Law Schools, Bars and Education*

Depending upon where you start to count, the Association of Canadian Law Teachers held its seventh, or third, annual meeting at the University of Montreal from the fourth of June to the sixth.[1] The two immediately preceding meetings had coincided with the meeting of the learned societies at Laval in 1952 and McGill in 1951, and the Association this year accepted the suggestion of the University of Montreal, which is celebrating the seventy-fifth anniversary of its Faculty of Law, that it be the host school. The meeting was opened by the president, Professor Albert Mayrand of the University of Montreal, and a short greeting was extended by Mgr. Olivier Maurault, the Rector of the University. Mr. T. R. Ker, Q.C., speaking on behalf of the Bâtonnier of the Montreal Bar, welcomed the delegates, who came from every law school in Canada, except Saskatchewan and Manitoba, and from the Faculty of Political Science of the University of Ottawa, two of whose members teach law classes. M. Georges Sylvestre, on behalf of the Board of Notaries of which he is the president, also addressed the meeting, and he was followed by Professor Charles B. Nutting, President of the Association of American Law Schools. Professor R. E. Mathews, last year's president of the American association, attended the meeting at Laval and Professor Mayrand, as president of the Canadian association, was a guest of the Americans at their annual meeting in Chicago last December. It is hoped that this exchange of visits between the two associations will become an established custom.

The Association of Canadian Law Teachers now has two standing committees: on Libraries and on Comparative Law. The report of the Comparative Law Committee was given by Professor W.

*This account of the last annual meeting of the Association of Canadian Law Teachers was prepared for the Review by Professor J. B. Milner of the School of Law, University of Toronto.

[1] The first rather informal gathering of Canadian law teachers was called by Professor F. R. Scott of McGill during the Canadian Bar Association meeting in Ottawa in 1947. The Association of Canadian Law Teachers was organized with slightly more formality at McGill in 1951, when it met along with the learned societies. See for a short account of the Association (1952), 30 Can. Bar Rev. 608.

Friedmann of the University of Toronto, who described a new experiment in bringing together the two great cultures and legal systems of Canada. From the University of Toronto two common-law lawyers went to the three civil-law faculties in Quebec—Montreal, McGill and Laval—to lecture to their students. From these faculties civilian lawyers visited the University of Toronto to lecture to students in the School of Law there. So successful was this exchange that it is expected to become an annual event among the four participating schools. The scheme was made possible by a fund donated to the University of Toronto School of Law by the Carnegie Corporation for the advancement of comparative law studies. In his report Professor Friedmann also referred to the forthcoming publication of a series of symposia on comparative legal problems. The first of these volumes, on Public Corporations, will have contributions from all over the world. Later volumes on Matrimonial Property, and on *Fiducie* and Trust, will deal primarily with intra-Canadian comparative problems.

Following a practice established last year at Laval, the programme of the meeting was divided between plenary sessions and panel groups, the panels discussing subjects of particular interest to a limited number of members. It was in the plenary sessions this year that indications were to be seen of the maturing of the association and its increasing awareness of the importance of the professional law teacher's contribution to modern society. As always, hospitality was generously tendered and thoroughly enjoyed. On the evening of the opening day the University of Montreal offered a dinner, at which the speaker was the Hon. Antoine Rivard, Q.C., LL.D., Solicitor General for the Province of Quebec, and on the second day the committees and editors of the Canadian Bar Review gave a cocktail party, followed by a dinner by McGill University at its Faculty Club.

At the first plenary session Dean Horace E. Read of the Dalhousie Law School, who is also chairman of a committee on legal education of the Conference of Governing Bodies of the Legal Profession in Canada, lead a discussion on pre-legal education, a problem that confronts every law school faculty. Dean Read referred to the current tendency to lengthen the period of formal education required of a law student before he enters the law school, and raised the question whether this lengthening is necessary or, if necessary, whether it should take place wholly outside the control or supervision of the law faculty. He also referred to the Minnesota experiment where the legal and extra-legal study is directly

controlled by the faculty of law. The discussion gradually lead from the question of control to the broader one of length of time, and it is remarkable that a number of voices were heard in favour of reducing the total period required of a student, although none suggested that the standard three-year law programme could be shortened with desirable effect. At present a number of provinces require a university degree in addition to law-school training for admission to the bar, and in most schools, even those where a student may be admitted after two years of college work, most students have a university degree on admission. Canadian law schools tend, therefore, to be "graduate" schools, which means that the total college and law school education has taken a minimum of six years after senior matriculation, and in many cases it has been seven. When one remembers that before admission to practice the student may be required by his provincial bar regulations to spend up to two years under articles, the total period of training will be seen to extend in some cases to nine years. Although longer university training is of course desirable where it is economically feasible, in establishing minimum standards it is vitally important that the best use be made of the shortest possible period.

Some further discussion of a related topic took place at the final plenary session, when the ever-present problem of "practical training" was explored following descriptive reports of the Quebec experiment of placing "practical training" in the hands of the law schools during a fourth year. After hearing about the methods used at each of the three Quebec faculties, representatives from other provinces described what was being done in their schools. It is abundantly clear that practising lawyers voicing criticisms of university law schools are not the only ones to distinguish between "academic" and "practical" training. The problem is obviously regarded as a matter of immediate concern to the faculties of law throughout Canada.

As might be expected, pre-legal education led to a discussion of the objectives of legal education generally, and Professor Maxwell Cohen of McGill raised the question whether law societies and law schools do not entertain different ideas of what a lawyer should be and suggested that discussion would advance more quickly if the facts were investigated. The conceptions of "practical" training varied from an almost complete emphasis on court practice, which is unrealistic in a country where many lawyers rarely appear in any court, to an emphasis on the preparation of leases and similar documents, on the assumption, yet to be substantiated, that the

practice of most lawyers in real estate is thus limited. Clearly the same conflict is applicable to the "practical" subjects as to the "academic": Is the objective of legal education to tell the students what the "law" is and where to place the seal to make the "law" effective, or it is to present the student with problems to think about, so that after three or four years of working with them no problem that arises in practice will ever seem completely novel? Probably the ideal lies somewhere in between these two extreme views. No one can claim to know the perfect answer, and it is an encouraging sign to see Canadian law teachers, as a professional organization, coming to grips with the problem for the first time in Canadian history.

Further indication of the self-awareness of the Canadian law teachers became apparent at the plenary session devoted to the question whether the Supreme Court of Canada should follow the Privy Council practice and deliver a single judgment, with no concurring or dissenting judgments. It was understood that the Canadian Bar Association had appointed a committee to consider this question and that no representative of the academic side of the legal profession had been included. This, according to one member, could hardly have happened anywhere else than in Canada, and perhaps indicated that the prestige of the law teacher in this country is somewhat lower than elsewhere. The one-judgment proposal itself hardly needed to be discussed, the membership was so unanimously against it. After some discussion the final view seemed to favour the present system of concurring and dissenting judgments, with the one limitation that there should always be an opinion labelled the opinion of the court, which would represent the complete area of agreement among the majority. Much of the discussion was devoted to the question of the status of the association and how it could most appropriately present its views on a matter on which it had not been consulted. The conclusion was that the views should go directly to the committee of the Canadian Bar Association as a voluntary expression of association opinion that might be helpful to the committee.

The question of research and legal writing was discussed at a plenary session at which Mr. G. V. V. Nicholls, Q.C., the editor of the Canadian Bar Review, was chairman. The need to improve research and legal writing in Canada was readily admitted by everyone. At the same time, the feeling was general that there were indications of an increased interest in legal writing and in support reference was made to the essay prizes offered by the Canadian Bar

Association and by the fund of the University of Toronto School of Law for comparative law. Of the various reasons advanced for the small amount of writing in Canada in relation to other countries, the financial question and the problem of time seemed to be foremost. Several members felt that curricula are already crowded, and the present faculty teaching load is too heavy, which leaves the students and faculty with little time for writing. Apparently if law teachers taught fewer subjects and were paid more, they would hurry about writing on every conceivable topic. This possibility led to consideration of the advisibility of setting up some organization to act as a clearing house on research topics so that duplication of effort might be avoided. One voice, that of Mr. Clive Parry of Cambridge (now visiting professor at the Harvard Law School), who was a guest at the meetings, was heard to suggest that good legal writing is not necessarily encouraged by elaborate organization. When the desire to write comes, other obstacles are overcome, but with no obstacles, the desire or ability to write something of value does not automatically arise. Mr. Parry seemed to have a wholesome fear of over-organization.

The keen interest in the subjects discussed at the plenary sessions reduced the panel discussions to little more than formalities this year, although a large number of members showed a desire to attend a group discussing the teaching of jurisprudence, or legal philosophy. Here, again, was evident the striving of the professional law teacher for clarification of his objectives, which is nowhere more necessary than in the teaching of jurisprudence. A subject like jurisprudence, if it may be called "a" subject, forces one to consider the question, What am I teaching this for? more directly than any other subject on the curriculum. But, once the law is conceived as a dynamic instrument to regulate an orderly society, it is a short step to see jurisprudence as the essential study of the system itself, in theory and in action.

Perhaps more than after any previous session the association meetings this year broke up with a mutual feeling that the problems of legal education, though still unanswered, are challenging more minds and receiving more consideration than they have in the past history of Canadian law schools, and that the hope for a renaissance in legal education is not a wholly idle one.