Interview with Pamela Leech[1*]

BRYAN SCHWARTZ &
LAURA BALAGUS

Laura Balagus (LB): Thank you so much for taking the time to meet with us today. I think the best place to start would be with an overview or description of your law practice, as it is now.

Pamela Leech (PL): Sure, I have been a sole practitioner for over a decade. I was with a mid-sized downtown firm that was a more traditional sort of mixed practice: civil law, a bit of criminal, lots of real estate, and wills and estates, corporate, it a really broad scope. When I finished law school, I already had three degrees. I had a profession prior to coming to law school, and I had no intention of litigating. I was told by the powers that be at the firm that were perplexed as anything; they said, "You will starve to death." And I thought, "Well, no, I won't because there's lots of work in mediation and arbitration, and in collaborative law." This was in 2008, so the Collaborative Practice Manitoba had a fairly healthy group, but it certainly wasn't as well understood then as it is now. Now mediation is somewhat mandatory. I did my mediation training at Northwestern University in Chicago, and there it is a mandatory jurisdiction for people with children. If they start a court proceeding in Illinois, they must attend a certain number of sessions of mediation before they can proceed. So, we've come a long way and I did not starve to death because my practice is fine. My practice is 50%

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* Interview conducted by Bryan P. Schwartz and Laura Balgus. This interview was conducted on August 5, 2021.
Pamela Leech is a family lawyer at Academy Family Law who has made a commitment to Collaborative Practice in her approach to resolving disputes. Pamela graduated with First Class Standing in Honours Bachelor of Social Work program at Lakehead University, and went on to win the Isaac Prize for Legal Research at the Robson Hall Faculty of Law at the University of Manitoba. She is also a member of the MBA and the CBA; the International Academy of Collaborative Professions and the local collaborative practice group.

mediation and in the last year, I've started to do more arbitration either in med-arb form, which was a bit of a stretch for me to get my head around, but I think I've done it. It's very little pure arbitration; people mostly want to try and resolve their own issues first, so it's a mediation-arbitration. I also do collaborative family law. A fantastic field of work that I've been doing for over ten years now is mediation in personal injury work involving a claim with Manitoba Public Insurance. Evelyn Bernstein is the director of the Automobile Injury Mediation program. That was a big learning curve for somebody who had specialized in family law to suddenly learn about The *Manitoba Public Insurance Corporation Act*[2] and its regulations, which are complicated, but they have provided excellent training and guidance. I've done those mediations for over ten years and those are usually represented by someone from the Department of Justice on a no-fee basis for the claimant for counsel. My practice is sort of becoming a dispute resolution practice, and it's changed over time, because it started off as purely mediation and collaborative family law, and it is now personal injury and med-arb. As I think the practice of law is evolving, so has my individual experience of it, which is fantastic and... I didn't starve.

Bryan Schwartz (BPS): Yeah, it always takes us time to catch up to what's happening in the real world in law school. So, you're about a ten-years-ago-vintage graduate from University of Manitoba law school?

PL: I started law school at Robson Hall in 2004.

BPS: Okay, so I'm guessing that a lot of stuff you're talking about, collaborative practice, med-arb, we didn't do much alerting you to it and educating you to it at that time?

PL: Very little. That's why I went to Northwestern.[3] I went there in 2012 and they had a fantastic immersive cohort learning program. For three years, I was also doing a project with the federal government where I did co-mediation with a senior mediator; she was the former president of Family Mediation Canada. Those three years were fantastic because they provided that experiential learning. I wrote a paper on experiential learning for my

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2 CCSM, c P125

3 Northwestern University in Chicago, Illlinois.

recent course at Osgoode Hall comparing clinical placements such as apprenticeships, placements, articling, residency. Some are paid, some are not paid. How we learn isn't just from books. And you're absolutely right, in my day when I started law school at Robson Hall in 20024, Dr. Schulz[4] had just joined the Faculty, and was sort of blazing a trail in terms of dispute resolution. I think that my experience with that was that it was more about – and I don't mean to be trite – but it was more about neighbour disputes, which folks at mediation services do. They do community disputes and they have a program where they do diversion through the Criminal Court. But, you know, mediation, it's interesting because I did Employment Law with Michael Werier; he has a huge experience base in arbitration and in labour, but mediation wasn't offered, or even a part of the discussion. It wasn't even in Family Law, even though we had a guest speaker come from Family Conciliation to give a talk on different ways that families can resolve disputes. It was sort of seen as the "easy way out", if you will. Which you know, it's not. The "real" way would be to file your pleadings and build your case, which I don't know if that's the most humane way to deal with family situations or even the personal-injury situations because the resolution rate is very high [in mediation]. Dr. Schulz actually reviewed the mediation program at the Automobile Injury Mediation office when it was still a Pilot Project. People have been waiting to go to the Appeals Commission, which is a tribunal, for years by the time they started this alternative mediation project – other jurisdictions already had it. We just plowed through cases. People felt heard and had ownership of the process; it was kind of a brave new world.

BPS: The idea of the "easy way out", that was an idea in the professional legal culture. It seems trivial, but I find that I have to keep preaching that your job as a lawyer is to resolve and get a result for the client, not to win a case. It seems so obvious, right? The idea is to help your client with a problem or a challenge and get away with the best balance between time and emotional and material costs. Your job as a lawyer is not to win a case in court. That is merely one possible avenue if nothing else works. The idea is to actually help the client get a result. I don't want to sound self-righteous here, but you'd think that would be kind of obvious.

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4 Dr. Jennifer Schulz has been a Faculty member at the Faculty of Law since 2004.

PL: There are very good litigators – I don't want to insinuate otherwise. There are excellent, skilled litigators, but the principle of proportionality is often through a skewed lens in litigation firms, partly because of the culture of the firm. The principle of parsimony, actually, is also sort of lost to a lot of litigation firms. I did an arbitration in May. I don't like to restrict counsel on the amount of documents they wish to submit so, in exchange, I give more time so that you don't put something in twenty-four hours before the arbitration. The joint agreed-upon statement of fact was 196 pages, mostly on facts that they did not agree to, but that was neither here nor there. Then, there was almost 1000 pages in submissions between the two of them. So, how streamlined and efficient is that? But that's the machine. Do I think that the court is necessary? Absolutely. I think that people absolutely need the protection of the court, or they need an outcome. They can get an outcome in different ways now, but the culture of game theory in litigation seems so counterintuitive. My work is personal injury and family, which are clearly different, but there are people who are suffering, they're in pain, and they have had a loss of some kind. And, I think, to be a participant in a process that makes that loss worse and puts someone in a lesser position; it only adds detriment. So many people, at the end of a litigated process, don't feel like they have won. The client doesn't feel like they have won. If anything, the client feels like they have lost the opportunity to decide; they have lost their own agency and autonomy.

BPS: And along the way, every back and forth, every rattling of the cage, every denial in a pleading is potentially just feeding people's anger and, unfortunately, vindictiveness, obsessiveness…

PL: Outrage, trauma.

BPS: You know, if you're a lawyer, your response is: we deny all of the above, go prove it. Right?

Nothing personal here. We're not calling you a liar; we're just saying we deny it, go prove it. Suppose you're a person who's been in some situations where you've been physically injured or you're going through an extremely difficult family situation. In that case, somebody just sending you a pleading saying, "I deny all of this," doesn't feel like this it's just lawyerly recreation. It actually feels very personal and very hurtful.

PL: It does.

BPS: Now, the thing you just started tackling, which concerns me, is with mediation. Unless we do this right, mediation just becomes an additional layer of litigation. We do all of this and then potentially do it all over again in court. If people see this as just litigation in a different form, that doesn't work at all, it makes things worse.

PL: It does, and I think proper preparation: preparing your client to attend mediation when you're acting as counsel and your client is heading off to mediation. I don't call them parties; I call them participants. I think that the most successful mediations are ones where counsel for the participants is present. I don't necessarily mean in the room, but they're available to their client: they can consult and provide legal advice. It's a process that is work and being prepared to some degree. In the arbitration world, the regulations[5] promulgated under the *Arbitration Act*[6] in Manitoba require the arbitrator to conduct a domestic violence screening interview before commencing the arbitration. I think that level of vetting is very important because there are people whose sole purpose, whether it's counsel or the client, is really to pervert the process and get something that they would never have achieved in a court of law. That's not the intent. So, as the keeper of the process, I try to be very mindful of that. The rules of disclosure, for example: if people are not providing adequate disclosure, I think that the question of bad faith needs to be addressed because it's the bad faith aspect of participation that perverts the process and just wastes people's time.

BPS: Let me ask you specifically about that because you have very practical experience with that. If you're the mediator, you're trying to come across as impartial and facilitative to both sides; you've got to try to build and maintain trust with everybody. Judges are relatively easy; you just look sternly and direct people. But if one side is acting badly – histrionics, gamesmanship, not disclosing documents, theatrics, and so on – as a mediator, how do you actually admonish people practically?

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5 *Family Arbitration Regulation*, Man. Reg. 105/2019

6 CCSM, c A120

PL: Without the other side going, "Oh goody, she's mad at them, hooray"? So back in the day, pre-COVID, setting up the room was really important. First of all, pre-mediation is critical. Sometimes people want to jump over that step, but I won't do that. In pre-mediation, I ask people questions in terms of what are your goals for resolution, etc. Then I ask, "What do you think the barriers are to resolution?" and that's where I'll hear about untreated mental health issues, untreated substance abuse, tendencies to be dramatic, gambling problems, etc. So that gives me the opportunity to read the room because in pre-mediation, that's confidential, and I'm not going to share what people tell me. In the mediation, if they want to bring it up, that is up to them to share. So, having the room set up and having the content of what the barriers to resolution are for these people, so that we know that when one participant engages a certain behaviour, the other participant is going to get triggered. If I did not know that in advance, I might not shut it down as quickly and then it could just become a full-on flame, with people erupting. So, breakout rooms, caucusing, having the room organized, and making sure that people are in the correct proximity to each other all become important. I also think that it's important to determine whether or not you need a co-mediator because there's always the risk of triangulation which happens when one person feels admonished or that sort of thing. In pre-mediation, I explain to people that I call it fairly quickly. As the keeper of the process, I don't allow people to swear at each other, or engage in name-calling, or that kind of thing. That will result in the use of a breakout room. The ability to set up breakout rooms, either a planned break – for example, at the one hour mark we're going to break for ten minutes because everyone needs a break – or there's what I'll call a recess – when somebody is clearly diverting away from what their goals were, and it's not making sense anymore, so we'll call a break. Some people do better with some sort of support person with them. I have co-mediated with an elder, a family mediator, a psychologist, and a financial planner who is also a trained mediator. That one was a particularly complicated, multi-corporation, family-law matter, so it was fantastic to sort of draw on those other skill sets. To be able to pinpoint the problem, because the financial planner was more adept at pointing out that the retained earnings in the corporation needed to be disclosed. As the financial mediator, that was their area of expertise, so they were able to get further with the situation and get results. So, it does take some creativity. Mediation is not for the faint of heart, because you do have to manage the room and manage the process.

BPS: I'm curious about the intangible, soft part of Zoom or other technologies versus the in-person experience. In your experience, are people less likely to be timid about expressing anger and so on, because, somehow, they're safer in their room and the familiar surroundings, and yelling into a Zoom camera doesn't seem as objectionable as yelling at a physical human being in the same space? Have you noticed any subtle changes or differences in the way people project and feel things emotionally online versus in a physical room?

PL: It's interesting because I still maintain a restricted schedule for in-person practice. There are certain participants that either have communication problems, or they're young, or they have language problems, or they don't process information very well, whatever the case may be. Those sorts of folks, they don't – in my mind – do well in other settings. Certainly, teleconference is inferior. In my view, it is the most inferior way of communicating in a dispute resolution setting. People need more time in a Zoom situation because you can't quite see the body language in full. In terms of safety, there are people that absolutely say that they would prefer Zoom or another platform irrespective of COVID. For certain populations, it suddenly made the process of resolving a dispute – whether it be through litigation, or-arbitration, or mediation, or whatever – it's made it accessible in a true and real way that previously I don't think we really kind of understood. For example, people from the high North or rural areas have to travel many hours at great expense to do something that they could be doing virtually. People who have mobility issues or people who hate driving around downtown, they don't want to be going to these things where they can't participate in that way. It's so interesting because I had never heard of Zoom until February of 2020. In my class at Osgoode Hall,[7] I think we have twenty-four students in my year, and we're from all across the country. Previously, what everyone did is they flew to Toronto, and they stayed in Toronto for the forty-hour immersive period for that term. Then they did their other thirty-two hours asynchronously. There was the whole sort of pomp and circumstance of going to Osgoode Hall, the first reception, etc. None of that happened as the February meet-and-greet for the new students was done via Zoom so that people didn't have to fly in. I had never heard of

7 Osgoode Hall Law School, York University, North York, Ontario.

Zoom, and I thought that Osgoode was just being very fancy and so far ahead of the game. I thought "This is great." Then, in March 2020, the next month, we all sort of got accustomed to it. I just see it as such an opportunity in so many different areas. I've had medical appointments via Zoom, or teleconference where previously, a ten-minute appointment to talk about blood results would have been me coming into their office. Now, if you're in a rural area or in the North or wherever, it really has opened people's minds that they can communicate. Again, in the medical profession, they would have the same sort of flags in that they'd have to be very careful in order to make sure that the information that you're getting from your patient is accurate. Is there a language barrier? Is there a communication barrier? If you're not physically examining them, if they are not physically in the room, the quality and the quantity of the information and the data that you get, you have to be reasonably satisfied that it's correct. You also must ensure that if you send them out with a requisition for blood work, or an x-ray, or whatever, that they'll do it. As you said, in a legal process in a courtroom, the judge would look sternly, and everyone would shudder in their boots. So, how do we impart that kind of solemnity that it is serious? In private mediation and certainly in personal injury–mediation at the Automobile Injury Mediation office, the consent form is detailed, and I take probably ten minutes at the outset to read aloud the important pieces: That we are going to act in good faith; we will be respectful, etc.; I'm a neutral party; I'm not going to be imposing a decision; I'm not here to advise you. We actually go through those steps and formalize it. In Zoom, it's even more critical because I'm sitting in my home office or even my cottage. The formality of going through what people would do in terms of being sworn in or affirming, those little steps along the way shouldn't be forgotten. Or if I'm executing documents with my client when I'm acting as counsel, I know the rules, I know that I have to execute a certificate; I know that it's been a continuous, uninterrupted feed, that, even though it's my client, I took the time to have them produce their driver's license with the picture. I saw the document before they signed it, they signed it, they showed it to me, and then I execute the certificate. As lawyers, I think we all should understand – some of us don't – but we should understand at the heart of it that if we witness an affidavit, that affirmed or sworn affidavit is as if they're giving you *viva voce* evidence before the Court. So, if they say the nonsensical, ridiculous, vexatious things that people say in affidavits, it's the lawyer that allowed that or even was the architect of it going forward. It's that integrity

piece, that if you're going to pick someone's affidavit and swear or affirm it, you need to have some formality to that. To me, that's how that is.

BPS: One of the arguments people traditionally make for doing things the old-fashioned way is that solemnity point. That you go into the huge, marble courtroom. The judge is seated up high, wearing a robe, looking down on you. One of the arguments people make is that these trappings get people to focus, take it seriously, limit the extent to which they think this is just one more reality show. You've been telling us that there are adaptive techniques to re-establish or reinforce that solemnity in the Zoom environment. Things like even reminding people specifically that this is a legal proceeding, that any submission you may hear is exactly the same as you would be doing in a court of law. So, I wanted to ask you something very, very down-to-earth and pragmatic. It seems that we live this multitasking screen life where people are watching TV or checking their iPhone on the side while doing their work or in a meeting, what do you try to do to get people to be totally present there, rather than thinking this is one more screen in my multitasking world?

PL: Well, I'll actually talk about that a little bit and say, "We're here." Another thing – in terms of making sure that people understand that this process has teeth, if you will – are the very particular minutes that I send around afterwards for the participants. I explain to people, if you come to an agreement and I render it down to a written document that says that the parties have agreed to X, you need to understand that your counsel can rely on that at a summary judgment. So, it is enforceable and people should be able to rely on the matters agreed to. For example, "You aren't going to tear down the boathouse." "Okay, agreed." If the person goes out the next weekend and the boathouse is torn down, what remedy is there for the person who relied on that? Well, there are minutes that state matters agreed to and matters not agreed to, and I make sure that those are very clearly set out. I tell people in advance that we are working towards getting to a resolution. You have to have enough information. So, I tell people, they need to make an informed decision, and an informed decision isn't hasty, and it isn't made with incomplete data. So, take the time to get the information that will allow you to make a well-informed position and decision, because it really can be quite like a virus if someone starts to recant on an agreement. I don't care what process you're in; that's not the ideal

situation, unless there's been a mistake. And I think in mediation, we can be a bit more gracious with people in terms of, "That was a mistake, of course we're not going to move forward if whatever it was you relied on is incorrect." Whereas in a litigated situation, that would be a small triumph if the other side had made an error. So, that's a difference. I'm not sure I answered the question. I also say to people that I'm not recording it, because that is contrary to the confidentiality, without prejudice, process. I take detailed, contemporaneous notes, and that's where I explain to people that the matters agreed to are rendered down to a written form. You can rely on those; they are enforceable. But I'm not recording it [the mediation]; it's confidential. I was in a personal-injury mediation where it was discovered that one of the people was recording it on their cell phone. I am the queen of the "faint hope" clause, but I ended the mediation because that was bad faith.

BPS: I just want to go back a bit to a point I had asked about way earlier, which is how do you get people down with the program? That is, this is a mediation. It's not a courtroom, there's no need to grandstand for anybody. And we talked even earlier about the culture shift: people who are experienced counsel who might have come from a time and place where this is new, this is different. How do you deal with that practically when you have a lawyer who thinks it's their lawyer-job to put on a three-piece suit, say "I object," and look good in front of a client?

A lawyer doesn't like to lose face in front of a client, so I imagine you would have to be very diplomatic about kind of bringing them in and explaining that this is a different frame. How do you actually do that?

PL: Actually, I have encountered this before. It was quite problematic in the first year to have the mediation program through the Automobile Injury Mediation office, because there were experienced counsel (senior counsel) who were well-accustomed to the tort system pre-1994 when the MPIC Act[8] came into full force and effect. Even though the tort system met its demise, those particular personal-injury lawyers would approach an appeal the same way. They would come before me and the first thing that they would do is they would speak for their client; their client did not open their mouth. It's

8 *Supra* note 2.

[the client's] story to tell! It was their motor vehicle accident. It's their loss. They need to be able to speak. So, that's pre-mediation, where there was a lot of education that went into it. It was not me as an individual mediator – I'm going to meet with maybe eight or ten mediators and the director and we addressed that very issue and sort of came up with a cohesive way to engage counsel. They're there to represent and support, but they're not there to speak on behalf of a participant and they're not raising a position. And that was the most difficult thing to address, along with trust. You could see the lawyer that was not prepared to sort of let their guard down and participate without prejudice, they needed so much reassurance that I'm not an employee of MPI; I'm not an employee of the Department of Justice – because they have a claimant advisors' group as well. I'm a private lawyer. I'm on an independent roster. I have no interest in the outcome. I'm merely here to make sure that the process and the procedure is done in a fair way that meets the principles of mediation. Then, we go over the mediation agreement again [laughs]; here are the principles of mediation. And for or so many of them, they really have a hard time saying, "Well, wait a minute, I can put down my weapons?" [laughs] Yes! it's okay, we're all putting our weapons down; you can put them down. You can have a conversation, it's not recorded; it's without prejudice. Even if you don't resolve today, you will learn more about both of your cases – if you will – and you will understand why this side is saying [X] and why the other side is saying "I don't agree with that." Because oftentimes – and you talk about the documents going back and forth – it's just a denial; it doesn't give any substance as to why, because they don't want to tip their hand, right? Whereas in mediation, they're forced to tip their hand because merely stating "No", that's not a conversation.

BPS: We talk about dispute resolution, and even I was phrasing it as an outcome or a result. But here is my intuitive sense of the thing: I think we're natural storytellers. The odd thing about the legal system is, you may get a result, may get an outcome, but the whole system may be geared against you ever being able to tell your story. For example, the rules of evidence: "that's interesting dude, but that's not what we need to know." Or "That's hearsay. I don't really care about the day-to-day suffering, let's just go to the chart here." It seems to be one way that people actually achieve resolution: even if they don't get the concrete material outcomes, they get to tell their story. Mediation/arbitration gives you that sense of closure because you actually

got to tell your story. Even if the other side doesn't buy your story or is telling another narrative, at least you finally got a chance to tell your story. And that seems to me in the real, emotional world of real-live-human beings, to be very important to achieving a resolution. You want a good material result, but something about getting closure is you have to have a chance to tell your story.

PL: Absolutely. I'm amazed at the people that come forward on an appeal, and the monetary or material outcome that they're looking for is not all that significant – I've also seen people with massive, huge ones that boggle my mind. There are people who come forward, and they have felt that not once ever have they been on a level playing field with the person across the table from them. That even though they're the customer or they're the claimant – whatever they are – no one has heard them. If they have told their story, it's been trivialized, and I understand why. I have deep respect for the people who work at Manitoba Public Insurance, but they are bound; the regulations that they work under are so narrow. There is no compensation for pain and suffering. There is no compensation for future loss of opportunity. So, what can you tell someone? For children who die in motor vehicle accidents, there's not much monetary compensation. Or, if you weren't the primary breadwinner, the calculation of the income replacement portion is different. Insurance law is like a meat chart. It's a crass phrase, but it's so apropos because it is, you know, your thumb is worth $3,000, and there's no discretion; there's no grace. It doesn't matter if you are a concert pianist, you get the same amount of money. The importance and the real, sort of, existential release that people get when they're able to have a discussion that is facilitated by a neutral third party, and there's a level playing field. They get the opportunity to ask what they want to ask. It's out there and it's answered. It's huge.

BPS: I'm going to ask you an off-the-wall follow-up question that I haven't thought about that much myself before. We tend – or at least I always tend – to identify with the injured person going up against the bureaucrat. I spend a lot of time cheering for the underdog in sports teams. It's tough, but I always cheer for the underdog. So, I always identify with the injured person going up against the bureaucrat, but it's got to be tough to be the bureaucrat who's got somebody crying in your office and saying, "You're telling me my thumb is worth X, I'm telling you this has changed my life. I

live to cook and I can't do this anymore," or "l live to play road hockey," whatever is. I'm not trivializing; these are really significant things in people's lives. And a bureaucrat in the ordinary format doesn't get to say something like this: "You know what, I actually sympathize with you as a human being, and many people come to me with these things, and I have to work within the law. Personally, as a human being, I wish I could do more, but I'm not allowed to do more because I'm bound by the law. The theory behind it is to simplify disputes and limit litigation. So, good theory or bad theory, that's what the legislature has chosen." It's embarrassing, but I never really thought much about it, emotionally, from the bureaucrat's perspective. Do you find that the technocrats in the system actually find it emotionally releasing too, to finally be able to talk – to some extent – as a human being and outside of the official dialogue box?

PL: So much so that in the first two years, the program's been around for over ten years –the representative from the corporation was just, sort of, not randomly picked it... It needed to be a *de novo* process, so they made sure that it wasn't someone who'd had their hands on the file at some point to ensure a *de novo* process. But other than that, the party line would, sort of, come out in mediation. A couple of them–started to realize that if you're going to participate in mediation, you have to change gears and you have to, you know, also be human. So, what they did – brilliantly enough – is they made a specialized little department of three or four people that were trained in mediation, and they came back, and they represent the corporation. Most of them have been with the corporation for thirty years; they were the head of the brain injury department. They're very, very well-versed in injury. It's so interesting, one professional will look at an injury from the mechanics of the injury – "how did that happen?" – and another professional will look at it from the perspective of how is the injury resolved. So, there's "how did it happen?" and "how is it recovered?": two different perspectives. The one goes to causation, but the other one – "how does the person recover" – that is a very difficult aspect because if the corporation feels you've recovered, your entitlement to benefits ends. One must ask, what is recovered? I debrief with them afterwards, so I think that that process has sort of opened up their minds a bit as well. And they say to people, "We were talking about this regulation – and I don't have a lot of room to move – but I'm here with an open mind." This one person – I've mediated with her on the other side a number of times – says this: "I come

here with an open mind, and I come here with an open heart and I'm here to listen." Wow! That is somebody who's a thirty-year person at MPI – which is one of the most regulated, regimented places you ever want to be, other than maybe perhaps the Workers Compensation Board[9] – but they can be free to say that and feel that they are in a safe place that is managed and there are rules. Or they can be free to say, "I've gone through your file and I'm sorry those things happened to you because that shouldn't have happened," whatever it was.

BPS: I would like to follow up on the emotional closure part. Closure is kind of a deceptive word because things are never really over. It's a relative degree of closure. It's not that you forget that you were in an accident that changed your life. It's more that you've come to a different state of dealing with it. In terms of coming to a different state, in mediation, people can say, "I'm sorry," right? They're not worried that it will be held against them and then the gavel will come down and it's over.

PL: And as you're about to say, "I'm sorry for what happened to you," your lawyer is swatting you saying, "Don't say that!"

BPS: And in your practice, that's actually significant to people, that "I'm sorry you went through two years of getting the runaround by the system," "I'm sorry that the system doesn't actually provide recovery for pain and suffering," "I'm sorry for the way we bungled the file today," or whatever. My intuition is that that is meaningful to people.

PL: It is.

BPS: Especially when you've been through a year and a half of feeling you are being treated like you don't matter, you don't count, right? "What's your file number?" "Who did you speak to previously?" It's like talking to a robot. And when the robot suddenly becomes human and the robot even acknowledges that the other robots – or this particular robot – might have got something wrong – "I didn't understand what you were saying before, and I'm not saying it's your fault; I'm just saying that we get many cases, and

[9] See the *Workers Compensation Act*, CCSM, c W200.

we understand that this one's different," – that is very meaningful to people, even if they don't get the material outcome.

PL: Well, it's interesting because in personal-injury cases with an MPI claim, through the process of mediation, that *de novo* person representing the corporation, they don't know the file. So, they look through the file almost from an auditing kind of perspective and they can see errors that were made. This was quite a few years ago now, but sometimes if the corporation has a suspicion or a tip that the person is defrauding MPI, they will order surveillance – and they don't need to tell the person, they don't need a court order, they can just do it. It's expensive, but they do it. They don't do it very often. So, ~~it~~ the MPI perspective was based on surveillance that this woman, the claimant, was denied her benefits. They demanded recovery of benefits that had previously been paid and put a lien on her house. Fraudulent claims certainly happen and should be investigated fully. It was about $27,000 that they wanted back – which is a lot of money for working people, a lot of money for most people. She was adamant that this was not correct. So, the surveillance material was reviewed, and certain pieces were printed out and brought to the table. It showed this woman – long grayish hair in a ponytail, a larger woman height-wise, weight-wise – getting groceries. She was carrying things in and out of her van and doing all the things that there's no way she could have been doing if her injuries were indeed as severe as she represented. The claimant was in, maybe, her mid- to late fifties. She took one look at the pictures and the date stamp, and she said, "Well, first of all, that's my thirty-year-old daughter who has long blonde-gray hair in a ponytail. And not only that" – they live in the country these people – "but I was having a procedure done at the hospital that day. So (a) I wasn't getting in and out of that van, that was my daughter, and (b) I was in outpatient surgery that day." You could hear a pin drop because there had been an error. They weren't maliciously doing this to the lady, but they had information that was incorrect. And through discussion, without posturing, without positioning, without blaming, it was just a case of "let's have a good thorough look at this information through a good-faith lens, through a solution-focused lens, and see what we can make of this "And ultimately, they corrected it, and she felt quite vindicated – if you will – and they were gracious with her about their mistake. They explained how they were going to rectify it, that they'd be removing the lien, they'd be reinstating her

benefits, her benefits would include indexation and interest, that their mistake should not cause her detriment. Wow.

BPS: In an ordinary litigation context, it could have taken literally years and years to get into a formal dispute resolution, and only then would the corporation have realized that they made a good faith but fundamental factual error. The fact that it can get to a resolution quickly may save people years of frustration.

PL: And legal fees.

BPS: Somebody says something that's just off-the-wall and untrue, and in the ordinary court system you don't get to challenge that in any meaningful way. It could be years and years and years until you get to the formal process. So, another off-the-wall question, if I could. I think part of the art of mediation is modelling for the participants. So, you're trying to show what it looks like to listen, you're trying to show what it looks like to be patient, what it looks like to be flexible and open to different ways of looking at things. I would imagine that even the best mediators – like the best lawyers and judges – sometimes make a mistake. You're too quick to decide that somebody is being dishonest when in fact, they're just wrong, or they just didn't phrase it right. Or you're becoming impatient while someone is telling their story because you already know how it ends. How do you balance projecting your authority as a mediator with modelling behaviours like being willing to admit a mistake? Is there some tension between the necessity of projecting authority and being the experienced detached person in the room versus modelling, "I'm human, I can make mistakes, get impatient"? Is that a natural tension? And how do you reconcile it?

PL: I think maybe for mediators who have not had a clinical experience and background in terms of communication and more sort of social science. Some people are just natural communicators, and they're fine. Others really have a hard time with being clearly impartial and actually feeling impartial. I've spent thirty-one years working with families in conflict, the first fifteen years was forensic social work. So, I was the person at Child Protection Centre who determined how people harmed the baby. That's not for the faint of heart and you can't go in with a judgment, or you will make a mistake. If you prejudge – "oh that's a *that* right there." – You don't know

what you're looking at without the whole story. It is patience; you have to let things unfold. If you don't let things unfold, you can make a horrendous mistake. It is a word: preparedness. The pre-mediation and caucusing and spending time debriefing afterwards, it's all part of processing, if you will. If you have a process that has a start, a finish, a bit of a metronome to it, a method – definitely a method – those are the tools, I think, that a judge, a mediator, or a finder of fact have to develop deliberately so that they can hear it. Everybody has biases and nasty thoughts – dark thoughts. Some people say, "Oh well, I never have those things." Well, people do; everyone does. Everyone has a bias. So, you need to hear those biases when they are coming forward and say, "Well, wait a minute, why am I thinking this? What is it that's making me think this?" And that may be a time to say, "I'm going to call a five-minute break." You go and get a glass of water, and you think, "Why do I dislike that person?" or "Why would I have said that?" while reflecting. That reflective learning, that's important. That's a close cousin of being able to give an apology, right?

BPS: I'm reflecting on some things from my own lifetime of experience, but I have this frustration, which is that: a lot of people – and surprisingly law professors that I work with sometimes – think the process is somehow an obstacle to getting satisfactory, substantial outcomes. Bad processes can have this effect, but good processes actually can be very useful, therapeutic, and facilitative in terms of getting to appropriate outcomes. All of us who think that mediation and ADR are good stuff see processes that are destructive, excessively costly, and disproportionate in other areas, like litigation. You can come out of that thinking, "Process equals bad," or you can come out of it thinking, "We need a different kind of process, but it's still a process." People might think that mediation is just freeform, right? It's just like improv, but even improv actors actually learn a whole lot of process, you know? There is a lot of artfulness in the way it looks like they're just making stuff up. It's all schticks like, "Go with it, rather than resist it." My sense is that there is actually an artfulness to being a mediator. Not everybody can be naturally brilliant at it, and some people are not going to be good at it – and shouldn't be doing it – but even for somebody who's got the capacity to do it, there's still a lot to learn. There's a lot of technique there, things like breakout rooms, caucusing, taking a break when people are losing it, making sure all the forms are signed. There could be a lot of very useful process there. Even though it's not the excessively fussy and dilatory, expensive

process of the formal system, it's still a process. You can't teach people to be artists, but you can teach them to be craftsmen. There's actually a body of learning here that's real. It's not just generating jargon and fancy words for things you knew anyway; it's something that's teachable, to a large extent. And I guess we probably should be teaching it a lot more at law school. The reason I'm saying this is you're talking about having processes as a mediator. People, I think, have an excessively polar sense that there is court process versus mediation that is totally free form. No! There is actually a lot of process in mediation, and it's process that's teachable and can be articulated. It may be subtle – like, you don't want the participants thinking, "Process, process, process." Obviously, if you're doing a really good job, people don't notice what a good job you're doing because you're doing it so well. Anyways, that's my observation: that there's a lot of process in mediations. You're following a process and sticking to it. Mediation isn't anarchy; it's a different kind of process. That's my sense of things. Feel free to disagree, but that's kind of what your thoughts inspired me to think about.

PL: It is quite a step-by-step process because I've learned that – certainly in personal injury, but in any mediation – qualifying myself as the neutral in an express way is very important because people are very worried. They're thinking, "How is this going to go? What's going to happen? Am I going to be ridiculed? Am I going to be told that I'm a bad person?" They're terrified! Mediation is meant to be the kinder, gentler way, but there's something at stake, so they're worried. So, I expressly declare my neutrality. Then I say, "If you're comfortable, I invite you to tell us a little bit about [X]." First of all, I get everybody to explain their role. What is everyone's role here? What can we expect in terms of the next three hours together? Inviting the claimant to describe the motor vehicle collision is very important to the claimant, but everyone around the table has learned. Some of these files come to me in huge boxes. I say, "I've read your file, but they are words on paper. I wasn't in the vehicle. None of us were in the vehicle. You were in the vehicle." Or worse yet, at the crosswalk – those are the worst ones. You can see them sort of shift gears. I don't let people go on and on because time is limited, but they get to say what happened, what they experienced at the hospital, how they recovered, what their life is like now, and give the context. Then, after that, I will go through the internal review decision. It's explained, "These are the four corners of our jurisdiction today, so the issues under appeal are [X]." I read them out. Again, that's formalizing, right? So,

the people know, "Okay, these issues are under appeal." Because the Commission would read the issues out loud, so there's something to be said for that. Then, asking open-ended questions is really, really critical. Now, you've got me thinking unrelated things!

As you were talking about how we teach lawyering... This summer, I did a course on teaching, training, and mentoring. This was at Osgoode Hall and it's meant for people who have some thought that they may teach at some point. On the reading list was Paulo Freire's *Pedagogy of the Oppressed* – which I read thirty years ago – and it's so interesting reading it thirty years later. My understanding of it was completely different because when I read it the first time, I was reading it from a social-science point of view. This time around, I'm reading it asking, "How do we acquire and learn information? What's the role of reflecting? What's the importance of mentoring and training?" and all these things. "How do we learn? Is the acquisition of learning a commodity that the teacher has and something that the student or the learner doesn't have? So, there's an automatic sort of oppressive state: I have the knowledge, you don't. I'm going to impart it to you, and if you don't acquire it, I'm still better off than you are." The way law schools are set up, I don't know that people really come out as learned as they could be.

BS: Yeah, my own observation is that – systematically and unintentionally – we do many things that tend to commodify learning. This isn't like left-wing politics, right-wing politics, but to get into law school, you need a really high GPA. So, you're encouraged to take courses where knowledge is chunk-ified and you're given a multiple-choice exam. It's really hard to get an A on a tough English essay or history essay; it's easier to get an A on something that's more packaged and definitive. So, in our undergraduate students, we've unintentionally incentivized people to take courses that don't really challenge you to look at things in sixteen different ways; it's more like assimilating the package. Then in law school, you're really anxious about getting your first job. So, if I'm a student in this environment, I'm very anxious about what happens to me after law school. So, I'm not enjoying a course where somebody is asking me to challenge everything. I'm enjoying a course where there's a well-defined body of knowledge, and I can get at least a B or a B+. Regardless of what we think we're doing, many things about the structure are actually kind of geared towards that. Something else is that we're in a very ideological age, so professors come in thinking that

they already know that "capital-T Truth". Their job is to inculcate the "capital-T Truth" that they know, politically, into the students. One of my favourite quotes from the annals of professor-dom is, "I don't know anything, but I know where to look." In other words, I'm still learning. Another one is, "I'm just an older student." One of the points of higher education, to me, is that we're trying to graduate lifelong learners, not people who already got it, but people who have the disposition and the tools to constantly be learning. This means you're open to hearing things you maybe didn't want to hear, open to looking at things a different way, open to the idea that everybody's got a story. Most people don't think they're the bad guy; most think they're the good guy. And if you actually talk to them, you can start to understand – even though you may disagree with somebody – how they could get to where they are. Are we doing a good job at law school of encouraging that frame of temperament and disposition and intellectual skills to spend your whole life being open to learning, enjoying learning and getting that little tingle in your spine with, "Wait a minute, I never thought of that before, but I thought of it now, and that's really changed things. I'm not embarrassed I didn't know this before, I'm actually quite excited." My view is: no, I don't think we've really done a great job of that at law school. For what it's worth from somebody who's been doing this a long time: yeah, I think we've got a lot to work on. I think it would surprise laypeople that we don't teach practice management in law school. You don't go into law ever having a course that asks you to think reflexively about what kind of practice you want to do and the advantages or disadvantages. Do I want to do collaborative practice? Do I want to do litigation practice? No judgment, but I don't like law schools preaching to people. Somebody's got to go up there and be a litigator, right?

PL: Yeah!

BPS: Sometimes people aren't reasonable, and you need really good, effective, ethical people to go out and conduct the combat. Somebody's got to do criminal defence work. It's tough; I'm really glad that people are doing it. It's not me teaching you how to live your life or what kind of practice to pursue, but me thinking as an educator, you're going to be there for thirty or forty years and if nobody starts to give you a framework for thinking and to reflect, when does that happen? You get assimilated into practice. There are enormous pressures all the time to bill, do this, do that. Not everybody

knows what they're doing already, so it's not like you'll suddenly stop and say, "Why am I doing this?" or "How are we doing it?" If we don't give you a start on thinking critically through your life, when does that actually happen? Again – for what it's worth – my view is that our job is to equip you to be a lifelong learner and not to preach, "This is right, this is wrong, this is what you should do." It's our job to teach you openness to a way of learning new skills, because – whatever we're teaching now – the world will be different in five years, ten years, twenty years. However you live your life, I don't want to exaggerate whether reflectivity makes you happier, I'm committed to the view that a life examined might have some more meaning. So, I'm just giving you some framework to think about things, and if you want to think about things, how do you do it? Go to the literature. You should know that you should read different points of view and not just reinforce what you already think. Going out and talking to people is a way of learning. It's not a way of learning that we tend to do much in law school, but it's what we're trying to do as a law journal: actually go out and talk to people – which obviously I find more than edifying.

I think the articling system is broken. Whether you learn something from it depends on which firm you're at. You may be doing something that you're not actually going to be doing the next forty years. People at the firm – no criticism – but they've got to handle their files and get their business done, they can't really stop and spend a lot of time mentoring you and getting you to think about the meaning of your life and whether this is the right practice for you. So, I actually think we should be doing a lot more practice training. Not practice training meaning to teach you the nuts-and-bolts stuff only, but practice training which is getting you to think about stuff. The example you gave earlier in the interview about affidavits, that's the example I always give. You might think, "Ah, that's quotidian lawyer stuff. They can teach that in practice. Why would we do it?" Well, if you think about it critically, there are all kinds of interesting questions with anything as common as an affidavit. You know, how much should you be substituting your voice for the client's voice? Where's the line in terms of coaching what's in the affidavit? What are your ethical limitations if you know the client is saying something that's not true? Hard questions, interesting questions, but if we don't ask them in law school and you don't get them to really think about it, where do you get to think about it? More precisely, where do you get to start to think about it? We're not teaching anything that will solve all your

problems, hopefully we're just teaching you to be aware that there are issues and ways of thinking about them. That's what I think we should be doing and the articling system – generally speaking – does not do that very well.

PL: You know, I have a ton of respect for litigators. I've done expert witness work, as well – as the court's witness – again, about thirty years of that. So, I've been in a courtroom a lot; I've seen a lot of very skilled litigators and I've seen some absolutely morally bankrupt things. There was a Law Society case in Alberta, sometime this year I think it was. A lawyer filed an affidavit. The lawyer drafted an affidavit and attached photographs as exhibits. They were photographs of the respondent in – shall we say – embarrassing circumstances. The judge went out of their mind and likely said, "You filed sexually explicit images in a court without anyone's consent!" So, they reported it to the Law Society in Alberta, who then sent it over to the Attorney General to consider charges. She was part of a firm – this lawyer – so who would think slapping photographs of someone in a compromising position is a good idea? Slapping that to an affidavit?

BPS: And whoever did it – I don't know about this case, so no reflection on the specifics – but a lot of stuff people do is really bad. It's not like they thought about this and did it, it's like they weren't prepped to actually keep thinking critically. "Are there ethical problems with putting those things in an affidavit?" Or, "Even if legally I'm allowed to do it in the rules of evidence, maybe this is not going to help in the long run. I could put in a lot of inflammatory stuff, maybe it's not all that relevant, but maybe it satisfies the legal test, but it's not helping here, it's not going to help you, it's not going to help the other side." If we don't encourage people to think about this stuff, even good people, even people who are certainly capable of thinking ethically and critically, just may not have thought about it at all in the first place? If we don't prime you in law school, where do you get primed? I think that's the unfulfilled challenge that we have as a law school.

PL: Yeah, at this rate, we're going to be saying that it should be a four-year degree [laughs].

BPS: Yeah! Actually, the idea of three years and then a fourth year where we focus on practice skills but teach them in a critical way and you come out qualified to practice law is something we should be actively considering.

The articling system is broken. It's not going to work for a lot of people. Plus, people shouldn't have the anxiety throughout the three years that they're not going to get a job and not be able to practice. So, maybe there should be an additional track where you do four years and the fourth year is something else instead of articling. Maybe, in some ways, we can do a better job than a lot of firms are capable of doing. We'd have to do a good job on it; it's not like we're inherently superior to anybody. It can't be pedestrian or uninspired or ineffective. If we think about it hard, we could offer an additional fourth-year track in lieu of articling and maybe equip people to practice in many ways in that apprentice year.

PL: Yes. I think it would be a superior learning experience. Particularly if the fourth year and the articling year had some cross-pollination. One of the best experiences in my time at Robson Hall was the judge shadowing program. Justice Little was my judge shadow, and it was just so incredibly insightful to be able to sit and listen to a hearing. Nothing is expected of me, I'm just sitting there and learning. I'm not thinking about the next thing I'm going to say or the next argument. I'm just seeing that process of evidence going in, being given weight, being sorted out, being analyzed, and then a decision. Whether it's a two-hour hearing or a trial, it's fascinating. Because when I'm an expert witness, I don't get to go afterwards and have a coffee with the judge and say, "Why did that happen?" Right? That judge shadowing experience was fantastic! Justice Little was such a great guy, but having that opportunity of just learning without an expectation and then being able to ask and inquire and process it; it was fantastic.

BPS: Most of the time, we're participant-learners; we're not learning as much because we're participating. If you can get the opportunity to just stand outside and look at things in a purely phenomenological way – like if you came from another planet. Why is the judge way up there and the civilians are way down there? You can take it for granted, but that's an interesting question. I have a program in another country where the Supreme Court is actually built in more of a circle. The idea is that we're all in this together, rather than on opposing sides. The chairs aren't so high, and the informality isn't as imposing. I'm not saying I don't think we're right, or they're wrong; I'm just saying that there are different ways to look at it. It's very hard to look at it all when you're busy being an active participant. Sometimes just standing back and saying, "I don't know

anything about this," then you find the things that are strange or need explanation or "Why on earth would we do that?" What you're describing is actually a very useful way of learning things but really hard to do once you've actually started being a lawyer already because anything you're doing, you're focused on the task, rightly so. You've got the responsibility of carrying the weight of somebody else's fate on your shoulders. It's not a good time to step back and just come out as a sociologist. It's something you can do in law school which is hard to do in practice: not a result-oriented participation, but a learning-oriented observational experience. It's something we have the advantage of as a law school that you wouldn't have much opportunity to do as an articling student. In my view, we should be thinking a lot more, we have a lot of catching up to do, I think. It's not just our law school; it's any law school. We've been doing things the wrong way for pretty much fifty years since the great transition from apprentice to the suburban law school. It's always time to think again, particularly with the problems with the articling system. We could step back, or we could step up and ask whether we can do something really useful that the apprentice system can't do or couldn't do.

LB: Talking about post-pandemic or post-remote proceedings, do you see your practice permanently keeping some of these techniques or tools? Do you see it trying to revert back? How do you see the future moving forward now that we've had all of this experience with Zoom, all this data that online dispute resolution has provided us?

PL: As we're sort of moving back, I think a lot of professions are asking that question. So, I've been reading about it, and then I'm preparing for this online dispute resolution course at Osgoode starting in the fall. Everything I read about it, what I've taken from it – and some of it is the business world, some of it's more of a clinical practice, all kinds of different people – I think hybridization is going to be something that really needs to be unpacked and thought about. It's like learning, right? We've learned so much about learning, all of these different approaches. So, going through some sort of dispute resolution process, is this an inferior tool, or a superior tool? It depends. It depends on the context; it depends on the person. Now, this isn't new: video witnessing for a witness who is unsafe to be in the courtroom. It's been done for a long time. Now, I did two days of expert witness work in a trial in May and I think there has to be an actual IT

[information technology] person designated to participate because if it's the judge or the teacher or the professor trying to manage the technical aspects, as well as participate in a full and proper way, that's too much juggling. You know, as the saying goes, "Good, fast, cheap: pick two." I think that if an organization is offering the online format – whether it's a non-profit organization or educational – there needs to be a new chair at the table saying, "If we're going to be offering this format in a meaningful way, somebody's got to take responsibility for that piece of it," because it's a big task. Security issues, confidentiality issues, technical issues, all these things. If you're running a two-week trial and the clerk of the court shouldn't be trying to figure out how to let people in the waiting room without accidentally letting the wrong witness in. Think of the days when court is open; no one is going to open that door. No one is going to open that door.

BPS: Right, that's certainly my experience as a classroom teacher. Thinking is easy, managing screen share is hard. It's really hard to teach when a large part of your limbic system or neocortex is preoccupied with, "How come I can't get screen share to start." Then you just lose everybody, and "Is this working?" Yeah, we can make all this work, but I'm just thinking about what you said about practice. As a teacher, there's actually a lot of ways we can really expand the role of university professors: have a lot more open classrooms – anybody can watch them, you don't have to register – there are all kinds of useful things we can do. But it's pretty hard to do. And yeah, actually, your professional performance deteriorates because you're so preoccupied with managing the cables. So, it sounds easy, but, in my experience, it's actually very stressful.

PL: Very stressful.

BPS: Well, even the start of this interview, right? It was very difficult to figure out how to get in and host my own Zoom thing. Yeah, it's really difficult. I had another class this summer where I couldn't get into my own Zoom class, and, fortunately, I had thought of a way of communicating to the students if that happened. I had a list so I could quickly tell people "There's a problem." If we're going to take full advantage of the distance technologies – I think at this stage of technology anyway – it's unrealistic to suppose that lawyers can manage their own IT problems. We've gone away from the idea that you need a person in the building to manage your IT and

so on, so forth, but I think we're going to have to go back. There at least has to be a virtual person in the building there as a steadily accessible resource. One profession that I don't think naturally attracts people who are really good at technical fussiness is our profession. I don't think it will radically change, so having that support in place, I agree with you, is crucial.

PL: It's like stage management. Like, the courtroom is one of the most stage-managed constructs you can think of, right? Everything's very formalized, as we've discussed. I think that technology is not my profession; it's not my training. So, if we don't approach it from a more stage-management perspective, it could become just a band-aid, right? And this should be more than a band-aid. I think it's a way to communicate with people – as I said, rural areas, remote areas, and mobility issues. It makes processes accessible to people who might not have been able to use them.

BPS: Thinking in terms of dollars and cents as a managing partner, I might be thinking that nowadays, commercial real estate is really expensive, so I should be expanding my practice in ways to reduce the need for physical real estate, but I'm going to have to make some investment in IT, right? It's not going to be free. Maybe I'm spending way less on fancy office buildings in downtown Winnipeg, but maybe I should be spending at least some fraction of that on the technical infrastructure which is taking the place of the old-fashioned board room, marble floors and so on. It doesn't have to be like it's 100% savings because we're not physically there anymore, but it's another thing that needs to be invested in. In the long run, we may even do better commercially because I've got an expanded client base and I can do all kinds of things I couldn't do before, but there's a necessary investment there.

PL: In working with individuals where English isn't their first language, I get an interpreter and it is onerous and slow, but it was onerous and slow in-person as well because some people literally had to have each sentence translated. For other people, it's more technical terms. It is a barrier for people, but it's just as much of a barrier in-person because that translator is needed. You just have to hope that that they're translating it properly!

LB: Speaking of online versus in-person, you mentioned earlier the advantages of the online system for participation, particularly people who

are located in remote or rural areas, people with mobility or accessibility issues, and I'm just wondering if there might be a risk of ascribing too much weight to these convenience factors? A lot of what we spoke about earlier was about the quality of alternative dispute resolution, about this kind of individualized or personal justice. Do we risk blurring the differences between an online and an in-person service, and does that jeopardize those qualities of alternative dispute resolution that make them so appealing to many different situations?

PL: That's a really good question because it isn't just about convenience and comfort, right? I think we're still going to have people who say, "Well, no, I want to wear a mask," or "No, I'm not coming in," and that's going to continue on for a little while. But being able to maintain an online dispute resolution process and to continue to offer it, I think it needs to be offered in a way where the quality of it is recognized and some thought goes into it. It's like how some reviews are paper reviews only: documents are filed, no one shows up, there is no in-person, submissions are made. Other things can't be done that way; there has to be oral evidence. So, I think that it's just a question – now that we're not doing this in a crisis – of whether we can kind of unpack it and say, "Is this platform superior to this one?" It isn't just a "yes or no" question, because you really do have to look at what you are trying to accomplish, what the deliverables are, who the participants are, all those things. It's a complicated process. We all jumped on to it because we didn't have a lot of options, but now we can kind of stand back and think about what pieces of this are superior and what they have to offer. Which parts are inferior and either could be worked on or discarded?

BPS: Well, I hope we haven't worn you out here. Thank you for doing this!

PL: Thank you.