

## A New Vision for the *Manitoba Law Journal*

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The *Manitoba Law Journal* was founded over a century ago and has been publishing steadily for over fifty years. It began with a view to addressing legal developments in the province of Manitoba, but in time it became like many other law journals; an eclectic combination of articles about different topics, mostly Canadian, but with no particular focus on local developments.

It is to that original vision that we now return. There is a need for independent and scholarly examination of legal developments in our own community. There is only one law school in this province, and it is our responsibility as a faculty to ensure that such commentary has a home and to do our fair share of contributing to its content.

Members of the professional legal community often cannot step back and freely express their views on what is happening or ought to be happening. Elected lawmakers must observe party discipline; civil servants cannot openly debate official policy; lawyers must advocate their client's position; judges must address the issues presented to them and proceed largely in accordance with the constraints created by the letter and logic of existing law and precedent. Journalists who cover contemporary legal developments are pressed by deadlines and the need to concentrate on the immediate story.

The law journal format offers all who contribute the opportunity to explore and expound in a spirit of free inquiry and expression. It is true that even academics do not always take advantage of this; the free movement of the intellect can be impaired at times by self-imposed ideological constraints or the desire for popularity and influence with those in power. At its best, however, legal scholarship can be an opportunity for all who engage in it, whether academics or other professionals stepping outside of their usual roles, to contribute to the public understanding of how the legal system is operating and what can be done to make it more efficient, accessible and just.

The Manitoba legal system impacts over a million souls, and that is enough to warrant its examination in its own right. For those seeking to learn or apply wider lessons, however, our own province should not be viewed as peripheral or parochial. It is a complex society; a student of it can see how the law interacts with almost any problem experienced anywhere in the world. There are very rich individuals and some living in desperate poverty. The economy includes everything from public and private enterprises of global reach to start-up companies and family farms. There is a large Aboriginal population, whose

ancestors have lived on the plains for millennia, and recent immigrants from every inhabited continent and kind of society. As a society perched above the United States and drawing on British, French and Aboriginal legal traditions, Canada has always been a place where lawyers are natural comparativists: professionals who study and adopt or adapt ideas and rules from a wide range of sources.

Those seeking to discover, rather than merely apply, large ideas about law and society always have to be inspired by the events of particular societies. Reflection on Manitoba's legal system is as good a place to begin thinking about jurisprudence as any. Big ideas proceed from the study of particulars. This is the case of science generally. Evolutionary biology is based not only on purely abstract reflection, but on learning wider lessons from studying particular species in particular times and places; Darwin had his Galapagos finches, Stephen Jay Gould his Caribbean snails. Manitoba has much to learn from the rest of the legal world; but it is quite possible that analysis of and reflection upon Manitoba's own legal system may yield much that other societies may find interesting or worthy of emulation.

There have been earlier attempts to return to our roots, and we have attempted to make use of them. Professor Alvin Esau, as executive director of the Legal Research Institute of the University of Manitoba, initiated a special issue devoted to Manitoba legal developments.<sup>1</sup> It canvassed case law in various areas, and included some statistical analyses, such as the success rate of appeals to the Supreme Court of Canada from the Manitoba Court of Appeal. Professor Esau's annual case-law review featured articles by many prominent scholars at the law school. Drawing on that model, the first part each year of the new-look *Manitoba Law Journal* will feature a collection of articles, speeches and interviews that looks primarily at developments in the courts and administrative tribunals.

The second part of the *Manitoba Law Journal* contemplated each year will be the continuation of another Manitoba-focused publication, *Underneath the Golden Boy*. A decade ago, inspired by Professor Esau's annual case-law review, I initiated a counterpart journal, *Underneath the Golden Boy*, to cover legislative developments. *UTGB* was initially a special issue of the *Manitoba Law Journal* under my distinct editorial control, and then became an independently published peer-reviewed journal of its own. The journal has been in continuous operation for a decade now and has covered a variety of different areas, including profiles of new bills enacted in the legislature, often by students in my Legislative Process course; articles on legislative reform, such as calling for fixed term elections; a series of interviews on "famous legislative crises" in Manitoba; and an exploration of voting system reform. *Underneath the Golden Boy* will again be published as a special, autonomously-edited issue of the *Manitoba Law Journal*.

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<sup>1</sup> (1990) 1 Man LJ was the first.

As a literary genre, law journals have received stringent criticism. In his celebrated "Goodbye to Law Reviews",<sup>2</sup> Professor Fred Rodell explained that he had only two objections to them: their style and their content. The former he considered indirect and obscure, the latter he considered scholastic examinations of fine doctrinal points rather than addressing real world issues and proposing solutions to them. It has been said of much academic writing, including law review articles, that it is primarily written to be written (thereby demonstrating the author's learning and eligibility for academic advancement) rather than to be read.

Our objective with the *Manitoba Law Journal* is to produce a journal that is worthy of being read. We want it to be a publication that practitioners, judges and ordinary citizens will find accessible, relevant, informative and even enjoyable. We hope it will discuss problems of genuine importance in the legal system and generate ideas that will lead to practical improvements.

The *Manitoba Law Journal* will be open to different philosophical perspectives and methodologies of inquiry. Several decades ago, Professor Harry Arthurs proposed that the academy concentrate on research about law rather than just "on" law.<sup>3</sup> That is, to produce scholarship about the social impact of the law, rather than to simply explain and criticize legal doctrine as expounded by judges. We believe that both "traditional" and "social science" approaches to law have their place.

Those working within the system, and the public that is exposed to it, want and need clear and rational explorations of doctrine. There is a great practical need for writing that looks and then organizes the pronouncements of judges and tribunals. There are, however, other avenues and subjects for the scholarly study of our legal system. Law journals rarely resort to the techniques of modern historiography and journalism, such as interviewing people in the field to gain a better understanding of both how the system is operating and how it is perceived to be operating. Law tends to make only limited use of statistical data and analysis. We hope, however, that the methods and conclusions of jurimetric analysis will add another dimension to some articles. We look forward to including articles and commentaries that make skilful use of such methodologies. More generally, we hope that many of our articles will draw effectively on the literature of the social sciences, such as economics, criminology, sociology and history.

The *Manitoba Law Journal* will also take advantage of new methods of publication. We have been working to set up a "*Manitoba Law Journal Online*" website. It will provide a medium for publishing articles that have been peer-

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<sup>2</sup> Fred Rodell, "Goodbye to Law Reviews" (1963) 23 Va L Rev 38.

<sup>3</sup> See Social Sciences and Humanities Research Council of Canada, *Law and Learning* by Harry W Arthurs et al. (Ottawa: Information Division of Social Sciences and Humanities Research Council of Canada).

reviewed and edited long before the print version can appear each year. We also hope to include on the website material that may not be suitable for the print version for reasons of length or immediacy, but which our readers will find timely and significant.

It has been said that there are two ways to bring light to the world: light your own candle or be the mirror for the light of others. With the latter in mind, my colleague Professor Darcy MacPherson and I volunteered to take on the editorship over a year ago. We are fortunate and grateful that so many of our fellow jurists - students, professors, private practitioners, public servants and judges - have been willing to lend their illumination to this first revitalized edition of the *Manitoba Law Journal*.