

Interview with Jean Teillet*

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

I. INTRODUCTION

Bryan Paul Schwartz (BPS): Thank you, again, so much for coming, I really appreciate it.

Jean Teillet (JT): I'm here anyway for the 200th anniversary of the Battle of Seven Oaks¹ – which was on Sunday – so the timing worked out well.

BPS: My grandmother used to live a couple blocks from the Seven Oaks House.² Is that museum still there and up and running?

* Interview conducted by Bryan P. Schwartz.

Jean Teillet, IPC, OMN, MSC (B.F.A., LL.B., LL.M.), is Senior Counsel (former partner) to the firm of Pape Salter Teillet LLP. Ms. Teillet's legal career has focused on Indigenous rights. She is the chief negotiator for the Stolo Xwexwilmexw treaty in BC and has appeared at the Supreme Court of Canada in eleven Indigenous rights cases. She is widely published and is the author of *Métis Law in Canada*. Harper Collins will publish Ms. Teillet's popular history of the Métis Nation in 2019. She is an adjunct professor of law at UBC. She is on the board of Indspire, Save the Children Canada and the Association for Canadian Studies. The Indigenous Bar Association awarded Ms. Teillet the title of "Indigenous Peoples Counsel." She has three honorary doctorates: Guelph University (2014), the Law Society of Upper Canada (2015) and University of Windsor (2017). The Métis National Council awarded Jean its highest honour, the "Order of the Metis Nation." In 2018 she was awarded a Meritorious Service Cross for her work with Indigenous peoples. She is appointed to the Interim Board for National Reconciliation and the Truth and Reconciliation advisory committee for the Federation of Law Societies. Ms. Teillet is the great grandniece of Louis Riel.

¹ The Battle of the Seven Oaks was a violent confrontation that occurred on June 19, 1816 in Red River, Manitoba. The battle was between the Selkirk Settlers and the Bois Brûlés (as the Métis were known at the time).

² Seven Oaks House Museum in Winnipeg, Manitoba. The house is a log cabin, which was completed in 1853.

JT: The Seven Oaks House Museum?

BPS: Yeah, it's the preserved Governor Semple's³ home, where the whole thing took place.

JT: You know, I didn't go there. Maybe I should go see it. One of the things that was interesting to observe at the 200th anniversary of the battle were the different perspectives on what happened. It starts with naming the event. The Métis never called it the Battle of Seven Oaks, they call it the Victory of Frog Plain. At the ceremony on Sunday you had people from the Selkirk Settlers Association⁴ and people from the Manitoba Métis Federation.⁵ You could tell they still disagreed 200 years later.

BPS: Still a little sensitive!

JT: Very. They still don't agree on what happened. So, it was interesting to watch.

BPS: So, in the 60's there were probably some Métis people going to law school, but they didn't self-identify at the time...

JT: – Or, nobody asked.

BPS: ... Can't say there wasn't anybody. Somebody told me that Premier Norquay⁶ of Manitoba was actually Métis.

JT: My thought is that that he had Indigenous ancestry but he didn't identify as Métis. So we should not call him Métis just because of that ancestry.

³ Governor Robert Semple was the Governor of the Hudson's Bay Company during the Battle of the Seven Oaks.

⁴ Selkirk Settlers Association was formed in 1908 and aims to preserve the history of the first settlers in the Red River area in the 1800s. The Selkirk Settlers were settlers in the Red River Colony, who arrived around 1812.

⁵ The Manitoba Métis Foundation (MMF) is a political representative for Métis people in Manitoba.

⁶ John Norquay was Premier of Manitoba from 1878 to 1887.

BPS: Right, that is what I am told. That is why I am cautious about saying there were or there weren't.

JT: My cousin Leo Teillet, went to this law school in the 70's, he definitely identified as Métis. He was active with the Festival de Voyageur⁷ for years. He is a graduate of this law school. I applied for this law school in '73 or '74, or something, and then I decided to go off and dance instead of go to law school. But, Leo would have been in law school in the early 70's I think.

BPS: By the way, do you know Dale Gibson?⁸

JT: Yes, I've been writing a book for Harper Collins, a popular history of the Métis Nation, so I've been reading Dale's new book: *Law, Life and Government at Red River*.⁹

BPS: Yeah, he wrote it when the Hudson's Bay Archives¹⁰ became available.

JT: Actually they've been available for a long time, but yes he uses those records.

BPS: That is the basis of the book as I understand it. I was just thinking of him because he spent a lot of time going back through the 19th century Manitoba history.

JT: And I believe he was the one who originally drafted the MMF statement of claim,¹¹ he was the original lawyer.

⁷ Festival du Voyager is a winter festival in Winnipeg.

⁸ Dale Gibson is a Distinguished Professor Emeritus at the University of Manitoba.

⁹ Dale Gibson, *Law, Life, and Government at Red River, Volume 1: Settlement and Governance, 1812-1872* (Montreal: McGill-Queen's University Press, 2015) and Dale Gibson, *Law, Life, and Government at Red River, Volume 2: General Quarterly Court of Assiniboia, Annotated Records, 1844-1872* (Montreal: McGill-Queen's University Press, 2015).

¹⁰ The Hudson's Bay Company Archives is part of the Archives of Manitoba. It holds the archived information from the Hudson's Bay Company and its history in the fur trade and development of Canada.

¹¹ MMF statement of claim from *Manitoba Métis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14, [2013] 1 SCR 623.

BPS: I didn't know that!

JT: I know that everyone thinks it was Tom Berger¹² these days, but it was actually Dale Gibson, who conceived the case and laid it out to begin with.

BPS: I didn't know that, I'll have to ask Dale about that.

JT: That is part of the problem with it. Some of the problems with the definition are that when Dale did it with Harry Daniels¹³ to begin with, it was on behalf of the Métis Nation, and non-status Indians. When CAP¹⁴ took it over they revised that and took out the Nation part, then it becomes just anybody who has some Aboriginal ancestry. So that is the evolution of the case after Dale left it.

BPS: There is so much going on, so many new developments just in the last few years.

JT: In my *Métis Law in Canada*¹⁵ book I do an annual update insert and it's almost 200 pages—every year—because there is so much going on.

BPS: In the 2013 version everything is already old news.

JT: If you are referring to the 2013 version available online, that is out of date. I am publishing it now in hardcover. You have it in your library. I am doing annual update inserts and it's hard to keep up with.

¹² Thomas R. Berger was legal counsel for the MMF in *Manitoba Métis Federation Inc. v Canada (Attorney General)*. He was a politician and a judge in the British Columbia Supreme Court.

¹³ Harry Daniels (1940-2004) was a Métis leader and activist. He challenged the government and brought forward a claim that Métis people should be brought within the constitutional jurisdiction of the federal government.

¹⁴ The Congress of Aboriginal Peoples (CAP), now known as the Indigenous Peoples' Assembly of Canada (IPAC), appealed the Federal Courts decision in *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, [2016] 1 SCR 99 to the Supreme Court of Canada.

¹⁵ Jean Teillet, *Metis Law in Canada* (Vancouver: Pape Salter Teillet LLP, 2013).

II. EARLY LIFE

BPS: So, you're a great grand-niece of Louis Riel.¹⁶ Where did you grow up?

JT: Born at the Forks,¹⁷ lived most of my early life in St. Vital and St. Boniface.¹⁸

BPS: Was your Métis heritage a big, every day, part of your identity growing up?

JT: Yes. Being a Riel was. I think because we are Riels. My grandmother was Sarah Riel, my great-grandfather was Joseph Riel, who was Louis's little brother; and who raised Louis's kids – after Louis was hanged – and became one of the leaders of the Métis back in that day, in the early 1900's. My grandfather was deeply engaged in writing that first history of the Métis, which is one of the things that I find quite amazing, that it is almost exactly 100 years later that I am doing the same thing. My grandfather and great-grandfather were helping the author, Auguste-Henri de Trémaudan write the first history, and here I am writing another one. So, for me being a Riel was how we grew up. I think as Riels you couldn't hide. I think other people could blend in and pretend they weren't Métis, but the Riel's weren't able to do that; not that we wanted to, but it would not have been possible.

BPS: I was just going to ask you, in terms of blending in, did some people think that there may be some sort of social stigma attached?

JT: Oh, I think a lot of people did. I have to say that I didn't experience it. I was raised to be inordinately proud of being a Riel. But, my dad and my aunts and uncles would talk a great deal about what it was like growing up in St. Vital. There were stores that they couldn't go into because people would say "Out, you Riel you." My aunt would say it was as if we had a brand of: "T for traitor" on our foreheads. That would be in the 40's.

¹⁶ Louis Riel was a Canadian politician, a founder of the province of Manitoba, and a political leader of the Métis Nation of the Canadian Northwest.

¹⁷ The Forks is a historic site in Winnipeg, Manitoba. It was the meeting place of Aboriginal peoples and Settlers who participated in trade.

¹⁸ St. Boniface and St. Vital are both neighbourhoods in Winnipeg, Manitoba, Canada.

BPS: That would be because you were related to Riel, not because you were ascended from the Red River Métis?¹⁹

JT: I always thought, listening to my dad and aunts talk, that it was double barrelled. All Métis were treated as if they were dirty, stupid, drunk and lazy. If you were a Riel, you were a traitor on top of that, so it was worse. They were a very insular group because of the prejudice around them. They didn't go other places much, other than that they used to go over to Rooster Town.²⁰ My dad told me that they used to go over there because they had cousins there.

BPS: St. Boniface itself is famous for being a centre of the Franco-Manitoban community, so even within the Franco-Manitoban community?

JT: Yeah, as I understand it, from what I've heard from my uncles and aunties, in the early 1900's. There is a new wave of Franco-Manitobans who don't want to have anything to do with that earlier period.

BPS: When you were growing up, were you thinking of being engaged politically or as a lawyer in Métis issues?

JT: Me, no! I wanted to be a dancer! And I was, I was a professional dancer.

BPS: If you want to sequence your life, if you are going to do dancing and law, you did it in the right order.

JT: You know Bryan, when I was tossing it around when I was in my late teens, early twenties. I was literally going "law...dance...law...dance." My parents hated both ideas. They thought going to the stage you might as well be a prostitute. And law, in 1971, for a woman to become a lawyer, those were really still in the days when it was thought that women were raised to

¹⁹ The Red River Métis are part of the Métis Nation, which is a distinct Indigenous people in the Canadian Northwest.

²⁰ Rooster Town occupied land in the Grant Park area of Winnipeg from the 1880's to the late 1950's, when its inhabitants were evicted. See: Evelyn Peters, Matthew Stock, & Adrian Werner *Rooster Town: The History of an Urban Métis Community, 1901–1961* (Winnipeg: University of Manitoba Press, 2018)

be teachers or secretaries or nurses – and even that was only supposed to be until you got married. You only went to university to get a husband who had a degree. I was raised that way. As you can see, a lot of women didn't really quite buy that. That is what we were being fed, but we weren't buying it, or there wouldn't be so many women lawyers and judges right now. So, the idea that you would want to have a profession or a career, over and above being married and having kids, that was still really tense stuff back in those days. My family is particularly catholic –Métis Catholic – and the priest was still on top. A quiet revolution was happening in Quebec, but it hadn't reached St. Boniface, yet.

BPS: That is very interesting culturally, of course, people who don't read the history, have no idea how clericalist Quebec was in the early part of the 20th century because now it's the most anti-traditional part of Canada.

JT: And that is exactly what was happening in Quebec. People were throwing that off, but we were throwing it off here too. I think it is my generation that tossed it. But, my mom and dad's generation was still deeply embedded in the Church, and the Church was still running your life in the 50's. My uncle Rodger,²¹ who became an MP here in St. Boniface²², his theory was that the Second World War was what started to change all of that. That was really the instigator because the men came back from the Second World War and their eyes were opened.

BPS: They had seen a whole other world.

JT: Exactly. As well, they'd seen that things didn't have to be the way the priests told them it was. It was a big education going over there.

BPS: That is true. Again, today's generation would have no idea how much the two European wars were Canadian events. An epochal event in terms of the number of Canadians who lost their lives, who were injured, who travelled outside of little farms – might have been the first time they left their little area – and ended up in France, Belgium, Germany, England.

²¹ Jean-Baptiste Roger Joseph Camille Teillet (1912-2002) was the grandnephew of Louis Riel.

²² Member of Parliament ("MP") from 1962-1968. He was also served as Minister of Veterans Affairs.

JT: They also ended up in the trenches next to guys like my dad. Then suddenly, these men with prejudice against Métis, all of a sudden became buddies with Métis men there in the trenches, fighting together and trying to do the same thing. I think that's part of the eye opener for the average white kid from the farm in Saskatchewan or Manitoba; they'd start to see something. They see a bigger, broader, world but they also really get to know these Indigenous guys next to them, didn't matter what they were. I think the holocaust made everyone come home with a: "Never again, everybody has rights just because you are a human being" kind of concept after the Second World War. That is, I think, the seeds that start the revitalization of the American Indian Movement,²³ the National Indian Brotherhood,²⁴ the Métis Associations, all of that stuff, it's those guys coming back. That includes my uncles and my dad.

BPS: Sounds like you were sort of osmotically very familiar with the emerging social and political situations of the Métis people, but your first love when you went into the adult world was dancing. Did you have an undergraduate degree?

JT: Yes, I had two years from the University of Winnipeg,²⁵ but I was also dancing a lot and finding it really hard to do both. I promised my mother I would get a degree. That was really what happened. No matter what I was going to do I was going to get a degree. Then I found out about the York University²⁶ dance program, you could do a fine arts degree there. So after two years at the University of Winnipeg, I went and did my dance degree at York, and then I joined Toronto Dance Theatre, the dance company there.

BPS: Lawyers talk about how difficult stress in the profession is, which I think it is, but it's my guess if you've been a dancer that nothing could be as hard.

²³ AIM was founded in 1968 to address sovereignty, treaties, and the relationship between police and racism against Native Americans.

²⁴ The National Indian Brotherhood represented Indigenous peoples in Canada prior to the creation of its successor organization, the Assembly of First Nations.

²⁵ The University of Winnipeg is a public university established in 1967, in Winnipeg, Manitoba.

²⁶ York University is a public university and established in 1959, in Toronto, Ontario.

JT: I think it's interesting that you actually see that, because when I went to law school they all thought a dancer going to law school was a joke. They didn't know it was me, but they knew there was a dancer in the first year class. On the first day the dean stood up and said "I'll just give you a snapshot of who is in the class, the average age is this, and we've got some doctors and we even have a dancer." And then we would go to first year corporate law class and the professor would say "Well of course, probably the dancer isn't going to get this." That was literally what was going on until I finally called them on it and then they stopped. At least they stopped saying it out loud. That was what I was getting the first semester, because the attitude was that dancers are cute and stupid. I don't know how they thought I'd gotten to law school, but it was a pain.

BPS: The Royal Winnipeg Ballet²⁷ is still here. Just from the outside it looks to me like dancers are warriors. You're judged all the time, you have to perform even when you feel terrible, you have to be synced with everybody else, it's extremely competitive, there is no career security, and it's very personal. So it seems to me, an extraordinarily tough vocation.

JT: It's competitive, not competitive like the Olympics, but it is like being a professional athlete. So, when I was looking at law and dance and tossing it around, I didn't know where to go with it. I wrote the law school entrance exams here and I got accepted here and at Dalhousie.²⁸ Why I applied to Dalhousie, I have no idea, but I did. I thought it might be fun to go to Halifax. I had also auditioned to pursue the dance thing. I was thinking if you want to be a dancer you've got to do it while you're young, there is just no choice. And in my mind I was thinking "Well, I can be a lawyer when I am 40." That of course being as old as I could imagine being at that point. I thought you couldn't dance at 40. But, one of my best friends is with the Winnipeg Contemporary Dancers,²⁹ and I went to watch her dance last year, she would be 62 or something, and she still looked beautiful. So obviously I was wrong about that. But the idea that you have to do it young, that was

²⁷ The Royal Winnipeg Ballet (RWB) is the longest running ballet company in North America and was founded in 1939.

²⁸ Dalhousie University is located in Halifax, Nova Scotia. It was founded in 1863.

²⁹ Winnipeg Contemporary Dancers is Canada's longest running modern dance company.

absolutely right. There was no question about it, so I just basically dumped the whole idea of law. I completely dropped it until I was 37, which was when I decided that I was ready to try it. That meant studying for and writing the LSAT, and applying. So, I was 38 when I went to law school.

III. LAW SCHOOL

BPS: Did you have in mind when you went to law that you would specialize in Indigenous rights?

JT: I had three thoughts in mind, because I've been doing three different things. One was Aboriginal rights. That was certainly in my mind. But, I have this other side of my practice, which most people don't know about, which is reproductive rights, and I've been doing that from day one. I was part of the legal team that negotiated the midwives into the regulated health professions in Ontario and BC. I've been their lawyer ever since. I worked for the Toronto Birth Centre³⁰ and I worked with the Morgentaler Clinic.³¹ I was heavily engaged in all of those issues and that part of my practice has continued. So, when I went into law school I thought Aboriginal rights and health law. And then the other thing was, I had just spent 20 years in the entertainment industry, I thought maybe entertainment law was something I could do. I dropped the entertainment law very quickly when I realized it was just contract law, and it was really all about who gets their name in a bigger font, and who gets it above the title or below the title, and who gets a bigger Winnebago. I realized I would be bored if I did that, so I moved away from entertainment law quickly and then started focusing on the other two and stayed with them.

BPS: Which law school did you attend?

JT: I went to the University of Toronto.

BPS: What year did you start?

³⁰ The Toronto Birth Centre is a center that encourages people to incorporate their culture and background in women's birthing experience.

³¹ The Morgentaler Clinic is an abortion clinic in Toronto, Ontario.

JT: Fall of '91.

BPS: Okay, so that is post '82.

JT: It was right in the middle of the Charlottetown round of constitutional negotiations.³²

BPS: So, in terms of your experience at law school, obviously, there is section 35³³ jurisprudence that is starting to evolve.

JT: Yes, *Sparrow*³⁴ had just come down the year before.

BPS: Were there specialized courses in rights of indigenous peoples at U of T at that time?

JT: No.

BPS: There were no moot court programs?

JT: No, so I started the Aboriginal moot because there wasn't anything Aboriginal to moot. And I kept thinking: "Why not? It's a great thing to do a moot about; we should be doing this." I started it because I wanted to moot, and I wanted to moot Aboriginal questions. I didn't want to do any of the other ones. So, I cornered Dean Sharpe,³⁵ he is now on the Court of Appeal. I just marched into his office one day and said, "I want to do this." And I had my arguments all marshalled, I thought that it was going to be a big fight, but he caved within about two minutes and said, "That's a great idea, let's do it."

³² The Charlottetown negotiation was a failed attempt to amend the Canadian Constitution. It was proposed by the federal and provincial governments in 1992. It was defeated in a national referendum.

³³ *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (UK)*, 1982, c 11, s 35 recognizes and affirms the aboriginal and treaty rights of Aboriginal peoples of Canada, which includes the "Indian, Inuit and Métis peoples of Canada."

³⁴ *R v Sparrow*, [1990] 1 SCR 1075, 1990 CanLII 104 (SCC).

³⁵ Justice Robert Sharpe was appointed dean of the Faculty of Law, University of Toronto in 1990. Since 1999 he has been an Ontario Court of Appeal judge.

BPS: I was joking with a friend of mine once, he was in the Court of Appeal and the judge said, “We have no need to hear from you,” and he was thinking: “Wait a minute, I spent three weeks working on this, I want to make my arguments still.” But of course once you’ve won you probably want to sit down.

JT: I had one of those too. I was doing a hunting case, it was here in Manitoba, in Dauphin. Clém Chartier³⁶ and I could see the look on the judge’s face when he saw the boxes of documents, and the people in the courtroom, and realizing what he was in for. When I was doing my opening argument, he was flipping through the papers, and I finally just stopped talking because he clearly wasn’t listening, and finally he looked up and I said, “You seem to be troubled by something. Is there something I can help you with?” And he said, “Well, I’m going to call a break here.” And he went to the back room and came back out and said, “You have an agreed statement of facts?” And we said yes. And he said to the Crown, “Are you sticking with this agreed statement of facts?” And she said yes. And he said, “Well, then I am acquitting him.” The first step in an Aboriginal rights case is that you need to be found guilty of an actual offence. And then you move on to your justification analysis, which is the Aboriginal rights defence. The offence stuff usually takes one minute, everybody agrees, “Yes I went hunting. I shot the moose,” right, or whatever it is; in this case it was a fishing case. The judge came back and he said “Well, according to the rules, the Fisheries Act, you have to be found guilty of fishing with a rod, reel, and hook, and you only said he fished with a rod and a reel.”

BPS: So, you’re off the hook!

JT: We call it the hook, line and sinker case. I found myself in the weird position of being the defence lawyer arguing, “No, no, don’t acquit my client.” The back of my brain is telling me, “Jean, you’re not supposed to do this.” But of course we were all there to argue the Aboriginal rights issues. The other part of my brain was kicking in saying “Jean, you don’t want this judge.” If he doesn’t want to be here, and he is doing this already, you really

³⁶ Clém Chartier is a lawyer, writer, lecturer, and activist. He has served in a political and administrative capacity with many Indigenous peoples’ organizations.

don't want this guy. So as I was talking aloud I talked myself out of it. I was all geared up and ready to go.

BPS: Yeah, sometimes you just have to accept “Yes” and go home.

JT: The problem was we had all this historical research, and we had experts who had done all this work and the Crown was all ready to go ... and then the case is eliminated because of this judge.

BPS: As I was looking at your CV, it looks as though you were already actively engaged in one of the leading cases while you were still at law school?

JT: Not actually at law school, but I was an articling student when I started *Powley*³⁷ and *Morin and Daigneault*³⁸ in northwestern Saskatchewan. I did *Morin and Daigneault* with Clém Chartier. He had been a lawyer for a long time, but he basically never really practiced law. He had articulated at a legal clinic and then he got called to the bar, but he had been a politician. He was going back into court after about 25 years and I was an articling student. We were hanging everything on my trial advocacy course, which taught me how to organize a trial and how to cross-examine. It was the blind leading the blind in a lot of ways. We walked into the court where we were doing the trial, we didn't think I could speak, so I kept pulling on Clem's shoulder and whispering to him. Finally after the first day the judge looked at Clem and said, “You know Mr. Chartier, Ms. Teillet can actually argue in this case because it's a provincial offence and she doesn't have to be a lawyer, she can be an agent, she can do this. So Clem just sat down right away and said, “Okay, you can take the next witness.” So there I was, in court, on my feet examining a witness for the first time.

BPS: When you were doing *Powley* did you have the sense that this was going to be a landmark case?

JT: No, not at all. If you'd asked me Bryan, back then, I never would have thought that the first big Métis rights case would come out of Ontario. At the time we thought the first case might be *Morin and Daigneault*. We won

³⁷ *R v Powley*, 2003 SCC 43, [2003] 2 SCR 207.

³⁸ *R v Morin and Daigneault*, 1996 CanLII 12081 (SK PC).

at trial, and then we appealed it to the Queen's Bench. But, Saskatchewan didn't want it to go higher, so they stopped appealing it. That was the general pattern on the Prairies. We won in the lower courts, but they did not want even a Court of Appeal decision. The difference was that in Ontario, for the *Powley* case, we were in those really conservative years with Mike Harris³⁹ and he was adamant that he was going to appeal this case all the way up – so that is what happened. But, at the time, when I first started this, I had no idea that this was going to be the first Métis rights case to get to the Supreme Court of Canada.

IV. POST-LAW SCHOOL

BPS: When *Powley* did get to the Supreme Court were you counsel?

JT: Yes, I was lead counsel all the way up.

BPS: How many years were you out of the bar at that point?

JT: I think we argued it before the Supreme Court in 2003, I would have been called in '96. I think we started the trial in May of '98, so I was just two years out when I did that, and I did the trial by myself; all the witnesses, all the organization. I didn't have any help. Clay Ruby⁴⁰ came in to argue at the end because I was at Ruby & Edwardh.⁴¹ I did the Ontario Superior Court by myself, and then at the Court of Appeal, Arthur Pape⁴² was with me, but I argued it there and at the Supreme Court.

BPS: One of the evolving issues, of course, is what the definition of Métis is. Is there one Métis nation across Canada? Is there a variety of Métis peoples? In the Supreme Court of Canada, the court adopts a three-part

³⁹ Mike Harris was the premier of Ontario from 1995 to 2002.

⁴⁰ Clay Ruby is a Canadian lawyer and activist. He specializes in Constitutional law, Criminal law and Civil rights.

⁴¹ Ruby & Edwardh was a law firm in Toronto, Ontario. The firm is now called Ruby & Shiller Barristers.

⁴² Arthur Pape was a Canadian lawyer, who passed away in 2012. He started the law firm Pape & Salter with Rick Salter. In 1993 Jean Teillet joined the firm. The firm changed its name to Pape Salter Teillet in 2005 when Jean Teillet became a partner. Today it is Pape Salter Teillet LLP.

test; they seem to back away from community acceptance in the *Daniels*⁴³ case. Was that three-part test argued at the Supreme Court of Canada?

JT: I actually created that test. One of the things that I learned when I was articling with criminal lawyers at Ruby & Edwardh was to tell the judge exactly what order you want from them. Don't let them go away and invent because they will invent something you won't like. They may still come out with something you don't like, but tell them exactly what you think it should be and what you want to come out of this, and why. I could see from day one – that there would be two main issues in *Powley*. The first was the date to establish the existence of the Aboriginal right. In *Sparrow* the Supreme Court used the idea of first contact with Europeans as the date to establish the existence of the Aboriginal right. Métis, as a people, didn't exist at contact, so for obvious reasons, that time frame was not going to work for the Métis Nation. So that was one big issue. The second one was the definition of Métis, because up until then no one had questioned the identity of the accused in an Aboriginal rights case. That is because, until *Powley*, it was just status Indians. The Crown accepted a government issued status Indian card as proof of Aboriginal identity and as proof of the Band as the rights holder. So the identification issue with respect to the individual or the community hadn't come up. I knew that the definition would be an issue in *Powley*. The problem was, what is the definition? I was working with the Métis National Council on a definition, and I kept saying to them, "Look, you don't want the court to define Métis for you, you want to do it yourselves and tell them what it is." There were others, including Clem Chartier and Paul Chartrand⁴⁴ warning the Métis National Council about this too. So, I was working with the Métis National Council, and they hadn't adopted a definition when I went to trial or at the second level court or even at the Court of Appeal. But right after the Court of Appeal, when it became obvious that it was going to go to the Supreme Court of Canada, they finally knuckled down and had assemblies all over. I am talking about the Métis Nation here, which is Ontario west, and we drafted a definition – that they adopted –which was in more detail than the one that went to

⁴³ *Daniels v. Canada (Minister of Indian Affairs and Northern Development)* 2016 SCC 12, [2016] 1 SCR 99.

⁴⁴ Paul Chartrand is an Indigenous lawyer, writer and former law professor. He was a Commissioner on the Royal Commission on Aboriginal People. The Report of the Royal Commission on Aboriginal People was released in 1996.

court but basically on the same three basic principles (self-identification, ancestral connection to the historic community and community acceptance). And so when they were interveners at the Supreme Court of Canada in *Powley* the Métis National Council stepped forward and said, “Yes, this is the definition that we are talking about,” and then the Supremes adopted the three principles.

BPS: Couple of questions about that. In regards to advocacy, something you always tell students is that if you bring someone a problem, always bring them a suggestion.

JT: For the solution, yes, I think it’s great advice to give students. In regards to litigation, I think students think that the whole thing is about winning. It’s not. The decision is just the beginning of what happens afterwards, the decision is just the tool you take and use to solve the problem. But I think it’s excellent advice.

BPS: It looked to me, at a distance, that the definition they came up with was inspired by one of the Australian commissions and reports that used basically the same three-part test. The definition was pretty much the *Powley* test, it was: self-identify, ancestral connection, and acceptance. Was that comparative exercise part of your thinking, or was that just coincidence?

JT: I didn’t get it from court cases. I was taking it from social science work that I was reading. And I was reading everything I could get my hands on: sociologists, anthropologists, and people talking about what is a culture, what is a people, how do you define it; that is where I got that from. Now if there is something in Australia, that is interesting to me, but I missed it at the time.

BPS: It might actually have a joint origin.

JT: It could be. But I got my information from social science data.

BPS: As I understand *Powley*, it’s quite flexible, because it acknowledges that there could be a variety of different rights bearing communities.

JT: I didn't suggest that, the court did that. It's not that I disagree with it; it's just that I didn't need it. I had no need to talk about other communities. I was only talking about what was going on in Sault Ste. Marie.⁴⁵ And I didn't need to connect them to Red River. All I wanted to do was get out of the idea that it was only Sault Ste. Marie, the city. I needed it to be the broader, local area around there as well. So that is why I was talking about Sault Ste. Marie and the vicinity. I didn't think that I needed to, and I think I was right, not to go any further. I didn't need to decide whether there was a Great Lakes Métis community, or whether they were connected to the Métis Nation – or anything like that. I didn't put in any evidence about that, and I didn't try to make that argument at all. In 100% hindsight, I think it was the right strategy to win the case and probably the Supremes wouldn't have gone there anyway. But I freely admit the idea of gluing an Aboriginal right to a community, which most people think of as a settlement, has been a major problem ever since.

BPS: So the problem is that there are different views about whether there can be a variety of different Métis peoples rather than one single national people?

JT: Historically the Métis Nation (centered largely on the Prairies) didn't have boundaries. We know it includes northwestern Ontario. But there is no hard line that has been established to indicate how far east it goes into Ontario. There is an argument about whether the Métis Nation goes as far east as Sault Ste. Marie. If there are other Métis peoples out there in Eastern Canada, the Métis Nation says fine, prove your history and existence as a separate Métis people. But you are not us! These other groups that may exist are not genealogically connected to the Métis Nation and they don't share the same geography or stories. So if there is a group in Newfoundland, fine, but that is a different people than we are, in what I call the Métis Nation of the Northwest. But, the problem that *Powley* created for us is that now everybody will only look at the local environs. That is a real problem when you get to the plains buffalo hunters who didn't create little isolated communities and live in them. They moved all the time. They were

⁴⁵ Sault Ste. Marie is a city in Ontario, Canada. It is close to the Canada–United States border.

migratory. So, now we have court cases where the court says, “No, we are only going to look at Medicine Hat,”⁴⁶ which didn’t even exist back then. But, there are Métis people hunting all around there. I had, for example, in the *Hirse Korn*⁴⁷ case, a photograph taken by the Boundary Commission⁴⁸ of a Métis hunting camp 36 miles from where the defendant *Hirse Korn* shot his deer. The photo shows a Métis camp of over 1000 Métis hunters, and it’s taken by an impeccable source. I don’t know who else has a photograph of that kind of evidence showing so many people hunting right where you are talking about. But that trial court judge still said we didn’t have sufficient evidence of Métis use of the area; that the Métis weren’t hunting there. But it’s because they bought into a narrow interpretation of this *Powley* paradigm. The way I look at it is this: it’s like looking through a telescope – there are Métis people roaming all over the area – but if you only look through a small lens in a specific spot, and you don’t see them exactly in front of your lens, you cannot conclude the Métis weren’t there, don’t exist, and don’t have harvesting rights. But that is what the courts are doing now. And that is the problem that *Powley* created. The Supremes refused leave for the *Hirse Korn* case. We will have to take it again somewhere else, and go through another eight years of work to get it back up. But, that is the problem *Powley* created.

BPS: Just a few thoughts about what you just said about doing it over – and so on. Certainly, my sense of history is that you only really understand with the retrospective of time. When you’re living in the moment, no matter how much you think, “This is what I want,” or “This is what I want to accomplish,” it takes a very long arc of time before you can look back and say, “That was the ultimate implication.” You mentioned, for example, that you got an outcome in the court, but that doesn’t necessarily change the realities on the ground. There can be all kinds of paradoxical outcomes of the decision, because you won sometimes there is another reaction and so on. You mentioned the humility of being a historian, that there are just so many views of history and it’s always going to be re-evaluated and re-

⁴⁶ Medicine Hat is a town located in southern Alberta.

⁴⁷ *R v Hirse Korn*, 2012 ABCA 21, 524 AR 57.

⁴⁸ The North American Boundary Commission, 1872-1876, was the body that surveyed and marked the border between Canada and the United States of America.

explored. There has been a revolution, I think, on jurisprudence on Federal provincial rights, because of *Tsilhqot'in*.⁴⁹

JT: Yes. Interjurisdictional immunity was reconceived in *Tsilhqot'in*. What does it mean now for Aboriginal peoples?

BPS: Basically, what the courts said is that we aren't using federal-provincial division of powers anymore to protect Aboriginal peoples because we have the section 35 piece now. They are moving parts because the Supreme Court of Canada seems to be more flexible than it used to be about revisiting, and sometimes overruling, its earlier decisions.

JT: And I think the circumstances change. The Métis that lived in Sault Ste. Marie lived a life that was much more like the Ojibwa than the plains buffalo hunters. In the Boreal forest⁵⁰ Métis people were living more like the First Nations. But the minute you get on the plains you've got a whole different set of issues that arise. That was the problem and we have not been successful in taking that paradigm apart. *Tsilhqot'in* is interesting to me, because they said that interjurisdictional immunity is not relevant in that kind of interpretation but the last line in *Daniels* is that the Métis Settlements Act⁵¹ in Alberta is not *ultra vires* the Province because the legislation doesn't "impair" the core of the 91(24).⁵² So here we are back again, that appears to suggest that there is a core of 91(24).

BPS: That is a remarkable transformation. The initial paradigm was that any singling out was *prima facie* unconstitutional.

JT: Yes. It used to be if you occupied the field it was *ultra vires*, and now it appears to be that you have to be impairing the core. To me it looks like if you're trying to do something positive for "Indians" then that is cooperative

⁴⁹ *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014] 2 SCR 257.

⁵⁰ Boreal forest region is a coniferous forest covering almost two thirds of Canada.

⁵¹ The *Métis Settlement Act*, RSA 2000, c M-14. The Act recognizes Métis governance and title to eight settlements in northern Alberta. It also provides constitutional protection of the lands, by means of an amendment to the *Alberta Act*.

⁵² *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91(24), reprinted in RSC 1985, Appendix II, No 5.

federalism and approved by the courts. Doing something negative? I don't know. I think you're right, we are wide open on where is this going.

BPS: I would say what's happened as well is that part of the thinking is, we have section 35 to protect rights, so we don't need to go through all this complicated interjurisdictional analysis to do it. Part of that I think is that the court realized, that because so many *Indian Act*⁵³ First Nations citizens live in the cities now, that if you didn't have provincial jurisdiction applying, you would have this patchwork in the cities and urban areas, instead of some sort of integrated policy run primarily by the provinces. I'm thinking of *NilTu,O*⁵⁴ where they decided that child and family services, even if it was doing part of its business on a First Nations reserve was still under provincial jurisdiction. Courts think about a lot of things. I think one of the things they are thinking about is: that so many First Nations citizens are not living on lands reserved for Indians anymore, and that if we maintain strict federal jurisdictional boundaries, we are going to have a real patchwork.

JT: Which they have anyway.

BPS: I'm trying to figure out some way to sort out these three-way jurisdictional battles. One of the challenges of the 21st century is situations where you are constantly in three-way negotiations to get any business done. It's not very practical. I'm sure you've experienced it.

JT: Yes, I am a treaty negotiator, so... yes.

BPS: In so many situations before you can get to solving the problems or addressing the problems, the province says it's the feds, the feds say it's the province, and you have a high level of respect now for Aboriginal self-government, so it's a three-way attempt to figure out who's responsible for what before you actually engage in solving the issues. Are you officially associated with the MNC?⁵⁵

⁵³ *Indian Act*, RSC 1985, c I-5.

⁵⁴ Nil Tu,O is a Child and Family service society located in British Columbia. It aims to maintain First Nation's traditions and values of extended family.

⁵⁵ Metis National Council (MNC) represents the Metis Nation both nationally and internationally.

JT: I'm not officially. I have done work for the MNC in the past and they are clients of my firm. My partner Jason Madden⁵⁶ is negotiating the MMF claim for them.

BPS: I am just curious about the evolution of Métis identity post-*Powley*, post-*Daniels* and so on and so forth. It just seems to me spectacularly complicated.

JT: Dog's breakfast is what I would call it.

BPS: A series of issues here. In some ways the First Nations are having a potential long-term demographic crisis because the *Indian Act* rules potentially mean that the number of status Indians looking decades ahead will suddenly plummet because intermarriage will result in people not having enough... it's not blood quantum, it's registered status quantum. Inherited registered status quantum is something that they are actually seriously worried about, will there be a significant number of *Indian Act* Indians, assuming that there is still an *Indian Act* in 30, 40, 50 years. Conversely, if it's any ancestral connection, and you don't have these rules about degree of inherited status, then potentially you could have a huge part of the population, particularly in Western Canada, saying that they have some sort of an ancestral connection with the... What was it that you referred to it as? The northwest?

JT: The Métis Nation of the Northwest. But the difference is I don't think you are talking about the Métis Nation when you speak of those who lost their *Indian Act* status. We say the historic Métis Nation is your ancestral connection. We are taking that back to the early 1800's. So if you're a status Indian and your ancestral line is Cree on the Thunderchild Reserve⁵⁷ for example, and your mom back in 1982 married a white guy and you lost your status, that makes you a Cree who lost your status, that doesn't make you Métis.

⁵⁶ Jason Madden is a co-managing partner of the law firm Pape Salter Teillet LLP. He specializes in Indigenous rights law.

⁵⁷ Thunderchild First Nation is a Cree First Nation in Saskatchewan.

BPS: Right, and one thing that is going on of course is incrementally more and more people are being reinstated through a combination of things like C-31.⁵⁸

JT: Right, and what I heard the other day is that there are 5 new cases, all challenging the *Indian Act* registry under the Charter. They are probably going to win all of them, because these are so many arbitrary paternalistic rules that are easily subject to challenges. So each change will reinstate thousands of people. The other thing that figures into this is that many bands have taken control of their band membership lists now. They take control of it specifically because they don't want to have their membership be limited to status Indians. This is because the federal government's position before *Daniels* was that, "If you're not a status Indian than you're a provincial responsibility. Non-Status Indians are a provincial responsibility." Well, after *Daniels* they can't do that anymore. So what about all those bands with membership roles that include a lot of non-status Indians or people who live off reserve? What's the federal government's principled reason now for not recognizing those peoples? That is what the problem is. People choose to enrol in a particular entity, particularly on the prairies, according to where they can get benefits. That was the evidence in *Powley* and that's the evidence in *Cunningham*.⁵⁹ You've got a kid who needs a particular medical benefit, and you can apply for *Indian Act* status because that gets you non-insured health benefits that you can't afford for your kid. I think almost any parent would do it if you had to. So that is a lot of what is going on.

BPS: Right.

JT: Let's put it this way, if the benefits were equal – all across the board – then people would choose for cultural reasons as opposed to where they can get a benefit they need.

BPS: Right. As people intermarry among all different kinds of backgrounds in Western Canada sooner or later a huge part of the population will be

⁵⁸ Bill C-31, *An Act to amend the Indian Act*, 1st Sess, 1985 (first reading 28 February 1985).

⁵⁹ *Alberta (Aboriginal Affairs and Northern Development) v Cunningham*, 2011 SCC 37, [2011] 2 SCR 670.

able to say “I have an ancestor going back to the Western Canadian Métis. Maybe there are some benefits I can get or some programs I can access for being Métis, so now I will self-identify.” Would it be up to the Métis National Council to say whether you would have to have some degree of inherited ancestry? Would it be on the basis of lifestyle? How would you evaluate?

JT: Well, they say community acceptance. That is why community acceptance is important to them. The theory is that if your grandmother was Métis and active as Métis and your dad is, and you are, that is being involved in the community. Part of community acceptance is people knowing who you are, and you actively being a part of the community. For example, here in Manitoba, in some of the locals, if you want to apply to get a Manitoba Métis Federation card, you have to have ten people from your community say, “I know this person, I know they are Métis, I know their family.” Ten people you have to get who will sign on saying you’re Métis. Somebody who’s living in St. Boniface or in Fort Garry⁶⁰ who hasn’t had anything to do with the community for generations, is not going to find ten people who will agree. The point is this: it’s not just about whether you self-identify and whether you’ve got the genealogical connection, the community gets to say whether you are part of us or not. The Māoris⁶¹ do a similar thing. They have a three generation rule, where the first generation has an automatic right of return. If it’s second generation, the community has some say as to whether you can come back. Third generation, it’s entirely up to the community to decide whether they are going to accept you. So, community acceptance is really important, because this is not just a genealogical exercise, which is the problem we have out east. We have all these cases – in Nova Scotia and New Brunswick and Quebec – where people are claiming to be Metis based solely on genealogy. And it’s all very new. They do a genealogy and find an ever-so-great Indian grandmamma in 1705 and then they say “I’m Métis, I get constitutional rights.” And the courts are saying, “No, this isn’t just a genealogical exercise,” and I would say the same thing, it’s not just a genealogical exercise.

⁶⁰ Fort Garry is a neighbourhood in Winnipeg, Manitoba.

⁶¹ Māori are Polynesian Indigenous People living in New Zealand.

BPS: Having ten people say “Yes you belong,” that is an MMF thing, or an MNC thing?

JT: No, it’s an MMF thing. You don’t join the MNC, you join the Manitoba Métis Federation, or you join the Métis Nation of Alberta, you join the Métis Nation of Saskatchewan, and then you are a part of the MNC. You don’t get a separate joining of the MNC. The MNC is just like the AFN,⁶² it’s like a national political body that represents the Métis Nation at the national and international level.

BPS: In terms of these harvester cards and so on, they are administered at the provincial level?

JT: Absolutely, at the provincial level.

BPS: In every province?

JT: Yes. It’s the only way we can do it. I think they’d like to have a linked system where all of the provincial registries would filter in and you could do it nationally, but nobody’s got the money to set up a national registry.

BPS: Yeah. I think this is another one of those things, where it’ll be decades and decades before we know the implications of *Powley* and *Daniels* and the emerging identities.

JT: There is no question that *Powley* raised the profile. When I grew up, nobody wanted to be Métis. We were the dirty, stupid halfbreeds, and nobody jumped up and said, “I’m Métis.” That was unheard of, now everybody wants to be Métis. Everybody is doing genealogies so they can find some Indian ancestry because they think that makes them Métis. I hear all these people saying, “I just found out I’m Métis, I’m so proud.” They even cry. And all I can say is “mmm.” This is a very peculiar social trend we are witnessing at the moment.

⁶² The Assembly of First Nations aims to protect and advance the interest of Aboriginal people.

BPS: Just a question of purely cultural competing claims, because as you say: there can be legal and material benefits associated with these different statuses.

JT: A lot of it is about hockey, believe it or not.

BPS: What's that all about?

JT: Well, you grow up in cities here, but if you are in Northern Manitoba, the Aboriginal hockey teams are the hockey teams to be on – because they are the best. The only way to be on them is if you are Métis or if you're Indian. So, people are going looking for some way to enable their sons to play on the hockey team in The Pas⁶³ and places like that. That's one of the things that are going on.

BPS: In terms of universities.

JT: There is another issue. At UBC,⁶⁴ where I am an adjunct professor, they are dealing with it too, about what *Daniels* means for them in terms of their acceptance because they had been asking for a card from what would be equivalent to the Manitoba Métis Federation in order to get accepted. And now that the Supreme Court has said “No, you can be Métis without that,” they are just wondering how are they are supposed to apply that to admissions.”

BPS: Yeah, at the pragmatic level somebody comes forward and the university says “Okay, we have a target. We want 25% of our new teachers to be Indigenous.” So somebody comes forward and self identifies, I don't know how an institution deals with that. You want to be very sensitive of not denying someone's self-identification...

JT: Sure.

⁶³ The Pas, Manitoba is located approximately 625 kilometres northwest of Winnipeg, Manitoba.

⁶⁴ University of British Columbia (UBC).

BPS: ... On the other hand, are you going to achieve your program objectives if somebody says “Oh I just did the search, and it goes way back, but I haven’t led the lifestyle and I hadn’t led the life until I suddenly discovered that it brought me within this program.” I’m just asking the questions because I don’t know the answers.

JT: I don’t know what they are going to do. What was it that Chris Anderson⁶⁵ said? – that the Supreme Court put a stake through the heart of cultural identification in *Powley* and left us with just a racial identification? The Supreme Court of Canada just revived racial identification.

BPS: Yeah, because in *Daniels* they backed off the community acceptance.

JT: It’s a problem, and the reasoning is completely wrong, too. The Supreme Court said they eliminated community acceptance as an identification criterion because some people were rejected from their communities. But that is factually incorrect with respect to the Métis. The court conflated the evidence and wrongly applied it to the Métis. Loss of status with a resulting community rejection was an issue with non-status Indians only. The Métis have never had that issue. For example, this city, Winnipeg, where we are sitting today, we started this city. It is our creation, Winnipeg. When the Selkirk Settlers arrived, there were Métis people already living here. And same with Edmonton and other cities on the Prairies. These cities grew up around the Métis Nation, we didn’t move to the city, we’ve been here all along. We never kicked people out of our communities. Government policies never removed people from our communities. So the Supremes got it wrong. That is because at the trial all the evidence conflated Métis and Non-Status Indians, which they called MNSI.⁶⁶ As if they were one thing. And the trial judge conflated all the evidence together and that is what created the problem, then the Supremes didn’t understand that they needed to separate the evidence as it applied to the non-status Indians from the evidence that was relevant to the Métis. This is one of the many problems with *Daniels*, which I have published on.⁶⁷

⁶⁵ Dr. Chris Anderson is a Professor at the University of Alberta in the faculty of Native Studies.

⁶⁶ MNSI at trial referred to Métis and Non-Status Indians.

⁶⁷ “Devoid of Principle: A racial analysis of s. 91(24) eliminates the Métis as one of the

BPS: When dealing with really difficult, challenging, sensitive issues, some people feel really personally engaged, some people will engage from the political or academic perspective. Do we have an environment now in the university where people are free to discuss issues like “Who are we going to include in a definition of Aboriginal students?” Or, do you have the sense that people are somewhat inhibited by being afraid to say the wrong thing or offend somebody?

JT: The only experience I have with that, Bryan, is with the class I am teaching at UBC, where we do have these discussions. The class that I just finished this semester had three First Nations in it, two non-Aboriginal people, and I think four Métis people. When talking about identity issues, the non-Aboriginal people didn't have any problem speaking in the class, the First Nations had more problems speaking about it. At one point I remember one First Nation woman saying, “I better shut up because I am going to start sounding racist.” So, in trying to encourage the discussion, it's difficult, but then again, it's a small class. I taught another class that was all about Métis rights to the entire class of 180 students. You certainly couldn't have that kind of discussion in that kind of large group, I think people would feel too exposed and too vulnerable to do it. But in the small group I thought it was pretty fascinating. The two that interested me were the two white students who seemed to be fine trying to engage in the conversation and have a discussion about it. One of the students was Armenian, but the other student was of white, Anglo-Saxon, Protestant, British ancestry. So they were different on those fronts too. I would hope that the university is a place where you can have those sorts of discussions.

BPS: You're an adjunct teacher, you went through the system, and it sounds like U of T was unreceptive about First Nations. Sounds like – in the 90's – it hadn't yet developed a lot of programs.

Aboriginal peoples of Canada,” co-authored with Carly Teillet, *Indigenous Law Journal*, 2016; “L'interprétation de la Loi constitutionnelle de 1867 à la lumière de la “race” exclut les Métis des peuples autochtones du Canada”, co-authored with Carly Teillet, in ed. D. Combet, L. Côté et Gilles Lesage's *De Pierre-Esprit Radisson à Louis Riel: voyageurs et Métis* (St. Boniface: Presses Universitaire de Saint-Boniface, 2014).

JT: They didn't have anything at that time, but they – I think – wanted to start. They had John Borrows,⁶⁸ who was doing his masters there at the time, and Darlene Johnston,⁶⁹ who was – I think – teaching or about to start teaching there. I enjoyed my own experience at U of T. I thought the professors were great. There were some really supportive people, like Kent Roach,⁷⁰ Dean Sharpe,⁷¹ and Patrick Macklem.⁷² They were all, I thought, very supportive and very helpful. I think they all went out of their way to try and make it a place where Aboriginal students felt welcome. The first year I was there, I have to say, was a huge change. Up until then they had never had more than one or two Aboriginal students, and the year I was there we were nine. And then by the time I was in second year we had fifteen, and they only take 160. So we were a fairly large cohort. That never happened again. After that it went back down to being two or three, and I think they are still like that, so we were an odd little bump there and I think our numbers also made us more vocal. I don't know if you've been in Flavelle Hall at U of T,⁷³ but there is a big brass plaque with quotes from the Torah. One of them is "There shall be one law for you and the stranger among you," I'm probably quoting it wrong but it's something like that. I remember on my first day of law school standing there, looking at that, and thinking that it didn't represent what I thought about the law. I didn't think that was right. That was my first day of law school. In second year I beaded a Two Row Wampum Belt replica.⁷⁴ The Native Law Students gave it to the university because we wanted a different statement of how you could look at law. And the school put it up right near the Torah quote. The Two Row

⁶⁸ John Borrows is a Canada Research Chair in Indigenous Law at the University of Victoria Law School.

⁶⁹ Darlene Johnston is a law professor at the Peter A. Allard School of Law at the University of British Columbia.

⁷⁰ Kent Roach is both a law professor and Prichard-Wilson Chair of Law and Public Policy at the University of Toronto.

⁷¹ Robert J. Sharpe was appointed dean of the Faculty of Law at the University of Toronto in 1990, before joining the judiciary in 1990. As of 1999 he has been a member of the Ontario Court of Appeal.

⁷² Patrick Macklem is a law professor at the University of Toronto.

⁷³ Flavelle Hall is a building at the University of Toronto that houses classrooms for the Faculty of Law.

⁷⁴ A Wampum Belt is a belt made of shell beads. Wampum belts are mnemonic devices that contain laws, agreements or treaties.

Wampum Belt represents the idea that there can be two concurrent systems of law, and that if you have respect, honour and a good relationship with each other these two systems can co-exist. The law school was very receptive to the idea of putting up this Indigenous statement of law. I enjoyed every minute of law school. Although it was really hard for me to go back to school after being out of school for so long.

BPS: It's my perspective that for anybody who has had another life before they come to law school, where professors want you to look at things in every possible way, it takes a lot of readjusting your mind set so that you are willing to play the more scholastic game. That is perhaps difficult for people who have already developed the more practical ways.

JT: I think for me it was. The way I described it was that for me it felt like my brain was a rusty tap, and there was water coming out in spurts and big rusty glugs at first. It started to flow, but for a while it was all rusty lumpy water. I came out of all these years in dance where you were putting all of your intelligence into your body and your articulation and all your literacy into physicality as opposed to into words. For me, coming to law school was like shifting to another part of my brain. It was a rough first semester, but by the time we got to writing first-year exams at Christmas I was feeling better about actually being able to think. It was a bit of an adjustment for me.

BPS: Dance and music of course are far less dependent on shared cultural conventions. Beethoven can speak to you whether you speak German or listen centuries later.

JT: Exactly.

BPS: However, law is all about being as precise and refined as you can with a very current vocabulary. Which is even more refined because you have to speak law speak.

JT: When I grew up my mother was a writer and a trained teacher. So I grew up very different from many dancers, who mostly don't like reading; because they are trained to keep their eyes up and out-focused, so coming down to a narrow-focus on paper is hard for them. We have all these studies about

how dancers don't read. It's the same with hunters, people who live out on the land, your focus is trained out and away and it's very difficult to pull down to paper. But I was trained — because my mother was a big reader — and so I always had a book in my bag and was always reading.

BPS: Do you know anyone else who has made that transition from dance?

JT: I only know of one other Canadian dancer who transitioned into law, Cynthia Westaway.⁷⁵ She danced with the Feld Ballet.⁷⁶

BPS: We published an article in the Manitoba Law Journal a few years ago, someone who did his doctrinal thesis on career transitions, and people's lives before the transition.⁷⁷ I would be very surprised if he did any on people in the interpretive arts before they went into law, because I don't think there are that many of them. Although, I've taught musicians before.

JT: Yes, there are a few musicians who are now lawyers.

BPS: He was talking about people with business careers and political careers and so on. This is really fascinating to me. I've had occasion to think before about transitions from other lives into law school but what you're telling me about specifically going from dance into law, that is so interesting.

JT: Most dancers when they transition out of dancing move into something else physical, they become physiotherapist or chiropractors, something staying in that. If they go to university they go into kinesiology or something that is body oriented as opposed to word oriented.

BPS: Are there some positives that a dancer would have that most people wouldn't have, such as maybe confidence performing in public?

JT: I think the performance element is helpful. It helps make one a good litigator. Another thing is concentration. When I was going to law school

⁷⁵ Cynthia Westaway is a partner at Westaway Law Group and focuses her practice and clients on First Nation, Métis and Inuit people.

⁷⁶ Feld Ballet - an American ballet company.

⁷⁷ Ralph A Chatoor, "Making the Transition from Lawyer to Lawyer-Politician in Canada: An Exploratory Study" (2012) 35:2 Man LJ 85.

the first thing that I couldn't believe was that the law students were always whining about their workload, and I just thought it was a piece of cake. I was used to dancing 14, 16 hours a day. I couldn't believe that people who took three–five hours of class a day thought that was too much. Obviously I had focus and concentration abilities that they didn't have. The ability to just do one thing for 10, 12, 14 hours and barely even look up was nothing to me.

BPS: A lot of the time dancers are performing with injuries.

JT: Or they are ill. You have very developed motivation skills. I think this isn't just unique to dancers, I think anybody who comes to law school after they have been out doing another career or something has much better motivation skills. A lot of the kids I met going into law school came into law school because their dad was a lawyer, or thinking they could make good money, kind of thing. I'm not saying that is everybody but there were a lot of kids like that, so they were just doing the minimum and doing what they felt like doing. I found the law interesting; everything about it fascinated me. Well, to be honest, I can't say tax law fascinated me, or wills and estates. But I loved constitutional law because I love the big social discussion. I loved that it was 1991 and we were in the midst of the Charlottetown round of constitutional debates, and we had only been eleven years into the Charter. Aboriginal law was taking off and the law was evolving and changing and seemed to me to be very creative. We were trying to find a new way to run this country and I thought that was fascinating, really fascinating, so I was deeply engaged in that. I'm still deeply engaged in that discussion.

BPS: Anybody who thought the first wave of writing on the blank snow was over with *Delgamuukw*,⁷⁸ look at what happened in the last few years with the *Manitoba Métis Federation* case, the *Daniels* case, the *Tsilhqot'in* case...

JT: And like you said, *Grassy Narrows*⁷⁹ fits into that whole interjurisdictional immunity mess too.

⁷⁸ *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 1997 CanLII 302 (SCC).

⁷⁹ *Grassy Narrows First Nation v Ontario (Natural Resources)*, 2014 SCC 48, [2014] 2 SCR 447.

BPS: This is an awful lot of change at a very fundamental doctrinal level. It's 2016 not 1982, and it's still happening, and we are still in the middle of it.

JT: Absolutely.

BPS: Any general thoughts about what law schools could be doing better or how they should be doing it, in terms of Aboriginal content or making Aboriginal students feel comfortable?

JT: Well I think Aboriginal content needs to be brought into everything, and it could be. Literally, you could bring in wills and estates issues with Aboriginal people. Most people don't realize that if you are an *Indian Act* Indian and are on reserve the Minister has to approve your will. And there are things you can't do and can do because you're in a different environment. Areas like family law could also really incorporate Aboriginal law; especially in a place like Winnipeg, where you have so many Aboriginal people living in the city. Family law should be dealing with the issues of child custody. Environmental law and even if you are going to work in corporate law or in oil & gas law, you need to know the law about Aboriginal consultation. We tend to hive off Aboriginal law into its own place, and then what happens is you are preaching to the choir, because the only people that sign up for those courses are the people that are already interested in them. But if you have a course on property law: there should be something about Aboriginal title in there – and reserves. Even corporate law. There is a new *Métis Act* in Ontario,⁸⁰ and it's a response to Aboriginal organizations that are trying to self-govern but are forced to squeeze themselves into the *Societies Act*, I don't know what you call it here, the *Companies Act*? For not-for-profit organizations.

It's not your *Business Corporations Act*, in BC people call it *Societies Act*, other provinces call it the *Companies Act*, and they are for not-for-profit and non-share corporations so you can have corporate entity. But trying to squeeze self-government into that is impossible. But, that is what everybody is doing

⁸⁰ Métis Nation of Ontario Secretariat Act, 2015, SO 2015, c 39.

because you have to have a corporate entity. In criminal law the cases we teach about Indians are almost always drunk cases – and that reinforces a really bad stereotype. Even in environmental law, because it's a huge part of what's going on all across Canada right now. All of these Aboriginal issues are coming up in every single area of law. I think Aboriginal law should be incorporated in every course so that Canadian kids coming out of law school would come out realizing that they are part of a multiple law system. It's the same problem that we have with treaties. We make these treaties and then they sit on a shelf somewhere, and then "Joe Smith" who is the forester out there gives out a licence, but no one told him that he has to go look at the treaties every time he does something. Because we don't write it into the laws, they are not incorporated into the laws, into the rules, into the regulations, into how we teach lawyers. I remember my property law professor saying something like "I don't expect you to remember all of this stuff, but I want this little red flag to go up in the back of your brain 'oh, there is something about that I am supposed to know,'" at least it will make you go look it up, because of course you can't remember it all. I think that is what we should be doing, planting red flags in all law students' brains, something that tells them that Aboriginal people are part of everyday life, they aren't just hived over here with special problems, they've got all of the same issues you do. Unfortunately, we don't teach it in school.

BPS: We have this constant debate at our law school about how much of our upper years should be mandatory and how much free choice. I'm certainly not a fanatic on making everything mandatory, but what you said about raising flags, that's one of the reasons I've wanted the building blocks to continue to be mandatory. Otherwise, how will students know what they don't know? If we haven't at least made you aware in law school that for First Nations on reserves there is a whole different wills regime, maybe you don't even know to look it up or check with somebody. A very large part of the urban population in Manitoba now, are people who've come from the reserves, and we've got a very significant Métis population. You need to know that you can't just cut and paste all law regardless of the fact that there might be distinctive adaptations – based on the fact that there are political, legal rights, and individual rights of various people. Nobody can master the law anymore, I don't know how anybody can do a general practice anymore, there is just too much to know. You need to at least be aware that "I don't know about this but I'll bring this case to Jean Teillet, or something, because

she knows about these matters.” But at least I have to know that it’s an issue and I’ve got to either look it up or refer it to somebody. People just not knowing what they don’t know carries great risk.

JT: We get bad law out of that. There is a case in BC where the Métis Nation of British Columbia asked me to do the appeal on this hunting case, and I agreed. I phoned the lawyer who did the trial and asked him to send me the files, and it arrived – a few slim files in one box, and I was appalled at the inadequate record. When I do a hunting case the room is full of documents, because you have to have the whole history. Each expert does a hundred-page report. The last case we did, Gwynneth Jones⁸¹ alone had about seventeen binders with probably thousands of documents, and she was just one expert. But in the BC case, the lawyer clearly didn’t know how to run an aboriginal rights defence. But as you know, the facts get set at trial. You can’t win afterwards when it’s been done out of ignorance. Now the Federation of Law Societies is talking about implementing a cultural competency rule. That might help to discourage lawyers who don’t know the field from wandering into it.

BPS: More than ever now the Supreme Court of Canada has made clear that even in Charter and Aboriginal rights cases you can argue about a doctrine but the trial record is the trial record all the way.

JT: Well, that was my problem with the *Manitoba Métis Federation* case. I hate to criticize Tom Berger, because he is one of the lawyers I admire greatly, but I really disagreed with the way they ran this case. They didn’t bring their own historical expert. So the only historical expert reports on the case are by Gerhard Ens and Tom Flannigan,⁸² not that that’s not fine, the Crown is perfectly capable of bringing whoever they want. But I think there was another story there – the Métis side of the history – and they didn’t bring their own experts to tell it. They took the position, which I thoroughly disagree with, that the documents speak for themselves. My experience as a lawyer is that every document has a context, and people are writing it for a purpose and from a perspective. I don’t believe the document

⁸¹ Gwynneth C.D. Jones is a historian. She has testified in several aboriginal rights trials including *Powley*, *Daniels*, *Hirsekom*, etc.

⁸² Gerhard Ens is a professor of history at the University of Alberta. Thomas Flannigan is a professor emeritus of political science at the University of Alberta.

ever speaks for itself. That is why we ended up with the whole issue of Métis title being dismissed as individual title. Aboriginal title is a collective title, but how it is held within the group is another issue. I believe the entire issue was misstated and the lack of a Métis historic perspective was the basis for the Supreme Court of Canada's error. I am pleased with the declaration but disturbed by the court's analysis of Métis title. That one will haunt us for decades.

BPS: In law school we largely teach appellate cases. The starting point is the highest level the appellate cases got to and unless we make an effort to point it out, students may not realize how much is contingent on how the lawyers and judge chose to handle the matter at first instance. A lot of deference is now given by higher courts to how the trial court defined the basic facts and balanced competing factors in reaching a legal conclusion. So you have decisions by one trial court that are potentially pan-Canadian in their impact and which have unusual durability if they are at the constitutional level. The Supreme Court will reverse themselves, they've shown, but it takes a while.

V. ORAL HISTORIES

BPS: People don't really think about it while they are living through it, but unless we actually talk to the people who lived through and experienced some of these major events I am scared that some of the history will be gone. The documents won't speak for themselves, it isn't the same as having the real person who lived it and experienced it. If I hadn't asked you about it, I would have gone on thinking that the Supreme Court of Canada made up that three-part test, or that it came from an Australian decision, and that isn't true.

JT: It's a good guess. No one's ever asked me where it came from before. At least you're thinking about it.

BPS: And this is a piece of history that otherwise might have been lost.

JT: I am glad you're doing this because I am writing the history of the Métis Nation right now and I was naively thinking I would like to write it from the Métis' own words, well... it's almost impossible. It is impossible. There

are only a few journals out there. I just was copying the Peter Garrioch's⁸³ journal from the 1830's, he was a Métis trader. It's because somebody sat him down and started interviewing him. There are a few now that are out there. In the early 1900's people went around and starting interviewing some of these folks and said, "Wow, there is this amazing old guy here, and his life should be written down." My grandfather went to Batoche⁸⁴ in the early 1900s with Guillaume Charette⁸⁵ from the Union Nationale Métisse⁸⁶ and they interviewed all of the survivors they could find from 1885. They took affidavits from survivors of the 1869-70 Red River Resistance too. They actually swore declarations and affidavits.

BPS: Where are they?

JT: There are copies of them in the St. Boniface archives, but nobody seems to know what they are. I know what they are, because I still have my grandfather's papers, which are not in the archives. I have some Louis Riel papers and some Joseph Riel⁸⁷ papers, and I have the story about when they went to get the declarations and affidavits. They went twice to Batoche. They interviewed Métis people, they had a big community meeting and they talked to people. Copies of the interviews are there in the archives. But there are post-it notes on them from historians asking where these came from and who took the interviews. I may be wrong about it, but I think I may know what these interviews are and where they came from. I am going to write this into the book I am working on, and put the citations and everything so that others can track the documents.

BPS: I had no idea.

JT: I don't think anyone knows. Or if they do, it doesn't seem to have been written about.

⁸³ Peter Garrioch was a Métis trader from the Red River Settlement.

⁸⁴ Batoche is located in the province of Saskatchewan. It was the site of a historic battle between the Métis Nation and Canadian forces in 1885. The Métis were defeated and their leader Louis Riel was tried and hanged.

⁸⁵ Guillaume Charette was born in Manitoba in 1884. He was born to Métis parents. He was a prolific writer and storyteller.

⁸⁶ Union Nationale Métisse is Canada's oldest Metis organization, founded in 1887.

⁸⁷ Joseph Riel was the younger brother of Louis Riel.

BPS: I do some work in some specific claims areas and am quite involved in specific claims tribunals. When you do specific claims research you will find absolutely pivotal moments, like discussions from a surrender meeting or something. Now, it is 100 years later, and we are trying to figure it out saying, “If only somebody had written a diary. If only somebody had sat down afterwards and done a debrief or something.” Forever a key data point for historiography might well be this one document created by one side and containing little or no elaboration.

JT: My dad passed on a few years ago and my mom had this binder of Riel papers. I’ve looked at them before but now I am writing this book and thought that I needed to take a look at them again. I don’t remember that there was really anything special in them, but I wanted to look at them again. This is another interesting part of our bad history in Manitoba. When my great Aunt Yvonne⁸⁸ died my uncles and my dad went through the papers that were in the attic of the house on River Road that is now the Riel Museum,⁸⁹ they were Joseph and Louis Riel’s papers. There was a big batch of papers. They had other things like his uniform and his gun. My understanding is that no one wanted the papers.

BPS: When was this?

JT: This would have been in 1957 or 58.

BPS: Let the record show my jaw is dropping.

JT: I know.

BPS: Why?

JT: My Dad told me that the Monseigneur from the St. Boniface Basilica⁹⁰ said we could store them in the attic. So my dad grabbed a few papers and

⁸⁸ Yvonne Riel was the widow of Louis Riel’s nephew, Honoré.

⁸⁹ The Riel House is a National Historic Site. It was the home of Louis Riel’s brother, Joseph Riel. It has been restored and converted into a museum.

⁹⁰ Saint Boniface Cathedral is located in St. Boniface, Winnipeg, Manitoba.

I think my uncle Louis did too. But anyway, they took the rest of the papers to the St. Boniface Basilica, and then of course the basilica burnt down in 1968. The papers were in a trunk in the attic and the trunk was badly burned. Those papers are now in the St. Boniface archives, and they are trying to preserve them. Some of them are so charred that you can't read them. Some are just charred around the edges and everything. What got lost is terrible. It's hard to believe the Manitoba Museum or Archives didn't want them. But there is no other explanation for the loss. The Riel House was being turned over to the government. One would think they would have also wanted the papers.

BPS: Was it hostility, or what?

JT: I don't know. In '58 I was five years old so I don't remember.

BPS: I would have thought if you are in the museum game it is not a question of whether you approve or disapprove, you want to preserve the record.

JT: My uncle Rodger was arguing with the family. Some of the family were saying that we should keep them, and he was saying no, "These belong to Manitoba. These are important historical papers, and they belong to Manitoba." So now I'm writing this history and I wanted to look at those papers again, and then I called up my cousin Louise because it dawned on me, "If I have papers I bet my cousins do too." So I called her and she said, "Oh yes, I've got five boxes of Riel papers sitting in the basement." So I said "Okay, can I look at them." And she said "My mom," and her mom is my dad's sister, "My mom won't let them out of the house, but you can come and look at them or you can come and photograph them." So my brother and I spent days with my cousin photographing all of the documents because I wanted to have electronic copies of them all. My aunt is ninety-two now, when she dies I think the papers will go to the St. Boniface Archives so that they have them, because I don't think that we should have them either, I am with my uncle on that. My mother has recently turned over our papers to the St. Boniface Archives. My uncle Roger is long gone, but I am with him, I think that the Riel papers belong to Manitoba. They are part of our history. What is in those papers is really interesting. I don't

know if you know Dr. Arthur Ray,⁹¹ but when I told him about the boxes in my cousin's basement he said, "These are the types of things that give historians nightmares." The idea that there is this incredible treasure trove of papers that are just sitting there. They are extraordinary because this is where I was able to track the story of the Métis affidavits from the participants of 1869-70 and of 1885. My grandfather and the Union Nationale were able to do it because they knew it was important and, because some of those old guys were still alive. They got these written affidavits from Ambroise Lépine⁹² and André Nault⁹³ and all of these people.

BPS: This is incredible.

JT: André Lagimodière is one of the guys who was supposed to have buried Thomas Scott's⁹⁴ body, and to this day nobody knows where it is.

BPS: There is still all this controversy about whether he was alive in his coffin and all kinds of stuff.

JT: Yes, but that story is really just nonsense. An execution squad shot him and a final bullet was put into his head to finish the job. So he was dead, thoroughly dead, when he was put into the coffin. The story that he was alive in his coffin is a fanciful, juicy story, but not true. But the Thomas Scott story will be in my book. I will also cover the Sayer trial,⁹⁵ which is the big free trade trial in 1849. Louis Riel Sr. was on the church steps in St. Boniface that morning and made a big speech and got all of the people to come over the river to the Winnipeg side. There were some four hundred horsemen mounted with guns pointed at the building where the trial was going on, and Louis Riel Sr. and James Sinclair⁹⁶ walked Sayer into the trial,

⁹¹ Dr. Arthur J. Ray is professor emeritus of history at the University of British Columbia.

⁹² Ambroise Lépine was the chair of the tribunal that tried and sentenced Thomas Scott.

⁹³ André Nault was a member of the tribunal that tried and sentenced Thomas Scott.

⁹⁴ Thomas Scott was an Orangeman from Ontario. He was captured and imprisoned by the Métis. He was tried and convicted by a Métis court in 1870. He was sentenced to death and executed. Scott became a martyr of the Orange Lodge.

⁹⁵ Pierre Guillaume Sayer along with three others were brought to trial in 1849 for trafficking furs contrary to the Hudson's Bay Company's charter.

⁹⁶ James Sinclair was a fur trader.

and at the end of it they walk out yelling “Le commerce est libre,” and Sayer, was on my great great grand uncle's shoulder. But Louis Riel was there, he was at church listening to his dad speak and he was five. He talked about it for the rest of his life. He said it was a formative moment of his life, when he watched his father make this big political speech. It is what formed a lot of his politics.

BPS: Well, I am buying this book. And how are you able to do this with your day job?

JT: I actually resigned my partnership on January 1st, 2016. I only kept my treaty file, so the only thing I am doing is negotiating the Sto:lo treaty⁹⁷. I will stay until the treaty is signed which will probably be five years at this point. So that is the only thing I am doing as a lawyer. I just decided that now that I am in my sixties, I am going to teach and write and speak and I don't really want to do litigation anymore, I don't want to do the day-to-day lawyering work. So I have an agreement with my firm, I am now Senior Council to my firm, and really I am doing very little there, 99% of what I am doing is writing this book. Big change.

BPS: As you can see, I am a big fan of preserving history. You are discovering these papers and writing about them, so they will live again.

JT: I hope so, those papers will end up in the archives. There are all these papers there already, and nobody has really done much with them. I was very interested to see Gerhard Ens and Joe Sawchuk just published a brand new book⁹⁸ that just came out a couple of months ago, it's very interesting. They are the first academics I've seen who've actually gone in and are using those documents.

BPS: I just found that in McNally Robinson⁹⁹ about two weeks ago so I read it to prep for these interviews.

⁹⁷ Sto:lo are First Nations people living in the Fraser Valley in British Columbia.

⁹⁸ Gerhard J. Ens & Joe Sawchuk, *From New Peoples to New Nations: Aspects of Metis History and Identity from the Eighteenth to the Twenty-first Centuries* (Toronto: University of Toronto Press, 2015).

⁹⁹ McNally Robinson is an independent bookseller located in Canada.

JT: I stumbled across it on the internet and I've read it now. He actually cites my grandfather quite a few times in the early part of it. But he's the first academic I've seen who's actually using those records that are in the St. Boniface Archives. I think there's a treasure trove of stuff there that people are just beginning to tap into, because they didn't know what it was.

BPS: Sounds like there are many PhD. theses just waiting to be written.

JT: I suspect that you are right about that. I think that we are just at the beginning of the discussion. I don't think that we have a very good handle on those events at all, what was going on. I think we have a sketch version of the events that just skims the surface, and I don't think it is right. I am trying to lay out my biases up front, I am not going to pretend that I am not a Riel writing this story. I am not pretending that I am an academic writing a neutral story. I am not doing that. I am not purposely trying to slant things, but I am trying to give the Métis perspective on this history, as opposed to the Hudson's Bay Company view of it, or the fur trade view of it, which is what everyone else is writing about. To date the written histories have passed as 'neutral'. But they aren't neutral at all. I am not trying to pretend I have a neutral view of this history. I'm not even an academic. It is a popular history too, although at this point I am footnoting it thoroughly, because I want people to be able to track the record. When people read it and think, "Well where is the backup for that?" I want them to be able to look at it and find it. A popular history isn't normally footnoted or cited nearly as much as I am doing. But I've made an arrangement with the Native Law Centre in the University of Saskatchewan. The book will just have one line directing them to a web page at the Native Law Centre. The full citations will be held there.

BPS: The good thing nowadays, is that you can always post an annotated version online or something.

JT: That is actually an interesting idea. I really want people to know that I am not making up stuff. For example, I have gone through seventy-five years of letters, since the first priests arrived here.

BPS: You're saving the next historiographer a zillion hours of time trying to reconstruct where you are getting this from. You're leaving a trail.

JT: Which is what I want. I want people to see that there is another perspective on everything that happened here, and that it's got an evidentiary foundation to it. It was so interesting to sit there on Sunday and watch, two hundred years later, Selkirk Settlers and Métis. But what we've got in the history books is not the Métis story; it's still oral for the most part. Although, you can find pieces, but I don't think we have put it together yet. It's a work in progress.

BPS: I am really looking forward to reading this.

JT: It should be out in the bookstores in the fall of 2019.

BPS: There was a show about Lyndon Johnson¹⁰⁰ on HBO the other day with the guy who was in *Breaking Bad*, the actor. Anyways, just thinking about Robert Caro's¹⁰¹ history of Lyndon Johnson, which stretched over about five volumes, it's a ripping read the entire way. He was in the Senate and had this amazing story in the Senate. It was still a page-turner even though it was five volumes, and it won a Pulitzer Prize, so it can be done.

JT: I haven't read that one but I've read the Churchill six-volume story about the Second World War.¹⁰² Churchill is basically saying, "Here are all the telegrams, here is all the stuff. This is what I knew at the time, not in hindsight, so when I was making those decisions this is what I had in front of me." I ripped through that. I thought it was fascinating.

¹⁰⁰ "All the way" is an HBO TV drama film based on the presidency of Lyndon B. Johnson in America from 1963-69. Starring Bryan Cranston as President Johnson.

¹⁰¹ Robert Caro is an American journalist who writes biographies about political figures. The books in his series on Lyndon Johnson are respectively entitled: *The Years of Lyndon Johnson: The Path to Power*; *The Years of Lyndon Johnson: Means of Ascent*; *The Years of Lyndon Johnson: Master of the Senate*; *The Years of Lyndon Johnson: The Passage of Power*. The fifth book of the series is in-the-works, and has not yet been published.

¹⁰² Winston Churchill wrote six books about the Second World War: *The Gathering Storm* (Penguin Classics, London: 1948), *Their Finest Hour* (Penguin Classics, London: 1949), *The Grand Alliance* (Penguin Classics, London: 1950), *The Hinge of Fate* (Penguin Classics, London: 1950), *Closing the Ring* (Penguin Classics, London: 1951) and *Triumph and Tragedy* (Penguin Classics, London: 1953).

BPS: I would highly recommend Boris Johnson's book on Winston Churchill.¹⁰³ It is such a ripping read, it's really funny and actually has some interesting historical perspective. It is revisionist in some ways; in terms of understanding Churchill and what motivated him. It's such a good read though.

JT: My publisher tells me that Canadians like reading history, they buy history books and they like reading about their own history, so that is one of the reasons they came and asked me to do this. They think it will sell. But the other thing is that women buy something like eighty percent of the books in Canada.

BPS: I didn't know that.

JT: Women are by far the largest purchasers of the books, but most of the history books are read by men. So I said "I have to write a book that women will pick off the shelf for their husbands?" and he said "That is my marketing problem not your problem." And I said "Good, because I don't know how to do that." (laughs) He said, "Just write your story." It's a real blessing to have a major publisher, because I don't have to worry about distribution, it'll be all over Indigo¹⁰⁴ and in other outlets.

BPS: Getting books onto a bookstore shelf is incredibly hard nowadays.

Thank you so much again; you've given us so much of your time.

JT: Thank you. Thanks for doing this series. I think you're right, it's important to write the history of the law school and what lawyers from Manitoba are doing. It helps understand what's going on here.

¹⁰³ Boris Johnson is a British politician and historian. Boris Johnson, *The Churchill Factor: How One Man Made History* (London: Hodder & Stoughton 2014).

¹⁰⁴ Indigo Books is the largest book retailer in Canada.