

Report on the MLJ since the New Mandate Given to it by LFC in 2010

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29 October 2014

Overview

This report is to update LFC on developments since the new mandate LFC established from the Manitoba Law Journal (MLJ) in 2010, focusing on developments in the Manitoba legal system and on improved coordination with Underneath the Golden Boy.

As the attached statistical summary indicates, the MLJ has been fully carrying out its new mandate. There has been:

- A fourfold increase in articles published per year;
- A seven fold increase in articles published in the MLJ by U of M law faculty members;
- An increase in coverage of Manitoba law from nil to almost thirty articles a year.

Our detailed analysis (not attached here) shows that 35% of citations to the work of law faculty members has been to work published in the Manitoba Law Journal. It is therefore crucial to overall scholarly productivity and reputation. Since the transition in 2010, about a dozen current and retired members of the faculty have contributed to the MLJ (including forthcoming or scheduled publications). The MLJ is carried on LexisNexis, Westlaw and HeinOnline. The latter is particularly important to the Law School's reputation, as the single biggest factor in the MacLean's annual ranking of law schools is "faculty quality" as measured by citations to journal articles contained on HeinOnline.

Part of the increase in production is due to the re-integration of Underneath the Golden Boy, which is re-established, an annual issue of the MLJ (rather than an independent publication) and so contributes again towards MLJ's total content and citations. UTGB itself is thriving in light of a new partnership with the Centre for Policy Studies.

Part of the increase in production is due to an overall net increase in production of articles within the mandate of the MLJ. We believe that the existence of the refashioned MLJ encourages the production of material that would otherwise not be created. The increased production is embodied not only in the regular issue of MLJ each year, but also in the special issues each year (Five Decades of Chief Justices, A Judge of Valour: Justice Samuel Freedman in his Own Words, the forthcoming issue on legal education in Manitoba) apart from Underneath the Golden Boy.

The Scholarly Publication Program at Robson Hall

The Law School has been associated with four publications that are distinctly its own:

- The Manitoba Law Journal, established over fifty years ago, a successor to the Manitoba Bar Journal;
- Underneath the Golden Boy: originally published as a special issue of the MLJ, Professor Schwartz continued to edit the journal for a number of years as a distinct publication. Its focus is on legislation, regulation, political law, and democratic and parliamentary reform, with a special emphasis on reviewing developments in Manitoba. UTGB has received high praise from leaders in all three major parties in Manitoba, e.g, “ a superlative academic and critical assessment”; (please see the attached letters of support;
- The Asper Review of International Business and Trade Law: Inaugurated when the Asper Chair was created in 1999, focuses on international business and trade law, and has risen to 13th out of 68 among all Canadian Law Journals in the latest ranking by the Washington and Lee University ratings, and 5th in Canada among specialized journals;
- The Canadian Journal of Human Rights: launched in 2011.

Professor Parkes has recently served a term as an editor-in-chief of the Canadian Journal of Women and the Law, so that fifth journal had an especially close association with Robson Hall for a number of years.

All four Robson Hall based journals are peer reviewed.

All four are on the list of academic publications for which students can obtain credit.

Three are housed in the Robson Hall Publications office (room 466), and the CJHR has its own office space.

The Transition in 2010

In 2010, Professor Short reported to LFC a content analysis that showed that the MLJ was not serving as a major outlet for publications by Manitoba jurists or about Manitoba law. Professor Short suggested that a new Canadian Journal of Human Rights be created. After an ad hoc committee chaired by Professor Schwartz studied the options and consulted with Professor Short, LFC agreed to a motion proposed by Professors Short and Schwartz to:

- Support both the existing Manitoba-based journals (MLJ and UTGB) and the creation of a new Canadian Journal of Human Rights;
- Refocus the MLJ on Manitoba legal developments;
- Improve coordination between MLJ and UTGB;
- Urge LFC members, in their roles on various funding committees, to ensure that the journals have all necessary fiscal support.

Half of the existing assets of MLJ were then assigned to the new CJHR. Professor Short has since assumed the role of inaugural Editor-in-chief, and the CHJR has been launched and produced a number of volumes.

UTGB, which continues to be edited by Professor Schwartz, has again become an annual issue of the MLJ, and contributes to its article, author and citation counts.

In 2013, UTGB began to collaborate with the Manitoba Institute for Policy Research at the University of Manitoba. There is now an annual section, edited (under Professor Schwartz' overall supervision) by public an administration and political science colleague that focuses on public policy issues in Manitoba. The cooperation has gone very well in practice, and will continue for at least the next few years.

Fiscal Situation of the Manitoba Law Journal

The annual cost of MLJ (including MLJ regular issue, UTGB, MLJ special issue, MLJ online)

- Printing costs \$15,000 for three hard copy issues;
- Student editors – 3 over the summer, plus some term assistance total: \$25,000.
- Total cost per year (apart from in-kind contribution by faculty editors): \$40,000.

The annual revenues are approximately:

- Subscription revenues: \$7,000;
- Legal Research Institute grant for two summer students: \$15,000;
- Endowment Fund Grant for one student: \$7,500;
- Shelley Weiss Fellowship for 2L Student Editors: \$3,000;
- Support from the Manitoba Institute for Policy Research: \$2,500;
- Support for UTGB from the Asper Chair: \$2,000.
- Total revenue: approximately \$37,000.

There is an annual shortfall of about \$3,000, which has been covered by the assets that MLJ had when it began its new mission. These funds are virtually exhausted. **The main reason for the shortfall is that MLJ is regularly producing much more material than the previous version, including a special issue every year.**

In addition, MLJ relies on an in-kind contribution from its faculty editors. It takes approximately:

- 150-200 hours each year for Darcy MacPherson (coediting MLJ apart from UTGB);

-300-400 hours each year for Bryan Schwartz (coediting MLJ (all three journals, including UTGB)

-150 hours each year for Andrea Rounce (coediting UTGB).

The in-kind contribution at Robson Hall alone is worth over \$50,000. The contribution is essentially from the faculty members themselves, as no MLJ editor is currently receiving any release time because of their editorial duties (other editors have in the past, as does the current editor of the CJHR). This point is mentioned here for information only, although it might emerge in other contexts, such as workload policies;

MLJ made an application to the SSHRC program for scholarly publications, filed in June 2013. The application was about sixty pages in length, including documentation. Approval rights for such applications are typically less than third, so a successful outcome cannot be assumed;

Private law firm sponsorship: might succeed, but MLJ has refrained from pursuing out of concerns over coordination with larger Law School capital campaign;

Advertising – has met the above same challenges as private firm sponsorship;

In the past, the MLJ has asked the Law Society to pay MLJ to distribute a copy to every member of the Law Society as part of a professional development program. We will canvass this possibility again when there is a new executive director, but it is a longshot;

If the SSHRC application is not successful, MLJ might apply to LRI for assistance with printing costs. The editors do not believe cutting back on the scope of the publication is in the best interests of the law school. Our consultations lead us to believe that going entirely electronic is not desirable from the point of view of readers or authors. We could forego doing special issues, but we believe that they have been highly success (including the Five Decades of Chief Justices, Sam Freedman's autobiography, the forthcoming special issue on Legal Education in Manitoba, a potential future issue on Aboriginal Peoples and Water Rights and so on).

Challenges:

Apart from fiscal challenges, and workload issues for current faculty editors, the **biggest concerns ahead are the continued generation of content by Law Faculty Members**, especially for the annual `regular issue`, which is supposed to survey current developments in the courts.

UTGB is largely self-sustaining in content, particularly in light of the partnership with the Manitoba Institute for Policy Research and the contributions of students. Special issues, like the forthcoming one on Education, do not have to be done every year, but so far we have found a series of valuable themes and content.

So far, in its first few years with a new focus, we have had a high level of participation in MLJ from full-time faculty members including articles, comment for introductory pieces (including

forthcoming) by: DeLloyd Guth, Gerald Heckman, Amar Khoday, John Irvine, Darcy MacPherson, David Milward, Debra Parkes, Donn Short, Bryan Schwartz, Lorna Turnbull, Donna Miller (visiting professor), Sara Lugtig (director of Clinical Legal education), Cam Harvey (emeritus), Jack London (retired), and Janet Baldwin (retired).

But we have received almost no contributions from faculty members for the 2014 regular issue;

Even short pieces that comment on cases, or canvass recent developments would be very welcome. Any case by the SCC is in mandate, as the Court's influence is nation-wide. Many developments in Manitoba are of national and international interest, and material produced here would contribute to both the citation count and reputation of individual authors, the MLJ and Robson Hall as a whole;

In terms of reputation, we believe the MLJ is well-regarded by many law school constituencies or stakeholders including the practising bar, the students who have opportunities to serve as editors students who have published papers, the faculty which uses it as a major outlet for publications, and the Manitoba Courts, especially in light of our special issues. We continue middle-of-the pack, and slightly down since 2010 in terms of the Washington and Lee University annual rankings. We believe that this is partly because of the limited scope of the publication prior to 2010; the citation counts used by the W&L rankings include past publications, not just recent ones. The much increased number of articles should help with the W&L rankings, but will be offset in part by the fact that the W&L rankings do not include citations to non-law journals, and much of the MLJ (especially UTGB) is of interest to scholars in other disciplines. Furthermore, the focus on developments in Manitoba also might limit the ratio of citations to articles published (a factor in overall ranking).

Governance

The grant to SSHRC was expressly premised on the continuation of the existing governance model. The current governance model is: Dean appoints faculty editors and faculty members to the MLJ Board, etc. We do not propose to LFC that it revisit the model until we know if the application is successful.

APPENDIX A
STATISTICAL SUMMARY
Manitoba Law Journal, Underneath the Golden Boy, Asper Journal
Faculty Council Report

Summary

Darcy MacPherson and Bryan Schwartz took over as editors of the Manitoba Law Journal in 2011, since that time:

Manitoba Law Journal produced on average:

- 43 articles a year
- 29 on Manitoba Law
- 7 by U of M faculty members
- 6 by students

Prior to transition the Manitoba Law Journal produced on average:

- 10 articles a year
- 0 on Manitoba Law
- 1 by a U of M law faculty member
- 0 by students

Content Analysis Manitoba Law Journal Four Years Prior to Transition 2006-2010

On average across the four previous volumes prior to the transition the Manitoba Law Journal produced on average: 12.4 articles a year, 1.4 on Manitoba Law, 3.2 by Faculty members.

2005-6 Volume 31 (1-3): 24 articles; 569 pages; 6 articles on Manitoba law; 9 by member of Faculty, 0 by students

2008 Volume 32 (1-2): 14 Articles, 204 pages 1 article on Manitoba Law; 2 article by member of Faculty, 1 by student

2009 Volume 33 (1-2): 11 articles, 615 pages; 0 articles on Manitoba Law; 1 article by member of Faculty, 1 by student

2010 Volume 34 (1-2): 15 articles (Justice Rand issue); 346 pages; 0 articles on Manitoba Law; 4 articles by Faculty, 0 by students

Content Analysis of MLJ Four Years after Transition 2011-2014

On average since the transition the Manitoba Law Journal have produced on average per year: **37.6 articles; 837 pages; 23 on Manitoba law; 11 by U of M Faculty of Law members, 5 by students**

2011 Volume 35(1): 15 articles; 292 pages; 8 on Manitoba Law; 8 by U of M Law faculty, 1 by student

2012 Volume 36: 33 articles, 1062 pages; 23 articles on Manitoba Law; 11 by U of M Law faculty, 6 by students

36(1): 12 articles, 393 pages; 3 articles on Manitoba Law; 4 by U of M law faculty; 3 by students;

36(2) UTGB: 12 Articles; 483 pages; 11 articles on Manitoba Law; 5 by U of M faculty, 3 by students; 4 non-law faculty

Special Issue - Five Decades of Chief Justice of Manitoba: 9 articles, 186 pages, 9 on Manitoba Law, 2 by Faculty, 0 by students;

2013 Volume 37: 65 articles, 1158 pages; 39 on Manitoba Law, 14 by U of M Law Faculty members, 8 by students

Issue 1: 32 articles, 508 pages, 10 articles on Manitoba Law, 10 by Faculty, 2 by students

Issue 2 – Underneath the Golden Boy: 19 articles, 345 pages, 15 articles on Manitoba Law, 0 by U of M Law Faculty, 9 by non-law faculty; 6 by students (in publication)

Special issue - A judge of Valour, Chief Justice Samuel Freedman in His Own Words: 14 articles, 305 pages; 14 on Manitoba Law, 2 by U of M Law faculty, 0 by students

2014 Volume 38 (in publication):

38 (1) (in progress) Special issue on Manitoba Legal Education – projected 10 articles, 10 on Manitoba Law, 300 pages; 1 by faculty, 1 by students

Appendix B- letters of support for




ATTORNEY GENERAL
MINISTER OF JUSTICE

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JUL 05 2010

Professor Bryan Schwartz
Asper Professor International Business and Trade Law
Editor, *Underneath the Golden Boy*
4th Floor Robson Hall
224 Dysart Road
Winnipeg MB R3N 0T7

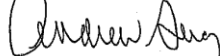

Dear Professor Schwartz:

Re: Underneath the Golden Boy

Thank you for your recent e-mail correspondence regarding the *Underneath the Golden Boy* Journal. This annual publication is a valuable review of legislative developments in Manitoba. As provincial legislation affects all citizens of Manitoba, *Underneath the Golden Boy* is a useful resource for me, my staff and the general public that provides insightful analysis of the bills and laws being passed in Manitoba and debates.

I wish you continuing success with the *Underneath the Golden Boy* Journal.

Yours truly,



Andrew Swan

UTGB



JON GERRARD
M.L.A. River Heights

Room 169 - 450 Broadway
Winnipeg, Manitoba R3C 0V8

April 8, 2010

Professor Bryan Schwartz
Asper Professor International Business and Trade Law
Editor, *Underneath the Golden Boy*
4th Floor Robson Hall
224 Dysart Road
Winnipeg, MB R3N 0T7

Re: Underneath the Golden Boy

Dear Professor Schwartz,

I am writing to provide you with my opinion on *Underneath the Golden Boy*. Let me first applaud you and the law students of Robson Hall for writing, compiling, and editing *Underneath the Golden Boy* each year. It is without question one of the most valuable assessments of our provincial legislative process.

I have served as an MLA in Manitoba for over ten years. During my tenure, I've had the opportunity to read and debate scores of bills; a large proportion of which, at present exist as Manitoba law.

Let me take this opportunity to also highlight the impact our bills have on Manitobans. Each year we usually debate approximately 50 government bills and roughly 20 opposition bills. The bills that receive royal assent become laws which govern all Manitobans. Cumulatively, these bills have an enormous influence on the well-being of our citizens. They impact the departmental budgets, the annual expenditures, the nature of investments, and the business climate in Manitoba which in turn affects the provincial economy and the social services in place for our citizens. Simply put, our provincial body of law is of paramount importance to the daily lives of our citizens. It is therefore vital that there be careful scrutiny of this process by an independent source that provides more scholarly analysis than media coverage.

In 1927, Hungarian Biochemist Albert Szent-Gyorgyi received the Nobel Prize for Medicine. He was quoted as stating, "Research is to see what **everybody** else has seen, and to think what **nobody** else has thought."

Manitoba bills and legislative debates are readily accessible to the public, both online as well as in print in various libraries across Manitoba. However, the mere availability of bills, debates, and committee minutes, is tantamount to providing what Albert Szent-Gyorgyi claimed, research that **everybody** could see.

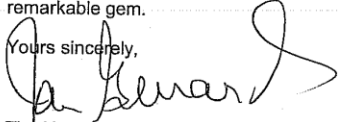
The mere availability of bills and debates is not tantamount to a rigorous, analytical examination of the legislative process itself or of the genesis of each bill and outcome following Royal Assent. That is where *Underneath the Golden-Boy* steps in – adding a vital and savvy analysis of the legislative process to both our public discourse and to our long-term historical records. *Underneath the Golden-Boy* provides analysis akin to what Albert Szent-Gyorgyi stated about good research – being thoughts that "**nobody** else has thought." Many chapters therein pry into the heart of the most note-worthy bills of our time, offering insightful counter-points, incorporating media commentary of the day, and incorporating relevant civil and legislative jurisprudence in deliberations therein.

I can state unequivocally that *Underneath the Golden Boy* is the best current assessment of laws being passed in Manitoba today. It provides a superlative academic and critical assessment of the positive and negative aspects of our bills and debates. Simply put, it is an intellectual and historic asset.

I certainly hope to read many future editions of *Underneath the Golden Boy*.

On a final point, let me state that although it may be possible at some point to have an electronic version of *Underneath the Golden Boy*, I prefer reading my editions in book or hard-copy form. Although electronic version would help further promulgate this remarkable gem.

Yours sincerely,



The Honourable Jon Gerrard
MLA for River Heights
Leader – Manitoba Liberal Party



Province of Manitoba

LEADER OF THE OFFICIAL OPPOSITION

February 18, 2011

Bryan Schwartz
Asper Professor - International Business and Trade Law
Editor, *Underneath the Golden Boy*
4th Floor Robson Hall
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Winnipeg MB R3N 0T7

Dear Professor Schwartz:

Thank you for the opportunity to provide comment regarding *Underneath the Golden Boy*. I also want to take this opportunity to thank you, as the Editor-in-Chief, as well as the publication's many contributors, for the thoughtful analysis, attention to detail, and informed commentary that is characteristic of this important publication.

Underneath the Golden Boy captures the many nuances of the legislative process that often go unnoticed by media, pundits, and members of the public. The publication is second to none in its analysis of the process by which a bill becomes - or fails to become - law.

As a legislator, I find *Underneath the Golden Boy* to be a useful tool, as it provides an objective assessment of both the proposed laws themselves and the process by which they are introduced, debated, amended, and passed. I know that our staffers regularly review the publication. Finally - and perhaps most importantly - issues of *Underneath the Golden Boy* will be an important tool for students of politics and history. While reading the text of a bill or a transcript from *Hansard* can be a useful exercise, only *Underneath the Golden Boy* provides the context that is often pivotal to understanding the potential impact of a bill on the lives of everyday Manitobans.

Finally, you have asked for comment on whether *Underneath the Golden Boy* would be better received in electronic form. I enjoy the hard copy version myself and would encourage you to continue publishing it. In addition however, an electronic version may make the publication accessible to a wider audience.

Once again, thank you for continuing to provide our office with copies of *Underneath the Golden Boy*. I wish you continued success with this important publication.

Yours truly,

Hugh McFadyen
Leader of the Official Opposition

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Appendix C

Law Faculty Council Resolution 2010:

That Faculty Council (the “Faculty”):

- (i) determines that the Manitoba Law Journal will be continued, with an intensified focus on Manitoba law in its practical application in Manitoba society, including case law developments. The Dean is invited to appoint an editor and a MLJ committee to provide oversight and support for a refocused journal to be launched in the fall of 2011. The committee is requested to report back before then on progress, including finance, editorial structure, coordination with Underneath the Golden Boy;**
- (ii) fully encourages and supports the initiative by Professor Short to initiate a new Canadian Journal of Human Rights. Professor Short is invited to report back to Faculty Council on progress, including any recommendations for governance and editorial structure, and Faculty Council supports his overseeing the production of the MLJ until the transition is completed;**
- (iii) encourages the Dean, the Legal Research Institute and granting agencies to provide all necessary financial support for both its Manitoba-focused journals and the CJHR;**
- (iv) encourages the committees and editors of Faculty-based journals, including the CJHR, to work cooperatively together, including sharing where possible of equipment, distribution channels, and providing a harmonious and mutually supportive approach to granting agencies.**