

THE LAW SCHOOL AT 100

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As U.N.B.'s Faculty turns 100, it is timely to reflect on the experience of the first century, and to look ahead to important developments and challenges.

The Law School's first 100 years have been marked by a steady sense of purpose, by commitment to local education and service, by dedication to excellence in teaching, and by the continuing development of a culture of scholarship and integration within the University. The language of dedication and steadiness, not to mention struggle, falls short of the imperialistic fare we have come to expect of centennials. But it is the language that best captures the experience of U.N.B.'s Law School through its first century. The preeminent story has been one of struggle, and of steady advancement. And the net result is a quality academic enterprise whose survival is assured, and whose reputation for excellence continues to grow.

A full appreciation of what has been accomplished at U.N.B.'s Law School over its first 100 years is reserved for those who witnessed the development of the School in more rudimentary times. The magnificence of the classrooms, the computer lab, the Law Library, and other physical amenities is most apparent to those who taught and studied in the Provincial Building in Saint John, home of the School until 1953.¹ The U.N.B. Law Journal is today recognized as a leading student-run academic publication; but its contemporary quality and scale are best appreciated by those who worked hard to develop the Journal in its earlier phases.² Contemporary admissions statistics are generally impressive; but a full measure of gratification belongs to the faculty members and others who strove through recruitment and scholarship support to build the student body from

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¹Franklin Leger, whose class spent its first two years in the Provincial Building, comments that faculty and students were "somewhat awestruck and not quite believing in their good fortune" when they moved in to their new premises at Beaverbrook House in the fall of 1953. "The Sixth Dean" (1990) 39 U.N.B. L.J. 232 at 235. Mary Louise Lynch, Q.C., who was Registrar of the Law School and a leading actor in the acquisition and renovation of Beaverbrook House, described the former quarters in the Provincial Building as "rather dingy" "Convocation Address," U.N.B., 17 October 1981. R.G.L. Fairweather recalls the building as "gloomy and grimy", especially due to the fact that the building was heated with lower grade New Brunswick soft coal: "U.N.B. Faculty of Law: A Recollection Forty Years Onward" (1990) 39 U.N.B. L.J. 243.

Reflections by the two full-time professors of the day on the significance of the 1953 acquisition of new premises can be found in G. A. McAllister, "Some Phases of Legal Education in New Brunswick" (1955) 8 U.N.B. L.J. 33 at 49; and, W.F. Ryan, "The University of New Brunswick Faculty of Law" (1965-66) 16 U. of T. L.J. 173.

²See, for example, the Foreword to this edition of the *Journal*, G.V. LaForest, "The Law Journal in the Law School's Centennial" (1992) 41 U.N.B. L.J.

numbers that were as low as 25 in all three years in the late 1950s.³ The Law Library collection, at 109,000 volumes, is still the smallest of the English language common law schools in Canada; but it stands as a major achievement to the pioneers who built the collection from a base of fewer than 1,000 volumes, beginning in the late 1940s.⁴

The bottom line is that the School has developed, in admirable fashion, and that it has done so with quiet conviction in the value of legal education. This development can be classified in three phases. The first is the period up to the 1950s, when the School remained what it was when founded in 1892: a professional training institution operated by the Saint John bar and bench on a virtual volunteer basis. The second is the period from the early 1950s to the 1970s, when there was a sustained effort to transform the Faculty into a full-fledged component of the University and to increase its scale of operation. The third phase of the School's development is the period from the early 1970s until today, when the primary challenge has been to build and enrich the Law Library, to develop the faculty corps, to recruit students, and generally to consolidate the academic and pedagogical reputations of the School.

In 1992, there is much to show for these efforts to build U.N.B.'s Law Faculty into a major actor in Canadian legal education. Applications for entry to the 1992 first-year class reached a new high of more than 1,400, up from 1,250 in 1991, and from 900 in 1989. In 1992, the Faculty appointed its nineteenth faculty member, thereby coming within striking range of a long-established target of twenty for a viable faculty complement. The Faculty's reputation for effective teaching is transmitted by graduates, who, in a 1991 survey by *Canadian Lawyer* magazine, rated the Law School fourth among Canadian law schools.⁵ The Faculty's research ranking, measured against a University-wide scale, reached its highest-ever standing in 1992. These signs of growth and achievement are all positive. At a time when the general mood in public service institutions and universities tends

³G.V. LaForest, who became a faculty member at the Law School in 1956, describes student recruitment in the late '50s and the '60s, notably the introduction of the Dunn and later the Beaverbrook Scholarships, in "Rambling Recollections of the Law School" (1990) 39 U.N.B. L.J. 224 at 228-29.

⁴A student editorial contribution to the 1950 U.N.B. Law Journal comments on the significance of Lord Beaverbrook's early contribution of more than 1,000 volumes to the Law Library, invoking comparison to the role played by Lord Beaverbrook in the Battle of Britain, "The Chancellor's Gift to the Library" (1950) 4 U.N.B. L.J. 6. In the same issue of the Law Journal, the lead editorial comments on the "remarkable progress" witnessed during the three years of the graduating class of 1951, and goes on to urge that the building process continue, "so that the U.N.B. Law School may, in time, be numbered among the best law schools in Canada and the first in the Maritimes." J.C.H. [the editor-in-chief of the 1950 Journal was J. Carlisle Hanson] "The Progress of U.N.B." (1950) 4 U.N.B. L.J. 5.

⁵"A Report Card on Canadian Law Schools," *Canadian Lawyer*, February 1991.

toward despondency, faculty members and personnel, students and relevant external constituencies have good reason to believe that the Law School is moving forward, and that it is on the right path.

However, these are not times for complacency. There are ongoing challenges for the Law Faculty, to build on a solid core of achievement, to enrich its programs and facilities, to continue to develop the culture of scholarship, and generally to strive for excellence in times of constrained resources and increasingly contested measures of what constitutes either excellence or authority.

Students

The factor that has contributed most to the reputation of U.N.B.'s Law Faculty over its first century has been the quality of students and graduates. No matter how hard the times, how brittle or idiosyncratic the professors, or how limited or grandiose the vision for legal education, at all times there has been a critical mass of students and graduates with the character and the native intelligence to ensure the vitality of the School, and to carry forward its reputation.

The reason for founding the Saint John Law School was straightforward: it afforded New Brunswick students an at-home alternative to study at Dalhousie, Harvard, Oxford or some other "foreign" location.⁶ With a few notable exceptions⁷, the student body consisted of New Brunswickers until the 1960s, at which time students began appearing from Newfoundland, Nova Scotia, and Prince Edward Island, as well as from Ontario, Quebec and Alberta. In the '70s and the '80s, the number of non-New Brunswick students grew and the reputation of the Law School beyond New Brunswick has spread to the point where, in 1992, more than two-thirds of admissions applications are from outside Atlantic Canada.

Over the past three decades, U.N.B. has gone from being a provincial law school to become an Atlantic regional school, and has at the same time developed a substantial recognition and presence outside Atlantic Canada. There are now approximately 130 graduates who are members of the Newfoundland bar, 50 in Prince Edward Island, and 130 in Nova Scotia. In New Brunswick, the number of graduates exceeds 900. The Faculty recognizes its substantial regional connection,

⁶The Saint John *Daily Sun* of 10 October 1892, reported "[T]he object of the school was a good one. Many parents could not afford the expense of sending their sons to Harvard or Dalhousie." "The New Law School – Formally Opened Under Distinguished Auspices" *Daily Sun* (10 October 1892) 1.

⁷In the late 1930s, three brothers from Prince Edward Island, Irving ('37), Augustus ('37) and Vernon Fraser ('39), graduated from the Saint John Law School. Ironically, when they returned to Prince Edward Island, their credentials were resisted by a local bar that favoured the articling system. Only one of the three ever became a member of the bar, and not until the late 1950s.

and considers admissions applications in geographic pools, one for New Brunswick, one for Newfoundland, one for Prince Edward Islanders and Nova Scotians combined, and one for applicants from outside Atlantic Canada. One half of the spaces in the first year class are reserved, on the basis of a rule-of-thumb rather than a fixed quota, for New Brunswick residents. The number of places in first year has been fixed at 80 since the early 1970s, and is likely to remain at that level, in deference to considerations of physical space and to judgments about optimum learning conditions.

In terms of "placement," the School's primary focus has historically been on the New Brunswick bar. Over three-quarters of the members of the New Brunswick bar and bench have received their law degrees from U.N.B. However, the phenomenon of leaving the region to find opportunities elsewhere has been an acknowledged fact throughout the Law School's history. Graduates have migrated to New England, to Ontario and Quebec, to Alberta and other western provinces, even overseas, for generations. Some made careers in large firms in big centres, but the more common pattern among those who left was to enter public service, to practice in smaller firms or in smaller centres, or to make a career in business or other fields outside of law.⁸

A development of the 1980s, primarily on the initiative of students, has been to formalize articling and placement efforts. Students invite recruiting employers to make opportunities known, and to attend a trade-show style event in the fall term and an interview weekend in January. As a result of these efforts, of the accumulated presence of graduates in various locations, of student participation in national activities such as moot court competitions, and of the Faculty's higher research and publication profile, the Law School has attained a greater visibility across Canada, and graduates are taking up professional careers in a wide variety of locations. The largest number of graduates continues to remain in New Brunswick.

An outstanding feature of the contemporary student body at U.N.B., as elsewhere in Canadian legal education, is the increased presence of female students. While there were women in the early classes at the Saint John Law School, legal education and the profession remained primarily a male preserve until the 1970s. In recent years the proportion of women in first year classes has

⁸The Law School's largest extra-Atlantic contingents are in Ottawa and Toronto, with approximately 120 graduates in each location. The Ottawa constituency is somewhat longer established, and is decidedly more oriented to public service careers. The Toronto group includes a significant number of graduates who have started with large law firms in the last ten to fifteen years. There are almost 50 graduates in Alberta, and 30 in British Columbia. While a civil law degree is required for membership in the bar of Quebec, there are more than 15 U.N.B. graduates living in Quebec, most of them working as corporate counsel. U.N.B. graduates currently serve on the bench in eight provinces, as well as on the Federal Court and the Supreme Court of Canada.

steadily advanced, and in 1992, for the first time in 100 years, the majority of entering students are women. The change from an overwhelmingly male student body to one where women constitute a majority and play a leading role in the civic and social life of the School has brought about an appreciable shift in the character of the School, and will doubtless lead to changes in curriculum and to other critical aspects of the Faculty's program.

Other changes in the demographics of the student population include an increasing proportion of mature students, and a greater number of aboriginal students. The Faculty recognizes the desire for a greater number of aboriginal persons to study law, and recognizes an historic failure to respond to the legal education needs of aboriginal people of New Brunswick and the region. The Faculty also recognizes the desirability, from the point of view of the whole student body, of including a greater range of experiences and perspectives. It therefore considers aboriginal students and mature students (generally requiring a minimum of seven years non-academic experience) in separate admissions categories. It is also foreseeable that, over the next several years, the Faculty will explore the possibility of a program of part-time studies, as well as joint degree programs with other faculties at U.N.B.

A remarkable phenomenon at U.N.B.'s Law School is the extent of student civic involvement. Indeed, the Law Students' Society pre-dates the founding of the Faculty itself.⁹ In addition to student participation in Faculty Council and committees, and student organization of social activities such as the Law Ball, the variety show, orientation and graduation, there is a general civic ethic of participation and responsibility. From its founding in 1947, the *U.N.B. Law Journal* has been edited and managed by students. The *Law Journal* is highly regarded for its editorial quality, and is one of the most important public relations assets of the Faculty. An annual budget of \$15,000 to \$20,000 is the sole responsibility of students. A student Moot Court Board takes primary responsibility for U.N.B. participation in five competitive moots, including for an annual budget of almost \$20,000. In the fall of 1991, students organized a major conference on the future of Atlantic Canada. The weekly Speakers' Hour, the annual Law Week, organizations such as the Association of Women and the Law or the Environmental Law Society, and a whole variety of ad hoc and regular initiatives contribute richly to the educational and civic climate of the School. These many activities combine with the small scale of the student body and the favourable faculty-student ratio to make the student experience at U.N.B. one of familiarity and attachment and responsibility. The opportunity for personal development, for effective learning, and for civic growth that comes with such an

⁹The Saint John Law Students' Society was first established in 1879, and its educational program, drawing upon members of the Saint John bar for lectures, was a forerunner of the Law School.

environment, remains the most positive asset of U.N.B.'s Law Faculty.¹⁰

Physical facilities

Ludlow Hall was built in 1967-68, with a \$1 million gift from the Canadian Beaverbrook Foundation. Construction and finishes were to a very high standard, and the building remains in excellent condition twenty five years later. In 1983-84, the Law School was expanded by a further 22,000 square feet, primarily for library purposes. The building is aesthetically pleasing, and enjoys a magnificent location on the hill overlooking the city of Fredericton and the Saint John River. The various study, research, teaching, office, library and casual spaces are well designed and function effectively as an integrated unit.

The current classrooms, study spaces, moot court facilities, computer lab and faculty and staff offices amply serve a student body of 230 and a faculty of eighteen. However, it is projected that office space for full-time faculty and visitors will have to be modestly increased over the next few years to accommodate gradually expanding faculty numbers and various visitors.

The Law Library remains the area of greatest strain in terms of physical and other resources. While it is below the average square footage for Canadian law school libraries, the current Library space is adequate to accommodate acquisitions for the next five to ten years, and possibly longer, depending on the mix of hard copy and electronic materials. A ten-station computer lab was added in 1990 with the generous support of the New Brunswick Law Foundation. Scheduling or even rationing of the use of the lab may become necessary as demand for both legal research and word processing increases; however, the current ten work stations will amply serve legal research needs for the foreseeable future.

The major pressure point in the Library concerns acquisitions. The cost of serials (journals, loose-leaf services, law reports, etc.), which make up approximately 85% of Library acquisitions, has increased at 3 to 4 times the rate of inflation for the past several years, while government funding for post-secondary education has declined in real terms. Approximately 30% of serials subscriptions were cancelled in 1981 and, in 1991, another \$54,000 (or 25%) of annual subscriptions were discontinued in an attempt to maintain a balanced budget.

¹⁰The practice of student responsibility for the intellectual and social life of the School is directly traceable to the Law School's days in Saint John, when the Law Ball was a major event on the social calendar, when the students organized mock trial and debating events that were attended by capacity crowds, and when they participated in inter-university debating competitions. In the late 1940s, the students created a weekly radio program called "Legally Speaking," which was broadcast on Sundays on Saint John radio station CFBC. Each of these activities can be found continued by law students of today, including an initiative spearheaded by a group of first-year students in 1992 to create a regular radio program to be broadcast on New Brunswick C.B.C. stations.

These strains come at a time when there has been a proliferation of available material, an expansion of the universe of what is considered relevant to legal research, and a major increase in materials that are available in electronic form.

U.N.B.'s Law Library is not alone in facing the crunch between available resources and the cost of acquisitions. At a meeting of academic law librarians and deans of all Canadian law faculties in the fall of 1991, it was predicted that, at current rates of cutbacks, it is foreseeable that there will not be a single serious research law library in Canada. The Canadian Law Information Centre, before it was eliminated in the 1992 federal budget, launched *Infolex*, a study to review the cost of acquisitions in Canadian law libraries. Preliminary results indicate that the cost of serials will continue to rise for the next four to five years at rates well above the Consumer Price Index.

Developing and maintaining a library adequate for research and instructional needs is the greatest resource challenge facing U.N.B.'s Law Faculty as it celebrates its 100th birthday. The Faculty is fortunate to have a very accomplished, nationally-recognized professional staff. The problem is profound, going to the vision we have for the Law Library, and its relationship to the teaching and research goals of professors and students. There probably are no solutions, as such, but there must be ways of moving ahead. One dramatic scenario would be to undergo a substantial conversion from print materials to electronic format, particularly for serials that are not in high usage. The downside risk of such a scenario is that there are no guarantees of access or stable costs. There is a further concern for users who are unaccustomed or unwilling to work with computer databases; however, this is a passing phenomenon, as the overwhelming majority of students and faculty members consider a computer to be at least as essential to legal education and research as is a pen and paper. Another scenario involves shifting resources from primary acquisitions such as law reports, especially those that are held in multiple copies, toward journals and monographs. Slightly more than 10% of 1992-93 acquisitions are monographs.

At the end of the day, the effective development of a law library is a question of vision, and resources. It is also a matter of rhetoric, or advocacy. Users, and funders, have to understand that the Library is integral to the legal education and research functions of the Faculty. In this respect law is different from other disciplines. The Library is, in effect, the Law Faculty's equivalent of the laboratory. Indeed, its resource concerns can be even more acute; while a laboratory may be able to manage with last year's instruments, a law library can never make up for a discontinued serial collection. If U.N.B. is to maintain the quality of legal education and the growing body of research activity that it has developed over the past decades, the range of information and services available in its Library must not only stop shrinking, it must expand.

Faculty

In the Saint John era, both faculty and administrators were drawn, as virtual volunteers, from the membership of the bench and bar. The first "full-time" professor also served as a Judge of Probate, and managed to carry what would today be considered an overload teaching assignment.¹¹ The lecturers had admirable credentials; they were among the leaders of the profession and many had law degrees from Harvard or Oxford. In 1950, two outstanding graduates of the Law School, who had gone on to take graduate studies at Columbia, were appointed as full-time faculty members, and it is from this point that the Law School's transformation into a full-fledged University-based legal education can be properly marked.¹²

Since 1950, the Faculty has made respectable progress in building up a complement of full-time professors. By 1961, the fifth professor was appointed. By 1971, there were eleven. By 1981, the faculty complement had reached fifteen. And, in 1992, the nineteenth faculty member will be appointed. A target of twenty has been accepted as a viable complement for the Faculty since the mid-1970s.¹³ This goal was reaffirmed in a 1980 report to the President of U.N.B. on the future of the Faculty of Law, and it remains a priority.¹⁴ The achievement of this minimum scale for the Faculty will mean that it can undertake a full and balanced program of teaching and research activity. It will also mean that the Faculty has the critical mass to include the diversity of perspectives desired to maintain an animated intellectual climate and a respected external profile.

The appointment of Professors Ryan and McAllister commenced a pattern of faculty development that has continued until recently, namely reliance upon the School's own outstanding graduates as the primary recruitment pool. By 1961, four of five full-time professors were U.N.B. graduates. As of 1992, eleven of nineteen professors hold their first law degree from U.N.B. This phenomenon is

¹¹Judge H.O. McNerney was named professor when the Law School first became associated with U.N.B. in 1923 and maintained that post until his retirement in 1950. Judge McNerney's teaching load of three first year courses and one course in each of the upper years is described by G.V. LaForest, *supra*, note 3 at 224.

¹²An editorial appearing in the *U.N.B. Law Journal* in 1950 comments: "Last, but not least, in the catalogue of achievements of the law school is the appointment to the faculty of two brilliant young New Brunswick men, namely Professors McAllister and Ryan." "The Progress of U.N.B." *supra*, note 4. In a 1965 reflection, Dean William F. Ryan, refers to 1950-65 as a "fifteen-year period in which the school was being radically altered in nature and purpose," *supra*, note 1 at 174.

¹³Report to the M.P.H.E.C., *Legal Education in the Maritime Provinces* by D. Soberman (1976).

¹⁴*The Future of the Faculty of Law* (May 1980), otherwise known as the Kavanagh Report. The Faculty of Law response underscored the need for a faculty complement of twenty as a *minimum* viable scale. *Response of the Faculty of Law to the Report of the President's Committee on the Future of the Faculty of Law* (November 1980).

not unique to U.N.B. among Canadian law faculties.¹⁵ Indigenous recruitment has its rewards in terms of stability and institutional commitment. As of 1991, faculty members had an average of fourteen years' teaching experience. This level of "seasoning" contributes substantially to the Law School's reputation as a strong teaching institution, and to the sense of community that represents such a significant part of the student experience at U.N.B.

A basic challenge in faculty development at U.N.B., and generally in higher education, is to bring together a diversity of experiences and perspectives, and to ensure renewal and vitality of the teaching and intellectual atmosphere. It is desirable that this be accomplished through recruitment and through full-time appointments, as well as through various programs to bring in visitors and to have faculty members gain exposure and raise U.N.B.'s profile outside of the Faculty.

It is a major accomplishment for U.N.B.'s Law Faculty that two of its three most recent appointments are women who hold doctoral degrees in disciplines other than law, and whose first law degree is not from U.N.B.¹⁶ It is desirable for the Faculty to appoint professors with experience or training in a second discipline, and it is desirable to increase the proportion of women on faculty; the appointment of the Mary Louise Lynch Professor of Women and Law in 1992 will mean that three of nineteen faculty members are women. It is also desirable to incorporate perspectives that come from spending time in other law faculties. In this regard many initiatives, in addition to new appointments, are being taken. One colleague taught, on exchange, at McGill in 1991-92, and others were sabbatical visitors at Canadian law faculties. In 1992-93, one colleague will be at Cambridge on sabbatical and another will be a visiting scholar at Yale. These, and other miscellaneous leave arrangements, permit the Faculty as a whole to gain fresh perspectives and energy.

There are many other ways in which the Law Faculty can, and should, enrich itself. An ongoing challenge is to ensure an effective mix of practical and academic experience. U.N.B. has an extensive, and positive, experience with lecturers drawn from the practising bar. For its first seventy years, the primary teaching staff consisted of part-time lecturers. In 1991-92 four members of the New Brunswick bar taught courses at the Law School, all in areas where they were able to bring unique expertise. It is desirable to continue such arrangements; a

¹⁵For example, in 1991-92, 21 of 36 professors on regular faculty at Dalhousie Law School were Dal graduates; 19 of 38 faculty members at McGill held McGill degrees; 23 of 34 faculty members at Sherbrooke held degrees from that faculty; and 12 of 21 professors at Saskatchewan were Saskatchewan graduates.

¹⁶The second most recent appointment is a U.N.B. graduate who spent eight years teaching in another law faculty. The fourth most recent appointment is a U.N.B. graduate who holds advanced degrees in law and history.

number of part-time lecturers have developed sophisticated courses and materials that are not replicated elsewhere in Canada. Faculty members participate in continuing education programs, and in other professional activities, thereby ensuring mutually advantageous relations with the practising bar. In 1992, the Faculty has its first judicial sabbaticant; Justice Ronald Stevenson of the Court of Queen's Bench makes guest appearances in a full range of courses, is an active participant in the life of the Faculty, and conducts a full research program. In 1992-93, the Faculty will create a Visiting Practitioners Program, bringing leading members of the bar to the Law School for periods of from several days to several weeks.

It is important that U.N.B. enrich itself through visits from academic colleagues. The Viscount Bennett Lecture and Symposium has, since its establishment in 1977, been effective in this regard.¹⁷ A spring-semester lecture series to be named in honour of Hon. Ivan C. Rand, a long-time supporter of U.N.B.,¹⁸ will be launched in early 1993. Students regularly bring visitors to the Faculty through enterprising Law Week and Speakers' Hour programs. In 1992, Professor William Kaplan of the University of Ottawa will spend several months on sabbatical leave at U.N.B. In 1991-92, Professor Dennis Klinck of McGill has been a faculty member, on an exchange arrangement with Professor Catherine Walsh. In 1992, two Canadians in the doctoral programme at Harvard, Ronalda Murphy and Jody Freeman, travelled to Fredericton on alternate weeks to offer a course in Feminist Legal Theories. The opportunities for such enriching initiatives are many. Ensuring that they continue will require modest amounts of resources, a fair measure of hospitality, and a lively intellectual reception.

U.N.B.'s Law Faculty does not need to be off the beaten path. At a time when communications through computer networks are increasingly common, when air travel is less expensive than it has been at any time in the past, and when the Law Faculty is developing an increased research and scholarly profile, connections with academic colleagues and practising lawyers in the Atlantic region, across Canada, and beyond, are eminently feasible and necessary. With the kinds of initiatives outlined here, in terms of full-time faculty recruitment and development, and in terms of visitors and lecturers on various arrangements, it can be expected that there will be regular injections of "new blood" into the Faculty, and that the

¹⁷Viscount Bennett Lecturers have been: (1977) Hon. William F. Ryan; (1978) Lord Hailsham; (1979) Professor Brian Hogan; (1980) Professor Peter Hogg; (1981) Hon. Thomas Berger; (1982) Professor John G. Fleming; (1983) Jonathan Aitken, M.P.; (1984) Professor Patrick Atiyah; (1985) Hon. G.V. LaForest; (1986) Professor John L.J. Edwards; (1987) Professor Bernard Schwartz; (1988) Professor Harry Arthurs; (1989) Hon. Beverly McLachlin; (1990) Dean John D. Whyte; and, (1991) Dean Constance Hunt. The Viscount Bennett Lecturer for 1992 will be Professor Martin Friedland, whose lecture will focus on the Canadian Criminal Code: 1892-1992.

¹⁸The former Mr. Justice Rand was an Honourary Visiting Professor at the Law Faculty beginning in 1964.

Faculty will continue to take advantage of the stability and the teaching savoir faire of an experienced professorial corps.

Research

While research has not been an historic strength of U.N.B.'s Law Faculty, there have been notable exceptions. The School's second dean, Dr. Silas Alward (1902-1916) published actively in the areas of legal history and biography, torts, property, criminal law, statutory construction, trusts and constitutional law. Dr. Alward had more than fifty entries in the *Index to Legal Periodicals* between 1900 and his death in 1919.¹⁹ G.V. LaForest published his first book just prior to joining the Faculty in 1956,²⁰ and published three more based on work done during his time at U.N.B.²¹ In addition, Professor LaForest (as he then was) published fifteen scholarly articles and notes between 1956 and 1968, in areas ranging from property law, to creditors' rights, to constitutional law, to international law, to criminal and municipal law.

Such prolific performances have not been the norm, at U.N.B. or elsewhere in Canadian legal scholarship.²² The Law Faculty, like many others in Canada, spent much of its energy in the 1960s and '70s developing a faculty corps and curriculum, and meeting the extraordinary institutional demands of a small faculty. Research and scholarship did not receive primary emphasis, most certainly not by comparison with the priority given to teaching. During this period there was a considerable amount of law reform work and commissioned research for various task forces and government agencies.²³ There were articles and comments on

¹⁹Dr. Alward's contributions to the Canadian Law Times were prolific: for example, "The Three Great Charters of English Freedom" (1913) 33 Can. L.T. 144; or, "The Triumphs of the Roman Civil Law" (1918) 38 Can. L.T. 12. The Law Times printed tributes to Dr. Alward twice during his lifetime [(1914) 34 Can. L.T. 531; and (1918) 38 Can. L.T. 1], as well as an obituary: "The Late Dr. Alward" (1919) 39 Can. L.T. 466. Alward published in the Harvard Law Review ("New Phase of Equitable Estoppel" (1905) 19 Harv. L. Rev. 113), as well as in the Irish Law Times and the Law Times.

²⁰*Disallowance and Reservation of Provincial Legislation* (1955) (reprinted, 1965).

²¹*Extradition to and from Canada* (1961) [this work was released in a second edition in 1991, under the principal authorship of Anne W. LaForest, a 1984 graduate of U.N.B.]; *The Allowance of Taxing Power Under the Canadian Constitution* (1967); *Natural Resources and Public Property Under the Canadian Constitution* (1969)

²²For a general appraisal of Canadian legal scholarship, see the Report to the S.S.H.R.C. by the Consultative Group on Research and Education in Law: *Law and Learning* (1983). The Report offered what its principal author, Harry Arthurs, termed "an extensive indictment": "To Know Ourselves: Exploring the Life of Canadian Legal Scholarship" (1985) 23 Osgoode Hall L.J. 403. This latter piece appears as part of a Symposium on Canadian Legal Scholarship, (1985) 23 Osgoode Hall L.J. 395-695.

²³See W.F. Ryan, *supra*, note 1 at 174; and E. Veitch, "The University of New Brunswick Faculty of Law" (1982) 7 Dal. L.J. 421 at 427.

doctrinal developments and law reform topics, although the overall quantity of such work was modest. This work was predominantly expository and analytical, and was directed primarily to the New Brunswick professional and public policy communities.

Over the past decade, the Law Faculty has extended and diversified its research and scholarly efforts. There remains a strong commitment to law reform and policy-oriented work, for provincial as well as federal governments.²⁴ Faculty members are encouraged to convert such projects into published work for dissemination to a wider audience, and a number have done so, or are in the course of doing so. Almost all faculty members are engaged in some form of published research, much of which would be classified as professional or doctrinal, in the terms of the Arthurs' Report. Some of this work has a substantial component of legal theory, and several colleagues are writing in the areas of legal history, law in society, or jurisprudence.²⁵ In addition, there is a substantially higher rate of participation in scholarly networks and associations. In 1991, the Faculty's research ranking, as determined by U.N.B.'s School of Graduate Studies and Research according to University-wide standards, reached its highest-ever level of "4" on a 10-point scale.²⁶ This rank signifies:

Many indications reflect a strong commitment to research and scholarship on the part of a substantial majority of members of the department. The department appears to place a high priority on research and scholarship. Many members of have received favourable recognition as productive scholars.²⁷

Notwithstanding the progress that has been made on the research portfolio in the past decade, there remains room to improve, to increase rates of participation and to achieve a higher profile for U.N.B. as a scholarly law faculty. With the growth of the faculty corps to almost twenty, we now have the critical mass to give higher priority to research and scholarship. And with the development of some of the resources to be discussed in a subsequent section, it is expected that the Faculty will be able to provide critical support and encouragement for research activity.

²⁴These projects cover a wide range of policy issues, including personal property security, telecommunications, securities regulation, credit unions, enforcement of judgments, and various aspects of industrial relations.

²⁵I have refrained in this discussion from making reference to particular colleagues or publications. The overall body of work is too great to be given inclusive attention in this review, and the singling out of particular works is by nature invidious.

²⁶The School of Graduate Studies and Research ranking for the Law Faculty for the years 1983-91 was: 8(1983), 7(1984), 5(1985), 6(1986), 5(1987), 5(1988), 5(1989), 5(1990), and 4(1991).

²⁷University of New Brunswick, School of Graduate Studies and Research, "Research Rankings" (March 1991).

Related to the research function is the Faculty's service role, where there is already a strong record of participation. Faculty members contribute to continuing legal education in New Brunswick and, to a lesser extent, elsewhere in the Atlantic region. Over the next five years, the task is to better promote what faculty and students are already doing, and to be more energetic in sharing legal information with the professional and general communities. There will be particular emphasis on student initiatives that tie in to pedagogical objectives. And there will be special attention to programs and initiatives that reach out to Prince Edward Island and Newfoundland, two of the Faculty's important constituencies that do not have indigenous law schools.

Curriculum

U.N.B.'s teaching program is, and has always been, devoted to the effective formation of legal professionals. The 1991-92 calendar includes a statement of educational philosophy that can be traced back to Law School Calendars from as early as 1960, stating the "basic purpose" of the Faculty to be:

[N]ot only to train students to a high level of competence in legal principles and rules and in the techniques of practice, but to create in them an awareness of the law as a liberal profession, and to convey an understanding of the role of law as a vital instrument in a just and efficient ordering of society.

It is expected that this statement will be modernized in the course of a 1992 long-term planning process, which has currently developed the following draft statement of educational purpose:

[The Law Faculty's] educational mission is to provide a dynamic and effective learning experience, respecting both equality and difference, which contributes to the effective formation of legal professionals, including a thorough preparation in basic principles and skills, an academic and critical appreciation of law and its role in society, and an appreciation of social and professional responsibilities associated with legal knowledge and with the practice of law.

The proposed statement does not represent a major break from the past. The four aspects of modernisation are: to advert explicitly to effective pedagogy; to include equality and difference in the educational agenda; to be more explicit about professional and social responsibility; and, to adopt a less instrumentalist and more empirical approach to law in society.

There are two outstanding features of U.N.B.'s approach to legal education. These are its extensive mandatory curriculum centred on effective professional formation, and its long-established commitment to teaching and to contact between students and professors.

U.N.B.'s mandatory curriculum is among the most extensive of any Canadian law faculty. The first year, as is the case at most other faculties, is completely

mandatory. In second and third years, fifteen credit hours are mandatory,²⁸ and another fifteen hours must consist of at least one course from each of five stipulated "clusters."²⁹ The net effect may not be substantially different from the program that students follow elsewhere. As was observed in the Arthurs' Report, notwithstanding extensive cutting back on mandatory curriculum in reforms of the late 1960s, most students pursue a narrow range of possibilities, and most of them "are professional, or at least thought to be professional."³⁰

The advantage of being explicit about mandatory components, for a small law faculty like U.N.B., is that the way is opened for a more complete menu of optional course offerings. Courses such as International Business Transactions, Feminist Legal Theories, Law and Social Reform, Bilingualism and the Law (offered in French), Legal History, and Comparative Law will be available in 1992-93, as will Environmental Law, First Nations Law, the Law of Professional Conduct, and a whole range of other advanced and specialized courses, many of them having to do with sophisticated contracts and the conduct of business. As well, students have opportunities to participate in one of five upper year competitive moots, and to be exposed to skills related to trial advocacy and alternative dispute resolution.

The downside of such an extensive mandatory curriculum, particularly given its somewhat awkward marriage with a pluralistic approach to options within the "clusters," is that student choice is substantially restricted, and students may not, in effect, have adequate opportunity to profit from the menu of optional courses offered. A further downside of the continued pretence of pluralism is that there is no clear progression from second year to third, and there is even some redundancy between first year and upper year courses. In this regard, U.N.B. joins company with other Canadian law faculties.

Former students and recent employers are generally positive about the curriculum at U.N.B., and in particular about its commitment to the "core," or its coverage of "the basics."³¹ Such feedback is typically accompanied by empirical

²⁸These courses are Constitutional Law, Evidence, Practice, Administrative Law and Conflict of Laws.

²⁹The "clusters" are: Business Organization and Regulation, Commercial Law, Property Law, Estates Law, and Perspectives on the Law.

³⁰*Supra*, note 22 at 56.

³¹Most of this evidence is admittedly anecdotal, but it is not insubstantial. In my first year in office as dean, I have travelled extensively, particularly in conjunction with the Law School's Centennial, and have met graduates and others interested in the Law School in Vancouver, Calgary, Toronto, Ottawa, Montreal, Prince Edward Island, Nova Scotia, Newfoundland, and at many locations in New Brunswick. The total of such encounters would now be in excess of 400. The reliability of the feedback is enhanced by the fact that many of these rendez-vous include requests for financial support for the Faculty.

claims of superior preparation for what students are expected to do upon graduation. With that kind of reputation being carried abroad, the challenge in curriculum at U.N.B. is not to completely overhaul it, or to turn away from its admitted commitment to effective professional formation, but to enrich current offerings, to make the overall structure of curriculum more efficient, to develop opportunities for greater research and intellectual exposure, and to be even more effective in pursuing the goal of professional formation.³²

It is recognized at U.N.B. that professional formation includes attending to contemporary intellectual and professional debates, and includes preparing students to deal with contemporary and foreseeable juridical, professional and public policy issues. In particular, it is recognized that legal education must be more effective in attending to gender-related legal issues. In 1992, the Faculty will launch the Mary Louise Lynch Chair in Women and Law. A primary stated purpose of the Lynch Professor is to:

[A]dvance, in her own work and in collaboration with colleagues, the inclusion of gender-related legal issues in the curriculum, pedagogy and practice of the Faculty of Law.

This initiative is a matter of high priority for the Law Faculty, and in this U.N.B. is not alone. Equality issues are currently the preeminent concern facing all Canadian law schools. The Canadian Association of Law Teachers has devoted substantial aspects of its four most recent annual meetings to various issues of equality and difference.³³ The Council of Law Deans and admissions administrators are similarly devoting considerable attention to these issues.

There are several ways in which U.N.B. can develop its curriculum to come to terms with gender and other equality issues. The most obvious is to create focused curricular offerings such as Feminist Legal Theories, or Readings in Law and Feminist Theory, or First Nations Law, which the Faculty has done over the past several years. The more consequential challenge is to incorporate diverse perspectives into existing courses.

³²The Faculty embarked on a comprehensive curriculum review in May of 1990. To date, no firm direction has emerged, which suggests that reforms are likely to be modest, when they come. To date, the focus has been on the first year curriculum, and the general thrust of the debate has been, as at many common law faculties, to try to resolve all of the ideological differences and all of the perceived deficiencies in the law school curriculum within the six credit hours of first year that do not concern Criminal, Property, Torts or Contracts. The result will probably be some amalgam of Legal Process, Jurisprudence and Public Law. The more consequential developments will concern the upper year curriculum, particularly as regards the reconciliation of mandatory and pluralistic approaches, and as regards the progression from first year, to second, to third.

³³See: *Equality in Legal Education: Sharing a Vision...; Creating the Pathways...*, Report of the Special Advisory Committee to C.A.L.T. (June 2, 1991), to appear (1992) Queen's L.J.

The principal challenge in making progress on equality issues is to keep the discourse going, and the failure to do so has been the cause of strife around such initiatives at several Canadian law faculties. U.N.B. has three advantages as it moves forward on the equality file. The first is its small size. The second is that we are just far enough behind on this issue that we may profit from the experience of others. The third, and most consequential, is that the students have a full and constructive head of steam on the issue, and will ensure that the discourse continues.³⁴

Other curriculum issues of concern include the capacity of the Faculty to respond to the bilingual and bicultural character of New Brunswick. It is particularly important that students planning to practice law in New Brunswick have the opportunity to acquire juridical abilities in both English and French. At present, the Law Faculty offers a limited number of courses in French³⁵ However, to offer effective exposure to juridical French, it is desirable for students who have the capacity to do so to spend a semester or a full year at l'Université de Moncton. In addition to its obvious academic merit, such an initiative has great potential to traverse social, professional and political dualities and to contribute to the long-run development of the Province.

It is also desirable, in accord with the general commitment to effective professional formation, to reflect on efforts with respect to professional responsibility and practical skills development. The Faculty has already devoted considerable attention to both of these areas, but there are important respects in which such initiatives could be elaborated upon. It is desirable to coordinate such efforts with bar admission and continuing legal education programs.³⁶

The bottom line on curriculum at U.N.B. is that the basic program is strong, but that it can be leavened and enriched. Part of the challenge lies in planning, and part of it is the development of faculty and student interests over time. A

³⁴An April 3, 1992 document supported by the all members of the Executive of the Law Students Society includes the following:

The U.N.B. Faculty of Law prides itself on its practical legal education. We believe that a course dealing with social justice, equality and the Charter should be part of that education. There should also be more critical analysis of existing course material addressing issues of gender, race, class and other differences. These are issues that are generating change and new directions in the law. Failure to expose students to current issues, and to equip them with the skills to critically with law from different perspectives, is a disservice.

A unanimous Faculty Council resolution of the same day reaffirmed the commitment of the Faculty to develop new courses and, in particular, to develop existing courses to be more reflective of and more sensitive to diverse perspectives.

³⁵In 1992, Droit constitutionnel and Bilingualism and the Law were offered in French. Other recent offerings in French include Practice II.

³⁶On the relationship between law school curriculum and bar admission courses, see: Karl J. Dore, "The Future of Legal Education in New Brunswick" (1988) 4(2) *Solicitor's Journal* 3.

major challenge in curriculum planning is patience, to take account of the limits of a three-year program, restricted resources, a modest and stable faculty corps, and a basic student expectation of effective professional formation. The challenge is to combine a sense of purpose with a measure of sanguinity. At the end of the day, curriculum debates consume far more energy in faculties of law than they warrant in terms of reform output. The most reliable assurances of effective legal education at U.N.B. are its small scale, the extent of professor-student contact, the quality of student interaction, and, above all, intelligent judgments about admissions.

Resources

Limited resources have been a chronic lament of U.N.B.'s Law Faculty throughout its history. In the late 1940s the Provincial Building was patently unsuitable as a law school premises. In 1965, Dean Ryan wrote that physical accommodation at Somerville House was "inadequate."³⁷ In 1982, Dean Veitch was preoccupied with the fact that Ludlow Hall had outgrown its capacity. Indeed, Dean Veitch's general synopsis was bleak, asserting that universities do not recognize the true cost of legal education and that the objective set for the law school administrators is a "somewhat sisyphian goal."³⁸

The most acute of my predecessors' concerns are, happily, not those of an incoming dean in 1991-92. Ludlow Hall is a magnificent facility. Faculty recruitment is a more feasible today than was the case with the woefully uncompetitive salaries of earlier times. The Faculty must still manage with a modest non-salary budget, but Karl Dore, during his deanship, developed and maintained sound financial practices and left no trace of red ink. One factor that gives U.N.B.'s Law Faculty a comparative financial advantage over most Canadian law faculties is that expectations of professors and students have not been inflated by the heady days of the '70s and the '80s. The Faculty, because of its historic modesty of means, is well prepared for the tighter times of the 1990s.

Notwithstanding its traditions of economy, the Law Faculty cannot continue to develop in the ways outlined in this essay without an assured resource envelope. The primary part of that envelope concerns support from the University for those aspects of the program that it has traditionally supported, including a level of funding that will arrest the decline in Library acquisitions, and that will provide for and maintain a critical mass of faculty members. The second element of the Law Faculty's resource envelope for its second century is "external" funding, for the enrichment of core educational and research programs. This will come from two

³⁷*Supra*, note 1 at 175.

³⁸*Supra*, note at 429.

primary sources: an endowment fund established in 1991 by the Law Foundation of New Brunswick;³⁹ and, an endowment established by graduates and friends of the Law School in conjunction with the 1992 Centennial.⁴⁰ These latter initiatives, together with continued support from the University, will ensure that U.N.B.'s Law School has the capacity to develop and to achieve its full potential as a major actor in Canadian legal education.

No discussion of resources and the development of the Law School would be complete without mentioning the Beaverbrook connection. Lord Beaverbrook, who was a student at the Law School in 1898, set out in the 1940s to build the Law School into an institution of national significance. Over more than four decades, he and his successors have built up the Library collection, provided three new homes for the Law School, funded scholarships, and sponsored the Mary Louise Lynch Chair in Women and Law. Without this support, it is debatable whether the Law School would have survived to see its 100th Birthday. It most certainly would not be the vital and significant academic institution it is today.

Conclusion

At the outset of this essay, it was said that the primary themes of U.N.B.'s first century have been a steady sense of purpose, commitment to local education and service, dedication to excellence in legal education, and the continuing development of a culture of scholarship and integration within the University. In its current phase, the Law Faculty has been challenged to build and enrich the Law Library, to develop the faculty corps, to recruit students, and generally to consolidate the academic and pedagogical reputations of the School.

On most of these fronts, the Law School at 100 can claim to have made substantial progress. In the nature of things, the struggle for excellence is never finished. But we do have reason to celebrate, and a lot to look forward to.

³⁹The Law Foundation, with revenues generated by interest from lawyers trust accounts, has been a critical supporter of the Law School through the 1980's, notably for the enhancement and automation of the Law Library, the establishment of a computer lab, and for the development of moot courts and the *Law Journal*. The Foundation also provides generous support for scholarships and has, happily, set aside a separate endowment fund for scholarships at U.N.B. and Moncton.

The prospect for the Law Foundation Endowment is not as promising in 1992 as it was in 1991 when the fund was established. Interest rates have declined significantly, as has the economy. The intention when the endowment was created was for the initial capital amount of \$300,000 to be increased by contributions of at least \$100,000 per year. Due to substantial reductions in Foundation revenues, no contribution will be made in 1992.

⁴⁰The Heritage Campaign identifies six projects, and has a goal of at least \$1,000,000. The projects are: (i) an endowment for the Law Library; (ii) support for scholarships and bursaries; (iii) the *Law Journal*; (iv) the moot court program; (v) a visiting practitioners program; and, (vi) the Ivan Rand Lecture Series.