

# Interview with Dale Gibson<sup>\*</sup>

## The Metamorphosis of Legal Education in Manitoba: An Eyewitness Account

---

BRYAN P. SCHWARTZ & CAMERON  
HARVEY

### I. ABSTRACT

Manitoba was the last province in Canada to abandon the concurrent approach to academic study and practical training in legal education. And the change did not occur quickly or without controversy. Dale Gibson, Distinguished Professor Emeritus of the Law Faculty, University of Manitoba, and a one-time member of the Manitoba bar, was both a product of the old system and an advocate for and participant in the change. Professors Bryan Schwartz and Cameron Harvey interviewed Professor Gibson for the *Manitoba Law Journal*.

### II. INTRODUCTION

**Bryan P. Schwartz (BPS):** Beginning at the beginning, Dale, could you tell us what brought you to law school as a student in the first place?

**Dale Gibson (DG):** You won't believe this, but it's true. In grade 7, I encountered an excellent teacher who was sick and tired of conducting discipline in her class. So, on the first day that we met with her, she said: "I'm not going to discipline the class; you are going to do it yourselves. You are going to organize yourselves into a government, elect officers including

---

<sup>\*</sup> Interview conducted by Bryan P. Schwartz and Cameron Harvey. Dale Gibson, B.A. (Man.), LL.B. (Man.), LL.M. (Harv.), F.R.S.C., was a Professor of Law at the Manitoba Law School and the University of Manitoba from 1959 to 1991, and a half-time Professor of Law at the University of Alberta for several years thereafter. He practiced law in Manitoba from 1959 to 1991, and in Alberta from 1991 to 2008. He has been an independent legal scholar and writer from 2008 to date.

police and a prosecutor, and hold meetings every Friday to deal with class business and hold trials for those charged with disciplinary offences.”

**BPS:** (Laughs) This was grade 7?

**DG:** Grade 7. And there were class meetings, including trials, every Friday, all year. I was elected by one vote—my own—to be Crown Prosecutor. I loved it—I’m afraid the power went to my head. And from then on I knew I was destined to be a lawyer. Accordingly, after obtaining an Arts degree at college, I went to law school.

**BPS:** That’s an amazing story. But you became an academic lawyer rather than a practitioner.

**DG:** Oh, I practiced—on a part-time, but sometimes pretty intense, basis—throughout my university career.

**BPS:** You eventually became, among other things, a human rights scholar, a constitutional scholar, a torts scholar, and a legal historian. Why history, by the way? Were you interested in history? Did you study that as an undergrad?

**DG:** (Laughs) You’re really exposing my dirty laundry, Bryan. I failed the only college course I ever took in history. But in first year law school Mr. Justice James Wilson<sup>1</sup>—Jimmy Wilson—who was an excellent teacher, gave a little course on English legal history, and that got me interested initially. When I returned from graduate school to begin teaching law, a distinguished older lawyer and writer named Roy St. George Stubbs,<sup>2</sup> who was very keen about Western Canadian legal history among many other subjects, took me under his wing, as he had and would other fledgling

---

<sup>1</sup> James Edward “Jimmy” Wilson (1915-1989) was called to the Manitoba Bar in 1946 and worked as a lawyer until 1965. He was appointed Queen’s Counsel in 1957, and a Justice of the Court of Queen’s Bench in 1965. He served until August 1988.

<sup>2</sup> Roy St. George Stubbs was appointed senior judge of the Juvenile and Family Court, serving until his retirement in 1982. He was given an honorary doctorate by the University of Manitoba (1995) and inducted into the Manitoba Order of the Buffalo Hunt (1982).

lawyers over the years, and passed on some of his enthusiasm for history (as well as for art, poetry, good food and wine).

But I didn't pursue history much further than that until the 1970 100<sup>th</sup> anniversary of the Law Society of Manitoba was looming. It was decided that a centennial history of the Law Society should be written; and since I appeared to be the only law professor who was doing much writing at that point, I was approached. Because I knew nothing about historical research, I asked my then wife, Lee Gibson, who had a keen interest in history, and a much greater knowledge of it than I, to work with me; and the two of us published, in 1972, a book called *Substantial Justice: Law and Lawyers in Manitoba, 1670-1970*.<sup>3</sup> That experience excited the hell out of me, and from then on I was tumescent about legal history. Nevertheless, history was never my central interest until I retired. Before that my primary focus was initially on tort law, and later on constitutional law and related subjects.

**BPS:** Let's turn now to our main topic. What can you tell us about Manitoba's old system of legal education?

### III. THE OLD SYSTEM

#### A. General

**DG:** The legal education regime that my law school classmates and I experienced—this was between 1954 and 1958—was an intensely practical one that combined, in side-by-side fashion, classroom instruction in an astonishingly wide range of legal topics with hands-on practical training as articulated students in law offices.

**BPS:** Where was the teaching done?

**DG:** On the third floor of what is now the 'Old' Law Courts' Building at the corner of Broadway and Kennedy streets in Winnipeg. The Law Society offices and the Great Library were on the same floor. The Manitoba Law School, as it was called, was operated by a Board of Trustees on which the Law Society and the University of Manitoba were equally represented.

---

<sup>3</sup> Dale Gibson & Lee Gibson, *Substantial Justice: Law and Lawyers in Manitoba 1670-1970* (Winnipeg: Peguis Publishers, 1972).

**BPS:** When was the teaching done?

**DG:** Every morning between 9 AM and noon from the beginning of September to the end of April.

**BPS:** By whom?

**DG:** Who taught? Chiefly sessionals—practicing lawyers and judges—although the Dean, G.P.R. (“Pete”) Tallin,<sup>4</sup> and an administrative officer called the Recorder, Colonel Harvey Streight,<sup>5</sup> both of whom were lawyers, also had heavy teaching loads.

**BPS:** And this went on for three years?

**DG:** Four.

**BPS:** How did the articling fit in?

**DG:** Every student was required to have an articling position with a law firm or a corporate law department throughout the four years—or five years if the student didn’t have a prior university degree.

**BPS:** So at least some previous university experience was a prerequisite?

**DG:** Yes, for most students: a minimum of two years in Arts or Science. If a person lived outside Winnipeg, however, he or she could apply to be a “Law Society Student,” and those in that category—they were few and far between by my time—could avoid the university prerequisite, as well as compulsory attendance at the law school, and simply “read law” under the supervision of the lawyer to whom they were articulated. They had to write the same exams as those who took classes, however. And, in common with those who had only the minimum two years of pre-law university study under their

---

<sup>4</sup> George Percy Raymond “Pete” Tallin was appointed Dean of the Manitoba Law School in 1945 and served until 1964.

<sup>5</sup> Harvey Newton Streight was called to the Manitoba Bar in 1922. He was appointed Lecturer of the Manitoba Law School in 1930 and became recorder of the school in 1945.

belts, they were required to article for five years rather than four in order to be eligible for call to the bar.

**BPS:** The articling was done—when?—in the afternoons?

**DG:** Yes—during term. But also on a full-day basis in the summer months when the law school was not in session.

**BPS:** You've told us that for most students at least two prior years in university were required. What about the quality of their performance during those prior years: their grades? It's extremely stressful now for a young person to get into law school. You've got to have a staggeringly high GPA. Was it like that in your day? Were people uptight about getting in?

**DG:** No. All you had to do to get into law school, apart from having passed—even barely—the prerequisite two years, was to get yourself to the third floor of the Law Courts building. And there was an elevator to assist you. If you made it there, and handed over the \$150 or \$200 annual tuition, you were admitted.

**BPS:** Did a winnowing occur once you got there? Was there a pretty high failure rate in first year?

**DG:** Not especially high. There were always a few failures, of course, but not many more than in more recent times. The winnowing occurred at two points. First, there were a number of people who said in first year, "This just isn't for me," and didn't come back, or perhaps left even before the end of the first year. And, secondly, the vicissitudes of making a living in practice after graduation weeded out a number of others relatively soon. But I would say that the percentage of people who entered and stayed in the profession after having come into first year law was pretty high in those days.

**BPS:** What was the demographic balance between men and women at the time?

**DG:** The number of women practicing law in Manitoba at the time I came into contact with the profession was very low. There had been female lawyers in the province for many years, but—although I don't know the

actual numbers—I'd be surprised to learn that the total for the province exceeded 15 or 20. And the law school enrollment reflected that proportion. There was one woman in my first year class of 24 or 25, and she dropped out after first year.

There was a sudden skyrocketing of female law students, however, about the time that we moved out to the University of Manitoba campus in 1970; and it wasn't long thereafter before the number of women equalled, and sometimes exceeded, that of men.

**BPS:** Was any effort made to try to get a rural-urban balance?

**DG:** I don't think there was any conscious incentive, other than whatever benefit accrued to rural practitioners from their ability to employ "Law Society students."

**BPS:** How about Aboriginal students? Were there any at all in your class?

**DG:** No. None in my class, and I'm not aware of any before that. The first Aboriginal students appeared, I think, when we were on the University of Manitoba campus.

**Cameron Harvey (CH):** I think we were still downtown. And I think it was Ken Young.<sup>6</sup>

**DG:** Cam, you're right that Ken Young was our first graduate, but that was after we were on campus. When I think about it, though, I do believe there were some indigenous students while we were still downtown. Perhaps they didn't graduate.

**BPS:** What about economic status? Sounds like it was pretty much open, because you could start working as an articulated student immediately, albeit it that, as I understand it, you'd be very poorly paid. So you had a pretty mixed group in terms of rich people, middle-class people, working-class people, and so on?

---

<sup>6</sup> Ken Young (B.A. 1967, LL.B. 1973) was the first Aboriginal student to graduate from the Faculty of Law at the University of Manitoba in 1973. He was from Opaskwayak Cree Nation.

**DG:** Yes, indeed. We had sons, and later daughters, of well-to-do lawyers in the school, of course. But we also had people who were not doing at all well economically. One of my classmates, for example, was a former lawyer from Yugoslavia who had come over as what was then called a “DP” – displaced person. He worked nights as a cleaner in public buildings in order to finance his way through law school here because he had to do the entire degree over again.

**BPS:** That’s kind of paradoxical, because it could be that the economic barriers to entry are actually higher nowadays, since you have to go through more undergrad study to get to law school.

**DG:** I suppose that’s true.

**BPS:** Winnipeg, certainly then, was very largely an immigrant and second-generation town. So you’d have people from all different kinds of ethnic backgrounds?

**DG:** Yes. I think my class contained a fair cross-section of the Winnipeg population.

**BPS:** Was a lawyer more of a general practitioner in those days? If a client had a will drawn up by a lawyer, would that same lawyer then defend the client in a criminal case? What was the degree of specialization?

**DG:** I can’t give you a statistically accurate answer about that. There was probably more general practice than nowadays, but specialization was certainly not uncommon even then. What had a generalizing effect was the law school itself, since there was no choice in the subjects you studied. The curriculum covered just about every legal topic you could think of, from highly practical matters like civil and criminal procedure in considerable detail to more cerebral subjects such as international law, jurisprudence, and conflict of laws. It was all on the curriculum, and you had to do it all—no choice. That curriculum certainly facilitated general practice. But those who wanted to specialize after graduation had no difficulty doing so.

**BPS:** Did students ever attend the trial of capital cases?

**DG:** One of the advantages of having the law school on the third floor of the courthouse was that one could drop in on trials. It was more often the rape trials than the murder trials that attracted student observation, but the latter were certainly popular too. When Harry Walsh<sup>7</sup>—Manitoba’s then predominant criminal lawyer—was in court, for example, a number of students would almost always slip down to see him in action, and many of his cases involved capital offences.

**CH:** The other aspect of that was to overlook the courtyard of the Vaughn Street detention facility when they were hanging somebody.

**DG:** That didn’t happen in my time, Cam, although it might well have occurred earlier on.

**BPS:** Did you ever see or participate in a capital case? There are some very interesting passages in Sam Freedman’s autobiography,<sup>8</sup> where he talks about trying a couple of cases where he had to hand down the death sentence and found it very difficult.

**DG:** I don’t recall ever attending a capital case, but I did a good deal less courtroom observation than some of my classmates. I had made the decision that since I was a terrible student in arts I would try to be a good student in law. I therefore took copious notes in classes, and rarely cut them to visit the courtrooms.

**BPS:** What do you know about the origins of the Manitoba Law School, Dale?

**DG:** It’s all in *Substantial Justice*. The school was established in 1914 by the man after whom Robson Hall was named: Mr. Justice H. A. Robson.<sup>9</sup> The

---

<sup>7</sup> Harry Walsh Q.C. (August 1913-February 2011) was called to the Manitoba Bar in 1937, and worked in law for over 70 years. He played a central role in the abolition of the death penalty in Canada in 1976.

<sup>8</sup> Samuel Freedman, *A Judge of Valour: Chief Justice Samuel Freedman—In His Own Words*, (2013) 37 Special Issue Man LJ.

<sup>9</sup> Hugh Amos Robson (1871-1945) was a politician for the Manitoba Liberal Party. He served as a Manitoba Court of Appeal judge from 1930 to 1943, and was later appointed Chief Justice.



articling system was born with the province in 1870, but nothing was done to supplement pure apprenticeship until 1910, when the Law Society relented a bit, and allowed students who wanted to go somewhere that had a law school for formal study to take a year's leave of absence for that purpose. Then, during the following three or four years, Robson undertook to give occasional classes—voluntary classes—to those who remained in Manitoba but wanted at least a modicum of instruction without having to go farther afield.

Robson then decided that there had to be something much more effective than those hit and miss arrangements; and he, along with a young lawyer named E. K. Williams<sup>10</sup> who had recently arrived from Ontario, organized a system, based on the Osgoode Hall model then prevailing in Ontario, of concurrent law school instruction and articling. What Robson and Williams did was to orchestrate an agreement between the University of Manitoba and the Law Society of Manitoba, whereby the system we've been talking about—which wasn't much different when implemented in 1914 than when I experienced it forty years later—would be standard for all law students, and would be administered under the joint aegis of those two organizations.

Williams remained, from then until the mid-1960s, the *éminence grise*, and all-but-absolute ruler, of legal education in Manitoba; so perhaps I should say a little more about him before we move on. He was a brilliant, widely-read man, of endless energy, with an engaging speaking style that graced an otherwise cast-iron character. His courtroom prowess, initially on behalf of the insurance industry but before long as a representative of establishment interests generally, soon took him to the top of his profession both provincially and nationally. He had a massive personal library, and accepted numerous invitations to address public meetings on a wide range of topics. And he wrote as eloquently and carefully as he spoke, publishing considerably more than his many other activities<sup>11</sup> would indicate was

---

<sup>10</sup> Esten Kenneth Williams (1889-1970) lectured at the Manitoba Law School from 1915 to 1934, and succeeded Justice Robson as the chairman of the School's Board of Trustees, serving in that capacity until the 1960s.

<sup>11</sup> Williams' astonishingly numerous and varied extracurricular activities over the years prior to his appointment to the bench are recorded in Dale Brawn's *Paths to the Bench: The Judicial Appointment Process in Manitoba: 1870-1950* (Vancouver/Toronto, UBC Press, 2014) in 24 separate references.

possible, including a very good book on landlord and tenant law that remained in circulation for a long time.<sup>12</sup>

**CH:** It's still in print.

**DG:** Really? Among the many influential friends Williams cultivated over the years were, despite his Conservative political leanings, Liberal Prime Ministers Mackenzie King and Louis St. Laurent. And in the mid-1940s, while serving as President of the Canadian Bar Association, Williams outraged civil libertarians across Canada by his brutal tactics as chief prosecuting counsel for the Government of Canada in the notorious “Spy Trials” that the revelations of Igor Gouzenko, a defecting cipher clerk in the Ottawa embassy of the Soviet Union, had triggered.

That assignment was followed, in 1946, by Williams' appointment by the federal Liberal government to the Manitoba Court of Queen's Bench as Chief Justice a position he filled, in every sense, for many years. Although, in formal priority, the Chief Justice of the Court of Appeal, also known as the “Chief Justice of Manitoba,” was higher ranking, Williams—by the sheer force of his personality—dominated the entire Manitoba profession from then until his retirement in the late 50s or early 60s. And it was he, more than anyone else, I believe, who was responsible for preserving concurrent articling in Manitoba while it gradually disappeared in the other common-law provinces.

He was a small man, very neat. When I knew him he had wonderfully white hair and a small, carefully groomed, white goatee. And he insisted on impeccable dress in his courtroom, which he ruled like a sergeant-major. If a lawyer appeared before him with the corner of a package of cigarettes popping out of his or her pocket, he would say something like, “I can't hear you, Mr. Gibson”—or whoever it was; and when you started to speak louder you'd be told, “I still can't hear you Mr. Gibson.” This was his way of telling you that he was not going to listen to your argument until you took those damn cigarettes out of your pocket, or pushed them down out of sight. He was feared by many in the profession. He was a fair-minded judge, but very hard in many ways. And he was absolutely wedded to concurrent articling.

---

<sup>12</sup> EK Williams & FW Rhodes, *Canadian Law of Landlord and Tenant*, 6<sup>th</sup> ed. (Toronto: Carswell, 1988, loose-leaf updated to 2016. The original book was EK Williams, *Notes on Canadian Law of Landlord and Tenant*, 1921 (publisher unknown).

Although small in stature he was reputed to have a large capacity for whiskey, and a remarkable imperviousness to its effects. Whenever there was a student dinner or something of that kind—to which Williams was always invited—he would be placed at the head table and provided with a full 26 [fluid ounce] bottle of scotch or rye. The legend was that he would demolish the bottle during the evening and remain perfectly normal in his demeanour throughout. I believe I witnessed that happen on several occasions, but I admit I never examined the bottle, before or afterwards.

## **B. Teaching**

**BPS:** Let's talk about the classroom experience. I don't know if there was a typical class, so maybe no generalization is possible, but can you tell us anything about the nature and quality of the teaching? Was there much discussion, for example?

**DG:** For the most part, there was very little discussion. I don't know how many times I was told, when I tried to ask a question or start a discussion: "You're here to learn what the law is, not what it ought to be." Most instructors taught in a highly didactic fashion.

It's important, though, to point out that there were exceptions—we had a few really excellent teachers. Good barristers are basically teachers, after all. They try to teach judges and juries the essence and reasonableness of their clients' positions. Some of those who stood out were Justice Sam Freedman,<sup>13</sup> Jimmy Wilson whom I've mentioned previously, Charlie Huband.<sup>14</sup> They, and a few others, were extremely good teachers by any standard, and tolerated—even encouraged—classroom discussion in moderation. But even they were tied to a curriculum based on an expectation of didactic instruction. There was always a good deal of discussion among the better students, of course—in the common room, the pub, and so on—but very little in class.

---

<sup>13</sup> Samuel Freedman, OC, QC (1908-1993) was a very distinguished lawyer and judge. Appointed to the Manitoba Court of Queen's Bench in 1952 and elevated to the Manitoba Court of Appeal in 1960, he became the Chief Justice of Manitoba in 1971, and retired in 1983.

<sup>14</sup> Charles Huband, sessional lecturer 1956 to early 2000s. He was a judge of the Manitoba Court of Appeal from 1979 to 2007, and currently practices at Taylor McCaffrey. For his interview, please see page xxiii of this issue.

**BPS:** So you had Sam Freedman, and you mentioned James Wilson and Charles Huband.

**DG:** Another very good teacher was Dean Tallin. He taught a lot: contracts, international law, and jurisprudence. He also had a wide range of personal interests, and a massive personal library. And his teaching was very effective, if somewhat over-structured. So there were several fine teachers. Also, alas, there were some dreadful ones.

**BPS:** Tell us about the latter—without necessarily naming names—some eccentrics.

**DG:** Eccentrics in the way of teachers?

**BPS:** Yeah.

**DG:** Well, the most notorious—although he was also sort of lovable—was an elderly gentleman we had in first year. He taught the very first law class I ever attended. The subject was personal property, and his opening words are still branded indelibly on my aging brain: “If A raises a hare on the land of B, and pursues it to the land of C before taking it into possession, what are the respective rights of the three parties?” I’m not sure we ever learned the answer to the question.

The fellow was so confused that he would come into the classroom wearing one brown shoe and one black one. Students would push lockers across the classroom door so he wouldn’t be able to find his class. That was done to the poor guy every year by every new class; and every class thought it had invented the prank. There was another guy we had in third-year—a rather unpleasant retired litigator—who arrived every morning for a 9 o’clock class looking bleary-eyed and smelling of booze. He dictated notes to us in surly tones, never lifting his eyes from the paper.

And then there was our unforgettable Recorder. His name was Colonel Harvey Streight.<sup>15</sup> He had been in charge of prisoners of war during World War II, and was always known by his military title despite—perhaps because—he had the least military personality you could ever imagine. He was a

---

<sup>15</sup> Harvey Newton Streight, Manitoba Law School faculty, 1930-1932; Recorder 1932-1960.

mousy-looking, sharp-witted, little fellow who loved to wear ludicrously lurid neckties, and was given increasingly outlandish ones by succeeding graduating classes. The Colonel was an absolutely lovely man, who ran the practical side of the school with quiet efficiency, and could never do too much for students. He was known to have made interest-free loans from his own pocket on several occasions to students in financial difficulties.

But Colonel Streight was an abysmally bad teacher. He would fall into a kind of hypnotic state as he was teaching. I know this sounds like an exaggeration, but it isn't. He would rock back and forth from heel to toe, his eyes rolled back in his head and, in a rhythmic monotone voice, dictate notes—copies of which every enterprising student had already purchased in printed form from students of previous years. There was an occasion when the nearby Old Law Courts' building, which could be seen from our classroom, burned down. At the height of the fire Colonel Streight was teaching us in that room. Every single member of the class walked out, one by one, to watch the fire, while Streight, appearing not to notice, never missed a beat. Perhaps he was grinning internally, but if so he didn't show it.

Those few were extreme cases; and I don't want them to be considered indicative of the norm. The teacher-quality norm, I suppose, would be best described as mediocre.

**CH:** Dale, just in terms of eccentricities, G. P. R. Tallin, as I understand it although I never had a class with him, used to demonstrate his strength by having students stand on his chest. He also ripped up books.

**DG:** I never heard of his ripping up books—that's a new one to me. But there was a legend that he sometimes invited students to stand on his chest. He too was a military man and, unlike Colonel Streight he rather relished his military background. I heard about, but never personally observed, his occasional exhibition of the macho image that some associate with military men.

One of Tallin's smaller eccentricities was a teaching habit that sometimes got to be a little annoying, and led to a student game called "Beat Pete" (Pete being the Dean's nickname). It's a nice little pedagogic trick when used sparingly, but Pete overdid it. He would say something like: "The name we use for the quid pro quo in a contract is..." and pause, waiting for

someone to say “consideration” before he did. But what the students tried to do was to come up with some smart-alec alternative such as “bribery” in that moment of silence. If someone got a clever substitute in before the Dean uttered the correct word, he or she was said to have “beat Pete.”

**CH:** The Board of Trustees did all the hiring and the appointing, is that right?

**DG:** That’s correct. And Dean Tallin, Colonel Streight, and the half time, untrained librarian that we had during my time—A. J. Christie<sup>16</sup>—were the sole permanent employees. Secretarial services, when required, were borrowed from the Law Society down the hall.

**BPS:** Nowadays, teachers are very sensitive to student feedback; you have this course evaluation form, and career progress is partly contingent on at least avoiding mass rioting. Was there any kind of feedback or accountability for teachers in those days?

**DG:** I don’t know how there could have been when I think about some of the duds we encountered standing in front of us at the lectern. Again, I don’t want to exaggerate. The really bad ones were relatively few, a number were mediocre, and some were brilliant.

**BPS:** And even for the mediocre and brilliant ones the basic method was lecturing, with illustrations from cases? Is that how it worked?

**DG:** Yeah. I’m not saying there were no questions. If you didn’t understand what the teacher said, you put up your hand and asked a question. But there was little or no discussion about the fairness or efficacy of laws and suchlike. The social purpose of laws was not considered to be a suitable topic for the classroom.

**BPS:** Dale, you went to law school because you wanted to be a practicing lawyer? Right?

---

<sup>16</sup> A. J. Christie, Manitoba Law School faculty, 1945-1947; 1950-1960.

**DG:** Well yeah, I wanted to be a lawyer, but I still didn't have any realistic understanding of what it would mean to be a lawyer. I didn't know much more about lawyers then than I did when I made my career choice in grade 7.

**BPS:** Nowadays, I think most people's conception of what it is to be a lawyer is what they see on TV, or in movies or downloads off Netflix: a rather glamorized notion . . .

**DG:** The same popular image of lawyers existed then; I don't think that has changed much.

**BPS:** So you thought it would be a lot of courtroom stuff and dramatic cross examinations?

**DG:** Yes, and my first experience in a real law office was accordingly very disillusioning. I had delayed trying to find an office, and as a result the only office I could find was a conveyancing mill. They did nothing but real property transactions and estate work; and I almost dropped out of law during that first year because I just couldn't see myself doing only that kind of work for the rest of my life. The lawyers in question were excellent solicitors, and they trained me well in conveyancing, drafting wills, and so on; but if a potential client was involved in litigation, or wanted to be, he or she was sent to another firm down the hall.

Fortunately, rather than dropping out, I looked around for another position, and found that the Winnipeg law department of the CPR—Canadian Pacific Railway—was looking for a law student. I had done well in my first year of law school, and so they accepted me readily. And the CPR law department was engaged in almost every type of legal work one could imagine: all sorts of contract and solicitor-type of work and litigation of most types, including substantial constitutional cases. So when I got to the CPR I saw a possible career I would like to follow in future.

One problem, though, was that I was a flaming socialist at that point—still am a sort of smouldering socialist—and the CPR officialdom did not entirely appreciate that. One day—a day that still throbs in my memory—at a time when I was spending my spare time as campaign manager for a CCF (the NDP's predecessor) candidate in a federal election—I had asked a printer to drop off my candidate's posters on my desk in the department's

library. But I wasn't there when he came, so the fellow took them to my boss's office instead and dropped them on his desk! A very uncomfortable scene followed. But I digress—we digress.

**BPS:** Yes, but provides a good bridge to the subject of articling.

### C. Articling Experience

**BPS:** In the pre-transition days, did a firm that took in articling students see them as low-cost employees to do low-end tasks; or did they see them as people to train? If I'm a practicing lawyer, do I want an articling student because I think he or she will be helpful to me in some of the simpler tasks, or is it, "Gosh I'm busy, and now I've got to stop and explain things to this new person?"

**DG:** Both. It was a situation of quid pro quo. Most law firms had students, and students were certainly economic benefits for them. They were much cheaper than regular clerks would be, even for such things as filing documents at the Land Titles Office—a common student task—and that sort of thing. But I would say that most lawyers also shared a sense that the profession had a responsibility to train its own—and took that responsibility seriously.

**BPS:** I believe, though, that they generally paid law students appallingly poorly.

**DG:** That's true. The standard rate of payment for law students ranged from \$20 a month to \$50 in rare cases. The average would have been about \$35 a month. That's what I was paid by the conveyancing firm that employed me the first year. A dollar bought much more than it does now, of course, but nobody could support themselves on standard student wages. When I went to the CPR I believe I became the highest paid student in the law school. There I got \$100 a month, probably because my employer, Canada's largest railway company, had no one else on its payroll earning as little as \$35 a month. As an articling salary, though, \$100 a month was just astonishing.

And it got better. There were four lawyers in our office, and before I arrived two or three of them had been doing conveyancing and estate work on the side for CPR employees who were buying or selling houses, or



wanted wills drawn, and so on. Because they did so for substantially less than the Manitoba Bar Association's official fee tariff, the number of employees who brought such work to the office was not insubstantial. When they found out that I had become a conveyancing whiz during my first year of articling, those lawyers proposed that I do all that sort of work from then on—under the supervision of one of them, of course—and we would all divide the proceeds. It was a proposal I couldn't refuse, and although I never learned whether I received an equal share of the fee pot, I did very well indeed. I wouldn't be surprised if a few other law students also found unofficial ways to supplement their incomes.

**BPS:** There was some sort of effort to litigate or go on strike among the law students way back then, on the basis that they weren't even getting minimum wage.

**DG:** That's right. I don't have chapter and verse about that, but my understanding is that it happened two or three years before I came to law school in 1954. A group of law students took a challenge to court under Manitoba's minimum wage legislation. The challenge was rejected on the ground, as I understand it, that the training students received in law offices was a form of remuneration that needed to be taken into account when calculating what articulated students earned. On that basis, it was decided that law student compensation exceeded the minimum wage; so they lost their challenge.

And I don't believe that decision was mistaken. If one wanted to be a practicing lawyer, the opportunity to have several years' hands-on experience in the real world of law practice under the guidance of seasoned professionals—a chance to constantly compare and contrast the actual with the theoretical—really was invaluable. And although most law students were certainly very low-paid monetarily at that time, I'm willing to bet that the overall cost of legal education for law students of today is much higher than it was then.

**BPS:** I thought you were a critic of the old system, Dale?

**DG:** Oh yes, I was. But it wasn't the blending of academic and practical learning that I opposed. It was the all-too-common poor quality of both. The law school needed more and better-qualified teachers, along with an

openness to studying legal norms and institutions critically. The articling system needed vigilant supervision to weed out law firms that failed to give their students quality instruction.

**BPS:** So the quality of the experience would be very much contingent on who you articulated with?

**DG:** Absolutely. The articling experience was very varied. Although some of it was awful, I think it's fair to say that most who completed the four or five years, and paid attention, came out at the other end competent to hang up a shingle and practice law. The fellow I first went into partnership with, my classmate Al Mackling,<sup>17</sup> did that, as did many others. That is not to say that they could competently practice every kind of law immediately. Unless they were stupid, they initially did only the things they had encountered and developed some skill in while articling. Some of them were also a lot better practitioners than others, of course; but that's the case at every stage of every professional career.

Concurrent articling and academic study meant that every student employed by a responsible law firm had the opportunity, almost from day one, to be personally involved in at least some aspects of law and lawyering; and to have up-close experience with at least some of the responsibilities of a professional. That, in my view, was a massive advantage of the old system. On the other hand, of course, there was the disadvantage that the academic program was necessarily watered down to some extent due to the competing time demands of articling. Don't forget, however, that the Manitoba program was four or five years in duration, while the duration elsewhere was only three years.

**BPS:** After you were done your four or five years—when you had passed law school—were you good? You didn't have to write a provincial bar exam or anything?

**DG:** No.

---

<sup>17</sup> Alvin H. 'Al' Mackling (1927) graduated from the Manitoba Law School in 1958, and was named Attorney General in 1969. He also served as Minister of Consumer and Corporate Affairs, Minister of Natural Resources, and Minister of Labour at different points of his political career.

**BPS:** You said that people were ready to practice after a combination of lectures and articling, both of which you acknowledge were of varying quality. Even after four or five years of that, were you not likely to be a menace to yourself and others in practice?

**DG:** Of course there was a risk of that in some cases; but monitoring that risk and guarding against it was the responsibility of the law firm with which the newcomer became associated. The chief problem occurred—and certainly there were instances of this—when someone set up their own independent practice immediately, without continuing to work along with more experienced lawyers. I mentioned that Al Mackling did that, but he was a brilliant guy, and had articulated with an excellent firm. Other talented people did so also.

It is certainly true that sometimes those who attempted solo practice from the beginning were not so bright or knowledgeable, and ended up in trouble with the Law Society; but I seriously doubt that the percentage of lawyers who found themselves having to answer to the Discipline Committee was any higher then than since the advent of the present system.

#### **IV. IMPETUS FOR CHANGE & EARLY RESPONSES (LATE 1950S/EARLY 1960S)**

**BPS:** Nowadays legal education in Manitoba is more or less like it is anywhere else in common-law Canada. When and how did that happen?

**DG:** The beginning of the change was almost simultaneous with my graduation from the Manitoba Law School; and its roots were in Ontario. The system I experienced had been developed in Ontario, of course, and it had survived in that province almost as long as in Manitoba. The University of Toronto had long offered a very good LL.B. based on full-time academic study; but that degree did not lead automatically to admission to practice. It had to be followed by articling. The Osgoode Hall Law School, on the other hand, continued to offer something resembling the combined program that Manitoba had copied back in 1917 until about the time I entered law school, or perhaps later—I'm sorry I don't have the precise date. And the Osgoode Hall faculty was top-notch. Its superstars in the late forties

were Dean Cecil “Caesar” Wright,<sup>18</sup> an internationally-recognized tort law expert, and Bora Laskin,<sup>19</sup> one of Canada’s most prominent constitutional law scholars, and future Chief Justice of Canada.

But Wright and Laskin became unhappy with the status quo, and left Osgoode to accept posts at the University of Toronto. I believe several of their colleagues followed them. This shook the Ontario system seriously, caused thoughtful lawyers to begin to wonder whether there might be a better way. In due course—after another several years—Ontario’s approach changed again: to a province-wide requirement of a full-time academic LL.B., followed by practical instruction in a newly-designed Bar Admission Course.

**BPS:** Plus some articling?

**DG:** Right.

**CH:** When Wright and Laskin left Osgoode and went to U. of T., did Osgoode not continue with the so-called dual system for a few more years?

**DG:** They did, Cam, but I don’t know the details.

**CH:** Yeah, I think they only converted around 1959 or so. I went there in ’61, and it was certainly converted by then.

**DG:** Perhaps 1958. Two of my Harvard classmates that year were from Ontario, and I now vaguely recall—I think I do—that they had just completed the first bar ad course—or maybe they were just steeling themselves to do so after graduate school.

**BPS:** How was all this significant for Manitoba?

---

<sup>18</sup> Cecil Wright (1904-1967) taught at Osgoode Hall Law School from 1927 to 1949. When the Law Society of Upper Canada rejected his proposed reforms favouring the classroom model over the practical model in 1949 he left Osgoode and became Dean of the University of Toronto Law Faculty (1949-1967).

<sup>19</sup> Bora Laskin (1912-1984) accompanied Wright to the U. of T., was later appointed to the Ontario Court of Appeal, and served on the Supreme Court of Canada for 14 years (1970-1984) the final ones as Chief Justice.

**DG:** Well, a small but significant number of Manitoba Law School graduates had always migrated to Ontario from time to time, presented their Manitoba LL.B. degrees to the Upper Canada Law Society, and been granted admission to the Ontario bar. That practice came to a sudden end—or perhaps it was just a threatened end, I’m not entirely clear—in 1958 when Ontario authorities, having altered their own requirements, announced that they no longer considered the quality of legal education in Manitoba to be sufficiently high to justify admitting Manitoba graduates to the Ontario bar.

I knew nothing about this crisis when I graduated from the Manitoba Law School in April 1958 and accepted a job offer from the CPR law office with which I had been articling. But, a month or so after graduation, I had a phone call from Dean Tallin asking me if I would be interested in a full-time teaching job at the school. Knowing that only the Dean and the Recorder had previously taught full-time in Manitoba, I asked about the reason for the change, and was told something to the effect that “the Board has decided we should have more full-time teachers in order to strengthen our academic offerings.” Nothing was said about the Ontario ultimatum.

I would have to get myself a graduate degree in law, of course, the Dean added; but he had already spoken to Dean Griswold of the Harvard Law School, and had determined that if I were interested in an academic career a scholarship to Harvard could be arranged. It turned out that Harvard had an LL.M. program designed for prospective law professors around the world, and Griswold thought, from what Tallin told him, that I would qualify.

**BPS:** That’s pretty remarkable.

**DG:** I’ll say.

**BPS:** So you accepted the offer, quit the job you had accepted, and went off to graduate school?

**DG:** Well yeah; but you should know that I wasn’t going to be the Manitoba Law School’s only, or even its first, new full-time teacher. Two others—both of whom you knew—were also contracted at that time. Keith Turner, a highly-respected Winnipeg barrister with scholarly interests, who was in his mid-to-late thirties at the time, agreed to traipse off to Harvard when I got

back, and to join the full-time faculty after that. And Cliff Edwards, from England via Africa, was hired for immediate duty while I was away.

**BPS:** So Cliff Edwards<sup>20</sup> was the first newcomer on the scene. And we know he played a crucial role in the larger changes that were soon to come. So let's talk about Cliff.

**DG:** With pleasure. The Manitoba Law School advertised for professors in the *Times of London* in 1958. As I understand it, they got very few responses, but in light of the man they hired, that didn't matter. Born in India and educated in England, Cliff Edwards was in Ghana at the time, if I recall correctly—or perhaps it was Malawi or Nigeria—he moved around a good deal. He and his wife Kathy had gone to Africa with a missionary society, Cliff having been hired as the legal adviser to the society; but he had subsequently moved on to law teaching.

Cliff was a very dedicated Christian—a Christian of the generic variety. I don't think he called himself a Baptist, or a this, or a that. He was simply a Christian—a very active Christian. While he was in Winnipeg I believe he was instrumental in establishing two churches, one of which, I remember, was the Church of the Way.<sup>21</sup> I don't recall what the other was. I believe both churches were humane, service-oriented organizations. The Christian thrust was always close to the forefront of Cliff's concerns throughout his career, along with a remarkably well-honed faculty of practicality and common sense.

I believe he had some quite remarkable experiences while in Africa. His personal physician in Malawi, for example, was Dr. Hastings Banda, a fascinating man and Malawi's founder.<sup>22</sup> But he and Kathy experienced some medical negligence (not on Banda's part) resulting in the death of one of their children, and this soured them on Africa. So they were looking for a change of scene when Cliff picked up the *Times* and saw the Manitoba Law School's advertisement.

---

<sup>20</sup> Clifford Edwards, Manitoba Law School and Robson Hall faculty 1958-2008, 1964-1979.

<sup>21</sup> The Church of the Way was established in 1965.

<sup>22</sup> Dr. Hastings Banda (1898-1997) was the leader of Malawi from 1961 to 1994.

**BPS:** My recollection is that one of Cliff's children was supposed to get a routine vaccination, and got double the dose.

**DG:** That sounds right Bryan, but I don't remember the details. In any event, the timing of the advertisement was a blessing for both the Edwards' family and legal education in Manitoba.

**BPS:** General impressions of Cliff? Everyone who met him got the impression that he was a very zealous evangelical in his personal life. He was a biblical literalist, and I know from conversations with him that he used to give fire and brimstone speeches at his churches. And people who knew that about him sometimes jumped to the conclusion that therefore he was politically conservative . . .

**DG:** He was socially conservative—certainly not radical—but he was also a forward thinker. Cliff rarely led the charge, except in the very important sense of being there to organize things smoothly. The ideas did not come primarily from him. They came to a very large extent, I think, from Brian Dickson,<sup>23</sup> who had been recently appointed to the Board of Trustees, and whose influence in that position soon became very great. What Cliff was able to do in his quiet, reasonable, common sense way was to implement those ideas, and to recognize which ideas would work and which would not. I was often coming up with crazy proposals, which he would examine courteously, reject the chaff, and accept what he considered useful and workable. He was a quiet guy whose sincerity was almost intuitively understood by just about everyone who met him: someone you couldn't help but respect very deeply.

**BPS:** That was my impression of Cliff as well, although I did not serve under him as Dean. But I look back at Cliff's work on the Law Reform Commission, as well as during those inaugural years of the new academic

---

<sup>23</sup> Brian Dickson (1916-1998), was a lawyer and judge. He served on the Manitoba Court of Queen's Bench (1963-1967), the Manitoba Court of Appeal (1967-1984), and the Supreme Court of Canada (1984-1990), succeeding Bora Laskin as Chief Justice of Canada. He lectured at the Manitoba Law School from 1948 to 1954, joining the school's Board of Trustees about 1958, and succeeding E.K. Williams as Chairman of that board—its final chair.

law school, and conclude that he was not only open to reform, but was quite skillful, as administrator, in bringing it about.

**DG:** Extremely so. Always open to improvement, but with a sound sense of what would work and what would not work. And he had an amazing ability to implement: to find money, for example, by speaking quietly to lawyers he thought might be willing to contribute. And he would make contact with friends in the English law teaching world, and persuade them to come over to Manitoba—the boondocks of the world—and help us out with some temporary teaching. And he brought Lord Denning—one of England’s finest judges, an inspiring speaker, and one of Cliff’s friends—to Winnipeg at least twice.

**BPS:** We have in our archives the typescript of the last judgment Lord Denning wrote. He sent it to Cliff. It was the “Cabbages and Kings” judgment about exclusionary clauses.<sup>24</sup>

**CH:** I’d forgotten the subject of the case, but that’s correct. And he signed it for Cliff.

**DG:** There were other distinguished visitors, too: Clive Schmitthoff,<sup>25</sup> for example, who was a rather famous conflict of laws professor, originally from Germany, I believe, who taught in England after escaping the Holocaust.

**CH:** Cliff brought over at least one a year during the 60s, certainly during my time after ’66, and some of them were very good, like Schmitthoff. But some of them were busts, like that strange little Welshman. Remember him?

**DG:** (Laughs) Oh yes! But let’s not use his name. That was a chaotic time. We’d bring two or three new faculty members from various parts of the world one year, and often let go of all but one of them at the end of the term. But the ones we kept were winners.

---

<sup>24</sup> *George Mitchell (Chesterhall) Ltd. V. Finney Lock Seeds* [1982] EWCA Civ 5, [1983] 2 AC 803.

<sup>25</sup> Clive Schmitthoff (1903-1990) was the Gresham Professor of Law in London from 1976 to 1986, and is known for his contributions in commercial law and arbitration, trade law, conflict of laws.



**BPS:** Nobody did an oral history of Cliff before he passed away, so I try to ask everybody who knew him to tell me a little bit about him. There's one anecdote I can provide that I think is germane to what we're talking about. I said to Cliff once: "Why did you hire so many bozos! You hired a bunch of people and then you had to get rid of them." And he said: "Well, dash it all, in those days it was so hard to get anybody with a master's degree to come to Winnipeg that if anyone was willing to come I was willing to give them a try." I thought that was reasonable, so I then said: "But also, Cliff, you had an incredible talent for getting rid of them, apparently without any *sturm und drang*. People would go away amicably. How did you do that?" "Well," he said, "I didn't tell people their contract was not being renewed. I came to them and said: 'Oh, Fred, I found you this wonderful new opportunity' in some job of which I was aware." So he would pitch it not as a termination, but as a wonderful new opportunity. Was that typical of his diplomacy?

**DG:** He was a very diplomatic fellow, but he wasn't always able, or willing, to act as kindly as you describe.

You have to remember that the concept of academic tenure as a legal notion didn't exist in those years, at least not for us. You have also to remember that those duds Cam mentioned were just that. They were kicking around the law teaching world trying to find employment, and were not unused to having to move on. The Welsh fellow Cam mentioned, for example, had social as well as teaching weaknesses. I can remember that Roland Penner had to bail him out of jail a few times for being found drunk and disorderly on the street. Such people were seldom surprised when told it was time for them to move on once more. It's important also to understand that many of our short-term faculty members were very good academics who had only signed on as short-term colleagues, and never had any wish to remain permanently.

But the key point is that each year the quality of the faculty improved. The people who were kept—the Cam Harveys and Janet Baldwins<sup>26</sup>— they were pure gold. Oh, and John Sharp<sup>27</sup>— a brilliant man and unforgettable

---

<sup>26</sup> Janet Baldwin taught law at the University of Manitoba for 31 years. Following her time at the university she served as chairwoman of the Manitoba Human Rights Commission from 2001-2007. For her interview, please see page 117 of this issue.

<sup>27</sup> John Sharp (1940-1976) B.A. LL.B. M.A. (Jesus College, Cambridge) taught international law, tort law and commercial law. He became a full professor in 1973.

colleague who died much too young from a brain tumor. Although I don't believe John was Welsh, he went to law school at Aberystwyth—in the same class as John Cleese, later of Monty Python fame. And was really good at mimicking Cleese's "funny walks." Whether he learned them at law school or from television I never knew.

**BPS:** And look at some of the other people Cliff hired, like Barney Sneiderman,<sup>28</sup> this left wing, New York or Connecticut, guy; and he hired Roland Penner,<sup>29</sup> who was quite left politically; and he hired Jack London; and he hired the first women at the law school.

**DG:** One of our first female visitors—perhaps our very first—was a bright and talented young English woman then called Pat Walker I believe, who carried on to Australia after a year or two in Winnipeg, acquired the surname Hyndman by marriage, and became a fixture at the New South Wales Law School in Sidney. And the list goes on: Gerry Nemiroff, Linda Vincent, Arthur Braid, Trevor Anderson. Trevor, Jack, Art and Roland all followed Cliff to the deanship. And let's not forget Phil Osborne and John Irvine—both very strong colleagues—and I've probably unfairly forgotten others. The point is that we—chiefly Cliff—built, relatively quickly, a superior team of law teachers and, to a somewhat lesser extent, of legal scholars.

**BPS:** So Cliff was eclectic in his hiring, obviously had a high respect for diversity, and eventually assembled a strong faculty.

But we're getting a little ahead of our story here. Let's get back in sequence. Cliff Edwards arrives in time to teach in the 1958-59 term while you're in Massachusetts getting a graduate degree, Dale...

**DG:** His teaching got rave reviews, by the way, according to the letters I was receiving from Winnipeg. Cliff was always a splendidly gifted teacher.

**BPS:** Back to you before you leave for Harvard. You've told us you didn't know that change was in the wind until Dean Tallin offered you a job on

---

<sup>28</sup> Barney T. Sneiderman, Robson Hall faculty 1971-2007.

<sup>29</sup> Roland Penner, Robson Hall faculty 1967-present.

condition that you got yourself a graduate degree. Had there really been no indications before that?

**DG:** No indications I was aware of that suggested help might be on the way. Well, on second thought, I suppose there was one straw in the wind, but I didn't recognize its significance of the time. I had been the valedictorian when my class graduated, and my valedictory address was a blazing criticism of the system's flaws. Brian Dickson, who had just been appointed to the school's Board of Trustees—a development whose importance I didn't yet understand either—approached me afterwards and asked me to call on him at some convenient time; and few days later he and I had a long frank talk about my concerns. He seemed interested and sympathetic, but said nothing to get my hopes up very much at that point.

**BPS:** I'm curious about the gist of your valedictory speech. Could you elaborate on the content of your critique—and what you considered a better model?

**DG:** I don't remember much about the details. I do remember that my classmates, knowing I was severely critical, were concerned that I might go too far. One of them gave me an ultimatum on behalf of the others: "Dale, you're not giving that speech until the rest of us have vetted it." So it was vetted, and the final draft was more moderate than the first one, but it was still pretty critical: critical of how the teaching and articling were handled, rather than of the nature of the system itself.

**BPS:** Cecil Wright and Bora Laskin would have already gone to American law schools. Was it Harvard or Yale?

**DG:** I believe they both went to Harvard.<sup>30</sup>

**BPS:** I think a lot of our faculty from the middle years—60s, 70s, 80s—went to Harvard also. Harvard had a program specifically for educating future teachers?

---

<sup>30</sup> Laskin received his LL.M. from Harvard Law School in 1937. Wright had attended in the 1920s.

**DG:** I think it had been recently created shortly before I lucked into it. Being designed for anyone around the world who had a strong undergraduate degree and wanted to teach law, it attracted a very diverse group to Harvard. So my fellow graduate students were a fascinating international conglomeration.

**CH:** You said there were some other Canadians in that class also?

Yes. Harry Arthurs<sup>31</sup> was in the same class, and there were three others: one other Ontarian, one from British Columbia, and a Nova Scotian.

**BPS:** Remind me what year that was?

**DG:** 1958-9.

**BPS:** What was the feeling at Harvard at the time, the vibe? Was it a Professor Kingsfield, *Paper Chase*,<sup>32</sup> kind of classroom experience?

**DG:** Yes, to a considerable extent. I had never experienced any of that previously. The poorly named “case method” of teaching was totally unknown in Manitoba. We studied cases, of course—cases and statutes were about all we did study—but the socratic approach to teaching, which is the essence of the case method and what Kingsfield used—was unheard-of at the Manitoba Law School. The students from Ontario were used to it, of course, but I found it quite remarkable. I’ve never had a very high opinion of that method of teaching, used strictly, because it’s a technique requiring a good deal more skill than didactic teaching does. And even at Harvard there were not many who were very skilled in using it. The few who were, however, were quite wonderful to watch and to interact with in class.

**BPS:** Were there any epic figures in your time at Harvard: professors who really stick your mind as influential and impressive?

---

<sup>31</sup> Harry Arthurs, Dean of Osgoode Hall Law School 1972-1977, President of York University 1985-1992.

<sup>32</sup> The *Paper Chase* is a 1971 novel by John J. Osborn Jr. which was adapted for film in 1973 and television in 1978-79/1983-86. It is set at Harvard Law School and tells the story of James Hart, a first-year law student, and his experiences with his brilliant contracts professor, Kingsfield.

**DG:** There were a bunch of them. But the one who stands out most for me was Henry Hart.<sup>33</sup> He had been a member of Franklin Roosevelt's 1930s "brain trust," and was a brilliant man, a learned and respected scholar. He wasn't a very good case method teacher, but he and another colleague, Albert Sacks, had developed a remarkable new approach to jurisprudence that we students sometimes called "jurisprudence on the hoof." Their course was called "The Legal Process," and Harvard required everyone who came as a graduate student—at least as an intending law teacher—to take it. It was a practically-oriented examination of how various parts of the legal system work in actual practice.

It was legal realism applied to specific parts of the justice and bureaucratic systems. Students were constantly asked to compare two faces of law: theoretical and actual, in a wide variety of settings. How closely did what the formal rules were expected to accomplish correspond with real-life outcomes in courtrooms and administrative settings? It was intriguing stuff, and got me reading Jerome Frank<sup>34</sup> and other legal realists. And that determined my personal approach to law: that it isn't so much about formal rules as it is about the people who administer them and the factors that influence those people. So, for me, what stood out above all else from the Harvard experience was Henry Hart and his Legal Process course.

**BPS:** All right. So you get back from Harvard and you start teaching...

**DG:** Preparing for teaching. I returned to Winnipeg in early 1959, was immediately put on the payroll, and spent the summer trying to figure out how I was going to conduct the courses I'd been assigned.

**CH:** In your coming to the law school, did you only deal with Tallin, or did you have an interview with the Board of Trustees before being hired?

**DG:** (Laughs) No. The Board generally stayed behind the scenes, though of course the Dean would never act without its approval. These were the days

---

<sup>33</sup> Henry Hart, Harvard Law School faculty, 1932-1969. See: Dale Gibson: Review of Henry Hart & Albert Sacks, *Myth and Justice in American Justice*, Cambridge, Harvard Law School casebook, 1958, in (2013) 50 *Alta L Rev* 916.

<sup>34</sup> Jerome Frank (1889-1957) was an American judge and legal philosopher who played a leading role in the legal realism movement.

of handshakes—informality prevailed. For example, it was fully two years after my return to Winnipeg that I learned I was an Assistant Professor. Before that I had assumed I'd been hired at the Lecturer rank, and no-one had told me otherwise. Come to think of it, I don't believe I ever signed a contract with the school.

Dean Tallin's relaxed approach to administration gave me a considerable scare at the outset. He had told me verbally that as soon as I got back from Harvard I'd be put to work—so long as I hadn't failed, of course. I then heard nothing at all from him until my Harvard graduation was looming the following spring. So I wrote him a letter asking him to confirm that I would be coming back to a job. And received no reply. My wife and I had very little money left at that point. We'd been planning to visit New York on the way home, but decided that if the job had somehow fallen through we had better not spend the money. So we roared back, and the day after our arrival I went to the law school first thing in the morning, heart in throat, and asked the Dean: "Are you still able to employ me?" "Of course we are!" he replied heartily, "I wrote you a letter about that." When I told him I had never received his reply, he went to the filing cabinet, opened my file, and—this is so typical of the administration at the time—said with a chuckle: "Oh! Well here's the letter. I signed it, but I guess I didn't mail it." That's how the place was run in those days.

Another example of that informality was the manner in which offices were furnished. On that first morning on the job, after shaking hands with Tallin and Streight and meeting Cliff Edwards and Mary Carey, I was shown my proposed office by the Dean. It was an empty room. "So how do I go about acquiring a desk, chair, filing cabinet, and so on?" I asked. "Come with me, my boy," said the Dean with a sort of crooked grin; and we descended by elevator to the basement, which turned out to be part of a vast catacomb extending as far as the basement of the Legislative Building. The ill-lit halls of that eerie space were lined with stacks of cast-off furnishings from government offices throughout the city and—who knows?—perhaps the entire province. "Take your pick," the Dean invited me, and went off to find a trolley for transporting the stuff to my office. It took me two or three trips, but before lunch my office was furnished with everything I needed—in slightly outmoded, but perfectly satisfactory, furniture. "Is there a list somewhere for me to record what I've taken," I asked the Dean. "Not to my knowledge," he replied. "No-one seems to care."

**BPS:** So now the expanded full-time team was complete?

**DG:** For that teaching season it was. Cliff Edwards had been there for almost a year at that point, so he and I plus Dean Tallin, Colonel Streight, and Mary Carey, who had been hired as the school's secretary and had also replaced A. J. Christie as Librarian, constituted the entire full-time staff.

But don't forget about Keith Turner. As I mentioned earlier, Keith left a successful litigation practice in mid-career, went off to Harvard a month or two after I returned, and seems to have revelled in the graduate experience while I was struggling through my first year as a law teacher. He returned with his LL.M. in the summer of 1960 to join our little team. He was assigned chiefly practice and procedure type courses, and the students loved him.

**BPS:** The Keith I remember was extremely bright, had a very dry, very sharp, sense of humour—a sort of absurdist sense of humour—and a just cosmically high sense of honour and ethics. A very interesting guy. Is there anything, any story or perception or something, about Keith that you want to put on the record here, Dale?

**DG:** You mentioned his sense of propriety, and I can give you one example that I then thought—and still think—was extreme, though I nevertheless admired him for it. He and I were working on some project together—I forget what it was. Then I wrote an article for the *Canadian Bar Review* criticizing the Supreme Court of Canada for the way they handled a certain tort case. One of the lines in the article was something like this: “As I read this judgment I was in the midst of marking exam papers, and if the judgment had been one of the exam papers I would have given it a failing grade.”<sup>35</sup> Keith came to my office close to tears and said: “I can't work with you anymore, Dale. I disagree so strongly with the disrespect you showed to the Supreme Court in that article that I just can't work with you anymore.” That's the kind of guy he was.

**BPS:** Did you patch things up afterward?

**DG:** Oh yeah, but we never worked together again.

---

<sup>35</sup> Dale Gibson, “Confusing Words from The Oracle,” (1978) 65 Can Bar Rev 693.

Just to complete the roster of that proto-group of new faculty members, Bryan, I don't suppose that either of you know the name Erlinger Eggertson?<sup>36</sup>

**BPS:** I do not.

**DG:** Well, Erlinger Eggertson was one of the early members of the full-time faculty as well, although not quite as early as Cliff, Keith, and I. He joined us in 1962 directly from practice. He was a young lawyer—a solicitor—who did conveyancing and that sort of thing. He thought he would like an academic career; but after he was with us for about three years he decided differently. Teaching didn't seem to work out for him, and he passed on. But I don't think he should be forgotten. He was a fine, friendly, eager fellow, and very much a part of our pioneer team.

**BPS:** Now that the school had several new full-time teachers, did you continue to use sessionals from practice as well?

**DG:** Yes we did. With all the courses we offered, we still needed them. And, of course, we had always valued the best of our sessionals. We considered them prize assets: model professionals, the type and quality of whom few other law schools could duplicate. But we were now able to prune the worst of the deadwood, with the result that even in those early years there was soon a very marked improvement in our pedagogic offerings.

**BPS:** You were speaking of furniture and suchlike in those early transition years, and I'm wondering about the mechanics of actually producing scholarship in those days. A lot of it would have involved handwriting being typed up by a secretary, correct?

**DG:** Well, yes. We had one secretary: Mary Carey.<sup>37</sup> Her recently-deceased husband had been a lawyer, and a sessional instructor at the school. He taught me torts. After his death during my sojourn at Harvard, she became the school's sole support staff. Also, because our half-time librarian left shortly after she arrived, she was made librarian. Mary did all of the typing

---

<sup>36</sup> Erlinger Eggertson, Robson Hall faculty, 1962-1965.

<sup>37</sup> Mary Carey, Administrative Assistant to the Dean, 1960-74.



for the Dean and the Recorder, as well as for those of us on the faculty who needed typing done. And she was very good. Yes, we would write things out for her—or we might use a dictating device.

**CH:** Interestingly, Mary's deceased husband Eric was a Harvard graduate from the 1930s.

**DG:** I had forgotten about that, Cam, but you're right. He was, by the way, a classmate at Harvard of Cecil Wright, the previously-mentioned tort law guru and law teaching rebel. Wright and Carey collaborated as graduate students on a term paper that is somewhere among my possessions.

**BPS:** Was there a separate law school library at this point, or were you just part of the Great Library?

**DG:** There was a law school library. Compared to a modern law school library, it was very small, but it covered the basics. The students had the opportunity to use either it or the Law Society's Great Library, which was just at the other end of the hall. So we weren't badly off for libraries in the sense of having lots of available books; but those who were designated as librarians—initially A. J. Christie and then Mary Carey—were not expected to do more than keep the books dusted and return books from the tables where they had been used to their designated places on the shelves.

Dean Tallin did all the ordering before I arrived. And Pete loved books, so he wanted to personally examine every new book that came in. But by my time he wasn't reading them quickly—if at all—so the books would pile up in his office. I'll come back to that problem later. Pete also had one or two strange beliefs about appropriate books for a student library. One of them that I recall was that insurance law is not law; so he refused to have any insurance law books in the law school library.

**BPS:** What was the basis of his theory that insurance law is not law?

**DG:** I don't know Bryan; too practical, I suppose. Anyway, after I had been there for a while the Dean decided that there should be more faculty supervision of the library; and I got the job. That is, I was given the title of Librarian. I wanted to do whatever I could to make the library more useful

to our students; but there was still this problem that the Dean was hoarding books in his office for months, sometimes years.

Not long after I was designated Librarian, I had a visit from a fellow called Stan Spooner, who was the local representative of Carswell Publishers, but was also a travelling salesman of law books from other publishers as well, servicing lawyers and libraries across the prairies. He was also, by the way, a wonderfully informative purveyor of legal gossip, free of charge, to all members of the profession he contacted in his travels. When I told Stan about my appointment, his eyes lit up, and he asked whether I had the power to order books. “Well,” I replied after a long pause, “why not?” So I ordered a few, wondering what the hell would happen when the Dean saw the bills. But the bills got paid—probably by Recorder Streight, and I had no backlash.

Eventually, I also found a way of dealing with the problem of book pile-up in the Dean’s office. Telling you about it will not show me in a good light—Keith Turner would never have done this—but history is entitled to the truth. I worked a lot in the law school at night, after the Dean had gone home, and the cleaning staff often left his office door open while they were doing their work. So I would tiptoe in there from time to time and carry a few books from his office to the library. I doubt that he ever noticed my depredations, because I don’t think he was actually reading a significant number of books at that point. In any event, I considered what I was doing to be a fair solution to the problem. The new books continued to be delivered to the Dean’s office, giving him a reasonable opportunity to examine them; but my midnight raids insured that they ended up where they should be after a reasonable interval.

**BPS:** The situation you were in was very different from the bureaucratic times of today.

**DG:** Oh yes. Another problem was that the library didn’t have a catalogue of any kind. I knew very little about being a librarian, but I at least knew that you had to have the names of the books, authors and subjects recorded on some kind of list or card index. So I recruited my mother, who was looking for something to keep her busy, to make a simple card index. I wrote out the names of all the books, their authors, and their subjects; and you can tell the size of our library because I was able to do so in a relatively short period of time. My mother then, again by hand, transposed the information

on my lists to file cards. And that was our first library catalogue. We got things done in those days, albeit primitively.

Happily, it was not too long before Shi-Sheng Hu,<sup>38</sup> an extremely capable professional law librarian, was hired, and managed in short order to convert my amateur operation into an efficient, modern, law school library.

**BPS:** Changing the subject sharply, Cam, you mentioned that there were places at the law school where you could see executions taking place?

**CH:** Well that's an anecdote; I think it was included in one of the collections of anecdotes. We were on the third floor as I recall, and one of the office windows from the back of the building overlooked the courtyard of the Vaughn Street Detention Centre.

**DG:** That's a conflation of two stories, Cam. Nothing like that could be seen from the law school's windows in the new Law Courts building; although it might well have been possible from the *old* Law Courts building which, as I mentioned earlier, burned down when I was a student. The notorious office window in the *new* building was in *my* office. And what it looked into when you and I were there was not the hanging yard, but a room in the art school where nude modelling for drawing instruction sometimes took place, and the models would often pose in front of the window. So that's what could be seen from my office—not hangings.

**BPS:** So did you find that more students would visit you as a result?

**DG:** Yes, and colleagues as well. I remember that Art Braid<sup>39</sup> was an occasional visitor.

**BPS:** In 1960—the year you returned to Winnipeg—there was a CALT [Canadian Association of Law Teachers] conference in Toronto that you and Dean Tallin attended.

---

<sup>38</sup> Shi-Sheng Hu, Robson hall librarian from 1967-1978.

<sup>39</sup> Arthur Braid, Manitoba Law School and Robson Hall faculty, 1964-2000; Dean, 1994-1999. Currently he is a Senior Scholar. For his interview, please see page 77 of this issue.

**DG:** I think he saw that as an opportunity to announce to the rest of the law teaching profession in Canada that we were actually taking steps to improve. I saw it as an opportunity to meet law teaching colleagues from across the country. Three of the latter were guys I was at Harvard with, and I met a whole bunch of others. So it was a valuable early boost to my professional development.

It was a little scary, also, because I presented a paper on a recent development in tort law,<sup>40</sup> and there in the front row was the great Cecil “Caesar” Wright, Tort King of Canada, listening with one ear while he read a newspaper. A terrifying trial by fire.

**BPS:** Was that a time when most Canadian law professors knew each other?

**DG:** A substantial proportion of the members attended the annual meetings, held every spring in conjunction with similar get-togethers of the other “learned societies.” And yes, those meetings were convivial as well as informative, and presented excellent opportunities to keep up on what was going on across the country.

**CH:** That was still the case when I joined in the mid-60s. There was a relatively small group, and everybody went religiously.

**BPS:** Speaking of teaching, today your contemporary Canadian law teacher thinks 12 credit hours is a lot, and is looking for release time to do their scholarship and stuff. What kind of teaching load did you have in the 60s?

**DG:** Heavy. I taught many subjects over time, and had a pretty heavy hourly load in the early years. In my very first year of teaching I taught torts, agency, negotiable instruments, and equity. I also had responsibility for the moot court program—though that may have started in my second year. It was something I undertook voluntarily because I wanted to revise it to include trials as well as appeals. The trials worked well, and were a lot of fun; but they were very time-consuming for me and the friends and family members I dragooned to play the roles of witnesses. Colonel Streight sadly died in the course of surgery during my first year as his colleague, and the following year

---

<sup>40</sup> “The Wagon Mound in Canadian Courts,” (1963) 2 *Osgoode Hall Law Journal*, 414.

I requested and was given his constitutional law course, which I'd had an almost indecent desire to teach, dropping equity to make that possible.

As for scholarship, few of the faculty wrote much at first, but I had a personal lust to write, so that added somewhat to the amount of time I put in.

**BPS:** I want to dwell on this teaching and writing thing, Dale, because you might have been one of the first, or at least among a minority in those days, who viewed a major part of their portfolio as being scholarship. My understanding is that in those days, if you went into teaching it was basically about teaching. You might do some scholarship, but a law professor was first and foremost a teacher. That's why people went into it, and that was the main expectation. Is that fair to say?

**DG:** It is reasonably fair of what was then the immediate past. But the situation was changing very rapidly right at that point. There was a sense across the law teaching profession in Canada, probably as a sort of shockwave from the Laskin-Wright revolution in Ontario, that scholarship was important. There was an exhilarating sense for those who had an interest and aptitude for research and writing that such work was now valued and welcomed. And it had become obvious that many of the younger guard of legal academics were keen about doing it.

**BPS:** Nowadays, whether you have a lust to write or not, you're going to write in order to keep advancing in the profession. It's just a routine expectation now that a young professor will be a productive scholar.

**DG:** While I love to write myself, I think it's sad, and stupid, to make it mandatory. It turns opportunity into obligation. And fails to recognize and appropriately exploit the remarkably varied talents existing within all professoriates. Why should a brilliant teacher with little or no interest in or talent for writing be forced to devote part of his or her time to mediocre scholarship? Or superb scholars be expected to teach as much as those who aren't cut out for research and writing? There are people, I think of Gerry Nemiroff, for example, and Cliff Edwards, who are amazingly gifted teachers and don't have much, if any, interest in writing. Why on earth should professors not be urged to concentrate that which they do best? The 'one-

size-will-damn-well-fit-all' uniformity model, leads to an excess of expensive publications that never get read, and simply doesn't make sense to me.

**BPS:** The *Manitoba Law Journal* was established in those early years: in 1962. I fought very hard to stop it being abolished a few years ago, and became its editor. I get satisfaction out of doing this stuff, but it is serious work. Tell me a bit about the origins. Were you involved in creating it? Were you one of the first editors? Was it based on the Harvard model?

**DG:** Well yes, it was my idea, and I was the first editor. We deliberately chose for the first two or three years not to have independent student editors à la Harvard simply because there was no tradition for students to fall back on as to how they should go about producing a journal. Harvard, and most other well-established law schools, had been producing journals for a long time. It was a tradition that the better students got into that work, and there were well-established procedures for doing it. We decided it would be a good idea to kick-start our publication with a faculty editor until such traditions and procedures could be developed. I was therefore the editor for the first few years—with plenty of student involvement, of course—and when we felt that the students were sufficiently familiar with the process we turned it over to them.

**BPS:** When did the transition go from faculty editor to student board and faculty advisors?

**DG:** I don't know, maybe three years into the process, maybe longer. And I can't remember who the faculty colleague was who took over from me, or whether the students were in charge by that point.

**CH:** I took over from you, Dale.

**BPS:** So Cam, when you took over was it as editor or as adviser to the students?

**CH:** I think I took over from Dale as editor, and then the transition occurred; but I would have to look back at the early volumes to pinpoint that.

**BPS:** Canadian law journals are all externally peer-reviewed now on the SSHRC<sup>41</sup> model, so everything that goes out has to go through another layer of editorial approval, which is to have independent outside people look at all the stuff. Was SSHRC involved in your time?

**DG:** We didn't have external review in the years I was involved.

**BPS:** Basically, American law journals still don't. The *Harvard Law Review* is still edited entirely by students.

## V. MORE PRESSURE & FURTHER RESPONSES (EARLY 60S)

**BPS:** How were all these changes you were making received in Ontario?

**DG:** They were considered inadequate. And it was the continuing refusal of the Law Society of Upper Canada to accept what they considered to be halfway measures—along with a surprise factor I'll tell you about in a moment—that eventually drove us to a full-time model.

**BPS:** So a professional association was demanding a more academic model? There's a certain irony there.

**DG:** Well yes. But remember, by that point Ontario had developed a model that recognized the importance of academic instruction by a full-time faculty in addition to a bar admission course and articling.

**BPS:** Now we are getting to the memorable quote from J. T. Thorson.<sup>42</sup> Thorson taught at this law school?

**CH:** And he was its Dean in the 1920s.

---

<sup>41</sup> Social Sciences and Humanities Research Council (SSHRC) is "the federal research funding agency that promotes and supports post secondary-based research and research training in the humanities and social sciences." <http://www.sshrc-crsh.gc.ca/about-au-sujet/index-eng.aspx>>. This special issue is funded through a SSHRC grant.

<sup>42</sup> J. T. Thorson (1889-1978), was a lawyer and politician from Winnipeg. Manitoba Law School faculty 1919-1926; Dean 1921-1926; part-time faculty 1929-1941. Later President, Exchequer Court of Canada.

**DG:** Thorson's early contributions have never been studied to my knowledge, and they should be. He was a brilliant young Manitoba lawyer who in the early 1920s was asked to turn the law school into a full-time operation, and did so. Whether it was he who proposed that in the first place, I'm not sure. He made major changes, including full-time instruction, but the changes were only in effect for a short time. I suspect, without knowing, that he got so much opposition from the profession that the system broke down, he resigned, and everything went back to what it had been. That short era in the history of Manitoba legal education really needs to be studied more fully.

**CH:** To get back to the quotation you mentioned, Bryan, during that period when we were trying to satisfy Ontario, Joe Thorson, declared publicly that we were "the worst law school in the Commonwealth."

**DG:** Which significantly increased the pressure on us!

**CH:** And it's interesting that when he was the Dean in the early 20s and introduced and supervised the full-time program, we were declared by the Carnegie Foundation, and one other group—maybe the American Bar Association—to be one of the best law schools in the world!

**BPS:** When we were looking through the archives preparing for this issue, I think I came across that reference.

**DG:** I had forgotten all about it, and my memory of it remains vague. Which underlines the point that there's an article that needs to be written about that whole little time warp in our faculty's history.

**BPS:** Did you know Thorson,<sup>43</sup> Dale?

**DG:** Yes, though not well. A very interesting man. I resented his slamming us when we were doing our best to improve, but in the long run he probably helped our cause.

---

<sup>43</sup> Joseph Thorarin Thorson (1889-1978) was a lawyer and politician from Winnipeg. He was made President of the Exchequer Court of Canada in 1942.



**BPS:** Did he become Deputy Attorney General of Canada?

**DG:** I don't believe so. He became the President of the Exchequer Court of Canada.

**BPS:** Later the Federal Court of Appeal.

**CH:** Before that he was a minister in Mackenzie King's government.

**DG:** Was he a full minister?

**CH:** Yes, in the 40s.

**DG:** He was a hot Liberal; and a very outspoken man. After retiring from the Exchequer Court he went back into practice, and mounted a campaign against Pierre Trudeau's legislation extending the use of the French language in governmental matters.

**BPS:** Yeah, he litigated challenges to the *Official Languages Act* on the basis that it was an unauthorized use of taxpayers' money. Although he lost on the substance of the challenge, it was a ground-breaking case on the issue of standing—his standing as a taxpayer to make the challenge—and he was successful on that issue.

**DG:** Joe Thorson was a very interesting, very bright, very friendly, very feisty, guy.

**CH:** When you say feisty, there was an incident in some country in South America where he was involved with a mugging. He wasn't going to be mugged, resisted, and ended up being shot in the leg or something.

**DG:** That's right. He attacked the mugger—at the age of 70-something—and I think succeeded in chasing the guy away.

**BPS:** So with Ontario still not relenting, and Joe Thorson stirring up the pot publicly, how did the Manitoba Law School respond?

**DG:** There might have been things going on behind the scenes that I knew nothing about; but from my perspective as a junior faculty member, it seemed that we just kept doing what we had been doing: continuing to try to improve. There were some important personnel changes, however. Chief Justice E. K. Williams, having retired from the bench, decided to move to England, where his son Rowland was a solicitor. And, at roughly the same time, G. P. R. Tallin resigned as Dean. Recorder Cliff Edwards replaced Tallin as Dean, and Mary Carey became Recorder. And—very significantly—Justice Brian Dickson became Chairman of the Manitoba Law School’s Board of Trustees.

**BPS:** You said earlier, Dale, that Dickson, future Chief Justice of Canada, was a pivotal figure. I didn’t know that before.

**DG:** Oh, he was. I think he was the one who basically made the changes happen. He was able to find money, and he had contacts just about everywhere in Manitoba society. I wasn’t a witness to much of what he did, but once E. K. Williams was off the scene, and I suspect even before Williams left, Brian Dickson had become the school’s new *éminence grise*.

**BPS:** To sum up, there were big changes in Ontario based in part on the more academically-oriented American approach. Manitoba had fallen quite far behind with its old model. One of the initial measures to get with the times was to hire a newer generation of teachers such as yourself, who had experienced the old system and were critical of it. Some of you had gone to Harvard and were in contact with other places that had gone to a more academic model. And, professionally, there was great pressures: the Law Society of Upper Canada would not recognize your graduates. Then there were public criticisms like “worst law school in the Commonwealth” from influential people like Thorson. So lots of forces, both practical and intellectual, were coming together.

## VI. SYSTEM CHANGES COMPLETELY (1964)

**DG:** That’s right, but the transition to the complete new system took several years longer. We kept improving, and Ontario kept saying: “You haven’t done enough.”

One of the further steps along the way—this was before the Dean’s retirement and Williams’ move to England—was that because of continuing criticism the Board of Trustees established a committee, chaired by the Dean’s brother, Clive Tallin,<sup>44</sup> to re-examine our situation and decide whether stronger changes were needed.

**BPS:** Was Clive Tallin a lawyer?

**DG:** He was a prominent lawyer. I don’t know the back story, but it was perhaps Dickson’s influence that caused the committee to be established. It certainly wasn’t wise from a public relations perspective to put Clive in charge. He was a highly respected and very capable man but—the Dean’s brother? Anyway, many people made representations to that committee—in written briefs rather than verbal presentations. Stupidly, I suppose, I wrote one also.

**BPS:** And yours called for a full-fledged law school on the Ontario model?

**DG:** Probably not. I can’t now recall precisely what I wrote, but it was certainly critical of our improving, but far from perfect, operation; and it caused E. K. Williams to become very upset with me and propose that I be fired. I didn’t know this until Cliff Edwards told me afterwards. And Cliff said it was the Dean, whom I had implicitly criticized in the brief, who came to my aid, saying something like: “No, he’s a valuable member of the faculty and we need him.”

**BPS:** I didn’t know much about Dean Tallin, but I now hold him in very high regard.

**DG:** I always did. Despite my criticisms of the system he defended, and of some of his personal foibles, I always respected Pete Tallin hugely. He was an erudite, talented man, consistently devoted to his students, his friends, his colleagues, and his profession. And to doing his duty as he saw it. When

---

<sup>44</sup> Clive Kerslake Tallin (1907-1985) graduated from the University of Manitoba with an LL.B. in 1932, was prominent in practice throughout his life, and served as Vice President of the Manitoba branch of the Canadian Bar Association and President and Life Bencher of the Law Society of Manitoba.

I learned from Cliff that he saved my bacon on that occasion, my estimation of him soared.

Then—unexpectedly—it turned out that I wasn't the only Manitoban pushing for more substantial changes. First the committee, to the surprise of many, recommended that the first year of law school be made fully academic, with articling delayed until the second year. We implemented that recommendation the following year; but, in the middle of that first experiment with full-time teaching, a *deus ex machina* appeared in the form of University of Manitoba President Hugh Saunderson!<sup>45</sup>

The university was in an expansionist mode at that time, and Saunderson was very keen to acquire a law faculty because he believed the best universities had law faculties. I don't know the sequence of behind-the-scene arrangements, but I suspect that they began with negotiations between Saunderson and Brian Dickson. Someone should check out the Dickson papers about this. Anyway, suddenly we got this proposal from the University of Manitoba, one of the two partners in the operation of the Manitoba Law School. And the proposal had promises of substantial funding attached. Not only did the university want to take over the law school totally, but it was willing to pay for it. One of the reasons that the Manitoba Law School Board had not felt that it could do a heck of a lot more than it was doing was that it didn't have much money behind it.

So, before our first year's implementation of the Tallin Committee's compromise proposal was complete, the ultimate breakthrough occurred; and everything was handed over to the University of Manitoba.

**BPS:** Was there any resistance from the practicing bar on the basis that the University was not going to do as good a job in the academic department, or that the profession would be losing cheap articling labour?

**DG:** I don't think the cheap labour thing was ever significant, but there certainly was a lot of criticism that the training would become far too theoretical. But such grumbling in the profession was never organized; and there was a good deal of support as well. Bear in mind that the agreement reached included the same practice-training solution that Ontario had already pioneered: a bar admission course and articling following university

---

<sup>45</sup> Hugh Hamilton Saunderson B.A. (Man.) M.A. (Man.) Ph.D. (McGill) served as president of the university from 1954-1970.

graduation. That was not a solution I had ever favoured personally, but I considered it to be a reasonable compromise in the circumstances. As for the Law Society, I suspect that it probably heaved a sigh of relief that it would no longer be responsible for running anything but a bar admission course. A distinguished and scholarly senior member of the profession, A. Montague ('Monty') Israels,<sup>46</sup> was put in charge of creating and initially administering Manitoba's bar admission course, and I believe he and his colleagues did a fine job.

## VII. INTERIM ARRANGEMENTS (1964-1970)

**BPS:** But the school—now the University of Manitoba faculty—did not go out to the campus immediately?

**DG:** No. The move didn't occur until midway through the 1969-70 term: January 1970.

But we continued to expand in the old premises. The faculty—that parade of distinguished and not-so-distinguished visiting professors we talked about earlier—continued; and to accommodate them we were forced to rely on expedients such as three makeshift offices on the landing of the Law Court Building's grand main staircase. Our enrollment also increased—and students were now with us all day, of course—so the office-size room previously used as a student common room was replaced by a large second floor space we somehow borrowed from the powers that were, and it was furnished thanks to money raised—or donated—by Harry Walsh's partner Archie Micay.<sup>47</sup> God knows where Shih-Sheng Hu stored the books he was rapidly acquiring for our library. And I believe our support staff grew modestly too.

It was a time of makeshift and trial-and-error arrangements, with many attendant inconveniences; but I felt—I believe most of us did—that the wind had shifted and was blowing fair. Remember that this was the mid 60s, when young people—which most of us still were—thought the world

---

<sup>46</sup> A.M. (Monty) Israels, Q.C. (1904-1973) was a distinguished lawyer, respected leader of The Manitoba Bar and the first Director of the Manitoba Law Society's Bar Admission Course.

<sup>47</sup> Archibald R. (Archie) Micay, Q.C. (1914-1998) was a bencher for the Law Society of Manitoba, served as president of the Manitoba Bar Association in 1966, and was a senior partner in the law firm of Walsh Micay and Company.

belonged to us. I recall receiving a letter from Harry Arthurs feeling me out about the possibility of my moving east; and I thought: “Why would I want to do that when everything is so exciting here?”

### VIII. ROBSON HALL (1970 TO DATE)

**CH:** I have a theoretical question for you. I know that you were very much in favour of moving the faculty to the Fort Garry campus; but had United College then been the University of Winnipeg, which it became, would you have been more in favour of staying downtown and becoming the Faculty of Law at the University of Winnipeg, instead of coming out to the University of Manitoba campus?

**DG:** Absolutely, Cam. I can remember looking around downtown Winnipeg at that point for a building that we might be able to use as a downtown-based law school. One side of me, the academic side, delighted in the idea of being around other scholars from other disciplines; but in terms of professional training, I felt it would have been better to stay downtown, closer to where law was being practiced. However, President Saunderson insisted that we come to the campus. And, in January, 1970, we did just that.

**BPS:** When you first moved out to the university, did you have any concerns about envelopment and takeover? About being a captive of the central university? Or was it your expectation that it would pretty much remain autonomous even in the new environment?

**DG:** I had some of the former concerns—which is why I wanted to stay downtown—but those concerns were allayed by the campus location we were given. The location that was found for us, at the back of the campus in an extreme corner, was, I felt, highly desirable. I did not want to see the law school—which is a graduate faculty, after all—placed where our students would be forced to mingle constantly with undergraduates. There’s a significant difference in my view between the serious-mindedness of the average 17-year-old and the average 20-year-old. Perhaps I was alone in believing that, but I did.

I can’t remember whether we had any choice in the location. Do you remember, Cam?

**CH:** No, I don't. I really wasn't privy or involved in that matter. My recollection is that, aside from maybe Cliff's involvement, you were a one-man band. I'm not saying that in a derogatory sense. You were the person who moved us to the campus.

**DG:** I wasn't entirely alone; there was a faculty building committee. I don't recall who all was on that committee, though I remember that Burtie Bass<sup>48</sup> was very active. He, along with his wife Doris, did an astonishing job of acquiring us a fine art collection for the new building in a very short space of time. But I chaired the committee, and should remember whether we were consulted concerning the building's location. My mind's a blank about that, however.

It might be appropriate to mention that, even though most of us seemed happy with the relatively isolated location we were given, we also took a few additional steps to help students keep in touch with the practice of law and its traditions. We arranged with Manitoba's legal aid authorities, for example, to have an office at Robson Hall where students wishing to engage in a little actual practice of law while studying law academically could do so by assisting in minor legal cases under the supervision of volunteer lawyers. We also included in the design of the new campus building what I believe was, at least at that time, the finest moot courtroom in any Canadian law school.

And—if this counts—in order to remind students of the early roots of their profession-to-be, I persuaded Manitoba's Minister of Public Works, who happened to be a cabinet colleague of my law partner and an old friend of my father-in-law, to let us have, on permanent loan, the fine old stained glass representation of Justice that now graces Robson Hall's main staircase. It had been rescued from the aforementioned fire in the old courthouse building, and had been in storage ever since the fire.

**BPS:** When I came, I didn't have a sense that the law school was integrated into the central university. I basically felt that while I was part of a larger university there was a high degree of internal management of our own affairs. Was that your sense at the beginning of the transition—the 60s and

---

<sup>48</sup> Burton Bass, LL.B. (Man.) M.A. (Harv.) taught environmental law, property law, family law and litigation at the University of Manitoba for 26 years.

70s—that the law school, while on campus, was not controlled, coloured, dominated by the university?

**DG:** Yes, we had a fair degree of autonomy at that point. And, at least at first, there was very little contact between our faculty members and their counterparts elsewhere on the campus. I personally enjoyed making greater contact with other areas of scholarship and other teaching disciplines, while some of my colleagues preferred to remain isolated or semi-isolated from the denizens of all those other buildings. Before long, however, I was far from the only member of our faculty who rubbed shoulders with other segments of the campus community. That often began as a result of some of us being seen as having skills that were useful to other parts of the community. Roland Penner, for example, became quite involved with the rest of the campus, partly because of his labour-relations experience. And Art Braid contributed greatly as a member of the Senate, and also as a general legal advisor. So some linkages grew spontaneously.

**BPS:** I would say there is now a lot of concern about that at this law school and other law schools in Canada, due to increasing bureaucratic intervention by central administrators, are losing control over a lot of things that are important to law schools.

**DG:** Yes, but that has little to do with the intellectual intermingling of disciplines; but rather with the subjection of all disciplines to a whole new order of management, driven by considerations of fiscality, if that's a word, and perhaps self-aggrandizement of some administrators, with little regard for the scholarly and pedagogical needs of any of the disciplines. The interdisciplinary contact I anticipated, and had the pleasure of experiencing after moving to the campus, was intellectual, not administrative.

**CH:** Dale, I think that in the early days you alone among us were interested intellectually with more involvement with the rest of the university. Art and Roland were involved, but that was in an administrative way, not an intellectual way. You alone were interested in cross-fertilization with other disciplines. The rest of us had no interest in that, and were just doing our Faculty of Law thing.



**DG:** I think that's a fair statement Cam, concerning those early years. I can't speak to the situation in the last quarter-century, of course, since I've been in Alberta most of that time. But I do know that DeLloyd Guth has been in considerable contact with other historians at the University of Manitoba and the University of Winnipeg, and I thought that Bryan (Schwartz) maintained connections with the Business Faculty. I also have the impression that some of the younger faculty members now rub shoulders with the inhabitants of other corners of the campus. I'd be a little surprised, and considerably disappointed, to find that that impression is mistaken, and that the faculty remains quite as isolationist as it was in our first years on the campus.

**BPS:** When did unionization take place?

**DG:** I don't remember sharply, but Roland could tell you that. He was very much involved—perhaps he masterminded—the whole thing.

**CH:** It was in the late 70s.

**BPS:** And I think Art Braid was very much opposed, wasn't he? There was some sort of action brought in the courts opposing the unionization. That's my memory.

**CH:** We had a vote in the Law Faculty, as I recall, and the majority of us were opposed to becoming members of the union. Some court action was taken, but it wasn't successful.

**BPS:** Coming back to you briefly, Dale, for a couple of wrap-up questions. Did you ever give any thought to going to another law school?

**DG:** Almost never. I did eventually, in 1991, take early retirement from the University of Manitoba and moved to Edmonton to enter practice and join the University of Alberta on a halftime basis. But until then I had been content to remain in Winnipeg, where I was born, and at the University of Manitoba, where, as I've said, I was thrilled to have played a role in the evolution of the province's legal education system, and where I'd had a very satisfying subsequent career.

The only time I was tempted to leave Manitoba before I took early retirement was when I was offered Bora Laskin's former post teaching constitutional law at the University of Toronto after he left to go to the bench. I considered the offer a great honour, and flew to Toronto to check out the circumstances. They were excellent, and I thought seriously about moving for a day or two, but decided against it. Ted Alexander got the job.

**CH:** And your practice. Was your early practice with Al Mackling in addition to your full time employment at the law school?

**DG:** Well yes it was. It was pretty minor. The only thing I wasn't happy with in my articling experience had been that I had almost no opportunity to do court work. I did a lot of opinion, conveyancing, and contract work with the CPR, and I got to know about a lot of interesting litigation that was going on. But, apart from occasionally representing the company at inquests, I had very little to do with litigation myself.

Al had opened his practice while I was at Harvard, and when I got back he needed some assistance. Basically, he wanted to be able to get away for a holiday in the summertime. So he asked if I would take charge of his practice for a month each summer, and occasionally at other times, in return for my using his secretary's services and his office facilities to carry on the miniscule personal practice I then had. We called the firm Mackling and Gibson, but it was not a partnership in any real sense. That arrangement continued until my first sabbatical in 1966. My own practice grew a little during those years. But it was almost like a hobby—never a heavy time involvement. Considerably later, chiefly as a result of my writing about constitutional law, I began to be asked for constitutional advice, first by the Manitoba government and then by the government of Canada, and a much larger constitutional law practice started to burgeon.

When I moved to Edmonton, where I took a half-time sessional position at the University of Alberta, I began practicing, also on a halftime basis, with a large law firm. I hated the large law firm atmosphere, however, and decided to open a small boutique practice in constitutional law. That continued until 2008, when, at the age of 75, I thought I'd like to get back to scholarship. So I quit practice and began to write legal history again.

**BPS:** My armchair history sense is that hard work and hard drinking were traditionally part of the culture of lawyers, but that things may have changed

over time. Law has always been a high-stress profession, but was it, and is it still, taken for granted that you had a couple of shots at the end of the day? Was that, and is that, a significant part of it?

**DG:** I have to be cautious answering that question, since I still rarely miss my scotch at 4:30 in the afternoon—scotch and popcorn.

The notion of the hard-drinking litigator had, and still has, some basis in reality, and I have known some. But I don't think it has ever been nearly as large a phenomenon as the myth implies. And, apart from rare exceptions—of which Chief Justice E. K. Williams may possibly have been one if the folktales are to be believed—the hard-drinking litigator generally destroys his or her professional practice in a fairly short span of time.

There was only one occasion in practice when I was personally affected significantly by the insobriety of such a person. I was retained by the Government of Canada to prepare a very important case, working in Ottawa under the alleged leadership of such a person—a prominent Government barrister. I found that he was rarely sober, and never helpful, when he showed up (he didn't always) for our scheduled meetings. Eventually, I and another lawyer working on the file decided we simply had to ignore him and do the job on our own—which we did to the client's entire satisfaction. Since ours was not the only case where the same problem had arisen, the Government of Canada got rid of the fellow—by appointing him to a provincial superior court! It gives new meaning to the expression of “sober as a judge.” But in my experience such situations are far from the norm. Most lawyers I encountered in practice were as sober as they needed to be to practice their profession conscientiously and well.

**BPS:** Returning to the central theme of our discussion, Dale, are you happy with the outcome of the educational evolution you've described?

**DG:** I loved my years as a professor at the University of Manitoba; and while I functioned as a regular member of its law faculty I was proud of the quality of my colleagues' collective output, both as teachers and scholars. I believe the law faculty improved markedly under the auspices of the University of Manitoba, and that its faculty members have every reason to hold their heads as high as their counterparts across the country. I have no convinced opinion as to whether the changes we've been discussing, and which we ultimately came to share with all under common-law law faculties in

Canada, have resulted in a profession better-qualified to serve its clients than that produced by the Manitoba Law School. I think today's lawyers tend to be more thorough, more verbose, probably more cautious, and certainly more expensive, than they used to be; but whether that makes them better or worse than their predecessors is not something I care to comment on.

**BPS:** Thank you so much Dale!

**DG:** It's been a great pleasure, Bryan, to chat again with you and Cam.