

Interview with Harold Cochrane*

B R Y A N P . S C H W A R T Z

I. INTRODUCTION

Bryan Paul Schwartz (**BPS:**): Do you prefer to be called Harold or Sonny?

Harold Cochrane (**HC:**): Sonny is what most people call me. My dad's name is also Harold, so in Fisher River, which is where I grew up, I was known as Sonny. In First Nation communities, almost everyone has a nickname. The elders in Fisher River called me "Mista-Man" when I was growing up. That name was given to by my grandfather when I was a little boy. Mista in Cree means "big," my grandfather called me his big-man (mista-man) when I was a little boy.

BPS: Was anyone there while you were growing up who had been a lawyer? What did people think of the possibility of being a legal practitioner?

HC: Fisher River is about three hours north of Winnipeg. I did not know of any lawyers growing up. There were no lawyers from Fisher River and there are no lawyers in my family. I'd heard of Ovide Mercredi¹ who was

* Interview conducted by Bryan P. Schwartz.

Mr. Cochrane is a member of the Fisher River Cree Nation, and practices in the areas of Indigenous Law, Business Law and Child Protection Law. Prior to entering private practice, Mr. Cochrane was legal counsel at the Federal Department of Justice and he worked in the criminal prosecution, tax litigation, and aboriginal law sections.

Mr. Cochrane is often engaged by First Nations in land claim negotiations, Crown consultation processes, governance issues and business development on First Nation territory. Mr. Cochrane is legal counsel to First Nation Settlement Trusts in Manitoba and Ontario where he provides full comprehensive legal services.

On July 1, 2017, Mr. Cochrane started his own law firm, Cochrane Saxberg LLP, and it is currently Manitoba's largest Indigenous law firm specializing in Indigenous Law including child protection.

¹ Ovide Mercredi, a member of the Cree First Nations community, graduated from the

national chief of the Assembly of First Nations.² I remember when Ovide was the national chief he was doing his circuit around the communities. He came to Fisher River in 1992 during the Charlottetown Accord³ and talked to the people in Fisher River. I went to his talk and I didn't know what he was talking about, it was above my head, but I followed him in Fisher River and I followed him to Peguis. I listened to him speak twice that day. That's how enamored I was with Ovide. I just found he had a great speaking style. I didn't know him then, of course, but I know him now.

Actually, my interest in becoming a lawyer was first sparked in grade nine. I grew up on a reserve, and I went to school on a reserve until I left to continue school in Winnipeg. I went to school there until grade ten. Back then it was a federal school run by the Department of Indian Affairs.⁴ I always say that the schooling then wasn't great. The Chief and Council used to come to my parents' house and they used to talk. I would sit and listen to them talk about different issues they were dealing with. I would sit in the corner and not interrupt and not get in the way and I would listen. I remember one of the councillors turned to me and said, "You know Sonny, we need our own lawyer." And that is what sparked my interest to become a lawyer. Of course, I did not know any lawyers, I did not know how to get there or what to do. That was the spark for me. My parents were also very supportive and focused on education. Even though my dad went to residential school, and he did not have great experiences at school, education was always very important to him. He instilled that in me growing up. It is the reason I left the reserve and moved to Winnipeg when I was 16 years old.

BPS: Hang on a second there, I'm intrigued by that pivotal moment. The context of, "We need our own lawyer;" was there a particular context to the councillor saying that? The lawyers coming through just didn't have sufficient cultural context or presence in the community to understand the fundamentals of the issue?

Faculty of Law, University of Manitoba in 1977. He is the former National Chief of the Assembly of First Nations.

² The Assembly of First Nations aims to protect and advance the interests of Indigenous peoples.

³ The Charlottetown negotiation was a failed attempt to amend the Canadian Constitution; it was proposed by the federal and provincial governments in 1992.

⁴ The Department of Indian Affairs and Northern Development was created in 1966.

HC: I can remember them talking about their lawyer at the time and, if I can recall, they were concerned or complaining that their lawyer did not understand the issues. The lawyer did not grow up in Fisher River or on a First Nation reserve and as result he did not and could not appreciate the issues. So that, I think, was what prompted the turn to me in the corner, saying, “We need our own lawyer.”

Earlier in my career I would go back to First Nation communities throughout Manitoba, and I would talk to high school students. I did that because, when I think back, I was really no different than those kids. I was just a kid on the reserve who happened to grow up and have certain fortunes turn my way. I had parents who taught me to work hard, and grandparents who I was very close with and who loved me. They played very important roles in my life. At the end of the day, I was just a kid on a reserve who happened to be sitting in that corner listening to the leadership talking to my dad. There is still a need for Indigenous lawyers. I hope that future lawyers who are coming up really take the time to cut their teeth, to get in the trenches, to learn the law, because those are the types of lawyers we need. We need lawyers that are well experienced and well taught. A lot of First Nation lawyers, when I first started, were going in-house, which is great, but there are certain limitations, I believe, in that type of environment. If you’re going to come to our firm, you’re going to do the research, sit in second seat or third seat on a trial, and you’re going to do that for a number of years and really learn lawyering skills. We need more qualified Indigenous lawyers like that.

The one thing that has been invaluable during my legal career is my growing up on a reserve. I know first-hand and appreciate the culture, the humor, the way of talking and the way of living. I also know the importance of treating people with respect, no matter their circumstances. I always say that any lawyer can learn the law. But one thing you can’t learn are the life experiences from living and growing up on a reserve with the people. As a result, I believe I have an in-depth and real (not fake) appreciation of the special and unique issues and challenges facing Indigenous people. I was in Pauingassi First Nation⁵ a while ago. I flew up there and spent an entire day up there. Each community, of course, is different; they have different

⁵ Pauingassi First Nation is located approximately 280 kilometres northeast of Winnipeg, Manitoba. Winter roads are created seasonably, and there is fly-in access, however, there are no permanent, all-season roads.

languages, different treaties, different customs, and different traditions. But at the end of the day, the moment they know I'm an indigenous lawyer who grew up on a reserve, everyone sort of relaxes a little bit. There is almost instant acceptance most times. I'm able to joke, and converse with people in a certain way, which I think is very important. I have a lot of First Nation clients dealing with difficult, difficult circumstances: flooding in the north, poverty, and suicides for example. But, the one thing you'll always see, feel or hear is the humor. I can have a boardroom full of people from the north, and we could be talking about the most deplorable conditions, but the one thing that's always coming out of the board room is laughter.

BPS: Certainly in my own cultural tradition developing a sense of humor through very difficult times is regarded as one of the defining characteristics of the whole civilization. So it's very interesting to hear you say that about the community you come from. You mentioned you went to an INAC school, was that a residential school or a day school?

HC: No, the schools were federally controlled. So Indian Affairs hired the teachers, sent out the teachers, and hired the principal, and those were the people who taught us in school. Now in Fisher River we have "local control," meaning that the First Nation has more of that control, generally through a Board of Directors or Board of Education. They're still following the provincial curriculum, but they can hire their own teachers, and to a certain degree tailor the curriculum. In Fisher River, for example, we have Cree language taught in the school. I was taught Cree in school growing up in Fisher River. It was around 1986, the year I left, that my particular community gained local control of education.

BPS: Did your community go through the destruction of the kids having to go away to residential schools?

HC: Yes. There were generations and generations of kids taken from their families in Fisher River. My dad, for example, was taken to Portage residential school. My grandmother was taken to Brandon residential school. My aunts and uncles were all taken to residential school. The people in Fisher River (including my family) were not spared the atrocities of residential schools. I grew up hearing the stories of abuse first hand. My dad still has the scars and you can still see where his finger-knuckle was

broken. I was fortunate enough to be born a generation later. I did not have to go to residential school. I tell my children that all the time.

In Fisher River, the school goes up to grade 12, so nursery to grade 12. In my particular case, I moved from the reserve after I finished grade 10, despite the fact that the school went to grade 12. My dad went back to school when he was 30, finished when he was 35, and became a plumber on the reserve. He was lucky that way, and I grew up working with him. I can remember it was he who “forced me” to leave Fisher River. I think he (and my mother) knew that if I didn’t leave the reserve then to pursue education, I probably would not have left. I would not be where I am today. So in 1986, my sister, my mother and I moved to Winnipeg. It must have been very difficult for my parents, especially when I begged them to let me live in Fisher River, but it was the best thing. My parents were very wise.

The first year I moved to Winnipeg was the toughest year of my life. I was 16 or 17 years old and I left all of my friends in Fisher River. As a student in Fisher River, I had very good marks, I was a good athlete. I quickly realized at my new school in Winnipeg I was not such a hot shot. My marks dropped and I was struggling to keep up academically. I had no friends and I was shy and lonesome for the first time ever. It was very hard. I also talked and dressed differently. I went home every single weekend back to Fisher River that first year. I can remember sitting at our kitchen table crying as a teenager, it was very, very tough. I made it through that first year (grade eleven) and by grade twelve I started to adjust. I had started playing some sports at school; I’d met some people and was a little more comfortable.

When I started first year university, I was excited because a group of my friends from Fisher River had also moved to Winnipeg for university. We started university at the same time. By this time, I could see how fortunate I was because I already had two years of schooling in the city, which then was a higher level, but more importantly I had already adjusted to city life. After a few months of university that first year, I was the only student left from Fisher River. My friends could not do it and they moved back home. I could understand because I went through the same thing a few years earlier. When I first moved to Winnipeg, I can remember walking onto Portage Avenue one day and being overwhelmed by the cars. I slowly backed off Portage Ave because I didn’t want to cross. I can understand the

challenges and difficulties that kids from reserves face when they moved to Winnipeg for the first time as students.

BPS: Ken Young,⁶ one of the first First Nations persons to go through law school, has mentioned to me that feeling of isolation. It seems to come up over and over again.

HC: I can remember sitting at my new school in Winnipeg and not knowing anyone. In Fisher River, I knew everyone, and everyone knew me. Fisher River was my home. The school I went to in Winnipeg had about 1200 to 1400 high school students, which was about the same number as the entire population of Fisher River back then. I remember sitting in the hallway at the school watching these kids, it seemed like they all knew each other. They had gone to school together, they were comfortable, and there I was sitting, watching them and I felt alone, totally lonesome. I'm sure every student leaving the reserve for the first time goes through that. Looking back now, I wouldn't change it. It forced me to grow up, forced me to have some pretty thick skin and I believe I was better for it in the long run, I became a lot more independent.

BPS: Let me ask you a bit about that. What is your perception of how other students saw you?

HC: I don't know. I was pretty shy; honestly, I didn't really make an attempt to go out and introduce myself and do that type of thing. I was so lonesome; I just couldn't wait for Fridays to come because every Friday, I went back to the reserve. I'd spend every weekend on the reserve and come back on the Sunday.

BPS: What did your contemporaries, the ones who'd stay behind and weren't going to University, have to say to you? Were they wondering why you were going to Winnipeg? Or thought that you were wasting your time?

HC: No, I never had any of that. I kept very close contact with my friends, although back then there were no cellphones or any of that. I think for the

⁶ Ken Young was the first Indigenous graduate from the Faculty of Law, University of Manitoba. He graduated with his LL.B in 1973.

most part people were supportive of me; they never changed their perception of me. My family and friends still live in Fisher River, and I still have very close connections to Fisher River.

II. LAW SCHOOL

BPS: What were you studying as an undergrad before you came to law school?

HC: I was in the Faculty of Arts. I majored in criminology and minored in native studies. When I got my degree, I applied to law school.

BPS: How open and exploratory are we in higher education when we're dealing with topics involving Indigenous people? In your classes, whenever Aboriginal or Indigenous topics came up, did the teachers and students feel free to just put it out there, say what they thought about it, have a lively conversation? Did you get the sense that people were being too politically correct and were afraid to say anything? Did you get the sense that people didn't know what they were talking about because they didn't have any experience?

HC: I don't think anyone held back just because I happened to be in the class. I can remember a lot of ignorance about Indigenous people. For example, a lot of people thought "Indians" do not pay tax. That is not true. There were comments "Indians" getting too much money for this and that, some comments about "drunk Indians", stereotypical and uninformed comments. I'm a firm believer that if I go look for trouble I can find trouble. I have always tried to treat people with respect and for the most part, I received the same. Certainly, there are a lot of ignorant people that I have encountered. I can be angry at the world or I can do my best to educate people, to show them that those stereotypes are wrong.

BPS: So all along in undergraduate degree you were thinking that you might eventually come to the law school?

HC: Yes, that was my plan. If I did not get into law school, I was going to be a plumber and work with my dad.

BPS: So this was mid-80's, right?

HC: Yeah, I would have started University in '88. I never had you as a professor, by the way.

BPS: Yeah I started in '81 but I don't remember teaching you.

HC: I had Butch Nepon.⁷

BPS: Close friend of mine. Any particular recollection of Butch? He taught the Indigenous topics.

HC: He taught me constitutional law. So I started law school in '92, Butch was my constitutional professor, and I enjoyed the class, I enjoyed his sense of humor and his views on things. He was always making jokes about himself and how he always took on the loser cases, he was funny and he would go on about that. He always had a can of ginger ale, every class. I also remember Barney Sneiderman, he was my criminal law professor.⁸

BPS: Do you remember whether the law school had any particular outreach program focused on recruiting Indigenous students?

HC: I don't know if she's still here, but Wendy Whitecloud.⁹ I can't remember if I made contact with her or if she made contact with me. I initiated a lot of my own contact through University. I ended up going to the University of Saskatchewan, that summer native law program they have there.¹⁰ So I did that that summer (1992), which I thought was a great program. I don't know if they still have it.

BPS: Yeah, they still do it. We also interviewed Brian Bowman¹¹ for our

⁷ Butch Nepon was at the Robson Hall Faculty of Law from 1969 to 1998.

⁸ Barney Sneiderman (1938-2006) worked in the Faculty of Law, University of Manitoba from 1969 to retirement.

⁹ Wendy Whitecloud is the Director of the Academic Support Program at Robson Hall.

¹⁰ The Program of Legal Studies for Native People (PLSNP) is often a condition for acceptance to law school, and counts as a property law credit for first year law. It is an eight-week course offered in the summer prior to beginning law school.

¹¹ Mayor Brian Bowman is the current mayor of Winnipeg, Manitoba, having served since

issue. I was astonished, Brian Bowman went to that program and he said it was amazing. There were students with all kinds of Indigenous backgrounds.

HC: And people from all different parts of the country. It was great. I'm still keeping in touch with a few of those individuals I met back then. I thought it was a great program, there were, if I recall, about four or five of us from Manitoba in my particular year. It was a really interesting experience putting a group of people together like that for two months.

BPS: Summer law camp. When you came to Robson Hall did you have that same feeling of isolation?

HC: You know, by then I had already gotten over the cultural shock of leaving the reserve. I spent a lot of time with the Indigenous students here at the law school. Do you know George Kemp?¹²

BPS: He was chief of Berens River.¹³

HC: Yes, chief of Berens River, he was here at the time. Beryl Cardy,¹⁴ I don't know where she ended up. I was also friends with Diane Kelly.¹⁵ And Kelly Moar, he is now a provincial court judge.

BPS: That's quite a graduating class.

HC: Yeah, there were four or five of us that graduated together. So those are the people I hung out with for the most part. They were sort of my people, people I connected with.

BPS: In terms of your law school experience and Indigenous content, my recollection is that we were rather limited in our programming at that time. Is that right?

2014. He is the city's first Métis mayor.

¹² George Kemp was the chief of Berens River First Nation from 2008 to 2014.

¹³ Berens River is located approximately 391 kilometres north of Winnipeg.

¹⁴ Beryl Cardy was a classmate who graduated with Sonny.

¹⁵ Diane Kelly graduated from the Faculty of Law, University of Manitoba in 1995. She is currently the Assistant Deputy Minister of the Child & Family Services Division.

HC: Yeah, it was very limited. There was one class that I think was called Aboriginal law. It was pretty much a paper course. Pick a topic, research it and write a paper. There really were not any lectures as I recall. There was not any meaningful exposure to Indigenous law issues. I learned about Indigenous law issues after law school from working at Federal Justice Department and from elders. Are there courses offered now?

BPS: We're expanding them. There is now a course offered in Métis Law. A particularly interesting idea is the idea of developing a course in Indigenous legal traditions. This would focus not on how the mainstream legal system deals with First Nations, but instead on First Nations own internal historical system. So, looking at it from the inside and not how the mainstream interacts with First Nations. In my view, we have a long way to go. One of many reasons why I'm having these conversations is that I'm trying to get ideas on what we should be doing at the law school what kind of programs we should be adding. One idea is that education on Indigenous matters should be done through a pervasive approach. For example, if you're teaching family law, make sure you've got at least a component in there about the distinctive issues related to child and family services involving reserve based communities. I don't think we did any of that in those days.

HC: No.

BPS: I don't think we do much of it now, frankly, but it's one approach that we could be trying. Now that you've been out there and have very extensive experience with First Nations government, with family services and so on, what is your opinion on what should we be doing at the law school in terms of increasing the quality of education concerning Indigenous issues and concerning Indigenous law, both for Indigenous students and for everybody else?

HC: I'll give you an example of a project I was involved in and sort of lead from there. I was legal counsel to MKO,¹⁶ which is a northern organization,

¹⁶ Manitoba Keewainowi Okimakanak Inc. (MKO) represents 30 sovereign First Nations signatory to Treaties 4, 5, 6 and 10.

and AMC.¹⁷ There was a self-government agreement signed in this province in 1994. I was retained as legal counsel for those organizations acting on behalf of all First Nations of Manitoba, so sixty-three of them. We were negotiating self-government on CFS, and on education. Of course, amongst different First Nations you have diversity – you’ve sixty-three First Nations, seven or eight treaty areas, five or six linguistic groups, different cultures, and traditions – but except for the Dakota First Nations, everything comes back to the treaties.¹⁸ The starting point is the treaties. Most people read the written text of the treaties and think, “That looks pretty clear to me, First Nations have no rights” but the one thing I really had to learn, and really had to appreciate, was the spirit and intent of the treaties. I learned about that from elders. I was not taught this in law school.

One short fall of law school, when I went to law school, was it lacked a treaty-based analysis of legal issues. Regarding the treaties, you can read the text of what is written, but you also have to have an appreciation, as lawyers, that the text represents one side. It is an unfair representation of one side. There’s a whole other side that is not reflected in the text of treaties. I learned about the First Nation side by talking to the elders. Sometimes when I hear lawyers talk, I can hear from the words they use that they don’t have a real appreciation of the spirit and intent of the treaties.

BPS: Yes, that’s very similar to my own experiences advising First Nations. As a professional, you’re trying to give your client the best, most honest advice. On the other hand, the community often has a fundamentally different understanding of what these legal instruments are. If, as a professional, you’re just looking at the issue from one narrow side of the fence, then you’re not going to be able to effectively communicate either. You have to be able to explain how the mainstream legal system views things so that people can make decisions within their framework, but you have to understand how your clients view it from the inside. It is remarkable how fundamentally different the understandings are about basic treaty issues. The main stream model understanding seems to be, “You’ve used all this territory, now we’re putting a little postage stamp. You can come visit and

¹⁷ The Assembly of Manitoba Chiefs represents 62 or the 63 First Nations in the province of Manitoba.

¹⁸ The Canupawakpa Dakota First Nation, located approximately 310 kilometres west of Winnipeg, Manitoba, are not a part of the numbered treaties, but do have relationships and arrangements with the Crown regarding use of land.

trap, but it's basically ours." The First Nations understanding was, "No, we're sharing this entire area. The reserve is one option if we want to try farming but we're not giving up this whole area, we're sharing this area." That's a hugely different understanding.

HC: I did not learn about this in law school. I did not get that from a textbook, I learned about this from talking to the elders. I think it would be very helpful and important for every lawyer to come out of law school with an understanding of the treaties, the residential school system and Indigenous histories.

BPS: Yes, I agree with you. To effectively serve as legal advisers to First Nations and other Indigenous peoples, we need to go beyond the traditional text based method, and looking at cases. There will need to be some more people to people contact, not just lawyer to lawyer contact. In operation, I'm not quite sure how to do that. Do you bring elders into the law school and do presentations? Is it about taking the law students out to a community? I don't know what works and what doesn't work, because we haven't done it. Do you have any thoughts?

HC: In my experience I think the elders, or the people out there, are very interested in wanting to express their views to people, so I don't think you'd have a problem if you invited speakers to come to Robson Hall. They might be a little intimidated by the classroom setting, but my sense is that people are going to be willing to come here and share their views.

BPS: My own personal perspective is that the best educational experience is an open conversation. We've had some elder presentations in first year orientation, but one thing I am concerned about is whether or not people are afraid to ask what might seem like an uncomfortable question. Do you think we can successfully find a context where students can get the benefit of the experience and still be free to ask and get the answers and have that genuine dialogue?

HC: I believe so. I believe there is, like I said, willingness out there among people to express and share their knowledge in many forms. I would be shocked if you had difficulty finding people to come here. I'd be willing to help you locate elders or I can recommend speakers. Everybody has different

views, even in the Indigenous community. Some are hard-core, others are very conciliatory, that's something that you learn over time.

III. LAW CAREER

BPS: When you started law school did you have any idea what kind of practice you were going to do coming out?

HC: I'm sure every other Indigenous lawyer who comes through here has this idea of going out and practicing Indigenous law; land claims and the big cases. So, I wanted to do that. I graduated from law school in '95, and I articulated at Federal Justice of all places.

BPS: Yes, me too.

HC: I articulated there, and I practised there for five years. I enjoyed it. I was working for the “wrong side”, or for the “dark side” I was told, but I enjoyed it. It gave me an appreciation of how that department of the federal government worked and I learned lawyering skills. I worked at DOJ Canada, which was the exact opposite from what I wanted to do. I did tax hearings for the CRA, criminal drug prosecutions, and I worked in the Aboriginal Law group. I was even involved in land claims against First Nations. I can remember my first land claim negotiation, acting for Canada, and it involved a First Nation here in Manitoba. It had to do with railway lines on improperly surrendered reserve land. I was assigned as a lawyer for Canada and there was a negotiator from Ottawa. As it turned out, this negotiator was a guy from Cross Lake.¹⁹ So we walk into the negotiation – a Cree negotiator and a Cree lawyer for Canada– and sitting there across the table was a white lawyer and white consultant for the First Nation. The first thing I said at the table was “Hold on, something is wrong here!” Everyone had a good laugh and we started the negotiation. Working at DOJ Canada was a great experience; I learned a lot.

I moved to private practice in 2000, I joined a prominent Winnipeg law firm.²⁰ People thought I was insane for making that move because I was an

¹⁹ Cross Lake is a northern community in Manitoba, located approximately 325 kilometers north of Winnipeg.

²⁰ At the time of the interview Harold Cochrane worked as a lawyer at a prominent law

Indigenous lawyer with the Federal Government, “Sonny you have it made, what are you doing? You have a pension, you’ve got paid vacation,” all those types of things. But, like I said, I went to law school to act for First Nations. So I went into private practice and almost instantaneously I had a good practice, because at that time, I believe I was the only First Nation practicing lawyer in Manitoba. There were other First Nation lawyers around but they were in-house lawyers. I had clients almost immediately when I stepped out of Justice.

BPS: Your experience has not been the typical experience, unfortunately, in the sense that I’ve spoken to a number of First Nations students who have gone out, gone into practice, gone with the big firm and things did not work out. I don’t know exactly why it doesn’t often work out, but I would like to figure it out. Maybe sometimes a big firm thinks, “Well you’re an Indigenous person so we’ll slot you into our Indigenous law part of our law practice,” rather than thinking, “Well you’re an Indigenous person but you can do anything anybody else can do.” Why did it work for you and didn’t work for other folks?

HC: In the private practice?

BPS: Yes.

HC: That’s a hard question, because I don’t know specifics about why things did not work for other Indigenous lawyers at private firms. However, I do know what you’re talking about because the First Nation law students I went to law school with did not practise, they did not get into private practice or stay with it very long. Most of them went in-house, some of them went into politics, and some of them went to work for tribal councils. I decided on a different route. There were times when I questioned if what I was doing was the right path (especially early in my career). I wasn’t making the same money as other Indigenous lawyers were making right out of law school, but I was gaining experience. I was learning how to be a lawyer, which is not glamorous. I worked hard.

firm in Winnipeg, Manitoba; he is now a partner at Cochrane Saxberg in Winnipeg, Manitoba.

BPS: Right, you had had a long apprenticeship at Justice. I recommend some of these government positions very highly to my own students because you get so much responsibility at a young age that you don't get in private practice.

HC: I probably did fifty trials as a young lawyer working at Justice Canada. Tax trials, Canada Pension appeal hearings, traffic ticket hearings, drug sentencings, and drug prosecution trials. I am sure I made every mistake you can make. I must have looked inexperienced and foolish at times in front of the court and other lawyers. Thinking back now, it was the best training I could have had. By the time I got into private practice I had five years under my belt, I had cut my teeth and learned how to be a lawyer. I think that was the difference or the reason why I made it in private practice to answer your earlier question.

BPS: During this series of interviews, people kept asking about how we've succeeded in integrating our graduates into the actual practice of law, and your name came up. This is the guy who did it and not only did he do it, but he's built up this big practice and started his own law firm with many Indigenous lawyers working in practice. Did you always think of starting your own firm? Do you recruit folks straight out of law school, or do they end up coming to you?

HC: In 2017, after 20 years of being a lawyer, I started my own law firm called Cochrane Saxberg. We are Manitoba's largest Indigenous law firm. We have 15 lawyers. About half of our lawyers are Indigenous, half of our lawyers are female and 3 of our 5 partners are Indigenous. I am very proud of this. I was very keen on having the right team of lawyers. Our lawyers are young but experienced, and we work hard. I get a lot of calls from lawyers, Indigenous lawyers included, wanting to come work at our firm. I think this is a good sign. I believe we have a very good reputation. I also have a branch office on one of the urban reserves here in Manitoba.

BPS: Sorry, which one?

HC: The urban reserve economic development zone they call it. We have a sub-office in Headingly at the Swan Lake Reserve.

BPS: Do you think that the future for legal services for Indigenous communities is going to be predominantly Indigenous lawyers doing the work? I was part of a generation where a lot of the lawyers who served First Nations communities were not Indigenous. I did a lot of work at a very high level for Indigenous people over the years. If I was me, thirty or forty years younger, and I was looking at a career working for bands and tribal councils and so on, do you think that that is something I should target? Or do you think that there are enough bright, young Indigenous people that they'll have a preference for hiring?

HC: I don't think it's a black and white answer like that. I do believe there is a strong preference of Indigenous clients to have Indigenous lawyers represent them. Having said that, I know many, many non-Indigenous lawyers who do a great job for their First Nation clients. People can see through a façade, they know when your heart is in the right place. I think that's what's most important. There is definitely, I believe, a preference for having Indigenous lawyers represent Indigenous clients, I see that every day. But I don't believe it's to the point where everybody else shouldn't even touch this area of the law; I don't believe that's the case. As long as your heart is in the right place and you know your job as a lawyer, I think there will always be an opportunity there.

BPS: On the child protection side, whenever I think about child protection, I think that it has got to be the toughest area you can practise in.

HC: If you had asked me when I was in law school, "Sonny, are you ever going to do child protection?" I would have said, "Absolutely not, no way. Never, ever did I have a goal of getting into child protection – furthest thing from my mind." What changed it for me, quite frankly, was getting involved in the self-government negotiations with child welfare. My instructing clients were the directors of the various Indigenous agencies and the grand chiefs. I got to know them and they wanted an Indigenous lawyer and asked me if I was interested. Probably for about two years I said, "I'm not, but here's who I recommend." Then I took on one agency, and honestly, I didn't know the first thing about it. I can remember when we had the first child protection case come to me, I looked at my assistant and I said, "I have no clue what to do, I really don't know what I'm supposed to do." Don't print that. Just kidding! (Laughs).

BPS: That's why we've got editing!

HC: That's where we started, right from ground zero. The circumstances are very, very difficult because you're dealing with people at a point in their lives where they're dealing with circumstances that are just depressing. Addictions are absolutely killing and destroying families and communities. Poverty, overcrowding – these are issues that we all see and it's the children who are really getting the brunt of it. It's a difficult area of law because we believe the best place for children is with their family, if the family is healthy. Unfortunately, due to circumstances, a lot of the families are not healthy; I believe it's going to take at least another generation or two yet to reach that point. If you read *The Child and Family Services Act*,²¹ it's very clear; apprehend, placement and adopt. That is not consistent at all with the approach that the Indigenous communities want to take. We find ways to get creative, or to work within the law to try and accomplish what it is we want to accomplish. It still is very difficult because we're dealing with children who are abused both sexually, physically. The internet is just exploding with child pornography and we deal with that frequently. I've been involved in five or six child death inquests now. In the Phoenix Sinclair inquiry,²² we represented five parties in what was about a two-year hearing. Very difficult circumstances.

One big problem, in my opinion, is there are no Indigenous judges in the Court of Queen's Bench Family Division. Yet, Indigenous families and children are grossly over-represented in the child welfare system. I do not intend to be critical of judges, but when judges are making judicial decisions about people they do not know or understand, or when they never lived on or set foot on a reserve, there is a problem. There has to be more Indigenous judges overall and preferably indigenous judges who are recognized and accepted as being indigenous by the Indigenous community.

Despite the difficulties of child protection law, I enjoy it. My phone could ring right now and just like that, there could be an emergency happening. We deal with interesting cases, including medical apprehensions. For example, Jehovah's Witness parents for religious

²¹ The Child and Family Services Act, CCSM c C80.

²² The Phoenix Sinclair inquiry was an inquiry into the death of five year old Phoenix Victoria Hope Sinclair (2000-2005). The inquiry looked into her involvement with Winnipeg Child and Family Services.

reasons refuse certain medical treatment for their children. That is a child protection concern. There was a case in Ontario involving an Indigenous mother who was taken to court by a hospital because she refused to have her child receive chemotherapy.²³ In that case, the medical opinion was that the child would die unless given the treatment and she said, “No, I want to treat the child with our traditional way.” That hasn’t happened in Manitoba yet, but that is an example of some of the evolving areas where we’re seeing child protection.

BPS: Some of the big firms have tried to do these workshops where people from the firms get together with our Indigenous law students and encourage them to think of all the career paths they might take. One piece of advice we all independently gave was, “Don’t decide too early in law school that you definitely want to be a criminal lawyer, or a family lawyer. There may be things that you never thought of doing which you might find very fascinating. Explore as many areas as you can because you never know where your career is going to go.”

HC: You never know where you’ll end up. I had a plan when I was in law school – I took the intensive criminal law course. I prosecuted for a bit at Federal Justice and I didn’t like it. I didn’t enjoy the second year tax course at law school, but I did tax prosecutions for CRA, and I loved it. You never know.

BPS: You never know.

HC: I tell the students and young lawyers the same thing. I tell them that they should get out and network. Meet people, because you’re going to be surprised when those same people call you twenty years later. “Sonny I remember you, we played hockey together” or, “You were on this board with me and I need a lawyer.” I still get those calls today. I think it’s very important for all lawyers, including Indigenous lawyers, to have a broad base; do your networking, because it does pay dividends at some point.

BPS: One observation I have related to Child and Family Services is that I don’t think it would be unfair to say that there’s a perception that in First

²³ Hamilton Health Sciences Corp. v H (D), 2014 ONCJ 603, [2015] CNLR 189.

Nations communities, many children don't have "traditional families." Kids frequently grow up with a mom but not a dad, or grow up with an aunt or the grandmother. We in the mainstream tend to see that as problematic. Part of that, I think, is a consequence of the residential schools disrupting traditional parenting. However, in a way what we tend to initially see as a problem is a source of great strength. Diane Kelly pointed out to me that in the community, everybody has a relative, everybody has an aunt, everybody has a cousin and they care about the child. So, the traditional model of apprehend, adopt, and so on doesn't seem to realize on all of these resources within the community. I don't think that's something most of us would have realized, that there's this potential human capital in the sense of having all these relatives nearby who are willing to help, and may enable you to avoid the displacement.

HC: I can give you one example. To be a licensed foster home, there are certain standards you need to meet, house size requirements and so forth. In the First Nation communities where there is overcrowding and shortages of housing, there are extended family members who do not qualify to be foster parents under the current system but would happily care for the children. This is not due to their own circumstances, but because of issues like shortage of housing and number of people in the home and so forth. These family members are an absolutely great resource for the children. Why wouldn't the system want to use that resource as opposed to pulling that child out from that community? I went through that when I left my community voluntarily, I couldn't imagine what it's like to be pulled from your family and brought to Winnipeg and put in the group homes. The provincial CFS system is not based on Indigenous values, traditions or beliefs. That is a significant challenge.

BPS: There are multiple pros: the child stays in their own community, the people who are fostering are doing something useful and productive, *et cetera*. There seems to be, like you were saying, a lot of potential there, but it involves creativity. It's not necessarily something the cut and dry legal paradigm takes into account. You were managing partner at a major Winnipeg law firm prior to starting your own firm?

HC: Yes, at my previous firm I became a partner and I was a partner there for about fifteen years. I was a managing partner at that law firm, which had about 65 lawyers, for about four years.

BPS: Of all the difficult experiences you've had, being managing partner of any law firm has got to rank up there.

HC: You better believe it.

BPS: I don't want that job.

HC: It was rewarding, but also very challenging. It was great to have my finger on the pulse of a major law firm. I did learn a lot about the business of law, but lawyers are a different breed. We always think we are right all the time. Most lawyers are type A personalities and most have a difficult time being told what to do or being managed.

After my first year of law school, I went back home to Fisher River and I did an oral history project. I wish I knew then what I know now because I'm sure the questions I asked did not go far enough. I spent the entire summer interviewing all of our elders, including my grandparents who are no longer with us. I have them all on tape and they are all transcribed. They all talked about residential schools, legends, about the treaties, the history of Fisher River and about how we did things traditionally. One thing I was trying to get at was traditionally how did we "police" ourselves. How did we do that? That's when my eyes started to open, just listening to these elders talk. A lot of them were talking in our language, Cree, but then they would translate for the tape and it was really interesting and something that I will never forget. That's over twenty-five years ago now. Real interesting issues in there.

BPS: As academics we might not even realize entire issues or perspectives unless we reach out to the people who are actually doing things in the communities. Well, thank you so much, this has been extremely informative for me.

HC: Okay, thank you very much.