

THE LAW SOCIETY OF UPPER CANADA: 1797-1947*

A statute passed at the second session of the second Provincial Parliament of Upper Canada in 1797 provided that it should be lawful "for the persons now admitted to Practice in the Law and practising at the Bar of any of His Majesty's Courts of this Province, to form themselves into a Society to be called the Law Society of Upper Canada". The Society was organized at Wilson's Hotel, Newark, now Niagara-on-the-Lake, on the 17th day of July in the same year. Ten practitioners attended the meeting, called to the bar themselves and five others, and appointed six Benchers, one of whom became the Treasurer.

In 1822 the Treasurer and Benchers were by statute declared to be "one body corporate and politic in deed and in law, by the name of the Law Society of Upper Canada" with perpetual succession and a common seal. By this Act the Society was given power to hold lands, and in 1828 it purchased from the Attorney-General, the Honourable John Beverley Robinson, six acres "in front of his Park Lot" on the north side of Lot (now Queen) Street just outside the town of York. A building was erected on this land, in spite of objections that it was out of town and too remote, and it was declared by Convocation on November 8th, 1830, that the building and property should be "the permanent seat of the Law Society of Upper Canada by and under the name of Osgoode Hall". The original building, part of the present east wing, was completed by February 1832. It was enlarged in 1833 by adding a range of chambers to the west end, between 1844 and 1846, by the construction of a west wing and a centre portion which contained the library and was surmounted by a dome. Between 1857 and 1860 the central part was enlarged and the dome removed. Since that time the central section and both wings have been extended to the north.

On October 31st, 1947, the Society formally celebrated its One Hundred and Fiftieth Anniversary. In the afternoon a reception was held in Convocation Hall for judges, members of the profession, and distinguished guests representing the other learned professions and educational institutions. In the evening a reception and dance was held for the judges and members of the profession in Ontario and their wives. About 500 persons attended the afternoon, and 1,500 the evening reception.

A special brochure tracing the history of the Society has been published, the work of Mr. G. A. Johnston, K.C., the Chief

* This account has been kindly prepared for the Review by Mr. W. Earl Smith, K.C., the Secretary of the Law Society of Upper Canada.

Librarian. Copies of this have been sent to all members of the profession and to the guests of the Society at the receptions.

In the evening Osgoode Hall was thrown open for this historic occasion. The visitors could hardly have failed to be impressed by the dignity and beauty of the building and some of its rooms, particularly Convocation Hall with its panelled and book-lined walls and imposing portraits, the Great Library decorated with autumn flowers and with its domed ceiling lighted by the brilliant cove lights, and the lower rotunda of the centre wing where the supper tables were laid out.

At the afternoon ceremony the Secretary read the Minutes of the first meeting of the Society at Newark on July 17th, 1797, and addresses were delivered by G. W. Mason, K.C., Treasurer of the Society, the Honourable Ray Lawson, O.B.E., Lieutenant-Governor of Ontario, the Honourable R. S. Robertson, Chief Justice of Ontario, the Honourable L. E. Blackwell, K.C., Attorney-General of Ontario, and the Right Honourable L. S. St. Laurent, P.C., K.C., Secretary of State for External Affairs. Mr. St. Laurent's address is printed in full elsewhere in this issue, and the other addresses will be published by the Society in pamphlet form and distributed to members of the profession.

The following are extracts from the addresses delivered on this occasion:—

GERSHOM W. MASON, K.C.

I have been asked to give a résumé of the history of the Society. Since it covers a period of one hundred and fifty years I shall have to proceed at the rate of about ten years to the minute but I hope not to trespass on your time unduly.

The Society, as the Minutes indicate, was founded at Newark in the year 1797. The site of this building was purchased in 1828. It seems to me that it was a very bold thing for the lawyers of that time to do, because by the preceding year the population of York had grown only to eighteen hundred and seventeen people. Yet they had the courage to buy this site, six acres, for one thousand pounds, and to proceed to erect certain buildings on it.

Prior to 1837 there had been additions to the building and lawyers and students lived in it. They paid board and they were entertained the year round for thirty-two pounds ten shillings. If they had a fire they had to pay thirty-seven pounds ten shillings.

The Rebellion came in 1837 and the only entry in the Minutes of the Law Society about it is this — "December 4th, 1837: Mackenzie's insurrection broke out this night, and in consequence of which the Convocation assembled no more during this Term". However Osgoode Hall played some little part in the Rebellion. For a very brief period this Hall was barricaded. The windows and the doors were covered with two inch planks and loop-holed for musketry. There was a rather interesting situation so far as the Judges were concerned, because Lount was to come down Avenue Road with his section of the rebels and Mackenzie was to come down Yonge Street with his section, and they were to meet at Osgoode Hall. They didn't get here, but had they done so they would have found this situation: Sir Francis Bond Head, who had thought there would be no trouble, had now come to the conclusion that there would be trouble and he was standing with a musket in one hand and another musket resting against his chest; Chief Justice Robinson — not Robertson — Justices Macaulay, Jones and McLean, the Attorney-General and the Solicitor-General, with muskets, cartridge boxes and bayonets, were all in the ranks as private soldiers under Colonel Fitzgibbon who, you remember, won his spurs at Beaver Dam. That was a warlike array. The Rebellion also affected the Benchers of the Society. There were two Benchers who had been very deeply implicated in it. One was John Rolph, who afterwards fled to the United States, and the other was Marshall Spring Bidwell. He was a lawyer of great eminence and apparently was a favourite on both sides, because Sir Francis Bond Head gave him a copy of all his correspondence that had been found and he was given an opportunity to leave the country. He did so and went to New York. He remained a Bencher in this Society until 1871; but he would never come back. He believed in adhering to the word he had given Sir Francis that he would not come back. Mackenzie had been unfortunate enough to leave a carpet bag at Montgomery's Tavern with the names of all his followers in it.

Now I am going to mention a couple of matters that are not quite so relevant, but are interesting because they affect certain of the gentlemen who are with me on the platform. A number of Benchers, and I will not take time to particularize, are descendants of men who supported the Government on that occasion in 1837, but two of them are descended from supporters of Mackenzie. Lount had a brother and his grandson is one of our Benchers, Mr. Springsteen. As Mackenzie fled he came to Sixteen Mile Creek. He had a young man with him and they had to cross this creek on the 7th of December. It was very cold and the creek

was icy. They had to take off their clothes and hold them on top of their heads, and after getting across the creek they went to the house of a friendly settler. Mackenzie said he never came so close to perishing in his life. He was treated kindly there and the family put blankets over the windows to hide what was going on inside. They were fed and warmed and sent on their way. The grandson of this settler is Mr. J. R. Marshall of Hamilton, another of our Benchers. His other grandparent was in arms for the Government. So you see we have quite a close association with the Rebellion of 1837.

After 1837 the Hall was leased to the Government and the 93rd Highlanders occupied it for about five years.

Many of you have heard about our famous fence. Some people wanted to do away with it during the war. I am afraid it would not have been useful to anyone who might have bought it for munitions or any other purpose. It was erected between the years 1865 and 1868. The original contract price was \$5,350. We are now having the old iron fence completely repaired.

It may be interesting to you to know something of the origins of the students at the Osgoode Hall Law School. In our present second year, one hundred and twenty-two are graduates of the University of Toronto; one hundred and twelve are graduates of twenty-one other universities and colleges; and one hundred and fifteen are matriculants. In the third year we have one hundred and twelve graduates of the University of Toronto, ninety-three others from eighteen universities and colleges, and forty-seven matriculants. I should say that the Society had a phenomenal record during the past war. How many students were in the School at that time I do not know, but one hundred and eighty-seven of them volunteered for active service, and of the lawyers who were then practising, seven hundred and fifty-one served in the armed forces. That means one out of four lawyers in the Province.

In addition to others, the Society has Honorary Benchers. Their duties are not onerous. We have had four in the history of the Society. First was King Edward the Seventh, then Prince of Wales; King Edward the Eight, then Prince of Wales, now Duke of Windsor; the third was Lord Tweedsmuir, who served so acceptably as Governor-General of this Dominion; and the fourth is the present Prime Minister of Canada. Thus, we have now only two Honorary Benchers, the Duke of Windsor and the Prime Minister.

THE HONOURABLE RAY LAWSON

Mrs. Lawson and I appreciate the privilege of being with you here on this most auspicious occasion. It is rare in Canada that an organization or society lives to celebrate its one hundred and fiftieth anniversary. Any organization that goes through one hundred and fifty years must have justified its existence in the community and have been of great service to mankind.

Your Chairman has spoken of the early days of the Law Society of Upper Canada and he goes back to 1797 in the Village of Newark. Perhaps I might say just a word regarding the Lieutenant-Governors during those early days.

In the latter part of 1791 John Graves Simcoe came to Newark and in the summer of 1792 William Osgoode took the oath of office before him in what I presume was Wilson's Hotel, the same hotel in which this Society was founded five years later. There are many similarities between the history of the office of Lieutenant-Governor and the growth of the Law Society, though in a measure they have progressed in different directions. The Lieutenant-Governors in the later part of the eighteenth century had many responsibilities that happily are not mine today. The duties of the Lieutenant-Governor have become somewhat less onerous while the duties of the members of your Society have continued to grow greater and greater.

Ladies and gentlemen, I am not the chief speaker on the programme, but we are delighted to be with you here today on this most interesting and happy occasion; all I can say is that I hope that one hundred and fifty years from now our great-great-great-grandchildren will be here with your great-great-great-grandchildren to celebrate the three hundredth anniversary of the Law Society of Upper Canada.

CHIEF JUSTICE ROBERTSON

The Treasurer has told you something of the origin and history of the Law Society of Upper Canada. It is difficult for us to realize how much the pioneers of Upper Canada had to do without. It may not be in accord with the opinion sometimes held of the legal profession that, in the early days of Upper Canada, the need of lawyers in the communities of settlers was generally felt, but in the preamble to the Act of 1794 it is recited:

WHEREAS much inconvenience may ensue from the want of persons duly authorized to practise the profession of the law in this Province.

There being no lawyers, litigants were permitted to appoint by procurator some one else to represent them in court. The

character or education or ordinary occupation of the attorney by procuracy was immaterial. There was one case of a man appointing his wife to be his attorney, thereby giving her precedence, by something like one hundred years, over Miss Clara Brett Martin as the first lady lawyer in the Province.

To supply the lack of competent attorneys, the Governor was given authority by a statute passed in 1794 to issue licences to persons whom he deemed to be fitted by their probity, education and character to act as advocates and attorneys in the conduct of all legal proceedings in the Province. Forty shillings was the fee payable for a licence. Licences were issued to a number of persons, none of whom of course had what might be called legal education or training. Some of them had been officers in the Army. One notable name is Christopher Robinson, whose calling, I think, was that of land surveyor and who held the office of Inspector of Forests. A number of the men so appointed to be attorneys by the Governor under the Act of 1794, popularly known as "Heaven-born lawyers", became members of the Law Society of Upper Canada when it was incorporated in 1797.

It is well to pause a moment to consider the opening words of the Act of 1797. The purpose of the Law Society is stated as follows:

as well for the establishing of order amongst themselves as for the purpose of securing to the Province and the profession a learned and honourable body to assist their fellow-subjects as occasion may require, and to support and maintain the constitution of the Province.

I think it right to say that, in a high degree, the fulfillment of that purpose was secured through the Law Society of Upper Canada. Not that there have never been occasional lapses which have called for correcting action.

The Law Society has, in the century and a half of its existence, well fulfilled the purposes for which it was founded. No more democratic body exists. No discrimination on account of race, creed or colour is to be found in the conduct of its affairs. Discipline among its own members is strictly and sternly enforced. The matters commonly discussed at meetings attended by members of the Society, whether they are meetings of the Canadian Bar Association, the Lawyers Club or of the Osgoode Hall Legal and Literary Society, relate to changes in the law, or in practice and procedure, that will benefit the public, rather than to matters of personal concern to the members of the profession. The members of the Law Society may well be described in the words of the statute by which it was founded one hundred

and fifty years ago as "a learned and honourable body [whose purpose is] to assist their fellow-subjects as occasion may require, and to support and maintain the constitution. . .".

THE HONOURABLE L. E. BLACKWELL

It is only fitting that on the One Hundred and Fiftieth Anniversary of the Society which was practically founded by my first predecessor in office, I should have the privilege of saying a few words to you. It has been intimated to me that I might say something about prominent lawyers in politics. Innumerable names of great lawyers, who played a more or less prominent part in politics, will occur to you as they do to me. The first Prime Minister of Canada following Confederation, Sir John A. Macdonald, was a member of this Society. The first Prime Minister of the Province, Mr. Sandfield Macdonald, was a member of this Society, and down through the years in the Province of Ontario, particularly when public affairs have been going well, the Prime Minister has usually been a member of this Society also.

Now I think it is generally appreciated by everyone in politics how very useful it is, if possible, to be a lawyer. After all, the importance of the lawyer in politics and the contribution he has to make is really expressed in the great purposes and objects that led to the founding of this Society.

I think it is in the minds and hearts of all of us that this very ancient and very honourable Society, which has now existed for one hundred and fifty years, should continue to grow and flourish as the custodian of that important element of the public interest, the maintenance of the rule of law, and that the stream of justice in this Province and elsewhere in Canada should remain pure and clean.

ON THE LIBERTY OF THE SUBJECT

The rights of the person may be again divided into three: the right of security, by which a man has a right to be locked up in the station-house, if found drunk and incapable of taking care of himself; the right of personal liberty, by which a person may go wherever he pleases, if he has only the money necessary to pay the fare; and the right of private property, enabling every man to keep what he has got, when the Government has helped itself, through the medium of taxation, to all that it requires. (Gilbert Abbott à Beckett: *The Comic Blackstone*. 1856 ed.)