

## A Celebration of Professor Cuming's 50th Anniversary at the College of Law

*Justice Donald H. Layh\**

Good afternoon distinguished guests and friends and family of the honoured guest, Professor Ronald Cuming.

Well, if I know you, Ron, I imagine that for the last few weeks you have been saying to Elisabeth that you wish this darn fuss was over. I am certain you have been squirming about this weekend. It's simply not in your character to seek fanfare. Boisterousness and self-promotion are completely foreign to you. I know that you are much more comfortable in accommodating others. So, first thing, Ron, knowing that you might be more comfortable with the spotlight dimmed a bit, I will take some heat off you.

Although this weekend is certainly a celebration of your accomplishments, it is also, in some measure, about the rest of us as well. For as much as we want and need to celebrate your achievements, I think I speak for many of us when I say that we also have a need for this weekend.

That need is to express to you our deep personal and heart-felt gratitude. As many of us have matured in our careers, whether as your university colleagues, whether as members of the Bench, or lawyers, or current and former students, we are appreciative that this weekend gives us an occasion to stop, reflect, and thank you for making such a difference in our own careers and in the contributions you have made to this college and this province.

And I would not be going too far to say that gratitude is felt nationally and internationally since your work has had influence from individuals to nations. This weekend gives us the chance to thank you for the great difference you have made. This is something we want to do and you will have little choice but to hear us out.

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So I have two themes to address this afternoon: the need to celebrate and the need to express gratitude. Celebration and gratitude—that is what draws us together this November afternoon at the College of Law, a place you have made your home for over fifty years.

First, we must celebrate your fifty years of teaching law. I promise we will not toss you onto our shoulders and parade you about singing “For He’s a Jolly Good Fellow.” But fifty years of an illustrious career is worth celebrating. Ron, drawing on your insights, primarily as a teacher, I invite you to consider that recognizing and celebrating your successes gives others the chance to dare to believe that they, too, can strive to reach similar accomplishments in their own unique way. Your light cannot be put under a bushel basket, because you need to let others see that a rural Saskatchewan boy can make a mark in the world. As reticent as you might be about accepting this acclaim, your successes inspire another generation of Saskatchewan scholars. You have taught many in your lectures, but equally you teach as a model of what passion and intelligence can accomplish.

So let’s celebrate. Celebrating, by definition, requires a retrospective, a glancing back, a gathering up of achievements and milestones. In Ron’s case, this retrospective shows a clear and discernable lineage of gifted academics, who have, in turn, inspired each other in the study of law. In this lineage, I start with Professor Jacob Ziegel who taught Ron at the College of Law during Ron’s law school days from 1959 to 1962. Professor Ziegel could not have known that he ignited a spark in a twenty-year-old law student from Estevan, Saskatchewan, the son of the local sheriff, Charles Cuming. Ron was born August 19, 1940 at Inchkeith, Saskatchewan, where his parents farmed for a short time before moving to Estevan.

When I learned that Ron was in law school at the age of twenty, I dropped him an email and said, “Ron, you were a baby in law school.” He returned a brief email, saying, “And I wasn’t a big baby. I weighed 119 pounds.” Ron, you must have been all brain and ribs, nothing more.

Anyway, the spark Professor Ziegel lit flared into an open flame that has burned brightly for over five decades. Jacob Ziegel introduced Ron to the American post-war innovation of Article IX of the Uniform Commercial Code, what we would later learn as *The Personal Property Security Act*.

After law school, Ron met Elisabeth Bruckner when she was nursing his ailing mother in the Regina Grey Nuns Hospital. Elisabeth was a true Saskatchewan prairie girl. She was raised on a farm at Southey, Saskatchewan, one of two daughters. After farm chores, including milking cows by hand, Elisabeth attended a one room country school in her single hitch with Black Beauty. You tell

me if Ron chose well when, in April 1964, he married Elisabeth, a caring nurse and a resourceful farm girl? Fifty-two years of marriage proves Ron and Elisabeth's compatibility.

After a short stint in private practice in Estevan at George Hill's firm, Ron enrolled in a master's program at Columbia University in New York City. With his two new passions, the law and his young wife of one year, Ron and Elisabeth ventured to Columbia University in New York City, where he completed his master's degree in 1965-66.

Now, let's imagine this: two young Saskatchewan kids motoring across the continent to New York City in 1965. The Beatles had just been on the Ed Sullivan Show a few months previously. In 1965, the U.S. was ramping up its war in Vietnam. In April of that year, police used force to evict anti-war protesters occupying the administration building at Columbia University. Racial tensions were high and volatile in all U.S. cities during the mid-1960s.

1965 was the year of the great New York blackout when the American northeastern seaboard and central Canada were plunged into darkness. It was commonly said that nine months later, New York had a baby boom. But Elisabeth assures me that their daughter, Lynnette, was not born until 1968, followed by a son, Donovan, in 1970.

Elisabeth did, though, clearly recall the blackout. She described New York in 1965 as violent, rude, and crude. The night the power went out, she was resting after getting off a nursing shift at St. Luke's Hospital when Ron came home from classes. They lived on the ground floor of a multi-floor apartment building on 123rd Street, just two blocks from Harlem's main street on 125th. Concerned about the likelihood of vandalism—they had seen purse snatchings from their apartment window—Ron was worried that their ground floor apartment had no bars on the windows. He recalled that he had a camping hatchet in their car from camping en route to New York. Ron resourcefully dashed out to get the hatchet and returned through the foyer of the apartment, hatchet in hand. Only then did he realize what he looked like to a group of New Yorkers, mostly women, waiting in the foyer for the power to return to engage the elevator. Elisabeth explained that after calming the women, he graciously and gallantly escorted many to their suites.

Anyway, I am sure that Ron could never have anticipated that fifty years later another young scholar from Saskatchewan would take his master's degree at Columbia University, studying an esoteric provision of a then unthought-of *Personal Property Security Act* that Ron would ultimately author. Or that this young scholar, Clayton Bangsund, would be his colleague, teaching commercial law fifty years later at the College of Law.

But I am getting ahead of myself, for interspersed in this generational lineage starting with Professor Ziegel, is another scholar, Rod Wood, professor of law at the University of Alberta for many years. Rod had caught Ron Cuming's contagion while a student at the University of Saskatchewan during the early 1980s and would become the emissary of personal property security law in Alberta. It was there in the early 2000s that Professor Wood met Clayton Bangsund, a young student from my hometown, Langenburg, Saskatchewan. A bromance over personal property security law unfolded yet again.

I've known Clayton even before he wore short pants. His dad and I taught high school together. A couple of years after graduating from law school at the University of Alberta, Clayton returned home to Langenburg, bought his grandmother's house and practiced law with me for two years. I was immensely impressed when Clayton, among 273 master's students at Columbia University, earned the highest GPA in his graduating class. Clayton is now completing his doctorate of laws under Professor Wood's supervision and teaches with Ron, forming a strong commercial contingent at the College of Law. I have named Clayton the "Second Cuming," the fourth generation of personal property security academics at the College of Law.

This lineage from Ziegel to Cuming to Wood to Bangsund is but one branch of the great commercial law genealogy that Ron has created. I was speaking to Justice Georgina Jackson a couple of weeks ago. She explained to me that she can draw a direct line from each milestone of her career to an experience or influence or invitation that, in some way, Ron made available to her. So, Ron, our gratitude is generational for without you we might not have a young and enthusiastic scholar like Clayton Bangsund or an eminent Canadian jurist like Georgina Jackson.

I know many others would say that "but for" Ron Cuming their legal careers would have taken a profoundly different and undoubtedly diminished direction. Professors Tamara Buckwold, Rod Wood, and Catherine Walsh, among many others, have been the beneficiaries of Ron's magnanimous and generous leadership and inspiration.

I, too, trace much of the enjoyment and success of my legal career to Ron's infectious indoctrination. Graduating from law school, familiar with the revolutionary concepts of personal property security law, I was seen as the go-to person in my law firm, Robertson Stromberg. Ron Cuming, Rod Wood and I participated in many in-services for the new legislation being introduced in B.C. and Alberta. I taught personal property security law at the Bar course for several years. I know without these experiences I would not have had the opportunity to go to New Zealand to in-service its new PPSA. I am certain I would not have understood the historic incompatibility between the federal *Bank Act* and provincial PPSAs and would have

missed the occasion to represent two small Saskatchewan credit unions against two chartered banks at the Supreme Court of Canada. Nor would I have had the privilege to co-author with Ron the annotation of *The Enforcement of Money Judgments Act*. Nor would I have joined the College of Law as an associate professor in 2005-2006.

I recall, too, when the Minister of Justice, Donald Morgan asked if I would chair the Law Reform Commission of Saskatchewan. I accepted with two conditions, that he would consider also appointing Mike Milani and Professor Cuming. Minister Morgan replied, "Do you mean Ronald Charles Chester Cuming?" So, it came about that Ron, Mike and I joined Justice Jackson and others on the Saskatchewan Law Reform Commission, yet another intersection of those closely tied to Professor Cuming.

As students we enjoyed inventing different monikers for Professor Cuming. I don't think we knew he was "Charles Chester." But we came up with many variations. "R.C. Q.C." or "R.C. raised to the third power" or "R.C. cubed."

And you should know that Ron has powers well beyond a mere rational academic. We all think Ron would eschew notions of telepathy, astrology, witchcraft, clairvoyance and the like. He is decidedly a left-brained, logical, rational man. Don't be fooled. His influence transcends the rational, into the paranormal. Let me explain.

In March of 2005, my wife, Jan, and I were traveling in India. I was alone in New Delhi one afternoon. After leaving a restaurant, two sari-clad, bejewelled astrologists were squatting in the shade of a tree. I approached them. They asked me for my "good name." I said, "Don." They immediately said, "Mr. Don, you're a Cancer." Well, I know enough about horoscopes to know that, in fact, I am a Cancer. I asked them how they knew. Their smiles said, "Just how daft are you Westerners?" I had time that afternoon and since a fortune telling in India is the equivalent of \$1.00 I thought, "Why not?" They asked for the exact date of my birth, drew a few charts on a dirty notepad, looked at the palm of my hand and began: "You like to travel." Well, okay, I'll give that to you. They became more detailed. Among the predictions was a particularly fanciful one. They said that in September I would be re-locating to a new residence because of a new career. Well, having moved back to Langenburg after eight years of practice in Saskatoon, after establishing a sound and enjoyable legal practice over ten years and building a new home on my childhood farm overlooking the Assiniboine Valley, I smiled, but said nothing.

Later that afternoon, I met Jan and told her that we would have to move in September. She teased that any move would be with my new stupid wife. I teased back, saying if she were twenty-five years old and stupid, I would probably struggle through the move.

Well, two days later we arrived home and I returned to my office. Among my emails was one from Professor Cuming. I remember it verbatim because it startled me. It said this:

Don, the College of Law is looking for a skilled commercial law professor. Your name has come to mind. Have you ever thought of a temporary or permanent change of career? We have a position available in September.

I immediately called Ron and asked him if he had received a telephone call from a couple of swamis in India. I told Ron I was flattered by the invitation, but I was extraordinarily busy and happy in my practice. He was gracious. When I told him I was coming to Saskatoon the following week he suggested I stop at the College for coffee. Well, I need not go into detail about the Dean, Brent Cotter, being there; assurances of a student assistant to work on a book project; an ability to teach half time and try out teaching; a generous offer of Ron's materials for secured transactions; etc., etc.

Cutting to the chase, I bought a condo in Saskatoon, obediently moved (without a twenty-five-year-old old wife or, for that matter a fifty-year-old wife) and spent a year at the College of Law. Professor Cuming has wily ways. Don't underestimate his influence. He communicates with soothsayers, astrologists, and swamis. He *will* have his way.

Ron, I know there are many of us here who can relate stories of your influence in our lives. One of my greatest experiences in teaching high school for four years happened several years later when a student whom I had coached and encouraged thanked me for the confidence I had shown in his ability. The next words he said were profoundly affecting: "Where would I be if Don Layh had not come to Langenburg to teach school?" That statement jarred me. And, this afternoon, Ron, I say the same thing: "How different would my career have been if, instead of attending the University of Saskatchewan law school and meeting Ron Cuming, I had gone to the University of Manitoba, which was my original intention?"

How many legally-trained persons in Saskatchewan could say the same thing? When my judicial colleagues and friends knew I was asked to begin this commemorative weekend I received several comments. This one is from Donald Buckingham, a former student and faculty member at the College of Law:

[U]nlike many of his students, I was able to become a colleague of Ron's during my time at the College of Law. And as his colleague, it became crystal-clear to me that Ron

was a man of great competence, of great character and a great mentor to a young faculty member like me.

Devin Dubois, a relatively recent student who articulated and practiced with me in Langenburg wrote this:

Professor Cuming's academic prowess and grit is only superseded by his genuine kindness and accessibility. As a sub-par student, I failed to recognize the academic genius available to me in Professor Cuming's debtor-creditor class: a solid 'C' grade is proof of my indifference. But in a few short years of practice wherein I found myself deeply entrenched in matters of debt, credit and property, I discovered the invaluable treasure of having ready access to, perhaps, the world's foremost expert on commercial matters through a simple phone call. Despite my 'C'-grade status, Professor Cuming was indifferent to my mediocrity, and was always kind and willing to discuss our real legal quandaries, asking nothing in return...although the odd bottle of scotch might have traded hands. What amazed me most was that he displayed the same level of passion when discussing a priority scrap over some combines as he did a potential change in international banking law. In a profession and academic field rife with pompous, big-city experts who are inclined to talk down to the world of practitioners, we've harboured a genuine world-class expert in our midst with little fanfare and even less pomp. Professor Cuming should be applauded for his genuine Saskatchewan kindness and humility as much as his academic renown.

Justice Shawn Smith dropped me an email, saying:

I clearly remember in the academic year 73/74 Professor Cuming's genuine excitement in teaching us about a new system of secured personal property based loosely on the American UCC.

I was reminded of Professor Cuming's pedagogical enthusiasm when a few years ago he lectured to the en banc about *The Enforcement of Money Judgments Act*. He evidenced the same verve as he did roughly 40 years earlier at his Secured Transactions class.

Please add my name to the long list of those who admire Professor Cuming and are, in fact and in law, indebted to him.

And from Chief Justice Marty Popescul:

Professor Cuming was an excellent professor. I remember going to the hundredth anniversary of the Supreme Court of Canada. They had a number of distinguished speakers including Michael Ignatieff, Ruth Bader Ginsberg and, you guessed it, Ron Cuming.

Justice Tholl emailed me:

I was fortunate enough to have taken some commercial law classes from Professor Cuming. He was absolutely one of the best professors I ever had.

And Justice Chicoine:

I graduated from the U of S College of Law in 1979. I took a class called “Secured Transactions” from Professor Cuming—back in the day when we had to learn about “perfected security interests” since *The Personal Property Security Act* was due to come into effect on May 1, 1981. This was one area of law where we were miles ahead of our principals when we took up our articling positions.

I know that Ron has taught many students as well as their children. Off-hand I know of at least a half-dozen examples of parent-child students, including my own daughter, Avery, who practices largely in debtor-creditor and judgment enforcement law. I wonder if during this weekend someone might know of three generations that Ron may have taught, since fifty years of teaching could easily span three generations. Ron, imagine saying to a law student, “I taught your grandmother.” But having so passionately taught for fifty years you have left a legacy that has touched so many in ways that continue to unfold and be revealed. Teachers come close to touching eternity. Neither you nor we know where your influence stops.

I canvassed the judges of the Court of Queen’s Bench and the Saskatchewan Court of Appeal and found that only one judge on each court had not been instructed by Professor Cuming. Can any academic in the history of English common law claim such impact?

I did a casual CanLII website search of Ron’s name. I found over 260 Canadian citations of Ron’s works on this one website, including twelve from the Supreme Court of Canada, eighty-one from Saskatchewan’s courts and seventy-seven from Alberta’s courts. I found several judicial citations from New Zealand and countless

academic articles referencing Ron's publications. I then searched Ron's name and the phrase "with all due respect"—and we all know what that phrase means—and found none. Could it be, Ron, that with nearly 300 judicial citations, no judge has disagreed with you? Is there another academic in Canadian history who has received such judicial adulation?

Ron's résumé is twelve pages of briefly described articles, books, and papers he has authored. I am sure if you lined up his writings sentence to sentence they would encircle the globe. Did you know that as recently as this fall he published a book, *Overview of Saskatchewan Real Property Security Law*? In a word, it is brilliant. This book represents a trifecta of prominent and lasting excursions Ron has made into Saskatchewan's commercial law. He has reformed personal property security and judgment enforcement law. Now, he is poised to reform the law of real property. Watch, within a generation we will talk about "real property security interests" and cast aside the term "mortgage" as distantly as we have cast aside the term "chattel mortgage."

Ron, you may weigh a few more pounds now than you did in law school, but you are a giant in Saskatchewan law reform. You have always punched well above your weight in the legal ring.

And you should know that Ron, unlike so many academics, is otherwise useful too. Elisabeth tells me he is a darn good carpenter, has built handsome oak furniture, does all their plumbing and electrical work and is a fine mason and wine-maker. No absent-minded professor is he, relegated to changing light bulbs and taking out the trash.

Ron, do you remember when I was at the Saskatchewan Court of Appeal several years ago and called you crying (almost literally) that I had lost a case when I argued that calves born of cows were not the cows' proceeds? My friend, Chris Boychuk, was arguing a case after me and every few years he reminds me how painful it was to watch me present my case, dismissed from the Bench with the respondent being told that he need not present any argument. Now, for the record, Justice Jackson was not on that panel. Ron, you were incredulous but leapt to action. A deft call to the Department of Justice and an amendment to the definition of "proceeds" suddenly appeared in Saskatchewan's PPSA and it remains the only Canadian PPSA with such a provision.

The amendment is a great marker of Saskatchewan's influence. When I was in New Zealand helping to introduce its new personal property legislation in 2000, I noted that its Act also had this unique provision. The New Zealand lawyers thought it was tremendously humorous how the amendment had come about. Australia's new

PPSA has the same provision, a testament to my ability to lose a simple argument, Ron's ability to fix it, and the consequences seen on the far side of the globe.

Oh, did I mention Ron's generosity, his willingness to share, to enable and empower others? Ron must have missed the episode of the old television drama, *Dallas*, when the oil mogul, Jock Ewing said to his two sons, "Boys, power isn't something you share, it is something you take." Ron, to the contrary, fundamentally understands that power, whether you call it well-being or influence, is something that is in unlimited supply. Unlike Jock Ewing, Ron thinks that power and influence is something you give, freely and repeatedly, without expectation of return.

So, Ron, in concluding, I use the trite phrase that I am "honoured and privileged" to have been asked to open this weekend's celebration. Let me at least say, I am highly, highly honoured and greatly and immeasurably privileged because I know so many others here this afternoon have had as many experiences to share.

Gratitude and celebration. I once heard that feeling gratitude without expressing it is like wrapping a present without giving it away. So, Ron, this weekend is our emphatic expression of gratitude to you.

And, as we know, we celebrate too little in our busy lives, whether successes in long careers, long marriages, or outstanding accomplishments, all of which apply to you. But we should celebrate those things that we want to see more of. That is what this weekend is about.

And, I remind all here this afternoon that this is *not* a retirement party; it's merely a celebration of Ron's first fifty years at the College. We all hope you go a long way into your second fifty years.

Ron, you will know—being a young man from the coalfields of Estevan—what happens when you put coal under pressure. It turns into a diamond. You have become a gem to this province and we take great pride in claiming you as ours.

Ron, thank you for fifty years of teaching at the College—a gift to each of us, whether your students, the College, the University, the courts, the province, or, indeed, the country. May your career continue and your health endure for many more years.