

An Introduction from the *Manitoba Law
Journal*

The Life and Works of
Chief Justice Hugh Amos Robson

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When Hugh Amos Robson was appointed Chief Justice of Manitoba, one of the speakers commended him as someone who would be remembered as a “great judge, a kindly, considerate and friendly man” but above all “a lover of the law.”¹ Robson’s own speech reveals little of his emotion. He tepidly acknowledges that he is a “bit overwhelmed” by the compliments he has received from other speakers. Looking back at his life, Robson describes some important public events he witnessed, but reveals little about his feelings or judgment about them. In mentioning some of the great events he had lived through and outstanding figures he had met, Robson cautions readers that he takes no credit for them, he just happened to be around. Regarding his contributions as a pioneer of legal education in the province, he remained modest and said others should not mention it “because it is everybody’s duty and everyone does his own work in his own way just as the occasion arrives.”²

In his installation speech, Chief Justice Robson lamented that biographies were not being written of Canadian lawyers, as they were of jurists back in the

¹ *Manitoba Court of King’s Bench, Address to Robson, H.A., Chief Justice, and response* in Legal Judicial History collection (1944), Winnipeg, Archives of Manitoba (Q 26407, A422, Box 6 file 35) [Chief Justice Appointment].

² Manitoba, Hon. H.A. Robson, K.C. (address given at Manitoba Bar Association, Winnipeg, 19 January 1921) in Historical Scrapbook, 1908-1945 A188, Faculty of Law Fonds, Winnipeg, University of Manitoba Archives & Special Collections, UA 43, PC 139, TC 87, MC 18 (A.96-57, A.96-85, A.97-30, Box 1, Folder 2).

United Kingdom.³ Yet when Robson gave tributes or eulogies to leading figures of his day, he tended to describe professional achievements and strong work ethics, yet offered little insight about his subject's personal life or the distinctive features of one's personality or character. At the beginning of his unpublished historical sketch of Manitoba, he mentions his childhood only by way of recalling a few personal events but almost nothing about how he felt about them.⁴

It does not appear that there was any sharp divide between the "private" Robson and the public figure. He appears to have spent most of his time, intellect, and attention on his profession. He had a sense of duty to serve as a practitioner, to educate the next generation of jurists, and as a judge to decide each case with scrupulous attention to detail. It is not evident from any of the writings by Robson in this volume that the public figure felt any pressure, either external or self-imposed, to repress some aspect of his private self, including his political beliefs and likes and dislikes for particular individuals or groups. In a meticulously researched and insightful contribution to this collection, Melanie Bueckert explores an era in which Chief Justice Robson found himself on a court with several allegedly senile colleagues. One author asks whether he might have actually reached conclusions opposite to his deteriorating colleagues based on an antipathy for their presence.⁵ While Bueckert's essay shows that Chief Justice Robson was, at the end of his Court of Appeal days, frequently at odds with one or more of the senescent judges, it does not definitively establish that Chief Justice Robson was indeed unconsciously skewing his judgements based on the ability of those with whom he shared the Bench. If one or more judges had deteriorated in competence, and Chief Justice Robson continued to be an exceptionally competent judge, one would expect increasing divergence in results.

Robson's judicial opinions are of a piece with his writings about his life and times and the important public officials he met along the way. These judgments exhibit an extraordinarily meticulous attention to factual detail. In hearing appeals from criminal convictions, he could spend many pages detailing evidence from the trial record. He was always scrupulous to separate his description of facts from his eventual evaluation of them. He affixes a legal

³ Chief Justice Appointment, *supra* note 1.

⁴ H.A. Robson, *Autobiography – draft and correspondence* (ca. 1945, 1989, Legal Judicial Historical Collection), Winnipeg, Archives of Manitoba, (Q 26462, file 40).

⁵ Dale Brawn, *The Court of Queen's Bench of Manitoba 1870-1950: A Biographical History* (Toronto: University of Toronto Press, 2006) [Brawn].

label to an individual or act at the end of a detailing of events; there is little or no “editorializing” along the way.

I wrote about Sam Freedman’s style in a volume several years ago, an edited version of his memoirs that I was lucky enough to find and rescue from potential disappearance.⁶ In contrasting the styles, I would say that Sam Freedman has a style which aims to be as concise as possible, and to find ways to distill and relate only the essential facts. Chief Justice Robson’s accounts of facts read more like trial transcripts; Chief Justice Freedman’s style was more like someone crafting an instructional folktale. Chief Justice Robson’s use of language was direct and clear, but functional rather than literary; Freedman aimed at achieving a lucid and succinct artistry. Like Freedman, Chief Justice Robson had a Blackstonian belief in the majesty and righteousness of the common law; it represented the accumulated wisdom of many minds, over many cases, over many years, and so in aggregate a storehouse of moral common sense,⁷ albeit always open to revision in light of new circumstances and further reflection.⁸

Chief Justice Robson’s opinions reveal little about himself; Chief Justice Freedman, on the other hand, often allowed his sense of humour or personal sympathies to show in his writings.

Robson’s personal character, professional performance, and literary style all converged to make him, in his own way, an outstanding judge. Robson took care to fully understand a situation before passing judgment on it, to assess each factual matrix in light of its own particularities rather than imposing an ideological lens, to identify, characterize, and weigh with precision the interests and equities on both sides of a case. He appears always to have done his best to be an impartial servant of justice according to the law, rather than imposing his own subjective values on the litigants or in promoting his own profile and advancement.

In other words, all the available evidence suggests that Chief Justice Robson was, in all aspects of his life, judicious.

⁶ See *A Judge of Valour: Chief Justice Samuel Freedman – In His Own Words* (2014) 37 Special Issue Man LJ [*Judge of Valour*].

⁷ Legal Education in Manitoba, Hon. H.A. Robson, K.C. address given at Bar Association, Winnipeg, 19 January 1921, in Historical Scrapbook 1908–1945, A188, Faculty of Law Fonds, Winnipeg, University of Manitoba Archives & Special Collections, UA 43, PC 139, TC 87, MC 18 (A.96-57, A.96-85, A.97-30, Box 1, Folder 2).

⁸ See *Judge of Valour*, *supra* note 6 at 101.

In the biographical sketch of Robson that is an inspiration for this volume, Roland Penner describes him through Joseph Thorson as “a very fair judge.”⁹ Penner would have characterized himself as a left-of-centre social reformer; yet he appears to have greatly admired the life and career of someone who practiced law as a lawyer for large corporations, who took a cautious approach to changing the law or society, and whose judgments are not easily characterized as having any particular ideology. Perhaps that is partly because Roland Penner’s father, Jacob, was a leader of the defence committee for Savaa Fedorenko,¹⁰ and Chief Justice Robson wrote the decision that effectively freed him.¹¹ No doubt Roland was also appreciative of the fair-minded approach Chief Justice Robson took in his Inquiry into the General Strike.¹² The record of carefully deliberated and balanced judgment that Robson left is one that can evoke admiration from many across the political spectrum.

It may be that some judges will be better remembered because they had a talent for articulating memorable turns of phrase, or championed a particular political cause or law reform agenda, or drew attention to themselves on the lecture circuit and in media rather than allowing their judicial opinions to speak for themselves. In my view – which might be uncommon among today’s academics – judges should not aim to be “oracles and performers”;¹³ the most important thing that a judge can do is hear and decide each individual case that comes before them as carefully and fairly as possible. Cases are about providing a just outcome, guided by law, for litigants, not about virtue-signaling or career advances of the judge assigned to try them.

Chief Justice Robson was also for a time the leader of a political party in Manitoba. When reading his political pronouncements, they appear to me once again entirely consistent with all other aspects of his life and career. He did not bring a strong ideology into his judging, nor even in his foray into electoral politics. He eschewed rhetorical flourish in both his judging and political speeches. Robson’s political credo is, like everything else he wrote,

⁹ See Roland Penner, *infra* at 22.

¹⁰ Norm Larsen, *Notable Trials from Manitoba’s Legal History*, 1st ed (Altona, Manitoba: Friesens, 2015) at 171.

¹¹ *Re Fedorenko (No. 2)* (1910), 20 Man R 224 at 230–31, 17 CCC (MBKB) 271.

¹² See e.g. Tom Mitchell, *infra* at 56 (“Strike or Revolution? H.A. Robson’s Inquiry and the Winnipeg General Strike”). See also *The Great Canadian Seditious Trials*, 2nd ed (2019) 42:5 Man LJ (for a republication of Jack Walker’s original book alongside additional materials).

¹³ See Bryan Schwartz, “On Choosing Judges – Oracles and Performers; or Philosophers and Sages?” (1992) 17 Queen’s LJ 479.

strong on facts and specifics; there are few statements of abstract belief, but rather a program that identifies a series of situations along with an action point. The political philosophy is basically that a government should take a balanced approach to all interests, rather than selectively favour some. That may seem bland, but you could do worse, and many governing parties in Manitoba have – precisely by strongly favouring some factional interests over others.¹⁴ Robson can hardly bring himself to say much that is negative about his opponent’s plans, and leaves personalities out of it entirely – including his own.¹⁵

In some arenas, Robson’s virtues might have been underappreciated. His report on the Winnipeg General Strike, some have noted, was widely ignored because it was too balanced and fair. It did not take the complex events and merely identify goodies and baddies; rather, it attempted to determine and do even-handed justice to different actors and beliefs. As a politician, Robson did not win many seats for his party. Perhaps the pragmatic and balanced nature of his program, and the dispassionate and depersonalized way he presented it failed to inspire voters who had definite commitments to particular ideologies or factional interests, or who connected better with a politician who seemed more personally approachable.

Robson’s statement at his installation address may summarize his approach to life, as well as his career. He did his duty as he saw it, and did not expect to be exalted, or perhaps long remembered for it. The world needs its misfits, eccentrics, geniuses, cranks, artists, and dreamers. It also needs some temperate and diligent people to try to maintain some order and fairness. In *Ulysses*, the romantic hero sets off on his last venture, leaving behind his son, Telemachus, to dutifully maintain order and justice. “He works his work” says Ulysses, “I mine.”¹⁶ There is no great poem called “Telemachus”; art and history tend to remember better figures who acted, for better or worse, with grand style and passion. There was, however, a Chief Justice Robson, and there

¹⁴ See generally Bryan Schwartz, “Revitalizing Manitoba: From Suppliant Society to Diversity & Dynamism” (Winnipeg, MB: Frontier Centre for Public Policy, 2011), online: <https://fcpp.org/files/1/RevitalMB_525x825_SP14_F1.pdf> [perma.cc/N977-R22M].

¹⁵ H A Robson, “The Revival of Liberalism in the Province of Manitoba” (address delivered 13 May 1927, Winnipeg Headquarters, 205 McArthur Building), Archives of Manitoba, John Bracken Fonds – “Political Subject files Platform 1932 – Lib. Platform (Manitoba), 1914–1927, P2548 file 8.

¹⁶ Alfred Tennyson, “Ulysses” (London: 1842), online: *Poetry Foundation* <<https://www.poetryfoundation.org/poems/45392/ulysses>> [perma.cc/2534-P8M4].

is, for now, a law school still named in his honour. After supervising the coming together of this collection and having had a chance to read much of what Robson said in his own voice, I believe that the honour is well deserved. Inevitably, a time will come when the building will be replaced and another name might appear instead; but it is hoped that this volume will help to record and preserve a record of public service which warrants respect and, in many ways, emulation. Values like personal modesty, devotion to public duty, diligence, and judiciousness may not be universally prized in current times, but perhaps there will always be some who appreciate them. At least I hope so.

A few words about the origins of this project.

Roland Penner and Norm Larsen were both enthusiastic authors of popular histories of legal affairs in Manitoba, and they often collaborated on projects. The *Manitoba Law Journal* has been conducting oral history projects for several decades now and fortunately they include published interviews with Roland (in our “Famous Legislative Crises” special issue)¹⁷ and “Norman Larsen: Draftstoyevsky,”¹⁸ which have helped to preserve their personalities and manners of expression, as well as their perspectives as legal professionals.

Roland and Norm had the idea some years ago of producing a biography of Chief Justice Robson. Norman passed away in April of 2017, and Roland continued the project on his own. He brought me a draft – about ten thousand words in 2017, for possible publication as a stand-alone issue of the MLJ. I responded that the idea of focusing on Robson was worthwhile and timely in light of the 100th anniversary of the General Strike and 50th anniversary of the opening of the building which houses the law school, Robson Hall. So I proposed, and Roland agreed, that we would develop his work into an overview of Robson’s Life and Times, and round it out into a full-length project by including some key works of Robson in his own voice and a series of commentaries relating to Robson’s life and times by experts in various areas. Roland passed away in the spring of 2018, but my co-Editor-in-Chief, Professor Darcy MacPherson (who also authored a contribution to this volume), and I continued to work hard on bringing his final scholarly contribution to fruition.

Erik Gusdal worked over the summer of 2019 to edit Roland’s sketch, checking into (and elaborating upon) some of the accounts and observations,

¹⁷ Erin Melrose & Bryan Schwartz, “Interview with Roland Penner” (2003) 30:1 Man LJ 79.

¹⁸ See Bryan Schwartz & Darla Rettie, “Norm Larsen: Draftstoyevsky” (2001) 28:2 Man LJ 201.

and providing extensive footnotes. We invited contributors from far and wide and are pleased to have had so many responses we could include in this volume.

Along the way I discovered that our Faculty's reference librarian, Matthew Renaud, had worked over several years to produce an in-depth history of legal education in Manitoba, including colour photos, which readers here will find to be a fascinating backdrop to Robson's eminent contributions in the area.¹⁹

The *Manitoba Law Journal's* motto is "we serve our communities" – including the lawmakers, jurists, and ordinary citizens of this province. We have made it part of our enterprise to study the past. Our methodology has included studying history through documents,²⁰ and also through oral history.²¹ With respect to the history of the judiciary, the present issue adds to our recent set of special issues including "Five Decades of Chief Justices of Manitoba,"²² as well as the memories of Chief Justice Sam Freedman.²³ Our *Underneath the Golden Boy* series has addressed legislative activity and democratic reform in this province. Given Chief Justice Robson's political career, this issue adds to that dimension of the *Manitoba Law Journal*.

Chief Justice Robson was a leader in legal education in the province, and this issue expands our advancements in that respect, as do our volumes on the careers of Indigenous jurists and policy-makers from Manitoba and "The Great Transition in Legal Education,"²⁴ the latter of which covers the move of the practice-oriented downtown law school to its joining with a suburban multiversity. Chief Justice Robson was a top-flight practicing lawyer in addition to being a judge, political leader, and educator, and the *Manitoba Law Journal* hopes to continue to address the evolution of the profession in this province and more widely.

¹⁹ See Matthew Renaud, *infra* at 287 ("From Reading Courses to Robson Hall").

²⁰ See e.g. *A Review of the Current Legal Landscape* (2016) 39:2 Man LJ.

²¹ See generally *The Great Transition in Legal Education* (2016) 39:1 Man LJ [*Great Transition*]; *Indigenous Jurists and Policy-Makers from Manitoba: A Collection of Oral Histories* (2018) 41:2 Man LJ [*Indigenous Jurists*].

²² (2012) 36 Special Issue Man LJ.

²³ See *Judge of Valour*, *supra* note 6.

²⁴ *Indigenous Jurists*, *supra* note 21; *Great Transition*, *supra* note 21.

As we have proposed on a number of occasions, a focus on our own communities need not make us parochial.²⁵ As a law journal, we seek to bring to bear the insights of distinguished authors beyond our borders or from those working in disciplines other than law. In turn, we believe that thoughtful reflection on our community can contribute to understanding and reform in many other communities.

We have been honoured with the support of granting agencies in our community, including the Legal Research Institute of the University of Manitoba and the Faculty of Law Endowment Fund, since taking over as co-Editors-in-Chief in 2010, and we are honoured to have had, since 2015, the crucial support of the Social Sciences and Humanities Research Council (SSHRC) program of grants in aid of scholarly publications. In the fall of 2019, the team at the MLJ was exceptionally gratified to learn that the SSHRC program had renewed its crucial support of our endeavour for another three years. The jury of experts that reviewed our submission gave our journal the second-highest score for overall excellence in all of Canada among qualified applicants in an envelope that included not only law, but also journals in economics, political studies, public administration, and industrial relations. We hope that this latest issue will once again demonstrate – as did the life and work of Chief Justice Robson – that actors and events in our community are as worthy as any of recollection and reflection.

POSTSCRIPT

As this project was almost finished, and after I wrote the essay you have just read, Melanie Bueckert brought to my attention a press clipping from 1912 reporting on the death of Robert Robson, the father of the later Chief Justice, by way of suicide. It has caused me to reflect more deeply on Robson's immersion in his profession and reticence about himself. Is it possible that both are in some way connected? Did trauma around his father's suicide haunt Robson throughout his life?

I reject the variants of postmodernism in the academy that minimize the objective existence and knowability of reality. Facts do exist, and as John Adams put it, they are stubborn things; they persist despite personal bias and

²⁵ See e.g. Darcy L MacPherson & Bryan P Schwartz, "Preface and Issue Overview" (2017) 40:1 *Man LJ* i (for a full set of mission statements and objectives); in brief, we aim to publish and produce informed, diverse, and timely discussions, of the highest possible quality, around events which involve, or are highly relevant to, our own communities.

ideology. Much of what we do in law, however, involves the characterizing of complex mental states, such as attitude, intent, understanding and motive. These kinds of judgments involve assessments where absolute precision is not possible; a person's "understanding" of an event may be fragmentary, evolve through time, and be internally conflicted. Adjectives cannot fully capture with infinitesimal precision the nuance involved. Society needs to appreciate the limits of the evidence available, personal biases, and the inherent uncertainties involved in arriving at such characterizations; we are not excused, however, from the hard work of trying to arrive at a reasonable conclusion when called upon to do so. There can be an element of subjectivity to moral judgment, and sometimes a jurist or historian has to acknowledge that an event be evaluated differently by reasonable and humane people; nonetheless, it can often be reasonably clear what the law provides, and what moral common sense dictates. Judges and juries are called upon to provide definitive evaluations, and we hope that when they do, it is with humility and with painstaking diligence – rather than yielding to any easy nihilism about what we can ever know about another person. Chief Justice Robson himself is an exemplar of how, even when issues are complex, even when multiple sides are presented by antagonists, it is possible to be reasonably objective.

I believe that this project provides considerable insight into the life and work of Chief Justice Robson; there is strong convergence of opinion about him from different contributing authors and it is consistent with the expressed opinion of other scholars and many of his contemporaries. The suicide note of his father does not cause me to doubt that reasonable objectivity and judiciousness is possible; but it does reaffirm my belief that the soul of another person can maintain within it mysteries which, ultimately, we cannot resolve due to lack of evidence or our inability to fully re-enact, in our own individual imagination, the thoughts and feelings of another.