

# RAMBLING RECOLLECTIONS OF THE LAW SCHOOL

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Some twenty of us enrolled at the Law School in Saint John in the Fall of 1946. Our class was joined the next year by a few others who had taken their first year in Fredericton under Professor Joseph Sears or in other law schools. So, by the time our group became the class of 1949, it was the largest by a considerable margin, and as well the largest single group to be admitted to the New Brunswick Bar up to that time. The majority were War Veterans, who seemed very mature to me at the ripe old age of 20, but in fact they were generally only a few years older. Of note was that there were two women students, who were joined by three more the following year, which must also have established a record. The next two years' classes, though smaller, were also large for the times, so there were 56 students in the school in 1948-49, the largest number it would ever reach in Saint John.

The school was then located in the old Provincial Building at the corner of Canterbury and Princess Street. The Registrar's Office was across the street at the Law Offices of Gilbert and McGloan. Adrian Gilbert, K.C. was the Registrar, but even then the work was largely in the hands of Miss Mary Louise Lynch who succeeded to the position of Registrar a few years later. Miss Lynch was effectively the liaison between the students and the Faculty. Not part of the school but certainly part of our lives was the coffee shop around the corner on Prince William Street where the students used to gather after classes to talk about law and other things.

The Faculty consisted of members of the Bench and the practising Bar. There was only one full time Professor, Judge H.O. McInerney who had then occupied that position for 23 years, and who was also Judge of Probate. A kindly white-haired gentleman, he taught no less than three courses in first year (Torts, Real Property and Contracts) and one each in second (Constitutional Law) and third (Conflicts). In fact, second and third year were taught together, so it lightened his burden somewhat, but carrying five major courses was, by any standard, an incredibly heavy load. He nonetheless tried manfully to keep up, supplementing the notes he had made over the years with frequent references to the Law Quarterly Review and the Canadian Bar Review.

Giving some credibility to the Law School was that several members of the Faculty were graduates of two of the major law schools in the English speaking world. Adrian Gilbert, K.C. and A.N. Carter, K.C. had both attended Oxford as Rhodes Scholars, and the new Dean, Mr. Justice W.H. Harrison, had attended Harvard, as had Mr. Lester G. Hoar who also taught in my second year there on his return from Harvard. In those days, it was probably considered at least as important that several members of the Faculty, like Mr. Gilbert and Mr. Carter,

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were distinguished practitioners who were known throughout Canada through their work with the Canadian Bar Association, of which the former was at one time Treasurer and the latter President.

For me, the Harvard group was the more helpful. Most of the Faculty relied on formal lectures which I dutifully transcribed, but the Harvard group used the case system and made me think. Mr. Justice Harrison was a gifted teacher, in some respects one of the best I have had anywhere. He taught Equity and Trusts. He would put questions to the students, fully dissecting the assigned cases and hammer home the principles they stood for at the end. But the practical element was never absent. I remember one class when he was vainly seeking to elicit the result of a case only to be met by a regurgitation of the applicable principle until finally he made it clear what he was seeking by asking "Who got the money?" While the content of his courses was not extensive (by and large, he kept within the confines of the casebooks by Smith, and Smith and Read), he conveyed a strong sense of the law which remained with me for many years. Lester Hoar, fresh from Harvard, was very effective teaching Labour Law, and John Palmer, though he had never been to Harvard, also used the case system with profit in commercial law.

Many of the courses, it must be said, lacked organization and depth, and in some courses, lectures were often cancelled. The lecturers, after all, had to tend to their first priority, the practice of law. I am sure the same sort of thing prevailed in other parts of Canada. With a few notable exceptions, Canadian law schools were then basically trade schools. There were few full time law teachers anywhere in Canada. There were very few casebooks, and Canadian text books too were rare; Falconbridge on Conflicts and MacLaren on Bills and Notes were among the few I remember. Essentially, what we learned was "black letter" law. No wonder one so often heard that the law in the books was entirely different from the law in practice. Still, some of the lecturers were able to instill life in their lectures from daily contact with practice. Paul (now Mr. Justice) Barry, who taught Criminal Law, was a case in point. When he chose to discuss one of his current cases, the loss of course continuity was certainly made up by the excitement he generated.

One addition to the Faculty was made in my third year that was to prove of enormous significance to the Law School. William F. Ryan became a lecturer in first year Contract, a course he was to continue until his departure from the Law School in 1971. I hardly knew Bill at the time, and our intellectual paths only touched on one occasion. The New Brunswick Bar had offered a prize for a legal essay that year and he sat on the Committee which awarded me the prize. I later learned from Mary Lou Lynch how impressed Bill was with my effort. It was only years later, after I knew the full measure of Bill's mind, that I realized what a tremendous compliment this was.

The facilities left much to be desired. There was only one lecture hall, and the library, since it really was that of the Saint John Law Society, was oriented to the practitioner, and not extensive. Nonetheless, we learned by trial and error to look up and parse cases and through them learn to think like lawyers.

Despite the lack of facilities, student life was very active. The combination of veterans and students just out of undergraduate studies seems to have produced just the right chemistry. There were debating, moot court, social, athletic and press committees, whose activities were coordinated by the Law Students' Society.

The students had for some years participated in an occasional intercollegiate debate. This was continued but, as well, in 1947 the school became a full member of the Maritime Intercollegiate Debating League, and with the small numbers at the school, this meant that many of us participated in this activity. Moot courts had been conducted on an occasional basis, but I was somehow able to persuade my colleagues that everyone should participate in this activity either as judge or counsel. There being no facilities, the athletic committee was largely limited to organizing interclass bowling matches, but it also organized sleigh rides and skiing, and even turned to bridge.

The major job of the social committee was to organize the Law School Ball, held in late October each year. It was a grand affair at the Admiral Beatty, the boys in their rented tuxes and the girls in long formal gowns dancing to the Big Band music of Bruce Holder. I have very happy memories of this event. Quite the best thing that ever happened to me was meeting my wife at my first Law Ball in October 1946. At one of these, I remember, Lord Beaverbrook attended. Not only did he seem to enjoy himself immensely, but he made sure the punch bowl in the students' suite never ran dry. The social committee also organized periodic parties at the law school when the furniture was moved out of the classroom so we could dance to the sounds of a record player.

In addition to expanding existing student activities, our group originated other things. The school crest, which was used until a few years ago when another was adopted, dates from that time. It was designed by one of the students, Neil Price. But the most important new development was the establishment of the Law Journal in 1947 on the initiative of Eric Teed. It was a close vote - by a majority of one I recollect - but it was a wise one. The Journal was originally called "Oyez-Oyez," mimicking I think Osgoode Hall's "Obiter Dicta." Originally planned as containing partially student news, partially articles, it was published twice yearly. The early editions are a valuable source of the history of the Law School, not only at the time but, because of Judge McInerney's article, for earlier days.

I should also mention two personages, Denny McGowan, the caretaker, and Herman Lordly, the librarian. Stories abound about the former and I shall not add to them except to say that I remember the excitement of many of us listening to the Yankee-Brooklyn Dodgers World Series in his apartment on the top floor when Gionfriddo made that marvelous catch. Lordly was not a lawyer but he liked lawyers and collected and wrote humorous poems about them, some of which appear in the early volumes of the Journal.

The school was then very much the Saint John Law School, though technically part of U.N.B. The first time I was "Up the Hill" was to get my degree in 1949.

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My next real contact with the Law School was when I came on as a professor in 1956. Much had changed in the interim. The Chancellor, Lord Beaverbrook, had not forgotten the small school he had briefly attended and in 1951 he provided it with a new home, the Starr House, which was renamed Beaverbrook House, and a new library, compiled, I gather almost overnight, by George MacAllister who, along with Bill Ryan, had been named full time professors that year. Both were highly qualified academics. In 1955, Mr. Justice Harrison died, and not long afterwards, Bill was named to succeed him. I think his first decision as Dean was to hire me. I, of course, think it was a great decision! It was for me. I stayed on for twelve years in what was to prove to be the most productive scholarly period of my life. In some ways, I think Bill got two for the price of one. Bill being a bachelor, we invariably turned to my wife for assistance on social occasions, whether for visitors to the Law School, parties for the graduates, or whatever. The Law School was central to our lives.

I had returned to New Brunswick to work for Mr. K.C. Irving the year before joining the Faculty. From that time, Bill and I became close friends. We simply had a great deal in common and shared a very similar view of law and scholarship. In fact, one of the strong incentives in my accepting Bill's offer was my attendance at a lecture he gave some months earlier at the mid-winter meeting of the New Brunswick Branch of the Canadian Bar Association on "Incomplete Contracts in Recent Cases." The logic of his arguments, and the clarity and power of his presentation imbued as it was his own deep (one is almost tempted to say passionate) interest in the law were compelling. That lecture convinced me that it was possible to develop legal education of first quality in New Brunswick. His students over the years will attest to the same high quality I discovered.

I did not know George MacAllister before I joined the Law School, but student reports attest to the fact that he, too, was also a very fine teacher. His was an entirely different approach. I called it, and I did not mean this pejoratively, the method of confusion. I gather that for a good part of the year, his lectures on tort (inhabited by such creatures as a vicious mad dog who never quite grasped the distinction between licensees, invitees and trespassers), raised all sorts of issues, but resolved few of them. That, however, came in a great revelation late in the year. The students were very fond of him. In the critically important area of Faculty-student relations, he was always a great asset. No matter how modest a student might be, George seemed to know all about him or her.

Much of the planning and administration fell to Bill as Dean, but in this I was always fully involved. Both of us were deeply committed to quality and were prepared to accept nothing less. The viability of the Law School was really in doubt in the early days, but our commitment to excellence never flagged, and that excellence, in our view, had to be measured by national standards. My view is that if one does not try to be better than one can be, one cannot be as good as

one should be. I recall saying to Bill one dark day that we had to fly high or not fly at all. He fully agreed. George shared our commitment to quality, although he was more inclined to view the standards of the School in terms of the needs of the local Bar than I was.

Having been hired in September, the task of preparing for three courses (seven hours a week) was no easy one. In those days, there were few casebooks, and sometimes one had to start with a blank piece of paper. This was at a time when Canadian law schools were compiling syllabuses (or outlines as we called them). There was a wide practice of exchanging syllabuses among the law teachers from all over Canada, of whom there were about sixty (which marked a substantial recent growth). The relations between law teachers were fostered by the Canadian Association of Law Teachers founded in 1951 on the initiative of Frank Scott. So we all knew each other. These syllabuses in time developed into casebooks. Some of them, in the more static subjects, continued for a long time. I adapted Bill Ryan's syllabus on Real Property which was in use at the Law School for many years, and one of my own syllabuses formed the basis of a casebook prepared by one of my colleagues in another school.

There were certainly very fine students when I started teaching at the Law School. These included the present Chief Justice Guy Richard of the Queen's Bench Division. Of his ten classmates, no less than three were awarded overseas scholarships, Daniel Hurley and Robert Webster (Beaverbrook overseas scholarships), and Joseph (now Mr. Justice) Daigle (France-Acadie). During my time at the Law School, both in Saint John and at Somerville House, it was a rare year (and during that period the graduating classes seldom exceeded ten except during the last couple of years) when our students did not gain at least one (one year there were four) prestigious scholarships for postgraduate studies. Per capita, we must have had by far the best record in Canada. In a period of four years, these included three Rhodes Scholars, David Cuthbertson and Alfred (now Mr. Justice) Landry (for New Brunswick) and William Rowe (for Newfoundland). They went on to such schools as Oxford and Cambridge, Yale and Harvard and Columbia, London, Paris, Michigan, Duke, Southern Methodist, McGill and Osgoode. Several returned to the Law School to teach for a time - Daniel Hurley, Eugene Mockler, Alan Reid, Basil Stapleton, Karl Dore and Richard Bird.

Despite the efforts by all concerned, the School found it unable to attract many students in Saint John. Only five students entered first year in 1958. Dr. Sears would get a number in Fredericton who would come to Saint John in their second year. He must have been doing something right because he sent us students of the caliber of Keith Allen and Eugene Mockler. It had for several years been debated whether the School should move to Fredericton and again Lord Beaverbrook precipitated the event when he wrote President Colin Mackay, offering his Fredericton home, Somerville House, and saying that if the School was successful, he would build. Dr. Mackay, who was throughout a great friend of the Law School, took up the offer. So we moved to Fredericton in 1959. In addition to Joseph Sears, Dan Hurley joined us, an altogether excellent colleague and a favourite of the students during his long period as professor and Associate Dean.

Alan (later Dean) Sinclair also joined the Faculty in Fredericton and soon acquired a reputation for the clarity of his teaching.

The move to Fredericton opened up all the advantages of a university setting. Thus I would ask Jack Iwanicki of the Philosophy Department to come to speak to the Jurisprudence class on Bentham on whom he was an expert. Or again, Father R. O'Brien Waugh of St. Thomas would come to speak on natural law. We reciprocated by helping other Faculties. Generally, we soon became involved in all aspects of university life, academic, administrative and social.

A matter of serious concern when we first moved to Fredericton was not only to attract more students, but to continue to attract first rate students. Lady Dunn had shortly before the move decided to offer seven prestigious Sir James Dunn Scholarships to Dalhousie, and we feared this would siphon off many of those we would expect to get. Fortunately, Lady Dunn generously offered us similar scholarships. The school year was well under way, but with a bit of scrambling, two were awarded in 1959, to Eugene McGinley and Ian Whitcomb. The scholarship committee was most impressive. It included Mr. Justice Ivan Rand (then Dean at the University of Western Ontario) as Chairman, Chief Justice John B. McNair, Gordon Fairweather (then Attorney General), K.C. Irving, Bill Ryan, with myself as Secretary. As Secretary, I did the detailed work and travelled to the various universities to recruit. We did very well. The scholarships were later taken over by the Beaverbrook Foundation and later by the University and renamed the Beaverbrook Scholarships. They were originally confined to men, but as soon as we got full control, we changed that to include women.

Student life appears to have been happy, but with the small numbers of students, it was no place for loiterers. By now, most of us used some variation of the case method, and it was a lucky student who escaped being confronted with a question daily in at least one class. We still had a number of outside lecturers, but they, too, became increasingly demanding.

One of the student activities with which I was much involved was the Law Journal, of which I was Faculty Advisor during most of my period at the Law School. It had even before my arrival gradually been moving away from news items to becoming solely a "learned journal." I strongly encouraged that. We were able to get increasingly good articles and changed the format on several occasions to make it more attractive. Quality material was sometimes hard to find. The curious will note that it was not published one year. That year, there was one article and a few students' notes, and if pressed I could have supplied a "pot boiler;" I was always scribbling in those days. The article, which had been prepared by a good and supportive practitioner, would have required a lot of reworking, involving considerable diplomacy. I went down to see the Dean and we again went into the philosophy that we had to fly high or ---. We did not publish that year.

Much of the material for the Law Journal was a product of lectures given at the mid-winter meetings of the New Brunswick Branch of the Canadian Bar As-

sociation. I have mentioned the meeting where I first heard Bill Ryan lecture in 1956. The year before, there had been a similar meeting sponsored by the Barristers Society and the Saint John Law Society, as well as the Canadian Bar, and they continued thereafter as Canadian Bar functions. These meetings probably mark the real beginnings of continuing legal education in New Brunswick. There were always a series of panels by the practitioners. At an early meeting, Bill Ryan organized the meeting and arranged for a series of lectures on a more academic level. This became a regular feature of the program for many years. Usually two (sometimes three) of us, one of the more academic-minded members of the Bar, and a member of some other Law Faculty were invited. The meetings moved annually from Saint John to Fredericton, to Moncton. It took some organizational skills as I found when I organized one of the last meetings following this format in 1968 and my wife organized the social programme. We managed to have fun too. The dance featuring the St. Thomas Thomies in the one I organized was the best part of it for me. I attended one of these meetings some years later, but by that time the lawyers had become deadly serious. It was all work - no more dancing; the spouses didn't even attend. This was a reaction, I think, to some years when there was too much fun. I regretted the old days.

The Law School not only contributed to legal education. It was - as I always believed it should be - a source of legal expertise for the province, and indeed the country, on issues that practitioners could not comfortably handle. From the time we moved to Fredericton, I seemed to be forever consulted about no end of things. My first big assignment was a study for the Atlantic Premiers of the constitutional issues relating to offshore resources (1959), followed by appearances in the Supreme Court of Canada. These had been initiated by Gordon Fairweather who, with me, was a member of the class of '49. These were followed by stints with federal Royal Commissions and many other consultations at both levels of government. My colleagues also acted in a similar consultative capacity and increasingly so in later years.

These "outside" activities in time absorbed most of us on a permanent basis. Bill Ryan went on to join the original Law Reform Commission of Canada in the early 1970's before being named to the Federal Court of Appeal. The Commission was to have as one of its members a former New Brunswick Faculty member for over a dozen years. I succeeded Bill in 1974 (an easy succession since as Attorney General of Canada (Research and Planning) one of my responsibilities had been to maintain liaison with the Commission), and Alan Reid followed me a few years after I left in 1979. George MacAllister, while Dean, was one of the Premier's senior advisers before becoming Ombudsman. And Alan Sinclair left to become a University President.

The student population grew slowly but steadily after the move to Somerville House and during the 1965-66 term, it surpassed the previous record (in 1948-49) with 62 students, 27 in first year. From then on, enrollment took several solid jumps and from that time we never looked back. Many of the students of those years went on to distinguished careers, not only in New Brunswick but in other provinces and at the national level.

The success Lord Beaverbrook had sought had come to fruition, and his Foundation honoured his promise. Ludlow Hall was built. I never served in the new Law Building and could not attend the formal opening in 1968, but I hasten to add that I was at the first formal event in the new Law Building - when the Faculty gathered to wish my wife and me well when we left for Edmonton where I had become Dean of Law at the University of Alberta. Since this decision had taken place in the summer, the students did not participate. Shortly afterwards, however, a delegation of them came to our home and presented us with two lovely keep sakes. I cherish them still.