

ALTERNATE PATHS IN LAW

Gerard V. La Forest*

You have asked me to speak to you in the light of my experience on the theme of this year's Law Week: "Alternate Careers in Law". In a sense, that seems natural since my life in the law is far from being the traditional one. However, on further reflection, this assignment is not as easy as it seems. The task before me poses two separate problems. First, much of the legal, social and economic environment today is quite different from the one I was confronted with in the early and mid-stages of my career. The second difficulty is that you would not want to hear a personal, blow-by-blow description of my passage through life, though some of this is unavoidable and, I hope, tolerable. This having been said, there may be some general lessons to be drawn from my experiences and I hope to bring to your attention some aspects or features of interest that may arise in some forms of practice and to indicate that your own special interests may be satisfied in jobs where, at first sight, you would not expect they would be.

Like so many aspiring lawyers, when I was in law school I thought I would practise law somewhere in New Brunswick with emphasis on court practice, and maybe politics. Things turned out a little bit differently. But — and it is a real *but* — I got some taste of what I wanted out of law in quite different contexts.

Then as now — I am speaking of the period just after World War II — finding a job was no easy task. The more successful lawyers, as they got out of their Buicks (the vehicle of choice then), would tell us beginners it was tough — too many lawyers, they said. After looking all over the province, I finally decided if I wasn't going to starve, I'd better put up my own shingle, which I did in my hometown of Grand Falls. That is much harder to do now, though I have some friends and at least one law clerk who have done this after some time in practice. As for me, I was encouraged by some influential persons, who had heard me make a speech, to take advantage of a political opportunity in the area. That turned out differently too, but I did get involved with the local machine and I did get a measure of support that helped make my initiative feasible. (I grandiloquently call that year the political phase of my career!)

Anyway, I hit it lucky. Grand Falls, at the time, was a one industry town — potatoes, of course. They hadn't sold well for five years but that year was good, so if you simply wrote people about their debts or other obligations, they would settle. They simply couldn't before. More important, many pent-up grievances had built up over five years to my great benefit. People suddenly got litigious and I got quite a number of lawsuits going, generally small but of considerable variety. Lots of them

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were settled. One thing and another, I did pretty well. At the end of the year, I owned a car and had a little money in my pocket.

The experience taught me several things. One is — you need luck. Most of us get lucky, one time or another, but you've got to be astute enough to seize the opportunity when it comes. At least equally important, you've got to recognize luck for what it is. It can come and it can go, and that means you may have to be flexible. It was tempting for me to think I might build a decent practice and maybe a political career, but that's a type of temptation that can breed inertia. No one much likes moving. Chances were there wouldn't be a good market for another five years. So when another opportunity came, I thought I should look into it. One thing I have learned is always to look at any reasonable opportunity seriously. You may make the right decision or the wrong decision, but make it with knowledge. Don't decide on the basis of untested assumptions.

The opportunity was this: when I had been looking for a job, I had made an application to what was then the Combines Branch of the Department of Justice in Ottawa. Nothing came of it and I had pretty well forgotten about it when, almost a year later, I got a call from the Assistant Deputy Minister who wondered whether I might be interested in the job of advisory counsel in the Legal Branch of the Department. There is much to be said for casting widely when seeking employment. The job concerned could involve litigation, advisory work to other departments, drafting legislation and so on. I originally hoped I would get into litigation, but when I arrived, the primary needs were in legislation and I understood I would get a crack at litigation later.

Now if I had been asked what I thought of the notion of drafting, I would not have placed it very high in my scheme of preferences. But I soon found that it was not just the business of writing or correcting a few words on paper. That has considerable value, of course. It teaches you to use language in a clear and precise fashion. That is a very useful skill in any lawyer. But the truth of the matter is that drafting is not just being a scribe. It demands close consultation with people seeking to establish policies and involves the task of deciding what kind of legislative or regulatory scheme can be devised to put those policies into place effectively. That, I found, can be very interesting work. But that was not all. Drafting legislation and regulations taught me to grasp even very complex proposals quickly and in sufficient detail to assist in elaborating the relevant policies, a capacity that has served me in many different ways, including the preparation of commercial contracts.

What I am saying here is that not only can one pursue a legal career in this area, or in any other particular area, but in doing so one can get experience and develop skills that are useful in other legal jobs. There is no single way to get from Point A to Point B, and in difficult times that is something one must always bear in mind. Today is not forever and one can learn from what one has to do at a particular time.

The job was not limited to legal drafting, but included giving opinions and other tasks, including research. For me, in particular, the job gave me an opportunity to discover that I could do research. Shortly after my arrival, I was asked to do some research on the federal power of disallowance of provincial legislation, which was still considered of possible practical concern at the time. I greatly enjoyed this task and spent many nights, as well as days, on it. When it was finished, the Department thought it good enough to publish. This helped me in getting another type of job later, the nature of which you can surmise. The message here is that you can sometimes discover your real skills and interests in apparently unrelated contexts.

I should say that government work can be fascinating in its own right. There is a wide variety of work and everything is bigger in government. Even as a junior, I had to give a preliminary opinion in a tax matter involving over a million dollars — respectable now but a very large amount in the 1950s. In my second stint at Justice, I was principally involved in the constitutional process and things like the establishment of the federal Human Rights Commission, privacy, freedom of information, law for the layman, Indian land claims and the relationship of native people with the justice system, as well as a wide spectrum of small programs. I was then a very senior official, but I needed assistance from junior people. They got in on it too.

I might digress a moment to say that many other UNB Law graduates besides myself have had a stint in the federal bureaucracy. My own classmate Gordon Fairweather's illustrious career as lawyer, Attorney General of New Brunswick and as a model Parliamentarian was followed by his appointment as the first Chief Commissioner of the federal Human Rights Commission and then as the first Chairman of the Refugee Board. As well, many of my former students here have had remarkable careers in the Department of Justice and some have gone on from there to other interesting careers. Eric Bowie was Associate Deputy Minister when he was appointed to the Tax Court of Canada a few years ago. Mark Jewitt, as Assistant Deputy Minister, is now the principal legal advisor to the Department of Finance. John Power, as Senior Counsel (Taxation), argues some of the most important tax cases in Canada, often before the Supreme Court of Canada. Lawson Hunter joined me when I was Assistant Deputy Attorney-General (Research and Planning), but then moved upwards rapidly to become the Director of the Combines Investigation Branch; he is now a senior partner of a national law firm. Rod Bryden who, after teaching law, became Executive Assistant to the Minister, later left for a career as an entrepreneur; he is now Chief Executive Officer of the Ottawa Senators hockey team. This trend continued in later years. Janice Cochrane rose up the ranks in the Department of Justice, and is now Deputy Minister of Citizenship and Immigration. Many other former UNB Law students, including two of my daughters, serve at various levels and functions in the federal Department of Justice. This is really quite remarkable, given the very small number of students at this law school during most of the relevant period. Recent surveys attest to the quality and relevance of this law

school's training for ordinary law practice. With the record I have just sketched, who says UNB does not offer good training for work in government?

A major attraction in government work is that one has a feeling of being involved in public service, something that was important to me and to many of my colleagues. As well, while one is not involved in political life, one gets, through knowledge and experience, to have some (sometimes considerable) influence on important public issues of the day. In the course of working on such issues as the *Victoria Charter* and Indian land claims, for example, I was something more than a mere pawn. Government work also has the advantage over private practice that there is a continuing context in what you do; one is part of larger ongoing projects.

Today provincial government work is at least as interesting as federal government work was in my day. I shall not list the many UNB lawyers who occupy or have occupied posts in the provincial Department of Justice because they are more familiar to you, but I should mention that there is a healthy cross-fertilization between government and the Faculty. Professor Karl Dore, for example, served in the law reform area before returning to the law school.

I realize that positions are now difficult to come by at either level of government, but periodically openings arise — some short-term, some long-term. Persistence helps. Here again I want to emphasize that experience is experience is experience. Much of it is transferable. So a short appointment may be helpful even in the long-term.

I found that out when I left Ottawa to work for Mr. K.C. Irving. My underlying motive for the change was to get back to New Brunswick, something that has always been a serious consideration for me. One of the things Mr. Irving wanted me for was, in his words, "to write deals". My drafting experience fit neatly into this.

Corporate practice has some of the attributes of government work in that it is integrated with the policies and practices of the corporation, but many of the day to day problems from real estate transactions, to company and labour law, to municipal planning, to taxation, to at least the issue of whether one should engage in litigation, bear a considerable relationship to private practice. Many lawyers find this one of the most satisfying environments for them to practice law. It, too, can lead to other things. Quite a few in-house counsel move directly into the business side of the company; a number have reached the top ranks in their companies. Some start in the business side; legal training is very valuable in business, as business training is to law. The combined B.B.A./L.L.B. programme is a reflection of this.

Working in a business setting can also lead to other openings in law. Some in-house corporate counsel have moved to and from ordinary law practice, and a few have made it directly to the bench. The most obvious example, of course, is Ivan

Rand who spent a large part of his career as a corporate lawyer before being appointed to the Supreme Court of Canada. Former Chief Justice Jockett of the Federal Court was another, though he had also had extensive practice in government which itself is an increasingly important source of judges.

Every person is of course, different and the admonition to "know thyself" is very important. But you often cannot know yourself without testing yourself. By the end of a year at Irving's, I knew that corporate work would not satisfy me in the long-term and I began to look around. I had a few other offers when Bill Ryan approached me to teach at the law school. Though my interest in research and teaching had developed by then, it may come as some surprise that I had some reservations. I still had some interest in what is sometimes described as the more active aspects of the law, but Bill suggested a few years of teaching wouldn't do me any harm. That's not bad advice with respect of many jobs. So I accepted. As you know, others have moved from practice to law school. Practice can serve as an excellent backdrop for teaching. Your Dean tells me so anyway. I add: so can government work.

For me, teaching and research is as good as it gets, just as others prefer traditional practice. When I came to the law school, law teaching in Canada was beginning to blossom and law teachers then, as now, were called upon to undertake a wide variety of projects, governmental and private, that do not fit comfortably in the context of the daily demands of law office work. I had more than my fair share of these, from specific opinions to practitioners, to massive research projects and advisory work for government, to arbitrations and to counsel work. These outside activities fed into my research or teaching and I always made sure they did.

Some law teachers, as you know, move from teaching to the bench. Mr. Justice Robertson is a recent example. So, of course, is Dean William Ryan, although in between he joined the Law Reform Commission of Canada. There he began the most searching examination of federal administrative tribunals in Canada, which I and later Alan Reid (also of this law school) were to bring to completion. Other law teachers enter private practice and some move to full-time arbitration. A good number continue to teach part-time. During the time I was Assistant Deputy Attorney-General at the Department of Justice and a Commissioner of the Law Reform Commission, I taught part-time at several universities.

Another possibility for lawyers, especially but not only academic lawyers, has of course, been university administration. This is not limited to Deans of Law. We have had numerous Presidents of Universities who have been lawyers. As you know, President Emeritus Colin Mackay's illustrious tenure as President of the University of New Brunswick was preceded by a stint in private practice.

An important conclusion to be drawn from what I have said is that the legal profession in Canada is far more fluid than it used to be, and, as I have illustrated,

it is a development in which both students and faculty of this law school have fully participated. In these difficult times — as was the case when I left law school — one may not have the luxury of getting one's first, or even second or third, choice of occupations in the law. Necessity made me look at alternatives and I do not think I am much the worse for it. It may happen that your first choice is not the best for you. At all events, one must take care of the moment and what one learns in alternative occupations is quite transportable. For example, my administrative experience as a Dean and in government made my understanding of the proper relationship between trial courts and appeal courts almost intuitive. Rules of law concerning that sort of question are often simply a reflection of good administration.

The fact that the legal profession now has so many manifestations leads me to another matter. Don't mentally close possible avenues. Try to learn about the various ways to make a living in law, as you have been given an opportunity to do this week. Get involved in this and other law school activities. The friends you make in pursuing common interests are both a pleasure and an asset. I can't begin to tell you how often friends have helped me along the way.

Thus far, in accordance with your suggestion, I have largely confined myself to my own personal experience and indeed to the parts that seemed most relevant. I simply add on that point that this variety of experience has been very useful to me as a judge. A wide variety of experiences among judges is most helpful to the judiciary as a whole. We learn from one another.

Let me conclude by saying that I have not begun to touch on the many possible paths that may be open to legally trained people nowadays. Since I am asked from time to time for references, I know that various organizations, both private and public, in some aspects of their work, need people trained in law. Dispute resolution and research needs are examples. Some of these are temporary; others more or less permanent. But, quite apart from these, one must not forget that a legal education can form a very useful background for careers other than the law. Some of these have been around for a long time. There is politics, of course. The Premier and the Leader of the Opposition are graduates of this school as well as two federal Cabinet Ministers. There is business, too, and government administration. Some of you with two professional degrees may be better attuned to some of the possibilities than I am. Law and medicine, and law and engineering are other examples. And with law being so central to social ordering today, I am confident that various other possibilities, some small, some large, will develop. For example, every day that I read the paper or listen to television, I wish there were more journalists who were better informed not only about the legal system but about our basic governmental system. One of our graduates, Bill Rowe of Newfoundland, has long practised in this field.

I rather suspect that the majority of law students will, as in the past, pursue a career in the traditional practice of law, but more, I suspect, will seek other options. In any event, necessity may require you to take up alternative occupations for parts

of your careers, particularly at the start. Many of these alternatives, and their availability, are different from when I left law school. But if my experience means anything in this context, it is that many of these alternatives are good in themselves, and some of you will find them more rewarding than what you originally had in mind. What is more, many are helpful in providing you with experience that will be relevant to whatever you ultimately wish to do. And then, too, a change is as good as a rest. A variety of experience can not only be enriching — it can be fun.