

“THE HEART OF THE MATTER”

The following is excerpted from remarks made by the Honourable Roland Penner, Q.C., M.L.A., Attorney-General of Manitoba, at the dinner tendered by the legal profession of Manitoba in honour of Chief Justice Samuel Freedman and Mrs. Freedman April 9th, 1983.

Mr. Chairman, Your Honour the Lieutenant Governor, Chief Justice . . . above all Sam and Brownie.

Let me first of all bring heart-felt warm greetings from the Government of Manitoba and the people of Manitoba, who are represented here and who wherever they may live, join in this warm “love-in” for Sam and Brownie Freedman.

. . . Jerome Frank in his classic work *Courts on Trial* at one point, in writing about the judicial process, described it in algebraic terms: the decision equals the rule applied to the facts ($D = R \times F$). He was doing so to make a point, a point with respect to the importance of fact-finding and of the rules of evidence in that process. Clearly Judge Frank would admit that this arid formula leaves out the heart of the matter. And that term, “the heart of the matter” is in my view pre-eminently the phrase for the evening. For a judgement to live long in the law, for a judgement to shape the law, for a judgement to form part of the legal and general culture of its time, if I may borrow the title of a showtune, “It’s got to have heart”. But for that it needs something rare, it needs a Sam Freedman, and what could be rarer.

Sam Freedman’s decisions, whether dealing with matters of great moment — constitutional issues, fundamental freedoms, community standards — or dealing with relatively minor matters (one of his judgements starts with the phrase, “This case concerns mice”), all are imbued with a humanity, a humanity as deep as his own roots to which he has always remained close, a humanity as rich as his own experiences from which he has never ceased to learn. For him as for Holmes, the life of the law is experience.

His dealing with lawyers who have appeared before him is equally imbued with that humanity. Even criticism, when criticism is due, has not had a cutting edge. The cutting edge has been smoothed with wit and leavened with kindness. To an ill-prepared lawyer desperately asking for an adjournment after being over-whelmed by an appellant’s argument, Mr. Justice Freedman, speaking for the Court, said, “We want you to know Mr. X, that although we are granting your adjournment the sounds you hear from this side of the bench are not applause.”

During the course of many years of practice I appeared in the Court of Appeal frequently and it was always for me a special occasion when Sam Freedman was sitting. Not that I had any special expectation of winning the day but because of his wit, his wisdom, his warmth, win or lose, one would go away having learnt something from Sam Freedman.

I have spoken of his wit this evening. Many others have also done so. I recall most vividly his wit in the *Prairie Schooner* case¹, one of the four obscenity cases decided in whole or in part by Sam Freedman which have made it easier for counsel everywhere in Canada to deal with the treacherously subjective concept of community standards. He cited from an exhibit an entire page of vivid sexual description, the hallmark of such books. The page in question described a numerically amazing series of sexual acts between an ex-marine, one Jack Doyle and a lusty chamber maid. All this was followed in the judgement by a wry comment by Sam Freedman: "Pausing only to note that Jack Doyle's age is not given . . .".²

For me Sam Freedman has always been a great teacher — at law school, by example, and in a personal way as well. Not long after I assumed office, Sam invited me for lunch, had words of kindness and words of advice that I certainly needed and I will always cherish.

And so, let me say this! Thank-you, Sam Freedman, for all you have been and I know you will continue to be to me, to the legal profession, to the law and to that vast international community of scholars of which you are such an honoured part. Thank-you, Sam Freedman, for that wit, that wisdom, that humanity, that culture which has made the practice of law in Manitoba much more pleasurable and memorable than it might have otherwise been. Thank-you, Sam Freedman, for teaching us by your personal example as well as by your judgements that legal justice is inseparable from social justice and that social justice without social conscience is mere rhetoric. And thank-you, Sam Freedman, for being and continuing to be, within the body of administration of law and justice in Manitoba, the "heart of the matter". Thank-you, Sam Freedman.

2. *Id.*, at 257