

# Interview with Jack R. London, C.M., Q.C.\*

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JESSICA DAVENPORT, JESSE EPP-  
FRANSEN

## I. INTRODUCTION

**Jessica Davenport (JD):** Let's start with your experiences in law school; what initially drew you to law school?

**Jack R. London (JRL):** It was the only place that would have me. I was an underperforming undergraduate student. At that point if one wanted to enter law school, you needed opposing thumbs and \$200. It was a saving grace for me; I would not have been able to do anything else. That is why I went to law school. Later, during my Decanal years, I learned many, if not most, entering students do so because they can't figure out what else to do but want a profession. This one is seen as eclectic.

**JD:** How large was your law school class?

**JRL:** There were about 28; it was a small class. We were the last class to do the old, concurrent-articling system. We worked in law offices in the afternoons and evenings during the week and full time in summers. In that class there were four women, the rest all men. One of the women, later Madame Justice Bonnie Helper<sup>1</sup>, had been advised by the then-Dean not to

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\* Interview conducted by Jessica Davenport and Jesse Epp-Fransen. Jack London graduated from the University of Manitoba in 1966 (LL.B.) and Harvard Law School in 1971 (LL.M.). He was a former professor at Robson Hall from 1971-88, and served as Dean from 1979-84. He is currently senior counsel at Pitblado Law, and was recently recognized as the 2014 Best Lawyers in Canada "Lawyer of the Year-Winnipeg" in the area of Aboriginal Law.

<sup>1</sup> Madame Justice Bonnie Helper was the first female appointed to the Manitoba Court of Appeal on June 30, 1989.

go to law school because it was not for women, and she would never be able to find a career in the profession. There were students of all ages from 19 to 65 from a variety of backgrounds and disciplines.

**Jesse Epp-Fransen (JEF):** Do you know what the makeup was with respect to students from out of province? Now, about a third of students are not from Manitoba.

**JRL:** I don't recall for sure but I would say it was close to 100 percent Manitobans. I remember only two from elsewhere: Saskatchewan and Australia, actually. As I said, there was also a very wide age-range in our class. I'm not sure if that was true generally in all classes. In our class there were people as old as—I thought they were very old at the time—their late 50s and middle 60s. One of them was a woman named Smerchanski<sup>2</sup> who went all the way through, graduated, and did in-house legal work for her husband in the mining industry. Another older student had been a newspaper editor and others engineers and accountants. The rest were associated riff-raff. I might have been the youngest person in the class.

**JEF:** How old were you?

**JRL:** I started in 1962, so I would have been 19.

**JEF:** And you were the last class to do concurrent articles.

**JRL:** Yes, we were the last class to do concurrent articles in all four years of the program. The class behind us was the transition year and they completed three years of articles. In those days (probably a fact that no one else will remark on), it was a four year degree program. The prerequisite for admission was only successful completion of second-year undergrad, with French. If you had an undergraduate degree, you were not required to article for an extra year after the four. But, if you did not have an undergraduate degree, you were required to article for an extra year to make up for the lost year. In our fourth year, I led the charge of the heavy brigade to the Law Society of Manitoba (LSM) arguing that this requirement was silly and discriminatory, although that was not prohibited behavior at the time. As a

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<sup>2</sup> Patricia Smerchanski, graduated from the Manitoba Law School in 1966 with an LL.B.

result of my Motion at the LSM, it was in that year the Law Society removed that additional one year obligation, and those with and without an undergraduate degree were called to the Bar at the same time. I remember trembling while making the presentation to the Law Society, but it turns out trembling is a good thing. You win sympathy when you tremble. I've tried to use that several times since.

**JD:** Can you describe the program during your time?

**JRL:** There were only four full time professors at the time; everyone else was a sessional lecturer. It was a prescribed, mandatory program. There were no options or electives. All classes were held in the morning for three hours. We articulated in the afternoons in private law offices. Except for the articling, it is not all that different from the prescribed curriculum that came back into the Law School here in the early 1980s when I was Dean. I thought there ought to be mandatory courses at the law school at least for the first two years. The reason for that was I found it myself really helpful in my career after law school to have a broad education in all fundamental areas. I was happy that people hadn't allowed me to do my own thing because my own thing would have been to not do very much. This was better. The broader one builds the education pyramid, in my view, the more rounded and able will be the lawyer.

**JD:** Was the case law method used?

**JRL:** Yes we did study by case law. At that time there was only one person, Dale Gibson<sup>3</sup>, teaching truly case law. He was not a Socratic teacher but he was as close as the Law School had. He had been to Harvard and imported some of the pedagogical theory from there. Primarily, however, it was lecture methodology. Some of the lectures were great, some not so much, and some horrid. The Bell Curve is inevitable.

**JD:** Were you graded on a bell curve? Was there competition for grades?

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<sup>3</sup> Dale Gibson, Robson Hall faculty, 1959-88, 1990-91, and is Distinguished Professor Emeritus. For his interview, please see page 25 of this issue.

**JRL:** Grading was based on a one hundred percentile system. It was not exclusively based on exams but pretty much. There were very few paper courses then. I do not remember what the distribution of grades would have been within the class. I remember the grades I got, but I don't remember anyone else's except those with whom I became competitive for the Gold Medal. I earned silver. One never forgets that.

**JEF:** While you were in law school the program was taking place down at the courthouse?

**JRL:** Yes, third floor of the courthouse.

**JEF:** So you would have had a lot of opportunity to see a lot more of the profession than students do today. Could you speak to how the profession appeared to you as a student?

**JRL:** Did we see a lot more of the profession as a result of being at the courthouse? I'd say no. For the most part the people we related to were in the Prothonotary's Office, the Queen's Bench administration, or the administrators in the various other offices in the building. We would attend parts of the occasional trial. I can remember learning some through that method, but I would not say that was primary significant learning methodology at the time. It was more inspiration and disgust depending on who were the lawyers.

The articling system was wonderful for me; I am thankful for having had that opportunity. But the experience was so unevenly distributed, it was unfair and arbitrary. It was so dependent upon with which office you worked, under which mentor in that office, the kind of work they and therefore you did, and their own availability and caring. I would say overall that seeing the law being done was not something that you could say that the class as a whole was able to intake. There were people who did nothing more than land title searches, act as messengers around town, and take dry cleaning in.

It is interesting. I hadn't thought of it before, but we did not see a lot more of the profession because so much of the profession is solicitor-oriented, in their offices. Being in the courthouse, we would have seen nothing of that side of the profession. Corporate law, tax law, conveyancing and such, had nothing to do with what was happening in that court-house

environment. If you were in an office that did both court work and solicitor's work, you would have got a smattering of them both. But, I would say there were very few of us who actually had a generalist introduction to the law through either of those processes. I was lucky.

**JEF:** Where did you article?

**JRL:** I'll start a little further back if you don't mind. I was 19 and my family was not affluent, not connected in any way, and at that age, unassisted. I needed to go and find an articling position, not knowing a lawyer in town, not knowing anyone who could refer me to a lawyer in town. So, I walked with the Yellow Pages around town. The first two law firms (large for the day) I approached, offered me jobs and a day or two after the offers came in, I got phone calls from the both of them saying that there had been a mistake. Either the position has already been filled or wasn't being filled. I quickly got the impression, still in the air at the time, that I was not personally presenting as a Jew. My name did not betray the religion or the peoplehood and, unlike the little hair left you are seeing now, then I was a flaming redhead. I didn't have any of the characteristics that you might normally associate with someone of this faith. So when they found out I was Jewish, they withdrew the offers. My one and only real experience with anti-Semitism really. They were two very prominent firms in Winnipeg and still are, although they are no longer restrictive in that way so I won't name them.

So the third lawyer I chose to seek articles with was a man named A. Montague Israels ("Monty").<sup>4</sup> I knew that if A. Montague Israels offered me a job, he would stick to it. That's what happened. I articulated with him in first year. At that time, he was subletting space to a then-young lawyer named Harvey Pollock<sup>5</sup>, who now heads a firm in Winnipeg. Harvey has been a leading litigator, and at one time, a criminal defense attorney. Then, ten years my senior, he was just starting out. I switched over to Harvey because

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<sup>4</sup> Abraham Montague Israels (October 8, 1904-November 20, 1973) attended the Manitoba Law School and was called to the Bar in Manitoba in 1927. He was made Queen's Counsel in 1956.

<sup>5</sup> Harvey Pollock graduated from the Manitoba Law School in 1957, and was appointed Queen's Counsel in 1970. He is the senior member of Pollock & Company, which is a Winnipeg-based law firm that focuses on medical malpractice, personal injury, and civil litigation.

his developing practice was more dynamic. His practice was more in-tune with what I was interested in because I thought I was a future Clarence Darrow<sup>6</sup>. I was going to be a litigator. Monty was older and he had a much more sedate and commercial practice, but he was very bright and perfectly ethical. He was a long-time member of the CCF (Co-operative Commonwealth Federation), the precursor to today's New Democratic Party (NDP). He counseled me two things: to take the offer that Harvey Pollock had made to me because it would provide the more varied and useful experience; and to join the Liberal Party because one day if I wanted to be a judge, I could never do that unless I was a member of the Liberal Party, which was then considered to be the inevitable federal ruling party.

## II. POST-GRADUATE WORK AND CHOOSING TO TEACH AT ROBSON HALL

**JD:** Around the time you were graduating from school was the same time that the Law Society and the University of Manitoba ended their partnership in providing legal education. Was that something the students were concerned about?

**JRL:** No, I would say that it was completely uninteresting to the student body that was handing out degrees at the end. Remember that this wasn't the law school class that you are familiar with now. This was a law school class that was there for many different reasons, but they weren't so much concerned with legal education. They were concerned only with the degree at the end and getting into practice. There were very few people I knew at law school who were interested in the philosophy or pedagogy of law or where the classes were held. It just wasn't part of our thinking. It wasn't part of my thinking until I went back to graduate school five years after being called to the Bar. A number of years later, another professor from Eastern Canada and I established the Canadian Law Teaching Clinic, a two-week clinic every year in Banff. We discussed law teaching methodology with people from across the country but that was long after being a student at the Faculty of Law in the early 60s.

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<sup>6</sup> Clarence Darrow (April 18, 1857-March 13, 1938) is regarded as one of the greatest criminal defense lawyers in American history.

**JEF:** Jumping ahead from your time as a student, in 1978 you wrote an article about your two year secondment with the Law Society as the Director of Education. You mentioned that this really represented the coming together of Law Society and the Faculty of Law. It seems to me to be a gap between the ending of the formal partnership in 1966 and 1978.

**JRL:** In that gap, there are some intermediate steps that one wants to talk about. To do that let me say that during the years that I articulated, I got tremendous experience. One more anecdote about that which explains what I had said earlier about the unevenness of the experience. I was losing my hair and was partially bald by 19. Harvey Pollock looked very young despite being ten years my senior. When a client walked into the office they assumed that I was the senior lawyer. So I was allowed to do a lot of work that no one else got to do at that age. It was just a great experience. But, my opportunity was not the result of pedagogic theory.

When I analyzed the type of work, I began to see that there was a connection between the learning at the law school, didactic learning, and the learning experience of practice. Then I graduated and went to work with the Justice Department in Ottawa doing tax litigation, mentored by great clinicians who also had an academic bent. Then I came back to join another mentor, Izzy Asper<sup>7</sup>, in tax practice here in Winnipeg for a number of years and learned the value of creativity. Then I went down to the States for graduate work and saw these other methodologies including some clinical education that was embryonic.

I found that the lecture methodology was not nearly as effective as it could have been and as what I experienced when I was in postgraduate study in the States at Harvard, which was basically a Socratic methodology. I became a large fan of the Socratic Method and used it in my 25 years teaching at the law school. I was mentored by one of the profs down there and modelled my teaching style off his. Harvard was also pioneering in clinical courses with great benefits.

When I came back, I determined that I would teach Socratically to the best of my ability and when I could, I would introduce clinical education to the Law School. In my second or third year of teaching, I was promoted to

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<sup>7</sup> Israel Harold "Izzy" Asper (August 11, 1932-October 7, 2003) graduated from the University of Manitoba with an LL.B. in 1957, and was a Canadian tax lawyer. He was the founder of CanWest Global Communications Corp.

Full Professor and won the University of Manitoba's Olive Beatrice Stanton Award for Excellence in Teaching<sup>8</sup>, selected by the students, which gave me confidence I was on the right track. And I also thought that it was now time for the law school to invest itself in clinical education. We started the first two clinical courses at Robson Hall, which were "Intensive Criminal Law" and "Intensive Family Law" as well as a hybrid course, "Interviewing, Counseling and Negotiating." I was committed to that notion of merging the two teaching and learning streams. There was good reason to do that; but not because there simply was going to be experiential learning for students. For me, it was still really all about the philosophy of learning, the philosophy of law, and the philosophy of practicing law. What were the overarching and guiding principles that would make people be good lawyers and well-trained graduates whatever they did? Truthfully, I was really more concerned with people who were going into practice, not really people who were going to do other things, but both required consideration.

In 1976 or 1977 when the Law Society was looking for someone to come down and revamp its Bar Admission Course, I saw that as an opportunity to merge those two methodologies, again, in a different way. We completely renovated the Bar Admission Course. We introduced a didactic program, learning about things by hearing about them, and clinical exercises to supplement the clinical experiences taking place in the articling offices, articling now being one year long. We also introduced to Manitoba the whole notion of Continuing Legal Education; that is, the notion that learning is life-long.

**JEF:** Could you tell me a little more about those courses?

**JRL:** Intensive Criminal Law and Intensive Family Law were co-taught by academics and practitioners. There was a third clinical program, that I taught, designed to merge the perspectives of psychology and law, about legal assumptions and lawyering practices; that was "Interviewing, Counselling, and Negotiating." We would involve psychologists, psychiatrists, social workers, mediators and so forth in those experiences. Unfortunately, it was a huge failure. Students hated the course, not—I hope—because of me, but they just didn't see the utility in the program. It

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<sup>8</sup> The Olive Beatrice Stanton Award for Excellence in Teaching was first awarded in 1968 and presented annually at May convocation to an outstanding teacher.

was impossible to inspire the students to believe that there was utility to that kind of learning. That was the single real failure then of this notion of integrating the two streams to which I was dedicated.

**JD:** I would hazard to say that maybe you were just ahead of your time. Students now are very much concerned with working together with other professions to find unique and holistic solutions for clients.

**JRL:** It does work now because when Harvey Sexter<sup>9</sup>, a later Dean, came back from Harvard to the Faculty, his clinical course in the same subject matter was hugely successful; partly because Harvey was fabulous but also there was now an acceptance of its utility. It turns out, as trite as it is, that it is almost impossible to get someone to learn when they are not ready for it.

**JD:** You mentioned that all of these programs were based on a desire to create good lawyers. What philosophies or values were you trying to instill?

**JRL:** Have you got a few days? It was not so much that I was seeking to teach people how to be “great” lawyers. I never, in all the years I taught, aimed those principles or ideas at the great ones, the great students. I always aimed at people in the middle. The idea was to inspire people to understand that if you are able to develop analytic skills, based on a more-or-less profound knowledge of legal principles, that ability brings with it an intuition about the ways to go about finding a solution to a problem. That's the foundation of a good lawyer. That is really all that is needed. Sometimes it's called teaching students to think like a lawyer, but that's trite. And that is not quite what I mean. I'm talking about something that is much more invested in a profound understanding of the decision-making process and the process by which one influences decisions. If you can do those things, I think you can be a terrific lawyer. There is no question about that. Some people are intuitive from moment one; as a professor, I could tell early on whether a person needed assistance in developing that intuition. If a person already has the intuition, you need to inject the teaching methodology with

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<sup>9</sup> Harvey Sexter, Robson Hall faculty, 1999-2009. He is currently the Chancellor of the University of Manitoba.

inspiration. But always with the same objective, not to be a great lawyer, most won't be, but to be an ethical and competent lawyer.

**JEF:** If we can jump back to hear a little more about your experiences as a faculty member, why did you decide to initially leave practice to go on to post-graduate work?

**JRL:** Ego and a vision of a passport to the future. Harvard accepted me; I couldn't believe they had accepted someone like me. My competitive side and my sense that this was a major formational asset would not allow me to pass up on this opportunity. I wanted to see how I could match up against the best and the brightest. There was a huge cost associated with me taking that opportunity because as I said earlier, I was then practicing with Asper and Company. It was a very, very successful firm, and Israel Asper was a very successful lawyer, the most creative man I ever met. Just before that time, three of us in his firm had been offered partnerships in the firm and my earnings would have jumped significantly; if I was earning x at that time, it would have been 6 times that amount within a very short period and I had only been practicing for four years at that point.

But I had put in the application to Harvard two years before that. I don't know what led me to do that other than I had the grades; I now had the academic standing. I had stood first overall in Third Year, and graduated in Fourth Year with the Silver Medal. I knew I had the grades to do it and I was emotionally committed to a life of changing experiences. My sense is that you have one lifetime: might as well experience it from all possible angles. From the same angle over and over again, you gain nothing other than you become proficient in that one area. That was never really a goal of mine, to become proficient to the nth degree. So for that reason I threw in an application. I was rejected the first time, but I was invited to leave my application in for the next year. I said, "Sure," and literally forgot about it.

After we had rejected the partnership with Asper (for reasons too complex to go into in this interview), the three of us who had received his offer set about opening our own law firm in Winnipeg. We were leasing space and such when I got an acceptance letter from Harvard. I went to my two colleagues and said, "I have got to go do this." One of them said if I jumped, he would return to the Asper firm. The other went out into practice on his own. I left an immediate income jump of maybe six times whatever I was earning then and when I came back to work at the Law School, I earned

less than \$20,000 a year, a pittance compared to what the partnership with Izzy would have produced. For the next twenty-four years, I was dedicated to the proposition that one ought never accumulate capital.

So that's why I went. How could one turn down the opportunity to play at that level? Having said that, it turns out that Harvard is about mythology. I could have taken almost every person in my Fourth Year law class at the University of Manitoba, sat them down in Harvard Law School, and they would have done just as well. It's like a high price label. It's a brand. There are certain parts of it that were unique and fabulous: the weaving was kind of nice, the cut was kind of nice, but the cloth is not really a superior experience to wear. But I never would have known that if I hadn't gone. However, as with so many other things in life, it did build self-confidence and it certainly has been the passport to opportunity that I hoped it would be.

**JD:** You returned to teach with a new methodology, that being the Socratic method. Did you experience any push back from other members of faculty since you were doing things differently?

**JRL:** I wasn't the only one teaching that way or even the best. There were a couple of people there who were equally adept, and one, Professor Nemiroff<sup>10</sup>, was the best. I could never have equaled him in terms of capacity because he was very disciplined and I was not. I had a love affair with the students and them with me, but I wasn't as good a teacher as he was in terms of rigor. But some students later turned against him. They demonstrated against him. It was the first class coming through the law school filled with people who had been bred in the experiences of the 1960s. It was the first real representation of women in the law school. It was the best class I ever taught, smart and just very interesting. They pushed back. Those students wanted to push themselves and not be pushed. It eased off after a period of time, but that was the start of the end of real Socratic teaching at the Law School. It became really difficult to do because you needed to be so staunch in your belief to do so.

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<sup>10</sup> Gerald Nemiroff, Robson Hall faculty, 1968-2008. For his interview, please see page 135 of this issue.

**JEF:** I had heard that Professor Nemiroff had been a Socratic lecturer but I had not heard of the student pushback. In what form did that take?

**JRL:** There were meetings at the law school of part of the student body railing against Nemiroff. There was knocking on the Dean's door, even when I became Dean in 1979. I was confronted by those angry people. They just wanted him to stop. They wanted to be lecture-fed. Socratic was too difficult for them, they said. I shouldn't short-change them; it wasn't too difficult. They just didn't want to be pressed. They wanted to be told what the law was and get out. That was the way the work-ethic swung in those years. It was the end of the 1960s influence and the beginning of a much more materially interested group of people who just wanted to get out of school as quickly as possible.

Let me add, however, that the Socratic teachers, Nemiroff included, were loved by many of the students who understood the value of the learning being offered. But now, as was happening throughout North America, there was a sizable, negative, persistent underclass who made it all very difficult. My experience since then has been that even those students later, after graduation, generally regret their opposition. They now understand the value of the method.

**JD:** Do you feel it is the same way now? Professors now seem to believe that students are not really caring about the learning of law but focused on what will get them high marks and a job.

**JRL:** I hesitate to say it is the same. I haven't taught at the law school since the mid-1990s, so it is hard for me to say what is going down contemporarily. I think I hear echoes of the same split opinion. I hear the negatives a lot but I look in my own family, at my youngest daughter, for example, who did law at McGill University but returned to Robson Hall for her last year. Her favorite class was Insurance with Gerry Nemiroff. She would not have been the person that I would have thought would have enjoyed that methodology; but she did. So, the majority may be asking for the easy path, but there remain some, maybe many, who understand the value of analytic learning.

### III. DESIGNING THE BAR ADMISSION COURSE

**JD:** Can you speak a little about your experience creating the modern Bar Admission Course and your time with the Law Society?

**JRL:** Sure, there are a couple of things to touch on. When we designed the course, Fridays were set aside to learn didactically or through simulations and there were exams at the end of each segment; four to six weeks, as I recall. The profession, not the whole profession, but a number bombarded the Benchers with complaints about this son-of-a-bitch who was taking students away from the offices on Friday. No student was allowed to do work on Friday. It was a real push-back from the profession about giving up that labour because after all is said and done, with all respect to my colleagues, the articling system originated as cheap labour. One could have the same learning experience teaching a first year lawyer to do things as teaching an articling student. It's just a label that you give to reduce their income and your expense. But I got fabulous support from the Benchers in those days, and particularly the people on the Education Committee.

We had to be careful to weed out people as instructors who we thought would not be good teachers in the program. For example, there was a Queen's Bench judge who I thought would be fabulous. He came in to teach and after his first lecture, he came into my office—and you'll have to excuse me for saying this—he said, “Did you see the woman in the first row? She has huge tits.” I weeded this guy out immediately. He was older, from another era. He never taught again in the program. The process of finding the right people to deliver these courses was difficult. These were not professional teachers and they were not even sessional lecturers from the law school. So if you just put somebody in the class room and say, “Go ahead and teach for an hour or two hours on conveyancing, wills and estates or family law,” there was no way of insuring quality control. There is no way to ensure quality; the Bell Curve will evolve, but that weeding-out process is essentially what I did for the next two year period. I was getting the right people in, and to this day, I still have half a dozen lawyers who, when they see me walking down the street, cross over to the other side because, I did not hire them or, having hired them, after a very short time, I said that they could not teach there anymore. I gave them reasons if they asked but some I did not. Some of them accepted it with grace and some of them just thought I was Machiavellian, sadistic, and wrong.

#### IV. GOALS AS DEAN OF ROBSON HALL

**JL:** Now, I should say I had the same experience as the Dean of the Law School. When I became Dean, there were three tenured professors whose course evaluations had been consistently awful. They were awful teachers and I knew they were awful teachers because when I listened to them, I either was confused or fell asleep. So I decided to move them out of teaching, which was not that easy to do because they had tenure. So I went out and found them other jobs in other parts of the economy which paid better and offered them equally, if not more, interesting work so they voluntarily left the law school. We built up the caliber of the teaching core at that time. I cannot tell you what it is today; I have not been there in a number of years.

**JEF:** How common was that? I have never heard of that being done but it is a very interesting idea.

**JRL:** It was unique.

**JEF:** How long were you Dean?

**JRL:** Five years. And during that five year period, the law school had a renaissance. We were becoming very well-recognized nationally. I was the President of the Canadian Law Teachers Association. We were doing the Law Teaching Clinic. The place was jumping with a call for excellence which I gave when I started. It was really taking off.

**JEF:** This was 1979-84, so that was when the Osborne-Esau<sup>11</sup> report was produced. So the 1983-84 reforms were right at the end of your time as dean.

**JRL:** I have an impressionistic memory with no detail in my mind so what I am about to say will be true but is not necessarily accurate. When I became Dean, in addition to moving the three professors out, there were six

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<sup>11</sup> Jack R London et al, "The Report of the Curriculum Review Committee on a New Curriculum", (2016) 39:2 Man LJ 155 [Osborne-Esau Report].

principle things that I wanted to accomplish. Above all, I wanted to raise the national standing of the law school, which we did.

Second was the abolition of mandatory class attendance. The reason for that was that when I was in law school, I was debarred from writing exams in second year because I refused to attend classes. They were taught by ineffective practitioners and judges. In the result, I had to write a supplemental exam in a course on Equity, the day before my wedding. I thought that was unfair. And I received a zero in that course on the final set of exams so my average plummeted down to tenth in class. All of these things had to be explained when I was doing my graduate applications later on. I thought that was silly and very early on we dealt with that; the abolition of mandatory attendance. Attendance was no longer taken in classes, except maybe in some of the clinical courses for obvious reasons.

The third thing was we changed the grading system. We took out the hundred percentile grades and we went away from the 4-point average. It became a matter of pass /fail and if you needed something for a job or graduate work, the professors could write an evaluation to assist in that. I don't know if that survived my departure, probably not because the students hated it. The good students hated pass/fail. I would have loved pass/fail as a student, but it did not prepare them well enough for what was about to come.

**JEF:** Now it is a mix. We have some courses that are pass/fail and some that are letter graded. The pass/fail courses do not generally receive the same kind of attention that a graded course will. You do not want to get a pass plus.

**JRL:** But if you transport that back to what you had then, there were only pass/fail courses. You did not pick a course because it was pass/fail rather than a letter grade; they were all pass/fail. There was an internal system that allowed for a kind of grading for failing purposes and for the gold medal and prizes that was not made public. It was internal to the faculty.

**JEF:** Do you recall how many students failed any given class? Today it is very rare for more than one student to fail any given class.

**JRL:** It was rare then. I would say in any given year, maybe a dozen or so failed a course and two or three failed more.

The fourth change I made was the revamping of the curriculum and that is how that [Osborne-Esau] report got produced, because I am really good at generating ideas, but not good at implementation. I do not like the hard work of detail, but Phil Osborne<sup>12</sup> and Alvin Esau<sup>13</sup> were very dedicated and good at it. I thought that the curriculum needed to be revamped. I believed there should be a common core of required courses followed by electives in the senior year.

Fifth, we emphasized academic research as a criterion in tenure and promotion decisions which really had not been the case prior to that time. Some people might regret that now because what happens is the pendulum swings way too far and everyone forgets that a major role of the law school is to teach students.

The last thing we did was increase affirmative action support and standing for Aboriginal students. That program preceded me; I did not author it. But we evolved it. In the third year that I was Dean, there was an aboriginal student that failed first year, came back and passed on the second try, failed second year, came back and wrote supplemental exams and had failing grades in two of those courses, which under the rules failed him that year. That also meant that, since he had failed overall twice, he was a permanent withdrawal from law school. The matter came before Faculty Council and the question was whether to push him through because he was an Aboriginal person. We were dedicated to assisting and supporting Aboriginal students. It was a priority.

So, what to do? It was my view then, which turned out to be acceptable to a majority of the Faculty, that there cannot be two standards of degrees for people who graduate. The market and others cannot say that if a graduate is an Aboriginal person, he/she did not get through on his/her own merit because there was a separate, double standard. I did not want to mark them ever with that stain, so we failed him. It was the hardest decision I ever made. To this day, I cry inside when I think about it but if I were doing it all over again I would do the same thing. I think it was a really important moment for the law school. There are no second class degrees, only ever-increasing support services during law school for those who require them for whatever reason.

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<sup>12</sup> Phil Osborne, Robson Hall faculty 1971-2012. He is a Senior Scholar.

<sup>13</sup> Alvin Esau, Robson Hall faculty 1977-2010. He is a Senior Scholar. For his interview, please see page 257 of this issue.

## V. THOUGHTS ON ABOLITION OF THE ARTICLING SYSTEM

**JD:** In the late 1960s, there was concern in Manitoba that the profession could not handle the number of people graduating from law school so there was a push in the Law Society that they could require firms to take on articling students. We have a similar problem going on right now in Ontario and in British Columbia and to some extent in Manitoba. How do you think we can address that issue besides forcing lawyers to take articling students?

**JEF:** You mention that this provision was passed by the Law Society in your article, to your knowledge has it ever been used? Has a law firm ever been forced to take an articling student?

**JRL:** Not that I know of, but there is a lot of arm-twisting that goes on. I do not think there has ever been a student who did not get called to the Bar because they could not get an articling position but I do not know that for a fact. I have been out of that scene for a very long time. My recommendation at the time as I recall—and it would be my recommendation now—is that the way to deal with that is to abolish articling. As in the United States, everybody gets a law degree and they attempt the Bar exam and if they pass the Bar exam they become lawyers. Then the market takes over. There is no way that you can indemnify people or protect them from the market. The question is when does it operate, and it ought not to operate before the qualification to practice. Since I am not a huge fan of articling to begin with, that is what I would do. Short of that, you are twisting arms or forcing people to take on more articling students than they'd like. Second best, you set up articling simulations. You set up essentially a clinical articling position. That has been done. Certainly it has been done in Ontario; I am not sure if it has been done here.

The other answer to that issue, if you go back and look at the records, I cannot remember if this was in the first year I was Dean or the second year, I argued for—and was successful in arguing for—a reduction in first year intake at the Law School, from 130 to 90 students, plus the special consideration students. One of the answers, it seemed to me, was if the market could not handle it, do not put out the supply and do not present students with the fantasy of market demand.

Now that is anathema in academic circles, because in academic circles, the most important thing someone ever says is “We do not train people to be lawyers; we train people to think. So whoever wants to think should be able to come to law school and learn how to think. Whether or not they become lawyers is not our concern.” I thought then, and I think now, that is such an absurd position that it does not deserve comment. But that was particularly true of the big schools in Ontario: University of Toronto, Osgoode Hall, Queen’s, and Western. You heard it over and over again. At Harvard, you never heard that. You heard that it should be concurrent. You teach people to think and you prepare them for the practice of law. That is why you have a professional law school. Otherwise do Law 101 and teach someone to think that way. When I said before—that Harvard was mythology—it was mythology except for that. They knew the reason they were there. They did not all teach to it. Some taught in different ways but they knew why they were there. The best course I did at Harvard, and I did some excellent courses, Psychoanalytic Theory and the Law and so forth, but I was there to do tax work and generally my courses were tax-focused. But I did a course called Interpersonal Transactions and Legal Practice. A psychiatrist taught it and it was essentially about transference and counter-transference, how you feel about things, how you react, how you deal with problems, and how you help people deal with problems. It was the inspiration for the course that I ultimately brought to the law school here: Negotiating, Interviewing, and Counseling. And I loved it. That course had only one purpose; it was to make you a better lawyer. It was too bad I did not pull it off here but others did later.

**JEF:** What would that model look like in Manitoba? If you were to recommend abolishment of articling, would it be concurrent or would there still be a gap between the end of the degree and the writing of the Bar?

**JRL:** In this way I would follow the American system. If you think about it, the Americans do not seem any less well-served by the legal profession than the Canadians. So where is the magic in articling? It would be that you graduate; after a period of time you write the bar exams; you choose the location you want to write the bar exams; you pass the bar exams; you are then entitled to practice; you throw up your shingle.

And I say that as a person who had a fabulous articling experience. I want to make a point of that. I had a fabulous articling experience. I was lucky. Most are not.

**JD:** Is that the job of the Law Society to make sure that the articling experience is good?

**JRL:** The Law Society is the governing body; it is absolutely responsible for the life of the graduate and the life of lawyers. The governing bodies in Canada, since they are all the same, are hindered by history. They are ensconced with British tradition. Manitoba was the last jurisdiction in the entire Commonwealth, the very last, to abolish concurrent articling.

**JEF:** We were also the first in Canada to abolish it but then we went back. From 1921-1926, we had the four year model. In Canada we were both the first and the last; it takes special talent to manage that.

## VI. FORMATTING THE CURRICULUM OF ROBSON

**JEF:** What did the program look like prior to 1966 curriculum wise? Were the topics the same for first year students? Obviously some things changed; *Charter*<sup>14</sup> issues did not exist.

**JRL:** There has been a conflation of courses in the modern law school. Equity, for example, is no longer taught as a separate subject matter. It fits into Trusts, and Wills. Personal and Real Property merged. There is no longer the same Criminal Procedure course that there once was. There were courses in trial tactics that are not taught now. A lot of these courses were fun but absolutely useless.

**JD:** Did the tactics not work?

**JRL:** The people who taught those courses, sessional lecturers, really wanted to tell you about the amazing experiences they had and how perfectly they worked. So it was fun for that reason, but not for learning. The bottom line

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<sup>14</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

is the same subject matter is being taught under some different titles and organizational categories now but it is the same stuff. However, then every course was mandatory, which was an over-reach.

**JEF:** From there until the reforms in 1983-84, the Osborne Report talks about balancing public and private law in the first year and also the balance between doctrinal, clinical, and perspective courses. But in terms of the subject matter of the courses, other than public and private being balanced in the first year when Constitutional Law became a first year course to create that balance, there does not seem to be a lot of discussion about what should be taught in any given course and what should be emphasized.

**JRL:** There were and are no effective prescriptions of course content. Course content was always thought to be a matter of academic freedom. You were appointed to each particular course and you decided what needed to be done. There were discussions that sometimes took place during those debates on curriculum, but they were never prescriptive. They were all stargazing in some ways. Having said that, there was no prescription within the courses; there was a lot of discussion about the balances that you just mentioned and the years in which those should be taught. Because the question was, what is foundational to the next level? That was really what that Report was more focused on. The students that sat on the Curriculum Reform Committee<sup>15</sup> were very influential. They were very good. They were very much focused on the more practical stuff.

**JEF:** Is that something that is consistent with students? My sense is that it is true now. Today students seem very materially-focused, very job-focused, but my assumption coming into law school—and I do not have a good researched basis for this belief—is that part of that is driven by the recent recession. Students who are in law school now were in their undergraduate degrees during the recession, when jobs were scarce, and they said “I need to get an education in something that will get me a job” and those of us who are here now chose law to do that.

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<sup>15</sup> Two students sat on the Curriculum Reform Committee: Eleanor Andres, graduated from Robson Hall, 1987; and Steve Vincent, graduated from Robson Hall, 1984.

**JRL:** Well, let's look at it this way. When I was a law student from 1962-66, the only thing that mattered was getting a job. Nobody wanted to do anything other than what would get them a job. If that is conservative thinking (and I am not suggesting it is), it would be said to be in academic circles, then my class was way more to the right than anything you would see today. Between the two blocks of demands, if your description is accurate, the pendulum swung back and forth a bit, sometimes more than a bit. But all of the studies show that people come to law school because they cannot figure out what else to do in life, not because they are necessarily really wanting to be lawyers. Most students are there to get a professional degree, not necessarily to be a lawyer but because, after all, the degree is considered to be the eclectic fountain of employment. I do not think the present population is any more self-interested than other years. I think the expression of it might be different but I do not think the theme is different.

**JEF:** What do you think the driving force behind that was? Could we separate a cultural value from an external pressure? My theory on the current class is that there would be an external pressure, rather than a question of values. People are not saying that they value capital accumulation or the prestige of being a lawyer but rather are simply saying "I have a goal: employment; this is a means to attain that."

**JRL:** I think that nothing has ever been different at law school than that it is a means to an end. Actually I would pluralize "end" because it is "ends." I do not have to be a lawyer: I can be a politician; I can be a banker; whatever I want to be. I can be any of those things because I learned how to think. That is how the academics got to teaching you how to think. But, subliminally, the law school must teach you to be a lawyer or else the "thinking" is far too abstract to be useful.

**JD:** Do you think that the faculty has changed in their understanding of what students want? Because if students have always said, "We just want a law degree to get a job," has the faculty always been working towards that goal? I would argue that we are no longer working toward that goal, or teaching toward that goal.

**JRL:** I do not know most of the current faculty; in fact, I know almost none of the Faculty so I am at risk here. But I think for the most part, the people

who taught law for the vast majority of the time I was there wanted to do good by their students. They wanted to teach their students something about the law and to give them that basic training. The way in which they decided to do that, I believe, was always dictated more by their own interests than by some dedication to a certain kind of pedagogy. So if you were a research-oriented professor, and deeply research-oriented, you might think that teaching was burden and you wanted to get through it as swiftly as you could. The way one rationalizes that is by thinking, "I am not actually a very good teacher but they are forcing me to do this, so I will do the best that I can and that is the way it works out. I also want to make sure that I only teach at 10:30 in the morning and 2:00 in the afternoon because I have a lot of stuff happening between those two times." There is a lot of that kind of self-interest in the profession, but I do not suspect the motives of the law teachers, or university professors for that matter. I think for the most part they are solid, but they are not homogenous.

## VII. RETURNING TO PRACTICE

**JEF:** Can you speak about your transition back to practice?

**JRL:** I took the first of ten consecutive leaves of absence without pay in 1988 and during the next few years I taught occasionally. I maybe even have taught a half or full year once or twice during that time but for the most part I was on leaves of absence. The transition to practice was, to be candid, remarkable because the last thing I wanted to do when I left the university was to go back to the practice of law. I had not loved the practice of law those first five years. That was one of the reasons I went to Harvard. I wanted to teach. I neglected to mention that before.

When I created the void of not having a job in 1988, because I was without pay, I used that void and I tried all sorts of different things. I went to the financial industry and said, "Maybe you would like to bring me on for this or that." They would take a look at my CV and say, "There is too much about abortion in this document; we do not share your ideas on choice. You would not fit in at this organization." Or after one look at the CV, which is 30 pages long or something like that, they would say, "We do not really have a place for a court jester in our organization." I applied to be the CEO of a billion dollar pulp and paper company in British Columbia. I thought my skills were transferable and portable. No one else thought so.

I had done lots of newspaper, radio, and television work, so I tried to get a job as Host of *Cross Country Checkup*<sup>16</sup> or *The Fifth Estate*<sup>17</sup>. I tried all sorts of different thing and none of them turned out.

Like many graduating students in law school, I went back to practice because it was the only thing that worked out. As it turned out, lo and behold, it was the best thing that ever happened to me. I have had a fantastic life in practice these thirty-odd years since leaving the academy. Almost from the very beginning, because I had taken that inter-regnum as a law professor, it was no longer considered that I had to pay my dues as a lawyer. I did not have to do all of those things that I disliked as a young lawyer the first time. I could do what I wanted to do, how I wanted to do it because I was not an employee. I came in as Counsel to the law firm, a synonym for independence. I refused to be a partner because I do not want that kind of relationship or responsibility. I had an extraordinary opportunity to be happy, to do what I want to do; and I have.

Coincidentally, at that time I became involved in Aboriginal Law and in particular with the opposition to the Meech Lake Accord<sup>18</sup>. I represented the Manitoba Chiefs who were sponsoring Elijah Harper<sup>19</sup>. Our team defeated the Accord. We took on all of Canada and won. I had the most extraordinary opportunity and I wish it on you. Part of my time has been spent continuing to do tax work with the most entitled people in the world and part of it working with First Nations people, who are the least enabled people in the world. On any given day I get to see the juxtaposition through the differing windows of those universes. It is fascinating and it never would have happened if I had not come back to practice. I did not come back to practice because I wanted to; I came back to practice because there was nothing else I could do which was to my liking or the liking of others. I thank my lucky stars.

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<sup>16</sup> *Cross Country Checkup* is a Canada-wide open-line radio show on CBC Radio One on Sunday afternoons, and features discussions on important issues of national interest, usually regarding Canadian politics.

<sup>17</sup> *The Fifth Estate* is a Canadian television show, which airs on CBC. It focuses on investigative journalism.

<sup>18</sup> The Meech Lake Accord was a package of proposed amendments to the Constitution of Canada, which was negotiated in 1987.

<sup>19</sup> Elijah Harper (March 3, 1949-May 17, 2013) was the Chief of the Red Sucker Lake community and a Canadian politician. He was a key player in the rejection of the Meech Lake Accord.

## VIII. ABORIGINAL LAW AND DEFEATING THE MEECH LAKE ACCORD

**JEF:** How did you get involved in Aboriginal Law? You were doing tax law and you went to Harvard to study tax law, then you came back and taught and eventually went back to practice and were involved in some pretty significant cases.

**JRL:** I continued to do the tax work; I continue to this day to do the tax work because it is the ultimate intellectual jigsaw puzzle. The *Tax Act* will rattle your brain. I like that.

I got to do the Aboriginal work in two ways. A guy who was a consultant for a number of First Nations had been using a lawyer from Eastern Canada who became ill. The lawyer<sup>20</sup>, a former Deputy Minister of Justice Canada, was a prominent lawyer on some Aboriginal cases that were taking place here. One day, the consultant showed up in my office and said, “I have heard about you; I have read about you; my name is so and so and would you be interested in getting involved in these cases?” And I said, “I don’t have anything standing in my way. Sure, I can do that! They look like they are huge and they look really interesting. I know nothing about this area. I do not know about Treaty Rights; I do not know what section 35<sup>21</sup> is.” He said, “That does not matter; the word we have is you would be good for this.” I have acted for those First Nations and many more for the last 30 years in a number of fabulous endeavours.

The other way, maybe more interesting story, of how I came to have this privilege is worth concluding on. When I came back to practice, I would take on cases that just interested me, very often pro bono. So one day there was this rag-tag group of people, called “Canadians Against Free-Trade” going across the country when the debate about NAFTA was going on in the Mulroney years. Like every group of rag-tag politicians that you can imagine—they were younger, they were older—but they were all rag tag. And they had been arrested and charged in Winnipeg because they were putting

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<sup>20</sup> Roger Tassé served as Deputy Minister of Justice from 1977-85 and was the Principal Constitutional Advisor to the Government of Canada during the Meech Lake Accord.

<sup>21</sup> *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, s 35.

up posters on telephone poles against free trade. They were charged with a by-law offence under *The City of Winnipeg Act*<sup>22</sup> and they had been convicted.

They came to me (I do not know how they came to me), and asked me to appeal. They said, "Would you take the appeal on this? Because we think this is inappropriate. We should not be charged with this; we should be able to do this." And I said, "Sure," and developed the first ever of my *Charter* arguments on free expression. I went on Motion for Leave before Court of Appeal Justice O'Sullivan<sup>23</sup>. He was known for being intellectually brilliant and extremely rude and gave me a really rough time. But at the end of the day, he asked a bunch of questions to which I gave apparently interestingly answers. With that, he was captured and said, "I think you are right; I think this is offensive to the *Charter* and I do not think there is any reasonability that will save it under section 1. So I am sending it back." As a result of sending it back, the City dropped the charges. The group was never charged again and that by-law was lopped off the books. That's the context.

A year later, that same rag-tag group of people is sitting around at Fort Garry Place in Winnipeg amongst two or three hundred First Nations people who are trying to strategize how to defeat the Meech Lake Accord. They are trying to identify a lawyer who would help them with that, and the rag-tag group of people says, "Hey, we had this guy London; he did a good job on our *Charter* argument, and he would be a good person to do that." I then get a phone call from Ovide Mercredi<sup>24</sup>, later National Chief, saying, "Would you like to come over? Would you be interested in doing this?" I couldn't get the words out quickly enough. "I will walk over." I walked over from my office building to Fort Garry Place and I was retained by the Assembly of Manitoba Chiefs to take on the Meech Lake Accord. Elijah Harper was also represented by another terrific lawyer and we worked as a team.

It is not so much that the defeat of the Accord gave me a reputation that allowed me to work in the Aboriginal community, although it has done that. And, I was never on Brain Mulroney's Christmas card list after that

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<sup>22</sup> *The City of Winnipeg Act*, SM 1989-90, c 10, repealed on January 1, 2003.

<sup>23</sup> Justice Joseph Francis O'Sullivan was appointed to the Manitoba Court of Appeal on July 24, 1975.

<sup>24</sup> Ovide Mercredi is a Canadian politician, and graduated from the University of Manitoba in 1977 with a LL.B. He also served as the National Chief of the Assembly of First Nations. He is currently the elected president of the New Democratic Party of Manitoba.

and some politicians are sometimes wary of me to this day because of that. But I tell you this, if I live to be a thousand and practice law for a thousand years, I will never again experience the rush of the day that the Accord fell, even though by that time I thought it was the wrong thing to do for Canada. I was concerned about Quebec; I had not been at the beginning but I came to believe that danger lurked if the Accord failed. But, I was a lawyer with a retainer. My political views mattered not.

There was this incredible feeling of satisfaction. We are talking about the defeat of a significant list of constitutional reforms. It did not get much better than that back in the early 1990s. I am so indebted to law practice for that feeling, no matter what happens to me over time. That, and a bunch of other experiences: thirty years of constitutional and political retainers from my principle client, Phillip Fontaine<sup>25</sup>, both as AMC and AFN Chief, and a dozen or so cases in the SCC, sustain me through the parts that are not so great or interesting. You also face a lot of difficulties. You have people who are angry with you. You have to deal with their irrational envy and prejudice. You just have to find a way to survive that and maintain your character and your sense of ethics and your sense of self.

My point is this and it should be remembered by every young lawyer: you never know how taking on a particular issue will pan out. It may lead to a current loss or a current gain. But the mere taking-on of that matter if it has substance may very well later on be your ticket to the stars. Do all you can as a junior lawyer to build up a repertoire of actions, one or more of which may one day be your ticket to real satisfaction.

**JEF:** This was a pleasure.

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<sup>25</sup> Larry Phillip Fontaine completed three terms as the National Chief of the Assembly of First Nations.