

## Gilbert Reginald Schmitt, Q.C.

Bert Schmitt died in his sleep, unexpectedly, at home in his own bed at age 90. He never woke up on Christmas morning. He still had his driver's licence and a girlfriend.

He was predeceased by his parents, Cecil Gilbert Schmitt, Q.C., and Daisy, and (in 2013) by his wife of 61 years Agnes (Klassen). His steadfast love for Agnes through her long illness inspired everyone who knew him. He is remembered by his son Doug and daughter-in-law Nona Sims, his daughter Frances and son-in-law Luciano Zago, and three grandsons, Toby, Matteo and Dante. He is also survived by his sister Elaine, brother-in-law Ray Hill and their three children Don, Cathy and Brian.

Bert was born in Saskatoon, graduating from the University of Saskatchewan with a B.A. in Economics and an LL.B. (Gold Medal) in 1946.

Although he was too young to serve overseas in the Second World War, he was involved with the Canadian Officers Training Corps and later the University Naval Training Detachment during that time.

Bert received his LL.M. from Harvard Law School in 1949. His time at Harvard profoundly influenced him. Bert took labour law from Archibald Cox and wrote a thesis under his direction. He took jurisprudence from Karl Llewellyn and Lon L. Fuller, administrative law from Kenneth Culp Davis and conflicts from Paul Freund.

Throughout his career Bert was an academic, teaching at the University of Saskatchewan College of Law from 1949 to 1956, then as adjunct professor at the faculty of law at UBC, teaching insurance law and professional responsibility for 43 years (a record). It was in 1949 at the University of Saskatchewan that Bert first became acquainted with insurance law, when the dean of the law school suggested he prepare a case book and teach the course. Over 2,000 of his former students are now practising law and thinking a little bit like Bert.

In his first year teaching at UBC, Bert shared the insurance course with Douglas McKay Brown, Q.C., and thereafter generally shared it with one of his then partners, Bud Hollinrake or Lance Finch, or occasionally someone from the faculty of law, such as Bob Franson, or from ICBC, such as Stan Winfield. All of them were well known personalities in the B.C. legal profession. Looking for a new academic challenge after 30 years, Bert spoke to



Dean Burns who asked him to start a new course on professional responsibility with Jerry Ziskrout. They taught that course together for 14 years.

Bert was a lawyer's lawyer who not only practised law but also taught and mentored generations of lawyers. He was admitted to the Saskatchewan bar in 1947 after articling with Moxon, Schmitt & Estey. He moved his family from Saskatoon to Vancouver in 1956 to join Guild Yule & Company (later Guild Yule & Schmitt) on a full-time basis. Although in later years his practice focused on insurance and he became widely known as an expert in that field, in his early years of practice, Bert took on a wide range of both solicitors' and barristers' work. When Bert joined Guild Yule the goal was to practise corporate law and expand the solicitor practice. To some degree, Bert was to try to replace Judge Sheppard, who had recently left Guild Yule to become a Court of Appeal judge. At Guild Yule, Bert practised labour law, including teacher salary arbitrations, as well as real estate law, corporate law and even some criminal and matrimonial law, all while developing a first rate insurance practice. By the time Bert relocated to Fraser Gifford in 1986, his focus was on insurance, although he always maintained other types of legal work and legal interests.

Bert brought the ethical principles he taught to the practice of law. He was especially tenacious in guiding young lawyers about their ethical and moral responsibilities as lawyers, emphasizing the profound importance of a lawyer's duty to court, client, and fellow lawyers. Bert's not so subtle reminder that a lawyer is a "lawyer 24 hours a day" and is "never off duty" remains imprinted in the minds of his many mentees to this day. He made it clear that a lawyer must act promptly to protect the client's interests. His manner was direct but in an indirect sort of way. For example, he instructed articulated students and young lawyers on the importance of attending the scene of an accident or to move quickly to obtain a witness statement, and did not hesitate to let them know the sad story of another student who failed to follow instructions promptly, which in turn led to the loss of key evidence. When asked of the outcome, Bert's remark was that the student was "not kept on".

Although academically oriented, Bert was a rainmaker before the term was in vogue; he was a pioneer in marketing legal services. He was never worried about losing out on work because he was always inundated with files. He encouraged lawyers in his firms to develop their own relationships with the firm's clients. His mentees, who include senior barristers and judges, are forever grateful for his relentless encouragement.

In 2001, Bert wrote an autobiography, which he described as an occasional paper, titled "A Lawyer's Story". The focus, as the title suggests, was on Bert's legal career although as Bert put it in the introduction:

A decision that has to be made when writing an essay such as this is to what extent the writer will attempt to separate his legal career from the rest of his life or whether to treat it as one story. There are examples of men whose work consumed their entire existence, examples of men who pursued their professional careers mainly to provide the money to finance their other activities. In my case, I started off as an academic and became a practitioner, but to a considerable extent, I became a marketer of legal services or a "rainmaker". I developed the concept of "lifestyle marketing", meaning that my marketing activities were blended in with my social life, travels and entertainment. This proved to be a workable lifestyle enjoyed by both Agnes and myself. To the extent that I was following that concept, my story as a lawyer tends to coincide with the story of my life.

Having reviewed "A Lawyer's Story" and relying, as well, on some first-hand experience, one is struck by the relentless energy and determination Bert demonstrated in travelling throughout Canada and the world. Bert's planned itineraries for his trips "back East", as well as to Europe, were legendary. His descriptions read like a "who's who's" of Canadian law during the second half of the 20th century. One can recall landing at night in Toronto with Bert in the middle of a blinding snowstorm and being whisked off to Oakville by an intrepid insurance claims manager, in snow gear, for dinner at the manager's home and then spending the next day at innumerable appointments with lawyers, brokers and insurers. Bert had great stamina, easily matching a person many years his junior. But Bert always made time on such trips to visit old friends and family (if family was within 200 miles) and for many other pursuits, such as attending Presbyterian church services on Sunday morning.

One quality which made Bert so good at all this was a warm and genuine interest in every person he met. It seemed that Bert found something to discuss vigorously with everyone regardless of who they were or what they did. That made him an engaging companion as well as an elite "lifestyle marketer".

Bert was an avid supporter of the Canadian Bar Association. His first meeting was the August annual meeting in Toronto in 1951 and he never looked back. Bert attended countless B.C. branch events. He was active in the insurance subsection, and was its chairperson for two years. He was also active in the civil litigation subsection. Typical of Bert, he was active as well in the civil liberties subsection and was chairperson of that subsection for a year or two. In 1986, Bert became an elected member of the Council of the Canadian Bar Association and was a member of the B.C. executive. For several years Bert was a member of the committee which awarded the R.B. Bennett scholarships. He was a member of the national committee on specialization and the committee which revised the *Code of Professional Con-*

*duct*. Bert authored the specialization report, "The Unknown Experts and the Revised Code of Professional Responsibility (1976)".

Bert was also one of the architects of the modern rules of the Supreme Court of B.C. They were in effect for 30 years until mid-2010. He was known as the "Master of the Rules".

Bert was a bencher from 1974 to 1977. Amongst many other tasks, Bert negotiated a new professional liability insurance package on behalf of the Law Society. Bert was appointed Queen's Counsel in 1982 and awarded the Georges A. Goyer, Q.C. Memorial Award in 1998, when he retired.

When he was appointed Queen's Counsel in 1982 he got a new silk gown. This was perfect timing for his son Doug, then a recent call, who got Bert's old stuff gown as a hand-me-down. Doug still wears that robe in court.

Bert did, in his words, a "certain amount" of legal writing, much of which appeared in the *Advocate*. In truth, Bert was a prolific writer of both legal articles and short stories. He published the history of the first fifty years of the University of Saskatchewan College of Law, memoirs of his and Agnes's life and even a book of his own sermons. In addition to volumes of letters, he maintained a diary from 1955 until his death. Bert was a voracious reader. His interests ranged from Cicero to Harry Potter to the writers of Eastend, Saskatchewan, where the Schmitt homestead was established.

Bert loved ideas. To grow up in his house was to live in a seminar on critical thinking. He encouraged intellectual curiosity. He kept in touch with friends from law and academia all over the world.

From his wide ranging interests, he chose a few on which he became a true expert. One was anarchy. He read extensive anarchist literature and philosophy including rare historical books from the UBC library. When he spoke to a communist he soon had the Marxist-Leninist on the defensive for being a mere wishy-washy socialist. He would do anything to get a rise.

Not everyone enjoys conversations like that. He was not universally loved, not always diplomatic. He was a smart litigator thriving on controversy.

He laughed for months about the reaction he got from one of his social experiments. At the height of the cold war, about 1970, he brought as his lunch guest to that temple of capitalism, the Vancouver Club main dining room, a Russian army officer in dress uniform.

Bert was tenaciously loyal to his family. At age 80 he travelled alone to Strasbourg, France and back just to hear his son give a lecture.

For 12 years his grandson Toby went through the Royal Conservatory of Music Piano course. This involves many recitals in obscure venues with other students starting with "Twinkle Twinkle Little Star" then more challenging pieces. Bert went to every recital unless he was very ill.

Bert was a patron of the Seattle Opera and of the Vancouver Symphony. He loved history, politics and a good debate. He loved to share his knowledge through public speaking, from legal education, to addressing the haggis, to New Year's Day sermons. Many an enjoyable evening was spent on January 25 of each year at "Robbie Burns Dinners", particularly after Bert became involved with the Vancouver Robbie Burns Club (his mother was of Scottish heritage).

The church held a prominent place in his life, providing spiritual and social fulfillment. He served as an Elder at the West Vancouver Presbyterian Church.

Bert's 90th birthday was in November 2014. He planned his own party at the Capilano Golf Club and gave a great speech.

He was a "Thinking Man's Bon Vivant". Bert enjoyed great food, wine and conversation and could often be found, in the company of these three things, at the Vancouver Club or the Capilano Golf Club.

Bert was a true gentleman. He was a great lawyer. He was a wise counsellor. He was a teacher, a mentor and a friend to countless people around the globe.

Martin Palleson, Douglas Schmitt and Mr. Justice Paul Walker

