

Introduction and Issue Overview

D A R C Y L . M A C P H E R S O N

We at the Manitoba Law Journal are proud to present this special issue, dedicated to exploring the lives of the last three men to serve as Chief Justice of Manitoba as of January 2013, that is, the Honourable Richard Scott, the Honourable Alfred Monnin and the Honourable Samuel Freedman. Collectively, the three served in that position from 1971 to 2013, covering five different decades as the administrative head of the Province's highest court.

This volume is a continuation of the MLJ's commitment to interview legal luminaries in the province which commenced in Volume 35. Originally, the plan did not involve a separate volume for this purpose. But, when the Editors-in-Chief sat down with our Student Editors to plan the next volume, there was a focus on a developing a deliberate strategy for the interview section of the MLJ over the next several years.

The subject of Chief Justice Scott seemed like a logical choice to start the discussion. He was, at the time, scheduled to retire shortly, after serving as Chief Justice of Manitoba for more than 22 years. He is the Court of Appeal's longest-serving Chief Justice in history. Chief Justice Scott speaks highly of his colleagues at the Manitoba Law School, and many of his teachers. He remembers with fondness some of the interesting and valuable cases worked on as a lawyer, and what was like to be reversed as a trial judge, only to have that ruling be reversed again by the Supreme Court, back to his original conclusion. Chief Justice Scott talks candidly about what it was like for the Court of Appeal to have their judgment reversed, and how even judges still try to learn at every opportunity. The *Charter*, standard of review, the role of the trial judge, the importance of public perception of the judiciary, were all important parts of the discussion, and much more. This is clearly a man who is engaged in thinking about the next generation of the court system, for judges, for lawyers, for litigants, for the public at large. He offers the perspective that only a lifetime of care and concern can bring to bear.

Once Chief Justice Scott's participation was confirmed, the editors asked themselves who would be next in our interview schedule. The Honourable Chief Justice Alfred Monnin, the province's highest judge immediately prior to Chief Justice Scott, was suggested for both his long judicial career (33 years on the Bench, five as a trial judge, and 28 as a member of the Court of Appeal, the last seven as its Chief Justice) and the interesting road that led him there. He is of course further removed than Chief Justice Scott from his time of the Bench, but no less passionate about the law, and the changes that have come to the profession of law and judging. There is much talk today of work/life balance, and it a legitimate and important topic for discussion in all facets of the legal profession. It may surprise some to learn that it is quite clear that similar concerns animated prior generations as well. Hard work (often without payment) and long hours were the norm in Chief Justice Monnin's time at the Bar as well. Perhaps one difference was that Chief Justice Monnin talks about a choice to join the judiciary as a means of better providing for his wife and five children, with the steady paycheck that the position offered. He speaks with warmth about the time he spent on the Court of Appeal with the Right Honourable Brian Dickson (later the Chief Justice of Canada). Chief Justice Monnin speaks glowingly of his Franco-Manitoban roots, and the business of the Monnin family in the law and becoming judges ("it's in the guts", he says). The Monnin Inquiry into the Manitoba vote splitting scandal in the 1990s shows his commitment to public service, even in retirement.

We at the MLJ are proud to have done the interview with Chief Justice Monnin in his native French, and it is reproduced in that language. For a while, we considered leaving the interview in only its original language. But, when we read the transcript again, two things popped to mind. First, it made sense to have it in both languages, since a significant portion, but not all, of Chief Justice Monnin's professional life was conducted in English. Therefore, to reproduce the interview in only one language—regardless of which language—would leave a significant gap in the exploration of the man and his career. Second, and perhaps even more importantly, in our view, all Manitobans deserved to hear about this remarkable man. This meant ensuring that it could be read in either official language. It is important to recognize the contributions of both Dr. Gerald Heckman and Lynn Donnelly in ensuring that the French questions in the interview and the answers were both accurately translated

so that the final product would be as accurate and engaging for the reader as possible.

As we looked around for sources to prepare for these two interviews, someone mentioned that there was previously an exhibition celebrating the life of The Honourable Chief Justice Samuel Freedman. As editors searched the Faculty's archives, we discovered that there was a significant amount of previously unpublished material on the subject of Chief Justice Freedman. As a result, we decided that five decades of Chief Justices of Manitoba should become our theme.

Each of these men is unique, and viewed their respective time on the Bench differently. But, commitment, hard work, lifelong learning, humour and humility characterize them all. Each speaks of different eras, but common themes emerge from each of these interviews. We hope you will enjoy.

But there is more to this volume than these interviews. Michael Rice, Melanie Bueckert and Ainslie Schroeder make a compelling case that Chief Justice Scott has been able to make an indelible imprint on the law not only of Manitoba, but Canadian law as a whole, through his decisions. His rulings have sometimes tipped the weight of Canadian authority on an issue, and been cited by courts throughout the nation. Even as a trial judge, his ruling in *R v Lavallee* (despite being overturned at the Court of Appeal) was reinstated by the Supreme Court of Canada, setting a new paradigm for the reception and use by courts of expert evidence. The Supreme Court justifiably gets a lot of credit for the decision in *Lavallee*. But the factual findings of a trial judge committed to improving the law were undoubtedly a strong factor in the end result. Rice, Bueckert and Schroeder point to cases throughout Chief Justice Scott's career where change to the law came from thoughtful and considered approach to the law and its development.

Chief Justice Scott's remarks to the Association for Canadian Clinical Legal Education were a happy accident, at least as the Manitoba Law Journal staff was concerned. But, when we realized that Chief Justice Scott was speaking at the Law School around the time that this volume was beginning to take shape, we decided that the speech should also be here. Reviewing the final product, we think we were right. By happenstance, some of the areas that the Chief Justice Scott had discussed in his interview with the MLJ were also relevant to the Association. For a man who is supposedly at the end of a lengthy working life, Chief Justice Scott

certainly does not lack for energy. The subjects on which he spoke in the interview of sufficient importance when trying to influence the academics who would have a significant role in shaping legal education for generations to come. Therefore, unintentionally, we at the MLJ are permitted to publish the broad themes that characterize some of areas that remain so critical to Chief Justice Scott. While some of the remarks till the same ground as the interview, in other ways, the two pieces are different, and driven at different audiences, at least originally. But, reading both side by side, it brought home (for me, at least) the depth of passion and commitment of of a man who will take every opportunity to serve the institution of judging that has defined his career.

Some may be disappointed that Chief Justice Monnin did not have a piece similar to that offered by Rice, Bueckert and Schroeder written about his judgments. There can be no doubt that such a piece deserves to be written, and would be equally insightful. But, when we interviewed him, I was struck by the personality of Chief Justice Monnin. He is a powerful man, of intellect, humour and storytelling. But my impression of him as we began the interview was that he was mildly surprised by the fact that the Manitoba Law Journal was interested in talking to him about his career. There is a sense of quiet pride in family (both those who came before, and those who follow). But, at the same time, Chief Justice Monnin looks at his own contributions in a very matter-of-fact way. For him, he did these things. That was the job. He did the job. No muss, no fuss. His quiet nature largely leaves judgments about the impact of his work to others. So, to me, the fact that there is little else with respect to Chief Justice Monnin is reflective of the man. His job is done. If others want to find more, I suspect that Chief Justice Monnin would say that this is a task best left to them.

Chief Justice Samuel Freedman was another public servant, serving not only as Chief Justice of Manitoba, but as the Chancellor of the University of Manitoba as well. A lengthy interview with him, conducted by Dr. D.L. Brandes, was graciously made available to us by the Jewish Heritage Centre. The Jewish Heritage Centre also previously held an exhibition which celebrated his life and career. Jack London (former Dean of the Faculty of Law at the University of Manitoba), Arnold Naimark (former President of the U. of M.), Bryan Schwartz (now the Asper Chair in International Business and Trade Law at Robson Hall) and the Honourable Martin Freedman (son of Chief Justice Freedman, and now a

recently-retired member of the Manitoba Court of Appeal in his own right) were among the speakers. Each focused on a different aspect of the man or his career. While a DVD was produced of the exhibition, the speeches were never widely distributed beyond those who were directly present. We at the MLJ believe that this Chief Justices issue offered us the perfect opportunity to bring these to a broader audience.

Chief Justice Freedman had a reputation as a wonderful public speaker, with an intriguing rhetorical style. Therefore, on reflection, it should not have been all that surprising for the MLJ staff to find a number of previously unpublished speeches by Chief Justice Freedman in the archives at the University of Manitoba's Faculty of Law. These, too, have been reproduced here.

Finally, as we reviewed material for the issue, both Chief Justice Freedman and Chief Justice Monnin were involved in the same case. Oddly enough, it was a case involving the potential capital punishment. Chief Justice Freedman was the trial judge; Chief Justice Monnin was the defence lawyer. Though the three young men on trial were found guilty of murder, then-Justice Freedman wrote an extensive letter to the Attorney-General of Canada arguing for clemency, no doubt to the delight of the defense attorney involved in the case. Yet, the letter, presumably to meet the dictates of the federal government in these circumstances, was relatively devoid of the rhetorical flourish that so often characterized Chief Justice Freedman in other contexts. We wanted to make the letter available for those who wanted to see how Chief Justice Freedman dealt what was undoubtedly the most serious task of a trial judge in Canadian legal history. But, we also did not want this letter to overwhelm the broader personal and professional narratives that these interviews, articles and speeches were meant to convey. Therefore, we thought about omitting it altogether. As a compromise, we decided to leave the original letter (in PDF format) at MLJ Online. We invite you to review it there.

Our discovery of the letter has led us to think about the past. The National Archives of Canada provided the letter, and we thank the National Archives for their effort. Undoubtedly, there are other cases, and other letters available from the National Archives. We believe that there probably a significant project in legal history with respect to these cases, and the letters from trial judges that they produced. We hope that someday, someone will take up the challenge.

But, for now, in this issue, the focus of the MLJ is these three men (Chief Justice Scott, Chief Justice Monnin, and Chief Justice Freedman). Each of them has made unique contributions to their communities, to the Province of Manitoba, and to Canada more generally. We hope that this issue brings more attention to the contributions of these men to the law. They deserve to be thanked for all that they have done. With this issue, the Manitoba Law Journal adds its voice to the chorus that does exactly that.

One final thought: an undertaking as daunting as this issue is rarely completed alone. It is my pleasure to put into print the thanks that Dr. Schwartz and I owe to a number of people and organization for taking this from an idea (and a relatively nebulous one at that) to the finished product. Any such list must begin with the subjects of the volume. If they had declined, there simply would be much less of interest to say. Chief Justices Scott and Monnin undoubtedly could have found reasons to decline. Instead, they let us ask whatever we wanted to know, from the personal, to the professional, and back again. The Honourable Martin Freedman graciously agreed to let us bring more about his father to light. The other authors put the interviews into a context that would other be lacking.

The National Archives of Canada and the Jewish Heritage Centre have already been mentioned as making key elements of this volume available to the editors. For their collaboration and generosity, we thank them. The contributions of Dr. Gerald Heckman and Lynn Donnelly are appreciated as they kept me from any serious errors in my second language. Jennifer Chlopecki's design help, along with the cover artwork of Brian Seed make the final product far more esthetically pleasing and memorable.

A number of students at Robson Hall (in addition to Ms. Donnelly) were critical to pushing this issue from beginning to end. Student editors Simon Jack and Tim Brown were at the helm on the student side, with great help from Liam Black, Brian Lee, and Daniel Hildebrand. The administrative wizardry of Maria Tepper helps keep the MLJ on the straight and narrow.

We wish to thank those funding institutions and administrators who have been indispensable to our proceeding with our refocused journal, including this Special Issue. The Law Faculty Council of the University of Manitoba has supported our new mandate and encouraged faculty

members who serve on various grant committees to ensure that the Manitoba-focused journals have the necessary financial support. Dean Lorna Turnbull has supported our efforts to carry through on the Faculty's new vision. The Law Foundation has continued to give us strong backing, even in challenging fiscal times, for the journal publication program at the Faculty. The Board of the Legal Research Institute of the University of Manitoba, chaired by the recently retired and much esteemed Phil Osborne, and the executive direction of first Jennifer Schulz and now Debra Parkes, has followed through consistently. The advisory committee for the Faculty of Law Endowment Fund has also facilitated our new on-line as well as print activities.

Our printer, Friesens, and their representatives, Donovan Bergman, Ryan Hildebrand, and Aron Friesen, got this done on a very short timeframe, and, as always, with a smile. Professor John Eaton's editorial assistance was invaluable, as was the informational and research support of the E.K. Williams Law Library staff.

There are undoubtedly others who deserve mention as well, like the individuals at the organizations mentioned above who actually dug out material and got it to the MLJ. We are indebted to all of them, and the many others whose work generated this volume.

