

Preface

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

When Dr. Bryan Schwartz and I took over the editorship of the Manitoba Law Journal (MLJ) in 2010, one of the first tasks was to determine the path that the publication would follow going forward. As we re-envisioned the goal of the MLJ, our overriding aim was to produce high-caliber and lively commentary on issues of importance to our own legal community. As part of that mandate, we decided to re-integrate “Underneath the Golden Boy” (UTGB) into the annual issues of the MLJ. Inaugurated in 2000 by Dr. Schwartz, UTGB focuses on legislation and public policy, with an emphasis on issues affecting Manitobans. While many academic law journals tend to concentrate on judicial developments, statutory changes and policy debates are topics often under-analyzed by legal academy.

As usual, this year’s UTGB issue includes profiles of bills enacted by the Legislative Assembly of Manitoba. Since these bills were introduced, there has been a change in government. The references to representatives of the Crown (such as ministers) are made as of the time of introduction of the relevant bill.

Nora Fien discusses Bill 35, an amendment to the worker’s compensation scheme in Manitoba. She does a remarkable task in discussing the often-misunderstood concept of post-traumatic stress disorder (PTSD), and the value of adding a presumption that post-traumatic stress occurred at work. Two of the most interesting elements of this paper are the comparison to other Canadian jurisdictions and the analysis of various stakeholder positions with regard to Bill 35.

In his contribution, Collin Intrater tackles the important issue of bad driving, whether caused by intoxicants, distractions (such as texting and

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social media), or other factors. Bill 34 introduced harsher penalties for provincial offences around driving, despite some indication from academic literature that there is only a minor deterrent effect in increased punishments. The amended act does not wait for a criminal conviction to apply these harsher outcomes; a charge around driving is sufficient to impose penalties. The system administered by the Manitoba Public Insurance to deal with problematic drivers is also scrutinized, and its “buyback” provisions are criticized in light of the amendments.

Erika Day’s contribution, focused on Bill 11, examines recent amendments designed to protect the victims of stalking and domestic violence. The author makes a convincing case that domestic violence and stalking are continuing and gendered problems in Manitoba, often resulting in the serious injury or death of victims. Bill 11 makes it easier, among other things, for victims to seek protective orders and monitor the use of firearms by those subject to these orders. Valid concerns about the efficacy of such measures are raised.

Danielle Magnifico explores Bill 5, an amendment to the *Police Services Act* designed to confront issues surrounding policing in First Nations communities. Manitoba has one of the largest Indigenous populations in the country. One of the most interesting parts of the paper is Ms. Magnifico’s discussion of the jurisdictional dispute surrounding policing in First Nations communities, as it appears neither level of government is willing to take responsibility over the issue.

This volume of UTGB also has a public policy portion. Bryan Schwartz, Terrence Laukkenen, and Justine Smith address one of the most important issues to Manitoba society as a whole and its criminal justice system, which is reducing the incidence of fetal alcohol syndrome disorder. The authors focus, in particular, on the challenges faced by Indigenous communities. They propose the need to develop strategies that include specific and measurable results, that draw on the successes achieved in other jurisdictions based on a thorough canvassing of the literature, and that consider interventions on many scales, from the cellular level to community employment and education.

Anne Turner has produced a thorough study of the history, modern development, and effectiveness of judicial supervision over the issuance of search warrants in wiretap situations. She points out that the law in this area still tends to be dominated by precedents that were developed in the era of rotary phones. Her ability to use history to explain a complex area of

law and its constitutional dimensions, and at the same time make it accessible to a non-expert, is a strength of the article.

Finally, the legality of purchase, sale and personal use of e-cigarettes lies in the background of the contribution authored by Ranish Raveendrabose. Raveendrabose wrote the article before any federal legislation was introduced, and he emphasized that more scientific research would help the legislature in formulating legislation that protects and serves those who are on either side of the issue of e-cigarettes. Interestingly, he concludes that the most effective method by which the federal government could regulate e-cigarettes is by amending the *Food and Drugs Act*, or drafting new regulations under this act (as opposed to the *Tobacco Act*).

One of the more distinctive aspects of this UTGB volume is that there is, in each of the contributions, a connection to police work, despite the fact that in some cases, this can create a jurisdictional issue with respect to the government. Ms. Fien's contribution has a policing dimension, as the presumption that PTSD is caused by employment was considered in certain jurisdictions for first responders, such as police, who are exposed to trauma as part of their work. The presumption is extended by the Manitoba legislation to all workers, which makes Manitoba a leader in the country on broadening this type of legislation and increasing supports for workers with post-traumatic stress disorder.

Distracted and impaired driving, discussed in Mr. Intrater's contribution, can lead to serious criminal offences that are sought to be curbed by a provincial amendment. Ms. Day's contribution describes how the amendments proposed by Bill 11 were developed through consultation with police, and addresses the enforcement aspect of protection orders. With respect to Ms. Magnifico's contribution, the connection to policing is, to say the least, obvious.

The public policy section addresses similar issues. In some cases (such as the Turner contribution), the link to the criminal law and policing is quite direct, while in others (such as the contributions by Schwartz, Laukkanen, and Smith, and that of Raveendrabose) the link is still clearly present, but not quite so obvious.

In the end, I believe that the various contributions in this volume fulfill the commitment that Dr. Schwartz and I have made with respect to the MLJ. The articles touch on various topics of great importance to Manitobans and the legal community. Many of the issues discussed are

connected to the criminal justice system. This is particularly timely as the MLJ will shortly release its first of many planned issues on criminal law jurisprudence.¹ Manitoba challenges, experiences, and policy initiatives in the area of criminal justice, including its impact on members of Indigenous communities, is potentially of national and international importance; we believe that in this area and in many other public policy areas over the years, the MLJ has released analysis and reflection that can contribute significantly to understanding and reform.

¹ (2017) 40:3 Man LJ [forthcoming].