

3

The 1930s and 1940s: Law and Marriage

A visitor to one of the English Inns of Court—a temple of law and learning—once commented upon the fact that the door through which he had entered was built unusually low. His host said that this was designedly so, adding that all who entered that temple should be willing to bow their heads.

[From “The Installation of the Chancellor,” speech, Winnipeg, 1959]

From the beginning my association with law delighted me. When I started out, the University of Manitoba’s Law School was located at the Law Courts Building on Broadway and Kennedy. I loved going in and watching the cases—the examination of witnesses and cross-examinations, the addresses to the jury and the conduct of the judges—though I never dreamed that I would be a judge one day, let alone Chief Justice of Manitoba.

I would remain at the office of Steinkopf and Lawrence for fifteen years, the first three as a law student, the next two as a junior barrister, and the following ten years (1936–45) as a member of the firm, by then called Steinkopf, Lawrence & Freedman. At the beginning I got the overflow work from the principals. In my days as a law student, one did not need to wear a gown in the County Court, which meant that I could act as counsel there without having yet been called to the Bar. It was my great good fortune that for a period of three years I was taking case after case. I was in the County Court two or three times a week, with my appointments for trial beginning in the early afternoon so as not to interfere with the Law School lectures in the morning. These were not weighty cases involving subtle and intricate transactions having a value of thousands and thousands of dollars. Indeed, I can describe the firm as I knew it at the beginning as a glorified collections agency: a storekeeper trying to collect \$50 from a debtor; the debtor claiming either that the goods were no good, or that he had already paid for them and didn’t want

to pay twice. My very first court experience brought me to court on the plaintiff's side, not the defendant's. I was usually on the plaintiff's side, trying to collect a legitimate bill through the court for someone who was a creditor against someone who was a debtor. In those kinds of simple controversies a good law student could do as effective a job as an inadequate lawyer, or better. Later on I appeared for the defence in criminal cases. I had one case early in my career defending a couple of hunters who were charged with hunting contrary to the game law. We won, and I got a very small fee, probably \$15 or so. But it was something, and it was a victory.

By the time I was ready to graduate I had acquired solid experience in the field of litigation. And in the fifteen years of my association with the firm, the nature of its practice underwent a remarkable change. When I first started, about 80 per cent of its work consisted of collections. When I left at the end of 1945, collections represented about 20 per cent of the business, and the rest consisted of law in nearly all its branches.

One case early on involved a certain gentleman, an old man named Peter Minuk. When Minuk died, leaving an estate of about \$150,000, no will could be located. This was in 1932-33, and that amount would be equivalent to at least a million dollars today.¹ About a year or more after his death, a will turned up, written in Yiddish, except for the signature "P. Minuk," which was in English, as were the signatures of the two 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.

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 impression left on me was the unscientific character of handwriting testimony. I remember Cardinal Richelieu once said, "Show me two

¹ More than \$2.5 million in 2014, according to the Bank of Canada Inflation Calculator, available online: <<http://www.bankofcanada.ca/rates/related/inflation-calculator/>>.

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 case fresh from his laurels in the Bruno Hauptmann kidnapping case. That was the case of the man who had kidnapped and killed the Lindbergh baby.² One of the curious features of the Peter Minuk signature centred on the first letter of the proper name—the "M". It appeared that there was a 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 made the first upward stroke of the "M" and then he looked 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 the downward stroke he is just a little bit to the right of the first stroke, which accounts for the space.

Now that sounded great for our side, but M.J. Finkelstein, who 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."

In the end a settlement was reached. The will was not admitted to probate, and every one of us interested in the case got some money out of the estate.

With the approach of my graduation in 1933 I realized that I must make plans for the future. My relationship with Brownie had only deepened and strengthened over time, and she had in fact accepted my proposal of marriage, eighteen months after our first date. I now wanted to put an end to an engagement that seemed of endless duration. Brownie

² US pilot Charles Lindbergh (1902–74) had made the first non-stop solo transatlantic flight in 1927. His infant son was kidnapped and murdered in 1932; Bruno Hauptmann was found guilty of the crime and executed in 1936.

was a graduate nurse by that time—the only Jewish girl among the Winnipeg General Hospital graduates in 1930—and she did private duty nursing. The pay for a twelve-hour stint was \$5: hard work, long hours, little remuneration. But she would not be working after we were married. It was felt then that if a man's wife, and particularly the wife of a professional man, held a job, it marked him as a failure. That's nonsense today, but there was a great deal of that then. I had to save enough money to be called to the Bar, and I was helping a little bit at home, too.

Brownie and I had a black book in which we budgeted our expected expenses. As a law student I was only making \$25 a month, and we calculated that we needed at least \$125 to get married.³ To help solve this difficulty I devised a three-year plan to submit to Steinkopf & Lawrence. Its commencement would be May 1, 1933, a date that would mark the end of Law School lectures for me and the commencement of full-time work in the office, and it would continue until April 30, 1936. According to my plan, from May 1, 1933 until December 31, 1933, Steinkopf & Lawrence would pay me \$100 per month. From January 1, 1934, until December 31, 1934 the firm would pay me \$125 per month. Then, from January 1, 1935, to April 30, 1936, the partners would pay me \$150 per month.

Before submitting the plan to Max Steinkopf, I took it first to my old and revered friend, Dr. Alan Klass. He listened to the details, then said, "A three-year plan is a good idea, but you will have to scale your figures down. They will never accept it in its present form." His reaction gives some indication of what times were like in 1933, in the depths of the Depression. I considered revising the figures, but decided against making any changes. If I had to scale them down, I could do so during the negotiation period, which I expected lay immediately ahead of me.

But my concerns were groundless. I stepped into Max Steinkopf's office the next morning and asked, "Can we talk for a few minutes?" He said, "Certainly." I told him I wanted to discuss my future, especially as it related to the office, and that I would very much like to remain in the

³ In her research Carol Wilton found that law students of the early to mid-1930s worked for \$30 or \$35 a month, even \$10 a month, and in the case of at least one firm (McMaster Meighen, Montreal), for nothing. See Carol Wilton, "Introduction" in Carol Wilton, ed, *Essays in the History of Canadian Law, Vol 7: Inside the Law: Canadian Law Firms in Historical Perspective* (Toronto: The Osgoode Society for Canadian Legal History and University of Toronto Press, 1996) 3 at 21.

office on a full-time basis. I also told him of my hopes for a not-too-delayed marriage. I produced and read the three-year plan. He said, "I'm glad you want to continue with us, and the plan seems alright to me. Let's get Bill Lawrence's views on that too." He took me into Bill's office and told him about my plan. In another two minutes or so, we had the agreement of Mr. Lawrence to the plan in all its details—a happy day for me indeed. I've always since had a soft spot in my heart for both those gentlemen, because they thereby enabled me to get married. Max died in 1935; his son Maitland joined the firm a year or two later.

After the acceptance of my plan, certain matters lay ahead of me. They had to be dealt with, and dealing with them successfully would require some money. I needed to be called to the Bar. I also wished to be admitted as a solicitor, as it was possible to become a member of one order without the other. It was the current wisdom that if a barrister practised as a member or associate of a firm that included a solicitor or solicitors, he would not be in breach of the *Law Society Act*, provided only that proceedings issuing from that office were in the name not of the barrister, but of the firm or a solicitor or solicitors thereof. Economic necessity dictated my course of action. Commencing May 1, 1933, I set a goal of saving \$25 a month, with the object of having, at the end of six months, \$150, just enough to pay the fee required in those days for the call to the Bar. A similar amount would be required for admission as a solicitor, but that event would have to be deferred to a more propitious day.

In September 1933 I made application for admission as a barrister and as an attorney at law. The following month I was called to the Bar. Concurrent with my obligation to save for that fee was another obligation, to repay Max Steinkopf a sum of \$75 I had borrowed in January 1933 to pay my second-term fees at the Manitoba Law School. This I had arranged to pay in monthly sums of \$12.50 each. Together the two obligations would be repaid in a period of six months. By October 31, 1933, I should be in the clear. By that time I could have reasonable hope of getting married either late in 1933 or early in 1934.

But a Depression winter was looming ahead, and it would demand a postponement of our wedding plans. This was an indirect rather than a direct result of the winter. It was my father who was the direct victim of the winter. He had been forced to sell his horse in order to avoid the cost of its maintenance. Instead he rented a horse to use in his junk peddling, at an outlay of fifty cents a day. In mild weather the rented animal would

function well enough to earn the fifty cents fee, plus something more. In bitter weather—and the winter of 1933 was bitter—one could not be sure that the day's operation would end with a profit.

Writing this in the 1990s, with the petty figures involved, I find it sad to recall how tough things were in the 1930s. A dollar was really a dollar then, and its expenditure was not lightly made. But the Depression years had some incidental benefits. They taught us to be content with little. They drove us in among ourselves and made us see virtue in the little things in life. In the evenings at home we'd stay near the radio, listening to the Lux Radio Theatre or the Orson Welles, or Fred Allen, or Eddie Cantor programs.

Much as I wanted an early marriage, I knew that the family financial crisis would have to be dealt with, and that to do so would require my help. I was able to contribute my share and more, thus enabling our family to get through that grim winter. Each month I made my contribution to the family fund with the silent hope that maybe the following month we would be able to get married. In the result, the marriage had to be put off month after month, and did not take place until June 29, 1934.

The night before the wedding I was home in full anticipation of the next day's event, and duly preparing myself. One of the things I did was cut my fingernails. My mother said to me (in Yiddish), "Sam, cut your toenails as well." The next morning I made my first appearance in the Court of Appeal. I worked, you might say, until the last moment. We were to be married about three o'clock in the afternoon. In the early afternoon I went home and got dressed in my blue suit jacket and white pants ("white ducks" as they were called).

I had arranged for a taxi to be at our home, which was now on Mountain Avenue. When it came I got into the back seat and found it was covered with dust. I feared that by the time the groom came to the wedding he would be dirty, soiled. Still, I got to the appointed place in one piece and not too bedraggled. It was a small wedding. We were married in Brownie's sister's apartment. We had invited seventeen guests in all—eighteen turned up. Al Cross said to me, "Sam, you don't have to invite me. I'm coming anyway." Five minutes after he got there he came sidling up to me and in a whisper said, "Sam, I've already broken something."

The ceremony was conducted by Rabbi Solomon Frank, a good speaker who carried the ceremony as though he were addressing a crowd

of three hundred. The bride was radiant, as she would always be. Following the ceremony the guests went to Brownie's grandmother's for dinner. Brownie and I went to our honeymoon train and headed off to Detroit Lakes, to the 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 and by the time we got to Detroit Lakes my white ducks had moved to grey-black.

We had a great honeymoon at a total cost of \$100. The Edgewater Beach Hotel rates were \$25 for a week. We spent the other \$75 and came home broke, but with ecstasy in our hearts, to take up life in the Scarsdale Apartments on Kennedy Street, just south of Broadway. We had a small flat with a combined living room and bedroom. How could we manage in that? 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. We lived there for about fifteen months, at \$40 a month. This was more than we could afford, so we moved to the Dalkeith Apartments, at only \$32 a month. These days it may be hard to believe that \$8 a month could make a difference, but the truth of the matter is that for small incomes, even an amount like \$8 loomed large. It was a few years after we were married before we actually did get bedroom furniture.



Fig. 4

During this time I also began to get somewhat active in the community. I was elected president of the YMHA of Winnipeg in 1936 (J. Samuel Perlman, later editor and publisher of *The Morning Telegram* in New York, was vice-president), and later became active in the Jewish Welfare Fund of Winnipeg as well, among other organizations.

At the YMHA I set myself an objective as president: to transform the existing YMHA (and its included YWHA) into a YMHA Jewish Community Centre. For myself that meant transformation of the YMHA from an athletic organization, as it largely was, into an institution with a broad program of activities, such as lectures, theatre, a newspaper, all with a substantial Jewish content. I spent many evenings devoted to this task, and the objective was realized to some extent. When my term was up the YMHA officials wanted me to continue in office, but by then we had news of Brownie's pregnancy, which was the effective answer to this request.

We were excited about the prospects of the pregnancy, though a little concerned that we couldn't afford a child. One of the recurring problems, eased in more recent years, in the Freedman life was the lack of enough money to do this and to do that. As a result of the pregnancy, the \$150 a month I was earning was raised to \$175. We were still living in the Dalkeith Apartments and would now need a larger place. We moved to the Kenilworth Apartments on Hargrave Street, where Martin was born on September 12, 1937, one month premature. I went to my parents' place to break the news, at about 8:30 on a Sunday morning. When they saw me 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! My mother said, "Naturally, we were excited. All the time you've been saying October, October, October, and here it's only September." We soon straightened her out. Martin's birth was followed by that of Susan, in May 1942, and Phyllis, in March 1947, all happy events. A year and a half after Phyllis's birth, in the fall of 1948, we were able to buy a house on Cordova Street—its first occupants.

Through the decade, alongside the career and the family life, the debates and speeches continued, and for the most part they concentrated on what it meant to be Jewish in the highly charged

political atmosphere of the 1930s. The YMHA announced, for instance, that on January 22, 1933, "Mr. Sam Freedman, one of Winnipeg's outstanding young men [will] speak on "Jewish Problems of Today." A month later the Winnipeg Section, National Council of Jewish Women, announced that, "Mr. Max Cohen and Mr. Sam Freedman will speak on 'The Jew and Forces of the 20th Century.' Our speakers are two of Winnipeg's most promising young men."

In November 1933, it was a "Debate at Auditorium Tonight" as Samuel Freedman and Prof. H.N. Fieldhouse were getting set to "uphold the affirmative of the resolution, 'Resolved that the old diplomacy was better than the new.'" On April 1, 1934, Rev. Stanley H. Knowles and Rev. Lloyd C. Stinson were taking the affirmative side of the question "Resolved that the League of Nations, though it yet speaketh, is dead." Samuel Freedman and H. Trevor Lloyd took the negative and won the judges' decision.

"To say that the League is dead is to say that we must revert to the old system of nationalism and jingoism and lose all that we have gained," Sam Freedman argued. "It is said that force and right govern the world—force until right is ready."⁴

On April 2, 1935, Sam Freedman was speaking at a banquet commemorating the tenth anniversary of the opening of the Hebrew University in Palestine. On November 3 that year, his topic at a general meeting of the Menorah Society was "The Olympic Games at Berlin," and the following month he was holding forth on "Some Reflections on Hitler's Germany" for the Ezra Chapter of Hadassah. Topics later in the decade included "Facing the World as Jews" (May 14, 1938, to the Herzlia Club) and "The World Crisis" (September 11, 1939).

In 1939 I was invited to become a member of the Winnipeg Branch of the Canadian Institute of International Affairs. I accepted with enthusiasm. The Institute—it was usually so described—was a small but very influential organization operating in the field of politics, economics, and social relations in general. Its Winnipeg Branch was regarded by many as

⁴ "League Still Power for Good, Debaters Hold" [undated clipping, 1934] Freedman Scrapbooks, 1927-37.

the strongest in the whole of Canada. Its members included John W. Dafoe of the *Winnipeg Free Press*, historian Arthur Lower, and the law's E.K. Williams, among others.

Two incidents at the Institute stand out in my mind. The first concerns the Institute's role regarding confidentiality. Information heard at the Institute could be used but was not to be attributed to a named person. In 1940 or 1941, when the war was not proceeding very favourably, Prof. H. Noel Fieldhouse was a speaker at a meeting of the Branch. He took the very clear position that Britain should accept the inevitable outcome of becoming "a little Sweden." The Chief Justice of Manitoba, Ewan McPherson, asked, "Are you advocating that we should surrender?" Fieldhouse said, "Yes, because sooner or later we will have to."

Some days after the meeting we heard that the RCMP was investigating the conduct of Prof. Fieldhouse in regard to his speech at the Institute. Chief Justice McPherson readily acknowledged that he was the complainant, adding that a defeatist attitude, such as Fieldhouse exhibited, was not entitled to protection under the confidentiality rule. It was prejudicial to the war effort, and the safety of the state was the paramount consideration. A meeting of the executive of the Institute was quickly called. As a member, I attended that meeting.

John W. Dafoe, one of my heroes, was the first to speak. "There must be no minutes of this meeting, because there may be consequences," he said. Nearly everyone nodded agreement. Surprised at my own courage, I dared to ask, "If there may be consequences, is that not a reason for having minutes?" Mr. Dafoe said, "We don't know what form the consequences will take, so we shouldn't become prisoners of minutes prepared, as it were, in the dark."

No minutes were taken. We moved on to a general discussion of the matter. At the end it was agreed that no member of the executive other than the chairman would give any information to the police or to the media. How far the RCMP went with its investigation I do not know, but no charges were laid and in due course the matter was quietly dropped.

The second incident arises from the sudden death, in January 1944, of Dafoe. An ordinary meeting of the Branch had already been scheduled for a date about ten days following. The president of the Branch was Dr. D.A. McGibbon, head of the Board of Grain Commission of Canada. I was secretary of the Branch. Dr. McGibbon called me in great agitation. He said, "I can't preside at the next meeting, because the one who presides

will have to say something about Mr. Dafoe. I loved him so much, I'm afraid I would break down." So I had to arrange for a substitute. After some unsuccessful efforts in other directions I was able to get Mr. J.B. Coyne (later Senior Justice Coyne) to take on the task. On my own I prepared a resolution about ten lines in length, as the Branch's memorial tribute to Dafoe.

At the meeting, when dinner was concluded, Mr. Coyne rose to his feet and said, "This is the first meeting of our Branch since he died . . ." He then burst into tears.

When I saw that Mr. Coyne would not, and apparently could not, continue, I rose and said that I would read a resolution on the subject. This I did, we all stood for an appropriate interval of silence, the meeting then proceeded, and the crisis was averted.

Samuel Freedman's community activities were always numerous. In the period from the 1930s to the early 1950s, besides serving terms as chairman of the Winnipeg Branch of the Canadian Institute for International Affairs (1947-48) and president of the YMHA (1936-37), he was president of the Winnipeg Lodge of B'nai B'rith (1943-44), honorary president of the University of Manitoba students body, vice-president of the Winnipeg branch of the League of Nations Society (1941-44), vice-president of the Jewish Welfare Fund (1942-44), and vice-president of the Community Chest (1946-47). He became a member of the Canadian Foundation in 1948. These various volunteer activities, all in combination with a busy law practice, represented a remarkable engagement with the community around him, and a staggering amount of committed time.⁵

In the 1940s, Sam, as "a young man of some apparent promise," was a member of what became called "The Monday Night Club." Each Monday evening two young lawyers, members of the Indigent Suitors Committee of the Law Society of Manitoba, would go as unpaid volunteers to the Law Courts Building to interview applicants for legal aid and make recommendations for the appointment of counsel. The Law Society's efforts to respond to the legal needs of "indigent persons", which had begun in 1937, may well have been "the first formal response by the legal profession in Canada to the need for legal

⁵ *The Winnipeg Free Press* (9 April 1952); Kieran Simpson, ed, *Canadian Who's Who 1985* (Toronto: University of Toronto Press, 1985).

assistance among low income people.”⁶ Most of the problems handled were in the area of family law. Although the Manitoba government began paying lawyers small fees for criminal legal aid work in 1962, it was not until 1972 that a fully funded state legal aid plan was set in place.⁷

In 1970 Sam Freedman reminisced about his time as president of the B’nai B’rith.⁸

I was president of B’nai B’rith Winnipeg Lodge No. 650 during the years 1943–44. Those were war years, and the program of the Lodge was specifically geared to the furtherance of the Canadian war effort. In a variety of ways—assisting the Red Cross in its blood donor campaign, raising funds for the acquisition of ambulances for the Canadian Forces, providing recreation programs for the troops, and so on—the Lodge confronted the challenge of those troubled years and met it honourably and admirably.

One feature of the Lodge’s war effort deserves special mention. It was the creation of an Air Force Cadet Corps. It functioned under the leadership of Bro. Earo Haid, who, for that purpose, was vested with the rank of Honorary Colonel. But the person in closest touch with the activities of the cadets was Bro. Percy Thompson. The gymnasium of St. John’s High School served as the cadets’ parade square, and it was a joy to go there and see Percy taking the cadets through their drills and marches. His military bearing, always precise, was an inspiration to every cadet in the Corps.

That was a time when, on every street in Winnipeg, one could see members of the armed forces. On their uniforms just below their shoulder was a label inscribed with the name of their country. Naturally most of the labels bore the name “Canada”. But there were many others, each one identifying the wearer with the country he served—Great Britain, United States, Australia, New Zealand, South Africa, and many others. It is a

⁶ Norman Larsen, “Legal Aid in Manitoba” in Cameron Harvey, ed, *The Law Society of Manitoba 1877-1977* (Winnipeg: Peguis Publishers, 1977) 158 at 159.

⁷ *Ibid* at 159–60.

⁸ Memo, August 1979, from Samuel Freedman, in response to a request; letter from Dr. Isadore Wolch (23 June 1979), editor in chief, B’nai B’rith 70th Anniversary Souvenir Book, for a one-page article of reminiscences, Winnipeg, Provincial Archives of Manitoba (box 78, file no 4).

pleasure to recall that in this galaxy of nations one could also see Air Force cadets whose uniforms proudly bore the name "B'nai B'rith."

Fidelity to truth compels a reference to another aspect of life in the Lodge in that period. It concerned a division in the Lodge between two factions. That division involved a matter of principle, namely, who should govern the Lodge—its elected officers, or a hierarchy of past presidents? Much of the work of the Lodge was carried on in a resultant atmosphere of tension and conflict. It led to a split in the Lodge and the creation of Manitoba Lodge No. 1616. A number of members of Winnipeg Lodge became the nucleus of the new Lodge. I was one of them and I have ever since remained a member of that Lodge.

Meanwhile I kept active as a young lawyer, practising with the firm of Steinkopf, Lawrence & Freedman until 1945. My practice was fairly general, starting with the smaller cases in the county court and later graduating to the Court of Queen's Bench and taking cases there. And I began to take part in the Bar Associations—both the Canadian Bar Association and the Manitoba Bar Association—and even the Law Society of Manitoba. In 1941 I was invited to become a part-time lecturer at the Manitoba Law School, teaching about two hours a week. I taught in the areas of civil procedure and domestic relations. The job satisfied an old desire to be a professor. It seems to me that it is always the lecturer who benefits the most from his lectures. As well, I was editor of the *Manitoba Bar News*, the journal of the Manitoba Bar Association, from 1942 to 1946, and later (1951–52) president of the Manitoba Bar Association. In 1944 I was named King's Counsel, and in November 1949 I made a successful application to the Law Society of Manitoba to be admitted as an attorney-at-law and solicitor of the Court of Queen's Bench of Manitoba—having enclosed a cheque for \$127, the fee at the time.

Lawyer and politician Joe Zuken, another Jewish product of Winnipeg's North End, used to tell a story about an encounter with the young lawyer Sam Freedman. Zuken was president of the New Theatre, a political drama group, and in 1939 the group took its performance of Albert Maltz's play, *Rehearsal*, to the Dominion Drama Festival in London, Ontario, where it won the prize for the best one-act

play in the English language. Maltz would later become famous not only as a Hollywood scriptwriter but as one of the “Hollywood Ten”, writers blacklisted in the late 1940s for their Communist affiliations. In 1939, when news of the play’s success got back to the playwright, he demanded his fair share of whatever it was that the play was taking in. Zuken said of the theatre group, “We were naive, or penniless, or both. But one day I got a letter from a lawyer, and the lawyer turned out to be Sam Freedman... Sam was very merciful and made no accusations. In a very gentle way he said, ‘You know the author is entitled to be paid some royalties.’ With Sam Freedman’s polite prodding, the payment due was settled over a period of time.”⁹

As editor of the *Manitoba Bar News* for almost five years, Sam Freedman put his very own stamp—of “articulateness and thoughtfulness”¹⁰—on a publication that strived to be more than a house organ containing loose items on happenings in the local profession. His writing shows the succinct quality—the exactness—that would become so apparent later on in his judgments as a member of the Court of Queen’s Bench, and the Court of Appeal. He displays a sharp attention to contemporary changes in the field, or to the need for changes. After Sam’s retirement as editor, the new editor, James E. Wilson, noted in the February 1947 issue that in Sam Freedman’s “very capable hands” the publication had “reflected the activities of the Association and the outlook of its members towards matters of legal interest in a manner which was always dignified and never incautious.” The following is a typical editorial.

BROADENING FIELDS OF LAW

[Editorial, *Manitoba Bar News*¹¹]

The need for vigilance on the part of lawyers against unfair encroachments into their professional sphere is a subject that has been frequently and properly stressed. Sometimes, however, preoccupation with the

⁹ Doug Smith, *Joe Zuken: Citizen and Socialist* (Toronto: James Lorimer & Company, 1990) at 68.

¹⁰ Mark MacGuigan, “Law, Conscience and Balance” (1983) 13:2 *Man LJ* 236 (special issue in honour of The Honourable Samuel Freedman).

¹¹ (1943) 15:6 *Man Bar N* 97.

subject of encroachments may cause one to lose sight of the fact that, though some legal areas may be invaded and become lost to the lawyer, new ones are being opened up to him or existing ones being broadened.

An instance of such a development, which we now take for granted, was the stimulus to legal work created by the emergence of the automobile. When one reflects that the first motor vehicle accident case reported in Western Canada was *Toronto General Trusts Corporation vs. Dunn* (1910) 20 M.R. 412, and considers to what significant extent these types of cases now form part of the average lawyer's practice, the change is remarkable indeed.

Similar developments, though certainly at first on a smaller scale, may be expected in the field of aviation law. The case law on this subject is comparatively meagre, but with the increased commercial use of the airplane in the air age of tomorrow, legal exploration of the subject will become deepened and expanded.

So it is with the general subject of taxation, particularly income tax. The tendency of this century had surely been to vest most of this work in the hands of auditors and accountants. One reason for this was the absence of any large number of legal decisions on our Canadian tax problems. The emergence of such a body of case law, together with an increasing awareness on the part of the lawyer of the important part played by taxation in the business life of the country, is likely to find the Bar playing an ever increasing part in this sphere of the law.

A parallel situation exists with regard to the many forms of controls brought about by war conditions. These have opened up areas of legal work for lawyers, and will in all likelihood persist for a considerable period after the war is ended.

Society being dynamic, changing and progressive, the sphere in which the lawyer works cannot remain static. — S.F.

In fall 1945, Dave Golden, who had been a prisoner of war in Hong Kong for nearly four years, returned home and we decided to start our own firm of Freedman and Golden. An announcement in the December issue of *Manitoba Bar News* stated: "W.D. Lawrence, K.C., Samuel Freedman, K.C., and Maitland B. Steinkopf, M.B.E., announce the dissolution of the firm of Steinkopf, Lawrence & Freedman as of December 31st ... Samuel Freedman and Captain David Golden will practice in partnership as Freedman and Golden, with offices at 508 Avenue Building."

Golden had been awarded a Rhodes Scholarship, and we agreed at the start that he could take a year from the office to go to Oxford. The workload in the office without him meant I had to step down as editor of the Bar News in 1946. In the end Dave and I had six and a half glorious years together, with our association continuing until I was appointed to the Bench in April 1952.

During those years in which I practised law in all its aspects, the practice brought my name before the judges. I did both office work and court work, the latter being largely civil in nature, with some criminal work as well. I was in the Assize Court every year at least once. There I handled drivers' cases, including motor manslaughter, as it was then called, theft, conspiracy, fraud, and even murder. I acted for the accused in one murder case, *The King v. Stoney*, and I regret to tell you that he was hanged.

The murder took place in March 1950. The accused, Walter A. Stoney, was a thirty-eight-year-old cook in a restaurant. He was an odd kind of character. The victim was his girlfriend. There had been some trouble between them, and she was threatening to leave him. She was found in his hotel room with seventeen or eighteen stab wounds. Later the Crown alleged that he had stabbed her with an ice pick 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, and threw himself in front of a moving freight train. The railway people found him on the tracks. He was badly injured, not killed. He was taken to the hospital, where he began to manifest peculiar characteristics, for one thing saying that the hospital staff were trying to poison him. The police were brought into the picture, and when they went to his room they found the dead body of the girl.

About this time, or shortly after, I was called by the Attorney General and asked to assume Walter Stoney's defence. I said I would, and thus became defence counsel in my first murder trial. The trial date was set for October 30.

It was interesting to talk to this man. He had asked me to bring him some biscuits and I brought a package for our second interview. He opened it up but wouldn't taste one until I did. He said there had been attempts to poison him, and he obviously wanted to make sure I was not participating in those attempts. This manifestation of fear and suspicion

on his part continued throughout my preparation of his defence, which at least gave me the lead. Here was the only defence that could possibly be raised—namely, insanity. There was never any denial that he had stabbed the woman in question. He had confessed to the police long before I was appointed counsel.

The provincial psychiatrist, Dr. T.A. Pincock, had been seeing this man because the Crown was expecting a defence of insanity. I met with Dr. Pincock as well, and realized he wouldn't be of any great help because, while recognizing that Stoney was a bit wingy, Pincock believed the accused was not yet insane within the legal definition. That is to say, he was not suffering from a disease of the mind that prevented him from understanding the nature of what he had done, and of knowing that it was wrong.

Stoney had also been to see a general practitioner. When I asked that doctor about him, he said, "Oh, I remember him, he's crazy." That was just what I wanted to hear, and I invited the doctor to accept a subpoena as a witness.

The trial lasted 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 started with certain simple questions. 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." He continued: "I don't want to go on with this. I want to plead guilty. I did it, I killed her, and that's it."

These statements created a sensation in the courtroom. Twelve jurymen turned and looked at me. I in turn, with all the composure I could muster, turned to the judge, who was Chief Justice E.K. Williams, and said, "My Lord, I take the view that this is one circumstance only of many that the gentlemen of the jury are entitled to consider in arriving at their verdict." The Chief Justice said that this was his understanding as well. But there really wasn't very much to say at this point. As they say in Yiddish, *es eez shoin geven noch nileh*: the last prayer for forgiveness on Yom Yippur had been said, and the books were closed.

I thus closed the defence. In the end, when I addressed the jury, I rested on the defence of insanity, emphasizing that the accused had pleaded guilty knowing that the penalty for murder was death by hanging. I tried to make the point that no one but an insane person would do that.¹²

The jury was out only about forty minutes. 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, who interviewed Stoney a few times but 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. The government refused to grant clemency and the execution was set.

I didn't attend the execution, but Harold Buchwald, a law student who worked with me on the trial, 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, there was a look of recognition. A moment later the trap sprung, and that was the end of the case of *The King v Stoney*.

From long before the time of that case, I had been against capital punishment, and I still am. Capital punishment is fundamentally a moral question, though many people refuse to classify it that way. They say it is a practical question arising from the need to assist effectively in the ongoing and ever-present war on crime. I take the moral position. I submit that it is wrong for the state deliberately to take a human life. The sanctity of human life is something to be cherished, not destroyed. True enough, a murderer himself doesn't show much respect for the sanctity of his victim's life, but there's a difference. The state should not, of set purpose, put itself in a position of doing what the murderer has done, namely taking a human life. The state must not allow itself to adopt the standard of conduct of the murderer.

¹² Stoney was executed on 17 January 1951. WE Morriss tells the story of the Stoney case, and notes that in his final plea to the jury, "Freedman made an eloquent plea for a manslaughter verdict." WE Morriss, *Watch the Rope* (Winnipeg: Watson & Dwyer, 1996) at 170.

By the late 1940s this relatively young lawyer had quickly moved up the local ranks of the profession. Freedman and Golden had an active practice, and although the firm tended not to represent the very rich, by 1950 Sam was being retained as counsel for clients accustomed to paying higher fees, namely the Royal Exchange Insurance Group, the Manitoba Teachers' Association, and the Milk Distributors of Winnipeg.

In 1949 Sam Freedman was elected secretary of the Manitoba Bar Association; in 1950 second vice-president; in 1951 first vice-president; and in 1952 president. His talent, as legal historian Dale Gibson put it, was recognized as "awesome" (in a time when that word carried more weight).¹³ His sense of fairness, his scholarship, and his various abilities in conducting a meeting, in getting to the heart of the matter, in ferreting out the facts of a situation, were noted as remarkable. His energies, his involvements, were prodigious. These "many qualities of heart and mind . . . raised Samuel Freedman to a position of eminence in law."¹⁴

Even more: he kept his sense of humour. He knew how to have fun. In his memoir, *Hearken to the Evidence*, Winnipeg lawyer Murray Peden writes about his time as a student at the Law School in the late 1940s:

We [the students] sat in as frequently as we could on another murder trial, not because it promised to raise any interesting issues, but because one of our lecturers had been appointed by the Court to defend the accused, a hapless wretch named Stoney. The lecturer was Sam Freedman ... who gave us our course in what was then called Domestic Relations. It embraced Family Law, including Divorce and Separation, and several related matters.

Sam was one of our favourites. He had an irrepressible sense of humour, which lightened many an hour for us in the classroom. I recall his hurrying in to a lecture one morning, late, having just returned from one of the more exuberant sessions of a Manitoba Bar conference, reaching briskly into his briefcase for his notebook, and pulling out a half-filled bottle of whiskey for a second, "accidentally", to get a laugh from the class....

When we were dealing with breach of promise, on an earlier occasion, he had tickled us with his recollection of a woman who had come into the office one day to give him instructions to bring suit for breach of promise against Clark Gable. Recovering from the shock, and treading warily as the mental warning bells began

¹³ Dale Gibson & Lee Gibson, *Substantial Justice: Law and Lawyers in Manitoba 1670-1970* (Winnipeg: Peguis Publishers, 1972) at 299.

¹⁴ George Lonn, *Canadian Profiles: Portraits in Charcoal and Prose, of Contemporary Canadians of Outstanding Achievement* (Toronto: Pitt Publishing, 1965) at 96.

tinkling, Sam tactfully pointed out that she would, of course, need some evidence to substantiate the close relationship.

“Well,” the young lady huffed, “there’s the letters.”

“You mean... Clark Gable has written to you?” Sam asked with hopeful caution.

“No,” she said, “but I’ve written to him.”¹⁵

Sam Freedman’s classroom manner was to temper pedagogy with wit. In one lecture he interjected, “... Now take the case of *Werzicozevitsky versus Smith—Werzicozevitsky*, spelt the usual way ...”¹⁶



Fig. 5

¹⁵ Murray Peden, *Hearken to the Evidence* (Stittsville, Ont: Canada’s Wings, 1983) at 57–58.

¹⁶ Harold Buchwald, “Sigma Xi’s King’s Counsel”, *The Octagonian of Sigma Alpha Mu* (March 1950) at 13, 30.