

Introduction and Issue Overview

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This issue of the Manitoba Law Journal is amongst the largest single issues in the Journal's long history. This fact reflects a high level of activity in this jurisdiction – including conferences – that reflect on our legal system and contemplate reforms. This activity coincides with the restored focus of this journal to critical and independent reflection with respect to matters that are of current concern to citizens and jurists in our own province. It is a welcome development that so many of those organizing and participating in events have seen the MLJ as a useful outlet for the preservation and distribution of ideas.

The issue begins with a memorial tribute to the Honourable Alfred M. Monnin, former Chief Justice of Manitoba, who passed away on November 29, 2013. Chief Justice Monnin was an interview subject in the Journal's *Five Decades of Chief Justices of Manitoba*.¹ His passing allows the multiple communities of which the Chief Justice was a member to reflect on a life well lived in public service. As with the original interview, the In Memoriam is presented in both official languages.

Our second contribution has been provided by Senator Roméo Dallaire, Canadian Army Lieutenant General (Ret.). As a proud soldier and faithful servant for his country, with vast international experience, most notably as United Nations Force Commander during the Rwandan genocide in the mid-1990s, Senator Dallaire has a unique perspective on Canada's role in the world, and how individuals can affect the world around them in a meaningful way. His presentation was so inspiring that the editorial staff at the Manitoba

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¹ (2012) 36:SI Man LJ.

Law Journal believes that reducing his words to paper for those who were not fortunate enough to hear them in person was a worthwhile project indeed. A translation of his speech into the Senator's native French is also presented.

The Manitoba Law Journal also continued its interest in the people who occupy the judicial office in the province, with its interview of The Honourable Richard J. Chartier, Chief Justice of Manitoba. A relaxed and wide-ranging conversation ensued, covering Chief Justice Chartier's law school experience at the Université de Moncton, his widespread community involvement, his days on the Provincial Court of Manitoba, and his time on the Court of Appeal, with some discussion of potential for the future.

The Manitoba Law Journal is also pleased to publish the essay of Professor Trevor C.W. Farrow discussing ethical lawyering in a globalized world. Originally a plenary presentation at the 2012 Pitblado Lectures,² the presentation makes the point that a broader understanding of the world as a whole is a part of good lawyering, no matter where one practises. Professor Farrow points to Isaac Pitblado himself as an example of a lawyer with a global life and a perspective to match. The presentation was revised for publication purposes and was subject to the full MLJ peer-review process.

The next contribution is the third annual DeLloyd Guth Lecture in Legal History. Presented by noted legal historian Professor Philip Girard, the lecture discusses early law in Rupert's Land, which includes current-day Manitoba, and how this historical background continues to be relevant today.

A one-day conference was held at Robson Hall on November 2, 2012. Entitled "Anatomy of a Public Inquiry", the conference was organized by Robson Hall instructor and former Manitoba Deputy Attorney General Bruce MacFarlane, Q.C. Professor MacFarlane brought together individuals who had filled various roles in different public inquiries, as well as those who had worked closely on the issues considered by such an inquiry, including police officers and public servants. Each of the participants was invited to prepare written versions of their presentations. All four graciously agreed. Also, the apology letter on behalf of the Government of Manitoba to Thomas Sophonow is reproduced. Mr. Sophonow was never convicted but was tried multiple time for a crime with which he was unconnected, and suffered a serious ordeal as a result. Mr. Sophonow's interactions with the Manitoba

² The Law Society of Manitoba, the Manitoba Bar Association and the Faculty of Law, University of Manitoba, The 2012 Isaac Pitblado Lectures "Legal Boundaries in a Global World", 30 November-1 December 2012, Winnipeg, Manitoba.

justice system were the subject of one of the public inquiries discussed during the conference. For more details on this section of the Journal, see the Introduction for these materials.

In the Articles section, we begin with three articles focused on criminal law. Professor Amar Khoday takes a critical look at *R v Creighton*,³ a case that considers the constitutional requirements of the crime of manslaughter in Canadian law. Some may question the need for the review of a precedent that is two decades old. However, courts, including the Supreme Court of Canada itself, have been more willing to reconsider precedents. For example, the decision in *Canada (Attorney-General) v Bedford*⁴ considered the constitutionality of the same provisions of the *Criminal Code*⁵ that were at issue in *Reference re ss 193 and 195.1(1)(c) of the Criminal Code (Canada)*⁶ The British Columbia courts in the *Carter*⁷ case were faced with a challenge to the same provision whose constitutionality was affirmed in *Rodriguez v British Columbia (Attorney General)*.⁸ The *Carter* plaintiffs have sought leave to appeal to the Supreme Court of Canada. Therefore, a discussion of the continued appropriateness of a Supreme Court of Canada precedent is particularly relevant. Criminal lawyer Ami Kotler (also an instructor at Robson Hall) comments on the proper retroactive application of the new self-defence and defence of property provisions introduced by the *Citizen's Arrest and Self-Defence Act*⁹ in 2012. He looks at how matters in the criminal justice system that have yet to be decided should be affected by this statutory change. In "That's the Man!", lawyer and former police officer John Burchill makes his second contribution to the issue.¹⁰ In this article, Mr. Burchill makes incisive comments on the frailties of eye-witness identification in criminal cases. Though not directly implicated, the connections between this article and the case of Thomas Sophonow (a case of a problematic prosecution where eye-witness identification was a significant part of the evidence against the defendant) are manifest.

³ [1993] 3 SCR 3, 105 DLR (4th) 632.

⁴ 2013 SCC 72 (available on WL Can).

⁵ RSC 1985, c C-46.

⁶ [1990] 1 SCR 1123, 109 NR 81.

⁷ 2013 BCCA 435, rev'g 2012 BCSC 886.

⁸ 1993 3 SCR 519, 107 DLR (4th) 342.

⁹ SC 2012 c 9.

¹⁰ Mr. Burchill was one of the speakers at the "Anatomy of a Public Inquiry" conference reproduced earlier in the volume.

In his article “The Economics of Life and Death”, Brandon Trask takes a law and economics view of the bioethical dilemma of assisted death. While lawyers and ethicists have created a vast amount of literature on the legal and ethical dimensions of this issue, the economic perspective is less explored.

Professor Darcy MacPherson and lawyer Edward D. (Ned) Brown consider an issue under the *Personal Property Security Act*¹¹ (PPSA) that has yet to confront the Manitoba courts with respect to serial-numbered goods. Should a searcher under the PPSA be expected to search both debtor name and the serial number of the collateral, or is one sufficient? A number of provincial courts of appeal have considered the issue, with often varying and contradictory results.

In the Commentary section, lawyer and former Robson Hall instructor Sascha Paul comments on *Manitoba Metis Federation Inc v Canada (Attorney General)*.¹² This is undoubtedly one of the most important cases in recent Canadian history, with wide-ranging implications for both Aboriginal persons and government, and, as the name suggests, it arose in Manitoba, and focused on the *Manitoba Act, 1870*,¹³ among other statutes. Professor Donn Short comments on *AB v Bragg Communications Inc*.¹⁴ The case was an important one, as it was the first opportunity for the Court to comment on the issue of cyber bullying and bullying more generally. Dr. Short brings his significant expertise on this important issue in both the school context and otherwise to his commentary.

Second-year law student Miranda Grayson provides her thoughts with respect to Mary-Anne Waldron’s latest book, *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada*.¹⁵ Any book of breadth is difficult to write, and difficult to review in a way that is both concise, and fair to the author of the work being reviewed, and helpful to readers of the review. Ms. Grayson accomplished this balance with aplomb.

Finally, the conference of the Association for Canadian Clinical Legal Education was held at Robson Hall in late 2012. The invitees to this conference are, as a group, highly committed to offering a well-rounded experience as part of the academic program at law school, so that law students

¹¹ CCSM c P35.

¹² 2013 SCC 14, 355 DLR (4th) 577.

¹³ SC 1870, c 3.

¹⁴ 2012, SCC 46, [2012] 2 SCR 567.

¹⁵ (Toronto: University of Toronto Press, 2013).

are well-prepared for the profession that most of our graduates will enter for at least some time following their departure from the academic environment. Some of the articles in this section have been peer-reviewed, and these are noted by an asterisk in the Table of Contents. While others were not peer-reviewed, this is not a slight; rather, it was a decision made by the editorial staff in consultation with the authors of the presentations at issue. Sometimes, this decision was made because peer review was inappropriate. For example, where a piece is largely descriptive of a particular program at a given Canadian law school, it would be very difficult for a peer reviewer to meaningfully comment on the piece. Other pieces were largely extemporaneous responses to what the speaker was hearing at the conference. Nonetheless, publishing work such as this is, in our view, important. If different approaches to innovative clinical teaching are not shared, there is the possibility that legal education will stagnate. We at the Manitoba Law Journal want to encourage participation by our colleagues who are fully invested in clinical teaching (and research into such opportunities). The introduction offered by Professor Sarah Buhler provides further details on this section of the Journal.

