

BILL RYAN — SOME THINGS I REMEMBER

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Above all we were friends. We enjoyed each other's company; we trusted each other and each other's judgment. Our approach to law was very similar, and our skills were complementary. For several crucial years, we shared the common purpose of transforming the old Saint John Law School into a modern university law school. Later, when we had both left the Law School, we again in a brief but fruitful collaboration took important steps through the instrumentality of the Law Reform Commission of Canada to create a broader and more sophisticated approach to administrative law and several other legal fields. Our friendship was fostered and fed by common interest and common goals, but it transcended these and continued to the end.

No one who had occasion to work with Bill could ever doubt the power of his intellect. He was one of the brightest men I have ever met. His intelligence was particularly revealed in the quality and clarity of his teaching, and it was as a teacher that he wanted especially to be remembered, as I am sure he will. Those who worked closely with him also learned of his innate practicality and his capacity to make tough decisions when he had to. His diffidence prevented all but his close friends from seeing other sides of his character. There was a lot more to Bill than met the eye of the casual observer. Needless to say he read broadly and was well informed about the world around him. But it was his particularized interests that fascinated. His love of Saint John, and his characteristically Irish perspective on it was one. This perspective undoubtedly fed his interest in Boston which he thought the most cultivated city in America and which he frequently visited. His knowledge and understanding of American politics was deep and broad, as was, as one would expect, his grasp of American legal theory. What might not have been expected was his encyclopedic knowledge of baseball. He knew the feats of the great baseball heroes and their personalities, as well as many tales that he would enjoy recounting. He thoroughly enjoyed social life. He greatly enjoyed the company of women and there were quite a few romances during the time I knew him. But as my wife, Marie, used to say to him, he seemed uncommonly relieved when these came to an end — a comment that always elicited a chuckle that made me think she might just be right.

Though I knew of Bill from my law student days — he began to teach first year Contracts in 1947 when I was in my second year — I really had no contact with him except that he was an examiner on an essay I had written, which he typically remembered in some detail years later. His memory was phenomenal. I recall phoning him while I was on the Supreme Court to see if he could remember the name of a not too well known case he had mentioned to me in the course of

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conversation years before. He remembered the conversation, the name, court and report, and the approximate time the case was decided.

We both went to England for further studies in 1945 and I wrote him before leaving about the possibility of meeting in England. He agreed, but I never took the initiative and we never did meet there. I was to learn over the years that in social matters, one should not expect Bill to take the initiative. This trait brings back an incident where Bill said to Marie (who, I should say, was also very fond of him) that he enjoyed so-and-so but had not heard from him in quite a while. To which my wife responded: "Bill, you should get a phone like ours that rings both ways." Bill (who was by then almost a member of the family) always enjoyed these caustic remarks.

Like so many bright people, Bill could be quite witty. In private, he could, however, display a more biting, almost cynical, humour. As with other administrative jobs, he as Dean often had to deal with people whom he had to suffer patiently if not gladly. One day, he explained to me how he worked himself up to the task. "Every morning", he said, "I look in my mirror and say 'Bill, today you're going to meet a fool'. I am rarely disappointed", he added.

Our friendship began in the short period (1955-56) when I was working as a legal advisor for Mr. K.C. Irving. We would frequently run into each other, and found we had much in common. I recall one early incident. There were no legal books at the office, and to check some point I would from time to time go to the Saint John Barristers' Society Library in the old Provincial Building where the Law School had been when I attended. Bill was there one day when I was trying to unravel the mysteries of the application of the rule against perpetuities to options. We discussed the subject as lawyers will, finding great enjoyment in the dullest of subjects. We moved on to other matters and at some point he asked if I might be interested in writing something for the *Law Journal*, to which I replied that I had no idea what to write about. He replied, "Why don't you write about what you're working on now?" I did.

In the first few years after I joined the faculty, Bill would sometimes act as a catalyst in my turning some piece of research I had done into a talk or a paper. I was less successful in getting him to do the same, something I found frustrating at times. I was firmly convinced that, if we were to gain national recognition – which I thought was essential to the development of the Law School – we had to publish scholarly works our peers would recognize. I was aware that the weakness of the library put limits on the character of the scholarly work we could produce, but both of us realized that, in the state of Canadian legal scholarship at the time, there was great need for basic doctrinal research (which we both enjoyed anyway), and that in the absence of such work, policy oriented studies were often built on sand. I particularly remember the time I tried to get him to publish the research

on restitution he had undertaken while on leave at London and Harvard. During that period I attended a Canadian Association of Law Teacher's Conference where one of the participants presented a paper on the topic. It was probably a good piece – everybody thought so anyway – but for my part I thought it rather elementary; I had learned far more about the subject in casual conversations with Bill. At some stage, I made a bargain with Bill that I would write a book or a number of articles if he got the work published, and I added that if he could somehow persuade George McAllister to do something too, that would really help put us on the map. I wrote what I had said I would, and a little more besides, but Bill's research remained in his files. It did not go to waste, of course. The students in his course on restitution received the benefit of it. This was clearly his preferred way of transmitting knowledge.

His files could be something of a treasure. When I first began teaching, I took over a number of subjects he had taught so he let me have the "outlines" of his courses – what we today speak of as syllabuses. These were always so organized that they brought out the essence of the subject matter with great accuracy and clarity. It saved me an immense amount of time in class preparation. This was a godsend, particularly in my first year of teaching when I joined the Faculty on 1 September and began teaching within a week or so. I felt secure in thinking I was teaching the courses very much as he did, but one incident revealed that even individuals who think as much alike about the law as we did can see quite different things in the same material. On one occasion, I prepared a paper for presentation to the Bar, which was taken from lectures prepared on the basis of Bill's outline, and while I did a little – but not much – additional research to fill in, the essential was I thought the same, and I told Bill so after he had read it. His response was: "Oh yes, but there's far more there and better developed." So much for thinking alike. Perhaps he did not want to be tarred with that brush.

Bill's files were helpful in other ways. Bill was a good administrator, very well organized, and he got onto things quickly. At one stage, I was asked to organize a provincial meeting for the Bar on very short notice so I went down to see Bill who had organized an earlier one in more relaxed circumstances. He gave me his file on it, which I immediately perused. What had to be done became immediately clear, so I just got on the phone and did it.

I have elsewhere briefly described the development of the Law School during the time Bill and I were there and I may some day develop this further. For now, I think it best to give a brief account of another phase of Bill's career which is less generally known – his period with the Law Reform Commission of Canada.

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During the period when planning for the Law Reform Commission was being conducted, I joined the Department of Justice in Ottawa as Deputy Attorney-

General of Canada (Research and Planning). In the course of discussions with the Minister and other officials about possible members for the Commission, I mentioned Bill's name to the Minister, the Honourable Mr. John Turner, as a possible choice from the Atlantic region. I do not know if others had mentioned him (one never really knows what influence one has in these matters), but Bill was, in any event, duly appointed to that body as one of its first Commissioners in 1971.

The bulk of the work of the Commission in the early years was intended to be in relation to criminal law, including criminal procedure, sentencing and evidence. In view of the public interest in the area at the time, family law was soon given a measure of priority. While all the Commissioners worked together, particular Commissioners concentrated on specific areas, and the areas I have already mentioned became the principal focus of the other Commissioners. Bill's principal focus was in other areas, notably administrative law, the law of expropriation, as well as exploratory research into aspects of commercial law. A very small part of the Commission's budget had been assigned to these. Indeed the administrative law project had originally been thought of as an extension of the evidence project as it applied in the administrative process. Not surprisingly, it was soon found that the subject could not be dealt with in isolation.

Bill and I and our staffs had a number of preliminary meetings to see what could be done about devising in depth studies on administrative law, which also fell within the area of my interests in the Department. The focus turned to administrative tribunals about which little detailed study existed. In the short time I had taught administrative law, I had become convinced that what law school courses were about was the pathology of the administrative process. The substance of the administrative process was largely *terra incognita*. Bill was of the same mind. We knew little about the real workings of the tribunals that governed so many important parts of our lives. Though I had some initial input concerning the thrust of the project, the pressing nature of my work in other areas was such that while my staff maintained liaison, the subsequent work was exclusively developed by the Commission under Bill's direction. The work proceeded under the modest authority in the Commission's mandate to study "the broader problems associated with procedures before administrative tribunals".

From that time until I succeeded Bill on the Commission after he was named to the Federal Court of Appeal in 1974, I really did not have much detailed knowledge of what was going on. During its first few years virtually the only written documents coming out of the Commission were its annual reports. When I joined the Commission, I think only three study papers had been published. What I did not know was that by this time, mountains of research had been produced, and the principal thing that was needed was to make decisions and to push material to publication. These were matters I could do something about.

But the research methods devised under Bill's supervision and the work already done made possible the further developments that took place.

In designing research methods for the studies of administrative agencies, the Commission derived considerable assistance from multidisciplinary approaches. Typically, a researcher would, with the cooperation of the agency, "live" with an agency for a certain period to observe its workings on a daily basis to learn how it worked and to identify problems relating to their operations. Several of these were ongoing, and some close to completion when I arrived. These agency studies were to prove of immense value to the agencies themselves. Many of the recommendations made by the researchers or the Commission were adopted even before publication. They were also of great assistance to the agencies in teaching their own staffs about their structure and operation. As well, the Commission had promoted close contact with law faculties as well as practitioners throughout the country, thereby fostering a more sophisticated approach to these bodies. Moreover, it created an advisory committee of the heads of senior agencies, and, through their own organization, significantly assisted cooperation between the various agencies in developing responses to problems that were common to them. It is often said that very little of the Commission's work was reflected in statutory change. But law in action can be far more influential than the law in the books, and, as can be seen, the work of the Commission in this area had a profound impact on the law in action.

On my arrival, I added significantly to the number of agency studies, and began other types of particularized studies. I pushed for publication, and, incidentally, a larger share of the budget. When I left, studies on most of the major federal agencies had either been published or were near completion. I also arranged for more general studies and proposed approaches to the various problems identified by the agency studies and ultimately set in motion plans for a comprehensive examination of the subject. It seemed altogether fitting that I take over, develop and expand the ambit of Bill's work and bring it to fruition. Our complementary skills had always worked well together. Ultimately, Alan Reid, who had also taught at this law school, took over the project and brought it to completion. Thus, this small law school played a central role in developing a more sophisticated understanding of the workings of administrative tribunals in Canada.

I have singled out this area as deserving attention in relation to Bill's work at the Commission. There were others, more modest, but important still. One began as an exploratory project on the *Bills of Exchange Act*, but was transmuted into an important work on the Canadian payments system. This task was undertaken at a time when the effect of computers on cheques and other means of payment were about to be felt at the consumer level. A very capable researcher was hired to prepare a study paper. Every single recommendation proposed in the

study paper was adopted by the Bank of Canada and the Department of Finance, most of them to the lasting benefit of the Canadian consumer.

The work of a body like the Commission cannot, of course, be attributed to any single individual. It is team work. But getting a good team, getting it to work together and devising appropriate research and cooperative strategies do not take place by happenstance. At a minimum, it can be said that it was Bill who initiated and originally fostered these projects, and created the atmosphere and encouragement that permitted a team of able young scholars to produce the work.

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Our professional association ended, of course, when Bill joined the Federal Court. But we remained in touch. Marie and I often had him over when we had a party. His health seriously deteriorated after he left the court but, until his return to Saint John, we saw him weekly when we drove him to church. These were difficult days for him, but Marie was always able to lift his spirits, as she always had, with some "crack" about some recent or past occurrence. After that, when we were in Saint John, she would use the "two-way phone" to chat with him and maintain contact, and as I said, the friendship continued to the end.