

# Preface to the Special Issue on Legal Education

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B R Y A N P . S C H W A R T Z

In this companion volume to the collection of interviews in Volume I on the Great Transition in Legal Education Manitoba<sup>1</sup>, the editors have prepared a collection of documents. The aim is to provide the reader with the opportunity to read directly, over the course of a century, the thoughts of leaders of the profession and of the law school as they reflect on the past and future of legal education.

There is a saying that “policy is personnel”. The most influential factor in the calibre of a law school are its professors and students: not its curriculum, not its physical plant. The first document in this edition, “Full-Time Teachers, Records & Librarians of the Manitoba Law School and of the Faculty of Law, University of Manitoba”, provides a list of the full-time teachers of the law school from its earliest years to the present day.<sup>2</sup>

The excerpts from the Canadian Bar Association debates from almost a century ago illustrate that the debate between university based education and apprentice training is nothing new.<sup>3</sup> The CBA reports recommended that one follow the other. The content of the discussions reinforces the contention of Ecclesiastes that there is nothing new under the sun.<sup>4</sup> A

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<sup>1</sup> Bryan P Schwartz & Darcy L MacPherson, eds, *The Great Transition in Legal Education*, (2016) 39:1 Man LJ.

<sup>2</sup> Cameron Harvey, “Full-Time Teachers, Records & Librarians of the Manitoba Law School and of the Faculty of Law, University of Manitoba,” (2016) 39:2 Man LJ 3; faculty list is updated as of April 2017.

<sup>3</sup> Canadian Bar Association, “Excerpts from *Proceedings of the Third Annual Meeting of the Canadian Bar Association Held at Montreal, Quebec 3, 4, 5 September, 1918*”, (2016) 39:2 Man LJ 9; Canadian Bar Association, “Excerpts from *Proceedings of the Fourth Annual Meeting of the Canadian Bar Association Held in Winnipeg, Manitoba, August 27th, 28th and 29th, 1919*”, (2016) 39:2 Man LJ 23.

<sup>4</sup> Ecclesiastes 1:9: “What has been will be again, what has been done will be done again;

detailed account of the initial decades of legal education in Manitoba is presented in Wes Pue's contribution: "Common Law Legal Education in Canada's Age of Light, Soap and Water."<sup>5</sup>

E.K. Williams's contribution<sup>6</sup> presents a history of what followed in the decades in Manitoba after the CBA reports, leading up to 1950, and includes a forceful argument for rejecting the sequential model and instead using the "dual system", in which university education and apprenticeship in the form of articling took place simultaneously. Williams also critiques some of the dominant thinking of his own time about the aims and methods of legal education. He is forthright in his view that the primary aim of legal education is to prepare practitioners, and that immersion in practice from the outset of a student's education best achieved that aim. Professor Dale Gibson, who would lead the movement in Manitoba towards abandoning the dual system, provides his recollection of Williams.<sup>7</sup> For Dale, Williams was a powerful intellectual and personality, and the leader of the "establishment" thinking of his era.

With the "Memorandum on the Future Status and Location of the Manitoba Law School",<sup>8</sup> we are presented with a first-person account by the pivotal figures in the Great Transition in the 1960s from the dual system to a one in which the university part of the education was physically embedded in the main campus of the University of Manitoba. Our interviews in Volume 1 include not only Dale's own account of the Great Transition,<sup>9</sup> but others who directly experienced or observed it, including Charles Huband,<sup>10</sup> Cam Harvey,<sup>11</sup> and Art Braid.<sup>12</sup>

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there is nothing new under the sun".

<sup>5</sup> W Wesley Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water", (2016) 39:2 a.

<sup>6</sup> EK Williams, "Legal Education in Manitoba: 1913-1950", (2016) 39:2 Man LJ 55.

<sup>7</sup> Bryan P Schwartz, "Interview with Dale Gibson", (2016) 39:1 Man LJ 25.

<sup>8</sup> Cliff Edwards & Dale Gibson, "Memorandum on the Future Status and Location of the Manitoba Law School" (2016) 39:2 Man LJ 91.

<sup>9</sup> *Supra* note 7.

<sup>10</sup> Lane Foster, "Interview with Charles Huband", (2016) 39:1 Man LJ 1.

<sup>11</sup> Jesse Epp-Fransen & Ryan Trainer, "Interview with Cameron Harvey", (2016) 39:1 Man LJ 97.

<sup>12</sup> Ryan Trainer, "Interview with Art Braid", (2016) 39:1 Man LJ 77.

The first-hand account of what happened in the two decades that follow the “Great Transition” through the mid-1960s can be found in the interviews with Janet Baldwin,<sup>13</sup> Gerry Nemiroff,<sup>14</sup> Jack London,<sup>15</sup> David Deutscher,<sup>16</sup> Alvin Esau,<sup>17</sup> and Justice Freda Steel.<sup>18</sup> Interviews with other colleagues—Lee Stuesser<sup>19</sup> and John Eaton<sup>20</sup>—provide a more recent snapshot of life at Robson. The interviews embody some of the key developments of their time, including: the evolution of the law professor as a teacher who does some scholarship to a scholar who does some teaching; the erosion of institutional autonomy for the law school vis-à-vis the central administration of the University; and the issues concerning demographic inclusiveness in education and the profession, including participation by women. There are, however, no Indigenous voices in Volume I, although Jack London and Bryan Schwartz devoted a large part of their careers as practitioners in advocating on behalf of First Nations. There were no Indigenous Faculty members at the time of the Transition. A later special issue of the *Manitoba Law Journal*<sup>21</sup> will focus on the later entry of Indigenous students into legal education and the profession, and look ahead to future developments as the law school attempts to fully recognize and embrace the distinctively Indigenous dimensions of a pluralistic legal education.

Jack London, in his 1977 essay,<sup>22</sup> recaps the history of the first century of legal education in Manitoba, and looks ahead to a new era in which there

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<sup>13</sup> Jessica Davenport & Ryan Trainer, “Interview with Janet Baldwin”, (2016) 39:1 *Man LJ* 117.

<sup>14</sup> Bryan P Schwartz, “Interview with Gerald Nemiroff”, (2016) 39:1 *Man LJ* 135.

<sup>15</sup> Jessica Davenport & Jesse Epp-Fransen, “Interview with Jack R. London”, (2016) 39:1 *Man LJ* 191.

<sup>16</sup> Bryan P Schwartz, “Interview with David Deutscher”, (2016) 39:1 *Man LJ* 217.

<sup>17</sup> Bryan P Schwartz, “Interview with Alvin Esau”, (2016) 39:1 *Man LJ* 257.

<sup>18</sup> Ryan Trainer, “Interview with Justice Freda Steel”, (2016) 39:1 *Man LJ* 277.

<sup>19</sup> Bryan P Schwartz, “Interview with Lee Stuesser”, (2016) 39:1 *Man LJ* 297.

<sup>20</sup> Bryan P Schwartz, “Interview with John Eaton”, (2016) 39:1 *Man LJ* 353.

<sup>21</sup> Bryan P Schwartz & Darcy L MacPherson, eds, *Manitoba Law Journal, Special Edition on Indigenous Issues*, 40:1 *Man LJ* [forthcoming in 2018-19].

<sup>22</sup> Jack R London, “The Admissions and Education Committee: A Perspective on Legal Education and Admission to Practice in the Province of Manitoba, Past, Present and Future”, (2016) 39:2 *Man LJ* 105.

is greater integration throughout all four years (University, articling) of practical and academic perspectives.<sup>23</sup> In 1983, a Report of the Curriculum Review Committee<sup>24</sup> (authored in large part by individuals interviewed in Volume I)<sup>25</sup>, presented a curriculum model that attempted to balance and combine all the dimensions of legal education, including the teaching of doctrine, skills, and wider social and philosophical perspective on the law. The model was adopted, and remains in force to the present time. Phil Osborne and Alvin Esau reflect on it in their 1993 essay.<sup>26</sup>

In 2014, a committee<sup>27</sup> at the law school presented its extensive reflections on the past, present condition and possible future of the curriculum.<sup>28</sup> A year later, Sarah Lugtig produced a report on developing the clinical component of the curriculum.<sup>29</sup> The practical outcome of these, and other recent reflective exercises, will emerge in the decade to come.

In my essay on the Great Transition, I suggest that the further change should be focused on re-establishing some of the autonomy of the law school and with that freedom, attempting to prepare students more fully for practice rather than counting on the articling year to do so.<sup>30</sup> The education involved would attempt to integrate academic and practical perspectives throughout, and it contemplates that the newly practising lawyer will not only be better prepared to start, but have the knowledge, skills and inclination to be a life-long learner.

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<sup>23</sup> See also: Justice Roy J Matas & Deborah J McCawley, eds, *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985*, (Montréal: Federation of Law Society of Canada, 1987).

<sup>24</sup> Jack R London et al, “The Report of the Curriculum Review Committee on a New Curriculum”, (2016) 39:2 Man LJ 155 [Osborne-Esau Report].

<sup>25</sup> The Curriculum Review Committee included: Dean Jack R London; Professors Alvin Esau, Dale Gibson, Norm Larsen, Phil Osborne, and Bryan P Schwartz; and Student Representatives Eleanor Andres, and Steve Vincent.

<sup>26</sup> Phil Osborne & Alvin Esau, “Curriculum Reform at Robson Hall”, (2016) 39:2 Man LJ 179.

<sup>27</sup> The Academic Innovation Committee included: Professors Mary Shariff, Debra Parkes, Gerald Heckman, Vivian Hilder, and Sarah Lugtig.

<sup>28</sup> Mary Shariff et al, “Academic Innovation Committee on the Robson Hall J.D. Curriculum: Consultation Paper” (2016) 39:2 Man LJ 241.

<sup>29</sup> Sarah Lugtig, “A Vision for Experiential Education at Robson Hall: Supporting Students’ Transition to Practice” (2016) 39:2 Man LJ 397.

<sup>30</sup> Bryan P Schwartz, “The Next Great Transition in Canadian Legal Education” (2016) 39:1 Man LJ xxiii.