

**NATIONAL ACADEMY OF ARBITRATORS
INTERVIEW OF PAST PRESIDENT, MICHEL G. PICHER
INTERVIEWER – JANE DEVLIN
OCTOBER 5, 2016**

JANE:

Today is October 5th, 2016, and it's my distinct privilege to be interviewing Michel Picher, who served as president of the National Academy from 2008 to 2009. I note that Michel was only the third Canadian to serve in this capacity.

Before we discuss your involvement in the Academy, I'd like to begin at the beginning. Michel, can you tell me where you were born.

MICHEL:

I was born in Ottawa, on the last day of the year, December 31st, 1944. Interestingly, approximately eleven years ago now, in 2005, after multiple twists and turns, Pam, my wife, and I returned once again to live in the Ottawa area. We live in a place called Cantley, Quebec, which is just outside of Ottawa in the Gatineau Hills, on the banks of the Gatineau River. It is a beautiful setting and we are very fortunate to be able to enjoy each season to its fullest.

JANE:

Can you tell me a little bit about your parents and whether you have any siblings?

MICHEL:

I'd be happy to do that. I have one brother, Jean-Pierre (Jeep), an older brother, who lives in the same area in the Gatineau Hills, albeit across the river. Jeep was a great athlete, a competitive skier. He became a very successful ski racing coach, and in so doing met his wife, Anne Reid, who, at the time, was training on the New Zealand Olympic ski team.

My dad was originally from Montreal and the oldest of nine children. He moved to Ottawa to branch out and to start a cheese business. He then married my mom, who was a champion speed skater from Ottawa, and, together, they bought and operated a general grocery store in the Vanier neighbourhood of Ottawa. It was the sort of all purpose grocery store that existed back in the 1940s and 1950s, which included a meat market, a fruit stand, canned goods, dairy products and baked goods.

JANE:

Did you work in the grocery store when you were growing up?

MICHEL:

I did. Just about every Saturday of my young life, I was required to go down to the store and pack groceries, stock shelves, help out in the butcher shop, help deliver groceries and do whatever else was needed to keep the business moving. To the delight of our customers, we took orders over the phone, filled them in boxes and then delivered them to people's homes, the old-fashioned way. I enjoyed it, although I also resented it to some degree because it meant that I couldn't go out and play hockey and

do the things the other kids were doing on their Saturdays. In retrospect, though, this regimen is what probably instilled in me a good work ethic.

JANE:

You are now, of course, married to Pam Picher, who is also a highly respected arbitrator. Can you tell me about your children?

MICHEL:

We have four children. Our three sons - Jean-Michel (age 43), Grégoire (age 41) and Andre (age 38) – all live in Toronto. Our youngest, our daughter, Marielle (age 32), lives down the Gatineau River from us in Cantley and so, happily, is quite close.

Our oldest son, Jean-Michel, has been deeply involved in USA politics since graduating from Colby College in Waterville, Maine, where Pam and I met in the mid 1960s. He's trained as a lawyer and has a business degree, but he's always been drawn to working on Democratic presidential election campaigns, such as those of John Kerry, Barack Obama, twice, and most recently that of Bernie Sanders. Between USA elections, he has also worked with the Liberals in Canada. Jean-Michel has an artistic eye and a determined attitude. With those attributes, he is particularly good at choosing event locations and setting them up in attractive and efficient ways that best enhance the goals of the candidate and work well for both the press and the public. They seem to like him for that. Recently, he's been called back to set up one of Obama's last campaign events, one for Hillary Clinton.

JANE:

Is Jean-Michel married?

MICHEL:

Jean-Michel is married to Valerie Poulin who is French Canadian and grew up in Ottawa. She is currently the Associate Vice-President for Community Relations at the TD Bank. They have a five-year-old daughter, Claire, who is a real sweetie. Both Jean-Michel and Val are bilingual and speak French to her at home. So, Claire is growing up able to speak both English and French, which will be a life-long asset for her. She and her cousin, Beau, are in a French immersion school in their neighbourhood in Toronto.

JANE:

You have two other sons in Toronto.

MICHEL:

By order of age, Grégoire, who is 41, is the next guy. He is our family artist and, actually, a very, very talented guy. From the age of three, it was clear that some aspect of art would be the path he would follow. He has blossomed in the animation film industry and played a significant role, for example, in creating the popular kids' television series, Paw Patrol. He currently works as a computer graphics supervisor (C.G. Sup) and is heading up two other shows that are about to hit the kids' television market as well. He has a particular talent for writing computer script that creates

tremendous efficiencies in the production pipeline, which saves the clients both production time and money. He has a phenomenal sense of humour and uses that, along with his exacting nature, to bring the best out of those he manages as well as to communicate effectively with the clients.

JANE:

Is he married, or does he have a partner, and do they have children?

MICHEL:

Grégoire has a son, Lucas, who is now 10. While he lives in Pittsburgh with his mother, Lucas spends lots of time in Toronto with Grégoire and his stepmother, Kristen Hudecki (who also works in animation), along with the rest of our family. The highway between Toronto and Pittsburgh is well travelled and so the arrangement, while difficult at first, has proved to be fine. Lucas is thriving as an artist, writer and accomplished baseball player.

JANE:

What about your third son?

MICHEL:

Of course, there is Andre, who's the third in line from the standpoint of age. Andre lives in Toronto as well. About six years ago he and his wife, M.E. Leroy, developed a business called Wholeplay. They started with one location in their

neighbourhood and now have approximately twelve locations across the Greater Toronto Area. Essentially, they provide classes focused on moms/dads and their infants from 0 to 36 months. For half of the class they sing songs and play games appropriate for the age of the class and for the second half, M.E. leads a discussion among the parents on a selected topic that is particularly pertinent to the age of the infants in that class, such as sleeping problems, attachment issues, nursing, discipline matters and the numerous other situations that arise with infants. The parents seem to thrive on M.E.'s professionalism and the openness and mutually supportive nature of the discussions. While M.E. runs the classes themselves, Andre tends to all of the business angles of Wholeplay.

JANE:

Do they have children?

MICHEL:

They do. They have a little boy named Beausoleil, age 5, who we call Beau, and a younger little girl by the name of Cooper, who is almost three years old.

JANE:

Is Cooper named after Pamela Cooper Picher?

MICHEL:

Yes, after Pam's maiden name. You can imagine how flattered Pam was and is. They're both great kids. Beau is turning into an avid golfer, which, of course, his father is as well. When Beau was five days old, Andre packed him in a sack on his chest as he played five holes of golf. Beau started passionately hitting golf balls at 14 months. By the time he was two, his swing was better than either Pam's or mine.

JANE:

Very nice. What about your daughter, Marielle?

MICHEL:

Marielle, as I said, is currently living not far from us, up on the Gatineau River. Marielle and her husband, Kamil Dlugosz, who works as a physiotherapist, have recently had a little boy named Leo, who is just about three months old.

JANE:

You may recall that Marielle graduated just in front of my son, Alexander, at Acadia University. Although Marielle was quite well dressed, I'm embarrassed to say that my son was in shorts and running shoes.

MICHEL:

That was a fun time for them. Marielle has done well since leaving Acadia. She is bilingual and has an interesting job with the City of Ottawa writing speeches for the

Mayor, among others, which she truly loves. At the moment, she's on maternity leave, of course, and is delighted to be able to spend a year full-time with their new baby.

JANE:

Perhaps we can talk a little bit about your education. Where did you first go to school?

MICHEL:

I went to elementary school in Sandy Hill, in Ottawa, where I grew up. I went to a school called École Garneau. Sandy Hill is in one of the older neighbourhoods of Ottawa. It lies between the Rideau Canal and the Rideau River and is bound by Rideau Street and Mann Avenue. Overall, it's quite a good neighbourhood. It has a big park, which was lots of fun for us. We had numerous embassies in Sandy Hill while, at the same time, we had Russian, French, English and Jewish middle class families. I realized what an interesting neighbourhood it was when I went to Harvard and took an urban planning course. There was one class on the ideal community in which they described that it should have multiple cultural and linguistic groups, a green space and this and that and the other thing. I sort of scratched my head and said, "My Glory, that's where I come from!" That's exactly what Sandy Hill certainly is and was - a good place to grow up.

JANE:

Did you play much hockey?

MICHEL:

Well, if you grow up in Ottawa, come November and December everything freezes. If you go outside to play as a kid, the most obvious place to go is the local rink. My house in Sandy Hill was about 345 feet from an outdoor hockey rink. We all spent our days out there playing pickup hockey. We also had little organized leagues. So, playing hockey was as natural for me as playing baseball would be to some kid from Alabama, I guess. It's just what you did. I enjoyed it.

JANE:

Was the school you went to a French or an English school? What was the language in which you were taught?

MICHEL:

My elementary school was École Garneau, which was French. So, my first eight years of school were in French.

JANE:

Did you speak French at home?

MICHEL:

Yes, although I've got to say that my brother and I spoke probably just as much English, if not more, because that was the common language on the street. My dad

used to say that when I was four years old, I didn't speak a word of English, I spoke only French, but that when I went out to play for one day, I came home speaking English.

JANE:

Did you continue to live and go to school in Sandy Hill through secondary school?

MICHEL:

There was a bilingual secondary school in Sandy Hill that was attached to the University of Ottawa and was known as the University of Ottawa High School. It was an all boys, private catholic school. We had to wear ties and do the things that private schools tend to require of you, which was fun. I was there from grades 9 through 12.

In grade 12 something special happened. I was on a 4-person team representing the U of O High School and we went on a CTV quiz show that included other high schools in Ottawa and the Ottawa Valley. The topic throughout was general knowledge and week after week we stayed in the challenge. We, in fact, never lost. We then attended a dinner in our honour at the Chateau Laurier where we were awarded a big trophy in the shape of a globe.

For grade 13, I moved to a wonderful high school, this one in English, called Lisgar Collegiate, which is one of the older high schools in Ottawa. I enjoyed it

immensely. I played mediocre football, on what had to be the weakest football team in Ottawa. I don't think we ever won a game.

JANE:

Did you play hockey in high school?

MICHEL:

I did. I played for the high school team at Lisgar. As fate would have it, that kind of led to my next step in life because the hockey coach from Colby College, a very nice man named Charlie Holt, came to Ottawa looking for people who might be interested in going to Colby who could play hockey. Colby, which is in Waterville, Maine, is a fairly elite and expensive college. Its tuition, at that time, was probably ten times what it would have cost to go to university in Canada. My parents were certainly not wealthy and, but for obtaining a scholarship, I would not have been able to go.

When the Colby hockey coach recruited me, he explained right away that to get a scholarship at Colby, being an athlete was neither here nor there. He emphasized that Colby would give scholarship money based only on need and academic quality. I had the need part in spades. As for the academic qualification, I didn't know much about the system, but I took the general SATs and scored well enough. I think what cinched it, though, was taking the French achievement test. The top score is 800 and I scored 800. It sure helped to grow up speaking and going to school in French, which would not have been the case for most of the kids taking that test.

JANE:

That's impressive.

MICHEL:

Colby was impressed. I didn't realize at the time how unique that might be. But happily, I was given close to a full scholarship to Colby for four years. It came with the requirement to do some campus jobs. Being a hockey player, I was fortunate enough to be assigned the job of patrolling the rink during public skating. Lots of other scholarship kids had to do dishes and other menial tasks, so I lucked out.

JANE:

When you were at Colby did you have any idea what you wanted to do with your life?

MICHEL:

Not a clue. Not a blessed clue. I was inclined towards the arts and humanities; I majored in English. I knew I wasn't going to be a mathematician or a scientist, but that was about the limit of my vision, although I had always had a bit of a lingering thought that I might like law.

I met Pam at Colby, of course.

JANE:

Can you tell me how the two of you met?

MICHEL:

Yes, it's a day I remember very vividly. Well, I'm really talking about the day I first laid eyes on her. Being from Ottawa, I'd never seen the ocean. During the first week or so at Colby, a trip was organized for the freshmen to go down to the Maine coast, to a lovely town called Camden. So, I signed up for that. Surely, and as expected, I saw the ocean that day, but I also laid eyes on Pam. There she was, this blonde girl from Pennsylvania with a green sweatshirt – I still remember it. We didn't get together or even talk that day, but I registered who she was and we both went on about our business.

What eventually happened is that we both seemed to have a natural tendency to become adjudicators. At Colby, the men's side of the college and the women's side each had a student court, a disciplinary court, referred to, respectively, as the men's judicial board and the women's judicial board. I was elected in my senior year as the chair of the men's judicial board and Pam was elected to be the chair of the women's judicial board.

JANE:

Did these judicial boards deal with student infractions?

MICHEL:

That's what they did, exactly. They were there to keep under control some kid who punched out a window when he was drunk, or someone who treated someone else inappropriately. The women had curfews and so infractions there could also target someone who returned late to their dorm, although now that might seem far-fetched. Typically, the judicial board had six or seven members and we, each of us for our separate boards, would chair the hearings and then lead the board's deliberation over assigning an appropriate punishment for that person's transgressions. In this manner, both of us found ourselves adjudicating at an early stage in our lives.

JANE:

A precursor of what was to come.

MICHEL:

Yes, and it was in those roles that we finally got together. We actually ended up leading a bit of a campus movement to liberalize the social rules at the college. At that time, women could not visit men in their rooms and vice versa. So, we started what became a very strong movement to loosen up the social rules. Although nothing changed in our senior year, notwithstanding all of our efforts, the following year, after we were gone, everything was reordered and visiting back and forth between men's and women's residences became the norm.

JANE:

Apart from meeting Pam, what stands out about your time at Colby?

MICHEL:

It was a dream. It was just simply heavenly. It's hard to describe. It was almost a Hollywood college campus. Its buildings were constructed of red brick and trimmed with white wood. It had a commanding library and a stunning white New England chapel. The campus was flooded with gorgeous greenery and all of it was reflected in a magnificent pond that was itself surrounded by weeping willows. Colby was a well-equipped college in every respect. The sports facilities and the academic opportunities were fantastic. So, I found myself dropped into heaven. It was really quite wonderful.

JANE:

Did you play much hockey at Colby?

MICHEL:

I did. I wasn't a particularly brilliant hockey player, but I played all four years for the College team and eventually gained a reasonable ability to contribute. We ultimately won the division championship in my junior year, beating a school called Merrimack College. I had the privilege of scoring two goals in that game. I wasn't a great scorer by any means, but I certainly remember that game fondly.

JANE:

That's a nice memory to have.

MICHEL:

Yes, I think of it often.

JANE:

When did you and Pam marry?

MICHEL:

We got married just after we graduated, although we had made no plans to that effect while we were at Colby. After graduating, Pam went home to Pittsburgh and I came home to Ottawa. I found myself staring at the walls and realizing that, my goodness, I'd better make some decisions as to what my life is going to involve.

Pam, independently, had applied to and been accepted to the U.S. Peace Corps. She was assigned to Liberia. We were now in the summer after our graduation and life was moving on. When I called her, I learned she was intending to soon head off to Liberia. I thought, well, wait a minute here ... I had thought about joining something like CUSO (Canadian University Service Overseas), which is the Canadian peace corps, and I made a few inquiries at CUSO's head office in Ottawa. They said, sure, they would be willing to have an American as a member of CUSO if she were married to a Canadian CUSO member. So, long story short, my way of proposing to Pam was to say, "Well, why not go into CUSO instead of the U.S. Peace Corps?"

Pam accepted. We were married on October 14, 1967 at a beautiful little white church in New Canaan, Connecticut where Pam had grown up. Not long after that, we shipped out to Ghana, in West Africa, where we taught for two years in a wonderful secondary school in a place called Tarkwa, in the western region. Pam taught English and I taught French.

You know, people tend to think of the CUSO or Peace Corps experience as kind of a hardship. Not so for us. We were on a very beautiful school campus with our own concrete bungalow. We had electricity and all the comforts, including a cold outdoor shower. If you took a shower in the sunlight, you'd have the joy of a few moments of hot water flowing from the warmed-up pipes. We had the fun of raising chickens to supply us with eggs. We were also blessed with Kwaku, our house person who took care of us for a minimal salary. He would bring us tea as a morning wakeup and cook and clean for us. So, we lived very comfortably. Kwaku had worked for the CUSO volunteers who were there before us and he wanted to just continue on.

The routine was fun too. It was a tropical routine because of the heat. We would teach, essentially, from 7:00 in the morning until about 1:00, when the workday was over. So, every afternoon we were free to take on whatever adventures we wished. We had a little motorcycle that we'd get around on, a Honda 125, and typically we'd explore nearby villages or go to one of the local mines, which had a swimming pool. Sometimes we'd go down to the ocean, where there was a wonderful beach nearby. It was two years of fun and adventure. One summer we put our motorcycle on a freighter

to Rotterdam and toured through Europe and North Africa. We then caught a freighter back to the Ivory Coast and toured overland through the bush to finally arrive back home in Ghana.

JANE:

That's interesting because I certainly wouldn't have thought of CUSO in those terms. I would have thought you would be describing something that was much more difficult.

MICHEL:

It wasn't gruelling and suffering. It was a glorious time. We didn't plan it that way, but that's how it played out.

JANE:

When you came back in 1969, what did you do?

MICHEL:

I had thought about what I wanted to do while we were in Ghana and I decided that law was the area I wanted to pursue. So, while in Ghana, I applied to Osgoode Hall Law School and Queen's Law School and got accepted to both. Pam and I had an appointment to visit Osgoode as soon as we returned to Canada. We were in culture shock, though, from being in Africa, and when we encountered 16 lanes of traffic on the 401 around Toronto, we couldn't find the exit to get to our Osgoode appointment on

time. We made an on the fly decision that Toronto was not for us and just travelled on to Queens Law School down the highway in Kingston, which was a lot quieter place. So, that is how we chose Queen's, which I think, in retrospect, was a good call. We then settled in Kingston for what was essentially the next four years.

When I started first year law, Pam was working in the library at Queen's to help put me through. She didn't really know what she wanted to do at that point. Every night, though, we would talk about the cases I was studying and she got so fascinated by it all that I said, "Well, why don't you apply?". So, she applied and came along one year behind me as a law student.

JANE:

When you were there, did you take labour and arbitration courses?

MICHEL:

Yes, it wasn't something that I had planned to do, but at that time Queen's was the absolutely preeminent labour law school in Canada. Some of the leading professors in labour law in the country were teaching at Queens, like Don Carter, Innis Christie, Bernie Adell and Gord Simmons. So just by pure happenstance, I found myself surrounded by those magnificent professors and did summer research work for them. I took virtually every labour law course in the school, which I thoroughly enjoyed.

Pam did the same and, as a result, we were each given a part-time job writing scope notes for the LAC (Labour Arbitration Cases) Reports. If you look at an LAC report of an arbitration case, there's a paragraph at the beginning that highlights what the case is about. We authored those notes by reading the full award and giving it a one paragraph summary or scope note.

JANE:

Where did you go after graduating from Queen's?

MICHEL:

I articulated because Pam was a year behind me. I articulated for a general practice two-person law firm, housed in a beautiful stone building in a tiny town called Gananoque, near Kingston, on the St. Lawrence River. It was a wonderful year and a wonderful experience. I did just about everything you could do, such as writing wills, dealing with minor criminal cases as well as buying and selling property. It was just a great way to articulate. I enjoyed every bit of it.

In fact, Pam and I got lucky enough to live on an island in the St. Lawrence River just off Gananoque, which was owned by a widowed lady whose husband had been a Queen's professor. She needed a couple to take care of her cottage. So, for a good part of the time while I was articling, I would go to work in a boat with my jacket and tie on. We had that cottage for three summers, which was a lot of fun.

JANE:

So, after you articulated, were you called to Bar?

MICHEL:

After my articles, I decided that I didn't really want to practice law and that I would like to have the option of teaching law. So, at the end of my articles, but before taking the Bar admission course, I decided to jump at the opportunity of going to Harvard to do the Masters programme.

JANE:

Did Pam go to Harvard as well?

MICHEL:

Not initially. Pam was pregnant with Jean-Michel in her third year of law school and gave birth just five days before we headed down to Cambridge so I could start my Masters at Harvard in September of 1973. By October, she was ready to get back into things and got a job in a prominent law firm in Boston. After about two months into her work, the Dean at Harvard said, "Well, why isn't your wife here as well?" She immediately switched over and started into the Masters programme.

That decision led us to the most obvious path, which was to both go into law teaching.

JANE:

What did you do your LLM in? What was the focus of your studies?

MICHEL:

My LLM interest was not labour related. At that point, I was more interested in environmental law so my Masters paper was on the NEPA, the *National Environmental Policy Act*, which concerned environmental issues and had nothing to do with labour.

JANE:

Did you ever think about staying and working the U.S.?

MICHEL:

No, it was something that simply never really appealed to either of us. I had gone to Colby and lived four years in the U.S. and then, of course, spent an extra year in the U.S. at Harvard. I'm not saying I wouldn't have stayed if a good offer had been made, but I really liked the idea of settling back home in Ottawa or in Canada. So, that was the plan. Pam was more catholic than the Pope. She really loved Canada and, although she had grown up in the States, she wanted to live in Canada.

JANE:

So, you returned to Canada and what did you do at that point?

MICHEL:

Well, from Harvard we returned to teach law school. The Dean from the University of Ottawa Law School offered us both teaching jobs, which really appealed to me because the Law School had both a common-law section and a Quebec civil law section that would be taught in French. The further appeal was that we both really wanted to be in Ottawa. I taught torts and administrative law while Pam taught wills and estates. She also had our second son, Grégoire, in the process. Pam wasn't that happy with the teaching and so after a year of teaching and after giving birth to Grégoire, she transferred to a job at the Law Reform Commission of Canada, which she greatly enjoyed.

I stayed on teaching and somewhere in my second year of teaching at the University of Ottawa, we received a call from Don Carter. Don Carter was our professor at Queen's, who had given us the job of writing scope notes for the LACs. Unbeknownst to us at that point, he had been chosen to become the chair of the Ontario Labour Relations Board. Don asked a little bit about what we were up to and what we were doing, and ultimately asked, "Well, would both of you be interested in the possibility of becoming vice-chairs of the Ontario Labour Relations Board?"

Now, at that point I think I was earning perhaps \$14,000 and the Labour Board would give us \$40,000. That wasn't the deciding factor, by the way, but it didn't take us long to tell Don that we would be very excited about coming to Toronto and being introduced to the OLRB. Once Don made the appointments they had to be approved by the Cabinet, and an objection was raised due to our marital status. The Minister of

Labour at the time was Betty Stephenson and she shot the objection down with such vigour that that was the end of that and our appointments were immediately approved by Cabinet.

JANE:

That's interesting because I think that when it comes to either our personal or professional lives, there are those door opening moments that you can look back on and see what a difference they made to the way your life progressed.

MICHEL:

Yes, absolutely and being invited by Don to join the OLRB was the critical door opening moment for both of us, along with Betty Stephenson's strong defense of our respective abilities to remain neutral while also being married.

When I was articling, I saw myself maybe doing real estate law or trial work, but then all of a sudden this happened. We were extremely comfortable with the OLRB development because of our time at Queen's and because of our experience doing the L.A.C. scope notes for arbitration decisions. As well, we'd both taken most all of the labour courses at Queen's and knew the basic Labour Board jurisprudence. I cannot overstate, though, the extent of our gratitude and good fortune. We were, and still are, empathically grateful to Don Carter, who for some reason trusted us enough to appoint us to these two important positions of vice-chairs of the OLRB when, at that point, we were virtually unknown to the practising labour bar and labour relations community. So

off we went to Toronto in 1976 to join the Labour Relations Board and to start what would become immensely satisfying careers in labour relations.

Interestingly, once Pam and I were installed as vice-chairs, the first time we each had a case dealing with the same employer, our decisions were taken on judicial review on the ground of conflict of interest due to our marital status. The Court heard the plaintiff's objection but didn't even call on the Board to reply before throwing out the appeal. With that, we've never heard another word about both of us doing the same type of work for the same employers and unions.

JANE:

For the benefit of Americans who may read this interview, can you talk a little about the kinds of issues the Labour Board was dealing with?

MICHEL:

Sure. The Labour Board, which of course we call the OLRB, has exactly a mirror jurisdiction of the NLRB. It is the organism that certifies unions, that conducts votes for certification, that oversees collective bargaining in the sense of dealing with unfair labour practice complaints and some forms of arbitration, particularly in the construction industry. So, it's a broad-shouldered tribunal. In fact, I've heard people say that the Ontario Labour Relations Board was considered to be the most prestigious administrative tribunal in the country. It had well respected jurisprudence, its own legal counsel and approximately ten full-time vice-chairs. It was, at that time, a very vital,

interesting, exacting and exciting place to be. Through the steady guidance of Don Carter as the OLRB's chair, we learned how to both balance the interests of the competing parties and to write cogent decisions.

JANE:

How long did you spend at the Board?

MICHEL:

My time at the Board totalled about seven years. I got there in 1976 and left to go into the world of labour arbitration in 1982 or 1983. I should add that there was no great risk in moving into arbitration work because one of the perks at the Labour Board was that we were allowed to do a limited number of arbitrations, perhaps one a month, while we were vice-chairs at the Labour Board. Before leaving the Board, therefore, I was able to get my arbitration feet wet and to get to know the arbitration community. I was, therefore, fortunate to know the day I left the Labour Board that I would be as busy as I needed to be in the arbitration world.

JANE:

I know that during your time as an arbitrator, in addition to doing *ad hoc* work, you've been on many permanent arbitration panels. I'm not going to ask you to name them all, but there is one that I would like you to talk about, and that's your appointment as permanent chief arbitrator for the Canadian Railway Office of Arbitration, which is known as CROA. I understand that you followed Ted Weatherill, who was also a

Canadian president of the NAA, in that role. Can you tell me a bit about that work and how long you served as chief arbitrator?

MICHEL:

I'd be happy to. It's astounding to me but when I recently left CROA, they gave me a little plaque which says that I was the chief arbitrator there for 28 years. While I find that span of almost three decades a little mind boggling, the Canadian Railway Office of Arbitration was a perfect hand-in-glove fit for me. One reason is that it operated in both languages. Although most cases were heard in English, there were a fair number of cases that took place in French. Utilizing French in my career was something that I found particularly rewarding.

Another aspect of the Canadian Railway Office of Arbitration system that was truly wonderful was that it replicated what arbitration essentially was in the forties and fifties. The parties would come to the hearing prepared with written briefs and supporting documentation. They would put their hard work in at the front end and did not simply show up at the hearing wondering where they were going to go with their cases that day. At the hearing they would essentially read their briefs and, as plodding as that may sound, it was extremely efficient. A typical hearing, which could be a discharge, for example, would probably take three hours rather than three days. The facts and exhibits were all there between the covers of the parties' briefs. I would hear five or six cases in a day. They wanted, and I was happy to provide, expedited, reasonably short decisions. So, typically, a discharge case would be heard in two to

three hours, and, within two or three days, I would provide a three or four-page decision and that would be the end of that case.

So, work at CROA was a far cry from the complicated, plodding, sometimes exasperating, experience that, in my opinion, too often arises in the general, ad hoc stream of arbitration. At CROA, they jealously preserved the efficiencies that generally surrounded arbitration in the fifties.

JANE:

How often would you hear cases for CROA?

MICHEL:

It was a monthly operation. On the second Tuesday of every month I would go to Montreal, although for some weeks the hearings would take place in Calgary or Edmonton. I would sit for three consecutive days and then finalize the decision writing on the Friday. In the busiest week I ever had, I heard 27 grievances. Typically, though, there would be 12 to 15 grievances to hear in a week. In any case, in the normal course, they were all decided, written and issued by the Friday afternoon of the same week. That system worked for me because I dictated my awards the same day I heard the cases. Before leaving the office in the evening, I would dictate a first pass on the decision in each one of the cases I had heard that day while they were still fresh. The next evening, I would polish up the previous day's drafts before dictating a first draft for each of the current day's cases.

JANE:

Would all of your decisions be fairly short?

MICHEL:

Yes, they had to be. Normally they would be between two to six pages. Rarely, but occasionally, I would give out a file if I thought it needed more in depth treatment. For example, I had one of the first cases on drug testing in Canada. So rather than issue a one-pager on that, I took the case home and wrote something a little more extensive over the next week or two.

JANE:

It still sounds like a bit of a daunting task to write that many, even short, decisions in a relatively brief period of time.

MICHEL:

The CROA weeks were somewhat exhausting but I have to say that the thrill of the work and the fine people I dealt with more than made up for that.

JANE:

Were the CROA cases precedent setting?

MICHEL:

Yes, certainly. The parties would rely on them in subsequent CROA cases. Each case has its own number and there's a very tight system of jurisprudence that they cite, all built around previous railway decisions. This is important because the railways are a very specialized industry. Interestingly, though, some of the CROA decisions also set precedent beyond the railways. For example, the drug testing cases that arose before me in the safety sensitive railway industry have become precedent setting for other safety sensitive industries in Canada.

JANE:

You mentioned a moment ago a plaque that you were given by CROA. Can you tell me about that?

MICHEL:

It was quite wonderful. After I left CROA, I was honoured with a dinner in Montreal which was attended by the various members of CROA. On the management side, that included the three major railways, CN, CP and VIA Rail. Then there are several unions, such as the TCRC representing the locomotive engineers and the conductors and the Brotherhood of Maintenance of Way representing the employees who install and repair the track. They were all at the lovely dinner in Montreal to which they had invited Pam and me to thank me for 28 years of service. They gave me a treasured plaque commending my service, which I proudly display in my office.

JANE:

On this evening, I understand that you were surprised with another honour.

MICHEL:

Yes, absolutely. The Canadian Railway Office of Arbitration has a permanent hearing room. For years, CROA's office was in the Windsor Station but it has now moved to Place Ville Marie. To my utter amazement and shock, they advised me that night that they had named the hearing room where the arbitrations of the Canadian Railway Office of Arbitration are now conducted in the Place Ville Marie, "The Michel Picher Hearing Room".

JANE:

That's a great honour.

MICHEL:

I was enormously moved, I've got to say. There's a plaque on the hearing room wall with my name on it. Arbitrators generally work in a pretty lonely, solitary way and recognition isn't something one gets very often, other than the compliment of being asked to do another case, which I think is the ultimate compliment. So, yes, I am, and always will be, touched and deeply fulfilled by their tribute.

As I look back on my years of arbitration, the railways really were the high point of my career for a number of reasons, not the least of which is that I really believe in their expedited form of hearing. I just love CROA's system and believe in the form of

justice it renders. The match between their expedited process and my natural style was effective because I believe in the importance of resolving labour disputes quickly and I like to write concisely. So, when I know that the parties are happy with a five or six-page decision that hits the right points, which is the case in the railways, then I'm thrilled to do it that way.

JANE:

Before turning to the National Academy, I want to ask you about an organization in which you served as vice-president and director, and that's the Ontario Labour Management Arbitrators' Association. Can you tell me a little about that organization and about your involvement?

MICHEL:

I'd be happy to. In the early 1980s, after I had become a full-time arbitrator, I got a call from the Assistant Deputy Minister of Labour in Ontario who advised that the Ministry was thinking about passing a regulation to control arbitrators' fees and he wanted to talk about it with me and a few of my fellow arbitrators. Needless to say, I had grave concerns. I believed, and still do, that arbitration is at its healthiest as a free market endeavour where arbitrators can provide their services for rates that are deemed to be appropriate by the parties as opposed to as a government regulated process.

A number of us got the same message from the Ministry – notably Ken Swan, Kevin Burkett and Maureen Saltman – and we were all equally alarmed. We got

together and decided that we needed to do something significant to respond to the Ministry's concerns. We did that largely through the efforts of Ken, who emerged as the first president of the Ontario Labour Management Arbitrators' Association (OLMAA). We persuaded the Ministry that with the creation of OLMAA, we would be instituting a kind of better business bureau style of service where the Arbitrators' Association would monitor and deal with any complaints about, for example, excessive billing or overly late decisions.

That is how OLMAA got underway and it has continued to informally regulate Ontario arbitrators for all these years. I'm proud to say that through the creation of OLMAA, the problem of excessive billing and unduly late decision making came under control.

JANE:

I also understand that you were a member of La Conférence des Arbitres du Québec. Can you tell me about that organization?

MICHEL:

La Conférence is really the mirror image of the Ontario Labour Management Arbitrators' Association. It's the Quebec association of labour arbitrators which, again, is an independent organism, not in any way beholden to or controlled by government. It has an executive; it has an annual meeting and essentially does those things that you would expect an arbitrators' association to do. I have had the privilege of being a

member of la Conférence and attending a few of their meetings. My participation, however, was not on the same level as it has been in OLMAA largely because my work is still, for the main part, on the Ontario/Canada side of things. I certainly enjoyed my association with the Quebec arbitrators, though, because they do have a different perspective on numerous issues.

JANE:

I'd like to turn now to the National Academy of Arbitrators. When did you first learn about the Academy and what prompted you to join?

MICHEL:

The Academy was first explained to me by Ted Weatherill, who, along with Howard Brown, was among the earliest Canadian members of the National Academy of Arbitrators. With Ted's encouragement, both Pam and I applied and were accepted into membership.

I've always been enthusiastic about the Academy. It has been fun to travel to meetings in all sorts of US and Canadian cities as well as to get to know the American arbitrators who have problems and challenges very similar to our own but with their own distinct twists.

JANE:

You were also instrumental in encouraging many Canadians, of which I am one, to join the Academy through what became known as the veteran's process. Can you tell me how you came up with that idea and what was involved in obtaining approval for it?

MICHEL:

When Pam and I joined the Academy there were no more than six Canadian members. The Academy admission process was enormously burdensome at that time. You had to fill out endless forms recording all your arbitration appointments over years and years. I don't want to exaggerate, but it was like a four or five-day process to get your application done. For Canadians who might wonder why they would want to join an American arbitrators' association, the complicated application process was a big disincentive. So, when I became a member of the executive of the Academy and really wanted to see more Canadians join the Academy, I made it clear in the meetings that we needed to clean up this ridiculous application process. I emphasized repeatedly that if we wanted to get Canadians to join, the application process had to become more efficient and less burdensome.

Through a vote of the Board of Governors, we ended up abbreviating the application form to allow applicants, particularly Canadian applicants, to submit a one or two-page form setting out their permanent panels and a listing of their major decisions. It became a very workable and manageable application process which proved to be quite successful since we now have upwards of 60 Canadian members.

JANE:

Michel, what committee work did you find most rewarding?

MICHEL:

That's interesting. About 10 years into my tenure at the Academy, in 1996, when George Nicolau was president, George appointed me to chair a Committee on Employment Arbitration. Some past presidents were on that Committee, such as David Feller, Arnie Zack and Tony Sinicropi. Joan Dolan, Sharon Henderson Ellis, Alvin Goldman and Joe Gentile were also members.

Our task was to develop guidelines for employment arbitration. Non-union employment arbitration was something of a controversial topic at that time, with some believing that because it was an employer controlled, non-union arbitration system, it was not authentic or pure. Essentially, these are arbitrations arising in a non-unionized workplace, such that it is the employer that selects the arbitrator and sets up and controls the process.

In May of 2009, the Academy published a Policy Statement on Employment Arbitration which was the culmination of a great deal of thought and work done by many Academy members which, it would be fair to say, started with George's formation of the Committee on Employment Arbitration in 1996. Chairing that committee was both a

challenging and an exhilarating experience. It might be fair to say that it, as much as anything else, launched my career at the Academy.

Another committee experience I particularly enjoyed was chairing the Host Committee for the annual meeting in Ottawa in 2008. Because Pam and I were living in the Ottawa area we were able to select locations and activities that we felt would be particularly exciting for the membership, such as holding the culminating dinner at the unique Canadian Museum of Civilization and inviting some members to a fun dinner at our house overlooking the Gatineau River.

I always took pleasure in pretty much everything I did in the Academy. Probably the most important and interesting, however, was being involved in internal disciplinary matters, which is where the rubber hits the road. We would deal with and remediate situations where arbitrators, for example, might be two years behind in issuing a decision or involved some other negative circumstance. Having that come before us for some form of either sanction or settlement was probably one of the most interesting things that we did.

JANE:

Before turning to your time as president of the Academy, can you tell me about your involvement in what Canadians refer to as the “Retired Judges” case? Perhaps you can begin by explaining what that case was about and your involvement in it.

MICHEL:

Certainly. The Ontario government took the initiative of declaring that it was going to appoint only retired judges to do interest arbitrations. Needless to say, that was greatly troubling to the Ontario arbitrators since we, not retired judges, had been doing that work for decades without any great issue or problem. The government's declaration of intention would be locking us out of an important area of jurisdiction that we'd always occupied.

My best recollection is that CUPE first challenged this initiative and that we, the Academy, then came in as an Intervenor. In that capacity, we took the position that interest arbitrations should not be taken out of the hands of experienced labour arbitrators who had done this work for decades and proved themselves to be acceptable to the parties. We emphasized that to put interest arbitrations in the hands of retired judges would be to place them before adjudicators who had no labour law expertise and who had not developed mutual acceptability among the parties.

When the case reached the Supreme Court of Canada in 2001, I was fortunate enough to be the one to appear as counsel on behalf of the Academy, in its capacity as Intervenor. I borrowed my gown from Ken Swan since, as a full-time arbitrator, I had had no need for one. I then made what must have been a 20-minute argument, essentially extolling the importance of arbitral independence, of the mutual acceptability to the parties of the interest arbitrator selected to set the terms of their collective

agreements, along with the long history of labour arbitrators making these important decisions.

It was my first and only time appearing before the Supreme Court of Canada and my son, Jean-Michel, took me through some practice sessions in which he guided me to simplify, simplify, simplify my submissions. His counsel must have helped because I'm proud to say that we carried the day and that much of my reasoning on behalf of the Academy was incorporated into its reasons for decision. The Supreme Court of Canada struck down the initiative of the provincial government to vest all interest arbitrations in the hands of retired judges instead of the province's traditional labour arbitrators with track records of mutual acceptability.

JANE:

As I noted at the outset, you served as president of the National Academy from 2008 to 2009. Do you think as a Canadian you brought a unique perspective to the role, or perhaps a perspective that was different from that of an American?

MICHEL:

I don't think that my perspective regarding the Academy's role, its committees and its activities was substantially different from that of the American presidents who had preceded me or who followed me. Still, though, I think that having a Canadian president was an occasion for enhancing the image of the Academy in Canada and encouraging Canadians to join the Academy and become part of its activities.

Having a Canadian president also provided an opportunity to shine a light on some of the important and fundamental differences in arbitral jurisprudence between Canada and the USA. In Canada, for example, arbitrators have the jurisdiction to interpret, in the course of rendering a decision on a grievance, all relevant and applicable labour law legislation, such as the federal and provincial human rights acts, the federal and provincial labour codes and employment standards. In the US, such is not the case. The jurisdictional differences can be dramatic and it is always interesting to compare and contrast the two systems and, in so doing, learn from each other. While this interchange has occurred on an ongoing basis over the years, it was given a particular boost when I was the president.

Additionally, having a Canadian president provided a springboard for increasing the Canadian membership. The Academy provides a unique and important opportunity for Canadian arbitrators because in Canada, there's no national organization of labour arbitrators. There are provincial groups, and that's fine, but there's no one umbrella group. The Academy is the only place I know where I can go and meet with arbitrators from British Columbia, Alberta, Nova Scotia and other provinces, and share experiences. In that regard, it is a particularly stimulating organization for Canadian arbitrators.

JANE:

Can you tell me some of the challenges that you faced during the time that you were president?

MICHEL:

As noted, there was a serious issue, then current, about the role of Academy members doing non-union employment arbitrations. We then developed a set of guidelines and ethical standards for Academy members to follow. Beyond that, I encountered no major crisis that I had to deal with as president. The Academy has been around for some 60 years. It has been an efficient, self-operating organization; it has a rich structure of sub-committees and chairs of those sub-committees who carry out the various roles and responsibilities of the Academy, whether its recruitment, dealing with cases in the courts, planning meetings or overseeing rare instances of discipline. I don't want to belittle my work as president, but what I found myself doing was presiding over a very fine instrument on automatic pilot.

JANE:

A well oiled machine.

MICHEL:

Really, I think that is the honest truth of it.

JANE:

Can you tell me what you enjoyed most about your time as president?

MICHEL:

One of the things I enjoyed, particularly, was visiting the regions. It's one of the responsibilities of the president of the Academy to go to various parts of the United States and Canada to meet with the groups that compose the Academy. It was a unique opportunity for Pam and me to go to places like New York, Pennsylvania, Arizona, California and Texas to meet with the local Academy members, learn about their regional concerns and bring word of their activities to the attention of the Academy. I was also delighted with the opportunity to enhance and promote the Canadian presence and the Canadian membership in the Academy.

JANE:

As an arbitrator I know that you've dealt with disputes in hockey and baseball. Can you tell me about the types of sports disputes that you dealt with?

MICHEL:

I was on the panel of Academy arbitrators for the NHL, who were regularly called upon to decide salary disputes and determine what some particular player was worth. A prerequisite for being on that panel was membership in the Academy. Those were pretty exciting cases in which I got to meet some of my heroes, like Bobby Orr, who was then acting as a player's agent, along with numerous others. I cannot deny, as well, how thrilling it was to meet some of the top players of the game through this process. The

salary arbitrations I did for Shea Weber and John LeClair were among the most memorable for me.

JANE:

For many years, you also served as an arbitrator and mediator for what is now the Sport Dispute Resolution Centre of Canada (SDRCC). Can you talk about what that work entailed?

MICHEL:

Yes, I'm proud of that work, not just for myself, but also for the SDRCC and what it has achieved. You know, if you think back 20 or 25 years, there was really no due process for Canadian athletes. If an athlete was turfed off the national team or denied funding, or whatever it might be, they had really nowhere to go. The SDRCC, and its predecessors, the Centre for Sport and Law and ADRsportRED, were the first organizations that provided a forum for athletes to appeal various kinds of issues. These included their membership on a given team, their participation in a given competition, their denial of carding (which is an important form of financial support for an athlete) and, equally important, their alleged doping infractions. The doping disputes would have to do with the suspension, if not the total banning, of a given athlete for a doping infraction. I've always felt privileged to be chosen to arbitrate some of those cases.

JANE:

What qualities do you think have made you such a successful arbitrator?

MICHEL:

I'll give you two that I think are critical. I think I'm a good listener. Although as the arbitrator I "run" the hearing, I don't run it. I essentially let the parties express what it is that they want to say. Obviously, there are points when I step in and limit redundant evidence or inappropriate conduct, but I don't try to control overly what the parties can or cannot present. Sometimes that involves listening to evidence or submissions that are not terribly helpful, but if the parties think they are, I look on it, perhaps, as part of their healing therapy and let that happen.

I think another critical part of my success is that I believe I was blessed with a fortunate gift for writing. I like to write; I've always liked to write. I thought, for a time, that I wanted to be a journalist or a novelist. Since I never took that fork in the road, I enjoy the fact that I can at least write arbitration decisions and legal articles. Writing has always come fairly easily to me. I'm reminded, though, of a comment that employer counsel, Roy Heenan made when we were discussing the fact that the next Canadian Broadcasting Corporation (CBC) case I would be hearing was one that had to do with creative writing. I commented to Roy, "You know, I've always loved creative writing", and, without the slightest hesitation, he rejoined, "I know, Mr. Chairman, I've read a lot of your fiction".

JANE:

You mentioned earlier that you were honoured by the Canadian Railway Office of Arbitration, but that's only one of a number of honours that you've received. In 2009 you were the recipient of the Bora Laskin Award; can you tell me about that award?

MICHEL:

Yes, that was a very high honour. I note that this year, in 2016, it was also awarded to another member of the Academy, Ken Swan, and in 2015, it was awarded to the Academy's immediate past president, Allan Ponak. The late Bora Laskin, as you know, was the Chief Justice of the Supreme Court of Canada. Well prior to that, however, he was a pre-eminent labour law scholar and probably the first leading arbitrator in our country. So, it's extremely fitting that the University of Toronto's Centre for Industrial Relations and Human Resources established in 2003 "The Bora Laskin Prize for Excellency in Arbitration". I have always treasured the memory of meeting Bora Laskin when I was a law school teacher. It was beautiful to see that his obvious brilliance was embodied in a wonderfully gentle and easy going man.

I'm also encouraged by the existence of this special award. As I said earlier, arbitration and being an arbitrator can be a lonely endeavour and it's nice to see such a respected institution as U of T honouring arbitrators on a yearly basis. So, with the award, I joined a number of my esteemed colleagues who have also been so honoured. I cannot overstate how extremely grateful and flattered I am by it.

JANE:

You were also recently awarded the Order of Canada, which is a great honour in this country. It is said to be Canada's highest civilian honour. Can you tell me about that?

MICHEL:

Well, I really can't, in the sense that I don't know what possessed them. All I can say is that I received a communication from the Governor General's Office saying, essentially, "Congratulations, you are going to be invested with the Order of Canada." And with immense shock, I gasped, simply, "Thank you."

JANE:

So, will you be attending a ceremony in Ottawa?

MICHEL:

I think that will be the case. I still haven't had any detail provided to me, but as I understand it, around New Year's time there will be a ceremony at the Governor General's Residence. But as we speak I have no idea, other than that I am deeply honoured.

JANE:

In closing, I understand that you announced your retirement in August of this year. So, time for another chapter?

MICHEL:

That's a fair way of putting it. I'm still young and vital enough to do other things. Obviously, golf will be one of my pursuits, as will hiking. What excites me the most, however, is that now I can realistically hone in on one of the endeavours I've always thought I'd like to undertake, which is creative writing - not legal writing. I have nothing against legal writing, but if I follow my heart it takes me to short stories, poems or a novel.

JANE:

I have one final question – and I realize that it may be a difficult one – but if you had to pick out one highlight in your long and illustrious career as an arbitrator and mediator, what would it be?

MICHEL:

Wow! I guess I'd have to say several things because I cannot pick just one, although I know that's not the answer you want. I think being the president of the National Academy of Arbitrators was a definite highlight in my career. I say that because I truly believe in the Academy and I think the Academy is a vital, critical organism. To have had the honour of being its president, particularly as a Canadian, was a very obvious distinction that I value and appreciate, particularly since the Academy covers all of North America.

Another highlight I would add is the Bora Laskin Award. That was a terrific and special honour and I'm extremely moved by receiving that. And how can I not count right along with that my 28 years as the chief adjudicator for CROA or my most recent Order of Canada. How very fortunate I have been in so many ways.

JANE:

Michel, as I mentioned you're married to a highly respected arbitrator. Can you tell me what that experience has been like?

MICHEL:

Absolutely. It's difficult to fully express the value of having had for so many years the eye and mind of such a good, critical and analytical person like Pam to discuss cases with on an ongoing basis. I don't know whether other arbitrators have similar sounding boards but it's been very, very helpful to me, and I think to both of us, to share our thoughts and to give each other full and blunt feedback, which seems inevitably to improve our final product. I simply cannot overstate how valuable Pam has been to me and to the success of my career.

JANE:

On behalf of the members of the Academy, I want to thank you, Michel, for taking the time to do this interview and for sharing your life story.

MICHEL:

Thank you, Jane. It has been a pleasure.