

# Preface and Issue Overview

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D A R C Y L . M A C P H E R S O N <sup>\*</sup> A N D  
B R Y A N P . S C H W A R T Z <sup>\*\*</sup>

This issue the Manitoba Law Journal is our regular *Underneath the Golden Boy* issue<sup>1</sup>, which focuses on legislative and public policy developments in Manitoba and on democratic and parliamentary reform generally. The *Underneath the Golden Boy* series began in 2000 as a special issue of the Manitoba Law Journal. It briefly became a standalone publication, but later rejoined the MLJ family. The contributions detailed below continue our tradition of publishing high-quality scholarship about statutes and public policy in Manitoba.

In Andrew Flavelle Martin's first contribution in this volume ("Loyalty, Conscience, and Withdrawal: Are Government Lawyers Different?"), the author considers the position of government lawyers when the client asks the lawyer to do something that the lawyer considers unethical. It adds to an impressive series of articles that the author has previously contributed to the MLJ relating to professional ethics.<sup>2</sup> Martin believes that there are unique scenarios that can arise for government lawyers. He goes on to

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<sup>1</sup> *Underneath the Golden Boy* is a series of special issues of the Manitoba Law Journal, initiated over two decades, focusing on legislation, public policy and democratic reform.

<sup>2</sup> Andrew Flavelle Martin's prior contributions to the Manitoba Law Journal include: "The Duty as Legislative Counsel as Guardians of the Statute Book: *Sui Generis* or a Professional Duty of Lawyers" (2021), 44(3) Man LJ 116; "The Premier Should Not Also Be the Attorney General: *Roncarelli v Duplessis* Revisited as a Cautionary Tale in Legal Ethics and Professionalism" (2021), 44(3) Man LJ 155; "Folk Hero or Legal Pariah? A Comment on the Legal Ethics of Edgar Schmidt and *Schmidt v Canada (Attorney General)*" (2020), 43(2) Man LJ 199; "Does the Attorney General have a Duty to Defend Her Legislature's Statutes? A Comment on the *Reference Re Genetic Non-Discrimination Act*", (2020), 43(2) Man LJ 221.

consider the obligations of the Attorney General when his or her Cabinet colleagues (or others within government) make demands of him or her that are inconsistent with the ethical obligations of the Attorney General as a lawyer, or which so violate the conscience of the lawyer that continued representation of the client becomes difficult or impossible.

The contribution by Bruce Curran (“Wage Restraint in Manitoba: Is Freedom ‘Just Another Word for Nothing Left to Lose?’”), explores in depth the introduction of the *Public Services Sustainability Act*<sup>3</sup> and the constitutional litigation that followed.<sup>4</sup>

Andrew Flavelle Martin’s second contribution in this issue (Can a Tribunal’s Former Counsel Appear Before the Tribunal? A Comment on *Certain Container Chassis*) explores the implications of allowing public lawyers who assist tribunals in their decision-making processes to then, after leaving the public service, appear before the same tribunals as an advocate for a partisan before the tribunal.

Lauren Gowler’s contribution (“Off to the Races: Bill 31, *The Horse Racing Regulatory Modernization Act (Liquor, Gaming and Cannabis Control Act and Pari-Mutuel Levy Act Amended* covers the legislative journey of a law that purports to harmonize the regulation of one form of entertainment with a gambling component (horse racing) with other forms of gaming under the auspices of the Liquor, Gaming and Cannabis Authority, and addresses reasons why this may not be appropriate.

The final piece in this volume presents an extensive interview with the Honourable Steven Fletcher, a former Member of Parliament, federal Cabinet Minister, former member of the federal Treasury Board. It is a continuation of the Manitoba Law Journal’s long-standing dedication to conducting and presenting oral histories of leading lawyers, judges and lawmakers from Manitoba.<sup>5</sup> The transcript explores in depth the sources of

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<sup>3</sup> SM 2017, c 24.

<sup>4</sup> *The Public Services Sustainability Repeal Act*, SM 2022, c 9; *Manitoba Federation of Labour et al. v The Government of Manitoba*, 2021 MBCA 85.

<sup>5</sup> Oral histories in the Manitoba Law Journal include: Chief Justice Robson: A Selection of His Original Works and Contemporary Reflections on Them, (2019), 42(2) Man. LJ; Indigenous Jurists and Policy Makers From Manitoba: An Oral History (2018) 41(2) Man LJ; The Great Transition in Legal Education (2016), 39(1) MLJ (which includes twelve interviews with teachers from the Manitoba Law School and University of Manitoba Faculty of Law; A Judge of Valour: Chief Justice Freedman - in His Own Words (2014), 37 MLJ (Special Issue), largely based on the autobiography interviews with The Honourable Chief Justice Samuel Freedman; Five Decades of Chief Justices

the subject's political philosophy, his experiences in practical politics, and how he has still been able to carry out such a varied and lengthy set of contributions to public life while addressing profound physical challenges arising from an accident as a young adult.

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(2013), 36 Man LJ (Special Issue), which includes interviews with the Honourable Chief Justices Samuel Freedman, Alfred Monnin and Richard J. Scott; the “famous legislative crisis” issue of *Underneath the Golden Boy* (2003) 30:1 Man LJ, which includes nine interviews with senior Manitoba politicians.

A forthcoming issue of the Manitoba Law Journal will include a series of interviews with Indigenous persons who studied law at the University of Manitoba and explores their professional careers after graduation. For an earlier introduction by Brian P. Schwartz that addresses the use of Indigenous oral history methodology, please see *An Indigenous Oral History Reader*, (Manitoba Law Journal, 2022 available online: [journals.library.ualberta.ca/themanitobalawjournal/index.php/mlj/article/view/1305](https://journals.library.ualberta.ca/themanitobalawjournal/index.php/mlj/article/view/1305)).