

# Interview with Sacha Paul\*

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

## I. INTRODUCTION

**Sacha Paul (SP):** So this sounds like an interesting thing that the Law Journal is doing, what brought this about?

**Bryan Paul Schwartz (BPS):** I'll tell you the backstory. In the 60's there was a big transition for law schools across Canada to move on campus. I thought that while they are still alive, I would interview people from the great transition. Just as we were getting finished I thought "We don't have any Aboriginal voices in here." In the 60's you wouldn't have had any faculty member that identified as Aboriginal, we might have had some Métis students, but they wouldn't have self-identified. We don't know if there were any First Nations students. So I thought that by contemporary measures this is a resounding absence. You're talking about past, present, future of legal education and not a single person with an Indigenous background. So I got a research grant to do a separate project, and you are part of it, of interviewing people who were part of the first wave of Aboriginal people to come into law school, and practice and, sort of, follow the generations that have come since then. I don't know what we are going to find, which is why we are doing this.

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\* Interview conducted by Bryan P. Schwartz.

Sacha R. Paul is a partner with Thompson Dorfman Sweatman LLP in Winnipeg. After graduating with a Bachelor of Laws from the University of Manitoba in 2002, Sacha articulated at TDS and then clerked with Justice Ian Binnie at the Supreme Court of Canada before returning to Winnipeg. His practice focuses on Indigenous law, public/administrative law, and insurance and personal injury. He has been called to the bar in Manitoba, Nunavut, Northwest Territories and Yukon. Mr. Paul was an instructor of Insurance Law at Robson Hall, Faculty of Law at the University of Manitoba and is a regular speaker in the Aboriginal legal community.

**SP:** It sounds interesting. I've been poking into the history of Aboriginal people for a while now, and it is interesting. It's quite timely.

**BPS:** One of the ironies of course, is so much of Indigenous historiography is in the legal context. That is for many First Nations the most extensive historical exercise that they will engage in — in terms of gathering elder testimony and gathering documents and looking through the archives — it will be in connection with a specific claim. For a lot of Indigenous people, the documentary record that will be left will be their testimony with the Residential Schools Committee. So it's an unfortunate irony of history that so much First Nations, Inuit and Métis history, the gathering of the history, discussion and analysis of the history so far has taken place in the context of dispute and litigation. I've been quite involved in the specific claims process, including working with the First Nations to establish the new system. When they had the interim claims commissioner: all the archives were sent down to the National Archives. My concern is that these records will disintegrate or be lost, and once it's lost, it's lost forever. By the way, concern over loss of historical memory is one of the reasons that I am doing this exercise, as I did with the "Great Transition in Legal Education" since the 60's. I don't know if you've ever even heard of Cliff Edwards?<sup>1</sup>

**SP:** Of course.

**BPS:** Cliff was the transitional dean from downtown practice, and nobody did a systematic interview of him and his recollections. When he passed away it was all gone, there is no way of ever recovering that. You are very conscious, I am sure, of that with elder's testimony right.

**SP:** Every passing day there can be less and less.

**BPS:** I was talking to Ovide Mercredi<sup>2</sup> a while ago and he was talking about doing some sort of a history project. I said, "Ovide, I don't know if you've thought about it, but the next generation will see your generation as the generation of elders and if you guys don't get your history down it will be

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<sup>1</sup> Clifford Edwards served as dean of the Manitoba Law School from 1969 until 1979.

<sup>2</sup> Ovide Mercredi, a member of the Misipawistik Cree First Nation, graduated from the Faculty of Law at the University of Manitoba in 1977. He is the former National Chief of the Assembly of First Nations.

potentially lost too.” So, I am hoping to get some of the key national figures as part of this project. Anyways, long preamble, but that is just the backstory.

## **II. PRE-LAW SCHOOL**

**BPS:** So where does it all begin for you Sacha, what was your background growing up, and why on earth would you go to law school?

**SP:** I went to law school, really, because I think my father put it in my brain as quite a young child. He attempted to go to the Native Law Center<sup>3</sup> in the late 70’s.

**BPS:** In Saskatchewan?

**SP:** In Saskatchewan. It must have been when the Law Center was just starting to pick up. He wanted to be a lawyer. He had been a teacher for a number of years. Unfortunately, during his initial stay there, he fell and he broke his kneecap, and as a result, he wasn’t able to finish the summer program, and therefore he was never able to become a lawyer. So at a young age, he was always keen on that being something that he thought could bring positive social good. And so he was keen on me doing it. I initially wanted to be a cartoonist until I realized that I couldn’t draw, and so from the fifth grade onwards I thought that law would be interesting. I wanted to do some good, interesting, work for Aboriginal people and Aboriginal law. That is where it came from, but really, without my father’s nudging, I am not sure what would have happened.

**BPS:** Was your father a band leader?

**SP:** He was Chief for four years in our community in Patuanak, Saskatchewan<sup>4</sup> and relatively recently. For the most part, his background was in teaching, whether in Hollow Water<sup>5</sup> or in other places in Manitoba or Ontario. But, he was eventually, near the end of his career, Chief.

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<sup>3</sup> The Native Law Centre at the University of Saskatchewan was founded in 1975 to facilitate access to legal education for Aboriginal peoples.

<sup>4</sup> Patuanak is a small town in northern Saskatchewan.

<sup>5</sup> Hollow Water First Nation is an Anishinaabe First Nation located on the east side of Lake Winnipeg, approximately 190 kilometres north of Winnipeg, Manitoba.

**BPS:** Did he have a university degree?

**SP:** Yep. He got a university degree in education, but I forget from where.

**BPS:** Okay. One of the things that is changing very rapidly I think is English language skills for First Nations citizens coming to the law school. I think generally it was a much bigger issue decades ago. Now I think that some communities' concern is that kids are growing up not having their Indigenous language. Was your father entirely comfortable in English?

**SP:** Oh yeah, entirely comfortable. He went to residential school so he was taught English. His first tongue was Dene, but he left, or was taken, around the age of six or seven, so his command of English is quite good. Eventually he became one of the few high school educated people to come out of Northern Saskatchewan who got an education, so he became quite conversant in English.

**BPS:** You are more than fluent in English, Sacha, and you write and speak very well, what was your language background growing up? Would you have had mainstream TV?

**SP:** In terms of where I grew up, yeah, I was growing up really in the early 80's, so there would have been television. I never grew up in a Dene community. My mother is not Aboriginal, she is Scottish from Nova Scotia, but they have lived in Aboriginal communities really all of their professional lives, until they both retired relatively recently. So, the education would have been in English in Hollow Water, the television in English. Outside of, maybe a couple attempts at teaching Anishinaabe, there wasn't much in terms of an Aboriginal curriculum. It was an Aboriginal school but it wasn't an Aboriginal curriculum. I eventually left Hollow Water in grade four, because my parents sent me to St. John's-Ravenscourt,<sup>6</sup> and I lived there from grades four to twelve. So that is the educational background, extensively in English.

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<sup>6</sup> Saint John's-Ravenscourt (SJR) is a university preparatory school located in Winnipeg that teaches kindergarten through grade twelve.

**BPS:** Now, when you went to Ravenscourt, that wasn't that long ago, that would be the nineties?

**SP:** I graduated in '95.

**BPS:** Ravenscourt is a private school in Winnipeg, Manitoba and has students from many countries and backgrounds. I was wondering, because Ravenscourt population is so diverse, was being a person of First Nations ancestry any big deal for the students and teachers, or are you just one of many people?

**SP:** There was a diversity for me, as someone coming from essentially a community of Aboriginal people, to see people who weren't, especially in such a large proportion. I remember the first time I ever saw someone with an asthma puffer was at SJR and the first time I ever saw someone who was Asian was at St. John's Ravenscourt. There were people from all over the place that at least for me were different; it was a culture shock because I was used to being in a homogenous situation of all Aboriginal folks. In terms of how I was received, the school was quite good for the most part, everyone was quite respectful. There weren't really any particular issues that are worth mentioning.

**BPS:** I don't know if the teaching of social studies and history was different then than now. I think now that there is much more consciousness of the history of the Métis people of Manitoba, it's probably more incorporated into the curriculum. Both Indigenous and non-Indigenous students would routinely know a lot more about the history and the culture than they would have, say fifty years ago. In Ravenscourt, were there any adaptations of the history program given the fact that we as a provincial community have a foundational Indigenous history?

**SP:** Not that I can recollect. I mean, there was the discussion of the general sort of fur trade and all that stuff, but to the extent that there were projects or papers for me to do, again with the support of my father, a lot of it was dedicated to Aboriginal issues. One of the things we were talking about in the 80's would have been natural medicines, we had to do a science project and that was one of the things that he assisted me with as far as he could, because he was in Hollow Water and I was in Winnipeg. That was an

interesting one, because it generated a lot of interest. Everyone had a very glitzy science project, because they had more assistance than I would have had, but the actual substance was interesting to the large non-Aboriginal population because it was so new, about varying types of natural medicines that were going around, at least around Hollow Water. There were opportunities such as that, where my father helped direct me to those areas to talk about Aboriginal issues, but in terms of its curriculum it was an average 80's type of curriculum. Aboriginal people were a subject of history, as opposed to a part of history.

**BPS:** So you go from Ravenscourt to the University of Western Ontario, which was your first degree. And what did you focus on there?

**SP:** Politics.

**BPS:** A lot of people who think that they are going to go to law school go to political studies in their undergrad. Did you already have it in your mind that you were going to go to law school?

**SP:** Yeah. That was the plan all along. I've had that plan really for ages. There was nothing at Western that dissuaded me. Western had some good teachers there. It was a very conservative school and it was interesting to hear that type of teaching. I was taught by Ian Brodie,<sup>7</sup> who was in the Harper government. He was one of the fairest guys. He put on a very good class dealing with essentially politics of the *Charter*. He was a great teacher. It was interesting to hear other people's views on certain issues, but I enjoyed Western, and I enjoyed the teachers that I had there, and nothing there dissuaded me from going into law; except that I almost did my masters in politics.

**BPS:** That would have only led to an academic career.

**SP:** That would have been terrible (laughs).

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<sup>7</sup> Ian Brodie is a Canadian political scientist who was a tenured professor in political science at the University of Western Ontario, before becoming Chief of Staff in the Prime Minister's Office of Stephen Harper.

**BPS:** Say no more! When you applied to law school you just applied through the standard process, you did not apply distinctively as a First Nations citizen?

**SP:** No, I applied all through the west because I decided that I wanted to get away from Western and go westward. So I applied everywhere, here definitely just in the regular stream. I am not sure if I changed it for other schools, it's possible. The only thing I do recall is that: from the law schools I applied to the only one I didn't get into was UBC. So forever they will just be on the bad list.

**BPS:** They should be looking deep into their soul to figure out how that could have happened.

### III. LAW SCHOOL

**BPS:** So you came into law school; let's talk socially and then educationally. Now what year was that when you started?

**SP:** That would have been '99.

**BPS:** So at that point, are you conscious of your fellow students thinking of you as a First Nations student, or are you just another student, part of the team?

**SP:** I guess I'm conscious of it. In the first week Murray Sinclair<sup>8</sup> was speaking on something, he was big then, but not as big as he is now in terms of his stature and importance. There was, at least, an Aboriginal sensitivity to things already, but I was just trying to be a student. I wasn't joining any social clubs or anything like that, I was just trying to figure out what the hell was going on.

**BPS:** While in law school, you did not just do well, you did very well.

**SP:** I did okay.

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<sup>8</sup> 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.

**BPS:** You won the gold medal didn't you?

**SP:** Nope. I think I finished 3rd.

**BPS:** That's a podium finish.

**SP:** I was happy with it.

**BPS:** In the classroom there would be a section 35<sup>9</sup> component in first year constitutional law. What else did we offer?

**SP:** In terms of first year, outside of Donna Miller<sup>10</sup> talking about section 35 and some of the big cases, there wasn't anything. Property was standard, personal property and real property, and stuff like that. I don't believe that we talked about anything related to sentencing in criminal law. So really the Aboriginal content would have been solely through constitutional law.

**BPS:** Because you are a person of First Nations origin, in the classroom were you treated as just another individual, or were you expected to be speaking for some certain political position?

**SP:** I think that people can feel like that. It depends how you sort of look at yourself. There can be a pressure to be a spokesman for the race, if there aren't that many of you, but that depends on whether or not you want to feel that pressure. I was interested in just learning what the law was. There was never really a situation where I was fighting with people in class about things, but really that is more of a personality trait. People who have different views, maybe I got this from Western, it's interesting to see what they are thinking and why they are thinking it.

**BPS:** That would be a good model for a university, a place where people feel comfortable to exchange ideas.

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<sup>9</sup> *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.

<sup>10</sup> Donna Miller taught constitutional law at the University of Manitoba before taking a position in the provincial government of Manitoba. She was the first woman in Manitoba to become clerk of the province's Executive Council on October 1, 2015.

**SP:** It is really difficult for people to express a view that they think might be controversial. If people don't talk about it then you aren't in a position to at least talk about it, or tackle it, or change it.

**BPS:** That is certainly one of the things I wanted to ask you about, Sacha. There are people, although I think less so now, who start off with a certain stereotype or perhaps some negative views of people with other backgrounds, in some cases people with Aboriginal backgrounds. In some cases there is a kind of reverse consciousness of social identity whereby "I don't want to say anything that might offend you, I don't want to say anything challenging, I am always thinking that you are not just Sacha, you are category First Nations person, subcategory Sacha," and there is a kind of patronizing "I don't want to tell you what I am really thinking and raise controversial issues." Is that an issue in law school, is it an issue since then for you?

**SP:** There may be courses that are better suited to try to tease out policy issues. I think through the law school training that I had, a lot of people were doing it on a sort of black-letter basis, which really isn't a question of why the law is the way it is, but this is how it is. The opportunities then to say "Why is the case this way or that way," wasn't the place for first year constitutional law, or even second year constitutional law. The Aboriginal issues in corporate law are going to be very few and far in between. Aboriginal issues in trust law weren't taught. It was straight Waters on Trusts.<sup>11</sup> But when it came to the perspective courses people self-selected those courses. I did Aboriginal law with Wendy Whitecloud.<sup>12</sup> People were taking that not because they were hostile to the concepts, but because they were supportive of the concepts.

**BPS:** There are just so many controversial issues out there in terms of Manitoba society and Indigenous peoples' place in it. Is there an environment in the profession and the society where we can have robust

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<sup>11</sup> Donovan W. M. Waters, Mark R. Gillen & Lionel D. Smith, *Waters' Law of Trusts in Canada* (Toronto: Carswell, 2012).

<sup>12</sup> Wendy Whitecloud is the Director of the Academic Support Program at Robson Hall.

discussions or are people inhibited by being afraid they are going to say something offensive?

**SP:** It depends on the person; some people are quite unabashed about trying to be provocative. The question is how to deal with that type of positioning. People who are meant to be provocative as opposed to trying to raise an issue in a constructive fashion, it's important to talk to them and it's important to try to understand where they are coming from. It can be challenging because sometimes you can be sort of blindsided. I am reluctant to escalate issues because I don't think that it generates change. If you have the opportunity to speak to someone about why things are it allows people to get at least my view on things. I may not be right, but it's just my views. You create a different space for people once you show that you are prepared to listen. Once I give speeches on Aboriginal law people come back and say this, that, and the other thing. Some of it they never want to say in a public setting because people might think that they are racist or something. Whatever it may be I try to deal with it in a way that shows them some level of respect, because people generally have issues. For those who are quite positional that is okay too. But, trying to deal with that I think only proves the point by being controversial with them. It's not meant for dialogue, it's meant for show, and I am not interested in show.

**BPS:** The reason I am asking these questions, Sacha, is my big picture sense is that everything is complicated. There is this assumption, for example, that major infrastructure projects about "economic developers versus First Nations". Nowadays in Manitoba, however, First Nations are often proponents of a project, and they are arguing sometimes with other Indigenous communities who are resisting it. Some of the problems in a community may be inadequate support by Federal and Provincial government, but another issue may be insufficient entrepreneurship in a community. Under-policing as well as over-policing can harm a community. It's just my sense, I guess in part because I am an academic, that having a robust discussion about this stuff will help us actually figure out problems. I also have the sense that a lot of discussion is prohibited because mainstream society has disqualified itself to some extent, to a large extent because of residential schools policy. Then there is the political correctness found sometimes in a university environment. So can you have these necessary, good faith discussions when people are bottling stuff up? I'm not

talking about bad feelings and negative feelings, but ideas about “This isn't working, we've got to change it and here's an idea.” Do we have a problem with having that kind of ability to have these discussions and people thinking out of the box, or is that more a university thing?

**SP:** The issues are complex and it's difficult for people to have a coherent thought process that can sometimes go above, you know, “I don't think people should have special rights at all,” or some sort of a basic type of approach. On those fundamental issues, those are difficult to resolve, other than to say, “Well the law is what it is right now, it could change but under section 35 there are different rights and etcetera.” When you get into more nuanced levels, I think a lot of the issue with Aboriginal issues is that most people don't spend a lot of time thinking about it. That is not to be unexpected because there are a lot of issues to think about, whether it is Aboriginal or otherwise. I think that the biggest concern is a lack of interest in the issues, other than sort of passing. Trying to get people to actually think about why things are the way they are takes a lot.

**BPS:** I think that is very true. I think it was Flaubert<sup>13</sup> who had this passage about somebody who didn't realize he was speaking prose until it was pointed out to him. We tend to think that things are the way they are because that is how things are, and why would they be differently? Sometimes things are really weird and you actually have to engage in a conscious process of saying, “Why is that the case?” I'll just give you a small example, Sacha. Every year I teach the Legislative Process course, and most of the law now is statutory not common law, it's just factual reality. Most of what lawyers do is interpret statutes. Why is it then in first year law you are not taught the legislative process, and you aren't taught to interpret statutory legislation? People look at me with blank faces. My view is that there is not a very good answer for that. We do it that way because that is the way that we have done it for about a century. The Harvard model was based on the case method, which was based on the idea that the law is common law. It is quite weird that we put such an emphasis on case law instead of legislative process.

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<sup>13</sup> Gustave Flaubert (1821-1880) was a French novelist.

**SP:** I have the same concern. I saw it when I taught insurance. People aren't given any level of statutory interpretation training, which is something at least you can bring into contractual interpretation. You aren't taught contractual interpretation in first year law because there is not enough time because you are too busy dealing with consideration and mistake and all that stuff about how you make a contract. So when it comes to the Aboriginal issues, that is where academia can spend some time, looking at what some of the oddities are in Aboriginal law. At least for the academy there is some level of protection, people can say what they want, and they have tenure, and they'll be fine. I'm trying to think of a lot of the academics in Aboriginal law, like Dwight Newman<sup>14</sup> at the University of Saskatchewan. I thought his stuff was great, it was interesting. He's talking about consultation issues, and he is dealing with it in a very fair and mindful fashion. I don't know where he stands on political issues because you don't see it really in what he is saying. At least that is where the academy can play a continued role, for people who want to delve in and say, "Well why is it the way that it is?"

**BPS:** That is very interesting because to get into a discussion about whether you are free to talk about stuff, which is kind of where I start, there is a prior question of, "Are we even thinking about that stuff?" What you're saying is it's a challenge to get people to actually stand back and say, "Well, what is this all about?" As law profs I think we somewhat tend to be reactive, because we tend to react to what gets litigated at a higher level, not all kinds of the really important issues that don't surface on the litigation front, and all kinds of those are at least as important as the more glamorous stuff that gets litigated.

**SP:** Also, it's asking professors to know stuff that is difficult to access. It's easy to access a case, it's more difficult to access the knowledge of individual clients to find out what is driving people to do what they are doing. Dwight Newman's book has some interesting comments about sort of economic accommodation and how that sort of plays out as law not made by courts but law made by the participants as they try to deal with business

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<sup>14</sup> Professor Dwight Newman is the author of five books, four of which deal particularly with Aboriginal peoples and the law.

development. You have to commend the guy for giving that some level of thought.

**BPS:** I've argued that we should put much more emphasis on teaching about things like practice management, the actual practice of law, and giving students, to some extent, practical skills, but to some extent also a critical framework to think about issues. As academics of course we can say, "Your paper didn't cite that extra source," or, "You didn't consider American sources," but people in the real world, have to budget time and have to budget client resources. Sometimes it's counterproductive to over-research a case; you've got one good case, why confuse the judge with five things that are less central? What is your practice going to be about? Is it something you really enjoy? Is it about money? Which is not a simple question. People in the real world have to balance off what pays versus what is satisfying.

**SP:** And how to get paid.

**BPS:** Yeah, how to get paid. In criminal law of course that is a huge challenge. You get really interesting work but the economics and the collections part can be extremely stressful. Did we do anything that prepared you for that end?

**SP:** No, there wasn't anything in that regard. It was one of my struggles teaching insurance. One of the things I do try to do when I teach is say, "I want you to be able to make a living. One of the things that you are going to be judged on are your memos." I take people through how to write a memo, at least how I was taught. I know people do it in legal methods, but people at the university don't examine on memos. They examine on papers or exams. I give people a month to do the research and to give me something. I'm trying to make the class more practice focused. It is a struggle because it's not taught. People don't look at that.

**BPS:** Yeah, and what a prof might be looking for in research paper may be quite different from what your principle at a law firm is looking for. A principle at a law firm will say: "Don't give me all these could be, might be, tell me whether this a loser, or give me some sense of whether this is far-fetched or not. Make it concise because I am really busy here. Tell me concretely how this applies to the facts." A law school exercise that is not

taught by someone who is familiar with practice or who has practiced might not, with the best of intentions, teach you those sorts of skills. So you're saying at your firm now you are trying to provide some supplementary education?

**SP:** I'm trying to get something together, at least in terms of in-house CLE's.<sup>15</sup> The problem with CLE's is that it's not structured. It's like, "Let's talk about discoveries," and it's anxiety provoking for a lot of people. You are with real people trying to ask appropriate questions and not look like an idiot. In terms of a systemic way, I am not sure why we have never moved as a profession and said, "Let's systemize what we are trying to do," to take the easy stuff out of the thought process, make sure it's done in a sort of checklist fashion. But no one is even running through what the checklists are. Checklists are only valuable if you know why it is happening.

**BPS:** I don't think that the gulf between the academic and practical, strangely enough, is in principle anywhere near unbridgeable. Some people, and I am speaking from my experience interviewing for the education issue, take the view that there is the academic deep thinking and then there is the form filling lawyers. If you are filling out a form or you're actually doing an affidavit there are just so many questions. Yes, you have a checklist, and you have to know the difference between hearsay and so on and so forth, and you have to know some law because you don't want the affidavit to say something potentially damaging. There is also the really interesting question of how much the affidavit is in your voice or the client's voice. Of course, you're always truthful, but do you want it to sound like the client? What's the strategic trade-off between getting everything out there, and that every additional thing you say may undermine your case. All these exercises that people in the more abstract world of academia think is just form filling, or mechanical, is actually really challenging. You can't do these practical exercises well unless you've thought about what you are doing and why you are doing it. So why is there this big gap between academic and practice?

**SP:** Form filling really is more corporate practice, but you still need to know why the form is what it is. People put thought into why the form says what it says. And you always need to understand why it is happening because your

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<sup>15</sup> Continuing Legal Education Programs.

case may not be the case that fits that form. I think people are quick to dismiss practice as making people into sort of technicians. I think it misconstrues what lawyers are. Lawyers are in many respects technicians. We are attempting to get people through technical aspects of a legal framework, and it's not always grandiose thinking, but you need to know it. You do not need to do grandiose thinking on every single file because it's not cost effective. It is also unnecessary to make every case into some big gigantic constitutional case; that wouldn't be serving your clients' interests. It may be serving yours inadvertently, because you get to charge more, but it isn't serving your clients. What they want is resolution.

**BPS:** That's what I always tell my students, that as a lawyer your job is to solve a problem, meet a challenge, it's to get a result. If you're in court that is already a problem; it is big money, big time, and big stress. The way to win the case is to get the result, and if you can get the result without going to court that is excellent. So to some extent the less transparent, the less elaborate the exercise, other things being equal, you are doing a better job.

**SP:** It has a human cost as well, it is difficult. Settlements are sometimes driven by people saying, "I don't want to do this anymore." That's not being a chicken, it's just a reality that people have other things going on in their lives, they don't want to deal with you or their lawsuit.

**BPS:** And there is the unfortunate reinforcement of obsessiveness. Somebody treats you badly so you want justice. You can get some justice from the justice system sometimes. Now you're dealing with the most traumatic thing you've dealt with, and that becomes the focus of your attention. Every time something bad happens it reinforces the emotional hole you've got into. Experienced lawyers are sensitive to the fact that they are dealing with a human being, and often extrication is better than vindication. Certainly in family law matters. I don't do that law for many reasons, one of which is that I never wanted to be the guy to give someone a bill when they are going through the worst time in their life. I'm not negative about people who do it; somebody's got to do it. "You're going through your own personal trauma, and I am trying to help you, and even though you are going through the worst financial time of your life, because now you've got two households, here's my bill."

**SP:** You've got to give the family lawyers a lot of credit, because it's a challenging environment to deal with highly emotional people. And as you said, a time of stress and a time of extreme cost.

**BPS:** And part of being a good lawyer is being sensitive to the human realities that your client's going through and adjusting your way to solve the problem. "I will get justice for you," but if you don't tell your client it will take another 2 years, another \$50,000 and shorten their life expectancy by another two years, then you're not doing your job, I don't think, as a practicing lawyer.

#### **IV. POST-LAW SCHOOL**

**BPS:** You practiced for a year, and then you worked for Justice Binnie at the Supreme Court of Canada?

**SP:** I did.

**BPS:** That must have been exceptionally interesting. Can you tell us a bit about the experience?

**SP:** It had a bigger impact on my practice than I probably could have envisioned at the time. My interactions with the judge occurred from time to time and Binnie was a nice guy to work with. It was interesting seeing him do the law and to speak to him every so often. I don't want to diminish that, it was interesting. But really my more interesting time was the people I was working with. Interesting folks, doing interesting things, with interesting thoughts. That has lasted longer. I think the level of prestige associated with being a clerk has got doors open that would never have been open otherwise. Also, knowing people who I met at that time has resulted in different opportunities. So, the actual time at the court, it was a great year. It's hard for me to articulate, in terms what I would have gotten practically out of sitting there doing research memos for Justice Binnie and seeing Binnie do his judgements. That to me was just another year of articling, it was knowledge by itself. The one thing I did gather from Binnie was just his comprehensiveness, his thoroughness about issues and what he wanted to look at. Realistically, the value was meeting the other people.

**BPS:** Did being on the receiving end of submissions influence the way that you make submissions yourself? I sometimes act as an arbitrator and I think it's influenced to some extent, how I make my own submissions as counsel. It makes you extra conscious of things like "Don't exaggerate, don't come across as too 'rah-rah'" because then you're not going to be credible. Try to make it clear and simple, candid and temperate.

**SP:** You saw the value of that written work. When you saw bad factums – even the most mundane things you would never think – like, the margins being off. Someone who, I think Freda Steel,<sup>16</sup> mentioned this as well, but I lived it because I am reading all these factums, but 8 o'clock at night, when the margins are off, and the type is messed with, you know someone is trying to pull a fast one. It's like, screw you guys, if you can't say it within the rules then you've got nothing to say.

**BPS:** Interesting.

**SP:** So it was interesting to see the value of the written argument. I read a number of factums during my time there. The oral argument oddly enough wasn't something that struck me as much. It seemed as though the arguments and the advocates, when I went to Washington to see the American Supreme Court, were much more polished. Maybe because they have a more dedicated Supreme Court Bar there than they do in Canada, where people in Canada may argue a case once in a career. People are reluctant to give those cases, where in DC these cases are run by that type of Bar. In terms of the quality of advocacy, you saw a difference between the Americans and the Canadians.

**BPS:** American Supreme Court advocacy is stunt driving for movies, rather than Grand Prix driving. It's true that the Supreme Court of Canada, most of it is going to end up being questions, but you can get a word in edgewise. At the American Supreme Court it's 60 minutes, not a second more. You know 8 occasionally 9 people are going to come at you, and it's going to come fast and thick and it's over in a flash and whatever you thought you were going to talk about – forget it. I can certainly see how Americans have

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<sup>16</sup> Madame Justice Freda Steel was appointed to the Manitoba Court of Queen's Bench on October 3<sup>rd</sup>, 1995 and the Court of Appeal on February 28, 2000.

been given that kind of trial by combat experience. It's tough to give up your one shot at the Supreme Court, but if it's the United States Supreme Court is just such a highly interventionist show that I can understand people saying: "You know what, nothing in my life has prepared me for that one hour." Then you went to Thompson Dorfman Sweatman.<sup>17</sup> I want to go back a little bit, we were together at a seminar in a boardroom with people who try to connect with current law students to make them more aware of all the different options that they have. You mentioned at that seminar, and I agree with you, don't decide too early what it is you want to do. Take different things in law school, try new things in law school, when you're starting law school you don't know what's really going to have resonance with you in terms of satisfaction. When you went to Thompson Dorfman, did you already have this idea that you loved insurance or contracts? Or did you just want to see what practice was about?

**SP:** I only ended up in Thompson Dorfman by accident really. I had done a summer as the Mini U<sup>18</sup> law instructor here in the summer and I was working with Cam Harvey<sup>19</sup> between the Mini U sessions. Sometime during that year I saw a sign downstairs around the office saying that Thompson Dorfman was looking for summer students, and I wanted a job so I applied. I didn't do any research; I had no idea what Thompson Dorfman really was. There was internet but there wasn't a lot of internet presence, it wasn't where you would immediately go to do research to figure out what Thompson Dorfman is really all about. I interviewed and I got a job. That is really what I was looking for, something to do. I would have liked to have done Aboriginal law, I would have liked to do work for Aboriginal communities, but I didn't know who was doing it, with the exception of Vic Savino.<sup>20</sup> I was interested in articling with Vic Savino, but at the time Vic Savino was going through his disbarment and his personal troubles. I've never met Vic, don't know him, but he was at least, to my knowledge, someone who was quite on the outside, quite involved in Aboriginal issues

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<sup>17</sup> Thompson Dorfman Sweatman LLP is a law firm located in Winnipeg, Manitoba.

<sup>18</sup> The Mini U Program is a summer program for children at the University of Manitoba.

<sup>19</sup> Cameron Harvey is Professor Emeritus at the Faculty of Law, University of Manitoba.

<sup>20</sup> Vic Savino was a successful Winnipeg lawyer before his disbarment for professional misconduct in 2005.

and quite active in it, and I thought that was interesting. But there was no sign at the time, so I didn't apply.

**BPS:** A lot of your practice at Thompson Dorfman was commercial?

**SP:** I did a lot of general litigation. I was doing, and still do, personal injury type of litigation. I rarely do to commercial type of stuff; I was given the opportunity to do some real estate and corporate commercial type transactions, but quickly out of the articling year that wasn't something that I wanted to pursue.

**BPS:** You wanted to do the litigation kind of stuff?

**SP:** Yeah.

**BPS:** I always admire full time litigators. Whenever I do litigation I always do it with a seasoned pro. To me a lot of it is stamina and an extraordinary level of organization. You have to be smart and flexible but just keeping track of everything is a skill in itself. What was your feeling on that?

**SP:** At Thompson Dorfman you were able to work with people and get a sense by observation as to how things were done. But you're right it is difficult, and you are not taught how to be a litigator, which is one of the things we are trying to improve at the firm, getting people to think about how to practice law. For the most part, people are stressed out over how to do it as opposed to what the law should be. The easiest thing is to get a book and research on a point. But to think: "Well how am I actually going to do this? What are the tactics?" are difficult. I am trying to get our firm to do that in a more robust fashion.

**BPS:** What type of commercial work do you do?

**SP:** My commercial work really is through the context of Aboriginal law working for resource developers like Manitoba Hydro. I don't really do the sundry type of commercial sort of buying shares, selling shares, to the extent I get involved in that at all its corporate type of litigation type of stuff. For the most part I do an insurance practice; I do a lot of the Aboriginal law

consultation type of stuff for resource developers. I do some band election disputes, because it's fun.

**BPS:** Regarding resource development, people looking at it from a distance might think it is “community versus” or something. One of the most interesting things is what happens within the community itself. You might have some people who are very pro-development, and some people who are very sceptical, sometimes based on legitimate past trauma about how this is going to work out, “This is what they told us in the seventies, why should we believe them now.” Any advice you would give to proponents of projects, or people working for First Nations about the lawyer's role in terms of intercommunity disputes? It's quite delicate. You have to make sure, I think, that you are not seen as partisan of one faction or another. You want to be candid, and come across as candid, and yet still not get caught up in the politics. Also, it's something for the community to decide for themselves which way they want to go, it's not for you as an advisor, I don't think, to make the political decision. It's for you to faithfully carry it out and to inform them. Any thoughts on managing those very sensitive politics?

**SP:** I think for the most part the best approach for people as resource developers is to deal with the leadership of the First Nation or Métis group. To the extent that you are aware of the dissent, be comfortable with the fact that no one group of people can have one view at the same time. No one would expect that of Canada and you can't expect that of First Nations, there will be differences. To the extent that you understand the substance of the view it's probably helpful to raise it with leadership, to say, “Look, this is what we are hearing,” if the leadership isn't doing it already. Ultimately, the leadership is taking instructions from the people, and if people are concerned about things, then chances are high, not inevitable, but high, that they will come out, so you deal with it on a substantive basis. You have to be clear when you disagree and inevitably there will be points where you just disagree, like the nature of the impact or what's required to address things. Saying no to people is never nice, but you have to take your positions and to do it in a respectful fashion through leadership.

**BPS:** I don't know if anybody has ever argued this expressly, but some people might have the view that an Indigenous community should have an Indigenous lawyer. Some people would think you just want the best lawyer

for the community, and you could have a non-Indigenous lawyer who's got all the skill sets and sensitivities to do a good job. Conversely, you could have someone from an Indigenous background who doesn't have the skills or sensitivities or diplomacy or whatever. Is it your sense that this is a question we should be thinking about? Should there be some preference for Indigenous communities to hire lawyers who share their background? Is there an intrinsic advantage to being from that background in terms of establishing more of a starting point in trust?

**SP:** I think it's an interesting question, I've thought about that a lot. One of the things I've always been curious about is whether people were asking too much of the first waves of lawyers to do too much, too early? It's difficult to know how to do law, and it takes a lot of time, probably seven or ten years to get a sense of it. To trust Aboriginal people amongst Aboriginal clients, immediately, with the expectation that you can handle the files appropriately is an unrealistic order. If you look at the numbers, all we know are the people who remain in practice, but from the 70's forward, say 70's to the 90's, where did the Aboriginal people go in that time frame? Forget the people who didn't make it through law school, or the people who graduated, did they get the articles, and who are they working for, and are they working for Aboriginal groups? Maybe you will find that there was a pressure to do too much too soon. If you do that your chances of error become higher, because you're not experienced enough, and it leads to challenges. That said, there is a significant benefit for some Aboriginal folks who want a political position to have Aboriginal people as a part of their team, and I can understand that, that is their choice as to who they have as counsel. You'll look at people like Sonny Cochrane,<sup>21</sup> he has done a considerable job at amassing a very large clientele of Aboriginal clients, and he should be commended for that. In addition to that, he has hired a number of Aboriginal people in his firm that far out strips any other firm in Manitoba. I think ultimately as a lawyer you can sell yourself as saying you have a certain Aboriginal background, it just depends how it plays. Just because I'm Dene doesn't mean that I am going to have the same knowledge base as someone who is Anishinaabe, there are differences, right. Someone from Treaty 3 is going to know that there is a difference.

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<sup>21</sup> Harold (Sonny) Cochrane received his LL.B from the University of Manitoba in 1995 and he is now partner at Cochrane Saxberg in Winnipeg, Manitoba.

**BPS:** Right.

**SP:** I don't push it either way for resource developers, people who aren't in the Aboriginal field or have Aboriginal clients may value it more than someone who is an Aboriginal client themselves. I think one of the interesting things, looking back at the history, is looking where Aboriginal work existed in Manitoba in the early 70's to the 80's, and I've been told it was at Myers Weinberg,<sup>22</sup> Pitblado,<sup>23</sup> etcetera. One person mentioned to me that a lot of work for Aboriginal communities wasn't coming to the blue chip, WASP-y firms like Aikins<sup>24</sup> or Thompson Dorfman, it was going to the Jewish firms. I don't know if anyone has given a good look at the relationship between the Jewish community and the Aboriginal community as to how they've significantly advanced Aboriginal claims. It may not have been Aboriginal issues themselves, I remember hearing someone, I want to say it was Harvey Pollock,<sup>25</sup> doing fabulous work for someone Aboriginal in a motor vehicle crash. Not just sending it in, but working up a real case and getting every dollar out. Whereas someone else may just overlook that and say, "He's just an Aboriginal guy."

**BPS:** Jewish lawyers were very involved in the African American civil rights movement. Alan Dershowitz just published a book called *Abraham: The World's First (But Certainly Not the Last) Jewish Lawyer*.<sup>26</sup> I think that some of it had to do with that generation of Jewish lawyers. Those generations still feel to some extent as the outsider, and identify with other people who were not fully respected or incorporated in the mainstream. There is a book by Robert Burt on this wider topic of Jewish lawyers naturally gravitating toward representing the outsider.<sup>27</sup> I don't know if anybody has looked at it

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<sup>22</sup> Myers Weinberg LLP is a law firm in Winnipeg, Manitoba.

<sup>23</sup> Pitblado LLP is a law firm in Winnipeg, Manitoba.

<sup>24</sup> Aikins MacAulay & Thorvaldson LLP and MacPherson Leslie & Tyerman LLP merged, effective January 1, 2017, to form MLT Aikins LLP.

<sup>25</sup> Harvey Pollock is a partner with Pollock & Company Lawyers in Winnipeg, Manitoba. His work has involved matters concerning Aboriginal rights, including the initiation of the Manitoba Indian Brotherhood.

<sup>26</sup> Alan M. Dershowitz, *Abraham: The World's First (But Certainly Not the Last) Jewish Lawyer* (New York: Schocken Books, 2015).

<sup>27</sup> Robert A. Burt, *Two Jewish Justices: Outcasts in the Promised Land* (Berkeley: University of

specifically in Manitoba, but when you mention it, there was a significant number of Jewish lawyers who were involved in First Nations cases. Jack London<sup>28</sup> is one of the people we will be interviewing in this series. Harvey Pollock, and many more people would come to mind if I sat down and thought about it.

**SP:** It would be interesting to see what Jack London has to say about representing Aboriginal folks early on in the 70's and 80's.

**BPS:** Jack would have a very acute sense; he was right there at the beginning. He sort of tracked Phil Fontaine's<sup>29</sup> career right from his very modest beginning.

**SP:** But why? Why would Jack do that? What motivated Jack London to do that? He didn't need to. He could have done wills, he could have done, I don't know, corporate, criminal prosecution.

**BPS:** He started off in tax, which was his first love. We will ask him about it. It's fun doing this cause I really like doing this stuff, Sacha, not just cause everybody like you who I interview is interesting, I have this redemptive sense that I am preserving these stories that otherwise would be lost to history. Twenty years from now somebody is going to look back and wonder how did all of this happen, at least there will be something out there.

**SP:** You'll remember the significance of people, you only get the lore through people that should know. I'd never admit this to Jack's face because it would be inappropriate, but he is a significant player in Aboriginal law, and has been, you have been as well. You guys have played an important role through at least the 90's, I've seen various interventions, but also earlier – dealing with and continuing on in Aboriginal law. Why? That is a question I don't need an answer to. But there are other people who put that question of why that is the case and what pressures if any people like Jack London or Pitblado felt to hire Aboriginal folks. I've looked, TDS and

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California Press, 1988).

<sup>28</sup> 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, Manitoba.

<sup>29</sup> Larry Philip (Phil) Fontaine is a prominent Canadian Aboriginal leader.

Aikins and Pitblado and Fillmore,<sup>30</sup> we have a pretty poor history of hiring Aboriginal people.

**BPS:** I think the effort was there but it didn't happen, and the question is: why? My guess was that it wasn't lack of good intentions, but something did not work there. Was it that these firms are primarily corporate commercial so it was tough fitting in students whose primary interest was in the rights based stuff? I think all the big firms in Winnipeg are basically corporate commercial, that is where the significant revenues are. Maybe they weren't specialized in Aboriginal work.

**SP:** But, you don't need Aboriginal people to do that type of work.

**BPS:** Of course.

**SP:** But again, in terms of the time I've been at the firm, there have probably been one or two Aboriginal people, and one of them left. It was for personal reasons that they had to go.

**BPS:** I know that Pitblado is conscious of it, I believe that they were making an effort, but if you look at our letterhead, we don't have a lot of First Nations people working with us now, so the question is why. I don't have the answer to that, by the way.

Looking back, I mentioned earlier in this interview that I happened to be at a session you were doing about trying to communicate to Aboriginal students coming in about career options and so on. Looking at the law school now what is it that we should be doing a better job of in terms of recruiting, making First Nations and other Aboriginal students feel comfortable, preparing First Nations and other Aboriginal people for practice? Any thoughts on what we should be doing differently or better or even any thought on what we are doing right?

**SP:** The one thing that I try to do is have a reception for Aboriginal people with those in the Aboriginal law area in order to at least draw connections. When I told the story of the fact that I went to Thompson Dorfman because

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<sup>30</sup> Fillmore Riley LLP is law firm in Winnipeg, Manitoba.

it was the first sign I saw it was because I didn't have any connection in the legal community. That reception, which happened for a number of years, was meant to try to get people to understand who Aikins is etcetera, and what happens is people can make a sense of more than just what is on the website. For that to continue on I think would be positive. Also, more for everybody, is talking about how to practice. Talking about money is important, the ethics of money and how you deal with things appropriately. We see people who get hauled up in front of the law society, and I think it's really because of stress and ignorance that people do things incorrectly and once you start getting yourself into regulatory trouble you get pushed further and further to the margins.

**BPS:** Certainly it is my view that what we should be doing in law school is giving people a framework to think about this stuff. It's a bit of a cliché, but you want a work/life balance and you want to focus on stuff you're doing well. I don't know if you experience it at Thompson Dorfman, but a lot of lawyers have this anxiety about "Is this my last file," so they'll never turn down a file because they are worried that they will never get something else to do. I don't know if we should be preachy about it, yeah we have the regular salary and the tenure, so it's easy to be self-righteous about "Oh, it's not about money," but it's a profession. Physicians practice to make a living, lawyers practice to make a living. There is nothing wrong with selling services to make money. In law school you never thought about where are you going to get the framework, where are you going to look, what literature, what resource, when you're trying to think about various situations. It's easy to say, "I'll only represent people who have this particular problem," but if you have kids, and you have a mortgage...

**SP:** I saw an interview of Rocko Galati,<sup>31</sup> the guy who represented Alex Chapman<sup>32</sup> and others, and did the Nadon case.<sup>33</sup> He did an interview in

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<sup>31</sup> Rocco Galati is an Italian-born Canadian lawyer who has argued before the Supreme Court of Canada.

<sup>32</sup> Alex Chapman filed a complaint in 2010 alleging sexual harassment and discrimination by the Honourable Lori Douglas and her husband Jack King.

<sup>33</sup> Justice Marc Nadon was appointed to the Supreme Court of Canada in 2013 by Stephen Harper, but was successfully challenged by Rocko Galati on the basis that the appointment was illegal under the *Supreme Court Act*, RSC, 195, c S-26.

the Globe<sup>34</sup> saying that if you are pro-cause lawyer you also need to pay the bills. He has a tax practice. That is how he funds, I am not saying he is a cause lawyer, but he can take cases that may be less economical because he actually has a basis upon which to pay the bills and to live comfortably. He made the point in the Globe that if you do too much of these cause cases you're not going to have a practice left, you're going to go under. That doesn't help people. If you came into law to help you're not helping anyone if you are now burnt out on the sidelines.

**BPS:** That's right. Plus, you learn things doing other skills. Law's changed a lot. Does anybody have a general practice anymore? I'm thinking it's too hard now, just too much to know. What keeps you up at night is what you don't know. You may think you've ticked off all the boxes, but are you sure you ticked off all the boxes? There are so many statutes and rules and rights out there that unless you are in a firm environment where you can share, it would be scary to be a solo practitioner.

**SP:** Even to teach solo practitioners that it is okay to farm stuff out, because there is nothing worse than doing something poorly when you can say to your client that you have to refer it to Aikins because they can actually do this corporate transaction. I was really good at dealing with your slip and fall, but when you are trying to incorporate a company you have to go that way.

**BPS:** In law school we can talk about that. It may be painful now because you didn't make money on this file, but this client will remember you as somebody who is putting the interest of the client ahead of your immediate interest. You will live longer because you aren't going to be stressed out of your mind that you made a mistake on the file.

**SP:** The firms you refer to remember. They remember you positively, and you never know where that comes off. People don't talk about that. People jealously guard what you have, and you think that you need every single cent out of it, when you don't. There are opportunities where it is not best for the client that I do what they are asking me to do.

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<sup>34</sup> Sean Fine, "The Lawyer Who Challenged the Harper Government and Won", *The Globe and Mail* (August 22 2014), online: <<http://www.theglobeandmail.com>>.

**BPS:** We need more interaction with the practitioners right from the beginning of the law school experience. I don't think it's all about having our program outsourced to practitioners, but I think we could do a better job of synthesis, and getting more practical experience.

**SP:** I think the law school inhibits itself by trying to force everything into term-sized classes. I remember hearing, and I am not sure how true it is, that the University of Ottawa takes a month of January to do more directed courses.<sup>35</sup> You could do that. There is nothing mandating you that is irreversible, that you have to do everything as a term length course. You can get more value out of something to say, "Here is a week on whatever."

**BPS:** For example, imagine a short intense course on practice management, where the students would hear from people in a dozen different types of practice: corporate, in-house, government, solo, etcetera.

**SP:** The thing is repetition because even though you don't like repeating yourself, at least in the education environment, something that you hear in first year is going to mean nothing. Second year it's going to mean a bit more, third year it's going to be a bit more, probably two or three years out it's going to mean more, as you say, "Oh, that is why they were telling me all of this all along." When you hear something for the first time you don't know what to synthesize and take in, but at least you've heard it. When you try to hammer it out a bit more as you go through class or summering or something, it starts to take on different meaning.

**BPS:** I find that as a teacher there are things that I know that they learn in first year, but if it comes up in a different second year class there is no connection until you actually make it and reinforce it. Skills too, like legal research and writing – you do a memo in first year and you have to keep doing it and hopefully at a progressive level you are doing it more extensively and profoundly as you go along. I totally agree with you that just doing it once is not enough, you've got to start early and progressively, give people a chance to do it again and again.

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<sup>35</sup> The Faculty of Law, University of Ottawa reserves a three-week period in January in which students focus all of their time on an intensively formatted course.

**SP:** And to learn from mistakes. The only time people learn from mistakes is if they actually ask or if they do a grade appeal. Those aren't always the more conducive ways of trying to learn how to do it. Again, that is probably the next learning lesson from my second-round exams in insurance, this is what I am finding of people, this is what you guys as a class have been doing that I found to be wrong. Everyone's going to have their own views on what wrong is, but you take my comments for what they are. You can't change your grade.

**BPS:** Regarding your own experiences as a teacher, you know there is that song by Bye Bye Birdie: "Why can't they be like we were, perfect in every way."<sup>36</sup> Do you have a sense that this generation of students, that is only one generation from yours really, is any different than you were? There are a bunch of clichés about millennials, I don't know if they are true or not, but less initiative, need more direction, less risk taking, overly sensitive to criticism. I'm just throwing out the quiver of clichés. Is there anything to any of this stuff that you've noticed about the current generation of students? Good stuff as well as bad stuff.

**SP:** It's funny because you are not able to assess how people take criticism until after the fact; because really the only time you are able to critically examine what you're doing is when they've written their exam. But at that point the class is all done. For the most part I teach, I don't think this is the best way to teach, through almost a solely lecture method. I haven't been able to transition to something that is more engaging. I think it's difficult then for me to assess how people are doing because for the most part, I teach in a very passive fashion. "Here is the knowledge, here you go." I don't sense any sort of generational laziness or anything like that. Even on the exam appeals, it's not like everyone is appealing their grade. There is the handful, five, that don't like their grade, and then I will respond to it. I don't get the sense that people are doomed. When you come into practice I think we as a profession have become too shy. Maybe we are not actually outlining the expectation of what work is at a firm. People are quite shy on saying what the expectations are. We are just having our new articling students in, I

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<sup>36</sup> This is referring to "Kids" a song from the 1963 musical *Bye Bye Birdie* written by Lee Adams and Charles Strouse.

think that every firm has its own sort of way of sort of dancing around the issue and saying, “Look, when you practice you should be hitting 1600 hours billed a year.” That is not non-billed. And that is not a significant goal. This is not 2000 hours, but you should know where you are each day in achieving that goal and think about the math of how many hours you need to clock daily or weekly in order to do that. As soon as you lose track of it, it is a problem. You have seen, and maybe it is because of under reporting, associate hours generally starting to go on the decline. That maybe is because of the lack of interest in doing a lot of work.

**BPS:** Certainly in law there is always one more thing you could do right. So, you could redraft the thing, you could do some more research, you could look at the academic literature, not just the case law. There is no point where, as a lawyer, you are actually confident that you did 100% of things. You have all these competing pressures: you have other files, cost pressures, how much you can put on this file, having a life outside of it. It’s really quite a challenge but again, just to editorialize a bit, I think it would be law school that would be a good place to start giving people a framework and at least thinking about it. We’re not the only people who have had to struggle with this. Again, I am very antipathetic to preaching – telling you, “This is the way you should do it, and that is the way you should do it,” but I think we could do more to give people knowledge and a framework for at least familiarizing ourselves with these pressures, making the right choice. You don't have to practise in a private firm, maybe you want to be 9 to 5, nothing wrong with that, but just know that with a lot of areas of private practice, and particularly litigation practice, you just can't. The judge wants something tomorrow and we can all believe in work life balance, but somebody has to stay up tonight and write it. It's not for everybody and there is nothing wrong with the fact that it's not for some people. You could say you want an in-house practice or a government practice. I just don't know if a law student coming out of here has been given much of a foundation to know that those are the different choices and to try to find the fit that works best for them. About 35 years ago or more, there was an epiphany for me. I was taught insurance by a very academic guy, but he had a very practical sense of things.<sup>37</sup> He said, “You're not going to understand these cases until you realize that sometimes judges come up with what seems

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<sup>37</sup> Marvin G. Baer, Professor Emeritus at the Queen’s University Faculty of Law.

like very strange reasons for things. What's really going on is the judge figured out that this was arson and you can't prove it, so he's got to find some way." It helped me realize that there is often a story behind the story. You can't just read a case and take it all literally, some things are going on and you want to think very pragmatically about what other stuff is going on and there's nothing like actually having somebody who's had a foot in the real world to do that. I don't want to sound like I am anti-academic, because I am very pro-academic in many ways, but I think it's important to get a more multidimensional mix at law school.

**SP:** The salary aspect is interesting. People will provide what they want to provide, and people will take it if they want to take it. I sympathize, I'm not sure if anyone is really doing the analysis of what salaries are around the nation for articling positions. I think it might be better in Saskatchewan than it is in Winnipeg.

**BPS:** The Manitoba legal market does not pay as well as it does in some big cities but it's my impression that you get a lot more responsibility at an early age in a Manitoba firm that you would at a Toronto firm, where it tends to be big firm assembly lines where you do a little piece of the deal. So one of the big advantages that countervails and lowers compensation here is you sometimes get a lot more action, and more responsibility at a younger age at a smaller, less hierarchical small firm in this city than you would at a big firm. I don't want to over generalize because I am sure it goes both ways, but these are the kinds of issues people should have a chance to think about in law school before they make these life decisions.

**SP:** There is a level of choice that is artificial. People are going to apply where they are going to apply because they just want to get something. Suddenly, someone is articling at Myers Weinberg because they need a position. They never envisioned that they wanted to go to Myers Weinberg, they wanted to go to MPI<sup>38</sup> and suddenly that is the reality of life. But make it through that point and try to then explore opportunities.

**BPS:** And having an open mind, people probably stress, "I always wanted to do this, and now I've got to article there. Yet an area of practice that

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<sup>38</sup> Manitoba Public Insurance (MPI).

sounds really boring and technical might turn out to be interesting and meaningful once you actually deal with the clients and get to do the creative problem-solving.

**SP:** People will gravitate to things that they feel they are successful at. If you suddenly figure out how to do wills and estates, even though you were never taught it before, you might gravitate towards it. People will excel at things that they feel good at.

**BPS:** Mastery is a lot of job satisfaction, it's more fun and it's gratifying because you are good at it.

**SP:** Again, I was told you start figuring out law after seven years, and that is a long time for people to be comfortable with their lack of knowledge. The demands are probably higher on people at smaller firms because you are expected to carry a bigger load at a younger age. That is when you have to deal with the majesty of demanding clients and not getting paid, and again stuff that you're not prepared for – until you start getting burned. I think that has a bad impact on people.

**BPS:** Sometimes you did a great job, and when the client doesn't get it and thinks that another lawyer would have fought that, "Yes they would have fought it to the end, cost you a ton of money, and you would have lost. So I actually saved you, but you're mad at me because I am not your friend." Sometimes the best advice you can give is walk away, forget it, settle, and the client may not appreciate it but it's still your job.

**SP:** Even to have those discussions, I always talk to clients and say, "Look, if you want to give me a new car, I can run that case for you, but you have to be comfortable with the fact that I am going to drive a brand new car and you're not. The result is going to be that you're going to lose. You're going to be mad, I am going to have a new car, and you're going to have costs against you. What do you want to do? I will take your money, I will. But you've got to pay, so what do you want to do?" Strategizing how to convince clients, client advocacy, is an art that is untaught.

**BPS:** Sometimes the client thinks that their best friend is the most aggressive, and is willing to do the most steps. One of the things they pay

for, whether they realize it or not, is more detached judgement, not as emotionally engaged, the experience to say, “This is how it actually works,” and being forthright about it. The client may not love you, the client may dump you, but you’re still doing the client a service by speaking candidly.

**SP:** You don’t want people spinning their wheels. Sometimes you have to say to people, “Look, you’ve got nothing here. Don’t call up other lawyers, unless you want to, but don’t call them up because they are going to tell you the same thing or they are going to charge you more to tell you the same thing. It’s up to you if you want to do it, but you have to decide how you want to spend your time.” But also understanding the files you shouldn’t take, like your uncle gets fired or someone has a house deal going sideways. Those are bad cases to take because you are not detached, you’re too close to whatever the situations are. In the positive areas like doing a real estate deal or will, maybe it’s easy. But, to do contested litigation for people that you have some relationship with, you probably should know early on not to do those. That is a difficult way to say no. But no one talks about it. You eventually learn it and say, “That was the worst file.”

**BPS:** It would be useful if you knew that early and did not have to find out the hard way.

**SP:** Yeah, people need to think about it. I’m not even sure that happens in the articling courses that the law society puts on – I don’t know.

**BPS:** I don’t know either. If we had a mandatory course in practice management, not just professional ethics, maybe we could try to explore some of these issues.

**SP:** I’ve always been interested, as I mentioned, as to how Aboriginal lawyers progressed over time, at least in Manitoba, and how they’ve done in the profession. It is important to see how the Aboriginal profession will grow in Manitoba or otherwise.

**BPS:** Look at application rates, for example?

**SP:** Application rates, or just even talking to people to say, “Who didn’t make it through law school” or “Who didn’t make it to articling.” You

might learn, “Oh, that guy is Métis, where is he now?” Is he not in the profession, why is that? Sometimes it is because there have been other opportunities outside of law, which is great, and sometimes, for whatever reason, it never worked out. I don’t think anyone’s really or trying to turn their minds to where people are heading. More work on that and the insights the first Aboriginal people have would be interesting. Like Ovide, he is legally trained, why didn’t he go on to articling?

**BPS:** I am glad that you are identifying this issue. In terms of doing a more systematic study I don’t think that we have the resources to go through the records, if they even exist. I do think, and this is not just about Indigenous students, they have to do a much more systematic job of not just asking people who are in the course about the course, it’s asking people who are out for five years: “Now that you look back, what did you actually learn in law school?” Asking people ten years out. One kind of feedback private law schools have in the United States, which is very powerful feedback, is the alumni satisfaction expressed in donation dollars. As a public university we aren’t as reliant on that. I might be wrong, but I don’t think we have made a point of going out and systematically surveying people five years out, ten years out, twenty years out, and saying “So, how did that really work out for you?”

**SP:** I would be curious with my insurance class to actually email some of the first people and say, “Has this had any impact?” Maybe it hasn’t. In fact, there are very few courses right now, I am thirteen years out, that I can recall with any level of specificity or clarity. That knowledge is there, it’s just hard to articulate. Those questions, I think, they are fair to ask. You have to take the results with a grain of salt, as well, but it would be interesting. I’ve always been interested in seeing if there was a way to ask these students “Did it matter in any fashion?”

**BPS:** Hopefully that is one of the agendas going forward, as an institution, to get better at following people in their careers. For example, I think we are pretty good at taking placement rates for articling, but a good question to ask five years from now is “Are you at a job that you are enjoying?” Not just, “Are you at a good job,” but are you enjoying it? This would be very valuable data, but I don’t think that we do that yet.

**SP:** There are a whole bunch of questions, and not everyone is going to have their eyes on those balls. Individually you'll see stories of things going sideways. It takes a lot to say, "Why is that the case? Why is that happening on a larger level," because it takes a lot more effort. There is definitely no fault for that. For example, when you look at the numbers of women in practice you can see how the numbers change over years, right? I don't know how long law schools have been graduating really 50/50 men and women, but as you go through the age brackets in Manitoba, you will start seeing a fall in the 50/50 split, probably about in the 5-10 year range – and then it drops quite dramatically. How much of that is attributable to women just leaving the practice because it is not conducive to women, or how much of that is just the fact that there weren't that many women going through the school at the time? I don't know. Someone who has been practicing for 35 years, there aren't going to be that many. The numbers were different back then. No one is really looking at these things.

**BPS:** I think the only way to find out for sure would be to do systematic surveying. I think there is value to doing this. I do it by just talking to people, but ultimately you would want to supplement that with doing a systematic survey.

**SP:** Maybe there is an academic, or statistic department, or economics [department], who would want to do these types of analyses – and don't know what to do. They are doing things on historic whale catch rates in the North Atlantic.

**BPS:** Now that you mention it Sacha, we may have a closer look at doing some systematic survey of our graduates. Thank you so much for your time.

**SP:** It was really interesting. I've been kicking these thoughts around myself for a while.