

Introduction

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THE LEGAL RESEARCH INSTITUTE at the University of Manitoba is engaged in a number of legal research and publication projects involving contemporary issues, historical perspectives, and critical commentary.¹ One of the projects we have initiated is the Manitoba Law Annual. This involves gathering the case law from the Manitoba courts, approaching potential contributors to join the project, advancing research funds to aid in the preparation of the articles, and handling the editorial and production of the volume in cooperation with the *Manitoba Law Journal*. This is the second volume of this project.²

While modest in scope, the two volumes of this project thus far have, I think, increased the amount of scholarly research and writing on law and the legal system in Manitoba. Future participation from scholars in Manitoba, or from scholars outside Manitoba who are interested in topics that have a particular Manitoba origin or focus, would be gratefully accepted. We would also welcome any responses from readers as to the value of this project.

For our first volume, Peter McCormick submitted a statistical analysis of the Manitoba Court of Appeal for the 1987 calendar year.³ In this second volume, he does an analysis of the decisions of the Manitoba Court of Appeal for 1989. This new work, like the previous study, identifies the number and kind of decisions, the reporting rate, the authors of the judgments, the success rate for appeals, the numbers and kind of citations, and so forth. However, one of the added strengths of this new work is that we can now compare the statistics to his previous study of the 1987 year, which may help us to

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¹ See Esau, *Annual Report of the LRI 1988-89* (Winnipeg, LRI, 1989) and Esau, *Two Year Report of the LRI 1989-90, 90-91* (Winnipeg, LRI, 1991). Copies of the Report are available upon request from the Institute.

² The first Manitoba Law Annual is (1990), 19 Manitoba Law Journal 1-217.

³ McCormick, "Caseload and Output of the Manitoba Court of Appeal: An Analysis of Twelve Months of Reported Cases." (1990), 19 Man. L. J. 31-51.

identify changes and trends. In addition, McCormick in this new study has given us some very useful tables and graphic displays of the comparative "voting" behaviour of our judges in terms of dissents, granting appeals, and agreement with the Crown or the defence in criminal cases, and the voting pattern of each judge in comparison to each of the other judges. This is the sort of empirical work on our courts that is both very refreshing for legal scholars who are often immersed in doctrinal research and also helpful to lawyers and law students by providing highly relevant data on our current Court of Appeal. The Legal Research Institute is currently providing support for another study of this kind to be included in our next volume.

In another study in this volume, Peter McCormick turns his attention to a twenty year study of the Manitoba Court of Appeal judgments that were appealed to the Supreme Court of Canada. The study compares Manitoba decisions on appeal with those of other provinces in terms of appeal success rate, frequency of appeal from this province, the rate of reversal of Manitoba decisions in the Supreme Court of Canada in the categories of Criminal, Charter, Public and Private law as compared to the rate of other provinces. McCormick even provides statistics on the individual judges of the Court of Appeal in terms of decisional affirmation or reversal by the higher court, and also statistics on the individual Supreme Court judges in terms of handling Manitoba appeals. This study has particular interest for us in terms of the finding that over this period Manitoba had the highest frequency of appeals of any province in Canada, and we had by far the highest rate of Supreme Court reversals of any court in the area of private law. The Legal Research Institute is supporting further research by Dr. McCormick to push this study back to 1949 when the Supreme Court became the highest court of appeal and perhaps back to 1875 when the Supreme Court was established.

Dr. Wes Pue is engaged in a major research project involving an investigation of the development of the attributes of modern professionalism amongst lawyers in the Canadian Prairies during the first half of the twentieth century. The Legal Research Institute is one of the funders for this project. In this volume, Professor Pue deals with the seminal work of Richard Abel on the market control trajectory of the professionalism project and Abel's trenchant critique of the alternative structural functionalist model. Pue makes some very suggestive points about the limits of the market control theory as a complete account of the professionalization project, and he outlines the

need for scholars to locate the history of the profession in the culture of modernity.

Providing continuity with the first volume of this series, Professor Philip Osborne has again reviewed the whole field of Tort decisions from the Manitoba courts, this time for the 1989 calendar year.⁴ As was the case last year, Osborne's commentary provides a very useful contextual background and critical discussion of central issues in Tort law. For this volume we have a discussion of structured settlements, occupier's liability, burden of proof in causation, unlawful interference with economic interests, and some notes on medical malpractice, contributory negligence, and products liability. Of particular note is an excellent and original discussion by Osborne on sporting injuries caused by one player to another player. Osborne is critical of the Manitoba Court of Appeal decision that reversed a trial court decision imposing liability as a result of a collision in a soft ball game.⁵

In terms of reviewing the cases in an area in a systematic way, we are very pleased that Professor Linda Vincent has contributed a very insightful review of Contract cases for the 1988, 1989 and part of 1990 calendar years. This article fits exactly the kind of review commentary that we had hoped this series would contain. Vincent's commentary touches upon some aspects of seven areas of contract law: privity of contracts, exemption clauses, non est factum, statute of frauds, certainty, restrictive covenants, and rescission for innocent misrepresentation.

One of the most significant recent developments in terms of the legal system in Manitoba is the establishment of a specialized Family Violence Court at the Provincial Court level. A specialized court of this sort is apparently the first of its kind in North America, and the Legal Research Institute is helping to fund a major study on the operation of this court. In this volume, Professor Jane Ursel, who is in charge of the evaluation, provides context by outlining the history of the changes over the past seven years which led to the development of this court and also the statistical information tracing the consequences of changes made within the justice and social service systems.

While Professor Ursel's article focuses mainly on spouse abuse, Professor Anne McGillivray turns to the issue of the criminalization of child abuse. She traces the history of shifting ideologies in regard

⁴ For last year's review, see Osborne, "A Review of Tort Decisions in Manitoba, 1988" (1990), 19 Man. L. J. 92-137.

⁵ *Temple v. Hallem*, [1989] 5 W.W.R. 669 (Man. C.A.)

to this issue, and the changes in substantive and evidential law brought into force by Bill C-15 in 1988⁶. Professor McGillivray then gives a very interesting account of the actual operation and effect of these new legal provisions in terms of such issues as prosecutorial discretion, use of the new offences, use of videotapes, use of screening devices, the establishment of the Family Violence Court, and the widening of the rule against hearsay.

On a different issue involving children and the law, Professor Alison Diduck provides us with compelling criticism of a Manitoba Court of Appeal decision that interpreted the *in loco parentis* doctrine narrowly to allow a man to avoid payment of support to his former stepchild.⁷ Professor Diduck looks both at the historical development and the contemporary policy considerations to show how and why the Court went wrong.

One of the developments in the Manitoba legal system that may interest readers, is that the Law Faculty in Manitoba has implemented and evaluated a new curriculum in the past few years. Professors Osborne and Esau give a short account of why the curriculum was changed, the principles of the new curriculum, and some evaluative comments on the operation of the new curriculum.

One of the original goals of this project of annual commentary, was to also deal with legislative developments. A step in this direction is taken in this volume in that Professor Cameron Harvey's note on Wills and Succession deals with two new statutes in Manitoba, namely *The Intestate Succession Act*⁸ and *The Dependants Relief Act*⁹. Professor Harvey also comments briefly on three recent judicial decisions, two of which deal with the *Dower Act*.¹⁰ Professor Harvey has also provided a note on the recent Manitoba Court of Appeal case of *Pearson v. Plester*¹¹ dealing with the authority of lawyers to settle cases and Professor Edwards has again provided a note on a couple of Trusts cases from the Manitoba courts.

⁶ *An Act to Amend the Criminal Code and the Canada Evidence Act*, S.C. 1987, c-24.

⁷ *Carignan v. Carignan* (1989), 22 R.F.L. (3d) 379 (Man. C.A.).

⁸ S.M., 1989-90, c.I43.

⁹ S.M. 1989-90, c.D42

¹⁰ R.S.M. 1988, c.D100.

¹¹ (1989), 62 Man. R. (2d) 142 (C.A.)

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