



“Let Right Be Done”: A History of the Faculty of Law at Queen’s University

Professor Mark D. Walters

Faculty of Law
Queen’s University

Foreword

I was delighted when Mark Walters generously agreed to write this history of Queen's Law to mark the 50th anniversary of the school of which we are so proud. Professor Walters graduated from Queen's Law in 1989 and finished his doctorate at Oxford in 1996. After teaching at Oxford, he joined our faculty in 1999 as a Queen's National Scholar. Among his major research interests is the historical legal status of aboriginal peoples in Canada and other former British colonies. In 2002-2003 he won the Jules and Gabrielle Léger Fellowship for his work on Crown-aboriginal treaty relations. His 2001 article on the historical and comparative aspects of unwritten constitutionalism received the Canadian Association of Law Teachers Scholarly Paper Award, and in 2005-2006 he gave a series of papers on that subject at Cambridge University, where he was the Herbert Smith Visitor. In 2006, he received the Canadian Association of Law Teachers' Award for Academic Excellence. He carries on the Queen's Law tradition of exceptional strength in public and constitutional law teaching and scholarship, building on the contributions of many of our long-time colleagues, including Bill Lederman, John Whyte, David Mullan, Beverley Baines, Noel Lyon and Dan Soberman.

Professor Walters has written not only a scholarly account of our faculty's first fifty years, but also a lively one that is marked by warmth and personal insight. This is a wonderful contribution to our anniversary celebrations, and I hope you will enjoy reading it.

William F. Flanagan
Dean of Law, Queen's University

“Let Right Be Done”: A History of the Faculty of Law at Queen’s University

*Mark D. Walters**

- I. Introduction: Corry and the Benchers in 1957
- II. Queen’s and the Law, 1841-1957
- III. The First Year, 1957-1958
- IV. Consolidating a Legal-Academic Community, 1958-1968
- V. Vision and Expansion, 1968-1977
 - A. Reforms to the LL.B. Curriculum
 - B. Establishing the Master of Laws Program
 - C. Students and Law School Governance
 - D. Founding the Queen’s Law Journal
 - E. The Genesis of Quicklaw
 - F. Clinical Programs: Legal Aid and Correctional Law
- VI. Community and Diversity, 1977-1992
- VII. Constraint, Renewal and Globalization, 1992 to Date
- VIII. Scholars, Ideas and Laws, 1957-2007
- IX. Beyond Queen’s Law
- X. Looking Ahead

* Faculty of Law, Queen’s University. A preliminary version of this paper was printed in January 2007. I wish to thank Matthew Wylie for the research he conducted on the faculty’s history under the guidance of Dan Soberman in the summer of 2003. I have also been assisted by Jane Emrich, Lisa Graham, Meg Einarson, Dianne Butler, Phyllis Reid, Mary Jane Moore, Patti Evans and Cathy Phan in gathering records and statistics. I am indebted to present and former faculty members — whose names are found in the history that follows — for being generous and candid with their stories and perspectives on the law school’s past, and for insightful comments on earlier drafts of this paper.

I. Introduction: Corry and the Benchers in 1957

Alex Corry was understandably apprehensive as he arrived at the Royal York Hotel in Toronto on January 18, 1957. Negotiations between the Ontario universities and the Benchers of the Law Society of Upper Canada to end the Law Society's monopoly over legal education in the province had recently taken a promising turn.¹ Queen's University Principal W.A. Mackintosh, who had been leading these negotiations on behalf of the universities, sensed that an end to the century-long struggle with the Law Society was perhaps at hand, and he had asked Corry, the Vice Principal at Queen's, to meet informally with several members of the Benchers' education committee to determine whether this optimism was justified.²

Corry had been a law teacher and was committed to university legal education, but he felt uneasy about being the lone university representative at the meeting. He had telephoned Bora Laskin, a member of the law faculty at the University of Toronto, to suggest that they meet the Benchers together.³ But the future Chief Justice of Canada reluctantly declined. Relations between his university and the Law Society had become so acrimonious that the Dean of Law at Toronto, the indefatigable Cecil ("Caesar") Wright, refused even to speak to the Benchers.⁴ In these circumstances, said Laskin, it was perhaps best if Corry went alone.⁵ And so he did.

1. See generally Christopher Moore, *The Law Society of Upper Canada and Ontario Lawyers, 1797-1997* (Toronto: University of Toronto Press, 1997) at 228-31, 240, 258-59.

2. Frederick W. Gibson & Roger Graham, eds., *Queen's University, Volume II: 1917-1961* (Montreal: McGill-Queen's University Press, 1983) at 347.

3. Transcript of a taped conversation between J.A. Corry, Stuart Ryan and Dan Soberman [n.d.] ["Conversation between Corry, Ryan and Soberman"] at 1 in the Queen's Archives, Mary Alice Murray Papers [QA MAM Papers].

4. See generally C. Ian Kyer & Jerome E. Bickenbach, *The Fiercest Debate: Cecil A. Wright, The Benchers, and Legal Education in Ontario, 1923-1957* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 1987).

5. "Conversation between Corry, Ryan and Soberman", *supra* note 3 at 1. On Laskin and Wright's decision to leave the negotiations to Mackintosh and Corry see Philip Girard, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2005) at 192-93.

Accounts of the meeting vary. What is known is that Corry met with John Arnup, who would later serve on the Ontario Court of Appeal, and Park Jamieson, and they talked through the afternoon in Jamieson's Royal York suite.⁶ They ordered dinner to the room and continued to talk into the night. At some point things fell into place and a deal was reached by which the Law Society would recognize university law degrees on equal terms with those conferred by the Law Society's own law school at Osgoode Hall. This was a historic moment, and Jamieson promptly produced some fine Scotch to celebrate. Corry could hardly believe his good fortune.⁷ Nor could others. When Corry telephoned Caesar Wright the next morning with the news, Wright was incredulous. "Don't trifle with me," he said, "I've been through too much."⁸

But the agreement was real. It was approved by the Law Society, and Wright was soon celebrating its "revolutionary" implications.⁹ Not only was his law school at Toronto finally recognized by the legal profession, but it was now possible to establish other university law faculties in the province. At Queen's, Mackintosh and Corry moved with remarkable speed to realize this end. By May 18, 1957, the Queen's Board of Trustees had given final approval for a Faculty of Law, and only four months later, on September 12, twenty-three men and one woman arrived at Queen's to start classes in the new law school.¹⁰ This was an

6. For diverging accounts of the meeting by those present, see J.A. Corry, *My Life & Work: A Happy Partnership* (Kingston, Ont.: Queen's University, 1981) at 152-54 [Corry, *My Life*] and John D. Arnup, "The 1957 Breakthrough" (1982) 16 *Law Society of Upper Canada Gazette* 180 at 181, 191-96.

7. As the deal came together Corry said he had to "keep pinching" himself to be sure he was not in a "daydream": "Conversation between Corry, Ryan and Soberman", *supra* note 3 at 1-2.

8. This is Corry's description of Wright's response: "Conversation between Corry, Ryan and Soberman", *supra* note 3 at 2. For Wright's own account of his earlier travails with the Law Society, see Cecil A. Wright, "Should the Profession Control Legal Education?" (1950) 3 *J. Legal Educ.* 1 [Wright, "Should the Profession"].

9. C. A. Wright, "The Outlook for Ontario Legal Education" (1957-58) 12 *U.T.L.J.* 282 at 282.

10. "Board of Trustees Gives Approval to Establishment of Faculty of Law" *The Queen's Review*, (May/June 1957) 116-17. See also H.R.S. Ryan, "The First Life and Resurrection of the Faculty of Law of Queen's University" (1984) 10 *Queen's L.J.* 216 at 231 [Ryan, "First Life"].

“incredible feat,” Arnup would later write, testifying to the “efficiency and imagination” of those involved.¹¹ The Queen’s Faculty of Law that now celebrates its fiftieth year had begun.

The agreement of 1957 between the legal profession and the universities was not just about who would teach law, but how it would be taught. It represented a commitment to a certain vision of legal education, and ultimately of law itself. Perhaps the best way to tell the story of the law school that was established at Queen’s in that year is to tell the story of how the school’s students, faculty and administrative staff have struggled through a half century of profound societal change to honour that commitment. My telling of this story cannot be wholly neutral — after all, the story is still unfolding and I am a participant in it — but I think the words and actions of the various people who built the law school speak for themselves. We can justly say that the commitment of 1957 is one worth honouring, and that their efforts to honour it have been both uniquely imaginative and strikingly successful.

Which is not to say that it has all been easy. As Professor Toni Pickard said to incoming first-year law students at Queen’s during the mid-1980s — myself among them — “[l]egal education is not something which is here for you to consume[;] it is a process which you create, for yourself and others,” just as law itself is a process reflected in the actions and judgments of the broader legal community.¹² This message is at once unsettling and liberating. It challenges the notion students often have of law as a certain and knowable objective reality. But in doing so, it opens to them the limitless possibilities of engagement and participation within the interpretive enterprise that is the law, offering a less secure but ultimately more rewarding understanding of law and legality. Of course, if legal education is a process of critical engagement rather than passive consumption, law schools must be places of contest, deliberation and argument. A placid law school fails in its mission — and Queen’s law school has been anything but placid.

Professor Stuart Ryan, one of the three founding members of the faculty in 1957, gave the school its motto — *Soit Droit Fait*. He was fond

11. Arnup, *supra* note 6 at 201.

12. The lecture is published: Toni Pickard, “Is Real Life Finally Happening?” (1986) 2 C.J.W.L. 150 at 152.

of reminding people of the double meaning of that phrase. It was the expression used by medieval kings when assenting to bills passed by Parliament, and it was famously employed by Charles I when assenting to the Petition of Right. It was an expression of sovereign will, “let the law be made,” a statement of law’s power and creative potential; but it was also an expression of transcendent value, “let right be done,” a commitment to notions of decency and justice implicit in the ideal of legality.¹³ The story of legal education at Queen’s is really a story about how teachers and students here have created an academic community in which people have engaged, in their own ways, in the common enterprise of trying to understand the enduring tension between these two conceptions of law.

II. Queen’s and the Law, 1841-1957

Legal education at Queen’s had already had a long, though uneven, history before 1957. Queen’s University was established by charter granted by Queen Victoria on October 16, 1841.¹⁴ In that same year Upper and Lower Canada were unified as the Province of Canada. Queen’s College, as it was then called, was located in the provincial capital, Kingston, on the banks of Lake Ontario. The government soon decamped for a new capital and Queen’s was left to develop in relatively quiet surroundings. Its founders were Presbyterian clergymen, and even today the grey limestone buildings are suggestive of its Scottish connections. Walking along University Avenue a few years ago, through a cold rain coming off the lake, the Scottish legal philosopher Sir Neil MacCormick said it felt very much like home.

As early as 1853 the Board of Trustees at Queen’s resolved to constitute a Faculty of Law.¹⁵ The first attempt to do so was in 1861

13. Taped Interview with Dan Soberman and Stuart Ryan (6 March 2002) [Interview with Soberman and Ryan].

14. See in general D.D. Calvin, *Queen’s University at Kingston: The First Century of a Scottish-Canadian Foundation, 1841-1941* (Kingston, Ont.: Trustees of the University, 1941) and Hilda Neatby, *Queen’s University, Volume I: 1841-1917* (Montreal: McGill-Queen’s University Press, 1978).

15. Neatby, *ibid.* at 106-07.

when a law faculty was established consisting of two professors under the deanship of Alexander Campbell, who had articulated and then practised law with the future Prime Minister of Canada, John A. Macdonald.¹⁶ The first Bachelor of Laws (LL.B.) degrees, five in total, were awarded two years later, and at the convocation the first honorary Doctor of Laws awarded by Queen's was conferred upon Macdonald, who was at that time Attorney General for Canada West.¹⁷

The Faculty of Law then promptly folded. It was revived in 1880 and three more students graduated in 1883, but it ceased to exist as a teaching institution in 1884.¹⁸ Thereafter the faculty had a sort of shadowy existence. The University *Calendar* continued to list a "Faculty of Law" and requirements for the "Degree of LL.B." until 1910-1911; in a somewhat cryptic 1908 Queen's advertisement reference was made to a "Law Course" leading to the "degree of LL.B." that could be "taken without attendance."¹⁹ In fact, during these years political science students at Queen's were permitted to take exams in law set by members of the local bar. Between 1883 and 1912 eighteen LL.B. degrees were awarded by Queen's on this basis.²⁰

The professors and students of these early law faculties at Queen's made important contributions to public life. The first Dean of Law, Alexander Campbell, was a "Father of Confederation," attending the Charlottetown and Quebec conferences of 1864 that led to the *British North America Act, 1867*; he was knighted in 1879, and later served as federal Attorney General and Minister of Justice and Lieutenant-Governor of Ontario. The Dean between 1881 and 1883, Byron Moffat Britton, was appointed a judge of the Supreme Court of Ontario, as

16. *Ibid.* See also, Calvin, *supra* note 14 at 210-14, and Ryan, "First Life", *supra* note 10 at 220-21.

17. Calvin, *ibid.* at 212; Ryan, *ibid.* at 221.

18. Calvin, *ibid.* at 213; Ryan, *ibid.* at 223.

19. Queen's University, *Calendars* for 1890-91, 1891-92, 1910-11; *Canadian Magazine Advertiser* (January 1908) 10.

20. Ryan, "First Life", *supra* note 10 at 224-25. The eighteen law graduates are listed in a memorandum dated 16 February 1977 from the Alumni Office to Mary Alice Murray, Faculty Secretary.

were a number of early graduates.²¹ William B. Munro (LL.B. 1896), the last surviving law graduate when the law school was revived in 1957, was a Harvard professor known for his works on government, constitutional law and legal history.²²

The early efforts to establish a law faculty at Queen's failed for the simple reason that the legal profession refused to recognize university law degrees when admitting lawyers to the bar.²³ The Law Society of Upper Canada was formed in 1797 to govern the legal profession in the province, and in exercising its powers it adhered closely to English traditions.²⁴ Historically, lawyers in England trained on the job and did not tend to study law at university. The first university lectures on English law were offered at Oxford by Sir William Blackstone in 1758, and it was well into the nineteenth century before the first university degrees in English law were conferred.²⁵ This is not to say that English lawyers were oblivious to the value of considering the common law in an academic light. As early as 1627 Sir Henry Finch wrote that the "rules of reason" which "direct our course in the arguing of any case" derive out of "the best and very bowels" of natural, political, economic and moral philosophy, "for the sparkes of all Sciences in the world are raked up in the ashes of the Law . . ."²⁶ The integration of law into the university curriculum was perhaps inevitable, and with the opening of law faculties in universities in England and the United States in the

21. Cornelius Price (LL.B. 1863), was a Frontenac County judge; H.M. Mowat (LL.B. 1883) and William Logie (LL.B. 1892), were judges on the Ontario Supreme Court: Calvin, *supra* note 14 at 210-14; Ryan, "First Life", *supra* note 10 at 220-21, 224-25.

22. "Dr. W.B. Munro Explains Former Law School Set-Up" *The Queen's Review* (August 1957). William B. Munro's works include: *The Seigniorial System in Canada* (New York: Longmans, Green, and Co., 1907) and *The Government of the United States, National, State, and Local* (New York: The Macmillan Company, 1922).

23. Gibson & Graham, *supra* note 2 at 5.

24. William R. Riddell, *The Legal Profession in Upper Canada in Its Early Periods* (Toronto: Law Society of Upper Canada, 1916).

25. Harold Greville Hanbury, *The Vinerian Chair and Legal Education* (Oxford: Basil Blackwell, 1958); F.H. Lawson, *The Oxford Law School, 1850-1965* (Oxford: The Clarendon Press, 1968).

26. Sir Henry Finch, *Law, Or A Discovrse Thereof, In foure Bookes* (London: Societie of Stationers, 1627) at 5-6.

second half of the nineteenth century it was only a matter of time before this would be done in Ontario.

Queen's was therefore in step with developments in legal education in the common law world when it opened its law faculty in 1861. In his address at the inauguration of the faculty in that year, Professor W.G. Draper, son of William Henry Draper, the Chief Justice of Upper Canada, observed that in the colony's early days there were "no public Colleges, no Universities, and but few Schools," and that his own father had walked ten miles to and from a law office each day during his apprenticeship and had managed to obtain only "a few musty volumes of [law] Reports" to read.²⁷ But conditions had changed, he continued, and so must legal education. A lawyer must be "well versed in the principles and practice of his Profession," but also "well read on all subjects."²⁸ Universities had now been established in Upper Canada — and lawyers should use them.

However, after the Law Society refused an 1862 request by Queen's to recognize its LL.B. as a substitute for "attendance at Terms in Toronto," it proved impossible to attract students to the program and it was forced to close.²⁹ Instead of recognizing university law degrees, the Law Society developed its own course of lectures, and by 1889 had established the Osgoode Hall Law School and made attendance mandatory for aspiring lawyers.³⁰

Despite a promising start, the Benchers' school at Osgoode Hall became little more than a trade school supplementing office apprenticeships.³¹ Writing in 1921, an American observer stated that Canadian legal education was controlled by "[u]ltra-conservative

27. W.G. Draper, "Inaugural Lecture Delivered at the University of Queen's College, Kingston, C.W., on February 4, 1861, at the Inauguration of the Faculty of Law" (1861) 7 U.C.L.J. 59 (part 1), 88 (part 2) at 88-89.

28. *Ibid.* at 89, 59.

29. Calvin, *supra* note 14 at 212.

30. G.B. Baker, "Legal Education in Upper Canada, 1785-1889: The Law Society as Educator" in D. Flaherty, ed., *Essays in the History of Canadian Law* (Toronto: University of Toronto Press, 1983) vol. 2 at 49; Brian D. Bucknall, Thomas C.H. Baldwin & J. David Lakin, "Pedants, Practitioners and Prophets: Legal Education at Osgoode Hall to 1957" (1968) 6 Osgoode Hall L.J. 137 at 158-59.

31. Bucknall, *et al.*, *ibid.* at 160.

practitioners,” and that its weakness therefore lay “in the obstacles that it places in the path of legal scholarship, with all that this means for the future growth of the law.”³² Upon his dramatic 1949 resignation as Dean of Osgoode Hall Law School, Cecil Wright stated that the focus at Osgoode Hall on training in “bread and butter” subjects to the exclusion of any consideration of “the implications of law for society” was “short-sighted,” as it failed to produce “lawyers capable of acting as informed leaders of opinion in public affairs”³³ Wright also expressed concern about diversity and accessibility. In his view, “students of foreign extraction and of different races and creeds” had difficulty obtaining articling positions in “those few offices” capable of teaching lawyers adequately.³⁴ “There is only one place where such students can obtain an equal education,” he concluded, “and that is in a properly conducted law school.”³⁵ Wright had been unsuccessful in his attempts to convince the Benchers either to develop such a law school themselves or let universities do so. It was only after the Law Society came under the influence of a younger, more progressive generation of Benchers that Mackintosh and Corry were able to negotiate an end to its monopoly over legal education in 1957.

The story behind the events of 1957 confirms that the entire point of the new law faculty at Queen’s was to offer a form of legal education different from the trade-focused training offered at Osgoode Hall. In the opinion of Alex Corry, the law school at Queen’s would “teach accurately and well what the lawyer needs to learn,” but it would do so by focusing less upon the “techniques of the craft” and more upon those “things that the lawyer . . . is most unlikely to learn except through systematic reading, study and reflection”³⁶ But what did the lawyer need to learn? The answer to this question, said Corry, depended upon the function of lawyers in society and on the nature of society itself. He

32. Alfred Z. Reed, *Training for the Public Profession of the Law* (New York: Carnegie Foundation for the Advancement of Teaching, Bulletin no. 15, 1921) at 28.

33. Cecil A. Wright to the Treasurer of the Law Society, January 21, 1949, printed in Wright, “Should the Profession”, *supra* note 8 at 25, 37.

34. *Ibid.* at 24.

35. *Ibid.*

36. J.A. Corry, “The Queen’s University Faculty of Law” (1957-58) 12 U.T.L.J. 290 at 291.

anticipated societal changes over the next fifty years that would require new forms of lawyering and new forms of legal education. “Barring thermo-nuclear dissolution of his society,” he wrote, the lawyer will find a complex set of relationships between individuals, great corporations, massive trade unions, and big governments, and lawyers would be needed to act as “adjusters” between these powerful forces, upholding “values that have given coherence and dignity to our society.”³⁷ The time for a trade-school legal education was over. If lawyers were going to participate in building the modern state, then, Corry concluded (quoting Holmes), Queen’s needed “to teach law in the grand manner.”³⁸

III. The First Year, 1957-1958

The 24 students who arrived to study law at Queen’s in 1957 were, in a sense, pioneers. They may have arrived to learn law in the “grand manner,” but their initial surroundings were anything but grand. They found a law school that consisted of only two full-time faculty members located in a small brick house on University Avenue, with a single lecture room in the basement of Richardson Hall. Even so, there was a shared sense of purpose and community among students and faculty; as Professor Ryan insisted later, a unique sense of “family” soon developed within the first first-year class.³⁹

Corry served as the Acting Dean of the new faculty. James Alexander Corry (1899-1985) studied law at the University of Saskatchewan (LL.B. 1923) and at Oxford as a Rhodes Scholar (B.C.L. 1927), and his work in Canadian public law had been important to the emergence of a critical scholarship on that subject.⁴⁰ Corry soon came to be seen by students as the “foundation cornerstone” of the new school,

37. *Ibid.* at 292.

38. *Ibid.* Corry was quoting from Oliver Wendell Holmes, “The Use of Law Schools” (1896), which is printed in Michael H. Hoeflich, ed., *The Gladsome Light of Jurisprudence: Learning the Law in England and the United States in the 18th and 19th Centuries* (New York: Greenwood, 1988) 265 at 266.

39. Interview with Soberman and Ryan, *supra* note 13.

40. W.R. Lederman, “James Alexander Corry, 1899-1985” (1987) 12 Queen’s L.J. 361.

his quiet confidence and generous spirit setting the tone for the legal-academic community that was developing.⁴¹ But the job of teaching the first-year class fell mainly to the school's two full-time faculty members. As Corry later wrote, in the desperate rush to set up a law school in four months "[w]e had some very good luck on the staffing side."⁴² That good luck came in the form of Stuart Ryan and Dan Soberman.

H.R.S. Ryan, Q.C. (1910-2004) earned his B.A. from the University of Toronto in 1930, was bronze medallist at Osgoode Hall Law School in 1933, and served with the Canadian Army from 1940 to 1946.⁴³ When Corry set about looking for law teachers, Ryan was practising law in Port Hope, but he had also published extensively in legal periodicals. It was Bora Laskin who first brought Ryan to Corry's attention.⁴⁴ Laskin must have known what others quickly concluded upon meeting Ryan — that he was a scholar at heart and that it was perhaps only the Depression and the war that had kept him from pursuing academia from the start. "As I look back," Ryan later wrote, "I marvel at my rashness in undertaking to teach and the rashness of Queen's in taking me on."⁴⁵ But it was a natural fit. As students used to say, he was a "human encyclopaedia of the law"⁴⁶— someone who could not only recite the medieval "writ of right" in Latin from memory, but who somehow managed to do it in a way that inspired genuine excitement for the law.⁴⁷ He was, Bill Lederman wrote, "our Renaissance Man," and like Chaucer's Sergeant-at-Law, "He knew of every judgment, case and crime/Recorded ever since King William's time."⁴⁸

41. "Dr. J.A. Corry's Portrait Gift of Law Students" *Kingston Whig-Standard* (22 October 1960) 22.

42. Corry, *My Life*, *supra* note 6 at 155.

43. "Queen's Faculty of Law Mourns Death of Harold Stuart Ryan, Professor Emeritus" *Queen's Law Reports* (2004) at 6.

44. "Conversation between Corry, Ryan and Soberman", *supra* note 3 at 26.

45. Stuart Ryan, "The FIRST First Year" *Queen's Law Reports* 9 (Spring 1997) at 2 [Ryan, "FIRST First Year"].

46. Queen's Law Students Society to Director of Alumni Affairs, Queen's University (19 January 1976), QA MAM Papers 1/3.

47. Comments by Paul Megginson (Queen's LL.B. '65), in Jane Emrich, ed., *Alumni Anecdotes, Faculty of Law Twenty-fifth Anniversary, 1957-1982* [unpublished] at 12 [Emrich, *Alumni Anecdotes*].

48. W.R. Lederman, "A Tribute to H.R.S. Ryan" (1981) 6 *Queen's L.J.* 358 at 359.

Daniel A. Soberman, born in 1929, received his B.A. (1950) and LL.B. (1952) from Dalhousie and his LL.M. (1955) from Harvard. He was teaching law at Dalhousie when approached by Corry. Bora Laskin helped with Soberman's arrival at Queen's too, forwarding his name to Corry after learning that he wanted to return to Ontario, where he had spent part of his childhood.⁴⁹

Having attracted law students and a law faculty to Queen's, Corry's next task was to find the law books that were essential to their enterprise. The collection began, appropriately, with a gift of a first edition of Blackstone's *Commentaries on the Laws of England* from Leonard Brockington, the University Rector and first Chair of the CBC.⁵⁰ The collection was augmented by other gifts, including the law library of William F. Nickle (who, in addition to being Attorney General for Ontario, was famous for having introduced the 1919 motion in the House of Commons abolishing hereditary titles for Canadians).⁵¹ Also, by chance, Soberman went to England before beginning his new job, and asked Corry whether there was anything in particular he could bring back. Corry replied, "Well, just about anything, because we have nothing."⁵² Soberman therefore went to Wildy's bookshop, the Dickensian rabbit-warren of new, old and ancient law books in the covered lane near Lincoln's Inn, and spent about \$15,000 on English and Canadian law reports.⁵³ Early in the first term, scores of boxes arrived at Queen's, and students and faculty alike gathered to unpack the volumes that would form the basis of their new law library.⁵⁴

Corry, Ryan and Soberman were able to cover the first-year subjects themselves. Corry taught Legal and Constitutional History, Ryan taught Torts, Criminal Law and Civil Procedure, and Soberman taught

49. Interview with Soberman and Ryan, *supra* note 13.

50. Sir William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1766-69), volume 1 (2d ed.); volumes 2-4 (1st ed.), now in W.D. Jordan Special Collections — Rare books in Douglas Library.

51. Douglas Library Notes, Supplement to the *Queen's Review* 6:3 (December 1957); Gordon Bale, "Remembering W.F. Nickle" *Queen's Alumni Review* (March/April 1998) 31.

52. "Conversation between Corry, Ryan and Soberman", *supra* note 3 at 14.

53. *Ibid.*

54. *Ibid.* at 15.

Property and Contracts.⁵⁵ They had to establish rather than follow patterns of teaching and learning — and they were all somewhat unsure of appropriate standards and expectations. By March of 1958 Ryan and Soberman concluded that the students, having no upper-year classmates to offer guidance, were “working themselves into a state of either hysteria or complete exhaustion.”⁵⁶ Ryan therefore gathered the class together and told them not to work quite so hard. As Soberman later observed, the advice seemed to have had its effect, for “[w]e never had to tell them not to work too hard again.”⁵⁷

For Ryan and Soberman the first year was something of an adventure. Ryan was teaching for the first time, and he later acknowledged that Soberman’s constant support kept him “sane.”⁵⁸ For his part, Soberman was grateful for Ryan’s intellectual generosity.⁵⁹ Sometime in October of that year, the two colleagues stood together on the front porch of Ryan’s house and watched the first satellite, the Russian Sputnik, cross the sky⁶⁰— an event that perhaps reminded them, as it reminds us today, that they were in their own way contributing to building a new society at a time of great uncertainty and exciting promise.

IV. Consolidating a Legal-Academic Community, 1958-1968

At the end of the law faculty’s first year, Corry stated in his report to the Principal that its “revival” had passed the most difficult stage and that “prospects for rapid advance seem excellent,” for by a “stroke of good fortune” the university had persuaded Bill Lederman to be Dean of Law.⁶¹ Corry later wrote that once Lederman took over as Dean, his

55. Queen’s Faculty of Law, *Calendar* (1957-8) at 7-8.

56. “Conversation between Corry, Ryan and Soberman”, *supra* note 3 at 17.

57. *Ibid.* at 18.

58. Ryan, “FIRST First Year”, *supra* note 45 at 2.

59. Dan Soberman, “A Tribute to H.R.S. Ryan” (1981) 6 Queen’s L.J. 360 at 360.

60. Interview with Soberman and Ryan, *supra* note 13.

61. J.A. Corry, Acting Dean of Law, Report to the Principal, in *The Principal’s Report, 1957-1958* (Queen’s University) at 45-46.

own work with the law school was complete and “we never looked back.”⁶²

William Ralph Lederman (1916–1992) was a native of Regina, earned his B.A. in 1937 and LL.B. in 1940 from the University of Saskatchewan, and in 1939 won a Rhodes Scholarship to study at Oxford.⁶³ However, it was only after the war and service overseas with the Royal Canadian Artillery that Lederman was finally able to get to Oxford and pursue graduate work in law. Once he was there, his academic promise was confirmed: in 1948 he won the prestigious Vinerian scholarship for the best results in the B.C.L. course. He returned to Canada to teach law at Dalhousie, and he had established himself as one of Canada’s leading constitutional lawyers and scholars when Corry asked him to be Dean of Law at Queen’s.

The law school had an understandably makeshift quality in its early days, and Lederman confronted the formidable task of transforming it into a proper academic institution. It was a task that he carried out with a sense of both firmness and patience. Said Ryan, “Bill took hold calmly, quietly and efficiently” and he began “building up” a Faculty of Law.⁶⁴

Building a law school takes time, and a sense of ordered chaos prevailed for several years. The faculty was still without its own building when Lederman arrived in August of 1958. During that summer, the school moved from its brick house to temporary space in Morris Hall, a men’s residence near the lake. The library was located in a damp basement, and considerable effort was spent trying to protect the books from falling plaster.⁶⁵ One of Lederman’s first tasks, then, was to oversee the design and construction of a law building. It seems that the great constitutional lawyer spent a good part of 1959 arguing with architects and builders to ensure that the building — especially the library — was appropriate.⁶⁶

62. Corry, *My Life*, *supra* note 6 at 156.

63. Ken Cuthbertson, “Lederman: A Legal Career in Retrospect” *Queen’s Alumni Review* (September/October 1986) at 7-9.

64. H.R.S. Ryan, “W.R. Lederman: A Personal Tribute” (1983) 8 *Queen’s L.J.* 12 at 12 [Ryan, “Lederman”].

65. “Conversation between Corry, Ryan and Soberman”, *supra* note 3 at 18.

66. *Ibid.* at 21; Ryan, “Lederman”, *supra* note 64 at 12.

Just as soon as Ryan and Soberman got the first year of teaching under control in 1958, they had to turn their minds to the upper-year curriculum. With little time for advance planning, Soberman simply referred to his calendars from Dalhousie and Harvard for ideas about how to structure second and third year courses. “We just jumped in,” he said, and designed the law school as they went.⁶⁷

In fact, the law school initially exercised little control over the curriculum. Under the 1957 agreement the Law Society maintained a firm hand on what courses students took. After their first year, students at Queen’s took courses like Companies and Partnerships, Constitutional Law, Equity and Trusts, Jurisprudence, Evidence, Family Law and Real Estate Transactions; they were permitted only one option, Criminology or International Law.⁶⁸ Additional optional courses, like Trade Regulation and European Communities Law, were added in later years, but there were no major changes to the curriculum until the late 1960s.⁶⁹ In their exams, the first class of law students at Queen’s answered questions not unlike those law students confront today. In addition to hypothetical fact problems were essay questions, such as: “A contract to be specifically enforced by the Court must, as a general rule, be mutual . . .’ Discuss.” (Equity); “If the proposed Bill of Rights is enacted by Parliament what difference will it make?” (Constitutional Law); “In each of the following parts describe all the interests that have been created: . . . ‘G grants to T and his heirs to the use of A for life, remainder in fee simple to the use of his first child to attain 21” (Property Law).⁷⁰

On May 28, 1960, the first first-year class — sixteen men and two women — graduated. Dean Lederman concluded that the contribution of these students to the building of the law school had been “very great and quite unique.”⁷¹ At their convocation ceremony, an honorary

67. “Conversation between Corry, Ryan and Soberman”, *supra* note 3 at 24.

68. Queen’s Faculty of Law, *Calendar* (1959-60) at 23-28.

69. Queen’s Faculty of Law, *Calendar* (1960-61) at 28 (Trade Regulation); Queen’s Faculty of Law, *Calendar* (1964-65) at 25-30 (European Communities Law).

70. Queen’s Faculty of Law, *Examinations, Sessions 1957-58 and 1959-60* at 8, 3, 18, 25, 67, 90, 91, 152.

71. W.R. Lederman, Dean of Law, Report to the Principal, *The Principal’s Report, 1959-1960* (Queen’s University) at 45.

degree was conferred upon John J. Robinette, then Treasurer of the Law Society and one of Canada's most respected barristers.⁷² In his address, Robinette praised the "new system" of university legal education, contrasting it to the "awful backwater" that was the law school at Osgoode Hall when he taught there in the early 1930s.⁷³ The law teacher, he said, is "now honoured and recognized as an important and in fact an essential person in our legal system," able to look dispassionately on the law and "criticise, suggest and formulate doctrines which will influence the development of the law as a means of social justice."⁷⁴

Forty-two years later, at the age of 92, Ryan sat down with Soberman to examine the 1960 class portrait. They could identify each student by name, and they knew what many of them had done after leaving Queen's.⁷⁵ Among the graduates were Paul Cosgrove, later Mayor of Scarborough, Member of Parliament and a judge on the Ontario Superior Court; Bill Lane, also a Superior Court judge; Mike Bonner, judge in the Tax Court of Canada; Jack King and John Brownlee went to practice in Alberta, and Brownlee later became a Family and Youth Court Judge; and Dick Abbott, the medal winner, who was later chair of the Department of Law at Carleton University.⁷⁶

The graduating class included two women, Mary Alice Murray, the only woman to start in 1957, and Geraldine Tepper, who transferred from the University of Toronto in her second year. That attitudes towards women in the legal profession were only just beginning to evolve at this time is perhaps reflected by the fact that the *Kingston Whig-Standard* carried a picture of Tepper and her husband, Kingston lawyer Lou Tepper (who later taught as a sessional instructor in the law

72. Jack Batten, *Robinette: The Dean of Canadian Lawyers* (Toronto: Macmillan, 1984); George D. Finlayson, *John J. Robinette: Peerless Mentor* (Toronto: Osgoode Society, 2003).

73. "Queen's Law Group Praised by Law Society Treasurer" *Kingston Whig-Standard* (28 May 1960) 1-2 ["Praised"]. Also "Law Graduates Are the First in 96 Years" *Globe and Mail* (30 May 1960) 4.

74. "Praised", *ibid.*

75. Interview with Soberman and Ryan, *supra* note 13.

76. *Ibid.* See also Ryan, "FIRST First Year", *supra* note 45 at 2-4.

school), taken at the graduation ceremony, with the caption: “Wife with an LL.B.”⁷⁷

In 1962, after being called to the bar, Murray became Law Faculty Secretary and Registrar, positions she held until shortly before her death in 1981. She was beloved by generations of students who were grateful for the individualized attention she gave them. In 1970 students lobbied for her inclusion within the governing body of the law school, the Faculty Board, on the grounds that she was “one of the most capable members of the Queen’s Law School.”⁷⁸ At the ceremonies marking the 25th anniversary of the law school she was given a posthumous “Q.C.” by Ontario, accepted by Geraldine Tepper (then President of the Frontenac County Law Association). On the school’s 40th anniversary, the class of 1960 made a generous donation in Murray’s name for the renovation of the student common room.⁷⁹

The first class to graduate from the law school had endured less than ideal conditions in the basements of Richardson and Morris Halls. Over the course of the summer and fall of 1960, however, builders worked to complete the new law building. On October 20, 1960, the building was finally ready.

Ninety-seven years after John A. Macdonald received the first honorary Doctor of Laws at Queen’s, Prime Minister John Diefenbaker received the same honour, and then with Dean Lederman officially opened the new law school building, which was named after Macdonald. As Lederman observed on this occasion, it was “singularly appropriate that our present Prime Minister of Canada should have opened Sir John A. Macdonald Hall”⁸⁰—not just because both Macdonald and Diefenbaker were prime ministers, but also because both were lawyers. In his law practice in Saskatchewan, Diefenbaker had often championed the cause of human rights on behalf of the vulnerable, and just a few months before, on August 10, 1960, one of his major legislative

77. *Kingston Whig-Standard* (30 May 1960) 17.

78. Leonard Levenson, “The Anatomy of Faculty Board” Queen’s University Law Students’ Society, *The Clapham Omnibus* 1:2 (1971) 7-8.

79. *Queen’s Law Faculty Board Minutes*, 559th Meeting (9 January 1997) 559-1.

80. “Opening Ceremony for Sir John A. Macdonald Hall” transcription of an audio recording (20 October 1960).

initiatives, the *Canadian Bill of Rights*, had become law.⁸¹ In his address at Queen's, Diefenbaker urged the establishment of a World Supreme Court so that people everywhere could enjoy "the hope of peace under law," noting that the challenge of extending the rule of law globally represented one of the "deepest challenges to law and scholarship in the law" — a message as true today as then, and one that the Queen's law school would take very seriously over the next half-century.⁸² On this note, the doors of Sir John A. Macdonald Hall were opened.

In the years that followed, the law school grew rapidly. The size of the first-year class rose from 24 in 1957 to 45 in 1961 and to over 100 in 1967.⁸³ The faculty grew as well. Among the professors joining the school during Lederman's deanship were Hugh Lawford, Bernie Adell, Gordon Bale, Ron Price, Marvin Baer, George Alexandrowicz and Ron Delisle — all of whom were still teaching at Queen's some thirty years later, and two of whom, Professors Adell and Alexandrowicz, still teach today. Some faculty members from this period went on to teach in other law schools, including Jim MacIntyre, Alan Mewett, Morley Gorsky, and Terry Ison, and a number of them went on to be Deans of Law elsewhere, including Murray Fraser and Lyman Robinson at Victoria, Stanley Beck at Osgoode, Innis Christie at Dalhousie, and David Johnston at Western Ontario. Richard Gosse became Deputy Attorney General of Saskatchewan and then Inspector General of the Canadian Security and Intelligence Service, Bruce McDonald became a leader of the intellectual property bar, and David Bonham became Vice-Principal of Finance at Queen's. In 1968, the last year of Lederman's deanship, the first woman joined the faculty. Irene Borys, later Bessette, a Holocaust survivor who had studied law in Bordeaux and New York and practised in Casablanca, became head law librarian and taught courses in Quebec civil law.⁸⁴

81. Garrett Wilson & Kevin Wilson, *Diefenbaker for the Defence* (Toronto: James Lorimer & Co., 1988); W.S. Tarnopolsky, *The Canadian Bill of Rights*, 2d ed. (Toronto: Macmillan Co., 1975) at 3-14.

82. "PM Suggests International Supreme Court" *The Globe and Mail* (21 October 1960) 13.

83. W.R. Lederman, Dean of Law, Report to the Principal, *The Principal's Report, 1961-1962* (Queen's University) at 58; W.R. Lederman, Dean of Law, Report to the Principal, *The Principal's Report, 1963-1964* (Queen's University) at 96.

84. Queen's Faculty of Law, *Calendar* (1968-69) at 11-12.

What kind of institution was Queen's law school under Bill Lederman? As Bora Laskin observed, Lederman "gave Queen's Law Faculty a distinctive character."⁸⁵ He encouraged a sense of community by welcoming students to his home for dinners.⁸⁶ Former students recall his dry wit and his incisive, if offbeat, pronouncements ("Life is too short for instant coffee," "Never mistake movement for accomplishment," etc.).⁸⁷ As an academic lawyer, Lederman was careful and deliberate in expressing his views, only committing himself to a position that he was convinced was right. When in discussion with Lederman, said John Whyte, it was impossible not to appreciate his "intellectual grandeur," and though he had a generous spirit and was prone to self-deprecating irony, "contradicting his views merely to generate controversy did not lead to happy conversations."⁸⁸ His colleagues and students always knew where he stood on an issue, and he expected others to defend their views with the same rigour and self-assurance as he did. But at the same time, Lederman demonstrated "steadfast friendship" and "constant kindness,"⁸⁹ and, to the occasional consternation of his colleagues, he showed a surprising soft-heartedness when it came to marking exams.

There was never any doubt that Lederman would work tenaciously to honour the commitment implicit in the events of 1957. "A law school must operate as a faculty in the interdisciplinary environment of a university," he wrote, "so that legal issues can be illuminated by reference to the natural sciences, the social sciences and the humanities generally, and vice versa."⁹⁰ For Lederman, the study of law had to be "both humane and social," and law professors were expected to lead through the "example of intellectual integrity" and to press upon their students an understanding of the law as it related to "human knowledge

85. Bora Laskin, "Preface" (1982) 8 Queen's L.J. 10 at 10.

86. Murray Fraser, "Bill Lederman: Personal Reflections" (1993) 19 Queen's L.J. 18 at 19.

87. Bruce C. McDonald to Mary Alice Murray (6 April 1981) QA MAM Papers 4.

88. John D. Whyte, "Lederman's Legalism" (1993) 19 Queen's L.J. 26 at 27, 35 [Whyte, "Lederman's Legalism"].

89. Ryan, "Lederman", *supra* note 64 at 12.

90. W.R. Lederman, "Canadian Legal Education in the Second Half of the Twentieth Century" (1971) 21 U.T.L.J. 141 at 151 [Lederman, "Canadian Legal Education"].

and morality generally, to the limits of mind and conscience.”⁹¹ Perhaps no professor could do this perfectly; but he sensed that “students know a genuine effort when they see it and are grateful for it” — and that this in itself was important.⁹² Indeed, he insisted that law teachers and law students were engaged in a common enterprise. It was a relationship defined by “a healthy scepticism” about all aspects of the law, and a spirit of “trust and sympathy” that permits each member of the community to engage freely in critical reflection and argument.⁹³ Lederman rejected the artificial divide between theory and practice that sometimes obscures debates about legal education. “There is nothing so practical in this world as the power to think,” he wrote, “and the university is the citadel of reason in modern society.”⁹⁴

When Lederman stepped down as Dean in 1968, a student tribute to him proclaimed: “Professor Lederman’s first love is the scholarly and the academic; not administration. When he was first appointed Dean of Law in 1958, when this school was still a dream, Professor Lederman forewent his first love for the sake of the school Today we reap the benefit”⁹⁵

V. Vision and Expansion, 1968-1977

On September 28, 1972, some sixty law students gathered in Law House on Barrie Street to watch the final game of the Canada-Russia hockey series, and there was, of course, a “deliriously joyous reaction” to Paul Henderson’s winning goal.⁹⁶ The victory may have been an unusual one, but the gathering of law students was not. Despite the size of the school — it had grown to roughly its present size of about 450 students — there was a real sense of solidarity among the student body.⁹⁷

91. *Ibid.* at 152.

92. *Ibid.*

93. W.R. Lederman, “Law Schools and Legal Ethics” (1965) 8 *Can. Bar Rev.* 212 at 217, 218 [Lederman, “Law Schools”].

94. Lederman, “Canadian Legal Education”, *supra* note 90 at 152.

95. Queen’s Law Students’ Society, *Queen’s Law Reports* 1:1 (13 November 1968) 2.

96. Douglas Edward (Queen’s LL.B. ’73) in Emrich, *Alumni Anecdotes*, *supra* note 47 at 29-30.

97. Dan Soberman, “The Faculty of Law of Queen’s University” (1969) 19 *U.T.L.J.* 420 at 422.

They took their work seriously, but there was a cooperative, even egalitarian, spirit within the law school.⁹⁸ Students often shared their study notes. Handwritten notes were photocopied and circulated, and before the advent of computer and e-mail technology the authority of such notes depended upon the reputation of their authors. In the 1970s, the notes of one Nicholas Bala — widely known as “Nicky notes” — seemed to have become unofficial required-reading for students.⁹⁹

In 1968, Dan Soberman succeeded Lederman as Dean of Law and served in that capacity until 1977, with Lyman Robinson serving as Acting Dean in 1973-1974.¹⁰⁰ Soberman was an expert in business law, having helped to draft the *Canada Business Corporations Act* in the late 1960s, yet he also taught and wrote in the area of constitutional law and comparative federalism. He would continue teaching in the faculty until 1999, and just this year he and Professor *Emeritus* Alex Easson completed the eleventh edition of their leading textbook on business law.¹⁰¹

The faculty continued to grow during the first years of Soberman’s deanship. The years 1968-1970 were particularly significant for the law school. During this time, Thomas Asplund, Donald Carter, Denis Magnusson, Robert Mackenzie, Gordon Simmons, Toni Pickard, Michael Pickard, Mark Weisberg and John Whyte joined the faculty, and a series of reforms and initiatives were undertaken that still define the basic character of the institution today.

98. On the school’s reputation for cooperation and egalitarianism, see Anne Kershaw “A forum for social change” *The Whig-Standard Magazine* 9:38 (9 July 1988) 7.

99. Comments of Peter Bishop (Queen’s LL.B. ’76), Bill Walker (Queen’s LL.B. ’77) and Jim Carruthers (Queen’s LL.B. ’79) in Emrich, *Alumni Anecdotes*, *supra* note 47 at 37, 43, 50. Nick Bala joined the faculty in 1980 and in 2006 was the co-winner of the Queen’s University Prize for Research Excellence.

100. “Prof. Soberman named Dean of Law” *Queen’s University Campus* 4:6 (October 1968) 3.

101. J.E. Smyth, D.A. Soberman & A.J. Easson, eds., *The Law and Business Administration in Canada*, 11th ed. (Toronto: Prentice Hall, forthcoming). The first edition was J.E. Smyth & D.A. Soberman, eds., *The Law and Business Administration in Canada* (Toronto: Prentice-Hall of Canada, 1964).

A. Reforms to the LL.B. Curriculum

The late 1960s were a time of intense social change, when young people everywhere questioned old ways. In 1968, at the peak of the sixties “revolution,” John Claydon, then a student member on the curriculum committee (and later a law professor), voiced the opinion that legal education must “reflect the ferment” of changing times.¹⁰² If lawyers are to serve society, he said, law schools needed to abandon “production line methods churning out legal technicians . . .”¹⁰³ The shift of legal education from the hands of the Law Society to those of academics had not erased all concerns over trade-school pedagogy.

In fairness to the law school, it had substantially increased the number of optional courses during the mid to late 1960s so that students had the opportunity to consider law’s changing role in society — including courses like Psychiatry and the Law, Contemporary Canadian Industrial Relations, International Organizations, Comparative Law, Securities Regulation, Human Rights, and Intellectual Property.¹⁰⁴ The problem, however, was that under the 1957 agreement the Law Society prescribed a list of mandatory subjects, and its list was long. As a result, no matter how innovative a law school was in designing new optional courses, students did not have the chance to take very many of them.

It is tempting to see the push for curriculum reform as part of a student-led sixties rebellion against an older generation. However, the professors were very much on the students’ side, and in fact led the move for reform in the face of reservations from some students about how it would affect their career prospects. Ryan, for example, argued that the law school curriculum “must reflect concern for not only analytical and technical aspects of legal rules but also social problems and social values.”¹⁰⁵ In early 1969 the faculty’s curriculum committee,

102. John Claydon, “The Curriculum Committee” *Queen’s Law Students’ Society, Queen’s Law Reports* 1:3 (19 February 1968).

103. *Ibid.*

104. See Queen’s Faculty of Law, *Calendar* (1967-68) at 30-38 and Queen’s Faculty of Law, *Calendar* (1968-69) at 13-23.

105. Stuart Ryan, “Curriculum and Social Responsibility”, *Queen’s Law Students’ Society, Queen’s Law Reports* 1:1 (13 November 1968).

chaired by Associate Dean Bernie Adell, concluded that even if all law students went into private legal practice, the faculty would “fail in its duty to society and to the legal profession if it sought to impart only vocational competence,” for it was the responsibility of the university “to develop in its students enough intellectual awareness and curiosity to enable them to look sceptically at their own activities and at the society around them.”¹⁰⁶

In fact, most of the Ontario law schools were of the same view, and in 1969 the Ontario law deans initiated talks with the Law Society to gain control over the law school curriculum. As in 1957, Queen’s in 1969 was at the forefront of the reform movement. The Ontario law deans asked Bill Lederman to lead talks with the Benchers, and he therefore “bore the brunt” of the negotiations.¹⁰⁷ In March 1969, Dean Soberman was able to report that Lederman’s efforts had been “considerable and successful” — the Law Society had accepted his proposals.¹⁰⁸

Under the 1969 agreement brokered by Lederman, the mandatory courses were reduced to just seven — Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Personal Property, Real Property, and Torts. The remaining 16 subject areas from the original Law Society list, plus Labour Law and Conflicts of Law, were to be covered by courses offered by each law school, but students were free to decide whether to take these courses or other options offered by the school.¹⁰⁹ The compromise Lederman secured between the legal-academic and legal-professional communities has remained largely in place ever since.

106. Queen’s Faculty of Law “Proposals of Curriculum Committee for Revision of Second and Third Year Curriculum” (B. Adell, Chair) 20 February 1969, approved *Queen’s Law Faculty Board Minutes*, 112th Meeting (3 March 1969).

107. Ryan, “Lederman”, *supra* note 64 at 12. Also, Dan Soberman, “A Peerless Dean Among Equals” (1993) 19 *Queen’s L.J.* 22 at 25.

108. *Queen’s Law Faculty Board Minutes*, 115th Meeting (8 April 1969) (Dean’s Report); D.A. Soberman, Dean of Law, Report to the Principal, *The Principal’s Report, 1968-1969* (Queen’s University) at 38-39 (announcing the Law Society’s decision and resulting curriculum reform in the Faculty).

109. W.R. Lederman, “Proposals of the Committee of Deans of Ontario Faculties of Law Concerning the Curriculum of an Approved Law School” (27 January 1969), printed as Appendix A to Lederman, “Canadian Legal Education”, *supra* note 90 at 155-59.

The range of courses offered at Queen's was now fairly impressive — from standard courses like Evidence, Administrative Law and Corporations to specialized courses like the Law of Socialist States, Securities Regulation, Legal Services for Low Income Groups, and International Transactions.¹¹⁰ And new courses were constantly being added. In 1969, a compulsory Public Law course was introduced to the first-year curriculum; it has remained there ever since, and led to the adoption of similar courses at other Canadian law schools. After a series of judicial rulings and inquiry reports confirmed the emergence of aboriginal claims as a pressing issue in the mid-1970s, Professor Marvin Baer, chair of the curriculum committee, argued for the establishment of a course in “Native Law” at Queen's as part of “the duty of a law school to respond to the social issues of contemporary society as they are reflected in legal conflicts.”¹¹¹ This sort of curriculum reform was possible prior to 1969, but after 1969 there was a real chance students might actually enrol in such courses. And indeed they did.

But at least some students were initially wary of the new curriculum. Associate Dean Adell explained to students that for many of them “traditional professional-vocational training” would have limited relevance and greater emphasis was needed on “law's virtually unlimited potential for furthering or frustrating social progress.”¹¹² He then observed:

Even if you intend to take over your Uncle Elmer's practice in Backwater Lake or to closet yourself in a Bay Street office in relentless pursuit of a six-figure income, do not forget that you are a young man or woman living in a world that is exhilarating and depressing at the same time. If you cannot be excited by the unfulfilled promise of our society and revolted by its failings, I do not think you have the spirit for a life in the law. If you have that spirit, however, there is a great deal for you in our new curriculum. Do not be stopped by your own inhibitions, or by anyone else's, from taking full advantage of it.¹¹³

110. Queen's Faculty of Law, *Calendar* (1970-71) at 18-21.

111. Memorandum to Law Faculty Board from Curriculum Committee (M.G. Baer, Chair) 19 February 1975, appended to *Queen's Law Faculty Board Minutes*, 230th Meeting (6 March 1975).

112. B.L. Adell, Associate Dean, “The New Curriculum” Queen's Law Students' Society, *Queen's Law Reports* 2:1 (3 September 1969).

113. *Ibid.*

At least some of the student concerns at this time were less about the range of course options available than they were about the manner in which courses generally were taught. “I have heard several people with more or less vigour assert that more law and less policy should be taught at this school,” one student wrote in 1970, but, he continued, “I wonder what they mean by ‘law’ in this type of statement.”¹¹⁴ In the same year Professor Mark Weisberg noted that at least some students expressed the fear that courses were “taking a turn away from practicality” to “more theoretical considerations.”¹¹⁵ Indeed, Weisberg would become increasingly concerned with student impressions about legal education.¹¹⁶ In the end, he would conclude that students benefited most — in practical terms — from the opportunity for reflection about the law that law schools could offer, and from the increased sensitivity to law’s relationship to language and writing that law professors might instil. “Since the law is a language,” he said, “and since language affects how people see and act in the world, however one speaks and writes will either reinforce accepted patterns or work to damage them.”¹¹⁷

Once legal education was subjected to the values of the academy, it was inevitable that questions would arise about the relevance of those values to the profession. As early as 1896, Oliver Wendell Holmes found himself defending law schools from the claim that they should be “more practical.”¹¹⁸ The range of student concerns expressed during this period of curriculum reform in 1968-1970 confirms that the tension between trade-based and university-based legal education had not been solved for all time in 1957, but would be an ongoing reality to be addressed by each generation of law teachers and law students.

114. Winston Tennant, Letter to the Editor, Queen’s Law Students’ Society, *Queen’s Law Reports* 2:5 (30 January 1970).

115. Mark Weisberg, “An Open Letter to Students and Faculty” Queen’s Law Students’ Society, *Queen’s Law Reports* 2:5 (30 January 1970).

116. See e.g. Mark Weisberg, “Looking for Socrates: Reflections on Legal Education” (1980-81) 6 *Queen’s L.J.* 587.

117. Mark Weisberg, “Epilogue: When (Law) Students Write” (2003) 27 *Legal Studies Forum* 421 at 433.

118. Holmes, *supra* note 38 at 270.

B. Establishing the Master of Laws Program

In his address to the graduating class of 1960, Robinette had stated that, having established a law school, the next step for Queen's was to develop a graduate program in law.¹¹⁹ Dean Lederman agreed. "Only by doing this," he stated in 1964, "can Queen's Faculty of Law hold her place as a front-rank law school in Canada."¹²⁰ In September, 1967, the decision was made to seek Senate approval for a graduate program, and Bernie Adell set to work to achieve that end.¹²¹ In 1969, the Master of Laws (LL.M.) program began, and the following year Queen's awarded the first LL.M. degree to Toni Pickard for her thesis on psychotherapy in the prison system.¹²²

From the beginning, the LL.M. program at Queen's attracted international students — more, in some years, than Canadians. In its second year, the first of a long line of students from Ghana was awarded an LL.M.¹²³ One of those students, Rosemary King (formerly Ofei-Aboagye), is a member of the faculty today.¹²⁴ In 1987, Jinyan Li, now professor of law at Osgoode Hall Law School, was the first of many students from China to receive a Queen's LL.M.¹²⁵ In fact, the program has attracted students from Albania to Zambia — and many countries in between. The presence of these graduate students has significantly enriched academic life in the law school.

119. "Praised", *supra* note 73.

120. W.R. Lederman, Dean of Law, Report to the Principal, *The Principal's Report, 1963-1964* (Queen's University) at 96-97.

121. *Queen's Law Faculty Board Minutes*, 92d Meeting (27 September 1967). Adell reported on progress: *Queen's Law Faculty Board Minutes*, 101st Meeting (3 May 1968); *Queen's Law Faculty Board Minutes*, 105th Meeting (9 September 1968); *Queen's Law Faculty Board Minutes*, 107th Meeting (15 October 1968).

122. Queen's Faculty of Law, *Calendar* (1969-70) at 21. Toni Pickard, *Preliminary Proposal: Program Design for the Psychotherapy Unit of the Regional Medical Centre Millhaven, Ontario* (LL.M. Thesis, Queen's University, 1970).

123. Gloria Tawiah Quansah, *Legal Aspects of Foreign Private Investments in Ghana* (LL.M. Thesis, Queen's University, 1971).

124. Rosemary Ofei-Aboagye, *Addressing Domestic Violence in Ghana* (LL.M. Thesis, Queen's University, 1991).

125. Jinyan Li, *Issues in Tax Treaty Policy with Particular Reference to the Peoples' Republic of China* (LL.M. Thesis, Queen's University, 1987).

Some of the international students who came to Queen's to do graduate work in law returned home afterwards to teach law. Among them were Ronald McCallum, who is now the Dean of Law at the University of Sydney, Hamudi Majamba, now Associate Dean of the Faculty of Law at the University of Dar es salaam in Tanzania, and Kenneth Miller, now Vice Principal of the University of Strathclyde. But like Professors King and Li, some have stayed to teach law in Canada — several, like Toni Pickard (United States) and David Mullan (New Zealand), at Queen's, while others now teach elsewhere, like Christine Boyle (Northern Ireland) at the University of British Columbia, Richard Devlin (Northern Ireland) at Dalhousie and Carys Craig (Scotland) at Osgoode Hall Law School. The LL.M. program has also attracted many Canadian students, some of whom have gone on to teach law — for example Martha Bailey and Lynne Hanson at Queen's, David Schneiderman at the University of Toronto, France Houle at the University of Montreal, and Sharon McIvor, a member of the Lower Nicola Band, who teaches at Nicola Valley Institute of Technology, an innovative post-secondary institution established by several bands of the Interior Salish peoples in British Columbia.

Still other graduates of the Queen's LL.M. program have entered public life, working in government, in international organizations or as judges. Edward Hoseah (LL.M. '90) is now Director of the Prevention of Corruption Bureau of Tanzania, and Edward Kwakwa (LL.M. '86), from Ghana, is counsel to the World Intellectual Property Organization in Geneva. Among the Queen's LL.M. graduates appointed to the bench are Simon France (LL.M. '83) who was appointed the New Zealand High Court in 2005, Ellen France (LL.M. '83), who was appointed to the New Zealand Court of Appeal in 2006, and Timothy Katanekwa (LL.M. '88), appointed to the Zambia High Court in 2006.

From 1969 to 2004, a distinctive characteristic of the Queen's LL.M. program was its very rigorous thesis requirement — as reflected in the fact that it was the only LL.M. program in Canada where students had to defend their theses before a full doctoral-style examining committee, including an examiner external to the university. In recent years, the doctoral degree in law has been displacing the LL.M. as the basic academic qualification for new law teachers, and has also become increasingly sought after by scholarly practitioners and public servants.

Accordingly, in 2004, acting on a report prepared by a committee chaired by Nick Bala, the faculty took the first steps toward establishing a doctoral degree in law, which is expected to be in place by 2008.¹²⁶ At the same time, in response to the changing role of the LL.M. degree, the faculty introduced a course-based LL.M. program to supplement the existing thesis-based program.

C. Students and Law School Governance

University campuses in the late 1960s were alive with student reform movements and protests — including calls for student participation within university government. The Queen’s law faculty was once again in the forefront in this respect, both within Queen’s University and among Canadian law schools. In 1967, the governing body of the school, the Law Faculty Board, agreed to student requests to sit on some of its committees. In 1969 the Board itself admitted seven student members, a number that would later increase to the present ten.¹²⁷ Students were not initially permitted to sit on the appointments committee, which did elicit student objections. “[W]e as students have a very real interest in the type of profs hired to ‘educate’ us,” one student claimed in 1968, and he then proceeded to add that a fault shared by many of the professors was that “[t]hey forget we possess more than the sense of sound.”¹²⁸ The campaign was successful, and students were admitted to the appointments committee.

In fact, law students have never been reticent about asserting their rights and interests within the law school. In 1972, student representatives in Faculty Board even argued that professors ought to place “less emphasis on essay type examinations,” since their “validity and reliability” was open to doubt and student performance might be unfairly affected by “nervousness or fatigue”; instead, more emphasis

126. *Queen’s Law Faculty Board Minutes*, 650th Meeting (24 September 2004); *Queen’s Law Strategic Framework, 2005-2010* (Queen’s Faculty of Law, 2005) at 6.

127. *Queen’s Law Faculty Board Minutes*, 94th Meeting (5 December 1967); Queen’s Faculty of Law, *Calendar* (1969-70); Queen’s Faculty of Law, *Calendar* (1997-98) at 18.

128. Vic Szumlanski, Editorial, Queen’s Law Students’ Society, *Queen’s Law Reports* 1:2 (18 December 1968).

should be placed on “multiple-choice machine marked tests.”¹²⁹ Needless to say, such proposals were voted down by the members of Faculty Board. Students constituted roughly one-third of the Board’s members, and therefore wielded considerable power — but at least one student thought it was unfair that they could not out-vote the faculty.¹³⁰ The appropriateness of student representation is, of course, a matter of perspective. Upon learning just how many students sat on Faculty Board and its committees, a noted British legal scholar visiting the law school in the late 1990s was overheard to mutter that it was “democracy run amok.”

Students quickly appreciated that opinion on policy matters confronting the Faculty Board rarely divided on a student/professor basis. One student observer of faculty politics suggested that the faculty consisted of, at one extreme, the senior “conservative” professors, who held “the power of the Law School,” and, at the other extreme, “the young idealistic Harvardites” (a reference no doubt to Mark Weisberg, Toni Pickard, Michael Pickard, and John Whyte) who were “very much *au courant* with the external world” and “socially aware and conscious of student problems and views”; between these two groups the rest of the faculty wavered, and were therefore the appropriate targets of student “politicking.”¹³¹ Another student opined that while some of the younger faculty members “are a little left of centre . . . I would be hard put to find a radical there,” and students seeking to achieve reform within the law school were advised to remember that “the faculty is more receptive to a slow but steady pressure than to a fast and furious rush”¹³² In later years, student representatives would prove to be both very effective and highly beneficial to the governance of the institution, especially in times of controversy or challenge.

129. *Queen’s Law Faculty Board Minutes*, 160th Meeting (25 January 1972) 160-3-5.

130. Levenson, *supra* note 78 at 3.

131. *Ibid.*

132. Lesley Cook, “The First-Year Student’s Guide to the Law Students Society and to Faculty Board” Queen’s University Law Students’ Society, *The Clapham Omnibus* (September 1971) 9-11.

D. Founding the Queen's Law Journal

In March, 1968, two students, Steve Bookman and Alan D. Gold, announced the establishment by the Law Students Society of the *Queen's Intramural Law Journal* for the publication of student articles.¹³³ The first issue, edited by Bookman and Gold, was published in November 1968. It included articles by Denis Magnusson, who had graduated earlier that year and had just begun teaching, and John Claydon, who was then a second-year student and would later join the faculty.¹³⁴ In 1971 the Journal was re-established as the *Queen's Law Journal*, but it continued to publish mostly student articles. Among its student authors from Queen's were a number of future academics, including David Mullan, Bryan Schwartz and Denise Réaume.¹³⁵

The idea of establishing a peer-reviewed journal for academic scholarship had been discussed by the faculty for some time. However, Lederman had opposed the idea on the basis that there was not enough good scholarly writing in Canada to support another such journal, and nothing was done.¹³⁶ Once the student journal was started, however, the Faculty Board revisited the idea and resolved in 1969 to consider establishing a separate "Queen's Law Review" for articles by academics.¹³⁷ A separate journal never materialized. In 1972, faculty attention shifted to the *Queen's Law Journal* and the question was debated whether the Journal should continue to publish student-authored papers or "go the whole hog" (as one professor said) and solicit external academic articles.¹³⁸ Lederman, wishing to avoid the "American

133. Steve Bookman & Alan Gold, public notice (March 1968) QA MAM Papers 7/11.

134. Denis Magnusson, "Insider Trading: The Basis of Liability" (1968) 1 *Queen's Intramural L.J.* 53; John E. Claydon, "Police Practices and Control Mechanisms: A Functional Re-appraisal" (1968) 1 *Queen's Intramural L.J.* 21.

135. David Mullan & Roger Beaman, "The Constitutional Implications of the Regulation of Telecommunications" (1973) 2 *Queen's L.J.* 67; Bryan Schwartz, "*Woodward's Estate: A Case of Nonconstitutional Law*" (1978) 4 *Queen's L.J.* 124; Denise Réaume, "Women and the Law: Equality Claims Before Courts and Tribunals" (1979) 5 *Queen's L.J.* 3.

136. Laskin, *supra* note 85 at 10.

137. *Queen's Law Faculty Board Minutes*, 115th Meeting (8 April 1969) item 2.

138. *Queen's Law Faculty Board Minutes*, 162d Meeting (7 March 1972) 162-24.

law review syndrome, with its attendant elitism,” was still reluctant to pursue the latter option, and the Faculty Board concluded that the Journal should continue “as a student edited and student contributed Journal.”¹³⁹

However, by 1976 the Journal’s direction had clearly shifted. Gradually, fewer of the Journal’s contributors were students and more were professors and practitioners, and within a very short time it had gained the reputation for publishing scholarship of the highest quality — scholarship that, for example, was increasingly relied upon by judges. The Supreme Court of Canada came to cite articles published in the *Queen’s Law Journal* regularly — a notable example being the 1996 aboriginal rights case of *Van der Peet* in which four different *Queen’s Law Journal* articles were cited, including one by future Supreme Court justice Ian Binnie.¹⁴⁰ The Journal is now a model for student-edited, peer-reviewed academic legal periodicals, and, under the guidance of its faculty advisor, Bernie Adell, it held the first national conference of Canada’s student-edited law reviews in 2005.¹⁴¹

E. The Genesis of Quicklaw

In October 1972, it was reported that a sense of maniac chaos reigned in the house at 140 Beverly Street, just one block from the Queen’s campus: “anxious-looking individuals” paraded through the house and everywhere were machines producing “nothing but paper — paper that overflows filing cabinets, crawls out of cardboard boxes, submerges work desks and creeps across floor space.”¹⁴² In fact, this chaos was the QUIC/LAW project, “a unique and significant project,” it was said, “that promises to improve the quality of legal services throughout the world” by providing lawyers with instant computer access to legal

139. *Ibid.* at 162-4, 162-5.

140. *R. v. Van der Peet*, [1996] 2 S.C.R. 507 at paras. 41, 42, 112, 116.

141. See Jean Leclair, “A Review of Law Reviews: Comments of a Contented Victim” (2005) 31 *Queen’s L.J.* 385.

142. Martin Jones, “Queen’s University Investigation of Computing & Law” *The Queen’s Journal* (31 October 1972) 10.

resources.¹⁴³ The mastermind behind the project was Queen's law professor Hugh Lawford, and over time the project would meet and surpass these ambitious expectations.

Lawford's interest in developing searchable computer databases for legal materials developed in the mid-1960s, and by September 1968, he had entered into discussions with IBM to establish a project of "considerable proportions."¹⁴⁴ A deal was finalized, and by the end of that year Lawford, Professor Keith Latta and Dick von Briesen, a visiting professor in the law school, were running a \$2.5 million project on the legal applications of computer technology, funded jointly by Queen's University, IBM and the federal government.

QUIC/LAW — the acronym for Queen's University Institute for Computing and Law — showed some early signs of success, but the issue of continued university funding soon became controversial. Lawford argued that if Queen's did not continue to support the project, a purely commercial entity would develop the technology, and equitable access to it might be threatened.¹⁴⁵ "The whole point of computerized information systems is to enable more people to have access to more information more quickly," Lawford stated in 1970, and it would be "unfortunate" if the effect of computerizing information was "to make it into a valuable commodity and to restrict rather than expand its use."¹⁴⁶ By 1973, however, IBM, the government and the university had withdrawn support for the project, and Lawford and von Briesen had established their own company, "QL Systems," to pursue what they feared someone else would pursue — the commercial computerization of the law.¹⁴⁷

143. *Ibid.*

144. *Queen's Law Faculty Board Minutes*, 105th Meeting (9 September 1968) (Dean Soberman's expression). *Queen's Law Faculty Board Minutes*, 108th Meeting (28 October 1968) (Lawford reports on "the progress of negotiations with I.B.M.").

145. Hugh Lawford, Keith Latta & Richard von Briesen, *The QUIC/LAW System of Editing and Retrieving Legal Documents* (Kingston, Ont.: Queen's University, 1970) at 1, 7-8.

146. "Notes for a Speech by Professor Hugh Lawford, Director, QUIC/LAW Project, Queen's University on Wednesday, September 16, 1970" Queen's Library, W.D. Jordan Special Collections — Lorne Pierce, Canada Pamphlet 1970 no. 021, 3.

147. Bill Rogers, "Quicklaw founder a trailblazer in online legal research — Hugh Lawford's on-line research database turns 25" *The Lawyers Weekly* 18:24 (30 October 1998).

One year later, the system was ready for a trial run before a group of Department of Justice officials. It was the computer serviceman making the final installation of the equipment who put the first question to the new system: “[W]asn’t there a case where a cow was struck by a car driving up a hilly, winding road?” Lawford doubted whether his system could produce the answer on the basis of such limited information, but he typed in the question anyway. Within fifteen seconds he had the answer: *Fleming v. Atkinson*, a case decided by the Supreme Court of Canada in 1959.¹⁴⁸ The room was silent. And then, one of the Department of Justice officials said, “By God, I think you have something here!”¹⁴⁹ Legal research would never be the same again.

In 1979 the new technology was made available to students at Queen’s: a computer terminal was placed in the library to permit access to the QL database.¹⁵⁰ By 1989, the law library had a computer lab with 24 workstations and with access to various databases, QL included. Associate Dean and Chief Law Librarian Denis Marshall explained in 1992: “University mainframe computers throughout North America are linked together by a series of regional communications networks known collectively as the Internet” — a reminder of just how quickly things have evolved.¹⁵¹

The QL system was original and hugely successful. Eventually Lawford sold the rights to the concept to the massive West Publishing Company in the United States, and it was used in the development of the “Westlaw” legal database. QL Systems was re-incorporated as Quicklaw Inc. in 1999 and merged with LexisNexis Butterworths Canada in 2002, with Lawford continuing as C.E.O. until 2004.¹⁵² Lawford remained a member of the law faculty until he retired in 1999. In recognition of his contributions to Canadian legal publishing, the Canadian Association of Law Libraries awards the Hugh Lawford Award for Excellence in Legal Publishing each year.

148. Lee Belland, “Computer law service not cowed by any question” *The Toronto Star* (25 January 1974) C9. *Fleming v. Atkinson* is reported at [1959] S.C.R. 513.

149. Keith Latta, Comments, *Slaw.ca* (30 January 2007), online: <<http://www.slaw.ca/2007/01/25/the-birth-of-quicklaw/>>.

150. Memorandum from Dean Adell to Law Students, “Re: Use of QL Systems terminal in Law Library” (6 November 1979) QA MAM Papers 1/3.

151. “Trends and Technology in the Law Library” *Queen’s Law Reports* (Winter 1992) 5.

152. “Quicklaw founder Lawford retiring” *The Lawyers Weekly* 24:3 (21 May 2004).

F. Clinical Programs: Legal Aid and Correctional Law

In 1967, the Ontario Legal Aid Plan was established, and the Queen's Law Faculty immediately accepted in principle the idea of faculty and student participation in the Kingston legal aid scheme.¹⁵³ In the end, however, a much more ambitious plan was adopted: the creation of a legal aid clinic in the law school operated by students under the supervision of a staff lawyer employed by the faculty. In March 1970, law students from Queen's were among the first in Ontario to receive approval from the Law Society to operate such a clinic.¹⁵⁴ The clinic operated under the supervision of Keith Norton, a graduate of Queen's law school (and later provincial cabinet minister and chair of the Ontario Human Rights Commission). One year later, lawyers from Legal Aid Toronto concluded that Queen's Legal Aid had had "a very successful start," attending to more cases than expected.¹⁵⁵

For several years, Queen's Legal Aid operated a Rural Legal Services project in which students travelled to towns and villages north of Kingston to deliver legal aid. A 1976 advertisement to residents of North Frontenac County and Lennox and Addington County proclaimed: "If you can't come to us we'll come to you!", "Look for the white van."¹⁵⁶ Today, the hugely successful Queen's Legal Aid program operates year-round. Over eighty student members provide legal services to underprivileged clients in Kingston and Napanee, as well as to Queen's students. Integrated into the program is the Clinical Litigation Practice course, in which eighteen students per term receive academic credit for their legal aid work.

In 1974, with funding assistance from the federal government, Professor Ron Price established the Correctional Law and Legal Assistance Project to provide legal assistance to inmates in correctional institutions in the Kingston region. Starting the following year, the project included a Clinical Correctional Law course in which students were "directly involved in providing legal assistance to prisoners under

153. *Queen's Law Faculty Board Minutes*, 94th Meeting (5 December 1967).

154. "Law students to operate legal aid office" *Kingston Whig-Standard* (28 March 1970) 21.

155. *Queen's Law Faculty Board Minutes*, 146th Meeting (16 February 1971) 146-4.

156. QA MAM Papers 1/10.

the supervision of members of the Faculty of Law.”¹⁵⁷ Under the guidance of Price and then Allan Manson, the Correctional Law Project gained a national reputation: as of 1977 it had conducted some 23 test cases on prisoner rights at various levels of the court system.¹⁵⁸ Students enrolled in the Clinical Correctional Law course — the only one of its kind in Canada — now work with a group of staff lawyers directed by Professor Charlene Mandell, and represent inmates before the Penitentiary Discipline Court and the National Parole Board.¹⁵⁹

The Clinical Correctional project has been just one part of the criminal law program at Queen’s. With the teaching and research of Don Stuart, who has been the Editor-in-Chief of the *Criminal Reports* since 1982, and Ron Delisle, Allan Manson, Toni Pickard and Phil Goldman, criminal law would become a real strength of the faculty — a strength continued more recently by the work of Gary Trotter, David Freedman, Malcolm Thorburn and Lisa Dufraimont.

VI. Community and Diversity, 1977-1992

Dan Soberman’s term as Dean of Law came to an end in 1977. During his nine years as Dean, Queen’s law school gained control over its own curriculum, initiated a graduate law degree, established a scholarly journal, and developed clinical programs for students. If Lederman had laid the foundations for the law school, Soberman built the superstructure. Bernie Adell had been responsible for managing key parts of the construction project, and so it was fitting that he was selected to be the next Dean of Law.¹⁶⁰

Bernard Leo Adell was gold medallist in law at the University of Alberta and won a Rhodes scholarship to study at Oxford, where he worked under the eminent labour law scholar Otto Kahn-Freund, writing a doctoral dissertation comparing the laws on collective

157. Queen’s Faculty of Law, *Calendar* (1975-76) at 27. “Law students help in prisons” *The Kingston News* (31 January 1974) 19; Rudy Platiel, “Storefront clinics bring legal aid to people” *The Globe and Mail* (2 July 1981) T1.

158. Editors, “Preface to the Symposium” (1977) 3 Queen’s L.J. 211 at 212.

159. Queen’s Faculty of Law, *Prospectus* (2006) at 5.

160. “Adell picked as new Dean of Law” *Queen’s Journal* (13 January 1977).

bargaining in Canada, the United Kingdom and the United States. He joined the faculty in 1964, and when he became Dean of Law (at the comparatively young age of 37) he was one of Canada's leading labour law scholars.

The law school under Adell had some 450 students, 30 to 33 faculty members, and offered over 70 courses — but it had less and less money. Throughout the 1960s a sense of confidence and progress gripped the law school, as it did Canadian society generally, a reflection of post-war optimism and steady economic growth. By the early 1970s, however, economic conditions and social expectations in Canada began to reflect the simple reality that economic growth was not inevitable and government resources were not unlimited. By 1975, the faculty had endured the “harmful impact” of three years of financial constraint.¹⁶¹ The cutbacks were a sudden shock — in Dan Soberman's blunt assessment: “Then the growth stopped.”¹⁶² The period of financial constraint would continue. By his fourth year as Dean, Adell had “cut to a bare minimum” all expenses in the faculty in an effort to avoid compromising its academic program.¹⁶³

The budgetary constraints came just when law faculties sought to diversify what was taught, the people who taught, and the people who were being taught. The Faculty of Law *Prospectus* for 1960-61 included a large photograph of a lecture hall of students showing a remarkably homogenous-looking group of men sporting ties, jackets and brush cuts.¹⁶⁴ They were among the brightest students of their day, of course, but a glance at the photograph reminds us just how different the law school was then, and how much it would have to change before it reflected the diversity of Canadian society.

Two women graduated with sixteen men in 1960, but no further women graduated until Katherine Cartwright did so in 1965. The size of the classes grew over the next few years, but the number of women did

161. *Queen's Law Faculty Board Minutes*, 237th Meeting (19 June 1975) 1.

162. D.A. Soberman, “The 1957 Breakthrough in Legal Education: Thirty Years Later” (1987) 12 *Queen's L.J.* 438 at 440 [Soberman, “Thirty Years Later”].

163. Kate Irving, “Course offerings decreasing in Law School” *Queen's Journal* (6 February 1981).

164. *Queen's Faculty of Law, Prospectus* (1960-61).

not. In 1970, 98 students graduated, but only one was a woman (Mary Jane Mossman, now a professor at Osgoode Hall Law School). The situation improved during the 1970s, however, and by 1980 there were 47 women graduates in a class of 151.¹⁶⁵

The faculty's professors were almost all men during this time. As noted, Irene Bessette was the first woman to join the faculty in 1968. But from then until the mid-1980s the only women to join the faculty were Toni Pickard in 1970, Gail Brent in 1971, and Beverley Baines in 1974.¹⁶⁶ Brent left in 1974, leaving three women on a faculty of over 30. Twelve new faculty members were hired over the next decade, but none were women. Virginia Bartley replaced Mary Alice Murray as Registrar of the Faculty of Law in 1980 and began teaching family law courses, but in 1983, the school's twenty-fifth anniversary, Toni Pickard and Bev Baines were the only women teaching full-time on a faculty of 35 tenured and tenure-track professors.¹⁶⁷

Both women pushed for change. In 1978 Baines suggested that the advertisement for faculty positions include the statement that positions were "open to men and women"; Dean Adell agreed, but he also defended the school's hiring practices, insisting that the appointments committee had "made an effort to attract women candidates" in previous years.¹⁶⁸ A time lag before women law professors could be hired in respectable numbers was natural, given the low numbers of female law students in the 1960s and early 1970s. But a decade later, when the numbers of women faculty members had not increased appreciably, it was clear that the gender imbalance in the faculty was a "serious problem" to be addressed.¹⁶⁹

165. The numbers of women within the graduating classes from 1960 to 1980 are: 1960: 2/18; 1961: 0/17; 1962: 0/19; 1963: 0/21; 1964: 0/33; 1965: 1/36; 1966: 1/31; 1967: 2/56; 1968: 4/63; 1969: 5/66; 1970: 1/98; 1971: 10/97; 1972: 8/111; 1973: 18/129; 1974: 15/124; 1975: 25/141; 1976: 31/131; 1977: 38/142; 1978: 34/143; 1979: 39/140; 1980: 47/151. I am grateful to Dianne Butler for collecting these statistics.

166. Queen's Faculty of Law, *Calendar* (1970-71) at 14; Queen's Faculty of Law, *Calendar* (1971-72) at 14; Queen's Faculty of Law, *Calendar* (1972-73) at 6; Queen's Faculty of Law, *Calendar* (1974-75) at 6.

167. Queen's Faculty of Law, *Calendar* (1983-84) at 6-7.

168. *Queen's Law Faculty Board Minutes*, 290th Meeting (14 September 1978) 2.

169. Soberman, "Thirty Years Later", *supra* note 162 at 441.

The law school was thus a male-dominated institution during its first quarter-century. If early student publications are any indication, the atmosphere in the school may not always have been welcoming to female students.¹⁷⁰ In 1971, Ross Irwin urged other students, male and female, to take more notice of the “well-known fact” of male domination in the law and how it affected women in the law school.¹⁷¹ It did not take long before students began to voice concerns. In 1972, two hundred students signed a petition, submitted to the Law Faculty Board, complaining about comments made by a sessional lecturer. The students stated that, although they respected “the concept of academic freedom,” they would “refuse to tolerate remarks made by professors in the classroom which are discriminatory, on grounds of sex, race, creed, colour, place of national origin or nationality.”¹⁷² In response, the Board reaffirmed its policy “against discrimination on account of sex in any aspect of the administration and conduct of the Faculty.”¹⁷³ In 1974, the year that Cynthia Campling, a Queen’s graduate, was fired from her articling job for wearing trousers instead of a skirt,¹⁷⁴ Queen’s law students founded the Woman’s Law Caucus to discuss gender-based “inequities” in the law,¹⁷⁵ and Professor Baines launched “Women and the Law,” a new course that considered “[l]egislation and common law inequities” relating to women.¹⁷⁶ In 1979, the Law Faculty Board, in response to student concerns, passed a motion calling upon all law

170. See e.g. [Queen’s Law Students], *Torts Illustrated* 3:1 (13 March 1964) 6 (including a cartoon making light of sexual assault). As late as 1981 it seemed to be an open question among students whether it was appropriate to permit a “stag party” complete with “obscene movies” and “strippers” to be held in the student Law House: Editorial, “Should Law House be X-Rated” *The Queen’s Counsel* 3:7 (16 March 1981) 4.

171. Ross Irwin, “Is That All There Is?” Queen’s University Law Students’ Society, *The Clapham Omnibus* (September 1971) 1-2.

172. *Queen’s Law Faculty Board Minutes*, 175th Meeting (19 September 1972) 175-3.

173. *Ibid.*

174. Terry Reilander, “Status of Women Council to investigate pantsuit case” *Kingston Whig-Standard* (18 January 1974) 19.

175. Queen’s Faculty of Law, *Calendar* (1975-76) at 63. The group’s name was changed to Queen’s Women and the Law in 1980 (Queen’s Faculty of Law, *Calendar* (1980-81) at 67); starting in 1987 it defined itself as “a feminist collective working towards equality for women in the law . . .” (Queen’s Faculty of Law, *Calendar* (1987-88) at 57).

176. Queen’s Faculty of Law, *Calendar* (1974-75) at 36.

faculties in the province and the Law Society to hold a symposium to examine “the significance of the increase in the numbers of women and members of ethnic minorities in the profession within the last decade, and the role of the law faculties and The Society as these changes have taken place”¹⁷⁷

A look at the class portraits displayed in the corridors of Macdonald Hall suggests that there was not only gender but also racial and ethnic homogeneity among students during the 1960s and early 1970s. As the 1970s progressed, the number of women students increased substantially, but the same progress was harder to detect in relation to visible minorities. The faculty appreciated the problem, and it began to examine its admissions policy to ensure qualified students with diverse backgrounds were not excluded.

In the past, the law school had admitted students entirely on the basis of their academic qualifications, as reflected in their undergraduate grades and, starting in 1969, their Law School Admission Test scores.¹⁷⁸ In April, 1972, Professor Tom Asplund suggested that a committee be struck to look into the idea of admitting “persons with incomplete qualifications and providing special programmes for them”¹⁷⁹ In March, 1973, the Faculty Board established an experimental admissions procedure for “special” students who “simply cannot satisfactorily be measured against such normal admission requirements, with special attention to persons of Indian or Inuit descent.”¹⁸⁰ Ten students were admitted through the special admissions process that year.¹⁸¹ The rules on such admissions were refined in subsequent years to provide that students who did not qualify for admission in the regular category might still be considered if they provided “detailed evidence of distinctive or sustained achievement,” if they were “a Canadian Indian, Inuit or Metis,” if they had “suffered from a seriously disadvantaged social or economic background,” if they had “a substantial record of activity on behalf of persons in disadvantaged

177. *Queen’s Law Faculty Board Minutes*, 296th Meeting (11 January 1979) 3-4.

178. *Queen’s Law Faculty Board Minutes*, 108th Meeting (28 October 1968).

179. *Queen’s Law Faculty Board Minutes*, 165th Meeting (4 April 1972) 165-5.

180. *Queen’s Law Faculty Board Minutes*, 188th Meeting (20 March 1973) 188-2.

181. “A fair trial for some ‘irregular’ students” *Alumni Review* (November/December 1973) 172.

circumstances and intend[ed] to continue such activity after obtaining a legal education,” or if they suffered from “a physical handicap.”¹⁸²

As for the faculty, there was at least some degree of diversification and internationalization over the course of the 1970s; Dean Adell even suggested that the faculty was “the most ethnically heterogeneous faculty on campus.”¹⁸³ The addition of Alex Easson (England), Don Stuart (South Africa), Tung-pi Chen (Taiwan), David Mullan (New Zealand), Donald Galloway (Scotland), the “young idealistic Harvardites” (to use the student expression), namely, Michael Pickard, Toni Pickard and Mark Weisberg (United States), and K. Venkata Raman (India) brought important comparative and international law perspectives to the school.

And the results were soon apparent. In 1980, new courses were offered in Chinese Legal Systems (Chen), Law and Social Theory (Galloway), Legal Imagination (Weisberg), Transnational Legal Policy (Raman), and Non-Adversarial Lawyering Tasks (Toni Pickard), as well as in Law of Corrections and Confinement (Allan Manson), Native Law (Noel Lyon), and Children’s Law (Nick Bala).¹⁸⁴ These were all innovative courses, and their adoption by the faculty reflected a real dynamism in the school. New perspectives were considered and new ideas tried.

It was during this time that the law faculty waged a battle to persuade the Queen’s Senate to remove the religious elements, in particular the Lord’s Prayer, from the University convocation ceremony. As Dick Moon, one of the students who pushed the issue before the Senate (and now a law professor at Windsor), observed: “We have to recognize the University as a public institution,” and it is “very important that people who attend the ceremony not feel excluded.”¹⁸⁵ After the Senate refused to change the ceremony in March 1981,¹⁸⁶ the idea of holding a separate, non-religious law convocation was discussed. Soberman wrote a powerful

182. Queen’s Faculty of Law, *Calendar* (1978-79) at 1.

183. *Queen’s Law Faculty Board Minutes*, 312th Meeting (17 January 1980) at 7.

184. Queen’s Faculty of Law, *Calendar* (1980-81) at 14-16; Queen’s Faculty of Law, *Calendar* (1979-80) at 14-17.

185. Marion Boulby, “Council moves to keep religion in graduation” *The Queen’s Journal* (28 October 1980); also Chris duVernet, “They’re law students — it’s their job” *The Queen’s Journal* (3 April 1981) 11.

186. Murray Hogben, “Religious elements kept in Queen’s convocations” *Kingston Whig-Standard* (20 March 1981) 17.

memorandum indicating that, although he had personally “endured” the “minor hurt” of the religious aspects of convocation “for a quarter of a century,” he thought it was best for the law school to remain part of the general convocation so that it would be in a position to “continue the dialogue” and effect change.¹⁸⁷ As a committee chaired by Don Stuart struggled with the issue, Dean Adell continued to press the university for reform. After interventions in favour of the change by the Principal of the Queen’s Theological College, Robert Bater, and Judge John Matheson in Senate and University Council meetings, victory was achieved: the Senate resolved to delete the Lord’s Prayer from the graduation ceremony.¹⁸⁸

As Adell’s deanship came to a close in 1982, the need to address issues of diversity and community was therefore beginning to emerge as important to the health and mission of the law faculty. However, it would fall to the next Dean of Law, Denis Magnusson, to address these issues directly.

Denis N. Magnusson studied commerce at the University of Manitoba, was gold medallist in law at Queen’s in 1968, and did graduate studies in law at the University of Michigan. Magnusson began teaching at Queen’s in 1968 and was highly regarded for his legal scholarship on intellectual property, business, telecommunications and the constitution when he was appointed Dean. He also had unique qualities of calm firmness and good humour that would prove essential during his deanship. He happened to begin his term in office just as the *Canadian Charter of Rights and Freedoms* came into force. With the *Charter* came profound changes to law and legal education in Canada. If there was still any doubt that understanding law required critical appreciation of the underlying principles of political morality to which those subject to law were committed, and a readiness to re-conceptualize the law to better manifest those principles, that doubt was erased in the years that followed the adoption of the *Charter*.

It may be said that, for the law school at Queen’s, the new era of reformative legal discourse was symbolized by Sheila McIntyre’s much-publicized “Memo” and its fallout. McIntyre was hired in 1984 on a two-year contract to teach in the law school, and in the summer of 1986 she wrote a memorandum to Faculty Board members detailing “incidents of

187. D.A. Soberman, “Religious Freedom and Freedom from Religion at Queen’s: A Personal View” (9 November 1981) QA MAM Papers Box 5.

188. Bernard Adell to Members of Faculty Board (27 April 1982) QA MAM Papers Box 5.

sexism and anti-feminism” during her first year of teaching.¹⁸⁹ McIntyre’s decision to write the Memo was something of an act of bravery, given that she did not have a permanent academic position at the time. What she did not anticipate, however, was that the Memo would become a national news story and that she would become a sort of “symbol,” in her own words, “feared, idolized, discredited, and mythologized” by supporters and detractors from across Canada and beyond.¹⁹⁰

In the Memo, McIntyre provided an eloquent explanation of her theory of law teaching. She stated that her feminism informed why, what and how she taught. Her basic assumption was that as long as what is “male-defined and male-centred” about law remained “unacknowledged, unexplored, and unexpressed,” then “women’s interests, experiences, and perspectives” would be “excluded, devalued, and subverted in the classroom and the profession”¹⁹¹ As a teacher, her ambition was simply to “create a space . . . where women’s interests, experiences, and views . . . can be voiced as legitimately, seriously, and safely as men’s, and can be perceived and accepted as contributions which are relevant, valid, and indispensable to the study and practice of law.”¹⁹² McIntyre then proceeded to describe how some students and faculty members opposed her attempts to raise feminist legal perspectives within the law school.

To McIntyre, these incidents were “sustained anti-feminist abuse.”¹⁹³ Not everyone accepted her account or her interpretation of events, but most of her male colleagues wished to discuss ways of addressing her concerns. Importantly, she received the support of the Dean. McIntyre later wrote that Dean Magnusson was “one of the most consistently supportive male colleagues I had; he backed me publicly to the press; and his remarks were carried in the national wire services”¹⁹⁴

189. The “Memo” is published: Sheila McIntyre, “Gender Bias Within the Law School: ‘The Memo’ and its Impact” (1987-88) 2 C.J.W.L. 362 (see 362 for quotation) [McIntyre, “Memo”]. For an overview of the Memo and its fallout, see Anne Kershaw, “Law School Confidential” *The Whig-Standard Magazine* 9:38 (9 July 1988) 4-8.

190. McIntyre, *ibid.* at 364. See e.g. Canadian Press, “Law professor ‘target of abuse’ in teaching feminist perspective” *The Toronto Star* (21 October 1986) D8.

191. McIntyre, *ibid.* at 373-74.

192. *Ibid.*

193. *Ibid.* at 373.

194. *Ibid.* at 396.

Bill Lederman also extended support to McIntyre. At the height of the controversy, Lederman invited McIntyre to speak to his class, a gesture that was, she said, “an act of enormous open-mindedness and generosity to a young colleague.”¹⁹⁵ Lederman and McIntyre were of different generations, and so there was perhaps the potential for misunderstanding between them. But, for Lederman, intellectual integrity was everything, and he decided that McIntyre’s work “was not just political but academic and she, and it, deserved the respect that doing academic work should always engender”¹⁹⁶ As Lederman had written fifteen years earlier, the members of a scholarly community had to pursue arguments with a “healthy scepticism,” but in a spirit of “trust and sympathy.”¹⁹⁷

In subsequent years the faculty began to address the gender imbalance among its professors. McIntyre accepted a tenure-track position. In 1987 Kathleen Lahey, an established tax scholar from the law faculty at the University of Windsor, accepted a tenured position. Other women joining the faculty in the late 1980s were Sheila Noonan, Jennifer Hatfield-Lyon, Martha Bailey, Patricia Peppin, Jane Emrich and Charlene Mandell.¹⁹⁸ Lahey said that, as she was an “overt feminist and ‘out’ lesbian,” her presence would invariably add a “certain political charge” to the life of the law school.¹⁹⁹ Indeed, such charges were critical to the emergence of the school as a modern institution. Specific new courses were added — Lahey began teaching “Law, Gender and Equality” in 1988 — but, as well, general attitudes to teaching and scholarship shifted during this time.²⁰⁰ In 1987, the Faculty of Law adopted and published in its *Calendar* a “Commitment of Principle” on gender issues which had been drafted by an *ad hoc* student group. The statement affirmed the faculty’s commitment to ameliorating historic and

195. Margaret V. Anderson-Clarke, “Dr. William Ralph Lederman Remembered” *The New Queen’s Counsel* 4 (1993) 7, quoted in Gordon Bale, “W.R. Lederman and the Citation of Legal Periodicals by the Supreme Court of Canada” (1993) 10 *Queen’s L.J.* 36 at 39.

196. John D. Whyte, e-mail correspondence with the author (23 November 2006).

197. Lederman, “Law Schools”, *supra* note 93 at 217-18.

198. In 2007 almost half of the faculty is female.

199. Kershaw, *supra* note 189 at 6.

200. *Queen’s Faculty of Law, Calendar* (1988-89) at 30, 36.

current inequalities between men and women, and ensuring that teaching materials and methods took issues of discrimination into account.²⁰¹

The events of 1986 thus precipitated a period of intense debate and, it must be said, tension within the law school. Dean Magnusson led the faculty through the initial stages of this period, but it fell to the next Dean of Law, John Whyte, to see the school through what was unquestionably a challenging time.

John Donaldson Whyte studied at the University of Toronto (B.A. 1962), Queen's (LL.B. 1968) and Harvard (LL.M. 1969), and had become one of Canada's most thoughtful and respected constitutional lawyers and scholars.²⁰² He was part of that group of young professors who came to teach at Queen's in the late 1960s and early 1970s committed to the intensive and creative exploration of legal ideas in their biggest sense. But he also appreciated and was interested in the political compromises that make constitutional order possible, and he participated in securing them. He was a key legal advisor to the Saskatchewan government during the constitutional negotiations that led to the patriation of the Canadian constitution.

It was said in the late 1960s, by one student at least, that Queen's law students did not engage in direct political action — in demonstrations, sit-ins and marches — in the way that students at other campuses did during that turbulent time.²⁰³ If this was so, law students of the late 1980s made up for the failure of their predecessors. Students at this time actively asserted their ideas of justice and rights, and at times their actions provoked unsympathetic responses from other students. In the winter term of 1988 a group of students forced Dean Whyte to stop teaching mid-way through a constitutional law class in an effort to defend the reputation of another professor from what they perceived were anti-feminist comments made during an earlier class.²⁰⁴ A few professors later called for an inquiry and disciplinary action against the students involved, but Whyte sought to

201. *Queen's Law Faculty Board Minutes*, 429th Meeting (12 February 1987) (the motion was brought by Leslie Newman and seconded by Meghan Robertson); Queen's Faculty of Law, *Calendar* (1987-88) at 2.

202. Bernie Adell, "Introduction: Recognizing an Exceptional Scholar, Teacher and Public Servant" (2006) 31 *Queen's L.J.* 441.

203. Levenson, *supra* note 78.

204. The events are described in Kershaw, *supra* note 189 at 8, but I am relying upon my own recollections (having been a student in Dean Whyte's class on the relevant day).

defuse the situation and simply asked for civility in “community discourse.”²⁰⁵ Whyte appreciated that feminism was a “claim for justice” which involved a redistribution of power within institutions, a claim that was “not comfortable for some people.”²⁰⁶ He was also beginning to appreciate the extent to which “the politics of [power] distribution is a politics played out in the law school unlike any other part of the university.”²⁰⁷ Whyte admired the objectives and commitment of students and faculty who asserted their case for justice during these years, but the responsibility for maintaining the “trust and sympathy” that defined the terms for intellectual engagement within the community must have weighed heavily upon him.

For many students, this was a period of intellectual ferment, the very opportunity to test ideas and arguments that universities are meant to provide. Other students felt differently. Cynthia Petersen, who has since argued a number of leading equality cases before the Supreme Court of Canada, stated that she endured a “hostile heterosexist environment” at Queen’s during the late 1980s that was academically distracting.²⁰⁸ The sense of unease for certain minority groups went beyond social interactions to the very idea of how law should be interpreted when it is taught. Patricia Monture, a Mohawk graduate of Queen’s in 1987, wrote that for an aboriginal law student to be told during a first-year Property Law course that the Crown in Canada owned all the land was like “running full-force into a brick wall.”²⁰⁹ Having opened their doors to aboriginal students, law schools could not expect them to assimilate fully into non-aboriginal legal culture; instead, Monture wrote, a genuine sense of equality suggested that schools should adjust what was taught and how it was taught to accommodate aboriginal legal perspectives. It is sometimes said in response to claims like this that law schools must teach law, not perspectives. But, of course, law does not exist independently of

205. *Queen’s Law Faculty Board Minutes*, 444th Meeting (18 March 1988).

206. Quoted in Kershaw, *supra* note 189 at 5.

207. *Ibid.*

208. Cynthia Petersen, “Living Dangerously: Speaking Lesbian, Teaching Law” (1994) 7 C.J.W.L. 318 at 319, n. 4.

209. Patricia A. Monture, “Now that the Door is Open: First Nations and the Law School Experience” (1990) 15 *Queen’s L.J.* 179 at 202.

perspectives, and we now know that property law in Canada *is* defined, in part, by judicial understandings of aboriginal perspectives.²¹⁰

One constant throughout this period, and indeed throughout the law school's recent history, was the determination of students to play a central role in shaping their legal education. In 1988, a student group called the Queen's Law Lesbians and Gays, the first such group in Canada, was founded to address discrimination based on sexual orientation within the law school.²¹¹ In the same year, the Multi-Heritage Collective was founded for students interested in issues of race and culture in the law.²¹² In March, 1989, 150 law students attended the group's first event. In response to the question that was to be addressed at the next session, "Does Racism Exist at Queen's Law School?", Dhaman Kissoon, a third-year student member of the Collective, implored students to "Come and let them know it does."²¹³ Kissoon has shown remarkable commitment both to the law school and to addressing issues of race. After starting his law practice in Toronto, he and classmate Ian Smith began returning to Queen's once a week to teach a course entitled "Racism and the Law" — something Kissoon still does today, sixteen years later.

The faculty during this period endeavoured to address issues of equity and race. Some of its initiatives were perhaps symbolic. In 1986, Donald Galloway and Michael Pickard introduced a motion before the Law Faculty Board recommending to the University Board of Trustees that it withdraw all university investments in companies doing business in or with apartheid South Africa.²¹⁴ Although there was some opposition to the motion on the grounds that it was "political rather than educational in nature," it was carried (13 to 3). The Board of Trustees acted on this recommendation. Closer to home, the faculty undertook internal reforms designed to combat racial and ethnic inequalities. In 1990, the Multi-Heritage Collective asked the Faculty Board to change the Commitment of Principle that had been added to the *Calendar* in 1987 so that it would

210. *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.

211. Queen's Faculty of Law, *Calendar* (1988-89) at 69.

212. *Ibid.* at 68.

213. Catherine Pigott, "Canada's legal system full of racism, students told" *Kingston Whig-Standard* (25 March 1989) 3.

214. *Queen's Law Faculty Board Minutes*, 420th Meeting (17 April 1986).

address issues of inequality more generally.²¹⁵ The proposed changes would acknowledge that “the fundamental principles of equality are not well enough served by a legal community which remains disproportionately male and white.” They would also have the faculty commit itself to ameliorating historic and current inequalities between women and men and to rectifying the inequities faced by “various minorities in our society, particularly visible minorities,” as well as to ensuring that teaching methods and materials reflected this commitment.²¹⁶ Several faculty members voted against the proposed changes, one stating that it was “a political statement inappropriate for the *Calendar*.” Professor Lyon offered a passionate defence of the measure, stating that it represented “an appeal to the humanity of members of Faculty Board.” The new Statement of Principle was accepted, and it remains in the Law Faculty *Calendar* today.²¹⁷

In 1992 the faculty’s special admissions criteria were broadened to allow the academic performance of applicants to be considered in light of any disadvantage they might have suffered “because of stereotyping based on race, religion, sexual orientation, or the like.”²¹⁸ In the same year, the law school established the Education Equity Program, the first such program in a Canadian law school, to make legal education more accessible to “women, aboriginals, visible minorities, and persons with disabilities.”²¹⁹ Its Director was, and remains, Rosemary King, who now works with Helen Connop, the Manager of Education and Equity Services; their work is deeply appreciated by students finding themselves in need of additional academic guidance and support. Since the mid-1980s, on average about 20 percent of the first-year class has been admitted through special admissions categories.²²⁰ Back in 1949, Cecil Wright had

215. *Queen’s Law Faculty Board Minutes*, 459th Meeting (13 April 1989) 459-5, 459-6.

Queen’s Law Faculty Board Minutes, 467th Meeting (7 December 1989) 467-4-10.

216. *Queen’s Faculty of Law, Calendar* (1990-91) at 3.

217. *Queen’s Faculty of Law, Calendar* (2006-07) at 9-10.

218. *Queen’s Faculty of Law, Calendar* (1992-93) at 4.

219. “Education Equity Program at Queen’s” *Queen’s Law Reports* 5 (Fall 1993) 9.

220. This is a rough estimate based upon admissions statistics for 1984 to 2006 provided to me by the Assistant Dean of Students, Jane Emrich. It is worth noting that during this period of time only a small number of Aboriginal students — typically between 2 and 5 per year — were admitted through the special admissions process. The faculty’s admissions categories are now: General, Aboriginal, and Access, with the latter category

stated that “equal education” in law without discrimination based upon race or ethnicity required “a properly conducted law school.”²²¹ Queen’s was taking the steps needed to ensure that this goal was achieved.

It was perhaps inevitable that, through “rumour and selective press coverage,” the debates in the law school on equity and diversity would lead to some misunderstanding in parts of the media and the legal profession.²²² For example, the 1991 report on law schools in the *Canadian Lawyer* was highly critical of Queen’s and other faculties for emphasizing “the vagaries of theory” and an “obscene degree of ideological and sexual politics” rather than the “practicalities of law.”²²³

The reality, however, was that “theory” had always been introduced at Queen’s within the context of a rich and varied curriculum that offered tremendous opportunities for doctrinal, practical and clinical learning. The *Canadian Lawyer* argument was premised upon the discredited view that law can be understood and taught in a social and philosophical vacuum, and that to critique law is to do politics, not law. This was not the view held by the reformers of 1957; it was not the view of Robinette, who told the first Queen’s law graduates in 1960 that the law professor was to criticize the law with a view to furthering the ends of social justice. Finally, it is important to note that critical scholarship by Queen’s professors was, at some level, committed to traditional values of legality. Kathy Lahey has argued, for example, that it would likely be courts rather than legislatures that would finally extend to sexual minorities “the full legal capacities presumptively flowing from the fact of being human,” and that the argument for equality should therefore appeal not to open-ended moral concepts, such as human dignity, but to distinctively *legal* concepts of civil capacity and personality that have roots deep in our legal

divided into subcategories of Disabled, Mature and Disadvantaged. The Disadvantaged subcategory is defined to include students whose academic work may have suffered due to stereotyping based upon race, religion, sexual orientation or similar factors, illness, barriers arising from linguistic, cultural or gender differences, and having to work to support oneself or one’s family: Queen’s Faculty of Law, *Calendar* (2006-2007) at 103-07.

221. Wright, “Should the Profession”, *supra* note 8 at 24.

222. “*Whig-Standard* Reports on Gender Issues in the Law School” *Queen’s Law Reports* 1 (Spring 1989) 4.

223. Michael G. Crawford, “The Myth of Legal Education” *Canadian Lawyer* 15:1 (February 1991) 2.

tradition.²²⁴ Calling attention to the ways in which legal concepts have been applied unevenly in the past is, of course, a classic form of common law reasoning. The attempt to discredit arguments of this nature as political rather than legal may have been motivated by political discomfort with the legal implications of the arguments, rather than by any rational view of the boundaries between law and politics.

External observers were perhaps overly quick to see scholarly debate at the law school as evidence of division inimical to the values of certainty and authority to which the law aspires. To the *Canadian Lawyer*, Queen's in 1991 was "a cauldron of dissent and bitterness."²²⁵ But members of the law school community have a different appreciation of those times. When he stepped down as Dean of Law in 1992, John Whyte conceded that these were "days of hard battle in legal education" due to the challenge of addressing issues of diversity in an era of severe budget cuts, but that the law school was a place "bursting with active and critical intelligence."²²⁶

If the choice were between a cauldron of dissent and a factory for uncritical legal technicians, most serious law students would choose the former. But of course that is not the choice. The choice is one between a university law faculty and a trade school, and that choice was made back in 1957 — and during the 1980s and early 1990s Queen's was at the forefront of defining how the commitments implicit in that choice were to be honoured as legal education and the legal profession finally opened their doors to people who had previously been excluded. As Sue Miklas, who joined the faculty in 1994, wrote in response to the *Canadian Lawyer*: "It's only if students have the ability to understand the social and political context in which law develops and changes that they'll be well suited for practice."²²⁷ This is, of course, what Corry said in the 1950s. In fact, Miklas was in a unique position to comment on the effect of changes in legal education at Queen's over the previous thirty years. She did her first year of law school at Queen's in 1964-1965, when there were only five

224. Kathleen A. Lahey, *Are We "Person" Yet? Law and Sexuality in Canada* (Toronto: University of Toronto Press, 1999) at 343-44, 115-16.

225. "A Report Card on Canada's Law Schools" *Canadian Lawyer* 15:1 (February 1991) 19.

226. "Dean Whyte's Farewell Message" *Queen's Law Reports* 4 (Winter 1992) 3.

227. Susan Miklas, "Law school survey rates an 'F' grade" *Queen's Alumni Review* (March/April 1991) 48.

women in the school and no discussion of feminist issues, and she returned to complete her degree in 1986, when almost half the students were women and feminist issues were widely discussed. The changes, she concluded, were for the best.

Late in the autumn term of 1986, students and faculty members gathered in the large basement lecture room of Macdonald Hall to hear Sheila McIntyre talk about the Memo. As a law student of only eight weeks, I lacked the necessary experience, in law and otherwise, to assess the claim about the “maleness” of our law. But the fact that such a claim could be advanced in a principled, rigorous way was something of a revelation to me. At that point I discarded my naive view of law as a politically neutral system of rules to be memorized, and I realized that legal education would be far more interesting than I ever thought it could be.

And interesting it was. In the months and years that followed there were talks by visitors like Neil MacCormick, the renowned legal philosopher, and Catherine MacKinnon, the famous American feminist scholar. And there were our own teachers, memorable now, years later, as much for the way they inspired thoughtful reflection as for the particular content of their lectures. In my memory — if I may continue this lapse from history into reminiscence — there is the careful but relentless deconstruction of the early *Charter* case, *Dolphin Delivery*, by Bernie Adell; there is the famous Thanksgiving Property Law lecture by Michael Pickard, a combination of *Pierson v. Post* and how to cook a turkey; there is Toni Pickard, admonishing us on the last day of first-year classes to stick to our principles upon entering the legal profession, and, to the men, not to shave our beards (which I took to be metaphorical, for by 1987 there were few beards to be seen); and, finally, there is the jet-lagged David Dyzenhaus, giving his first-ever class in Jurisprudence two days after defending his doctoral thesis in England, the start of a series of classes on Hart and Dworkin that to me now seem far more memorable than the classes I would later have as a graduate student with Dworkin himself, the first encounter with new ideas always having a power that later encounters cannot match. No one at Queen’s was content with easy answers during this time. Instead, faculty members forced each other and their students to look for the *best* answers to hard legal questions, an aspiration that must always involve a principled form of contest and disputation. This was what it meant to teach law in the “grand manner.”

VII. Constraint, Renewal and Globalization, 1992 to Date

1992 was a year of transition for the law school. Former Dean Bill Lederman died. In the same week John Whyte — for whom Lederman was like an academic father — reached the end of his five-year term and stepped down as Dean of Law.²²⁸

The transition to the next Dean was not straightforward. Over the previous decade the expectations placed upon the office of Dean of Law had mounted to almost unreasonable levels. Somehow this person had to satisfy the increasingly disparate demands of students, faculty, the central university administration, and the legal profession, and do so on a shoestring budget. Whyte succeeded in meeting these expectations, but to do so he made personal sacrifices that few people were willing to contemplate. As the process of selecting the next Dean unfolded, Virginia Bartley served as Acting Dean, bringing to this position administrative capabilities that she had developed as Registrar and Associate Dean and that she would later bring to her position as senior review counsel to Queen's Legal Aid.

In March, 1993, Principal David Smith asked Don Carter to be considered for the office of Dean of Law, and Carter agreed. Smith and Whyte had not been on particularly good terms, and there was some concern among certain faculty members that Smith, in approaching Carter to be Whyte's successor, might be trying to circumvent normal procedures of consultation with faculty members. In answering these concerns, Carter displayed the diplomatic touch that defined his deanship: the regular decanal selection process had run its course without results, he said, and it was only his deep "concern and interest" for and in the Queen's law community that led him to accept the call to service. In these circumstances, said David Mullan, Carter's decision to stand for Dean was both "appropriate and brave."²²⁹ Carter was appointed the next Dean of Law.²³⁰

228. Whyte, "Lederman's Legalism", *supra* note 88 at 28.

229. *Queen's Law Faculty Board Minutes*, 506th Meeting (1 April 1993) 506-2-5.

230. "New Law School Dean Appointed" *Queen's Law Reports* 5 (Fall 1993) 1.

Donald D. Carter obtained a B.A. and LL.B. from Queen's in 1963 and 1966, and did his graduate work in law at Oxford. He joined the Queen's faculty in 1968 and quickly gained a national reputation as a leading scholar of labour and employment law. He served as Chair of the Ontario Labour Relations Board from 1976 to 1979, and from 1985 to 1990 he was the Director of the Queen's School of Industrial Relations. As Dean of Law, Carter used his considerable skills in negotiation and administration to navigate the law school through a treacherous course in the mid-1990s, around a series of menacing obstacles created by forces beyond his control. Just as Carter turned to implement strategies of re-investment and renewal in the law school, he confronted the reality of a province-wide crisis in university funding

In 1957, the law students who enrolled in the new law school at Queen's paid tuition of about \$370.²³¹ University tuition fees were regulated by government, and fees at the law school would increase incrementally, in step with increases for other programs and other law schools in the province. Students paid about \$480 in the school's tenth year, about \$1,100 in its twenty-fifth year, and just over \$2,000 in 1993, Carter's first year as Dean.²³²

Of course, these fees did not reflect the true cost of university education; the bulk of university funding came from government, and ultimately from the taxpayer. But the relative contributions made by law students and taxpayers to the cost of legal education would radically change over the course of the 1990s. In Ontario, the proportion of general university revenues received from government would decrease sharply from about 75 percent in 1990 to about 52 percent by the end of the decade.²³³ The difference would have to be made up in some way. But until alternatives were found, universities faced very serious decisions about their programs and priorities.

Carter reported to the Law Faculty Board that "the realities of the 1990s must be addressed" and that unpopular cost-saving measures

231. Queen's Faculty of Law, *Calendar* (1957-58) at 4.

232. Queen's Faculty of Law, *Calendar* (1966-67) at 14; Queen's Faculty of Law, *Calendar* (1983-84) at 14; Queen's Faculty of Law, *Calendar* (1993-94) at 15.

233. Bruce Pardy, "Poor Students, Well-Paid Lawyers: Post-Graduation Income-Contingent Tuition Fees for Law Schools" (2004) 29 *Queen's L.J.* 848 at 850.

would be necessary.²³⁴ By November 1995, there was talk of needing to “downsize,” and the idea of pooling resources with the Faculty of Law at McGill was mooted.²³⁵ At times Carter even wondered whether “as an institution Queen’s Law School was in jeopardy.”²³⁶ In January, 1996, the Faculty confronted a 14.5 percent budget cut for the following year. Queen’s Principal William Leggett and Vice-Principal David Turpin came to the Law Faculty Board to explain that the cut was meant to “shock” the Faculty into developing a “bold vision” about “the future of Canadian legal education and scholarship” so that it could maintain its “leadership position.”²³⁷ The seriousness of the situation was clear: if solutions were not found, perhaps “merger” of Queen’s law school with another law school was the best option.²³⁸ Upon being asked if closure of the faculty was being contemplated, however, Vice Principal Turpin was emphatic: Queen’s University had played a central role in Canadian governance and public administration in the past, it would continue to do so, and having a strong law school was essential to that mission.

Over the previous decade Law Deans at Queen’s had invested increasing amounts of time and energy in fundraising. Carter now redoubled the effort. He launched a 40th Anniversary Campaign to raise money, and he visited alumni and law firms across the country to explain the realities of funding legal education in the 1990s. With the assistance of Associate Dean Denis Marshall, Carter worked hard to put the school on an even financial keel. By October 1997, the faculty had raised over a million dollars.²³⁹ Most of the money was needed for essential improvements to Macdonald Hall, however, and during Carter’s deanship only two new tenure-tracked professors were hired — Martha Bailey and Bill Flanagan.

As government funding was cut, universities began to consider seeking government deregulation of tuition, so that fees could be increased to make up shortfalls. Back in 1993, the Law Faculty Board

234. *Queen’s Law Faculty Board Minutes*, 512th Meeting (7 October 1993) 512-2.

235. *Queen’s Law Faculty Board Minutes*, 543rd Meeting (30 November 1995) 543-2.

236. *Ibid.*

237. *Queen’s Law Faculty Board Minutes*, 546th Meeting (12 January 1996) 546-1.

238. *Queen’s Law Faculty Board Minutes*, 547th Meeting (1 February 1996) 547-2.

239. *Queen’s Law Faculty Board Minutes*, 571st Meeting (9 October 1997) 559-1.

had resolved to oppose tuition deregulation on grounds that “accessibility” to legal education would suffer.²⁴⁰ By early 1998, Carter, anticipating deregulation, sought from Faculty Board a commitment to support increasing tuition for the next year “to the level required to maintain the position of the Queen’s Faculty of Law as one of Canada’s leading law schools.”²⁴¹ Concerned about accessibility and equity, student representatives and some faculty members objected, and the Dean’s motion was tabled.

But the issue could not be put off for long. In May 1998, Ontario’s Conservative government announced that professional school fees were thenceforth deregulated. This gave the Queen’s Board of Trustees power to set law school tuition at whatever level it wanted. There was really no question that it would increase fees substantially; the only real question was whether the law school could effectively control its tuition level by developing a policy that the university would accept. Those faculty members committed to the values associated with a publicly funded university system, and opposed to increased fees for reasons of accessibility and equity within the legal profession, must have felt that the ground under their position had eroded very quickly indeed.

Throughout the period of financial austerity, Carter insisted that the law school keep developing as an academic institution. Through the Queen’s Law Faculty Advisory Council, which he established in 1995, valuable insight was gathered from alumni on the future direction of the school.²⁴² Fundraising produced resources for renovations in Macdonald Hall. In 1994 the refurbished law library was renamed the William R. Lederman Law Library, and Brian Dickson, the former Chief Justice of Canada, attended the dedication ceremony. Lederman and Dickson had been high school classmates in Regina. Both men had served in the Normandy invasion in the Second World War, Lederman being close enough to Dickson’s regiment to witness the “friendly fire” incident in

240. *Queen’s Law Faculty Board Minutes*, 513th Meeting (4 November 1993) 513-3.

241. *Queen’s Law Faculty Board Minutes*, 574th Meeting (5 February 1997) 574-2-3.

242. “Faculty of Law Advisory Council: Inaugural Meetings held” *Queen’s Law Reports* 7 (Spring 1995) 1.

which Dickson suffered near-fatal wounds.²⁴³ Dickson would later rely upon Lederman's scholarship when deciding constitutional law cases, and he described Lederman as "an outstanding scholar, a true friend, a great Canadian."²⁴⁴

The law school curriculum kept developing as well. One of the faculty's traditional strengths was labour and employment law – in addition to Bernie Adell and Don Carter, professors working in this field included Innis Christie, Morley Gorsky, Gordon Simmons, Ken Swan, Sheila McIntyre and, more recently, Sara Slinn. The law faculty was a major participant in the setting up of the Queen's School of Industrial Relations (now part of the Queen's School of Public Policy) and its Master of Industrial Relations (M.I.R.) program. In 1996, the law faculty and the School of Industrial Relations established a joint M.I.R./LL.B. program.²⁴⁵ This was the first co-operative law degree offered in Canada: M.I.R./LL.B. students earn both degrees in four years, and through work placements they meet the Law Society's articling requirement at the same time.

Public international law has been another area of traditional strength at Queen's. In the early years, Hugh Lawford encouraged the building of a strong library collection in that area. George Alexandrowicz, K. Venkata Raman and John Claydon developed an innovative range of international law courses. In recent years, the emphasis has shifted away from the law of war and peace, and Bill Flanagan, Art Cockfield, Sharry Aiken and Stan Corbett have developed courses on the economic impact of globalization, refugee law, and international human rights.

In 1994, litigation lawyer David Stratas (Queen's LL.B. '84) began teaching an innovative course in Advanced Constitutional Law, with emphasis on advocacy exercises judged by members of the Ontario Court of Appeal or the Supreme Court of Canada.²⁴⁶ Stratas co-taught

243. Robert J. Sharpe & Kent Roach, *Brian Dickson: A Judge's Journey* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2003) at 37-38, 58.

244. Brian Dickson, "W.R. Lederman: Scholar and Friend" (1994) 19 *Queen's L.J.* 1 at 15.

245. *Queen's Law Faculty Board Minutes*, 556th Meeting (3 October 1996) 556-1; *Queen's Law Faculty Board Minutes*, 558th Meeting (28 November 1996) 558-1.

246. See "David Stratas: Teacher, Lawyer, Alumnus, and Queen's Law Supporter" *Queen's Law Reports* (2003) 27.

the course with John Whyte, then with David Mullan, and now teaches it himself.

Also in 1994, a group of students organized a symposium on business law issues. They wanted a forum in which legal practitioners, business leaders, academics and students could present and debate substantial academic papers that would then be published. Their topic was “The Role of the Regulator in the Capital Markets.” Once Edward Waitzer, Chair of the Ontario Securities Commission, agreed to come, other leading members of the securities and corporate bar quickly joined in. The event was a great success, and it has been held every year since.²⁴⁷ Under the direction of Professors Bill Flanagan and Anita Anand, and now Paul Paton, the Queen’s Annual Business Law Symposium has evolved into a unique forum that provides students with an opportunity to engage directly with leading practitioners, scholars, and regulators on pressing issues of business law.

It was during this period that the international law and business law programs at Queen’s established a physical presence in Europe. In 1993, Alfred and Isabel Bader gave to the university Herstmonceux Castle — a fifteenth-century landmark in East Sussex, England, surrounded by a moat and 500 acres of gardens and parkland. The law faculty established a spring International Business and Law Program at the Castle in 1996, and that program would be significantly expanded in later years. The faculty’s commitment to helping students acquire comparative and global perspectives on law was manifested in other ways too, such as a joint common law/civil law program with the Université de Sherbrooke established in 1997, and the development of student exchange programs with City University of Hong Kong, National University of Singapore, and the Universities of Sydney, Melbourne, New South Wales, Groningen, and Jean Moulin (Lyon).

In 1995, in response to the “overwhelming concern of the student body,” the faculty approved the establishment of a Career Services Office for students.²⁴⁸ These were, of course, times of tight financial

247. The papers of the first symposium are published at: *Securities Regulation: Issues and Perspectives* (Toronto: Carswell, 1995). The student organizers were Winston Tannis, Anton Sahazizian, Peter Kalins and Janice Javier.

248. *Queen’s Law Faculty Board Minutes*, 532d Meeting (19 January 1995) 532-2-3.

constraint, and so in March, 1996, the Law Students Society agreed that students themselves would pay half the salary of a career counsellor.²⁴⁹ The Career Services Office quickly became one of the most heavily used student services in the school, and once the financial picture improved, the faculty took over responsibility for the salary of the Director of Career Services. Ann Tierney (now Associate Vice-President of Student Services at Carleton University) was the first Director. She was succeeded by Gillian Ready (now Assistant Dean of Administration and Finance) and then by Deanna Morash, the present Director.

During Carter's deanship, Nick Bala and Mark Weisberg oversaw the establishment of a First Year Resource Program for first-year students, and Sue Miklas oversaw the development of a Shadow Program matching first-year students with graduates.

Carter's five-year term as Dean came to end in 1998. Under his leadership, the faculty had not just survived but flourished during a challenging period, and with the easing of financial constraints it was now in a position to engage in a process of renewal. Alison Harvison Young became the next Dean of Law, the first from outside the faculty since Bill Lederman. Harvison Young had studied law at McGill and Oxford, and had clerked for Justice Willard Estey at the Supreme Court of Canada. As a member of the Faculty of Law at McGill, she had become a leading scholar in family law, administrative law and health law. Her appointment marked the start of a new era for the faculty.

At the beginning of his deanship, Carter had stated that "[o]urs is an aging faculty" — a blunt but accurate assessment.²⁵⁰ By the end of his term, a number of professors had retired, but only two tenure-track faculty members had been added (Martha Bailey and Bill Flanagan). Harvison Young's legacy would be one of rejuvenation. In the six years that she was Dean, an even greater number of professors with long and distinguished records of service to the university were lost through retirement — but fourteen new tenure-track professors arrived to take their places. The composition of the faculty had not changed so much so quickly since the 1960s.

249. Jordan Furlong, "Queen's, U. of T. students spring for law career development officer" *The Lawyers Weekly* 16:4 (31 May 1996).

250. *Queen's Law Faculty Board Minutes*, 526th Meeting (6 October 1994) 526-3.

The school was able to hire new faculty in part because financial constraints had finally eased. However, the solution to the university funding problem of the 1990s—tuition deregulation rather than increased government spending—produced considerable tension within law faculties across the province. As Bruce Pardy, one of the new law professors to come to Queen’s during this period, has written, the issue of law school funding is often portrayed as “a choice between more government funding and increased tuition fees,” but for law schools “no such choice exists”: the level of government support is beyond their control and is unlikely to increase much in the foreseeable future.²⁵¹ The message from the university to the law faculty at the end of the 1990s was unequivocal: the school can expand if it wants to, but only by increasing tuition.²⁵² The message from Harvison Young to the faculty was also unequivocal: “Standing still is not enough for us in these changing times,” and tuition increases were therefore inevitable.²⁵³

In the autumn of 1999, Dean Harvison Young and Associate Dean Don Stuart developed a tuition policy that was premised on the principles of quality, flexibility, accessibility, and predictability.²⁵⁴ Quality and flexibility would require tuition increases. The principle of accessibility called for directing a considerable portion of increased tuition dollars to bursaries for law students. As for predictability, the plan envisaged that the university would establish and publish law school tuition not just for the current year but also for the next two years, so that students would know at the beginning of their first year what they would have to pay each year. The plan, which was approved by the university’s Board of Trustees, set tuition at \$5,903 for 2000-2001, \$7,084 for 2001-2002, and \$7,792 for 2002-2003.²⁵⁵ In 2001, the Dean recommended, and the Board of Trustees accepted, a tuition level of \$8961 for 2003-2004.²⁵⁶

251. Pardy, *supra* note 233 at 852.

252. *Queen’s Law Faculty Board Minutes*, 594th Meeting (11 November 1999) 594-2.

253. *Queen’s Law Faculty Board Minutes*, 619th Meeting (1 February 2002).

254. *Queen’s Law Faculty Board Minutes*, 595th Meeting (25 November 1999) 595-1.

255. *Queen’s Law Faculty Board Minutes*, 598th Meeting, (9 March 1999) 598-2.

256. *Queen’s Law Faculty Board Minutes*, 608th Meeting, (12 January 2001).

In 2002, things were not so easy. The Dean proposed tuition for 2004-2005 of \$10,663, an increase of 19 percent from the previous year.²⁵⁷ The subsequent tuition debate within the faculty illustrates vividly the important role that students had come to play in the governance of the institution, and the sense of responsibility, leadership and diplomatic acuity of the leaders of the Law Students Society (LSS). The LSS appreciated that tuition for 2004-2005 would have to increase sharply, but it created its own tuition plan that included an increase of 14 rather than 19 percent, and LSS President Bindu Dhaliwal made a powerful case to the Law Faculty Board for the plan's adoption. Faculty members were impressed by the tone of compromise that informed the LSS plan, and an emotional debate ensued about which plan — the Dean's or the students' — was better.

A number of professors spoke in favour of the student plan. Universities had become "addicted to on-going tuition increases," said Stan Corbett, and it was time to bring that addiction under control. Sheila McIntyre warned her colleagues that the school's "equity ethic" was endangered by tuition increases. Allan Manson, who was opposed to piling the cost of legal education "on the backs of students," said he could support neither plan. In the end, the student plan fell two votes short, and the Board of Trustees eventually approved the Dean's proposal. Addressing the Benchers of the Law Society of Upper Canada one month later on the topic of tuition, Dean Harvison Young stated: "In the four years I have been dean of Queen's Law School, this has been the most difficult issue I have had to face."²⁵⁸

The commitment to fundamental values of accessibility and fairness was not forgotten in this debate. The tuition increases at Queen's were modest in comparison to the Toronto law schools, where tuition of between \$16,000 and \$22,000 was planned for 2006-2007.²⁵⁹ Furthermore, Queen's has the most generous bursary program of any Ontario law school, paying about \$1.5 million each year to law students

257. *Queen's Law Faculty Board Minutes*, 619th Meeting, (1 February 2002).

258. H. Paul Beyer, "Law Society of Upper Canada examining how to approach issue of soaring tuition fees" *The Lawyers Weekly* 21:45 (5 April 2002).

259. Louise Brown, "Law school tuition soaring" *The Toronto Star* [Ontario Edition] (8 March 2004) B5.

in the form of financial aid. In 2004, for example, more than 65 percent of Queen's law students qualified for non-repayable bursary grants, and the average bursary award covered almost half of tuition.²⁶⁰

The "theme of renewal, rejuvenation and renovation" dominated Harivson Young's deanship.²⁶¹ Aside from hiring new faculty members, extensive renovations to Macdonald Hall were completed.²⁶² As chair of the building committee, Don Stuart oversaw the building of a new atrium entrance-way and state-of-the-art moot court and seminar rooms. And there were additions to the program itself.

The spring Castle program was significantly developed. In 2003, Bill Flanagan established and began to direct an eight-week International Law Spring Program at the Castle, open to law students from Queen's and other faculties of law, in which students do modules in International Business Law, Public International Law or, starting in 2008, International Intellectual Property Law. Instructors in the program are leading international lawyers and academics, for example, Kim Prost, a judge on the International Criminal Tribunal for the Former Yugoslavia, and Norm Farrell (Queen's LL.B. '86), senior prosecutor with the same court. Students visit the international institutions they study, including the World Trade Organization and the Office of the UN High Commissioner for Human Rights in Geneva, the Organization for Economic Cooperation and Development and UNESCO in Paris, and the International Court of Justice in The Hague.

In 2002, the law school partnered with the Queen's School of Policy Studies to offer a joint Masters of Public Administration (M.P.A.)/LL.B. program, modelled on the M.I.R./LL.B. program. Also, the faculty's links with China were reinforced. In the 1980s, Queen's had developed a Chinese Law Program that included courses in Chinese law, scholarly

260. Queen's Faculty of Law, *Prospectus* (2006) at 1. In 2005-2006, 29% of students received non-repayable bursary grants covering 50% or more of tuition; 8% of students received non-repayable bursary grants covering between 50% and 74.9% of tuition; 17.7% of students received non-repayable bursary grants covering between 75% and 99.9% of tuition; and 3.9% of students received non-repayable bursary grants covering 100% of tuition. I am grateful to Jane Emrich, Assistant Dean of Students, for providing these statistics.

261. *Queen's Law Reports* (2001) at 1.

262. *Queen's Law Reports* (2003) at 13-16.

exchanges with students and academics, and a training program for Chinese lawyers.²⁶³ Chinese officials expressed their gratitude publicly for the assistance provided by the Queen's project, which culminated in the drafting of a series of laws necessary for the reforms their country anticipated.²⁶⁴ These links were further strengthened through a project on women's law organized by Martha Bailey, and funded by the Canadian International Development Agency, involving exchanges and collaborative work with Chinese women legal scholars.

In 2000, the faculty lost Denis Marshall to cancer. Marshall was an exceptionally committed and thoughtful faculty member, law librarian and administrator. He played a key role in making modern information technology readily accessible to students and faculty members. The computer room he created in the law library now bears his name. Each year, the Canadian Association of Law Libraries awards the Denis Marshall Memorial Award for Excellence in Law Librarianship, and the LSS gives a number of Denis Marshall awards to students who enrich the law school community. The collaborative spirit within the law school was greatly enhanced by Marshall's openness and availability to faculty and students alike — a tradition that the present head law librarian, Nancy McCormack, carries on today.

It has been written of law school administrative staff that they “ke[ep] things going steadily over the years as deans and other officers have come and gone. They run the place”²⁶⁵ This has been very true at Queen's, where the administrative staff, following the lead of Mary Alice Murray, have made great contributions to the law faculty community. A number of staff members have worked at the law school for more than fifteen years, including Mary Jane Moore, Lisa Graham, Phyllis Reid, Nancy Somers, Carol Johnson, Nancy Leake, Margaret Moore, Vyvien Vella, Gloria Lund, Audrey McIntyre and Wendy Moulton.

263. Queen's Faculty of Law, *Calendar* (1988-89) at 65.

264. Konrad Yakabuski, “Canadian advisers on economic laws win China's thanks” *The Toronto Star* (24 August 1990) C6.

265. William Twining, *Blackstone's Tower: The English Law School* (London: Stevens & Sons/Sweet & Maxwell, 1994) at 73.

On November 19, 2004, Associate Dean Gary Trotter announced to the Law Faculty Board that Dean Harvison Young had been appointed to the Ontario Superior Court, and that the faculty was losing “a great leader, respected colleague and good friend.”²⁶⁶ Trotter, who had studied law at Toronto and Cambridge and was a leading criminal appeal lawyer before coming to Queen’s, served as Acting Dean until Harvison Young’s successor was selected. That successor was Bill Flanagan, who is the Dean today.

William F. Flanagan was raised in Alberta, obtained his law degree from the University of Toronto, did his graduate work in law at the Sorbonne and Columbia, and clerked for Justice Willard Estey at the Supreme Court of Canada. He began teaching at Queen’s in 1991, and his research agenda has been remarkably wide, including property law, the legal implications of AIDS, business law, and international trade. From 2000 to 2004 he was the director of the Canada AIDS Russia Project, which established AIDS training and treatment centres in Russia. In 2003, as noted above, he established the International Law Spring Program at the Castle in England. Upon taking up the deanship, Flanagan stated that his mission was to bring “my passionate interest in international law and international affairs to my role as dean of the law school”²⁶⁷

While his predecessor had the opportunity to shape a tuition policy for the law school, Flanagan has not. In 2003, the new Ontario Liberal government froze university tuition for two years. Recently it announced that, starting in 2006-2007, law schools would be permitted yearly increases of up to eight percent from 2003 tuition levels — whatever they happened to be at the particular school at that time. This policy is, of course, motivated by concerns about affordability and accessibility, but it has had the bizarre effect of entrenching vastly different tuitions at the different law schools in the province. For example, it rewards the University of Toronto for exploiting deregulation quickly (the University of Toronto raised tuition to about \$16,000 before the freeze), and it means fewer resources for schools like

266. *Queen’s Law Faculty Board Minutes*, 652d Meeting (19 November 2004).

267. Pablo Fuchs, “New Queen’s law dean set to internationalize curriculum” *The Lawyers Weekly* 24:38 (18 February 2005).

Queen's, which charged just under \$9000 in 2003 and had announced a series of measured and gradual increases for subsequent years. As Dean Flanagan has argued, the government's policy is "irrational and unfair," and it will have to be revisited in the future.²⁶⁸

Flanagan began his deanship by initiating a process of consultation among students, faculty and alumni about the future of the law school. The result is the *Queen's Law Strategic Framework, 2005-2010*, an ambitious plan that emphasizes the goals of maintaining and enhancing excellence in research and teaching, encouraging public service and professional integrity, and ensuring financial accessibility — all of which are to be pursued with global horizons in mind. There is now, states Flanagan, an "increasingly strong focus on internationalisation in all aspects of our legal curriculum."²⁶⁹

Of the specific goals identified in the *Strategic Framework*, one of the first to be met was the establishment of a joint Masters of Business Administration (M.B.A.)/LL.B. degree with the Queen's School of Business. The first M.B.A./LL.B. students began their studies in 2006.

Another Flanagan initiative has been to recognize student academic achievement by restoring Medals in Law for the top three graduating students, by establishing Dean's Scholar Awards for the top first and second year students, and by setting up a Dean's Honour List for each year. From 1960 to 1970, a Gold Medal in Law was awarded to the student with the highest standing in the graduating class. Medallists during that period included Richard Abbott (1960) and Peter Barton (1967), who later taught law at Carleton University and the University of Western Ontario respectively, and Gordon Bale (1962), Bruce McDonald (1963), Ron Delisle (1964) and Denis Magnusson (1968), all of whom later joined the Queen's law faculty. The other gold medallists became distinguished practitioners: William P.A. Kelly (1961), Donald Gordon (1965), Alexander A. Mesbur (1966), Peter T. Banwell (1969) and Alan D. Gold (1970). In 2006, Gold returned to present a University Medal in Law to Lily Ng and Medals in Law for second and third highest standing to Benissa Yau and Jennie Baek.

268. Bill Flanagan, "Fair play for Ontario's law schools" *National Post* (8 September 2006) A16.

269. Queen's Faculty of Law, *Prospectus* (2006) at 1.

The faculty has benefited greatly from the contributions of sessional instructors — like Kissoon and Stratas — whose practical experience and insight is deeply appreciated by students. And although the full-time faculty (at less than 30 members) is still significantly smaller than it was in the 1970s, it continues to grow. Dean Flanagan presides over a faculty that is vastly different — and significantly younger — than it was just six years ago, over half the professors having arrived during that time. Flanagan observed in 2005 that new scholars had brought “an infusion of energy, vitality and ideas to the law school.”²⁷⁰ Malcolm Thorburn, Tsvi Kahana, Paul Paton, Larissa Katz, Hoi Kong, Lisa Dufraimont and Erik Knutsen have all joined the faculty in very recent years. This is a talented group of scholars with credentials from places like Yale, Columbia, Harvard, Tel Aviv, and Stanford, and with experience as appellate court clerks or as practitioners in international or government settings. They will in all likelihood carry forward the long tradition of academic creativity and intellectual integrity that has developed in the Queen’s law faculty over fifty years. They will be no more content with easy answers than their predecessors were.

VIII. Scholars, Ideas and Laws, 1957-2007

In 1960, John J. Robinette told the first law graduates of the new law faculty at Queen’s that the law professor is “honoured and recognized as an important and in fact an essential person in our legal system,” as someone able to examine the law and “criticise, suggest and formulate doctrines which will influence the development of the law as a means of social justice.”²⁷¹ Not all legal academics would accept this as an adequate description of what they do. Some might say that it fails to capture the significance of work which is deeply sceptical of law’s purpose, or which offers rigorous empirical description of law’s doctrinal content or its impact on society, or which takes a theoretical or historical perspective that is detached from normative claims about law’s practical manifestations. But, as Peter Goodrich has written, it is

270. *Queen’s Law Reports* (2005) 1.

271. “Praised”, *supra* note 73.

extremely difficult to imagine legal scholarship as “an autonomous art . . . without any necessary relation either to the experience of law or to the modes of knowing that constitute its practices”²⁷² No matter how critical, descriptive, abstract or historical any piece of legal scholarship might be, it cannot help but offer insight into the uniquely practical phenomenon of legality. Through diffused and uncharted paths, legal scholars — if they do their job well — invariably contribute to shaping the cultural heritage of law over the long run.

It is well beyond the scope of this paper to assess the extent to which the legal scholarship emanating from Queen’s over the past fifty years has made fundamental contributions of that sort. But we can address the more limited question of whether law professors at Queen’s have managed to contribute to law’s development in the more immediate sense that Robinette had in mind. Some evidence of this contribution may be gathered from examining how the work of Queen’s faculty members has helped to shape judicial reasoning in Canada.

Scholarly work done at Queen’s has affected judicial reasoning in ways which are as varied as that scholarship itself has been. Judges often need accessible, accurate and critical accounts of complex legal doctrine — and for this reason they have cited Manson’s book on sentencing, Delisle’s work on evidence, and Knutsen’s analysis of causation in tort law.²⁷³ At other times, they require insights into the larger historical or comparative contexts of legal problems, and so they have relied upon Carter’s work on the evolution of public sector labour law, Trotter’s treatment of the history of bail, Adell’s comparative study on collective agreements, and Bale’s analysis of judicial use of parliamentary debates.²⁷⁴

272. Peter Goodrich, “Of Blackstone’s Tower: Metaphors of Distance and Histories of the English Law School” in Peter Birks, ed., *What Are Law Schools For?* (Oxford: Oxford University Press, 1996) 59 at 65.

273. See *R. v. Cheddesingh*, [2004] 1 S.C.R. 433 at para. 1, McLachlin C.J.C. citing Allan Manson, *The Law of Sentencing* (Toronto: Irwin Law, 2001); *R. v. Noble*, [1997] 1 S.C.R. 874 at para. 26, citing R. Delisle, “Silence at Trial: Inferences and Comments” (1997) 1 C.R. (5th) 313; *Aristorenas v. Comcare Health Services*, [2006] O.J. No. 4039 at para. 49 (C.A.), Rouleau J.A. citing Erik S. Knutsen, “Ambiguous Cause-in-Fact and Structured Causation: A Multi-Jurisdictional Approach” (2003) 38 *Tex. Int. L.J.* 249.

274. *Public Service Alliance of Canada v. Canada*, [1987] 1 S.C.R. 424 at 449, Dickson C.J.C. citing Don Carter; *R. v. Hall*, [2002] 3 S.C.R. 309 at paras. 55, 105, Iacobucci J.

Judges often confront a tangle of case law and legislative text that obscures the ideal of interpretive coherence in the law. Here again, academic work proves helpful. If Baer has already sorted through competing lines of case law to identify what “may now represent the view of the majority of the Supreme Court of Canada,” judges will rely upon his work.²⁷⁵ If Bailey has already resolved the “confusion” about whether a certain line of case law is still relevant after legislative reforms in family law, then, again, her insights can be adopted by judges.²⁷⁶ And, from time to time, judges will cite academic commentary for no other reason than the scholar’s ability to cut through complex human problems with clear analytical insight — as Lamer C.J.C. did when he cited Toni Pickard’s analysis of *mens rea* and sexual assault.²⁷⁷

Limitations on the role of judges and their lack of training in the social sciences often preclude them from gathering or interpreting empirical data on the social realities that underlie legal problems. Here, scholarly work that transcends disciplinary boundaries is essential. In this regard, work by Bala and Bailey examining rates of sexual assault against children was cited in *R. v. Sharpe*.²⁷⁸ When sensible interpretation of the law requires an understanding of policy debates within government or an understanding of industrial realities, resort to scholarly assessment may again be very helpful — and so courts have referred to Bala’s analysis of provincial

citing Gary T. Trotter, *The Law of Bail in Canada* 2d ed. (Scarborough, Ont.: Carswell, 1998); *Dayco (Canada) Ltd. v. CAW-Canada*, [1993] 2 S.C.R. 230 at paras. 63, 65, LaForest J. citing Bernard L. Adell, *The Legal Status of Collective Agreements in England, The United States and Canada* (Kingston: Queen's University Industrial Relations Centre, 1970); *Maison L'Intégrale Inc. c. Syndicat canadien de la Fonction publique, section locale 313*, [1996] A.Q. no 751 at para. 57 (C.A.), Robert J. citing Gordon Bale, “Parliamentary Debates and Statutory Interpretation: Switching on the Light or Rummaging, in the Ashcans of the Legislative Process” (1995) 74 Can. Bar. Rev. 1.

275. *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353 at para. 44, Lamer C.J.C. quoting Marvin G. Baer, Case Comment on *Heerspink* (1983), 17 U.B.C. L. Rev. 299.

276. *Miglin v. Miglin*, [2003] 1 S.C.R. 303 at para. 32, citing Martha Bailey, “*Pelech, Caron, and Richardson*” (1989-90) 3 C.J.W.L. 615.

277. *R. v. Creighton*, [1993] 3 S.C.R. 3 at para. 46, Lamer C.J.C., citing Toni Pickard, “Culpable Mistakes and Rape: Relating Mens Rea to the Crime” (1980) 30 U.T.L.J. 75.

278. *R. v. Sharpe*, [2001] 1 S.C.R. 45 at para. 170, L'Heureux-Dubé, Gonthier and Bastarache JJ., citing N. Bala & M. Bailey, “Canada: Recognizing the Interests of Children” (1992-93) 31 U. Louisville J. Fam. L. 283 at 292.

inquiries into the apprehension of children in need, and to Peppin's work on the pharmaceutical industry.²⁷⁹ Similarly, judges must rely upon academic work for insight into matters on which their own experiences may be limited—most notably, perhaps, when the law affects vulnerable minorities. And so to contextualize the position of gay and lesbian young people within schools, for example, we find Iacobucci and Bastarache JJ. relying upon Lahey's book, *Are We "Persons" Yet?*²⁸⁰

The common law may indeed "work itself pure," to use an old expression, and that process involves the constant struggle to restate existing law in ways that better manifest the underlying principles of political morality to which the legal system is committed. Often academics sense, before judges do, the subtle shifts in the currents of legal discourse that combine to produce a sea change in our understanding of what the law really is. David Mullan's 1975 article "Fairness: The New Natural Justice" synthesized a variety of cases in a critical way, identifying the emerging idea of procedural fairness in administrative law, and thereby providing a light for the courts to follow.²⁸¹ In other instances, judges will cite a scholar's work as a way to mark or emphasize a point of departure or a new way of conceiving of an issue or problem. Nowhere is this sort of reliance better illustrated than by the Supreme Court of Canada's adoption of Noel Lyon's statement that section 35(1) of the Constitution Act, 1982 "calls for a just settlement for aboriginal peoples . . . [and] renounces the old rules of the game"²⁸²

279. *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519 at para. 105, L'Heureux-Dubé J., citing N. Bala, "Reforming Ontario's Child and Family Services Act: Is the Pendulum Swinging Back Too Far?" (1999-2000) 17 C.F.L.Q. 121; *Hollis v. Dow Corning Corp.*, [1995] 4 S.C.R. 634 at para. 25, La Forest J. quoting Patricia Peppin, "Drug/Vaccine Risks: Patient Decision-Making and Harm Reduction in the Pharmaceutical Company Duty to Warn Action" (1991) 70 Can. Bar Rev. 473.

280. *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 at para. 81, Iacobucci and Bastarache JJ. quoting Kathleen A. Lahey, *Are We "Persons" Yet? Law and Sexuality in Canada* (Toronto: University of Toronto Press, 1999).

281. D.J. Mullan, "Fairness: The New Natural Justice" (1975) 25 U.T.L.J. 281 is cited in *Nicholson v. Haldimand Norfolk (Regional) Police Commissioners*, [1979] 1 S.C.R. 311 at 325, Laskin C.J.C.

282. *R. v. Sparrow*, [1990] 1 S.C.R. 1075 at 1107, quoting Noel Lyon, "An Essay on Constitutional Interpretation" (1988) 26 Osgoode Hall L.J. 95.

Only rarely will a scholar command the level of judicial respect that Bill Lederman did. He has come to occupy an almost iconic status within the field of constitutional law. As Le Dain J. once observed, to cite Lederman's "Independence of the Judiciary" (or, we might add, his "Unity and Diversity in Canadian Federalism" or "Classification of Laws and the British North America Act") is to cite a "classic" piece of Canadian legal scholarship.²⁸³ Justice Bertha Wilson, who was Lederman's student at Dalhousie, has acknowledged that he had an enduring influence on her approach to judicial reasoning and constitutional interpretation.²⁸⁴

But even Lederman was not followed blindly. In the famous *Patriation Reference* of 1981, a majority of the Supreme Court of Canada described him as a "respected scholar" whose views on constitutional conventions and amendment "deserve more than cursory consideration," but the judges did not agree with those views.²⁸⁵ Indeed, perhaps the greatest compliment that can be paid by a judge to a scholar is not to agree with the scholar's work, but to disagree with it and to offer an explanation for that disagreement. For a judge to engage in a debate with a law professor in the course of writing a judgment is to acknowledge that the quality of the professor's work is such that it simply cannot be passed over without comment, but must be confronted openly and some reason given for why its conclusions are not accepted on that occasion. The work of Don Stuart provides a good example. One can find in decisions of the Supreme Court of Canada

283. *R. v. Valente*, [1985] 2 S.C.R. 673 at para. 24, Le Dain J. citing W.R. Lederman, "The Independence of the Judiciary" (1956) 34 Can. Bar Rev. 769. See also *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161 at 181-82, Dickson J. citing W.R. Lederman, "Classification of Laws and the British North America Act" in W.R. Lederman, ed., *The Courts and the Canadian Constitution* (Toronto: McClelland & Stewart, 1964) 177; *Reference re Anti-Inflation Act (Canada)*, [1976] 2 S.C.R. 373 at 451-52, Beetz J. citing W.R. Lederman's "Unity and Diversity in Canadian Federalism: Ideals and Methods of Moderation" (1975) 53 Can. Bar Rev. 597.

284. Bertha Wilson, "The Ideal Teacher" (1993) 19 Queen's L.J. 16; Ellen Anderson, *Judging Bertha Wilson: Law as Large as Life* (Toronto: University of Toronto for the Osgoode Society for Canadian Legal History, 2001) at 42, 134.

285. *Reference re Patriation of the Constitution of Canada*, [1981] 1 S.C.R. 753 at 783-84, Laskin C.J.C., Dickson, Beetz, Estey, McIntyre, Chouinard and Lamer JJ.

many statements like: “I agree with the following comments of Professor Don Stuart”²⁸⁶ But one will also find statements like those of Cory J. — “Despite my admiration for the work of Professor Stuart, I cannot accept his position”²⁸⁷ — or L’Heureux-Dubé J. — “I am somewhat uncomfortable with the way Professor Stuart refers to ‘an offence of subjective *mens rea*’”²⁸⁸ In these statements of disagreement we find, I think, evidence of the deepest respect for Don Stuart’s contributions to the law.

Beverley McLachlin, the Chief Justice of Canada, has recently written the following about the contributions made by Queen’s law professor David Mullan:

Professor Mullan’s work stands as a testament to the power of a law professor to assist judges and influence the development of the law. Fiercely independent and not infrequently critical, he has pointed out problems and suggested solutions. He has done so in a way that has enhanced the respect Canadians hold for the courts and the esteem in which Canadian legal scholarship is more widely held.²⁸⁹

The “power of a law professor,” as the Chief Justice puts it, can indeed be significant. The cases suggest that the faculty members at Queen’s have been regarded, by judges at least, as worthy of exercising that power.

It should be noted that Queen’s law professors have also contributed to legal developments as advocates for vulnerable groups. Ron Price conducted test case litigation on behalf of prisoners as part of the Correctional Law project. More recently, Allan Manson has represented prisoner groups in cases on *habeas corpus* and voting rights, and Sharry

286. *R. v. Hall*, [2002] 3 S.C.R. 309 at para. 90, Iacobucci J. See also *R. v. Bernard*, [1988] 2 S.C.R. 833 at para. 37, Dickson C.J.C.; *R. v. Stillman*, [1997] 1 S.C.R. 607 at para. 191, L’Heureux-Dubé J.; *R. v. Swain*, [1991] 1 S.C.R. 933 at para. 175, Wilson J.

287. *R. v. Thibert*, [1996] 1 S.C.R. 37 at para. 7, Cory J. For the most part, Cory agreed with Stuart: See e.g. *R. v. Hundal*, [1993] 1 S.C.R. 867.

288. *R. v. Hinchev*, [1996] 3 S.C.R. 1128 at para. 80, L’Heureux-Dubé J.

289. Rt. Hon. Beverley McLachlin, “Academe and the Courts: Professor Mullan’s Contribution” in Grant Huscroft and Michael Taggart, eds., *Inside and Outside Canadian Administrative Law: Essays in Honour of David Mullan* (Toronto: University of Toronto Press, 2006) 9 at 18-19.

Aiken has appeared for refugee groups challenging the constitutionality of measures taken against terrorist suspects.²⁹⁰ Kathy Lahey has represented the Métis National Council of Women in several cases,²⁹¹ and she appeared before the Supreme Court of Canada in the *Same-sex Marriage Reference*.²⁹²

Of course, an examination of the reasons of the courts offers only a glimpse of the ways in which legal scholarship contributes to the development of ideas about law. If, as Queen's law professor Tsvi Kahana emphasizes, the legislative branch of state is as important as the judicial branch in articulating fundamental legal concepts, then a full assessment of the academic role in law reform must include consideration of the ways in which legislators listen to law professors.²⁹³

Law faculty members at Queen's have consistently made the short trip to Ottawa or Toronto to make oral submissions to legislative committees on bills affecting areas of law related to their research and expertise. Nick Bala's explanations of the findings of the Child Witness Project — his massive empirical study investigating child testimony in courts — have had a major impact on legislative reform.²⁹⁴ Other faculty members have prepared reports commissioned by governments on questions of law reform. Ron Delisle's work on evidence for the Law Reform Commission of Canada is an example, as is David Freedman's work on intellectual property and international law for Industry Canada and the Competition Bureau of Canada. A report for the Department of Justice and Status of Women Canada by Martha Bailey, Bev Baines, Bitá Amani and Amy Kaufman (then a law student and now a Queen's law

290. *Canada v. Solosky*, [1980] 1 S.C.R. 821 (Price); *May v. Ferndale Institution*, [2005] 3 S.C.R. 809 (Manson); *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519 (Manson); *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 (Aiken).

291. *Lovelace v. Ontario*, [2000] 1 S.C.R. 950; *Métis National Council of Women v. Canada (A.G.)*, [2005] F.C.J. No. 328, [2006] F.C.J. No. 280 (C.A.), leave to appeal denied [2006] S.C.C.A. No. 170.

292. *Reference re Same-Sex Marriage*, [2004] 3 S.C.R. 698. Lahey was also counsel for same-sex couples in *EGALE Canada Inc. v. Canada* (2001), 95 B.C.L.R. (3d) 122 (S.C.).

293. Tsvi Kahana, "Understanding the Notwithstanding Mechanism" (2002) 52 U.T.L.J. 221; Richard W. Bauman & Tsvi Kahana, eds., *The Least Examined Branch: The Role of Legislatures in the Constitutional State* (Cambridge: Cambridge University Press, 2006).

294. *Queen's Law Reports* (2001) at 8; *Queen's Law Reports* (2005) at 7.

librarian), recommending the decriminalization of polygamy, and a report by Nick Bala and a team of researchers opposing that recommendation, caused something of a media frenzy last year.²⁹⁵ Occasionally members of the law faculty have been commissioned by international bodies to help foreign states draft laws. Bernie Adell was sent by the International Labour Organization to advise Swaziland on the rewriting of its labour laws in the mid-1970s, and Alex Easson has often served on International Monetary Fund missions to help Bosnia-Herzegovina, Sierra Leone and other countries draft tax legislation.

Queen's faculty have also participated in the executive and administrative aspects of government. Stanley Sadinsky served as the Chair of the Ontario Racing Commission, and Bruce Parry serves on the Ontario Environmental Review Tribunal. Several faculty members have served on human rights boards of inquiry, and in the early 1990s Dan Soberman undertook an inquiry on behalf of the Canadian Human Rights Commission into the relocation of Inuit families to the high Arctic. As for non-governmental entities, Stuart Ryan, Don Stuart and Sheila Noonan were involved in the John Howard and Elizabeth Fry Societies, and Paul Paton sits on the professional ethics committee of the Canadian Bar Association. Allan Manson, Marvin Baer and Phil Goldman have made important contributions to the governance of the university in their role as bulwarks of the Queen's University Faculty Association. Stuart Ryan was Chancellor of the Ontario Diocese of the Anglican Church for 31 years.

Perhaps another sign of the contribution made by members of the Queen's law faculty is that they are often asked to assume positions of public trust and responsibility upon their departure or retirement from Queen's. Tung-Pi Chen is head of the Taipei Economic and Cultural Office in Ottawa, and thereby serves as Taiwan's chief representative in Canada. Robert Hawkins is President of the University of Regina. Don Carter serves as Chair of Ontario's Public Service Grievance Board.

295. The reports are published in *Polygamy in Canada: Legal and Social Implications for Women and Children – A Collection of Policy Research Reports* (Ottawa: Status of Women Canada, November, 2005). See "End polygamy ban, report urges Ottawa" *The Globe and Mail* (13 January 2006) A10; Editorial, "The perils of polygamy" *The Globe and Mail* (18 January 2006) A16.

David Mullan serves as the first Integrity Commissioner for the City of Toronto. Since 1987, Heino Lilles has been a judge of the Yukon Territorial Court, and he has helped to develop the use of sentencing circles in First Nations communities. Alison Harvison Young and Gary Trotter have recently been appointed to the bench in Ontario. It was after his departure from Queen's that John Whyte, as Deputy Attorney General and Deputy Justice Minister for Saskatchewan, made a memorable appearance before the Supreme Court of Canada in the 1998 *Quebec Secession Reference*. His elegant oral assertion that "[t]he threads of a thousand acts of accommodation are the fabric of a nation," apparently composed on a scrap piece of paper moments before he stood to speak, was quoted by the Court in its historic reasons in that case.²⁹⁶ No one familiar with Whyte during his years at Queen's would have been surprised: extemporaneous constitutional poetry seemed to be woven into most things he said in the classrooms and corridors of Macdonald Hall.

Often the most treasured acknowledgment of an academic's worth comes from peers in the academy. Examples include the nomination for awards of Art Cockfield's book on tax policy and NAFTA and Gary Trotter's book on bail, the conferral of the Academic Excellence Award by the Canadian Association of Law Teachers on Don Stuart and David Mullan, the awarding of a Fulbright Fellowship to Cherie Metcalf, the invitation to Michael Pratt to present his work in contract theory to Jules Coleman's class at Yale, and the publication of a *Festschrift* in honour of David Mullan.²⁹⁷ These are all signs that a scholar is indeed

296. *Reference re the Secession of Quebec*, [1998] 2 S.C.R. 217 at para. 96. See also Roy J. Romanow, "Canada . . . A Thousand Acts of Accommodation: The Contributions of John D. Whyte" (2006) 31 Queen's L.J. 450.

297. Arthur J. Cockfield, *NAFTA Tax Law and Policy: Resolving the Clash between Economic and Sovereignty Interests* (Toronto: University of Toronto Press, 2005) was short listed for the Douglas C. Purvis Memorial Award for a work of excellence in Canadian economic policy; Gary T. Trotter, *The Law of Bail in Canada*, 2d ed. (Scarborough, Ont.: Carswell, 1998) won the Walter Owen Book Prize for Excellence in Legal Writing; David Mullan and Don Stuart received the C.A.L.T. Academic Excellence Award in 1996 and 1998 respectively; Michael Pratt presented his article "Promises, Contracts, and Voluntary Obligations" (forthcoming in *Law & Philosophy*) to Professor Coleman's class in the autumn of 2005; the *Festschrift* in Mullan's honour is Grant Huscroft & Michael Taggart, eds., *Inside*

participating in a valuable way in shaping the social discourse on law's problems and potential. The same may be true of the remark by Peter Hogg that Lederman's work "has been the most important single contribution to my understanding of constitutional law."²⁹⁸ The law of Canada, and of other places as well, would look very different today without the contributions of Queen's law professors over the past fifty years.

IX. Beyond Queen's Law

From the beginning, Queen's law graduates have gone out into the world and made a difference. They are lawyers in public and private practice, in big cities and rural settings; they are judges, business leaders, academics, politicians and civil servants. They include George Thomson, former Deputy Attorney General for both Ontario and Canada and now senior director of the National Judicial Institute; John Sims, current Deputy Attorney General for Canada; Brigadier-General Kenneth Watkin, the Judge Advocate General of Canada; Louise Binder, recipient of the Order of Ontario and an honorary Doctor of Laws from Queen's for her work on HIV/AIDS; Thomas d'Aquino, President of the Canadian Council of Chief Executives; Beth Symes, prominent administrative law and equality rights litigator; Kenneth Campbell, Director of the Criminal Law Division of the Ontario Ministry of the Attorney General; Mark Peacock, Montreal litigation lawyer and 2002 winner of the Canadian Bar Association's Louis St-Laurent Award of Excellence; Yolande James, the first black woman to be elected to the Quebec National Assembly; John Gerretsen, the Ontario Minister of Municipal Affairs and Housing; David Johnston, who served as Principal and Vice Chancellor of McGill and is now President of the University of Waterloo; and David Stratas, who litigates cases that define the shape of the Canadian polity. They include lawyers like Frank Walwyn, president of the Canadian Association of Black

and Outside Canadian Administrative Law: Essays in Honour of David Mullan (Toronto: University of Toronto Press, 2006).

298. Peter Hogg, *Constitutional Law of Canada*, 3d ed. (Toronto: Carswell, 1992) at v-vi.

Lawyers who takes time from his Bay Street practice to encourage youth from minority communities to consider law school. They include lawyers whose work transcends national borders, such as Dianna Buttu, Legal Advisor to the Palestinian Prime Minister on peace negotiations, and Norman Farrell, senior prosecutor at the International Criminal Tribunal for Former Yugoslavia. They include judges like Gordon Sedgwick and Douglas Belch of the Ontario Superior Court; Heather Smith and Douglas Cunningham, the Chief Justice and Associate Chief Justice respectively of the Ontario Superior Court; Jean MacFarland of the Ontario Court of Appeal; Thomas Cromwell of the Nova Scotia Court of Appeal; and Rose Boyko of the Ontario Superior Court, who was the first aboriginal woman to be appointed to a superior court in Canada.

X. Looking Ahead

Alex Corry articulated a vision for legal education at Queen's — one in which law would be taught in the “grand manner,” so that graduates could serve as guardians of the rule of law in times of uncertainty and times of promise. It is fair to say that Corry's aspiration has been fulfilled. The law school at Queen's has taken very seriously the job of engaging critically with the law, with legal institutions and with the ideal of legality. It has grappled with the tensions inherent in its motto, “Let Right Be Done” — the tensions between law's creative power and law's transcendent moral value. It has done so in ways that have been both innovative and controversial. People have noticed what has happened here, a sure sign that the Faculty of Law at Queen's in its first fifty years has been a community with relevance and meaning.

Every generation thinks that it confronts truly significant changes and challenges. But as the twenty-first century begins, there really is something different about the social problems we face. In 1957, Corry said that legal education would have to respond to the challenges associated with the building of the modern state. In the next fifty years legal education will have to confront the issues arising from looming environmental catastrophe, the proliferation of information technologies, the continued rise of international trade and investment,

the complexities produced by immigration and population movements, and the fear of terrorism — issues with an interconnected and global scope that challenge the very relevance of the modern state. This challenge will not be met simply by adding a few more optional courses to the curriculum. Innovation at a deeper level is needed. The Faculty of Law at Queen's will have to adapt and expand to meet these global challenges. Happily, its record in recent years indicates that it has already begun to do so.