

# Preface

---

BRYAN P. SCHWARTZ

Does the “inside game” matter anymore? Does what happens in legislative assemblies significantly affect the content of legislation, or is that essentially pre-determined by a majority government? Can an opposition party use parliamentary procedure to slow down a measure it strongly opposes and use its speeches and manoeuvres in the assembly to rally public opposition? Does the debate in a legislative assembly inform the public, change opinion, and affect the outcome or elections, or is a sideshow in the world where public attention is fragmented into a multichannel world of television, internet and social media?

We pose these questions, among others, in a set interviews included in this issue that we conducted with a set of senior party officials in Manitoba — the then-leader house leader for the government, Andrew Swan, the house leader for the opposition, Kelvin Goertzen, the leader of the Manitoba Liberal Party Rana Bokhari, and then former, now returning leader of the Green Party, James Beddome. Readers are invited to explore their answers, and to view in the context of the remarkable recent events in Manitoba politics. All of these leaders are alumni the University of Manitoba Law School – including the Legislative Process Course that has been at the heart of the Underneath the Golden Boy from the outset. We explored with a number of them the possible links and disconnects between their legal educations in general and their political careers.

The long-governing party of Manitoba, the New Democrats, came to power with assurances of the Premier that there would not be an increase in sales tax. The opposition leader, Hugh McFayden, went down to defeat while insisting that Mr. Selinger’s numbers were not credible, that a Progressive Conservative Government would need several years to balance the books, and that the NDP would have to increase taxes to maintain its own agenda.<sup>1</sup> After increasing its

---

<sup>1</sup> “Manitoba Tories Release Election Platform” (29 August 2011) *CBC News* online: CBC News <<http://www.cbc.ca/news/canada/manitoba/manitoba-tories-release-election-platform-1.1054654>>.

majority in the Legislature, the government suddenly announced an increase of one cent in the provincial sales tax while repealing the requirement that such increases must first be submitted to a plebiscite.

The political and legislative consequences of that decision continue to unfold. The official opposition party chose to focus its efforts on resisting the measure in the Legislative Assembly. Its successful effort to protract debate on government bills, including the tax increase, delayed its implementation. Whether affected or not by opposition tactics in the Legislature, support for the Premier in opinion polls dropped and that of the opposition party increased. Events reached the point where five cabinet ministers resigned. At the time that this preface is being written, at the end of December 2014, the new Democratic Party has agreed that a convention in March will include a leadership race. One of the rebel five has entered the race, and a cabinet Minister who was not among the original rebel five has resigned his cabinet seat to compete.

The legality of the government's decision to proceed without a referendum was contested in the courts;<sup>2</sup> an analysis of the decision upholding the constitutionality of the legislation, is provide in these pages by the editors in chief of this publication. A public policy examination of the erosion and possible reform of balanced budget legislation in Manitoba is provided by Professor Wayne Simpson.

Another high controversial measure – leading as well to protracted debate in the legislative assembly – was the government's bill to address bullying of students in schools.<sup>3</sup> An account of the politics and policy of that debate is provided by a group of three students from the 2014 Legislative Process class. Each originally wrote their own account, and notwithstanding their varying political persuasions, they were able to collaborate on a balanced and informative analysis.

An overall review of the events of the past year, elaborating on her hypothesis that Manitoba politics is moving from a long period of stability to one of uncertainty is provided by Karine Levasseur.

In a typical session, over thirty bills are passed in Manitoba Legislative Assembly, as always, Underneath the Golden Boy has sought to provide critical portraits of some specific pieces of legislation, both as objects of study in their own right and as part of an exploration

---

<sup>2</sup> *Progressive Conservative Party of Manitoba v Government of Manitoba*, 2014 MBQB 155.

<sup>3</sup> *The Public Schools Amendment Act (Safe and Inclusive Schools)*, SM 2013, c 6.

of the nature and value of the legislative process. Studies in this issue, in addition to those already mentioned include the following efforts:

- Kyle Emond studies the educational and social philosophy behind of a bill to promote “community schools” reviewing the comparable initiatives in other jurisdictions, and finds that the bill was a meritorious effort that has the potential to assist students from less advantaged backgrounds.
- Sherry Brown reviews legislation to provide for admitting privileges at hospitals for nurse practitioners and midwives; she expresses concern that the practical implications of the bill were not sufficiently identified and addressed, partly due to a lack of prior consultation with health care providers.
- Jessica Isaak reviews legislation to expand the power of teachers’ professional society to establish a code of conduct for members and discipline them for breach. She concludes that that legislation does not provide sufficient direction to guide teachers and their regulators, and that the legislative process was not sufficiently deliberate in this respect.
- Jessica Davenport and Geritt Theule write on a bill to require the amalgamation of small municipalities in Manitoba. They find that there is insufficient evidence to support the view that good government is required or served by amalgamation.

We initiated last year the integration into *Underneath the Golden Boy* of essays by experts in many other disciplines besides law, focusing on the reform of public policy as well as specific legislative initiatives or outcomes. This partnership with the Manitoba Institute for Policy Research has grown this year to include:

- Katherine Buddle proposes that public policy on addressing issues of youth crime should move away from an approach that focuses on suppressing a threat and more on initiatives to identify the potential in young people and assist in their positive development.
- Joan Graces calls for a stronger framework for intergovernmental cooperation in addressing the infrastructure debt.
- Richard Jochelson and his coauthors propose that measures be taken to increase the participation of aboriginal citizens in criminal trial juries.

- Shauna MacKinnon proposes the creation of a new organization, a labour market intermediary, to promote the preparation and placement of aboriginal citizens with respect to employment
- Jane Ursel reports on a study of the effectiveness of the Family Violence Court.

With respect to these essays, I would briefly point to some alternative perspectives.

“Neo liberalism” as Katherine Buddle acknowledges in her essay, might have a variety of meanings. As with my comments in prefatory comments last year,<sup>4</sup> I would caution against a stark division of thought and political parties in Manitoba in the Manitoba context in terms as sweeping as “neoliberal” versus “progressive”. A reasonable neo-liberal approach would indeed be concerned about the freedom and opportunity of all members of society, and so would at the same time seek to reduce the burden on the victims of crime, who disproportionately come from disadvantaged parts of society. At the same time, neo-liberals would be wary of the abuse of state authority, concerned about the special interests that might profit from over-incarceration, and eager to find ways to facilitate the ability of individuals to achieve meaningful lives in the context of their own values and choices. If “neo liberalism” includes seeking a balance and pluralistic society, in which a central government is not overwhelmingly pre-eminent, then promoting the contribution of non-governmental organizations to promote individual development and reduce crime would be consistent with that philosophy. Over the years, various contributors to *Underneath the Golden Boy* have expressed concern about the extent to which “crime suppression” initiatives, including those involving gangs, have insufficiently addressed the issues of their practical effectiveness and compatibility with civil liberties.

Joan Grace in her contribution views more intergovernmental cooperation as necessary element of addressing the infrastructure debt. Another perspective – adopted by Rana Bokhari in her interview and in my own writings<sup>5</sup> on the subject - might be that cooperation has its merits, but that a fundamental part of the problem is the imbalance in

---

<sup>4</sup> Bryan P. Schwartz, “Preface” (2013) 36:2 Man LJ i at i-ii.

<sup>5</sup> Bryan P. Schwartz, “Diversity in Governance: A New Deal for Cities” in *Revitalizing Manitoba* (Winnipeg: Frontier Centre, 2012).

resources and authority with which varying levels of government approach issues. Local governments do not have the powers, including access to growth taxes that are commensurate with their responsibilities. Rather than expanding the arena in which the provincial government can dictate to municipalities or exercise overriding and direct control over infrastructure choices, it is time to strengthen the capacity of municipalities to make their own decisions.

Just before going to press, we learned that the Manitoba Law Journal has received a grant from the Aid to Scholarly Journals program of the Social Sciences and Humanities Research Council that will facilitate our next three years of operation, including continuing *Underneath the Golden Boy*. We are looking in forward to further expanding the cooperation with our colleagues in Political Studies, public administration and other disciplines on producing the public policy part of our journal. We are hoping to enlist contribution from even more disciplines and grounded in a variety of fresh perspectives. If, as Karine Levasseur argues, we are entering a dynamic new period in Manitoba politics and public policy, we believe that *Underneath the Golden Boy* is better placed than ever to be a forum for critical and independent analysis of what has been and visioning of what could be.