

# Interview with Chief Justice Marianne Rivoalen\*

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MACPHERSON

## PART I

**Darcy L. MacPherson (DLM):** First question. There's relatively scant information about you when you were younger: before law school. Where were you born?

**Chief Justice Marianne Rivoalen (CJMR):** I was born at the Grace Hospital<sup>1</sup> in Winnipeg. During my first five years, my parents lived in Flin Flon, Manitoba.<sup>2</sup> My mom was a homemaker, and my father worked in the mines up in Flin Flon.

**DLM:** He was a miner?

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\* Interview of Honorable Chief Justice Marianne Rivoalen, Chief Justice of Manitoba, was conducted by Dr. Bryan Schwartz and Darcy MacPherson on November 23, 2023.

Chief Justice Marianne Rivoalen was appointed as a Justice of the Family Division of the Manitoba Court of Queen's Bench in February 2005 and served as Associate Chief Justice of the Family Division (2012- 2015). She joined the Federal Court of Appeal in 2018 and remained there until her appointment as the Chief Justice of Manitoba in June 2023. Prior to her judicial appointment, she worked at large law firms in Winnipeg in civil litigation in both French and English and then moved to Justice Canada in 2003, where she worked in the Aboriginal Law Services Department as Senior Counsel and Team Leader.

<sup>1</sup> Grace Hospital is a regional hospital in Winnipeg, Manitoba, located in the St. James Assiniboia region of the city of Winnipeg. It was founded by the Salvation Army in 1890.

<sup>2</sup> Flin Flon, Manitoba, is a mining city located at the border of Manitoba and Saskatchewan. It is located around 750 kilometres northwest of Winnipeg.

**CJMR:** Yes, he was a hard worker. Mining is a very hard job; there was a lot of very hard manual labour. He was born on a farm in Brittany, France,<sup>3</sup> and immigrated to Canada in 1951; he was 23-24 years old at the time. He met my mother, who was working in the laundry facilities at the St. Boniface hospital.<sup>4</sup> So, they met in St. Boniface and got married. My father's English was very poor, but he was able to get a good job in the mines in Flin Flon because he was a big, strapping guy. They decided to move there for my father's employment purposes. My mother had some sisters up there, too. At that time, in the late 50s and early 60s, there were jobs up North that paid a decent wage. So, for almost the first five years of my life, I was raised in Flin Flon. My mother was born and raised in St. Labre, Manitoba.<sup>5</sup> It is a small town in southeastern Manitoba. My parents would visit my grandmother there during the summers. My father started buying land in my mother's hometown. By the time I started kindergarten, they had purchased farmland and a farm home. My mother and I moved to St. Labre and my father continued to work in the mine for a short while before moving back in with the rest of the family. So, very humble beginnings.

**Bryan P. Schwartz, K.C. (BPS):** What was the language environment in your home?

**CJMR:** French.

**BPS:** Would that be Breton-French?

**CJMR:** Well, my mother was Franco-Manitoban. Her parents were born and raised in Belgium, and she was a first-generation Franco-Manitoban. Of course, my father's first language was actually Breton, but he obviously spoke French, so my parents spoke French to each other. Literally, my

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<sup>3</sup> Brittany, France, is a peninsula in northwestern France, bordered by the English Channel on the north and is sometimes referred to as "little Britain."

<sup>4</sup> St. Boniface Hospital is the second largest hospital in Manitoba, and is located in the St. Boniface neighbourhood of Winnipeg, Manitoba, founded by the Sisters of Charity of Montreal in 1871.

<sup>5</sup> St. Labre, Manitoba, was established in 1897. It is a small town located approximately 118 kilometres southeast of Winnipeg, Manitoba. St. Labre has a very strong agricultural base, with up to 4000 acres of farmland.

mother tongue is French. Growing up in Flin Flon, though, the moment you were outside playing with kids in the neighborhood, it's all obviously English. I learned English by watching television and being outside with the other kids. When we moved to the farm, I went to Woodridge Elementary School, which is in a small town about seven miles from St. Labre. I went there from kindergarten to grade six, and the instruction was all in English.

**BPS:** Was the language kept up in the home?

**CJMR:** French? Yes, absolutely.

**BPS:** I know Pierre Poilievre<sup>6</sup> has recently spoken about having to recover French from his childhood.

**CJMR:** Yes, that is a very different story.

**BPS:** Yeah, He was away from French for a while, so he had to recover it. For you, is it a continuous fluency?

**CJMR:** Yes. Because of my parents and, of course, my cousins and my mother's sisters and brothers spoke French. My dad's family was all in Europe, so it's not like I have cousins on the Rivoalen side in Canada. My mother's side was all French-speaking, so I grew up bilingual. You're going to learn English no matter what you do. The French language, I just maintained it throughout the time I lived with my parents.

**BPS:** You went to Université de Moncton law school.<sup>7</sup> I'm just curious; you would have known to speak French fluently. Was there a point where you had to learn all the intricacies of written French expression?

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<sup>6</sup> Pierre Polievre is a Canadian politician and has been the leader of the Conservative Party of Canada and Leader of the official Opposition since 2022. He has been a member of Parliament (MP) since 2004.

<sup>7</sup> Université de Moncton is a French-speaking university located in Moncton, New Brunswick. It was founded in 1963, and the Faculty of Law was founded in 1978. The university offers common law training entirely in French.

Chief Justice Rivoalen attended Université de Moncton, Faculty of Law, from 1985 to 1988 and was called to the Manitoba Bar in 1989.

**CJMR:** Kindergarten to grade six, instruction was in English, then I went to La Broquerie High School<sup>8</sup> where from grades 7 to 9, half of the courses were in English and half in French. Then grades 10 to 12, instruction was entirely in French, save for one class on English literature.

**DLM:** You've mentioned that your dad worked very hard in the mines, and you were on a farm. In my experience, that typically means a lot of hard work and long hours doing physical labour. Do you see any of your traits today as being driven by or started by the realities of back then?

**CJMR:** I think I do because I'm a product of my environment, so I'm not afraid of hard work. I'm not afraid of rolling up my sleeves when I must do something. Now, it's more intellectual work, obviously. But the same kind of principles still come into play. You must work until you get the job done, and I grew up with those values that still apply today.

**BPS:** Yeah. Follow up on Darcy's question. Either mining or farming, you must have an acute sense of realism. That's the theory, anyway. Reality will always talk back to you and let you know what's happening in the real world as it does in law. We spend most of our lives pushing words. Would you say that those direct contacts with physical and human realities is something that affects you in your work as a judge?

**CJMR:** Well, you're living in the present moment, that's for sure. Especially as a farmer, I worked on the farm with my parents, and you're at the mercy of nature. You can't control the outcomes all the time. You have to figure things out; you can't always hire a vet or a mechanic to get things done. This is something that helped me when I was a trial judge and as a lawyer, too. I feel like I could understand where people were coming from. I don't know if this is the same for my colleagues, but for me, I was always very curious about people's lives and found it easy to empathize and come away with an understanding of where some people are coming from. I've seen life from a different perspective, perhaps, from some of my colleagues. It has influenced me as a fact finder.

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<sup>8</sup> La Broquerie High School is located in the small community of La Broquerie, Manitoba, just outside Steinbach, Manitoba.

**BPS:** Our profession is all about words. Some people who are very smart know a lot, but their lives do not consist of symbolic manipulations. Unless you come from that background, you may not appreciate that just because someone is not speaking in a particular way or using formal vocabulary, that they may be very smart; they might have some very powerful insights.

**CJMR:** On that point, my father is probably one of the smartest people I've ever known, and he's self-taught in terms of English! He would read every magazine and paper he could get. He listened to the news, and he liked to discuss things. Just because you don't have a formal education doesn't mean that you're not a smart person. As a judge, when you're looking at a person, you try not to judge them, right? You're just trying to understand what their background is to provide context. But in terms of intellectual discussions and curiosity, I had that in spades when I grew up in my home, mostly coming from my dad because of the immigrant experience and just being so curious about Canada.

**BPS:** This happens to be the immigrant experience in Canada; people come from different backgrounds. Even today, we have neurosurgeons who are working as cosmetologists because they can't get credentials. Sometimes we can be rather quick to evaluate people without realizing being a miner or farmer doesn't make you less intellectually curious.

**CJMR:** Look where his daughter ended up! My parents have both passed away, but my dad would say I got it mostly from him. My mum was a very quiet and humble person; she was very closely connected to nature. And my dad was more of a curious, intellectual person who did what he needed to do to support his family. "Anything is possible," is what my father would say. "If you work hard, you've got the drive, and you're not afraid of failing, then the world could open up to you. Especially in Canada, where you have access to good universities." Hopefully, that gives you a bit of insight as to where I'm coming from. I wouldn't change my childhood for anything. I grew up on a farm in a beautiful area in the middle of nowhere. Some people think, "Oh my God, she grew up in the bush!" The natural beauty was just gorgeous, the wild animals and nice peaceful community. It was a very nice way to grow up as a child.

**BPS:** So, at the same time, your father was in a very dangerous profession. [Mining] I think it's the most dangerous.

**CJMR:** That was when I was young, but that is one of the reasons why he left mining. He had some problems with his lungs and hearing; it was very difficult for him physically.

**BPS:** You grew up in an environment where people were working with nature with their hands and then you go to university, and you study philosophy and math.

**CJMR:** My undergrad was at St. Boniface College<sup>9</sup> when it was affiliated with the University of Manitoba. The reason why I went there is because it is a French college. I was 17 when I graduated from high school, and I started university that same year. I went into sciences because I got a bursary, a very small bursary; I think it was like \$400 or something. That was enough to make me realize, "Okay, I'm going to go into sciences then," because there wasn't a lot of money around, and I had to take student loans. I went into sciences and, long story short, completed a three-year degree; I didn't know what I wanted to do in life. I did a math major because the professor was so fabulous that I just kept on taking math courses. I wanted to end up with a Bachelor of Sciences, but I was missing one course in my third year. I didn't realize I needed to have a statistics course; the course wasn't offered at St. Boniface, and my schedule didn't work for the University of Manitoba. So, I went to my guidance counsellor and said, "Okay, I need a degree. I don't care what it is; just give me a degree." At that point, I realized I was going to apply for law. As you know, lawyers, thankfully, come from all kinds of different backgrounds and have different undergraduate degrees. At St. Boniface College at the time, they had a general degree called a Bachelor of *Latin Philo*, Latin philosophy. I haven't taken any Latin courses, and I've never taken a philosophy course. But that's the degree I received, even though most of my courses were science-based courses.

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<sup>9</sup> Université de St. Boniface, formerly known as St. Boniface College, is a French-language university located in the St. Boniface neighbourhood of Winnipeg, Manitoba. Father Norbert Provencher (1787-1853) established the college in 1818. St. Boniface College was given university status in 2011 after the passage of the *Université de Saint-Boniface Act*, CCSM, c U60.

**DLM:** That's really interesting! You mentioned something that I was going to bring up in any event, but was there anybody at this stage in your life who was really making an impact toward "law might be the thing?" Was there a professor or somebody who was really an impactful person for you saying, "You should go try this," or "You could do this." People with successful careers often have an individual who helped inspire them. Was there anybody like that for you?

**CJMR:** Well, in terms of getting into university, one of my high school teachers in La Broquerie was Raymonde Gagné,<sup>10</sup> who's now the Speaker of the Senate. When I went to La Broquerie, Senator Raymonde Gagné was a very young teacher, and she taught math and sciences. She was a very strong, smart young woman who was just a great example of somebody who inspired the kids she was teaching to go to university. Thanks to Raymonde, I went to university. In university, I realized very quickly that I was just not made for medicine. I had no idea what I was going to do with this degree. One of my classmates who was in sciences said, "My sister is in law school in Moncton; you should go there. You should try it out." I said, "Law school!? What am I going to do in law? I don't even know what a lawyer does. I've never even met a lawyer." She says, "Well, you can do all kinds of things with a law degree." My friend, Belinda Curpen,<sup>11</sup> is now a doctor in Toronto, but it was her sister, Radha Curpen,<sup>12</sup> who went to law school. She used to be a partner at Thompson Dorfman Sweatman.<sup>13</sup> Because of that word of mouth, I was willing to try law school. In terms of the university professors, I wouldn't say somebody in my undergrad pushed me down the path to law; it was more just having a good classmate who

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<sup>10</sup> Senator Raymonde Gagné, OM, CM, worked in education for over 35 years and served as President of Université de Saint-Boniface from 2003 to 2014. She was appointed Senator for Manitoba in 2016. From 2020 to spring 2023, she served as Legislative Deputy to the Government Representative in the Senate (Deputy Leader) and was then appointed as the 46th Speaker of the Senate (2023-present).

<sup>11</sup> Dr. Navamane Belinda Curpen, BSc, MD, FRCPC, is a Diagnostic Radiologist at Sunnybrook Health Sciences Centre in Toronto, Ontario.

<sup>12</sup> Radha D. Curpen is currently the Vice Chair and National Leader of ESG Strategy and Solutions and the Co-Head of Environmental Law Practice at Bennett Jones. She was also the managing partner of the firm's Vancouver office from 2016 to 2024.

<sup>13</sup> Thompson Dorfman Sweatman LLP is a full-service law firm in Winnipeg, Manitoba, founded in 1887.

suggested it and brought it up, and Radha Curpen was really enjoying her experience. Lo and behold, that's what I did.

**DLM:** Now, we've talked a little bit about this, but I want to make sure to give you a chance to talk about this. You're the second Franco-Manitoban in a row to occupy that chair [as Chief Justice of Manitoba, following The Honourable Chief Justice Richard J.F. Chartier].<sup>14</sup> There is clearly something about that community that has a great impact on many of its members. What was the impact for you of being a member of the community? Your predecessor used to say, "Winnipeg is a community of communities." I think that is generally true for Manitoba, but what is it about that community that was so clearly helpful along the way?

**CJMR:** I am a very proud Franco-Manitoban and obviously very proud of my roots and where I come from. My father always said, "You've got to be proud of growing up on a farm." Then, going to the Université de Moncton, I was able to obtain a common law degree *en Français*; it was between Moncton and [the University of] Ottawa. A lot of Manitobans went to Moncton, though, probably because of Roger Bilodeau<sup>15</sup> and others who started off there.

**DLM:** He started out as a professor at Université de Moncton, right?

**CJMR:** Yes, he was one of my profs.

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<sup>14</sup> The Honourable Richard J.F. Chartier was the Chief Justice of Manitoba between 2013 and 2022. The Manitoba Law Journal did two different interviews with Chief Justice Chartier. One was at the beginning of his term as Chief Justice. See "An Interview with the Chief Justice of Manitoba Keynote", (2013) 37:1 Man. LJ 43. The second was near the completion of that term. See "Interview with the Chief Justice Richard Chartier", (2023) 46:3 Man. LJ.

<sup>15</sup> Roger Bilodeau, QC, is a lawyer who has practiced civil litigation, constitutional, administrative, and human rights law in Winnipeg, Ottawa, and Moncton and has arbitrated commercial disputes. He has also taught at the Université de Moncton, Faculty of Law. He was the Deputy Minister of Justice and Deputy Attorney General of New Brunswick (1999-2003) and the Registrar of the Supreme Court of Canada (2009-2020).



**BPS:** He contributed to the lawsuit that led to the 1985 reference case<sup>16</sup> regarding whether a non-bilingual ticket is legally valid. That's what provoked the huge debate in Manitoba about becoming an officially bilingual province.

**CJMR:** In 1979, Georges Forest<sup>17</sup> started off the big debate of the fact that the Official Language Act of Manitoba was ultra vires or inoperative because of the conflict between it and Section 23 of the Manitoba Act (1870), which mandated the use of English and French in the legislature and the courts of Manitoba. Then Roger continued another portion of that whole argument, arguing that the provisions of Section 23 are mandatory, not directory, which ended up in the 1985 reference case from the Supreme Court. Roger Bilodeau was one of my professors in Moncton during that time. The whole French-Canadian, French language piece of who I am, certainly, made me realize that you must fight for your rights, you're always making sure that your rights are being respected; I think it encourages you to become a leader in that sense. Because when you know that you're entitled to certain things and if what is happening is not fair and in accordance with constitutional principles, it makes you kind of a warrior. I feel like that's been instilled in me throughout the years.

**DLM:** So, let's talk a bit about your experience, three years out east in Moncton. What was that like for you?

**CJMR:** It was great; I was so young. Wow, to be young again! I wasn't married. Moncton was a very small law school, and there were students from across Canada. Maritimers are the best in terms of knowing how to work hard and still enjoy life. I felt like there was a real affinity between the Manitobans and some of the Acadians [francophone Atlantic Canadians]. It was just a wonderful, wonderful experience. Coming from a small town and then a small university and then going to another small university. The people there were wonderful classmates and good professors.

**DLM:** But you would return home shortly after the end of law school.

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<sup>16</sup> *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721, per The Court.

<sup>17</sup> Georges Forest (1924-1990) was a Metis language-rights activist and owner of an insurance agency. In 1970, he also helped co-found Festival du Voyageur, which is a festival celebrating Metis history that takes place annually in Winnipeg, Manitoba.

**CJMR:** Yes.

**DLM:** And then you went to Aikins?<sup>18</sup>

**CJMR:** No. I worked at Lower Fort Garry, as a tour guide. It was a good job. I'd come home every summer to work at Lower Fort Garry. Then, when I graduated from law school, I came back to do my articles at Pitblado and Hoskin,<sup>19</sup> as it was called in those days, and stayed there for ten years. I got my call in '89, and I stayed at Pitblado until '99. When Marc Monnin<sup>20</sup> was appointed to the bench; he was a partner at Aikins. Aikins was looking for a bilingual litigator, somebody who could take on some files. So, I was approached to see whether I'd be interested in joining Aikins as a senior associate to do some litigation.

**DLM:** So, litigation was always the plan?

**CJMR:** Yes, I was doing litigation at Pitblado, primarily family law, with a little bit of a mixed bag. I was mostly doing family law because I had a lot of Francophone or French-speaking clients. When I joined Aikins, I did very little family law, just for French-speaking clients and did mostly civil litigation.

**DLM:** Now, without revealing confidences, of course, what were the most powerful memories of those periods, both at Pitblado and at Aikins? Were you still enamoured with the law?

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<sup>18</sup> Aikins MacAulay & Thorvaldson (presently MLT Aikins) in a regional full-service firm. Chief Justice Rivoalen practiced in civil litigation in the Winnipeg office of this firm from 1999 to 2003.

<sup>19</sup> Pitblado Law is a law firm in Winnipeg, Manitoba, founded in 1882. In 1998, Pitblado & Hoskin merged with Buchwald Asper Gallagher Henteleff. Justice Rivoalen joined Pitblado as an articling student in 1988 and practiced at the firm until 1999.

<sup>20</sup> The Honourable Justice Marc M. Monnin was appointed to the Court of Queen's Bench of Manitoba (as it then was) in 1997; he then served as Chief Justice of the Court of Queen's Bench from 2003 till 2011, when he was appointed to the Manitoba Court of Appeal. As of 2016, he elected supernumerary status. Prior to his judicial appointment, he practiced civil litigation, transportation law, administrative law and unemployment at Aikins MacAulay & Thorvaldson (presently MLT Aikins) in Winnipeg, Manitoba.

**CJMR:** Well, when I started working at Pitblado, I was one of the very few women there; the most senior woman was Janet Sigurdson.<sup>21</sup> There must have been at least 50 lawyers at Pitblado, and I think maybe we were five women, and we were all very junior. That kind of struck me, but I had a good experience at Pitblado because there were some good mentors around who assisted in my development. At the time, I still did not know if I liked the law; I was still figuring things out. I went into litigation because that's the client base I got. I did a lot of volunteer work for the French community, and that's how I would get more and more clients asking me to do family law, wills and estates, and real estate. It was almost like being a general practitioner.

**BPS:** I want to ask you a bit about those days in litigation practice. I don't know if it's changed enough yet, but in the old days, my understanding is that, in Manitoba, people were very adversarial. People weren't looking so much to lawyers to arrive at amicable resolutions; it was combat. Maybe you try extra hard, but it eats you up emotionally, and you lose your detachment, and you start to take everything personally, which may not pay the price and may not even be helpful to your clients. How did you find that?

**CJMR:** Well, there's no question that practicing family law is very, very challenging emotionally. It can be very hard on the lawyer, even if you don't take things personally, it is the high volume that chips away at you. Sometimes, the cumulative effect of it can wear a person down. It is important to be mindful of that. When I was young, I thought I was doing good work. I was able to go to court on a regular basis. I got to know the judges well, and I would tell my clients my opinions on whether they would win or lose. But then, when it came to billing, I was a bit of a softy; I would often know my client's financial situation better than they would. I could have billed more, but I wouldn't. What I really liked about family law was

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<sup>21</sup> Janet Sigurdson is a lawyer and advocate for children. Prior to retiring, she was general counsel in the Family Law Section of the Legal Services Branch in the Manitoba Department of Justice; in her time there, she was part of the Canadian delegation to the Hague for the Protection of Children. She has been on the board of the Canadian Centre for Children Board of Directors since 2002 and is currently its Vice Chair. Earlier in her career, she practiced at Pitblado Law.

the human element and that we could resolve things the right way. With reasonable people and reasonable lawyers, there's always a way of resolving things. When you have clients with mental-health issues, though, you'd need to refer them to counsellors or mental-health professionals. The pace was also very different back then; back in the day when I was at Pitblado, there weren't any of these instantaneous emails. You would receive a nice letter in the mail, you would read it, it was well-written. The practice and the pace were just a bit different.

**BPS:** Yeah. I remember talking to one lawyer who said, "Well, in the old days, a fast turnaround for a letter was two weeks." People are like, "I emailed you this morning!" What's going on there is that people expect that, somehow, humans can keep up with the technology. Just because something can technologically be done instantly, doesn't mean that the human can somehow produce an instant turnaround. I think that's added a lot to the stress of the profession.

**CJMR:** Yeah, I'm not sure I would have been able to manage that very well. Back when I was practicing from '88 to '99, there wasn't much instantaneous messaging demanding instantaneous responses.

**BPS:** I'm guessing you always had a talent for dealing with difficult people. You've got to deal with a lot of difficult people when you're in family practice with clients, sometimes lawyers, there can be larger-than-life egos. Did you have techniques for dealing with that?

**CJMR:** How do you deal with difficult people? I feel like having emotional intelligence is important. I can often understand where people are coming from. Sometimes, it's about having boundaries and knowing how much you're prepared to take. Generally, if you treat people with respect and if you are calm and don't react, it tends to deflate the other side a little bit.

**BPS:** Well, you mentioned something earlier in the interview about judging people. Say you're dealing with an extremely difficult client; you can kind of get what it's like to be emotionally wounded. Or you're dealing with an angry judge; you can guess what their day has been like and so forth. You can sort of see why people do what they're doing, even if you don't like it. I think that would go a long way to handling difficult people.

**CJMR:** Maybe that's one of the reasons why I'm here, where I am now? That has been my approach, and I have been getting better and better at it the older I get. I also think that growing up in a nice, peaceful environment has helped me to be a very calm person on the outside, even if I am rather anxious on the inside. Being able to display calmness on the outside has gotten me a long way; I've never been one to scream, and I treat people with kindness. I feel like that goes a long way in life, even in this profession.

**BPS:** Even if you were on the wrong end of people being unkind, you seem like you have pretty good emotional stamina for dealing with that.

**CJMR:** Yeah, I've been on the receiving end of that. What I do is try to remove myself from the situation and just not react, not engage in the confrontation, because then it's going to deteriorate even worse.

**DLM:** Do you mean remove yourself from the equation? That this isn't about you.

**CJMR:** Yes, but to physically remove myself from the situation if someone is being completely ridiculous. Sometimes, it means taking a recess or something. It can be hard not to take some things personally, but what I always strive for is not to react in an aggressive way. Sometimes, you need to stand up for yourself and be firm, but not to meet their aggression. I don't want to end up in a screaming match; it isn't my style. So, I wouldn't necessarily have the qualities to make a good politician.

**BPS:** It sounds like you have very good qualities to be a judge, though.

**CJMR:** Yeah, well... I think it served me well.

**BPS:** Removing yourself is important; if the person you're interacting with thinks you're terrible, you can just focus back on the facts and figures and not go down that rabbit hole. I think that is a gift of temperament. It is an emotional discipline that not everyone has learned. It isn't easy to do, especially if you're a very logical person.

**CJMR:** It's not easy to do it when you think the other side is being illogical. Depending on what the circumstances are though, it can be a very effective way of dealing with things as a judge. As a judge, it's a whole different ballgame. As a judge, I control the process, and I control the courtroom. I set the tone. If somebody starts misbehaving, you bring them back in line. You can take a recess. I think the lawyers know how I conduct hearings, so I haven't seen a lot of that [bad behavior] in court. It is a skill set that is very useful even outside of court.

**BPS:** Well, having spoken to a lot of lawyers over a lot of years, in a lot of bureaucratic contexts, I think one of the most powerful techniques for diffusing conflict is just giving people a sense that they've had their say. If they got the sense that they had their say, that they were heard. You might not agree, but it is corrosive to the system when they think the decision-makers aren't listening or they think your mind was made up before they had a chance.

**CJMR:** I totally agree with you. I think the qualities a judge needs are being a good listener, having patience, not interrupting, and not telling people how you see it without giving them an opportunity to have their say.

**BPS:** When you're in the arena of family law or criminal law, sometimes you must listen and see things that are very difficult to experience. We have a colleague who talks about it openly; he left his career in criminal prosecutions. Some cases can be so traumatic that you are still dealing with it long after. Is that something that you can learn to turn off at the end of the day? Can you just go home and live your life afterwards? Because, at one level, you must.

**CJMR:** When I was working at Aikins, the files I had were in regular civil litigation; there weren't a lot of emotions involved, and it was almost like a bit of a break. But there were emotions for sure when I became a judge working in family law. The cumulative effect of all these cases, especially child-protection cases, can be difficult. But I started trying to find tools to help me stay healthy: mentally and physically healthy. Being emotional when it is appropriate to do so. I don't think that keeping things inside is necessarily a good thing, so you need to find the tools to help you work

through those emotions. I started yoga and meditation around 2003, and those have helped me a lot.

**BPS:** In judicial training, have we started to educate judges and give them some of the coping skills?

**CJMR:** I'm involved in a program that is organized by the National Judicial Institute<sup>22</sup> called "Survive and Thrive," and it's intended for judges who might be having difficulty with the nature of the work that they're doing. The program has a mental health aspect to it. Debbie McCawley,<sup>23</sup> who you know well, has been involved in the planning of that program. So, yes, there are more programs available to judges and lawyers now for mental health resources. I'm not ashamed of speaking about mental health issues because we're all human. Yeah, it's all part of reality, what we go through in life.

## PART II

**DLM:** I don't want to get away from this, but we seem to have jumped straight to your judicial stuff. We will certainly get there, but one of the things that I found interesting in your bio was while you were in practice, you took on other roles, such as judging roles in the Manitoba Labour Board,<sup>24</sup> the Deputy Chief commissioner of the Residential Tenancies Commission.<sup>25</sup> I'm assuming that at least the latter of those had a lot of self-reps.

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<sup>22</sup> The National Judicial Institute (NJI) is a judge-led organization which provides educational programs and resources to judges in Canada.

<sup>23</sup> The Honourable Justice Deborah J. McCawley, KC, was a judge on what was then the Manitoba Court of Queen's Bench (1997-2014). In 2014, she elected to go supernumerary, and retired from that Court in 2021, although she remains a Deputy Judge of the Court Martial Appeal Court of Canada. Prior to her appointment to the bench, she was the Chief Executive Officer of the Law Society of Manitoba (1988-1997). She practiced family law and civil litigation in private practice (1976-1980) before she became the deputy Chief Executive Officer of the Law Society of Manitoba (1980-1988).

<sup>24</sup> The Manitoba Labour Board is established by the *Labour Relations Act* (CCSM c. L10). It is an independent tribunal that specializes in the fair and efficient administration and adjudication of responsibilities under legislation such as The Employment Standard Code (CCSM c. E110), The Workplace Safety and Health Act (CCSM c. W210), and *The Public Schools Act* (CCSM c. P250).

<sup>25</sup> The Residential Tenancies Commission, consisting of the Chief Commissioner and a

**CJMR:** Yes, I didn't do the Labour Board that much; I did it primarily when there was a bilingual arbitration as I was on the roster. But I worked at the Residential Tenancies Commission as Deputy Commissioner for ten years, so I did a ton of hearings.<sup>26</sup> I did a ton of residential landlord-tenant hearings. I would say 99% of the time the parties were self-represented, certainly tenants and a lot of the landlords, too, had their own agents, but lawyers rarely appeared. And so, I learned how to manage hearings on a three-person panel where I was the chair, and you have a layperson on both sides, one representing the landlord, one rep for the tenant. Then, you had to get those decisions out really quickly. So, I loved it. It was a great experience. Al Zivot<sup>27</sup> was the Chief Commissioner at the time.

**BPS:** Did you work in government for a while?

**CJMR:** That was at the very end of my career. Well, I think I started with the Residential Tenancies Commission when I was at Pitblado, and it carried on when I went to Aikins. I said, "I do this kind of on the side. It's almost like community service in a way." They said, "Yeah, no problem if you want to do it." So that was a great experience.

**DLM:** What was it about that particular opportunity? You are a woman, you are francophone, you are a lawyer; you could have had your pick of community involvements. What was it about those opportunities with the Labour Board, in particular, the Residential Tenancies Commission, that made you say, "Yeah, that's how I want to spend my off time?"

**CJMR:** Well, I think you are in a quasi-judicial role in the sense you're an administrative decision-maker, so it really puts you in the seat of the

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Deputy Chief Commissioner, hears appeals from landlords and tenants about orders and decisions issued by the Residential Tenancies Branch. Appeals may also be heard by a panel consisting of a landlord, a tenant, and either the Chief Commissioner or a Deputy Chief Commissioner.

<sup>26</sup> Chief Justice Rivoalen served as the Deputy Commissioner of the Residential Tenancies Commission from 1993 to 2003.

<sup>27</sup> Alvin Muray Zivot, QC, was an attorney who served as the Chief Commissioner of the Residential Tenancies Commission while Chief Justice Rivoalen served as Deputy Commissioner.



decider, and it might even enhance your advocacy skills because you see what's effective and what's not. I enjoyed it; I enjoyed the stories, and how life is stranger than fiction sometimes. It was just a very good opportunity to hone my skills.

**BPS:** We always ask people who have become judges; you have the advantage of being on both sides of the decision and seeing what works and what doesn't work in terms of advocacy. There are many different theories. We've had colleagues who taught, "Just stick to your one point. Don't confuse them with the rest." I'm skeptical about that because you don't know what the judge will actually be interested in. My guess is you have to be thorough because you never know what point a judge will actually think is the key point. The other part is distilling things. "I've given you all the details you need, but I'm also cutting through all this stuff. This is really about X. You may disagree with me on this, but the real point here is X." So, you have both the distilled big picture and the meticulous details. In a nutshell, that's my theory of advocacy. I hope you don't think what I'm saying is platitudinous because there are so many different theories. There's the "throw everything and see what sticks." There's the "now just pick one story and stick with it."

**DLM:** Maybe two points. Three points?

**BPS:** That was just my preface. Do you have any views? Being on both sides and what works?

**CJMR:** Yeah, I do. And it depends on whether you're a trial judge or an appellate judge, too, though I think it also depends on if you're an administrative decider. I think the different levels of decider bring a different kind of advocacy in different areas. In terms of an appellate judge, the written word is very important: conciseness and briefness. Even though, you're allowed 30 pages in a factum, you don't need more than 30 pages to ever make your points. I would say 2 to 3 points, certainly, in an appellate setting. The writing is crucial, but you can still change judges' minds with oral advocacy in an appellate court after you hear a really good argument or somebody who is prepared to think on their feet and not stick to the written text and all that.

I think it is a bit different in front of a trial judge because it's all about finding the facts. The advocacy is more the direct examination or cross-examinations; those things are critical. As an appellate judge, I'm stuck with the facts. So, in terms of the piece for appellate lawyers who do appellate work, it's also knowing what the standard of review is. You can't go on and on about these facts unless there is a palpable and overriding error; I'm stuck with those facts. So, move on; what's the legal issue? You know that kind of thing.

**BPS:** Yeah, I would say another thing about appellate advocacy. I haven't been an appellate judge, but this is my theory; it is trying to think of something that the judge can take away and use.

**CJMR:** Yes, absolutely. For sure. When there are good facts, you're inspired by them, and in your reasons, you might even cite some things from the factum and give credit to the lawyers.

**DLM:** You left private practice to go to the federal government. And I read something somewhere where you said that era for you, that period for you was quite transformative. What were you doing, and why was it transformative? What did you mean by that?

**CJMR:** I left Aikins for the federal Department of Justice in April of 2003. At Justice, I was hired to conduct Indian Residential School litigation on behalf of the federal government representing the Crown. In private practice, I had done some tort litigation, so I was familiar with the tort side of abuse claims. What was transformative for me is that I wasn't aware of the history of residential schools; I never read about it in high school, and I was just completely unaware. Because I am bilingual, I was asked to look after the Fort Alexander Residential School<sup>28</sup> which is on Sagkeeng First

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<sup>28</sup> Fort Alexander Residential School (Sagkeeng, Manitoba) was founded by the Oblates of Mary Immaculate for the Indigenous and Métis children in the area. This school initially started out as a day school; however, by 1905, the students were required to live in the school for ten months per year. The school was eventually closed in 1970 after a change in the policy of the Department of Indian Affairs (now Indigenous Services Canada), which no longer promoted separate schooling for Indigenous students.

Nation<sup>29</sup>. The Catholic Oblates Fathers<sup>30</sup> were responsible for that school. The lawyer at the time who was representing the Oblate Fathers was Rhéal Teffaine,<sup>31</sup> and he had all their documents at his office. I knew him from the French community, so one day, I said to him, “Rhéal, I need to see your documents.” He said, “Well, you'll have to come to my office because there are boxes and boxes and boxes of documents.” I spent days going through the documents that were from the Catholic Church in connection with the school, because a number of survivors, a number of plaintiffs, had made claims against various alleged perpetrators, many of whom were Catholic priests.

So, I'm reading all of this. I then did several discoveries of plaintiffs from the Sagkeeng First Nation. So, I got to know their stories. Sagkeeng First Nation was also where Phil Fontaine<sup>32</sup> grew up. One of the lawyers who was representing the plaintiffs was a law professor out of Calgary named Kathleen Mahoney.<sup>33</sup> She would do this in the summer as one of her projects and she'd have a couple of her students assisting her. So, acting as the Crown, I got to know Kathleen Mahoney; she was representing the plaintiffs. The churches were not participating in the litigation, but I had

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<sup>29</sup> Sagkeeng Anicinabe Nation is composed of Anicinabe people near Fort Alexander Indian Reserve #3, located in Manitoba, close to Winnipeg River and Traverse Bay. Sagkeeng Anicinabe Nation is located 120 kilometers northeast of Winnipeg, Manitoba.

<sup>30</sup> Fort Alexander Residential School was operated by Missionary Oblates of Mary Immaculate (OMI). OMI were founded in 1816 and are missionaries of the Catholic Church.

<sup>31</sup> Rhéal Teffaine, KC, is a lawyer in Manitoba who has been practicing for over 50 years. He has also advocated for French-language rights and has been involved in many organizations such as la Société Franco-Manitobaine and l'Association des Juristes D'Expression Française du Manitoba.

<sup>32</sup> Larry Phillip (Phil) Fontaine, OC, OM, is an Indigenous leader, politician and advocate. He has previously served as National Chief of the Assembly of First Nations (AFN), Grand Chief of Manitoba and Chief of Sagkeeng First Nation. More information about Phil Fontaine can be found in the Manitoba Law Journal in an article titled, “Interview with Phil Fontaine”, (2018) 41:2 Man. LJ 65. The interview was conducted by Dr. Bryan P. Schwartz.

<sup>33</sup> Kathleen Mahoney, KC, is a Professor Emerita at the University of Calgary's Faculty of Law (retired in 2021). She was also the Chair of the Board of Directors of the International Centre of Human Rights and Democratic Development and a founder of the Women's Legal Education and Action Fund.

access to the documents. Long story short, early in the process, Kathleen says to me, “You need to come to Sagkeeng and have a tour of the reserve because when you're doing these discoveries, people are describing certain things and then you can go and you think, ‘Yeah, yeah. You know, I understand the river’s here, etc., etc., etc.’” So, I took her up on her offer and went to Sagkeeng First Nation one Saturday.

Phil Fontaine picked me up from wherever we had agreed to meet. He and Kathleen gave me a tour, and I met a number of the people there. Anyway, let's just say it was re-learning Canadian history. I was learning a lot. A lot, a lot. It was just a mind-blowing experience for me to understand what had happened. I was only with the Department of Justice for 22 months when I was appointed to the Bench. I stopped working on the Indian Residential School files just around the time the settlement agreement was being negotiated amongst all of the First Nations, the Churches and the federal government.<sup>34</sup>

That's a long answer, but it was just learning about the history, understanding the different perspectives and then actually speaking to survivors. It wasn't an adversarial discovery process. Some of my colleagues looked at me like, “What is she doing?” I did not conduct an adversarial discovery; I had some questions, and I would just let the plaintiffs talk and not challenge them. I wasn't there to determine if it was consistent; I just wanted to make sure that their story was on the record. We ended up resolving a number of those cases because there was very little going on in court in Manitoba in terms of those cases. That was one of the best experiences that I've had as a lawyer, and it helped me as a judge because when I was on the Bench and I saw First Nations people in front of me, that knowledge put things into context for me.

**BPS:** As a trial judge for a court, especially as an appellate judge, you're seeing the world filtered through paper. But you have had the human experience of knowing what a voice sounds like or knowing the firsthand account of an experience, as opposed to the way it's described in the trial judgment or transcript, that must add a whole dimension of understanding.

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<sup>34</sup> The Indian Residential Schools Settlement Agreement was approved by all parties in May 2006 and was implemented in September 2007.

There's just no substitute for direct observation. But it must have been a tough experience hearing some of those stories.

**CJMR:** It was tough, but it was a good experience for me because it wasn't for me, it was for the survivors; it wasn't adversarial. I think that the plaintiffs were happy that the Crown actually listened to them. I was there as the Crown; that's how they saw me. They had their lawyer there and there were all kinds of other supports around. I believed them, and we were making settlement offers, so they were able to resolve their cases. So yeah, that was a very, very good experience for me. Overall, I felt like it was fair, and it was an opportunity to do something constructive.

**BPS:** Yes, because it wasn't adversarial. It wasn't, "How can I take a person who has had horrible experiences and try and minimize the damage to the federal treasury?" It was "This is the first time somebody at the Crown has listened," and there was something of an outcome. I mean, you can never undo some things, but at least the process was intended to compensate in some way. No one could pretend that money can always substitute for the kind of losses people endure in that context. There are two dimensions of positivity to it: listening and actually providing some material recognition.

**CJMR:** The litigation had been going on for some time before I got to Justice. We took instructions from an Assistant Deputy Minister out of Ottawa named Elizabeth Sanderson.<sup>35</sup> When I started with the feds, I had been a lawyer in private practice for around 15 years, so I didn't understand the chain of command. When you're there as a lawyer in a private firm, you do what you think is right. When you're in the government, you usually can't do that. But Elizabeth Sanderson agreed with my approach to the litigation and made it known that this was the approach she wanted to take: a non-adversarial approach. Some of the litigators who had been at the federal government for a long time were more traditionalists in the sense

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<sup>35</sup> Elizabeth Sanderson was Justice Canada's Assistant Deputy Attorney General, Aboriginal Affairs Portfolio (2002-2010) during the Residential School Class Actions Settlements. She also served as the Deputy Minister of Justice for the Nunavut Government (2014-2016) and was Senior General Counsel in the Public Law Policy Section (1996-2002). Additionally, she is a sessional professor at the University of Ottawa, Faculty of Law and is currently the Public Service Mentor in residence and was previously Justice Canada's Public Servant-in-Residence (2012-2014) at the university.

that you always had to make a request for anything to block or stall things. But my thinking was, “Are you guys crazy? Do you know who the judges are? Do you know what happens if this plaintiff testifies and the alleged perpetrator is dead, and we’ve got the alleged perpetrator’s diary, and this is what the diary says.” We need to resolve these cases.

**BPS:** As a point of resonance for me, I started my legal practice working in the federal government and back then, it was on the sixth floor with the constitutional division; great people, really smart people, but I realized early on that I couldn't work in an environment where you needed six signoffs. Everything I say has to be run up the chain. I understand the accountability and the consistency that a bureaucracy needs to give, but I just couldn't see myself working a career in that environment, where everything I say has to be pasteurized and processed for the next 40 years.

**CJMR:** Initially, I didn't feel that way. I was doing my own thing, and nobody was mindful of what I was doing. Only after a while did they realize, “Oh my God, Rivoalen's doing all this!” I started setting down discoveries, and they were like, “What are you doing?” and I responded, “I'm doing my work. This is my First Nation. I'm looking after this, and I'm doing it the way I think it should be done.” After a few months, there was a competition for team leader, and I became the team leader. Once you're the team leader, then you've got a little more sway. People think, “Okay, well, I guess we're going to do it the way she's doing it.” Then, when the assistant deputy minister said, “This is the way we should be doing it,” then very shortly after that, there was a settlement agreement. I was lucky I had the experience as a litigator in private practice to do what I thought was right and also to have the skills to just do it without really needing much assistance from other people.

**BPS:** That's why some people are still in private practice. It's tough in Manitoba, as you know. Marketing remuneration for even top lawyers isn't like it is in other environments; they don't have a pension plan, etc. Some people are still in private practice because of that autonomy; they can come in and then leave at eight in the evening—whatever they want.

**CJMR:** Yeah, being in control of your own [environment] is important.

**DLM:** For me, this suggests one of the positive sides of being on the Crown side. All the Crowns say to me, “Yeah, it is difficult work doing criminal law, doing a lot of all this stuff for the government.” But the one good thing is that when they do the right thing (whatever you think the right thing is legally speaking), it is probably the right way to do it. They've complained often about the bureaucratic nature of how you get to do what you want to. “Do the right thing in court,” that's the only instruction I have to follow.

**CJMR:** My experience was not in criminal law, so I can't speak to what it's like to be a Crown in criminal law, but certainly, judges always appreciate lawyers, whether they're the Crown or defence, who are doing the right thing within the law.

**BPS:** We've had discussions when we've interviewed other judges and lawyers. If you're the Crown and you think four years [as an appropriate sentence], is it right to ask for six? Because maybe you'll get your four. The people I am most impressed with said, “No if I think it's four. I ask for four. I don't ask for six because I'm going to be around a long time and my credibility is the most persuasive element I have. I'll tell it like it is.” I think that's the right approach.

**CJMR:** I think that's the right approach.

**DLM:** One of the things that's consistently impressed me about this series of interviews is that virtually all the judges we've interviewed have very successful careers, but they've also generally been heavily invested in not-for-profit, community-based stuff that they knew they weren't going to be paid for. They were often working very hard in a career, but then they'd give up a ton of time to do that important work. What do you attribute that to in your case and more generally amongst the profession?

**CJMR:** In my case, as a Francophone, the warrior thing I've said previously. There's a need in your community for young leaders to come and sit on boards. I got a lot of invitations to sit on boards and I took them. I took up those invitations because that's how I got to know my community and build a client base. It can act as an advertising piece for your work and your reputation as a lawyer. That is likely how I got a lot of the clients. And you're giving back to your community. I don't have children. My husband's

retired now, but he was a lawyer, so he was working long hours. It feels good to give back to your community and meet all kinds of new people.

### PART III

**DLM:** There's a song called "Bless the Broken Road,"<sup>36</sup> and when I looked at your judicial career, it resonated deeply with me. You have moved around quite a bit.

**CJMR:** (Laughs) Yeah.

**DLM:** You started as a regular judge of the Family Division [of what is now the Manitoba Court of King's Bench], even though you hadn't practiced family for a while.

**CJMR:** I still had some files, but not to the extent that I did earlier.

**DLM:** So, you did a lot of it early, less of it later, and then decided to go back to being a family court judge at the superior level.

**CJMR:** Correct, yup.

**DLM:** Then you were assigned as the Acting Associate Chief Justice of that Division?

**CJMR:** Yes.

**DLM:** What was remarkable about that for me was the length of time between starting as the Acting Associate Chief Justice and becoming the full Associate Chief Justice. Three years later, they removed the "Acting" title. Then, you decided to take a completely different step and move to the Federal Court of Appeal in Ottawa.

**CJMR:** Yes, in Ottawa.

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<sup>36</sup> "God bless the broken road/that led me straight to you" is a line in a song by the American country rock band Rascal Flatts, in the song titled "Bless the Broken Road." The Rascal Flatts version of the song was released in 2004; however, the first version of the song was released by the Nitty Gritty Dirt Band in 1994.



**DLM:** Then, after five years of doing that, you come home to become Chief Justice of the Manitoba Court of Appeal and Chief Justice of Manitoba. Talk to me about that.

**CJMR:** I know that's very strange.

**DLM:** No, it's an interesting thing. What could you tell us about it? Would you mind telling us what caused each of those jumps?

**CJMR:** Well, the first appointment was in February '05. I was appointed to the Family Division of the Court of Queen's Bench at the time, and I was the first bilingual judge in that court in the Family Division of the Queen's Bench. I'd been encouraged to apply. So, I did. Of course, if you get the call, you're going to take the job. But I was really enjoying the work I was doing at the federal government. I took that position, and it was fabulous to be a judge providing service to the community, specifically to litigants who wanted to appear in front of me in French; I could do that, too. Then, I was asked to become an Acting Associate Chief Justice of the Family Division during the Lori Douglas<sup>37</sup> years. We learned that my Associate Chief Justice had some difficulties with a disciplinary matter, was no longer sitting in court, and not performing her administrative duties pending this matter that was being dealt with by the Canadian Judicial Council.<sup>38</sup>

I had been asked whether I would step up and do the work in an acting capacity. So, I was doing the administrative piece of the Family Division work, and I was still sitting full-time. But just to be clear, this was not an appointment from the Prime Minister's office; this was my Chief asking me

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<sup>37</sup> A. Lori Douglas was the Associate Chief Justice of the Family Division of the Manitoba Court of Queen's Bench (2009-2010). In 2010, she was put on administrative leave due to an investigation by the Canadian Judicial Council. She retired from the Bench in March 2015.

<sup>38</sup> The Canadian Judicial Council (CJC) is a federal body created in 1971 under the *Judges Act* (RSC, 1985, c. J-1). This council is chaired by the Chief Justice of Canada (currently the Right Honourable Chief Justice Richard Wagner) and has 44 members (the Chief Justices and Associate Chief Justices of the superior courts staffed by federal-government appointment). The Council oversees judicial conduct and develops policies for the professional development of judges.

to do this. It's not like I had a salary increase or any extra bonuses. You're just doing it because your Chief has asked, and there's a need in the Court.

**DLM:** When did that start?

**CJMR:** That would have been in 2012. I had been a judge by then for about seven years.

**DLM:** Yeah, and you've seen this job being done.

**CJMR:** Yes. Gerry Mercier<sup>39</sup> was my Associate Chief Justice before Lori Douglas.

**DLM:** Right. So, you'd see this job being done. You knew that it was a lot of work, and you just said, "I did it for no increased pay, and it just needed to get done."

**CJMR:** Well, if somebody is going to organize it, I may as well do it because I'm one of the judges, you know...

**BPS:** The only reason you'd ever want to be a law-school Dean is that you don't have to deal with the Dean.

**CJMR:** (Laughs) Yeah, exactly. There was work that needed to be done. I had been there for seven years. I liked my colleagues, and I kind of figured I knew what to do, and as you said, at least I knew what I was going to do.

**BPS:** You know, I believe Brian Dickson<sup>40</sup> once told people his favourite job ever was as a trial judge. I don't remember the elaboration, but believe

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<sup>39</sup> Gerry Mercier was formerly a judge and politician in Manitoba. He was a member of the Legislative Assembly of Manitoba (1977-1988) and a Cabinet Minister for the Progressive Conservative (PC) government. He was then appointed as a judge in the Family Division of the Court of Queen's Bench in 1989 and later went on to serve as Associate Chief Justice of the Family Division (1993-2009), after which he elected to become a supernumerary judge.

<sup>40</sup> The Right Honourable Robert George Brian Dickson, PC, CC, CD (1916-1998) was a Puisne Justice of the Supreme Court of Canada (1973-1984), before being appointed as the Chief Justice of Canada (1984-1990). He wrote several influential judgments on the *Canadian Charter of Rights and Freedoms*, Part I of The Constitution Act, 1982, being

it was, “I’m still dealing with people directly and not dealing with people one step removed or two steps removed as you are as you go up the appellate chain.” We’re going to ask a few questions about the writing process: when you’re writing at the trial level, who are you writing for? Is it more for the litigants or the people reading this for precedential value?

**CJMR:** As a trial judge in the Family Division, it was certainly for the parties and the lawyers who represented the parties. I never wrote for the Court of Appeal. I didn’t write for the media. In family law, I think that’s probably the best approach because you’re trying to respond to issues that are so personal to the parties. When I write, I try to write for the parties, even at the appellate level. Though because there is sometimes jurisprudential value, I try to make it worthwhile for the profession as well.

**BPS:** When you’re writing at the trial level, I know that people are writing decisions. There’s a spectrum again, right? Some people are writing for the party, and some people are saying, “I never want to get this judicially reviewed.” So, they’re spending an awful lot of time, and there are trade-offs, right? Because the more you’re elaborating at the technical level, the less comprehensible it may be to the actual litigants. As a trial judge, were you concerned about, “We’re going to get kicked upstairs, and I’ll feel bad if they reverse me” or something, or did you just simply not worry about it?

**CJMR:** No, I wasn’t worried about that as a trial judge. I never was worried about being reversed. As an administrative judge,<sup>41</sup> when I was on the trial court, there were a couple of decisions I wrote. I didn’t do a lot of those kinds of decisions, but there were a couple of decisions that were intended to be read by the profession so they could understand things like courtroom decorum. I wrote a couple of those that were intended to speak more broadly to the profession. Most of the time, though, I felt like as long as I was applying the law properly to the facts that were before me, that was my job, and to make sure that the parties understood how I came to my decision.

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Schedule B to the Canada Act 1982 (UK), 1982, c 11.

<sup>41</sup> In this context, “administrative judge” refers to the administrative role as either Acting Associate Chief Justice or Chief Justice that Chief Justice Rivoalen had taken on. While administrative judges can and do still sit as trial judges, they also issue decisions and directions to the profession with respect to administrative issues within their portfolios.

**BPS:** Getting fussed about whether this is going to get appealed or reversed is never an area where you want to invest your time.

**CJMR:** No.

**BPS:** You went to the Court Appeal; now that you're going to be one step removed from being in the arena, it's a different kind of challenge. What were your thoughts about going from the trial level to the Court of Appeal?

**CJMR:** Well, when I went from the Family Division to the Federal Court of Appeal, that was a huge leap of faith on my part in terms of just thinking, "Okay, I'm going to try this." Obviously, the areas of law and the jurisdiction of the Federal Court of Appeal has nothing in common with the jurisdiction of the Family Division or the trial court overall. But in 2015, I became a member of the Canadian Judicial Council when I was appointed as the Associate Chief, after three years of acting in that role. I then started attending the Canadian Judicial Council meetings, and I got to meet all of the chiefs [Chief Justices] and associate chiefs [Associate Chief Justices] from across Canada. Then, I met Marc Noël,<sup>42</sup> who was my former Chief Justice at the Federal Court of Appeal. Let's just say that at one point in time, I became aware that there was a position opening up there, and he was very interested in trying to find a Western judge who was bilingual because he always wanted to try to have a Federal Court of Appeal that represented the diversity of the country. I was at the right place at the right time, and my husband was very encouraging, saying, "Yeah, you can do this." I thought, "Can I do this? Can I really do this? Can I learn all these new areas of law?" That was one of the best things that ever happened to me!

**BPS:** I'm thinking Federal Court of Appeal. I'm thinking, "Oh my God, I've got this incredibly complicated tax case or trial review of the copyright board sections."

**CJMR:** Lots of Aboriginal law.

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<sup>42</sup> The Honourable Chief Justice Marc Noël, KC, was the Chief Justice of the Federal Court of Appeal from 2014 to 2023 when he retired as a judge.

**BPS:** Just on the really, really technical ones.

**DLM:** Like the Drug Pricing Review Board.<sup>43</sup>

**CJMR:** Yeah. There's that, and there's also the Canadian Energy Regulator,<sup>44</sup> and there's the Canadian Radio-television and Telecommunications Commission,<sup>45</sup> the Canadian International Trade Tribunal,<sup>46</sup> and so on—

**BPS:** —Yeah, I know there's deference, but people are still rolling in with this pile of stuff from the administrative hearings, not all of which we would all find scintillating.

**CJMR:** A lot of administrative law reading...

**BPS:** ...but you mentioned at the start that you have never been afraid of rolling up your sleeves and doing the slog.

**CJMR:** —and being curious about things. Having this opportunity to completely shift my area of expertise from a family law setting to a whole different setting with—

**DLM:** —and moving at the same time.

**CJMR:** Moving, of course, having to find a residence. I always kept my home in Winnipeg; I didn't sell my house or my cottage even though I lived primarily in Ottawa. It was a travelling court, so we all actually travelled

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<sup>43</sup> The Patented Medicine Prices Review Board (PMPRB) is a quasi-judicial body that regulates pharmaceutical patents and drug prices.

<sup>44</sup> The Canadian Energy Regulator is a regulatory body that regulates energy safety and efficiency, pursuant to the *Canadian Energy Regulator Act*, SC 2019, c 28, s 10.

<sup>45</sup> The Canadian Radio-television and Telecommunications Commission is a regulatory body that regulates and supervises broadcasting and telecommunications, pursuant to the *Canadian Radio-television and Telecommunications Commission Act*, RSC 1985, c C-22.

<sup>46</sup> The Canadian International Trade Tribunal is a quasi-judicial body that provides trade remedy inquiries to Canadian and international businesses, pursuant to the *Canadian International Trade Tribunal Act*, RSC 1985, c 47 (4<sup>th</sup> Supp.).

across Canada; the Federal Court of Appeal is an itinerant court.<sup>47</sup> We would travel. That's why I'd be back home relatively often. It was the best thing I could have done, because you become a student again, at a very high level. You've got colleagues who are the David Stratats,<sup>48</sup> the John B. Laskin,<sup>49</sup> the Richard Boivin, to name but a few.<sup>50</sup> And I was able to work in French. I did a lot of hearings in French and wrote in French. It was fun; it was exciting to have a new learning opportunity.

**DLM:** I'm an Anglophone who can speak French well enough to do moots in French, so I know that I can ask my questions in French, get the answers, and understand what people are telling me. Was it nice to be back in your mother tongue on a more regular basis?

**CJMR:** It was! At the office, my working life was in French; my assistant was French. My law clerks were always bilingual and primarily Franco-Ontarians. So, my working environment was mostly French; my next-door neighbour was Marc Nadon,<sup>51</sup> a Quebecois. It was nice to be able to just get back into that environment. So intellectually and professionally, that was really good for me. Then, actually having facta in French and having hearings either all in French or half English, half French, and then requiring writing in French and having the resources there to do so. Having a young law clerk researching with you and editing; it allowed me to hone my writing skills for sure.

**BPS:** If you've read some of our early interviews, I'm always very interested in judicial stylistics. There's one theory of language, the Sapir-Whorf hypothesis,<sup>52</sup> that people think differently in different languages. The

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<sup>47</sup> Itinerant courts are migratory judicial bodies.

<sup>48</sup> The Honourable Justice David W. Stratats is a Justice of the Federal Court of Appeal (2009-present) and the Court Martial Appeal Court of Canada (2012-present).

<sup>49</sup> The Honourable Justice John B. Laskin is a Justice of the Federal Court of Appeal (2017- present).

<sup>50</sup> The Honourable Justice Richard Boivin is a Justice of the Federal Court of Appeal (2014-present).

<sup>51</sup> The Honourable Justice Marc Nadon was appointed to the Federal Court of Appeal in 2001, elected to go supernumerary in 2011 and officially retired in 2021. He was a supernumerary judge of the Federal Court of Appeal while Justice Rivoalen was there.

<sup>52</sup> The Sapir- Whorf hypothesis states that thoughts are shaped by an individual's native

language they are operating in, such as French or Mandarin, will actually affect the way they perceive and decide. We asked this of Chief Justice Chartier,<sup>53</sup> but he said, unfortunately, he hadn't had enough opportunities to write in French to really be able to give an informed opinion. Do you think that there's anything to that? That when you're listening and writing in French, somehow it affects the way you think about cases, the way you express yourself?

**CJMR:** I don't think it affects the way I think about a case, but it certainly affects the way I will write about a case. Legal English, like legal writing English, influences the way that I strive to write, to emphasize the use of stronger verbs and short, concise sentences. When I'm writing, I like to avoid adverbs and avoid adjectives and try to introduce shorter sentences. In French, though, there's a different style, and the terminology is different. Writing in French, for me, is way more difficult than writing in English.

**DLM:** Judicially speaking?

**CJMR:** Overall.

**DLM:** Overall?

**CJMR:** Overall.

**BPS:** I'm really interested in your response because it's my intuition that when I read judgments, it's easier to write plain, simple English than it is to write plain, simple French.

**CJMR:** Absolutely. That's true. For example, the whole pronoun—not debate, because it's not debated anymore. In French, that's a more difficult debate because you have words that are feminine words and words that are masculine.

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language, and the language of the speaker influences their worldview.

<sup>53</sup> Chief Justice Richard J.F. Chartier was appointed to the Court of Appeal in 2006 and was later appointed Chief Justice of the Manitoba Court of Appeal (2013-2023). He also served as a judge of the Provincial Court (1993-2006), where he specialized in criminal and family litigation.

**DLM:** And we don't have a neutral. There is no neutral language in French, and a neutral noun doesn't exist.

**CJMR:** French is a more complex language in that sense.

**DLM:** There are more words to express shorter phrases, like “Je m'appelle.” If you translate that into English, it is “I call myself,” right?

**CJMR:** I certainly find that, writing in French, but that's probably just the nature of the fact that I'm a French language minority but it's a different process.

**BPS:** It's difficult to do that. Sam Freedman<sup>54</sup> was a master of writing plain, simple English, very folksy, very accessible. The closest thing I can think of when I read French-language judgments was Jean Beetz,<sup>55</sup> who tried very hard to write really clearly and simply. It's still a much more formal register to my ear. I'm not as fluent in French, but it just feels more formal; it feels more elaborate.

**CJMR:** It is more formal! Yeah, that's true. There is some formality still. Maybe it's because at the Federal Court of Appeal, the written French was at a very high level—I had some of the best French jurists, like Richard Boivin and Yves de Montigny,<sup>56</sup> who is now the Chief Justice of the Federal Court of Appeal.

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<sup>54</sup> Chief Justice Samuel Freedman, OC QC (1908-1993) was a highly influential judge in Manitoba in the mid- to late- 20<sup>th</sup> century. He served as a judge on the Manitoba Court of Queen's Bench (1952-1960). He was elevated to the Manitoba Court of Appeal in 1960 and would later become Chief Justice of Manitoba (1971-1983). More information about Chief Justice Freedman can be found in Volume 37SI, a special issue of the Manitoba Law Journal entitled *A Judge of Valour: Chief Justice Samuel Freedman— In His Own Words*. Of particular note in this context is an essay by Dr. Bryan P. Schwartz, entitled “Justice Freedman’s Literary Style” (2018) 37:SI Man. LJ iii.

<sup>55</sup> The Honourable Justice Jean Beetz, OC (1927-1991) was a Justice of the Supreme Court of Canada (1974-1988).

<sup>56</sup> The Honourable Chief Justice Yves De Montigny is the current Chief Justice of the Federal Court of Appeal (2023-present) and has been a Justice of the Federal Court of Appeal since 2015.



**DLM:** It must be challenging, too, because it seems to me that this writing thing also applies to statutes. As you know, they're equally authoritative. I've always asked myself whether these minute differences between the English and the French were really a decision that Parliament made, or was it just something like, "How would I write this so that these would be identical?"

**CJMR:** Well, I can't speak to how the legislature drafts, but they are of equal authority. There are nuances in language, and a direct translation is not necessarily the right translation when you're trying to understand the text, context, purpose etc. Overall, I think the work done by the legislative counsel and the drafters is very good. I think our Manitoba statutes are very well-drafted, and they're a team of translators when they do it.

**BPS:** I was asking somebody who was in legislative drafting about the languages. Semantically, I have found that with the English and the French language versions of statutes, Manitoba matches up fairly well. Every so often I found the French language version clarified something that the English language didn't. So, I was asking about that, and I was told, "Yeah, they're usually drafted in English and then translated, and then the translator would say, 'Well, what do you mean?' And they actually have to clarify their thoughts in the process of the translation," which is why sometimes the French language version is clearer and more precise.

**CJMR:** Yeah, I'm not surprised.

**DLM:** Your judicial history leads to another question: there aren't many people who will have your breadth of expertise. Starting in family law, then we go to the wide swath of administrative law, but not to forget the Indigenous stuff that you did in between, and some civil litigation. I mean, what does that do to the judicial mind when you're sitting here and seeing a bit of everything? It must have some effect.

**CJMR:** I think it keeps the judicial mind open because you're not an expert in anything. I think it keeps the mind open because you see how things are dealt with in different areas of law. And yeah, I feel like you don't have a narrow mind. Your thinking remains flexible.

**DLM:** Some people are just drawn to leadership roles. It sounds like early experiences for you as a Franco-Manitoban led you in that direction. It also sounds like that might be a bit of your personality. If I may be so bold. If I've got this wrong, let me know. But is leadership, in your view, sort of an innate quality that some people have and that some people have to learn? And if so, which one are you? This is your predecessor's<sup>57</sup> fault; he loved to talk about Edwards Deming.<sup>58</sup> But it is interesting to apply the Demings concept<sup>59</sup> to basic leadership. It is an interesting dynamic for me because some people just aren't comfortable being leaders; it's just not their bent. Other people are forced into leadership and just must do it. You've decided, I would think, at various points that you want to lead on several issues, and you're in this job which wasn't required. Is it innate? Did you learn it? Did you get better at it?

**CJMR:** It's probably a combination of a lot of things. I think that some people are encouraged. I would say that I've been encouraged a lot in my life and throughout my career to apply for things and to go and try things out, as I've mentioned. And I think what I would say is I have the courage to try and not be afraid of failing because if you fail, who cares? You can get up and do something else. I think it's more of a question of being courageous. I do like people generally; I have liked people from a very young age. Being in a leadership role is all about the people you're serving, the people you work with, the people who are supporting you in terms of staff, and then about making sure that the institution you are leading shines. So, it's a people focus. If I'm called a leader, my leadership style is more people focused. Then it's trying to make sure the institution, the Court of Appeal, either stays at the level it is, which is a very good level, or try to improve it in some way.

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<sup>57</sup> The Honourable Chief Justice Richard J. F. Charrier was the predecessor of the Honourable Chief Justice Marianne Rivoalen as Chief Justice of Manitoba.

<sup>58</sup> William Edwards Deming (1900-1993) was an American business theorist, composer, economist, industrial engineer, management consultant, statistician and writer.

<sup>59</sup> "Text, context and purpose" are often thought of as key components in statutory interpretation. See *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 SCR 601, *per* Chief Justice McLachlin, and Justice Major, in joint reasons, for the Court. See also *R. v. Jones*, 2017 SCC 60, [2017] 2 SCR 696.

**DLM:** I don't think we can get out of here without talking a little bit about the fact that there's a very limited number of women who have led an appellate court or above. I know some of your history that you didn't talk about; you won an award in 2001<sup>60</sup> for your work in equality. Now you're here. There is a fair amount in between, but the reality is that there's a limited number of people who've done what you've done. Constance Glube<sup>61</sup> is one, Catherine Fraser<sup>62</sup> is another, and, of course, Beverley McLachlin.<sup>63</sup> But it's not a big club that is doing this. Do you think it makes any difference who sits in that chair, whether it's a woman or a man? does it make a difference to the court institutionally? Obviously, it makes a bit of a difference to you personally. But does it change how the institution operates?

**CJMR:** I think that being a woman and having the life experience I've had obviously will have an impact on the way I manage the court and my vision because, as a human being, I think that it is just natural that that should happen. Having that family law background, I think after Bonnie Helper,<sup>64</sup> I'm the only other judge who's ever come up to the Court of Appeal as a judge who has had a family law background. My background and me and my life journey will have an impact. The fact that I'm a woman for sure will have an impact because I might see things a little bit differently because of my life experience.

**DLM:** I'm just going to ask you this because this is something I struggle with as a person who uses a wheelchair. Some people think that is the lens through which I see everything. When I'm dealing with accessibility issues/social justice issues, the realities of my background play a lot into it.

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<sup>60</sup> In 2001, Chief Justice Rivoalen received the Prix Réseau and the Femme Remarquable de l'année from the Fédération Nationale des femmes canadiennes-françaises.

<sup>61</sup> The Honourable Chief Justice Constance Rachel Glube, OC NS (1931-2016) was the Chief Justice of the Supreme Court of Nova Scotia (1982-1998) and was later appointed the Chief Justice of Nova Scotia (1998-2004).

<sup>62</sup> The Honourable Chief Justice Catherine Fraser served as the Chief Justice of Alberta from 1992 until her retirement in 2022.

<sup>63</sup> The Right Honourable Chief Justice Beverly McLachlin, PC, CC, was the Chief Justice of Canada from 2000 until her retirement in 2017.

<sup>64</sup> The Honourable Justice Bonnie M. Helper was the first female judge appointed to the Manitoba Court of Appeal (1989-2002).

When I am dealing with corporate law, on the other hand, it has absolutely nothing at all to do with the choices that I would make. Is that your impression of being a woman and being a judge, being in a leadership judicial role, something you think about when it's appropriate but it's not going to determine the success or failure of your term institutionally? I guess I gave my example of what it's like for me. What is it like for you if you think in those terms? How often does it come up in your head that, "Wait a minute, this is something that I have to think about a little differently?" Are there things where you say, "I don't care."

**CJMR:** That's a good question. When I had my formal swearing-in, I mentioned that I obviously recognize I'm the first female Chief Justice of Manitoba, and that there's a lot of responsibility that I carry, and I'm cognizant of that. But in my day-to-day life here in court, I don't think, "Oh, I'm a woman; I have to do it this way or that way." Plus, there are a lot of women around, and well, the men are in the minority at this point on the Court of Appeal. But I would say that I'm more mindful of that when I'm speaking to the Bar, the profession or young lawyers, perhaps to encourage women to stick with it, stay in the game, you know, not to quit too soon because it's tough. Don't quit too soon, especially when it comes to private practice. Stick with it if you can, because other doors will open for you. That would be more of the approach I would take.

**BPS:** I'm just thinking about a couple of the things we ask people; one is that you can reach a point where people are filtering themselves, and is that a problem? Do people say or imply, "You are this important person, and I can't talk to you like you are a person anymore." We asked Ray Wyant,<sup>65</sup> the former Chief Judge of the Provincial Court, about this. And I asked, "How do people address you?" He said, "I tell them to call me Ray." Is that something that's a challenge for you? As a university professor, we don't have to worry about people filtering themselves with us or getting direct and candid feedback. It's not an issue that is actually a challenge for us. Do you find that people aren't giving you their authentic selves because they're dealing with you as a person in a deservedly prestigious and important position?

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<sup>65</sup> The Honourable Chief Judge Raymond E. Wyant was the Chief Judge of the Provincial Court of Manitoba (2002-2009). He was originally appointed as a Judge of the Provincial Court in 1998.

**CJMR:** Not within my team in the Court, certainly not within the judges, but also the staff, I think, are very comfortable with me because they know me on a human level. With the lawyers, it's a little different, and that's okay unless I know them personally; I expect the lawyers to treat all judges with respect because of the role that we play. Anybody who knows me well knows that I'm approachable, and I need to hear what a person really thinks, not what they think I might want to hear. I'm not here to get my ego stroked; I want to hear what the issues are so that we can find a solution to it or whatever the case may be.

**BPS:** The last thing I want to ask you about is legacy because I have maybe an eccentric view on that. I know people who've been very successful and spent a whole lot of time thinking about "How I will be remembered, and so on and so forth." I wrote an article once, "On Choosing Judges - Oracles and Performers; or Philosophers and Sages?"<sup>66</sup> in which I argue that as a judge, what you really should be worried about is getting this case right. Maybe people won't remember in ten years, maybe it's not a famous precedent, and maybe it's reported in the newspaper in a critical way. The most important thing you're doing is justice in this case right now and doing it one at a time. Maybe it's your 10,000<sup>th</sup> case as a judge; I know it's not an exaggerated figure; Marshall Rothstein<sup>67</sup> wrote about 10,000. But you somehow must keep viewing each case as "This is really important to the litigants." I don't want to sound preachy, but for the litigants, this is their case; this one thing is tremendously important in their lives. Somehow, even though sometimes it's a tedious slog, and no one will thank you for reading the transcript. But you have got to somehow internalize this norm that, "I'm here to try and do my best in this case here and now." It is something that we asked Chief Judge Ray Wyant; he basically said, "If you're not about that anymore, it's time to quit, right?" If you're looking over your shoulder and worried about whether you're appreciated, loved or

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<sup>66</sup> Bryan P. Schwartz, "On Choosing Judges - Oracles and Performers; or Philosophers and Sages?" (1992) 17 *Queen's LJ* 479.

<sup>67</sup> The Honourable Marshall Rothstein, CC, KC, was a Justice of the Supreme Court of Canada (2006-2015). Prior to this, he was a Justice of what was then known as Federal Court, Trial Division (1992-1999) and was then elevated to the Federal Court of Appeal (1999-2006).

remembered ... if you're asking yourself the question. I hope this doesn't come across as too preachy, but it's time to go.

**CJMR:** I agree with certainly the fact that every case is important. There's no such thing as a case that's not important. And that's why when I was on the Federal Court of Appeal, every case was a new discovery for me. I discovered and learned new areas of law. And the same for my work here. Everybody who knows me knows that I didn't have much exposure to criminal law, for example – until now, I haven't had an opportunity to be exposed to it – that it is something I should be learning. I have some colleagues who are very solid in that area; I might bring other things to the Court. But every case is important. I'd like my legacy to be that the parties will have felt like they were treated with respect and that they've been heard, even if they haven't "won." I would hope that people would remember me as, "She was a kind, compassionate judge who listened, did her work and I understood her reasons."

**BPS:** If I were writing a job description, that's the one I would write.

**DLM:** You mentioned earlier that there are a majority of women right now on the Court of Appeal. Was that surprising to you at some level? I mean, you were in Ottawa on the Federal Court of Appeal when that happened. It happened, and then you came back as the Chief Justice. Does this make a difference? I'm not suggesting that it does, but it must have been an interesting dynamic to walk into it as opposed to growing up in it.

**CJMR:** Yeah, it's very different from where I started when I was at Pitblado & Hoskin to put it that way. All of my colleagues on the Court of Appeal are collegial and hardworking. And it's very encouraging to see that there's a majority of women on the Bench, it just shows you that women are good legal thinkers and writers.

**DLM:** One of the interesting things that I learned from interviewing some of your predecessors was how much comes with this title that has nothing to do with choosing judges to be in court or being in court yourself. A lot of it is ceremonial. Some of it is really quite important as a matter of government. We try to say the judiciary is separate from the other branches of government, but the reality is in Canadian law, if the Lieutenant

Governor is absent or things happen, they often either look to the person in your job to help them resolve going on or you're literally doing their job for them. Is that what you signed up for? I was surprised when I heard how much time was either on the ceremonial side or on the governmental side of things. That is not what we think of when we think of a Justice of any court.

**CJMR:** Yeah, the fact that if the Lieutenant Governor, Anita Neville<sup>68</sup> is away or for whatever reason cannot fulfill her role, I would have to step into that role. So far, I haven't had a lot to do in that sense. But I'm aware of the fact that this could happen if she's on holiday or whatever the case may be, and that comes with the role; that's something that I knew when I was coming in. But yeah, it's interesting. As you said, it's kind of like you're almost blending a little bit of the government piece. And then, being on the advisory council for the Order of Manitoba,<sup>69</sup> being a member of the Winnipeg Foundation<sup>70</sup> appointing board, being chair of King's Counsel Advisory Council.<sup>71</sup> You're also chairing or sitting on the dais at swearing-in ceremonies, going to the Law School to speak. There's a lot of that kind of thing.

**DLM:** How do you manage that? Do you just show up and do what you can? Is some of it like, "I'm a judge; I'm trying to run a court here." It seems so busy. There must be something in your head where you have to say, "Okay, this is the role, but..."

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<sup>68</sup> Anita R. Neville, PC, OM, is the 26<sup>th</sup> Lieutenant Governor of Manitoba (2022-present). Prior to her appointment, she was a member of the House of Commons (2000-2011).

<sup>69</sup> The Order of Manitoba was established in 1999 and is the highest honour in Manitoba. It recognizes individuals who have excelled in their field and enriched the social, cultural or economic well-being of their fellow Manitobans.

<sup>70</sup> The Winnipeg Foundation was established in 1921 and is a charity and community foundation in Winnipeg. This Foundation is dedicated to enriching the social culture in Winnipeg by gifting grants to support community service, education, employment, health, environment, heritage, arts and culture and recreation.

<sup>71</sup> King's Counsel is an honorary title given to lawyers to recognize their excellence in their profession. The advisory council to decide King's Counsel includes the Chief Justice of Manitoba, the President of the Manitoba branch of the Canadian Bar Association, the President of the Law Society of Manitoba and three lay people appointed by the Lieutenant Governor, who are not members of the Law Society of Manitoba.

**CJMR:** I'm very new, still roughly six months in. I think there's such a thing called delegation where sometimes I can get a colleague to step in if I'm unable to, for whatever reason, but I recognize that it's important to have a presence at certain settings, especially the Law School, the Bar Association, and Law Society. It is a lot of time outside of "the nine to five." I don't mind being busy; I don't mind using my time for a good purpose. When you volunteer, and I'm not volunteering, but it's that mindset of giving back to the profession. Then, as I just said, you're human. Sometimes, you have to delegate things, too.

**DLM:** You've had a number of leadership roles. Most people, when they walk into leadership roles, feel a need to either at least maintain or, usually, elevate the institution that they're trying to lead.

**CJMR:** I agree.

**DLM:** So, I'm giving you a magic wand. You can make the improvements you want to make unilaterally. What's the big one?

**CJMR:** I have two answers to this. One is a realistic goal that's been started now.

**DLM:** Six months in!

**CHMR:** It was started a little bit before by my predecessor, I think before he left or around the time he was leaving. And by the time I leave, it's got to be done. The goal is digitizing, bringing the court into the 21<sup>st</sup> century. This includes eliminating or almost eliminating paper so that appeals will be filed electronically, expanding our ability to even have virtual hearings when appropriate. All that kind of stuff. Where I came from (the Federal Court of Appeal), that was how we worked because we travelled across Canada. We would have our laptops, and we would print off documents, sometimes, but that was up to the individual judge. And so that is something that we're working on. And that, to me, it's like we have no choice but to go in that direction because we're the last Court of Appeal, I believe, in Canada that doesn't allow for digital filings and electronic case management.



**BPS:** Just before you answer that question on the second level, I want to put in a plug. We're doing a special issue on online dispute resolution.<sup>72</sup> We interviewed people in the judiciary and people practicing law in the civil service about what happened during COVID-19 and how much that is going to become permanent. There were a lot of innovations during COVID-19, which we probably would have gotten around to doing eventually. Now we've had to try them and test them. The challenge now that we have had the chance to evaluate them is how many we're going to make permanent. It sounds like we're moving in that direction with the Court of Appeal. You said that you would answer that on two levels.

**CJMR:** So that's the realistic goal that I think will happen; I think within 18 months, let's say September 2025, we should be up and running to allow for that operation to exist so that people don't have to physically come to 408 York<sup>73</sup> to file their documents with registry and also to be able to work with electronic documents, all of that. So that's the first thing.

**DLM:** Will those be available electronically, the way, for example, the Supreme Court of Canada now has? You know, I can get any factum I might want.

**CJMR:** I think that might be part of it, too, because of the open court principle. In some respects, certain documents should be available. We have to be careful, of course, about privacy and publication bans; there would be some restrictions of that kind. Having access to electronic documents for the parties and the lawyers involved and for the judges working with that system is the direction I'd go.

**DLM:** The reason I mention it is that for those of us who do research in law, it would make it much easier to do collation and quantitative research on a number of cases, but it requires a very good programmer of the database.

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<sup>72</sup> This is a special issue of the *Manitoba Law Journal* called "Online Dispute Resolution: Lessons from the COVID-19 Pandemic" (2023) Volume 46, Issue 3.

<sup>73</sup> 408 York Avenue in Winnipeg, Manitoba is the address of the main courthouse in the Manitoba capital. It is located at the intersection of York Ave and Kennedy Street.

**CJMR:** My goal is to digitize the records, to allow people to work with digital documents and electronic filings, and to manage the case files electronically. Now, if I had a magic wand, my second wish would be to have more space for the Court of Appeal because we're running out of space.

**DLM:** You have 14 judges right now, right? Including your supernumeraries?

**CJMR:** 13, eight full-time judges, which includes the Chief Justice position, and then five supernumerary, which includes Freda Steel,<sup>74</sup> who is leaving May 1<sup>st</sup>, 2024. So, the space issue is a challenge because the population of Manitoba has grown since 1984; the number of judges in the Court has grown since 1984, but there's been no major, court-facility construction in Winnipeg since that time. The KB [Manitoba Court of King's Bench] and the Provincial Court have also grown. I'm not talking about the courtrooms necessarily but the judicial space for the staff and judges. For example, in the Court of Appeal, the four legal researchers are outside of chambers because we don't have space. That's a challenge; ideally, we would all have our staff in our chambers. All three courts are independent as well, so to have appropriate space for the three courts so that you're not walking on top of each other and that kind of thing. Distinct space so that each court would have our own boardrooms and lounges. The Law Courts Complex in Winnipeg is a beautiful building for sure, but the population's grown, the courts' growth, and the number of cases and the complexity of cases has grown, but the space has not.

**BPS:** We know at our institution; we have comparable challenges if you look at the condition of the buildings and stuff. We now have 30,000 students at the University. As an administrator, you're dealing with the *crisis du jour*; lurching year to year. You leap from crisis to crisis. The law building [Robson Hall, where the Faculty of Law at the University of Manitoba is located] is now old; we're running out of space. It's very difficult to do

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<sup>74</sup> The Honourable Freda M. Steel was a judge in the Manitoba Court of Appeal (2000-Present) and previously served on the Manitoba Court of Queen's Bench (1995-2000). More information about Justice Freda Steel can be found in Volume 39, Issue 1 of the Manitoba Law Journal in an article written by Ryan Trainer titled "Interview with Justice Freda Steel."

capital improvements because everybody's focused on what's an immediate problem and it's a heavy lift to try and do that kind of more long-range stuff, which must be done.

**CJMR:** Yeah. And, as you said, the capital. If you're building a new structure, that is potentially millions of dollars. That is a challenge, and I don't know what the solution is.

**DLM:** An additional floor, maybe?

**CJMR:** It might mean that we'd have to move out of this building, you know? In my experience on the Federal Court of Appeal, being a travelling court, they have an office in every major center. Perhaps there is a way of combining some resources by the federal and the provincial government coming together. I don't know. I'm not sure I'm going to be able to solve the space problem in the time that I'm Chief Justice. But it's certainly something that I'm aware of and contemplating.

**DLM:** I think you've already answered my next question a little bit. Were there any other institutional concerns that either it's the relationship between the courts and the profession? Is there anything else that keeps you up at night? Is there anything where you, as Chief Justice, are genuinely concerned?

**CJMR:** Well, I don't know that I'm genuinely concerned about this yet, but I'm aware of what's going on with our neighbours to the south and in other democracies where the judiciary is not necessarily respected or where the institutions are becoming eroded. I'm aware that, as an institution, it's important to maintain independence and to make sure that the rule of law is respected. We're not insulated, necessarily, from those kinds of influences. We must maintain a very, very strong judiciary that may have to occasionally have some pretty difficult decisions and judgments to render because you're the check and balance of what's going on with the executive or legislative branches.

**DLM:** So, you would probably remember this because you were a judge when it happened. There was a bit of a kerfuffle between then-Prime

Minister Stephen Harper<sup>75</sup> and Chief Justice McLachlin.<sup>76</sup> Judges generally didn't say anything, but members of the profession came forward and said, "Look, that's not appropriate or fair for a Prime Minister to do publicly. It's just not right". I wonder, given recent events, are you concerned that maybe the profession or the judiciary might be more susceptible to tactics like that?

**CJMR:** I think it's difficult for the judiciary to come and give an interview to the press and to justify things. We speak through our judgments, and I still feel like that's an appropriate way for the judiciary to act. I'm kind of a traditionalist that way, but it's hard. It's important to have a very, very strong profession that's prepared to uphold the judicial branch and also to understand where we are at in our constitutional democracy. For the lawyers coming out of law school and the young law students, it is important for them to recognize that having a strong judiciary and a strong legal profession is of the utmost importance in our time.

**DLM:** The other thing that concerns me as a professor is the ability of students to write. The students come in with much better grades than they did when I went to law school in '94; they come in with a lot more extracurricular activities, a lot more expectations on experiential learning than we did back in the day. I don't know if writing is always the forte; that was something they hammered when I went to law school. The ability to write, whether you were in litigation or corporate law, the ability to write a letter that uses context-appropriate language – that was important when I went through. You've written in a ton of different contexts: as a lawyer for the federal government, essentially a decider for the federal government in a lot of cases as a judge, as a trial judge and now you're the Chief Justice. How much does context matter? We've talked a little bit about writing differently in different languages because the language itself demands that.

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<sup>75</sup> Stephen Joseph Harper, PC, CC, AOE, is a Canadian politician and was the 22<sup>nd</sup> Prime Minister of Canada (2006-2015) and the leader of the Conservative Party of Canada (2004-2015).

<sup>76</sup> The incident between The Right Honourable Prime Minister Stephen Harper and The Right Honourable Chief Justice of Canada, Beverly McLachlin, occurred in 2014 when Prime Minister Harper accused the Chief Justice of attempting to contact him regarding a court case involving Prime Minister Harper's appointment of Justice Marc Nadon to the Supreme Court of Canada. Prime Minister Harper stated that Chief Justice McLachlin breached a basic rule of her office by attempting to contact him.

But it seems to me there's a difference when you write as an appellate judge or when you write as the Chief Justice; how does the writing change? Or does it? Do you think, "I'm a judge; this is just the way I write."

**CJMR:** I think I said this earlier, but writing as a trial judge is very different from writing as an appellate judge. As an appellate judge, If I'm one of the panel members, I might not be the one writing it. So that's fine. If I am writing it, unless you're trying to make a point to the profession about something or it's jurisprudential, you're going to be as clear and expound as much as you can on whatever it is. I think less is more. Personally, I'm not a big fan of *obiter*;<sup>77</sup> I have other colleagues who like *obiter*. If there are certain issues you don't need to decide to dispose of the case because you don't have the right facts in front of you. I'd dispose of the case, whichever way I can and not hamstringing some other trial judge or lawyer; that is my approach. I know that sometimes it is very disappointing to some lawyers who were hoping that they would get more answers, but I feel like it's appropriate in an appellate court not to, as I say, hamstringing a trial judge or a lawyer who wants to bring an argument that hasn't been considered. I don't think you need super lengthy reasons to make a good point.

**BPS:** And that's the way Chief Justice Chartier answered it. It was certainly his view that judges' judgments are written to be read: you want to be clear, you want to be focused and project confidence. You're trying to get to the result of the case in the shortest distance. There's no philosophizing like sitting back in my armchair, "Let me be reflective. What do I need to decide the cases?" If there's one authority from the Supreme Court, that will do it.

**DLM:** Don't cite seven separate authorities.

**CJMR:** Yeah, there's no need to do that.

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<sup>77</sup> *Obiter dicta* means "things said in passing." These are statements about the law made in a judgment that are not strictly necessary to decide the case. The principle for which the case stands ("the *ratio decidendi*") is the thing that is binding on lower courts in the judicial hierarchy. Once the *ratio decidendi* has been provided, generally, *obiter dicta* are not supposed to be binding on other courts. These are often commentary about how their decision may have been different if the material facts of the case were different from those actually presented.

**BPS:** Yeah. I think his theory has been borne out; the Court of Appeal right now is quite influential and is quite often cited throughout Canada. I think part of that is the stylistic; it is efficient and streamlined. And my speculation is it probably has far fewer dissents; I asked Chief Justice Chartier about that. But if you're citing what you need to decide, you don't invite areas for disagreement because you haven't entered into it.

**CJMR:** That's true.

**BPS:** People don't have to disagree about the next case or the general philosophical background and so on and so forth because the rate of dissent seems to be quite low, impressionistically. We haven't run this, but the stats seem to be quite low. It's going to be interesting when you get those records.

**DLM:** Yeah, I think that's true. I think there was a generation, when you started, where that was not the case. The Supreme Court of Canada used to write seven or eight judgments because they felt, "If I am being paid to write, then I am going to write." I don't know if they recognized some of the jurisprudential problems with that. Determining the majority opinion on points becomes much more challenging when there are seven judgments.

**CJMR:** Yeah, and I think that is a generational difference where the writing styles were different.

**DLM:** Well, thank you so much for your time and considered opinions. I think this has been highly valuable.