

Preface

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In 2010, the Faculty Council for the Faculty of Law at the University of Manitoba proposed an overhaul of the Manitoba Law Journal. The Faculty recognized that the Journal should acquire a sharper focus, higher quality, and wider readership. Two faculty members, Bryan Schwartz and Darcy MacPherson, assumed the senior editorial positions, and worked with student staff members to further define and implement the Manitoba Law Journal.¹ One of the first steps was to integrate this publication, *Underneath the Golden Boy* – an annual scholarly review of legislation and public policy, inaugurated by Bryan Schwartz a decade earlier.²

In 2013, the improving Manitoba Law Journal obtained its first-ever Social Sciences and Humanities Research Council (SSHRC) grant. Since then, further strides have been taken, including incorporating an annual special issue on Criminal Law,³ producing special issues on legal history⁴ and pioneering the introduction of the Journal to cyberspace, including publishing its first e-book version,⁵ upgrading its website,⁶ and posting its

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¹ Bryan Schwartz, “A New Vision for the *Manitoba Law Journal*” (2011) 35:1 Man LJ.

² Bryan Schwartz & Darla Rettie, “Introduction” (2001) 28:2 Man LJ.

³ (2017) 40:3 Man LJ.

⁴ (2016) 39:1 Man LJ (*The Great Transition in Legal Education*); (2014) 37: Special Issue Man LJ (*A Judge of Valour: Chief Justice Freedman – in His Own Words*).

⁵ (2018), Amazon, online: <[https://www.amazon.ca/Great-Transition-Legal-Education-Manitoba_ebook/dp/B076GB8KK5/ref=sr_1_1?ie=UTF8&qid=1530637054&sr=8-1&keywords=Manitoba+law+journal](https://www.amazon.ca/Great-Transition-Legal-Education-Manitoba-ebook/dp/B076GB8KK5/ref=sr_1_1?ie=UTF8&qid=1530637054&sr=8-1&keywords=Manitoba+law+journal)>.

⁶ “The Manitoba Law Journal” (2018), online: <<http://themanitobalawjournal.com/>>.

content on more free-access websites.⁷ The Manitoba Law Journal's overall vision is now:

- to encourage and publish material that is of scholarly depth, precision and independence, and at the same time readable and engaging;
- to focus on issues that are particularly relevant to our own population in Manitoba. We recognize that we have a diverse society that includes Indigenous peoples, longstanding residents and recent immigrants, and that Manitoba's economy ranges from the traditional to the hypermodern;
- to welcome thoughtful work from across the philosophical and political spectrums; the academy must be a forum for searching exploration and debate, not the mere repetition of orthodoxy of any kind;
- to encourage the application of ideas from other jurisdictions in Canada and around the world;
- to ensure that our insights into our own society contribute to understanding at the national and international levels;
- to embrace all useful methodologies, including traditional legal argument, social sciences, and work of an empirical and/or statistical nature;
- to support the investigation of issues through means that include interviews with active participants, as well as the review of documents; the techniques of oral history should not be alien to law journals;
- to welcome contributors from all backgrounds, including practising lawyers, judges, academics, and authors who are experts in a wide variety of disciplines apart from law;
- to study the past, the present and the future. We have published special issues that have recovered and reflected on the lives and contributions of outstanding jurists;⁸ we seek to ensure that our volumes are produced quickly enough to

⁷ See e.g., (2017) 40:1 Man LJ, CanLIIDocs 185, <<http://www.canlii.org/t/7cr>>, retrieved on 2018-07-03.

⁸ (2012) 36: Special Issue Man LJ (5 Decades of the Chief Justice of the MBCA).

reflect current events; the Journal is a forum for predictions and prescriptions about the future;

- to follow the recommendations of The Truth and Reconciliation Commission⁹ with respect to legal education. In fact, the next Special Issue of the Journal will be focused on Indigenous Peoples and Oral History, and will include career retrospectives by the first wave of Indigenous jurists to attend law school and go on to practice.¹⁰

Our mission it to serve our communities. Specifically:

- we serve the scholarly community at the provincial, national and international levels by producing high-calibre work that is refereed at three levels: first by our student staff, second by our own faculty editors, and third, by external reviewers. The Journal is ranked among the top quartile of all law journals in Canada in terms of influence among the world community of scholars;¹¹
- we serve our practising legal community by welcoming contributions from all of its participants, and producing work

⁹ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: 2015) at 174-178, online: <http://www.trc.ca/websites/trcinstitution/File/2015/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf>.

¹⁰ The publication will be integrated with a new course at the law school, beginning in 2019, on Indigenous Peoples, Oral History and the Law. Oral history projects at the MLJ are conducted with the approval of the Research Ethics Board at the University of Manitoba. The interview subjects are generally outstanding figures in government or community leadership or distinguished academics. The interviews are edited in consultation with the individual involved, annotated by MLJ editors and subjected to peer review at both the MLJ and external levels. For another recent oral history project at the MLJ, please see the special issue on the Great Transition in Legal Education, volume 39(1). It includes, along with several essays, interviews with retired University of Manitoba law professors, each with at least thirty years of teaching experience, who critically reflect on their careers, their participation in the revolution in legal education that began in the 1960s, and their thoughts about the potential for another wave of fundamental reform.

¹¹ Based on Google Scholar Metrics <https://scholar.google.com/citations?view_op=top_venues&hl=en&vq=en>.

that is useful and relevant to them. We aim to produce one issue every year on events in our courts and administrative tribunals. We publish an average of approximately forty articles every year; of those, more than twenty are specifically focused on events in our jurisdiction.

- we serve our policy and law-makers by producing an annual issue devoted specifically to legislation and public policy, in the form of *Underneath the Golden Boy*;
- we serve our own faculty by providing a timely and facilitative forum for their work. Of the law journal articles produced by University of Manitoba Faculty of Law members every year, over half appear in the *Manitoba Law Journal*;
- we serve our students by providing opportunities to edit scholarship and to collaborate in it. The *Manitoba Law Journal* is a for-credit course open to students, and we employ a full-time student staff during the summer, as well as part-time during teaching terms. We publish on average half a dozen fully-refereed articles every year in which a student of the Faculty of Law is an author or co-author. The *Law Journal* also serves our students by producing work that can be readily incorporated into our teaching program.

This latest *Underneath the Golden Boy* illustrates the overall mission and character of the new-era *Manitoba Law Journal* program.

The introductory article, by Professor Richard Helmholz from the University of Chicago Law School, examines statutory interpretation in Europe during the Middle Ages, and compares it with the latest techniques used in Canada.

The “policy reviews” essays further illustrate the diversity of approaches among our journal authors; Jennifer Schultz’ article on the use of mediation in automobile injury cases in Manitoba uses statistical methods to explore whether mediation is efficient in actual practice. Richard Jochelson and David Ireland use student surveys and a review of the academic literature to comment on curricular innovation in law schools across Canada. Meanwhile, John Burchill relies on more traditional canvassing of case law to comment on whether police powers need to be more precisely codified. Bryan Schwartz’s legal opinion on the

constitutionally of federal carbon taxes looks at the relevant international as well as Canadian context in arriving at its conclusions. Virginia Torrie explores in depth the practical application of bankruptcy and insolvency statutes of earlier times. Her work will provide considerable insight to the ongoing debate in this area on how to balance the rights of creditors and debtors. Gerrard Kennedy explores how terms of reference for public inquiries should be crafted. Darcy MacPherson reviews a recent judicial interpretation of personal property security legislation in Ontario, and recommends against the adoption of a similar approach by courts or lawmakers in Manitoba.

The annual section that profiles specific legislation is part of a research program that was initiated in the Legislative Process class¹² fifteen years ago. Each student is asked to identify and then study a particular piece of recently-enacted legislation in Manitoba. They are encouraged to explore a recurring set of questions, including:

- What is the intellectual and political origin of the bill? Why is this subject being addressed by the legislation now and in this way?
- How much does the legislative process, including the response of opposition parties and public input, actually affect the final text?
- Does the legislation actually resolve a debate, or does it merely authorize some other officials to make the real decisions?
- In what style is the bill cast? Is it clear? Understandable to the general public?
- Do the French and English language versions of the bill actually say the same things
- Does the legislation promote sound public policy? What are its potential benefits and drawbacks?

Work is already well under way on the next *Underneath the Golden Boy*, scheduled for release this time next year. As noted above, the upcoming issue of the *Manitoba Law Journal*, 41(2), will be on Indigenous

¹² See University of Manitoba, Robson Hall Faculty of Law, “Legislative Process” (2018), online: <<http://law.robsonhall.com/current-students1/course-descriptions/legislative-process/>>.

Peoples, Oral History and the Law. Following that, we will release the latest Criminal Law annual Special Issue.¹³ Interest in it from readers and contributors across Canada is now so strong that it will be published in two success issues, volumes 41(2) and 41(3) of the Journal. Looking further ahead, we have also initiated a special issue on the changing face of the legal practice.

Our plan for the long term is to do our best to ensure that the Manitoba Law Journal serves as a worthy part of the changing face of legal scholarship – in our province, in our country, and our interconnected world.

¹³ (2018) 41 Man LJ [forthcoming].