Dominant Professionals: The Role of Large-Firm Lawyers In Manitoba

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I. INTRODUCTION

LARGE LAW FIRMS, virtually unknown in nineteenth-century Canada, now dominate the legal profession. The visible signs of their prestige include superbly appointed offices located in the high-rent office towers overlooking Canada's major cities. It is these large-firm lawyers who service the legal needs of Canada's corporate giants. The salaries they receive are the envy of the rest of the profession, not least the law students who compete ferociously for coveted places in such firms. These students know that such a position yields not only wealth, but opportunity for advancement in business, politics, or the profession itself.

Large-firm lawyers are unquestionably influential, but their role remains mysterious; they are proverbially secretive. Neither the media coverage of their activities, nor the histories that chronicle their headlong expansion, truly reflect the role of large laws firms in Canadian society. This essay uses the Winnipeg bar from 1899 to 1959 as a case-study to examine systematically the extent of that role. Over that period, there was an increasing tendency for those entering professional practice to do so as either members of multi-lawyer associations or solo practitioners. Those starting their career at either end of the legal spectrum

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TABLE 1
The Bar of the Province of Manitoba

Location	Numbers of Lawyers						
	1899	1909	1919	1929	1939	1949	1959
Winnipeg	72	193	325	389	359	331	443
Rest of Manitoba	72	104	109	157	150	133	141

were destined to remain there. This produced two results: It ensured that Winnipeg lawyers did not share a common professional experience, and it created a highly differentiated and stratified bar dominated by members of large firms. By controlling both the Law Society and the Manitoba Law School, members of large firms marginalised women, Jews, and small-firm practitioners. In so doing they perpetuated their control of the profession and guaranteed its continued stratification. Lawyers in the city's largest and smallest firms practised a different kind of law for a different kind of client, for reasons this essay explains.

To get behind the facade of large firms, this essay combines a critical examination of existing studies of the profession with a quantitative analysis of litigation, lawyer mobility, law-firm growth, specialisation, and Law Society elections. It explores the client base of varying sizes of firms and the impact client type had on how law was practised. This essay suggests that not only is the relationship between large-firm lawyers and their clients dominated by clients, but that clients' values are adopted by those at the top of the legal hierarchy.

This essay also reveals startling new information about how lawyers in large Winnipeg law firms have come to dominate a profession composed largely of small-firm practitioners. It indicates that large firms essentially put their undoubted talents at the service of corporate clients, leaving the "little guy" to the generalists of the profession. Moreover, the significant former clients continued to be represented for years after their appointment. In addition to virtually monopolising the most lucrative forms of legal work, as well as judicial posts, members of large law firms influenced the development of both the Law Society and the Manitoba Law School during their formative stages. Further, their presence in politics guaranteed that corporate interests would be protected in the public as well as in the private arena.

Table 1 describes the composition of Manitoba's legal profession between 1899 and 1959. It suggests that, by the start of the second half of the twentieth century, 70 percent of lawyers who practised law in the province did so in Winnipeg. What is important in understanding the evolution of Winnipeg law firms, however, is less the number of lawyers who practised in the city that the size of the firms with which they practised.

TABLE 2
Manitoba's Largest Law Firms

Firm Name	Rank in Terms of Size						
	1899	1909	1919	1929	1939	1949	1959
Pitblado, Hoskin	4	2	5	3	2	1	1
Aikins, MacAulay	1	5	5	1	3	2	2
MacInnes, Burbidge	–	1	1	3	1	3	4
Thorvaldson, Eggerston	–	–	3	–	5	3	–
Hudson, Ormand	–	2	–	2	4	–	–
Thompson, Dorfman	–	–	–	–	–	5	2
Walsh, McMurray	–	–	–	–	–	5	4
Parker, Tallin	4	–	5	–	–	–	–
Hughes, Inkster	–	–	–	3	5	–	–
Tupper, Tupper	2	4	–	–	–	–	–
Filmore, Riley	–	–	1	–	–	–	–
Fisher, Wilson	2	5	3	–	–	–	–

Tables 2 and 3 divide Manitoba and Winnipeg law firms, respectively, according to the number of associates or partners employed. Large firms are defined as those containing six or more lawyers; and medium firms, those with between three and five lawyers. When the term "small firm" is used, it refers to both solo and two-lawyer practices. Prior to 1959, only fourteen Manitoba law firms employed more than five lawyers in any given year, and all were located in Winnipeg. Of these, table 2 describes the twelve which at one time or another were ranked among the largest five.

A comparison of the growth patterns of just the Pitblado and Aikins firms suggests that, in the first half of this century, large-firm growth was both planned and incremental. Such differences as exist between the firms can probably be attributed to the personalities of their founders. Between 1909 and 1959, for example, both Pitablado, Hoskin and Aikins, MacAulay grew by approximately two lawyers per decade, but 20 percent of Pitblado lawyers came from small or medium-sized firms compared with just two percent for Aikins (whose recruits came primarily from the government or corporations). Moreover, lawyers who started out with Pitblado were twice as likely to remain with that firm for their entire career as were those who started with Aikins. Both findings reflect the fact that Pitblado grew up with a much less affluent and privileged environment than Aikins and made a greater effort to get along with

TABLE 3
Winnipeg Law Firms

Size of Firm	Number of Firms					
	1904	1914	1924	1934	1944	1954
Large	1	5	10	6	4	8
Medium	10	31	42	27	30	35
Two Lawyers	17	45	45	46	30	33
Sole Practitioners	20	60	92	155	128	137

TABLE 4
Law Firm Profile

Year	Small				Medium		Large	
	1 Lawyer		2 Lawyers		3–5 Lawyers		6+ Lawyers	
	Actual	Percent	Actual	Percent	Actual	Percent	Actual	Percent
1899	27	38	26	36	19	26	0	0
1909	31	16	52	29	82	41	28	14
1919	71	22	72	22	115	35	67	21
1929	112	29	86	22	118	30	73	19
1939	135	38	84	23	90	25	50	14
1949	118	36	76	23	82	25	55	16
1959	135	30	82	19	143	32	83	19

his associates.[1] And although both were well respected, Aikins was not much liked:

> Sir James had not been a popular person. A humourless man of Methodist persuasion and consuming ambition, he almost invariable put business before pleasure, and found little time to develop close personal relationships. And although capable of impulsive generosity, [he] had a reputation of niggardliness.[2]

II. LAW-FIRM SIZE AND STATUS

THE SIZE OF THE LAW FIRM with which lawyers practise has a profound impact on their career and the type of clients they attract. This section examines the significance of size in the context of law-firm growth, and lawyer mobility and status.

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1 A. Tillenius, *Learned Friends, Reminiscences: Pitblado, Hoskin, 1882–1974* (Winnipeg: Pitblado, Hoskin, 1975).

2 D. Gibson & L. Gibson, *Substantial Law and Justice: Law and Lawyers in Manitoba, 1670–1970* (Winnipeg: Peguis, 1967).

Table 3 suggests that, notwithstanding the modest growth enjoyed by medium-sized firms after 1914, lawyers entering the legal profession increasingly did so either as members of large firms or as solo practitioners.

Table 4 illustrates the extent of this trend more clearly. It indicates that, between 1909 and 1959, the number of practitioners working in two-lawyer and medium-sized firms declined by 37 and 24 percent, respectively (from 30 to 19 percent and from 42 to 32 percent), while those employed in large firms increased by 36 percent (from 14 to 19 percent).

The most dramatic change, however, involved solo practitioners. In 1909 they made up just 16 percent of the legal profession. By 1959 that figure had virtually doubled (from 16 to 30 percent). This pattern likely had much to do with the growth of specialisation. Economies of scale dictated that lawyers could maximise their income potential by working either alone or in a firm sufficiently large to permit them to focus their practice in a single area of law or on a particular type of client. Over time the effect of this trend was to produce a bifurcation of the Winnipeg bar.

The patterns of growth described in table 4 were neither haphazard nor insignificant. In his study of the ethics of New York lawyers, Jerome Carlin made a similar discovery. He determined that lawyers tend to remain in the same stratum of the bar in which they begin their careers. Any movement that occurs typically involves just one step, either up or down.[3] Carlin categorised firms as large, medium, small, or individual practitioner. He concluded that, if a lawyer did not start out with a large firm, very rarely would he or she move into one later, although a considerable number of large-firm lawyers moved down into medium-sized firms. He also found that a majority of lawyers who begin practising in small firms eventually end up as solo practitioners.

According to Carlin, the net effect of this stratification was that lawyers in the upper and lower strata did not share a common professional experience. Only ten percent of large-firm lawyers ever practised on their own, and only seven percent of solo practitioners became members of large firms. As dramatic as Carlin's findings were, those described in table 5 are even more so. This table details the movement between firms for lawyers who commenced practice in Winnipeg every fifth year between 1900 and 1950.

The data described in table 5 suggest that the stratification of the Winnipeg bar was even greater than that found by Carlin in New York. Only five of eighty-three lawyers who begin their practice in a large firm became single practitioners and just three percent of Manitoba lawyers who started out practising on their own eventually joined a large firm (compared with seven percent in New York). With the exception of members of large firms, when a Winnipeg lawyer changed firms it was almost always to practise alone.

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[3] J.E. Carlin, *Lawyer's Ethics: a Survey of the New York City Bar* (New York: Russell Sage Foundation, 1966).

TABLE 5
Lawyer Mobility

Size of First Firm	Number of Lawyers				
	1900s	1910s	1920s	1930s	1940s
Sole Practitioner					
• no change	7	18	36	15	9
• to a two lawyer firm	15	14	6	6	5
• to a medium firm	2	4	2	10	5
• to a large firm	2	0	1	1	1
Two Lawyer Firm					
• no change / same size	17	21	17	8	12
• to practise alone	18	20	25	10	3
• to a medium firm	5	5	3	1	3
• to a large firm	3	2	0	0	0
Medium Firm					
• no change / same size	34	31	15	18	17
• to practise alone	11	20	19	3	5
• to a two lawyer firm	3	4	9	2	2
• to a large firm	2	0	1	1	1
Large Firm					
• no change / same size	8	17	14	10	12
• to practise alone	0	0	1	3	1
• to a two lawyer firm	1	3	3	0	0
• to a medium firm	3	2	5	0	0

The subject of law-firm size is particularly deserving of study for at least one significant reason. The perception the public and other members of the legal profession have of a practitioner is based largely on the size of firm with which he or she practises. Status is a product of a social stratification, which places those employed by large firms at the top of the professional hierarchy and those employed by small firms at the bottom. According to Jerome Carlin, the characteristic common to those at the top is not talent, but, rather race, religion, and social background.[4] As LoPucki points out, clients attracted to large firms typically share a background similar to that of their lawyer. Moreover, they are inclined to retain practitioners who are at least their social equal.[5] Richard Abel examines lawyers at the other end of the legal spectrum. He concludes that the clients of small-firm lawyers are typically lower- or middle-class business pro-

4 *Supra* note 3.

5 L.M. LoPucki, *The De Facto Pattern of Lawyer Specialization* (Madison: Institute of Legal Studies, University of Wisconsin-Madison Law School, 1990) at 19.

prietors. The services they receive are routine and non-specialised. According to Abel, lawyers practising at the bottom of the professional hierarchy are usually from more modest backgrounds that lawyers in large firms, and are seldom able to attract corporate clients or individuals requiring ongoing legal services. Carlin and Howard argue that these lawyers are the least competent members of the bar.[6]

Regardless of whether practitioners work alone or in large firms, if they specialise according to client type, such specialisation is usually class-specific. Some serve a working- or middle-class clientele. Others serve business concerns and the affluent. Few serve both.[7] Abel suggests that this fact has had direct impact on how lawyers practise and whose value systems they espouse. Small-firm practitioners are usually the social superiors of their clients and seldom have an ongoing relationship with them. This gives them a degree of independence not permitted lawyers in large firms. They often refuse to represent clients whose beliefs clash with their own. The relationship between members of large firms and their clients, on the other hand, is very much dominated by the clients, in part because corporations and the financially advantaged can bring to bear a great deal of political, economic, and professional muscle to ensure that they get their way. In addition, as repeat customers, large-firm clients are a valuable commercial commodity. Finally, as the social equals of superiors of their lawyer, they are not intimidated by the legal process. Conflict between large-firm practitioners and their clients is almost non-existent, probably because these lawyers typically have no reluctance in carrying out the wishes of their client. Paid well, they follow orders implicitly.[8]

In the first half of the twentieth century, large Winnipeg firms represented the kinds of clients most small-firm lawyers would meet only as customers. Aikins, MacAulay, for example, represented the Canadian Pacific Railway, the Great West Life Assurance Company, the Dominion Express Company, both the Imperial Bank and the Bank of Ottawa, the Canadian Fire Insurance Company, the Canadian Indemnity Company, and the Northern Trust Company.[9] Pitblado, Hoskin was solicitor of record for the Bank of Hamilton, Mutual Life of Canada, the Landed Banking and Loan Company, the Toronto General Trust Corporation, the Home Investment Association of Manitoba, the Reliance Loan and Savings Customer, the City of Winnipeg, the Winnipeg Board of

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6 J.E. Carlin & J. Howard, "Legal Representation and Class Justice," in V. Aubert, ed., *Sociology of Law* (Middlesex: Penguin, 1969) 336.

7 R.L. Abel, *American Lawyers* (New York: Oxford University Press, 1989).

8 R.L. Nelson, *Partners with Power: The Social Transformation of the Large Law Firm* (Berkeley: University of California Press, 1969) and J.P. Heinz & E.O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* (Evanston: Russell Sage Foundation, 1982).

9 L. Gibson, *A Proud Heritage* (Winnipeg: Aikins MacAulay, 1993).

Trade, the Winnipeg, Grain Exchange, both the federal and provincial governments, and virtually all of the nation's rail interests.[10] By the 1920s satisfying the needs of corporate clients of this sort permitted large Winnipeg firms to grow and to specialise. It was a process, however, which did not occur until transportation and communication facilities had greatly improved, and society had become concentrated.

IV. SPECIALISATION

IN THEIR STUDY of legal specialisation in America, Glenn Greenwood and Robert Frederickson suggest that, as the economy in North America became more complex, the services performed by lawyers became more specialised.[11] Law-firm growth permitted an in-house compartmentalisation of work. Over time, the relationship between growth and specialisation grew symbiotically. A 1983 study of legal specialisation commissioned by the Canadian Bar Association concluded that it was "common knowledge in the [legal] profession that the growth of large firms is often based on teamwork within the context of a high degree of individual specialisation."[12] Barlow Christensen notes that the issue of why legal specialists are mostly concentrated in large firms has spawned little academic interest because the reasons are so self-evident.[13] Equally self-evident, according to Christensen, is the fact that specialists provide legal services superior in quality to those offered by generalists:

> Other things being equal, any given service, legal or otherwise, can be better performed by one who devotes his entire time and attention to that kind of service than by one who spreads his talents and attentions over a broad field.[14]

Certainly this was the perception in Manitoba by the second-last decade of the nineteenth century.

In 1882, pioneer Winnipeg lawyer Colin Campbell cited two reasons for leaving his partner and joining two other practitioners in a medium-sized firm. Such a move, he felt, could not help but enhance his professional status, since

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10 R.W. Willie, "'It Is Every Man for Himself': Winnipeg Lawyers and the Law Business, 1870 to 1903," in C. Wilton, ed., *Essays in the History of Canadian Law, Vol. VI: Beyond the Law: Lawyers and Business in Canada, 1930 to 1930* (Toronto: The Osgoode Society, 1990) 283.

11 G. Greenwood & R.F. Frederickson, *Specialization in the Medical and Legal Professions* (Mundelein: Callalghan, 1964).

12 Canadian Bar Association (Special Committee), *The Unknown Experts: Legal Specialists in Canada Today* (Ottawa: Canada Bar Association, 1983).

13 B.F. Christensen, *Specialization* (Chicago: American Bar Foundation, 1967).

14 *Ibid.* at 40.

"a small firm cannot command the same standing and reputation" as a larger firm. Equally important, it would allow him to specialise:

> I will take Common Law or Civil and Commercial Department, Crawford the chancery and Robertson insolvency and general work. We each get what we like and what each is best up in.[15]

Twenty years later, John Ewart became a specialist of a different sort. He moved to Ottawa and restricted his practice to cases in which he could appear before either the Supreme Court of Canada or the Privy Council. That law firms should specialise was perhaps inevitable. By virtue of their training and need first to recognise and then to solve problems, lawyers have always specialised. It was only when the legal problems of clients began to require more complex solutions, however, that practitioners were presented with the opportunity truly to focus their practice. Doing so enabled them to acquire more specialised knowledge and skills. To an extent, law-firm growth and increased specialisation became the natural consequences of the growing complexity of legal regulation. Large firms increasingly became the instruments by which corporations attempted to come to grips with the demands of a new and more regulated business environment.[16]

According to Robert Nelson, legal firms typically grow in one of two ways—by developing a core of clients for whom the firm provides a full range of general services, or by offering specialised services to a wide range of clients on an *ad hoc* basis. He refers to the first method as "general service growth" and to the second as "growth by special representation."[17] General-service clients are usually banks, corporations, and utilities. Special-representation clients are typically individuals, municipalities, and real estate concerns. The older the firm, the greater the likelihood it grew through general-service relationships. The newer the firm, the greater the likelihood it lacked an institutional base and was hired by clients on a one-shot basis. An examination of the client lists of both the Aikins and Pitblado firms suggests the two grew by providing a wide range of generalised services.

The structure of large firms is inherently more facilitative of specialisation than that of small firms for a number of reasons. Traditionally these firms have large and stable clients with multiple legal problems. They are less dependent on walk-in traffic than are small firms. Their clientele typically recognise the need for specialised services and can afford to pay for them. There is evidence which suggests that all large firms, regardless of whether their practices are general-service or specialised, provide clients with a better quality of legal service

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15 Willie, *supra* note 10 at 275.

16 Nelson, *supra* note 8 at 17.

17 *Ibid.* at 40.

than do small firms. In 1952 G.W. Saunders, secretary of the province's first legal-aid scheme, complained that the advice given by small-firm practitioners was "on the most part hurried, casual and matter-of-fact." There is, he said, "a need for a new step forward to be taken toward the goal of justice for the poor."[18] Twenty years later, a lay bencher of the Manitoba Law Society echoed the same sentiment. Muriel Smith, an Oxford graduate and holder of three university degrees, suggested that Winnipeg's needy were often poorly served by the legal service they received:

> The fact that there are greater financial benefits accruing to lawyers who specialise in cases involving conflicts over property and money, as distinct from cases involving interpersonal conflicts, has led to a concentration of lawyers in these more lucrative areas, with a consequent down-playing of concern for the problems of the already disadvantaged. Put bluntly, under the current system, more legal service goes to the rich rather than to the poor.[19]

The reason large-firm Winnipeg lawyers could provide a better quality of legal service than could small-firm practitioners was the ongoing nature of their involvement with repeat clients. This provided them with financial security and the opportunity to recognise the difference between a client's short-term needs and long-term objectives. With recognition came the ability to analyse legal problems objectively. There are two reasons why large-firm specialists were able to develop this facility, whereas small-firm lawyers were not. First, they benefited from experience gained doing similar work for the same client. Second, the daily interaction of same-firm lawyers with expertise in different areas sensitised each to changes in both law and tactics. This explains why experienced large-firm lawyers with no particular expertise in a given area are able to achieve similar or better results than lawyers with more specific but less general knowledge. The effectiveness of a lawyer, and particularly a large-firm lawyer, thus has less to do with the small and more to do with the large picture. Dietrich Rueschemeyer put it another way:

> A good deal of the lawyer's competence is connected with his legal knowledge only indirectly or not at all. Since the law is a generalised mechanism of social control, its application covers a great variety of social institutions. Different applications require a grasp of these social contexts as well as of the law. From the good lawyer we may therefore expect a generalised capacity for defining situations and a great variety of "worldly knowledge."[20]

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18 N. Larsen, "Legal Aid in Manitoba" in C. Harvey, ed., *The Law Society of Manitoba, 1877–1977* (Winnipeg: Peguis, 1977) at 167.

19 M. Smith, "The Legal Profession—A Lay View" in Harvey, *ibid.* at 182.

20 D. Rueschemeyer, "Lawyers and Doctors: A Comparison of Two Professions" in Aubert, *supra* note 6 at 271.

A lawyer in the Aikins firm was referring to this capacity when he noted that the strength of senior partner John MacAulay did not come from his knowledge of the law. Instead, it came from his unique ability to size up both the quality of an opponent's case and the quality of an opponent's lawyer. He used as an example the outcome of a trial with which MacAulay had insisted on proceeding, despite the weakness of his client's legal position. "What won the day was not his [MacAulay's] perception of the law, but the weakness of his opponent's knees."[21]

Regardless of to whom legal services were supplied, if they came from a member of a large Winnipeg firm in the first half of the twentieth century, they were not provided by either a women or a Jew. Although women practised law in Ontario since 1893, it was not until shortly before Manitoba became the first province in Canada to adopt a policy of female suffrage that its Law Society admitted a woman to the bar. In 1915, Melrose Sissons and Winnifred Wilton shared the distinction of becoming Manitoba's first women lawyers. Two years later, Isabel MacLean also received her call. She promptly became the first woman to establish her own practice and, in 1953, the first to be named a Queen's Counsel. Four years later, another Manitoba woman made history. When Nellie McNichol Sanders was appointed to the Winnipeg Juvenile and Family Court in 1957, she became the first female member of the province's judiciary. But, by 1969, although thirty-nine women had entered the legal profession, a female practising in a large firm remained a rarity. Between 1915 and 1972, for example, the Aikins firm hired just one woman (Elizabeth Morrison), and she remained for only two years before resigning in 1947 to become Dean of Women at United College. Mildren McMurray was another rarity. She worked briefly for Macdonald, Craig, Tarr and Armstrong between receiving her call in 1922 and setting up her own practice a few years later.

Large Winnipeg law firms were just as unlikely to hire Jews as they were women. In 1906, E.A. Cohen became the first Jewish lawyer to practise in Manitoba. He was almost immediately followed in the profession by Max Steinkopf, S. Hart Green, Marcus Hyman, and M.J. Finkelstein. With few exceptions, these men, and most of the Jewish lawyers who followed them, practised alone or with one associate. By 1931, forty-seven Jews were members of Winnipeg's bar. Ten years later, that number had risen to sixty-two, not including the province's first two Jewish police magistrates, who, in 1941, were both appointed to a bench outside the city. But the lack of professional recognition afforded Jewish lawyers was not unique to Winnipeg. When Samuel Freedman was elevated to Manitoba's Court of Queen's Bench in 1952, he became only the second Jew in Canadian history to be appointed to a provincial superior court.

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[21] L. Gibson, *supra* note 9 at 138.

While Jewish lawyers may have been denied membership in a large firm, there is no evidence that they were systematically denied admission to the legal profession itself. Nor were the sexist and racist attitudes held by many senior barristers unique to lawyers. In fact, the kind of quota system adopted by the Manitoba Medical College in the 1920s to keep Slavs and Jews out of medicine was rejected by the Law Society. Statistics alone can neither prove nor refute the reality of discrimination, but in the case of Winnipeg lawyers they suggest that, as a percentage of the total population, the number of Jews practising law was actually higher than for non-Jews. In 1931, for example, there was one non-Jewish lawyer for every 589 non-Jewish residents, compared with one Jewish lawyer for every 366 Jewish residents. Ten years later, those figures were 690 and 274, respectively.

The personal and professional belief systems possessed by many of the founders of Winnipeg's oldest and largest law firms were one reason that women, Jews, and members of other minorities were successfully isolated from the legal mainstream. These men almost all shared a common set of values. United by their Protestant religion and British heritage, they were practical, material-oriented individuals who saw themselves as carriers of tradition and agents of improvement. Men like James Albert Manning Aikins, Colin Campbell, and Alfred Andrews arrived in Winnipeg during the last years of the nineteenth century just as that city was undergoing a tremendous transformation. Immigrants were entering the West in previously unheard-of numbers. Almost overnight, fortunes were made in real estate speculation. These expatriate eastern lawyers joined a Winnipeg elite made up of merchants and businessmen who believed that rapid, sustained growth was to be achieved at the expense of all other considerations, including social justice.[22] The handful of lawyers who came West before the dawn of the twentieth century believed absolutely in their right to use political power and personal connections to become a linchpin between a rapidly industrialising East and the untapped potential of a resource-laden prairie West. The size and economic might of their clients positioned men like Aikins to acquire private wealth and professional power, and to use both in the pursuit of their own agendas.

V. JAMES ALBERT MANNING AIKINS

WHEN AIKINS ARRIVED in Winnipeg, he immediately made use of an eastern connection he was to nurture for years to come—a father who had already been a member of one John A. Macdonald cabinet and was about to become a member of another. But he also possessed something which was to have a profound effect on the evolution of the Winnipeg bar and the provincial Law Society—an

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[22] A.F. Artibise, *Winnipeg: A Social History of Urban Growth, 1874–1914* (Montreal: McGill-Queen's University Press, 1975).

unwavering desire to mould both in his own likeness. He was absolutely convinced that the values and beliefs he had acquired while studying in Toronto reflected the best in the British legal tradition. On his arrival in Winnipeg, he parlayed his father's social capital and his own ambition into positions as a Law Society bencher and counsel to the Canadian Pacific Railway, the federal Department of Justice, and the Province of Manitoba. He thereby laid the basis for one of Manitoba's oldest and most influential law firms.

While Aikins was taking advantage of a boom in Winnipeg real estate to establish a personal fortune, he was simultaneously entering the political arena. First, he became a leading member of a number of federal and provincial commissions, and then, in 1911, Member of Parliament for Brandon. After being denied entry into the federal cabinet (probably the only time in his adult life he was not able to control his own destiny), he returned to Manitoba in 1915 to take over the reins of the provincial Conservative party. The Manitoba Tories had been left in a shambles following the forced resignation of party leader and provincial premier Rodmond Roblin. Although Aikins was unable to slow his party's dramatic decline, his efforts were ultimately rewarded with the provincial lieutenant-governorship. But Aikins did not restrict his activities to politics. He was a leader in the Methodist Church, first president of the Winnipeg YMCA, and lead organiser of the local Boy Scout movement. In 1914 he resurrected the Canadian Bar Association and remained as the body's president until two years before his death in 1929. He also founded the Commission on Uniformity of Legislation and, not surprisingly, became its first president. By the end of the 1920s, Aikins had been honoured with a knighthood and honorary doctorates of law from the universities of Manitoba, Toronto, Alberta, Queen's, and McMaster.

VI. Isaac Pitblado

Isaac Pitblado was born in Nova Scotia and attended Dalhousie University until his minister-father was transferred to a Winnipeg pulpit. Like Aikins, he had a bent for learning, eventually earning three university degrees. Pitblado received his call to the Manitoba bar in 1890. He remained with the Aikins, Culver firm for a year before joining Alfred Andrews in a partnership which was to last until he rejoined Aikins in 1899. In 1903, he and Colin Campbell, Henry Grundy, and Alfred Hoskin formed a law firm which, from its inception, has been among the province's largest.

Pitblado's area of specialisation was freight rates. It was a specialty he dominated on a national level from the 1890s until the 1950s. His abilities produced for his firm retainers from local, provincial, and federal interests. But it was his eloquence and reputation for integrity rather than his knowledge of the railway industry which prompted Manitoba premiers Norris and Bracken to retain him when they were, at different times, charged with wrongdoing. Pitblado was

elected a bencher in 1901 and remained one for sixty-three years. By the time he died, at ninety-seven years of age, he had been practising law for seventy-four years and had received honorary doctorates from Dalhousie University and the University of Manitoba.

While the careers of Aikins and Pitblado were unique, they illustrate how large-firm lawyers used personal connections and professional status to further their own ambitions. In the case of Aikins, altruism was tempered by a driving ambition to control, not only his own destiny, but that of the Winnipeg bar. His personal standards became those of every member of his firm. Since a sizeable portion of Manitoba's judiciary were alumni of the Aikins firm, the influence he exerted by association was considerable. Pitblado was quite different from his former mentor. He was less irascible and arguably possessed a different set of personal priorities. Yet he too used his position at the top of Winnipeg's legal hierarchy to attract the kind of corporate and government clients which enabled his associates to specialise in a number of different areas of law.

One reason men like Aikins and Pitblado could so easily play such a significant role in the affairs of their adopted home was that their firms grew with the city. As Winnipeg developed, so too did their influence. When the first bar of the newly created Province of Manitoba met in 1871, the population of Winnipeg was 271. Ten years later, it stood at 7 985, and in 1891 at 25 639. Between 1901 and 1911, the population increased by more than 220 percent. This pattern of sustained growth brought to Manitoba an influx of lawyers. The number practising in Winnipeg grew by 68 percent between 1899 and 1909, and by a further 64 percent in the following decade.

VII. LEGAL ACTIVITY

IN THEIR STUDY of litigation filed in America's federal courts between 1900 and 1970, Joel Grossman and Austin Sarat adopt a formula capable of measuring the extent of legal activity occurring in a community at any given time. They suggest that economic and population growth is usually accompanied by an increase in the number of lawyers. While lawyers are not involved in all aspects of the legal process, Grossman and Sarat argue that an increase or decrease in their number relative to changes in population is an accurate indicator of all resort to law.[23] According to their formula, legal activity is determined by dividing the number of lawyers practising in a community into the community's population. They suggest that the use of a lawyer/population ratio should produce two results: It should increase over time, and there should be a relationship between that increase and economic activity. Contrary to their expectations, however, Grossman and Sarat found that, in the United States, legal

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[23] J.B. Grossman & A. Sarat, "Litigation in the Federal Courts: A Comparative Study" (1975) 9 L. & Soc'y Rev. 332.

Table 6
Legal Activity Indicator 1901–1951

Year	City of Winnipeg			The Rest of Manitoba		
	Population	Lawyers	Index	Population	Lawyers	Index
1901	42340	72	1.7	212871	72	.3
1911	136035	193	1.4	325359	104	.3
1921	179087	325	1.8	431031	109	.25
1931	218785	389	1.8	481354	157	.3
1941	221960	359	1.6	507784	150	.3
1951	235710	331	1.4	540831	133	.24

activity actually declined as both economic activity and litigation rates rose. The situation in Winnipeg was exactly the opposite. Just as Grossman and Sarat predicted, legal activity increased as economic activity did. And those increases were accompanied by a corresponding decrease in the number of lawsuits filed.

Table 6 shows legal activity for Winnipeg and the rest of Manitoba. Table 7 compares the activity for Winnipeg with that city's litigation rate. Legal-activity indices (lawyer/population ratios) are determined by dividing the population of Winnipeg and the rest of Manitoba, in thousands, into the number of lawyers practising in each area. The resulting indices are then compared with each other and with changes in the provincial economy. According to Grossman and Sarat, an increase in a legal-activity index indicates that informal and formal resort to law has increased. When it falls, legal activity has declined. They suggest that both changes should reflect a corresponding increase or decrease in economic activity. The data in table 6 suggest two things: first, that legal activity in Winnipeg was between five and six times as great as that in the rest of the province, and, second, that it did indeed increase or decrease according to the level of economic activity occurring in the city.

History suggests that changes in the indices shown in table 6 did reflect the changing circumstances of the time. The period 1901 to 1911, for example, was a boom time in the West. As land in Ontario suitable for settlement grew increasingly scarce, the movement of new settlers into Manitoba accelerated. Between 1901 and 1903, land values doubled. Wheat output rose from 14 million to 60 million bushels. Industry laboured long and hard to provide the railways, elevators, stockyards, and other facilities demanded by an economy still largely agrarian in nature. At the centre of all this activity stood Winnipeg, gateway to the West. In 1907 alone, over $12 million in new construction was carried out in the city. Entire streets sprang up almost overnight. Between 1900 and 1910, the industrial output of Manitoba increased from $13 million to $15 million, and its labour force from 5 000 to 17 000. The level of prosperity experienced by the province, and in particular Winnipeg, is reflected in the legal-activity indicator for 1901. Changes in the way Winnipeg's economy was structured in the second decade of the century is reflected in the index for

TABLE 7
Legal Activity and Litigation Rates

	1909	1919	1929	1939
Legal Activity	1.4	1.8	1.8	1.6
Litigation Rate	8.7	6.1	2.5	1.5

1911. Table 6 suggests that, between 1901 and 1911, resort to law, and by implication economic activity, declined by 18 percent. History indicates that indeed was the case. By 1912 boom times in Manitoba were over. Settlers increasingly passed through the province on their way to Saskatchewan and Alberta. War in the Balkans produced a reversal of the flood of money which had traditionally flowed from Britain into the West, and with the opening of the Panama Canal it suddenly became cheaper to ship goods by water through Vancouver than by rail through Winnipeg.

The index for 1921 suggests that the short-lived boom experienced by Winnipeg in the late 1920s produced an increase in legal activity. Although the city's economy still lagged behind that of Montreal, Toronto, and Vancouver, by 1927 it was once again on the upswing. For the first time in the history of Manitoba, industrial production exceeded that of the agricultural sector. The dominant role played by industry is reflected in the fact that, between 1911 and 1921, legal activity increased by 29 percent in Winnipeg, while it declined by 17 percent in the rest of the province. When the world-wide Depression of the 1930s struck, however, circumstances changed again. Winnipeg struggled to keep its economy afloat. It was only the industrial expansion generated by an impending war that kept legal activity at the same level it had been at ten years earlier. During this period, rural Manitoba experienced less of an economic slowdown than Winnipeg. This was so because it had far fewer industries and, as a consequence, fewer unemployed. Its indicator of legal activity actually rose 20 percent in the Depression decade. Both Manitoba indices declined by 1951, although the decline was seven percent less in Winnipeg than in the rest of the province as industrial growth continued to outpace agricultural production.

In table 7 litigation rates are calculated by dividing the population of Winnipeg in thousands into the number of claims filed in the city's Court of King's Bench every tenth year between 1909 and 1939. The results are then compared with Winnipeg's legal-activity indicator. According to Grossman and Sarat, an increase in overall legal activity should be accompanied by a corresponding decrease in the rate of litigation. They suggest that formal resort to law typically declines when economic activity increases because filing law suits is disruptive of ongoing business relations.

The data presented in table 7 suggest that the amount of litigation filed in Winnipeg's highest trial court declined by 83 percent between 1909 and 1939 (from 8.7 to 1.5), while the index which measured all legal activity increased by

14 percent (1.4 to 1.6). These findings indicate two things: First, since an increase in litigation rates usually reflects a disruption in the ordering of society, a decline suggests that the dispute-resolution mechanisms of a community are working to keep disagreements within structured bounds; second, as Winnipeg underwent an industrial expansion during the first half of this century, law firms kept pace by shifting the focus of their activity away from litigation to law practised outside courtrooms.

VIII. Litigation and Social Change

Willard Hurst suggests that an examination of what lawyers do, and for whom, can reveal much about the changing nature of our society.[24] An analysis of litigation filed in Winnipeg's Court of King's Bench in 1909, 1919, 1929, and 1939 illustrates one aspect of this. Not only did Winnipeg's litigation rate decline as its pace of industrialisation increased, but also, as the number of claims filed and defended by large firms went down, the number filed by small firms went up. Both changes occurred during a period in which the amount of overall legal activity increased. This finding provides support for the suggestion that, between 1909 and 1939, the focus of large firms shifted away from the courtroom. It also indicates that the vacuum created by that change was filled by those at the bottom of the legal hierarchy.

Table 8 describes the results produced by grouping claims and defences according to the size of the law firm which filed them. The five most active litigators among each of large, medium, and small firms were identified. The extent of their involvement in the court process was determined by dividing their number (fifteen) into the number of filings with which each was involved. The fifteen are referred to in the table as "specialist litigators." The remaining firms which filed at least one statement of claim or defence are referred to as "non-specialist litigators." Their involvement in litigation was determined by dividing their number into the number of claims and defences they filed.

Table 8 indicates that, by 1939, specialist litigators filed one out of every two statements of claim filed in Winnipeg, and seven of every ten statements of defence. To appreciate the extent of the role they played, however, these findings must be analysed in the context of those described in Table 7. The data in table 8 suggest that, between 1909 and 1939, the degree to which specialist litigators dominated the court process increased at the same time as their involvement in litigation generally declined. That this occurred while the totality of legal activity was increasing suggests that specialists had shifted the focus of their practice way from courtrooms. The findings described in table 7 suggest when this change began. Between 1909 and 1919, for example, the legal activity index

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[24] J.W. Hurst, *The Growth of American Law: "The Law Makers"* (Boston: Little, Brown, 1950) 295.

TABLE 8
Law Firms Involved in Litigation

Year	Firms Filing a Claim	Filings	Claims Per Firm	Firms Filing a Defence	Filings	Defences Per Firm
Non-Specialist Litigators						
1909	83	703	8	73	261	4
1919	97	692	7	95	285	3
1929	101	353	3	72	154	2
1939	85	168	2	49	62	1
Specialist Litigators						
1909	15	474	31	15	205	14
1919	15	394	26	15	206	14
1929	15	196	13	15	93	6
1939	15	168	11	15	143	10

TABLE 9
Litigation Trends According to Firm Size

Firm Size	Percentage of All Filings			
	1909	1919	1929	1939
Large	27	22	21	24
Medium	42	39	37	33
Small	25	32	36	37
Other	6	7	5	5

rose by 29 percent (from 1.4 to 1.8) while King's Bench filings fell by 30 percent. In the period 1919 to 1929, resort to law remained unchanged, yet litigation rates fell by a further 59 percent. Over the next decade, they fell another 40 percent. The data indicate that, between the end of the First World War and the start of the Second World War, the focus of specialist practice had moved dramatically away from courts.

Table 9 suggests that this refocusing affected the practices of all specialists except those practising at the bottom of the legal hierarchy. As medium- and large-firm lawyers left courtrooms to practise law in areas outside the public glare, small-firm practitioners took their place. By 1939 just under 40 percent of litigation filed in Winnipeg's Court of King's Bench was filed by one- and two-person firms.

The data shown in table 9 are suggestive of the impact client type has on the law practised by firms of various size. For instance, as corporations grew in sophistication, they found it disrupted business relationships to resort to courts. They began litigating less, and the involvement their lawyers had with courts

declined. Individuals, on the other hand, began resorting to law more often. Injuries in the workplace and on the province's roadways increasingly brought them into contact with small-firm lawyers. The next effect was that, as lawyers at one end of the professional spectrum shifted the focus of their practice in one direction, those at the other end shifted theirs in another. By 1939 approximately one in four lawsuits involved corporations. Tow in three involved men, and one in ten, women. Large firms were 70 percent more likely to represent a corporation than were small firms. Small firms, on the other hand, were 48 percent more likely to act for women and 17 percent more likely to act for men. In 1972 Marc Galanter offered an explanation for these findings.[25]

IX. GALANTER'S REPEAT-PLAYER THEORY

GALANTER'S THEORY IS BASED on the premise that, in North America, both wealth and power are widely but unevenly distributed, and that some members of society, those with the greatest amount of both, utilise the courts to make or defend claims more often than do those with little of either. The former he refers to as "repeat players," or "haves," and the latter as "one-shotters," or "have not's." The stakes in any particular case are smaller for repeat players, relative to their total worth, than for one-shotters. Repeat players are usually the larger of the two units. They have the resources to pursue long-term interests. A one-shotter, on the other hand, pursues claims that are either too large, relative to its size, or too small, relative to the cost of a likely outcome. As a result they cannot manage litigation easily or rationally. Because repeat players litigate often and for long-term goals, they develop the ability to recognise a weak position and are able to minimise likely losses. And because of the pressure to settle lawsuits inherent in the court system, "haves' will almost always settle cases there they expect unfavourable outcomes and pursue only those more likely to yield a positive result. They are the type of litigant most likely to recognise the advantages to be gained from dealing with a legal specialist.

Individuals, on the other hand, are less likely than corporations to require the services of a lawyer. When they do so, their involvement is more likely to be on a one-shot basis. Even when this is not the case, their needs are likely to be episodic rather than ongoing. Individuals typically lack one or more of resources, experience, and an awareness of the advantages to be gained from dealing with a specialist. The legal services they receive are usually provided by a lawyer whose practice is located relatively near their place of residence and who is typically a member of a small firm. Not only are these litigators unlikely to be retained on an ongoing basis, but they are not likely to receive a sizeable fee or gain other clients as a result of their efforts. In short, corporations seek

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[25] M. Galanter, *Why the "Have's" Come Out Ahead: Speculation on the Setting and Limits of Legal Change* (New Haven, CT: Yale Law School, 1972).

TABLE 10
Specialisation According to Cause of Action

Cause	Percentage of All Claims and Defences			
	1909	1919	1929	1939
Contract	30	33	24	18
Goods & Services	19	9	6	3
Negotiable Instruments	17	10	11	5
Negligence	5	8	19	43

out lawyers in large firms because of the specialised services those professionals can provide.

Individuals seek out small-firm practitioners because they perceive their legal needs to be immediate, pressing, and best met by someone with whom they can relate and for whose services they can afford to pay. The problem for small-firm clients, however, is that these things mean that there is a good chance the legal advice they receive will be ad hoc, poorly researched, and of inferior quality to the advice rendered to the clientele of large firms.

It is possible to determine if repeat players in Winnipeg used the court system in a different way than individuals by examining the causes they litigated over a long-enough period to discern patterns of change. In table 10, claims and defences filed in the city's Court of King's Bench in 1909, 1919, 1929, and 1939 are divided according to the cause of action they represent. Table 10 describes the four most litigated.

As has already been noted, throughout the period 1909–39, large firms typically represented corporate clients. Changes in what large firms litigate therefore arguably reflect changes in the way their clients conducted their affairs. In 1909 and 1919, for example, most disputes involved negotiable instruments, the provision of goods and services, and contract disagreements. Large firms almost always acted for plaintiffs. Over time, however, as the number of these suits declined and negligence actions increased, the involvement of large firms in litigation changed. They continued to act for the same parties, but their clients were no longer plaintiffs. Insurance companies and industrial concerns began defending actions rather than pursuing them, and their lawyers increasingly became defence specialists. One reason for this change was the increased use of automobiles. By 1939 large-firm litigators in Winnipeg were acting for defendants nearly 80 percent of the time, almost always in negligence suits. Small firms typically represented plaintiffs, usually in the same actions.

The litigation with which Winnipeg lawyers became involved in the years spanning the two world wars reveals much about the changing nature of Manitoba society. The way individuals and corporations managed their businesses between 1909 and 1939 became more sophisticated. That is reflected in a 72 percent decline in commercial claims. The 600 percent rise in negligence suits

over the same period clearly resulted from changes in modes of transportation. Such an increase arguably also represented a heightened belief that, in a more ordered society, individuals who had been harmed had a right to expect compensation. Changes in the way corporations litigated no doubt paralleled their involvement in society generally. Railways and merchants were usually plaintiffs in 1909. By 1939, they were almost always defendants. A complete absence of actions either for or against them marked the passage from Manitoba's history of land-settlement companies. And litigation started to reflect the new role women had begun to play in society. In the period 1909–39, their involvement in the court process increased by 271 percent (seven to 26 percent) and their participation in their own capacity rather than as co-litigant rose by 260 percent.

These findings provide support for the suggestion that small-firm Winnipeg lawyers represented those for whom an involvement with formal law was a one-shot occurrence. The men and women who typically filed negligence suits could not anticipate their need for a lawyer's services, nor was it likely that the event which created that need would recur. In terms of their relationship with each other, small-firm litigators and small-firm clients were one-shotters. Insurance companies, on the other hand, anticipated that claims would be made against them and retained the ongoing services of a specialist in the expectation that their advice would be required.

X. The Law Society of Manitoba

In 1871 the statute which anticipated by six years the passage of Manitoba's Law Society Act admitted to the legal profession its first ten members and empowered them to form a bar society. By the end of the year, its membership stood at fifteen. When the Law Society Act was ultimately passes by the provincial legislature, it transferred from the courts to the new organisation the power to admit and discipline lawyers. From that time onwards, the right to practise in the province was restricted to its members. All had to agree to be bound by the rules passed by the Law Society's governing body, the Convocation of Benchers. In 877 the government appointed the province's first nine benchers and directed them to draw up a set of rules governing admission and practice. In 1886, these rules were amended to increase the number of benchers to twelve. Ten were to represent the Eastern Judicial District (Winnipeg and immediate environs), and two the rest of the province. Between 1886 and 1916, the Central, Southern, Northern, and Dauphin districts were created, and the number of benchers increased to twenty. Fourteen were to come from the Eastern District, two from the Western (Brandon and immediate environs), and one each from the remaining four. Except for a brief experiment with a formal nomination procedure, until 1956 an open ballot was used for all election. Over

TABLE 11
Profile of Winnipeg Benchers

Size of Firm	1904–1933		1934–1959	
	Percent of All Lawyers	Number of Benchers	Percent of All Lawyers	Number of Benchers
Large	15	63	15	37
Medium	36	35	28	38
Two Lawyer Firms	26	2	21	24
Sole Practitioners	22	2	36	1

time, the Law Society Act was further amended to bestow life-benchership on retiring presidents and those who had served at least five terms as benchers.

Open-ballot elections and life-benchership were examples of how senior barristers attempted to perpetuate their control of the Law Society. The policies produced two results. First, they enabled some lawyers to serve as benchers for virtually their entire career. Second, it put control of Manitoba's legal profession into the hands of members of Winnipeg's largest law firms. Isaac Pitblado, for example, was a bencher for sixty-three years, Aikins for forty-nine, Alfred Hoskin for forty-four, and Alfred Andrews for forty-two. The influence exercised by those rewarded with a life-benchership was not significantly diminished when they no longer had to be elected. Robert Blackwood Graham was a bencher for twenty-six years; when he died in 1951, he was still chair of the Society's Discipline Committee and member of three others. Charles Stuart Anderson Rogers had a similar, though longer, involvement with the Law Society. He sat on its Discipline Committee for twenty-nine years, on Finance for twenty-eight, and on the Examining Committee for twelve. Of the forty years that Rogers was a bencher, he was elected in only fifteen. Even elevation to the bench did not lessen the influence some senior barristers exerted over their profession. One of the first things Justice-elect E. K. Williams did on being advised of this appointment was to inform the Law Society of his intention to remain active in its affairs. With the exception of Graham, all these men were member of large and prestigious firms.

Table 11 describes Winnipeg lawyers who sat as Law Society benchers between 1904 and 1959. They are categorised according to the size of firm with which they were associated at the time of their election. It is immediately apparent that large-firm lawyers were over-represented on the Law Society, and solo practitioners underrepresented.

In the period 1904–33, sixty-eight Winnipeg lawyers served as benchers. Of these, one practised in a two-lawyer firm and another worked alone. This means that, in the first three decades of the twentieth century, two benchers represented 48 percent of the bar. Forty-three represented just 15 percent. The contrast between the electoral success of large- and small-firm lawyers was slightly less sharp between 1934 and 1959, but solo practitioners were, if anything, even

TABLE 12
Bencher Longevity

Size of firm	Number of Law Firms, 1904–1959	Firms Electing One or More Bencher	Average Terms as Bencher
Large	14	13	7.0
Medium	134	15	2.0
Two Lawyer Firms	–	7	3.0
Sole Practitioner	–	2	1.5

more marginalised than they had been before 1934. Over the period 1934 to 1959, eighty-two benchers were elected in the Eastern Judicial District, only one of whom practised alone.

The control over the Law Society exercised by large-firm lawyers was even greater than the data in table 11 suggest. Between 1904 and 1959, the average number of terms served by large-firm benchers was seven. The average served by all other practitioners was between 1.5 and 3 (see table 12). When the Law Society set at five the number of terms benchers had to serve before they were awarded a life-benchership, only one segment of the bar benefited.

The findings described in table 11 suggest that the Law Society's life-bencher policy produced three results. First, since no solo practitioner was ever elected president of the Society, none became a life bencher that way. Second, since the average number of terms served by all but large-firm benchers was less than the number required to qualify for a life-benchership, few became benchers that way. Finally, because its presidents and most of its benchers were usually large-firm lawyers, the Law Society ensured that control over its affairs remained in the hands of a minority of its members.

Another way this control was perpetuated was through open-ballot elections. Lawyers qualified to vote simply wrote the name of the person they were going to vote for on a ballot and deposited it with the Law Society. Since campaigning was considered unethical, the effect of large-firm members voting for one of their own arguable ensured that solo practitioners had little chance of being elected.

There is reason to believe, however, that the marginalisation of such a large portion of the bar was systemic rather than the result of a deliberate policy. Small-firm lawyers were unlikely either to have wanted or to have been able to take part in Law Society activities for a number of reasons. They could ill afford the time or cost associated with being away from their office for extended period. They lacked the kind of office support which permitted large-firm lawyers to attend meetings and other professional functions. And, finally, participating in Law Society activities was unlikely to earn them either the respect of their peers or new clients.

An even more persuasive explanation for why small-firm practitioners seldom became members of the Law Society's executive is offered by Richard Abel.[26] He argues that the involvement of lawyers in bar associations varies according to their professional status. Participation in such activities by members of firms with a large institutional base of clients (Like Aikins, MacAulay and Pitblado, Hoskin) is part of an overall external orientation towards the practice of law. Taking part in Law Society functions is merely part of a general tendency to use political, social, civic, and professional forums as a means of attracting new clients and building a reputation. The problem for the legal profession, however, is that, when it comes to actually taking part in the work of bar committees, many large-firm lawyers use their positions to further the agenda of clients rather than that of the profession: "The Lawyers of elite (large) firms may well take progressive stands on certain issues within the profession, may lead efforts at legal rationalisation, and may exhibit a liberal orientation on general political questions, but both the direction of their reform activities and their approach to the issues that arise in ordinary practice ultimately are determined by the positions of their clients."[27]

The reform activities of large-firm lawyers are usually directed towards producing a result which will benefit either themselves or their clients. In seeking to bring about reform, they actively exploit the advantages of time and money, which they possess in far greater abundance than do solo practitioners. Absent a direct and overriding interest of a client, these lawyers share a single common interest—preserving the system in which they are the elite.[28] Winnipeg lay bencher Muriel Smith suggests that her involvement with the Law Society of Manitoba caused her to become disillusioned with the reform efforts of some members of the Winnipeg bar. Senior lawyers, she notes, are more concerned with preserving the status quo, and their position within the profession, than with changing it.[29] Smith, however, ignores the fact that often it is those who have the least who most oppose reform. While there is little doubt that large-firm lawyers are not reluctant to advance the position of clients, that fact alone is not suggestive that all either are or were anti-reform. The contrasting position taken by two prominent Manitoba judges illustrates this point.

Prior to the appointment of E.K. Williams to the Court of King's Bench in 1946, there was a growing sentiment among Winnipeg lawyers that many of the anachronistic customs associated with the practice of law should be done away with. Court of Appeal justice R.M. Dennistoun shared those sentiments. He

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26 R.L. Abel, *American Lawyer* (New York: Oxford University Press, 1989)

27 Nelson, *supra* note 8 at 232.

28 *Ibid.* at 262.

29 Smith, *supra* note 19 at 177.

argued that superior court judges should no longer be addressed by the deferential "My Lord" or "Your Lordship":

> We judges have no legal right to be so addressed. We are not Lordships, and in a country where real titles have been discarded, it seem inconsistent to perpetuate fictitious ones. They savour of old colonial days when official snobbery was in evidence. We have in Canada no Lord Justices of Appeal, nor Lords of Appeal in Ordinary, nor are we members of the House of Lords. English judges so created are rightly addressed as Your Lordships. We have no such right.[30]

These sentiments were not shared by Williams. Like Dennistoun, he was an alumnus of a large firm. Unlike him, Williams possessed a nearly overwhelming reverence for legal traditions, even those which had not previously existed in Manitoba. During his tenure as Chief Justice, for example, the black robes customarily worn by justices of the Court of King's Bench were replaced by violet, mauve, and scarlet gowns similar to those of English trial judges. The beliefs of men like Williams, and their attitudes towards women, Jewish lawyers, and tradition, deserve special attention. They were part of a relatively small group of Winnipeg lawyers who, until the 1930s, exercised nearly absolute control over both the Law Society of Manitoba and the province's system of legal education.

X. The Manitoba Law School

BY SETTING THE AGENDA of Manitoba's only law school, influential large-firm lawyers attempted to guarantee that their firms would be provided with a supply of practitioners who possessed the belief systems and expertise they valued.

Although the University of Manitoba established a reading course in law in 1885, the first systematic attempt made by the Law Society to provide articling students with a formal education did not occur until a series of lectures was organised in 1911. Three years later, the Law Society and the university entered into an agreement jointly to establish and operate the Manitoba Law School. Students were to take three years of lectures, receive a law degree, and be admitted to the bar. The new institution was initially located in premises leased from the YMCA. Its affairs were managed by a board of five trustees, and its faculty consisted of a full-time recorder and seven part-time lecturers. In 1918 the school's first full-time employee resigned over a wage dispute. Administration of academic matters was placed in the hands of a board of supervisors consisting of lawyers D.H. Laird, J.B. Hugg, and A.T. Hawley. That situation continued until 1921, when J.T. Thorson, a local practitioner, became the first official dean. He remained as such until 1926. In that year he resigned to sit as a Member of Parliament for Winnipeg South.

In 1925, future superior court judge C. Rhodes Smith was appointed law professor, but to make ends meet both he and lecturer Henry Streight continued to

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30 D. Gibson & L. Gibson, *supra* note 2 at 287.

TABLE 13
Law School Lecturers, 1941–1959

Size of Firms	Number of Lecturers	Percentage
Large Firms	11	21
Medium Firms	21	39
Two Lawyer Firms	4	8
Sole Practitioners	1	2
Municipal / Corporate Lawyers	8	15
Retired and Non-Lawyers	8	15

practise part-time. A year after Smith's tenure began, one of the institution's founders, Hugh Robson, became its acting dean. He continued in that capacity until 1929, when Winnipeg bencher E.H. Coleman became the school's second dean. Coleman carried on as full-time academic and part-time lawyer for four years. He then resigned to become Canada's under-secretary of state. In 1934, T.W. Laidlaw replaced him at the law school, where he remained for ten years. When he returned to private practice, he was succeeded by Rhodes Scholar and well-known lawyer G.P.R. Tallin. In 1958, the board of trustees announced it intended to improve the quality of education provided by the Manitoba Law School. To that end it hired Clifford Edwards as lecturer, and it made the deanship a full-time position. In 1963 Tallin retired and was replaced by Edwards.

The Manitoba Law School was the creation of a handful of Winnipeg lawyers, virtually all of whom were members of large firms. Hugh Robson and E.K. Williams, however, have been credited with playing the most instrumental role in the school's founding. Both were considerably more than just lawyers. Each was an alumnus of Aikins, MacAulay, each maintained an association with the law school throughout his career, and each became an influential member of the province's judiciary. In effect, for most of the first half of this century, the values of two men became the values of an entire bar.

By the 1940s, however, lecturers from medium-sized firms had replaced large-firm lawyers on the school's faculty (see table 13). This shift in the influence took place at the same time as a similar change was occurring within the Law Society. While both likely reflected the emergence of a more polyglot bar, table 13 suggests that small-firm lawyers continued to be isolated from the professional mainstream. Of fifty-three men who lectured at the Manitoba Law School between 1941 and 1959, only one practised alone and just four worked in two-lawyer firms.

The reasons those practising alone did not participate in the activities of the Manitoba Law School are largely the same as those which explain a similar lack of involvement in the affairs of the Law Society. An examination of the school's history therefore reinforces the extent to which those at the bottom of the legal hierarchy were isolated from the professional mainstream. It also helps explain

why control of the school gradually shifted away from large-firm lawyers to members of medium-sized firms. As the men who founded the law school aged, their priorities shifted and their involvement in its affairs decreased. Younger associates, caught up in the process of building specialised practices, arguably did not share the same commitment to formal legal education as did their senior partners. Their place on the school's faculty was taken by members of medium-sized firms. Their involvement was part of a growing external orientation towards the practice of law. They likely recognised that participation in the law school's teaching program not only would increase their status at the bar, but would also attract the attention of clients who had historically retained only lawyers who practised in large firms. Finally, the reform measures referred to earlier confirm that, by the 1940s, the school had acquired a poor reputation in both the academic and the legal community. Members of Winnipeg's elite firms may well have become reluctant to continue an association which no longer increased their profile, either inside or outside the profession.

XII. Lawyers and Politics

Regardless of the many changes which occurred in the legal history of Manitoba, between 1900 and 1960 one thing remained constant. The one forum in which lawyers from small and medium-sized firms could achieve the same kind of prominence as members of large firms was politics. When large-firm lawyers like Colin Campbell, Hugh Robson, Hugh John Macdonald, C. Rhodes Smith, and James Aikins entered politics, they enjoyed advantages not shared by members of small practices. These ranged from the support of office staffs to sharing the power and prestige of influential clients. Campbell, for example, dominated the Winnipeg bar in the first decade of the twentieth century as Premier Rodmond Roblin's attorney general. Robson was deputy attorney general for the Northwest Territories before becoming a twice-appointed member of the judiciary, first chairman of the province's Public Utilities Commission, and co-founder of the Manitoba Law School. Hugh John Macdonald was one of three sons of Fathers of Confederation to practise law in Winnipeg. By the time he died in 1929, Macdonald had been a member of Parliament, premier of the province, and city police magistrate. Smith served as attorney general of Manitoba, justice of the Court of King's Bench, and dean of the provincial law school. And when James Aikins completed the second of his two terms as Manitoba's lieutenant-governor, his office was filled a few years later by two other large-firm lawyer, W.J. Tupper and R.F. McWilliams.

But not all lawyers who became prominent in politics were associated with large-firms. An early example is Joseph Dubuc. He arrived in Manitoba in the 1870s and throughout his career enjoyed none of the advantages associated with large-firm practice. By the time he retired as Chief Justice of Manitoba, however, he had been Speaker of the provincial legislature, attorney general,

member of Parliament, and a thirty-one-year veteran of the Court of King's Bench. Dubuc was not unique. Neither of the two lawyers appointed to the bench after 1922 federal election were members of large firms. Both were, however, defeated Liberal candidates. John Adamson was one of them. He became the first Manitoba-born lawyer ever appointed to a provincial superior court. The other was Lewis St. George Stubbs. He was perhaps the most controversial lawyer to practise in Winnipeg, both before the after he became the first Manitoba judicial appointment made by the newly elected Liberal government of Mackenzie King. A prominent lawyer-politician who was neither appointed to the bench nor a member of a large firm was Stuart Garson. After spending five years as premier of Manitoba, he left the province in 1948 to become federal minister of justice.

Not only did the prominence of small- and medium-firm lawyers-politicians rival that of members of large firms, but many of the former did not even get their start in Winnipeg. Thomas Mayne Daly, for example, was Brandon's first mayor and a member of Parliament before he gained a reputation as well-regarded Winnipeg Police Court magistrate. He subsequently became judge of the country's first juvenile court. Portage la Prairie's Arthur Meighen gained considerably greater fame when he became Canada's prime minister in 1921.

Regardless of the size of the law firm with which they practised, lawyers who entered politics benefited their firms in at least one way: They acquired recognition. Public platforms were the means by which many exposed themselves, and their firms, to potential clients. For those at the top of the professional ladder, becoming active in politics was just part of an overall external orientation to the practice of law. For small-firm lawyers, however, membership in a political party provided a level playing field and many of the advantages denied them professionally. It gave even most marginalised an opportunity to be both seen and heard.

XIII. THE JUDICIARY

INVOLVEMENT IN THE LAW SOCIETY and the Manitoba Law School were only two ways in which large firms attempted to exert control over the legal profession. Equally important was the influence they exercised in determining who was elevated to the Bench. For that reason alone it is important to examine the role the judiciary played in the legal process. There is, however, an even more compelling reason to do so. Robert Nelson and Richard Abel suggest that the values of large-firm lawyers accurately reflect those of their clients. And R.C.B. Risk argues that, in Canada, the common law is made by judges whose values

TABLE 14
Background of Manitoba's Judiciary

Background	Number	Percentage
Politician	7	14
Rural Practitioners	5	10
Two Lawyer Firms	8	17
Medium-Sized Firm	9	19
Large Firm	19	40

are those of society's most powerful groups.[31] These factors, together with the expectations and institutional pressures associated with meting out justice, mean that law is usually applied in a like manner by all members of a provincial judiciary. With one exception, that in fact proved to be the case in Manitoba. When large-firm lawyers are elevated to the bench, they do not automatically discard the attitudes of the social group of which they form a part. Winnipeg barrister John Ewart alluded to this in a speech he made in 1903:

> If I be asked whether I think that government jobs and railway passes influence judges, I reply that human nature is weak; that motive and mental influence work subtly, and their operations are much more easily discerned by onlookers than by the one affected; that such things usually do produce a frame of mind favourable to the donors, and ... that elevation to the Bench is not equivalent to inoculation against the feelings of gratitude for past favours or pleasing anticipation of those to come.[32]

Hurst suggests that judges have their widest influence through the pressure they exert simply remaining in the background.[33] Rosenthal argues that judicial preferences and prejudices hang like a hammer over the heads of lawyers because of the power judges have to influence the outcome of future applications.[34] In this context an examination of the role the judiciary played in Manitoba in the first half of the twentieth century is revealing. It confirms that a significant number of those appointed to one or the other of the province's two superior courts had practised with a larger firm prior to their appointment. And it suggests that the inclination for members of the judiciary to award judgements to defendants increased with the length of time a judge sat.

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31 R.C.B. Risk, "The Law and the Economy in Mid-Nineteenth-Century Ontario: A Perspective," in D. Flaherty, ed., *Essays in the History of Canadian Law, Vol. I* (Toronto: The Osgoode Society, 1981) 106.

32 D. Gibson & L. Gibson, *supra* note 2 at 172.

33 Hurst, *supra* note 24 at 172.

34 D.E. Rosenthal, *Lawyer and Client: Who's in Charge?* (New York: Russell Sage Foundation, 1974) 86.

As table 14 indicates, between 1900 and 1959, forty-eight men were appointed to one or other of the province's two superior courts. Of these, seven received their appointment as an obvious political reward. Each was, at the time of his appointment, a sitting member of a legislative body or had been defeated in an attempt to join one. Five judges practised outside Winnipeg prior to their elevation to the bench, eight worked in association with other lawyers, and twenty-eight were members of large or medium-sized firms. Of these last, nineteen were alumni of a large firm and, of that number, nine had been associated with Aikins, MacAulay.

With one exception, between 1909 and 1939 every member of Manitoba's Court of King's Bench became more inclined to decide trials in favour of defendants the longer he sat on the bench. Table 15 illustrates this tendency. One explanation is the inclination of the judiciary to identify with those who were, by 1939, increasingly being brought into the court process as defendants—wealthy individuals and corporations. American studies suggest that the value system of those who act for this type of client is that of the client, and that conflict between the two is virtually non-existent.[35] Since lawyers from the highest stratum of the bar make up just under one-half of the judiciary, there is reason to believe that most judges possess similar values. Their collective values are arguably those inherited from former clients. Table 15 suggests that it may not be coincidence that the number of decisions favouring those clients increased as corporations began defending more actions than they filed.

A second explanation for the results described above is the selection effect inherent in cases which proceed to trial and the effect produced when corporations withdrew from the court process.[36] The selection effect holds that when both a plaintiff and a defendant share the same opinion of the likely outcome of litigation, chances of settlement increase. The greater the disagreement over the likely outcome, the greater the chances that a dispute will be litigated. The critical determinant of litigation and of the rate of success of plaintiffs or defendants is the error of the parties in predicting the likely outcome of the dispute. Where the error variance is small and approximately equal for both parties, the likelihood that the plaintiff will win is close to 50 percent. As the error of the parties diminishes, the proportion of disputes litigated declines and the settlement rate increases. As the litigation rate declines, the proportion of plaintiff victories will more closely approach 50 percent.

Three factors loom large in the selection effect—litigation costs, settlement costs, and the size of the judgement. When litigation costs are lower than settlement costs or where judgements are exceptionally large, most disputes will be

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35 Nelson, *supra* note 8, and Heinz & Laumann, *supra* note 9.

36 G. L. Priest & B. Klein, *The Selection of Disputes for Litigation* (Toronto: University of Toronto Press, 1982).

TABLE 15
Trial Judgments, 1909–1939

Decisions in Favour Of	Percentage			
	1909	1919	1929	1939
Plaintiff	87	62	61	53
Defendant	13	38	39	47

litigated, and the proportion of plaintiff victories will likely be less than 50 percent. In short, where the gains or losses from litigation are equal for both plaintiff and defendant, the individual maximising decisions of the parties creates a bias towards a 50 percent rate of success, regardless of the substantive standard of law.

In the context of litigation filed in Winnipeg's Court of King's Bench, however, it is the exception to the selection effect which perhaps best explains the tendency of members of the Manitoba judiciary increasingly to render decisions in favour of defendants. As corporations grew in size and sophistication, they gradually withdrew from the court process. This occurred primarily because resort to law was both expensive and disruptive of business relationships. Over time, large-firm clients were drawn into a courtroom only when not to do so would damage their reputation and a victory would restore it, or in circumstances where losing a dispute would affect future business or require them to change an existing practice at an increase in cost. In such cases, when the stakes are greater for a defendant than for a plaintiff, fewer disputes will be litigated, but the outcome of those which are usually favour a defendant.[37] The effect produced when corporations began entering the courtroom as defendants rather than plaintiffs was to narrow considerably the gap between plaintiff wins and defendant losses.

A third explanation for a shift in the decision-making propensity of the Manitoba judiciary is related to growth of quasi-judicial bodies. Many disputes in which the liability of a defendant was readily apparent were suddenly removed from the formal adjudication process.[38] This left the judiciary only those cases where a defendant had either a valid or a strongly perceived defence. The net effect was to lessen the number of cases filed with courts and to increase the number of trial decisions favouring defendants.

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37 *Supra* note 36 at 38.

38 J. Benidickson, "Private Rights and Public Purposes in the Lakes, Rivers, and Streams of Ontario, 1870–1930," in D. Flaherty, ed., *Essays in the History of Canadian Law, Vol. II* (Toronto: The Osgoode Society, 1983) 365.

XIV. CONCLUSION

IN THE FIRST NINETY YEARS of Winnipeg's history, only fourteen law firms employed more than five lawyers at any given time. As the city grew, so too did the influence of these few large firms. Over time law-firm size came to have a significant impact on the professional lives of lawyers. It not only determined their status at the bar, but dictated the type of clients they attracted. The larger the firm, the greater the likelihood that clients were wealthy individuals or corporations. Servicing the needs of those with power and influence permitted large-firm lawyers not only to specialise, but to play a dominant role in the affairs of the Law Society and the Manitoba Law School.

The influence of senior members of Manitoba's oldest and largest firms was exaggerated primarily because these individuals shared a common set of values. As a result, women, Jews, and small-firm practitioners were excluded from large-firm practice and isolated from the legal mainstream. One route to prominence for those marginalised by the professional establishment was politics. For many, joining a political party was like becoming a member of a large law firm: It brought acceptance and the opportunity to distinguish themselves in the eyes of other lawyers and potential clients.

As large firms grew and became more specialised, their focus shifted away from the courtroom. The needs of corporate clients were increasingly satisfied outside the glare of public scrutiny. Filling the void left by large-firm litigators were those who occupied the lowest rungs of the professional ladder. Their clients were lower- and middle-class individuals. As the number of commercial actions typically filed by corporations declined, negligence suits filed by individuals increased. With that change small-firm practitioners began to play amore significant role in the court process. They continued, however, to be shut out from both the Law Society and from teaching positions at the province's law school.

An examination of the legal history of Manitoba suggests that the founders of Winnipeg's largest firms share a lasting legacy—a highly differentiated and stratified bar. There is no reason, however, to believe that such a circumstance is unique to Manitoba. Recent bencher elections in Ontario suggest that the legal profession in that province is also stratified, albeit along different lines. Further research will no doubt also show that the influence of wealthy individuals and corporations pervades metropolitan bars both inside and outside Canada. By adopting the kind of methodology described in this essay, researchers should be able to measure both the extent and the effect of that influence. It should also be possible to identify groups marginalised by inequities inherent in the structure of modern law firms and in other law societies and professional organisations. Only in this way can the legal profession truly embrace the notion of reform.