

and sarcastic daughter, sister, aunt and friend, and a strong advocate for her clients. At the celebration of life, we heard many stories of people who had been inspired by Jill to carry on in the face of their own challenges, and I know Jill's inspiration and wry sense of humour will be carried in the hearts of many for a long time to come.

Margaret Sages



### Frederick Howard Herbert, Q.C.

Frederick Howard Herbert, Q.C., peacefully passed from this world on July 19, 2014, in his 85th year, at his beloved Square Bay home in Halfmoon Bay. His wife, Adele, and three children, Gordon, Tim and Cathie, were at his side.

Fred was born on February 3, 1929, in Edmonton. He moved to Vancouver and attended UBC, where he received his B.A. (honours in political science and economics) in 1950 and his LL.B. in 1953. He was called to the bar of British Columbia on May 28, 1954. After 21 years of practice with Boyle & Aikens (now Boyle & Company) in Penticton, he joined Bourne Lyall and moved to Vancouver. John Spencer had just been appointed to the Supreme Court, so the firm was in need of an experienced and respected senior litigator.

Fred was much more laid-back and easy-going than Bourne Lyall had been used to in a barrister. I don't think he was very religious (as Sunday was usually a good fishing day!), but I think he understood the concepts. He was already a Q.C. (appointed in 1969) when I first met him. Phil Shier told us that having a Q.C. meant that one got to pass wind through silk, so that was impressive. Fred had a delightful self-deprecating sense of humour; he never took himself seriously that I ever saw. I once asked Fred how he got his Q.C., and his response was along the lines of: "I won't BS you with the pre-eminence at the bar stuff. Notwithstanding what I did practising law, I do think that one of my earlier experiences as a junior federal Conservative



lawyer might have helped. One of my early jobs while sitting in the back of the limousine campaigning with the likes of John Diefenbaker and Davey Fulton around the Okanagan was to pick away at the block of ice making ice cubes for their drinks!"

Fred also had a disarming "Columbo" clumsiness about him which he exhibited both in and out of court. He once took off his reading glasses and dropped them into his opposing counsel's water glass while that lawyer was reaching the climax of his argument. He was also known for placing his dinner plate or glass of red wine onto a side table that wasn't there; but a once-lovely white carpet was beneath. None of us really knew whether Fred did things like that out of planning or just fumblingness!

Nonetheless, Fred was a focused advocate for his clients—like a dog with a bone. Speaking of which, I don't think Fred had a mean bone in his body.

He was also full of folk wisdom, like:

"When you're acting for someone seeking a divorce, you're acting for someone who is temporarily insane!"

"A legal partnership is like a marriage without sex!"

"There's no such thing as bad scotch; it's just that some are better than others!"

I find myself telling Fred Herbert stories all the time. Even though I wasn't there for most of them, I feel like I was, because of my repeated telling.

For example:

1. Fred was a fishing guide at Painter's Lodge while he worked his way through UBC. He rowed many clients into the Campbell River Tyee Club, now celebrating its 90th year. His daily routine would be to row his clients all day long and then row across the straits to visit his girlfriend at April Point; and then row back to Painter's and start all over again. Through that process I can tell you that Fred became a superb fisherman. Tom Toynbee (three years Fred's junior) was also a Painter's guide. Tom told me the story about buying Fred's Model A Ford for \$35 at the end of one summer so that Tom could get himself, his worldly possessions and his fish back home to Saltspring Island. Fred wisely wrote "caveat emptor" into the contract of sale and Tom told me that the car barely made it back home. Tom quickly sold it for what he had paid Fred and with the same proviso.
2. One time his best friend came to his office in Penticton, all excited about taking Fred for a spin in his brand-new green Oldsmobile convertible. Off they went into the hills around Penticton, where they stopped and got out. Fred's friend suggested that now was a good time to shoot some skeet, so he went into his trunk and produced skeet, a

- throwing sling and a double-barrelled shotgun. Fred wasn't a shooter or hunter and tried to protest. "Nonsense!" came the response, so Fred started flinging out skeet while his friend blasted away. "Your turn," he said to Fred. Again, Fred's protests were ignored, and after a quick lesson his friend slung a mighty skeet high into the air. Fred dutifully followed the skeet to its zenith and then followed it to the horizon, where he let go with both barrels. The Oldsmobile was now completely peppered in shot!
3. Fred was very good about attending our annual partner retreats. I remember one we had at Whistler Mountain years ago. At that time Fred was driving a monstrous baby-blue Monarch which we called the "Blue Blancmange". Unfortunately, Fred injured himself on the slopes on the last day and couldn't drive home. After he self-medicated, we poured him onto the back seat of the Blue Blancmange and took him home. Fred only had one tape in his car, of Roger Whittaker's famous hits. We got to listen to Roger and Fred sing all the way back to Vancouver—Fred knew every word of every song! Bless him.
  4. One day at work I remember Fred returning from court quite distressed. I joined him in the boardroom, where he had just poured himself a healthy scotch. "What's up, Fred?" I asked. "I was cross-examining a woman in court today, and as I turned away from her to formulate my next question, she must have pitched out of the witness box onto the floor. Dead from a massive heart attack. I turned and tripped over her with my robes fluttering away. That's the second time that's happened," he lamented. I was speechless.
  5. Many of Fred's partners and clients ventured up to Langara Island in Haida Gwaii for summer fishing adventures. Fred had never lost his touch. I remember watching him sharpen his hooks and then stab himself in his thumb; if it bled, the hook was ready—his thumb looked like a mangled pin cushion after these trips!
  6. I came to realize that Fred grew up in law during a period when time records, billings and collections were irrelevant to the honourable profession of the practice of law. When I became managing partner of Bourne Lyall in the mid 1980s, one of my challenges was to help Fred with his retainers, timekeeping, billing and collections. I fondly remember trying to explain the importance of all of these to Fred in a "come to Jesus" meeting one late afternoon. Fred just smiled at me politely while he warmed some ice cubes with his single malt. I wasn't getting through. My "aha" moment came when I said to Fred, "How about I look after all of that stuff

for you and you just keep doing what you do?" "Deal," said Fred. So, after that, Margo Munroe and I ran the ugly accounting side of Fred's practice, and I think he was much happier for it! Ironically, neither Fred nor I had at that time anticipated future events, as Bourne Lyall merged itself with first McKercher, Collingwood in 1985 and then Russell & DuMoulin in 1989. We had no collective idea about how law firm management was about to change. Suffice to say, Fred's client account management was protected, or "grandfathered".

Fred's practice was varied and took him to all levels of the Supreme and Federal Courts. He also enjoyed an arbitration practice, including acting as nominee, counsel and chairperson, and he appeared before many provincial and federal boards and tribunals. He was also active in litigating aboriginal claims, including acting as counsel at the inquiry concerning the West Bank Indian Band over which John Hall, Q.C., presided as commissioner.

In 1994, when Fred turned 65, the mandatory retirement age for partners at R&D, he decided to join Jeffrey & Calder as senior counsel for another five years; he still had gas in his tank. There, Fred continued to focus his practice on major civil litigation and personal injury cases.

From 1990 to 1998, Fred was chairperson of the Pacific Regional Council, the senior advisory body to the federal Minister of Fisheries and Oceans. This council's members provided guidelines and recommendations to the minister on all aspects of the commercial, sports and native fisheries as well as aquaculture interests.

From 1992 to 1995, Fred was chair of the Canada Pension Plan Review Tribunal for the Vancouver region. This administrative tribunal heard and adjudicated appeals from the rejection or granting of benefits under the Canadian Pension Plan.

In 2004, Fred, along with nine other B.C. lawyers (including John McAlpine, Q.C., and David Roberts, Q.C.), received their certificates from the B.C. Law Society honouring 50 years in the profession. On June 26, 2014, Fred received his 60-year certificate (as did John and David, among others).

In retirement at Halfmoon Bay on the Sunshine Coast, Fred became an active member of the Sechelt Capilano University Elder College, where he presented courses in law and organized "Law for Seniors". He was also a member of the Sechelt Golf and Country Club.

He was a great lawyer, partner and friend, and a lot of fun. He will be greatly missed.

Tight lines, Fred!

Bruce Bell