THE PUBLIC RESPONSIBILITIES OF THE ACADEMIC LAW TEACHER IN CANADA

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THE PUBLIC RESPONSIBILITIES OF THE ACADEMIC LAW TEACHER IN CANADA*

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The primary responsibility of an academic law teacher is to help students to learn how to think in terms of law as it is applied and ought to be applied to individual and social action. His first duty is to excel in the practice of his craft. This requires him to engage in constant and concentrated study and research which almost inevitably reveal needs for reform and development of the law which he should expound and advocate. The questions are, first, whether he holds any further responsibility, and, second, if he does, how is it to be measured and how can he fulfill it most effectively.

The responsibility of the academic teacher in the administration of justice is the most obvious of his public responsibilities and, perhaps, the one most consistent with what I have suggested are his primary duties. The debt of the common-law courts to the writings of teachers in textbooks and periodicals has been generously acknowledged in recent years by liberal-minded judges like Learned Hand, Cardozo, and Lord Denning, perhaps more generously than as a group we deserve, and certainly in terms that if applied to us in Canada would indeed be fulsome. Addressing the Association of American Law Schools in 1925—whose members he described as "pattern makers of the law"—Judge Learned Hand ascribed the functions of teachers, on the one hand, and the Bench and Bar on the other hand, as follows:

> So you will see that I do not choose to assign to us [the judges] a very noble part in our common enterprise of keeping and advancing the law. To you I will ascribe the more excellent function of systematizing, of rectifying and of clarifying what exists so that we shall know our

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> possessions and be able to use our tools. To you too I will ascribe the still more excellent function of contriving new methods, of discovering new ideas, of surveying new territory, though in this we may have at times a not insignificant part. And to ourselves I reserve a more humble role; we are the mass from whom proceeds moral authority over the people. We furnish the momentum, you the direction; but each is necessary to the other, each must understand, respect and regard the other, or both will fail.[1]

Some years later this speech brought forth an even stronger assertion of the academic teacher's role from Mr. Justice Cardozo, while he was Chief Judge of the New York Court of Appeals:

> The vanguard of the column which is our common law system was once led by the judges, is led by them no longer . . . . The outstanding fact is here that academic scholarship is charting the line of development and progress in the untrodden region of the law.[2]

Although these words are not supported by our achievements in Canada, they do suggest what might be, what should be and perhaps will be.[3]

The role that Mr. Justice Cardozo attributes to the academic lawyer in the administration of justice is of course hardly an exaggeration of the teacher's position in civil-law countries like France. By comparison, there are obstacles in the common-law countries, at least in Canada, that inhibit the teacher's leadership of "the vanguard of the column which is our common law system". One, the most obvious and important one, is that the academic lawyer in Canada has hardly yet demonstrated his capacity to lead the vanguard. In its report of three or four years ago, the committee on legal research of the Canadian Bar Association said, I think correctly, that "legal research in Canada is wholly inadequate today in quantity and quality to enable the legal profession properly to fulfill its high social obligation . . ."[4] and, later, "nor can it be said that the law teachers as a whole have yet made any notable contribution to legal writing and research".[5] For this failure there are good reasons which I cannot explore in this paper (beyond

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[1] Hand, Have the Bench and Bar anything to Contribute to the Teaching of Law? (1926), 24 Mich. L. Rev. 466, at p. 480.

[2] Introduction to Selected Readings on the Law of Contracts from American and English Legal Periodicals (Compiled and Edited by a Committee of the Association of American Law Schools) (1931), p. IX.

[3] See also review by Lord Denning of Winfield's, A Text-Book of the Law of Torts, in (1947), 63 Law Q. Rev. 516, and Lord Denning, The Universities and Law Reform (1949), 1 J. Soc. Public Teachers of Law 258.

[4] Report of the Committee on Legal Research (1956), 34 Can. Bar Rev. 999, at pp. 1000-1001.

[5] *Ibid.*, at p. 1027.

saying that the opportunity to correct it is now beginning to appear) but it has undoubtedly occurred.

Another obstacle, the other side of the coin, is that Canadian judges have not always been conscious of the creative part they should play in developing the law.[6] The abridgements and digests of the practitioner they have no doubt always used, but they have not always made use of the "repository principles" that have been provided by the academic lawyer, or acknowledged their debt when they did use them. Even today there seems to be a vague belief in the legal profession in common-law countries, including Canada, that juristic writing ought not to be cited to a court. "Sometimes the suggestion is that no one but a writer who has held or holds judicial office should be cited; sometimes that living authors may not be cited; sometimes that periodicals are somehow less worthy of attention than bound books."[7] An obstacle of the same kind, which also illustrates a climate of opinion discouraging to legal scholarship, is the criticism by judges and practising lawyers of published comments on a case while an appeal to a higher court is pending.

It would be interesting to speculate what the results would be for the common-law system in Canada if the academic lawyer were in fact the vanguard of the column. For the narrow, positivist approach to the decisions so prevalent in Canada, there would no doubt be substituted the conception of the judge as the creative maker of law in cases permitting of it. Emphasis would be placed more on what the law should be, rather than on what it is. The rigid view of stare decisis would give way to something approaching the attitudes to precedent taken in France and Quebec. Materials other than the strictly legal—from economics, sociology, medicine, psychiatry—would be drawn more frequently to the attention of the courts and their lessons permeate the process of adjudication more quickly.

Whether or not this vision of professorially inspired judicial law-making becomes a reality in the future, it will, in the phrase of Mr. Justice Holmes, remain "interstitial only" for some time to come. Legislation has perforce become the main growing point of the law. It has been well said that "this development has been a natural one, apiece with the ever-changing complex of today's

[6] See generally, Horace E. Read, The Judicial Process in Common Law Canada (1959), 37 Can. Bar Rev. 265.

[7] G. V. V. Nichols, Legal Periodicals and the Supreme Court of Canada (1950), 28 Can. Bar Rev. 422, at p. 425, and generally for a discussion of this "negative attitude of the courts to juristic writing", as the writer calls it.

society. The common law established the basic principles. Additions, adjustment, variations and improvisations to meet rapidly changing conditions and constantly arising problems require the ready adaptability of legislation".[8] Let us look at some of the agencies in Canada in which lawyers have become associated together in preparation of legislation designed to improve the law. Let us review the part played by academic law teachers and consider how far their responsibility for participation extends.

The Conference of Commissioners on Uniformity of Legislation in Canada, the only national agency, was organized by the governments of the provinces in 1918 under the sponsorship of the Canadian Bar Association with the declared aim of achieving "simplification, systematization, and in a very considerable degree, unification of the positive law of the provinces on a large variety of topics affecting the transactions of every day business".[9] Since then the Conference has met annually, excepting in 1940, on the five days immediately preceding the annual meeting of the Association and at or near the same place. The officers of the Conference are *ex officio* members of the council of the Association to which a statement of progress is made annually.

The government of each of the ten provinces and of Canada appoints three or more representatives to the Conference. They have included members of the judiciary, governmental law departments, the practising profession and faculties of law schools, all of whom have served without financial remuneration.[10]

In 1923 the president of the Conference declared that the aim was to prepare and recommend for enactment by all provinces "uniform legislation on subjects common to all, model acts of the best type, well-drafted and carefully considered", this with a twofold purpose, "(a) to secure uniformity in the *lex scripta* of provincial enactments governing the same activity or thing in commercial or kindred subjects; (b) to obviate conflicting decisions of

[8] D. W. Peck, Our Changing Law (1957), 43 Cornell L.Q. 27, at p. 31.

[9] Address by Sir Lyman Duff, Report of the Canadian Bar Association (1915), p. 58. See generally L. R. MacTavish, Uniformity of Legislation in Canada—an Outline (1947), 25 Can. Bar Rev. 36; H. F. Muggah, Uniformity of Legislation in Canada (1957), p. 205.

[10] The financial support provided by the governments for the Conference has included no funds for research. Consequently, expenditures both of money and time for this purpose have been made personally by the Commissioners. This handicap may, however, soon be overcome since the Legal Research Foundation, now being incorporated under the auspices of the Canadian Bar Association, includes among its recommended functions "the undertaking (and financing) of specified research programmes of the Conference on Uniformity of Legislation". See Report of the Canadian Bar Association Committee on Legal Research, *supra*, footnote 4, at p. 1053.

courts in different provinces upon the same question arising out of identical or similar facts and under statutes substantially alike in principle or varying slightly only in phrases expressing those principles."[11] In the past forty years the Conference has prepared and recommended for enactment fifty model Acts, many of which have been amended and revised several times. Of these, twenty-six have been enacted in Alberta, twenty-one in British Columbia, twenty-eight in Manitoba, twenty-five in New Brunswick, twelve in Newfoundland, nineteen in Nova Scotia, twenty-two in Ontario, twenty-four in Prince Edward Island, one in Quebec, twenty-five in Saskatchewan, twenty-three in the Northwest Territories and twenty-four in the Yukon.[12]

The founders of the Conference declared that each uniform Act should be in the nature of a code designed to be best for the people at large and construed according to its wording. Accordingly, few of the model Acts have been meant to be merely declaratory of the common law.

While the primary work of the Conference has been and is to achieve uniformity and improvement in respect of subject matter covered by existing legislation, it is obvious that in the preparation of the model Acts, the processes of selection from among conflicting rules and necessary rephrasing and rearrangement have resulted in a measure of law reform. In addition the Conference has in recent years prepared model legislation of an avowedly creative and reforming character on subjects on which no legislation had hitherto existed in the common-law provinces of Canada. Examples are the Survivorship Act in 1939,[13] the section of the Uniform Evidence Act dealing with photographic records in 1944,[14] the section of the same Act which abrogated the rule in *Russell* v. *Russell*[15] in 1945,[16] the Regulations Act in 1943,[17] the Frustration of Contracts Act in 1948,[18] and the Proceedings against the Crown Act in 1950.[19] Also, recent revisions of several of the older uniform Acts have been deliberately reformatory in various ways, including the new conflict of laws provisions of the Wills Act in 1953,[20] the general revision of the Wills Act in 1957,[21] of the Reciprocal

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[11] M. G. Teed, President's Address, 1923 Proceedings of the Conference of Commissioners on Uniformity of Legislation in Canada (hereinafter cited as Proc.), p. 19, at p. 20.
[12] See tabulation in 1959 Proc., pp. 14, 15. (Attached as Appendix "A")
[13] 1939 Proc., p. 63.
[14] 1944 Proc., p. 60.
[15] [1924] A.C., 687 (P.C.).
[16] 1945 Proc., p. 73.
[17] 1943 Proc., p. 63.
[18] 1948 Proc., p. 73.
[19] 1950 Proc., p. 76.
[20] 1953 Proc., p. 51.
[21] 1957 Proc., p. 135.

Enforcement of Judgments Act in 1957[22] and 1958,[23] the Highway Traffic and Vehicles-Rules of the Road Act in 1955[24] and 1958,[25] and the Legitimation Act in 1959.[26]

In 1944 a Section on Criminal Law and Procedure was established. It has devoted itself almost entirely to study of the operation of the criminal law and preparation of recommendations for amendments to the Criminal Code and drafting of the amendments for submission to the Minister of Justice. The members of this Section consist almost entirely of members of the provincial departments of the Attorney General and of the Department of Justice. They have exerted an extensive and decisive influence upon the development and revision of the Code.

In its entire history, only eight academic law teachers have been members of the Conference, but they have made a substantial contribution to its work.[27] In addition to participating in the discussions of proposed measures at the annual meetings, all of them carried a large portion of the burden of research upon which the successful functioning of the Conference has depended. This is reflected in the reports of the working committees published in the successive *Annual Proceedings*, especially in the fields of foreign judgments, wills, life insurance, contributory negligence, survivorship, reciprocal enforcement of maintenance orders, testators family maintenance, legitimation, the conflict of laws of wills and foreign torts, and domicile.

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[22] 1957 Proc., p. 111.
[23] 1958 Proc., p. 90.
[24] 1955 Proc., p. 39.
[25] 1958 Proc., p. 128.
[26] Proposals of subjects for model Acts may be taken to the Conference by the Canadian Bar Association, by an Attorney General or by one of its members. Generally, a proposal will be considered at an annual meeting only if it is in the hands of the secretary at least one month before the opening date, but any submitted later may be taken up if the Conference by resolution so decides. Work will, as a general rule, not be commenced on a proposed project unless the Conference is satisfied that there is a reasonable possibility that at least four governments would like to have a uniform Act on the subject and that they would be likely to enact it.

Experience has shown that at a meeting of the Conference, there should in almost all cases be no attempt at drafting and no discussion of details of phrasing. Principles, and principles only, should be discussed; although in settling principles it may be necessary to discuss applications, exceptions and special cases. Drafting is done in at least two stages by small groups of not more than three. At least in the case of those who prepare the final draft, they are chosen from among the Commissioners who have had the most experience in the preparation of legislation.

[27] J. D. Falconbridge, 1918 to 1934, (Secretary until 1930, President 1930 to 1934); John E. Read, 1924 to 1928; Sidney Smith, 1930 to 1934 (Secretary until 1934); Vincent C. MacDonald, 1934 to 1947 (Secretary until 1937); Cecil A. Wright, 1943 to 1948; James B. Milner, 1947 to 1949; Horace E. Read, 1950 to date, (President 1957 to 1958); Wilbur F. Bowker, 1952 to date. (Gilbert D. Kennedy has also been a Commissioner since 1958 when he became Deputy Attorney General of British Columbia).

The Conference keeps all of the uniform Acts that are in force in the provinces under scrutiny. Annually, a commissioner reports amendments made by the legislatures and the reasons for them, and another commissioner (an academic law teacher) reports and comments upon reported cases which involve significant questions of interpretation. In this way, departures from uniformity by the legislatures and courts, the reasons for them and their bearing upon the policy and utility of the acts, are evaluated and necessary revisions are made.[28]

Few law teachers have so far brought either (a) defects and anomalies in areas of law of which they have special knowledge or (b) theoretical or practical defects in the uniform Acts to the attention of the Conference. Fewer still have informed the Attorney General of their province of willingness to participate in its work. There is no doubt but what the work of the Conference would benefit from an increased participation by academic law teachers. As R. E. Megarry has stated, "teachers of law make the highly important contribution of a synoptic view of the whole branch of law; they alone are daily concerned in seeing a subject as a whole as opposed to examining certain small parts of it in detail. They see the landscape, while counsel applies his magnifying glass to some plant in the foreground. Teachers, too, are concerned with theory, with qualities of clarity, elegance and consistency, while at times the practitioner is content with a healthy pragmatism."[29] There is an opportunity in the Conference to combine

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[28] Preparation of a model Act proceeds through several stages: (a) research by designated commissioners who report to a meeting of the Conference on the desirable features and deficiencies of existing law in Canada and elsewhere and recommend in a general way the type of legislation that they believe is desirable, making special mention of the features to be included and those to be excluded; (b) discussion of the report in principle at a meeting of the Conference and decision whether or not a draft act is to be prepared; (c) if it is, the designation of the commissioners of one province to prepare it, and the Conference, with them present, then proceeding to discuss the report in detail and decide the various principles to be adopted; (d) preparation of a draft Act; (e) critical discussion of the principles embodied in the draft Act at a meeting of the Conference resulting in either a reference for further research or a delegation to two or three experienced draftsmen of the task of preparing a semi-final draft; (f) preparation of a semi-final draft; (g) discussion of the semi-final draft as to principles at the Conference and its tentative approval; (h) publication of the tentatively approved draft in the Proceedings, and submission to the Attorneys General, the Canadian Bar Association and other persons or bodies interested, inviting criticisms and suggestions; (i) consideration by the Conference of any criticisms and suggestions; (j) giving final approval and publication of approved model Act in the Proceedings; (k) recommendation of the model Act to the Attorneys General.

[29] R. E. Megarry, Law Reform (1956), 34 Can. Bar Rev. 691, at p. 698; Record of the Commonwealth and Empire Law Conference (1955),

constructive and critical legal scholarship with the experience of the practitioner in direct furtherance of legislative adaptation of important areas of law to meet the changing needs of Canada as a whole.

Under Canada's federal constitution, exclusive jurisdiction over property and civil rights belongs to the provincial legislatures. Hence, they are the focal points for reform of most of so-called lawyer's law, and therefore the organized research necessary for wise statutory change concerning matters peculiar to each province should be done by groups within the province. Whether a provincial group is organized under governmental, law society or other auspices, or some combination of auspices, the particular type of organization might well be left to determination by available local resources and preference. In this regard, careful planning should ensure that there are not too many such organizations. The tendency in Canada generally in recent years has been to multiply organizations with similar objects which often tread on one another's toes and dissipate their energy and resources by unco-ordinated effort.

In the last few years, a beginning has been made in conducting organized research as a basis for law reform in the provinces. In 1955 the Attorney General's Committee on the Administration of Justice was established in Ontario. Its membership comprises members of the Bench and Bar and a representative from each of the faculties of law at Osgoode Hall and the University of Toronto.[30] They serve without salary and their out-of-pocket expenses are borne by the government. Their labours have already borne fruit in the passage of the Certification of Titles of Lands Act in 1958;[31] the Libel and Slander Act[32] in the same year; and the Bulk Sales Act in 1959.[33] In addition to revising and recommending these Acts in their entirety, the Committee has prepared a number of amendments which have been made of provincial statutes.

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p. 145. The author proceeds to point out limitations on the qualifications of teachers as law reformers as follows:

> "Yet teachers live on an unbalanced diet. Of necessity, they must draw for their knowledge on reported cases; usually they are limited to those instances of pathology in the law which call for report. And so it may be that among practitioners new trends and new ideas may grow up—sometimes jealously guarded professional secrets—which may be almost wholly unknown to the teachers of law. Perhaps the most important contribution made by teachers of law is that in their capacity as authors of books, and especially of articles in the learned periodicals, they frequently call attention to defects in the law and so help to create the necessary professional climate for reform."

[30] H. Allan Leal and David G. Kilgour. See M. L. Piper, Law Reform in Ontario (1959), 2 Can. Bar J. 442.

[31] S.O., 1958, c. 9. [32] *Ibid.*, c. 51. [33] S.O., 1959, c. 9.

A law reform committee was set up in Saskatchewan two years ago by the Attorney General. A member of the Faculty of Law of the University of Saskatchewan has been serving on the Committee, and it is reported that its labours have already been fruitful.

A small beginning was made in Nova Scotia when a Center for Legislative Research was established at Dalhousie Law School in 1950. The method used in that organization was described in the American Bar Association Journal in 1956[34] and the University of Toronto Law Journal in 1959.[35] It is sufficient to say here that it was established to enable students to engage in the preparation of actual bills under the supervision of the teacher of the course in legislation and the Legislative Counsel of the Province who acts as Associate Director of the Center. The amount of careful research and drafting that can be accomplished by forty or fifty students in an academic year is limited, but much of it has been useful. For example, over a three year period, they did the basic research and preliminary drafting for the revision of the Nova Scotia statutes, covering the period from 1923 to 1954, which became "The Revised Statutes of Nova Scotia, 1954". They have made a substantial contribution to the research upon which several statutes making significant changes in the law have been based, including the Proceedings Against the Crown Act of 1951,[36] the Non-Profit Societies Act of 1953,[37] the Survival of Actions Act of 1954,[38] the Interpretation Act of the same year,[39] the Testators Family Maintenance Act of 1956[40] and the Act to Simplify Conveyances[41] of the same year. They have recently completed a bill for a Family Courts Act which has been presented to the Attorney General with the support of welfare agencies, church organizations and the Barristers' Society. They have also worked upon several projects of the Conference of Commissioners on Uniformity of Legislation. In pursuing their research, the students have investigated and made comparative analyses of the methods of handling the same or similar problems in other provinces and countries, and consulted welfare agencies, provincial and civic organizations, social scientists and government departments.

In 1954 a Board of Legal Research was organized by the Council of the Nova Scotia Barristers' Society. This resulted from a growing awareness that every lawyer shares responsibility to contribute in some measure to the improvement of the law and

[34] (1956), 42 A.B.A. J. 572.
[35] (1959), 13 U. of T.L.J. 81.
[36] S.N.S., 1951, c. 8.
[37] S.N.S., 1953, c. 11.
[38] S.N.S., 1954, c. 12.
[39] *Ibid.*, c. 2.
[40] S.N.S., 1956, c. 8.
[41] *Ibid.*, c. 3.

its administration. The Board consists of practising lawyers and academic law teachers and the aid of students in the Center has been used. From their day to day experience, the practising lawyers have found no difficulty in determining areas of the law demanding immediate attention. The first result of their work was the Act to Simplify Conveyances[42] and the establishment of pre-trial procedures in the Supreme Court of Nova Scotia. They are now concerned with what to do about the Statute of Frauds, the Rule against Perpetuities, modernizing the administration of estates, improving the system of registration of land titles, landlord and tenant law, and dower and related matters.[43] As is customary with law reform agencies in Canada, the members of the Board volunteer the time and money for research. Since the work must be done by persons who are already fully employed in their special spheres, it proceeds at a rather slow pace.

At the University of British Columbia, the seminar in legal theory and legislation has, during the past three years, been oriented toward law reform. A number of group projects have been developed. Two of the projects were in co-operation with professional organizations concerned with public health and another two are in association with the Department of the Attorney General.

In the work of the sections and committees of the Canadian Bar Association in several of the provinces, there has been evidence of increasing recognition by its members of the need for active participation in reformation of law, especially of its legislative component. As a result, several recommendations for statutory change are usually made at the annual meetings. Apart from taxation and admiralty law, research by the sections has usually not been comprehensive, systematic or co-ordinated, and that done by some of the provincial sub-sections has often been spasmodic and of uneven quality. An examination of the annual reports of the Association reveals only four published papers by full-time members of law faculties, although several others are known to have aided in the work of the sections from time to time, notably in the fields of labour law, maritime law, taxation, civil liberties, administrative law, civil justice, international law and comparative law.

Most of the older law schools report that some full-time members of the faculty are engaged in *ad hoc* research on an individual basis in their special fields in aid of community organizations and

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[42] *Ibid.* See this statute reviewed by P. J. OHearn, The Nova Scotia Conveyancing Act (1957), 12 U. of T.L.J. 102.

[43] See Annual Reports, N.S. Barristers' Society, 1955 to 1960.

government departments.[44] There have been also several full-time members of the faculties who, since World War II, have been commissioned by governments to conduct investigations leading to legislative reform or to represent them officially at conferences whose deliberations have resulted in changes in the law.[45] Those so commissioned have served as advisor to provincial governments on legislation in general, advisor on constitutional law, member of a Royal Commission on Electoral Law, secretary of a Royal Commission on Workmen's Compensation, chairman of a Royal Commission on Automobile Insurance, secretary of a Royal Commission on Milk Marketing, assistant secretary to the Royal Commission on Canada's Economic Prospects, the Royal Commissioner on the Coal Industry, member of a Committee on Combines Legislation, member of the Canadian delegation to the International Conference on Copyrights, consultant to the Technical Assistance Branch of the United Nations on electoral law, and representative of Canada at the International Conference on Law of the Sea.

Recently, a substantial direct contribution to the development of a new area of law has been made by two teachers of labour law[46] by part-time service on boards of arbitration. In the labour arbitration cases their opinions have been conspicuous for consistency of approach, breadth of learning and constructive adjudication.

When making any appraisal of the contribution that has been made by the academic law teachers of Canada to law reform, either judicial or legislative, it must be remembered that until the year 1920 there were only three full-time faculty members in the entire country. In 1929 there were nine and in 1939 eighteen. Since the Second World War, the number of law schools has increased from nine to fifteen and the number of full-time teachers from twenty-four to one hundred and one.[47] As late as 1956, the number of full-time law teachers was sixty-six. So far, most of the published writing and almost all of the direct contributions to legal reform have been the work of law teachers with more than fifteen years experience. During the years of rapid expansion of faculties, most

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[44] Those reported include: W. F. Bowker, A. L. Foote, G. V. La Forest, O. E. Lang, G. A. McAllister, J. B. Milner, R. G. Murray, A. D. Pharand and W. F. Ryan.

[45] These have included: L. O. Clarke, F. C. Cronkite, G. F. Curtis, V. C. MacDonald, W. A. MacKay, A. J. Meagher, I. C. Rand and H. E. Read.

[46] Bora Laskin and A. W. R. Carrothers.

[47] Teachers' Directory, Association of Canadian Law Teachers, 1959-1960. At least twenty additional full-time teachers have been engaged for 1960-1961. There were 2,660 students registered in the fifteen schools.

of the more junior teachers have perforce devoted the most of their time and energy to mastery of their courses and improving their teaching methods. While the total contribution to law reform so far has not been large, it is believed that the review made in this paper reflects a creditable degree of accomplishment by a small group of men, despite the handicaps portrayed by Professor Scott in the Report of the Committee on Legal Research published in November, 1956.[48] This record constitutes a challenge to the growing numbers of full-time teachers to attain a relatively greater accomplishment. The means available to them promise to be much greater.

If the present rate of growth of Canadian law school libraries is maintained, there can be little justification for anyone being unable to document thoroughly any aspect of existing law, especially if an efficient inter-library loan system is established. The expansion now occurring of full-time faculties should be continued to the extent necessary to enable teachers who demonstrate an interest in and capacity for creative research to be freed from teaching duties for periods necessary to pursue individual projects or to engage in co-operative efforts directed toward much-needed discovery of what the law ought to be as well as what it is.[49]

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[48] *Op. cit.*, *supra*, footnote 4, at pp. 1020-1025.

[49] *Ibid.*, at pp. 1006-1012. In a letter to the writer, Dean Cecil A. Wright made the following typically perceptive and cogent comment:

"From a somewhat broad point of view, I have reached the conclusion that all our law schools in Canada have been very modest in limiting the number of appointments to their staff to the bare carrying on of certain allocated subjects appearing in their curriculum, without taking into account the responsibility of a law school to provide, not merely what you refer to as "teaching efficiency" but full participation in research problems. For example, in many fields, I think the time has come when it is imperative that lawyers study the social facts in which various fields of law operate rather than confining their attention to a development of conceptual symmetry of the doctrine itself. I am thinking particularly, although not exclusively, of the field of torts where no studies have been made to examine the operation of the compensation of say, motor car accidents, nor to see statistically how victims are being compensated if at all; the extent to which jury participation makes the fault principle more or less unworkable; the extent to which relaxation of the fault principle might impede progress in accident prevention, *etc.* We all talk learnedly of these matters, and yet, to my knowledge, no one has any information on which he is entitled to express a sound opinion one way or the other. I doubt whether these studies will ever be made so long as we require members of our staff to spend their time in efficient teaching which involves keeping track of hundreds of decisions, to say nothing of relevant legislation, and which thus deprives many of them of an opportunity of doing a job that badly needs doing.

I do not know whether universities can be sold on this concept, but I am rapidly coming to the conclusion that if one looks at the situation in the medical schools, we have much to learn. What we need are research teams with perhaps younger men doing the teaching

While recognizing the special public responsibilities of the academic law teacher, we should keep firmly in mind that he owes his first duty to his students, and should plan and manage his research mainly for their benefit. Authorship and direct participation in law reform and public service will serve to instruct students and perhaps to inspire them to emulation, but in other respects are by-products of the basic process. It is easy to pass by almost imperceptible degrees from being a teacher engaged incidentally in writing and practical affairs to being writers or reformers or public servants engaged incidentally in teaching. This transition must be avoided. The fact is that the contribution that the academic law teacher can make to improvement of the law and the general welfare of the community through the medium of his students is potentially far greater than he can ever hope to make by his own efforts. Much of the law-making sterility of Canadian judges during the first half of this century has resulted from positivistic and historical methods of the law teaching. Today, the law teacher who is worth his salt must be able to assist and encourage his students to make careful value judgments and to ensure that the "ought" is made to take its rightful place in their thinking beside the "is". The greatest influence of the law teacher as such is vicarious, and anyone who does not find satisfaction in this should be in another branch of the profession.

This brings me to a reference to "training of students in the public responsibilities of their future profession" — a topic specified in the terms of reference for this paper, possibly as a consequence of the current emphasis upon it in the United States. The 1958 Arden House Conference declared that the professional responsibilities of the lawyer are: "to the courts, to the administration of justice, to law reform, to the law making process, to his profession and to the public".[50] In 1956 at Boulder, Colorado, the conference held under the auspices of the Association of American Law Schools had grappled learnedly, earnestly and inconclusively with the problems of how to help students to understand and in their future careers fulfil these responsibilities.[51]

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and the older men directing projects in which this question of public responsibility might become something more than a phrase on which learned papers are constantly being delivered with very little results."

[50] Report of the National Conference on Continuing Education of the Bar, held under the sponsorship of the American Law Institute and the American Bar Association.

[51] See Julius Stone, Legal and Public Responsibility, Association of American Law Schools, 1959. The topic was also stressed at the Conference on Legal Education at the University of Michigan in 1959. See The Law Schools Look Ahead (1959), esp. pp. 69 to 85.

There is no law school in Canada which has a course whose chief concern is training in professional responsibility. Only three have a course under the name of "legal ethics". One of them consists of two lectures and is taught by a man who doubts the efficacy of formal codes of conduct. Another, given as a seminar to third year students, is described as "dealing with legal ethics in general and particularly with the borderline moral problems that so often confront a practising lawyer". Indeed, there is at present little evidence of sympathy among Canadian law teachers with any attempt to teach ethical ideas or the public responsibilities of lawyers in a single course. There seems to be general concurrence with the opinion of Mr. Justice Ivan Rand that "apart altogether from the fact that the work now prescribed at most law schools is sufficient to engage the undivided effort of the best students and that the school is primarily for the inculcation of the ideas which constitute the body of the law, the task in ethical enlightenment is not so much to give an intellectual grasp of its ideas as to advance their absorption in behaviour".[52]

In Canada there is an integrated bar in every province with power vested in the law society to govern admission to practice and professional conduct. Some of their officers and other leading barristers and solicitors and judges lecture at most law schools and post-graduate instruction in legal ethics and professional responsibility is being attempted in experimental bar admission courses. As far as formal instruction in law schools is concerned, the fact should not be overlooked that many malpractices resulting in disciplinary action have been induced by professional incompetence.

No one questions the obligation to bring the scope and nature of the lawyer's professional responsibilities home to students in so far as they differ from those of any good citizen. While there is no cause for complacency, there is not much evidence of failure to fulfil it. In close association with members of the bar in the work of governing bodies and other professional organizations during the past ten years, I have observed a marked advance in recognition and maintenance of ethical standards and active assumption of burdensome tasks for public welfare.[53]

Aiding and strengthening the democratic process are public

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[52] Papers Presented at the Annual Meeting of the Canadian Bar Association (1956), p. 203.

[53] Such as legal aid, indemnity funds and insurance, refresher courses, establishment of higher minimum educational requirements for admission to the study of law, and improvement of the practical training of students.

responsibilities of the profession which are inseparable. The first full-time dean of a Canadian law school declared in his inaugural address in 1883: "In drawing up our curriculum we have not forgotten the duty which every university owes to the state—the duty which Aristotle saw and emphasized so long ago—of teaching to the young men the science of government. In our free government we all have political duties, some higher, some humbler, and these duties will be best performed by those who have given them most thought. We may fairly hope that some of our students will, in their riper years, be called upon to discharge public duties."[54] There has been sufficient adherence to this ideal in legal education to have nurtured a tradition of public service and enable Canadian lawyers both as political leaders and advisers to formulate policy and judgments which have exercised high influence upon the course of public affairs in critical periods. Present day curricula have been expanded to include courses in administrative law, community planning law, comparative law, international law, introduction to law, jurisprudence, land use controls, labour law, legislation and

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[54] Richard C. Weldon, who was Dean of the Faculty of Law at Dalhousie University from 1883 to 1914. He held a Ph.D. in constitutional law from Yale University and was for some time a member of the House of Commons of Canada.

In 1947, G. H. Steer, Q.C., restated this position in modern terms:

> "The time has gone by when it can be argued with any degree of plausibility that law schools do all that should be required of them by turning out technically trained craftsmen. The lawyer, more perhaps than the member of any other learned profession, owes a duty to society to equip himself as a policy maker. For no matter in what niche he may ultimately find himself, whether as practitioner, judge, teacher, legislator, civil servant or businessman, he finds himself dealing with matters of high public policy. The skill acquired as the result of his training should equip him to decide upon that supreme question of policy, *viz.*, the ultimate aim and basis of the organization of the state in which he lives and, having made his decision, he should, if adequately trained, find many ways in the course of his career of influencing policy to achieve his objective.
>
> "He ought to be, as Dean Roscoe Pound has suggested, a member of an organization characterized by learning and imbued with the spirit of public service."

On Legal Education (1947), 25 Can. Bar Rev. 943, at p. 944.

In the last decade, aims, methods and conditions of Canadian legal education have been extensively and ably stated and discussed in: A Symposium on Legal Education, by Dean F. C. Cronkite, Dean C. A. Wright and Dean V. C. MacDonald in (1950), 28 Can. Bar Rev. 128, 141 and 161; The Condition of Legal Education in Canada, by Maxwell Cohen, *ibid.*, at p. 267; Legal Education in Manitoba: 1913-1950, by Hon. E. K. Williams, *ibid.*, at pp. 759, 880; Legal Education in Canada, by Hon. I. C. Rand, in (1954), 32 Can. Bar Rev. 387; Objectives and Methods of Legal Education: An Outline, by Maxwell Cohen, *ibid.*, at p. 762; New Frontiers in Jurisprudence in Canada, by Edward McWhinney, in (1958), 10 Jour. Legal Ed. 331; Law Clerkship in Canada, by Mervyn Woods, *ibid.*, at p. 475.

taxation, in addition to the courses which, when taught in the grand manner, were successful vehicles in the past for conveying to students a knowledge and understanding of the scope and nature of their public responsibilities. The consensus of opinion is that obviously the good teacher will develop his teaching so as to inculcate the public responsibilities of the profession, but that, if this is not to be a relatively futile academic exercise, he must provide a living example by taking the active part in research and improvement of the law that is consistent with the fulfilment of his primary function. The character and personality of the teachers and their attitudes toward the public interest are vital, but there is no manifest inclination by persons responsible for faculty appointments to devise a test by which to measure "capacity to create awareness of responsibility in students".

In conclusion, I venture to make some categorical statements, which, while they have little originality, are substantiated by the facts:

(1) The first of the responsibilities of an academic teacher of law is to teach and all others are inherent in or ancillary to it.

(2) Scholarship and research should be mainly focused upon the subjects taught and not fragmented and dispersed in furtherance of unrelated projects however valuable they may be in themselves to university administration, community welfare, governmental administration, or even reform of law.[55]

(3) It is the responsibility of the individual law teacher to determine for himself whether he is distributing his time and energy correctly, but the attitudes and intellectual climate of the faculty as a whole will largely influence him in this respect.

(4) The contribution by Canadian academic law teachers to written exposition of law and to its growth and reformation has been small relative to the need, but, until recently, not relative to their number and resources.

(5) Law school libraries and full-time faculties are now being built up at a rate which, if maintained, will soon, if not now, provide ample resources for research for expository writing. The Canada Council and Canadian Bar Association Research Foundation may provide additional financial support and there has recently been some indication that the lawyers as such will do so.[56]

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[55] Discussion of distractions from creative legal scholarship are within the scope of the paper on The Academic Lawyers "House of Intellect", and therefore public responsibility other than for law reform has not been considered in this paper.

[56] The writer commented recently that "In Canada the lawyers as such

(6) The members of the legal profession and governments are progressively realizing the need for growth, adaptation and reform of law by legislation and assuming their responsibilities in this regard. There is likely to be no lack of opportunity for law teachers to co-operate actively, and responsibility of each to do so will vary in direct proportion to the extent to which (a) he has gained mastery in the relevant field of learning and (b) participation will enhance his value as a teacher by enriching his knowledge and experience and stimulating his students.

(7) The urgency of the need for academic teachers of law to produce the literature of the law is plain, but law teachers will not bring about a major judicial reshaping of law merely by publishing books and articles, however great. They must also successfully instil their students with a concept of law as a living organism and of the judiciary as one of its creative and formulating instruments.

(8) If the new generation of Canadian academic teachers of law measure up to the prospective opportunities which seem to be theirs, the second half of this century may well see them become in truth "the head of the column".

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have given relatively small direct financial support to the law schools. The means for the expansion of facilities and improvement of teaching during recent years have come mainly from other sources. Despite their evident interest in and concern for the quality of the education of future members of the Bar and Bench, lawyers in general do not seem to have realized how much money is required to achieve the quality which they profess to desire. A devoted group of Canadian lawyers have made, and are now making, an indispensable and invaluable contribution as part-time instructors. If lawyers individually and collectively were to make an equivalent financial contribution and were to emulate the doctors by systematically encouraging contributions from other sources, the kind of education required for the welfare of the profession and of Canada would be assured." (1959 Report of the Special Committee on Educational Standards of the Conference of Governing Bodies of the Legal Profession in Canada.)

APPENDIX "A"

1959 — TABLE OF MODEL STATUTES — Conference of Commissioners on Uniformity of Legislation in Canada.

The following table shows the model statutes prepared and adopted by the Conference and to what extent these have been adopted in the various jurisdictions.

Line	TITLE OF ACT	Conference	ADOPTED Alta.	B.C.	Man.	N.B.	Nfld.	N.S.
1	Assignments of Book Debts	1928	'29,'58*	....	'29,'51*,'57*	1952‡	1950‡	1931
2								
3	Bills of Sale	1928	1929	....	'29,'57*	——$	1955‡	1930
4	Bulk Sales	1920	1922	1921	'21,'51*	1927	1955‡	——$
5								
6	Conditional Sales	1922	....	1922	....	1927	1955‡	1930
7								
8	Contributory Negligence	1924	1937*	1925	....	1925	1951*	'26,'54*
9	Corporation Securities Registration	1931	....	....	....	....	....	1933
10	Defamation	1944	1947	——$	1946	1952‡	....	....
11	Devolution of Real Property	1927	1928	....	....	1934†	....	....
12	Evidence	1941	....	....	....	....	....	....
13								
14	Foreign Affidavits	1938	'52,'58*	1953	1952	1958‡	1954*	1952
15	Judicial Notice of Statutes and							
16	Proof of State Documents	1930	....	1932	1933	1931	....	....
17	Officers, Affidavits before	1953	1958	——$	1957	....	1954	....
18	Photographic Records	1944	1947	1945	1945	1946	1949	1945
19	*Russell* v. *Russell*	1945	1947	1947	1946	....	....	1946
20	Fire Insurance Policy	1924	1926	1925$	1925	1931	1954‡	1930
21	Foreign Judgments	1933	....	....	....	1950‡	....	....
22	Frustrated Contracts	1948	1949	....	1949	1949	1956	....
23	Highway Traffic and Vehicles—							
24	Rules of the Road	1955	1958†	1957*	....	....	....	....
25	Interpretation	1938	1958*	....	'39‡,'57*	....	1951‡	....
26								
27	Intestate Succession	1925	1928¶	1925	1927‡	1926	1951	....
28	Landlord and Tenant	1937	....	....	....	1938	....	....
29	Legitimation	1920	1928	1922	1920	1920	——$	——$
30	Life Insurance	1923	1924	1923$	1924	1924	1931	1925
31	Limitation of Actions	1931	1935	....	'32,'46‡	....	....	....
32	Married Women's Property	1943	....	....	1945	1951$	....	....
33	Partnership	....	1899°	1894°	1897°	1921°	1892°	1911°
34	Partnerships Registration	1938	....	....	....	——$	....	....
35	Pension Trusts and Plans							
36	Perpetuities	1954	....	1957	1959	1955	1955	1959
37	Appointment of Beneficiaries	1957	....	1957	1959	....	....	....
38	Proceedings Against the Crown	1950	1959‡	....	1951	1952†	....	1951$
39	Reciprocal Enforcement of Judgments	1924	'25,'58*	'25,'59*	1950	1925	....	....
40	Reciprocal Enforcement of Maintenance							
41	Orders	1946	'47,'58*	'46,'58*‡	1946	1951‡	1951‡	1949
42	Regulations	1943	1957‡	1958*	1945‡	....	....	....
43	Sale of Goods	....	1898°	1897°	1896°	1919°	1899°	1910°
44	Service of Process by Mail	1945	——$	1945	——$	....	....	....
45	Survivorship	1939	1948	'39,'58*‡	1942	1940	1951	1941
46	Testators Family Maintenance	1945	1947‡	....	1946	1959	....	——$
47	Trustee Investments	1957	....	1959	....	....	....	1957†
48	Vital Statistics	1949	1959‡	....	1951‡	....	....	1952‡
49	Warehousemen's Lien	1921	1922	1922	1923	1923	....	1951
50	Warehouse Receipts	1945	1949	1945‡	1946‡	1947	....	1951
51	Wills	1929	....	....	1936	1959	....	....
52	Conflict of Laws	1953	....	....	1955	....	1955	....

* Adopted as revised.

° Substantially the same form as Imperial Act (*See* 1942 Proceedings, p. 18).

$ Provisions similar in effect are in force.

Line	Adopted							Remarks
	Ont.	P.E.I.	Que.	Sask.	Can.	N.W.T.	Yukon	
1—	1931	1931	....	1929	....	1948	1954‡	Am. '31; Rev. '50 & '55; Am. '57
2—								
3—	....	1947	....	1929	....	1948‡	1954‡	Am. '31 & '32; Rev. '55
4—	....	1933	....	....	....	1948¶	1956	Am. '21, '25, '39 & '49; Rev '50
5—								
6—	....	1934	....	....	....	1948‡	1954‡	Am. '27, '29, '30, '33, '34 & '42; Rev. '47 & '55
7—								
8—	....	1938*	....	1944*	....	1950*‡	1955‡	Rev. '35 & '53
9—	1932	1949	....	1932	....	....	....	.....
10—	....	1948	....	....	....	1949*‡	1954	Rev. '48; Am. '49
11—	....	....	....	1928	....	1954	1954	.....
12—	....	....	....	....	....	1948*‡	1955‡	Am. '42, '44 & '45; Rev. '45; Am. '51, '53 & '57
13—								
14—	'52,'54*	....	....	1947	1943	1948	1955	Am. '51; Rev. '53
15—								
16—	....	1939	....	....	....	1948	1955	Rev. '31
17—	1954	....	....	....	....	....	1955	.....
18—	1945	1947	....	1945	1942$	1948	1955	.....
19—	1946	1946	....	1946	....	1948	1955	.....
20—	1924	1933	....	1925	....	....	....	Stat. Cond. 17 not adopted
21—	....	....	....	1934	....	....	....	.....
22—	1949	1949	....	....	....	1956	1956	.....
23—								
24—	....	....	....	....	....	....	....	Rev. '58
25—	....	1939	....	1943	....	1948*‡	1954*	Am. '39; Rev. '41; Am. '48; Rev. '53
26—								
27—	....	1944‡	....	1928	....	1949‡	1954‡	Am. '26, '50, '55 & '58
28—	....	1939	....	....	....	1949‡	1954‡	Recomm. withdrawn '54
29—	1921	1920	——$	1920	....	1949‡	1954‡	.....
30—	1924	1933	....	1924	....	....	....	.....
31—	....	1939‡	....	1932	....	1948†	1954*	Am. '32, '43 & '44
32—	....	....	....	....	....	1952†	1954†	.....
33—	1920°	1920°	....	1898°	....	1948°	1954°	.....
34—	....	....	....	1941†	....	....	....	Am. '46
35—								
36—	1954	....	....	....	....	....	....	Am. '55
37—	....	....	....	....	....	....	....	.....
38—	1952‡	....	....	1951‡	....	....	....	.....
39—	1929	....	....	1924	....	1955	1956	Am. '25; Rev. '56; Am. '57; Rev. '58
40—								
41—	'49‡,'59*‡	1951‡	1952$	1946$	....	1951†	1955‡	Rev. '56; Rev. '58
42—	1944‡	....	....	....	1950$	....	....	.....
43—	1920°	1919°	....	1896°	....	1948°	1954°	.....
44—	....	....	....	——$	....	....	....	.....
45—	1940	1940	....	1942	....	....	....	Am. '49, '56 &'57
46—	....	....	....	....	....	....	....	Am. '57
47—	....	....	....	....	....	....	....	.....
48—	1948$	1950‡	....	1950$	....	1952	1954‡	Am. '50
49—	1924	1938	....	1922	....	1948	1954	.....
50—	1946‡	....	....	....	....	....	....	.....
51—	....	....	....	1931	....	1952	1954‡	Am. '53; Rev. '57
52—	1954	....	....	....	....	....	....	.....

x As part of The Commissioners for Oaths Act.
† In part.
‡ With slight modification.
¶ Adopted and later repealed.

Manitoba Law School

THE UNIVERSITY OF MANITOBA
AND
THE LAW SOCIETY OF MANITOBA

THE HON. E. K. WILLIAMS, C.J.Q.B.
CHAIRMAN, BOARD OF TRUSTEES
G. P. R. TALLIN, Q.C., B.A. (OXON), LL.B.
DEAN
H. N. STREIGHT Q.C., LL.B., RECORDER

LAW COURTS,
WINNIPEG 1, MANITOBA

January 4, 1960.

Dean Horace E. Read, Q.C.,
Faculty of Law,
Dalhousie University,
Halifax, N. S.

Dear Horace:

You have managed to ask so many inter-related questions in your letter of December 23rd that I scarcely know where I should commence. I propose to repeat each of your questions with suitable alteration of the personal pronouns in the order of asking and reply as well as I can.

1. Q. Have we underway or planned any project involving systematic research designed to bring about the reform of any phase of Law?

   A. No.

2. Q. Do we have any part of our curriculum designed particularly to train students in the public responsibilities of their future profession.

   A. There is no course particularly so designed. There are however several subjects in the undergraduate course in which these responsibilities and the relationships between law and other social studies are heavily stressed, namely, Jurisprudence, Public International Law, Constitutional Law, Legislation and Administrative Law. In the post graduate course the same may be said of the subjects of Jurisprudence, Public Internation Law, Constitutional Law, and Comparative Law.

3. Q. In what way, if at all, do you think such training can be best provided?

   A. I do not think there can be any absolute answer to this question, If we had unlimited time, and resources I think the most effective method would be by establishing a separate course or subject designated by a name which would direct and concentrate the attention of every student on the duties that rest upon him and

the opportunities that are presented to him by virtue of his training to serve his fellows at local, provincial and federal political levels and through charitable and other similar organizations. However such a course would be just one more to be added to an already heavily loaded curriculum.

But since we have only the short space of three or four years within which to fulfill what I regard as our primary function of training lawyers reasonably well qualified to advise and represent clients on legal matters, we are driven to the alternative method of dealing with these social reponsibilites in a somewhat less systematic manner, during classes in such subjects as I have mentioned in the answer to question No. 2.

While this method might seem to lack the desirable degree of emphasis on the lawyers non-professional responsibilities, it need not necessarily do so.

In this as in many other matters I believe much more depends on the personality and ability of the instructor than on the arrangement and content of the curriculum. The student at any rate will have the not-negligible benefit of a number of different points of view. //

4. Q. In the light of the teaching load and other University duties, what portion of their time can reasonably be devoted by members of our Faculty to law reform projects and other forms of public service?

A. At present two members of the Faculty devote six to eight hours a week to certain forms of public service, as chairmen of permanent and ad hoc Boards and Commissions dealing with labour and municipal problems. The other three full time members of the Faculty are recent appointees and their time should be, and is, fully occupied in preparation for classes. In the future I can foresee that they might have approximately the same amount of time to devote to public services as in the case of the two first mentioned members.

5. Q. If a choice must be made between increasing teaching efficiency and participating in a systematic legal reform project or in public affairs what would be my choice?

A. While I do not believe such a choice is unavoidable, if it were so, I would choose the increasing of teaching efficiency.

However I do not believe that participation in projects of legal reform or in public affairs necessarily decreases teaching efficiency. On the contrary I believe that within limits, which I certainly do not now attempt to define, contacts by a teacher with the practical affairs of life makes him a more effective teacher of law. If law can be called a science,

it is an applied science, and some experience in its application leads to a better understanding. Though tempted I will refrain from setting out any of my views about Utopian systems of Law.

6. Q. (Paraphrased) What part has been taken in the past and at present by members of the Faculty of our Law school in legal reform or in public affairs.

A. This a difficult question in one way. Some members of our Faculty passed by almost imperceptible degrees from being members of our faculty engaged incidentally in public life to being public officers engaged incidentally in teaching and then to being finally full time public officers. I will mention a few.

J.T. Thorson First Dean of the Law school, later member of Parliament, then Minister, then President of the Exchequer Court.

C. Rhodes Smith - Lecturer, Member of City Council, Member of Legislative Assembly, Minister of Labour, Minister of Education, Attorney-General for Manitoba, Chairman Combines Investigation Board, and National Labour Board.

E.R. Coleman - Dean of Law School, Secretary Canadian Bar Association, Deputy Secretary of State for Canada, Ambassador to Cuba.

D.A. Golden - Lecturer, Deputy Minister of Defence Production.

C.D. Shepherd - Lecturer, ~~Chairman of Board of Railway~~ Chief Commissioner, Board of Transport Commissioners.

W. J. Wilson - Lecturer, Deputy Minister of Municipal Affairs.

John Allan - Lecturer, Deputy Attorney - General.

Glynn Consley - Lecturer, Commissioner of Taxation, Chairman of Workmen's Compensation Board.

Chief Justice Adamson
Chief Justice E.K. Williams
Mr. Justice A.M. Campbell
Mr. Justice S. Freedman
The late Chief Justice Robson
The late Justice J.J. Kelly
The late Mr. Justice Dysart

All the above named judges were both prior to their appointment to the bench and in most cases for some years afterwards, lecturers on the staff of the school.. Mr. Justice Dysart became Chancellor of the University a position now held by Mr. Justice Freedman.

While your inquiry is directed to the activities of faculty members, I think some indication of their influence in public affairs may be apparent in the fact that so many of our graduates have gone into public life both as candidates for political office and in the civil service. Several Ministers in the Provincial Government and Deputy Ministers, as well as about 40% of the members of the City Council and Winnipeg School Board are graduates of the school. All the sitting members for Greater Winnipeg in Parliament are very recent graduates.

I chair an average of about ten conciliation Boards each year and am chairman of the Civil Services Board. Of course I am a member of the University Senate and of seven or eight committees thereof. I am also on the Boards of several public institutions.

I have tried to be factual and hope the information will be helpful. I would have liked to expand my views on some of the questions, but no doubt the expansion would not add anything to what has already occurred to you. I have just finished reading the report of the Arden House Conference on Continuing Legal Education, and have again been impressed with the fact that there is little new in the world, just younger people expressing ideas that seem new to them because they have forgotten where they picked them up. My views would doubltess have a similar appearance to you, with the difference that not being a 'younger' person I ought to know better than to waste your time by repeating them.

Best wishes for the kind of 1960 you like to enjoy.

Yours sincerely,

G.P.R. Tallin.

GPRT/bm

FACULTY OF LAW
UNIVERSITY OF TORONTO

THE DEAN

January 26th, 1960.

Dean Horace E. Read, Q.C.,
Faculty of Law,
Dalhousie University,
Halifax, N. S.

Dear Horace:

I must apologize for not having answered your query of almost a month ago. The truth of the matter is that I have been baffled as to what I might say. All of which leads me to extend to you my sympathy at having to deal with this on a much broader basis.

So far as this Faculty is concerned, we have no specific project involving systematic research directed in any way towards the reform of any phase of the law, other than that engaged in by any worthwhile law teacher of investigating subjects and writing on those things which he feels to be in need of reform or change. Obviously, if there is no systematic research directed to reform by the Faculty, there is no student participation although, again, I think the students do a fair amount particularly through their medium of the Faculty of Law Review.

I know that our Attorney-General has the "Attorney-General's Committee on the Administration of Justice", of which Professor Kilgour of this Faculty is a member. I think this committee meets two or three times a year and could furnish a good avenue for suggested projects for reform which any Faculty wished to put forward. This may be because the present Attorney-General is quite open-minded and I think quite willing to receive suggestions. I have attempted to interest members of our Faculty in doing something along these lines but so far as getting them interested in any corporate manner, I have not been able to achieve any degree of success. You, of course, know the work done by the Uniformity Commissioners and while our law schools in Ontario were at one time interested in this, I am afraid that they have now been more or less excluded for reasons which are not altogether clear to me.

In the past, when I was editor of the Canadian Bar Review, I think I had some slight effect in reforms of various kinds, a couple of which come to my mind, one dealing with the Commorientes Act and the other dealing with the abolition of the rule in

Russell v. Russell. When you refer to the part played in "public affairs" I am not altogether sure what is meant. For several years, during the war in particular, I acted as chairman of various conciliation and arbitration boards concerned with labour problems and I believe that Professor Laskin is doing a similar thing at the present time. I also think that Professor Milner carries on some activity in connection with a committee of adjustment under zoning legislation. There is, of course, always a demand for members of the staff to speak at various public functions and McWhinney is eternally going to the Staff College at Kingston or on other jaunts sponsored by the Institute of International Affairs, etc. Sometimes, as in the case of Laskin, this involves the expenditure of quite a period of time and I am not at all sure that the time, from the standpoint of academic research, etc., is fully warranted. I certainly do not see more time for this sort of thing being available in the future although I do not know as I would like to answer dogmatically your question of making a choice between increasing teaching efficiency and participation in systematic reform projects or public affairs.

From a somewhat broad point of view I have reached the conclusion that all our law schools in Canada have been very modest in limiting the number of appointments to their staff to the bare carrying on of certain allocated subjects appearing in their curriculum, without taking onto account the responsibility of a law school to provide, not merely what you refer to as "teaching efficiency" but full participation in research problems. For example, in many fields I think the time has come when it is imperative that lawyers study the social facts in which various fields of law operate rather than confining their attention to a development of conceptual symmetry of the doctrine itself. I am thinking particularly, although not exclusively, of the field of torts where no studies have been made to examine the operation of the compensation of say, motor car accidents, nor to see statistically how victims are being compensated if at all; the extent to which jury participation makes the fault principle more or less unworkable; the extent to which relaxation of the fault principle might impede progress in accident prevention, etc. We all talk learnedly of these matters and yet to my knowledge no one has any information on which he is entitled to express a sound opinion one way or the other. I doubt whether these studies will ever be made so long as we require members of our staff to spend their time in efficient teaching which involves keeping track of hundreds of decisions, to say nothing of relevant legislation, and which thus deprives many of them of an opportunity of doing a job that badly needs doing.

I do not know whether universities can be sold on this concept but I am rapidly coming to the conclusion that if one looks at the situation in the medical schools, we have much to

learn. What we need are research teams with perhaps younger men doing the teaching and the older men directing projects in which this question of public responsibility might become something more than a phrase on which learned papers are constantly being delivered with very little results.

With respect to your other question as to our curriculum training students in public responsibility, we do not even have a course on Legal Ethics and, lacking that, we have no other course whose chief concern it might be considered is training in public responsibility. I have little to offer in this connection save the suggestion that any good teacher must so develop his teaching as to make apparent the public responsibilities of the profession. I am afraid, however, that as actions speak louder than words, until we devise a system by which law schools can demonstrate by the type of research I have already mentioned their true interest in public responsibility, any form of teaching will be just another academic exercise doomed to failure. I think all our law schools on the North American continent are falling very short of performance in this connection and I am not sure that the answer does not lie in the suggestion I have previously made, in freeing senior men from teaching to the extent that they demonstrate an interest in research along the lines mentioned which could only result in public benefit and act as a living example of a sense of public responsibility affecting teaching colleagues, students and the profession generally.

I doubt whether any of these remarks will be helpful to you but they are the best I have been able to think up and I can only sympathize with you in the task that has been dumped on you and express the hope that perhaps one or two of the things I have mentioned might give you an opportunity of stirring things up a bit.

With best regards,

Sincerely yours,

Cecil A. Wright,
Dean.

CAW/jm.

Lent

29th January 1960.

Dean Cecil A. Wright,
Faculty of Law,
University of Toronto,
Toronto 5, Ontario.

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Dear Caesar:

Thank you very much for your interesting and informative letter of January 26th. After I have consolidated the facts and opinions contained in the various replies to my enquiries from the Deans of the Canadian law schools and have had an opportunity to think about them, I will ask you to comment on my tentative conclusions.

Thanks again.

Yours sincerely,

Horace E. Read,
Dean.

HER/MM