

Preface and Issue Overview

D A R C Y L . M A C P H E R S O N *

This issue of the Manitoba Law Journal is our annual *Underneath the Golden Boy* edition. This means that the contributions in this volume are largely focused on the actions taken by, and issues around, the legislative and executive branches of government, rather than focusing on the courts. In Andrew Flavelle Martin's first contribution in this volume ("Loyalty, Conscience, and Withdrawal: Are Government Lawyers Different?"), the author considers the somewhat unique¹ position of government lawyers when the client asks the lawyer to do something that the lawyer considers unethical. Martin believes that there are unique scenarios that can arise for government lawyers. He goes on to 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.

In the contribution authored by Bruce Curran ("Wage Restraint in Manitoba: Is Freedom 'Just Another Word For Nothing Left To Lose?"), the author tackles the introduction of the *Public Services Sustainability Act*¹, the constitutional litigation that followed (even though the Act was never technically proclaimed into force, and was later repealed).² The author discusses the judgments in the litigation, and provides critiques of all of them. But, to me, one of the most powerful arguments against the use of

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¹ SM 2017, c 24.

² *The Public Services Sustainability Repeal Act*, SM 2022, c 9.

legislation to restrain wages in the public sector (including workforce is not directly employed by government, such as universities and hospitals) was the argument that the author makes (supported by both economic theory and practical experience) that legislation to restrain wages is unnecessary and, perhaps even counterproductive, given that the parties have to continue to work together.

In Andrew Flavelle Martin's second contribution in this volume (*Can a Tribunal's Former Counsel Appear Before the Tribunal? A Comment on Certain Container Chassis*), the author returns to the important theme of the ethical responsibilities of lawyers. In this contribution, Martin considers the implications of allowing public lawyers who assist tribunals in their decision-making processes to then, after leaving the public service, to appear before the same tribunals as an advocate for a partisan before the tribunal. Though he looks at this issue by means of a case comment that considered this important ethical dilemma, the case really provides an entry point for a discussion of the broader topic. For me as a reader, the case (*Certain Container Chassis*³) was a lesser part of the analysis. The more important points made by the author were the convincing policy arguments about the need for a test that would balance the right (and need) for lawyer mobility (and the ability to represent clients in the private sector), while protecting the interests and reputation of the former tribunal client. Not only does the author provide the rationale for a test, he also offers some amendments to the test offered in the case to make the law even more responsive to the policy issues identified in the paper.

In the contribution by Lauren Gowler ("Off to the Races: Bill 31, *The Horse Racing Regulatory Modernization Act (Liquor, Gaming and Cannabis Control Act And Pari-Mutuel Levy Act Amended)*"), the author 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. There were a number of interesting arguments made about this change to the law. One of them was the point that the state itself is a beneficiary of casino gambling. To make the state agency in charge of casino gambling the regulator of one of the competitors of the casino

³ 2021 CanLII 84563 (CITT), [2021] CITT No 102 (QL), 2021 CarswellNat 3896, 2021 CarswellNat 3897, online: <<https://decisions.citt-tcce.gc.ca/citt-tcce/a/en/item/512691/index.do>>.

industry (the horse racing industry) does seem to create a conflict of interest, when previously, representatives of the horse racing industry and the government shared responsibility for regulation.

The final contribution in this volume is a continuation of the Manitoba Law Journal's practice of doing oral histories with important public figures. In that spirit, my Co-Editor-in-Chief, Dr. Bryan Schwartz decided that the next subject for our oral history project would be the Honourable Steven Fletcher. A former Member of Parliament, federal Cabinet Minister, former member of the federal Treasury Board, and a former provincial MLA are only some of the roles that this interesting public servant has occupied in a remarkable life with ups and downs, and notable twists and turns. There were many memorable moments in this oral history, but what is perhaps one of the most captivating lessons it presents is both how Fletcher arrived at his personal principles, and how Fletcher held to them even at tremendous personal cost.