

## 32 NOTABLE PEOPLE

### They include...

- A founding father who suffered "death by litigation."
- A priest who negotiated Manitoba's entry into Confederation.
- A lawyer who made contact with a spirit named Walter.
- A judge who spoke his mind – and lost his job.
- Two detectives – the last of the tough and legendary police officers.
- An activist nun who had a law degree.
- A lawyer-businessman who rather enjoyed suing and being sued.

They are (in order) Thomas Douglas (Lord Selkirk), Noel Ritchot, Isaac Pitblado, Lewis Stubbs, Peter Vander Graaf & Jack Taylor, Geraldine MacNamara, Izzy Asper.

### "Ten Notable Visitors" include...

- The Chicago lawyer known as the "attorney for the damned."
- A famous author who argued for moral perfection through crime.

They are Clarence Darrow and Mark Twain.

**Norm Larsen** is a retired lawyer. He lives in Winnipeg.

The cover photos are identified on page 2.

Cover design by Caroline Traweger.

Norm Larsen

NOTABLE PEOPLE



From Manitoba's Legal History

# NOTABLE PEOPLE

## FROM MANITOBA'S LEGAL HISTORY

Including:

Four Founding Fathers, Criminal Lawyers,  
Corporate Lawyers, Mavericks & Outliers,  
& Ten Notable Visitors

Described in Quotations and Anecdotes  
Compiled & Edited by Norm Larsen

# **NOTABLE PEOPLE**

*from*

MANITOBA'S LEGAL  
HISTORY

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## COVER PHOTOS

From the upper left:

*Row 1:* James Aikins, E.K. Williams and Sam Freedman, Chief Peguis, Nellie McClung, Joseph Zuken.

*Row 2:* E.K. Williams, Sam Freedman, Thomas Douglas (Lord Selkirk), Lewis Stubbs, E.J. McMurray.

*Row 3:* Isaac Pitblado, Noel Ritchot, Louis Riel, John Schultz, Chief Little Six.

*Row 4:* John Scollin, Saul Greenberg, Geraldine MacNamara, Louis Morosnick, Melrose Sissons.

*Row 5:* W.P. Fillmore, Hugh John Macdonald, Adam Thom, Arthur Meighen, Peter Vander Graaf and Jack Taylor.

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## MANITOBA'S LEGAL HISTORY

— including —

**Four Founding Fathers  
Criminal Lawyers  
Corporate Lawyers  
Mavericks & Outliers  
Ten Notable Visitors**

★

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by Norm Larsen

★

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Special thanks to the taxpayers of Manitoba for paying my salary for over 25 years, first as a public school teacher and later as a government lawyer. I hope this can be regarded as an added return on their investment.

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Last, but definitely not least, I thank my partner Linda Perry for her photos, edits and support for my enthusiasm for Manitoba’s legal history.

\* \* \*

# Introduction

More than 100 years ago, French author Anatole France commented that publishing another book was like urinating into Niagara Falls. If he were alive today, he might rather refer to the Atlantic Ocean. And yet, knowing that, here I am self-publishing another book, only a year after self-publishing *Notable Trials from Manitoba's Legal History*.

*Notable Trials* was a perfect hobby and an enjoyable experience for a retired lawyer who enjoys history—especially legal history—and books. The enjoyment more than made up for the usual financial loss involved in self-publishing. I am therefore happy to do it again.

## Pop History

*Notable Trials* is a form of pop history, but it has a serious purpose, particularly in highlighting the three little-known sedition trials following the Winnipeg General Strike. *Notable People* is also pop history with a serious—but different—purpose that is explained in part by Dale Gibson's introduction to his "Anecdotal Sampler" (1977), a collection of anecdotes he gathered from Manitoba lawyers, in *The Law Society of Manitoba 1877-1977* (1977):

**Anecdotal lore serves many useful functions: to illustrate and perpetuate the traditions of the profession, to remind lawyers of their limitations, and to celebrate the variety and colour of the legal panoply.**

The quotations and anecdotes in this book are organized to provide glimpses into the lives of 32 people, most of whom were

famous in their day but whose names are now unfamiliar to the general public and even to most lawyers. I hope this collection helps to revive and perpetuate their names and accomplishments, and encourages readers—especially students—to read more about them in the cited source material.

## Selecting 32 "Notables"

I began this book by compiling a list of people that I regard as notable—all of them connected in some way to Manitoba and its legal system. They numbered about 50 but shrank to 32 (all deceased), based mostly on the amount of source material that I had to draw from. Thus, Provincial Court Judge Ian Dubiński and Court of Appeal Judge Roy Matas (my favourite judges from my seven years in the courts), are not in this book. The few anecdotes I have about them are in *Tales from the Underworld* (2009), a book by Roland Penner and me.

In *Tales*, a chapter is devoted to Sam Freedman and another to the famous criminal lawyer Harry Walsh. Sam has a chapter in this book as well, but Harry does not. The reason is that all the stories I have about Harry are contained in 13 pages in *Tales*, while new stories have emerged about Sam.

## Anecdotes

In addition to quotations from books and articles, this volume contains anecdotes that I have gathered from lawyers over the years. Several of the anecdotes are from interviews conducted around 2008 for *Tales from the Underworld*, but left out of that book for lack of space. I am delighted to include them here.

## Ten Notable Visitors

This collection ends with ten "notables" who briefly visited the Red River Settlement, later Winnipeg, between 1863 and 1996. It is mind-boggling to contrast the tragedy of Chief Little Crow's visit soon after the Minnesota Sioux Uprising of 1862 with the pleasant evening that I and 2,000 others spent with movie star Gregory Peck at the Centennial Concert Hall in 1996. The events occurred about 130 years and one mile apart.

## Format

As in *Notable Trials*, the quotations and anecdotes in this book are uniquely organized to tell at least part of the stories of 32 people. The material is “compiled and edited.” I have added an occasional word or number within a quotation for clarification, and I have made deletions without necessarily using ellipses. In so doing, I have tried not to alter a quotation’s meaning or the intent of its author.

The first time a source is referred to under a subject heading, the full citation is provided. Any later reference under the same heading contains only the name of the author and the year of publication.

Norm Larsen  
October 4, 2016



# PART 1

## FOUR FOUNDING FATHERS

## THOMAS DOUGLAS

Lord Selkirk  
the 5<sup>th</sup> Earl of Selkirk  
(1771-1820)

**He believed that the rule of law triumphs,  
justice is done, and the truth prevails—  
but he suffered “death by litigation.”**

Thomas Douglas of Scotland is well known for his efforts on behalf of poor and disadvantaged people. They include the establishment of the Red River Colony (in what is now Winnipeg) in 1812 by people from Scotland and Ireland who were displaced by changes there in the use of land.

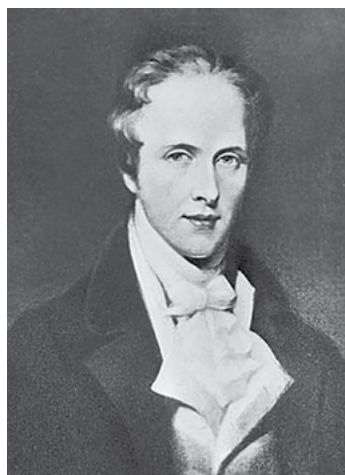
Not as well known is the sad story of Douglas' idealistic and tenacious faith in law and justice.

### His Creed

John Morgan Gray, *Lord Selkirk of Red River* (1963):

He hardly knew tranquility of mind since the vision of the Red River Settlement possessed him.... He stated the creed that was to become the rallying cry of his supporters:

“Truth must prevail in the end, and in the confidence that justice will ultimately be done to me, I put little importance on any words that may be aimed at my feelings.”



### Death by Litigation

Peter C. Newman, *Caesars of the Wilderness: Company of Adventurers* (1987):

Douglas succeeded in destroying himself. There is an enduring uncertainty as to whether he was fool or saint.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

When Douglas died in 1820, no one doubted that the chief cause of death was the litigation to which he dedicated the last three years of his life as recklessly as he had devoted his fortune to the establishment and survival of the Red River Settlement.

### Starting Out

John Morgan Gray (1963):

When Douglas was 14 he registered at the University of Edinburgh for a course in liberal arts, to be followed by training in law. There were reminders in the Law Courts that the splendours of the past did not all reside in the exploits of warriors, but in the concepts of life under law with justice.

### The 1811 Overture

Louis Aubrey Wood, *The Red River Colony* (1915), referring to Douglas preparing to establish the Red River Settlement:

His initial move was to get the best possible legal advice regarding the validity of the Hudson's Bay Company's Royal Charter of May 2, 1670. Five of the foremost lawyers in England said the Charter was flawless.... He made overtures to the HBC shareholders to be allowed to plant a colony within Rupert's Land, preferably in the region of the Red River.

In fact, the five lawyers did not say the Charter was “flawless”. They said it was “good”. Their opinion of about 50 lines includes the following:

We are of the opinion that the grant of the soil contained in the Charter is good; and that it will include all the country, the waters of which run into Hudson's Bay.... We are of the opinion

that an individual holding from the HBC a lease, or grant in fee-simple, of any portion of their territory, will be entitled to all the ordinary rights of landed property as in England.... We are of the opinion that the grant of the civil and criminal jurisdiction is valid, but it is not granted to the Company, but to the Governor and Council at their respective establishments... It [the jurisdiction] is to be exercised by the Governor and Council as judges, who are to proceed according to the laws of England.

Edward Ellice appeared before a Select Committee looking into the HBC in 1857. He is quoted by John Perry Pritchett in *The Red River Valley 1811–1849* (1942):

We have the opinions of [10 named lawyers]. The opinion of the eminent lawyers is that the proprietary rights of the HBC in Rupert's Land cannot be disputed.

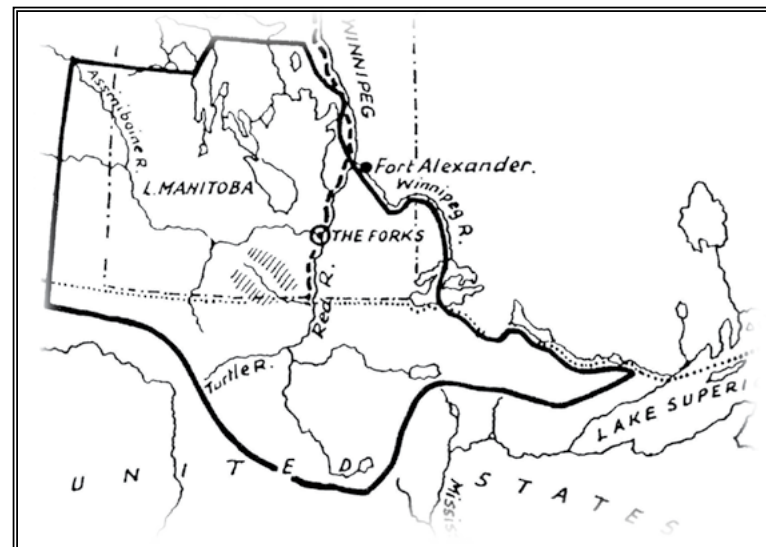
The legal opinions were given at different times in the early 1800s. Despite them, the HBC knew from at least England's "Glorious Revolution" of 1690 that the validity of its Charter was suspect because Parliament had not confirmed it.

### A Deal with the HBC

The HBC was "the lord and proprietor" of Rupert's Land from May 2, 1670 to June 23, 1870. In 1811, the Company granted a large piece of land to Douglas for a nominal 10 shillings and some conditions. He named his land Ossiniboia and then, from about 1816, Assiniboia. The best known part was the Red River Settlement near the junction of the Red and Assiniboine Rivers in what is now Winnipeg.

John Morgan Gray (1963):

On June 12, 1811, documents were signed that conveyed the grant from the HBC to Lord Selkirk.... The plan had a breath-taking boldness. In return for 116,000 square miles of land—for which he was to pay 10 shillings—he undertook to develop an agricultural colony.



The boundaries of Assiniboia were drawn mostly along rivers. The southern tip was at the source of the Red River near what is now Wahpeton, North Dakota. The United Kingdom ceded all of Rupert's Land south of the 49<sup>th</sup> parallel—the current Canada-U.S. boundary—to the U.S. under the Treaty of 1818. The 49<sup>th</sup> parallel thus became the new southern boundary of Assiniboia.

Assiniboia was sold back to the HBC 25 years later, in 1836.

From 1822, when Upper Fort Garry was built in what is now Winnipeg, until Manitoba became a province in 1870, this was its address:

Upper Fort Garry  
Red River Settlement  
District of Assiniboia  
Rupert's Land  
British North America

## Perseverance: Lawyers, Guns & Money

On June 19, 1816, 21 Selkirk Settlers were killed near the Red River Settlement in a clash with Metis who worked for the Hudson's Bay Company's (HBC) long-time competitor, the North West Company (NWC). The place and the event are known as "Seven Oaks". It is about five miles north of The Forks in Winnipeg, where the Red and Assiniboine Rivers meet.

Douglas was not at the Settlement at the time of Seven Oaks. When he learned of it, he wrote a letter dated July 29, 1816 to John Sherbrooke:

The North West Company has effected the destruction of the Red River Settlement, with the massacre of about 20 settlers.... I am reduced to the alternative of acting alone or allowing an audacious crime to pass unpunished. I cannot doubt that it is my duty to act.

John Morgan Gray (1963) describes Douglas in 1816:

He could not believe the Nor'Westers were outside the law. His faith in the law cried out against the proposition.... He set the machinery of the law in motion. He knew he was not acting for himself alone, for his family, or for the HBC. He was the instrument of justice, if not of vengeance, for his settlers.

## Magistrate Douglas Makes Mistakes

In August 1816, Douglas obtained an appointment as a magistrate. He then seized the North West Company's Fort William (now Thunder Bay) with his private army of about 100 men from Swiss regiments called the De Meurons, which had disbanded after the Napoleonic Wars in Europe. Acting as a judge, and not at all impartial, he charged several men with various offences and sent them east for trial in Upper Canada.

These events at Fort William gave the NWC grounds for court action against Douglas.

Jack Bumsted, *Lord Selkirk: A Life* (2008):

From the outset, the legal difficulties of his actions were plain, even to himself. Nevertheless, he expected to be supported by

government because the NWC was [as he wrote] "not to be restrained from crimes by anything less than a striking example of the Vengeance of the Law."

## Commissioner Coltman

E.E. Rich, *History of the Hudson's Bay Company 1670-1870* (1960):

The Governor General of Canada could see no prospect of controlling the rivals [HBC and NWC] at a distance of 2,000 miles. His suggestion was that commissioners be sent to Red River to "adjust the quarrels of the contending parties", as an alternative to a court of law.... Commissioner William Coltman was bent on achieving a compromise, and the Northwesters, having done their damage, were prepared to be sweetly reasonable, whereas Selkirk was not.

Douglas was at the Red River Settlement from June 21 to September 9, 1817, where Coltman was downplaying the clash at Seven Oaks, as "an inadvertent explosion".

John Morgan Gray (1963):

This to Douglas was legal madness. Though Commissioner Coltman asked him for a list of crimes, suspects and witnesses, Coltman took no steps to arrest even those already indicted. Men in the Metis camp were slipping away—men who played a leading part at Seven Oaks.

## Resisting Arrest

Lucille Campey, *The Silver Chief* (2003):

In the autumn of 1816, while at Fort William, Douglas was visited by a constable with a warrant for his arrest [on various charges] based on evidence supplied by NWC clerks.... In April 1817 he was served with another warrant, which he declared to be illegal. He believed himself to be in the right, exposing the wickedness of the NWC. But the outside world took a different view. Instructions came [from London in 1817] ordering his arrest to answer the charge of resisting arrest. He would stand trial in Sandwich [now Windsor, Ontario] in 1818.

## Chaos Causes Doubt

Samuel Gale of Montreal, one of Douglas' lawyers, wrote to Douglas' wife on October 24, 1818, describing the trials going on in the Upper Canada:

Irritations caused at distant times and places are produced and confounded together. Dates are confused. Hearsay is brought forward where facts are deficient. Charges from the bench increase the confusion till all becomes perfect chaos. In a case of doubt, the jury are bound to acquit. It must certainly be a case of doubt where all is unintelligible.

## The NWC Offers a Compromise

John Morgan Gray (1963):

A proposal from the NWC suggested an agreement not to press charges. It must have been tempting. But the price was to abandon the dead [those killed at Seven Oaks] and the wronged.... He was affronted at this lack of any sense of wrongdoing to be answered for. So much the worse for them [he thought]. When the time came, they should learn a lesson about the rule of law.

## 29 Charges against the HBC & Settlers (No Convictions)

E.E. Rich, *History of the Hudson's Bay Company 1670-1870: Volume 2: 1763-1821* (1960):

Preferred against the HBC and the settlers were nine charges of stealing in dwelling houses, six of grand larceny, five of robbery, five of riot and pulling down houses, three of false imprisonment, and one of assault and battery.

## 170 Charges against the NWC (One Conviction)

Chester Martin, *Lord Selkirk's Work in Canada* (1916):

The litigation between Selkirk and the NWC is bewildering. The number of charges makes it impossible to trace proceedings in detail.... There were 35 charges against NWC partners and 135 charges against clerks and minor employees [including] 42

charges of murder or complicity in murder, 18 of arson, 16 of robbery, nine of burglary, nine for stealing boats, nine for grand larceny, and seven for malicious shooting.

Patrick Brode, *Sir John Beverley Robinson: Bone and Sinew of the Compact* (1984):

On October 26, 1818 the trial of two men for the murder of Red River settlers at Seven Oaks began in York [Toronto].... Cross-examination of eyewitnesses discredited their testimony and substituted another version of the event: the massacre was only a "great riot", not murder, and the acts were misdemeanors committed in a general pattern of uprisings and disturbances.

Paul Brown and Francois Firmin Boucher were the men tried for the murder of Governor Robert Semple at Seven Oaks. On October 27, 1818 the jury deliberated for less than an hour and brought in verdicts of not guilty.

## Doomed Trials

A. Amos, a Barrister at Law from Cambridge in England, wrote a Preface to the *Report of the Trials in the Courts of Canada Relative to the Destruction of the Earl of Selkirk's Settlement on the Red River* (1820, 449 pages, available online).

Amos refers to long delays in bringing the charges to trial, transferring the trials from Lower Canada to Upper Canada, and granting bail to most accused, despite the serious charges they faced. In the result, many accused people and witnesses disappeared. He concludes:

Under all the circumstances, an acquittal [of the NWC accused] cannot be considered as affording any very strong presumption of innocence.

## Litigated to Death

John Perry Pritchett, *The Red River Valley 1811-1849* (1942), referring to cases heard in Upper Canada:

The first case against Douglas was thrown out by the Grand Jury. The second was put off repeatedly until all of his witnesses had scattered. The remaining charges were gathered under the heading of "conspiracy to injure or destroy the trade of the NWC." After the grand jury spent three days examining 40 witnesses and two days in deliberation, the Chief Justice adjourned the court, without assembling the jury to explain his reasons.

John Morgan Gray (1963):

In 1819 news came of two successful civil actions against Douglas at York, for false imprisonment [at Fort William]. In his anger he proposed a libel suit. The excitement and effort produced a hemorrhage. His sister wrote, "From then on, he had nothing but anxiety, sorrow, labour of body and heartbreak."

E.E. Rich (1960):

The Northwesters secured triumphant vindication on all charges. Douglas retired to France, exhausted in mind, body and purse, and suffering from tuberculosis.... His work lived on in the Red River Colony that he had re-established, in the clear discredit of the NWC, and in the ultimate triumph of the HBC.

Douglas died on April 8, 1820. In 1821 the two companies merged under the name of the Hudson's Bay Company.

Louis Aubrey Wood (1915):

In his eyes the HBC was endowed with all the virtues. He never analyzed the motives or recognized the achievements of its great rival. Had he ordered his representatives in Assiniboia to meet the Nor'Westers halfway, distress and hardship might have been lessened, and violence might have been avoided.

## His Legend & Epitaph

Jack Bumsted, in his Introduction to *The Collected Writings of Lord Selkirk: 1810-1820* (1988):

Douglas never really appreciated that getting justice for his colony, his colonists, and himself was not part of anyone's agenda except his own.

Lucille Campey (2003):

George Bryce [in *The Romantic Settlement of Lord Selkirk's Colonists*, 1910], first unearthed the many injustices that Selkirk suffered, and later scholars have given sympathetic accounts of his life's work. Although wrongs have been righted, insufficient attention had been paid to what he and his colonists achieved.... I can find fault with some of his decisions and his judgment, but his values and life's endeavours are beyond reproach. His attitudes and beliefs were far better suited to our generation than his own. He was very much a man of the people.

John Morgan Gray (1963):

His legend grew throughout Canada, carried in the hearts of people. His name became attached to schools and streets, hotels and theatres, a town and county.... Unknowingly, he and his faithful supporters had long before pronounced his epitaph: "*The truth must prevail.*"

Louis Aubrey Wood (1915):

In 1836 the rights of the Selkirk family in Assiniboia were purchased by the HBC. When Selkirk's son died in 1885, the line of Selkirk became extinct. Long before this, the family had broken the tie with the Canadian West.

\* \* \*

## CHIEF PEGUIS

(1774-1864)

**He generously saved the Red River Colony,  
but his generosity was later betrayed.**

From “Peguis the peacemaker” in *The Greatest Manitobans* (2008), published by the *Winnipeg Free Press*:

Accounts of meetings with traders, settlers and ministers all say the same thing: Peguis was a kind, honest man and a great leader.

Tom Axworthy in “Canada’s Human Rights Hall of Fame ... and Shame” in the *Winnipeg Free Press* (March 13, 2005):

The life of Chief Peguis, a Saulteaux chief, shows us how we should treat immigrants. He befriended the Selkirk settlers by showing them how to grow corn and offering warriors to defend them. He was rewarded for his kindness when later settlers trespassed on his St. Peter’s Reserve and violated his 1817 treaty with Lord Selkirk.

### Peguis & Douglas

Thomas Douglas (Lord Selkirk) was at the Red River Settlement only once, from June 21 to September 9, 1817.

Arthur Morton, *A History of the Canadian West to 1870-71* (1939):

Douglas busied himself disentangling the business of the Red River Colony. First was the question of his title to the land. A great council of Indians was held.

Chief Albert Edward Thompson, the great great grandson of Peguis, *Chief Peguis and His Descendants* (1973):

On July 17, 1817, Douglas gave Peguis a letter of introduction that would assure him of hospitality wherever he travelled:

“The Bearer, Peguis, one of the principal chiefs of the Chippewas or Saulteaux of Red River, has been a steady friend to the Settlement ever since its first establishment and has never deserted its cause in its greatest reverses. He has often exerted his influence to restore peace, and having rendered most essential service to the settlers in their distress, deserves to be treated with favour and distinction by the officers of the Hudson’s Bay Company and all friends of peace and order. “

John Morgan Gray, *Lord Selkirk of Red River* (1963):

Selkirk opened negotiations for a treaty to quench the Indian title to at least the lands of the Red River Colony. The land had been occupied for some 50 years by the Saulteaux.... The Indians’ liking and trust, and their naming of this quiet man The Silver Chief, were to become part of the folklore of the Red River Settlement.

John Perry Pritchett, *The Red River Valley 1811-1849* (1942):

Some Cree were opposed to the treaty, but Peguis prepared them to accept Selkirk’s terms. On the appointed day, crowds of Indians gathered at the Red River Settlement. Selkirk, dressed in an imposing costume and attended by a long retinue of followers, greeted them in princely fashion.

Peguis and four other chiefs signed “The Selkirk Treaty” on July 18, 1817. It is about two pages long, written in legalese (“In witness whereof the Chiefs aforesaid have set their marks on the day aforesaid”). It can be seen on the website of the Manitoba Historical Society.

### Peguis is Amused

In his book *The Correction Line* (1933), Reverend A.C. Garrioch quotes Reverend John West’s account of his conversation with Peguis on October 6, 1822:

I said it was the will of the Great Spirit that a man should have but one wife. Peguis smiled at this information, and said he thought there was no more harm in an Indian having two wives than one of the settlers, whom he named.

### The St. Peter's Reserve: A Shameful Episode

Gerry Friesen, Justice Murray Sinclair and Justice Al Hamilton in “ ‘Justice Systems’ and Manitoba's Aboriginal People” in *River Road: Essays on Manitoba and Prairie History* (1996):

Every Manitoban should be told at least this one chapter in the provincial story of Aboriginal land surrenders. This case concerns the Aboriginal community [St. Peter's Reserve] situated along the Red River between Lower Fort Garry and Lake Winnipeg. The settlement was recognized in the Selkirk treaty of 1817 and was led for nearly half a century by Chief Peguis. A large tract of this land was set aside as the home of nearly 2,000 Aboriginal people in Treaty One in 1871.

Frances Russell, *Mistehay Sakahegan – the Great Lake: The Beauty and Treachery of Lake Winnipeg* (2000):

One of the most shameful episodes in the long and often tragic history of European and North American relations occurred in 1907 with the surrender of the St. Peter's Reserve and the forced relocation of the people 160 kilometers north [to what is now Peguis First Nation]. The yielding of the land that Chief Peguis retained for his people in negotiations with Lord Selkirk in 1817 was accomplished by bribery, trickery and an outright denial of due process.

### Peguis' Generosity at St. Peter's

According to Donna Sutherland in *Peguis: A Noble Friend* (2003), the land issues at St. Peter's might have originated in one of his acts of generosity:

By 1857 the Red River Settlement was expanding onto reserve lands. Peguis and the other chiefs posted a warning to settlers “that if they cut hay beyond the two mile boundary [off the Red River] referred to in the treaty with Lord Selkirk, their stacks

would be destroyed.” Peguis did allow certain farmers to pass the two mile boundary, but he was adamant that they secure his permission first.

Sutherland quotes settler Thomas Truthwaite about farming his two miles off the Red River, in front of the St. Peter's Reserve, in the 1850s:

I began to find that farming the two miles would not provide a decent living. I cast longing eyes on the fine country at the back.... I drove to St Peter's to see Peguis. I told him I wanted a square piece of land, which I believed was his to grant, and I would pay for it. Patting me on the shoulder, he said, “Thomas, my son, you may take as much land as you can use. It will cost you nothing.” Good old Peguis. He was the best friend the settlers ever had. Other settlers followed my example. This occupancy went a long way in securing title to the other two miles and thereby doubled the extent of each river holding.

### Land Titles Office Refuses to Act

Bruce Cherney in “St. Peter's surrender: ‘Best People’ of the town of Selkirk pushed for the surrender and sale of the reserve” in *Real Estate News* (2011):

While the residents of Selkirk sought to preserve the so called “reputation” of the town by having the reserve relocated, the primary issue—besides outright racism and the desire to divest the Ojibway (Saulteaux) of their prime agricultural land—was the muddle of land patents (first titles to land) that complicated the settlement of long-standing claims made by natives and non-natives at St. Peter's. The band members wanted the outsiders evicted, while the non-native occupants of reserve land wanted confirmation that they legally held title to their property. The titles were withheld by the Land Titles Office until the federal government resolved the question of ownership on the reserve.



## A Chief Justice Perpetrates An Injustice

Gerry Friesen, Murray Sinclair and Al Hamilton (1996):

The pressure for “development” of this prime agricultural land produced legal disputes in the late 19th century. In 1906, the federal government appointed a Royal Commission headed by Chief Justice Hector Howell of the Manitoba Court of Appeal to investigate the disputes. Rather than investigate, he suggested that the solution to the problem was simply to move the Indians. A series of rigged meetings of questionable legality followed. The campaign for surrender of the reserve was led by men who wished to speculate in land sales and was abetted by insider trading in lands by government officials, bribe payments to Indians, and a rigged vote among St. Peter’s residents.

Bill Redekop in “Indians hustled off land” in the *Winnipeg Free Press* (June 23, 1992):

Chief Justice Howell tried to wrest the land from the Peguis band three times in 1907, only to be rejected each time. He succeeded in a last attempt on September 24. The band voted to leave the lush farmland bordering the Red River for bog and scrub land 160 km north.

Bill Redekop in “Swindle Revisited: Federal government used bribery, booze, deceit to acquire control of Peguis reserve’s fertile farmland” in the *Winnipeg Free Press* (June 22, 1992):

It was September 24, 1907. The federal government called a vote seeking surrender of the land with just a day’s notice. Many band members were away on a fishing expedition. Bribery and liquor were used to influence votes.... The treaty was not fully read to those at the reserve, and what was read was in English. Only when it came time to vote did the agents speak in Cree. In exchange for giving up the land, Indians would receive \$90 per member and the current Peguis reserve. The tally of votes was 98 against surrender and 107 for surrender.

Gerry Friesen, Murray Sinclair and Al Hamilton (1996):

A provincial Royal Commission [consisting of three judges of the County Court] reviewed the surrender of land and concluded in 1912 that “the Surrender was void, could not be ratified and was not ratified.”

## The *St. Peter’s Reserve Act* (1916)

The federal government accepted that the surrender of land on September 24, 1907 was illegal and void, and in 1915 started a proceeding in the Exchequer Court for a declaration to that effect. But the government later decided that voiding the many purchases and sales of parcels of the land since 1907—involving more than 500 people—could create more legal problems than already existed.

The *St. Peter’s Reserve Act* was introduced in the House of Commons on February 16, 1916. Cabinet minister Arthur Meighen of Manitoba spoke to it:

A settlement is necessary in the interests of the individuals who acquired the land from those who had secured them at the first sale. The government is still of the opinion that lands were illegally obtained in 1906-07, but a compromise settlement is preferable to long and expensive litigation.... The present action would in a measure do justice to the Indians without hardship to innocent parties who have since become interested in the land.

The one page Act states that “the sales of such lands are hereby confirmed and made good”. It received royal assent on May 18, 1916.

## A Settlement—101 Years Later

Bruce Cherney in “St. Peter’s surrender: Howell claimed new reserve was fully satisfactory to band members” in *Real Estate News* (2011):

The infamous saga was not resolved until 2008, when the Peguis First Nation accepted \$126 million federal settlement as compensation for being illegally uprooted from their homes in 1907 and moved 220 kilometres north from fertile land to a location strewn with rocks and swamps.

Frances Russell (2000):

The people of St. Peter's lost 48,000 acres of prime agricultural land for less than one-tenth its value at the time. This was how the Government of Canada repaid the people of St. Peter's and Peguis, without whose countless acts of generosity and assistance the fledgling Red River Colony would never have survived. Fortunately, he didn't live to witness the ultimate betrayal of his people.

\* \* \*

**NOEL RITCHOT**  
(1825-1905)

**He was Louis Riel's trusted spiritual and political advisor who skillfully negotiated Manitoba's entry into Confederation.**

On October 2, 1995, the Historic Sites and Monuments Board of Canada unveiled a plaque on the grounds of the Legislative Building. It reads as follows:

**NOEL-JOSEPH RITCHOT**  
(1825-1905)

Born at L'Assomption, Lower Canada, Father Ritchot arrived at St. Norbert as a missionary in 1862, serving there until his death. He took part in the Red River Settlement's resistance when Canada annexed the Northwest without consultation in 1869-1870. He then led the delegation which Louis Riel's provisional government sent to Ottawa to negotiate entry into Confederation. The delegates suggested the name Manitoba, gained its immediate acceptance as a province, and won strong representation in Canada's Parliament. Ritchot later promoted the expansion of francophone settlement in Manitoba.

Philippe Mailhot in *Ritchot's Resistance: Abbé Noel Joseph Ritchot and the Creation and Transformation of Manitoba* (unpublished thesis, University of Manitoba, 1986):

**Without Father Ritchot's presence to organize, legitimize and encourage the Red River Resistance of 1869-1870, it seems unlikely the young Riel could have withstood the early efforts**

to break up the movement.... Whatever feelings of betrayal Riel harboured toward Archbishop Tache and his other associates, he never lost faith in the bearded curé who befriended and aided him in 1869.

A note in the pamphlet “St. Norbert” (1996) by Manitoba Culture, Heritage and Citizenship:

Ritchot was a member of the Diocesan clergy and as such should be addressed as “Reverend” or “Abbé”, but because he was called “Father” by his parishioners, he is referred to as such in this publication.

### His Appearance and Ability

Lawyer Guillaume Charette (1884-1952), *Vanishing Spaces: Memoirs of Louis Goulet* (1976):

Ritchot was as charitable as he was rough looking. He was very stern and forbidding in appearance. He excelled in the art of disguising his own thoughts while reading yours like an open book with large type. That must have been why Riel chose him to go and confront the politicians in Ottawa in 1870. With more like him in their delegation, the Metis wouldn't have been tricked so often, and the Rebellion of 1885 never would have happened.

### Metis Lawyers

Don Purich, *The Metis* (1988):

Catholic priests served as Metis advisors during the rebellions of 1869 and 1885. They helped the Metis draft petitions and carried them to Ottawa. They tried to protect the Metis from unscrupulous speculators. In many ways, the Catholic clergy served as the Metis' lawyers in the 1800s.

Frits Pannekoek, *A Snug Little Flock: The Social Origins of the Riel Resistance* (1991):

The Catholic Church exerted a substantial influence during the first month of the Riel Resistance. Without its support the Resistance would have sputtered out. However, once the

movement gained momentum, the clergy opted to counsel and assist Riel rather than to lead the Metis directly.... Father Ritchot espoused the Metis cause openly and vigorously. Yet he never instigated any measures or attempted to provide any leadership. It is impossible to determine the precise extent of his influence.

### The Great Negotiator

Early in 1870, Ritchot and two others were delegated by Riel's Provisional Government to go to Ottawa and negotiate provincial status for the Red River Settlement based on a “List of Rights” proposed by the Provisional Government.

Bruce Sealey and Antoine Lussier, *The Metis: Canada's Forgotten People* (1975):

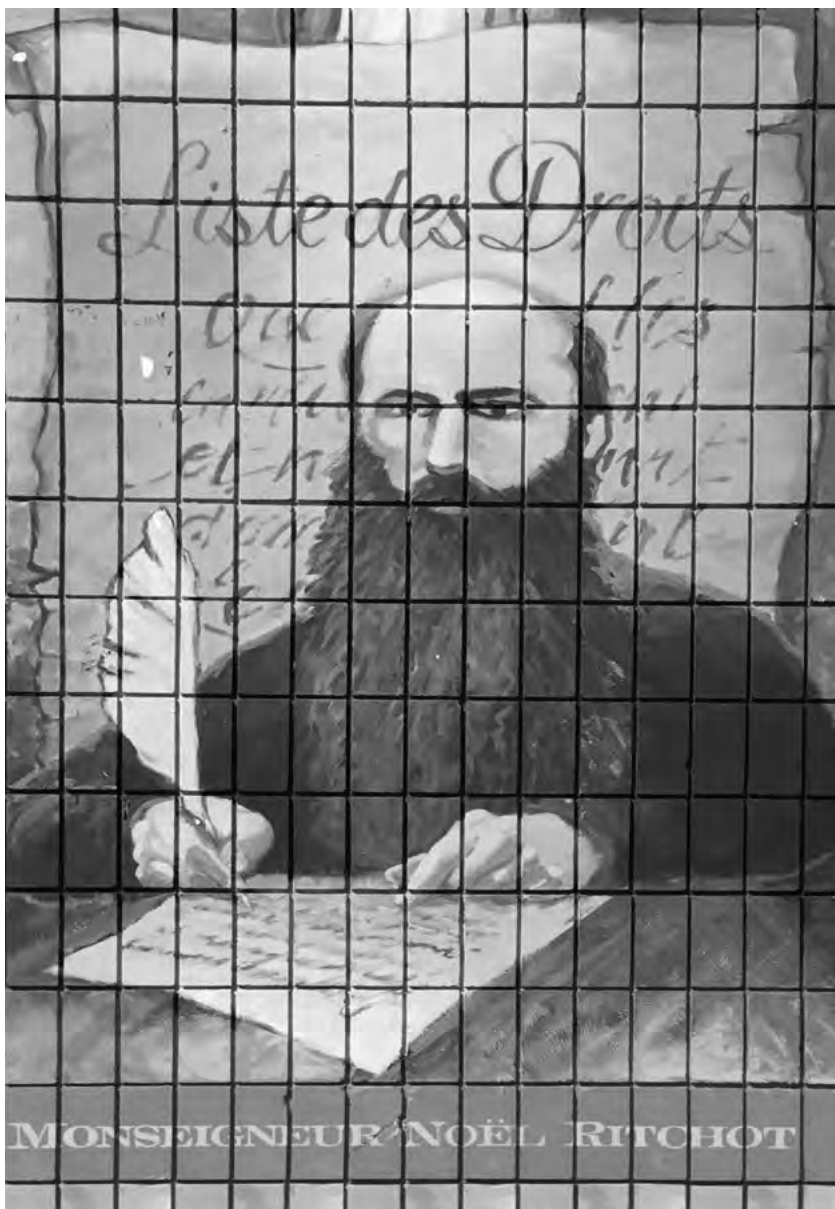
Judge John Black and Alfred Scott [the other two delegates] were largely ineffective in Ottawa, but Father Ritchot rigorously applied himself to the difficult task at hand. He was able to persuade the Conservative Party to put the *Manitoba Act* through the House of Commons. It contained most of the demands in the List of Rights, with a special section asserting the land rights of the half-breeds and guarantees of the bilingual school system. He also pressed for an amnesty for the leaders of the insurrection.

### From One Year to Three Days

Ritchot and his two colleagues negotiated with Prime Minister John A. Macdonald and George Cartier from about April 25 to May 9, 1870. Ritchot kept a journal from March 24 to May 28. Its 56 pages show that he did virtually all the negotiating on behalf of the Provisional Government, and took a firm stand on many issues, including language, education and property.

This is from Ritchot's journal entry for April 25, 1870, the first day of negotiations:

The 25<sup>th</sup>, Monday, we began discussions. Sir John told us that the government wished to make the territory a province later. He asks a year, then six months, then two months.



This image of Ritchot is from a painting on the side of a commercial building on the corner of Pembina Highway and Eglise Ave. in St. Norbert.

Just three days later, Ritchot was presented with a draft Bill for discussion. A final Bill was presented to Parliament on May 2, and passed third reading on May 9. *The Manitoba Act* received Royal Assent on May 12, and came into force on July 15, 1870.

### Back to Red River

George Stanley, *The Birth of Western Canada: A History of the Riel Rebellions* (1936):

Ritchot returned to Red River in June 1870 with the result of his efforts at Ottawa. A special session of the “Legislative Assembly” was summoned [on June 24], to which Ritchot made his report. It was received with much satisfaction, and a cordial vote was adopted “for the straight-forward, courageous and successful way” in which Father Ritchot discharged his duty. It was then moved and carried with enthusiastic applause, “that the Legislative Assembly of this country do now, in the name of the people, accept the *Manitoba Act*.”

Manitoba, a name suggested by Ritchot, was born as the tiny “postage stamp province”, but a province nonetheless, thanks in large measure to his efforts.

### His First Compliment

Father Ritchot made this entry in his journal on May 17, 1870:

Judge John Black [one of the three delegates] was pleased with me. Without me, he said, we should not have had the half of what we had, the people of Red River, English and French, and Canada owed me a great deal, etc. Miss Black [the judge’s sister] said the same thing. She thanked me a thousand times in the name of the settlers of Red River.... She was happy to be able to say that she will long remember the generous effort that I have made for the people of Red River in general, without distinction of origin or belief.

An English translation of Father Ritchot’s journal is found in *Manitoba, the Birth of a Province* (1965), edited by W.L. Morton.

## School, Monument, Crypt

A Winnipeg school and a rural municipality are named after Ritchot. In St. Boniface, Ritchot Street and Riel Street are located near the St. Boniface Cathedral.

The Riel-Ritchot Monument is located in front of 80 St. Pierre Ave. in St. Norbert. It has their life size images and describes the events of 1869-1870, including this:

The Metis, led by Louis Riel, stopped the surveyors. Shortly thereafter on this site, the Metis created the National Committee to protect their rights. A blockade is erected at St. Norbert to prevent Canada's entry into the Settlement. At this time, Father Ritchot, parish priest of St. Norbert, fully supports armed resistance to unlawful Canadian encroachment and plays an important role as counsellor and member of the Committee.

Father Ritchot's body is interred in a crypt in the basement of Ritchot Hall, part of the St. Norbert Parish Church, at 70 St. Pierre Ave. in St. Norbert. A plaque notes that he died at the age of 79 years, two months and 18 days, and ends with this;

Il vivra dans ses oeuvrer.  
(He lives in his works.)

\* \* \*

**LOUIS RIEL**  
(1844-1885)

**In 1885 he was “the devil’s false traitor.”  
Today, he is a legend & Manitoba’s  
most recognized Father of Confederation.**

The following quotations give a sense of how that transition took place.

## He Fought the Law—and Lost

J.M. Bumsted, *Louis Riel v. Canada: The Making of a Rebel* (2001):

**Few individuals in Canadian history have had their actions so defined by, and bound up with, the law and legalities. On one level, Riel was not so much a personality as a litigant—sometimes the prosecutor but more frequently the defendant—in an ongoing legal struggle with the government of Canada.**

Riel was born in St. Boniface. When the Metis at the Red River Settlement seized and held Fort Garry from October 2, 1869 until federal troops arrived on August 23, 1870, he was head of the “Provisional Government of Assiniboia.”

## President Riel

Riel was only 25 years old, the youngest members of the Provisional Government. He is described by James Wickes Taylor (1819-1893), the American Consul at Red River, in a letter dated May 24, 1870 to the Secretary of State in Washington:

**In the dispatch of business, Riel is indefatigable. He is an impulsive and eloquent speaker and combines audacity and caution very effectively in the management of men and assemblies.... Whatever his errors, history will not deny to**

him the distinction of being the founder of the Province of Manitoba.

## Charged with Murder

In 1873 Riel was charged with the murder of Thomas Scott in Winnipeg in 1870, while he was head of the Provisional Government. The charge is expressed in standard legal language of the time, alleging that he “feloniously, wilfully, and of his own malice aforethought, did kill and murder one Thomas Scott.”

In 1875, the House of Commons voted in favour of granting amnesty to Riel and others in respect of the events of 1869-1870 (including the death of Scott), “conditional on five years banishment from Her Majesty’s Dominions.” Riel fulfilled the condition, living in exile until he led the short-lived 1885 North-West Rebellion in what is now Saskatchewan.

## Charged with Treason in 1885

After the Rebellion ended and with Riel in custody, the lawyers who drafted his indictment on a charge of treason (dated July 6, 1885) used about 2,000 words and colourful language. This is an excerpt:

**Louis Riel being a subject of our Lady the Queen, not regarding the duty of his allegiance, not having the fear of God in his heart, but being moved and seduced by the instigation of the devil as a false traitor against our Lady the Queen ... did attempt by force and arms to subvert and destroy the constitution and government of this realm.**

From the *Winnipeg Free Press* (December 17, 1885):

**Riel was fairly tried, honestly convicted, laudably condemned, and justly executed.**

Riel was executed in Regina on November 16, 1885.

From “Louis Riel was man of many parts”, an editorial in the *Winnipeg Free Press* (April 25, 2004):

**Victors write history, so Riel became a traitor.**

Roy St. George Stubbs, *Lawyers and Laymen of Western Canada* (1939):

**Had either of Riel’s rebellions been successful, his success would have gilded any crime that he may have been guilty of.**

J.M. Bumsted in his introduction to *Reporting the Resistance: Alexander Begg and Joseph Hargrave on the Red River Resistance* (2003):

**The critical year for Riel’s rehabilitation was 1936, when A.H. Tremaudan published *Histoire de la nation metisse* and George Stanley published *The Birth of Western Canada*. Neither work changed public opinion on Riel in the short run. But gradually the emphasis on Riel as the constructive Metis leader began to gain ground.**

Tremaudan vigorously defended Riel. The English version of his book is *Hold High Your Head: History of the Metis Nation in Canada* (1982):

**The story of Riel’s trial in 1885 is one of the most shameful in the history of civilization, in general, and of Canada, in particular. Even with hindsight, we cannot but be amazed at the unpardonable political crime—the condemnation and execution of Louis Riel.**

## A New Approach

George Stanley’s influential book—never revised and never out of print since 1936—is based on his new approach to Riel. Stanley called it his “cultural conflict” theory.

George Stanley in “Louis Riel: Patriot or Rebel?” (26 pages, 1954):

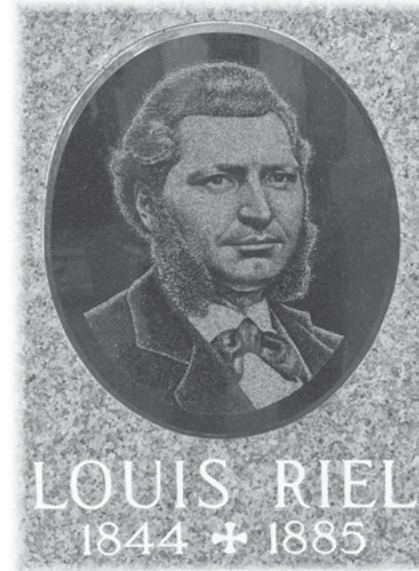
**By historical accident Riel became the symbol of divisions as old as the Franco-British struggle for the control of northern North America. This accident has obscured the fundamental character of the two risings that bear Riel’s name.... They were the typical results of the advance of the frontier, the last organized attempts on the part of Canada’s primitive peoples to preserve their culture and identity against the encroachments of civilization.**

# Five Faces of Riel

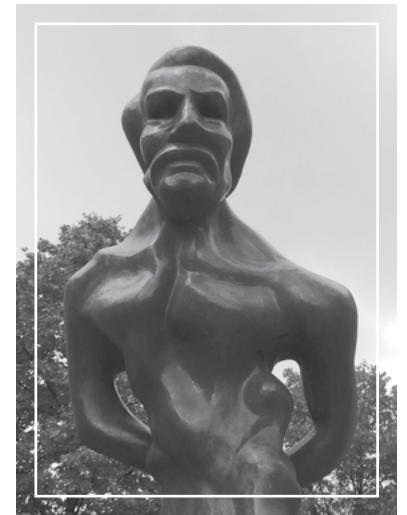
These images are located outdoors and within a short distance from St. Boniface Cathedral.



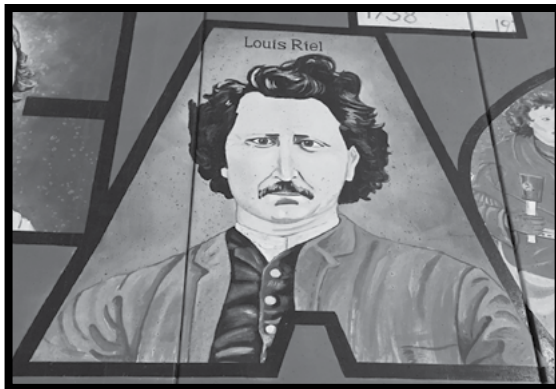
At the St. Boniface Museum on Tache Avenue, by Rheel Berard



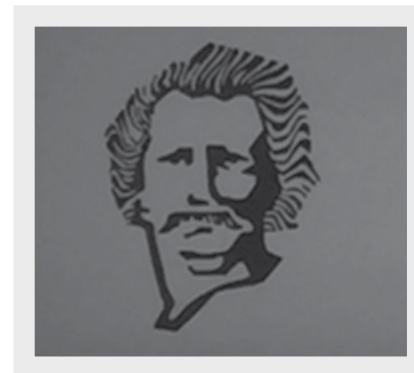
At Riel's gravesite in front of St. Boniface Cathedral



At the St. Boniface University on Aulneau Avenue, by Marcien Lemay



On a mural from 2001 on the side of a building at 160 Provencher Boulevard, by Dan Donaldson



On an electrical sign at Le College Louis-Riel on St. Jean Baptiste Avenue

Fifty years after the publication of his book, Stanley wrote “The Last Word on Louis Riel—The Man of Several Faces” in *1885 and After: Native Society in Transition* (1986):

Am I presumptuous in claiming to have pointed the way to a new interpretation of Riel and the Metis risings? To interpret Riel as the defender of a Native culture rather than as a rebel against constituted authority was to imply, on my part, a degree of sympathy unacceptable at that time to many Canadians.

## Evolution

Grant MacEwan, *Metis Makers of History* (1981):

Long after Riel's principal antagonists like John Schultz were lost to memory, every Canadian scholar was still expected to hold opinions about Riel, favourable or unfavourable. Scores of volumes were written by friends and sympathizers to present him as a martyr and hero, and by his critics to make him appear like a common criminal.

This is from the book jacket on *The Man Who Had to Hang* (1961) by E.B. Osler:

This is the first frankly sympathetic biography of Louis Riel by an English Canadian. The intriguing, pathetic and baffling character of Riel emerges with haunting clarity.

Will Ferguson, *Bastards and Boneheads: Canada's Glorious Leaders Past and Present* (1999):

In the 1960s it became fashionable to present Riel as a kind of northern Che Guevara. This image of him as a modern freedom fighter and anti-establishment hero is odd—but then, the appeal of myth often has little to do with cold hard facts.

Margaret Atwood, *Survival* (1972):

Riel is the perfect all-Canadian failed hero. He's French, Indian, Catholic, revolutionary and possibly insane, and he was hanged by the Establishment.

Peter C. Newman in *Maclean's* (March 23, 1992) and in *Defining Moments* (1997):

Riel remains the perfect Canadian martyr: a well-meaning yet deluded mystic who died prematurely by pretending to be sane.

## Conflicts & Contradictions

From “A proper place for Louis Riel”, an editorial in the *Winnipeg Free Press* (January 11, 1998):

Was Riel a traitor or a Father of Confederation, a murderer or a martyr, a lunatic or a visionary? He has been called every one of these things, but what may be the closest to the truth is that he was, in fact, all of them.

From “Louis Riel was man of many parts”, an editorial in the *Winnipeg Free Press* (April 25, 2004):

He is not the only man in history who contained many contradictions. He should be accorded the honour he deserves for what he accomplished and what he intended.

Will Ferguson (1999):

Riel represents a chain of conflicts that can be charted in opposing pairs:

French v. English  
 Native v. White  
 Catholic v. Protestant  
 West v. East  
 Minority v. Majority  
 Frontier v. City  
 The Prophet v. The Establishment  
 The Revolutionary v. The Bourgeois



## A Powerful Political Analyst

Gerald Friesen in “The Collected Writings of Louis Riel” in *River Road: Essays on Manitoba and Prairie History* (1996):

The Collected Writings of Louis Riel [2500 pages] was published in 1986.... The first surprise is the survival of so much of his writing. The second is the force and ingenuity of the prose. He appears as a powerful political essayist, a serious writer.... His political thinking in the 1880s was clear and innovative. For example, an essay he prepared in 1885 constitutes one of the finest statements of Aboriginal claims in Canadian history.

## Name Calling

Descriptions of Riel over the years have included criminal, casualty, demagogue, eccentric, false traitor, leader, liberator, martyr, maverick, megalomaniac, murderer, mystic, mahdi, pariah, patriot, pawn, radical, rebel, victim, villain and visionary.

Albert Braz lists more names in *The False Traitor: Louis Riel in Canadian Culture* (2003):

The quintessential Canadian, the Metis founder of Manitoba, a small David battling the Goliath of Ottawa, and Canada's own Che Guevara, Joan of Arc, Guy Fawkes, William Tell, Robin Hood and El Cid.

## A Legend and a Holiday

In 2007, *The Interpretation Act* of Manitoba was amended to add section 23(2.1):

The following days are holidays: ... The first Monday in February, to be known as “Louis Riel Day”.

From “Louis Riel's Legacy”, an editorial in the *Winnipeg Free Press* (February 18, 2008—the first “Louis Riel Day”):

It is both fair and true to say that history is on Riel's side.

George Stanley in “The Last Word on Louis Riel—The Man of Several Faces” in *1885 and After: Native Society in Transition* (1986):

He has become a Canadian legend, if not the Canadian legend. He is our Hamlet, the personification of the great themes of our human history.

\* \* \*

## PART 2

# JUDGES

## ADAM THOM (1802-1890)

**“The father of the Bench and Bar of Western Canada” delivered a brutal kind of frontier justice**

Thom was born in Scotland and studied law in Montreal. He was called to the bar of Lower Canada in 1837 and—just two years later—appointed by the Hudson’s Bay Company as the first “Recorder of Rupert’s Land”. He served from 1839 to 1851.

The HBC gave the name “Recorder” to the men it appointed as judges in its territory. “Judge” was used for appointments made by a government authority.

### Simple Honesty v. Quibbles.

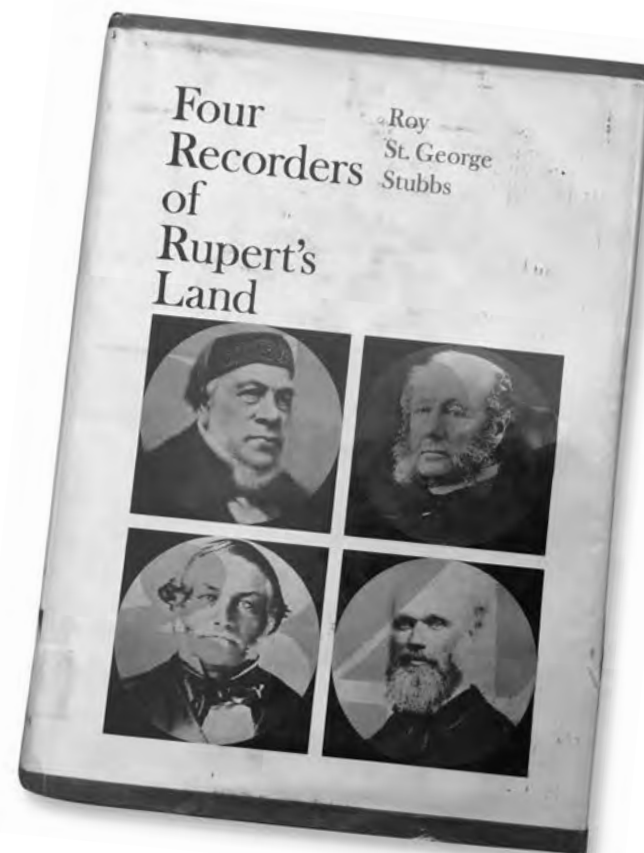
Richard Willie, *“These Legal Gentlemen”: Lawyers in Manitoba: 1839-1900* (1994):

**When Thom arrived at the Red River Settlement in 1839 to assume his duties as Recorder of Rupert’s Land, he became the first person trained in the law to reside in the Settlement.**

At this time, the population of the Red River Colony was about 3,700.

Alexander Ross, *The Red River Settlement: Its Rise, Progress and Present State* (1856):

**The laws worked remarkably well [before Thom arrived], and gave general satisfaction without the aid of lawyers, but the HBC introduced a professional man into the colony in 1839 under the title Recorder of Rupert’s Land.... In place of the simple honesty that marked our proceedings hitherto, Thom had a tendency to substitute the quibbles and technicalities of law, which few but lawyers could comprehend.**



Thom (upper left) was the first of the four Recorders who served successively from 1839 to 1870. The others (clockwise) were Francis Johnson, John Bunn & John Black.

## The Ogre

George Bryce, *The Romantic Settlement of Lord Selkirk's Colonists* (1910):

And now, in 1839, there became evident the dreadful presence of the law in the person of Adam Thom, the relentless ogre of the law.

W.L. Morton, in his Introduction to *London Correspondence Inward from Eden Colvile 1849-1852* (1956):

Thom was a Scot by birth and trained in the law in Lower Canada. A man of considerable legal learning and of an acute intelligence, he was nevertheless vain, pompous and lacking in judgment. Arrogant of mind and tactless of manner, he was endowed with a knack for irritating turns of speech.

In a letter to George Simpson dated August 26, 1850, Eden Colvile referred to Thom as “a clever man endowed with marvelously little judgment.”

## The Worst Kind of Law

E.E. Rich, *Hudson's Bay Company 1670-1870: Volume 3: 1821-1870* (1960):

Though Thom's knowledge and courage were beyond question, he was too legalistic and cold for a situation that demanded tact and human understanding.

Alexander Ross (1856):

Thom was exempted from nearly all the checks that might be expected elsewhere to influence a lawyer on the bench. The more diligently he showed that he could split hairs, the more readily did the many believe that he would split them whether they needed splitting or not. He inspired the multitude with a notion that he could turn black into white and white into black.

## The Case of Capenesseweet

Thom did not have jurisdiction to try a murder charge, but that did not stop him.

Roy St. George Stubbs (1967):

Recorder Thom presided at the trial of a Saulteaux Indian, Capenesseweet, charged with the murder of a Sioux and a fellow Saulteaux on August 31, 1845. The trial took place four days later.

The second man's death was not intended. A single bullet killed both men.

J.M. Bumsted, *Trials & Tribulations: The Red River Settlement and the Emergence of Manitoba 1811-1870* (2003):

Thom knew that imperial law called for him as judge to send such cases to Canada for trial, but he insisted that would cause nothing but trouble for the witnesses.... Thom was nothing if not courageous, however much Red River found the execution excessive and distasteful.

The execution took place on September 5, 1845, five days after the offence, and one day after the trial.

## *Foss v. Pelly*: The End of a Rocky Road

Thom's willingness to use the law for his own purposes reached a peak in a civil (non-criminal) case of slander in 1850. One of the defendants took exception to Thom's multiple roles in the matter.

Roy St. George Stubbs (1967):

Pelly objected to the formation of the court, “as Adam Thom was allowed to sit as a judge in a case in which he had acted as attorney to the plaintiff.” The court of seven members overruled this objection. Thom [one of the seven men] gave sworn evidence for the plaintiff. The proceedings were a sorry business, from beginning to end. Governor Colvile wrote, “Thom's conduct of the trial seems to have been as unlike a judge as anything could be.”

For the HBC, this was the last straw.

## An Unquiet Sojourn

W.L. Morton (1956):

Governor George Simpson persuaded Thom to abstain from acting as Recorder. Thom abstained but he did not resign or cease to draw his salary of 700 pounds a year.

Thom's appointment as Recorder was revoked in 1851, but he did not leave the Red River Settlement until 1854. Even in those years, there were threats of violence from those who remembered the kind of judge he was.

Dale Gibson, *Law, Life and Government at Red River* (Volume 1, 2015):

Despite major accomplishments, Thom's judicial career was a disaster.

Joseph James Hargrave, *Red River* (1871):

At the close of his often unquiet sojourn of 15 years in this place, Thom left behind the reputation of great ability and of kindly hospitality in his private relations.

Roy St. George Stubbs (1967):

Thom's positive qualities—intelligence, courage, honesty—out-measured his defects, which were many, and he may be honoured, without apology, as “the father of the Bench and Bar of Western Canada.”

\* \* \*

## EDMUND BURKE WOOD

(1820-1882)

**“The father of Manitoba’s judicial system”  
was often abrasive, abusive, impulsive,  
dictatorial and intemperate.**

Wood was the province's second Chief Justice, holding the position for eight years. He was warmly greeted when he arrived in Winnipeg from Ontario on June 6, 1874.

Manitoba Library Association, *Pioneers and Early Citizens of Manitoba* (1971):

Wood's tenure was colourful and controversial. He is sometimes spoken of as the father of the judicial system in Manitoba.

Richard Willie, *“These Legal Gentlemen”: Lawyers in Manitoba: 1839-1900* (1994):

Wood was the most commanding personality occupying the legal landscape of Manitoba. One-armed, because of a shooting accident, yet able to swing a cricket bat, he was big, had a booming voice that earned him [as an MP from Ontario] the sobriquet “Big Thunder”, and was known to possess an abrasive style.

J.M. Bumsted, *Dictionary of Manitoba Biography* (1999):

Prime Minister Alexander Mackenzie reported to the Manitoba Lieutenant Governor that Wood was “perhaps too impulsive for a judge, but that is a good quality in a new country.”

## His First & Best Known Case

John O'Donnell, *Manitoba As I Saw It* (1909):

The first case Wood tried is the best known of all the cases that came before him, the cause celebre, *The Queen v. Ambroise Lepine* (1874). His written judgment was pronounced a remarkable specimen of forensic learning and acumen.

Since the case was decided by a jury, O'Donnell must be referring to either Wood's decision on the question of jurisdiction, or his charge to the jury.

## Complaints

In 1875, Lieutenant Governor Alexander Morris wrote to the Secretary of State in Ottawa about Wood's conduct.

Richard Willie (1994):

Charges against Wood detailed "notoriously partial" judgments, introducing politics in court, an open hostility toward French-Canadians, the use of abusive language towards suitors and lawyers, taking the unsworn statement of persons on the street or at his residence, and his "gross exhibition of intemperance while in circuit".... His efforts to maintain a luxurious style of life [with his wife and six children] ruined him financially.

Wood always had financial problems. Soon after he arrived in Manitoba, he was deeply in debt to the combative and controversial John Schultz. In February 1875, Wood acquitted Schultz on a charge of perjury.

Alexander Begg and Walter Nursey, *Ten Years in Winnipeg* (1879):

Some thought that Wood had favored Schultz, and the *Free Press* wrote an article that endeavored to bring the Chief Justice to task for his conduct. W.F. Luxton [owner of the newspaper] was arrested and brought before the Chief, who sentenced him to a fine of \$200, payable forthwith,

or imprisonment until paid. Within 10 minutes the sum of \$200 was subscribed in the court. The sympathy of the citizens was with Luxton, as may be seen from the following list of donors [showing 63 names].

## Touché

Samuel Biggs (1851-1911), a lawyer from Ontario, was Wood's nephew. In 1876, Biggs appeared before his uncle as defence counsel in a murder trial in which Biggs wanted to call a certain man as a witness. Wood demanded to know why.

**BIGGS:** I propose to show by this witness that the Indians who were killed were savages and that they fell in warfare, and this was not murder but self-protection.

**WOOD:** Why, sir, your own ancestors were savages only two or three generations ago.

**BIGGS:** True, my lord. I claim the same ancestry as yourself, only one generation further removed.

Chief Justice Wood did his best in *Simpson v. Ellis* (1876):

I cannot say I am altogether satisfied with the conclusion at which I have come, but it is the best judgment I can form on the whole case.

## *The Queen v. Charles Wicks* (1882)

Justice Samuel Freedman of the Court of Queen's Bench, in his Foreword to Arthur Chiel's *Jewish Experiences in Early Manitoba* (1955):

How many people in or out of Manitoba ever knew that in an assault case tried in 1882, in which the complainant was a Jew, Wood delivered a judgment in which, in eloquent and lyrical terms, he extolled the virtues of the Jewish people and vigorously condemned their persecution?

Arthur Chiel, *Jewish Experiences in Early Manitoba* (1955):

In 1882, over 300 Russian Jewish immigrants arrived in Winnipeg. About 150 were assigned to work with the CPR, laying tracks. One day, Keiva Barsky, one of the immigrants, was attacked for no good reason by Charles Wicks. Barsky suffered serious wounds..... In Russia, it was useless to bring charges against a Gentile. What of justice in Canada? Owing to the contradictory nature of the evidence, Wood gave Wicks the benefit of the doubt, convicted him of common assault, and sentenced him to one month's imprisonment. In his judgment, Wood expressed strong sympathy for the Jews.

Chiel quotes the whole of Wood's long judgment as it appeared in the *Winnipeg Free Press* (August 11, 1882). An excerpt:

The complainant is of the race of the Jews. This senseless and unmeaning persecution of that people by Christian communities appeals strongly to our sympathy, and makes us blush for our common Christianity. This man, with others, has been lately driven by Russian Christianity to our borders as an asylum from persecution, and he is entitled to the welcome of a brother man, and to the protection of the laws aside from all other considerations.

## More Complaints

Dale Brawn, *The Court of Queen's Bench of Manitoba 1870-1950* (2006):

In 1881 four of Wood's protagonists, including Henry Clarke, prepared a petition [for his removal as a judge] in which they alleged that the Chief Justice was guilty of no less than 11 misdemeanours. They included [these first three]:

1. Changing the dates on certain documents and thereby procuring the illegal outlawry of Louis Riel.
2. Illegally and corruptly preparing a list of half-breeds who were enemies of Ambrose Lepine to serve on the jury which tried him for the murder of Thomas Scott.
3. Being so notoriously partial, dishonest and unjust in his judgments so as to have lost the confidence of the people of Manitoba.

Just as a committee of Parliament was to begin hearings into the allegations in this petition—and a second petition—Wood died.

## A Great Man & A Judicial Dictator

From the *Canada Law Journal* (1880):

For those disposed to criticize Wood's judicial career, it will be well to remember that it fell to his lot to do the chopping, slashing and clearing, so to speak, of a new country. If the work was not artistic, it was at least useful.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

Despite the controversial life Wood lived, many sentiments expressed about the pugnacious old man after his death were much warmer than form required.

Roy St. George Stubbs in "Hon. Edmund Burke Wood" in (1958) *Papers Read before the Historical and Scientific Society of Manitoba*:

There is an onus on the bench to make itself worthy of respect. Wood did not always discharge this onus.... Never a man of even temper, his financial worries did not improve his disposition. Lawyers soon learned that it was not always a pleasant experience to appear in his court. He was a judicial dictator, and the last place a dictator belongs is in the judgment seat. Whether he had more serious failings is not so clear. There is plenty of smoke.

John O'Donnell (1909):

Wood was one of Canada's greatest men, an excellent judge of men, and one of Canada's greatest public speakers. In private life he was the most genial of men, very witty, most entertaining.

J.M. Bumsted, *Dictionary of Manitoba Biography* (1999):

In later years, paralyzed by strokes and heavy drinking, he died on the bench—one step ahead of his removal.

Dale Brawn (2006):

Before becoming Manitoba's second chief justice, Wood was charismatic, intelligent, widely read, and genial and witty in private. Yet he died in ignominy.... He was a judge of above-average ability. His decisions were usually thoughtful and reasoned, often settled important questions of law, and gave both impetus and direction to the way the province's legal system evolved.

Roy St. George Stubbs, *Four Recorders of Rupert's Land* (1967):

What were Wood's qualifications? He had virtually no experience in the practice of law. He had a temper and a tendency to see no point of view but his own. He took himself deadily in earnest and had no sense of humour.... His first loyalty was always to the HBC, never to the Red River Colony.

Dale Brawn, *Every Stone A Story 11* (2009):

Wood was often selfish, self-serving, headstrong and irresponsible. He earned a well-deserved reputation for opportunism, venality and drunkenness. But he was more than the sum of his shortcomings.

### The First Law Student: Ed Wood, Jr.

Dale Gibson and Lee Gibson (1972):

Manitoba's early lawyers were all trained elsewhere. The province's first law student appears to have been Wood's son, Edmund (1858-1926). He was the first locally-trained person to be admitted to practice when he was called to the bar in 1879. He later had a long career [42 years] in the provincial civil service.

\* \* \*

## HUGH JOHN MACDONALD

(1850-1929)

**He was happy as a soldier and judge,  
but unhappy as a lawyer and politician.**

Hugh John—the son of John A. Macdonald, Canada's first Prime Minister—was born in Kingston, Ontario. He articulated in his father's law firm and was called to the bar of Ontario in 1872.

George Stanley, *Toil and Trouble: Military Expeditions to Red River* (1989):

Hugh John always wanted to be a soldier rather than the lawyer or politician his father had set his heart on his being.

### Family Pressure

John A. Macdonald's first son was John Alexander, who was born in 1847 and died in 1848.

Richard Gwyn, *The Man Who Made Us* (2007):

When Hugh was born, John A's cry was, "We have got Johnnie back again." As Hugh grew up, he must have sensed that he was competing with an opponent he would never beat—his own, long dead, infant brother. The relationship between father and son was never relaxed or close, and quite often it was strained.

Henry James Guest in "The Old Man's Son—Sir Hugh John Macdonald" in (1972-1973) *Historical and Scientific Society of Manitoba Transactions*:

In 1869 Hugh submitted to his father's persuasion that he take up the legal profession. The study of law failed to hold his interest [he complained of its "shattering dullness"]. In



1870 he begged his father to let him join the Wolseley military expedition to quell the insurrection [the Red River Resistance and Provisional Government lead by Louis Riel] at Fort Garry.... On August 24, 1870 he marched through pouring rain and knee-deep mud along what became Winnipeg's Main Street.... John A. was determined that his son would be a lawyer, and summoned Hugh back to Ottawa.

Agnes Macdonald (1886-1920) was Hugh John's step-mother. Louise Reynolds quotes from her diary in *Agnes: The Biography of Lady Macdonald* (1979):

I should like to see Hugh become Prime Minister of Canada. Tho' I consider politics a most anxious, money losing, thankless, weary task, I also consider it his duty.

### Back in Uniform

Hugh's wife Isabel died suddenly in 1881. In the following year, he returned to Winnipeg and practised law. During the 1885 North West Rebellion, lead by Louis Riel in what is now Saskatchewan, he was back in uniform as Captain Macdonald.

Hugh wrote to his father on April 26, 1885, from Fish Creek, the scene of several skirmishes between the army and rebels:

**My dear Father: At this moment the total loss is 9 killed & 43 wounded, many mortally but the men are in good spirits & quite ready for another fight. I fought in the front rank of skirmishes but did not receive a scratch though men were hit all round me.... I was pleased and rather surprised to find that I was quite cool under fire.**

The Rebellion was soon over, and Hugh John returned to his law practice in Winnipeg.

### MP, MLA & Premier

Keith Wilson, *Hugh John Macdonald* (1980):

**He was the only son of the Old Chieftain. Even if at times he wanted to forget this, his father's party would not let him. He was to be honoured, but he was also to be used.**



This picture is from Lena Newman's *The John A. Macdonald Album* (1974), which provides no information about it.

Henry James Guest (1972):

**In 1893 Hugh was offered the lieutenant governorship of Manitoba. He declined because he could not afford the position. He was offered a seat on the Court of Appeal, but replied that he could not make ends meet on the salary.**

Hugh Ross, *Thirty-Five Years in the Limelight: Sir Rodmond P. Roblin and His Times* (1936):

Hugh was elected to the House of Commons in 1891 [as was his father, who died later in the year]. He resigned in 1893 to return to law practice.... On January 8, 1900 he became an MLA and premier of Manitoba. Scarcely had a start been made when he tired of the responsibilities and retired in October. He seems to have had a strong disinclination for political life.

Lena Newman, *The John A. Macdonald Album* (1974):

Hugh's later years were as tragic as his early years had been. His first wife died in 1881, five years after they married, leaving him with a small girl. His son Jack, the only child of his second marriage, died at the age of 20 [1885-1905].

Hugh John's daughter was Isabella Mary, known as Daisy (1877-1959). See "The Macdonald family" in "Memorable Manitobans" on the website of the Manitoba Historical Society.

## A Contented Judge

In 1911, at age 61, Macdonald was appointed a magistrate for Winnipeg.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

Macdonald became Manitoba's best-loved judicial figure. A reporter who visited his courtroom was moved to comment: "For the first time in any courtroom, I felt that the prisoner was considered innocent until proved guilty and that on the bench was a mind that could never be tainted with any touch of meanness and holding much of human grandeur."

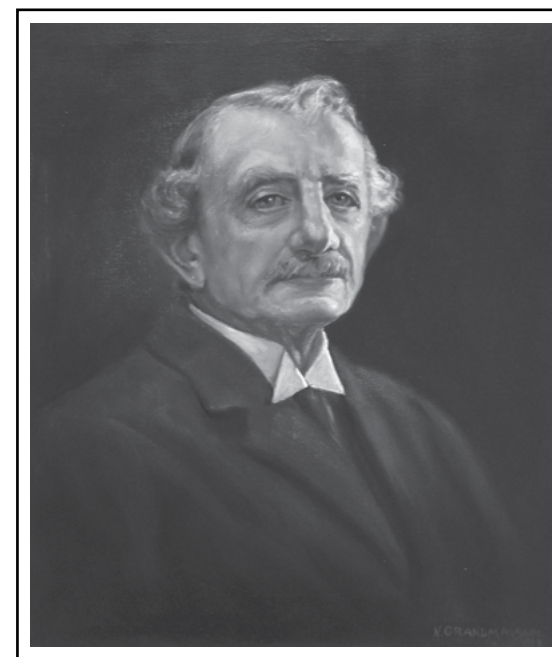
Soon after the Winnipeg General Strike in 1919, but before the sedition trials that followed it, Magistrate Macdonald wrote a letter dated July 16, 1919 to Acting Minister of Justice Arthur Meighen:

I have had so much to do with the leaders of the strike that I fear it would be most unjust for me to attempt to try them. The very fact that I should dearly love to try them is proof positive that I ought not to do so.

## "I've Had Enough"

Roy St. George Stubbs, *Lawyers and Laymen of Western Canada* (1939):

He had not shone at the Bar, but he was to shine on the bench.... After a leg was amputated, he resumed his judicial duties on May 1, 1928. Though 78 years of age, he was still in full possession of his faculties. Every morning, two policemen carried him from his car to his seat on the bench. There he sat, the same kind, courteous gentleman as of old, the personification of courage.



This painting of Macdonald hangs in the Law Courts Building in Winnipeg. The artist is Nicholas de Grandmaison (1882-1978).

Dale Gibson and Lee Gibson (1972):

The key to Hugh John's popularity, and to his success as a magistrate, lay in the humane approach that he took to his judicial responsibilities. In a letter to Arthur Meighen in 1919, he explained his judicial philosophy: "I have always held that, as a Police Magistrate, I occupy a position halfway between a Judge and the father of a family".... The esteem with which he was regarded can be judged by the fact that he was accorded a state funeral, only the third in Manitoba's history.

Keith Wilson (1980):

In 1929 his other leg became infected. The doctors advised amputation, but he steadfastly refused: "No, I've had enough. If need be, I'll just pass on." He spent his last day as police magistrate on March 2, 1929. He died on March 29. Thus passed from the scene the man who had once termed himself a "reluctant politician", a man torn between family life and political life.

Hugh John's grave is located in the cemetery at St. John's Cathedral in Winnipeg.

## Free at Last

Henry James Guest (1972):

Tragedy seemed to dog him throughout his life. He was not a great man, but he was closely associated with many of the political giants of his time. The one great irony is that he never really knew the most famous of them all, his father. As a magistrate, he came into his own and was at last not bound by the memory of his father..... In his last years, he advised his grandson to steer clear of politics.

Keith Wilson (1980):

With his death, there passed into history a much loved man who symbolized in many ways the spirit and achievement of the pioneers who migrated to the west in the booming eighties.

## A Continuing Legacy

From "Macdonald helps people build better tomorrows" in the *Winnipeg Free Press* (April 6, 2005):

Macdonald Youth Services was created in 1930 in honour of Macdonald, who often brought wayward teens to live in his basement instead of sending them to prison. The organization kicked off its 75th anniversary celebrations at Dalnavert Museum at 61 Carlton Street, the 1895 home of Macdonald.

Hugh John Macdonald School is located on Bannatyne Avenue in Winnipeg.

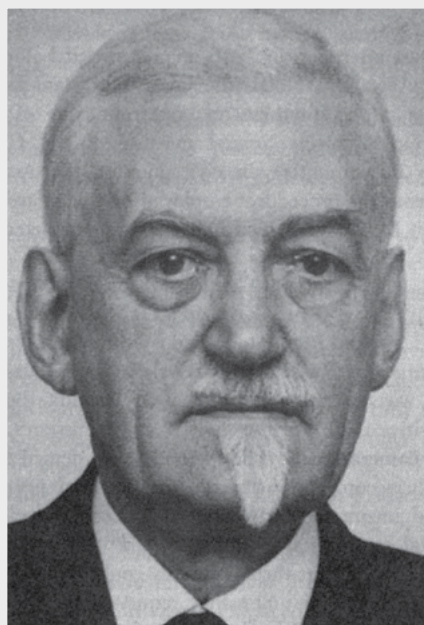
\* \* \*

**E.K. WILLIAMS**

(1889-1970)

**“E.K.” was a formidable lawyer,  
a no-nonsense judge,  
&  
a man of great dignity.**

Eston Kenneth Williams was born in Ontario. He was called to the bar in Ontario in 1911 and in Manitoba in 1912.



Lee Gibson, *A Proud Heritage: The First Hundred Years of Aikins, MacAulay and Thorvaldson* (1993):

Williams acquired a national reputation for erudition, eloquence, precise thinking, and unwavering standards of professional behaviour. Though slight, almost frail, of stature, his appearance was arresting. Carefully trimmed moustache and goatee framed precise lips, and ice-blue eyes seemed to penetrate any upon whom his unflinching gaze fell.

**An Establishment Warrior in 1919**

Lee Gibson (1993) refers to the 1919 Winnipeg General Strike and the Committee of business and professional people that opposed it:

Prominent among the lawyers on the “Citizens’ Committee of 1,000” was E.K. Williams. On June 21, 1919 [“Bloody Saturday”], when the strikers’ will was broken by brutal confrontations with the Mounted Police and federal troops, he rode in an automobile at the side of the officers who directed the operation.

The strike was followed by three sedition trials in which nine men were charged with conspiring to overthrow the governments of Canada, Manitoba and Winnipeg. Five prosecutors had help from lawyers behind the scenes, including E.K. Williams and Joseph Thorson. After juries convicted six of the men of seditious conspiracy, the openly biased Judge Thomas Metcalfe sentenced them to prison terms of one to two years.

Thorson, later a judge of the Exchequer Court, was interviewed in the 1980s by Winnipeg lawyer Jack Walker, who quotes Thorson in *The Great Canadian Sedition Trials* (2004):

When I look back at the trial of the strike leaders of 1919, I am shocked that it is possible to pack a jury, strictly in accordance with the law, in such a way that there is no possibility of an acquittal. I believe that this was the situation in the case of the trial of the strike leaders.... Prior to the trial, every person on that jury panel list was investigated. Counsel for the Crown had a dossier about every single person on that list.

As a member of the Citizens' Committee of 1000 and the team of prosecutors, Williams would have known about the jury tampering. The prosecutors, all lawyers from the private bar, regarded it as a matter of ends justifying means.

Williams again argued that ends justify means—25 years after the sedition trials.

## A Cold War Warrior in 1945

Dale Brawn does an analysis of Williams and how he managed his career in *The Court of Queen's Bench of Manitoba 1870-1950* (2006):

Williams kept himself in the public eye through his work on numerous royal commissions. On one of those, the 1946 espionage commission, he participated in one of the largest abrogations of human rights in the country's history.

Soon after World War Two ended in 1945, it was discovered that Russia had spies in Canada. Williams' key role in the panic that followed was no doubt influenced by his memories of the panic of 1919 (the "Red Scare").

Reg Whitaker and Gary Marcuse, *Cold War Canada: The Making of a National Insecurity State, 1945-57* (1994):

The Justice Department called in Williams. He recommended a commission that "should sit in camera, make its enquiries in the widest possible way, and not allow counsel to appear for those summoned before it." On February 5, 1946 cabinet established a Royal Commission [with power] to seize, incarcerate, interrogate, and detain suspects incommunicado and without charging them with a crime for an indefinite period and to force the testimony of the suspects and punish them with charges of contempt if they refused.

## A Presumption of Guilt

The Commission was known by the names of the two judges of the Supreme Court of Canada who headed it: R.I. Kellock and Robert Taschereau. Williams was the most influential of the three lawyers advising them.

Laurel Sefton MacDowell, *Renegade Lawyer: The Life of J.L. Cohen* (2001):

The Kellock-Taschereau Commission presumed that suspects were guilty until proven innocent.... When questioning resulted in self-incrimination, they were released, immediately arrested, charged and sent to trial.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972), referring to discussions about the Commission at the annual meeting of the Canadian Bar Association in Winnipeg in 1946:

The debate was intense. Williams, chief counsel for the Commission, was responsible for many of the procedures complained about. He took no part in the debate.... Many fine sentiments were expressed about the importance of civil liberties, but in the final analysis, most lawyers supported authority.



Williams introduced colourful gowns and sashes for K.B. judges in 1949. This caricature of "E.K." was done in 1974 by Dave Campbell.

## A Strict & Stern Judge (1946-1962)

In 1946 the federal government appointed Williams as Chief Justice of the King's Bench, possibly as a reward for his work with the Commission.

Dale Gibson and Lee Gibson (1972):

Williams brought a strictness to court. Although small in stature, he was a man of commanding presence, and his stern, goateed countenance frowning down from the bench could intimidate witnesses and lawyers.... Some believe that in his concern for proper form he sometimes lost sight of substance, and that his influence tended to deflect attention from the goal of "substantial justice".

## Reverence & Irreverence

Dale Gibson in "An Anecdotal Sampler" in *The Law Society of Manitoba 1877-1977* (1977):

Stern, correct, impeccable in dress and expression, Williams personified the characteristics popularly associated with judicial office. To determine a young boy's eligibility to take an oath as a witness, E.K. questioned him:

WILLIAMS: Now then, young man. Do you attend church?

BOY: No, sir.

WILLIAMS: Do you know who God is?

BOY: I don't think so, sir.

WILLIAMS: Do you mean you don't know who created the universe?

BOY: You?

\* \* \*

Dale Gibson, in the same article:

Most judges regard it as one of their duties to ensure that sober standards of dress and decorum are observed in court. Williams was perhaps the greatest stickler of all in this regard, subjecting counsel to severe tongue-lashings for wearing casual slacks under a gown. Brown shoes were particularly frowned upon.

Norm Larsen recalls E.K. and "graduates from law":

In the fall of 1957, the law school held a social event in the basement of the St. Charles Hotel on Albert Street to welcome the new first year students. The room was crowded and filled with cigarette smoke. E.K. was the guest speaker. He said that a lawyer had recently claimed to be "a graduate *from* law." He talked about the law as a jealous mistress and the impossibility of graduating from law and concluded with a shout: "Gentlemen! TO HELL with graduates from law!" Everyone cheered.

Murray Peden recalls his student days in *Hearken to the Evidence* (1983):

One morning, students were milling about when E.K. appeared. His severe, thin face, was dominated by a pair of cold blue eyes and a white goatee. As students parted like the Red Sea for Moses, one student became aware of the Imperial Presence and genuflected with synthetic reverence. That gesture said a great deal about Williams' relationship with the student body. But he had redeeming qualities. He spoke with precision and to the point. His knowledge of the law was encyclopedic, and he ruled with an iron hand.

Williams taught at the law school for about 40 years. When the Faculty of Law opened at the University of Manitoba in 1969, the library was named for Williams in recognition of his contribution to legal education.

## The Iron Hand in Action

Murray Peden recalls a case he prosecuted in 1952:

The jury found the accused guilty of robbery and attempt murder. Williams turned his unblinking gaze on the prisoner, speaking in the coldest and most imperious voice I ever heard in a courtroom: "Stand up. I sentence you to 30 years in the Manitoba Penitentiary [on each charge, concurrent]...." They were the longest determinate sentences I ever heard in a Manitoba courtroom.

In *Watch the Rope* (1996), reporter William Morriss describes five murder cases at which Williams presided—"with his customary icy preciseness"—in the 1940s. He sentenced all five men to death.

## Reservoirs of Humanity & a Sense of Humour

Williams was a strict, no-nonsense judge, even in his dealings with lawyers and his fellow judges—some of whom were said to have ignored his attempts to dictate to them. He was generally regarded as very conservative, with one notable exception. Sam Freedman—a widely admired lawyer at the time—paid tribute to Williams in a speech found at (1945) 17 *Manitoba Bar News* 81:

In an age when the term "culture" is too often carelessly used, one is compelled to think of Williams as a liberal and cultivated exponent of Mathew Arnold's "sweetness and light."

Years later, Freedman—as Chief Justice of the Court of Appeal—delivered another tribute to Williams. It is found in *A Judge of Valour: Chief Justice Samuel Freedman—in His Own Words* (2014) 37 *Manitoba Law Journal*:

For eight years [1952-1960] I was able as a judge of the Queen's Bench to enjoy a happy association with E.K. Williams. He commanded a great deal of respect. He seemed to be austere and stern, but had reservoirs of humanity—and a very fine sense of humour—which the general public did not credit him with possessing. I cherish his memory.

## A Man of Great Dignity

Lee Gibson (1993):

Williams' death in 1970 brought to the conclusion one of the most remarkable legal careers in Manitoba and, indeed, in the country.

Gerry Jewers in "Nos Disparus" ("We Grieve") in (1970) 38 *Manitoba Bar News* 108:

He will be fondly remembered as a truly fine gentleman. He appeared as a soft-spoken man of great dignity. No greater honour can be bestowed on a man than to be remembered with great respect and E.K. Williams is and shall continue to be remembered in such a manner by many.

\* \* \*

## SAM FREEDMAN

(1908-1992)

### He was a “judge of valour” & a delightful man.

Samuel Freedman was born in Russia and arrived in Manitoba in 1911. He was called to the bar in 1933 and practised law until he was appointed to the Court of Queen’s Bench in 1952. In 1960 he was elevated to the Court of Appeal and was Chief Justice from 1971 until he retired in 1983.

#### Caution v. Valour

Judges, like the rest of us, are sometimes referred to as being “conservative” or “liberal” minded. Sam Freedman had his own terms of reference. In an 1975 article in the *Winnipeg Free Press*, he referred to “judges of caution”—who are inclined to decide a case by looking backward to find a precedent—and “judges of valour”—who see the law “as an instrument that is capable of adaptation and growth, and that has developed through wise judicial use.”

Justice Freedman was a liberal and a judge of valour.

#### An Unforgettable Injustice

In old age, Sam remembered an event from when he was about eight years old, in *A Judge of Valour: Chief Justice Samuel Freedman—in His Own Words* (2014) 37 *Manitoba Law Journal*:

One day Mrs. B., the teacher, slapped V, a student, hard in the face. In the afternoon, came a knock on the door. I caught sight of V and her mother as Mrs. B stepped out into the hall and closed the door. A spirited dialogue ensued. After a short while, Mrs. B. opened the door and asked, “Class, did I slap V in the

face this morning?” With one voice, the entire class, including me, said, “No.” Not without shame do I recall my participation in that sordid episode. If I had my life to live over again, I would have said—as I should have said—“Yes, you know very well you did slap V.” But injustice won the day.

#### In Practice

In *Who Said That?* (2003), Russ Merifield quotes from Sam’s speech to the Empire Club in 1961 on “Some Aspects of My Profession”:

I recall the statement of a lady who said, “Don’t talk to me about lawyers. I have had so much trouble with my husband’s estate that sometimes I wish he hadn’t died.”

Murray Peden, *Hearken to the Evidence* (1983):

Sam recalled a woman coming to his law office to give instructions to sue Hollywood actor Clark Gable for breach of promise. Sam pointed out that she would need evidence to substantiate the relationship. She huffed, “Well, there are the letters.” Sam asked, with hopeful caution, “You mean Clark Gable has written to you?” She replied, “No, but I’ve written to him.”

#### In Class

Vern Simonsen’s anecdote from *Tales from the Underworld* (2009):

When Sam taught *Domestic Relations*, he gave us these definitions: if a married man has intercourse with a single woman, that is adultery. And if a married woman has intercourse with a single man, that too is adultery. But if a single man has intercourse with a single woman, that is sport!

Murray Peden (1983) recalls his student days:

Sam was one of our favorite lecturers. He had an irrepressible sense of humour. In a lecture covering the grounds of divorce, he digressed with a reference to bestiality to remind us, deadpan, that the current definition of sodomy was simply “enlarging the circle of one’s friends.”



Yude Henteleff remembers when Sam, a future judge, met another future judge in a classroom:

Nellie McNichol Sanders already had a law degree—Class of 1932—when she joined our Class of 1951 to upgrade herself. When Sam, our instructor, first saw her in his class on Domestic Relations, he addressed her: “Mrs. Sanders, in this course, I will be sharing some anecdotes that some people might find off-colour. Would you mind if that happened occasionally?” Nellie replied, “Mr. Freedman, I can assure you that where off-colour jokes are concerned, I am colour-blind.”

Sanders (1906-1990) was the first woman appointed to the bench in Manitoba. She served in the Family Court from 1957 to 1977. She was an excellent judge.

### A Famous Sense of Humour

Henry Duckworth, *One Version of the Facts: My Life in the Ivory Tower* (2000):

Sam had jokes that no one had heard before. For example, until he told us, we were unaware of the mixed gathering at which hen-pecked husbands were ordered to go to one side of the hall and those who were not hen-pecked to go to the other side. Only one man went to the non-hen-pecked side. When asked why he had gone there, he explained that his wife told him to.

Examples of Sam’s sense of humour, gathered from lawyers:

- At a party at his home, Sam approached a very pregnant woman: “My dear, you don’t have to worry. Your secret is safe with me.”
- Sam took a seat at a restaurant. A young man came along and said, “My name is Joe and I will be your server.” Sam replied, “My name is Sam and I will be your customer.”
- Sam told of a man whose job at a circus was to be shot from a cannon. When the man quit, the circus owner was upset because, “One seldom meets a man of his calibre.”



This caricature of Sam Freedman was done by Dave Campbell around 1975.

- At a party, Sam had a long and serious conversation with a woman. He later said to her husband, “Please don’t be concerned about my intense conversation with your wife. My interest in her is purely sexual.”
- Sam and his wife Brownie hosted a party at their home. As the guests were leaving at the end of the evening, Sam announced, “This is about the time that Brownie gets a headache.”

## On the Bench

Vivian Rachlis in “A Biographical Note” in *Chief Justice Samuel Freedman: A Great Canadian Judge* (1983):

Freedman admitted in later years that ever since he entered law he regarded an appointment to the bench as his ultimate goal.

Isadore Wolch, *Winnipeg's Unknown Celebrities* (2002):

When Sam was appointed the first Jewish judge in the province, the Jewish community honoured him with a dinner. The main speaker, Sam's brother Max, spoke in glowing terms of Sam's accomplishments. In reply, Sam said that in their family there were debates as to who was the better speaker, Sam or Max. Sam said, “Tonight I am prepared to bow to my brother as the better speaker. However, I want you to remember the topic he had.”

Jeff Gindin's comment in *Tales from the Underworld* (2009):

Sam Freedman overwhelmed me! From one brief appearance in his court, he would know your name. He knew everybody's name! And he was the kind of guy who would remember you if he saw you at Safeway two months later.

Hersh Wolch in “The Young Prosecutor's Trial by Fire” in *Tough Crimes* (2014):

Sam Freedman was the perfect role model for a judge. In the 1970s I was asked by *Macleans* magazine to name my greatest heroes. For some reason I named Justice Freedman and Muhammed Ali. From then on, when I appeared before Sam in court, he would make a sly reference to boxing or Ali. And he would stop me in the halls and say in his great voice, “Muhammed Ali?” and walk on.

Dale Gibson in “An Anecdotal Sampler” in *The Law Society of Manitoba 1877-1977* (1977):

A police witness was testifying to certain statements he claimed to have recorded in his notebook. When Justice Freedman ordered the book to be produced, it turned out to

contain nothing but blank pages. Peering intently at the officer over his spectacles, Freedman asked, “Invisible ink, constable?”

Yude Henteleff tells the story of his first jury trial, at which Sam Freedman presided. The charge was sexual assault. Yude recalls cross examining a police officer in great detail and at great length—not realizing that he was encroaching on eternity. At last, Sam intervened:

Mr. Henteleff, I have been quite patient. Have you concluded your self-sex education course?

Lawyers recall the advice Sam gave them when they were arguing tough cases:

- To Sid Cohan: You are rowing upstream.
- To Colon Settle: You are swimming against the tide.
- To a veteran prosecutor who asked improper questions during a trial: “You are teetering on the edge of an abyss that has no bottom.”
- To Richard Wolson, on his first appearance in the Court of Appeal: I'm sure you will have many great days in this court, but today won't be one of them.

Sam Freedman, in a speech found at (1983) 13 *Manitoba Law Reports* 241:

If a man and a woman spend the night in a hotel or motel room, the court is entitled to infer that sexual intercourse took place between them—unless of course they are husband and wife.

Walter Ritchie found a limit to Sam's sense of humour:

Chief Justice Freedman presided in a case in the Court of Appeal in which I complained that the other lawyer had given me his factum [written argument] only two days before the hearing, and that I therefore was able to write only a short reply. Sam said, “Don't worry. We have read your factum. In fact, I took it to bed with me last night.” I said, “I hope you were satisfied.” He was known for his sense of humour, but he didn't laugh. He snapped, “Proceed!”

Lyle Smordin was better than Sam:

I did imitations of Sam. Using his slow and measured style, I would say something like, “Mr. Smordin ... I would like you ... to tell me ... why we should not ... put your client ... in jail.” Someone told Sam about me. At a social event, he said to me, “I hear that you ... do me ... better than I do.”

### The Tranquil Court of Appeal (1960-1983)

Chief Justice Samuel Freedman reminisced on “Courtroom No. 1” of the Queen’s Bench at the Law Courts Building in Winnipeg at (1973) 39 *Manitoba Bar News* 157:

From the tension and pressure of the trial court there emerges an occasional miscarriage that is transported to the enlightened and tranquil atmosphere of the Court of Appeal, where justice can be made to prevail.

Ken Filkow discovered Sam’s “six sweetest words”:

I appeared in the Court of Appeal before Chief Justice Freedman and two other judges. The other lawyer went first. When he finished his submission, the judges took a break. When they returned, the Chief said, “Mr. Filkow, we have for you the six sweetest words in the English language.” I said, “What might they be, my lord?” He replied, “We need not hear from you.”

Sam Freedman wrote several judgments on the subject of obscenity. The one in *The Queen v. Prairie Schooner News* (1970) includes a touch of humour:

Both of these magazines must be classified as obscene. I may add—not particularly relevantly—that they go over the line even by my own robust standards.... The books are marked by a high degree of crudity and vulgarity. *Mental Revenge* concerns one Jack Doyle. The chambermaid has come into his hotel room. [He quotes a description of Doyle’s acrobatics with the maid.] I pause only to note that Doyle’s age is not given.

A list of Sam Freedman’s judgments, and a summary of about 70 of them, is contained in *Chief Justice Samuel Freedman: A Great Canadian Judge* (1983), edited by Professor Cameron Harvey.

### Retirement

Mel Myers’ anecdote from *Tales from the Underworld* (2009):

After Chief Justice Freedman retired in 1983, he joined the firm of Aikins MacAulay, where his son Martin was already practising. One day I called Aikins and asked for Mr. Freedman, intending to speak to Martin. The receptionist asked, “Which Mr. Freedman do you want, Martin or the Chief Justice?” I asked for Sam, and when he answered, I told him I had a dilemma: when I called the firm, which Mr. Freedman should I ask for? He replied, “It’s best to ask for me. I charge much less.”

### Luck

In a memorial event for Sam (March 8, 1993), Arnold Naimark quotes from a draft of Sam’s unfinished memoir:

As I look back upon my life, as I review its major events, both the good and the bad, I conclude that a fair assessment of it warrants a favorable verdict. It has been an active life with not many wasted years. Above everything else, it has not been dull. And in the things that count the most, I have been extraordinarily lucky.

### Legacies

In his Introduction to *Judge of Valour* (2014), Professor Brian Schwartz describes how remarkable it is to look back on Sam Freedman’s career:

That someone of such talent and humanity rose to the top of our legal system, provided a model of wisdom and civility in any proceeding in which he was involved, and left a body of work that can inspire and instruct anyone wishing to learn to express themselves with clarity and grace.



This bust by Eva Stubbs was presented to the Faculty of Law in 1974 to mark Sam Freedman's 10 years as Chair of the Law School Foundation (1964-1974).

Morley Walker in "Law School Attracts Quality Art Donations" in the *Winnipeg Free Press* (July 3, 1998):

At the Faculty of Law is a bronze bust of Freedman by sculptor Eva Stubbs. The forehead is shinier than the rest of his face. Before exams, students rub the forehead for luck.

\* \* \*

## JOHN SCOLLIN (1927-2015)

**He was known among lawyers for his wit, common sense and delightful "Scollinisms".**

John Ambrose Scollin was born in Scotland. in 1927. He was called to the bar in Scotland in 1950 and in Winnipeg in 1958. He was a judge of the Court of Queen's Bench from 1981 to 1999.

### In Court

Evan Roitenberg remembers a man who loved the courtroom:

You knew that John Scollin was a man who absolutely loved what he did. I think he probably preferred his life as a lawyer to being a judge, but his love of the courtroom always came through. Win, lose or draw, I always left his courtroom smiling.

This is from Hymie Weinstein's anecdote in *Tales from the Underworld* (2009):

Judge Scollin was irrepressible, highly intelligent, often highly scathing in rejecting legal arguments, and almost always unpredictable. He presided at a trial in which I acted for a woman charged with manslaughter. His charge to the jury was very pro-prosecution, but he ultimately gave my client a suspended sentence. That very night, there was a social function where I chanced upon Judge Scollin. I knew him well enough to say, "John, your charge to the jury was so favourable to the prosecution, I couldn't believe it." With a glint in his eye he said, "Hymie, you did such a good job in your address to the jury that I thought the prosecutor needed a hand." And he was serious!



Richard Wolson recalls being accused of dancing in court:

John Scollin was a colourful judge, and sometimes a difficult one. In one case, he accused me of “dancing on the head of a pin” in one of my arguments, and later of “dancing at the nitpickers’ ball.” When the jury said they were deadlocked, he chastised them and told them not to leave their common sense at the door. The jury then convicted my client. A panel of judges at the Supreme Court of Canada reversed the conviction—unanimously.

## Scollinisms

### On Lawyers

*Black v. Blair Athol Farms Ltd.* (1995):

The question arose as to whether the woman would like a lawyer. Alerted no doubt by the cry that echoes down the canyons of the ages, she said, “I don’t trust lawyers.”

*Unicity Taxicab Ltd. v. Manitoba Taxicab Board* (1992):

The measure of good advocacy is the ability of counsel to distinguish volume from weight and length from depth. Too often the errant knight-at-law mistakes caterpillars for dragons.

*Watson v. Johnston* (1990):

Despite some public scepticism, honour does frequently survive in the real world, and professional integrity has not yet been fatally wounded by the dollar.

### On Experts

*S.K. v. K.P.K.* (1988):

The experts who gave evidence have experience with the matters in issue, but the ultimate answer is for the judiciary. Experts designed the Titanic.

*Marynowsky v. LGD Stuartburn* (1993):

A flood claim is a Mayday for experts. They commonly row to the rescue from opposite directions.

*Fuerst v. St. Adolphe Co-Op Parc Inc.* (1989), commenting on an actuary’s estimate of damages:

The actuarial combines with the astrological to produce the astronomic.

*The Queen v. Myrrmidon Inc.* (1987):

This reasoning is the handiwork of a linguistic prankster. The argument floats weightless, free of the gravity of relevance.

### On Legislation

*Montrose Mortgage Corporation v. City of Winnipeg* (1995):

Irrationality is no stranger to statutory law but should not be presumed to be its bosom companion.

*The Queen v. Derco* (1986):

Making law is not always the same as making sense. Reluctance to acknowledge self-defeating laws has led the courts on occasion to redeem irrationality with sophistry. The courts become foolish alchemists when they abuse language to transmute legislative oversight into convoluted wisdom.

*Connery v. City of Portage la Prairie* (1993):

In statutory construction, dissection is less enlightening than vivisection.

### On Precedents

*Winnipeg v. General Aluminum Forgings Inc.* (1988):

This case joins a motley, straggling line of cases. All of these cases bear a certain family resemblance, but none is the identical twin of this case.

*Friends of Oak Hammock Marsh v. Ducks Unlimited* (1991):

The single-minded are often also one-eyed.... I have read all the three score and ten cases and texts which were included in the more than seven kilograms of material filed, but I find it necessary to refer to only a few of them. Despite efforts to adorn them, the issues remain simple.

### On The Bottomless Well of Human Error

*Kochanowski Estate v. Farm Credit Corp.* (1990):

The range of human misunderstanding and fallibility is so vast and marked by so many permutations and variables that the comparison of one set of misapprehensions and mistakes with another one serves only to illustrate that the well of inventive error is bottomless.

### Farewells

Justice Scollin's comments on a decision of the Supreme Court of Canada appeared on the front page of the *Winnipeg Free Press* (March 15, 1995):

It is a decision arrived at by a court that lacks adequate training and experience in criminal law. It's an unfortunate fact about it, but now that I am coming to the end of my career, I have no hesitation in saying that it's an inadequate, poor, retrogressive decision.

From Justice Scollin's obituary in the *Winnipeg Free Press* (March 2015):

He was fiercely loyal and exceptionally hard working. He saw the irony and humour in all things and never feared to speak his mind. His love of the law was second only to his love for his family, who treasured him for the tremendously sentimental and generous spirit he always was.

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## PART 3

### FOUR EARLY LAWYERS

## FRANK LARNED HUNT (1825-1903)

**He was the first qualified lawyer  
at the Red River Settlement,  
where he found Utopia.**

Roy St. George Stubbs, *Four Recorders of Rupert's Land* (1967):

Hunt was a lawyer from Detroit who, as a result of some domestic difficulty, came to Red River in 1853 to engage in farming.... When Manitoba became a province, he practised law in Winnipeg until his retirement to Poplar Point.

Manitoba Library Association, *Pioneers and Early Citizens of Manitoba* (1971):

Hunt came to the Red River Settlement in 1860 and practised law in Winnipeg. He lived at Poplar Point for over 20 years before his death. He wrote on various subjects—family history, Indian life and folk lore. His poetry was published in the *Winnipeg Free Press*.

### A Reluctant Lawyer

On February 19, 1863 there began the longest trial in the history of Assiniboia: *The Queen v. Griffith Owen Corbett*. The Reverend Corbett was charged at the Red River Settlement with five counts of attempting to procure an abortion.

Roy St. George Stubbs (1967):

The trial lasted nine days; 61 witnesses were called. The burden of the defence was carried by James Ross. The trial was the first occasion on which a qualified attorney [Hunt, representing Corbett] held a brief in the courts of Red River. Hunt merely sat taking notes. As the trial progressed, he

removed his seat from within the bar to a stove at the other side of the room. Such behaviour suggests that he had no great enthusiasm for his brief.

Dale Gibson, *Law, Life and Government at Red River* (Volume 1, 2015):

James Ross was hired as Hunt's assistant, but his performance far outshone that of his "leader," who in fact did next to nothing. Ross's five-hour closing address to the jury was undertaken at the last moment because Hunt failed to show up.

Joseph James Hargrave, *Red River* (1871), a history of the years 1861-1869:

Hunt resided at a hotel, but on the conclusion of the Corbett case, he found himself unable to pay. He obtained permission to occupy the court house for an evening and issued tickets at one shilling each for admission to a lecture that he gave on Red River. He cleared enough money to relieve him from the temporary embarrassments.

### Paradise Found

George Bryce, *The Romantic Settlement of Lord Selkirk's Colonists* (1910):

Larned's poetic spirit was never repressed. Marrying, after his arrival at the Red River Settlement, a daughter of one of our best native families, and on her death, a pure Indian woman, he reared a large family.

Hunt had four children with his first wife, Henrietta Gunn, and five children with his second wife, Harriet Fox.

Hunt's "Britain's Own Utopia" (11 pages, 1902) is available online. An excerpt:

The history of the colonies that faced the Atlantic Ocean reveals no Utopia. It remained for a later time, amid some severity of climate to evolve a community in the heart of the continent, shut away from civilized mankind, known to the world as the Red River Settlement.... Sweet thought, pure



speech, went hand in hand. When the country in future is teeming with wealth and luxury, this light will shine down the fullness of the time with hues all its own. The story that it tells will be as a sweet refreshment: a dream made possible, called by those who shared in its great calm, "Britain's One Utopia."

George Bryce (1910):

The Red River Settlement was a self-contained spot. To the old people there was a feeling of freedom from care, of its being a lotus eater's land—an Utopia; an Eden, before sin entered.

Sam Steele, *Forty Years in Canada: Reminiscences of the Great North-West* (1915):

Up to the rebellion of the Metis in 1869, I believe there were no more truly happy people in the world than the inhabitants of this region.

Rev. A.C. Garrioch, *First Furrows* (1923)—referring to the 1860's:

The settlers did not appear to have any more occasion to discuss legislation or litigation than their first parents had in the Garden of Eden.

A dead man from Illinois considers his life in "Batterton Dobyms" in *Spoon River Anthology* (1915) by Edgar Lee Masters:

I was cut down in my prime  
From overwork and anxiety.  
But I thought all along, whatever happens  
I've kept my  
insurance up,  
And there's something in the bank,  
And a section of land in Manitoba.

Joseph James Hargrave (1871):

No professional lawyers have yet practised at Red River.  
Litigation is extremely cheap. Agents may be got for a trifle.  
Many ambitious orators are ever at hand who would consent gratuitously to conduct a case for a needy friend.

## Paradise Lost

Alexander Begg and Walter Nursey, *Ten Years in Winnipeg* (1879):

We had no bank, no lawyers, one doctor, one policeman, no taxes—nothing but freedom. The advent of these legal gentlemen from Ontario and Quebec was the commencement of the misery of the people of Winnipeg.

Alexander Begg, *The Creation of Manitoba or A History of the Red River Troubles* (1871):

When the people of the North-West were represented as groaning under a yoke of oppression, they were in reality enjoying a degree of liberty and happiness unparalleled in any other country.... People had learned to live on terms of friendship and kindness towards each other, and it was not a difficult matter to heal a breach between any two individuals. Had the settlers been the only parties with whom the HBC had to deal, all would have been well; but when parties from abroad came to Red River....

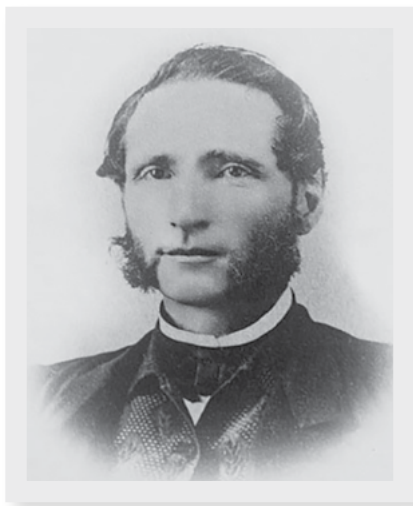
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## ENOS STUTSMAN

(1826-1874)

**As a lawyer and politician,  
he travelled between Dakota Territory  
and the Red River Settlement.**

Enos Stutsman (also spelled Stutzman) practised law in Dakota Territory, which became the states of North Dakota and South Dakota in 1889. He often visited the Red River Settlement.



J.M. Bumsted, *Reporting the Resistance: Alexander Begg and Joseph Hargrave on the Red River Resistance* (2003):

Stutsman was born in Indiana with no legs. He used crutches throughout his life. He became a legislative leader in the Dakota Territory after he moved there in 1858.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

Stutsman was one of the most colourful characters of the American frontier. His horsemanship, legal acumen, business judgment and political cunning won him a reputation of legendary proportions.

A description of Stutsman in the *St. Paul Pioneer* newspaper (January 21, 1870) is quoted by Dale Gibson, Lee Gibson and Cameron Harvey in their book *Attorney for the Frontier: Enos Stutsman* (1983):

He is a sharp and scheming Yankee; smooth and captivating in conversation; genteel and temperate in habits; daring in deeds; ambitious of fame, and susceptible of mischief.

### The Wild West

Stutsman was a member of the first Dakota Territory Legislature from 1862 to 1873. The 1862 session is described by Vera Kelsey in *Red River Runs North* (1951):

Into the log cabin crowded soldiers of fortune, lawyers, doctors, frontiersmen, missionaries, desperadoes, and city slickers. Their origins were so various that the governor's inaugural address was printed in English, Norse, German and French. As there were no defined political parties, any member could propose weird, controversial measures.... There were drawn guns, bloodshed, black eyes, trickery, tides of whisky, and general pandemonium.

Joseph Kinsey Howard, *Strange Empire: The Story of Louis Riel* (1952):

In 1866 Stutsman was appointed a customs agent for the U.S., assigned to the risky and unpopular job of checking smuggling on the Red River trails. He moved to historic Pembina [just south of the international border]. There he practised law and built a hotel.

Arthur Morton, *A History of the Canadian West to 1870-71* (1939):

In a murder trial at the Red River Settlement in 1868, the accused was defended by Enos Stutsman, an American citizen and lawyer from Pembina. No one seemed to think it strange. There were, after all, no lawyers, as there was little law in Red River.

Stutsman was the only fully qualified lawyer within 500 miles of the Settlement.

## Dreams of U.S. Annexation

George Stanley, *Louis Riel* (1969):

It is not known whether the provisional government was Riel's idea or whispered in his ear by Stutsman during the latter's visit to Fort Garry on November 22, 1869.... Stutsman seems to have been something of a privileged character, for he moved to and fro between Pembina and Fort Garry.

This is from a footnote by editor J.M. Bumsted in *Reporting the Resistance: Alexander Begg and Joseph Hargrave on the Red River Resistance* (2003):

Louis Riel apparently met with the American lawyer Enos Stutsman [in December 1869] and drafted a "list of rights." The first four clauses are a direct lift from a Dakota bill of rights written by Stutsman a month earlier.

Alexander Begg, *The Creation of Manitoba or A History of the Red River Troubles* (1871):

Stutsman again made his appearance in the Red River Settlement on January 10, 1870. It was reported that he intended to take up residence in Red River, but this expectation was frustrated. His arrival was the signal for renewed efforts on the part of the Americans to get into power [in the Red River Settlement, Assiniboia, and Rupert's Land].

From his base in Pembina, Stutsman promoted the annexation of Red River to the U.S. The *St. Paul Pioneer* newspaper (January 21, 1870):

Stutsman is just the man to plan, impel and guide a border rebellion among so excitable and impulsive a populace as the half-breed French. In activity, pluck and acuteness he stands head and shoulders with the shrewdest of men.

Dale Gibson, *Law, Life and Government at Red River* (Volume 1, 2015):

Riel welcomed Stutsman's help, and gave the impression that he was open to U.S. involvement in the insurrection.... Stutsman suddenly realized [on January 11, 1870] that the prospect of annexation was virtually dead. When he called upon Riel about "some very important business" that he wished to discuss in "strictly private conversation," he failed to receive the welcome to which he was accustomed.... He seems never to have returned to Red River.

## Imperial Dreams

Howard Roberts Lamar, *Dakota Territory 1861-1889* (1956):

Stutsman thrived on large political and speculative schemes in the best western tradition. He dabbled in Riel's Rebellion in the hope that western Canada would annex itself to the U.S. and he could be one of the founders of a northwestern empire. Such were the dreams of the short, half-crippled lawyer who always signed his letters, "Your little friend, Stuts."

Lamar quotes from an undated letter that he attributes to Stutsman:

In the great squabble for office and place, you need not count me in. I have tried office and found it does not pay. As a mere experiment, I intend to see if I cannot make an honest living!

Joseph Kinsey Howard (1952):

When Stutsman died in 1874, the press eulogized his skill, geniality and honorable record and said he won respect and admiration on the frontier.

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## FRANCIS EVANS CORNISH

(1831-1878)

**In his six years in Winnipeg, he was a lawyer, mayor, dandy, rogue and scalawag.**

Keith Wilson, *Francis Evans Cornish* (1986):

Cornish spent but six years (1872-1878) in Winnipeg, yet left his indelible imprint. His expertise in law was generally recognized, notwithstanding his irritating and often rude courtroom behaviour. He was the eternal rebel whose riotous behaviour shocked many just as it endeared him to others. He showed “polygamous tendencies”.... His antics have tended to distract attention from the many positive qualities and achievements of this brilliant but erratic man.

Cornish was one of five lawyers called to the bar of Manitoba on June 12, 1872.

Ruth Swan, “Francis Cornish—The Man”, *Manitoba History* (1985):

Cornish could be called a dandy, a political fixer and a rogue, but he epitomized the brawling and often bigoted spirit of frontier Winnipeg.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

He had a succession of political, professional and marital difficulties, and came to Winnipeg [from Ontario] at the age of 41 to start a new life.... Boisterous, bibulous and violent, he exerted an extremely disruptive influence on local politics. Even by the barbarous standards of the time, his tactics were crude. However, he was a magnetic individual and he possessed a rich sense of humour that glossed over many of his shortcomings.

Dale Gibson, *Law, Life and Government at Red River* (Volume 1, 2015):

Cornish was an experienced and talented barrister, but an unruly, violent and bigoted—if roguishly charming—man, often at the centre of Manitoba’s ethno-political mischief.

### Five Versions of One Story

Dale Gibson and Lee Gibson (1972):

It is said that when Cornish was mayor of London, Ontario from 1861 to 1865, he tried a charge against himself for driving a horse and carriage while drunk. After convicting and fining himself, he reduced the fine because of previous good conduct.

*Winnipeg Centennial Souvenir Book* (1974):

Cornish demonstrated the difficulties that could arise when lawmaker and lawbreaker were one and the same. Sitting as a magistrate, he called for Francis Evans Cornish to stand up. He stood up. “You are charged with a breach of the city by-laws. Guilty or not guilty? [Answering himself:] Guilty. You are fined five dollars and costs.... Taking into consideration past good behavior, your fine is remitted.”

Keith Wilson (1986):

Some of his antics became part of local folklore. In one case, arrested for being drunk and disorderly, he tried himself, pleaded guilty, fined himself ten dollars, remitted half the fine for previous good conduct, and pocketed the remaining five dollars as his magistrate’s fee.

The account of the incident in *Brookside Cemetery: A Celebration of Life* (Volume 1, 2003) implies that it happened in Winnipeg:

It is alleged that on one occasion when Cornish was serving as a Magistrate, he was caught operating a horse and buggy while intoxicated. At the time of the court case, he was the defendant, defence lawyer and magistrate all at the same time. He found himself guilty and imposed a fine of ten dollars, than as a magistrate, he charged the court ten dollars for his services.

Charles Brawn and Dale Brawn, *Every Stone A Story: Manitoba's Buried History* (2008):

In the 1860s a mayor automatically became his community's magistrate. Consequently, when Cornish was arrested for public drunkenness he presided over his own trial. After pleading guilty he fined himself four dollars, then reached into one of his pockets and removed the money. He accepted it on behalf of the city, and dropped it into a second pocket. He concluded by lecturing himself on the evils of drink.

## Prosecutor & Scalawag

Manitoba Library Association, *Pioneers and Early Citizens of Manitoba* (1971):

Cornish was deeply involved [as prosecutor] in the 1874 trial of Ambroise Lepine for the murder of Thomas Scott and in the case of Lord Gordon Gordon [a cause célèbre in 1873]. In the federal election of 1872, he played a prominent role in the September riots during which the offices of three newspapers were ransacked.

Richard Willie, *"These Legal Gentlemen": Lawyers in Manitoba: 1839-1900* (1994):

Cornish was aligned with the anti-French elements in the community. He was charismatic, crude and seasoned in the corrupt practices of local politics, and capable of violence.

*Winnipeg Centennial Souvenir Book* (1974):

The candidates for mayor in 1874 were William Luxton and Francis Cornish. The supporters of Cornish expressed their political conviction by voting repeatedly. The result was that, with 388 legal votes to be cast, 562 were counted.

Dale Gibson and Lee Gibson (1972):

Cornish remained a scalawag to the end. He and law partner, W.B. Thibeau, were convicted in 1876 of stealing the poll-book for a current election, and shortly before his death he was accused of kidnapping his opponent in another

election. At his funeral his professional colleagues followed a practice that they observed for many years: attending in their court robes.

Cornish died of stomach cancer in Winnipeg at the age of 48. The Cornish Library and a nearby street are named after him.

\* \* \*

## HENRY CLARKE

(1833-1899)

**The province's first Attorney General oversaw the enactment of the first laws while being flamboyant, outrageous, impulsive and scandalous.**

### Fast Tracked

Clarke no sooner arrived in Manitoba than he was elected an MLA and appointed the province's first Attorney General.

Manitoba Library Association, *Pioneers and Early Citizens of Manitoba* (1971):

Henry Joseph Hynes Clarke was born in Ireland. He came to Canada [Montreal] with his parents in 1836. He married a widow with two sons. He was called to the Lower Canada bar in 1855.... In 1870 he was invited by Father Noel Ritchot to go to Manitoba. Clarke arrived in November and on December 30 was elected to the first Legislative Assembly of Manitoba. On January 10, 1871 the Executive Council was appointed, with Clarke as Attorney-General.

Gerald Jewers, *Manitoba Justice* (2013):

Clarke was appointed as Attorney General at a salary of \$5,000 per annum. He was just 37 years of age, although he had done many things in his life, including journalism, politics, and the practice of criminal law.... His style and manner were so abrasive that he was regarded with some considerable lack of affection by the populace.

Richard Willie, *"These Legal Gentlemen": Lawyers in Manitoba: 1839-1900* (1994):

For prominent and flamboyant lawyers like Francis Cornish and Henry Clarke, escaping unstable marriages was part of the reason for coming to Manitoba, and partly explains the scandalous affairs they conducted in Winnipeg.

### Outrageous Fees

Alexander Begg and Walter Nursey, *Ten Years in Winnipeg* (1879):

Clarke commenced his career in Winnipeg by taking charge of the police business, in which he acted pretty much as prosecutor, judge and jury.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

He was adept at obtaining material benefits for himself and his friends. For example, it was alleged that his fees for conducting prosecutions [at \$25 each] while Attorney General amounted to \$25,000. On the other hand, he was loyal to certain policies: representative government, a strong judiciary, fair treatment of the French-speaking population, and autonomy of the legal profession.... He left behind a legal and governmental system that was complete in most of its essentials, an accomplishment for which he, as Manitoba's first Attorney General and de facto Premier [1872-1874], was in no small part responsible.

Robert B. Hill, *Manitoba: History of Its Early Settlement, Development and Resources* (1890):

So outrageous had the expense of Government been, and so little accomplished, that this failure began to tell against the Government. Another cause was Clarke's gross indecency in public and private life. The Government allowed him, outside of his salary, \$25 for each indictment. So unscrupulous was he that in some cases as many as 20 separate indictments were drawn against one criminal.

## Judicial Retirement

In a letter dated May 28, 1871 to Prime Minister John A. Macdonald, Lieutenant Governor Adams Archibald refers to the possibility of Clarke being appointed to the bench:

The man is rash and impulsive, knows little law and possesses so little balance that he is perpetually getting everybody into scrapes.... Bad as he is, he would be worse on the bench. Whoever else you think of, don't think of him.

Dale Gibson and Lee Gibson (1972):

Prime Minister John A. Macdonald, knowing that Clarke would be distressed at not receiving an appointment to the bench, wrote a conciliatory letter [dated October 29, 1872]: "When the affairs of Manitoba are in a more settled state, and you have spent some time in the Legislature, you will then fairly have earned your retirement."

## From Politics to Practice

Manitoba Library Association (1971):

In 1874 a resolution of want of confidence was carried and the Clarke government resigned at once. He then practised law in Winnipeg and was an able criminal lawyer, defending some of the rebel prisoners following the North-West Rebellion of 1885. He died September 13, 1889, on a C.P.R. train at Medicine Hat, North-West Territories, and was buried at Pembina.

Gerald Jewers (2013):

Clarke's ministry was responsible for the passage of the fundamental legislation required for the government of the new province.

Lee Gibson, *A Proud Heritage* (1993):

The boom in Winnipeg real estate attracted a tidal wave of lawyers. A *Free Press* editorial in 1883 estimated there were 147 barristers and 166 attorneys, and about two-thirds of them had arrived since 1881. The *Canada Law Journal* commented that "Winnipeg has more lawyers to the square acre than any other place on the face of the earth."

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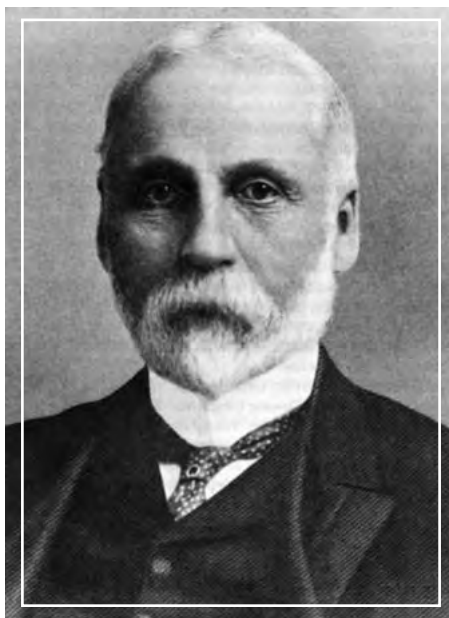
## PART 4

# CRIMINAL LAWYERS



**NATHANIEL HAGEL**  
(1846-1915)

**He was brilliant, restless and flawed.**



Roy St. George Stubbs, *Lawyers and Laymen of Western Canada* (1939):

Of the advocates who practised in Western Canada a generation ago, none was more brilliant than Nathaniel Hagel. He was brilliant rather than learned. He never had to grub for knowledge: his mind absorbed information like a sponge, and he did not exert himself to the limit. Things came too easy for him. While a man of wide reading, he did not like reading law.

Gerry Jewers, *Manitoba Justice* (2013):

Crown Prosecutor and Magistrate R.B. Graham ranked Hagel amongst the greatest jury lawyers in the history of Canada.... Hagel acted for the defence and the Crown and also appeared in civil cases. He was born in Ontario and called to the bar of Ontario in 1873. He began to acquire a name as a criminal lawyer in Toronto, but a restless spirit caused him to go west to Winnipeg in 1881.

Hagel was called to the bar of Manitoba in 1882. He practised in Winnipeg, with one break: from 1898 to 1905 he practised in B.C. and Yukon Territory.

Roy St. George Stubbs in "The Late N.F. Hagel, K.C." in (1936) 8 *Manitoba Bar News* 313:

He was physically and mentally alert, with a restless, roving spirit, foreign to the orderly ways of life as we know it. He was meant for the times in which he lived. He came into instant prominence at the Manitoba Bar. Gracious, well-mannered in the old world sense, he was a man to catch and rivet the attention of any jury. In court, he always went on the assumption that fortune favours the audacious. He was daring, almost reckless.

### His First Trial

Roy St. George Stubbs in "Hon. Edmund Burke Wood" in (1958) *Papers Read before the Historical and Scientific Society of Manitoba*:

Hagel had a case before Chief Justice Wood one morning. It was important to his future at the bar, and so he arrived early at the court house. He wandered into the judge's room and there saw on his desk a written judgment for Hagel's case. The judgment was against his client. Later, in court:

**HAGEL:** I rise to make a motion of a very serious nature. I move to impeach the Chief Justice of this court for pre-judging a case.

**CHIEF JUSTICE WOOD:** What do you mean? Such insolence cannot be allowed to pass. I shall have to hold you in contempt.

HAGEL: If your lordship will read the document that you had in your hand when you came into court, and which now lies before you, it will be apparent to all in this court what I mean.

WOOD (rushing from the court room): Impeach and be damned!

The case later came on for trial before Wood, whose decision was in favour of Hagel's client.

## King of the Criminal Courts

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

Whatever Hagel's shortcomings as a father, his professional record was outstanding. Of the 76 accused murderers he defended, only one was hanged. In an era when forensic eloquence flourished in the criminal courts, he was the undisputed king.

Chief Justice D.A. Macdonald, in a letter to the editor, in (1936) 9 *Manitoba Bar News* 343:

I recall a case involving the death of a mule. In Hagel's address to the jury, he described the sufferings of the mule, while tears ran down his cheeks. It took the jury but a few minutes to render a verdict for Hagel's client, possibly rather a verdict for the mule.

In *Brandes v. McConnell* (around 1900), the plaintiff alleged that the defendant (a doctor) injected the plaintiff's wife with morphine and then seduced her. The jury found in favour of the plaintiff after hearing the florid address of his lawyer, Mr. Hagel. An excerpt:

Remove the dust from the wings of a moth and you can never re-gild them. Take the blush from a rose and you can never restore it. Once taken advantage of, a woman is a slave and the man is master, his will supreme, his way her way. This unfortunate woman may not hear pardon from my learned friend, there may be no remorse on the part of her seducer, but she will ever be able to hear the voice of Him who said, "Neither do I condemn thee" [from the Gospel of John 8:11].

## One Question

Gerald Jewers (2013) quotes a question that Hagel put to a witness who identified Hagel's client, a man accused of stealing money from a bank, as the man who rented a carriage from him:

If you knew that this young man's mother was on her deathbed and that news of her son's conviction would send her to her grave, would you be positive that he is the man who hired a carriage from you on the night in question?

The witness answered "no". The jury acquitted.

## Being Helpful

Roy St. George Stubbs (1936):

Hagel was always especially courteous to junior counsel. When A.J. Andrews was scarcely 21 years old [in 1886], he defended a man charged with murder. Hagel appeared for the Crown and helped Andrews bring out his evidence. Andrews began to worry as he saw that the effect this had on the jury was unfortunate for his client. However, the jury returned a verdict of manslaughter and Andrews had scored a victory against Hagel, the most formidable advocate at the bar.

Stubbs records that when Andrews reflected on the case 50 years later, he realized that if Hagel had not "helped" him, his client probably would have been acquitted.

## Hagel v. Howell

During a trial around 1910, Hagel and irascible Chief Justice M.H. Howell had an encounter. Howell told Hagel to step away from a witness:

HOWELL: Get back or I will commit you for contempt of this court.

HAGEL: Your lordship forgets one thing. I am one of His Majesty's counsel and as such have a right to a place within the inner bar. I have a right therefore to stand where I am, and here I intend to stand.

HOWELL: Oh, very well, Mr. Hagel, but get on with it.

## Deemed Unfit for Politics

In 1886, Mr. Hagel ran unsuccessfully for political office. The *Manitoba Free Press* was blunt in its estimation of him (July 16, 1886):

Mr. Hagel ought to stay at home. He does not possess the first attribute to make even a decent public man. In his everyday life he may successfully live out the principle that toadyism, sycophancy and conciliation are the secret of success, but these traits will never immortalize him as a public man. Sucking politicians are not in demand.

## Assessments

Roy St. George Stubbs (1936):

As a lawyer, Hagel left something to be desired. His grasp of elementary legal principles was good but he could not be considered a black-letter lawyer by any stretch of the imagination. While he was a man of wide reading, he did not like reading law. However, one branch of the law he knew backwards and forwards: he had the law of evidence at his fingertips.

F.H. Schofield, *The Story of Manitoba* (1913):

Hagel has been termed “Manitoba’s most noted criminal lawyer.” Court records establish his position as a skilled and able advocate whose knowledge of the law is comprehensive and exact and whose application of legal principles is correct. He is strong in argument, logical in his deductions, eloquent and forceful in his appeals, and his briefs are prepared with the utmost thoroughness.

## A Sad End

Dale Brawn in “The Lawyer Who Died in Ignominy” in *Every Stone A Story 11* (2009):

Nathaniel was regarded by his contemporaries as the most talented lawyer of his day. His deep, resonant voice impressed juries, and his ability to quote the Bible and Shakespeare at length was moving and entertaining, although critics suggested

it hid an ignorance of the law. The scandal that cost his son Percy his freedom devastated him, and shortly after his son was sent to prison, he suffered a stroke. Within two months he was dead.

\* \* \*

**PERCY HAGEL**  
(1881-1944)

**Like his father Nathaniel,  
he was brilliant, restless and flawed.**

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

Percy became acquainted with many of the legendary figures of the gold rush [in B.C. in the 1890s] and developed addictions to liquor and gambling. In 1900, with greater knowledge of the seamy side of life at the age of 19 than most men acquire in a lifetime, he presented himself at his father's office and announced he wanted to study law.... Sloth and alcohol prevented the realization of his full potential. Nevertheless, he became the best known and one of the most capable members of the criminal bar.

Hagel was called to the bar in Yukon Territory in 1904, and in Manitoba in 1906.

Gerry Jewers, *Manitoba Justice* (2013):

Percy had his father's qualities of mind and eloquence and was a very effective advocate. Sadly, what might have been a brilliant career was undermined by his love of drink and a somewhat loose attitude towards ethics. This led to his downfall in the Krafchenko case.

### *The King v. Krafchenko*

Hagel's career as a lawyer is overshadowed by his role in helping his client John ("Bloody Jack") Krafchenko escape from jail in 1914.

On December 3, 1913, Krafchenko (1881-1914) robbed a bank of about \$3,000 in Plum Coulee and killed the manager who pursued him from the bank. Krafchenko was captured in Winnipeg and charged with murder and robbery.

A few hours after Krafchenko was committed for trial on January 9, 1914, he escaped custody and was at large for four days. The escape was actually planned for the previous night, but Hagel got drunk and forgot about it, according to Charles Brawn and Dale Brawn in *Every Stone A Story: Manitoba's Buried History* (2008).

This is from a "wanted" poster for Krafchenko:

**Age 32, 140 pounds, Roumanian. Probably be found around  
houses of ill fame. Expert locksmith. Always carries firearms.  
Good Shot. Badly wanted on charges of murder and robbery.**

The *Evening Telegram* reported that Percy Hagel was one of five people involved in the "sensational plot" to free Krafchenko:

Hagel was admitted to the Manitoba bar in 1905. He formerly practised in the Yukon with his father, Nathaniel Hagel, now a prominent barrister in this city.

Mr. Hagel, junior, resides at 877 McMillan Avenue. He is 32 years of age and married. Since commencing practice in Winnipeg, he has been more or less prominent because of his work as a criminal lawyer.... Mrs. Hagel is almost prostrated with grief and cannot believe that he is involved in the affair.

Ben Rolph, a Winnipeg taxi driver, in "John Krafchenko" (52 pages, around 1914):

Krafchenko's planning of the robbery showed crudeness and bad judgment. During the preliminary hearing he maintained an attitude of bravado that was never shaken. The crime savored of the boy who had read too many dime novels and wanted to do something daring and let everybody know he did it.

Jack Templeman, *From Force to Service: A Pictorial History of the Winnipeg Police Department* (1998):

Krafchenko was a con artist who was full of promises to share his hidden money and jewels with anyone who would help him escape. This greedy lawyer, Hagel, accepted his words and arranged to obtain a gun and rope for him.

Chief Justice Mathers presided at Krafchenko's three week jury trial in Morden. It involved 72 witnesses for the Crown and nine for the defence. Krafchenko was convicted, and executed on July 9, 1914.

Percy Hagel was charged with conspiring with Krafchenko and others to effect the escape, and with assisting in the escape.

Charles Brawn and Dale Brawn (2008):

In a macabre postscript, Krafchenko's stepmother claimed his body immediately after he was officially declared dead. She and five helpers then tried to bring him back to life. Among those in attendance were two witches, a warlock, a soothsayer and a voodoo priest. Their efforts were in vain.

## Sins of the Father

Dale Gibson and Lee Gibson (1972):

The revolver and rope were smuggled into the jail by Hagel. In spite of the best efforts of his father and A.J. Andrews for the defence, he was sent to prison for three years. Nathaniel died a few months after. It is said that he was broken-hearted by his son's disgrace, but there can be little doubt that he was in no small way responsible for Percy's problems. If Nathaniel's own life, which was no model of rectitude, did not have a detrimental effect on his son's moral outlook, his abandonment of the 15 year old in the lawless land of the gold rush certainly did.

The government established a Royal Commission to look into the escape. The *Evening Telegram* (January 19, 1914) commented on Hagel's testimony before the Commission:

Hagel was at times resentful, at all times direct, and ever and anon sparkling with humour.

## Unreliable but Reinstated

Hagel was disbarred by the Law Society. He was active in the 1916 debate on Prohibition. James Gray, *Booze* (1972):

In the speaking corps for the "Drys" were Nellie McClung and Percy Hagel. Hagel, blaming his disgrace on drunkenness, was a prime attraction on the lecture circuit, even though somewhat unreliable in his attendance.

Gerald Jewers (2013):

Hagel persuaded the Law Society to reinstate him. He carried on with the practice of law, but his ethics had not much improved and he was continuously in trouble with the Society. Still he became the best known criminal advocate of his day, and when asked to name a lawyer, the average lay person would probably have named him.

Dale Gibson in "An Anecdotal Sampler" in *The Law Society of Manitoba 1877-1977* (1977):

Hagel's prison record sometimes came back to haunt him, as when he asked a witness where he had been on a certain day in 1915, and received this reply: "You should know. You were in the next cell block."

## As He Lay Dying

Dale Gibson (1977):

The Law Society had many occasions to regret reinstating Hagel. He was in and out of trouble the rest of his life. However, his career greatly enriched the mythology of the legal profession.... It is said that he died in the embrace of a woman of ill repute, and legend has it that she said, "When he trembled, I thought he was coming. But I guess he was going."

\* \* \*

## ROBERT BONNAR

(1860-1932)

**He had an unusual style  
and a national reputation.**

Robert Andrew Bonnar studied medicine for two years and was involved in the agricultural business before he took up law in the office of Nathaniel Hagel in 1885.

Professor W.H. McConnell, *Prairie Justice* (1980):

Perhaps the two foremost criminal counsel in the early history of the Canadian west were Patrick Nolan of Calgary and Robert Bonnar of Winnipeg. Bonnar was born in Canada West. He was called to the bar of Manitoba in 1889, practising in Winnipeg, and losing only one of 46 [some say 58] murder trials in which he represented the accused.

### Theatrical & Successful

Roy St. George Stubbs, *Lawyers and Laymen of Western Canada* (1939):

Robert Andrew Bonnar appeared for the defense in 58 murder trials and only one conviction, a record that has seldom been equalled.... His speeches seldom had the gleam of gold or the flash of diamonds. He was not sufficiently a man of books to be an eloquent speaker. His feet were planted too firmly upon the ground.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

A large rough-hewn man with a flaming red mustache, Bonnar's language was from the streets rather than from literature. He liked to affect the homely style of the American advocate, Clarence Darrow, strutting around the courtroom

with his thumbs hooked in his suspenders. He was often criticized for his uncouth ways and his imperfect understanding of legal principles but his record of success in criminal cases has few parallels in Canadian legal history. His clients escaped the gallows in 57 of the 58 murder cases he handled.

### Dueling Strategies

Roy St. George Stubbs in "The Late N.F. Hagel, K.C." in (1936) *8 Manitoba Bar News* 313:

Nathaniel Hagel had the act of annoying his opponent developed to a fine point. He appeared in a case with Robert Bonnar, that giant of the bar, on the other side. The case concerned a family squabble. In cross-examining a witness, Bonnar inadvertently said, "Did you say that you were laying [lying] for the old man?" Hagel was on his feet: "Your lordship, I would like to ask my very learned friend what he suggest the witness was laying for the old man." Bonnar was so furious that he could not continue his cross-examination.

Stubbs' comment in a later book—*Lawyers and Laymen* (1939)—suggests that Hagel might have played into Bonnar's hands:

One of Bonnar's stratagems was to deliberately mispronounce simple words so as to give the jury the satisfaction of correcting him.

### A Seditious Trial

Bonnar was one of four defence lawyers in the 1920 trial of the so-called "strike leaders" on a charge of seditious conspiracy following the 1919 General Strike. The lead prosecutor—A.J. Andrews—knew Bonnar well and warned the jury:

Mr. Bonnar is perhaps the greatest criminal lawyer in Canada.

In a 25 page tribute to Bonnar in *Lawyers and Laymen of Western Canada* (1939), Roy Stubbs briefly mentions the trial:

Bonnar was counsel for the defence, but not being in harmony with the social issues involved in the trials, he was not seen at his best. He was in his real element in a murder or manslaughter case.

## Pot Shots

Roy St. George Stubbs (1939):

Bonnar was cross-examining a constable who produced a billie [a club] as evidence. Bonnar tried to make out that it was not a formidable weapon, when the judge interrupted him: "If you think it's harmless, let the witness hit you over the head with it." Bonnar handed the billie to the constable, saying, "Hit his lordship over the head with it. Your lordship, you are the judge of the weight of the evidence."

Gerald Jewers, *Manitoba Justice* (2013):

Bonnar was not averse to taking the odd pot shot at judges. In one case, a judge overruled his objection to certain evidence and ruled it admissible. Bonnar proceeded to cross-examine the witness about his sleeping and eating habits, until the judge demanded to know the relevance of the questions. Bonnar replied they were just as relevant as the evidence the judge had just ruled admissible. And then he sat down.

\* \* \*



From the book of cartoons, *Manitobans As We See 'Em 1908 and 1909* (1909), in which all the cartoons are attributed to Hay Stead and Donald McRitchie.

## LOUIS MOROSNICK

(1892-1956)

**In court he was “Louis the Weep”  
—better than Barrymore.**

Peter MacDonald, *More Court Jesters* (1987):

Louis David Morosnick was known as “Louie the Weep”, because he could cry on cue. One day in the 1950s, lawyer Graeme Haig heard the first few minutes of Louis’ address to a jury in a murder case, but had to leave. When he returned, Haig asked the court clerk, “How is Louis doing?” The clerk replied, “Not bad. So far he’s had the fellow acquitted twice and convicted three times.”

This is from the website of Robson Hall (accessed in April 2016):

Louis attended Norquay School and Central Collegiate. At 14 he had his first job, as a messenger for a drug company. He also reported sports for a city newspaper and worked as a police reporter. He worked his way through Arts and the Manitoba Law School as a reporter, graduating in 1915.

### A Publicity Hound

From an article in the *Winnipeg Tribune* (December 10, 1948):

Morosnick is one of the few Winnipeg lawyers with a full-blown sense of the dramatic. He is aided by a booming voice, a leonine head, and a pair of expressive hands.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

Morosnick was one of Manitoba’s most unorthodox lawyers. In many ways he resembled Percy Hagel. His clientele was of the same general type, he had a similar talent for eloquence

and he had a reputation for using outrageously imaginative techniques. But Morosnick did not share Hagel’s disreputable personal attributes, and he had a thirst for publicity that far exceeded Hagel’s.... When Louis’ partnership with Mark Shinbane dissolved, Louis called in a carpenter to cut each of the firm’s bookcases in half from top to bottom, giving one-half of each case to Shinbane.

Sam Minuk’s anecdote in *Tales from the Underworld* (2009):

I articulated with Louis, who had several nicknames, including “Louis the Weep, “the Silver Fox” and “the John Barrymore of the Courtroom” (based on acting ability, not looks). I sat with him during a jury trial. When a witness for the prosecution was giving damning evidence against his client, Louis took out a pair of glasses and a handkerchief. He was apparently cleaning the lenses with the handkerchief while smiling sweetly at the jury—until he ran the handkerchief through the frames, which had no glass in them! This might have contributed in some way to the jury’s verdict of not guilty.

### Politics

Duff Roblin, *Speaking for Myself* (1999):

On my election [as leader of the Progressive Conservative Party in 1954], I was carried up to the podium by two enthusiasts, one of whom was Louis Morosnick. There had been a legal firm in Winnipeg called Shinbane, Morosnick and Roblin, of which my father was a member before he went into business. Shinbane was a leading Liberal, but Morosnick was a staunch Conservative.

### Never a Q.C.

Duff Roblin (1999):

Morosnick was a criminal lawyer, dubbed “the John Barrymore of the courtroom” for his theatrical outbursts. This was not looked upon with favour by the establishment. Consequently, he was never made a Q.C. (Queen’s Counsel). I cherished the thought that if I became premier, I would have the pleasure of



recommending him to be a Q.C. Unfortunately, he died in 1956, before that happy event could take place.

The first and only posthumous Q.C. was awarded by the provincial government to Solomon Greenberg (1894-1958) in 1972.

### A Legacy

This is from the website of Robson Hall (accessed in April 2016):

In his will, Louis directed that no memorials be erected to him. He wrote: Whatever good I have done, if any, will live in the hearts of those who are dear to me and of those who I may have been of some assistance to in my lifetime. I have tried with all my heart to make people happy and in my small way make this a better community and a better world than when I entered it.

In 1964, Mr. Morosnick's wife established the L.D. Morosnick Prize for a course in "Crime, Law & Society", which has since become "Sentencing and Penal Policy".

### It's a Wonderful Life

Your Compiler has not been able to verify that the following is from Mr. Morosnick's will, but two senior lawyers insist that it is:

I find the world is wonderful, God is good, but the people are crazy.

\* \* \*



Mark Shinbane, Duff Roblin and Louis Morosnick, at the moment Duff was declared the new leader of the Progressive Conservative Party of Manitoba on June 17, 1954.

Photo credit: University of Manitoba Archives & Special Collections, *Winnipeg Tribune* fonds, PC 18 (A81-12), Box 14, Folder 482, Item 9

## E.J. McMURRAY

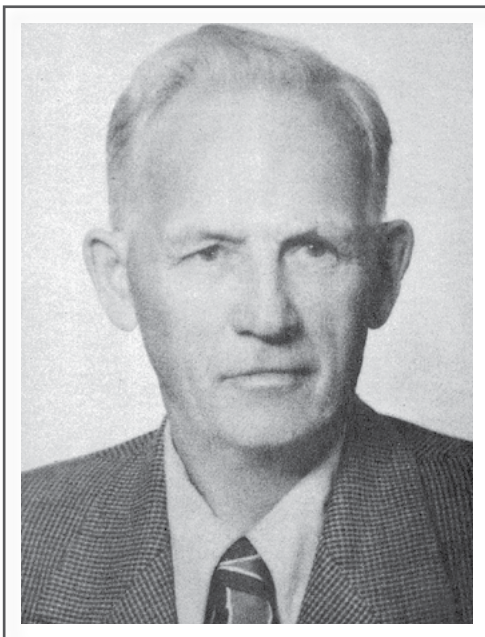
(1876-1968)

**He was a highly respected lawyer  
who dabbled in politics but preferred the courtroom.**

Edward James McMurray was born in Ontario and arrived in Winnipeg in 1880. He was a teacher before and while he went to law school. He was called to the bar in 1906.

Roy St. George Stubbs, *Prairie Portraits* (1954):

As a boy of nine in 1885, McMurray accompanied his father to a political rally. The best speaker was a barrister, and E.J. decided that was the profession for him.



### An Unusual Case

Roy St. George Stubbs (1954):

In 1917, McMurray defended a young man charged with murder. The accused was tried five times. In the last trial, the jury found him guilty with a strong recommendation for mercy on the ground that they were not sure of his sanity.

According to Stubbs, the death sentence was commuted to life imprisonment.

### Sedition Trials after the 1919 General Strike

Kenneth McNaught in "J.S. Woodsworth and A Political Party for Labour, 1896 to 1921" in (1949) 30 *Canadian Historical Review* 123:

In 1919, Fred Dixon tried to obtain McMurray to conduct his defence on a charge of seditious libel, but E.J. was already engaged by one of the eight men [George Armstrong] charged with seditious conspiracy. E.J. advised Dixon to undertake his own defence [which he did, successfully]. But when J.S. Woodsworth suggested that he undertake his own defence [on similar charges], E.J. gave the opposite advice, informing Woodsworth that he would be too likely to throw away his case in his zeal to underline the conflicting principles at stake.

Jack Walker, *The Great Canadian Sedition Trials* (2004):

On Saturday, March 20, despite being notified in court of his father's sudden death a day earlier, McMurray addressed the jury on behalf of George Armstrong. He told the jury that it was the most important trial ever heard in Canada: "This trial will be read by your descendants."

### Law, Politics & the Judiciary

James Gray, *Troublemaker!* (1978):

McMurray could dominate a courtroom while half dozing at the counsel table when his pedestrian opponents were supposedly occupying the spotlight. He was a master of the quiet aside and the loaded double entendre.

In 1921 McMurray was elected to Parliament for Winnipeg North, as a Liberal.

Lewis St. George Stubbs, *A Majority of One: The Life and Times of Lewis St. George Stubbs* (1983) – referring to his grandfather:

Stubbs' high opinion of McMurray as a man, lawyer and politician was not shared by John Dafoe, editor of the *Winnipeg Free Press*, who wrote to Clifford Sifton on March 12, 1923: "He is not well thought of in the city. He is pretty much a police court lawyer and has no particular standing in his profession. He is regarded as a man of very ordinary ability and not likely to measure up to the requirements of such a position as Minister of Immigration." On September 12, 1923, McMurray was appointed Solicitor General.

Roy St. George Stubbs, *Prairie Portraits* (1954):

On two occasions since 1925, McMurray has been offered a judgeship on the Queen's Bench. He refused and continued at the vocation that has always had first claim on his affections.

### ***The King v. Smith* (1934)**

A.E. (Albert Edward) Smith, *All My Life* (1949), referring to events in 1934:

This announcement sent a thrill through Toronto. "E.J. McMurray, former Solicitor-General for Canada, has been retained to defend A.E. Smith [on a charge of sedition under s.104 of the *Criminal Code*]." He was a lawyer of great skill and wisdom and unfailing courtesy and patience who conducted one of the most dramatic political trials in Canadian history in Winnipeg in 1920.... His address to the jury in the Smith trial was brilliant, dealing with the history of civil rights. He ripped the Crown's evidence to shreds.... The judge made a studied effort to appear fair while steering the jury to a "guilty" verdict. Six hours were required for the jury to make up their minds. Not guilty.

### ***The King v. Kardash* (1940)**

Doug Smith, *Joe Zuken: Citizen and Socialist* (1990):

On July 6, 1940, dozens of police officers engaged in a series of raids across Winnipeg. Over 20 members of the Communist Party were taken into custody.... E.J. McMurray defended William Kardash. He lectured the court on Kardash's accomplishments during the Spanish Civil War, concluding, "You ought to take your hat off before this man. He fought against fascism before you ever heard the word or knew there was such a thing." Kardash was one of the few acquitted of charges under the 1939 *Defence of Canada Regulations* under the *War Measures Act*.

### ***The King v. Deacon* (1947)**

In 1954, McMurray estimated that he had acted as defence lawyer in 60 to 70 murder trials. Lawrence Deacon was the only one of his clients who was executed.

Roy St. George Stubbs (1954):

On March 31, 1946, the body of a taxi driver was found in a vacant lot in Winnipeg. Deacon was charged with murder. The chief witness for the Crown was a woman who gave four different versions of her story.... McMurray remained firm in the conviction that Deacon was innocent. Deeply depressed by the final verdict, he determined to draw his criminal practice to a close.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

A case that stirred public interest was the trial of Lawrence Deacon, convicted of murder in 1947. The case marked the end of McMurray's career as a defence counsel. A very conscientious barrister, he was convinced that his client was innocent, and he blamed himself for the conviction. He vowed never to take an important criminal case again.

William Morriss, *Watch the Rope* (1996):

Of the seven cases in this book, in which all the accused men were executed, there is one [Deacon] where there is far more than a reasonable doubt as to his guilt.

## Legacies

Jack Batten, *In Court* (1982):

Harry Walsh articulated with McMurray, who was for decades Winnipeg's wizard of the criminal courts. Walsh assumed his mentor's starring role in the courts.

Harry Walsh (1913-2011) continued McMurray's legacy by specializing in criminal law and mentoring dozens of lawyers during his 71 years of practice. For some highlights of his career see *Tales from the Underworld* (2009).

Mr. McMurray left the residue of his estate (\$63,000) to an endowment fund at the Winnipeg Foundation. Interest earned by the Fund is used on his direction "to provide scholarships and educational opportunities for children born of Indian parents in Manitoba."

\* \* \*

## SOLOMON GREENBERG

(1894-1958)

**He was a courtroom legend in his own time.**

Professor Cameron Harvey, "Manitoba and Other Legal Trivia" (around 2010, unpublished):

Solomon Greenberg was born in Odessa, Russia. His father died in 1901, leaving a 35 year old wife and seven children. The family emigrated to Canada in 1911. In 1915 he graduated from St. John's High School and registered in law school. He was considered one of the best criminal lawyers in western Canada, with 99 of his cases reported. He became a legend in his profession and a hero to his clients, who were mostly people of modest means.



Ken Filkow remembers his uncle:

My father's sister was married to Solomon Goodman, a very well known lawyer who specialized in litigation. At family functions he would expound on the law and his cases. I remember him as an old gentleman, very pleasant and interesting but rather dry and scholarly. His firm at the time of his death was Greenberg, Arpin and Rich. He died before I articled with Maurice Arpin in the 1960s in what had become Arpin and Company.

Cameron Harvey (c. 2010):

During World War Two, Mr. Greenberg defended members of the Communist Party charged under the *Defence of Canada Regulations*. As a result of those and other cases, he was never accepted by the establishment.

In 1958, Mr. Greenberg died of a heart attack in "Courtroom Number 1" in the Law Courts Building. In 1972, the NDP government granted him the first and only posthumous Q.C. in order to remedy, in the words of Attorney General Al Mackling, "a long overdue omission."

Doug Smith, *Joe Zuken: Citizen and Socialist* (1990):

Zuken believed that the Q.C. award had been debased over the years to the point where it was a reward for political loyalty rather than legal ability. He nevertheless accepted a Q.C. in 1970. "One reason I accepted it was Solomon Greenberg, in order to prove that one has the right not to be discriminated against politically."

## A Famous Feud

Dale Gibson in "An Anecdotal Sampler" in *The Law Society of Manitoba 1877-1977* (1977):

The feud between Greenberg and his former close friend, Justice Arnold Campbell, apparently began with Campbell's pique at how Greenberg couched an appeal from his first decision as a judge. The feud raged for years.

One legend has it that Greenberg was cross-examining a witness before Campbell when the witness pulled a gun.

Campbell calmly said to Greenberg, "Well, don't stand in front of him. Serves you right anyway, the way you were badgering him." Not so well known is that when Greenberg was stricken in the courtroom, it was Campbell who rode with him to the hospital in an ambulance.

## A Legacy

Every Manitoba lawyer and law student knows Mr. Greenberg's name thanks to a donation by his wife to the Faculty of Law in 1964 to provide a prize for the student judged to be the best presenter in the annual "Solomon Greenberg Moot Court Competition." The Manitoba Bar Association later donated additional funds and a prize for the first runner up.

\* \* \*



Three of Winnipeg's oldest, largest, most prestigious and expensive law firms—Aikins, Pitblado and Fillmore—with a combined total of about 250 lawyers, are conveniently located in this one building, just a few steps south of Portage and Main.

## PART 5

### CORPORATE & COMMERCIAL LAWYERS

## JAMES AIKINS (1851-1929)

**In 1879 he founded a law firm  
that continues today under his name.**

James Albert Manning Aikins (also known as “Jam” or “Jammie” in his time) was born in Ontario and was called to the bar there in 1878. He was called to the bar of Manitoba in 1879.

The notes that Mr. Aikins prepared for the 50<sup>th</sup> anniversary of his call to the bar are found at (1929) 4 *Canadian Bar Review* 235. He recalls arriving in Winnipeg where there were then 12 lawyers, 1200 people on the voters’ lists, and a lot of mud, puddles and mosquitoes. Why did he come?

What spirit led me to come West in July 1878, I have failed to discover.

### Aikins Was There

The law firm of Aikins, MacAulay & Thorvaldson (also known as Aikins Law or just Aikins) issued a statement on its 125<sup>th</sup> anniversary (2004):

On February 19, 1879, James A.M. Aikins published his first professional advertisement in the *Manitoba Free Press*: “J.A.M. Aikins Barrister, Attorney, Solicitor, etc. Office over Parsons and Richardson’s Store, Main Street, Winnipeg. Money to loan on good mortgage security. No commission.”

His office was 10 feet by 12 feet and was located over a stationery and book store. Heated only by a stove pipe, it was a term of his lease that he keep his landlord’s ink bottles warm during the winter months.

The Aikins firm is the oldest and largest in Winnipeg, with about 95 lawyers. Since it was founded, the name has changed at least 20 times as lawyers have come and gone, but Mr. Aikins’ name has always been first.

### A Workaholic in Perpetual Motion

From “Winnipeg’s Ever Widening Circle of Millionaires”, in the *Winnipeg Telegram* (January 29, 1910):

J.A.M. Aikins holds the somewhat unique position of being a millionaire lawyer. He is a many-sided man. He is yet in the prime of his manhood and his great intellectual power. He is an indomitable worker.

Lee Gibson describes Mr. Aikins in her excellent biography of the firm, *A Proud Heritage: The First Hundred Years of Aikins, MacAulay and Thorvaldson* (1993):

Intelligence of a common-sense variety; imagination grounded in conventional moral and social values; venturesomeness tempered with caution; monumental determination and self-confidence; and vigour that seemed at times to resemble perpetual motion. His eloquence made him a very effective courtroom counsel and a riveting platform speaker. In short, he was a driven, omnicompetent workaholic.

### An Elite View of the Profession

Harold Dick in “Cultural Chasm: Mennonite Lawyers in Western Canada 1900-1919” in *Lawyers and Vampires* (2003):

The goal for Aikins and the legal profession in 1919 was to ensure the survival and growth of a British, liberal, capitalistic and democratic society, and to entrench the position of the legal profession within that society.... Most Western Canadian lawyers at the time believed the interest of the legal profession and those of civilized society to be identical. Lawyers were said to be qualified by training, experience and commitment to service as natural leaders of the people in public affairs.

Mr. Aikins was President of the Canadian Bar Association from its revival in 1915 until 1927. He was Lieutenant Governor of Manitoba from 1916 to 1926.

## Blemishes

Cameron Harvey in “Some Benchers and Secretaries” in *The Law Society of Manitoba 1877-1977* (1977):

It is not inappropriate and only fair to mention that Mr. Aikins had blemishes. By comparison to a contemporary such as Isaac Campbell, he was by no means a universally popular, well-liked man, and he was by reputation capable of being niggardly when it came to money, despite his generous donations to the Canadian Bar Association, several universities, the United Church and other organizations.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

A humourless man of Methodist persuasion and consuming ambition, he found little time to develop close personal relationships. Nevertheless few in the profession would deny that he was an uncommonly competent lawyer, or that he devoted as much of his talent and energy to the interests of his province and his profession as to the amassing of personal wealth.

## In Conclusion

To mark his 50<sup>th</sup> year in practice in 1929, Mr. Aikins generously invited every lawyer in Manitoba, and many from across the country, to a dinner on Monday, February 25. More than 400 attended.

Two of Mr. Aikins' old friends, lawyer Isaac Campbell and Judge Hugh John Macdonald, were too ill to attend the dinner. He visited them on February 23.

E.H. Coleman, in part of a group *Editorial*, at (1929) 4 *C.B.R.* 220-222:

Mr. Aikins called at their homes and returned to his rooms, only to be seized with the attack which had its fatal termination on March 1. Macdonald was one of the oldest and most cherished of his friends. Four weeks from the day we carried Sir James to his last resting place in St. John's Cemetery, Hugh John was laid there, only a few feet distant.

The dinner went ahead as planned, but without Mr. Aikins. The speech he prepared for the occasion was read by Isaac Pitblado.

This is the conclusion of Hugh Robson's “Biographical Sketch” at (1929) 4 *C.B.R.* 266-274:

Mr. Aikins' body lay in state in the Legislative Chamber from 10 o'clock to 1:30 on March 1. There were present many of those who had been within his sphere of work during his restless, impatient days. To those, it was not the lying in state or the imposing ceremonies or the reverent throng that made the impression. It was the fact that there in the midst of it all lay the last of “Mr. Aikins.”

## A Pivotal Moment for the Firm

Peter C. Newman in *The Canadian Establishment: The Acquisitors* (1981) and in *Izzy* (2008):

Martin Freedman [of the Aikins firm] is one of Winnipeg's ablest corporate counsel.... A moment of pure epiphany occurred in 1980, expressing the transfer of power from old WASP Winnipeg to a new, unprejudiced way of doing things. Factions of the Sifton family had been hurling insults at one another through lawyers and the press. The last of Victor Sifton's children exploded. She announced, “Only Martin Freedman speaks for the Siftons!”

## In the 21<sup>st</sup> Century

An advertisement in the *Winnipeg Free Press* (February 14, 2015):

From the moment Sir James Aikins was elected the first president of the Canadian Bar Association [in 1915] until today, we are building a history of success for our clients and our community.

Aikins, MacAulay and Thorvaldson LLP  
AIKINS Law



## JOHN MACAULAY (1895-1978)

**He was the dynamo who inherited the Aikins' law firm and accepted the Nobel Peace Prize for the Red Cross.**

John Alexander MacAulay was born in Morden, Manitoba. He served overseas in World War One and received his law degree in Winnipeg in 1918.

Lee Gibson, *A Proud Heritage: The First Hundred Years of Aikins, MacAulay and Thorvaldson* (1993):

The sixth of seven children of a not very prosperous farm family, he taught school for several years. His friendly manner, easy smile and plain speaking graced a brilliant mind, creative imagination and supreme self-confidence.... By the 1950s his renown was international, especially in the fields of art and humanitarianism. Of his many roles—lawyer, businessman, art connoisseur, diplomat and philanthropist—none was played more stunningly than his star turn as director and dynamo of the law firm he inherited from James Aikins.

### Suddenly a Corporate Lawyer

Robert Sharpe and Kent Roach, *Brian Dickson: A Judge's Journey* (2003):

In 1928 MacAulay was in California. He was regaling his golfing partners in the locker room when the fellow beside him asked what he did. He answered he was a lawyer and the fellow said, "I am head of Safeway in the U.S. and we need a legal firm to represent the company in Canada." MacAulay accepted the offer and turned his attention from litigation to corporate law and business.

Lee Gibson (1993):

The president of the corporation was so gratified by the five million dollar tax refund that he gave instructions to double MacAulay's fee, regardless of what it turned out to be. But when the bill arrived, he observed, "The son-of-a-gun has already doubled it!"

Dale Gibson in "An Anecdotal Sampler" in *The Law Society of Manitoba 1877-1977* (1977):

In the 1950s, many lawyers who indulged in a lunch-hour relaxant would restrict themselves to vodka, which would be less discernible to afternoon clients. MacAulay gave his colleagues advice: "If you're going to drink at noon, make it scotch. I'd rather have clients knowing you're drunk than thinking you're stupid!"

### The Nobel Peace Prize

Mr. MacAulay was president of the Manitoba and Canadian Red Cross during World War Two, and chair of the Board of Governors of the International League of Red Cross and Red Crescent Societies from 1959 to 1965. In 1963 he accepted the Nobel Peace Prize on behalf of the League and delivered one of the acceptance speeches in Oslo.

Mr. MacAulay was awarded the Red Cross Legacy Award in 2015.

\* \* \*

**ISAAC PITBLADO**  
(1867-1964)

**He was a living legal legend  
who practised law for 74 years.**

Mr. Pitblado was born in Nova Scotia. His father, Reverend Charles Pitblado (1836-1913), had an interesting career that included acting as chaplain during the 1885 North-West Rebellion and as part of Louis Riel's escort from Batoche to Regina for trial. Isaac came to Winnipeg in 1882, and was called to the Manitoba Bar in 1889.

David Ricardo Williams, *Just Lawyers: Seven Portraits* (1995):

**Pitblado held a firm belief that work keeps a man alive, and he followed his own advice, maintaining regular hours at his office until the last two years of his life.**



### Standing Tall in 1903

Anna Tillenius, *Learned Friends: Reminiscences—Pitblado & Hoskin 1882-1974* (1974):

**In every generation a small select group of men appear who by reason of their intellect and energy stand tall above the crowd. They emerge as natural leaders in their sphere and draw unto themselves men of like stature in a communion of mind and spirit.... They came together in 1903 initially known as the firm of Campbell, Pitblado, Hoskin and Grundy.**

### A High Point: Sedition Trials

Pitblado and A.J. Andrews were prosecutors in two of three high-profile trials following the 1919 Winnipeg General Strike in which eight men were accused of conspiring to overthrow the governments of Canada, Manitoba and Winnipeg. Andrews handled the cases in court and said it was easy because Pitblado did all the work.

The General Strike was a hobby for Jack Walker (c.1935-1994) after he began practising law in Winnipeg in 1961. His book was published in 2004 as *The Great Canadian Sedition Trials: The Courts and The Winnipeg General Strike 1919-1920*.

Walker refers to a problem he had in researching the topic:

**As I approached people, many asked, "Whose side are you on?" While many were cooperative, many were reluctant and suspicious.... I met with Isaac Pitblado. He was in his 90s, alert and still head of a large firm of lawyers in Winnipeg. He refused to talk about the trials: "Nothing could be gained except to stir up old animosities."**

For a summary of the General Strike and the three sedition trials that followed it, see *Notable Trials from Manitoba's Legal History* (2015) by Norm Larsen.

In 1920, Bill Pritchard, a longshoreman from Vancouver, was tried with six others ("The Winnipeg 7") with seditious conspiracy. Addressing the jury at the trial, he poked fun at Pitblado, who had just received an honorary doctorate from

Dalhousie University:

I am not a vindictive kind of chap, and I can easily forgive Mr. Andrews [for prosecuting the seven men], but I am not so charitably inclined towards Dr. Pitblado. To me he appears to be educated somewhat, and ought to have known better.

## Opportunities

Mr. Pitblado rejected many offers to run for political office and to be appointed a judge.

Dale Brawn, *Paths to the Bench: The Judicial Appointment Process in Manitoba, 1870-1950* (2014):

During Pitblado's remarkable career, he was a bencher of the Law Society for 63 years, and he was elected president of the Canadian Bar Association. He enjoyed his time at the bar and was not prepared to leave law for politics or the bench.

## A Sense of Humour

David Ricardo Williams (1995):

Pitblado enjoyed cracking jokes. Several times he told the same story, one of the better examples of a lowly genre. During the Napoleonic wars, a group of lawyers in London raised a regiment that was reviewed by the king. When the king inquired what the regiment's name was, the colonel said that no name had yet been picked, whereupon the king suggested "The Devil's Own."

One of W.P. Fillmore's anecdotes in "The Lighter Side of the Law", (1973) 39 *Manitoba Bar News* 114 is quoted by Anna Tillenius (1974). W.P. refers to a court case in which the Pitblado firm acted for the plaintiff and Fillmore acted—successfully—for the defendant:

Much to my surprise the judge said, "The action is dismissed." I waited in the courtroom while he wrote his decision on the file. He said, "You know, Fillmore, the Pitblado firm does not know how to run a law office." I said, "How is that, judge?" He said, "They fired my son last week."

## An Anecdote about an Anecdote

In his review of two books of anecdotes in the *Globe and Mail* (October 1, 1968), Larry Zolf includes an anecdote about an anecdote:

All of us press people were gathered in John Diefenbaker's office when he told his favourite Jewish joke. Winnipeg was not hospitable in the 1920s, to what Dief called "members of the Hebraic persuasion." The Grain Exchange put out a bulletin depicting Aaron Sapiro as a communist. He sued for libel. The Exchange hired the legendary Isaac Pitblado for its defence. With Sapiro on the witness stand, Pitblado—hoping to convey to the jury that Sapiro was Jewish and counting on anti-Semitism to help his client's cause—asked, "Is not your first name Aaron?" Sapiro answered, "Yes it is, Isaac." The jury broke up and Sapiro won the case.

## "Mr. Freight Rates"

Most lawyers regard litigation as a younger person's game. Mr. Pitblado did not.

From the *Ottawa Journal* (October 2, 1948):

Mr. Freight Rates himself [Pitblado] came to Ottawa to show the young fellows a trick or two. Members of the Federal Cabinet, some of whom were in diapers when Pitblado started building his reputation as a freight rates expert, got an eyeful and an earful as the 81 year old spry oldster laid down the law to them. After listening to the argument of the provinces, he rattled off a two hour rejoinder, much of it off the cuff, and delivered it at machine-gun pace.

From the *Winnipeg Free Press* (April 16, 1951):

From coast to coast no lawyer is better known. No man of his profession has more often dominated the legal forums of the country. One would think that lapse of years would dull the edge of his argument. But not with Pitblado. Today, at 84, he acted like a man of 55. His assignment demanded presentation of facts covering 45 years. The order in which he marshalled them and the arguments deducted from them were crystal

clear. Someone suggested that he take a chair. He said, "I'll do this job standing up!" And he did, for four and one-half hours.

### Life's Assets

Mr. Pitblado is quoted by Anna Tillenius (1974):

The lasting asset of real value that a man gets out of life is not the honours. They whither in the brightness of tomorrow's sun. Nor the amount of money accumulated, which may vanish over night. Nor the successes achieved, which are soon forgotten. My 90 years have taught me that the only real assets of a man's life are friendships, religion and a happy home.

### Mr. Pitblado & the Paranormal

Barbara Smith, *Ghost Stories of Manitoba* (1998):

The law and the paranormal must be considered to be at opposite ends of a continuum. Law is pragmatic and impassive. Its strength lies in hard evidence. The world of the paranormal is more like a religion in that it is based on faith and superstition.

Mr. Pitblado's interest in the paranormal gave added credibility to the credible Dr. Glen Hamilton of Winnipeg.

### Dr. Hamilton

Dr. Glen Hamilton (1873-1935) has an impressive resume that includes five years as an MLA (1915-1920). He researched psychic phenomena from 1920 until his death. His observations were published in 1942: *Intention and Survival: Psychical Research Studies and the Bearing of Intentional Actions by Trance Personalities on the Problem of Human Survival*.

Winnipeg lawyer H.A.V. Green wrote the Foreword to the book:

One lesson that can be learnt from the rules of evidence is that of the fallibility of human witnesses. Too often lawyers are forced to realize the frailty of their fellow beings as recorders of facts. The observations of Dr. Hamilton were always careful and exact.... He was a man of probity and intelligence. It was

for that reason he made so profound an impression on medical men and on the public generally when he came forward as a witness of psychic phenomena.... He was a man whom to know was to accept his word.

### Conan Doyle

Conan Doyle, famous as the creator of Sherlock Holmes, participated in a séance at Dr. Hamilton's home in Winnipeg on July 4, 1923. Part of the experience was seeing water turn into a red substance that some observers took to be wine.

Doyle is quoted in *The Wild Is Always There* (1993), edited by Greg Gatenby:

I have a deep distrust of ritual and form and sacraments, and here were all those things. Yet they were solemn and moving, and nothing can exceed the absolute faith of these men and women.... I came away with the conclusion that Winnipeg stands very high among the places we have visited for its psychic possibilities.

### Walter

Barbara Smith (1998) describes a séance in Winnipeg in 1930:

Pitblado's affidavit of more than 1,000 words attests to the sophisticated measures taken to ensure the legitimacy of the contact with Walter, the spirit who had requested Pitblado's attendance.... There was clearly the image of an extra person in each of the photographs. The controlled conditions under which the experiment was conducted certainly make its integrity convincing.

### Legitimacy

Measures taken by Mr. Pitblado at the seances to ensure their legitimacy are described by James Nickels in "Psychic Research in a Winnipeg Family: Reminiscences of Dr. Glen F. Hamilton" in *Manitoba History* (Number 55, 2007). For example, the doors and windows to the room were sealed, and Mr. Pitblado personally examined the participants.

Mr. Pitblado's involvement is described by David Ricardo Williams in *Just Lawyers: Seven Portraits* (1995). See also Bill Redekop, *Crime Stories: More of Manitoba's Most Famous True Crimes* (2004).

Carolyn Gray, in "Playwright's Notes" for her play about the seances, *The Elmwood Visitation* (2007):

**I wish to specifically point out that in my research I never found a hint of impropriety or falsity in any of the dealings involving Dr. Glen Hamilton and his wife Lillian.**



Isaac Pitblado (left) & W.P. Fillmore

\* \* \*

## W.P. FILLMORE

(1882-1978)

**He was a giant of the profession,  
known and remembered particularly  
for his sense of humour.**

William Parker Fillmore arrived in Winnipeg from Iowa in 1902. He was called to the bar in 1907 and practised law for 65 years.

Gerald Jewers, *Manitoba Justice* (2013):

**W.P. Fillmore was perhaps the premier civil litigator of his day. He was active with the same law firm all of his life, and today it is still one of the leading law firms in Manitoba under its current name of Fillmore Riley.**

Mr. Fillmore was first part of the firm's name in 1913. It is now one of the largest firms in Winnipeg with about 70 lawyers.

Cameron Harvey in "Some Benchers and Secretaries" in *The Law Society of Manitoba 1877-1977* (1977):

**Fillmore was in no way a pretentious man. In 1947 he was thusly described: "With a slouch, shambling gait, and a diffident air, he looks as though he'd be at home beside the cracker barrel in a crossroads general store and talks in a lazy drawl that's a relic of his Iowa youth."**

Dale Gibson in "An Anecdotal Sampler" in *The Law Society of Manitoba 1877-1977* (1977):

**As both a raconteur and the subject of countless stories, Fillmore has probably contributed more to perpetuating the mythology of the province's legal profession than any other living lawyer.**

## A Lively Sense of Humour

Mr. Fillmore was the guest speaker at a bar luncheon at the St. Regis Hotel in 1972. He told a string of amusing anecdotes from his life. His notes were published as “The Lighter Side of the Law” in (1973) 39 *Manitoba Bar News* 114. This is the first sentence:

I seem to have had a penchant for bringing out the humour in almost any situation.

This is the first anecdote in the article:

As a student, the first client I interviewed was sent by a lawyer from another law firm. The client had come from the U.S. to join her husband, who was working for the firm. She found that he was living with another woman in a one room apartment. She said they were all staying in the room. I asked how many beds there were, and she said “one” and I said “Where do you sleep?” and she said they all slept in the same bed, with her in the middle. I said “Is that a satisfactory arrangement?” and she said “No.” I said “Why not?” and she said, “I do not like them holding hands across my stomach.”

Also from Mr. Fillmore’s article:

Around 1944, one judge in the Court of Appeal was mentally incapable, another was nearly blind, and another was hard of hearing. There was also a County Court Judge named Joe B. He was a gentleman, but he had more experience in politics than in court and he was allergic to books. When the Chief Justice of the Court of Appeal was about to retire, I remarked, “Why not elevate Joe to the Court of Appeal and improve both courts?”

Norm Larsen attended the luncheon in 1972, and recalls Mr. Fillmore telling an anecdote that does not appear in his article:

W.P. said that in his youth, law students would sometimes get together at a speakeasy for an illegal drink. On one occasion he went with two other students. The police raided the place, lead by the Chief of Police, who knew Fillmore and his family. The Chief announced that people could leave without charge if

they gave their names. At W.P.’s table, the Chief asked one of the students, “What’s your name?” He answered, “John Smith.” The Chief said he could leave, and asked for the next fellow’s name. He said, “Joe Jones.” The Chief said he could leave, and then turned to W.P. “All right, Fillmore. What’s your name?”

An anecdote told by Dale Gibson (1977) and Gerald Jewers (2013):

Fillmore acted for a company that was sued for refusing to pay for a shipment of frogs that were dead on arrival. When the judge commented on the lack of evidence as to why the frogs died, Fillmore said, “I suggest your lordship can take judicial notice that frogs packed like these were bound to croak.”

## Cost & Value

Joe Wilder, class of 1960, recalls a courtesy from Mr. Fillmore:

I had practised law for a couple of years when I got a call from W.P. Fillmore: “Can you come to my office?” Of course, I was pleased to meet a giant of the profession. At his office, he told me I had missed a deadline in a case in which he was acting for the other side. He said he was not taking advantage of my mistake. He said, “Let this be a lesson to you. Don’t take advantage of another lawyer’s slip.” I have always remembered that lesson, and I have had occasion to pass the favour on to other lawyers.

Sid Green recalls Mr. Fillmore’s evaluation of a colleague:

I had a case in which I consulted W.P. Fillmore. He assigned Jim McLachlan, a member of his firm, to help me. After Jim and I went to court and recovered about \$10,000, I got a bill from Fillmore for ten dollars. When I ran into Fillmore and McLachlan socially, I mentioned the bill. This was news to Jim. He said to Fillmore, “I did all that work and you charged only ten dollars?” Fillmore said, “I wouldn’t want to charge more than you’re worth.”

In his 1973 article, Mr. Fillmore gives an example of a bill from when he first became a lawyer:

April 1	Letter to you.....	\$2.00
April 4	Perusing letter from you.....	\$1.00
April 5	Attending across the street to interview you when discovered it was not you.....	\$2.00

Parker Fillmore, W.P.'s grandson, is quoted in the firm's newsletter, "The Brief" (Spring 2010):

**My grandfather had a reputation for not charging clients enough. There is a story about how he resolved a matter that brought the client tremendous relief. When the client received the bill, he called my grandfather and said, "I think you left a zero off your bill."**

\* \* \*

**ISRAEL (IZZY) ASPER**  
(1932-2003)

**He was a lawyer, politician, media mogul, litigant, philanthropist, and a jazz aficionado.**

Peter C. Newman, *Izzy: The Passionate Life and Turbulent Times of Izzy Asper, Canada's Media Mogul* (2008):

**Israel Harold Asper was one of the most charismatic and combative Canadian tycoons of the past quarter century, the quintessential entrepreneur, constantly in flight and flux. His biggest challenge was to catch up to himself—and he never did.**

Catherine Mitchell in "Asper hails parents with \$2 million pledge" in the *Winnipeg Free Press* (April 20, 1996):

**Leon Asper figured his youngest son would never amount to much, something Izzy confirmed for him when he became a lawyer.**

Mitchell explains that Mr. Asper's attitude was based on his memories of how hard it was for lawyers to make a living during the 1930s.

**Creative & Charming**

Jack London remembers Mr. Asper:

**Izzy was the most creative man I ever met. I have never known anyone with his vision and his capacity to marshal facts, circumstances and ideas into a brilliant plan. He was an absolute genius and a charming rogue, which is about the best combination you can have if your objective is to make a billion dollars—which he did.**

Mr. Asper is one of about 40 people named “the greatest” in *The Greatest Manitobans* (2008), published by the *Winnipeg Free Press*. The only other lawyer in the book is corporate lawyer Harold Buchwald (1928-2008).

Jim Carr of the Business Council of Manitoba is quoted in the book:

Asper had a combination of personal charm and shrewd toughness. He was nourished by his roots in Manitoba, but his influence spread worldwide.

## All That Jazz

Peter C. Newman, *Titans: How the New Canadian Establishment Seized Power* (1998):

Although Izzy Asper spent most of a decade studying at the University of Manitoba to be a lawyer, the most significant aspect of his education was to nurture his affinity for jazz.

Jennifer Wells in “Izzy’s Dream” in *Maclean’s* (February 19, 1996):

In “the Gershwin Room” in Asper’s home hangs the contract in which George Gershwin in 1927 sold the rights to “Rhapsody in Blue” to RCA Victor for \$300.

Peter C. Newman quotes Asper about articling in the 1960s, in *Izzy* (2008):

An articling student in those days was the guy who took the urine samples from clients to the insurance companies, and that was essentially what I did.

## Tax Lawyer

Gerry Schwartz, who articulated with Asper and became his business partner, is quoted by Allan Levine in *The CanWest Global Story: The First Twenty Years—1977-1997* (1997), referring to Asper in the 1960s and 1970s:

Izzy was by far the smartest, most aggressive, brilliant lawyer, not only in Winnipeg, but in Canada. He was the pre-eminent tax lawyer in the country.

Nick Ternette, *Rebel without a Pause* (2013):

I spent my 26<sup>th</sup> birthday [at home, in 1971] with Izzy Asper. He wasn’t a Liberal. He was a libertarian. We had 20 NDPers surrounding him in a corner of a room. I don’t know how he survived the party, but he stayed for four hours. He probably loved the challenge.

## Business Rules of Engagement

Asper’s comment at the time he was inducted into the Canadian Business Hall of Fame is quoted in *The Quotable Tycoon* (2002), compiled by David Olive:

If at first you don’t succeed, welcome to the club.

Olive quotes Asper on “how he regarded his life as a media baron”:

It doesn’t bring you new friends. It only brings you a better class of enemies.

Asper is quoted by Peter C. Newman in his Introduction to *The CanWest Global Story* (1997):

No matter what your partners agree to when they go into a transaction, ultimately they forget what they had for breakfast when it comes time for lunch. I learned the hard way that amnesia is the curse of the business world.

## Litigation for Fun, Profit & Pain

Lawyers are reputed to drive cautiously, with a foot on the brakes, while entrepreneurs like Mr. Asper like to drive with both feet on the accelerator.

Peter C. Newman, *Izzy* (2008):

He was able, thanks to his legal training, to use the courts almost as branch offices that enforced his edicts.

Newman quotes an executive who worked for Asper:

He absolutely loved litigation. His attraction to court actions



speaks to the idea that if you were king, and if you believed that you were on the right side of the facts, you had to accept challenges. It was a sport. It was fun to try to prove yourself right.

Jennifer Wells in “Izzy’s Dream” in *Maclean’s* (February 19, 1996):

Asper lives his life by axioms. One could be “another day, another lawsuit.” His career has been marked by corporate courtroom fights, which he usually wins.

David O’Brien in “Israel Asper 1932-2003—Larger than Life” in the *Winnipeg Free Press* (October 8, 2003):

The chain-smoking, tough-as-nails businessman developed a reputation in some circles as a scrapper because of his willingness to sue at the drop of a hat. He once advised, “Never get into a war, but if you do, take no prisoners.” But most people remember a man who was kind, generous and thoughtful.

Allan Levine, *The CanWest Global Story: The First Twenty Years—1977-1997* (1997):

After months of bitter haggling, Paul Morton and Seymour Epstein launched a \$50 million breach-of-contract lawsuit against Asper, who countersued. The battle took nearly five years to resolve, producing more than 10,000 pages of testimony and a ton of work for an army of lawyers that generated millions of dollars in legal fees.

Peter C. Newman (1998):

If taking over ultimate control of Global TV took 14 years of brain-numbing, soul-testing maneuvers and the payment of enough lawyers’ fees to finance their kids and grandchildren through university in perpetuity, well, that was the going price, and Asper paid it. He paid not only in dollars but with the psychic agony involved in suing former friends and colleagues. But he knew it would eventually be worth the money and the trouble. And it was.

## What Made Izzy Run?

Peter C. Newman, *Izzy* (2008):

His father died in 1961, when Izzy was 29 and monumentally unsuccessful. It was much too soon to validate his chosen profession. The time gap created an aching, open wound in Israel’s psyche from which he never recovered. That sense of being robbed of the opportunity to prove his father wrong, haunted him the rest of his life. And that’s what made Izzy run.

## A Legacy for the Ages

The following is from “A Message from Israel Asper”, from the website of the Asper Foundation (retrieved in April 2016). He wrote it in July 2003:

When I established The Asper Foundation in 1983, I gathered my three children [all lawyers] for a family meeting. They were then in their twenties. I told them that I had just incorporated a foundation that was to be treated as the fourth Asper sibling, and that all four siblings would inherit the family assets equally. I advised them that it was my strongest desire that they work together to carry out the objectives of the foundation. This would be their opportunity to do something useful with their lives and make a difference.

On April 17<sup>th</sup>, 2003—the 21<sup>st</sup> anniversary of the Canadian Charter of Rights and Freedoms—I, with our federal and provincial governments and the City of Winnipeg partners, announced the potential creation of a groundbreaking \$270 million Canadian Museum for Human Rights. This will be the largest human rights museum in the world and I am proud to have it located in my hometown of Winnipeg.

The Canadian Museum for Human Rights, located at 86 Israel Asper Way, opened on September 20, 2014.

\* \* \*

## PART 6

# MAVERICKS & OUTLIERS

## JOHN SCHULTZ

(1840-1896)

**In his lifetime he successfully fought the law and Riel, but he has lost the verdict of history.**

John Christian Schultz was born in Upper Canada and arrived at Fort Garry in 1861. He accomplished a good deal in his new home, including terms as an MP, Senator, and Lieutenant Governor, but he has had many enemies and detractors.

### Schultz v. Riel

Professor R.O. MacFarlane, in "John Christian Schultz" in *Canadian Portraits: C.B.C. Broadcasts* (1940):

In the Red River Valley, Schultz was more admired by his friends and more hated by his enemies, than any man of his generation, with the possible exception of his arch enemy, Louis Riel. Schultz won the battle against his Metis adversary. He achieved wealth and public office. Yet he is just a name to most Manitobans. On the other hand, the career of his defeated enemy is known to every Canadian schoolboy. Such are the uncertainties of the conflict with oblivion.

From "Louis Riel's Legacy", an editorial in the *Winnipeg Free Press* (February 18, 2008—the first "Louis Riel Day" in Manitoba):

It is both fair and true to say that history is on Riel's side.

### The Bright Side

R.G. MacBeth, *The Making of the Canadian West: Reminiscences of an Eyewitness* (1898):



The formidable John Schultz

Schultz stands out as a man of culture and refinement as well as of courage and strength. As a public speaker he excelled by reason of his perfect coolness, his musical, well-modulated voice, his choice language and clear-headed statesmanship.

F.H. Schofield, *The Story of Manitoba* (1913):

Schultz stood as a type of the ideal citizen in his devotion to the general welfare, in the nobility of the principles that governed his life, and in his high and lofty patriotism.

Professor R.O. MacFarlane (1940):

Whatever one might think of his political tactics, there is no denying the influence he exerted on the history of western

Canada in the most critical years of its development. No man did more to secure the annexation of the Red River Colony by Canada. Few served their country with more vigour and zeal.

James Jackson, *The Centennial History of Manitoba* (1970):

Despite his universal unpopularity among the natives of Red River, he rose to great heights of wealth and office in his adopted province.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

John Schultz, an entrepreneur of great ability but limited scruple.

## The Dark Side

R.G. MacBeth (1898):

He possessed almost incredible strength and a somewhat inflammatory cast of mind.

Arthur Morton, *A History of the Canadian West to 1870–71* (1939):

Grasping by nature and utterly unscrupulous.

Alvin Gluek, *Minnesota and the Manifest Destiny of the Canadian Northwest* (1965):

As a citizen, he put himself above the law. As a businessman, he behaved unethically. As the owner and editor of a newspaper, he was unscrupulous and irresponsible.

R.W.W. Robertson, *The Execution of Thomas Scott* (1968):

Schultz was born to make trouble. He was hated and feared by the Metis.

James Jackson (1970):

He was regarded as outstandingly unscrupulous. He seemed to go out of his way to court unpopularity,

Gerald Friesen, *The Canadian Prairies: A History* (1984), quoting Roderick Campbell:

Fate manufactured a scoundrel out of material meant by Nature for a gentleman.

Maggie Siggins, *Riel: A Life of Revolution* (1994):

There are few villains in Canada's frontier history as menacing as Schultz. He was an aggressive, obnoxious bigot.

## He Fought the Law—and Won

Schultz owned the *Nor'Wester* newspaper from 1864 to 1868 and was the proprietor of a store. In 1867 a creditor sued him. Schultz lost the case, but refused to pay the amount of the judgment, 300 pounds.

Roy St. George Stubbs, *Four Recorders of Rupert's Land* (1967):

The Sheriff was instructed to seize Schultz's goods to the amount of the judgment.... The Sheriff charged that Schultz assaulted him. A Justice of the Peace ordered Schultz committed to prison. In the early hours of the following morning, Mrs. Schultz and some 15 others entered the prison, overpowered the guard and freed him.... A petition, expressing disapproval of his unlawful behaviour, was signed by 804 citizens [but he did not return to jail]. He deliberately played fast and loose with the law.

Donald Gunn and Charles Tuttle, *History of Manitoba* (1880):

No attempt was made to recapture Schultz, but a General Council was held to consider the position of the HBC rule. The authorities granted him a new trial. He was allowed to plead his own case, and received, amidst the acclamations of the spectators, a verdict in his favor without one dissenting voice.

Alvin Gluek (1965):

One of Schultz's former clerks testified that he saw Schultz hand a large amount of money to the plaintiff [to settle the claim]. A good many people thought the witness perjured himself. Their suspicions were strongly reinforced when Schultz swiftly rehired him.

## One Hero & One Villain

Roy St. George Stubbs (1967):

For much too long a time, Schultz was seen in the role of hero, with the role of villain played by Louis Riel, in the Red River Resistance of 1869-1870. When the dust of history began to settle, these roles were gradually reversed.

Auguste Henri de Tremaudan, *History of the Metis Nation in Western Canada* (1936):

Schultz and his clique used every means in their power, including crime, to destroy Riel's influence, degrade him, and tarnish his memory in the minds of generations to come. The work of this band of cheats, criminals and thieves marks the darkest and most depressing period in the history of the Canadian West.

## Arrested by the Provisional Government

When the Metis seized Fort Garry on November 2, 1869, Schultz became Riel's number one enemy.

Don McLean, *1885, Metis Rebellion or Government Conspiracy?* (1985):

John Schultz and Charles Mair were organizing the Protestant factions of the community into a para-military political unit called the Canadian Party.... By December 2, word reached Riel that the Party had plans to seize Fort Garry and assassinate him. Within a few hours, 300 Metis rushed to the Fort.... Schultz was cornered in a storehouse, with 45 followers, by Ambroise Lepine and his Metis militia [on December 7 or the early hours of December 8, 1869].

## The Great Escape & The Incredible Journey

Schultz was a prisoner in Fort Garry. With his wife's help, he escaped on January 23, 1870 and embarked on a trek that showed his incredible strength and persistence.

R.G. MacBeth (1898):

In after years when I heard Schultz say that he "had still the shattered remnants of a good constitution," I used to account

for the "shattering" by thinking of the desperate leap from the prison, the running with maimed limb and scanty clothing six miles in an arctic atmosphere, and then the fearful journey on foot across the rocky shores and wind-swept bays of Lake Superior.

## Offices & Honours

After Manitoba became a province in 1870 and Riel had left the country, Schultz was an MP from Manitoba (1871-1882), then a Senator (1882-1888), and Lieutenant Governor of Manitoba (1888-1895). He was also knighted.

Dr. Murray Campbell in "Dr. J.C. Schultz" in *Papers read before the Historical and scientific Society of Manitoba* (Series 3, Number 20, 1963-1964):

In the 1890s, Schultz had the appearance of an old man. John A. Macdonald was once asked why he had made him a Senator. His cynical reply implied that Schultz didn't have long to live: "Just look at him."

Raymond Hébert, *Manitoba's French-Language Crisis* (2004):

There can be no more obvious symbol of the authoritarian, intolerant nature of "democracy" [in Manitoba] in the late 1870s and the 1880s than the elevation of John Schultz to the position of Lieutenant Governor.... A "new class" of Ontario Anglo-Saxons came into power in Red River, and it dealt with the Metis more ruthlessly than even the most pessimistic among them must have envisaged in 1870, sweeping away, in a single generation, all the language, religious and land rights they had wrested from the Canadian government.

## Placid at Last

John O'Donnell, *Manitoba As I Saw It* (1909):

When Schultz assumed office as Lieutenant Governor of Manitoba in 1888, he was in poor health, and remained an invalid until his death in 1896 at the age of 56. His official term was characterized by nothing in particular. He was at all times placid, discreet, plausible and non-committal.

## A Surprising Will

Excerpts from Schultz's will are quoted by the Manitoba Library Association in *Pioneers and Early Citizens of Manitoba* (1971):

**In the event of my wife's death before mine I give all my personal and real estate to my executors ... to be applied one third to the advancement of Christ's Kingdom upon earth, one third for the technical education of the children of half-breeds in Manitoba, and one third for hospital purposes principally for the half-breeds and old resident population of this province.**

Mr. Schultz died in 1896 in Mexico. Mrs. Schultz died in 1929.

Schultz Street in Winnipeg's north end was named after him in 1872. Holy Trinity Church in downtown Winnipeg, completed in 1884, has a large stained glass window behind the altar, with this written across the bottom: "In loving memory of Sir John Schultz, Lieutenant Governor of Manitoba and Keewatin, 1888-1895".

\* \* \*

## NELLIE McCLUNG

(1873-1951)

**She was a feminist, author, politician, activist, a force to be reckoned with, and a "person."**

Helen Letitia Mooney McClung was born in Ontario. She lived in Manitoba from 1880 to 1914.

## Justice and A Fair Deal

Nellie McClung, *In Times Like These* (1915), one of her 16 books:

**To bring about an even chance for everyone is the plain and simple meaning of life. Let us declare war on meanness, snobbishness, jealousies, injustice, special privilege, selfishness and greed. Our watchword is "A Fair Deal".**



Nellie McClung, as rendered in 1983 by Dorothy Elias Yakiwchuk of Moose Jaw, and formerly of Winnipeg.

Will Ferguson, *Bastards and Boneheads: Canada's Glorious Leaders Past and Present* (1999):

McClung was a force to be reckoned with. "Our Nell" to her supporters. "The Holy Terror" to her opponents. Her motto: "Never retract, never explain, never apologize. Just get the job done and let them howl." When you hear people lament that Canadians have no heroes, no role models, ask them: what about Nellie McClung, Agnes Macphail, Emily Murphy and all the others? They fought the good fight, and they won. Of course they won. They had all the best lines.

Nellie McClung (1915):

Chivalry is a poor substitute for justice, if one cannot have both.... Chivalry is like a line of credit. You can get plenty of it when you do not need it. Chivalrous gentlemen who tell you of their adoration for women shrink from the idea of women lawyers or women policemen. To use their own words, these positions would "rub the bloom off the peach." And yet their offices are scrubbed by poor women. Is there any pity felt for them? It is the thought of women getting into comfortable and well-paid positions that wrings their manly hearts.

## The Broad Issue

Mary Hallett and Marilyn Davis, *Firing the Heather: The Life and Times of Nellie McClung* (1993):

In 1911 a delegation of women approached the Law Amendments Committee at the Legislature seeking a law that would prevent a man from willing his property away from his wife. The women were told that 99% of men were just, and that women could trust the judges to be fair in settling any such case. The Attorney General reminded them that "a husband is never far wrong, and is better capable than anyone else of judging what he should leave to his wife. If he leaves her penniless there is a good reason."

Nellie McClung (1915):

If any person doubts that society has been made by men, and for men's advantage, let them look at the laws that govern society. Society allows a man all privilege, all license, all liberty, where women are concerned. He may lie to women, deceive them, he may break many a heart, and blast many a fair name. That merely throws a glamour around him and is no disadvantage in the business or political world, where men dominate. But if a man is dishonest in business or neglects to pay his gambling bills, he is down and out. These are crimes against men, and therefore serious.

Lesley Erickson, *Westward Bound: Sex, Violence, The Law, and the Making of a Settler Society* (2011):

In 1925, McClung published *Painted Fires*, a novel that relates the trials and tribulations of a young Finnish girl who immigrates to North America in search of a better life. Her heroine is victimized by an unsympathetic criminal justice system controlled by conservative, autocratic and ethnocentric judges concerned only with preserving the sexual double standard and the middle class, Anglo-Canadian status quo.

## Inspired by Premier Greenway

In *Clearing in the West* (1936), Nellie McClung recalls when she was a teenager in the 1890s and taken by a Mrs. Brown to hear Premier Thomas Greenway speak at a Liberal election rally in Manitou:

Greenway said he was glad to see two women in the audience. Politics concerned women as much as men, though he did not think women would ever need to actually take part in politics. Mrs. Brown and I had written out two questions. Are you in favour of extending the franchise to women? Are you in favour of women having homesteading rights? The chairman showed them to Mr. Greenway, who laughed good-naturedly and looked at us with a sort of fatherly rebuke in his eyes! Then the chairman put the paper in his pocket.

## Inspired by Cora Hind

In 1890, 17 year old Nellie McClung had a brief encounter with Cora Hind (1861-1942) at a railway station. Hind was a feminist, a highly respected agricultural reporter, and a leader in the fight for female suffrage.

Hind was the first type-writer (as typists were first called) in Winnipeg. This is from the pamphlet “E. Cora Hind” (1982) by the Department of Cultural Affairs and Historical Resources of the government of Manitoba:

On a visit to a law firm in 1883, she met a lawyer who suggested she try her hand at typing. The typewriter had recently come on the market. She rented one and practised for one month. She applied for a job at a law office at a salary of six dollars per week.

Hind was determined to become a journalist, and succeeded in 1901 when she was hired by the *Free Press*. Her reports were so highly regarded that in 1935 the University of Manitoba conferred on her the degree of honorary doctor of law.

Kennethe Haig, *Brave Harvest: The Life Story of E. Cora Hind, LL.D.* (1945):

The president of the *Winnipeg Free Press* said he would sooner have Miss Hind on his side than all the lawyers in the world.

## The Right to Vote

On January 27, 1914, Nellie McClung spoke on behalf of a delegation of women who met with Premier Rodmond Roblin at the Legislature.

Mary Hallett and Marilyn Davis (1993):

Although she was gracious, Nellie stated unequivocally: “We are not here to ask for a reform, or a gift or favour, but for a right—not for mercy but for justice.... Sir Rodmond, we have come to the last ditch in our onward march towards freedom and usefulness and we are stretching our hands to you to help us over. It is your move.”

In her book *The Stream Runs Fast* (1945), McClung quotes some of Roblin’s long and patronizing comments:

You’re a fine, smart young woman. I can see that. And take it from me, nice women don’t want the vote.

A mock parliament was scheduled for the night after the meeting with Roblin, with Nellie playing the part of Roblin.

Kevin Longfield, *From Fire to Flood: A History of Theatre in Manitoba* (2001):

The most famous of the mock parliaments was at the Walker Theatre January 28, 1914. McClung used many of Roblin’s best lines against him [substituting “men” for when Roblin had referred to women]: “Politics unsettle men, and unsettled men means unsettled bills and broken vows, and divorce. When you ask for the vote for men you are asking me to break up peaceful, happy homes.”

## Prohibition

Nellie McClung (1936):

It is strange to look on those days, when men were divided into two classes. They either drank, or they didn’t drink. Needless to say, no woman drank.

One of McClung’s allies was the Reverend Charles Gordon, better known at the time by his pen name, Ralph Connor. They faced formidable opposition.

Keith Wilson, *Charles William Gordon* (1981):

Speaking in a Winnipeg Church on March 3, 1907, Reverend Charles Gordon repeated the allegation that Manitoba was the most drunken province in Canada, and spoke of the terrific power of the liquor interests as having finally overcome the government.

In *Postscript to Adventure: The Autobiography of Ralph Connor* (1938), Gordon refers to his activities on behalf of the temperance movement, around 1907:



I entered the biggest fight of my life. It lasted another 10 years, costing time, money, strength and friendships, and brought upon me the most ruthless slander, vilification and scurrilous abuse that any public man in Canada was ever called upon to endure.

Prohibition was in force in Manitoba from 1916 to 1923.

## Her Sense of Humour

In *Nellie McClung* (2000), Mary Lile Benham points out that Nellie is sometimes portrayed as “the stereotype of a thin-lipped, repressive, temperance worker, bearing little resemblance to the warm, outgoing, vivacious woman who was adored by thousands as ‘Our Nell’.”

Nellie was a popular speaker across Canada, partly because of her quick wit.

HECKLER: Nellie, don't you wish you were a man right now?

NELLIE: Don't you wish you were?

Nellie was fond of using her humorous summary of the election laws of the time. It has often been quoted as if it was once the wording of a federal law (it wasn't):

No woman, idiot, lunatic or criminal shall vote.

Nellie McClung's “Anti-Suffrage Creed” (1915):

I hold it true—I will not change,  
For changes are a dreadful bore—  
That nothing must be done on earth  
Unless it has been done before.

## The Limits of the Law

McClung was instrumental in winning the right to vote for women in Manitoba, but moved to Alberta in December 1914, before the enactment of *An Act to Amend The Manitoba Election Act* (1916). The one page Act changes four sections by adding a few words, starting with section 14:

Section 14 is hereby amended by adding after the word “person” in the first line thereof the words “whether male or female, married or unmarried.”

The amendments came into force on January 28, 1916, making Manitoba the first province in Canada to give women the right to vote. In 1920 Edith Rogers (1876-1947) became the first woman elected to the legislature. In 1963 her daughter, Margaret Konantz (1899-1967), became Manitoba's first female Member of Parliament.

In 1938, Nellie reminisced with some disappointment in an article quoted by Robert Sharpe and Patricia McMahon in *The Persons Case* (2007):

We believed that enfranchisement meant emancipation. We spoke glibly of freedom. We were obsessed with the belief that we could cleanse and purify the world by law.... But when the smoke of battle cleared away, something happened to us. Our forces, so well organized for the campaign, began to dwindle. We had no constructive program for making a new world. So the enfranchised women drifted.

Nellie would have been disappointed as well in the repeal of the prohibition law in Manitoba. During Prohibition (1916-1923), about 10,000 convictions were registered for liquor offences, but there were flaws in the system.

Gail Konantz, *Edith Rogers* (1981), referring to the Prohibition era:

The weaknesses of the 1916 liquor legislation became all too apparent. Doctors' prescriptions for alcohol were not hard to get. One doctor was suspended for giving out 10,000 prescriptions for whiskey in one month.

In the United States, Prohibition was the law from 1920 to 1933.

## Two “Person” Cases

In 1912, a case arose in Manitoba about the meaning of the word “person”. McClung was not involved, but she would have known about it, and perhaps it contributed to her involvement in the later and more famous “persons case” in the 1920s.

Lee Gibson in “A Brief History of the Law Society of Manitoba” in *The Law Society of Manitoba 1877-1977* (1977):

In 1911 Melrose Sissons applied to the Law Society for admission as Manitoba’s first female law student. The Society said “person” as used in *The Law Society Act* did not include a woman. She persisted and succeeded in having an amendment passed to the Act in 1912. She was called to the Bar in 1915.

McClung was one of the “Famous Five” women whose names were on a petition that put this question to the Supreme Court of Canada in 1927 in what is now known as the “Persons Case”: does “persons” in section 24 (appointments to the Senate) of Canada’s constitution include women? The Court said no, but on October 18, 1929 (now celebrated as “Persons Day”) the Privy Council in London, England said yes.

In *The Persons Case* (2007), Robert Sharpe and Patricia McMahon comment on some views of the Famous Five that are now repugnant to many people:

When assessing the contribution of the Famous Five, we must remember that equality is an evolving concept. It takes different shape and form in different times, and it may be that the champions of equality in one era will fail to live up to the ideals that emerge in another. Despite what modern readers may regard as serious flaws among the Famous Five, it cannot be denied that they ultimately played a major role in the evolution of the Canadian approach to equality. They created a legacy that transcends their shortcomings.

## At Her Best

Mary Hallett and Marilyn Davis (1993), recalling when Nellie moved to Alberta in 1914:

In the future, she would play a prominent role in many organizations, receive appointments that recognized her ability, even be elected to the Alberta legislature, but she would never again receive the attention and outpouring of praise that was bestowed on her during and after this Manitoba campaign.

Within weeks of arriving in Alberta, McClung was politically involved. In *Rogues & Rebels* (2015), Brian Brennan quotes from her speech in the Alberta legislature on February 15, 1915:

I ask for no boon, no favour, no privilege. I am just asking for plain, old-fashioned, unfrilled justice.

In April 1916, Alberta women were given the right to vote.

## Legacies

Charlotte Gray, *Nellie McClung* (2008):

As the Women’s Movement blossomed in the 1960s, academics and writers rediscovered the first wave of feminism of the late 19<sup>th</sup> and early 20<sup>th</sup> century who demanded equality and justice. There were many early activists to celebrate [including Nellie and] all her allies from Winnipeg and Alberta.... By the end of the 20<sup>th</sup> century, when Canadians were polled for the most important woman in their history, Nellie’s name was the one most often mentioned.

McClung is one of 40 people named in *The Greatest Manitobans* (2008), published by the *Winnipeg Free Press*.

## The Nellies

*The Nellie McClung Foundation Act* was enacted on December 4, 2003. Section 4 sets out its purposes:

(a) to promote the memory of Nellie McClung by erecting and maintaining a statue in her honour on the grounds of the Manitoba Legislature or at any other location the foundation considers appropriate; and

(b) to undertake any other activities the foundation considers appropriate to educate the public about Nellie McClung and her contributions to Manitoba and Canada.

The Foundation established the Nellie Awards (or “Nellies”) to recognize achievements of Manitoba women in social justice, women’s rights, and human rights. Each of the inaugural awards in 2016 included a quotation from Nellie McClung:

**I want to leave something behind when I go; some small legacy of truth, some word that will shine in a dark place.**

\* \* \*

## ARTHUR MEIGHEN

(1874-1960)

**He was a conservative idealist  
who tried to practise politics  
as he practised law in courtrooms,  
but it didn’t work.**

Meighen was born in Ontario. He moved to Manitoba in 1899.

Roger Graham wrote an excellent three-volume biography of Meighen. The first volume, *Arthur Meighen: Door of Opportunity* (1960), refers to Meighen articling with four different law firms and enjoying none of it:

**He later remarked that he might just as well have spent his time writing his name for all he learned about the law.**

After his call to the bar of Manitoba in 1903, Meighen opened a law office in Portage la Prairie, and joined the Conservative Party.

### Logic & Reason in Law & Politics

Gerald Jewers, *Manitoba Justice* (2013):

**Meighen’s logical mind and flair for oratory were soon on display in the court room. He quickly gained a reputation as a formidable trial lawyer and criminal defence counsel.**

Roger Graham (1960) refers to Meighen’s “exhilarating baptism” into politics in 1904:

**An audience at a political meeting stimulated him, just as a jury in a courtroom did.... A delusion to which he clung and from which he was to suffer was that in politics as in law, the weight of evidence and the force of argument determine**

The issue; that a reasonable presentation of the facts and of their significance wins the day. He was to experience a deep disillusionment with the processes of democracy as he discovered that in politics, reason did not always prevail.



Arthur Meighen, as rendered in 1984 by Dorothy Elias Yakiwchuk of Moose Jaw, and formerly of Winnipeg. The sign is a reminder that Meighen was Acting Minister of Justice in Ottawa during the 1919 Winnipeg General Strike.

## Member of Parliament

Roger Graham (1960), referring to the newly elected Member of Parliament for the constituency of Portage la Prairie:

The new life into which the young lawyer was now plunged [in 1908] was one to tax the endurance of his frail-looking

body.... Life was somehow different and more complicated than before. As a lawyer he had worked hard, striving to build up his practice; as a lawyer-politician he had to work even harder.

George Bowering, *Egotists and Autocrats: The Prime Ministers of Canada* (1999):

Other MPs recognized that when it came to thinking and speaking Meighen was their superior and they disliked him for it.... He did not know how to make people like him. His actions and words during the 1919 Winnipeg General Strike reveal the strength of his venom and the extremity of his conservatism.

## Prime Minister

Meighen was Prime Minister of Canada from July 10, 1920 to December 29, 1921 and from June 29 to September 25, 1926.

Peter C. Newman quotes author Ralph Allen in *The Establishment Man* (1982):

When Meighen was sworn in as Prime Minister on July 10, 1920, he had everything he needed to succeed—except a chance to succeed. His prospects as prime minister were hopeless before he became Prime Minister.

Michael Bliss, *Right Honourable Men* (1994):

In 1920, Meighen, a hard-working small-town lawyer, became Prime Minister. He did not know what to do with power.

Robert Craig Brown and Ramsay Cook, *Canada 1896-1921: A Nation Transformed* (1974), describing Meighen around 1920:

He had a keen legal mind, a sharp tongue, and an almost unlimited ability for work. He was an intense partisan with a strong, even arrogant, sense of the rightness of any course he chose to follow. An admirer took his measure: "He is a fine parliamentarian and a first class political advocate, but still regards Liberals as children of the devil and has too hard and unyielding a mind for the times in which we live."

Gordon Donaldson, *Fifteen Men: Canada's Prime Ministers from Macdonald to Trudeau* (1969):

Only his family and close friends knew that the private man was cheerful, humorous and never put on airs. If he had stayed longer in the prime minister's office, there would have been time for his more endearing qualities to shine through. As it was, he endured the frustrations of the job without the rewards.

## Defeated & Disillusioned

Gerald Jewers (2013):

[As Prime Minister] Meighen was not prepared to compromise on anything. As far as he was concerned, if the people wanted wishy washy policies they should vote for the Liberals. And they did.... It may be that the electorate detected in him a lack of flexibility and an authoritarianism they did not find appealing.

Roger Graham, *Arthur Meighen: And Fortune Fled* (1963):

To be beaten [in the 1926 election] by Mackenzie King meant that masses of voters could be swayed by demagogic appeals, impressed by meaningless verbiage, or seduced with proffers of public funds.... He could not shake off a feeling of baffled incredulity, mixed with a gnawing disillusionment.

Roger Graham, *Arthur Meighen: No Surrender* (1965):

He rose to the top in a dozen stormy years, then suffered overwhelming defeat in 1921, rose again, and again fell in the shocking, shattering climax of 1926 [resulting in] dark despair and disenchantment with public life.

Roger Graham, "Arthur Meighen" (1968):

Was Meighen responsible for his own downfall? In his later years, he could not bring himself to believe that, everything considered, he was really to blame. In this the weight of evidence is on his side.

## "Fortune Came & Fortune Fled"

From Meighen's speech to a Conservative Party convention in Winnipeg in 1942:

Gentlemen, I am through. Fortune came and fortune fled. Whatever I have said, whatever I have done, is going to remain unrevised and unrepented. It will await whatever verdict may come. The future can assess it or forget it, and it will be all right with me.

J.L. Granatstein and Norman Hillmer, *Prime Ministers: Ranking Canada's Leaders* (1999):

Bitter, convinced that the people had chosen fools to lead them, Meighen was through with politics.... His record in politics was undistinguished. He had great gifts and a powerful mind. Yet he failed to realize that Canada was a nation of regions and races, and he could never bend his principles to satisfy enough voters to win and hold power.

Meighen returned to practising law in Toronto. He died there in 1960.

## Intellectual Grandeur & a Fatal Flaw

Gerald Jewers (2013):

In his way he was an admirable man possessed of a powerful intellect and great gifts as a debater and orator, most certainly amongst the best, if not the best, ever produced in this country. Unfortunately he was such a man of principle that he could never bring himself to make the compromises necessary to govern, and that was his fatal flaw.

Gratton O'Leary in his Foreword in *Unrevised and Unrepented: Debating Speeches and Others, by the Right Honourable Arthur Meighen* (1949), edited by Arthur Milnes:

Through 40 years of journalism I have heard all the great masters of our speech on both sides of the Atlantic Ocean. Meighen, at his highest and best, was an arrow's flight beyond them all. In Canada, only Wilfred Laurier, Joseph Howe and D'Arcy McGee dwelt on the same plane with him. He could

state his case, argue it and prove it with a persuasiveness that was irresistible. He had to have the “dry light” of reason on whatever subject he dealt with—the truth, the whole truth, and nothing but the truth—unaffected by any distortion or discolouring rays of passion, prejudice or emotion.

Gratton O’Leary in “The Right Honorable Arthur Meighen” in (1970-71) *Historical and Scientific Society of Manitoba Transactions*:

I have spent 60 years watching Parliament. I say without qualification that in intellectual grandeur, Meighen had no superior in Parliament and very few equals. In the cut and thrust of debate, he was devastating. The winds and moods and idiosyncrasies of democracy robbed us of his full genius.

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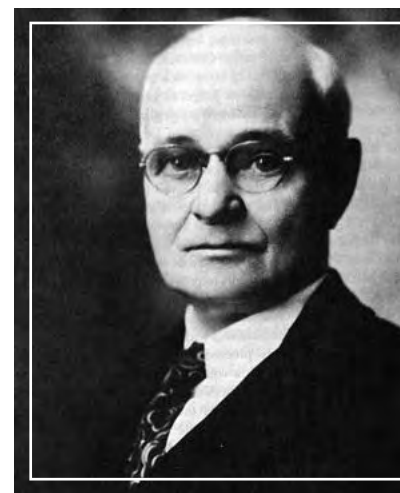
## LEWIS STUBBS

(1878-1958)

**He was a feisty lawyer, a controversial judge,  
and a popular politician.**

Lewis St. George Stubbs, the son of Roy St. George Stubbs and the namesake of his grandfather Lewis, wrote *A Majority of One: The Life and Times of Lewis St. George Stubbs* (1983):

As my grandfather died when I was seven years old, I never knew him personally, but I did meet his lifelong friend, lawyer E. J. McMurray. He was fond of pointing to a picture of my grandfather and saying, “I loved that man.” They were born in the same month in the same year—June 1878—and called to the bar on the same day, November 26, 1906.... The greatest influence in my wanting to write this book was my own father, who worshipped his father this side of idolatry.



Gurey Bishop, *Davidson of Manitoba* (1974):

Some dim parental prescience had christened Lewis “St. George”. The name fitted the diminutive bull-terrier of a man, for he was to slay many political “dragons”. For polemics, he had no equal among his contemporaries.... He espoused the cases of many “under-dogs” without fee and championed them fearlessly without the slightest regard for his own hide.

## A Country Practice

From *A View of the Birdtail: A History of the Municipality of Birtle 1878-1974* (1974):

A most colorful and idealistic lawyer and personality was Lewis St. George Stubbs, born in 1878 in Turks Island, British West Indies. He served in the Boer War and in 1904 married Mary Wilcock. He studied law in Manitoba and was called to the bar in 1906. He came to Birtle in 1908. In 1920 G.A. Lauman joined the firm, which was now Stubbs and Pratt. In 1922 Mr. Stubbs was appointed Judge of the County Court of Manitoba.

Lewis St. George Stubbs, *A Majority of One* (1983):

My grandfather was a small man, five foot six and weighing 140 pounds. He kept in good condition with exercise and a moderate life style. He ate sparingly and abstained from tobacco and liquor. He was a dynamo of nervous energy. He loved a good debate. He could never have won any laurels for tact.... He had seven children [four sons, three daughters]. Four became lawyers [Roy, Connie, Harold and Gerald]. During his 25 years' practice, he was in partnership with them for various periods.

## Lewis the Lion

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

He had not been on the bench long before it became evident that he bore little resemblance to the typical holder of judicial office. He possessed a passionate concern for the ordinary

man.... While opinions remained divided about the propriety of his judicial conduct, most lawyers developed genuine, if sometimes grudging, admiration for the crusader they called “Lewis the Lion”.

From his appointment to the bench in 1922 until 1930, Stubbs' tenure was relatively uneventful. Then came three cases in 1930.

## The Macdonald Will Case

In 1930 Judge Stubbs was upset with judgments of the Court of King's Bench and the Court of Appeal in a case that he was determined to decide in the County Court. He rented the Walker Theatre to give a public lecture on his view of the matter.

Lewis St. George Stubbs (the judge's grandson) in “The Macdonald Will Case” in (1981) 11 *Manitoba Law Journal* 291:

By addressing a public meeting to discuss a case that had been heard in his court, he overstepped the boundaries of judicial propriety. Although judges are allowed to make public statements of a non-political nature about the Canadian judicial system, he should never have addressed the meeting.

## Complaints

Later in 1930, Judge Stubbs' comments from the bench in two criminal cases were the subject of a complaint by Manitoba's Attorney General to Ottawa.

## *The King v. Duddles*

I am always very suspicious of police evidence, because when policemen get a man in their toils they are out to get him, and they never let up until they get him, and their evidence is nearly always biased.... To get away with crimes, you have to be in it on a pretty big scale, steal a million or two. You have to get to be a real big thief, and then perhaps you will get away with it, and even be rewarded, but not as long as you are a working man.

### *The King v. Tansowny*

It is becoming increasingly difficult for some courts to know how to gauge their sentences for criminal offences, because when rich rogues and wealthy scoundrels and those possessed of social power and political influence can get off with very light sentences, it is extremely embarrassing for the conscientious judge to know how to sentence the ordinary run of poor men with no social power, and no influential friends, who come before him.

The age-long grievance that there is one law for the poor and another for the rich, has been strikingly illustrated in the last year or two, when a few wealthy rogues steal more money than all the bank robbers and the hold-up men and common thieves since Canada began, and get off with nominal punishment. It is very disturbing, not only to some judges but to the public mind. I am going to deal with the accused leniently and sentence him to two weeks imprisonment.

### More Complaints

In 1932, two more of Stubbs' judgments were the subject of complaints to Ottawa.

### *The King v. Gibson*

You have pleaded guilty to what is very rightly in law considered a very serious offence—the offence of perjury, known out of court as common lying.... Lying is lying, in court or out of court, whether done by the Attorney General of the province on the floor of the Legislature in defaming one of His Majesty's judges, or by a humble citizen like yourself, caught in the toils of the law, in a vain attempt to extricate yourself.

### *The King v. Rae*

The accused is indicted of theft of \$2,408. If ever there was a reasonable doubt, surely it sticks out all over the case. He has been in custody for several months on an offence of which he has not been proven guilty.... If I were to find this man guilty and sentence him, what would be the proper proportional

sentence for this man—if, as the Court of Appeal has held, a term of 18 months imprisonment is a proper sentence for the theft of \$284,177? I am going to acquit you, and the next time you get into trouble you will have a big credit coming to you on your offence.

### A Royal Commission

Lewis St. George Stubbs (1983):

My grandfather published a pamphlet, giving details of the cases that formed the subject of the complaints against him: "The issue is the free right of judicial comment and the independence of the bench, whether judges are to be reduced to censored and controlled political puppets of the powers that be...." He heard [in September 1932] of the appointment of a Royal Commission to enquire into his judicial conduct. By calling into question the legal status quo, he had made enemies. But he had one powerful ally. He received strong support from the press.

The federal Minister of Justice appointed Justice Frank Ford of the Alberta Supreme Court as Commissioner. Hearings took place over 24 days.

James Gray, *The Winter Years: The Depression on the Prairies* (1966):

I was on the Stubbs defence committee. All of us discovered that working for a professional martyr could be frustrating. He never seemed satisfied with our efforts, and after we collected thousands of signatures, the committee quietly expired.... Instead of letting E.J. McMurray make his case, Stubbs seemed to do everything imaginable to make sure that he lost. He stomped around the court, posturing like a caricature of a freshman law student. He turned his back to the judge and harangued the assembled spectators in purple phrases.... He was as honest and courageous a judge as ever sat on the Canadian Bench.

Stubbs was removed from the bench by an Order-in-Council dated June 1, 1933.



Gerald Jewers, *Manitoba Justice* (2013):

Stubbs believed that a judge could speak as freely as any ordinary citizen, both on and off the bench. This view was demonstrated in spades during his judicial career....But he committed the judicial sin of becoming an advocate rather than an arbiter and injected himself into the fray. He went too far and was rightly dismissed.

## A Fighting Spirit

In 1936 Stubbs was elected as an independent M.L.A.

Dale Gibson in “An Anecdotal Sampler” in *The Law Society of Manitoba 1877-1977* (1977):

After his expulsion from the judiciary, Stubbs entered upon a remarkable political career as an independent member of the Legislature [from 1936 to 1949].... Commenting on a meeting of the government caucus, he is reported to have said, “Mr. Speaker, I understand that the caucus met again last night. Do you know the difference between a caucus and a cactus? In the case of the cactus, the pricks are on the outside.”

Lewis St. George Stubbs (1983):

In 1954, Stubbs addressed the graduating class of the Manitoba Law School. He recalled that in 1906 he had been the spokesman for his own graduating class, and had quoted Blackstone: “Law is a jealous mistress, and those who would worship at her shrine must do so in spirit and in truth.” He said that although he was not popular with the legal establishment, he had always been faithful to his mistress—the Law.

Les Rutherford in the *Winnipeg Tribune* (November 1956):

On Monday, two of Winnipeg's most colorful and outstanding lawyers [Stubbs and E.J. McMurray] will celebrate the 50<sup>th</sup> anniversary of their call to the bar. One is tall and slim, the other short and dapper. Their common physical trait is white hair. Their common characteristic is a fighting spirit.

Lewis Stubbs died two years after this event, at the age of 80.

\* \* \*

PETER VANDER GRAAF

(1923-2010)

JACK TAYLOR

(1927-1994)

**They were the last  
of the legendary police officers:  
“hardened, tough and principled.”**

During 30 years as police officers in Winnipeg, their names were always linked. “Vander Graaf & Taylor” retired from the Winnipeg Police Department on the same day—March 31, 1978.

Jack was the quiet one, described by lawyer Robert Tapper as “a grandfatherly kind of guy with a soft voice and glasses that often perched at the tip of his nose.” Pete, the outgoing one, is at the centre of most of the stories told about the “dynamic duo.”

Pete's last name has been spelled in different ways, including VanderGraaf, Vandergraaf, van der Graaf and Vander Graaf. The spelling used here is from his obituary.

## Dishing Out Street Justice

Gordon Sinclair in “‘Big-time’ respects for an old-time cop” in the *Winnipeg Free Press* (April 4, 2010):

Vander Graaf and Taylor were out to enforce the law, even if they had to break a law to do it. And, of course, break a few heads while they were at it. Today, they would be iconic figures for those who believe the laws are too limp, the courts are too soft, and the cops are too by-the-book.

Jack Templeman, *From Force to Service: A Pictorial History of the Winnipeg Police Department* (1998):

The names of Vander Graaf and Taylor may bring a shudder to some old-time senior officers who thought they could control or change their ways. Their methods were often unorthodox, to say the least, but effective. They were not above dealing street justice when the situation demanded it. This was in the days when many officers practiced similar justice but on a much smaller scale.



Pete (right) and Jack in 1982, on the east side of Main Street, just north of Logan Avenue. Photo by John Paskievich.

## In Court

Norm Sundstrom recalls cross-examining Pete:

During a trial, I asked Pete for notes he made in connection with the alleged crime. He handed over his notebook. I couldn't understand his notes until it emerged that his practice was to put quotation marks around everything—except quotations.

Mel Myers recalls Pete as a very relaxed witness for the prosecution:

I prosecuted a charge of “possession of stolen goods.” Pete gave evidence of his investigation, but left out a key fact that proved the accused man knew the goods were stolen. I asked him in different ways, but I couldn't get him to say it. When I gave up and sat down, the defence lawyer pointed out the gap in my case, and the judge dismissed the charge. I asked Pete why he didn't mention the key fact. He said, “I was saving it to surprise the defence lawyer in cross-examination.”

Roland Penner recalls an incident from around 1965:

I had a trial in which Pete was a witness. He asked the judge for permission to use notes to “refresh” his memory on the case. When I later asked to see the notes, Pete admitted that there weren't any in his notebook because he had thrown away the pages pertaining to the case. I asked why. He said, “They had coffee stains.” This had no effect on the judge. Before the *Charter of Rights* (1982), few judges ever questioned the credibility or actions of a police officer.

Larry Ring recalls a story that lawyers told about a case in which Pete was cross-examined on whether a confession he obtained from the accused man was made voluntarily. It went something like this:

**DEFENCE LAWYER:** I suggest that the confession was not voluntary. I suggest that you threatened the accused and said, “Listen, asshole, you better confess right now or I'll shove your fricking balls down your damn throat.”

**PETE:** I know it couldn't have been me who said that. I never swear.

This would have caused many people in the courtroom to snicker, knowing that it wasn't true. Pete knew that they knew, but he also knew that the defence lawyer wasn't about to call witnesses (if he could find any) to prove that he ever swore.

## Too Good to be True

Jake MacDonald quotes Pete in "Partners: Pete Vandergraaf and Jack Taylor" in *Winnipeg 8: The Ice-cold Hothouse* (1982):

I was in court for the trial of a guy I'd picked up for breaking and entering. The prosecutor asks, "Do you recognize the accused?" I answer, "Yes sir." I look around the courtroom, but I don't recognize a single face. So I yell, "WILSON—STAND UP!" The guy leaps to his feet and I said, "That's him."

In *Stop! Police Humour* (1995), former Winnipeg police officer Bruce Day recalls a court case in which he and his partner could not identify the accused man:

We had to go into the courtroom one at a time so as not to prejudice each other's testimony. Before I went in, I told Jack, "When I come out, if I pass you on the left, he's on the left" In court, the prosecutor said, "Can you identify Mr. Jones?" I said, "Certainly. JONES—STAND UP!" And he did. I said, "That's him."

It's a good story but even in the days of Vander Graaf and Taylor, it's unlikely that any judge would accept evidence based on a shenanigan that proves the witness cannot identify the accused.

## Out of Court

Marty Tadman remembers a chance encounter:

When I was a rookie lawyer in the early 1970s, I soon met Pete and Jack. Pete took a liking to me. One evening I was having dinner with my family in a restaurant when Pete came along. He pulled me out of my chair, put his arm around my shoulders and announced at the top of his voice, "Anybody need a lawyer? This is the guy. This is the best lawyer in Manitoba!" I looked around for a hole to crawl into.

Former prosecutor and judge Ruth Krindle is quoted by Jake MacDonald in *Winnipeg 8* (1982):

I met Pete and Jack around 1968. I'd just gotten out of law school. One day I was standing at the bus stop in front of the police station. Pete and Jack pulled up in a police car and asked where I was going. I told them I wanted to get to Portage Avenue. They offered me a ride. When we got to Portage, it was rush hour and there must have been 50 people waiting at the bus stop. Pete opened the door for me, smacked me on the behind, shook a finger in my face, and said, "You remember what I told you! You be on the bus for out of town tonight! We've got enough fifty dollar hookers in this city!" As they drove off, I decided not to wait for my bus.

Provincial Court Judge Frank Allen in *Winnipeg 8* (1982):

One afternoon I was on my way to my car when a police car skidded to a stop in front of me. Peter Vander Graaf loudly demanded to know where I was going. He and Taylor told me to get into the back seat of the car. Pete always drove like a madman and in no time we arrived at a house. [a bootlegger] .... I don't have to tell you that we were getting pretty plastered. With them, there was no such thing as being on or off duty. They might be at the bootlegger through their night shift but they never stopped being detectives, even on their days off. For them, police work wasn't a job, it was who they were.

In her book *The Roblin* (2014), Marie Sharpe Schnerch tells the story of the hotel that operated for decades—until March 31, 1990—at 115 Adelaide Street in Winnipeg. The detectives in this anecdote sound very much like Pete and Jack:

One lunchtime, two detectives were having their usual sandwiches, pickled eggs and coffee when an inebriated young man began cursing about something. One of the detectives walked over to the man, picked him up by his collar and belt, and marched him out the back door. As he threw the man into the alley, the detective warned him never to come back. The manager didn't know how to tell the detective that the man lived upstairs at the Roblin.

## A Story about Jack

Robert Tapper's anecdote from *Tales from the Underworld* (2009):

Years ago I got a call from a client who said that the famous police detectives Vander Graaf and Taylor told her they were going to arrest her husband when he got off a plane that evening. Jack was a grandfatherly kind of guy with a soft voice and glasses that often perched at the tip of his nose. I called him and suggested that I would pick up the guy at the airport and bring him to the Public Safety Building for booking, and then apply for bail. He said, "Sure, no problem." I knew his reputation for pulling tricks on lawyers, so I said, "No tricks?" He said, "Robert! Why would you suggest such a thing?"

I pick the guy up at the airport. On the way downtown, a police vehicle pulls us over. An officer comes to my window and says, "Are you Robert Tapper? You're under arrest for harbouring a fugitive." My client starts to laugh. I ask the officer a few questions, and his answers show that he doesn't realize he is part of Taylor's idea of a joke. I tell the officer what is happening and I urge him to call the duty inspector at the PSB to confirm that I am on my way to surrender my client. He makes the call and soon lets us go.

When we get to the PSB, Vander Graaf and Taylor are waiting. Jack, with his glasses at the end of his nose, ever so innocently says, "Robert, you're late. What took you so long?"

## No Regrets

Jake MacDonald (1982) attributes this to Pete and Jack:

You wouldn't want your whole police force to be like us, but you've got to have guys who can meet criminals and speak their language.... The courtroom is a tricky place for most policemen. You never lie in court unless you're damn good at it.

Ruth Krindle, in *Winnipeg 8* (1982):

To me, Pete and Jack will always be two very high-spirited, good-natured characters with a flair for intrigue and theatrics, who were in the exact careers they were meant for. I think

the legend got to be even larger than they were. The need to constantly live up to this Wyatt Earp image might have been a factor in their decision to take early retirement in 1978.

Paul Johnston, a former Deputy Chief of the Winnipeg Police Department, is quoted in "Local Police Legend Dies" in the *Winnipeg Sun* (March 23, 2010):

Pete was admired by the worst of the crooks, the best of the lawyers, and many of the judges. Under that gruff exterior was one hell of a nice man.

\* \* \*

## GERALDINE MACNAMARA (1938-1984)

**She was an activist nun with a law degree.**

Sister Geraldine Edna MacNamara had two nicknames: “Sister Mac” and “Gem” (her initials).

Rosemary Radford Ruether, in the Foreword to Eleanor Stebner’s *Gem: The Life of Sister Mac — Geraldine MacNamara* (2001):

**Her story is one of the radicalization of a middle-class white woman. From her growing commitment to the poor, she seeks out legal skills, studying for a law degree.... She moves to questioning a system, to analyzing an underlying evil in an organization of wealth for the few at the expense of the many.**



## Teens Change Her Life

Sister Mac obtained a Bachelor of Arts in 1959 and a Bachelor of Education in 1965, both from the University of Manitoba. In 1971 she entered the Faculty of Law at the U of M.

Eleanor Stebner (2001):

**She graduated with a law degree in 1974. She left for the Legal Aid office one morning and discovered two teenagers on her back steps, passed out from sniffing glue. This became a moment of illumination for her: here she was going to the office to help people, but she was doing it by stepping over the very ones who most needed her help.**

Val Werier, “The house the Sisters built”, in the *Winnipeg Free Press* (January 18, 2001):

**Sister Geraldine, who did not have an easy childhood, then and there quit her promising career as a lawyer. In 1976 she founded Rossbrook House, a drop-in centre in an old church at the corner of Ross Ave. and Sherbrook St.**

Rossbrook House opened at 658 Ross Avenue on January 20, 1976. Its motto was coined by Sister Mac:

**No child who does not want to be alone, should ever have to be.**

## A Message for Judges

Eleanor Stebner (2001):

**She wanted judges to take responsibility for their “enormous power”.... She concluded [in a speech to judges] that cynicism about the justice system grew because of callous and crass judges and court officials, yet it was the judges’ responsibility to “set a tone of justice for everyone”.... She especially disliked hypocrisy, a trait that she thought was most embodied by politicians, social workers, judges, and so on.**

## Legacies

In October 1983, Sister Mac was awarded the Order of Canada by Governor General Ed Schreyer in a ceremony at Rossbrook House. She died of cancer on February 20, 1984.

Mike Mauder and Virginia Maracle quote a nine year old boy in "Rossbrook House expansion hailed" in the *Winnipeg Free Press* (January 21, 1999):

Because I go to Rossbrook House, I am a good person. I don't do bad stuff like beating up kids, stealing bikes or swearing at big people.

In 1997, Sister Leslie Sacouman was asked to speak at Sister Mac's induction into the "Winnipeg Citizens Hall of Fame." She asked for advice from a young woman who had known Sister Mac for many years at Rossbrook House. The woman gave Leslie an outline for her speech:

Tell them she was a good woman, that she treated people nice, and that she didn't take no crap from no one.

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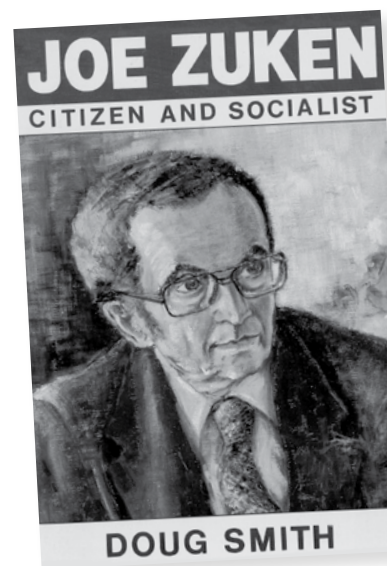
## JOSEPH ZUKEN

(1912-1986)

**He was a lawyer, municipal politician  
and "a man of the people".**

From "A True Man of the People" (1986), an editorial in *The Canadian Jewish Outlook Anthology* (1988), edited by Henry Rosenthal and Cathy Berson:

Zuken arrived in Winnipeg from the Ukraine in 1914 and spent all his formative years in the working class North End of Winnipeg. He dedicated his life to defending the rights of working people, minority groups and the poor.... It was in public service that he made his mark, during a 42 year career in public office: 20 years on the school board (1942-1962) and 22 years as a city councillor [1962-1983]. He lost only one election, when he ran for mayor in 1979.



The cover of Doug Smith's excellent biography of Joe Zuken.

## A Mentor

Doug Smith, *Joe Zuken: Citizen and Socialist* (1990):

In 1931 there were 30 barristers and solicitors on the public relief roles in Winnipeg, but Zuken secured an articling position with John MacLean, Manitoba's first Rhodes Scholar. A literate and learned man, MacLean did not have a particularly busy practice. Clients were so few in number that he spent much of his time happily reading Greek and Latin classics, but to Zuken he was an example of integrity and honesty in the practise of law.

Mr. Zuken was said to practice "Poverty Law" in two senses of the term: he did a high volume of work for low income people, and didn't make much money doing it. His firm's accountant is quoted by Doug Smith:

I have never seen so many files and so many entries for such small amounts.

## An Honest Politician

Martin Zeilig reviews Doug Smith's book in "The Conscience of City Hall" in the *Winnipeg Free Press* (January 26, 1991):

Zuken was a lifelong member of the Canadian Communist Party. Yet he was not an unbending ideologue adhering rigidly to party policy. He was a passionate, practical and independent minded idealist with an extraordinary ability to articulate a type of left-wing populism.

Zuken always received far more votes than there were Communists in his constituencies. Non-Communists had various reasons for supporting him.

Bennett Muraskin, *Let Justice Well Up Like Water* (2004):

Zuken overcame years of red-baiting to become a poplar figure with the media and the public at large. Most of all, his constituents knew that he placed their interests first and could be counted on to provide honest and effective representation.

Joe Wilder remembers his grandfather and Zuken:

In the 1950s I worked for Cece Semchyshyn, a candidate for the Liberal Party in Winnipeg North. He was Ukrainian. My grandfather was born in Ukraine, and so I suggested that he should vote for Cece. He said he would rather vote for Zuken because he was Jewish. I said, "But he's a Communist, and you are not a Communist!" He said, "You're right. I'll vote for the Liberal". On election day, I asked if he had voted. Yes. He voted for Zuken! I said, "What do you mean, Zuken? We talked about this!" He said, "Ah, but Zuken iz zich fort a yid [Zuken is, after all, still a Jew]."

Bill Neville in the *Winnipeg Free Press* (August 19, 2005):

While a city councillor in the 1980s, I became friends with Zuken. He was intelligent, eloquent, kind and possessed wit and humour. I served as a pallbearer at his funeral and was honoured to do so. Two years later, seeking re-election, I encountered constituents who remembered nothing of my activities beyond my serving as a pallbearer. They concluded I must be a Communist, and nothing would induce them to vote for me. They could not comprehend the concept of friendship transcending politics.

Doug Smith (1990):

In 1962 Zuken charged that the RCMP was denying citizenship to people who were engaged in perfectly legal behaviour. He drew laughter with this: "A woman was denied citizenship because she once helped to make pyrohy (dumplings) for a social. It might be called The Case of the Subversive Pyrohy."

## Candidate for Mayor

Donald Avery in "Ethnic Loyalties and the Proletarian Revolution: A Case Study of Communist Political Activity in Winnipeg, 1923-1936" in *Ethnicity, Power and Politics in Canada* (1981):

In the 1979 mayoralty election, despite being 76,649 votes behind the victor, Zuken and his supporters seemed satisfied with the spirited campaign. At the post-election party, the disc

jockey paid tribute to Zuken by dedicating the song “Do Ya Think I’m Sexy?” to him. Times have changed from when Matthew Popovich sang Ukrainian socialist songs in the Ukrainian Labour Temple.



## Respectability

Doug Smith (1990):

At Zuken’s last council meeting in 1983 he received a standing ovation and a plaque bearing this inscription: “The selfless dedication in which Joe Zuken has served his constituents and all the citizens of Winnipeg has set a standard to which elected officials should aspire”.... Following his retirement, he was elected as a bencher of the Law Society of Manitoba, attaining a degree of respectability he found almost unbelievable.

Ted Allan quotes Zuken in “Once ‘a black eye to Winnipeg’, Zuken has become respectable, a curiosity piece” in the *Winnipeg Free Press* (March 30, 1976):

There’s a line that goes, “If Zuken hadn’t been a Communist he’d be a judge, a cabinet minister or a rich and famous trial lawyer.” It’s just tripe. I’ve become so respectable I sometimes wonder where I went wrong.

Doug Smith (1990):

In public he was a formidable debater, but in private he displayed a sly sense of humour and a broadly humanistic approach to everyone he encountered.... He was also a riddle. Why had someone so uncompromising in his principles, so intellectually rigorous and courageous in his opinions, remained a lifelong member of the Communist Party? He spent his life wrestling at the edges where reality and ideals come into conflict.

Ben Chud, speaking at Zuken’s funeral:

How can we explain the fact that the media in Canada picked up the story of the passing of someone they describe as a communist, a civic politician, a lawyer and a Jew, and treat all of these characteristics of this man with such dignity and respect? Part of the answer is that Joe destroyed every stereotype associated with being a communist, a politician, a lawyer and a Jew.... As a lawyer, he knew that the law was not equally applied for the rich and the poor. All of his professional life was spent in an attempt to rectify that wrong.

\* \* \*

The Joseph Zuken Memorial Endowment Fund at the Winnipeg Foundation is based on a capital fund of about \$100,000 established with hundreds of donations from a cross section of the general public. Interest earned on the fund is distributed in grants in support of charitable, educational and cultural activities that reflect Joe Zuken’s interests and legacy. Another remembrance is Zuken Park in Point Douglas.

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## PART 7

### TEN NOTABLE VISITORS

## CHIEF LITTLE CROW

(1810-1863)

**In 1863 he fled “The Great Minnesota Sioux Uprising” and spent three days at Fort Garry.**

On August 17, 1862, in Acton Township, Minnesota, four young Sioux men killed five settlers. Events quickly escalated into what is known by various names, including The Minnesota Uprising, The Dakota War of 1862, The Great Sioux Uprising, and Little Crow's War.

The Sioux were reacting to years of broken promises and treaties and a desperate need for provisions brought on by crop failures, lost hunting grounds, and callous and corrupt traders and government officials.

The exact number of people killed in the uprising is not known. Most estimates vary from 450 to 800 settlers and soldiers, while the number of Sioux is unknown.

Donald Gunn and Charles Tuttle, *History of Manitoba* (1880):

**Settlers to the number of 1,500 were murdered. The route to Red River Settlement was closed. All communication between the Red River settlements and those of Minnesota was cut off for months.**

The war in Minnesota was over by the end of 1862, but continued in the Dakota Territory until the Battle of Killdeer Mountain on July 28, 1864.

## Due Process at Top Speed

About 1,000 Sioux were captured and—in a remarkable event in the history of law and order—about 400 were tried before five judges over two weeks (October 25 to November 5, 1862). Some trials lasted for five to ten minutes, with no explanations or representation given to the accused men. A total of 303 Sioux men were convicted and sentenced to death. President Abraham Lincoln commuted the death sentences of all but 38.

Nan Shipley, *Road to the Forks* (1979):

**The execution of 38 Sioux all at once took place [on one very large scaffold in Mankato] in Minnesota on December 26, 1862. On December 27 the residents of St. Norbert, near Fort Garry, were alarmed at the sight of 90 mounted Sioux trotting along the Pembina Trail [now Pembina Highway]. Citizens were fearful, despite the Union Jack the Indians carried to indicate a peaceful mission.**

Guy Gibbon, *The Sioux: The Dakota and Lakota Nations* (2003):

**The U.S. government negated all Dakota treaty rights, confiscated their land [including reservations], and banished the Lower Sioux from Minnesota with the *Forfeiture Act* of February 16, 1863. From a population estimated at 6,000 in 1850, as few as 50 Dakota remained in Minnesota in 1867. Most who left were placed on reservations in the Dakotas and Canada.**

## Little Crow at Fort Garry

Joseph James Hargrave, *Red River* (1871), a history of the years 1861-1869:

**On May 29, 1863 under the leadership of their most able and formidable chief Little Crow, about 80 Sioux arrived from Minnesota, and were as usual lodged in the courtroom. The party remained for three days.**

**The courtroom was densely crowded by the public, who gazed and listened with great curiosity. Speaking through an interpreter, Little Crow said his people had suffered much for years. They had been defrauded, and advantage was being taken**

of the rash behaviour of their young braves [the four whose actions started the conflict] to gain a pretence for exterminating them. He knew he and his men were fighting with ropes around their necks.

Little Crow soon returned to Minnesota, where he was killed in an exchange of gunfire with a settler on July 3, 1863.

### After Little Crow

James Hargrave (1871):

On December 11, 1863, nearly 500 Sioux appeared at Fort Garry in a state of starvation. They said they came to live and die in the Red River Settlement, where it was better for them to attempt to gain a livelihood from charity than to perish in snowdrifts. Words can scarcely convey any idea of the extremity of destitution to which these people were reduced. They were without clothing and the thermometer ranged between 20 and 40 degrees below zero. They were without guns, ammunition or food. They sold their children gladly to anyone who would give them food.... They quitted their camp at Sturgeon Creek [on Christmas Day, 1863] and went to White Horse Plains, 25 miles up the Assiniboine River from Fort Garry.

The Sioux were desperate but they kept the peace, and those who survived soon dispersed. Those who had sold their children often “stole” them back.

Al Hamilton, *Country Lawyer—City Judge* (2007):

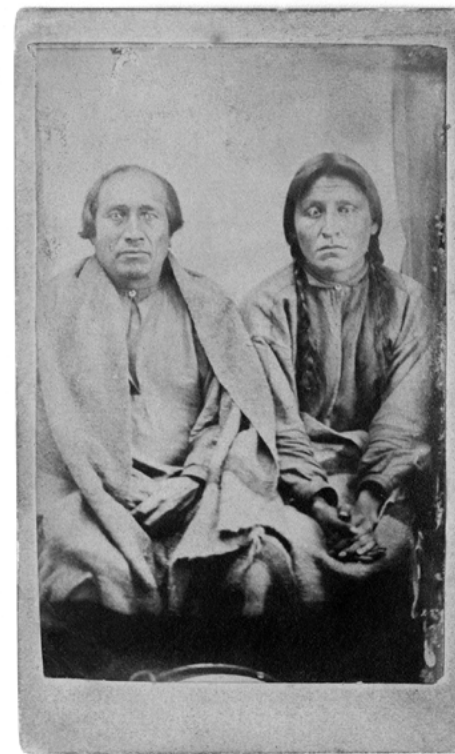
After the Minnesota Uprising, more than 3,700 Dakotas came to Canada and settled on nine reserves. They now live on five reserves in Manitoba. Although the Canadian Dakotas or Sioux are status Indians, they were not entitled to sign treaties because they had no lands to surrender. They were granted reserves and are governed by the *Indian Act* (of Canada).

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## CHIEF LITTLE SIX (1811-1865)

Little Crow's half brother was  
“the most unpopular Sioux of all.”

In August 1864, Chief Little Six and Chief Medicine Bottle (1831-1865) lead about 3,500 Sioux from Minnesota to the Red River Settlement.



Chief Little Six (left) and Chief Medicine Bottle.

Alvin Gluek, *Minnesota and the Manifest Destiny of the Canadian Northwest* (1965):

**Though the Sioux were destitute, they got little sympathy. That they also were starving aroused little compassion, for there was not enough food in the Red River Settlement to feed them for any length of time and the Red River Settlement could never forget that the Sioux were well armed, defiant and desperate. Citizens pleaded for American intervention.**

While Little Six was at the Red River Settlement, the U.S. Cavalry was stationed at Pembina on the U.S. side of the border. He refused requests from Major Edwin Hatch to cross the border and surrender.

Grant MacEwan, *Sitting Bull: The Years in Canada* (1973):

**Little Six had the distinction of being the most unpopular Sioux of all.... In December 1864, a meeting was called in Fort Garry and a plan drawn. The troublesome Indians were to be invited to dine at A.G. Bannatyne's home where they would be given all the liquor they could drink.**

Gontran Lavolette, *The Sioux Indians in Canada* (1944):

**Chiefs Little Six and Medicine Bottle reached Bannatyne's house at midnight. They were plied with liquor and then laudanum [opium and alcohol] was added to their drinks.... They were strapped on a dog sled and driven to Pembina, where they were delivered to Major Hatch.**

Little Six (a.k.a. Shakopee) and Medicine Bottle were convicted of murdering 36 people and executed at Fort Snelling on November 11, 1865.

Today, the Little Six Casino is located in Shakopee, Minnesota.

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## CHIEF POUNDMAKER

(1842-1886)

**In 1885, he was popular in Winnipeg despite his conviction for treason.**

Chief Poundmaker was involved in the North-West Rebellion of 1885. In Regina in August of that year he was convicted of treason and sentenced to three years in Stony Mountain Penitentiary.

Gerald Friesen, *The Canadian Prairies: A History* (1984):

**Over 100 prisoners were processed in the summer of 1885, including two whites, 46 Metis and 81 Indians. Most trials were for treason. The judicial result included the imprisonment of 44 Indians and seven Metis. The bias against the Indians could not be more evident. One legal observer said Poundmaker was "convicted on evidence that, in any ordinary trial, would have ensured his acquittal without the jury leaving the box."**

In *Poundmaker* (1967), Norma Sluman describes his arrival at Winnipeg's train station on his way to Stony Mountain:

**The police tightened their cordon and Poundmaker was brought out. A roar of recognition broke out from the crowd. He looked around in bewilderment as they tried to touch him, to take his picture. He raised his hand and waved at them. It was the least he could do as such a popular villain!**

After seven months in prison, Poundmaker returned home and died soon after.

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## JACK LONDON

(1876-1916)

**As a hobo in 1894, he matched wits with the Winnipeg police.**

Before Jack London became famous for books like *Call of the Wild* (1903) and *The Sea Wolf* (1904), he rode the rails as a hobo in the U.S. and Canada. In Winnipeg he was picked up by the police, who required him to convince them that he had an occupation and was not a vagrant. He knew from experience that if he were charged with vagrancy, he would be convicted and sent to jail.

This is from London's account in *The Road* (1907):

I remember a police station in Winnipeg. Of course, the police wanted my story, and what better than a sea story? And so I made up a tale of my life on a hell-ship.... I racked my brain for the trap they were going to spring on me [to prove he was lying].

Disaster stalked me in the form of a weather-beaten son of the sea [brought to the station by the police] who questioned me. Blessed fact—he had not been to sea in 20 years. He asked, “Do you remember the temple in Rangoon?” If I said I remembered the temple, I would have to describe it. I said, “It was destroyed in the earthquake of 1887,” I asked, “Do you remember Billy Harper [a fiction] at Shanghai? Everybody knows him.” Then the miracle happened. The sailorman remembered Billy.

Did I betray my desperate plight to those guardians of the public welfare of Winnipeg? Not I. After a night's lodging, I was released to wander on westward.

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## MARK TWAIN

(1835-1910)

**In 1895 he explained at the Manitoba Club how to attain “absolute moral perfection” through crime.**

In 1895, the famous American author of such books as *Tom Sawyer* (1876) and *Huckleberry Finn* (1885) was in financial straits. Rather than declare bankruptcy, he embarked on a lecture tour in a successful effort to pay all his creditors in full.

From *The Autobiography of Mark Twain* (1924):

On July 15, 1895, Mrs. Clemens and daughter Clara and I started our lecturing raid around the world. We lectured and robbed and raided for 13 months.

Milton Meltzer, *Mark Twain Himself* (1960):

Twain arrived in Winnipeg from St. Paul on Friday, July 25 and left by train for Crookston, Minnesota on Monday, July 29. He spoke at the Manitoba Club on three evenings.

Winnipeg was the 12<sup>th</sup> of about 150 stops on Twain's tour of five continents.

Dale Gibson and Lee Gibson, *Substantial Justice* (1972):

Lawyer Isaac Campbell (1853-1929) was a cultured gentleman with intellectual interests extending well beyond law. He was genial, unassuming and generous. He generally preferred quiet evenings at home, although when Mark Twain visited Winnipeg in 1895 it was as Campbell's guest [at his home at 86 Garry Street].

One of Twain's lectures at the Club was "My First Theft". It is in *Mark Twain Speaking* (1976), edited by Paul Fatout:

**You should prize as a priceless thing the lesson of every crime you commit. Impress it so that you never commit that crime again. The logical result is that you will get interested in committing other crimes. There are 462 possible crimes. They have been thought out by the most capable men in the penitentiary. When you have committed the 462, you will stand complete with absolute moral perfection. I am more than two-thirds of the way there.**

Mark Twain, *Following the Equator* (1897):

**The welcome an American lecturer gets from a British Colonial audience is a thing that will move him to his deepest depths. From Winnipeg to Africa, experience will teach him nothing. He will never learn to expect it, it will catch him as a surprise each time.**

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## RUDYARD KIPLING

(1865-1936)

**The English author visited just after receiving the Nobel Prize for Literature.**

When he visited Winnipeg in 1908, Kipling was at the peak of his career and the height of his world-wide popularity as the author of such works as *The Jungle Book* (1894), *Gunga Din* (1890) and *Kim* (1901). He had received the Nobel Prize for Literature in 1907.

Russell Merifield describes Kipling's visit to Winnipeg in January 1908 in *Speaking of Canada: The Centennial History of the Canadian Clubs* (1993):

**Since the rules of the Canadian Club did not permit women, the directors delegated to their wives the responsibility of entertaining Mrs. Kipling. The women slipped into the visitor's gallery. This was a great occasion for Carrie Kipling, who had never heard her husband speak in public.**

Merifield provides an excerpt from Mr. Kipling's speech:

**You bring me here, tie me to a steak, and expect me to speak for half an hour.**

Kipling travelled across Canada by train. Lord Birkenhead (Fred Smith) quotes Kipling's impressions of the country in *Rudyard Kipling* (1978):

**Always a marvel—to which Canadians seem insensible—was that on one side of an imaginary line should be Safety, Law, Honour and Obedience, and on the other, frank, brutal de-civilization; and despite this, Canada should be impressed by any aspect whatever of the United States.**

## Lest We Forget

Kipling's poem "Recessional" (1897) is a plea not to forget sacrifices made in war. It contains "lest we forget", a phrase since associated with Remembrance Day in Manitoba, Canada and beyond. It frequently appears on epitaphs, but seldom with any reference to the poem or Kipling.

## Meeting Twain

In 1889, Kipling tracked down his literary hero, Mark Twain, in East Hill, New York. They talked for two hours. It was their only meeting. In 1906, just before Kipling's Canadian tour, Twain commented on his admiration of Kipling:

**Between us, Kipling and I cover all knowledge. He knows all that can be known, and I know the rest.**

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## MORRIS "TWO GUN" COHEN (1887-1970)

### He spent six months of his colourful life in the Vaughan Street Detention Centre in Winnipeg.

Two Gun Cohen was born in poverty in Poland, emmigrated to England, and was sent to Canada in 1905 after graduating from reform school. He wandered through Canada, gambling, carousing and picking pockets. Cohen spent about 15 months in Winnipeg in 1908-09.

Daniel Levy, *Two-Gun Cohen* (1997):

**In Winnipeg, Cohen started selling fake rings and fake 21 jewel watches in bars. With his income secure, he passed his non-working hours playing poker and craps.... He pleaded not guilty to the charge of carnal knowledge of a girl under 16. Magistrate Daly sentenced him to six months. Cohen and nearly 200 other prisoners were confined to bed from 5:00 at night until 8:00 in the morning at the jail on Vaughan Street at York Avenue.**

Two Gun's very eventful life included a stint as a bodyguard for revolutionary leader Sun Yat-sen in China, where he picked up his nickname. He died in England.

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## CLARENCE DARROW

(1857-1938)

### The famous “Attorney for the Damned” lectured against Prohibition.

When he visited Winnipeg in 1916, Clarence Darrow of Chicago was already regarded as one of the greatest criminal lawyers in U.S. history, though two of his best known cases were still to come: *The People v. Leopold and Loeb* (1924) and *Tennessee v. John Scopes* (the so-called “Monkey Trial”, 1925).

### A Prohibition Plebiscite

James Gray, *Booze* (1972):

In Manitoba, a plebiscite on whether to introduce Prohibition [banning the production and sale of alcohol] was called for March 13, 1916. The near-unanimity of the support for the Dry cause was beyond belief. The wealthiest and most prestigious tycoons clamoured for places on the bandwagon. Among them were Isaac Pitblado and J.A.M. Aikins, the most honoured names in law.

### Darrow's View

Irving Stone, *Clarence Darrow for the Defense* (1941):

As early as 1909, Darrow began writing and lecturing against prohibition. He lectured and debated from platforms in nearly every American city. His argument was that the nature of man being what it is, Prohibition could never work, that it increased drinking and drunkenness, that it forced upon people crude and often poisonous liquor, and that it was breeding a new class of criminal. He based his attack on the ground that prohibition was a grievous invasion of personal liberty.

Clarence Darrow, *The Story of My Life* (1932):

In prohibition I saw a grievous and far-reaching menace to the right of the individual. In this context I am, and always have been, with the individual battling for the right to express himself in his own life regardless of the mob. I did everything in my power to protest the rising danger.

### At the Pantages

James Gray (1972):

To try to stem the tide, the bartenders brought in lawyer Clarence Darrow, then at the peak of his fame. He filled the Pantages Theatre for two meetings in which he attacked Prohibition as an infringement of personal freedom.

Darrow's efforts were in vain, both in Manitoba and the U.S. The vote in the Manitoba plebiscite was 50,484 to 26,502 in favour of Prohibition. It was provincial law from 1916 to 1923. Prohibition was in force in the United States from 1920 to 1933.

James Gray (1972):

There was a rush by Winnipeg's leading citizens to get their cellars stocked [before Prohibition became law]. A.J. Andrews placed an order for seven cases of wine, six cases of brandy, five cases of scotch, 10 cases of gin, two cases of liqueurs, and a case of rum. Travers Sweatman ordered 27 cases of scotch. Such purchases serve to underline the class aspect of the Prohibition legislation. The working class was effectively cut off from access to booze.

### Aftermath

During Prohibition, about 10,000 convictions were registered for liquor offences, but there were flaws in the system that eventually brought it down.

Gail Konantz, *Edith Rogers* (1981), referring to one of the flaws:

The weaknesses of the 1916 liquor legislation became all too apparent. Doctors' prescriptions for alcohol were not hard to



get. One doctor was suspended for giving out 10,000 prescriptions for whiskey in one month.

### One of a Kind

Michael Musmanno, *Verdict!* (1958):

What Daniel Webster was to the Senate, Benjamin Disraeli to Parliament, and Henry Ward Beecher to the pulpit—that is what Darrow is to the courtroom. There will never be another Clarence Darrow.

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## AIMEE SEMPLE McPHERSON

(1890-1944)

### Her visits to “the seamy side” of cities began in Winnipeg in 1920.

“Sister Aimee” was born in Ontario. In 1918, she arrived in Los Angeles with “10 dollars and a tambourine.” For the rest of her life she practised a flamboyant style of evangelism at her huge Angelus Temple in L.A., and across North America. She often visited the seamier sides of cities, a practice she began in Winnipeg in 1920 when she appeared at the Old Wesley Church (still standing at 520 William Avenue).

Robert Bahr, *Least of All Saints: The Story of Aimee Semple McPherson* (1979):

She rushed to Winnipeg for a revival at Old Wesley Church. On the first night, she told a half-full auditorium, “The end is near, and none of us can afford the luxury of sitting here while people are perishing in dance halls and bawdy houses all over this city.” The next morning, she went to the police station and held a service for the prisoners. That night, accompanied by reporters and police officers, she visited dance halls, whorehouses and gin mills. Thereafter the church could not contain the crowds.

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## GREGORY PECK

(1916-2003)

### **The personification of Atticus Finch visited Winnipeg for one evening.**

Gregory Peck had a long and distinguished career as an actor in Hollywood movies, usually playing men of integrity and dignity. He appeared in a one man show at the Centennial Concert Hall in Winnipeg on September 11, 1996.

Peck's visit was significant for many in the legal community who were inspired to study law by the example of Atticus Finch, the hero in Harper Lee's novel *To Kill a Mockingbird* (1960). Peck played Finch in the movie version (1962) and said at the Concert Hall that it was his favorite role, partly because it won him his one and only Academy Award for Best Actor. He added:

**I love courtroom movies. The courtroom is the classic  
confrontation of adversaries in the arena, a fight to the finish.**

In 1999 the American Film Institute named Peck the 12<sup>th</sup> "Greatest Male Star of All Time." In 2003 the Institute named Finch "the greatest movie hero of the 20<sup>th</sup> century,"

\* \* \*

Tommy Traddles, a lawyer in Charles Dickens' *David Copperfield* (1850), assesses himself:

**I am not a bad compiler, but I have no invention at all, not a particle.**

\* \* \*



**Norm Larsen with “Norm,” a sculpture by Dorothy Elias Yakiwchuk of Moose Jaw and formerly of Winnipeg. Photograph by Kayla Ryan.**