

Legal Education in Manitoba: 1913-1950*

E. K. WILLIAMS

Winnipeg

Let me now turn to the always debatable and difficult question of curriculum. The Canadian Bar Association, the Conference of Governing Bodies of the Legal Profession in Canada, and governing bodies and staffs of the various law schools have been giving earnest consideration to this matter for many years. At the outset we are met with the fact that the systems of legal education in the various provinces differ considerably. In Manitoba, with the dual system and a four-year course, our curriculum must be one that in our opinion gives the most satisfactory results.

At the 1919 meeting of the Canadian Bar Association it was decided to set up a special sub-committee to prepare and submit a standard curriculum which might be recommended for adoption by the law schools in the common-law provinces. This sub-committee made its report to the 1920 meeting and, with a few amendments, the report was, after debate, adopted for recommendation. The report and the standard curriculum have been printed, with notes by Dr. Lee, the chairman of the Committee, who, describing how the Committee had worked and what it had found out, said:²³

With regard to the course of procedure of the Sub-Committee it was felt that its task would not be to frame a rigid curriculum and to recommend it for universal acceptance, but to see if an agreement could not be arrived at as to the subjects which could most properly be studied in the first, the second, and the third year of the course. If this method of procedure proved successful, the result would be to suggest a skeleton or framework of legal study which it was thought might prove generally acceptable. As regards some of the subjects proper to be included in the curriculum, there might be difference of opinion as to the year to which they should be assigned. In regard to this each law school should feel itself free to adopt any course it might think best.

*Continued from the August-September issue (1950), 28 Can. Bar Rev. 759.

²³ 5 Y.B. 250, at p. 252.

In 1921 Manitoba adopted the standard curriculum with the exception of the subjects of "Shipping-and-or-Railway Law" in the Third Year. Since then there have been some changes, mostly readjustments, some made necessary by changing the course from a three-year to a four-year course.

The present curriculum, which may be compared with the "standard curriculum", follows:

First Year:

1. Contracts
2. Torts I
3. Real Property I
4. Personal Property I
5. Criminal Law I and Criminal Procedure I
6. Practice and Procedure (Civil) I
7. History of Law

Second Year:

1. Equity I
2. Wills, Probate and Administration
3. Personal Property II (including Sale of Goods)
4. Bills and Notes
5. Agency and Partnership
6. Practice and Procedure (Civil) II
7. Real Property II (including Mortgages and Landlord and Tenant)
8. Torts II

Third Year:

1. Equity II
2. Corporations
3. Canadian Constitutional Law
4. Evidence
5. Practice and Procedure (Civil) III
6. Domestic Relations
7. Drafting and Conveyancing
8. International Law

Fourth Year:

1. Practice and Procedure (Civil) IV, Part I
2. Conflict of Laws
3. Jurisprudence
4. Criminal Law II and Criminal Procedure II
5. Taxation
6. Practice and Procedure (Civil) IV, Part II
7. Legislation

8. Labour-Management Relations
9. Accounting
10. Thesis.

This curriculum, however, is the subject of continuous study by the Board and teaching staff. It may be said that we do not favour a rigid curriculum. Now that a post-graduate course in law has been instituted, the School curriculum may require some alteration.

Ever since 1915 we had been desirous of making arrangements by which a post-graduate course leading to a further degree in law might be established. The members of the profession were also anxious that this should be done. In 1930 strong recommendations to that effect were made by the Bar and a committee was set up by members of the Junior Bar to study the matter in conjunction with the Board.

This was just at the onset of the depression of the thirties and it was found impossible, for financial reasons, to establish such a course. During the depression the salaried members of the staff willingly submitted to reductions and the other members of the profession who were lecturing to the School volunteered to continue without any remuneration. The financial situation had not improved sufficiently to permit the course to be instituted when World War II began and the matter had to stand in abeyance until after the war.

As soon as possible it was again taken up and, in co-operation with the University, such a course was instituted in 1949 and the first lecture were given in October of that year. Seven barristers have completed the first year of the course, which they are continuing, and it is anticipated that at least the same number will enter the first year of the course in September next.

The present regulations of the University provide that to be eligible for enrolment an applicant must possess the degree of LL.B. from the University of Manitoba, or must hold an equivalent degree from another approved institution. If the applicant is accepted he will be required to pursue a course of studies in three subjects selected from the following list: (1) Comparative Law, (2) Jurisprudence, (3) Evolution of Law, (4) International Law, (5) Taxation, (6) Insurance, (7) Constitutional Law, and (8) Corporations. At least one subject must be selected from (1), (2), (3) and (4).

The courses consist of lectures and class work carried on in the evenings and extending over a period of at least two academic sessions of twenty-seven weeks each. At the end of this time the

student is required to pass a written examination in each of the three subjects of his programme, and, at the discretion of his instructors, he may be required also to take an oral examination in each, or all, of his subjects. The student is also required to prepare and submit a thesis on an approved topic related to his course of studies. Instruction in this course is given by members of the teaching staff of the School, appointed by the University on the recommendation of the Board.

It is, I believe, generally conceded that curricula and methods of instruction must be considered in relation to the examinations, which are intended to ascertain if possible to what extent the student has profited by his instruction. It is also, I think a matter of agreement that examinations of some kind are necessary, but there is no general agreement on what kind of examination is best. Much has been written on this subject. It has received and is receiving anxious consideration in Manitoba. It will not, I imagine, be seriously disputed that when a student graduates from the School, he has only completed one phase of his legal education and as he enters into practice he is entering on another phase that will last the rest of his life.

There are some conclusions at which we have tentatively arrived. We feel that an examination should not be a mere memory test. Too many examinations put a premium on the ability to memorize. There is still much truth in the often repeated statement that no lawyer can be expected to know all the law but that a good lawyer should know where to find the law. We are therefore experimenting with a plan by which the examinations in certain subjects are being written with some of the books available to the student. We hope that with improved accomodation some examinations will be written in the library with liberty to the student to consult any volume he wishes. In other subjects the students are advised about a month before examination that two or more certain questions will be on the paper and that a very high degree of accuracy of statement in as condensed a form as possible will be expected in the answers to these questions.

These and other experiments are being tried. At present all that can be said is that the results are encouraging.

This brings me to a consideration of our library facilities. I agree with Judge Frank²⁴ that the library is not the "heart" of a law school. Surely the heart of any school, if the term is appropriate at all, is to be found in the group of teachers and taught. But a good library is undoubtedly an essential part of the teach-

²⁴ *Op. cit.*, p. 227.

ing equipment of a law school. Here the American schools have an advantage over us in Canada. If we were not forbidden to covet, we all would, I know, envy them their magnificent buildings and wonderful libraries. The library at Harvard is undoubtedly the finest law library in the world.

In Manitoba we have no law school building. During the first few years lectures were given in the Y.M.C.A. building; during the first World War some space was made available in the University buildings. Later, with the co-operation of the Provincial Government, the School moved into the present — the “new” — Court House. Later it transferred to one of the former court houses, where we were given space which provided lecture halls, reasonably good library accommodation and common rooms for staff and students. In September next we shall move back into the “new” Court House, where we shall have excellent accommodation including most satisfactory library rooms.

The School is financed only in part by the fees paid by the students; its yearly deficit is paid by the University and the Society, who contribute equally. In such circumstances building up a library, which the Board set out to do as far back as 1916, has been a slow process. In the last few years substantial progress has been made and at present the School has a well-selected library of over 15,000 volumes. This does not count a substantial number of textbooks which have over the years been replaced by new editions — a wastage that every library must reckon with. Each year substantial additions are being made and we are satisfied with our progress in this respect.

The Society has assisted the School greatly by allowing the students to make reasonable use of its Great Library for their studies. This will not be so necessary when we get into our new quarters. Of course many of the students do a certain amount of library work for their principals and this is a decided advantage to the students.

Many years ago I started to compile a bibliography of the books and articles on legal education and to read as much as possible of what was written. The bibliography attained large proportions and the works to be read continued to come out in ever-increasing numbers. At times while reading I felt as if I was in a land of fantasy.

All educational institutions, and the law schools particularly, are constantly reminded that it is their duty to train men for leadership. I think the Canadian law schools have never been unmindful of that responsibility. Not every law student has a capa-

city for leadership — that is not given to all — but perhaps the best test of the effectiveness of the work of any law school in that field is to see what its graduates have done. I am not suggesting the School is entitled to all, or even a lion's share, of the credit. Much must go to the other educational institutions which have shared in training the graduate, and full consideration must be given to the natural qualifications of the man himself. But I feel satisfied that the law school in which the student obtained his last formal education at a time when he was emerging from adolescence into manhood can safely claim to have done its share.

I therefore content myself with remarking that the graduates of the Manitoba Law School have established a record second to none by what they have achieved in the legal, political, social, business and economic life not only of Manitoba, but of Canada. Over the years we find amongst them a Provincial Premier, a Dominion Cabinet Minister, many Provincial Cabinet Ministers, members of the Dominion Parliament, and of the Provincial Legislature, members of School Boards and Municipal Councils, Deputy Ministers at Ottawa and Winnipeg, and men holding important positions under various governments or in many business and financial undertakings, and all playing an important part in all charitable and social undertakings for the common weal.

In 1924 Jules Prud'homme, K.C., Corporation Counsel to the City of Winnipeg, contributed an article to the *Canadian Bar Review on Legal Aid Societies*,²⁵ which was most favourably received. The question of establishing such a society in Manitoba was discussed from time to time but it was not until 1934 that an article by A. Wallace Johnson, a graduate of, and at that time a lecturer to, the School, in the *Manitoba Bar News* (March 1934) resulted in definite action being taken. A committee under the joint chairmanship of R. B. MacInnes, K.C., presently a lecturer to the School, and C. K. Guild, K.C., then a lecturer to the School, made a comprehensive report as a result of which in 1938 provision was made for free legal aid in civil matters to needy persons.

Two committees were set up by the Law Society — an Advisory Committee which sits weekly to interview applicants for assistance, and a Certificate Issuing Committee — and provision was made in the Rules of Court to assist in carrying out the plan. The Advisory Committee has always been composed of graduates of the School and in June 1938 the Board of Trustees recommended that the senior students should make a practice of attending

²⁵ (1924), 2 *Can. Bar Rev.* 181.

the meetings of this Committee whenever possible. Many of them did so, and today some of those same students, now in practice, are members of the Committee. It not infrequently happened that some of the cases approved by the Committees were assigned to senior students, who acquitted themselves creditably and in this way gained additional valuable experience. This practice is still being followed.

The latest report (to March 31st, 1950) shows that 1,999 persons have been interviewed since the formation of the committees and that 613 certificates have been issued. The plan was so successful in civil matters that last year, after careful consideration, another committee was set up to provide for legal services to indigent persons in criminal matters. The same procedure is being followed as in civil matters, and, while it is still in the experimental stages, senior students are doing useful work in this field.

The number of practising lawyers in Manitoba as at December 31st, 1932, was 603; as at December 31st, 1949, it was 536. One of the reasons for this drop is that many of our graduates have gone into business or other activities, or are practising their profession in other provinces or in the United States. We have kept in close touch with most, if not all, of these and find that they are most successful in their chosen fields. The School is proud of its graduates and with good reason.

Before the termination of hostilities in the last war the School, in consultation with the Society, had completed its plans to give refresher courses to returning barristers and solicitors who might desire them, and to cope with the problems of the education of the students whose courses had been interrupted by the war and of the large number of returned men whom it was known would enter the School.

Refresher courses were not required on the scale we anticipated. Some of the returned lawyers attended lectures in some subjects, the hours of instruction being arranged to suit their convenience as much as possible. The Manitoba Bar Association and the Manitoba Section of the Canadian Bar Association, in co-operation with the School, arranged several series of special lectures, which were made available in mimeographed form, and the School and Society also made available such of the lectures given in other provinces as were published.

After the war there was a heavy enrolment in the School. Following World War I concessions had been made to returned men in the way of shortened courses and reduction of time of service under articles. It was the later view of the men who com-

pleted their legal education at that time that it would have made things much easier for them in their practices if they had been required to complete the full course. In the light of their experience it was decided that all returned men should be required to complete the full four years of instruction, although the Society did shorten the term of service under articles. Many of the returned men had been on active service for several years and were naturally anxious to complete their legal education as soon as possible.

In order to assist them to do this and to obtain the advantage of the reduction in the term of service, it was decided that each summer the full third-year course would be offered to every student completing his Second Year who had seen active service. This meant that on completion of the Second Year in April there would be a break of about ten days, after which the student would commence the third-year course. The third-year course would be completed in September and the student could enter on the fourth-year course in October. The experiment has proved satisfactory and successful. It could not have been done without the self-sacrificing help of the members of the teaching staff who lectured to the Third Year. I was not one of them.

The first of these special summer courses was given in 1945-46; the last is being offered this year and is being taken by thirty-five veterans.

Because of the large number of students entering the School in the last few years it has not always been possible for some of them to get into offices at once. To meet this difficulty a "practice class" was formed under the direction of Mr. David Golden, B.A., LL.B., a Hong Kong veteran, a gold medallist of the School, and a Manitoba Rhodes Scholar. The members of this class do work similar to what they would do in an office. This has solved the problem and we have found that most of the students in the practice class are before long placed in an office.

The students of the School have never published a magazine, although at times such an undertaking has been discussed. Two years ago the Board arranged with the Manitoba Bar Association that four or more pages of the Manitoba Bar News — the official publication of that Association — now in its twenty-second year, should be made available to the students. The Law School agreed to pay for all space that might be used. It was suggested to the students that they set up an editorial board and they were advised that there would be no editing of their contributions by Board or staff. They were also advised that criticisms and sug-

gestions would be welcomed and given careful consideration. It was thought that in such a way it would be possible to find out the student's views on legal education, although the relations between the student body, the staff and the Board were sufficiently close to enable us to know, rather well, what those views were.

So far there has been one contribution. This does not however indicate inertia in the student body, which has always been a virile one. When the editors of the Canadian Bar Review, in 1948, made the suggestion that students in the final year of the School should, under the general supervision of the faculty, prepare digests of articles in legal periodicals for publication in the Review, the students eagerly responded. In fact there was considerable competition for this work. The first of the digests appeared in 1949 in the January number²⁶ and the Dean in announcing the arrangement said:

Hitherto each student in the fourth and final year of the course has been required to submit a satisfactory thesis on a subject approved by the faculty. For the current year the students are being permitted to choose between submitting a thesis, as in the past, or reviewing a specified number of legal articles. The articles will be chosen by the students but the reviews will be read and checked for accuracy by the faculty. The material published will be almost wholly in the nature of a summary. The students have undertaken this responsibility realizing that they will be the chief beneficiaries, but with the hope also that they can be of some service to readers of the Review.

The arrangement is continuing, the students have benefited, and I am sure those who have read their summaries will agree that they have done good work.

I have referred to a land of fantasy into which it seems some writers on legal education invite us to enter. In his chapter XVII, "Training for Trial Judges", Judge Frank, who makes it clear that his suggestion is not limited to trial judges, writes:²⁷

To put it bluntly, I urge that each prospective judge should undergo something like a psycho-analysis. I say 'something like' because the theory and techniques of the art of psycho-analysis are being constantly revised, and some adequate, less prolonged and complicated, substitute may soon appear. I do not believe that, through such self-study or otherwise, any judge will become aware of all his prejudices or always able to control those of which he is aware. But such self-knowledge, I think, can be of immense help in reducing the consequences of judicial bias.

From his following elaboration of these ideas, it seems that after his appointment a judge should "be required periodically to consult government psychiatrists".

²⁶ (1949), 27 Can. Bar Rev. 106.

²⁷ *Op. cit.*, p. 250.

If there is merit in Judge Frank's proposal, should it not be extended to all teachers of law, to all lawyers, from whom the judges are chosen, and to all prospective lawyers? And why should it be confined to judges, and teachers of law, and lawyers and prospective lawyers? Why should it not be applied as universally as possible, at least to all professions? At what stage should it begin and how often is "periodically"? And why should the consultation be with "government" psychiatrists? What would happen if there were a change of government and a change of "government" psychiatrists? What power to control the thoughts of people this would place in the hands of the government of the day.

With all respect to those who are working in the field of psycho-analysis, it is true that their theories and techniques are being constantly revised. I do not know what Judge Frank means by "something like a psycho-analysis". I am aware that similar proposals have been made by others and also that it is urged by some that teachers of law should have a knowledge of, should apply, and should teach, psychology.

In certain philosophical circles it seems to have become fashionable to decry common-sense as being merely the sum of the opinions of the "common" or "uninstructed" man. In other fields of thought there is a recognition that in some sciences there has been a transition from common sense. Bertrand Russell says: "Modern physics is further from common sense than the physics of the nineteenth century".²⁸ His evaluation of psycho-analysis well repays study; he is not one who depreciates common-sense, and he is fully aware that the methods which must be used "in the law courts" differ somewhat from those used in science.

I had thought we had in our deliberations given consideration to every factor requiring consideration in studying legal education, but I must confess that we had not pursued the subject as a problem in psycho-analysis. It will be an interesting topic to put on the agenda for our next meeting, but I feel almost certain that — for the present at least — we shall be inclined to rely on such common-sense as we possess.

There is much more on legal education in Judge Frank's book — and I refer to it so frequently because it is the latest work — with which I should like to deal. I can, however, say little more about it in this article, which is primarily the history of the Manitoba Law School with an explanation of what we in Manitoba have tried to do, and our reasons for doing it.

²⁸ Russell, *Human Knowledge: Its Scope and Limits* (1948).

For some years I have had the intention of writing the story of the School, as I am now the only one who has been continuously connected with it since it came into existence. Much has happened in thirty-seven years and some things have already been forgotten. My original idea was to collect my material but not to publish it until I was no longer connected with the School. I should like to complete the story, which will naturally contain many things of merely local interest, for our fortieth anniversary. Because of the Survey now being made I thought this account might be of some present interest.

Let me emphasize that this is primarily an account of what we have done or tried to do in Manitoba. I realize that there are many other views, and many conflicting views, on every topic I have dealt with. The system we have adopted in Manitoba is the one we consider most satisfactory for us, having regard to our local conditions. There has, of necessity, had to be some criticism of other systems in explaining why we have adopted one method or the other, but I hope it has been criticism without asperity.

May I be permitted to say that I think there is too much acrimony on the part of some writers on legal subjects, particularly those who write on legal education? Judge Frank refers²⁹ to Mr. Justice Holmes' recommendation "that some high-flown, unrealistic, legal notions be 'washed in cynical acid' ". In his Introduction he says:³⁰

I have dwelt on the importance of avoiding, as far as possible, prejudice and dogmatism; but doubtless here and there I have been swayed by my own prejudices and dogmas. I urge the reader to be on the watch for my hidden biases. As I have discussed a large and difficult subject, of course I have made blunders. I shall be grateful to those who point them out, for, if there is ever another edition of this book, I shall try to correct them.

Notwithstanding this excellent introduction, Judge Frank permits himself to write:³¹

For contemporary law-school teaching got its basic mood at Harvard, some seventy years ago, from a brilliant neurotic, Christopher Columbus Langdell.

With great respect I submit that this is not the spirit in which to approach any serious and controversial subject. Whether we accept or reject, in whole or in part, Dean Langdell's ideas, a man who left the impress of them on three generations must have had the elements of greatness in him. I wonder what Judge Frank

²⁹ *Op. cit.*, p. 3.

³⁰ *Op. cit.*, p. viii.

³¹ *Op. cit.*, p. 225.

would reply to a counsel appearing in his court who asked him to disregard a decision of a judge because he was a brilliant neurotic?

Bertrand Russell, in his reminiscences of an old friend, wrote last year:

Philosophically I owed much to him, encouragement and stimulus in early years, and later, when I had come to disbelieve everything that he taught, the psychological understanding of how such opinions could be held by a sane man.

Is not this a wiser attitude? I have just finished reading Professor L. C. B. Gower's article, "English Legal Training",³² and was somewhat pained by his reference to "the best of law schools" in Canada and the United States "attacking" each other's ideas. I do not know where Professor Gower obtained his information about conditions in Canada, but if "attacking" the ideas of other law schools is the, or a, criterion of a "best" law school, then Manitoba is not in that favoured class. It is not our practice in Manitoba to "attack" the "ideas" of other law schools. We consider and discuss them and if we cannot agree with them we disagree in a friendly spirit and without recrimination. We have never claimed more than that we consider our system is the best system for us.

We have always felt particularly happy about the cordial and close relationship between the University and the Law Society, bodies which we believe should share in the responsibility for legal education — each having a different, but equally important function to fulfil. The faculty of the School is not a Faculty of the University, but the School and the University have steadily grown closer. In 1915 legislation was obtained empowering the University and the Law Society to make mutual arrangements for legal education and validating the provision therefor already made. In 1928 the University Act was amended to provide for the election to the University Council (which became the Senate in 1936) of one representative by members of the Law Society who are graduates of the University. Then, by the University Act of 1936, it was provided that the Dean of the School should be a member of the Senate which then replaced the Council. The Dean is also a member of many of the Senate Committees, including the Committee on Post-Graduate Studies.

The content of the Arts course given at the University should be mentioned. The Arts curriculum makes available to the student, amongst others, courses in Economics, Logic, Philosophy and Psychology, and in addition, in the senior years, Government and

³² (1950), 13 Mod. L. Rev. 137.

Sociology. Every student entering upon the course for the LL.B. degree must have standing in both the first and second year of his university course in one of the following languages: Greek, Latin, French or German. Close attention is given by the University and the School to instruction in the use of English—a matter in which lawyers are particularly interested and one in which it is apparent that the fundamental instruction which should be given in public and high schools sometimes has not been as effective as could be wished.

We have drawn our present teaching staff largely from graduates of the School. The present Dean, G. P. R. Tallin, K.C., B.A. (Oxon) LL.B., a graduate of the School and a Manitoba Rhodes Scholar, succeeded Mr. Laidlaw as Dean in 1945. He and Harvey Streight, LL.B., who is also a graduate of the School and besides teaching certain subjects acts as Recorder, are no longer in active practice. The other graduates of the School now teaching are the Hon. C. R. Smith, K.C., B.A. Juris (Oxon), LL.B., presently Minister of Education, and also a Rhodes Scholar; H. E. Carey, M.A., LL.B., S.J.D. (Harvard); I. Nitikman, B.A., LL.B.; H. G. H. Smith, K.C., B.A., LL.B.; S. Freedman, K.C., B.A., LL.B.; H. M. Hughes, K.C., LL.B.; R. G. B. Dickson, LL.B.; G. L. Cousley, K.C., B.A., LL.B.; J. E. Wilson, B.A., LL.B.; C. D. Shepard, LL.B.; R. D. Turner, B.A., LL.B. (M.L.A.); T. W. Laidlaw, K.C. LL.B.; T. G. Wright, B.A., LL.B.; C. W. Pybus, B.A., LL.B.; Mr. Justice Campbell, B.A., LL.D.; Mr. Justice Kelly, LL.B.; and David Golden, to whom I have already referred. The other lecturers in law are F. J. Sutton, K.C., LL.B.; R. B. MacInnes, K.C., LL.B.; John Allen, K.C., B.A., for many years Deputy Attorney General of Manitoba; and myself. Fred Johnson, C.A., lectures in Accounting.

The two members of the Board of Trustees at present representing the University are the Hon. Mr. Justice Dysart, B.A., M.A., LL.B., LL.D., of the Court of Appeal, Chancellor and formerly Chairman of the Board of Governors, who did post-graduate work at Oxford and Harvard, and President A. H. S. Gillson, O.B.E., M.A. (Oxon). The representatives of the Law Society are B. C. Parker, K.C., B.A., LL.B., and F. J. Turner, K.C., LL.B., the latter a graduate of the School.

There is much more that I should like to say on the subject of legal education in Manitoba, but while we presently have a number of matters under consideration I shall defer any comment on them until the necessary decisions have been made.