

# ONE HUNDRED YEARS OF LEGAL EDUCATION AT DALHOUSIE

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*In this article the author describes the contribution which Dalhousie Law School has made to legal education, legal scholarship and the role of law in general in Canadian society since it was founded one hundred years ago as the first law school in a common law jurisdiction. The record of public service of its graduates has also been impressive.*

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*Dans cet article l'auteur décrit l'apport de Dalhousie Law School, la première école de droit dans une province régie par la common law, à l'éducation des futurs juristes, à la science juridique et au rôle du droit dans la société canadienne, depuis sa fondation en 1883. La contribution de ses diplômés au bien public a aussi été considérable.*

At one time, "Go to Halifax" seems to have been used in Australia as one of the more polite ways of telling someone to go to the ends of the earth and perhaps beyond. Few Australians who used this mild expletive, however, would have known that if they ventured to the eastern end of mainland Canada and arrived in Halifax from 1883 onwards they would have found a law school there with attributes like those of similar university-based institutions which were beginning to evolve in Australia and New Zealand. In places as geographically remote from each other such as Adelaide, Dunedin, Halifax and Melbourne, the foundations were being laid for a quiet revolution in education and research in law based on English sources. Legal studies within independent university-sponsored law schools were an innovation in the common law jurisdictions of the British Empire in the second half of the nineteenth century and doubly so when they were recognised, as for Dalhousie in 1891, in providing an accepted prerequisite for admission to the local bar. When it took in its first students in October 1883, Dalhousie Law School became the first law school in a common law jurisdiction in Canada, joining a handful of similar bodies in Australia and New Zealand, including two new antipodean law schools which were founded in the same year.

Unlike their Australian counterparts, however, many Dalhousie graduates often found it necessary to move elsewhere and notably to the developing regions of western Canada. With this, the law school became a nationally recognised institution. Quite remarkably, at its fiftieth anniversary, it could be noted that there were Dalhousie graduates on the benches of the Supreme Courts in all but three provinces. The record of

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public service of its graduates was also impressive and hardly accidental. From the outset, beginning with the influence of its first dean, Richard Chapman Weldon, who served concurrently for a time as a member of the House of Commons, the law school was never just a trade school. The school's Mock Parliament, which began in 1886, helped to epitomise the way in which Dalhousie students were encouraged to develop a broader concern for the role of law in society in this and other ways. Two graduates who were Premiers were present at the school's fiftieth anniversary dinner. Another graduate, R.B. Bennett, the Prime Minister, was unable to attend but sent his congratulations to the gathering. These, however, were only some of the graduates who already had made important contributions to public life across Canada since the foundation of the law school.

The development of university-centred legal education along the lines essayed at Dalhousie in 1883 was no easy task. Firm traditions had dictated for almost six hundred years that universities were not appropriate venues for the study of the common law. Blackstone had brought little change to this despite his famous lecture series at Oxford in the eighteenth century. In England, the beginnings of effective, modern-style university education in English law could be traced back only to the establishment of University College, London, in 1826. The University of Melbourne led the way in Australia with the establishment of legal studies in the 1850's but a fully fledged faculty of law was not created there until 1873. Law began to be studied at two universities on the south island of New Zealand at about the same time. These small, poorly housed law departments which were started at Dalhousie and elsewhere in the second half of the nineteenth century were the progenitors of important changes in legal education, frequently outstripping developments in England and only being surpassed in some ways by richer universities which had established law faculties in the United States. At the same time, there was no general acceptance of university-centred legal education, particularly as a pre-requisite for admission to the bar. This was especially so in Ontario where the legal profession maintained a generally unimaginative, vice-like grip on legal education in that province until 1957. By then, however, the Dalhousie model for legal education had been well planted elsewhere in Canada, not least through the influence of its graduates reaching well beyond the confines of the maritimes. This provided a proven exemplar which helped to point the way to the important changes in legal training in Ontario from 1957 onwards.

From its inception, Dalhousie began to earn its place on the present-day roll of honour of those law schools which have contributed most to making English-style law a university discipline. As elsewhere, however, the development and ultimate acceptance of university legal education in this mould was not a simple process. There were, for example, complex interactions to be developed between university law schools and the legal profession. Added to this, small and often struggling faculties needed at

times to rely on the goodwill and assistance of bench and bar to ensure their survival; something which Dalhousie seems to have had in excellent measure from the Nova Scotian legal community down the years. Within universities, too, the need to support faculties teaching law in the same fashion as other disciplines was not always appreciated as it might have been, at least until comparatively recent times, and even then too often with measured reluctance.

Fortunately, as Dalhousie Law School completes its first century its crucial role in helping to transform legal education in Canada has now been explored in depth in the school's history, written by John Willis. *A History of Dalhousie Law School*<sup>1</sup> started as a project undertaken by a former Dean, Horace Read. It is a warm engrossing account of the people and events which have given a special character to the law school which Willis served with such distinction at the beginning, and again at the end, of his law-teaching career. As such, it has a revered place in the libraries of Dalhousie graduates. But this history is much more than this. It is not just a chronicle of the life and times of one law school, important as this is. It also contains the essential clues for historians and others to understand and assess the growth of university-based legal education in the conspectus of the evolution of legal systems based at root on English traditions. As Willis illustrates, in the evolving mosaic of the life of one law school there have been special and sometimes barely discernible factors at work which have been strong influences in bringing university-centred legal education to its present state of attainment and acceptance in Canada and elsewhere. In these there seem to be elements of more than transient importance; transcending values as they might be described, which cannot be lightly put aside in planning for the present and future working of university-based legal education. The detailed, everyday modes of pursuing legal education cannot remain static, as the changing curricula of law schools demonstrates the world over. But more broadly based principles of working, affecting these and other developments in the past, could well be needed still to prescribe the future directions of legal education. Not the least of these, as Willis' book demonstrates, centres on the importance of maintaining mutual respect and forms of collaboration between bench, bar and university teachers in the conduct of law school affairs. Similarly, the concept which took hold at Dalhousie from its beginning, that law is a discipline that requires considerably more than simply instruction in the technicalities of legal processes is something which patently cannot be ignored. Implicit in this are values of continuing significance for the well-being of legal studies within universities. Law, no less than other areas of knowledge, can only find its ultimate justification in a university environment when it maintains the scholarly attributes and standards which are traditional in such institutions. Just as importantly, it may well be that the future viability of the legal profession itself could depend on its capacity to retain the

<sup>1</sup> (1979)

breadth and flexibility of thinking which institutions such as Dalhousie Law School have helped to instil in their students down the years.

For legal historians, John Willis' book is also a rich store of information on the way in which institutions like Dalhousie have been as significant as any in the common law world in their contribution to the spread of the quiet revolution in legal education in the past 100 years. With little effective guidance from Britain on the aims of legal education, lacking the resources of large American universities, Weldon's "Little Law School" basically had to find its own place in the sun. Like its counterparts in Australia and New Zealand, it set out on a largely uncharted course. Almost indefinably, but importantly, however, the frequent necessity to experiment and even improvise to pursue law school activities seems, in the long run, to have served well the cause of university centred legal education. One consequence of this was that Dalhousie Law School and others like it in the British colonies of the nineteenth century could never really be pale, transplanted versions of bodies in other countries. They slowly took strength and gained acceptance for their work through processes which were essentially localised in character. Of prime importance in this was the way in which Dalhousie and other law schools operated as co-operative enterprises with a sharing of teaching and other responsibilities between full-time teachers, bench and bar. The "downtown" lecturers who taught generations of law students made it possible for Dalhousie to sustain a full range of subjects for many years. But this was only one aspect of the importance of the role of these members of the legal profession in the growth of university law schools. They served, too, as one important means of minimising traditional professional worries about university studies in law. Their participation in law school affairs helped to ensure that university legal education gained and retained acceptance as a pre-requisite for admission to legal practice. Side by side with this, and often nurtured by the close association between full-time and "downtown" teachers, the bench and bar more generally came to share and support the values implicit in university centred legal education. The reservoir of goodwill which came with this, and the succour which could flow from this, particularly in times of stress, proved to be a potent factor in helping to bring Dalhousie and other law schools to their present condition as vibrant centres of research and education.

On the face of it, there was more than a touch of paradox in the way in which Dalhousie Law School rose to its present eminence. At the school's inception the city of Halifax could hardly be described as a large metropolis. The region around it could not boast of the wealth of places like the colony of Victoria. There, a gold enriched community could even attempt to challenge the cities of the mother country with its public buildings and other facilities. Weldon's Law School could not fall back on the range of professional assistance which could be obtained in cities such as London and Sydney. Nevertheless, there were factors at work in the Nova Scotian

environment which helped to make up for the deficiencies in wealth and population which could have militated against the growth of the Dalhousie Law School. One element in this was the character of the law school's deans over the years. Unlike the law schools in Australia which tended to import their full time teachers from Britain, for many years, Dalhousie relied from the beginning on deans with close associations with the maritime provinces. Like Weldon and Horace Read, they may have spent periods of their life working or studying elsewhere. But the reliance on deans with maritime connections brought with it personal commitments to the cause of law school affairs which could have been more difficult to find in others, particularly with the relatively small salaries and lack of other facilities which existed at Dalhousie until comparatively recent times. Another continuing source of strength was the spiritual as well as material support which was accorded to the law school by its graduates. There are few, if any law schools in the Commonwealth which have been able to maintain the allegiance and support of its graduates in the fashion this has been accorded to Dalhousie. Even as many moved west and south away from the maritimes they retained their interest in the law school and showed their practical support for its work in a variety of ways.

As John Willis points out, the burgeoning national reputation of Dalhousie Law School in the first part of the twentieth century was aided by the economic necessities which led so many of its graduates to move on from the maritimes to other places. Their visibility in the work of the legal profession and their contributions to public life in places such as British Columbia, Alberta, Manitoba and Saskatchewan helped to bring the law school to national attention. But it was not just the movement of its graduates which made Dalhousie a national institution. There were attributes and qualities which flowed from its style of legal education which seem to have been just as influential, not least in the capacities these helped to stimulate and endow in its graduates when they moved on from the law school. One important key to Dalhousie's success in this was the way in which it was generally able to meld together the influences of British and American attitudes and ideas in relation to the law and bring them into an emerging focus which was essentially Canadian in character. From the outset, Weldon helped to put these processes in train. Like many of those who have followed him as full-time teachers in the law school he had strong connections with American legal education. But he was also a respected heir to the elements of English legal tradition which had taken firm root in Canada, as he demonstrated in his classes in constitutional law. Over the years, the American connection helped to emancipate Dalhousie from the often stifling limits which the British connection tended to impose on legal education in Australia and New Zealand until after the Second World War. Dalhousie students may have chafed and even almost come to the point of rebellion when Socratic style instruction was introduced into the law school, as Willis relates. But along the way, the students were released

from the dictation of lecture notes as if the printing press had never been invented; a situation which remained in vogue for much longer in Australia, despite some efforts to alter this early in the twentieth century. Even today in Australia there are still adherents of the old ways. This was not the only teaching development, however, in which Dalhousie aspired to new standards of law school instruction. Case method, particularly in more advanced courses, may ultimately be almost as destructive in its capacity to limit the understanding of students about the relationships of law to society as some of the older methods of law school teaching. But where it has been combined with other forms of instruction such as the legal writing programme instituted at Dalhousie and the development of seminar style classes in such areas as the treatment of human rights the resulting blend has helped schools like Dalhousie to remain well to the fore in providing guidelines to others on the way the traditional aims of legal education as expressed by men like Weldon can best be fulfilled in modern times.

Dalhousie's contribution to legal education, however, cannot be marked simply in terms of the qualities of its students and the calibre of the education and research which has been carried on there. One of the most powerful legacies of its first century has been the important contribution it made to the development of university centred legal education in common law jurisdictions across Canada. It is hard to conceive that the "Osgoode model" as Willis describes it, with its ties to the legal profession, would ultimately have succumbed as it did without the propagation of the counter-vailing Dalhousie "model" across Canada from the early decades of the twentieth century. Now law schools in Australia or New Zealand can even approximate the range of influence which the Dalhousie experience brought to bear on the evolution of legal education in Canada. The Dalhousie experience was the chief progenitor of the adoption of university based legal education in Alberta, British Columbia and Saskatchewan. In British Columbia, for example, it was under the guidance of a Dalhousie law graduate, N.A.M. McKenzie, that a faculty of law was created in 1945. The school's first dean, George Curtis, had previously been a law teacher at Dalhousie for eleven years. Finally in Ontario, Sidney Smith, a graduate and former dean of Dalhousie Law School, was an important proponent of Nova Scotian style legal education in the province as president of the University of Toronto. As Willis succinctly sums up Smith's role in the changes made in legal education in Ontario after 1957, he "played a leading part in the events that culminated in 1957 in the abandonment by the Law Society of its monopoly over legal education and the establishment of several university law schools in that province".<sup>2</sup>

Of necessity, Dalhousie's role in the transformation of legal education in the common law jurisdictions in Canada, which largely parallels the

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<sup>2</sup> *Ibid.*, p. 7.

original growth and sustenance of university legal studies in Quebec by Laval and McGill Universities, and more recently the University of Montreal, has slowly but inevitably brought about changes in its situation in the context of Canadian legal education. In the past it set standards of achievement which are now being emulated by university law schools elsewhere. Its graduates are no longer necessarily quite as unique in the western provinces of Canada as they were in the first decades of the twentieth century. But despite the passing of the years the Dalhousie Law School seems to have retained many of the qualities of mind and the style of determination which brought it into existence and helped to sustain it during its first century. With this, it seems to have been well prepared to meet the complexities and contradictions of modern society which have brought new pressures and demands to bear on law faculties in Canada and elsewhere. Without innovation, the flexibility and breadth of mind which goes to the heart of the Dalhousie style of legal education cannot be maintained. Too easily, perhaps almost unconsciously at times, law schools can revert to the isolated presentation of knowledge in box-like categories in their efforts to relate to evolving social phenomena. In some places, the presentation of traditional courses, such as contract and torts, can be maintained almost as if much of what has happened in the twentieth century in the conduct of society's affairs can be ignored. Today, the expanding interaction between nations around the world has created a new and pressing need for law schools to develop teaching and research acknowledging the significance of global concerns in the ordering of legal affairs. Significantly, the Dalhousie Law School has shown a resilience based on its long nurtured traditions of legal education in moving to meet these new conditions. Its multi-disciplinary work in marine and environmental law which began in the nineteen-seventies is one example of the way in which it has found a new means to maintain both its commitment and leadership in the evolution of legal education and thinking. The continuing legal education programme initiated in the same period is a firm acknowledgement that law can no longer be regarded as a static, unchanging phenomenon and that lawyers and the community more generally need regular access to updated thinking from law schools on a variety of legal developments. The institution and growth in the opportunities for post-graduate studies at Dalhousie has also been a development of note. Antipodeans, for example, may have known little, if anything of Dalhousie Law School in the nineteenth century. Today, however, graduates of Australian law schools do not neglect Dalhousie as one important venue for moving overseas to undertake post-graduate studies. In one Australian law school, for example, a graduate of what was once Weldon's "Little Law School" is a full time teacher while another of his colleagues served on the staff there for a number of years.

Fifty years ago, John E. Read, dean from 1924 to 1929, noted in this *Review* that for Dalhousie "it may confidently be predicted" that the next

century "will be more fruitful than the last".<sup>3</sup> While the spirit of the past continues to foster and nurture the present, as it has in the developments at Dalhousie Law School in recent years, Read's prediction would seem no less apposite today than it was when the law school celebrated its golden jubilee. Today, Dalhousie is recognised as one of the most significant pioneers in the development of university legal education in the Commonwealth. While its greatest influence has been in Canada, its role in bringing university centred legal education to its present state of acceptance in the common law world ranks internationally with only a handful of similar institutions elsewhere. In the last analysis, those law schools which began in places which were once colonies of the British Empire have almost certainly contributed as much as any to the maintenance of common law traditions and fitting them to meet the changing needs of evolving communities. The one hundredth anniversary of the Dalhousie Law School is clearly an occasion of moment for Nova Scotia and the rest of Canada. But it is also one which requires warm congratulations and acknowledgements of respect from the other parts of the common law world where few institutions can even begin to claim that they have served with such distinction in developing and maintaining the core of common law traditions and adapting these to meet the needs and challenges of contemporary society.

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<sup>3</sup> (1933), 11 Can. Bar Rev. 392, at p. 395.