

# An Interview with Chief Justice Samuel Freedman

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THE HONOURABLE CHIEF JUSTICE  
SAMUEL FREEDMAN \*

## I. INTRODUCTION

This interview was conducted by Dr. D.L. Brandes for the Jewish Heritage Centre of Western Canada. The contents of this interview come from a recording found in the University of Manitoba Archives, which included a transcript. The transcript has been edited by the Manitoba Law Journal to more accurately reflect the recorded interview. We thank the Jewish Heritage Centre and the family of Chief Justice Freedman for allowing us to publish the interview.

## II. EARLY LIFE

SF: My childhood memories centre around Stella Avenue and Aikins Street. Actually we lived on both: first on Stella Avenue for about two or three years, then we moved to Aikins Street, where we lived for, oh, five or six years. I think I must have been 8 years old when we came to Stella Avenue from Redwood Avenue. We were on Stella Avenue when I was in grade three and four, I think, and then from grade five or possibly grade six until grade eleven, I lived on Aikins Street. We played with other kids in the area. Stella Avenue and Aikins Street (the intersection I am now speaking of) was our outside playground. We played hockey with old hockey sticks. The puck was frozen manure. This was a period of course where very few people drove cars in that neighbourhood but there was an abundance of horses so we had our pucks and the replacements thereof

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\* O.C., Q.C., B.A., LL.B. Chief Justice Freedman served on the Manitoba Court of Appeal from 1960-1983, beginning his term as Chief Justice in 1971. He passed away in 1993.

because one piece of frozen manure would begin to wear down as it was battered around. It couldn't last for the whole game and we would take another piece of frozen manure. You understand this was hockey without skates. Oh, it was great!

DB: I guess a puck in the face was a double threat?

SF: [laughs] You put it very delicately but I think I am in possession of your point.

I was 3 1/2 years old when our family left Russia. I have nothing but Canadian memories. I take my Russian origin on information and belief. I know I lived in Russia for 3 1/2 years because my mother told me so. The language of communication at home was largely Yiddish. In our earlier days, as we grew older and as my mother and father became somewhat more acclimatized to the Canadian scene, they began to understand English. They began to speak English imperfectly, but sufficiently to make themselves understood, and we then began to communicate both in Yiddish and in English. My father and mother were married for 65 years. They had a very happy marriage. I don't mean a marriage that was graced with an abundance of material possessions, but of the basic things that counted—understanding, mutual respect, mutual love—they had that in large measure.

And we can tell stories about them. I remember the time my mother was going to a Mizrachi meeting. She had her coat on, a knock at the door, a neighbour lady comes on in, she said, "If you're going to the Mizrachi meeting then, Mrs. Freedman I will go with you." So my mother said "Fine." The lady said, "But Mrs. Freedman, you know you are going to have to make a speech there." "Consternation!" My mother said, "What kind of a speech can I give them?" My father said, "Give them the speech that you give me."

And then was there was the occasion when they went out for a walk. After a while they come back into the house laughing. We said, "What is it?" And we must tell this as they said it in Yiddish. We said, "What is it, mamma?" "This is [Yiddish], a witticism." We said, "Let's hear." Well it appears they're walking down the street when suddenly my father spies a dime on the ground, picks it up and not content with his good fortune,

he's got to gloat about it. He says to my mother, "(in Yiddish) We're both walking but I find the ten cents and you don't." My mother says, "(in Yiddish) You find the ten cents because I walk with my head in the air and you walk with your head in the earth." And my father says, "(in Yiddish) You walk with your head in the air because you've got me and I walk with my head buried in the ground because I've got you." Quick translation: My father says, "We are both walking but I find the ten cents and you don't find it." My mother says, "You find the ten cents because I walk with my head in the air and you walk with your head buried in the ground." And my father says, "You walk with your head in the air because you've got me and I walk with my head buried in the ground because I've got you."

DB: Beautiful. That particular one doesn't lose anything in the translation.

SF: It does lose a bit because "buried in the ground..." Nothing can match that. Well, not the one that happened to my mother and father, but generally in Jewish life the wife says to the husband, "[in Yiddish]" and he answers "[in Yiddish]." Do I have to translate that? The wife says to the husband, "What do you want?" And he says, "I don't want a younger one, I don't want a finer one, I don't want a richer one, I don't want a prettier one, I just want another one."

DB: Very rich Jewish humour which as you can see by talking to me has virtually disappeared amongst people of my generation.

SF: It's most regrettable but perhaps inevitable. The language of communication in our house after I got married was English. Our kids were not exposed to Yiddish.

DB: Do your kids speak Yiddish?

SF: Hardly at all. It's an unfortunate commentary on the gradual disappearance of Yiddish.

DB: That's right. Well, let's get back to life in the North End. How many of you were there?

SF: In our family, do you mean? We lost a child at about age six months and then that left seven of us who all survived the North End period, though three of them have died since, and my father making four.

DB: And what did your father do?

SF: He was a junk pedlar with a horse and wagon. You see, when he came he didn't know the language and never went to school here. He was the prisoner of the old country traditions that he brought with him: the ideals, yes, but also the handicaps. Until he retired, that's what he did. We were the products of honorable poverty, shall we say? It didn't bother us as much as perhaps it ought to have bothered us because we lived in a working class neighbourhood. There wasn't much wealth around us and one quickly grows accustomed to accepting one's lot in life. I look back now and I understand what happened when that area around Stella Avenue and Aikins Street became in later years the subject of "urban redevelopment," which was the polite way of saying "slum clearance." Actually, we lived in a small slum area.

DB: Were you aware that it was a slum area?

SF: Not acutely so. It's only when I think back. You see it was a house not with full plumbing. We had a toilet in the basement but no bathtub or shower. Our baths were taken in the kitchen in a big—I don't know what you'd call it.

DB: Big tub of water?

SF: Big tub. You'd get the cold water in first, a couple kettles of hot, test it and in you go. And this wasn't a daily thing because with seven children it would be pretty hard to look after them every day.

DB: Did you and Max ever share a tub?

SF: Oh, I'm sure we did. Immigrant Jews settled in areas where other Jews lived and I went to Aberdeen School. It was largely Jewish. When the high holidays came there wasn't much use teaching the rump part of the class—a very small segment of which were Ukrainian, German and the odd Anglo-Saxon.

DB: How did you get along with the other ethnic groups? Was there much rivalry or fighting? Anti-Semitism?

SF: Yes, there was. We are talking about the pre-1920's and early 1920's when Aberdeen School played against Machray School, Strathcona School, or the King Edward School—which were largely non-Jewish—we always ended up in fights and usually we lost. The non-Jews were tougher. We were protected by a young man named Jack Levick, who was known as Jack Prizefighter. And he was a tough guy. When he came, no one would start with him. There would be no fights and that was an off-the-field victory for the Jews.

DB: Were you aware that there was a Wellington Crescent or equivalent as a kid?

SF: Yes, we knew that over there was the South End.

DB: Did you ever go?

SF: For sports, yes, our team played in the finals against the South End team. In those days we walked over the Salter Bridge and very rarely spent a nickel for a streetcar. But it didn't hurt us in the long run. I think it taught us to be content with little. It enabled us to realize the value of a dollar and that continued when we went to the university. Plenty of times I walked over that Salter Bridge coming home. I might get a nickel for the streetcar up there because I had to be there at a certain time. Coming home, there was greater leeway and without the nickel I walked on the Salter Bridge, in the middle, unprotected, gales of winds blowing at us, me with my cap and the earmuffs down, the frail figure battling against the storm. But we did it and we did it and we did it.

DB: And you say nothing's changed. You are still with the earmuffs battling the cold and the wind.

SF: Yes, the elements, right.

DB: Where did all the men used to gather?

SF: My father's favourite hangout was the Synagogue. He wasn't educated in English but he was educated in Yiddish and Hebrew and in his limited way he was a kind of Jewish intellectual.

DB: Why do you think the North End of Winnipeg has turned out so many illustrious people?

SF: Chris Dafoe, the young man who is now in Vancouver or Victoria, wrote a little piece about himself being under the handicap of never having lived in the North End. It was a tongue in cheek article but very cute. Actually, there's good deal of romanticizing about the North End. The one thing that I can say with certainty is that there was a stimulus to work at a rate, not of 100%, but of 110%, or 120%, in order to achieve what the South Ender could do with 80% of effort. In other words, we found ourselves subject to the stimulus of challenges and I think in the North End we responded to them. We felt we had to work harder than the others. You know Avis number two—"We try harder"—they got that from us!

DB: Were your parents strict with you?

SF: Pretty well. They wanted us to go to Synagogue much oftener than we wanted to go. We wanted to play football, soccer football, or baseball. I tended to break away from religious beliefs and religious practices. I was brought up in an Orthodox home but I quickly ceased to be Orthodox. I remember when I went to the University, our professor of philosophy said "the acids of modernity have dissolved the old religious beliefs."<sup>1</sup> And that had an apt application to the Jewish group, particularly when we got into the atmosphere of the university. The scientific approach, the need for objective appreciation of facts—all these things were inconsistent with blind faith and uncritical acceptance of religious dogma. I moved farther and farther away from adherence to Orthodox practice.

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<sup>1</sup> This quote comes from Walter Lippmann, *A Preface to Morals* (New Brunswick: Macmillan Company, 1982) at 8.

DB: Was there ever a time you became an atheist in your own mind?

SF: I've never been an atheist. What I would say is what Mr. Justice Frankfurter said of himself. He described himself as the "reverent agnostic."

DB: Tell me about your Bar Mitzvah.

SF: I never had a Bar Mitzvah formally. I became 13 years of age by fluxion of time. That's the usual way one achieves it and I was usual. And I don't think we could have afforded a Bar Mitzvah because that called for a party celebration at the Synagogue. So I became 13 quietly without the accoutrements of a formal Bar Mitzvah.

DB: Was this quite common for all of your friends?

SF: It was quite common. You know when a man becomes 70 they say he starts over again towards his Bar Mitzvah and there is such a thing as the second Bar Mitzvah at age 83. If I make the 83rd birthday, perhaps I'll try to have a Bar Mitzvah then.

### III. SCHOOLING

DB: Let's talk a bit about your school days. How did you like your primary school?

SF: I loved Aberdeen School, particularly when I got to about grade 6, 7 and 8. I can remember a teacher of history named Mrs. Wallis, who was an imaginative person and an inspiring person. I recall that she taught us to be interested in historical personages. In fact, she got our class to do a reenactment of Confederation. I was George Brown, my friend Michael Syme was John A. McDonald, Max Wolinsky was I think Tache, and so on and so on. Our teacher got the original speeches and in shortened form we delivered them. We reenacted the story of Confederation first to our class, then for the whole school, then we moved from the auditorium of Aberdeen School to the North End YMCA where we did this for parents and the general public. And to this day, whenever I think of Confederation, I think of that inspiring teacher who tried to make the story vivid and meaningful for us. Of course I look back with enthusiasm

to the influence and inspiration she provided for us. There weren't many Mrs. Wallises and I cherish the memory of the one we had at Aberdeen School.

DB: Were there any other teachers who made an impact on you?

SF: In high school, St. John's High School, there was a wonderful English teacher named Miss Ada Turner. I think that she was perhaps the best teacher I ever had. She was exceedingly well-equipped with the knowledge of English literature, poetry, prose. She did her best to pass it on to us. In some cases she found resistance because we had our mistakes and our foos, but we had some good students and I think I can, without false modesty, say that I was one of the better ones. I graduated from St. John's Tech with a scholarship which enabled me to get into the university—and when I say it enabled me to get into the university, I point out that the hundred dollar scholarship was enough to pay the fee which was probably \$80.00, leaving \$20.00 for books. That's how I made it.

DB: The influence of that teacher must have been great because in fact you did not start out to be a lawyer, you wanted to be a Classics scholar.

SF: That's true. At the University of Manitoba I majored, if you would call that, in the Classics. If I had been able to continue in the Classics, which meant if I had been able to get the Rhodes Scholarship for which I applied and which I did not win, I might have continued with the goal of becoming a professor. Instead, I took the second choice and the story of one's life often is the second best turns out to be the best. I can't imagine that I would have enjoyed being a professor nearly as much as I've enjoyed being a lawyer, and then a judge.

DB: You didn't entirely leave the academic life. You went on to become Chancellor of the University of Manitoba.

SF: Before that, a great event occurred in my life when I was telephoned by the Dean of the Law School inviting me to become a lecturer there, that is, a part-time lecturer, for a couple of hours a week. And there was a kind of fulfillment because I had wanted to be a professor. This was not quite a professor but it was in the lecturing field. Teaching law, moving in an atmosphere of young, active, fertile minds. I was at the Law School as a



faculty member from 1941 to 1958, resigning when I became Chancellor of the University of Manitoba.

DB: Okay, we are getting a little ahead of ourselves. Now, you distinguished yourself in university both as a thespian and as a debater, the two going hand in hand I suppose. Now, which came first, the acting or the debating?

SF: The debating came first. The debating is an activity in which I think I did very well. The acting was in a different category entirely. All I had was aspiration. No talent.

DB: That is not what your friend Maxwell Cohen said.

SF: He may have been kind and gracious but I was not a good actor. I am still a frustrated actor. I love the theatre. I would have been delighted to be in more plays. I was in two or three amateur productions, playing lead roles.

DB: You'd better tell us about that.

SF: You know the reviewers said "Sam Freedman seemed to have a feeling for his part but he took it slowly, almost ministerially." The truth is I talked then the way I talk today. Slow. It's all right when you are a judge. It sounds like grave, judicial utterances. But you get on a stage, they want a little more pep and speed, qualities which were singularly lacking in me. To this day, I would have loved to have been an actor. I was never a good actor. But a debater? Yes, I think I'll say that at the University of Manitoba, in the forum of the University of Manitoba Debating Union, I played an active and honorable role. Well, we had what we called the Oxford system of debating. That is to say, two men a side. When the main speeches were delivered by the four debaters, before the rebuttals would start, the question would be thrown open to the floor and people from the audience could speak for I think up to five minutes. Some would merely ask a question, others would speak. My first debate at the University of Manitoba, my first participation in the event, came as a speaker from the floor. And I must have done well because they invited me to be one of the formal debaters at the next debate, and not much later I became a McGoun Cup debater. It was a particularly good debate against the

visiting English team and our topic was: "Resolved, that this house favours dictatorship." This was about November, 1930. The Depression had set in. Our economic condition in Canada and indeed all over the world was in a perilous state and people were becoming critical of the established institutions. Even our form of society, our democratic structure, found itself on the defensive and having to show cause for its continued existence. And in that mood, in that climate, you could understand how a topic like "Resolved that this house favours a dictatorship" may have appealed to a lot of people. I am proud to say that we were on the democratic side and the panel of five distinguished judges divided three to two in our favour. I think that was the most important debate in which I participated. I also participated in two McGoun Cup debates. I debated against St. Thomas College in St. Paul and I became President of the University of Manitoba Debating Union, I think a distinguished forum which produced many good debaters including Maxwell Cohen, Stanley Knowles, and two Freedmans. My brother Max was not a registered student, but he attended the debates and when the question was thrown open he spoke magnificently.

DB: Do you think that your years as a debater aided you in arguing your cases before the courts?

SF: I haven't the slightest doubt of that. It certainly did and particularly in Appellate Court work or in addresses to a jury in criminal work. Being able to structure an address to a jury with a clear beginning, middle and end, and speaking with earnestness and sincerity and with the appropriate degree of vigour are things which had emerged from long training at the University of Manitoba, than which there has never been a greater forum. All that I think was of inestimable benefit when I was a practising lawyer.

#### IV. ACTING

DB: Okay, I am not going to let you off so easy about your acting career. I know that you did appear as a lead in a couple of plays. Was one a Shakespearean play?

SF: No, I didn't get that far.

DB: Greek tragedy or something?

SF: No, I was in a play, a one act, called "Forgotten Souls," a play written by Dave Pinsky.<sup>2</sup> The Menorah Society put on that year three one-act plays in one evening. I think ours was supposed to be the hit; we came on last. I'm not going to go into details of the plot because it was very involved. I played a man named Hindis. He was a lame man, one leg shorter than the other. That I learned to do, to walk dragging my leg. I was perhaps a man of 45, very much in love with the girl who was about 30. She was in love with somebody else. She thought he reciprocated her love. He didn't. It was the funny letter that he wrote declaring his love for her sister but the letter was ambiguous as she thought he meant her. I had got a letter at the same time which made it abundantly clear he didn't mean her.

DB: I think we lost this plot already but continue. This was only a one-act play?

SF: A one-act play. In the end, she, on the rebound, wants me to marry her and she takes the aggressive and says, "You and I and these forgotten souls, we have a right to happiness and to love."<sup>3</sup> Now there's a long speech near the end in which she is coming to me, taking the aggressive.<sup>4</sup> Of course all this on the rebound, she having just become deeply conscious of the degree of her rejection by the man she was really in love with. So she comes to Hindis. There's a speech near the end taking a whole page. My director was the consummate ass. He said, "Now up to the one-third she is declaring her love you'd look, mystified, look over her shoulder as she's in your arms." At about two-thirds of the way down he gave me the line, "You take her closer to your arms. At the bottom you kiss her." This ass didn't realize he was dealing with a college audience and he didn't sense that they would react to the proclamation by the girl of her love and her saying "kiss me Hindis, kiss me, put into it your whole soul, make it express all your love" and I remembering what the director had said about staring over her shoulder for the first third of the page. And the

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<sup>2</sup> David Pinsky, "Forgotten Souls" in Isaac Goldberg, ed, *Six Plays of the Yiddish Theatre* (Boston: J.W. Luce and company, 1916) at 51.

<sup>3</sup> *Ibid* at 82.

<sup>4</sup> *Ibid*.

audience is laughing and to say I am waiting for the last one-third to come and dutifully I take her into my arms and do not as she is still telling me to kiss her but I'm looking dazed and mystified and the audience are going wild with joy. Finally we get to the bottom and I do kiss her and there's tremendous applause. We made it you know. I didn't realize how stupid I was. Any actor with a degree of experience would have departed from the director's instructions, sensing that they had no application to the realities of the situation, but I was young enough and obedient enough to think that he knew more than I did. I followed him. It was a complete and total disaster. So when you speak of me as an actor, thugh!

DB: Did you keep the review of this? Is this where the guy said you were ministerial?

SF: That was the review.

DB: Did you have trouble living this down?

SF: No, because it was an extracurricular activity. No one was particularly good. Others were as bad as I was but I was bad in a stupid kind of way.

DB: But the incredible thing to me is that you still remember the lines.

SF: I remember. They were seared into my soul!

DB: You never have a bad dream about this play and wake up screaming?

SF: No, fortunately those things are experienced, lived with, and overcome. And if not forgotten at least emerging as a memory a little sad but with its overtones of humour too.

DB: You mention the Menorah Society. Tell us about the Menorah Society.

SF: The Menorah Society was a great institution. It was the forerunner of the Hillel movement. It was a meeting ground for Jewish students on university campuses. It prided itself on the fact that it did not advocate any "isms": Zionism, socialism. It was the broad forum where every Jewish student could meet and it was interested in the study and advancement of Jewish culture and ideals. Now its approach to life had its good and its bad

features. Its good features? It was broad enough to enable everyone that was a Jewish student to come in and feel at home and participate. Its bad part was that it was so objective that it did not encourage participation and advocacy of causes which were really of importance. I'm thinking of Zionism. The Menorah Society prided itself on the fact that it was neither pro-Zionist nor anti-Zionist. The result was that only a very small percentage of my college generation in the pre-Hitler period had made a commitment to the Zionist cause. Today the Hillel movement is more ideologically oriented but there's a bad feature there. It tends to appeal to a very small segment of the Jewish student population.

## V. UNIVERSITY

DB: I wonder whether you could tell a bit about university life in general.

SF: I take it you are speaking of my own university experiences. We are talking about something half a century away you understand. I look back to my university days with a good deal of pleasant affection for what took place there. We started as a distinctly minority group: Jewish boys, most of us from North Winnipeg, rather deeply conscious of an inferiority complex. Our status as a minority people on the campus was very much in our minds all the time. We outgrew that and I think that a great deal of credit is to be given to the contemporaries of mine, my college generation. I think they succeeded in making the breakthrough for the great mass of Jewish students.

DB: When we look back to college life 50 years ago, one gets sort of a romantic picture of students divorced from the reality of the world, sort of a "rah rah" atmosphere. I guess that really isn't true, is it?

SF: To a degree it is. The "rah rah" atmosphere of the 20' s, "Joe College." The symbol was the coon coat you used to wear in winter.

DB: Did you have one of those?

SF: I couldn't afford a coon coat. If I had a coat, I was happy.

DB: Did you play sports when you were in University?

SF: I played soccer and football when I was in Arts. I was on the Arts Junior Soccer team. I don't remember how well we did, whether we won many games or whether we won any games. I do remember enjoying playing and bringing to the game what I usually bring to sports: namely, little skill and much enthusiasm.

## VI. RHODES SCHOLARSHIP

DB: Now, you often mention that law was your second choice. You had gone to university to become a student of Greek and Latin and the Classics but something changed all that. How did that come about?

SF: I think the answer to your question is that I did not get the Rhodes Scholarship.

DB: I'd like you to tell us the whole story about the Rhodes Scholarship and how this all came about.

SF: Well, we knew it was available. We knew it was a plum scholarship. I figured it was worth a try. My academic record was good. I was president of the Menorah Society, that is the society of Jewish students on the campus, so there was a degree of leadership. Some participation in sports (that wasn't a strong point). I applied and I can remember certain things that I had to supply. For instance, a birth certificate. How could I give them a birth certificate, born in Russia where they never kept records, at least in the little village where I was born? So I spoke to the Registrar of the University and he said, "Supply an affidavit of one of your parents." I got my father to provide such an affidavit and then I needed to have it sworn before a lawyer. I had a friend who was on the executive of the Menorah Society with me (although he was by this time a graduate from the University), a lawyer named Hymie Cohen. He was the junior member of the firm of Abrahamson, Greenberg, and Cohen. He looked after that affidavit for me and supplied the usual endorsement or backing of the paper document and at the bottom the name of the firm appeared. When Ben Hayman, my friend, looked at that affidavit and saw Abrahamson, Greenberg and Cohen, he said to me, "Are you crazy? We know you're Jewish. Do you have to throw it at them? Abrahamson, Greenberg and

Cohen sounds like Potash and Pearlmutter. You won't be treated as an ordinary student. You will be treated as a Jewish applicant. Get away from that. Erase any indication of that tie." I felt distressed. The next thing that happened, I needed to supply a medical certificate. Well, I went to the Medical Arts Building, one that was close, the University then being on Broadway and Kennedy. Secondly, I knew there would be no Jewish doctors there because in those days the Medical Arts Building was not open to Jewish medical people. I went into the first door that I saw half ajar and said I want to see a doctor to give me a medical certificate and a certificate of good health. The nurse or the receptionist said "Well, see Dr. Christopher Rice." I learned later that he was an obstetrician and gynecologist. He was amazed when I came in. I told him I was a university student. I was applying for a Rhodes Scholarship. One of the requisites was to supply a certificate of health. Would he examine me and write the appropriate letter? He did and I never forget his letter that said something like this: "I have today examined Samuel Freedman, fourth year Arts student at the University of Manitoba. I find him to be in good health and he has no varicose veins." I always thought that last part was the ultimate in non-sequiturs.

DB: Well, maybe you had to have varicose veins to get the Rhodes Scholarship?

SF: No, they were not essential. Anyway I remember my appearance before the Rhodes Scholar Selection Committee and there is no doubt that I was regarded as a Jewish applicant but not in a hostile way by the Committee. They seemed to take a genuine interest in the Menorah Society: what it was, what it aimed to do. The subject of Zionism came up. I had a little discussion with them about that. I don't think there had been many Jewish applicants there before and they were making the most of the half-hour exposure to a Jewish student and I felt the interview went well except for a somewhat too heavy concentration on my Jewishness.

DB: Who sat on that Committee? Do you remember?

SF: I remember some of the members. The Chairman of the Committee was the Chief Justice Perdue, the Chief Justice of Manitoba, a predecessor of mine several chief justices removed.

C. C. Ferguson, father of Dr. Colin Ferguson, was a member. I think Joseph T. Thorson was a member, C. Rhodes Smith, Christopher Adamson, one or two others I can't recall now.

DB: Well now you've mentioned all these names. Now let's be honest with one another. Don't you think that they were practising gentlemanly anti-Semitism? I mean, why the big interest? Were you a foreign object to them? So what if you were Jewish?

SF: There may have been a little bit of that. I don't think I would accuse the members of that committee of anti-Semitism. Their exposure to Jews was rather limited I would think. I had set forth as one of my activities leadership in the Menorah Society and I think they picked it up and felt quite justified in pursuing that, exploring it a bit, and from that we got into the general question of Jewish relations with non-Jews. We got into the problem of Zionism and Palestine. I look back to that interview not with any bitterness but with a great deal of pleasure. I thought I was well-treated. I didn't win but so seven others that year didn't win.

DB: How long after did you find out that you didn't win? Did they tell you right away?

SF: That evening, yes. We went out and waited in the anteroom and the secretary came out later and said, "The winner is Mr. Lawrence Bonnycastle." We all shook hands with him, with each other, and that was it. The years have a way of bringing about a certain expiation. I was never able to be a Rhodes Scholar but in time I became Chairman of the Rhodes Scholarship Selection Committee of Manitoba. I wasn't a Rhodes Scholar myself but played a role in the selection of Rhodes Scholars over a period of about 10 years.

DB: You became romantically entangled in University, I believe. Isn't that right?

SF: Ah, that's a subject on which I don't mind discoursing for a while, yes.

DB: First of all, before you answer that. Were you ever a ladies' man?

SF: Never.



DB: Do you have any girlfriends that you haven't told me about?

SF: No, I was scared, shy, socially backward.

DB: Why do you think that was? Is that just your nature?

SF: Well, I don't know why. I know I didn't dress very fancily. But I was scared of girls, really. I'd never taken a girl out. I didn't dance. I was an awkward kind of kid. When they had class parties, I was one of the wallflowers. It was just agony going through that kind of evening. The change began with entrance into Sigma Alpha Fraternity. The very day that I accepted the offer to become a pledge of that fraternity I was told there was going to be a fraternity party the coming Sunday. I was to invite a girl as a date. I want to tell you now that that threw me into a tizzy. I didn't know any girls. I felt awkward in the association with the boys even and with boys and girls, what could I do? It is an interesting thing. I asked a girl named Cecilia Brownstone. I had never taken her out but I knew her and she knew me. I telephoned her and invited her to this party. But there's a God that looks over the young and the innocent. She said no, she was busy. The best thing that could ever have happened to me because it forced me to make a second choice. I selected Brownie because I knew her. Brownie Udow was the freshie representative of the Menorah Society. I was I think a vice-president. I knew her well enough to screw my courage to the sticking place, in Shakespeare's words, and ask her. She accepted and then came an event that complicated matters. All of a sudden I was told the party is off. One of the boys lost his grandmother and in those days that seemed reason enough to cancel a social event. I then had to tell Brownie that the party was off. With an instinct for doing the right thing, I told her by phone that the party was off and would she be able to come with me on Saturday to a show. She said yes and on Saturday, January the 6th, 1927, just over 51 years ago, I, Samuel Freedman, had my first date with a girl. It was by no means Brownie's first date. We went to the Metropolitan Theatre. We saw an ordinary kind of show. Brownie, blessed her, treated it as though it were a wonderful show. We went afterwards to the Princess Tea Room—now dead and gone, it was on Portage Avenue about where the North Star Hotel is. This was a very important romantic occasion for me and to mark that mood, the mood of romanticism, what did I order? A sardine sandwich! And Brownie ordered a banana split. But she was so wonderful about everything. We went back by streetcar and

indeed we had come to the Metropolitan by streetcar too. Those things didn't matter in those days. Today all students have cars. In my generation few students had cars.

Well, I don't think that I realized the degree to which I was smitten. I was more enthusiastic about the fact that I had finally taken out a girl and I think the enthusiasms associated with that bold adventure were the things that were uppermost in my mind. But I thought of Brownie and quickly asked her out to a debate and dance. The McGoun Cup debate was coming in about three weeks. I was one of the Manitoba debaters. We were debating against the University of Alberta. We lost, but that doesn't matter. I did a fairly good job in the debate. Brownie had come there with her cousin Elise. Afterwards, I danced with her. I'd started to take dancing lessons and was awkward then and I've consistently remained awkward on the dance floor but it doesn't seem to matter.

DB: Were these private dance lessons or Arthur Murray-type dance lessons?

SF: It was a Professor Scott who taught dancing, and I danced with him, I danced with a woman—I never knew her name but in talking about it to Brownie I always refer to her as "Halley" because she had quite an advanced case of halitosis. But she helped me to dance and that was something.

At the McGoun Cup Debate, I danced with Brownie and later I was sitting talking to her when Max Cohen came by, took two or three steps past us, turned around, looked at both of us. He must have seen the look of ecstasy on me and he realized at once this wasn't the product of the debating defeat I had just sustained. He leaned over to me and whispered in my ear, "I think you've got a crush on Brownie." And his expression of that just crystallized for me something of which I hadn't been immediately conscious. I sort of said to myself, "A crush on Brownie? Of course! That's what it is." I knew I was feeling in the mood of ecstasy and it was Max Cohen who had defined and pinpointed the very reason for it. I didn't have an easy time. I had strong competition from a student a year ahead of me—a handsome fellow, Arnold Abrahamson (Arnold Abrahamson all of a sudden died a few years ago). But I took Brownie out again and again and soon she was absorbing all my waking moments. I began to be

disinterested in Latin and Greek. What I was interested in was Brownie. And that shows good sense, too. First things first. An instinct for the right kind of priorities.

I was able that year to get the Latin scholarship. My Greek marks were no hell. I did graduate in Arts Magna Cum Laude, but in the final year I got no scholarship and I think the reason was that I was giving a lot of time to Brownie. Thank heavens.

DB: When did you tell your mother of this great revolution?

SF: I think I must have told my mother and dad fairly early because there was another debate in which I was not a participant. It came about February or March. You remember my first date was January 6th, 1927. My mother and father went to that debate and I had taken Brownie to it and I brought her up to my parents and introduced her. So they knew Sam was going with a girl. So that's something.

DB: Was anything more said? Did your mother start to get a bit pushy?

SF: No, I think they watched it with benevolence and hope.

## VII. MARRIAGE<sup>5</sup>

SF: I was married on June 29th, 1934 in the depths of the Depression. I recall that the night before I was at home in full anticipation of the next day's event and I was cutting my fingernails. My mother said to me (in Yiddish) "Sam, cut your toenails as well. Lest you give Brownie a scratch."

Next day the wedding came. There was I dressed in my blue suit and white pants ("white ducks", they used to be called). I had arranged for a taxi to be at our Mountain Avenue house. When it came I got into the taxi (the back seat). It seemed to be covered with dust. I feared that by the time the groom came to the wedding he would look dirty, soiled. Anyway, I did make a complaint to the taxi company after I got back. But I got there in one piece and not too bedraggled. It was a small wedding. We were married at Brownie's sister's apartment. We had invited 17 guests in all. 18

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<sup>5</sup> Dr. Brandes is silent for the remainder of the interview.

turned up. Al Cross said me, "Sam you don't have to invite me. I'm coming anyway." Five minutes after he got there, I see him siding up to me and in a whisper he said, "Sam, I've already broken something."

The ceremony was conducted by Rabbi Solomon Frank. He was a good speaker and he carried the ceremony as though he were addressing a crowd of 300. Anyway, we liked it. The bride was radiant, as she still is. And following the ceremony, the rest of the guests went to Brownie's grandmother's for dinner. Brownie and I went to our honeymoon train headed for Detroit Lakes for Edgewater Beach Hotel there. Fools that we were, we went in our wedding garb. We had a compartment on the train but the dust was coming in. By the time we got to Detroit Lakes, my white ducks had moved from white to grey to black. I can remember meeting several couples in Detroit Lakes. There was one lady who was enchanted by the knowledge that we were on our honeymoon. She said, "I have a little ditty for you." I remember it across these 4 1/2 decades. I don't think I should hoard it any longer. It went like this: "Here's to a night of sweet repose, tummy to tummy and toes to toes. Here's to an hour of pure delight, then fanny to fanny for the rest of the night." We had a great honeymoon at a total cost of \$100.00. The Edgewater Beach Hotel rates were \$25.00 for a week. Ah, those were the days! We spent the other \$75.00, I don't have to tell you, and we came home broke but with ecstasy in our hearts.

We lived in the Scarsdale Apartments on Kennedy Street just south of Broadway. We had a small apartment with a combined living room and bedroom. How can that be? Very simple. We had what they called a Murphy Wall Bed. You pulled it out at night and your living room was instantly transformed into a bedroom. Ah, those were the days indeed!

Brownie and I lived in the Scarsdale Apartments for I think about 15 months. Our rent was \$40 a month. I must tell you that to us it was more than we could afford and after 15 months, we moved to the Dalkeith Apartments, where the rent was only \$32 a month. You know it is hard to think in these prosperous days that \$8 a month could make such a difference, but the truth of the matter is that for small incomes, small amounts even like \$8 loomed large relatively.

## VIII. THE BIRTH OF MARTIN

It was in the Dalkeith Apartments that Brownie became pregnant. That meant of course that we needed a bigger apartment. We then moved to the Kenilworth Apartments on Hargrave Street. Martin was born on September 12th, 1937. He was one month premature. I can remember coming to my parents' place to break the news. It was about 8:30 Sunday morning that I came there. Consternation! They were scared out of their wits. "What are you doing here so early? What's the matter?" I said, "Everything is alright. Brownie had a baby boy." Excitement, jubilation, everything great! Then my mother said, "Naturally, we were excited. All the time you've been saying, 'October, October, October!' And here it's only November." We straightened her out, anyway.

About this time I was active as a young lawyer. I was part of the firm of Steinkolof and Lawrence and I did quite a bit of court work then.

## IX. THE MINUK CASE<sup>6</sup>

One of my early cases was the Peter Minuk will case. Peter Minuk was a gentleman, an old man. He left an estate of about \$150,000. I am talking about 1932-33 and that amount would be the equivalent of at least a million dollars today.

When he died, no will could be located. About a year or more after his death, a will turned up. It was written in Yiddish except for the signature "P. Minuk" which was in English as were the two signatures of the attesting witnesses. These two gentlemen testified that they signed the will after seeing Peter Minuk sign and that all of this took place in the kitchen, the will being signed on the kitchen table. When the case came on for trial, the central issue was simply this: Was this a genuine will or a forgery? Six lawyers appeared on the case. Three upholding the will; three opposing the will. Those on the side of the will's validity were M.J. Finkelstein, Ben Foster and Nick Golsof. Those opposing the will were A.M. Shinbane, C.K. Guild and myself.

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<sup>6</sup> This case is unreported, but for an early account of the case see Clark Sellers, "Strange Wills" (1937) 28:1 J Am Institute of Crim Law & Crim at 106-117.

Each of us called a handwriting expert. So you had the spectacle of six handwriting experts testifying, three stating positively that the will was genuine, three stating equally positively that the will was a forgery. One of the impressions that was left on me as a result of that case was the unscientific character of handwriting testimony. I remember Cardinal Richard once said, "Show me two signatures of the same man, and I'll hang him on one for a forgery." The star witness among all the handwriting experts was a gentleman from the United States named Herbert Walter. He came to the Minuk will case fresh from his laurels in the Bruno Hauptman kidnapping case. That was the case of the man who'd kidnapped and killed the Lindbergh baby. One of the curious features of the Peter Minuk signature revolved around the first letter of the proper name: the "M." It appeared that there was little space at the top of the upward stroke of the "M" and the first downward stroke of the "M." In other words, they didn't touch each other. Herbert Walter, the handwriting expert, said that the forger undoubtedly had before him a genuine signature of Peter Minuk, perhaps a cancelled cheque or something like that and he makes the first upward stroke of the "M" and then he looks down at the genuine signature on the cheque and in the process of looking down, his hand slips ever so slightly with the result that when he makes a downward stroke of the "M", he is just a little bit to the right of the first stroke (there is a little space). Now that sounded great for our side, but M.J. Finkelstein, when he rose to cross-examine, said to the handwriting expert, "If this will were signed on the kitchen table, is it not possible that a crumb under the paper might have caused Peter Minuk's hand to slip ever so slightly, thereby producing the space in question?" A turning point for the other side or so it appeared. But A.M. Shinbane rose and said, "I invite the court to find that on Peter Minuk's table there would never be any crumbs left."

A footnote to the Peter Minuk case: In the end a settlement was reached. The will was not admitted to probate and everyone of us interested in the case got some money out of the estate.

## X. MARTIN AND THE STAMPS

Another early incident in my legal career related to my son, Martin. When he was about ten years old he was a stamp collector. He used to get most of his stamps from an agency in the United States. He got them on a kind

of option basis. If he kept the stamps he would send the money. If, within a certain number of days, he decided not to keep the stamps, he would return them. The system worked most of the time, but once, there was a breakdown in communication. This American agency got neither the stamps nor the money and they wrote Martin about it and since he was the son of an active practising lawyer, he sensed that he was under no contractual obligation to this agency, so he ignored their letter. But then came another letter from this American agency saying that if they didn't get either the stamps or the \$1.80, they would take measures to enforce their rights.

They didn't realize, I am sure, that they were dealing with a ten year old. When I came home from the office, Martin showed me the letter. I read it and I said, "Martin, it looks as if they are going to take you to court. He said, "I don't care! I'll get Harry Walsh."

## XI. THE STONEY CASE

Not all of my cases were marked by frivolity. Let me tell you about the case of *The King v. Walter Stoney*.<sup>7</sup> He was charged with murder, the victim being his girlfriend. The Crown alleged that he had stabbed her about 35 times with an icepick and that when he was through with this little venture, she was stone dead. What Stoney did after this was an obvious attempt at suicide. He went to the railway yards a short distance from the hotel where the alleged offence occurred. He threw himself in front of a moving freight train. He was badly injured, not killed. He survived. He went to the hospital and it was at the hospital that he began to manifest peculiar characteristics. He kept saying that they were trying to poison him there. About this time or shortly after, I was called by the Attorney General. I was asked to assume the defence of Walter Stoney. I said I would, and then I became a defence counsel in my first murder trial.

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<sup>7</sup> Winnipeg, 5-3970 (MB QB). For more details see: Bob Holliday, "Killed with an ice pick", *The Winnipeg Sun* (6 September 2009) online: [Winnipeg Sun <http://www.winnipeg.sun.com/news/canada/2009/09/06/10769061-sun.html>](http://www.winnipeg.sun.com/news/canada/2009/09/06/10769061-sun.html); Stoney appears to have been hanged in Headingley in 1951: Gordon Sinclair Jr, "Hangings long gone, but gallows remain", *Winnipeg Free Press* (29 October 2011) online: <http://www.winnipegfreepress.com/local/hangings-long-gone-but-gallows-remain-132842628.html>.

It was interesting to talk to this man. He had asked me to bring him some biscuits and in our second interview I brought him a package of biscuits. He opened them up but wouldn't taste one until I did. Quite obviously he thought I was trying to poison him too. That at least gave me the lead. Here was the only defence that could possibly be raised—namely, insanity. The provincial psychiatrist, Dr. Pincock, had been seeing this man because the Crown were expecting a defence of insanity. I met with Dr. Pincock as well and I realized that he wouldn't be of any great help to me because while recognizing that Stoney was a bit wingy, he was not yet insane within the legal definition. That is to say, he was not suffering from a “disease of the mind” which prevented him from understanding the nature of what he had done and of knowing that it was wrong.

The trial took about five days. The problem that I faced was this: should I call Stoney as a witness for himself? I decided I had nothing to lose. On the fifth day I put him in the witness box. I said, "What is your name?" He said, "Walter Stoney." I said, "You are the accused?" He said, "Yes." I said, "Put your mind back (and I mentioned the date of the offence). Would you tell the court and the gentlemen of the jury what happened?" Stoney, who by this time had seen many policemen in the witness box, had acquired some finesse. He turned to the judge and said, "My Lord," and he turned to the jury and said, "Gentlemen of the jury, I don't want to go on with this. I want to plead guilty." This was a bombshell; an accused person taking the witness stand on a murder charge and saying he wants to plead guilty. I turned to the trial judge, who was Chief Justice Williams and said, "My Lord, my understanding is that this is simply evidence to be weighed by the jury." The Chief Justice said that was his understanding as well. I was entitled to continue, but there really wasn't very much to say at this point. I closed the defence. I then had to address the jury and in my address I rested on the defence of insanity and I made a point of the fact that the accused had pleaded guilty knowing that the penalty for murder was death by hanging and I tried to make the point that no one but an insane person would do that. Unfortunately, the verdict was guilty. The judge pronounced the mandatory sentence of death. What followed thereafter was a request for mercy to the Federal Cabinet. They did go so far as to send a psychiatrist out here. He interviewed Stoney a few times but he came to the conclusion that albeit Stoney wasn't all there, he was not insane. In other words, he took the same position that Dr. Pincock, the provincial psychiatrist, had taken at the trial. So the Government



refused to grant clemency and the execution was set. I didn't attend it but Harold Buckwald, my law student who had been with me on the trial, he attended. He told me later that an instant before they put the black hood over Stoney, his eyes circled the room. When they landed on Harold, they was a look of recognition. A moment later the trap sprung and that was the end of the case of *The King v. Stoney*.

## **XII. CAPITAL PUNISHMENT**

Let me say a word about capital punishment generally. I've been against it, firstly because of my respect for the sanctity of human life. True enough, the murderer himself didn't show much respect for the sanctity of his victim's life, but there's a difference. I don't think that the State should, of set purpose, put itself in a position of doing what the murderer has done, namely taking a human life. Secondly, the punishment of death is irreversible and while it's rare that an innocent person should be hanged, it has happened. A well-known example is the case of Evans in England. He was charged with murdering several people. The Crown witness against him was a man named Christie. Evans was in due course hanged. Later on, in the very house where Evans and Christie had both lived, mainly 10 Rillington Place, several corpses were found in the walls. Now, some of these were the corpses of people who had been alive at the time when Evans had been executed. Clearly he couldn't have been responsible for their deaths. It became pretty obvious that Christie, who had been the chief Crown witness against Evans, was probably himself the murderer. Unfortunately, Evans couldn't be revived and I remember a ditty that was current at the time: "all the Queen's Counsel and Home Office men couldn't put Evans together again."

Just a footnote to my stand on capital punishment. It's the special case of terrorists. I think I could be persuaded that for terrorists perhaps capital punishment should be considered.

### XIII. THREE BOYS<sup>8</sup>

I had a personal encounter with capital punishment. It was something that seared the subject right into my soul. It became my duty as trial judge, within a period of about five minutes, to impose the sentence of hanging of three boys. These three boys lived in Montreal. They were hitchhiking out west. When they came to Portage la Prairie or just beyond it, they got a ride in a car owned and driven by Father Kririon, a Catholic priest. Shortly before they came to Brandon, they shot and killed Father Kririon, and robbed him of his wallet (containing, as I recall, about \$80.00). The trial took about two weeks. It was an event of great public interest, probably because the victim himself was a Catholic priest and the three boys charged with his murder were themselves Roman Catholics. The boy who actually did the shooting was named Ferang. The defence was that Ferang was insane. We heard a lot of evidence on that issue with expert opinions on both sides. I am satisfied that the jury weighed the matter correctly and that their verdict was the proper verdict, namely guilty. But the result of the jury's verdict was that I had to pronounce the death sentence and because there were three accused, I had to pronounce them individually, three separate times.

I am not going to pretend that it was an easy thing to do. During the course of this trial, which had lasted about two weeks, and which took place in the presence of the parents of these boys, I acquired a feeling towards them (I won't say a paternal feeling, perhaps an avuncular feeling). In any event, to pronounce the death sentence—to say that these boys should on a certain day between 1:00 a.m. and 6:00 a.m. be taken from their place of confinement and taken to the place of execution, there to be hanged by the neck until dead—that was not a very pleasant thing to do, nor an easy thing.

I did something afterwards, though. The trial judge has to present a report to the Minister in Ottawa. I did present such a report of the case and I

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<sup>8</sup> The Court of Appeal decision on the case reviews the facts as well: *R v de Tonnancourt*, 115 CCC 154, 18 WWR 337. Justice Freedman's letter requesting clemency is reproduced on the MLJ Online at <<http://robsonhall.ca/mlj/>>, and it also provides a review of the facts of the case.

accompanied it with the recommendation for clemency. There were at least three grounds for the recommendation. First, the youth of the boys. Secondly, the fact that the one that did the shooting, while not legally insane, was clearly abnormal mentally. And thirdly, that carrying out of the execution would mean taking three lives for the one they had taken.

The Minister and the Cabinet acted on the recommendation. The death penalty was set aside. A commutation took place in favour of life imprisonment.

A footnote to the case: They were in Stony Mountain Penitentiary for about eight or nine years and then they were released on parole. They are still out on parole and, according to the information I get, none of them has been in any trouble since.

#### XIV. THE LIGHTER SIDE OF THE LAW<sup>9</sup>

Let's get away for a moment from the serious aspect of law. There is a lighter side to the law. I realize of course that one doesn't look for the comic aspect in the mortgage end of the *Real Property Act* or in an indenture of lease and I am sure there are gayer things by far than a warrant of committal to jail. But there are lighter aspects to the law. I think of a case of Lord Coleridge, who was presiding. An irate litigant, expressing his disagreement with the ruling of the judge, picked up a heavy law book from the counsel table and hurled it at Lord Coleridge. Lord Coleridge ducked, rose, and said, "had I been an upright judge, I would have had it."<sup>10</sup>

And then there was the case of FE Smith, later Lord Birkenhead. He was acting for a tramway company in a case in which the plaintiff was just about six years old, and it was alleged that as a result of the accident, the boy had become blind. The judge, very sympathetic to the boy, looked on

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<sup>9</sup> Freedman recounts a number of commonly known and frequently re-told sayings and anecdotes, many of which are without a definite source.

<sup>10</sup> This anecdote has also been attributed to 17th century judge and politician Sir Thomas Richardson. See William J. Thoms, ed, *Anecdotes and Traditions Illustrative of Early English History and Literature* (London: John Bowyer Nichols and Son, 1839) at 53.

at him and said to his counsel, "Blind, poor boy, blind. Lift him up so that the members of the jury can see him." Now this was devastating to the defendant's cause and F.E. Smith, counsel for the defendant, said, "Yes, pass him from hand to hand." The judge looked down at Smith and said, "Mr. Smith, that was a most improper remark." Smith said, "My Lord, it was provoked by a most improper suggestion." A pause and the judge said, "Mr. Smith, are you familiar with the saying of Bacon, the great Bacon, that youth and discretion are ill-wedded companions?" "Indeed, I am," said Smith, "And is your Lordship familiar with the saying of Bacon, the great Bacon, that a much talking judge is like an ill-tuned cymbal?" A pause, and the judge said, "Mr. Smith, you are impertinent." And Smith said, "My Lord, we both are. I, because I wish to be, your Lordship, because you can't help it."<sup>11</sup>

And then there was the case of Serjeant Sullivan, the last of the serjeants. The judge said to him, "Serjeant Sullivan, surely your client is familiar with the maxim *volenti non fit injuria*." And Serjeant Sullivan said, "My Lord, in County Kerry, where my client lives, they talk of little else."<sup>12</sup>

They say when counsel is appearing before an appellate court, that is a court consisting of more than one judge, he should repeat every argument three times. You state the argument the first time in order that one of the judges may grasp your point. You repeat it the second time in order that, while you are repeating it, he may explain the point to his brethren. And then you repeat it the third time in order to correct the erroneous impression which the judge has unfortunately conveyed.

They say that every judge in the course of his judicial career goes through three stages. During his first five years on the bench, he delivers every judgement with the lurking suspicion in the back of his mind that he is wrong. During the next five years, he delivers every judgement absolutely convinced that he is right. Thereafter, he delivers his judgements with a

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<sup>11</sup> Winston Churchill, *Great Contemporaries*. (London: Thornton Butterworth Ltd, 1937) at 176-7

<sup>12</sup> C.P. Hutchinson, "Serjeants-At-Law" [1967] NZLJ 466 at 469.

growing indifference as to whether he is right or wrong and when the indifference becomes habitual, he should retire.<sup>13</sup>

There was a case in England in which the counsel said to the witness, "Is it not a fact that you received a bribe of \$5,000 in connection with this case?" The witness didn't answer. Counsel said again, "Isn't it a fact that you received a bribe of \$5,000 in this case?" Again, the witness remained silent. The judge says to him, "Answer the question." The witness emerges as though from a brown study, turns to the judge and says, "My Lord, I thought the question was being addressed to you."

Then there was the story of the judge who found himself on a train with a law student. They had a long trip ahead of them and the law student said, "In order to pass the time quickly, let's tell each other riddles. And let's do it for reward but bearing in mind that you're a judge and I'm only a law student. If you stump me, you pay me fifty cents. If I stump you, you pay me a dollar." The judge said, "Fair enough. You go first." The law student said, "What is it that has two legs flying and four legs swimming?" The judge pondered and pondered and finally said, "I don't know. Here's your dollar. What is it?" And the law student said, "I don't either, here's your fifty cents."

A very short one. A witness was asked, "Were you not surprised by this?" The witness answered, "Aye, I was bugged." And the judge said, "He means he was taken aback."

There was a celebrated divorce case in Winnipeg many years ago. The wife, Petitioner, was represented by counsel. The husband appeared for himself. When the case came up for hearing, the husband rose and said, "Judge, I don't think this is the way a husband and wife should live—she in her home, me in my home—that isn't the way it should be. Tell her to come back to me and we'll be able to live together like husband and wife." Well, this seemed to be an appeal from depths. The judge was visibly impressed but he looked at the petition and noticed that in paragraph 7 there was allegation that this husband was living in an illicit and adulterous

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<sup>13</sup> Cameron Harvey attributes this quote to Freedman in *Chief Justice Samuel Freedman: A Great Canadian Judge* (Winnipeg: The Law Society of Manitoba, 1983) at 15.

relationship with one Beulah Matilda MacGillicudy. The judge looked over his glasses and said to the husband, "Do you know a lady named Buelah Matilda MacGillicudy?" And a light dawned on the husband's eyes and he said, "Yes judge, you know her too?"

I've got a brace of stories relating to Jewish interpreters.

There was the case of an old gentleman who was called to the witness stand and he was Jewish. He was giving his evidence through an interpreter and the proceedings went thus. The lawyer said, "What is your name?" The interpreter said, "(in Yiddish) What is your name?" The witness said, "(in Yiddish) Samuel Nussbaum." The interpreter said, "Samuel Nussbaum." Next question, counsel said, "How old are you?" The interpreter said, "(in Yiddish) How old are you?" The witness said, "(in Yiddish) 91." The interpreter said, "91 years." Third question, the lawyer said, "How long have you lived in Canada?" The interpreter said, "(in Yiddish) How long have you lived in Canada?" The witness said, "(in Yiddish) 71 years." The interpreter said, "71 years." At which point a shocked judge said, "I think it is a scandal that this man has lived so many years in this country and still doesn't know the language of the country." The interpreter said, "(in Yiddish) I think it is a scandal that this man has lived so many years in this country and still doesn't know the language of the country." To which the old gentleman replied, [in Yiddish]. The translation of that (and I must say it loses a lot in the process) is "Tell him that I am not leaving this country as yet."

And the other joke that goes with it is the story of the old gentleman that was called to the witness stand. As he approached, the judge looked at him, saw a man coming forward with the long black beard, a yarmulke on his head, the long black caftan or the cloak that the religious Jews wear, and he said at once, "Swear in the Jewish interpreter." And this was done at which point the proposed witness turned to the judge and said, "My Lord, I am 75 years of age. I was born in this country. I am a graduate of Balliol College, Oxford. My field is English literature. I've written extensively in that field, much of it on the Chaucer era but a good deal too on contemporary modern literature. So I really don't think there will be any need for the services of this gentleman." At which point the interpreter turned to the judge and said, "(in Yiddish) My lord, I am 75 years of age..."

## XV. CLIENTS

In the year 1950, my law practice underwent significant change. All of a sudden I found myself acting for some very lucrative companies. For example, the Royal Exchange Insurance Group retained me as their counsel and it was a pleasure to work for them. First of all, they were accustomed to paying big fees. They did so with a smile and they paid such fees to me and I smiled. I became counsel for the Manitoba Teachers' Association and, perhaps most interesting of all, counsel for the Milk Distributors in Winnipeg.

Milk is a recurring problem. If you act for milk distributors, they come to see you about one aspect of milk or the other, usually the fixing of prices. They want an increase in the price of milk, you have to battle with the Milk Control Board, you face the opposition of the Consumers' Association, and most of all, you face the opposition of Safeway stores. You see we operated on the theory (and I think it was a correct theory) that Safeway was using milk as a kind of loss leader. They would have the milk at the back part of their store so that the housewife who wanted to get a bottle of milk or a quart of milk would have to pass through all the counters going in and coming out and, as would most often be the case, she'd buy things she hadn't intended to buy.

Early in 1951 I had to appear before the Law Amendments Committee of the Manitoba Legislature for a milk hearing. It was a most interesting experience. I had prepared a brief which I was constantly revising but when the actual hearing came, it was in good shape. My then partner, Dave Golden, appeared with me. He was delivering the handing out of the copies of the brief. I think I did well. I put on a bravura performance for the legislators. And best of all, Dave whispered to me near the end of the hearing that our clients were delighted with my performance.

Dave and I had talked about the fee we should charge. I thought a thousand dollars would be about right. My big opponent that day was Mr. John A. MacAulay, QC, lawyer for Safeways. When we finished our hearing, he said to me, "Sam, this is the first time the distributors have had their case properly put. How much are you going to charge them?" I said, "John, how much should I charge them?" He said, "Five thousand dollars." Well, that was a staggering sum. I knew I couldn't charge that. I laughed

and thanked him. Anyway, the secretary of the Milk Distributors, the man who was my point of contact with them, came up to me and said, "Sam, we've very pleased with the work you've done. How much are you going to charge us?" I said, "How much should I charge?" He said, "You tell me. I'll let you know whether you are high or low." So, in the words of Shakespeare, putting my courage to the sticking place, I gulped a couple of times and said, "Two thousand dollars." And he said, "Sam, you're low. Make it three thousand." Well, of course, I was delighted. I think today perhaps I should have done what John MacAulay suggested originally and made it five thousand, but three thousand was good and it had the effect of fixing a basis in accordance which I would charge the Milk Distributors in the future.

## XVI. APPOINTMENT TO THE BENCH

In the course of about a year or a year and a quarter, I must have made nearly \$10,000 in fees from the Milk Distributors. As a matter of fact I was at a meeting of the Milk Distributors on the day when the Minister of Justice telephoned me inviting me to become a judge of the Court of Queen's Bench. I accepted with enthusiasm, even though I knew it would mean an immediate loss of income and indeed that's been the story ever since. My contemporaries at the Bar have continued to make money far in excess of a judge's salary. But I can tell you this: that if I were faced with the same decision, I would make the same choice that I was honored to make in April 1952.

I may say that this was the second invitation to me to go on the Bench. The first did not involve the superior court. It was an invitation to join the County Court Bench. And so anxious was I to assume the judicial role that I accepted only for two or three days. Brownie kept saying to me, "What sort of work do you do? Who are the County Court judges?" When I named them, she said, "Why don't I know them? I know all the Court of Appeal judges. I know the Court of Queen's Bench judges. Whenever we go to a Bar or social event, I meet them. Who are the County Court judges?" And I realized at once that this put the finger on the central issue: County Court judges were lower court judges, the office lacked prestige, it would be a mistake for me to accept it. And I so notified the people who had been sponsoring my name, indicating: "thank you very much, but the answer is 'no.'"



Becoming a judge of the Court of Queen's Bench was an exciting thing. I remembered first of all phoning Brownie to tell her the news. All I said was, "Darling, that call just came through." She said, "You mean you heard from Stuart Garson, the Minister of Justice if you'd go on the Court of Queen's Bench?" I said, "Yes, and I have accepted." Then I telephoned my parents. My mother answered the telephone. I said, "Mother, great news." She said, "What?" I said, "Guess." She said, "Max is married?" Mothers have a strange way of being able to put all things into proper perspective.

That story got to Ottawa remarkably speedily. It happened in this way. I walked over to the Court House to see my new brethren of the Court of Queen's Bench and to say hello also to the judges of the Court of Appeal. I was in Mr. Justice Coyne's office talking to him and I told him the story of the telephone call to my mother. He loved it. Not ten minutes later, he telephoned the Winnipeg Free Press, spoke to the editor, Grant Dexter, who was delighted to hear it. He then at once himself put in a long-distance call to Ottawa. He got Max and George Ferguson, a former Free Press editor who was with Max, told them the story and Ottawa at that point got it. And I think it got to Stuart Garson, the Minister of Justice, within minutes. I may tell you that it's a sure-fire laugh in a speech and I made a good deal of mileage over the years on that story.

I served on the Court of Queen's Bench for a total of about eight years. In that period, I had a variety of cases, some civil, some criminal. In the criminal field, I guess I had everything from petty crimes to murder. What I particularly liked was the drama of the unfolding trial. It's very interesting to see a case in progress—examination, cross-examination, re-examination, a surprise witness (either one who wasn't expected to be called at all or the expected witness who says unexpected things and throws his lawyer into a tizzy). You've got to adjust to the current of the moment like rowing on tidal waters.

What a trial judge needs above all else is patience. Some judges tend to make up their mind too early in the case. There are cases in which a new light is thrown on everything that have gone before by the testimony of the last witness. What he says and how he says it may transform your whole concept of the case. Therefore, keep an open mind until the very end. That's the golden rule for a judge.

In March 1960, I received a telephone call from Davie Fulton, who was then the minister of justice in the Conservative Government. He invited me to go on the Court of Appeal. I was happy to accept and after eight years of being a trial judge, became an appellate court judge.

It's been said that an appellate court judge is both a soloist and a member of an orchestra. Dealing first with the second aspect, the orchestra one. You are a member of a multiple court. You can't be a stubborn, pig-headed crank. You're committed to your judgement, true enough, and if your conscience demands that you adhere to every word, well so be it and let the heavens fall. But the situation may be such that on the second look, you may be able to delete the paragraph in question without any intellectual impoverishment of our society.

But a judge is a soloist too, especially is this the case when he's writing in dissent. It's been said that the dissenter, knowing that the present cause is lost, speaks to the future. Sometimes that may be the early future particularly if his dissenting judgement, when reviewed by the Supreme Court of Canada, receives the approval of that Court. I occasionally have played the role of the dissenter. I can recall a case in the field of obscenity in which the entire court other than myself found the magazines in question to be obscene.<sup>14</sup> Now we're talking about 1963 or 1964. The test in these matters is always community standards and by the community standards of those days, even I regarded the magazines as risqué, even though not obscene. But by today's standards, they would seem polite, innocuous, innocent. In any event, I was the sole dissenter in our Court. I held that they were not obscene. I didn't have to wait very long for confirmation of my views. An appeal was taken to the Supreme Court of Canada and I was paid the high compliment by the Court of them writing only a single paragraph in which they said that they concurred with the dissenting judgment of Freedman, Justice of Appeal, and that they had nothing whatever to add to that judgement.

I recall another case in which I was the sole dissenter. It concerned a woman who was the recipient of welfare payments from a municipality in which she lived. One day this woman had the great good fortune to be hit

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<sup>14</sup> *Dominion News & Gifts (1962) Ltd. v. The Queen* [1964] S.C.R. 251

by a motorcar. As a result, in very short time, she became entitled to an award of about \$3,000. Well and good, but at this point the municipality stepped in and said, "You owe this money to us. We are going to take it." The case came to court and when it reached our Court, I was the sole dissenter. In my judgement, I reviewed the history of the common law relating to welfare payments. It seemed perfectly plain to me from that history that the receipt by a welfare recipient of moneys did not constitute a debt repayable to the municipality. That was the common law. Unless the statute in explicit terms changed the common law, then the old common law should be applied. I found that the statute did not in express terms constitute that welfare payments are a debt, hence the money was not repayable by the woman to the municipality and the bonanza she had received as a result of her very fortunate automobile accident redounded only to her benefit and not to that of the municipality. But I was alone in our court in that view. An appeal was taken to the Supreme Court of Canada and I'm happy to say that that court concurred with the dissenting judgment of Freedman, Justice of Appeal.

I may say that on the whole I've had a pretty good record with the Supreme Court of Canada. Indeed, at one point, I had a long, unbroken string of successes without a single reversal by the Supreme Court of Canada. Indeed, I was speaking somewhere and I was introduced by a lawyer who had gone into statistics and pointed out to the audience that here was a judge who was still batting a thousand, who had never once been reversed by the Supreme Court of Canada. When I rose to speak, I thanked him for the high compliment he had paid me, but I said, "As you and I know, this can't keep up. One of these days the Supreme Court of Canada is bound to make a mistake." I may add that they made that mistake more than once since.

I've been a judge now for 27 years and I am bound to say that I've enjoyed every day of that tenure of office. I know that if I stayed in the active practice of law, I'd have made more money than I am making. My contemporaries in law have been the beneficiaries of a constantly rising graph in income each year, but there have been other satisfactions associated with the type of work in which I've been engaged that have caused me never to regret the decision I made to go on the Bench.

I was a trial judge for eight years. I enjoyed that work very much indeed. The drama of the unfolding case has a special fascination of its own. Then when the opportunity came to go on the Court of Appeal, and I was invited to become an appellate court judge, I accepted that. I felt that my eight years on the trial court would the better equip me to handle appellate court work, and I think I am right in that assumption. An appellate court may not be as dramatic and exciting as the trial court. We do not hear witnesses, we operate from the written transcript of the core of the case in the court below, but the important feature of appellate court work, in my mind, that makes membership on a Court of Appeal interesting and rewarding is that it is a much more authoritative court than a trial court. Not because it is equipped with better judges necessarily, but because it is a multiple court. There are these three judges on every case, very often five judges. And as a result a decision of that kind of tribunal, taking the second bite of the apple is likely to be sounder and more authoritative than the judgement of a court of first instance.

## XVII. CONCLUSION

I've been Chief Justice of Manitoba for eight years. It's an appointment which I cherished when I got it and I have been happy ever since. We have a cooperative court and, if I may say so, a court of competent judges.<sup>15</sup>

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<sup>15</sup> The interview ends at this point.