

# Interview with Arthur Braid, C.M., Q.C.\*

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R Y A N   T R A I N E R

## I. INTRODUCTION

**Ryan Trainer (RT):** I thought we would begin by traveling back to 1956, to your first year of law school, what brought you to law?

**Arthur Braid (AB):** I always wanted to be a lawyer. I remember taking an aptitude test in grade 9 and answering all the questions in the way I thought that a lawyer would answer the questions. I didn't care what I personally thought. Lo and behold, when the results came out the tester said, "Your graph is exactly like that of a lawyer or banker." This result was confirmed when I had polio in 1953 and I said to myself, "I have to make it with my brain; I can't do it physically," so the logical thing was to become a lawyer. After that, I could hardly wait to get admitted into law school. I did not enjoy the Faculty of Arts, but it was the necessary preamble to entry Law School. It was a wonderful day when I was admitted. Back then you didn't have to do anything other than complete your second year university to gain entry; there was no LSAT and no selection committee. If you had the second year credentials, you were in.

**RT:** Was it a large class?

**AB:** No, we had 36 in our class and we were a fairly big class compared to the next year's class, which was quite small. I recall when we started using the LSAT as a criterion for admission in the late 60s. We needed some way

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\* Interview conducted by Ryan Trainer. Arthur Braid received his LL.B (Manitoba) in 1960 and his LL.M (London) in 1967. He was a professor of law at the University of Manitoba from 1964-2000 and served as Dean of Law from 1994-1999. He is currently a Senior Scholar.

of winnowing the applicant pool in order to have a manageable list from which to make our selections. The only criterion we had before this was an applicant's grades. The LSAT was a great leveller. We were the first law school in Canada to use the LSAT.

**RT:** So you just had the two years of University before you started law school; were you prepared for it?

**AB:** Right after high school I started university but I wasn't ready for it. I went to United College: they didn't make you do anything; they didn't care if you did anything; they just let you do what you wanted to do. So I played hearts in the common room with a bunch of boys from the North End. I had never met such street-wise kind of guys before. Remember, I was a middle-class lad from River Heights. We would play snooker at Casey's Pool Hall at the corner of Portage Ave and Sherbrook. I went to one Calculus class and didn't like it so I didn't go back. I just threw away my year; I think I passed French and Chemistry and that was it. As for the rest of my subjects, there was no point of me even showing up for the exams. I remember my mother saying to me before the Calculus exam, "Why aren't you going?" and I responded, "I only went to one class, so what's the use?" and her classic response was, "Well, you should go anyway dear, because something might come to you." Anyway, that summer of 1953 I got polio and spent the next ten months in the hospital. I returned to university in September 1955 to finish my second year in order to qualify for law school. I finished off second year with B's and C+'s. That was "fun" too because all but one class was in the old Tier building and I was on crutches and braces back then. To attend class I had to crutch up the stairs from the Common Room in the basement. I had one class that was in the tower room; there several flights of stairs: 101 stairs that I had to go up and down twice a week for one term. I also had a Psychology lab on the top floor of the administration building. It was quite an effort but I was happy to do it if it got me into law school. When I started law school, I immediately thought it was where I belonged; I loved it. I started to get A's then.

**RT:** You received the highest mark in Criminal Procedure and Jurisprudence.

**AB:** I was top of the class in first and second year and second to my friend and study group partner, Andy Balkaran<sup>1</sup>, in third and fourth year; but I won the prize for the highest aggregate standing over the whole of the law program. Andy went on to become the legislative counsel for the Province of Saskatchewan.

**RT:** When you went to law school, it was a four-year degree and it was much different than it is now.

**AB:** Yes, of course; as you know, we went to school for four years from 9-12 o'clock each weekday from September to April. Then we articulated in the afternoons and on Saturdays with a law firm. We had to sign Articles of Indenture with an active lawyer. My principal was Walter C. Newman Q.C. In summer, you worked at the law office like a practising lawyer. It was great because we had our classes in the Law Courts building. Although we had no spare periods, we would still spend a lot of time watching lawyers in action in the various courtrooms. It was a well-rounded education because when you graduated, you simultaneously had completed your articles and you had your academic education. Some out-of-province academics commented that there was too much focus on "black-letter law" and not enough on scholarship. We didn't have to write academic papers that involved research and scholarship and we did not have a lot of time to spend in the library. There was some truth to these observations. Nevertheless, we had excellent sessional lectures drawn extensively from the bench and practising bar. There were only two permanent staff. We had a great legal education even if some people criticized it for only being a "trade school".

**RT:** We've heard others echo your statements about the strengths of the program but what were the shortcomings?

**AB:** Well, as I said, we didn't do legal writing, or academic papers. Before we graduated, we had to submit one twenty-page paper, which the students of today submit routinely. I did mine on the standard of proof of a crime in

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<sup>1</sup> Andrew Clarence Balkaran (1924-March 13, 2000) graduated with the University Gold Medal in 1960. He was appointed as legislative counsel by the Government of Saskatchewan from 1966-69; due to family issues, he returned to Winnipeg and retained a position as associate legislative counsel from 1969 until his retirement in 1988.

a civil action. As it turns out, my paper got it wrong when the Supreme Court of Canada later held that the standard is still the civil standard of proof based on a balance of probabilities. At any rate, my “thesis” is still out there somewhere. The big difference in our legal education was that we really knew a lot of law. The curriculum was completely mandatory and covered a broad legal spectrum. One difference is that as students we rarely went beyond the cases that were assigned and the lectures we had. Current students not only read a case but have to really analyse it in order to answer lots of questions in class or on an examination. We had a couple courses that were really useful, such as legislative drafting and accounting. We learned about balance sheets, profit and loss statements, and legal accounting: all of which is relevant to the practice of law. We even did public speaking. In between periods and at noon, over lunch, we would have great legal and political discussions in the common room. Many of the participants in these sometimes heated discussions would eventually go on to lead political parties and the like.

**RT:** I don’t know if it is the nature of the class size today or the make-up of the student body but big political discussions are rare at Robson Hall today.

**AB:** The discussions were a good chance for us to get know people in all of the classes. We would all go to the same, rather small, common room, so we got to know the students in the other years, not just those in our class.

**RT:** Which is important, because I’m sure that most people who went on to practice stayed in Manitoba.

**AB:** Very few left Manitoba.

## **II. LAW SCHOOL ADMISSIONS**

**RT:** Given the high level of competition to gain law school admission in Canada, does it surprise you that today the majority law students at the University of Manitoba are still from Manitoba?

**AB:** When I was Dean, I did a compulsory survey of the out-of-province students in second year and one of the questions was “What is your current intention as to where you will practice law?” All but one of the out-of-

province students stated that they intended to go back to their province of origin. I realized we were just training out-of-province students for export. Our experience was that there were not a lot of Manitobans who intended leave the province after graduation. Basically, Manitoba was getting Manitobans and we were not getting that cross-pollination from other provinces. I think we get a lot more students today, however, who are from out of province who intend to stay here. Maybe only ten percent is my guess, but that is more than it was when I did the survey. I don't think the class at Robson Hall should have more than 40% of the student body from out of province; otherwise you will get in trouble from Manitoba parents who say, "Well my child wants to be a lawyer and has the academic credentials; our university should be training future lawyers for this province, not for other provinces." As the only law faculty in Manitoba, if we admit too many non-Manitobans, we will be under political pressure to change entry requirements.

**RT:** I think it is happening; we only have provincial preference for students from Manitoba late in the game on the wait list.

**AB:** Yes because on the alternate list we know that if offered late acceptance, Manitoba students are the ones who are sure to accept the late offer. That's a very small Manitoba preference. I have said that we should limit admission of non-Manitobans to 40%. That to me, that is the tipping point.

**RT:** In your graduating class, was it largely Manitobans then?

**AB:** We had only one from out of province: Jack Montgomery<sup>2</sup>. It was the same for many years. That's because, back then, the people from out of province could easily get into the law schools in their own province. They didn't have to look elsewhere. It was only when the squeeze on admissions began that we started to get out-of-province applicants. I asked a subsequent question on my class survey, which was "Why did you come to the U of M if you were from out of province?" and everyone said it was because they couldn't get in to a law school in their own province. I've always been of the view that you will get a great legal education no matter what law school you

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<sup>2</sup> John (Jack) Montgomery (1927-December 7, 2004) received his call to the Bar in 1960 and articulated with Fillmore Riley before joining the Department of Justice in 1962 and becoming one of the leading prosecutors in Manitoba.

went to in Canada; they are all of high standard. You can rank them 1-17 but the difference between the low and the high isn't significant. The quality is high across the country: great professors, and well-educated students entering the programs, from a diverse group. The courses can only vary so much from school to school. Insofar as getting a good legal education is concerned, it really doesn't matter if one goes to one law school or another. I also don't think it makes a difference to one's legal education if a professor at one school has fifty books published and the other only has twelve; it doesn't mean one is better than the other at teaching the students. Even new law schools, such as that at Lakehead University, have a high quality program. I've looked at the curriculum and the academic staff and was impressed. Even the proposed law school at Trinity Western has a solid curriculum. If it were not for the covenant issue, I am sure that it would be certified as meeting all the academic standards.

**RT:** Nor do I think where you go to school dictates how good a lawyer you will be or even your likelihood of securing an articling position.

**AB:** The Faculty did a study called the Browning Study which looked at all the data of the incoming class over a five year period. The Study considered the student's GPA, LSAT, the program, and courses they studied. There were eight criteria which were considered and compared to first-year law results. We wanted to know if there was any correlation between pre-law performance and first year law examination results. What he found was that there was little difference between the GPA with all the aberrant grades excluded and the GPA with the aberrant grades included. Even so, we thought it was fairer to individuals who may have gotten off to a bad start in their undergrad to allow some grades to be excluded. The highest correlation was the LSAT; it was a better predictor than the GPA, which itself was a materially better predictor than the pre-law program or any individual or combination of particular courses. Taken together, the LSAT and pre-law GPA were the best predictors of law school success. Statistically we should have weighed them 60-40 in favour of the LSAT but we thought that politically unwise. That would never fly. So we went with a 50-50 weighting.

**RT:** That's interesting because my understanding is that the University of Victoria weighs 70-30 in favour of GPA.

**AB:** I always fought against the suggestion that we select our students by examining their whole file and asking “What kind of person is this?” Who is going to make that kind of subjective decision as to whether someone who is a nurse or was kind to their mother etc. is better than the person with high grades and LSAT? Don’t let the faculty members make these subjective decisions; they cannot help but be influenced by their own bias. We recognized the need to add diversity and maturity to the class and that is why we have the Individual Consideration category. It’s a rigorous process involving personal statements, reference letters, and interviews. We rarely fill all fifteen available places even when the applicant pool exceeds 100.

**RT:** Right, it might actually be harder to get in under that category than by Index Score category. I think last year we were at one placement for every eleven applicants for Individual Consideration applicants. On the topic of difficulty at looking at the whole file, it is hard enough trying to figure out the likelihood of getting into law school on a year-to-year basis as the average index score for admissions changes each year.

**AB:** Absolutely correct. It’s a bit of a crapshoot. There is no such thing as a better class however, only a different class. Cameron Harvey<sup>3</sup> and I were very involved in the selection process when we had to select the students on the basis of grades only. We had these books that had all the information and records for each individual candidate and we would look at the GPA, whether it was improving. This was before we had adopted a formula for assessing applicants. We would eventually pare the applicant pool down to forty for the last twenty places available. We would try to rank the students, comparing programs, courses, whether the senior years grades were higher, or by what schools they attended for university. Was the average GPA of their particular program lower than other programs? We would re-calibrate GPAs based on university attended. For example, the Royal Military College had much lower GPAs than other universities. It was not unusual for the gold medalist to have a 3.20 GPA. We would adjust their GPA accordingly. This latter process took all afternoon. Thank goodness for the Index Score category.

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<sup>3</sup> Cameron Harvey, Robson Hall faculty, 1966-present, and has been Professor Emeritus since 2006. For his interview, please see page 97 of this issue.

**RT:** Imagine doing that for thousands of applications.

**AB:** They do that in the United States; they call it file reading. Five or more professors get a stack of applications and they go through and read them and rank them. There is no second-guessing them. Their biases come through. It's a bad system.

**RT:** As an applicant, you would have almost no ability to appeal, there is no objective standard.

### III. EVOLUTION OF GUEST SPEAKERS AT ROBSON

**RT:** I spent some time this summer looking back through the old *Manitoba Law Journals* and looking at who came to Robson Hall back then—esteemed lecturers and the like—and in 1964, Lord Devlin<sup>4</sup> came to the school.

**AB:** Yes, that was at the Hudson Bay Company restaurant.

**RT:** My understanding is that it was typical that Robson Hall would invite scholars, judges or lawyers from Britain. They were legal British celebrities which is much different practice than today. In recent years, we had Chief Justice Beverly McLachlin<sup>5</sup> and Senator Romeo Dallaire,<sup>6</sup> the focus is very much on Canada.

**AB:** Yes, well we have our own all-stars now and we will bring them in. I don't think that students would even know the leading judges in England now. Twenty years ago they would be familiar with them all.

**RT:** When did the transition happen?

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<sup>4</sup> Lord Patrick Devlin (November 25, 1905-August 9, 1992) was a British lawyer, judge and baron.

<sup>5</sup> Chief Justice Beverly McLachlin is the current Chief Justice of Canada. She is the first woman to hold this position and is the longest serving Chief Justice in Canadian history.

<sup>6</sup> Romeo Dallaire is a retired senator and former Lieutenant-General of the Canadian Forces.



**AB:** Probably in the late 1980s.

**RT:** Do you think the repatriation of the Constitution and the creation of the *Charter*<sup>7</sup> had anything to do with the timing?

**AB:** I don't think so. It happened when the professoriate changed, when new people came in and started relying more on Canadian and some of the American sources. It used to be that graduates would normally go over to England to study. What happened is that people doing graduate work would now go down to the United States to Harvard, Colombia, etc., and when they returned to teach, they wouldn't have an affinity for the British sources. Perhaps the change occurred in part because we now have many more years of Canadian jurisprudence to rely on.

**RT:** That's a fair point; most classes are still structured in a way where you begin with old English cases before working your way forward to Canadian cases and the infusion of Canadian legislation.

**AB:** It's evolutionary and I think it just sort of happens. I've often recommended we bring over people from England and the response I often get is "why not our own people?" And they're right. When I was at the London School of Economics, one of the chaps in my small little corporate law seminar group with Lord Wedderburn was Anthony Grabiner<sup>8</sup>, who later became the head of the Number One Essex Court Chambers and is now Lord Grabiner. He is reputed to be the highest paid barrister in England. I have offered to try to invite him to come over as a distinguished speaker but there was no interest. I think today they would prefer an American luminary to an English one.

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<sup>7</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

<sup>8</sup> Anthony Grabiner is a British barrister and head of chambers at One Essex Court; he became a baron in 1999.

#### IV. TRANSITIONING CAMPUSES AND TEACHING AT ROBSON

**RT:** Let's talk about the transition from the Courthouse to the Fort Garry Campus. At the time Dean Edwards told the *Winnipeg Free Press* that the law school was busting at the seams while enrolment continued to rise. Also at the time, in 1964 in particular, the University of Manitoba absorbed full responsibility of the law school. The faculty held a debate over where the law school should be located and you debated Dale Gibson.<sup>9</sup>

**AB:** At the time, there were not that many of us on Faculty, maybe nine at the most. There were certain advantages of being downtown where the action is, in the Law Courts. There was the other view that we should be more of an academic institution and not a professional training ground. There should be more emphasis on academic writing and publishing of legal scholarship and the creation of a more academic atmosphere. These were not to be found in a profession-oriented setting. There were arguments on both sides that were strong. Dale Gibson was a proponent of doing what the other law schools had done and moving to our own building on campus. Cliff Edwards assigned one person to present the reasons why we should stay downtown and another person to present the reasons why we should move to the University campus. I prepared the case for staying where we were if we could find the space at the courthouse and Dale prepared the case for moving to the University campus. The faculty considered and discussed our arguments and ultimately a vote was held that decided we would make the move. We then negotiated the move with the University and an agreement was signed between the Manitoba Law School and the University of Manitoba. Part of the agreement was that we keep our own library. That's been done away with. That was in 1967 or 1968 and the building opened in 1970.

**RT:** What was lost with the move to campus?

**AB:** What was lost for the students was the immediate sense of being part of an honorable profession and not just a student studying in an academic institution. Most of our students were members of the Canadian Bar

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<sup>9</sup> Dale Gibson, Robson Hall faculty, 1959-88, 1990-91, and is Distinguished Professor Emeritus. For his interview, please see page 25 of this issue.

Association and felt part of the profession as soon as they entered law school. Some students still do join the CBA, which is something I think they absolutely should do. Ultimately, to make up for the lack of connectivity with the legal profession by our students, we have introduced things such as judge shadowing and mentoring in order to connect the student body with the profession. We want them to feel that they are more than just university students but part of a noble profession. In my first year law, I went to what were called law “smokers.” They don’t exist anymore, thank heavens. We were welcome there even though we were just students.

**RT:** So this was a smoking party?

**AB:** No, it was a stag where they smoked, drank, played poker and craps in the hotel rooms. The first one I went to, I was just amazed; there were no women, but judges and senior lawyers were there. Chief Justice Williams<sup>10</sup> would sit in the corner of the room and hold court, a glass of scotch in his hand. He had a white beard and people would almost pay homage to him. I immediately felt part of the profession. One lawyer, Oscar Grubert, quietly advised me, while I was watching a craps game, to stay away from the craps table or any other gambling with this crowd. That was sound advice; some of the attendees were far too experienced for a neophyte like me. By the way, Oscar eventually bought the hotel where the smoker was held. The smokers went on until 1968 or 1969 until someone brought in a stripper. Many judges were present and were unexpectedly compromised and wanted no further part in the festivities. One of the judges was yelling “Repent!” as he left the room. He had a couple of drinks, I think. This smoker made the papers the next day: “Lawyers have stripper at event.” No one was there of course; not one person admitted publicly to being present or knowing anyone else who was present—and no one will. That publicity ended the smokers; it later evolved into beer and skits.

## V. TEACHING AT ROBSON: ACADEMICS VS. PRACTICE

**RT:** When you finished law school in 1960, you practiced for four years?

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<sup>10</sup> Esten Kenneth Williams (1889-April 30, 1970) lectured at the Manitoba Law School from 1915-34 and was a former Chief Justice of the Court of Queen’s Bench.

**AB:** Well I practiced with my principal, Walter Newman, after I was admitted to the bar until June 1961. In 1963, Dean Tallin<sup>11</sup> asked me if I was interested in teaching and I said that I would think about it. My principal used to tell me that I was more interested in talking about the law than I was in practising it.

**RT:** It was a natural transition.

**AB:** I finally decided in early 1964; I called Dean Tallin and accepted the offer. By the time I started, Cliff Edwards had been appointed as the new Dean and so he was stuck with me. I had joined the Law School with the condition that I obtain a Master's degree, so Cliff arranged for me to get into the London School of Economics and he secured a scholarship for me with the British Council. I was in England for the 1966-67 academic year.

**RT:** I think a Master's is still technically enough to teach now.

**AB:** Yes, but I think most have a Ph.D. now.

**RT:** Reflecting back now on your years as a teacher: what do you think makes a good teacher? My thoughts on this, and this is not so much a criticism of professors getting a Ph.D., but on universities focusing too much on research and sometimes forgetting about the teaching component of professors jobs.

**AB:** If you are asking what makes a good teacher as opposed to a good professor, I think the answer is someone who really enjoys teaching and the interaction with students more than they enjoy writing articles and books and doing that side of things. It is someone who looks forward to the classroom, who prepares for the classroom experience and enjoys it. They don't think they have to get a lecture out of the way so they can get back to their true passion of academic writing. I think it is attitude to a large extent; that teaching is first and research is second. Now there are some who are not only good researchers but also naturally gifted teachers; they will be

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<sup>11</sup> George Percy Raymond Tallin (July 27, 1894-January 13, 1970) served as Dean of the Manitoba Law School from 1945-64.

good no matter what. Be clear, I am not saying that really dedicated researchers cannot be good teachers; that simply does not follow. What I am saying is a good teacher is someone who really enjoys teaching. That is the priority. I would like to think, and I may be in the minority here, that to hire someone or to grant someone tenure, that person should first of all be a really good teacher. That would be my number one criterion. Good researcher would be my second. I don't want a top-notch researcher and publisher who is a less than an adequate teacher. Unfortunately this happens occasionally. Also, there are teachers who are very good at teaching in small seminar settings but not in large lecture room type classes. We are probably not rich enough to afford the wonderful seminar teachers who can't teach basic 40-person-plus lecture classes. Overall, however, we have had very good teachers.

**RT:** The articling crisis in Ontario, and maybe a looming crisis in Manitoba as students from elsewhere consider Manitoba where they may not have before, has brought to the forefront this discussion of how much law school should focus on preparing law students for the practice of law. Whether or not it is a fair criticism, law firms have expressed their frustration with what they see as students who are not prepared for the practice of law.

**AB:** This is a difficult question. The more professors you have who are primarily interested in research, the more you will hear the observation that the law school is more like a department of law in a Faculty of Arts than a Faculty of Law within a university. You can attend the University of Ottawa's Department of Law if you want to get that kind of education. I say that the function of a law school is primarily to prepare students for the practice of law. Not exclusively, but primarily. That is why good teaching is important and that is why it is preferred to have a curriculum that mandates a range of compulsory courses so that later, graduates do not discover that they have limited their areas of practice to such a degree that they have regrets. You require students to take basic subjects that will prepare them for law practice. You should have a curriculum that satisfies that purpose first. For the students who don't intend to practice law when they graduate, let them have complete freedom to select from a broad menu of other courses beyond the compulsory courses. That's my view of where the focus of where teaching should be, where hiring should be. It's hard though when you have academics who are primarily research-oriented; they will disagree

with that. They will argue that the Faculty of Law is part of the university and as such is primarily dedicated to the discipline of law and the advancement of research and scholarship.

**RT:** We have had professors agree with your opinion that it should primarily focus on preparing for the practice of law.

**AB:** Yes, but not to the point of becoming a trade school, because without academic scholarship in, and the teaching of, the discipline of law, a law school has no credibility as a university faculty.

**RT:** I think in the wake of criticisms that law school had become too academic, Robson Hall has created more clinical or experiential learning opportunities, at least in the upper years, trying to integrate legal education into the practice of law. This could be in the form of internships at the Legal Help Center, clerkship programs, or even the Family Law Clinic.

**AB:** The idea we had, based on the Osborne-Esau Report<sup>12</sup>, was balance. Balance between doctrinal courses, paper courses, and the practical training such as a course in advocacy. The concept of progression of study was also built into the curriculum. I think that our curriculum was well constructed. I have had students speak to me, years after graduating, and say “I’m so glad I was made to study such-and-such a course; I wouldn’t have taken it but I now find myself so comfortable in my bar admission course or in articles or practice; I feel ahead of my peers in this and other areas.” I’ve never heard anyone say that they hated the curriculum or the legal education they received in Manitoba. You can never accuse the Manitoba Faculty of Law of being either an ivory tower institution or a trade school. We have always sought balance in the curriculum.

**RT:** It seems like Robson Hall was ahead of the curve in some respects in terms of making particular classes a mandatory part of the curriculum.

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<sup>12</sup> Jack R London et al, “The Report of the Curriculum Review Committee on a New Curriculum”, (2016) 39:2 Man LJ 155 [Osborne-Esau Report].

**AB:** They've done that now at Lakehead with Dean Lee Stuesser<sup>13</sup>, who is a former student and professor in our Faculty. He has actually put into force many of the ideas that I've been expressing: that students, when they finish, should be ready to practise except for finishing their articling period. On the other hand, I must tell you what Sanford Riley<sup>14</sup>, C.E.O of Investors Group, said in a speech to one of our graduating classes. He said that when he attended Osgoode Hall, he was allowed to choose whatever courses he wanted after first year. He chose mostly perspective courses that dealt with the discipline of law. He didn't take commercial law courses or taxation or corporate law. Yet he said, "Here I am as the C.E.O of Investors Group immersed daily in all the commercial-type courses that I eschewed." Maybe the lesson learned is that you don't have to worry about what courses you take as long as you go to a good law school. I understand that point but I also believe that he is an exceptional case. With some people, it doesn't matter what courses they study, the cream will rise to the top. The exception proves the rule perhaps. For most of us however, that is not something that we can expect. Perhaps it is wrong to over-emphasize what specific courses we teach in law school because when our graduates are fifteen years out, does it really matter? They have acquired so many different skills, read so many different books, had so many different experiences, that it is difficult to look back and say it was their law school courses that led them to where they are now. How much did my honouring in English in Arts or studying Corporations in Law help me now at age 40? Who knows? Maybe the specifics are overrated. The fact is that law school teaches you to think, analyze, and present your arguments like a lawyer regardless of what specific courses you might have taken.

**RT:** Recent judgments in the Court of Queen's Bench are a pleasure to read in comparison to the judgments from the early twentieth century where they meander and bend before finally coming to some conclusion.

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<sup>13</sup> Lee Stuesser graduated with an LL.B. from the University of Manitoba in 1984. Lee Stuesser, Robson Hall faculty 1988-2008, Lakehead University Dean 2012-June 30, 2015. For his interview, please see page 297 of this issue.

<sup>14</sup> Sanford Riley was the former CEO of Investors Group from 1992-2001, and is currently the CEO and President of Richardson Financial Group Ltd. since 2003. He received his LL.B. from Osgoode Hall Law School at York University.

**AB:** That's right, the legal way of looking at things. The IRAC method: Issue, Rule, Analysis, Conclusion. You can now see judges overtly using this legal reasoning method in their written decisions. Students are really good at finding the issues and stating the rules. They are fair on analysis but very weak on conclusion. On the analysis portion of an exam question, they will proceed by saying one side will argue this and the other side will argue that, and then go to the next exam question. There is no application of that analysis to a conclusion. Which argument is the better one and most importantly, why? They leave the examiner hanging. I would give them a C+ at most.

**RT:** Well and often, students are told your conclusion doesn't matter. What I think they mean though is that it doesn't matter what side of the argument you come down on as long as you can explain how and why you got there.

**AB:** That's right! Why is that the right answer? Both sides have merit but I want to know what you think. It's not, "I choose this side." There was a Court of Appeal decision that I read in the last year that was sent back because the trial judge did just that. The trial judge said that he preferred this argument over the other without saying why. The trial judge submitted a C+ paper!

## **VI. EVOLUTION OF THE LEGAL PRACTICE**

**RT:** I have just a few questions left; they are pretty broad so answer them however you'd like. How do you think the profession has changed since you started?

**AB:** It has changed hugely since 1956. Back then in Winnipeg everyone knew each other. There were only nine QB judges so you knew them, with the same number on the Court of Appeal. There were only five or six county court judges. There were only five or six magistrates so everyone knew everyone on the bench, especially with the smokers and other Bar Association events. It was a very close-knit profession. I think there were probably 650 lawyers in Manitoba. The trouble was that there were very few women. It was a male-dominated profession; even in my law class there was only one woman and she dropped out in third year. I think it was just too hard for her; we were indifferent in a thoughtless way to her situation. There



were no women on the bench, almost no women in practice. It was a closed group. Now, jump ahead fifty years, what a difference! Lots of women on the bench, many more judges both on the Queen's Bench and Provincial Court. The firms are much larger: ninety people at a firm whereas a big firm used to be thirty. You have many more students graduating. The older members of the profession say to me, "I don't know anyone anymore." You used to know everybody. The sense of camaraderie, the "strive mightily but eat and drink as friends" concept, has faded. I am unsure whether individual lawyers feel the same sense of being part of an honourable profession. I know that those on the bench still do. If they didn't feel it before their appointment to the bench, they certainly would feel it after serving on the bench. Outside of that group, I don't know. I think the practice of law has lost some of its sense of professionalism and fellowship. It has become much more of a business than a profession, though I don't want to suggest it has become a business, just more than it was. Look at the firm advertising and everything you see in the legal journals with articles about how to make money in practice. They have become more practice-oriented journals than they used to be. This is not a change for the better.

**RT:** I don't know how much this plays in to what you're saying, but even the nature of litigation today has changed dramatically. The overwhelming majority of civil suits are resolved outside of the courtroom. There has been the rise of judicial dispute resolution, forced mediation, etc. People can't afford litigation.

**AB:** Well yes that is one thing. The cost of litigation is so high, much more than it used to be. It doesn't pay to litigate anything unless it is really substantial. People can't afford it; hence the rise in unrepresented litigants and the problems that this raises.

**RT:** From my understanding, there has also been a change in the type of litigator. I've heard stories of the great litigators of Manitoba of the last fifty years, litigators who would captivate a courtroom. That sort of litigation style just is not the way anymore.

**AB:** We don't have the all-stars anymore, the legends in their own time. You're right.

**RT:** For better or for worse, there is no longer that element of surprise; judges would not appreciate the dramatic flair in the courtroom.

## VII. CONCLUSION

**RT:** You've been involved with the university now for fifty years, what is it that you've enjoyed most about it? What is it that keeps you coming back to the office at Robson Hall?

**AB:** The thing I most enjoyed about teaching was the interaction with the students or prospective students; remember: I was on the admissions committee for over thirty years. I loved doing the pre-law counselling. I remember one of the future judges of Manitoba coming in, a female judge<sup>15</sup> and say, "I'm thinking of doing law." So I asked her what she had been doing and she said, "Well, I've been building stack-houses." She was a very interesting lady. I think we chatted for an hour about stack-houses before I advised her on what she needed to do. Things like that I enjoyed. I remember a future female provincial court judge<sup>16</sup> coming to see me and somehow the conversation of old time songs came up and we started singing some of them together. When I had to give the speech at her swearing-in ceremony many years later, I reminded her of the time that we first met, when we sang songs together. I really enjoyed the students more than anything else I think. When I was younger, I used to go to all the parties, the house parties, everything. I still did until I retired. Trevor Anderson<sup>17</sup> and I used to go.

I also enjoyed my colleagues. Most of them are gone now; there are only a couple left. There has been a generational change. I was also on the Board of Governors for 15 years and the University Senate for 30 years so I was involved in a lot of things in the broader university community. I was Chair of the Senate Rules and Procedures Committee for a number of years. I drafted or co-drafted many of the Senate and Board of Governors

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<sup>15</sup> Sylvia Guertin-Riley was appointed to the Manitoba Court of Queen's Bench on July 27, 1995 and retired in 2011. She graduated from the University of Manitoba Law School in 1980.

<sup>16</sup> A. Catherine Everett was formerly a Manitoba Provincial Court Judge, but was later appointed to the Manitoba Court of Queen's Bench on November 23, 2006, to replace Justice Guertin-Riley who had elected to be a supernumerary judge.

<sup>17</sup> Trevor Anderson, Robson Hall faculty, 1971-2007. He is a Senior Scholar.

governance and regulatory by-laws and policy documents. I enjoyed doing that sort of thing. I got a lot of satisfaction from that sort of thing.

**RT:** Professor Braid, thanks so much for participating. I had a great time sitting down and chatting today.