Interview with The Honourable Justice Kenneth Champagne*

DARCY L. MACPHERSON

Darcy L. MacPherson (DLM): We begin today with a very simple question, where did you grow up?

The Honourable Kenneth Champagne (THKC): I grew up in small town Manitoba, Lac du Bonnet,[1] which is approximately 100 kilometers northeast of Winnipeg. The community is right on the Winnipeg River.

DLM: Got it, okay. And was there anything in your background that brought you to think about law as a career early on?

THKC: Certainly not early on. I come from a working-class family if I could call it that. I certainly did not have exposure to the sort of people that went on to pursue post-secondary education. Our family friends, my friends growing up, nobody ever thought about going to university. We did not know any professionals in the community, like doctors or nurses or schoolteachers, so that was never on my radar to go to school. My late father, he never learned to read or write. He was taken out of school by his father when he was in about grade 4.

DLM: What did your grandfather want your father to do?

THKC: He put him to work to help support the family.

---

* Interview conducted by Darcy MacPherson in September, 2022.

The Honourable Kenneth Champagne was appointed as a Judge of the Provincial Court of Manitoba on April 14, 2005. In 2009, he was named Chief Judge of the same court. He was appointed as a Justice of what is now known as the Court of King's Bench of Manitoba on April 5, 2018.

1 Lac du Bonnet is a small town located northeast of Winnipeg on the west shore of the Winnipeg River.

DLM: So, were you the first in your family to go to post-secondary education?

THKC: I was not. I have a brother who is two years older, and I have three sisters who are younger than me and if anyone was destined to continue with education after Grade 12, it was my older brother. My mother is still in the same little house that we grew up in and in the basement, there are a bunch of trophies. I have a bunch of trophies from when I was a kid growing up, all sports related for hockey and baseball. My brother has a bunch of trophies for academics. He always got the top award in math and science and all of these different things. So, if there was anyone in our family who was going to continue with post-secondary education, it was going to be my brother. And he did. He has three degrees and he has been working at the University of Alberta up until recently.

DLM: Wow, that's really impressive. So, you're not alone in having academic success, then?

THKC: No. If anyone had academic success, it is my brother. I think what was instilled in all of us was a strong work ethic. You have to work for what you wanted, and that was instilled very early on, and it served me very well.

DLM: Okay, so you went to the University of Winnipeg originally.

THKC: I did.

DLM: That was your first exposure, and you did a major in justice and law enforcement as part of your BA, is that right?

THKC: That is correct.

DLM: I'm curious about whether or not you chose law enforcement because you knew the career path you were headed on, or you chose that on a whim and then that had an effect on what you chose afterwards.

THKC: Okay, I get where you are headed, so if I could just back up a moment.

DLM: Sure.

THKC: As I said, I was not destined for a path to post-secondary education. I went back to school as a mature student.

DLM: Okay.

THKC: I would like to say it was because of the encouragement of my spouse, who was my girlfriend at the time. It was not so much encouragement, it was more or less a threat. My girlfriend told me, listen, you can do better, you can do more, and education is important. And if you think we are going to have any kind of future together, you need to try and pursue post-secondary education. So, in order to maintain the relationship, I found myself returning to school, as I say, as a mature student.

DLM: What did you do between the end of high school and returning to school?

THKC: Well, as I said, if you were not in school, you were going to have a job. And my family, all of us, we had jobs throughout high school or even before that. I was working full-time by the time I was going into Grade 12. I worked at a rock quarry in Lac du Bonnet. To put it simply, I made little rocks out of big rocks. In Lac du Bonnet, there was a mining industry and, of course, hydroelectricity. And those were the types of jobs that people were aspiring to get because they were pretty good-paying, steady jobs. And as I said, most of my friends, that was the path they wanted to take. The people I hung around with certainly were not going to school. And what I have come to learn is you do what you are exposed to. So, if you grow up and there is nobody in your family who has ever gone on to university, there is probably a good chance you are not going to do that. I have two kids and the expectation is that they are going to university. It is not a question of going to school, it is <u>where</u> are you going to school?

And so, my daughter is in second-year university at the University of Manitoba right now. My son is just finishing up Grade 12, and that is [university is] the expectation. As I say, when I grew up, that was not the expectation. The expectation was you got to get through Grade 12, and graduate from high school. And so back to your question is what drew me to the justice and law enforcement program? Lac du Bonnet is a small

community. I was very active in the community through sports and different things. Right around that time there was a justice committee being formed and I was approached to be part of this justice committee. That was my first involvement in the justice system. I have, unfortunately, friends who had involvement in the justice system, negatively. Some of the people I grew up with became involved in crime, and our friendship sort of separated at times because one thing that was instilled in me was the difference between right and wrong. Although we had no involvement with lawyers or anything like that, there was a strong influence from my parents about what is right and wrong. And you should do what is right. So as a result, I was asked to be part of the justice committee, and I think that influenced me. So here I am going back to school and what I wanted to take, I really had no idea, and I thought, well I am interested in this aspect of the law, community involvement in trying to deal with people who come in contact with the criminal law. So, in looking at university programs, I selected that one.

DLM: Okay. And you did that in four years or three?

THKC: It was a three-year program. And then I took another year off. I was working to try and support myself to go through school. I needed some time away just to replenish some funds. I went back to work at the quarry, and I thought, okay, here I am working at a rock quarry, and I have a Bachelor of Arts degree. I am the only person working there with any kind of degree, and what am I going to do now? That degree really did not change my life, perhaps the way it was envisioned by my spouse at the time. I was doing the same thing, even though now I was a little better-educated doing it.

DLM: Okay. So how old were you when you went to law school?

THKC: I was 26 when I went to law school.

DLM: So, you were a bit older than some of your colleagues.

THKC: I was, yes. I was not the oldest one there, but I was older than the majority. The University of Manitoba's law school is a little bit unique where students can get in after two years of an undergraduate program. And there were a number of those people, and then there were a number of people who had a three-year degree. But there were a few other people who

were coming back to school, pursuing a different education then what they had already obtained.

DLM: Right. Now, being a bit older than some of your colleagues, do you think that changed your law school experience? Did it alter how you interact with them? Did it alter how you viewed the education you were getting?

THKC: I do not think it was so much my age as it was my connection to my community. I worked throughout my post-secondary education. I was supported by my manager at the quarry. I could go home on weekends and work, so I did not hang around the law school a lot. I have some great friends from my law school days because I also played hockey and I was on the law school hockey team and we traveled around to play games. You meet people and you hang out with the people that you enjoy. But I did not spend a lot of time at Robson Hall because I was working. I was also playing hockey for competitive teams — one in Lac du Bonnet and one in Winnipeg — so I did not hang out as much as I should have, looking back on it. I think I missed out on some of the educational experiences by leaving and not dedicating my time, as I should have, to the study of law.

DLM: Well, that leads to my question of how did you do academically?

THKC: Oh, I would say I was an average student, and for whatever reason, my interest in the law really focused on the criminal law. And perhaps that was just my background and my upbringing and the people I knew in their stage of life. So, I did well in courses like Criminal Law and Evidence, but I would say I was overall an average student at best.

DLM: You mentioned that the criminal law really was your focus or interest. What was it about the criminal law besides your experience with the University of Winnipeg that really drew you in there?

THKC: I think it was just dealing up close and personal with people involved in very serious matters. I just found the practice of criminal law to be the most exciting area of the law. Being in the courtroom. If you are practicing criminal law, you are in the courtroom day in and day out. There was something about that experience that just captivated me. I like to be in the courtroom and so the practice of criminal law really provides you that

opportunity. Once I had a taste of it, it just continued, and I could not get enough of it.

DLM: You became a Crown attorney[2] according to my research?

THKC: Correct.

DLM: I've heard a lot of reasons why people become Crown attorneys, some of them having to do with not wanting to be a defence lawyer but loving the criminal law, some about public service. What was your reason for saying this is the way I want to devote my time and my talent?

THKC: So, it was a combination of those factors that you just mentioned. After finishing law school, going through the articling interview process, I only interviewed with criminal defence firms and the Manitoba Department of Prosecutions.[3] Those are the groups that I wanted. Ultimately, I put Prosecutions as my number one match and that was where I was matched with. Some of the reasons were what you mentioned, public service, but one of the main reasons was a person that worked there as the director, Bruce Miller,[4] was a hockey guy. I was playing hockey in the law league and Bruce Miller was playing, we were on the same team. He convinced me that I should give the Crown's Office a chance and come and work at the Crown's Office and said that I would enjoy it. That was an early influence in the direction of my career.

DLM: Bruce Miller, if I'm not mistaken, became the Director of Public Prosecutions. Is that not true?

THKC: That is true, and then he was appointed to the Provincial Court of Manitoba. He became the Associate Chief Judge at the Provincial Court of Manitoba and passed away far too early after coming down with pancreatic

---

2 A Crown Attorney represents the Crown while acting as a prosecutor in criminal proceedings.

3 The Manitoba's Prosecution Service, as it is now known, is responsible for the prosecuting of most offences in Manitoba.

4 The Honourable Bruce Miller was appointed a Judge of the Manitoba Provincial Court in 1994, where he eventually became the Associate Chief Judge. He passed away in 2004 after a battle with cancer.

cancer. I know all of this because I followed his career and when I was appointed to the Provincial Court of Manitoba in 2005, it was his position that I filled.

DLM: Oh goodness, I must have met Bruce very early on because I think he came out to give a speech to students when I thought he was still Director of Public Prosecutions.

THKC: Okay that goes back awhile, it goes back to my time starting out as a Crown attorney in 1994; he was still there at prosecutions running the office.

DLM: My goodness. So, you went to Thompson for a while, didn't you?

THKC: Yes, so I articled at the department in Winnipeg and I was called to the bar June of 1994. After articling everybody was looking for a full-time position and at the time it was the "Filmon years".[5] Things were tight, we had "Filmon Fridays" where they were trying to reduce costs by closing government offices on Fridays and there were no full-time positions in prosecutions. There was one full-time position in Thompson, Manitoba,[6] and again it was Bruce Miller who said to me, "Hey, Champagne, listen. I know nobody wants to go to Thompson, but you go there, it will serve you well". He said every day you spend in Thompson, Manitoba as a Crown attorney would be like six months in Winnipeg. You are going to be given lots of opportunity to do a lot of the prosecution in very serious matters very quickly. And because I am a rural guy, moving to the North was not a concern for me. So, I ended up going to Thompson, on his direction.

DLM: His strong impetus to say, go do this.

THKC: Yes, yes.

---

5 "Filmon years" is in reference to The Honourable Gary Filmon, who served as the leader of the Progressive Conservative Party of Manitoba from 1983 to 2000, while also serving as the Premier of Manitoba from 1988 to 1999.

6 Thompson, Manitoba is the largest city in the Northern Region of Manitoba and is situated along the Burntwood River, North of Winnipeg.

DLM: So, tell me, I haven't had the privilege to be up North for extended periods of time. What was that like?

THKC: Well, again, I think being a small-town Manitoban served me well and you know, sports served me well too. I can tell you, I think most people who move to Thompson, or certainly at that time, remember the day they arrived. It was the 17th of August, 1994. I showed up at the provincial building (the courthouse) in the basement and I was told to report to Glen Reid who was the senior Crown attorney for Prosecutions. It was a very small office. I was taking over a position for a Crown who had been up there and transferred to Portage la Prairie.[7] So, I showed up at the office, it was about four o'clock after driving all day, it is a long drive, a good eight hours. And I met Glen Reid and the other Crown attorney, who is his wife now, Anne Krahn[8] and -

DLM: Who is also the Associate Chief Judge of the Provincial Court?

THKC: Correct, her term just ended on the 8th of September, 2022. So, both are good friends of mine, they were incredible supports early on in my career. I met the two Crown attorneys, it was a three-Crown office at the time. And by 6:00 o'clock that evening I was playing baseball on the courts baseball team. I showed up at the baseball diamond, and one of the first people I see is a guy who grew up in Lac du Bonnet, he was much older than I was, but he was on the team, so I had an immediate connection to a person outside of the justice system. Things just took off from there. By September, I was on a couple of different hockey teams and working day in and day out in the Crown's office. It was a very small office, but Glen and Anne both were incredible colleagues to work with. Bruce Miller was correct, the opportunities to be involved in very serious matters happened very early on. Just by way of a quick example, I put in my first jury trial as a Crown attorney in October of that same year. Three months after arriving and practicing as a lawyer, I had put in my first jury trial and that just did not happen.

---

7 Portage la Prairie is a small city located 75 kilometres west of Winnipeg, along the Trans-Canada Highway.

8 The Honourable Anne Krahn was appointed as a Judge of the Provincial Court of Manitoba on June 5, 2013. Later, she was appointed Associate Chief Judge of the same court from September 9, 2015 to September 8, 2022.

DLM: No, that wouldn't happen in Winnipeg very easily. My goodness. Okay, so you've publicly identified as Métis.[9] Your work as a Crown attorney, according to public statements around your appointment as a federal judge, indicate that you did a lot of work in Indigenous communities when you were up there and were recognized for that work. Does that hold any special significance for you? Or is that just, that was just part of the job, I did the job in front of me?

THKC: I think it is a bit of both. I knew going up to Thompson early on that I would see a lot of Indigenous people. My grandfather was still alive in 1994 and we were having a little get together as I was leaving home to move to Thompson. It was in August of that year, and my grandfather said to me, "listen, you're going to see a lot of people up there and you have to remember that these are good people who perhaps have made some poor choices and you are going to see a lot of the same people up there". He was referring to the fact that I would see a lot of Indigenous people in the work that I was doing. And he was right about that. Of course, I knew going up to Thompson that I would be immersed in the criminal law, and I would be traveling to all of the remote Indigenous communities. In Thompson at the time, there were about 15 communities that we went to. Only two of them were driving circuits, the rest you flew in a court-party plane and went and held court. So, as I said earlier, I was immersed in criminal law and Indigenous communities. I think for me it was more than just part of the job, but obviously that is a big piece of it. I tried to get to know the people in the community, engage with the people in the communities, and I think that came from my background and working as a sort of layperson — a citizen of the community on a local justice committee — knowing that there were other ways to deal with those people involved in the criminal law and trying to support that alternative measure aspect of the criminal law that the *Criminal Code*[10] allows for. So, if there was one thing I tried to do as a Crown going into these communities, it was to try and promote the idea that the communities could take some ownership of the matters that were happening in their community. And of course, there were a lot of serious

---

9 The Métis are an Indigenous group of people whose historical homelands include Manitoba, Saskatchewan, Alberta, and parts of British Columbia, the Northwest Territories, Northwest Ontario, and the northern United States.

10 *Criminal Code*, RSC 1985, c C-46.

matters. The RCMP have very difficult jobs in policing these communities and exercise a lot of discretion in terms of charging people. Typically, you just see the most serious cases as a Crown attorney, and police were trying to deal with other matters within the community.

DLM: Now, one of the interesting things for me that I learned in the research that I got about you was that later in your career, you joined a unit in Prosecutions that was focused on domestic-violence cases. Every Crown attorney has tough cases to look at. Every Crown attorney has tough choices to make about what to do in a lot of different scenarios, but you seem to seek out what I must assume had to be these exceptionally difficult issues in family violence. Why would you seek that out?

THKC: Well, I am not so certain it was a question of me seeking it out. People get opportunities, I firmly believe, by saying yes. And it was from the smallest sort of asks, "Oh, could you come and help out with this hockey team?", "Oh, could you come in and sit on this committee?", "Could you come and speak to the law students?", "Could you come and do this or come and do that" , and if you say yes to these requests, I guarantee you are going to be granted an awful lot of opportunities. So, I had been up in Thompson for about six years, it was the year 2000, and I wanted to come back to Winnipeg because my spouse was putting a lot of pressure on me to come back to Lac du Bonnet. And so, at the time, Janice leMaistre[11] was running the family violence unit for Prosecutions in Winnipeg, and she had heard that Champagne wants to come down. I knew her from my articling year, she was a couple of years ahead of me. And she said "I want that guy in my unit." essentially. When I showed up in Winnipeg at the office it was already predetermined that I would be working in the family violence unit with Janice leMaistre and her whole team of family violence prosecutors. And again, by saying yes, you do not know that that was a real opportunity until time marches on and you reflect back on what happened during that period of your life and work or family, and it became a really good opportunity for me. A couple of things I will talk about, because of my experience in the

---

[11] The Honourable Janice leMaistre was the supervising senior Crown attorney in the family violence unit for Manitoba Prosecution Service in Winnipeg. On November 22, 2006, she was appointed as a Judge of the Provincial Court of Manitoba in 2006. On September 9, 2009, she was appointed as the Associate Chief Judge of the same court. She was appointed to the Manitoba Court of Appeal on June 19, 2015.

north and being thrown into serious matters day in and day out and doing great work, there was a very serious case in the family violence unit that was being prosecuted that fall. The Crown attorney who had it, this was her first jury trial, but she was also expecting her first child and the trial was set for about six weeks and after the second week, I was told, "Hey, you got to go and help out the Crown because her doctors a little bit concerned about her pregnancy and the stress of the trial." By the third week, she was ordered to bed rest, so I took over this jury trial midway through and, at the time, it was one of those things, "Yeah, no problem, I'll do this." After it was finished, some of the more senior counsel in the Crown said "Champagne, you're an idiot. You don't know what you're stepping into when doing something like that." I said, "Well, something just needed to be done and they asked me to do it, so I did it." You know, because I did not have time to prepare, I did not know the victims, and it was a horrific case, just a horrific case. Serious sexual assaults and serious violence, two spouses and three children and at the end of the day, the accused was convicted of 20 different counts on the indictment and sentenced to 25 years in prison after a number of years being deducted for the principle of totality. So, it was a very, very serious matter. That case got a few headlines and other opportunities came up. At the time in the family violence unit, you were dealing with child-abuse cases regularly, which are very, very difficult cases. We had the growth of the internet right around that time and child pornography was just coming to the forefront in Manitoba, and I was asked to be the point person from Prosecutions on what became known as the "ICE unit". The Integrated Child Exploitation Unit,[12] the forefront of all of these child pornography charges, had me involved in that, right from the outset, and we would learn information — the police would learn about a potential suspect in Manitoba by somebody in the UK or the United States that some police force took down a particular site and they got all of this information about possible suspects, their IP addresses and where they were located geographically. And it was a very complex and new type of prosecution involving MLAT requests, applications and that sort of thing.

---

[12] The Integrated Child Exploitation Unit is a unit of Manitoba Prosecutions that takes on cases related to child pornography.

DLM: Sorry, I just want to make sure that I get the acronym right. You, said MLAT?[13]

THKC: Yes, it's the Mutual Legal Assistance Treaty between countries, so Canada and the US, for example. So, to get the evidence from the United States you would have to go through this sophisticated application process. It is something that I had never heard of, but because I said yes to the family violence unit, I found myself being involved in these brand-new, not cutting edge, but new, types of prosecutions, things that we had not seen before. The *Criminal Code of Canada*[14] had to be amended to even create a crime, for example internet luring, those are relatively new offences that did not exist in the *Criminal Code* when I went to Thompson in 1994.

DLM: Now, just to cover Janice leMaistre, you mentioned her. Janice leMaistre[15] went from the Crown's Office to the Provincial Court, and then ultimately to the Court of Appeal, if I'm not mistaken?

THKC: You are correct about her career path. I was appointed to the Provincial Court in 2005. Janice was appointed shortly after that, so we were colleagues on the Provincial Court bench. I was appointed to Chief Judge and shortly after that Janice was appointed Associate Chief Judge of the Provincial Court, and just before her seven-year term ended, she was appointed to the Manitoba Court of Appeal, where she currently resides.

DLM: Okay. Now, my dad was a social worker. So, doing this type of work with child pornography and domestic violence takes a particular type of mindset and a particular type of person who can deal with that. I'm wondering how you washed it off at the end of the day.

THKC: That is a very interesting question and observation, and I think it is a correct one. I think growing up in the criminal justice system had a lot to do with it, on how to deal with what you were dealing with day in and

---

13 MLAT is an acronym for "Mutual Legal Assistance Treaty" and refers to mutual legal assistance requests to Canada made under treaties. Canada has the legal authority to obtain court orders on behalf of countries that are parties to mutual legal assistance agreements with Canada.

14 *Supra* note 10.

15 *Supra* note 11.

day out, because you often see the very worst of people dealing with the criminal justice system. Growing up with others going through the same thing from day one of my legal career, I think was a big assistance in being able to manage what is in front of you. So, Crown attorneys, I think, for the most part have a pretty dark sense of humor. Being able to laugh about some things when appropriate is very important. You know, I told you at the outset, I grew up in Lac du Bonnet. I still live in Lac du Bonnet, so I commute every day and my drive is about an hour and ten minutes coming to work and an hour and ten minutes going home. That time is very valuable to prepare for the day and very valuable to put the day behind you. That time to think about, deal with, and process what has gone on in a courtroom is, for me, my way of dealing with these matters and is very helpful.

DLM: You just let it marinate for a while and then when I pull into the driveway, that's it.

THKC: That is exactly it. And not that I do not return to things later on in the evening, as I often do, just in terms of thinking about things or even sitting down and making some notes about things. But when I get home, I go for a run, I am still pretty active. Even though I have gotten up in age, I still play hockey. So those types of physical activities really help as well. I try to make sure that when it is family time, I am focused on the family.

DLM: Terrific. Now, what in your legal career said to you, "Being a judge might be fun, that might be a good transition."? Because it seemed like you were proceeding along a path within the Prosecution Service and then you took a bit of a left turn.

THKC: Yes, I think that is a very astute observation. I think it was about ten years as a prosecutor and the Provincial Court of Manitoba was just going through some personnel changes for a number of different reasons. One was the compensation process had changed in the year 2000, after Martin Freedman[16] wrote a report, and that report resulted in a much better

[16] The Honourable Martin H. Freedman practiced law and was the Managing Partner at Aikins, MacAulay & Thorvaldson LLP, at the time a major Winnipeg law firm, which later became part of MLT Aikins LLP, a major regional law firm. He was appointed a Justice of the Manitoba Court of Appeal on July 16, 2002.He retired from the Court on September 12, 2012.

pension for Provincial Court Judges and so as a result, some of the judges were deciding to retire. We had a Provincial Court Bench of judges that had been there for a long time and needed to continue to be there because the pension plan was not very good, and so, judges just kept working. And then this one report changed things, and we saw some of the judges retiring and creating vacancies, and that was something I was aware of from my days in Thompson. One of the things that you get to do when you are working in these remote locations is you get to know the judges both on a professional and personal level. So, I knew some of the judges of the Court and even the Winnipeg judges you get to know because they were often parachuted in to come and do circuit work in Thompson. You are going out on circuit for a week, you are coming to the airport, getting on a plane or driving in a vehicle together, and you get to know the judges. So that left turn from prosecutor to judge really came about because I was approached by a few judges saying "Champagne, you know, this is something you should think about, you've got this somewhat unique background, you went up north to Thompson, you spent a fair bit of time there, you came down to Winnipeg, you have had a pretty steady diet of serious cases, and you may not know this, but the judges think highly of you and respect you.". So, all of a sudden, I thought, "huh, that's pretty interesting", and I ended up applying. The Provincial Court of Manitoba has this application process, and I ended up getting an interview and the judicial nominating committee obviously thought well enough of me, put my name forward to the Minister's office and I was appointed to the Court. Really, there was no one more surprised than me because of the makeup of the Court. When I was appointed, I was 40 years old. That was not unheard of, but a little bit unusual to have people of that age appointed. And at that same time, my good buddy Kelly Moar[17] and a woman named Christine Harapiak[18] was appointed in Dauphin, and Kelly and I in Winnipeg and we were all similar vintage, similar age, and I think that sent a message to the profession about, the change in the Provincial Court of Manitoba, or that there were changes coming. I do not think we were the start of the change; I think two years earlier was the start of a major change, just in the appointment process where judges were appointed at the

---

17 The Honourable Kelly Moar was appointed as a Judge of the Provincial Court of Manitoba on April 13, 2005.

18 Christine Harapiak, , was appointed as a Judge of the Provincial Court of Manitoba on April 13, 2005.

same time. Tim Preston,[19] Fred Sandhu,[20] John Combs[21] out in Brandon, and Murray Thompson[22] in Thompson and I think that was really a change from whatever –

DLM: They were all younger than expected.

THKC: They were all younger, different backgrounds and the provincial court, not overnight, changed. The majority of the provincial court was these old white guys with a handful of very good women judges, and then these new appointments started happening and, in my view, a big factor was that the compensation had got to a level where judges could retire comfortably. And so, people started doing that. We have seen a constant change in the provincial court where judges are retiring at an earlier age. We have managed to secure a senior judges program, a big benefit for the court, and it did not exist at the time where you could retire and come back and work as a senior judge. The court had the best of both worlds, increased capacity, access to justice, and judges who had retired still have their foot in the door, still doing some good work and easing into a full-time retirement.

DLM: You mentioned Tim, there was another woman?

THKC: So when I was appointed with Kelly Moar and Christine Harapiak. Christine was appointed to the Dauphin Judicial Centre[23] and Kelly and I were appointed to Winnipeg.

---

19 Tim Preston was appointed as a Judge of the Provincial Court of Manitoba on April 30, 2003.

20 The Honourable Fred Sandhu was appointed as a Judge of the Provincial Court of Manitoba on April 30, 2003. He served as a Judge until July 6, 2012. He began serving as a Senior Judge of the same court on August 14, 2012.

21 The Honourable John Combs was appointed as a Judge of the Provincial Court of Manitoba on March 26, 2003.

22 The Honourable Murray Thompson was appointed as a Judge of the Provincial Court of Manitoba on March 26, 2003. He served a seven-year term as an Associate Chief Judge of the same court from August 2, 2006 to August 1, 2013.

23 Judicial Centres refer to the appointed where a judge is expected to sit. Winnipeg, Brandon, Thompson, The Pas, and Dauphin are all examples. Judges often go "on circuit", that is, hearing cases in smaller communities, often remote and accessible only by plane.

DLM: Great. Now, what, in your view, is the best thing about being a Provincial Court Judge? The money is obviously not bad, you have mentioned that, but that can't be the best thing about it.

THKC: Over the course of my career as a Provincial Court Judge, both as a sitting judge and as the Chief Judge, I have often had the opportunity to speak at different public gatherings, law schools, and that sort of thing. I always start off by talking about the Provincial Court being the "people's court". In terms of criminal law, I think the Provincial Court of Manitoba deals with about 90% of the cases and we do it in the community. We go to all of these small, remote Indigenous communities in the North and throughout the province. We have Judicial Centres at all four corners of the province and you are dealing with people day in and day out. It is a very busy court, but you get to see and make decisions in a pretty quick fashion. It takes a bit of a skill set to go in and deal with a case and make a decision and move on to the next one. But there is something rewarding about getting matters done and providing that type of access to justice.

DLM: So, you're very passionate about access to justice, particularly for remote communities.

THKC: Absolutely, there is no doubt about it. I think that has been a hallmark for the judiciary across the country for the last 15 or 20 years even. Beverly McLachlin,[24] as the Chief Justice of Canada, showed tremendous leadership from the top down in terms of the legal system, not just the criminal justice system. The entire legal system has to think about and improve access to justice for all areas of the law. Family, criminal, civil, and it is an ongoing difficulty and there is ongoing commitment to try and improve access. So, it is something that I think the judiciary is very focused on and will remain focused on because it is challenging.

---

[24] The Right Honourable Beverley McLachlin was appointed as a Judge of the Vancouver County Court in April 1981. In September of the same year, she was appointed as a Justice of the Supreme Court of British Columbia. In December 1985, she was elevated to the position of Justice of the British Columbia Court of Appeal. In September 1988, she was appointed to the position of Chief Justice of the Supreme Court of British Columbia. On March 30, 1989, she was appointed as a Puisne Justice of the Supreme Court of Canada. She served as the 17th Chief Justice of Canada from January 7, 2000 until her retirement on December 15,2017.

DLM: Well, it's always been remarkable to me with the Provincial Court, you talked about, how quickly you made decisions, and you needed to make decisions, particularly on circuit. I would assume, because you're not going to fly in just to make a decision; you're going to do it in the room, presumably. It's always amazed me how much law those judges must have to maintain in their heads to manage that sort of caseload. That's what amazes me as an outsider to the judiciary. What sort of things surprised you as a young judge when you saw these people doing what they were doing, even as a Crown attorney?

THKC: I think one of the biggest things that surprised me was, you talk about judicial independence and each judge is making a decision based on the evidence in the courtroom before them, and it does not matter if it is a bail application, a sentencing hearing or a trial. What struck me was the collegiality of the Court, the judges in the Court, and how everybody would go to other judges to talk about the issues. In Winnipeg especially, because that is where the majority of the judges are, and you are up in chambers and all close together. That opportunity to speak to a judge about a matter that just happened in your courtroom so that you could go down there and be in a position to deliver a decision was so helpful. So, although you are making your own decision on the matter in the courtroom before you, you had the ability to seek advice and input from others, and I did not know that existed. Maybe because in Thompson, where I started out practicing, that certainly did not exist for those judges outside of the Winnipeg Judicial Centre. There were two Provincial Court Judges at the time, there are three now in Thompson, and those two judges were in court in different places every single day. The demand on those judges was simply incredible. For those judges to go out and make those decisions day in and day out, and of course there were cases that you would have to reserve on, and perhaps do a written decision, but for the most part, the judges were making decisions and getting it right time and time again.

DLM: I'm just going to put together two thoughts that you just put in my head, which is access to justice and the demands we put on people outside of Winnipeg. I mean, there's about – is it about half our judges are in Winnipeg?

THKC: Oh, more than half. So, if there are 42 Provincial Court Judges, there is now three in Thompson, two in The Pas, two in Dauphin, three in Brandon, and one in Portage La Prairie, and the rest in Winnipeg. For the Court of King's Bench, there are even fewer judges outside of Winnipeg. There is one in Dauphin, two in Brandon, and that is essentially it, although there are supernumerary judges in those locations as well.

DLM: You're talking about 10 or 12 Provincial Court Judges in places other than Winnipeg, is that right?

THKC: Right.

DLM: Is that ideal in the sense of delivering the access to justice that you're talking about?

THKC: Well, it is certainly challenging for those judges. I do not think we would ever be in a position to have all of the judicial resources that we want. I think the government has come to recognize that just appointing another judge is not all that helpful unless you are also appointing court clerks, hiring more lawyers, more prosecutors, Sheriff's officers, the whole gamut. Putting in the infrastructure. There is no use putting another judge in The Pas when you do not have a courtroom for that judge to sit in. So, we are really sort of limited by the infrastructure that we have. And much like Toronto is the centre of the universe for Canada, in Manitoba, being a rural guy, I complain that Winnipeg is the centre of the universe for the Province. I have often accused, in a joking way, that some judges suffer from "Perimeter-itis". As soon as they leave the Perimeter,[25] they lose all common sense, they do not want to be there, they lose the sense of direction and time because they are most comfortable being in Winnipeg. Having said that, I think we have to recognize the makeup of our province. In my time, I have

[25] This refers to the Perimeter Highway, an orbital road which surrounds most of the City of Winnipeg. I write "most of" the city because as urban sprawl has taken place in Winnipeg, and municipalities have joined the city, there are portions of the City of Winnipeg that are technically outside of the Perimeter Highway. For example, I live in the south end of the city, in a neighborhood known as St. Norbert. While this is technically south of the Perimeter Highway, I nonetheless pay property taxes to the City of Winnipeg. However, as a general rule, the Perimeter Highway is generally thought to be one of the markers of the City of Winnipeg. Therefore references to being "outside the Perimeter" is generally a colloquial reference to being outside the City of Winnipeg.

seen the change. I have seen the railroads pulled up from the ground, our rural communities shrinking. Most people gravitate to the big centres, Winnipeg obviously being the biggest centre. I am guessing, but I suspect there are 750,000 people living in Winnipeg or the immediate vicinity. Our province is what 1.2 million people? And southern Manitoba has a growing population, but it is one of the few places outside of Winnipeg that has a growing population. Small communities are disappearing and so to invest in more resources in those communities where the number of people are diminishing does not make a lot of sense for the government. But having said that, the legal system, the justice system, it applies to all of us. If you want to provide some access, I think it is important that we are able to invest some of our dollars in providing access to the major centres in the province, all four corners of the province, and wherever possible to get into the small communities. Because we still have, it is amazing, very remote communities where internet access is not available. You need to go there to those communities to provide them justice.

DLM: You mentioned court clerks, you mentioned bailiffs, Sheriffs officers, all of these types of people. It's not something we talk a lot about when we think about the criminal justice system but having been Chief Judge, having seen this over an extended career, I wondered if you might say a word or two about the importance of those jobs and those people to the delivery of justice.

THKC: It is incredible the people that we have in the justice system and whether it is a court clerk, a judicial justice of the peace, staff justice of the peace, a Sheriff's officer, the correctional officers, the police themselves, all of the lawyers — Crowns, defence lawyers. All of these people are so important to the efficient, and more importantly, effective running of a justice system that any weak link can hamper and diminish tremendously access to justice. We are very fortunate that people who sign up for public service are really dedicated to providing that service. I have been at it a long time and do not get me wrong, people get frustrated, they feel that they go unnoticed, they often feel that people do not see their work as being valuable, but it is tremendously valuable in terms of what they do. I can tell you the court system would not run without the court clerks. For all the technology that we have in this world today, the justice system is still very paper-dependent, which is really interesting and something that we need to

improve upon. The amount of paper that a court clerk takes on a circuit court is incredible. They have to come with a computer, a printer, paper, all of the recording equipment because everything said in the courtroom is being recorded. Their work is unbelievable. And unless you are immersed in it, it goes unnoticed. It is very important, and I tried to, throughout my career and still do today, to thank all of these different people for their valuable service. I make a point of it.

DLM: I appreciate that. Now, you become a Provincial Court Judge, what is the most memorable case you ever went through? Is there anything that sticks out in your mind that is sort of like, that was funny, that doesn't happen, whatever it is, whatever it was.

THKC: As I said, the Provincial Court is really the "people's court". For the most part, it is serious matters. It is serious for victims of crime, it is serious for the accused and for the players. And thankfully there still is the odd time that there is some laughter in the courtroom. That is a good thing. But, when I think about my career in the Provincial Court, the most interesting and satisfying for all Provincial Court Judges is trying to be involved in some of these problem-solving courts that we have created. In Manitoba, and this is across the country at the Provincial Court level, we have drug-treatment courts, we have mental-health courts, we have an FASD[26] court and why those courts are satisfying is, you are trying to get to the root cause of the problem. And there are some successes, if I could call it that, where you have a graduation from a drug-treatment court or someone who has been involved in very serious cases, and they have got their addiction issue under control, and they are now a contributing member of the community. So, that is very satisfying to see. But, for myself, I think the most memorable case or cases that I was involved in, I had the good fortune to travel to Hollow Water, Manitoba,[27] which is sort of my backyard. I used to play baseball in Hollow Water and some of the other remote communities, and

---

26 "FASD" refers to fetal alcohol syndrome disorder. The creation of this specialized court recognizes that some of the symptoms of this disorder can create circumstances that increase the likelihood of interactions with the criminal justice system.

27 Hollow Water First Nation is an Anishinaabe First Nation located on the east side of Lake Winnipeg.

Hollow Water is somewhat famous for their sentencing circles.[28] It goes back to the 70s and 80s, where sexual abuse was rampant in the community, police were charging in and many men were being taken out of the community, convicted of serious sexual assaults. At one point, the women in the community said, you know, we have got to deal with this differently. We do not have the men here to support us hunting, for cutting firewood, for these types of things, they turned to the Crown's Office and the Hollow Water sentencing circle was developed. It went on for quite some time and was pretty successful, and then it diminished. Like many things, what happened was the driving force behind it was a woman named Miss Bushie, and she got sick and the sentencing circles for Hollow Water disappeared, and those criminal cases were moved to Pine Falls[29] and that was almost the end of it. And then Miss Bushie, Berma Bushie,[30] returned to the community, and I had the opportunity to sit for a full day of sentencing circles in Hollow Water, and we had three different accused people. Court started at 10:00 o'clock and went to about 7:00 o'clock in the evening, and then we concluded court with a feast. There was a domestic-violence case, a sexual-assault case, and a property-offence case. It was something to see where you have community members coming and going, joining the circle, coming in and leaving, the lawyers being involved and everybody sharing their thoughts and concerns about the particular individual, the victims, the complainants and turning at the end of the day for a sentencing. All of those individuals, including the person convicted of sexual assault, ended up with a sentence that had them remain in the community. This was sort of unusual, but having participated in presiding over it, you saw how effective this alternative type of sentencing, this alternative type of justice system, could be. And it is really unfortunate, in my view, that we do not see more of that. It still happens every now and then that we have sentencing circles, more so in the Provincial Court, once in a blue moon we might have one in the Court of King's Bench, but not very often. These types of legal process

---

28 Hollow Water is known for their "Community Holistic Circle Healing" (CHCH) approach to justice which fosters healing for all while holding offenders accountable to their communities.

29 Powerview-Pine Falls is a small town in Manitoba, approximately 120 kilometers northeast of Winnipeg.

30 Berma Bushie is a member of Hollow Water First Nation and has been involved with Community Holistic Circle Healing since its inception.

contemplated by the *Criminal Code of Canada*[31] and more importantly, the common law as discussed by the Supreme Court of Canada, allow for some innovation and some successes in dealing with people's lives.

DLM: Now I just want to make sure; you said Berma Bushie –

THKC: Berma Bushie, this incredible woman.

DLM: Okay, now like your successor in this job, Margaret Wiebe,[32] you didn't wait long to apply to be Chief Judge. You spent four years as a sitting judge, and then you decided to apply for the job of Chief Judge. What attracted you to the administrative demands that would come with that particular position?

THKC: I think it comes back to opportunity. I am going to take a moment to try and describe what it was like to join the Provincial Court of Manitoba. So, I have explained that I had Judges of the Court say to me, "Hey, Champagne, you should consider this as a possibility". I remember I explained how there was a transition going on in the personnel, the makeup of the Provincial Court of Manitoba. I remember the first day walking into chambers after I had been appointed as a Provincial Court Judge. Ray Wyant[33] was the Chief Judge at the time, he was the first judge to serve a seven-year term under the amendments to the legislation.[34] He called me and said, come on down and I will see you in chambers. I got off the elevator leading into chambers and the judges were sitting around a table in the common room where the judges sit while they are waiting to go to court.

---

31 *Supra* note 10

32 The Honourable Margaret I. Wiebe was appointed as a Judge of the Provincial Court of Manitoba on December 12, 2012. She was appointed Chief Judge of the same court as of July 10, 2016, serving a seven-year term up to and including July 9, 2023.

33 The Honourable Raymond E. Wyant was appointed as a Judge of the Provincial Court of Manitoba in 1998. He was appointed Chief Judge of the same court as of July 10, 2009, serving a seven-year term up to and including July 9, 2016..In 2014, he was designated a Senior Judge on the Provincial Court. He retired from the Provincial Court in 2024.

34 See the *Provincial Court Act*, CCSM, c C275, s-s 8.0.1(1).

The elevator door opens, and there was Murray Howell,[35] who was a judge in Thompson but had transferred from Thompson to Winnipeg. And Murray came to me, shook my hand, said congratulations, put his arm around me and said "listen, I'm the chair of the compensation committee, we need some help on the compensation committee, you're joining the compensation committee".

DLM: And this is your first day.

THKC: This is my first day, and it gets better. Marva Smith[36] who was a Judge of the Court, she used to be a constitutional lawyer from Department of Justice. Marva was the chair of the education committee. She says, you have got to come and join the education committee, I need some help on this committee. And it continued on that way. Provincial Judges of Manitoba have an association, like all provincial courts, it's the "Provincial Judges Association of Manitoba", PJAM is how we refer to it.[37] And they said, "Champagne. We need you on PJAM as well". And why there was this need was because we had judges who had been serving on these positions for so long, who now had the opportunity to retire. There was this change happening and this is all extra work to do besides going into court every day and they were looking for some help, some new blood. As I said earlier on in our discussion, you create opportunity or you get opportunity by saying yes, and I did not know any better. I did not know what the demands were going to be, so I said yes to all of these things. And so very early on in my judicial career with the Provincial Court of Manitoba, I was deeply immersed in the running of the Court. All of these committees, it takes a lot of committees to actually have the Court function. The judges need to work together, they need to support the Chief. If they want any sort of a new initiative, the Chief Judge needs to call on all of the judges of the Court to try and pull everything together to make things happen. And so, I found myself deeply involved in the running of the court. Ray Wyant and I had a

---

35 The Honourable Murray Howell was appointed as a Judge of the Provincial Court of Manitoba on August 1, 1985, and retired October 20, 2006.

36 The Honourable Marva Smith was appointed as a Judge of the Provincial Court of Manitoba on October 27, 1999. She retired from her full-time position on July 6, 2012. She was designated as a Senior Judge of the same court on August 12, 2012.

37 The Provincial Judges Association of Manitoba (PJAM) is an organization that represents the interests of provincial judges in the Province of Manitoba.

good relationship. We talked about the appointment process just briefly. There was a judicial nominating committee, the Chief Judge chairs that committee, and there was always one other representative from the Court. Because I was involved in the Association, typically the representative comes from the executive of the Judges Association. I was on the Association, so I found myself being involved on the nominating committees, interviewing lawyers to become judges of the Provincial Court. So, I had a pretty good understanding of how the Court was running, about the needs of the Court, and the changes that were coming to the court in terms of people leaving. When you looked around and you were signing up for a 7-year term and looking around, and again I had some people come to me who basically said "Champagne, you have got to put your name forward for this." And I am thinking to myself, "This is crazy, but I've got support". People were telling me, "Put your name forward", and then it was the same sort of thing. It was a big interview process and there was a nominating committee for that position, and they thought well enough of me to put my name on the list, and I ended up being appointed the Chief Judge of the Court. I had a bit of an administrative background from when I was at the Crown in Thompson, I became the senior supervising Crown for the office and that entailed some administrative work. So, I did have a bit of background in some administration. And then when I was appointed Chief, I was deeply immersed in court administration.

DLM: What was the best part of that job, in your view? What was the most rewarding part of being Chief?

THKC: I think the best part and the worst part were the people.

DLM: Okay, you'll have to explain that one.

THKC: Maybe not the worst part, but the most challenging part. We spoke about all of the integral people involved in the running of the justice system. And when you are the Chief, all of these people turn to you for support, for answers and to provide ideas to try and do things better. And so, you found yourself, or I certainly found myself, very open and responsive to anybody and everybody who would come to the office door. I would have defence lawyers come up if they had a concern about something that happened in the courtroom, a process issue, they would come up to my chambers, knock

on the door, say "Can I see Champagne?", and my executive assistant would say let me ask, yeah sure come on in. And so always making time for people. There were those types of demands. And your team, your most valuable resource is your team, your judges on your Court. It is a very demanding job. We were going through this turnover of new judges; that one of the most challenging things for any new appointment is giving up your ability to schedule your life. Judges do not have the ability to schedule their life. The Court, through the office of the Chief, controls your schedule and it is a very busy schedule. You might be scheduled to do a two-week trial and low-and-behold, day one of that trial somebody pleads guilty to five counts of robbery. So, you think, "Oh great, now I'm going to get some time to get caught up. I might take a couple of days off, I might do this ..." that is not how it works.

As soon as, as Chief, you find that you have a free judge, you are assigning them to something else because there is always, in the Provincial Court, a courtroom that needs to be covered, that you are always overbooking, otherwise you would never be able to catch up on delay. You are always overbooking, so you are counting on cases folding and we tried to create a matrix to figure out exactly how far, how much can we overbook and still cover everything from day-to-day, and it was a challenge. The judge's loss of control of their own scheduling, their professional life scheduling, caused some angst for them and added to the overall stress and pressure of the job. As the Chief, you need to support your judges the best you can, and you do that by providing, or I tried to do that by providing, holiday and vacation time whenever it was requested, and that was a challenge. As well, [I did that] by supporting the judges through education programming. And because I was on the education committee before I ever became Chief, I was well-placed to really support the education program of our judges and education across the country for judges. So, I said the most rewarding aspect I was dealing with the people, incredible people. And I am not just talking about the judges, I am talking about all the players in the system, the lawyers, the Crown attorneys, the court clerks, the sheriffs, really, really committed people. There was a sense of accomplishment that you get when you know the day goes off without a hitch and it is because of dealing with all of these people. And the most challenging thing, again, is trying to support all of these people. At any given time, people have lives. You know, a person walks in the door, "I need today off. My mother's in the hospital." You have to

get that person out of court. And that can be a very serious challenge because that person was in the schedule for bail court or whatever it was, and you have to find a way to support that person. It is a demanding job, it is a challenging job and it can be very, very difficult. So, I think administratively that would be one of the biggest challenges, just providing a support level that the judges felt was being met, and it didn't always happen, but I do believe that under my watch we were able to increase the level of support for the judges. As I said earlier, I am very proud of the fact that I was able to obtain a Senior Judges program,[38] so that allowed me to call on the retired judges to work, and that often provided extra support for the judges that were working day-to-day.

DLM: Now, I heard about you a little bit before I before I arrived in this interview and I heard about how calm, cool, and collected you tend to be. Was there ever a case that really tested that equanimity, where you just wanted to take somebody and shake him, or what have you?

THKC: The one that immediately comes to mind is a case I just did. I presided over a five-week murder trial.

DLM: This is in the Court of King's Bench?

THKC: Correct. And it just concluded not that long ago. Some of the challenges in certain kinds of cases are the uncooperative witnesses. I had a very uncooperative witness who was prepared to come to court and be uncooperative and thought about how he could be uncooperative and still escape the responsibility of a witness. It all started when the police tracked him down. This person was a criminal, there was no doubt about it; he had been involved in criminal behaviour, selling drugs for a long time and the police tracked him down. He was an important witness, and they served him with a subpoena. And he said to the police officer, "Well, I know I have to come to court because you served me this order, but it doesn't mean I have to cooperate. And I know if I don't cooperate, you know, I could find myself in trouble if I misbehave, I could be found in contempt of court. But there's

---

[38] A Senior Judge is a retired judge who has ceased to serve on an everyday basis, but is below the age of 75 years, and has requested the designation of Senior Judge. Senior Judges may serve on a *per diem* basis at the request of the Chief Judge. See the *Provincial Court Act*, *supra* note 34, s 6.5.

nothing that they can do to me if I can't remember, isn't that right?" And so, he came to court and that was what he did. And what was so frustrating to me was the Crown made every application they could to have this man testify. Pursuant to section 9 of the *Evidence Act* — subsections (1) and (2) — I granted the Crown full opportunity to cross examine their own witness.[39] And I was counting the number of times that he was laughing in the face of the Crown. I interrupted at times and I did not cross the line, but I came close to it, in speaking to this witness in a very firm tone about his requirement to participate and he laughed out loud at me, and I felt very hamstrung in what I could do with him. It was a very frustrating experience, and it was very interesting because ultimately there was an application to have his videotaped evidence admitted for the truth of its contents and I granted the application. But the defence lawyer, a very experienced lawyer who I liked a lot, made a comment, "Well, my Lord, we know he's a frustrating witness, but he did say something. So I'm not sure that the Crown has met the test of necessity and reliability in that no, he did testify about some things, maybe not all the things, but he had asked you to carefully consider whether or not the Crown has met the onus that they must in relation to the application to have the evidence admitted to the principled exception to the hearsay rule". And so, he was alluding to the fact that I was losing control with the witness a little bit, it did not go that far, and the lawyer did not go that far to say that, but I know exactly what he was alluding to. I felt the same way that this was one particular witness that got to me a little bit in terms of my own demeanor in the courtroom.

DLM: I admire the judges that can keep it together in the face of such things, it's really rather remarkable. We've talked a little bit about the fact that the Provincial Court does not currently, though it appears it may be getting it from some of the interviews that we've done in this series, that it may be getting a retirement age, but it currently doesn't have one. You were an administrative judge, is that challenging? Not knowing when people are going to retire and not having a sense of turnover?

THKC: Absolutely. It is very challenging and very early on, Ray Wyant did this as well, he asked judges to give notice about when they were going to retire, because the process, and it depends on the government of the day,

---

[39] *Canada Evidence Act*, RSC 1985, c C-5, s 9.

but the process to replace a judge could take an awful long time. The government has to, through an Order-in-Council, strike a judicial nominating committee and then lists have to be created and I know the legislation is changed to try and address that, but under my watch that was a real challenge. And you could go, even after having the Order-in-Council sending out a notice that the Provincial Court is looking for applicants, going through all the interviews, submitting a list, even after all of that work is done and you have given a list of names to the government, it could be months. I am talking six, seven, eight, nine months before you got an appointment. So, when you had 40 judges and only 40 judges, and you were short one judge, it was a big deal. When you were short two or three judges, it was an even bigger deal. So, I went back and really impressed upon the judges the importance of giving as much notice as possible. We actually agreed to at least six months notice before somebody was retiring unless exceptional circumstances arose and somebody felt that they had to go. The judges bought into that. But even having that kind of notice that they were going to retire, you were really hamstrung at times by the government in terms of getting a full complement of judges. That was one of the real reasons that I pushed so hard for a Senior Judges program, so that you could call on people who had already retired to come back and fill some of these chairs that were vacant while we were waiting for appointments. That Senior Judges program really assisted in dealing with the transition between people retiring and the chair being filled, and new judges getting up to speed in terms of work mentorship, and that sort of thing. It is, and I suspected at times it continues to be, a challenge to get those positions filled in a timely basis.

DLM: Now, the federal system that you are now a part of because you went from the provincial court, in what was it, 2016 just after your –

THKC: 2018. I was appointed in April 2018 to the Court of Queen's Bench at the time, yes.

DLM: To the Court of Queen's Bench[40], as it then was. And they have a mandatory retirement age at 75.

---

[40] The Court of King's Bench (previously The Court of Queen's Bench) is the highest trial court for the Province of Manitoba. The court is created by provincial legislation (see

THKC: Right.

DLM: And in your, I mean admittedly you don't have quite as long in that system as you did in the provincial system, but do you find that that's more orderly, for lack of a better term, then?

THKC: Yes, I think I know what you are getting at. I think a mandatory retirement age, and one at 75, is appropriate. You might quibble with what that age should be, but I think there should be a mandatory retirement age for a couple of reasons. There are exceptions to the rule in terms of a person's level of energy, their commitment to the position, and that there are people who are 75 and beyond who could continue to sit as judges whether in Provincial Court or the federal court. But what a mandatory retirement age also does is it ensures that there is some turnover and new individuals coming to the Court and I think that is very important as well. As I said, the Provincial Court when I was starting out was long-time judges, a lot of males, not really representative of the diversity of Manitoba at the time, but having to stay on the job really for financial reasons and there was never a retirement age contemplated. But things have changed and there is a very good pension plan and typically judges get appointed, well, it is a wide range of ages, but in the federal system, I think right now 52 is the average age of an appointment. So, you have enough time to accumulate a full annuity before you are 75. So, you should be financially looked after when you are being shown the door if you choose to work to 75, but you also have, in the federal system, the supernumerary program and now in the provincial court the Senior Judges program where you can retire before 75 and continue to work as a part-time judge. I think that is very important for people to have a strategy or an exit strategy to take them to retirement because a lot of people know it is coming, but they are never prepared for it and having the ability to work part-time eases a person into retirement and still allows them to contribute to the Court, and I think that is a good feeling for everyone.

The Court of King's Bench Act, CCSM c C280). However, its judges are appointed by the federal Governor in Council, pursuant to the *Judges Act*, RSC 1985, c J-1.

DLM: Now, the same thing with Chief Justices. This is a case where the Provincial Court made the opposite choice to the federal system, in the sense that you talked earlier about a change to the legislation that said the Chief Judge is going to be here for seven years and then they say goodbye to that role. You know, you can go back to being a regular judge, but you're only staying for seven years as Chief. Now, is that a tough thing to do? I would suspect it might be. You know, you've been in charge. You've been the one that people are coming to and then suddenly you're back amongst the amongst the masses. Is that a challenge? Was that a challenging transition for you?

THKC: It was, and it was not. I always knew I loved being in the courtroom, so I could go back and sit in court on a regular basis, that was not a part of it, but I did feel that in order to actually support the incoming Chief, it would be better if I moved on, if at all possible. And I say that for this reason: you never know how it is going to turn out with a Chief Judge and this is why a term position is so important. I think you have some people who were going to be seen as being very good leaders, they are going to be supported by their Court, they are going to be supported by the profession and all of the other players within a justice system. But you are also going to have people who perhaps out of necessity, the time of the days — you know, what is going on in society at the time— that perhaps do not have that same level of support. And a term, whatever the length of the term is, guarantees that there can be change. And so, all of the players in the system, judges, the defence lawyers, the Crown, know that if things are not going necessarily well under the leadership of a particular individual, that that is going to change because the law is going to force a change. I think that is important for many reasons. A new person in the Court may bring a new leadership style, new leadership ideas, there is a new set of eyes and a refreshing new energy that comes to the table with term positions. Although the opposite occurring is fair, you know people are sad to see the Chief go because they think that that person has done such a fabulous job and, if you could only stay for a little longer, things would continue to maybe improve. That is the upside and downside. Overall, I think that the term positions are an important one and it is one the provincial courts across the country now all have — term positions — and as a Chief, you get to spend time with Chief Judges and Associate Chief Judges across the country. There exists the

Canadian Council of Chief Judges,[41] where you meet on a regular basis, and you get to discuss ideas, processes, case flow and access to justice. All of these different things with other people who are doing the same job, facing very similar issues and how they are trying to deal with those issues. You get to call on others who are doing exactly what you are trying to do, and you find support and friendship in that setting. I think for the most part, many of the Chiefs, if not most, agree that a term to their position is important and you know that it is for that limited time, you may have some specific goals that you want to try and achieve for the Court and for the people of your particular province, and you will do everything you can in that period of time to do it. But as we all know, the justice system moves slowly and incrementally. I always took the view that I was trying to set the table for the next person, that you work on some initiatives, you know you might not get them, but hopefully they are important initiatives that the next person will pick up.

DLM: You talked about the Senior Judges program in that regard that that was one of your big initiatives while you were Chief. Was there any concern you wouldn't get it done before you left?

THKC: Ray Wyant was the Chief for seven years. From day one of his term, he tried to get a Senior Judges program. It is challenging with the government to try and somehow extract resources for something like that. I continued it. He was sort of setting the table, there were discussions, there were all sorts of different models of what that might look like, and everybody wanted something to be similar to the federal program of a supernumerary program. And at the end of the day, at the end of his seven years, I think it became obvious that the government was not going to create a supernumerary program like the federal system. So, I had a committee, a senior judges committee, with judges of the Court and the administrative people. We met, and it was a challenging thing to try and get the government to be on side with the creation of the program. It took a number of years for that to happen. And then, we got the program, and it took a number of years for some judges to retire and participate in the program. But the program is developed, there is a large complement of

---

41 The Canadian Council of Chief Judges aims to improve the quality of judicial services in Canada's provincial and territorial courts.

judges in the program and I am quite certain, even though I have been gone from the Court for a number of years now, the senior judge's program is providing an incredible service to the people of Manitoba.

DLM: That's great. My next question was around the idea of your predecessor, Ray Wyant, you mentioned did some very heavy-duty work with the other members of the court, I think you might have been one, that worked on the Front End program, the Domestic Violence Front End program that won some pretty big awards from the National Public Administration Group. I'm sorry, I can't remember what it was, but the Canadian Association of Public Administrators, I think?

THKC: Yes, and internationally as well.

DLM: And the United Nations as well.

THKC: Yes.

DLM: Now, you're a former domestic-violence prosecutor. Did that program and those awards have special meaning for you because of your history with the issue?

THKC: You know what, it does. If you look at criminal law in Manitoba right now and the number of cases that go through the court systems at all levels, I would say domestic-violence cases, and you put in that child-abuse cases, make up about 50% of the cases in the court system. And so, what you saw was the development of a second stream of criminal law cases in the Provincial Court of Manitoba to try and deal with that volume. You know we had, I am looking at it on the shelf [looks off-camera], but you cannot see the shelf, but it is the Commission of Inquiry into the death of Rhonda and Roy Lavoie.[42] A domestic-violence case where Perry Schulman,[43] who was a Queen's Bench judge at the time, was the

---

42 From 1995 to 1997, the Manitoba Commission of Inquiry into the Deaths of Rhonda and Roy Lavoie was charged with the investigation into the deaths of Rhonda and Roy Lavoie, and with reviewing the systems in place for dealing with domestic violence.

43 The Honourable Perry Schulman was appointed as Justice of the Court of Queen's Bench (as it then was) on May 28, 1993. He fully retired from the Court on July 1, 2008, after electing supernumerary status years earlier.

Commissioner for the inquiry and his report was from 1997, and then remember I started as a Crown in 1994. It was clear to Justice Schulman that domestic violence was rampant and it was clear to the police. I think one of the biggest changes in terms of what led to the influx of all of these cases was the policing of domestic violence changed. It was a mandatory change that was not simply a police officer showing up to a domestic dispute, separating the parties, and taking the male away from the house to go sleep at their brother's place. Now, there was mandatory charging for domestic violence cases. We saw an immediate impact as a result of that in terms of volume and then the court, under Chief Judge Wyant, recognized that this is going to be a big challenge how are we dealing with all of these cases coming? They moved specialized Crowns, and a specialized unit was developed, a separate bail court that still exists today is for a family violence stream of criminal matters. So, you had judges who were trained, now all of the judges are trained in domestic violence, I think. So, you had this incredible influx of cases and how are you going to manage them, and this was going on across the country. This was not just Manitoba, the discussion at the national level of the Chief Judges across the country because of case flow management. How do we improve access? We need to look at case flow and what is going on in the courtroom, what is taking up all of the time, the judges time and the court did a very good job in terms of trying to change the way that the courts were operating to deal effectively and efficiently with all of these cases. So, the administration changes to the cases and the way that court was operating was recognized with these awards. When I started working as a Crown attorney, the most important thing was for people and lawyers to be in the courtroom when they were required to be in the courtroom. It did not matter if it was just going to be a remand, to speak to something, to set a trial date, to do all of these different purposes you were appearing in front of a judge. It quickly became apparent that that was not a very good use of a judge's time, to have judges sit in administrative dockets just to remand things and set trial dates. So, they created a system where other judicial officers could do all of that so that the judges could be in the courtroom doing meaningful things. Hearing trials, imposing sentences, hearing bail applications. That was a significant change from the way things operated. I remember being in docket courts where you had 200 matters on the docket and you were just telling the judge where it was going to appear next, and it took all day. And so, we have other people dealing with that. I remember being a young lawyer and appearing in the Court of Queen's

Bench in chambers for a pre-trial hearing in front of a judge whom I will not name. So, I was the Crown and there was a defence lawyer, and the defence lawyer was not there. This was a 9 o'clock appearance and it was five after nine, the judge's phone rings and it is the defence lawyer who phoned in to say that, for whatever reason, he could not make it, and could he appear by way of telephone. The judge in front of me went up one side and down the other side of the lawyer over the phone saying that that was completely unacceptable, you are required to be here in person. That was early on in my career. Now, we are doing everything we can to keep the lawyers away from the courtroom unless something meaningful is going to happen in terms of a disposition or a bail application or a trial. And with the pandemic it became even more apparent the necessity of changing the way our processes work. We, out of necessity, are engaged in exactly what we are doing here today,[44] and over the last two years I have heard trials that were completely remote. We have this ability in our courtroom to record everything that is being said for people to be appearing in courtroom by a screen. So, the system has changed. Now, whether or not that is for better or worse, that is yet to be determined, but I suspect we are going to have some of what we have learned through technology and the pandemic continue on. We have not had a pre-trial conference in person in two and half years in the Court of King's Bench. The lawyers love it. Our challenge, our concern was always going to be, well if the lawyers are not showing up in person, they are not going to be prepared. Thankfully, that has not been the case. We have had very meaningful meetings, either by teleconference alone, or over video, by MS Teams, or Zoom. We have managed to keep the lights on, the doors open, and the wheels of justice turning throughout the pandemic. So, the justice system is changing, it is flexible. It takes time, but it does change.

DLM: Well, I'll just jump straight to my COVID-19 question, because there was going to be a question about COVID later on in this interview. But, since you mentioned COVID and the changes that have arisen because of it, what do you think the lessons that either the Court institutionally has learned, or that you as a judge have learned from this necessity of moving to technologically different ways of operating?

---

44 The interview reproduced here was conducted remotely, on the platform of either Zoom or Microsoft Teams.

THKC: So, I think I have just touched on that and I think it is a rich avenue for exploration in terms of how we are providing access to justice and it is not just technology. One of the things that we have all lived through with COVID is all of the public-health orders, trying to protect one another by distancing, and we have had to do that in the courthouse. And of course, a lot of the people, not most, but a lot of the people who come into our buildings and our courtrooms across the province and across the country are what we would call "high-risk people"; they're exposed to people where they could get sick, and we did not want people to be bringing the pandemic into the building. So, we were very careful about respecting all of the health orders with masks, social distancing. To do that, you need a lot of space. One of the big challenges was jury trials. How do you have a jury trial in a courtroom and then tell the jury to retire into this other little room where you are sitting shoulder to shoulder to have your deliberations. I was involved in a few jury trials over COVID and some were cancelled but I did sporadically have some jury trials go ahead where you needed two courtrooms. We needed a big courtroom for the actual trial, and you needed another courtroom to act as your jury room. And so, we found ourselves with limited space. For our civil matters, we turned to the profession. Some of the large law firms have conference rooms and things. I held, over the pandemic, a number of trials at different law firms. It was like being on circuit as a Provincial Court Judge. I went to Fillmore Riley,[45] I had probably a total of three weeks over a number of different weeks where I had a court clerk come with all of the recording equipment, we had witnesses come and testify, but we had the space in their big conference rooms to conduct this trial. I did a jury trial up in The Pas[46] where the courthouse could not accommodate social distancing. So, we rented out the Métis community hall, that not only had a big hall for the trial to take place in, but it had an enormous kitchen and backroom that could serve as the jury room where people could be spaced out 12 feet apart to have their deliberations. So, back to the original question, about the pandemic and what we have learned. I think we have learned that the justice system, when there is pressure and needs that can be met by being a little bit innovative and perhaps taking us out of our own comfort level and trying some new things,

---

45 Fillmore Riley LLP is a large, multi-service law firm in Winnipeg, Manitoba.

46 The Pas is a town in Manitoba, Canada, located approximately 520 kilometres northwest of Winnipeg.

whether it be technology, taking our show on the road, dealing with things differently. I think that that is a lesson well learned.

DLM: It seems to me, and I think you alluded to this, that it requires goodwill amongst all the participants to get it done.

THKC: Absolutely, and I, especially in the civil matters, the criminal matters I think we had to hold in our courthouses, but the civil matters, I was very impressed with the civil bar. My background is not in the civil area, but I have been immersed in it. I have met a lot of really fantastic lawyers, and the law firms really stepped up to help out and ensure that their cases could still proceed. We would typically hold JADRs in our courthouse — JADR is judicially assisted dispute resolution[47] — for some of the civil cases, and again, you need multiple courtrooms because you are caucusing[48] in one courtroom. You have the plaintiff and the defendant separated out, and as the judge you are going back and forth. We simply could not do that because of the space we needed for our criminal matters [in the courthouse]. So, we were holding those offsite in the law firms. I do not know how many times I went to hold a JADR, and it has gotten to the point where even though now we have returned to pre-pandemic courtroom availability, I am still setting JADRs in law firms, and I had one in the summertime, where I went down to Thompson Dorfman[49] and they provided multiple rooms so we could have the JADR take place there. So even just having that option of additional space is very helpful.

DLM: That's great. Now my question is, you've served as the Chief Judge of one of the Province's busiest tribunals. You've also spent a number of years in the provincial superior court, the newly-renamed Manitoba Court of

---

47 Judicially assisted dispute resolution is a form of mediated dispute resolution of legal disputes where a judicial official will meet with the parties either together or separately, to discuss various routes to resolve the dispute between the parties.

48 In this context, a "caucus" is a meeting that one party has with the neutral judicial official in the absence of the other party or parties. The absence of the other party or parties encourages honesty in terms of information, perspective and needs of the party, as well as honesty with respect to the potential strengths and weaknesses of the case of the party in the room, in an effort to resolve the differences between the parties.

49 Thompson Dorfman Sweatman LLP, also known colloquially as either "TDS" or "TDS Law", is a large multi-service law firm with locations across Manitoba.

King's Bench and you've seen all different types of judges. What attributes do you think make good judges?

THKC: Well, I think patience is a key one, and listening. You know, the ability to listen. When you do any job long enough, I think you become predisposed to the routine and what you expect to have happened and it is very important to listen to everything being said in the courtroom. On criminal cases, you can almost predict what is going to be said and that is a danger. It is very important to listen to what the witnesses have to say. So, patience, that ability to listen, open mind, the ability to analyze quickly on the spot, to assess witnesses and what they have to say, are those important attributes for a judge. I think anybody who has been involved in the legal profession for any length of time and is being appointed to a position of judge, you have demonstrated through your past that you are pretty bright and you can figure things out and that is what is going to be required.

I think it is important for judges to always remember the work ethic that is required for the job. No judge or lawyer is an expert in everything, and when you come to court, even if you are appointed to the Provincial Court, where 90% of the things are criminal matters, there is always something new coming up. The *Criminal Code* is amended every year. There are new charges, there are changes, and it takes work to stay on top of the law. So, a pretty healthy work ethic, I think, is one of the strongest attributes of a good judge.

DLM: Now, having worked in both the federal and provincial systems, my question is this: is there a different skill set between the two? I mean, there's certainly different law that you had to deal with, and I'm assuming that you had a bit of a learning curve in the change –

THKC: Sure.

DLM: But is there a different skill set to being in provincial court versus being in the Court of King's Bench? Because I would assume, this is me speaking as an outsider, when you're dealing with seven bails in a day or seven sentencings in a day, there's a speed which one does it that just becomes something you need to practice. It's a mental skill that not everybody has, that I'm assuming is less necessary in the Court of King's

Bench. I don't think you would see that many matters in a day. So, what are the differences?

THKC: I think you have identified the main difference. It is a lot easier for a Provincial Court Judge appointed to the Court of Queen's Bench (as it then was) to sit in and become comfortable very quickly. That certainly was my experience, and I was very fortunate. I knew all of the judges in the Court before coming here, so that was very helpful as well. If you are being appointed off the street to a court, you might know a few of the judges, you may have appeared in front of some of them, you may not have. We have appointments of lawyers who — in the Provincial Court, I can think of a couple of recent appointments — never practiced criminal law and would not know any of the judges. And, all of a sudden, they are a Provincial Court judge not knowing anybody up there, not knowing the criminal law or experiencing that, that would be extremely challenging and it is something that you have to get on top of. And your example of bail court or sentencing where you are making multiple decisions at any court sitting is very different than the way things operate in the Court of King's Bench. And so that is a skill set that you do develop. I feel for those people who do not come from that background because that is one of the toughest things to do. You are expected to make decisions and make them quickly in the provincial court. In the Court of King's Bench, the decisions are not made that quickly. Most decisions are being written. I am one of the few people who make oral decisions on the fly and it is just because of my background. And I spoke to both Chief Justice Joyal[50] and Associate Chief Justice Perlmutter[51] about my approach when I was appointed, and they encouraged me to continue making those decisions, if I am comfortable, as quickly as possible. They had no problem with that, but they did say, "hey, look at if you're touching

---

50 The Honourable Glenn D. Joyal was appointed as a Judge of the Provincial Court of Manitoba on November 25, 1998. He was appointed as a Justice of the Manitoba Court of Appeal on March 2, 2007. On June 22, 2007, he was appointed as a Justice of the Court of Queen's Bench (as it then was). The appointment was effective on July 10, 2007. He was appointed as the Associate Chief Justice of the Court of Queen's Bench (General Division) on January 22, 2009. He was appointed as the Chief Justice of the Court of Queen's Bench on February 3, 2011.

51 The Honourable Shane I. Perlmutter was appointed as a Justice of the Manitoba Court of Queen's Bench (as it was then known) on February 3, 2011. He was appointed Associate Chief Justice of the Court of Queen's Bench (General Division) on March 7, 2013.

on the law as opposed to just the facts, it's probably important to consider writing the decision if it's in any way influencing what the law is currently or might be". And so, I try to be mindful of that. I am one who makes a lot of oral decisions, other judges of the Court make, well, all other judges decisions are written including bail applications, things that, you know, I would never consider writing a decision on. So, there is a bit of a different skill set and a different comfort level, I believe. It would be a lot easier for a Provincial Court Judge to come to the Court of King's Bench having that background. I think a King's Bench judge having to sit in Provincial Court, for example in bail court, I think they would have a heart attack.

DLM: Or at least some of them might.

THKC: They might, yes.

DLM: Now, are these attributes, in your view, mostly innate, or can they be taught? We've all heard about federal judges going off to what, and I don't personally use this term, but Marshall Rothstein[52] says it and I'd send to repeat it simply because he said it, he called it "dumb judges' school" right-

THKC: Right.

DLM: Is that the way they actually refer to it amongst the judges?

THKC: We do yes, and Provincial Court Judges have the same. Judicial education has come a long, long way. The National Judicial Institute[53] delivers education for all of the federally appointed judges, but also the Provincial Court Judges. There are "dumb judges' school" for provincial court judges, everybody who gets appointed is required to go. It has been hampered and delayed because of the pandemic but I know the provincial

---

[52] The Honourable Marshall E. Rothstein, CC, KC, was born in Winnipeg, Manitoba on December 25, 1940. He was appointed as a Justice of the Federal Court, Trial Division (as it was then known) on June 24, 1992. He was appointed to the Federal Court of Appeal on January 21, 1999. He was appointed Puisne Justice of the Supreme Court of Canada on March 1, 2006. He retired from the nation's highest court on August 31, 2015.

[53] The National Judicial Institute is an independent, judge-led organization that provides dynamic and relevant educational programs and resources to Canada's judiciary.

court judges, just recently about five of them, attended dumb judges' school in Bromont, Quebec.[54] It is the Quebec Provincial Court, and it is very, very active in putting on judges' school with the support of the National Judicial Institute. Janice leMaistre[55] from our Court of Appeal was there providing one of the lectures for the program. So, judicial education is very important for all levels of court, and it is provided. But I think that one of the things that really assists any judges is their life experiences. And the more life experiences you have, and the more well-rounded you are, I think the better the judge you will be. What I found over the years, and this is when I was a practicing lawyer, is that common sense perhaps is not all that common, and it is because of life experiences and practicing in the North, again getting back to sort of Perimeter-itis and judges who have not experienced the North or rural Manitoba. Some of their thoughts and things that came out in a courtroom. It was like, "You haven't been exposed to much, and that's impacting your ability to deal with this particular situation." So, I think common sense, life experiences, education both before law school, during law school, and sort of ongoing legal professional education, and then judicial education are all things that you have to engage in and be dedicated to if you want to be good at what you do. It is a lifelong learning thing, it never stops, and you have to be dedicated to it.

DLM: Now, the Indigenization of education and other institutions has been a serious concern for a very long time. Yet the number of Indigenous judges or self-identifying Indigenous judges is still, in the view of a great many people, far too low. In your view, having been Chief Judge in a Province with a high Indigenous population, is there anything that we as a society can do systemically to demonstrate to Indigenous groups the level of procedural and substantive justice that we're going to get, that they're going to get, is going to improve going forward? We have just had our first Indigenous appointment to the country's highest court,[56] you're obviously a person of Indigenous heritage, but what can we do better as a society, do you think? To convince people that it's not simply a matter of "Is there good

54 Bromont is a city in southern Quebec.

55 *Supra* note 11.

56 The Honourable Michelle O'Bonsawin is an Abenaki member of the Odanak First Nation. She was appointed as a Justice of the Ontario Superior Court in 2017. On September 1, 2022, she was appointed as a puisne Justice of the Supreme Court of Canada, the first Indigenous person to receive such an appointment.

justice or isn't there?" There's a matter of public perception amongst those groups that they are understood.

THKC: Right, and I think diversity of the courts and the legal profession is one small aspect of trying to improve public confidence. If you look at those people who do not have confidence in the justice system, in this case, Indigenous people, we have this tragic long history of the treatment of Indigenous people in this country that is going to take a long time to overcome. You know Murray Sinclair[57], who has done so much work in the area, starting with the Aboriginal Justice Inquiry[58] here in Manitoba, which was over 30 years ago. Often, it has taken seven generations to get to where we are at, it is going to take another seven generations to get to where we need to be. That is a long time and I think along the way, the more we as a society can do to not support, but to endorse Indigenous involvement in all things we do, the better. In business, education, the legal system, the health system, every aspect of life, we need to work towards reconciliation and the understanding of the Indigenous issues that we have and why we have them. It takes generations of change for that to resonate. And I see it with my own children and their education, Indigenous issues, Indigenous law and their understanding of it, and just Indigenous people. I grew up playing hockey, baseball at reserves across the province. When I went to Thompson, I

---

[57] The Honourable Calvin Murray Sinclair, whose Indigenous name is Mazina Giizhik, was appointed as the Associate Chief Judge of the Provincial Court of Manitoba on March 4,1988. He was the first Indigenous judge in Manitoba. He would serve on Provincial Court until January 30, 2001. He was appointed as a Justice of the Manitoba Court of Queen's Bench (as it was then known) on January 31, 2001. He would serve in this role until his retirement from the Court on April 2, 2016. He also served as the Chief Commissioner of the Indian Residential Schools Truth and Commission from 2009 to 2015. The following year, he was appointed as a member of the Senate of Canada. He retired from the Senate in 2021. He died on November 4, 2024.

The Manitoba Law Journal did an interview with The Honourable Murray Sinclair. See Bryan P. Schwartz, "An Interview with Murray Sinclair" (2018) 41:2 Manitoba Law Journal 263. The interview was part of an issue which was designed to collect the oral histories of Indigenous jurists and policy-makers from Manitoba.

[58] The purpose of the Aboriginal Justice Inquiry was to provide recommendations to better protect Indigenous communities within the justice system. Murray Sinclair co-commissioned this inquiry.

continued that. I would go to Cross Lake,[59] God's Lake,[60] Norway House,[61] all these places and to just meet people and be engaged with people, to understand people and what I have learned over time is there is an awful lot of people who have never had that kind of relationship with Indigenous people in this country. It is foreign to them and it is unknown to them, and that is troubling. So, I think as a country we just need to become more of a community and as we see more Indigenous people involved in all of these aspects of life, teachers, lawyers, social workers, nurses, doctors, the judges, and the makeup of all of these extremely important institutions, politicians, government officials, reflecting our community, our Indigenous community, the better off we will be. That diversity and inclusiveness of Indigenous people in all of these areas is very important, as it is for minorities. Everybody has got to be involved, and all of these institutions need to reflect the people that they are supposed to serve if you want to get confidence in the institutions. We are at a very delicate time, I guess every generation has said that, but when you see what is going on over the last number of years with the pandemic and the ability of technology to get an immediate message out to those like-minded people, I have concerns about our public institutions. A small number of people can make an awful lot of noise, in this day and age of technology. I am worried about public confidence in all of our institutions, but for me, especially the justice system.

DLM: Fair enough. I'm curious because you mentioned you went to those communities not just as the Crown attorney, but you went to play sports and you went to do other things in these smaller communities. I wonder if we exposed more people to those communities and those people, because when we pull people out of those smaller communities, we tear away the support systems that these people have developed in their home communities. But if we go there, we put them at ease for a minute because

---

59 Cross Lake First Nation is located over 700 kilometers north of Winnipeg. The Nation is Cree, with approximately 9,000 members, based primarily around Cross Lake, Manitoba, on lands covered by Treaty 5.

60 God's Lake First Nation is a First Nation primarily located in God's Lake Narrows, Manitoba, a community approximately 250 kilometers southeast of Thompson, Manitoba.

61 Norway House is a community located approximately 456 kilometers north of Winnipeg. The community is a primary location for the Norway House Cree Nation. The Cree Nation has over 10,000 members, on lands covered by Treaty 5.

it's their home turf and we learn more from them, and we assure them that if they choose to come to law school or they choose to come to medical school or whatever it is, they don't have to give up this place forever, they don't have to give up the support system that has brought them to where they are. I wonder if we need to do more of that as settler peoples, when we say to people, "Look, we're not trying to destroy your connection to home, we're not trying to take away your Indigeneity, we're not trying to make life harder for you. We're trying to let you have all the things you have now, but also get access to other things that may improve things for you.

THKC: I think that is a very important and valuable approach that we could all learn from. I have one example from the Justices in 2010, and it had to deal with the Federal Court, based out of Ottawa. The Federal Court was dealing with all sorts of Indigenous issues at the time that involved testimony from Elders by way of oral history. And of course, that testimony in our adversarial system was being challenged by government lawyers, the oral history and what one generation to the next recalled about whether it is treaty agreements, or what have you. "This is where we always lived or roamed around, and this was part of our area that we would roam to hunt and fish and to live". Elders were being cross-examined at length, and they were fed up. They made it clear that they were no longer going to participate in this adversarial system.

There were real legal issues that needed to be determined, and you had one party essentially saying we are fed up with the way you are treating us. And the Federal Court, to their credit, accepted an invitation by the elders to meet on their home turf and they chose Sagkeeng First Nation.[62] Dave Courchene Sr. from that First Nation was very active in the Indian Brotherhood decades ago. Dave Courchene Jr., followed in his father's footsteps and was an Elder. If you Googled his name, you would see an internationally known Indigenous man.[63] He created a lodge in Sagkeeng called Turtle Lodge and Indigenous Elders from across the country, many different First Nations, said we're going to meet with you to discuss our

---

62 The Sagkeeng First Nation is a Treaty-1 First Nation located 120 kilometres north of Winnipeg.

63 Dave Coucherne Jr. was a prominent Anishinaabe Elder from Sagkeeng First Nation. He passed away at 71 years old in 2021.

concerns, but you've got to come to our home." And they chose Sagkeeng, middle of the country, Turtle Lodge to come and meet and this was in 2010. I was invited because I was the Chief Judge of the Provincial Court, this was my backyard, and I happened to know one of the judges on the Federal Court and he said, "Hey, could you just come — and I knew Dave Courchene, and I knew the community of Sagkeeng — we'd like you to come and participate in this".

It was something to see, I cannot remember if it was nine or ten Federal Court Judges and some of their assistants bussed into this community, this lodge, which is remote, there was no running water, over the course of two days to sit and meet with the Elders. It was a sharing circle and there was all sorts of Indigenous ceremony. Those judges left there learning a lot. If you looked at the Federal Court, they have changed some of their rules in relation to a dealing with Indigenous history and oral testimony as a result of that meeting. It was a sharing and learning experience for judges by going into the community, something that I suspect nine out of the ten had never ever done. So that was my example to pick up on the question that you had.

DLM: Right, now can I just ask, you don't just mean federally appointed judges, you mean judges of the Federal Court of Canada?

THKC: Judges of the Federal Court of Canada.[64] That exclusive small group of that court.

DLM: The last question that I'll ask that belongs in the category of talking about Indigenous stuff, is that you've written about *Gladue*.[65] *Gladue* was at first celebrated and now is undergoing some criticism. Looking at what comes next, I don't want you to give away anything that you're not comfortable sharing, but are there any thoughts you want to share about *Gladue*? The way that the criminal law deals with what we've begun to

---

64 The Federal Court of Canada is a trial court that deals with, among other things, claims against the federal Crown, such as claims regarding Indigenous title, Indigenous rights and treaty rights, and claims for damages against the Crown..

65 *R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 SCR 688; In *Gladue*, the Supreme Court of Canada ruled that courts must consider an Indigenous offender's background when they are being sentenced for a crime. Since then, every court in Canada must consider factors from *Gladue* when sentencing an Indigenous person.

recognize is the intergenerational harms, particularly for Indigenous people. Is there any way we can do it better? Or any thoughts you want to share about that?

THKC: Well, I think there was a lot of hope from Parliament and the Supreme Court of Canada regarding amendments to the *Criminal Code*[66] that included the necessity of factoring in the Indigenous background when coming to an appropriate and fit sentence.[67] That was raised because everybody was aware that there was this incredible over-representation of Indigenous men, Indigenous women and Indigenous children involved in the criminal justice system in this country. I was always attuned to this concern because Manitoba often led the country in the over-representation of Indigenous people locked up in our institutions. And so, when the *Criminal Code* was amended and *Gladue* came out and the Supreme Court recognized all of these concerns and said we have got to do better for the Indigenous people in this country, and that we should really try to come up with alternative meaningful sentences for Indigenous people, which was a great thing to say, but, in reality very few tools were put in place to really become creative and to deal with Indigenous offenders in a meaningful way. And so, the *Criminal Code* was amended in 1996, and I think effective in 1997. I was in Thompson at the time, and Parliament introduced conditional sentences.[68] There was some belief that, you know, conditional sentence orders was going to help alleviate this over representation of Indigenous offenders, that you now have some tools to be more creative and keep people out of prisons and still impose a meaningful sentence for offenders. It just did not work. As the judges tried to do it, the resources were not put in place to allow for a meaningful sentence. So, if you wanted somebody to serve their jail sentence at home, jail under a curfew and also attend programming for substance abuse, or anger management or domestic violence or whatever it happened to be, you needed resources to make sure that could happen. You had all of these people coming, and this is the Manitoba experience, certainly in northern Manitoba, breaching their conditional sentences no sooner than they were imposed, because there were no resources put in place to actually monitor and support the

---

66 *Supra* note 10.

67 *Ibid*, para. 718.2(e)

68 *Ibid*, s. 742.1.

individual who had been sentenced. And then you had a change in government with time and you know, crime becomes political. You look at the *Free Press* today, what is on the forefront for people running? Well, crime and homelessness, and the two go hand in hand. If you scare people in society enough and your platform is that you are all going to be a victim of crime and we are going to be tough on crime, that can get you votes. Once you are voted in, you think you have to respect what the population is asking for, so you are tough on crime, and pretty soon, conditional sentence orders, the availability of conditional sentence orders was reduced so much that you seldom ever see them anymore. That one tool in the *Criminal Code* toolbox to provide a different type of sentence has been diminished. And so, the high aspirations that we had for *Gladue*, which is now 25 plus years old, has really not had any meaningful impact on the over representation of Indigenous offenders. I think if you did a study, and I know there have been studies, you would find that the rates of over-representation for Indigenous people had grown in that period of time. So, there is some criticism about *Gladue*, the courts, the judiciary, and where we are today. It is challenging, because the criminal justice system is being asked to do what society has failed to do. And we are simply not equipped to do it.

DLM: I think this is a really interesting area to address, because I think that you've lived through it. You were there pre-*Gladue*, you wrote about *Gladue* when *Gladue* was out, and then you've been a judge for an extended period around dealing with Indigenous offenders in the Provincial Court. Then you moved up to another court where again you're dealing with more serious offences, some of whom end up with Indigenous offenders in our correctional institutions. I think it's really important that we talk to people about the reality of how we deal with the over incarceration if *Gladue* principles are not working, what's next? Because as a settler person, you sort of think, "Okay, we've got *Gladue*, we've got the conditional sentence order, we've got other tools." What I'm hearing you say is "Well, that's great, we should have those things, they are important for steps, but they're not really working the way we intend them to work." So, for me as a person who doesn't know this stuff as well as you do, what do we try next? There's no guarantee that whatever we do will work, but it's better, I think, to think about what can we try as a as a second kick at the can, as it were, rather than throwing up our hands, and saying "Well, *Gladue* doesn't work, we won't use conditional sentence orders, and we will just go on our merry way. "

THKC: I wish I had the answer, there is no easy answer, it is incredibly complex. It is 150 years in the making, and it is going to be difficult to overcome. What I was saying was that, you know, the justice system is ill-suited to deal with the reality of Indigenous peoples and where they are today as a result of colonization, residential schools,[69] the Sixties Scoop[70] and all of those other things, as well as the reserve system, the *Indian Act*.[71] If you read the *Free Press*[72] this weekend, you would have seen the article about education in some remote First Nations where kids can get school up until grade 9, and if you want to continue your education, you have to leave your community after grade 9 and come to Winnipeg or Thompson or someplace else to get through senior school. That is hard. That is very hard on kids to have to move and to be dropped into Winnipeg. There are all sorts of challenges and opportunities to do everything but the schoolwork that you are there to do. And so, then lots of times, those young people are targeted by others. So, it is incredibly challenging. We have a justice system that has been unable to address that over-representation. And so, where do we go? Earlier in our discussion, I talked about Hollow Water[73] and the healing circles.[74] We have to, I think, embrace all of these small little

---

69 This refers to the execution of government policy over an extended of time, pursuant to which Indigenous children were removed from their families, almost exclusively *without* familial consent and placed in what were referred to "Indian residential schools". The horrors of these schools are well-documented, up to and including the death and burial of the children, without so much as notification to their families. Even for survivors, the loss of connection to their families and Indigenous traditions and other cultural touchstones left deep wounds.

The policy and its long-lasting effects led to the Indian Residential Schools Settlement Agreement, signed in 2006, which provided for, among other things, (a) an acknowledgement of the harmful nature of what was done, including an apology; (b) general compensation for all eligible children at these schools, (c) a process to make claims for particular wrongs done to specific residents at the Schools.

70 The "Sixties Scoop" refers to the deliberate placement of Indigenous children in the care of the state with non-Indigenous parents. Despite its moniker, this policy was in place from 1951 to 1991. The loss of cultural identity for the children involved was both real and harmful.

71 RSC 1985, c I-5.

72 *The Winnipeg Free Press* is a major English-language daily newspaper in the city of Winnipeg, Manitoba.

73 *Supra* note 27.

74 *Supra* note 28.

measures, alternative measures, conditional sentence orders, community involvement for the remote communities in dealing with their own crime and punishment, because our imposition of what we see as the way to go hasn't worked well for those people in those communities. But it is challenging because for every Indigenous person that we have locked up, there is at least one Indigenous victim, one Indigenous complainant, and oftentimes multiple Indigenous people who are being harmed. And again, what we really need is healthy lifestyles and that is a challenge because of the background of this country. And I return to Murray Sinclair's comments that it has taken an awful long time to get to where we are, it is going to take an awful long time to straighten it out. So, the justice system has a role to play, and we need to continue to try and embrace alternatives to just locking people up. But having said that, some people do things that there is no other option but to lock them up, and unfortunately there is an awful lot of violence in the Indigenous communities for very complex and long-standing reasons.

DLM: Right. Now, one of the things that struck me when I read about you, and you mentioned this earlier in this conversation, was your commitment to sport, and your commitment to sport in communities other than your own. And I wonder if things like that, bringing in different groups of people in a very non-threatening, non-bureaucratic, non-top-down approach to problems, sport is never a problem. Well, it doesn't usually, in of itself, create issues. It creates friendships and community in the sense that I think you're talking about. It doesn't restrict the community to the Indigenous community versus the settler community. I'm curious whether you can talk a little bit about your experience in sport and if you could connect that to some of the things we've been talking about.

THKC: Well, I think you have hit the nail on the head just in terms of what team sports bring. I grew up playing hockey and baseball, those are my sports and they are team sports. And I have played a lot on Indigenous teams, for example, I remember traveling up to Riverton for a tournament one weekend and we were young, maybe 14 years old, and it was all the young

guys from Lac du Bonnet,[75] Manigotagan,[76] Powerview-Pine Falls[77] and we were hand-picked as a team to play in an Indigenous, I am using the word Indigenous tournament, it was called an "Indian tournament" in my day, and one of the Elders in Riverton, Manitoba[78] took us all in. There were a total of 11 young guys staying in this one house. It was so important to him to support the team and the tournament and the event in the community. He said "No, no, you can all come and stay at my place", and he fed us for the weekend and gave us a place to sleep, and it was amazing. And so, you are spending that time with all of these other people from very similar backgrounds, and you just get to know people, they are your friends. And although some of those people that I spent a lot of time with unfortunately had other issues to deal with and became involved in the criminal law, I still consider them friends. I grew up with some people who had challenging lives. One of the guys I grew up with, and spent an awful lot of time with, went to prison multiple times and there was always a community notification when he was released. I still remember him growing up as a kid and all of these incredible memories through sport. So I think it is important. Sport builds community, builds friendships, it builds understanding, it builds acceptance. And not only do I think it is important, but if you look at the work of the TRC, the Truth and Reconciliation Commission,[79] it is one of the calls to action regarding sport and identifying Indigenous involvement in sport. This country has a rich history of Indigenous people involved in sport and it is something that should be noticed, that should be marked and that is important.

DLM: Great. Now, very few people can have the career you've had without a lot of support from a lot of people, like colleagues, family, friends, and others to get there. Now, is there anybody you'd want to talk about as having

---

75 *Supra* note 1.

76 Manigotagan, Manitoba a small settlement 188 kilometers north of Winnipeg.

77 *Supra* note 29.

78 Riverton, Manitoba, is an urban community in the Municipality of Bifrost located approximately 110 kilometres north of Winnipeg.

79 The Truth and Reconciliation Commission (the "TRC") was formed with a goal of educating people about the history and legacy of the residential school system while allowing people to share their personal experiences. Notably, the TRC released their final report in December 2015 which included 94 "calls to action" aimed at furthering reconciliation between Canadians and Indigenous peoples.

particularly helped you along the way? I know you've mentioned some people, but is there anybody who really stands out for you professionally, personally, familywise to get to where you've ended up?

THKC: Right, well obviously my spouse. Without her encouragement, if I could use that as a kind word, bullying or demands, I would never have gone back to school. She has been there all along the way to support me and encourage me to continue to reach and help. So personally, I owe everything to her. Professionally, that experience in the North. My colleagues at the Crown's Office Glen Reid and Anne Krahn and all of the other players from the defence lawyers, the court staff, all of them. It was a real community. It was an incredible experience, an incredible learning experience and that really set the stage for the rest of my career. I would not have, and I have said this many, many times, I would never have been appointed to the Provincial Court of Manitoba had I not had that experience in Thompson, Manitoba. So, when I speak to law students, I talk about Perimeter-itis and I tell them a bit about my story and I say, "If you ever have the opportunity to take something outside of Winnipeg, take it. You will not regret it.

DLM: Okay. Much of this has been looking backwards, but I'm going ask you to look forward for just a minute, and when your contributions are done, whenever that might be, whether you retire, go supernumerary, or when you are done with whatever you're doing, what do you hope people will say about you?

THKC: Well, I have thought about that one. I just hope people say that "Hey, Champagne was fair. He was a good judge to appear in front of, and he was fair to all sides." We practice in an adversarial setting. That means there's winners and losers, not that anybody is keeping a scorecard, but you know, if you are an accused in a criminal case and you are going off to jail, that was not a very good day. But what I hope from all the people who appear in front of me, whether it be lawyers, court staff, complainants, witnesses and most importantly the accused, that at the end of the day they feel that they have been heard, and they have been treated fairly. They may not like the decision I have had to make, but I hope that they leave with a sense that they were respected in the process. That is what I hope.

DLM: Okay. Last question, is there any question I haven't asked in this interview that you really wish I had asked?

THKC: Darcy, you covered everything. You have asked a lot of questions, personal, professional, thoughts about the legal system, the justice system, you've covered everything. I looked at that and nothing jumps out at me as a question that I wish you had asked. I am going to think about that some more and I will get back to you at some point, I might reach out to you and just share some thoughts. Thank you very much.

DLM: Thank you, Mr. Justice. Really, really appreciate the time. This has been really educational for me.