims tribunal – once it happens you sort of look back and think, "Yeah that had to happen sooner or later," but at the start imagine there would be all that change in just the course of a few decades.

PF: I must admit, Bryan, it was never by design. But, these things happen, and you act. You take a chance and you hope that your decision is going to be the right one. It just so happens that many of the outcomes have been good. There have been some exciting times. I think you're absolutely right, Meech Lake, the residential schools settlement – the largest settlement in Canadian history – the apology,³⁰ we actually got to speak to Canadians from the floor of the House of Commons, I wore my headdress. The TRC – which we designed actually. No one ever has given us any credit for that. A lot of people think that the Truth and Reconciliation Commission actually happened over here, but it was the Assembly of First Nations that actually insisted on a truth commission, and it was our team that actually designed the framework for the TRC. You have the specific claims new legislation, the tribunal Bryan was very involved in that, and that isn't often mentioned in terms of discussion of accomplishments or achievements. That was huge. I was there when the government tabled the Statement of Reconciliation in 1998. The \$350 million dollars for the Aboriginal Healing Foundation, that essentially opened the door to all of the civil suits, and criminal proceedings on abuse in residential schools. That actually made it possible for us to do the settlement agreement and be involved in the negotiations around that. There is an interesting story around that too that Canadians are generally not aware of, and how all that happened. Meech

²⁹ *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.

³⁰ This is referring to the 2008 apology made by former Prime Minister Stephen Harper to former students of Indian Residential Schools, on behalf of the Government of Canada.

Lake brought forward the Royal Commission on Aboriginal Peoples.³¹ You'll recall that Brian Mulroney brought forward the letter and we had a big meeting in Jack's office. The Prime Minister had sent a delegation of officials from Ottawa to meet with us and try to convince us to withdraw and accept these commitments that if we changed our position and accepted Meech Lake, they would have the Royal Commission and this and that. They brought forward the Royal Commission anyways, so we were right. Then we had — how many recommendations in there? Three or four hundred. There were some pretty big things that came out.

BPS: I was telling people before we started that I wasn't sure how we would do this interview in just a couple of hours, but let's try to do a little bit about a couple of the events that you've mentioned. Talking about serendipity, Oka³² happens, so to try to make sure that there were no more Oka's, Prime Minister Mulroney announces that there would be an interim Indian Claims commission,³³ which you were a commissioner of. By the way, I just want to ask you, as a non-lawyer in this very lawyerish environment, did you feel comfortable there? Did you feel somewhat at a disadvantage being a claims commissioner as a non-lawyer? Or you figured out that lawyers don't know that much stuff compared to an informed lay person?

PF: Actually, I've been criticized for this – I never hesitated to reach out to experts to help formulate our strategic positions or to be involved in the negotiations. Often, the experts or specialists I brought on were non-Indigenous. I would be criticized. I think the word that someone used was that I had a penchant for hiring white people. When it comes to such

³¹ The Royal Commission on Aboriginal Peoples was created in 1992 to explore issues facing the Aboriginal Peoples in Canada. In 1996 the Commission published a 4000 page report of recommended changes over a twenty year period.

³² The Oka crisis refers to a stand-off between the Mohawk Nation and the Quebec police force in Oka, Quebec. Following a court decision to allow a development company to expand a golf course onto traditional land, the Mohawk Nation protested by blocking access to the region. The standoff began July 11, 1990 and lasted 78 days. It gained national media attention and resulted in one fatality.

³³ The Indian Specific Claims Commission performs a variety of tasks as an impartial third party, including: mediation, inquiries into a disputed rejection of a special claim, and disagreement over compensation criteria to be used in determining the amount of a specific claim.

matters I am colour blind. I've never had a preoccupation that my expert here or my expert on this side had to be Indigenous. Not that I believe that Indigenous peoples are not as skilled as non-Indigenous, but there are moments where you draw on the best help you can, and that has been my practice. In my view, it's paid off handsomely. It's been just very exciting. You mind if I tell you the story about how we finally made it possible to enter into actual negotiations for the Indian Residential school settlements?

BPS: Please do.

PF: We had the interview with Barbara Frum³⁴ where I disclosed my story. Civil suits ensued, and some criminal proceedings, and residential schools became a national issue. People had no idea what residential schools were. The whole idea that the churches ran these schools, and no idea that these were residential schools in places like Winnipeg, and industrial schools in St. Boniface, one in Middlechurch, one in Brandon. They were all over actually. Canadians had no idea what went on in these schools, no idea that these schools were failing our people, and all the suffering that went on. So it breaks open and it becomes this national story. It rolls out, we have the Statement of Reconciliation in January of '98 and it opens up the door even more to this experience. More agitation, people were pressing, and government decided, "We've got to do something about this because these claims are going to clog up the courts, the courts won't be able to function, so let's establish a process to try to deal with these claims." So they established this alternative dispute resolution process. So that went on for a bit. Then we discovered that it wasn't working, and people weren't being compensated and the average age of the survivors was getting older and older and older. We were afraid that we would all die before the government ever did anything fairly about this. So, we pushed on. I lost the election in 2000 and I was appointed as Chief Commissioner of the Indian Claims Commission. The other Commissioners were not lawyers either, so we had legal counsel that we could call on. I never hesitated to go to legal counsel for advice and support in making the right decisions. So, I was finished with that. I was Chief Commissioner for a three-year period. In the course of my work, I go to a meeting and I don't know how many Chiefs were there from

³⁴ Barbara Frum was a reporter for CBC. She interviewed Phil Fontaine on the topic of residential schools on October 30th, 1990.

across the country, and I had lost SOMETHING in 2000 and I walk into this meeting room and a Chief gets up from BC and says, “Our next National Chief.” And I was thinking, “What the heck?” right? So it was obvious that the people were prepared to support me the way that they hadn’t in 2000. I got back into the mix and I was re-elected in 2003 and I served for 6 more years. One of the big issues that we took on was this residential school issue. We were meeting all kinds of resistance from Justice’s lawyers especially, because they didn’t believe that we had a legitimate claim to financial compensation. We had all kinds of discussions, and everything was bogged down, so we organized this conference. My partner, Professor Kathleen Mahoney³⁵ and I, put together this conference. We brought in survivors, we brought in elders, we brought in church people, we brought in others – South Africans, for example – we brought in people that had experience with the South African Truth Commission. It was just an incredible conference, and at the end of the three days, the conclusion was that this thing was a huge mess and we had to do something to fix it, otherwise the outcomes were going to be so terrible. Before we concluded the discussion, I took the senior official, by the name of Mario Dion,³⁶ off to the side and I said, “Look, Mario, we’ve been here for three days, you’ve listened, and I am sure you’ve come to the same conclusion as I have, that we’re going to have to do something other than what is being done now. Give me an opportunity. Give me some money and I will put the best team together, and I will fix this for you and the government.” He said, “Phil, how much do you want, how much do you need?” I gave him a number and he said “Okay.”

BPS: Wow.

PF: He said okay and so I put a team together, headed by Professor Mahoney, and Sheilah Martin³⁷ now a Puisne Justice on the Supreme Court

³⁵ Kathleen Mahoney, a professor at the University of Calgary, was the chief negotiator for the Assembly of First Nations for the Indian Residential School Settlement Agreement.

³⁶ Mario Dion was the Deputy Minister of Indian Residential Schools Resolution of Canada.

³⁷ Madam Justice Sheilah Martin worked as professor, and Dean at the University of Calgary’s Faculty of Law. In 2016 she was appointed to the Alberta Court of Appeal. She also served on the Court of Appeal for the Northwest Territories and the Court of

of Canada, was another member of our team. We had a pretty impressive group of people. I sent them out. I don't know what the right term would be, but they went out to Ireland and all over the place and learnt about similar experiences and the government's response to these experiences. At the conclusion of their research, Professor Mahoney wrote a report, on behalf of the Assembly of First Nations, that set out what we considered the appropriate action to resolve this issue. Among those actions were an apology, a truth commission, compensation for individuals, money for the Aboriginal Healing Foundation, and an early payment to the elderly survivors. So we tabled that to the government and they said, "No, we are still not convinced." I had a good relationship with then Prime Minister Paul Martin, and I think what is the first for a sitting Prime Minister, - he just dropped into the National Chief's office one day. He came in, put his feet up on the coffee table and had a chat with me. We talked about a whole number of things, including the residential school issue. Again, he said, "Phil, what difference is it going to make if we give you a ton of money? What will a pile of money fix?" So I tried to explain to him what that would mean to our people, and he listened, didn't say anything, and he left. Not long after that John Paul II died. I got a call from the Prime Minister's office, inviting me to join him and his wife Sheila at John Paul II's funeral. So I said, "Absolutely." So they expanded the official delegation to include the Leader of the Official Opposition, Stephen Harper,³⁸ and he also invited Jean Charest,³⁹ the Premier of the most Catholic province in the country. So there were five of us. But then a whole bunch of other people came, including the media. So we flew off to Rome. Every nation state was represented at the funeral, and they are all interviewing as you came out of St. Peter's, and there I was from Sagkeeng, little guy, part of the five. The night before we had had this dinner when we arrived in Rome. The Prime Minister took all of us out to dinner and he was just the most gracious host, pouring wine, Jason Kenny⁴⁰ here, we had Harper there, you had Rob Nicholson⁴¹ who became Justice Minister there, Member of Parliament

Appeal of Nunavut and the Court of Queen's Bench of Alberta.

³⁸ Stephen Harper served as Canada's twenty-second Prime Minister from 2006-2015.

³⁹ Jean Charest was premier of Quebec from 2003-2012.

⁴⁰ Jason Kenney, the former leader of Alberta's Progressive Conservative Party, is currently running for leadership of the new United Conservative Party.

⁴¹ Rob Nicholson is the Member of Parliament representing Niagara Falls riding in the

Ethel Blondin⁴² was there, and others. So we are having this dinner, all kinds of talk. Paul Martin was talking to Jason Kenny, “Your family was liberal, you were a liberal at one time,” and that kind of conversation. Then he turned to me and he started having this very personal conversation about residential schools issue again. And as Martin was one, he asks all kinds of questions. He always asked so many questions about whatever issue was before him until he was convinced that he understood it. So, we are having this conversation, then he stops and says, “Phil, we are going to get it done.” That night, right, in Rome. So it was like a mantra when you come back, “And then the Pope died,” as lawyers would say, meaning something happened at the funeral.

So not long after we got back we are told that the government is now interested in actually engaging in discussions, no longer just conversations. These discussions led to negotiations, the Agreement in Principle, and the appointment of Justice Iacobucci⁴³ to be the federal representative to try and resolve this. And we did it. Just before the stroke of midnight. We had to get it done because the government was going to fall. So we had this Agreement in Principle that was legally binding, and it incorporated all of those elements that were in the AFN report. We were at the table sometimes eighty people, mostly lawyers. We were the only delegation that had survivors, elders, not just lawyers. We had to be really strategic, and we were. We won the day because we ended up with; it wasn't called the lump sum payment, but the common experience payment - \$1.9 billion. We ended up with an endowment to the Aboriginal Healing Foundation,⁴⁴ the Truth and Reconciliation Commission, funding for the commemoration projects, money for the lawyers - there were a whole number of lawyers. The apology is not written into the agreement, but it was always understood that an apology would be part of the package. The first thing that the incoming

House of Commons. Nicholson represents the Conservative Party.

⁴² Ethel Blondin is a Dene woman and Canadian Politician. She was the first Indigenous woman to be elected into Canada's Parliament.

⁴³ The Honourable Justice Frank Iacobucci was appointed to the Supreme Court of Canada in 1991, and served until 2004.

⁴⁴ The Aboriginal Healing Foundation (AHF), established in 1998, has the main objective of healing Indigenous peoples from the effects of attendance at Indian Residential Schools. The AHF received one hundred twenty-five million in funding from the Indian Residential Schools Settlement Agreement.

government did was to seek advice on the settlement agreement, and they were advised that it was a legally binding agreement that they had to honour.

BPS: So all kinds of serendipity, as you mentioned, had to happen – the butterfly effect. One of the lessons though I try to teach my students is that if you want something to happen, don't bring the other guy a problem without a proposed solution. Which you did there. My view is that if you want a government to do something about residential schools, they've got one thousand problems; they don't know what the answer is anyways, why should they figure it out. You have all that friction and inertia. But, you brought them the solution. Now, there had to be a lot of good luck to make that happen, but you had done the homework to actually conceptualize what the solution would look like. To some extent, that happened with specific claims too, because the AFN was an active partner in trying to formulate what a system would look like.

PF: You were at our meeting, in fact, in Vancouver. The last meeting with Jim Prentice and Jack London, you didn't come with Jack that time.

BPS: On Spec Claim?

PF: Yes, Specific Claims. No, you came on with the working group. But we had a hell of a session there. Jim Prentice was a friend of mine and he was the Minister of Indian Affairs. We had a battle royale because he said, "Let's take a break," he didn't like what Jack had said. "We need a break, we gotta go for a coffee." So he invited me to his room with his Chief of Staff, Jean-Sébastien Rioux, and my Chief of Staff, Roy Jogistein, so he is going to start off complaining about Jack, and I just ripped into him. I cursed him like you wouldn't believe. I screamed at this guy. He turned kind of pale and he just sat there, he didn't know what to do. I said, because he was challenging my legal counsel, he was doubting my legal counsel, and Jack was trying to be supportive about the proposition that was on the table. Prentice completely misunderstood that, and he was being an asshole, so I had to call him on it. And we walked out of there and we had the deal. There again Jack was an essential player. That is when we came to an understanding on Specific Claims. Bryan became a very important person in bringing forward the actual inner workings of the legislation. You had to craft the legislation.

BPS: Yeah, to a very large extent, I don't want any discredit to the contribution of federal justice officials, particularly Bob Winogron,⁴⁵ but yes, the legislation itself acknowledges that it was basically a joint production of federal officials and us, and it wasn't easy. After the 1988 promising 1998 AFN-Canada joint task force report, there was a really bad piece of legislation parliament passed in 2002, which is a forgotten piece of history, remember the *Indian Claims Resolution Act*?⁴⁶

PF: I was the Chief Commissioner there, it was awful.

BPS: It was awful.

PF: The Commissioners there were just terrible. They were Liberal appointees.

BPS: You hung in and then the Harper government produced Justice at Last. And then we got back to the table and a lot of things have gone predictably off course since, the bureaucracy has been very worse about rejecting claims than ever, but now there is an independent tribunal and once it is there, how is anybody going to abolish that. There is an independent specific claims tribunal.

PF: Created by legislation. It's like the Supreme Court of Canada Act. It's like the *Official Languages Act*. It's like the *Multiculturalism Act*.

BPS: It's hearing cases, it's deciding cases, there are dozens of cases before it. In retrospect, I keep saying to people, when something is done it's like, "No kidding, that is obvious you have to deal with those claims," but getting from the, "Yes you would think it was obvious, it took us about ten years of blood, sweat and tears."

PF: Oh gosh, years. Actually, with successive governments it took about sixty years to bring forward new legislation on claims. And it was actually the Harper government that succeeded.

⁴⁵ Bob Winogron is a partner in the Ottawa, Ontario office of Gowling WLG. He was also Canada's legal representative on the AFN/Canada Joint Task Force, which created the Specific Claims Tribunal.

⁴⁶ Specific Claims Resolution Act, SC 2003, c 23.

BPS: Yeah, you were talking about scolding Prentice. I had to be very affirmative, but very professional when I was negotiating for you guys. I remember one time this federal official tried to use this technique of, “Oh, I thought we agreed on that, so let’s just move on,” “No, we didn’t agree on that,” “No, we agreed on that, let’s move on.” I was like, “As long as I am retained by the Assembly of First Nations, I am here to speak on their behalf and we are not just going to move on. So, you may not find me particularly loveable at the moment but no, we are not just going to move on.” You can’t do that all the time or you’re just a crabby irrational person, but you’ve got to do it once in a while.

PF: It’s part of the theatre. I didn’t dislike Jim Prentice, in fact he was a friend of mine. But he had scolded me before that for bringing in an advisor, right. He said, “You know, this guy’s costing you,” I said, “Well, he is my advisor, he is my guy, he is not your guy.” I tried to give him advice then. I said, “Look, you’re spending far too much time with Patrick Brazeau,⁴⁷ you are taking too much from Brazeau, he’s going to hurt you.” He said, “Phil, I have a lot of time for Brazeau.” I said, “Okay, I will never raise Brazeau’s name again, ever. Whoever you want to consult with, that is your business.” Well, we know what happened then, with Brazeau. He’s been a terrible albatross in the government, no longer in the government. It’s just a sad story. Jim Prentice had no idea that it would turn out the way that it did there, his appointment to the Senate.

BPS: I don’t know, maybe I am giving him too much credit, but I always figure that one of the reasons that we succeeded on this specific claims file was because of Prentice.

PF: Oh yes, absolutely. You know that he was co-chair of the Indian Claims Commission before I was.

BPS: Yes, so I figured this guy knows the file, and has shown genuine commitment to it. And no matter what, people are always critical of the

⁴⁷ Patrick Brazeau was a Conservative Senator for Repentigny, Quebec. He assumed office in 2009.

Minister, whoever it is. But one thing I figured was that without Prentice there, we probably never would have got it.

PF: Look, if it wasn't for Prentice, we wouldn't have had the Settlement Agreement. It was taken from Bev Oda⁴⁸ and placed in Jim's responsibility, and it made a huge difference.

BPS: It is funny how history works. Bev Oda, remember her from the orange juice?

PF: And killing the Indian language, \$172 million.⁴⁹

BPS: Oh, I didn't know that.

PF: Indigenous Languages Initiative.⁵⁰

BPS: Oh, that is worse than the orange juice.

PF: Terrible, it was one of the worst decisions by the Harper government. First decision they took was to kill the language initiative. The second thing they did was kill the Kelowna Accord.⁵¹ And the Kelowna Accord in my view is one of the single most important achievements of the Martin government.

⁴⁸ The Honourable Beverley "Bev" Oda was a Conservative Member of Parliament. In 2006, she was appointed Minister of Canadian Heritage and Status of Women; in 2007 she was appointed Minister for International Cooperation. In 2012 she resigned her seat following the controversy surrounding her using taxpayer money to purchase orange juice.

⁴⁹ In 2002 the then Liberal government determined it would spend one hundred seventy-two million dollars over eleven years to help preserve Indigenous languages. In 2007, under the then Conservative government, the one hundred seventy-two million dollars of funding was cut.

⁵⁰ The Aboriginal Languages Initiative, managed by the Department of Canadian Heritage, provides five million dollars annually across Canada to support language initiatives.

⁵¹ The Kelowna Accord, established in 2005, had the goal of closing the gap of the standard of living in Canada between Aboriginal and non-Aboriginal peoples.

BPS: It's strange how things don't go away. It went away politically in a sense, but there was just that decision of the Canadian Human Rights Tribunal about how it is discrimination to underfund First Nations Child services.

PF: So what happened is the Harper government kills it, and one of the ways they did it was during the campaign was when Monty Solberg⁵² is interviewed on a Saskatoon radio station. He says, "The Kelowna Accord was negotiated and written up on the back of a napkin, it's worth as much as the napkin it was written on." When they came in Kelowna was cast aside. But guess what, 2016 the budget, Kelowna plus. It never died. There was a private members bill that was passed without the money.

BPS: It was very active litigation program which I greatly enjoyed participating in as one of your counsel along with Jack while you were National Chief. There are some landmark cases there, *Mikisew*⁵³ for example which has had a lasting impact. Any thoughts on the litigation program that AFN conducted and the importance of having its own voice at the Supreme Court of Canada?

PF: Well, one of the responsibilities, and in fact it is part of every mandate, every National Chief is to protect the rights of the First Nations - treaty and title rights. The interpretation I put on that was that if there was a case before the courts that was important in terms of our rights and interests, we were going to be there. But we knew that we couldn't intervene at every level and so a decision was taken that we would be interveners at the Supreme Court level. I had no budget for that and the government of course would never agree to fund our efforts in that way. So, we just ate the costs of all of our interventions at the Supreme Court. I think we did twelve or fourteen - I forget the exact number - during my terms there. I wouldn't really take issue with this, you know, I didn't argue publicly about it, but whenever our people would say, "What the hell is AFN doing, representing our rights, and

⁵² The Honourable Monty Solberg was a Conservative Member of Parliament from 1993-2008. He represented the riding of Medicine Hat.

⁵³ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 SCR 388. The Court unanimously decided the crown owed a fiduciary duty to First Nations which included a duty to meaningfully consult with them before developing on treaty land.

why don't they do this, why don't they do that, why are they so weak?" I've done this very discreetly of course, I would remind people that we were interveners at the Supreme Court, whatever the number was, twelve or fourteen times, and it cost us a fair bit, but it was worth every cent. It was really very significant. I don't know if the AFN does it as regularly as we did.

BPS: It was a crucial time in terms of the arc of developing the case law. We mentioned *Mikisew* where we did an intervention, in *Sappier-Grey*⁵⁴ we suggested the test of domestic use, which was an AFN concept that the court ultimately adopted. As an intervener, you don't want to be too boastful about what we won or we lost, there are a lot of other people there, including the main people. I think in some cases we had a positive influence, and in some cases, I think a decisive one. I don't want to say which ones in particular because I don't want to be unkind or ungenerous to the other counsel, but I am biased, obviously Jack and I were there for it. It was a crucial time in developing the case law.

PF: We made the decision to retain Jack and Bryan.

BPS: Serendipity too, it just happened I was in Winnipeg, and there is a story behind that because it had to do with my family coming from a far world and ending up in Western Canada. Jack had the same kind of family history, and you ran into Jack, and Meech Lake, and Jack happened to hire me as a law prof.

PF: And the rest is history.

III. THE LAW SCHOOL GOING FORWARD

BPS: One of the reasons I am doing this project is that we are at a crucial point in the history of Canadian law schools. We just started teaching the Indigenous stuff maybe in the 80's or 90's, not very much. It used to be we had very few if any, Indigenous students going to the law school. A lot has changed in many, many ways. All of these things that we've been talking about – the Specific Claims Tribunal, the creation of the residential claims system, modern land claims agreements, self-government agreements, many

⁵⁴ *R v Sappier; R v Gray*, 2006 SCC 54, [2006] 2 SCR 686.

First Nations citizens now assuming positions in the judiciary, and as ministers, Mayor of Winnipeg now is a person of Indigenous ancestry. Okay, so we are a law school here, and we are wondering what do we do now? What should we be doing? How do we make the place more comfortable in terms of bringing in more Indigenous students? What do we teach students, whether they are Indigenous or not? What is important for us to teach them about Indigenous peoples and how to represent Indigenous peoples? This is just a very general open-ended question; it isn't like there are definitive options A, B, C. We are just starting, especially in light of the TRC recommendations, what do we do next? Do you have any thoughts on what is next for us as a law school trying to contribute to understanding, discussion and training in this area?

PF: How many Indigenous law students are there now?

BPS: I think five or ten right now in our first-year class.

PF: Any in the final year?

BPS: I would say that the completion rate is much higher than it used to be. You've probably spoken to some of the people who went through initially, Ken Young⁵⁵ for example. He has mentioned to me about how lonely it was, there was just no support, no other Indigenous citizens. Now we have a support program. The statistics might be a little elusive, because what is an Indigenous person nowadays? You might have thought originally only a First Nations person, now we certainly think that it includes Métis people. What about people like Brian Bowman, who doesn't have official status, but has ancestry?

PF: Or Jean Allard,⁵⁶ he was here the same time as Murray Sinclair.⁵⁷ He was an MLA for Rupertsland, and he is Métis, but I don't think he ever identified as such when he was a student here. But I have thought about

⁵⁵ Ken Young was the first Indigenous graduate from the Faculty of Law, University of Manitoba. He graduated with his LL.B. in 1973.

⁵⁶ Jean Allard was elected MLA for Rupertsland in 1969.

⁵⁷ Murray Sinclair, a member of the Ojibway First Nations community, graduated from the Faculty of Law at the University of Manitoba in 1979. He was the first Indigenous judge to be appointed to the bench, in 1988. He is now a Canadian Senator.

your question before. I would compare just about every law school in the country to Victoria, and to a lesser extent the University of Toronto, where you have Ken Young's nephew as a professor there.

BPS: Oh, I didn't know that.

PF: Yes, Doug Sanderson.⁵⁸ I've gone there to speak in his class. I go every year pretty much. The school has to be really Aboriginal-friendly. It has to be Indigenous-friendly. That means, I don't know what your support program is like, but Indigenous students should be accepted as integral to the success of the law school. There are any number of ways of doing that. I think you want to take a very careful look at the University of Victoria and see what steps they've taken to achieve the kind of success that they've achieved because you get a lot of people - Indigenous people - that are interested in law that really want to take John Burrows' teachings. I think you have to make the entire institution here such that when students are finished their undergrad, they look to the law school as the most important vehicle for change. One of the ways you do that is to make sure, and I think the steps are underway, to establish the Aboriginal presence as a central part of the curriculum here at the University. If you want to graduate from Arts, one of the requirements is you take a science course. One of the requirements ought to be an Indigenous history course, or native studies, I don't know if they still call it native studies, but something related to Indigenous peoples. If you can establish the kind of base that is welcome here, I think you'd end up with more Indigenous students than is the current situation. It's always been seen as something that is out of reach for most Indigenous students, I don't know, that may not be the case now.

BPS: There is still a physical separation here in Manitoba. Lots of Indigenous people live in the cities now, but you were in a reserve that was physically different from Winnipeg, some of the reserves are still very distant because the only way you can get in and out part of the year is with an airplane. This is a challenge we've got to get our heads around. One of the things I keep thinking, Phil, is that we've got to get beyond seeing everything through a "lawyers talking to lawyers" framework. If our students are going

⁵⁸ Douglas Sanderson, a member of the Opaskwayak Cree Nation, received his J.D. from the University of Toronto in 2003, and his LL.M. from Columbia University in 2004. He is an associate professor at the University of Toronto Faculty of Law.

to get a beginning of some ideas and some perspectives on Indigenous issues, that is a lifetime of trying to acquire what a different culture is all about. It's got to be more contact than somebody who has practised law, or an Indigenous lawyer, somehow we've got to make connections with people who live in the communities, who've dealt with lawyers, who've dealt with child and family services, just whatever. I don't know. It's much easier for me to say than to actually figure out how to execute. We have a basic model of learning as university profs, "Here is a printed text, let's talk about a printed text." We've looked at Indigenous legal traditions, those are not written, it's an oral tradition. So how do you connect people to an Indigenous legal culture that are by their nature not textual. As oral traditions, how do you actually get people to talk to elders or people who know that tradition? I don't know yet how we as law schools accomplish this for our students in operational terms.

I think we have to get beyond actions that are merely ritual. You can have people come in first week in orientation and give a speech, but how can we get people much more engaged? I was thinking for example, we can have a course in oral history, so every student as part of their assignment for the class would be to do an oral history with an Indigenous person - actually go out to the community and talk to the person, learn about what the law is doing, the law and ethics of interviewing people, how oral history works in the courts. But also, actually talk to an elder, someone who has had experiences, and get to know somebody not just as an introductory lecture, but through a sustained time. So that is just some of my thinking.

PF: Good ideas.

BPS: My view is that we would benefit everyone, including Indigenous peoples, the most if we tried to be as open and forthright as possible. If we are having a class on say funding of First Nations, I want people to be comfortable saying, "Well, why do we keep sending all that money? That is a lot of money we aren't getting results," and someone else to say, "Okay, well here is why, and here is what we can do better." To me, we are not really going to find improvements, and educate people, unless people feel free to ask hard questions that are not always comfortable. You've got to have all the views out there and openly discussed. How can you find solutions if you can't openly discuss the problem? My view is that there was a time when people had negative biases, and some people maybe still do to

some extent. But now we have a time when some well-meaning people are actually sometimes patronizing in their interactions with Indigenous persons, “I don’t want to state my genuine questions or concerns because they might offend you, and I will say instead that I accept everything you say.” That, to me, is not helpful either, that is not treating someone as an equal. I don’t see how you actually resolve problems without having an honest conversation. Any thoughts about all that?

PF: I’ve never been afraid of listening to hard conversations or listening to people ask tough questions. Inappropriate questions, who decides what is or is not appropriate? It should be wide open because we are all about learning, and you won’t learn if you don’t ask the questions that are important to you. Some of these questions may hit pretty hard, but that is fine. We’ve been hard at this now for a long, long time, and people shouldn’t overlook the fact that fifty years ago we may have had 10-20 Indigenous students in university in the entire country. Today you have anywhere from 22,000 to 30,000. That is a fair number, and they are in every discipline, every profession. Of these people, some will fail, and a good number of them will succeed. Support is very strong. One should never, ever be afraid of asking a tough question.

BPS: By the way Phil, on a lighter note, I don’t know if you remember this, I just wanted to find a way to work it in because I just think it is a funny story. Do you remember once you spoke at the Canadian Jewish Congress? I was the speaker after you, and in your speech you said, “People keep telling me I look Jewish,” and you said, “I don’t know what that even means, I see Jews and they are tall, and they are short, and they are dark, and they are light, and curly, and straight hair. So what does that mean to look Jewish?” I came on afterwards and said, “I’ll tell you what it means. What is the Jewish look? It’s anxious.” There has been an intersection in particular of Jewish lawyer’s in particular with First Nations with similar to the American civil rights movement, there is kind of an interesting cultural background as to why Jewish lawyers have frequently been involved in representing minorities, it has to do with their experience of being a minority. But I’ve told that story many times about what the Jewish look is, it gave me an insight.

PF: The first land claims settlement in North America was in Alaska, wasn't it? And the lawyer there was Arthur Goldberg.⁵⁹

BPS: That sounds about right, yes.

PF: Didn't he end up in the Supreme Court in the United States?

BPS: Yes.

PF: That was years ago. That deal was close to one billion dollars, nine hundred million I think, which, especially back then, was a lot of money.

BPS: That was a time when nine hundred million dollars was real money. (Laughs) you can buy things with that.

PF: Getting back to the question. I struggle with my answer. I don't know, it really depends on the situation. It depends on the audience. It really is very much dependent on what one wishes to accomplish or achieve. As a result of the question being asked by this person or that person. If it is just to be mischievous, then that isn't worth as much as someone that is genuine and really wants to learn. That person will ask a question that seems somewhat unfair or tough, but if the person is focused on learning then that is quite alright. You would think that in a place like this that the questions being asked are usually pretty genuine, and that there is no malice intended in the question. If there is malice intended, people should say enough is enough. We used to worry about the stories in the *National Post*, for example. We, for the longest time, thought and believed that the *National Post* was using us to get at the Liberal government. It was hurting us. For example, they used to have these front-page stories about this woman from Portage la Prairie⁶⁰ that would go to Ottawa with a couple of shopping bags, full apparently with evidence of corruption and mismanagement and abuse by Chiefs. She would be welcomed in the House by the Reform Party and the *National Post* would give it front page coverage. I talked to this woman, I knew her father, and I said, "Look, if you have evidence, take it to the

⁵⁹ Arthur Goldberg (1908-1990) served on the U.S. Supreme Court from 1962-1965.

⁶⁰ Portage la Prairie, Manitoba is a small city located approximately 70 kilometres west of Winnipeg, Manitoba.

police. If there is criminal wrongdoing it's a police matter, take it to the police." She said, "No I am not, you can't trust the police, they are in bed with the Chiefs." She had learnt that from someone obviously. So I went to the then owner of the *National Post*, Izzy had died, and so I went to his son Leonard.⁶¹ I said to Leonard, and I was accompanied by Jack, I said, "Look, you gotta ease off on this stuff, it's hurtful, it's not helping anything." Of course, it was always about the money. "First Nations are getting seven or nine billion dollars, where is that money going? It's the taxpayers that are responsible for this, is there any accountability, there is no transparency." Of course, part of the Kelowna Accord, one of the provisions was the creation of actually two institutions - the Aboriginal Auditor General and the creation of a position of Ombudsperson. People were complaining in our community because they didn't have access, they didn't know where to take the complaints, so we created this institution where they could take whatever complaint or concern they had and they would have a full honest hearing. In terms of accountability, let's create an office like the Canadian Auditor General, working with the Canadian Auditor General, completely independent, and let's fix this problem of accountability and transparency. You know what happened, Kelowna hit the dust with the Harper folks. Were they really sincere about accountability? Not on our terms obviously. It was going to be on their terms.

BPS: Can't thank you enough, Phil. You're one of the great white whales of interview subjects on this topic.

PF: I am never a very logical kind of thinker, so when I talk it reflects the fact that I can be all over the place.

BPS: I always think about someone reading this twenty or thirty years from now, looking back and wondering "What happened then?" Some of the stories you told us, maybe they would be lost to history if we hadn't talked about it.

PF: My breakfast with Elijah, and Elijah's big concern that was not Meech Lake. (Laughs) His nomination!

⁶¹ CanWest Global Communications Corp., founded by Israel "Izzy" Asper, acquired the *National Post* between the years 2000 and 2001.

BPS: Or even things that I just learnt myself today. I always wondered how you got so good at politics and I didn't know the whole story about going back to Fort Alexander. I know that this is only a fragment of the whole story you've gone through, Phil, but as they say you can't be expected to complete the task, but we aren't excused from beginning, so this is a beginning.

PF: When I became Chief I remember Dave Courchene Sr., he wasn't afraid of taking risks. So we became the first First Nation community, Indian band, to take control of education. We established the first locally controlled education system in the country in 1973. That was the very first decision I took as Chief. And then we created the first Indian Child Welfare Agency in the country in '76. That was big for us. Then I was part of Cindy Blackstock's⁶² (First Nation Chief and Family Caring Society of Canada) action filed with the Canadian Human Rights Commission, I was National Chief then and we co-sponsored the action against the feds.

BPS: There is a book or a novel or a movie in here, Phil, because just think of it - I know you don't think of it this way because you lived through it - but imagine a kid who lives through the worst of the residential schools and then stands in the House of Commons and has the Prime Minister read the apology.

PF: And the conversation that I had with Harper when we were negotiating the apology, he and I. I was trying to play hardball. They called me and said that the Prime Minister would like to see me, and I said, "I can't, I have a doctor's appointment." It was true! And they said, "Well when will you be finished?" and I said, "Well, probably here at this time," and they said, "Well, he'll meet you then!" Sure enough, I went and I had three people with me and they stayed outside and we talked and the first thing he said to me was, "Phil, you strike me as an angry guy." He actually told me that. I said, "Prime Minister, I am not angry, I am not an angry guy, I am a very concerned person, though. You have an opportunity to do something really

⁶² Cindy Blackstock, a member of the Gitksan Nation, is a Professor at McGill University with a PhD in social work. She has published many books relating to Indigenous and welfare issues. In 2016 she was appointed as a Commissioner for the Pan American Health Organization on Health Equity and Inequity.

significant for the country, your government and for us.” And he said, “Aren’t you up for re-election in a little while?” and I said to him, “Actually, I am going to be around a lot longer than that.” So he was suggesting that this was strictly politics, right. And I said, “No, no, no. I am being very sincere, this is an opportunity and we can’t let it slip us by.” I think I put him at ease, and we started having a real conversation. He admitted to me that he didn’t show his emotions easily, it was hard for him. This was big stuff for him, too, right. He told me then what he had done with the Chinese Head Tax apology – he didn’t trust the officials, not surprising right, Harper – he took the pen from his officials and he wrote the apology himself is what he told me. He had done the same thing with the apology that he delivered on residential schools. The fear of Justice officials is liability. If he apologized he would be admitting liability, and we’d already negotiated a Settlement Agreement. So he said, “Well, I can’t wait for these guys, so I took the pen from them and I am doing it.”

BPS: I am just imagining a play or something, if you want to crystalize the whole modern history, just you and Stephen Harper in a room discussing the apology.

PF: And I had come from my doctor’s appointment. I think I had an eye thing, but it wasn’t that important. But I was just saying look, my time is important. You know the guy that actually engineered this was Bruce Carson.⁶³

BPS: Bruce!

PF: Yes!

BPS: This will be hard to portray on an interview, I don’t know what font you’ll do that voice in. “Alright, now what ball of snot do you want us to deal with now?”

PF: So when we arrived there, he ushered me in right away. So, I had other occasions to have that kind of conversation. I also remember just he (Harper) and I sitting in the car in Rome, waiting for the rest of the

⁶³ Bruce Carson was senior advisor to the Harper government from 2006-2008.

delegation. We were just having a chat and I told him, “If you form government, the guy we want as Minister of Indian Affairs is Jim Prentice.”

BPS: I didn’t know that.

PF: He said, “Really?” And I said, “Yeah, you know Jim is a friend and I think that he would be great.” I had no idea that they were going to do it.

BPS: See, this is another butterfly. I never knew that. As you know Phil, I think that if we hadn’t had Prentice as Minister, we wouldn’t have got the Special Claims Tribunal through. And now I find out that happened partly because you had a conversation with the Prime Minister at Jean Paul II funeral.

PF: The conversation I had with Martin, pouring wine and all that. When I arrived there, I was a big shot from the reserve. We checked into this fancy hotel and I didn’t know how to turn on the lights. I couldn’t for the life of me figure out how you turn on the lights. I struggled with that for a bit. Finally, I put my suitcase down and I looked around, and all I had to do was put it in the slot in the light. There is outer Rome and inner Rome, and the lights for that one were on the console. So I had to go downstairs and ask them how to turn on the light.

BPS: I am glad you did, because if you’d tripped in the dark Canadian history might have been changed!

PF: Then I got a call from the Prime Minister’s assistant, and we were all being invited to dinner. That was pretty big for me because when we arrived there was all kinds of security – police cars, lights flashing. Then the long line of cars to the hotel. It was pretty big for me.

BPS: I hope sometime in the future we can do something like this again, because there’s got to be a whole lot more stories like this.

PF: I would love to sit and chat. I really didn’t have time to reflect.

BPS: Thank you so much, Phil.

PF: Thank you, Bryan. It was lovely to see you.