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# A History of British Columbia Legal Education

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# **A History of British Columbia Legal Education**

**By W. Wesley Pue**

**University of British Columbia Legal History Papers**

**WP 2000-1 (March, 2000)**

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W. Wesley Pue,  
March, 2000

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# Introduction

## Law School

Law school. Two words, each short, simple, monosyllabic, but together they make a powerful phrase that is packed with myth and cultural meaning.

For many students, law school represents transition from youthful, open-ended intellectual enquiry to career. The brass ring is just within reach. Feelings of self-satisfaction and pride, but also of insecurity and fear of failure colour the experiences of its inmates. Everyone on the outside wants in; everyone inside desperately wants out.

Law school is a place of tremendous intellectual challenge, stimulation, and individual flourishing. Simultaneously, it is a centre of repetitive training, endless boredom, and crushing conformity.

Student chatter swirls about those who have passed on, making the transition to the other side. Some—friends of friends—have gone on to glory: six-figure salaries, offices on the forty-fourth floor, expensive holidays, power, and fame. A premier went to our law school. So did a mayor, a cabinet minister, an important CEO, a former prime minister. Dozens of our predecessors are judges of one sort or another. One sits on the Supreme Court of Canada.

Others, however, have fallen from the highroad. Someone, somewhere—according to the newspaper—is working without a salary, eking out a bare existence on welfare, struggling to maintain self-respect and middle-class respectability. Someone else could not find work at all. Another was disbarred. Yet another was suspended from practice. An exceptionally able woman hit the “glass ceiling”. Many are poorly paid and overworked. Rumours persist of sixty-, eighty-, no, make that hundred-hour work weeks, of personal lives in disarray: ill health, stress, substance abuse, broken relationships, ethical lapses, and alienated kids.

Graduates typically hold both strong memories of law school and less stereotyped views of life beyond. They also often have powerful opinions about law school, legal education, professional socialization, and technical training.

Their memories range wide. So do their opinions of the experience. Many loved it and flourished. Others did not.

But opinions about “law school” are not confined to its inmates past and present. Everyone has something to say about law school, lawyers, and legal education. Novices who somehow escape exposure to these opinions before entering law school soon learn. The social introduction “I’d like you to meet my friend the law student” evokes an altogether different response from any other introduction—“You must be very smart.” “I bet you’re arrogant.” “Wow!” “Gonna be rich, huh?” “Pretty difficult, eh?” “How could you ever defend all those bad guys?” “Law is just for the wealthy you know.” “You seem nice. Don’t let law corrupt you.” “Lawyers are liars.”

The media too have a field day with legal education. Scott Turow’s book *One L: An Inside Account of Life in the First Year at Harvard Law School* and the film *The Paper Chase* rank with *Easy Rider*, *Woodstock*, or *Apocalypse Now* as cultural markers. The humiliation of facing professors who tell students that their “minds are mush” tweaks at insecurities well beyond the university campus. Magazines, newspapers, and other media periodically feature sustained coverage of the internal life of this or that law school. Ideological battles at Harvard, pervasive sexism at one or another faculty, controversial decanal appointments, excessive “political correctness”, homophobia in the academy, and other topics have all received surprisingly extensive media coverage in recent years.

### **What Is Legal Education?**

Legal education is not only about law school, however. Legal education transcends the parochial concerns of the legal profession if only because law is so very much a part of everyday life. All societies are premised on the notion that their citizens share, to a greater or lesser degree, both the values inherent in law and knowledge of the structure of legal rules or procedures that envelop us all. Education in the law is fundamental training in citizenship or membership in a community, as the First Nations of North America believe. Canada’s first legal systems recognize no radical separation of spirituality or morality from law and, for First Nations peoples, an education in the language, rituals, and values of their nation amounts to a fully rounded “legal education” that is integrated entirely within social life.<sup>1</sup>

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<sup>1</sup> I am grateful to Professor James Youngblood Henderson for educating me on these matters.

Although this spirit of integrated legal knowledge is much diminished in Euro-Canadian society, a similar sense that legal education is about something more than merely qualifying individuals to earn a living has a respectable lineage within both the civilian and common-law traditions. Marie Lacoste Gérin-Lajoie, for example, an important legal educator in turn-of-the-century Quebec, directed her work toward women, educating and powerfully influencing the way they thought about themselves and their world. Her writings ultimately affected the development of the formal legal system in important ways. Nicholas Kasirer insightfully argues about her career that “[a]longside the public face of legal education and law reform, involving law professors, law students, lawyers, judges and legislators, there was . . . a private world of law teaching and law reform where women played a central role and in which Marie Gérin-Lajoie thrived”.<sup>2</sup> It is worth keeping in mind that this other sphere of legal education exists, that it is important, and that women, once prohibited entry to the formal legal profession and still often frustrated within it, have historically played a very significant role here.

Even legal education more traditionally defined has not always been directed primarily or even principally to aspiring lawyers. In announcing his new Oxford lectures “On the Laws of England” in 1753, Sir William Blackstone explained that:

This Course is calculated not only for the Use of such Gentlemen of the University, as are more immediately designed for the Profession of the Common Law; but of such others also, as are desirous to be in some Degree acquainted with the Constitution and Polity of their own Country.<sup>3</sup>

The lectures, he announced, would outline the laws of England, “deduce their History; . . . compare them with the Laws of Nature and of other Nations; without entering into practical Niceties, or the minute Distinctions of particular Cases”.<sup>4</sup>

We are no doubt far removed in both time and space from eighteenth century Oxford. In Blackstone’s day every gentleman might expect to be called upon to perform any number of important public legal functions that are now by

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<sup>2</sup> N. Kasirer, "Apostolat juridique: Teaching everyday law in the life of Marie Lacoste Gerin-Lajoie (1867-1945)" (1992) 30 Osgoode Hall L.J. 427 at 431. Marie Lacoste Gerin-Lajoie (1867-1945) wrote *Traite de droit usuel* (Montréal : C.O. Beauchemin et Fils, 1902). Although legal education is often thought to have been an exclusively male sphere in the past, her career serves to remind us of the importance of, as Professor Nicholas Kasirer has found, "a private world of law teaching and law reform where women played a central role".

<sup>3</sup> Advertisement dated June 23, 1753, I am grateful to Dean George Curtis for bringing this to my attention.

<sup>4</sup> *Ibid.*

and large restricted to lawyers. Nonetheless, and perhaps somewhat surprisingly, it is still the case that a good deal of legal knowledge circulates widely in Canadian society. Every school child knows a great deal about ownership (property law), exchange agreements (law of contract), traffic rules, and many aspects of criminal law. All of us are barraged daily with information about law. Newspapers, magazines, electronic bulletin boards, radio, television, and street-corner chats all convey massive amounts of legal information. Almost every article in a major newspaper has significant legal content. Self-help books, computer programmes, and public legal education courses of one sort or another also bring law from the office towers and judicial bench to street level.

More formally, legal education is widely available for many who may never intend to qualify as lawyers. High schools often teach courses in law. College courses for legal workers and training programmes for notaries public or labour arbitrators are widely available to adult learners. At universities, a great number of courses centrally concerned with “law”—sometimes entire degree programmes—are taught to students who may not have the least intention of earning a living from legal practice. Legal history, for example, may be taught as an important part of education in sociology, history, women’s studies, classics, or geography, as well as in law faculties. Constitutional law is a mainstay of offerings in political science, public administration, or history. These courses are only the tip of a jurisprudential iceberg. Economic analysis of law, legal philosophy, the sociology of law, criminology, labour law, First Nations rights, commercial law, feminist legal theory, environmental regulation, tax law, international relations, and many other law-related offerings are found throughout the university curriculum. Although, curiously, Canada does not have any fully integrated law faculty offering undergraduate, professional, and graduate level degrees, several Canadian universities (Calgary, Laurentian, York, and Carleton) offer bachelor’s programmes in legal studies that are not directed toward professional qualification.<sup>5</sup> Concordia and the University of New Brunswick may be about to start similar programmes. Four institutions offer advanced non-professional degrees: Brock University provides a master’s programme in judicial administration, Simon Fraser University and University of Toronto offer advanced degrees in criminology, and Ottawa’s Carleton University teaches an innovative and challenging master’s programme in legal studies.

Even for lawyers, law school is neither the beginning nor the end of formal legal education. Beyond the law faculty, all lawyers are required to undertake both on-the-job training by serving a year of “articles”—or

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<sup>5</sup> W. W. Pue, "Non-professional Legal Studies in Canada" (1988) Focus 2 at 9ff.



apprenticeship—under the direction of an experienced lawyer and to complete a practice-oriented course such as the Law Society of British Columbia’s professional legal training course. Many conscientious lawyers, reluctant to see their minds turn to “mush” or desperate to somehow keep on top of evolving legal knowledge, take an active part in courses or seminars offered through bar associations, continuing legal education programmes, and scholarly associations. Such courses will one day be compulsory for most Canadian lawyers.

It is important to bear in mind the diversity and extent of legal education when approaching the history of “law school” in British Columbia. The many reasons for legal education and the wide variety of sites at which it can be found are too often forgotten, only because a highly structured arrangement of professional credentials has enjoyed some degree of stability for the last half-century and because law school has occupied a very special place within that structure. But we must remain aware that it was not so with our predecessors. The history of legal education in British Columbia does not begin in 1945. It is concerned with more than the development of the modern university law school. Although this book has been published to mark the fiftieth anniversary of the founding of British Columbia’s first university law faculty and its principal focus is the education of aspiring lawyers since 1945, the historical events leading to the creation of the University of British Columbia Faculty of Law (and, later, its sister faculty at the University of Victoria) are an important part of this tale.

While many of us tend to presume that something more or less like the current system of training for the legal profession (undergraduate degree, bachelor of laws, a period of apprenticeship, and Bar admission course) originated in the distant past, nothing could be further from the truth. A university education did not become *de rigueur* for lawyers in any common-law province until the 1920s. The two largest jurisdictions—Ontario and British Columbia—did not fall into line with this evolving national standard until after the Second World War. The fifty years that have lapsed since British Columbia lawyers were first actually required to become educated is but a fleeting moment when measured against the long history of the legal profession. The half-century of university education seems flimsy material indeed from which to fashion professional claims to longstanding traditions of great learning.

Nonetheless, British Columbians need not be apologetic. The conclusion of five decades of university legal learning (in Autumn 1995) marks a record of respectable antiquity by any Canadian or Commonwealth standard, despite our imagined histories of greater grandeur. Anglophiles in our midst would be grossly in error in attributing the relative novelty of university legal education to

either frontier conditions or to the inadequacy of colonials: England has in fact lagged far, far, behind us in the structure of its legal education.

So too has Ontario. The University of Toronto law faculty and “Osgoode Hall Law School” became fully accredited university faculties oriented toward qualification for the legal profession well after the University of British Columbia law faculty was established. As the first Canadian law school opened after the Second World War, the creation of the “Curtis” faculty represents a significant turning point for both British Columbia and for Canadian legal professionalism.

The indigenous origins of formal legal education in the province are noteworthy. The modern University of British Columbia law faculty and its newer sister in Victoria represent the outgrowth of nearly a century of educational development and innovation in the province. Two sources—the university and the legal profession—converged in 1945 to produce the modern law faculty. The resulting sometimes uneasy but always creative union of the worlds of ideas and of practice has characterized legal education in British Columbia ever since.

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# Indentured Labour<sup>6</sup>

## **Ferries, Corduroy, and a Jitney**

Our conditions of work today are very different from those prevailing in turn-of-century British Columbia; advances in transportation and communication make Vancouver a very different place than it once was. In every meaningful way distance was at one time much greater. Legal tasks that today take mere moments might then have occupied an entire day of productive labour. Take the experiences of Leonie (Lalonde) Anderson, for example.

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<sup>6</sup> Sources consulted in preparing this chapter include: A. Watts, "Cariboo Law Student and Other Things" (1980) 38 *The Advocate* 13; A. Watts, interview with Mrs. Maryla Waters, May 10, 1983, conducted as part of "The Aural History Programme, British Columbia Legal History Collection Project" University of Victoria Faculty of Law (hereinafter "Aural History Project"); "Harvey Recollections" received as personal correspondence from The Honorable J.T. Harvey, Oct. 31, 1994; A.B. Russ, "The Law Student in Early British Columbia" (1953) 2 *The Advocate* 77; A. Watts, *History of the Legal Profession in British Columbia 1869-1984* (Vancouver: Law Society of B.C., 1984) at 54; F.H. Zemans, "Articling: a law school perspective" (1988) 22 *Gazette* 382.

Leonie Lalonde articulated in Vancouver in the second decade of the twentieth century and was the first woman to qualify for the British Columbia legal profession entirely within the province.<sup>7</sup> During her qualifying period a strike temporarily closed streetcar service, disrupting commerce and causing considerable inconvenience. Legal work, however, continued:

[O]ne day the firm asked me if I would go to Tsawwassen by way of Ladner, to get a legal document from one of their clients. I said, "Oh, yes, certainly." I thought afterwards, "How do I get there?" and he had hired a jitney to take me, and as far as 16th Avenue the roads were all right, but from 16th Avenue on they were corduroy. That means that the road bed was covered with logs and all the way to the Fraser River on Granville Street I was on this corduroy from Granville to Fraser and then there was a bridge, and then from the other side there was a ferry to Ladner, crossed the island there, and then there was a ferry on the north arm of the Fraser to Ladner. And I was nearly dead by that time. I was shaken over every log. But I got the paper, the processed paper, and had to return the same way. It was terrible. I'll never forget it. Terrible.<sup>8</sup>

This bone-shaking jitney ride was not undertaken by the young Lalonde in the capacity of a messenger or menial servant—the mission was assigned to her as part of her legal education. She was employed by a law firm under a relationship that in time qualified her to practise law. In common with other aspiring lawyers of the day, the predominant part of her training involved work in a law office: every trainee lawyer was required to spend a full five years in legal apprenticeship.<sup>9</sup> Graduates of "some British or Colonial Universal College duly authorized to confer degrees" were allowed to qualify by only three years of servitude, no special or additional allowance being made for anyone who might happen to have a degree in law.<sup>10</sup> Lawyers, then, trained by working in law offices—usually for little remuneration, occasionally entirely without pay. Low pay and long, tedious days were, apparently, taken in stride. Charles Hamilton explained that in the period immediately following the First World War an "honorarium" of ten dollars per month seemed reasonable to him as he articulated in his father's office:

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<sup>7</sup> Leonie (Lalonde) Anderson, interview with Maryla Waters, 1979, "Aural History Project", *supra* note 6 at 1.

<sup>8</sup> *Ibid.* at 41-42.

<sup>9</sup> A.B. Russ, "The Law Student in Early British Columbia" (1953) 2 *The Advocate* 77.

<sup>10</sup> A. Watts, interview with Maryla Waters, *supra*, note 6 at 2. Also, Watts' account of his own legal education in *Advocate*, *supra* note 6.

Of course, in those days, I think it was considered that it was really a privilege to be allowed to learn the trade, as it were, and it was far short of being an apprenticeship, rather than a rendering of services, when you are learning and being taught, and it was a privilege that was given you rather than that you were performing services which you were entitled or expected to be paid for.<sup>11</sup>

Donald Clark Fillmore expressed similar views about his unpaid articles during the Great Depression of the 1930s: “It was a privilege to find someone who had enough space and would take the responsibility of signing you up for articles.”<sup>12</sup>

The tasks befalling articling students were set at the whim of their employers, ranging from repetitive administrative procedures and courier service through to fairly advanced legal work. Much depended on the lawyer to whom a student was articulated.

Some students found adventurous and perhaps not very educational ways to spend their time in training.

## Articles

Law is a practical profession and the historical foundation of professional education is work. For most of its history the legal profession has simply assumed that new lawyers would adequately learn their trade by doing it. Ideally an initial period spent working under the direction of experienced and knowledgeable practitioners would expose the trainee to the mysteries of the lawyer’s art. Over time more or less formal apprenticeships were developed. Lawyers’ guilds came to require service for specified periods of time as what came to be called “articles” developed into the principal mode of qualifying to practise law.

The flavour of professional apprenticeships in British Columbia’s early years is captured in Peter Sibenik’s research on turn-of-the-century legal education in Prairie Canada:

For most of the pre-1921 period, articling was the heart of legal education in the Territories and Alberta. It amounted to a technical training whose efficacy varied from firm to firm. Book learning was something students were

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<sup>11</sup> C. Hamilton, Q.C., interview with R.C. (Tino) DiBella, Feb. 1979. "Aural History Project", *supra* note 6 at 78.

<sup>12</sup> D.C. Fillmore, Q.C., interview with Nigel Taylor and Maryla Waters, March 1984 "Aural History Project", *supra* note 6 at 23-24.

expected to pick up in the after-hours. Like their principals, articling students were fonceurs who engaged in part-time time business activities and restlessly roamed the Territories, province and country in pursuit of new economic activities.<sup>13</sup>

The English legal professions—which provide a profound cultural influence on common-law Canadian lawyers—have in fact long taken great pride in the practical utility of training through apprenticeship. So too, many Canadian lawyers who qualified by articling have thought that much can be said for a system of apprenticeship. Victoria lawyer Robert A. B. Wootton told an interviewer in 1979 that under such a system “you quite clearly, mentally and physically, absorbed your knowledge of the law day by day. We had the advantage of being in the office, seeing and doing what lawyers did and being in court on occasion and having the opportunity to hear some able lawyer address a Judge or to watch the conduct of a case by experts and to see the judge and what his duty was and how he discharged it.” Such a system of training, Wootton believed, produced “very able” lawyers who could “practice law with confidence”.<sup>14</sup>

While many, many supporters of professional training-by-apprenticeship can be found, criticism of the articling process also has a long and distinguished history. Sustained criticism germinated the seeds from which subsequent developments in legal education grew. Sir George Stephen, for example, was a prominent nineteenth century English solicitor who took great pride in his profession. Nevertheless, he criticized the inadequate education through which the “lower” class of his profession gained their credentials:

They are young men who have probably been introduced in early days, at their early boyhood, at the age of 10 or 12 or 13, as soon as they could write, into an attorney’s office, and employed as copying clerks. They pick up a great deal of practical knowledge, more especially a great deal of familiarity with the peculiar business of their employer; they remain in his office for five or six years, or perhaps seven or eight years, and they become of extreme value to him; and then the attorney, with a view to retain them upon a very moderate salary, and probably with a view of ultimately making them partners, to take off the burthen of his business,

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<sup>13</sup> P.M. Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta, 1885-1928" (1990) 13 *Dalhousie L.J.* 419 at 463.

<sup>14</sup> R.A.B. Wootton, interview with Anna F. Wootton and Montague Tyrwhitt-Drake, 1979, "Aural History Project", *supra* note 6 at 21-22.

will article them; and you may say with respect to a man of that sort, that he is suckled and cradled as an attorney.<sup>15</sup>

To similar effect, English poet, classical scholar, barrister, and university law professor Charles Rann Kennedy critically assessed the training of solicitors as follows: “A young man of sixteen, who has been imperfectly educated, is sent to a solicitor’s office to commence the routine of business, before he knows anything of his subject, and when his mind is not sufficiently formed, to undertake the arduous task of teaching himself on right principles.”<sup>16</sup> The outcome was an educational disaster and the *Law Magazine* commented in 1847 that “A student’s education is a thing of shreds and patches. Their minds are a reflex of marginal notes, and a compendium of points of practice. Rarely do we find radical learning, enlarged powers of generalisation, or a group of principles.”<sup>17</sup>

The structures of apprenticeship prevailing at the English Bar (purportedly the more “learned” branch of the divided legal profession) were no better than those of the solicitor’s branch. Odd though it may seem, nineteenth century English barristers qualified principally by dining (yes, eating) in the company of members of the Bar. Lord Campbell succinctly and critically described the system of qualification that had prevailed for the “higher branch” of the English legal profession since the seventeenth century:

All that has been required has been, that the candidate to be called to the Bar should be of fair character; that he should have been a certain number of years upon the books of the Society; that he should have kept a certain number of terms, by eating a certain number of dinners in the Hall each term, and have gone through the form of performing what are still called Exercises, but which consist of a mere farce of a case being stated, and a debate on each side; but the parties being stopped by the time they have read three words of the case, or the argument on either side, the case and the argument being furnished to them by an officer of the Society.<sup>18</sup>

Another distinguished barrister, Lord Brougham, was more dismissive still of what the English Bar called “keeping terms”. This amounted, he said, only to

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<sup>15</sup> As cited in W.W. Pue, “Guild Training versus Professional Education: The Department of Law at Queen's College, Birmingham in the 1850's” (1989) 33 *The American Journal of Legal History* 241 at 248. [“Guild Training”]

<sup>16</sup> *Ibid.* at 272.

<sup>17</sup> *Ibid.* at 251.

<sup>18</sup> *Ibid.* at 254.

“being present at the time grace is said, for a minute or two, a certain number of days in each term”.<sup>19</sup>

To be fair, many nineteenth century English “barristers” would have little need for legal knowledge. It was then common for men of “gentlemanly” pretensions to seek Bar membership for reasons of social status rather than career attainment. Of those who did seriously seek to work at the Bar many, most in fact, subjected themselves to some form of apprenticeship to a special pleader, draftsman, or conveyancer. Typically such arrangements were for periods of two or three years. The great nineteenth century reforming barrister, Lord Brougham, was extremely critical of the ad hoc education that resulted:

In attending his master, the pupil is not taught by interposition of the pleader or draftsman; generally speaking he is left entirely to himself; he sees the precedents; he may copy them or not as he chooses; he sees cases brought to be answered by the pleader, or draftsman, or conveyancer; he sees the answers, and he may obtain information by speaking to his master and discussing the subject; but, generally speaking, he is left very much to himself.<sup>20</sup>

All told it is not surprising that an 1846 Select Committee on Legal Education concluded that there was a “total absence of all provision for legal education in the Inns of Court” (the governing bodies of the barristers’ profession), while the solicitors’ branch was, through apprenticeship, taught matters of “mere manual dexterity”.<sup>21</sup> There was, they concluded, “no Legal Education, worthy of the name . . . to be had” in England.

### **A Profession of Apprentices without Principals**

Common-law Canada, it seems, inherited the bad as well as the good of legal training from England. Proving that history repeats itself, remarkably similar comments were directed toward the articling system as it was employed half a world away the better part of a century later. University of Saskatchewan

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<sup>19</sup> *Ibid.* at 252. For a statement on the merits of the legal profession, see *The Victoria Colonist* (25 June 1922). In that newspaper, M.B. Jackson wrote that “[f]or my part I challenge that there is no body of men or women of finer intelligence, loftier aims for social improvement, of nicer standards of ethics, of stricter discipline over their membership in everything touching professional conduct, in short of greater individual capacity or a higher code of honor. I further challenge that no other classified body in modern history has proven an equal capacity or labored and accomplished so much for democracy than that of the lawyers; that none more altruistic, none more qualified, none more sincere and none so indispensable.”

<sup>20</sup> *Ibid.* at 255.

<sup>21</sup> *Ibid.* at 254-255.



political scientist and lawyer Ira MacKay spoke on the topic of legal education when addressing a general meeting of the Alberta Law Society in 1913:

So long as students are allowed to gather their legal knowledge scrap by scrap in the hundred different offices in which they serve their time, no consensus of legal opinion and honor is possible. The clerks in the offices spend most of their time doing clerical work which they will not do for themselves but which they will require their own clerks to do for them when they themselves begin to practise. The result is a profession of apprentices without principals. These clerks receive absolutely no instruction and scarcely any assistance in their work. If once and again they are delegated to gather law on some matter in litigation they only succeed in gathering information which is wholly one-sided and misleading for purposes of impartial and effective legal advice. The only studying they do is during tired after hours by reading legal text books or hand books, most of which are so condensed and the number of authorities so great and so confusing that thorough study is wholly out of the question. This system may possibly produce collectors, conveyancers, money lenders and real estate dealers but it cannot produce lawyers. Clearly this system is only designed to degrade the profession into the position of a mere stepping stone for purely mercenary ends.<sup>22</sup>

MacKay was clearly a partisan in matters touching on legal education or training for the profession of law. He was a firm and powerful advocate of systematic, formal legal education. If his ringing condemnation of “a profession of apprentices without principals” crosses the line from rhetorical flourish to overstatement, nonetheless, criticism of the articling system has been more or less a constant feature of legal life.<sup>23</sup> Oscar Bass as a British Columbia law student complained to the Benchers of the Law Society of British Columbia in 1900, for example, that it was “manifestly unfair, to say the least, to enrol students and then simply turn them loose, like so many animals in a field, exposed to all sorts of weather, and with no protective means taken to look after their moral or professional standing”.<sup>24</sup> Similar criticisms were reflected in an article in the *Victoria Colonist* in 1909:

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<sup>22</sup> I.A. MacKay, "The Education of a Lawyer" [speech delivered Dec. 1913, to the Third Annual Meeting of the Law Society of Alberta], (1940-42) *Alberta L.Q.* 103 at 110; See also W.W. Pue, "Common Law and Legal Education in Canada's Age of Light, Soap and Water" (1995) 23 *Manitoba L.J.* 654-688.

<sup>23</sup> For criticisms of credentialing practices prior to the establishment of the Vancouver Law Students Society in B.C., see "Quill" - actually Mr. J. Murphy - in *1911 Vancouver Law Students Annual* at 42.

<sup>24</sup> Watts, *supra* note 6 at 54; see also Colonel C.G. Beeston, Q.C., interview with Mrs. Maryla Waters and Mr. J.T.F. Horn, Oct. 24, 1980, "Aural History Project", *supra* note 6 at 3.

Every student experiences to a greater or less degree the difficulty of obtaining a wide outlook over the law, when he pursues his studies only in an office. The barrister to whom he is articled has little time and usually little disposition to interest himself in the young man's studies, and the result is that he is compelled to grope in the dark, his mind often being hopelessly confused by decisions of courts and the opinions of text-book writers, so that when he begins the practice of his profession he has hardly grasped a single legal principle.<sup>25</sup>

Such criticisms are almost certainly overbroad. The private nature of the articling process makes it very difficult to generalize with any degree of confidence, even about articles today. Determining which factors shaped aspiring lawyers in the first half of the twentieth century is much more difficult. Memories fade and health fails, and because the commonplace is taken for granted, it is rarely recorded in writing. So the history of the articling process in early British Columbia is all but lost. The strongest impression gleaned from the few written accounts and oral histories that survive is simply that a tremendous variety of experiences were subsumed under the heading "articles".

Some indication of the flexible, entirely unregulated character of articles in British Columbia that prevailed even as late as the 1930s is indicated by Alfred Watts's recollections of his own articling experience.<sup>26</sup> Upon graduating from the University of British Columbia with a commerce degree in 1932, Watts started the three-year apprenticeship required of him. The activities he pursued upon taking articles with Vancouver lawyer Colonel W. S. Buell reflect a world in which the education of even MacKay's copying clerks or Bass's "animals in a field" would have seemed rigorous and demanding. "After taking out articles," Watts reports, he "went away for four months, (things were rather casual in those days), and took a trip around the world."<sup>27</sup> Beginning a somewhat more orthodox routine upon his return to Colonel Buell's office, Watts found himself distinctly under-employed from November 1932 through to February 1933. Another student had been taken on during his travels, compounding the shortage of legal work that Buell was experiencing as a result of the Great Depression. Apart from "a lot of collections of small claims which were mostly dead turkeys", and some foreclosure-related chambers work ("speaking to the odd

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<sup>25</sup> *The Victoria Colonist*, Mar. 31, 1909 at 4.

<sup>26</sup> Watts (1980) *supra* note 6 at 13.

<sup>27</sup> *Ibid.*; Watts (1983) *supra* note 6, at 2, indicates "in fact I don't remember whether I even turned up to begin with them" [i.e. articles].

thing in chambers and adjourning it or something like that”),<sup>28</sup> Watts found little to do.

Realizing that “there really wasn’t enough to keep both students busy”,<sup>29</sup> Watts arranged to have his articles transferred. His new principal, Ross Tolmie, had himself been called to the Bar only the month before.<sup>30</sup> The two entered into a three-way partnership with Roger Odlum (who was not a lawyer), in a business venture that combined an itinerant general store with a roving law office. They zealously took up their mission of bringing flour, miscellaneous provisions, and law to Cariboo gold miners. A one-and-one-half ton International truck was acquired and loaded with “the required commodities for a general store”, ten drums of gasoline, and a few law books. So equipped, the trio set off along a crude Fraser Canyon trail “for the Cariboo, with no exact destination”. Over the next months Watts’s articling consisted of large doses of truck maintenance, grocery purveying, and lumber hauling. At one point, qualification for his future legal career was even advanced by assisting Percy Wilson, who happened to be a lawyer, in Wilson’s film developing business.<sup>31</sup> There is remarkably little record of either mentoring by his principal or independent study of law during this phase of Watts’s articles. He reports:

There were examinations coming up in June down town and somehow the necessary knowledge had to be acquired. It would be nice to tell of the long and helpful discussions with my principal on the finer points of the law of contract, his leadership in demonstrating the finer points of legal ethics and generally his expositions on the whole sweep of the law. Unfortunately this cannot be related because it never really happened, all of us being much too busy in surviving and making a living. He did produce some old first year exam papers and with the aid of a few dog eared texts the law student presented himself in Vancouver and somehow or other got through the exams except for practice and procedure which had remained and still remains a completely closed book.<sup>32</sup>

After examinations were concluded, summer was dedicated to general business pursuits (“not much law but a good deal of fun”<sup>33</sup>). Only as winter

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<sup>28</sup> Watts (1983) *supra* note 6.

<sup>29</sup> Watts (1980) *supra* note 6 at 14.

<sup>30</sup> Watts (1983) *supra* note 6 at 45 indicates that Tolmie was called in "September, October I guess of '32"; January, 1933 is the date of Tolmie's call as indicated in Watts (1980) *supra* note 6 at 14.

<sup>31</sup> Watts (1980) *supra* note 6 at 17.

<sup>32</sup> *Ibid.* at 19.

<sup>33</sup> *Ibid.* at 20.

approached and it became apparent to the three partners that the Cariboo's mini-gold boom was running itself out did Watts arrange to have his articles reassigned to Colonel Buell. It could well have been otherwise. In 1983, Watts told an interviewer that if the business "had kept really going along we would have probably stayed on, because my articles were running and, what the hell, I couldn't care less"<sup>34</sup>. In any event, he returned to Vancouver in September to focus more directly on apprenticing for his profession. His motivation was partly professional and partly economic: "I was pretty well convinced and possibly Ross may have assisted me to some extent, that if I wanted to really get to be a lawyer I'd better get down to Vancouver and do something about it."<sup>35</sup> His partners stayed in the Cariboo long enough to sell the business "to a chap who ran the post office there . . . and he went broke in no time at all"<sup>36</sup>. Watts was called to the Bar in 1935.<sup>37</sup>

Other professional apprenticeships, certainly, were neither as colourful nor, seemingly, quite as unrelated to legal work as was Watts's. Daniel M. Gordon was questioned in 1978 about the process by which he qualified for the legal profession under articles to Alex Martin in Victoria from 1912 to 1915. No formal legal education was available in Victoria until the last few months of Gordon's articling period (when the Victoria Law School opened), but he and "about half a dozen other pupils" paid E. C. Mayers for "a series of private lectures"<sup>38</sup> taken at Mayers's offices at night. Reflecting free-market principles at their finest, the lectures were arranged according to the students' wishes. Gordon recollected:

[W]hen we began the lectures, he asked us how we wished to have these lectures given, whether he should go over any particular text books with us or whether he should go over some of his cases and explain what he did and why he did them, and we all opted for that (the cases) and he went through a number of cases and oh, he went into pleadings and how he raised the various points at the trials of these cases and why he did it that way.<sup>39</sup>

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<sup>34</sup> Watts (1983), *supra* note 6 at 58.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> D.M. Gordon, interview with J.C. Scott-Harston and Mr. Jamieson, July 14, 1978, "Aural History Project", *supra* note 6 at 4.

<sup>39</sup> *Ibid* at 14.

Although one might have hoped that all articling principals could have offered their students as much, such legal discussion did not routinely take place. Nor did students expect it of their principals, as Leonie (Lalonde) Anderson accounts:

Mrs. Waters: It sounds as though it was a very practical course [of articles], therefore. Do you feel that any of the partners had an academic turn of mind, that they wished you to think about the whys and wherefores of law, as well as the black letter?

Mrs. Anderson: Oh, I think they were too busy to really analyse us at all. They just took us and it was up to us to qualify.<sup>40</sup>

One lawyer in the firm did offer to tutor Lalonde, but no worthwhile educational process resulted. Bob Smith, according to Lalonde, “did think that he could help me in my studies, and did help me once, but it turned out to be very slow and very—I don’t think he was a teacher, and so it was never repeated”.<sup>41</sup>

The workaday world of articles in the time of Leonie (Lalonde) Anderson and Daniel Gordon are markedly different from that of many modern articling students. According to Gordon, it “was rare for students to be paid”<sup>42</sup> at all and when they were paid, salaries generally fell somewhere in the range of fifteen to twenty-five dollars per month (in comparison, veterans of the First World War were given a grant of sixty dollars per month for one term at university;<sup>43</sup> Chief Justice John Owen Wilson earned fifteen dollars per month articling in 1922 and paid thirty-five dollars per month for board.<sup>44</sup> When T. D. Pattullo eventually paid him forty-five dollars monthly he thought it “a terrific salary . . . for a law student”).<sup>45</sup> Mr. Justice Meredith McFarlane recalled that when he articulated to J. Edward Bird in 1929 he was paid fifteen dollars per month, though this sum was increased dramatically—to thirty-five dollars—“after about four or five weeks”.<sup>46</sup> Not all students were shy about monetary matters, however. In 1910 a young man by the name of Clarence H. Kearns indicated that he would transfer the last two years of his articles to the firm of Williams and Manson in Prince

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<sup>40</sup> Anderson, *supra* note 7.

<sup>41</sup> *Ibid.*

<sup>42</sup> Gordon, *supra* 38 at 10.

<sup>43</sup> The Honourable J.O. Wilson, interview with R.B. Hutchinson and B.W. Hutchinson, 1979, "Aural History Project", *supra* note 6 at 18.

<sup>44</sup> *Ibid.* at 20.

<sup>45</sup> *Ibid.*

<sup>46</sup> M. McFarlane, interview with T. Sheppard of UBC Law School, May 31, 1995.

Rupert for a salary of one hundred dollars per month. The firm's response is revealing. Alex Manson wrote to Leon Ladner of the Vancouver Law Students' Society on May 13, 1910:

In regard to Kearns—he apparently would make a good man for the position, but I cannot for the life of me see why in blazes he wants to ask from \$90. to \$100. per month to start, and he a third year man with two years more to run. It seems to me a student has his nerve to ask that amount. He has got to go some to earn it, and I venture to think the average student would not leave much of a margin on his work if he were paid \$100. and besides he is supposed to be gaining experience and be under tuition. I am the last person on earth to kick at paying a man a fair and reasonable wage, but I think \$75—unless a man “Shows me”—is pretty nearly my maximum to a student. The young man that refuses to come here without an exorbitant salary is making a mistake. I came here fresh from the college halls. I have not regretted it for an instant, and the prospects I see ahead of me give me hope to believe I never shall. I honestly think that a good student could get an opening in our office such as he could get in no other office in B.C., unless it is in that of our friend across the street—L. W. Patmore. We are perhaps not doing the volume of business that some of the firms in Vancouver are, but we have as good prospects as any young man would want. There are no senior Counsel here to over shadow a young man in the court room, and even a student stands pretty nearly on an even footing to his principal.<sup>47</sup>

Even the reduced salary of seventy-five dollars per month that Manson was willing to pay seems generous by the standards of the time or indeed of any period in the next several decades. Manson's letter also suggests that the Prince Rupert firm might have offered something more valuable than mere economic return: a richer and more challenging experience of legal work than was available in law offices elsewhere in the province. The everyday world of the articling student in the early twentieth century was not always either stimulating or intellectually challenging. Lacking electric typewriters, computerized word-processing, photocopiers, and cost-effective printing services, Daniel Gordon recalled spending a good portion of his working life as a student lawyer preparing documents mostly drafted in long-hand”.<sup>48</sup> Despite the enormous amount of time such routine tasks must have taken, however, his articles amounted to a good deal more than mere service as a copying clerk. He had time

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<sup>47</sup> A. Manson to L. Ladner, May 13, 1910, L. Ladner papers, Vancouver City Archives (add.mss.#641)

<sup>48</sup> Gordon, *supra* note 38 at 10.

to “go across to the Court House and listen to the counsel quite often, especially in the Court of Appeal”.<sup>49</sup> Gordon engaged in reasonably sophisticated legal work, and read in the evenings—“not [just] for examinations but just for general information”.<sup>50</sup>

Daniel Gordon’s description of a “typical day” in his life during articles is interesting. The picture emerges of a young man working quite hard in a law office and gaining exposure to a variety of legal work. It is clear, nonetheless, that he was left largely unsupervised. Learning seems to have been acquired in much the same way as Lord Brougham had described in England many years before: “generally speaking” the student was “left very much to himself”:<sup>51</sup>

Mr. [Leslie] Jamieson: Could you please talk a little more about what you did, say, on a usual day, regular day, while you were articling here. What kinds of things would you do, basically?

Dr. Gordon: You mean legal work.

Mr. Jamieson: Yes, legal work.

Dr. Gordon: Oh, that’s not easy to say. There was a certain amount of variety about it . . . I handled a good many foreclosures and then I occasionally took a small case or two towards the end of my articles. Judge [P. S.] Lampman allowed us students to do that because he said we needed the practice. [general laughter]

Mr. Jamieson: So, it wasn’t all leg work . . .

Dr. Gordon: Oh no, oh no.

Mr. Jamieson: Did you have much supervision during that time?

Dr. Gordon: No, practically no supervision in the office.

Mr. Jamieson: So, when you got a case it was basically your case and you . . .

Dr. Gordon: Oh yes, I worked it up myself; in fact, I used to work up cases [chuckles] for my employers.<sup>52</sup>

Despite lack of supervision or mentoring, the overall impression conveyed by Gordon’s description of his legal training stands in strong contrast to Alfred Watts’s world-voyage and “Cariboo days”. Gordon’s days were filled with legal work or sitting in on Appellate Court proceedings, his evenings devoted to private study, supplemented by individually arranged tutorials. This work

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<sup>49</sup> *Ibid.* at 12.

<sup>50</sup> *Ibid.* at 9.

<sup>51</sup> As cited in W.W. Pue, “Guild Training” *supra* note 15 at 255.

<sup>52</sup> Gordon, *supra* note 38 at 7-8.

counted equally, as far as the law society was concerned, with adventurous travels, running a small business, delivering lumber, and film processing.

Not all law students were left as thoroughly unmentored by their principals as were Watts, Lalonde, and Gordon. Articling experiences in the past varied tremendously, just as they do today. At least one student who articulated in the 1930s thought of his principal (Cecil Killam) as being deliberately and very much involved in an educational process. Asked by Maryla Waters whether “Killam saw himself, in his role as Principal, as a teacher and a mentor to you?”, Donald Clark Fillmore replied emphatically:

Oh yes I think so. I think so. He wasn't too busy, very few lawyers were busy then. Yes he did, and he enjoyed arguing with me about a point or having me argue with him about a point and he'd get a bit aggressive about it. But that was fine, that's what he wanted, he enjoyed that which of course was helpful to me.<sup>53</sup>

This pedagogic strategy closely resembles the Socratic method, and if, as the passage seems to suggest, the experience was repeated with any degree of regularity, it must have provided a very fine education in law.

Other articling lawyers were less well mentored, but nonetheless managed to gain a valued and reasonably well-rounded experience of legal work. Mr. Justice McFarlane divided his articles between two Vancouver principals and a year spent in Toronto doing legal work while attending lectures at Osgoode Hall. Interviewed by Professor Tony Sheppard in 1995, he reported that the time spent in Ontario was not particularly helpful:

Mr. Justice McFarlane: I found that most law students in Ontario, at that time, didn't get nearly the broad practical look at things that we did here in Vancouver. The antiquated Land Registry System . . . was such that most of the law students, when they got out of their lectures, Osgoode Hall lectures at noon, had a quick lunch and just went to the Land Registry Office, where somebody from their principal's offices were there with the titles that were to be searched that day. And that's about all they did.

. . .

Some of them didn't see their principals for weeks on end, they would send the results of their searches back and that was it.

Professor Sheppard: So they were just doing Title Searches?

Mr. Justice McFarlane: Most of them were, I think.

. . .

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<sup>53</sup> Fillmore, *supra* note 12.



[I]t's just a question in my mind whether the year in Osgoode was worth it compared to the practical things that I think students have to do in order to be qualified to practice . . . after the excellent academic training they got at a law school, especially at your law school now.<sup>54</sup>

### **Day-to-Day Work**

Most efficiently managed organizations assign time-consuming, repetitive, and intellectually undemanding work to their lowest ranking, poorest paid employees. In that capacity, rather than fully clothed as “professionals-in-training”, such tasks were often delegated to articling students. This sort of work constituted a significant part of the articling experience; for example, Daniel Gordon's days copying documents in longhand or Leonie Lalonde's bone-rattling jitney journey. Copying and delivering were not out of the ordinary in the work of early articling students.

Robert Wootton, who articulated to his father from 1918 through 1923, used a “press letter book” to keep copies of correspondence for the firm:

Mr. Wootton: . . . We had no dry files for our letters. We used a press letter book. That book was a book with numbered pages and the paper was tissue paper of a particular kind and you used a damp rag and cards and you placed a card down, you placed a damp rag upon it and pressed it flat. You then drew upon that rag, flattened a sheet of tissue paper of the book and then upon that you put the letter face downwards, then another card and that could be done for about four or five letters at a time. You took the book then and put it under a press and whirled this press about until you felt you had pressed it hard enough and then left it for a short time and pressed the book and took out, with great care, because the paper could tear easily, took out the cards and rag, etc. and continued the process for so many letters as there might be.<sup>55</sup>

In addition to maintaining the “press letter book”, Wootton also kept busy with “running errands and filing documents at the Registry”. “[A]bove all”, however, he was responsible for keeping track of the billable legal work done by the partners. The task required meticulous attention to detail and was time-consuming. As Wootton described, “It was my duty as to the docket to take the entry from the partners' daybooks into which it was their duty to write a memorandum of each client interviewed for each chargeable item for work done,

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<sup>54</sup> Mcfarlane, *supra* note 46.

<sup>55</sup> Wootton, *supra* note 14 at 16.

to be entered. That entry was then transferred into a huge volume under the heading and separate pages of course of the name of the client. There had to be entered also a reference to the letters sent out and the letters received.” The tedium of this chore seemed not to have bothered Wootton, who embraced it as an educational experience. He reported many years later that “[t]he docket . . . was a treasure box because the young student saw and read about exactly what was going on”. Wootton called it his “training with the docket”.<sup>56</sup>

Leonie (Lalonde) Anderson reported that she “learned a lot from handling legal documents” during articles that were spent doing “office work” for “eight hours a day, six days a week”.<sup>57</sup> Like other students, she also spent a good deal of time on “leg-work” and routine procedures:

Mrs. Waters: Can you recall some specific duties that you had? You mentioned doing a great deal of walking as part of your job, why was that?

Mrs. Anderson: Well, after banking hours we would get from the bank all the protested bank articles and I had to represent these things to those who had signed these different papers. They called it protesting, and I protested after three o’clock every banking afternoon, and then took all those protested papers to the bank and I did that every afternoon, and the fees were marked on these protests and really they did very well with me after banking hours. But my own payment never increased, so I did a lot of walking.<sup>58</sup>

Her work in the office did expose her to “all the different stages of papers prior to trial”.

Although she did not feel particularly attracted to court work, Lalonde participated in all the work that articling students preparing for careers in litigation would have engaged in. Students, she reported, “only appeared in Chambers. We had no occasion to appear in court. That was a practice for court work. It was part of each action and we did that very readily, but the solicitor’s work was interesting.”<sup>59</sup> Donald Fillmore recalled that, apart from discussing things with his principal, “all I did was to collect some debts and that sort of thing, or try to collect debts. . . . there wasn’t very much going on in the legal business”. He also reported ample opportunity to “go to the Courthouse and

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<sup>56</sup> *Ibid.* at 15.

<sup>57</sup> Anderson, *supra* note 7.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

listen in on cases”.<sup>60</sup> The economic cycle, apparently, had a drastic impact on the character and pace of articles.

Charles Hamilton divided his articles between service to Mr. Wragge in his father's Nelson law office and a final six months of articles (in 1924) to the renowned E.C. Mayers in Vancouver. While in Nelson he had done "anything that came to hand, except of course, work that we weren't qualified to do. . . . I don't know that anybody asked me for my opinion particularly during that time, but it was work that was practical experience and doing anything that either my father or Mr. Wragge felt that they could trust me with under their supervision".<sup>61</sup> E.C. Mayers apparently had no such exalted vision of the appropriate role for an articling student, even one near the end of his qualifying period. While in service to Mayers, Hamilton "used to collect the books that he wanted from the library, and run messages for him". His own frank assessment was that he was not "very much use" to Mayers "except as a hewer of wood and drawer of books".<sup>62</sup>

To similar effect, former Chief Justice Nathan Nemetz described his articles in Vancouver in the 1930s as a busy but largely uninspiring period: "all in all, it was hard work because most of the day, from 9:00 a.m. until 3:45 p.m. you were just rushing around doing menial chores . . . and you were supposed to be studying of course, but the study periods were short and small".<sup>63</sup> Most of the chores assigned to articling students were, he said with studied understatement, "not highly edifying":

The only good thing about it was that if the boss wanted to take you to court, and that depended. Claude McAlpine would take you to court with him in cases where he figured he needed someone to handle the books . . . and things of that nature, but when it came to advising or starting to ask what he was doing that was none of the student's concern. But I went with him a number of times, I got to like him very much. . . . That was an interesting period of time . . . .<sup>64</sup>

The articling experience thus varied tremendously from place to place, from firm to firm, from lawyer to lawyer, and from one personality to the next.

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<sup>60</sup> Fillmore, *supra* note 12.

<sup>61</sup> Hamilton, *supra* note 11 at 6-7.

<sup>62</sup> *Ibid.*

<sup>63</sup> Chief Justice N. Nemetz, interview with Prof. P. Burns of UBC Law School, 1995.

<sup>64</sup> *Ibid.*

Charles Hamilton's account of his two quite distinct articling experiences particularly indicates this diversity, as does the wide variation in other individual recollections of legal apprenticeship. In a time when articles ran over three to five years, students could take advantage of the differences among principals, as Hamilton had, by arranging to work under two or more in sequence. Anyone who was bored with what they were doing or who felt a need to seek out a more rounded exposure to legal practice than was possible with their principal could arrange to have their articles assigned. Angelo Branca, like many others, worked under more than one articling principal. Beginning with Arthur Sutton, solicitor for North Vancouver in the 1920s, Branca soon became bored ("Hell, all I did was by-laws, you know")<sup>65</sup> and transferred his articles to Arthur Fleishman. There, apparently, he did a little bit of everything: "Arthur was a very litigious man, he'd put everybody into litigation, so that's where I got my blessing in the law courts. I'd go up to . . . do all the chamber work that had to be done. And process the claims and so on. I learned an awful lot in the four years that I was there . . . .",<sup>66</sup>

The picture that emerges from firsthand accounts of articling in the early years of the twentieth century is not altogether edifying: low pay, long hours, copying, record-keeping, walking, delivering, filing, and repetitive office routine interspersed only with the occasional opportunity to appear in chambers or to sit in on court proceedings. The working world of articling students in the first decades of this century was probably nowhere near as intellectually challenging or as demanding of sophisticated skills as that of any legal secretary today. Indeed, many accounts of the articling experience match, with surprising accuracy, the training in "mere manual dexterity" denounced by England's 1846 Select Committee on Legal Education.<sup>67</sup> There was little positive mentoring by the lawyers under whom articling students worked.<sup>68</sup> Opportunities to obtain a formal legal education of any sort in British Columbia were not available until 1914.

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<sup>65</sup> The Honourable A.E. Branca, interview with W.A. Craig, July 1982, "Aural History Project" *supra* note 6.

<sup>66</sup> *Ibid.* at 54-55.

<sup>67</sup> As cited in Pue "Guild Training" *supra* note 15 at 254-55.

<sup>68</sup> Cf. P.M. Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta, 1885-1928" (1990) Dal. L.J. 419.

## Studying and Examination

It would be a mistake, however, to assume that no learning took place during a lawyer's articling years. A world of difference separates the uneducated from the self-educated. Many British Columbia articling students of the early twentieth century understood that they were to make the fullest possible use of their time in order to educate themselves adequately for the career that they intended to pursue, fired by both moral imperative and, simply, long-term self-interest. Judge James Moses Coady, who was called to the Bar in 1916, was aware of the laxity surrounding legal credentialling in early twentieth century British Columbia, but reminded an interviewer in 1979:

A great number of the lawyers in Vancouver in the early days were English lawyers and Ontario lawyers. Some from Manitoba—not many. Most of these lawyers had gone through and taken their course—the Ontario lawyers were Osgoode Hall men, I presume. They had gone to law school. But our British Columbia lawyers who came into the picture, they were all men who articulated—served under articles and called to the Bar, went into practice, not so well qualified. If a man was ambitious enough, student enough, to study and read, not only the textbooks but to read the volume of literature that's available to you on legal subjects, he could be as well qualified as those who took a course at the university here after a law school was established.<sup>69</sup>

Self-education was also to some extent forced upon articling students by a provincial law society that examined candidates for admission not once, but several times. The matter of these examinations was of no small importance for, unlike the situation prevailing in much of the United States, no one could work as a lawyer in British Columbia without being a member of the law society. In addition, preliminary examinations evaluated the general education of “Candidates for Admission upon the Roll as Students-at-Law” (A. B. Russ, writing in 1953, described these examinations as requiring the “earnest student” to strive “through Horace's rapturous verses to his remote, beloved Lalage—‘Child of the Sea, on tawny beaches prone’—as a prelude and preparation for the study of Byles on Bills”).<sup>70</sup> Robert Wootton reported that at the time of his

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<sup>69</sup> J.M. Coady, interview with A. Watts, June 27, 1979, "Aural History Project" *supra* note 6 at 31-33.

<sup>70</sup> Russ, *supra* note 6.

articles from 1918 to 1923, the law society administered “three examinations.”<sup>71</sup> There was the first intermediate, the second intermediate and the final.”<sup>72</sup>

Many students seem to have taken these examinations quite seriously, putting considerable time and effort into preparation. Wootton, for example, reported that in addition to working “a full day at the office and, indeed a full week because we carried on at the office until one o’clock on Saturdays” a typical articling student of his era “was the studier of textbooks. . . . the textbook was the source of our training.” Given the length of the work week, studying took place at night. Cyril G. Beeston, who articulated in Nelson and Victoria before his 1914 call to the Bar, recalled that in those days “[o]ne simply worked all day in the law office and then went home and studied”.<sup>73</sup> Wootton reported similarly of his Victoria articles a few years later:

I do not know what others did, but at night I usually had my supper and then read something until twelve midnight or two in the morning and I would read in that fashion for about three weeks. By the end of which I could not absorb one item of what I was reading and would then take a break of a couple of nights and then start again because my mind was freshened by the break. That was done—that was, I suppose, the average method of the average student at law of my day.<sup>74</sup>

Chief Justice Nemetz observed that his seniors at the Bar, the men and women who qualified before even law society lectures were offered, learned what they had to “just by rote and by hard work”.<sup>75</sup> A fortunate few may have gained a quality education: “some of them would have good education . . . I mean . . . Claude McAlpine had a degree from Harvard, Senator [Wallace] Farris had been to Pennsylvania”.<sup>76</sup> These lawyers were the exception, however. “Rote and hard work” aptly captures the spirit of early twentieth century legal qualification as it was experienced by the vast majority of lawyers.

The effort put into preparing for the law society examinations suggests that they were rigorous, demanding exercises despite the absence of a well developed educational programme. Robert Wootton compared his own

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<sup>71</sup> Wootton, *supra*, note 14 at 17-18.

<sup>72</sup> L. (Lalonde) Anderson mentioned in her interview, *supra* note 7 at 19: “I think we took three exams during our period. Like, I had three exams during the five year period and those with degrees took the same exams in the shorter period.”

<sup>73</sup> Beeston, *supra* note 24.

<sup>74</sup> Wootton, *supra* note 14 at 17-18.

<sup>75</sup> Nemetz, *supra* note 63.

<sup>76</sup> *Ibid.*

professional examinations with what he knew of university education in the 1970s. “The intermediate examination,” he thought, “was just as serious a business for the student of those days as examinations are at universities and other places of learning today.” Indeed, present-day students would protest with heartfelt righteous indignation if faced with an examination schedule such as that Wootton and his peers confronted:

The finals were a particular problem. In the five days of the week of the final examination, I wrote thirteen examinations spread over the period of days and when you had written thirteen examinations in five days, most of them quite difficult examinations, you really felt you had been through a week of toil.<sup>77</sup>

Similarly, Oscar F. Lundell reported that his law society examinations, taken in the 1920s, were “stiff”, prepared for after-hours by private study and, by that time, with the help of lectures provided at the Vancouver Law School.<sup>78</sup>

Despite the light-hearted, somewhat self-effacing accounts that Alfred Watts provided of his peripatetic articles, even he in fact engaged in fairly serious study in preparation for law society examinations:

Mrs. Waters: But, to get back to the study of law. How much studying of law did you do over that adventurous summer? . . . You keep telling us how you are just scraping through things, you must have been awfully bright to get through examinations on that sort of experience.

Mr. Watts: Well, that’s the way I’ve always studied anyway. I’m afraid I’ve always been rather a loner which may or may not have been a good thing, but as far as studies are concerned I’ve always maintained that I could do a lot better if somebody would just give me the lecture notes and let me do it my own way rather than listen to lectures, probably because my powers of concentration are rather poor. I obviously had a pretty good idea of what was coming up next year by way of examination and I obviously took the required texts of one kind or another up to the Cariboo with me so that I could read them, but I must say reading about—I can’t remember really—Contracts was one, and trying to absorb Anson on Contracts without really having any explanation from anybody [was difficult and so for Equity, Real Property, and so on.]<sup>79</sup>

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<sup>77</sup> Wootton, *supra* note 14 at 17-18.

<sup>78</sup> O.F. Lundell, Q.C., interview with M. Waters, 1980, "Aural History Project", at 21; The Honourable H.C. Green, interview with J.E. Eades, 1980, "Aural History Project", at 14-16.

<sup>79</sup> Watts, *supra* note 6.

The conditions of study in the Cariboo or, for that matter during more orthodox articles in Vancouver, may have been far removed from the idealized life of quiet reflection and directed study that is associated with university education. Nonetheless a good deal of private study and exam preparation seems to have taken place. Of the Vancouver portion of his articles, Watts reports attendance at lectures but indicates that “we were supposed to pick up the rest of it on our own and what we were learning as law students. Then when it came to examinations they at least let us have the old exams and they didn’t show too much imagination about changing their questions, so that was rather helpful.”<sup>80</sup>

The law society's lack of imagination in revising its examinations was a perennial complaint. Alfred Watts's recollections of the unimaginative examining technique in the 1930s is similar to a complaint that Leon Ladner had documented two decades before while acting as an activist in the Vancouver Law Students' Association. A letter to Oscar Bass, secretary of the law society, on February 7, 1910, outlined Ladner's assessment of professional examination at that time:

As you will know the examination questions year after year have been repeated word for word, so that by checking up the examinations three years back a Student can, as many of them actually did, compile a concise brief of likely questions and short answers. I know one Student in particular who wrote out a small book about one-third of an inch thick of questions and answers. When all the examinations were over he explained to me that there was not one question on the whole examination which he did not have down in his brief short answers. This of course, makes the whole examination system a feat of memory instead of a test of the Student's intellectual capacity. I know as a matter of fact that the examination system carried on here is ridiculed in the East.

. . . [t]he examination system should be changed by varying the questions although touching on the same sphere of work but not making the examinations one bit harder nor restricting the passing of one additional Student, but so changing the style of the questions that as among the Students themselves who were writing, a man who had a thorough and comprehensive grasp of a subject would have a fair chance against another who had merely performed a feat of memory.<sup>81</sup>

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<sup>80</sup> *Ibid.* at 66-67.

<sup>81</sup> Letter from L. Ladner to O. Bass, Feb. 7, 1910, Leon Ladner papers, Vancouver City Archives (add.mss.#641).



Surely the examinations were more serious and demanded a greater level of preparation than this letter might suggest. Some students from this era admit to having put a great deal of effort into studying. Chief Justice Nemetz was critical of the examinations that he faced in the 1930s because “they were principally oriented to practical, legal practice. . . . Unless you had wealth and ability to get to other institutions, you really had defective education.”<sup>82</sup> Nonetheless, the examinations had to be taken seriously on their own terms. Chief Justice Nemetz told Professor Peter Burns during a 1995 interview that he “used to study” with a colleague, to “swot up for our examinations which came regularly, yearly”.<sup>83</sup> E. A. Lucas, who qualified two decades before Chief Justice Nemetz, might have been told only “to get Indermaur on Common Law and read it” in order to prepare for what he called “the hardy perennial questions” of the first intermediate examination, but nonetheless studied so hard that he “had whole passages practically letter-perfect”.<sup>84</sup> Mr. Justice McFarlane recounted that the examinations he faced at the beginning of the Great Depression “were for real. We worked hard. . . . I think I wrote eight examinations in five days.”<sup>85</sup> “Rote” learning this may have been. A pro forma matter it was not.

Even individuals who had benefited from a very fine full-time legal education could not afford to treat law society examinations casually. John Graham (Jack) Ruttan, who graduated from Oxford University in 1936, returned to British Columbia “immediately . . . to write . . . my final Bar exams . . . as quickly as I could before I forgot the little bit of law I had learned at Oxford”.<sup>86</sup> An English legal education could not of course be expected to prepare students for examination on local statutes or British Columbia practice and procedure. So Ruttan prudently deferred examination in these subjects until January of the following year, again suggesting that reasonably rigorous examinations confronted him.

### Early Twentieth Century Articles

Firsthand accounts of the qualifying process required of the British Columbia legal profession in the early twentieth century lead to three conclusions. First, the articling experience was tremendously diverse, varying according to

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<sup>82</sup> Nemetz, *supra*.

<sup>83</sup> *Ibid.*

<sup>84</sup> E.A. Lucas, "Faculty of Law" (1946) 4 Advocate 7.

<sup>85</sup> Mcfarlane, *supra* note 46.

<sup>86</sup> The Honourable J.G. Ruttan, interview with M. Tyrwhitt-Drake, 1983, "Aural History Project", at 27.

location, economic circumstances, office technology, the character of individual law practices, and the personalities of students and articling principals. Second, many lawyers who qualified in this period have recorded positive recollections both of their articling experience and of what they learned during it; at its best, the old articling system provided a rich hands-on training. Third, the earlier system of training was not just a matter of putting in time at an office, but formal knowledge did have to be garnered and demanding examinations were imposed to ensure that the book-learning deemed necessary at the time was indeed acquired.

Nevertheless, the structure of early twentieth century professional qualification had serious problems. Even extensive exposure to the workaday world of law combined with demanding professional examinations fell far short of the evolving expectations of professional education that were in their ascendancy in early twentieth century Canada. Voices within the legal profession soon began to register demands for the development of more elaborate, formalized structures of professional qualification in the province.

# 2

# Formal Legal Instruction Begins

Although it eventually took up its educational mission with much enthusiasm, the early Law Society of British Columbia was a reluctant partner in the development of formal legal education.

During the province's early years, most established lawyers saw little reason to change a system under which professional qualification was earned principally through apprenticeship. Despite statutory grants of power in 1884 and 1888 that conferred authority over legal education and authorized any necessary steps to improve "legal education generally" (including, importantly, the power to appoint and pay lecturers), the governing body of the law society (the "Benchers") made little use of their new powers until well into the twentieth century.<sup>87</sup> Many individual Benchers no doubt thought that training by apprenticeship had served them well and genuinely saw no pressing need for change. Self-interest may have come into play too, for, as cynics may note, one

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<sup>87</sup> A. Watts, *History of the Legal Profession in British Columbia 1869-1984* *supra* note 6 at 51, 53, 131-32.

practical effect of qualification by apprenticeship is to make the services of unpaid or severely underpaid para-professional workers readily available to established practitioners.

Despite this, some elite lawyers worked to create a system of formal lectures and examination in British Columbia's early years. Such individuals were encouraged, prodded on, and nagged by articling students, who were the earliest and strongest champions of formal legal education in British Columbia, as elsewhere in Canada. As early as 1900 Oscar Bass, as an articulated clerk, wrote a letter to the Benchers asking them to offer a course of lectures for law students.<sup>88</sup> Although it now seems odd, law students at one time earnestly wished to attend lectures, very much wanted to learn and, indeed, sought to be subjected to the rigors of objective examination.<sup>89</sup>

### **Ladner's Journey and Its Aftermath**

Turn-of-the-century British Columbia witnessed a remarkable professional resurgence. Bar associations of one sort or another were formed to foster self-improvement and to lobby, cajole, bully, or persuade lawyers and legislators alike of the need to take a proactive stance in developing for the first time a fully self-regulating, highly educated, and ethical legal profession.<sup>90</sup> Amid all the fervour to become professional, a group of young men (and soon, women) formed the Vancouver Law Students' Association in 1907. They immediately pressed the law society to implement a series of lectures for their benefit. Early in 1909 their president, a remarkable young man of confidence and ability,<sup>91</sup>

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<sup>88</sup> *Ibid.* at 53-54. Watts points out that this was apparently a call to revive "some form of volunteer lectures earlier which had died out". The Benchers minutes of Oct. 1 record that Bass had written - this may have been his letter of July 6.

<sup>89</sup> *Ibid.*

<sup>90</sup> see, for example, W. Wesley Pue, "'The disquisitions of learned Judges': Making Manitoba Lawyers, 1885-1931", in Jim Phillips and G. Blaine Baker, eds., *Essays in the History of Canadian Law: In Honour of R.C.B. Risk* (Toronto: Osgoode Society, 1999), 825-914; W. Wesley Pue, "British masculinities, Canadian Lawyers: Canadian legal education, 1900-1930", in *Misplaced Traditions: The Legal Profession and the British Empire*, Symposium Issue, 16(1) *Law in Context*, 1999 (guest edited by Robert McQueen and W. Wesley Pue), 80-122; R. Crawford, "The New Westminster Bar Association, 1894-1994" (1994) 52 *Advocate* 221-26.

<sup>91</sup> "Personal" in *Vancouver Law Students' Annual 1991* (UBC Law Library Special Collections) 63 at 64. Some of the student writing indicates that Leon Ladner was a regular contributor to New Westminster newspapers - heavily satirical tone indicating that "ladies" will have been awaiting news of "The Pride of the Delta"... "Leon has been talking ever since, save and excepting those occasional moments when he has engaged in writing autobiographical sketches for publication in the 'New Westminster News', or the 'Columbian'...". "Having closed his university career in a blaze of glory" (see New Westminster papers, June 1907).

travelled from the Lower Mainland to Victoria to address the Benchers of the Law Society of British Columbia on the need for legal education. His mission was daunting: to inform a distinguished group of his professional seniors that they were not properly discharging their duties to develop the profession for which they were responsible.

Leon Ladner,<sup>92</sup> who at 25 years of age was still in training to become a lawyer, implored the Benchers to develop a formal system of legal education in the province. Ladner's April 7, 1909 "Notes on Address to Benchers" (sketched out in longhand on Empress Hotel letterhead) outline arguments in favour of taking this step. Formal education was, he thought, clearly the only sensible way to qualify for any modern profession worthy of the name. Ladner's sparse notes indicate that he envisioned an organized law school administered by a dean and following the "principles of Osgoode + Dalhousie e.g. Board of Governors". Under the heading "Expediency of establishing law school now" he noted that no university was likely to be established for "4 yrs at least". Stressing the "Responsibility of Law Society towards training students" and the likely resulting "Efficiency of legal profession", Ladner presented financial projections showing that the costs of a law school could be met from available funds if they were topped up by a new levy of a "nominal fee on students in attendance say \$20 per term". He seems to have thought that some tie-in with the proposed British Columbia University might be developed in due course. His notes cryptically indicate "University assistance later". The second page of Ladner's speaking notes is a summary of the main points he wished to communicate to the Benchers:

Sum up points —

We ask —

- (a) Law school now organized
- (b) Pay lecturers + Dean
- (c) All students + barristers + solicitors join
- (d) University long way off
- (e) Govt favourably disposed
- (f) Financial aspect
- (g) Responsibility of legal profession towards student body
- (h) Future possibilities.

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<sup>92</sup> B.A., 1907, Univ. of Toronto; LL.B., 1909, Univ. of Toronto; admitted to the B.C. bar, 1910 [see Leon Ladner Fonds (1915-69) at U.B.C. Archives]. See also Leon J. Ladner, *The Ladners of Ladner: by covered wagon to the welfare state* (Vancouver: Mitchell Press, 1972); See also Leon Ladner papers, Vancouver City Archives (add.mss.#641).

Would appreciate questions by Benchers.<sup>93</sup>

According to the Vancouver Daily Province of March 17, 1909, Ladner and his peers sought the creation of “[a] provincial law school for Vancouver, which will ultimately be in affiliation with the proposed provincial university”. Knowing that Nova Scotia’s Dalhousie University funded and controlled the law school in that province, while Toronto had a non-university professional course fully funded, controlled, and managed by the law society, the Vancouver students sought “a combination of both”: “They ask for the appointment of six lecturers with three lectures a week during six months of the year.” Although plans were then being developed to create a provincial university, no such institution had yet been established. As a result the law students could not fully outline the exact relationship that might be developed between profession and academy. As an interim measure they sought a loose affiliation with Vancouver’s McGill College (a satellite campus of Montreal’s McGill University), which had agreed “to provide the society with two rooms for the lectures”.<sup>94</sup> The students were supported in this initiative by the Vancouver Daily Province and Victoria Colonist newspapers, Attorney-General William J. Bowser, and Premier Richard McBride, as well as by some sixty members of the legal profession who had formally endorsed “a properly organized law school”.<sup>95</sup>

Although this action seems thoroughly unremarkable from the vantage point of the late twentieth century, Ladner’s 1909 proposal in fact represented a call for a radical departure from the status quo. His proposals tapped into a ground swell of lobbying activity by articulated students across Canada, supported behind the scenes, one suspects, by some of Canada’s leading lawyers. They were also probably influenced by the rapid development of university law schools then taking place in the United States.<sup>96</sup>

Despite the apparent logic of their arguments, the growing stature and influence of the young man who made them, and his powerful allies in the cause of formal legal education, British Columbia was not to see the development of a

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<sup>93</sup> April 7, 1909, *Notes on address to Benchers* (Leon Ladner papers, Vancouver City Archives, add.mss.#641).

<sup>94</sup> *The Vancouver Province* (17 March 1909) 1.

<sup>95</sup> *Ibid.* (indicating support of "more than sixty members of the profession"); (30 March 1909 - article endorsing law school idea); (7 April 1909 at 20 - noting that Premier indicated support for law school); *The Victoria Colonist* (31 March 1909) 4 - article endorsing idea of law school - also indicates support of A.G.; W.J. Bowser, LL.B., K.C., M.P.P., appointed Attorney General in 1907; Sir Richard McBride, appointed Premier June 1, 1903-15; See *British Columbia From the Earliest Time to the Present - Biographical* Vol. IV, 1914.

<sup>96</sup> Watts (1984), *supra* note 6; D. Gibson & L. Gibson, *Substantial Justice: Law and Lawyers in Manitoba, 1670-1970* (Winnipeg: Peguis, 1972); Pue, "Disquisitions", *supra*.

university faculty of law until after the passage of a full generation, two world wars, the Great Depression, and massive changes in the provincial economy and culture. The University of British Columbia Faculty of Law was not to be launched until 1945.

But Leon Ladner did not speak to the Benchers in vain. Developments elsewhere in Canada had their effect in British Columbia and legal education was transformed in the decades between Ladner's presentation to the Benchers and the eventual founding of the University of British Columbia Faculty of Law in at least three major areas:

- (1) the creation of professional training schools for aspiring lawyers in Vancouver and Victoria;
- (2) significant developments in the teaching of law to undergraduate arts students at the University of British Columbia; and
- (3) the entry into the legal profession of the first generation of women lawyers.

In 1909, however, these developments lay in the future. For the youthful Leon Ladner it must have seemed that an eternity passed before anything came of his initiatives. Alfred Watts has aptly observed that senior lawyers "are a conservative lot" and it may well be that a combination of innate conservatism, fiscal responsibility, and uncertainty as to how to best address the concerns of a divided student constituency (Victoria and Vancouver law student associations each lobbied to have the provincial law school located in their city) slowed the development of formal legal education. (One argument deployed by Victoria law students to support bringing a provincial law school to their city rather than Vancouver was that "Victoria as the home of a proportionately greater leisure and moneyed class of people would probably furnish a relatively greater number of students than Vancouver").<sup>97</sup> Even at that, within only five years of Ladner's address to the Benchers, British Columbia had not one but two law school programmes—the divided student body was placated in 1914 when new law schools began operations on both sides of Georgia Strait.

### **The Law Students' Campaign**

The students' campaign to institute formal legal education in the province did not begin and certainly did not end with Leon Ladner's 1909 trip to Victoria. Ladner, as president of the Vancouver Law Students' Association, inherited a

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<sup>97</sup> Letter to the Law Society, May 27, 1909, MSS 948, Vol. 40, file 15, British Columbia Archives [hereinafter BCARS]. I am grateful to Prof. J. Brockman, Criminology, S.F.U., for bringing this source to my attention.

mantle from others who had gone before him. As early as September 29, 1900, A. R. Creagh and Frank J. Bayfield, representing themselves as “President” and “Secretary” respectively of the “Law Students’ Society of Vancouver B.C.” had written to the Benchers asking that law books be placed in the library.<sup>98</sup> Ladner added his own energy and vision to his predecessors’ work on behalf of articling students and bequeathed a continuing project to his successors.

In their effort to establish a law school in British Columbia, the students were empowered by an almost irresistible cultural logic. Two distinct arguments combined powerfully, each well-illustrated in a short letter published in the 1911 Vancouver Law Students’ Annual. The author, “Quill”, was identified at the time as only “a very good friend of the law students”, but was subsequently revealed as Mr. Justice Denis Murphy.<sup>99</sup> Murphy, who served on the Supreme Court of British Columbia from 1909 to 1941, had been educated at Ottawa University and served as member of the legislature for Yale from 1900 to 1902.<sup>100</sup> The public interest, “Quill” forcefully asserted, required that lawyers be well trained. The legal profession, however, was failing miserably to meet its obligations. “Quill” argued that if students were to be forced (as was required) both to article and to demonstrate advanced legal knowledge as a precondition to practising law, then it followed as a sort of quid pro quo that they were entitled to have a properly formal education made available to them.

As for the public interest, “Quill” pointed to “the great status that the profession holds among other vocations of every civilized community” and suggested that the training of the profession was of crucial “importance to the Subject” in three ways:

- (1) it is “the lawyer in whom the client must place the most implicit trust when his life, his liberty and his property interests are at stake”;
- (2) “[i]t is from the Bar that ultimately must be selected the judges upon whom devolves the discharge of the most solemn and grave duties”; and
- (3) the Bar also produces “[a] large number of our legislators, who participate to a marked degree in the making of our laws”.<sup>101</sup>

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<sup>98</sup> Provincial Archives of B.C. [hereinafter PABC] mss 948-40-6; and a year later H.A. Bourne lodged a similar complaint with the benchers regarding the New Westminster library - Feb. 23, 1901, PABC MSS 948-40-6.

<sup>99</sup> Watts (1984), *supra* note 6 at 55, citing G. King, “The Case of the Vancouver Law School”, unpublished manuscript.

<sup>100</sup> J.N. Fraser, “Judges of British Columbia to 1957” (1984), a sourcebook compiled in Occasional Paper #1, Univ. of Victoria Law Library, Victoria B.C. at 74.

<sup>101</sup> “Correspondence”, *Vancouver Law Students’ Annual* Vol.1 (1911) at 17 (PABC, Victoria; UBC Law Library Special Collections)



It was thus appropriate, “Quill” thought, that the Bar of British Columbia had in fact fixed admission standards at a high level. Unfortunately the articling experience as actually administered by Vancouver lawyers fell well short of what was necessary to prepare students adequately for the admission standards that they were forced to meet. A familiar litany of complaints against the unregulated articling process followed. Leading lawyers, “Quill” said, did not care “a ‘tuppence’ how or when the student duly articulated to him commences, pursues, or ends his training for the Bar”. Students were used merely as “office clerks”, their education not only neglected but positively subverted by their masters: “The student, instead of being encouraged by assistance in his reading and by being given time to attend the courts, is practically cut off from such aids. If perchance he devotes any time in attendance at the law courts he is placed in the invidious position of appearing to be imposing upon his employer.”<sup>102</sup>

As a result, “Quill” believed student lawyers to suffer from “unpardonable neglect”. They were, he said, “being self-trained for the Bar”.<sup>103</sup> In an age when duty was taken seriously and in which the sense of obligation constituted a significant moral force, “Quill’s” clinching argument was powerful:

It is a sad reflection upon our Senior Bar that they appear to ignore the reciprocal duty cast upon them by seeing that the added responsibility assumed in respect of those indentured to them is discharged. When it is demanded as a prerequisite to the entry into the privileged ranks of the profession that one must be of good character, training and repute, surely the duty arises to grant the aids and provide the means for the development of such qualifications and attributes.

It is, I hope, not asking too great a sacrifice or the exercise of too great an effort on the part of our masters of the law to encourage us through their personal character, as well as by precept and example, or to contribute or at least attempt to contribute to our education in the intricacies of the law.

No more cogent evidence of their realization of those serious responsibilities can be given (and which if given will go a long way to make us overlook past shortcomings on their part) than that the Benchers at once take steps to organize a law school in British Columbia. I am quite sure that were half a dozen of the leading lawyers to make up their minds

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<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

to it we would have a fully-equipped law school established within a very short time.<sup>104</sup>

Law students in early twentieth century British Columbia added the force of their own energy and imagination to the power of the logic of this argument for formal legal education and the increased persuasiveness derived from a few influential friends and allies. A persistent campaign in support of formal legal education was managed by the Vancouver Law Students' Association from the time of its origin right up to the opening of the two law schools in 1914. Not content simply to address the Benchers or to submit a petition, the students worked diligently on these matters. Their effort was sustained at a high and relatively constant level despite the inevitable and frequent changes in leadership that often stymie even the boldest of student initiatives.<sup>105</sup>

The seriousness with which the student campaign was advanced (and also the importance of behind-the-scenes support of elite lawyers) is evident in a letter Leon Ladner wrote on June 1, 1910. The recipient, W. E. Walz, was dean of the University of Maine College of Law and author of an article on "Some Aspects of Legal Education in Germany". Ladner explained that "a friend, Mr. Justice [Aulay] Morrison" had given him the article and that he was writing to ask for more information, for references, and for copies of articles on related subjects. This imposition was justified with a defence of necessity: "There is a dearth of literature relative to this subject in our local Libraries and as several of the leaders of the Bar who are members of the Benchers of the Law Society are not disposed towards spending the necessary funds of the Law Society for the establishment of the Law School it is the intention of the students to prepare as strong a case to that end as they are able to do."<sup>106</sup> The students, Ladner explained, were planning to appear before the Benchers again in October 1910, "after the Royal Commission . . . now sitting in the Province has determined the location of the University".<sup>107</sup>

It is tempting to imagine that the student campaign may have benefited considerably from not only diligence and the assistance of friends in high places but also from the presence of a sort of double-agent operating within the privileged sanctum of the law society. Oscar Bass, the law student who had written the Benchers in 1900 to ask that a lecture programme be implemented, served as secretary of the law society from 1905 to 1913. Alfred Watts has noted

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<sup>104</sup> *Ibid.* at 17-18.

<sup>105</sup> *Ibid.*; *Law Students' Society Yearbook*, Vol. 1 (1914) (PABC).

<sup>106</sup> Ladner to Walz, June 1, 1910 at 2. Ladner fonds, Vancouver City Archives.

<sup>107</sup> *Ibid.* at 1.

that Bass may have played a pivotal role in bringing the Benchers around on the issue of legal education:

[F]or many years, there were efforts by the law students to get some form of lectures going. And the benchers for many years were most unhelpful in that regard. Whether they weren't interested, or figured everybody could learn like they learned, I guess that was probably it, they didn't do very much about it. And it wasn't until I think around 1907 when a fellow named Oscar Bass who was then the secretary, obviously a very capable guy, he had a pretty wicked pen, but still he was a capable fellow, and he started them up and got things going and got in touch with people in England, Odgers and other people like that who were good enough to send out material. And eventually in about 1913 they finally got a law school going in Vancouver, which in the end would have been very similar to the law school I went to in 1934.<sup>108</sup>

The proposed law school's ardent supporters faced a dilemma as they attempted to organize formal legal education in British Columbia during the first decade of the twentieth century. Continuing uncertainty as to whether British Columbia's much discussed but still non-existent university would actually come into being, much less as to whether the institution, if founded, would be ready, willing, and able to play a role in professional education left supporters of formal legal education in something of a quandary. While many of them might have wished to see law teaching taken over by the university, they could not afford to simply await the appearance, as if by magic, of a university law faculty. This event, they knew full well, might never happen. Other supporters, however, must have genuinely doubted the wisdom of creating elaborate structures of professional education that could at any time be rendered redundant by the development of a provincial university.

In any event, by 1911 the student campaign had made considerable progress. Their flagship publication, the Vancouver Law Students' Annual, that year reproduced at length notes of lectures that had been given on their invitation,<sup>109</sup> and the students expressed their thanks to the Benchers and the Bar for the time that they had devoted to delivering lectures.<sup>110</sup> The students claimed that both the law society Benchers and the lecturers supported their campaign to establish a law school,<sup>111</sup> and the need for some such institution was emphasized

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<sup>108</sup> Judge A. Watts interview with M. Waters, May 10, 1983, "Aural History Project", *supra* note 6 at 131-32.

<sup>109</sup> *Supra* note 101 at 20-38 (reproducing the notes of the lectures given by the Benchers).

<sup>110</sup> *Ibid.* at 14.

<sup>111</sup> *Ibid.*

during speeches at their annual banquet in February 1911. Provincial Attorney-General W. J. Bowser apparently promised that a room in the courthouse would be made available for the students to use.<sup>112</sup>

Bowser was as good as his word, and the next year's Annual reported that the students had indeed been given a room in the courthouse.<sup>113</sup> While progress was being made, parallel developments to found a university had muddied the waters considerably by 1912. There was some danger that the needs of law students might be lost in a larger flurry of educational innovation. The students noted with concern that:

[t]he British Columbia University will soon be here. So soon, in fact, that the establishment of a law school must not be lost sight of. While we realize that British Columbia's University, in order to measure up to the standard it should set, could not be complete without a faculty of law, nevertheless this question must not be lost sight of. The benchers have again been petitioned to take the matter up, and in view of the consideration they have shown us in holding examinations in Vancouver, we feel sure they will be only too pleased to take care of the students' interests in this direction.<sup>114</sup>

By 1913 the students had succeeded in arranging a coordinated series of lectures that fell just short of what might be attained by a formal law school. Judge James Moses Coady's recollections are recorded in a 1979 interview with Alfred Watts, which tells us much about the curriculum this informal series of lectures covered. It is even more revealing, perhaps, of the very great divergence of attitude within the legal profession toward the mentoring obligations of established lawyers:

Judge Watts: Well that—you articulated in 1913. [Yes.] That was just at the time the whole business of a Law Society school came to a head. What are your recollections of that?

Judge Coady: Well, Garfield King was the main mover in that along with Gerry McGeer and one or two others probably and it was decided that we should interview judges, and members of the bar, and set up a series of lectures. Perhaps none of them gave more than three or four lectures really in the course of the year, you know, but it was something, otherwise, we

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<sup>112</sup> *Ibid.* at 23.

<sup>113</sup> *Vancouver Law Students Annual* (UBC Law Library Special Collections, 1912) at 12.

<sup>114</sup> *Ibid.* at 14.

simply had the textbooks; torts and contracts, and so on; so that was done. I think it was Charlie Tysoe, he was a law student at the time. . . . I think it was Charlie Tysoe that interviewed, so he told me at one time, E. P. Davis. E. P. Davis would have nothing to do with it. He wasn't going to encourage the development of legal talent among young people coming up. That was part of his living. . . . But they went to [L. G.] McPhillips. Now McPhillips was the one who backed them up and McPhillips was one of the leading counsel in Vancouver at the time. And then we got the Judges. Judge [Denis] Murphy gave us a few lectures on evidence. Judge [Aulay] Morrison gave us a few lectures on equity, believe it or not, and Judge Howay on bills and notes, the Bills of Exchange Act really. And Robie Reid of Bowser, Reid and Wallbridge, he lectured on real property and W. H. D. Ladner who was at that time in the Bowser, Reid office and doing all of their County Court work, some of their police court work and perhaps a bit of their Supreme Court work as well and Rex MacDonald who was a partner of Bird—J. Edward Bird; and who else? Oh, Clement gave us a lecture or two on constitutional law and [D. A. McDonald?] yeah, well D. A. McDonald on contracts and [R. W.] Hannington on common law.

Judge Watts: What about Joseph Martin?

Judge Coady: I never took a lecture from him. I saw his name and his picture in the Annual there. I don't recall him. I must have missed his lecture. He may have given one or two but that was all. . . .

Judge Watts: But—did the students feel they got—quite a bit from those lectures?

Judge Coady: Oh yes, oh yes. We made prolific notes, you know, and exchanged notes and so on and we had these things typed out and we sort of prepared briefs and prepared for exams. They were very helpful. It is pretty dry reading you know if you start in on torts and contracts and equity and so on.<sup>115</sup>

Student pressure was relentlessly sustained. An editorial in the 1913 Vancouver Law Students' Annual discussed the need for a law school,<sup>116</sup> Dr. Elliot Rowe delivered a speech on the need for a law school at the annual banquet of that year,<sup>117</sup> and a tongue-in-cheek timetable for the development of a university law

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<sup>115</sup> J.M. Coady, interview with A. Watts, June 27, 1979, "Aural History Project", at 29-30, 81-81. Coady's overall conclusion was: "Oh, education-wise the lawyers today are much better educated in my view".

<sup>116</sup> *Vancouver Law Students Annual* (1913) at 13.

<sup>117</sup> *Ibid.* at 56.

faculty was published.<sup>118</sup> The Benchers, probably exhausted by this zealous display of youthful energy, invited the students to draft their proposals for a law school curriculum. Anyone even vaguely familiar with the intractability of curriculum debates in the late twentieth century may be inclined to suspect the Benchers of having issued this “invitation” only to dissipate student energies. But if such Machiavellian plotting coloured the actions of the Benchers, it was useless. A curriculum report was efficiently produced and duly published in the Annual.<sup>119</sup>

The students moved simultaneously on all fronts. They wrote to the Vancouver Bar Association (not to be confused with the Law Society of British Columbia), urging the formation of a law school. The minutes of that association’s executive meeting for January 1914 record that “upon motion of Mr. F. J. T. Lucas seconded by Mr. S. S. Taylor the following committee was appointed to assist the Students in their effort towards the establishment of such a school, viz:—Mr. Douglas Armour, Mr. R. L. Reid, Mr. W. B. A. Ritchie”.<sup>120</sup> The historical record lapses at this point, unfortunately. We cannot know what exactly followed from this meeting or how precisely the Bar association, law students’ association, and law society worked together. However it came about, the sustained student campaign triumphed spectacularly within the year as law schools opened in both Vancouver and Victoria in the autumn of 1914.

### **The Vancouver Law School, 1914 to 1943**

The Vancouver and Victoria law schools are institutions about which little is known. They emerged in a period of considerable, rapid development in Canadian legal education and, despite some initial hesitation, moved early to adopt a ground-breaking model curriculum recommended by the Canadian Bar Association at the end of the First World War.<sup>121</sup> Neither law school seems to have been fully part of the remarkable flourishing of legal education that took place in common-law Canada in the 1910s and 1920s and we know little about what they actually taught, their faculty, or their procedures. No published account of either law school is available beyond a brief portion of Alfred Watts’s history of the legal profession. Archival holdings reveal that the Vancouver Law

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<sup>118</sup> *Ibid.* at 65.

<sup>119</sup> *Ibid.* at 50.

<sup>120</sup> "Minutes of Meeting of the Executive of the Vancouver Bar Association" (January 1914), Vancouver Bar Association RG 11, Vol. 1, Law Society of B.C. Archives.

<sup>121</sup> Canadian Bar Association - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings (1921).

School lived a precarious existence in its early days and was not always able to provide even short courses of lectures in all the subjects on which law students were examined. Dean R. M. MacDonald provided periodic reports to the law society Benchers. The curriculum provided in 1922 to 1923 was as follows:

First Year

Real Property, R. L. Reid, 12 lectures

Torts, J. P. Hogg, 12 lectures

Contracts, The Dean, 12 lectures

Criminal Law, R. L. Maitland, 1 lecture

Second Year

Practice and Procedure, Mr. Justice Morrison, 8 lectures

Personal Property, Judge Howay, 12 lectures

Landlord and Tenant, Mr. Justice D. A. McDonald, 6 lectures

Equity, Mr. Justice Morrison, 9 lectures

Evidence, Judge Howay, 10 lectures

Final Year

Contracts, The Dean, 12 lectures

Constitutional Law, Mr. Justice Murphy, 4 lectures

Bills and Notes, Judge Howay, 7 lectures

Land Registry Act, Clarence Darling, 3 lectures

Domestic Relations, The Dean, 4 lectures<sup>122</sup>

Some brief account of the Law Society of British Columbia's two law schools is contained, interstitially, in the annual reports of the Canadian Bar Association committee on legal education. These accounts occasionally consider the state of legal education in British Columbia, and the dean of the Vancouver Law School seems to have participated in committee activities. It is clear nonetheless that the two British Columbia law schools were somewhat less ambitious undertakings than the other professional law schools or university faculties of law of the inter-war years. It is unclear whether the lack of support for the law schools resulted from a principled, ongoing commitment to the primacy of apprenticeship, individual personalities, or simply an inability to formulate ambitious plans for legal education in the absence of adequate and secure funding. Evidently R. M. MacDonald, the longest-serving dean of the Vancouver Law School and, inferentially, the Benchers who appointed him, did not share fully in the ambitious schemes for a scholarly legal education that enjoyed widespread currency elsewhere in common-law Canada.

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<sup>122</sup> PABC - 948-43-37 - see also the examination curriculum in this box.

The first reference to the Vancouver Law School in reports of the committee on legal education is found in relation to the 1918 annual meeting of the Canadian Bar Association. R. M. MacDonald, who served as dean of the Vancouver Law School from 1919 to 1936, argued that because of the degree of divergence among the provinces, there was no need to implement a uniform system of legal education across Canada. Dean MacDonald also stated his position that full-time legal education was not desirable. He favoured academic legal education taking place simultaneously with the practical training obtained through employment in a law office.<sup>123</sup> The objective of legal education, Dean MacDonald told the 1920 Canadian Bar Association meeting was “to saturate the minds of the students in those elementary principles that lie at the base of all law, and upon which our ideas of freedom and justice exist”.<sup>124</sup> While other provinces (notably Manitoba) experimented with various models of legal education in the inter-war years, British Columbia remained relatively constant in pursuing this vision. At Canadian Bar Association meetings in 1931, Dean MacDonald reiterated his basic position that law school education should run concurrently with practical training (“so that the theory and practice come to him simultaneously”), albeit registering the concern “that where law students are paid in a law office, they come to be treated as clerks and they are apt to be limited in the office to the work in which they are most useful, the work in which they least need instruction”.<sup>125</sup>

In adopting each of these positions (except, perhaps, the last) Dean MacDonald endorsed a vision of legal education that had fallen out of favour with many leading lawyers in Canada during the crucial formative period from 1910 through to the 1920s. His views were certainly anomalous among the elite lawyers and legal educators who enjoyed hegemony within the early Canadian Bar Association and its committee on legal education.<sup>126</sup> Much influenced by

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<sup>123</sup> Canadian Bar Association - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings, 1918.

<sup>124</sup> Canadian Bar Association - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings, 1920.

<sup>125</sup> Canadian Bar Association - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings, 1931 (CBA Proceedings) 207.

<sup>126</sup> Not, perhaps, in the 1930's: Canadian Bar Association - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings, 1935. There was also this year a report by the Special Committee on Legal Education that is produced in Vol. 13 of the Canadian Bar Review. The report focuses on the operation of the Osgoode Hall law school. It examines the preliminary education standards. It also calls for a process to select only those law students who are suitably qualified to enter law school. Again the issue of practical education is examined. It felt that academic education was unduly emphasised, and so calls for amendments to teaching schedules and curricula to accommodate this.



contemporary developments in the United States, many of those lawyers subscribed to a fully integrated vision of legal professionalism. This professional self-image emphasized the pivotal role of properly selected and educated lawyers in securing ongoing social integration in nations such as early twentieth century Canada, which were forcefully torn in many directions by multiple forces. In a society riven by deep fault-lines of regionalism, class antagonism, industrial unrest, political upheaval, and ethnic, religious, and linguistic diversity, they sought to mould a legal profession of right-thinking moral agents whose work for individual clients would be directed so as to consistently advance the best interests of the state. The entire orientation of the committee on legal education in this period was to find ways of selecting, socializing, and educating lawyers who would ensure social integration through their selfless and community-directed approach to daily work.<sup>127</sup> This ultimate goal, it was thought, would best be advanced by raising (pre-law) admission standards, implementing a more rigorous and intellectually oriented curriculum, developing full-time courses of legal education taught by full-time instructors, implementing a nationally uniform curriculum, and employing the “case method” as the predominant or sole method of instruction. Clearly, Dean MacDonald and the early Vancouver Law School stood outside the developing Canadian mainstream in most, if not all, of these ambitions. The narrower Vancouver vision of legal education, with its emphasis on practical training, seems nearer that of the Ontario law society Benchers than to legal educators or policy-makers elsewhere in common-law Canada.

The Benchers of the Law Society of British Columbia, for their part, seem to have had no strong commitment to legal education. More accurately, perhaps, the degree of dedication to either professional training in law by means of a law society school or to academic education at the university level ebbed and flowed dramatically as the personnel of the law society’s governing body changed. In 1922, for example, Dean MacDonald referred obliquely to apparent division among the Benchers on the state of legal education in the province when he told the Canadian Bar Association that:

[w]ith regard to the question of legal instruction in British Columbia, I have not very much to say; because the whole question is in a somewhat chaotic state here. For a year or two before the war there was a law school in existence, attendance at which was required of students in Vancouver, New Westminster and Victoria. . . . The Law School carried on in that manner until the war broke out, and practically every student, I am proud

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<sup>127</sup> W.W. Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water" (1995) 23 *Manitoba L.J.* 654-688.

to say, went to the war, and as a consequence, our legal instructions in such manner have ceased. After the termination of the war the school was revived and has carried on in the same condition ever since. But those in authority are not in unity as to the advisability of continuing, and if continued, as to whether it should be continued on these lines. That whole matter is up for consideration by the Benchers.<sup>128</sup>

The following year the Canadian Bar Association received a report from its committee on legal education which indicated that all had turned out well in British Columbia where “instruction in law by the Law Society, which last year was threatened with interruption, is still being given”. Both the “Vancouver Law School and the Victoria Law School” were said to be “continuing operations”<sup>129</sup> (an unfortunate description in that, unknown to the committee, the Victoria school was then on its deathbed).

The Benchers seem to have been uncertain about how to best handle legal education during this period. On July 3, 1922, they passed a motion resolving “that there be no appropriation for the Law Schools . . . for the coming year”<sup>130</sup>, but three months later approved the expenditure of six hundred dollars “for the term prior to the Christmas holidays”<sup>131</sup> and a further six hundred for the period from January “up to the coming Easter holidays”<sup>132</sup>. The reasons for this reversal are unclear and it may or may not be relevant that two Benchers—E. P. Davis and J. H. Senkler—participated in the Benchers’ meetings that decided against supporting the two law schools, but not in the other meetings.

The Canadian Bar Association committee on legal education in 1923 also indicated that discussions had taken place between the law society and the university “regarding the establishment of a Law Faculty at the University, with the result that the University, while expressing its willingness and desire to

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<sup>128</sup> Canadian Bar Association - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings, 1922 (address by MacDonald on legal education in B.C.) 48-49. See also, on attendance policy, Canadian Bar Association - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings, 1935; "The Organisation of Legal Education in Ontario" looks at the requirements of all the provinces for admission to legal practice. It states that in B.C. (but outside of Vancouver) all that is required for admission is working in an office for a specified period of time. Students in Vancouver however are **obliged to attend** law school, which it says is conducted by the Law Society.

<sup>129</sup> "Committee Report on Legal Education in Canada", Proceedings of the Canadian Bar Assoc., 1923, 376-389 at 387.

<sup>130</sup> Notes from "Benchers Meetings Minutes, 1922-1924" (Law Society of British Columbia), July 3, 1922.

<sup>131</sup> Notes from "Benchers Meetings Minutes, 1922-1924" (Law Society of British Columbia), Oct. 2, 1922.

<sup>132</sup> Notes from "Benchers Meetings Minutes, 1922-1924" (Law Society of British Columbia), Jan. 8, 1923.

undertake the teaching of law, has nevertheless decided that it cannot do so until the funds for the purpose have been put at its disposal”.<sup>133</sup>

### **Student Experiences at the Vancouver Law School**

The transcripts of the Aural History Project directed by Maryla Waters provide a unique insight into many aspects of the history of the British Columbia legal profession. Indeed, apart from the sparse notes generated by Canadian Bar Association meetings, these aural histories constitute virtually the only surviving account of this 30-year period of formal legal education. But even this resource fails to tell us everything we would wish to know about the Vancouver Law School or the Victoria Law School and little in the way of general conclusion can be drawn from the scattered recollections of men and women who were interviewed more than half a century after their student days. While some variation is to be expected in the fine texture of individual accounts, it is significant that the overall assessments offered of the merits of the Vancouver Law School programme vary considerably.

Charles Hamilton reported an indifferent experience of formal legal education during his period of articles in Vancouver in 1924:

[T]here was supposed to be a Vancouver Law School, the Dean of which was Rex MacDonald, and when he had time, he would give us lectures and there would be, as I remember it, not more than half a dozen students who would attend at any one time. And these lectures would be given when and where it suited him in different places. There was really no organized curriculum or anything of that kind.<sup>134</sup>

Similarly, Leonie (Lalonde) Anderson reported a rather informal structuring of lectures during the first incarnation of the Vancouver Law School a decade before Charles Hamilton began his years as a law student. Although she reported that “every phase in law” was taught, the curriculum was apparently informally arranged, more in response to the availability of lecturers than to any overriding pedagogic concern. Attendance was nominally compulsory for students who lived in Vancouver and New Westminster. Lalonde reported that she dutifully attended all the lectures. Her peers did not, however, assign

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<sup>133</sup> "Committee Report on Legal Education in Canada", Proceedings of the C.B.A., 1923, 376-389 at 388.

<sup>134</sup> C. Hamilton, Q.C., interview with R.C. (Tino) DiBella, Feb. 1979, "Aural History Project", *supra* note 6 at 8-10.

uniformly high priority to attendance at lectures.<sup>135</sup> Lalonde recorded that “[t]hey either wanted to go or they didn’t”.

The overall impression conveyed by Lalonde’s recollections is very much to the effect that, in its early years at least, the Vancouver Law School marked no radical departure from the previous, ad hoc lectures that had been offered from time to time by public-spirited lawyers. Students were not given time off work for educational purposes, and teaching was restricted to the “early evening” in order to accommodate the daily ebb and flow of work at law offices. Despite all this, Lalonde’s experience of her education at the Vancouver Law School was generally positive. The lecturers, she said, were “all very good and I have no doubt that they were chosen for that purpose—that they were good lecturers”.<sup>136</sup>

Similarly, Alexander B. Robertson, who articulated in Vancouver from 1925 to 1928, seems to have been a relatively content student of law society legal education during the inter-war years. Although the Vancouver Law School’s educational programme suffered in some respects from the lack of full-time faculty (“lectures . . . started at 4 o’clock if the lecturer happened to remember to come or wasn’t too busy at his office”),<sup>137</sup> Robertson was, overall, impressed by both the stature of the lecturers and by the quality of instruction provided:

[S]ome of the lecturers were a Mr. Reginald MacDonald who was head of the Law School and he was universally called Rex . . . Mr. MacDonald lectured on Contracts. The lecturer on Real Property was Mr. R. H., or Reggie, Tupper who was a leading member of the Bar at that time and very highly respected. Judge Howay of New Westminster and one of the authors of Howay and Schofield’s History of British Columbia, was the lecturer on Personal Property. Criminal Law was lectured by R. L., or Pat, Maitland who was a very good criminal counsel and for a number of years after that was Attorney-General; and the lecturer in Evidence was Mr. J. R., or Jack, Nicholson, . . . who later among other things was Lieutenant-Governor of the Province.<sup>138</sup>

Angelo Branca, who also attended the Vancouver Law School in the 1920s, was similarly impressed by the quality of instruction. His class of “about

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<sup>135</sup> L. (Anderson) Lalonde, interview with Mrs. M. Waters, 1979, "Aural History Project", *supra* note 6 at 27.

<sup>136</sup> *Ibid.*

<sup>137</sup> The Honorable A.B. Robertson, interview with J.L. Farris, 1980, "Aural History Project", *supra* note 6 at 28-29.

<sup>138</sup> *Ibid.*

eight or nine” was lectured by “real top men from various offices”, who were, he said, “very generous with their time”.<sup>139</sup> Oscar Lundell’s recollections, too, confirm the impression that lectures of some considerable quality were well delivered by competent, committed instructors. Lundell, who qualified in 1928,<sup>140</sup> told an interviewer that “the Vancouver Law School . . . wasn’t much of a law school” but, in reminiscing about the teaching faculty and the courses they taught (Rex MacDonald teaching contracts, R. H. Tupper teaching real property, Judge Howay covering personal property, R. L. Maitland taking care of civil and criminal law, Mr. Justice Aulay Morrison lecturing on equity, and J. R. Nicholson providing instruction in evidence), concluded that “the lectures were good lectures—they weren’t bad at all. I know many lecturers in the university law schools who weren’t as good as these men were.”<sup>141</sup>

Alfred Watts, attended the law school during the Great Depression (after his “Cariboo days”). He too was generally satisfied with the legal education offered by the “old law society school”. Although teachers at the Vancouver Law School were not employed permanently or full time, Watts recalled that Dean Rex MacDonald (“a very fine chap, nice fellow”) was backed up by a competent team of lecturers. Lectures were delivered in an intimate atmosphere: “The classes were quite small, there were about fifteen of us probably in the evening, or after 4.30, for about an hour’s lecture and that was really about all there was to it.”<sup>142</sup> Nonetheless, even the abundant good will and dedication of the Vancouver Law School instructors could not entirely overcome the limitations of the structure within which they laboured. The educational ambitions of a part-time faculty were very really constrained. “There was,” according to Alfred Watts, “no attempt to do anything more than the three hours with us and we were supposed to pick up the rest of it on our own and what we were learning as law students.” Watts responded to the challenge this limited schedule presented with a large dose of self-help and the support of an informal study group:

I used to . . . I studied quite a bit with Jack Sargent and then John Farris had gone to Harvard I guess and when he came back he still had to write the . . . this was for the last year . . . he had to write the final examinations that we did before he’d get called to the Bar. So we used to go and work

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<sup>139</sup> A.E. Branca, interview with W.A. Craig, July 1982, “Aural History Project”, *supra* note 6 at 55-56.

<sup>140</sup> O.F. Lundell, Q.C., interview with M. Waters, 1980, “Aural History Project”, *supra* note 6. Called to the Bar in 1928 ( at 17); articulated Jan. 2, 1925 because he had a B.A. ( at 14).

<sup>141</sup> *Ibid.* at 21.

<sup>142</sup> A. Watts, interview with M. Waters, May 10, 1983, “Aural History Project”, *supra* note 6 at 66-67.

up in John Farris's . . . his dad had a lovely study in the old house up there . . . and we used to go up there and work together.<sup>143</sup>

Many others of his generation probably prepared for examinations in similar fashion. Interviewed in 1983, Watts's overall assessment was that "it was a school for the times, it certainly could not cope with the demands of today".<sup>144</sup>

The Vancouver Law School era nevertheless produced many fine lawyers and jurists—whether by design or by happenstance. John G. (Jack) Ruttan, who himself had been educated in law at Oxford, acknowledged that the law society school benefited from the presence of at least one "marvellous" teacher (Tupper) and observed that "going through Law School in those days you had to take five years and some very good lawyers came out through that process of course".<sup>145</sup> At least one lawyer who qualified in that period—and probably many, many more—thought that location had a good deal to do with the quality of the legal education obtained: Alexander Robertson thought that the old law society school had it all over modern university law faculties. Students under the old regime benefited greatly, in his view, from spending their days downtown on legal work and their evenings in the courthouse for lectures. Proximity to real-life litigation was, he thought, a great advantage. As a student, Robertson had been in the habit of dropping "into a courtroom to listen to whatever case was going on". This experience, he continued, was an important component of legal education that has since been lost:

I think that one of the differences between the training that would-be lawyers get at the Faculty of Law today and the training that those of us who went to the Vancouver Law School had is this: that we used to have to go to the Courthouse frequently to file documents and things of that kind and nearly everybody would drop in for a certain length of time to listen to what was going on in the courts and we all observed all the different counsel. The people at the Faculty of Law don't have that opportunity and I think that this is one reason why so many of them when they come out of there hardly know how to behave in Court.<sup>146</sup>

Others however have been nowhere near as positive in their evaluation of the Vancouver Law School. It is hard at this distance to determine whether the marked variations in student accounts of the school are attributable to

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<sup>143</sup> *Ibid.* at 65-67.

<sup>144</sup> *Ibid.* at 66-67.

<sup>145</sup> The Honorable J.G. Ruttan, interview with M. Tyrwhitt-Drake, "Aural History Project", *supra* note 6 at 34-36.

<sup>146</sup> Robertson, *supra* note 137 at 51-52.

differences in the quality of programme from year to year or simply to widely divergent student expectations. In contrast to both Leonie (Lalonde) Anderson and Alfred Watts, Donald Clark Fillmore thought rather poorly of the Vancouver Law School. “[I]t was,” he remarked of the lectures of the 1930s, “poor instruction at that stage because basically all we had were people who were practising lawyers who would come about three times a week to the Courthouse and help as best they could reading from text books and that sort of thing.”<sup>147</sup> Formal instruction in textbook knowledge did not, in Fillmore’s opinion, come anywhere near to providing an exposure to the substance of the law of the sort needed by lawyers-in-training. He thought the programme deficient in that there was “[n]ot too much from the actual cases”.<sup>148</sup> Harvard’s much-vaunted “case method” of legal instruction (in which students learn the law by reading appellate court decisions rather than by learning textbook statements of law) had not yet migrated to British Columbia.

Chief Justice Nathan Nemetz also expressed the opinion that the educational regimen implemented by the Vancouver Law School fell short of what it should have been. Interviewed for the UBC Law Faculty Newsletter in 1988, he said that there was “a narrow application of talents. There was no jurisprudence, no theory. And there wasn’t the breadth of education there is today. It was geared principally to training solicitors.”<sup>149</sup> In 1995 he told Professor Peter Burns that, while the old system of legal education prepared students well “to do Articles of Association, Memorandums of Association, all of those things that you would need to do as a practicing solicitor”, the education provided “was eminently unsatisfactory” on what he called “the theoretical side”. The practical legal training of the 1930s left “a massive gap in educational philosophy and having to do with basic theories of legal studies”.<sup>150</sup> The advantages that he recognized in the legal education of his era—lectures by “prominent practitioners”, “a highly literate” dean, teachers who “had prepared” their “lectures excellently”, and hands-on practical training—did not, in the view of the former chief justice, begin to compensate for its defects: “Now the defects of the system were manifold . . . the defects were that you are really being trained to be practitioners.”<sup>151</sup>

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<sup>147</sup> D.C. Fillmore, Q.C., interview with N. Taylor & J. Waters, Mar. 1984, “Aural History Project”, supra note 6 at 4-5.

<sup>148</sup> *Ibid.* at 26.

<sup>149</sup> UBC Law Faculty Newsletter, Summer, 1988, Vol. 6, 1-3 at 1.

<sup>150</sup> Chief Justice N. Nemetz, interview with Prof. P. Burns of UBC Law School, 1995.

<sup>151</sup> *Ibid.*

Others too have reported poorly of the Vancouver Law School. Howard C. Green, who qualified for the British Columbia legal profession in 1922,<sup>152</sup> recounted some early career advice he was given upon his return from military service in the First World War:

I had decided while I was overseas that I wanted to go into public life and straighten the country out. I think quite a few of us . . . got that idea, that we'd be very good candidates for giving some leadership in Canada. Anyway law seemed to me the very finest training for a career of that kind. When I came back to the Kootenays I was intent on getting into an office in Victoria and learning the practical way; not fooling around with lectures and things like that. But when I got to Vancouver a relative of mine who was a friend of G. Roy Long . . . took me over to Roy Long's one Sunday afternoon and Roy Long said, "Now Howard don't you fool around here, there's no proper law school here; you've got your [veterans'] gratuity and you ought to go to Osgoode Hall or Dalhousie; those are the two best law schools in Canada."<sup>153</sup>

Roy Long's rather poor opinion of the Vancouver Law School was, apparently, borne out in Green's experience. As for Long's guidance, Green reported, "I took his advice, fortunately."<sup>154</sup>

It may be that the quality of instruction at the Vancouver Law School was neither as good as Leonie (Lalonde) Anderson thought nor as thoroughly inadequate as some others reported. Lalonde had never experienced any other form of advanced education and her evaluation may suffer from a lack of any standard of comparison. Conversely, it may be that Donald Clark Fillmore was inclined to hold the Vancouver Law School to an overly high standard. He had spent a year at the Ontario Law Society's school ("Osgoode Hall Law School") and in so doing had gained exposure to one of the finest programmes of legal education that Depression-era Canada had to offer. It is apparent that Fillmore's critique of the British Columbia programme was in all respects heavily influenced, perhaps unfairly so, by this standard of comparison. Despite his criticisms of the Vancouver programme, Fillmore himself conceded that "it was as good as it could be" given the way "it was set up". If the school failed in his mind it was, perhaps, not failure in absolute terms, but only relative to standards of excellence met by few educational institutions of the era: "It was not a patch

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<sup>152</sup> The Honorable H.C. Green, interview with J.E. Eades, "Aural History Project", *supra* note 6 at 17.

<sup>153</sup> *Ibid.* at 14-15. Long apparently did not know that the Manitoba Law School was widely acknowledged as the best in Canada at this time. See Pue, "Disquisitions", *supra* note 90.

<sup>154</sup> *Ibid.*



on what training I did get when I went to Toronto.”<sup>155</sup> In contrast with the Vancouver lectures (Fillmore described these as “no law school, no professional instructors at all”),<sup>156</sup> Osgoode Hall was graced with the presence of first-rate, full-time faculty. He told Maryla Waters that it was “the year” in Toronto “that really educated me”, and paid glowing tribute to Osgoode Hall, its faculty, and its teaching method:

Mr. Fillmore: Well, they were professional teachers. . . . There was Cecil A. Wright, was keen. He had been at Harvard quite recently before that and I think had been thoroughly drilled in the case method—which is you go to the cases, you don’t take a broad statement in a text book as gospel because it may be that in your situation it doesn’t apply. You’ve got to go to the cases themselves and read them.<sup>157</sup>

### **The Victoria Law School, 1914 to 1923**

If the history of an institution such as the Vancouver Law School is sparsely documented (and it operated continuously as the principle organ of legal education in British Columbia for nearly three decades, temporary periods of abeyance in war-time aside), then the history of its sister institution in Victoria is much harder to trace. In part the absence of records is to be expected of a smaller institution that existed for a mere decade, even counting an extended dormancy during the First World War.

A 1923 report of the Canadian Bar Association committee on legal education commented that both the Vancouver Law School and the Victoria Law School were continuing operations under the direct control of the Benchers of the law society, but that only in Vancouver was there a paid part-time dean.<sup>158</sup> Like its Vancouver equivalent, the Victoria Law School seems to have relied on lectures given voluntarily by members of the local legal profession. One might surmise that the Victoria Law School would as a result have suffered similarly from uninspired pedagogy and limited curriculum. However, insufficient evidence survives to sustain any firm conclusions about the character or orientation of the school. In at least one respect the Victoria branch of professional legal education seems to have surpassed Vancouver’s equivalent,

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<sup>155</sup> *Supra* note 147 at 39-40.

<sup>156</sup> *Ibid.* at 4-5.

<sup>157</sup> *Ibid.* at 39-40.

<sup>158</sup> Canadian Bar Association - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings, 1923.

though. Robert Wootton, who started articles in Victoria in 1918, reported that, in the provincial capital, attendance at lectures was both compulsory in theory and enforced in fact:

We did, at the beginning have no lectures but later on an establishment was made whereby lectures were given by practicing barristers and we were further required to attend a sufficient number of the lectures to entitle the student to write an examination. . . . I was articled to my Father in 1918—in November. I have before me this certificate which I will read, “We Hereby Certify that Robert Alexander Wootton has attended a sufficient number of lectures to entitle him to write on the first intermediate examination in December next and that he has paid his fees for such lectures. Dated at Victoria, B.C., this 25th Day of November, 1920.” So you will see that I had lectures. Later on the certificate read, not “sufficient number” but the actual number attended because perhaps the certificate had then been given as to a sufficient number when the fellow hadn’t attended any. But I have a form here which indicates as to my intermediate lectures that I had attended 61 out of 75 lectures and therefore was entitled to write the second intermediate examination.<sup>159</sup>

### **In Retrospect**

Like Toronto’s long-established Osgoode Hall Law School or the newer Wetmore Hall in Regina, the two British Columbia law schools were organized, structured, and maintained by the legal profession. The Vancouver Law School and the Victoria Law School closed in 1915 as the seriousness of the Great War became apparent, reopening following the cessation of hostilities in 1919. Although the Victoria school had a short life-span, closing permanently in 1923, the Vancouver institution survived until 1943, when another long and devastating war again forced its closure. What rose from the ashes on that occasion was not a revived professional school but the much more ambitious undertaking of the University of British Columbia Faculty of Law. That new model derived much from Dalhousie University, Nova Scotia legal culture, and also from the fine traditions of legal learning associated with Prairie law schools, the great American universities, and Oxford.

No matter how much more ambitious British Columbia’s university law faculties have been, however, the Vancouver Law School was a thoroughly

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<sup>159</sup> Mr. Justice R.A. Wootton, interview with A.F. Wootton & M. Tyrwhitt-Drake, 1979, “Aural History Project”, supra note 6 at 17-18.

reputable programme by any reasonable standard of its time.<sup>160</sup> It was no poor cousin of programmes elsewhere in Canada and, in fact, British Columbia rather closely approximated the national norm in the programmes of legal education then in place in common-law Canada. Even Ontario's celebrated professional law school at Osgoode Hall in downtown Toronto was not necessarily in an altogether different league. Although many lawyers of the period have paid testimony to the value and influence of Osgoode Hall, not all were inclined to a generous appraisal of that institution. John L. Farris, who qualified for the British Columbia legal profession in the 1930s with an education at the Harvard Law School offered a blunt, critical appraisal of the Vancouver Law School's central Canadian twin:

Osgoode Hall should never have been dignified with the name of a Law School. It was . . . you spent your time in the offices and took lectures afterwards. There was a report in the late twenties by the Carnegie Foundation on legal education in Canada and what they had to say about Osgoode Hall was just unbelievable. They said the only law school fit to be called a law school was Dalhousie.<sup>161</sup>

Whatever the merits of Osgoode Hall Law School in the 1930s, a number of its students would likely have agreed.<sup>162</sup>

Only Saskatchewan, Alberta, and Nova Scotia provided common-law professional training in a university setting during this period.<sup>163</sup> Manitoba had developed an intellectually ambitious, full-time academic legal education in the mid-1920s but jettisoned its state-of-the-art programme entirely after only a few short years. The various reports of the Canadian Bar Association committee on legal education from 1916 through 1945 generally convey the sense that, although British Columbia may never have been at the forefront, neither was it especially deficient by any reasonable standard of the day.<sup>164</sup>

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<sup>160</sup> And also in student comparisons with Osgoode Hall and Oxford - see Ruttan, *supra* note 86 at 59.

<sup>161</sup> The Honorable J.L. Farris, interview with D. Williams, "Aural History Project", *supra* note 6 at 177-78.

<sup>162</sup> C.I. Kyer & J.E. Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario, 1923-1957* (Toronto: Osgoode Society, 1987) 121ff; D. Carrick, "Wasting Three Years at Osgoode", *Obiter Dicta* (26 Jan. 1933).

<sup>163</sup> Only Alberta and Saskatchewan in the 1930's were notably different from the B.C. pattern: [Canadian Bar Assoc. - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings, 1931]. It examined the system in Saskatchewan and Alberta where practical training for a year was undertaken after graduation but before being called to the Bar.

<sup>164</sup> Canadian Bar Association - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings (Reports from 1916-1945).

In short, the Vancouver Law School deserves to be recognized for what it was: a sustained, serious professional training school—no more; no less. As important as it was in training professionals and in laying fundamental groundwork for the eventual development of modern British Columbia legal education, however, the Vancouver Law School was not the only game in town. The University of British Columbia was also involved in teaching law, from the end of the First World War on, albeit not in a programme directed toward professional qualification.

Quick!

### A Surprise Quiz

To find out how much you know about the history of legal education in British Columbia try the following quick test:

- (1) When did university legal education begin in British Columbia?
- (2) Name the first dean responsible for legal education at the University of British Columbia.
- (3) Who was the first University of British Columbia law teacher to hold a doctoral degree?
- (4) Identify the first law book published by a University of British Columbia professor.

Did you get the following answers?

- (1) 1945
- (2) Dean George Curtis
- (3) Dr. Malcolm MacIntyre
- (4) A. W. R. Carrothers, *The Labour Injunction in British Columbia* (1956)<sup>165</sup>

If so, then you should be proud of your knowledge of the history of the University of British Columbia Faculty of Law. Unfortunately, however, these are not “gold medal” answers. In fact, you fail the test entirely. The correct answers are much less widely known than these “nearly” right responses.

University legal education in British Columbia actually began not with the return of veterans from the Second World War but in the wake of the First World War. Teaching of the earliest university-level law courses took place not in a “law faculty” but in the department of economics, sociology, and political science. The responsible dean was G. E. Robinson, who administered the faculty of arts and sciences. Theodore H. Boggs, who taught jurisprudence and constitutional law with Henry F. Angus as early as 1920–1921 held a doctoral

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<sup>165</sup> A.W.R. Carrothers, *The Labour Injunction in British Columbia* (1956).

degree from Yale.<sup>166</sup> Angus, who held a bachelor of arts degree from McGill, and master of arts and bachelor of civil laws (master's equivalent) degrees from Oxford, published *Citizenship in British Columbia* in 1926, some thirty years before any monograph-length publication would emerge from the University of British Columbia Faculty of Law.<sup>167</sup> In addition to these men, who formed a sort of "core" of University of British Columbia law teaching in the early twentieth century, the faculty also enjoyed the services of Harvard law school graduate William J. Brockelbank, who served briefly as a lecturer in government in 1942–1943; of Reginald H. Tupper (Dean of the Vancouver Law School from 1938 to 1943), who served as a lecturer in commercial law from 1934 through 1943; and of Vancouver lawyer John L. Farris, who served as a lecturer in the Faculty of Commerce in 1942–1943.<sup>168</sup>

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<sup>166</sup> Professor Theodore Harding Boggs held B.A. degrees from Acadia and Yale and M.A. and Ph.D. degrees from Yale University. He joined the University of British Columbia as an assistant professor in the department of economics in 1916-1917, was promoted to Professor in 1919-1920 and served as Department Head for the "Department of Economics, Sociology and Political Science" from 1920 through to 1931.

<sup>167</sup> Henry F. Angus, who held a B.A. degree from McGill and M.A. and B.C.L. degrees from Oxford, joined the University of British Columbia as Assistant Professor in the Department of Economics, Sociology and Political Science in 1920-1921. Promoted to Associate Professor in 1922-1923, he became Head of the Department in 1932; *Citizenship in British Columbia* (Victoria: C.F. Banfield, 1926).

<sup>168</sup> Source: U.B.C. Calendars. Tupper appears as a lecturer in the Department of Economics, Sociology, and Political Science from 1934 through 1942. In the 1942-1943 session he is listed as a lecturer in Commerce, in the Commerce Faculty, joined in that capacity for one year only by John L. Farris.

# 3

# University Legal Education Begins

## **Legal Education at the University of British Columbia, 1920 to 1945**

It is not widely appreciated that the original plans for a University in British Columbia envisioned the development of a law department, nor that significant law teaching in fact took place in the university throughout the 1920s and 1930s. As early as 1877, John Jessop, provincial superintendent of education, called for

the creation of a university to train students in “arts, law, and science”.<sup>169</sup> Provincial legislation of 1891 had contemplated the development of a faculty of law and, when the University of British Columbia was eventually launched under President Frank Fairchild Wesbrook two decades later, the provincial minister of education invited architects from across Canada to draw up plans for a full-service university that would include space to teach law. As late as February 1914, President Wesbrook sketched his own plans for a grand campus in which “Arts, theology, law and commerce are brought in touch and yet not divorced from the sciences”. The president told one correspondent that he hoped to begin teaching in a “College of Law” some time after the 1915 academic year. He did not then appreciate, of course, the awful turning point in human history that was to be marked by the assassination of a European aristocrat in Sarajevo on June 28, 1914. During the pre-war period the official publication of Vancouver artiled students, the Vancouver Law Students’ Annual, reported optimistically on the possibility and likelihood of eventual affiliation of a professional law school with the University of British Columbia.<sup>170</sup>

If British Columbia, like Alberta, Saskatchewan, and Manitoba, had at this time enjoyed the reality of a well-established provincial university, then it might well have joined the other western provinces in developing a full university law faculty in the second decade of this century. Such ideas were clearly in the air in British Columbia as much as elsewhere in Canada.<sup>171</sup> The sort of hybrid school that was envisaged, one that would be neither entirely of the university nor a mere creature of the organized profession, was more akin to that which was subsequently brought into being in Manitoba than to professional education programmes elsewhere in Canada: it was planned neither in the Dalhousie mould (university controlled) nor as a mere imitation of the Toronto Law School (later called “Osgoode Hall Law School”), which at the time was entirely managed and controlled by the organized legal profession. Although the Manitoba Law School failed substantially after a brief, meteoric moment of glory, British Columbia professional legal education in the inter-war years would probably have benefited considerably from any affiliation with the university.

Such a connection, however, was not the case. Wesbrook’s ambitions for the University of British Columbia were frustrated as the combined exigencies of war and provincial fiscal crisis took their toll. Plans for a professional school

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<sup>169</sup> As quoted in *The University of British Columbia, 21<sup>st</sup> anniversary, 1915-1936* at 5. This document indicates (at 11) that the University still held out hope of creating a Faculty of Law in 1936.

<sup>170</sup> *Vancouver Law Students Annual* (1915).

<sup>171</sup> *The Vancouver Province* (17 March 1909) 1.



of law housed within a university died with the First World War, and were not revived for a further thirty years.

It would be a mistake to assume that the “department of law” referred to in early planning for the University of British Columbia would have borne a strong resemblance to modern law schools. British Columbia elite culture of the period assumed that all responsible citizens would want to know about the common law and, conversely, that all good lawyers would wish to be fully cultured gentlemen and ladies. Law was not then conceived of as a narrow technical speciality of interest only to individuals seeking to make a living from the trade in services. It was, rather, a fully integrated aspect of cultural flourishing that fit precisely the definition of the “cultural stage” of education provided by Paul Klapper and quoted in the 1923 Preliminary Survey of Higher Commercial Education Made by the Associated Boards of Trade of British Columbia:

The final stage, the cultural stage, is reached when the educator determines that the field in question is so much part of the general civilization or intellectual wealth of the world that it ought to receive some consideration, not only by specialists in the field but also by the students pursuing a well-planned course of a general non-technical character designed to enable him to appreciate and play some role in the world in which he lives.<sup>172</sup>

The division between law and the arts had not yet been rent.

### **Early University of British Columbia Law Teachers**

It is not surprising then that two of the early University of British Columbia arts faculty were, in addition to their other credentials, fully qualified law teachers. Theodore H. Boggs, who taught jurisprudence and constitutional law with Henry F. Angus as early as 1920–1921 held bachelor of arts degrees from Acadia and Yale and master’s and doctoral degrees from Yale University. He joined the University of British Columbia as an assistant professor in the department of economics in 1916–1917, was promoted to professor in 1919–1920, and served as department head for the department of economics, sociology, and political science from 1920 through to 1931.

Henry F. Angus, who joined the University of British Columbia as assistant professor in the department of economics, sociology, and political science in 1920–1921, would have graced any law faculty in the British

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<sup>172</sup> See "Boggs, Theodore, materials", UBC Archives MG51 file# 1-3 at 43.

Dominions. Following completion of a bachelor of arts degree from McGill University in Montreal, he went on to Oxford, where he took first class degrees in law at both the bachelor of arts and the bachelor of civil law levels in 1913 and 1914, respectively.<sup>173</sup> Angus subsequently recalled his Oxford legal education with some fondness, reporting that in his second year there: “[t]he study of law became more interesting as I had an opportunity of attending informal classes at which Geldart discussed cases or Holdsworth entertained us at tea while he discussed legal history.”<sup>174</sup>

Also admitted to the degree of barrister-at-law by the Inner Temple (one of the four professional bodies admitting barristers in England) in 1914,<sup>175</sup> Angus followed war-time military service by working briefly in the chambers of Joseph Ricardo of the Inner Temple (“a small but varied practice. . . . I was learning more than I could have done in larger chambers where the premium would have been high”)<sup>176</sup> and heading the department of law of the Khaki University of Canada in London, England.<sup>177</sup> (The examiners of the Khaki University, incidentally, included such legal luminaries as “Geldart, Holdsworth, Odgers and others”. It was nonetheless thought by Benchers of the Law Society of British Columbia not to provide a credible education for, in 1920, they refused to give credit for any courses completed at the Khaki University’s Department of Law.)<sup>178</sup>

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<sup>173</sup> H.F. Angus, *Curriculum vitae* on file in UBC archives. Henry F. Angus was the first fully qualified lawyer to serve on the full-time teaching staff of the University of British Columbia. Educated in law at Oxford and the Inner Temple, he headed the Law Department of Canada's Khaki University before joining the staff of the University of British Columbia, 1932.

<sup>174</sup> H.F. Angus, *My First 75 Years* (m/s UBC archives, Angus Family, box 1-1) at 90.

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.* at 159.

<sup>177</sup> *Ibid.*

<sup>178</sup> Benchers' Meeting, 10/4/1920. See A. Watts, *History of the Legal Profession in British Columbia*, *supra* note 6 at 64.

## CURRICULUM OF THE FACULTY OF LAW OF THE KHAKI UNIVERSITY OF CANADA

A student before enrolling to take the Law Course must show that he has passed the equivalent of College Matriculation Examinations.

### First Part

History of the Common Law: Pollock and Maitland's History of the Common Law or Jenk's Short History of English Law

Introduction to Equity: Maitland's Lectures on Equity

Personal Property: Williams on Personal Property

Contracts: Anson on Contracts; Finch's Leading Cases on Contracts

Torts: Underhill on Torts

Criminal Law: Tremear or Crankshaw on Canadian Criminal Code Odger's Common Law of England; Book II Canadian Criminal Code

### Second Part

Commercial Law: Smith's Mercantile Law, including Sale of Goods, Insurance, Bills and Notes and Negotiable Instruments, and Shipping for such Students as may desire to study this branch

Evidence: Phipson on Evidence; Powell on Evidence

Real Property: Williams on Real Property

Equity: Snell on Equity

Master and Servant: Smith's Master and Servant

English Constitutional Law: Lowell's Government of England or Anson's Law and Custom of the Constitution

### Third Part

Real Property: The Law of Landlord and Tenant

Partnership: Lindley on Partnership

Companies: Palmer on Companies

Canadian Constitutional Law: Clement's Law of the Canadian Constitution  
British North America Act

Banking Law: Falconbridge on Banks and Banking

Private International Law: Dicey's Conflict of Laws

Public International Law: The Hague Conventions; The Geneva Conventions

Wills: Jarman on Wills<sup>179</sup>

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<sup>179</sup> Law Society, correspondence, PABC, (add.mss.#948).

Career opportunities of one sort or another frequently fell in Angus's way after the war. The head of the Khaki University under whom he worked in 1919 was Dr. H. M. Tory, a great Canadian educator and the president of the University of Alberta. Angus reports that "[a]lthough a good administrator he could be very impulsive and on one occasion, annoyed with a letter he had received from the Dean of his Law School that practically amounted to a resignation, he asked me if I would accept the post."<sup>180</sup> This opportunity was declined. So too was the offer, made not once but twice in quick succession, of a tutorship in law at Magdalen College, Oxford.<sup>181</sup> Angus was determined to pursue a legal career in Vancouver and would not swerve from this object despite the academic temptations thrown before him. When he did return home, however, gaining a foothold in Vancouver legal practice was surprisingly difficult. Despite great learning, a wealth of experience, and thoroughly sparkling credentials, he subsequently recalled that the:

outlook in the law business seemed rather gloomy and I discovered that it would take some little time for me to prepare for an examination on the statutes of British Columbia. However, within twenty-four hours of arriving in Vancouver, I was invited to join the staff of the University of British Columbia on a part time basis. This offer was the result of an introduction by Walter Sage who was teaching in the Department of History. I was very doubtful of my qualifications to teach Economics but the head of the department, Dr. T. H. Boggs, was most encouraging and the university obviously had to get some assistance on an emergency basis to deal with the flood of students returning from the war. These considerations quickly overcame my scruples.

I was accepted, on a part time basis, in the law firm of E. P. Davis, then leader of the British Columbia Bar and, early in 1920 I was called to the bar in British Columbia . . . I still expected to be a full time lawyer at the end of the academic year.

The law business did not warm up very quickly and the arrangement with the university continued for a second and third year. I found university work very congenial.<sup>182</sup>

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<sup>180</sup> Angus, *supra* note 174 at 160.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.* at 164-65.

Eventually, the legendary Vancouver lawyer E. P. Davis came around to offering “a full-time post with a small salary and permanent prospects” in his law firm. Angus declined. At thirty-one years of age and after a great deal of deliberation he deviated for the first time from his constant adult ambition of making a career at law. He was committed now to a life’s work at the university.<sup>183</sup> Angus was to flourish as a university professor. He quickly rose through the academic ranks, published numerous scholarly articles and a half dozen books, was elected to the Royal Society of Canada, and achieved a degree of eminence in the world of ideas. He was a member of two royal commissions, worked in government during and following the Second World War (1941 to 1951), and served as chair of the Public Utilities Commission of British Columbia for a number of years.<sup>184</sup> Angus, moreover, did his fair share of work in university bureaucracy and administration, serving as head of the department of economics, political science, and sociology from 1930 through 1956 (“a dubious appointment”, he said, made because he “had no rivals in the department and financial pressures forbade any expensive experiment”)<sup>185</sup> and as dean of the faculty of graduate studies from 1949 to 1956.<sup>186</sup>

These features of his life are well known. Indeed, Angus has become a celebrated figure in the history of the University of British Columbia—the complex that houses the faculty of commerce and business administration is named after him. Less well known is his role in developing undergraduate legal education at the university. From the time of his return to Vancouver at the end of the First World War, the University of British Columbia developed a number of courses that provided relatively large doses of legal education to students in arts, commerce, and other undergraduate disciplines.

The courses ranged from what appear to have been merely “service” courses, introducing the outlines of legal obligation to business students or engineers, to quite serious courses of an intellectual or jurisprudential nature. The importance of these subjects as part of a rounded general education for citizens who would fill responsible positions in their society should not be disparaged. More narrowly, such courses must have formed an important—perhaps indispensable—role in the professional formation of many students who later went on to more narrow practical training in preparation for careers in the legal profession. Many years later, former Chief Justice Nathan Nemetz told an

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<sup>183</sup> *Ibid.* at 166.

<sup>184</sup> Angus, *supra* note 174 at 159.

<sup>185</sup> Angus, *supra* note 174 at 192.

<sup>186</sup> Angus, Curriculum Vitae, *supra* note 173.

interviewer that “Professor Henry Angus . . . taught me a great deal of jurisprudence in his government courses”.<sup>187</sup> Other distinguished jurists were also exposed to Angus during their undergraduate education, including Judge Art Lord,<sup>188</sup> Bruce Fraser (later County Court Judge in New Westminster), and Meredith McFarlane (later Mr. Justice McFarlane of the British Columbia Court of Appeal).<sup>189</sup> Interviewed in 1995 by Professor Tony Sheppard of the University of British Columbia Faculty of Law, Mr. Justice McFarlane recalled the influence of Henry Angus on his professional formation:

McFarlane: I was in the last freshman class in the old Fairview Buildings and I graduated with my B.A. in 1928.

Sheppard: I see . . . and in your B.A. program did you take any law related courses at that time? Were you already decided on your career as a lawyer at that point or had you yet to make up your mind?

McFarlane: I made up my mind, I think, very shortly before I graduated and one of the important factors in my decision was lectures I had taken in classes called Government I and Government II, in which the professor was Angus . . . Henry Angus.

. . . and I was most interested in his lectures and learned about things like *Sorrell v. Smith* and *Quinn v. Leatham*, and that’s what got me started.

. . . [Professor Angus] was, I thought, an outstanding professor . . .

Sheppard: So it was really Professor Henry Angus that sort of was the primary . . . role model in heading into law then . . . he whetted your interest? . . .

McFarlane: It was the trigger . . . it was a triggering event, I think.

Sheppard: Do you have a legal background? Do you have antecedents in the legal profession?

McFarlane: No, none of my parents or grandparents were in the law at all. First of the gang for that.<sup>190</sup>

A very large proportion of British Columbia lawyers who attended university in the province would have received their first exposure to legal studies in this way. The university, it should be remembered, was an important “feeder” to the legal profession in the province even before university education was required of aspiring lawyers. A Preliminary Survey of Higher Commercial Education in 1923 reported that fully twenty “male graduates of the University

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<sup>187</sup> (1988) 6 *UBC Law Faculty Newsletter* 1-3 at 2.

<sup>188</sup> Angus, *supra* note 174 at 166. On Lord, see “New Judge” (1951) 19 *The Advocate*.

<sup>189</sup> M.M. McFarlane, interview with Prof. Tony Sheppard of UBC Law School, May 31, 1995.

<sup>190</sup> *Ibid.*

of B.C. who were primarily interested in the study of Economics” in the classes of 1918 to 1922 had chosen to pursue careers in law.<sup>191</sup> These young men would have constituted an important portion of British Columbia articling students in any given year. The number represents fully one third of the designated graduates from the University of British Columbia over this period and the largest single career choice of the eight listed in the survey (teaching came a distant second at fourteen, while “business in B.C.” followed with twelve).<sup>192</sup>

### **UBC Law Curriculum, 1919 to 1945**

During the inter-war years Angus and Boggs taught a number of courses that would have enhanced the curriculum of any reputable Canadian, British, or American law faculty. In 1920–1921, for example, the department of economics, sociology, and political science offered two courses in the “government” category, which were similar to courses on offer in most respectable law schools at the time. The first, constitutional government, was described in the university calendar as being concerned with “the nature and origin of the state; with its development and with the machinery and methods of government in the British Empire, the United States, France and Germany”. The assigned books for this three-hour course were Leacock’s *Elements of Political Science*, in combination with the more classically legal *Common Sense in Law* by Vinogradoff.

The only other course taught as part of the curriculum in “government” fell four-square within the “legal” realm. Studies in jurisprudence and constitutional law were organized as two half courses. The first, dealing with “the nature and origin of Law and the development of legal systems”, was taught through Salmond’s *Jurisprudence, or Theory of the Law*. The second component of the course dealt with “the constitutional law of Great Britain and of Canada, special attention being given to the relation of the citizen to the government and to the extent to which individual liberty is recognized and protected”. This was taught through Houston’s *Constitutional Documents of Canada*.

The following academic year (1921–1922) saw some refinement in these offerings. A two credit-hour jurisprudence course on the nature and origin of law and the development of legal systems was developed, making use of the Salmond and Vinogradoff books. By the 1922–1923 academic year, a new three-hour course providing an “Introduction to the Study of Law” was introduced by Professor Angus and provided a rapid survey of legal history in combination

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<sup>191</sup> L.J. Fisher, *A Preliminary Survey of Higher Commercial Education* (copy in T. Boggs, materials, UBC Archives MG51 file# 1-3 at 43).

<sup>192</sup> T. Boggs, materials, UBC Archives file# 1-3 at 43.



with an outline of jurisprudence. Jenk's *A Short History of English Law* and the books by Salmond and Vinogradoff formed the mainstay of the reading material for this course, which, with some variations in required readings, was taught continuously from 1922 through to the 1945–1946 academic year. Professor Angus taught the course throughout, with the exception of a period during the Second World War when Brockelbank<sup>193</sup> and Farris filled in. In addition to these courses—which would have been central to any credible programme of legal qualification in their day—the University of British Columbia offered a number of courses dealing with the legal regulation of the economy, international law, international trade, and labour relations, which likely had significant legal content.

It is of course no easier to identify a “law course” in the abstract than it is to define “law”—a question that even the great jurisprudential scholar H. L. A. Hart declined to pursue because of the conceptual difficulties presented.<sup>194</sup> That said, Angus and his colleagues at the university did in fact engage an impressive amount of law teaching in this period. By any definition, a number of law courses were taught as part of the undergraduate curriculum at the University of British Columbia from the time of the First World War on. University calendars reveal the following:

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<sup>193</sup> William J. Brockelbank, who served as a "lecturer in government" in 1942-1943, held a B.A. degree from Haverford College, the LL.B. degree from Harvard and the Docteur en droit from Paris.

<sup>194</sup> H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961)

## ECONOMICS<sup>195</sup>

INTERNATIONAL TRADE AND TARIFF POLICY. 1920–1921 onward (focusing on theory of international trade, commercial policy, and the British Dominions)

CORPORATION ECONOMICS. 1918–1919 through 1940 (a course dealing with the historical development of industrial organization, company types, financing stocks, public policy; the course was renamed and modified in 1941)

TRANSPORTATION. 1931–1932 onward (a course dealing with railroad development and organization, including legal and economic problems and issues relating to public control)

COMMERCIAL LAW. 1929–1930 (principles of contracts, negotiable instruments, bankruptcy, and property)

COMMERCIAL LAW I. 1930–1931 through 1939 (principles of contracts, negotiable instruments, bankruptcy, and property)

COMMERCIAL LAW II. 1930–1931 through 1939 (mortgages, liens, trusts, real property, and landlord and tenant)

## DEPARTMENT OF COMMERCE (ESTABLISHED 1939)

COMMERCIAL LAW I. 1939–1940 (principles of contracts, negotiable instruments, bankruptcy, and property)

COMMERCIAL LAW II. 1939–1940 (mortgages, liens, trusts, real property, and landlord and tenant)

COMMERCIAL LAW. 1940–1941 (single course replaces Commercial Law I and II)

<sup>195</sup> Wherever in this chart "onwards" is indicated as the "terminal date", this indicates that the course persisted into the 1949 calendar at least.

## GOVERNMENT

CONSTITUTIONAL GOVERNMENT. 1918–1919 onward (political institutions of government in Canada, United States, Great Britain, and others)

JURISPRUDENCE AND CONSTITUTIONAL LAW. 1920–1921 (two half courses: the nature and origin of law and the development of legal systems; constitutional law of Great Britain and Canada, especially citizen–government relations)

JURISPRUDENCE. 1921–1922 (the nature and origin of law and the development of legal systems)

INTRODUCTION TO THE STUDY OF LAW. 1922–1923 through 1946 (survey of legal history; outlines of jurisprudence)

IMPERIAL PROBLEMS. 1923–1924 onward (problems of government within the British Empire)

THE RELATIONS OF THE DOMINION AND PROVINCES IN CANADA. 1940–1941 onward (general with special attention to finance, changing in 1946 to a general course on the government of Canada)

PUBLIC INTERNATIONAL LAW. 1942–1943 onward (general course using texts such as Hudson, Cases on International Law; Keith, The Dominions as Sovereign States; Oppenheim, International Law; Brierly, The Law of Nations; McKenzie and Lang, Canada and the Law of Nations)

## ENGINEERING

ENGINEERING ECONOMICS. 1918–1919 through 1920–1921 (finance, stocks and bonds, partnerships and corporations, contracts and charges; texts used included Waddell and Wait, Specifications and Contracts; W. H. Anger, Digest of Canadian Mercantile Law of Canada)

ENGINEERING LAW. 1920–1921 onward (status as witness, negligence, contracts, liquefied damages clauses, maintenance and defect clauses, arbitration, awards, agents, specifications and contract writing; texts included W. H. Anger, Digest of Canadian Mercantile Law of Canada; Ball, Law Affecting Engineers; Kirby, Elements of Specification Writing).

Over and above these courses—impressive though the list is—one suspects that many other courses on the university calendar would have dealt with legal issues more or less directly. “Principles of Sociology”, for example, is described in the 1920–1921 arts calendar as covering a range of topics including “industrial organization”, “marriage and the family”, “rights”, “the social problems of modern society growing out of destitution, crime, overcrowding, etc.” and a “survey of schemes for betterment”. Similarly, the 1938–1939 calendar records that “Social Science I” offered a potentially “legal” aspect in its investigation of “institutional origins” and “the political and economic institutions of the world today”; “Principles of Economics” included coverage of “money and banking, international trade, tariffs, monopoly, taxation, . . . the control of railways and trusts, etc.”; and “Government Finance” included “principles and methods of taxation”. Beyond these courses, “Labour Problems and Social Reform”, “Money and Banking”, or “International Trade” may have had a substantial legal content.

By any standards, however, the University of British Columbia did provide a fairly extensive exposure to law and legal issues to undergraduate students during the third and fourth decades of the twentieth century. A comparison with the offerings of the University of Manitoba law faculty in its golden era (when it was probably the finest in Canada according to both the chair of the Canadian Bar Association’s committee on Legal Education<sup>196</sup> and the Carnegie Foundation)<sup>197</sup> or with the Canadian Bar Association’s “standard curriculum” reveals that undergraduate education about law at the University of British Columbia rivalled, in many respects, the best “professional” education programmes of the day.

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<sup>196</sup> "Proceedings" (1923) 8 *Canadian Bar Association* 387; quoted in *Substantial Justice* 248; Robson Hall, University of Manitoba, Faculty of Law pamphlet at 9.

<sup>197</sup> *Substantial Justice* 249; Robson Hall pamphlet at 9; *Annual Review of Legal Education, 1926, 1927* (Carnegie Foundation).

Comparison of UBC Law Courses with Manitoba Law School Curriculum, 1922–1923 and Canadian Bar Association “Standard Curriculum”, 1920		
MANITOBA LAW SCHOOL	STANDARD CURRICULUM	UBC PROGRAMME
First Year		
Contracts	Contracts	Commercial Law Commercial Law I Engineering Law
Torts	Torts	
Real Property	Property (Real and Personal) 1	Commercial Law Commercial Law I Commercial Law II
Personal Property		Commercial Law Commercial Law I Commercial Law II
English Constitutional Law and History	Constitutional History	Constitutional Government
		Jurisprudence and Constitutional Law
Criminal Law	Criminal Law	
Civil Procedure	Practice and Procedure (Civil and Criminal)	
Criminal Procedure		

MANITOBA LAW SCHOOL	STANDARD CURRICULUM	UBC PROGRAMME
Elementary History of English Law	History of English Law	Introduction to Law
Roman Law		
	Jurisprudence	Jurisprudence and Constitutional Law  Jurisprudence Introduction to Law
Second Year		
Equity	Equity 1	Commercial Law II
Wills	Wills and Administration	
Evidence	Evidence 1	
Sale of Goods	Sale of Goods	Commercial Law I
Bills and Notes	Bills and Notes	Commercial Law I
Agency	Agency	Engineering Law
Corporations	Corporations and Partnerships	Engineering Economics
Partnerships		Engineering Economics
	Insurance	
Practice	Practice and Procedure	
Real Property	Property (Real and Personal) 2	Commercial Law I Commercial Law
Personal Property		Commercial Law I
		Commercial Law

Landlord and Tenant Law	Landlord and Tenant	Commercial Law II
Ancient Law		
Third Year		
Constitutional Law and Canadian History	Constitutional Law Canadian History	Domestic and Provincial Relations Constitutional Government
		Jurisprudence and Constitutional Law
MANITOBA LAW SCHOOL	STANDARD CURRICULUM	UBC PROGRAMME
Equity (Trusts and Trustees)	Equity 2	Commercial Law II
	Evidence	
Practice and Procedure (Civil and Criminal)	Practice and Procedure (including Criminal Procedure)	
Conflict of Laws	Conflict of Laws	
Mortgages	Mortgages	Commercial Law II
Suretyship	Suretyship	
Practical Statutes	Practical Statutes	
Rules of Interpretation and Drafting	Rules of Interpretation and Drafting	
	Shipping and Railway Law	Transportation
Domestic Relations	Domestic Relations	
Public International Law	Public International Law	Public International Law

Jurisprudence	Jurisprudence	Jurisprudence and Constitutional Law
		Jurisprudence
		Introduction to Law
Legal Ethics	Legal Ethics	

Admittedly, this comparison does take some necessary liberties. It assumes, for example, that a general course in commercial law might provide meaningful coverage of a range of distinct “professional” topics, including contracts, agency, and negotiable instruments. No sensible observer in the 1990s would even momentarily mistake a business school’s potted undergraduate survey of business law for the panoply of private law offerings that all credible law schools provide. The comparison may be considerably less strained in the 1920s and 1930s, however. Recall that during this period full-time legal education was rare, many aspiring lawyers had no experience of further education, and classes were often arranged on a more or less ad hoc basis to suit the timetable of part-time lecturers (some of whom may have merely read from published textbooks). Even at its best, the Vancouver Law School could offer only a truncated exposure to systematic instruction. George Curtis, who in 1945 became the founding dean of the University of British Columbia Faculty of Law, spoke highly of the Vancouver Law School but noted that “there were only ten or twelve lectures in Contracts and so forth. That’s the most they could do.”<sup>198</sup> During this period, then, mere fractions of a university course might have offered as much learning as “professional school” lectures in any single subject. The lack of any identifiable or uniform standards at Canada’s part-time law schools renders the comparison far more reasonable than would be the case today.

It is interesting too to compare the programme in law teaching that developed at the University of British Columbia during the 1920s with the programme put in place at the University of Toronto in the same period. Inter-war Toronto too had its own undergraduate arts department, a lawyer engaged in arts teaching, and a number of “law” courses available to the non-specialist undergraduate student. A 1923 report *On the Suggested Establishment of a Faculty of Law at the University of British Columbia* said the following about the University of Toronto programme:

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<sup>198</sup> George Curtis, interview with Murray Fraser, (1980) "Aural History Project", supra note 6 at 47.



At Toronto University certain Law courses are offered as a part of the work in the Faculty of Arts. These are for the most part of an academic character and include: History of English Law, Roman Law, Jurisprudence, Federal Constitutional Law (comparative), English Constitutional Law, Colonial Constitutional Law, International Law, and two general courses on Commercial Law.<sup>199</sup>

The University of British Columbia in the same period taught, coincidentally, history of English law (as part of "Introduction to the Study of Law"), jurisprudence, constitutional law, international law, and general courses on commercial law. Toronto's programme, however, blossomed into a much-celebrated department of law under the direction of W. P. M. Kennedy<sup>200</sup> while law teaching at the University of British Columbia developed more modestly, never taking shape as a free-standing academic unit.

The University of British Columbia's impressive combination of faculty competence, curriculum, and interest might, in other circumstances, have given birth to an undergraduate department of law (as happened not only at the University of Toronto in the same period but also at Carleton University four decades later), or it may have formed the nucleus of a faculty of law simultaneously capable of pursuing the academic goals of a university and the training needs of a profession (after the fashion of the University of Saskatchewan College of Law). Neither of these transformations in fact took place, likely because of the extraordinary complications surrounding the University of British Columbia's birth and the quick succession of economic depression and war that hit the province in the third and fourth decades of the century. On several occasions, a full-blown university legal education seemed tantalizingly near in British Columbia, only to slip away as economic crisis or war conspired to defer the possibility.

It is possible too that Angus along with Boggs or others at the university rejected the idea of forming an undergraduate department of law for reasons of principle. Canada, in the inter-war period, had not yet opted decisively for either post-graduate legal education (the developing American norm), nor for undergraduate university legal education (after the fashion of Oxford, Cambridge, or other English universities). The fiery critic of Ontario's Benchers,

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<sup>199</sup> "Notes on the Suggested Establishment of a Faculty of Law at the University of British Columbia" (UBC Special Collections, President's Office, Microfilm Roll #5, file 40: "Law School" 1916-1923) at 2.

<sup>200</sup> C.I. Kyer & J.E. Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario, 1923-1957* (Toronto: Osgoode Society, 1987) 107ff; W.P.M. Kennedy described his programme in "Legal Subjects in the Universities in Canada" (1932) 32 *Journal of the Society of Public Teachers Law* 23; "Law as a Social Science" (1934) *Scots Law Times* 165; "A Project of Legal Education" (1937) *Scots Law Times* 1,17,21.

Cecil (Caesar) A. Wright, strongly opposed the direction in which W. P. M. Kennedy pulled his University of Toronto “Department of Law” during the 1930s despite his own passionate commitment to university legal education. In private correspondence (reproduced in C. Ian Kyer and Jerome E. Bickenbach’s outstanding 1987 book on legal education, *The Fiercest Debate*), Wright expressed the fear that Kennedy’s initiatives to create an undergraduate department of law would introduce a “bastard” system of legal education:

I think you know my own personal views regarding University Law Schools. I am quite convinced a University is the proper place. I am equally sure that its place should be after and not concurrent with an Arts course. What I do fear, is that we may be shoved into the same position as England if K. gets his way. I think that is bad, because our conditions here are so different. After all, the largest part of our law school work consists in doing what the English barrister does for some years as a junior in chambers. We have not got that. To take the English system without it, seems to me even a further retrogression than we have as yet had.<sup>201</sup>

Although Angus seems to have avoided the destructive vortex that developed around inter-war Toronto’s parochial debates on legal education, he probably shared the view that Canadian professional legal training should follow rather than displace a rounded Arts education. Certainly, he rebuffed a law society invitation to merge the two during the Second World War precisely because he thought it undesirable to “cut down the amount of general education to make room for professional subjects”.<sup>202</sup>

### **The British Columbia Anomaly**

Angus’s rebuff of the law society offer raises a puzzling question about the history of British Columbia legal education: If, by 1920, both a professional school of law in Vancouver and a university department were actively engaged in the teaching of law, why did the two not merge to provide university-based intellectual training for aspiring lawyers? From our perspective seventy-five years later, a union seems both logical and practical.

In maintaining both a professional school and a university department as separate institutions during the 1920s, British Columbia was something of an anomaly in common-law Canada. Each of the three Prairie provinces had by this

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<sup>201</sup> Kyer & Bickenbach, *ibid.* at 120.

<sup>202</sup> Memo of Professor Henry Angus to President Klinck (May 6, 1940) (the date on this document appears to be in error - it is "1930-31" but it refers to "the war").

time developed arrangements under which individuals wishing to pursue a career in law could fulfil part of their professional qualification by registering in courses offered through the provincial university. New Brunswick and Nova Scotia had long-established university law faculties by this time. Newfoundland was not yet part of Canada, Prince Edward Island and the northern territories had very small population bases, and Quebec, as a civil-law jurisdiction, structured legal qualification in its own way. Among the common-law provinces, only Ontario and British Columbia maintained a professional law school separate from the university.

Ontario can be forgiven, for its lapse at union is less clearly aberrational. By the second and third decades of this century a sort of institutional inertia surrounded the Osgoode Hall Law School, which was then both well- and long-established as an arm of the Law Society of Upper Canada. Lawyers in Ontario had no particularly strong reason to wish to radically disrupt a familiar, comfortable credentialling structure that was still looked upon as a respected model by the newer legal professions of the western provinces. The situation in British Columbia, however, was different in almost all respects: Canada's Pacific province had no highly developed training programme, no established institutions in danger of disruption if a university law faculty was to be created, and no establishment feathers to be ruffled. The province was characterized by a social and institutional fluidity seemingly more akin to Manitoba, Saskatchewan, or Alberta than to "Upper Canada". Why would this new, western province turn its back on the pattern—quickly establishing itself across North America—of providing university legal education as part of professional credentialling?

It is tempting to speculate that British Columbia's aberrational behaviour must have arisen from some principled opposition on the part of either the university or the law society to formal academic education for the legal profession. It is easy to imagine a certain sort of university scholar looking askance at any hint of practical education—resolutely defining their role in relation to teaching the classics, literature, history, and humanities rather than to professional disciplines or the sciences (cultivating "Greek roots in Ivory towers" in Depression-era parlance, according to Angus).<sup>203</sup> On the other side, it is possible that influential legal practitioners who held scholarship and all things associated with the university in utter contempt may have actively opposed any role for academics in training new generations of practical men and women of law. The history of Ontario legal education has too often been characterized by misunderstanding, distrust—perhaps even bad faith—in many encounters between the world of legal practice and the world of legal ideas. The same

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<sup>203</sup> Angus, *supra* note 174 at 199.

processes might be presumed to have played themselves out in British Columbia, stymying the development of legal education until very late in the game.<sup>204</sup>

Nothing could be further from the truth. The explanation of the anomaly is much more mundane. A university law faculty was not created out of law society efforts before the First World War because there was, in effect, no university with which either the Vancouver or the Victoria law schools might be affiliated. A series of accidents of timing and other unpredictable misfortunes intervened to prevent the union of the two throughout the inter-war period. Some considerable opposition to the principle of formal legal education probably played itself out behind the scenes but it was muted, kept in-house, and entirely without the pyrogenics produced in Ontario.

### **Review of the University Environment in British Columbia, 1872 to 1945**

The University of British Columbia was a rather late entrant to the field of publicly funded provincial universities in Canada. After years of planning, preparation, heightened expectations, dashed hopes, and further planning and preparation, the first convocation was held in Victoria on August 21, 1912—three years before any classes were taught and a year before the new institution even had a president. In *Tuum Est: A History of the University of British Columbia*, Harry Logan described this convocation “as a sort of launching ceremony for the University”.<sup>205</sup>

The earliest known proposal to create a university in British Columbia in fact is found several decades earlier in the First Annual Report of John Jessop, superintendent of education in 1872. Jessop simply assumed that some sort of legal education would be provided: “British Columbia will soon require a Provincial University, capable of conferring degrees in Arts, Law and Medicine”.<sup>206</sup> So, too, the British Columbia legislature took it for granted that law had a place in university education. Logan summarized the 1890 Act Respecting the University of British Columbia as follows:

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<sup>204</sup> For an example of opposition to academic legal education, see the Provincial Archives of British Columbia, file# 948-42-29, letter from J.H. Senkler, K.C. to E.C. Senkler, Secretary to Law Society, Oct. 16, 1919. J.H. Senkler writes that: “I would not make it compulsory to attend lectures at all - I think that lectures are no good whatever, and so far as I am concerned, I would do away with the law school in a minute, but apparently it has been decided by the Benchers to have the law school”.

<sup>205</sup> H.T. Logan, *Tuum Est - A history of the University of British Columbia* (Vancouver: University of British Columbia, 1958) at 44.

<sup>206</sup> *Ibid.* at 1.

The University was to be empowered to grant degrees in Arts, Science, Medicine and Law. Courses in Arts and in Science were to be set up at once. It was laid down that the Arts course “shall embrace all the branches of a liberal education necessary for the degree of Bachelor of Arts or such degrees as may be determined on by the University council” . . . “The Science course shall include the subjects of Agriculture, Mechanics, Mining and Civil Engineering, leading to and preparatory to the degrees of Bachelor and Doctor of Science.” While no provision was made for actual courses to be given in Medicine and Law, the University Council was authorized to “make and alter any statutes . . . touching the curriculum and examination necessary for degrees and the granting of the same,” and in the meantime, subject to approval by the Lieutenant-Governor-in-Council, the University might admit to examination for degrees in Medicine or Law graduates or students from approved Medical or Law Schools situated in either the Province or elsewhere.<sup>207</sup>

This attempt to found a provincial university for British Columbia foundered on the rivalry between Victoria and the Lower Mainland for leadership of the new province. As a result, college-level education came to Vancouver in 1906 and to Victoria in 1908 when McGill University established satellite campuses under provincial enabling legislation passed in February 1906.<sup>208</sup> By 1912, however, an energetic minister of education had carried the idea of a provincial university far enough to issue a call for architects from across Canada to compete for the design of a university campus. They were asked to submit plans for a full-service university that combined the conventional university subjects with training in a number of practical disciplines. Significantly, law was to be included.<sup>209</sup>

The first president appointed to head the University of British Columbia was a Canadian physician serving as dean of medicine at the University of Minnesota. Frank Fairchild Wesbrook, appointed in February 1913,<sup>210</sup> laid ambitious plans for both curriculum and the construction of a campus. Faculty were hired and a calendar was issued. The first session of instruction began in the autumn of 1915—possibly among the worst of all possible times in Canadian history to begin any new venture of this sort. Canada and the Empire were then

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<sup>207</sup> *Ibid.* at 3.

<sup>208</sup> W.C. Gibson, *Wesbrook and his University* (Vancouver: Library of the University of British Columbia, 1973) at 47.

<sup>209</sup> *Ibid.* at 50-51.

<sup>210</sup> Logan, *supra* note 205 at 42.

mired in the second year of a dreadful war whose fullest horrors were yet to be revealed. The stresses of the time were immense and, not surprisingly, the ambitious plans for the development of a major provincial university were put aside. Henry Angus later noted that “the financial stringency resulting from the World War had also caused the building programme to be postponed and the one permanent building at Point Grey remained in skeleton form for many years” while the university was housed in “inconspicuous” and “temporary quarters” near the Vancouver General Hospital<sup>211</sup> in buildings known as the “Fairview shacks”. (So modest were these quarters on Henry Angus’s arrival in Vancouver, that, he said, “the street car conductor could not tell me where to get off”.)<sup>212</sup>

President Wesbrook died shortly before the Armistice in 1918 at 50 years of age. His efforts to develop an institution he envisaged as a “provincial university without provincialism”<sup>213</sup> were all but completely frustrated during his lifetime. The university for which he had nurtured grand ambitions would not enjoy security of funding until after the Second World War.

Wesbrook’s plans at all stages allowed a place for legal education. An idealistic man credited with setting “the University on a broad and liberal path from which it has never since deviated”,<sup>214</sup> Wesbrook outlined his sweeping vision for a provincial university in an important speech delivered during his first year in office:

Canada’s task is that of constructing a nation almost “while we wait”, which must, however, be a part of that supnation upon which the sun never sets. Hers is a constructive problem. She builds anew and does not have to dwell in chaos amid the litter of tearing down whilst she rebuilds her whole national fabric. She will therefore do wisely to profit by the experiences of the older nations in order that there may be no need of the uneconomic and tragic task of reconstruction . . . .

Inevitably we shall become incapacitated from over-specialization unless we develop our “social nervous system” to the corresponding degree. . . .

The people’s university must meet all the needs of the people. We must therefore proceed with care to the erection of those workshops where we may design and fashion the tools needed in the building of a nation and from which we can survey and lay out paths of enlightenment, tunnel the mountains of ignorance and bridge the chasms of incompetence. Here we

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<sup>211</sup> Angus, *supra* note 174 at 165.

<sup>212</sup> *Ibid.*

<sup>213</sup> note 205 at 59, 75.

<sup>214</sup> *Ibid.* at 43.

will generate currents of progress and patriotism while we prepare plans and begin the construction of a finer and better social fabric than the world has known. Having done our best to found provincial universities without provincialism, let us pray that posterity may say to us that we built even better than we knew.<sup>215</sup>

Education in law had an important role assigned to it in advancing this vision. Notes Wesbrook made in February 1914 while on ship returning to Canada from England sketched out a future campus in which intellectual linkages and relationships among different fields of knowledge would be crystallized in architectural form:

We have sought to relate the biological sciences to the physical sciences and arts, whilst we have them next door to agriculture, forestry, medicine and pedagogy. Mines and geology are located in the same group, as close as possible to engineering and the pure sciences foundational to them. Arts, theology, law and commerce are brought in touch and yet not divorced from the sciences. The university administration building, library, and convocation hall are centrally located. The athletic grounds, drill grounds, armoury, the site for the department of pedagogy's practice school and the hospital-medical school sites are all on the town side of the university grounds so as to be more readily accessible to Vancouver<sup>216</sup>

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President Wesbrook's assumption that the university would in the fullness of time develop a full law department was also recorded in correspondence that same year in which he explained that "[a]ctive teaching in the arts and sciences will not begin until the autumn of 1915 and it will probably be some time thereafter before a College of Law is established".<sup>217</sup> Wesbrook and his contemporaries took it for granted that legal education had an important role to play in the new university.

During the years of relative prosperity in the 1920s, and under the leadership of a new president, the university should have prospered. But in fact even the period between the end of the First World War and the Great Depression were difficult times for the new institution. Premier John Oliver was,

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<sup>215</sup> Gibson, *supra* note 208. In November, 1913, President Wesbrook travelled to Winnipeg to attend ceremonies marking the installation of President MacLean at the University of Manitoba and presented an address on "The Provincial University in Canadian Development".

<sup>216</sup> *Ibid.* at 85-86.

<sup>217</sup> *Ibid.* at 92, 96.

to say the least, cool to the cause of higher education in British Columbia.<sup>218</sup> Henry Angus recalled that, just after he had turned down the opportunity to take up a legal career in order to commit himself to the university, the “very precarious” financial situation was revealed when his own “elimination was seriously discussed as one of the necessary economies”.<sup>219</sup> “The future of the university was still in doubt”<sup>220</sup> and would remain so for another two decades.<sup>221</sup>

Timing is everything. It seems that from one decade to the next, mishap followed upon accident of timing followed upon disaster to deny British Columbia a university law faculty. The university did not exist at all in the period from 1909 through 1914 when the Law Society of British Columbia was giving active consideration to the problem of how to best educate students in law. By the time the law society’s two schools had opened and the university was launching its programme, Canada was immersed in the First World War. A thumbnail sketch of the history of the university written in 1958 by its president, Norman MacKenzie, alludes to the great difficulties the university encountered during its first thirty years:

Those who did all in their power sixty or seventy years ago to have higher education established in British Columbia could not possibly have foreseen that the new university must, of necessity, begin its lectures one year after the outbreak of the First World War. As a consequence, both staff and students had to make do with what limited “temporary” quarters were available, while during each of the wartime sessions many of their ablest colleagues and friends left for overseas service. To-day the khaki cord on the undergraduate gown has almost lost its significance for those who wear it, but it symbolizes a precious inheritance. The delay of a decade before the University was installed on its present beautiful campus had scarcely been overcome when a world depression shattered all hopes of expansion, or even of consolidation, and came near to closing the University. Again U.B.C. overcame its difficulties only to enter a longer and more pitiless world war.<sup>222</sup>

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<sup>218</sup> Logan, *supra* note 205 at 90. In 1981, John L. Farris stated that "John Oliver was a farmer and he didn't believe in this high falutin' stuff of education very much".

<sup>219</sup> Angus, *supra* note 174 at 182-83.

<sup>220</sup> *Ibid.*

<sup>221</sup> Logan, *supra* note 205 at 36; B.D. Edwards, *The Censure of Dr. L.S. Klinck on March 16, 1932 - Personalities and Events Surrounding a Crisis at the University of British Columbia* (M.A. Thesis, UBC Faculty of Graduate Studies, Education, 1984).

<sup>222</sup> Logan, *supra* note 205 at xi, "Forward" by Norman MacKenzie.



A more difficult half-century can scarcely be imagined. With survival of the polity, the university, and the individual so threatened, it is not the least surprising that the merger of British Columbia's two traditions of legal education was delayed.

# 4

# Toward a Law Faculty

## **Affiliation with the Law Society**

The University of British Columbia consistently indicated its interest in developing a law programme from its earliest days. For its part, the law society seems to have frequently (if not consistently) demonstrated either a desire to work with the university in providing professional education or, at the very least, an openness to the idea in principle (it is unclear whether these desires were based in a deep professional love for the world of ideas or, as Peter Sibenik has hinted of the Alberta Law Society,<sup>223</sup> a deeper and even more abiding desire to off-load educational costs to students and the public). Probably the aspirational combined seamlessly in the minds of many lawyers with more practical concerns about law society finances. Nevertheless, British Columbia came tantalizingly close to having a university-affiliated faculty of law as early as 1923—and also in 1930, 1938, and 1941!

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<sup>223</sup> P.M. Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta, 1885-1928" (1990) Dal. L.J. 419.

### **The Law Society's Financial Situation**

All discussions of legal education in the province during the inter-war period took place within a context in which the provincial university was severely underfunded and the law society was in a permanent state of financial crisis. Alfred Watts has provided a succinct account of the scandal that was law society finances:

It was about the turn of the century that the fees of a large number of outside applicants resulted in fairly substantial funds becoming available to the Society and a capital account of some eighty-five thousand was rapidly accumulated. The Benchers concluded that something better than bank interest should be obtained. . . . By 1915 they had some fifty-three thousand dollars invested in Mortgages in Victoria and by about 1924 had lost the whole bundle.

And at the same time various matters combined to provide additional financial stress. The second digest of the B.C. Reports was printed at a cost of seven thousand dollars and given to the members while the fees of all those on active service (of which there was a very large number) were excused, and, again due to the war, there was practically no enrolment of outside Barristers and Solicitors. In addition a special meeting of the Society had authorized the Benchers to pay out the sum of ten thousand dollars to a patriotic fund. Indeed by 1916 there was an expenditure of seven thousand dollars over receipts.

. . .

After the end of the first war the financial position of the Society continued to deteriorate, and by 1923 there were numerous complaints from the members, particularly because the annual statement showed only receipts and disbursements.

. . .

By 1924 the Society had expended eighteen thousand dollars more than it had received and when an effort was made to increase the fees strong objection was made by members of the Society, no doubt because of the serious financial losses.<sup>224</sup>

By 1924 a more or less general rebellion of ordinary lawyers developed from concern about the miserable state of law society finances. Watts records that in February 1924 Garfield King wrote to the secretary of the law society to register the sense of “ever increasing discontent and dissatisfaction felt with the

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<sup>224</sup> Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 at 38ff.

financial arrangements of the Society. Some of the ‘elder statesmen’ would surely get bumped at the next election of the Benchers if the expression of opinion at the Bar luncheon are any indication”.<sup>225</sup>

It is hard to know what role legal education played against this backdrop of budgetary crisis and law society politics. The structure and content of legal education has always been an intensely political issue—matters of training and skill speak powerfully to visions of citizenship, professionalism, competence, self-worth, personal status, and wealth. Accordingly, every common-law jurisdiction has seen its share of sustained, heart-felt debate about the ideology of legal education. The matter is complicated when, as in early twentieth century British Columbia, concerns for economy and prudent law society management might have suggested disposing of law lectures altogether, cutting the budget provided for them to the bone, or seeking out some cost-effective long-term arrangement with a university—depending on the predilections and individual cost-benefit assessments entered into by a changing slate of Benchers.

### **The Law Society Proposal for a Law Faculty**

On August 11, 1922, a Bencher of the Law Society of British Columbia, Arthur M. Whiteside, wrote to Leonard S. Klinck, who had succeeded Wesbrook as president of the University of British Columbia. Whiteside advised the president that the Benchers had appointed a committee (A. H. MacNeill, R. M. MacDonald, and Arthur Whiteside) “to interview the University authorities for the purpose of discussing the possibility of establishing a Faculty of Law in connection with the University”. Whiteside reminded Klinck that “the Benchers have for some time past conducted a Law School, at which the students have been in attendance”, and informed him that “they feel that it would be a decided advantage to those desiring to enter the profession and to the public, if the activities of the Law School were undertaken by the University”.<sup>226</sup> Klinck apparently responded enthusiastically, if cautiously, to this approach (he faced severe budget problems of his own<sup>227</sup>) and moved quickly to meet the law society committee.<sup>228</sup> He was assured that the rough plan the law society was

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<sup>225</sup> *Ibid.* at 39.

<sup>226</sup> Whiteside to Klinck dated Aug. 11, 1922, President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

<sup>227</sup> *Supra*, note 205.

<sup>228</sup> Letters, President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library. L.S. Klinck served as president of the University of British Columbia during the crucial inter-

working toward would involve only modest expenditure. In September the president met with “Mr. Reid” (most likely Robie L. Reid, a member of the university board of governors from 1913 to 1935)<sup>229</sup> to discuss the Benchers’ proposal for a faculty of law. President Klinck’s memorandum of this meeting indicates that:

[d]uring the course of the interview, Mr. Reid called up Mr. R. M. MacDonald and learned from him that the representatives of the Benchers did not expect that the University would be able to defray any considerable part of the expenses. He also stated that it was their intention to have the teaching conducted in the Court House where the Library would be available to all.<sup>230</sup>

So assured, the president initiated a thorough investigation of the state of legal education in Canada and the role of universities in training lawyers. On October 4, 1922, Stanley Matthews, registrar for the university, wrote to the law societies of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, and Nova Scotia to enquire about examinations, instruction, and “[t]he extent to which study at a University is required, and how far, if at all, a University degree is recognized as qualification, or as part of a qualification, for call for admission?” A copy of this letter was apparently provided to “Mr. Angus”<sup>231</sup> though what further role, if any, Henry Angus played at this time is unclear.

At a special meeting of the board of governors on October 20, 1922, a letter from Arthur Whiteside was read. It put forward the proposal “that the University establish a Faculty of Law “and set out” the conditions under which legal instruction might be carried on without immediate most to the University”. The board responded with interest and referred the matter to senate.<sup>232</sup> The law society apparently took encouragement from its dealings with Klinck and with the board of governors, for Whiteside’s correspondence during the next two weeks seems premised on the assumption that the birth of a university faculty of

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war period. Much maligned for not sufficiently defending the interests of the university during these times, he nonetheless put enormous effort into developing a university law faculty.

<sup>229</sup> Logan, *supra* note 205 at 242.

<sup>230</sup> Sept. 19, 1922 - memo to file by L.S. Klinck re: meeting with the Law Society committee on organizing a Faculty of Law. President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

<sup>231</sup> Oct. 4, 1922 - letter from Stanley Matthews, UBC Registrar, to law societies of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia (with copy apparently to "Mr. Angus"). UBC Archives, microfilm roll#15, "Law Societies" 1922. Special Collections, UBC Library.

<sup>232</sup> "Excerpts from Minutes of Board of Governors", Special Meeting of the Board of Governors on Oct. 20, 1922, President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

law was imminent.<sup>233</sup> A meeting of the Benchers on October 2, 1922, passed a resolution “that the Law Society undertake to pay \$2000.- annually toward the maintenance of a Law Faculty at the University of British Columbia and that the Committee on legal education be empowered to confer with the University Authorities on that basis”.<sup>234</sup>

At a December 20, 1922 senate meeting, the president, further to the mandate of the senate, appointed a committee (Cecil Killam, Chair; R. E. McKechnie; Judge Howay; Dean R. W. Brock; and Theodore Boggs) to look into establishing a faculty of law.<sup>235</sup> President Klinck continued to play an active role in all aspects of work directed toward establishing a law faculty.

### **Preliminary Consultations and Cultural Vision**

By the time the senate had approved the appointment of a committee to investigate legal education, correspondence had begun to flow into the university from legal educators and university presidents across Canada. Their advice likely had considerable influence on the attitudes of the British Columbia university president, the senate committee, and, indeed, law society activists who worked toward establishing a law faculty both in 1923 and in later years when university legal education was again considered.

Pioneering law teacher and classicist Arthur Moxon wrote to Klinck to explain the state of legal education in Saskatchewan.<sup>236</sup> University of Alberta president, Henry Marshall Tory, wrote to report on law teaching at his university, including, for good measure, a personal endorsement of the idea of university legal education. Tory’s university, like Moxon’s, was graced with one of the cutting-edge Canadian law faculties of the era. “I hope,” he wrote, “the time is not far distant when the lawyers will be wise enough to agree that no body will be permitted to practise Law who has not taken a full college course. I cannot understand why they regard college education as so essential even for a

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<sup>233</sup> Whiteside to Klinck. Oct. 26 and Oct. 28, 1922 points to the need to secure legislation if a university law faculty is to be created. President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

<sup>234</sup> Oct. 2, 1922 notes from "Benchers Meetings Minutes, 1922-1924" maintained at the Law Society of British Columbia.

<sup>235</sup> "Excerpts from Senate Minutes", President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

<sup>236</sup> Moxon to Klinck, Dec. 20, 1922, President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

school teacher and yet are willing to allow men to become lawyers by such information as they can pick up around a lawyer's office."<sup>237</sup>

The McGill law dean, Herbert A. Smith, wrote a letter that was virtually a manifesto for twentieth century reform of legal education. His response to the University of British Columbia's enquiry went far beyond mere reportage or idle encouragement to outline an entire philosophy of legal education. Smith addressed three crucial aspects of legal education: faculty, students, and curriculum. On all fronts he recommended the development of a programme that would fully reflect the state-of-the-art as it was then understood by thoughtful North American observers of legal education. Regarding faculty, Smith endorsed the then-current position of the "American Association of Law Schools" that, although "some faculty who work mostly in legal practice" would be needed, a minimum complement of three full-time faculty members was essential if a credible university programme was to emerge.<sup>238</sup> Like Tory, Smith wished to transcend entirely the traditional, limited demands made of trainee lawyers. "The student," he said, "like the professor, can only do the best kind of work if he gives substantially his whole time to his academic studies. The attempt to combine the work of the law school and that of the office means in practice that neither is done well."<sup>239</sup> Moreover, again reflecting current thinking of leading legal educators within both the American Association of Law Schools and the Canadian Bar Association, Smith recommended that the academic prerequisites to legal study be set at a high level: "I believe that you would do well to begin at once with insisting upon two years in Arts . . . it is not possible for boys to study law with advantage if they are intellectually immature."<sup>240</sup> He encouraged the University of British Columbia to move toward a school in which full-time students of superior qualifications would be taught intensively by full-time faculty.

This direction in itself would have powerfully shaped legal education. Smith also advised Klinck that the university should be vigilant to fully protect its independence in all of its dealings with the legal profession. He took care to caution that "[t]he University should retain entire control of the staff, the curriculum, and the examinations" even though it "should always be ready to consult the judges and practitioners upon matters of common interest".<sup>241</sup> This

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<sup>237</sup> Tory to Klinck, Mar. 7, 1923, President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

<sup>238</sup> H.A. Smith, Dean, Faculty of Law, McGill University, to Klinck, Jan. 8, 1923, President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

<sup>239</sup> *Ibid.*

<sup>240</sup> *Ibid.*

<sup>241</sup> *Ibid.*

moral may have been derived from his own experiences dealing with the organized legal profession in Quebec.<sup>242</sup> It was certainly a direct warning that the university should neither permit its law teaching arm to become entirely subjugated to the law society (as at Toronto's Osgoode Hall) nor to fall too closely within the professional orbit (as, perhaps, was the jointly administered Manitoba Law School).

Over and above whatever abstract principles of university autonomy may have been important to Smith, he likely had a pressing reason for counselling against permitting practising lawyers or judges too great a role in the university. The possibility of developing a form of legal education adequate to meet the social needs of the day would, he thought, be severely compromised—perhaps even entirely subverted—if the legal profession was allowed too strong a role in the design of either curriculum or pedagogy. He seems to have thought, as did the American jurist Karl Llewellyn, that lawyers should be “on tap” but not “on top” in developing the university curriculum in law. Smith whole-heartedly endorsed the model curriculum developed only a few years previously by the Canadian Bar Association's ground-breaking committee on legal education:

The Faculty would be well advised to conform to the general lines of the curriculum suggested by the Canadian Bar Association. In this connection I should like to emphasize the importance of keeping the cultural part of the training well to the front during the whole course by devoting adequate attention to such subjects as international law, constitutional law, legal history, and theoretical jurisprudence. If possible, facilities and encouragement should be offered to students to interest themselves in Roman Law and in the civil law of Quebec. It must be remembered that under modern conditions a law school is not only concerned with the training of practitioners. Its graduates, more than those of any other department, enter Parliament and the public service, or become prominent in other walks of life. This throws upon the Faculty a special obligation towards the country at large, which needs highly educated men as leaders and legislators. It is therefore important not to allow the more cultural part of the teaching to be crowded out by trying to fill the curriculum with the greatest possible number of purely technical courses.<sup>243</sup>

The “cultural” education of lawyers was only in part about course content and the structure of education. The ideal of training “highly educated men as

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<sup>242</sup> R.A. Macdonald, "The National Law Programme at McGill: Origins, Establishment, Prospects" (1990) 13 Dal. L.J. 211

<sup>243</sup> Smith to Klinck, *supra* note 238.



leaders” also required the adoption of an appropriate teaching method. Smith advised Klinck that “[t]he formal dictation of notes” was “a very insufficient method of teaching law” and endorsed “the informal and conversational discussion of practical problems between a teacher and his class, which Americans call the ‘case method’”.<sup>244</sup> Entirely consistent with his stated objectives of producing cultured, well-rounded university graduates to work in law, the McGill dean recommended that the law and arts faculties of the university should be closely integrated.<sup>245</sup>

This appeal to a cultural vision of professional education would have been immediately understood and warmly received by scholars at the University of British Columbia in the 1920s. As part of an ongoing process of identifying new and useful ways in which to adapt an ancient European idea—the university—to the peculiar needs and expectations placed on public institutions by a modern North American community, the early University of British Columbia was engaged in an extended process of study relating to business education. The similarities in mission and educational vision shared by business and legal educators of the era is striking. During the same months that active consideration was being given to founding a law faculty, initiatives taken by Theodore Boggs in relation to business education received positive review in the Preliminary Survey of Higher Commercial Education Made by the Associated Boards of Trade of British Columbia.<sup>246</sup> That document outlined a continuum of educational programmes that also reflected a natural evolutionary process. According to the model relied on in this report, primitive professions were educated by apprenticeship alone but eventually developed organized schemes of guild training in order to more efficiently communicate systematized knowledge. From there the next stage through which progressive professions passed through the next stage, developing a “broad” education based on “scientific knowledge”. The final stage was achieved when the particular field of knowledge came to be fully appreciated as “part of the general civilization or intellectual wealth of the world”. This “cultural” stage represented the pinnacle of practical learning and a goal toward which the most worthy of callings strove.<sup>247</sup> When McGill’s dean of law offered advice about the importance of developing “cultural” education in law, the faculty and administration at the University of British Columbia would interpret his words through this ideologi-

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<sup>244</sup> *Ibid.*

<sup>245</sup> *Ibid.*

<sup>246</sup> "T. Boggs, materials" UBC Archives, file# 1-3 at 4-6. Special Collections, UBC Library.

<sup>247</sup> *Ibid.*

cal framework. “Law”, in these terms, was far too precious a cultural heritage to be left in the custody of ordinary lawyers: far too many of whom were uneducated, trained only by “apprenticeship”, or at best exposed to guild training. Smith’s reference to the need for “cultural” education in law and his firm view that lawyers should be kept at arm’s length when it came to formulating either law faculty curriculum or educational method would have been well understood and taken to heart by thoughtful educators at the University of British Columbia at the time. It was, as lawyers like to say, “on all fours” with everything else they understood about their mission as university teachers.

This message was strongly corroborated and reinforced by further advice from University of Alberta President Henry Marshall Tory. His advice too would have been very influential. Tory, a distinguished educator in his own right, resided over the provincial university in the next province, an institution that had fostered an innovative Canadian law faculty. Klinck reported on Tory’s views in an extensive internal document headed *Data Re: Law Faculties in Canadian Universities*: “President Tory went very fully into the whole matter himself and strongly urged that a high academic standard be set and that if possible, the course in law be related to what he terms a ‘double course’, that is, with Arts.”<sup>248</sup> Tory too was apparently persuaded of the virtues of the “case method” of legal instruction. Klinck reported that “[h]e was evidently most favourably impressed with the Harvard system and suggested the desirability of having at least one Harvard trained man on the staff”. The possibility of appointing Henry Angus as dean of a new University of British Columbia law faculty had been discussed and the discussion of his suitability as a law teacher reveals a great deal about Tory’s commitment to what we now call the Socratic method of teaching law. Angus, it will be recalled, held an arts degree from McGill and had earned two first-class degrees in law at Oxford before being admitted as a Barrister-at-Law of the Inner Temple. He was known to Tory, who had appointed him to head the law department of the Khaki University in 1919, and had approached him about deanship of the University of Alberta Faculty of Law. It seems, however, that by 1923 Tory had formed the opinion that, no matter how fine a scholar Angus might be, his English education was something of an obstacle to be overcome if he was to be a suitable choice to lead a North American law faculty through the twentieth century. Klinck’s notes are brief and admittedly somewhat cryptic. They record only that Tory “knew something of Mr. Angus and thought that a man of his training would, especially if it were supplemented by a course in Harvard, make him extremely valuable, if his professional experience had been

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<sup>248</sup> "Data Re: Law Faculties in Canadian Universities", President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923 at 1-2. Special Collections, UBC Library.

wide enough to justify his appointment".<sup>249</sup> For Tory, in other words, the case method was the sine qua non of a credible legal education and the case method was synonymous with Harvard. An Oxford education could be overcome by gaining some direct exposure to a leading American institution of legal learning.

## Finances

Programme was clearly important to the administration of the University of British Columbia. Klinck and those around him were determined to ensure that any scheme of legal education developed at the university should be well-thought out and thoroughly reputable by the highest standards prevailing in North America. The problem of impecuniosity had to be confronted, however, and this was a matter of the first importance. The financial calculations the university entered into are revealed in an internal memorandum President Klinck generated in March 1923. Projected income for the new faculty of law was calculated as follows:

Grant of \$2,000 for at least one year from Benchers

Estimated number of students—60

Suggested fee \$100

Mr. Whiteside stated that in 1918 there were 200 students enrolled; 1919, 31; 1920, 42; 1921, 22; 1922, 23.<sup>250</sup>

From this income (which would come to \$8,000, including the once-off grant from the Benchers) it would be necessary to find a dean's salary. In accordance with advice Klinck had received from elsewhere in Canada, this was projected at \$6,000 per annum. President Klinck's March 1923 memorandum assumed that volunteer lecturers drawn from the practising legal profession would help to round out the faculty's offerings. The budget was tight even allowing for the contributions of services by volunteer lecturers. Other costs, including any for books, office accommodation or teaching space, administrative support, and contributions of teaching resources by existing University of British Columbia faculty would have to be met from the small margin left over and above the dean's salary. The university may have intended to absorb some overhead costs from its larger budget, but no matter what such assumptions

<sup>249</sup> *Ibid.*

<sup>250</sup> "Information with regard to Finances as relating to establishment of Faculty of Law - L.S. Klinck" memo, March 1923, President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

might have been made, these financial projections allowed only a narrow comfort zone for the university.

From its side, the law society could not have found a more advantageous arrangement. A grant of \$2,000 to the university was a relatively small commitment even if, contrary to what university officials had been told, it was to transform into an annual obligation (the Benchers in 1914 by comparison had authorized an expenditure of \$2,500 per annum on lectures).<sup>251</sup> Some such scheme would have permitted the law society to simultaneously off-load the costs of fulfilling its moral and statutory educational mandate to another institution, significantly increase the standards of legal education in the province, and relieve itself of an administrative, managerial, and political headache. In light of the small margin of error allowed for by the administration's budgetary projections and the university's own precarious financial situation, Dean Brock thought it prudent to launch a university law faculty only on the understanding that "in the event . . . that sufficient funds were not available after the faculty had been established, the Benchers should take the school over and relieve the Board [of Governors] of all moral obligations to the students". President Klinck's notes indicate his understanding that "Mr. Whiteside and Mr. Killam considered this a reasonable suggestion".<sup>252</sup>

### **The 1923 Apparition**

With these financial arrangements, understandings, and contingency plans in place, the university and the law society proceeded rapidly to finalize the arrangements that would bring a faculty of law into being. There was no reason not to do so, as the development would simultaneously advance the university's mission and further the professional mandate of the law society while relieving it of a sophisticated educational endeavour that it was ill-equipped to manage. The law society would benefit from a cost-effective, professional educational programme, while the university would be able to expand its offerings in an other wise bleak period. In developing a law department, the university could count on significant support from the local legal community to enhance its salaried teaching staff, confident also that its graduates could reasonably hope to move into a practical career. In today's parlance, developing a law faculty was a win-win situation. Both sides of the negotiations apparently appreciated it as such. But the window of opportunity was narrow. Whiteside advised the

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<sup>251</sup> Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 at 56.

<sup>252</sup> Leonard Klinck, "Notes - re Law", Jan. 30, 1940, President's Office, UBC Archives, Special Collections, UBC Library

University of British Columbia senate that political processes within the law society threatened to disrupt the progress that had been made. He reported that a Benchers' election was imminent and that "[t]he personnel of the Benchers may be changed as there seems to be some difference of opinion between the Benchers and the ordinary members of the Bar".<sup>253</sup>

Whiteside sketched out his vision for a faculty of law early in 1923. His comments were noted in a University of British Columbia memorandum headed Senate Committee on Establishment of a Faculty of Law, which reported that the law society sought to develop university education as a significant part of professional qualification, not out of any selfish motivation, but for the betterment of the profession:

The present members were not afraid of the competition which came to them as the result of training students in their offices, but they felt that it was increasingly desirable that all law students should have a University education. He also thinks that a University connection would attract a better class of students and would probably at the same time, increase the numbers.

Cecil Killam, chair of the senate committee, interjected his own view "that many members of the Society still regard law as a business and not as a profession and that connection with the University would tend to overcome this handicap".<sup>254</sup>

The Benchers hoped to bring about an arrangement in which attendance at the law faculty would be compulsory for articled clerks in Vancouver and environs but not for "Victoria and up country" students, who would be left to the traditional means of qualification. The most effective means of implementing university legal education without radically disrupting existing statutory and regulatory frameworks would simply be for the law society to recognize time spent in full-time attendance at the university as equivalent to time in articles and this, apparently, is what was envisaged in 1923. The Benchers were clearly of the view that students at the proposed university law faculty would continue to be subject to law society rules and regulations, and Whiteside advised the senate committee that the cost of legal education would be higher than that of other sorts of university education because "law students were not permitted to earn money during the holidays".<sup>255</sup> There was also a discussion of the suitability

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<sup>253</sup> "Senate Committee on Establishment of a Faculty of Law" [March 1923] President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

<sup>254</sup> *Ibid.*

<sup>255</sup> *Ibid.*

of one “Mr. Myers” for appointment as dean of law (this may have been E. C. Mayers, a leading British Columbia counsel who had edited a British Columbia case digest from 1914 to 1916).<sup>256</sup>

In any event, the matter proceeded rapidly. On March 26, 1923, Cecil Killam presented “a statement on behalf of the Senate Law Committee in respect to the proposal for the establishment of a Faculty of Law” to the board of governors. The board immediately appointed “Mr. Justice Murphy and Mr. Reid be a committee to investigate the matter further and report at a subsequent meeting”.<sup>257</sup>

A subsequent report of the senate committee on the establishment of a faculty of law reveals that members of the committee believed the creation of a law faculty to be imminent. Cecil Killam, as chair, reported that “with the assistance of R. M. MacDonald, Esq., the Dean of the Vancouver Law School, A. M. Whiteside, Esq., representative Bencher of the Law Society, and the excellent material furnished by the President, the committee had formulated a plan for a Faculty of Law without additional expense to the University”.<sup>258</sup> This report had been duly referred to the board of governors and it appears that the committee expected a fairly rapid formalization of arrangements that had been substantively agreed upon between university and the law society:

This plan your Committee presented to the Board of Governors, which then appointed a committee from its embers to confer with the Benchers of the Law Society for the purpose of arranging a contract for an annual contribution from the Law Society.

Upon the execution of the contract as above and the establishment of a Faculty of Law, the Board will fix the annual fee for students. . . .

The Senate can take immediate action upon report from the Board of Governors.<sup>259</sup>

At this time the projected educational arrangements involved “a permanent dean appointed with one or more paid assistants including at least one from the present staff of the University, other lecturers to be voluntary, with the free use of lecture rooms and the Law Library in the Court House in

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<sup>256</sup> *Ibid.* See also Watts, *supra* note 6 at 114 for material on Mayers.

<sup>257</sup> "Excerpts from Minutes of Board of Governors", President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

<sup>258</sup> "The University of British Columbia, May 5, 1923, To the Secretary of Senate, The University of B.C. Report on Faculty of Law"; see also Cecil Killam to Secretary of Senate, May 5, 1923, President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923. Special Collections, UBC Library.

<sup>259</sup> *Ibid.*

Vancouver". This report was received and adopted formally by senate on May 9, 1923.<sup>260</sup>

Everything was primed and ready to go. All that was necessary for the immediate creation of a law faculty seemed to be in place, the entire process having taken well less than a year from Whiteside's first approach to President Klinck in August 1922. Financial arrangements were agreed upon, an academic plan sketched out, and mutually beneficial cooperation between the law society and the university agreed upon in principle. It was distinctly possible that a university faculty of law might emerge in time for the fall term of 1923.

The entire arrangement was scuppered by the law society. Having initiated the discussions and pursued them with a good deal of enthusiasm, the Benchers simply walked away at the last minute from the agreement they had sought. The reasons for this reversal remain mysterious. The Canadian Bar Association's committee on legal education reported simply that after considerable discussion with the law society, the university had indicated that, despite its wish to begin law teaching, it had decided not to do so until funds for the purpose were available.<sup>261</sup> This statement is a somewhat misleading presentation. University records reveal another story. The board of governors learned from its law faculty committee on July 30, 1923, that, despite previous assurances, "the Law Society, after fully considering all the circumstances, had reached the conclusion that it was not advisable at the present time to proceed with the matter".<sup>262</sup> Given this, the university senate was formally advised in the autumn that the board of governors thought it "inadvisable to proceed with the matter of such a Faculty at the present time".<sup>263</sup>

### Years of Dormancy

So the matter stood for some years. Although the matter of creating a university law faculty lapsed into dormancy for a good many years, the law society decision of 1923 had not delivered a fatal blow to the idea of university legal education in the province. It may be that some serious division among the

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<sup>260</sup> *Ibid.*

<sup>261</sup> Canadian Bar Assoc. - Reports of the Committee on Legal Education and the discussion thereof at the annual meetings (1921) at 682ff.

<sup>262</sup> "Excerpts from Minutes of Board of Governors" July 30, 1923; also Klinck to S.W. Mathews, Secretary of Senate, Aug. 3, 1923. President's Office, Microfilm Roll#5, file 40: "Law School" 1916-1923, Special Collections, UBC Library.

<sup>263</sup> L. Klinck to Whiteside, "The University of British Columbia Faculty of Law" Oct. 17, 1923, President's Office, Roll#30, UBC Archives, Special Collections, UBC Library.

Benchers as to the most desirable method of training lawyers lurked in the background of an anti-academic decision which was justified on budgetary grounds. The Canadian Bar Association's legal education committee, which had strongly advocated the creation of full-time university legal education in its first decade lapsed during the 1920s into sometimes acrimonious debates on the relative merits of qualification by articling, by an articling system that ran concurrently with attendance at lectures, or by full-time academic training.<sup>264</sup> These debates likely also found expression within the leadership of the British Columbia law society.

Be that as it may, the Law Society of British Columbia (unlike the leaders of the organized profession in Manitoba or Ontario, for example) never formally declared itself vehemently opposed to academic legal education. The advantages of some liaison with the university for legal education were obvious and neither side wished to rupture the possibility of developing a mutually advantageous programme. It is likely that informal communications on the topic of legal education continued sporadically throughout the next decade. Elite lawyers and elite academics would, to some extent, have moved in overlapping social circles during this time, and it is likely that the topic was kept alive through many undocumented casual conversations. The matter might come up incidentally in a way that leaves historical trace. A September 4, 1928 letter from Dean R. W. Brock to E. C. Senkler, secretary of the law society, related to J. M. Jephson's request that the university assess whether he has equivalent to second year arts standing. Dean Brock proposed to Senkler that "the University . . . examine for you in academic subjects candidates for admission as students-at-law".<sup>265</sup> He continued:

This would be a feasible first step in linking up the Law School with the University, an end that I understand is desired by both your Society and the University, and that has not been consummated yet solely on account of the University not being in a position to assume the financial obligations that might be involved.<sup>266</sup>

The matter took an interesting turn or two during the 1930–1931 academic year. First, by letter of October 2, 1930, Reginald Tupper provided President Klinck with a summary of his academic record, reporting that for "four years I

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<sup>264</sup> C.I. Kyer & J.E. Bickenback, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario, 1923-1957* (Toronto: Osgoode Society, 1987).

<sup>265</sup> Dean R.W. Brock to E.C. Senkler, Secretary of Law Society of B.C., Sept. 4, 1928. UBC Archives, Microfilm Roll#25, Special Collections, UBC Library.

<sup>266</sup> *Ibid.*



lectured on the Law of Real Property at our local Law School".<sup>267</sup> Tupper, who was a key player in many law society initiatives relating to legal education, subsequently took up a part-time appointment to the university faculty. It is certainly clear from this appointment that the university wished to maintain some profile in law teaching, at least as a valued part of general education and, also, perhaps as a stage en route to professional training. Tupper's involvement also solidified an important link with the British Columbia legal profession and it may have been hoped that his appointment would in some way further the process that had begun in 1922.

Second, more formal discussions between the university and the Benchers began afresh. Late in December 1930, President Klinck responded to an enquiry from Arthur Whiteside by sending him a copy of a University of British Columbia document, The University of British Columbia Faculty of Law, which had been prepared during the previous round of discussions on the topic.<sup>268</sup> Whiteside responded in turn by asking for a copy of the materials President Klinck had gathered in 1922 on law training at other Canadian universities. Fearing, perhaps, that the university might have come to think of the law society as an unreliable partner in educational matters, Whiteside assured the president that, this time around:

We are in earnest in our intention to use every effort toward the establishment of a faculty of law at the University. We believe that such a move would result in benefit to the Institution as well as to the public.

It is now necessary for any student-at-law to have his degree in Arts or in the recently instituted business course, which is really an Arts degree, and we feel that it is but a natural step for a student to proceed in his own college to acquire the standing necessary to enable him to practise law. Further, it is not anticipated that there would be so much opposition to the project on the part of the Legislature as there would have been if we had launched the proposal in the late Premier Oliver's time.

There is a meeting of the Benchers of the Law Society on Monday next. Mr. [Lindley] Crease ... and I are expected to make a report and I should like you to let me know when I can meet you before that date so that we may have a further informal discussion. Possibly I might have Mr. R. L. Reid ... at the same time.<sup>269</sup>

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<sup>267</sup> R. Tupper to Klinck, President's Office, Roll#65, UBC Archives, Special Collections, UBC Library.

<sup>268</sup> L. Klinck to Whiteside, Dec. 29, 1930, President's Office, Roll#30, UBC Archives, Special Collections, UBC Library.

<sup>269</sup> A.M. Whiteside to Klinck, Dec. 31, 1930, President's Office, Role#30, UBC Archives, Special Collections, UBC Library.

Despite Whiteside's protests, this meeting too turned out to be a false start on the road to a British Columbia university law faculty. Division among the Benchers may have been greater than Whiteside was willing to acknowledge in his dealings with the university president—he resigned as a Bencher for reasons not disclosed by the Benchers' minutes at their next meeting on January 5, 1931.<sup>270</sup> Certainly, John Farris recalled the Benchers of this era as being hostile to the notion that a formal education in law was necessary or even desirable as preparation for a career as a lawyer. His assessment of the educational aspirations of the British Columbia Benchers in 1931 stands in stark contrast to the optimistic appraisal of Mr. Whiteside. Farris told an interviewer in 1981 that:

I know when I applied to go to law school, Harvard Law School, in 1931, he [his father, Senator J. W. de Beque Farris] was a Bencher then and the only reason that I was permitted to go to Harvard was because Dad was a Bencher and it was an act of friendship to them. Most of the then Benchers were products of Osgoode Hall. . . . So these men, they believed . . . they were hard-nosed practical men and they thought this idea of wasting your time on an academic training in law was nonsense.<sup>271</sup>

Whiteside's letter to President Klinck may have put a more optimistic gloss on the state of the Bencher's thinking than was warranted. Even so, the timing of this new approach to the university turned out to be unfortunate on at least two counts. First, Whiteside's influence was waning among the Benchers. Even though Arthur Whiteside was very much a central figure in promoting university legal education throughout this period—his energy, vision, and ability to pull disparate actors together in a common effort was crucial—Whiteside's political capital within the law society was severely eroded during the course of 1931 by events that were seemingly entirely unrelated to his educational initiatives. During that year the Benchers retained him to prepare a digest of volumes 21 to 44 of the British Columbia Reports. Straightforward enough, this undertaking resulted in an unfortunate rupture between Whiteside and his fellow Benchers. Alfred Watts records simply that "difficulties" arose in the project "and the Benchers removed the material from Mr. Whiteside for the final revision, no doubt an embarrassing situation as Mr. Whiteside was himself a Bencher. Mr. J. A. Bland, for so many years a mainstay in the Law Society office, and his wife, formerly Miss M. L. Ringland (called to the Bar in 1919), completed the material, the digest being published November, 1933."<sup>272</sup>

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<sup>270</sup> Notes from "Benchers Meetings Minutes", maintained at the Law Society of B.C., Jan. 5, 1931.

<sup>271</sup> J.L. Farris, interview with D. Williams, April 22, 1981, "Aural History Project", at 177-78.

<sup>272</sup> Watts, *supra* note 6 at 85-86.

The politics of small organizations being what they are, one suspects that Whiteside's fall from grace within the law society would, on its own, have created serious problems for the projected faculty of law. Whatever difficulties arose from that source were immeasurably compounded by the general economic climate in British Columbia.<sup>273</sup> As misfortune would have it, the Great Depression was powerfully building steam just as discussions between the law society and the university were resumed. The law society never fully recovered from its earlier financial debacles and, by 1929, it could not even make its usual annual contribution to the Conference of Governing Bodies. Many individual lawyers suffered severe financial problems as the Depression began to bite, and law society initiatives of all sorts went unfunded. From the law society's perspective, this was hardly an auspicious time to launch any new initiative, even one as sensible and cost-effective as participating in the development of a university faculty of law.

Nor was the University of British Columbia in any position to pick up the fiscal slack. The university grant from the government was cut from \$626,000 in 1929–1930 to a mere quarter of a million dollars in 1932–1933. Even existing operations could not be sustained. Salaries were cut (between five and twenty-three percent), programmes reduced, and faculty released.<sup>274</sup> President Klinck ran into a good deal of trouble as faculty members became increasingly distrustful of his ability to manage the crisis.<sup>275</sup> The resulting crisis of leadership culminated in April 1932 in a senate resolution of non-confidence in the president, passed by a large majority.<sup>276</sup> Just as the implications of this striking development were being worked through, worse news came. In July 1932, a government-appointed committee, known by the name of its chair as the "Kidd committee", reported. The committee, composed of members of the local business elite who had no experience of government, had been established at the initiative of "leading industrial, business and financial organizations of the

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<sup>273</sup> Moreover, the shifting culture of government probably compounded difficulties. The Tolmie Government was perceived as hostile to the University: "the new Minister of Education, Canon J. Hinchcliffe, did not approve of the University as it was being administered. His own experience with Canadian educational systems was negligible and he had little sympathy with the ideal of popular education. He was convinced that standards of the University were not high enough, and he suspected that many of the University's activities were wasteful. He especially disliked the professional and occupational courses..." (see Logan, *supra* note 205 at 110).

<sup>274</sup> E.D. MacPhee, *History of the Faculty of Commerce and Business Administration: The University of British Columbia* (1976) at 17; Logan, *supra* note 205 at 109ff.

<sup>275</sup> Logan, *ibid.*

<sup>276</sup> *Ibid.* at 117; see also B.D. Edwards, "The Censure of Dr. L.S. Klinck on March 16, 1932 - Personalities and events surrounding a crisis at the University of British Columbia" (M.A. thesis, UBC Faculty of Graduate Studies, Education, 1984).

Province” to investigate matters relating to provincial finances. George Kidd and friends recommended that the university be denied any government grant whatsoever in the following year. If, as seemed likely, this would threaten the very existence of the University of British Columbia, the Kidd committee was unconcerned. In that event, they said, “the question will have to be considered whether it may not be in the best interests of higher education to close the University and rely on the proposal . . . to establish scholarships to furnish the means of attending a University elsewhere in the Dominion”.<sup>277</sup> While these culture vandals were ultimately held at bay long enough to see Simon F. Tolmie and his reprehensible Minister of Education, Canon Joshua Hinchliffe, replaced by the Liberal administration of T. D. Pattullo,<sup>278</sup> the early 1930s were clearly no time for expansion at the University of British Columbia. Any new commitment, much less anything so ambitious as the creation of an entirely new faculty, would have been both financially foolhardy and politically disastrous.

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<sup>277</sup> As quoted in Logan, *supra* note 205 at 119.

<sup>278</sup> *Ibid.* at 120.

# 5

# Reawakening

## **The Idea Resurfaces**

A grain of truth lies in even the most hackneyed expression, and so it truly seems that the darkest moment in the struggle to create a university faculty of law in British Columbia preceded the dawn. Although the months immediately following the Kidd Report must have seemed unremittingly bleak and hopeless to members of the university community, relief (spelled “g-o-v-e-r-n-m-e-n-t g-r-a-n-t-s”) was just around the corner. Professor Harry Logan, who served as university faculty throughout the Depression, has recounted this period in the life of the university:

Recovery came fairly quickly after 1933, though to those who waited it seemed an age in coming. In its annual plea for a more generous allocation of funds, the University, from 1933–34, had to deal with one of its own staff, Dr. G. M. Weir, Provincial Secretary and Minister of Education in the new Liberal administration of the Honourable T. D. Pattullo. In 1936–37 the Government grant rose to \$350,000 and in 1937–38 to \$400,000. Now University budgets included small grants for research and adult education, and in 1936–37 the Government made a special grant of \$30,000 for adult education to supplement the larger grant from the Carnegie Corporation to establish a Department of University

Extension. . . . In the 1937–38 session, the salary cuts were fully restored.<sup>279</sup>

It did not take long for the idea of establishing a university law faculty to be revived. This new initiative took place in a better economic context and also seems to have benefited from the key role assumed by leading lawyers who enjoyed more influence in the law society and in British Columbia public life than had Arthur Whiteside. This observation is not in the least a slight to Whiteside or his sustained efforts. Rather, it merely notes that the new leaders of the cause included the formidable team of Senator J. W. de Beque (Wallace) Farris and his remarkable wife Evelyn Fenwick Farris. Politically astute, well-connected, powerful, and influential figures, the participation of Evelyn and Wallace Farris would have significantly bolstered any cause.

The first sign that something was again brewing in legal education came as early as 1935, a mere three years after Kidd had in effect recommended dismantling the university altogether. The Vancouver Daily Province of July 9, 1935, reported that the Law Society of British Columbia had appointed a committee to investigate the establishment of a faculty of law at the university. While this initiative did not immediately progress very far, in 1937 the law society appointed Wallace Farris and R. L. Maitland as a committee to work with the University of British Columbia board of governors on the creation of a law school.<sup>280</sup> Given the status of the Benchers' committee, a satisfactory hearing was no doubt ensured. If not by that reason alone, the presence of Evelyn Farris as an important member of the board of governors during the period from 1935 to 1942 probably helped.<sup>281</sup>

Leonard Klinck, who, having survived the non-confidence motion of 1932, continued as university president,

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<sup>279</sup> *Supra*, note 205 at 120-121.

<sup>280</sup> Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 at at 58-59.

<sup>281</sup> Logan, *supra* note 205 at 242: Appendix 1, UBC Board of Governors, 1913-1958.

responded to this new approach from the law society with his accustomed enthusiasm, hard work, and encouragement. During the summer of 1937 he gathered “information . . . on the organization and conduct of Law Schools” which he duly forwarded, along with a “digest” of the calendars of Canadian law schools to Wallace Farris in September.<sup>282</sup> The preparatory work President Klinck engaged in at this stage was both thorough and carefully executed. It probably had a tremendous influence on the design of legal education that was eventually brought into being during the watch of his successor, President N. A. M. MacKenzie.

Two crucial documents were prepared by President Klinck during this period. One, headed *Faculties of Law and Law Societies in Canada, 1937–1938* by L. S. Klinck included summaries of law school calendars, some short law school histories, information on fees, and notes of discussions with university presidents. The second, headed *Excerpts From Statement in Regard to Law Courses and Law Societies in Canada*, dated May 1937 was, by and large, a testimony to the value of and the need for university education in law as a mandatory part of the training for practising lawyers.

As for the need for university education in law, both of Klinck’s reports reproduced a passage summarizing the approach to the education of lawyers in the three Prairie provinces—which were clearly thought to be a model more worthy of imitation than anything in existence in Ontario at the time:

19. Additional Notes Regarding the Faculties of Law in the Prairie Provinces.

. . . The Benchers in each of the three provinces encourage all students to attend a Law School and grant them certain concessions with regard to service in a Law Office. In each of these provinces the student proposing to study Law is required to spend two years in Arts before being admitted to the Law School. In consequence nearly all now spend an additional year and qualify for the Arts as well as the Law degree.

There can be no question of the great value of a Law School in maintaining a high standard of professional training, and in preserving and

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<sup>282</sup> Klinck to Senator J.W. de B. Farris, Sept. 11, 1937, President's Office, UBC Archives. Special Collections, UBC Library; Sept. 14, 1937 Klinck to Farris enclosing "two copies of Faculties of Law and Law Societies in Canada, 1937-1938. I trust this statement will furnish the background for the consideration of the proposal that a Faculty of Law be established in the University of British Columbia"; Sept. 21, 1937 - Farris responds indicating desire to "arrange a conference" on this matter; Sept. 7, 1937 short letter from Farris to Klinck: "My dear Dr. Klinck: I would like to take up with you at your earliest convenience the question of the Law School at the University, and to hear your views on what you learned about the question in the East this summer".

strengthening the great traditions associated with the administration of justice.

The Provincial Law Schools have centralized the interests of the profession, raised the standard of qualifications and have greatly strengthened the traditions of justice. This is of the greatest importance in a new country where meet the representatives of the most diverse racial and national traditions.<sup>283</sup>

The mission of the law school outlined here is not limited merely to providing a more comprehensive training of the technicians of the legal system. The law faculty's mission extends to a much larger vision of the role of law and lawyers in Canadian society. In preserving "the great traditions associated with the administration of justice" early twentieth century legal educators hoped to better inscribe Britishness on the tabula rasa of North America's wide open and untamed spaces. By centralizing the "interests of the profession" legal educators hoped to create, artificially if need be, centripetal forces to counteract the centrifuge of Canadian society in which powerful forces pulled at faultlines of race, ethnicity, class, language, religion, and region. As it is reproduced in Excerpts from Statement in Regard to Law Courses and Law Societies in Canada, May, 1937, the passage quoted above is followed by a further statement of reasons why it was of paramount importance that Canadian lawyers be exposed to a rounded cultural education:

The Law students of today may become the political leaders of tomorrow.

If the closing of any school results in the failure of any considerable number of students to receive the benefit of a sound training, the economies effected may be secured at too great a price.<sup>284</sup>

The cultural vision of legal education that this report reproduces is tremendously important. In the midst of the many Canadian and European upheavals of the 1930s, law school was quite literally seen as a crucial bulwark against all that threatened British civilization. One of the great achievements of the existing university law faculties was their contribution in precisely this area:

Not only have they created attitudes and intellectual interest among thousands who now, as graduates, are in positions of influence in their communities; not only have they safe-guarded the mechanics of civilization by maintaining the standards of entrance to the professions

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<sup>283</sup> L.S. Klinck, "Faculties of Law and Law Societies in Canada, 1937-1938", President's Office, UBC Archives. Special Collections, UBC Library.

<sup>284</sup> "Excerpts From Statement in Regard to Law Courses and Law Societies in Canada: May, 1937", President's Office, UBC Archives. Special Collections, UBC Library.



which are significant in our modern civilization; but, even more, they have quietly but insistently emphasized the permanent values in a time and in an environment where the material might be given undue prominence.<sup>285</sup>

Theoretically, the socialization, intellectual training, and acculturation that were considered necessary in order to create lawyers who would serve to advance both the interests of the larger “civilization” they had inherited and the “permanent values” it embodied might be achieved in other ways. In England, for example, the ancient lawyers’ guilds known as the Inns of Court collectively provided each of socialization, education, and acculturation through institutions that more accurately reflected medieval than modern social and political structures. No such alternative mechanisms presented themselves as reasonable alternatives in western Canada, however. Excerpts from Statement in Regard to Law Courses and Law Societies in Canada, May, 1937 recognized this absence and emphasized the indispensable role of the university under the conditions prevailing in the West: “The Universities safeguard the standards in all phases of professional life in Western Canada. No other institution in the province could, or would, safeguard the standards which are fundamental to present day civilization.”<sup>286</sup> Nor, according to this document, did professional schools such as the Vancouver Law School, Osgoode Hall, or even professional law schools administered jointly with a university provide reasonable stand-ins for a university law faculty. Despite actual knowledge of the precise state of legal education across Canada, the document asserts that British Columbia and Manitoba have “no School of Law” and continues: “The absence of a provincial school under present conditions practically means that about nine-tenths of the students receive no professional instruction.”<sup>287</sup>

This theme of the inadequacy of both Osgoode Hall<sup>288</sup> and the Manitoba Law School is important. It must be recalled that university legal education had no “taken for granted” quality about it during these years. The University of Toronto, true enough, had a law department, but its degrees were unrecognized by the Ontario (or any other) law society. Manitoba had experimented with a programme of legal education much like that of any university law faculty, only to cut it off when its imaginative and energetic dean resigned to pursue a career in public life. The Manitoba programme, after a brief flourishing, was reined in

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<sup>285</sup> *Ibid.*

<sup>286</sup> *Ibid.*

<sup>287</sup> *Ibid.*

<sup>288</sup> J.L. Farris, interview with D. Williams, April 22, 1981, "The Aural History Programme, British Columbia Legal History Collection Project", Faculty of Law, University of Victoria [hereinafter "Aural History Project"] at 177. Farris said it didn't deserve the name "Law School".

so completely that it resembled, in all important respects, the Vancouver Law School as much as any other. The remainder of the Prairies had attempted to emulate American developments that led in the direction of full-time, post-graduate university education in law; but Canada's other powerful Imperial source of culture and structures, the United Kingdom, resolutely refused to have anything to do with university encroachment on the educational prerogatives of the various lawyers' guilds. Ontario and Manitoba had each seen rancorous divisions emerge over the nature of professional qualification, and British Columbia lawyers would have no reason to wish to take up the side of academic lawyers who, seemingly, had caused so much unnecessary trouble in these two jurisdictions.

Therefore, the information President Klinck gathered for the benefit of his university colleagues and the law society Benchers was resounding in its repudiation of the paths followed by the two central Canadian common-law provinces. As for the professional trade school maintained by the Law Society of Upper Canada at the time, the document records simply:

Notes on Osgoode Hall. Based on Interview with Four University Presidents.

All the Presidents interviewed were of the opinion that the system in Toronto is unsatisfactory.<sup>289</sup>

The case against the Osgoode Hall model was relatively clear, not least because, despite two decades of experience, the British Columbia Benchers had not yet been able to produce a programme at the Vancouver Law School even remotely approaching the standards of Toronto's trade school in law. Manitoba's compromise solution to the puzzle of legal education, however, was more imaginative than approaches taken elsewhere and did, in theory, hold out the promise of providing the best possible integration of the strengths of each of the university and the practising legal profession. The Manitoba Law School was created in 1914 as a joint undertaking of the provincial law society and the University of Manitoba, and was managed by a board of trustees representing each of the parent institutions. As so often happens, though, the attempt to secure the advantages of two distinct traditions ended up rather less successfully than its creators had hoped. President Klinck seems to have enquired fully of the situation and carefully noted the objections raised by President Sidney Smith

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<sup>289</sup> Klinck, *supra* note 252 at 22.

(also a former university law teacher<sup>290</sup>) to the Manitoba compromise. Klinck's notes reveal Smith's comments to have been both frank and strongly negative:

16. Notes on the Manitoba Law School (University of Manitoba and the Law Society of Manitoba) Based on Interview with President Sidney Smith.

President Smith was not very enthusiastic regarding the Law School in the University of Manitoba. The number of full-time men is two, and this the President regards as the irreducible minimum. . . . He is strongly of opinion that the most effective way to organize a Faculty of Law is for the University to assume the responsibility outright, since he believes that what is gained in interest by the Benchers' contribution may easily be lost in efficiency because of more or less compromise arrangements with regard to appointments, salaries and courses.<sup>291</sup>

The University of Saskatchewan president, W. C. Murray, was more enthusiastic about his faculty and "more hopeful than President Smith that a good Department of Law could be constituted and carried on at a nominal expense".<sup>292</sup> He emphasized, however, the importance of a university law faculty having its own library ("access to the Benchers' Library . . . generally works out satisfactory for a time, but the general experience is that the Benchers object to students using books which are needed by them for immediate reference").<sup>293</sup> Both Smith and Murray recommended that the minimum number of volumes in a university law library would be eight to ten thousand volumes.<sup>294</sup> President W. A. R. Kerr of the University of Alberta reported that their law library was valued at \$10,000 and that annual library expenditures "not including gifts which are considerable, is \$200.00".<sup>295</sup>

By and large Klinck's enquiries in 1937 and 1938 reinforced the principle messages that had been absorbed in British Columbia in 1923:

- (1) university legal education must, if it was to succeed, be genuinely of as well as in the university;

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<sup>290</sup> For writings on Smith, see J. Willis, *A History of Dalhousie Law School* (Toronto: U. of T. Press, 1979). See also C.I. Kyer & J.E. Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario, 1923-1957* (Toronto: Osgoode Society, 1987).

<sup>291</sup> Klinck, *supra* note 252 at 23.

<sup>292</sup> *Ibid.* at 24.

<sup>293</sup> *Ibid.*

<sup>294</sup> *Ibid.* at 23-24.

<sup>295</sup> *Ibid.* at 25.

- (2) there must be a significant intellectual component of legal education surpassing training in the mundane and repetitive matters of legal practice;
- (3) while the organized legal profession must be generally “on-side” it should never be permitted control of programme, curriculum, pedagogy, or personnel;
- (4) part-time teachers might be used with profit but should not dominate the school’s intellectual or cultural tone, which should be given direction by a scholarly and committed full-time faculty; and
- (5) any law faculty must be assured of sufficient funding to establish a first-class library and to carry the necessary full-time faculty.

All of President Klinck’s findings reinforced the hand of those within the law society, including Wallace Farris and his brother Wendell Farris, Tom Ladner, Sherwood Lett, and others who strongly endorsed the creation of a scholarly faculty of law. This support in turn laid an important—crucial—foundation for the design of a law faculty compatible with MacKenzie’s own predisposition (coming, as he had, from an earlier career as a university law teacher). It also probably helped immeasurably in preparing the ground for the Law Society of British Columbia to welcome the appointment of a thoroughly scholarly individual as the faculty of law’s first dean when the time came.

Most of President Klinck’s background research had been completed by the time a university committee was appointed on December 22, 1937, to confer with a law society committee “in working out the details of the proposed Faculty of Law”.<sup>296</sup> It is also quite likely that informal consultations and discussions had by this time produced consensus as to how “the details” should be worked out. In any event the board of governors appointed a committee of Sherwood Lett (board), chair; A. E. Lord (senate); Dean J. N. Finlayson (faculty); and President Klinck.<sup>297</sup> As chair of the new committee, Lett was almost immediately provided with a copy of the Faculties of Law and Law Societies in Canada, 1937–1938 report.<sup>298</sup>

A document headed Notes Used by President Klinck at Meeting of Committee on Faculty of Law—Mr. Lord’s Office, City Hall, January 13, 1938 reveals that by the time the university committee met for preliminary discussions, Klinck was prepared to engage in a very full review of all important policy issues ranging from entrance requirements through to projected annual

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<sup>296</sup> President’s Office, Roll#30, UBC Archives, Special Collections, UBC Library.

<sup>297</sup> *Ibid.*

<sup>298</sup> S. Lett to Klinck, January 1938, President’s Office, Roll#5, UBC Archives, Special Collections, UBC Library.

budgets, staffing (“Three full time and four or five part-time a fair working unit. A Dean.”), and library (“8,000 to 10,000 volumes. Annual appropriation thereafter”).<sup>299</sup> None of these policy issues seemed to come as any great surprise to the other members of the committee. They moved very quickly toward consensus on many issues that might have proved controversial. Sherwood Lett and A. E. Lord, though serving on the university committee, were both fully qualified lawyers. The preliminary consultations and careful prepared groundwork were quickly made manifest.

A memorandum generated following the January 13, 1938 meeting reflects a degree of early consensus around a structure of legal education somewhat like that prevailing in common-law Canada in the 1990s. In two crucial respects, however, this early document provides powerful evidence of the extent to which, even by the late 1930s, issues surrounding legal education had still not taken form firmly in the Anglo-Canadian mind. The committee present (Sherwood Lett, chair, President L. S. Klinck, Dean Finlayson, and A. E. Lord) agreed that “a faculty of law is desirable in principle, provided that such faculty could be set up and maintained at a high standard and provided further that the necessary arrangements, financial and otherwise, could be agreed upon with the Benchers of the Law Society”.<sup>300</sup> They concluded, not surprisingly in light of President Klinck’s background research, that “all lectures should be held at the University” (except for use of the courthouse “as a purely temporary arrangement”), that the degree to be offered should be designated as the “LL.B.” and that “a law library should be established at the University as soon as possible”.<sup>301</sup> These events are not particularly surprising from our perspective nearly six decades later.

Their early uncertainty about the period of legal training and the way in which it should be structured, however, provides a good indication of the wide degree of latitude open to early twentieth century Canadian legal educators as they worked to remake the process of training for the legal profession. The university committee clearly planned to segregate formal instruction from the articling experience (rejecting as unworkable the “concurrent” system of legal education then in place in British Columbia, Manitoba, and Ontario) and to require an extended period of training which, over time, would include significant elements of both. Beyond this plan, however, nothing was clear. The

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<sup>299</sup> “Notes used by President Klinck at meeting of committee on Faculty of Law - Mr. Lord's Office, City Hall, January 13, 1938”, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>300</sup> “Memorandum of meeting held in Mr. Lord's office re: establishing Faculty of Law at the University of British Columbia”, Jan. 13, 1938, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>301</sup> *Ibid.*

matter was clearly considered to be difficult and in need of further consideration. The committee simply agreed that “the period of legal education should be extended over a period of seven years. This might either be four years university and three in a law office, or five years university and two in a legal office”<sup>302</sup> (by comparison, lawyers training in the 1990s typically complete between two and four years of undergraduate education, three years of bachelor of laws studies, and one year of articles, totalling six to eight years of post-secondary education and apprenticeship).

A certain lack of clarity about the overall duration and composition of legal education might, on reflection, seem not altogether unwarranted. Their tentative conclusions about how the jurisdictions of the university and the law society over legal education would mesh are, however, astonishing. President Klinck, it will be recalled, had been advised by university presidents and legal educators across Canada to protect his turf, to ensure that legal education was fully part of the university culture, and to keep the legal profession from officious meddling in any university faculty of law that might be developed. He seems to have taken this message very seriously indeed and to have persuaded others of its importance. A Memorandum of Meeting Held in Mr. Lord’s Office Re Establishing Faculty of Law at the University of British Columbia, January 13, 1938, probably prepared by the designated secretary of the meeting, A. E. Lord,<sup>303</sup> recorded that “[t]he control of the faculty, including examinations and proceedings with respect to call and admission, should rest with the University” (emphasis added).<sup>304</sup> It seems highly unlikely that these words could have slipped unnoticed or unintended into minutes prepared by anyone the least familiar with the ways of the legal profession, much less into a document prepared or consented to by a fully qualified solicitor. The words “call and admission” are lawyers’ terms of art. Quite precisely and unambiguously, they refer to call to the Bar (that is, attaining formal status as a barrister) and admission as a qualified solicitor.<sup>305</sup> The astonishing conclusion is that the committee at this point envisaged a future in which the Law Society of British Columbia would cede all of its authority over admission to the legal profession to the university.

This particular affront to the dignity of a learned profession did not survive past the first joint meeting of the university and law society committees

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<sup>302</sup> *Ibid.*

<sup>303</sup> Logan, *supra* note 205 at 168 - identifies Lord as "City Solicitor" in 1940.

<sup>304</sup> *Supra.*

<sup>305</sup> Watts, *History of the Legal Profession in British Columbia 1869-1984 supra* note 6 at 51, indicates that this right was conferred on Law Society by 1884 Act.

on the establishment of a faculty of law. The two committees met jointly on January 18, 1938, at the home of Senator Wallace Farris and Evelyn Farris. The full membership of both committees was present on that occasion (representing the Law Society of British Columbia: Senator J. W. de B. Farris; R. L. Reid, R. L. Maitland; and R. H. Tupper; representing the university: President L. S. Klinck; Dean J. N. Finlayson; Sherwood Lett; and Arthur Lord) and the principle of establishing a university law faculty was easily agreed upon “provided that such faculty could be set up and maintained at a high standard”, and subject to satisfactory arrangements being made between the law society and the university.<sup>306</sup> On the crucial and related questions of the duration and structure of training for the legal profession on the one hand and control over admissions to the law society on the other, the January 18th meeting took matters considerably beyond the stage they had reached within the university committee the previous week. A memorandum of the joint meeting records agreement on the following points:

### 2. Law Course

The course should be a combined one leading to the degrees of B.A. and LL.B. and should extend over a period of six years. Such course to be established only on the understanding that students would be admitted to call and admission on completion of an additional year in a law office and that the Benchers would accept the University degree as part of the law students course. The Benchers would have the option of deciding whether examinations would be required in practice and procedure, and statutes at the end of the students time in an office.

### 3. Control

The control of the faculty, including examinations, set in collaboration with the Benchers, should rest with the University.<sup>307</sup>

Beyond these points, the joint committee estimated costs of the new faculty (\$15,000 per annum plus \$2,000 per annum for the law library), and agreed in principle that “all lectures should be held at the University”.<sup>308</sup> The committee was obviously in a hurry. It was agreed too that the rooms societies and library at the courthouse might be used “purely as a temporary arrangement”, that Maitland and Farris would look into the matter of the “Contribution from Law Society as proportion of cost”, and that a university law faculty might be

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<sup>306</sup> "Memorandum of meeting held at the home of Senator Farris re: establishment of Faculty of Law at the University of BC", Jan. 18, 1938, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>307</sup> *Ibid.*

<sup>308</sup> *Ibid.*

launched in time for the fall of 1939 (“provided that the legal status and financial matters are satisfactorily arranged”).<sup>309</sup>

The proviso about the need to see to “financial matters” signalled a serious difficulty for the scheme. Lack of money proved the undoing of this initiative, just as had always been the case in the past. A plea of poverty is not in itself conclusive of human motivation but it is, in this case, all that the archival record makes available to us. Lawyers know well that when poverty is pleaded in excuse of seemingly wrongful or short-sighted conduct that it often camouflages another root problem in the character, ranging from moral defect, inadequate commitment to fulfilling one’s duties, and lack of resolve to structured mismanagement and pervasive incompetence. The motivations of law societies are at least as mysterious as those of tort-feasors, and it is unclear exactly why the Law Society of British Columbia failed to provide the funds necessary to support an educational arrangement that its own committee had sought out, worked on, and negotiated. This was, after all, the third formal approach the Benchers had made to the university on this matter in just fifteen years.

Certainly by the autumn of 1938 it was becoming increasingly clear that a workable plan for legal education was available to be implemented subject only to the question of whether the law society was, at the moment of decision, willing to commit sufficient financial resources. On October 24, 1938, a second meeting of the combined law society and university committees was held. The university continued to be represented by Klinck, Finlayson, Lett, and Lord, although law society representation had changed. The new committee representing the Benchers included W. Ernest Burns, Sidney A. Smith, Senator Wallace Farris, and Reginald Tupper. This change in personnel did not present any serious difficulty, and all of the points of agreement that had been reached on January 18, 1938 “were reaffirmed”.<sup>310</sup> It seemed too that the problem of finding temporary accommodation for a law faculty had been overcome through the efforts of Senator Farris, who had obtained Attorney-General Gordon Wismer’s assurance that relocation of the provincial police office meant there would be “room for law student lectures in the Courthouse”.<sup>311</sup> The sticking point arose in “the contribution from the Law Society as proportion of cost of

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<sup>309</sup> *Ibid.*

<sup>310</sup> "Memorandum of Meeting held in the Faculty Room of the Administration Building, University of British Columbia, on October 24, 1938", President's Office, UBC Archives, Special Collections, UBC Library.

<sup>311</sup> *Ibid.*



proposed faculty”<sup>312</sup> (emphasis in original). Arthur Lord’s memorandum of the meeting records that:

The representatives of the Law Society were quite definite that the Law Society could not take care of the cost of the faculty which would be over and above the fees obtained from those enrolled in the faculty, but Senator Farris thought that the Law Society would make some contribution and it was suggested that this might take the form of a grant, say of two thousand dollars a year over a period of years for the Law Library to be established eventually at the University.<sup>313</sup>

As a result, Farris and W. Ernest Burns (the latter was “treasurer” or president of the law society) agreed to take to the Benchers the idea of providing indirect support through an annual grant to the university law library. President Klinck and Sherwood Lett, for their part, agreed to sound out the board of governors as to the possibility of seeking an extra \$8,000 per year from the government in order to cover the anticipated shortfall expected under the projected \$15,000 law faculty budget.<sup>314</sup>

The next day, Burns wrote to Klinck in his official capacity as law society treasurer to advise that “in the event of the Law Faculty being established at the University as from a year from now, the Benchers will obligate themselves to provide up to \$2,000.00 as may be required for the purpose of establishing a Law Library at the University”. Helpful though this may have been, the offer of a once-off \$2,000 grant fell far short of the commitment of an annual sum in that amount which Farris had hoped to be able to secure.<sup>315</sup>

As agreed, the matter of finances was taken up at the university board of governors on October 31, 1938, when Sherwood Lett made a presentation on the proposed faculty of law. The board duly approved the release to the senate of various background materials that had been compiled and a number of documents were forwarded to Stanley W. Matthews, secretary to senate, on

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<sup>312</sup> *Ibid.*

<sup>313</sup> *Ibid.*

<sup>314</sup> *Ibid.*

<sup>315</sup> UBC Archives, President's Office, including: May 5, 1923 Report of Senate Committee on Faculty of Law; Synopsis of action by Board of Governors - 1922 & 1923; Representations made to the Board, Dec. 22, 1937; Appointment of Committee; Memorandum of meeting of Committee, Jan. 13, 1938; Memorandum of meeting of Committee with Committee of the Law Society of B.C., Jan. 18, 1938; Memo of meeting of Committees, Oct. 24, 1938; Letter from W.E. Burns, Oct. 25, 1938, re: action for Law Society regarding the provision of \$2,000.00 for Law Library purposes; Memo prepared by the President re Faculties of Law and Law Societies in Canada, 1937-38.

November 4, 1938.<sup>316</sup> At this point the paper trail disappears for a time. It seems that some combination of parsimony and bureaucratic inertia stymied this, the fourth attempt, to create a faculty of law at the University of British Columbia.

Like a persistent terrier, the law society was soon back at the heels of the university asking, yet again, that a faculty of law be established. If President Klinck felt the least frustration by these repeated approaches by an outside organization that had consistently proved unwilling to provide pocket-book commitment, he did not let it show. On January 26, 1940, the university president again met with a delegation of the law society (J. A. Campbell, W. E. Burns, A. R. MacDougall, R. H. Tupper, and Mr. W. H. Dixon). This new law society delegation again reviewed the 1938 proposals, again affirmed the law society's satisfaction with the general plan of legal education outlined at that time, and again indicated their desire to do what they could "to facilitate matters".<sup>317</sup> The 1938 consensus was clearly beginning to take on the status of a more or less fixed statement of educational principle.

Accepting that "nothing could be done in the 1940–41 session", the law society delegation expressed their "hope that an early decision would be reached which would enable the University to offer courses in Law beginning at the opening of the academic year 1941–42".<sup>318</sup> Some concern was expressed as to the accommodation for a faculty of law. The law society delegation "made it very clear that any arrangements for class room accommodation and library facilities at the Court house should be regarded as purely temporary, and as soon as accommodation would be provided at the University all the work in Law should be given on campus". President Klinck, not surprisingly, concurred.<sup>319</sup> On being advised that the procedure for consideration of the order in which new degree programmes would be created was a matter for the consideration of university senate rather than administrative fiat, Klinck reported that "[t]he delegation then wished to know if there were any steps which they could take to bring their representations more forcibly to the attention of the Senate and Board".<sup>320</sup>

A few days later the university president jotted down some personal notes recording a series of concerns about the ability of the university to commence professional legal education. The notes make it clear that Klinck believed it

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<sup>316</sup> *Ibid.*

<sup>317</sup> L. Klinck, "Memo re meeting with delegation of the Law Society, Friday, January 26, 1940", President's Office, UBC Archives, Special Collections, UBC Library.

<sup>318</sup> *Ibid.*

<sup>319</sup> *Ibid.*

<sup>320</sup> *Ibid.*

necessary for “Law . . . to pay for additional courses for undergraduates” and that a law library would require a minimum \$10,000 initial grant. The notes record President Klinck’s “Summary of Points”, which included the following:

- (1) Limitation.—Classes are so crowded we can no longer count on absorbing more students.
- (2) Necessity for appointments in related courses; classes are now more than filled.
- (3) Virtually a certainty that additional courses for undergraduates in Law will be required.
- (4) \$2,000 is only a nucleus for a Library.
- (5) Necessity for generous annual appropriations for Library.<sup>321</sup>

Any and all of these problems could, of course, have been rapidly met if adequate funding were available to support the proposed law faculty. Although President Klinck had told a law society delegation on January 26, 1940, that “the amount of money involved in the establishment of a Faculty of Law was relatively small”,<sup>322</sup> it was apparent to all that a significant gap had to be closed.

In a report submitted to the senate, the board of governors, and the chancellor of the university on February 10, 1940, President Klinck provided Financial Information Supplementing the Reports of Committees on the Proposed Establishment of New Units of Instruction in the University of British Columbia. This document indicated the annual projected cost of a law faculty to be \$17,000, of which only \$7,000 would be recovered from student fees.<sup>323</sup> The law society was in direct competition with other groups seeking to find a place on the university timetable for the introduction of new programmes. In this context, one particular passage in Klinck’s report stands out:

Those requesting the establishment of courses of instruction in Home Economics, Pharmacy and Law, are prepared to make a cash contribution towards the initial cost in the following approximate amounts: Home Economics, \$15,000.00; Pharmacy, \$5,000.00, and Law, \$2,000.00.<sup>324</sup>

Further documentation prepared within the university that month also focused on financing matters and the university, like the law society, was

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<sup>321</sup> *Supra* note 252.

<sup>322</sup> *Supra* note 230 at 39.

<sup>323</sup> "Financial Information Supplementing the Reports of Committees on the Proposed Establishment of New Units of Instruction in the University of British Columbia. Report Submitted by the President", Feb. 10, 1940, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>324</sup> *Ibid.*

prepared to take the academic arrangements agreed to in 1938 as providing a sufficient blueprint for the actual operation of a law faculty, should it eventuate. A document President Klinck prepared for a meeting of the combined committees of the law society and board of governors laid out financial projections in some detail. It was apparent that considerable progress would need to be made if a credible law faculty was to be economically feasible. A particular obstacle was the need to develop a sizeable law library at a minimum cost of \$10,000. The report pointedly noted that “[a]fter First year, no provision made for Library, and since the use of the Benchers’ Library is regarded as purely temporary, the University must make provision for an annual expenditure of \$2,000.00 for Law books until such time as the value of same amounts to \$10,000.00”.<sup>325</sup>

The next day the treasurer of the law society, W. Ernest Burns, wrote to confirm the availability of the courthouse for lectures, to assure the university that the courthouse library would be available to university law students, and to indicate that Benchers would probably be willing to contribute \$2,000 annually “to aid in the establishment of a Law Library at the University” for the foreseeable future. Burns also indicated his belief that “if it is deemed preferable the Benchers would be willing not to earmark the grant for any particular purpose but to contribute for the general purposes of the Faculty” and urged that the law faculty be created in absolute priority over the other newly proposed programmes. Unfortunately, Burns had to acknowledge that he was “writing without any authority” and that these were only his predictions as to the likely outcome of discussions among the Benchers.<sup>326</sup> Klinck’s past experience may have been such that he was unwilling to jeopardize other possible expansion of the university in reliance on predictions of future generosity on the part of the law society.

In the event, the senate met on February 21, 1940, and recommended to the board of governors that a faculty of law be established “second in priority among the five courses considered, if and when funds permit”.<sup>327</sup> The first of the new programmes to be established would be home economics.<sup>328</sup> The tenacity of those members of the Bar who were committed to developing a faculty of law was impressive. Rather than accept either defeat or delay, they simply moved

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<sup>325</sup> *Supra* note 250 at 37.

<sup>326</sup> W.E. Burns, Treasurer of Law Society, to Klinck, Feb. 20, 1940, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>327</sup> Klinck to J.A. Campbell, Mar. 1, 1940, President's Office, UBC Archives, Special Collections, UBC Library; see also Logan, *supra* note 205, at 157.

<sup>328</sup> Logan, *supra* note 205, at 157.

forward by a different route. J. A. Campbell, who had been on the most recent law society committee, at this point launched into action in his capacity as president of the Vancouver Bar Association (a voluntary group of lawyers). Writing on association letterhead (which, incidentally, recorded as vice-president Sherwood Lett, a member of the university board of governors and an active participant in the work of the university committee that considered creating a law faculty), he told Klinck on March 13, 1940:

I beg to inform you that the Vancouver Bar appreciates your efforts to establish a Law Faculty and that our committee are taking steps to interview the Premier and members of the Government in the hope that during the current year the Government will provide sufficient additional monies in its estimates to enable the Board of Governors to establish a Faculty of Law in the Fall of 1941.<sup>329</sup>

## The Second World War

The continuing optimism for an early launch of a law faculty in British Columbia was soon to give way to more sober assessment. The sitzkrieg that had prevailed in Europe during the winter of 1939–1940 gave way to German attacks on Norway and Denmark (April 9), France, and the Low Countries (May 10). . . Within a few short months the European war had become desperate. Harry Logan recalled that “by July the Commonwealth stood alone to face the marshalled might of Hitler”. The University of British Columbia joined the rest of Canada in translating itself to a war footing.

Not surprisingly, legal education again took second place to more pressing demands on the energy, resources, time, and personnel of the university. Still, the idea of developing some sort of programme of formal legal studies at the University of British Columbia did not die entirely. On May 5, 1940, a committee of the Vancouver Bar Association met with Professor Henry Angus to discuss the possibility of somehow bringing order to and expanding the law-related courses on the undergraduate curriculum. Angus recorded the discussion that ensued in a memorandum to President Klinck:

On May 5, I met with the Committee of the Vancouver Bar Ass’n on legal education (Messrs. MacDougall, Darling and Campbell). They recognized that it was unlikely that a Faculty of Law could be established at the U.B.C. during the war and wished to do something to improve legal education in the meantime.

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<sup>329</sup> Campbell to Klinck, Mar. 13, 1940, President's Office, UBC Archives, Special Collections, UBC Library.

Their suggestion was that some law courses might be included as B.A. and B. Com. options. My view was that this suggestion ran counter to the intentions of the Bar Ass'n in insisting on a B.A. or B. Com. degree as a prerequisite for legal training, inasmuch as it would cut down the amount of general education to make room for professional subjects. It might, however, be possible to make Commercial Law a B.A. as well as a B. Com. option, and to make Government 2 a B. Com. elective.

I suggested that it might be more constructive to make a start with one year of law, after the B.A. or B. Com. degree, to be followed by two years of office training under articles. The same result would follow if the present time (three years) under articles were retained but students given leave to take one year at the U.B.C.—just as they are often given leave to study for a year at Dalhousie or Osgoode. A year's course (15 units) could no doubt be devised which would be accepted by Canadian Law Schools as the equivalent of one year towards their degrees. . . . The cost might not be high . . . .

I explained that I did not think that the U.B.C. would be ready to consider such a proposal unless it were recognized as a mere interim policy designed to lead to a full fledged law school.

As for immediate action, it was decided that the Committee should correspond with Canadian Law Schools and find out the sort of course which would be generally acceptable as the equivalent of one year elsewhere, and that the university should not be approached unless there was a definite course in mind, on the basis of which financial estimates could be made.<sup>330</sup>

This meeting seems to have been more or less informally arranged with Henry Angus (either in his capacity as head of the department of economics, political science, and sociology or simply because he was a legally qualified member of the University of British Columbia faculty) rather than mandated by the board of governors, senate, or the president's office. In any event, little seems to have come of the idea and there is little evidence of any follow-up in the university during the remainder of the Second World War.

Another fully qualified legal academic was added to the university staff in 1942. William J. Brockelbank joined the faculty as a "lecturer in government" during 1942–1943. Holding a bachelor of arts degree from Haverford College, a bachelor of laws from Harvard, and the Docteur en droit from Paris, he was seemingly very well qualified to work either on expanding law offerings in the

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<sup>330</sup> Prof. Angus to Klinck, May 6, 1940, President's Office, Roll#30, UBC Archives, Special Collections, UBC Library.

undergraduate programmes of the university as the Vancouver Bar Association had suggested or to work with others on developing a faculty of law. More prosaically, it is also possible that he was simply taken on to fill a gap created by the departure in 1941 of Henry Angus to serve as special assistant to the under-secretary of state for external affairs.<sup>331</sup> Whatever the original motivation, nothing came of it. Brockelbank served only one year on faculty. The war dragged on; limited human energies were put to other uses.

### **Breakthrough!**

The story of the origins of a university faculty of law in British Columbia is in large part a story of interesting initiatives stymied by external events: government hostility to the university coupled with fiscal crisis at the law society in the 1920s; economic depression in the 1930s; and war-time disruption in the 1910s and 1940s. Ironically, it was outside developments that gave added impetus and indeed urgency to the final push that led to the creation of the University of British Columbia Faculty of Law in 1945.

By 1944 the course of the Second World War had turned and the return of many thousand Canadian soldiers seeking a university education or professional career loomed on the horizon. Reginald Tupper, dean of the Vancouver Law School from 1938 to 1943, had worked hard as a legal educator and on various committees directed toward the creation of a university law faculty from the 1920s onward. Alfred Watts's records that in 1944 Dean Tupper reminded an annual meeting of the law society of both past failures in their efforts to establish a university law faculty and the urgent need to take advantage of the opportunities presented by the end of the war, then in sight. In the last years of the 1930s, he recalled:

We had assurance from the University that so soon as the Domestic Science course was instituted we would be next . . . . Since . . . we have heard that there has been an attempt to start a school of Pharmacy . . . . If we have not a faculty it is doubtful if we will reap any benefits of the rehabilitation scheme being extended to all students who are coming back . . . quick action must be taken . . . I am going to move that you appoint a committee to conduct an investigation with the University for the establishment of a Faculty of Law and that the Benchers do take some action

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<sup>331</sup> Logan, *supra* note 205, at 147; H.F. Angus, *My First 75 Years* (m/s autobiography), Angus Family, box 1-1, UBC Archives, Special Collections, UBC Library.

in regard to the establishment of such a faculty as they can do as soon as possible.<sup>332</sup>

Tupper's motion was duly made and seconded by Leon Ladner. Senator Wallace Farris again served as chair of a Benchers' committee to work with the university toward this end.

The university had a new president by this time, N. A. M. MacKenzie having been appointed when Klinck retired on August 1, 1944.<sup>333</sup> On November 18, 1944, less than a month after the formal ceremonies installing MacKenzie,<sup>334</sup> Farris was again writing to a president of the University of British Columbia to advise that he chaired a law society committee (J. A. Campbell, A. W. R. MacDougall, Arthur Lord, and Sherwood Lett) which aimed to promote and assist in the establishment of a faculty of law.<sup>335</sup> The circumstances, on this occasion, were favourable. With the approach of peace, the federal government had adopted a policy that Harry Logan described in his history of the University of British Columbia as "open-handed assistance in the education of discharged military personnel".<sup>336</sup> The public mood was expansive and optimistic.

Confident that, because of their previous efforts, everything but funding was in place for the creation of a university law faculty, the law society committee approached the government of British Columbia with a request backed by arguments addressing public demand, economic growth, patriotism, and fidelity to those who had served their country in time of war. The general outline of arguments put in support of government funding for a university law faculty are succinctly captured in a night letter sent to the premier by Sherwood Lett on January 11, 1945:

Hon. John Hart, Parliament Buildings, Victoria:

Regret inability to be present with Senator Farris President MacKenzie at interview tomorrow to endorse submission concerning law faculty STOP I understand initial cost would not be large and there is undoubtedly public demand for properly trained lawyers and adequate legal education STOP This demand will certainly increase with province's industrial and

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<sup>332</sup> Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 at 59.

<sup>333</sup> Logan, *supra* note 205, at 173. MacKenzie served as president of UBC during the expansionary decades following the Second World War. The university thrived during his period of leadership and it was during his tenure that a law faculty was developed along lines sketched out in some detail by President Klinck and several generations of law society Benchers.

<sup>334</sup> Oct. 25, 1944. See Logan, *supra* note 205, at 173.

<sup>335</sup> Farris to MacKenzie re: Law School, June 21, 1945, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>336</sup> Logan, *supra* note 205, at 175.



commercial expansion STOP Suggest time is overdue when in the public interest British Columbia should provide its own legal education and if instituted now returned men can benefit STOP Respectfully recommend your favourable consideration and earliest possible action Sherwood Lett<sup>337</sup>

Although some of the members of the law society delegation were heartened by their meeting with the premier, they were soon disappointed.

A June 21, 1945 letter from Senator Farris to President MacKenzie remarked on the fact that the government's estimates indicated no likelihood that a law school could be developed in the near future. The disappointment was tangible. Farris noted that:

For five years, ending in 1938, I was Treasurer of the Law Society and at that time worked very hard to secure a Law School. Although we had the active support of President Klinck, nothing was accomplished. After this year's budget I concluded that we were still no farther ahead.<sup>338</sup>

British Columbia lawyers were not in a mood to take "No" for an answer, however. Farris informed the president that the officers of the law society and also the Vancouver Bar Association "intend to keep the question alive, and to continue the demand for a Law Faculty at the University". Farris reported that he had in fact "taken the matter up with Premier Hart" earlier that day. His pitch to the premier was simple and straightforward: there was a public need for a law school; accommodation presented insufficient difficulties to justify delay; and the capital expenditure necessary to create a law faculty was small. Obligation to returning soldiers was the final, irresistible argument put to the premier. On this point Farris simply noted that "[m]any of the boys are now returning from overseas and an urgent necessity exists". Incredibly, he indicated his assumption that "if provision were made at this time for a Dean and one or two instructors" this would "enable a beginning to be made this fall".<sup>339</sup> The date on this letter, recall, was at the end of June!

Four days later, on June 25, 1945, the board of governors authorized MacKenzie to meet with Farris about a law faculty "with a view to co-operating in any way possible, but without any financial commitment on the part of the

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<sup>337</sup> S. Lett to Hart re: Government Funding for Law School, January 11, 1945, UBC Archives, Special Collections, UBC Library.

<sup>338</sup> Farris to MacKenzie re: Law School, June 21, 1945, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>339</sup> *Ibid.*

University”.<sup>340</sup> MacKenzie followed up and on July 7, 1945, wrote to the premier himself arguing from the need for returning service men and women to train for the legal profession: “We owe it to them.” He told Premier Hart that “the University in co-operation with the Law Society and members of the legal profession should organize this year a law course for returned service personnel and such other of our young men and women as may desire to take it”.<sup>341</sup>

The premier recognized the irresistible force of a well-organized campaign when he saw it and the government gave way. On July 20, 1945, the premier wrote to offer \$10,000 of public funds toward establishing university legal education in the province. From this point on, things moved smoothly and with astonishing speed.<sup>342</sup> On July 30, the board of governors received the premier’s letter and formally gave their blessing to the immediate creation of a law faculty. President MacKenzie reported this meeting in a letter to Dean Daniel Buchanan:

The Board of Governors at the meeting on July 30th, received a letter from the Honourable John Hart, Premier, under date of July 20th, stating that the Government had approved the request for a grant of \$10,000.00 for the establishment of a Faculty of Law in the immediate future so that the University, in co-operation with the Law Society, might provide this training for ex-service personnel who plan to enter the legal profession.

The following resolution was passed by the Board,—

That the Board of Governors go on record as approving, subject to the agreement of Senate, the establishment of a Faculty of Law at the University of British Columbia for the Session 1945–46, and that a letter of appreciation be sent to the Premier.<sup>343</sup>

The university president had anticipated formal approval for the programme and seems to have begun his search for a dean of the new faculty immediately upon receipt of the premier’s letter. “Dean search” does not entirely capture the sense of what happened. MacKenzie seemed determined to lure Professor George Curtis away from his chair at the Dalhousie Law School and there is no evidence that other candidates were seriously sought out or even

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<sup>340</sup> Board of Governors Meeting, June 25, 1945, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>341</sup> MacKenzie to Hart, July 7, 1945, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>342</sup> July 23, 1945. Letter from MacKenzie to Curtis, asking for names of suitable candidates for Deanship; July 28, 1945, secret telegraph from R.A. MacKay indicating Curtis was on train that night to Edmonton re: Alberta Law School!, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>343</sup> Mackenzie to Dean Buchanan, Aug. 2, 1945, President's Office, UBC Archives, Special Collections, UBC Library.

considered. The first approach to Professor Curtis was courteous, tactful, and indirect: a letter enquired whether he knew of any suitable candidates for the position. That letter did not arrive until after it was apparent that a more direct approach was needed. Five days after the letter was mailed, the university was forced to rapidly accelerate the process. R. A. MacKay sent a confidential cable to President MacKenzie reporting that Curtis was that night on a train to Edmonton to discuss a position at the Alberta Law School.<sup>344</sup> MacKenzie moved quickly in response.

Dean Curtis recalled the sequence of events that took him to British Columbia during a 1980 interview with Murray Fraser:

Dr. Curtis: I had received a letter from the President of the University of Alberta who explained that their law school had more or less stood down for a time. Weir, the Dean, had died in the middle of the war. MacIntyre had carried on as acting dean for a year or two and then had returned to Sackville, New Brunswick, to practice with his father in the old firm. They were in mind, as the war was ending, to re-establish the Alberta Law School and they were looking for someone to take it on.

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... and so I replied, thanked them very much but said that I was very well situated at Dalhousie. I was willing to think about it. They suggested that I come out. I said I would only come on the clear understanding that there was no commitment on my part, that I just wasn't in any position, I wasn't looking for anything, I was happy at Dalhousie, etc. They wrote back and said that was completely without prejudice, that I could come and just have a look at it and equally on their part, they wanted to look at me, etc. So off to Alberta. ... So we had many discussions for two days and I went back to my hotel. I think I can say now that I wasn't too happy with the set-up at the University. ... I wasn't too impressed with, first of all the arrangements that they had there. ... I couldn't get any clear idea of what was planned. ... In any event, I was pretty negative in my mind. I hadn't made up my mind but it wasn't too favourable.

I arrived back at the hotel and the clerk rushed up to me and said, "Oh, I am so glad to see you. There's a letter arrived here that actually arrived yesterday. And there was a Colonel of the United States Air Force of the same name as you and it was delivered to him. He's gone now but he's left a note of apology because he opened the letter and then saw it wasn't for

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<sup>344</sup> *Supra* note 342.

him.” This was a letter from N. A. M. MacKenzie, the President of U.B.C., saying that they had decided to set up a law school.

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Dean Fraser: The letter had gone from Vancouver to Halifax. . .

Dr. Curtis: From Vancouver to Halifax, from Halifax to Lunenburg County where my wife was. We had a little cottage rented down there at Lower La Have. She rushed in and put it in the post and sent it to me at Edmonton.<sup>345</sup>

Curtis phoned MacKenzie the next morning and interviews were immediately arranged.<sup>346</sup> The expected round of discussions with senior university officials and leaders of the Vancouver legal profession followed. A crucially important luncheon took place on August 2, at which George Curtis met with Senator Wallace Farris, Sherwood Lett, J. A. Campbell, Dal Grauer, Denis Murphy, Dean Buchanan, Dean Finlayson, Dr. Gordon Shrum, and R. Benson).<sup>347</sup> The university officials and Vancouver lawyers were impressed by Curtis and he with them. A half-century later the retired Dean Curtis recalled:

It was a very impressive committee. Now, what was even more impressive to me as we sat down to lunch to discuss the matter was the answer that I got from them. I said “Well what sort of a law school do you want?” They said, “We want a law school like Dalhousie.” Now that in the language of that time, meant a law school that was not rule-bound, a law school in accordance with the atmosphere, that Weldon the first Dean had created, would have a open mind towards the law. It would include International Law as one of its subjects, for instance. Constitutional Law taught, to use Holmes’ phrase in the “grand manner”. That was the aspiration, and that was interesting because also it was a University Law School, and of course, the great contest you could see coming up in Canada was between . . . University law school as against a professionally controlled and run law school, which may well be much more inclined to be rule-bound, not likely to be as open. . . . So that was a wonderful answer I got, Dalhousie, the university law school at Dalhousie. That was excellent.<sup>348</sup>

<sup>345</sup> George Curtis, interview with Murray Fraser, Feb. 20, 1980, "Aural History Project", *supra* note 6 at 48-51

<sup>346</sup> *Ibid.* at 51.

<sup>347</sup> "Luncheon for Prof. Curtis, Faculty of Law, Dalhousie University", Aug. 2, 1945, indicates "Regrets - Mr. A.E. Lord, Mr. R. Tupper, Mr. A.R. MacDougall, Chancellor Hamber, Mr. Bruce Robertson, Mr. F.A. Shepherd, Mr. C.H. Locke", President's Office, UBC Archives, Special Collections, UBC Library.

<sup>348</sup> G. Curtis, interview by W.W. Pue, History of Legal Education in British Columbia Project, Jan. 17, 1995.

Even so positive a meeting by no means left it clear that leaving a comfortable faculty position at the Dalhousie Law School to launch a new faculty in British Columbia was a good idea.<sup>349</sup> British Columbia's historical neglect of higher education was well known, and George Curtis was aware of the "persistent underfunding of the University"<sup>350</sup> and of its consequences. A further private meeting with Senator Wallace Farris was accordingly set up. Dean Curtis has recorded the necessity for this meeting and its importance in personal recollections:

Before I left Vancouver, I thought I should double check the Bar's position. That factor—the Bar's attitude—to me was critical. The Bar of Nova Scotia made Dalhousie, despite small resources, the famous place that it became. Sir John Thompson and his colleagues at the Bar made Weldon's work possible.

I decided to see Senator Farris privately, not only because he was the chairman of the Bar committee, but because I knew that when one member of the Bar consults another member for personal advice, he can count on straight-shooting. . . .

Senator Farris gave me his full mind on the situation as he saw it. He made no attempt to paint a rose-tinted sky: the government of B.C. was parsimonious in its support of the University. The risk was there: but the support of the Bar could be counted on.<sup>351</sup>

On August 8, MacKenzie wrote to Curtis offering the deanship. Curtis accepted by telegram two days later.<sup>352</sup> His reasoning was simple and straightforward: "The war was over. A new University president was in office. . . . It was time for optimism. A grant of \$10,000 to start a law school could hardly rank as munificent; but with the Bar solidly behind me and a venturesome captain on the bridge, better days should be ahead."<sup>353</sup> Senate approved creation of a law faculty at the end of August,<sup>354</sup> Curtis arrived to begin work in Vancouver on

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<sup>349</sup> *Ibid.*

<sup>350</sup> G. Curtis, "Personal recollections, draft of 1994" part 4.

<sup>351</sup> *Ibid.*; see also Curtis, interview with Murray Fraser, (1980) "Aural History Project", supra note 6 at 47 - points to debate in Canada at the time as to whether legal education should follow the model of Osgoode Hall or that of Saskatchewan/Dalhousie: "I was convinced that here we were at a point of decision and I was determined that if the opportunity came to start a law school out here in B.C. of what I call that university type of law school, that pattern, that it was terribly important for the country".

<sup>352</sup> MacKenzie to Curtis, Aug. 8, 1945; Curtis to MacKenzie, Aug. 10, 1945, President's Office, UBC Archives, Special Collections, UBC Library.

<sup>353</sup> Curtis to MacKenzie, *Ibid.*

<sup>354</sup> Approval Document, Aug. 27, 1945, President's Office, UBC Archives, Special Collections, UBC Library.

September 4, and a university law faculty opened for business three weeks later.<sup>355</sup>

### **Opposition to University Legal Education**

Opposition within the law society to the creation of a university law faculty in British Columbia was not always limited to financial niggling, greed, selfishness, or reluctance to pay higher law society fees. Some British Columbia lawyers clearly opposed the move on principle.

This sort of opposition may have originated in a carefully reasoned assessment of the skills and experience required of a lawyer or simply in the innate conservatism of middle-aged, middle-class, moderately educated journeymen lawyers. George Curtis recalled “a natural loyalty . . . to the ‘old systems’ ”,<sup>356</sup> telling an interviewer in 1995 that he “occasionally . . . met a person who rather nostalgically said, ‘Well, I had a pretty good experience [of] articles, it was a pretty good experience. I don’t know that I would have been better if I had gone to law school or not.’ ”<sup>357</sup>

It seems probable that nostalgia mixed promiscuously and to varying degree with both principle and raw, blinkered conservatism to constitute an unholy alliance in opposition to the creation of a law faculty. The written record of this opposition is sparse, providing little evidence from which to reconstruct the particular mixtures of personalities and motivations that led some lawyers to oppose university legal education. As in many areas of British Columbia legal history, it is the recollections of individuals who participated in developing the University of British Columbia law faculty rather than the written record that is most helpful. These recollections consistently suggest that important forces opposed the university initiative.

It is less clear how opposition was expressed, by whom, or why. Alfred Watts has recalled that, by the time the University of British Columbia established a law faculty, the Benchers presented a united front in support of legal education. Nevertheless, there was considerable opposition to either the very idea of a university law faculty or to the particular plan being put into place. Watts noted, for example, that:

[T]here was a lot of—not a lot but there was considerable complaints from people (such people as Pat Maitland, who was a very very fine lawyer,

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<sup>355</sup> George Curtis, interview with Murray Fraser, (1980) "Aural History Project", supra note 6 at 59.

<sup>356</sup> *Supra* note 348.

<sup>357</sup> *Ibid.*

Attorney General), who were most hesitant to see the benchers knock out the old five year rule whereby a man could simply article for five years, without a degree, and write the examinations and then be called to the Bar, as opposed to going to law school. . . . The benchers wanted to make a clean sweep of it and have nothing more to do with it and leave it up to the law faculty, and as usual in these things there's some sort of a compromise worked out and the five year rule was carried on for some years and then it was eventually dropped.<sup>358</sup>

If it seems likely that Maitland's objections in 1945 (he had served on the law society committee to establish a law faculty as early as 1937) were precise and focused on one

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<sup>358</sup> A. Watts, interview with M. Waters, May 10, 1983, "Aural History Project", *supra* note 6 at 135 - Recounts that Watts taught Criminal law in the law school, "...I fought like mad with the faculty and a fight I didn't win because I wanted them to do more about professional responsibility and legal ethics. They wouldn't do it, they didn't regard it as an academic subject and - this always rankles me...".

or two issues, other opposition may have been more generalized. Many of the higher court judges apparently opposed the very idea that book learning should form any significant part of professional training. Chief Justice Nathan Nemetz told Professor Peter Burns in 1995 that “the local judiciary at the time were divided” on the merits of creating a law faculty. “There was,” he said, “no frontal support . . . they thought that this was all going to end up in a sort of place where you’d be learning a lot of theory and not knowing anything about how to practice law and this troubled them. I remember the then Chief Justice, Bird, who didn’t like the idea at all . . . these people had gone through the former system where they actually had no education, no university education at all. . . . and they . . . I think there was a bit of an inferiority complex about this proposition.”<sup>359</sup> Nemetz explained further that, at a time when “we only had about seven Supreme Court judges, as opposed to a hundred and five now” opposition from this quarter was “a bit of a problem”.<sup>360</sup>

It seems too that many senior practitioners beyond the realm of governmental and judicial office entirely disliked the idea of a university tampering with professional credentialling. Mr. Justice Lloyd McKenzie told Professor Marilyn MacCrimmon during the course of a 1995 interview that “the older practitioners were suspicious” of the new law faculty, “not only [because] of the fact that we’d be there in too great numbers, but also [because] we’d have the sort of high faluting university education that had no contact with the reality of the law. The only way to do it is, you know, to be at a law office, follow the lawyer around, carry the briefcases.”<sup>361</sup> Similarly, John L. Farris pointed to opposition within the legal profession when he recalled the work his father (Senator Wallace Farris) and uncle (Chief Justice Wendell Farris) did to develop a university law faculty. In addition to their work with the provincial government and university, the two Farris brothers struggled against an ingrained anti-intellectualism of their professional peers: “what Dad and Wendell mostly did was to talk to these fellows, the older members, their contemporaries at the Bar and urge them to support this”.<sup>362</sup>

Before his appointment to the Supreme Court of Canada, Mr. Justice C. H. Locke had served as a Bencher of the Law Society of British Columbia, including a term as “treasurer” (president). Nearly fifty years later, Dean Curtis recalled an interview he had with Locke soon after his arrival in Vancouver:

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<sup>359</sup> Chief Justice Nathan Nemetz, interview with Prof. Peter Burns of UBC Law School, 1995.

<sup>360</sup> *Ibid.*

<sup>361</sup> Mr. Justice Lloyd McKenzie, interview with Professor Marilyn MacCrimmon of UBC Law School, May 24, 1995.

<sup>362</sup> The Honorable J.L. Farris, interview with D. Williams, “Aural History Project”, *supra* note 6 at 180-81.



The then treasurer of the Law Society, the President in other words, was Mr. Charles Locke, later Mr. Justice Locke, of the Supreme Court of Canada. Mr. Locke came to me when the decision had been made and when I arrived here. He said, “Mr. Curtis, I want to tell you that I was never in favour of this. It was much discussed by the Benchers, the majority voted against me. Clearly they wanted this law school. They wanted the University Law School and . . . I, of course, loyally went along with them. Now I’ll tell you that I will give you every support that you ask for.” That I thought was enormously encouraging because he was a top-flight practitioner. In other words, “I’d lost the case, but there it is. Now we go ahead.” And he was true to his word.<sup>363</sup>

Locke’s reasons for opposing the idea of developing a university law faculty unfortunately remain mysterious. He had moved to British Columbia from Winnipeg and it may be that he imported the spirit of hostility to academic legal education that had come into ascendance in Manitoba during the 1920s. Certainly, he told Dean Curtis that his opposition to a university law faculty derived from having “been through all this in Manitoba” and knowing “the controversy there”.<sup>364</sup> The deeper concerns that drove the Manitoba profession in this direction are also, however, unknown. Dean Curtis could only guess that “there was a loyalty and attachment to what essentially was the same as Ontario, copying the English system, namely that the Bar ran the educational qualifications for the Bar. Universities were quite remote from that and had no real part in it.”<sup>365</sup>

Whatever motivated individual lawyers or judges to oppose university legal education during the inter-war years, the profession coalesced behind their new faculty once it had actually begun. The year 1945 marked a turning point from which the legal profession and the University of British Columbia never looked back.

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<sup>363</sup> *Supra*, note 348

<sup>364</sup> George Curtis, interview with Murray Fraser, Feb. 20, 1980, "Aural History Project", *supra* note 6 at 63.

<sup>365</sup> *Supra*, note 348.

## 6

# The

# Law School's

# Mission

## Let Justice Be Done

*Fiat justitia, ruat coelum.* “Let justice be done though the heavens fall”—these words were powerfully invoked by Lord Mansfield in 1772 as he freed the slave whose fate was at issue in *Sommersett’s case*.<sup>366</sup>

Nearly two centuries later, these same words were deliberately selected to serve as the motto of the University of British Columbia Faculty of Law. Today they grace the main entrance of the law building. Ignored, rarely understood,

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<sup>366</sup> E. Heward, *Lord Mansfield* (London: Barry Rose, 1979); C.H.S. Fifoot, *Lord Mansfield* (Oxford: Clarendon Press, 1936).

perhaps not even noticed as students and faculty pass below, this motto nonetheless reflects much of the spirit with which the first university law faculty was established in British Columbia.

The motto was selected by the faculty's founding dean, George Curtis, as his own "spontaneous and personal choice",<sup>367</sup> but considerable thought went into its selection. Intended to simultaneously lay hold to ancient wisdom, encapsulate the indispensable essence of common law, and powerfully, authoritatively invoke a vision of the future, these four Latin words carry a heavy burden. Since *Sommersett's case*, they have migrated through two centuries, across an ocean, and over a continent, absorbing meaning at each stage of their migration.

The historical essence that the motto encapsulates was explained by Dean George Curtis during a 1995 interview. The immediate origins of the motto are found in 1951 when a new building was constructed for the University of British Columbia Faculty of Law. It was "the first law building built for a law school and occupied by a law school"<sup>368</sup> in Canada. Although its architectural style emphasized unadorned facades and simple, straight lines, Dean Curtis thought the new building needed at least modest embellishment. It should, he thought, carry an appropriate motto over its entrance. The dean recalled to an interviewer that his "mind went back to a magical hour when I was a student in the Law School in Saskatchewan":

We had a remarkable teacher, Dean Moxon, Arthur Moxon, a superb teacher, I've not heard a better law teacher, I've heard many since of course. A man of learning, graduate of Dalhousie in Classics, of Oxford in Law. And what he was talking to us about was a favourite subject of his, namely that the common law was freighted with a cargo of human freedom. That's putting it a little poetically, but anything he did was eloquent. And he held us in thrall while he talked about the history of personal freedom under the common law, Bracton, Coke, onto the last bit, which was Mansfield. Mansfield's subject was *Sommersett's case* where he released the slave [and] said that the air of England does not tolerate slavery. And Moxon read from the closing words in that judgment in *Sommersett's case* . . . and he used as a flourish . . . he quoted from the judgment the Latin motto "Fiat justitia, ruat coelum", and it thrilled us. "Let justice be done though the heavens fall". Well, I remembered

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<sup>367</sup> Curtis, interview with Prof. W. Pue of UBC Law School, 1995, *supra* note 348.

<sup>368</sup> *Ibid.*

that, all through the years, and so I thought what could be better to express the spirit with which this law school, I hoped, would be imbued.<sup>369</sup>

So the motto reflects a joyous satisfaction with the historical achievements associated with the elimination of slavery and with the progress of individual liberty. It speaks also to a general, optimistic, if somewhat abstract, aspiration that the common law can and should be “freighted with a cargo of human freedom”.

Its spirit of optimism and commitment to the creation of a just society is not derived solely from eighteenth century England, however. Dean Curtis’s explanation hints at origins in an environment of hope, idealism, and utopian aspiration a good deal closer to home. In Arthur Moxon’s classroom, the words absorbed meaning from Saskatchewan’s political culture. Many of the Europeans who had migrated to Prairie Canada at the time thought themselves to be advancing an historically important mission. They chose to view themselves as hard-working, virtuous peoples who were “opening up” a new, very special territory: “a new civilization was being planted on the Prairies. The figure that a good many politicians used, when they made their speeches, was ‘A New Jerusalem’, let’s create a ‘new Jerusalem’”.<sup>370</sup> The Prairie ethos was imbibed to its fullest by the young George Curtis. He detected a powerful sense of community superimposed on a tremendously diverse population made up of people from many different ethnic origins, languages, and religions. Many affirmed a deeply held faith in those values of “personal freedom” that “today we call human rights”.<sup>371</sup>

Political philosophers, social theorists, and contemporary legal scholars alike are inclined to see a powerful contradiction between “freedom” and “social justice”. Ideas that motivate and sustain claims to “personal freedom” or “individual rights” are often thought of as inherently opposed to ideologies and beliefs that might support the collective measures which proactively advance political community, social justice, and the protection of the public welfare. No such dichotomy informs the spirit behind the motto of the University of British Columbia law faculty. It invokes “justice” in its most rounded sense, incorporating each of procedural, substantive, and social justice to their fullest. Again, early twentieth century Saskatchewan’s cultural ethos provides an interpretative touchstone. Dean Curtis explained:

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<sup>369</sup> *Ibid.*

<sup>370</sup> *Ibid.*

<sup>371</sup> *Ibid.*

It's perfectly true, that this desire for freedom was the marked characteristic of the people who went out and settled the Prairies. But at the same time there was the counter of that, what I called the "balancing factor". . . . the sense of neighbourhood, you couldn't live on the Prairies without being very conscious of the fact that you helped each other. Community helping, you see! Everybody helping, because you had to, had to. It was a society that wasn't wealthy, and so people had to help each other. And so it was a wonderful feeling. There's your contradiction. I don't regard it as a contradiction, I think its a balancing act, and I think we're all the stronger for having these things balanced out. And that was the foundation for much of the political thinking on the Prairies.<sup>372</sup>

This political culture tolerated a good deal of individual autonomy but also nurtured the development of medicare and other social programmes directed to the well-being of the community as a whole. Two "freedoms" were of central importance in establishing the groundwork for this "just" society. First, it was essential to avoid "the class divisions in Europe" so as to ensure a "freedom of the talents". Second, freedom required that ways be found to escape "elements of authoritarianism in government, which is always present, remember".<sup>373</sup>

*Fiat justitia, ruat coelum* invokes memories, then, both of the historical achievement of individual liberty under English common law and of the optimistic embrace of community-oriented political and social values by diverse European settlers in the early Prairie provinces. The need to ensure freedom from authoritarianism in government raises a third, less pleasant, range of considerations that informed Dean Curtis's choice. The motto has a dark side, for its most recent history speaks not only to hope and achievement but also to the need for great vigilance in the face of evil. The words hint at fell circumstances and are impressed with the quite specific, pressing concerns of the mid-twentieth century. This was a time when the heavens, indeed, seemed to fall. Infused with hopefulness, optimism, and idealistic aspirations, the motto simultaneously serves as talisman against the multiple evils our century has produced. It is a reminder of the hell-on-earth we have created whenever vigilance has waned.

The generation of Canadians who founded the University of British Columbia Faculty of Law lived through the Boer War, the First World War (the "war to end all wars"), the Bolshevik revolution, the Great Depression, the Second World War and its Holocaust, and the deliberate nuclear destruction of

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<sup>372</sup> *Ibid.*

<sup>373</sup> *Ibid.*

civilian populations in Hiroshima and Nagasaki. Something better had to be possible, and many thinking individuals hoped that law would have a central role in fashioning a new, better world. Wendell Farris, then Chief Justice for British Columbia, expressed this idea well in a 1946 address when he said that “[i]t is essential that . . . lawyers and those . . . who are to become lawyers must realize that only through the law and the lawyers can peace prevail throughout the world”.<sup>374</sup> Such ideas pressed on the mind of Dean Curtis when he came to select a motto, a few short words, to encapsulate the spirit of his new faculty.

The immediate background in 1951 was the “veterans’ era”. Founded in 1945, the law school was largely populated in its first years by returning war veterans. Unspeakable horrors were very real. This generation knew that the danger of authoritarianism “is always present. . . . God help it, power corrupts, we know that from Acton, and absolute power corrupts absolutely. . . . that’s the thread that runs through all of European history. . . . It’s there, it’s there, it’s latent most of the time, but suddenly it breaks out as it did in Nazi Germany, as . . . it broke out in Fascism in Italy”.<sup>375</sup> The student veterans, Dean Curtis recalls, “risked their lives, many of their friends had lost their lives in the cause of freedom,” in order to:

get rid of that dreadful business which was shown by the cruelty, the inhumanity which unfortunately had gripped the German nation under the Nazis and it expressed itself in the Holocaust. There it was. That’s what these fellows went overseas to stop, and they did, they won the war. And they came back, and why not in peace time keep that thought alive “Let Justice Be Done Though The Heavens Fall”. There it is, that’s the motto! I got a little excited over this, I’m afraid because it is an excitable subject. It deserves the full extent of our being . . . has to be in this, . . . but that’s what I think is the spirit which this law school wanted to express in that motto and wanted to keep to reinforce. . . . Law is much more than just a bunch of rules. Law represents an important part of a nation’s culture, it expresses values, it has a normative effect on society. It should, at least. And that’s what I wanted to encourage.<sup>376</sup>

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<sup>374</sup> The Hon. W.B. Farris, Chief Justice of the Supreme Court, "The New Era" (1946) 4 *The Advocate* 130 at 131.

<sup>375</sup> *Supra* note 348.

<sup>376</sup> *Ibid.* Also, on Nazism, Dean Curtis offered the following observations:

Dean Curtis: Remember, Nazism came to my generation as one of the great surprises. Who would expect that the nation of Beethoven and Mendelsohn and the great philosophers, Nietzsche and all the rest of it. Enormous learning, and Germany had this enormous reputation for learning, who would expect that they should descend to the level that they did. These made us think without doubt. Here in 1952 we were a liberated from it. Why not express our ambitions, at least. That's it. Maybe I'm making too much of it, I

All that was worthy in the nation's culture, values, and law were, for Curtis, in all respects the antithesis of Nazism. The democratic tradition, community spirit, respect for individual rights, and "a great sense of tolerance"<sup>377</sup> for human diversity together constituted the sense of "justice" to which the new law school was dedicated.

### The New Era: Law's Crucial Mission

The idealism and sense of mission Dean Curtis attempted to express by his choice of a motto for this, the first Canadian law school founded in a generation, was no merely idiosyncratic, personal expression. It tapped into deeply felt convictions of the day that touched student, professor, lawyer, and citizen alike.

On January 17, 1946, the Honourable Wendell Farris, Chief Justice of the Supreme Court of British Columbia, addressed the opening ceremonies which formally launched the University of British Columbia law faculty. His topic was "The New Era". The new era Farris wished to speak to was not just the new phase of British Columbia legal education that he gave his imprimatur to on that occasion but the new beginning of human history marked by the new year. Chief Justice Farris noted the course upon which the world was launched following the collapse of the German and Italian armies, the "awful revelation made to the world of the great power of destructiveness as demonstrated by the dropping of the atomic bomb on Hiroshima and Nagasaki", the unconditional surrender of Japan, and the start of the Nuremberg trials. He was greatly interested in the new era of legal education for reasons that went well beyond the parochial interests of a provincial legal profession. Farris explained that the education of lawyers was a matter of pressing concern to the world at large. His speech merits lengthy quotation for it conveys the hopes held out for university professional education by his generation and simultaneously reveals the immediacy with which world events were felt in the local arena.

"The year 1946," Farris noted, "opens a new era for mankind, in which era lawyers will be called upon to play a more prominent part in world affairs than at any time in history."<sup>378</sup> The future hope of the world was to be found, he thought, in the rule of law. English history provided a chart or schema he hoped to see replicated on a world scale:

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don't think so. I think...derived from various students that have graduated from here, I've heard them say that they've seen the motto and they thought of it later on, which pleases me.

<sup>377</sup> *Ibid.*

<sup>378</sup> *Supra* note 374 at 130.

In England there have been three rules—the rule of Anarchy, the rule of Kings and the rule of law, and only under the rule of law did Democracy flourish and grow. Over our history in international affairs to a large extent the rule of Anarchy alone has existed. That rule in brief is “might is right”.

The year 1946 ushers in the new rule of International Law,<sup>379</sup> and with this Rule of Law inevitably must follow a real world democracy.

. . . it was not the Norman Conquest but the Common Law of England which evolved constitutional freedom out of chaos, revolution and despotism.

Bacon, Coke, Blackstone, Mansfield, Brougham, Erskine and hundreds of others, by the law and through the law, have done more for peoples and States than all of the warriors of the world.<sup>380</sup>

As the result of the war it has been necessary that bureaucracies should be set up and to a large extent the affairs of our country have been run by regulation rather than Statute Law. Eternal vigilance must be exercised to prevent this bureaucracy spreading out its tentacles. Its growth is insidious. The culmination of bureaucratic control is the destruction of freedom itself. It is the duty of lawyers to give leadership in this regard, not in any selfish manner but to maintain the freedom which is our heritage and which has been maintained for us by the gallant sacrifice of such young men and women who largely compose the members of the student body of this Law School.<sup>381</sup>

We must work together as one body, realizing the great privileges we have and the responsibility which comes with privilege. Never in the history of the world has the opportunity been as great as at present to give leadership at this time, but it is our privilege to do so. We must stand together and while maintaining the individuality of the great traditions of our profession, march with the rest of decent society for the betterment of mankind.<sup>382</sup>

University President Norman MacKenzie spoke on the same occasion. He believed that “[t]he founding of a Faculty of Law will mean a great deal to the University and to the Province and to Canada. Legal education is a great deal more than the training of practising lawyers, important as that may be . . . it

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<sup>379</sup> *Ibid.*

<sup>380</sup> *Ibid.* at 131.

<sup>381</sup> *Ibid.* at 133.

<sup>382</sup> *Ibid.* at 134.



contributes much to all the profession and to the community and the nation”.<sup>383</sup> Similarly, a senior British Columbia legal practitioner, E. A. Lucas, visited the law faculty early in 1946 and reported that the student body consisted of “earnest young men and women, intent upon devoting their lives and their talents to upholding the great principle that there can be no liberty without the supremacy of the law”.<sup>384</sup> Lucas joined Chief Justice Farris and President MacKenzie in believing that law’s crucial cultural mission was to be entrusted to the next generation of lawyers, being educated now for the first time in the university:

We are all familiar with the creaky croaking from the thick layer of the unthinking. “There’s too many lawyers; the lawyers get it all; did you say lawyers or liars?” The real situation, past, present and future, in this or any other province, is that the progress of public and semi-public activities depends to a very large extent upon the quality and integrity and the purposive effort of the members of the Bar. Some of us forget sometimes that the tone of the community, good, bad and mixed, is set to a very considerable extent by our profession, dusty wheezing to the contrary notwithstanding.<sup>385</sup>

Similarly high expectations held of legal education are indicated in an address Mr. Justice John E. Read (Canadian Representative on the Court of International Justice) delivered to a section of the Canadian Bar Association in 1947. Legal education, he said, had moral, cultural, and practical objectives. “The first and primary purpose”, in his opinion, was moral—the “development within the personality of the student at law . . . [of] those moral qualities which are embodied in the best of our professional traditions”.<sup>386</sup> The second objective, providing a general cultural education, was important in marking law’s status as a “learned profession”, rather than a mere “trade”. By relating law “to the broader fields of human knowledge” Read thought aspiring lawyers would

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<sup>383</sup> N.A.M. MacKenzie, "Proceedings of the formal opening of the Faculty of Law of the University of British Columbia" (1946) 4 *The Advocate* 44 at 44. MacKenzie is quoted as saying:

I may say that the majority of those in the course in law are men, and some young women, who have come back from active service, and they are the finest group of young men that any community could hope to have and we are happy and proud to have them here with us and we wish them all success as students and in the future.

<sup>384</sup> E.A. Lucas, "Faculty of Law" (1946) 4 *The Advocate* 7 at 10.

<sup>385</sup> *Ibid.* at 11. Lucas states: I should like to say to every member of the big freshman class in Law that he or she is a potential leader of British Columbia. The great doors of opportunity are open before them. What they have to do is go right in and go right ahead. And if that sounds like airy unreality, I should like to say that I have seen it work in British Columbia for forty years.

<sup>386</sup> J.E. Read, "Legal Education" (1947) 5 *The Advocate* 208 at 208-209.

develop “an admirable mental discipline” and “a broad and civilized outlook upon life”.<sup>387</sup> The “public profession of law”<sup>388</sup> required that subjects such as comparative law, public international law, conflicts of laws, constitutional law, legal history, and jurisprudence be considered part of “the fundamentals”.<sup>389</sup> The narrower aspect of legal education (equipping “the student for the practice of law”) was relegated to “third place for two reasons—the moral and the cultural objectives are in fact more important and one can attain the third objective more readily by a flank than by a frontal attack”.<sup>390</sup> For Read, as for many others, the lawyer’s mission transcended mundane matters of legal practice. It was important that legal education be structured appropriately to prepare lawyers for a leadership role among citizens.

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<sup>387</sup> *Ibid.* at 209.

<sup>388</sup> *Ibid.*

<sup>389</sup> *Ibid.* at 210.

<sup>390</sup> *Ibid.*

## 7

# Law's Content

## **The University of British Columbia, 1945 to 1950**

The enormously important task of training the next generation to carry out law's crucial mission was entrusted to an institution seemingly ill-equipped for the task.

The University of British Columbia was under-staffed, under-built, and under-resourced. The end of the war brought a flood of new students to an already impoverished institution and the new faculty entered an environment that must have seemed at times to be utterly chaotic. At the end of the Second World War, the university exploded, virtually bursting its seams, and British Columbia's first faculty of law came into being amid a whirlwind of activity on the Point Grey campus. Professor Harry Logan describes this time as “the most stirring and exhilarating period in the University's history”<sup>391</sup> — a statement that is both literally true and a cautious euphemism for a period of great difficulty. “The Federal Government's open-handed assistance in the education of discharged military personnel, the generous policy of admissions adopted by the National Conference of Canadian Universities, and the decision of the President and Board of Governors to reject no candidate who could qualify for entrance, brought an influx of veteran students which taxed to the limit the already overstrained resources of the University.”<sup>392</sup>

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<sup>391</sup> Logan, *supra* note 205 at 175.

<sup>392</sup> *Ibid.* In 1980, Dean Curtis stated:

The university's new president, Norman MacKenzie, was a former law teacher from eastern Canada. Henry Angus recorded that MacKenzie's policy of opening "the doors of the university to all qualified candidates, no matter what the strain on resources might be"<sup>393</sup> resulted in unprecedented growth. From a student population of approximately 3,000 in 1944–1945:<sup>394</sup>

[t]he number of students rose rapidly to over 9,000. Accommodation was provided by procuring army huts and moving them in by truck, placing them on cement foundations and equipping them with the necessary facilities. This step was taken boldly even without an assurance that the Government of Canada would meet the cost. Various concessions were made to students who had been in the services and to whom some of the normal university requirement (e.g., an obligatory language) would have been irksome or even prohibitive. But with minor exceptions it was sought to maintain standards in the face of difficulties. The classes were large. . . . In general the graduates were fed into a society eager for manpower—an economic climate very different from that of the 1930s and the First World War.

Looking back, twenty-one years later, I doubt if anyone fully understood the revolution that had begun in Canadian universities. The population explosion was not to affect them for many years but nevertheless they were swamped with students. The teaching staff had heavy administrative duties and there was little time for research and creative writing. The universities were expected to give types of vocational training that had not in earlier years been considered to justify a university degree. Yet this training had to be given somewhere and the universities could give it efficiently and economically.<sup>395</sup>

The law faculty began in the same spirit that motivated the explosive expansion of the university as a whole. By September 1945, the personnel of the

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We had no accommodation, of course. I was placed in the Senate Room. I was up at one end. The university supplied me with a secretary in the middle and then Mr. Read down at the other corner. In came innumerable young men and one or two young ladies, most of them in uniform, because the war had ended so abruptly; those who were of long service got first release and they came in. Some of them had started under articles, others hadn't and I said to them, "Well, we've nothing here as you see... Well, you've got your D.V.A. benefits, why don't you go to the established law schools? They are there already. We will try to do the best we can". So many of them said, "Look, I've been away four, five, six years, I'll take a chance. When do we start? (Dean Curtis, Feb. 20, 1980, interview by M. Fraser, University of Victoria Aural Legal History Project at 59-60.).

<sup>393</sup> H.F. Angus, *My First 75 Years* (m/s UBC Archives, Angus Family, box 1-1) 343.

<sup>394</sup> Logan, *supra* note 205 at 176.

<sup>395</sup> Angus, *supra* note 174 at 343-344.

new law faculty had been assembled. Dean George Curtis, Professor Frederick Read, and their secretary, Miss Wright, carried on the work of the faculty even though they had no offices, no books, no equipment, and no classrooms. The three began work as “squatters” in the university senate room. The dean, as befits the dignity of office, occupied the chancellor’s chair at one end. Professor Read sat at the other end of the room, while the faculty secretary worked in the middle.

“No sooner had I sat down in the Chancellor’s chair,” Curtis recalled, “than the door of the Senate Chamber opened and a veteran came in. He was followed by a steady stream of others.”<sup>396</sup> The veterans were home and eager to get on with life. Their presence must have brought terrible moral pressure to bear. Although it was an enormous gamble—hindsight would have judged it reckless in the extreme if the new faculty had failed—Curtis decided to open the law school that term, with absolutely nothing ready and less than a month to get organized.<sup>397</sup>

### **They’re Actually Reading Cases! Pedagogic Objectives of the Early University of British Columbia Faculty of Law**

If the tremendous idealism and “can-do” attitude of the post-Second World War generation is one feature that marked the early University of British Columbia law faculty, its approach to scholarship and education was another.

The preceding chapters have emphasized continuities of intellectual and institutional lineage between the University of British Columbia law faculty and earlier programmes of legal education. But it would be wrong to underestimate the degree of innovation involved in creating a new law faculty in common-law Canada’s second-most populated province. Interviewed in 1980, Dean Curtis recalled that, a generation previously,

there was a great debate in Canada. What should the future of legal education be? Should it be the essentially old system where such law schools as existed would be run by the profession as in Ontario (Osgoode Hall), or should it be what I’d been familiar with both at Saskatchewan and at Dalhousie, namely that it should be a university

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<sup>396</sup> Curtis, *supra* note 350.

<sup>397</sup> Curtis: “The decision to start the law school right away, with nothing ready, and not to wait the promised year, was entirely mine. It was easily come to”. (Curtis, interview with Murray Fraser, Feb. 20, 1980, “Aural History Project” *supra* note 6 at 59-60).

enterprise. The academic side of the preparation . . . for the practice of law should be within the university atmosphere . . . .

I was convinced that here we were at a point of decision and I was determined that if the opportunity came to start a law school out here in B.C.—of what I call the university type of law school, that pattern—that it was terribly important for the country. That was the right answer and it was still up for grabs . . . of course.<sup>398</sup>

Given the qualities of the new dean, the law teaching background of President Norman MacKenzie, and the important preparatory work undertaken jointly by President Leonard Klinck and several generations of Benchers, it is not surprising that a scholarly programme derived from Dalhousie and the Harvard Law School was in fact implemented.<sup>399</sup> Curtis, it will be recalled, had been much relieved during his earlier meetings with Vancouver lawyers when they told him of their desire to create a university law faculty modelled on Dalhousie's.

The full import of this choice merits emphasis. Fifty years later it is easy to take for granted the general outlines of the educational programme then brought into being—it is recognizably of the same family as the programmes to be found in any credible North American law faculty of the 1990s. In fact, the decision to follow in the path of Dalhousie and Harvard connoted much more than a simple substitution of full-time studies for the part-time lecture series that had preceded it in British Columbia. “Dalhousie” serves as a sort of code-word among legal educators in Canada, much as “Harvard” does in the United States of America. It invokes a vision of intellectually ambitious, rigorous, and scholarly approaches to education for the profession of law. In British Columbia, the transformation from part-time to full-time study involved the implementation of a model of legal education that was “Dalhousie” in all respects. The result differed dramatically from the old Vancouver Law School.

Curtis believed that “[t]he academic side of the preparation of men for the practice of law should be within the university atmosphere. The approach to law shouldn't be black letter, positivist exclusively, by any matter of means but the approach should be creative, imaginative and so forth”.<sup>400</sup> An early decision

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<sup>398</sup> Curtis, *ibid.* at 47. See also Curtis, *supra* note 6:

We had made a quick start but plainly we could not afford to flag. The imperative was that we must be more than a locally-centred, "service" law school. Our planning should be informed by ampler aims. Improvements in legal education in Canada were needed right across the board - larger faculties and staff, larger libraries with staffs to care for them, more teaching materials and student financial assistance, and more than "make-do" accommodation.

<sup>399</sup> E.A. Lucas, "Faculty of Law" (1946) 4 *The Advocate* 7 at 9.

<sup>400</sup> Curtis, *supra* note 2 at 47.

about the colour of the law hood worn with an academic gown on academic occasions was intended to reinforce this belief. By convention, each faculty at the university has its own hood colour. In 1945 blue, red, and gold were already spoken for by the faculties of arts, science, and agriculture. The colour chosen for law, the university's fourth faculty was amethyst. It was meant to merge in harmony "the blue, the high mindness of Arts" and "the red, the practicability of Applied Science"<sup>401</sup> to symbolize that the new faculty united traditions of law society legal education (practical training) with those of the university (scholarship and open enquiry).

The new law faculty also took a quantum leap forward in training students to "think like lawyers". The much-vaunted Socratic or case method made its debut in British Columbia with the opening of the law faculty. As caricatured on prime-time television or in films like *The Paper Chase*, the approach requires students to engage in a careful reading of assigned court decisions in advance of each class. They are expected to grapple with conceptual difficulties on their own, to learn the fact-patterns that gave rise to litigation, and to assess the legal and logical merits of the "case-law" before coming to class. In its ideal form, the Socratic method is played out in the classroom through a sustained dialogue between teacher and student—the teacher never lectures. Instead, he or she simply puts a series of questions to students, calling upon them to develop answers of their own. Each answer produces another question as an unpredictable, unscripted, and un-ending drama is played out. Audience and teacher together search actively for law. A Socratic teacher leads students toward their own conclusions but never declares "truth" from the podium. The object is not the accumulation of information, rote-learning, or memorization, but the development of critical thinking—learning to "think like a lawyer". With extraordinary teachers and dedicated students, the Socratic method can be electrifying. In the hands of lesser beings, however, it lapses into either undirected discussion (Madam Justice Mary Southin characterized this as " 'the blind leading the blind' . . . a lot of ignoramuses . . . continuing to spout your ignorance")<sup>402</sup> or a ritual of "sarcastic-method" bullying, intimidation, put-downs, professorial power-tripping, and ostentation.

The Socratic method presupposes the displacement of a passive body of student scribes. It offers instead an instructor–interrogator whose careful questioning is intended to lead students to discover the fundamental principles of law for themselves. Students are taught to teach themselves, to engage with the internal logic of law. "The law teacher's task," according to Kyer and

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<sup>401</sup> Curtis, *supra* note 6 at 34.

<sup>402</sup> Mary Southin interview by Dean Smith (1995).

Bickenbach, “was changed from that of setting out the principles and practices of the law to the considerably more challenging one of selecting and presenting cases that embodied or exemplified legal principles and, through a process of careful questioning, drawing out these principles from the responses of his students.”<sup>403</sup> In his book *Law School: Legal Education in America from the 1850s to the 1980s* Robert Stevens said that the role of law teacher was transformed “from treatise-reading clerk to flamboyant actor in a drama”.<sup>404</sup>

Harvard Law Dean Christopher Columbus Langdell is generally credited with originating the case method of legal instruction.<sup>405</sup> He described his vision in the introduction to his ground-breaking 1891 book *Cases on Contracts*. Law’s principles were to be found, he said, in the cases decided by the courts:

To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every student of law. . . . the shortest and best, if not the only way of mastering the doctrine effectively is by studying the cases in which it is embodied. . . . It seems to me, therefore, to be possible to take such a branch of the law as Contracts, for example, and without exceeding comparatively moderate limits, to select, classify, and arrange all the cases which had contributed in any important degree to the growth, development, or establishment of any of its essential doctrines; and that such a work could not fail to be of material service to all who desire to study that branch of law systematically and in its original sources.<sup>406</sup>

Law was a science, the library its laboratory, and the case approach its method.

In practice, Robert Stevens said that the study of appellate decisions “became entangled with the question-and-answer technique, similar in purpose and form to the traditional law school ‘quiz’, a merger that rather pretentiously

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<sup>403</sup> Kyer & Bickenbach, *supra* note 162 at 15.

<sup>404</sup> R. Stevens, *Law School: Legal Education in America from the 1850's to the 1980's* (Chapel Hill: University of North Carolina, 1983) at 63.

<sup>405</sup> Langdell is generally given credit for the development of the case method though, as Kyer & Bickenbach note, there may be reason to suspect Harvard President Charles W. Elliot's hand in this. Elliot had, according to Kyer & Bickenbach, earlier argued for a "case method" in science education which "involved the replacement of lectures by an 'inductive' analysis of concrete cases with the aim of identifying general principles". (see *supra* note 13). See also A. Chase, "Birth of the Modern Law School" (1979) 23 *Amer. J. of L. Hist.* 329. Apparently, Langdell was extraordinarily confused as between "science as an empirical and as a rational activity" (see Stevens, *ibid.*).

<sup>406</sup> See Arthur E. Sutherland, "Law at Harvard : A History of Ideas and Men, 1817-1967" as quoted in Kyer & Bickenbach, *supra* note 162 at 15-16.



came to be known as the Socratic method”.<sup>407</sup> Thaddeaus Hebert, who taught at the University of Saskatchewan College of Law during the 1920s, was an early Canadian master of the method. His classes were vividly described in the memoirs of one of his students, Dean J. A. Corry. Hebert assigned:

specific cases from the law reports for students to read and study with care. They had to be prepared to state in class the essential facts of a case, the precise decision made by the judges on the facts, and the legal reasoning given for the decision. The student (or perhaps I should say the victim) who reported on a particular case was then questioned by the instructor and by such of his fellow students as found some defect in his report. Did he think the decision right or wrong by law? Why? What facts had been decisive in the opinion of the judges? How did he distinguish this decision from that in other cases on similar facts where the decision had been different?

Then, if the distinction could not be made clearly other, often suppositious, cases would be put to the student—or to the class as a whole. What was the right answer in these cases? Could he reconcile his views on these hypothetical cases with the judgment in the principle case as he had reported it? If there were strong differences of view within the class as a whole, there might be a torrent of suppositious cases to be analysed.

The immediate purpose was to shake the student in the view he had adopted, entice him into adopting indefensible positions, and trap him into contradicting himself. Any other student who had expressed firm views would be given the same treatment. It was a great victory to get most of the class confused. The longer-run purpose, of course, was to rouse the student’s critical faculties, sharpen his mind, compel him to think clearly and consistently, and make him wary of pitfalls. In short, the objective was to make him think, as a lawyer must, about all sides of the facts and to anticipate opposing legal arguments which would almost certainly be raised in a courtroom.<sup>408</sup>

The Socratic method is best understood by comparison with what it displaced. The formal lecture “inherited from English universities” might offer the advantage of clarity of exposition but, C. R. Smith noted in 1935, it tends “to degenerate into dictation of notes by the lecturer, written down a breakneck

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<sup>407</sup> Stevens, *supra* note 404 at 53.

<sup>408</sup> J.A. Corry, *My Life and Work: A Happy Partnership (Memoirs of J.A. Corry)* (Kingston: Queen's Univ., 1981).

speed by the students". In all events, "the formal lecture . . . does very little to develop the power of analysis and gives little practice in expression and argument".<sup>409</sup> Cecil Wright described the method of instruction prevailing at Osgoode Hall in his student days as consisting only of entirely uninspired lectures that combined dogmatic presentation, furious note-taking, and assignment of a solitary textbook slavishly followed by students and lecturer alike.<sup>410</sup>

At the other end of the spectrum, the Socratic method is quite different too from more informal, relaxed approaches in which a teacher attempts to engage students in "discussion": there is a world of difference between the sort of educational experience to which Thaddeus Hebert subjected his students and looser classroom discussion. Few students exposed to "discussional" teaching would think of themselves as "victims". Non-Socratic discussional teaching does not revel in leaving a class confused, nor does it generate the "perplexity, frustration, and anger" that John Willis described in his *History of Dalhousie Law School*.<sup>411</sup> For Willis, the case method was "something more" than discussional teaching and something "more rigorous and more demanding both of teacher and of student".<sup>412</sup>

Although now commonly used, the introduction of Socratic teaching marked a significant transformation in 1945. A senior British Columbia lawyer who visited the law faculty during its first year was much impressed. E. A. Lucas reported in the *Advocate* that the students "have been . . . cluttering up the Library, reading Law Reports of all things, at their age".<sup>413</sup> This experience, he remarked, was quite different from his education for he recalled having been told to "get Indermaur on Common Law and read it", committing "whole passages" to memory "practically letter-perfect" for regurgitation in response to "hardy perennial questions" on law society examinations.<sup>414</sup> If Lucas's report is accurate, in his reporting the new method was introduced to British Columbia

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<sup>409</sup> C.R. Smith, "Legal Education: A Manitoba View" (1935) *Canadian Bar Review* 404 at 408. Smith was, at the time of writing this piece, a lecturer at the Manitoba Law School.

<sup>410</sup> "Memorandum by Cecil A. Wright Concerning Matters Discussed at the Legal Education Committee, Law Society of Upper Canada Meeting December 1, 1933", as cited in Kyer & Bickenbach, *supra* note 13 at 82. I am reminded of a senior legal academic with whom I once worked who, while generally disengaged from scholarship, consistently presented lectures which were thoughtful, well organized, informative, erudite: an effect achieved by reading word-for-word the readings which had been assigned to students in the class!

<sup>411</sup> Willis, *A History of Dalhousie Law School* (Toronto: U. of T., 1979) at 83.

<sup>412</sup> *Ibid.*

<sup>413</sup> Lucas, *supra* note 399 at 7.

<sup>414</sup> *Ibid.*

without the common side-effect of turning students into “victims”. No sense of student “perplexity, frustration, and anger” was reported in the enthusiastic description he provided. Like an anthropologist in a strange and foreign land, he reported his observations of a class on the requirements of a memorandum under the Statute of Frauds:

Days before, the class had been given a list of half a dozen border-line cases; they had read summaries of the facts and the judgments in a big case book they have out there, and the Reports themselves at the Court House Library. They brought to the lecture their own head notes of the six cases. The Dean started off with a short rescript of the requirements of a memorandum, and asked Mr. Blue to read his notes on the first case.

“Have you any further observations to make?” And there was an impromptu reply. “You disagree with the judgment; any one supporting it?” Hands went up, and their comments were listened to. The subject matter, the bargain, the price, the signature, were taken apart and put together. They came to the Auctioneer’s case, where the auctioneer’s clerk (the Dean called him “the little man in the bowler hat” so they would remember him) said to the successful bidder, “Name, please?” and wrote it down in his book. Was this the signature of the party to be charged therewith? “The Court says, ‘Yes.’ What do you say?” “I say the memorandum was not signed by the purchaser, but was a record made by the vendor.” “Did you see who the judge was?” “Mr. Justice Denman may have been wrong.” The debates were punctuated by half a dozen laughs like that. The Dean commented on the generous principle of importing a legal fiction into a case. There was a brisk hour of this and by the time those young protagonists had put forward their opinions, backed or attacked by others, and questioned, corrected and commented on by the Dean, they must have gone away, as I did, with a vivid picture of the angles of judicial interpretation of the Statute of Frauds.<sup>415</sup>

The students, Lucas observed, still looked at textbooks but now only as “commentaries on the decided cases”.<sup>416</sup> The rigour of examination and the quality of student answers also impressed this experienced practitioner:

The Christmas examination paper on Contracts consisted of a series of moot cases upon which the students wrote their opinions, giving their reasons and their authorities. An example:—On the centrefield fence of a

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<sup>415</sup> *Ibid.* at 7-9.

<sup>416</sup> *Ibid.* at 9.

ball park there was a large target painted, with these words under it: “Players hitting Bull’s Eye Get \$1,000. Target Cigarette Company.” The Plaintiff, without having seen the sign, stepped up to the plate with the bases loaded and whango, hit the bull’s eye. Should he succeed in recovering the \$1,000? The Dean read me one answer. Precise, concise, well-reasoned, and inclusive of all the pro and con factors. Written by a freshman.<sup>417</sup>

Lucas clearly thought the students of 1945 were being far better prepared for the practice of law than had his own generation. He felt that the new generation was benefiting both from a systematic and orderly exposure to legal knowledge and from a method of education that, in combining extensive reading of important court decisions with probing, daily cross-examination in the classroom was superior to anything that had preceded it.

It proved more difficult to import the full-blown Socratic method, however, than either full-time instruction or a case-based legal education. Although Dean Curtis (“a question-and-answer, true-case-method man” according to his Dalhousie colleague John Willis<sup>418</sup>) and some other early full-time teachers had thoroughly mastered the method, the new faculty relied heavily upon part-timers who themselves had never benefited from any such classroom experience. Effective use of the Socratic method requires extensive preparation by the teacher and an intellectual ease and agility that is hard to attain without considerable experience. Moreover, the small full-time teaching staff was soon stretched to its limits. Class sizes grew from seventy-six in 1945 to approximately 150 in 1946 to 250 in 1947. The tiny new faculty was swamped! Intensive Socratic dialogue requires classes of modest (not necessarily very small) size and this prerequisite soon gave way to massive enrolments. The stress must have been great on teachers whose pedagogic conviction ran in a direction entirely incompatible with their conditions of work.

As a result, the overall student experience during the early years was not one of consistent or uniform exposure to Socratic teaching. Mr. Justice Lloyd McKenzie’s small first class (LL.B. 1948) was exposed to a strong, active Socratic method that involved “a great deal of vigour in the interchange between the teacher and the students”.<sup>419</sup> Circumstances soon overtook pedagogy, however. Professor Diana Priestly recalled only that her large class (LL.B. 1950) encountered “the method where the lecturer would ask the different people in the

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<sup>417</sup> *Ibid.*

<sup>418</sup> Willis, *supra* note 411 at 135.

<sup>419</sup> *Supra* note 361.

class to comment on the cases you've read overnight, so there was some class discussion".<sup>420</sup>

Other students of the day have similarly recalled a teaching method that combined modest amounts of class discussion with a predominance of lecturing. Professor Robert Franson asked Chief Justice Allan McEachern (LL.B. 1948) how classes were conducted in the early days of the faculty and whether they were "mostly lectures?" McEachern responded:

Oh yes! Straight lectures! We were given casebooks and mimeographs and some just case lists. We were just expected to read and brief these cases . . . and then the lecturer would lecture to us but ask the various members of the class to state a case, to describe it and extract the principle from it . . . and this was done with varied degrees of success.<sup>421</sup>

Madam Justice Southin (LL.B. 1952) pointed to the limitations imposed by class size when asked by Dean Lynn Smith to recall the teaching methods of the early faculty: "with big classes like that there wasn't much time for anything else other than lecturing".<sup>422</sup> Despite the constraints flowing from a poor student-teacher ratio, some heroic efforts were made to preserve traces of Socratic dialogue. These efforts were not always appreciated by the young Mary Southin:

Well, if you mean asking questions of the class, we'd be asked occasionally about what the proposition in some case was, but most of it was just straight lectures and paying attention. . . . You know lecturers were very good. Now I don't mean that sometimes they weren't dull, but I didn't care about that and I didn't want anybody asking me any questions. I wanted to sit at the back of that lecture hall and listen. I thought that was what my father and mother were paying for, for me to listen, not gab but listen . . . and I didn't care much . . . I mean there was always a handful of students in our year who wanted to ask a lot of questions and what not. It used to irritate me . . . because they'd interrupt the flow of the class.<sup>423</sup>

Despite the concessions necessary in the face of enormous post-war enrolments, professors were not prepared to compromise on the fundamental principle upon which the Socratic method rested: students were responsible for preparing themselves thoroughly in advance of each class. Southin recalled Professor George McAllister reinforcing this point with dramatic flair:

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<sup>420</sup> Priestly, interview by J. MacIntyre, Sept. 23, 1994.

<sup>421</sup> McEachern, interview by Franson, April 26, 1995.

<sup>422</sup> Southin, interview by Smith, Oct. 7, 1994.

<sup>423</sup> *Ibid.*

I'll never forget this little incident, we must have only been there a week, we were supposed to have briefed these cases, so . . . he could ask somebody to say what the case was . . . well he asked about three people, nobody had done any work . . . and nobody he had asked had done any work. I had done it, but I was sitting way at the back of the class, skulking, I didn't want anybody asking me anything. Well, I was shy, . . . I didn't want anybody asking me. He was so angry, he put his books together and he said "I'm not going to lecture a class that won't do any work, I'll come back . . . next time and see whether any of you have done the work then . . . and then we'll see." Of course everybody had done their work next time.<sup>424</sup>

## Curriculum

The new law faculty marked a turning point in what students were expected to learn as well as how it was taught. The early Curtis faculty merged a distinguished "cultural" tradition in legal curriculum (that had roots in Prairie Canada and Dalhousie's law faculty) with a more contemporary vision of law and law's role in Canadian society. The objective was to fully take on board the post-New Deal welfare state. Courses and course content were added to the traditional "cultural" curriculum in order to meet this new social reality.

The cultural tradition holds at its centre a vision of lawyers and lawyering that goes beyond mere technical competence to cast lawyers in the role of dedicated servants of the public interest. Richard Chapman Weldon, the legendary founding dean of Dalhousie's law school, is generally credited as the founder of this tradition in legal education. He described his objectives as follows:

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<sup>424</sup> *Ibid.* Prof. G. McAllister was only briefly with the UBC Law Faculty, but apparently left a strong positive impression on his students. In a 1994 interview with Prof. J. McIntyre, Diana Priestly recalled:

*Priestly*: "Yes, he came from Columbia and he taught us Torts, and he was quite an exciting teacher. He was young and colourful in his manners, looked a bit like Clark Gable and became very friendly with a lot of the students. He really was part of the new way of teaching law. We found him tough to get used to after the rather more old-fashioned teachers, Prof. Read, the Dean, President McKenzie, but I think we all liked him and enjoyed his course. It was intellectually stimulating".

*MacIntyre*: "Was he there the full three years that you were there or did he leave?"

*Priestly*: "I think he left before, no, because he taught us Administrative law which was in third year. Yes, he was there the full three years. I wish I could think of his first name but of course...".

*MacIntyre*: "George".

*Priestly*: "George McAllister!, but we didn't use first names in those days".

*MacIntyre*: "He did eventually go back. I knew he was at UNB, became Dean there and became head of the Law Society there and I think he's passed away".

*Priestly*: "Yes, yes".

In drawing up our curriculum we have not forgotten the duty which every university owes to the state, the duty which Aristotle saw and emphasized so long ago—of teaching the young men the science of government. In our free government we all have political duties, some higher, some humbler, and these duties will be best performed by those who have given them most thought. We may fairly hope that some of our students will, in their riper years, be called upon to discharge public duties. We aim to help these to act with fidelity and wisdom.<sup>425</sup>

Weldon established a tradition that Dalhousie Law School long considered its distinguishing mark: a curriculum that John Willis said mixed “political science, cultural or public law (the labels are interchangeable) subjects, and professional or strictly legal ones”.<sup>426</sup> The core courses of “cultural” legal education in this first generation were constitutional history, international law, and conflict of laws.<sup>427</sup> The “standard curriculum” initiated during the First World War by Prairie lawyers and formally endorsed by the Canadian Bar Association shortly after the end of hostilities included two other equally “impractical” subjects (jurisprudence and legal ethics), while the Manitoba Law School folded Roman law and ancient law into the “cultural” mix during its brief golden age.<sup>428</sup>

Regardless of their views on the merits of any individual course, legal scholars in Canada have always felt a great commitment to this tradition as a whole. Despite his belief that adaptation was urgently needed at mid-century, Curtis fully appreciated the merits of the tradition. Fifty years later he recalled Dalhousie Law School’s “stimulating and satisfying intellectual atmosphere” and paid tribute to its success as “a house of intellect”.<sup>429</sup> The cultural tradition was something to be built upon, not sacrificed to newer, more fashionable gods.

By good fortune, the law society’s committee fully agreed. As a result, the common division between “town” and “gown” on matters of orientation or curriculum was largely avoided and the full-time faculty was not obstructed in its pursuit of scholarly objectives. Many Vancouver lawyers had attended the Dalhousie Law School and reported favourably of the experience.<sup>430</sup> For its part, the law society’s legal education committee was composed of men who had

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<sup>425</sup> Weldon, as cited in Willis, *supra* note 411 at 35.

<sup>426</sup> Willis, *ibid.* at 40.

<sup>427</sup> *Ibid.* at 31.

<sup>428</sup> See Chapter 3 table, above.

<sup>429</sup> Curtis, interview by Pue, *supra* note 348.

<sup>430</sup> *Ibid.*

experienced a scholarly education in law. Senator Wallace Farris, the chair, was a graduate of the University of Pennsylvania and three Rhodes scholars (A. W. R. MacDougall, Sherwood Lett, and Dal Grauer) served with him on the committee. A further committee member, Reginald Tupper, had graduated from neither Oxford nor an elite American law faculty but was “one of the most cultivated lawyers in Canada”.<sup>431</sup> Dean Curtis recalled the committee’s views about the old approach to legal training. They thought quite simply that:

[t]here wasn’t enough there . . . it wasn’t intellectually challenging. There is no doubt about that, and I think these men felt that we need it now, the time has come, 1945, . . . let’s get going on this thing, because we know that people trained, educated I would prefer, rather than trained in their early years for the law if they have not only studied a number of what one might call the cultural subjects, but also the atmosphere of free inquiry, of deep thinking that was represented by legal research. The sort of thing that goes on in universities and the relation of law, above all, the relation of law to its social context. Law is not just a bunch of rules, its more than that. It is a living thing. It’s part of human life and human experience. I think they felt that, that you get more of that in university atmosphere than you possibly could under the old system.<sup>432</sup>

The “cultural tradition” involves much more than simply supplementing a narrow hard-nosed practitioner’s education with a few “softer” courses of marginal relevance to legal practice. It is, however, much harder to identify, describe, or evaluate the spirit of cultural education in law than it is to identify the courses that conventionally mark its presence. Features that Curtis hoped to transplant from Dalhousie included such intangibles as an intellectual orientation, “openness” of enquiry, and an approach to legal issues that was both “critical and creative”.<sup>433</sup> His view was “that we needed a variety of approaches. The wider a variety, the better, not only in terms of doctrinal approach, philosophical approach, but also of course, in terms of countries. We always had a great mixture here of people from various cultural backgrounds, and it is good for us.”<sup>434</sup> The real presence or absence of a “cultural curriculum” in any faculty’s offerings cannot be determined merely by reviewing a list of course offerings. Any legal subject might be taught in an intellectually ambitious, progressive fashion that locates law in its social context and addresses policy as

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<sup>431</sup> *Ibid.*

<sup>432</sup> *Ibid.*

<sup>433</sup> *Ibid.*

<sup>434</sup> *Ibid.*



well as rules. Equally, any student knows that subjects apparently loaded with cultural content and intellectual glamour can, in the wrong hands, be stripped altogether of scholarly content or even intellectual interest. Dean Curtis explained to an interviewer in 1995 that the cultural curriculum is:

not just a matter of subjects, I am convinced, that's part of it, I mean. It is the approach and manner of presentation by the instructor, so forth and so on. That's terribly important. . . . I am a little concerned that we not tie ourselves down in our thinking just through a formal curriculum. . . . There is nothing final about the law, the law moves as society moves and that was getting to be more and more the understanding of lawyers in the Thirties even.

As early as the 1930s even tort law (surely as conventional a doctrinal offering as exists on the law faculty calendar) could be made into an intellectual offering that advanced both the traditional goals of the cultural curriculum and the more contemporary “legal realist” philosophic vision that was increasingly bound up with it. Dean Curtis explained that it was apparent to legal scholars in the 1930s that a decision such as Lord Atkin’s pivotal judgment in the negligence case *Donoghue v. Stevenson* conveyed a “conception of the essential movement of the law in response to new social conditions. And everybody had read Lord Atkin’s judgment, no matter who you were. The impact of that case is enormous, of course. This is the sort of thing that we were thinking about.” The mission of legal education was to convey practical learning in such a way as to provide future legal professionals with an extra edge. Very fine lawyers are distinguished from the mediocre, in Curtis’s assessment, by something more than hard work, “clear minds”, and “superior intellect”—they’ve “got that little extra thing which sees law in its context of life, and I think that makes a difference. Certainly it makes a difference in judges of course.”<sup>435</sup>

The difficult question confronting legal educators in 1945 was how to best adapt the “cultural” tradition to the conditions of a new era: post-Depression, post-Nazi, and post-Hiroshima. Richard Weldon’s Dalhousie programme had its origins in the nineteenth century, while the Canadian Bar Association’s standard curriculum had been developed during the period of the First World War—both radically different times from the mid-twentieth century. It was clear to many that the passage of time and the great events of the twentieth century had rendered curriculum reform necessary. Even during his last years in Nova Scotia, Curtis had worked with Acting Dalhousie Law Dean John Willis to prepare for post-war curriculum reform. This preliminary work at Dalhousie

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<sup>435</sup> *Ibid.*

involved, Willis said, “inducing a knowledgeable chartered accountant to give a stripped-down rudimentary course on taxation, and subjecting, in a preliminary way, the curriculum to the first critical review it had had for many years”.<sup>436</sup>

The curriculum that emerged at the University of British Columbia after the Second World War reflected both fidelity to an inherited model and the contemporary political views, idealism, and utopian aspirations of a generation of legal academics. Not that party politics as such were foisted upon unsuspecting young minds—“political” beliefs in this narrow sense had to be politely checked at the door of the mid-century legal academy. Dean Curtis was himself convinced of this propriety. He told an interviewer in 1995 that a top-flight lawyer rises above partisan, political considerations.<sup>437</sup> Equally, political belief:

did not affect a professor’s views, the good professors. They rise above that you see. They rise above partisan politics, they can put partisan politics in their place and keep them there. It’s the second raters that get muddled up in their minds.<sup>438</sup>

At a level deeper than the superficial matter of party affiliation, however, a widespread political consensus informed the Anglo-Canadian legal academy. Broadly, this group was “liberal”, Canadian nationalist, and “legal realist”. A generation of intellectuals who had lived through the Great Depression had little faith in the beneficence of an unregulated economy’s “invisible hand”. Part of the “New Deal” generation, they were confident that the future would involve a combination of private business, state regulation, and socialized enterprises. Further development of the nascent welfare state seemed inevitable and desirable. Regardless of party political affiliation, Canadian scholars “were all a little bit touched”, Curtis recalled, “by an appreciation that government no longer could merely be the policeman and the soldier, that there were duties of government that governments should undertake”.<sup>439</sup> They believed that constitutions and laws exist to serve people, not vice versa; that Canada should

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<sup>436</sup> Willis, *supra* note 411 at 127. See also, Curtis, *supra* note 6 where he states: [re: tax] “John Willis and I, at Dalhousie, busied ourselves in the final years when we were together there, laying plans for a revision of the curriculum when the war ended. We planned to introduce several new subjects, among them income tax law”.

<sup>437</sup> Curtis, *supra* note 348. This passage is immediately followed by: “Good people have a much clearer idea and understanding of it, I think. I’ve been trying to think as you talk. Who would I put as a Conservative? An academic Conservative? It would be awfully hard to find them it seems to me. There are very few actually”.

<sup>438</sup> *Ibid.*

<sup>439</sup> *Ibid.*

be fully independent of Britain; and that a new world order based on activist governments and the rule of international law would and should replace the old. In matters of legal philosophy, Canadian scholars generally steered clear of the rhetorical vulgarity that sometimes characterized “American legal realism”, but they took its central message on board: they knew, to borrow a phrase, that the state of a judge’s “digestive system” affects case outcomes at least as much as abstract legal rules.

It followed that an adequate education for lawyers required developing an understanding that legal doctrine is only one part of “law” in the real world: “policy” as well as legal rules needed to be understood. Their “great heroes”, Dean Curtis said, included avant-garde American legal thinkers like Holmes and Brandeis. This generation of Canadian legal educators harboured a deep suspicion that important judges (particularly the Watson–Haldane privy council) had subverted the Canadian constitutional scheme in furtherance of an outdated, damaging philosophical commitment to nineteenth-century laissez-faire.<sup>440</sup> Their

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<sup>440</sup> *Ibid.*

*Pue:* Was there a great degree of **consensus amongst your generation of legal intellectuals in favour of the social welfare state?**

*Curtis:* Regardless of politics. Very much so. As I say it was a very general feeling that there was no use confining these things to the provinces or assigning them to the provinces. They couldn't do anything about it, they didn't have the money, they didn't have the taxation resources. A large part of the constitutional history of this country at that period at the first of this century, could be explained in the anti-judicial committee view on this point, plus the thinking about the extending, widening the taxation base for the provinces. How do you do it? You do it two ways. One, by agreement with the federal government. That's the present system, very largely used, of course, as Rowell-Sirrois. You have what you call the equalization payments and what have you. The other was the purely legal one of taking those words 'direct taxation' within the province and extending the meaning of 'direct taxation' in terms of modern realities. Now you're getting some legal realism you see. Let's look at the actual situation, never mind looking at the words, never mind going back to see what 'direct taxation' meant in... . What is the result today? How does it work out? It was out of that was developed the legal basis for what today you and I call the sales tax, misnamed of course, which should tip you off that there is something gone wrong here somewhere. It's not a sales tax, it's a consumer tax of course. ... Senator Farris' great victory, he told me he regarded this so, ... Was the legislation he drew and then defended successfully for the Judicial Committee in 1951/52, or something, enabling the province to put a tax on timber, growing timber, as a commodity. I don't want to get into the ins and outs, the technical ins and outs, but you see that the drive of opinion and Privy Council moved on this. The courts here moved of course. We got sales taxes, that was a great help to the provinces, a consumer tax.

*Pue:* This is interesting to think about what you're saying, because you are describing now the ethos or the culture of a generation of legal intellectuals, rather than the detailed argument that somebody wrote in an article about addressing that. You also suggested that at one point **the Privy Council cases were criticized pretty widely for enclosing a laissez-faire vision, say order on Canada, which was dysfunctional to the thirties**, I guess.

*Curtis:* That's correct. That's putting it very well.

*Pue:* Was the sense that the Privy Council had gone wrong **because of their own commitment to a particular political ideology** or was it a **lack of knowledge** about this foreign country they were ruling on?

*Curtis:* Well, I think elements of both the points you make. I would put first of all, I always said that it was very wrong to have a final court deciding the pattern, the constitutional pattern of a country of which they

vision of law, not as rules in dusty books but as a lived process had significant implications when it came to thinking about what lawyers-in-training need to learn. Dean Curtis explained:

What's happening is we're looking at the present-day world, we're not tying ourselves to the old. . . . law is a live discipline. It doesn't just exist in books and old ideas. . . .

And another point, . . . I think that we were all very conscious of the fact that the law was entering a period, a new period of development in its long history. Up until then, the bulk of the law had been created by decided cases, by judges in other words. . . . This is primarily today the age of the

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knew so little. I didn't mean that critically, well I mean it critically in one sense, in the classical sense of 'critically', but I didn't blame them for it. After all, they were all very comfortable and their Bar was very comfortable, but that's the first point. The **unfamiliarity with Canadian conditions**, which is of course an **aspect of legal realism** if you want it, in other words, how does this work out? How does it apply in actual community? . . . The second point was the deeper philosophical point that I've mentioned, namely that the effect, whether they were conscious of this or not, the effect of assigning these things to provinces so widely was to give to a branch of a federal government. Secondly, **they didn't understand federalism**. You can't, federalism takes some understanding. . . . They were not, I think, on the whole, they were not used to an active use of law as an instrument of social change, social organization. They had been brought up on the nineteenth century liberalism, which is essentially 'leave things alone'. Where it was obvious that they coming up as I say and driven home by the Depression was the need for the state, the community, society to help people, move into fields really helped them. Old age pensions, unemployment insurance, earlier workmen's compensation, which I talked about. These are what I think we differed on that second ground, we differed about Privy Council, without Privy Council weren't alive to this. The two points really merged to some extent you see.

*Pue:* See, just thinking across the border, around the same time, the U.S. Supreme Court . . . was accused of enacting **Herbert Spencers Social Statistics**.

*Curtis:* Exactly, exactly.

*Pue:* Was that kind of . . . did Canadian legal academics generally suspect the Privy Council of the same sort of motivation?

*Curtis:* Basically yes. Basically that they belonged to that generation etc. Sure that was part of their culture, whereas we \_ of the first one of our great heroes was Holmes and later on Brandeis. . . . One of my great disappointments and one of my great surprises was the judgment of the Privy Council which stands in the name of Lord Aiken now whether he wrote it or not I don't know. In the Bennett New Deal cases, that surprised me. There was the author of the principle 'forward looking judgment' in Donoghue and Stevenson. This Australian Englishman who was open clearly to new ideas, I've always thought that his Australian background must have had some effect on him that way, but here he was in what? 1937?, saying no, no, no, it can't be done. Even the treaty power, for Heavens sake, all the clear indications of where the court should have moved. I should have thought that they would have realized that the constitution needed updating, couldn't live in the nineteenth century all the time. . . . The world was moving, there had been a collapse of the nineteenth century political system of Europe in 1914. They were trying to put it together rather pathetically in what we now know as the inter-War period. That was followed by a complete collapse of the world economic system, largely based on nineteenth century ideas. It meant the great Depression. Now, why in a courtroom you would go back? I just can't understand it. You see, R.B. Bennett, who was a Tory, was a very much more forward looking person, he's never received credit for this, . . . But he was, he was a forward looking fellow in many ways. He'd lived too long in Western Canada to be nineteenth century, and above all too long in Alberta, which was the maverick province of Canada for years. . . . Now going back to the Privy Council that was a surprise to me.

common man. There is no doubt about that in my mind. . . . that being so, it means that the majority, that public opinion has a much greater voice in the law than it ever had in any history . . . public opinion, whether represented by the majority or by . . . special interest groups, has taken over a great deal of the crafting of the law. In other words, legislation.<sup>441</sup>

In practical terms, the cultural curriculum was carried forward in British Columbia in two principal ways. Faculty appointments were crucial. Care was taken to hire as full-time faculty only individuals whose backgrounds and qualifications suited them to teaching in the required “grand manner”. It was important, too, that the new professors enjoy working conditions that would make it possible to engage in the demanding and time-consuming task of producing scholarship. The new dean worked to increase the full-time faculty complement to a size sufficient to create an intellectual “critical mass” that was capable of meeting its teaching obligations while holding classes to a moderate size and leaving time for research and writing.

As for the formal curriculum, the early faculty took its lead from the old Canadian Bar Association “standard curriculum”. That programme was readily available, widely accepted, and had an appropriately intellectual orientation. It was brought up to date by adding three courses that spoke to both contemporary conditions and the changing social functions of law in Canadian society: income tax, municipal law, and labour law. Beyond these subjects, one longstanding marker of the cultural tradition took on a heightened significance in the years immediately following the Second World War: public international law moved to a place of pride corresponding with Canada’s role at centre stage in the creation of a post-war world order. English legal history was taught in the first year.<sup>442</sup>

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<sup>441</sup> *Ibid.*

<sup>442</sup> See supra note 420.

*MacIntyre*: "... There was Dean Curtis himself".

*Priestly*: "Yes, he taught a lot in those days. And of course his course in Legal History in first year and he certainly made that interesting". ... "English Legal History, which was really a history of the development of the courts in England. It was very much what Bora Laskin called a 'sterile' course. That was the way it was taught all across Canada, but ... it was pretty sterile course. They didn't even teach it as even the growth of Law Reform, I mean they could have done that through all the changes. But no, it was the history of the courts and how the names came about and what the jurisdiction was". ... "Kings and things, but the Court of Kings Bench and the rise of Equity and yes, sterile is the word to describe it. We memorized what his notes said and were examined on it. He made his particular classes, he expected us, we used an English text, Potter, and he expected us to read Potter ourselves and then he illustrated certain points and he was wonderful at that. When he was really in top form for a lecture you couldn't beat him. You never forgot his lectures".

*MacIntyre*: "Yes, that was my experience as well".

By some quirk of human nature, educational innovations that seem dangerous or even foolish when they are introduced often become quickly integrated into the mainstream. One generation's successful curricular revolution quickly becomes another's hallowed and timeless tradition. So it was with Blackstone's eighteenth-century lectures on English law, Harvard's nineteenth-century case method, and the Canadian Bar Association's early twentieth-century "standard curriculum". So too, not surprisingly, with the University of British Columbia's mid-twentieth-century innovations. Very few lawyers now consider subjects such as conflict of laws, tax, labour law, or municipal law as anything other than important, mainstream, practical subjects. They are commonly understood now to be the sorts of things that every lawyer should know. These courses have so successfully taken root that their origins as part of a "cultural" curriculum or "law and society" programme have been obscured. In 1945, however, they marked a significant transformation that, according to Dean Curtis, "carried legal studies beyond old limits".<sup>443</sup>

Labour law was put on the curriculum, Dean Curtis said, in "response to a social need to have disciplined, deep thinking about one of the great social problems of our age, the relations of employer and employee in a unionized society".<sup>444</sup> Labour law was intended to showcase the vitality of law in action. The new subject merged social science with law and was noted for its social relevance, but such characteristics did not immediately endear the subject to all established lawyers in 1940s Vancouver. Curtis recalled:

I can remember when I submitted the second year curriculum to the Bar—(you see, I always kept very close contact with the Bar)—I remember one member of the Bar said, "Well, I notice here that you have Company Law

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*Priestly*: "Gilbert Kennedy taught in every year. He taught a funny little introductory course we had in first year".

*MacIntyre*: "Legal and Judicial Process".

*Priestly*: "That's right, yes. That was learning about stare decisis...".

*MacIntyre*: "Statutory interpretations...".

*Priestly*: "Well, we didn't have much on statutory interpretation when I was a student. That came later. I really can't even remember what he did put into that first year".

*MacIntyre*: "He also, it it's the same, he also taught Wills".

*Priestly*: "Oh yes. Then in second year ... no he didn't ... no, he didn't teach in every year. He taught in first and third. And then in third year he taught two courses, Wills and Trusts, and Conflicts, which a number of the people in the school, including the older students, felt that it gave him too much control of the third year when it came to marks because he marked hard".

*MacIntyre*: "Yes, I know that".

*Priestly*: "Yes. He was very involved in the Canadian (Bar Review) writing articles for the Canadian Bar Review in those days and the men in our class got so they called it the 'Kennedian Bar Review'".

<sup>443</sup> *Supra* note 350.

<sup>444</sup> *Supra* note 348.

for two hours a week all through the year,” which was standard. But, he said, “I see Labour Law, also two hours a week throughout the year.” He said, “Do you think that’s right?” “Oh,” I said, “That’s the trend of the times. We’d like to institute this and I’ve got a man coming who is an expert on it.”<sup>445</sup>

So justified, the new course took its place on the curriculum and soon became a mainstay of legal training.

Similarly, income tax law was an unorthodox addition to the legal curriculum in 1945. At the law faculty’s formal opening ceremonies in 1946, Chief Justice Wendell Farris identified taxation as one of the “great domestic fields which belong primarily to the lawyer but are not occupied by them”.<sup>446</sup> Dean Curtis shared the Chief Justice’s belief in the importance of tax law but was inclined to emphasize the intellectual reasons for its inclusion rather than just the market potential it then seemed to hold. “The reason I insisted on putting Taxation on,” he said in 1995, was “because that is one of the social facts of the modern workman of Canada.”<sup>447</sup> Although income tax had originally been introduced as a “temporary” measure:

[f]rom the point of view of the practitioner, it was going to be a very necessary part of his practice if he was going to advise people on their wills, . . . Companies, commercial transactions, all the way through. . . . and I knew it [income tax] was going to be permanent for another reason. My generation . . . were convinced that we should have what is today called the welfare state. We didn’t think of it in those terms. The welfare state is

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<sup>445</sup> Curtis interview, *supra* note 392 at 67.

<sup>446</sup> The Hon. W.B. Farris, Chief Justice of the Supreme Court, "The New Era" (1946) 4 *The Advocate* 130 at 131.

<sup>447</sup> *Supra* note 348.

rather, we thought of it in terms of a more caring society. Old-age pensions, unemployment insurance, widows' pensions. These were the sort of things we felt fit within a modern society, and it's got nothing to do with politics, . . . we all believed in this, and some of us had no politics and we still believed, that was . . . how it was going to be financed, the Income Tax, was the clue there . . . I thought it had to be taught. It was a proper subject to be taught and it turned out to be enormously popular, and of course enormously valuable taking it to the lowest level. Can't really practice law without some knowledge of income tax law in this modern age.<sup>448</sup>

Despite obvious and very practical reasons for including a course on tax law, this course too was a significant innovation in curriculum. Tax "was then regarded as an extremely exotic, specialist field". Although John Willis had introduced such a course at Osgoode Hall, no other university law faculty in Canada taught it at the time.<sup>449</sup>

Unlike tax, public international law had a long-established and secure place within the cultural curriculum. Speaking at the official opening ceremonies for the new faculty, Chief Justice Farris said that important new areas were opening up to lawyers in 1946. "[O]ne of the most important and interesting of all these fields," he said, "is the study and practice of international law."<sup>450</sup> Dean Curtis thought that international law, like other components of intellectual legal education, "opens your window to the outside world"<sup>451</sup> and broadens the mind. There was another, more immediate reason for making the subject a compulsory full year course. Asked by the distinguished Harvard philosopher of law, Lon Fuller, why the University of British Columbia had, uniquely among faculties of law in common-law North America, given international law such heavy emphasis, Dean Curtis replied: "Well, we started, you must remember, at the end of the War, that was a brand-new law school and it was appropriate, it seemed to me, that these men who a few months before had been fighting, some of them dying, for the sake of what? A New World Order?, should want to do something about it in peace time."<sup>452</sup> The relevance of the subject was not lost to the first

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<sup>448</sup> *Ibid.*

<sup>449</sup> Curtis interview, *supra* note 392 at 69.

<sup>450</sup> *Supra* note 446 at 131.

<sup>451</sup> *Supra* note 348.

<sup>452</sup> *Ibid.* See also, Curtis, *supra* note 6, where he states, "... a full year course in Public International Law which, despite its unorthodox presence as a compulsory subject - McGill was the only other law school in either Canada or the U.S.A. which so prescribed it - stood its ground for two decades. It won its unusual place



generations of students. Diana Priestly recalled having been educated throughout by “people who had all been part of the growth of the League of Nations. . . . They believed that it was possible to have the perfect world with no war and that spirit, I think, was passed on to a lot of us if we were open to it because they were so filled with it.”<sup>453</sup>

The post-war period’s pervasive sense of optimism and the deeply held belief that law had an important role to play in bringing about a better future was reflected in a national symposium on legal education (the first ever at a Canadian university) sponsored by the University of British Columbia Faculty of Law in 1949. This symposium brought together leading Canadian and international law teachers, including Dean Cronkite (College of Law, University of Saskatchewan), Dean Wright (University of Toronto School of Law), Dean Vincent MacDonald (Dalhousie Law School), and Dean Griswold of Harvard. A published Summary—The Symposium in Retrospect emphasized the need to carry Canada’s “cultural tradition” forward:

[T]he curricula of the law schools must be reevaluated and extended to provide an understanding of the principles and processes of the new and widening fields of law. The infinite complexity of these new areas of social administration and the uncertainty of their composition render it impossible for the schools to offer detailed instruction. They can, however, broaden the student’s knowledge in those subjects out of which the concepts of public law arise. They can and must insist as a prerequisite to the attainment of a law degree that the student possess some general understanding of the social sciences and of the function and techniques of existing social structures. They must impart to the student an awareness of “new economic movements, the new philosophy of government, the new techniques of administration” out of which the principles of modern public law are born.<sup>454</sup>

### **The Common Law Is the Thing, the English Common Law!**

One feature of the early University of British Columbia law faculty that seems odd to citizen and lawyer alike at the end of the twentieth century is its “Englishness”. Diana Priestly recalls that in her student days the casebooks

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originally because a heavy veteran enrolment was hospitable to a subject which gave thought to the creation of a better world order than one which had brought the world the tragedy of war”.

<sup>453</sup> Priestly, interview by M. Waters, University of Victoria Aural Legal History Project, at 15. (Wes - no date??)

<sup>454</sup> "The Symposium on Legal Education" (1949) 1 *Advocate??* 13 at 24-25.

“were filled with the leading English cases. Then Dr. Malcolm MacIntyre joined the faculty in my second year and Gilbert Kennedy, of course, they were always interested in getting more Canadian content and they brought with them the idea that we should be teaching some Canadian courses.”<sup>455</sup> There were, however, limits beyond which even the likes of MacIntyre and Kennedy would not go in mid-century Anglo-Canada. Priestly recalls MacIntyre complaining about the heavy preference for Canadian content in the first edition of Cecil Wright’s Canadianist study of tort law. In his view good cases, not just Canadian ones, should have been selected.<sup>456</sup>

After graduating from the bachelor of laws programme, Diana Priestly pursued graduate work in librarianship, returning to the University of British Columbia as its first professional law librarian in 1953. In this capacity, too, she noted the heavily English emphasis of mid-century Canadian legal education. The geography of the library reflected two biases: a preference for English law over Canadian, and a powerful preference for case law over statute:

The first things you saw when you entered the law library were the English materials—English finding tools (digests and encyclopedias), were on wall shelving immediately to one’s left, and English reports series were on wall shelving around the room. . . . Canadian report series followed English and were fitted in ahead of New Zealand, Australian and South African series, but after Ireland and Scotland. It is surprising how long pride of place continued to be given to English materials. It was not until I went to York (Osgoode) in 1967, and Balfour Halevy and I were starting a new law library in a new building, that we gave the Canadian materials the first place. . . .

The prior importance of English materials extended to secondary materials as well—texts and government documents. The professors read *The Times* and were very anxious to get the reports of English Royal Commissions as soon as they read of them. The names of the English judges who chaired these commissions came up in our conversations as though we knew them.<sup>457</sup>

The role assigned to statute law in legal education was similarly manifested in the library layout. Although the faculty spent a good deal of time “discussing how we could incorporate the use of statutory materials in some of

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<sup>455</sup> *Supra* note 453.

<sup>456</sup> *Ibid.*

<sup>457</sup> Priestly, memo to J. MacIntyre, Sept. 12, 1994.

the courses”<sup>458</sup> there was a general “lack of interest in statutory material”<sup>459</sup>. Priestly recalled that when she took up the position of law librarian, “only the most recent revisions of the B.C. and Canadian statutes were shelved in the main reading room. They followed the English digests on the shelves. All other statutes were relegated to the Hall . . . with no provision for chairs and tables at which to work on this material.”<sup>460</sup>

Although both of these features of legal education seem distinctly peculiar at the century’s end, they were the result neither of lack of imagination nor lack of industry in the 1950s. Canadian lawyers and legal educators at the time had a much greater affection for things British than now exists and many viewed the English common law as a pinnacle of human achievement. Interviewed by the University of Victoria Aural Legal History project, Donald Clark Fillmore complained that modern law students spent too much of their time reading the judgments of “the Supreme Court of Canada plus the provincial court, B.C. courts”. This approach he thought to be “a mistake” because “[t]hey are going to be too limited, they get the case method but they are limiting it greatly. I don’t know how often they look at an English report. . . . the common law is the thing. The English common law.”<sup>461</sup>

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<sup>458</sup> *Ibid.*

<sup>459</sup> *Ibid.*

<sup>460</sup> *Ibid.*

<sup>461</sup> D.C. Fillmore, Q.C., interview with Nigel Taylor and Maryla Waters, March 1984 "Aural History Project", *supra* note 6 at 48-49.

# 8

# Experiences at Law School

## **Practising Profession as Part-time Teachers**

The early University of British Columbia law faculty could not have functioned without the active support of the local legal profession, many of whom taught at the faculty on a part-time basis and without pay.

The 1945 entry class had eighty-six students (counting both beginning law students and some who, midway through professional qualification, attended under special transitional arrangements) and all were taught by only two full-time faculty members: the Dean George Curtis and Professor “Pappy” Read.<sup>462</sup>

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<sup>462</sup> D. Priestly interview with J. MacIntyre, Sept. 23, 1994:

*MacIntyre*: "Now, one of the ones whose picture is on the walls for us is what we called unprofessionally Pappy Read".

*Priestly*: "Oh, Mr. Read. We adored him. He was very old-fashioned. Everything we had ever read about the law in Dickens, he seemed to personify. He was a very scholarly old man. He know Latin and expected us to have Latin at our fingertips and he was very witty, dry, dry wit. I think he enjoyed the older students and the students who had a good war record. He enjoyed that. I found him, because he was still there when I went back as librarian, I enjoyed his company. He used to go 'round to the Kennedy's a lot, for meals so I saw quite a lot of him. I liked him".

*MacIntyre*: "He retired, it was well after he was sixty-five".

Although the full-time faculty complement was increased to four the next year (adding George McAllister and Gilbert Kennedy), student numbers threatened to entirely overwhelm an institution that, as a matter of principle, would not turn down any qualified applicant. The four met that fall with a student body of some 240.<sup>463</sup> Despite doubling in faculty strength, the student–faculty ratio worsened from 43:1 to 60:1 in a single year. The full-time faculty met a student population of 409<sup>464</sup> the next year for an entirely intolerable student–faculty ratio of 100:1. New hiring was authorized during 1948. Malcolm MacIntyre and John Westlake (Vaselenak) came to the faculty, soon reinforced by Fred Carrothers, who began his distinguished career as a lecturer on a one-year appointment.<sup>465</sup> Even at that, student–faculty ratios were miserably inadequate and Dean Curtis was never able to let up his pressure on the university administration to increase staffing.

Achieving tolerable conditions for teaching and scholarship was one thing; mere survival quite another. It seems highly unlikely that the faculty could have provided a credible education of any sort without the support of a small army of lawyers who contributed their time to the cause of legal education. Practising lawyers moved quickly to fill the breach in 1945 and have consistently done so ever since. Faced as he was with impending crisis attempting to staff a law faculty with only a month's lead time the new Dean found that:

[t]he response of members of the bench and bar to requests for their help was exemplary. They wanted the law school to succeed. There was not only the particular obligation which all felt toward the returning veterans but the sense of seeing a long hoped-for faculty make the grade. I asked the Bar Special Committee on the Establishment of a Law School for names of possible instructors. Every one of their nominees accepted

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*Priestly*: "Yes, and went downtown to one of the law firms. The Campney Owen firm. He always had a very dry wit. I think he said about that when the Campney Owen firm moved once. They moved over a Labour day weekend and he said "Oh yes, the move went very smoothly, well of course we had a past Minister of Transport looking after things". He would always make little remarks like that, he was very witty".

*MacIntyre*: "Yes, I never knew the man, I wish, I mean I've seen him, but I never...".

*Priestly*: "He taught a course called Bills and Notes, which I suppose was a forerunner of Commercial law, but if anyone asked him what he taught he'd say, "Oh, it's a course called Bills and Notes and very, very, interesting". And of course, it wasn't at all really, but he made us, he made us roll in the aisles laughing at his descriptions of the fact patterns in some of the cases. And Domestic Relations! He taught Domestic Relations to us in third year, and of course those fact patterns he was even funnier about".

*MacIntyre*: "I would have thought he might have been a bit shy about those".

*Priestly*: "Yes, no, no, he wasn't. (laughter)".

<sup>463</sup> Curtis, interview with Murray Fraser, University of Victoria Aural Legal History Project, Feb. 20, 1980 at 66.

<sup>464</sup> *Ibid.* at 68.

<sup>465</sup> *Ibid.* at 68-70.

readily. The interview with M. M. McFarlane remains etched in my mind. I sought his help with a course on company law. He listened attentively, expressed his interest and willingness; but indicated a reservation. He hesitated a minute; then went on to say he found it wise to speak bluntly when delicate points were to be faced. He proposed to be blunt. He did not know what the university's financial practices were and would not wish to do anything to disturb them. But he must make it a condition of his acceptance that he neither expected nor would he take any financial remuneration. He wished his work to be a contribution to the profession and to the university.

I assured him that I was confident MacKenzie would not suffer the slightest embarrassment from such an arrangement.<sup>466</sup>

In 1946 alone the *Victoria Times* reported on "seven prominent jurists who will lecture in the faculty of law. They are Mr. Justice H. I. Bird, Judge J. M. Coady, Senator Wallace Farris, S. J. Remnant, F. A. Sheppard, Mr. Justice Sidney Smith and Mr. Justice J. O. Wilson".<sup>467</sup>

With the best intentions in the world, more than one Canadian law dean has discovered to his or her chagrin, that it is one thing to persuade busy practitioners to teach on a part-time basis and another altogether to encourage them to take sufficient time out of their working lives to prepare adequately for the classroom. There was apparently no difficulty of these sorts at the early faculty of law for Dean Curtis's impression has been that these teaching assignments:

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<sup>466</sup> Curtis, *supra* note 350. See also, McFarlane, interview by Sheppard, May 31, 1995:

*Sheppard*: And were you remunerated for that, if I may ask?

*McFarlane*: No, and I didn't want to be.

*Sheppard*: Yes, George Curtis tells a story about when he went down to see you for your initial appointment there, he said that you said, 'I want to make one thing very clear, that if this is a difficulty I better deal with it now, but I don't want to be paid for my time!'

*McFarlane*: Yes George is quite right. I felt that I owed it to my profession.

*Sheppard*: That was your contribution to your profession. George is still very grateful that you were willing to do that... He said, 'I didn't think it would be an obstacle for the University to have you come out to lecture at no charge.' (laughter)

*McFarlane*: No, I enjoyed it very much.

See also: "the Bar responded admirably as they did all through my Deanship. I never received a refusal from any member of the Bar and remember there was no remuneration in this at all. This was just a service to the profession". (Curtis, *supra* note 2 at 66).

<sup>467</sup> See the *Times-Colonist* (3 Oct. 1946) 2. This article indicates that Curtis asked judges to lecture:

*Judge Coady*: ...So Judge Wilson and myself volunteered for that work. Wilson lectured on practice and procedure and I lectured on evidence. I think I continued there for seven or eight years... (James Moses Coady interviewed by Alfred Watts, June 27, 1979, University of Victoria Aural Legal History Project, at 80.

were taken very seriously by the members of the profession. They were not treated as tag-end engagements. One day I met Mrs. J. W. de B. Farris, wife of Senator Farris, the leader of the bar. The Senator had agreed to give a special lecture to our students on constitutional law, he having recently returned from the Privy Council where he had argued a difficult constitutional case. I was always on good terms with Mrs. Farris. This day she bore down on me. Her annoyance was that “For the last week Wallace has been like a bear with a sore paw around the house. Every time I protest, he replies—But don’t you understand—I have to get a lecture ready for George Curtis’s students.”<sup>468</sup>

Despite the dire situation in which the practising Bar was first called upon to teach, Dean Curtis’s reliance upon them was not simply opportunistic. The relationship was one he very much sought to foster, and fifty years later he expressed his delight that “the close and cordial relationship between the profession and the law school has ever been an energizing feature of legal education in British Columbia”.<sup>469</sup> Post-war Ontario was already notorious for the acrimony that had developed between law teachers and the practising profession, and Curtis quite consciously opted to follow a rather different model. He knew that:

Dalhousie from its beginning days followed the practice of having a number of Judges and practicing members of the Bar teaching subjects which their experience particularly fitted them to do. I saw every reason for replicating this practice at UBC. Besides the value, in certain subjects, of having a teacher in charge who is daily meeting the problems raised in the area, the visits of the practitioners are a visible and outward sign of the unity of interest between the School and the Bar . . . .<sup>470</sup>

Part-time teachers have given freely of their time, and through their services students have learned about subjects that full-time faculty could not possibly have covered. Often, they have gained access to some of the finest jurists and practitioners in the province. Mr. Justice Lloyd McKenzie recalled that “the students were especially appreciative of the practitioners”.<sup>471</sup> “Med” McFarlane (later Mr. Justice Meredith McFarlane), for example, taught at the University of British Columbia for a full seventeen years, where he was, Chief

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<sup>468</sup> Curtis, *supra* note 350 at 16.

<sup>469</sup> *Ibid.* at 41-42.

<sup>470</sup> *Ibid.*

<sup>471</sup> *Supra* note 361.

Justice Nathan Nemetz recalls, “an excellent teacher”.<sup>472</sup> Even in light of so distinguished a record, however, he told Professor Tony Sheppard in 1995 that he never considered himself to be “a proper good teacher or educator, but I think I knew what I was talking about”.<sup>473</sup> The full-time faculty, he said, did “a much more important job than mine”.<sup>474</sup>

Coming as it does from a long-standing legal educator of fine reputation and outstanding professional achievement, this self-assessment suffers from a surfeit of modesty. Nevertheless, every silver lining has a cloud and Mr. Justice McFarlane’s reflections on his teaching career provide a good deal of insight into the difficulties that inevitably arise when busy practitioners become part-time educators.

Most of the problems encountered by part-time teachers in the early years were a natural consequence of the competing demands on their time: with the best will in the world they could not reasonably be expected to put time and effort into class preparation, course design, or student contact equivalent to that of full-time faculty members. The extensive preparation required by Socratic teaching effectively precluded part-time teachers from presenting their classes in that way. Asked about the teaching materials he relied upon in the early years, Mr. Justice McFarlane responded simply: “I just had my own notes, which I did myself, that’s all.”<sup>475</sup> “My contribution,” he said, “was to go out and do those morning lectures and that was about it.”<sup>476</sup> Other part-time teachers, too, seem to have had to rely on a straight lecture method. Professor Diana Priestly recalled that another early teacher taught his subject from a textbook that he simply “went straight through”.<sup>477</sup> It was not uncommon for part-timers assigned to a 4:30 p.m. teaching slot to miss classes altogether and “when they came”, she

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<sup>472</sup> Nemetz, interview by Peter Burns, *supra* note 63.

<sup>473</sup> McFarlane, *supra* note 46.

<sup>474</sup> *Ibid.*

<sup>475</sup> *Ibid.*

<sup>476</sup> *Ibid.*

<sup>477</sup> Priestly, *supra* note 462:

"We thought he was marvellous because he was a very firm, fierce looking man and he talked about the cases that way. I happened to be in the office when I came back as librarian when Williams' book came out on Criminal law. Mr. Remnant didn't think much of it. He said: "A dangerous book". "A dangerous book". He said: "They used it in court the other day and O'Halloran went after it like a trout after a minnow" (laughter). It was really quite exciting. We were all standing around listening to him fulminate about what a terrible book this was (more laughter)".



said, “there was no time wasted. They reeled off cases . . . . Their personality didn’t come across. They weren’t part of the school.”<sup>478</sup>

Equally, pressure on their time meant that part-time lecturers were unable to participate significantly in the collegial life of the faculty. Although relations were cordial, they had little to do with the full-time professoriate.<sup>479</sup> In general, they were unavailable to students outside of scheduled class times (“I usually went in the mornings before I went downtown, I always liked to get out at eight-thirty in the morning, spend an hour there and be in my office by ten”, said McFarlane)<sup>480</sup> and part-timers were too busy with practice and the other demands on their time to participate in the extra-curricular activities that enrich student life.<sup>481</sup> In the early years of the faculty, the full-time academic staff both set exam questions and marked the answer papers in subjects taught by judges or practising lawyers.<sup>482</sup>

Despite these acknowledged problems, the participation of practising lawyers as volunteer teachers was a life-line for the early University of British Columbia Faculty of Law. It gave the practising profession a sense of ownership in the new institution and did much to cement good ongoing relations between “town and gown”.

### Returning Veterans’ Refresher Course

The law faculty had started off well in its relations with the practising profession by, in turn, demonstrating its capacity for service. The end of the war had resulted in rapid demobilization not only of large numbers of young men and women considering a career in law for the first time but also of a number of fully qualified lawyers who had abandoned their practices to enlist in the armed forces. With the war over they wanted to re-enter legal practice. Mr. Justice Meredith McFarlane was one: “I had been practicing for . . . oh . . . eight or nine years, just had gotten myself well established when the damn war came along.”<sup>483</sup> The immediate problem confronting these returning soldier-lawyers was two-fold. First, they had to “catch up” on legal developments that had taken place during their years in uniform—to learn any new law. More fundamentally,

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<sup>478</sup> *Ibid.*

<sup>479</sup> McFarlane, *supra* note 46.

<sup>480</sup> *Ibid.*

<sup>481</sup> *Ibid.*

<sup>482</sup> *Ibid.*

<sup>483</sup> *Ibid.*

however, they had to adjust their thought processes. Med McFarlane recalled that they needed “to get the idea of the war and the war service out of our minds and to get to be lawyers again”.<sup>484</sup>

The new law faculty came up with an idea that at once provided considerable service to the Bar and amounted to a public relations coup for the university. The idea was a simple one that Dean Curtis brought with him from Dalhousie:

How about the guys who had been away 3, 4, 5, 6 years? Can we do something for them? My idea was to set up, what we called in the simple language of those days, a refresher course. Now its got the grand name of Continuing Legal Education, no less. But in those days it was a refresher course. So, I brought that material with me, the subjects and how it was to be organized and so forth. And I preyed on the assistance of Alfred Watts who is a very considerable person in the development of legal education in this province in this period. He was the upcoming secretary of the Law Society . . . . Now . . . while he was still waiting for the formal appointment, he helped me a great deal. He liked this idea of a refresher course. He did the organizing downtown for it, as my hands were pretty full . . . . So he organized it, we had this refresher course. . . . It was very informal in a way, . . . now that refresher course was worth its weight in gold. . . . They thought that was great. We were going to have a law school that was prepared to help out this way, there was a need, an obvious need. “This is what we want, we like this. These guys up at the law school are pretty good fellows,” that’s the sort of thing. There was a very conscious effort. Now, effort . . . when I say effort, that is overstating it. Very natural effort.<sup>485</sup>

Overall the “refresher course” provided great service to the Bar and repaid dividends many times over to the law faculty. Dean Curtis concluded “nothing with which the infant law faculty was associated did more to cement the school and the profession than this refresher course”.<sup>486</sup> At least one “graduate” of the programme apparently agreed. Med McFarlane recalled his feelings at the time: “It was a great help to getting out of uniform and into a gown again. . . . It was wonderful.”<sup>487</sup>

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<sup>484</sup> *Ibid.*

<sup>485</sup> Curtis, interview by Pue, *supra* note 348.

<sup>486</sup> Curtis, *supra* note 350 at 17.

<sup>487</sup> McFarlane, *supra* note 46.

## Maintaining Relations with the Legal Profession

Despite good and cordial early relations, it might well have come to pass that even a law faculty with its origins in a committee of the law society would, over time, lose contact with the practising profession. Certainly stories of this sort have unfolded in other places. Practising lawyers are often inclined to believe that their own training represented some sort of historical high watermark of professionalism, and have not infrequently failed to appreciate either educational innovation or the evolving culture of legal education. Academic lawyers for their part can sometimes be resentful of what they perceive as a hard-nosed anti-intellectualism in the Bar and there is always potential for misunderstanding, tension, or even distrust to develop between intellectuals and practical workers. It is a tribute to the commitment and work of the early faculty that relations between “town” and “gown” remained cordial during the first decades of university legal education in British Columbia.

The efforts of Dean George Curtis and his wife, Doris Curtis, are particularly noteworthy in this regard. Curtis clearly had a special duty in matters of importance to the fledgling law faculty and he was, of course, personally committed to fostering good external relations with the legal profession. Despite his solid academic training and years of work at Dalhousie, Curtis recalled that he “never felt a stranger so far as the Bar is concerned. I suppose primarily I regard myself as a teaching lawyer, and no doubts among my academic friends who would say, ‘Isn’t it too bad. Too bad . . . Curtis isn’t a scholar really, you know, he is just an ordinary common attorney.’”<sup>488</sup> The early faculty built the legal profession into its teaching programme and into its special occasions and events at every opportunity. For example, the official opening of the faculty, early in 1946, was intended to showcase the university to the practising profession and Dean Curtis put some care into its planning. It started a tradition in British Columbia: “The guests of the evening were the members of the Bench and Bar. This was the first of a succession of occasions when the law school reached out its hand in hospitality to the profession.”<sup>489</sup>

The pivotal role of the new dean was widely recognized and appreciated. Former Chief Justice Nathan Nemetz commented that “George is a very kind person . . . and he was at that time very energetic . . . and very diplomatic . . . and I think he himself was able to quell the latent antagonism . . . to the school.”<sup>490</sup> John L. Farris recalled simply that “George Curtis did a wonderful job of

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<sup>488</sup> Curtis, *supra* note 24.

<sup>489</sup> Curtis, *supra* note 348 at 41-42.

<sup>490</sup> Nemetz, *supra* note 63.

bringing town and gown together. The result was that the profession was proud of the law school.”<sup>491</sup>

The role of Doris Curtis in this task is more easily lost but equally important. The social expectations of a dean’s wife in that era were enormous. She must have put great amounts of time and energy into facilitating the sorts of social occasions that were required. Shortly after their arrival in Vancouver, University President Norman MacKenzie pulled Doris Curtis aside to inform her that “anything done to bridge the gap between gown and town would be appreciated”. The implication was clear: the university assumed that she would take on significant responsibilities as a hostess in addition to managing the home. While any such comment would be grossly out of place in the 1990s, no offence was taken in the social circumstances of the 1940s. Dean Curtis recalled the great importance of his wife’s contribution to binding a community together:

My wife threw herself into the practice of the ancient art of hospitality with great energy. Our home . . . became the site of welcome for scores of judges, lawyers and business friends from the city. . . . As well, our home was “open house” for our friends of the University faculty. . . . All this meant the building up of a sense of community which is one of the intangible rewards of university life.<sup>492</sup>

This work, invisible, sheltered from historians’ prying eyes, took place in the “private sphere”, the home, and the “social” world. It no doubt provided an indispensable foundation without which the more formal efforts of public men to cement good relations between “town and gown” would have foundered.

### **Student Experiences at the Early Law Faculty**

The student experience of the new law faculty was powerfully affected by the circumstances of its creation. An elaborate, complex mythology has developed about this era in British Columbia legal history. The mythology (all myths, I hasten to add, are true) finds expression in reminiscences about “no-nonsense” veterans, war-time huts, shoestring-bound casebooks, small classes, large classes, limited resources, intellectual awakening, libraries, common rooms, debates, moots, dances, and discussions.

Students of the era seem to have thought that the curriculum and teaching methods of the day stood them in good stead. Their comments are often overlain

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<sup>491</sup> J.L. Farris, interview, Aural History Programme, B.C. Legal History Project, University of Victoria, at 180-181.

<sup>492</sup> Curtis, *supra* note 348.

with subtle questioning of more recent innovations. Chief Justice Allan McEachern (LL.B. 1950), for example, is quoted in a 1987 UBC Law Faculty Newsletter, as saying: “We were given an excellent and very disciplined legal education. . . . There were no frills. An important point—the professors were without ‘causes’; they were middle-road legal educators and there was no digression into philosophical subdivisions of law. We were free to think for ourselves, to develop our own ideas. . . . it was an unfolding of universal ideas that was enjoyable and valuable.”<sup>493</sup> The early curriculum, he told Professor Robert Franson in 1995, “was fine. It gave me all I needed to know in order to practice and I think that I have a bias about legal education. I think that there’s too much frills and not enough basic principle.”<sup>494</sup> “We learned,” he said, “what we needed to learn in practice and hadn’t any regrets that we weren’t subjected to any other courses, other than the ones we had.”<sup>495</sup>

Madam Justice Southin (LL.B. 1952) similarly thought her legal education to have been “excellent”.<sup>496</sup> During the course of a 1994 interview she told Dean Lynn Smith that:

From my point of view it was an excellent education. . . . I had no complaints about it at all! I think it was the best way to teach . . . for a student who was willing to apply himself or herself it couldn’t have been better. And as I say I had never been one for seminars and all that stuff. That “intellectual rubbish” etc. . . . I would have loathed being dragged into that sort of stuff, . . . so I thought it was an excellent education . . . .<sup>497</sup>

Some of the earliest generations of university law students have expressed a sense of gratitude that their legal education concentrated heavily on fundamental material.<sup>498</sup> Madam Justice Southin recalled “a very good

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<sup>493</sup> "Alumni Profiles: The Hon. Chief Justice Allan McEachern (LL.B. '50)" (1987) 5 UBC Law Faculty Newsletter 7 at 7.

<sup>494</sup> McEachern, interview by Franson, April 26, 1995.

<sup>495</sup> *Ibid.*

*McEachern*: I think there were only three lecture rooms. Certainly in all the time that I was there there was no optional courses. . . .None. I’m not sure we needed them either.

<sup>496</sup> Southin, interview by Smith, October 7, 1994.

<sup>497</sup> *Ibid.*

<sup>498</sup> *Ibid.* Furthermore:

*Smith*: Now what about **skills training**?

*Southin*: There wasn’t any then.

*Smith*: . . .and did you think that was a gap or . . . ?

grounding in torts, contracts and real property” and thought well of a form of legal education that focused on “fundamentals”. These, in her view, retain their value despite changing times and circumstances. She told Dean Lynn Smith in 1994 that “I know you can’t any longer send” students:

out into the world only with Smith’s Leading Cases because the world has changed, but there’s a certain basic attitude to the law concerning the fundamentals of it which students, I think, should be required to study. Now, I don’t see for instance, myself, teaching something called poverty law, for instance, it’s goofy.<sup>499</sup>

A legal education should expose students to that kind of fundamentals, getting some principles into your head and cases into your head. . . . when I graduated from law school I could have . . . written down, on long sheets of paper the names of nearly every case we had studied . . . I committed them all to memory . . . hundreds of them.<sup>500</sup>

By all reports, examinations at the early law faculty were rigorous. They consisted of “traditional law school questions. They were full of pitfalls and . . . so, you had to be able to analyze them”.<sup>501</sup> Students were only rarely expected to

*Southin*: We had a course in Procedure, I guess in second year, and I think we had one in third year as well, and they were usually given by downtown practitioners... That’s all. When I graduated from law school I had actually never seen a writ or a statement of claim... and I never got one... and I didn’t think I was any the worse for it because I don’t think... it can be easily taught in a classroom setting. ...Some years ago there were, it seems to me, I don’t know whether I was a Bencher by then, there was a big do about the law school curriculum and I went to a couple of meetings out at the university. I suppose as a representative of the Law Society, the Benchers, to discuss these things... and there were people pushing for more what I call ‘practical stuff’ and I was very much opposed to it, I consider a law school is supposed to be \_ intellectual??? \_ lecturable???, a place for developing a legal intellect”.

*Smith*: ...the other area that there’s often discussion about is Professional Responsibility, Ethical Issues...

*Southin*: I don’t know how you teach that at law school. I really don’t know how...I mean I know that there are programs to look into those things, and I don’t see what cost and point there is in attempting that at the law school. Mind you I don’t understand why we have to have courses in it at all, people needing a course in professional responsibility, they should go and get some other job. I mean I don’t understand how anybody should need that sort of thing. I mean there are certain customs of the professions and whatnot that somebody has to teach you, you know. You don’t do this ... and you’re going to do that, but when it comes to ethics in the true sense of that word, I don’t know why anybody, how you could need to be taught it by the time they’re 21... they’re never going to get it (laughter). That’s my opinion, by the time they’re 18 I should think.

See also Priestly, *supra* note 462:

*MacIntyre*: Heavy on Procedure, three courses? Procedure I, Procedure II, and Procedure III?

*Priestly*: Yes! I had forgotten that! Yes, we had Procedure I and where we actually learned the County Court Rules which I don’t even think are mentioned in law school now.

<sup>499</sup> Southin, *supra* note 496.

<sup>500</sup> *Ibid.*

<sup>501</sup> *Ibid.*

write essays or term papers but seem not to have objected to a system of education that evaluated them by examination only. Widespread discontent with closed-book examinations, the drudgery of memorization they require, and the unimaginative approaches to study and problem-solving that they sometimes reward still lay in the future.

Overall, students of the early years were pleased with their education. They understood some of the difficulties faced in trying to establish a new faculty and the mood of the student body was uncritical: Chief Justice Allan McEachern reported that he and his peers were “desperate to get finished and get on with our lives. We weren’t going to complain or criticize, we just wanted to get through.”<sup>502</sup>

### Student Culture and Ethos

The post Second World War University of British Columbia law faculty exerted a tremendous power over its students despite (some might say because of) the adverse conditions they encountered. One tremendously powerful force in fostering both socialization and “school spirit” was simply continuity of close personal contact over long periods of time. Mr. Justice Lloyd McKenzie has recalled that the early law school had no optional courses. The result was that “[e]verybody was together” for all of their classes. Over the full three-year law degree everyone learned exactly the same subjects from exactly the same teachers.<sup>503</sup> McKenzie recalled “[w]e stayed together during all three years. . . . It was a standard diet for everybody.”<sup>504</sup> Under such circumstances the gravitational pull exerted by a peer group of only sixty-five or seventy-five students must have been very powerful indeed.

The social experience would have varied tremendously, however, depending on which of the early classes a student belonged to. Diana Priestly (LL.B. 1950) recalled that in “a class of 200 . . . you didn’t get to know everybody who was in the class, you knew the people who were in the few rows around where you sat. I usually sat in or around the fifth or sixth row, so you knew the people who sat around there. You tended to sit in the same place in class each time.”<sup>505</sup> Even at that, the socializing effect of the law faculty must have been strong. Priestly and her peers did not move out of their classroom at

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<sup>502</sup> McEachern, *supra* note 494.

<sup>503</sup> *Supra* note 361.

<sup>504</sup> *Ibid.*

<sup>505</sup> Priestly, *supra* note 462.

all during teaching hours: “you stayed there the whole morning”.<sup>506</sup> Not surprisingly, Chief Justice Allan McEachern has similar recollections. His description of a large class moving en bloc from classroom to library to classroom throughout its university career is interesting:

[I]t was a new adventure and in those days . . . there was only two classrooms, and there were two years of law ahead of us, so our class started our lectures for the first year in some other huts that were located on the north-west corner of the main mall of University Boulevard and we had our lectures there and then we trooped, diagonally as it were, across the campus to the site of the law faculty where the library was situated and spent the afternoons in the library, but all of our lectures were up at this intersection that I have mentioned. And then it was an interesting experience because we were all together.<sup>507</sup>

### **The Spirit of the Veterans’ Era**

Many of the students shared the idealism of the full-time faculty who taught them and were equally eager to participate in building a better tomorrow.<sup>508</sup> They picked up this idealism, in varying degrees from their teachers, the spirit of the times, and from their own life experience. No account of student culture in the early University of British Columbia law faculty would be complete without referring to the fact that a very high proportion of students had served in Canada’s armed forces during the Second World War. Diana Priestly recalls that although there were “veterans who were very bitter and just wanted to get out and have a peaceful home and be left alone”, others were more open to the spirit of public service communicated by their professors and picked up from them the belief that “it was possible to have the perfect world with no war”.<sup>509</sup>

The “veteran’s era” has registered strongly in the consciousness of British Columbia lawyers. Many mature students who had put their lives on hold in service of their country, not surprisingly, were in a hurry to get on with life. Confident, enthusiastic, and hard-working, the student-body was in a “no-nonsense” frame of mind. Mr. Justice Lloyd McKenzie, who began his legal education at the University of British Columbia in 1945, served as president of

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<sup>506</sup> *Ibid.*

<sup>507</sup> McEachern, *supra* note 494.

<sup>508</sup> Priestly, interview by Waters, University of Victoria Aural Legal History Project, **DATE?**, at 16.

<sup>509</sup> *Ibid.*



his class. “The secret of that first class,” he recalled in 1995, “was that tremendous enthusiasm.” All the suppressed energies of a generation raised in the Great Depression and matured during six years of war were unleashed:

It was just . . . You know the war was over! The war was over and we won! And here it was just opening up . . . new vistas altogether, just a whole new world. We had come out of the Depression and we didn’t really know what lay in store for us, you know, in terms of jobs. Might get a job doing something, nobody knew what. Then all of a sudden to have the opportunity for a professional career. You know it was just overwhelming, it was absolutely wondrous. And that sort of spirit invested all the members of the class and it’s lingered. The first class has been the most faithful of the reunites, we’ve had, usually every five years or something like that, but a lot of classes have never reunited, or they do it sporadically or they do it without very much enthusiasm. I’m not a reuniter by nature except with my law school, and you know that’s firmly embedded.<sup>510</sup>

Most people who enjoy their education recall in later years that their peers had something “special” about them. Cynics may dismiss accounts of the University of British Columbia’s “veteran’s era” as distortions of memory, but the fond memories of former students are, in this case, strongly corroborated from every available source. Mr. Justice Meredith McFarlane, for example, was well acquainted with the first class but not part of it. A Vancouver lawyer at war’s end, he taught at the law faculty on a part-time, voluntary basis. The first class, he recalled, consisted of “men who knew what they wanted and they were impatient to get on with it”.<sup>511</sup> As a group, “the students were as keen as hell. . . .

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<sup>510</sup> *Supra* note 361.

*McKenzie*: . . .and I think one of the most successful coups of my life. . . I guess I must have been president of the class when this happened. . . each veteran was entitled to sixty dollars a month gratuity from the government, and we thought there should be a differential for married people. . . so I represented the law school before the Department of Veterans Affairs and managed to get the gratuity for married veterans hoisted to eighty dollars a month. And that eighty dollars a month, believe it or not, provided a very good living. My wife and I had an apartment in the West End, and I think it was forty dollars a month.

*MacCrimmon*: I see. Was it hard to get in ? . . .the law school?

*McKenzie*: There was no problem, you had to have academic qualification. . .the Japanese War abruptly ended with the two big bombs. And coincidentally, within a day or so, I heard that they were establishing a law school at UBC. I couldn’t believe it! It was miraculous. Now, this was something. . .this was super reality. . . that just couldn’t possibly exist. There it was!

*MacCrimmon*: Well, had you planned to go to law school?

*McKenzie*: I had a sort of a hope that maybe I would be able to go to Osgoode Hall, but it was dim hope. . . .But I was just so absolutely enchanted, elated, unbelieving as everyone else was that here was a law school and a grateful government was going to give us free passage through it. And what’s more it was going to pay us. . .

<sup>511</sup> McFarlane, *supra* note 46.

most of them were vets and they were so damned anxious to get the war over and get to be lawyers as soon as they could”.<sup>512</sup> Capable, hardworking, enthusiastic, and “damned nice”, these students “wanted to listen”.<sup>513</sup>

Dean Curtis too recalled the 1945 class as something special. They were, he said, “the keenest students I’ve ever taught”.<sup>514</sup>

There they were, the seventy odd veterans, keen as mustard and also, of course, they themselves had been in command. Most of them had been officers or non-commissioned officers. They were used to command. They knew the situation. No complaints. Their attitude was “anything we can do to help, let’s get on with it”. And they were superb and certainly, in terms of academic performance, they were well-organized, tremendously self-disciplined hard workers. They’d lost a lot of time out of their lives and they were going to make up for it. . . . Absolutely super and great fun. Great, great fun they were . . . They were all keen for this thing and they were wonderful people to teach.<sup>515</sup>

Diana Priestly confirms that her peers, a few years later on, were part of a culture of “no-complaints”: “[w]e weren’t a very complaining crowd, we were just very glad to be at university.”<sup>516</sup>

Similarly, E. A. Lucas, senior Vancouver lawyer and self-described “old crock”, reported in glowing terms on his 1946 encounter with the student body. He remarked on “the spirit of the enterprise”<sup>517</sup> that he considered “the very essence” of the new faculty. The mood was contagious. Lucas reported an atmosphere “of fresh and eager beginning. Take two hard-baked old crocks like Elmore Meredith and me. Driving back from our session with them, we never stopped talking of the inspiring effect of just looking in on the fine new adventure. The whole set-up is radiant with youth and determination. They know where they are going and they are surely on their way.”<sup>518</sup>

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<sup>512</sup> *Ibid.*

<sup>513</sup> *Ibid.*

<sup>514</sup> Curtis, *supra* note 463 at 65.

<sup>515</sup> *Ibid.* See also, Curtis, *supra* note 348 at 19:

"There was spirit and elan. The veterans took the inconveniences and shortages in their stride. They had run into plenty of snafus in the Services. Now back in normal life they were determined to get on with building their careers. Their verve and drive was infectious. It was a 'goodly company' which assembled".

<sup>516</sup> Priestly, *supra* note 462.

<sup>517</sup> E.A. Lucas, "Faculty of Law" (1946) 4 *The Advocate* 7 at 11.

<sup>518</sup> *Ibid.*

The veteran's era extended over several years. Although the experience of legal education varied considerably, each class was strongly influenced by the presence of large number of veterans. Mr. Justice Lloyd McKenzie has pointed out that "the 'veteran era' . . . lasted, I would imagine, for about five years before all the people filtered out from the army, maybe four years".<sup>519</sup> The preponderance of veterans made itself felt despite dramatic variations from year to year in class size, physical environment, and teaching staff:

War, of course, is a maturing experience if there ever was one, you know, you confront periodically the prospect of not living another day, you know you get into some very dangerous times. . . . you have time to concentrate on . . . life and its meaning all that sort of stuff. We were serious. We really couldn't wait to get through our legal education, we didn't want to dawdle over our legal education. We wanted to get it behind us and get our ticket and go out into the world and . . . you know build a house, practice and get going. We were older you see. Time was slipping by.<sup>520</sup>

Unlike some of their successors, students of this generation sought to build a better world modestly and from within existing structures. Mr. Justice McKenzie told an interviewer in 1995 that they did not think "in terms of changing the world" as such.<sup>521</sup> What they hoped to do was simply to make their "mark". Many did so through participation in community undertakings or charitable work. Lawyers, he recalled, "thought that this was an obligation. You know we did really feel a sense of gratitude. I have never, never . . . overcome my sense of gratitude of a benevolent government . . . gave me so much."<sup>522</sup> Diana Priestly too recalls that the idealism of her generation found expression through work and participation in public processes. They wanted, she said, "to be part of the building [of a better tomorrow] and Dean Curtis, of course, instilled in us that it was our duty as educated people to play a part in that and, of course, so many went into government work with that in mind."<sup>523</sup>

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<sup>519</sup> *Supra* note 361.

<sup>520</sup> *Ibid.*

<sup>521</sup> *Ibid.*

<sup>522</sup> *Ibid.*

<sup>523</sup> Priestly, *supra* note 462.

## Student Social Life

Student social life in the early University of British Columbia law faculty varied according to the individual tastes, inclinations, and finances of the students. Asked by Dean Lynn Smith to recall social life in her student days, Madam Justice Mary Southin responded simply that it “depended on what sort of social life one chose to have”.<sup>524</sup>

A typical day in the life of a law student involved a predictable and comfortable schedule divided in three parts. The morning was given to classes from 8:30 a.m. to 11:30 a.m.; lunch-hour might be taken up by various student activities; and afternoons were given to reading and private study. Most campus clubs met at 12:30 p.m. “so you would have your lunch and go to that and then be out by twenty after one”.<sup>525</sup> After lunch hour Madam Justice Southin recalls returning to the faculty’s army huts and its small library. “You could go in there, find yourself a place, and you could work right through till it was time to leave and go home for supper.”<sup>526</sup>

It was certainly possible for law students to participate in the life of the larger university. There were, she said, “a lot of the students who belonged to campus clubs which were not for law students only. . . . I mean that’s how you got to know somebody . . . How would you get to know anybody to take you out unless you joined something.”<sup>527</sup> Two or three law students of her generation belonged to the “Radio Society”; some joined a drama society known as the “Players Club” (“the Players were of course notoriously snooty”<sup>528</sup>), while “fraternities and sororities” were attractive to others.<sup>529</sup> The young Mary Southin participated in a sort of mock Parliament known as “Parliamentary Reform”, which “put on debates at lunch time”, brought in speakers, and occasionally organized a full mock-Parliament: “somebody would compose some silly Bill and we would have a debate and then afterwards have coffee”.<sup>530</sup> It was, she remembers, “more for fun than anything”. Though she “was a Progressive Conservative out there” and others were active in different political parties, “not all the people in Parliamentary Reform were in politics”.<sup>531</sup> The usual ebb and

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<sup>524</sup> Southin, *supra* note 496.

<sup>525</sup> *Ibid.*

<sup>526</sup> *Ibid.*

<sup>527</sup> *Ibid.*

<sup>528</sup> *Ibid.*

<sup>529</sup> *Ibid.*

<sup>530</sup> *Ibid.*

<sup>531</sup> *Ibid.*

flow of student elections occupied some students some of the time—although student politics were something nobody at the law faculty seemed to take particularly seriously.<sup>532</sup>

The degree to which law students found social outlet within the university varied with to individual inclination and law school generation. Mr. Justice Lloyd McKenzie recalled “very little in the way of extracurricular activities”<sup>533</sup> apart from “some political activity”:

I can remember there was a group of Progressive Conservatives and they were making a big fuss all the time. They would drive through the campus in their Model T Ford wearing top hats and all that sort of stuff . . . to encourage people to come to a debate that was being conducted between them and the Liberals.<sup>534</sup>

Lack of facilities on campus made it difficult for the first few classes to participate as fully in the life of the university as their successors. Until a university law library developed, students had to make a daily migration to the downtown courthouse if they were to do any class preparation. McKenzie recalls his 1945 class as being “adrift from the university”, “separate”, “encapsulated” in the law school, and uninvolved “with the campus at large”. “Our concerns,” he explained, “were localized, focused on the law, what was happening at the university, what was happening down at the Court House.”<sup>535</sup>

For Chief Justice Allan McEachern, however, the decision to remain apart from the extracurricular life of the university was more deliberate. Although he recalls other law students taking part in clubs and student activities of various sorts, his own involvement was limited to athletics. This choice was simply a personal matter: “I’ve never been a joiner, I’ve never belonged to a lot of clubs.”<sup>536</sup>

Of course, lack of involvement in clubs and organized activities does not imply that an individual is unaffected by the cultural network that envelops them. A significant part of student social life is found in the quiet, informal places where education, common interest, and friendship intersect. Dean Curtis, according to Diana Priestly, “tried to make it a good atmosphere”. The library circulation desk, predictably enough, “was a great social center” and the law buildings of her time had not one but two student common rooms: students were

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<sup>532</sup> *Supra* note 361.

<sup>533</sup> *Ibid.*

<sup>534</sup> *Ibid.*

<sup>535</sup> *Ibid.*

<sup>536</sup> McEachern, *supra* note 494.

segregated on the basis of gender. The relatively small number of women students consequently got to know each other well despite large entry classes.<sup>537</sup> They would also, from time to time, be invited to coffee parties organized by Doris Curtis for women students, faculty wives, and student wives.<sup>538</sup>

A gender divide of some sort also found expression in the way informal study groups coalesced. Women, Diana Priestly remembers, “tended to work with the other women students until you passed your first year exams and then in second year and third year you were included in the study groups that the men had”.<sup>539</sup> Although Mary Southin felt these groups to be “a waste of time”,<sup>540</sup> she remembers other students finding “a kind of social life” by working together in “little study groups” (“nearly all men”), who would “study and then go drinking or something or other”.<sup>541</sup>

Not all student activity orbited around law. Both Mr. Justice McKenzie<sup>542</sup> and Madam Justice Southin recall other students playing cards in the faculty common room:

M. Southin: . . . a lot of the young men, of course some of them weren't so young, they used to play a lot of poker and bridge in the common room.

. . . Sometimes they were gambling . . . they weren't just playing . . . they were gambling . . . and I'm sure that was against all the university rules. . . . but they were grown men, for heaven's sake, I don't know how the university could have been expected to tell a man in his thirties, who had spent years flying over Germany or fighting through France, that he was not to play bridge for money in the common room at the law school. . . . and I don't think that anybody tried.<sup>543</sup>

Political debate was also fairly lively in common room and corridor. This debate was not then restricted to the safe Canadian middle ground between Liberal and Tory. Unlikely though it may seem, the early student body included several committed leftists who were not always given to suffering the views of

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<sup>537</sup> Priestly, *supra* note 462.

<sup>538</sup> Southin, *supra* note 496. Southin states:

The only time I remember there was, I think Mrs. Curtis gave some kind of a coffee party at one stage for the women students, and I suppose some of the faculty wives were there...but I don't have any memory of spending much time coffee partying...

<sup>539</sup> Priestly, *supra* note 462.

<sup>540</sup> Southin, *supra* note 496.

<sup>541</sup> *Ibid.*

<sup>542</sup> *Supra* note 471.

<sup>543</sup> Southin, *supra* note 496.

their more mainstream fellow students in silence. Gordon Martin, a student in the first class, subsequently earned a prominent place in Canadian legal history by being denied admission to the legal profession solely because his political views were deemed unacceptable by British Columbia lawyers at the time. Remembered by Mr. Justice Lloyd McKenzie as “a doctrinaire Communist”, Martin “thought they had the better idea”. Right-wing students would engage him “in argument . . . on a daily basis” and the two sides “would argue vociferously all day as to which system was the right one”.<sup>544</sup>

### Attending the Annual Law Ball

Without a doubt, the annual “Law Ball” was the most important social event on the early law student’s calendar. It was a formal event to suit the times, characterized by tuxedos, ball gowns, and “booze under the table”.<sup>545</sup> Madam Justice Southin recalls the ball as “the social event of the year”:

[T]hey were always held at the Commodore and they were black tie for most of the boys, although those that couldn’t . . . I mean I was going out at the time with a chap who was an Agriculture student. . . . and his budget did not extend beyond a dark blue suit for every serious occasion but that was all right. But the girls, the women who went to them wore all evening dress. The judges came, the faculty came. . . . there were always quite a number of people there in tails. A lot of men had tails in those days . . . . And of course as always at such affairs as this in Vancouver, the boys, the men brought a date . . . the bottle was put under the table. I remember the party as being great, and actually, I was underage and shouldn’t have been drinking anything, but I had no difficulty by the time I was eighteen getting into a pub.<sup>546</sup>

. . . the Commodore had a marvellous dance floor . . . . And there would be an orchestra, and an occasion was always followed by a group of people going down to Chinatown after for dinner. There were in those days [rules of propriety] . . . young ladies were taken home . . . I know we had to be home at a reasonable hour, that first year I was living with my sister and my brother-in-law and you know . . . my sister would not at all have been pleased if I had not been home by 1 or 2 in the morning. Well she felt she was in loco parentis, and so she was, . . . I was not a kid to get

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<sup>544</sup> *Supra* note 361.

<sup>545</sup> *Ibid.*

<sup>546</sup> Southin, *supra* note 496.

into trouble anyway so the Law Ball was the great social occasion of the year.<sup>547</sup>

### Founding of the UBC Law Review

It would be misleading, however, to imagine that student social life at mid-century was entirely focused on political chatter, balls, drama societies, coffee evenings, bridge, and pubs. Overall, Madam Justice Southin remembers “a relatively quiet life I suppose, by modern standards”.<sup>548</sup> She recalled the veterans as “mature men” who “were getting on with their lives and they weren’t fooling around. They were married men, so they weren’t out gallivanting”.<sup>549</sup> Even the younger students “weren’t all running downtown to the pub, most of us didn’t have enough money for that kind of entertaining, and in those days the girls, you know the boys took you out when they could afford to take you out, you didn’t pay anything”.<sup>550</sup>

The scholarly side of extracurricular activities at the faculty was soon elevated when some ambitious students decided the University of British Columbia should follow the practice of American law faculties and established its own student-run law journal. This bold initiative did not immediately receive enthusiastic support from the dean. At the time Dean Curtis thought that Canada could not sustain another law journal.<sup>551</sup> Madam Justice Southin served on the editorial board but does not remember “it as being a very strenuous contribution to the life of the faculty. It was fun though. . . . it seems to me that is what we did and wrote something for it. . . . you know, that was the idea. . . . make a little

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<sup>547</sup> *Ibid.*

<sup>548</sup> *Ibid.*

<sup>549</sup> *Ibid.*

<sup>550</sup> *Ibid.*

<sup>551</sup> Priestly, *supra* note 462.

*MacIntyre*: There was no **Law Review** at the law school in your time, was there?

*Priestly*: Yes, it came in either my second or my third year because I was Secretary of the Law Undergraduate Society at the time and I remember when the Review was starting. Dean Curtis wasn't very much in favour of our having a Law Review but gave in to pressure from the students who wanted there to be a Law Review. You can tell from the dedication he wrote for the very first issue, . . . . from the way that was worded you could tell that he really wasn't very much in favour of starting the Law Review. I think he didn't like the idea of all the law schools starting a Review and not having them for his class. He thought the Faculty of Law Review in Toronto was the one academic journal for Canada and should remain that way.



contribution.”<sup>552</sup> Dean Curtis, who in later years became very proud of the publication that grew into the University of British Columbia Law Review, gives full credit to the students who initiated the project. He told Murray Fraser during a 1980 interview that it:

started with a Victorian, Barney Russ, A. D. Russ, way back in those veteran days. Barney, of course, was agile with his pen and fluent and he got some of his col leagues to start it up and it was entirely a student initiative and it was called “Legal Notes”. To some extent, I am afraid I may have influenced that because, you know, we were then four hundred, yes but, what was going to happen. We might get small and could we maintain a decent Law Review so they went along with Legal Notes. It is better to walk than to run and that, of course, became a great success and then they turned it into the Law Review and that has again, let me say, with student initiative right through, been excellent, really excellent.<sup>553</sup>

### **Selling Pencils**

The experience of legal education is always strongly coloured by the likelihood of finding a good job upon graduation. So the mood of professional school students is strongly and directly affected by their assessment of the likely economic return for their educational investment. The legal profession periodically experiences panic around the perception that there are “too many lawyers” and this view can have immediate repercussions on the mood within the academy.

While “generation X”—and even some of the “baby boom”—often look back with envy at a generation whose working life corresponded precisely with the sustained economic expansion that followed the Second World War, it was by no means clear to university students during the 1940s that the future bode well for them. One student veteran, returned to university with the help of veteran benefits, is reputed to have joked with his colleagues about the bleak prospects he foresaw: “Well, I don’t know what you fellows are going to do but I’m going to sell pencils at Georgia and Granville because there’s not going to be jobs for all of us.”<sup>554</sup> Chief Justice McEachern recalled how the future looked during his student years:

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<sup>552</sup> Southin, *supra* note 496.

<sup>553</sup> Curtis, *supra* note 463 at 107.

<sup>554</sup> McEachern, *supra* note 494.

We were all in a rush because we thought that there were so many lawyers coming through the system that there wasn't going to be room for us all. . . . it was a time of great uncertainty. . . . we really wondered what we were all going to do when we got out. . . . There were only about five to six hundred lawyers in the entire province and here we had a class of two hundred. All of us who took the double degree thought we made the most serious mistake of our lives, we lost a whole year and that we'd be a year behind in getting the positions in the professions . . . .<sup>555</sup>

That things in fact turned out quite differently (“the profession just grew, and grew and grew and there was room for us all”)<sup>556</sup> reveals only one reason why economics is called the “dismal science”. Students at the time had every reason to think their economic prospects bleak.

Life as a law student in mid-century British Columbia was even more directly affected by the world of work in two ways. Despite the tremendous financial boost the veteran's benefits provided, many students found it necessary to find part-time work in order to support themselves and their families during the course of their studies. Legal education then, as now, was designed around the fiction that students were financially ready, willing, and able to dedicate themselves full-time to academic work during the university term. “Working at other jobs,” Diana Priestly recalls, “was not encouraged.” Nonetheless, economic necessity pressed many students—especially those married with children—into the market for part-time work.<sup>557</sup>

### Sandwich Courses

Law students faced the world of work in another way too. Under the earliest arrangements entered into between the university and the law society, British Columbia's programme of legal education was in effect a “sandwich” course that interspersed academic and practical (“clinical”) education for the legal profession. Chief Justice McEachern recalled, “we were expected to article in the summer between the First and Second Year . . . and spend four months of each of three summers”<sup>558</sup> in order to be fully qualified exactly three years after beginning legal studies. In theory, students completing their articles in this way were expected to make a clean break from “articles” when classes recommenced

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<sup>555</sup> *Ibid.*

<sup>556</sup> *Ibid.*

<sup>557</sup> Southin, *supra* note 496. See also Priestly, *supra* note 1 and note 47.

<sup>558</sup> McEachern, *supra* note 494.

in the autumn. There is some evidence, however, that a few firms, accustomed to full-service, long-term articling students, may not always have encouraged students to break completely from the law firm on returning to class. Some students may have ended up in effect continuing with articles while enrolled in nominally full-time studies.<sup>559</sup>

Chief Justice McEachern recalls the search for articles as “a rather desperate sort of affair even then as it is now”.<sup>560</sup> One historical constant seems to be that “people who had associations, family associations, or connections didn’t seem to have any trouble getting placement”.<sup>561</sup> The situation became so desperate for others, however, that:

the Dean called a meeting and said that he wanted to see anybody who didn’t have Articles, and I was one of fifteen or twenty at least that went to this meeting and said that we didn’t have Articles. So he said, “Well, I’ll do what I can but give me your names” . . . and so we all put our names down on the sheet, went away and then he called us back, he called eight of us back, and said that a law firm had agreed to take eight students. They recognized an obligation to look after these students in some way and he had taken the list and put our names in a hat, and drew out eight names and mine was one of the fortunate names drawn out of the hat, so I was sent down to the law firm, which is now Russell and DuMoulin.<sup>562</sup>

Ironically, perhaps McEachern’s luck in the draw ended up in his stepping off the “fast track” to qualification:

On the second day down there the senior partner, to whom I had been assigned, came in the evening and sat down as he liked to do and just talk. . . . “You know you are making a terrible mistake, there isn’t enough work here to keep you busy all summer and you should go out and get some life experience and then come back and then article for a whole year. It will put you a year behind, but it will give you a much better chance of getting a position, because we can’t keep all these people that we are taking on as students.” I needed the money and I didn’t feel that I was going to argue with the senior partner. So I arranged to disengage myself for the summer and for the next two summers I worked in various industries. He told me to try to get work in a couple of different industries each summer to get

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<sup>559</sup> Priestly, *supra* note 462.

<sup>560</sup> McEachern, *supra* note 494.

<sup>561</sup> *Ibid.*

<sup>562</sup> *Ibid.*

the kind of experience that you need to deal with problems in the British Columbia economy . . . .<sup>563</sup>

Following this advice seems not to have caused permanent harm to the professional career of the future Chief Justice.

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<sup>563</sup> *Ibid.*

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# Opening the Portals

## **The Doorkeepers**

The establishment of a university faculty of law in British Columbia marked a transition in the point of admission to the legal profession that, over time, would have a powerful impact on the composition and structure of the profession in the province. By transferring the early stages of training for the practice of law to the university, qualifying was opened up to visible, public, and meritocratic criteria. Articling was deferred and any of a number of informal, highly personal screening mechanisms that then came into play were relegated to a position of secondary importance. The initial doorkeeper of the legal profession had been powerfully, irrevocably changed.

Peter Sibenik's discussion of turn-of-the-century legal education in Prairie Canada opens with an evocative passage from Franz Kafka's *Before the Law*:

Before the Law stands a doorkeeper. To this doorkeeper there comes a man from the country and prays for admittance to the Law. But the doorkeeper says that he cannot grant admittance at the moment. The man thinks it over and then asks if he will be allowed in later. "It is possible," says the doorkeeper, "but not at the moment." Since the gate stands open,

as usual, and the doorkeeper steps to one side, the man stoops to peer through the gateway into the interior. Observing that, the doorkeeper laughs and says: "If you are drawn to it, just try to go in despite my veto. But take note: I am powerful. And I am only the least of the doorkeepers. From hall to hall there is one doorkeeper after another, each more powerful than the last. The third doorkeeper is already so terrible that even I cannot bear to look at him." These are difficulties the man from the country has not expected; the Law, he thinks, should surely be accessible at all times and to everyone.<sup>564</sup>

Sibenik's article goes on to explain that, contrary to much recent theorizing about the alleged evils of the organized legal profession, Prairie lawyers have not in fact always sought selfishly to advance their own economic interests by artificially restricting entrance to the legal profession. His article and the quotation with which it starts do, however, serve to remind us that any system of legal education has the effect of restricting admission to the practice of law. It also puts us on notice that educational structures and more general issues relating to fitness to practice are closely related.

A similar theme was developed by Brian Dickson, formerly Chief Justice of Canada. In 1986 he said that "the ethos of the profession" is set by "the gatekeepers to legal education, namely those involved in the admissions process".<sup>565</sup> The "gate" to the Canadian legal profession in the past, as now, has been guarded by formal admissions policies, the exercise of unregulated discretionary power, and by a host of subtle and not-so-subtle attitudes within the academy, law societies, and the profession at large.

However humble, all "doorkeepers" exercise discretion and, therefore, power. Their behaviour can be courteous, non-intrusive, and helpful, or it can be arbitrary, discriminatory, irrational, and mean-spirited. The finest doorkeepers can too easily slip from diligence to officiousness and from officiousness to capriciousness. Class, race, gender, ethnicity, belief, sexual orientation, religious faith—indeed, any perceived personal characteristic, belief, or trait—can, in the wrong circumstances, bar entry. Many such ascribed characteristics have in fact become obstacles—even insurmountable barriers—to a legal career in British Columbia. The law society has, at times, been overly diligent in its admissions screening. Too often the principles invoked have been tied to cultural exclusion

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<sup>564</sup> F. Kafka, "Before the Law" in N.N. Glatzer, ed., *The Complete Stories and Parables* (New York: Quality Paperback, 1983) 3, as cited in P.M. Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta, 1885-1928" (1990) 13 Dal. L.J. 419 at 419.

<sup>565</sup> B. Dickson, "Legal Education" (1986) 64 Can. B. Rev. 70.

rather than to knowledge, ability, or integrity. Sometimes decision-makers literally cannot tell the difference.

The “doorkeepers” to the Bar have been remarkably concerned with gender but also with ethnic origin and political belief. Along with the rest of Canada, British Columbia had developed a complicated structure of discriminatory laws and policies by the time the Second World War broke out. To greater or lesser degree, public policy sought to allocate individuals to a status and role deemed appropriate to their sex, national origin, or other traits.<sup>566</sup> Basic civil rights have been denied to many Canadians because of their “race” or ethnicity. Further blatantly racist legislation was rushed into place during the crisis years of the Second World War. The legacy of expropriation of property, internment, and displacement from British Columbians of Japanese origin is well known and has besmirched Canada’s reputation.

Although others suffered in British Columbia, the Asian community bore the brunt of racism and ethnic discrimination during the first fifty years of the century. Jewish Canadian lawyers in the province did not apparently encounter the difficulties then common in other parts of the country. The Jewish Western Bulletin of March 17, 1994, quoted David Freeman as remembering that during the 1920s and 1930s “discrimination . . . was deflected onto Chinese, Japanese and East Indians. . . . But the Jews were free to do whatever they wanted”.<sup>567</sup> In Toronto, by contrast, he could not find articles in the mid-1930s because “[n]one of the firms” there “would hire Jewish graduates at the time”. An Irish Catholic lawyer who himself had suffered from the intolerance of the Toronto establishment eventually took him on. At that time, Freeman recalled, “[t]hat sort of professional discrimination was completely foreign to Vancouver”.<sup>568</sup>

It is much to the credit of mid-century Canadians that many worked actively to dismantle both the artificial barriers that stood in the way of “talent” and the attitudes that supported them. One small but significant incident occurred at the University of British Columbia shortly after Dean Curtis arrived to establish the law faculty. President MacKenzie was then in the habit of consulting with deans on important matters of policy. On one occasion he sounded them out on the stance the university should adopt regarding racial exclusions. Curtis recalled that:

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<sup>566</sup> See Renisa Mawani, “In between and out of place: racial hybridity, liquor, and the law in late 19th and early 20th century British Columbia” (2000) 15 *Can. J.L. & Soc.* No. 2, 9-38

<sup>567</sup> J.W.B. Staff, “JNF honoree a city pioneer” (1994) 1 *The Jewish Western Bulletin* 6 at 6.

<sup>568</sup> *Ibid.*

A Japanese grade 12 student who was attending school upcountry, where her parents had been “evacuated” in 1942, had just won a provincial scholarship to attend UBC. But the restrictions against Japanese living at the Coast were still on. Would the University incur public criticism if it sought exemption from the restrictions for the young lady? I expressed my settled view on the responsibility of universities. . . . I added that I would check with my veteran students to make sure I was right. I did. To a man they spontaneously said that the University should not think twice about getting permission; moreover, the ex-majors, wing commanders and other ranks, gave their opinions in decisive terms. “What in the name of all that is holy,” more than one asked, “had they fought the war for?”<sup>569</sup>

The mood of the times was such that Canadians gradually—it must have seemed painfully slow to the victims—began dismantling the most egregiously discriminatory policies. Their destruction of a legacy of racism was neither immediate nor fully uniform at all times. Nonetheless, the general direction was toward a breaking down of formally sanctioned racism.

Awful though they are, formal barriers to full participation in the life of a community are only the first of many difficulties that victims of discrimination face. Just as Kafka’s man from the country learns that “there is one doorkeeper after another, each more powerful than the last”, so too some of those who have sought careers at law in twentieth-century British Columbia have encountered a continuing series of obstacles to professional success. Like images caught between two mirrors, they recede in seemingly infinite number. Only the crudest, earliest, and most obvious of these obstacles involved a formal policy of exclusion based on gender, “race”, or political belief. Well after formal blanket exclusions were withdrawn to allow the entrance of women and Canadians of First Nations or Asian origin, “more powerful”, secondary, tertiary, and quaternary doorkeepers confronted many would-be lawyers. These doorkeepers lurked in classrooms, judges’ chambers, and law offices, covering the gamut from simple, blinkered insensitivity through to ingrained, blatant, and deliberate racism, sexism, or bigotry. It is horrific to consider that anti-Semitism may actually have increased in British Columbia’s civil society just as the Nazi horrors were being revealed. This is certainly the impression of one prominent Jewish lawyer, who remembered that “[t]he Holocaust exposed the non-Jewish community here to anti-Jewish ideas.” “Some of those ideas, unfortunately, stuck”, David Freeman said in a 1994 interview.<sup>570</sup>

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<sup>569</sup> Curtis, *supra* note 350.

<sup>570</sup> *Supra* note 567.



The doorkeepers of law are polymorphous, omnipresent, and unpredictable. Their dismissal from service can never be final or taken for granted.

### **Racism and the Legal Profession**

Although British Columbia moved dramatically in the years immediately following the Second World War it is important to appreciate that within living memory egregious racism represented a political mainstream. While individual lawyers have always been found to fight injustice of all sorts, the early law society was often a willing accomplice in both racism and sexism.

Although the efforts of the Vancouver Law Students' Society was crucial to the establishment of a formalized system of legal education in the province, to their lasting discredit, the students also lobbied the provincial law society on other issues. On January 19, 1918, according to Alfred Watts:

[T]hey petitioned the Benchers that Asiatics be prohibited from becoming members of the Law Society. At that time the provincial Electors Act prohibited Asiatics the right of being on the voters' list. Acting on the law students' petition the Benchers amended Rule 39 to require applicants to be among other requirements: "a British subject and who would, if of the age of twenty-one years, be entitled to be placed on the Voters' List under the Provincial Elections Act."

This situation continued until the Provincial Elections Act was amended in 1949 and until that date had the effect of barring among others the First Nations of British Columbia, who obviously should have been entitled.<sup>571</sup>

As late as 1942, the Victoria Daily Times carried the headline "No Oriental Lawyers in this Province".<sup>572</sup> The article reported the apparent satisfaction expressed by an unidentified member of the law society who explained that " 'We have had one or two applications for enrolment as students. Chinese and Japanese are not on the voters' list and persons not on the voters' list cannot become lawyers.' " <sup>573</sup>

While it may be understandable that xenophobia heightened during wartime, British Columbia has a long history of discrimination against both the first peoples of the region and immigrants from Asia, among others. The organ-

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<sup>571</sup> Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 at 58.

<sup>572</sup> "No Oriental Lawyers In This Province" *Victoria Daily Times* (6 July 1942).

<sup>573</sup> *Ibid.*

ized legal profession has, in the past, been thoroughly implicated in this sorry tale and clearly is not innocent.

Against this background, the response of a class of veterans when Dean Curtis put to them the question of how the university should respond to the problem of admitting a high school graduate of Japanese–Canadian origin marks a significant turning point. Dean Curtis, explained his views in a 1995 interview. The law faculty, he said, “has to be open”. It should be “[o]pen to all the talents, open to all the views. . . . Equally so the students.” The earliest students of Asian origin, Curtis recalled, were “a little apprehensive, because they’d been under a cloud, you see”. They told the Dean, however, that in fact “they were welcomed here as equals, with no exception”.<sup>574</sup>

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<sup>574</sup> Curtis, interview by W. Pue, 1995, *supra* note 348.

## Women Lawyers in British Columbia

Women too have often found the doorkeepers of law to be unwelcoming. Oscar Bass, who vigorously advocated progressive policies in legal education as an articling student and then, from 1905 to 1913, as law society secretary (chief executive officer), revealed himself to be an utter misogynist when the matter of women's entry to the legal profession in British Columbia first arose. Alfred Watts quotes in full a letter Bass wrote to E. M. Pawley on March 17, 1908, in response to the latter's enquiry about the status of women in the legal profession in the province.

Bass happily reported that because "the fair sex have not yet threatened to invade the legal profession" the Benchers had not yet formulated any policy to deal with "the application of a modern Blackstone in petticoats to enter the profession". A particularly offensive passage appeared at the end of the brief letter. "You will perceive," Bass wrote, "that we have been ungallant enough to ignore the very existence of the beautiful sex except inferentially as being possibly classifiable among the British subjects of full age." Possibly? With a thoroughly sexist flourish he concluded that "[t]he admission of the age limit might lead to a mental evasion, equivocation or secret reservation mentioned . . .; but if the candidate had made up her mind to practice law for a livelihood a little thing like that should cause no conscious qualms or scruples".<sup>575</sup>

From the perspective of the late twentieth century it is all too easy to dismiss Bass as simply a woman-hating, unenlightened, bombastic, eccentric individual. He was not eccentric. Nor, as secretary of the law society, was he unimportant. While Bass may have been particularly sharp in expressing his opinion, it is clear that he was not atypical of his generation. When the Ontario Law Society had been confronted with the question of admitting women lawyers in the late nineteenth century, the response on the part of many lawyers was incredulity. In a ground-breaking article on Clara Brett Martin, Canada's first woman lawyer, Professor Constance Backhouse quoted a passage from the *Legal Scrap Book* of April 16, 1892:

[I]t was . . . no doubt felt that a woman can find a more suitable place in life to fill than that of counsel. A woman does not, as a rule, arrive at a conclusion by logical reasoning, but rather by a species of instinct, which, no matter how unerring, cannot assist others to arrive at the same con

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<sup>575</sup> Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 at 133.

clusion. Her arguments would be after the fashion of the old nursery rhyme which used to run something like this:

“The reason why I cannot tell; I do not love thee, Doctor Fell, But this alone I know full well, I do not love thee, Dr. Fell.”

Her mind is not apparently formed so as to give logical reasons to support the conclusions she arrived at.<sup>576</sup>

“The author did not seem to realize,” Backhouse wryly notes, “the absurdity of appealing to nursery rhymes in order to prove that women were by nature illogical.”<sup>577</sup>

After the end of the First World War the Vancouver Law Students’ Annual carried an article, “The New Order”, which addressed the question of women’s exclusion from the legal profession. The nub of the issue for the author was simply that “the legal profession must change with the changing times; that the State is entitled to avail itself of all disciplined intelligence, regardless of sex”.<sup>578</sup> While the author conceded that her “feminine understanding indeed fails to follow the windings of masculine logic”,<sup>579</sup> she took the trouble to set out the “many and ingenious” arguments that men then relied upon to demonstrate women’s “alleged unfitness for the high calling of an interpreter of the law”.<sup>580</sup> In ancient Rome, we are told, “women were prohibited from pleading in other people’s cases ‘in violence to the modesty which becomes them’.”<sup>581</sup> Many modern lawyers, through “slavish adherence to precedent”,<sup>582</sup> thought no further. A handful of other “natural facts” were assumed by many male lawyers who thought there was no room in their profession for women:

We have been told that the defects in the temperament and mind will lower the standard of professional conduct; that they are unable to appreciate the fineness of man’s code of honour; that their presence at the Bar will interfere with the course of justice owing to sex influence. We are overwhelmed with the almost complete unanimity of this verdict.

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<sup>576</sup> As quoted in C.B. Backhouse, “‘To Open the Way for Others of my Sex’; Clara Brett Martin’s Career as Canada’s First Woman Lawyer” (1985) 1 Canadian Journal of Women & the Law 1 at 9.

<sup>577</sup> *Ibid.*

<sup>578</sup> Anonymous, “The New Order”, Vancouver Law Students’ Annual 1919-1920, 26 at 27.

<sup>579</sup> *Ibid.*

<sup>580</sup> *Ibid.* at 26.

<sup>581</sup> *Ibid.*

<sup>582</sup> *Ibid.*

One fervent adherent of the old order of things pleads in the alternative that in any event women should not be admitted to the practice of law, because they can never be successful.<sup>583</sup>

The author proceeds to counter arguments such as these with a mixture of logic and ridicule and by example: the article is accompanied by photographs and short biographical sketches of three early Vancouver women lawyers (Leonie (Lalonde) Anderson, Edith Paterson, and Gladys Kitchen). The three women are described by reference to their academic credentials, professional qualifications, and current practising status—just as any man might be. Elsewhere the issue of the Vancouver Law Students' Annual carries photographs of two women who served as officers of the association. Miss Winifred McKay, “pursuing her studies under Mr. Arthur M. Whiteside” was vice-president<sup>584</sup> and Miss Evelyn Seton (“under articles to Mr. L. G. McPhillips”) was on the editorial committee.<sup>585</sup>

The story of how women such as these first came to be permitted to study for the British Columbia legal profession is a sorry one that casts neither the law society nor the judicial bench of the province in good light. Just two years after Bass's letter to Pawley, the law society was confronted with Hilda S. Cartwright's enquiry as to her eligibility for the legal profession. Cartwright, a stenographer with the Russell firm at the time, forced the organized legal profession to consider its position on the matter for the first time. According to Alfred Watts, Bass “superciliously advised the Committee, ‘I do not know what the objection is that is raised to those persons being put on the rolls, except that neither the Statutes or the Rules of the Law Society authorize it.’”<sup>586</sup> The Benchers went along with Bass and slammed law's portal in Cartwright's face. In their very fine account of Russell and DuMoulin: *The First Century, 1889–1989* Christine Mullins and Arthur Harvey report that Cartwright “remained a secretary and law clerk to Finley Russell until, in 1917, she formally began her articles and . . . was called in 1921. She did estate work and other duties with Finley, and later with Alan Russell, until her retirement in the late 1940s.”<sup>587</sup> What had happened between Cartwright's rejection by the law society and her eventual admission as an articling student in lawyer 1917 had little to do with any process of gradual enlightenment. The Benchers of the law society fought

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<sup>583</sup> *Ibid.*

<sup>584</sup> Vancouver Law Students' Annual, *supra* note 578 at 33.

<sup>585</sup> *Ibid.* at 34.

<sup>586</sup> Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 at 133.

<sup>587</sup> C. Mullins & A. Harvey, *Russell & Dumoulin - The First Century, 1889-1989* (1989) at 37.

long and hard to keep women out of the legal profession. They were supported in their efforts by the judicial bench and did not give in until they were forced to do so.

When Mabel Penery French presented herself for admission to the Law Society of British Columbia in 1911 the Benchers faced a considerably more difficult issue than either the abstract question raised by Pawley in 1908 or the 1910 application of a Vancouver stenographer. French had graduated with distinction from the law programme of King's College of Law in Saint John. David Bell's outstanding account of *Legal Education in New Brunswick: A History* quotes the Saint John Globe of 1905 as reporting that:

[D]uring the last three years [she] easily led her classes in every branch and at the closing examinations made a brilliant record. Mr. [Stephen] Bustin [her principal] said Miss French was one of the brightest students he had ever met. She has a wonderful memory, a great capacity for work and is as well grounded in law as any student who has gone up for examination in recent years.<sup>588</sup>

Despite these achievements she had also won status as a fully qualified lawyer in New Brunswick from a reluctant law society forced to admit her by the legislature. That struggle had revealed her to be a formidable opponent. When the Supreme Court of New Brunswick upheld the law society's assessment that women were not "persons" and hence not eligible for admission under the terms of local legislation governing the legal profession, French resorted to a form of orchestrated civil disobedience to draw attention to her cause. According to Mullins and Harvey, she deliberately ran up personal debt and, when sued by her creditors, developed "the novel defence that, as she was not a person, she could not be sued for debt. The defence failed, but she accomplished her purpose of making one court effect a *reductio ad absurdum* of another's judgment".<sup>589</sup> As a result, a 1907 statute was passed that explicitly permitted women to be admitted to the legal profession.

By the time she applied to the British Columbia law society then, French was a law graduate and a qualified lawyer of over three years' standing who had developed a reputation as a formidable opponent. Entirely consistent with their previous decisions, the Benchers eventually told French that "in their opinion they had no power . . . to admit ladies to the practice of law".<sup>590</sup> French, who at

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<sup>588</sup> As cited in D. Bell, *Legal Education in New Brunswick: A History* (Fredericton, N.B.: Faculty of Law, University of New Brunswick, 1992) at 99.

<sup>589</sup> *Supra* note 587 at 34.

<sup>590</sup> As quoted in Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 at 133.

the time was employed by the Russell, Russell and Hannington law firm, initiated court proceedings to force the law society to admit her. Despite her obvious qualifications and the courtroom assistance of Joe Russell, French lost her case at its first hearing and on appeal. The Court of Appeal of British Columbia concluded, as the New Brunswick courts had earlier, that she was not a “person”.<sup>591</sup>

Where “law” fails, politics invariably come into play. One of the lawyers with whom French worked in Vancouver was Bob Hannington, a social friend of Senator Wallace Farris and Evelyn Farris. Evelyn Farris, described by Mullins and Harvey as “an elegant, intelligent and determined woman”,<sup>592</sup> was a powerful political force in her own right and “a strong advocate of women’s rights”.<sup>593</sup> On learning of French’s situation from Hannington she immediately launched a campaign to have the law changed. As president of the University Women’s Club, Evelyn Farris established a committee to consider the issue, contacted the press, and scheduled a meeting with provincial Attorney-General Bill Bowser.<sup>594</sup> The Vancouver Daily Province of January 19, 1912, carried an editorial suggesting that permitting women to enter the legal profession would not overturn established gender relations in the province:

Success in that as in every other profession or occupation . . . depends upon personal merit and ability . . . despite the fact that the bars have been taken down in more than one of the learned professions, the women who seek entrance are few and far between and those who achieve distinction still fewer, [which] seems to indicate that the great masses of women are more concerned with having the door opened than with walking through the . . . door.<sup>595</sup>

Despite initial protestations that insufficient time remained in the legislative session to permit the introduction of new legislation, Bowser eventually gave in to Evelyn Farris’s pressure. He returned to Victoria in late February 1912 and introduced An Act to Remove the Disability of Women so far as relates to the Study and Practice of Law. This bill passed through all three readings in the legislature in only two days and received royal assent the next. It

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<sup>591</sup> *Supra* note 587 at 34.

<sup>592</sup> *Ibid.* at 36.

<sup>593</sup> *Ibid.*

<sup>594</sup> *Ibid.*

<sup>595</sup> As cited in L.K. Yorke, “Mabel Penery French (1881-1955): A Life Re-Created” (1993) 42 U.N.B.L.J. 3 at 38.

had passed with “virtually unanimous support” of the legislature despite the opposition of the organized legal profession.<sup>596</sup>

The door was now formally opened to the admission of women lawyers. Although French immediately marched through and was soon followed by others, the prediction of the Vancouver Daily Province proved reasonably accurate. Most women did not, apparently, wish to be lawyers and most lawyers did not, apparently, want to work with women as equals. It should not be imagined that the male-dominated profession experienced an immediate feminist conversion on being forced to correct their ways. Transforming attitudes takes far longer than merely bringing about rule changes. One measure of the difficulties women faced is, paradoxically, found in the Russell firm’s extraordinarily good record as a sponsor of women lawyers. This firm’s historians have observed, that “[b]etween 1910 and Finley Russell’s death in 1939, a period when major competitors took few or no women at all, the firm engaged six women students. Behind this record, small though it seems, stood the policy of Joe and Finley Russell”.<sup>597</sup> Although this record is a tribute to the firm it also stands as an indictment of the legal profession in general that so high a proportion of the earliest women lawyers qualified through a single firm.

One of the earliest women to enter law’s portal in British Columbia was Leonie (Lalonde) Anderson. Beginning her articles in 1913, Lalonde became the first woman to qualify for the Bar entirely in British Columbia. Interviewed many decades later by Maryla Waters, Lalonde was thoroughly unimpressed by her own extraordinary career decision. “I took it in my stride”,<sup>598</sup> she recalled. In fact, a legal career was something of a fall-back position for her. At a time when most of her women peer group was opting for a more traditional career (such as teaching—“Which is, of course, a very natural thing for women, they excel at

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<sup>596</sup> *Supra* note 587 at 36-37. See also Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 at 134; J. Brockman, "Not by Favour But By Right": The History of Women in the Legal Profession in British Columbia" in McLaren & Foster, eds., *Essays on the History of Canadian Law: British Columbia and the Yukon* (Osgoode Society, 1995); Yorke, *ibid.* at 27ff; C. Mullins, "Taking the Law into Her Hands" (1987) 9 *Horizon Canada* 2540; C. Mullins, "Mabel Penery French" (1986) 3 *The Advocate* 676; C. Harvey, "Women in Law in Canada" (1970-71) 4 *Man. L.J.* 9; A. Paige, "Base Charge is Refuted: Professional Women Not Misfits" *Vancouver Daily World* (30 May 1923); R.M. Wigle, "Sisters in Law" (1927) 6 *C.B.R.* 419; E. Kelsey, "B.C.'s Portias Have Own Case to Argue" *Vancouver Province* (15 Jan. 1938) 2; W.R. Riddell, "Women as Practitioners of Law" (1918) 18 *J. Comp. Leg.* 200; M. Kinnear, *In Subordination. Professional Women 1870-1970* (McGill-Queen's, 1995); Kinnear, "That there Woman Lawyer: Women Lawyers in Manitoba 1915-1970" (1992) 5 *C.J.W.L.* 411; Backhouse, *supra* note 13; C. Backhouse, *Petticoats & Prejudice: Women and Law in Nineteenth Century Canada* (Toronto: Women's Press, 1991).

<sup>597</sup> Mullins & Harvey, *ibid.* at 37.

<sup>598</sup> Mrs. Anderson, interview by Maryla Waters, University of Victoria's Aural Legal History Project at 51.



teaching”)<sup>599</sup>, Lalonde briefly considered a career in medicine until she was put off by two uncles whose financial support would have been essential but who were “averse to women doctors”.<sup>600</sup> Her legal career was launched by her mother who arranged for S. S. Taylor, a lawyer-acquaintance, to take her on for articles.<sup>601</sup> Lalonde thought that the firm at which she articulated was “forward-looking”. It is noteworthy that Taylor’s partner Bob Smith was the son of Mary Ellen Smith, one of the prominent women of her generation and an early woman member of the legislature. It may well be, as Maryla Waters has suggested, that the presence of “a partner who was used to a woman taking a pioneering role” was a significant factor in the firm’s sponsorship of Leonie Lalonde.<sup>602</sup>

Lalonde was perhaps an unlikely candidate to attain status as British Columbia’s first home-grown woman lawyer. She was both uninvolved and uninterested in the women’s movement of her day (“It was enough,” she explained, “to want to study law.”)<sup>603</sup> and agreed with another early woman lawyer, Gladys Kitchen, that a woman’s “place” in law was probably solicitor’s work rather than litigation.<sup>604</sup> Her relations with male law students were distant but cordial—“Everybody was very pleasant. I know that they were well-bred men”.<sup>605</sup> She attended but took no part in arranging the activities of the Vancouver Law Students’ Association and worked in study groups only with other women.<sup>606</sup> Despite the time and effort she put into obtaining her professional qualification, Lalonde knew, when she married, that she wanted to have children. For her, as for so many women lawyers at that time and afterwards, this decision more than any other put career in jeopardy. She explained that “I wanted to have children so I knew that I was quite sure I wouldn’t be doing both, being a good wife and mother and practising. It is more than an average woman could do, really. And I was average.”<sup>607</sup> As a result, she quit her legal career immediately upon marriage and never again considered returning to paid employment.

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<sup>599</sup> *Ibid.* at 8.

<sup>600</sup> *Ibid.*

<sup>601</sup> *Ibid.* at 10.

<sup>602</sup> *Ibid.* at 14-16.

<sup>603</sup> *Ibid.*

<sup>604</sup> *Ibid.* The Aural Legal History Project also contains reference to Walter S. Owen’s comments that in particular, women are not suited to the barrister’s role (at 63-64ff).

<sup>605</sup> *Ibid.*

<sup>606</sup> *Ibid.* at 8.

<sup>607</sup> *Ibid.* at 46.

Many themes that come through from Lalonde's legal career persistently recur in the history of women lawyers in British Columbia and, indeed, elsewhere: the assumption that barrister's work was unwomanly; a certain necessary distance from the professional peer group; and an awful choice, which men rarely encounter, between professional career and family. Not all women who have wanted to be lawyers have been as fortunate as Lalonde. She, at least, could count on a supportive family, positive mentoring, and a peer group that was at least formally courteous as a result of being "well-bred". Others could not.

Chief Justice Nathan Nemetz told an interviewer in 1994 that, during his time at the Vancouver Law School era in the 1930s, "I think we had 15 in my class . . . and there was a woman, who for a short period couldn't take it, she just couldn't stand it. It was so male oriented . . . there were no women".<sup>608</sup> The founding of a university law faculty in 1945 represented a breakthrough of some significance for British Columbia women. One consequence of transferring legal education from an apprenticeship-based model to a university setting has been widely noted around the common-law world. The shift moves preliminary selection of future lawyers from the privacy of the law office to the more open and reviewable processes of university admissions. Reliance on ascribed traits is, as a result, displaced by meritocratic criteria. In traditionally male dominated professions—such as law—this in turn can open careers to a larger number of women.<sup>609</sup> One Manitoba lawyer told historian Mary Kinnear that when legal education in that province moved from a law society controlled school to the university it was "a door opener for women. You didn't need to find an office at the start."<sup>610</sup>

Entry to a programme of professional education has not always been pleasant for women. In the history of the professions sorry tales abound of professors or fellow students deliberately making the lives of women students in traditionally male fields as unpleasant as humanly possible. Kinnear, for example, records a pervasively misogynist culture at Manitoba's law school after the Second World War. The presumption "that the women were there to get husbands was common" and one respondent described the atmosphere as "definitely anti-feminine".<sup>611</sup>

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<sup>608</sup> Nemetz, interview by Peter Burns, *supra* note 63.

<sup>609</sup> Carrie Menkel-Meadow, "The Comparative Sociology Of Women Lawyers: The 'Feminization' of the Legal Profession" (1987) 3:4 *ISSR Working Papers*, online: UCLA <<http://www.sscnet.ucla.edu/issr/paper/issr3-4.txt>> (last accessed 11 May 2006)

<sup>610</sup> Kinnear, *In Subordination*, *supra* note 596 at 85.

<sup>611</sup> *Ibid.* at 86.

To some extent British Columbia seems, by 1945, to have put the very worst of gender bias behind it. Whether because of faculty personnel, a tradition within the university, or a local elite culture strongly influenced by the likes of Evelyn Farris and men such as the Russells who felt secure in a world that included professional women, the new law faculty started off well. The presence of women students was routinely acknowledged in formal addresses and informational material from the beginning. Both men and women graduates of the period report an intellectual and social climate that was open to the participation of women as equals. Madam Justice Mary Southin reported that she “never had any feeling at all that there was any discrimination at the Law School”.<sup>612</sup> Of the seven women in her law class “we produced two Judges of the Court of Appeal, one Administrative Judge of Provincial Court”.<sup>613</sup> Similarly, Diana Priestly recalls women and men from her class socializing together, studying together (after first year) and becoming “long-term friends in our class. Ours was quite an unusual class because we stayed friends, a lot of us”.<sup>614</sup>

It is noteworthy that Chief Justice Allan McEachern has similar memories of his law school class. He remembered about half a dozen women students: “I don’t think there were any problems at all, they were just members of the class, the same as the rest of us. I hope they felt that way, it is certainly that is the sense I had in the way we felt about them . . . that they were pathfinders, courageous persons embarking upon a new adventure for them, and . . . for women of their ilk and they were full members of the class and they participated in everything that happened.”<sup>615</sup>

It would be wrong to assume from these reports that a fully feminized legal profession had magically developed in British Columbia in 1945. Indeed, questions relating to gender discrimination, a “chilly climate”, and unequal career prospects for women continue to be of central importance to legal educators and professional policy-makers alike. Nonetheless, it is clear that a significant advance happened when the University of British Columbia Faculty of Law was established. There was nothing inevitable about this. Neither a university environment nor the return of women veterans guaranteed that women who dared approach the portals of law would be well treated. In other places, gatekeepers more terrible than those in British Columbia continued to bully and intimidate. Again, the contrast with another western Canadian law school is in-

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<sup>612</sup> Southin, interview by L. Smith, Oct. 7, 1994.

<sup>613</sup> *Ibid.*

<sup>614</sup> Priestly, interview by MacIntyre, Sept. 23, 1994.

<sup>615</sup> McEachern, interview by Franson, April 26, 1995.

structive. Mary Kinnear records that the Manitoba Law School (which by this time had repudiated all intellectual pretensions and reverted to a mere professional trade school modelled on Osgoode Hall) had a quite different ethos during the post-war decades:

[T]he dean of the law school from 1945 to 1964, G. P. R. Tallin, took what opportunities he could to deter women. As one woman described it, “When I began [in the early 1960s], the old Dean really had a lot of reservations about women going into Law. He called me in for a little chat and explained that although he knew I was clever enough to do all these things it really wasn’t suitable. I was baffled. He said, very embarrassed, ‘Well, some times of the month you just might not be up to it.’” Another woman said, “I went to pay my full year fee, and they suggested I pay only until Christmastime. I was intimidated.” Nevertheless, she remained to finish the entire year. The dean was “particularly hostile”, it was noted, and was “unhappy to have women in the class—it was a man’s profession”. One woman completed her two years in arts and applied to law, but as she was under twenty-one she needed the consent of the dean. “He refused. Because I was a woman. He didn’t hesitate to say so.”<sup>616</sup>

Despite the relative openness of the early British Columbia law faculty, women students continued, long afterward, to confront predictably mixed responses from the profession when they attempted to find articles. Two tentative generalizations seem possible. First, it seems that men who had previous experience working with women lawyers on the basis of professional equality were reasonably open to doing so again. Alexander Robertson recalled that his own attitude “on women in the profession” was shaped “very early because . . . in Robertson, Douglas and Symes there was a Miss Barbara Dunsmore who did no counsel work at all but she was an excellent solicitor. I shared an office with her for about three years and I got entirely used to the idea of women in practice and my high regard for her made me feel that women could be just as competent as men in the law.”<sup>617</sup>

Second, although some lawyers steadfastly refused to work with women (Ian Shaw told the young Mary Southin, “Well, Miss Southin, I have to tell you we’ve never had a woman student here and I don’t think after talking to my partners we are about to start”<sup>618</sup>) those men who were willing to take women as

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<sup>616</sup> Kinnear, *In Subordination*, *supra* note 596 at 86.

<sup>617</sup> A.B. Robertson, interview, Aural History Programme, British Columbia Legal History Collection Project, University of Victoria, at 125-126.

<sup>618</sup> Southin, *supra* note 612.

articling students seem on the whole to have treated them fairly and with an appropriate degree of professional respect. Very powerful forces of self-selection are obviously at play here. Mary Southin articulated to Mr. R. H. Tupper, whose father had been one of two Benchers to support the admission of Mabel Penery French in 1912.<sup>619</sup> “[T]here was,” she said, “no problem at Bull Housser . . . it was wonderful, wonderful education there.”<sup>620</sup> Similarly, Diana Priestly recalls being well treated during her Nanaimo articles: “I always thought I was quite fortunate . . . I never had any trouble either getting articles or being treated unequally. It never occurred to me that I would be.”<sup>621</sup>

The standards of equality and civility that prevailed in legal education during the 1940s were in no sense “timeless”. Socially acceptable gender relations change over time. Despite rumours to the contrary, there is no record of the University of British Columbia Faculty of Law having ever discriminated against women in admission, or of having conducted an affirmative action program to admit more women. Nevertheless, as the “second wave” of the women’s movement gathered force in the 1960s and 1970s increasing numbers of women entered law school, and expectations changed. Women students challenged the notion of a “students’ common room” (where the vending machines were located and the women students were not permitted) and a “women students’ lounge” in the basement. Women students attended social events at the law school that had hitherto essentially been “stags”, such as the annual retreat at Harrison Hot Springs, with predictable discomfort and friction.

Dean Lynn Smith, who was a student in the early 1970s, has observed that materials in the Evidence course at that time seemed to have been chosen according to the principle that, wherever possible, a given rule of evidence should be illustrated through a case involving rape, sexual assault, or some other humiliation of a woman. This pattern was fairly common at the time in North American legal education, and it began to change during the 1970s, with the arrival not only of more women students, but also women faculty members. Indeed, Lynn Smith recalls that it was when Beverley McLachlin (now a Justice of the Supreme Court of Canada) was a member of the law faculty and undertook revisions of the Evidence materials that they were changed.

One distinguished and very senior legal scholar recalled the 1970s as one of the rockiest times for women in the Faculty, reflecting the fact that there was considerable discussion and even confrontation about issues. Coming out of this,

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<sup>619</sup> *Ibid.* See also, Watts, *History of the Legal Profession in British Columbia 1869-1984*, *supra* note 6 re: Tupper’s vote in 1912.

<sup>620</sup> Southin, *ibid.*

<sup>621</sup> Priestly, *supra* note 614.

however, the first Women and the Law course was offered in the mid 1970s, when a group of students successfully persuaded the faculty to attempt it. As well, there was an attempt to persuade the Law Society that discrimination in hiring articling students based on sex, race, or other human rights grounds should be a matter of unprofessional conduct. This was motivated by the experience of some women seeking articles who had been expressly denied the opportunity because of their gender. However, the Benchers were not persuaded at the end of the day, despite the fact that it was not completely clear whether the human rights code applied either.

The integration of women into the teaching of law and of feminist perspectives into legal scholarship has proceeded on parallel lines with the integration of women into the legal profession, with a good deal of cross-fertilization in the process. Dean Lynn Smith considers that, since the 1970s, substantial progress has been made in both the academic world and the profession. Thousands of women have now graduated, and their impact on the profession and on scholarship will inevitably be felt. Curriculum changes, the infusion of women faculty, and the clarification of social norms in laws such as the Charter and human rights legislation have changed the way that law is taught and studied across Canada, and the University of British Columbia Faculty of Law has been able to play a leadership role from time to time as that process continues.<sup>622</sup>

“Substantial progress” made since 1970 is indicated not only in curriculum change and in the changed demographics of the student body and the faculty. Just as women have begun to assume leadership positions in the profession and the judiciary, they have begun to take their turn at leading law faculties. Lynn Smith in 1991 became the second woman dean to lead a law faculty in British Columbia, Professor Maureen Maloney of the University of Victoria served as dean of that law faculty from 1990 to 1993.

Two women deans mark progress indeed. So too do changes in the composition of the legal profession. “Though the profile is still predominantly male”, the Law Society of British Columbia reported that in the summer of 1995 “women have almost doubled their representation over the past 10 years, from 13.2% in 1983 to 25.7% midway through 1994. By March 1995 the representation of women in the profession stood at 26.4%.”<sup>623</sup>

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<sup>622</sup> L. Smith, "Gender Equality - Professional and Ethical Issues" (Conference of the Canadian Bar Association's Continuing Education Committee and the Task Force on Gender Equality, 1992).

<sup>623</sup> Law Society of British Columbia, *Briefings* (1994-1995 Report to the Federation, 1995).

Nonetheless, Chief Justice Allan McEachern told an interviewer in 1995, “I don’t think any of us can assume that the problem of women in the law has been solved . . . it’s far from being solved”.<sup>624</sup> Even with women making up over twenty-five percent of the legal profession, we are still far short of numerical gender equality. What is more, significant problems persist. The Canadian Bar Association’s landmark report, *Touchstone for Change: Equality, Diversity and Accountability* was published in 1993. Prepared by a distinguished task force on gender equality, it reports that in British Columbia an astonishing “98% of women and 83% of men were of the view that there is some gender discrimination against women in the legal profession”. Across Canada women lawyers tended to believe that “gender bias was widespread but subtle”<sup>625</sup> and the report makes it clear that they encounter many “controls imposed by a male-dominated profession [which] impede their progress following graduation”.<sup>626</sup>

The report also provides abundant evidence that the time has not yet come for complacency about either gender equity or race equality in contemporary Canadian law schools. Many Canadian law students encounter racism, gender discrimination, or homophobia of the most blatant kinds while pursuing their legal education. A survey of “at risk” students revealed that very high percentages had “experienced discrimination from other students . . . and outside of law school during interviews at law offices. . . . Some discrimination was also perceived from professors in law schools, but generally at lower levels than from students.”<sup>627</sup> Moreover, despite significant improvements in curriculum over recent decades, the Canadian Bar Association committee has identified the need for “further efforts . . . to add and integrate courses that address gender and minority issues”<sup>628</sup> because:

[t]he principle of equality must also be recognized in the law itself. The principle of equality makes it clear that: a male perspective is not neutral; a white perspective is not neutral; and so on. No one’s perspective is neutral. Therefore, legal education must include a diversity of approaches to the law that reflect more than just one or two perspectives.<sup>629</sup>

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<sup>624</sup> McEachern, *supra* note 615.

<sup>625</sup> C.B.A., *Touchstone for Change: Equality, Diversity and Accountability* (1993) at 56.

<sup>626</sup> *Ibid.*

<sup>627</sup> *Ibid.* at 34.

<sup>628</sup> *Ibid.* at 30.

<sup>629</sup> *Ibid.* at 31.

### “Dirty” Politics

Despite the need for ongoing efforts, 1945 did mark the beginning of a distinctly different era for the status of women and “minority” groups in the British Columbia legal profession.

Darker clouds were on the horizon, however, for freedom of political belief and values. Professional distaste for unconventional political belief acquired a new visibility and a harder edge in the immediate post-war period. This distaste was no doubt influenced by the mass-hysteria which was to become known as McCarthyism. It may be too that a strong, unspoken professional ethos had made itself powerfully felt in former times in informal ways. Small in number, the British Columbia legal profession may in the past have preserved its ideological purity simply and without unnecessary fuss: the thoroughly unorthodox would not be taken on as articling students.

The University of British Columbia, however, could employ no such admissions criteria. The university had a number of left-wing or socialist student clubs and organizations and individuals whose politics might have been deemed unacceptable to the profession at large were able to pursue three years of legal studies unhindered by the organized legal profession. Within the law faculty the left-wing students were able and willing to return as good as they received when arguments were entered into as between equals. In his 1975 book *Rankin’s Law: Recollections of a Radical*, Harry Rankin recalls that “some” of his “professors were openly hostile to my politics but many could remain objective. In general, the more establishment oriented they were, the more they felt threatened and fearful.”<sup>630</sup> None however felt it appropriate to take any punitive action in their role as professors at the law faculty. Well-known socialists such as Dalhousie’s John Willis and McGill’s Frank Scott ranked among the most capable and highly respected Canadian law teachers of the day and most of the academic law teaching profession likely had little taste for political repression.<sup>631</sup>

The law society, however, took a rather different approach. It routinely grilled left-wing students about their political beliefs when they applied for admission to articles and, when the first such student graduated from the university bachelor of laws programme, the law society went to extraordinary lengths to exclude him. That student was Gordon Martin. In a day when a very high proportion of law teachers were elite practitioners, it may well have been impossible to shield a student’s political views from the probing gaze of the law

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<sup>630</sup> H. Rankin, *Rankin’s Law: Recollections of a Radical* (Vancouver: November House, 1975) at 62.

<sup>631</sup> See G. B. Baker, “Willis on ‘Cultured’ Public Authorities” (2005) 55:3 U. of Tor. L. J. 335-360, and R.A. Macdonald, “F.R. Scott’s Constitution (Inaugural lecture)” (1997) 42 McGill L.J. 11. MacIntyre suggests that the O’Halloran judgment indicates that faculty participated as character witnesses for Martin.



society's governing body. Martin in any event, was neither given to hiding his beliefs nor to compromising them. There was, Mr. Justice Lloyd McKenzie recalled, "nothing covert . . . about him. . . . he was a doctrinaire Communist."<sup>632</sup> It would, in any event, have been hard for Martin to conceal his political identity from the Benchers even if he had wanted to. He had been the Labor-Progressive Party (that is, communist) candidate for Point Grey in the previous provincial election and, while at university, served as president of the student Communist Forum.<sup>633</sup>

When, at the end of his legal education and completion of articles, Martin applied to be called to the Bar, the Benchers of the law society put him on notice that he would be required to prove to them that he was a "fit and proper person". A inquiry before the Benchers—"this private inquisition" as Harry Rankin has it<sup>634</sup>—took place in September 1948. Garfield King appeared to represent Martin and a number of witnesses were called to give evidence as to Martin's "character". One of the witnesses called on his behalf was Lloyd McKenzie: then class president, later "Mr. Justice McKenzie". He recalled the occasion during a 1995 interview:

Now he asked me, as president of the class, to speak on his behalf as a character witness, which I did, before the Benchers. . . . and I remember being cross-examined by Senator Farris. First and last time I think I have ever been the subject of a cross-examination. He was questioning me, "Do you think he can take an oath of allegiance being a Communist and all that?" I have no idea how adequately I performed. I know that I was waiting outside the Bencher's room outside in the old Courthouse . . . all day long to be called in to give evidence . . . and the hearing for the day ended at four o'clock or something and I was told to come back the next day. While I was out in the hall I was talking to John Stanton, . . . John Stanton was a Communist at that time and the News Herald, the morning paper of the day, had a headline story about this and said that two well-known Communists, Lloyd George McKenzie and John Stanton, were waiting to give evidence . . . .

At an earlier hearing Martin had, according to the Vancouver Sun, admitted to being a communist<sup>635</sup> but refused to answer questions about his

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<sup>632</sup> *Supra* note 361.

<sup>633</sup> "'Red' Law Student Okayed by Benchers - Secret Inquiry into Political Beliefs Clears Norm Littlewood" *Vancouver Sun* (31 July 1948).

<sup>634</sup> Rankin, *supra* note 630 at 65.

<sup>635</sup> *Supra* note 633.

political views, the Sun quoted him as saying “I do not believe the Benchers have the authority to inquire into mine, nor anyone else’s politics.” He indicated his willingness to “take the barrister’s oath which requires applicants to swear allegiance to the King, and to ‘do his utmost to make known any treason or conspiracy.’”<sup>636</sup> Neither this nor a series of strong legal arguments put on Martin’s behalf by Garfield King persuaded the Benchers<sup>637</sup> and Martin was refused admission. The reason was simple. Cutting through a good deal of legal mumbo jumbo, Judge James Coady stated the essence of the law society’s position some months later when he ruled on a legal proceeding brought by Martin in an attempt to force the law society to admit him. The law society, Coady said, had decided that Martin was not “a person of good repute within the meaning of the Legal Professions Act, R.S.B.C. 1936, c. 149” for one reason and one reason only: “[W]hile otherwise satisfied with the applicant’s qualifications, the refusal is based on the finding that the applicant is a communist and an adherent to and a supporter of communist doctrines and teachings and consequently should not be admitted to membership in the society.”<sup>638</sup>

The case quickly became something of a cause célèbre. Students at the university campus mobilized behind Martin, “even”, as Harry Rankin puts it, “members of the Young Liberals who had a sense of fair play”.<sup>639</sup> The university student newspaper strongly attacked the law society as early as September 1948<sup>640</sup> and, on October 17, fully 1,500 students converged in what would now be called a “demonstration” (then, more politely, denoted a “meeting”). The Victoria Daily Colonist reported the students’ resolution: “We will ask the Attorney-General to prevent any action by the society based on political discrimination against a legally-constituted organization.”<sup>641</sup>

Nothing in the power of the students or the university was able to save Martin from the Bencher’s whim. The Courts failed miserably to live up to their role as guarantors of liberty. Judge Coady, who in effect conceded that the case involved political discrimination pure and simple, refused to look into the substance of the complaint out of deference to the autonomy conferred upon the

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<sup>636</sup> *Ibid.*

<sup>637</sup> Rankin, *supra* note 630 at 64-67.

<sup>638</sup> *Re: Martin*, [1949] 2 D.L.R. 559 at 561.

<sup>639</sup> Rankin, *supra* note 630 at 65.

<sup>640</sup> "Ubysey Hits Law Society" *Colonist* (29 Sept. 1948) 1. In this article, it is reported that the student newspaper "strongly attacked action of the British Columbia Law Society in refusing Gordon Martin admission to the Bar". "Martin had stated he presumed the refusal was based on his political views".

<sup>641</sup> "Students Ask Law Society to Explain Stand" *Colonist* (17 Oct. 1948). 1500 students attended a meeting to protest LSBC refusal to admit Martin.

law society under British Columbia's statutory scheme. "It is not," he said, "for the Court to substitute its view for that of the Benchers."<sup>642</sup> The headnote to Coady's judgment has it that the law society's action was unreviewable at least to the extent that nothing deprived the society "of its discretionary power to determine, honestly, fairly and reasonably, and from no improper motives and on no irrelevant or alien ground whether applicant was a fit and proper person and of good repute. If this discretion is so exercised, it is not reviewable."<sup>643</sup>

The matter was taken to the Court of Appeal where legal reasoning was thrown to the wind in favour of a more direct political assessment. Crudely, the reasoning adopted seems to have been as follows: "Martin is a communist. Communists lie. Martin says he is willing to take the barrister's oath and oath of allegiance. This would be expected of Communists who, after all, would lie about such a thing. Therefore he is not a fit and proper person to be admitted to the legal profession." As Mr. Justice J. A. Robertson put it, a "Communist's protestations of loyalty are not to be accepted".<sup>644</sup> Mr. Justice Bird was even more explicit in taking judicial notice of and endorsing the witch-hunts that were then sweeping Canada's southern neighbour:

It is common knowledge that governments on this continent, public and private organizations, more particularly among Trades and Labour Unions, alive to the danger of Communist infiltration and influence are now alert to the menace, and are actively moving towards its elimination.

In these circumstances I consider that the decision of the Benchers was right and that the findings made by them disclose a lawful and proper exercise of the discretion and public responsibility imposed upon them under the Legal Professions Act.<sup>645</sup>

Although no proper study of the subject has yet been conducted it seems that the Martin case is something of a low point in political gate-keeping by Canadian law societies. Certainly, the Manitoba Benchers showed no inclination to follow British Columbia's lead when a well-known young Communist veteran, Roland Penner (later provincial Attorney-General and dean of law at the University of Manitoba law faculty), decided to pursue a legal career.<sup>646</sup> British Columbia's law society continued to police the bounds of political belief, although perhaps somewhat less enthusiastically in the wake of Martin. The

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<sup>642</sup> *Supra* note 638 at 567.

<sup>643</sup> *Ibid.* at 560.

<sup>644</sup> As quoted in Rankin, *supra* note 630 at 68.

<sup>645</sup> *Ibid.*

<sup>646</sup> "Interviews Between Roland Penner and Jacob Penner" Provincial Archives Manitoba (Winnipeg: 1965).

following year, four law students were selected for a political inquisition: Norman Littlewood, Harold Dean, Ike Shulman, and Harry Rankin. Rankin's Law records that he had to appear at a hearing that he perceived as "a Star Chamber tribunal"<sup>647</sup> and a "witch hunt".<sup>648</sup> It was, he said, "the most undemocratic procedure that had ever been inflicted upon me. . . . This was simply political intimidation, the Law Society letting a whole generation of law students know that it was unacceptable to do any real thinking about change."<sup>649</sup>

Before this meeting he had been summoned to the office of Sherwood Lett, chair of the law society's credentials committee, where he was required to sign a document in the following terms.

I, Harry Rankin, do solemnly swear that I am not a communist or a member of any association holding communist views, that if called to the Bar I can take the Barristers' Oath without reservations of any kind and that I have no intention of following any communist association in the future.

That I do not and will not advocate nor am I a member of any organization that advocates the overthrow of democratic government by force or violence or other constitutional means.<sup>650</sup>

Having signed this declaration and survived the inquiry process, Rankin was called to the Bar. Littlewood, Dean, and Shulman also survived and they too were admitted to the British Columbia legal profession. Martin took up other work and fell off the legal circuit. Many years later an invitation from his former class president to attend a class reunion was politely declined: "[H]e wrote a very polite letter and said 'No, I would be a Spectre at the feast.'"<sup>651</sup>

Over time political witch-hunts have fallen out of favour. The Martin case and its surrounding circumstances, however, blemish the record of a generation of lawyers whose other achievements include the regularization of legal education, significant advances for women lawyers and others drawn from groups that had traditionally suffered at the hands of "establishment" British Columbia, and a breakdown of institutionalized racism.

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<sup>647</sup> Rankin, *supra* note 630 at 71.

<sup>648</sup> *Ibid.* at 72.

<sup>649</sup> *Ibid.*

<sup>650</sup> As quoted in *ibid.* at 70.

<sup>651</sup> *Supra* note 361.

# 10

# Buildings and Books

## **Building a Place for Learning**

In the history of education it is perhaps too easily forgotten that ideas, curriculum, teaching methods, and student social life actually need a place to happen. Formal education—legal or otherwise—needs some sort of infrastructure. Classrooms, books, library quarters, offices, support staff, telephone, books, and office equipment and supplies are indispensable to the functioning of any educational institution.

Once the infrastructure is in place its users, without exception, take it for granted. Yet its development takes an enormous amount of the time and energy of institution-builders. Whereas the earliest University of British Columbia law faculty did not have even an embryonic physical plant, within seven years the faculty boasted one of the finest libraries and arguably the best building in the country.

The evolving physical surroundings of the post-war years were an important part of the student experience of the earliest generations of university-educated lawyers in British Columbia. It was also essential work that required enormous energy on the part of the institution's founding dean.

## Status in 1945

In the first month of planning their new educational endeavour Dean Curtis, Professor Read, and the law faculty secretary, Miss Wright, worked as temporary “squatters” in the university senate chambers. Little more was in place when the faculty began its teaching programme. Lloyd McKenzie recalls that the first University of British Columbia law students began their professional education as temporary tenants of the university’s existing facilities:

We didn’t have any building. . . . the law school existed in the mind of [University of British Columbia president] Norman Mackenzie, and I mean that literally because there was no facility. There was no law school in the bricks and mortar sense. We used a room in Brock Hall, and our lectures were there. . . . We didn’t really have any facility, it was an idea. The law school was an idea. It was people. You know it is sort of a tradition of the teacher at one end of the log and the student at the other, except we didn’t even have a log.<sup>652</sup>

The chronically underfunded university’s facilities had already been stretched to the limit<sup>653</sup> when the war ended in 1945. The institution could scarcely have been less prepared for a flood of war veterans seeking an education. Further, the problem of providing physical space was considerably worsened by the severe shortages of building materials that was also a direct result of the war.<sup>654</sup> There was not the least hope of erecting even the most make-shift temporary structures to accommodate the new students. Fortunately, General Pearkes had offered to make nearby vacated army huts available to the university. During his interview for the deanship, George Curtis had discussed the problem with President MacKenzie, Professor Gordon Shrum (who had taken on responsibility for accommodation), and Jack Lee, the university’s superintendent of buildings and grounds.<sup>655</sup> Dean Curtis recalls that this group decided then “to move six of the proffered huts . . . fit them up for lecture and office space and see how they worked out”. If all went well, the law faculty would in due course get its own huts.<sup>656</sup>

The army huts worked out tolerably well and before long British Columbia’s budding Blackstones and Portias were housed in buildings of their

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<sup>652</sup> *Supra* note 361.

<sup>653</sup> Curtis, *supra* note 350.

<sup>654</sup> *Ibid.*

<sup>655</sup> *Ibid.*

<sup>656</sup> *Ibid.*

own. Two distinctly divergent accounts tell of how the “huts” arrived on campus to form the physical nucleus of the new institution. The more romantic version is provided by E. A. Lucas in an article, “The Law Building”, which was published in the *Advocate* in 1952. In this version the law faculty has its origins in a night-time raid on a deserted army camp:

Seven years ago the war ended and the young men came home to get on with their education. One bright group of them wanted to study law, and there was no law school here. Just the sort of immovable object to challenge George Curtis, backed by an irresistible force known as Norman MacKenzie. One late evening, during the dark of the moon, a number of men went to an empty army camp, sawed several of the huts in two, loaded them on log trucks and landed them on the campus. Permission to do this was said to be expected from Ottawa almost any time. Shortly afterwards, Dean Curtis guided me through mud and darkness by flashlight and his luminous grin into one of the huts.<sup>657</sup>

It may be that Lucas took a certain poetic licence in providing this description. A more matter-of-fact tone is adopted in Dean Curtis’s version of the story. It lacks entirely the elements of stealth and surreptitious visits. Nevertheless, his account too has a quietly heroic quality about it. In late October 1945:<sup>658</sup>

[T]wo forty-foot huts were brought on campus. . . . One morning I was at the office of that kindly man, Dean Daniel Buchanan, talking over some common concern when, with his habitual politeness, the Dean said to me: “I am sorry to break in. But do look out the window. There is the Law School going by.

Along the main mall a flat top was laboriously making its way onto the campus with a hut aboard.<sup>659</sup>

The original huts provided somewhat cramped but welcome quarters for students and faculty alike. Lucas recalled the huts as “now warm and bright”, with “the Dean’s Office in one small corner, closed in by some sort of screen to give it dignity”.<sup>660</sup> At first only two huts were used. Dean Curtis remembers “[t]hree miniature offices were squeezed into the end of one of them and

<sup>657</sup> E.A. Lucas, “The Law Building” (1952) 10 *The Advocate* 133 at 133.

<sup>658</sup> Curtis, interview by Murray Fraser, University of Victoria Aural Legal History Project, 1980, at 64.

<sup>659</sup> *Ibid.* See also, Curtis, *supra* note 350.

<sup>660</sup> Lucas, *supra* note 657.

shelving put along the walls”.<sup>661</sup> Within a few days an order of the Dominion Law Reports arrived to form the nucleus of a law library. Impatient and unwilling to await the arrival of university staff, the students immediately took fire axes to the shipping boxes and shelved the books themselves. Now housed and equipped in this rudimentary fashion, a tremendously important phase had been reached in the development of the new institution. University legal education in British Columbia was now tangible.

### Status in 1946

By any standard, however, the new huts were barely adequate. They would still be there the following autumn and the law faculty looked forward to the challenge presented by taking in a new entry class each year. The continual expansion of its physical “container” was therefore a pressing need in the earliest days of the faculty. Dean Curtis has recalled that:

[T]he first job when term ended in 1946, was to get two large (120 feet) huts moved . . . and put in shape for law school use. . . .

The building combining two huts functioned well—a library in one wing, six or so offices in one corner, a classroom in the other wing, restrooms discretely out of sight, even a common room for the lively exchange of legal and student gossip. . . .

. . . the surroundings which, even if cramped in humble huts, were surprisingly attractive.<sup>662</sup>

Although they were apparently “pretty crude stuff”<sup>663</sup>, the huts served their immediate purpose and were remembered affectionately by the earliest generation of students. Soon to be complemented by a new, purpose-built law building, the original huts continued in use for nearly three decades<sup>664</sup> and, as a result, are synonymous with legal education in the minds of many generations of British Columbia law graduates.

Madam Justice Southin recalls that the conglomeration of huts that constituted the law faculty in her day “consisted of one big ‘hut’ which was the library. All the books were in there and then there was another one that sort of had a ‘common room’ in it . . . and off it was a little ‘common room’ for the

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<sup>661</sup> Curtis, *supra* note 350 at 21.

<sup>662</sup> *Ibid.*

<sup>663</sup> McFarlane, interview by Sheppard, May 31, 1995.

<sup>664</sup> L. Smith, comment on her interview with M. Southin.



ladies”.<sup>665</sup> The faculty members each had “a little cubby hole” for an office and space was generally in short supply. Southin recalls that “maybe there were two rooms where you could get a place to work in but there never seemed to be an absence of the place to do your studies”.<sup>666</sup>

Even with the newly expanded quarters, however, the law faculty could not contain the growth in demand for legal education. The faculty had to resort to the expediency of trooping its students off across campus until such time as more permanent quarters could be developed. Madam Justice Southin recalls a daily trek across campus where “there were some big, great big halls that . . . must have been built right after the war, they held 150 students . . . and they were right across the campus”.<sup>667</sup> Somewhat inconvenient, perhaps, this arrangement at least kept the faculty functioning until its own permanent building could be put up.

### **Status in 1951**

The need for a new building to house the law faculty was soon apparent. Although student needs could (barely) be met by the assembled army shacks, the conditions in which the growing law library was housed was a matter of some concern. The library was quickly developing into a valuable resource yet was housed in huts that, according to army estimates, had only a twenty-minute life expectancy in the event of fire. Dean Curtis fell into the habit of making inspections of the buildings late each night as a precaution. Persuading the cash-strapped university to invest in a new building for a new faculty was, however, a difficult matter. After a “period of advocacy” that laid heavy emphasis on the danger of losing a unique collection of 20,000 or more hard-to-replace books, the university gave its approval to an expenditure of \$325,000 to erect a law building.<sup>668</sup>

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<sup>665</sup> Southin, interview by Smith, Oct. 7, 1994.

<sup>666</sup> *Ibid.*

<sup>667</sup> *Ibid.*

<sup>668</sup> Curtis, *supra* note 658 at 73ff. See also:

*Curtis*: ...you see when the building that we built in 1951 was given to us, after again, a period of advocacy, the great argument then, of course, was that by 1951, we'd accumulated a very considerable library. All of that was in army huts and the life of an army hut under fire is twenty minutes. Well, that persuaded the then Board of Governors, and my colleagues of the rest of the university, that it would be a sheer tragedy to see a library of, I don't know, twenty or thirty thousand books just go up in flames or be destroyed by water and smoke and so that's why we got money in '51. We got \$325,000 to build a building... IT was only one-third of a building. We were to get the rest of it in 1960. [never happened!].

The new building was designed to be simple and workable. Its exterior lines were clean and modern. Inside:

[t]he Main Reading Room was the centre-piece. Its deep windows gave a view which must be unrivalled—the harbour entrance in the foreground, the mountains rising behind one after the other to the distant horizon. The north light—the “artist’s light”—was what we wanted for a reading room, and was balanced by high narrow windows around the other walls. The walls were lined with books—space, on a tight budget, was at a premium—and as well [they were] in batteries of chest-high shelves arranged between tables and chairs. The floor shelves served as furniture to “break up” the floor area, and yet were not so high to cut off light from the windows. For General Assemblies and the like the free-standing floor shelves could be moved and chairs put in their place. Altogether it was an economical, efficient and pleasant facility.

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On each side of the Main Reading Room, were two lesser sized rooms, also north facing with deep windows. They served as lecture rooms in the mornings and late afternoons. For the rest of the time, being lined with books, they were reading rooms. A third room of similar size reached back to the southeast.<sup>669</sup>

The head of a Cambridge college once commented to the law dean that he thought the new law building to be “an admirable design for a petrol station” until he entered the main reading room. Thereupon the visitor’s impression was entirely transformed. He judged it to be a “magnificent Hall, one the best I have ever seen”.<sup>670</sup> E. A. Lucas, who had been a great fan of the early law huts, paid the highest complement he could think of to the new, purpose-built law school (“now largely butchered” by subsequent construction according to Curtis).<sup>671</sup> It was, he said, “a splendid dream . . . come true. The new Law Building is a glorified beautified hut!”<sup>672</sup> Others thought equally highly of the 1951 law faculty building although, unlike the unnamed Cambridge visitor or Mr. Lucas, they did not feel compelled to draw such disparaging comparisons. Diana Priestly recalls the “big central reading room” as “a beautiful room with huge windows looked out to the sea. We could see the steamers coming back and

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<sup>669</sup> Curtis, *supra* note 350.

<sup>670</sup> *Ibid.*

<sup>671</sup> *Ibid.*

<sup>672</sup> Lucas, *supra* note 657 at 133-134. [“beautified” - sic].

forth from Victoria and the mountains beyond that, a beautiful room”.<sup>673</sup> Madam Justice Southin described “the first real new Law School” as “a very nice building for us . . . it was very nice”.

## The Library

Developing an adequate law library at the early University of British Columbia was an enormous task. Little funding was available from the government of British Columbia’s start-up grant after other essential expenses were covered. A law library was desperately needed and had to be built from scratch. Few law faculties in Canada at the time had resources beyond the bare, minimal, working library. Professional law librarians were unheard of until University of British Columbia law graduate Diana Priestly assumed faculty duties in that capacity in the 1950s. When the library was first developed, Professor Gilbert Kennedy (“indefatigable as far as energy for the law school was concerned”, according to Diana Priestly<sup>674</sup>) administered it with the aid only of part-time student assistance.

The dean threw himself actively into the tasks related to acquiring library material from the beginning, determined, he said, to create the sort of “breadth-inducing research” library “on which the advancement of learning in any discipline so largely depends”.<sup>675</sup> It was often dirty work but, as they say, someone had to do it. In rebuttal of persistent rumours that he would regularly review newspaper obituaries hoping to find estates with unwanted books available for donation, Dean Curtis told Murray Fraser in 1980 that “It’s a good story. I hate to say it’s not true”.<sup>676</sup> Obituary columns and grieving families were out of bounds. But there was little else honourable and legal that the dean did not undertake to build a reputable library.<sup>677</sup> A good library is indispensable to the

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<sup>673</sup> Priestly, interview by Waters, University of Victoria Aural Legal History Project at 22. **Date???**

<sup>674</sup> *Ibid.* at 14.

<sup>675</sup> Curtis, *supra* note 350.

<sup>676</sup> Curtis, *supra* note 7 at 115.

<sup>677</sup> Priestly, interview by MacIntyre, 1994:

*MacIntyre:* Ah, o.k., so what would you do for a library?

*Priestly:* There was a library in the huts... Yes...and there were huts down there and Dean Curtis worked hard trying to get a library put together. I've heard him talking about what it was like, or course, because much of the stock had been war damaged, if it hadn't been burnt it had suffered water damage and it was very hard to get the English series. He told me once that they literally watched the death notices in the paper and whenever a lawyer had died they would immediately get in touch with the estate to see if they could buy the books.

work of any decent law faculty because, as Lucas, wrote in 1952, “the Law is in the Books. The library is the blood circulation, as it were, in the body of this school.”<sup>678</sup> Donations from all sources (including, of course, estates) were of great importance in the early years.

Attics and back lane garbage pick-ups, as well as more conventional sources were scoured in order to build up a world of legal knowledge at the University of British Columbia. Mr. Justice J. E. Clearihue called Dean Curtis on one occasion to report that the attic of an apartment house in Victoria contained a large collection of law books. “[A]rmed with a pair of coveralls,” Curtis reports that he travelled to Victoria and “went up into the attic”:

There they were, hundreds of books but the pigeons had got through the broken windows with the usual results. So I went out to Woolworth’s and bought myself a scrub brush and removed what I could from the books. But I decided we could use the books so I arranged for them to be picked up . . . several boxes were shipped over.<sup>679</sup>

On another occasion books were literally retrieved from the garbage. Returning to Vancouver from the 1946 Canadian Bar Association meetings in Winnipeg, Curtis dropped in to visit his friend M. A. MacPherson in Regina. MacPherson, who had recently moved into an apartment, revealed that he had left a set of Hansards running from Confederation to 1946 in the back lane for garbage pick-up just a few days earlier. “There was only a half an hour to train time,” according to Dean Curtis “but that was enough to solicit the help of Mr. Donald MacPherson, his son (now Chief Justice MacPherson), to retrieve the books the next morning should they still be sitting in the lane. They were still there the next morning, and with a good showing of Regina gumbo on their spines from the week-end rain, sent to us, are duly shelved in the School.”<sup>680</sup>

Efforts of these sorts paid off rapidly. Within four years the University of British Columbia law library had grown from nothing to 12,000 volumes, making it the largest law collection in Canada apart from the much older collections of McGill and Dalhousie.<sup>681</sup> By the mid-1950s the collection had reached, perhaps, 30,000 volumes.

By November 1951 the new facility was ready to be occupied. The moving job was enormous, however, and the university arranged for the faculty to be closed for a few days while books were moved over. The students would

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<sup>678</sup> Lucas, *supra* note 657 at 134.

<sup>679</sup> Curtis, *supra* note 658 at 115.

<sup>680</sup> Curtis, *supra* note 350.

<sup>681</sup> Cohen, "Condition of Legal Education" (1950) Canadian B. Rev. 267 at 302, as cited in Curtis, *ibid.*

have none of it and organized a work gang to ferry books over to the new building. Madam Justice Southin remembers that the students were organized “like a bucket brigade . . . and you got yours and the person at the end put them up on the shelf”.<sup>682</sup> Nobody was paid for the work: “we were just labourers but we didn’t know . . . it was sort of fun”.<sup>683</sup>

The move was completed in a single day. To speed things up the students had taken a chain saw to the wall of one of the huts, opening a portal at the nearest point possible to the entrance of the new building. “Enough student veterans were still around,” Dean Curtis recalled, “to make resourcefulness and self-reliance the order of the day.”<sup>684</sup> Nobody, it seems, objected to the incidental destruction of university property.

### The UBC Cases Series

A perennial problem of legal education relates to the intensity of use of a finite number of readings drawn from a large number of original sources. Students in any particular course taught by the case method will be required to read court decisions reported in any number of report series from any one of the world’s common-law jurisdictions. A very real and practical problem arises. At any given moment as many as sixty or a hundred students might descend upon a law library to read a single case that occupies only a small portion of one volume of a much larger, expensive report series. It would be necessary to carry multiple copies of many different published law reports in order to meet this predictable demand. The direct cost, storage costs, and wear on a library collection would be immense.

For better or ill, most North American law faculties have responded by calling upon their students to read excerpted cases reproduced in course-specific “casebooks”.

The University of British Columbia law faculty, as the first university-centred institution of mass education for the legal profession in common-law Canada, pioneered the development of casebooks. The faculty’s “golden age” in casebook production was memorialized by Professor A. W. R. Carrothers in a mid-1950s article aptly entitled “By the Page and the Pound”.<sup>685</sup> Casebooks began, he reports, out of necessity. The very rapid increase in enrolment during the faculty’s first years stretched its resources to the breaking point. By 1946,

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<sup>682</sup> Southin, *supra* note 665.

<sup>683</sup> *Ibid.*

<sup>684</sup> Curtis, *supra* note 350.

<sup>685</sup> A.W.R. Carrothers, "By The Page & The Pound" (195????) *The Advocate* at 145ff.

according to Carrothers, “it was apparent that the bound reports would not stand up to the foreseeable wear and tear. Besides, the case method of instruction made it desirable that there be an opportunity for both student and instructor to have the assigned cases before him in the lecture room. The answer was the case book.”<sup>686</sup> The damage to library holdings was in fact a very serious issue. Diana Priestly recalls that heavy student use of original sources in classes where no casebooks were available wrought great destruction on the library: “any course that didn’t have a casebook, like Shipping, all the old, early cases in the [English Reports] that were used in Shipping, the pages were just crumbling out of the book”.<sup>687</sup>

During a 1995 interview, Mr. Justice Lloyd McKenzie explained the teaching materials used by the early law faculty:

The library, of course didn’t exist at the beginning, . . . somehow or other, George Curtis’s secretary produced what we called “casebooks”. She had an ancient Gestetner duplicating machine, that they had discovered somewhere, it was a castoff from a law office. I remember it had purple ink and these things are ground out on butcher paper and bound in some primitive kind of fashion . . . and a very limited number of them. Your eyes would water, trying to read this blurry print, but they were cases, just a collection of cases that were brought from an assortment of different subjects, but . . . you could only look at them, you could only use them in class. You couldn’t take them home, except after nine o’clock, if you brought them back by eight-thirty or something like that. The facility we did have was the downtown law library. We had the use of it and that was a very clear advantage over the existing system, however good the law library is . . . . That brought us into contact with what was happening in the Court House.<sup>688</sup>

By 1947 the new faculty had obtained permission to use two casebooks produced elsewhere in Canada and Professor “Pappy” Read had compiled a set of materials for UBC students on “Bills and Notes”. Thus began the “UBC Cases” series. Almost half a century later it is easy to underestimate the importance of this new departure. Canadian legal publishing was nowhere near as advanced as it is now and Canada’s tiny, overworked law faculties had not yet begun to produce scholarship and teaching materials at today’s levels. In the conditions prevailing in the 1940s, the production of casebooks was simultaneously

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<sup>686</sup> *Ibid.*

<sup>687</sup> Priestly, *supra* note 677.

<sup>688</sup> *Supra* note 361.

essential to the law faculty's educational mission, a service to practising lawyers, and a contribution of some importance to Canadian legal education at large. Carrothers reported in "By the Page and the Pound":

Over nine thousand case books have been supplied to law students through the University of British Columbia Book Store since 1947. Of sixteen published books 12 were edited by members of the Faculty of Law, one was revised by permission from an earlier work, one was a supplement to an earlier work, and two were republished with permission. Behind these figures lies an unsurpassed record of service to Canadian legal education. Members of the legal profession in this province are aware of the case book programme at the Law School, for over half the profession are now graduates of the Faculty of Law. . . . And many graduates (and more senior members of the profession also) have found it convenient to use the case books as a handy reference to the leading cases on the subject covered. Indeed a number of lawyers practising in more remote parts of the province where a good law library is not readily accessible have come to rely on their case books for materials on first principles. There must be few law offices in British Columbia in which UBC Cases are unused or unknown.<sup>689</sup>

Editorship of the casebooks was never claimed by any individual during the early years—Carrothers explained that they were thought of as "the product of a community of effort"<sup>690</sup> regardless of who had actually taken on the primary responsibility for a particular set of materials. Most of the full-time faculty and a number of the part-timers took "responsibility" for seeing materials "through the press" during this period: G. F. Curtis, F. Read, M. MacIntyre, G. D. Kennedy, J. R. Westlake, A. W. R. Carrothers, L. J. Ladner, S. J. Remnant, and D. McK. Brown.<sup>691</sup>

In an era before electronic data transmission, word-processing, and photocopying, production was an onerous undertaking. The faculty relied on an outside printer, "Mr. Best" who, Diana Priestly said, "had an old Gestetner machine . . . the [original law] books went down with Mr. Best, and he did the typing straight onto his stencils".<sup>692</sup> The result, Carrothers recounted, was a

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<sup>689</sup> Carrothers, *supra* note 685.

<sup>690</sup> *Ibid.*

<sup>691</sup> *Ibid.*

<sup>692</sup> Priestly, *supra* note 677.

series of “heavy limp books, with their legal size mimeographed pages, brown covers, and shoe string binding—legal education by the page and the pound”.<sup>693</sup>

By the mid-1950s the University of British Columbia’s heyday as a producer of casebooks was over. Although their materials were then used in fourteen courses at eight Canadian law schools, Carrothers noted that a number of converging forces militated against the faculty retaining its pre-eminence in this field. It was beginning, he said, “to appear that case book production at UBC has passed its peak”. The reasons were varied: “decreased enrolment, increasing costs of production, and the understandable desire of law teachers in other Canadian universities to edit for publication and even as commercial ventures case books of their own”.<sup>694</sup>

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<sup>693</sup> Carrothers, *supra* note 685.

<sup>694</sup> *Ibid.*



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# The Modern Web of Legal Education

## **The Expanding Law School**

By the mid-1950s legal education in British Columbia was very different from a decade earlier. The most dramatic changes by far concerned the rapid development of the programme of professional legal education at the University of British Columbia. Each spring the law faculty routinely graduated many more lawyers than had ever previously qualified in the province in any single year. Graduates had inundated the profession and made up fully half of the membership of the provincial law society. Even after the surge of veterans had run itself out, student numbers stabilized at just over two hundred (in all three

classes) throughout the 1950s.<sup>695</sup> The expanding post-war economy absorbed them all with unanticipated ease.

In a few years the campus lawyers had progressed from homelessness to squatters occupying a collection of humble army-surplus huts. From those humble origins in turn they had risen to their 1951 status as lords and ladies of a magnificent, custom-built manor overlooking Howe Sound and the coastal mountains of Vancouver's north shore. The law library had grown during the same period from a mere two volumes (which belonged to Dean Curtis and Professor Read) to the finest collection in the country. The full-time faculty complement had grown beyond all precedent. Although no institution of legal education in common-law Canada had previously had more than four full-time faculty (Dalhousie's pattern was "three men and a boy", that is three genuine full-timers aided by one junior instructor on limited term appointment), the University of British Columbia had seven professors on staff by 1949. Even in the face of declining enrolments, the faculty continued to grow as Dean Curtis and University of Toronto Law Dean "Caesar" Wright "whipsawed" their universities to their mutual benefit. The full-time faculty stood at fourteen by the end of the 1950s. The innovations introduced in 1945 had carried curriculum considerably beyond the Canadian Bar Association's "standard curriculum", and the new faculty produced the tremendous output of teaching materials necessary to make the "case method" workable.

University legal education had become securely established as the sole means of qualifying for the legal profession in British Columbia despite its uncertain origins only a decade earlier. The new institution held a place of pride both in relation to the local legal profession and among leading law faculties in North America and the Commonwealth.<sup>696</sup> "On the whole," Dean Curtis recalled, "the decade of the 1950s within the law school was a period of calm and settled growth after the excitement, the improvisations, and the scarcities of the beginning period."<sup>697</sup>

Although this history has principally traced the origins of contemporary university legal education in British Columbia, it would be wrong to leave the impression that the story of legal education ends with the stabilized and secure

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<sup>695</sup> Curtis, interview by M. Fraser, University of Victoria Aural Legal History Project, 1980 at 71.

<sup>696</sup> Curtis, *supra* note 350 at 81. Note also:

"The settlement of the basic structure of modern Canadian legal education is what, above all, characterizes the decade of the 1950's... The first segment of the progression from student to practitioner is a period of non-legal university studies of not less than three years duration. ... Then comes university law school for three years. ... **Wes - note further discussion of articles/PLTC at 84ff.**

<sup>697</sup> *Ibid.* at 33.

university law faculty in the 1950s. Time does not stand still and legal education has never been confined to the teaching programmes of university law faculties. The modern “web” of legal education has stretched out in several directions.

First, the past several decades have seen continuing changes in the law faculty curriculum. Diana Priestly recalls that during her time on the University of British Columbia faculty (1953 to 1963) fairly dramatic changes took place: “[W]e had suddenly taken on five or six young faculty members and had sectioned the classes. We were no longer teaching the big classes and they had brought in the idea of having some choice in the courses for the students”.<sup>698</sup> New faculty, “were fresh from graduate school . . . [and] wanted to do small seminars in their particular subject interests”.<sup>699</sup> Curtis recalled that Professor Carrothers taught the first seminar offered at the law faculty. It was a “great success” and resulted in the faculty trying “to add . . . more seminars which allowed you to pick subjects that don’t fall into the old conventional pattern”.<sup>700</sup> More ambitious reforms were possible again in the 1960s, largely because faculty resources had grown, it was possible to keep class size within reasonable limits, and sufficient faculty time was freed to permit both research and the intensive class preparation required for advanced specialist seminars.<sup>701</sup>

The curriculum of the 1950s was viewed retrospectively as “pitifully sparse” by Dean Curtis.<sup>702</sup> “Practically nothing but the ‘core’ subjects were offered,” he recalled. “Doctrine ruled and analysis dominated.”<sup>703</sup> One University of British Columbia law student of this era later expressed grave dissatisfaction with the focus on core subjects. It was, he thought, “the great weakness” of legal education at the time “that it was never truly theoretical yet it was never really practical. All we did was court of appeal judgments.” The result, according to this critic, was that students did not learn the practical

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<sup>698</sup> Priestly, interview by Waters, University of Victoria Aural Legal History Project at 27. **Date???**

<sup>699</sup> *Ibid.*

<sup>700</sup> Curtis, *supra* note 695 at 88.

<sup>701</sup> *Ibid.* See also, Curtis, *supra* note 350 at 29-30:

As well, at long last, the expansion of faculty enabled us to make a beginning with seminar offerings in selected subjects which lend themselves best to small group instruction. In its earliest days legal education was an undergraduate programme. But as each year passed, law became more and more an intrusive and complex discipline. Moreover, as entrance requirements to law schools rose and the pressure of students who sought entry to the profession forced the threshold of entry to law school higher and higher, law school instruction came closer to graduate level. In other disciplines, at graduate level, seminar and small group instruction is a norm.

<sup>702</sup> Curtis, *supra* note 350 at 78-79.

<sup>703</sup> *Ibid.*

requirements of legal work but simultaneously failed to obtain any significant understanding of “history or comparative law or jurisprudence or any kind of conceptual analysis of the role of law in the community”.<sup>704</sup> Looking at the 1950s curriculum from the other side, however, even this dissatisfied consumer of legal education was prepared to concede the benefit of “the Harvard–British analytical approach” as providing a powerful training in “legal analysis”.<sup>705</sup> Similarly, Dean Curtis has expressed his view that the established curriculum of the period had very real advantages despite its limitations. The “decisional law”, he said, was subjected to “sharp evaluation in the classroom”. “[I]t was accepted that one of the principal roles of university law schools was to subject the cases to close and critical examination. The case method of instruction, widely used, lent itself to the dissection of received doctrine, and of its strengths and weaknesses.”<sup>706</sup>

Even as the University of British Columbia law faculty was settling into a comfortable routine, new currents were welling up in the world of legal ideas and Canadian society was undergoing massive change. Both the professional and the scholarly context of legal training were being transformed. Massive growth of the university sector, the increasing, endemic “professionalization” of Canadian society, and the beginnings of the many cultural revolutions known retrospectively simply as The Sixties were just around the corner. Calls for greater “relevance” in law school, student choice, and an expanded curriculum were soon heard. The University of British Columbia Faculty of Law, along with other leading Canadian law schools, incrementally expanded its course offerings, developed new seminars, and offered “the extensive curricular choices that are now the common feature of modern legal education”.<sup>707</sup>

An important thread in the transformation of Canadian legal education during the 1960s and 1970s has its origins in discontent with legal education at the University of British Columbia and McGill. It drew its intellectual inspiration from the law and social science stream associated with the Yale Law School of the 1950s, and was eventually played out to its fullest in the creation of a new, highly innovative law faculty at the University of Victoria. In 1964 a young McGill law professor published an article that had been fermenting within him since his student days at the University of British Columbia a decade before. Published as “Legal Education at McGill: Some Problems and Proposals”

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<sup>704</sup> R. Cheffins, interview by M. Waters, University of Victoria Aural Legal History Project, 1984, 84.

<sup>705</sup> *Ibid.* at 85.

<sup>706</sup> Curtis, *supra* note 350 at 78-79.

<sup>707</sup> *Ibid.* at 32-33.

((1964) 10 McGill Law Journal 126), the article communicated a profound discontent with the state of Canadian legal education. Its author, Professor Ron Cheffins, recalled his dissatisfaction during a 1981 interview with Murray Fraser. He had one key objection:

[M]y objection to law schools as I had seen them in Canada was that they were neither intellectual on the one hand, truly intellectual and academic on the one hand, nor truly practical on the other. It struck me that they fell between the two stools, in that they were not inspiring in terms of ideas and yet they didn't teach you how to do very much other than argue Court of Appeal cases. I guess my basic idea was to try to make universities more intellectual in the sense of trying to relate law more to its political, social and economic environment.<sup>708</sup>

The Bar in effect exercised too much influence on Canadian law faculties. Cheffins told Maryla Waters in 1984 that the overstretched full-time faculty of the early 1960s had not been able to put “any real thought” into curriculum. His student impression was that “the Bar simply said ‘Cram as many rules into these kids as you can and ship them down here to article.’ It seemed to me as if they were trying to cover the entire spectrum of law in three academic years with virtually no thought given to what the hell they were doing.”<sup>709</sup> More specific concerns related to the absence of any unifying theoretical framework, over-reliance on final examinations, too few seminars, limited student choice, and a monotonously repetitive programme: “[d]reary mimeographed casebooks, case after case after case. No Jurisprudence, no higher overview of law. . . . Approximately thirty fragmented subjects with no linkage between one and the other.”<sup>710</sup> It is telling that even one student’s perception of the curriculum could be so markedly different from the high aspirations of his teachers. The tremendous pressures on early full-time faculty and the absolute necessity of justifying themselves to an under-educated professional constituency (as late as 1967 an outside committee explained that “tensions between the practicing profession and the academic law teachers” in British Columbia was “in part attributable to the fact that very few of the seniors in the profession have had an academic law school education”<sup>711</sup>) meant that university law faculties of the 1950s sat uneasily between the world of practice and the world of ideas. Law

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<sup>708</sup> R. Cheffins, interview by Murray Fraser, University of Victoria Aural Legal History Project, 1981, 82.

<sup>709</sup> Cheffins, *supra* note 704 at 53.

<sup>710</sup> *Ibid.* at 44.

<sup>711</sup> Corry, *Report of Griswold, Prosser and Corry* (UBC Archives, Box 7-18) at 2.

faculties “right across the country” were similarly situated and Cheffins found “the same nonsense” when he arrived to teach at McGill.<sup>712</sup>

“Legal Education at McGill: Some Problems and Proposals” was written as a heartfelt critique of the status quo. Time frequently catches up with the most outrageous of ideas and most of Cheffins’s proposals were in fact accepted by every credible law faculty in North America during the 1960s and 1970s. As a result, ideas that now seem modest or even commonplace “would have been regarded as quite radical and far reaching”<sup>713</sup> in 1964. These ideas centred on developing truly “national” programmes of legal education, introducing some significant student choice to the curriculum, providing a sophisticated education in the legislative process, and developing interdisciplinary approaches to legal education.<sup>714</sup> The ideal was a law school that encompassed law in all its forms, prepared graduates for all the careers that they might reasonably be expected to enter, and was thoroughly, absolutely, grounded in the world of scholarship and the university.

The sorts of ideas Cheffins expressed found fertile ground in Canada at the time—to some extent contrary to his expectations. A Report of the Curriculum Committee to the Faculty of Law, University of British Columbia in February 1964 resonates with similar themes.<sup>715</sup> The report indicates that, with massive increases expected in student enrolment as the baby boom approached university age, the law faculty was “at a decisive stage in its history”.<sup>716</sup> A key portion of that report merits quotation at some length for it indicates the direction not only of changes that were immediately implemented but also the terrain through which battles over curriculum have been contested at most Canadian law faculties ever since:

We are a University Faculty, part of a community dedicated to the disinterested pursuit of knowledge and ideas in a spirit of free inquiry. In determining what is studied how, and by whom, we should be unhampered by any restrictions other than the limitations of our own physical and intellectual resources. But we are also a professional Faculty, charged with the responsibility of producing men and women equipped for the profession of law. Since the majority of our graduates do in fact enter the

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<sup>712</sup> Cheffins, *supra* note 704 at 45.

<sup>713</sup> *Ibid.* at 94.

<sup>714</sup> *Ibid.*

<sup>715</sup> *Report of the Curriculum Committee to the Faculty of Law, University of British Columbia* (UBC Archives, Box 7-15).

<sup>716</sup> *Ibid.* at 1.

practice of law in this province we must have in mind the needs of the practitioner. But the services of lawyers are demanded in other capacities as well—industry, government and the universities—and we have a responsibility to ensure that our graduates are capable of meeting these demands.

All these functions are complementary. The lawyer is not merely a technician engaged in keeping a client's affairs in order. He is a professional man with obligations to his profession, the court, the state and society, as well as to his client. He thus requires not only skill and knowledge but wisdom and understanding. Far from being a series of abstract propositions, the law is intimately related to the problems of social life. If not the most, it is unquestionably a most important form of social control. The legal process is a dynamic and creative one that shapes, is shaped by, and secures the basic values and institutions of the community. The doctrines and verbal propositions commonly called law have meaning only in the social context in which they are used. Legal rules do, however, have a compulsive force of their own. They constitute order in a changing society; both order of the moment and a means to orderly change.

In order to play the full role of the lawyer in the community our graduates must acquire more than a knowledge of doctrine. This they must know. But to deal with the law as a practitioner, to act as a policy-adviser and policy-maker in the community, the lawyer must understand the forces—whether political or economic, social or psychological—which shape the law and are expressed through it. He must understand the relationship between a rule and the reasons of social policy—whether in 1763 or 1963—which called it into existence and justify its survival—if in fact it is justified. He must understand the nature of law, and its process of “becoming”—that its “black-letter” rules always need reformulation.<sup>717</sup>

Interestingly enough, the 1964 committee thought the teaching method that had defined the distinctiveness of the original British Columbia law faculty now stood as an impediment to improvements in legal education. The “case method”, they reported, militated against the kind of legal education they sought to introduce. While it was very good for teaching “critical analysis” and probably “the most effective method of study in a law school”, it needed to be supplemented by other approaches and other sorts of assigned readings, the committee thought.

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<sup>717</sup> *Ibid.* at 5.

“What is required,” they said, “is the accumulation and introduction of new materials for the study of problems in a broader perspective. This would stimulate a freer spirit of inquiry and would alert the students to the wider framework in which the law operates.”<sup>718</sup> The new curriculum, the committee recommended, should develop a professional education directed toward three related ends: teaching the “basic doctrines, concepts and principles” of law; training in legal skills (including, they noted with regret, the need to teach law students “to communicate in the English language”); and teaching future lawyers to understand the social context of law.<sup>719</sup> The “social context of law”, though anticipated by both the early Canadian Bar Association’s “cultural curriculum” and the innovations introduced by the early “Curtis faculty”, took on a new spin in the 1960s:

[T]he student must see the functions of law and lawyers in society as they have evolved over the centuries and he must acquire some framework of analysis which will give a more comprehensive meaning to law in its substantive and procedural particulars. He must learn to see the law in its total social context; to be aware of its uses as an instrument of social control in both the municipal and international arena, to be sensitive to the lawyer’s potentialities and responsibilities as a policy-maker and policy-adviser and to realize<sup>720</sup> that value-judgments are involved at every level of the legal process.

### A New Law Faculty in Victoria

Ironically, in light of what in fact transpired, Cheffins thought in 1964 that it would be impossible to implement changes of these sorts at any existing law faculty.<sup>721</sup> He wrote to Malcolm Taylor, president of the University of Victoria, about establishing a law faculty at the then-new university and in 1965 moved west to take up a position as associate professor in the department of economics and political science. Cheffins clearly understood his appointment to bring with it an explicit mandate to develop a faculty of law. He expected the task to take half a decade to complete and thought himself fully prepared for the challenge facing him. Little did he anticipate the unpleasant surprise that awaited him. He recalled:

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<sup>718</sup> *Ibid.* at 6.

<sup>719</sup> *Ibid.* at 7.

<sup>720</sup> *Ibid.*

<sup>721</sup> Cheffins, *supra* note 704 at 97.



I was absolutely horrified to find that when I arrived in Victoria, the very first letter in my box, was a carbon copy of a letter which Malcolm Taylor [had] written to the Law Society of British Columbia assuring them that I was not here to start a new law faculty. . . . So almost on the first day of my arrival I felt that my position had been undercut.<sup>722</sup>

This must have been a devastating blow to an individual who at mid-career had left a secure faculty position at one of Canada's great universities, relocated his family, and suffered all the predictable stresses and disruptions of a major move in order to launch a new type of law faculty.

Despite so unfortunate an initiation, Cheffins launched into discussions about starting a new law faculty. Brian Smith, then a well-established Victoria barrister, "embraced this idea wholeheartedly"<sup>723</sup> and a rapidly expanding circle of professional acquaintances expressed enthusiasm for the idea. Bill McIntyre (later appointed to the Supreme Court of Canada) and Lloyd McKenzie (later appointed to the Supreme Court of British Columbia) supported the idea. Lloyd McKenzie spearheaded efforts to develop support among the Victoria legal profession. After a good deal of effort, the creation of a law faculty was approved by the university in 1969. At that point difficulties not directly related to the issue of legal education distracted the University of Victoria for several years. In the winter of 1972–1973 support came from unexpected quarters. Alex MacDonald, the new provincial attorney-general, expressed his interest in seeing a second law faculty established in British Columbia. This was "a complete and total surprise"<sup>724</sup> to Cheffins. In the spring of 1973 the provincial cabinet approved funding, the appropriate university committee was established, a dean and librarian hired, and one of Canada's newest and finest law faculties developed at break-neck speed. The new dean, Murray Fraser, moved quickly to appoint faculty, establish a curriculum, and take all the other steps necessary to launch a major new educational endeavour. In September 1975—thirty years after the opening of the University of British Columbia law faculty and a half-century after the Victoria Law School had foundered—legal education began at the University of Victoria.<sup>725</sup> The new faculty very quickly established a reputation for excellence that is highly respected both across Canada and internationally.

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<sup>722</sup> *Ibid.* at 102.

<sup>723</sup> *Ibid.* at 109.

<sup>724</sup> *Ibid.* at 157.

<sup>725</sup> See "School Profile", online: University of Victoria <[http://www.law.uvic.ca/Admissions/school\\_profile.php](http://www.law.uvic.ca/Admissions/school_profile.php)> (last accessed 11 May 2006).

## Innovation in the Teaching of Law

Meanwhile, across the Georgia Strait, curriculum innovation had continued at the University of British Columbia law faculty. A November 1969 Report of the Curriculum Committee of the Faculty of Law, University of British Columbia endorsed the 1964 reforms. The Ontario law society had just loosened its reins on Ontario law schools, opening the doors to curriculum innovation across the country—and the University of British Columbia committee expressed relief at being “freed for the first time from the shackles of Ontario”.<sup>726</sup> Further innovation was proposed. The committee thought the “total range and content” of courses should be increased and, in particular, that it was necessary to overcome an existing “heavy bias toward private law”. “[I]t could almost be argued,” they said, “that the present curriculum forces a student toward a specialization in commercial law and limits his ability to obtain a general legal education.” Importantly, it was emphasized that “[t]he boundaries of legal studies are not fixed and immutable” and that law should reach out to the social sciences much more than had previously been the case. The committee emphasized that “we should seek the assistance of teachers in other disciplines in establishing courses which are of immediate relevance to lawyers in that they involve legal problems (e.g., Law and Psychiatry) even though the courses span several University disciplines”.<sup>727</sup> As a result, the number of compulsory subjects was reduced, room was opened up for student choice, and a much expanded range of courses and seminars were developed.

The observations of the two University of British Columbia curriculum committee reports and the process by which the University of Victoria law faculty was developed serve as useful reminders of an important point. Ron Cheffins’s appointment to teach political science during the mid-1960s is reminiscent of the appointment nearly fifty years earlier of another lawyer to teach in an arts faculty. Cheffins, like Henry Angus at the University of British Columbia at the end of the First World War, taught law-related courses to many students who never aspired to become lawyers. Just as law is pervasive in our society, so too legal content pervades the university curriculum.

Even the most cursory survey of any contemporary university calendar reveals that law cannot be neatly confined to a professional school. A good deal of “legal education” takes place in British Columbia universities entirely outside the law faculties. The accompanying tables indicate that many courses taught to

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<sup>726</sup> *Report of the Curriculum Committee of the Faculty of Law, University of British Columbia* - Nov. 1969 (UBC Archives, Box 7-13) at 2.

<sup>727</sup> *Ibid.* at 5-6.

students in a wide range of programmes at both the University of British Columbia and the University of Victoria have substantial legal content. The list would no doubt be considerably larger if it had been developed from a review of detailed course descriptions so as to ferret out every course that had any legal content whatsoever. Law impinges on every aspect of human life and, therefore, on every humanity and social science discipline.

British Columbia's most coherent programme in legal education outside of the two law faculties is provided by Simon Fraser University's School of Criminology. With over twenty full-time faculty engaged in teaching and research in relation to "law and society", the school is an important Canadian centre of legal studies. Degrees are offered at both the undergraduate (bachelor's) and graduate (master's and doctoral) levels. The programme makes no attempt to imitate a professional law school curriculum and its graduates earn no qualification toward the practice of law. Nonetheless, they do undertake an extended, rigorous "legal education" and as such are, equally with professional school students, heirs to earlier programmes that form an important part of the heritage of professional legal education in British Columbia.

Finally, a good deal of "legal education" takes place outside the walls of universities altogether. The British Columbia legal profession participates both in an extensive continuing legal education programme for practising lawyers and in an extremely well-developed professional legal training course required of all articling students.

Non-professional Law Courses at the University of Victoria in 2005-2006 <sup>728</sup>		
TITLE (DEPARTMENT/DEGREE PROGRAM)		
Commercial Law (Business)		
Industrial Relations (Business)		
The Canadian Constitution (Political Science)		
Constitutional Law and Politics (Political Science)		
International Law (Political Science)		
Sociology of Law (Women's Studies)		
Engineering Law (Engineering)		
Local Government Law (Public Administration)		
Administrative Law and Federalism (Public Administration)		
Local Government Law (Public Administration)		
Philosophy of Law (Philosophy)		
Law and Social Services (Social Work)		
Legal Skills for Social Service Professionals (Social Work)		
Non-professional Law Courses at the University of British Columbia in 1994		

<sup>728</sup> See letter from Dean David Cohen, Dec. 1, 1994.??????

TITLE (DEPARTMENT/DEGREE PROGRAMME)
Engineering Law and Contracts in Civil Engineering (Civil Engineering)
Legal Aspects of Project and Construction Management (Civil Engineering)
Topics in Law (Business Administration)
Real Property Law (Business)
Introduction to Business Law (Business)
Managing the Employment Relationship (Commerce)
School Law (Educational Administration)
Health Care Law (Health Care And Epidemiology And Commerce)

TITLE (DEPARTMENT/DEGREE PROGRAMME) (Continued)
Administration of Collective Agreements [arbitral jurisprudence] (Commerce and Business Administration)
Topics in Business Law (Commerce and Business Administration)
Income Taxation (Commerce and Business Administration)
Tax and Estate Planning [laws and cases] (Commerce and Business Administration)
Labor Relations (Commerce and Business Administration)
Commercial Law (Commerce and Business Administration)
Government and Business (Commerce and Business Administration)
Law of Business Associations (Commerce and Business Administration)
Business and the Administration Process (Commerce and Business Administration)
Employment Law (Commerce and Business Administration)
Land Law (Commerce and Business Administration)
Air Transportation [international law and regulations] (Commerce and Business Administration)

Income and Other Taxes (B.C. Statutes)  
(Commerce and  
Business Administration)

Corporate Reorganizations (Commerce and  
Business  
Administration)

International and Comparative Labor Relations  
(Commerce and Business Administration)

TITLE (DEPARTMENT/DEGREE PROGRAMME) (continued)
Seminar in Taxation (Commerce and Business Administration)
Law and the Arts (Commerce and Business Administration)
The Legal Context of Planning (Community and Regional Planning)
Seminar in Real Property Development (Community and Regional Planning)
Urban Infrastructure Planning and Development (Community and Regional Planning)
Influencing the Policy [legislation] (Community and Regional Planning)
Contemporary Perspectives on Planning Law (Community and Regional Planning)
Economic Analysis of Law (Economics)
Public International Law (Political Science)
Crime and Society (Sociology)
Sociology of Crime and Justice (Sociology)



Beyond the legal profession, law today is taught through public legal education programmes, in high schools, and as a necessary part of the formal professional training required of accountants, paralegals, real estate professionals, notaries public, insurance brokers, and many, many others.

### **Looking Forward**

Although few things remain constant in life, two features of legal education recur. First the history of legal education, along with the history of the profession in general, is quickly forgotten. In the workaday world of legal practice the current file demands the fullest possible attention. Many lawyers like to imagine that they are heirs to a noble and long tradition, but few in fact have the time or inclination to learn about the profession's past. It is routinely presumed to have been much like the present although probably not quite so good! "History" and living memory become co-extensive. Living memory is both short and fallible.

The second notable feature of legal education is that its future has always proved unpredictable. Law is too closely associated with politics, culture, technology, value systems, and social life to be immune from "outside" influences. The best programmes of legal education constantly re-invent themselves in response to changing social and legal conditions. It is therefore no more possible to project the future of legal education than it is to predict economic cycles, political victories, or future developments in technology.

Legal education in British Columbia in all its forms stands well prepared to adapt to whatever challenges are thrown its way. With two outstanding law faculties each of which enjoy the active support of the practising profession, a much-admired "bar admission course", a world-class school of criminology, ongoing professional development through continuing legal education courses, and a plethora of non-professional university "law" courses, British Columbia at century's end is a far, far different place from the marginalized province that only sixty years ago stood in danger of losing both its professional trade school and its solitary university.

The occasion of the fiftieth anniversary of the creation of the province's first law faculty is time to reflect on the achievements of the past, a time to contemplate the role of law and lawyers in Canadian society, and a time to plan for the challenges of the future.

The last word properly belongs to the University of British Columbia's original law dean. In 1980 George Curtis explained to Murray Fraser, then dean of the University of Victoria Faculty of Law, that "law schools are not teaching or laying the foundations for practising tomorrow morning. You've got to think twenty years ahead if you can."<sup>729</sup>

That, in a nutshell, is history's lesson. It is also a considerable challenge for the future.

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<sup>729</sup> Curtis, *supra* note 1 at 87. See also Curtis, *supra* note 1 at 156-157:

[F]irst of all, [I would like my contribution to legal education in Canada to be remembered for] making good the case for a university law school, the present system in Canada, at a time when that was still very much an issue, when people divided and divided with passion on the subject. That would be the first, making that case by, not only by advocacy, but above all by demonstration that this was the right system.

The second, I think, would be this. That I tried never to lose sight of the fact that what was wanted was a quality law school. It would be wrong to settle on something parochial and merely a service school. It had to have a large view of the profession and the place of the profession and the responsibilities of the profession both individually and collectively to the general national and international good. I am very, very persuaded of that. That's what I'd wanted - that was the effort with pretty small resources at first and never very ample resources. ...I still say that legal education in Canada is not supported as fully as it should be. It's much more important than people regard it, I think. We need to - there is still much to be done.