

6-1-1956

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Recommended Citation

Raymond A. Landry, "Developments in Legal Education, Faculty of Law, Civil Law Section, University of Ottawa" (1956) 10:1 Dal LJ 173.

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Raymond A. Landry*

Developments in Legal
Education, Faculty of Law, Civil
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I. *Introduction*

The present Faculty of Law of the University of Ottawa was inaugurated in 1953, although law had been taught at the Institution from 1887 to shortly before the First World War. This first venture in the teaching of the law was addressed to students both from Ontario and Quebec and the objective of the Faculty, at that time, was to teach both legal systems and to prepare students for the practice of law in both provinces.

When the Law School was reinstated at the University of Ottawa in 1953, the program consisted of Civil Law and was intended to prepare students for the practice of law in Quebec. Four years later, in September 1957, the Common Law School was founded with the result that both of the major legal systems of the country were taught in the same Faculty.

Since the early days of the Faculty, the University of Ottawa has respected the administrative autonomy of each Section, both Civil Law and Common Law.¹ Each Section has its Dean, its Faculty Council and its specific programs. The Civil Law Section grants a licentiate in law; the Common Law Section a B.C.L.

In 1973, the Faculty moved into the premises which it presently occupies, Fauteux Hall, named after the Former Dean, Chief Justice Gérald Fauteux. Both Sections of the Faculty share classroom space, administrative facilities such as photocopying and, of course, the law library. There are a number of programs in the Faculty which are common to both Sections (of which more will be said later) but the core remains the teaching of Canada's two major legal systems in two separate curricula.

We will endeavour to present the developments in legal education from the perspective of the Civil Law Section although, unavoidably, the presence of the Common Law Section has had a considerable influence on these developments. Most of what is distinctive and original in the University of Ottawa's program depends precisely on the interrelationship

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**I wish to thank Professor André Jodouin for his help during the preparation of this paper.

1. For more details on the Common Law Section, see H.A. Hubbard, *University of Ottawa, Faculty of Law, Common Law Section: The Past Ten Years*, (1985), 9 Dal. L.J. 383 et seq.

between the two Sections and the programs which have been created as a result of this rather unique opportunity.

II. *The Undergraduate Programs*

The main thrust of the Civil Law Sections undergraduate program is the granting of a first degree in Civil Law. This is achieved in three years. The first year is chiefly concerned with "fundamental" courses: Obligations, Civil Responsibility, Basic Public Law, Civil Law of Property, Criminal Law. No options are provided to first year students. Teaching methods vary, Civil law professors tending to favour lecturing as opposed to Public law professors who rely more on the case-law approach, although the rule is far from inflexible.

The second year contains a core of compulsory subjects as well as a choice of options, each student having to elect a minimum of eight credits in optional courses. The optional courses are not offered in clusters or concentrations. Students, however, can elect to concentrate in areas of their choice and care is taken in scheduling to avoid conflicts between options in the same area, for instance commercial law.

The third year is much like the second except that the proportion of elective courses increases. Students are required to follow five compulsory courses and may choose a minimum of eighteen credits in options.

This then is the basic core of the civil law undergraduate program. The assumption underlying this approach is no doubt coloured by the geographical situation of the Section: a Civil Law Section in a Common Law environment. It is felt that a strong commitment to the civil law system can best be realized through a mainstream, classical approach to the teaching of law. Nonetheless, this basic program is supplemented by a number of other initiatives.

1. *Enseignement appliqué*

During the three years of the undergraduate program, students are subject to a compulsory series of credit courses geared to the acquisition of legal skills. The director of the program is a professor whose teaching load is reduced by one half to meet the considerable time requirements imposed by the program.

The first year involves a series of lectures and exercises in five areas: case analysis, library research, construction of statutes, the structure of legal writing and civilian legal argument. Responsibility for each part of the program is carried by a team of professors as part of their teaching load, and by the library staff.

The second year involves participation by every student in a moot court program. Each moot is under the supervision of a professor and of a non-faculty practitioner. This counts as a two credit course and involves for each student, research on a hypothetical case, the researching and drafting of a factum and oral pleading in an appellate setting.

During the third year of their undergraduate program, the students are encouraged to develop their drafting skills. This may take the form of a preparation of an essay, the drafting of a judgement on the points of law developed by students participating, in the second year, in the Moot Court program, or preparing a research paper that is ultimately submitted to a number of outside competitions sponsored by various Foundations. Also, third year students are encouraged to compete in moot court competitions, such as "Le tribunal-école interfacultés" which puts in competition students from every Law School in Quebec, the Jessup Competition and the Gale Cup. A substantial amount of financial and human resources are devoted to the preparation of students for those major competitions.

Serious consideration is being given to a proposal of the International Commission of Jurists, Canadian Section, to develop a writing competition on the general subject of the "Rule of Law".

Special emphasis is also placed on presenting a number of noon-time conferences by special guests who can open up the horizons of our undergraduate students. For example, Ambassadors from foreign countries have accepted to speak on the legal system of their countries and public servants or visiting officials from abroad have accepted to share their knowledge of specific areas of human relationships with our students. These activities are very well received by the students and have generated a number of *ad hoc* ideas for exchange with students of foreign countries. These activities have been developed in parallel with an objective of the Faculty of Law to promote linkages with developing countries, more particularly, those that share with Canada a bi-juridical environment, such as the West Indies and Papua-New Guinea.

Another feature of the third year program, is a four-credit course entitled "Initiation à la pratique privée". Started three years ago, this course is designed to allow selected students to participate, up to a maximum of eight hours a week, in a number of aspects of the private practice; the program provides opportunities to work under the tutorship of a judge, a private practitioner or a lawyer working for a government agency, such as legal aid or the department of the Attorney General. This program involves cooperation between the Law Faculty and the Bar and has, so far, had a beneficial effect on the training of our students. The course is graded on the pass-fail system and the student, as well as his

tutor, must produce a monthly report on the activities carried out by the student.

At the undergraduate level, we have actively participated in the Common Law/Civil Law exchange program and the curriculum provides that credits, up to four, may be granted to students who participate in and successfully complete the summer program funded by the Department of Justice.

2. *Special LL.L.-LL.B. Program*

During the academic year 1969-1970, the two Sections of the Faculty of Law inaugurated a special program that allows a civil law graduate or a common law graduate to obtain, during the span of a four year program, a degree in the other Section. The Common Law student who wishes to obtain his Civil Law degree after having been granted his LL.B., must take courses totalling at least 45 credits in the Civil Law Section, including a number of pre-requisite courses that he must follow during the second and third year of his LL.B. program. Conversely, the Civil Law student must follow during his LL.L. program 12 credits of required Common Law courses and complete a year of full-time study consisting mostly of non-federal common law courses.

Because of the strict requirements of this joint program, more and more students from both Sections are allowed to take optional courses in the other Section to be credited towards their first law degree. This is done on *ad hoc* basis and does not lead to the granting of a second degree in law.

3. *Special LL.L.-M.B.A. Program*

Since 1979, the Faculty of Law and the Faculty of Administration of the University of Ottawa offer a joint program designed to promote the simultaneous study of business administration and law in order that, during a four year period, the student may obtain a M.B.A. as well as a LL.L. or LL.B.

To qualify for this special program, students must satisfy the admission requirements of both programs. Since the M.B.A. is a graduate diploma, students must necessarily have a B.A. before entering into this program.

The special LL.L.-M.B.A. program has been designed to enhance interdisciplinary studies and to allow for greater cooperation in teaching and research between the Faculty of Law and the Faculty of Administration.

4. *The Notarial Program*

Once the student has obtained his degree in Civil Law, he may enter into

a special fourth year program designed to prepare him for his admission to the Chamber of Notaries of Quebec.

This program is professional in nature and designed to teach notarial skills to the student.

Once the student has completed his studies and successfully passed the required examinations, he must submit to a further test administered by the Board of Notaries to be admitted to the practice of law as a notary. The student may accumulate during his university courses up to 50% of the total marks required for his admission to the Chamber of Notaries.

5. *General Certificate In Law*

The Civil Law Section inaugurated in January 1981 a program of "Certificat général en droit". The objectives of that program are to offer to people in other professions precise information on the structure and functioning of the legal system.

This program is entirely distinct from the undergraduate program and is not designed to prepare students for the practice of law. Because of our geographic situation in the *Outaouais* region, a special emphasis is placed on the private international aspects of the law.

To obtain the certificate, a student must successfully complete 30 credits of which 24 are mandatory. Those courses are basically fundamental courses in law such as General Introduction and Methodology, The General Theory of Obligations, Public Fundamental Law, Administrative, Constitutional, Penal and Commercial Law. The student is free to establish his own rhythm of progress as long as he does not leave the program for more than 12 months.

To be eligible for the program, the candidate must at least have completed 13 years of studies in Ontario or the equivalent or be at least 21 years of age and have the necessary background, in the judgment of the Faculty, to benefit from the course.

Because the program is designed mostly for working people, the lectures are given in the evening, during the three academic terms.

According to the statistics, the majority of the students already have a full-time job. One third of those are in the Federal Public Service, 25% from other public sectors, such as Embassies, National associations, agencies and corporations of the Crown, Hospitals and other provincial or municipal bodies. Approximately 15% of the students are from the private sector, such as commercial or manufacturing firms, banks and legal offices. Finally, close to 25% of the students registered in the program are also registered in another course of studies or are seeking employment or retired.

Although, intuitively, it was felt that this type of program would respond to a demand, the number of registrations since the inception of the program have surpassed our most optimistic projections; since January 1981, there have been more than 1493 registrations to different courses of the program.

III. *The Graduate Programs*

In the field of graduate studies, a most interesting development occurred in 1981 when the two Sections of the Faculty of Law (Civil Law and Common Law) decided to unite their efforts and resources to enrich the existing graduate programs. For all practical purposes, the two Sections have merged at the graduate level and the Faculty of Law now offers a joint and bilingual program leading either to Master of Laws or to a Diploma of Specialized Legal Studies. In addition, the Faculty offers a Doctoral Program and two specialized master programs in Legislative Drafting, one in English and the other in French².

The Faculty of Law of the University of Ottawa first established a graduate program on October 1st, 1957. That program led to a Diploma of graduate studies (Diplôme d'études supérieures en droit or D.E.S.D.) and to a Doctorate of law (Docteur en droit or LL.D.). In 1970, the Diploma of graduate studies was replaced by the degree of Master of Laws (LL.M.) and four areas of specialization were developed: public law, commercial law, labour law and comparative law. Recently, comparative law has been subsumed in private law courses and labour law has been discontinued as a special concentration because of insufficient core faculty in this area. Regardless of the area of concentration chosen, all students must take the seminar on Philosophy of Law. This has been the case since 1981.

In addition to the Master's and Diploma programs just described, the Faculty offers two special Master's programs in legislative drafting, one in English and the other in French.

The English program began in 1970 under the direction of Elmer Driedger, Q.C., and is presently headed by professor Douglas Stoltz. The French program was established in 1980 and is under the direction of the honourable Louis-Philippe Pigeon, formerly a justice of the Supreme Court of Canada.

The doctoral program is basically one of research, open only to those who have already demonstrated a capacity for scholarly research and writing.

2. Adapted from an Introduction to Graduate Studies at the Faculty of Law, prepared by Professor Donat Pharand.

The general objectives of the joint graduate program are in harmony with the special mandate of the University, as a bilingual and bicultural institution, provided for in its Charter. The program is open to students of both legal systems of Canada, Common Law and Civil Law and offers courses in English and in French. Because of the high degree of bilingualism among the teaching staff of the Faculty and to a lesser degree among students, some of the courses are even bilingual. This means that a professor, regardless of his or her own legal system or first language, might give a course in either language, or might alternate between the two languages, the choice of the language and the alternation depending on the linguistic ability of the students and the subject matter under discussion.

Occasionally, the interaction between the two systems is stimulated and intensified through team teaching. This has been done with considerable success in constitutional law and in comparative law. In constitutional law, an English speaking Common Law professor teamed with a French speaking Civil Law professor, each using his own language, to give a course on the Constitutional protection of human rights in Canada. This enabled students to learn something of the differences in approach and emphasis by professors of different legal backgrounds in an area of the law which is the same across Canada. Similarly, two other professors teamed in a comparative law course relating to family law. In this instance, the advantage of such teaching was even more pronounced, since comparisons were constantly made on the substantive content of the law.

Located in Canada's capital and at the boundary of the province of Quebec, the University of Ottawa is ideally located for graduate studies, especially in public law and comparative law. Aside from its own library with about 160,000 volumes and over 700 periodicals covering both Common Law and Civil Law sources, the general library of the University is a depository of all United Nations documents in English and in French, and students have access to the Supreme Court of Canada library and government departments' libraries. In particular, the Department of Justice has an excellent library in both civil and common law and the Department of External Affairs offers a legal as well as a general library. The Public Archives of Canada and the National Library also offer important research facilities. In addition, access may be had to the private libraries of foreign embassies, some of which have already been of appreciable assistance in pursuing research with a comparative perspective.

The program also aims, whenever the subject matter permits, at giving students an insight in the day to day practical application of the law, as

an integral complement to the theoretical base offered by most professors. Consequently, some of the courses are given by lawyers in practice or in government service and, in some other courses, those lawyers are called upon to give a few special lectures as part of those courses. In addition, outside specialists are sometimes called upon to act as “technical” advisers to assist thesis supervisors in the counselling of students. In such cases, an effort is made to choose those who have completed graduate studies themselves and, in any event, the person responsible for ensuring the necessary quality of research and writing is always a Faculty member.

The student body is made up mostly of part-time students, most of whom are either legal advisers in the service of the Government of Canada or are practitioners in the capital region, in Ottawa or in Hull. To insure that they devote sufficient time to their studies and classroom assignments, these students may not take more than one course in any one term. In addition, once they have completed their course work, they are strongly encouraged to obtain leave for a period of three to six months to concentrate their efforts on a full-time basis to the preparation of the thesis.

IV. *General*

The following lines will deal briefly with the publications of the Civil Law Section as well as with a number of initiatives that have been developed jointly with the Common Law Section of the Faculty of Law.

1. *Publications*

From the outset, the Civil Law Section has embarked in the activity of publishing works of its professors. The first regular publication of the Civil Law Section was entitled “Justinien” and was published mostly in the French language. With the setting up of *Le Centre de droit comparé*, a number of yearly seminars were held and the resulting papers published in the language in which they were presented during those seminars. Today, the Section publishes a quarterly review entitled *La Revue Générale de Droit*; that review is a bilingual refereed publication that includes not only articles by professors of the Civil Law Section but also by other legal scholars or practitioners. The board of directors is under the responsibility of professors of the Civil Law Section; since 1984, the board of editors includes some 20 legal scholars from outside the Civil Law Section. Every paper accepted for publication must be assessed by a professor of the Civil Law Section or, where the paper is prepared by a professor of the Section, monitored by an outside legal expert. *La Revue Générale de Droit* receives a grant from The Social Sciences and

Humanities Research Council of Canada and is indexed in the following periodicals: *Annuaire de jurisprudence du Québec*, *Canadian Current Law*, *Index to Legal Periodicals*, *Ulrich's International Periodicals Directory*, *Faxon*, *Periodicals in Canadian Law Libraries*, *Current Law Index*, *Legal Recourse Index*, *Index to Canadian Legal Periodical Literature*, *Indat*, *Index Gagnon*.

The Civil Law Section, in conjunction with the University of Ottawa Press, is also responsible for the publication of a number of monographs. The latest in a series is a book entitled *Essays on the Civil Codes of Québec and St. Lucia*. This is the only publication in the English language that deals, in parallel, with civil institutions of the Civil Code of Québec and of the Civil Code of St. Lucia. As part of its linkage agreement with the University of the West Indies, seminars on those civil codes were held in Montebello, Québec and in Castries, St. Lucia and the results of those discussions form part of that publication. Of particular interest is the fact that the Civil Code of St. Lucia is, to our knowledge, the only Civil Code that has been adapted, almost verbatim, from the Civil Code of Québec in 1879.

Since 1975, the Section has been particularly active in publishing a number of books that are part of "La Collection Bleue". Those books are designed primarily for the students, not only of our Section but from other law schools in Québec. Some of those books are particularly useful, also, to judges and practitioners because they may be the only ones available on particular subjects. The collection includes, so far: *Précis de responsabilité civile*, *Précis de la preuve*, *Les libéralités*, *Les obligations*, et *Les successions ab intestat*. The publication of three books is foreseen during the next two years on such topics as *L'administration de la preuve*, *Les assurances* et *Les biens*. Because all those books are published in the same format, they can be sold at a very reasonable price and updated regularly while remaining financially self-sustaining.

2. *Joint Ventures with the Common Law Section*

Although each Section of the Faculty of Law is autonomous, a number of joint ventures have been possible.

The Human Rights Centre which was established in 1981 is a teaching and research centre designed to promote knowledge in the field of protection of human rights. Presently headed by professor Ed Ratushny of the Common Law Section and by professeur Gérald A. Beaudoin of the Civil Law Section, the Centre is progressively carving for itself a leading role in the field of human rights in Canada. The fact that the Centre is bilingual and bi-juridical, attracting its scholars from both the

civil and common law backgrounds, enhances the possibilities of covering all facets of the Canadian society.

Another activity of the Faculty of Law is in the field of translation and legal documentation. With the help of L'Association des juristes d'expression française de l'Ontario and the financial backing of the Secretary of State and other public bodies, this centre has produced, in the French language, a number of legal documents, for the benefit of francophone common law lawyers in Ontario or elsewhere.

During the past few years, both the Common Law and Civil Law Sections have entered into a number of linkage agreements with universities of developing countries; so far, such agreements exist with the University of the West Indies, in Cave Hill, Barbados, the Faculty of Law of the University of Papua New-Guinea, in Port Moresby and the Faculty of Law of the University of Los Andes in Bogota, Colombia. These agreements have allowed a number of exchanges between professors of those universities and the setting-up of seminars either in Canada or in some of those countries. Presently, a professor from the Civil Law Section is spending his sabbatical year at the University of Los Andes; last year, another professor from the Civil Law Section spent his sabbatical year at the University of the West Indies, in Cave Hill.

Although up until now the emphasis has been placed on the activities described above, there are possibilities that, through helpful various sources, these exchanges will take other forms in the future, such as exchange of students, research in specific areas and the holding of seminars on specified legal topics.

As described above, both Sections of the Faculty of Law have joined their efforts at the graduate level. Given the proper financial and human resources, the graduate program will develop its strength and originality.

Finally, the two Sections participate in a number of other activities, such as symposia, judge in residence program, exchange of students between both sections, joint research and eventually publication. The *ad hoc* approach taken in the past has proved to be successful in incrementally developing and promoting a bi-juridical approach to the Canadian legal system.

V. Conclusion

This paper simply attempts to give a broad description of the various activities in which the Civil Law Section of the Faculty of Law of the University of Ottawa is engaged in. No attempt has been made to emphasize the constant research to develop better objectives for the Section and for the Faculty as a whole. This is and will remain a primary

preoccupation of all those who are engaged in legal education; the Civil Law Section will not remain a stranger to that endeavour. Although located in Ontario and having as one of its objectives the legal education of students under the Quebec legal system, the Civil Law Section is committed to promoting the development and understanding of the civil law approach as part of the Canadian legal system. So far, the civilian approach to legal matters has not permeated the common law system; because it has been possible for some common law concepts to influence the civilian approach there are no basic reasons why certain valid and tested concepts of the civil law should not, in the future, influence the solutions required under a common law system. The promotion of both the civil and common law systems of law in force in Canada at the present time is and will remain one of the important objectives of the Civil Law Section of the Faculty of Law of the University of Ottawa.