10-1-1988


Mary Jane Mossman
Osgoode Hall Law School

Follow this and additional works at: https://digitalcommons.schulichlaw.dal.ca/dlj

Part of the Legal Education Commons, and the Legal History Commons

Recommended Citation

This Commentary is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact hannah.steeves@dal.ca.
I. Introduction

My work... has assumed the shape of... a spiral curriculum, circling around the same issues, though trying to keep them open-ended.1

This statement was penned by Northrop Frye in *Spiritus Mundi* in the context of reflections about creativity and literary criticism, but it aptly describes as well the intellectual ferment of writing about legal education in Canada during the past few decades. Indeed, Frye’s suggestion that the above quotation “may be only a rationalization for not having budged an inch in eighteen years”2 may similarly offer an important clue about the legal education debate in Canada and the regular re-occurrence of the same issues. Seen in this way, “legal education never is, it is always about to be”3, and the process of writing about legal education represents nothing so much as a “spiral curriculum”.

In this context, the place of Osgoode Hall Law School in Canadian legal education is unique because of the school’s special relationships with both the profession and the university. Although Osgoode Hall Law School has been in existence since 1889, it was only in the late 60s that Osgoode became a university law school, after 80 years as a law school housed with and directed by the Law Society of Upper Canada. Thus, the law school at Osgoode has an old and venerable history at the same time that it is among the newest of university law schools in Canada. Perhaps, for this reason, Osgoode’s story presents both continuity and tradition at the same time that it demonstrates diversity and change.

The early history of Osgoode Hall Law School is a story of repeated efforts (and successive failures) during most of the 19th century to establish an acceptable program of instruction for those who wanted to

---

*Associate Professor, Osgoode Hall Law School.

The research assistance of Ms. Heather Ritchie, Osgoode Hall Law School, Class of 1989, is gratefully acknowledged, as is the technical assistance of Mrs. Hazel Pollack.


2. Id.

become lawyers in Ontario. In a well-known study of legal education at Osgoode from 1889 to 1957, for example, it was suggested that:

... by the middle of the nineteenth century legal education in Upper Canada ... was in a rather anomalous state. The province had no law school nor did it have anything resembling or likely to become a law school. By even this early date Harvard and Yale had a quarter-century head start in the establishment of law as an academic discipline.4

By comparison with Harvard and Yale (and Dalhousie as well, for example) in the 19th century, legal education in Ontario was expected to take place primarily in the offices of lawyers to whom students were articed. For this reason, the Law Society regarded its Law School as "at best, a rather extraordinary supplement to the real process of legal education which was going on in law offices throughout the province."5 Thus,

The [Law] School was therefore at all times administered so as to impinge to the smallest degree possible on the service and articling processes. It is not surprising that a school so restricted was also in the smallest degree possible academically useful.6

This tension between the Law School and lawyers' offices, evident so early in the development of legal education at Osgoode, was a continuing and pervasive idea even after the establishment of a permanent law school in 1889. Many years later, in the "crisis" of 1949 when Dean Wright and members of his faculty resigned, the issue of the nature of legal education was still at the heart of the disagreement between the Dean and the Benchers.7 Only in 1957, when the Law Society decided to support a three-year full-time academic legal education program at Osgoode, and to recognize the LL.B. degree programs at other university law schools, was it possible to assert that "academic legal education had at long last come of age in Ontario".8

5. Id., at 160.
6. Id.
7. Id. at 207-208. The authors suggest that while the public may have thought the dispute was over the form of legal education, more perceptive observers realized that more fundamental issues were at stake, such as "academic freedom", "teaching methods", and "the purpose of legal education". As well, there was an issue about who was to control legal education and a less obvious issue about who was to pay for it. A recently published account also explores in more detail the nature of the dispute and the important players in it. See C. Ian Kyer and Jerome E. Bickenbach, The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario 1923-1957 (The Osgoode Society: 1987).
8. Supra, note 4, at 228. In the Report of the Special Committee on the Law School (Law Society of Upper Canada: February 1957, at 14-15), a similar conclusion is expressed in somewhat different terms:
Yet, the issue of the fundamental nature of legal education in Ontario did not end in 1957, either at Osgoode or elsewhere, and it has continued to enliven the debates on many different issues both before and after Osgoode's move to York University in the late 60s. This comment explores some issues about legal education at Osgoode over the past two decades, particularly as the issues have been documented in the "formal" history of the law school, but also in relation to my (and others') "lived experiences". In doing so, some suggestions are offered about both the process and substance of the reform agenda for legal education at Osgoode and in Canada more generally.

II. Creating a Modern University Law School

1. Locating Osgoode at York University

The decision to affiliate Osgoode Hall Law School with York University was both a bold intellectual initiative and a recognition that there was no other practical alternative. Notwithstanding a glowing report by the Dean to the Chairman of the Law Society's Legal Education Committee

[The new plan] is designed to equip future law students with the best possible academic and practical training. There is a temptation to favour training in the one branch at the expense of the other. The problem is to keep them in balance. The Benchers of this Society have never been in doubt that adequate training in both branches must be maintained.

9. This comment is, inevitably, my personal account of Osgoode's development. My perceptions are informed by my own experiences as a law teacher here since 1977 (although I was on leave and teaching only part-time at Osgoode from 1979-82), but I was never a student at Osgoode. Moreover, I accepted a faculty appointment after nearly five years of teaching at the University of New South Wales in Australia, a law faculty with very different traditions and visions from those at Osgoode, and my experiences at U.N.S.W. have obviously influenced my perceptions of Osgoode. My position as the second woman to be appointed to a tenurestream appointment at Osgoode, and as one of a small number of women members of faculty over the past decade, has undoubtedly influenced my perceptions as well, particularly in relation to a significant amount of administrative work (as both Assistant, and then Associate, Dean) in which I have been involved both at Osgoode, and in the wider legal community.

As will be evident in the text, however, I have tried to present an informed picture of some of the developments at Osgoode by reading all the available annual reports and other significant documents since 1963. While the annual reports inevitably represent the views of individual Deans, they do provide an interesting source of annual commentary about the formal reports of curriculum committees, faculty council deliberations, and admission statistics. This account of Osgoode Hall Law School spans the deanships of six men and the acting deanship of two others, and the annual reports for the relevant periods were prepared by them. Since they are not identified in the text, the general details are set out here:

Dean A. Leal to 1966
Acting Dean A. Mewett 1966-67
Dean G. LeDain 1967-72
Dean H. Arthurs 1972-77
Dean S. Beck 1977-82
in 1962-63\textsuperscript{10}, the succeeding annual report by a newly-appointed Acting Dean for 1965-66\textsuperscript{11} candidly admitted the difficulties then facing the law school:

Few years can have been more disturbing for the Faculty and the Governing Body [the Law Society] than this academic session, though I venture to report that, thankfully, the students were not seriously adversely affected. It says much for the common sense and rationality of all persons concerned that the crisis has now been resolved to the satisfaction of everyone.\textsuperscript{12}

The "crisis" referred to by the Acting Dean was the proposed affiliation of Osgoode Hall Law School with York University, and the annual report suggests that the affiliation proposal with York was accepted only because there was no reasonable alternative. Because of increasing space limitations at Osgoode Hall for the burgeoning numbers of prospective law students\textsuperscript{13}, as well as the escalating costs of providing good quality legal education (including the urgent need for better library facilities), the Law Society decided that its law school should be affiliated with York. As the annual report stated:

... for reasons outlined by the Treasurer, the affiliation was the only resolution to the problem, so that the members of the Faculty disagreed only over the terms and conditions of that affiliation.\textsuperscript{14}

Dean J. McCamus 1982-87
Acting Dean J. Evans 1987
Dean J. MacPherson 1988-

For another account of the history of Osgoode, see the forthcoming history of Osgoode Hall Law School by Professor Curtis Cole.

10. Osgoode Hall Law School, \textit{Annual Report} 1962-63 (Dean Allan Leal). The report reviewed in detail curricular developments, faculty appointments, overall student performance in final examinations, and special activities and conferences at the school in the preceding year. The statistics in the report demonstrate that Osgoode then educated just under half of the undergraduate students in the province. In 1963 Osgoode also conferred the degree of LL.M. on the School's first two graduates (Marshall Cohen and B. Barry Swadron). From the perspective of the 1980's, the report's conclusion (at p. 22) seems prescient indeed:

Even the briefest reflection on the activities referred to above convinces one that legal education at this institution, and I believe in Canada generally, is undergoing a metamorphosis. Like Peter the Great, and to a degree not previously experienced by us, we have opened the window on the world and society in which we live. The flow of air and light is not limited to one direction.

11. Osgoode Hall Law School, \textit{Annual Report} 1965-66 (Acting Dean Mewett). There appears to be no annual report for 1964-65 at all, and that for 1963-64 is very short and appears to have been "Never Published".


13. Acting Dean Mewett described the space problem as a "crisis" in his annual report (at p. 3): the Phillps Stewart Library had reached "maximum accommodation" and there was "quite literally, no further office or stenographic space" even though for 1967-68 the School required "at least five new Faculty offices and two more secretaries".

14. \textit{Id.}, at 1.
A contemporary account of the decision to affiliate with York confirms this part of the rationale for the Law Society's decision. Yet, the physical need for space was not apparently the sole rationale for the affiliation of Osgoode with the university. Rather, there was a "second factor, statistically immeasurable but nonetheless real: the relentlessness of forces which had been set in motion over the preceding decade". The influx of new faculty with interests in experimenting with new forms of teaching, the ad hoc collaboration with teachers and researchers in other disciplines, and the influence of ideas about education then current in Ontario all contributed to a sense that "the school's full potential would never be realized so long as its governing body was not primarily involved with educational matters." Aspirations such as these on the part of the Osgoode faculty were accompanied by the Benchers' growing sense that they could not cope with an increasingly complex school (and, as well, some genuine sympathy by some of them for the faculty's aspirations).

Osgoode's annual reports for 1965-66 and 1966-67, however, reflect the difficulties of accomplishing the transformation of Osgoode Hall Law School to that of a university law school. A number of faculty resigned, including Dean Leal, although the reports do not explain the extent to which the affiliation with York University affected the choices of those who remained on the faculty and of those who decided to resign from 1966 on. As well, it remains unclear whether those who remained members of the faculty after 1966 did so, primarily, partly, or at all.

---

16. According to Professor Arthurs, the "law school population explosion" promised a continuing increase in the demand for places in legal education which the Law Society could not accommodate in its existing premises and for which the cost of acquiring new land in the vicinity was too great. Faced with this physical dilemma, Professor Arthurs stated: "Only complete removal of the school would provide an escape from this impasse." (Id., at 197.) According to figures provided by Professor Gray in Professor Arthurs' account, there would be 300 qualified law school applicants who would not be accommodated in existing or proposed facilities by 1968 and this number would rise to almost 700 by 1972. (Id.)
17. Id.
18. Id.
19. In 1965-66, Professor Ian Baxter resigned to join the faculty at the University of Toronto and professor Arthur Foote did so to take a position at Dalhousie. In the following year, both W.G.C. Howland and G. Arthur Martin resigned their lectureships, Professor P. Lamek resigned to enter practice and Professor M.R. MacGuigan resigned when he was appointed Dean of the Faculty of Law at the University of Windsor. Annual Report 1965-66, at 2-3 and Annual Report 1966-67, at 2.
20. According to the annual report for 1965-66 (at p. 2), Dean Leal resigned in April 1966 on the basis that "he could not participate in the affiliation with York on the terms proposed." For reasons that are not explained in the report, Dean Leal's resignation was not made public until June 30th, 1966.
because of the opportunities presented by the location of the law school within the university context; or whether there just seemed to be no other available option. What is clear is that the move to York University consolidated the physical location of Osgoode Hall Law School without wholly resolving the perennial tension between the profession and the academics about the nature of legal education. In Northrup Frye's terms, the "spiral" continued, "circling around the same issues".  

2. "Educating Men and Women for Service Through Law"  

In the celebrations that accompanied the relocation of Osgoode to the campus of York University, there was palpable enthusiasm, despite all the difficulties of moving an existing institution to a new environment. In retrospect, however, the law school's physical relocation was much less challenging than the institutional reform of legal education simultaneously undertaken. The 1968-69 annual report chronicles the initial enthusiasm for "significant curriculum developments" as a result of the review of the school's academic program. In rapid succession the semester system was introduced and "proved successful"; the range of elective courses in third year was increased, particularly in the three areas "identified for special emphasis in the work of the School: administration of justice, business law, and urban legal studies". As well, "a beginning was made... in the development of courses offered jointly with the Faculty of Arts and Science and the Faculty of Administrative Studies as part of a conscious policy to further interdisciplinary studies at York."  

22. The Chief Justice of Ontario used these words to dedicate the new Osgoode Hall Law School building at the Ceremony of Dedication on June 10, 1969 when he declared the building officially open and dedicated to "the high purpose for which it was designed: the education of men and women for service through law". The occasion of the Official Opening coincided with the annual meeting of the Association of Canadian Law Teachers and was marked by a Special Convocation at which degrees were conferred on the graduating students by York University and by the Law Society of Upper Canada. Honorary degrees were conferred on the Chief Justice of Canada, the Chief Justice of Ontario, and the Minister of Justice of Canada, and the former Treasurer of the Law Society of Upper Canada. Professor Sacks, Associate Dean of Harvard Law School and special consultant in the affiliation process, and L.C.B. Gower, a distinguished academic and law reform commissioner, also received honorary degrees. Osgoode Hall Law School, Annual Report 1968-69, at 5-6.  
23. Indeed, the move was delayed for a year because of a construction strike that must have been extremely frustrating at the time, though all but forgotten now. See: Annual Report 1968-69, at 1.  
24. Id., at 1-2.  
25. Id., at 2.  
26. Id.
More significantly for legal education, the same annual report explained the need for structural change to accommodate curricular developments:

In the course of the curriculum review . . . , it became apparent that the possibilities for reform were severely limited by the curriculum regulations which the Law Society had accepted in 1957 for the approval of law schools for purposes of the admission of their students to the Bar Admission Course. Accordingly, the Deans of the Ontario Law Schools carried on negotiations with the Legal Education Committee of the Law Society . . . for a revision of the regulations that would permit the law schools greater curricular freedom.27

This understated report of the negotiations which had taken place with respect to the required content of the LL.B. program belies its importance (at least in theory28) to the arrangements for legal education in Ontario. At Osgoode, the new regulations permitted the creation of a fully optional curriculum for second and third years.29 By 1969-70, efforts were well underway to increase significantly the number and range of "electives", and arrangements were in place to permit law students to take a certain number of courses in other faculties for credit towards a law degree. The report enthusiastically endorsed these developments:

The new system combines freedom of choice with adequate controls and is expected to stimulate student motivation by affording opportunities for concentration in areas of special interest.30

In addition to its review of these structural changes, the 1968-69 annual report is important for its focus on particular curricular developments. The report identified Osgoode's Clinical Training Programme as already "a distinctive aspect of legal education" here, and referred to discussions and consultations which had occurred in relation to its further development.31 As well, the report was enthusiastic about the Business Law Programme, which had offered a series of Round Table Discussions involving academics, practitioners, businessmen, government

27. Id., at 2-3.
28. Other commentators have suggested quite forcefully that the curricular freedom is symbolic only because the Law Society requires all law schools to advise their students that certain courses are highly recommended by the Law Society; and that most students confine their course selection to a very narrow range. See H.J. Glasbeek and R.A. Hasson, "Some Reflections on Canadian Legal Education" (1987), 50 Mod. L.R. 777, and text post.
29. In doing so, Osgoode was consciously following the model of American law schools; the 1968-69 annual report refers to the curricular change as one which accords "with the general development in the leading American schools". Annual Report 1968-69, at 3.
30. Id.
31. Id., at 3-4.
officials and distinguished American experts. In this year also, there were four law journals being edited at Osgoode, and the report lists a wide range of activities and publications on the part of faculty members. In 1968-69, moreover, representatives of the student body were admitted to Faculty Council and its committees, a significant development in relation to ongoing curricular changes.

The enthusiastic tone of the 1968-69 annual report reflects the spirit of change that accompanied the relocation of the law school, and the willingness to reform institutional arrangements to accommodate the new environment. Within a year, however, the enthusiastic tone had changed to one of cautious optimism. While the annual report for 1969-70 noted that some efforts had been made to promote interdisciplinary studies in the fields of judicial behaviour, administrative process, criminology, urban legal problems, and business regulation, it concluded that "the results so far, although encouraging, have been relatively modest". Even more frankly, the report went on to suggest:

This process [of interdisciplinary work] cannot be artificially stimulated. It must arise naturally out of specific individual interests. It remains to be seen how far the concept of interdisciplinary study involving law can be given meaningful content at York. Like many other attractive ideas in modern legal education and research, it is easier to talk about than to implement effectively.

The report expressed some concerns about the school's experience with the fully elective second- and third-year program, and concluded generally that further assessment was needed:

The liberation and modernization of the Canadian law school curriculum, in which Osgoode has played a leading role, has undoubtedly been a very stimulating process, but it will be necessary in the next few years to take a hard look at the results.

Notwithstanding these comments, there is no doubt that major changes in legal education at Osgoode occurred at the time of the law school's relocation to York, changes that were enhanced by the university location

32. Id., at 4-5.
34. Id., at 7-9. The Dean's appointment as Chairman of the Commission of Inquiry into the Non-Medical Use of Drugs established by the federal government was noted among other awards and appointments of faculty members.
35. Id., at 9.
37. Id.
38. Id., at 4.
if not wholly inspired by it. In this respect, the "crisis" of the move to York created an opportunity to reform and revitalize legal education. In this first phase of reform, the basic structure of academic legal education was established, and some innovations were attempted. Yet, the fundamental tension between law in practice and law as an academic discipline was not really confronted, leaving this issue to surface again in succeeding efforts to consolidate the changes occasioned by the move to the university.

III. Re-Thinking Fundamentals of a University Law School

1. Comprehensive Reform and Basic Principles

In the 1969-70 annual report, the experimental nature of many of the early institutional reforms is clearly evident, along with the absence of institutional methods for assessing their effectiveness. What was seriously needed was a comprehensive re-thinking of the legal education process, a way of assessing the strengths and weaknesses of the new curriculum in practice, as well as a theoretical basis for continuing to improve it. In response to this need, Osgoode established the Long Range Academic Policy Study Group in May 1972, with responsibility to undertake as its principal task "the evaluation and reporting upon the basic philosophy of legal education at Osgoode, the academic goals emanating from that philosophy, and suggested policies for their implementation."39 The process and recommendations of this committee represented the beginning of the second phase in the most recent reform of legal education at Osgoode.

Ironically, part of the need for the Long Range Academic Policy Study Group at Osgoode arose because of developments at the Law Society. In 1970-71, the Law Society had appointed a special committee with broad terms of reference concerning legal education (the MacKinnon Committee).40 In particular, the committee was asked to consider the

---

40. The terms of reference of the Committee were as follows:

The area of concern and study of the Special Committee will be, without being restrictive, the length and content of the university programs and of the Bar Admission Course (both articling and teaching portions) and all matters relevant thereto, and it shall make recommendations to convocation thereon.

Report of the Special Committee on Legal Education 1972 (Law Society of Upper Canada: 1972) at 3. The Report made recommendations that were quite broad in relation to legal education, including recommendations about special admission programs for mature students and native peoples, a combined five-year degree, the abolition of articling, and the teaching of professional responsibility. See pages 18-34.
appropriate length of time in the education process for candidates for the legal profession and what measures might be adopted to prepare candidates adequately for the practice of law. During the academic year 1970-71, the MacKinnon Committee visited Osgoode and discussed the academic program, including the benefits of the optional curriculum in the upper years. 41 As a result, the Long Range Academic Policy Study Group was assigned the additional task of preparing a response for Osgoode to the MacKinnon Committee. 42

The Study Group's Report is regarded as an important contribution at Osgoode to the development of ideas about legal education in a university context. In retrospect, however, the Report has functioned more effectively in providing a context for decision-making about academic programs than as a definitive document in itself. At least two reasons may be suggested for this result. One was the Study Group’s responsibility both to respond to the MacKinnon Committee and also to re-think the fundamental nature of legal education. While there were obvious overlaps in the issues to be considered in relation to both tasks, the Study Group’s responsibility to respond to both requests at once may have inevitably affected its ability to think about the issues as they affected professional objectives separately from the goals of legal education in a university context. Particularly because the Study Group was asked to respond to the MacKinnon Committee first, the definition of the issues and the range of options may well have been influenced by its initial task. In this respect, the Study Group’s work reflected the continuation of dual objectives at Osgoode — both professional legal training and law as a university discipline — even after the move to York University.

41. Osgoode Hall Law School, Annual Report 1970-71, at 3-4. The faculty submitted to the MacKinnon Committee that the recent academic changes had produced four positive results: increasing student motivation by permitting individual programming opportunities; increasing the sophistication of lawyers' understanding of the nature and role of law and the function of the lawyer in society; increasing student awareness of the law in action through the clinical programs and interdisciplinary work; and increasing opportunities for creative participation by students in the educational process through field work as well as through research and writing. 42. The Report of the Long Range Academic Policy Study Group identified its tasks as first to develop a response to the MacKinnon Committee and second, and principally, to evaluate the basic philosophy of legal education at Osgoode, etc. Clearly, some of the issues addressed in the completion of these two tasks were overlapping.

43. The Study group worked over the summer of 1972 to prepare for the MacKinnon Committee's Report which was released on October 20, 1972. The Study Group then coordinated the response by Osgoode to the MacKinnon Committee Report, and submitted it in February 1973. As the Study Group's Report noted (at p. 2), "In February 1973 the Committee was able to return to the main task of evaluating the Osgoode curriculum and formulating recommendations for change."
These dual objectives were reflected in the Report's statement of goals for the law school. The four goals recommended were leadership in the use of law in society, a professional as well as a liberal education for students, flexibility to permit both a general and specialized education, and research and public service. In each case, the Report tried to redefine the task of legal education to embrace both existing professional

44. The law school's responsibility for leadership was defined in terms of existing legal services but also in terms of the rapidly changing needs of society for legal services:

[Osgoode's] curriculum must not be confined to the interests and needs of the profession of yesterday or today, its curriculum must recognize the tentativeness of present legal solutions to perceived ills, and must ensure that its graduates will see the law not as a static system but as an instrument of social engineering which must change to realize or respond to changes in society's values and needs.


45. The Report recognized the differing expectations of law students without resolving the tension between competing needs:

The law school must satisfy the demand for professional training. But it is not obvious that each graduate's career will be in the private practice of law: it may be with government, administrative agencies, private corporations, schools or universities. A scheme of legal education is adequate only if it is a preparation for many different careers.


46. The term "generalist" in the Report referred not to training to become a general practitioner, but rather to one which imparts to all students "those qualities which, so far as we are able to see, should be common to many kinds of legal careers." Report at 26. As well, the Report also recommended that students have opportunities to specialize at law school in the sense of a major concentration:

... which provides insights into the law as a whole, its methodology, its relations to other disciplines, the limits of its effectiveness, and so on. In other words, the function of specialization (in the curricular sense) is to make the student a better generalist.

Report, at 26-27.

The Report further identified six types of "specific knowledge and skills" that the law school expected all of its students to acquire: analytic skills, research skills, communicative skills, knowledge of substantive law, knowledge of institutional environment, and public responsibility. Report, at 28.

47. A separate chapter was devoted to this goal of the law school, recognizing it as integral to the teaching program but having a life separate from it as well. However, the Report, at pp. 29-30, made clear the primary function of the law school was a teaching institution:

The LL.B. programme is the largest and most important single enterprise of the law school. It is now, and always has been, the primary focus of commitment for our resources. But the law school also engages in a large number of functions which are not contained within the LL.B. programme. Moreover, these functions [research and public service] ... are in our judgment of equal validity and importance to the LL.B. programme itself. While they complement and enrich the LL.B., they have an independent validity of their own.
needs as well as future developments, and to broaden legal perspectives at the same time as it recommended increasingly sophisticated understandings. In the end, both the Study Group\(^4\) and Faculty Council\(^4\) were able to accept the Report, but the fundamental tension about the nature of legal education, especially in terms of priorities for law school resources, remained unresolved.

This difficulty was related to the second reason for the limited effectiveness of the Study Group's Report. The process of curricular reform created for the Study Group was a committee of faculty and students with some sense of a need for the group to reach a consensus which would be generally acceptable at Osgoode. Such a structure may be appropriate to a context where individual members of a group share basic goals and values, or where the task is one that can be defined with some precision and determinacy. It may also be useful as a means of communicating ideas within a more divergent group in terms of working out basic goals and values. In the context of a dynamic period in the development of ideas about lawyering and legal education, however, such a structure may tend to produce no more than a bottom-line consensus, one which may well be unsatisfying in some respects to all of the individual participants with their very different visions.\(^5\) In this way, consensus may be achieved about general directions, but without confronting the difficult choices needed to implement specific and essential changes.

The Study Group's work took place in a particularly dynamic period in Ontario law schools. Not only was Osgoode adjusting to its new

---

\(^4\) The Study Group Report, at p. 4, noted that there were differences among its members and "considerable argument over each issue". It expressly noted that there were never divisions in the form of faculty-student splits, but that some decisions were reached as a result of a majority vote rather than by consensus.

\(^5\) The annual report for 1973-74 commented extensively on the Study Group's Report:

It is fair to say that no committee in our history has ever worked so diligently and intensively, consulted so widely, and achieved such general acceptance of its far-reaching recommendations. Following extensive consultation within the Osgoode community, and with several outside referees, the report was discussed at a two-day meeting of Faculty Council in May 1974. The principal recommendations of the report, adopted by Council, will help to keep Osgoode in the forefront of Canadian legal education.


\(^50\) For an overview of the nature of academe and its decision-making processes, see Roger G. Baldwin, "Review Essay: the Academic Profession in Search of Itself" (1987), 11 Rev. of Higher Education 103. These ideas have also been inspired by the work of Carrie Menkel-Meadow on decision-making by lawyers; see, eg., "Toward Another View of Legal Negotiation: the Structure of Problem Solving" (1984), 31 U.C.L.A. Law Rev. 754.
identity as a university law school, but it was also experiencing the same demands as other Canadian law schools for more diverse educational experiences. Moreover, the composition of the student body was changing dramatically, bringing different educational needs and expectations. The 1972-73 annual report recorded some of the trends in admissions to Osgoode, for example, noting that “the number of female applicants has increased rapidly over the past few years from the merest handful to 20-25%”\(^{51}\) and that “the first contingent of mature students” would enter the LL.B. program in 1973-74\(^{52}\). In 1974-75, the first native students were admitted to the first year of the LL.B. program\(^ {53}\), and in 1976-77, a comprehensive policy on admission for mature students, native students, and economically disadvantaged students was adopted.\(^ {54}\)

In addition to the composition of the student body, the actual numbers of students had also increased significantly since the move to York.\(^ {55}\) The design of a comprehensive legal education program for students, with such a range of diverse backgrounds and different interests and educational needs, was a daunting task indeed. Moreover, the same period witnessed tremendous growth in the numbers of lawyers in Ontario and increasing diversity and specialization in their professional work.\(^ {56}\) In the end, therefore, it was perhaps inevitable that the Study Group’s Report would emphasize fundamental objectives in broad brushstrokes, and recommend the need for flexibility in relation to the detailed picture.\(^ {57}\)

---

52. *Id.* See also *Study Group Report*, at 16-17.
55. By 1970-71, the undergraduate program included about 800 students. In that year the annual report sounded a cautionary note about the projected increase to 930 students, and suggested that the first-year class should be maintained at about 300 students annually. This recommendation was expressed to be for the purpose of permitting Osgoode “to maintain its relative position in legal education, at a time when there is a greater demand for small-group work and individual attention.” See: *Annual Report 1970-71*, at 6.
56. The increased numbers of lawyers in Ontario in the mid- to late-70s reflected the impact of the creation of newly-established law schools after 1957, and the modest increases in their admission figures for a period of time into the late 70s. For an interesting analysis of the nature of work being done by lawyers in private practice, see John Hagan, Marie Huxter and Patricia Parker, “Class Structure and Legal Practice: Inequality and Mobility Among Toronto Lawyers” (Unpublished: 1986). For a review of trends in the work of lawyers in the 1980s, see Greta Fung with Mary Jane Mossman, “Issues in the Delivery of Legal Services” (Law Society of Upper Canada: 1987).
57. It is, of course, interesting to note that all five faculty who were members of the Study Group were male. This fact is not surprising since at that time there were no women who were full-time tenured or tenure-stream members of faculty at Osgoode. One of two student
The major recommendations of the Study Group's Report were accepted with little dissent at Osgoode, but the process of implementing recommendations was somewhat more challenging. The 1974-75 annual report stated that implementation had already proved difficult because "not all members have shown an equal willingness to ‘vote’ through personal involvement, rather than by merely raising hands in Faculty Council". By 1975-76, moreover, because of strained financial resources for teaching in the law school, it was evident that some of the recommendations of the Report had not been successfully implemented and that others could not be followed.

In particular, the experiment in "staged" courses in the first year (students studied only two courses for a period of five weeks at the beginning of the semester, and then added a further two courses for the balance of the semester, the total number of hours for each subject over the whole semester remaining the same) produced relatively little enthusiasm among participants. Most instructors (according to the annual report) taught the same course in different packages rather than fundamentally altering the course content to reflect the semester goals overall, and the annual report noted the difficulty of persuading individual instructors to relinquish their individual objectives for those of the curriculum in general. The other experiment in first year, the integration of small group "workshops" with substantive courses, was somewhat more successful but also faced difficulties in terms of faculty support for the tasks involved:

Showing students how to solve problems, how to find answers, how to express themselves is invaluable, but ultimately unglamorous. Constructing a theory of some area of the law or performing the socratic soft-shoe routine seems to hold superior attractions.

members of the Study Group was female, and she authored (among others) a research paper for the Study Group. See Marion Irvine, "Women at Osgoode: Problems and Perceptions of a Growing Minority", January 1974.

The Study Group's Report also noted that a 1972 analysis of the Class of 1974 revealed that over 80 per cent of the students were of British or Jewish background. Over 48 per cent of the class were children of fathers engaged in business activity, 13.7 per cent were children of professionals, and only 8.6 per cent the children of skilled or unskilled members of the labour force. See Study Group Report, at 17. There is some impressionistic evidence that the racial and economic backgrounds of law students at Osgoode began to change in the mid-70s and has continued to the present. See interviews with Osgoode's Admissions Officer, Andrew Ranachan, in Obiter Dicta, October 21, 1985 and September 22, 1986.

60. Id., at 15-16.
61. Id., at 17.
What seems evident in retrospect is the difficulty of forging enthusiasm among instructors for an educational program, created as a bottom-line consensus on broad principles, which may not have been sufficiently supported by institutional resources or integrated into other aspects of professional and academic life for law teachers.62

By contrast, the introduction of the first-year perspective options (generally taught by one instructor, or perhaps two) were generally approved for their ability to provide some "compensatory macro-analysis to set against the traditional micro-analysis which is the business of the other courses."63 In the same year, moreover, the intensive Criminal Justice Programme was added to the clinical offerings for upper-year students, and the introduction of the substantial research programme (individual supervised research for academic credit) provided some students with a valuable opportunity for significant research experience. Again, because of a lack of financial resources, the proposal to permit each first-year student to study in at least one small group setting was deferred, as was the recommendation to limit further the size of the high-enrolment classes in the upper years.64

In retrospect, therefore, the Study Group's Report did not provide the vehicle for actual substantive reform as was expected when it was established, and it failed to achieve the commitment of resources, both of individuals and institutionally, that would have permitted substantial implementation of several of its proposals. In part, these problems reflect the perennial inadequacies of the financial resources available to law schools. As well, however, the Report's proposals reflected a desire for some consensus within a dynamic and increasingly diverse academic community, which led to its recommendations promoting the "hundred flowers" strategy65 without confronting the need to make hard choices

62. The need for both institutional resources and integration with other professional activities, as a means of ensuring the success of new teaching arrangements, has both practice and academic aspects. For example, a perceived need to retain professional identity and reputation may make it difficult for some law teachers to direct major time and energy to the creation of academic courses wholly "irrelevant" to practice. At the same time, academic priority (for tenure and promotion decisions, for example) for published scholarship may dissuade law teachers from undertaking major teaching activities at the expense of their own scholarly work. Both of these "structural" constraints need to be taken into account in designing and implementing major curricular change.

63. Id., at 18.

64. Id., at 18-19.

65. As the Report noted (at p. 104):

When the Osgoode Hall Law School moved to the optional second and third year curriculum in 1968 it hoped (with Mao Tse-tung) that a "hundred flowers" would bloom and a "hundred schools" would contend. By allowing new courses and seminars
among competing alternatives. As well, the Report seemed to suggest that the law school was committed to objectives of professional training for the practice of law as well as to goals of academic legal education, as if both could be simultaneously accomplished; once again, the need to confront hard choices among competing alternatives was not addressed.

Yet, despite these difficulties of implementation, the Study Group’s Report made a unique contribution to the discourse at Osgoode in relation to goals, objectives, and ideas. Its recommendations have served as benchmarks in succeeding years in the further development of legal education ideas, and it successfully created an agenda for continuing reform, reflected in subsequent years in other proposals for changes to the curriculum and teaching methods at Osgoode. In this respect, the Study Group’s effort to provide a comprehensive review of legal education at Osgoode was a significant contribution, albeit not as was intended, to the second phase of the law school’s curricular reform.

2. Interstitial Reform and Particular Issues

Following the Study Group’s intense activities and the release of its Report, a number of specific tasks were identified for further study. Among them, for example, was a report on student assessment which was submitted to Faculty Council in May 1975, and which recommended that first-year students be assessed by several different procedures in accordance with an integrated schedule of assessment worked out by instructors in each section.66 As well, it suggested the need for special symposia on teaching and evaluation to be directed particularly to new instructors.67 In the spirit of “democratizing” entry to law school, another special committee considered the need for, and made recommendations to implement, a program of study for the LL.B. degree to be undertaken on a part-time basis to accommodate students who could not otherwise afford to undertake a legal education because of “work or domestic commitments”68

66. Annual Report 1974-75, at 12-13. This policy has been altered a number of times since 1975, although its fundamental principles and objectives have not been altered.
67. Id.
68. Id., at 13. The report of this committee was eventually adopted in principle by Faculty Council in May 1979 but was not implemented for budgetary reasons relating to the loss of provincial resources for part-time students. See: Report of the Committee on Part-time Legal Education, May 1979. The issue of part-time legal education programming is again under consideration by the Admissions Committee in 1988-89.
Major efforts also continued in the development of interdisciplinary courses. In addition to the joint programme for the M.B.A./LL.B. degrees implemented in 1975-76, the joint programme for the LL.B./M.E.S. degrees was approved and then implemented in 1976-77, and discussions commenced in 1975-76 concerning the creation of a joint programme to award the M.A./LL.B. degrees. Yet, the difficulties of interdisciplinary study continued to inhibit developments of this kind. In a frank assessment of the problem in the mid-70s, for example, it was suggested that "much remains to be done in securing genuine integration of law and other disciplines at the level of both research and study within the law school's curriculum". Some recognition of the extensive commitment of personal and institutional resources required for this kind of work was also noted:

The key to the integration of law and other disciplines is not, ultimately, institutional arrangements, but rather personal commitments. Osgoode has in fact been the focus for many serious projects in this area over the past decade or more, but each has lasted no longer than the involvement of particular individuals, some of whom have now moved on to other interests or situations . . . . "It is essential that we develop [ways of providing research leave for faculty to acquire new training, and] we must provide a supportive atmosphere for work of this type. . . ."

By contrast with these concerns about interdisciplinary work, this phase of curricular reform was a period of great activity and creativity in relation to clinical programs. Intensive programs in family law and in administrative law were introduced, as well as a special seminar in trial practice. At the same time, however, funding problems with the Ontario Legal Aid Plan occurred at Parkdale, Osgoode's original clinical program, and a review of CLASP (the student legal aid program) also revealed some funding difficulties. In the fall of 1978, a review of Osgoode's clinical programs was established to assess both individual programs and the law school's clinical education policy. The report recognized four categories of "clinical" programs at Osgoode: direct client-service operational models (such as Parkdale); field observation-facilitated immersion models (such as the intensive programs in criminal law, family law, and administrative law); simulated practice experience

71. Id., at 23.
72. Clinical Training Committee, Clinical Education Report, Spring 1980, at I-IV.
74. See: Clinical Education Report, at 100-104.
programs (such as the trial practice seminar); and direct client-service operational programs of a voluntary nature (such as CLASP). As well, the Report recognized and recommended the use of "clinical" experiences in the classroom context.

The Clinical Education Report, approved by Faculty Council in 1980, expressly noted the need to take account of non-traditional perspectives in the design of the curriculum. The report's conclusions identified a need:

... in the school's education, research and leadership activities for greater emphasis on the delivery aspects of the legal system, on the role of the lawyer and on matters relating to professional responsibility. [As well ...] there are a number of important interests in society whose legal needs and problems have not been a significant part of the law school's traditional focus.

In identifying a need to re-direct the law school's "traditional focus" to meet legal needs and interests, the Report emphasized the need for determining priorities. In this way, the issue of clinical programs was seen as not merely one of whether they would be accepted per se, but whether clinical programs would be "accorded an accepted place of prominence" within the overall activities of the law school. Such a recommendation, of course, suggested a need to determine relative priorities, a process quite different from the "hundred flowers" approach.

The work of this committee also departed from the methodology of other curriculum review committees when it chose to survey graduates of the Parkdale program. While the survey may have had some limitations, it was significant that a very high proportion of former Parkdale students thought that the Parkdale program had achieved "significant success in respect of almost all of the listed objectives and was significantly more successful in most areas than the school's traditional program." Nonetheless, the Report did not crystallize decision-making about curricular reform, even in the context of clinical programs, and within a few years, the intensive programs in both administrative law and family law ceased to be offered. New directions occurred only after the appointment of a faculty member as Director of Clinical Education.

75. Id., at 105.
76. Id., at 110-111.
77. Id., at 107.
78. Id.
79. A number of limitations are discussed in the report. See Clinical Education Report, at 32-44.
80. Id., at 41-42.
81. See post.
The other major curricular report of this period focused again on the first-year program. Established in 1980, the original terms of reference of the First Year Curriculum Review Committee were specifically directed to a review of the Introduction to Law course, the perspective option course arrangements, and the possible need for a first-year course in Legal Process. The work of the review committee suggested the need to expand the terms of reference, however, and the report eventually provided a major review of the first-year program. Its recommendations included a change in focus for the Introduction to Law course, renamed Legal Research and Writing to reflect its new emphasis on research methods and writing skills.\(^{82}\)

The committee's Report on the first-year program in general, styled a "preliminary assessment" rather than a "final report", concluded that both the content of the first year (and the debate about it) were surprisingly uniform in most Canadian and American law schools; indeed, concerns about goals and objectives, coverage, relevance, rigour, semesterization, and methodology were reported to be "as alive and as popular as they were in the 1920s."\(^{83}\) The Report stated that reforms introduced at other law schools had achieved quite mixed reviews from faculty and students\(^{84}\), and that the only consensus was that "there is no consensus".\(^{85}\) Admitting that there is a need to define goals and objectives, and at the same time some difficulty in doing so with precision and room for diversity, the Report both commended and criticized the 1974 comprehensive review at Osgoode:

The attempt [to define goals and objectives] in the [1974] report was both thoughtful and well-intentioned. . . . Most if not all faculty members would agree with these objectives — they are at best self-evident, almost trite. They do not offer much guidance in dictating specific curriculum choices for a particular first-year programme. They do not provide the necessary precision for either curriculum design or programme implementation.\(^{86}\)

In the result, the committee's Report recommended support for individual experimentation by instructors coupled with consultation and cooperation within subject areas in the design of new courses and

---

83. Id., at 22.
84. Id.
85. Id., at 23.
86. Id., at 24.
teaching arrangements. Rather than an overall prescription for first year, the Report acknowledged the value of small experiments and innovations. As well, the Report seemed to be pessimistic about the possibility of comprehensive review in the context of dynamic change and diverse needs, suggesting instead that:

... educational policy in the law schools during the closing years of this century is likely to become increasingly pragmatic, consciously experimental. We shall have to distribute our eggs among many baskets. This is true because the needs we serve are altering and we do not yet know very clearly what form they will take and, in any event, the demands on legal education will become increasingly numerous and diverse. It seems likely, therefore, that if the law school is to flourish as part of the university, or even survive, the law school must become an even more pluralistic community than it has yet become. ... 

This view aptly characterizes the interstitial nature of curricular reform for several years following the work of the Long Range Academic Policy Study Group's Report. In some ways, such reform activity may appear less successful than a comprehensive approach; at the same time, however, interstitial reform may also suggest respect for diversity and differences. In terms of lasting changes, neither the Study Group Report nor the subsequent efforts to examine particular issues affected the fundamental shape of legal education at Osgoode in the decade or so after the move to York University. Yet, many individual initiatives were undertaken and many of them quietly succeeded in providing intellectual challenges for students and faculty alike. Certainly, by the mid-1980s, the academic program had matured significantly, even as it continued to avoid confronting hard choices and failed to resolve the tension between practice and academe. In Frye's words, the "spiral curriculum" continued.

IV. New Directions in Legal Education and Research

1. Synthesizing Research and Legal Education

In recent years, curricular reform at Osgoode has occurred in a variety of different ways. In general terms, the reform has been fragmented rather than comprehensive, but it has increasingly been theoretically focused and not merely pragmatic. As well, reforms have been more often closely linked to developing areas of challenging legal research for individual faculty members and students. Indeed, the outstanding characteristic of

87. Id., at 25-27. The Report concluded, somewhat ironically, that the more pressing priority for curriculum reform was the upper-year programme, specifically in relation to pedagogy: teaching materials and methodology, class size, evaluation techniques, etc. Id., at 30.
88. Id., at 25-26, quoting Professor Francis Allen.
legal education reforms at Osgoode in recent years has been the critical nexus between research activities and classroom teaching.

In the context of clinical education, for example, the appointment of a faculty member as Director of Clinical Education in 1984-85 resulted in a systematic review of all existing clinical programs. Initially, the CLASP program was reorganized and strengthened, and then Faculty Council was asked to debate and approve a new direction for the Parkdale program proposed and recommended by the Clinical Education Committee. Essentially, Faculty Council approved the redesign of the Parkdale program as an intensive programme in Poverty Law "with major changes proposed to the practicum, supervision and formal teaching components." The former emphasis on "skills training" was altered to permit "a more systematic analysis of the conceptual and contextual issues arising from the provision of legal services to clinic clients." And in a new burst of creative synthesis, the program at Parkdale also became interdisciplinary with the inclusion in its course work component of students from the School of Social Work at York.

The Clinical Education Committee also reviewed other existing clinical programs in terms of theoretical design. The intensive programs in business law and in criminal law were continued, while those in administrative law and family law were formally discontinued. In 1986, however, Faculty Council approved the Committee's proposal for a new clinical program in family law (with a theoretical and critical perspective), designed to be undertaken by students as the basic family law course; and some planning has occurred in the Committee for a proposed intensive program in public law and policy. As well, the Director and the Clinical Education Committee have continued to pursue measures to enhance the use of clinical methodologies in classroom teaching. Unlike the earlier efforts at curricular reform these

89. Osgoode Hall Law School, Annual Report 1983-84, at 12. This report explained the appointment of a Director of Clinical Education as the result of a recommendation of the Clinical Education Report in 1980. The job description provided that the Director would have "primary responsibility for the formulation and implementation of clinical education policy at the law school, within the framework of the usual faculty decision-making processes." The report further noted the expectation that efforts would be made to build clinical experiences into the traditional curriculum (at p. 13).
92. Id.
93. Id.
94. Id, at 22.
95. Id.
changes were created and designed (and implemented) by the group of specialized instructors committed to clinical education strategies, with the approval of Faculty Council as a whole. As Osgoode's recent *Five Year Planning Document* stated:

This review [of clinical programmes] thus offers another model for curriculum review, . . . involving the initiative of a group of faculty with mutual interests in research and teaching [collaborating] in redesigning a part of the curriculum.\(^9\)

This model of curricular reform has also occurred in the context of public law at Osgoode. For several years, faculty involved in teaching or research in constitutional law have met regularly in informal colloquia to discuss current issues, assess research in progress, and plan teaching arrangements. Particularly in 1982-83, when the *Charter of Rights and Freedoms* was proclaimed, the Constitutional Law Group was able to propose and implement new arrangements for teaching in the public law area and to ensure a coherent and effective teaching program in relation to *Charter* issues.\(^9\)

A special initiative by the Academic Policy Committee in 1982-83 commenced a process of curricular review by areas of interest, beginning with the Constitutional Law Group.\(^9\) Interestingly, in proposing this form of curricular review, the Associate Dean's memo to the Committee expressly suggested a preference for small-scale reform rather than a wholesale approach:

(i) Any curriculum reform should be of the intermediate range, that is we ought not to spend the next six months producing a blue-print of the Osgoode philosophy of legal education, the law, and the world. Nor should we so limit our inquiry so that we confine ourselves to looking for overlap or gaps in the subject matter taught at the Law School.

(ii) We should start by asking our colleagues whether the courses that are offered in the area in which they teach overlap or have omissions in subject matter, approaches, balance of doctrine, theory, policy and inter-disciplinary perspectives, methods of teaching and evaluation, and skills development . . . \(^9\)

In the result, the Constitutional Law Group completed its review and recommendations for the Committee, and, after some problems, the Committee eventually abandoned its efforts in relation to other subject


\(97.\) Annual Report 1983-84, at 10. The process is, of course, an ongoing one, often not without controversy, particularly in the context of the role of the *Charter*.

\(98.\) For details of the proposed review and issues to be addressed, see Appendix 4 to Annual Report 1982-83.

\(99.\) Id., at 1.
areas. Instead, the Committee supported the production of a comprehensive “Guide to Upper Year Course and Seminar Selection” with detailed advice for students on programme design and a full description of course offerings in different areas of law, with some advice as to “how a balanced programme placing some emphasis on the area in question would be constructed.”

This effort at curricular reform achieved some success overall, despite its failure to accomplish effective review of all areas of the curriculum. The process contributed significantly to the organization and development of course arrangements in public law at a critical point, and fostered more cohesion and intellectual activity among public law teachers. Interestingly, it also contributed to some renewed enthusiasm for interdisciplinary activity when scholars from other disciplines at York, and some governmental policy-makers, were encouraged to participate in the group’s regular meetings. In an important respect, moreover, the new Research Centre of Public Law and Public Policy at Osgoode represents the consolidation of these efforts and offers the opportunity for continued exploration of the links between research activity and the academic program, particularly for graduate students. In this way, the Research Centre offers a unique opportunity to forge a special nexus between research and teaching at Osgoode.

Two other curricular changes also deserve mention. One is the process of computerization that began at Osgoode in 1984. On the basis of a consultant’s report, computers have been made available over the past few years to faculty, support staff, and students. While some limited use has been made of computer-assisted instruction, the creation of the student computer lab for the preparation of legal writing assignments in first year and research essays for upper-year students has contributed greatly to students’ opportunities to improve writing skills. While this development is not strictly one of curricular change, it has already had a significant impact on the learning environment for students, and provides a unique resource for future curricular reform. In contrast to other curricular developments, this reform occurred with considerable support and consultation with faculty members, but with only a small amount of committee organization.

101. See Osgoode Hall Law School, Annual Report 1986-87, at 10. The Centre’s mandate is to pursue interdisciplinary research on the role and impact of law in the formation and expression of public policy.
103. Id., at 5.
Similarly, another important curricular development has occurred as a result of individual efforts rather than large-scale organization. In recent years, a number of new courses have been approved, reflecting interdisciplinary or non-traditional approaches to law, generally designed as offshoots of faculty research interests, and very much encouraged by the appointment of two new faculty members with qualifications in history and in philosophy. As was noted in the Five Year Planning Document, the creation of new courses directly related to faculty research interests offers students “the potential . . . to be associated in the creation and development of legal ideas.”

Many of these courses have forged new syntheses of legal knowledge and offered critiques of law both in theory and in practice. As reform efforts, they are often (but not always) quietly subversive, nurtured in an environment that is friendly to the intellectual passions of individuals. Indeed, Osgoode’s intellectual culture is one that thrives on just such passions — and their diversity. As the Mission Statement in the Five Year Planning Document explained:

[The university environment may be] the only remaining environment in our society which still offers warm hospitality to the intellectual passions of individuals without regard to their attraction for the collective as a whole. Within the Osgoode community . . . , there is a collective sense of tolerance, even mutual support, for our individual and intellectual passions, and a recognition of the importance of the preservation and enhancement of a community in which ideas are fostered and encouraged as well as challenged.

In this spirit, the creation in recent years of a variety of funded lectures,

105. See, eg., Five Year Planning Document, at 20-21. The list of recently-approved courses and seminars includes the following:

1982-83 Immigration Law (Professor Angus)
   Occupational Health and Safety (Professor Tucker)
   U.S. Constitutional Law (Professor Cameron)

1983-84 Law, Gender, Equality (Professor Mossman)
   Commercial Law Seminar: Secured Financing in Canada (Professor Geva)

1984-85 The Constitution and Natural Resources (Professor Moull)
   International Human Rights Law (Professor Hathaway)
   Social History of Crime and Criminology (Professor Hay)
   History of Criminal Law and its Administration (Professor Hay)

1985-86 Funds Transfer Law (Professor Geva)
   Legal Values (Professor Green)

107. Id., at 8.
108. Included annually are the Laskin lecture on Public Law, the Lewtas lecture in commercial law, the Gibson-Armstrong lecture in legal history, the Or Emet lecture on legal
exchange programs for students and faculty, bilingual course offerings in civil law, and specialized conferences and symposia represents a collective effort of individual energies that makes Osgoode both a rich and diverse academic legal community.

All of these myriad and innovative accomplishments support the truth of the assertion in the *Five Year Planning Document* that "Osgoode Hall Law School has aspired to, and in many respects has achieved, a leadership role." This positive conclusion is, however, challenged by the serious critique of such legal education in Canada in the SSHRC Report, *Law and Learning*. Focusing on the need for a new direction in legal education, the *Report* is highly critical of the "eclecticism" of legal education as it has evolved:

We have several times described law school curriculums as eclectic. The premises of eclecticism were both negative and positive. Its negative premise was that students should be released from the bondage of the old "classical" curriculum; its positive premise was that they would use their new freedom to choose individual courses of study reflecting their academic interests and professional aspirations. In our judgment, the negative has proved itself, but the positive has not. While some degree of individuality has been manifest, most students pursue a rather narrow range of possibilities. And while some of these possibilities are academic, most of them are professional, or at least thought to be professional . . . ."

Such criticism suggests that, notwithstanding many excellent curricular developments in Canadian law schools, such as those described at Osgoode, most students continue to choose courses according to ethics, and the Barbara Betcherman Memorial Forum on women and the law. See: *Annual Report 1984-85*, at 26; *Annual Report 1985-86*, at 32; and *Annual Report 1986-87*, at 31-33.

109. Included are the exchanges with Monash University, Melbourne Australia; with l’Institut de Droit des Affaires, Aix-en-Provence France; with Kobe University, Japan; with l’Université de Montreal, Montreal, Canada; and with the Southwest Institute of Political Science and Law, Chongqing China. *See: Annual Report, 1986-87*, at 33-35.

110. In 1986-87, two courses were offered in French, and in 1987-88, three courses were so offered. The 1986-87 annual report stated that six faculty at Osgoode were capable of and interested in providing instruction in French. *See: Annual Report 1986-87*, at 36-38.


112. *Five Year Planning Document*, at 7. The document continues:

Whether the Law School is able to sustain this role is dependent on a number of factors, not the least of which is the measured judgment of others. Nonetheless, the pursuit of excellence and the continuation of a tradition of leadership remains an important aspect of our collective purpose.

113. Minister of Supply and Services, 1983.

114. *Id.*, at 56.
professional rather than academic interests. On this basis, the SSHRC Report suggests that the innovative experimentation in individual courses at Osgoode in recent years can have no major impact on the general quality of legal education. By contrast, the Report recommends support for academic interests in the curriculum by the creation of separate streams within law schools for “academic” and (perhaps several different forms of) “professional” education in law. In the result, the Report recommends replacing eclecticism “with a new structure pluralism which offers a genuine choice of identifiable alternatives.”

Whether the competing demands of training for the practice of law on one hand and academic objectives on the other can be satisfied by such bifurcation is a matter of ongoing debate at Osgoode as at other Canadian law schools. More interesting, perhaps, is the fact that the SSHRC Report evidences a renewed debate about the appropriate balance between professional and academic interests in the context of a university law school. Just as these issues were unresolved two decades ago when Osgoode became a part of York University, so they remain as present-day challenges for both faculty and students. Just as the “spiral” has no end, the debate is never ended.

2. Thinking About Spirals and Legal Education

The issue of reform in legal education still has vitality both at Osgoode

115. Law and Learning, at 56.
116. At Osgoode, as elsewhere, it is difficult to generalize about the response to Law and Learning. One effort to generalize a response has suggested that it might be taken “with partial acceptance, partial resistance, considerable irritation, and, predominantly, with sadness.” See Mark Weisberg, “On the Relationship of Law and Learning to Law and Learning” (1983), 29 McGill L.J. 155 at 156. Weisberg suggested that the Report misconceived the scope of understanding of the education process:

[The Report] addresses neither the way things are learned in law schools nor the links between research and personal knowledge or between research and teaching. Some sections of the Report even claim a negative link between research and teaching, not only by the usual argument that doing one fills time that might have been devoted to the other, but also in the almost incredible assertion that law teachers find in the subjects they teach no stimulation. . .

117. It is interesting that Kyer and Bickenbach speculate that the model of law teacher and scholar created by Dean Wright in 1949, and which led to his resignation from Osgoode Hall Law School, was precisely that which was severely criticized by Law and Learning.

. . . Wright was at heart a practice-oriented teacher; he was not interested in delving into the intricacies of legal philosophy or examining the social scientific approach to research in the law and legal institutions. As a teacher, he hoped to turn out well-prepared practitioners; as a scholar, he was concerned with the critical analysis of particular judicial pronouncements.

Kyer and Bickenbach, supra, note 7, at 276.
and elsewhere. Yet the process of reforming legal education, like other movements for social and intellectual change, is one of complexity, involving both rational discourse about principles as well as the organization of appropriate structures and policies. In this context, for example, it has been forcefully suggested that Osgoode's move to York University and the accompanying curricular reforms, dramatic as they may have appeared, did not accomplish substantive changes in legal education at Osgoode. Because the structure of the reforms permitted continuing influence by the profession in the university legal education process, "[what the private practitioner does] is given a disproportionate amount of weight in education and research, distorting the study of law and reducing the possibility of meeting the objectives of, what we believe, a university legal educational programme should be."119

Thus, the tension between the objectives of legal education as an academic discipline and those relevant to law practice remains central to the reform debate. Whether this tension is a healthy one, forever distinguishing law academics from other university teachers120, whether it is appropriate for law academics to bridge theory and practice in this

118. As one American commentator stated, however:

Reading about legal education can be depressing for a law professor... [The] overall assessment of legal education is anything but favorable. If the writing accurately pictures the reality, the following assertions are at least partially true: law professors do not prepare their graduates adequately for law practice; the law school curriculum is neither properly theoretical nor adequately practical; law schools create unproductive stress and anxiety in their students; law students are generally bored after the first semester of study; law professors, despite their protestations to the contrary, stress knowledge of rules rather than broader legal issues; and the law school curriculum inclines students toward serving the affluent. Historically, law schools have claimed with confidence that they teach their students to think like lawyers, but a recent study casts doubt on that assertion as well.


120. For a cogent argument on this point, see D.A. Soberman, "Law Schools Under Attack" (1982-83), 7 Dal. L.J. 825, at 827. As Soberman suggested, law schools offer students a variety of intellectual experiences unlike other professional schools and unlike other academic programmes:

... on the one hand, we expect our students to be prepared to handle the intellectual and scholarly aspects of university studies on a par with graduate students in other disciplines, but with different emphasis. On the other hand, we expect our students to be prepared to handle professional skills, at least after some practical experience, even better than would students who might obtain a “practical” training in proprietary law schools — if they existed in Canada.
way\textsuperscript{121}, or whether there is a need to see accomplishments to date as an essential step to future progress\textsuperscript{122} are all issues about the relationship between academic and practice objectives in legal education.

Yet, this way of characterizing the problem masks a deeper issue within the legal education debate, an issue that informs both theoretical ideas about legal education as well as the norms of legal practice.\textsuperscript{123} To what extent is law (both in theory and in practice) neutral and objective, determined by precedent, and constrained by the rule of law? To what extent is our knowledge of law shaped by theoretical ideas that reflect a range of human experiences, and to what extent does the practice of law pay heed to the needs and expectations of all those in the community? To what extent does the theory and practice of law recognize the relevance of fairness in the classroom as in the courts of law?

These questions are being asked with new urgency in the law school environment. As admission applications soar so that increasingly difficult choices must be made as to who should qualify for legal education\textsuperscript{124}, as the composition of the student body (but not as often the faculty) increasingly reflects the multicultural society of Canada at the end of the

\begin{quote}
\textsuperscript{121.} For an argument that the data on university law teachers arising out of the research for the SSHRC \textit{Report} reflects appropriate choices for teaching and research on the part of law teachers in Canada, see Alan M. Thomas, Book Review of John S. McKennirey, \textit{Inside the Law: A Commentary on Canadian Law Professors} (1983), 21 Osgoode Hall L.J. 561, at 566. The author argues that law teachers are dedicated to teaching objectives:

One of the clearest messages of the \textit{Report} is that the legal professoriat is as devoted to the pursuit of that objective [teaching], . . . as any body of academics could possibly be. The linking of their consultation, their production of teaching materials, for which they receive little or no remuneration, and their apparent determination to remain in touch with or on top of practical developments in their field, paints an admirable portrait of responsible teaching.

\textsuperscript{122.} \textit{See}, eg., J.D. McCamus, "After Arthurs — A Preface to the Symposium on Canadian Legal Scholarship" (1985), 23 Osgoode Hall L.J. 395, at 396. As the author stated, it may be appropriate to view the SSHRC \textit{Report}

. . . as a harbinger of the coming of age of Canadian legal scholarship. Imagine having so substantial a body of scholarship that it can be studied, assessed, and, indeed, criticised for being too heavily focused in certain areas of enquiry. . . . The achievements of the past twenty-five years are, in this context, quite remarkable.

\textsuperscript{123.} For other explorations of similar ideas, see Rod Macdonald, "Legal Education on the Threshold of the 1980's: Whatever Happened to the Great Ideas of the 60's" (1979), 44 Sask. L.R. 39; and the symposia on "Bhopal and Legal Education" (1986), 36 J. of Legal Ed. 285. The issue of fundamental values in legal education has surfaced recently in Australia as well, in the context of the Pearce Report. For a critique of theory and practice in relation to the Pearce Report, see John Schlegel, "More Theory, More Practice" (1988), 13 Leg. Service Bull. 71.

\textsuperscript{124.} \textit{Supra}, note 56.
\end{quote}
20th century\textsuperscript{125}, and as the complexity and accelerated change in the law itself promotes new arrangements for providing legal services\textsuperscript{126}, the essential nature of law must be questioned in academe and practice alike.

In the law school context, such questioning has begun to occur\textsuperscript{127} challenging the traditional perspective of law\textsuperscript{128} along with the traditional values of law schools and teaching methods\textsuperscript{129}. Any effort to reform legal education for the 1990s and beyond must, therefore, take account of such fundamental questions, and the creation of a process of curricular reform and an environment which encourages and supports such initiatives are themselves important goals. Such curricular reform at Osgoode must also take seriously the challenge directed to the law school at the time of its relocation to York: to make meaningful the dedication of its resources for "educating men and women for service through law"\textsuperscript{130}

In this context, it is unlikely that efforts to achieve general agreement on overall curricular reform would achieve more than a bottom-line consensus now at Osgoode, any more than such consensus was possible in 1974 when the Study Group released its original \textit{Report}. Since the effort to achieve such consensus necessarily diverts scarce resources, it seems preferable to use time and energies to stimulate ideas and provide support for other efforts to create new educational designs. Both within individual courses, and among groups of teachers with common interests, more challenging educational ideas will be forthcoming when faculty and students feel a creative commitment to their own intellectual pursuits\textsuperscript{131}

\textsuperscript{125} In 1988, Osgoode's Faculty Council adopted a resolution on equality and non-discrimination for the law school. The resolution was presented as a result of expressions of concern by students about race and sex discrimination. Abundant information about the composition of the legal profession in Toronto and the relative "success" of different groups within the profession is available in Hagan, Huxter and Parker, \textit{supra}, note 56.

\textsuperscript{126} A summary of some recent changes is contained in Greta Fung, \textit{supra} note 56.


\textsuperscript{128} One example, in relation to cases about the personhood of women in law and their eligibility to become lawyers, is Mossman, "Feminism and Legal Method — The Difference It Makes" (1986), 3 Australian J. Law and Soc. 30.


\textsuperscript{131} \textit{See, eg.}, the proposal discussed in the Academic Policy Committee at Osgoode in 1987-88 to permit a group of first-year instructors to redesign the first-year curriculum for the fall semester. Such tasks are both intellectually challenging and time-consuming, and require
Northrup Frye’s image of a spiral curriculum offers an interesting analogy for legal education. Like a spiral, the objectives of legal education look different, depending on the perspective: from one perspective the spiral looks like a circle, and from another perspective, it does not. Like a spiral, too, the process of reform and renewal in legal education is not linear but continuously in motion. And just as the spiral has an internal logic, but may still be open to outside influences, so legal education must respond, not only to the need for integrity from within but also to the challenge of new perspectives from outside.132 In designing legal education for the 21st century, Osgoode and other Canadian law schools (as well as the legal profession) will transform the normative tradition133 of law only by responding to the challenge of the outsiders; as Epstein wrote about women lawyers:

[The] outsider role, no matter what its pains and handicaps, does give a perspective different from that of insiders with vested interests in the existing structure.134

opportunities for experimentation over a period of time. Institutional resources would be needed to make such a proposal workable. No action was taken on this proposal because of the creation of a joint faculty-student Ad Hoc Committee on Curriculum Reform in April 1988. Five faculty and five students have been asked to review Osgoode’s curriculum and report within a year. There are no terms of reference for the committee, which has proceeded by way of weekly discussions open to all to attend. The Committee intends to formalize its process in the fall of 1988 (Memos from Associate Dean Neil Brooks, May 1988).

132. The idea of “outsider” is itself one that suggests different perspectives to different people; in this context, I am referring to the challenges presented to the legal system and the law schools by the changing composition of our society and the entry into law school classrooms of perspectives historically excluded from the law: women, native Canadians, students with a first language and culture that is neither English nor French, and those with economic disadvantages or physical disabilities. Whether our law schools demonstrate a capacity for re-learning legal values in the context of the challenges presented by these “outsiders”, or whether we include these persons who have been excluded from the legal profession only if they assimilate to existing norms, are critical issues for the future of the legal profession and for the integrity of law in our society in the 21st century.

133. See Langland and Gove, eds., A Feminist Perspective in the Academy (U. of Chicago Press: 1981) at 59. In her article for this collection, Rosemary Radford Ruether warns that:

We underestimate the radical intent of women’s studies . . . if we do not recognize that it aims at nothing less than . . . [a] radical reconstruction of the normative tradition.