

THE CANADIAN ASSOCIATION OF LAW TEACHERS



BULLETIN

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WORD FROM THE PRESIDENT

Philip Girard, Faculty of Law, Dalhousie University



Your executive is busy managing the current cycle of CALT activities, which will culminate with our annual conference next spring at the University of Manitoba. Much of the executive's work focuses on the annual conference, but a number of ongoing tasks also require attention: preparation of the CALT directory, now available in both hard copy and web-based versions; development of our website; and publication of the Bulletin. The Bulletin, with the financial assistance of Carswell and the able editorial guidance of vice-president Annie Rochette (UBC), has now replaced the newsletter formerly maintained by correspondents based at each law faculty. Rounding out the executive, Kim Brooks (Queen's) keeps an eye on our finances and our minutes as secretary-treasurer, while Past President France Houle (Université de Montréal) is an invaluable source of ideas and advice on all topics. Other executive members are identified in the body of this report.

Looking back: the 2003 annual conference

I am happy to report that our annual conference at Dalhousie, held in conjunction with the Congress of Humanities and Social Sciences 2003, was a great success, with some 100 registrants. A new format was adopted with a call for papers drafted by Mark Walters (Queen's) on the theme of "Power, Law and Trust," and the response was most gratifying. Some forty papers were presented in 17 separate panels, and the participation of younger scholars was particularly noteworthy. In addition to papers on the general theme, two of the sections (criminal law and intellectual property law) organized panels on substantive law developments, while Dalhousie colleagues Richard Devlin and Dianne Pothier organized a conference within a conference on the theme of "Critical Disability Theory." A number of the papers presented at those sessions form an edited collection currently under review by UBC Press. The Law Forum presented stimulating views from both senior and junior colleagues on the questions "What Makes Law Possible?" and "What Does Law Make Possible?" while Legal Perspectives, sponsored by the Law Commission of Canada, focused on the theme of "Law and Risk."

Some 40 persons spent a lively evening at the CALT young scholars' dinner. The closing banquet was also well attended. It was the occasion for honouring Hugh Kindred of Dalhousie with the CALT Prize for Academic Excellence, Anita Anand of Queen's as the winner of the CALT Scholarly Paper Award, and Aline Grenon of Ottawa as past president of CALT. Guest speaker Archie Kaiser of Dalhousie spoke about his experience in attempting to reform the appointments process to provincial boards and tribunals through the laying of a human rights complaint.



WORD FROM THE PRESIDENT *(Cont'd)*

Looking forward: the 2004 annual conference

We will meet with the Congress of Humanities and Social Sciences in 2004 at the University of Manitoba from Monday 31 May to Wednesday 2 June, with the Law Forum and Legal Perspectives sessions occurring on 2 June. Lorna Turnbull (Manitoba) will be local arrangements coordinator. The format will be slightly changed from 2003 in that instead of distinguishing between a "legal scholarship day" and a "teaching day", panels on both will be solicited in the call for papers and may be interspersed on both 31 May and 1 June. The young professors' dinner will be on 1 June and the closing banquet on the 2nd.

The Congress 2004 theme of "confluence" is a particularly apt one for legal scholars and has been adapted in our own call for papers, prepared by Lorne Sossin (Toronto). In 2003-04 CALT plans to extend its outreach to graduate students in law by inviting them to submit proposals and to become members of the Association. Our constitution provides for graduate student membership and we intend to recruit them more actively in the years ahead. I will be writing to graduate program directors across the country to urge them to circulate this news to their students.

The Law Forum, planned in conjunction with the Canadian Law & Society Association, issues a separate call for papers and you will find it elsewhere in this Bulletin. Thanks to Hugo Cyr (UQAM) for his efforts in drafting the call with Richard Moon, president of CLSA. The Law Commission of Canada will shortly issue the call for papers for the Legal Perspectives session which follows the Law Forum.

Winnipeg in 2004 represents a significant historic "confluence" of events. Exactly 50 years ago, the CALT annual meeting was held in Winnipeg, with Professor Bora Laskin (as he then was) as president of the Association. In some respects the differences in the law teaching profession over the past half-century have been profound: the influx of women in particular would have been surprising to that small group of men gathered in 1954, and the range of scholarship now is much more diverse than they could have imagined. Yet the fundamental preoccupations of legal academics remain stable: How can we be better educators and scholars? how can we contribute to the creation of a more just society, both in Canada and abroad? Let us get together once again in 2004 and share our thoughts on these and other questions of interest to all of us. I hope to see you there.



THE EXECUTIVE



Prof. Philip Girard
President

Faculty of Law, Dalhousie University
Tel: (902) 494-2814 Fax (902) 494-1316
philip.girard@dal.ca



Prof. France Houle
Past President

Faculty of Law, University of Montreal
Tel: (514) 343-6870 Fax: (514) 343-2199
france.houle@umontreal.ca



Prof. Annie Rochette
Vice-President, Bulletin editor

Faculty of law, UBC
Tel: (604) 822-2398 Fax (604) 822-8108
rochette@law.ubc.ca



Prof. Kim Brooks
Secretary-Treasurer

Faculty of Law, Queen's
Tel: (613) 533-6000 ext. 78346
brooksk@post.queensu.ca



Prof. Lorna Turnbull
Annual Conference, Winnipeg 2004

Faculty of Law, Manitoba University
Tel: (204) 474-6136 Fax: (204) 474-7580
lorna_turnbull@umanitoba.ca



Prof. Lorne Sossin
Site web

Faculty of Law, U of Toronto
Tel: (416) 946-8229
lorne.sossin@utoronto.ca



Prof. Hugo Cyr
Law Forum

Faculté des sciences juridiques, UQAM
Tel: (514) 987-3000 ext. 8319 Fax: (514) 987-4784
cyr.hugo@uqam.ca



CALL FOR PAPERS

Law's Confluence: Merging, Emerging and Diverging.

The confluence of legal doctrines and principles is apparent across a wide range of private and public law settings, across the spheres of civil and common law, and across local, national and international boundaries. In some cases, this confluence has led to unifying tendencies, for example in the alignment of fairness obligations in administrative law, constitutional law, and civil and criminal procedure. In other cases, entirely new legal fields are emerging out of this intermixing, such as "harmonization" specialists who focus on reconciling Québec's Civil Code and federal legislation. In still other cases, the result has been divergence and the shoring up of distinct legal silos, as in the case of the sharp line drawn by the Supreme Court between judicial independence and other forms of independence.

We invite proposals for papers on the theme of "Law's Confluence" to be delivered at the 2004 CALT Annual Meeting in Winnipeg from May 31st to June 2nd. We also invite panels of three or four presenters, as well as proposals by those who wish to present their "works in progress" or their "ideas in progress." Papers or abstracts will be distributed through the CALT website. We encourage submissions from a variety of legal perspectives. Some possible topics are:

- What are the implications of the growing influence of international law human rights principles and norms on Canadian constitutional and administrative law?
- How kindred is the deployment of the "reasonable person" standard in administrative law, criminal law, commercial law and tort law?
- Accounting for the disparate evolution of fiduciary obligations in aboriginal rights jurisprudence, commercial settings, statutory benefit settings and power-dependant relationships (e.g. doctor-patient, etc).
- Commonalities in the use of the "dialogue" metaphor to explain the development of the Civil Code of Québec and the elaboration of Charter rights.

- The dilemmas arising in the application of Charter principles to elaborate common law rights and in the interpretation of statutory discretion.

We also invite and encourage papers, panels and workshops dealing with the teaching and learning issues raised by the theme of law's confluence. These workshops will take place throughout the conference, rather than on a separate day dedicated to research and teaching. Some ideas include:

- The influence of technology on teaching approaches and on student learning – do high-tech classrooms really make a difference?
- Students as learners or students as customers? Are rising tuition fees making students into "consumers" of legal education? What is the "product" we are selling to them?
- Where does critical pedagogy and analysis fit in an institution increasingly funded by private donors?
- What role do law reviews play in students' education? What is the future of the generalist review? What is the effect of the American influence towards massive multiple submissions on Canadian law reviews?

**THE DEADLINE TO SUBMIT PROPOSALS IS JANUARY 16TH, 2004.
PROPOSALS FROM GRADUATE STUDENTS ARE WELCOME AND ENCOURAGED!**

Please send a summary of your proposal (250 words) by email, mail or fax to:

**Lorne Sossin, Associate Professor
University of Toronto, Faculty of Law
84 Queen's Park Cr., Toronto, On. M5S 2C5
(fax) 416-978-7899; email: lorne.sossin@utoronto.ca**



CALL FOR PAPERS

Canadian Law Forum 2004

The Canadian Law Forum is an initiative of the Canadian Council of Law Deans, the Canadian Association of Law Teachers and the Canadian Law and Society Association. It is also supported by the Law Commission of Canada. The goal of its organizers is to foster innovative perspectives on the law and to favour the development of theoretical work drawing on a variety of disciplines.

The Canadian Law Forum will be held on Wednesday, June 2, 2004 from 9:00 a.m. to 12:30 p.m. as part of the annual meetings held respectively by the Canadian Association of Law Teachers and the Canadian Law and Society Association in conjunction with the 2004 Humanities and Social Sciences Federation Congress at the University of Manitoba, in Winnipeg. The Forum will be followed, on the same day, by a series of presentations of papers prepared as part of the annual Legal Perspectives programme organized by the Law Commission of Canada.

Call for Papers: What is legal knowledge?

Professors and graduate students working in law faculties and departments or in the field of law and society are invited to submit proposals for papers that would seek to answer the question, "what is legal knowledge?" The question invites reflections on issues such as what is the nature of legal knowledge (is it a theoretical and/or practical knowledge?), what is its content, where can it be found, how is it produced and acquired, when does too much information become none, etc. The question can be answered from the standpoint of legal theory, philosophy of law, sociology, anthropology, history, criminology or political science.

Five or six proposals for papers and 20-minute presentations will be selected to form two panels. The purpose of these contributions will be to offer both a point of departure and a perspective susceptible of launching a broad and engaging discussion on the issues raised by the question.

Those interested need not initially submit a paper. However, proposals must be received by January 16,

2004. Proposals should be a maximum one-half page in length and accompanied by a curriculum vitae, preferably in short (one page) form. Invitations to those panellists whose proposals are selected will be sent no later than February 13. Travel and accommodation will be provided for those invited. Simultaneous translation will be available. Each of the selected panellists is to produce a draft paper before May 17 so that other panellists will be able to prepare responses.

THE BOARD OF EDITORS OF THE MANITOBA LAW JOURNAL HAS AGREED TO PUBLISH THE LAW FORUM PAPERS ONCE THEY HAVE BEEN ACCEPTED BY THE LAW FORUM SELECTION COMMITTEE.

Paper proposals and curriculum vitae should be mailed or sent by e-mail to the following address:

Prof. Hugo Cyr
Faculté de science politique et de droit
Département des sciences juridiques
Université du Québec à Montréal
C.P. 8888, Succursale Centre-ville
Montréal, Québec
Canada H3C 3P8
Phone : +1 (514) 987-3000 extension 8319#
Fax : +1 (514) 987-4784
Email : cyr.hugo@uqam.ca



THE ISSUE OF TUITION FEES

A workshop at the annual CALT conference results in a very lively discussion!

By Annie Rochette, Faculty of Law, UBC

During our annual CALT conference that took place in Halifax last June, we held a workshop on the tuition fee issue, which featured presentations from Bruce Parly and Ann Tierney from Queen's University, as well as Richard Janda from the McGill faculty of law. Their presentations, outlining some alternative views and solutions on the thorny issue of tuition fee hikes, resulted in a very lively discussion between all participants. Since this issue is of interest to all of us as law professor or administrators, we thought it would be a good idea to continue the debate with the following two articles, written by people who were either presenting or participants in the discussion.

I'd also like to note that the tuition fee issue is not only a concern for central Canada. Here "out west", we have seen the deregulation of university funding and a resulting hike in tuition fees. For example, students admitted at the UBC law school in 2003/2004 are paying annual fees of \$7000 for their legal education, fees that will increase to \$9000 for the 2004/2005 academic year. Conscious of the impact of increasing tuition fees on access to legal education, the University of Victoria and UBC faculties of law are conducting a multi-year study on the issue.

How can we resolve the dilemma between access to legal education and the financing of law schools in the current deregulation context? My colleagues Bruce Parly and Ann Tierney from Queen's, as well as Marie-Claude Prémont from McGill, share some of their thoughts. To theirs I add my questions, which remain unanswered: how will these increases in tuition fees affect student expectations in relation to their education, or to their results? How can we demonstrate in a concrete fashion to those students that they are "getting their money's worth"? Will we have to change the way we deliver legal education? Our evaluation methods? Will we have to change our professor-student ratios? What will be the impact on our individual work loads?

If you'd like to make comments on the following articles or any of the questions raised, or if you have other ideas for articles in the bulletin, please send them to Annie Rochette (rochette@law.ubc.ca). It will be our pleasure to publish them in upcoming bulletins.

In the next bulletin, we'd like to include articles on Teaching with Technology. If you'd like to share your experiences with learning technologies, from course management software to the use of Powerpoint or the internet in the classroom, please send your thoughts to Annie Rochette (rochette@law.ubc.ca)



TUITION FEES

In Search of a Third Way

By Bruce Pardy and Ann Tierney, Faculty of Law, Queen's University

At the 2003 CALT annual meeting in Halifax, a lively group took part in a panel discussion on law school funding and tuition fees. The purpose of the session was to explore options for finding a "third way" of raising law school revenue. Ann Tierney, Assistant Dean at Queen's, gave an overview of the present financial situation of law schools in Ontario. Professor Bruce Pardy, also from Queen's, then introduced the concept of post-graduation income-contingent tuition fees as an alternative to high up-front fees for law schools in deregulated jurisdictions. Professor Richard Janda of McGill discussed his school's proposal for a "social contract" as an alternative for law schools in provinces with regulated fees.

Universities in general and law schools in particular have two main sources of operating revenue: government grants and tuition. The level of government support decreased dramatically in the 1990s. These grants once made up approximately 75% of university operating budgets in Ontario but in 2000 made up only approximately 48% of operating budgets.

In 1998, in the midst of a period of government funding reductions, the setting of tuition for professional schools in Ontario was deregulated, and thus schools were able to set their own fees. The only requirement was that 30% of all new tuition dollars be set aside for student assistance. Ontario law schools responded to decreasing levels of operating funds by increasing their tuition levels to ensure the continuation of quality academic programs. In Ontario, tuition rose from a range of \$3,500 to \$5,000 in 1998 to a range of \$8,500 to \$16,000 in 2003.

High law school tuition fees present the following conundrum. On one hand, a legal education is a valuable commodity. Even at ten or twenty thousand dollars a year, a law degree is an excellent financial investment. On the other hand, high fees may limit access to legal education. The prospect of accumulating debt in the tens of thousands of dollars may deter some who would otherwise qualify for a place in law school from applying or attending. Also, for some graduates, debt may present an obstacle to pursuing less lucrative careers. Thus the problem is this: how to avoid charging students the high fees that well-paid lawyers can afford? Post-graduation income-contingent tuition fees, described in a forthcoming piece in the spring 2004 issue of the Queen's Law Journal, are one possible solution. Under this approach, "law schools would make a financial investment in their students by providing legal education at reduced up-front cost, and in return would receive an interest in the future income of the lawyers they have trained. As a condition of admission, students would promise to pay to their alma mater a certain percentage of before-tax employment income for a set number of years following graduation."

This strategy has several advantages over more traditional funding sources. "Post-graduation income-contingent tuition fees are efficient and equitable. They would not require additional government funding beyond current levels, and they would allow law schools to avoid the necessity of increased up-front tuition fees. They would be less onerous for law students, and in the long run, they would give law schools a more ample and secure source of resources."

In jurisdictions where schools are unable to set their own fees, one option is to seek voluntary agreement from students to contribute funds after graduation. This idea is the basis of the social contract model being explored at McGill. Like post-graduation income-contingent tuition fees described above, a social contract could stipulate contribution levels that vary by income.

An energetic discussion followed the presentations.

¹ B. Pardy, "Poor Students, Well-Paid Lawyers: An Introduction to Post-Graduation Income-Contingent Tuition Fees for Law Schools" (Spring 2004) Queen's Law Journal [forthcoming], at 1-2. *Ibid.*, at 2.



TUITION FEES

As objects of social discord

By Marie-Claude Prémont, Faculty of Law, McGill University

As we know, there have been significant increases in university tuition fees across Canada (for example, the University of Toronto Faculty of Law charged \$16,000 for the students admitted in 2003/2004), with the exception of the province of Québec, where tuition fees still average out to \$1675/year.

The rise in tuition fees has been accompanied by a substantial decrease in government funding of universities. For example, according to Statistics Canada, government spending on higher education in Ontario decreased by 33% between 1992-1993 and 2002-2003, and tuition fees increased by 123% between 1993-1994 and 2002-2003. In those same years, government funding of universities in Nova Scotia decreased by 31% while tuition fees climbed by 93%. For B.C. and Alberta, government funds decreased by 23% and 20% respectively, accompanied by a rise in tuition fees of 41% and 88%. On the other hand, the tuition fees in Québec (for residents of that province) have remained stable, as has government financing, with a decrease of 1% from 1992-1993 to 2001-2002. Saskatchewan and Manitoba are the only exceptions to the rule of inverse proportionality between government funding and tuition fees. Caution should thus be exercised by those in Québec who seem to think that an increase in tuition fees could be simultaneously accompanied by an increase in government spending.

It is also important to note that the above average tuition fee increases are not necessarily representative of the increases experienced in law faculties across the country. Where the legislation permits tuition fee increases up to a certain amount, professional schools like law and medicine have been the ones taking full advantage of these ceilings. The professional schools enjoy a demand larger than the number of admission spots. They can therefore afford to raise the tuition fees because there will always be more students willing to pay than spots. The only problem with this picture is that even if we are able to fill all the available spots, the rules of accessibility have been profoundly changed. The financial capacity of students (and their families) now becomes a determinant factor in potential students' decision to even apply. Many students will now consider they cannot afford to pursue legal studies, and this, despite the existence of generous financial aid programmes. The limitations of the archaic logic of giving charity to the "deserving poor" have since long ago been established, here and elsewhere. A study conducted by the Canadian Federation of Medical Students has shown that the deregulation of tuition fees has in fact changed the demographics of the student body: representation from rural areas has decreased, while representation from middle and upper classes has increased. For example, the annual family income of future doctors admitted to Western University's medical school went from \$82,000 to \$142,000 in the first three years of deregulation, despite the implementation of financial aid programmes.

(Cont'd over) →



TUITION FEES *(Cont'd from page 9)*

As objects of social discord

By Marie-Claude Prémont, Faculty of Law, McGill University

Alternative solutions have thus been proposed to address the accessibility issue. The ideas presented during the conference workshop, i.e. the post-graduation income-contingent tuition fees presented by Bruce Pardy of Queen's faculty of law, or the "social contract" discussed by Richard Janda of McGill University, demonstrate their proponents' good will to make the most of the current situation while trying to maintain accessibility to legal education. The contexts are different in Ontario and Québec and it would be difficult to meaningfully compare and contrast these two schemes. However, the unpredictability relating to the administrative costs, as well as the uncertainty surrounding the legality of these types of financing schemes, especially in terms of the tax implications, affect their legitimacy. This in turn has the effect of further legitimizing the complete overhaul of the way in which institutions of higher education are financed.

There is yet another dimension to this issue, which is unfortunately often overlooked. With the rise in tuition fees across Canada outside of Québec, the professorial organizations (either unions or associations) have benefited from increases in salaries. We are experiencing the inflation of salaries granted to certain categories of professors and researchers by certain faculties of law, an inflation in which the federal government programme of Canada Research Chairs is playing a distortion role that is not negligible. The resulting gaps in the salaries between faculty members of different departments of the same university, as well as between members of the same faculties, cause a great deal of frustration to the point where the increase in tuition fees appears as the most plausible solution to the gaps. Thus, the interests of the professorial bodies, disguised as arguments in favour of the quality of education, are pinned against the public interest of access to higher education. This hidden tension is especially felt in Québec since neighbouring Ontario schools, thanks to the increases in tuition fees, have dramatically increased the salaries of a number of their professors. It is difficult for professors in Québec to see the conflict of interest they are facing when looking at the question of deregulating tuition fees, since they would certainly be the first ones to benefit.