Doorkeepers: Legal Education in the Territories and Alberta, 1885-1928

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I. Introduction

Before the Law stands a doorkeeper. To this doorkeeper there comes a man from the country and prays for admittance to the Law. But the doorkeeper says that he cannot grant admittance at the moment. The man thinks it over and then asks if he will be allowed in later. "It is possible," says the doorkeeper, "but not at the moment." Since the gate stands open, as usual, and the doorkeeper steps to one side, the man stoops to peer through the gateway into the interior. Observing that, the doorkeeper laughs and says: "If you are drawn to it, just try to go in despite my veto. But take note: I am powerful. And I am only the least of the doorkeepers. From hall to hall there is one doorkeeper after another, each more powerful than the last. The third doorkeeper is already so terrible that even I cannot bear to look at him." These are difficulties the man from the country has not expected; the Law, he thinks, should surely be accessible at all times and to everyone. . . .

Legal education has been subjected to greater scrutiny in common law jurisdictions since the publication of *Lawyers and the Courts* in 1967.2 Most of the recent literature has addressed the issue of who received a legal education and became entitled to practise law. It has also examined how a conservative-minded profession regenerated itself, and whether it equipped new recruits with the proper tools to meet the challenges of a changing society.3

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The best of the recent Canadian literature is: John Willis, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1980); G. Blaine Baker, "Legal Education in
This study examines the institutional transformations in legal education in the North-West Territories from 1885 to 1905, and in Alberta from 1905 to 1928. It was during this period that the educational standards of newcomers to the Territorial and Alberta profession were controlled, more or less successively, by governments, law societies and post-secondary institutions. Modern legal education came to Alberta in 1921 when a fusion of selective aspects of English, American and Canadian models of legal education was accepted by the Alberta profession. Academic standards had been rising in the years leading to this achievement, but only fitfully due to the metropolitan tensions within the profession and among various educational institutions, the lower academic standards in other jurisdictions, the reluctance of many students to embrace an academic legal education, and the fiscal imperatives of the institutions involved in the provision of legal education.

Governments, law societies and post-secondary institutions were the three major players in this story. All three underwent significant changes in nomenclature in this period, mostly due to the creation of the new provinces of Alberta and Saskatchewan out of the rubric of the North-West Territories in 1905. The Territories had been governed by a lieutenant-governor and Council appointed by the federal government ever since the lands had been ceded by the Hudson’s Bay Company to Canada. Membership in the Council became partly elective in 1876. In the same year the seat of government became Battleford, but in 1882 Regina became the capital. In 1888 the Territories was granted an Assembly, and most of its members were elected. It was not until 1897 that responsible government (that is, an executive drawn from and holding the confidence of the Assembly) was granted the Territories. Its first premier was F.W.G. Haultain, and he sought to govern the Territories on a nonpartisan basis despite his Conservative affiliation. In 1905 the lands comprising its two westernmost districts, Alberta and Athabasca,


4. Legal education refers to the knowledge acquired not only through law courses at post-secondary institutions, but also through articling and self-study.
were partitioned from the rest of the Territories to form most of presentday Alberta. The new province had an elected legislature (in Edmonton) from the very outset, and it was controlled by Liberal governments until 1921 when the United Farmers of Alberta swept to power.5

The Territorial Council (or Assembly) and the Alberta legislature passed legislation known as ordinances and statutes respectively. It was by such legislation that the legal profession was regulated. Thus, the Territorial Council enacted the first legal profession ordinance in 1885 by which it, together with the Territorial courts, assumed jurisdiction over the few lawyers in the Territories. By 1898 there were sufficient numbers to warrant a measure of self-government in the Territorial profession. Thus, an ordinance incorporated the Law Society of the North-West Territories to assume the educational (and some other) functions. The Society was governed by convocation, which was comprised of benchers elected by members of the Society. Convocation had general powers to conduct the Society's affairs, including education and admissions. As convocation only met once or twice a year, much of the day-to-day work was delegated to various standing committees, such as the Examining or Education Committee, or to the Society's officers. The most important officers were the secretary-treasurer, and from the standpoint of education, the examiners.6 After Alberta and Saskatchewan were created in 1905, the Territorial Society decided to disband in favour of separate societies for each new province. To this end, the Alberta legislature passed the Legal Profession Act incorporating the Law Society of Alberta in 1907.7 Its structure was almost identical to that of the Territorial Society.

The development of post-secondary institutions was affected less by the creation of the province of Alberta than by municipal, provincial and university politics. Plans for a Territorial university never got past the stage of legislation authorizing one. In 1903 the Territorial government had resolved "to avoid a repetition of the evils which by reason of competing institutions had been experienced by the Eastern Provinces." Thus, the Assembly enacted legislation providing that there would be one, non-sectarian university in the Territories. The legislation was passed

7. Statutes of Alberta, 1907, c. 20. [Hereinafter S.A.]
without opposition and met with “general approval from the public.”

No further action was taken to establish a university before Alberta and Saskatchewan were created. The new Alberta legislature enacted virtually identical legislation in 1906, and appropriated $150,000 for a university that the government decided to locate in Strathcona, which was amalgamated into Edmonton in 1912. Henry M. Tory was appointed president of the University of Alberta early in 1908, and teaching began that fall.

Most Calgarians were upset with the decision to locate the University of Alberta so close to Edmonton. Thus, many of its prominent residents — including the Calgary-based benchers — petitioned the legislature for a local university. The government acceded only in part, for the legislation incorporating Calgary College, in 1910, withheld degree-granting powers. Further, Calgary College did not have the power, given to the University of Alberta that year, to arrange for examinations with the Alberta Society and other professional bodies. The province did not finance its operations when it began law and other lectures in the autumn of 1912. Until 1915 it was a formidable antagonist to the University’s aspirations that its Edmonton campus would be the site of the province’s law school.

What follows, then, is an analysis of several themes in the history of legal education in the 1885-1928 period: the major paradigms of English, Canadian and American legal education, Territorial admission standards, the nature of the articling experience, the development of law lectures, curriculums and examinations after 1900, the creation of a part-time LL.B. programme in the Faculty of Law at the University of Alberta in 1912, students’ academic performances, the impact of institutional competition for students on academic standards, and the creation of a full-time LL.B. programme at the University in 1921. These themes are explored through extant primary sources of the major players in the story: the private and published minutes of the convocations of the Territorial


and Alberta Societies, the departmental records of the Territorial and Alberta Attorneys General, and the papers of Henry M. Tory, whose presidency of the University of Alberta lasted until 1928.

II. The English, Canadian and American Experience

The development of legal education in England had long hinged on the demarcation between barristers and solicitors. The former were under the complete control of one of the four Inns of Court, while the Incorporated Law Society, Parliament and the courts shared control over the latter. The standards of education for prospective barristers had been deteriorating since the mid-seventeenth century due to the Inns' abdication of their intellectual and educational functions. Legal education amounted to little more than keeping terms, paying fees, and writing examinations. As a result, apprenticeship to a barrister after a final examination became common. But this was not compulsory and it usually consisted of technical training. In 1762 the Inns allowed Oxbridge graduates to be called to the bar after three years of apprenticeship instead of the usual five, but no law was taught at Oxbridge. The Inns started to give lectures by the 1850's, but they were irregularly held, voluntary and poorly attended. Bar examinations were established in the 1860s and made compulsory in 1872, but their efficacy was still being criticized in 1930.11

In an effort to enhance the prestige of solicitors, the Law Society took a more reformist position than the Inns on legal education. By the time that the Society was founded in 1823, the "three or five" apprenticeship system, by which the usual five-year term was reduced by two years for university graduates, had been in place for two years. As with prospective barristers, the quality of the apprenticeship varied from office to office, and usually involved technical duties. Lectures, first instituted by the Society in the 1830s for its London students, were extended to students in the provincial towns after 1875. Again, they were not compulsory, they were of limited value for the purpose of the examinations, and therefore they were rarely attended; students continued to use their private crammers. In 1838 a compulsory written final examination (set by a judge and graded by solicitors appointed by the Society) replaced the perfunctory judge's interview that, since 1729, had passed for an examination. In 1860, preliminary examinations testing general knowledge were established with a view to attracting gentlemen to the

profession. Eventually, a system of preliminary, intermediate and final examinations was established under the sole control of the Law Society. In 1894, university graduates were exempted from the intermediate examinations if they had already taken the subject in question at a university before entering law studies.12

From the 1840's to 1900 repeated efforts to establish a less technical, more doctrinal education for prospective barristers and solicitors, through existing law faculties or through the creation of a legal university in London, met with limited success. Oxford and Cambridge began offering law degrees in this period, but the curriculum emphasized classics, jurisprudence, history and Roman law (instead of torts, equity, criminal law and evidence) because academics were suspicious of practical subjects. Moreover, lawyers did not want to let universities assume greater responsibility for academic legal education because they were reluctant to concede that their own education had been inadequate. They also did not take academic lawyers and research seriously. Moreover, there was a reluctance, especially by the Inns, to give up educational jurisdiction and substantial admission fees to a law school where prospective barristers and solicitors would be taught together.13

At the turn of the century, after they had rejected a role in legal education by London University, the Inns simply continued their modest educational programme. However, the Law Society expanded its lectures and in 1903 established a law school in London; the lectures were not compulsory. It maintained a firm hold over examinations, and refused to get involved in university-based legal education. It was only in 1922 that it supported legislation making mandatory a year's attendance at a law school for those without approved degrees. Provincial law schools were established shortly thereafter with the financial assistance of the Society. However, most lecturers were practitioners whose own narrow education was invariably imparted to the students. Teaching in London was broader, but crammers were still in use because students had limited time to study for their final examinations. Thus, apprenticeship was still the basis of prospective solicitors' education in the 1920s. While significant advances had been made in continental Europe and North America, educational reforms in England had been stifled by a profession mired in conservatism.14

13. Ibid., pp. 51, 57-63; Carr-Saunders and Wilson, The Professions, pp. 49-50; Abel-Smith and Stevens, Lawyers and the Courts, pp. 68-76, 165-74.
The first self-governing body established in British North America was the Law Society of Upper Canada, and it drew its inspiration from both the English Law Society and the Inns. It was created in 1797 by the legislature of Upper Canada. Its custodians were called benchers, and they gave an oligarchic cast to the governance of lawyers in the nineteenth century, even after the members of the Society won the right to elect benchers to office in 1870. From the very outset the Ontario Society was subject to the control of the legislature and the judiciary. Thus, the former passed not only general legislation affecting the Society's governance of the profession, but also the occasional private bill admitting an individual to the practice of law. The judiciary's powers were more titular than real due to its reluctance to assume control. The Ontario Society's primacy in matters of admissions and legal education was confirmed in the 1870's.

In the first sixty or seventy years of the Ontario Society's existence, there were major advances in a system of education that was built on entrance examinations, the “three or five” system of apprenticeship, term-keeping at the courts of Osgoode Hall, attendance at lectures offered by practitioners at Osgoode Hall, and bar examinations. However, by the 1880's lectures, entrance examinations and term-keeping were no longer compulsory. The re-establishment of the Society's law school in 1889 — for the third time in as many decades — was probably motivated by the profession’s unwillingness to delegate or share its monopoly over education with the universities. The lectures, now compulsory, were held, as in the past, at the beginning and end of the workday so that they would not unduly interfere with the students' articling duties. The emphasis on practical legal education remained unchanged until well after World War II. As in England, the Ontario Society, and especially rural practitioners, were reluctant to concede the value of a more academic legal education or to relinquish control over legal education to the universities.

This was not the case in Nova Scotia, the first common law province to emphasize full-time studies in law in a university setting, and to

15. The Law Society of Upper Canada is referred to as the Ontario Society both before and after 1867.
separate academic legal education from practical training. When it opened its doors in 1883 in Halifax, Dalhousie Law School offered a three-year programme of lectures and examinations leading to the LL.B. degree. The Nova Scotia Barristers Society accepted the degree as satisfying its requirements for admission to the bar. The LL.B. did not supplant the traditional articling route of admission to the bar, but it was popular and contemporaries felt that it provided an excellent legal education. Students seeking admission to the LL.B. programme had to either pass the Society’s entrance examination or the Faculty’s matriculation examination. The programme was billed as full-time from the outset, although students often continued to do office work until the 1910’s because of the relatively light course load and short academic year. The early emphasis on public law courses gave way to a more balanced curriculum, one that emphasized both liberal and technical aspects of the law. By 1915 the curriculum had become even more practical and oriented to private law courses, and the Canadian Bar Association adopted it as its model curriculum in 1920. One or two of the instructors were full-time, but the rest of the faculty was comprised of prominent practitioners. Just as the Osgoode model of legal education that prevailed in Manitoba was a reflection of the overwhelming influence of Ontario-educated lawyers, so too was legal education in Saskatchewan and Alberta profoundly influenced by the presence of many Dalhousie graduates in positions of influence in those provinces.18

In the United States, state courts and legislatures had greater control over education and admissions than did professional associations. These associations did not have as much power, or fulfill the same functions, as their counterparts in England and Canada. Apprenticeship in a law office, supplemented by self-study, were the usual methods of entry into the profession in the eighteenth and nineteenth centuries. Apprenticeship standards varied from state to state, but they were less rigorous than in England or Canada. Further, these standards declined from 1830 to 1865, largely due to the presence of a strong egalitarian and laissez-faire

ethos, and professional disinterest in maintaining professional organizations.19

A few American law schools — really outgrowths of private law offices — emerged in the eighteenth century. In the following century, they became or gave way to university-based law schools, such as Harvard Law School, founded in 1817. They grew slowly until the last quarter of the nineteenth century. It was in this period that Harvard and some other law schools began to require that their students have pre-law university degrees and attend law school on a full-time basis for two (later three) years. They also hired more full-time professors, who increasingly used the case method instead of the lecture method of instruction.20

After 1870 — and especially after 1900 — the elite law schools, corporate lawyers, and their respective professional organizations began to insist that all law schools raise their standards to this level, and that all law students undertake academic legal education in addition to articling. These reform efforts were largely directed against night law schools, which emerged after 1860 in response to the great numbers of people from less privileged backgrounds who wanted to become lawyers but could not attend school full-time. These part-time schools simply prepared students for the bar examinations. The elite, full-time law schools were partially successful in promoting law school education and in raising the standards at all schools in the 1910's and 1920's. By 1920 most states had at least one law school, usually located in an urban area. However, no state required attendance at a law school — even in 1927.21

III. Territorial Admission Standards

Before 1885 there was neither a professional organization nor rules and regulations governing who could practise law in the largely unsettled North-West Territories. As a result, lawyers arriving from other jurisdictions simply commenced practice.22 Thus, when Robert Strachan

22. There appears to have been some discussion of establishing a law society before 1885. In 1883 a young N.D. Beck intended to head West as soon as he closed up his firm in
Peterborough, Ontario. He asked that his name be inscribed on the rolls of the proposed society. An elderly Fort Macleod non-lawyer wrote in similar vein the same year. There is no further mention of creating a law society until 1897. Beck to A.E. Forget, Aug. 8, 1883, and [..] to E. Dewdney, Aug. 29, 1883, Saskatchewan Archives Board (Saskatoon), Attorney Generals’ Records, files 165L, 137L. [Hereinafter SAB(S), AGR.] It appears that non-lawyers were practising law in the Territories before 1885. See the discussion of streams three and four later in this section.


24. An Ordinance Respecting the Legal Profession, Ord., 1885, no. 10, ss. 4-6. The lieutenant-governor then placed him on the roll and granted a certificate of practice, which was prima facie evidence of his entitlement to “all the rights and privileges of an advocate”: ss. 7, 8. See generally Sibenik, “The Doorkeepers,” pp. 170-80 for a history of who was entitled to practise law in the Territories and Alberta.

25. Ibid., s. 1(1). The proviso on residency was left out of the 1888 revision, but a residency requirement was reimposed in 1889. An Ordinance Respecting the Legal Profession, Ord., 1888, no. 41, s. 2(1); An Ordinance to Amend Chapter 41 of the Revised Ordinances . . . , Ord., 1889, no. 25, s. 2.
there could not have been more than a handful of persons in this category in that part of the Territories that eventually became Alberta. Non-residents with the foregoing qualifications who subsequently became residents and paid an enrolment fee of $50 were admissible under the second stream.

Non-lawyers who had practised law in the Territories for two years prior to 1885 and who had “studied law in a law office within Her Majesty’s Dominions for at least three years” could be admitted via the third stream. As with the first stream, the enrolment fee was $2. The fourth stream allowed for the enrolment of a British subject if he satisfied his local judge that he was a twenty-one-year old resident of the Territories, was of good character, had been practicing law in the Territories before 1885, passed the requisite examination by 1886, and then paid the $50 enrolment fee. A British subject who satisfied the local judge that he had articled for a Territorial lawyer for three years qualified for admission under the fifth stream. There were similar requirements with respect to age, residency, character and examination fees as in the fourth stream, except there was no limit to the time it took to pass the examination.

Transitional streams three and four (allowing for the admission of non-lawyers who were practising law in the Territories before 1885) were deleted as early as 1888. Thus, in 1895 an individual seeking admission had to pay $75, and produce a judge’s certificate that “he is a fit and proper person and is entitled to be enrolled” by one of the three remaining streams (one, two and five). The lieutenant-governor then enrolled him and gave him a certificate of practice. These were the provisions that were recited to Ontario lawyers C.W. Cross and S.J. Willoughby, and English solicitor E.H. Neville, when they enquired about admission to practice.

27. Ibid., ss. 1(3), 4.
28. Ibid., ss. 1(4), 3, 5.
29. Ibid., ss. 1(5), 5. The 1887 Ordinance specified that the “judge” in streams three and four was a judge of the recently established Territorial Supreme Court. An Ordinance to Amend Ordinance No. 10 of 1885.... Ord., 1887, no. 16, preamble, s. 1.
30. Ord., 1888, no. 41, s. 2.
31. An Ordinance to Amend and Consolidate ... the Law Respecting the Legal Profession, Ord., 1895, no. 9, ss. 2,10.
32. Cross to J.A. Reid, June 21, 1898; Clerk of the Executive Council [hereinafter Clerk] to Cross, June 28, 1898; Willoughby to R.B. Gordon, Nov. 8, 1897; Clerk to Willoughby, Nov. 20, 1897; Clerk to Neville, Feb. 9, 1898, SAB(S), AGR, file 541L, items 17-18, 46, 62-63. Cross was already in Alberta, while Willoughby and Neville were writing from Ottawa and Australia respectively.
There were several changes to the outside stream in the 1890s. In 1895 lawyers from other parts of Canada — but not from the United Kingdom — had to provide proof of their membership and good standing in a professional organization, and testimonials of their good character. The rationale for this change remains unclear, but it was short-lived: in 1898 all admissions via the outside stream — regardless of origin — had to provide these items.33 The inside stream was substantially altered in 1898 too: the prescribed period of articles for matriculants was raised to five years. This term could be reduced to three years for “a graduate in arts or law of a recognized university in the United Kingdom or in Canada or [for] a graduate of the Royal Military College of Canada . . . .”34 The “three or five” articling regime was now in place.

The 1907 Act incorporating the Alberta Society made one modification to the outside stream: writers to the signet joined barristers, attorneys, advocates and solicitors as the kinds of lawyers who could be admitted. There were more changes to the inside stream. First, students had to produce evidence of good character, although testimonials were not required until 1913. Second, students of the Territorial Society resident in Alberta were now deemed to be students of the new Society. Third, university degrees in medicine, science and literature now qualified for the reduced articling period. Fourth, the Society could allow students to serve part of their articles in a law office in the British realm or in a law school outside the province. Finally, the Society could grant students from other parts of the British Empire up to the same status in Alberta that they held in those parts.35

These legislative developments suggest that a British-Canadian stamp was sought to be placed on the recruitment of new members to both Societies. This was not surprising in view of the British-Canadian origins of the profession.36 These measures made it very difficult for American

33. Ord., 1895, no. 9, s. 2; An Ordinance Respecting the Legal Profession . . . . Ord., 1898, no. 21, s. 3(2).
34. Ibid., s. 3(1). The section’s transitional provisions with respect to educational requirements, examinations, and fees for those currently under articles were repealed in 1904. An Ordinance to amend . . . the consolidated Ordinances 1898, Ord., 1904, c. 4, s. 1.
36. See generally Sibenik, “The Doorkeepers,” p. 202, Table 3, col. 2, and also the records of Territorial and Alberta lawyers at the Glenbow Archives, Calgary and Provincial Archives of Alberta, Edmonton. [Hereinafter GA and PAA respectively.] Non-British ethnic groups made very modest incursions into the ranks of the profession in the 1920s. See the lists of new admissions in the Society’s minutes for that decade. The British-Canadian origin of the profession was also reflected in Alberta’s notaries public, who were required to be British subjects as of 1906. An Act Respecting Notaries Public, S.A., 1906, c. 16, s. 1; S.B. Woods, Deputy Attorney General to Susemihl, Dec. 8, 1906, Provincial Archives of Alberta, Attorney Generals’ Records, Acc. No. 66.166, box 11, file 201d. [Hereinafter PAA, AGR. The acronym AG hereinafter refers to a member of the Attorney General’s Department.]
lawyers to practise in the Territories and Alberta. Thus, when a federal Cabinet minister made enquiries in 1898 on behalf of a Seattle lawyer, the Territorial Attorney General informed him that American lawyers could not be admitted unless they complied with the requirements of the inside stream. In 1901, the Territorial Society decided to admit lawyers from non-British jurisdictions who were over twenty-five, articled for five years in the Territories, and then passed the same examinations that law students had to pass. The only concession to them was that they did not have to write the preliminary examination.

Legislation in 1903 and 1907 confirmed that the Societies could admit foreign lawyers, but in 1908 convocation sought to have it repealed, despite the fact that it was permissive, not imperative. The benchers felt that it was "never satisfactory to admit men who have received their legal education outside of His Majesty's Dominions." Convocation evidently wanted to be in a stronger position to reject the petitions of the many American lawyers seeking admission to the Society.

The amendment was never obtained. In fact, in 1910 it became slightly easier for foreign lawyers to practise in Alberta. They could become members of the Alberta Society if they articled for three years, met the character test, passed a final examination, and paid the usual student fees. In 1911 foreign lawyers who had been Alberta residents for six years previous to 1911, and who had served in the office of an Alberta lawyer for one of those years, could be admitted. Thus, the provisions discouraging American and other foreign lawyers from relocating to Alberta became less restrictive in the 1910's. But the fact that so few of them became members of the Alberta Society suggests that the provisions were still formidable.

37. [..] to W. Mulock, Feb. 5, 1898, SAB(S), AGR, file 541L, item 48. Note that, later that year, the articling requirement for the inside stream was raised to five years for matriculants. See earlier remarks in this section.
38. Law Society of the North-West Territories, Rules and Regulations, May 1, 1901, rules 14, 15, at University of Saskatchewan, Shortt Library. [Hereinafter LSNWT, Rules, 1901.] For more on changes to the examination system, see secs. VI and IX, infra.
39. An Ordinance to amend ... the Consolidated Ordinances 1898, Ord., 1903 (2nd sess.), c. 14, s. 1; S.A., 1907, c. 20, s. 35; Law Society of Alberta, "Minutes," July-Aug. 1908, pp. 49-50 [hereinafter LSA, "Minutes," which are located at the Society's current offices in Calgary]; Memorandum, n.d., PAA, AGR, Acc. No. 66.166, box 52, file 854a; AG to O.M. Biggar, Jan. 12, 1909, ibid, box 11, file 201c. See PAA, AGR, Acc. No. 66.166, box 10, file 201b and at ibid, box 11, files 201c, 201d for enquiries from American lawyers — mainly from the Dakotas, Pennsylvania, Illinois, Massachusetts, Wisconsin and Indiana — to the Attorney General's Department about qualifications for admission to the practice of law.
41. The Statute Law Amendment Act, 1911, S.A., 1911-12, c. 4, s. 29(2). [Hereinafter SLAA.] See also SLAA of 1913, S.A., 1913, c. 9, s. 42.
42. For a time-series on the number of foreign lawyers admitted to the Alberta Society, see the last subcolumn of col. 6, and also col. 8, in the table at Sibenik, "The Doorkeepers," p. 199.
Of course, American residents and others who sought to circumvent the legislation and rules on admissions could, and occasionally did, petition the legislature for special relief. A Minneapolis lawyer wrote Premier (and Attorney General) F.W.G. Haultain in January 1898 as to whether his brother-in-law, H.A. Fairchild, could be admitted to the Territories. Fairchild had studied some three years or more with John Crerar and his various partners, at Hamilton, Ont., passing some of the examinations of the Ontario Law Society; after that he studied one year at Fargo, N.D. [North Dakota] and from there [he went] to... the State of Washington.... Fairchild now sought to practise in Dawson City because “all his best clients have gone to the Yukon District and he determined to follow them.” Haultain replied that while Fairchild’s “American certificates would not be accepted here,” Fairchild might possibly be able to have a private bill passed by the legislature “to allow his time put in under Articles in Ontario, as there are one or two precedents for this.” Haultain also gave him an extract of the rules of the legislature relating to private bills and a copy of “a Private Bill passed at the last session of the [Territorial] legislature which is very much the same as the one which Mr. Fairchild would require.”

That bill was probably O.W. Kealy’s. Kealy was a member of the North-West Mounted Police, and stationed in Battleford in January 1897, when he required about admission to practice. He had articulated with an English solicitor for five years, passed the English intermediate examination and now sought the status of a student “as if he had been duly articulated to a practising Advocate of the North-West Territories and had duly completed his term of service thereunder.” The bill was passed by the legislature and his name was eventually placed on the roll.

A petitioner’s legal background appears to have played an important part in the legislature’s willingness to pass a private act. This is suggested by the outcome of the attempt of G.M. Atkinson, of Wishart, to lay a private bill before the legislature in 1898. His MLA pressed the government to do this so that he could become a student in the Territories with the same standing as he had in Manitoba, viz. that of a student who, by 1887, had passed his third intermediate examination and had articulated for two years. Haultain requested information “as to the manner in which

43. J.H. Robertson to Haultain, Jan. 31, 1898 and Feb. 19, 1898; Clerk to Robertson, Feb. 3, 1898 and Feb. 14, 1898; and AG to Robertson, March 7, 1898, SAB(S), AGR, file 541L, items 37, 41-43, 47, 49. Robertson’s name does not appear on the roll of the Territorial Society. Yukon was part of the Territories.

44. Kealy to Reid, Jan. 7, 1897, ibid., item 71; Clerk to Kealy, Dec. 27, 1897, ibid., file 675, item 1; An Ordinance to Give Oswald William Kealy a Certain Status as a Student-at-Law, Ord., 1897, no. 44, s. 1; LSNWT, Roll of Advocates [1886-1901], GA, p. 13.
Mr. Atkinson has employed his time since September 1887, which appears to be the latest date of his connection with the profession.” An unsatisfactory answer to the query probably explains why Atkinson did not proceed with the bill, for his name does not appear on the roll.

The advent of university legal education in Alberta in the 1910's probably discouraged people from seeking admission by private act. J.A. McCaffry, a student of the Society who had articled for four years in England, was made a lawyer after a private bill was passed by the legislature in 1913. The December 1913 general meeting of members of the Alberta Society expressed its unanimous opposition to the creation of lawyers by such bills or by special amendment to the 1907 Act. Convocation felt that the Society's arrangements with the University of Alberta with regard to examinations and lectures would discourage such bills in the future.

IV. Reciprocal Admissions

 Those responsible for the governance of lawyers in the Territories and Alberta sought to ensure that other British-Canadian jurisdictions allowed Territorial and Alberta lawyers moving to their jurisdictions the right to practise law as expeditiously as possible. This is because British-Canadian lawyers were allowed to practise law almost as soon as they arrived in the Territories or Alberta. The desire for interprovincial and Empire-wide uniformity or similarity in admission standards was rooted in a belief that the quality of the legal training, and the legal system in the Territories and Alberta, compared favourably with that of any other jurisdiction in the British realm. Therefore, the reciprocal provisions imposed by governments and law societies in the Territories and Alberta on admissions via the outside stream were really sanctions against those governing authorities which felt otherwise.

45. D.H. McDonald to Haultain, Aug. 6, 1898 and Clerk to McDonald, Aug. 13, 1898, SAB(S), AGR, file 541L, items 12-14.
47. It has been suggested that the policy of the Alberta Society with respect to admission of students and lawyers from other jurisdictions was motivated less by retaliation and discrimination than by a desire to protect standards: W.F. Bowker, History of Law Society of Alberta [unpub. memo to L.D. Hyndman, Edmonton, July 24, 1981], p. 12. But this was true only insofar as admissions via the inside stream were concerned. Standards were not at issue with respect to admissions via the outside stream. See generally sec. X, infra on the efforts to protect educational standards in Alberta in the 1910s.
The founding of the Territorial Society. Thus, S.J. Willoughby, an Ottawa lawyer employed by the Department of the Interior in 1897, was referred to the reciprocal provision on enrolment fees in the 1895 Ordinance. It allowed a member of a Canadian law society to practise in the Territories after paying the same fee that his own law society would charge a Territorial lawyer seeking admission.48

Legislation in 1898 and 1907 empowered the Territorial and Alberta Societies (respectively) to impose on a British-Canadian lawyer seeking admission via the outside stream the same preconditions with respect to examinations and residency that his governing authority would impose on the Societies’ members.49 In 1906, bencher N.D. Beck informed convocation that the examination that a non-Ontario lawyer had to pass in order to become an Ontario solicitor was oral, and was kept “purposely so simple that no one can be ‘plucked’, that in fact an answer that the candidate does not know is commonly accepted.” Beck felt, and convocation agreed, that as the purpose of the Territorial Society’s own rules was “solely that of insisting upon reciprocity,” it should do likewise.50

A major problem that the Territorial and Alberta Societies experienced in efforts to achieve reciprocity derived from the fact that, unlike many other British-Canadian jurisdictions, they had dispensed with the demarcation between barristers and solicitors. From the very outset, Territorial and Alberta lawyers could do both barristers’ and solicitors’ work.51 The only attempt to separate barristers from solicitors came in 1911 when C.C. McCaul asked the Society’s general meeting to establish separate rolls.52 It is not surprising that nothing further came of the request. In a land where a sparse population covered a large expanse of territory, a bifurcated profession would have been impractical.

However, the Territorial government and Society had to deal with the consequences of other jurisdictions’ adherence to the distinction. Thus,

48. Willoughby to Gordon, Nov. 8, 1897 and Clerk to Willoughby, Nov. 20, 1897, SAB(S), AGR, file 541L, items 62-63; Ord., 1895, no. 9, s. 2(c). The provision did not apply to those who were permanent residents of the Territories.
49. Ord., 1898, no. 21, s. 3(2); S.A., 1907, c. 20, s. 34(2).
51. Haultain to Lieutenant-Governor, Jan. 27, 1897, SAB(S), AGR, file 815, items 3-4; Ord., 1898, no. 21, s. 2; S.A., 1907, c. 20, ss. 2, 3.
when the English government drafted legislation in 1896 to allow colonial solicitors to practise in the United Kingdom, the Territorial government felt that, since there were few impediments to any kind of lawyer from the United Kingdom seeking to practise in the Territories, Territorial advocates should be allowed to do both barristers' and solicitors' work in the United Kingdom. In 1905 the Ontario Society imposed few restrictions on outside lawyers seeking to practise as solicitors, but required them to article for three years if they wanted to practise as barristers. The Territorial Society protested that any Ontario lawyer could engage in any kind of law in the Territories, and that he could do so almost immediately upon his arrival in the Territories.

Reciprocal problems with other jurisdictions continued even after the creation of the Alberta Society. In 1909 the Alberta Society secured legislation strengthening the reciprocity provision in the 1907 Act. The occasion of this request was that law societies, such as Manitoba's, required examinations of solicitors — but not of barristers — seeking admission via the outside stream. The Alberta Society made no such distinction, thereby enabling Manitoba barristers to practise as barristers and solicitors in Alberta without writing any examination. The amendment had the desired effect: when the Manitoba Society rectified its rules to the satisfaction of the Alberta Society, the latter decided to admit Manitoba barristers and solicitors without examination. Reciprocity was not a major concern of the Society thereafter: a policy was now in place, and admissions via the inside stream began to increase.

V. The Articling Experience

While governments and law societies in the Territories and Alberta had no qualms about imposing reciprocal conditions upon the outside stream of admissions, there was no attempt to do this with respect to the inside stream. No doubt this was due to the desire to attract students to their jurisdictions, and to the rudimentary state of academic education in the Territories and pre-1921 Alberta. It was not until the 1920's that major inroads were made in a system of education that revolved around articling, self-study, and examinations. Efforts in the 1910's to supplement this with lectures sponsored by the Alberta Society and the

53. See the correspondence of the Territorial and Canadian governments and a draft of the English legislation at SAB(S), AGR, file 815, items 1-14; Colonial Solicitors Act, 1900 (U.K.), 63 & 64 Vict., c. 14.
56. LSA, “Minutes,” July 1909, p. 149.
University of Alberta were halting, confined to Edmonton and Calgary, resisted by the many students who did not have the inclination for academic education, and impeded by the debate over the site of the provincial law school.

Institutional responsibility for the administration of articling changed several times in this period. The Territorial government and courts had responsibility until 1898, but there was little attempt to centralize control. The 1885 Ordinance simply required that articles and assignments be filed with the District Court, and after 1887 with the Supreme Court. The reference to assignments was needed because students rarely remained articled to the same lawyer for three years — let alone the five years required of matriculants as of 1898. They were constantly taking advantage of economic opportunities in other parts of the Territories and country. Further, students articled and partook in these economic opportunities — a small business or a minor office with the provincial government — concurrently, such that the line between law and business became blurred. Thus, the most striking impression of the articling experience in the late nineteenth century was its triviality and less than full-time status.

Armand Hartley, a graduate of the University of Manitoba who was articling in Edmonton, was an atypical example of the mentality of most students. He asked the government in 1897 whether he had to spend all three years of articles in “actual practice of Law” or whether he could spend “the final 1 year or 2 years in an office, and the 1st or first 2 years in study, also attending on Saturday in a Law Office.” He noted that other students were not always attending to their office duties. He was told that the nature of his articles was a matter between him, his principal and the examining judge.

Another reason for the superficiality of the articling experience was that, by the turn of the century, the steel point pen, typewriter, duplicating machines, female stenographer and telephone were eroding much of the traditional transcribing function of the articling student. His duties were still technical, and no doubt performed “with a smile so bland.” But now he had fewer opportunities to pick up legal skills using “a big round hand.”

57. Ord., 1885, no. 10, s. 1(5); Ord., 1887, no. 16, s. 2; Ord., 1888, no. 41, s. 2(1); Duff to Gordon, Apr. 18, 1894 and [..] to Duff, May 23, 1894, SAB(S), AGR, file 481L, items 439-40. For other indications of this mobility in the Territorial period, see the certificate of articles at SAB(S), AGR, file 481L, item 342, and also LSNWT, “Minutes,” June 1899, pp. 8-9.
58. Hartley to Reid, Feb. 6, 1897 and Reid to Hartley, Feb. 13, 1897, SAB(S), AGR, file 481L, items 136-37.
When the administrative responsibility for articling students was transferred to the Territorial Society in 1898, and then to the Alberta Society in 1907, the Societies sought to prevent students from working at places other than their principals’ offices. The Territorial Society insisted in 1906 that they serve in the offices of Territorial lawyers, who had to provide the Society with particulars of the places where their students had articled. In 1921, the Alberta Society had to deal with the problem of students technically articled to a lawyer but really working for the government.

Further, the Alberta Society became increasingly concerned about the non-legal activities of articling students. It was reluctant to grant standing to prospective students who had been employed as checkers in a Land Titles office or as court clerks. Convocation decided in 1921 that it would judge each case on its merits. At the same time it convinced the Attorney General that, in future, students hired by the government would only be employed by his Department (and with his consent), and that they would be engaged in legal work under the direction of a lawyer in the Department. In 1925, convocation lengthened the articles of R.M. Sherk when it discovered that he had been teaching school while under articles. He, in turn, complained to the Society that another student was working as an accountant and that this student was frequently out of town for prolonged absences.

Concerns about the efficacy of the articling experience climaxed in the 1910’s. Ira MacKay, a law professor at the University of Saskatchewan, was an articulate critic of the “three or five” articling regime. He told a meeting of Alberta lawyers in 1913 that the profession was less learned than it had been in the days of Coke and Bracton. This was because legal education had not kept pace with advances in human knowledge, research and economics. He offered these observations in advocating the parity of law teaching and law practice. He pointed out that the great universities had been teaching since 1869, whereas the legal profession was only beginning to develop in the 1880’s.


60. LSNWT, “Minutes,” June 1899, p. 9; LSNWT, Rules, 1901, rule 35. The government had tried to curb the students’ independence as early as 1888. Ord., 1888, no. 41, s. 2(2). The words “under articles” had been added to the 1885 Ordinance. Cf. Ord., 1885, no. 10, s. 1(5).


63. Ibid., p. 17.

64. Ibid., Jan. 1926, pp. 20-21. But the Alberta Society was not consistent in maintaining the integrity of the articling experience: during the Great War, periods spent in military service or in actual work on a farm were deemed to be periods under articles. Ibid., July 1920, p. 14; ibid., July 1922, p. 26.
need for at least two years of full-time legal education in the context of a law school:

So long as our law students are allowed to gather their legal knowledge scrap by scrap in the hundred different offices in which they serve their time, no consensus of legal opinion and honor is possible. The clerks in the offices spend most of their time doing clerical work which they will not do for themselves but which they will require their own clerks to do for them when they themselves begin to practise. The result is a profession of apprentices without principals. These clerks receive absolutely no instruction and scarcely any assistance in their work. If once and again they are delegated to gather law on some matter in litigation they only succeed in gathering information which is wholly one-sided and misleading for purposes of impartial and effective legal advice. The only studying they do is during tired after hours by reading legal text books or hand books, most of which are so condensed and the number of authorities cited so great and so confusing that thorough study is wholly out of the question. This system may possibly produce collectors, conveyancers, money lenders and real estate dealers but it cannot produce lawyers.65

For those students seeking a more academic education in the years before Alberta got its own law school (1912), the Territorial and Alberta Societies allowed them to study for up to two years at approved law schools. This period of study would count as articling time. Thus, in 1905 G.H. Ross and G.H. Barr were allowed to study at Michigan’s Ann Arbor Law School and Osgoode Hall respectively for seven months.66 The petition of L.F. Mayhood, however, exemplified convocation’s reluctance to let students attend American law schools. Mayhood had matriculated from the University of Michigan and was in his second year of studies when he filed his articles. Convocation granted him matriculation standing in 1909, but refused his request to continue his legal studies at Michigan. Two months later a majority of the benchers refused to reconsider. At the same time, it asked the Attorney General’s Department for an amendment to prohibit students’ attendance at law schools outside the British realm.67 The Alberta Society also resisted efforts to reduce matriculants’ five-year articling term. In 1910, bencher R.B. Bennett and 111 others petitioned unsuccessfully for such a reduction.68 Convocation

also rejected subsequent efforts to reduce the term for matriculant students who received Honours on their examinations.69

VI. The Founding of University Examinations and Lectures

Convocation’s decision regarding the Bennett petition, and perhaps the decision regarding students’ attendance at American law schools, were related to ongoing efforts to supplement articling with university-based legal education in Alberta. In 1909 a special committee of convocation met with representatives of the recently established University of Alberta. The committee recommended that the minimum standard of pre-law education be raised from junior to senior matriculation, that the University provide law lectures and administer the Society’s examinations, that students with second-year standing at the University of Alberta be entitled to a one-year reduction of their five-year articling term, and that the Society be given a seat on the University’s Senate.70

The first step toward implementation of these recommendations came in 1910 when the Alberta legislature passed a new University Act. The Act empowered the University Senate to arrange examinations, appoint examiners and report examination results to the Society (and the governing bodies of other professional associations).71 Ten years later Henry M. Tory, president of the University of Alberta, stated its rationale thus:

When the University started to function, all the professions of the Province were working independently of one another with regulations of their own prepared by their own bodies. This had led to considerable discussion from time to time in the public press, as to the justice of a state of affairs which allowed professional organizations to fix standards for themselves independently of public control. The question was finally solved by relating all these organizations definitely in affiliation with the University, and the responsibility for establishing standards of education was placed upon the University Senate by the Second University Act passed in 1910. One by one the professions came into the scheme and today, through the University Senate, working in cooperation with the professions, educational standards have been established that have removed all

70. Ibid., July 1909, pp. 99, 116; ibid., Jan. 1910, p. 196; Law Society of Alberta, Summary of Convocation, Jan. 1910, PAA, AGR, Acc. No. 66.166, box 11, file 201c, p. 4. [Hereinafter LSA, Summ. Con. Unless otherwise indicated, as here, these Summaries can be found at the Calgary offices of the Alberta Society.]
possible grounds of complaint as to the fairness between an examining body and persons to be examined.  

Tory then negotiated with the Society for University-sponsored lectures. He reported to the University’s Council of the Faculty of Arts and Science in September 1912 that “an arrangement had been entered into (subject to the approval of the Senate) whereby the University would take over the arrangement of Law lectures and conduct of the Law Examinations.” The Council then approved the establishment of a “Department of Law” at the University.  

However, Tory was exaggerating the nature and importance of the 1910 amendment, as well as the University’s role in the subsequent arrangements with the Alberta Society. The Society retained a large measure of control over legal education. This is evident from the 1913 agreement between the University and the Society. The agreement, which dealt only with examinations, specified that the University would conduct and provide physical facilities for biannual examinations in Calgary, Edmonton and other places it selected. The examinations would be the same as those that the Society had been conducting — first intermediate, second intermediate, and final. They would also be based upon “the books and subjects upon which the Society’s examinations were now conducted.” The University was obliged to report the results to the Society within two months. The Society had a veto in many important areas: examination dates, changes in books and subjects, notice requirements, examination fees, the conduct of the examinations, and the selection of examiners. It also had the right to elect a representative to the Senate. Finally, the agreement was to continue from year to year until terminated by either party. Thus, convocation was correct when it

72. Quoted in W.F. Bowker, Report on Professional Acts [unpub. paper, Edmonton, June 22, 1965], p. 3. Johns suggests that the 1910 amendment was a manifestation of a desire to provide “instruction in Law beyond that available in the offices of members of the profession.” W.H. Johns, “History of the Faculty of Law,” Alberta Law Review [Twenty-Fifth Anniversary Issue — Feb. 1980], p. 2. Hyndman suggests that the reason for the 1910 amendment was that many lawyers and University professors felt that a university education would provide a better foundation for legal practice. Hyndman, The Legal Profession in Alberta, p. 6. Bowker and Johns suggest that it was Tory who was behind the move to give the University a role in examinations. Bowker, History of Law Society of Alberta, pp. 9-10; W.H. Johns, History of the University of Alberta (Edmonton: University of Alberta Press, 1980), p. 30.  

73. Council of the Faculty of Arts and Science, “Minutes,” Sept. 21, 1912, TP, First Facts file, p. 84.  

74. LSA, “Minutes,” Jan. 1913, p. 55; ibid., July 1913, p. 10. Compare the draft (ibid., July 1912, pp. 20, 24-27) with the one that was executed (Johns, “History of the Faculty of Law,” p. 2). The Society’s representative in the Senate until 1920 was Frank Ford; thereafter it was H.H. Parlee. LSA, “Minutes,” Jan. 1914, p. 101; ibid., Jan. 1920, p. 54.
stated that the Society would still have the final say on examinations, and its prerogatives were scrupulously guarded thereafter.75

Similarly, the provision of lectures to the students in the 1910's began as a joint endeavour of the University and the Society, and the lectures were initially financed only by the latter. Thus, in response to a request from the Calgary Law Students Society and others in 1912, convocation agreed to provide at least twenty lectures based on the Society's curriculum if at least ten students in any one place petitioned for them. Convocation allocated $500 for lectures at such places, and $2,400 for all lectures. Those students residing at the place of lectures (and who had paid a $10 fee), and all non-resident students, were entitled to attend them.76 When twenty-three Calgary students and twenty Edmonton students subsequently petitioned for lectures pursuant to the resolution, W. Kent Power and several others were authorized to spend $1,200 for sixty lectures in Calgary. Bencher O.M. Biggar was authorized to enlist the co-operation of the University, and Edmonton lawyers and students, for the Edmonton lectures. The University was paid $1,100 by the Society when it arranged for local lawyers to lecture the Edmonton students for 1912-13. The University's Board of Governors had refused to underwrite the cost of the University-based law lectures.77

Tory had aspirations that the University would be able to provide a larger, more independant role in legal education. By 1914, with the University now on a firm financial footing, Tory offered to provide lectures in Calgary and Edmonton at no cost to the Society. Convocation immediately accepted the offer and cancelled plans for its own lectures for 1914-15.78 Financial considerations were probably behind this decision: at a time when the Society's finances were being squeezed at the height of the recession, the saving for 1915 alone would be $2,400.79

The decision was part of a series of events that did not sit well with Calgary lawyers and students. The ink on the 1913 agreement respecting examinations had hardly dried when the Calgary Law Students Society

75. Ibid., Jan. 1913, p. 55. Starting in 1913, the Society's minutes allude to convocation's approval of the examiners, who were usually practising lawyers. When the list was not forthcoming, the University authorities were criticized for their tardiness. Biggar to Registrar, Apr. 25, 1913, TP, box 11, file 134; LSA, "Minutes," Jan. 1918, p. 46. References to the Society's approval of University examiners include: ibid., July 1913, p. 70; ibid., July 1914, p. 109; Report of the Education and Legislation Committee, ibid., July 1915, p. 6. [hereinafter ELC]; ibid., July 1920, p. 4; ibid., Mar. 1924, pp. 27-28.
76. Ibid., July 1912, pp. 6, 27; ibid., Jan. 1913, p. 61.
77. Ibid., pp. 55-57; ibid., Jan. 1914, pp. 67-68; MacLeod, "Calgary College," p. 125. See also the correspondence between Tory and the lecturers at TP, box 10, file 130.
petitioned the Alberta Society for its termination. But convocation felt that the system needed a "fair trial."  

However, when convocation decided to let the University assume complete administrative and financial responsibility for the lectures, Calgary lawyers and students — led by James Short and C.A. Coughlin — mounted a campaign for the retention of the Society's sponsorship of not only the lectures, but also the examinations. After a "very animated and thorough discussion," convocation appears to have relented because it rescinded its earlier resolution allowing the University control over the lectures.  

It is not clear why, but the policy reversal did not prevent the University from assuming sole responsibility for the lectures after 1914. The society never again directly sponsored the lectures.

VII. Calgary College

The agitation by students and lawyers in Calgary over this incident was undoubtedly related to their aspirations that the fledgling Calgary College would be the site of the province's law school. However, their efforts in this regard were shrewdly impeded by Tory, who wanted the University of Alberta to be the only degree-granting institution in Alberta. He had noted, almost with glee, that the organizer of the College had been denied a charter in 1911. When Tory caught wind of the fact that Calgary College had made overtures to McGill University and the University of Toronto with a view of affiliating with one of them, Tory warned the principal of McGill (his alma mater and former employer) in February 1912 to stay out of the "local quarrel." In 1914, two years after the College had commenced giving law lectures, F.H. MacDougall, the "Dean and Acting President" of the "University of Calgary," asked Tory whether students could get credit at the University of Alberta for courses taken at the Calgary institution. Tory's ambiguous reply was addressed to "Professor" MacDougall of "Calgary College."

80. LSA, "Minutes," July 1913, p. 70.
81. Ibid., July 1914, pp. 2-4.
82. The Society never again made an appropriation for lectures or received reports on the number of lectures given to the students. Also, the University budget estimates show line-items for the lectures. See the University budget estimates at TP, file 19, items 24, 30 where the cost of the lectures, including travelling expenses, is put at $1,800 and $2,000 for 1917 and 1918 respectively. See also sec. VII, infra.
85. Tory to W. Peterson, Feb. 15, 1912, TP, file 253.
86. MacDougall to Tory, Sept. 28, 1914 and Tory to McDougall, Sept. 29, 1914, ibid.
A private bill, establishing the College as a university with power to confer degrees and to arrange for examinations with professional associations, was presented to the legislature in October 1913. Among its supporters were two prominent Calgary practitioners — James Short and R.B. Bennett. (Bennett was also the leader of the provincial Conservatives.) The government struck a commission in May 1914 to examine the feasibility of a second university for the province. In December, the commission recommended that the province retain the one-university policy of the Territorial government and other provincial governments in the West. It gave several reasons for the maintenance of the historic policy: inadequate financial resources on the part of the public and private sectors; the institutional rivalry and political influence that were corollaries to "divided University support"; the University of Alberta was servicing all parts of the province adequately; and the need for provincial uniformity and solidarity.

The report was a body blow to Calgary College, which closed its doors a few months later. Until then, Calgarians felt that their city deserved a university. They did not think that Edmonton was the logical site for the province's law school simply because it had the University. Thus, convocation's decision in 1912 to sponsor lectures had spurred Calgary students and lawyers into action. The students met in September with the benchers, local lawyers and the president of Calgary College. The latter suggested that the College would provide one lecturer if the profession financed the cost of another. In October, a slight majority of the 17 students who attended a meeting of the Calgary Students Law Society accepted the plan. It appears, then, that the Calgary lectures that were financed by the Alberta Society in 1912 were also financed by (and given at) Calgary College.

To L.F. Mayhood, a dissenter who wrote Tory of these developments, "it is apparent that there is in the minds of some of those who are working to have the Law Lectures established, a plan to have the Law School of the Province permanently established in connection with Calgary College." Mayhood wrote of the tactics of the Calgary boosters:

87. "Report of University Commission," 1914, pp. 1-3. A copy of the bill can be found at TP, file 253. See various correspondence and petitions dealing with the bill at PAA, AGR, Acc. No. 70.426, box 9, file 561 and at *ibid,* box 16, files 772, 821.
89. MacLeod, "Calgary College," pp. 194-95.
In answer to the protest of some of the Law Students Society that the Law School should be under the Control and management of the Provincial University, the reply was made that as yet the Provincial University has made no offer or proposition to the Law Students, and that the matter of their Legal Education is vital to them and must be attended to at once. \(^9\)

Tory replied that the University had already established a Faculty of Law offering an LL.B., teaching for which would be undertaken where there were sufficient numbers. The lectures would count as “part of the course now required for the practice of Law . . . .” He was reluctant to “interfere” at the moment, but told Mayhood that the University of Alberta had the upper hand:

[T]he so called University of Calgary is not a University but a college and has no degree conferring powers and cannot confer a degree upon the students. Further our plan would be comprehensive enough to make it possible for the younger lawyers who have passed a Provincial examination . . . to supplement that work and receive the LL.B. degree. I should be glad to take [up] the matter of organizing [Calgary] classes . . . with the students at any time after Tuesday. \(^9\)

The Calgary Bar Association and Calgary lawyers like James Short also promoted the idea of a local law school. In 1914 they sought to undercut the University by offering lectures, probably at Calgary College, in areas “where the University Lectures were deficient.” Tory was informed that this was “very clever strategy, as the mere fact of their supplementing proclaims failure on the part of the University, and they will only have to compete with weak points, if any.” Tory was also told that “this must be carefully watched, so that we may be ready to spring into the breach.” \(^9\)

These background events suggest that Tory’s 1914 offer to convocation to assume responsibility for the provision of lectures to the students was part of his efforts to undermine the formation of a law school in Calgary. The subsequent protests by the Calgary students and lawyers were, therefore, primarily an attempt to keep alive Calgary's aspirations for a law school — indeed a university — pending the decision of the University Commission. Not surprisingly, the Calgary students were cool to overtures from the University during this period. As Walter S. Scott, Tory’s confidant in Calgary put it, the executive of the Calgary Law Students Society “came [to see me] out of courtesy to me and not at all with any idea of coming under what I call for convenience, Edmonton Jurisdiction.” \(^9\)

The Calgary students refused to participate in a tripartite

\(^9\) Ibid.
\(^9\) Tory to Mayhood, Oct. 8, 1912, ibid.
\(^9\) Scott to Tory, n.d., ibid. (2 p. letter). The letter was written sometime in July or Aug. 1914.
conference of the University authorities, local lawyers and themselves. However, Scott indicated that the students' reasons for opposing the University were not exactly the same as those of the Calgary lawyers:

They profess to be as averse from having legal education placed under Calgary College as from subordination to the University of Alberta. At the same time, they urge that they dare not offend their masters, who, as [Cyril] Coughl[i]n graphically put it, fear that they have been hasty in making a treaty with Alberta University and would “fain get out, while things look good” i.e. want to await the report of the University Commission before deciding how to act.\(^9\)

If the Edmonton students were caught in the same vise, it is not apparent. A meeting of their organization had as early as October 1912 unanimously endorsed the Senate’s early establishment of “a faculty of law, providing a course of lectures on the subjects prescribed in the curriculum of the Law Society.”\(^96\) The organization kept a low visibility between 1912 and January 1915 when its president, W.D. Craig, approved of the Society’s “scheme of co-operation with the University of Alberta in the matter of Legal Education.”\(^97\)

By that time, the report of the University Commission was in, and the government accepted its recommendation not to establish a second university. Scott wrote Tory that

the best course is not to have another meeting, but to quietly begin our lectures [in Calgary] .... [S]ome struggling students are beginning to adhere to our course. It is better to bring them in this way rather than reawaken or accentuate animosities by another meeting.\(^98\)

Thus, by 1915, with the closing of Calgary College and the Society’s decision not to directly sponsor lectures, the way was clear for the University to entrench its role in academic legal education in all parts of the province.

VIII. Lectures, Lecturers and the LL.B. Programme in the 1910’s

The founding of the University’s Faculty of Law in 1912 did not mean that all of its students intended to earn an LL.B. degree. Nor did this change in 1915 when, by virtue of the closing of Calgary College, the University had a monopoly in the provision of academic legal education in Alberta. This is because the Faculty catered to two kinds of students. First, the Faculty offered lectures (and conducted examinations) in

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95. *Ibid.* He wrote further: “There is no doubt that they are being utilized, but do not see it and, indeed, in their own way possess a certain rough independence.” *Ibid.*


courses on the Society’s curriculum. But those wanting an LL.B. had to
take these lectures plus an additional set of lectures — mainly in history,
constitutional law and jurisprudence — as specified in the Faculty’s
curriculum. These courses could be taken at the same time as the regular
courses, or after their completion. Thus, it was possible for the LL.B.
students to complete their courses and earn their degree in the same three
years that it took the non-LL.B. students to complete their courses.99 This
perturbed the Society and the University because they felt that it was
improper that matriculants could cut short five years of articling by two
years simply by taking the part-time courses in the three-year LL.B.
programme. Thus, in 1914, the two institutions agreed to lengthen the
programme to four years for matriculants; graduates (that is, those who
had university degrees prior to becoming law students) could still earn an
LL.B. in three years — the length of the articling period.100

The University’s curriculum had its genesis in the Society’s curriculum,
which had become more elaborate over the years. The 1885 Ordinance
had specified that students had to write an examination on “the general
principles of the common law and equity jurisprudence, the British North
America Act, and amendments thereto, the Statutes of the Dominion,
and the Ordinances of the North-west Territories . . . .”101 The curriculum
remained true to this in the next forty years. In 1895 texts by Broom,
Smith, Pollock, Underhill, MacLaren, Williams, Smith, Snell, Best,
Hawkins, Harris, Coutlee and Clement, together with ordinances and
federal statutes, were required reading. Property, commercial law, equity,
criminal law, practice and procedure, constitutional law, contracts, torts,
evidence and wills were the main subjects studied.102 In 1901, Bourinot
on constitutional history, Anson on contracts, Kerr on Blackstone,
Powell on evidence, Odger on pleading, Westlake on private
international law, and Holland on jurisprudence were added to the
curriculum.103 By the time of the 1914 revision, the text on jurisprudence
had been dropped.104

99. University of Alberta, Faculty of Law, Calendar, 1912, TP, box 10, file 129, pp. 4-7
[hereinafter Fac. of Law, Calendar]; Fac. of Law, Calendar, 1914, pp. 6-13. The University
could not unilaterally alter textbooks on the Society’s curriculum. Tory to Scott, Mar. 17,
1915, TP, box 10, file 131.
100. Fac. of Law, Calendar, 1914, pp. 5, 6-15; LSA, “Minutes,” Jan. 1914, pp. 89-90; Memo
from the Minutes of a meeting of the Senate of the University of Alberta, Apr. 14, 1914, TP,
box 11, file 134.
101. Ord., 1885, no. 10, s. 1(4)(5).
102. See the list of texts at SAB(S), AGR, file 481L, item 404.
103. LSNWT, Rules, 1901, rule 31. The 1906 revision is at LSNWT, “Minutes,” July 1906,
pp. 131, 134-36.
The University sought to impose its own pedagogical stamp on this curriculum. Thus, the Faculty's 1914 calendar indicated that lecturers would emphasize how statute law varied from the content of the texts on the Society's curriculum. The introductory lectures would "make as clear as possible the general and fundamental principles of law." In addition, some of the lectures to advanced students would incorporate the case method so as "to afford frequent opportunities for discussion and to assist in the elucidation of set books by furnishing a summary or synopsis thereof as far as possible, the intent being that he [the lecturer] should serve as a guide rather than as an expositor."105

Power and Walter S. Scott organized most of the lectures for the Society and the University in the 1910's. They also gave many lectures, and were assisted in this regard by leading practitioners.106 Power was a graduate of Dalhousie University, and had been a law writer in New York before becoming editor of the Western Weekly Reports and the Alberta Law Reports in 1912.107 He delivered most of the Society's lectures in Calgary — thirty in the fall of 1912, sixty in 1913.108 By 1914 he was also the registrar of the Calgary branch of the University's Faculty of Law. Scott, who by 1914 was the Faculty's "Advisor on Legal Studies," frequently told Tory that he had serious reservations about the quality of Power's lectures:

[T]hey seem to give the student nothing he would not gain from a more or less intelligent study of a prescribed text book. For obvious reasons I have not said this before; however, the fact that Power is fairly well provided for by his editorship of the Alberta Law Reports, and his monthly retainer by a lumber company, permit me to speak more plainly, especially as I do not feel I am attacking his capacity in the field upon which he has chosen to rely for his bread and butter. He has more than once expressed to me his intention of not attempting to pursue an academic career permanently.109

These views were probably shared by the students, for when Tory sounded out the University's chancellor, Justice C.A. Stuart in 1921 on

105. Fac. of Law, Calendar, 1914, p. 16.
106. For a list of the University's instructors for 1914, see Fac. of Law, Calendar, 1914, pp. 3-4.
107. Johns, "History of the Faculty of Law," p. 3.
109. Fac. of Law, Calendar, 1914, p. 3; Scott to Tory, July 14, 1915, TP, box 10, file 131. It is also clear that Scott had little personal respect for him: "... I do not care to work in any way under Power, not because I have objection to Power, but because my amour propre would be wounded — a bad reason, I know, but one that is very effective with me." Scott to Tory, June 9, 1914, ibid.
Power's suitability for the deanship of the Faculty of Law, he reported what his informants stated:

[H]is lectures were not good but very poor. They [Stuart's informants] said he [Power] evidently made no preparation — just practically read from the text books and presented nothing in a form of his own. He seemed to have no vigor and energy. . . . This makes me very reluctant to approve of his appointment to a full professorship. . . .

Scott, on the other hand, was more inclined to take on academic responsibilities, and told Tory so on many occasions. A graduate in classics and English literature from Trinity College, Dublin, he subsequently read law at King's Inn, Dublin and Lincoln's Inn, London. He had served on the editorial staff of Halsbury's *Laws of England* and practised at the Chancery bar in London for eight years. He had also taught in England. In Canada he was a practitioner, but more importantly he was editor of the *Western Weekly Reports* between 1913 and 1917 at the same time that he was giving lectures.

In 1915, Scott opposed a decentralized system of lectures and "the present multiplicity of lecturers." He also disagreed with Tory's proposal to make Power and him responsible for the Calgary and Edmonton lectures respectively: "There must be a central authority and that central authority . . . should be an individual . . . ." However, Tory may have felt that it was more important to ensure the support or at least neutrality of the profession, which may not have been as inclined to law school education as he and Scott would have liked it to be. Of course, Tory also had to be careful not to overtly advocate centralization at a time when the doors of Calgary College had only recently closed. A disgusted Scott left Calgary for Edmonton in 1915 to, *inter alia*, lecture the Edmonton students and devote more time to writing.
This reluctance to fully embrace an academic legal education was mirrored by the students' attendance at the Society's lectures. Attendances at the 1913 lectures were so dismal that the Calgary Law Students Society suggested that examination fees be rebated for all students who attended a certain percentage of lectures. Convocation rejected this, for the fees were now payable to the University. Instead, it sought to bolster attendance by stipulating that no student could write an examination unless he could prove he had attended at least two-thirds of the lectures on the subjects he was being examined on — a policy the University also adopted.\textsuperscript{115} This problem remained in 1914, and when it was impossible to determine the extent of students' attendance at the lectures due to incomplete records, convocation simply permitted all students to write the examinations that year.\textsuperscript{116}

Another reason for the poor attendances in the 1912-14 period was that the same courses were offered each year. The senior students had no inclination to hear lectures they had already heard in previous years. Therefore, convocation agreed to Power's proposal to grant exemptions for a course already taken.\textsuperscript{117} But the larger problem was that the lectures for both the LL.B. and non-LL.B. students were built around the students' and lecturers' other responsibilities. Thus, in 1913 the lectures were confined to the hour before ten in the morning and the hour after five in the afternoon.\textsuperscript{118} Moreover, the profession's support for law schools did not initially translate into a desire for a reduction of the students' office duties. Thus, Calgary students and lawyers successfully opposed the University's proposal in 1913 or 1914 to hold lectures from nine to noon. The students felt that the proposal "would tend to lower their salaries by cutting so many hours out of their day."\textsuperscript{119} For most of the 1910's, then, the profession had no desire to replace the "three or five" articling regime with full-time attendance at a provincial law school.

\textbf{IX. Academic Standards}

If the students' bodies were elsewhere than at the University's lecture-halls in the 1910s, then their examination performances suggest that their minds were too. The number of examinations, and jurisdiction over them, had changed several times since 1885. Prior to 1893, the single examination that articling students had to write was set and graded by a

\textsuperscript{115} LSA, "Minutes," Jan. 1913, p. 12; \textit{ibid.}, July 1913, p. 77; \textit{ibid.}, Jan. 1914, p. 91.
\textsuperscript{116} \textit{Ibid.}, p. 61; \textit{ibid.}, July 1914, p. 112.
\textsuperscript{117} \textit{Ibid.}, Jan. 1913, p. 58; \textit{ibid.}, July 1913, pp. 50-51; \textit{ibid.}, Jan. 1914, pp. 62, 90-91.
\textsuperscript{118} \textit{Ibid.}, Jan. 1913, p. 58; \textit{ibid.}, July 1913, pp. 51, 77.
\textsuperscript{119} Scott to Tory, n.d., TP, box 10, file 131 (1 p. letter).
Territorial judge and lawyer.\textsuperscript{120} As of 1893 these duties were assumed by a government-appointed Board of Examiners, composed of up to three lawyers. The Board may have been inspired by similar boards in many American states. In addition, students were now required to pass an intermediate and a final examination. Dates and places for examinations were set by the Territorial Council. Students had to pay a $10 fee to write each set of examinations, but other examination costs were borne by the government.\textsuperscript{121} The Calgary Law Students Society did not want its members prejudiced in the transition to the new arrangements, and the government assured it that the purpose of the amendments was to establish a uniform, periodic examination.\textsuperscript{122}

With the passage of the 1898 \textit{Ordinance}, and then the 1907 \textit{Act}, jurisdiction over examinations passed to the Territorial and the Alberta Societies respectively. They established policy-making examining committees and hired examiners to handle the same duties that the Board and government had handled. They also established elaborate rules of procedure for the examinations, which had been divided into first intermediate, second intermediate, and final by 1901.\textsuperscript{123}

Most examination scores ranged from borderline to fair — at least until 1921. As early as 1895, C.C. McCaul and W.C. Hamilton, who comprised the Board of Examiners, reported to the Territorial government that one of four candidates had written a satisfactory paper in that year's examinations:

\begin{quote}
The answers of the other three candidates ... display ... an almost grotesque ignorance of the most elementary principles of law and equity, and furnish intrinsic evidence that their authors can not have studied the subjects of examination with even a slight degree of intelligence or care.\textsuperscript{124}
\end{quote}

They recommended that a first intermediate examination be created to encourage systematic study and to enable students to test "their knowledge of elementary principles and foundations." This would help

\begin{enumerate}
\item Ord., 1885, no. 10, s. 1(4)(5).
\item An \textit{Ordinance to Amend "An Ordinance Respecting the Legal Profession" and Ordinance No. 19 of 1890 ...}, Ord., 1893, no. 26, s. 2; Ord., 1895, no. 9, ss. 8, 9. See SAB (S), AGR, file 481L for correspondence between the government and the students in the 1893-98 period. See \textit{ibid.}, file 255, items 12-13 for a list of examiners.
\item Thomas O'Brien to Haultain, Oct. 18, 1893 and Haultain to O'Brien, Oct. 19, 1893, \textit{ibid.}, file 450L, items 1-3.
\item LSNWT, \textit{Rules}, 1901, rules 21-32, esp. 28, 45, 48(a); LSA, \textit{Rules}, 1910, rules 17, 20(b)(2), 66-75. Graduates were exempt from writing the first intermediate examination. The final examinations were split in two at the students' request in 1920. LSA, "Minutes," Jan. 1920, pp. 33, 55-57. There were now four sets of examinations, two intermediate and two final, and the 1925 curriculum reflected this division. \textit{Ibid.}, Jan. 1925, pp. 120-23.
\item Report of Board of Examiners, Feb. 25, 1895, SAB(S), AGR, file 481L, item 394.
\end{enumerate}
to ensure that those who failed would realize their unsuitability for the profession early on, and thereby “turn to some other means of livelihood without further waste of time.” The first intermediate examination was probably not yet in place when Calgary resident E. Alexander, the first woman law student in the Territories, was notified in 1898 that she had failed her examinations. The poor performances continued even after jurisdiction over examinations passed to the law societies. For example, the scores in the 1910 final examinations ranged from 55% to 76%, with only one student in the seventieth percentile. As in the Territorial period, the lowest scores were in constitutional law, criminal law, equity, pleading, and practice and procedure. These performances occurred despite the low pass grades. In 1900 convocation let a student write a supplemental examination in practice and procedure; noting that it was an exceptional case, convocation set the pass grade at 33%. Students with scores between 33% and 50% in particular subjects were being passed in 1910 as long as they achieved over 50% of the total available marks in a set of examinations. In 1915 bencher O.M. Biggar succeeded in raising the pass grade for the Society’s examinations to the University standard — 50% in each subject. However, caught up in the patriotic fervour of the Great War, the Society did not require students who had failed an examination to write supplementals if they were on active service.

Thus, when the students expressed reservations about the University’s involvement in examinations after 1912, they were probably concerned that their prospects for early admission to the Society would be jeopardized. For the students, the advantage of professional control over the examinations was that they could always petition convocation or a bencher for special relief when they had failed. Such petitions were so pervasive in 1905 that convocation had to instruct the benchers not to

125. Ibid., items 394-95. See generally ibid., items 12-13, 255-60, 348, 372-74.
126. Clerk to Alexander, Aug. 15, 1898, SAB(S), AGR, file 785, item 16. Haultain had informed R.L. Alexander in January 1896 that there was nothing to prohibit her daughter from studying law: Alexander to Haultain, Dec. 27, 1895, ibid., file 541L, item 721.
127. LSA, “Minutes,” June 1910, p. 278.
128. See the examination results at SAB(S), AGR, file 481L, items 255-60. See also LSA, “Minutes,” July 1920, p. 108; ibid., July 1921, pp. 88-89.
130. LSA, “Minutes,” June 1910, p. 278.
pass students who had failed their examinations, or who did not have the requisite qualifications for admission.\textsuperscript{133}

A 1915 incident indicates the extent of the profession’s control over examinations despite the fact that the University was now administering them. One of the lecturers had informed the Calgary students that the answers to examination questions would require knowledge less of the texts than of the lectures. But students complained that as they came from different parts of the province, many of them had not had an opportunity to attend the lectures. They also felt that the lectures given to different groups of students were not always the same in content. Tory and bencher O.M. Biggar confirmed that questions would be based only on the texts. Tory also told Scott that the persons setting the questions (usually the lecturers) should not be the same ones grading them:

This would secure questions based on the subjects treated in the lectures while at the same time it would give the men who had not heard the lectures an equal opportunity to answer the questions from the books.\textsuperscript{134}

A miffed Scott agreed to the change too, even though he was convinced “that all objection proceed[s] from one office in town, whose latest hope is to have a small law school attached to the new Calgary Technicological [sic] College.”\textsuperscript{135}

Similarly, students complained to Tory and convocation in 1920 that the questions in the examination on practice and procedure were non-practical, ambiguous, and unrelated to the curriculum. The examiner, A. Macleod Sinclair, agreed to convocation’s request to reread all papers with scores between 33\% and 50\%, but his views of the merits of the students’ protests and motivations were unequivocal:

[T]he [students’] Petition is a piece of gross impertinence. It is not even written in decent English. In my opinion there is not a single question in the paper with which a second year student should not be familiar. The performances which one sees in the Courts here, show the result of letting men pass who have no knowledge of the subject. If the legal education of this province is to be governed by the opinions expressd in Petitions by people who are afraid they have failed, I would suggest that the matter be

\textsuperscript{133} LSNWT, “Minutes,” Jan. 1905, p. 97.
\textsuperscript{134} Tory to Scott, Mar. 27, 1915, TP, box 10, file 131; Biggar to Cecil Race, Mar. 16, 1915, and Race to Biggar, Mar. 19, 1915, TP, box 11, file 134.
\textsuperscript{135} Scott to Tory, Mar. 30, 1915, TP, box 10, file 131. He cautioned Tory that the examiners “were the keen men of the place, and . . . like myself, resent keenly the implication of unfairness and incapacity which has come to them via the Education Committee of the Law Society, upon the complaint of a firm which has refused to take any part in our endeavours to do what we could for legal education.” \textit{Ibid.}
turned over to the O.B.U. [One Big Union] or some such similar organization.\textsuperscript{136}

X. \textit{The Competition for Students}

Given the at best mediocre academic performances of most students, it is easy to criticize the Alberta Society and, to a lesser extent, the University of Alberta for not insisting on higher standards in the 1910s. However, several extenuating factors have already been noted: the University had been created only recently, the emergence of Calgary College had acted as a destabilizing force, and many students in the new province lacked the urban or urbane frame of mind usually associated with higher learning. Another important factor was that the Society and the University were in competition with their counterparts in other provinces. Both institutions were concerned throughout the 1910's that if they set higher standards, the students would leave or not even come to Alberta because another jurisdiction had fewer obstacles to becoming a lawyer.

The debate over matriculation standards and extramural degrees in the 1910s reflected this concern. Matriculation standing as a prerequisite to articling was first legislated in 1890. A prospective law student was required to satisfy a judge that he had matriculated in Arts from a university in a British land, or held a second-class non-professional teaching certificate from the Territorial board of education.\textsuperscript{137} The Alberta Society adhered to the junior matriculation standard until 1910 when a unanimous convocation raised it to senior matriculation. Three years later, convocation reverted to the lower standard after rejecting Tory's suggestion that the University should be allowed to determine it. Still, Tory and the provincial Department of Education supported the lower standard, and probably sympathized with convocation's uneasiness at being forced to lower entrance standards to the same level as in other jurisdictions. Convocation felt that to insist on the higher standard would only have the effect of forcing residents of this Province to pay an enrolment fee in a Law Society of some other Province, it being impossible to refuse recognition of students-at-law enrolled in other societies and permitting their admission here with the same standing as they have already acquired elsewhere.\textsuperscript{138}


\textsuperscript{137} \textit{An Ordinance to Amend the Revised Ordinance Respecting the Legal Profession,} Ord., 1890, no. 19, s. 2(b).

\textsuperscript{138} LSA, "Minutes," July 1909, p. 149; \textit{ibid.}, Jan. 1910, p. 196; \textit{ibid.}, July 1913, pp. 70-72, 77-78; \textit{ibid.}, Jan. 1914, p. 98. It appears that the Ontario Society's law school accepted non-matriculants, but the Alberta Society would not let its non-matriculant students attend it. \textit{Ibid.}, June 1910, p. 278; \textit{ibid.}, Dec., 1910, p. 294.
The standard deteriorated even further in 1915, shortly after the prerequisite for admission to the University's LL.B. programme was lowered from senior matriculation (or one year's work in the University's Arts and Science programme) to junior matriculation.\textsuperscript{139} When G.A. Costigan sought admission into the LL.B. programme in 1914 even though he did not have the Latin requirement, Tory wrote C.F. Adams, the Society's secretary-treasurer, that the University customarily admitted a student who was one subject short of matriculation: it would be unfair for the student to be held back a year while he completed the subject. Coming on the heels of the reversion to junior matriculation, Adams was not optimistic that convocation would assent to the arrangement insofar as law students were concerned. His prognostication was wrong, for convocation agreed in 1915 to admit students who were short one or two subjects if they matriculated within a year.\textsuperscript{140} It was not until 1920, when the ranks of the profession were becoming crowded, that convocation no longer accepted conditional admissions and restored the senior matriculation standard. When convocation tried to enforce the changes in 1920, Alberta's Attorney General observed that inadequate notice of the change was causing "considerable criticism." Convocation, therefore, agreed to extend the implementation date to 1922.\textsuperscript{141}

The problems facing the Society and the University respecting extramural degrees in the 1910's further exemplifies the pressures on Alberta's educational institutions. Tory had some sympathy for rural students who found it difficult to attend lectures on account of their distance from Calgary and Edmonton. He noted in 1915 that at least one third of all law students in the province had no lectures.\textsuperscript{142} But he was opposed to the idea of extramural degrees, that is, degrees awarded upon completion of correspondence courses. To Tory's consternation, this was not the case in other provinces. In 1916 Tory protested the University of Manitoba's awarding of extramural LL.B. degrees. The practice jeopardized the University of Alberta's LL.B. programme, offered in Edmonton and Calgary, by pandering to those Alberta students "who wish to get a degree without leaving home." Tory told the president of the University of Manitoba that "the tendency in all universities worthwhile

\begin{itemize}
\item \textsuperscript{139} Fac. of Law, Calendar, 1912, p. 3; Fac. of Law, Calendar, 1914, p. 5.
\item \textsuperscript{140} Tory to Adams, Sept. 15, 1914, TP, box 11, file 134; Adams to Tory, Sept. 16, 1914 and Jan. 14, 1915, \textit{ibid}. See also LSA, "Minutes," Jan. 1915, agenda item III(1); ELC, \textit{ibid}., p. 4; and the statistics on Rule 57 (conditional) admissions in Sibenik, "The Doorkeepers," p. 199, col. 8. The new rule was really a codification of an occasional practice. LSNWT, "Minutes," Aug. 1907, p. 137.
\item \textsuperscript{141} LSA, "Minutes," July 1920, p. 13; \textit{ibid}. Jan. 1921, pp. 16-17, 28.
\item \textsuperscript{142} Tory to Scott, Mar. 17, 1915, TP, box 10, file 131.
\end{itemize}
is to get away from extramural degrees, especially so in professional subjects."\textsuperscript{143}

The Alberta Society was also concerned about the problem. It negotiated an agreement with the University in 1914 to prevent matriculants from obtaining an LL.B. until they had articled for four years. This would discourage the University’s LL.B. graduates from subsequently going to another jurisdiction (in order to take advantage of another law society’s less onerous articling requirements), and then applying for admission to the Alberta Society via the outside stream. Convocation noted that this would not resolve the problem of Alberta’s standards being undercut by the University of Manitoba’s easier granting of LL.B.s. However, it felt that once the above arrangements were concluded, legislation could be passed “so as to prevent the University of Manitoba from lowering the standard of scholarship fixed by agreement between the Law Society and the University of Alberta.”

XI. Full-time Legal Education

That proposed legislation was shelved, probably because of the disruption caused by the advent of the Great War.\textsuperscript{144} More importantly, the Canadian Bar Association and provincial law societies (including Alberta’s) were conducting major reviews of Canadian legal education.\textsuperscript{145} In the ten years after the founding of the Canadian Bar Association in 1914, its committee on legal education made many recommendations for reform.\textsuperscript{146} The committee’s reports to the annual meetings of the Association from 1918 to 1920 were particularly important because they spawned tensions between academics and practitioners as to the purpose and direction of legal education in Canada. In 1918 the committee made three general recommendations — that the existing system of legal education (which it felt was the same across English Canada) be retained, that unessential differences in provincial standards be removed, and that the provinces have a wide discretion on matters of detail. Specifically, the committee recommended that no one be permitted to become a law student unless he was eighteen years old and had his junior matriculation.

\textsuperscript{143} Tory to James MacLean, Jan. 7, 1916, TP, box 10, file 127.
\textsuperscript{144} Aytenfisu, The University of Alberta, chap. 5.
\textsuperscript{145} Ibid., Jan. 1917, pp. 77-78; ibid., Jan. 1918, pp. 5-6; Proceedings of the Canadian Bar Association, 1919, p. 206. [Hereinafter CBA Progs.]
\textsuperscript{146} The committee was led by R.W. Lee and then by D.A. MacRae, the deans of law schools at McGill and Dalhousie respectively. The committee had representation from each province; the Alberta representatives were usually T.M. Tweedie of Calgary and Walter S. Scott of Edmonton. CBA Progs, 1918, p. 104; ibid., 1919, p. 77; ibid., 1920, p. 157. See generally Kyer and Bickenbach, The Fiercest Debate, pp. 62-68 for more on the debate over legal education within the Association in these years.
It wanted law students to attend a law school full-time for three years, and to engage in a separate period of articles (one year for those with pre-law degrees, two years for others). It also wanted Canadian law schools to formally recognize each other so that students who moved to another province could be given full credit for time already spent in another law school. Finally, it advocated more interprovincial uniformity in examinations and courses of study.147

The recommendations were ambiguous, often contradictory, because the committee had great difficulty reaching a consensus. Even so, most lawyers at the Association’s 1918 meeting rejected mandatory law school training, and even the divorce of articling from a more academic education. As a result, the report was referred back to the committee.148 The 1919 report of the legal education committee recommended that the entrance standard be raised to senior matriculation, and this was accepted by the meeting. But in a major retreat from 1918 the report now wanted the “three or five” regime to continue, with the proviso that office attendance be suspended if a student attended a law school. However, the annual meeting was not satisfied with even this because it felt that the articles of a graduate student should be four years and that a student should be allowed to attend law school and to article in a law office concurrently.149 The 1920 annual meeting proved to be less controversial. It adopted a model curriculum that emphasized private law courses; Roman law, jurisprudence, and public international law were relegated to an optional status.150

But the concessions wrung out of the Association’s legal education committee were more important to Ontario practitioners than to their Alberta counterparts, who were much more receptive to academic legal education. Negotiations between the Alberta Society and the University of Alberta for the creation of a full-time LL.B. programme began in 1920. The negotiations were not contentious, and there were several reasons for this. First, the profession had considerable respect for the University’s negotiating team — Tory, Chief Justice Horace Harvey (chairman of the University’s board of governors since 1917), and Justices Charles A. Stuart and N.D. Beck (the University’s chancellor and vice-chancellor respectively since 1908).151 Second, most of the benchers were well-
educated: many were holders of university degrees, and four of the 1921
benchers were graduates of Dalhousie Law School.152

Third, unlike the first half of the 1910's, there was close to a consensus
in the province that full-time academic education in a university setting
was needed. Tory felt that the system of "voluntary lectures had been
tried out both at Edmonton and Calgary, but had been found to be
impossible." The Calgary students, and especially the Edmonton
students, supported the establishment of a full-time programme based at
the University. They attributed the inadequacy of the existing system of
lectures to the "lack of organization and of a directing head" at a time
when returned soldiers were significantly augmenting their ranks. The
Edmonton Students requested that "an immediate effort be made to
procure more of the leading members of the profession to lecture during
the remaining half of the Session 1920-1921 and until the establishment
of a law school."153

The Calgary Bar Association also felt that a better system of education
was needed, and that the University of Alberta should provide its
academic component. But it was opposed to any agreement that would
fetter the Society's control over whom it could admit. It felt that the
faculty and curriculum should continue to be approved by the benchers,
"all of whom are men of practical experience as to the qualifications
necessary for successful and creditable practitioners of law under the
circumstances prevailing in this Province . . . ."154

Convocation rejected the measures advocated by the Calgary lawyers.
It may have been confirmed in this view when the University withdrew
its request for a money grant from the Society — which was again in a
precarious financial situation — to partially finance the new full-time
LL.B. programme.155 An agreement-in-principle, based on an amended
version of the "Tory memo" on legal education, was reached in January
1921. The agreement contemplated that prospective students of the
Society would undertake three years of full-time studies leading to the
LL.B. and a year of articling, and then write the Society's examination on
provincial statutes. They would no longer have to write the examinations
that had been required by the Society and administered by the University.
The University would provide the facilities, library, and instructors

154. Ibid, Mar. 1921, p. 139.
155. Ibid, Jan. 1921, pp. 88-90. Tory had previously assured convocation that "there already
has been money granted from time to time by the legislature, though not in very large amounts,
but sufficient to start the work if a working basis could be arrived at." Ibid., p. 88. See Sibenik,
"The Doorkeepers," p. 43 on the Society's finances during this period.
through its own financial resources, and would establish fees for admission to the Faculty of Law. Finally, the Society's education committee would act as the new Faculty's advisory committee, whose "advice and criticism" would be sought on changes affecting the Faculty before they went to the Senate.156

The requisite amendments to the Legal Profession Act were pre-approved by convocation and then enacted by the legislature that spring. They empowered the Society to admit to the practice of law those students with senior matriculation who, before their one-year articles, had completed the six-year full-time Arts-Law course, or the three-year full-time LL.B. programme, at the University of Alberta.157 In 1925 pre-law entrance requirements for all prospective law students were raised from junior matriculation to two year's college work at an approved university.158

The 1921 amendments made no mention of the status of LL.B. graduates from institutions other than the University of Alberta. This omission probably reflected a consensus that provincial legal consciousness and provincial educational standards should be nurtured and protected. In fact, the Society discouraged prospective members from getting a legal education outside the province.159 This was an explicit rejection of the principle of free transfer of students, as advocated by the 1918 and 1919 reports of the legal education committee of the Canadian Bar Association.

There were a number of transitional problems for the rest of the 1920s. During the negotiations between the Society and the University, Tory had walked softly around the sensitive issue of the continuance of lectures for "office men." In July 1920 he had stated that the "five year course" should still be "available for students actually unable to attend the University...."160 The following year he had undertaken to continue lectures for the "office men" until the courses were finished, but he

156. LSA, "Minutes," Jan. 1921, pp. 89-90. Tory was concerned about the raison d'être for such a committee in university affairs: "This is a very grave departure from any procedure heretofore followed in the university and if adopted generally with respect to affiliated organizations might become a source of serious embarrassment." Ibid.

157. Students who were taking the Arts-Law course or who were graduates could fulfill their articling requirements during the summers in four-month stretches; that is, they could serve interpolated articles. Tory to L.C. Klinck, Mar. 7, 1923, box 10, file 127; Reed, Present-Day Law Schools, pp. 354, 356; S.A., 1921, c. 5, s. 7(2).


159. Ibid; Reed, Present-Day Law Schools, pp. 348-49; CBA Prcegs, 1919, p. 207.
refrained from suggesting anything about the long-term future of the “three or five” regime.  

Both convocation and the University, however, wanted the lectures phased out — much to the consternation of Calgary lawyers and students, who protested the discontinuance of the Calgary lectures for “office men” in 1923. But convocation was unsympathetic to their views because of the lengthy consideration that legal education had received in 1920-21, and because of the Society’s bleak financial condition.  

The University was just as adamant, as exemplified by a letter that Tory wrote W.H. Sellar:

[H]aving secured recognition for the teaching at the University, we should strive to bring all the students to take a regular course of study free from other work .... [T]here is no more reason why students in Law should be freed from University courses than students in any other profession, including teaching. Compulsory attendance at some kind of Law School is enforced now practically everywhere.

Sellar agreed with Tory on the “broad questions of legal education,” but confessed “to having sympathy with the student who is not able to attend the University, and who has to struggle through his examinations without help or guidance.” Tory’s firm attitude on residency was exemplified further by his decision in 1928 not to allow a Canadian diplomat, who was about to be stationed in Shanghai, permission to take extramural courses leading to an L.L.B. degree.

Still, the “three or five” regime that had been the mainstay of the inside stream of admissions for so long did not disappear immediately. Indeed, the 1921 amendments did not abolish it, although the full-time L.L.B. programme was securing a stronger foothold with each passing year. There were one hundred forty-three students registered with the Faculty

161. Ibid., Mar. 1921, pp. 138, 142.
162. Ibid., July 1923, pp. 25-27; W.H. Sellar to Tory, July 12, 1923, TP, box 10, file 131.
163. Tory to Sellar, July 28, 1923, ibid. Tory wrote the president of the University of British Columbia in a similar vein. Tory to Klinck, Mar. 7, 1923, TP, box 10, file 127.
165. Tory to Beck, Mar. 3, 1928, ibid. Ironically, it was Tory who had created an Extension Department in 1912 in order to take the University to the people. Mario Creet, “H.M. Tory and the Secularization of Canadian Universities,” (1981), 88 Queen’s Quarterly 718, at 726. Tory had also been the inspiration behind the Khaki University, which had provided correspondence courses for Canadian soldiers on overseas service in 1918-19. Johns, A History of the University of Alberta, pp. 61-68.
166. S.A., 1921, c. 5, s. 7(2); “First Class,” Gateway; Reed, Present-Day Law Schools, pp. 348, 356; LSA, “Minutes,” Jan. 1921, p. 89. Bowker, History of Law Society of Alberta, p. 12 contends that the “three or five” regime “disappeared almost immediately” thereafter.
in the 1921-22 academic year: fifty-four were taking the combined Arts-Law course, twenty were freshmen taking courses in the new LL.B. programme, and the other sixty-nine were finishing LL.B. courses under the “three or five” regime. Thirteen degrees were awarded in 1924 to the first graduating class; by 1926, the sixth year since the inception of full-time LL.B. programme, fifty-one degrees had been awarded. In the same year, there were fifty-three students in the Faculty, and 75% of them had standing equivalent to three or more years in Arts before they had entered the LL.B. programme; another seventeen were completing the Arts part of their Arts-Law degrees. “Office men” were still being admitted as members of the Society in 1926, but in far fewer numbers. In 1926, only eleven “office men” were writing one of the four sets of examinations (there had been three sets until 1920) still being given under the auspices of the University.¹⁶⁷

Tory had considerable difficulty finding a suitable dean for the new Faculty in 1921. Walter S. Scott had the support of much of the Edmonton and Calgary profession, but he was rejected — perhaps due to his British origins. He was also squeezed out of his position as the University’s “advisor on Legal Studies.” He remained bitter about his non-role in the Faculty for many years.¹⁶⁸ W. Kent Power also put his hat into the ring, but he too was rejected after Chancellor Stuart declined to endorse him.¹⁶⁹ Tory probably felt that the dean should be a Canadian with Harvard training. He had considerable difficulty recruiting such a prospect, despite the fact that he corresponded with Harvard dean (and close friend) Roscoe Pound about suitable candidates. Both I.C. Rand and P.E. Corbett turned down offers for the deanship. With the advent of classes mere weeks away, a frustrated Tory wrote Pound in August 1921 that “Law and Medicine are such remunerative professions that it is a difficult task attracting men from these callings.”¹⁷⁰

Tory decided to postpone his search for a new dean, and instead concentrated his efforts on recruiting full-time instructors. In October he secured the appointment of John A. Weir, who became the Faculty’s dean in 1926. Tory waited another year before making Victor E. Kleven

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¹⁶⁸. See the petition at TP, box 10, file 122; Gertrude C. Russell, Assistant Archivist, University of Alberta Archives to author, May 4, 1984 [in author’s possession]; Scott to Tory, Sept. 12, 1923, TP, box 10, file 124.
¹⁶⁹. Power to Tory, Aug. 20, 1921, ibid., box 10, file 122. See also sec. VIII, supra.
¹⁷⁰. Tory to Pound, Aug. 20, 1921, TP, box 10, file 122. See also other correspondence on the deanship in that file.
the second full-time instructor. Kleven held an LL.B. from the University of Saskatchewan and, like Weir, was a Rhodes Scholar. In appointing him, Tory may have passed over another \textit{prima facie} suitable candidate, Victoria Allen, a resident of Olds, Alberta. When she wrote in February 1922 as to whether the University had a teaching vacancy, Tory indicated there was none. It is not clear whether the position that Kleven eventually received a few months later was available when Allen had enquired, whether she was still available for teaching later in the year, or whether her gender or American law degrees played a role in her non-appointment. The full-time instructors were assisted by prominent practitioners, many of whom had taught in the pre-1921 period.

The University's student newspaper, \textit{The Gateway}, noted in 1924 that the law school had been modelled on Harvard Law School. This observation was especially germane with respect to the nature of the instruction. First-year students were lectured in contracts, torts, liability, procedure, property and criminal law. Each course had large, well organized casebooks containing leading English and American decisions, from which the headnotes had been excised. Students were given

172. Allen to Tory, Feb. 18, 1922, and Tory to Allen, Feb. 21, 1922, TP, box 10, file 124. Allen had a B.A. from the University of Alberta, plus law degrees from Yale and the University of Chicago. Allen to Tory, Feb. 18, 1922, \textit{ibid}. (Tory had a low opinion of American professors, except those from prominent eastern universities, where he felt British cultural and intellectual traditions were stronger: Aytenfisu, "The University of Alberta," pp. 113-14.) No legislation or rule prohibited women from becoming members of the Alberta Society on account of their gender. See note 126, \textit{supra} and LSA, \textit{Information as to Admission, Examinations, Fees, Etc.}, p. 11.

This was also true as regards University admissions, for Tory had informed Daphne Garrison of Westlock, Alberta that "men and women are on an equal footing and a woman can enter any department of the University she wishes — Arts, Law, or Medicine." Garrison to Tory, Feb. 6, 1914 and Tory to Garrison, Feb. 20, 1914, TP, box 10, file 125.

But there were other pressures on women. A twenty-year old stenographer in a Calgary law office wrote Tory in Nov. 1921 about her prospects in law. Her employer had cautioned her that "it is harder for a lady to succeed as a lawyer than it is for a man, and he thinks it is better for me to continue as a stenographer instead of studying to be a lawyer." Tory indicated that "the percentage of women who can succeed in law is small, but an able woman no doubt would succeed as in any other walk of life." Madeleine Cassidy to Tory, Nov. 18, 1921 and Tory to Cassidy, Nov. 22, 1921, \textit{ibid.}, box 10, file 127.

173. For example, Frank Ford, H.H. Parlee, W. Dixon Craig, and G.H. Steer were the proposed lecturers for 1926-27. Senate Report, 1926.
174. "First Class," \textit{Gateway}; William Kerr to H.L. Howe, n.d., TP, box 10, file 127. See Senate Report, 1926 for a list of proposed courses for all three years of instruction for 1926-27. The Society's minutes note that the Faculty had adopted the model curriculum promulgated by the Canadian Bar Association.
175. The emphasis on case law was designed to enable the student to practise in any common law jurisdiction. Kerr to Howe, n.d., TP, box 10, file 127.
assignments, and cases were discussed in class, under the direction of the instructor, with a view to determining their reasoning and correctness. The instructors sought to instill in the students' minds a capacity for "independ[e]nt thinking which is absolutely lacking under the text book system."\textsuperscript{176} The students were graded in each subject by four-hour examinations in June of each year. William A.R. Kerr, Dean of the Faculty of Arts and Science, regarded the questions on them as a "pretty fair test," and the grading as "extremely stiff":

An absolutely correct answer gets 80 and an exceptionally brilliant one more (if you bring out a point that the prof himself has not seen.)\textsuperscript{177}

Law students became involved in general university life such as clubs, student newspapers and student government, and they won major scholarships in the 1920s.\textsuperscript{178} There had been some concern that the profession might be reluctant to hire graduates of the new programme, but the Dean observed in 1926 that law school graduates had no particular difficulty getting jobs after their admission, and that there was a negligible efflux of graduates to the United States.\textsuperscript{179} Thus, by the end of the decade, lawyers and students alike had come to accept the changes in attitudes and studies engendered by the establishment of a full-time LL.B. programme at the University of Alberta in Edmonton.

XII. \textit{Conclusion}

The development of legal education in the North-West Territories and Alberta in the 1885-1928 period was marked by changing doorkeepers, by a transition from the outside stream of admission to the inside stream, and by efforts after 1910 to establish higher academic standards in the context of provincial post-secondary institutions. The Territorial government assumed control of legal education in 1885 when it enacted

\begin{itemize}
  \item \textsuperscript{176} \textit{Ibid.} In fact, Tory realized that not all of the courses were amenable to the case method of instruction: "[T]he purely historical subjects are still treated on the lecture basis. We are thus trying to combine the best elements of the two systems, the old English system and the case system. The scheme is working out eminently satisfactorily." Tory to Klinck, Mar. 7, 1923, \textit{ibid}. The hours of instruction were long and the students had to be well prepared for their classes. A high-ranking University official wrote vividly of one instructor, "Bull" Warren, who "insists on everyone telling him before class whether or not you are prepared and if you fail to inform him and he later discovers unpreparedness it means being expelled from his classes for two weeks. He pounced on one of his victims this morning." Kerr to Howe, n.d., \textit{ibid}. See also Reed, \textit{Present-Day Law Schools}, pp. 369, 373. The introduction of moots, in which students honed their research and forensic skills, must have assisted in entrenching the case method approach. \textit{Ibid.}, p. 369.
  \item \textsuperscript{177} Kerr to Howe, n.d., TP, box 10, file 127.
  \item \textsuperscript{178} Senate Report, 1926.
  \item \textsuperscript{179} \textit{Ibid.;} Tory to L.A. Walsh, Mar. 6, 1928, TP, box 11, file 134.
\end{itemize}
the first ordinance respecting the legal profession. That ordinance sought to ensure the least possible governmental intervention. Thus, some of the administrative duties were delegated to the courts. Subsequent ordinances tightened educational and professional qualifications, and these qualifications were in place before the Territories became heavily populated. There was little substantive change in the "three or five" articling regime when it came under the control of the Law Society of the North-West Territories in 1898 and then its Alberta successor, the Law Society of Alberta in 1907.

The 1910's, on the other hand, was a transitional, often turbulent decade. It was marked by the emergence of lectures in Edmonton and Calgary. At first, the lectures were given both by the Alberta Society and the nascent Faculty of Law at the University of Alberta. By 1914 only the University was giving them. Most of the students taking the lectures were not enrolled in the part-time LL.B. programme, which involved taking more courses. The significance and timeliness of the University's role in the Society's partial divestment of its educational role must not be exaggerated. The members of the Alberta Society retained a strong hand in the lectures, examinations and policy-making — even after 1921 when the "three or five" regime was gradually supplanted by the three-year, full-time LL.B. programme in the context of the University's Faculty of Law, followed by a year's articling.

But the relative lessening of professional control over education, and the decline of the "three or five" regime, constituted a rejection of much of the English and Ontario paradigms of legal education that the practitioner-dominated Canadian Bar Association favoured. This is all the more remarkable in view of the Alberta profession's origins in, and affinities with, those jurisdictions. The Dalhousie model of full-time legal education in a university setting was influential in Alberta. Notwithstanding the antipathy toward the admission of American lawyers and to American legal education for much of this period, the University's law school also drew on the Harvard model.

For most of the pre-1921 period, articling was the heart of legal education in the Territories and Alberta. It amounted to a technical training whose efficacy varied from firm to firm. Book learning was something students were expected to pick up in the after-hours. Like their principals, articling students were fonceurs who engaged in part-time business activities and restlessly roamed the Territories, province and country in pursuit of new economic opportunities. It is not surprising, then, to see poor examination scores, spotty attendance records at lectures (despite the students' request for them), and considerable doubt and tension about the direction of legal education in the 1910's. Efforts to
raise standards in the 1910's were also temporarily stymied by lower matriculation and degree standards in other jurisdictions competing for the same students, by the creation of Calgary College, and by the many students who wanted to practise law as soon as possible.

All this changed with the advent of full-time academic legal education in 1921. The benchers were receptive to this change due to the presence of prominent justices on the University's negotiating team, the financial difficulties of the Society, the fact that the benchers themselves had had the benefit of higher education, technological advances that were impeding the usefulness of a long period of articles, the post-war movement in Alberta and the rest of Canada to reform legal education, and the need for students to come to grips with the increase in legal knowledge in the past decade. There is little indication that the new educational regime was implemented due to a desire to restrict competition at a time when the profession was becoming overcrowded, and when the economy was in a recession, but these too must have been factors.

The articling requirement, of course, would remain, but as a rump of its former prominence, and it became more spatially distinct from academic education. At the same time, the establishment of a full-time Faculty of Law began the depaysement of legal education in Alberta. While it took the rest of the 1920's to consolidate the gains, this development began the process of supplanting the themes of self-help, isolation and decentralization that had been so pervasive in the education of Territorial and Alberta lawyers. Kafka's "man from the country" would henceforth have to condition himself to the syllabus, the case method, law as science and precedent, and three years of urban life in Edmonton — or else he would be denied "admittance to the Law." Modern legal education arrived in Alberta when the profession traded some control over entry into its ranks for higher standards in the context of a publicly funded, local institution.

180. See Sibenik, "The Doorkeepers," p. 199, cols. 3, 6 and 8 for the number of lawyers in Alberta.