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Notes and Comments

H. A. Hubbard*

University of Ottawa, Faculty
of Law-Common Law Sec-
tion: The Past Ten Years

The character of the Common Law Section of our Faculty of Law has changed dramatically in the years since our move into our present quarters in Fauteux Hall in the Fall of 1973. In order to appreciate fully the scope of these changes, it is necessary to contrast the development of our school over the past decade with the situation that preceded it.

When the University of Ottawa opened its Faculty of Law in 1953, it renewed an undertaking begun nearly seventy years before. In 1887, a law school was established at the University of Ottawa and its first Dean, who was to become Prime Minister of Canada, was Sir John Thompson. Many difficulties led to the closing of this first law school, but the University resolved to reopen a law school as soon as circumstances should prove more favourable.

Whereas most federations unite separate law districts of common legal heritage, Canada brings into conjunction two distinct legal systems: the civil law of Quebec and the common law of the other provinces. Ottawa, as the seat of the federal government and a focal point of the inter-action of our two juridical systems, is a natural site for a faculty of law teaching both common law and civil law, and it was with the expectation that it would eventually be able to provide a legal education in both systems that the University in 1953 re-established the Faculty of Law, even though only courses in civil law could be offered at that time. The founding Dean of the present Faculty of Law was the Honourable Mr. Justice Gérald Fauteux, of the Supreme Court of Canada, later to become the Chief Justice of Canada. When four years later the Law Society of Upper Canada modified its conditions for admission to the practice of law in Ontario making it practical to do so, the University, with the approbation of the Law Society, established in the Faculty of Law in September of 1957 a common law school academically separate

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from the already existing civil law school. Professor Thomas Feeney was appointed Director of the Common Law Section, and Professor Rodrigue Bédard, who had been Director of Studies, assumed the position of Director of the Civil Law Section. Upon his appointment to the Superior Court of Quebec in 1960, Professor Bédard was replaced by Professor Pierre Azard.

The Common Law Section had always been academically distinct from the Civil Law Section and, in 1962, when Mr. Justice Fauteux resigned as Dean, the University gave further recognition to the almost complete autonomy of the two law schools within the one Faculty by appointing Professors Azard and Feeney as separate Deans for each Section. Thus, there is a Dean of Common Law and a Dean of Civil Law for the separate administration of the two Sections, with a Joint Committee to administer matters of common interest. The Deans of the Common Law Section have been Professors T. G. Feeney (1962-73), H. A. Hubbard (1973-81, 1983-), and A. W. R. Carrothers (1981-83).

Although its two Sections are almost completely autonomous, our unique Faculty provides a milieu for a truly Canadian social, cultural and intellectual exchange from which we have tried to benefit. In the light of the bi-legal character of this country and the special objectives of the University of Ottawa, we have from the beginning tried to foster interest in both systems of law by allowing students of each Section to take some courses in the other, and in 1970-71 the Faculty commenced its special LL.L.-LL.B. programmes that enable a number of students to obtain in four years both degrees each of which, taken separately, is a three-year programme. Students registered in one Section take courses from the other as options towards their first degree. Upon graduating with the degree of one Section those who do well enough enter the other Section's special one-year programme of full-time studies leading to the first degree of that other Section. The institution of two special programmes rather than one reflects the Faculty's concern that each Section preserve its distinctive methodology, sacrificing nothing in the formation of its own students. However, the additional year of studies in the other Section, together with the common federal law content of the two programmes, assures that the graduates of both special programmes become truly national or Canadian lawyers in that each has the academic foundation for eventual admission to the practice of law anywhere in Canada.

In the Fall of 1973, the Faculty moved into its new building,

Fauteux Hall. This large and handsome structure includes a law library designed to house 200,000 volumes, a moot court complex that can be converted into three separate amphitheatre-style classrooms, and many other spacious classrooms as well as numerous seminar rooms. The completion of this very functional building brought the two Sections of the Faculty under one roof after a prolonged and undesirable physical separation, and this has fostered closer collaboration between them. Moreover, the new home for the Faculty of Law enabled the fusion of what had been separate, inadequately-housed and understaffed, law libraries into one law library serviced by a large professional staff and providing most generous seating and a shelving capacity for an impressive and growing collection. The new home for the Faculty also enabled the expansion of the Common Law Section, which has more than doubled its professoriate since moving in.

When we moved into our present quarters in 1973 the full-time faculty numbered 15, and there were 9 part-time teachers. Today there are 32 full-time faculty positions, a scholar-in-residence, and a full-time review counsel to supervise our student legal aid programme. There are also 52 sessional lecturers involved in our various programmes. This tremendous expansion over a relatively short period was generated not only by increasing enrolment and a falling attrition rate, but in order to attain that critical mass of students necessary to meet the exigencies of modern law school curricula and programmes. When the Section opened its doors in 1957, 44 students were admitted into first year, 27 of them graduating with the LL.B. degree three years later. The programme was completed in 1959-60 by the addition of the third year of studies, and our total enrolment reached 110. The last year spent in our old quarters saw a total enrolment of 224, with two sections for first year students but no sectioning of classes beyond that. In 1973-74, our first year in Fauteux Hall, the total enrolment rose to 337. In 1984-85, we have 516 LL.B. students for whom we provide four first year sections, three or four sections of all other major courses, and an extensive and varied list of optional courses and seminars. The extent of curricular development can be seen by contrasting the present LL.B. programme with the programme as it was the year before we moved into Fauteux Hall. Our calendar for 1972-73 lists the following required courses: First Year — Civil Procedure, Contracts, Criminal Law and Procedure, Legal Method and History of Law, Land Law, Personal Property, Torts; Second Year —

Commercial Law, Company Law, Constitutional Law, Equity, Family Law, Legal Accounting, Legislation and Administrative Law, Mortgages, Practice; Third Year — Conflict of Laws, Evidence, Municipal Law and Community Planning, Taxation, Wills and Trusts. The optional courses from which third year students could elect in order to fill the remaining ten credits of their programme were Advanced Legislation, Comparative Law, Criminology, Insurance and Social Legislation, International Law, Jurisprudence, Labour Law, Legal Research and Writing, Problems of Canadian Federalism. The present first year programme, which involves no choice save as to the language of instruction, consists of Civil Procedure I (Procédure civile I), Contracts (Les contrats), Criminal Law and Procedure (Droit et procédure pénaux), Legal Institutions (Introduction au droit et méthodologie), Legal Research and Bibliography (Recherche et bibliographie juridiques), Property I (Droit des biens I), and Torts (Les délits et les Quasi-délits). Beyond first year we still retain a number of required courses, which may be taken in either English or French: Administrative Law (Droit administratif), Commercial Law (Droit commercial), Business Associations (Droit des sociétés), Constitutional Law (Droit constitutionnel), Evidence (La preuve), Family Law (Droit de la famille), Taxation (Droit fiscal), Trusts (La fiducie), Wills and Administration of Estates (Testaments et successions). These courses may be taken by students while in either their second or third years of the programme. Of the 90 approved courses and seminars in our option programme, 69 are in English and 21 in French. Not all of these courses and seminars are offered every year, and we are currently offering 51 of them in English and 13 in French, several of them being offered in multiple sections because of demand. It should be noted as well that a number of our advanced LL.B. courses are also open to LL.M. students. Apart from the obvious economy in avoiding an entirely separate set of LL.M. courses, the mingling of the two levels of students has worked out well because of the relative maturity of our upper year LL.B. students. Although the minimum academic entry qualification for regular students is a year short of a university degree in another discipline, almost all entrants have a degree, many have masters degrees, and we usually have a few who have doctorates. A number of others are admitted as “mature students” in accordance with criteria established to assure their suitability. Thus, in the past few years the students in our entering class have been on average between 25 and 26 years of age.

Despite the considerable growing pains inherent in the kind of expansion just described, the Common Law Section managed to introduce a number of other programmes as well during the course of these turbulent years, the most important one being the teaching of common law in French. The special objectives of the University of Ottawa include its statutory obligation "to further bilingualism and develop French culture in Ontario". The Franco-Ontarian community had long endeavoured to secure the right to receive legal services in French, but it was not until the Provincial Government decided in 1977 to admit the use of French in a restricted number of lower courts that a programme of French-language common law instruction became practical. Because the Province's first initiative was of such limited and rather tentative scope, we began by teaching only some of our courses in French on an experimental basis in the 1977-78 academic year. Happily, the Province expanded its programme so that now French is available as an official language at all levels of judicial proceedings in Ontario, and our French-language programme, now fully-funded and entrenched, is virtually complete. Indeed, for the past couple of years it has been possible for a student in the Common Law Section to obtain an LL.B. degree having taken all of his or her instruction in French. However, it is to be noted that what is involved is not a choice between alternate LL.B. programmes, such that a student must take either all or none of the French language offerings. Rather (unlike the unilingual Faculty of Law at Université de Moncton), any qualified student may elect the language of instruction in which he or she wants to take any course that is offered in both English and French. This has resulted each year in a core of students (both anglophones and francophones) who take all their courses in French, a substantial number who take a large part of their programme in French, and considerably more who, for a variety of reasons, take at least some courses in that language.

The French-language common law programme occupies a special place in the programmes of our Section. Not only does it relate directly and significantly to the total University commitment of which the French language is a critical part, but it is recognized by the Government of Ontario and the Secretary of State for Canada as an operational mechanism for carrying out public commitments relating to the delivery of French language legal services to the Franco-Ontarian community. And it is being watched, monitored and assisted by that community itself through such organizations as l'Association

Canadienne Française de l'Ontario and l'Association des juristes d'expression française de l'Ontario. Indeed, in 1984 the latter Association as a joint project with the University established, with provincial and federal assistance, the Centre de Traduction et de Documentation Juridiques. Located on campus near the law school, the Centre has already translated a significant number of important works and documents, and it offers assistance to our professors in preparing their classroom materials for French language courses.

Still with respect to the bilingual character of our law school, it might be noted as well that our Student Legal Aid Society and our student-run Association of Women and the Law, (which was founded in 1974) operate in both languages, as does our student's "Law Line" service. Although the University of Ottawa Law Information Line/ Télédroit has been in operation only since 1979, it has already come to be regarded as a valuable source of legal information both to the campus population and to the community at large, and it has provided a stimulating learning experience for the students who provide this service on a voluntary basis.

Our combined LL.L.-LL.B. programme, which commenced prior to our move to Fauteux Hall, is not the only joint programme we offer. In 1978, in co-operation with the Faculty of Administration, we established a joint Masters in Business Administration-Bachelor of Laws programme. Although the basic course requirements and standards of each programme remain unchanged, students in the joint programme take more than the minimum number of credits per year and, in lieu of other optional courses that they might have taken were they following one programme only, they must take for credit courses given in the other programme. This makes it possible for students to obtain both degrees in the span of four years rather than the normal five. Students admitted to the joint programme will initially be registered in one programme only, although the admissions requirements of both must be fully satisfied. Also, students of either programme may during the course of the first year of that programme apply for admission to the joint programme. Such applicants must satisfy all the admission requirements of the other programme. In order to continue in the joint programme, the student must successfully complete the first year of the programme in which he or she started (programme one) and stand within the first quartile of that class. Upon the successful completion of the first year of programme two, and provided that he or she placed in the first quartile of that class, the student may proceed to years three and four of

the joint programme. The combination of courses that has been worked out is not really a single programme in the sense that it leads to one degree with the hybrid designation M.B.A.-LL.B. Rather, it is a structural blending into each programme of the essential elements of the other, with the recognition of certain common elements. Indeed, there are two separate entry points: first year M.B.A. or first year law. Moreover, each faculty grants its own degree separately in recognition that its own requirements have been met. However, because of the shared character of the undertaking, and the sequence of the studies involved, both degrees are granted only after completion of all four years.

The intensity with which our efforts were devoted to assuring the proper growth and enrichment of our LL.B. programme in the first few years after our move into Fauteux Hall acted as something of a brake in respect of the Common Law Section's activity in the area of graduate studies. In 1975-76 we did expand our certificate programme in legislative drafting into an LL.M. in Legislation, but it was not until 1981 that we entered into full partnership with the Civil Law Section which had been offering a comprehensive programme of graduate studies for many years. Graduate studies now forms the most substantial bridge between the two Sections, our endeavours at this level being Faculty programmes that are not exclusively identified with either Section. These programmes, leading to Masters and to Doctorate degrees, as well as to a Diploma of specialized legal studies, are administered by a Director and an Associate Director, with policy matters being dealt with by a joint committee of the two Sections. The Director is a full-time member of one Section and the Associate Director is a professor in the other Section, the Directorship alternating between the two Sections on a regular basis. Because graduate studies in the Faculty of Law are institutionally bilingual, individual students may select programmes that are either unilingual or bilingual, depending upon their linguistic competence and interests. The areas of specialization for the Diploma and Masters programmes are presently commercial law, comparative law, labour law, and public law; but, with the permission of the Director, a student may choose a general programme without specialization. Candidates for the LL.M. degree must complete a programme of four courses (16 credits) and produce a thesis of approximately 100 pages. The Faculty's doctoral programme is basically one of research, open to those who have already demonstrated a capacity for scholarly research and writing. There

are 14 full-time and 59 part-time students registered for LL.M. courses and another 68 who are in the process of preparing their theses. We have 8 part-time Diploma students, 3 full-time and 10 part-time Doctoral students and 16 other special students doing graduate work in the Faculty.

It was the Common Law Section that took the initiative leading to the establishment of the Human Rights Research and Education Centre at the University of Ottawa in the 1980-81 academic year. Although this Centre is not an integral part of the Faculty of Law, its Director and Associate Director are full-time professors in the Common Law and Civil Law Sections, respectively, and its constitution provides for its continued direction to be provided by law professors. Many other members of the Faculty of Law are actively involved in the work of the Centre as well, as are a good number of our students, particularly at the graduate level. The Centre's creation, thanks to a three-year start-up grant of \$300,000 from the Donner Foundation, was in response to a felt need for a university-based centre that would stimulate research and education in, and promotion of, human rights. Because it is situated in the nation's capital with ready access to headquarters of federal government departments and agencies and many major national non-governmental organizations concerned with human rights, the University of Ottawa, as Canada's largest bilingual University, was seen as the natural site for what is the only such Centre in the country. Although the Centre is interdisciplinary, it has been conveniently located within the Faculty of Law to take advantage of the bilingual and bijuridical setting we have to offer. In its first three years of operation the Centre has already established a reputation of academic, publishing and programmatic excellence. It maintains productive relations with numerous federal, provincial and territorial government departments, the private sector, labour, non-governmental organizations in Canada and abroad and with charitable foundations. The Centre has attracted a number of graduate students to the Faculty as well as seven senior research fellows spending six months or longer at the University while pursuing research in the field of human rights. Our research fellows, reflecting the interdisciplinary approach of the Centre, have taught classes in various Faculties on campus and been available for informal discussions with students and faculty members. Following its publication of a collection of essays entitled *The Canadian Charter of Rights and Freedoms: Commentary* (which coincided with the coming into force of that historical constitutional document, and

which has become a standard reference already cited and quoted in numerous judicial decisions), the Centre commenced publication in 1983 of its *Canadian Human Rights Yearbook*. The second edition of this multidisciplinary, scholarly work is proceeding towards publication. Amongst the specific projects that the Centre has undertaken are the provision of "Training Conferences" for human rights officers from all over Canada, a programme of over forty seminars on the interpretation of the Charter that was offered across the land to both lawyers and judges, a comprehensive study of systemic discrimination, the development of a Human Rights Code for the Northwest Territories, chairing and co-ordinating the Coalition to Celebrate the Thirty-fifth Anniversary of the Universal Declaration of Human Rights (involving fifty-four significant Canadian organizations), and offering annually the Yvon Beaulne and Gordon Fairweather Lecture Series. Thus, it can be seen that the Human Rights Research and Education Centre has placed the University of Ottawa at the forefront of major developments in this important field.

Since 1979 the Section has offered a number of courses to students of other Faculties and for general continuing education. Although a considerable bank of courses has been established those offered from year to year depend upon demand and the availability of resources. However, in view of a growing constituency of persons who are interested in a non-professional programme providing a structured and comprehensive overview of the law and the legal system, we are currently planning a Certificate Programme in Law. The object of such a programme (of which our colleagues in the Civil Law Section are pioneers) is to offer structured studies that would provide insight into the nature of law as a social institution and an applied social science, as a mechanism of "social engineering", as one of a wide range of institutions for social control, and to provide some understanding of how the law operates in specific instances to contain and resolve disputes. Such a programme is not designed to instill technical skills, nor to provide credit toward a law degree.

Another programme for which we have received substantial start-up funds and which we anticipate commencing in 1985-86 is one that will lead to a Diploma in Legal Translation. This graduate level programme will be administered jointly by the Faculty of Arts, through its School of Translators and Interpreters, and the Faculty of Law. It is a 42-credit programme the first stage of which, for graduates of the School of Translators and Interpreters, will consist of a number of carefully structured law courses designed to provide

them with a sufficient legal background and clear understanding of legal terminology in its original language. The programme will be open as well to law graduates interested in becoming legal translators, but they will be admitted into a separate initial stage designed to provide them with the general knowledge and skills involved in translation and interpretation. All students in the programme will then follow a common second stage dealing with translation and legal terminology.

Other recent initiatives in the Faculty of Law include our Judges-in-Residence Programme and formal linkages with law schools abroad. Each year we invite a Judge to be here "in residence", as it were, for a period of at least a week. The Judge, who is provided with an office and any support service he or she requests, makes guest appearances in various classes, gives one or two special lectures to all students and faculty who are interested in the topic and is provided with ample opportunity to meet informally with faculty and students in small groups.

Our linkage agreements are with the Faculties of Law of the University of the West Indies and the University of Papua New Guinea. They are designed to encourage exchanges of professors and students, to promote conferences and research projects of mutual concern and interest and to assist in the development of library collections. In 1983-84 a member of our Faculty of Law was a visiting professor at the University of the West Indies, and two conferences took place involving professors of both Faculties as well as members of the St. Lucia Bar. The Island of St. Lucia, although anglophone, has a civil law code based on that of Quebec as it was nearly a century ago. The conferences, which took place in Montebello, Quebec, in August and in St. Lucia, in February, were designed to assist in the modernization of that code. Our Faculty was also host in 1983-84 to the Dean of the Law Faculty of Papua New Guinea who participated in some of our classes, and arrangements have been made for a recent graduate to go to Papua New Guinea in order to undertake certain projects on their behalf. In the years ahead we expect a growing number of mutually advantageous arrangements to be made with both of these universities under the umbrella of our linkage agreements.