Continued Instability in Manitoba: Deficits, Taxes, Elections, and Resetting Government

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I. INTRODUCTION

In last year's edition of the *Manitoba Law Journal: Underneath the Golden Boy*, I argued that the veneer of political and economic stability was beginning to decay in Manitoba. In this edition, this theme is further explored and argues that in the fallout of the Provincial Sales Tax (PST) increase in Fall 2013, Manitoba has endured more political and economic instability. The time frame for this analysis is June 2013 to July 2014.

We ended last year's discussion with an overview of the public policy landscape and the surprise budgetary announcement of a one percent increase to the province sales tax (PST) for the next ten years. This increase, which amounts to approximately $280 million annually or close to $3 billion over the ten years, is earmarked for infrastructure programs. Given the lack of popularity that taxes enjoy with the electorate (see Himelfarb and Himelfarb 2013), it is perhaps not surprising that this year's edition begins with a discussion of this public policy decision. The paper begins with an overview of the PST controversy and then explores how Premier Selinger responded to this controversy vis-à-vis a change in political and bureaucratic leadership.

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The paper concludes with a review of the 2014 budget and its emphasis on economic growth.

II. SITUATING THE PST INCREASE IN THE BROADER PUBLIC POLICY LANDSCAPE

Readers may recall that Manitoba's balanced budget legislation, which included the referendum requirement for new taxes including increases to the PST, was passed by the Progressive Conservative government in 1995. Upon taking power, the newly elected NDP government led by Premier Gary Doer opted to retain this legislation albeit with certain amendments, but the referendum requirement remained intact. Bill 20, which allows for the PST to increase from 7% to 8% effective 1 July 2013 without the requirement of a referendum, made for a long summer in 2013. The legislative session proved to be simultaneously fascinating and concerning. It was fascinating because of the delays produced by the Opposition Party, led by Progressive Conservative Leader Brian Pallister. By relying on stalling tactics such as the ringing of the bells, raising points of order at the end of each Question Period, and calling for recorded votes related to the speakers' rulings,[i] the legislative session did not end until the late days of August. It is not often that we see opposition parties go to such lengths to do what they are intended to do: oppose and criticize legislation.

To be certain, some of these tactics are not entirely new.[ii] The ringing of the bells is the same tactic used by the Progressive Conservative Party, then led by Gary Filmon, in the French language debate of the early 1980s. In 1981, a constitutional court challenge was brought forward to determine the validity of Manitoba's statutes that were only printed in English (Schwartz and Melrose 2003). To prevent the case proceeding to the Supreme Court, amendments were introduced by the NDP government, led by then Premier Howard Pawley, to allow for translation of the statutes and to declare English and French as the official languages in the Province of Manitoba. Controversy soon erupted over these amendments with the Opposition Party arguing that Manitobans should be consulted and thus the bell-ringing episode began as a means to delay the process. This tactic included the continuous "ringing of the division bells [which are] buzzers used to call members of the Legislature for a vote" (Schwartz and Melrose 2003: 32).

But the legislative session last summer is also concerning for several reasons. First, the summer of 2013 was unusually warm and

muggy so extending the session in a building with limited air-conditioning made for an uncomfortable — and likely frustrating — work environment for MLAs, staff, journalists and spectators alike. Second, and more importantly to our discussion of public policy, these stalling tactics delayed the passing of other important bills. When an agreement was reached to end the gridlock, a small number of bills were negotiated by the NDP and PC Parties for passage in early September including the controversial anti-bullying bill and the municipal amalgamation bill. However, other 36 bills were left for the next legislative session starting 12 November 2013 (The Canadian Press 2013).[iii]

An important issue raised by the PST controversy is the need for legislative debate. As Melrose (2003) reminds us, debate is crucial in a parliamentary democracy so that all views and criticism can be raised and considered. However, she also reminds us that at times, the need to limit debate may also be necessary to ensure that government business is not jeopardized. Obviously, a fine line exists between the need for debate and the need to limit debate. Two mechanisms exist in Manitoba to limit legislative debate: time allocation and closure. Time allocation is defined by Fraser, Dawson and Holtby (1989:162, as cited in Melrose) as a mechanism "for planning the use of time during the various stages of consideration of a bill rather than bringing the debate to an immediate conclusion". Closure is defined as a mechanism that no longer allows debate to be adjourned (Melrose 2003: 8). Generally, the deployment of a time allocation rule is thought to be less drastic than the use of closure.

Given that these mechanisms exists, the prudent question to ask is why they were not employed to end the delays related to the PST controversy. Two answers exist. The first is political. It may be that the Selinger government did not want to be further portrayed as being anti-democratic. Throughout the controversy, the Selinger government was accused of being arrogant and disrespecting the democratic process when it opted to raise the PST and waive the referendum requirement. Invoking time allocation or closure mechanisms may have been seen as draconian — an image the NDP did not want attached to their brand. The second is procedural. While Manitoba has a closure mechanism, it has rarely been used in part because of its complexity. In Manitoba, the closure mechanism is treated as a debatable motion which would allow opposition to extensively debate that motion, potentially extending the Legislature's sitting time.[iv]

The ramifications of delaying legislation are not clear at this time, nor is it clear to what extent democracy was served by these actions: is democracy better served by having longer legislative sessions? Did this extended session improve the quality of debate over Bill 20? Do extended legislative debates contribute to better public policy? Are public hearings before legislative committees a better opportunity for more deliberative debate or should referendums be held – at considerable cost and delay – to decide these issue?[v] When is it 'reasonable' to limit or end legislative debate? These are just a few questions that scholars and practitioners alike should be contemplating.

The increase in PST made for a long summer for MLAs and spectators alike, but the question that remains to be answered is whether it will be a key public policy issue in the next provincial election. Before this question can be answered, it is important to understand the range of views held by Manitobans. As with most public policy decisions, there are different views and interpretations as to whether there is a problem, how the problem is defined, and what solutions are viable.[vi] As will be illustrated, the PST controversy involves both procedural and substantive concerns.

The first and second views contend there is a public problem related to aging infrastructure. So while these views agree on the problem, there is disagreement related to the prescriptive solution. The first view contends that an increase in the PST earmarked for infrastructure projects is both appropriate and acceptable. The second view holds that deeper austerity measures[vii] — not tax increases — are needed to identify savings that can be applied to fund infrastructure projects.

The third view contends there is an infrastructure deficit and that the tax increase is appropriate. However, the concern is that the tax increase may not resolve the problem because of the definition of 'infrastructure'. In August 2013, the provincial government adopted a broad definition of 'infrastructure' to include projects such as skating rinks and outdoor recreational facilities. For some, however, the problem associated with the infrastructure deficit relates to 'core' infrastructure such as bridges, highways, and piping. The proposed definition raised skepticism as to whether the PST increase would actually resolve the 'core' infrastructure problem. In short, this view contends the idea to raise revenue for infrastructure projects is a good idea, but the execution was flawed (Government of Manitoba 2013b; Winnipeg Free Press 2013a). While some see this as poor implementation, others see it more cynically. At least one editorial in the Winnipeg Free Press refers to this broad interpretation of

infrastructure as "crass political opportunism" to produce "grip-and grin photo opportunities" (Winnipeg Free Press 2013b). The Selinger government then reversed its position and announced in the 2013 Throne Speech that a much narrower definition of infrastructure was adopted. There is specific reference in the Throne Speech to 'core infrastructure' to include projects in three key areas: a) transportation (highways, bridges); b) flood protection; and c) municipal infrastructure (roads, pipelines).

The last view is more concerned with how the PST legislation was passed. Readers will recall that Manitoba's balanced budget legislation required a successful referendum before taxes like the PST could be increased. However, in an effort to pass Bill 20, which would allow for the PST increase to occur, the Selinger government waived the requirement for a referendum with former Finance Minister Stan Struthers stating that, "We think we need to move very quickly. We can't afford to lose a construction season" (Lambert 2013). The concern raised here is procedural as Brodbeck (2013) contends,

> The tax hike immediately drew the ire of the public, not only because it added to the multitude of tax hikes we've seen in this province in recent years — both provincially and municipally — but also because Greg Selinger's NDP government took away the public's right to vote on the proposed tax increase. Under provincial law, government is prohibited from raising the PST without first going to the public for approval through a referendum. They did it anyway, further enraging Manitobans.

As discussed below, the legitimacy of the Selinger government was challenged judging by the decline in popularity coupled with the fact that 122 private citizens and 21 groups made presentations to the Standing Committee on Social and Economic Development from 27 June – 6 July 2013.[viii] Adding to this is the fact that the Opposition sued the government for failure to provide due process and appeared before the court on 4 June 2014 (Progressive Conservative Party of Manitoba 2014). In his ruling, Justice Kenneth Hanssen of Court of Queen's Bench rejected the Progressive Conservative Party's argument that waiving the referendum violated the section 7 of the *Charter of Rights and Freedoms*.[ix] Justice Hanssen concluded that the

> Legislative Assembly had the constitutional authority to consider and pass Bill 20 notwithstanding [the referendum requirement]. The doctrine of parliamentary sovereignty prevents a legislative body from binding future legislative bodies as to the substance of its future legislation.[x]

While suing government has been described by some as a political stunt, this court ruling illustrates two things. First, governments cannot bind public policy decisions of future governments through

legislated requirements for referendums. Second, the effectiveness of legislation requiring referendums as found in the balanced budget legislation is questionable.

Given these views, where do Manitobans situate themselves? A Probe Research survey conducted in September 2013 reveals that 65% of Manitobans do not believe the increase in PST is necessary compared to 27% who believe the increase is necessary (Brown 2013). An Angus Reid Global (2013) survey found that Premier Selinger had the second worst approval rating of all the Premiers in the country. This survey also concludes that Progressive Conservative Party Leader Brian Pallister's approval rating (50%) is higher than Premier Selinger (26%). Another Probe Research survey conducted later in 2013 reveals that 48% of Manitobans support the Progressive Conservative Party while support for the New Democratic Party fell to a new low of 26% (MacKay 2013). This survey also found that support for the Liberal Party with its new leader — Rana Bokhari — had not changed from previous polling (20%). What is interesting to note is that the most recent poll conducted by Probe Research in June 2014 indicates that support for the NDP increased slightly ahead of the Liberal Party.[xi] While the NDP still lags behind the PC Party, its support increased by 4% to 32% from March 2014.

While Manitobans expressed frustration with the Selinger government over its handling of the PST increase, it would be unwise to declare that this issue will be the make or break policy issue for the next election. While there may be attempts to position this as an electoral issue, such attempts may not necessarily result in changes at the ballot box. Paul Thomas argues that "specific issues such as the PST matter less during an election than more nebulous ones such as leadership and general image of the party, despite what people say when pollsters call to ask about a hot topic" (as cited in Welch 2013). The PST increase is a wild card issue at this point and discussions of Selinger's leadership have been occurring in various circles. It may be possible that the NDP suffers a loss in the next election, but whether the loss is the direct result of the PST controversy – or another reason such as a general malaise and need for change after 16 years of NDP rule – remains to be seen.[xii]

What is clear is that Manitobans endured a lengthy wait before receiving a clear rationale why this change was needed. The announcement of the PST increase was suddenly announced in 2013 budget, but the rationale was never clearly articulated in the early days. Indeed, the public policy decision was made and then the rationale for

this decision was developed over time with some reversals (i.e. changes in definition of what constituted infrastructure as described earlier).[xiii]

III. Resetting government vis-à-vis Cabinet shuffle

On 18 October 2013, Premier Selinger shuffled his Cabinet. In doing so, he indicated that his government was at a stage where the policy button needed to be "reset" (Owen 2013). This need to reset the policy agenda coincides with the fact that the year 2013 represents the mid-term point of the Selinger government.[xiv] Stoney and Doern outline the significance of the 'mid-term' as a means to understand the build up to the next election. They (2013: 3) contend, "[t]ypically, mid-terms represent a point in the electoral cycle when government popularity is at low ebb, election promises have yet to be fully implemented, and government mandates can appear to drift." While Premier Selinger attempts to frame this Cabinet shuffle to focus on its public policy priorities of the economy, jobs and families (Government of Manitoba 2013a), others suggest the shuffle had less to do with refocusing public policy and more to do with "reviv[ing] voter support" after the PST controversy (Owen 2013).

Tables 1 and 2 illustrate the changes in Cabinet Ministers. While the size of Cabinet remains unchanged, three Ministers — Christine Melnick, Nancy Allan and Jim Rondeau — were removed from Cabinet and three backbench MLAs — Sharon Blady (Healthy Living and Seniors), James Allum (Education and Advanced Learning) and Erna Braun (Labour and Immigration) — were added. While there are many changes, the two worth highlighting relate to the advancement of two female Cabinet Ministers into crucial portfolios. Jennifer Howard moved from Family Services and Labour to Finance. Theresa Oswald moved from Health to the newly-titled Department of Jobs and the Economy formerly known as the Department of Entrepreneurship, Training and Trade. Howard and Oswald have been dubbed as the "saviours of the NDP" by local media, and according to some, they were promoted in an effort to respond to the PST controversy (Owen and Kusch 2013: A6). To be sure, Oswald and Howard are strong performers, but it would be overly simplistic to assume their elevation is purely in response to the PST controversy. When constructing cabinet, there are a variety of factors that must be considered such as gender, race and geographical representation. So, while it may appear that Oswald and Howard were promoted because of political calculations,

there are also the considerations that both are strong performers with potential to lead the NDP after Selinger's departure. Indeed, these promotions may reflect a deliberative strategy as to who may be leading the NDP in the next election. As such, the promotion to departments with a strong economic focus may be, in part, to develop their future leadership capabilities given their strong performances to date. In this sense, these promotions were earned by these MLAs.[xv]

Table 1: Ministers and Deputy Ministers Pre-18 October 2013

DEPARTMENT NAME	CABINET MINISTER	DEPUTY MINISTER
Infrastructure and Transportation	Steve Ashton	Doug McNeil
Innovation, Energy and Mines	Dave Chomiak	Grant Doak
Conservation and Water Stewardship	Gord Mackintosh	Fred Meier
Aboriginal and Northern Affairs	Eric Robinson	Harvey Bostrom
Local Government	Ron Lemieux	Linda McFadyen
Housing and Community Development	Kerri Irvin-Ross	Joy Cramer
Family Services and Labour	Jennifer Howard	Jeff Parr
Justice and Attorney General	Andrew Swan	Donna Miller
Finance	Stan Struthers	John Clarkson
Culture, Heritage and Tourism	Flor Marcelino	Cindy Stevens
Health	Theresa Oswald	Karen Herd
Children and Youth Opportunities	Kevin Chief	Jan Sanderson
Agriculture, Food and Rural Development	Ron Kostyshyn	Dori Gingera-Beauchemin
Healthy Living, Seniors and Consumer Affairs	Jim Rondeau	Cindy Stevens
Advanced Education and Literacy	Erin Selby	Gerald Farthing
Immigration and Multiculturalism	Christine Melnick	Hugh Eliasson
Education	Nancy Allan	Gerald Farthing

Entrepreneurship, Training and Trade	Peter Bjornson	Hugh Eliasson

Table 2: Ministers and Deputy Ministers Post-18 October 2013

DEPARTMENT NAME	CABINET MINISTER	DEPUTY MINISTER
Infrastructure and Transportation	Steve Ashton	Doug McNeil
Mineral Resources	Dave Chomiak	Hugh Eliasson
Conservation and Water Stewardship	Gord Mackintosh	Grant Doak
Aboriginal and Northern Affairs	Eric Robinson	Harvey Bostrom
Tourism, Culture, Heritage, Sport and Consumer Protection	Ron Lemieux	Terry Goertzen
Municipal Government	Stan Struthers	Fred Meier
Housing and Community Development	Peter Bjornson	Jeff Parr
Jobs and the Economy	Theresa Oswald	Hugh Eliasson
Family Services	Kerri Irvin-Ross	Joy Cramer
Justice and Attorney General	Andrew Swan	Donna Miller
Finance	Jennifer Howard	Jim Hrichishen
Multiculturalism and Literacy	Flor Marcelino	Cindy Stevens
Health	Erin Selby	Karen Herd
Children and Youth Opportunities	Kevin Chief	Jan Sanderson
Agriculture, Food and Rural Development	Ron Kostyshyn	Dori Gingera-Beauchemin
Healthy Living and Seniors	Sharon Blady	Karen Herd
Labour and Immigration	Erna Braun	Jeff Parr
Education and Advanced Learning	James Allum	Gerald Farthing

While this Cabinet shuffle received significant public and media attention, the real movement I argue is in the Deputy Minister shuffle as outlined in Tables 1 and 2. Bourgeault (n.d.:256) defines Deputy Ministers as "agents serving the government … by being assigned to a department to serve the minister of the department". In this definition,

Deputy Ministers are senior civil servants who are assigned to lead the department and act as the interface between the bureaucracy and the Minister. More specifically, Deputy Ministers "provide sound policy advice and translate government decisions into effective and efficient programs and deliver services to citizens in an impartial, fair manner" (Jenson and Thomas 2014:202). The appointment of Deputy Ministers in our system is done by the recommendation of the Premier through an Order in Council (i.e. Cabinet). While Deputy Ministers support the Premier, Cabinet and Ministers, Jensen and Thomas (2014:202) contend they are directly accountable to the Premier and their Minister. Deputy Ministers are indirectly accountable to Cabinet for their performance.

Three aspects of this shuffle in the senior bureaucracy are notable. First, the Department of Finance lost its political and bureaucratic senior leaders simultaneously. The resignation of the Deputy Minister of Finance (John Clarkson) in October 2013 coincided with demotion of the Minister of Finance (Stan Struthers) to another portfolio. It is speculated that Minister Struther's demotion was the result, rightly or wrongly, of an inability to convince Manitobans about the need for the PST increase (Owen and Kusch 2013).

Second, of the 15 Deputy Ministers outlined in Table 2, only six (6) remained with their same portfolio: Donna Miller (Justice), Doug McNeil (Infrastructure and Transportation), Harvey Bostrom (Aboriginal and Northern Affairs), Jan Sanderson (Children and Youth Opportunities), Dori Gingera-Beauchemin (Agriculture, Food and Rural Development), and Gerald Farthing (Education and Advanced Learning). It must be noted, however, that of the six Deputy Minister who were left in their positions, two are relatively new to their positions. Donna Miller was appointed Deputy Minister of Justice on 31 July 2013, effective 10 August 2013. Dori Gingera-Beauchemin was appointed as Acting Deputy Minister on 2 March 2013 and became fully appointed as Deputy Minister on 18 October 2013.

Two individuals are new to their position without any previous experience as a Deputy Minister: Jim Hrichishen (Finance) and Terry Goertzen (Tourism, Culture, Heritage, Sport and Consumer Protection). The remaining seven Deputy Ministers changed portfolios either partially or completely.[xvi]

Last, these changes in leadership must be considered against the backdrop of the loss of two key advisors. In July 2013, Paul Vogt left his position as the Clerk of the Executive Council. The Clerk is the most senior civil servant and serves as advisor to the Premier to assist with the development and implementation of public policy. Traditionally in

the Manitoba context, the Clerk comes to this position with partisan political experience working with the governing party[xvii] (Jensen and Thomas 2014: 233).

In his own words, Vogt describes his most important role as involving communication and acting as a liaison:

> The most important thing in my role is that the decisions of the government are communicated very clearly along with the detail that is required for those decisions to be translated into effective policy. I see myself as a liaison between cabinet and the public service - eliciting the best possible advice and documentation for Cabinet, and overseeing the effective implementation of policy (Thomas 2012).

Vogt also concedes that given the dual leadership shown in Manitoba with elected politicians and appointed public servants, there is an equally important role related to the provision of advice to Ministers. He notes,

> It's appropriate for deputies to challenge their ministers on the five Ws of policy, on how they implement policy. But once a decision has been made by Cabinet, it is the role of deputies to acknowledge the direction of the government and to make their best efforts to carry it out. There has to be that clear distinction (Thomas 2012).

In December 2013, Civil Service Commissioner Debra Woodgate, announced her resignation after a long tenure. Woodgate was instrumental in leading civil service renewal in Manitoba over many years. Given the leadership, vision and institutional memory provided by Vogt and Woodgate, their departures are significant.[xviii]

These changes in leadership – both political and bureaucratic – have come at a time when the NDP is vulnerable. These changes occurred between July and December 2013 amid the PST controversy, declining popular support, and struggle to reduce the deficit. There are also new challenges that will need to be addressed. Space constraints prevent the provision of an exhaustive list of all the challenges, but among the most pressing include the implementation of recommendations stemming from the Phoenix Sinclair Inquiry. Phoenix was a five-year old girl murdered by her mother and stepfather in 2005 while in the care of Child and Family Services. The Inquiry led by Commissioner Ted Hughes investigated how and why the child protection system failed Phoenix.[xix]

Another challenge relates to the Christine Melnick incident. Readers may recall that Melnick, then Minister of Immigration and Multiculturalism, claimed that she did not instruct a senior bureaucrat to invite stakeholders to the Legislature and witness a motion that opposed the federal government's attempt to centralize settlement

services held in April 2012. Over the following summer months, an investigation by the Ombudsman Office concluded that Melnick had instructed the bureaucrat to send the invitations. Melnick later suggested that a medical issue contributed to her forgetting that she had provided the instruction. Regardless of the political drama that ensued,[xx] there are two potential concerns. The first concern rests with Melnick's performance. Melnick lied to the Legislature and failed to inform the Premier about her actions. Leadership and political ethics concerns arose and as a result of her performance, she was removed from Cabinet on 18 October 2013 and then removed from caucus on 4 February 2014. The second concern relates to the neutrality of the civil service. Rules exist whereby civil servants in our province are politically neutral and this neutrality is a core value because it is essential to the maintenance of the public's trust. As Acting Ombudsman Mel Holley notes,

> Ensuring that civil servants remain neutral in carrying out their responsibilities is of great importance for the effective operation of government. Any real or perceived erosion of this impartiality can undermine public confidence in the administrative actions and advice of civil servants" (Manitoba Ombudsman 2013).

While the Ombudsman concluded the invitation by the civil servant was not an act of partisanship, the report does call on the government to revisit the rules that protect the neutrality of civil servants. However, there are already rules in place that protect neutrality and there is the potential for a 'chill-effect' to emerge whereby political staff, not civil servants, begin to increasingly manage the relationships with stakeholders and agencies as we are witnessing with the federal government and the marginalization of civil servants.[xxi]

IV. 2014 BUDGET: NO SURPRISES

The 2014 budget projects a deficit of $357 million with the deficit to be eliminated by 2016-2017. Spending is capped at two percent overall, although nine departments will have their operating budgets frozen or decreased. As outlined in Table 3, the department that experienced the largest reduction is Labour and Immigration, but this is in light of the federal government's announcement to re-centralize settlement services.[xxii] With the exception of the Department of Labour and Immigration, these reductions are not large especially when compared with the reductions that have occurred at other levels of government. By way of example, the Harper government has been in a continuous

cycle of budgetary reductions through a variety of reviews. One such review — Strategic Review — was conducted from 2007 to 2010 with each department and agency required to identify low priority programming equaling 5% of program spending. The savings from the Strategic Reviews are $2.8 billion (Rounce and Levasseur n.d.). With this kind of comparison, what is clear is that the social democratic roots of Manitoba's NDP are showing themselves with these kinds of budgetary choices. Rather than employ deep austerity measures to deal with financial pressures, the Selinger government opted instead to limit spending and raise taxes.

Table 3: Estimates in Expenditure by Department

Department	Change from 2013-14 to 2014-15 (%)
Aboriginal and Northern Affairs	0.0
Agriculture, Food and Rural Development	-1.4
Children and Youth Opportunities	0.7
Civil Service Commission	0.0
Conservation and Water Stewardship	-1.2
Education and Advanced Learning	2.6
Family Services	4.1
Finance	-1.3
Health	2.1
Housing and Community Development	0.0
Infrastructure and Transportation	3.5
Jobs and the Economy	2.0
Justice	4.0
Labour and Immigration	-27.5
Mineral Resources	0.0
Multiculturalism and Literacy	0.0
Municipal Government	4.9
Tourism, Culture, Heritage, Sport and Consumer Protection	0.2

The budget emphasizes three key themes: economic growth, job creation, and protection of frontline services. These are not new themes for the Selinger government so Budget 2014 was a safe budget. Indeed, even Finance Minister Jennifer Howard concedes that creating jobs is "not sexy, but is critically important to growth" (CBC News 2014). Given the reaction to last year's announcement related to the PST increase, it is not surprising that this year's budget played it safe and did not contain any new taxes. The budget provided the following measures:

- creation of a low interest loan program through Manitoba Public Insurance to purchase snow tires on a voluntary basis
- creation of a LEAN Council
- eliminate school taxes for seniors by 2016
- $5 fee for a hunting licence
- increase to minimum wage from $10.45/hour to $10.70/hour effective October 1, 2014
- increase in social assistance by $50 to $70 a month, on average
- $5.5 million for child care spaces and wages
- $5.5 billion for core infrastructure projects
- financial incentive for new employers who register to train and supervise apprentices
- $1,000 bursary for apprentices to complete their final level of training.[xxiii]

While there are several public policy winners in Budget 2014, the biggest include infrastructure and apprenticeship training. Budget 2014 allocates $5.5 billion of provincial and federal funding over five years to respond to improvements in core infrastructure. A report conducted by the Conference Board of Canada reveals that each dollar invested yields a $1.16 benefit to the Manitoba economy. It further concludes that the net result is a "$6.3 billion boost and a $5.4 billion increase in … exports. And for Manitoba families, the Five-Year Plan will create good job opportunities – more than 58,000 of them" (Government of Manitoba n.d.). There are two concerns related to this allocation. First, Grace (this volume) astutely notes that while core infrastructure is essential, municipalities may have other important infrastructure projects such as arenas and community centres. In her view, this five-year plan provides much needed leadership, but there is a need to further improve relationships between municipalities and the province. Second, while these are impressive returns, the analysis informing these returns is limited. Injecting $5.5 billion into core infrastructure will create jobs and boost the economy to be sure, but the question that needs to be posed here is: who will benefit? Applying a gender lens to this public policy decision suggests that building roads, bridges and

flood protection projects provide jobs that are, generally speaking, dominated by men. An examination of the apprenticeship training and certification system,[xxiv] which provides skilled labour needed for infrastructure development, clearly illustrates this point. While women participate in apprenticeship training and certification, they are generally segregated into the 'traditional' trades such as cook, hairstyling, and esthetician that generally pay lower wages than the 'non-traditional' trades such as plumber, crane operator, welder, and so on. In 2012-2013, the number of female apprentices in the non-traditional trades was 207 or approximately 2% of all apprentices in Manitoba as outlined in Table 4 below.

Table 4: Women in non-traditional trades in Manitoba, 2012-2013

	Women in non-traditional trades in Manitoba		
	Active	**Completed**	**New Registrations**
Number	207	26	49
Percentage	2.1%	2.1%	2%

Source: (Government of Manitoba, 2013c: 11)

This segregation is not unique to Manitoba (see Levasseur 2013a), but budgets that allocate large amounts of spending to infrastructure projects may not benefit women and other underrepresented groups very well. To its credit, the Province of Manitoba has recently started to address this inequity with the creation of an advisory committee tasked with the responsibility of proposing prescriptive solutions (Government of Manitoba 2013c).[xxv] However, recruiting women and other underrepresented groups into the non-traditional trades will be a long-term endeavor given the many challenges such as gender stereotyping, discriminatory hiring practices, harassment, and accessibility issues. In the interim, there are measures contained in this budget that address equity including increases to the minimum wage and welfare, in addition to the $5.5 million allocated to childcare for spaces and improved wages. These are important public policy measures to be sure, but they simply do not compete with the $5.5 billion allocated to infrastructure projects. To what extent these measures address equity is a matter of debate.

V. CONCLUDING REMARKS

As noted, this paper explored the theme of instability. It argued that in the wake of the PST controversy, our province has endured more instability. Whether this instability is temporary or transitionary remains to be seen as we head into the next election.[xxvi] The paper illustrated the declining confidence of citizens in the government coupled with the political turmoil that involved the use of delay tactics over the summer of 2013 and resulted in the delay of important pieces of legislation. The paper also indicated the significant changes in leadership – both political and bureaucratic – as a means for the Selinger government to 'reset' the public policy agenda and overcome the mid-term blues. Last, it illustrated the budgetary choices of the Selinger government to deal with the debt and deficit by opting to limit spending rather than employ austerity measures.

While there is some instability, this is not necessarily a negative aspect to how our province is governed. After all, in the wake of instability and change lies the opportunity for realignment and adjustment. Indeed, there may also be opportunities to use sources of instability for re-stabilization efforts. Take flooding as an example. While flooding in the past few years has been shown to produce economic, social and political instability depending on the severity, flooding can also be used to focus attention away from certain issues such as the PST increase towards on a common threat given that we live on a flood-plain.[xxvii]

The real question heading into a provincial election scheduled for 2015 is whether Premier Selinger will continue to lead the NDP given his popularity. If he opts not to lead the party in the next election, discussion will centre around who is a viable contender in a leadership race. Given the Cabinet shuffle, coupled with the strong performance of several Cabinet Ministers including Oswald and Howard, the NDP has real depth in its leadership capability. These kinds of discussions are occurring in various communities and will continue over the next 18 months as we prepare for another election.[xxviii]

Elections aside, what is clear from a public policy perspective is the value placed on infrastructure by the Selinger government and, in turn, the jobs associated with these types of projects. This dominance, coupled with capped spending of two percent, may mean that resolving other public policy issues may be a challenge for the time being and the old adage of 'do more with less' appears to play out in this scenario.

Readers are invited to read the articles in this volume and assess the implications of this fiscal reality for public policy.

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i I would like to thank an anonymous reviewer for bringing this point to my attention.

ii I would like to thank Paul Thomas and an anonymous reviewer for bringing this point to my attention.

iii See the Legislative Assembly of Manitoba website for specific details on these delayed bills: https://web2.gov.mb.ca/bills/40-3/index.php.

iv I am indebted to Paul Thomas and an anonymous reviewer for clarifying this point. See (Melrose 2003) for an account of the cumbersome nature of the closure mechanism in the French language debate in 1984.

v I would like to thank Paul Thomas for raising this point.

vi The range of views provided here are not necessarily mutually exclusive, meaning that individuals may hold more than one view simultaneously.

vii Austerity measures are budgetary reductions to public and non-profit entities.

viii See http://www.gov.mb.ca/hansard/business/hansard/40th_2nd/committeecalendar.html for presentations made to the Standing Committee.

ix Section 7 of the Charter includes "right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

x http://www.canlii.org/en/mb/mbqb/doc/2014/2014mbqb155/2014mbqb155.html?searchUrlHash=AAAAAQAPQnJpYW4gUGFsbGlzdGVyAAAAAAE.

[xi] http://www.probe-research.com/documents/140623a%20June%202014%20Party%20 Standings.pdf.

[xii] I would like to thank Andrea Rounce for helping me clarify these ideas.

[xiii] I would like to thank an anonymous reviewer for this comment.

[xiv] The NDP won its fourth term in office on 4 October 2011. The next provincial election is scheduled for 6 October 2015, but if there is a federal election at that time, the provincial election will move to 19 April 2016.

[xv] I would like to thank Paul Thomas and Andrea Rounce for these ideas.

[xvi] An example of a partial change is Deputy Minister Karen Herd who prior to 18 October was responsible for Health. After the shuffle, Ms. Herd is now responsible for Health, and Healthy Living and Seniors.

[xvii] There are some exceptions. Jensen and Thomas (2014:233) point out that Jim Eldridge "spent his entire career in the civil service and worked in senior roles, including as clerk, with both Progressive Conservative and NDP governments".

[xviii] Milt Sussman replaces Paul Vogt as the Clerk after serving as the Deputy Minister of Health. Lynn Romeo replaces Debra Woodgate as Civil Service Commissioner.

[xix] The report is available online: http://www.phoenixsinclairinquiry.ca/.

[xx] For example, Melnick later claims she was a scapegoat and acting on direction from senior political staff (see Kusch 2014).

[xxi] I would like to thank an anonymous reviewer for this idea.

[xxii] As I noted in last years edition, this reduction is due in part to the federal government's decision to re-centralized immigrant settlement support services that had been decentralized to the provinces. As a result, federal funding for these services were reduced.

[xxiii] This list provides highlights and is not exhaustive.

[xxiv] Apprenticeship is a training and certification system of an apprentice in designated trades such as plumber, electrician and welder (Levasseur 2013a). Apprentices provide labour under the supervision of a journeyperson and both parties – apprentices and employers register with the Province of Manitoba. Apprentices learn 80% of the trade from on-the-job skill development and 20% in the classroom for theoretical instruction.

[xxv] In the interest of full disclosure, the author was a member of this committee known as the Targeted Groups Advisory Committee.

[xxvi] Thanks are owed to Andrea Rounce for raising this idea.

[xxvii] I thank Andrea Rounce for introducing this idea.

[xxviii] Thanks are owed to Andrea Rounce for clarifying these points.

Balanced Budget Legislation for Manitoba: Principles and Prospects

WAYNE SIMPSON *

I. INTRODUCTION

In 2009, the Government of Manitoba suspended its balanced budget legislation (BBL) that had been in force since 1995, promising to balance the budget and restore the legislation by 2015-16 in time for the next provincial election. The Government has since indicated that it will need an additional year to balance its books and introduced an increase in the retail sales tax from 7% to 8% beginning 1 July, 2013 for a ten-year period (Government of Manitoba 2013). Bill 20, which suspended the BBL and its taxpayer protection provisions that include a referendum on any tax increases, passed only after a protracted summer and fall sitting of the legislature and was challenged in the courts. While the focus of the challenge was the increase in the retail sales tax rather than the budget balancing and debt repayment provisions of the legislation, a successful verdict would have struck down Bill 20 and ostensibly restored all aspects of the existing BBL, including requirements to balance the budget within a four-year cycle. The state of the provincial books and the future of BBL will undoubtedly continue to be central issues leading up to the next provincial election, as many voters will seek assurance that their incoming government is not committed to deficit financing and debt accumulation.

BBL has been popular with provincial governments of all political persuasions for at least two decades. Only Newfoundland, Nova Scotia and Prince Edward Island do not have some form of BBL. That popularity now extends to the federal government, which has promised in its 2013 Throne Speech to introduce BBL before the federal election in 2015. While the idea of BBL has become virtually commonplace, its

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execution and effectiveness have been more controversial. Manitoba's suspension of BBL in response to the recession in 2008 and 2009, far from being unique, has been the reaction in every province with BBL except Saskatchewan. This led Simpson and Wesley (2012:308) to argue that: "BBL was neither strong enough to limit expenditure growth relative to revenue growth during the good times, nor was it adequate to prevent governments from choosing to run deficits during the bad times." As BBL continues to be a ballot question in Manitoba and across Canada, further analysis of this legislative instrument is essential.

This paper examines the ideas behind BBL, its effectiveness and its prospects for the future. The focus is Manitoba, which was both an early proponent and an innovator in BBL, but the paper will also draw on important lessons from other provinces. The paper argues in section 2 that Manitoba has played a leading role in the development and fine-tuning of this legislation over the last two decades. The historical narrative concentrates on a few crucial provisions of the legislation, including the establishment and development of its Fiscal Stabilization Fund to offset revenue fluctuations over the business cycle. We then assess the difficulties faced by BBL during its first real test, the sharp recession of 2008-09, focusing on government spending patterns before and during the recession. Section 3 argues that an important issue for the success of BBL is whether the legislation restrains government expenditure to provide a cushion, in the form of fiscal stabilization savings to withstand a recession, since there appears to be little political appetite in Manitoba or other Canadian provinces for either sharp spending cuts or tax increases when revenues decline. The paper then re-considers the appropriate requirement for Fiscal Stabilization Funds in section 4 that would restore the integrity of BBL in terms of its ability to withstand inevitable future downturns. Our calculations and previous literature indicate that the savings rate required may be considerable, based on the severity of past recessions. Our findings also suggest that there should be concern about the suspension of BBL in Manitoba because the latest recession did not provide a harsh test. The final section argues that re-instatement of the BBL in Manitoba would be more credible if the target savings rate for the Fiscal Stabilization Fund were re-assessed and if other changes were made to the BBL to ensure that future governments would make a reasonable effort to comply with the legislation before it was ever again suspended. The paper concludes with some thoughts on the more fundamental question of whether short-term budget balancing should be the ultimate goal for

effective economic policy or whether it would be better to focus on broader issues around fiscal management strategy and public debt to establish a foundation for sound fiscal policy and prosperity.

II. BBL IN RETROSPECT

Although British Columbia (B.C.) receives credit for Canada's first BBL in 1991, Manitoba had already established Canada's first Fiscal Stabilization Fund (FSF) in 1989. The Fiscal Stabilization Fund Act defined a "target level" for the Fund "equal to 5% of the expenditure of the operating fund" and was initiated with an opening balance of $200 million "to assist in stabilizing the fiscal position of the Government from year to year and to improve long-term fiscal planning" (Government of Manitoba 1989:2(2)), although no direct link was established between the Fund and balancing the budget. In any case, the tepid B.C. BBL, which simply required the provincial government to balance its books over a five-year cycle (Phillips 1997), was quickly repealed when the New Democrats replaced the Social Credit Government in 1992.

Despite these faltering initial steps, the case for legislative and political constraints to structure the way governments would react to economic downturns remained. In this sense, BBL constitutes a commitment device to prevent political parties from promising to balance the budget prior to their election and then, once elected, giving in to political demands to run a deficit. Although governments could amend or repeal the legislation to run a deficit, the associated political costs would serve as a significant deterrent (Phillips 1997). BBL would provide a crucial counterbalance to the institutional incentives for deficit spending embedded in the budgetary process of governments over time (Buchanan 1997). Well-crafted rules would provide governments with the political cover to reject proposals to expand government programs and provide a means to overcome the concentrated-benefits-diffuse-costs dilemma (Kennedy and Robbins 2003; Wilson 2000). BBL would also prevent governments from off-loading responsibility for today's fiscal challenges to tomorrow's governments and taxpayers in the form of debt and act as an effective signal of fiscal responsibility to international investors and financial markets as well as voters (Tapp 2009).

More serious and enduring legislation arrived in 1995 when Alberta, Saskatchewan and Manitoba passed BBL, but only the Manitoba legislation required a FSF at that time. Table 1 shows how

the Manitoba FSF has evolved in relation to total government revenue since its inception. Since the FSF is intended to "smooth out" revenue fluctuations, Figure 1 summarizes the state of this account as a proportion of revenues. From an initial deposit of 3.3% of revenues in 1989, the account has fluctuated from a low of 0.4% in 1995 when the BBL was introduced to a high of 7.7% in 1997.[i] It stood at a relatively healthy 6.8% in 2009, above the target level of 5%, when the BBL was suspended in response to the economic recession. Since then, the Fund has been only partially depleted to augment revenues during the economic recovery and remains at 2.7% of government revenues as of 31 March 2013.

It is difficult to see how BBL can operate in a sensible fashion without some form of revenue smoothing. Otherwise, the revenue fluctuations inherent in the business cycle must be met by matching pro-cyclical expenditure instability that would exacerbate the recession and involve serious cuts to core program spending that governments of all political stripes appear unwilling to entertain (Simpson and Wesley 2012). The two forms of revenue smoothing that have been adopted are the institution of a savings account or "rainy-day fund" or the adoption of a multi-year budget cycle. The initial Saskatchewan BBL, for example, instituted a four-year budget balance requirement: "Over the four fiscal years covered by a four-year financial plan, the total expenses for the four fiscal years must balance with or be less than the total revenues for the same four fiscal years" (Government of Saskatchewan 1995:4). That requirement was converted to an annual budget balance requirement in 2008 after the Saskatchewan Party replaced the NDP. While Manitoba shifted from an annual budget requirement to a four-year budget balancing requirement in 2008, this initiative goes against the grain of other provincial BBL that has generally settled on an annual budget balancing cycle.[ii]

Regardless of the length of the budget-balancing cycle, some form of savings account or FSF is still necessary for BBL. No government has proposed a balancing cycle of more than four or five years, likely because this corresponds in some sense to a normal term of office.[iii] Yet there is no guarantee that a business cycle will evolve over this time period, since the very essence of past cycles is both their inevitability and unpredictability. Thus, balancing a budget over one year or four or five years requires provisions for savings during the "good" years when revenues are growing and surpluses are realized that are sufficient to supplement declining revenues in the "bad" years when deficits occur. Several provinces—including Alberta and Saskatchewan but also

Quebec and New Brunswick—have followed Manitoba to institute a FSF but other provinces, including British Columbia and Ontario, have not. Alberta modified its BBL in 1999 to require a FSF, the Alberta Sustainability Fund and set a target of 3.5% of forecast revenues (Boessenkool 2010). This is similar to Manitoba's initial contribution of 3.3% of realized revenue to its FSF in 1989, although Manitoba established a higher target of 5% of operating expenditure. A "savings rate" of 3.5% of revenues in good years would accumulate to a substantial cushion for the bad years, but it is not clear that the contributions to Alberta's Fund were ever interpreted in this way. On the other hand, a Fund of 3.5% of annual revenues would provide a more modest cushion than the Manitoba target that would quite possibly be inadequate for a typical recession. Other provinces have been even less clear than Manitoba and Alberta about the size of their FSF. The appropriate size of the FSF is considered more carefully in section 4.

Manitoba has also provided leadership in other aspects of BBL. Gary Filmon's Progressive Conservative government established what was considered Canada's most comprehensive anti-deficit regime of its day, at least according to journalists (Richardson 1995; Gunter 1995; Nankivell 1998), with the passage of its Balanced Budget, Debt Repayment and Taxpayer Protection Act in 1995. In addition to its requirement to balance budgets annually, both operating and capital, with the objective of retiring the province's $7 billion debt within thirty years, the Act contained several features that have been popular in subsequent BBL across Canada. The Act prevented the government from changing accounting practices to balance budgets. Restrictions on accounting practices to increase transparency and to prevent manipulation to achieve a budget balance were also a feature of Alberta's Balanced Budget and Debt Retirement Act in 1995 and Saskatchewan's Growth and Financial Security Act in 2008.[iv] The now controversial provision in the Manitoba Act to prohibit the government from raising any major taxes without first calling a referendum was also a feature of the Alberta legislation, where the focus was the institution of a provincial sales tax. Finally, Manitoba became the first province to place penalties on government ministers for non-compliance with the BBL. In the event of a budget deficit, cabinet members faced a 20% reduction in their ministerial salary top-up in the first year of non-compliance and 40% if the budget deficit persisted. British Columbia's Balanced Budget Act of 2000 contained a 20% ministerial penalty in the event of a budget deficit. Its successor,

The Balanced Budget and Ministerial Accountability Act, extended the concept and its associated incentives to allow ministers to earn back half the penalty by meeting ministry budget targets (Collins 2001:1445). The stringency of the Manitoba legislation was viewed by many at the time – including the B.C. New Democrats, Liberals and the federal Reform Party – as a model for BBL in Canada (Ovenden 1998).

Manitoba's 1995 Act also introduced an explicit set of extraordinary circumstances under which the budget balance requirement would not apply: "(a) an expenditure required in the fiscal year as a result of a natural or other disaster in Manitoba that could not have been anticipated and affects the province or a region of the province in a manner that is of urgent public concern; (b) an expenditure required in the fiscal year because Canada is at war or under apprehension of war; (c) a reduction in revenue of 5% or more in the fiscal year, calculated before transfers to the Fiscal Stabilization Fund and the Debt Retirement Fund, other than a reduction resulting from a change in Manitoba's taxation laws." (Government of Manitoba 1995: 3(2)). In addition, the legislation did not apply in an election year in which a change of government took place. The recent Saskatchewan BBL contains similar provisions, but most other legislation is less precise about what constitutes extraordinary circumstances.

III. BBL: SUCCESS OR FAILURE?

By 2008 Manitoba had passed The Balanced Budget, Fiscal Management and Taxpayer Accountability Act, which converted the budget-balancing cycle from one year to "the average of the net results for the fiscal years within the four-year period ending at that time" to provide additional flexibility (Government of Manitoba 2008: 3(1)). The new law added mandatory summary (as opposed to core) budgeting, stricter requirements on public reporting and the use of generally accepted accounting principles to the previous legislation. The new legislation had the advantage of Manitoba's own experience with BBL and with refinements to BBL contained in other provincial legislation. As Table 1 shows, provincial revenue growth experienced a modest setback in 2002, when provincial revenues fell by 0.3% from $9,299 million in 2001 to $9,268 million in 2002 and recovered only modestly to $9,320 million in 2003.[v] The FSF had declined to $79 million by 2004 to combat the setback, but had rebounded in the subsequent good years to a balance of $818 million on 31 March 2008 or about 6.6% of revenue, which was both above the target set for the

FSF and close to the peak ratio attained in 1997. Yet, within two years, the Manitoba Government had suspended the legislation for the duration of the "economic recovery period" to 31 March 2014 or until a balanced budget has been achieved (Government of Manitoba 2010c), which is now forecast to occur in 2016 or later. What happened?

Manitoba and Saskatchewan had the distinction of being the only two provinces to declare a balanced budget in 2009. Manitoba's then Finance Minister Greg Selinger argued that Manitoba was in a good position to weather tough economic times, but the 2009-2010 budget would involve hard choices to avoid a deficit (Government of Manitoba 2009). Growth in government spending was projected to decelerate from 6.2% in 2008-2009 to 4.4% in 2009-2010, but the budget was hardly draconian. Infrastructure spending increased by $625 million in an effort to stimulate an estimated 10,000 jobs and the government fulfilled its promise to eliminate the final 1% of the small-business tax. Selinger's rationale was clear: "Times may be tight but this is not the time to stop investing in our greatest resource – our people... Bricks and mortar projects are important stimulus initiatives and today's budget continues to modernize our province's infrastructure. However, investing in people and building our knowledge economy are the best actions we can take to steer our province through uncertainty and towards prosperity. This is the path we have chosen" (Government of Manitoba 2009:30).

Using the evidence in Table 1, we can see that Manitoba Government revenues did taper off during this period, growing by only 3% in 2008-09 compared to 8.1% a year earlier and declining by 1% in 2009-10. To sustain expenditures and balance the budget, the government withdrew $110 million from the FSF and amended the BBL to suspend its statutory obligation to contribute funds to the debt retirement fund, limiting its contribution to $20 million instead of the mandated $90 million (Government of Manitoba 2009). Although critics decried these measures, the government responded that the FSF balance was considerably higher than when the party took office in 1999 and that the government would continue to "pay down debt while protecting important services and investing in people and the programs that prepare the province for the future" (Government of Manitoba 2009:30). On the other hand, despite the draw from the FSF, the reduction in debt payments, increased borrowing for infrastructure investments and reliance on a $170 million boost in federal transfer payments, expenditures outstripped revenues on core government operations by $88 million even if Crown corporation revenues and

pension obligations were excluded. Provincial net debt, which includes the debt of crown corporations plus pension liabilities and other costs not considered in core government operations, was projected to rise by $700 million despite the small official budget surplus.

Manitoba felt the full impact of the recession the following year, posting a deficit of $555 million as of 31 March 2010. Although the 2010 Budget noted that there were signs of economic recovery, new Finance Minister Rosann Wowchuk observed that "Manitoba has fared better than most, but we are still feeling the impact of the worst economic downturn since the Second World War. What we need to do now is ensure our economy is competitive when the global economy recovers. We need to do it in a way that doesn't leave people behind" (Government of Manitoba 2010b:30). The budget forecast a second deficit of $545 million in 2010-2011 and a total of $1.5 billion in deficits over four years. The Manitoba Government argued that this deficit financing was necessary to continue to invest in priority areas like health care, education, training, policing and family services and to invest $1.8 billion in stimulus infrastructure projects. Some belt tightening would occur, including spending reductions in half of all departments, such that overall core spending growth would be limited to 2% annually for the next five years. The five-year recovery plan also delayed promised income and corporate tax cuts, removed a post-secondary tuition freeze, increased some service fees, instituted a wage freeze for members of the legislative assembly and promised to "negotiate a pause in public sector wage increases" (Government of Manitoba 2010b:30).

To implement its approach, the government had to suspend several sections of the BBL until 2014 or until annual budget balance had been restored. The suspended provisions included the requirements to present a balanced budget (s. 2(1)) and to submit an annual statement of balance (s. 4(1)), an Auditor General's Report (s. 4(2)) and a third-quarter report of projected balance (s. 5). Debt repayment obligations were also suspended for the entire recovery period. Ministerial salaries were cut by 20% for the 2010-2011 budget year, a full year earlier than the four-year budget cycle required, but the 40% reduction embedded in the BBL for subsequent years of budget deficit was suspended. Finally, in determining its deficit, the government used the "extraordinary circumstances" provision of the BBL to exclude $90 million incurred for the H1N1 influenza campaign. In a somewhat unconventional financing maneuver, the government promised to dedicate $600 million from its FSF to debt repayment, touting the

party's record of reducing Manitoba's net debt since it took office in 1999, despite the fact that proposed deficit financing would actually raise provincial debt over the economic recovery period. It is hard to see how using $600 million from the FSF to reduce the deficit or to reduce debt makes a substantive difference to the provincial economic account, other than to superficially highlight the government's earlier record of debt reduction.

The government made it clear that a priority was to preserve essential or core services. Minister Wowchuk drew a clear distinction with previous approaches to spending during a downturn: "During the last recession, governments made deep cuts to key services such as health care, education, training and supports for families... While these cuts may save dollars in the short term, the cost of repairing this neglect is much greater in the long term" (Kusch 2010:C8). Wowchuk added that "After we came out of it we faced critical nursing shortages, doctors shortages... We had higher taxes, we had crumbling roads and we really had a shortage of skilled workers. Our government hasn't forgotten that" (Owen and Kusch 2010:A5). In her budget address, she re-iterated the damage to public services and stimulus investments that adherence to the BBL would require. Instead, she characterized her plan to restore budget balance over five years to be "both financially and socially responsible, balancing priority investments in vital services and in infrastructure with sound fiscal management... This balanced, multi-year approach is mirrored by other provinces and the federal government" (Government of Manitoba 2010a:5-6).

The Manitoba experience with the recession of 2009-10 was similar to most other Canadian provinces and offers some important lessons for future assessment of BBL.[vi] First, provincial governments did not anticipate the recession, resulting in difficult spending choices during the 2009 budget season as finance ministers scrambled to offset rapidly declining revenues. Manitoba fared somewhat better than most provinces and was able to forecast a balanced budget in 2009-10 with only modest reductions in planned spending, but any hopes of escaping the recession unscathed were soon dashed. Second, provincial governments of all political stripes resisted cuts to program spending, especially core services such as health, education, employment and social services. Third, there was recognition in many provinces, including Manitoba, of the need for provincial stimulus, not only to match federal initiatives, but also to offset declining private spending. Stimulus included the maintenance of core program spending but also the maintenance, and even expansion, of planned infrastructure

investments. Fourth, the cuts governments were willing to make to non-essential services were far from adequate to compensate for declining public revenues, largely because these non-essential services constitute a relatively small, and dwindling, proportion of provincial expenditure. Health and education alone account for 64% of the Manitoba budget (Government of Manitoba 2013). Fifth, the flexibility embedded in BBL in the form of stabilization funds, extraordinary circumstance provisions and extended budget-balancing cycles was insufficient to allow provincial governments to cope with the recession. Even with a four-year budget-balancing cycle, a FSF above its target, clearly defined provisions for discounting expenditures arising from extraordinary circumstances and a milder recession than most jurisdictions in Canada or elsewhere faced, Manitoba was unable to balance its budget and had to suspend its BBL. The role of savings funds, such as the Manitoba FSF, is particularly crucial in allowing provinces to sustain spending, an issue considered further in the next section. Sixth, governments either could not or would not raise major taxes to increase revenues. In cases such as Manitoba, the BBL precluded major taxes increases without a referendum, which would be both time-consuming and politically risky. In other provinces where BBL did not require a referendum for tax increases however, there appeared to be little or no appetite for such initiatives either because governments recognized that tax increases were unpopular or that they would hurt economic recovery. Finally, provincial governments responded to the recession in a fashion that they believed reflected the political will of the electorate. Innovative spending reductions or tax increases were nowhere to be seen as governments of various political stripes responded in a similarly centrist fashion to the budgetary crises they faced.

IV. CAN BBL BE SUCCESSFUL AND AT WHAT COST?

Effective BBL must contend with the problem of economic recession and short-term revenue shortfalls. Based on the historical record, these recessions are inevitable and unpredictable in terms of their timing and severity. They are also likely to be proportional to the size of the economy so that, as an economy grows, it can expect larger fluctuations in output and revenue in absolute terms. Credible BBL must provide measures that will allow the government of the day to deal with these realities.

Existing BBL provides various means of dealing with declining revenues, although some of the legislation reduces the options available. The declining revenues associated with a recession can be met by corresponding reductions in expenditures. As we have seen however, such dramatic reductions in expenditures were not politically palatable during the recent recession and would likely involve substantial cuts to core program spending in health and education, which constitute about two-thirds of provincial program expenditures. While some proponents of BBL might welcome initiatives of this kind as a means to achieve smaller government, most proponents likely envision a more orderly reduction in spending that would allow the accumulation of surpluses in the good years to finance revenue shortfalls in the bad years, using vehicles such as a FSF. There are only a few specific examples of spending limitations in existing BBL, such as the specific provisions to limit civil service spending growth in Saskatchewan's 2008 legislation. Simpson and Wesley (2012), examining the growth of provincial spending relative to revenues before and after the introduction of BBL, find little evidence that most jurisdictions moderated expenditure growth relative to revenue growth in the presence of their BBL. On the other hand, Tapp (2012) estimates the impact of a variety of fiscal rules on budgetary balances and finds that BBL has a significant positive impact. One difficulty in attributing budgetary improvements to BBL is that governments choose advantageous moments to introduce BBL as budgetary balances are improving, ensuring at least early favourable outcomes when the real issue is how well the BBL will do as economic fortunes decline. Even if spending is moderated, there is the question of whether the reductions occasioned by BBL will be sufficient to permit budget balance during recession periods.

If significant spending reductions are off the table, other methods of dealing with declining revenues include tax increases and adjustments to accounting practices. Taxpayer protection legislation, which may or may not be part of BBL, requires a referendum prior to raising major taxes in provinces such as Manitoba, Alberta and New Brunswick, but other provinces were just as reluctant to elect this route to deal with the 2008-09 recession. While provinces may have raised service fees or post-poned promised tax reductions, these actions fall well short of what is needed.[vii] Governments appear to have uniformly rejected what would have to be sudden and sharp, although ostensibly temporary, tax increases as a means to offset declining revenue. BBL has also been used to close potential loopholes associated with altering

accounting practices, including the inclusion of Crown asset sales in revenues, to achieve budget balance in Manitoba and Saskatchewan.

Provisions for extraordinary circumstances in BBL may also be used to offset revenue declines in specified circumstances, typically including natural disasters and war. In addition, the most recent Manitoba BBL defined a revenue reduction of more than 5% as an extraordinary circumstance that would allow the government to run a deficit. This is quite a stringent provision however and would not have applied in the 2008-09 recession when revenues rose 3.05% in 2008-09, fell only 1.02% in 2009-10, and rose 4.74% in 2010-11. In other words, recessions of the sort faced in 2008-09 do not appear to be an "extraordinary circumstance" under Manitoba's BBL.

If all these options for dealing with a recession are avoided, the only remaining option is a savings plan that transfers some revenues from the good years to offset revenue declines in the bad years and allows governments to maintain core spending with limited or no tax increases. But how much saving is necessary and what is the appropriate size of FSF needed if BBL is to be restored in a credible fashion that will withstand inevitable future downturns? This turns out to be a fairly complex question, but there has been some research on the issue. Wagner and Elder (2007) use a model of expansions and contractions in U.S. states to construct savings rate rules that would allow governments to accumulate a "rainy-day fund" that would permit the state to balance its budget annually with a specified probability. Elder and Wagner (2012) subsequently apply this methodology to estimate savings rate rules that would balance the budget over the business cycle for various OECD (Organisation for Economic Co-operation and Development) countries, including Canada. Note that the rules refer to a savings rate out of revenues whenever possible rather than some target level of savings of the sort established in Alberta and Manitoba. They find that the Canadian Government would have to save between 2.18% and 8.27% of its revenues during expansion (surplus) periods to balance its budget, depending on the responsiveness of revenues to GDP measured by the "revenue elasticity,"[viii] which was allowed to vary from 1.2 to 1.7 and the specified probability of avoiding a deficit. For example, if the revenue elasticity were 1.5, the federal government would have to save 2.77% of revenue to avoid a budget deficit on average (with 50% probability) but 3.35% to avoid a budget deficit in three out of every four cycles (75% probability) and 7.26% to avoid a deficit in nine out of every ten cycles (90% probability). An important lesson in this analysis is that, since the

duration and severity of expansions and contractions involves considerable uncertainty, as reflected in the variability of these events in the historical record, the required savings rate rises with the desired level of confidence of achieving a balanced budget over the cycle. For the high level of confidence implied by legislation, literally at or approaching 100% for legislation without escape clauses or measures, Elder and Wagner find that the required savings rate would be quite high for Canada (in excess of 7.26%).

The remainder of this section draws on the work of Wagner and Elder (2007) and Elder and Wagner (2012) to provide a simplified estimate of an appropriate savings rate for Manitoba's FSF that will allow us to assess the provisions in the existing BBL. We cannot replicate their approach for Manitoba or other Canadian provinces because of the lack of appropriate quarterly data at the provincial level.[ix] Instead, we use quarterly GDP data for Canada to identify recessions since 1980 and examine their impact on the provincial budget using annual GDP data for Manitoba to estimate savings requirements that would avoid deficit financing. To identify Canadian recessions, we follow the research of Cross (1996, 2001) at Statistics Canada and recent research by Hao and Ng (2011) to identify Canadian recessions as periods in which the cumulative GDP growth over two consecutive quarters is negative. Thus, Figure 2 plots cumulative GDP growth for Canada over consecutive quarters and annual GDP growth for Manitoba. Three recessions are identified in 1981-82, 1990-91 and 2008-09, as in Hao and Ng (2011). Each recession corresponds to a trough in Manitoba's annual GDP within a year, although the recessions in 1981-82 and particularly 1990-91, appear to be much more severe in terms of the decline in GDP.

We examine these recessions in more detail in Table 2. By all measures, the recessions of 1981-82 and 1990-91 appear to have been more severe than what is often referred to as the "Great Recession" of 2008-09. The earlier recessions both lasted longer, in part because both were "double dip" recessions in which a brief weak recovery was followed by a second round of negative GDP growth. Both earlier recessions involved a greater decline in GDP relative to the average for the period (2.04% from 1981 to 2012). Indeed, the 1990-91 recession was the only one that led to negative annual GDP growth in Manitoba, as GDP growth fell 5.1% below the average over two years compared to 2.2% over two years in 1981-82 and 0.9% over one year in 2008-09. Although the recent recession was mild in comparison with earlier counterparts, it was distinctive in two respects. The period of time

since the previous recession was very long (17 years) and BBL had been in effect for most of the period. Yet the budgetary response appears to have been no better than in previous, more severe downturns, as budget deficits of $2.2 billion and counting will have accumulated in the aftermath of the recent recession compared to $3.7 billion following 1981-82 and $1.9 billion following 1990-91.[x]

Wagner and Elder (2012) estimate the savings-rate rule as a fixed rate that would allow savings in the high-growth regime of the business cycle to offset shortfalls or deficits in the low-growth regimes. While their model estimates the duration of high and low growth in probabilistic terms using Markov models with endogenous switching,[xi] we apply their logic to the last two business cycles involving the 1990-91 and 2008-09 recessions. They argue that the analysis should apply to GDP growth because revenue growth variations capture both the business cycle swings of concern and discretionary tax rate changes which may be correlated with the business cycle. They then advocate using a revenue elasticity of about 1.5, which is consistent with our evidence for Manitoba.[xii] For our analysis, we divide our data on Manitoba GDP in Figure 2 into two segments, which capture the 1990-01 and 2008-09 business cycles, as in Table 3.

Following but simplifying Elder and Wagner (2012), revenue grows during good times at a rate gH for tH periods from an initial value of R0 to (approximately, for gH small) R0(1+gHtH). During this period a fixed fraction s is saved each period for total savings in the FSF of:

$$sR_0\sum_{i=1}^{t_H}\left(1+g_H i\right)=sR_0[t_H+g_H S_H] \quad [1]$$

where we use $S_i = {t_i(t_i+1)}/{2}$, $i = H.L$ to denote the cumulative sum from 1 to t_H and t_L, respectively. These savings must be sufficient to sustain revenue (and therefore expenditure) growth at g_H for t_L bad periods, but without contributions to the savings account, despite actual revenue growth during the t_L bad periods of $g_L<g_H$. The difference or revenue gap is therefore:

$$R_0(1+t_H g_H)\left[(1-s)\sum_{i=1}^{t_L}(1+g_H)^i - \sum_{i=1}^{t_L}(1+g_L)^i\right]$$
$$= R_0(1+t_H g_H)[(g_H - g_L)S_L - s(t_L + g_H S_L)]$$
[2]

Equating the right hand sides of equations [1] and [2] provides a simplified version of Elder and Wagner's equation [3] for the savings rate required to balance the budget over a given cycle with t_H good periods of revenue growth g_H and t_L bad period of lower revenue growth g_L:

$$s = \frac{(1+t_H g_H)(g_H - g_L)S_L}{(t_H + g_H S_H) + (1+t_H g_H)(t_L + g_H S_L)} \quad [3]^{xiii}$$

The savings rate has to be larger the greater the fall in revenue growth, g_H- g_L, and the longer the recession (the larger is S_L), but has to be smaller the greater the revenue growth prior to the recession, g_H, and the longer the good times last (the larger are t_H and S_H). In Elder and Wagner's model, the regimes t_H and t_L are determined endogenously and in probabilistic terms. In our illustrative case, we determine t_H and t_L by inspection for the last two Manitoba business cycles. Since GDP growth rates are used, the revenue growth rate is the GDP growth rate multiplied by the revenue elasticity estimate, which we take to be 1.5 as in Elder and Wagner.

Table 3 provides the results for the last two Manitoba recessions. For the 1990-91 recession we have eight years of GDP growth at an annual average 2.27% followed by a recession in which GDP fell by an average of 0.51% for two years. Using equation [3], Table 3 provides an estimate of 1.34% for the savings rate needed to accumulate sufficient funds to sustain pre-recession revenue growth without savings, which would allow expenditure growth to be sustained at its pre-recession growth rate as well. This rate might be considered modest in comparison to Elder and Wagner's (2012) estimate of a savings rate of 2.77% that would be required at the federal level in Canada to ensure sufficient "rainy-day" funds to balance the budget without compromising expenditure growth. Table 3 also shows that savings at that rate would have accumulated $606 million in the FSF

prior to the recession, just sufficient to sustain expenditure on its pre-recession trajectory and still balance the budget. Since the Manitoba Government only initiated the FSF in 1989, it stood at only $225 million when the recession occurred in 1990, which was insufficient to offset revenue declines and avoid budget deficits between 1990 and 1994.

We therefore choose 1995 to consider the growth phase leading to the second recession in 2008-09. In this case we have a much longer GDP growth period of 14 years at an average of 2.47% followed by a single year, 2009, with below average GDP growth of 1.14%.[xiv] As a result, a lower savings rate of only 0.15% is required to accumulate a modest $198 million to permit pre-recession expenditure growth to be sustained. Behind equation [3] is a fairly simple logic: if you roughly double the period of good growth (from 8 to 14 years), halve the revenue shortfall to be made up (4.17% vs. 2.00%) and halve the period of slow growth (from 2 years to 1 year), then you cut the savings rate needed by a factor of 8 which approximates the 0.15% savings rate implied for the second recession. Table 1 shows that the Manitoba FSF savings rate out of revenue has been approximately 0.3% and, with accumulated savings of $818 million by 2008, should have been sufficient to withstand this mild recession.

From this perspective, the behaviour of the Manitoba Government in 2009 and 2010 is puzzling. Despite all the rhetoric, the recession of 2008-09 was mild in Manitoba, if not elsewhere, and much less severe than earlier downturns. The government had flexible BBL and FSF legislation that accumulated a sizeable "rainy-day" fund to comfortably withstand the short recession without altering the pre-recession expenditure growth path. The 2010 annual report issued in September reported a deficit of $201 million for 2009-10, well within the capacity of the FSF, and a four-year balance that remained positive at $319 million (Government of Manitoba 2010). Yet the government had already chosen to suspend its BBL in June rather than rely on the FSF and the provisions of the BBL, including the provisions for a four-year balancing cycle and extraordinary spending arising from natural disasters (such as epidemics or flooding),[xv] to try to sustain a balanced budget. If BBL cannot pass the simple test associated with what in historical terms was a mild recession, can it be credible in a future where prospective recessions may be more severe?

In the government's defense, there would seem to be two possible explanations for their quick response in suspending the BBL. First, the duration of the recession was inherently unpredictable and the

government may have expected it to last longer than it did. If however, the government did not know how long the recession would last, why did it not at least wait until the FSF was forecast to be depleted before capitulating and suspending the BBL? Secondly, the government may have built into its projections anti-cyclical expenditure increases, including some increases in infrastructure spending associated with federal government partnership incentives. Has any accounting been done to assess the size of any temporary increases in expenditure growth designed to counteract the recession and the downturn in private demand? Would it have exhausted the FSF? If so, comparable anti-cyclical spending should be built into the future design of the FSF if it is to support credible BBL.

V. SHOULD WE PERSIST WITH BBL?

The Manitoba experience with BBL is instructive. Manitoba was one of the earliest and strictest proponents of BBL, although Manitoba also introduced some flexibility to recognize the difficulties a government might have in coping with revenue declines or extraordinary expenditure demands in the short-term. Despite these measures, it is clear from the Manitoba experience that BBL as it stands cannot prevent governments from running deficits even during a relatively weak cyclical downturn. Experience with BBL elsewhere provides similar lessons, as only Saskatchewan's BBL, aided by a concomitant resource-driven growth spurt, survived the 2008-09 recession.

It might be argued that the failure of BBL in Manitoba and elsewhere reflects a faulty design. Some measures might be instituted to ensure that every effort is made to adhere to BBL. In the Manitoba case, the government should have been able to continue beyond the 2009-10 fiscal year with a four-year balancing cycle, provisions for extraordinary circumstances and a Fiscal Stabilization Fund balance that exceeded target levels. Legislation might dictate the following steps prior to suspension of BBL: (1) suspension of debt retirement payments, (2) identification and provision of all extraordinary circumstances provided by the legislation, (3) emptying the FSF account and (4) realization of a four-year deficit as provided by the legislation. Some proponents of BBL as a means to restrict the size and role of government in the economy may also have in mind automatic expenditure reductions to match revenue declines, but such measures seemed clearly at variance with the will of governments and their

electorate in the recent recession and it is difficult to see how such BBL provisions could be implemented in similar circumstances in the future. Moreover, such measures are likely counter-productive and could prolong the recession, creating a vicious circle of expenditure cuts followed by falling revenues dictating further spending reductions.

One design feature that deserves attention is the size of the savings account or "rainy-day fund". If Manitoba's FSF was inadequate for the weak recession of 2008-09, what savings rule would be needed to ensure sufficient funds for the stronger and more frequent recessions in the historical record? Since recessions are unpredictable in terms of timing and size, substantial savings are likely required to be confident that the FSF is large enough to permit the government to cope, including any anticipated anti-cyclical expenditure growth to counteract the recession. Research for Canada and other countries suggests that, rather than some establishing a target level, Manitoba might need to establish a savings rate of as much as 2-3% of revenue in each year of good revenue growth and that even higher savings rates might be needed to insure against sharper and more frequent recessions. We have calculated that the 1990-91 recession would have required a savings rate of 1⅓% of revenue in each of the preceding good years and more severe and frequent recessions cannot be ruled out. A savings rate of the size indicated by these calculations would reduce the funds available for programs and for debt retirement and might not be the best way to manage public resources, since the savings could be immediately applied to the debt until surplus funds were no longer available.

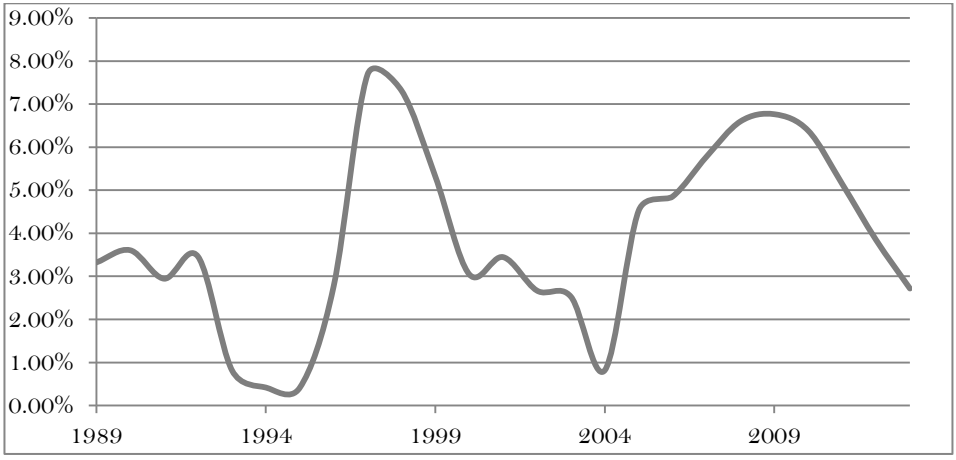
The real issue is prudent fiscal policy on both the expenditure and tax sides. Taxpayers and voters want governments that will avoid excessive taxation and ineffective expenditure and governments have used BBL to respond to this imperative. If BBL is no longer credible, at least as it is currently designed, what else might be done? If the concern is prudent fiscal policy, then legislation might compel the production and issuance of a regular fiscal management strategy. Indeed, this is already part of the Manitoba legislation, where Section 8 of the legislation requires the minister of finance to table a "financial management strategy" along with the budget. The financial management strategy is expected to set out government objectives and project core expenditures and revenues for the fiscal year. The minister is also required to table a report with the public accounts after the end of the fiscal year that compares the proposed strategy to actual outcomes. These are sensible measures that provide accountability to

the public and could serve as a sensible substitute for other provisions of BBL.

A pared down BBL, in the form of a Fiscal Management and Taxpayer Accountability Act, would eliminate the budget balancing provisions of the current legislation. In its place, the "financial management strategy" could be beefed up. For example, the strategy could be given more public visibility by requiring the tabling of a distinct "budget strategy" document in the spring that sets out government objectives and projections and a distinct "accounts strategy" document that compares the "budget strategy" document to actual outcomes for the fiscal year. These documents should be separate from the budget and public accounts documents so that their message is not lost in other fiscal details. One important addition to these documents would be a requirement to report and highlight the province's debt-to-GDP ratio as a measure of its fiscal health. This seems sensible since Part 3 of the Manitoba BBL is devoted to debt reduction from surplus funds and this is a feature of other BBL legislation as well. Moreover, cross-national research has suggested that there are potentially important, if still controversial, links between the debt-to-GDP ratio and economic growth that should not be ignored (Reinhart and Rogoff 2010). The province should be required to set goals and project outcomes for the debt-to-GDP ratio in its "budget strategy" report and assess these measures against the realized debt-to-GDP ratio in the "accounts strategy" report. The focus on goals, revenues, expenditures, the debt-to-GDP ratio and related measures of fiscal performance would hold government to account for its fiscal plans without setting intermediate rules around short-term budget balances.

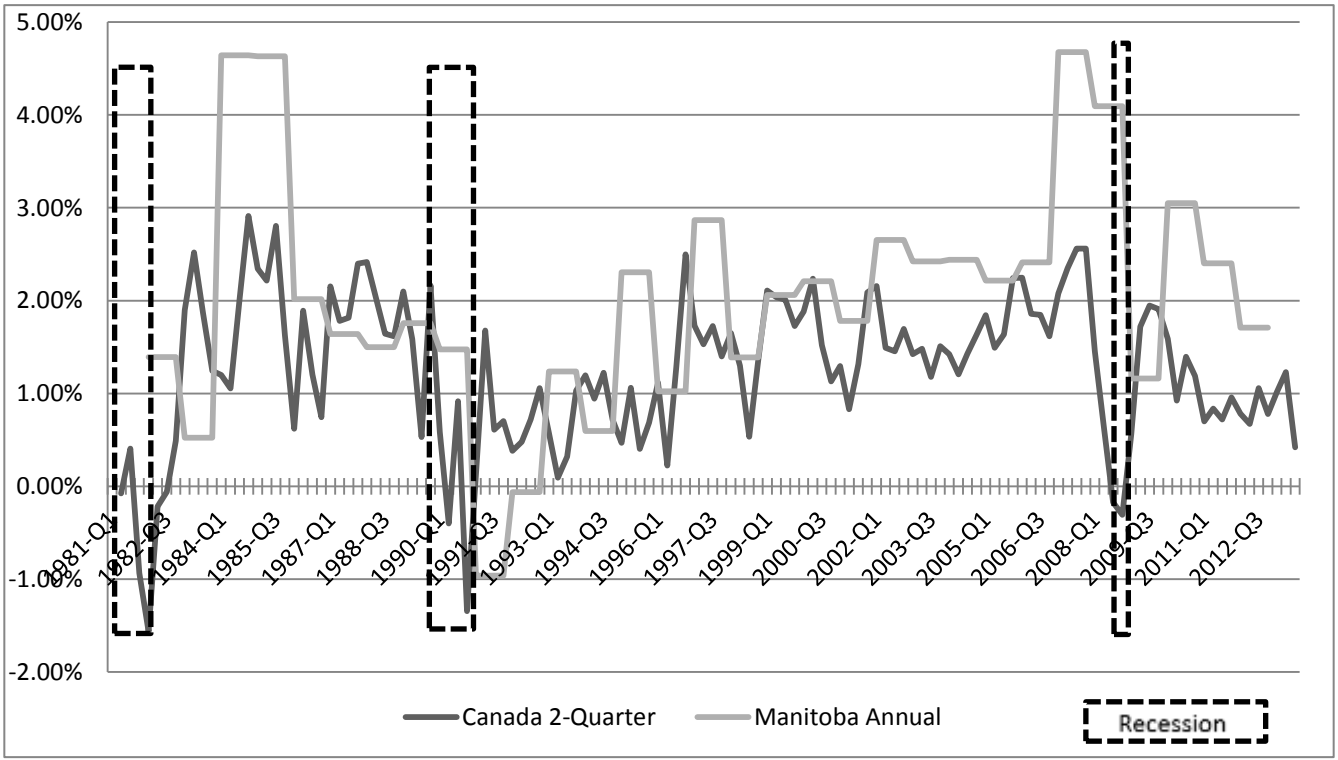
VI. FIGURES AND TABLES

Manitoba Fiscal Stabilization Fund as a Proportion of Total Government Revenues, 1989-2009



Source: (Statistics Canada n.d.(a); Government of Manitoba n.d.)

Figure 2 Canadian and Manitoba GDP Growth, 1981-2012



Source: (Statistics Canada N.d.(b); Statistics Canada N.d.(c))

Table 1 Manitoba Fiscal Stabilization Fund, 1989-2009

	(Millions of dollars)			
Year ended 31 March	FSF Balance	Total Revenue	FSF as percent of Revenue	"Savings Rate"
1989	$200	$6,019	3.32%	
1990	$225	$6,239	3.61%	0.40%
1991	$189	$6,427	2.95%	-0.56%
1992	$237	$6,866	3.46%	0.70%
1993	$56	$6,792	0.82%	-2.68%
1994	$29	$6,907	0.42%	-0.39%
1995	$30	$7,390	0.41%	0.02%
1996	$210	$7,603	2.77%	2.37%
1997	$577	$7,514	7.69%	4.89%
1998	$565	$7,722	7.32%	-0.16%
1999	$427	$8,036	5.32%	-1.71%
2000	$265	$8,687	3.05%	-1.87%
2001	$320	$9,299	3.45%	0.60%
2002	$247	$9,268	2.67%	-0.79%
2003	$236	$9,320	2.53%	-0.13%
2004	$79	$9,613	0.82%	-1.63%
2005	$484	$10,688	4.53%	3.79%
2006	$532	$10,962	4.85%	0.44%
2007	$663	$11,474	5.78%	1.14%
2008	$818	$12,400	6.60%	1.25%
2009	$864	$12,778	6.77%	0.36%
2010	$807	$12,648	6.38%	-0.45%
2011	$682	$13,248	5.15%	-0.95%
2012	$527	$13,688	3.85%	-1.14%
2013	$375	$13,786	2.72%	-1.10%
Mean 89-09	$346	$9,415	3.77%	0.30%

Notes: "Savings Rate" is the change in the FSF balance as a percentage of total revenues
Source: (Statistics Canada n.d.(a); Government of Manitoba n.d.)

Table 2 Canadian Recessions and their Impact in Manitoba, 1981-2013

Canadian Recessions			Manitoba Impact		Remarks
Start	End	Duration/Years since last recession	GDP	Budget (year refers to fiscal year end)	
1981 Q2	1982 Q3	6 quarters/1 year (Hao and Ng, 2011)	no period of negative annual growth but growth 2.17% below mean over 2 years (1981-3)	Deficits in 1981 ($143M), 1982 ($539M), 1983-8($3.05B); Total deficit: $3.73B	Double dip recession in Canada
1990 Q2	1991 Q1	5 quarters/8 years	growth -0.96% in 1991 and -0.06% in 1992; growth 5.1% below mean over two years (1990-2)	Deficits in 1990($233M), 1991($301M), 1992($360M), 1993-4($969M); Total deficit: $1.86B	Double dip recession in Canada; below average growth in MB from 1987-1994
2008 Q3	2009 Q1	3 quarters/17 years	no period of negative annual growth but growth 0.88% below mean for one year (2008-9)	Deficits in 2010 ($185M), 2011 ($181M), 2012-6 ($2.59B); Total deficit : $2.95B (est.)	No double dip recession; growth recovery above average in 2010 (3.05%) and 2011 (2.4%); H1N1 (2010), Flooding (2012)

Notes: Canadian recessions are identified by two consecutive quarters of cumulative negative real GDP growth as in Cross (1996; 2001) and Hao and Ng (2011); Mean Manitoba GDP from 1981 to 2012 was 2.04%.

Source: (Statistics Canada N.d.(b); Statistics Canada N.d.(c); Statistics Canada N.d.(d); Government of Manitoba 2014)

Table 3 Savings Rate to Achieve Budget Balance from the Last Two Manitoba Recessions

MB Recession		Good Years		Bad Years				
Start	End	GDP rate g_H	Duration t_H	GDP rate g_L	Duration t_L	Annual savings rate to achieve balance	FSF Accumulated Savings at Recession	Actual FSF balance at recession
1990 Q2	1991 Q1	2.27%	8 years (1983-90)	-0.51%	2 years (1991-92)	1.34%	$606 (1990)	$225 (1990)
2008 Q3	2009 Q1	2.47%	14 years (1995-2008)	1.14%	1 year (2009)	0.15%	$198 (2008)	$818 (2008)

Notes: The growth rate is the average for the period for GDP, based on data from sources below (and in Table 2); savings rate is calculated from equation [3] with revenue growth equal to GDP growth times 1.5; FSF accumulated amounts are calculated from equation [1]; actual FSF values are from Table 1.

Source: (Statistics Canada N.d.(b); Statistics Canada N.d.(c); Statistics Canada N.d.(d); Government of Manitoba 2014)

VII. NOTES

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[i] The target level in the FSF Act was defined to be 5% of operating expenditures, which would be equal to 5% of operating revenues when the operating budget is balanced. We focus on the size of the Fund as a proportion of revenue because it is natural to think of rate of savings out of income (revenue) rather than expenditure, but the difference between revenues and expenditures in percentage terms is typically quite small.

[ii] Among the seven provinces with BBL, only New Brunswick and Manitoba now have a four-year balancing cycle.

[iii] In fact, the 1995 Saskatchewan BBL explicitly required each newly elected government to create a budget plan in which revenues exceeded expenditures over

a four-year period (Phillips 1996). A larger issue not considered here is that neither annual nor multi-year balancing cycles geared to the election calendar bear any relationship to the public investment cycle associated with new infrastructure spending and maintenance nor to the debt repayment schedules that arise from such investment. Agenor and Yilmaz (2011), for example, argue that balanced budget rules that include productive investments in infrastructure and maintenance have worse economics growth outcomes than primary surplus rules that exclude such investment spending.

[iv] Provincial accounting practices vary in part according to what counts as a revenue or expenditure in the fiscal year. Of particular concern are the financing arrangements for multi-year infrastructure projects on the expenditure side and treatment of Crown asset sales on the revenue side. Temporal budgeting issues and the tensions between the annual and multi-year budgeting cycles and the electoral, political and business cycles are discussed in Doern, Maslove and Prince (2013:205-28).

[v] As discussed in the next section, this was not a recession in Manitoba in technical terms.

[vi] For a detailed discussion of the response to the recession across Western Canada, see Simpson and Wesley (2012).

[vii] Manitoba's controversial decision to raise its retail sales tax in 2013 was not part of the public discussion in response to the recession or in association with the bill to suspend the BBL. Rather, it was an unanticipated policy decision four years later.

[viii] The revenue elasticity is the percentage change in government revenues realized from a one percent change in provincial GDP.

[ix] Librarian Gary Strike found quarterly real GDP at basic prices for all industries at the provincial level. This data is available from the Conference Board beginning in 1961, but the data set is incompatible with the standard GDP series used here for Canada and Manitoba.

[x] These are current or nominal dollars but the comparison would be more striking in real terms.

[xi] Markov switching models characterize a time series by two or more equations that represent different regimes, such as booms and recessions in a business cycle. Switching from one regime to another is determined by a state variable whose current value depends on its immediate past value.

[xii] If we regress the data we have for the growth of GDP on the growth rate of revenues for Manitoba from 1990 to 2012 without a constant term, the estimated revenue elasticity is 1.4 with a t-value of 4.2. Wagner and Elder (2012) use revenue elasticities between 1.2 and 1.7 and focus on 1.5 as a representative point estimate.

[xiii] This is Elder and Wagner's (2012) equation [3] with the simplifications that $(1+x)^n \approx 1+nx$ for x small (as for g_H and g_L here) and the assumption that no interest is earned on savings (r=0).

[xiv] GDP growth was 4.09% in 2008 and 3.05% in 2010, both well in excess of the average growth rate of 2.04% for the period from 1981 to 2012.

[xv] The major unanticipated expenditures from flooding did not occur until 2011 after the suspension of the BBL.

REVITALIZING POVERTY REDUCTION AND SOCIAL INCLUSION

S.B. STROBEL* & E.L. FORGET**

In 2009, the Province of Manitoba introduced a poverty reduction and social inclusion strategy that was subsequently enhanced by the 2011 Poverty Reduction Strategy Act and the 2012 creation of a Workforce Development and Income Support Division. Manitoba's *Strategy for Sustainable Employment and a Stronger Labour Market* is not a static program. It comprises a series of key actions to be undertaken through 2015 and beyond which attempt to reduce poverty, encourage employment and smooth the transition "from assistance to independence" (Government of Manitoba n.d.:6). The purpose of this article is to explore the potential of three different policies to achieve the poverty reduction and social inclusion goals articulated in this strategy – raising minimum wages, introducing a guaranteed annual income (GAI) and introducing an earned income tax credit (EITC) that builds on the very small working income tax benefit that already exists at the federal level in Canada. These three policies have been at the forefront of recent debates on poverty alleviation in the post-recession period.

The article is organized as follows: first, we suggest that the fundamental approach of the provincial strategy is well founded, and that any approach to poverty reduction and social inclusion ought to consider the impact on current employment as well as future employability for all Manitobans. This is especially important for those

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most vulnerable to market downturns such as young people, new entrants to the labour market and people with disabilities. Second, each of the three policies is examined in isolation and assessed along three dimensions: the efficiency with which each policy addresses poverty, the relationship of each to employment, and the ease with which an individual can move into and out of the labour market. The ways in which these policies might be combined to enhance poverty reduction is considered in the final section, in which we advocate a pilot study designed to test the cost-effectiveness of an EITC in combination with minimum wage legislation.

I. PERSISTENT POVERTY AND EMPLOYMENT

In 2012, a new Workforce Development and Income Support Division was created by the Manitoba Government under Manitoba Entrepreneurship, Training and Trade.[i] This builds on the poverty reduction and social inclusion strategy introduced in 2009 (*All Aboard)* and the 2011 Poverty Reduction Strategy Act which, among other things, obligated the province to track a series of indicators and publish annual reports.[ii] The philosophy underlying this approach is the claim that "the best route out of poverty is through a well-paying job" and "Helping people get and keep good jobs so they can provide for themselves is a fundamental element of *All Aboard*, Manitoba's poverty reduction and social inclusion strategy" (Government of Manitoba n.d.:7). It might be argued that a poverty reduction scheme based on the claim that a good job is the best route out of poverty is fundamentally misguided because it shifts responsibility for systemic issues to the individual. However, the link between poverty reduction and employment is about more than assigning blame. Evidence has been accumulating for two decades suggesting that the effects of prolonged periods of unemployment, especially among young people, persist into the future in the form of reduced employability and lower wages (e.g. Nordstrom 2011). If such an association exists, then it is essential to look at the labour market opportunities and incentives associated with particular poverty reduction policies.

The theoretical basis for labour market scarring, which occurs when future remuneration or employment is negatively affected by periods of unemployment, can be found in human capital theory. This theory suggests that the deterioration of both firm-specific and general skills during periods of unemployment can reduce future employability and wages (Becker 1994). This deterioration is compounded if potential

future employers percieve periods of unemployment as indicators of lower productivity (Lockwood 1991; Pissarides 1994). Some researchers have explored the psychological effects of discouragement on job search (Clark et al. 1991). These findings have led other researchers to examine the empirical evidence to determine whether labour scarring exists and whether its effects are transitory or long-lasting (e.g. Ruhm 1991).

A review of the long-term effects of unemployment on workers of all ages found mixed results of labour scarring (Arulampalam et al. 2001). For example, Ruhm (1991) using the US Panel Study of Income Dynamics, initially found no evidence that bouts of unemployment are associated with lower wages or increased future unemployment, while Jacobsen et al. (1993) did find stable evidence of labour scarring for workers of all ages. More recent evidence from Sweden shows that skill depreciation can occur outside of young workers due to unemployment spells (Edin and Gustavsson 2008). Similar evidence from Italy (Lupi and Ordine 2002) suggests that workers across the age spectrum are affected by unemployment spells, although these results are dependent upon local labour market conditions. However, the results for young workers are far more uniform and robust. Nordstrom found, in a systematic 2011 review, that early experiences in the labour market affect employment and wages far into adulthood (Nordstrom 2011). The evidence has consistently shown that duration of unemployment in youth is associated with lower wages and increased probability of unemployment in adulthood across developed countries, but that questions remain about how long this effect persists and whether it tends to diminish over time (Cruces et al. 2012).

The literature on labour scarring suggests that poverty reduction requires a two-pronged approach. Individuals require income assistance, but they also require access to jobs. Any policy designed to address poverty must take into account the opportunities and incentives it creates for employment, particularly for the youngest and most vulnerable members of the labour market. Below, we consider the potential impact of three different policies designed to reduce poverty and enhance social inclusion.

II. Enhancing Minimum Wage

One of the indicators tracked by the Province of Manitoba as part of its poverty reduction strategy is minimum wage, which has sometimes been thought of as a key antipoverty policy. Increases to the minimum

wage in isolation are unlikely to have a significant effect on poverty reduction for two reasons. First, while increasing the minimum wage has a minimal impact on total employment, it does nothing to create new employment opportunities, to enhance employment or employability or to make it easier for those collecting employment assistance or disability pensions to enter the labour force. Second, increasing minimum wage is an inefficient method of reducing poverty because most of those working for minimum wage do not live in low-income families and most of those living in low-income families do not have members working for minimum wage. We do not suggest that minimum wage increases have no role to play in poverty reduction, but we do suggest that minimum wage increases used on their own are insufficient to achieve the stated goals of the provincial poverty reduction strategy.

The association between minimum wage increases and employment remains controversial, in spite of being very well documented. In Canada, there seem to be very small, if any, effects on total employment associated with minimum wage increases (Baker et al. 1999; Gunderson 2008; Fortin 2010; Lemieux 2011; Brochu and Green 2012; Galarneau and Fecteau 2014). An increase in the minimum wage, however, is associated with an increase in unemployment among teenagers (who comprise most of those working for minimum wage) and the negative effect is larger in Canada than in the US (Fortin 2010; Gunderson 2008; Galarneau and Fecteau 2014). The size of the effect varies by industry and region, and depends on globalization, changes in technology, the rate of unionization and how close the minimum wage is to average hourly earnings (Galarneau and Fecteau 2014). The closer minimum wage is to the average hourly wage, the greater the impact on employment (other factors held constant). The effect on employment among adolescents seems to occur largely through reduced hiring (Brochu and Green 2012).

The empirical evidence suggests that the employment impact of marginal increases in the minimum wage range from zero (for adults) to somewhere between 3% and 6% (depending on the study) for teenagers. Pierre Fortin (2010) argues that when minimum wage reaches 50% of the average hourly wage, further increases will reduce youth employment by 6%, largely through diminished opportunities for employment. This would seem to be a credible upper bound for the employment impact of minimum wage increases and any effects that do occur are likely to be concentrated among young, part-time workers.

If minimum wage increases have small or no effects on employment, they have a similarly meager impact on poverty reduction. The most recent evidence from Statistics Canada demonstrates that the profile of employees paid at minimum wage in Canada has not changed since 1997 when the Labour Force Survey began collecting data on minimum wage earners: "61% of minimum wage employees were aged 15 to 24 in 2013 (57% in 1997). Also, 59% of them held a part-time job in 2013 (55% in 1997). Finally, in 2013, 61% of all minimum wage employees were in the retail trade or food and accommodation sectors (54% in 1997)" (Galarneau and Fecteau 2014:7). That is, minimum wage earners are still disproportionately young, part-time workers.

In Manitoba, there has been a substantial increase in the proportion of all workers who earn minimum wage, from 3.9% in 1997 to 6% in 2013, while in Canada as a whole the rate increased more modestly from 5.0 to 6.7% (Galarneau and Fecteau 2014:6-7). This increase in the proportion of minimum wage earners is matched by a reduction in the proportion of workers earning between the minimum wage and 10% above the minimum wage. These facts, together, suggest that the increase in the proportion of minimum wage earners in Manitoba is largely a consequence of legislated increases in the minimum wage. Workers who had previously earned slightly above minimum wage did not necessarily receive a wage increase when minimum wages increased.

Canadian data since the 2008 recession also demonstrate that the profile of the Canadian minimum wage earner has not changed in response to economic turmoil. Despite the variations in economic conditions over time, more than 59% of minimum-wage workers in Canada were under the age of 25 in 2009 and 61% were under 25 in 2013, compared to 57% in 1997 (Statistics Canada 2010; Galareneau and Fecteau 2014). A 2010 Statistics Canada profile concluded that most of these were part-time workers attending an educational institution. Many lived with their parents or another family member (60%). Of the 25% who lived with a spouse, 74% of the partners were working and, in most cases, earning more than minimum wage (Statistics Canada 2010).

This is not to deny the existence of real hardship among the working poor. Almost a third of minimum-wage earners are adults between the ages of 25-54 and, among these, women are over-represented. Even among those aged 15-19, some are self-supporting individuals living alone rather than students working part-time for pocket money. The Survey of Consumer Finances has been used to show that those aged 15-19 contribute a significant portion of total household income for families living below the low-income cutoff

(LICO)[iii], with 30% of teens living in low-income families claiming to contribute 26% or more of household income (Sen, Rybczynski and Van De Waal 2011:46).

Increasing the minimum wage, however, is not an efficient way to reduce this hardship. Neumark and Wascher (2008) and Gunderson (2008) showed how little overlap exists between minimum wage workers and low-income families. Two more recent provincial studies, one in Ontario and another in Quebec, validate these results and conclude that minimum wage increases are not an efficient poverty reduction tool by demonstrating that people who earn minimum wage do not necessarily live in low-income families (Mascella, Teja and Thompson 2009; Clavet, Duclos and Lacroix 2009). Nationally, these results remain valid. Galarneau and Fecteau (2014) use Statistics Canada Survey of Labour and Income Dynamics to demonstrate that only 10% of workers paid at minimum wage belonged to families living below the LICO in 2013. Therefore, increasing the minimum wage is likely to increase the incomes of many people (most of them adolescents) who do not necessarily live in poverty, while doing little to address persistent poverty among those families without a minimum wage earner.[iv]

Perhaps the greatest limitation of using minimum wage increases alone as a method of reducing poverty is that its impact is limited to those who are in the labour market. Minimum wage policy is not designed to make transitions into the labour force smoother for those currently receiving income supplements through other schemes. Enhancing employment opportunities for youth, the currently unemployed and people with disabilities can happen only by addressing the ways in which income support schemes are designed.

Overall, minimum wage policy may be a component of a reasonable poverty reduction and social inclusion scheme. By itself, however, it cannot increase opportunities for employment or make entry into the labour market easier. Moreover, as a poverty reduction tool, minimum wage increases are not efficient because they cannot be targeted to those families and individuals most in need.

III. A GUARANTEED ANNUAL INCOME

A guaranteed annual income (GAI) can be designed in a variety of ways, but we focus on one variant that has a Manitoba history: between 1974 and 1979, *Mincome* was introduced as an experiment in Winnipeg and Dauphin, with a variety of other communities serving as controls.

Any individual with no income from any other source was guaranteed a stipend keyed to the LICO which varied by community and family size. As income increased, benefits were reduced, albeit less than proportionately. Consequently, people well above the LICO received at least some benefit from the program.

Winnipeg was designed as a classic experiment in the sense that a small proportion of the total population was selected to participate and families were randomized into treatment and control arms. The treatment arm received the GAI, while the control arm received standard treatment. In Winnipeg, the size of the guarantee and the rate at which benefits were reduced varied among recipients. Dauphin, by contrast, was a saturation site in which all families were eligible to participate and offered the same deal: if they had no other income from any source, they received 60% of the LICO. As income from other sources increased, the benefit was reduced by 50% of the increase. Hum and Simpson (1991) and Forget (2011) describe the features of the experiment.

This program has a number of very attractive characteristics, but the entire experiment was designed (as were its four US counterparts) to address one significant concern: if individuals or families were given a guaranteed income, would they reduce their work effort or leave the work force altogether? Hum and Simpson (1991) describe the labour market results of the Canadian experiment, which were consistent with the findings of the four comparable US experiments. There was a reduction in total hours worked of approximately 13.5% which is larger than the changes in employment associated with marginal changes in the minimum wage. However, the details of the employment effect speak to the particular strengths of the GAI.

There was, as is the case with minimum wage hikes, virtually no impact on the number of hours worked by adult primary earners. Two groups of workers did reduce the hours they worked significantly: married women and adolescents. The outcomes for adolescents, however, are unambiguously positive, while those for married women are more nuanced. Adolescents reduced their hours worked very significantly – by up to 80% in some studies – largely because they took their first full-time job at a later age (Hum and Simpson 1991). Before we conclude, however, that labour scarring might be an issue, it is important to examine the data more closely. Forget (2011) re-examined the data and found that young people who reduced their hours of work so heavily were returning to high school. There was a significant increase in the number and proportion of students who completed high

school during the period rather than leaving school before graduation to take full-time employment. As a deep body of literature suggests high school completion significantly increases the probability of future employment and increases lifetime earnings. It is protective against labour scarring (see Galarneau and Fecteau (2014) for a summary of the evidence).

Married women reduced their work hours by using the GAI to "buy" themselves longer parental leaves, when they took time off work to give birth they prolonged their absence. It is important to remember that this effect may be dependent on the policies and practices of the period; women were just entering the labour force in large numbers when this experiment took place. Moreover, paid parental leave in the mid-1970s was much more limited than it is today. It is well known that attachment to the labour force is associated with career progress and higher lifetime earnings (cf. Phipps et al. 1998), yet as a society we have decided that longer parental leaves are beneficial for families. The availability and design of parental benefits does seem to influence maternal job market behaviour, however the relationship between maternal employment, return to work patterns and parental benefits is a matter of ongoing empirical investigation. It seems reasonable to conclude that women are more attached to the labour force today than they were in the mid-1970s when these experiments were conducted, and therefore that the employment response today would likely be smaller than it was then. Nevertheless, North American policymakers have always been somewhat ambivalent about how and whether social programs ought to be designed to encourage mothers of young children to participate in the labour market; at what stage in a child's life should maternal "independence" be a goal and when is income assistance appropriate?

Mincome was designed specifically to encourage the smooth transition of individuals into the labour market – from "assistance" to "independence" in the words of the current poverty reduction strategy – because benefits would be phased out gradually as employment income increased thereby eliminating the threshold effect that faces individuals who bump up against the income maxima stipulated in assistance programs. There would always be an incentive to work more as compared to traditional social assistance programs where each additional dollar earned through the labour market meant a reduction of benefits by a dollar. This design feature was novel in the 1970s and it was so successful that it has subsequently made its way into the design of most income assistance programs, in at least a minimal way. As an

automatic feature of an income assistance program, it encourages individuals to accept part-time or low-paid work even if that is all that is available to them, because the program acts as a wage subsidy.

This design feature has both positive and negative consequences. New mothers might be enabled to work part-time, balancing their family responsibilities while maintaining their connection to the labour force and relying on the GAI to ensure that their family income is sufficient to maintain a reasonable quality of life. Young people, who might struggle to find well-paying or full-time work, can build labour market connections while still benefiting from the GAI if their family income qualifies. People with disabilities might choose to develop and maintain a labour market connection with part-time work even if they feel unprepared for full-time work, while relying on the GAI to supplement their income. Under a GAI, there is no requirement for an individual to justify or rationalize the labour force choices made. That is, a new parent need not "qualify" for parental leave, the family can decide how best to allocate its activities. A person who feels physically or mentally unable to maintain a full-time job need not be labelled "disabled" by a recognized authority, with requirements for ongoing monitoring to ensure that the disability has not changed. Individuals faced with parental or family care requirements need not meet narrow and prescribed regulations in order to "qualify" for meager income supplements. The program, instead, relies on the families and individuals involved to make their own decisions; it is not coercive. The *Mincome* evidence demonstrates that coercion was not, in fact, necessary: there was no flight from the labour market.

The wage subsidy effect of a GAI also has potential negative consequences. Employers may find themselves able to fill a low-paying job with workers who would not be prepared to take that job were it not for the existence of a GAI. That is, in a labour market in which employers have market power, these employers might be in a position to reduce wage offers and thereby capture some of the benefits of a GAI that might otherwise go to employees. This suggests the need for some ongoing minimum wage legislation to discipline the labour market, particularly during market downturns.

A GAI, then, has moderate employment effects for secondary earners and is well-designed to smooth the transition between assistance and independence. It enhances the social inclusion of people with disabilities because it does not require that conditions be policed and monitored. Moreover, its design means that benefits can be efficiently targeted towards low-income families through existing

infrastructure in the tax system. This also allows for one of the major benefits of the GAI that we have not discussed in detail, which is the simplicity of its administration.

A GAI, however, has three limitations that need to be acknowledged. First, if potential employers have market power as they may during market downturns, there can be downward pressure on wages that wage legislation needs to address. Second, despite evidence to the contrary, there is still a popular belief that, given the opportunity, individuals offered a GAI will choose to work less. This makes a GAI politically difficult to implement. Third, the fiscal costs of the program depend very much on how the scheme is designed. While there are likely to be substantial savings from other social programs if a GAI effectively addresses poverty and reduces bureaucracy, the net costs are still likely to be considerable (Forget 2011). An untried program with open-ended net costs is a radical policy proposal and it is unlikely that Manitoba has the fiscal capacity to operationalize such a scheme without federal support.

IV. AN EARNED INCOME TAX CREDIT

The US introduced an earned income tax credit (EITC) at the national level in 1975 and, since then many countries including Canada, have introduced similar (but often much smaller) earned or working income tax credits. An EITC is a refundable tax credit for low and moderate income earners, often limited to individuals or families with dependent children. An EITC usually begins to take effect at a relatively low level of earnings and the family receives a proportion of total earnings until the maximum benefit amount is reached. At that point, the total amount paid out remains stable over a range of earnings. At a pre-determined family income, the value of the tax credit begins to decline until the benefit reaches zero (OECD 2003). As with a GAI, an EITC is targeted towards low-income earners and is therefore a relatively efficient poverty reduction tool, although (as with minimum wage increases) an EITC has no capacity to increase incomes for those not participating in the labour market. It does, however, provide some incentive for individuals to participate in the labour market who might otherwise not.

The design of an EITC is very similar to that of *Mincome* with one striking difference: the income subsidy depends on earned income so there is a very strong incentive for individuals to enter and stay in the labour market. That is, the EITC is designed specifically to deal with

the fear that individuals offered a GAI would reduce their work hours because there is no guaranteed income assistance for those who do not work and no minimum payout. In contrast, the gradual phase-out of the EITC is similar to that of the GAI; an individual is always better off earning another dollar in the labour market because his/her benefit will be reduced less than proportionately. Like the GAI, this design facilitates a smooth transition into the workforce and creates work incentives. Unlike the GAI, the work incentives are coupled with the requirement that families participate in the labour market if they are to benefit from the EITC.

There are a variety of EITC programs among the various states and these natural experiments have given rise to a number of empirical studies. There is very strong empirical evidence that an EITC increases employment and income among affected families (Strully 2010; Dahl 2009; Hotz 2003; Ellwood 2000; Meyer 2000; Eissa 1996). It increases employment in single parent families, especially those headed by women (Simpson 2010; Strully 2010; Dahl 2009; Eissa 1996; Meyer 2000). Perversely, it might not increase employment among very low-income two-parent families, particularly those whose EITC refund might be reduced if family income were to rise further (Ellwood 2000; Hotz 2003). Meyer and Rosenbaum (2000) identify one mechanism responsible for employment increases with the EITC: single mothers are particularly incentivized to work.

An EITC has a number of very attractive features: there is no employment disincentive, and the empirical evidence suggests that employment among most groups increases. It is therefore very consistent with a provincial focus on employment as the best route out of poverty. It is relatively efficient, in the sense that it can be targeted to low-income families through the tax system. Its design facilitates smooth transitions into the workforce because the benefits are retained over a substantial income range. Unlike a GAI, an EITC may be more politically feasible; if there remain popular fears that individuals who are given a GAI will reduce their work effort, there can be no such concern about a program that explicitly rewards work effort. In the United States the EITC has received broad support from across the economic and political spectrum for both its efficiency and its poverty alleviating qualities.

Three limitations of an EITC persist. First, a very attractive feature of the GAI is that it leaves the decision about whether and how to allocate their effort towards the formal labour market to individuals and families. We suggested that there was little evidence that total

employment would be much affected, but that a GAI nevertheless allowed people with disabilities, mothers of young children and people with caregiving responsibilities to make decisions that best met their family needs without the need for a bureaucracy to monitor compliance. An EITC, by contrast, is explicitly coercive. It creates strong incentives for employment. This is both its strength and its weakness.

Second, like the GAI, an EITC is a wage subsidy and, as such, creates an incentive for employers to reduce wage offers if the labour market is dominated by firms with market power. It provides incentive for employers to free-ride on government subsidization of the wage and reduce wage offers. If the economy is such that employers have the power to implement such wage reductions, they would be able to internalize the benefit of the program to the detriment of the families who are the nominated beneficiaries of such a scheme. Such market power may be countered with a minimum wage policy that can provide a hard floor for wages. Finally, of course, an EITC does nothing to address poverty among families with no earned income. An EITC would necessitate other social assistance programs for those families who are unable to work.

V. REVITALIZING POVERTY REDUCTION AND SOCIAL INCLUSION

This article has examined the capacity of three different policies, in isolation, to further the articulated goals of the current Poverty Reduction and Social Inclusion Strategy of the Province of Manitoba. We laid out the advantages and disadvantages of these policies in terms of their effectiveness in reducing poverty and improving employment. We made the argument that both of these goals are necessary parts of a social assistance program designed to reduce poverty and transition Manitobans into sustainable, economically self-sufficient living.

What would an effective, politically feasible poverty reduction strategy look like in Manitoba? Such a strategy could make use of the special strengths of all three policies, combining the phased withdrawal of benefits associated with both *Mincome* and most EITC schemes with a binding minimum wage indexed to inflation. A phased withdrawal of benefits would provide incentive and support for Manitobans to transition into the workforce without harsh penalties. In a perfect world, we would trust families to choose behaviours that optimize their well-being. In the real world, an EITC may be just coercive enough that we could reap many of the benefits of a GAI, while accommodating the

innate cynicism that we attribute to taxpayers. Such a plan would also appeal to the business community because of its ability to boost overall employment without shifting the entire burden of legislated wage increases onto private businesses. Minimum wages, indexed to inflation, would ensure that these businesses paid their fair share. This would avoid the degradation of the minimum wage in real terms and provide a hard wage floor to support an EITC.

We would like to end with a concrete proposal: that the Province of Manitoba undertake a formal pilot study of the cost-effectiveness of a significant provincial EITC in combination with minimum wage legislation and monitoring to reduce poverty, encourage employment, and improve the quality of life of all Manitobans.

VI. NOTES

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i The Department of Entrepreneurship, Training and Trade is now known as the Department of Jobs and the Economy.

ii All Aboard is described on this website, which also publishes annual reports: http://www.gov.mb.ca/allaboard/ (accessed 18 July 2014). The Poverty Reduction Strategy Act can be found here: http://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=p94.7 (accessed 18 July 2014).

iii The LICO is regularly updated by Statistics Canada, and varies by community and family size, and whether it is measured before or after taxes and transfer payments. It is one of several low-income measures designed specifically to measure relative poverty.

iv The only Canadian study to simulate the effects of an increase in the minimum wage on poverty goes much further. Creating a worst-case scenario by combining the disemployment effect among adolescents with the above results, the authors conclude that a 10% increase in the minimum wage is significantly correlated with a 3-5% drop in employment among adolescents, and a 4-6% *increase* in the number of families living below the LICO (Sen, Rubczynski, Van De Waal 2011). This is a model rather than a data analysis exercise, but it demonstrates that increasing the minimum wage is not necessarily associated with a reduction in poverty.

Making the Case for an Aboriginal Labour Market Intermediary: A Community Based Solution to Improve Labour Market Outcomes for Aboriginal People in Manitoba

SHAUNA MACKINNON *

I. ABORIGINAL PEOPLE IN THE CANADIAN CONTEXT

Aboriginal[1] people in Canada continue to measure poorly on several social and economic indicators when compared with non-Aboriginal people. Aboriginal people are over-represented among those who are poor, unemployed, precariously employed and measure comparatively poorly on many health indicators (Fernandez, Mackinnon, and Silver 2010). Aboriginal people are disproportionately represented in the criminal justice system, child welfare system, are more likely to live in poor housing and Aboriginal youth are more likely to leave school at an early age. These poor social and economic conditions and outcomes have nothing to do with indigeneity but rather a long history of structural forces that can be traced back to the arrival of European colonizers who brought with them a worldview that prioritized economic expansion and the generation of wealth at all costs. As described by Indigenous scholar

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1 For the purposes of this paper "Aboriginal" includes First Nations (status and non-status), Metis and Inuit people who self-identify as Aboriginal.

Taiaiake Alfred, they "came to discover, with no collective ethos" but rather "a strong belief in individuality and the pursuit of individual material gain" (Alfred 2009:10-11).

Colonialism continues to have serious, long lasting and very damaging economic, social and cultural consequences. Generations of Aboriginal people have been traumatized by efforts to strip them of their identity and culture. In many cases, this has led to a complex form of poverty that is far more serious than simply a shortage of income.

On many reserves today and in many urban centres Aboriginal people experience a form of poverty that is complex, involving many interconnected layers of systemic exclusion and intrusion. The lack of adequate housing for example has been linked with poor education outcomes, which in turn has an impact on future earnings (Cunningham, and MacDonald 2012). Children involved in the child welfare system are at greater risk of poor social and economic outcomes (Brownell et al. 2010), the length of time in foster care and number of placements has been associated with poor education outcomes (Mitic, and Rimer 2002) and it has been shown that the longer people live in poverty, the less likely they are to escape it (Lang 2007).

Aboriginal people generally have lower education levels, lower income levels and weaker attachment to the labour market. The 2011 National Household Survey (NHS) shown in Table 1 shows the disparity in income between Aboriginal and non-Aboriginal people in Canada and more specifically in Manitoba.

Table 1: Median Income: Canada and Manitoba

Age 15 and over	Total Income Canada	Employment income Canada	Total Income Manitoba	Employment Income Manitoba
Aboriginal Identity	$20,701	$24,481	$17,690	$24,456
Total Population	$29,870	$31,603	$29,029	$30,371

Source: (Statistics Canada 2011a)

While these statistics demonstrate the serious disparity, it should be noted that the high global non-response rate of the National Housing

Survey is likely to understate the relative disadvantage of Aboriginal people.

Government and business sectors are increasingly taking notice of the statistics highlighting the poor social and economic outcomes of Aboriginal people. This is in part because the recruitment and retention of Aboriginal workers has become widely recognized as critical to Canada's economic future. In May 2013 Manitoba business leaders attending an event hosted by the Business Council of Manitoba identified the challenges facing Aboriginal people in Manitoba as a top priority. The business community is taking notice in part because it knows that the Aboriginal population is growing far more quickly than the non-Aboriginal population and it is understood that Aboriginal people will be a significant source of labour in Manitoba's future. A total of 16.7% of the Manitoba population and 11% of Winnipeg's population identified as Aboriginal in 2011(Statistics Canada 2011b). This is an increase from 15% in Manitoba in 2006 and from 10% in Winnipeg. According to the NHS, the metropolitan area (CMA) of Winnipeg has the highest number of Aboriginal people of all CMAs in Canada and this population is expected to grow further and quickly. Statistics Canada estimates by 2031, between 18 and 21% of Manitoba's population will identify as Aboriginal.

Aboriginal people in Manitoba are also generally much younger than the non-Aboriginal population. In 2011, Aboriginal children aged 14 and under represented 28.7% of the total Aboriginal population in Winnipeg and 18.1% of all children in Winnipeg (Statistics Canada 2011b). By comparison, non-Aboriginal children aged 14 and under accounted for 16% of the non-Aboriginal population. The median age of the Aboriginal population is 21 years, almost half that of the non-Aboriginal population of 39 years. Statistics Canada (2011b) estimates that the number of Aboriginal adults in Manitoba between ages 20 and 29 will increase by over 40% by 2017 compared with a 9% growth rate among the same age cohort in the general population.

The increasing number of Aboriginal people in Winnipeg is in part the result of migration from First Nation communities as individuals and their families relocate to Manitoba's largest city in search of better opportunities. Unemployment in Manitoba First Nations is extremely high and poverty is rampant — 62% of First Nation children in Manitoba live in poverty (MacDonald, and Wilson 2013).

Of all CMAs, Winnipeg has the highest population of First Nation people living off reserve. Many of these families settle in Winnipeg's inner city and north end communities. The Aboriginal population in the

inner city is markedly higher than in Winnipeg generally. Census 2006 showed 21% of the inner-city population identify as Aboriginal. In some inner-city neighbourhoods more than 50% of residents are Aboriginal. Within these neighbourhoods Aboriginal people are also among the poorest and most marginalized. For example, 65% of inner-city Aboriginal households had incomes below Canada's Low Income Cut Off measure (LICO) in 2005 (Statistics Canada 2006a).

II. LABOUR MARKET PARTICIPATION

It is often said that the best way out of poverty is employment. Poverty alleviation is of course far more complicated than this, especially in the contemporary political economy where the labour market is increasingly segmented and polarized (MacKinnon n.d). Nonetheless an emphasis on paid work has become increasingly central to federal and provincial social policy since the 1990s, and improving labour market access to Aboriginal people is an important means toward improved social and economic outcomes.

While the Aboriginal population in Manitoba grows, Table 2 shows that Aboriginal participation in the labour market continues to lag far behind that of the non-Aboriginal population.

Table 2: Labour Market Participation in Manitoba

	Employment Rate 25-64 years	Unemployment Rate 25-64 years	Participation Rate 25-64 years	Employment Rate 15-24 years	Unemployment Rate 15-24 years	Participation Rate 15-24 years
Aboriginal Identity	61.3%	11.4%	69.3%	33.1%	23.2%	43.1%
Non-Aboriginal	80%	3.9%	83.3%	60.5%	11.5%	68.3%

Source: (Statistics Canada 2011a)

As these statistics show, Aboriginal labour market participation is far weaker than that of the non-Aboriginal population. As noted, the reasons are complex and labour market participation is but one indicator of the continued oppression and exclusion of Aboriginal People. Nonetheless, access and retention of employment that pays well and provides opportunity for advancement can contribute significantly to improved social and economic well-being.

III. Improving Labour Market Participation – The potential role of a Labour Market Intermediary

If there is one thing that governments, the business community, Aboriginal and civil society groups seem to agree on, it is that improving labour market outcomes for Aboriginal people is an important priority. It should be emphasized that the majority of Aboriginal people will access education and employment without great difficulty— highly educated and skilled Aboriginal people are in very high demand. However, as illustrated in the data tables provided, there is a significant minority and growing number of Aboriginal people who continue to be excluded from labour market participation. The impact is far reaching. There are many Aboriginal people with a host of barriers impeding them from reaching their full potential. For these individuals and their families, and in light of the fact that the Aboriginal population is quickly growing, improving labour market outcomes will require that we rethink existing interventions with a focus on Aboriginal people who have weak labour market attachments and employers seeking to hire them.

In the past 10 years, two research studies have been conducted through the Canadian Centre for Policy Alternatives (CCPA) – Manitoba Research Alliance (MRA) in collaboration with community based organizations (Silver, and Loewen 2005; Silvius, and MacKinnon 2012). This research supports the case for a labour market intermediary (LMI) that is specially designed to meet the needs of multi-barriered Aboriginal people and the employers who hire them.

Autor (2009) describes labour market intermediaries as "entities or institutions that interpose themselves between workers and firms to facilitate, inform or regulate how workers are matched to firms, how work is accomplished and how conflicts are resolved." The breadth and depth of services provided by labour market intermediaries varies from the very minimal to comprehensive in scope. Labour market

intermediaries can be particularly helpful for individuals with weak labour force attachment and limited networks.

Comprehensive labour market intermediaries not only serve to match employers with workers, but they provide continued and consistent supports to ensure successful transition. This can be particularly important for individuals who have had little or no previous workplace attachment. Successful models in the US demonstrate that LMIs are most effective when they integrate on-the-job training and supports for both employers and prospective employees (Harrison, and Weiss 1998; Silver, and Loewen 2005).

In the case of Aboriginal people, a LMI can serve the purpose of working with local training organizations and employers to:

1. Ensure that trainees are getting the skills necessary to meet labour market demand
2. Match employers with Aboriginal employees
3. Assist in easing the transition to work by providing ongoing supports with an emphasis on cultural reclamation for program participants and cultural competence training for employers
4. Track employment and income outcomes
5. Assess labour market need into the future
6. Work with training organizations to adapt programming to meet labour market needs

IV. UNDERSTANDING CHALLENGES, NEEDS AND OPPORTUNITIES

An Aboriginal LMI can provide a unique role in response to the challenges identified by the business community and also in response to what Aboriginal people tell us when asked about their experiences finding meaningful employment and opportunities for advancement in their workplaces (MacKinnon n.d.). In a recent report titled *Understanding the Value, Challenges, and Opportunities of Engaging Metis, Inuit, and First Nation Workers* published by the Conference Board of Canada, authors Howard, Edge, and Watt (2012) report on findings from employer surveys that showed challenges in two key areas—attracting and hiring Aboriginal workers and work performance and retention. With regard to attracting Aboriginal workers, survey respondents noted challenges including low skill levels; lack of work experience; reluctance to relocate; language or cultural issues; and inability to communicate. Regarding work performance and retention, survey respondents noted absenteeism, productivity or performance

issues; quality of work issues and substance abuse issues as particularly challenging.

There exist many research studies looking at these and other challenges in an attempt to understand the root causes of Aboriginal exclusion from the labour market. Most notable is the evidence of a long history of misguided colonial policies designed to assimilate indigenous people by stripping them of their identity and culture (Hamilton, and Sinclair 1991; TRC 2012). Added to this is the reality that the colonial context continues and racism is pervasive and systemic. The effects have been, and continue to be, deeply damaging for generations of Aboriginal families for whom education and good jobs remain far out of reach.

V. Education Outcomes and Impact

The importance of education and training as a means of ending the cycle of poverty is broadly understood and there have been a growing number of opportunities available to Aboriginal people in Manitoba. Census 2006 shows that one-third (33%) of Aboriginal adults aged 25 to 54 had less than a high school education compared to nearly 13% of the non-Aboriginal population, a difference of 20 percentage points (Statistics Canada 2006a; Statistics Canada 2006b).

It is true that education levels for the Aboriginal population have improved, however they continue to lag far behind that of the non-Aboriginal population. As shown in Table 3, the percentage of Aboriginal Canadians not completing high school continues to be very high. According to the 2006 census, 34% of survey respondents between 25 and 64 years who identified as Aboriginal reported having not obtained a high school certificate. Comparatively, 15% of the non-Aboriginal population of respondents in this demographic reported not having a high school certificate. The 2011 NHS shows some improvement with 28.9% "Aboriginal identity" respondents reporting having not obtained a high school certificate compared with 12.1% of the non-Aboriginal population. Fully 64.7% of all adults between 25 and 64 years had completed some form of post-secondary education in 2011, compared with 48.4% of Aboriginals. This too has improved. The number of Aboriginal people with a degree continues to increase with 6% in 2001, 8% in 2006 and 9.8% in 2011, of Aboriginal people reporting having a university degree. However, the Aboriginal population lags behind the non-Aboriginal population in general and

Manitoba fares worse than Canada when looking at high school certification of both Aboriginal and non-Aboriginal people.

One notable observation is that the number of Aboriginal people in Manitoba with a university degree is keeping pace with the national rate of Aboriginal people with degrees (Table 3). The relatively positive increase in university attainment could in part be attributed to Manitoba's Post-Secondary ACCESS Programs, which provide academic and other supports to Aboriginal and multi-barriered students.

Table 3: Highest Level of Education Age 25-64

	Total Population Less than high school	Total Population High school certificate or equivalent	Total Population With University Degree	Aboriginal Less than high school	Aboriginal High school certificate or equivalent	Aboriginal With University Degree
Canada	15 %	24 %	23 %	34 %	21 %	8 %
Manitoba	20 %	25 %	19 %	40 %	12 %	8 %

Source: (Authors calculations from Statistics Canada 2006a; Statistics Canada 2006b)

However, the importance of ongoing systematic transitional supports for employee and employer pre- and post-employment continues to be disregarded if not completely ignored. Supports to ease transition are minimal at best because training organizations, although well aware of the need for transitional supports, are not adequately funded to provide them and therefore do so as an 'aside' and on a very short term basis. This has resulted in continued challenges for employers and Aboriginal trainees.

In Winnipeg there are many organizations providing training opportunities for Aboriginal people wanting to enter the labour market. While they are making great strides, in most cases their job technically ends when training is complete. This creates a critical gap in service for at least three important reasons. First, many of the individuals who

participate in training have had no previous attachment to the labour market. For these individuals, the adjustment to work life can be extremely difficult. Related to this is a second challenge that is often not considered—employers are often not prepared for this type of worker. As described by the executive director of a local Aboriginal training program, employers expect workers to be "job ready". Not only do they expect workers to be trained, most employers will assume that the individuals they hire will have had some experience with work and will have a sense of what the 'culture' of the typical workplace is like. But this is not the reality for many Aboriginal jobseekers. Many have returned to receive training as adults wishing to enter the labour market, but have had minimal, or no experience with paid employment. These individuals have much to learn beyond the job-training phase. Third, there continues to be a cultural divide between Aboriginal and non-Aboriginal people and racism remains prevalent in many workplaces. This is a problem in its own right, but one that makes it especially difficult for Aboriginal workers first entering the labour market. Many simply give up and walk away from their jobs.

To better address the gap between training and employment for Aboriginal people who have been excluded from the labour market, researchers, employers and community based training and other service providers have proposed an Urban Aboriginal LMI that could be a comprehensive point of service connecting employers with individuals who have had difficulty finding and keeping good jobs by providing a full range of supports (Silvius, and MacKinnon 2012). The LMI would continue to support both employer and employee through the transition from unemployment to work. Establishing a LMI for Aboriginal people seeking employment, and employers seeking to hire Aboriginal workers, could help to address some of the complex issues identified by prospective employers and Aboriginal workers.

VI. Features of a Labour Market Intermediary

As noted, the Conference Board of Canada survey of employers identified specific challenges related to both recruiting and retaining Aboriginal employees. The question that remained in their report was what to do. A labour market intermediary designed to serve employers and Aboriginal jobseekers is one solution in response to their concerns while also recognizing and responding to the challenges of Aboriginal jobseekers.

The LMI proposed herewith is essentially a one-stop shop that connects employers with training programs and individuals who have had difficulty finding and keeping good jobs. It provides the full range of supports that are necessary for successful attachment to the labour market beyond the training stage. It also provides jobseekers with a window to various training and employment possibilities so that they can make choices that align with their interests as well as labour market demands. The model proposed is different from services that currently exist, because it is comprehensive, long-term focused, community-based, community-driven and directed by a consortium of training agencies and other stakeholders with an understanding of the specific needs of Aboriginal jobseekers. These features are centrally important to the LMI model proposed.

Establishing a LMI for Aboriginal people seeking employment and employers seeking to hire Aboriginal workers, could help to address some of the complex issues identified by prospective employers and Aboriginal workers. Similar models have worked well with marginalized groups in other jurisdictions. For example, the Centre for Employment and Training (CET) in California works closely with marginalized workers and employers and has been shown to be a success. A 2004 report titled *Grow Faster Together, or Grow Slowly Apart* (Elwood 2004) provides other examples of success in the U.S.A.

A 2005 study by Loewen and Silver showed that LMIs are most successful when they collaborate with community-based organizations (CBOs) and other education and training institutions working with marginalized people; connect job seekers with jobs that pay a living wage, and include benefits and opportunities for advancement; provide comprehensive and ongoing supports for individuals and employers to ensure successful workplace transition; and include the full involvement of unions in organized workplaces.

Given the under-representation of Aboriginal people in the labour market and the ongoing challenges described above, it makes sense to develop a labour market intermediary that focuses on the specific needs of Aboriginal workers and the employers seeking to hire them. While the majority of Aboriginal people successfully find employment without the need of a LMI, community based organizations have found that many of the trainees graduate with little or no employment history and continue to experience many obstacles. This makes finding work and successfully transitioning into work once they are hired, far more complicated.

Loewen and Silver also found that employers often have unrealistic expectations of individuals who often have had no previous attachment to the labour market. The disconnect between employers and Aboriginal employees is evident in the aforementioned 2012 Conference Board Report. While employers have valid concerns that should be taken seriously, survey responses also showed that many employers continue to hold stereotypes and misinformation about the Aboriginal people that they hire. Many employers and their non-Aboriginal employees typically have very minimal knowledge of the obstacles many Aboriginal workers have had to overcome. For example, employers surveyed described challenges including absenteeism, productivity or performance issues, inadequate skills levels for the workplace (e.g., literacy, technical and leadership), quality-of-work issues; and substance abuse issues (Howard, Edge & Watt 2012). Yet there is no discussion in the report about 'why' some Aboriginal people continue to struggle with these challenges and what employers might do to support them.

While employers certainly have the right to expect employees to abide by workplace policies, it would be beneficial for them to understand the historical and contemporary socio-economic and political context that continues to marginalize Aboriginal people. There is a tendency for the non-Aboriginal population to dismiss the impact of colonization, believing that Aboriginal people should "get over it" and 'move-on'. However, the continued disparity between Aboriginal and non-Aboriginal people suggests that this 'strategy' has not worked. As most recently demonstrated through the work of the Truth and Reconciliation Commission of Canada, the damaging effects of colonization are very real and cannot be ignored. However, survey results and analysis of findings reflected in the Conference Board's suggests that employers continue to view the problem as that of individual Aboriginal workers. Employers surveyed seem to be oblivious to the damaging intergenerational effects of colonialism and somewhat naively expect Aboriginal employees to have escaped colonialism unharmed—fully assimilated.

Failing to recognize the complex reality for many Aboriginal workers and resistance to respond differently than we have in the past will serve only to perpetuate the 'problem'. An Aboriginal LMI mandated to work with both employers and employees could play an important educational and supportive role for those employers interested in better understanding the challenges they have identified,

so as to strengthen relationships, improve workplace experiences and employment outcomes for Aboriginal employees.

VII. SMALL, SAFE, HOLISTIC PROGRAMS

When considering a LMI that would best address the transition to employment for multi-barriered Aboriginal people, it is useful to turn to the research examining the experience and outcomes for those who have made a successful transition. Research has shown that the most effective programs for multi-barriered job seekers offer:

> holistic approaches that address all the barriers to work and raise aspiration and confidence; they offer an individualized approach, flexible support with a personal adviser; they provide continuing support once the individual has moved into a job; they involve partnership working between the agencies delivering the different elements with a seamless service and ' no wrong door'; employers are actively engaged in opening up job opportunities, work placements and skills support; and early support is available (Green and Husluck 2009 as cited in Newman 2011:98).

Aboriginal people who have returned to school as adults are more likely to succeed in environments that take a holistic approach to education and training (MacKinnon n.d.; Silver 2013) and it follows that a comprehensive, holistic labour market intermediary would have similar effects. Ideally this means small programs where students or trainees build trusting relationships with program staff, and they have program staff available to assist them with accessing supports such as housing, income supports, childcare and counselling.

An extremely important feature is the integration of healing and cultural reclamation. The legacy of colonization runs deep and the effects cannot be overstated. Generations of Aboriginal people are paying a painful price as a result of government policies including those which gave us the residential school system – a means by which children were removed from their families and placed in state and church run schools aimed at "kill[ing] the Indian from the child" (TRC 2012) – and the Sixties Scoop – the practice of removing children from their families and placing them in homes with non-Aboriginal families. While these practices have been abolished, the effects remain. Further, colonial social relationships and systemic racism persist and many Aboriginal people continue to be oppressed and marginalized.

Aboriginal students and trainees speak to the need to "heal the spirit first" and this begins with an understanding of the history of colonization and its continued effects (MacKinnon n.d.). Integrating "decolonizing pedagogy" into the education and training experience is

fundamental. As stated by one Aboriginal women who returned to school as an adult to obtain her high school certification followed by a university degree, both obtained through small community based programs built from a decolonizing philosophy, the impact is "huge".

> [without it] there is a piece missing. You can take lots of different training and go out there and get a job and you can earn money and you do this and that, but you know- you're still ashamed of being an Indian. I had the benefit of experiencing something different, and if I had not, I would not be talking about this.
>
> For 44 years I walked around with my head up my ass because I'm supposed to be all those terrible things and I'm not all those terrible things. I come from tribes of people that were amazing. But I never knew" (Mackinnon n.d.:232).

For those Aboriginal people who are fortunate enough to participate in education and training that integrates decolonizing pedagogy, the transition from training to employment is easier. However many Aboriginal people seeking employment have not benefitted from this experience and even those who do are faced with racism when they enter the labour market. A labour market intermediary would need to take this into consideration by integrating a 'healing the spirit first' approach to programming.

Silvius and MacKinnon (2012) recommend a model that builds from earlier research as well as consultations held in 2011 with Manitoba employers and community based organizations familiar with the challenges many Aboriginal people face. The following builds on this further, recommending an Aboriginal LMI with the following core features.

A. A Community-Based Model that Builds on the Long Established Relationships between Community based Organizations and the Aboriginal People who use their Services

There are a number of community-based organizations providing an array of services to Aboriginal people and they know what the challenges are and how best to respond. These organizations have developed trusting relationships with the community and it is essential that a LMI for Aboriginal people be an extension of these organizations, guided by them to fill the gap that has been identified. This does not mean that other stakeholders should be excluded nor does it mean that government should not have a role. What it does mean however, is that

a LMI, by its very nature, cannot be government driven – it needs to take a fundamentally different approach than that is currently available.

The work of an LMI does not begin when training ends. As noted earlier, trusting relationships have been identified as particularly important for Aboriginal people who have returned to school as adults and this holds true for those who are entering the labour market for the first time. Developing trusting relationships with LMI 'counsellors' ideally begins while jobseekers are in the training stage. Similarly, LMI counsellors will have established relationships with employers so that they will understand the employers needs and the culture of the workplace as well as the needs and ambitions of the jobseekers they seek to place.

B. Cultural Reclamation Must be Fully Integrated

The devastating effects of colonial policies such as residential schools and the sixties scoop have been well documented. As noted earlier, decolonization and cultural reclamation are critically important for Aboriginal people for whom these policies have led to "a lack of self confidence, fear of action, and a tendency to believe that the ravages and pain of colonization are somehow deserved" (Daes 2000 as cited in Hart 2010:117). One graduate of a training program that integrated decolonizing pedagogy into their program spoke to the importance of understanding the root causes of her difficulties. She spoke of the confidence she gained as a result of the supportive environment she studied in. She said: "I always thought I was stupid, but now I know that I am smart!" (Mackinnon n.d.).

It follows then that a LMI that integrates cultural reclamation for jobseekers in addition to providing education and awareness of the effects of colonization for employers is a critical component. The good news is that a LMI does not have to reinvent the proverbial wheel. There are community-based programs that have successfully integrated decolonizing pedagogy and cultural reclamation into their programming. These organizations should be called upon, and adequately funded, to share their expertise with jobseekers through the LMI.

C. Simplify Relationships between Employers and Participating CBOs

The current situation is such that employers seeking Aboriginal workers are attempting to reach out to community based training initiatives and other CBOs to recruit Aboriginal workers. Larger companies often hire human resource staff—Aboriginal Liaison is a typical job title— solely tasked with the job of finding Aboriginal employees. For their part, community-based training organizations are constantly doing their own outreach, seeking employers to hire their graduates. Not only is this an inefficient model for employers, it places an unnecessary burden on training organizations that is also beyond their expertise and mandate. A LMI is a much more efficient model because it brings employers and prospective employees together through a single entity staffed by human resource and other staff who have the expertise to not only help match employers with employees, but to also provide the transitional supports required. This makes it easier for employers to find Aboriginal employees as they do not need to reach out to the many employment development programs—all programs would potentially connect through the LMI. In the past, government employment centres have played a somewhat similar limited role but one that is far more limited and not specific to the unique challenges of Aboriginal jobseekers.

D. Simplify Relationships between Government and CBOs including the Tracking of Outcomes

Another important role for a LMI could be the continued evaluation of projects and institutionalization of knowledge so that the long-term impact of equity training and hiring is better understood. This is something that has been missing. This is in part because projects are understandably focused on evaluating their own outcomes and have less interest in the broader public policy implications of the targeted training and employment approach.

As the main funder of training organizations, it is understandable that

governments want to know what the outcomes of training are. However, training organizations are rarely able to report on employment outcomes beyond that what they know at the point of program completion. They can report on how many trainees have completed the program and they can report on whether they have found

work upon completion. However, they do not have the expertise and resources to track the long-term employment, social and economic outcomes of their trainees. This is critically important information to have if we are to understand what works best and plan for the future.

Some CBOs argue that they could better track outcomes if provided sufficient resources. While this may be true, it is unlikely that funding will be available for all training organizations to perform this function. Others argue that governments should be tracking outcomes however a LMI might be better placed to do this because of their direct relationships with CBOs and jobseekers. Longitudinal research and evaluation is resource intensive and it would be far more efficient to develop this expertise within one central organization.

E. Employ Personnel Dedicated to Supporting Employers and Employees and Coordinating the Multiple Referrals and Services that Any One Individual May Require

The lives of many Aboriginal people who have had weak labour market attachment are often complicated. Part of the transition to work challenge is establishing family stability. Accessing and retaining the various services required so that employees are able to attend work as scheduled is critical to successful transition. It is not uncommon for individuals to lose their jobs because of missed work due to a lack of childcare, housing instability, family issues and other challenges. An important role of the LMI would be to ensure that jobseekers have all the necessary resources in place, thereby minimizing absenteeism due to family and other crises.

F. Establish a Governance Structure including Representatives from Employer Groups, Labour, Education and training programs, Aboriginal Community Based organizations and Relevant Government Departments

As noted earlier, an Aboriginal LMI should be community based. It is also advised that a governance structure include representation from all pertinent stakeholders to ensure that the services provided are meeting the needs of employers and jobseekers while also ensuring that

the LMI does not duplicate services but rather extends beyond services that currently exist. Details of what this governance structure would look like and what organizations should be represented would need to be negotiated by all stakeholders. Establishing a LMI governance structure is likely to be a challenging task. All Aboriginal groups (First Nations, Metis, Inuit and Urban Aboriginal) will need to be represented and politics will need to be put aside. It will be important to establish terms of reference that stipulate the non-partisan, non-political nature of the LMI as this is sure to be a complicating factor.

Long Term Planning and Guidelines for Future Economic Development

A labour market intermediary guided by Aboriginal community-based organizations, employers, labour and government could play an important role in establishing guidelines for state supported economic development projects.

There are many examples of such projects that have integrated targeted training and employment and many more examples of projects that could do so. Recent examples of major projects in Manitoba include the Red River Flood Way, The MTS Centre, Manitoba Hydro, northern hydro development projects, The Canadian Human Rights Museum to name a few. Some have integrated equity training and hiring and others have not. In the case of large-scale capital projects such as these, a LMI could help with challenges that result in part because of the time limited, project specific nature of projects and the incredible amount of time it takes to get projects up and running. There is also a significant cost in setting up entities to support the employment and training objectives of large-scale projects and in the case of smaller scale initiatives there is limited capacity to broker between employers and trainers. Even when targeted training and hiring has been established, implementation has often been slow to 'gel' because institutional knowledge and experience is lacking. In spite of what has likely been learned, each new project seems to start from scratch (MacKinnon n.d.). The result has been frustration for employers and jobseekers. A permanent LMI would have the ability to develop long-term relationships with key stakeholders as well as an institutional knowledge of what works. It would eliminate the steep learning curve that is recreated each time a new large-scale development project emerges. Past mistakes are often repeated as key stakeholders and project employees repeat the practice of learning to negotiate their roles and relationships with prospective employers. For this reason, a

permanent LMI would be far more cost efficient, and effective for all parties.

Dedicated Multi-year core Funding

Even the best of models will not be effective unless adequately resourced. Previous federal/provincial labour market agreements were sufficiently flexible that the provincial government would have been able, if they so choose, to commit to fully funding a LMI. However things have become more complicated with the introduction of the *Canada Jobs Grant*. While not the only challenge, finding adequate funding for a LMI is perhaps the biggest challenge and recent changes in federal policy with the introduction of the *Canada Jobs Grant* are likely to make provincial funding of a LMI more difficult. Provincial governments were unanimous in their discontent with the proposed program when it was first announced, however the Province of Manitoba has recently signed on to an amended agreement. Details of how the *Canada Jobs Grant* will work continue to be sorted out, however the basis of the *Canada Jobs Grant* is the cost sharing of training between the federal, provincial governments and employers. The federal government will contribute to projects, only where a private sector financial commitment is made. It is required that training be job specific leading to private sector employment.

While the strong opposition from provincial governments suggests that the *Canada Jobs Grant* was not well thought through, in the case of a LMI, it might be possible for the Manitoba government, private sector stakeholders, training organizations and other stakeholders to negotiate the use of *Canada Jobs Grant* resources to fund an Aboriginal LMI.

VIII. OTHER CONCLUSIONS

In spite of what we have learned about the potential for labour market intermediaries to address the serious gaps that training organizations, job seekers, employers and other stakeholders have identified, we have yet to see this model emerge in Manitoba. In addition to funding, there are other challenges that will need to be addressed. One such challenge is where to situate a LMI. Among those organizations that agree in principle with the LMI model, there is not consensus on where it should be situated—geographically and institutionally—and how it would be governed.

Some existing organizations believe that they are well placed to provide the services of a LMI if they were properly funded to do so. Other community based training organizations are not completely convinced of the LMI model and believe that all community-based training organizations should be provided with sufficient funds to deliver the kinds of transitional services suggested for a LMI. The absence of consensus poses a serious problem. Although the evidence shows that the model proposed could be cost effective, efficient and beneficial to all concerned, and in particular for Aboriginal jobseekers, it won't work unless Aboriginal community-based organizations and other stakeholders agree on where it should be located and how it should be governed. While there is an argument to be made for an Aboriginal LMI in the North and elsewhere in the province, a LMI situated in Winnipeg seems to be the place to start because it is the major urban centre in the province with the greatest number and diversity of opportunities. As noted, a model that brings together all of the key stakeholders, including training organizations, service providers, employers, governments and labour will provide the best service to trainees and employers is highly recommended.

Since there is no obvious and agreed upon existing home for a LMI, it is most likely that a new entity will need to be created, bringing together all of the pertinent stakeholders as equal partners. It is very possible that there will never be consensus from all of the stakeholders on the 'where' and the 'how'. Given its mandate regarding training and employment, the provincial government, if serious about its commitment to innovation in connecting Aboriginal people with good jobs, will need to show leadership and bring stakeholders together to create a community-based labour market intermediary that makes best sense for employers and jobseekers.

Further to the issue of funding, a LMI would need to be sufficiently resourced to provide the kind of comprehensive, holistic programming to adequately respond to the needs of employers and jobseekers. The fiscal challenges facing the provincial government are very real and it would be difficult for a LMI to be fully funded by the Province. As suggested, there might be potential for the new *Canada Jobs Grant* to be used as a source of revenue. Funding might also be leveraged through the private sector and crown corporations as they could benefit directly from the services of a LMI, leading to an efficient and cost effective solution to their hiring and retention challenges. However, the Provincial government will need to take the lead role. Premier Selinger has recently demonstrated a serious commitment to employment,

establishing the new *Jobs and the Economy* department. This provides a new opportunity for the Province to develop innovative solutions toward Aboriginal social and economic inclusion and the LMI is one idea worthy of serious consideration.

It should also be noted that the provincial government appears to have integrated some features of the LMI approach into a government centred model that currently focuses on their relationship with industry sector councils and through the establishment of Manitoba Jobs and Skills Development Centres. However, this approach runs contrary to the holistic approach of the LMI model proposed, which brings all stakeholders to the table with an emphasis on fully understanding and responding to the deeply rooted challenges facing many Aboriginal workers as a starting point toward sustainable transition into the labour market. Community-based organizations and others working with marginalized Aboriginal jobseekers seem to agree that current practice has serious limitations and moves too far from what the research shows to be most effective. It isn't clear why the provincial government continues to resist the LMI model proposed. While we can only speculate, it may be that establishing an LMI that is community driven, led and controlled would mean that government would lose too much control. They may have concerns about whether the community has the capacity to deliver and they may want to avoid the politics that may arise as various stakeholders compete to lead the LMI. While it is likely true—establishing an Aboriginal LMI will come with some growing pains—this government has not shied away from controversial policy decisions in the past and given the importance of Aboriginal people to the Manitoba's labour market, this could be an important legacy.

IX. CONCLUSION

An Aboriginal focused LMI would integrate the same concepts that we know work best for Aboriginal people who have dropped out of school and returned as adults—small, safe and centred on trusting relationships (Silver, Klyne & Simard 2006; MacKinnon 2011).

Establishing a permanent LMI could provide the mechanism needed for the development of long-term relationships between employer, training organizations and jobseekers through a single entity focused solely on making the employment relationship work for both employer and employee. It would provide graduates of training programs with a resource to help them find work; and it could provide individuals exploring both work and training opportunities with a central place to

go to direct them to their various employment and training options. It could also provide cultural sensitivity training for employers and cultural reclamation programming for Aboriginal job/training seekers by linking with existing organizations that have developed expertise in this area.

A LMI could help connect Aboriginal graduates of training programs with well-informed employers willing to go the extra mile. For those uncertain about whether or not they want to pursue employment or further education and training, a LMI can support individuals as they explore their various options. It cannot be overstated that a central feature of a LMI is that it is community based. It is different from typical government employment search programs because its mandate is far more comprehensive in scope. A central feature includes its ability to continue to support individuals, training organizations and employers over the long-term – an important feature that does not currently exist.

The idea of an Aboriginal LMI increasingly makes sense as the Aboriginal population grows and employers begin to recognize Aboriginal people as an important source of labour. If the recent discussion generated through the Manitoba Business Council and that reflected in the aforementioned Conference Board of Canada report are any indication, there are likely to be several broad-minded employers who will see the virtues of an Aboriginal LMI in Manitoba.

There seems to be a growing number of employers who understand the longer-term benefits of creating workplaces that are more understanding and accepting of cultural and experiential differences. An Aboriginal LMI working closely with the existing network of community-based training organizations, post-secondary institutions, labour unions and employers, could provide an important additional support bridging the divide between supply and demand. It could also respond to the Conference Board's call for a simplification of points of contact between employers and Aboriginal organizations (Howard, Edge & Watt 2012)

The continued low level of Aboriginal participation in the labour market and the over representation of Aboriginal people among those with low-education, low-wages with few opportunities for advancement suggests that we are failing to meet the needs of many Aboriginal people. We must therefore find new policy and program responses to better assist Aboriginal people transition into employment that provides a path to better social and economic outcomes.

Labour market intermediaries have been successful for marginalized workers and employers in other jurisdictions. An intermediary focused on supporting Manitoba's most excluded demographic is a cost efficient solution that simply makes sense.

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Tagged and Turfless: Neo-liberal Justice and Youth Crime in Winnipeg

KATHLEEN BUDDLE *

I. NEO-LIBERAL PROJECTIONS

The crime statistic plays a critical role in neo-liberal policy discourse. And yet, crime statistics are characteristically indeterminate insofar as they are the dual product of police and public reporting. They inevitably fluctuate in proportion to the efficacy of the legal enforcement and information services and according to the amount of trust the public places in them (Comaroff and Comaroff 2006b:219-220). David Harvey denotes as neo-liberal, those highly interested class-based public policies that enrich those with capital, while deteriorating the quality of life for the poor and working classes (cited in Ferguson 2009:170). The political agendas of most neo-liberal democracies have come to place a high priority on the management of class anxieties and fear with regard to crime, risk and the re-categorizing of other governmental issues under these headings (Stenson 2001, 2005).

The calculation of risk is also a central governmental technology of "Actuarial Justice," a juridical style that is mainly renowned for its introduction of new consequences for sentencing, but which also underpins crime prevention strategies, policing and reflects a specific

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politics closely associated with conservative brands of neo-liberalism (O'Malley 2008:451-453). Actuarial justice aims to impose sanctions that incapacitate offenders rather than reforming them. It works by removing from circulation the risks the offender represents (Feeley and Simon 1994).

This article attempts to explore how the construct of "at-risk youth" is filtered through a number of discursive configurations: namely, through different methods for creating knowledge (anthropological, sociological and criminological); the types of expertise they give rise to and the practices of intervention they constitute. In it, I argue that contemporary practices of calculating, managing and storing the disordered (i.e. youth who disrupt the orderly functioning of the market) have created some of the needs for and many of the limits on, critical protective factors that mitigate against gang involvement – namely, Aboriginal community-realizing initiatives. Moreover, the supplanting of non-profits' collectivizing function by an auditing one comes at great human cost – one that cannot be borne in the absence of either corporate or university partnerships. The non-profit "market" is predicated on such collaborations.

Geographer, David Harvey's analysis of neo-liberalism serves as the conceptual ground:

> Neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices…But beyond these tasks the state should not venture. State interventions in markets (once created) must be kept to a bare minimum because, according to the theory, the state cannot possibly possess enough information to second-guess market signals (prices) and because powerful interest groups will inevitably distort and bias state interventions (particularly in democracies) for their own benefit (Harvey 2005:2).

While Harvey's construction proves compelling for many, there exists no singular critical conception of neo-liberalism within the social sciences. As Wendy Larner (2000) instructs, neo-liberalism is unevenly deployed as a policy paradigm, a hegemonic ideology and as a form of governmentality. Its conceptual elaboration in anthropology focuses on the ways in which it serves as a process – i.e., the political project of neo-liberalism – namely, how it is specified in a variegated landscape of ideas, institutions and economic circumstances (Collier 2012:191).

According to Wacquant, for example, the neo-liberal state functions to remove impediments to the free functioning of the market and to

ensure positive conditions for its operation. It extends freedom at one end of the income scale and replaces the welfare state with punitive measures. It "accumulates by dispossession" (cf. Harvey 2004) or places limitations on citizenship and penalizes poverty. Wacquant insists that although this level of state intervention seems antithetical to its *laissez-faire* character, these twinned actions of guaranteeing circulation in some sectors while impeding it in others is a core principle of the neo-liberal project (Wacquant 2012:67).

Given that gang members tend to hail from the lowest socio-economic strata, it is tempting to play up the role of material factors (the economy) in the production of gangs and to assess gangs in terms of the exploitation and social control gang members endure as "deviant classes" at the hands of those who design the neo-liberal project. A Marxist approach would decry the injustice of a system with interests in protecting the propertied that would rather see corporate crimes go unpunished and the lowly locked up. Capitalism itself, from this perspective, is crimogenic. Criminal behaviours are nourished in an environment where the maximization of profit, the accumulation of wealth and economic self-interest rather than collective interests are valorized. RETORT (2005:31), an activist academic collective in the San Francisco Bay area, adds 'spectacle' and 'violence' to the terms of reference for neo-liberalism, and provides a Marxist analysis of the ways in which neo-liberalism serves not merely as a struggle for material dominance, but as struggle for the control of appearances. Among other implications of this 'colonization of everyday life,' they argue that the hollowing out of state welfare functions through policies of privatization and deregulation has contributed to the increasingly corporate nature of policy formulation (RETORT 2005:100).

Non-structural accounts of neo-liberalism in the governmentality scholarship (following Foucault's lectures 1978-79) see neo-liberalism and neo-liberal techniques as fluid, mobile, mutable and more responsive to local conditions and forms. For governance scholars, neo-liberalism is more particularized than structuralists would allow (see Rose et al. 2006; Collier and Ong 2005; Ong 2006). Taking a governance approach, as I attempt to do, permits one to attend to the ways truth regimes are created in local settings moving beyond mere ideological discussions. Thus, gang members may be viewed as trafficking in neo-liberal techniques, but not as necessarily in league with the neo-liberal project. The governance approach also permits attention to neo-liberal means of policy development and implementation.

In terms of anthropological prison research, approaches critical of neo-liberalism increasingly question the premises of the growth of penalization and seek to contextualize the political emphasis on crime and punishment that supports the expansion of the prison apparatus. Critics suggest, according to Rhodes (2001:67), that the prison performs a socio-political and economic magic, insofar as it "disappears" significant numbers of poor and minority peoples. Its political function is to repress disorder and dissent through policing and "lawfare" (cf. Comaroff 2001). Economically, the prison provides jobs in rural areas or in the prison industrial complex. Finally, says Rhodes (2001:67), the prison contributes to market-friendly counts, removing the unemployed from statistical visibility among other demographic feats.

Although its penetration is incomplete, Canadian criminal justice practices increasingly resemble what Freely and Simon have termed "the new penology." Its characteristics are as follows: rather than to eliminate offending, which is now considered inevitable, authorities seek merely to minimize its consequences. Offenders are evaluated not in terms of a biological profile but in terms of their risk and dangerousness. Offenders become "risk objects" and are targeted as aggregates rather than individuals. Rather than to *transform* them, which is difficult and resource depleting, the objective shifts to *managing* the risks that offenders represent. Statistical data is used to predict the risk of future offenses and to assemble the tools for the actuarial justice enterprise, namely indicators, prediction tables and population projections (Feely and Simon 1992:451-458).

In keeping with its neo-liberal tenor, although it continues to delegate funds, in the post-social welfare environment, the state devolves its responsibility to *intervene* in the lives of troubled youth to what Rose, O'Malley and Valverde (2006:91) call, "quasi-autonomous entities" such as non-profit groups or what are popularly referred to as civil society organizations. The state then governs these entities "at a distance", through management procedures "via budgets, audits, standards, benchmarks and other technologies that [are] both autonomizing and responsibilizing" (Rose et al. 2006:91). The effect of this governing technology has been the devolution of responsibility to the voluntary sector in terms of both *service provision* and *visibility procedures*. The organizations compete for funds on a per service – or program - only basis, but are not generally compensated for core operating costs. The overall effect has been a destabilization of the funding regime for so-called "special interest groups" and an overburdening of the sector's administrative capacities with resource-

depleting conditions of investment. These priorities have also diminished the *political* capacity of registered charities at the level of policy development by limiting their annual expenditures on advocacy to 10% of their total resources (see Levasseur 2012:182; Laforest 2013).

This places the very existence of non-profits in peril. The sort of collaborative governance the neo-liberal program supports will not succeed says Phillips (2000-2001:184), "if it is weighted down by the rules and accountability mechanisms designed to work within departmental hierarchies".[i]

One could argue that the very creation and ongoing existence of youth serving non-profits reflects doubts about the state's capacity to safeguard youth populations. The same could be said, however, about doubts concerning the abilities of parents to govern their own offspring. The attribution of super-parental, "bio-political" responsibility for youth welfare, which may indeed represent an ethical response to the state's failure, has become a normative condition of contemporary Canadian citizenship.

In contrast to the parent and to the state, the role of populist rule and more specifically, of the consumer-voter, is expansive in the neo-liberal regulatory regime. Individuals are expected to employ "calculative choice" working toward greater and greater self-governance (Rose et al. 2006; Collier 2012). Under these circumstances, wherein every citizen's expetise is suddenly valorized, the subject positions created by popular media for gang members become critical data sources in the public's reckoning schemes.

Lacking in social capital and possessing cultural attributes that are inimical to marketing, Native youth are read as depleting resources within the political economy. As such, Native male youth are easily signified as a non- or even, as a counter-productive class. Tough on crime advocates mobilize these alleged dangers to the proper functioning of the market to support policies that would increase incarceration rates (Dyer 2000). In seeking to contain or minimize those who do not self-maximize in legally sanctioned ways, the state then works to remove from circulation this so-called "problem" population and pours heavy resources into institutions of segregation. This draws limited funds away from the efforts of non-profit groups which seek to ameliorate the circumstances of those whose freedoms are not well-served by strong private property rights, free markets and free trade alone.

II. THE AFFLICTED CITY

In the annual public forums organized by the Gang Action Interagency Network (GAIN) in 2012 and 2013, residents in Winnipeg's Central, West, and North Ends identifed safety as a growing public concern. Community members pointed to high rates of drug use, ongoing fallout from the illicit trade in drugs and the presence of gang operated crack shacks in their midst. They conceded that concerns about retaliation by gangs often prohibited residents from mobilizing collectively to reclaim their communities and to improve safety controls. Residents stated that they feared that all Aboriginal youth in the North, Central and West End are at-risk of gang involvement owing to the pervasiveness of gang related violence in their neighborhoods and to a perception among many male youth of the necessity of joining gangs as the primary means of surviving this violence. High rates of sex trade activity also pervade these neighbourhoods which contributes to the general perception of the area as disorderly, lawless and "plagued" by social problems (Buddle 2012b).

Aboriginal male youth, in particular, have become the unmarked subject in local media crime reports, such that suspects in stabbings, shootings or automobile theft are automatically assumed to involve impoverished North, Central and West End Native or other raced males. Hence, the practice of providing rich background context in stories involving differently classed and raced criminals so as to account for their *exceptionality*.

Through the repetition of stories on, and the stylizing of, Native youth crime, the local media outlets manufacture "the gang member" presenting him as an immediate threat to societal values and interests. The coding of violence through which urban Native male youth are identified in the media has become normalized enough to evoke "moral panic" without any explicit reference to the implied authors of the crime (cf. Welch, Price and Yankey 2002:4). As a result, the drive-by shooting, for instance, is pre-configured as a racially specific and group-organized form of crime. Statistical incidences of Aboriginal youth involvement in these criminal acts inform the city's national crime-ranking indicators, negatively affecting capital investment.

Representations of lawlessness form an important structuring device both in the production of knowledge about gangs and in the creation of a moral civil society. This latter concept, though imprecise and unspecified, is both extremely common and rife with complexity owing to the country's colonial history, which took the form of a

"civilizing" mission. Secondly, the polyvalent concept encompasses a populist endeavour to realize a moral collective at a time when neo-liberalism, with its cult of the individual, calls into question the very existence of "society" (Comaroff and Comaroff 1999:3). Civil society links and stands for a broad cluster of values in academic, political and social activism discourse and in peoples' everyday imaginings of their cultural identities, moral communities and relationships between their selves and the state. It refers broadly, according to the Comaroffs, to a neo-communal ethic and to a means of constituting an "us" and a "them". They write:

> The threat of the postmodern, the crisis of masculinity, the excesses of identity politics, the demise of family values, the triumph of the commodity over morality, the availability of work and alterations in the conditions of employment, the dispersal of community; all of these things have sparked moral panics in many parts of the world…and sparked an equally millennial pursuit of civil society (Comaroff and Comaroff 1999:15).

Similarly, narratives of crime and fear incorporate specific racial and class anxieties to produce a certain type of signification. While the notion of the law-abiding citizen helps to structure what is civil, what is sociable and the appropriate relationship between the individual and the state, as a complementary mutually constitutive term, lawlessness serves a critical distinguishing function. Namely, the crime category has become a resource with which citizens and police classify a number of social problems as "gang" problems.

For the propertied classes, gangs are "threats" and are often characterized as deploying the discourse of cultural "difference." As Rosemary Coombe (2005:37) suggests, *legitimate* social movements are governed by a cultural politics of place denoting cultural and ecological attachments to territory. They are accommodated by neo-liberal orders because these forms of difference can be formulated in commodity terms. "The Indian" in Canada's remote north who lives off the land is a useful tourist motif and a marketable form of distinction. Native peoples in urban areas such as Winnipeg, on the other hand, assert rights based on forms of cultural difference that are difficult to articulate with the conceptual framework of modernity. "Urban Indians" in the Canadian imagination are symbolically "out of place" they are, not incidentally, turfless. Identified as having failed to live up to formulaic renditions of "traditionalism," urban residents are structurally ambiguous and symbolically "polluting." They do not perform their difference in socially acceptable *productive* ways that help to tell the story Canada wants to tell about itself to others (see Buddle 2011a; Buddle 2011b).

Accordingly, in a neo-liberal era wherein the urban underclass is left to fend increasingly for itself, gang involvement offers one means to challenge conventional demarcations of *legitimate* commerce, to contest spaces of inequality, to disturb practices of exclusion, and to displace normative notions of marginality. Justice Murray Sinclair, co-author of the *Aboriginal Justice Inquiry* (Hamilton and Sinclair 1991), insists that common practices, principles and comportment codes become law when the community recognizes them as corresponding with a set of enforceable rights and obligations. In practice, however, large segments of the population may refuse to endorse the premises on which an order is founded and this defiance may have a collectivizing force. Nowhere is this more apparent than in discussions of "crime" with disaffected urban Aboriginal youth from Winnipeg.

The Preliminary Report on Aboriginal Gangs in Manitoba (Buddle 2006) reveals that street gang members view gangs in contradictory ways—as integral components of the community or as neighborhood institutions, at once performing services for and exploiting their neighbors (Buddle 2006). Like the Mexican gang youth whose lives Zatz and Portillo (2000) document, Manitoba Native youth sometimes see themselves as agents of anti-colonialism (cf. Alfred 2008). These youth point to the police as trouble-making interlopers and charge the media with failing to cover the economic problems that pervade poor non-white neighborhoods.

Looking askance at statutes that protect only the wealthy, gang members may conceive of their activities as valid forms of material redistribution and legitimate means of emotional redress. Appropriating and re-signifying the culture of legality, gangs self-regulate using codes of ethics and by-laws for ranking and disciplining subordinates, while at once perpetuating exploitative gendered violence. Yet, offering initiates a quasi-legalistic mode of citizenship, gangs may well represent a pragmatic and rational response to the situations of placelessness in which many Winnipeg Native youth find themselves. And, in the process of internally regulating the lives of their members, gangs may unwittingly serve in the "realization of community" (Amit 2002).

III. ARCHIVING ANARCHY

While Canadian authorities have been monitoring Aboriginal gang activity for some time, newspaper reports and the Canadian Security and Information Services Annual Report (CSIS 2004) advises that there has been a dramatic upsurge in Aboriginal gang activity in major urban

centres on the prairies where Aboriginal gangs have reached "crisis" proportions. Winnipeg is commonly referred to in the media as the Aboriginal "gang capital" of Canada (for example, Hayes n.d.; Vice News 2014). Thus, in the Late-Capitalist era, a different set of conditioning circumstances ensures that Aboriginal urban residents will be subjected to seemingly inescapable bureaucratic regimes that situate them in a city's most undesirable spaces. As Comaroff and Comaroff (2006b) have argued, statistical representations grant authority to these constructions. The crime statistic serves as:

> a discursive currency by means of which government speaks to its subjects, citizens speak among themselves, experts speak to everypersons, everyone speaks back to government — and the media mediate all the incessant talk, adding their own inventions, inflections, inflations (Comaroff and Comaroff 2006b:211).

As the following concedes, the economic imperatives of neo-liberalism have given rise to a ubiquitous and pernicious managerialism. To establish evidentiary authority today, one cannot avoid resorting to numbers – indeterminate though they may be.

RCMP reports indicate that beginning in 2006 Winnipeg youth street gangs began to grow at an alarming rate and are engaging in increasingly lethal battles for control of the lucrative illicit drug economy. From 1991-2008, gang related homicides increased more than 500% (Beattie 2009). This period corresponds with a significant increase in the number of Winnipeg street gangs (Linden 2010). Conservative estimates by Winnipeg Police Services suggest that Aboriginal street gangs now dominate the roughly 26 Winnipeg gangs, with an approximate total of 2000 members. Despite the fact that overall youth crime rates appear to be declining in Canada, and acknowledging the indeterminacy of police reported crime statistics, (where low reporting to police is in evidence[ii]), Winnipeg continues to report the highest *violent* Crime Severity Index (CSI) among the census metropolitan areas (119.9) with robery serving as the highest contributor to the index.

Manitoba (136.0) has the highest violent CSI among the provinces (Boyce, Cotter and Perreault 2014:12). Moreover, Manitoba had the highest homicide rate among the provinces (for the seventh year in a row) reporting 3.87 deaths per 100,000 persons (Boyce, Cotter and Perreault 2014:14). According to Statistics Canada counts, Manitoba's homicide rate is currently almost triple the national average of 1.44 per 100,000 (Boyce, Cotter and Perreault 2014:13). Other violent crimes are also on the rise. Winnipeg Police Statistics indicate that while most forms of assault and most property crimes declined from 2012-2013, sexual assaults with a weapon increased by 130% and firearms offences

by 19% (Winnipeg Police Service 2013:2). While there were 27% fewer robberies (1,822 total) (Winnipeg Police Service 2013:2), the Census Metropolitan Area (CMA) of Winnipeg continues to serve as the robbery capital of the country with provicial rates keeping pace (Boyce, Cotter and Perreault 2014:16).

In Winnipeg, there were 26 homicides in 2013 – exactly half of which involved youth (Boyce, Cotter and Perreault 2014:39). The Winnipeg Police statistics reveal a 19% decrease from the previous year. Meanwhile, *attempted* murders increased by 55% (Winnipeg Police Service 2013:2). For every homicide, there are approximately 6 admissions to hospital for intentional injury and more than 148 emergency department visits. Data from a 2012 study by the Manitoba Centre for Health Policy indicates that among youth (aged 13-19), violence whether to the self (8.6%) or caused by others (10.5%), is among the top four causes of injury hospitalizations (Brownell et al. 2012:117).

In 2009 more Aboriginal people than non-Aboriginal peoples reported being victimized (37-26%) by crimes and Aboriginal youth (aged 15-24) were the victims of nearly half of the violent incidents that Aboriginal people reported. In 2009, there were 425 violent incidents for every 1,000 Aboriginal people aged 15 to 24 years. The corresponding rate for non-Aboriginal people was 268 per 1,000 (Perreault 2011:9).

Over the past decade, youth violent crimes in Canada have increased 12% with assault accounting for much of this increase. By 2013, youth crime under the Youth Criminal Justice Act in Winnipeg had increased by 50% over a 5 year average (Winnipeg Police Service 2013:4). In 2011-12, for example, 77% of youth court cases involved males, 61% were aged 16 and 17 (Dauvergne 2013:3). Inducing bodily harm is the violent offence for which youth are most often apprehended (Dauvergne 2013:6). There was a 10% decline, however, in the number of cases completed in youth courts from 2009 to 2012. Youth who commit crimes but who do not find their way to court may receive warnings, cautions, or referrals to community programs. In courts, 57% are found guilty, while 43% have charges that are dismissed, stayed, withdrawn or discharged – a number that is increasing (Dauvergne 2013:3). Of those who are found guilty, only 15% receive custody setences – the majority being released under community supervision (i.e. probation). The national trend is toward youth release.

Despite that youth incarceration declined throughout Canada by 12% from 2005 to 2011, it increased by 38% in the same time period in

Manitoba (Munch 2012). According to Manitoba Justice reporting, Manitoba's youth incarceration rate was 29 per 10,000 people aged 12-17 in 2011-12, while every other province (aside from Saskatchewan) was below 10 per 10,000 (Manitoba Justice 2012). The corrections system renders results similar to the treat and release strategy of hospitals, in that as many as 90% of young offenders who serve time in corrections facilities are re-arrested within two years of their release (Manitoba Justice 2011).

The numbers reveal that non-profits must assume the enormous responsibility for managing miscreant youth. As risk assessment, management and cost-effectiveness come to prevail over the "best interests of the youth," a *parens patriae* orientation becomes more difficult to sustain (Kempf-Leonard and Peterson 2000). With curtailed lobbying power, non-profits cannot speak for youth, nor are youth voices heard in a system of penalization that evidences diminishing concern for intentions or mental states. Rather, adult *moral* authorities produce, control and distribute criminal representations and create the official gang archive. Governance structures, crime statistics, legal precedents, police records and media reports, among other popular and official sources of gang knowledge, comprise the archive.

The archive works to store and contain, organize, represent, render intelligible and produce narratives. The archive thus acts as a political apparatus rather than as a neutral format for communicating information. In addition to preserving a certain type of crime talk, it works to legitimate the rule of those in power and to produce a historical narrative that presents class structure and power relations as both commonsensical and inevitable. Although it is seldom approached as an object of critical practice (Meehan 2000; Comaroff and Comaroff 2006a), the gang archive is intimately connected with social structural power relations *and* individual ways of being, along with everyday practices and patterns of thought which generate and reproduce a gendered, racialized and spatialized moral hierarchy (see Razack 2000; Gill 2002).

The gang archive functions as an object of both surveillance and discipline. It is populated by a variety of methods for accumulating "intelligence": observing without being observed, recording, counting, mapping, interrogating, interviewing and, most recently, through practices of diagnosing.

The contemporary imaginary of the plague in the city serves as a fertile repertoire for experimenting with notions of crime and disorder as infectious diseases. By shifting from "crime" to "illness" and from law

enforcement to public health, neo-liberal governance indexes an important neo-liberal movement. This shift resonates with a rising investment in what Foucault denotes as "security" namely, bio-political practices for "…organising circulation, eliminating its dangers, making a division between good and bad circulation, and maximizing the good circulation by eliminating the bad" (Foucault 2007:18).

The idea of the city under siege by contagious forces is employed to show how a previous concern with controlling territory morphs into a governmental concern with circulation. The movement of disorderly and dangerous elements becomes the focus for control and marshalling these movements serves the purpose of creating security. Risks come to be viewed as social and health problems requiring law and order solutions. Statistics enable a health risk accounting. Crime figures, as Jean and John Comaroff contend, are often cited as a symptom of the "state of disorder" in the land (2006b:219). Disorder, and the people constructed as embodying disorder who circulate improperly, have become a central resource of political power. The law not only plays a central role in producing disorderly people and facilitating "bad circulation," but also plays a role in assisting their social and economic exclusion (O'Grady and Bright 2002:39; Parnaby 2003).

IV. DIAGNOSING DISORDER

In 2012, Winnipeg became the Census Metropolitan Area with the highest number of police per capita. There are 198 police officers per 100,000 persons (Burczycka 2013:13). Given that youth crime continues to increase in Manitoba, and that Aboriginal peoples are disproportionately victimized in youth gang crime, it is telling that resources continue to be so heavily invested in suppression activities which provide only the illusion of security.

Criminalization, Wacquant asserts, is an effective means of disciplining so-called problem cultures, signaling the decline of the maternalist welfare state and the rise of paternalist penal authority:

> The social worker is being succeeded by the prison guard…as the state representative entrusted with exercising public guardianship over the dangerous classes …police, courts and prisons have become major instruments of penetration…over the nether zones of social space and prime vehicles for the symbolic construction and material management of 'problem' populations and territories (Wacquant 2002:11, 20).

Permitting the police to stand in for the public signals an important shift from a centralized to a more dispersed form of governance.

Police street gang units began to emerge in major prairie cities in the 1990s to quantify information on, track and subdue assemblies of miscreant youth. Statistics Canada, the police, the media and a variety of service organizations also regularly contribute to the torrent of numbers–each producing, purveying and deploying figures according to specific "governance" projects. As John and Jean Comaroff contend, estimations of disorder or "deviance" pre-suppose a rule-governed social order with positive parameters that are most visible in the negative (2006b:210). And, as O'Grady and Bright rejoin, "…the well-being of the public, as constructed by the government, has come to depend upon a mentality of exclusion - on the notion that public safety and security depend upon finding, punishing and excluding an enemy 'other" (2002:39).

The criminal accounting of Aboriginality in Canadian prairie cities has become critical to mainstream civic identity-making equations. The "Aboriginal criminal other" renders a *moral* public meaningful–at once dis-counting Native "outlaws" and bringing majority lawfulness into full relief. What passes for lawfulness is really an endless accounting of criminality. The numbers re-count that the majority of people do not break the important laws. And, 'they' who experience lethal violence suffer outside the areas where most of 'us' live. Times of security in moral spaces are times of danger and chaos elsewhere. That violence exists "out there" is enough to maintain the fantasy of lawfulness "here." Made legible by specious crime statistics, spurious surveys, dubious gang "data" bases and sensationalized media reports, the Native gang represents a landscape of pseudo-knowledge and fantasy projection (see Buddle 2011a).

Gang suppression activities are typically reactive and incident driven. Special initiatives are designed to cut out pathological elements with surgical precision under the auspices of police probes such as "Project Northern Snow" (which syphoned off the founding members of Manitoba Warriors in the 1990s), "Project Falling Star" (incising the third and fourth wave of Warriors in 2014), "Project Guillotine" (a project designed to sever the head of the Indian Posse) and "Project Recall" (which called back the tainted meat that was the Mad Cowz). The 2006 police effort to eliminate from circulation and store elsewhere all manner of street crime in the West End, aptly entitled "Operation Clean Sweep" came into existence after a passer-by was killed in a gang shooting in the West End. The operation targeted visible street crimes such as prostitution, drug dealing and street-level violence and was eventually transformed into a permanent organ of Winnipeg Police

Services in the form the Street Crime Unit, which would come to serve the whole of the city.

Still, a prominent gang theorist and his colleagues assert that, "There is little, if any, consensus as to what constitutes a gang and who is a gang member, let alone what gangs do either inside or outside of the law" (Esbensen et al. 2001:106). Indeed, both within the academe, among policy makers and between law enforcement officials in different geographic locales, there is no consensus concerning the best method for defining gangs. One consequence of this conceptual impasse is the absence of a standard methodology for identifying gang members or gang-related crime (Wortley 2010).

This has concrete consequences for law enforcement practice. For instance, if a police organization or study employs a restrictive definition of a gang, it is likely that the actual number of gangs in a community will be under-estimated (Wortley 2010). Under-estimating gang activity may have the effect to further jeopardize the safety of already vulnerable, economically disadvantaged communities–namely the high crime zones in Winnipeg.

Employing an overly vague or broad definition may yield an over-estimation of the gang threat (see Barrows and Huff 2009). Exaggerating the pace of gang growth and the scope of gang activity may have the effect to create a moral panic, augmenting public fear of youth assemblages in general, racialized male youth in particular and gang crime *in toto*. Ill-founded public panic may lead to an inappropriate apportioning of police, judiciary and social services resources. Determining when a group constitutes a gang and identifying gang members are far from straightforward processes (Wortley 2010; Buddle 2013a).

Unlike more historically established criminal sub-cultures such as are to be found in Montreal, Toronto, Hamilton, New York, Chicago and California, Winnipeg is considered an "emerging" gang city. This label refers to the class of cities that only began to experience serious problems with violent urban street gangs in the early 1990s (see Tita and Ridgeway 2007). Methods for defining and dealing with gangs locally are limited by complex factors, not the least of which are funding shortages and increasing administrative burdens, both of which are well-known to Winnipeg Police Services.

Detecting who is or who is not a gang member can be systematized with a proper assessment tool. According to Andrews, Bonta and Wormith (2006), there have been significant advances in the assessment of gang crime offenders over the past 20 years. Despite that these

instruments exist, police departments do not seem to be making use of them.

Instead, Canadian police agencies are developing their own gang member classification systems based on the unstructured judgments described by Andrews *et al.* above. There would appear to be some loose consistency across Canadian police department practice concerning identifying gang members and associates along the following criteria. When the fourth condition is met, an individual may be identified as a member if at least two additional criteria can be evidenced:

1. There is information confirming membership from a reliable source (e.g., inside gang member/rival gang member, legitimate community resources, i.e. schools, business, citizen).
2. Police information is provided as a result of observed association with other known gang members (i.e. surveillance).
3. The individual admits to gang membership.
4. There is involvement (direct/indirect) in gang-motivated crime.
5. Previous court findings identify that person as gang member.
6. The person has or participates in common and/or symbolic gang identifiers such as gang paraphernalia (i.e. tattoos, weapons, poems, clothing) and induction rituals (see Chatterjee 2006; Hemmati 2006:29).

The likelihood of misreading these measures and for identifying a false positive is high when police and other observers seek to prove, rather than to scientifically disprove, a theory of gang membership. Circular logic rationalizes identification, charging and sentencing in a lawful tagging exercise that delivers disorderly youth into the gang-making machine that is the youth detention centre (see Nafehk 2002).[iii]

V. CORRECTING CIRCULATION

A positive gang identification is critical in determining whether a drug-related crime, for instance, may benefit a criminal organization. This would be considered an aggravating factor when sentencing youth under the amended "Controlled Drugs and Sentences Act", which mandates a mandatory minimum sentence.

In previous years, youth advocates had hoped that that the Youth Criminal Justice Act (YCJA), introduced in 2003, would encourage police to use their discretion to clear youth by other means or to refer them to a diversionary program, rather than charging them. Prior to 2003, Canada is alleged to have had the world's highest youth incarceration rate (Bernard 2007:A7). There is evidence to suggest the YCJA had its intended effect, for in 2007, 62% of youth accused of a drug-related incident were cleared by means other than the laying of a

formal charge compared to 42% a decade ago (Dauvergne 2009). In 2012, 44% of youth accused were charged (Dauvergne 2013). It would seem the legislation was interpreted unevenly across the country however. In 2007, youth accused of a drug-related crime in British Columbia, Newfoundland and Labrador and the three territories were most likely to be cleared by other means. Youth in Manitoba, on the other hand, and particularly in Winnipeg, were most likely to be charged (Dauvergne 2009). When I interviewed youth advocate and Winnipeg-based *Gladue* Report writer, Donna Bear Glover on 28 September 2012, she charged that the YCJA grants too much power to the police who may be encouraged to inflate the number of charges so as to ensure that a youth is detained. Manitoba currently has the highest youth incarceration rate in the country. While the national average is 8 per 10,000, Manitoba's is 28 per 10,000 youth (Munch 2012:19).

In Manitoba, Aboriginal youth comprise 23% of the provincial population, but are vastly over-represented in custody. The percentage of Aboriginal youth (12 to 17) admitted to correctional services in 2011 was 71.3%. According to Munch (2012:3):

> The youth incarceration rate, at 8 per 10,000 youth population, fell 5% between 2009/2010 and 2010/2011, the third consecutive annual decline. The overall decrease in the rate of youth in custody between 2009/2010 and 2010/2011 was driven by decreases in youth in remand (-5%) as well as youth serving an open custody sentence (-7%) and youth serving a secure custody sentence (-3%).

Aboriginal youth sentenced to pre-trial detention, however, grew from 2010 to 2011 (from 1,621 to 1,907), compared to that of non-Aboriginal youth (382 to 410). Aboriginal youth sentenced to secured custody also increased from 123 in 2010 to 150 in 2011 (compared to non-Aboriginal youth, 10 to 24). Finally, rates of open custody sentencing also increased for Aboriginal youth, from 138 in 2010 to 173 in 2011 compared to non-Aboriginal youth (which rose from 20 to 32 in 2011) (Statistics Canada n.d.(a); Statistics Canada n.d.(b)).

When referred by extra-judical means, youth in Winnipeg have some options. A number of Winnipeg after-school and community-based agencies currently work to provide programming and services to support at-risk and marginalized youth (ranging in ages from 6 to 29) – the most recent of which is McDonald Youth Services 24 hour emergency youth centre which opened in April 2014. Others include: the Art and Sports Programs at 26 Litehouse sites, Just TV, Grafitti Art Programing, Art City, Teen Stop Jeunesse, Ma Mawi Wi Chi Itata, the West Central Community Program and the YMCA-YWCA, all of which provide supervision and organized activities at schools,

community centres and/or cultural organizations. There are Youth Outreach Programs at Spence Neighbourhoods, West Broadway, Ndinawemaaganag Endawaad Inc. (N'dinawe), Resource Assistance for Youth (RaY), Immigrant Refugee Community Organization of Manitoba (IRCOM) and the LINKing Refugee Youth and Families to Positive Social Supports program at Newcomers Employment and Education Development Services (NEEDS Inc.) which seek out vulnerable youth, build relationships with them and connect them with existing programs.

There are Mentoring Programs at Ka Ni Kanichihk, MacDonald Youth Services and Big Brothers and Sisters that pair youth with positive role models and Employment Skills Programs such as Youth Build, N'dinawe's (Ndinawemaaganag Endawwad Inc.) Turning Tides, and Workforce Venture at MacDonald Youth Services. There are temporary housing solutions offered via N'dinawe, MacDonald Youth Services, RaY and Rossbrook House. Finally, there are clinical options for addictions and/or psychiatric or psychological treatment as well as support groups at the Addictions Foundation of Manitoba, Opportunities for Independence, several medical clinics, the Manitoba Adolescent Treatment Centre, the Marymound Crisis Stabilization Program and New Directions which offers family counselling and parenting programs. As many programs require referrals, access to them is often difficult to negotiate and the wait lists for some can be as long as three years (Buddle 2009).

Winnipeg's community cultural organizations generally formed to engage in collectivizing or community-realizing activities. Community-realizing encapsulates Appadurai's notion of "the production of locality" which he views as a social achievement (1996:179) more than a geographic or demographic entity. Namely, he is referring to the creation of belonging, integration, engagement or connectedness within, and responsibility to, one's material and cultural environment. Referring more to a quality or idea of sociality, rather than an actual social form (Amit 2002), this connectedness correlates strongly with one's sense of quality of life and of opportunities for the future as well as with health outcomes and educational attainment.[iv]

The neo-liberal shift from the provision of core, to program-only funding from the 1990s onwards, has resulted in a situation whereby fewer than half of the above mentioned programs may be running at any given time, generally with attenuated or inconsistent program schedules, and with inadequate staffing, as resources are re-directed toward fundraising and lobbying initiatives. This causes difficulties both

reaching and retaining youth with complex needs. Those that are currently in operation have low intakes and fill up quickly. Some have pre-emptively expensive membership fees. All but three serve low-risk youth who attend school. And, many are geographically inappropriate for youth who cannot safely travel outside their neighbourhoods without threat of rival gang attack, nor participate in programs with rival gang members.

There is a significant gap in services which are appropriately located, consistently offered and which can engage and retain Winnipeg's highest risk youth, such as gang-involved youths and their families. There is an inadequate database to systematically track program outcomes. Also, there currently exists no systematic effort to coordinate multi-service delivery to youths whose needs are multi-faceted, whose family situations are complicated, whose connections to community resources are unstable, and who often carry exhaustingly weighty cultural and political baggage which they do not have the skills to unpack on their own[v].

Economically impoverished and racially marginalized youth populations and youth crime are growing. Yet youth who have been charged with offences and returned to the community with warnings or conditional sentences such as probation are unlikely to find adequate treatment or services. Consequently, the number of youth facing penal segregation seems likely to rise. Addressing the underlying causes of youth violent offending behaviours ought to be of urgent concern, however, it is difficult to quantify the outcomes of social programs which aim to build social, cultural, economic and political capacity. This does not bode well for social organizations whose 'capital production' cannot be measured without resorting to nebulous "crime reduction" projections. Government funders are reticent to promote long-term programs that are unlikely to return electoral gains. Short-term programs are a better bet, targeting low to moderate risk youth and producing measurable outcomes in education, employment and criminal involvement.

VI. THE CIRCLE OF COURAGE INTERVENTION

Ka Ni Kanichihk developed Circle of Courage in 2007 after Manitoba Justice determined Central Winnipeg to be one of four Winnipeg neighbourhoods experiencing high gang activity. Working in collaboration with community partners and within the context of the Manitoba Gang Reduction Strategy, Ka Ni Kanichihk created a

community-based comprehensive gang reduction initiative that was comprised by a combination of direct interventions and partnerships with law enforcement agencies and community organizations.[vi]

From 2007 to 2012, Circle of Courage (COC) in partnership with myself and a team of grad students at the University of Manitoba worked with Aboriginal youth aged 12-17 who were at risk of joining, or who are already involved in, gangs. The program's objectives were to stabilize Aboriginal youth involved in gang violence through the provision of youth-centered, holistic, asset-based and outcome-oriented programing. COC's core elements included: life skills and academic education, visual media training, employment preparation, emotional and spiritual socializing, mentoring, case management and recreation. COC was innovative insofar as it combined and operationalized the 'best' practices of programs that *build assets* to prevent or reduce gang involvement among marginalized male youth and qualitative methodologies that demand intensive and prolonged interaction in the lives of youth participants and their families (for project design, funding application, evaluation and reporting (see Buddle 2012a). Researchers employed Participatory Action Research and Photovoice, which placed project design, decision-making as well as recording equipment in the hands of youth and trained them in the practice and ethics of visual storytelling (see Buddle 2015).

According to the Social Planning Council's (2014:7) *Child and Family Poverty Report Card* for 2013, Manitoba has the second highest poverty rate for children in the Country:

> In 2011, 31.2% of the Aboriginal people in Manitoba lived below the Low Income Cut-Off (after tax) compared to 14.3% of the non-Aboriginal population. In Manitoba, 16.7% of the population is Aboriginal (199,940), which includes about 63,000 children under the age of 15, according to the 2011 National Household Survey. This is a 22.9% growth in the Aboriginal population between 2006 and 2011. The Aboriginal population is expected to continue to be the fastest growing population in Manitoba and will make up an estimated 20% of the population of Manitoba by 2030.

Aboriginal families characteristically endure less stable housing and greater dependence on social assistance. They are comprised by younger parents and by parents who have been disproportionately maltreated as children. Aboriginal families have higher rates of drug and alcohol abuse and experience a higher number of child welfare placements (Trocmé et al. 2001).

The majority of children in Child and Family Services' care are members of poor, Aboriginal or ethnic minority families (Zetlin et al. 2003; Zetlin and Weinberg 2004; Bennet 2008). Drawn from

circumstances where community, family and pro-social peer supports are absent or dysfunctional, the target youth group are likely to have been expelled from schools and therefore cannot avail themselves of the sorts of programs offered therein. Their most basic needs for food, shelter and clothing are not often being met. They are generally unaware of, and therefore have little access to, the sorts of community programs and treatments that are available to them and are more likely to have served time in a corrections facility than to have achieved employment (Buddle 2012a, 2013b).

Aboriginal gang youth in Winnipeg experience culture conflict, poverty and associated family and school problems. In addition, they are apt to undergo personal devaluation, anomalous child-rearing experiences, tension-filled gender role expectations and problems with self-esteem stemming from all these forces. Sexual, physical and emotional abuse, exploitation experiences and neglect can lead to pent up rage that may be expressed through violent behaviour (Buddle 2006). Circle of Courage began with the premise that anti-social behaviours, failure at school, social deficits, poor self-esteem and gang membership are more productively understood as the symptoms of underlying unmet needs, rather than as the expressions of innately aggressive adolescents, the program expands this definition to include their needs for "belonging, mastery, independence and generosity" (cf. Brendtro, Brokenleg, and Van Bockern 2002).

Therefore, rather than pursuing a focus on risks and deficits, Circle of Courage offered a strength-based approach, seeking to identify assets, build social and personal capacities, and ground these in a strong belief system.

This approach differs significantly from an expert-driven medical model approach. Approaching gangs employing the public health model for prevention of disease and disorder involves assessing the epidemiology of a targeted problem such as youth violence, identifying risk factors associated with the problem, applying interventions known to reduce these risk factors and enhance protective factors that buffer against the effects of risk, and monitoring the impact of these interventions on the incidence and prevalence of the targeted disease or disorder (see Hawkins et al. 2002). The difficulty with this approach is its tendency to obscure gang members' relationships with a variety of disciplinary and regulative protocols and apparatuses of the state. Identifying the violent criminal as the pathologic element deflects attention from the deviant positionality through which the state produces these subjects. Seeing violence merely as a disease or disorder

produces a historical narrative that presents class structure and power relations as both commonsensical and inevitable. This works to legitimate the rule of those in power and normalizes unexamined notions of moral health.

While measuring assets is far from an exact science, the research team employed a post-test devised by myself, that measured changes in the pre-test assessment criteria (Buddle 2008). In addition, we employed the mixed data collection methods designed specifically for the program. From the output results, it appears clear that high risk youth benefit from immersion in intensive, culturally appropriate, relevant, programing and from working with adult mentors whom they respect and with whom they have established bonds of trust and caring. The majority of COC youth demonstrated improved capacities for negotiating crisis, for coping with a constantly changing set of circumstances and for building personal, social, physical and human assets (Buddle 2012a).

By the end of the program funding period in 2012, 120 youth had registered for the project. Fifteen, actively participate at one time, which is the maximum number the staff can work with. After the first year, there were 12 youth on a waiting list to enter the full program. This number would grow year by year to 20 in the final year. The project reached its target of highest risk youth all of whom reported gang and criminal involvement. While there continued to be traffic between the program and various youth detention centres, youth remained in the community on average four times longer than when they were not supported through the program. There was a reduction in smoking, alcohol and drug use among youth while in the program. The majority of youth had applied for waged jobs for the first time in their lives. Youth also reported being more confident entering public places such as Starbucks, libraries, stores and other venues and claimed to experience more "curiosity" and less "racism" when they did. Many were able to avoid their former associates who remained gang-involved. While in the program, youth were less inclined to engage in criminal activity and some managed to avoid gang activities entirely (Buddle 2012a).

Many of the youth referred to the program had substance addictions. The few residential treatment facilities for youth in Winnipeg, however, have long waiting lists and youth are routinely denied treatment. COC was not equipped to provide the addictions treatment these youth required. Some of the youth referred to the program from corrections facilities genuinely wished to exit gang life, but were unable, and justifiably unwilling, to cut off ties with family

members who were gang involved. This often resulted in continued, although reduced, gang involvement. Some youth were so ensconced in gang life it would have been impossible for them to safely exit gangs without subjecting their families and friends to certain gang retaliation. There are no facilities or services that can facilitate family relocations for exiting gang members in Winnipeg (Buddle 2012a).

COC youth who had been expelled from high schools were frustrated in their efforts to pursue home schooling, the regulations for which are complicated for programs of this nature. Certified teachers willing to offer lessons under alternative circumstances are difficult to find and prohibitively costly. Circle of Courage requires permanent funding to remain viable. When the five-year funding cycle ended in 2012, the youth were left to their own devices and many of the gains that had been achieved began to dissolve. The youths' preconceptions that adults could not be relied upon were confirmed. Their former gang associates, on the other hand, were ever willing to console them (Buddle 2012a).

Street gangs are not necessarily oppositional and a-cultural, nor merely symbolic substitutes for culturally approved social structures. Rather, they may function as one of the few avenues for entrepreneurship, authority and for the production of non-hegemonic gender identities (Monsell-Davis 1986) available to groups barred by race and class from other forms of capitalism (Sanchez-Jankowski 1991), or political and cultural power. Youth gang violence makes legible through the language of bruises, flesh-torn bones and bullet wounds, the unspeakable pain of psychological trauma. It does so in a strikingly clear and expressive display that demands attention from adults as a lethal ultimatum.

VII. CONCLUSION

Reliable Winnipeg-wide statistics regarding youth violent crime and violent injuries according to neighbourhood, ethnic or cultural markers and other contextualizing factors (time of day, place and nature of crime, outcomes after sentencing) do not exist. Nor are there rigorous evaluations of the programs that do intermittently offer anti-violence programing for the highest risk youths.

Social scientists may over-rely on indeterminate statistical information, poorly drafted surveys, interviews (either with non-authoritative sources or without verifying data with participant observation); some never achieve the critical skills that are necessary to

overcoming the assumptions that may inform and over-determine their studies. Scholarly disciplines have different preferred criteria for reliability and validity (these are sometimes mutually exclusive). For example, a researcher might rely on a strategy of rigorous randomized sampling to conduct research with gang members. This can be disastrous without a good understanding of the culture however, as it allows the researcher to narrow the focus prematurely and eliminate the very people who are relevant to the study. Such a study would yield high reliability but extremely low validity undermining an entire study.

Legal experts, as with others, are concerned with particular questions (to the exclusion of others). They follow particular procedures and have their own standards for reliability and validity – chief among them being the principle of precedent. Asking questions that will yield information that is relevant to Canadian law, legal scholars and practitioners are sometimes reluctant (or may lack the resources) to undertake the amount of work that might advance legal precedent and promote a paradigm shift in legal reasoning.

Legal practitioners must be practical and use their resources economically. Problematic or out-dated precedents therefore often remain unchallenged. Thus despite that an individual may have been deemed a gang member in a former trial, a defense attorney may deem it expeditious to deal only with a theft charge, leaving the former gang ruling in tact – showing the theft to have been minor, i.e., without a weapon. The result for the defendant might be a swifter trial and a quicker release from an overcrowded remand centre, which might be of higher immediate value to the offender than name clearing and legal precedent setting which challenges, for example, whether gang membership itself, is criminal. Prosecutors may invoke the "benefiting a criminal organization" charge strategically calculating its value as a tradable commodity for pleas on other charges, while acknowledging the difficulty of proving this empirically in court.

Gang members are not themselves reliable information sources. Gossip and rumour mongering are common methods by which gangs (like many other social formations) manage unwanted and invite desired attention, sanction gang and rival gang members, and misinform police (as well as probation officers, social workers and family members) (see Sanchez-Jankowski 1991). In other words, gang members constantly spread a mixture of facts and misinformation. The girlfriends of gang members are also a rich source of strategic rumour mongering for a wide variety of purposes (see Totten 2000). There are methods of triangulating research that test the validity of these individuals'

assertions. One wonders if the same standards for testing are employed in police interviews of "reliable sources," or in academic studies that rely primarily on interviewing gang members without engaging in participant observation.

Despite the indeterminacy of gang reporting, crime statistics continue to measure incidents of crime presuming a similar normative subject. And, viewed as empirical data rather than as a priori epistemological processes, statistics are fed into a higher level of abstraction–social indicator categories–and only here receive analytic attention. Thus, treated as reality in itself, rather than representations of it, frequency-facts serve to solidify social facts (Comaroff and Comaroff 2006b:211).

Taken together, these quasi-surveillance systems contribute to the dispensation of Actuarial Justice–identifying, measuring, and presenting a vicarious experience of disorder--"managing" and "storing" the products of pre-conceptions rather than questioning these complicated discursive processes. Surveillance, a form of governance from a distance, combined with the self-assertive citizen action–the use of cell phone cameras to record crimes or the installation of private surveillance cameras--is typical of the regulated autonomy of neo-liberal polities.

To counter these calculative practices, academics would ideally engage more directly in interventions, working for instance, on the street with new units of police to change the nature of the prevention and suppression strategies now being constructed to deal with the perceived problem of Aboriginal gang-related crime. Replacing a focus on police gang units, with community policing ones, would shift the focus from suppression to prevention – the latter requiring a skill set and temperament that are radically different from the former. Here, method sharing across camps of ethnographers, statisticians and police would promote the building of more trusting relationships between community officers and the small percentage of youth and their families who are contributing most significantly to crime. Additionally, such an approach would permit the collection of data on youth in crisis (as opposed to youth crime) that would lead to the provision of greater supports, rather than criminal categorization and penalization.[vii]

Youth serving organizations ought to be able to engage more concertedly in political advocacy which includes the design, implementation and evaluation of all components of youth crime reduction initiatives. They require stable core funding that does not limit their political activity to meet this task. They would also benefit

from greater assistance from the Children and Youth Opportunities Department by way of accounting and administrative technicians who would, themselves, complete the extraordinary bureaucratic gymnastics required to meet government funders' accounting conditions.

Different sorts of colonial violence have become "folded" into present day institutions of order (Deleuze 1988). As threats *to*, rather than resources *within*, the political economy Winnipeg Native male youth are easily signified as a dangerous class just as their ancestors were "outlawed" and contained to facilitate the 'proper' circulation of goods, people, finances, technologies and ideas that Canadian political and economic progress entrained over the course of the settlement era. As agents of the state seek to reduce disorder by restoring zones of civility—employing the discourse of crime to distract attention from the material and social effects of neo-liberalism—segregation comes to serve as the instrument de jure of social restoration (cf. Commaroff and Comaroff 2006a:61). The extraordinarily high rate of Aboriginal youth incarceration in Manitoba confirms that Aboriginal youth are the most *managed* aggregate group of young offenders in the province, and serves as a reminder that the colonial project of classifying and removing improperly circulating persons or "pollutants" from spaces reserved for 'legitimate' commerce is far from a distant memory. Then as today, this serves the purpose of surveillance, confinement and control.

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i Meanwhile, commercial firms enjoy expansive freedoms. Taxpayers, for instance, indirectly finance the lobbying activities of corporate entities because their taxable income is reduced by virtue of the fact that expenses are considered a legitimate cost of doing business. This creates a "de facto public subsidy of corporate activities…and their activities are virtually unrestricted in scope" (Phillips 2000-2001:187).

ii Burczycka instructs: "Many factors can influence police-reported crime statistics including: local police service policies, procedures and enforcement practices; changes in various demographic, social and economic factors; neighbourhood characteristics; technological advancements; legislative amendments; and public perception and attitudes," among other things (2013:12). Initiatives specifically designed to target drug crime, for instance, may result in a greater number of incident identifications by police, rather than a greater number of actual occurrences. Likewise, police may focus law enforcement efforts more on addressing drug-related crimes when resources permit; as, when other types of crime decline (Dauvergne 2009).

iii When the police make a positive gang identification, the information is entered into their database - the Niche Record Management System. According to its Winnipeg-based developer, Niche RMS is a unified, incident-centric operational policing

system that manages information in relation to the core policing entities – people, locations, vehicles, organizations (businesses or other groups), incidents (or occurrences) and property/ evidence (see Niche Techology n.d.). While the system has streamlined administrative and information sharing practices, if erroneous information, such as the mis-identification of a gang member, is entered regarding a suspect, this same information is reproduced incorrectly throughout related databases often for long periods of time before detection. Countervailing forces or tests cannot easily compensate for such systemic problems. Because these files are confidential, there is currently no peer review or social science critique of these data standard protocols. Therefore, there is no way of knowing who oversees any errors in reporting, what the consequences of these false positives may be for erroneously labeled individuals, and how, when, or if, corrections to a file can in fact be made. Since allegations of gang affiliation are based on one's association with identified members or associates, one errant entry has the potential to negatively affect the status of numerous individuals simultaneously.

[iv] The funding to voluntary organizations became institutionalized in the 1970s with the intent to provide a training ground for the making of 'good citizens.' Funds for the organizations' core activities were dramatically reduced under the Mulroney government (1984-1993), however, "premised on the twin beliefs that such organizations should succeed or fail in the 'marketplace' of ideas and funding and that the states should not support groups that criticize it's policies" (Phillips 2000-2001:185). This occurred at a time when non-profits were under tremendous pressure to provide those services from which the government was withdrawing. This situation was temporarily vitiated when the Liberal government introduced the Voluntary Sector Initiative (VSI) in 2000.

[v] The Block by Block Community Safety Initiative is a Provincial government program launched in 2014 to provide greater coordination of services within a 21-block area in Winnipeg's North End. Block by Block aims to improve communication between community groups, social and health agencies, schools and police. Certain community organizations charge that the $600,000 for the three-year networking plan might have more productively funded an actual service or program.

[vi] In 2001, Ka Ni Kanichihk Inc. became a registered non-profit corporation. It operates using a culturally-centered and value-based approach to provide Aboriginally-identified programs and services which build on the strengths and resilience of Aboriginal peoples. It promotes empowerment, healing, reconciliation and justice through self-sufficiency, healthy relationships and caring communities.

[vii] Suppression remains a necessity. Aboriginal families who are the victims of crime by Aboriginal and other offenders are not the "soft on crime" advocates they are often assumed to be. Focusing on the actual perpetrators of offences rather than profiling, however, would facilitate more reporting of crimes by community members and result in a more accurate registering of crimes by police. This would lend greater reliability to statistical counts and improve the general safety of Aboriginal and other inner city residents.

Is Justice Delayed, Justice Denied? Changing the Administration of the Winnipeg Family Violence Court †

JANE URSEL *

I. INTRODUCTION:

The well-known, frequently used aphorism in the title of this article implies that faster justice is better justice. This was a motivating factor in the introduction of a new administrative process for handling cases in the Winnipeg Family Violence Court (FVC). It seems like common sense that a reduction in the time it takes for a criminal matter to work its way through the courts would improve the exercise of justice (Bell et al. 2011). However, we seldom have the opportunity to examine the experience of justice personnel and the court system before and after changes in administration to measure whether this is actually the case. The introduction of the Front End Project (FEP), a new program for

† This study was made possible by funding from the Maxbell Foundation and Manitoba Justice.

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streamlining cases in the Winnipeg FVC provided us with this opportunity. A longitudinal study of the FVC provided researchers with a valuable before and after data set. This quantitative data was supplemented with key informant interviews to explore the impact of this program on criminal justice personnel. Our study uses these two measures to examine whether the FEP shortened the time for justice to be served or improved the administration of justice in other ways. This paper suggests that while the results of the FEP are mixed, there are some positive developments that make this author optimistic about its future.

II. BACKGROUND

In 1990 the Winnipeg Provincial Court became the first court in Canada to develop a specialized response to family violence cases, known as the Winnipeg FVC. This court hears all cases involving individuals who are in a relationship of trust, dependency and/or kinship with their assailant. Thus, the FVC hears cases involving a criminal offense against an intimate partner, as well as cases of child abuse, child pornography and elder abuse. The goal of the FVC was to hold offenders accountable, to impose sentences commensurate with the seriousness of the crime and to exercise flexibility in responding to first time accused differently than repeat offenders. The introduction of the specialized court resulted in a rapid increase in the volume of cases (Ursel 1992; 2000; 2012a). In 2004 the Provincial Court Chief Judge introduced the 'Front End Project', the goal of which was to remove most administrative matters from the court room and commit all components of the 'front end' of the system (police, prosecutors and defense lawyers) to meet prescribed timelines to submit essential information so that cases could proceed to court. Prior to the FEP, many hours of judges', prosecutors', and defense lawyers' time would be spent in court rooms hearing/making requests for remands because not all of the necessary information to proceed was available. A dedicated judicial justice of the peace (JJP) was appointed to ensure compliance with the prescribed time frames. It was expected that court hearings would occur when all necessary information is collected and the defense lawyer is ready to enter a guilty plea or set a trial date. This process was designed to substantially reduce the number of courtrooms and court personnel involved in hearings for the purpose of remanding a case. In the first two years case management data indicated significant

success in meeting these goals. This project won the 2006 United Nations Public Service Award.

However, case management data does not collect the details of each criminal matter to determine whether efficiency and speed had an impact on the original goals of the FVC court, including court outcomes and sentencing. The purpose of this paper is to explore the impact of the FEP on these factors as well as revisit the original case management assessment, six years later, to see if the efficiencies of the model were sustained. It is important to note that while the FEP was first applied to the specialized family violence court, the perceived administrative advantages of this system resulted in the process being applied to all matters in provincial criminal court within a few years. This study however, applies only to the impact of the FEP to cases heard in the Winnipeg FVC.

III. GOALS AND PROGRAM COMPONENTS

The intended outcome of the FEP was threefold: 1. More expeditious timelines for proceeding with criminal matters; 2. More efficient use of courtrooms; and 3. More effective use of human resources. To achieve these goals a number of changes were introduced. In response to the first goal, expeditious case processing, timelines were set for all of the key criminal justice system (CJS) professionals to have their information completed. Police would need to commit to have full reports to prosecutors within a certain time, prosecutors would commit to disclosure to the defense lawyer within a certain time, and defense lawyers would commit to having their case ready by a certain time so that when the key personnel met before a judge in a criminal court, a substantive hearing would occur, either to enter a plea of guilt or set a trial date. The agreed upon timelines were a product of negotiation with representatives of police, prosecution, and defense at the table with the Chief Judge of Provincial Court. Recognizing that complex legal matters may not always be able to achieve clock-work efficiency, an administrative court was established to address situations in which agreed upon timelines could not be met. The administrative court was set up with one judge who would meet with one prosecutor (representing all Crown cases) and the relevant defense lawyer/s to determine and hopefully remedy the situation causing the delay. It was intended that the implementation of timelines and the introduction of administrative courts would provide a more effective use of courtrooms, fulfilling the second goal of the project.

The above two initiatives were expected to lead to the third goal of the project which was more effective use of human resources. The specific intent was to free up judges' and prosecutors' time from attending administrative hearings. To achieve this goal a new role emerged for JJPs and for Crown attorney assistants. The tracking of cases and timelines were assigned to JJPs identified as pre-trial coordinators, who would communicate with the 'front end' of the justice system, (i.e. police, prosecutors, and defense lawyers) to ensure that they met their timelines. In addition, Crown assistants would be tasked with all communication to the pre-trial coordinators regarding timeline issues and requests for time extensions where necessary. When the agreed upon timelines were exhausted the case would be transferred from the trial coordinators court to an administrative court.

This liberated prosecutors and judges from countless hours of court appearances for administrative matters. As a result, concurrent with the introduction of the FEP, the prosecutor's office introduced 'Crown ownership' of files. This was a significant change in the prosecution process, because each prosecutor would be responsible for a particular accused and would stay with the case over time, prosecuting any subsequent re-offenses. This facilitated prosecution in two ways. First, the Crown became very familiar with the accused and the pattern of their offending behaviour. This in-depth knowledge, provided prosecutors with greater evidence to present at bail court, sentencing court and/or trial. Secondly, the victim would only have to interact with one Crown, who would be familiar with their case history. This innovation was only possible through allocating the administrative matters to paraprofessionals and is perhaps the best example of more effective use of personnel.

IV. METHODOLOGY

A mixed method, combining analysis of quantitative and qualitative data, was selected to examine the impact of FEP. The quantitative component of this study involved an analysis of court cases processed before, during and after the introduction of the FEP to see if there were any significant changes in processing time, conviction rates and/or sentencing patterns. This data consists of a selection of years of court data which is part of a much larger longitudinal court study conducted by the author in partnership with Manitoba Justice. The longitudinal data is not a sample but a complete set of all cases heard before the

specialized court which has been collected without interruption for 24 years.

The FEP was introduced in the year 2003-2004. Our court outcome data includes five years of data: two selected years before the introduction of FEP, the year FEP was introduced and two selected years after the introduction of FEP. The five year data set is not a sample; it consists of all cases (16,412) before the family violence court in those years. These cases include intimate partner violence, child abuse, child pornography and elder abuse cases, unless otherwise indicated. Overall, about 75% of the cases heard in the court involve intimate partner violence (IPV). For some analysis, samples from the larger data set are used and the reasons for this will be explained.

The qualitative component of this study involved interviews with key informants, (personnel within the justice system), about the impact of the FEP on their work. A standardized open ended interview guide was used by the author who conducted all interviews. The challenge in selecting key informants was to identify individuals who had been in their practice before and after the introduction of FEP so they could reflect on the impact of the project on their work. Since interviews were conducted in 2012, we needed personnel who had been in their practice at least 10 years. The 15 respondents recruited had in fact been in practice for an average of 15 years. The key informants included four judges, four prosecutors, three court administrators, two victim services staff and two defense lawyers.

To assess the impact of the FEP we explored its effect on processing time, conviction rates, sentencing patterns and practitioners experience of the work that they did. To address these research questions we analyze before and after measures of court processing, court outcomes and sentencing patterns, as well as key court personnel's assessment of the success of the new system.

A major limitation of this study is the lack of victim or accused interviews. An important measure of the impact of justice is the victim's and/or the accused assessment of the court process. However, resources did not permit researchers to recruit a sample of victims or accused whose cases had been heard before and after the project.

V. FINDINGS

A. Adherence to Timelines

The initial positive reports on time reductions resulting from the FEP were based on data collected in the first two years of its implementation. Our data allowed us to revisit the court processes to see if time reductions were still evident four to six years after implementation. We were interested in the phenomenon of institutional drift: could the agreed upon time frames for reporting and sharing information among all of the criminal justice personnel be maintained over time or would staff eventually 'drift ' back to old practices?

The broad comparison of average time to process all cases in the family violence court from first appearance to final disposition reveals a substantial reduction in time. The average time to disposition in 2001-2002 was 304 days and the average time to disposition in 2007-2008 (four years after implementation) was 230 days, this 74 day reduction constitutes a 24% reduction in average case processing time. As indicated in Table 1 below, we find that cases that end in a stay of proceedings are disposed of more quickly in 2007-2008 than in 2001-2002.

Table 1 Average Time to Case Disposition for Selected Years: Before and After Front End Project

	2001-02 (N=3,913)	2007-08 (N=2,702*)	Change	% Change
All cases	304 days	230 days	- 74 days	24%
Stay**	309 days	208 days	-101 days	33%

*All tables N=number of individuals.
**Stay - we excluded those cases that were stayed for counseling because they extend time to allow for completion of counseling.

Because the stays constituted 33% of all cases in 2001-2002 and 39% of all cases in 2007-2008 much of the overall reduction can be explained in terms of the shorter time to dispose of stayed cases.

When we examine the time involved in the disposition of trial cases, we find that FEP did not reduce trial times. We took a sample of trial cases each year for five years, one year (2001-2002) prior to the FEP and four years after the introduction of the FEP to see if the time from arrest to disposition changed. For this sample we only included accused in adult intimate partner abuse (IPV) cases who were out of custody. We limited the sample to IPV out of custody cases because they were more numerous and subject to a different timeline than in custody cases.

Table 2 Case Processing Time for Domestic Violence Contested Cases (Trials)

Time Year	Arrest to 1st Appearance	1st Appearance to Disposition	Total (Arrest to Disposition)
2001-02	25.42 days	514.61 days	539.89 days
2005-06	20.14 days	578.48 days	598.61 days
2006-07	25.93 days	548.62 days	574.55 days
2007-08	17.18 days	476.14 days	493.32 days
2008-09	12.25 days	588.04 days	603.45 days

The first appearance (after FEP) occurs before a Pre Trial Coordinator.

Overall the single difference is the time from arrest to first appearance which is an average of 25.4 days before the FEP compared to an average of 18.9 days or a 26% reduction after the FEP. However, from arrest to disposition the average time in 2001-2002 was 539.9 days and the average after FEP is 567.5 days, a 5% increase. Thus, when it comes to trials for out of custody accused FEP has not succeeded in shortening time.

Trials, however, may not be the best measure for timelines since they only account for 2% of all cases before the court. To assess the

impact of the FEP on timelines, a consideration of guilty plea cases may well be a better measure. Because this work was extremely labour intensive, we limited the comparison to two years, 2001-2002 (before FEP) and 2007-2008 (after FEP). For each year we did a random sample of guilty plea cases for (IPV) cases that did not have a previous trial date set. In 2001-2002 for out of custody cases, we chose every 6th accused. If they had a trial date we selected the next person. For in custody, we followed the same procedure and selected every 7th person. For 2007-2008 for out of custody cases we could not do a random sample because only 41 accused met the criteria; for in custody cases, we selected every 5th accused. We did this to ensure that we were comparing, like cases and not comparing early guilty pleas with contested cases set for trial that resulted in a late guilty plea.

We calculated the average time to case disposition in 2001-2002 compared to the average time to disposition 2007-2008. Using a difference of means test we could determine if the differences were statistically significant. Table 3 below presents the results.

Table 3 Case Processing Time for IPV Guilty Plea Cases Before and After FEP

	2001-2002	2007-2008	
Out of Custody Cases	(N=46) Mean	(N=41) Mean	Difference
Avg. # Days	212.9	187.9	-25 days
In Custody Cases	(N=46) Mean	(N=48) Mean	
Avg. # Days	117.9	108.0	-9.9 days

Out of custody: T-test -12.9, $p<0.01$
In custody: T-test -9.7, $p<0.01$

Clearly the differences were in the right direction, for out of custody cases after FEP there was a reduction of 25 days in the average time to

case disposition, for in custody cases after FEP the reduction was 9.9 days. In both cases the differences were statistically significant.

We also recorded the number of timeline violations associated with each case in the 2007-2008 sample, (before FEP there were no established timelines). Despite the success in reducing the average number of days to disposition the data indicates that in the case of guilty pleas there appears to be considerable difficulty meeting the agreed upon timelines. For out of custody cases in 2007-2008, 39% of the cases had timeline violations noted on file, the majority 62% had a single timeline violation, 25% had two and 12.5% had three violations. For in custody cases 25.5% of the cases had violations noted on file, 66.7% had single violations, 25% had two violations and only one case had 3 violations.

Most of the key informants felt that adherence to the agreed upon timelines had seriously declined. One judge pointed out that the growing number of administrative courts in operation and the size of their dockets is evidence of the difficulties meeting timelines.

> "The size of those dockets, at least in the past, has been quite significant….like the old screening courts to some extent. The numbers can still be high. You know, I remember a number of years ago sitting from 9:30 a.m. to 5:30 or 6:00 at night….with no break, literally no break. That is, no bathroom break, no lunch break, no nothing, it was one of those [situations] you were just welded to the seat" (Judge 2).

One judge who regularly sits in administrative court identified two major sources of delay; first, the assignment of counsel for the accused and secondly, the issue of disclosure (has all of the necessary information been received by the prosecutor and shared with defense?).

The problem of delays due to unrepresented accused became so severe that a Legal Aid administrative court was developed. The biggest stumbling block was to provide Legal Aid with all of the information required to determine the accused eligibility. Persons in conflict with the law are often not individuals who keep track of their income records. Thus, through a combination of negotiation with Legal Aid about relaxing some of their bureaucratic requirements and creation of the specialized Legal Aid administrative court, the system is attempting to reduce that source of delay.

With regard to timeline violations due to delay in disclosure, some judges felt that not all of their colleagues were equally strict in requiring accountability and action in the face of delays. Judges have commented that there needs to be consistency for administrative courts to be effective.

> "[If] counsel feel they, at least, have a fighting chance of not being quizzed extensively on what the holdup is, then administrative court loses some of its power…it emphasizes the importance, I think of everyone being close to being on the same page" (Judge 2).

One of the questions asked of all the participants is if they felt there was "institutional drift" back to the old ways of doing things. Two judges responded affirmatively to this question and one judge reported that they were just in the process of reviewing the FEP protocol.

> "We do have institutional drift …I'd love to see the stats on remand delay and trial delay. I'd be shocked if they're as good as we got in the early days of the project. We may get back to that institutional thing (drift). The fact that they (administrative courts) proliferated and the fact that there are so many matters in there is a great worry to me. Why do so many cases go in there? Why are there timeline violations? So does that mean that the timelines were inappropriate to begin with or people aren't adhering to the agreements that they made. I suspect both" (Judge 4).

One of the most frustrated informants expressed their concern with administrative courts and time delays. A defense lawyer remarked that although judges and prosecutors no longer had to attend administrative hearings, defense lawyer's presence was required. Referring to these front end courts, one defense lawyer stated:

> "Crowns didn't have to come to court so they weren't as accountable in my experience…You have a roomful of defense lawyers, we still all have to come to court. The onus, I think has increasingly shifted to defense to move a case forward and contrary to what some people may tell you, that's really not defense's job. …prosecuting used to be a verb. There are very few prosecutors who take the steps to move a case forward since FEP because there is no pressure on them from a judge" (Defense lawyer 1).

Overall, we find that the reduction in time for a case to proceed in FVC was greatly dependent on how the case was resolved. Reductions were significant in cases resolved by a stay of proceedings (33% reduction) and guilty pleas, however, there was no substantial time reduction in trial cases. Our data does indicate a growing problem in meeting agreed upon timelines as indicated by the proportion of timeline violations – 39% for out of custody and 25% for in custody guilty plea cases. Challenges meeting agreed upon timelines is also identified in the observations of our key informants.

B. Effective use of court rooms and court personnel

In addition to reducing the processing time, the FEP was designed to reduce the number of hearings with a full complement of personnel. Specifically, the intent was to have hearings for remands presided over

by JJPs, designated as pre-trial coordinators. Using the guilty plea court sample above, we also had a useful measure of the number of full hearings (identified as presence of judge, crown attorney and defense) that occurred from first appearance to final disposition before and after FEP. What we are excluding are hearings presided over by pre-trial coordinators and administrative courts. Once again we have separated the out of custody cases from the in custody cases because they are subject to different timelines which has an impact on the average number of hearings before FEP. Table 4 below identifies the number of full hearings before and after FEP, clearly indicating a significant reduction for in and out of custody cases.

Table 4 Average Number of Full Hearings Before and After FEP for D.V. Guilty Plea Cases

	2001-2002	2007-2008	
Out of Custody Cases Difference	(N=46) Mean	(N=41) Mean	
Average # Full Hearings	5.37	1.4	3.9
In Custody Cases	(N=46) Mean	(N=48) Mean	
Average # Full Hearings	10.24	2.21	8.0

Out of custody: T-test -13.3, $p<0.01$
In custody: T-test - 7.6, $p<0.01$

This quantitative difference had a significant impact on the day to day work of CJS personnel. Our key informants articulated this difference when contrasting the nature of their work before and after FEP. Prior to separating administrative matters from substantive legal matters, all Crown attorneys, judges and defense lawyers interviewed identified the overwhelming size of dockets. Volume really militated against deliberation and many informants referred to the intake and screening courts as 'assembly line' or 'sausage factory' work. Commenting on the system before the FEP, one Crown commented on the intake court process:

> "I remember having to come in on a Saturday and Sunday to prepare for the Monday morning docket that would have over 400 matters on it. It was just sort of like a mill, you just address the files, remand them, adjourn them and so on, that's how the court system worked" (Crown 3).

The legal aid duty counsel had a similar comment:

> "I can tell you that Monday intake court was a zoo. It was a very stressful day for me and the court as well" (Defense 1)

One judge commented on the amount of time they had to preside over administrative matters prior to the FEP:

> "…an awful lot of time would be taken up with those first steps, such as advising the person that they have a right to a lawyer; getting the person attached to legal aid or to seek a lawyer privately; getting the lawyer to get a police report; seeking bail variations; getting Crown to review whether they had a case to proceed against one or both parties" (Judge 3).

Following the intake process, there were screening courts. These courts dealt largely with administrative matters and were overwhelmed by volume as well. As one judge remarked:

> "…screening courts …were so large and so unreal…it really just became a bit of a sausage factory …it was difficult to spend much time on any particular matter to…get to the heart of what the particular problem was to investigate" (Judge 2).

This led to backlogs. As one judge expressed:

> "The back log at that point in time was unconscionable…We had lots of docket courts where all that happened for five and a half hours a day was judges did remands and cases got remanded" (Judge 4).

The introduction of the FEP is credited with making the system less chaotic through separating the administrative matters from substantive legal matters and assigning different personnel to the two tasks. In addition to streamlining the system, the creation of new job descriptions and the negotiation necessary to implement this model resulted in a work culture shift for many of the personnel involved.

C. Changing the Work Culture

While the FEP was designed primarily to reduce case processing time and increase efficiencies it also had the somewhat unanticipated effect of changing work culture. This theme was articulated by a number of key informants.

> "So one of the strengths, which was unintended, was the start of a change of culture; a culture of collaboration, of discussion, which I think, I believe probably does continue today at some levels" (Judge 4).

Interviews indicated that the major human resource impact was most significant for four professions: (1) Crown attorneys; (2) prosecution assistants (paralegals in prosecutions); (3) JJPs who became pre-trial coordinators; and (4) judges.

Two categories of staff now play a more independent role as paralegals in the administrative courts: JJPs and Crown assistants. The pre-trial coordinators now preside over the intake and remand courts. The court administrators spoke of the impact of the FEP, in particular the creation of pre-trial coordinator positions which resulted in a new line of work for JJPs, increased responsibility and greater job satisfaction.

> "…it's brought about a change in our workplace here definitely and the way in which court functions…It certainly has provided for people to take on new roles that were obviously not available to them before, such as the pre-trial coordinator role" (Court Administrator 1).

Similarly, the Crown assistants also experienced a significant change in their work and their responsibilities. As one Crown involved in the implementation stated:

> "…training our paralegals was a big change…I think there was nervousness at first, but I think that it's a really valued position in our office now, a really looked-up-to position… I think that there is huge job satisfaction." [They are playing an important] … "role in court, running the dockets on their own and having interactions with defense counsel about adjournments and things like that. I think it's empowering" (Crown 2).

The respondents most enthusiastic about the FEP were the prosecutors who valued this project most for facilitating the introduction of Crown ownership of a file. All of the prosecutors interviewed highly valued file ownership and felt it enhanced their ability to prosecute cases more effectively.

> "I like ownership. I think being responsible for my file makes me more accountable, more invested in the outcome and gives me the availability to be more involved in the people in the files" (Crown 1).

One prosecutor recounted an experience she had, which she attributed to her greater knowledge of the individuals involved that Crown ownership permitted.

> "I recall one woman . . . who came to court . . . and was addressing the judge, asking for contact with the accused. I was indicating that (contact) should not be a part of the disposition. Part of the probation order should include a no contact order because she wasn't in the best position currently to assess the risk. For a variety of reasons the judge ordered it (no-contact). When I went out of the court room, she asked to speak to me privately in the witness room, so we went into this room. I was waiting for the barrage, the blast. But she

> hugged me and thanked me and said she'd been feeling such pressure from his family to come and felt guilty about doing it. …(she) was so glad that I had known her well enough…to put the situation in context before the court that allowed the no contact order to be put in place" (Crown 2).

One judge, who was previously a prosecutor, summarized the significance of the move to Crown ownership:

> "…We felt very strongly that there was a gap in terms of the Crown being able to maintain continuity and to have the full picture when it came to both the offender and the victim. So from my perspective that was a really key component of affecting change and that was ensuring that we could have file management so that is, one Crown, one file, one Crown, one offender and one Crown, one victim where possible so that the Crown would always have the full picture and the history of the parties in terms of the abuse and their involvement in the system" (Judge 1).

This same judge added:

> "I see a higher quality of prosecution from my perspective on the bench; I think it ups the ante in terms of the level of seriousness" (Judge 1).

Crown ownership also had an impact on the work of victims services staff. In pursuit of the "full picture" of the dynamic of abuse in a relationship, prosecutors relied on victim service staff for greater information from the victim. A victim service respondent talked about the change in work culture which resulted in a concurrence of Crown ownership, the new computerized system (PRISM) and younger Crown attorneys who were comfortable with computers.

> "…things are happening a lot quicker than they used to and I think…, there's been a big shift in the culture of the Crowns. They really are making better use of us I would say…way beyond just reading our memos" (Victim Service staff 2).

The Front End Project also introduced some very welcome changes into the day to day work of the judges.

> "We saw an immediate change in terms of less administrative matters coming before us. As a judge when we're going to court, we're more often doing something significant, such as bail or sentencing or trial" (Judge 3).

This judge observed that the division of labour between the administrative and substantive court hearings and the efficiencies it introduced, has enabled the courts to handle what would have been a crushing volume of work under the old system.

> "Well, I don't see how we could possibly handle the numbers that we're handling now under the old system. I mean we're trying to maximize the use of our judicial resources and we're still struggling" (Judge 3).

The professionals who reported the least satisfaction with the FEP were the defense lawyers. They acknowledged that FEP introduced efficiencies for court personnel but they did not express the same benefits to their day to day work as prosecutors.

Defense lawyers expressed frustration that they may want to file for a variation in conditions. This may require that defense seek out a Crown to confirm their position on variation and a judge to approve, if there is consent. In response to this particular concern, prosecutors have indicated that there is always the opportunity to determine these issues ahead of time via email with the prosecutor who has conduct of the file and, with consent of the Crown, the matter can be handled quickly.

A judge heard similar sentiments discussed by defense. This judge observed:

> "The one thing I haven't talked about is that the defense lawyers still say they want to go back to the days of the old screening courts. And they say that what they have lost as a result of the FEP is the opportunity to meet face to face with the Crown attorney. And I say we didn't take that away from you, all we did was take away the ability of having a judge present when you're having that conversation with the Crown, and in my view, it's inappropriate for there to be a judge present for Crown and defense to have a conversation" (Judge 1).

This judge also confirmed the defense lawyers' belief that you need "pressure from a judge to move a case forward" (Judge 1).

> "I think that defense lawyers in particular continue to be court driven. And what I mean by that is unless there's a court date looming; they're not doing anything on a file" (Judge 1).

To summarize, the FEP did have a significant impact on the day to day work and satisfaction of a number of professionals specifically, paralegal's work and responsibilities, Crown ownership of files and judges release from many administrative hearings. In terms of indirect impact, victim services staff expressed the view that the FEP, along with the introduction of computerized systems and Crown ownership of files, had improved and increased the communication between the two offices. All of the above professionals were able to identify very distinct improvements in their work as a result of the FEP, however, defense lawyers were much less enthusiastic. They preferred the old screening court system because they felt it facilitated greater contact between prosecutors and defense. However, both defense lawyers did acknowledge that the docket courts presided over by the pre-trial coordinators had substantially reduced the volume and the chaos of the old docket court system.

D. Court Outcome

While there is considerable evidence that the court process has changed, an important issue still to be addressed is whether these changes had an impact on court outcomes. We will look specifically at conviction rates and sentencing patterns before and after the FEP.

In order to appreciate whether the FEP had an impact on court outcomes we need to control for any changes in factors that affect outcome such as, type of charge, characteristics of the accused and prior record of the accused.

Table 5 Type & Frequency of Charge By Most Serious Charge Per Case By Year

Type of Charge	1999-00 (N=3,929)	2001-02 (N=3,121)	2003-04 (N=2,697)	2005-06 (N=2,712)	2007-08 (N=4,047)
Common Assault	50%	49%	47%	43%	44%
Breaches	18%	21%	22%	16%	25%
Assault w/weapon	12%	11%	11%	14%	10%
Ag. Assault &ACBH*	7%	7%	7%	8%	8%
U.T. & Crim Harass**	7%	7%	7%	7%	5%
Sexual Assault	3%	2%	3%	3%	4%
Murder***	(10)	(10)	(14)	(4)	(3)

* Aggravated assault and ACBH (assault causing bodily harm)
** UT (Utter threats) and Criminal Harassment
*** Murder recorded as number of cases not percentage

During the study period we see some minor fluctuations in the most serious charge per accused. From 1999-2000 to 2007-2008 there was a consistent decline in common assault being the most serious charge an accused had when they enter the court. Overall, there was a decline of

6% between 1999 and 2008 in common assault and an increase of 7% in breaches constituting the most serious charge. The other clear change was the reduction in number of murder cases before the court. We should be cautious in our interpretation of what seems like a dramatic decline in homicides between 1999 and 2008 because the limited number of murder cases, relative to other charges, results in significant variation from year to year. For example, domestic homicides in Manitoba from 2006 to 2012 fluctuated from a low of 3 in 2006 to a high of 10 in 2010 (Ursel 2012b).

The other factors known to affect court outcomes are the characteristics of the accused and the victim, as well as the prior record of the accused. Thus, to ensure that any differences in court outcome observed are not an artifact of these factors, we compare these characteristics before and after the FEP. The prior record of the accused is an important determinant of court outcome and sentencing (Ursel, and Hagyard 2008). Table 6 below indicates the most serious charge an accused had in prior court cases. In the case of common assault we distinguish between a general assault and an assault on a domestic partner. What is most striking is the fact that over 80% of all accused had prior charges, the overwhelming majority of which were for prior assaults against persons.

Table 6 Most Serious Prior Charge of the Accused by Year

Prior Charge	1999-00	2001-02	2003-04	2005-06	2007-08
Prior Charges	82%	83%	81%	81%	81%
Charge Type					
Domestic Assault	37%	44%	40%	39%	42%
General Assault	23%	18%	16%	14%	13%
Sexual Assault	3%	4%	7%	6%	6%
Child Abuse	1%	2%	3%	7%	8%
Murder	0%	0.5%	0.2%	2%	2%

Other charges	18%	15%	14%
13%	10%		

There is a pattern of change in the prior charges an accused has had. There is an 8% reduction in other charges (not violent crimes). Among crimes against persons, there are increases of 5% in domestic assaults, 3% in sexual assaults, 7% in child abuse, and 2% in murder/attempt murder prior charges. This suggests that the accused have a more violent prior charge history over time which could be correlated with more serious sentences.

In addition to changes in the prior record of the accused, there are also some changes in the characteristics of the accused. We observed an 8% increase in the number of Aboriginal accused and a 9% decrease in accused of European origin from 1999. The increase in accused of Aboriginal origin may affect both court outcomes and sentencing patterns because Aboriginal accused tend to have a lower rate of stays of proceedings and are more likely than non-Aboriginal offenders to receive a sentence of incarceration (Brzozowski, Taylor-Butts, and Johnson 2006; Perreault 2009; Ursel 2007). In addition, there was a decrease of 3% in females accused. This is significant because women tend to have a higher rate of stays of proceedings and less severe sentences (Fraehlich, and Ursel 2014). The decline in female accused is largely explained by the reduction in dual arrests after the Winnipeg Police Service introduced 'primary aggressor' training. This training resulted in a dramatic decline in dual arrests, from a high of 9% of all cases in 1999-2000 to a low of 3% in 2007-08. The changes in prior record, ethnicity and gender of the accused are anticipated to have a moderate impact on court outcome and sentencing.

To address whether or not the FEP had an impact on court outcome, we will examine two years of before data and two years of after data from FVC and include 2003-2004 data, the year the FEP was introduced. We will look specifically for changes in conviction rates, stay rates and any changes in sentencing patterns.

Table 7 indicates that during the period under review, both before and after the introduction of the FEP, conviction rates fluctuated between 52% and 57%. Prior to the FEP in 2001-02, conviction rates peaked at 57% and following the introduction of the FEP in 2005-06, conviction rates peaked at 56%. There does not appear to be any evidence that the Front End Project had either a positive or negative effect on conviction rates.

Table 7 Court Outcome by Year

Outcome	1999-2000 (N=4,038*)	2001-2002 (N=3,913)	2003-2004 (N=3,090)	2005-2006 (N=2,669)	2007-2008 (N=2,702)
Guilty Plea	51%	55%	53%	56%	53%
Trial: Guilty	1%	2%	0.5%	0.1%	0.1%
All Convictions	52%	57%	54%	56%	53%
Rehabilitative R.**	8%	9%	9%	7%	7%
Outcome with Consequences	60%	66%	63%	63%	60%
Stay w Peace Bond	8%	7%	8%	8%	8%
Stay of Proceedings	30%	26%	28%	33%	31%
Trial: Not Guilty	1%	1%	1%	1%	<1%
Dismissed/Discharged	1%	1%	<1%	<1%	<1%

*The total number has been adjusted to remove accused who died before sentencing and a small number of cases with missing information.

**'Rehabilitative R.'

'Rehabilitative R' refers to a rehabilitative remand, a circumstance in which the accused is judged to be a low risk and is likely to benefit from a treatment program for abusive persons. In this case, the prosecutor delays the final decision on prosecution, giving the accused an opportunity to attend, participate and complete a treatment program. If they do so successfully, the prosecutor will stay the case. If they fail to do so, then the prosecutor has the ability to proceed with the prosecution. In this way the accused is offered a benefit. A stay of

proceedings results in no criminal record and the Crown attorney has a 'stick' – non-compliance will result in proceeding with a prosecution.

A second observation is the tendency for the stay rate to increase over time. If we examined all four years prior to FEP, the average stay rate was 35%, varying from a low of 33% (2001-2002) to a high of 38% (1999-2000). In the four years that followed the introduction of the FEP, the average stay rate was 38%, varying from a low of 35% (2004-05) to a high of 40% in (2005-06).

The final consideration of the impact of the FEP on the justice system is to see whether there are any discernible differences in sentencing patterns before and after FEP. Table 8 examines the sentencing pattern for selected years before and after the introduction of FEP.

Table 8 Sentences of Offenders in the Winnipeg Family Violence Court for Selected Years

Sentence*	1999-2000	2001-2002	2003-2004	2005-2006	2007-2008
	N=2087	N=2202			
	N=1656	N=1378			
	N=1451				
Incarceration at Sentence**	25%	26%	27%	34%	26%
Conditional Sentence	2%	2%	2%	2%	2%
Supervised Probation	33%	26%	19%	22%	18%
Unsupervised Prob.	4%	5%	5%	5%	5%
Fine &/or Restitution	13%	15%	13%	12%	14%
Conditional Discharge	12%	11%	9%	9%	8%
Absolute Discharge	1%	2%	<1%	2%	1%

*Columns add up to greater than 100% due to the frequency of multiple sentences per case, i.e. fine and supervised probation or incarceration followed by 2 years probation.

**In many cases incarceration at sentence includes or is equivalent to the time in custody. For clarity we are using the single measure incarceration at sentence.

Overall, the sentencing pattern before and after the Front End Project does not reveal any dramatic change. However an increase in incarceration from an average of 26% before to an average of 29% after FEP and a decrease in conditional discharges from 12% to 8% suggest a greater severity in sentencing. The magnitude of these changes are consistent with the changing characteristics of the accused and in particular their more severe prior records.

Another change is the reduction in the percentage of offenders sentenced to supervised probation. Further, the past pattern of combining a period of incarceration with on-going probation – 68% in 1999-2000 and 58% in 2001-2002 – seems to have been dramatically reduced after 2003-2004 when the FEP was introduced. In 2007-08, 34% received this combination of incarceration and probation which was half the rate in 1999-2000. It is not clear if there is any connection between changes in sentences of probation and the introduction of the FEP. These changes may result from the fact that since 2004 there has been an overall reduction in programs in corrections for domestic violence offenders. This separate and unrelated (to FEP) development may have an impact on sentencing. This pattern deserves more inquiry, but it falls outside of the parameters of this study.

Despite the above changes and a slight increase in stays of proceedings, most measures of court outcome and sentencing suggest that the efficiencies introduced with the FEP were not at the expense of the FVC's initial goals. The goals of holding offenders accountable, imposing appropriate sentences and exercising flexibility through rehabilitative remands have remained intact despite considerable administrative changes introduced through FEP.

VI. CONCLUSION

Ten years after the introduction of the FEP we find a variety of outcomes – some anticipated and others not. The first goal of the FEP was to reduce the time it took to process a case in the FVC. Overall, we found that the reduction in time for a case to proceed in FVC was greatly dependent on how the case was resolved. There was an average 24% time reduction from first appearance to disposition, however, much of this reduction can be explained by the 33% time reduction in cases

resolved through stays of proceedings. Trial times were not reduced; however, our sample of guilty plea cases did reveal a significant reduction in average time to case disposition for in and out of custody cases. Our key informant interviews revealed that all the court personnel were aware of the problem of the 'front end' of the system adhering to agreed upon timelines. The issue of institutional drift was identified by a number of informants, who also indicated that there was a review of the system underway at the time of the interviews. The proliferation of administrative courts was a matter of concern to the judges and seen as an indicator that timeline violations had become a serious challenge for the courts. In assessing the effectiveness of FEP in achieving its first goal, one would have to conclude that results were mixed.

The second goal of the project was to have a more efficient use of courtrooms by separating courts for administrative matters from courts for substantive matters. The efficiency of this process was articulated in key informant interviews and was evident in the significant reduction of substantive court hearings from first appearance to disposition. Key informants indicated that dockets are of more reasonable size and judges appreciated attending a courtroom that was not distracted by numerous applications for remands. These benefits, however, are balanced against the growth of administrative courts and their increase in volume. In short, requests for remands have not been reduced but the system for responding to these requests has changed.

The third goal of the project was more efficient use of human resources. This appears to be the most successful achievement of the FEP. The extensive use of paralegals in monitoring timelines (pre-trial coordinators) and the expansion of Crown assistant's responsibility in attending the pre-trial coordinators dockets and interacting with defense counsel about adjournments, has increased job satisfaction and liberated a great deal of time for judges and prosecutors to attend to substantive legal matters. One important consequence of the FEP was the development of Crown file ownership. Prosecutors, judges and victim services staff all see this as a significant improvement in the CJS system. The only court personnel unhappy with the new system are the defense lawyers.

Finally, this study also explored the impact of the FEP on court outcomes and sentencing. Court data collected before and after the introduction of the project indicated no significant change in conviction rates and a slight increase in the severity of sentencing which was consistent with the increased severity of prior record charges. Increases

in the percentage of accused who are male and an increase in those who are of Aboriginal origin may also have contributed to the changes in sentencing pattern.

To conclude, public discourse on justice seldom includes discussions of administration, however, this study opened the author's eyes to the fact that administration, like house work, is the invisible scaffold supporting human actions and critical social activities. It is hoped that this study will encourage more inquiry and research into the administration of justice and its role in achieving justice. With regard to the success of the FEP itself, the author suggests that the results have been mixed, however, there are some reasons for optimism. First, the process was under review during the time of this study and our more detailed report informed the review. Secondly, the detailed monitoring of the system by the pre-trial coordinators provides an excellent opportunity for 'mid course corrections'. Some reforms have already been introduced, specifically increasing the senior supervising Crowns in the domestic violence unit to assist in expediting Crown case assignment and rehabilitative remands. Finally, the new culture of work referred to by one judge as "*a culture of collaboration, of discussion*" has contributed to a mindset open to renegotiation and change.

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Revisiting Representativeness in the Manitoban Criminal Jury

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I. FRAMING REPRESENTATIVENESS

It has been over twenty years (1991) since the Aboriginal Justice Inquiry of Manitoba (AJI) issued its final report on issues facing Indigenous communities and their involvement with the justice system in Canada. One of the most troubling of its findings was that the jury selection process in Manitoba routinely had problems of inadequate Indigenous representation in the case of Indigenous accused persons. The Canadian jury selection process attempts to select a representative jury. A representative jury is defined as a jury that corresponds to a cross-section of society and the larger or wider community (*R v Kokopenace*, [2013] ONCA 389). Though the issue of jury representativeness was the basis of a relatively recent appeal in Ontario (*R v Kokopenace* [2013]), thus far, there is no binding national case law to suggest that an accused can insist that he or she be tried by

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a person with whom they share personal characteristics (e.g., ethnicity, disability, etc.). Certainly, there is Supreme Court authority which allows for challenging juror membership when a juror is suspected to possess racial bias, and for asserting that representativeness relates to the rights to be tried by a jury (s. 11(f)) and to a fair and impartial hearing apprised of the presumption of innocence (s. 11(d)) under the Canadian *Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 1 (see *R. v. Williams*, [1998] 1 SCR 1128; *R. v. Sherratt*, [1991] 1 S.C.R. 509).

While there are recent Ontario policy directives (such as the recent Iacobucci Report for Ontario, 2013) to ensure that Indigenous jury representation moves beyond a minimal standard (and to instill faith in the administration of justice), the degree to which jury representation is related to legal decision making is a matter that is largely unexplored in the extant Canadian literature (Ontario 2013). Even when the Manitoba Aboriginal Justice Implementation Commission (AJIC) tabled its final report on 29 June 2001, it failed to acknowledge the issues of Indigenous jury under-representation despite the Justice Inquiry's precipitating findings in 1991; it left the issue for the federal government to attempt to address, due to the administrative issues involved in ameliorating the representation issue (AJIC 2001; AJI 1991). Broader issues of Indigenous-justice system interactions were the primary focus of the report (AJIC 2001).

In this paper, we investigate how Canadian courts, and in particular, Manitoba courts have responded to jury representation problems raised in the 1991 report. We also review Ontario cases such as the Iacobucci Report (Ontario 2013) which indicated that the issue of Indigenous representativeness on juries is a significant challenge in Ontario. Given that case law supports the conception of the jury as the conscience of the community, we also endeavour to identify perceptions of representativeness of a population of students who participated in our survey.

We examine how Manitoba law and policy (and related) communities reacted to the problematic findings regarding juries in 1991. We then study a Manitoban student sample's conceptions of jury representativeness using an empirical approach. We examine how participants perceived the make-up of a representative jury, and whether demographic variables affect perceptions of representativeness. Some individual-level variables (e.g., education level and age) have been shown to impact juror comprehension of jury instructions, and extant American research has shown it is possible

that these variables also affect interpretations of more abstract conceptions relating to findings of guilt and innocence (Sommers 2007).

Broader issues of Indigenous representation such as incarceration and charging rates have largely occupied the policy landscape of Manitoba law and society scholars (Monture 2014). Yet, there has been less acknowledgment in the extant literature that Indigenous persons are routinely excluded from participating as triers of fact in the Canadian criminal justice system (AJI 1991). The absence of a fully developed literature on jury work may be due to concerns that participation in the Canadian justice system represents a form of colonial coercion, or it may simply be that studies have generally focused on Indigenous persons as accused persons rather than Indigenous persons as determiners of justice (AJI 1991). In either case, the time to examine the systemic problems in juror representation is long overdue.

This paper is not a revisiting of the issue of Indigenous inclusion in jury work in general since the history of Confederation. Rather, we are aiming to revisit what has happened in Manitoba (and to some extent Ontario) since the findings of the AJI. A complete history of jury composition and indigeneity is beyond the scope of our work. Certainly, there has been progress in Indigenous inclusion in jury composition over a long period of time. From 1886-1952 Indigenous people were barred from jury work stemming from an inability to vote, and for many years until 1971, reserve officials were less than forthcoming in sharing names from jury rolls (AJI 1991). These changes occurred in the charged political climate of Manitoba and so jury policy in Manitoba has been evolving for some time. Nonetheless, few studies have revisited the issue since 1991 and this revisiting is our main goal in this paper. While Manitoban politicians have struggled to implement justice reform in a variety of circumstances to account for Indigenous requirements, since 1991 there have been no official policy changes in the context of jury making, other than referring the bulk of the issues to the federal government for amelioration (see endnote 1).

Further, the AJI called for a comprehensive overhaul of the justice system to meet the requirements, needs and rights of Indigenous persons (this work has been theorized aptly by Coulthard 2008). Of course, in such a context, the mere tweaking of jury composition would not meet every requirement of the AJI. Certainly, the calls for Indigenous sovereignty and concomitant newly established justice systems could arguably alleviate the need for legal reform in the

mainstream justice system. The calls for Indigenous justice systems are profound and important. For example, Turpel notes that the preamble of the *Constitution Act, 1982* is insensitive to Indigenous people because it references "God" and the "rule of law" both of which are colonial constructions (1989:6); further, the Constitution fails to recognize that Indigenous people "have never fully consented to their collective dispossession through the wholesale taking of their traditional lands and resources" (Orkin 2003:445). In particular, some scholars take issue with Canadian assumptions about Indigenous people "have fundamental moral unit of a theory of justice" (Turner 2006:13). Turner notes that "Indigenous rights are a *sui generis* form of group rights and not merely a class of minority rights" — the quality and kind of rights that inure are fundamentally distinct and arise from a connection to the lands in Canada - this connection is uniquely distinct from equality rights that may vest in other vulnerable populations (2006:31). This distinction means that incremental law reform within the mainstream system cannot, alone, meet the needs of Indigeneity – thus proposing law reform within the mainstream system should not be seen as a settling of justice issues, but as a remedial step at best, in achieving justice for Indigenous communities (Turner 2006). Some scholars then call for a resurgence of Indigenous law in Canada (Borrows 2002), as something articulable, material and purposive, noting that while legal, political, and economic powers have improved for Indigenous Canadians, the changes have been "too slow and peripheral" (Moodie 2004:270). Scholars like Borrows call for the legitimacy of Aboriginal law as something that coexists with mainstream law and that would indeed bind Canadians (Borrows 2002). This fundamental and ambitious project does not though, preclude simultaneous amelioration of injustices in the mainstream system.

When presenting arguments in favour of Indigenous inclusion in the justice system one must remain sensitive to the fact that the rule of law itself is contested by many in Indigenous communities and that in particular the criminal justice system is fraught in its dealings with Indigeneity, being one of the major tools of Indigenous oppression, as evidenced by the overrepresentation of Indigenous persons in carceral environments in Canada, and in particular Manitoba. Yet the failure of Canadian justice to answer the rights and entitlements of Indigenous persons and Indigenous sovereignty should not be an excuse to fail to study and incorporate legal reform in the mainstream criminal justice system. Inclusive change should be encouraged on multiple fronts and incremental, intra-systemic law reform is one means of moving

towards a more inclusive, and representative system, even if a separate and sovereign Indigenous system may be an ultimate goal. Changes to the Canadian justice system (which in many cases could be seen as illegitimate, foreign and discriminatory to Indigenous persons) can move in lock step with more fundamental changes to the meting of justice in Canada, even when new justice systems are articulated. Turpel writes that:

> [R]eforms to the mainstream system, and working out the fit or interaction between Aboriginal justice circles and projects and the mainstream system will take lengthy discussions and a commitment to a new relationship. This new relationship cannot be defined in the abstract or with preconceived ideas of what Aboriginal Peoples have to agree to before moving ahead on reform. It has to be defined together by thinking concretely and sympathetically about Criminal Justice reform (1994:219).

Adhering to the path of abstraction would mean stalling needed reform in the mainstream system while waiting for a new alternative system to be formed. This would create unacceptable gaps in justice for Indigenous populations. Incremental law reform to the mainstream system and sovereign alternative systems can develop simultaneously. This paper thus speaks to an issue of incremental law reform and should not be seen as an attempt to presuppose and circumvent the development of Indigenous justice systems. Equality and participation are values that the mainstream justice system should strive to attain, and we suggest that improved representation in jury work is an area where much improvement is needed in the mainstream system.

Israel notes the ways that Indigenous communities "have challenged the way that juries are selected" (2000:109). Israel argues that the lack of representation is ultimately a problem of legitimacy. We agree with Israel (2000) when he writes:

> Do we want a legal system that enjoys very little legitimacy among specific parts of our society? Juries need not be a part of a solution to this problem if Indigenous people are able to operate their own justice systems…on the other hand, if juries are to act as a symbol of integrity and fairness and represent diverse communities, then changes have to be made in the ways that juries are selected (109).

More recently, Kettles has written of the legal failings of the Canadian jury system. Kettles writes that current jury selection methods are inappropriate given that vetting practices reduce representativeness of the jury and public confidence in the jury system (2013:464). Beyond the issues of jury vetting, other practices may indeed lead to representativeness issues on the jury. It is these other

practices that inform the case review we undertake in the later pages of this paper.

II. THE MANITOBA AND ONTARIO REPORTS

In Manitoba, the Aboriginal Justice Inquiry was conducted in response to the tragic deaths of two Indigenous victims in 1987 and 1988, Helen Betty Osborne, and J.H. Harper, respectively. The report of the inquiry was an indictment of the way the Manitoban Justice system interacted with Indigenous Canadians (AJI 1991). The report was best known for its suggestions regarding the overrepresentation of Indigenous Canadians as victims and inmates within the criminal justice system, suggesting that Manitoba's approach to the unique problems facing Indigenous Manitobans were falling far short of the goals of substantive equality. One relatively less interrogated and explored chapter in the Report was Chapter 9 on Juries (AJI 1991).

The Report found that the jury system in Manitoba was a stark example of systemic discrimination against Indigenous Manitobans and noted that Indigenous communities were underrepresented on Manitoba juries (AJI 1991). This underrepresentation contributed to the feeling in Indigenous communities that the justice system was foreign and imposed. The Report found that though the jury system lies at the heart of the Anglo-Canadian justice system, to an Indigenous Canadian, the system might seem culturally inconsequential, as conceptions of guilt and innocence are largely antithetical to most Indigenous traditions (AJI 1991).

The Report cited two case studies as emblematic of the problems of juror representation in Manitoba. Of 120 people appearing on a jury panel in Winnipeg, only one was Aboriginal. In a second case study in Thompson, Indigenous representation on two juries was found to be 50% of their representation in the local community (AJI 1991).

Manitoba began to use computer records of the Manitoba Health Services Commission to form the lists of potential jurors in 1983 and this, at the time, was thought to be representative. The Report found that using health records as a basis for juror lists was effectively representative of the local community in most cases. The Sheriff of each region formed a jury panel by sending out registered mail summonses, and acting with the Chief Justice, determined the number of summonses. Those who attended the courthouse were assessed by a judge for qualifications to serve. The Crown and defence, at the time of the Report, then had an opportunity to exclude jurors for cause

(reasons related to impartiality), peremptory challenges (automatic exclusions) and in the case of the Crown, stand asides (i.e., allowing the Crown to later call the person for challenge) (AJI 1991).

The Report found that the summons process excluded Indigenous peoples from participation on the jury because the remote location of many Indigenous peoples, as well as more frequent itinerant habitation patterns, made dealing with mail or even a simple phone call, more difficult (AJI 1991). People who call in first are more likely to attend the courthouse and the slower response times that many Indigenous communities required meant further underrepresentation (AJI 1991). These conditions were exacerbated by the social and economic conditions of many of the people who were on the original list. The costs associated with being a juror, and in particular, the delayed reimbursement of those costs after the travel, further disincentivized Indigenous persons from participation (AJI 1991). Moreover, the Sheriff also possessed the discretion to exclude prospective jurors by virtue of lack of comprehension. Indigenous persons who only spoke Indigenous languages were routinely excluded from serving. The Report suggested this was another opportunity to underrepresent Indigenous persons on the jury.

The Report made sweeping recommendations including: when a Sheriff exempts an Indigenous person from service they should be replaced by a member from the same community; stand aside and peremptory challenges should be eliminated; rulings for challenges for cause should be made by the presiding judge; jurors in rural communities should be drawn from within 40 km of the trial location where practicable or from locations that are more functionally representative; and that translation services be provided for prospective jurors who speak only Indigenous languages and that the provincial legislation be amended to allow service of these individuals (AJI 1991).

Manitoba was the only province before 2013 to have conducted a major review of the underrepresentation of Indigenous jurors, though Alberta, British Columbia and North West Territories have noted similar deficiencies in other contexts (Ontario 2013:38). The only major reform of jury law that occurred was a response to the Supreme Court Decision of *R. v. Bain* [1992] 1 S.C.R. 91 (in which elements of the juror challenge scheme were held to give the apprehension of a pro state bias in the formation of the jury), when Parliament, in 1992, amended s. 634 of the *Criminal Code of Canada*, RSC 1985, c C-46 s. 745 to eliminate stand asides by the Crown and created equal peremptory challenges by both Crown and defence counsel (Ontario 2013:40). This

alteration was in response to a perceived imbalance of power between Crown and defence and was not aimed at ameliorating representation problems on juries.

Ontario's recent report on *First Nations Representation on Ontario Juries*, conducted independently by the Honourable Frank Iacobucci, echoed many of the same systemic problems found by the Manitoba Report (Ontario 2013). Though many of its recommendations are specific to Ontario, the report was limited in its mandate to "ensure and enhance the representation" of "on reserve" Indigenous persons and to strengthen "understanding, cooperation and the relationship" between the Attorney General and First Nations on the representativeness issue (Ontario 2013:3). The report received submissions from a variety of stakeholders, such as Indigenous communities and legal aid. The most alarming finding of the report is its contention that "it is clear that the jury system in Ontario…and its counterparts across a variety of Canadian …jurisdictions, has often ignored and discriminated against Aboriginal persons" (Ontario 2013:53).

Amongst the reports and studies it commissioned was a submission by Karen R. Restoule, who interviewed 15 Indigenous persons and found "that there is a profound mistrust of, and alienation from, a criminal justice system that is perceived to be contrary to" Indigenous "original jurisdiction over justice matters and devoid of: Indigenous legal principles or cultural values" (Ontario 2013:53; Restoule 2012). The Ontario Report leaves little doubt that Indigenous underrepresentation on juries is an issue that plagues jury trials across all jurisdictions in Canada.

In the face of two high-profile public reports conducted over the last 25 years, one would assume that the case law of jury representativeness would demonstrate major challenges to the current representativeness procedures in place across Canada. Yet a review of the extant and reported case law demonstrates that the issue remains one that evades or confounds Canada's courts at most turns. We reviewed every reported Canadian case that looked at the issues of representativeness and juror challenges in Canada, and found that when the issue challenged was purely representativeness based, Courts were far less likely to allow a remedy for an accused. This is to be contrasted with situations in which jurors were challenged on the basis of bias - a method which seems to be far more well-received by both trial and appellate courts.

A discussion of all of the cases would be too expansive for a single paper; however, we do provide a summary of several cases below. For

the purposes of coherence, and because we have explored reports commissioned in Manitoba and Ontario, we will review sample cases in the jurisdictions of Manitoba and Ontario. We will also review Supreme Court of Canada cases that touch on representativeness issues as they provide binding precedent across Canada. We will also briefly review some sample cases that explore issues of juror bias in Canada in order to determine how representativeness interacts with bias as a legal value.

A. Manitoba

In *R. v. Lamirande*, [2002] MBCA 41, the appellant, an Indigenous person, was charged with manslaughter for shooting an individual in the process of robbing a grocery store in Winnipeg. The appellant raised the lack of Aboriginal persons on the jury as a problem of representativeness (para. 150). The appellant argued that prior to jury selection there were few (if any) Aboriginal people on the jury panel, so as a result the applicant's counsel demanded that Aboriginal jurors be recruited. The trial judge had found that inquiring about what appeared to be a lacking Aboriginal membership among the jurors would be "offensive". The appellant argued that the jury panel itself must contain Aboriginal persons in proportion to the number of those residing in the community. The appellant argued that by refusing to question jurors on the panel about their background that there was a denial to the Charter guarantee of a fair trial under s. 11.

The Manitoba Court of Appeal agreed with the trial judge's ruling on representativeness and noted that all juries begin with the presumption that its members are impartial. For a jury pool to be representative, it does not need to have a particular racial, ethnic or gendered composition: so long as the jury is randomly selected from the community (abiding by *The Jury Act*, CCSM 2010, c. J30) Charter compliance was assured. Polling jurors based on race was not required. To demand a jury poll based on race, the Court ruled, would be its own form of racism, running counter to Canada's multicultural right that every person can stand as a juror, and is to be presumed impartial. The appeal was dismissed.

In *R. v. Teerhuis-Moar*, [2007] MBQB 165 the accused was charged with second-degree murder, and was of Aboriginal descent and a resident of Winnipeg at the time of the offence. The accused sought to challenge the validity of certain sections of *The Jury Act* and the jury formation process that purportedly violated a number of his Charter rights. The jury was randomly selected from the Manitoba Health

Services Commission List by the jury manager, whose tasks were delegated by the Chief Sheriff. The jury manager selected 1600 names of persons from Winnipeg from the roll that had been prepared the year before. The notices were sent out, with the regular request for exemption or reason for request of disqualification. With respect to this case, there were 176 potential jurors available from the 1600 who were summoned. The jury manager was unable to identify how many individuals were Aboriginal (para. 9).

The applicant in this case challenged the Chief Sheriff's discretion in getting to choose the geographic area from which jurors were summoned (from the area where the case was tried). He submitted that jurors should instead be summoned from the area where the offence took place and brought in to the court (*R. v. Teerhuis-Moar*, [2007] MBQB 165, para 45). These submissions were based on demographic claims made by the applicant, including that the Aboriginal population in Winnipeg was only 7% compared to 11.7% of the population of Manitoba, meaning that random selection from Winnipeg alone would result in an unrepresentative jury (para. 47). In addition to this issue, Aboriginal populations had much lower rates of home ownerships than non-Aboriginal populations (only 26.3% as compared to 77.6% of non-Aboriginals own homes). Additionally, other sources of underrepresentation were that Aboriginal populations move far more than do non-Aboriginal populations (25% had moved in the past year compared to 15% of other Manitobans). Given the higher incarceration rates for Indigenous persons the applicant also argued that the exclusion of convicted criminals from prospective juror lists also lowered the chances of achieving representativeness on the jury (para. 46).

The Court dismissed the application, noting that the Charter only guarantees a fair and impartial tribunal, and that a representative jury does not require representation from every population sector (*R. v. Teerhuis-Moar*, [2007] MBQB 165, para. 56). Indeed, adding more jurors with traits shared by the accused might instead derogate from the impartiality of the tribunal. The Court distinguished between impartiality and representativeness - impartiality arises when there exists a real potential for the jurors to be of biased opinion, while representativeness focuses on whether the jurors are drawn randomly from a fair cross-section of the community (so long as competent, community-representative jurors were selected, there was no reason to believe that the impartialness requirement was adversely affected; para. 62). The claims the applicant was making were considered by the Court

to "mean the imposition of inequality" (para. 64). Further, the use of the Health Services Insurance Act, CCSM 2008. c. H35 as a source of potential jurors was one of the most representative lists possible, including individuals of "Aboriginal heritage" (para. 78). The Court noted that the applicant's claim that mail summonses excluded Indigenous people due to higher rates of mobility was "troubling" but does not prove that "representativeness of the community at large" was not achieved (para. 82-3). The Court also noted that only 13 out of 1217 prospective jurors were disqualified for possessing criminal records and that if even all of those were Aboriginal it would not have affected impartiality and representativeness in this case.

B. Ontario

A search of written decision in Ontario reveals a number of representative challenges since the advent of the Charter. In the interests of space, we have selected some important examples as emblematic of the general legal trends emerging in Ontario. The cases continue to demonstrate the difficulty in challenging jury trials on representativeness grounds and echo the same difficulties faced by accused persons in Manitoba. The cases demonstrate the judicial opinion that the (Ontario) *Juries Act*, RSO. 1990, c.J.3 is not discriminatory against any particular group of people, and that impartiality and representativeness should not be confused. In particular, Ontario has denied the accused the ability to argue that the citizens are denied their equality rights under s. 15 of the Charter by being denied jury service on the basis of their race and/or heritage (see *R. v. Laws*, [1994] 7392 (ON SC) and *R. v. Church of Scientology of Toronto*, [1997] 16226 (ON CA) for examples).

In *R. v. Fiddler*, [1994] 7396 (ON SC), the accused, a member of the Nishnawbe-Aski Nation, was charged with two counts of sexual assault (s. 271 CCC), two counts of aggravated sexual assault (s. 273 CCC), and one count of anal intercourse (s. 159 CCC) against a young complainant in the Sandy Lake First Nations Territory, a first nations reserve in the judicial district of Kenora (NW Ontario). The accused was committed to stand trial in the town of Kenora, about 400 km away from Sandy Lake with a jury composed of members of the Judicial District of Kenora. The accused submitted that it was his constitutional right to have his trial at the Sandy Lake Reserve, and to be tried by individuals selected from the Sandy Lake area. The accused argued that he was unfamiliar with Kenora, which was 400km distance for him and witnesses to travel, and that the cultural and language barriers were

immense between himself and non-Aboriginal jurors. He asserted that culture, language, and geographic impact could negatively affect his ability to have a fair trial. In this case, the Crown decided to provide free travel and accommodation for Aboriginal witnesses when in Kenora for trial purposes (and, in the event of an acquittal, to return the accused back to his community). The travel time of two weeks was found to not be a major imposition for witnesses (para. 34).

The accused had argued that mailing notices to prospective jurors would effectively remove Indigenous representativeness from the jury due to higher mobility rates in the Aboriginal population. In 1993, the return rate was 60-70% for non-Aboriginals, but 33% for Aboriginals. In this case, the deputy sheriff wrote letters in the Aboriginal language of the band to rectify the situation. Additionally, the sheriff paid the expenses for travel/accommodations for reserve jury members.

The Court found that there was no requirement that jurors be fluent in the primary or only language of an accused for representativeness to be satisfied. As it was a Charter right to have an interpreter present at trial, any disadvantage from language barriers were mitigated. Although this was not an ideal solution - as interpretations will inevitably be altered to a degree - not being fully understood was not a Charter violation (*R. v. Fiddler*, [1994] 7396 (ON SC), para. 61). Further, the Court found that, in regards to allegations of sexual abuse, no distinct cultural differences were detectable between Aboriginal and non-Aboriginal approaches to the nature of the crime - there was no level of understanding the circumstances of the case required by a certain cultural group to make a competent decision on the matter (para. 61). The Court noted that the accused's interpretation of representativeness of community would be unworkable and problematic:

If the law is to reflect the moral sense of the community, the whole community—and not just a special part—must help to shape it. If the jury's verdict is to reflect the community's judgment—the whole community's judgment—jurors must be fairly selected from a cross-section of the whole community, not merely a segment of it… In this case, the accused is an elder of the community, a position that has a lot of influence and demands respect from community residents, and bands from the surrounding area (para. 81)… It is a conflict of interest to have jurors who know the accused in some way, which is a very likely scenario if the trial was to be held on the small reserve. Informing the jury of the cultural differences is a responsibility of the Crown, which in this case proves to be sufficient. Aboriginal populations are not

entitled to any higher degree of representativeness than the population at large (para. 85).

The Court also noted that the jury experience itself helped to inoculate against discrimination by the jury (*R. v. Fiddler*, [1994] 7396 (ON SC), para. 92). The Court found that the trial judge's warnings to the jury that they must not resort to preconceptions or biases, including racial biases, in arriving at their verdict also inoculated against discriminatory effects at trial. Therefore, the selection of members other than the Sandy Lake community was not racist, but was a means of ensuring community representativeness of diverse groups. In this case, cultural differences were but one component in a complicated matrix (para. 95). The Court summarized its view of Canadian law on the matter of juror representativeness and bias (para. 98):

Canadian courts have consistently held that juries need not be selected from any specific community, any specific race, nationality or other identifiable minority and that the right to trial by jury includes the right to be tried by a jury selected at random from persons representing a cross-section of the community. While participation from minority groups must continue to be encouraged and facilitated, no accused is entitled to trial by a jury selected on the basis of racial considerations which would result in the elimination of the general population from the jury panel.

The Court thus dismissed the claims of the accused and his motion to have an Aboriginal jury and hold the case on the reserve community.

A similar approach and finding was made in *R. v. Nahdee*, [1994] 7395 (ON SC). In this case, the Sheriff's officers had obtained supplementary lists of names (in addition to Municipal tax rolls) from the federal government, and had requested the local band councils provide contact information for the names to ensure representativeness. Citing privacy concerns, of 424 requests the bands delivered only 117 responses. Using similar reasoning to Fiddler, the Court denied claims of fair trial violations (and other related Charter rights) in the case of an Indigenous person charged with murder and aggravated assault and robbery. The Court noted that the Sheriff had undertaken "all reasonable efforts" to ensure representativeness (para. 14). This approach was followed more recently in *R. v. Wareham*, [2012] ONSC 908.

In *R. v. Kokopenace* [2013] ONCA 389, now the leading representativeness case in Ontario, the accused was appealing his conviction of manslaughter. He argued on appeal that the petit jury

found him guilty out of racial biases (in this case, a lack of inclusion of Aboriginal on-reserve residents). He argued numerous violations of Charter rights and of violations of the *Juries Ac*t R.S.O. 1990, c.J.3. The Court of Appeal noted that jury representation serves two major functions: 1) ensuring the jury is an impartial decision-maker (acting as a community conscience) and 2) serving to build public knowledge/trust in the criminal justice system (para. 28). The Court of Appeal found that the right to a representative jury is not an absolute right, but a qualified right that requires the state to use a jury roll process that provides for a generally representative panel of jurors. Hence, the only obligation of the state is to ensure that the list from which jurors are drawn is representative of the community (para. 31).

The majority of Court of Appeal did not support the notion that the appellant have a jury representative of his particular case/characteristics, but noted that it was open to a reviewing court to inquire whether the steps taken by the state to seek and prepare a jury roll was a reasoned platform for an impartial jury (*R. v. Kokopenace*, [2013] ONCA 389, para. 44). The state cannot control whether or not individuals respond to their notices received (para. 50). However, reasonable steps must be taken to ensure that there is a representative list of potential jurors to send notices out to, as well as taking efforts to encourage responses The Court of Appeal noted in this case that very few summons were returned from Aboriginal communities and took notice of the reasons stated for such results in the Iacobucci Report. Little effort was made to rectify the low Aboriginal response rate and this failure violated the accused's rights to a fair jury trial under s. 11(d) and (f) of the Charter. This undermined the public confidence in the integrity of the justice system and the administration of justice (para. 226). The case was the first major Court analysis to draw on the Iacobucci report and may represent a new momentum for reviewing Courts in representativeness assessments.

In other contexts, challenges regarding jury representativeness have met with some limited success. For example, in *R. v. Huard*, [2009] 15442 (ON SC) the jurors being called upon from the community (Windsor and County of Essex) were from an area that was in a severe economic recession (the unemployment rate was one of the highest in the country). Many jurors responded in their letters that they feared the economic implications of sitting at a lengthy trial. In this particular case, increasing jury monetary supplementation was required in order to ensure jury representativeness. The Court stated that its ruling should not hold for all cases in the future and should be

determined on a case by case basis. In less necessitous circumstances, Ontario courts have ruled oppositely (See *R. v. Louis*, [2009] 21764 (ON SC)).

Most recently in *R. v Wabason*, [2014] ONSC 2394 an accused charged with second-degree murder and breaking and entering challenged the lack of representation on a jury using s. 11 of the Charter. The Court applied the *Kokopenace* precedent; the Court found that the province had failed to make reasonable efforts to meet its representation obligations under the Charter, illustrating the wide-ranging potential effects of the *Kokopenace* case.

III. SUPREME COURT OF CANADA AND INTERPRETATION

The leading case on representativeness is the Supreme Court case of *R. v. Sherratt*, [1991] 1 S.C.R. 509. The appellant was convicted of killing a pimp in Winnipeg. The accused had informed the police that he was involved in the pimp's death and that he dumped the body in a garbage bin; however, by the time the police had gotten to the bin, it had been dumped, necessitating a landfill search. There was wide media publicity especially since the victim had a lengthy criminal history. All reports occurred approximately 9-10 months before the trial. The accused wanted to challenge for cause each potential juror because he suspected partiality from pre-trial publicity. He had prepared 11 questions to be asked to each member of the jury panel. At issue was whether the accused was properly denied the ability to challenge each prospective juror. The appeal was dismissed largely because the Court found that an accused does not have the right to a favourable jury and the selection procedure cannot be used to thwart the representativeness that is essential to the proper functioning of a jury. The case also clarifies the scope of questioning that can occur in the juror selection process.

The case is important to our discussion because it outlines the nature of the scope of juror representativeness in Canada. The Court's majority noted that the importance of the jury and the Charter right to fair jury trial is:

> meaningless without some guarantee that it will perform its duties impartially and represent, as far as is possible … the larger community. Indeed, without the two characteristics of impartiality and representativeness, a jury would be unable to perform properly many of the functions that make its existence desirable in the first place. Provincial legislation guarantees representativeness, at least in the initial array. The random selection process, coupled with the sources from which this selection

> is made, ensures the representativeness of Canadian criminal juries…However, the "in-court" selection procedure, set out in the Criminal Code, can impact on the representativeness of the jury in some situations. The impartiality of the jury is controlled in the main through the Criminal Code procedure. Section 11(d) of the Charter further buttresses the requirement of impartiality (*R. v. Sherratt*, [1991] 1 S.C.R. 509, 525).

This passage indicates the link in Canadian law between formation of the jury at the name gathering stage as well as questioning of individual jurors as critical for the establishment of representativeness analysis. No bright line can be drawn between the formation of the juror lists and the challenges towards individual jurors in ensuring the right to a representative jury as both issues may affect representativeness - a matter that stems from the right to a fair trial through the innocence presumption under s. 11(d) and the right to a jury trial under s. 11(f) of the Charter (*R. v. Kokopenace*, [2013] ONCA 389, para. 26).

The Charter right to a representative jury roll serves several purposes. Courts interpreting Sherrat note that a representative jury insures impartiality, provides an adjudicating body which acts "as the conscience of the community" and builds "public knowledge of and trust" in the criminal justice system (*R. v. Sherratt*, [1991] 1 S.C.R. 509, 53; *R. v. Kokopenace*, [2013] ONCA 389, para. 28). The *Sherratt* case, combined with the recent Iacobucci Report has given cause for courts to consider a cautiously expanded reading of the right to a representative jury as an "inherently qualified" right that places some tangible demands on the state (*R. v. Kokopenace*, [2013] ONCA 389, para. 31).

The legal focus in analyzing representativeness

> must be on the steps taken by the state to seek to prepare a jury roll that provides a platform for the selection of a competent and impartial…jury that will ensure confidence in the jury's verdict and contribute to the community's support for the criminal justice system (*R. v. Kokopenace*, [2013] ONCA 389, para. 45).

The legal test is whether, in the process of compiling the jury roll, the province made reasonable efforts to provide a fair opportunity for the distinctive perspectives of "Aboriginal on-reserve residents to be included, having regard to all the circumstances and keeping in mind the objective served by the representativeness requirement" (para. 51). The standard of reasonableness is a "continuing one". If, over time, "further steps that are reasonably available are needed to provide the fair opportunity to be included, they must be taken" (para. 52).

The result is that representativeness is a continuing value that inures from the formation of the rolls throughout the trial process. The Iacobucci Ontario report, together with recent interpretations of the *Sherratt* decision, seem to imply that provinces are under a continuing duty for ensuring the jury formation process is apprised of Indigenous values on a reasonableness standard. That standard is meant to instill public confidence in the justice system, a matter given articulation through the conception of the administration of justice since the jury acts as the community's conscience. In this context it is remarkable that little has been said in the case law of determining what the content of the community's conscience is, or whether the disputed procedure meets public understandings of representativeness in the Canadian context.

IV. CHALLENGES FOR BIAS

Courts have been more liberal in allowing alteration of juries to deal with racial bias. In *R. v. Williams*, [1998] 1 SCR 1128, an Aboriginal man was charged with robbery of a pizza parlour in Victoria. He argued that he possessed the right to question potential jurors to determine the presence of bias against Aboriginal people. The Court of Appeal, agreeing with the reasoning in *R. v. Parks*, found that disallowing such challenges for cause could negatively bias the jury towards the Crown (para. 29) and that such questioning might be the only way to identify some biases (para. 36). The Court of Appeal noted that while such challenges might invade the privacy of prospective jurors, "the accused's rights to a fair trial must be held to the same standard as those protecting the privacy interests of prospective jurors" (para. 51).

The Court of Appeal noted that judicial notice can be taken of the social reality that biases against Aboriginal populations exist. This notice should serve to prevent systemic discrimination of Indigenous populations. Thus, the trial judge should have allowed the challenge for cause *(R. v. Williams*, [1998] 1 SCR 1128, para. 51).

Making the argument for racial bias-related questioning is not guaranteed, especially in cases where the trial judge allowed some limited questioning on possible racial bias. For example, in *R. v. Gayle*, [2001] 4447 (ON CA), an accused (black male) was charged with first degree murder of a white police officer and attempted murder of another officer. The accused argued that the trial judge erred in limiting the questioning of prospective jurors as to possible racial bias.

The Court dismissed the appeal on the basis the trial judge's limitations were reasonable. The trial judge permitted the challenge for cause, but limited the questioning to "Would your ability to judge the evidence in this case without bias, prejudice or partiality be affected by the fact that the person charged is a black Jamaican immigrant and the victims are white police officers?" (para. 13). Additionally, the trial judge allowed questioning as to whether or not any of the potential jurors had family members/friends that were police officers and to whether they had been exposed to the publicity. This was in part due to the Crown bringing forth a psychologist as an expert witness who testified that it is nearly impossible to truly determine whether or not an individual is impartial via questioning, given that jurors do not want to appear racist in their answers (especially when questions are so obviously prying for bias). The expert submitted that the questions were adequate in testing the opinions and abilities to move past such biases; however, such questions could not guarantee impartiality. This style of question was found by the Appeal Court to align with the Parks/Williams rules and the notion that jurors are to be presumed impartial and indifferent (*R. v. Parks*, [1993], 84 C.C.C. (3d) 353, para. 332; *R. v. Williams*, [1998] 1 SCR 1128, paras. 501-503).

In *R. v. Find*, [2001] SCC 32, [2001] 1 SCR 863, an accused was charged with 21 counts of sexual assaults against different youths (aged 6-12). Prior to jury selection, he applied to challenge potential jurors for cause, believing that, given the stigmatization attached with sexual offences against children, that some jurors may not be able to try the case in an impartial manner. These challenges were denied and the Supreme Court of Canada upheld these denials. The Court explains why the arguments for juror bias in these cases is problematic:

> In terms of widespread stereotypes affecting juror impartiality, there are many stereotypes that have plagued sexual offence trials, often which work in the "benefit" of the accused. Such include rape myths of women of unchaste character being more likely to have consented to the act and are hence less worthy of belief, the clothing and behavior of the woman suggested sex, and the testimony of children is likely fabricated and unreliable to name a few. None of these have ever been held to justify challenges for cause, as the courts trust that the jurors can act in an impartial manner in such "he said she said" cases. There is no reason to believe that stereotypical attitudes about accused persons are more intense that those placed on complainants (para. 101).

The Court's findings here upheld the reasoning in its earlier case of *R. v. Biddle*, [1995] 1 SCR 761, in which the accused appealed two counts of assault causing bodily harm and two counts of choking with intent to commit an indictable offence. The appellant was convicted by an all-female jury, a jury that the appellant argued was unrepresentative. The majority found that the issue was moot due to its decision in *Bain*, but the reasoning of Justices McLachlin and L'Heureux-Dubé in dissent seems to have been taken up by the Court in *Find*.

To say that a jury must be representative is to set a standard impossible of achievement. The community can be divided into a hundred different groups on the basis of variants such as gender, race, class and education. Must every group be represented on every jury? If not, which groups are to be chosen and on what grounds? If so, how much representation is enough? Do we demand parity based on regional population figures? Or will something less suffice? I see no need to start down this problematic path of the representative jury, provided the impartiality and competence of the jury are assured. Representativeness may be a means to achieving this end. But it should not be elevated to the status of an absolute requirement (para. 56).

V. A Brief Review of Jury Studies on Race and Representation

Certainly in the United States, studies of juries and their representativeness are well worn, an observation which reflects the frequency of jury trials in America. Studies on the representativeness of jury rolls can be found in major jurisdictions (Kairys et al. 1977). The Canadian context is less prolific in the area of jury representation. The Manitoba and Ontario reports are amongst the best sources regarding issues of representation. Other major Canadian studies have not attempted to investigate the Canadian populace's views on representation, a matter all the more important given that the courts seem to want representativeness to meet the strictures of how the reasonable Canadian would react to the administration of justice in a given case.

Within the last 25 years there have been academic calls for jury reform. Petersen (1993) asserted that white jurors are more likely to be influenced by racial stereotypes and contended that juror challenges that removed prospective jurors from the jury exacerbated the bias and representative issues of a given jury. Petersen contended that Canada

should revisit its laws on peremptory challenges and the author was prescient in her advocacy for suggesting that questions for racist and prejudicial attitudes should be permitted (see Williams, Parks and Gayle above).

Roach (1995) studied the cases of *R. v. Parks* and *R. v. Williams* and outlined legal tools that could be used to prevent the risk that jury deliberations would be sullied by racial prejudice and stereotypes. Roach argued that the decisions should make clear that racial prejudices may apply to accuseds and complainants and calls for closer interrogation of whether the law should scrutinize for bias in the context of age or gender-based distinctions. Roach argues that Canada should strive to avoid the American model of jury vetting in which defence and prosecution struggle to obtain a favourable jury to ensure easy wins. Nonetheless, Roach noted that understanding of personal and institutional racism were critical investigations for future legal cases, though Roach remained wary of the claim that singular questions could cleanse a jury of bias (1995:426).

Israel (2003) examined the specific issues of Indigenous underrepresentation in the jury panel and described the roots of the issue through historic discrimination. Israel explored the problems that exacerbate the representation issues including the use and administration of non-representative lists, the broad Sheriff discretion in finding eligible members for a jury, the problems of using mail, issues related to qualification (including criminal records) and the rolling nature of jury service (which favours non-Indigenous response) (Israel 2003). Israel notes that Ontario and Manitoba studies such as the Manitoba Aboriginal Justice Inquiry, Law Reform Commission of Saskatchewan, Donald Marshall Jr. Inquiry and Commission on Systemic Racism in the Ontario Criminal Justice System irrefutably establish underrepresentation as a problem and that legal reform was a necessity (2003:43).

Morton (2003) studied the *R. v. Gayle* decision and noted that while the Court paid lip service to the notion of representativeness, it provided a formalistic legal decision that created a very high burden on an accused to demonstrate that the jury was either biased or unrepresentative. The process of assembling the list of potential jurors (i.e. the array of names) and its randomness together with the lack of misconduct on the part of the Sheriff seemed to satisfy formalistic interpretations that a jury was representative (Morton 2003). Morton asserted that the Canadian courts have in generally been ascribed to

conceptions of formal, not substantive, equality in ensuring jury representativeness and lack of bias.

Psychological studies have considered the race and decision-making of juries, albeit in the United States context (Sommers 2007; Hastie et al. 1983). Sommers notes that most studies focus on the race of the accused, rather than the jury. In general, jury studies have found that juries that are authoritarian hand out harsher punishments (McGowen and King 1982), that jurors who can be evaluated as highly ethnocentric are more likely to judge people who are of different race more harshly (Kemmelmeier 2005) and that white jurors are more likely to convict dark-skinned than light-skinned accused persons (Foley and Chamblin 1982). In cases with ambiguous evidence, jurors of both races were harsher towards other-race defendants, showing a strong "in-group, out-group" effect (Ugwuegbu 1979). Other studies have found that race works in complex ways, but that different contexts will produce a race-based effect in mock trial scenarios (Sommers and Ellsworth 2000; Mazzella and Feingold 1994). Race-based effects have been found in a number of other studies, as well (Bowers et al. 2001; Bernard 1979; Hans and Vidmar 1982; Jones and Kaplan 2001; Marder 2002; Mitchell et al. 2005; Perez et al. 1993). In short, the litany of American psychological studies shows that race does, across a variety of contexts, predict juror decision-making.

The Canadian literature on juries is somewhat scant in terms of empirical studies, but, as we have discussed above, major jurisdictions are reporting representation and jury bias issues, and issues pertaining to bias on the jury. The two most recent major reports establish as social fact that jury representation is a major obstacle facing Indigenous accusers in Canada.

Iacobucci notes that the jury is a fact finder that protects against oppressive laws and that it acts as an "educator" because it helps to legitimize the criminal justice system by acting as the conscience of the community in criminal proceedings (Ontario 2013:20). These functions were adopted by the Supreme Court of Canada in *R. v. Sherratt.* The importance of representativeness in Canada was constitutionalized in 1982 but seemed to be apprised of the values of "fairness" and "random selection" (Ontario 2013:30). *R. v. Sherratt* served to link the Charter right to be tried by a jury under s. 11 (f) and the presumptions of innocence under a fair and public hearing in s. 11 (d) to the principles of representativeness. Iacobbuci contends that the *Sherratt* decision serves notice that the jury's role is essentially one that mirrors the

community's commitment to justice, including its conceptions of representation (Ontario 2013:31).

It is surprising, given the public reports, the Supreme Court's findings in *Sherratt*, and the psychological literature on race, representativeness, and bias, that there are no Canadian studies analyzing the opinions of Canadians regarding juror representation. If a jury stands as a proxy for the Canadian conscience, surely the content of that conscience, in respect to issues of representation, must be examined. Given this context, we developed a questionnaire in order to gather information on Canadian conceptions of representativeness. The implementation of the survey was accomplished through the use of a student sample.

It has been well established in the Canadian jurisprudence that the jury is to act as something of a moral arbiter in criminal cases, one that balances the administration of justice including the needs of an accused for due process and the state's interest in maintaining a secure society. It is worth noting that the conception of representativeness is derived from the Charter as opposed to explicitly within its enumerated terms. No Canadian study has attempted to understand if the conception of representativeness is a value that prospective jurors hold. Our literature search did not uncover any instance in which a Canadian sample was canvassed regarding attitudes and relative value of the conception of representativeness. Given the dearth of research on the topic, our questionnaire attempted to provide some content and context to the relative importance that representativeness has to populations. Questions were developed to study four basic themes associated with representativeness: 1) how participants understood and defined the concept of 'larger community' in the context of representativeness, 2) how participants understood and defined the composition of a representative jury, 3) how participants understood and defined representativeness with respect to the accused in a case, and 4) how participants understood and defined a representative jury with respect to the victim in a case. It is notable that while courts have been reluctant to give too much weight to the representativeness claims of accused persons, the two major public inquiries find major deficiencies in the implementation of representation rights. If the public perception were that representativeness was an acceptable value, the case for law reform would be strengthened considerably.

VI. METHOD

A. Participants

One hundred and thirty-six undergraduates from the University of Winnipeg participated online in exchange for bonus credit in their Introduction to Criminal Justice course. This research was approved by the University of Winnipeg Human Research Ethics Board. Six participants were excluded from analyses because they could not be classified according to their stated ethnic ancestry. Four of these participants reported mixed ethnicity and two indicated 'Canadian' for their ethnic ancestry. Eight other participants were excluded from analyses because they indicated their ethnicity was 'Other' but did not specify. These exclusions resulted in a final sample of 122 participants.

Females comprised 58.2% of the final sample. Ages ranged from 18 – 46 years (M = 20.62, SD = 3.71). Participants reported their ethnic ancestries as European (64.8%), Aboriginal (6.6%), and non-Aboriginal visible minority (28.7% ; referred to as 'other visible minority' [OVM] and comprised of participants that have Asian, African and South Asian ancestry).

B. Materials

We used the currently accepted legal definition of a representative jury – one that corresponds to a cross-section of society and the larger community (*R. v. Kokopenace*, [2013] ONCA 389) – as the basis to examine how participants perceived the make-up of a representative jury. There were two types of questions used throughout the study. 1) Participants were presented with a statement (e.g., "A defendant should have an absolute right to a representative jury") and asked to indicate their level of agreement with the statement on a scale of 0% (do not agree at all) to 100% (agree completely) using a computerized sliding scale. 2) Participants were presented with a 'fill-in-the-blank' type of statement (e.g., "If the accused is of a racial minority, ___ juror(s) should be of the same racial minority") and asked to select from a drop-down menu the number of jurors they thought was appropriate for that scenario. Participants had the option to select a number from 0 to 12, or, alternatively, they could have selected the option "I do not think this is important to the issue of jury representativeness."

One final question asked participants to rank five options (Canadian population, Provincial population, local population, the accused, and the victim), from most to least important, in terms of jury representativeness (i.e., a rank of 'one' would indicate the participant

felt this item was most important regarding jury representativeness, a rank of 'two' would indicate this item was next most important to jury representativeness, etc.).

C. Procedure

The study was completed online. Participants were provided with the study URL and completed the study on their own time. After accessing the URL, participants were told that the study would take approximately 90 - 120 minutes and were requested to complete it when they were in a quiet place free from distractions. Upon continuing, participants read a letter of information, provided electronic consent, and filled out demographic information before answering the study questions. For each question, participants were provided with the following instructions on the same page as the question:

According to Canadian case law, "a representative jury is one that corresponds to a cross-section of the larger community as far as is possible and appropriate in the circumstances."

The following instruction was also provided for the scale questions:

> For the following statement, please rate your level of agreement from 0% (do not agree at all) to 100% (agree completely).

The following instruction was also provided for the number of juror questions:

> For the following statement, please select the number of jurors, from zero (0) to twelve (12), that you believe is the appropriate number of jurors for that particular scenario.

Questions were delivered in thematic blocks such that participants answered questions on the same topic in a single grouping. The order of these blocks was randomized, and the order of questions within blocks was also randomized. The exception to the randomization was that the last question presented was always the ranking question. Following this question, participants were debriefed and thanked for their participation.

VII. ANALYTIC STRATEGY

Scale Questions

We analyzed questions using mixed-model or one-way ANOVAs with ethnic ancestry as the predictor between-participants variable. We used mixed-model ANOVAs when looking at questions that paralleled

each other, with the paralleled questions as the repeated measure and ethnicity as the between-subjects factor. For example, in several instances identical wording was used for two separate questions with the exception of referencing the victim versus the accused in the question. We conducted one-way ANOVAs when questions were not paralleled with other questions, with ethnicity as the between-subjects factor.

"Fill-in-the-Blank" Questions

For cases in which participants selected a number, we ran one-way ANOVAs with ethnicity as the predictor and number of jurors as the dependent variable. If participants selected the 'not important' option, 2 (ethnicity: European vs. OVM) x 2 (selected 'not important' vs. selected a number) chi-squares were undertaken. Analyses originally included Aboriginal participants, however, due to the low number of Aboriginal participants (8), in all cases this resulted in expected cell values < 5 so they were excluded from these analyses.

VIII. RESULTS AND DISCUSSION[1]

Given that courts have been reluctant to allow accused-persons challenges on the basis of representativeness and given that courts have routinely relied on the notion that juries represent the conscience of the community, we were interested in examining the degree to which Manitoba-based samples might find representativeness to be an important legal value. In terms of the scale questions, the only statistically significant differences we observed were between participants who identified as being of European Ancestry versus OVM.

The lack of any significant findings with regard to Aboriginal participants was impacted by the small number of Aboriginal participants, which resulted in low power (i.e. little probability of finding significant differences if they actually existed). We provide the caveat that we know many further Aboriginal respondents are required to make any strong statements about the way Aboriginal Canadians perceive jury representativeness, but would feel remiss in not providing some comment on these participants. If we make the assumption that similar results would be found even with a larger sample of Aboriginal

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[1] Please note that all results are presented in Tables 1, 2, 3, and 4 available at Manitoba Law Journal Online <http://robsonhall.ca/mlj/>.

respondents, there are a few interesting points to note. First, the mean levels of agreement of participants who identified as Aboriginal tended to be between those of European and OVM participants. Second, in some cases the levels of agreement were at a near mid-point between the other two groups, and in other cases Indigenous responses were closer to the agreement expressed by participants of European ancestry than OVM. This is interesting because it indicates that in some cases, Indigenous participants may have more moderate opinions than European and OVM participants, and in others, their opinions align more closely with European than OVM participants. Again, these interpretations are based on the assumption that similar results would be found even with a larger sample of Indigenous participants (an assumption which may be faulty), so clearly, further research using larger Indigenous samples would be required to make definitive findings. Nonetheless given the importance of the Indigenous persons' stake in issues of representativeness, we report those findings in the tables.

We did find significant differences in the way OVM and European participants answered a number of the scale questions. OVM participants were more likely to agree than European respondents that juries should share characteristics with the accused (53.83% versus 36.16%) and victim (56.91% versus 34.32%) in a given case. This demonstrated, at best, modest endorsement, though not overwhelming, by OVM respondents for shared characteristics between the jury and the accused and victim. European disagreement with the conception of shared characteristics could be characterized as general disagreement with the statements.

This is supported by evaluating agreement with the statement that if a crime occurred on reserve, that the larger community (which the jury is said to represent) should be limited to reserve populations – agreement was 51.86% amongst OVM and only 37.37% amongst European. While neither population strongly agreed with the statement, OVM participants displayed modest receptiveness relative to Europeans regarding the conception of representativeness engulfing the geographic and cultural area of the reserve. In comparison, the findings for the statement that if a crime occurs on-reserve, that a jury representative of the "larger community" need not include members from the reserve - agreement was 45.47% amongst OVM, and 30.54% amongst Europeans indicating that both groups, and Europeans more so, show some level of discomfort with the exclusion of Indigenous, particularly on-reserve, people from juries for such crimes.

The highest levels of mean agreement occurred with statements that a jury should be made up of individuals who vary in cultural identity (73.78%), that conceptions of "larger community" should include the reserve for reserve-based crimes (65.24%), and that the "larger community" should, in part, share personal and cultural characteristics/identities of people within Canada (64.81%). The lowest values of agreement also suggested our sample valued representativeness – the greatest levels of disagreement were for statements that representativeness does not impact verdicts (32.84%), that legally defining what is meant by "larger community" was unimportant (38.92%), and that if the crime occurs on reserve, the "larger community" can exclude the reserve (34.87%). In tandem, these statements indicate that participants felt jury representativeness matters and legal conceptions of representativeness matter. In addition, communities in which crime occurs, in particular Indigenous ones, should, according to our respondents, include some conception of "larger community" that is comprised of people who live in the community where the crime occurred.

We also had participants answer questions about specific numbers of jurors required to achieve representativeness in various circumstances and found that OVMs wanted more juror representation in certain cases. If the accused was charged with sexual assault, OVMs wanted more sexual assault victims on the jury than Europeans (4.00 versus 1.90). OVMs wanted more jurors with a criminal record if the accused possessed one, than Europeans (3.79 versus 1.15).

In looking at the questions participants did not find important to the issue of representativeness, a greater proportion of Europeans than OVMs felt that it was unimportant that a certain number of jurors should have a career or occupation similar to the accused (35.4% versus 17.1%). Similarly, a greater proportion of Europeans than OVMs indicated it was not important to the issue of representativeness that a certain number of jurors should have a criminal record if the accused has a criminal record (32.9% versus 14.7%). OVMs viewed socioeconomic status as more important to the issue of juror representativeness. As the smallest proportions of participants indicating race and gender were unimportant to the issue of representativeness, this means that conversely, race and gender were found to be the issues of most importance to representativeness and that items least likely to be important to issues of representativeness were political affiliation and similarity in age to accused or victim. It

appears that participants viewed race and gender as two issues particularly relevant to their conceptions of jury representativeness.

Finally we asked participants to rank, from most (1) to least important (5), factors that ought be represented on a jury and provided the options of: Canadian population, provincial population, local population, the accused, and the victim. Mean rankings varied from 2.77 to 3.20 and there were no differences between means (all ps > 0.293). The full range of rank (1 to 5) was selected for all items. We concluded there was large variability in terms of which of these items was most important to participants' sense of representativeness. Further, no race or item effects were found, indicating that - whether the respondent was OVM or European - the lack of consensus persisted.

Our findings allow us to tentatively conclude that representativeness of the jury is a concept that participants valued. Participants were most responsive to issues pertaining to race and gender. When it came to on-reserve crimes, participants wanted some on-reserve representation, but the degree of that representation varied, with OVM participants wanting greater representation. Participants wanted legal clarity on the definition of "larger community" that informs jury representation and believed that the concept of representativeness was important to the determination of a trial. In general, OVM participants wanted greater individual trait representativeness with accused and victims, than European participants wanted. Neither population showed a preference for representativeness being a value of more importance to either the accused or victim.

The results seem to indicate the possibility that participants' conceptions may align with the kinds of conclusions being made by investigatory committees, such as those in Ontario, and about how representativeness is problematic in the context of Indigenous offenders. The concept of Indigenous representation on a jury seems to be valued by participants to some degree. Our findings do suggest a potential affinity between the goals of recent public inquiries in jurisdictions like Ontario (and the findings of the Manitoba AJI of 1991) and inclinations towards representativeness, though future studies in other populations are necessary in order to make this claim definitively.

We see less preference for representation for attributes aside from race and gender, perhaps indicating that race and gender items mark the boundary between appropriate representativeness and stacking of

the jury by placing biased members on the jury (e.g., similar political affiliation of the accused). Certainly, the case law we reviewed demonstrates that courts, too, struggle with the need to establish representativeness on the one hand and the avoidance of bias on the other. Mainly, and with the notable exception of the Ontario Court of Appeal case of *R. v. Kokopenace*, courts have been reluctant to allow issues of representativeness to alter the trial process or to second-guess the jury formation process at the appellate level of review. The Iacobucci Report and, perhaps, as more data comes in, public sentiment, may align in the idea that a social problem exists when it comes to Indigenous representation and the Canadian jury system. On the other hand, our data also are consistent with representativeness concerns beyond just issues for Indigenous peoples.

IX. FUTURE DIRECTIONS AND LIMITATIONS

In future studies we hope to receive enough Indigenous participation to statistically evaluate Indigenous responses to the posited questions. As our sample size increases, we imagine that statistical power will also increase, potentially allowing us to examine differences related to more discrete ethnic traits and affiliations. Future directions also involve expanding our age range for participants, as the current sample size was drawn from student participant pools at a post-secondary institution; this change will allow us to examine age-based distinctions.

We acknowledge that the findings from our student population may not generalize to the Canadian population given participants' limited range on demographic variables, and even more so when one considers that Indigenous peoples are underrepresented in the University setting. However, as an opening salvo into public perceptions of the issues of jury representativeness, the perceptions we uncovered allow us to tentatively assert that law reform in the area of jury representativeness is unlikely to be publicly perceived as unwelcome change in the mainstream justice system, even when the seeds of an alternative and co-sovereign Indigenous justice system may strengthen and grow in the future.

X. CONCLUSION

It has been well over 20 years since the AJI found rampant underrepresentation of Indigenous persons in Manitoba's jury system.

Case law in Manitoba and Ontario demonstrates that the normal course is for courts to reject improper representation claims by an accused because conceptions of representative jury trials, though guaranteed by the Charter under s. 11 and in Supreme Court cases such as *R. v. Sherratt* continue to be too ethereal and legally amorphous to be actionable in the vast majority of cases. The Appeal Court's decision in *R. v. Kokopenace* together with the Iacobucci Report provide some faint hope that law reform may be on the way to ameliorate the representativeness issues. Certainly, (our study suggests that some public opinions about representativeness) align with the nascent legal changes, though further research would be needed to know whether widespread public opinion aligns with that of our sample. Given that the jury is said to be the conscience of the community and an arbiter of the administration of justice, community perceptions of representativeness are of obvious relevance to law reform in the area. Though we have seen some incremental steps forward towards greater representation in the last years, Manitoba's efforts to enhance representation have not yielded any fruit in the reported legal cases. Our participants' perceptions, together with actions undertaken in Ontario, suggest that it is time for Manitoba Justice to revisit the issue of Indigenous representation on its juries. Aboriginal overrepresentation in the justice system resulted in a wave of law reform changes in terms of the carceral experience and outcome, impacting sentencing and ideas of rehabilitation and integration. Despite these changes, we have not seen reductions in Indigenous offender involvement in the criminal justice system. Perhaps it is time to consider that Indigenous participation in the justice system could be constructive as justice-makers – as members of a jury who can give more concretized and contextual insight into the criminal trial at hand. Enhancing representation of the criminal jury, though difficult and controversial, is one missing piece of the justice system puzzle – a system that is meant to represent the wider community, in its never-ending efforts to protect it.

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Building from the Ground Up: Funding the Infrastructure Deficit in Manitoba

JOAN GRACE *

I. INTRODUCTION

Local communities are critical to regional and national economies. Many municipalities, however, are unable to live up to their social and economic potential (Courchene 2007). This is visibly evident in municipal infrastructure. In the built environment, municipalities are remarkably under-resourced; a situation familiar to taxpaying citizens frustrated with having to drive around potholes or navigate chipped concrete on sidewalks. Roads, mass transit, parklands, and water systems significantly contribute to public health and citizens' standards of living, yet 60% of infrastructure works in Canada were built over 70 years ago. This situation is even more troublesome when we consider that the life span of many of these public works is only 40 to 50 years (IFC 2011:38). Added to these concerns are provincial-municipal financial arrangements often characterized as being equally in a "state of disrepair" (Kitchen 2006). Across the country, the infrastructure deficit — the disparity between demand for services versus the financial ability of municipalities to build and maintain public infrastructure — has become an uncontroversial source of worry for many municipalities (Vander Ploeg and Holden 2013; Mirza 2007;

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Vander Ploeg 2003). In Manitoba, infrastructure renewal is even more vexing due to destructive weather systems, fluctuations in economic performance and a dependence on federal transfer payments, all of which have contributed to a sizeable infrastructure deficit. In fact, according to calculations of the Association of Manitoba Municipalities and the Infrastructure Funding Council, in 2011 the province confronted an $11 billion infrastructure gap. In Winnipeg, the total deficit was $7.4 billion; $3.8 billion for repair or replacement of existing infrastructure and $3.6 billion to fund new projects – amounts which have continued to grow (AMM 2012-2013; IFC 2011:13).

However, targeted funding has flowed to municipalities. From 1961 to 2009, for example, yearly totals of federal infrastructure funding through grants to provinces rose from $1.25 billion to $63.8 billion, with provincial grants to municipalities increasing from $187 million to $53 billion (Mehiriz and Marceau 2013:73). From 2001 to 2012, $273 million went to municipalities through the Building Manitoba Fund and provincial investments specifically directed to highways tripled from $174 million in 1999 to $532 million by 2013 (Manitoba 2014:1; Manitoba 2011). Through federal-provincial shared-cost programs, the Canada-Manitoba Infrastructure Program directed $180 million toward financing projects in urban, rural and northern municipalities; also from 2004 to 2007, the Municipal Rural Infrastructure Program contributed $145 million to smaller municipalities across the province (Canada-Manitoba 2007-2008:4). Capping this suite of programs was the Canada Strategic Infrastructure Fund which allotted hundreds of millions more for building large projects in Winnipeg such as the Kenaston overpass, the Winnipeg wastewater treatment project and the expansion of the Red River Floodway.

While targeted initiatives have been crucial to shoring-up local resources for municipal projects, I argue that the capacity gaps in financial arrangements and intergovernmental institutional linkages between the levels of government have contributed to the infrastructure deficit in Manitoba. While shared-cost programs have made a dramatic difference in Manitoba, I suggest that a strategic policy response through strengthened provincial-municipal relations could work toward addressing gaps in capacity within the infrastructure policy system. To make this argument, the analysis begins with discussing capacity issues to explain why infrastructure needs are particularly acute in Manitoba. These arguments further

support my contention for the development of a comprehensive intergovernmental capacity-building strategy.

II. CAPACITY AND MANITOBA INFRASTRUCTURE

Policy capacity has been defined as the ability to:

> anticipate and influence change; make informed, intelligent decisions about policy; develop programs to implement policy; attract and absorb resources; manage resources; and evaluate current activities to guide future action (Honadle 1981: 578).

The capacity of a policy system to "think through the challenges it faces" can mean the difference between success or policy failure (Bakvis 2000:73). In reality, what counts as success certainly differs across, or even within, a policy system. A number of key aspects, however, can be identified which facilitate effective policy capacity, including a critical mass of financial and human resources, viable institutional presence within the policy system, the collection of information and expertise, or analytical policy capacity, within the institutional policy system (Atkinson, et al. 2013:142-143), organizational capabilities which meet institutional goals and programmatic implementation tools which attend to "on the ground" suggestions and requirements (Wellstead and Stedman 2010:894). With these fundamentals in mind successful capacity-building in Manitoba, regarding infrastructure renewal, would attend to:

- Understanding the unique policy environment of the province in conjunction with infrastructure needs;
- Appropriate and stable funding levels for municipalities to propose, construct and operate public works over a period of years;
- Federal-provincial-municipal policy connections to facilitate knowledge transfer and policy and program development to meet local objectives.

Assessing capacity factors are "only meaningful" if discussed in context to the situation being assessed (Hall 2008:464). Manitoba's policy context, for instance, has significantly influenced the province's unique infrastructure needs and has shaped political responses. Manitoba is home to over 1 million people sprinkled over a wide geographic expanse except for one major city located in the Southern part of the province. In 2013, there were 197 municipalities stretched across the province, yet the capital region, which includes Winnipeg and 16 adjacent municipalities, constitutes two-thirds of the province's population (Manitoba Municipal Government 2014). The expanse continues in Winnipeg with the urban density at just 1,400 people per

square kilometre. This is lower than other comparable Canadian cities such as Ottawa (1,700) and Montreal (1,850), Winnipeg has one of the most "sprawling urban centres in the country" (Gillies 2011). Getting around the capital and across the province takes many and different types of traversable routes and passageways.

The province boasts vast waterways and rich clay soil which has created some of the most productive agricultural lands in the world, yet severe winters, relentless winds on the prairie plains, yearly flooding or drought conditions during the summer often wreak havoc on crops; while degrading and even demolishing, concrete, pipes and land surfaces. It has been reported, for example, that the 2004 drought cost Manitoba Hydro $426 million and the 2011 flood cost the province over $1 billion (Welch 2014). This scenario is once again affecting the province. After one of the coldest winters in a century, there were 2,194 reported cases of frozen pipes during winter 2013-2014, with many homes and businesses left without water for months on end even well into the summer months. The expected cost to the city of Winnipeg may reach up to $5 million (Forlanski 2014). Spring and summer catastrophic flooding will also add to the financial burden for provinces and affected municipalities. In the "land of 100,000 lakes", Manitoba is a province with 19,000 kilometres of highways and roads, 7,000 in Winnipeg alone and on any given day, a resident is traveling across one of the province's 3,300 bridges – 1,000 of which were built during the 1950s and 1960s (Manitoba 2014:7, 10). All of this is to say that Manitoba's physical environment should be a stark reminder to policy developers when developing infrastructure policy requirements and funding programs.

In addition, due to vulnerable production sectors and fluctuating international commodity markets, the province's economic fortunes are often uncertain. In considering Manitoba's infrastructure funding needs prior to the announcement of the federal Canadian Infrastructure Program in 2000, overall economic stability had been buttressed by an export-driven economic strategy, which was initially implemented under Progressive Conservative governments during the mid-1990s. This strategy transformed Manitoba away from its traditional position as the Canadian "Gateway to the West" into the "Gateway to the South" given a 152.5% increase in the export of goods to American markets from 1988 to 1997 (Black and Silver 1999:18). Contrast to a record high of $491 million in 1996, however, agriculture outputs rose by an estimated 2.1% in 1998 and low commodity prices seriously

decreased farm income by more than half in the same year to $83 million (Conference Board of Canada 1999:27).

Economic conditions, along with a small population base and population growth, typically below the national average from the early 1990s to 2009, further exacerbated the variable economic fortunes of the province, particularly in relation to Manitoba's uninterrupted status as a have-not province. Federal transfer payments have become a needed source of revenue for Manitoba governments, accounting for a third of provincial revenue. During the period under study, for example, federal transfers to total provincial revenues, such as equalization and the social and health transfers, averaged 30.5% from 2004 to 2012 (Minister of Finance 2005:28, 2008:44, 2012:43). As Paul Thomas has pointed out, the province is sometimes criticized by the business community for not creating the "competitive economic conditions necessary for prosperity" although as I and others have argued, vulnerabilities in Manitoba requires financial support from the national government to "complement provincial efforts" (2008:38).

Manitoba's dependence on federal transfers juxtaposed to close ties to American markets often severely impact commerce. The province's economy began to show signs of improvement, however, in the mid-2000s. From 2005 to 2011, unemployment rates were below the national average and housing starts per capita were above the Canadian average from 2004 to 2006 (Manitoba Finance 2007). Population growth rates in the province steadily increased between 2007 and 2011, likely attributable to the Provincial Nominee Program which facilitated immigrant in-take. By 2011 in Winnipeg, the population had increased by 50,000 over the past decade placing a significant impact on "infrastructure demands both from a residential use as well as an economic needs perspective" (IFC 2011:15). Manitoba's central location has encouraged the diversification of the economy as an ideal locale for transportation and wholesale distribution, making the trucking, rail, marine and warehousing industries major contributors to employment accounting for roughly 100,000 jobs in the province (IFC 2011:14; Carter 2009:236).

It is rather clear then that infrastructure maintenance, especially roadways and other fixtures which facilitate the movement of people and goods, are vital to the continuing health of the Manitoba economy, perhaps even more so than in the past. Manitoba has been successful in attracting "new economy" investment, such as information technology as well as research and development industries and reaps considerable financial benefits from the sale of hydro-electric power to American and

other Canadian provincial markets. Export growth in Manitoba has more recently been geographically broadened by building trade ties with Asian, Latin American and European markets. Exports remained strong from 2005 to 2007 eventually taking a dip due to the 2008-2009 global economic downturn when commodity prices collapsed in primary industries such as mining, agriculture and forestry (Baragar 2011:13, 59). As a consequence, the national unemployment rate rose from 6.3% to 8.6% between October 2008 and October 2009, signaling a loss of 400,000 jobs (Baragar 2011:1). Still, the provincial economy weathered the storm relatively well maintaining the GDP at 0% in contrast to an almost 2.8% decline in the Canadian GDP (Baragar 2011:1). This type of steady growth is often attributed to the province's "balanced, diversified, and slow growing" economy which has no "significant source of revenue windfalls" protecting it from boom and bust economic cycles (Carter 2009:237). Nonetheless, the economy remains vulnerable to ruptures in the international trade system.

Changes to federal funding formulas also have an impact on Manitoba's capacity to fund and finance infrastructure renewal. The federal Building Canada Fund program, for instance, allocated monies to Manitoba not based on infrastructure need or square kilometers, but on population figures taken from the 2006 census (Canada-Manitoba 2014a). This is a concern given Manitoba's sparse population in relation to physical infrastructure needs. As well, federal transfers to Manitoba decreased by $379 million in 2012-2013, an issue contested by the Government of Manitoba arguing, ironically, that the 2011 Census data used to calculate federal transfers by Statistics Canada underestimated the province's population because the counting was undertaken during a time of catastrophic flooding.

Transfer payments and dedicated infrastructure funding programs from the federal government remain a significant and indispensible source of revenue for financing public works, especially in light of disasters discussed above and unexpected financial liabilities such as the 2009 H1N1 crisis which cost the province $83 million (Levasseur 2013:186). As a consequence, Manitoba governments often have to make tough decisions regarding where to spend limited financial resources which has resulted in decades of infrastructure neglect contributing to policy gaps in financial resources available to municipalities. A political "steady but onward" attitude has further encouraged an aversion to the types of sweeping policy responses required of Manitoba political parties to substantively address the infrastructure deficit. As Jared Wesley aptly remarked, even in spite of

its "easternmost position, Manitoba is the Prairies' political middle ground" (2011:175).

III. ATTRIBUTES OF THE POLICY SECTOR

All policy sectors have unique characteristics which influence the complexity of the policy area, the arrangement of capacities required to facilitate policy success, the array of actors involved in policy communities and dominant frames of reference which influence policy development. Municipal infrastructure, sometimes called assets as they are considered investments over a long period of time rather than the result of one-time government "spending", are generally owned by municipalities (Vander Ploeg 2003). Indeed, over 50% of infrastructure across Canada is owned by municipalities and is financed by local governments which collect just 8 cents of every tax dollar (IFC 2011:38-49; Mirza 2007:5). Like other locales across the country, municipalities in Manitoba are under-resourced and often lack legal and administrative capacities to finance public works. Constitutionally, municipalities fall under the legal purview of the province. In Manitoba, they are only able to borrow if approved by the Manitoba Municipal Board and are subject to several provincial laws. The main sources of revenue for municipalities in Manitoba are property taxes, user fees and realty taxes. Mayors and reeves hesitate to increase property taxes, however, fearing negative reaction from home owners. In Winnipeg, property taxes were frozen from 1997 to 2011 – a popular decision perhaps but a political position which was eventually financially unsustainable. City council eventually raised property taxes by 3.5% in 2012, with slight additional increases of 3.87% and 2.95% in 2013 and 2014 respectively (Pursaga 2013).

Infrastructure is the "physical assets developed and used by a municipality to support the community's social and economic activities" including the types of structures most Manitobans use on a daily basis, although innovations of modern society have led experts to re-conceptualize definitions (Vander Ploeg 2003:2-3). Contemporary categorizations of infrastructure (sometimes labelled as: basic, high tech, amenities, knowledge-based and health care related) facilitates economic prosperity, social, cultural and business connectivity, as well as the comfort and safety of citizens (Vander Ploeg 2003:2-4).

Basic urban infrastructure includes core infrastructure projects such as transportation networks (local and collector roads, bridges, flood protections and transit systems, railways, airports, seaports,

energy utilities, pedestrian walkways, street lights and traffic signals), environmental and sanitary operations (wastewater and storm-water networks, water pump stations, drinking water systems, sewer manholes) as well as general-use public buildings and protective services such as fire, policy and emergency systems. High-tech infrastructure supports a wide range of physical systems which include cellular and satellite telecommunications, the internet and e-mail systems. Amenities, the third category, includes other public infrastructure works such as cultural, social, community and recreational facilities, as well as parklands, public libraries, art galleries and museums. These aspects of the built-environment are not conventionally associated with urban infrastructure, but are considered to be important to a well-functioning society. Knowledge-based infrastructure projects are also not generally included in conventional understandings of the policy area, but they are significant to modern, post-industrial economies. These include educated and skilled workforces and investments in public education, training and apprenticeships. Beyond definitions of typical "core infrastructure" contemporary understandings of infrastructure encompass services like national and local weather operations, data generating services including Statistics Canada and the Manitoba Bureau of Statistics and publicly available digital and electronic databases and information/research networks located within businesses, universities and research centres. Health infrastructure, the final category, includes hospitals and other health services given the importance of maintaining a healthy citizenry and workforce.

As this taxonomy illustrates, municipal and public infrastructure includes a broad range of tangibles and non-tangibles which work in tandem to support a community's quality of life. Most infrastructure funding programs, however, focus on traditional infrastructure given the clear need for repairs to roads, highways and other core services. In the aggregate, core municipal infrastructure attributes consist of:

- Large networks built over generations generally not replaced as a whole system;
- Systems which have a long and sometimes unknown usage life because service capacity is maintained by refurbishments and replacements;
- System components which are interdependent and not amenable to subdivision or separate disposal; and,
- Assets which are initially quite costly yet have a value which is sometimes difficult to determine (Craft et al. 2013:42-43).

Infrastructure renewal is a complex endeavour. Projects are often cross-sectoral in the development of infrastructure planning and

rehabilitation strategies involving multiple provincial departments such as Finance, Intergovernmental Affairs, Municipal Government, Infrastructure and Transportation and, for some public works projects, Water Stewardship and Aboriginal Affairs. For other projects, the Clean Air Commission will weigh in to assess the environmental consequences. There are also physical disruptions to peoples' lives and businesses. Refurbishing pipes, for example, involves underground excavation, road upheaval and uprooting trees and lands. Infrastructure projects sometimes require fixing piece-by-piece, made all the more complicated when the project spans across communities. Also, weather may undermine the integrity of infrastructure in one locale, and have devastating effects well down the line in adjacent communities. Infrastructure projects also demand multilevel government agreements and intergovernmental relationships in the funding, construction and maintenance of public works. Pipes for water systems, bridges or highways connect families and communities located in particular municipalities, and are also communally used by residents from surrounding areas, if not from across the country. Many projects are not just for provincial benefit, they are for national economic purposes. This makes determining which locale is responsible for costs political and often contestable. Costs of infrastructure refurbishment will also be impacted by professional regulatory standards for safe drinking water, effective wastewater management and public safety. For some projects, labour-management agreements have to be negotiated and security systems have to be upgraded or installed. Further costs may include property assessments, fees and contract negotiations with professional engineers and architects, and the availability of parts to complete a project, not to mention fluctuating construction prices. The upshot is that municipalities are simply unable to carry the costs of infrastructure renewal, often massive in scale, making shared-cost programs between the federal and provincial governments a policy priority for local communities.

IV. INFRASTRUCTURE FUNDING SCHEMES

And there is, frankly, a dizzying array of infrastructure funding programs. At the local level, under the Winnipeg Recreation and Leisure Infrastructure Initiative, a Manitoba-Winnipeg agreement, $43 million was allotted through the federal Canada Strategic Infrastructure Fund to improve aging community centres and for building skateboard and spray parks. Other infrastructure funding

programs have included, but are not limited to, the Manitoba Building Fund, the Manitoba Water Services Board, the Municipal Water and Sewer Program, Rural Water Development Program, Small Communities Transit fund, the Municipal Roads Improvement Plan and the Manitoba Bridge Program.

Significant federal funding has also reached municipalities through the province via programs such as the Gas Tax Fund and the Infrastructure Stimulus Fund. Gas tax monies began in 2005 and are forwarded to municipalities through the Manitoba Building Fund. The Conservative Government recently legislated the Gas Tax Fund as a permanent source of revenue for municipalities. The City of Winnipeg used a portion of these funds for upgrades to the Disraeli Bridge which included a footpath for pedestrians and a new Canadian Pacific Rail overpass (Infrastructure Canada 2013). To encourage short term stimulus to the economy during the global recession, the Infrastructure Stimulus Fund invested $335 million in Manitoba, funding 112 projects across the province (Canada-Manitoba 2014b). The program was devised to dispense funds quickly and to be spent effectively by municipalities over a two year period (2009 to 2010 and 2010 to 2011). Most of the projects had to demonstrate "construction readiness" and all projects had to be completed by 31 October 2011.

There have been five major shared-cost infrastructure funding initiatives since 2000: the Canada Infrastructure Program, the Municipal-Rural Infrastructure Fund, the Canada Strategic Infrastructure Fund, the Building Canada Fund and the recent New Building Canada Fund. During his tenure, former Winnipeg Mayor Glen Murray strongly advocated for a new partnership between the three levels of government. A founding member of a coalition of mayors from five large Canadian cities, the first meeting of the "C5" took place in Winnipeg in May 2001 advocating for a "new deal for cities" to ensure local communities could address pressing public concerns and "fundamental infrastructure needs" (Winnipeg 2001).

In response, then Prime Minister Chretien earmarked $2.65 billion in the 2000 budget for physical infrastructure, monies eventually administered under the Canada Infrastructure Program. When Paul Martin became Prime Minister, a Cities Secretariat in the Privy Council Office was established in 2003 and an External Advisory Committee on Cities and Communities was struck. In July 2004, the Cities Secretariat was combined with Infrastructure Canada creating a new ministry tasked with implementing the "New Deal for Cities and Communities". Since 2000, the federal government has followed up

with further infrastructure investments that have been administered in Manitoba through the Municipal-Rural Infrastructure Fund (MRIF) and the Canada Strategic Infrastructure Fund (CSIF). During Liberal Government years, further funding flowed to Manitoba, as noted, through the Federal Gas Tax Program and the Public Transit Fund Program. The Conservative Party, after election in 2006, continued shared-cost infrastructure funding through the Building Canada Fund and via the recently announced New Building Canada Fund. Discussed here are brief aspects of each of these major federal programs.

A. Canada-Manitoba Infrastructure Program (CMIP)

In October 2000, Ottawa and the Province of Manitoba signed a $180 million, six-year contract for infrastructure improvements to promote sustainable economic development (Minister of Intergovernmental Affairs 2001-2002:62). The stated objectives of the Canada-Manitoba Infrastructure Program (CMIP) were to enhance the environment, support long term economic growth, improve community infrastructure and build 21st century infrastructure through best technologies, new approaches and best practices (Canada-Manitoba 2002-2003:6). The $180 million, $60 million each from the federal and provincial governments, was a matching funding scheme with contributions made in partnership with municipalities or non-governmental interests such as community-based groups or private-sector organizations. Unlike conventional conceptions of infrastructure, the Canada Infrastructure Program funded a wide range of projects to encourage environmental priorities, improve quality of life and support culture, promote tourism and connect citizens through information technology. The program was reimbursement-based, with projects funded equally between the federal and provincial governments in partnership with the community project proponent (such as municipalities or non-governmental groups). All project applications had to be approved by the local municipal or town city council then forwarded to the Canada-Manitoba Infrastructure Secretariat, a joint federal-provincial body which has managed the administration of the shared-cost grants.

Municipalities incurred and paid 100% of project costs, then were reimbursed for up to two-thirds of the expenses from the federal and provincial governments (Canada-Manitoba 2002-2003:7). Applications for funding under CMIP were made on-line and assessed based on the financial sustainability of the project, whether the applicant leveraged other methods of funding, along with the regional impact of the

project. All applications were ranked based on their merit and vetted whether projects enhanced the quality of the environment, improved wastewater and solid waste management and efficient energy use, supported long term economic growth, enhanced infrastructure in communities where standards fell below the "norm" to improve the quality of life of residents, supported community heritage and culture, as well as information technology usage. Of applications received, 155 of 173 projects were approved and had to be completed by the stipulated end date of March 2008 (Canada-Manitoba 2006-2007:26).

B. Municipal-Rural Infrastructure Fund (MRIF)

Announced in the 2003 federal budget, the Municipal Rural Infrastructure Fund (MRIF) was created to support municipal infrastructure projects in smaller communities that improved quality of life, sustainability and economic development. In Manitoba, a minimum of 80% of the MRIF funds were directed to municipalities with populations of less than 250,000, although some monies were allocated to Winnipeg projects. Five-year project support was set at $120 million in Manitoba during the life of the program which ran from 2005 to 2010 with completion by 2011. The MRIF included a component which specifically addressed the infrastructure needs of First Nations communities. The federal government and Manitoba each invested $41 million, with matching project funding from local governments. In May 2007, there was a $25 million top up over and above the original allotment added to the MRIF (Canada-Manitoba 2006-2007:36). Like the CMIP, applications were submitted on-line to the joint Canada-Manitoba Infrastructure Secretariat and were assessed based on many of the same criteria as the CMIP. And like the CMIP, the process was highly competitive with mandatory screening which, among other requirements, obligated the applicant, municipality or non-governmental body, to demonstrate a business case including operational viability and project sustainability.

C. Canada Strategic Infrastructure Fund (CSIF)

The Canada Strategic Infrastructure Fund (CSIF) supported infrastructure initiatives deemed a "national priority" or of national/regional significance (Canada-Manitoba 2004-2005:2). In Manitoba, CSIF funded the Red River Floodway expansion, the Winnipeg waste water treatment system and the Kenaston Underpass. Separate agreements were signed for each of these projects. For the floodway, a federal-provincial agreement was struck which provided a

$120 million contribution from the federal government to begin expansion, with the province contributing "at least an equal amount" (Canada-Manitoba 2002-2003). The City of Winnipeg allotted $23 million to improve pumping stations, drainage ditches, sewer systems and internal dikes for the floodway expansion, and contributed funds toward the underpass and the waste water treatment project.

D. Building Canada Fund (BCF)

The federal 2007 budget provided funding under Infrastructure Advantage which extended the gas tax transfer and provided further funding for the floodway expansion project funder the CSIF. In the Throne Speech of October 2007, the Conservative government announced the Building Canada program, allocating $33 billion over seven years (Canada 2007:4). Similar to previous major initiatives, projects under the BCF were cost-shared between the federal, provincial and municipal governments on a one-third basis. The BCF had two components: the Major Infrastructure Fund (MIC) and the Communities Component (CC). The MIC funded strategic projects of national and regional significance; the CC stream funded projects in communities with populations less than 100,000. Manitoba's allocation for MIC funds was based on the province's population as accounted for in the 2006 census. The Canada-Manitoba Infrastructure Framework Agreement was signed in September 2008 committing $718 million to public infrastructure in the province (Canada-Manitoba 2007-2008). An additional $36.24 million top up was added to the CC stream for Manitoba in 2011, with projects completed by 31 October 2011, although some projects were extended until 2012. Continued under the New Building Canada Fund, there is also a hybrid stream providing funds for public-private partnerships. Called the P3 Canada Fund, eligible projects must generate public goods and promote job creation and economic growth. In Winnipeg, the Chief Peguis Trail Extension was funded through the P3 program in 2010 (Infrastructure Canada 2010).

E. New Building Canada Fund (NBCF)

Officially launched March 2014, the current shared-cost infrastructure initiative is the new Building Canada Fund slated to provide $14 billion to communities across the country over a ten year period. The NBCF has two major components: the National Infrastructure Component (NIC) and the Provincial-Territorial Infrastructure Component (PTIC). Municipalities contribute one-third

of the cost of a project using monies other than from their share of the gas tax fund (AMM 2014). To be eligible for funding under the NIC, projects must have broad public benefits contributing to long-term economic growth demonstrating a viable business case. Eligibility for municipalities, band councils, regional entities or private sector groups under the PTIC stipulates that projects must be of a national, regional or local importance which contribute to economic prosperity and a clean environment. The new BCF is a back to basics approach financing core infrastructure such as highways and roads, rail and port infrastructure, public transit, local and regional airports and disaster mitigation.

F. Intergovernmental Relations and Policy Development

Manitoba boasts a successful history of bipartite and tripartite agreements between the City of Winnipeg, the Province of Manitoba and federal governments (Carter 2009:250). From 1981 to 2009, four separate five-year Urban Development Agreements between Ottawa, Manitoba and the City of Winnipeg (the Winnipeg Core Area Initiative I, 1981-1986; the Winnipeg Core Area Initiative II, 1986-1991; the Winnipeg Development Agreement, 1995-2001 and the Winnipeg Partnership Agreement, 2004-2010) have brought hundreds of millions of dollars to Winnipeg to address pressing urban challenges and to stimulate downtown revitalization. The development of The Forks, one of Canada's national indigenous historic sites and an urban oasis for many Winnipeggers, is a direct result of these types of partnerships.

Manitoba has engendered a collegial working relationship with successive federal governments (Thomas 2008). Although there certainly have been times when Manitoban Premiers have not agreed with the priorities of Ottawa, Manitoba New Democratic Party governments have taken a pragmatic approach to federal-provincial relations under both Liberal and Conservative federal governments. While the Manitoba government generally works at maintaining harmonious federal-provincial relations, they nonetheless often publicly defend the interests of the province. Characterized as "polite but persuasive in-your-face federalism" by a senior bureaucrat in Ottawa, former Manitoba Premier Gary Doer's personal style of working with Ottawa to the minds of some "paid off" (Winnipeg Free Press 2003a:A3). A good example was Gary Doer's refusal to sign on to the Conservative government's Building Canada Fund until Manitoba received a guarantee from the federal government that funds for the

Red River Floodway expansion were forthcoming (Winnipeg Free Press 2003b; Winnipeg Free Press 2007:A1). This style of federal-provincial relations continues under the current Premiership of Greg Selinger, although Karine Levasseur (2013:191) has argued that Gary Doer's successor has been departing from the previous "path of pragmatism" evident in part due to the recent and highly unpopular one percent increase in the provincial sales tax.

On the federal front, after the 2006 election of the Conservative Party, support for the "New Deal" cities agenda waned. The current Prime Minister's approach to "low key intergovernmentalism", in conjunction with his priority to rein in federal spending, have been less favorable to Manitoba's economic realities (Teliszewsky and Stoney 2007:36, 39; Graefe and Laforest 2007:52). Still, the Conservative Government continued infrastructure funding by putting into law the Gas Tax Fund and by the creation of two Building Canada Funds. The legal framework of federalism in Canada, nonetheless, has structured multilevel governing relationships between the levels as directive and top-down – with the federal government taking the lead position. This policy relationship is further buttressed by elements of the programs in this policy sector. The Canada Infrastructure Program, the Municipal-Rural Infrastructure Fund, the Canada Strategic Infrastructure Fund and the Building Canada Funds have all been administered via formal agreements negotiated by federal and provincial government codifying application procedures and funding criteria. To be sure, shared-cost programs offer flexibility and matching funding programs facilitate "optimal production of local public goods" (Mehiriz and Marceau 2013:82). Also, shared-cost programs can be useful policy instruments because they express, and hopefully achieve, different objectives of the various parties. After all, the federal government is largely concerned with stabilizing the national economy, the Manitoba government is keen to increase regional economic prosperity and local councils want to provide reliable services to citizens.

Under these one-size-fits-all programs, however, there was little recognition of the unique geographic and economic factors affecting infrastructure renewal in Manitoba, nor was there recognition of the complexities of the policy field. All applicants had to adhere to specific application guidelines and follow highly structured vetting procedures, arguably more amenable to some municipalities than others. The shared-cost programs did not effectively recognize, for example, that remote and Northern communities require larger amounts of money given the challenges of construction due to longer winters (AMM

2014). Demonstrating a "business case" and economic "viability" also had to be quite different between locales such as Leaf Rapids and Winnipeg given that project viability is affected by unique northern versus southern environmental conditions as well as the timely availability of human resources and construction materials. As well, shared-cost programs focusing on core infrastructure and trade corridors benefitted communities connected to major highway systems to the detriment of municipalities seeking funding for non-traditional infrastructure needs such as broadband connectivity, tourism venues and community or cultural facilities.

Other than typical provincial consultations with municipalities, there was limited room to build policy connections with the federal government. Importantly, however, an institutional structure was created in Manitoba to administer and monitor the implementation of the infrastructure grants, which provided an avenue for municipal participation, albeit during later phases of program development. Since 2000, all Canada-Manitoba infrastructure programs have been managed and approved by Western Economic Diversification Canada, on behalf of Infrastructure Canada, and by Manitoba Infrastructure and Transportation through a joint federal-provincial secretariat (Canada-Manitoba 2014c). The nine-person joint Canada-Manitoba Secretariat is staffed by federal and provincial employees, originally housed in Manitoba Intergovernmental Affairs then in Manitoba Infrastructure and Transportation. In 2011, the joint secretariat was relocated to the Manitoba Department of Local Government (Minister of Local Government 2011-2012). During the administration of CIF, MIRF and CISF, the staff included a Director (a provincial employee), an Associate Director (a federal employee) and seven staff (two federal, five provincial) tasked with various responsibilities such as communications and policy analysis. The secretariat was established to minimize overlap and duplication in federal program delivery, to contribute to federal-provincial co-operation and to provide single window delivery to local governments. The secretariat managed and processed applications and communicated with funding applicants and recipients.

The secretariat has been an effective central agency in the support and administration of the major shared-cost programs and for the participation of local representatives. An internal committee structure to facilitate administration and consultation with local governments was created, as was a federal-provincial Management Committee which established administrative practices for program reporting and

evaluation. The Management Committee was composed of deputy ministers of Western Economic Diversification and the lead provincial department, Manitoba Infrastructure and Transportation. The bulk of the actual review of applications, however, was undertaken within the secretariat and by consultative committees. The Federal-Provincial Local Consultative Committee evaluated proposals and provided funding recommendations to the federal-provincial Management Committee for consideration. The committee's recommendations were processed through the federal and provincial approval systems via the secretariat. The Local Consultative Committee was composed of representatives of the Association of Manitoba Municipalities (AMM) and the Northern Association of Community Councils (NACC). For projects outside of Winnipeg, a Rural-Northern Federal-Provincial Local Consultative Committee stepped in with advice and guidance. On this committee were representatives from the Association of Manitoba Municipalities, the Northern Association of Community Councils and Manitoba Aboriginal and Northern Affairs. A separate process was set up for Winnipeg given its size and importance in the infrastructure portfolio. In Winnipeg, the Federal-Provincial Local Consultative Committee was composed of the Manager of the Executive Policy Secretariat and Directors of Public Works and Transit who represented the interests and decisions of Winnipeg City Council to the Management Committee within the secretariat (Minister of Intergovernmental Affairs 2001-2002:61).

Successfully accessing funds, however, was a significant challenge for many municipalities. Because the programs were reimbursement-based, often established as one-third cost-sharing scenarios, municipalities had to raise their share of the funds for the project prior to submitting an application, and then the application had to meet strict approval criteria as set out by federal and provincial governments. Clear application and reporting procedures put in place accountability measures, but serious transparency issues were evident. Information has not been publicly available regarding which applications went unfunded, who the applicants were, or why some projects were denied funding. As a consequence, it remains unclear if municipal project proposals were rejected for reasons other than being a "financially viable" or because criteria requirements, such as proving a business case, were simply too onerous for municipalities to meet or incongruent with the fiscal realities of some local governments. We also do not know if applicants were denied funding because projects did not fit with federal and provincial preferences to fund core

infrastructure. As well, there has been no direct organizational reporting by the secretariat through annual progress reports about the two Building Canada Funds as was the case during the administration of the previous major shared-cost programs. Indeed, it is conceivable that the secretariat has currently assumed a tangential role in shared-cost agreement implementation and program linkages with municipal representatives.

V. BUILDING FROM THE GROUND UP

Funding levels still fall short of what is required to fill the infrastructure funding gap. In 2007, the joint secretariat reported that the demand substantially exceeded the availability of funds by a ratio of 4-to-1 (Canada-Manitoba 2006-2007:25). Even with the hundreds of millions of dollars which have flowed to Manitoba via the five major grants discussed above, billions more are required. Indeed, at levels of spending in 2011, the infrastructure deficit in Manitoba is estimated to reach $13.4 billion by 2019 (IFC 2011:12). This was the finding of the Infrastructure Funding Council launched in 2010 by the City of Winnipeg in partnership with the Association of Manitoba Municipalities. The Infrastructure Funding Council (IFC) was tasked with developing a "comprehensive infrastructure funding strategy" (Winnipeg 2010). As President of AMM remarked at the announcement:

Manitoba's municipalities are facing an overwhelming infrastructure deficit and our revenues – mainly from property taxes and the odd grant – are simply not meeting the needs of our citizens. It is essential that we develop a strategy that will see us into the coming decades, so we can create the vibrant, welcoming communities we all want to live in (Winnipeg 2010).

The IFC undertook an extensive study offering several suggestions in their 2011 report, New Relationship: A New Order. In part, the IFC recommended new revenue streams for municipalities and the development of a "Manitoba Municipal Infrastructure Funding Agreement". The IFC also recommended the establishment of an Implementation Committee, comprised of individuals appointed by the province, AMM and the City of Winnipeg to facilitate a "new intergovernmental infrastructure funding relationship" (IFC 2011:11).

In 2014, the province offered a measured response. Upon conducting consultations with municipalities and AMM in 2012, the Manitoba government launched a five-year infrastructure investment

plan called The Five-Year Plan to Build a Stronger Manitoba: Manitoba's Core Infrastructure Priorities (Manitoba 2014). The five-year plan targets $5.5 billion beginning in the 2014-2015 fiscal year to take advantage of the newest federal infrastructure funding program, the New Building Canada Plan (Manitoba 2014). The plan appears to be the only contemporary dedicated strategy on infrastructure renewal developed by the Manitoba government. The plan focuses on core infrastructure such as highways, roads, flood protections and bridges, in part funded by the recent one percent increase in the provincial sales tax (Manitoba 2014).

The five-year plan directs funds to trade corridor infrastructure, not entirely unexpected given the government's priority of focusing on the economy yet it means the strategy is quite narrow in terms of meeting the varied aspects of infrastructure needs across the province. While the five-year plan demonstrates leadership on the part of the NDP, municipalities require funding for projects beyond core infrastructure works. For many rural municipalities, for example, arenas, community centres and cultural events make important contributions to their economies. As well, municipalities must have reasonable and equitable shared-cost funding arrangements and programs which provide continued, stable operating monies to maintain new or refurbished infrastructure projects.

Municipalities in Manitoba have to rely on their sources of revenue which rarely cover the enormous and escalating costs of maintaining infrastructure along with other municipal services (Carter 2009:237). Funding programs must be more open-ended allowing room for municipalities to make decisions appropriate to their infrastructure needs and for local authorities to tailor funding needs to support long-term planning. Municipalities also require more funds through own-source revenue streams; monies from future shared-cost grants, for example, could be funneled directly to municipalities (Rabson 2012). Finally, provincial authorities could strengthen intergovernmental connections with local councils through the establishment of a municipal-provincial forum similar to an "Implementation Committee" recommended by the Infrastructure Funding Council. A renewed provincial-municipal relationship may not guarantee better funding arrangements from the federal government, but if instituted, provincial policy developers, municipalities and organized policy networks will be better able to systematically address enduring infrastructure challenges within their own jurisdiction as well as collectively advocating a firm position to the federal government.

VI. CONCLUSION

Reducing the infrastructure deficit in Manitoba is a demanding undertaking due to an exceptional geographic expanse, severe environmental conditions and on-going catastrophic weather-related events – all exacerbated due to financial vulnerabilities of the province and many municipalities. Capacity gaps were also notable in the institutional and policy development system. While the Manitoba Infrastructure Secretariat afforded access to municipalities, I argue that application procedures were too cumbersome and restrictive, with participation provided too late to offer any viable way for municipal authorities to articulate infrastructure needs to federal and provincial governments.

Economic vulnerabilities in the province coupled with the complexities associated with infrastructure works means that shared-cost grants are an inescapable necessity. And this is as it should be. National funding programs are for the national, regional, and local good. Yet, due to the magnitude of the infrastructure deficit, along with the dramatic cost of infrastructure renewal, I propose that intergovernmental policy relationships must be strengthened, underpinned with bold political action through a forum which better integrates local perspectives and "on the ground" policy ideas. Infrastructure challenges will not be solved in the medium term. Restructured intergovernmental relations and shared-cost programs, along with comparative research, however, may well lead to the determination of appropriate, if not substantive, policy responses.

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Support and Inclusion for All Manitobans: Steps Toward A Basic Income Scheme[†]

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I. INTRODUCTION

This paper proposes and describes an evolutionary approach to development of a basic income by the Government of Manitoba in order to decrease economic disadvantage and inequality in the province. We demonstrate below that a new approach is required because poverty reduction under Manitoba's All Aboard poverty reduction strategy has lagged behind the rest of Canada, and because the level of inequality has remained stable for more than a decade.

This is important because poverty and inequality are key strategic issues influencing many policy domains in addition to the well-being of the poor. For example, there is evidence that poverty limits economic growth (Conference Board of Canada 2013; OECD 2005) and imposes real costs (Laurie 2008) related to health status and care (Braveman et al. 2010), social services (Aron et al. 2010) and criminal justice (Nikulina, Widom, and Czaja 2011). There is also evidence that income inequality impairs population health and decreases social cohesion (Wilkinson, and Pickett 2006).

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The basic income model of economic security for all, differs in significant ways from existing income support programs at the provincial and federal levels in Canada. Basic income "provides a stream of regular cash income to every citizen or resident in a given political community" (Widerquist et al. 2013:xiii). The model of basic income as advanced by Van Parijs (2004) and others is universal (it is paid to every individual regardless of other sources of income or wealth) and unconditional (it does not require a means test or work in exchange for the benefit).

Two alternative delivery mechanisms for basic income are: i) a universal demogrant paid to all (that may or may not be subject to tax-back from higher income earners), and ii) a negative income tax (NIT) that targets benefits to those at lower income levels. In fact, both of these mechanisms are already in use in Canada for non-universal and conditional income security programs, as outlined in the "existing architecture" section below.

Proposed versions of the basic or guaranteed income model (the latter term being the one commonly used in Canada) have cycled through our social policy debates over many decades (see the "brief history" section below). Most schemes have been proposed at the federal level, but some provincial proposals and programs have been launched as well. Here in Manitoba in the late 1970s there was a very notable basic income pilot project called "Mincome" (also described in the brief history section below). Although the Mincome experiment ended abruptly in 1979, there have been recent news stories about the renewed interest in the basic income approach – at least as a model to be considered – by the Premier of Prince Edward Island (Wright 2014) and by the Minister of Social Solidarity in Québec (Loisel 2014). Beyond this, the leader of the official opposition in Manitoba has recently indicated his openness to this approach. The Globe and Mail has also featured an interview with one of the Mincome investigators. In addition, the 2014 International Congress of the Basic Income Earth Network held in Montreal received significant media attention and a national public campaign is now underway to increase interest in the approach.

This paper begins by providing the rationale for an evolutionary approach to change in income support programs and demonstrating the need for more effective measures to reduce poverty and income inequality in Manitoba. It goes on to describe how the idea of a basic income has been proposed and debated in Canada over previous decades. Next, nascent basic income mechanisms at the federal and

provincial levels are identified. Finally, the broad outlines of an evolutionary approach toward a full basic income guarantee are articulated.

II. RATIONALE

Basic income (BI) is widely seen to be superior to the existing complex and confusing array of targeted and conditional income support programs. BI can provide more security (people are less likely to fall through the holes compared to a 'patchwork' social safety net) and exhibits greater bureaucratic simplicity (eligibility criteria are broad and the application process is straightforward). The BI approach also would eliminate the punitive and intrusive approach that characterizes 'last resort' social assistance mechanisms, in which a large number of workers are required to process applications and enforce complex eligibility rules. These latter two characteristics of the GI approach can result in savings on the cost of program administration; these savings could in turn be used to off-set the costs of broader and more generous BI benefits, and to reinvest in the social supports that many people may require beyond mere income maintenance (e.g. child care, job training, and mental health and addiction programming).

Guy Standing (2008) identifies a number of other advantages of basic income over selective and conditional income support programs and social insurance schemes. He notes that basic income avoids the perverse incentive to limit increases in income in order to maintain eligibility in needs-tested programs. This includes incentives for beneficiaries to decrease the amount they work for pay. In addition, basic income strengthens the power of disadvantaged groups in the labour market through providing an alternative to unattractive employment and provides economic stimulus by transferring resources into the hands of those most likely to consume locally produced goods and services. Basic income is also non-labourist in that it does not privilege some forms of work over others through remuneration. This is especially important for women who are involved in unpaid caring work outside of the labour market in order to support the functioning of their families and maintenance of their households.

Basic income is market neutral, and therefore does not introduce market distortions which might affect competitiveness. For example, the absence of a work requirement avoids increasing the supply of unskilled labour, which would exert pressure to lower wages. In addition, because the benefit is not tied to particular goods and

services, like a subsidy, a basic income is unlikely to increase demand for any particular good or service, thus potentially driving up its price. The non-stigmatizing benefits in a BI scheme also strengthen solidarity and reinforce community and social cohesion.

One major objection to a basic income scheme is the concern that it will limit labour supply. However, four negative income tax experiments in the 1960s and 1970s in the United States found an average difference in work effort of only 5% to 7.9% between the experimental group and control group for males (Widerquist, and Sheahen 2012). This was largely due to participants taking more time to look for the next job when they became unemployed. Women worked an average of 7% to 21.1% less than their control group counterparts and this was largely due to devoting more time to child care. There is evidence that decreased maternal employment can enhance child development, especially in the early years (Heinrich 2014). As described below, the Mincome experiment in Manitoba yielded similar results.

Basic income has been advocated for a variety of reasons including, poverty reduction, labour market flexibility, low wage subsidization, welfare state downsizing or abolition, improvement of the position of women, persons with disabilities and ethno-cultural minorities, furtherance of social justice, citizenship enhancement and democratic development (Pateman, and Murray 2012). In addition, there are other good reasons for setting in place a basic income that is universal, unconditional and adequate. These include the left-libertarian argument (Van Parijs 1995) that basic income provides real freedom for everyone to make choices and determine their course in life. There is also the ecological argument (Andersson 2009) that basic income can redistribute wealth so that everyone's basic needs are met and that it can thereby end our addiction to economic growth as the presumed guarantor of prosperity for all. Such a shift is required if we are to move toward a steady state economy that is environmentally sustainable.

Amartya Sen's (2008:271) capabilities approach provides another rationale for the basic income approach. A basic cash income can underwrite an individual's ability to exercise her or his capabilities to ensure bodily health and integrity, have control over her or his environment, develop strong interpersonal affiliations and to enact other capabilities.

In Sen's (2008) framework "functionings" are states of being and doing, such as being well-nourished or having shelter – they should be

distinguished from the commodities employed to achieve them (being able to prepare and consume food versus possessing the ingredients) (Wells 2012). "Capability refers to the set of valuable functionings that a person has effective access to. Thus, a person's capability represents the effective freedom of an individual to choose between different functioning combinations – between different kinds of life – that she has reason to value. The approach is based on a view of living as a combination of various 'doings and beings'," (Wells 2012). Quality of life is assessed in terms of the capability to achieve valuable functionings.

Martha Nussbaum (2003) has specified some of these capabilities and they have been empirically tested (Anand, Hunter, and Smith 2005). For some with limited capability to meet needs, some form of support may be required to enhance their access to functionings (the ability to do and be). This is especially relevant to the replacement of needs-tested residual social assistance programs with basic income schemes. A central rationale for the intrusive rules and monitoring procedures of social assistance programs is to control the behaviour of those with limited functionings, however, this may further erode their capacities. Therefore, we prefer the provision of developmental support rather than the exercise of control – it is more just and likely to be more effective.

However, our central interest in this paper is in the reduction of the rate and depth of poverty and in the decrease of the level of income inequality. Nevertheless, many of the other reasons may constitute additional rationales to be considered in advocacy for and adoption of our proposal. In this regard, we explicitly adopt enhancement in the efficiency of the delivery of income transfers (Howard, and Widerquist 2012) rather than welfare state diminution as a goal. We also argue argue that a basic income scheme must be accompanied by adequate education and training, social services and health care provided by the state.

Full basic income schemes have attracted limited political and public support (Purdy 1988; Carala, and Wildavsky 2003); but have been implemented on a pilot basis in Canada (Forget 2012), the United States (Widerquist, and Sheahen, 2012) and the developing world (Haarmann, and Haarmann 2012). However, these pilots have never successfully made the transition to full scale implementation. Beyond this, partial basic income schemes have been implemented in several jurisdictions, notably Alaska's permanent fund dividend (Groh, and Erickson 2012). In 2004, Brazil became the first country to enact basic

income legislation (Coelho 2012), but its implementation has been limited (Lavinas 2013).

All of this has led to advocacy for an approach which is gradual and reversible (Offe 2001) to promote learning and preference change through action and experience. This is seen as a means to avoid a frontal attack on affordability and predicted erosion of work effort through gradual movement toward a comprehensive basic income. Claus Offe (2001) notes that in most advanced economies, numerous types of beneficiaries are entitled to tax-financed income transfers at a subsistence level or even higher. He then suggests several gradual strategies, including expansion in the classes of eligible persons, increasing benefits to a subsistence level and loosening means and needs tests for eligibility.

We recommend a five stage strategy for Manitoba, with the first four stages constituting improvements to existing income transfers through increasing benefits and broadening eligibility. The first stage involves improving the *55* Plus Program for low income older adults and the second stage involves improvements to the Manitoba Children's Benefit. The only income support program for low income working age adults in Manitoba is the 'last-resort' residual needs-tested Employment and Income Assistance Program. The third stage involves removing disabled adults from this program and establishing an income-tested supplementation program, similar to *55* Plus, for them. The fourth stage involves expanding *55* Plus to provide for working age non-disabled adults. The fifth and final stage involves amalgamating all of these income supplementation programs into a single basic income program, ideally delivered through the personal income taxation system.

Such gradualism is consistent with recent thinking from a historical institutional perspective about incremental endogenous change in state institutions through displacement (Mahoney, and Thelen 2010). Displacement is described as a mode in which "new models emerge and diffuse which call into question existing, previously taken-for-granted organisational forms and practices" (Streeck, and Thelen 2005:19). It is exactly such emergence and diffusion which we hope to catalyze through a program of gradual policy change.

Now, we will turn to why movement toward a basic income is necessary in Manitoba from poverty and income inequality reduction perspectives. The central question is whether the rate and depth of poverty and the level of income equality is improving under the current policy regime. First, with regard to poverty, the Government of

Manitoba announced the All Aboard Poverty Reduction Strategy in 2009 (Government of Manitoba n.d.), and it has been renewed since then (Government of Manitoba 2012). Therefore, it is relevant to examine the effectiveness of this strategy in decreasing the rate and depth of poverty.

In this regard, a recent analysis (Frankel 2013) uses the approach of comparing change from 2008 (the year before the introduction of the strategy) to 2011 (the latest year for which data are available) in Manitoba and Canada as a whole. Canada has no official poverty line, so data using all three measures collected by Statistics Canada (2012) were used. The Market Basket Measure is an absolute measure, which Statistics Canada (2012:11) describes as, "based on the cost of a specific basket of goods and services representing a modest, basic standard of living. The Low Income Measure is a relative measure, which Statistics Canada (2012:10) describes as a "fixed percentage (50%) of median adjusted household income, where "adjusted" indicates that household needs are taken into account." The Low Income Cut-Offs are a semi-relative measure, which Statistics Canada (2012:11) describes as "income thresholds below which a family will likely devote a larger share of its income on the necessities of food, shelter and clothing than the average family." The approach is essentially to estimate an income threshold at which families are expected to spend 20 percentage points more than the average family on food, shelter and clothing.

As Table 1 demonstrates, Canada outperformed Manitoba on all measures with regard to improvements in the poverty rate. This was also true for the longer term (2002 to 2011) Market Basket Measure[i]. The average Market Basket Measure annual decrease for Manitoba (unstandardized slope) was -0.13939% however for Canada as a whole, it was a superior -0.14242%. Manitoba exhibited a small average annual decrease on the after-tax Low Income Measure between 2000 and 2011 (-0.01294%); however, Canada as a whole exhibited a very small average annual increase (0.00035%) over this period. Manitoba also exhibited a higher average annual decrease on the after-tax Low Income Cut-Off between 2000 and 2011 than Canada as a whole (-0.41818% versus -0.32902%).

Table 1: Change in All Persons Poverty Rates: Manitoba and Canada 2008 to 2011

	Manitoba			Canada		
	2008 Rate	2011 Rate	% Change	2008 Rate	2011 Rate	% Change
Market Basket Measure	9.2%	11.5%	+25.0%	10.9%	12.0%	+10.1%
After-Tax Low Income Measure	13.5%	14.0%	+3.7%	13.2%	12.6%	-4.5%
After-Tax Low Income Cut-Off	8.5%	8.9%	+4.7%	9.3%	8.8%	-5.4%

Statistics Canada (2014b).

The same analysis was completed to examine the performance of All Aboard with regard to improvements in the depth of poverty, using the median gap ratio[ii]. The findings are mixed with Canada as a whole outperforming Manitoba on two measures. Manitoba dominated Canada only on the absolute measure.

Table 2: Change Median Gap Ratio: Manitoba and Canada 2008 to 2011

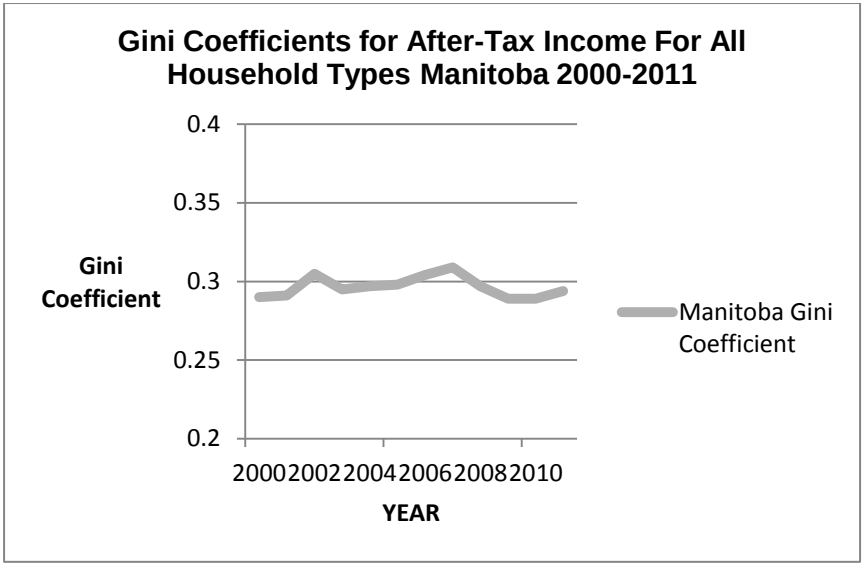
	Manitoba			Canada		
	2008 Ratio	2011 Ratio	% Change	2008 Ratio	2011 Ratio	% Change
Market Basket Measure	28.3	24.5	-13.4%	25.0	24.6	-1.6%
After-Tax Low Income Measure	20.0	25.1	+25.5%	24.0	25.0	+4.2%
After-Tax Low Income Cut-Off	23.2	25.5	+9.9%	26.5	26.1	-1.5%

Turning now to income inequality, little has changed in Manitoba in the last decade. Inequality is measured using the Gini Coefficient, which Statistics Canada (2014a) defines as

> a number between zero and one that measures the relative degree of inequality in the distribution of income. The coefficient would register zero (minimum inequality) for a population in which each person received exactly the same adjusted family income and it would register a coefficient of one (maximum inequality) if one person received all the adjusted family income and the rest received none. Even though a single Gini coefficient value has no simple interpretation, comparisons of the level over time or between populations are very straightforward: the higher the coefficient, the higher the inequality of the distribution, and vice versa.

Figure 1 plots the Gini Coefficient in Manitoba for all family units for after tax income from 2000 to 2011. The average change per year (unstandardized slope) is -0.0001, indicating some fluctuation, but no significant trend of improvement, with Canada's performance being similar (-0.0002).

Figure 1: Gini Coefficient for All Family Units for After Tax Income: 2000-2011



Source: Statistics Canada (2014a)

The available data indicate that further improvement is required and possible. The case is clear on all measures, with regard to the poverty rate, upon which Manitoba should strive to achieve at least the level of improvement of Canada as a whole. Similarly, Canada outperforms Manitoba on relative and semi-relative measures in improvement on the depth of poverty. In addition, the level of economic inequality has remained stable for more than a decade.

III. A BRIEF HISTORY: BASIC INCOME PROPONENTS IN CANADA

There is a long history of discussion and debate about basic income in the modern era of Western political thought, dating back to the early 1500s (Basic Income Earth Network n.d.). Over the last eighty years or so in Canada, the idea of a basic income as a means to combat poverty and enhance economic security has surfaced in several proposals, studies and campaigns (see Young, and Mulvale 2009; Mulvale, and Vanderborght 2012). In the 1930s, for example, the Social Credit government in Alberta, led by William Aberhart, argued for

regular cash payments made to all by the provincial government as a means of economic stimulus and redistribution. But the promise of such a universal "social credit" was not implemented due to a lack of funds in the provincial treasury and opposition by the federal government.

In 1968, the Economic Council of Canada (1968:103) noted the presence of poverty in Canada "on a much larger scale than most Canadians probably suspected" and pointed to the idea of a basic income as a possible remedy to the problem. In 1971, a Special Senate Committee on Poverty chaired by Senator David Croll recommended a basic income financed and administered by the federal government, and delivered through a negative income tax (Croll 1971). This scheme would have ensured a base income of at least 70% of the poverty line, but would not have been paid to single employable adults under age 40. In the same year, the Castonguay-Nepveu Commission (Commission of Inquiry on Health and Social Welfare 1971) recommended a three-tier income security plan for Quebec, consisting of a basic negative income tax, benefits for "employable" people that would top up low earnings, and better benefits for those "not employable."

In 1970, the Royal Commission on the Status of Women (1970:325) recommended that a "guaranteed annual [basic] income be paid by the federal government to the heads of all one-parent families with dependent children." In 1973, a minority federal Liberal government initiated a social security review, which argued for a two-tiered approach to social assistance, including a basic income plan for those who could not work and an income supplement for the working poor (Lalonde, 1973).

From 1974 to 1979 a basic income pilot project called Mincome was carried out in Dauphin, Manitoba under the auspices of the provincial and federal governments. This quasi-experimental project was organized as a "saturation site" where everyone in the community was eligible for a negative income tax top-up to their income. According to Evelyn Forget (2012:96) the experiment yielded some "community-level effects" that were impossible to gauge in other basic income experiments during this era in Winnipeg and certain cities in the US that only targeted selected individuals in a given area. During the Dauphin pilot there were higher rates of adolescents remaining enrolled in high school and a decline in hospitalization rates for accidents and injuries and for mental health issues. Additionally, Forget (2012) found the Mincome benefit had no effect on family dissolution and divorce rates, nor on withdrawal of primary income earners from the labour market. There was some withdrawal of

secondary and tertiary labour supply, but Forget (2012:96) sees much of this as "a positive outcome" – married women used the BI benefit to "finance maternity leaves" and adolescents used it "to stay in school longer".

On a broader level, Derek Hum and Wayne Simpson (1991) undertook a detailed and careful analysis of data from the Mincome project and the other pilots in North America. The authors found that "the worry … that cash transfers would diminish work incentives" was "largely misplaced" (91). Hum and Simpson (1991:91) also found that, compared to the approach of subsidizing wages, basic income is a superior approach.

> Since the guaranteed annual [basic] income scheme is much better at delivering income supplementation to all those in need, not only low wage workers, the case for a guaranteed annual [basic] income to eliminate poverty is strengthened by our findings.

In 1982, a Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Commission) recommended a version of a basic income called the "universal income security program" (UISP). This benefit was set at a very low level and involved the elimination of other income security measures such as unemployment insurance and old age security. Due to its 'scorched earth' approach to reforming income security, the UISP proposal of the Macdonald Commission was strongly opposed by the labor movement and other groups (Haddow 1994).

Discussion of basic income seemed to again fade from Canadian social policy debates in the late 1980s and for most of the 1990s. But interest began to increase again in the 2000s, sparked in part by the publication of two books in Canada on the topic of basic income (Lerner et al. 1999; Blais 2002).

During the minority Parliament of 2008–2011, calls to consider moving towards a basic income model came from two parliamentary committees. The Senate's Sub-Committee on Cities recommended careful study of "a basic annual income based on a negative income tax" and implementation of "a basic income guarantee at or above the LICO [Low Income Cut Off] for people with severe disabilities" (recommendations 5 and 53 in Senate of Canada 2009). The House of Commons (2010) Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities also made a recommendation to the Conservative government that it should "create a federal basic income program for persons with disabilities" (Recommendation 4.2.5).

Perhaps the most prominent basic income advocate on the recent political scene in Ottawa has been former Conservative Senator Hugh Segal. In recent years, he has publicly and repeatedly proposed the introduction of a federally initiated basic income (Segal 2008), arguing that Canada has the money to ensure that every citizen can live with dignity. According to Hugh Segal, "when we look at the billions we now spend on social policy, it's clear we have the capacity" (Monsebratten 2007).

Another prominent individual voice in favour of basic income has been that of the senior vice-president and chief economist of the Conference Board of Canada, Glen Hodgson. He argues that "there is no better time than right now to heat up the [basic income] debate" (Hodgson 2011). He goes on to state that a system of basic annual income could be constructed through "cooperative federalism" and that "since social assistance and publicly funded health care are delivered by the provinces, careful coordination would be required between the federal government and the provinces to make a [basic income] work" (Hodgson 2011).

Among federal political parties, the party with the strongest commitment to basic income is the Green Party. Its platform commits to a "guaranteed livable [basic] income" based on negative income tax (Green Party of Canada 2011: 80). The Liberal Party of Canada (2014) passed two resolutions at its 2014 policy convention in support of basic income. Resolution No. 97 (coming from the National Women's Liberal Commission) called for "a federal pilot of a basic income supplement" to assist working age Canadians, along the lines of the National Child Benefit and the Guaranteed Income Supplement for seniors. Resolution No. 100 (from PEI Liberals) asked that

> a Federal Liberal Government work with the provinces and territories to design and implement a Basic Annual Income in such a way that differences are taken into consideration under the existing Canada Social Transfer System.

The federal New Democrats have shied away from offering any support for basic income, other than a suggestion in 2012 by unsuccessful federal leadership candidate Paul Dewar that the party should "take the first step toward creation of a guaranteed annual [basic] income" (Bryden 2012). This faint support contrasts with earlier positions on the question – in 1985 the federal NDP passed a convention resolution in support of basic income (Whitehorn 1985).

At the provincial level in Manitoba, there is no mention of basic income to be currently found on the provincial NDP website. Looking

back, of course, the support of the Manitoba NDP government under then Premier Ed Schreyer was essential for the launch of the Dauphin Mincome project in the late 1970s. But by 2012 the Manitoba NDP government was distancing itself from basic income in response to rising community interest in this approach (Welch 2012). In contrast, the current NDP leader in Prince Edward Island, Mike Redmond, has stated that he is supportive of a proposal that that province serve as the site of a basic income pilot project (Canadian Broadcasting Corporation 2013).

During this same period, in October 2013, Brian Pallister as Leader of the Official Opposition in Manitoba criticized the provincial government's anti-poverty measures, and stated that he was "open to more radical solutions, such as a guaranteed annual [basic] income" (Welch 2013), although he provided no specifics.

Media interest has recently been picking up about basic income as a topic of interest. Wayne Simpson was featured in a question and answer piece on basic income in the *Globe and Mail* (McKenna 2014). More generally, around the country, there has been a "BIG Push" campaign (n.d.) underway under the auspices of the Basic Income Canada Network (BICN) (BIEN n.d.). The goal of BIG Push is to increase interest in and support for basic income among a variety of organizations and constituencies. BICN also hosted the 2014 International Congress of the Basic Income Earth Network which attracted a large pan-Canadian and international group of participants, and substantial attention from the Anglophone and Francophone media (Shingler 2014a, 2014b).

IV. THE EXISTING ARCHITECTURE

In fact, we already have partial and targeted BI mechanisms in the Canadian income security system. The federal government's Old Age Security is a universal, but taxable, demogrant. Other federal benefits paid out in a NIT format are the Guaranteed Income Supplement for seniors, the Canadian Child Tax Benefit and the National Children's Benefit Supplement, the GST/HST credit, and the Working Income Tax Benefit. At the provincial level in Manitoba, benefits that are income-tested and resemble a negative income tax include the Manitoba Child Benefit, the Manitoba Prenatal Benefit, 55 Plus, and the Education Property Tax Credit. In addition, there are a range of income tested subsidies and partial subsidies for particular goods and services, including rent (Rentaid), some legal services (Legal Aid

Manitoba), prescribed medications (Pharmacare) and licensed child care (Child Care Subsidy).

A. Federal Income Security Programs

Canada's major income security programs at the federal level are Employment Insurance (EI) and the Canada Pension Plan (CPP). Despite its contradictory name, EI pays benefits to those who are *unemployed* because they have lost their job "through no fault of their own," as well as to those suffering short term illnesses or disabilities and to new parents taking parental leave. CPP is the national contributory seniors' pension scheme, and also pays disability and spousal/child survivor benefits. Employers as well as employees contribute to EI and CPP. Of course these social insurance programs do not follow the basic income model, since benefits are limited to those who have contributed and (in the case of EI) are subject to complex sets of rules governing eligibility and the level and duration of benefits. But in the context of our existing income assistance architecture in Canada, the EI and CPP programs are important sources of income security for many Canadians.

Canada has one benefit that is still paid out as a "demogrant" (on a universal basis) to persons in a particular category – those aged 65 years of age and over. The Old Age Security (OAS) is available universally, but since 1989 it has been taxable income, and is subject to a recovery tax for high income earners. The basic OAS benefit (June 2014 rate) is $552.00 per month. Seniors lacking other sources of income can also apply for an income-tested Guaranteed Income Supplement (GIS), which works as a negative income tax. The maximum GIS rates (for those with very low incomes) are $748.00 per month for single seniors or $496.00 per month ($992.00 for a couple) for seniors who are married or in common-law relationships. The federal government made a major change to OAS/GIS in its 2012 budget, when it announced that "the age of eligibility for Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) will gradually increase from 65 to 67 over six years, starting in April 2023" (Service Canada n.d.(d)).

Canada has a multi-layered set of income-tested benefits for children. The major components are the income-tested Canada Child Tax Benefit (CCTB) that is linked to the more targeted National Children's Benefit Supplement (NCBS) for low income families. The CCTB is "a tax-free monthly payment made to eligible families to help

them with the cost of raising children under age 18" (Service Canada, n.d.(a)). The amount of the CCTB benefit is $1,433.00 per child per year, with a top-up of $100 per year for the third and each additional child in the family. In Manitoba, the full NCBS of $2,221 a year for the first child (and slightly less for the second and third child) goes only to those families whose net income is less than $25,356. A partial NCBS is paid on a gradually reducing basis to families with net income levels between $25,356 and $43,561 (Canada Revenue Agency n.d.(d)).

Another current child benefit (that was brought in by the Harper Conservative government shortly after its election in 2006) is the Universal Child Care Benefit (UCCB). This program "issues a taxable $100 monthly payment to families for each child under the age of six" (Service Canada, n.d.(b)). Despite the program's name, there is no requirement that parents spend this money on child care, and, in fact, the amount of the benefit does not come close to covering the actual cost of child care in a publicly funded, licensed centre. Finally, there is a Child Disability Benefit (CDB), "a tax-free benefit for families who care for a child under age 18 with a severe and prolonged impairment in mental or physical functions" (Canada Revenue Agency n.d. (a)).

Other cash benefits at the federal level include the Working Income Tax Benefit (WITB) and the GST/HST Credit. The WITB (Canada Revenue Agency, n.d. (b)) is a small refundable tax credit for those in the labour force who make very little money. The maximum annual WITB benefits for 2013 were $989.00 for a single person and $1,797.00 for a couple, with an additional $495.00 per person if the claimant was disabled. The maximum WITB is paid only to single persons whose working income is between $6,992.00 and $11,332.00, and to families whose working income is between $10,252.00 and $15,649.00 (2014 benchmarks). Benefits are gradually reduced above these "base thresholds" of $11,332.00 for singles and $15,649.00 for families, disappearing completely at $17,986.00 in the case of singles and $27,736.00 in the case of families.

The GST/HST Credit is a program designed to lessen the financial burden that low income people carry in paying sales taxes levied by the provincial and federal governments. Sales tax is a regressive 'flat' tax – everyone pays at the same rate, regardless of their level of income. So, the GST/HST Credit makes partial recompense to low income people for their disproportionate burden in paying sales tax. Similar to WITB, benefit amounts of GST/HST credit are very modest (no more $409.00 per year for unmarried adults with no children, with an upper limit of $1,100.00 per year for families with four children, based on the 2013

tax year). Benefits are phased out as income rises, and disappear at $42,000.00 for unmarried persons with no children and at $56,000.00 for families with four children (Canada Revenue Agency n.d. (c)). Eligibility for the GST/HST credit is based on household rather than individual income, and any UCCB benefit received by the household is deducted dollar for dollar from the GST/HST credit.

These federal programs, for which working-age (18 to 64) people are eligible, are very limited in their size and scope. The benefits' levels are very low and the income eligibility tests are very stringent. However, if we take a 'glass half full' approach, it can be argued that a combination of the GST/HST credit and the WITB could be the base upon which to build a more seamless and more generous NIT version of basic income at the federal level for working-age people in Canada. Our focus in this paper is on provincial benefits in Manitoba, but the case for a federal NIT scheme along this line has been made recently by the Canadian Association of Social Workers (Drover, Moscovitch and Mulvale 2014).

B. Provincial Partial Basic Income Mechanisms

Our focus here is on benefits which can be allocated at the discretion of the beneficiary (one of the defining elements of a basic income), rather than on the income-tested subsidies, such as those paid to low income Manitobans to cover the cost of prescriptions, child care, rent or legal services.

The largest income support program in Manitoba is not a partial basic income guarantee at all, but a residual social assistance (SA) program. "Employment and Income Assistance (EIA) is an income support program of last resort open to all residents of Manitoba not living on an Indian Reserve, regardless of marital status. Eligibility for EIA is based on a needs test in which individual or family income is compared to the basic needs budget set by the program according to the number and ages of children and the marital and disability status of adults" (Stevens, Simpson, and Frankel 2011:166). The statutory authority for this program is contained in the Manitoba Assistance Act (C.C.S.M. c. A150) and the estimated expenditures for benefits for the 2014-2015 fiscal year are $436,479,000.00, inclusive of health benefits and benefits for persons with disabilities (Government of Manitoba 2014b). Generally, recipients of EIA are not eligible for the income supplements described below, with some exceptions.

Based on a 2008 complaint from 12 community organizations about the implementation and administration of the Employment and Income

Assistance Program, the Manitoba Ombudsman (2010) has made 68 recommendations for needed improvements. The general point was made that "the program could be improved by adopting a non-categorical system [of eligibility] that analyses the needs of individuals and families and provides benefits in accordance with those needs rather than attempting to fit individuals into one of a number of predetermined categories" (4). It was also recommended that EIA jettison the fallacious bifurcation that the "disabled" cannot work and the "non-disabled" can and must work. The Ombudsman pointed out that "many EIA participants in the disability category can and do work" and that "[t]here are participants in the general assistance category who are not considered 'disabled' but who cannot work and will not be able to work until various circumstances and conditions impeding their employment have been resolved" (4-5). While the Ombudsman was ***not*** calling for the replacement of EIA with a basic income scheme, she ***was*** recommending that social assistance become less categorical and conditional in its approach to providing financial support to the people of Manitoba. In other words, she was advocating that the EIA program operate a bit more like a basic income program.

Harvey Stevens (2012) has demonstrated that EIA in its current form has not been adequate to reduce the rate and depth poverty for single, non-elderly adults and recommends more generous benefits, enhanced earning supplements or tax credits. Similarly, Make Poverty History Manitoba (n.d.) has called for increased EIA benefits so that Manitoba's rates rank higher in comparison with other provinces.

The Education Property Tax Credit is designed to compensate resident home owners and renters for property taxes levied by local school boards to support primary, intermediate and secondary education (Manitoba Finance n.d.)). It is offered under the authority of the Income Tax Act (C.C.S.M. c. I10). A basic credit of $700.00 was available in 2013 for those who paid more than $250.00 in property tax or the equivalent in rent. For non-dependent seniors over 65 an additional amount is available for those with incomes of $40,000.00 or less. The maximum additional credit was $1,100.00 in 2013, declining as income increases. The estimated cost of basic and additional credits for 2014-2015 is $346,473,000.00 (Government of Manitoba 2014b).

As of 2014 (Government of Manitoba 2014a) residents over 65 (or who have spouses or common law partners over 65) who own their principal residences in the province will be eligible for a rebate of up to $235 based on the school division special levy paid minus property tax credits already received. This rebate is not income tested.

55 Plus is an income supplement for very low income Manitobans who are 55 years of age or older. It is offered under the authority of the Social Services Administration Act (C.C.S.M. c. S165). There are two components: a senior component for recipients of federal Old Age Security benefits (Social Services Administration Act, C.C.S.M. c. S165, Income Supplement for Persons Eligible for Old Age Security Benefits, (55 PLUS) Regulation 65/90) and a junior component for those not eligible for federal Old Age Security benefits (Social Services Administration Act, C.C.S.M. c. S165, Income Supplement for Persons Not Eligible for Old Age Security Benefits, (55 PLUS) Regulation 64/90). Under the senior component, if a single, widowed or divorced beneficiary had an income (as declared on their federal GIS application income for the previous taxation year) at or near zero, s/he would receive the maximum quarterly 55 Plus benefit of $161.80. This benefit gradually diminishes as income rises and disappears at $840.00 of declared income. In the case of two married or common law beneficiaries, both receiving Old Age Security benefits, their joint income as declared on their GIS application would have to be at or near zero to receive maximum quarterly benefit of $174.00, with the benefit disappearing at an income level of $1,824.00.

In the junior component, eligibility is based on net family income in the previous taxation year. Single beneficiaries with incomes up to $8,930.40 receive maximum annual benefits of $647.20 and the minimum annual benefit of $55.60 can be received by those whose incomes do not exceed $9,746.40. Married or common law beneficiaries with net family incomes not exceeding $14,479.20 receive the maximum annual benefit of $695.60 each. The lowest annual benefit of $52.00 each is received by those whose net family income does not exceed $16,255.20.

The estimated cost of 55 Plus benefits for the 2014-2015 fiscal year is $4,932,000.00 (Government of Manitoba 2014b). In addition, School Tax Assistance for Tenants 55 Plus (STAT 55+) provides a maximum $175.00 rebate for renters not in non-profit housing, with net family incomes of less than $23,800.00 (Jobs and the Economy, n.d.). The estimated cost of Stat 55+ in 2014-2015 is $690,000.00 (Government of Manitoba 2014b).

The Manitoba Child Benefit is an income supplement for families with children who are in receipt of the Canada Child Tax Credit and are not First Nation families living on reserves (Social Services Administration Act, C.C.S.M. c. S165, Manitoba Child Benefit Regulation 85/2008). The maximum annual benefit of $420.00 per

child is paid to families with an adjusted income of $15,000 as declared in applying for the Canadian Child Tax Benefit (Jobs and the Economy n.d.(a)). It is delivered under the authority of the Social Services Administration Act (C.C.S.M. c. S165). For families with adjusted incomes over $15,000.00, the benefit is reduced by a factor of the amount over $15,000.00 multiplied by 7.73% for families with one child, 15.46% for families with two children and 23.8% for families with three or more children. This results in eligibility for benefits disappearing beyond an adjusted family income of $20,435.00 for families with up to three children, $22,242.00 for families with four children, $24,052.00 for families with five children, and $25,864.00 for families with six children. The estimated expenditure for the Manitoba Child Benefit for 2014-2015 is $4,154,000.00 (Government of Manitoba 2014b).

The Manitoba Prenatal Benefit is an income supplement payable to resident women between fourteen weeks of pregnancy and the birth of the child or other outcome of the pregnancy (Social Services Administration Act, C.C.S.M. c. S165, Manitoba Prenatal Benefit Regulation 89/2001). The authority for its delivery is the Social Services Administration Act (C.C.S.M. c. S165). Women receiving Employment and Income Assistance are eligible, but those incarcerated in correctional institutions are not. Women whose annual net family incomes do not exceed $21,744.00 (including recipients of Employment and Income Assistance) receive maximum monthly benefits of $81.41. The benefit is reduced as income rises and disappears at an income level of $32,000.00 per year. In 2012-2013 the reported cost of the benefit was $1,756,544.83 (Government of Manitoba 2013).

From the perspective of an evolutionary approach toward a full basic income in Manitoba, it is clear that much of the architecture is in place, even if the buildings are not large enough. It would also be useful to consider internal rationalization and simplification of the various children's benefits; as well as the various seniors' benefits to enhance administrative efficiency and beneficiary comprehension. The main missing element is a nascent basic income mechanism for adults between 18 and 55 years of age. Beyond residual social assistance, which is highly conditional, at the provincial level there is only the possibility of receiving support related to children and partial compensation from the provincial government for property taxes levied by school boards. At the federal level, only the Working Income Tax Benefit is available, which supports only those with a threshold level of employment income to a limited degree (e.g. a benefit of $998.00 for

those with annual income from work of only $6,992.00 in 2014) (Canada Revenue Agency, n.d.(e)).

It is also noteworthy that the Manitoba Child Benefit and the senior component of 55 Plus top up benefits delivered by the federal government. Therefore, inter-governmental coordination would be useful, but this is difficult with the current federal government that is practicing a more traditional view of federalism based upon jurisdictional separation (Banting 2008).

Nevertheless, there are significant limitations and risks related to the province moving toward a basic income without meaningful federal government participation. The primary limitation is financial in that use of the federal spending power has been instrumental in the federal government's efforts "to help provincial governments carry out their constitutional responsibilities for health care, postsecondary education, social assistance and social services" since the early twentieth century (Wood 2013:3). Without this contribution the Canadian welfare state would have been far less developed. Since 1994 absolute decreases in federal funding and containment on growth in block grants have led to deterioration in provincial programs (Rice and Prince, 2013). It is difficult to imagine an adequate basic income scheme being established at the provincial level without federal support. This is why the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities of the House of Commons (2010) called for a new federal transfer to help support provincial and territorial poverty reduction efforts. The Canadian Association of Social Workers (Drover, Moscovitch, and Mulvale 2014:21) has also called for federal leadership and enhanced financial support in the context of a return to cooperative federalism in developing social program initiatives at the provincial level:

> The federal government would have to foster (and to some extent cost share) the provision of a more comprehensive income security system as well as health services and social program supports at the provincial level that would address the longer-term and systemic roots of poverty.

Beyond this, in the absence of agreements to the contrary, introduction of provincial basic income initiatives may provide a perverse incentive to the federal government to reduce or constrain expenditures on income support programs which it directly delivers. In the larger context, provincial initiatives may also syphon off pressure for new federal initiatives in poverty reduction.

Finally, it is clear that the benefit levels of these partial basic income programs fall far below the guarantee necessary to end poverty.

For example, the After Tax Low Income Measure threshold for a household of one was $19,930.00 in 2011 (Statistics Canada 2013), but single persons with net incomes up to $8,930.40 receive maximum annual benefits of only $647.20 in the junior component of 55 Plus. After receiving the benefit only 48.1% of this poverty threshold is achieved for individuals in this situation.

V. TOWARD A BASIC INCOME FOR MANITOBA: AN EVOLUTIONARY APPROACH

This section spells out the broad outlines of a gradualist approach to achieving a basic income for Manitoba. As an alternative to a comprehensive proposal *de novo*, this approach attempts to erode resistance by demonstrating the concept, at first through small changes which avoid the most controversial issues, so that the current policy approach will eventually be displaced in favour of a basic income approach (Offe 2001). Ken Battle and Sherri Torjman (2000:2) put it this way:

> A big bang, one-size-for-all guaranteed [basic] income plan is not the way to go. Instead, the federal and provincial governments should launch a national project to reform existing programs to better achieve the goal of an adequate basic income. This task, though monumental, is not impossible because it already has begun.

The difficulties of federal-provincial cooperation in the current context have already been noted. An evolutionary approach at the provincial level has been adopted in Quebec. Le Comité consultatif de lutte contre la pauvreté et l'exclusion sociale, the consultative committee appointed under Bill 112, known as An Act to Combat Poverty and Social Exclusion (An Act to Combat Poverty and Social Exclusion, R.S.Q., chapter L-7, chapter 61; Clavet, Duclos, and Lacroix 2013), has recommended successive small steps toward a basic income to end poverty.

Although this evolutionary approach is designed to mitigate the risk of rejection of a comprehensive proposal, it does generate the potential for some other risks. First, as Karl Widerquist (2001:1024) has noted:

> Many of the steps toward BI have poverty traps, work disincentives, or administrative costs that basic income does not have. If we adopt a gradualist policy, people could see these shortcomings as a reason to move further toward a basic income or they could see them as evidence that we should stop moving in that direction.

Therefore, careful design of evolutionary steps must attend to avoiding or decreasing perverse disincentives. This design should also include a communication strategy which points out the disincentives and high administrative costs of the income support programs being replaced, and which demonstrates the improved efficiency of the new basic income.

Karl Widerquist and Michael Howard (2012:9) also note the inherent difficulty of gradual and modest program changes if our goal is to develop a supportive public constituency for their continuation. Policies that help only a few people in a major way or help many people in a barely noticeable way are constantly in political danger. To limit this risk, advocates of basic income must place incremental steps in the context of the ultimate goal.

Beyond this, another inherent risk related to the gradualist strategy simply involves the length of time it takes to unfold. This increases the risk that changes in the political and/or economic environment may compromise progress. The longer the path to the ultimate policy goal, the more opportunity for threats to occur.

An evolutionary approach also requires that certain conditions be in place. First, gradual program changes must be of sufficient magnitude to yield measureable effects in the short to medium term. This is because the logic of the approach involves demonstration and learning to garner support and erode opposition. Second, this demonstration requires an adequate evaluation plan. Given the limited changes which will be implemented at any point in time, it is likely that population wide effects may be small and a more sophisticated quasi-experimental design may be required. Third, economic evaluation of the program changes should assess the economic value of health, education and employment benefits (Forget 2011, 2012) and not just costs. Fourth, improving personal and household incomes is not the only element required for poverty reduction. Adequate public services, including child care, education and training, public and non-profit housing, and health care are also required. Therefore, increased government expenditure to move toward a basic income cannot be financed through decreases in expenditure on these required public services. Indeed, expenditures may have to increase on these services in order for a basic income to yield effects. For example, enhanced educational outcomes may be compromised if adequate support for post-secondary education is unavailable or if childcare spaces remain scarce. Fifth, income-tested subsidies should remain available for such variable needs as prescription medication, child care and legal services.

Finally, at least a small last resort residual social assistance program must remain in place to assist with emergency needs and abrupt decreases in income.

Defining the specific criterion of poverty is essential for establishing the amount of the basic income, if the central purpose of a basic income is poverty reduction. Definition is complicated by two factors. First, the concept of basic income includes the idea of individualized payments high enough to meet individual basic needs, but poverty criteria take account of economies of scale within the family or household unit (Widerquist et al. 2013). Therefore, if based on individual basic needs, the collective guarantee will be above what is needed to alleviate the poverty of the family or household. Since we are focusing on poverty reduction, we advocate a guarantee which varies by household size and is based on a poverty criterion. Indeed, Sanzo and Pinilla (2004) argue that a basic income must vary by household size in order to adequately meet basic needs and not unfairly advantage those who benefit from economies of scale in large households. This does not obviate the possibility that individual payments can go to each adult member of the family or household.

The second complicating factor is that Canada has no official poverty measure and Statistics Canada produces three criteria based on differing concepts and units as described above. We advocate using the relative Low Income Measure because such measures correlate more strongly with health and developmental outcomes (Raphael 2011; Wilkinson 1997; Williamson, and Reutter 1999).

The evolution from the current system of nascent basic income mechanisms might be accomplished in five steps. These need not be sequential. If windows of opportunity are open wider (Kingdon 2011), steps might overlap, or even be initiated simultaneously.

The first step would involve increasing the *55* Plus benefit in successive iterations so that the eligible person is brought up to the after-tax Low Income Measure threshold for herself or himself as a percentage of the threshold for the household size in which she or he lives. This should be coordinated with liberalizing the needs test so that seniors living in households up to the Low Income Measure threshold become eligible. Given the gradualist strategy, it is useful to begin with seniors because they are a powerful political constituency which is generally seen as deserving by the public. They are a large and growing proportion of the population, and they exhibit higher voting rates than younger adults (Uppal, and LaRochelle-Cote 2012). Studies of public attitudes toward the welfare state have found broad support

for policies supporting seniors, in Canada and elsewhere (Blekesaune, and Quadagno 2003). Complexities of changes in work effort are avoided because social norms expect diminished labour from these beneficiaries, especially those over 65. However, it should be noted that persons over 65 had the lowest poverty rate of any age group in Manitoba in 2011 at 10.6% (Statistics Canada 2014b).

The rate of benefit increase and needs test liberalization will require careful judgement. It must be fast enough to yield measureable change in health and other outcomes, but not so fast that it will attract strong resistance.

The attractiveness of seniors as beneficiaries is evidenced by the property tax rebate to come into force in 2014 as described above. A window of opportunity may also be open because of recent concerns related to increasing poverty among seniors in Canada (OECD 2013).

Implementation of this step would require changing the needs test for eligibility to a household basis, as this is the unit for which the Low Income Measure is calculated. In addition, the evaluation should take into account changes in personal care home admission, consumption of hospital services and use of medication. However, this improvement to 55 Plus can be partially financed through savings from Employment and Income Assistance.

The second step would involve a similar approach with the Manitoba Child Benefit. Children are also seen as deserving and not subject to norms regarding work. They also exhibited the highest 2011 poverty rate of any age group, 22.4% (Statistics Canada 2014b). However, some will be concerned about changes in work behaviour by the children's parents or other caretakers. Similar considerations as described for the first step would be relevant. The evaluation should include assessment of improvement on developmental, health and educational outcomes.

The third step would involve removing working age adults with disabilities from Employment and Income Assistance and establishing a program based upon a basic income guarantee for them. It could be of similar form as 55 Plus, and would have to continue to be accompanied by programs to provide disability supports. The minimum full benefit should be established as greater than the current Employment and Income Assistance disability benefit and incrementally brought to the appropriate Low Income Measure threshold.

This is similar to a proposal made by the Caledon Institute (Battle, Mendelson, and Torjman 2006) in which persons with disabilities are removed from provincial social assistance programs and served by a

federal program without work requirements. British Columbia, Alberta and Ontario (Kneebone, and Grynishak 2011) and most recently, Saskatchewan (Saskatchewan Ministry of Social Services n.d.) already have income support programs for adults with disabilities separate from the general income support program for adults.Persons with disabilities are seen as deserving by the public, and social norms (rightly or wrongly) limit work requirements placed upon them.

The fourth step would involve extending what is now the 55 Plus junior component to all non-disabled adults 18 years and older. Adults between 18 and 64 years had a 2011 poverty rate of 11.8% (Statistics Canada 2014b). Employment and Income Assistance can then be terminated and replaced by a small last resort needs-tested income support program to provide assistance in the case of emergencies and relatively sudden changes in income. The extended 55 Plus program (suitably renamed) should be accompanied by a capacity to assess barriers to earning and maintaining as high a quality of life as possible, and to apply resources to assist in eliminating or lowering these barriers.

These four steps could set the stage for a fifth step, implementation of a universal basic income. This could begin by amalgamating the programs discussed in steps one to four into a single program structure. Beyond this, significant issues must be resolved in universalizing eligibility in an affordable manner. The first involves selection between a demogrant and negative income tax delivery mechanism. The latter is superior for our purposes for a number of reasons. It can be designed to more effectively reduce poverty than a demogrant (Tondani 2009), and it requires lower initial expenditures. Even if funds are re-captured by the personal income taxation system, a demogrant requires increased initial outlays, which will result in the appearance of greater growth in public expenditures. This may create political vulnerabilities for the sponsoring government. In addition, an income taxation system which has become less progressive may re-capture the entire or part of the demogrant less efficiently (Fortin et al. 2012).

A second issue is that federal cooperation would be required in modifying the income taxation system, and if such cooperation was not forthcoming a separate income reporting and delivery system would be required at a provincial level. The latter scenario would significantly increase administrative costs. However, the major issue as described above relates to affordability, and the potential for the federal government to share the cost.

A third issue involves decisions related to whether and how eligibility for a universal basic income would be broader than eligibility for the base programs involved in stages one to four. This essentially requires operationalizing which groups have membership in the Manitoba political community. Two groups are implicated. The first is registered Indians living on reserves, who are ineligible for Employment and Income Assistance and the Manitoba Child Benefit. In the case of the former a parallel, if not completely equivalent, program is administered by the Government of Canada. Given federal jurisdictional responsibility for registered Indians on reserve, the province is unlikely to include them in a basic income initiative in the absence of federal financial participation.

The second implicated group is defined by citizenship and residency. Eligibility for the senior component of 55 plus is based upon eligibility for the Guaranteed Income Supplement, which, in turn, is based on eligibility for Old Age Security. Eligibility for Old Age Security is limited to Canadian citizens or legal residents who have lived in Canada for at least ten years since the age of 18 (Service Canada n.d.(c)). Similarly, eligibility for the Manitoba Children's Benefit is based on eligibility for the Canadian Child Tax Benefit, which is limited to citizens, permanent residents, refugees and temporary residents of more than eighteen months. Extension of eligibility beyond the federal programs may result in higher cost to Manitoba for recipients without federal support.

VI. FUNDING

Identifying adequate sources of financial support for a basic income guarantee, and a workable strategy for evolution toward it, will be important if the goals are to garner public support and establish a fiscally sustainable program. The initiative can be partially funded through existing resources dedicated to income support programs, and hopefully will yield administrative efficiencies. Beyond this, a dedicated tax or levy should be avoided as it might generate long-standing self-interested opposition (Widerquist, and Howard 2012).

One innovative idea flows from experience in jurisdictions where publicly owned resources (such as oil, gas, minerals, or hydroelectric power) generate revenues for government that can be used to finance a basic income guarantee. Paying a basic income on such a basis can be seen as a means for every resident to benefit from common ownership of public resources (Flomenhoft 2012), rather than as a handout from

the state. This is how it has apparently worked out in Alaska, where the state's Permanent Fund Dividend is financed from taxes on oil production (Widerquist, and Howard 2012).

In this regard, we have a unique opportunity in Manitoba, where Manitoba Hydro, a Crown corporation, is responsible for the development and sale of electricity. Its 2012-2013 annual report indicates retained earnings of $2,542,000,000.00, although there is a need to invest in replacing infrastructure (Manitoba Hydro Electric Board 2014). Nevertheless, might it be possible for the electricity pricing structure, especially sales to corporations and jurisdictions outside of Manitoba, to be set to partially or fully finance a basic income guarantee?

VII. CONCLUSION

We do not pretend to have provided a comprehensive plan for the evolutionary road to a full basic income guarantee; but we have sketched out the main outlines of an income enhancement proposal for support and inclusion for all Manitobans. These outlines can form the basis for detailed planning, including cost and benefit estimation. Although there are some hopeful signs as described above, it is clear that effective policy advocacy is required to begin the evolution toward a basic income for Manitobans. A target for such advocacy may be the upcoming provincial election, which might be fashioned by advocates into a window of opportunity.

John Kingdon's (2011) three streams model of agenda setting and selection among alternatives in public policymaking provides a useful framework for describing the advocacy task required. Kingdon (2011) describes a policy window as an opportunity which occurs when three streams or processes intersect. The three streams are the problem stream (which relates to the recognition of a phenomenon as a problem which must be managed), the solutions stream (which relates to the development and ascendancy of policy proposals for management of the problem) and the politics stream (which involves changes in the political environment).

The phenomenon of poverty is already on the agenda as a problem for policy action. Not only has the Manitoba government developed a poverty reduction strategy as described above, but the United Way of Winnipeg has developed a Poverty Reduction Council (Winnipeg Poverty Reduction Council n.d.). The key advocacy task is to raise the prominence of the poverty problem so that it is sufficiently high on the

agenda to require attention. Basic income is represented in the solutions stream in at least a limited manner, through media attention to Mincome, the comments of the provincial leader of the opposition and an emerging national conversation about the basic income model. The Manitoba Ombudsman's (Manitoba Ombudsman 2010) report described above also has raised questions about categorical and conditional income support programs.

Therefore, advocates must raise the prominence of basic income as a solution to poverty, perhaps beginning by convincing the local advocacy groups, such as Make Poverty History Manitoba, the Social Planning Council of Winnipeg and the Canadian Centre of Policy Alternatives. Poverty reduction, and to a lesser extent, basic income, have entered the politics stream to some extent, as the government and opposition have staked out positions. The key task for advocates is to influence as many political parties as possible to couple poverty and basic income in their election platforms, by lobbying their key decision makers.

Hopefully, two factors will assist in such advocacy. One is the presence in Manitoba of visible and committed anti-poverty advocates, such as those organizations named above. The second is the pragmatism of the approach we have presented here.

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i The Market Basket Measure began to be collected in 2002

ii Statistics Canada (Statistics Canada, http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=2020802&pattern=202-0801..202-0809&tabMode=dataTab) describes this measure as "the difference between the low income threshold and the family (or household) income, expressed as a percentage of the low income threshold. For those with negative income, the gap ratio is set to 100. As a measure of depth of low income, the statistic takes the form of the median of the gap ratio calculated over the population of individuals below the income line."