

THE LAW JOURNAL AT 50

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The celebration of the *Journal's* first half-century immediately strikes a personal chord. I fully remember the meeting at which the Law Students' Society endorsed Eric Teed's proposal that the Society publish a law journal. Fifty years is a long span in the life of an individual, but it is a short time in the life of the law. But those fifty years have witnessed a revolution in the practice of law in Canada and, in particular, the interrelationship between the different branches of the profession. In this development, law journals have played a significant role — a role in which this journal has fully shared.

The *Journal* was one of the very first university law journals in Canada, and, as I briefly sketched in a Foreword to the *Journal's* edition during the centennial year of the Law School, it was some years before it developed into a modern learned journal of the kind we know today.¹ But develop it did, though not without interruption, and it was in time joined by many others.² There are some fifty learned law journals in the country today.

This is in sharp contrast to the situation when the *Journal* was first published in December 1947. There were still only three law school journals in 1950. For all practical purposes, there was only one learned legal periodical published in Canada, the *Canadian Bar Review*. It and the *Law Quarterly Review* were virtually the only law journals to which Canadian lawyers referred on any regular basis. And courts hardly greeted them with a welcoming embrace. Thus, in 1950, an attempt by counsel to buttress his argument before the Supreme Court of Canada by reference to the *Review* elicited this response from Chief Justice Rinfret: "The *Canadian Bar Review* is not an authority in this Court."³ As if this were not enough, the convention against citing living authors still flourished.

A totally new dispensation now governs. Courts throughout the land, and notably the Supreme Court, routinely rely on law journal articles, both Canadian and foreign. This journal has been cited not only by New Brunswick courts, but also by those of other provinces, as well as the Supreme Court. Some attribute today's more cosmopolitan approach of the Supreme Court solely to the coming of the *Canadian*

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¹G.V. La Forest, "The *Law Journal* in the School's Centennial" (1992) 41 U.N.B.L.J. i.

²As the school was very small at the time, it was sometimes difficult to find sufficient quality material. Rather than sacrifice quality, the *Journal* was not published in some years. This explains why there are not yet fifty volumes.

³G. Bale, "W.R. Lederman and the Citation of Legal Periodicals by the Supreme Court of Canada" (1993) 19 Queen's L.J. 36 at 50.

Charter of Rights and Freedoms. There is no doubt that the *Charter* has played a significant role, but it served more as a final powerful force that marks the culmination of a longer process.

The process finds its real beginnings in the post-war expansion of Canadian law schools and their development as seats of learning in a university context. Law reviews and journals have served as a vehicle for the dissemination of academic research, opinion and critique to a wider legal audience. If courts were not for some time inclined — at least overtly — to make use of law journals, these publications nonetheless provided intellectual fodder for the profession. The ideas they generated formed the basis for a myriad of reform activities. Ideas that first saw the light of day in legal periodicals formed the bases of many recommendations later proposed by Law Reform Commissions.

It was only a matter of time before the courts began to make full use of learned journals. Judicial reliance on law journals began before the advent of the *Charter* under the leadership of the Supreme Court. The new and searching questions raised by *Charter* litigation made this reliance a necessity, and reference by courts to legal periodicals soon became routine not only in *Charter* litigation but in all types of cases, both public and private. Law journals offer the courts the newest thinking on a subject, suggest where the law is going and where a case before them fits in the ongoing development of the law. Altogether they can provide a broader and enriched perspective. Law journal articles not only serve a monitoring role for the courts; they can sometimes indicate where a break from traditional thinking is required and suggest possible means about how this might be done.

The role of a law journal in the modern legal environment must, at best, have only been dimly perceived by the students who established this journal and the faculty members who encouraged them. But the students did perceive it as fulfilling the role of a learned journal.⁴ The Dean for his part saw it as fulfilling the more modest goal of encouraging effective legal writing and “thinking” among students.⁵ The *Journal* has, over the years, performed this valuable function even as it gradually expanded its critical evaluation of the law and its relevance to traditional and emerging social issues, both in this jurisdiction and beyond. It is a source of satisfaction that the students of this school were among the first to see and to act upon the need for a law journal. It is equally satisfying that the *Journal* has over the years been successfully transformed into a valuable vehicle for transmitting ideas about the law and of its role in the resolution of social problems.

⁴See their “Editorial” in the first issue: (1947) 1:1 U.N.B.L.J. 4.

⁵See the “Foreword” by the Honourable W.H. Harrison: (1947) 1:1 U.N.B.L.J. 3.

I am confident the progressive development of the *Journal* will continue apace. I wish it well.