The Law Teachers' Annual Meeting*

The fourth annual meeting of the Association of Canadian Law Teachers was held at Winnipeg on June 3rd, 4th and 5th, 1954, in conjunction with the meetings of the learned societies which were held this year at the University of Manitoba. Nearly every law school in Canada was represented—Dalhousie, University of New Brunswick, McGill, Montreal, Toronto, Osgoode, Manitoba, Saskatchewan, Alberta and British Columbia. The editor of the Canadian Bar Review is a member and attended the meeting as he has always done in the past. For several years the president of the Canadian Association has been a guest at the annual meeting of the Association of American Law Schools. Under this practice Professor Laskin went to the Chicago meeting in December and in return the president of the American body attended the Winnipeg meeting. He was Professor Shelden D. Elliott of New York University Law School, a former dean at Southern California and now director of the Institute of Judicial Administration which Chief Justice Vanderbilt helped to establish. Another guest was Mr. K. Howard Drake, Secretary and Librarian of the Institute of Advanced Legal Studies at the University of London. Members of the judiciary who took part were Chief Justice Williams, Mr. Justice Campbell, Mr. Justice Duval and Mr. Justice Freedman of the Court of Queen's Bench of Manitoba. In addition, Dr. N. A. M. MacKenzie, President of the University of British Columbia, attended some of the sessions.

The president of the Association, Professor Laskin, presided at the meetings, which were attended by some thirty-five law teachers. A prominent part in the programme was played by Dean Tallin of the Manitoba Law School and his teaching staff.

In his opening remarks the president pointed out that the law teachers first met informally at the time of the annual meeting of the Canadian Bar Association in 1947 and in each of the following two years, and with the learned societies in the last four. Reviewing briefly the nature and activities of the association, he referred to

*This report was prepared by Dean W. F. Bowker and Professor Alex Smith of the Faculty of Law, University of Alberta.

the fact that it is primarily concerned with teachers' problems and interests. The constitution, which was reached by tacit agreement rather than by solemn and formal promulgation, can be amended at any time by a majority vote of those present.

Turning to the business of the meeting, Professor Laskin referred to a resolution passed at the 1953 meeting expressing opposition to the one-judgment proposal for the Supreme Court of Canada. That resolution favoured a "judgment of the court" while maintaining the existing right of each judge to add his own concurring or dissenting opinion. After the 1953 meeting the executive prepared a statement in elaboration of the resolution, which was sent to the Minister of Justice, the President of the Canadian Bar Association and the chairman of that Association's special committee on the subject. Although it appears that no formal acknowledgment of the statement was received, it was widely circulated. Moreover, Mr. J. A. MacAulay, chairman of the special committee, indicated at the annual meeting of the Alberta Section of the Canadian Bar Association in January that his committee had received the statement favourably.

Another item of business was to make arrangements for the compilation of the early history of the Association. This will be important for the future because the early meetings were most informal and the proceedings were not reduced to writing. It appeared likely that one of the law publishing houses will be prepared to assist in publishing it.

One of the highlights of the meeting was the contribution made by Professor Elliott. He attended all sessions and generously made available his lengthy experience in the Association of American Law Schools. Stressing the value of the interchange of views between countries, especially in law, he suggested that it would be profitable to study the similarities and differences between American and Canadian common-law jurisprudence, and invited suggestions as to areas that lend themselves to comparative study. At another point in the meeting, when minimum standards were under discussion, he referred to the minimum of 1,080 hours laid down by the A.A.L.S.—twelve hours a week for thirty weeks for three years. His own view on the proper minimum was from 1,200 to 1,350 hours. The object is to produce a competent practitioner with an interest in public affairs. In the United States the existence of forty-nine admitting jurisdictions with their own bar examinations creates peculiar problems for the law schools. Some law schools are national while others are local. Usually graduates of

the former enter practice as juniors in the large city firms throughout the country, whereas those from local law schools go directly into practice for themselves in their own states. Bar examinations control to a large extent the content of curricula in the law schools.

It appears from his account of the content of law-school courses and of methods of teaching in the United States that developments go in cycles. For example, cases are not used as exclusively as they were a few years ago. Other materials have been added to the case books. Time spent on recital of facts by the students in class has been reduced, particularly in the senior years. For a time there was a proliferation of small courses, but this has been followed by a trend back to packaging. Some courses that disappeared for a time are now reappearing, for example, equity. The trend to public law has been to some extent reversed and there is now more emphasis on private law. A wide choice of options is being replaced by required courses. The expansion of seminars has passed its peak. Legal writing may have been overemphasized. There is a growth of "legal clinics" in the law schools. Some schools have made use of visual aids, such as moving pictures of an accident that is made the subject of a mock trial. Graduate programmes have grown until now 1,600 out of a total of 38,000 students are graduate students.

These comments of Professor Elliott's have been noted in some detail because of their pertinence in Canada. To those who want law schools to do everything, except possibly what they do now, we can point to the American experience to show that many innovations are not lasting and that there is no simple, ready-made recipe for producing model practitioners.

One of the main items on the agenda was the consideration of the advisability of endorsing a statement of objectives and of minimum curricular requirements. Dean Read of Dalhousie, in opening the discussion, approved the stating of objectives from time to time. He was, however, opposed to an attempt by the Association to prescribe minimum curricular requirements, at least for the time being. The Association is not an organization of schools but of teachers and there is no need for it to accredit law schools as the American association does. The second principal speaker on this topic was Mr. H. G. H. Smith of Manitoba. He favoured the establishment of both objectives and minimum curricular requirements. We still have the age-old problem of theoretical as against practical training, he said. Most schools compromise, with emphasis on the academic. It is impracticable to turn out a com-

plete lawyer and the function of a law school is to graduate men grounded in basic theory and method. It is arguable that some specialized courses, for example, patents and labour law, should be left for graduate schools. Agreement on minimum curricular requirements might assist in solving the problem of interprovincial recognition.

Nearly everyone contributed to the discussion of this topic and ultimately it was agreed that the executive should appoint a committee to bring a draft statement of objectives to the next meeting. Some members would have preferred to proceed forthwith to a detailed study of various subjects on the curriculum but the consensus was that clarification of objectives should come first

In connection with the same subject Professor F. R. Scott read an excellent paper prepared by Professor Maxwell Cohen of McGill entitled "Objectives and Their Achievement". In Professor Cohen's view, the objectives are (1) to train the student to practise law in all its present-day forms; (2) to make him aware of the sources and nature of law and the legal system; (3) to teach him the impact of law and society upon each other; and (4) to make him think about what the law ought to be. As for methods, the university is the proper place to teach law, and an efficient law school requires a strong staff with a library that permits a high quality of research. The school must give twelve to sixteen hours a week in classes for at least three years, with at least twice the time spent in preparation that is spent in class. The curriculum must offer the student a good grounding in private and public law, and make him see the legal order as a whole. It must be aimed at the average student as well as the brightest and help him to think for himself and improve his performance. For legal education in Canada to reach its full potential, we require larger full-time staffs, better salaries, better libraries, the offering of options in the third year, staff and funds for graduate study, improved methods to bridge the gap between legal education and practice, and the development of more and better teaching materials.

At another session Mr. H. E. Carey and Mr. J. E. Wilson, both of Manitoba, led discussion on the subject of "Shaping the Curriculum". Their talks covered subject matter of courses, methods of teaching and pre-legal training. Mr. Wilson approved the saying that a graduate "must be equipped to grapple with the unknown". He observed that it is hard to produce from the student who comes into the law school, bearing in mind his pre-legal

education, or lack of it, the type of graduate envisioned by the Canons of Ethics of the Canadian Bar Association.

Mr. Drake gave an exhaustive explanation of the organization of the profession in England and Scotland and of the requirements for qualifying to practise law in each branch of the profession. It appears that admission to the bar depends on passing a series of examinations which do not require attendance at classes and for which students may prepare by attending "cram" colleges. There has, however, been some tightening of standards since the war. The eating of dinners at the Inns of Court is still required. Probably the greatest safeguard of standards at the bar lies in the tradition of a sound, liberal education together with the custom of a voluntary post-admission apprenticeship in the office of a successful leader. The formal admission requirements do not seem devised to ensure that a successful candidate will be able to take his place at the bar. The admitted high calibre of the English bar depends on the principle of survival of the fittest together with a high tradition of public service rather than on stringent standards of admission. On the North American continent we appear rather to rely on elimination of the unfit during the formal training that is a prerequisite to admission. As for solicitors, on the other hand, the period of articleship is long and the examinations far from perfunctory.

One afternoon was given to two papers on the jurisprudence of the Supreme Court of Canada. In the first of these Professor Albert Mayrand dealt with "The Work of the Supreme Court in Civil Law". He reminded us that the Supreme Court is a general court of appeal for all Canada—a tribunal where the common- and civil-law systems meet. He gave a scholarly description of the influence of the one system on the other, particularly of the extension of the doctrine of *stare decisis*, as well as certain substantive rules of common law, into Quebec jurisprudence. To one not familiar with the civil law it was most instructive to learn of the interaction between the two systems and to remind ourselves of the rôle of the Supreme Court in bringing it about.

In the second of these papers Professor Laskin examined four important constitutional cases decided by the Supreme Court of Canada in the five years since it became the court of last resort: *Johannesson* v. *West St. Paul*, [1952] 1 S.C.R. 292; *Saumur* v. *City of Quebec*, [1953] 2 S.C.R. 299; *Johnson* v. *A. G. of Alberta*, [1954] S.C.R. 127; and *Winner* v. *S.M.T. (Eastern) Ltd.*, [1951] S.C.R. 887, affirmed in part by the Privy Council, [1954] 2 W.L.R. 418.

He found in these recent decisions a trend toward rehabilitation of the peace, order and good government clause; a disinclination on the part of the court to treat a provincial statute as valid under the double-aspect rule or, in other words, a trend toward denying the provinces legislative power that earlier decisions accorded to them under the double-aspect rule. On the subject of fundamental freedoms, he raised the question whether the Supreme Court would ultimately find in the constitution an implied bill of rights that bars the provinces from passing laws abridging freedom of speech and religion.

It is perhaps fortunate that law teachers do not always adhere strictly to the subject before them, because a discussion on objectives veered into a consideration of the vital question, Who should be admitted to law schools? One suggestion is to let in everybody who possesses the paper qualifications and rely on examination results to weed out the unfit. An opposing view supports very rigid admission standards at the threshold of law school with the aid of interviews and tests of aptitude, interest and stability. Although unanimity was not reached, it is significant that the meeting gave lengthy consideration to this subject. After all, the material that comes into the law schools may be the most important factor governing the direction that legal education and standards in the profession will take.

Ever since the organization was founded, there has been a difference of opinion as to whether it is better to meet with the learned societies or with the Canadian Bar Association. There are advantages and disadvantages to each course. The sense of the meeting seemed to be that it would be better not to make an invariable rule, but to meet sometimes with the one group and sometimes with the other.

A new executive is elected at each meeting and the members for the forthcoming year are as follows: President—W. R. Lederman, Dalhousie University; Vice-President—W. F. Bowker, University of Alberta; Secretary-Treasurer—George A. McAllister, University of New Brunswick; Executive Members—Bora Laskin, University of Toronto (Immediate Past President), G. P. R. Tallin, University of Manitoba, and R. Comtois, University of Montreal.

In its short existence the Association has grown in strength, vigour and maturity, and has opened avenues of inquiry that will be fruitful in future years.