

Preface

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In this issue, we have added a new feature. Assistant Professor Karine Levasseur of the Political Studies Department, as guest editor, has commissioned and edited a series of articles on public policy in Manitoba. Our aim is to expand the extent to which this publication can serve as a forum for ideas about law and regulation in our province. Ideas about public policy, even if not focussed on specific pieces of existing law, may promote our understanding and evaluation of the laws and the books and inspire specific proposals for reform. We at *Underneath the Golden Boy* hope this pilot project will lead to an even wider debate, enlivened by the views of an even wider range of authors, in the years ahead.

All of the editors at this publication wish to thank Karine and all the authors for their effort and ideas in this pilot year.

We do not propose to critique any of the public policy papers in depth, but would draw to the attention of readers a different perspective that is embodied in several of them. In “Revitalizing Manitoba”, first published as a series in the *Winnipeg Free Press*, and later in two annotated editions by the Frontier Centre for Public Policy, I have attempted to set out this alternative perspective and apply it to specific areas of policy.¹

Professor Sid Frankel of the Faculty of Social Work offers a strongly worded critique on the current government’s approach to addressing economic disadvantage and social exclusion. He characterizes the government as a “neo-liberal” or “third way” in its orientation. I would suggest that “neo-liberal” is a very broad term. In many variants, it could certainly include the view that government has a necessary role in identifying economic and social marginalization and finding mechanisms to ameliorate it. However, the mechanisms of doing so, where reasonable and practical, can enhance the ability of beneficiaries to make their own

¹ Bryan P Schwartz, *Revitalizing Manitoba: From Suppliant Society to Diversity & Dynamism*, (Winnipeg: Frontier Centre for Public Policy, 2011).

choices rather than leaving them to the discretion of government policy makers and bureaucrats.

In my view, the current government is not “middle way”, but tends to adopt an approach that highly favours centralized, and with it, politicized control rather than leaving space for, or promoting, the capacity of individuals, families, non-profit institutions, businesses and local governments to choose and innovate in light of their own knowledge, values and abilities.

In his essay on Bill 6 in this issue, Timothy Brown suggests the ways in which Bill 6 provoked controversy by further enhancing the control of Regional Health Authority bureaucracies over the non-profit sector, to determine their ability to provide their own ideas, resources and commitment in the service of choice and quality for patients, residents and clients.

Assistant Professor Andrea Rounce provides a useful summary of the development of public policy in the post-secondary educational arena. I would point readers, for additional background, to the report of the Commission of Commission on Tuition Fees and Accessibility to Post-Secondary Education in Manitoba.² Professor Rounce suggests the current system overall is working rather well. While there are no doubt some strength in the status quo, including high participation rates in post-secondary education, I would offer by contrast some concerns for the consideration of readers.

The current system is largely delivered by a small number of large institutions whose boards are predominantly appointees of the provincial government. Council on Post-Secondary Education officially influences allocations among institutions, but the provincial government appoints that body, it provides little or no transparency in how and why it reaches its conclusion. Within the universities, there is an increasing trend to more centralized bureaucratic control, rather than allowing individuals and units with the University to make their own choices in light of their immediate contact with students and particular communities, and their own expertise and experience.

Access to education in my view should include access to high quality services, not only entrance. The Maclean’s annual survey of post-secondary

² Commission on Tuition Fees and Accessibility to Post-Secondary Education Manitoba, *Final Report* (Winnipeg: Minister of Manitoba Advanced Education and Literacy, 2009) (Chair: Dr Ben Levin).

education in Manitoba reports that student tend to be less satisfied with the quality of their education than in many other places.³ A system that to a greater extent funded students, rather than institutions, and allowed them to make their own choices among universities, colleges and other education and training venues, might make the system more responsive to actual student needs and choices. If the government relaxed its control over financing, some units might find ways to both increase program quality and enhance accessibility; portions of a general tuition increase might, for example, be used to expand support for students most in need of financial assistance.

This publication has always taken a strong interest in parliamentary and democratic reform. About a decade ago, at the height of the search in support for voting system reform, this publication carried a piece of mine on “proportional representation” for Manitoba.⁴ That led to an invitation to produce a research study for the Law Commission of Canadian, “Valuing Canadians”, which in turn helped to inform the Law Commission’s own proposals.⁵ Since those days, a number of Canadian jurisdictions have considered a move to modify our current first-past-the-post system. Commissions were formed, plebiscites were held and no change emerged. Things that do not happen tend to attract less study than those that do; recall *Sherlock Holmes’ Dogs that Didn’t Bark*. But in this case, the story of how all that enthusiasm produced no results seems worthy of study, both out of historical interest, and to derive larger lessons about democratic reform.

I invited students in my latest legislative process class to do some cases studies of “how nothing happened” in various jurisdictions William Kuchapski took up the challenge, and has produced a highly informative case study concerning Ontario, included in this volume. My hypotheses so far are these:

³ Across multiple satisfaction indicators Manitoba universities averaged between 15th and 25th of 37 institutions, see Macleans, “Canadian University Consortium 2012 Results”, (7 February 2013), online: Macleans.ca on Campus <<http://oncampus.macleans.ca/education/2013/02/07/canadian-university-survey-consortium-cusc-2012-results/>>.

⁴ Bryan P Schwartz, “Proportional Representation in Canada” (2001) 28:2 Man LJ 133.

⁵ Bryan Schwartz and Darla Rettie, *Valuing Canadians: The Options for Voting System Reform in Canada* (Winnipeg: Asper Chair of International Business and Trade Law, 2003).

Enthusiasm for voting system reform in the public mind tends to reflect recent experience, rather than reflection on the long course of the past and future. Enthusiasm for voting system reform peaked when there were perceived to be serious anomalies in various jurisdictions, such as elections in which opposition parties received no representation whatever in a legislature, or there appeared to be protracted one party majority rule in various jurisdictions by parties who rarely, if ever, obtained a majority (rather than plurality) of public support. But many of these anomalies were resolved, at least in the short term, in the past decade.

In jurisdictions like Ontario, the first-past-the-post system was producing regular alternations among parties, and there was not a perception over the last decade that it was working unfairly. The anomalies tended to disappear partly because there is room for adaptation in the first-past-the-post system. In some provinces, opposition parties united and were then able to oust long-entrenched governments. In Ontario, the first Liberal government in decades had been brought to power by a formal agreement between the second and third place parties right after the election.

Both governing and opposition members owe their jobs to whatever system brought them into office, and so will tend to be dubious about major reform. In Ontario, the government and parties did not tend to publicize, let alone support, proposals for reform. As a result, as William Kuchapski demonstrates in his study of the Ontario situation, it is not a surprise there was little enthusiasm or support for change at the polls.

Systems that incorporate some element of proportional representation tend to produce more minority governments. But Canadians in the last decade experienced a long period of minority government at the federal level. Many seem to have decided they would prefer more stability and less pluralism at the law-making level, and pumped for a majority government.

In British Columbia, there was an impressive attempt to break out of the self-perpetuating nature of the current first-past-the-post system. A Citizens' Assembly met periodically for about a year and proposed the single transferrable ballot system. The assembly was chosen by lottery from among those expressed interested. But a paradox might have emerged. The members of the assembly were not truly representative in some sense. First, they were interested enough in politics to work hard, for a long time, at no compensation, to study up and make recommendations. Second, they became quite expert on the theories and alternative "single

transferrable ballot” has much theoretical appeal, but is hard to explain to the general public and may not be well-suited, with its need for multi-member constituencies, to a geographically sprawling jurisdiction like British Columbia. It may also be that such a complex system is less suited for a federalized state like Canada, where voters already are represented at various levels, and it is hard to keep track of who your representative is at the best of times.

Perhaps we will have some case studies, like the one by William Kuchapski with respect to Ontario, to offer in future editions. I would look forward to seeing my hypotheses confirmed, qualified, or disproved by further case studies of the quality of William Kuchapski’s.

Included in this year’s issue is also a research study prepared by Bryan Schwartz and Dan Grice on a framework for electronic voting in Canada. The use of distance technologies might make voting more accessible and convenient for many Canadians, but carries with it risks that must be anticipated and addressed in a way that ensures not only the intrinsic reliability of the process but public confidence. There are unique challenges involved. The incentive to tamper, for political reasons or amusement, is high and the consequences of doing could be society-wide and long-lasting. The system must both avoid fraudulent voting and secure the anonymity of the voter. In other contexts, by contrast, such as financial transactions, the potential for fraud is minimized by going to extensive steps to ensure that the user is identified. The Chief Electoral Officer released this peer-reviewed study on its website in December 2013, and it is included here to make it more widely and enduringly accessible to scholars and the public.

It has been an eventful year in legislative process in Manitoba, including an intense debate over the lawfulness of the government’s increasing the provincial sales tax without either holding a referendum or first amending earlier law to remove the referendum requirement. The whole episode deserves to rank in the annals of “Famous Legislative Crises” that were the subject of a special issue of this journal in 2003.⁶ We hope in at least one future issue to provide some insights and perspectives on the constitutional and legislative issues involved.

⁶ See (2003) 30:1 Man LJ.

