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The University of New Brunswick Faculty of Law

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Approaching twenty years ago Dean Ryan Q.C. (now Mr. Justice Ryan of the Federal Court, Appeal Division) described concisely¹ the development of the institution from a professional training school to a University faculty within the old, established provincial University.² He dealt successively with the make-up of the student body, the growth of the curriculum, the educational background of the teachers and mentioned the stresses and strains of growth. It is now appropriate to bring all of that information up to date.

At the outset it must be observed that the transmogrification from training school to department within the academy has taken longer than was anticipated. It is only in very recent time, and after some debate, that the Faculty reasserted its operating principle, as an integral component of the University community, to be:

“The Faculty of Law provides a liberal and professional education in law, which education is to prepare graduates for business and government service and the practice of law and, for any public or private career in which a knowledge of the legal process is necessary.”³

The attendant alteration in the relationship between Faculty and the Bar has not been achieved without some minor friction. There can be little doubt that when the Deanship of the School and the Presidency of the Bar Council were personified in one individual,⁴

* Dean, Faculty of Law, University of New Brunswick.

1. Ryan, “The University of New Brunswick Faculty of Law” (1965), 16 U.T.L.J. 172-175. Mr. Justice Ryan served as Dean from 1956 to 1971; he was succeeded by the late Professor G. McAllister Q.C. 1972-1974; Dean Alan Sinclair Q.C. held the position from 1974-1978 before accepting the post of President of Acadia University, N.S.; Professor Richard Bird was Acting Dean during the year 1978-1979 in which latter year Dean Edward Veitch began a five-year term. For another statement on the place of the University of New Brunswick Law School in the legal education system of this country see Veitch, “Pride or Prejudice: The Choices for the Smaller Law School” (1981), 30 U.N.B.L.J. 208-225, and generally, “The Vocation of Our Era for Legal Education” (1979-80), 44 Sask. L. R. 19-37.

2. The University of New Brunswick traces its origins to the year 1784 and as such lays claim to being the oldest public university in North America.

3. “Response of the Faculty of Law to the Report of the President’s Committee on the Future of the Faculty of Law, 1980” (Nov. 1980 U.N.B.).

4. The late Dean George McAllister Q.C. 1972-1974.

relations between the teaching and practicing branches of the profession were close. The separation of the groups in recent years has resulted in misunderstandings as to their differing purposes and functions. It has been necessary to reiterate the purpose of the law school to be the making available of an education in law to all persons meeting the school's entry requirements, and to underline that that of the professional organisation is to certify only those persons whom it believes to be qualified to practice law in the best interests of the people of the jurisdiction. Thus when controversies have erupted over such as lawyer-saturation⁵ it has had to be established that decisions on numbers lie with the professional society and not with the University Faculty. Equally there have been occasional distempers when the practicing organisation has sought to deem certain courses necessary for certification, which scheme, if implemented, would have placed pressure on the Faculty's scarce manpower, and which clashed with the School's notions of a well-rounded graduate.⁶

The re-establishing of closer links between School and Bar has begun with the setting up of a Bar-Law School Liaison Committee⁷ which will concern itself with such crucial matters as competency of graduates, curriculum development and professional responsibility. Hopefully this group of teachers and practitioners will function after the fashion of the advisory committees which have operated successfully in securing harmony between the professional engineering societies and their University counterparts. In addition the law teachers can close the gap between themselves and the practitioners by increasing their involvement in the continuing legal education of the Bar which programmes increase with every year.

Of course one other cause of change in the relationship was the establishment in 1978 of a sister law school at the Université de Moncton, offering instruction in the common law in French. Clearly the setting up of a second law school brought to an end U.N.B.'s "special role in legal education in the Province" (since 1892) which was recognized by Dean Ryan. Despite the contrary recommendation of Dean D.A. Soberman in 1976,⁸ it must now be realised that the francophone law school was essential to meet the political, economic and social aspirations for french-speaking New Bruns-

5. Are There Too Many Lawyers? (Nov. 12-13 1981, London, Ontario).

6. Motion presented to the 1980 A.G.M. Barristers' Society of New Brunswick by the Committee on Legal Education listing twenty-five compulsory courses.

7. Adopted by the Bar Council, March 15th 1982.

8. Report to the MPHEC "Legal Education in the Maritime Provinces" (1976)

wickers. On the other hand at the time many agreed with the Soberman rationale for the expansion of U.N.B.: - "A law faculty with both French and English language education, planned to accommodate 350 students or so, would be an attractive undertaking, capable of making a major contribution to legal education in Canada."⁹

Presently both law schools must now work out just how they are to meet the growing integration of both official languages in the practice of law. The Report of the Barry-Bastarache Committee¹⁰ is now before the membership of the Bar who will be asked to vote on the forty-eight recommendations, a good number of which are non-controversial. However, many from both linguistic groups have expressed reservations with two of the proposals:

Rec. 13: All proceedings shall be in one language only. The lawyers shall address the Court in the language of the proceedings.

Rec. 45: All students admitted to the Bar as of 1988 shall be required to pass a proficiency test in both official languages. This test will serve to ensure that all new practitioners can read and write both official languages and have a passive understanding of conversation in the other official language.

While these provisions are vital to the scheme of the Report, the rejection of the Report itself or those provisions above will not alter the decisions to be made by the law schools who must face the *de facto* changes in the practice of law in the province. While no decisions have been taken as yet, the ultimate authority lying in the University and not with the Faculty itself, the law school nevertheless must consider whether it will do nothing at all, leaving language competency in the hands of the student himself; set entry or exit language requirements; permit language credits to be earned within the law degree; offer instruction in the 'other' official language; or enter into co-operative ventures with our colleagues at the Université de Moncton. Suffice to say that all are agreed that both English and French New Brunswickers must receive legal services in their own language which rights are now enshrined in the Canada Act.¹¹ The nature of U.N.B.'s contribution to that goal must be worked out in the immediate future.

9. *Id.* at 90.

10. Committee on Integration of the Two Official Languages in the Practice of Law (Final Report. Sept. 1981).

11. S. 19(1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.
(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

Dean Ryan's description of the student complement showed that while in the late fifties practically all of our students came from New Brunswick, by 1965 six provinces were represented and at the present there are students from eight jurisdictions in Ludlow Hall. In recent years the first year in-take has been eighty students which figure is fixed by the physical capacity of the classrooms. The size of the graduating classes have numbered in the low seventies with some forty or so taking the New Brunswick Bar examinations in recent years. There have been pressures to increase the student numbers supported by various arguments. Some have said that the Law School has not yet reached the critical mass essential for a balanced legal educational experience,¹² others have held that it is unethical for a publicly funded institution to turn away even one qualified applicant from our own province.¹³ Nevertheless the Faculty of Law has consistently resisted unrestrained growth on two premises, firstly that student numbers must be determined by the limitations of the physical facilities and available human resources, and secondly that a University department has a moral responsibility to be honest in its efforts to encourage students to enter the discipline which realistically must be shaped by the facts of the market-place. In concluding this portion it is appropriate to say that the linguistic make-up of the student body has changed with the opening of the second law school in the Province but it remains true that measurable numbers of francophone students continue to enrol at U.N.B.

The Scholarship support for students at U.N.B. consists in part of the Beaverbrooks, which are now wholly funded out of the operating budget of the University and which are presently set at \$3,500 per year, and in part of the New Brunswick Law Foundation Scholarships whose varied programme of support includes a number of scholarships at \$1,500 along with bursaries of \$1,000. These funds are increasing in their importance to students as they are more and more squeezed by inflation, and to the School as the demand for legal education continues to soften, and competition between the schools increases.

Following graduation, each year some of our graduates proceed to other institutions such as Harvard, Columbia, Cambridge, L.S.E., and this year to the Tulane Maritime Law Programme in New Orleans. Others have been appointed as Clerks to the Justices of the Supreme Court of Canada and to the Chief Justice of New Bruns-

12. *Supra*, footnote 8 at 40.

13. "Report of the President's Committee on the Future of the Faculty of Law" (May 1980 U.N.B.) 11.

wick. In all of these ventures they have been markedly successful. If there is one carp here it arises from the question - why do we counsel our best students to go abroad for their advanced training rather than explore Canadian legal problems in graduate programmes at Dalhousie, Toronto or U.B.C? - especially since it is not obvious that the "tourist approach" to graduate studies has furthered the cause of Canadian legal research up to this time.

The Faculty offers all of the courses usually taught in Canadian law schools, and which to a considerable extent are demanded by bar admissions requirements of the provincial professional organisations. In other words the School offers a good, sound, traditional education in law but whose numbers of teachers preclude the additional and, sometimes experimental, courses available in our larger law schools. Indeed the fiscal restraints of last the two years, which appear to be with us for the foreseeable future, have limited curriculum change to merely cosmetic alterations.¹⁴ Cogent arguments can be made for the establishing of some area of specialisation by which the school could become recognised throughout the country. But such a course can only be pursued effectively where the area of specialisation is arrived at by a process of evolution and by investment in existing teachers. In view of the size of the Faculty such a development can only be achieved in co-operation with other disciplines on campus where the project combines the strengths of both participating faculties.

Dean Ryan stated his belief that the educational background of his faculty of six, trained principally in Canada with post-graduate experience in the United Kingdom and the United States, influenced the conduct of classes and ensured differing philosophies of legal education.¹⁵ The make-up of today's enlarged staff of seventeen is not

14. The pattern over recent academic years is as follows:

Year	Nos. of Faculty	No. on Leave	Part-Time Instructors	No. of Courses Offered		
				Faculty	Instructors	Total
1976-77	15	0.5	10	57	15	72
1977-78	16	1.5	11	59	12	71
1978-79	15	1.5	9	55	12	67
1979-80	15	0.5	9	57	11	68
1980-81	17	1.5	14	65	19	84
1981-82	17	1.5	4	62	7	69

15. The impact of the educational background of law teachers on the development of a Canadian legal tradition has been explored by Veitch and MacDonald, "Law Teachers and Their Jurisdiction" (1978), 56 Can. Bar Rev. 710-724.

markedly different,¹⁶ so that presently we have a complement which is typical of Canadian law schools and which comprises a blend of persons trained locally and abroad, and who together teach law from a national perspective but at the same time make students fully aware of the often individual nature of the provincial law. It is likely that the twin factors of the payment of competitive salaries and a tightening of the law teaching market will ease the pressure on smaller law schools such as U.N.B. which traditionally have played host to considerable numbers of teachers at the beginnings of their careers. In the past the prestige and dollars of practice, the attraction of the power of governmental involvement together with the fact of greater compensation in other law faculties has ensured a regular turn-over of teachers. The footnoted list reveals an array of talented lawyers who have taught at the School over the last two decades.¹⁷

The new collective regime in the University of New Brunswick has not only clarified the role of the law professor but also has raised the levels of performance expected. The not unusual collective agreement, largely based on the model of performance of the 'hard' scientist dictates that the law teachers must regularly prove their research capacity by formal publication. And while this is not overly difficult, with in excess of thirty Canadian legal publications in

16.	Canada LL.B. No other Degree	Canada LL.B. Canada LL.M.	Canada LL.B. U.S. LL.M.	Canada LL.B. S. Pacific LL.M.	Canada LL.B. U.K. LL.M.	Canada LL.B. U.K. LL.B.	Entirely U.K.
UNB	3	0	0	0	0	0	0
Dalhousie	1	0	0	0	0	0	0
Osgoode	0	3	0	0	0	0	0
Toronto	0	2	0	0	0	0	0
Columbia	0	0	1	0	0	0	0
Harvard	0	0	1	0	0	0	0
London	0	0	0	0	3	0	0
Cambridge	0	0	0	0	0	2	0
Edinburgh	0	0	0	0	0	0	1
New Zealand	0	0	0	1	0	0	0

17. G.A. McAllister, Q.C. 1950-1974; W. F. Ryan, Q.C. 1950-1971; Dr. G. V. LaForest, Q.C. 1956-1969; Dr. D. M. Hurley 1960- ; Dr. A. M. Sinclair, Q.C. 1961-1978; A. D. Reid 1966-1979; A. I. Bulbulia 1967-1973; R. W. Bird 1968- ; K. J. Dore 1968-1977; R. W. Kerr 1968-1976; D. G. Rouse, Q.C. 1970- ; B. D. Stapleton 1971- ; C. S. Axworthy 1972-1975; J. D. Morley 1972-1974; W. G. Webster 1972-1975; D. C. Stanley 1973-1975; C. C. Emanuelli 1974-1977; J. F. Landry 1974-1979; J. R. Williamson 1974- ; Dr. E. Colvin 1975-1979; E. Craig 1975-1979; G. S. Garneau 1975-1982; B. D. Bruce 1976- ; J. P. Lordon 1976-1978; A. A. McLellan 1977-1980; D. J. Fleming 1977- ; S. K. McCallum 1977-1979; I. F. Ivankovich 1978-1980; M. E. Hatherly 1979- ; T. S. Kuttner 1979- ; J. T. Robertson 1979- ; D. A. Townsend 1979- ; E. Veitch 1979- ; Dr. M. F. Gochner 1980- ; J. P. McEvoy 1980- ; B. G. Smith 1980- ; H. A. N. Versteeg 1980- ; C. A. Walsh 1981- .

pursuit of authors, it is a fact that not all law professors have chosen to channel their creative talents in this restricted format. Further the agreement in force at U.N.B. lays out clearly the criteria, in addition to research, to be met for promotion, tenure and merit evaluation. The result is that the upwardly mobile teacher can only be that professor who is a skilled lawyer, a good teacher, an able researcher and a willing volunteer in the administrative process. In short, the paradigm is overall competency. My present colleagues have already proven their willingness and capacity to meet these new requirements.

With regard to research the professors at U.N.B. continue the type of work described by Dean Ryan earlier. Research contracts are in train with both the provincial law reform division and the Canadian Law Commission, and other research services are being provided to other provincial ministries such as Labour. It is vital here to appreciate the role of the law school in a small jurisdiction where the Faculty serves as a provincial resource, and whose contribution to reform and development of the local law can be substantial as has been shown by the success of various colleagues in the preparation and passage of major legislation. In addition, the traditional doctrinal research goes on in journal form.

The research contribution of the students is seen most tangibly in their production of the U.N.B.L.J. The product of the sixties and seventies was modest indeed but as a result of editorial resolve and the injection of institutional financial support from the University of New Brunswick, the N.B. Law Foundation and the N.B. Barristers' Society the volumes appearing from 1979 onward have met the national standard of respectability for a university based review. The new volumes comprise a balanced review with an appropriate mix of national and provincial essays contributed in part by academics of national reputation and by students of proven ability. It is a production of which the School can be proud.

It may be that stresses and strains are endemic to law schools whether they be due to growth, as in Dean Ryan's time, or whether caused by the fiscal restraint of today. The Faculty moved into a new and gracious building in 1968 designed for under one hundred and seventy-five students and built to house a library of approximately 65,000 volumes. At present the student number is around two hundred and twenty which puts pressure on the facility. The library was constructed on the second and third floors (in itself a mistake) and worse still the third floor was inadequately designed and is without load bearing floors to cope with library stacks. As a conse-

quence the library has never grown to its projected size, which combined with the present cut backs in financing means that the library is restricted in function to that of a decent teaching or working library but cannot be claimed to be a research facility. The impact on the creative efforts by both students and teachers needs little emphasis. While the expansion of the law library has been the priority capital development at U.N.B. for several years, and although the M.P.H.E.C. has recognised that status, the inability of the provincial government to provide the funds must be seen in terms of competing demands for very scarce provincial resources.

The relative poverty of the provincial government along with the expressed desire of the national government to cut back its support for higher education ensures that present fiscal difficulties will be with us for some time. Inevitably that must place great pressures on a small faculty such as the U.N.B. Law School where there never has been any protective 'fat'. It places considerable pressures on academic administrators to be creative with diminishing dollars and this requires something of the skill of a pirate. This is quite at odds with the training of those of us who began working in the Universities in the 1960s when the required talent was imagination and ideas to spend the dollars which were plentifully available. It can only be hoped that by dint of hard work and some sacrifice we can preserve the advances secured since Dean Ryan's earlier report.

The economic woes and fears felt in law schools at this time derive from diverse sources. Of course the immediate tension between the national government and the administrators of the provinces over the funding of higher education has given rise to an expected volume of comment. Yet at the same time the law faculties cannot hide from the fact that the demand for legal education is softening as students pour into the temporarily voguish disciplines of business and engineering, in response to some extent, to the scares of lawyer-saturation.¹⁸ In addition it would be ostrich-like for administrators to ignore the implications of the closures of high-schools across the country in response to demographic facts which must soon impinge upon law school enrolment.¹⁹ In the face of these phenomena, unless the deans can renegotiate the fiscal arrangements for law schools with the university administrators, the turn-down in student numbers can only exacerbate the historically impoverished position of the law facul-

18. Are There Too Many Lawyers? (Nov. 12th, 13th, 1981, London, Ontario). White, Law School Enrolment Continues to Level (1980) 66 A.B.A.J. 724

19. London, "Reducing Enrolment in Law Schools", (S.S.H.R.C. Consultative Group on Research and Education in Law Vol. VIII, April 1982). 36

ties in relation to the other disciplines on the campuses. In the early eighties we can already witness the pernicious effects of the shortages of cash in the difficulties experienced by certain schools, large and small, in participation in commendable national initiatives such as the Canadian Law Teachers Clinic²⁰ and the Jessup Moot Competition.²¹

To a considerable extent the financial problems of the institutes of legal education have been disguised by the generosity of the provincial law foundations who have bestowed their sometime embarrassment of riches, produced by high interest rates, on the faculties of law. This has resulted in a disparity of wealth amongst the schools which has mirrored provincial disparities with the consequence that in the carrying on of national legal programmes we are operating an informal 'equalisation' of resources as Ontario 'subsidises' some of the schools of other provinces. It requires little wit to appreciate the unhealthiness of this present situation dependant as it is on the vagaries of interest rates and the flexible policies of charitable foundations.

Thus the problem facing the development of legal education today remains the unresolved issue of a generation ago — when will the universities recognise the true costs of effective legal education? The objective set for the law school administrator is the attempting yet again of that seemingly sisyphian goal.

There is an alternative to University funding and that is financial support from the alumni(ae). This, at least to the present, has not been a major source of income for most of our law schools. There are something like fifty university fundraising campaigns active in Canada at this time and it must be wondered just how much the graduates can give in the face of such an onslaught. On the other hand, while this writer admires the inventiveness of our neighbours to the south it is not obvious that we should take over the game-plan of one law dean who puts on Saturday morning continuing legal education seminars for alumni(ae), hosts a noon-hour corn-boil for the families, and garners donations into a leather money belt while dishing out complimentary tickets to the afternoon's varsity sports

20. Canadian Law Teaching Clinic, A Project of The Committee of Canadian Law Deans, The Canadian Association of Law Teachers, and The Canadian Law Faculties.

21. Fleming, "The Canadian Round of the Philip C. Jessup International Law Moot Court Competition: Team Preparation, the National Value of the Event and its Place in the Curricula of Law Schools in Canada" (1981), 30 U.N.B.L.J. 187

22. Dean Gordon Gee, West Virginia University College of Law, A.A.L.S. Senior Administrators Workshop September 25th, 1981 (Chicago, Illinois) to the tune of several hundreds of thousands of dollars each year.

event. As the showman-dean said in jest to the writer²²—“What the hell, this isn’t education—its entertainment.” With all respect, that is not in the Canadian tradition and we should not be forced to embrace such gimmickry in public institutions in order to enhance the national investment in a vital resource.²³

23. It is proper to record that the Government of Mr. Richard Hatfield has authorised the expenditure of some two million dollars for the extension of Ludlow Hall and principally for the expansion of the Law Library.