Introduction and Issue Overview

BRYAN P. SCHWARTZ* & DARCY L. MACPHERSON**

In 2021, the Manitoba Law Journal, along with the rest of the world, continues to deal with the effects of the worldwide pandemic. Some projects that were started in 2019 had to be reorganized and reshaped in light of new imperatives, as well as the changing needs of our students and audience. Notwithstanding these challenges, the MLJ continues to put forward new and interesting content from both before and during the pandemic. As Editors-in-Chief, we would be remiss if we did not thank the students and staff who put forth so much effort in these trying circumstances.

The first contribution in this issue is a statistical analysis of the contribution of The Honourable Justice Suzanne Côté of the Supreme Court of Canada to the work of our country's highest court. The study, authored by Sandrine Ampleman-Tremblay & Camille Nadeau, makes some interesting and unexpected findings. These include that though Justice Côté is a frequent dissenter, she is nonetheless also one of the members of the Court most likely to write unanimous judgments on behalf of herself and her colleagues. This explains the title of the contribution ("Justice Côté in 2019: Great Dissenter, Voice of the Court, or Both?"), suggesting that both are possible, and even likely. The study, based on the judgments of the Court rendered in 2019, also finds some other interesting incongruities. For example, though some Justices are likely to disagree with the majority opinion regularly (Including Justice Brown and Côté), that does not necessarily lead to the conclusion that these dissenting Justices agree with each others reasoning when they do so.

* Professor and Asper Chair in International Business and Trade Law, Faculty of Law, University of Manitoba, Co-Editor-in-Chief, Manitoba Law Journal.

** Professor, Faculty of Law, University of Manitoba, Co-Editor-in-Chief, Manitoba Law Journal.

The study concludes that more study is needed to draw even more meaningful conclusions concerning the current Supreme Court of Canada members. Justice Côté provides an interesting example of a Justice who is not easily categorized.

In Gerard Kennedy's contribution ("*Hryniak* Comes to Manitoba: The Evolution of Manitoba Civil Procedure in the 2010s"), the author looks at recent developments in civil procedure law in this province. The author analyzes motions for delay, summary judgment motions, and appeals therefrom, and how the justice system deals with potentially vexatious litigants, among other issues. The author reviews important changes to the *Manitoba Court of Queen's Bench Rules*[1] made over a number of years. He offers a statistical analysis of cases in light of these regulatory changes and considers the jurisprudential changes arising from the Supreme Court of Canada's decision in *Hryniak v Mauldin*.[2] Although the focus is on Manitoba, the analysis extends to both commonalities with other provinces (such as Alberta and Ontario) and differences with jurisdictions as well (such as Ontario). These comparisons explain similarities and differences in approach; some appear to be based on language of regulatory instruments, others on judicial temperament.

What I find more refreshing about this contribution is that the manner it states its various conclusions is cautious but without uncertainty. The answers are drawn from the data, based on analysis and logical inferences, but the author also recognizes the small sample size available and the short time that some of these changes have been in effect. Therefore, his conclusions are strong enough to allow the reader to get a flavour of the current state of development of the law of civil procedure in Manitoba without suggesting that development is ironclad.

Interestingly, these first two contributions have much in common. First, they both take a serious statistical look at relatively recent developments in the law. Second, both contributions find that their subjects defy easy characterizations. Third, both contributions recognize the limitations of their analyses, and, rather than glossing over nuances that give the reader a true sense of the complexities that remain to be explored in the future.

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1 Man Reg 553/88.

2 2014 SCC 7.

In the contribution, "Feeling Inadequate: Reframing the Mindsets of Legal Education to Promote Mental Health", Edward Béchard-Torres makes a convincing argument that some of the institutional norms of legal education are contributing to a mental-health crisis for graduates. The argument is that many factors can interact to cause many law students to enter into poor mental states during their legal education. According to the author, these include the large-value final exam, Socratic exchanges, the mythology around how difficult legal learning is supposed to be, and the expectation of lower grades in law school (as compared to other university programs). As members of the professoriate, we can appreciate this perspective that today's students need to be reminded that, though innate ability is always helpful, hard work by the student is usually the greatest determinant of success in law school. The contribution also offers sample scripts for dealing with certain high-stress scenarios for students that will be of use to members of the law school community to help students who are engaging in less than productive talk with themselves.

Some of the same themes find expression in the contribution from Richard Jochelson, James Gacek and David Ireland ("Reconsidering Legal Pedagogy: Assessing Trigger Warnings, Evaluative Instruments, and Articling Integration in Canada's Modern Law School Curricula"). The authors detail the results of a study with current students about three contemporary for law schools in the 21st century: (i) the appropriateness of the use of "trigger warnings" or "content warnings" when professors and other instructors are approaching content that may be challenging for some students beyond as a matter of academic study (for example, for personal, emotional or social reasons); (ii) the appropriateness of the 100 percent final examination as a sole evaluative criterion in the law-school setting; (iii) the relationship between the law school and the profession in terms of experiential learning and practical training. The contribution is particularly engaging because it reviews the literature on each of these issues, setting out different viewpoints before discussing the views of study respondents. This means that the reader is given a background in the issue before getting the study results. In some ways, this puts the study results into an important frame for the reader. In other ways, the literature review makes some of the result quite surprising.

These two contributions (the one from Béchard-Torres, on the one hand, and the one from Jochelson, Gacek and Ireland, on the other) are linked together in a number of ways. The mental health of law

students should be a concern at the forefront of any modern law school. For example, Jochelson, Gacek and Ireland's contribution can be seen to confirm, at least in part, the assertion from Béchard-Torres that the 100 percent final examination may not be well-suited to the learning styles of at least some 21st-century law students.

At the MLJ, we have made the legal profession one of the continuing dimensions of our program. With respect to the contribution of Brendan Forrest focused on the ascendency of collaborative law practice, this adds to our "Changing Face of the Legal Profession" project. Although there are other aspects of this project to come in the future, current lawyers are helping us by setting out primers on emerging trends or reasonably newly established facets of our profession. For us at least, the Forrest piece was eye-opening in that collaborative law essentially "flips the script". In traditional practice, a failure to reach an agreement was one of the potential outcomes of negotiation, meaning that litigation would always be in the background of negotiation. Contrary to this orthodoxy, collaborative practice says that removing the possibility of litigation (at least with lawyers who agree to negotiate collaboratively) can be a significant advantage in appropriate circumstances. These include lower costs, and greater speed and flexibility, among others.

At the same time, Forrest (along with other scholars in the area) recognizes first that collaborative practice, although it appears to have gotten its start in the area of family law (where an ongoing relationship between the parties is often inevitable), this should not necessarily be the only area of law where collaboration be used. In many non-family cases where civil litigation would be expected (such as business disputes), collaborative approaches may be employed.

Forrest further recognizes that there are situations (often where fundamental power imbalances can be exploited by one of the parties against the other to achieve a profoundly unjust result) where the formalities of litigation can have the effect of lessening the impact of these imbalances. In such cases, using collaborative approaches would be inappropriate.

Sean Corrigan continues the theme of the changing face of the legal profession in his contribution that examines the trajectory of fee arrangements other than the billable hour. He suggests that the billable hour, once a mainstay in the legal-services business, is slowly declining in importance. Clients are demanding alternate fee arrangements. Some of

these might merely be "tweaks" to the billable hour model, such as unbundling fees or putting caps on the fees charged for a particular activity of one's lawyer. Flat fee arrangements, contingency fees, blended fees, and other compensation arrangements based on the value produced by the lawyer's professional work are all at the forefront of the law business, as lawyers try to meet the changing needs, wants and expectations of their clients.

These two articles layout discrete topics about the challenges that face our profession going forward. They raise questions about the contours of the profession that most law graduates will join at some point in their careers. These questions extend far beyond "the business of law" – though, admittedly, the business of law will be an important part of this discussion as well – and into questions about the competencies that young lawyers are going to need to develop both during and after law school in order to serve their clients successfully, and maintain the professional success for themselves, both financially and otherwise.

In the contribution from Jennifer Schulz, she explains the sometimes-misunderstood field of cultural legal studies. Cultural legal studies recognize the effects that law has on culture and the effects that culture has on law, and that each not only affects the other but is part of the other. As Schulz explains, a willingness to accept multiple interpretations of both law and culture (diversity), a willingness to accept that each participant may view each of law and culture (contextualization), and a willingness to challenge that which has previously been accepted (critique) are all she wants to get more academics to use a cultural lens in their research.

As Co-Editors-in-Chief, we agree that as law develops, it is inherently affected by, and affects, culture at large, and each of law and culture is dependent on the other. These questions of course play into some of the themes that other contributions in this volume have raised. How will cultural norms around mental concerns affect the development of law over time? How will the practice of law change in light of these cultural norms? How will the expectations of lawyers and legal training be altered to better serve the profession that many of our graduates will be joining, as Co-Editors-in-Chief, it is not our role to answer all (or even any) of these questions in this Introduction. But, for us, it is an opportunity to draw some attention to the connections that can be made between the various contributions in this volume, hoping that others may endeavour to

seize on these questions and connections to inform and enrich their research going forward.