

MALCOLM MURRAY MacINTYRE
1904-1964

In 1930 Professor MacIntyre came to the Faculty of Law at the University of Alberta, having taken his Bachelor's and Master's degrees in law at Harvard University. For the next twelve years he and the late Dean Weir each taught about fifteen hours a week. Then in June of 1942 Dean Weir died and his colleague succeeded him. Two years later when the student body had shrunk to a handful because of the war, Dr. MacIntyre took a sabbatical leave which he spent in practice at his home town of Sackville, New Brunswick. Circumstances made it impossible for him to return to Alberta in the fall of 1945 so he resigned. After several years in practice he joined the Faculty of Law at the University of British Columbia where he remained until his death this April.

At Alberta he taught Torts, Sales, Jurisprudence, Wills, Evidence, Partnership and Property. The student body, like the faculty, was small and contact between them was close. Certainly Dr. MacIntyre's students were fond of him. He was friendly, completely lacking in condescension and he enjoyed wrestling with them over legal problems. In his early years some students might have been taken aback by his irreverence to black-letter law and his sociological approach. (He had been a student of Roscoe Pound.) As time passed, however, he succeeded in communicating his concern about the human importance of legal rules and his strong sense of injustice. In the beginning, his power of analysis was not yet apparent, for he seemed preoccupied with uncertainties and doubts. "I don't know. Nobody knows" was sometimes a reply to questions. By 1937-38, however, when he spent a sabbatical at the Harvard Law School, working for his Doctor's degree, his critical power had emerged. It was then that he wrote his famous article, *The Rationale of Last Clear Chance*, which was published in the Harvard Law Review and the Canadian Bar Review.¹ The leading writers in torts invariably cite it as excellent, and in recent years as classic. A great protagonist of Contributory Negligence Acts, Dr. MacIntyre was impatient with the tendency of the courts to continue to apply last clear chance and so to hold one party solely to blame and make the Act a dead letter. This was the subject of an article, *Last Clear Chance after Thirty Years Under the Apportionment Statutes*, that appeared in the Canadian Bar Review.² It shows the breadth and depth of his learning in the subject and his power of analysis and criticism. The tone of the article is pure MacIntyre: humorous, ironical and impatient.

To say that he was a distinguished scholar is of course true. More specifically he was a teacher, and perhaps his greatest contribution to legal education was in his influence on students. He would spend hours on the *Loach* case,³ and again on *Polemis*.⁴ After class his door was always open and the discussion continued. He interested himself in students' problems, legal or personal, and would become intensely in-

¹ (1940) 53 Harv. L. Rev. 1225; (1940) 18 Can. Bar. Rev. 665.

² (1955) 33 Can. Bar Rev. 257.

³ B.C. Electric Co. v. Loach (P.C. (B.C.)) [1916] 1 A.C. 719.

⁴ Re An Arbitration Between Polemis and Furness, Withy & Co. (C.A.) [1921] 3 K.B. 560.

volved in them. He imparted his own love of law and his concern for logic, workability and fairness.

His other contribution was of course in legal writing, though the volume is not large. There are seven articles in the *Canadian Bar Review*, and one on *The Rationale of Imputed Negligence* in the *University of Toronto Law Journal*.⁵ To Alberta lawyers Dr. MacIntyre will be remembered as the one who established the *Alberta Law Quarterly* in 1934 and ran it almost single-handed until publication was suspended near the end of the war after the publication of five volumes.

On becoming Dean in 1942, he made changes in the curriculum that gave recognition to new needs, particularly in public law. Thus he added both Taxation and Administrative Law to the course at a time when many still did not recognize their importance. Generally, however, he was not particularly interested in administration and organization, nor in following the book. Rules never seemed important, especially those applying to students. Indeed there may have been a bit of Irish in him.

Not being an organization man, he never sought positions on committees and councils. However, he did make a stimulating report as Chairman of the Canadian Bar Association's Committee on Noteworthy Changes in the Statute Law in 1944⁶ and was Chairman of an important committee of the Association of Canadian Law Teachers on pre-legal education in 1955-56.

His human traits emerged in little things. Once while in practice he defended a harmless inebriate who had accidentally bumped a pedestrian off the sidewalk, and then was charged with assault. "Doctor Mac" threw himself into this task with as much fervour and anxiety as he expended in a successful appeal on a perpetuities question before the Supreme Court of Canada.⁷ His students here still recall a number of incidents. One cold night in Edmonton near the University he found a stray pup. Carrying it in his arms, he went from door to door trying to find the owner. Probably he ended by taking it home. One year at Harvard he had traded his two tickets to the Yale Game for a fur coat. He continued to wear it as long as he remained in Edmonton, disreputable though it became. Then at a Convocation in Edmonton when he did not have his Doctor's hood, he borrowed Mrs. MacIntyre's (her degree being in Home Economics from Mount Allison).

Other qualities can be inferred from his writings. In one long article he made an error in the facts of a case, saying that a truck was unlighted. Noticing his mistake he wrote the Editor of the publication "I am very sorry that it occurred because one naturally regrets being in error and as a result of it a reader could hardly be blamed for expecting other errors in the statement of facts of other cases."⁸ In another article he set out to criticize certain provisions in a Contributory Negligence Act. He began by saying

"I am about to criticize this Act—and harshly. For that I am sorry and I herewith tender my apologies in advance. No disrespect is intended. The other Uniform Acts with which I am familiar are excellent. This one happens to contain provisions with which I disagree, and since my views are minority views they must be stated strongly, if they are to accomplish their purpose which is to raise doubts as to the wisdom of those provisions."⁹

⁵ (1944) 5 U.T.L.J. 368.

⁶ 22 Can. Bar Rev. 670.

⁷ *Auld v. Scales* [1947] S.C.R. 543.

⁸ 33 Can. Bar Rev. 504-05.

⁹ (1944) 22 Can. Bar Rev. 670, 675.

There is a touch of pathos in the fact that Dr. MacIntyre first became seriously ill early in 1957 while returning to Vancouver from Calgary. He had gone to attend the annual meeting of the Law Society of Alberta in order to be present when the law graduates gave to the University his portrait, which is now in the Law Reading Room. Anyone who saw him in the last seven years was bound to notice the effects of his illness and the courage with which he bore it. He died shortly after giving his last lecture this spring.

The generation of Alberta lawyers who are now approaching middle age remember him with respect and affection.

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