

Interview with Charles Huband*

L A N E F O S T E R

I. THE 1950S LAW SCHOOL EXPERIENCE

Lane Foster (LF): We are here to talk about legal education: where it is been, and where it is going and more generally about your law school experience. Particularly, we are interested in your perspective as someone who has used their legal education in practice, in politics, and as a judge. To start, what was the education model like when you went through law school? I think it was the apprenticeship model while you were in school. What did you think of the program?

Charles Huband (CH): I graduated in 1955, and law school consisted of four years instead of three. It was four years of articling where you would work in a law firm as a student: articling for the afternoon, and go to the university in the morning. Usually, you would continue to work for the firm in the summer. The academic side was very weak at the Manitoba Law School at the time. The Dean and the Registrar were the only two full-time employees of the faculty. Everyone else was just a lecturer brought in for a particular subject. Some of the lecturers were good; some of them were awful. There was no real way to assess the quality, but I would say most of them were mediocre or sliding into pretty awful.

LF: Which firm were you articling with? Did students article with just one firm?

* Interview conducted by Lane Foster. Charles Huband graduated from the University of Manitoba with an LL.B. in 1955. He served as a judge for the Manitoba Court of Appeal for 27 years between 1979 and 2007, and intermittently as a sessional lecturer at the University of Manitoba from 1956-early 2000s. He currently practises at Taylor McCaffrey.

CH: I went to a number of firms but a lot of students stayed with one firm. The first firm that I became involved with was a firm with two lawyers. You must remember that it was just after the war. Both of the lawyers had been serving in the war, had come back, and established a practice that was largely solicitor work. They inherited the practice from one of their fathers. It was basically a real estate practice where they acted for a major insurance company that was lending money. I did not find it very useful. As always, the value of the articles depends almost entirely on the willingness of the law firm to take an interest in the education of the students. I had no such feeling in the first two years that I was there.

I articulated for Lorne Campbell¹ (who ultimately became a senior partner at Aikins Macaulay & Thorvaldson), a very nice man and a very skilled corporate lawyer before he was finished. But, he was young at that time and doing little more than looking after the generation of mortgages, real estate deals and the like, and I did not find that very interesting. I spent a great deal of time at the Land Titles Office, searching titles and reporting back. I remember after about two years, I had a petty cash book where I put in my expenses and then would be reimbursed; I put in a fictitious amount for running shoes because I was running to the Land Titles Office so much. They did not find that very funny (laughs). It was intended as a joke, but in any event, I did get along with Lorne Campbell and the other lawyer, Graeme Haig². Graeme Haig later became a senior partner at D'Arcy Deacon. In other words, they split and evolved into other practices. Graeme Haig was a great guy, a storyteller, but I did not learn very much from him either. I think that the expectation I had was that I would not learn very much from them. They were young guys and the firm was not doing the things that were particularly interesting to me. I say this not to be critical of them, but I think, just as a fact, that the articles were not very useful to me. It was cheap labour for lawyers and that was about it.

After two years, I moved over to the Attorney General's department. There were some obvious reasons for why I did that. One was to get a

¹ Lorne Campbell (1920-January 15, 2014) graduated with an LL.B. from the Manitoba Law School in 1947, and joined Aikins Law in 1964. He was appointed an Officer of the Order of Canada, and served as President of both the Manitoba and Canadian Bar Associations.

² Graeme T. Haig (August 7, 1923-December 15, 1993) graduated with an LL.B from the Manitoba Law School and was called to the Manitoba Bar in 1949. He served as President of the Manitoba Bar Association.

different kind of work, and the other was to get a little bit more money. In those days, I was getting about twenty-five dollars a month when I was in school, and they increased it to maybe fifty dollars a month in the summer. The Attorney General's department were required to pay a little bit more, though I am not sure why. Probably some legislation, but it was a little better in terms of funding and it was a change in direction. I did have the opportunity to do some criminal law work, or at least dabble in it. Although some of the work in the Attorney General's department was drudgework, such as going through the recent regulations and seeing that they were put in books in the proper order, that kind of clerical work.

In short, I did not find the articles very useful either in private practice or in the Attorney General's practice, and I did not find the lectures at the Law School to be at a high level at all. That does not mean that I did not have an interest in some of the subjects, I did. Dean Tallin³ taught Trust Law and I became interested in Trust Law, and wound up reading extra about Trust Law simply because he whetted my appetite in that area, and I have enjoyed it ever since. So, it was not that you did not have a learning experience, you did, but it was not because of the quality of the lectures, and as I said, some were downright awful. Taking Civil Procedure from a lawyer who speaks in a monotonous tone and reviews the rules has a somnolent effect.

I mentioned the Registrar; he was a very nice man, but he was one of the dullest lecturers you could ever imagine. He knew the subject verbatim so he would lean up against the chalkboard, close his eyes, and start talking. It was pretty dull (laughs).

LF: That sounds awful.

CH: First of all, Real Estate Law is not the most scintillating subject and he was unable to add another dimension. Anyway, that was the Law School. I articulated in my fifth year. I should explain that. You could get into a law school with a degree in Arts, but you did not have to have completed it. You could apply for, and be allowed in with two years of Arts. Once I had two years of Arts, I immediately applied to go to the law school. The catch was that if you did not have a full degree you had to take an extra year of

³ George Percy Raymond Tallin (July 27, 1894-January 13, 1970) served as Dean of the Manitoba Law School from 1945-64.

articling, so I did that. In the last year of articling, I was at Manitoba Telephone System (MTS) in their legal department. Again, the object of articling with MTS was that they almost paid a living wage. So it was finances more than anything else that drove me to apply for and accept a position with the MTS. That was both a good choice and a bad choice. It was a good choice economically but a bad choice in terms of the scope of the work. Basically, I was drawing easement agreements to have hydro lines go through farmer yards and so on. I got a company car and I would have farmers sign easements for certain considerations and so on and so forth. When I ended my articles there, the head of the legal department and the only legal officer there to whom I was articulated, Sid Davies, said, "Oh look, you are going to be moving elsewhere; would you do me a favour and take these easements to Neepawa and get them signed?" This was sort of my last day or two in the service of the MTS and I said, "Oh, sure." He did not want to have it left unfinished, since he would have to do it. I took the company car and started out and got as far as Portage la Prairie when the engine of the car blew and I was able to go no further. That was my last act for the MTS.

I then moved to another law office called Haig and Haig; there were two lawyers in it. One of them was Senator John Haig⁴, who was an elderly man at that stage. He was a member of the Senate of Canada, a Progressive Conservative member. His son, Campbell Haig⁵, as though it was hereditary, succeeded his father after his death as a Senator. When I worked there, it was the two working there, father and son. Their practice was limited to mortgages, real estate, and the like. Again, I did not learn very much there. There was one instance where the firm got a claim of a widow whose husband had been killed in a motor vehicle accident. Those were the days before Manitoba Public Insurance, where it was still a fault process. The widow wanted to bring an action against the other motorist claiming damages for a fatality. Campbell Haig spoke to me about it and said, "We cannot take that; we do not do litigation." But he said, "Would you like me to speak with Parker Fillmore⁶ and see whether he would take it and maybe

⁴ John Thomas Haig (December 15, 1877-October 23, 1962) was called to the Manitoba Bar in 1904. He was appointed to the Canadian Senate in 1935, and retired in 1962.

⁵ James Campbell Haig (June 2, 1909-February 5, 1980) graduated in 1934 with an LL.B. from the University of Manitoba. He served as a corporate lawyer before being appointed to the Senate in 1962. He resigned in 1977.

⁶ William Parker Fillmore (February 22, 1882-May 1, 1978) began practising law with

you could work with him?” And I said, “Yeah, that would be good fun.” He did speak with Parker Fillmore, who was the head of Fillmore Riley. That goes back a long way, to around 1955. I do not recall too much about the case other than the fact that we won and I did have an opportunity to participate in examinations for discovery and the trial process. I also remember working with W. P. Fillmore, who is a bit of a legend of a litigation lawyer; he was top notch. So that was my first breath of an opportunity to work in negligence law and participate in an important case. As well, I gained the experience of working with a senior lawyer who had a very high reputation. That was the best thing I learned there. Can I keep on going?

LF: Of course. Did you always know you wanted to be a litigator? Or was it that case that spurred your interest?

CH: I think I wanted to get into litigation but I did not know how: fumbling around; going from one articling position to another; none of them really what I needed or wanted. During that time, the Manitoba Law School was actually offering a Master’s degree in certain subjects. I do not think they should have been since they were not on the level that is really required of a Master’s degree. I guess they were faking it and they wanted the prestige of saying “we’ve got a Master’s program in the law school.” Anyway, the lecturer in Insurance Law was a fellow by the name of Burt Richardson. He was about in his sixties. He was known as a person who had a lot of experience in dealing with tort claims of various sorts but mainly motor vehicle. His son was in practice with him and at least one or two other junior lawyers.

We used to meet at his office and discuss insurance law of various sorts and some of the cases. Again, that was a more vital and interesting area of law. I did not find that Burt Richardson was the expert that he should have been, but he tried. I was a participant in class discussions and I guess he was a little bit impressed with me because he offered me a job and I quit the course and took the job. So I never did finish the Master’s degree, which did not hurt me one way or another. That started me on my way in terms

Bradshaw, Richards and Affleck in 1907. The firm would later be renamed to Fillmore Riley LLP in 2005. He served as President of the Law Society and the Manitoba Bar Association.

of being a civil litigator. That would be in about 1956. From there on, I worked in that firm. It went through some transition. One of my classmates, Scott Wright⁷, who became a very good judge in the Court of Queen's Bench and a very good lawyer, joined the firm. He was also my best friend. I got him into the same firm. We got Reeh Taylor⁸ who was, again, a young lawyer, who is now ninety years of age and he is in the office next door to me. He is more of a corporate lawyer and we started building a firm together. Burt Richardson ultimately retired and went to British Columbia. We, generally speaking, took over the practice and built it. I continued practicing law then for twenty years or so until I was appointed to the bench and during that time it was virtually all civil litigation that I was involved in.

LF: Just going back a bit, the application process to get into the law program: was it just a case of everyone gets in? Or was it stringent?

CH: No, it wasn't stringent at all. I had a summer job at the Land Titles Office of all things, but I really wanted to be a lawyer. I just had a gut feeling that is what I wanted to do and that I could be successful at it. So for me it was an easy decision to apply and I had the qualifications to get in, that being having finished two years of arts.

I immediately decided that I was going to make an application and I did. I can recall, my older brother and I, we both lived at home at that stage, I was getting dressed to go down to the law school to put in my application and he said, "Where are you going this morning?" And I said I was going down to the law school to put in an application. He was a graduate of Commerce and he was two and a half years older than me and was thinking of going into accounting or taking a job in industry. But when I said I was going down to the law school he said, "Oh, that would be interesting. I will come down with you." He made his application that morning and was in that afternoon. That was how difficult it was.

We had a class of around forty to forty-five people, with maybe two women. There were at least two to three students in the class who had a supplemental examination from their examinations in Arts. The Dean,

⁷ Scott Wright is a former Manitoba Justice. He was appointed to the Queen's Bench in 1973 and served until 2004.

⁸ Reeh Taylor graduated in 1951 with an LL.B. from the University of Manitoba and was appointed Queen's Counsel in 1971. He is the "Taylor" of Taylor McCaffrey LLP. He passed away on December 2, 2015.

being a kindly soul as he was, despite his rough exterior, would say, “Oh, you cannot get into law school unless you have a Bachelor of Arts.” And they would say, “Oh, I could not get through French,” and he would say, “Well, okay, you can get in but you have to write the supplemental examination sometime during your four years.” That is the way people got into law school back then.

LF: That is a lot different than the admissions process today where students are always crunching numbers and making sure they are on pace to have good enough grades to get in and preparing for the LSAT.

CH: Yeah. Now I have to say, in spite of the condemnation of the quality of education and how easy it was to get in, that there were some excellent lawyers turned out of our year at the law school. I am not referring to myself, but there were a number of judges who have done well and had a good reputation. Alan Philp⁹ spent time at the Court of Appeal along with myself. Gerald Jewers¹⁰ was at the Court of Queen’s Bench for many years. Scott Wright was a Court of Queen’s Bench judge for many years. A person by the name of Ron Bell¹¹ went into the federal service Civil Tax Department and went on to have a private tax practice in Calgary before he ultimately became a judge of the Federal Court in the Tax Division. And so it goes. We had some really good students. There was Sidney Green¹², who is a good friend of mine and served a period of time as an NDP cabinet Minister. He left under a bit of, well, a big disagreement with the party. His politics changed more Conservative than NDP. Over the whole of the last sixty years he would be, I would say, an outstanding civil litigator, first class. So we had good people graduate even though the admission standards were not high.

LF: Do you think that speaks to their mentors being strong? Getting articles with the right firm?

⁹ Alan Reed Philp was appointed to the Manitoba Court of Appeal on May 5, 1983 and retired on August 3, 2005.

¹⁰ Gerald Oliver Jewers was appointed to the Manitoba Queen’s Bench on July 1, 1984 and retired on May 19, 2007.

¹¹ Ronald Bell served as a Federal Court Judge in Alberta from 1991 to 2006.

¹² Sidney Green ran for leadership of the New Democratic Party of Manitoba twice before leaving to help form the Progressive Party of Manitoba.

CH: No, I do not think so. I think it mainly comes down to individual perseverance, intelligence, and dedication. I do not think you learn that and I do not think you get it from your mentors. You either have it or you do not. It just strikes me that a lot of the students in our class succeeded because they had that individual determination. It sure was not because of the quality of the lectures. It was not because of high admission standards. And it was not because of the articling system.

LF: So just personal qualities?

CH: It had to be something else. Now, I am not saying that some were not luckier than others, but that is the same system as we have right now. I mean, students applied to Taylor McCaffrey because someone tells them that it is a good place to get experience. I do not know whether it is or not because I am not in that area. I mean, I see some of the students right now, some of them are twiddling their thumbs, wondering what is going on. I do not say that in criticism of the people at Taylor McCaffrey; all I am saying is it is rolling the dice. Sometimes you think you are getting with the firm that is really going to give you good experience, but if they do not apply themselves to make sure that you get a rounded experience in your articling year, you can come up short. So I think it does depend on individual initiative, perseverance and intelligence.

II. CHANGES IN LEGAL EDUCATION

LF: During your years of practice, you would have seen generations of students join the profession. Have you noticed a change in the level of preparedness of new lawyers?

CH: I think there is a better chance of getting a high quality young lawyer now than there was during that time. In my years in the Court of Appeal, I would say that there was a gradual improvement in the quality of the people, that is, the younger lawyers who were presenting in the Court of Appeal. I think that they were well prepared on the whole, knew their case better and were prepared to answer the questions that the court had. I think there has been a general improvement over the years but I would hate to give it a totality because you still get some awful lawyers. Even back when I first went on the court, there were lots of good lawyers.

LF: Has the changing demographics of the profession changed the law? There are many more Aboriginal people and women practicing today than there have been in the past.

CH: Sure, it has changed the profession. Just as you said, there are more women in the practice of law, and some of them are very good. I am old-fashioned enough to say I think it is a tough profession for women to be in. I think it is tough from the standpoint that if they want to have children, it takes them out of the profession. For that reason, a lot of them have found that working as in-house counsel works better for them than practice in court. There are some very good family and criminal lawyers who are women, but I have not seen very many civil litigation lawyers who are women, because it takes sometimes two to three years working on a case and sometimes they just do not have the time to do that.

In regard to Aboriginal people, my comment would be this: I wish that more of them would be involved in civil litigation. I have a feeling that they get a law degree and feel obliged or want to work representing Aboriginal communities, rather than the general practice of law. I think if I were an Aboriginal person, and going to law school, my objective in terms of helping Aboriginal people would be to apply to Aikins, MacAulay & Thorvaldson to do my articles, get into the corporate set there and see whether I could get an appointment to some companies' board of directors. Maybe end up on the board of directors of the Royal Bank of Canada. I think that you could do more to help the cause of Aboriginal people that way than some of the ways they are directing their thoughts to now.

LF: In 1966, the Manitoba Law School became the Faculty of Law at the University of Manitoba, which transformed it into an academic institution. What are your thoughts on this? Do you agree that it is the academic nature of the program today that permits students to develop their critical thinking and develop a broader perspective of the law? Do you think the academic training has changed the way new lawyers argue in court?

CH: I do not dismiss that, nor do I suggest that there is not an element of truth in that. Yet, it does not necessarily become evident in the cases that are argued in the Court of Appeal. I mean, there you are dealing with specific situations with set facts, findings of fact by a trial judge that are

difficult to upset, and either written evidence or other evidence of that kind that cannot be changed. The parameters are: you have got to make the most of the case you got. Was the advocacy on a higher level in 2005 than it was in 1965? It is very hard to pinpoint any particular case where that became evident. I just have a general feeling that younger lawyers were better trained and it resulted in a higher quality of lawyering. It probably would be so in all areas of law, not just litigation.

LF: Do you think that law, in a general way, has changed dramatically over the last fifty or so years?

CH: I think it probably has. Take family law, for example. It was not something that the average law firm would have done. They would say, “Oh gosh, family law; go to the lawyer in the mall over there.”

LF: Now it is a big part of what makes this firm successful.

CH: Yes and that is a change. See, this firm has one of the largest family law sections, if I can put it that way, of any firm. It also has some of the biggest billers in the city, including Jim Stoffman¹³. The difference is that more people are getting divorced, with property and money, and are ready to fight each other for it. So it is a very fertile area, and people like Jim Stoffman have done very well by it. By the way, when I make these comments, I am not, in any way, critical of Jim Stoffman. I am just saying he is good at it, he charges for it, and he has seen the opportunity to build not only his own practice, but a working team within a firm like this.

Labour law is another area that is huge. Again, this firm has a very large labour section led by Grant Mitchell¹⁴, who is one of two best employment lawyers in Winnipeg. These were sections which were thought to be relatively unimportant that have become important. *Charter* law of course is another area, particularly for people doing criminal law, not exclusively, but in large measures. We have seen the difference it has made. I think a lot of the decisions have taken the *Charter* too far. There have been cases I recall where a person is arrested and you are supposed to give them their rights.

¹³ Jim Stoffman graduated from Robson Hall in 1974 with an LL.B and was appointed Queen’s Counsel in 1985. He is currently a Partner at Taylor McCaffrey LLP.

¹⁴ Grant Mitchell graduated from Robson Hall in 1977 with an LL.B and was appointed Queen’s Counsel in 1998. He is currently a Partner at Taylor McCaffrey LLP.

You are to tell them not only what their rights are but that Legal Aid will help you if necessary. There have been people carrying around a wad of cash of ten or twenty thousand dollars and they say, "But he did not give me my *Charter* right that Legal Aid would be available to me and..." which results in the charges being thrown out.

LF: I have heard there is a saying that goes: "There are two types of verdict in a drug case: a guilty verdict and a *Canadian Charter of Rights and Freedoms* section 8 plea."¹⁵

CH: Yeah. The search laws may have gone too far. There was a case that I had and I dissented on it, in the Court of Appeal. There was a car seen weaving down the road and someone behind that car had a cellphone and phoned the police. They said this is happening and you should do something about it. The police sent out a car and they did not spot it but they had certainly heard a lot about it. They thought they saw the car move off the highway and go to a parking lot by an apartment. The driver at that stage was walking towards the apartment building and a police officer said, "Pardon me, were you driving that car?" He said, "Yes." So they said, "Well then, we will give you your rights" and so on and so forth. They gave extended rights and arrested him. He was in fact the driver of the car that was weaving down the highway. His defence was that they had to warn him before they said, "Are you the driver of the car?" That was the fatal question. It really was what convicted him because as soon as he said "yes," they had him. He said, "You had to give me my warning." Not having given that preamble, my colleagues said, "Case dismissed." I dissented on that. But it was a dissent more on saying we have taken the *Charter* too damn far. But, there it was.

LF: I would like to jump back to something we touched on earlier. What are your thoughts on the current system of three years in law school followed by a year of articles? Do you think that is the right balance or should it change?

¹⁵ *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, s 8.

CH: I think it probably is about right. I am not sure of that because I have not sat through the lectures of the law school. I am unable to tell whether they are good, bad, or indifferent. I think that my own lectures when I was lecturing were a pretty high standard academically. During the time I was a judge and I had more time then. When I was practicing law, you were flying by the seat of your pants when you were going out to the law school. You do the best you can, but I cannot apologize for the fact that sometimes they might not have been to that high standard you would expect at a university. But when I became a judge, I spoke to whoever was the Dean at the time and I said, "I am quite happy to continue as a lecturer in the Law of Trusts because I think I will have more time now. I think I can do a better job." And I think I did, the lectures improved. There was one year when I ran for the Liberal Party in a general election and I just said at one of the first lectures, "See you guys, I am outta here! I will not be around for a month or two." That does not happen when you are on the Court of Appeal. You have time and you can slot that in your agenda. So I think I was a better lecturer during those years than in earlier years.

I never did escape a lecture format and that might be disappointing to some people. Of course, I did not dismiss questions or discussion that might arise during the course of a lecture, but I had a set program to give them. A lot of it was cases that I had been involved in either as a lawyer or more recently as a judge and you know I could tell stories about these things. The very kind I just told you, and students are interested in that. They like to see the practical side of the academic. I am not sure that they get that. I think that having some lecturers who are in practice, and prepared to devote time as casual lecturers, not as full time academics, I think that is an important component.

LF: I wanted to touch on the issue of skill development. Do you think we are producing the right number of lawyers, who eventually go on to be judges, politicians and so forth, and providing them with the skills they need to be successful?

CH: Well, let me take the issue of judges. I think we are over judged. I think we have too many judges in the Court of Appeal and too many judges in the trial division and that we are too protective of judges. Let me also say that the rules of court are rigged to make it easier for judges than it ought to be. I will give you some background on that.

When I started out in law, you filed a Statement of Claim and the defendant filed a Statement of Defence and you filed a reply. Roughly twenty days after the last pleading, you can set that down for trial. And we used to do that. There were no preliminary motions. I mean, it takes a year and a half to get something down for trial now. Then you are lucky to even have the trial. Everything is done to avoid it. They do not want a mess; they do not want something to come up or surprises where they may have to do some work. They may say the lawyer for the plaintiff is not doing his job properly. They are not giving me the authorities so I am going to have to look them up myself. What a shock. They want everything to be presented so that there is the least amount of work for the judge to do. You have to give a preliminary brief on every motion no matter how simple it is. You would not get a date for a contested motion unless there is a brief by both sides. In our day, we did not have any briefs. If we had a motion, we would go into court with a bunch of books. You would start saying, "Judge, here is a book that you need and I would give the case," and he would cope with it. Now, everything is to protect the judge from any surprises and I think that is crazy. It has slowed down the whole process and we have agreed to that in the Court of Queen's Bench Rules some time ago saying, "Oh, the courts of Ontario have got a new rulebook and it got so much thicker and we have got to do the same." We basically adopted the Ontario rules. We do not need the Ontario rules. It is ridiculous. Theirs is a far more complicated process and we have bought into that more complicated process and I just do not believe that it is right.

Same thing goes for the Court of Appeal in this respect. When I joined the Court, there were six judges. I do not know how many they have got now but they have got a whole stream of judges now. What are they up to, ten? They have supernumerary judges and they have appointed judges, some of whom are totally inexperienced. They are popping onto the Court of Appeal when they have not argued a Court of Appeal case in their lives. Anyway, I think we are being too protective of judges. Everything is being held back until they are ready and they say you have now done all your preliminary work. Then they will finally say, "We can now hear this case." Everything has been packaged for them so there are no surprises. I think they should be ready to deal with surprises and they should speed up the process instead of slowing the process. It really is a long, tedious process and I think that is why a lot of these things end in settlement, which is what the courts want.

They want everything settled if they could possibly to do it. They encourage alternative dispute arrangements where the judge will have people down and tell them what they should do and I question that. I do not think that is the function of judges because at that stage, they are talking settlement and their function is to bring back a settlement. If you are a judge, and theoretically, if you see that the plaintiff's case has no validity in law, the defence is there, and they want to get a settlement, you are going to say to the defendant, "Well, there is a certain amount of risk here; you'd better give them twenty percent or something like that to get it done." Then you can say you have had a successful time. You have been successful at telling the defendant to pay when they should not be paying at all. Is that the function of the judge? I do not think it is. I think that the function of the judge should be to apply the law.

LF: I want your take on the debate on what the purpose of the law school should be: one that is more academic or one that is more theoretical. You went to law school under the apprenticeship model. You have been a judge and the leader of the Manitoba Liberal Party. You have had to engage with broader policy discussions at different points in your career. Do you think that more academically-focused law training would have been beneficial to you? Or, do you feel that you were sufficiently prepared under the system in which you were trained?

CH: Let me try and do it this way. I was involved in public issues almost right from the beginning. I became involved as the editor of the *Manitoba Bar News*. This was not a weighty publication. I do not even know who my predecessor was. At that stage, the Manitoba Bar Association had a monthly newsletter, if I can even call it a newsletter. It sometimes had articles in it about some phase of the law. I do not know why they asked me, but they asked me if I would be the Editor of the *Bar News*, maybe a year or two after I graduated; maybe less than that. I agreed and started editing the *Manitoba Bar News*. I would ask some of my friends if they could write an article on a subject and I wrote some myself.

There are two that I specifically remember. In one, I said that the whole process of awarding Queen's Counsel was a crock. I tried to prove it by going through the Western Weekly Reports and showing that some of the recipients of Queen's Counsel had no reported cases. I was saying that if you are going to call yourself Queen's Counsel, it should have something to

do with appearances in court and knowledge as a litigator. I pointed out that one lawyer, who was a recent recipient of a Queen's Counsel, had only one appearance in court and the judgment was only reported because he was in the wrong court and the court he was in did not have jurisdiction. To me, such an appearance was not a very good reason to appoint someone as Queen's Counsel. The profession was very upset with me.

LF: That is a gutsy paper.

CH: The other thing I recall rather vividly came a few years later. I wrote an article in the subject area of trusts and it had to do with a judgment that had been written by E. K. Williams¹⁶, who was then Chief Justice of the Court of Queen's Bench. He was also the Trustee and the Chairman of the Board of Trustees of the Law School. He ruled the roost, no doubt of that. I wrote an article criticizing one of his judgments, saying that it was wrong. I was lecturing at the Law School at that stage and Dean Tallin phoned me up one day and said, "Would you be ready to continue teaching next year?" And I said, "Oh sure, that is fine" and that was the conversation. About two months after I wrote the article about E. K. Williams, he phoned me and said, "Um...we have a problem. We cannot reappoint you this year." I asked why, because it was no big deal as far as I was concerned, but I was curious. He said, "E. K. Williams did not like your article and said I cannot hire you."

LF: Wow.

CH: That is in part an indication of the somewhat parochial nature of the school at that time. I can remember going to a faculty meeting, although it is not the most appropriate term since there were very few of us on faculty. The practice was that E. K. Williams would hold one meeting a year. It was a dinner in a salon at the Fort Garry Hotel. There would be maybe twenty to twenty-five people sitting around a large table. There would be drinks beforehand and we would eat filet mignon or whatever was on the menu. It was very nice and then the meeting would start with E. K. Williams saying, "Now I am going to give my impressions of the progress of the school." Then

¹⁶ Esten Kenneth Williams (1889-April 30, 1970) lectured at the Manitoba Law School from 1915-34 and was a former Chief Justice of the Court of Queen's Bench.

he would speak for maybe fifteen minutes and say how well things were going. After that, he would ask one of his supporters if he had anything to add. He never asked his detractors. They would compliment him saying, "Oh, I think you put it wonderfully. It is just exactly as you said; I could not add a word." Then, after two or three of these comments by faculty, E. K. Williams would say, "Well, I think that we now have a good idea of the mood of everyone so the meeting is now adjourned..." Boom. Those were the faculty meetings.

Now I exaggerate a little bit because one or two times I remember Harold Buchwald¹⁷, who was on the faculty as a casual lecturer, made some comment of criticism, but I have given you the general pattern that was there.

III. POLITICS

LF: When did you become interested in politics?

CH: Well, some of what I have just gone over was political. My comments about Queen's Counsel were really saying, "What the hell are we doing?" It is just an indication that right from day one, I was involved in those kinds of issues. I had switched parties, although not immediately. When I was a young man at twenty years of age (maybe even younger than that), I was involved with the Conservative Party. In particular, I was a supporter of Dufferin Roblin¹⁸ when he was on the march and becoming an important force in Manitoba politics. He appealed to me as he appealed to a lot of people as a progressive kind of Conservative. I got to know him a little bit. It is interesting because he was a difficult person to get to know; he did not make small talk well. I volunteered to be his chauffeur from time to time and I can remember making trips out into the countryside where he was trying to chase down a possible candidate in Carmen or some such place. In other words, I knew him, and I supported him.

¹⁷ Harold Buchwald (February 22, 1928-April 17, 2008) graduated with an LL.B. in 1952 and an LL.M. in 1957 from the University of Manitoba. He was a founding partner of Buchwald, Asper, Henteleff, which is currently known as Pitblado.

¹⁸ Dufferin Roblin (June 17, 1917-May 30, 2010) was a Canadian politician. He was appointed to the Senate from 1978 to 1992 and served as the 14th Premier of Manitoba from 1958 to 1967.

I became involved in an election where he became Premier, defeating Douglas Lloyd Campbell¹⁹. I was active in the Young Conservatives and made little speeches from time to time. It was “Here is young Charlie Huband over here; he will just say a few words,” that sort of thing. In 1960, Dufferin Roblin started a new form of government for Winnipeg and that was the Metropolitan Corporation of Greater Winnipeg. At that stage, there was the City of Winnipeg and nineteen separate municipalities around it. Each one had their own municipal government with a police force. Tuxedo had a police force with a Police Chief and maybe two police officers. I mean, it might have been alright for Saint Boniface which had a decent population, but some of these municipalities were so small it just did not make sense.

So the Metropolitan Corporation was formed, and through legislation was given certain responsibilities. They should have been given more, but they were given the major street system, the arterial streets, major parks and recreation like Assiniboine Park, and so on. They were also given control over water and waste, as well as general control over planning and zoning within its jurisdiction. Anyway, that was formed in 1960. I think that the first terms were intentionally longer to give them an opportunity to learn their way. I ran for office in 1964 and was elected as a Member of Council. I then ran for re-election and went for another four years before I decided that whatever I was doing, I did not want to be a career municipal politician. I am not in any way downplaying the importance of municipal politics, but it just was not my idea. I was still practising law. Being on Council was sort of a hobby. I was interested in politics and this certainly kept my hand in.

There were only ten members of the Metropolitan Council. The constituencies were very large. I represented River Heights, Tuxedo and Charleswood. That is a big chunk of the city but there is a delightful reason for why that works, and that is because there is no single group in your constituency that is a dominant group. There is no one who can say the whole constituency is directing you to go in a certain direction because there is division between River Heights and so on. It is easier to keep control, I think. But they were pie shaped constituencies leading from the center out. That was a good system.

¹⁹ Douglas Lloyd Campbell (May 27, 1895-April 23, 1995) was a Manitoban politician and served as the 13th Premier of Manitoba from 1948 to 1958.

Anyway, I am diverting. That got me involved in politics obviously, and beyond that, I was still in the Conservative Party. I met Duff Roblin and we're having lunch together at the Winnipeg Squash Club and I said, "Duff, you have got to take it the next step, and the next step is total amalgamation of Winnipeg. You have gone half way. It is a good start but you have got to move it all the way." He told me that he would not do it. At that stage, I knew quite a few people in the Liberal Party. Gildas Molgat²⁰, who was the leader of the Manitoba Liberal Party, came to me and said, "We would like you to be a major part of the Liberal Party and be the person who is responsible for the development of policy on municipal government."

That was one of the reasons why I decided to make a switch. I am just telling you those things were going on while I was actively in practice. I was not fiddling around; I was working eight-hour days at the law office and doing this work in my spare time.

LF: Two separate streams of work almost.

CH: Yeah, that is right. Nowadays, people who get into municipal politics do it on a full-time basis and I could see that coming. I am not decrying that; I think it is a natural outcome as more and more responsibility devolves upon them. I just did not want to move in a way that required me to stop practicing law. And that's what it ultimately would have led to. So I've led you off stream; this has nothing to do with the law school.

IV. TIME ON THE BENCH

LF: Since passing the bar in 1955, you have accomplished a great deal. I read in an interview conducted by the *Winnipeg Free Press* that you want to litigate in front of the courts again. What is it that keeps you going? Is it just the case that you love the law that much?

CH: I think so. First of all, I enjoyed my time on the Court of Appeal. I also enjoyed my time as a lawyer, as a civil litigator, and faced with mandatory retirement in the Court of Appeal, I thought, "What am I going to do?" My choice was to say well if I am still active and capable I would like to practice

²⁰ Gildas Molgat (January 25, 1927-February 28, 2001) was a Canadian politician and served as the leader of the Manitoba Liberal Party from 1961 to 1969. He was appointed to the Canadian Senate and served as Speaker from 1994 to 2001.

the profession of law again. There is a rule of course, that the Law Society has, which is that there is a three year cooling-off period, where you cannot appear in the court that you served, or any lower court. I recognized that and I did not endeavour to do that. As soon as the three years were up, I had the opportunity of going back to court and I did. I have been doing that ever since.

Now, some of my past colleagues on the Court of Appeal do not like that. They feel uncomfortable about it, whatever. They organized the panels so that no person who was with me when I was serving on the Court of Appeal would be on a panel nowadays. I wrote a letter to the Chief Justice who is a good friend of mine, Richard Scott²¹, now retired. I told him: "This is unfair, not to me, but to my clients." My clients are entitled to the full choice of judges in the Court of Appeal on a rota system. If it comes up that it is Chief Justice Dick Scott, then they should have the benefit of having him sitting on the case. And why the hell should they not acknowledge that I have the right to appear in court? They do not dispute that, but a right to appear before any judge, whether they were on the court or not. Now, I have also appeared before the Court of Queen's Bench. As a Court of Appeal judge, I had the right to serve in the Court of Queen's Bench, too. I also regarded them as my colleagues and they are not saying they have a problem with me litigating in their court. I would have thought their court would have been the one with the problem. I never overruled my colleagues on the Court of Appeal, but I sure overruled trial judges. But they are prepared to say, "Come down and take your chances." But the Court of Appeal has a different attitude. They do not want me to appear.

LF: But why have you continued to practice when you could have retired? You could be down in Florida right now, soaking up the sun instead of practicing law.

CH: Oh yeah, I am contemplating my retirement, to be honest with you, in the sense that I am not trying to set a time record or anything of that kind. There are some lawyers who keep on going into the nineties and I do not intend on doing that. I think it is partly that I wanted something to do that was challenging, and that I could continue to enjoy. But it was also to

²¹ Former Chief Justice Richard Scott graduated from the University of Manitoba in 1963 with an LL.B. He was appointed to the Queen's Bench in 1985 and became the Chief Justice of the Manitoba Court of Appeal in 1990.

challenge myself. Can I still do it? Can I make a decent argument? I can write a decent judgment, but that is different than appearing in court and making a decent argument. I have always said that it is a lot easier to be a good judge than it is to be a good lawyer. Practicing law is tough and I wanted to see whether I could still do it, simple as that.

LF: Are there any decisions you wrote as a Court of Appeal judge that you remember as being particularly memorable or, alternatively, decisions where you wrote a strong dissent?

CH: Well, let me say that I dissented on quite a few cases. I do not have a number or anything but I think that part of the responsibility of a judge is to dissent if he honestly cannot abide the decision of the majority. If he thinks that they are wrong, then he should say so. Some of my colleagues amaze me. I will not name names but I know one judge of the Court of Appeal who has had a long, distinguished career and, to my knowledge, has never dissented. And I say to myself, "How can it be?" I have lived in that same situation and I cannot imagine that I could go through a whole career without a dissent. The danger is if you are trying to avoid a dissent that you are going along for the sake of collegiality and that is not a good enough reason. So, one has to be careful about things of that kind.

LF: That is interesting because I have always wondered about collegiality amongst judges. I mean, judges must be able to have arguments but then drop it afterwards and be collegial for the most part, right?

CH: Oh sure, but you asked about memorable cases. One of them would have been a dissent that I had where it was a murder case. A young man showed up at two in the morning in the country somewhere at his grandfather's residence. The grandfather came to the door and he shot him with a shotgun. Blew his head off, charged with murder, and he was convicted. I thought all along that there is something wrong here; this kid must be insane. My colleagues disagreed, there was not any mistake made by the judge to the jury and so on. I forget the details but I know I did dissent and it went to the Supreme Court of Canada. I think the situation is the same now as it was then. On a capital murder charge, there is an automatic leave to appeal. He appealed and he won.

I remember the case more for the aftermath of it. Some years later, more like a couple of years ago, I met a person at a reception and he said “You do not know me but I am part of the family of the grandfather and grandson. Your decision was the most important thing for our family. It has saved the life of that young man.” The young man went into a mental health institution, of course, but survived that, came out of that kind of treatment and has been reunited with the family. And you sort of say, “Wow.” That is what can happen either for good or ill from the decisions that we are making. I am not saying that I was looking to make the right decision from that standpoint, but I am glad it worked out that way for that family. If it had been different, and he had gone to jail for twenty-five years, I do not think that could possibly have happened. So you know, it teaches a lesson, too, about how important the law is in terms of affecting the lives of not just the accused person or the party to the litigation, but of others closest to them.

I have had some memorable cases but also some amusing ones. One of those involved the *Constitution Act, 1867*²², back when Pierre Trudeau was the Prime Minister of Canada. It is rather unimportant history. But when he was talking about bringing the Constitution back from Britain, and making it our responsibility along with the *Charter of Rights and Freedoms* and so on, the Provinces were saying, “You can’t do that; the Parliament of Canada does not have the power to do that without provincial consent.” So, Pierre Trudeau said, “Well, let us frame a question and send it out to three Provincial Courts of Appeal.” Manitoba, Newfoundland, and I think the other was either New Brunswick or Nova Scotia. Ours was one of the provinces to whom he said, “You decide.” Now, it ultimately bypassed all the Courts of Appeal and went to the Supreme Court. But this was the first step, and I think that Manitoba was the first province where the issue came up and it was argued for a couple of days. Before I get to that, the Court of Appeal at that stage had six judges. On ordinary cases, we would sit in a panel of three. If it was a particularly important case or a constitutional case, we would sit a court of five, but we always would sit in odd numbers. So, Chief Justice Sam Freedman²³ came to me and said, “Sorry Charles, but you

²² *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.

²³ Samuel Freedman (16 April 1908-March 1993) was appointed to the Manitoba Court of Appeal in March 1960 and was named Chief Justice in 1971. He retired on April 16, 1983.

are the sixth man on the court.” I had been fairly recently appointed at that stage and the other five judges were all senior to me. He said, “We are going to sit five and it will be the five senior members of the court. So you are not going to be included. I thought I should tell you that.” I let it go for that evening. The next day I went into his office and said, “You know, they are asking for the opinion of the Court of Appeal. Not the majority of the court, not five-sixths of the court; they are asking for the opinion of the Court. I am part of the court.” Moreover, I argued that this was not a situation where it would matter whether we are tied three and three; it simply did not matter. The Court could give two equal opinions; it was just a reference. They are just asking “What do you guys think?” He thought about it and said, “You know what, I think you are right; we should sit six.” So he told the other members of the court we were going to sit six. Justice Alfred Monnin²⁴, who was then the senior person of the court, said, “That is crazy; we should not be doing that.” And Sam said, “Well that is what we are going to do.” Justice Monnin said, “No, we are not, because I refuse to sit under those circumstances.”

LF: So you sat five?

CH: We did; we sat five [laughs]. Except that I have to hasten and say I dissented. I said it would require provincial consent. I said that Her Majesty the Queen takes the advice of the Parliament of Canada on matters of their jurisdiction. But she takes advice of the Provincial Governments on matters of their jurisdiction. This is as much their jurisdiction as it is the Parliament of Canada’s and that has been recognized by asking the courts to deal with the matter. So, I said it had to have the consent of all provinces. The compromise was made by the Supreme Court of Canada, and I do not know on what basis, that you have to get so many of the provinces, and such population percentage and so on and so forth. It was nothing except expediency in that decision.

LF: While serving the Court of Appeal, were there any lower court decisions which you would have liked to have had appealed in order to weigh the matter?

²⁴ Alfred Maurice Monnin (March 6, 1920-November 29, 2013) was appointed to the Manitoba Court of Queen’s Bench in 1957, and to the Manitoba Court of Appeal in 1962. He was appointed Chief Justice in 1983 and retired from the Bench in 1990.

CH: Not really, no. The way that the Court of Appeal operated, and I assume still operates, is that when a matter can be dealt with by the panel on the spot, they do. They are free to deal with it. We used to go into the back room and write something about how the claim has no merit or whatever and then walk back into the room and pronounce the judgment. But where it is reserved, and in a lot of cases it is reserved, then you have to write something. The participants, the panel of three, will decide who will write it. It would be asked, "Will there a dissent or are we all in agreement?" If we were all in agreement, someone will write a draft and they will all come to a conclusion that the draft is good. But before it goes out it is then passed to the other members of the court. Not so that we could overrule them, but so we could red flag potential issues. "Hey, you guys forgot about such and such" or, "you should mention this other case," or whatever. You get this opportunity even though you are not part of the panel to at least alert them to your concerns. I do not think there was anything other than one case that I became involved where it went much further than that. Sometimes you would alert them to something they could change, a sentence or two very quickly and by agreement and so on.

LF: Thanks so much for taking the time to do this; we really appreciate it.