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Border Tactics: Canadian Legal Studies Workshops

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Border Tactics in the Canadian Legal Studies Workshops

ously, if Canada is to survive, that has to be resolved," he said. "Time will not resolve it."

Gagnon also chafed at the Canadian Charter of Rights and Freedoms, noting that Quebec has had its own Charter of Rights and Freedoms since 1975. "In fact," he said, "it predates the Canadian Charter of Rights and Freedoms and it goes beyond the Canadian one. It has within it a charter of social rights which the federal charter lacks. So why do you want to force on Quebec a Charter of Rights and Freedoms that the Quebec Charter of Rights and Freedoms would be subject to? Obviously, the intent was that Quebec would not be the point of reference, the point of reference would be the Supreme Court of Canada."

A recent proposal by the Canadian government to remove itself from five provincial jurisdictions, Gagnon said, was "pretty arrogant. This was not perceived as an act of generosity from the Quebec viewpoint."

"The federal government was saying: 'We are going to remove ourselves, but this is going to be conditional. You're going to have to respect the national standards. And to add insult to injury, those agreements were to be effective for five years. You have to negotiate them ad nauseam. ... I really tried to search for that concept that allows diversity, and I couldn't find it.'"

Preserving Canada's cultural diversity, Gagnon said, is crucial. "The only way Canada can survive," he said, "is to provide an environment that is conducive to allowing the Quebecois culture to survive." ■

The interplay of environmental and developmental issues, along with an examination of the proposed Canadian constitutional accord, formed the core of the fall semester's Canadian Legal Studies Workshops at UB Law School.

Offered as a three-credit seminar to law students and others under the auspices of the Canada-US Legal Studies Centre and its director, Professor Robert Berger, the Wednesday afternoon workshop series also drew other students, faculty and interested members of the public.

"I think there are many reasons on several different levels to have a greater understanding of what goes on in Canada," said Kerry Mitchell, public affairs officer for the Canadian Consulate in Buffalo.

"The workshop series is really quite broad, and it makes an attempt to focus on many different areas having to do with Canada. It's a particularly good source because they bring Canadian experts in to present their views and their research, rather than relying on American views of Canadian issues," she said.



"I was really impressed," one presenter, Professor Patricia Dirks, chair of the Department of History at Brock University, said of her listeners. She spoke on "Quebec's Distinct Society/Canada's Federal System: The Roots of Canada's Current Constitutional Dilemma."

"They were quite an interested audience, both because of their legal training — they were interested in the whole issue of constitution-making — and they also seemed to be fairly aware of the issues that were dividing Canadians."

Dirks brought a historical perspec-

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tive to the series, discussing the deep-seated fear of assimilation by French-speaking Canadians, and how that ensured defeat last fall of the nation's proposed new constitution. That constitution would have created special rights for Francophone Canadians both in Quebec and outside the province.

Dirks suggested that differing cultural perceptions led both French- and English-speaking Canadians to vote against the constitution — one group because it was seen as creating too few special rights, the other because it was seen as creating too many. "It was much easier to justify voting no than it was to justify voting yes," she said. "There was so much that was left unclear. I know I vacillated from day to day."

Dirks argued that the nation's Anglophone governments from the late 18th century onward adopted policies that ensured French-speaking Canadians could not assimilate into the larger culture. Though many Quebecois hold fast to the idea of Canada as a binational, bicultural nation — they regard Quebec City as their national, not just provincial, capital — Dirks said the notion of side-by-side existence has never caught on with Canada's Anglophone majority.

Why did the new constitution fail? "By trying to do so much," she said. "The attempt to reach a compromise included so many groups that it ultimately raised problems."

On a more immediately pragmatic level, two economic development promoters — Judith Kossy of the Western New York Economic Development Corp., and Mike Duffy of the Niagara Regional Development Corp. — gave a cross-border perspective on economic development policies, including consideration of the U.S.-Canada Free Trade Agreement, the proposed North American Free Trade Agreement and what these pacts will mean for businesses and for lawyers.

"The global trade that's impacting the region and impacting what we're doing is a set of laws, and it's implemented through a set of laws," Kossy said, explaining lawyers' role in international trade.

Of Western New York's changing economy, she said: "We have a lot more emphasis on trade with Canada. We have more emphasis on attracting Canadian investment. We've paid more attention to the infrastructure — roads, bridges — and we're trying to build cross-border relations, to build the whole pie."

Duffy, her counterpart across the border, spoke of his agency's efforts to foster entrepreneurship in existing com-

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panies, and to help rescue parts of failing companies by helping them spin off into profitable smaller enterprises.

"Some of the major issues happening here are all related to the restructuring of our manufacturing economy," he said. "We're not part of a lot of new investment these days."

Rather, he said, "We're spending more and more time in the area called restructuring. We're trying to identify components of an industry that may still be very viable, but no longer are viable in a bureaucratic multinational corporation. They may be much more viable as a small entrepreneurial structure."

That can work two ways, he said: either by carving such a unit out of a failing business and helping it to succeed on its own, or by developing a self-

sufficient unit within a corporation and giving it the autonomy to prosper as an entrepreneurial enterprise. That means financial support from the head office, but giving the entrepreneurs responsibility for developing and marketing their products.

Duffy cited as an example a recent trip to Pittsburgh in which he was told that 100,000 jobs were eliminated as that city's steel mills fell victim to overseas competition. "But nowhere did I hear that there were parts of those businesses that could be salvaged," he said.

Lawyers, he said, are needed both to help set up these new businesses, with a board of directors and bylaws; and to help make sense of the maze of government regulations that apply to businesses both large and small.

"There's a tremendous amount of legislation out there that in many respects goes against why somebody would even want to set up a business," Duffy said. "We need lawyers to start looking at why we have all this legislation. How do we make it simpler? There just seem to be so many roadblocks in there today."

Alex Kraas, of the Ontario Ministry of the Environment, spoke on "Toxic Waste Liability Issues: The Canadian Approach," discussing Canada's environmental cleanup fund — similar to the United States' Superfund.

"The problems are the same," he said: "Once you have an abandoned site, who cleans it up and who pays for it?"

Kraas presented some issues raised in a new discussion paper under consideration at the ministry. "Our approach is not as refined yet as it is in the U.S.," he said. "We're also looking at what we could learn from the American experience."

Other topics in the workshop series included the United Nations Convention on Biological Diversity; the issue of aboriginal rights in Canada; a proposed Ontario Environmental Bill of Rights, and "Myth and Reality in the Far North of Canada." ■