

Introduction

Several years ago, I led a project that produced an oral history of our law school.¹ Our team interviewed many of our retired professors who had served during the “Great Transition” in legal academia starting in the 1960s. As noted in my introduction to that issue, I have now been conducting oral histories of jurists and law-makers for several decades.²

Law journals, despite their name, generally avoid a key technique of journalism, which is to talk to people. My belief is that dialogue with someone, on their life and career, can have distinctive value. It may allow us to appreciate the human being behind the performance of official roles, and how the personal and professional may be linked. When writing a government report, issuing a judicial opinion or making a political speech, an individual may be required, by the nature of the task or by convention, to try to depersonalize both what they talk about and how they express themselves. Furthermore, an official text may leave us with many questions, but no means of following-up with its author; in the interview context, the back-and-forth can lead to the explanation, clarification, elaboration or modification of an initial statement.

The *Great Transition* project had no Indigenous voices in it. I committed in my introduction to the previous volume,³ that this one would focus primarily on Indigenous jurists and law-makers with a connection to Manitoba. This small province has been home to an extraordinary share of

¹ See generally Bryan P Schwartz & Darcy L MacPherson, eds, *The Next Great Transition in Canadian Legal Education* (2016) 39:1 Man LJ [*Great Transition*]; see also Bryan P Schwartz & Darcy L MacPherson, eds, *A Review of the Current Legal Landscape* (2016) 39:2 Man LJ (a companion issue of documentary history). See also Bryan P Schwartz, *Great Transition*, “The Next Great Transition in Canadian Legal Education” at xviii.

² See e.g. Bryan P Schwartz & Darla Rettie, eds, “Interview with Rick Mantey” in *Underneath the Golden Boy, Special Edition* (2001) 28:2 Man LJ 187; Bryan P Schwartz & Darla Rettie, eds, “Interview with Norm Larsen”, *ibid* at 201; Bryan P Schwartz, *ibid*, “Interview with Dale Gibson” at 25; Bryan P Schwartz, *ibid*, “Interview with John Eaton” at 353; see also Bryan P Schwartz & Darcy L MacPherson, eds, “Interview with Donna Miller, QC” (2011) 35:1 Man LJ 249.

³ Bryan P Schwartz & Darcy L MacPherson, eds, *Underneath the Golden Boy* (2018) 41 Man LJ at ii (where the following is said: “the next Special Issue of the Journal will be focused on Indigenous Peoples and Oral History, and will include career retrospectives by the first wave of Indigenous jurists to attend law school and go on to practice.”).

the intellectual and political leaders in Canada in relation to Indigenous issues. In this volume, eleven of these influential figures look back on their life and their times, which have seen drastic change in the way the Canadian legal system recognizes the rights of Indigenous peoples. In 1982, Aboriginal and treaty rights achieved constitutional protection, and decades of court decisions have followed; in 1991, the Royal Commission on Aboriginal Peoples issued its report; in 2006, the Indian Residential Schools Settlement Agreement was reached; in 2008, the Truth and Reconciliation Commission was established, and in that same year, the Specific Claims Tribunal became operational.⁴

I had the opportunity during those times to reflect on these events as a scholar.⁵ As a law professor, I witnessed increased enrolment by Indigenous students, the hiring of our first full-time faculty members who have Indigenous backgrounds, and the development of new courses relating to Indigenous issues. As an academic, my view is that my role is not to use my position for political activism; it is to bring my students and readers information about the issues, identify differing perspectives, and provide evaluation and proposals for reform that reflect my own independent judgment. The practical experience I have had in the law and politics of Indigenous issues has, I hope, contributed to the understanding I bring to my own critical reflections.

My practical experience has spanned almost four decades. From 1982 to 1987, I was a consultant to the Government of Manitoba during a round of constitutional talks focusing on Indigenous issues. I had the honour of appearing at the Supreme Court of Canada, as counsel to the Assembly of

⁴ Specific Claims Tribunal Canada, online: <https://www.sct-trp.ca/hom/index_e.htm>; see also *Specific Claims Tribunal Act*, SC 2008, c 22, s 13(1)(b) (under “Powers of the Tribunal,” where it reads: “The Tribunal may [...] receive and accept any evidence, including oral history, and other information, whether on oath or by affidavit or otherwise, that it sees fit, whether or not that evidence or information is or would be admissible in a court of law”); see also *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, ss 49(1)(d), 49(2)(a)-(b), 56(1)(c), 56(2)(a)-(c), 83-4, 97 (describing oral history procedures at the SCTC); for more on the intricacies of SCTC caselaw, see Bryan P Schwartz, “Specific Claims Law” (accessed 31 January 2019), online: <<http://sclaimswp.bryan-schwartz.com/assembly-of-first-nationsassemblee-des-premieres-nations/>>.

⁵ See e.g. Bryan P Schwartz, *First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft*, 1st ed (Institution for Research, Canada: 1987).

First Nations, on a number of landmark cases.⁶ One of the professional achievements from which I take the most satisfaction is having served as part of the team that partnered the Assembly of First Nations with the Government of Canada, crafting the Specific Claims Tribunal. Over the years I have advised Inuit organizations and First Nations at the band, Tribunal, council, and provincial levels. I have also advised a number of provincial and territorial governments on issues involving Indigenous communities. Along the way, I came to meet a number of the individuals interviewed in this volume; some of the interviews involve shared recollections, and reflections on events in which we both participated.

The process of preparing this volume began with obtaining ethics approval from the Research Ethics Board at the University of Manitoba. We interviewed over a dozen remarkable figures in the 2016-2017 academic year. After that our team of student editors transcribed the interviews, edited them for clarity and flow, added annotations and sent them back to the authors for approval or any changes. Our plan was to stay as close as reasonably possible to the author's own initial interview; what you read in this volume is very close, in all cases, to what the author actually said initially. Most of the participants have retired from public life (or are now close to the end of their careers), and this may have contributed to the reflectiveness and candour of the interviews. After reviewing the edits made by the participants, our team made a few final edits, and asked the authors to complete their consent-to-publish forms.

I hope this project is only the first of many in which teachers and students at this law school contribute to the creation of oral histories involving Indigenous communities. In the spring of 2019, I also launched a new course on "Oral History, Indigenous Peoples, and the Law."⁷ It aims to provide a wide variety of perspectives on oral history, generally, as well as in relation to Indigenous peoples. I have included the course syllabus and

⁶ See e.g. *R v Marshall*, 2005 SCC 43; *Blackwater v Plint*, 2005 SCC 58; *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69; *Canada (Attorney General) v Lameman*, 2008 SCC 14; *Ermineskin Indian Band & Nation v Canada*, 2009 SCC 9; and *Quebec (Attorney General) v Moses*, 2010 SCC 17.

⁷ For an earlier outline of the now-running course, see *UTGB* (2018) 41 Man LJ, *supra* note 3 at n 10 (reading: "[t]he publication will be integrated with a new course at the law school, beginning in 2019, on Indigenous Peoples, Oral History and the Law. [...] The interview subjects are generally outstanding figures in government or community leadership or distinguished academics.").

timetable, and a selected bibliography by subject matter, in case they may be of aid to others in developing their own teaching programs.

While this volume is composed of the oral histories of individuals, the oral tradition of communities – with stories, songs, and laws passed down from generation to generation – is also of great interest and importance. Oral tradition can be an evidentiary source in the litigation of cases, where the mainstream legal system is applied to issues such as Indigenous claims to aboriginal title,⁸ or alleged breaches of fiduciary obligations owed to Indigenous communities by the Crown. Oral history can also be understood as the source of law that Indigenous communities themselves created; work is being done in a number of communities to develop legal codes based on traditional law.⁹

I hope that our new course will be followed up by the creation of an oral history practicum. Students in the latter would be interviewers in oral history projects involving Indigenous communities. In the process of learning, the students would also personally contribute to the store of knowledge and understanding about the lives of Indigenous individuals, and of communities and civilizations. All of us at the law school who worked on this project wish to express our gratitude to everyone who agreed to be interviewed. A small number of interviewees, in the end, chose not to have dialogues published. One of them, who has one of the most exuberant spirits I have ever encountered, quietly explained that, upon reading the transcript, her reflections on earlier times appeared to be irrelevant today. Why talk about an era when Indigenous rights were so poorly understood and respected by the mainstream, and when the ambitions of Indigenous communities were so modest? Why not focus on the aspirations of today's generation of Indigenous persons, who seek sovereignty and self-sufficiency?

⁸ See e.g. *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 (wherein it was ruled that: “[n]otwithstanding the challenges created by the use of oral histories as proof of historical facts, the laws of evidence must be adapted in order that this type of evidence can be accommodated and placed on an equal footing with the types of historical evidence that courts are familiar with, which largely consists of historical documents.”).

⁹ See generally John Borrows & Michael Coyle, eds, *The Right Relationship: Reimagining the Implementation of Historical Treaties* (Toronto: University of Toronto Press, 2017); see also Monica Pohlmann, “John Borrows on indigenous legal traditions: ‘We need to explore how we can take that law and carve it in new and beautiful ways’” (11 December 2017), online: <<https://www.theglobeandmail.com/opinion/john-borrows-on-indigenous-legal-traditions-we-need-to-explore-how-we-can-take-that-law-and-carve-it-in-new-and-beautiful-ways/article21960774/>>.

I accepted her choice instantly; no one should feel pressured or cajoled into telling their story. From my perspective, there would have been enduring value in a record, in her own voice, of her personality, adventures and reflections. I hope that the oral history exercises in this volume have done at least some justice to the life and work of some other remarkable individuals.

In this Special Issue, we at the Manitoba Law Journal wish to acknowledge the important contributions to Indigenous legal studies by members of our own faculty in the past decade, including those of Wendy Whitecloud, who led the academic support program at our law school for many years; David Milward, who recently joined the law faculty at the University of Victoria, which is at the cutting edge of incorporating oral tradition into their teaching and research program; Aimée Craft, author of *Breathing Life into the Stone Fort Treaty*, which makes impressive use of oral histories; and Brenda Gunn, whose work includes exploring the international law dimension of Indigenous rights, including those of the Métis people.