

Good afternoon, Your Honour.

Good afternoon.

When you first heard ‘The Honourable Mr. Justice Michael Emery’, what did you feel?

I felt flattered. Humbled. And had to look over my shoulder to see who they are talking to.

I’ve heard that it can be a little alienating to lose your name. You are no longer Mike or Michael, you’re Mr. Justice. Have you found that?

I found that in my neighbourhood and with friends, everybody returned to the standard place of familiarity after the shock of me getting appointed wore off. However, in court circles, for staff, and of course, with the public, I’m Your Honour or Justice Emery and that just comes with the territory. You get used to it.

Were you at all anxious about the road ahead?

Well, I still am anxious about the road ahead because I want to do the best job I can. If you’re talking about when I was first appointed and when I perceived that it was going to be a great job but with enormous responsibility, yes, I started to think about the road ahead.

You’ve been sitting for approximately a year?

Yes.

What do you miss most about private practice.

As strange as this may sound, and it’s not because we’ve both done a lot of work in Hamilton and not because this interview is going to appear in the Hamilton Law Association Magazine, but I miss working at the Hamilton Law Library. I would often work in the Hamilton Law Library on the 5th Floor of the Sopinka Court House before Court in the morning for motions or trial. And I would also hang out in the Lawyer’s Lounge, checking my blackberry and returning calls after Court. There’s a certain anonymity to floating in and out of the lounge and the library, just saying hello to people, that I don’t have now because I know that I’m not likely going to be visiting the Hamilton Law Library with any great regularity.

What do you miss the least?

Well, I don’t miss docketing all the time, billing all the time, hoping that I’ll get paid as though it’s somehow a gift when instead it should be seen as payment for hard work and money well earned. And I don’t miss having to start climbing that billing mountain again every January 2nd.

Let’s discuss your life outside of the practice of law. Where were you born?

Toronto, Ontario.

Were you raised there?

No, I was only there for about three weeks. My parents were Westerners - my father from Edmonton, my mother from Regina. They met at the University of British Columbia in their undergraduate years. My

father graduated first and took my mother with him to an advertising career in Toronto where he was going into advertising for whatever reason. I say 'whatever reason' because I come from a family of lawyers and my father ultimately became a lawyer. So during their brief sojourn in advertising in Toronto, I was born. I was only in Toronto for three weeks because my parents, ages 19 and 23, didn't know what to do with this baby and so they bundled me up (I think, with the encouragement of my respective grandmothers) and took me to my great Aunt Nora's house in Elora, just outside of Guelph. I was there for a number of months before my parents returned to Western Canada. And that's the beginning.

You're obviously the firstborn.

Yes.

Do you have siblings?

I do. My parents divorced when I was about three or four and then each of them remarried and each had a separate family. I have the great benefit of having two sets of siblings.

Were both of your parents fully involved in raising you?

Yes, they were.

And given that they were University educated were they also heavily involved in your schooling both before and into University?

Each of my parents provided terrific support and encouragement throughout my growing up years as did their respective parents, being my grandparents. I credit them all. I found that whenever I felt like taking a course off or a year off, let's say, in high school (it was the 70s, after all, when everybody wanted to be in a rock band) and perhaps return to Grade 12 at a later time...

I'm having difficulty visualizing you in a rock band but that's a story for another day.

[laughs] ... one parent or another would convince me that it would be better to stay the course and do the work in front of me, get the school done and then I could consider my other options. Of course, at the next stage of my soul searching, they would convince me to go on, get the work done, complete the schooling and then consider my options at the next plateau until I finally realized that they had actually nurtured and guided me right through undergrad and into law school, at which time I was making informed decisions.

Your parents were more carrot than stick?

I would agree with that.

Were you self-motivated in school?

I would say so.

Had you ever worked at anything other than the practice of law in your youth?

Well, of course, in years between ... undergraduate years, I was employed with the BC Parks branch where I collected camper fees three nights of the week, cleaned campsites and other facilities the campers used the other two days. In the summers between law school years, I worked at a telephone company running cable and during one of those summers I also doubled up and worked at a law office. Throughout

my high school years and, in fact, undergraduate years, I also worked at sawmills from time to time. So I've done some manual labour, I've done some thinking labour. So I sort of understand that the world is made up of many parts and people that do many kinds of work.

Have you drawn from your early life experiences in practicing law?

Well, I think lawyers draw from their own lives and experiences to channel their skills, their knowledge and resources in how they can assist clients. Judges do the same thing. We draw on our backgrounds, our knowledge, our experiences to understand and put into context what we're hearing from parties and witnesses in a trial. And I would say that I draw from my past experience, whatever that experience happens to apply to.

You told me that your father became a lawyer a little later in life, was he a lawyer when you were in law school?

Oh, yes, definitely.

Did you ever work with your father?

No. He made it a rule that none of his sons would ever practice law with him. You may find that curious because you have a quizzical look on your face, Lou. The reason is, and I direct you to the picture on my wall here, showing the family lineage of Emerys. At the top left is my great-grandfather, Edward Corrigan Emery, who started out in London Ontario in the 1800s before he embarked to Edmonton, Alberta where he became one of the first lawyers in Edmonton before Alberta became a province. His son, my grandfather (to his right) was born in Edmonton and practiced in the family firm, which is now Emery Jamieson. My father (immediately below him in the bottom right hand corner) became a solicitor and he worked in the family firm after graduating from the University of Toronto. It was his employment with the family firm that is the reason why he formulated the rule that no sons should practice with fathers because his father, as I understand it, was exceedingly tough on him so that no one could ever say that the father was favouring the son. And my father said, this is too much work and he ultimately migrated out to Victoria, B.C. where he grew a firm with a number of lawyers into the very fine firm that it is today.

Did you feel pressured to pursue the 'family business'?

No.

Did you feel the weight of that history and legacy, in pursuing a career in law, an obligation or responsibility to those who came before you?

I don't think so. I think that every member of the family stands on their own and each of my forefathers had very rewarding careers in and of themselves in their time so that I didn't feel that there was a line to carry on.

You were born when your parents were relatively young, did you know your grandfathers well?

Yes, I knew both grandfathers. I knew my father's father when I was living with my father in Edmonton in my grade school years. He was very stern, but he had a great sense of humour which he trotted out only on Sunday evenings after dinner. I kid, but he was a very well respected lawyer in Edmonton. And I knew my mother's father all through my life until his death in 1983. He was a doctor from Regina.

Apart from your parents/grandparents, did you have a role model?

My Grandfather Emery's good friend from his growing up years in Edmonton, Alberta was Roland Michener, who was the Governor General around the time I was a kid. I would say that Mr. Michener was a role model.

Did you meet him?

I never met Mr. Michener until much, much later when I was graduated from law school and Mr. Michener was the Chancellor of Queen's University and he conferred my law degree on me. I had a chance to speak to him on that occasion and to remember my grandfather to him.

Were you a reader as a young man?

Yes.

What did you enjoy reading?

Mysteries and Science Fiction.

Both of those areas of interest would suggest a mind that was inclined to imagination and fantasy. This comes as a surprise to me.

Should I mention at this juncture that I'm a great fan of Classic Rock as well? [laughs]

You're nothing if not eclectic.

I'll take that as a complement.

Yes, as it was intended.

So you graduated from Queens in 1980 and you went back to British Columbia where you practiced for a few years as a civil litigator?

And I did some family law.

What prompted you to come all the way back to Ontario?

I was practicing in a small town in Northern British Columbia and it was not what I envisioned where I wanted to spend my life as a lawyer.

Dawson Creek?

Dawson Creek, B.C.

I was single at the time. I was 29 years old and if you're going to make a move, that's the time to make a move. I also missed the great friends that I had made in law school who were all leading happy, productive lives as young lawyers in Toronto and Ottawa. So I packed up my Chevy Impala and headed East and there I stayed.

So what you're saying is – had there been online dating at the time, you might have stayed in Dawson Creek?

Maybe.

So, you drive all the way out to Ontario and you ultimately end up at Simpson Wigle in 1991 – do I have that correct?

Correct. January 1, 1991.

What do you remember of those first few months of starting up a new career at Simpson Wigle?

I was filled with awe because I was joining, or rather I had been accepted, as a new member of a very established, very respected Hamilton law firm. And I remember walking the halls of Simpson Wigle thinking ‘it just doesn’t get any better than this.’ Remember, Lou, that I was hired to have an office physically in Burlington where I had been practicing for three years so I knew the lay of the land in Burlington very well. I realized that I had really lucked out because located at the firm’s Burlington office, I had all the benefits of a small office, with all of the advantages of a large firm because the firm had offices in both cities.

Did you have an early mentor at SimpsonWigle?

Well, I certainly drew on the leadership of Larry Matthews and Clark Craig who had joined the firm themselves when their small firm in Burlington merged with the larger firm two years before. I, of course, looked up very much to George Simpson. I have to say that I made friends throughout the firm at every strata very quickly so I can’t really isolate and point to one individual.

Were you managing your own files at that point or were you toiling as a junior?

I was mostly managing my own files. I brought a practice with me from the previous firm and so I was very busy right from the start. However, I also embraced the opportunity to work with others. I worked with John Wigle on Construction Lien files. Tim Bullock would refer work to me. Paul Milne would refer work to me and, of course, my colleagues in Burlington would refer work to me. I’m sure I’m forgetting many other sources of work for which I was and will always be grateful to build my practice in those days.

But I also found that because I am quite social, I would get out for lunch a lot (my wife thinks that as a lawyer that’s all I did because whenever I’d come home, she’d say ‘what did you do today?’ and all I’d say is ‘I went out for lunch with such and such’, I guess, she thought that was all I did with my day). I made many friends in the greater legal community in Burlington, Oakville and in Hamilton through going out for lunch. I was also blessed with attracting work from other law firms and other service providers like accountants.

Looking back on your legal career is there any aspect of the way in which you practiced that you look on differently now and would consider changing?

I think that with the change in perspective one is always going to say ‘I could have done something better before’. I’m not saying that I didn’t do it well before, but I have to say that now that I’m watching others practicing law, I can see how others are doing things better than I did. I can also see the other side of the coin where people aren’t doing things as well as I did when I was a lawyer. I think about things like presentation of overviews, facts and points of law in factums.

Let me stop you there. What is it you think about when you think about that?

I think that sentences should always be short and clear. I think that arguments should be precise and crisp. I think that principles of law should be summarized in a very coherent manner and that you don't need ten cases for every point.

I assume you've read Justice Laskin's article *Forget the Wind Up and Make the Pitch*?

I read it when it first came out and I've gone back to it many times over my career.

You'd agree that it's a wonderful resource for both junior and experienced counsel?

Yes.

You were in the Hamilton area for a good many years. What observations can you make about the legal culture in our community?

I think, actually, it was a good place to come to and it is a better place now. I remember lawyers who happened to be female telling me from time to time that they were treated somehow differently by the Bar back in 1991. I stopped hearing that as the new Century was ushered in and I think that's a great credit to the Bar generally. Of course, it was long overdue and there is no place for distinctions like that.

I also find, and this is important, that senior members of the Hamilton Bar really understand their mentorship role in the legal community. There were a great many members of the bar who provided me with an open door and a willing ear to listen to anything I might have to get a second opinion about. So mentorship is big and Hamilton plays a large role in mentorship in this province.

Do you find that you treat older experienced advocates differently than younger lawyers? I can recall the Toronto masters as being merciless when I was a young lawyer practicing there.

I try to treat them all the same and hope that they see me as being even handed and that I treat everyone equally. I like to think of myself as having a patient countenance. I try and give everyone the opportunity to ask their questions when they are examining or cross-examining in their own way. I try and let them argue their point as best they can in their own way, whether they are out for one year or 31 years. But I have seen wonderful young counsel who have performed as though they've been at it all their lives and I've seen very Senior counsel who might want to take another run at the question they've asked or argument they've made to make it more effective.

You have raised the attribute of patience and I want to ask you a question about that – I wanted you to rank the following qualities of a judge in order of importance: 1) intelligence; 2) strong writing skills; and 3) being a good listener.

Well, I think listening ability has to come first because all else flows from the ability to listen and to hear what is being said. Then comes intelligence, because you have to appreciate what you have listened to and what you have heard. Writing comes last because I think we're always working on that and I can't really say that you perfect that skill because it's a work in progress apparent for all to see when they read the finished product.

The work of a lifetime.

It really is the work of a lifetime.

You talked about what you enjoyed reading earlier on, do you still enjoy reading those things?

I do.

What book are you reading right now?

I'm reading *The 100 Year Old Man that Climbed out the Window and Disappeared*.

What is it about?

It's about a 100 year old man who during his 100th birthday party in a rest home in Sweden says, 'I'm going for an adventure' and he climbs out the window of his rest home (thankfully it was on the ground floor) and he embarks on an adventure of a lifetime which goes to say that it's never too late to have an adventure.

You read a lot for a living, as do I, and sometimes I find it a challenge to be able to sit and read for pleasure. Do you find that at all or is actually a welcome diversion from the sort of reading that you do during the day?

I always try to read a chapter a night before I fall asleep.

I want to ask you about an interview that I listened to the other day. In the program Tapestry on CBC, one of my former colleagues, former Chief Justice Pat LeSage, was interviewed.

Great judge.

Agreed.

Have you heard the interview?

I have not.

He said that he had no difficulty with the biases that he knew he had, but was greatly concerned about the biases he was unaware of. Would you concede that concern and what if any training have you had as a new judge or a judge that equips you to deal with that if any?

That's an interesting question. The last part of the statement you're asking me to comment on is like cancelling a negative and that's to say how do you address a bias that you're not aware of. So that's a hard question.

I think, without reference to the question particularly but just as a general comment, the Court and the National Judicial Institute provides us with courses. You've heard of New Judges School. There are actually two segments of it for each judge – a Spring session and a Winter session. You get the two components early on in your judicial career and it's made up of a great many parts that allow you to think and express yourself in a more comprehensive manner. It sensitizes you to issues both human and legal regarding matters that you're going to encounter in terms of evidence, in terms of Charter rights, in terms of basically understanding your function and how important an open mind is. So the job provides you with resources at the very beginning to be the best you can be at giving yourself a check, not only for a bias you can appreciate you have as an individual and that you want to remedy or make sure that you're aware of, but also those that people may tell you they perceive you to have.

Are you a man of religious faith?

I am.

Does it play a role in your life as a judge or do you leave it entirely out of the Courtroom?

My wife and I are both parishioners at St. Luke's Anglican Church in downtown Burlington. I don't take religion into the courtroom, in my mind, with me but I do pray that I will make just decisions and that I treat people fairly and that I be the best judge that I can be when I'm praying on Sunday morning.

Do you have children?

Lesley and I do not have children together. However, she has a son from a previous marriage who I consider to be my son. His name is Jesse.

How old is he?

He is 33 years old and he is engaged to a lovely woman named Zara. And here's the best part: they just had a baby in July of 2013. Therefore, we have a granddaughter and Lesley and I are ecstatic about her.

Congratulations.

Given that you've been elevated to the Court, have you made it clear to him that your elevation confirms what you've been saying for years – that you're all knowing and wise?

I'm sure he knows that already and I'm sure that he doesn't want to hear it again. [laughs]

How did your parents, who are still alive, receive the news of your elevation to the Bench?

Well, my mother was pretty excited although I didn't know how to tell her as she couldn't make it to the swearing in.

My father did come from Victoria. Before my appointment, I played it through many times in my mind about how I would tell him if the call ever came from the Minister. When the call came and it was time for me to call my father, I didn't know what to expect. I knew he'd say, 'Oh, that's great', etc. etc., but since he was a man of great accomplishment, I just didn't know how he would receive it. But when I telephoned him that evening, and I can still hear his voice, and I told him that I had been appointed a Judge of the (Ontario) Superior Court, he said, 'What does that mean?' And I said, 'It means I'm a Judge of the Superior Court of Ontario' to put it in terms he would understand, and he said, 'No, I know about the Judge part, but what does the Superior Court of Ontario mean?', and I said, 'Well, Dad,' and you'll remember I was a practicing lawyer in British Columbia so I know that they have the Supreme Court of British Columbia so I said, 'Dad, it means that I'm on the same level of court in Ontario as your Supreme Court of British Columbia', and he turned to his wife of 52 years over the telephone receiver and said, 'Rosemary, Michael's been appointed to the Supreme Court of Ontario almost like he was yelling at a neighbour across the fence to exclaim it to the world. I'd never seen that level of emotion in my father or heard it in his voice until that moment, and I realized right then and there, I had made my old man proud.

When you think about that moment and your life and accomplishments, do you see that as an affirmation of your parents' love and effort in your life?

Absolutely.

Your Honour, thank you very much for your time – and lunch – today.

