

Issue Introduction and Overview

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

As Co-Editor-in-Chief of the *Manitoba Law Journal*, I am usually heavily involved in selecting content to appear in the Journal. In this Special Issue on Legal Education in Manitoba, my role was a bit different. While I sat in on some of the interviews, they were generally conducted by either students or by my fellow Co-Editor-in-Chief, Dr. Bryan Schwartz. The goal was for me to come in near the end of the editorial process and provide an unbiased view of the content. I hope that this introduction means that we were successful in this approach.

Many readers of the *Manitoba Law Journal* will recognize that this is not the first time that the Journal has endeavored to provide an element of legal history in some of its issues. Since Dr. Schwartz and I took over the editorship of the Journal in 2010, we have been committed to significant legal history projects. Part of this commitment arose from the fact that both of us believe that interviews with significant figures can put historical developments and context in a way that other forms of research may not be able to do. To each other (and other people as well), we have expressed regret that no one had sat down with C.H.C. (Cliff) Edwards, the first Dean of the Faculty of Law at the University of Manitoba (1964-1979) late in his career. While our colleague Cliff had certainly given interviews over the years, no one had done a comprehensive retrospective interview on his career. Undoubtedly, one of the reasons for this would have been the fact that, at the time of his death in the summer of 2008, Clifford had still been planning to return to the Faculty of Law in a teaching role for his 51st year of association with the Faculty that he helped inaugurate.

This regret on the part of both my Co-Editor-in-Chief and myself was one of the driving forces behind our decision to dedicate a Special Issue to the three men who had served as Chief Justice of Manitoba between 1971 and 2012.¹ As part of the preparation of our *Five Decades of Chief Justices*

¹ Darcy L MacPherson and Bryan Schwartz, "Five Decades of Chief Justices: Issue

issue, I had the privilege to interview The Honourable Alfred Maurice Monnin, who had served as Chief Justice of Manitoba from 1983 to 1990.² Sadly, we lost Chief Justice Monnin in late 2013.³ Interestingly, the *Five Decades of Chief Justices* issue led us to a previously unpublished manuscript about the earliest of the Chief Justices profiled in the *Five Decades* issue, namely, The Honourable Chief Justice Samuel Freedman.⁴ This manuscript, assembled and put into context by historian Robert C. Clarke, became the basis of the *Manitoba Law Journal*'s next Special Issue.⁵

Both Dr. Schwartz and I are full-time academics. Therefore, it is unsurprising that when we started to discuss the next Special Issue of the *Manitoba Law Journal*, we were both interested in legal education. We quickly settled on the idea that the last major transition in Manitoba legal education was the transition from the Manitoba Law School (located in downtown Winnipeg) to the Faculty of Law at the University of Manitoba, which happened in the mid-1960s. But we knew that there were many people who had experienced both systems who would still be available, and, we hoped, willing to talk about their various experiences, both prior to and following the transition. What was reasonably unexpected was how many other transitions became part of the interviews that Dr. Schwartz and the students were doing.

Overview and Introduction" (2012) 36:SI Man LJ v-xi.

² "An Interview with The Honourable Chief Justice Alfred Monnin" (2012) 36:SI Man LJ 75. We produced the interview in both of Canada's official languages, given that Chief Justice Monnin's native tongue was French, and his Franco-Manitoban background was an important subject for the interview. We felt it was important to produce the interview in English as well, so that the important insights from this powerful figure would be accessible to as broad an audience as possible. For the same reasons, we produced the "In Memoriam" tribute to Chief Justice Monnin in both official languages. See Darcy L MacPherson, "In Memoriam: The Honourable Chief Justice Alfred M. Monnin", (2013) 37:1 Man LJ vii-xii. Also in volume 37 of the *Manitoba Law Journal*, we decided to produce a paper by then-Senator, The Honourable Roméo Dallaire in both official languages, for similar reasons. See: The Honourable Senator Roméo Dallaire, "When Humanity Fails", "Lorsque l'humanité échoue", (2013) 37:1 Man LJ 1.

³ See MacPherson, "In Memoriam", *ibid.*

⁴ *A Judge of Valour: Chief Justice Samuel Freedman – In His Own Words* (2014) 37:SI Man LJ.

⁵ See Darcy L MacPherson, "Issue Overview", *ibid.*, at i-ii.

To begin with one of the obvious examples, many of the interviews discussed a transition in the composition of the academic staff at Robson Hall. Gradually, Robson Hall has transitioned from a Faculty where most of the academic staff had Masters degrees, to a place where doctoral studies are becoming *de rigueur*. Becoming part of a larger academic institution (namely, the University of Manitoba) has led to other changes, as well. For some of the interviewees, traditional legal research was something with which they were very comfortable. Others made their research contributions by keeping their casebooks and student knowledge up-to-date. Since Robson Hall has become home to the province's only law school, we have also seen a significant transition in the way that legal information is organized, accessed, and distributed with the advent of both legal databases, and more general search engines, such as Google. Some of our interviewees were part of the early classes that had large numbers of women. One of our interviewees was one of the first women to join the Faculty.⁶ These are all important transitions that have happened over time, during the teaching and other legal careers of our interviewees. In other words, the *Manitoba Law Journal* was very interested in the transition from the Manitoba Law School to the Faculty of Law at the University of Manitoba. The content of this volume shows that during the lifetime and careers of some recently-retired colleagues, there was more than one major transition that occurred. In fact, there were several.

Many of our interviewees have retired from the Faculty of Law at the University of Manitoba. From my perspective, this volume contains several lifetimes' worth of accumulated knowledge, experience, and perspectives. Many predate the change from the practitioner-dominated law school of the 1960s. Currently, the legal academic environment is once again going through significant transition. The attempt by the Federation of Law Societies of Canada to be more involved in the curriculum discussion at Canada's law schools has raised the level of the debate about the proper "division of labour", as it were, between the law schools, on the one hand, and the regulatory bodies that admit students to practice of law, on the other. The ongoing attempt by Trinity Western University to ensure that graduates of its proposed law school will be able to be admitted to the Bar of any province or territory raises the level of debate about what social values

⁶ Jessica Davenport & Ryan Trainer, "Interview with Janet Baldwin" (2016) 39:1 Man LJ 117.

may be prioritized in a law school environment. Both of these (and many others, too) are important debates to be had, not only by those of us immediately involved in education in law schools, but by legal practitioners, and even the general public. Law schools, for better or worse, are going to evolve in some way. All of us are likely to have ideas about what the proper evolution of the law school environment might be. It is not our goal, in the pages that follow, to resolve, or even enter into these current debates.

Rather, our efforts herein are devoted to ensuring that people with the broadest range of experience and differing perspectives are asked important questions. While these important questions have often begun with the past, what is most interesting is that many of our interviewees have also provided important food for thought about the future. The “future”, in this context, refers to the future of not only the legal profession, but also perspectives that might affect the future of the student experience while at law school, and the future of legal research. All of these are discussed in these pages.

Our interviewees agree on much. Many of them can point to the weaknesses of the concurrent articling system that predated the transition to Robson Hall and joining the University of Manitoba as a Faculty.⁷ However, this does not mean that the system did not produce many outstanding lawyers.⁸ They also generally agreed on the impact of Dean Cliff Edwards, someone who exercised a very positive leadership role in the transition. The interviewees also seemed to be a consensus with respect to the fact that there is been a significant change in legal education in the province both during and since the time of Dean Edwards.

Where they did not always agree was whether the change was a positive one. Some seem to implicitly accept the quality of teaching may have risen through the use of full-time teachers rather than practitioners to deliver the academic program of the law school. Others seemed very concerned over the loss of the closeness with the profession that being downtown in the old Law Courts building offered to students of an earlier era. Some of these people spoke of the learning that went on simply by the ability to “drop in” on trials, and watch tremendous advocates in the courtroom environment.

⁷ On this point, see also the interview with the Honourable Chief Justice Richard J. Scott, as part of our *Five Decades* issue. See: “An Interview with Chief Justice Richard K. Scott” (2012) 36:SI Man LJ 1.

⁸ *Ibid.* In the same volume, Chief Justice Scott himself offer some views on the state of legal education. See The Honourable Chief Justice Richard J Scott, “A Judge’s Perspective on Legal Education” (2012) 36:SI Man LJ 67.

For some people, the physical relocation of the law school, therefore, made it more difficult for this type of learning to occur. There is also a certain amount disagreement about the quality of today's students compared to those of other eras. Some interviewees were quite overt in suggesting that they might be unsuccessful if they were to apply to law school today. Others have suggested that though grade point averages and LSAT scores may have increased over time, this may be more due to grade inflation than to an increase in the quality of the students who are applying to law school.

Some of these differences may be explained by the relative position of the interviewee at the time of the transition. Some of the interviewees experienced the transition as students. Others were lawyers trained under the former, concurrent articling system. Still others were young academics at the Manitoba Law School at the time of the transition. Still others would become legal academics later, but who were trained by the men and women who had experienced both systems. Finally, still others were never students in Manitoba, but would join the Faculty of Law at the University of Manitoba in the quarter-century following the transition.

Each would feel the effects of the transition differently. It is difficult to see that any one perspective on the transition or what followed is "right" in any objective sense. To be clear, it is not our goal, in the pages that follow this overview, to attempt to determine a "right" answer, neither for the past, nor certainly not for the future.⁹ Rather, the goal is to ensure that all of these different perspectives are captured at a moment in time when many of the people who lived through, or affected to varying degrees by, the transition are still available to share the benefits of their experiences.

In many ways, the different capacities and frames through which the various interviewees view their experiences at the richness and texture to the volume that no single interview could possibly hope to capture. In many ways, the differing views of practitioners, judges, academics, and others are left for the reader to think about, puzzle over, and ultimately result for him- or herself. As I read these pages in doing the final edit of the volume that follows, I was left with the answers to questions I had never really asked myself, but probably should have. I was left with questions about what a bygone era might be able to tell us but the 21st century law school. I was left

⁹ Nonetheless, one of our interviewees has written an academic article where he has made suggestions with respect to the future of legal education in Canada. In fact, it appeared in the *Manitoba Law Journal*. See Lee Stuesser, "The Future for Canadian Law Schools", (2013) 37:1 *Man LJ* 155.

with a sense of appreciation that those who proceeded me in this journey had some strong thoughts about what the future might hold, as well as how we might learn from the past. But, most of all, I was left with a sense of gratitude. This may seem odd to some. But, for me, to know that those who were either close to or had already left the legal profession writ large were still willing to engage with us in this historical project was immensely satisfying. I would have thought that upon their retirement, many of them might have chosen to do exactly that—that is, retire from debates that had filled their professional lives. Instead, the generosity and spirit of public service of the interviewees was a tremendous feeling to experience as I had the privilege to read the pages that follow.¹⁰ I, and all of my colleagues at the *Manitoba Law Journal*, sincerely hope that readers will take away that same generosity and spirit as they read the important commentary of the interviewees. Finally, we can only hope that historians in the future may find significant insights in these interviews. As to this last point, unfortunately, only time will tell.

¹⁰ I remember having a similar feeling when judges and practitioners spoke so eloquently at a one-day conference entitled, "Anatomy of a Public Inquiry". The *Manitoba Law Journal* reproduced the Remarks of John Burchill (at 105), fall police officer and later a graduate of Robson Hall; the Remarks of Bruce MacFarlane, Q.C. (at 121), the former Deputy Attorney General for Manitoba; the Remarks of Richard Wolson (at 128), a criminal defence lawyer; and the Honourable Jeffrey J. Oliphant (at 139), a former Associate Chief Justice of the Manitoba Court of Queen's Bench, all of whom had been participants in public inquiries in the past. All of their Remarks can be found in Volume 37, Issue 1 of the *Manitoba Law Journal*. In my introduction to these Remarks, I indicated each of these gentlemen could have found reasons not to take on the work that was being asked of them in relation to the public inquiry. Then, I wrote as follows:

Yet all of these gentlemen found a way to do what they thought was right. We hope that this collection will be one way that history will record that they did what was in the best tradition of lawyers acting in the public interest. So when we all hear a lot of stories about lawyers having done horrible things that we shouldn't do, keep in mind these gentlemen. They did not do this for the money, the fame, or for any reason other than that they thought they were serving the public interest. For that alone, we owe them all a debt of gratitude.

See Darcy L MacPherson, "Anatomy of a Public Inquiry: Introduction" (2013) 37:1 *Man LJ* 101 at 103.

We also, in the second volume of this issue,¹¹ include a collection of documents from over a century of deliberations by governing bodies, professional associations, and academics on the future of legal education in this province. One thing that is remarkable is how the debates of long ago and through time identify themes that are very similar to those that infuse the discussions of today.¹²

¹¹ Bryan P Schwartz & Darcy L MacPherson, eds, *The Great Transition in Legal Education*, (2016) 39:2 Man LJ.

¹² The Document Supplement includes the following: a list of the Faculty of Robson Hall until 2016: Compiled by Cameron Harvey, "Full-Time Teachers, Recordors & Librarians of the Manitoba Law School and of the Faculty of Law, University of Manitoba" (2016) 39:2 Man LJ 3; excerpts from Bar Association Meetings over a century ago debating the same problems that face law faculties today : Canadian Bar Association, "Excerpts from *Proceedings of the Third Annual Meeting of the Canadian Bar Association Held at Montreal, Quebec 3, 4, 5 September, 1918*", (2016) 39:2 Man LJ 9, and Canadian Bar Association, "Excerpts from *Proceedings of the Fourth Annual Meeting of the Canadian Bar Association Held in Winnipeg, Manitoba, August 27th, 28th and 29th, 1919*", (2016) 39:2 Man LJ 23; an article by EK Williams detailing the history of legal education from 1913 to 1950: E.K. Williams, "Legal Education in Manitoba: 1913-1950", (2016) 39:2 Man LJ 55; first person account detailing the options to move to the University campus: Cliff Edwards & Dale Gibson, "Memorandum on the Future Status and Location of the Manitoba Law School" (2016) 39:2 Man LJ 91; an article by Jack London recapping the history of legal education until the 1970: Jack R London, "The Admissions and Education Committee: A Perspective on Legal Education and Admission to Practice in the Province of Manitoba, Past, Present and Future", (2016) 39:2 Man LJ 105; the curriculum reform report done in the early 1980s: Jack R London et al, "The Report of the Curriculum Review Committee on a New Curriculum", (2016) 39:2 Man LJ 155 [Osborne-Esau Report]; an article detailing the findings of the Osborne-Esau Report: Phil Osborne & Alvin Esau, "Curriculum Reform at Robson Hall", (2016) 39:2 Man LJ 179; another article detailing the initial decades of legal education in Manitoba: W Wesley Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water", (2016) 39:2 Man LJ 205; a more recent curriculum reform report done emphasizing the need for experiential learning: Mary Shariff et al, "Academic Innovation Committee on the Robson Hall J.D. Curriculum: Consultation Paper" (2016) 39:2 Man LJ 241; an article detailing the importance of experiential learning using the results of the Academic Innovation Committee Report: Sarah Lugtig, "A Vision for Experiential Education at Robson Hall: Supporting Students' Transition to Practice" (2016) 39:2 Man LJ 397; memo and minutes where Robson Faculty voted to adopt the proposals set for in the Academic Innovation Committee Report: Academic Affairs Committee, "Memo Regarding Academic Innovation Committee Consultation Paper on March 9, 2016" (2016) 39:2 Man LJ 453 and Law Faculty Council, "Excerpts from Law Faculty Council Minutes, Meeting on March 24, 2016" (2016) 39:2 Man LJ 473.

But like the generosity of the interviewees, I am left with the spirit of optimism about the future of the university-based law school in Canada in general, and in Manitoba in particular. As before, there is much work still to be done to make the law school better. This is no time for the Faculty of Law to rest on any laurels. But, I have little doubt that if we were to renew this project in 10, 20, or 40 years from now, we would find the same generosity and spirit would continue to pervade our graduates and those associated with the Faculty of Law at the University of Manitoba. From my perspective, this generosity and spirit are clearly evident in the present. I trust that it will be true in the future as well. If I am right in that, then the Faculty of Law at the University of Manitoba has much of which it can be justifiably proud.