

Curriculum Reform at Robson Hall

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I. INTRODUCTION

IN 1975 JOHN MCLAREN WROTE:

It is no exaggeration to assert that of all the issues of academic policy and planning which exercise the minds and consume the energy of law teachers in Common Law Schools in Canada curriculum development predominates.¹

The Faculty of Law at the University of Manitoba has not escaped this preoccupation with curriculum design. During the 1970's minor alteration of the curriculum was an annual event. Periodically more ambitious attempts were made to fully reformulate the curriculum to reflect some consistent philosophy or vision of legal education. These attempts failed. The reason for failure is not difficult to identify. Curriculum planning involves much more than a formalistic ordering of courses. It raises fundamental questions about the whole enterprise of legal education. How does one balance the scholarly and research mission of the law faculty with its task of professional training? Should we even think that scholarly and professional training are in tension? What attributes, skills and knowledge are required to become a "good lawyer"? What courses should be mandatory? What is the place and purpose of clinical teaching in a university setting? What is the appropriate relationship between law school education, bar admission study and continuing education? What courses should be offered? What degree of specialization should be facilitated and encouraged? Should interdisciplinary courses be incorporated within the syllabus? Should students be required to do more legal writing? Consequently, failure in curriculum revision is rarely, if ever, the result of a lack of

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¹ *Recent Trends in Legal Education in Common Law Canada: Curriculum Proceedings of the Eleventh International Symposium on Comparative Law (1975).*

intellectual and emotional energy and devotion to the task. It is most often the result of fundamental disagreement about the nature and goals of legal education. It is this which makes involvement in curriculum planning both interesting and frustrating.

In the early 1980s the Curriculum Review Committee tried again to define the goals and objectives of our curriculum. The *Report of the Curriculum Review Committee on a New Curriculum*² sparked a sometimes heated debate among both faculty members and student representatives, but early in 1984 a modified version of the Committee's recommendations was passed by an overwhelming majority of the Faculty Council. A combination of dissatisfaction with the old curriculum, a spirit of goodwill, accommodation and co-operation and a sense of need for new direction and purpose in curriculum planning produced a new curriculum. It was implemented with the first year class of the 1986/87 academic year.

The purpose of this article is to identify some of the shortcomings in the 1970's curriculum which led to change, to discuss the principles embodied in the new curriculum, to explain the structure that was finally implemented, to evaluate the performance of the new curriculum and finally to make some comments about the whole process of curriculum planning.

II. THE CURRICULUM OF THE LATE 1970'S

A DESCRIPTION OF THE CURRICULUM of the 1970's and an explanation of its perceived inadequacies and defects can most effectively be conducted by a separate consideration of the first year curriculum and that of the final two years of the LL.B. degree.

A. First Year Curriculum

The first year curriculum was entirely mandatory and was not dissimilar to that of other common law schools. The curriculum contained the following fundamental core of doctrinal courses:

² Available from the Chairperson, Curriculum Review Committee, Faculty of Law, University of Manitoba.

Contracts	6 credit hours
Torts	6 credit hours
Criminal Law and Procedure	5 credit hours
Personal Property	2 credit hours
Real Property	4 credit hours
Introduction to Civil Procedure	2 credit hours
Agency	1 credit hour

This core was supplemented by *Legal System* (5 credit hours) which involved a general study of law and legal institutions, judicial, legislative and administrative process and legal history; *Legal Research and Writing* (2 credit hours), which was an introductory course on the techniques of discovery and application of legal materials and *Practice Skills Workshops* (2 credit hours) which included both a simulated exercise based on a typical solicitor's transaction (eg. a house transaction) and an oral advocacy exercise such as making a chambers motion. The last course reflected a desire on the part of Faculty Council to incorporate in first year a clinical experience.

During the years immediately preceding the 1983 curriculum review the Curriculum Review Committee struggled with a number of problems that had arisen in this first year curriculum. These problems included the dominance of private law in the first year curriculum, the fractured nature of the curriculum which created the possibility of a student having to adjust to twelve different teachers, the nature, scope and method of teaching of *Legal Research and Writing*, the content and purpose of the *Legal System* course, the efficacy of the Practice Skills Workshops and the value of the small group teaching of *Contracts* which had been initiated a few years earlier to emphasize the teaching of the skills of legal analysis. These problems defied individualized solution.

B. Upper Years Curriculum

Second year was made up of a core of compulsory courses supplemented by electives from a closed list of courses. The five compulsory courses were:

Constitutional Law	5 credit hours
Business Organization Law	4 credit hours
Trusts	3 credit hours
Family Law	4 credit hours
Evidence	4 credit hours

The balance of 10 credit hours was made up of courses elected from the following list:

Wills and Succession Litigation	Commercial and Consumer Transactions
Insurance Law I	Remedies
Issues in Law and Bio Ethics	Federal Income Taxation I
Problems in Contract and Tort	Landlord and Tenant
Criminal Procedure	Crime and Social Policy

In third year *Legal Profession and Professional Responsibility* (3 credit hours) was the only compulsory course. Students *elected* a further 27 credit hours from the following list of courses:

Wills and Succession Litigation	Real Estate Transactions
Insurance Law I	Crime and Social Policy
Issues in Law and Bioethics	Intellectual Property
Problems in Contract and Tort	Federal Income Taxation II
Debtors' and Creditors' Rights	International Law
Commercial & Consumer Transactions	Jurisprudence
Civil Liberties	Labour-Management Relations
Criminal Procedure	Corporate Law and Policy
Estate Planning	Insurance Law II
Remedies	Manitoba Law Journal
Restitution	Legal Aid Clinic
Research Paper	Civil Law/Common Law
Administrative Law	Summer Exchange Program
Federal Income Taxation I	Conflict of Laws
Transportation & Communica- tions Law	Land Titles
Consumer Protection	Business Planning and Finance Law
Environmental Law	Poverty Law Advocacy
Landlord and Tenant	Municipal and Planning Law
Comparative Law	Solicitors' Transactions
Current Legal Problems	Clinical Elective
Competition Law	Canadian Charter of Rights and Freedoms

Clearly the most notable characteristic of the upper years curriculum was the high degree of student choice in formulating their program. This was a product of a number of diverse views and pressures. Students in the late 60's and 70's demanded much greater

autonomy in course selection and choice of programme. It was claimed that they could judge their own best interests and ought to be able to tailor their programme of studies to their own interests and career plans. Students would have an opportunity to specialize and would also have an opportunity to study law as an academic discipline. Many faculty members were and continue to be sympathetic to a more elective programme. A broad elective programme would require many more courses to be added to the curriculum. This would not only broaden and deepen legal education but it would also permit professors to develop courses in their fields of interest and expertise. The Faculty responded by increasing the number and diversity of course offerings and increasing the amount of choice each student had over her own programme. There was, however, a fundamental assumption which supported this eclectic and elective curriculum. Although it was seldom articulated at the time, it was expected that students would exercise their autonomy responsibly and that their choice would reflect a balance among doctrinal courses, perspective courses and clinical courses. This notion of balance among kinds of courses is so essential to understanding of the 1980's reform that a moment will be taken to explain each category.

Doctrinal courses are those which teach "black letter" law. They teach rule systems and develop and refine the skills of legal analysis. They have dominated law school curricula for decades and include contract, torts, property, trusts, taxation, and corporate law. Traditionally they have been evaluated on the basis of examination.

We are well aware that the use of terms like "doctrinal" and "black letter" to describe courses is like raising a red flag in an arena full of bulls. Law professors may be placed on various scales of legal ideology that we construct. For example, we might think of a simplistic scale of formalism versus realism. At one end you have those who believe that law is to a significant degree a body of formal rules that can be identified without resort to other "nonlegal" normative considerations and can be applied to problems through a process of reasoning that is significantly autonomous from resort to "nonlegal" reasoning. At the other end of the scale are those who would fundamentally deny that law and legal reasoning can ever be fenced off from the personal and the political; from who we are as persons and from the society that we both identify with and find ourselves alienated from. Needless to say, the professor with realist leanings is hardly going to describe what goes on in the classroom as the "black letter" teaching of rule systems and legal reasoning. Even the professor leaning in the formalist

direction will be quick to assert that any course in law should not just teach what the law is, but also critically evaluate it. To evaluate something means that we express some standards of value, some standards of good and bad, better or worse, that we measure the law against.

However, it is our conviction that despite protestations to the contrary; despite attempts to critically examine the doctrinal developments of subjects in terms of morality; despite attempts to introduce historical, sociological, and policy analysis into the elucidation of the subject matter; when all is said and done the law student at the end of the day is still, in most courses, expected to "know" and "apply" a whole bundle of concepts and cases and controversies in regard to a particular doctrinal subject area of the law and for a variety of reasons this more legalistic discourse becomes primary and everything else becomes secondary. How many Professors have not found themselves rushing through masses of material in a formalistic way so that they can "cover" the course? How many have not found themselves dumping moral discourse in the face of the persistent resistance to that which is perceived as "soft" and "subjective"? How many have not found themselves to be shallow and inadequate to the task of engaging in discourse that breaks the bounds of "legalism"? How many have not also when marking exams looked to primary competence in regurgitation and application of existing "legal" doctrines and given only secondary "gravy" marks for evaluative commentary?

The point of labelling some courses doctrinal is not to normatively encourage professors to teach them in a black letter fashion or to give up the challenge to teach critically and contextually, but rather to admit to the reality that the primary focus of these courses has in fact been the gaining of a knowledge base of rules, principles, and concepts of law related to a particular subject matter.

What we call *perspective* courses on the other hand, are those courses that are designed to explicitly focus on a variety of modes of discourse and utilize knowledge from a variety of disciplines to understand law and legal institutions. Perspective courses are those which develop a more humane and broader understanding of legal institutions and legal phenomena generally. Some concentrate on legal theory (Jurisprudence) while others study the relationship of law to society (Legal History). Some are interdisciplinary (Law and Economics) and some are comparative (Comparative Law, International Law). Some examine law from a variety of perspectives such as Feminism, Marxism or Critical Legal Studies. All encourage a

scholarly, academic and reflective approach to law as an intellectual discipline. Traditionally these kinds of courses have required a research paper as part of the evaluative process. The courses, therefore, permit students to improve research skills, writing skills and in the presentation of the paper improve skills of oral presentation and the ability to explain and defend a prepared thesis.

Clinical courses have three broad functions. First, they are to assist students to develop a theory of lawyering and a methodology with which to evaluate their own professional performance throughout their careers. Secondly, they are to assist students to develop a sense of professional competence and an ability to deal with problems of professional responsibility in the lawyer client relationship. Thirdly, they provide critical reflection on, and development of, practical skills such as interviewing, identifying and applying law to facts, developing a case strategy, counselling, drafting legal documents, writing briefs, negotiating and preparing and conducting trials.

It had been hoped that students would make a balanced selection among these kinds of courses and that this would allow students to acquire the amalgam of knowledge, perspectives and skill that are important assets in the competent and humane lawyer. By the late 1970s, the courses offered were sufficiently diverse to permit all students to select a balanced program of doctrinal, perspective and clinical courses.

However, the perception grew that students were not selecting a balanced load of courses. The impression of the members of the Curriculum Review Committee was that most students were selecting predominantly doctrinal courses evaluated by way of examination and that while there had been a change in the form of the curriculum in the 1970s (compulsory to elective) there had been no change in substance. The legal education of most students in the late seventies was the same as those in the early sixties. This perception was confirmed by a study undertaken by the Committee. The results are set out in "*A Study of Student Selection of Second and Third Year Courses: The Graduates of 1981 and 1982*".³ Overall the study shows that students selected doctrinal and clinical courses and avoided perspective courses and courses, whether perspective or not, which required a research paper. A brief passage from the report makes the point.

³ Available from the Chairperson, Curriculum Review Committee, Faculty of Law, University of Manitoba.

There [are] a ... significant number of students who do not include any perspective courses in their course selection. Of the 1981 graduates 31% did not choose any perspective courses in their second or third years and for 1982 the figure is 29%. Again, if one takes the position that an absolute minimum of two perspective courses ought to be taken, we find that 57% of the graduates of 1981 do not meet this minimum and 63% of the 1982 graduates. Many would argue that students should be taking four perspective courses: two in each of second and third year. Of the 1981 graduates only 3% of students fell into this category and 8% of the 1982 graduates.

... a significant number of students are not choosing courses evaluated by a paper. Of the 1981 graduates 26% did not take a course evaluated by a paper in second or third year. Of the 1982 graduates the percentage is 22%. If we were to assume that as an absolute minimum a paper should be written in each of second and third year we would find that in the 1981 class 45% of graduates did not satisfy that minimum and of the 1982 graduates 57% wrote fewer than two papers. We might note that for those who do not write papers in the second or third year their only research and writing exposure is in the Legal Research and Writing Program in the first year. If we assume that most students should write three or four papers in second and third year we find only 29% of the 1981 graduates complying with that standard and in 1982 that figure drops to 18% ...

There are a number of reasons for these results. Clearly the faculty failed to persuade students of the value of a balanced legal education. Secondly, students have their own expectations and preconceptions about what the study of law should be like. Doctrinal courses fit that mould. Their assessment is fortified by the dominance of doctrine within the curriculum. Thirdly, and perhaps most importantly, there was a belief among students that a heavy dose of doctrinal courses would place them in a more competitive position for employment and enhance their ability to succeed well in the bar admission process. Consequently only a few students took advantage of the opportunity for a broader legal education. The conclusion drawn by the Curriculum Review Committee was that it was necessary to reconsider the upper years curriculum to determine if steps could be taken to promote a balanced education without sacrificing all opportunity for the pursuit of personal interests and specialization.

This combination of concerns and reservations about both the first year and upper years curricula persuaded the Curriculum Review Committee that a major reassessment of the curriculum was called for.

III. TOWARDS A NEW CURRICULUM: THEMES & PRINCIPLES

THE PLANNING OF A NEW CURRICULUM is facilitated if one has some basic principles on which there is agreement and on which individual decisions can be made. Underlying the new curriculum are a few core ideas and it is appropriate to identify those themes and principles which influenced the Committee in its work. They are *cohesion*, *balance*, *progression* and *flexibility*. They will be examined in turn.

A. Cohesion

The Committee wished to avoid the *ad hoc*, uncoordinated and incremental curriculum reform of the past decade. It was seen as important to have some overall coherent and rational policy within which curriculum planning could take place. A curriculum, of course, cannot be static. It must evolve to reflect societal and legal change. Nevertheless, it is possible to have some vision of legal education within which future modification and reform can be made. A major motivating force in developing the new curriculum was a desire to move from incrementalism to coherence in curriculum planning.

B. Balance

The key vision in the new curriculum is balance. There was a strong feeling that exposure to a variety of courses, a variety of teaching methods and a variety of evaluative processes is necessary to assist students to develop the skills, knowledge and perspectives necessary for a career in practice, teaching, research or in some other legally based vocation. The idea of balance embraces a variety of elements. Primarily, it requires students to take a program which would include 60% doctrinal courses, 20% clinical courses and 20% perspective courses. Such a balance is not merely to operate in the context of the whole programme. Balance is essential in each term of each year of each student's program. Balance is also achieved by ensuring an appropriate mix of public law and private law courses. The existing curriculum had a heavy bias towards private law, particularly in first year. Finally, it is essential that students do more legal writing, including some significant legal research and writing in the upper years.

C. Progression

If there is one theme in the literature of legal education in the last few decades, it is the need for some progression in legal studies.

Repeatedly it is said that students learn to "think like lawyers" in first year and then face a boring grind of accumulating more and more doctrinal courses of similar complexity, taught in a similar style, evaluated in a similar manner and developing the same sorts of skills. What is needed is a curriculum which provides increasing complexity and sophistication in each of the three years so that students are provided with continual intellectual challenge and can develop a sense of continuing growth and achievement. Some sense of progression had been introduced by way of clinical courses but a much greater degree of sequenced progression was thought desirable.

D. Flexibility

Legal education is facing and will continue to face a range of challenges and influences. It is absolutely essential that the curriculum has a degree of flexibility to allow for a continuing diversity of subject matter, approach, and teaching technique. By way of example is the increasing impact of inter-disciplinary study on legal education. We can anticipate a much greater relationship between the social sciences and law. Already 'law and economics' is a strongly established entity and 'law and psychology' and 'law and sociology' promise useful areas of study and insight. Critical legal studies is another area which provides new perspectives on the law by questioning basic assumptions inherent in legal concepts and rules. There also needs to be a strengthening in the way law schools deal with gender and the law and consideration must be given to how that issue can be dealt with throughout the curriculum rather than in specialized courses. There is likely to be increasing experimentation and diversity in teaching methods and there are new developments in the area of sustainable development, international trade, the environment and aboriginal justice. The curriculum must be able to accommodate significant changes in legal education, legal thinking, and in the legal system itself.

These are the underlying ideas behind the model curriculum presented to the Faculty Council by the Curriculum Review Committee.

IV. THE NEW CURRICULUM

THE MODEL CURRICULUM was not fully accepted by the Faculty Council. Nevertheless, after much debate, argument and compromise a new curriculum was approved. In the course of describing the new

curriculum some of the more significant differences between the model curriculum and the new curriculum will be noted.

A. First Year

The outline of the first year program is as follows:

Legal Methods	6 credit hours
Legal System	6 credit hours
Contract	6 credit hours
Tort and Compensation Systems	6 credit hours
Criminal Law and Procedure	5 credit hours
Property	4 credit hours
Constitutional Law	5 credit hours

A number of the changes merit some explanation and comment.

The Research and Writing Programme, Practice Skills Workshops and Civil Procedure were amalgamated and modified in the course *Legal Methods*. This course is the foundation clinical course. The course is taught in groups of 20. It was designed to teach through seminars, exercises and problems, legal research skills, legal bibliography, legal writing, identifying and applying law to case facts, factual investigation, civil procedure, drafting and oral advocacy. This course provides a foundation to second and third year clinical courses. *Legal System* is the foundational perspective course. The course covers aspects of legal history, legal reasoning, legal thought, legal education, the legal process, legal practice and law reform from a variety of different perspectives. It leads into perspective courses in second and third years. Both *Legal Methods* and *Legal System* were given a substantial credit hour weighing (6) in an attempt to avoid marginalising clinical and perspective teaching.

On the doctrinal side the notable changes were the inclusion of *Constitutional Law* in the First Year Curriculum to provide a better public law/private law balance, the extension of *Torts* to include compensation systems, thereby assisting students to appreciate the global issues of disability compensation, the amalgamation of *Personal Property* with *Real Property* to rationalize the teaching of property and reduce credit hours, and the removal of *Agency* from a first year course to a third year elective.

Overall the number of courses was reduced, but the programme is weighted at 38 credit hours, a significant increase on the old curriculum. This first year program mirrors the proposals of the Curriculum Review Committee and promises a strengthening of clinical and

perspective components and a more balanced and rationalized doctrinal exposure.

B. Second Year

In second year students must take:

Introduction to Advocacy	4 credit hours
Interviewing, Counselling, & Negotiation	3 credit hours
Federal Income Tax I	4 credit hours
Business Organizations	4 credit hours
Family Law	4 credit hours
Evidence	3 credit hours
Administrative Law	3 credit hours
Trusts	3 credit hours

They must also select one *perspective* course from the following list:

Issues in Law and Bio-Ethics	International Law
Civil Liberties	Jurisprudence
Research Paper	Charter of Rights and
Environmental Law	Freedoms
Limits of Law	Comparative Law
Issues in Crime and	Canadian Legal History
Punishment	Law and Economics
Native Peoples and the Law	

It is in second year that the curriculum must strongly reflect the swing away from the eclectic elective programme of the seventies.

Interviewing, Counselling and Negotiation and *Advocacy* are the mandatory clinical courses which are designed to build upon the foundational course *Legal Methods*. The mandatory *perspective course* is designed to build balance into the program. It was also decided to couple the need for more legal writing in the upper years to the perspective courses. Consequently in perspective courses fully seventy-five percent of the final grade must be calculated on the basis of a written paper. The Curriculum Review Committee had recommended that second and third year students be required to take *two* perspective courses in each year but that proposal was modified to just one in each year. (Although in third year, *The Legal Profession and Professional Responsibility* course is required and is taught as a perspective course.) In part this is explained by the restricted number of perspec-

tive courses offered in the Faculty. Financial considerations did not permit an immediate and significant increase in perspective courses. Two courses, *Canadian Legal History* and *Law and Economics*, were added but practical considerations required some courses that are only marginally perspective to be incorporated in the list and the mandatory requirement had to be cut back to one course. The faculty is fully aware of the weakness of the curriculum in the perspective area and new courses and future hiring will address the problem. Already new perspective courses such as *Children and the Law*, *Gender and the Law* and *Literature and the Law* are in the pipeline.

The most controversial aspect of the second year program is that there is a *mandatory* doctrinal core of courses. This was done for a variety of reasons, some administrative and some pedagogical. The pedagogical reasons include the need, for purposes of progression, to have a distinct second year and the need to ensure a balance between private and public law. Few issues cause more passionate debate among faculty members than the compulsory/elective division of doctrinal courses. Even if there is a consensus that *some* courses should be mandatory the subsequent debate over *which* courses is extremely divisive. The Curriculum Review Committee made its choice on a series of factors. The more factors that were applicable to a course the stronger the argument that it be compulsory. They included:

- (a) The course introduces the students to new legal concepts.
- (b) The course is *de facto* compulsory (i.e. most students take the course if elective).
- (c) Legal concepts in the course pervade other subject areas of the law.
- (d) The course is important in the practice of law.
- (e) The course does not lend itself to self instruction.
- (f) The course is an essential prerequisite to some third year courses.

At the end of the day, however, a degree of arbitrariness was unavoidable.

C. Third Year

In third year a high degree of student choice is permitted to allow students to follow their own interests and to pursue a degree of specialization. There are two mandatory components. All students must take *The Legal Profession and Professional Responsibility*. For too long law schools have marginalized consideration of the ethical and professional dimension of the lawyer client relationship. This

mandatory requirement predates the new curriculum but the course is an integral component in a balanced legal education and is an essential aspect of good clinical teaching. The other mandatory component of the third year curriculum is a perspective course drawn from the same list as for second year. In the perspective area the element of progression was to some extent lost. Practical considerations required us to mix second and third year students in perspective courses. The overall shift from a heavily doctrinal curriculum to a more balanced curriculum has put pressure on our ability to deliver a broad range of perspective courses over the short term.

The Curriculum Review Committee had also recommended a further compulsory clinical component. For many years the Faculty has offered an eight credit hour clinical course called *Clinical Elective* dealing with both simulated and real legal disputes and fulfilling the objectives of clinical courses set out earlier in this article. There were three sections to the course, including *Intensive Criminal Law*, *Intensive Family Law* and *Intensive Administrative Law*. These courses were complemented by the three credit hour course *Solicitors Transactions*. The Curriculum Review Committee recommended that all students take one of these clinical offerings. This was designed to complete the progression of clinical courses from *Legal Methods* through *Interviewing, Counselling and Negotiation* and *Advocacy* to a third year clinical experience. Faculty Council was not persuaded. Only so much compulsion was acceptable. It was felt that in the light of a mandatory second year programme choice should be maximized in third year. Some students do not wish to practice law and it was thought that eight credit hours of clinical combined with three of *Legal Profession and Professional Responsibility* would unreasonably restrict students who wish to pursue a more academic and perspective program. In reality balance is not affected unduly because clinical programs are very popular and most students take one of them. For example, in 1990/91 79 of 85 students are registered in either a section of *Clinical Elective* or *Solicitors Transactions*. The remainder of the student programme is left to student choice. A full range of doctrinal third year courses and perspective courses is open for selection. There is a minimum number of perspective courses but no maximum in third year.

Curriculum reform is always achieved by compromise. The result never pleases everyone. Nevertheless, the new curriculum did achieve some of the goals that the Committee had set. There is greater cohesion to the curriculum. There is a consensus that the mission of the

faculty is to provide an education in the broad range of skills and knowledge and perspectives necessary for one using a legal education as a vocational foundation. There is a recognition in the concept of balance that legal education must not be a narrow legal training for the routine practice of law. A law school is not a trade school. It must provide a challenging intellectual environment in which law is studied as an academic subject and as a societal phenomenon of fundamental consequence to all Canadians. Progression has been more difficult to structure. There is some success in the clinical and perspective components of the curriculum and in the creation of a distinct second year. Moreover, it is recognized that progression depends as much on professorial expectations and demands as on formal structure. Finally, the curriculum provides a degree of flexibility. Many of the trends and themes sweeping legal education relate to innovative and challenging perspectives on law. In the future more perspective courses will be added to expand the intellectual and academic challenges to our students. New areas of doctrine can be added in the usual way and the clinical area is alive with innovation, change and improvement within the overall structure. Most important of all was the high degree of Faculty and student support for the whole venture. There has always been an understanding that ultimately the success of any curriculum depends on the commitment and goodwill of individual faculty members. There must be a belief that it is a vehicle for a better legal education of the students and a commitment to make it work.

There were of course some people who had to overcome serious reservations about the new curriculum and it is useful to recognize those concerns. One significant criticism related to the classification of courses into doctrinal, perspective and clinical categories. As noted before, it was argued that this failed to recognize that good law teaching and good courses involve students in a holistic study of law which deals not only with legal doctrine, but also assesses that doctrine from a variety of perspectives and deals with clinical issues. Consequently, it is a mistake to classify a course as one or the other. It is an invitation if not an instruction to the teacher to pursue only one aspect of an ideal of legal education. It may also have the consequence of marginalizing clinical and perspective teaching, treating it as a frill or decoration to the doctrinal majority. Few would disagree with the premise of those who argue this point. Of course good law teaching involves more than teaching rules and legal analysis. Discussion of topics from the perspective of a variety of disciplines, theories and views and consideration of clinical and ethical

aspects of the subject area is the ideal. The *reality* of law teaching, unfortunately is that many teachers do not have the desire and/or ability to meet the ideal. Different teachers have different strengths and they tend to play to those strengths. Furthermore, law schools have been traditionally dominated by doctrinal teaching and an aging professoriate is not likely to make significant changes in teaching style. Moreover, as the *Study of Student Selection of Second and Third Year Courses: The Graduates of 1981 and 1982* showed, perspective courses under the old curriculum were marginalized and disparaged to the point of extinction. In light of this reality the response of the faculty was to reassert the importance of those aspects of legal education in the curriculum structure. But there was no desire to discourage teachers from striving for the ideal of a balanced education in every course. When the ideal is reached there can be a withering away of categories and compulsion and the faculty can permit a free and full election among courses secure in the knowledge that balance is found in every course. It was felt that the new structure was more likely to foster this development than maintenance of the *status quo*.

A second criticism related to the degree of flexibility in the curriculum. Doubt was expressed about the ability of the new curriculum to accommodate future innovations in legal education. One significant concern was the lack of a bridging programme. The idea of a bridging experience began in Harvard Law School and has been adopted by some Canadian law schools. Broadly speaking it attempts to get students to understand that the traditional division of law into categories such as contracts or torts is largely arbitrary. It attempts to show students that similar legal concepts and themes are found in diverse areas of the law and that legal problems are normally multifaceted, with more than one area of the law contributing to their solution. Thus, some period of time normally in the course of first year is set aside, when the normal timetable is suspended and a bridging programme is introduced. For example, students may study the notion of mistake as it relates to torts, contract and criminal law, or the issue of duress in those same subjects may be considered. Similarly, they may study the issue of surrogacy contracts based on the *Baby M*⁴ case. That would allow for consideration of how contract law, family law and criminal law are all relevant to the solution of that issue. Bridging also allows for consideration of the relationship between diverse personal interests and public policy. Perspectives from femin-

⁴ *In Re Baby M* 537 A. 2d 1227 (1988).

ism, psychology, economics and medicine could be introduced by legal and non-legal experts. The new curriculum was criticized because it tended to fracture legal education rather than build bridges. The argument was a powerful one and if these programmes in other schools fulfill their promise there may have to be further change. However, some degree of bridging can probably be achieved within the current framework. As a foundation perspective course, the *Legal System* course seems particularly well suited to introduce some bridging exercises and instruction. But only time will determine whether sufficient flexibility has been built into the curriculum.

V. THE NEW CURRICULUM: AN ASSESSMENT

IMPLEMENTATION OF THE NEW CURRICULUM began with the first year class of 1986-87 and now two classes have graduated under the new regime. It is not premature to make some tentative assessment of its performance. Two surveys have provided some useful information. The first was a 1986 survey of graduates that was conducted in relation to an Academic Review of the Faculty of Law required by the University administration. The second was a survey of student opinion on the curriculum conducted in 1990. Each will be considered in turn.

A. The Survey of Graduates 1986⁵

This survey, which was conducted with the assistance of the University of Manitoba's Office of Institutional Analysis, assessed the opinion of graduates of the faculty who continue to be members of the Law Society of Manitoba. The questionnaire, to which 402 lawyers replied, covered virtually all aspects of the faculty's operation from teaching to administration and from classroom climate to graduate programmes. At the time of the survey the new curriculum had received faculty approval but had not been implemented. Nonetheless, the faculty used this survey to receive graduate/practitioner opinion on some of the assumptions and ideas behind the new curriculum and to make an assessment of the third year clinical courses that had been implemented in the 1970s. The scope of the overall survey narrowed the inquiry into purely curriculum matters. Nevertheless, some interesting information was received. The results of the survey were analysed for "all graduates" and for "graduates from 1970-85". The results

⁵ Available from Chairperson, Curriculum Review Committee, Faculty of Law, University of Manitoba.

on curriculum are virtually identical, however, and the numbers used are on the basis of the replies of 'all graduates.'

Two assumptions underlying the new curriculum were that the curriculum had no sense of progression built into it and that student selection of courses was based upon an erroneous perception of what is in the student's best interests and what is important for a good legal education. On the progression point our graduates fully agreed with us. Eighty-five percent of respondents agreed with the statement that the law school program was a collection of courses of similar difficulty throughout the three years. The balance perceived a "progression from elementary to more difficult and demanding courses". The information on student course selection is more equivocal but fully forty percent of our graduates would not make the same course selection that they had made in law school.

The other useful information was on the question of balance. Seventy-four percent of respondents agreed that the curriculum should strive for a balanced programme among doctrinal courses, pragmatic skills oriented or clinical courses and legal theory and perspective courses. Furthermore, when asked if there should be constraints to ensure that students maintain a balanced programme 81% answered in the affirmative. Of those who disagreed with a mandatory balance most disagreed with the necessity for perspective and legal theory courses. Nevertheless, an additional concern relating to balance was also found. Sixty percent of respondents felt that the curriculum placed too little emphasis on legal writing. Clearly there is strong support in the legal profession of Manitoba for the fundamental theme of the new curriculum.

A final point of importance relates to the scope of the curriculum. Fifty percent of respondents were unable to take desired courses because they were not offered by the Faculty. This is, of course, a resource problem; but one which underlines the importance of flexibility and the extension of the curriculum to provide a wider coverage of topics when financial conditions permit.

In the 1970's there was a significant development of the clinical component of the curriculum. That development was most significant in the third year with the development of *Intensive Criminal Law*, *Intensive Family Law*, *Intensive Administrative Law* and *Solicitors Transactions*. All these courses were seen positively by graduates who took them. Sixty percent of respondents who took one of the courses felt that the course was moderately or very beneficial in preparing them for the practice of law. Perhaps of more importance is the fact

that 60% of respondents feel that the courses were of "continuing" value in the practice of law. Only 17% felt the courses had no continuing value. There is a critical component to good clinical education. Clinical courses must do more than teach students what they will learn in the first six months of articling! The intensive courses were seen by sixty percent as being beneficial or very beneficial in developing lawyering skills, understanding the lawyer-client relationship and developing a concept of one's role as a lawyer. There was less agreement about the success of the courses in developing an appreciation of the ethical dimension of the practice of law (47% beneficial) and developing a theoretical framework for the practice of law (29% beneficial). A bare majority of respondents (55%) felt that the 8 credit hours spent on the intensive course was worth the sacrifice of not being able to take other third year elective courses. Similarly only 50% favoured the idea of a clinical term (approx. 15 credit hours) in third year.

Solicitors Transactions was felt to be most beneficial in developing lawyering skills, developing a concept of one's role as a lawyer, developing an appreciation of the practice of law as a business and developing an understanding of the lawyer client relationship. Again, the course was perceived to be weaker in respect of its development of a theoretical framework for the practice of law (twenty percent beneficial) and in ethical dimensions to the lawyer-client relationship (twenty-four percent beneficial). The lack of emphasis on professional ethics probably indicates that reliance is being placed upon the mandatory *Legal Profession and Professional Responsibility* course to explore those issues. The most heartening aspect of these results is that the clinical courses are not 'how to' courses. They provide students an opportunity to explore a variety of aspects of the lawyering role and as such play a crucial element in a good legal education. To this extent the results support the new curriculum.

B. Survey of Student Opinion on the Curriculum of the Faculty of Law 1990⁶

In 1990 a series of questionnaires were drawn up by the Curriculum Review Committee. A questionnaire on the first year curriculum was completed by the first year students 1989/90. A questionnaire on the second year programme was completed by second year students 1989/90 and a questionnaire which covered their experience of all

⁶ Available from the Chairperson, Curriculum Review Committee, Faculty of Law, University of Manitoba.

three years was completed by law graduates 1989/90 and bar admission students (graduates 1988/89). The returns were analyzed and synthesized by two students working for the Legal Research Institute, Ms. Karen Beattie and Mr. Jonathan Penner, who wrote the *Report on Student Opinion of the Curriculum of the Faculty of Law 1990*.⁷

An enormous amount of information was gathered, much of it in respect of technical matters and individual courses. An attempt will be made here to identify student opinions on some of the underlying themes and concepts of the curriculum and then to broadly present their views on each year of the programme. The returns from the bar admission class were disappointing in number and quality. Consequently, on the assessment of the whole programme, reference will be made to the third year responses unless the bar admission responses are significantly different.

1. Broad Themes: Balance and Progression

The third year questionnaire sought to assess student opinion on the central concept of a balanced legal education. Students were asked if they agreed with the idea that students be compelled to take a balanced programme of doctrinal, clinical and perspective courses. Sixty-nine percent of students gave affirmative answers. Given the distaste of many students for being told what to do, the figure is surprisingly high. It will be remembered that mandatory balance was introduced because of a reluctance among students to choose perspective courses and to write research papers. Interestingly, in both second and third year, students view the perspective courses they have taken very positively and feel that they achieved their objectives. Many felt that the courses led to a better understanding of the legal system, gave new insight and perspectives and encouraged a critical assessment of legal principles. The perspective courses have also led students to discover the educational value of writing research papers. Fully 91% responded positively to the educational value of writing a research paper. Among the benefits identified were an opportunity to pursue topics of personal interest, the chance to pursue issues to a greater depth of analysis and understanding, the opportunity to improve research and writing skills, the chance to express one's own ideas and theories, a greater understanding of an area of the law and the chance to embark on a more intense legal analysis. The response to the perspective segment

⁷ Available from the Chairperson, Curriculum Review Committee, Faculty of Law, University of Manitoba.

of the curriculum is very heartening. Students do perceive the importance of the more academic, theoretical and critical aspects of legal education and understand the significance of legal research and writing. There has been a dramatic change in student attitude to a balanced education from that found in the *Study of Student Selection of Second & Third Year Courses: The Graduates of 1981 and 1982*. In the early 80's perspective courses and paper courses were disparaged and avoided. In the late 80s they are perceived as a valuable component of a good legal education.

Third year students were asked if, in the course of the three year programme, they felt a sense of progression from the elementary to more sophisticated and difficult issues. Seventy-two percent responded positively and felt that there was a progression of challenges and a sense of moving in graduated steps to more complex and demanding courses. Special mention was made of the clinical courses in this respect. Nevertheless, fully 28% continue to feel that law school is just three years of similar difficulty. However there has been dramatic improvement given the results in the *Survey of Graduates 1986* in which 85% of respondents thought there was no degree of progression in the curriculum. It is fair to conclude that the balanced curriculum has been well received by students and some progress has been made in imbuing the curriculum with a sense of progression.

2. *The First Year Programme*

The two important changes in the first year programme were the creation of two substantial clinical and perspective courses: *Legal Methods* and *Legal System*. Both courses continue to be in a state of development but the results are encouraging. First year students assessed how well *Legal Methods* had achieved its objectives of teaching legal research and writing, civil procedure, drafting and advocacy on a four point scale; one indicating poorly and four indicating very well. The overall average was 2.4, in essence a satisfactory rating but obviously also an indication that there is room for improvement. Many third year students saw the course as a valuable foundation to *Advocacy* but not to the other second and third year clinical courses. There continues to be some uncertainty about whether the course is a legal research and writing and civil procedure course or whether it should be more eclectic in its coverage of foundational components of clinical legal education. The student opinion of the *Legal System* course varied from section to section. Students in one section of the course were very positive that the course

had achieved its objectives as a foundational perspective course, while students in the other section were more critical. Students continue to be lukewarm about the *Legal History* component of the course. More troubling, however, is that students fail to see any valuable connection between *Legal System* and their other first year courses and second and third year students do not perceive the value of the course in relation to their perspective courses. This would indicate that there is room for improvement in the integration of *Legal System* and *Legal Methods* with the upper years perspective and clinical components of the curriculum.

For some time *Contracts* has been taught in 5 small groups of approximately 20 students. Students were strongly supportive of this use of resources. Eighty nine percent perceived pedagogical value in the smaller group and seventy six percent felt *Contracts* had been of the greatest assistance in developing their skills of legal analysis. Some of the benefits identified were a less inhibiting classroom environment, better rapport among students and teachers, better class participation, more individual attention from teachers, and a greater opportunity to ask questions. It is interesting to note that the positive assessment was also reflected in the third year questionnaire. Seventy nine percent of students responded favourably to their small group experience in *Contracts*. A few further points are worthy of note. An average first year student spends 50 hours per week on law studies and twenty five percent of first year classes is spent on a critical evaluation of rightness or wrongness of the law rather than just what the law 'is.'

3. *The Second Year Programme*

The positive response to the mandatory perspective course and research paper has already been noted. In the clinical segment of the curriculum the assessment is less even. The longer established *Advocacy* program continues to get a very positive response from students. An assessment of how well the course achieved its objectives of teaching interviewing, identifying and applying facts, developing case strategy, counselling, drafting, writing briefs, preparing for trial and conducting trials averaged (on a four point scale) 3.0. The *Advocacy* program has been a very successful clinical programme for many years and the course maintains its reputation. *Interviewing, Counselling and Negotiation* received a 2.3 rating and is in need of some further course development. The course has suffered from a high turnover of teaching personnel and a lack of resources. Moreover it is a very difficult course to deliver successfully. The course however has improved over the

years and now the primary need is for a full time teacher whose primary field of interest is in this area. Future recruiting may resolve this problem. Overall second year students gave a global rating of how well *Legal Methods*, *Advocacy* and *Interviewing, Counselling and Negotiation* attained their goals. The rating of 2.5 is consistent with the results of individual questions. Finally it should be noted that 94% of second year students feel that the doctrinal courses assisted them in further development of skills of legal analysis.

4. *The Third Year Programme*

The positive response to the perspective and paper elements of the third year programme have already been noted. Over 50% of students felt that the third year clinical courses met their objectives. They thought the courses assisted them to develop a theory of lawyering, an appreciation and understanding of the lawyer client relationship and professional responsibility and to develop some of the lawyering skills. On the latter, the development of skills, the courses globally received a 2.3 rating but it should be noted that this aspect of the courses is the least important. Most students felt that the intensive courses warranted the eight credit hours allocated to them. These results are fairly consistent with those in the *Survey of Graduates 1986*. In retrospect 50% of the students agreed that *Legal Methods* had achieved its objectives. Almost all students responded positively to the *Advocacy* course but there was a good deal of criticism of the *Interviewing, Counselling and Negotiation* course. Only 12 of 52 students responded positively to it. 24 regarded the course as a complete waste of time. However second year students, as was noted, were not as negative and this may mark some permanent improvement. Nevertheless, it is fair to say that this course continues to be the weakest link in the clinical programme for reasons discussed earlier.

There is also a need for greater integration of the clinical courses. Although the students perceive no significant overlap among the courses, less than a majority respond positively to the suggestion that the clinical component of the curriculum is an integrated progressive programme from *Legal Methods* through to *Clinical Elective*. This finding seems to contradict to some extent the student opinion on 'progression' mentioned earlier.

Overall, the Graduate and Student Assessments provide encouragement. It was always understood that the new curriculum could not be successfully implemented immediately. It was a plan for consistent and rational *future* development and a considerable period

of time for readjustment and development would be necessary. Much remains to be done in strengthening the perspective area, improving and developing clinical courses and broadening the scope of the curriculum. The surveys indicate that progress is being made and that students are receiving a broader and more balanced legal education.

The Curriculum Review Committee is currently making its own assessment of the curriculum. However that review is being conducted in the context of a Faculty consensus late in 1989 that fundamental principles and structure of the curriculum are broadly acceptable. Consequently the focus of the Committee's work will be on improvement and development of the existing structure.

VI. CONCLUSION

NO OVERALL ASSESSMENT OR EVALUATION of the curriculum will be made here. Indeed it is doubtful if anyone can make a defensible evaluation of a curriculum while it is in the process of development. The Faculty remains committed to the general idea that a wide range of knowledge, skills and perspectives are important if lawyers are to be equipped to deal flexibly and innovatively with the individual and societal problems of the twenty-first century. The degree of success will be judged in the future, by others. However it may be useful to outline a few of the lessons that have been learned in the process of curriculum change.

First, curriculum change is difficult. Woodrow Wilson is reputed to have said that changing a curriculum is more difficult than moving a graveyard. There is always a strong commitment to the *status quo*. Faculty members are comfortable with teaching assignments and pedagogical techniques. Students are a surprisingly conservative constituent. They don't want any experimentation with their legal education. And as soon as change is mooted there is a good chance that faculty collegiality will divide into camps of individuals holding strongly divergent views about legal education and its ultimate goals, or that it will melt away into positions of self interest. To many objective observers the Manitoba reform will appear modest and very much within the mainstream of current trends in legal education. Nevertheless, consensus was difficult to reach and only a great deal of goodwill and tolerance for the ideas of others produced an acceptable package. Of critical importance in forging that unity was the fact that the curriculum package was tied to no ideology and to no one theory of legal education. It called for diversity and expressed a desire for our

students to be exposed to an eclectic mix of views and ideas about law and society from which each student may find his or her way.

Secondly, in curriculum planning one must not allow one's aspirations and desires to exceed the capacity of the institution to implement them. The Manitoba plans came perilously close to collapse in the implementation process. For example, a perspective course for each student in second and third year was approved. But where were the requisite perspective courses? Where were the teachers willing to deliver them? Compromise was necessary. Some courses on 'the list' were arguably barely perspective. Many students were unable to get their first choice; separate second and third year courses in the perspective areas could not be provided. Classes were mixed thereby diluting "progression" principles. Slowly the situation has improved. New courses were added when resources permitted and recent hiring has helped. But it is sobering to remember that the original Committee plan was to require *two* perspective courses in each of second and third year. Great care must be taken to ensure that there are sufficient financial resources and faculty commitment to implement the plan.

Finally, it is perhaps appropriate to end with a reminder that curriculum plans are not a panacea for a good legal education. Ultimately a good legal education depends on good teaching. In the *Survey of Graduates 1986* 56% of respondents believed that the "person who taught the course was more important to their learning than the course itself." Only 25% disagreed with that, the remainder being neutral. A good curriculum and poor teaching will not provide a good legal education. A poor curriculum and good teaching will not lead to a poor legal education. However, a good curriculum and good teaching may, just may, provide something special.