Acouple of generations ahead of popular demand': the First National Law Program at McGill University, 1918-1924

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Recommended Citation
Following the First World War, Dean Robert Warden Lee introduced some radical changes to the curriculum at the McGill Law Faculty. Three-year courses were instituted leading to either a civil law degree or a common law degree, and a four-year course in which both degrees could be obtained. The program was extremely controversial, running into opposition within the part-time faculty, the Montreal legal community and the bar societies of several provinces. Difficulties in obtaining professional accreditation for the common law graduates led to a decline in enrollment, and the common law option was discontinued in 1926. Lee's vision of a law school of international importance where both great branches of the law were taught was ahead of its time. It was not until 1968 that Dean Maxwell Cohen was able to introduce successfully a very similar concept in McGill's National Programme.

Après la Première Guerre mondiale, Robert Warden Lee, doyen de la Faculté de droit de l'Université McGill a apporté des changements radicaux au programme d'enseignement. Il a mis en place des cours étalés sur trois années menant à l'obtention d'un diplôme en droit civil ou en common law, et un programme de quatre ans menant à l'obtention des deux diplômes. Le programme a soulevé une grande controverse et provoqué une vive opposition chez les membres du corps professoral qui enseigne à temps partiel, chez les juristes de Montréal et au sein des Barreaux de nombreuses provinces. Les problèmes éprouvés par les diplômés en common law pour faire reconnaître leur diplôme ont entraîné une baisse des inscriptions, et cette option a été éliminée en 1926. Robert Warden Lee était un visionnaire, et son idée d'une faculté de droit où les deux grandes traditions juridiques seraient enseignées était avant-gardiste. Ce n’est qu’en 1968 que le doyen Maxwell Cohen a pu réussir à mettre en place un concept fort similaire, le programme national de droit de McGill.

Law Librarian, McGill University. The author is grateful to his colleagues, Professors G. Blaine Baker and Roderick Macdonald from McGill University, and Professor Philip Girard from Dalhousie University for commenting on drafts of this article. The staff members of the McGill University Archives, especially Gordon Burr, were extremely helpful in providing access to the primary materials used herein.
Introduction

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Introduction

In North America there has long been a tension between professional and academic bodies over the control of legal education from the time universities began asserting a role in the process. In the United States disagreements have been well documented about the place of perspective courses in legal education, such as the one that led, for example, to professors leaving Columbia University to form the modern Yale Law School.1 In the various common law provinces of Canada the debate was largely played out in the first half of the twentieth century. In Nova Scotia, through the preeminence of Dalhousie Law School, fulltime university-based legal education with practitioners assisting in the examinations became the model. In Ontario, legal education was tightly controlled by the professional body, the Law Society of Upper Canada, through Osgoode Hall Law School, where classes and articling were held concurrently. For the remaining provinces it seemed to depend on whether the key players and decision makers were Dalhousie or Osgoode graduates. In British Columbia, despite an initial intention to follow the Dalhousie model, the Osgoode model was adopted simply because of the long delays, actually until 1945, in establishing a university law faculty. Alberta and Saskatchewan, both having obtained provincial status in 1905, opted for fulltime university studies followed by articling, when the law societies failed to maintain their own schools. In 1914, Manitoba implemented an innovative joint venture between the Law Society and the University of

Manitoba, which, following classes taught by practitioners, resulted in a university degree; however, this approach was abandoned in 1927 in favour of the Osgoode model. In New Brunswick, the law school in Saint John was until 1923 a branch of King's College of Windsor, Nova Scotia, and then attached to the University of New Brunswick. However, since classes were concurrent with articling, New Brunswick was considered to follow the Osgoode model despite university affiliation.\(^2\)

In civil law Quebec the situation was somewhat different. Although professional accreditation could be gained through apprenticeship until 1949, the universities had been offering legal education, followed by bar examinations, since the mid-nineteenth century. Indeed, a general and legal university education was perceived as a desirable prerequisite to preparing for the bar. The debate centred more around the curriculum and the quality of university education. McGill University perceived its role as unique since it was not only competing with articling to provide better and more general legal training but also protecting the rights of the English Protestant minority. The Quebec bar jealously guarded its legal right to control entry to the profession, generally resisting innovations proposed by the university.\(^3\) Separate from the Quebec bar but equally interested in controlling the curriculum were the Anglophone members of the Montreal bar. Almost exclusively McGill graduates, they wished to ensure an ongoing supply—although not over-supply—of English-speaking lawyers in the city, and resisted innovation that might allow law students to practice elsewhere. Even the Board of Notaries, though a lesser player in the drama, succeeded in obliging McGill University to appoint a


\(^3\) *Act to Incorporate the Bar of Lower Canada*, S.Prov. C. 1849 (12 Vict.), c. 46 granted the Bar sole responsibility for admission to the practice of law one year after McGill began offering courses towards a law degree.
separate professor of notarial law. Successive McGill principals, dealing with local practitioners who were frequently members of the board of governors over every curricular change or initiative, could be forgiven for thinking Tennyson had something else in mind when he wrote of "moaning of the bar."

In its century and a half of existence the McGill Faculty of Law, while generally evolving in new and interesting directions, has made three profoundly significant changes to its mission and curriculum. These include the introduction of the National Programme in 1968 and the Trans-systemic Program in 1998, both of which encountered some skepticism and resistance. However, no initiative caused greater local consternation than the attempts of the visionary dean Robert Warden Lee to create, through offering degrees in civil and common law, a law school of national and imperial significance following the First World War. The Anglophone members of the Montreal bar resisted any notions of training lawyers for jurisdictions other than Quebec and objected to any curriculum that was broader than this goal. Additionally, its members had controlled legal education at McGill through providing all the part-time teachers. Any curriculum that featured areas outside the civil law of Quebec would require the recruitment of full-time professors from outside Quebec to teach such courses, and lead to a loosening of the bar's influence. This article examines the historical context that made Lee's program possible, as well as the development, implementation and final collapse of the program.

I. The gathering storm

The last two decades of the nineteenth century saw increasing friction between McGill University and the council of the Quebec bar on the subject of legal education. This was not merely concerned with the best pedagogical approach, but also involved issues about the protection of general educational rights for the Protestant English minority. The debate was carried on publicly in pamphlets and letters to the newspapers. Principal Sir William Dawson expressed the view that "[t]he time was when professional education was limited to an apprenticeship with a


5. "Crossing the Bar" in Demeter and Other Poems (London: Macmillan, 1889) at 175.

6. The Faculty was founded in 1852. Prior to this time, law courses had been taught within the Faculty of Arts since 1843 and a B.C.L. degree from the Faculty of Arts was sanctioned in 1848.

7. See generally Macdonald, supra note 4 at 233ff.
practitioner, but that has long since passed away in all civilized countries, and systematic teaching by learned and able professors is held to be indispensable. He further objected "on every principle of sound education and of civil rights to place the curricula and examinations of our Protestant education in the hands of professional councils" and that to do so would degrade not elevate the legal profession. He concluded:

[I]t is the duty and interest of the public to sustain the general education system of the country and the universities against the encroachments of the professional councils, however well meant these may be, on the ground that systematic education of a high type and suited to the wants of the present age can be given by the higher schools and the universities alone, and not by the professional boards, and that the interference of the latter, except under very strict limitations, is as bad in principle as it would be to hand over the general elementary education of the country to the trades unions.

Siméon Pagnuelo, secretary to the council of the Quebec bar, was quick to respond. He dismissed fears concerning language and religion as groundless and concentrated on the question of standards, writing:

I hope that the time will come when graduates of universities will be admitted to the study of all liberal professions without further examinations; but in the opinion of the Council of the Bar that time has not yet arrived.

Our rules are general and uniform for all universities and as it is considered that degrees are as yet too freely granted and in order to avoid anything like discrimination, no privilege is accorded to any. ...

[L]iberal professions are also free to protect themselves and the public, and before granting any advantage to the possessor of a university degree, they are also free to ascertain that those degrees have not been granted to unqualified persons.

8. Sir John William Dawson, The Relation of McGill University to Legal Education (Montreal: s.n., 1887) at 1. This was originally published as a letter to the Montreal Gazette, 19 April 1887. Dawson (1820-99) had strong ideas about the role of the university in society as the best place to train for the professions as well as for the classical curriculum. See Stanley Frost, McGill University for the Advancement of Learning, vol. 1 (Montreal: McGill-Queen's University Press, 1984) at 177ff. Dawson, ibid. at 2.
10. Ibid. at 3.
11. Siméon Pagnuelo, Universities and the Bar: a Criticism of the Annual Report of McGill, from a French-Canadian Standpoint: Mr. Pagnuelo, Q.C., Secretary of the Bar, Replies to the Governors (Montreal: Gazette Printing Co., 1887) at 4-5. Pagnuelo (1840-1915) believed that law students should matriculate from a cours classique before undertaking legal studies. A prominent ultramontane, he was closely associated with Ignace Bourget (1799-1885), Bishop of Montreal, who was deeply suspicious of both liberal causes and Protestantism. See Macdonald, supra note 4 at 235, n. 45.
Whatever the merits of the arguments presented—and there were flaws on both sides—the point was moot. Then, as now, the bar was legally empowered to control access to the profession within its jurisdiction and the University was obliged to operate within these constraints.

II. *Strengthening the faculty*

McGill’s response to the unsatisfactory, from its perspective, relationship with the bar was to strengthen the Faculty of Law. Largely through the generosity of Sir William Macdonald the Faculty was moved on campus, the library holdings strengthened and an endowment created to hire full-time staff. In 1897 McGill was able to appoint the first full-time dean of law. In a bold and controversial step the governors selected Frederick Parker Walton, an English academic. Having graduated with a classics degree from Oxford, Walton received a law degree from Edinburgh before teaching Roman law at the University of Glasgow. As a scholar, he had published several monographs on Scottish law. He was not only the first non-practising lawyer to serve as dean but his background, a Scottish civil law degree, also rendered him ineligible to be a member of the Quebec bar without taking courses in Quebec civil law. The acting dean, Leonidas Davidson, who had wanted to be named dean, took such umbrage at the appointment that he resigned immediately. Not all the part-time teachers were so disenchanted, one recalling:

13. *Ibid.* at 241-43; Frost, *supra* note 8 at 277-81. Some of the law book collection was left behind when the faculty moved on campus in 1895, and much of the remainder integrated into the holdings of the new Redpath Library, which did include a law reading room of some 1200 volumes.
14. It has been wrongly suggested that R.W. Lee was the first non-member of the Quebec bar to be appointed to the Faculty in 1915. See Stanley Frost & David Johnston, “Law at McGill: Past, Present and Future” (1981) 27 McGill L.J. 31 at 34, where it was stated to be “a step of major proportion when in 1915 Principal William Peterson went outside the Quebec Bar” to appoint Lee. Walton was the first. Possibly the authors meant Lee, though his background was in Roman law, was the first who did not have a civil law degree. Walton (1858-1948) did become a member of the Quebec Bar in 1906. On leaving McGill he took up the position of Director of the Royal School of Law, Cairo (1915-23) until his retirement. See H. G. Hanbury, “Walton, Frederick Parker (1858-1948)” in Eric Metcalfe, *rev.*, *Oxford Dictionary of National Biography* (Oxford University Press, 2004), online: <http://www.oxforddnb.com/view/article/36720>.
15. Letter from William de Montmollin Marler to Currie, 4 December 1921 at 2. McGill University Archives (hereinafter MUA), RG2, Cont. 65, File 1183, “1920-26: Law: Profs Greenshields, Smith and Lee.” Marler (1849-1929) was Emeritus Professor of Civil Law when this letter was written. He had served the Faculty as a part-time professor of notarial law for over three decades and was, in addition, McGill’s official notary. He also authored the *Law of Real Property: Quebec* (Toronto: Burroughs, 1932). Published posthumously, it was a work considered to be of sufficient importance as to be reprinted in 1986 by Carswell. The governors’ tribute on his death stated inter alia, “Lucid in judgement, facile in exposition, an able and accurate draftsman of the law, he was a recognised leader in the legal calling, and his sound judgement, his high integrity and his sound sense of justice added lustre to his profession.” Leonidas Heber Davidson (1842-1927) was a professor of commercial law (1881-97) and acting dean (1896-97).
I look upon Walton's appointment as the best thing that ever happened to our Faculty. He was a man of great culture; he spoke French, German and Italian; he had written several books of some merit; he had much humour and great charm of manner, and was a fascinating speaker. He inspired his staff with enthusiasm, so that vacancies in the staff which, before his time had been filled with difficulty, were sought for eagerly.\(^{16}\)

Walton himself felt that, while the primary mission of the Faculty should include professional training for the bar, it should be far broader: "[W]e do not intend our Faculty to be a mere coaching establishment to prepare students for the Bar examinations. Of all the shallow and short-sighted views of education, there is surely nothing more shallow and more contemptible than that which lies in thinking that nothing is worth learning which cannot be put to immediate practical account."\(^{17}\)

During his deanship Walton's interest in the emerging field of comparative law paved the way for the teaching of common law at McGill. He was interested in "the scientific study of civil law not to preserve its purity, but rather to achieve its perfection,"\(^{18}\) as exemplified by his important monograph *The Scope and Interpretation of the Civil Code of Lower Canada*.\(^{19}\) He also authored a significant monograph on Roman law and a number of scholarly journal articles while at McGill.

III. *The Lee years*

The governors again went to Great Britain to secure a dean when Walton resigned in 1914. Robert Warden Lee was given a "mandate to resurrect the Faculty's earlier curricular and scholarly vocation" in terms of an international and comparative dimension.\(^{20}\) After graduating, like Walton, in classics from Oxford in 1891, Lee joined the civil service in Ceylon, where he developed an interest in Roman-Dutch law. Returning to England for health reasons, he was called to the bar by Gray's Inn in 1896, and obtained his B.C.L. two years later. In addition to his practice, often before the Privy Council on appeals from Ceylon, Lee taught law at both Worcester College, Oxford, and the University of London, where he was

\(^{16}\) Ibid.

\(^{17}\) Frederick Parker Walton, *The Work of a Faculty of Law in a University* (Montreal: Gazette Printing Company, 1898) at 4.

\(^{18}\) Macdonald, * supra* note 4 at 246. Macdonald contrasts the approach taken by Walton in his book on the civil code (Montreal: Wilson and Lafleur, 1907) with that of Pierre-Basile Mignault, twenty years later, who attempted to protect the civil law from the corrupting influences of the common law.

\(^{19}\) (Montreal: Wilson & Lafleur, 1907).

\(^{20}\) Macdonald, * supra* note 4 at 248. Lee (1868-1958) had been in practice at the London Bar (1902-14) and Professor of Roman-Dutch Law at the University of London (1906-15) while simultaneously teaching jurisprudence at Worcester College, Oxford (1903-14). Lee was called to the Quebec Bar in 1919 and was appointed K.C. the following year.
given the chair in Roman-Dutch law in 1906. His best known monograph, *An Introduction to Roman-Dutch Law*, came out in 1915, and subsequently went through five editions.21

When he came to Canada it quickly became apparent that Lee was firmly committed to the concept of university-based legal education, propounding these theories in publications22 and as the chair of the Canadian Bar Association (CBA) committee whose report on legal education appeared in 1919.23 He expressed his views of the law school of the future as follows:

The law schools … must take a wider view of their function and opportunity. Some of them will occupy themselves principally with research. All of them will supply courses of study designed as an introduction to various branches of public life. They will cease to be machines for turning out lawyers. They will become more than before schools of citizenship. Plato dreamed of a time when philosophers should be kings, and kings philosophers. May we not entertain a nearer vision of legislators who have been taught to legislate, and of law school graduates pledged to social service.24

Lee viewed McGill as splendidly positioned for audacious experiments in legal education. Montreal, one of the largest and richest cities in the British Empire,25 was a mixed jurisdiction employing the two great western legal traditions. Lee felt that in addition to providing English-speaking lawyers for the Quebec bar, McGill could become one of the leading common law schools in North America and an ideal centre for the study of comparative law. Since Quebec was one of several mixed jurisdictions within the British Empire, he felt McGill could play a role as a law school of imperial significance. As dean Lee was perfectly placed to realize this vision if he could secure the support of the McGill board of governors and gain acceptability for the common law graduates in other North American jurisdictions. The former condition required creating a curriculum and making a case for financial support, while the latter was likely to prove a long-term process. Lee was also aware that he would

25. It was the largest outside of India.
face difficulties from some of his own part-time staff who would find the proposed mission unacceptable.

Gaining acceptance for any proposals from the University administration was problematical because of the climate of uncertainty surrounding the McGill principalship following the First World War. Principal Sir William Peterson, who had managed Walton's appointment as the first full-time dean and also hired Lee, resigned in 1919 because of ill health.26 The governors appointed Sir Auckland Geddes as his successor, granting Geddes a year's leave of absence to complete his war work. However, before he could take up the position, Geddes was appointed British Ambassador to the United States and resigned before ever coming to Montreal.27 Frank Dawson Adams, who had been acting principal during the leave, continued in this role until 1920.28 It was therefore to Adams, who was naturally reluctant to authorize any profound changes, that Lee made his case.

IV. Lee's curriculum
Lee premised his proposal on the following "facts":

a) Montreal is and will continue to be the principal city of Canada.

b) Canada is and will more and more become the pivotal point of the Empire, particularly in its relation to the United States of America.

c) Montreal, the meeting point of the two world-wide systems of law, the Common Law of England and the Civil Law of Rome and Continental Europe, offers unique opportunities for the comparative study of those two systems.29

He concluded that "Montreal, more than any place in the world, is fitted to be the scene of a great school of law in which the science of law will be studied in its comparative and international aspects. Such a school

26. Frost, supra note 8, vol. 2 at 109. Peterson (1856-1921) suffered a stroke in January 1919 and resigned in April to return to England, where he died two years later.
27. Ibid. at 110. Geddes (1879-1954) had been Professor of Anatomy at McGill (1913-14). After war service as Director of National Service, he became a Unionist MP for Basingstoke (1917-20) and was president of the Board of Trade and Minister of Reconstruction when he accepted the McGill appointment. He served as ambassador to the U.S. from 1920-24, before becoming chairman of Rio Tinto (1924-47).
28. Adams (1859-1942) was Canada's foremost geologist in the first half of the twentieth century and considered the founder of modern structural geology.
29. "The Law Faculty of McGill University: its past, present and future." Undated typed memorandum from Lee. MUA, RG2, Cont. 64, File 1172, "1919-1921 Law: Dean Lee's brief on the future of the Faculty."
The principal function of a law school is to teach law, not to teach men to be lawyers and that a knowledge of the law was essential to legislators and public servants. A minimum requirement for this ambitious program would be the appointment of a second career professor. Since the available local teaching expertise was in civil law, this second position would have to be in the area of common or international law and recruited from outside Quebec.

As may be expected there was tremendous opposition to these proposals from the Anglophone members of the Montreal Bar, especially the part-time teachers at McGill. Lee had long advocated the position that law should be taught by full-time career professors, a cause of some resentment. This resentment was exacerbated and became personalized when Lee proposed that “[i]n future members of the Bench and Bar appointed to the staff should with rare exceptions be appointed lecturers...”

30. Ibid.
not professors. They should ... be appointed merely for the session, so that their engagements can be easily cancelled.\textsuperscript{32}

Other opponents suggested that Montreal was not unique as an ideal centre within a mixed jurisdiction. Lee dismissed their counter examples, writing:

The position of the McGill Law School is quite unique. It offers instruction in both systems. No other law school in the world does so (I leave out of account the law school of Louisiana, which does not seem to be a very flourishing institution, and the law schools of South Africa, which are too remote and too underdeveloped to enter into competition).

As our reputation grows we may look to attract students from the U.S.A. and from G.B. in increasing numbers. There is no limit to our future if we take our courage in both hands.\textsuperscript{33}

Lee's enthusiasm and vigour were sufficient to convince the governors despite the strength of the opposition. The course was approved and, in making the public announcement, Lee wrote: "I question whether a more comprehensive course in law is offered anywhere in the world. It may be overcrowded. Time will show."\textsuperscript{34} He was also given permission to recruit a second full-time professor and H.A. Smith was hired in 1919.\textsuperscript{35} Within a year and despite continuing opposition, Lee was asking the governors to endow a chair for a third full-time professor, to endow and staff a law library,\textsuperscript{36} and to provide a building for the Faculty.\textsuperscript{37}

Lee's hopes for the four-year LL.B. "public service preparation" program were, in fact, overoptimistic and enrollment evidently small. Following Lee's departure from the Faculty the option was withdrawn after the 1920-21 session, before the first class could even have graduated from the program. For 1921-22 it was decided to award the LL.B. degree to those who had followed the B.C.L. Course B (common law) option. Smith felt this would be more meaningful to American bars, although Lee had resisted the suggestion while still dean. Prior to this change it had been extremely difficult to differentiate the enrollments in the civil and common

\textsuperscript{32} Supplement to Dean Lee's memorandum on the Faculty of Law, 6 January 1920. Handwritten by Lee as it contained salary data. MUA, \textit{supra} note 29.

\textsuperscript{33} Letter from Lee to Currie, 4 November 1920, \textit{ibid}.


\textsuperscript{35} Herbert Arthur Smith (1885-1961) served as Professor of Jurisprudence (1919-24) and Professor of Constitutional Law (1924-28) before returning to the University of London as Professor of International Law (1928-48).

\textsuperscript{36} The Faculty still shared the Arts Building and had only a reading room, inconveniently distant, in the Redpath Library. The reading room was under the direction of faculty secretary and part-time professor Archibald McGoun, (1853-1921), who taught legal bibliography. See Macdonald, \textit{supra} note 4 at 241.

\textsuperscript{37} Supplement, \textit{supra} note 32.
law options, but thereafter it became easy to track. In June 1922, twenty-three candidates received the B.C.L. while nine obtained the LL.B. The governors did approve the appointment of a third full-time professor in 1920 and continued to support Lee's vision but with a note of caution. Adams wrote to Lee, saying:

[The governors] are of the opinion that your plan for the development of the Law Faculty into a great national and international School of Law is admirable, and that it is most desirable if it could be realized.

They are of the opinion, however, that the training of men for the Bench and Bar of the Province of Quebec should be regarded as the first aim of our school. This training should be of the highest possible character. The welfare of the English-speaking minority...depends largely upon the maintenance of a highly trained English-speaking Bench and Bar, and for this we must look solely to the McGill Law School. ...

[T]herefore...the teaching of the Civil Law and those branches of Common Law which are used in...Quebec, should first be strengthened, and the development of the instruction in the Common Law should then be continued as far as our present and future means may permit.

Thus Lee's program gained qualified, though by no means universal, acceptance within the University and the Montreal legal community. While the Quebec bar and Montreal Anglophone member of the bar did not approve of training lawyers to work outside Quebec, they were consoled by the fact they would still control entry to the profession if Lee's experiment produced less qualified B.C.L. candidates. There remained the longer term problem of acceptance of the common law graduates in other jurisdictions. Lee, and subsequently Smith, were successful in getting the common law program accepted by McGill's election to the Association of American Law Schools in 1921, and the program was accredited by the New York State Department of Education the following year. However, neither Lee nor his successors were able to gain immediate acceptance for the program from some of the Canadian provincial bar associations, a factor that would be clearly critical to the program's long term viability.

The difficulty of facilitating common law graduates being called to the provincial bars was not so much a matter of curriculum, but more

38. Macdonald believes Smith may have made a strategic error here in that the common law program became more obviously vulnerable when its specific enrollment was highlighted with a separate degree from the civil law candidates. Macdonald, supra note 4 at n. 96.
40. Macdonald, supra note 4 at 257.
related to varied views of legal education in the different provinces. All provinces except Manitoba, Ontario, and Saskatchewan allowed admission to the profession through articling for four or five years with no university requirement at all. Most accepted the desirability of a combination of university law courses and articling, as preparation for taking the bar examinations. The question was whether one should work in a law firm at the same time as taking law courses—the concurrent approach—or do the practical work before or after taking the University degree—the consecutive approach. There was also the possibility of a hybrid approach—attending university full-time in the fall and winter semesters, and articling in the summer, as occurred in the Dalhousie program. Clearly the concurrent approach would be impossible for McGill common law students. Lee, as convenor of the CBA committee on legal education was well-placed to advocate his views on the consecutive approach as well as to lobby for a standard curriculum for common law education. In this he was strongly supported by Donald Alexander MacRae and John Delatre Falconbridge. He was opposed in particular by the benchers of the Law Society of Upper Canada, led by M.H. Ludwig, who favoured its existing concurrent approach. In 1919 the CBA adopted a compromise resolution that required a student to be articulated for five years, but would be excused office attendance during any time he or she was following a course of study at an approved law school. However, the Law Society's own law school at Osgoode Hall declined to make any immediate changes despite the pressure created by the report. The net effect of this situation, as Lee informed the principal and governors, was that it would take a McGill graduate one year longer to be called to the Ontario bar since a three, rather than five, year apprenticeship would still be required.

Lee also organized a subcommittee on curriculum which presented a report to the CBA recommending a standard curriculum for common law legal education throughout Canada, modified from but closely following that being used at Dalhousie University. This curriculum,

41. For a more comprehensive description of the situation at this time, see Kyer, supra note 2 at 60ff.
42. MacRae (1872-1955), a Maritimer, took to law as a second career having taught classics at Ivy League schools until the age of thirty-seven. Soon after studying law at Osgoode Hall and being called to the Ontario bar, he accepted the position of dean of law at Dalhousie University, serving 1914-24, after which he returned to Osgoode Hall as a professor.
43. Falconbridge (1875-1968) was at this time assistant principal and the only full-time lecturer at Osgoode Hall Law School, becoming acting principal, later dean (1923-48).
44. Michael Herman Ludwig (1867-1937) was a Toronto barrister and K.C. He had been elected a bencher of the Law Society of Upper Canada in 1913, chairing its legal education committee for twelve years. He became treasurer of the Society in October 1936, ten weeks before his death.
45. Lee, supra note 29 at 6.
oriented towards private law and traditional practice, seemed somewhat at variance with Lee’s broader view of legal education, including public service. Indeed, the Manitoba Law School, the first institution to accept a version of this curriculum, felt compelled to add certain “intellectual” or “cultural” offerings, such as Roman law, ancient law, and English constitutional history. One may speculate that Lee accepted the more practical curriculum despite his personal views because, if accepted by the bars across Canada, it would allow McGill graduates easier access to the profession outside of Quebec. Indeed, the free movement of all law school graduates in the common law provinces was one of the primary aims of the report. The report was ultimately presented to the CBA by MacRae, since Lee was then on leave at Oxford. The curriculum was endorsed by the CBA and, by 1923, had been adopted in principle by all common law provinces except New Brunswick, Ontario, and Prince Edward Island. While this activity served to highlight how far Ontario was falling behind much of the rest of the country in terms of legal education, it did little to stir the Law Society of Upper Canada to accept any immediate change. Smith’s subsequent acerbic remarks and publications on the situation would not have helped to ameliorate matters.

V. Lee’s leave of absence and resignation
Upon receiving approval for a third full-time position, Lee recommended the appointment of Ira Mackay, whom he believed to be “one of the very best teachers of law in Canada.” At the same time Lee informed Adams that he had accepted the professorship of Roman-Dutch Law at Oxford University for a term of one year. The Trustees of the Rhodes Foundation had asked him to take the position on an ongoing basis, but Lee felt there was still much to be accomplished at McGill. The compromise was that he should go to Oxford for a year and then return. At the end of May Sir Arthur Currie was appointed principal, and thus he knew Lee only briefly before the latter went to England. However, they appear to have got on extremely well and Currie was impressed with Lee’s vision for the Faculty.

46. Pue, “Disquisitions,” supra note 2 at 533. The CBA model curriculum followed very closely that which had been instituted at Dalhousie by MacRae in 1915, replacing the more culturally oriented one of his predecessor Richard Weldon. The Nova Scotia Barristers’ Society had put pressure on Dalhousie at this time to develop a more practitioner-oriented curriculum. Willis, supra note 2 at 79. See also McLaren, supra note 2 at 121.

47. See e.g. H.A. Smith “Legal Education in Canada” (1921) 4 Am. L. Sch. Rev. 734 where he stated legal education was some “thirty or forty years” behind that of the U.S. in an address to the Association of American Law Schools. See also Macdonald, supra note 4 at 260 for further examples.

48. Letter from Lee to Adams, 16 March 1920. MUA, supra note 29. Ira Allen Mackay (1875-1934) only stayed four years in the law faculty (1920-24) before accepting the Frothingham Chair of Philosophy in the Faculty of Arts. He shortly became dean where he served until his untimely death.
Mackay, though a controversial figure, had excellent academic credentials and shared Lee’s views on the importance of university-based legal education. Lee told Currie: “a member of staff writes to me: As to Mackay the students say that he is a ‘corker’ – which I take to be a term of high encomium.” In the same letter Lee noted he had visited South Africa in the previous summer where he had become convinced of the importance of attracting students to England rather than Holland for their legal education. He suggested, feeling perhaps the argument would resonate with Currie, that he might “serve the Empire better” by remaining at Oxford, and that the permanent chair was still being offered to him. Lee also had personal fears about growing old in Canada, writing:

I am entering on my 53rd year, and am, therefore, already advanced some way in what is, for most things, the last decade of still vigorous life. The Canadian winter is trying even for Canadians as they get on in years, still more for Englishmen. I ask myself how things will be with me in five or eight years time. I shall be losing my grasp. The University will be tired of me. I shall want to go, and there will be nothing to go to. What I am offered here is in fact a pension or retirement from the strenuous activities of my post at McGill. The only trouble is that the opportunity has come too soon.

He was, therefore, very seriously considering remaining in England. Currie responded:

You have here amongst the legal profession of Canada and amongst the citizens of Montreal many warm friends and supporters. There are others who prefer to ‘wait and see’. Others are antagonistic. That is only to be expected when a change in a system is introduced until time and circumstance have demonstrated beyond a question the wisdom of the change. Your work here is not completed, but it is a great deal more than half completed. To find a successor to you will give us a great deal of worry and concern, and should you eventually decide to go I would


50. See Mackay’s 1913 speech “The Education of a Lawyer” (1940-42) 4 Alta. L. Q. 103.

51. Letter from Lee to Currie, 8 December 1920. MUA, supra note 29.

52. Ibid. There is no question that Lee did take imperial duty seriously. The memorial currently in the faculty to the sixteen members who died in the First World War was not only presented by Lee, but was actually made by his wife, Amice Anna Botham. Despite his fears of “losing his grasp” he remained active in scholarly pursuits, including the production of a number of important monographs, over the next thirty-five years.
value very much your advice. I feel that had you remained here until time had forced you to give up you would have laid and built up the foundations for one of the great Law Schools of the world. Your going will, I am sure, result in a certain interruption of that work.  

Currie concluded the letter by offering Lee an increase in salary if he stayed. Within a month of receiving Currie’s letter, Lee did in fact resign. He suggested that either Smith or Mackay could be appointed dean, and continued: "As regards the future of the Faculty of Law I have no apprehensions. If the wise and liberal policy which has promoted the developments of the last few years is continued, the Faculty cannot fail in due course of time to take rank along with, or indeed in front of, the leading Law Schools of the American continent."  

With regard to the replacing of Lee and the development of the faculty Currie was to prove a rather more accurate prophet than Lee.

VI. An acting dean

The first choice for an acting dean would normally be selected from the remaining full-time professors, Smith and Mackay. Smith was an excellent scholar, but lacked Lee’s diplomatic touch. He was somewhat acerbic and had made few friends in the Faculty. He believed law should be taught only by full-time professors, which did not endear him to his colleagues, and while acting dean during Lee’s leave he had suggested McGill adopt this approach. Currie responded cautiously: "I do not consider it would be advisable to change from part-time professors to full-time at one fell swoop. You know that the next thing I have in mind to do for the increased efficiency of the Law course is to add a full-time professor in Civil Law.”  

Currie realized appointing Smith as acting dean following Lee’s resignation would not be acceptable to the community, while Mackay was too new and something of an unknown commodity. He therefore took the unusual step of appointing part-time professor, Judge R.A.E. Greenshields, as acting dean to represent the Faculty externally, while

53. Letter from Currie to Lee, 31 January 1921, ibid.  
54. Letter from Lee to Currie, 21 February 1921, ibid.  
55. Macdonald, supra note 4 at 256, n. 92.  
56. Smith’s views on legal education can be found in his articles “The Functions of a Law School” (1921) 41 Can. L.T. 27 and “Legal Education in Canada” (1922) 4 Am. L. Sch. Rev. 734.  
57. Letter from Currie to Smith, 22 September 1921. MUA, RG2, Cont. 65, File 1179, “1919-1925 Law: Curriculum and Organization; Quebec Bar.” Charles Stuart LeMesurier (1888-1972) was subsequently hired on a full-time basis. Macdonald, supra note 4 at 263.  
58. Robert Alfred Ernest Greenshields (1861-1942) began his legal career as defence lawyer for Louis Riel. He served as a judge on the Quebec Superior Court from 1910, becoming chief justice in 1929. He taught criminal law at McGill from 1915-29.
Smith was appointed vice-dean, with a responsibility for the internal management of the Faculty. Finding a full-time dean would prove to be more difficult given the polarized views of the faculty and its programs. One part-time professor, William Marler, summarized the problem for Currie:

I am not so sure that we need a Civil Law Dean, except to counteract the impression, if we are to pay any heed to it, that arose in Lee's time that McGill is sliding away to common law, and is not looking closely enough to the interests of the men who intend to practice in this Province, an impression, which, in his time at least, was without foundation. We cannot progress by sticking to Civil Law Subjects alone.

The great difficulty is to find a suitable man. The desirable men at our own bar are too busy, and prefer, naturally enough, the contacts in the arena, which are more exciting, more improving to the intellect and more profitable. If we are to have a local man, we need an outstanding one. Among them, there are few students.

Marler concluded by recommending that McGill once more seek a scholar from abroad to take the position. Currie was not able to find such a candidate, and the temporary arrangement went on for some years. Meanwhile, the differences between part-time and full-time professors, and those between the faculty and the community, shortly became more polarized by the saga of the Class of '21.

VII. The class of '21

The Law Class of '21 was unusual in several respects. In addition to being the first class graduating under Lee's new curriculum, it was by far the largest and oldest in the history of the Faculty because it included returning veterans. They graduated with great pomp at McGill's centenary convocation, at which one hundred honorary degrees were given. Many of the class would become distinguished in a number of fields. Thirty years after graduation the class would boast two cabinet ministers, the provincial leader of the Opposition, three judges, three senior crown prosecutors, a member of the Quebec upper house, an ambassador, a Quebec public service commissioner and the sports editor of the Montreal Gazette. Many of the graduates sat the Quebec bar examinations in July 1921 and a large percentage failed. When the unsuccessful candidates took the examinations again in January 1922, the results were equally

59. Marler, supra note 15 at 1. When he used the phrase “there are few students,” he meant that few of the local practitioners were students of the law and so lacked scholarly attributes.

60. C.F. McCaffrey, "The Famous Law Class of 1921" (1952) 33 (Spring) McGill News at 16ff.
disappointing, especially in relation to graduates from Université Laval and the Université de Montréal, who enjoyed far greater success in percentage terms. As one student put it, “either McGill had given us the right answers to the wrong questions or wrong answers to the right questions.” When the results first became public, Currie faced a firestorm of concern from graduates and governors. Various theories were advanced for this unfortunate situation: Francophone hostility towards McGill and discrimination against Anglophones; discrimination specifically against returning veterans who had fought in an imperial war; a desire to limit the number of people admitted to the bar; opposition to Lee’s curriculum; the poor quality of university teaching; and increasingly poor study habits on the part of students. These theories are examined below:

**Discrimination against Anglophones**

There were clearly elements in Quebec society who felt that McGill discriminated against Francophones. During the 1920-21 session of the Legislative Assembly, Quebec Premier Louis-Alexandre Taschereau wrote to Currie stating that in the past he had “paid tribute to McGill University for the broad-mindedness and the true Canadian spirit of its governors and professors” and that he would normally reject “any reproach to McGill of having discriminated between Anglo-Canadian and French-Canadian students.” However he felt he had to pass on the contents of a letter he had received from an old Montreal acquaintance, accusing McGill of discrimination, in the hopes the matter might be clarified before “the coming session when our legislature will be called upon to confirm our contribution to your Centenary Fund.” The complaint was that a Francophone student, who stood high in the class and was deserving of the Macdonald Travelling Scholarship to Paris, was denied this scholarship and given $500 as compensation. Currie was able to explain to Taschereau that the terms of the Macdonald endowment specified the scholarship was for English-speaking graduates to learn French, and that the Francophone was ineligible for this particular award. However, in order to recognize the student’s achievements, the faculty had created a special award of $500. Taschereau found this explanation “quite satisfactory,” but the incident highlighted the unease of the times.

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61. Ibid. at 84.
62. Letter from Taschereau to Currie, 6 December 1920. MUA, supra note 57. Taschereau (1867-1952) served as Liberal premier of Quebec from 1920-36. His views were in fact quite liberal and pluralist, and his chief opponents during his terms of office were the nationalists Henri Bourassa and Lionel Groulx.
63. Letter from Taschereau to Currie, 15 December 1920, ibid.
Members of the Anglophone community certainly felt that language played a role in the problem of the Class of '21. They were conscious of the fact that many in the Francophone majority, and possibly some in the Francophone-dominated bar, viewed McGill with hostility as an elitist anti-French institution. One prominent lawyer pointed out that in the July examinations only forty-one per cent "of the English were allowed to pass, compared with seventy-two per cent of the French" and concluded that "friends of our students will not be satisfied without an equal percentage of English being passed." Currie, in his response, rejected the notion of comparing percentages and suggested his responsibility lay "in seeing the Bar examinations are conducted in a fair and impartial manner." However, Currie was clearly concerned about this aspect, writing to a member of the board:

I might add, though, that we at McGill are very much surprised at the results of the Bar examination. Some of our best students have been plucked, whereas, some whom we considered very indifferent have been successful. One dislikes to mention it, but yet one cannot help noticing that all of those who wrote in French were successful. Some of those who wrote in French we did not regard as strong students, certainly not to be compared with some others who failed.

Facts such as those would clearly add fuel to the theories of linguistic discrimination.

The returning veterans
The Class of '21 included a significant number of veterans who had interrupted their studies at various stages to do military service. It was felt unreasonable to ask these men, who had already sacrificed years of their youth, to start their university programs again from the beginning. Therefore special summer schools were arranged to allow them to complete certain prerequisites. These veterans did not fare well in the bar exams, causing Westmount opposition MLA, Brigadier-General C. A. Smart, to raise the question in the Legislative Assembly. He stated:

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64. Letter from W.D. Lighthall to Currie, 26 November 1921, *ibid.* William Douw Lighthall (1857-1954) was a prominent and influential lawyer, and a noted author and poet. In 1915 he founded the Canadian Association of Returned Soldiers and took the problems veterans faced extremely seriously.

65. Letter from Currie to Lighthall, 28 November 1921, *ibid.*

66. Letter from Currie to J.J. Creelman, 13 September 1921, *ibid.* John Jennings Creelman (1882-1949), a practising lawyer, was acting mayor of Montreal and president of the Protestant School Board at this juncture. He had a special relationship with Currie under whom he had served as Colonel of the 3rd Artillery Brigade. He also represented the law faculty as a graduate on the corporation of McGill (the corporation was the forerunner of the Senate).
En terminant, je veux dire un mot sur la façon dont on traite les anciens soldats aux examens du Barreau pour être admis à la profession d’avocat. Je fais cette déclaration en connaissance de cause. La majorité des membres du Conseil du Barreau ont délibérément fait de la discrimination contre les soldats de retour du front au cours des dernières années. Ils les ont collés trois ou quatre fois et certains de ces candidats qui ont été recalés en savaient plus sur la loi que ceux qui les avaient jugés. 

Smart continued that it was "une petite clique" who controlled the examinations and deliberately discriminated against the veterans. Taschereau responded by requesting proof of the allegations against these men whom he knew to be honourable.

Others suggested that the veterans were ill-prepared for the return to university and were victims of the kindness shown them by allowing an accelerated arts program. Judge E.E. Howard, a sessional lecturer, expressed his personal view to Currie that:

It is a great advantage to enter the Faculty fresh from school or college. The soldier students had been overseas for a varying number of years, where, to say the least, they had got completely out of the habit of study and probably much of what they had previously learned from books had passed more or less completely out of their minds. I always thought it was a mistaken kindness to these fine fellows to permit them to proceed to their degree without taking the full course. Instead of requiring less preparation than the average student, they required more, for they had the additional burden of getting back to where they were when they enlisted for overseas. ... It is not surprising, therefore, that many of these students went up to their Bar examinations unprepared and failed in consequence. I am surprised that so many of them got through.

It seems possible that the apparent discrimination against veterans was not because they fought in an imperial war but because they were given concessions on their return. Howard’s own theory was that the contemporary student faced too many distractions and failed to study enough, while the quality of teaching was poor.

The problems created by fast-tracking returning veterans were by no means unique to McGill. In Ontario, where the Law Society was strongly and enthusiastically behind the imperial war effort, veterans were offered even more significant concessions. Military service meant an automatic

68. Letter from Howard to Currie, 6 February 1922. MUA, supra note 57. Eratus (or Erastus) Edwin Howard was a lawyer and served on the Quebec Court of King’s Bench (1920-34).
exemption of one full year of law school classes and a second full year could be completed in a short summer session. In 1924, a veteran who had twice failed the third year examinations was recommended for a call to the bar because a war disability rendered him "incapable of concentrating on his studies." The general consensus was that these "concessions had produced too many inadequately trained, incompetent lawyers." The difference in the problem between Ontario and Quebec was that in the former veterans gained easy access to the bar through the concessions, while in Quebec any concessions only led to a university degree but not professional practice.

**Keeping the bar small**

There were those who advocated maintaining high failure rates to keep the bar small, presumably to cut down on the competition. One of these advocates was a member of the board of examiners, but he did not appear to exercise undue influence. Judge Howard assured Currie that:

> The gentleman from Montreal whose name has been most prominently mentioned as being in favour of keeping down the number to be admitted to the practice to a minimum, has undoubtedly been indiscreet on one or two occasions, but I am assured that he stands alone among the examiners and that in consequence of his occasional indiscretion in speech he has lost whatever influence he may once have had over his fellow-examiners, who entirely disapprove of his professed attitude.

**The common law option**

Many members of the bar had been concerned with Lee's curricular innovations and it was inevitable that the common law option would be blamed for the bar examination crisis. Some of Lee's opponents even seemed pleased by the high failure rate. Currie was informed:

> One of the Governors (whose name I withhold) reported to me a conversation had with one of his Colleagues on the governing Board. The latter happens to be a member of the Bar. This worthy, and, more or less, learned member of the governing Board, speaking with utter ignorance of the facts, gleefully pointed to the results of the January examinations as a condemnation for what he called "the innovation introduced into the Law Faculty in the shape of a teaching course on the common law".

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69. Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyer, 1797-1997* (Toronto: University of Toronto Press, 1997) at 194. Interestingly, Dalhousie University, which had recently raised its admission standards significantly, gave no concessions to returning veterans. Willis, *supra* note 2 at 84.

70. Ibid.

71. Howard, *supra* note 68.

72. Letter from Greenshields to Currie, 28 January 1921 [i.e. 1922], *ibid.*
Indeed Greenshields considered the suggestion that the common law option had anything to do with four of six B.C.L. graduates failing the January bar examinations as completely implausible. He pointed out that not one of the four had spent any time studying common law.

*The quality of the examiners*

Greenshields felt the blame lay with the quality of the individuals selected as members of the board of examiners, especially from the Montreal district. He had not been acting dean when these were selected and, as a result, no McGill teacher had been included—an omission he promised to remedy the following year. He believed a number of the examiners were “utterly and entirely unfit for the office.”³⁷ Therefore they prepared questions that “a well taught parrot might answer as well, if not better, than an intelligent well trained student who knew something about the principles of law rather than the text of the Code. The man who started out to memorize the Articles of our Code, without understanding their meaning, would return a much better paper than the boy who used his head and not his memory.”³⁷⁴

*Currie's resolution*

Faced with such a variety of conflicting and controversial theories, Currie took the high road in resolving the problem. With the support of his fellow university rectors, he wrote to the bâtonnier of the Bar, J.E. Perrault, stating:

> [I]t seems possible that the Bar Council and the law faculties may be working along different lines in their application of the tests to determine the fitness of the students for the legal profession. Since it is obviously desirable that all those who are engaged in the task of training and examining candidates for the practice of law should work in entire co-operation upon common principles, I am venturing to address you with a view to removing the differences of policy, or of methods, if any should be found to exist.⁷⁵

The result of this initiative was the formation of a committee with representatives from the three faculties and the Bar Council. Naturally the

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³⁴. An unsigned and undated comment on the examination, probably from Smith, echoed Greenshields’ view. He gave examples from the constitutional law questions that required only memorization of the *British North America Act* and made “no attempt to test the student’s knowledge of the distribution of Federal and provincial powers or any other of the leading principles of our constitution.” He concluded that “there are very few judges or leading practitioners in Montreal who would not fail in at least one part of a paper composed along these lines.” *Ibid.*

⁷⁵. Letter from Currie to Perrault, 14 February 1922, *Ibid.* Joseph-Édouard Perrault (1874-1948) served as bâtonnier of the Quebec Bar in 1921 and 1922. He was also Minister of Settlement, Mines and Fisheries (1919-29) in the Taschereau cabinet.
committee could neither acknowledge the fact that there was discrimination against McGill graduates, even if such existed, nor attribute any blame to the examiners. Therefore very few recommendations were made. In practical terms, however, there was progress. Membership in the examiners was changed to include greater university participation, including O.S. Tyndale from McGill. Tyndale subsequently reported to Currie that he read all the English papers and could “certify that none was refused who was worthy of admission,” even though the system followed was not changed at all. With regard to the question of prejudice, he noted that while there was only one other Anglophone out of thirteen members of the examiners, he had no criticism to offer. He continued:

While I might say confidentially that one or two of the examiners are perhaps not men of very wide juridical attainments nor characterized by impartiality, the Board as a whole is satisfactory. I should particularly like to bear testimony to the absolute impartiality, the erudition and the irreproachable sense of honour of the chairman of the Board, Mr. Ferdinand Roy, of Quebec.

Tyndale’s assessment of Roy appears quite justified and certainly Roy could not be accused of prejudice towards returning service men. In 1917 he had published in French, and later in English:

an eloquent appeal to French Canadians to reverse their anti-war attitude before it was too late, to enroll for active service, and to submit gracefully to the Military Service Bill when it became the law of the land. Distressed at the clear-cut division on strictly racial lines, which the Military Service Bill debates in the federal Parliament had shown, and the campaign of violent and riotous protest against conscription then raging in the cities of Quebec and Montreal, Roy appealed to his compatriots for reason, tolerance and a new vision of French Canada’s duty lest their national identity should be swept away altogether by the current racial hatred.

76. Orville Siewwright Tyndale (1887-1952) began lecturing at McGill in 1921. He was a judge of the Superior Court (1942-52) and associate chief justice (1946-52). He also served as chancellor of McGill (1947-52).
77. Report on the Examination for Admission to the Practice of Law, 9 January and following, 1923. MUA, supra note 57. Tyndale also felt experience as an examiner allowed him to prepare more useful class material for the third year tutorial.
78. Roy (1873-1948) was an eminent jurist. Bâtonnier of the Quebec Bar (1919-20), he was a professor of criminal law at Laval university (1907-29) and dean (1929-47). He also served as chief justice of the Quebec magistrates’ court (1927-48).
The Class of '21 had generally been successful in passing the summer bar examinations in 1922. In 1923 the McGill graduate pass rate was the same percentage as the other universities, and the issue died away.

VIII. *The common law option*

Even though the common law program had nothing to do with the difficulties in passing bar examinations, it continued to be controversial. One early graduate of the program, arguably the Faculty alumnus with the greatest claim to popular fame in his later career, was concerned about the quality of education received even though he had led the class in each year. Charles Goren\(^8^0\) petitioned the University for financial support to do graduate studies, writing:

> In May of this year I shall complete the three year course in Common Law leading to the degree of B.C.L. In view of the rather recent establishment of this course at McGill and the more or less unsettled character of the curriculum during the first year or two, I feel that it would be greatly to my advantage, if not altogether necessary, for me to pursue my legal studies for one more year. ...

> At many colleges, students who have done excellent work and show some measure of promise are given assistance by the university authorities in pursuing further study. My record at McGill has been a very good one. I led my class in the Freshman year and also came first in the second year, being the winner of the Alexander Morris Exhibition last April. My work to date this session has been of the same order as that of the first two terms and I feel confident of my ability to lead the class for the third successive year.

> If the authorities see fit to grant me assistance in this connection it is my plan to return next September for graduate work in such manner as would be approved by the committee on graduate studies.\(^8^1\)

Goren was later awarded the Sir William Dawson Exhibition for Highest Standing in Common Law. Apparently, however, there was no further money forthcoming and he did not register for the LL.M.

While the common law course was accepted in U.S. jurisdictions, objections to it came not only from the Quebec bar but also from other provinces. In October 1923 Currie summarized the problems as follows:

\(^{80}\) While Goren (1901-91) did practice law in Philadelphia for thirteen years after graduation, his almost universal fame would come from being a contract bridge writer and teacher. A female acquaintance laughed at his ineptitude at bridge while a McGill student, providing him with the motivation to master the game if not, apparently, the law.

\(^{81}\) Petition of Charles H. Goren. Undated but written in the Winter Term, 1922. MUA, RG37, Cont. 12, File 400. "Correspondence – Graduate Students, Goren, C.H."
We have all been aware that for some time considerable criticism has been made of the curriculum of our Law School. We must remove all grounds for that criticism as soon as possible. Much of it, I believe, has not been deserved, owing to a lack of understanding as to just what the University is doing and as to the objective aimed at. Regarding the B.C.L. course it is our intention to prepare a memorandum [concerning] just what it is, whom it is given by and the place it occupies in our Law School. It is the intention to circulate this memorandum to all members of the Bar in this city and I think we shall be able to prove that the B.C.L. course is not being sacrificed by anything the University is doing regarding an LL.B. course. ....

I think the University has been a couple of generations ahead of popular demand for such a course and its usefulness is being restricted and practically nullified by the restrictions by which the Bars of the different provinces hedge around entrance to the profession of law. I am of the opinion that the time has come when it would be as well for the University to discontinue giving the LL.B. course as at present outlined, but I am convinced that there is a vital necessity for some course which will prepare men for public service. 82

Currie's letter was inviting part-time lecturer George Montgomery to sit on a committee he was establishing to look into the Faculty curriculum. The other members of the committee were the two full-time professors, Smith and Mackay, and two part-time professors, Arnold Wainwright and Eugene Lafleur (chair). 83

The committee met twice and found itself hopelessly deadlocked. The part-time staff wrote a majority report and the full-time professors a minority opinion. 84 The only substantive area of agreement was that the course leading to an LL.B. should be discontinued—an almost inevitable conclusion given Currie's views. Enrollment in the LL.B. program had steadily decreased because of, in Smith's words, "the somewhat illiberal spirit of the bar regulations in various provinces, which in effect penalize in varying degrees any student who wishes to pursue legal studies outside

82. Letter from Currie to George Montgomery, 2 October 1923. MUA, supra note 57. George Hugh Alexander Montgomery (1874-1951) was a lawyer, gentleman farmer and sessional lecturer at McGill. He served as batonnier of the Quebec Bar (1926-27) and as graduate representative to the board of governors (1928). Currie's concluding sentence should be read to mean that he favoured dropping the controversial common law degree for the time being, but still hoped to continue some form of Lee's original four-year LL.B. degree with its mixture of arts and law courses to prepare students for public service.

83. Eugène Lafleur (1856-1930), a renowned jurist, was a sessional lecturer in international law (1890-1909). Although no longer teaching at McGill his outstanding reputation made him seem the ideal candidate for this difficult task. It was in this year he declined the pleas of the prime minister and the governor general to become chief justice of Canada, preferring to remain at his legal practice.

84. Letter from Smith and Mackay to Currie, 30 January 1924. MUA, RG37, Cont. 2, File 61, "Legal Education in Canada."
the limits of his own province.” However, the full-time professors felt that legal education should continue to include courses on common and international law, should be available to students other than law students, and should be taught by full-time professors to the extent possible. The majority report condemned the idea of “founding and maintaining in McGill a national law school,” cautioned against broadening the curriculum, attacked the usefulness of full-time professors on grounds of efficiency, and recommended that students work in law offices during the day and take classes at night. In short, the majority report propounded the same theory of legal education as the Law Society of Upper Canada had advocated to the Canadian Bar Association. Smith summarized his views as follows:

The majority report is an attack, not merely on the LL.B. course, but on the whole idea of legal education as it is generally understood today. Its adoption would condemn our law school to permanent insignificance and obscurity, and would deprive us at once of the rather precarious status which the efforts of the last few years have secured for us among the reputable law schools of this continent. The failure of McGill’s effort to maintain a proper law school would attract universal notice, and would have a most damaging effect upon the reputation of the University.

Between these two theories of legal education the University must now make its choice.

Lafleur responded that he did not feel the two views were so “fundamentally divergent,” but that there were insufficient resources at that time to broaden the curriculum.

Greenshields’s resolution

In April 1924, in an attempt to achieve compromise between the opposing viewpoints, the Faculty recommended to the University that it would be unnecessary
to have a professor devoting his whole time to common law teaching... [but it is] desirable that at least one member of the full-time staff should be a recognized specialist trained in English law competent to give instruction in some of the subjects common to both systems and

85. Draft letter from Smith to Currie, 17 December 1923, ibid.
86. Smith had previously proposed to Currie that the number of full-time professors be increased, at the same time eliminating part-time staff. Currie responded that he did not wish this done immediately, but favoured the addition of a full-time civil law professor. Letter from Currie to Smith, 22 September 1921. MUA, supra note 57.
87. Smith, supra note 84 at 4. See also Lafleur to Currie, 31 December 1923, ibid.
88. Smith, ibid. at 5.
89. Letter from Lafleur to Smith, 1 February 1924, ibid.
especially in comparative law, and who would also be available to offer instruction in distinctly common law subjects to such students as may from time to time desire it.\textsuperscript{90}

Although this recommendation was accepted by the Corporation, Greenshields prepared the Faculty \textit{Announcement} for the following year in which it was stated that instruction would be given in “common law and the statute law of Canada (in so far as it is in force in Quebec).”\textsuperscript{91} Mackay, feeling there was little future in the Faculty for someone with his expertise, resigned to take up the Frothingham Chair of Logic and Metaphysics in the Faculty of Arts. Smith wrote to Currie complaining that the \textit{Announcement} omitted, whether by design or accident, all references that had previously appeared to national aims and was “the most explicit declaration of pure provincialism that we have ever permitted ourselves to make.”\textsuperscript{92} He complained that it was extremely difficult to answer student inquiries about the common law curriculum, given the discrepancy between the two documents. Currie, perhaps weary at last of the subject, simply asked Greenshields to “deal with the question.”\textsuperscript{93}

Greenshields, now confirmed as dean rather than acting dean, responded to Smith that the wording of the report to the corporation was “unfortunate.” After reiterating unequivocally that in future the Faculty would only teach common law in so far as it was in force in Quebec, he suggested Smith had quoted the report out of context. He stated that he was “afraid it is an instance of selecting an isolated passage, and giving it a sense or meaning which it was not intended to have or bear.”\textsuperscript{94} Greenshields concluded his letter on a somewhat patronizing and sarcastic note:

\begin{quote}
If you will submit to me the inquiries you have already received concerning Common law teaching, and if and when you receive any further such inquiries you will be good enough to refer the enquirer and the enquiry to me, I have no doubt satisfactory consideration and disposition will result.

It may be regrettable that no reference to “National aims” appears in the Announcement. It would be, however, in my opinion, useless to here enter into a discussion upon that subject. ...
\end{quote}

\textsuperscript{90} Quoted in a letter from Smith to Currie, 5 September 1924. MUA, RG2, Cont. 64, File 1177, “1924-33 Law: Curriculum; Quebec Bar.”

\textsuperscript{91} McGill University, \textit{Announcement of the Faculty of Law, Session 1924-25}. (Montreal: n.p, n.d.).

\textsuperscript{92} Smith, \textit{supra} note 90.

\textsuperscript{93} Letter from Greenshields to Smith, 11 September 1924. MUA, \textit{supra} note 90 at 1.

\textsuperscript{94} \textit{Ibid.} at 2.
It may be you will require further guidance in replying to enquiries, but... it is difficult to give useful guidance in absolute ignorance of the nature of the enquiries concerning which guidance is sought.

With an expression of the greatest willingness and desire to assist you in every possible way in this matter, which seems to embarrass you,

I remain, etc.  

Greenshields’s disposition ended, for over forty years, Lee’s vision of a national law school in which both civil and common law were taught. The narrowness of Greenshields’s views on the curriculum were further exposed the following year when Currie inquired whether it was true that he had signed a petition to the bar, started by students, that requested the bar drop from its “requirements courses in Roman Law, Legal History, Public International Law, Constitutional Law, etc.,” presumably making the courses more practitioner-oriented. Greenshields confirmed that this was the case but that he had signed as a private individual, not as the dean or even as a judge of the Court of King’s Bench. He offered to remove his signature should Currie wish. The common law option was allowed to wind down, with two LL.B. degrees awarded in 1925 and the final two in 1926. Mackay was replaced by Percy Corbett, an Oxford civil law graduate, who taught Roman law and whose scholarly interest was international law. Smith stayed on for three more years, resigning in 1928 when Corbett was appointed dean. He was replaced by F.R. Scott and, with his departure, the last advocate of Lee’s vision was gone.

Conclusion

There was a propitious climate for change in the societal euphoria and enthusiasm that followed the end of the First World War. The desire for change in the methods of Canadian legal education was no exception, and a number of interesting experiments were attempted. In common law Canada the advantages of university-based legal education over articling were examined, following similar developments in the United States, and attempts were made to introduce the uniform CBA curriculum largely based on that already existing at Dalhousie University. At Dalhousie, beginning in 1915, the curriculum had been re-oriented to a more practical approach, while significant changes were made in the admissions requirements to get far better qualified candidates. Manitoba used an innovative hybrid approach creating a school under the umbrella of the University of Manitoba.

95. Ibid. at 4.
96. Currie to Greenshields, 10 November 1925. MUA, supra note 57.
97. Greenshields to Currie, 11 November 1925, ibid.
The First National Law Program at McGill University, 1918-1924

(soon graduates received a university degree), adopting the CBA curriculum with some cultural additions, but having the course offerings taught by practitioners. The experiment was dropped in 1927 and a concurrent system of articling introduced. As it was the first Western province to attempt university-based legal education, Manitoba became the last to re-adopt it in the 1960s. Only Saskatchewan and Alberta were able to maintain law schools at the universities, largely because the law societies lacked the wherewithal to run their own schools. The impediment to the university initiative was always in Ontario. The Law Society of Upper Canada revitalized Osgoode Hall offerings and continued to frustrate the periodic attempts of the University of Toronto to form a faculty of law for decades. It was not until 1957 that an agreement was reached allowing universities to offer a three year LL.B., after which students would attend "bar school" at Osgoode Hall for six months. Thus, any groundwork laid following the First World War to establish full-time university-based legal education west of Quebec and excluding Alberta and Saskatchewan was a long time coming to fruition, and must in the short term be viewed as a failure.

Lee's vision for a law school of national and imperial significance at McGill also failed, but the seeds remained. While the British Empire passed away, McGill remained at the crossroads of political, linguistic and legal cultures. In 1968, the McGill Faculty of Law inaugurated the National Programme and, on this occasion, the program stood the test of time until it evolved into the trans-systemic curriculum of the twenty-first century. Maxwell Cohen championed the National Programme, using all the same arguments Lee had used fifty years previously. He faced the same opposition and concerns both from within the faculty and from the external community, and for much the same reasons. The program enjoyed more enduring success, perhaps in part, because there a much stronger contingent of full-time professors on staff committed to the concept (although there were also full-time opponents on faculty including F.R. Scott) and, unlike Lee, Cohen remained with the Faculty for some years after the program's introduction. While Greenshields has received some criticism for the earlier failure, it is difficult to see how the program could have been maintained in the circumstances even if he had been an advocate of the approach. It may have been doomed from the moment Lee chose to take up his position in Oxford, leaving no appropriate successor within the Faculty. Lee might have been able to persuade the provincial bar associations to accept the McGill degree and the consecutive approach
to legal education. He might, as he intimated to Currie,\textsuperscript{98} have populated the program with American students who did not face the same difficulties gaining state bar accreditation. He may have obtained the ongoing support of the principal and board, while securing at least the neutrality of the local bar and part-time professors. Once he had gone, however, no one else on faculty had sufficient stature or ability to sustain the program. It may also simply have been, as Currie suggested, that the University had "been a couple of generations ahead of popular demand" in attempting to implement an idea whose time had not yet come.

\textsuperscript{98} Lee, supra note 32.