

# THE CANADIAN BAR REVIEW

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## LEGAL EDUCATION.

### REPORT OF THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

The SPECIAL COMMITTEE ON LEGAL EDUCATION begs leave to report as follows:—

On June 15, 1933, a Committee, consisting of the Chairmen of the Standing Committees, was appointed by Convocation to consider various matters affecting the Law School and Legal Education, and upon its recommendation Convocation appointed this Special Committee on Legal Education, consisting of Messrs. Ludwig (Chairman), Young, Denison, Robertson, Sims, Nickle, Middlebro' and G. L. Smith "to investigate the subject of Legal Education in all its aspects, and report their conclusions and recommendations."

Your Committee has held several meetings, the Treasurer also attending, at which they have had the advantage of consulting a number of the Judges of the Supreme Court of Ontario, the Dean and lecturers of the Law School and of hearing representatives of the County of York Law Association, of the Lawyers' Club of Toronto and of the Law Students. Many of the representatives, as well as the Dean and lecturers, were good enough to supplement the views orally submitted by written memoranda. Your Committee desires to express its appreciation of the valuable assistance they have derived from these sources.

Mr. Sims, a member of the Committee, during a recent visit to England, spent some time investigating Legal Education there and the Committee is much indebted to him for his valuable report and recommendations.

Your Committee inspected the Law School, the Students' Library, the Lecture Rooms, Students' Common Rooms and other portions of the Law School building and as a result of

such inspection recommended certain additions, alterations, replacements and improvements, and these were immediately undertaken and have been carried out. Further improvements are necessary but they must await a comprehensive report by an architect.

#### PRELIMINARY

The question of Legal Education in a wide range of its many aspects as affecting the student, the profession and the community has received peculiar consideration during the last 25 years in the United States and Canada, and to a less extent in England. It has been the subject of annual reports by the American Bar Association and the attention of our Canadian Bar Association has been given to it with resulting recommendations and reports.

In our common heritage of the English Common Law, the conclusions of leading American lawyers and teachers of law are of peculiar interest to Canadian lawyers who may, as they do, combine the functions of the English Barrister and the English Solicitor. Ontario lawyers will naturally incline towards English opinion and practice which we believe we are well advised to follow in principle as far as different conditions warrant.

In England they have entirely different courses of study and examinations for the Bar and for admission as a solicitor.

A candidate for the Bar may become a student of one of the four Inns of Court on passing one of several prescribed examinations, university matriculation being sufficient. His course takes about three years and during that time he must keep Terms by dining in the Hall of his Inn three days if a member of a university, otherwise six days, in each Term. Before being called he must pass the Bar examinations conducted by the Council of Legal Education, a joint Committee appointed by the four Inns of Court, to which by an immemorial custom is confided the duty of admitting students to the Bar. The Council provides lectures which the student may, but is not obliged to attend.

A candidate for admission as a solicitor must serve under articles for three years if a graduate, otherwise for five years. Unless he has passed some exempting examination, he must pass a preliminary examination conducted by the Law Society more elementary in character than matriculation. Before admission, he must attend a Law School provided or approved by the Law Society for one year and must pass an intermediate and a final examination conducted by the Society. Much of the training before Call to the Bar and for admission as a solicitor is given

by private law tutors. Substantial fees are paid to solicitors on entering into articles and to barristers for the privilege of reading in Chambers.

A Committee presided over by the Rt. Hon. Lord Atkin made a report on Legal Education in July, 1934, in which it was said that, except for the attendance at the Law School for one year, the majority of candidates for admission as solicitors do not receive any university training and, with reference to candidates for the Bar, the report said :

"It has to be remembered that a large number of men seek admission to the Bar every year who have not been educated at a University. They come after a previous experience in business, or in a solicitor's office, in the civil service at home and abroad, in local government service, trade union work, journalism, and the like. The right to be admitted to the Bar is much valued, and we do not think it practicable that it should be confined to members of a University."

The distinction between the Barrister and the Attorney was adopted in the earliest legislation of this Province, and in keeping with English precedent for the Bar the attendance for four terms at York for every student was for some years rigidly enforced. Down to the establishment of the present law school service in a law office bulked very large in a student's professional education in this Province. Examinations were simple and frequent for Call to the Bar as well as for admission as a solicitor, and the student depended almost entirely on his independent reading and the training he received in the office of the solicitor to whom he was articulated.

#### ADMISSION REQUIREMENTS

A subject that has created much discussion and has received special consideration from your Committee is the educational qualification that should be required for admission to the Law Society as a student-at-law. Many changes have been made in recent years but a standard other than graduation from a University has always been maintained. For many years prior to 1920 a certificate of having passed the matriculation examination of a university approved by Convocation was sufficient for admission to the Society. This was altered by a rule of 1922 to require Matriculation with Honours or an unconditional pass into the second year of any recognized university. In the following year new regulations with new terminology having been

adopted by the Department of Education, "Middle School" examination formerly Junior Matriculation, with specified subjects in the "Upper School" or former Senior Matriculation, was prescribed.

On May 20, 1926, an important change was made by an amendment of the rule to take effect on September 1, 1927, which required for admission to the Society an unconditional pass into the third year of the course leading to the degree of Bachelor of Arts of any approved university. This adoption of what is known as the "two year college course" was doubtless due to the discussion that followed a recommendation by the American Bar Association in 1922 in favour of a general requirement throughout the United States of two years' attendance at a college or a satisfactory equivalent in the way of cultural training as admission to the study of law. This recommendation seems to have been more fruitful in Canada than on the native soil. At the meeting of the Canadian Bar Association in 1927 the chairman of the Legal Education Committee reported that 8 out of 9 provinces had adopted the standard of two years in Arts for admission, whereas a recent annual review of Legal Education by the Carnegie Foundation indicates that it had then been adopted by only 11 of the 48 American States.

On May 19, 1932, the rule of 1926 was amended by restoring the standard of admission to the Middle School examination with additional subjects of the Upper School examination. This followed an important change by the Department of Education whereby instruction in the Upper School work, the equivalent of the first year pass course at the University, was transferred to the high schools and collegiate institutes of the Province. The University of Toronto thereupon discontinued entirely its first year pass course. Instruction in the first year pass work or the Upper School work is still available in the other provincial universities but they all, with possibly one exception, accept a standard equivalent to that required for admission to the Law Society as sufficient for admission to the second year pass course. The curious situation resulted that with negligible exceptions a student need spend at a university only one of the two years formerly required for the "two year college course." The arguments which have been urged in support of the two year college course were chiefly that students who had spent two years at a University were likely to complete their course and obtain a degree and that permission to enter as matriculants tends to increase the number entering the profession which is already overcrowded.

It is significant that except as a preliminary to the early abolition of the matriculant class the two year college course received no substantial support in the material or representations submitted to the Committee. The York Law Association and other County Associations, the students' representatives and a majority of the members of the Lawyers' Club all advocated the single standard of a degree from an approved university. The Dean and Faculty of the Law School are of the same opinion. Your Committee inclines to think that in the helpful discussions we had, the views officially submitted were somewhat modified. Nevertheless, the representations made have borne strongly on your Committee.

Your Committee fully realizes that many of the profession, apart from any ulterior motive of restricting numbers, sincerely desire an improvement in the cultural standing of students and to that end would require some attendance at a university. Your Committee while recognizing the importance of a good cultural background for all intending lawyers, are not convinced that such a requirement should now be enforced. They are also of opinion that the emphasis laid upon the importance of a university degree has to some extent obscured the advantages which students may and ought to derive from five years' experience in actual practice in an office, especially in the case of matriculant students who may spend two years in offices in their own locality, gaining valuable practical experience without the interruptions and expense incident to removal to a university centre for nine months of the year.

Your Committee, after the fullest consideration, is unable to recommend either the two year college course or a university degree as a necessary condition for admission to the study of law. A university degree, though very desirable, should not be essential and the two alternatives at present open should remain—that graduates of approved universities be admitted to practice after serving under articles for three years and students of the matriculant class, after serving under articles for five years, all students being required to complete the three year course of study at the Law School. Your Committee is fortified in this opinion by the Report of Lord Atkin's Committee to which reference has already been made.

#### MATRICULANT CLASS

Heretofore matriculants after admission to the Society have spent two years under articles without any supervision. They

have not been called upon to follow any course of study or to satisfy any tests as to their fitness to enter the Law School. There has, therefore, been no opportunity to ascertain their capacity and diligence and, should they fail to pass the examination at the end of the first Law School year, the three years will probably have been wasted. This is an important consideration having regard to the recent regulations respecting examinations in the Law School, by which students who fail to pass in any year are either disqualified from further attendance or are required to repeat the year. It seems desirable, therefore, that some selective process should be adopted at an early stage to ensure that only well qualified matriculants shall be admitted to the Law School.

Your Committee therefore makes two recommendations in regard to matriculants : first, that the present requirement of 50% shall be increased to 60% of the marks on each paper in respect of the subjects required to be written for admission as a Student-at-law, and second, that after being enrolled and before entering the Law School matriculants be required to pursue a course of preliminary study and satisfy prescribed tests. Concrete suggestions in this regard can be formulated to better advantage by the standing Legal Education Committee in co-operation with the Dean and staff. Your Committee recommends that this course be adopted.

#### TRAINING IN OFFICES

While opinions may vary as to their relative importance, Legal Education clearly consists of two distinct branches—the academic in legal theory and the vocational training that qualifies a lawyer for the services he must render in non-contentious business, as well as in litigation. There can, however, be no difference of opinion in respect of the value and importance of proper office training and the immediate need of better measures to supply it.

The gravity of the problem and the difficulties of finding a solution are fully recognized by the experts and the practising lawyers who have made an effort to find a remedy. In an introductory article to the Annual Review of Legal Education of the Carnegie Foundation, entitled "The Missing Element in Legal Education," the question is fully discussed ; and special consideration has been given to the question by the Legal Committee of the Canadian Bar Association. It was the specific problem for consideration at the meeting in 1931, and after considerable

interchange of views among its members, and obtaining the opinions of many of the profession, the Committee thought that no specific recommendation should be ventured until after further discussion. That the student requires practical training was stated to admit of no doubt. While abstaining from making any recommendation, what were described as merely "conceivable possibilities" were outlined in considerable detail to aid further discussion. In the Report of 1932 the difficulties are again pointed out, with the suggestion that the present tendency seems to be in the direction of office service after graduation but before call. In the Report of 1933 the conclusion is reached that no suggested solution seems to be entirely satisfactory and it is again stated that the tendency towards apprenticeship appears to be after graduation and before call.

The requirement of compulsory attendance at the Law School in Toronto necessarily encroaches to a great extent on practical legal training in an office. The Law School work is undoubtedly of great importance and value but your Committee is of opinion that the tendency has been to emphasize unduly the academic training at the expense of efficient office training. We think a change in this respect is desirable, and that greater facilities should be provided for work in the office.

As a first step to this end your Committee recommends that the number of morning lectures be substantially reduced and that a return be made to the practice formerly in vogue of giving at least one lecture a day to each class late in the afternoon. Thus, if lectures are at 9 a.m. and at 4.40 p.m., the students will be available for office work during office hours. Your Committee further suggests that some courses of the existing curriculum might be shortened materially. In the curriculum for the session of 1932-33, which is being substantially followed this session, 90 lectures on Contracts, 48 on the Law of Property and 48 on the History of English Law were delivered in the first year; 48 on the Law of Property, 54 on Agency and Partnership and 54 on Sale of Goods in the second year; 48 on Trusts (a subject embraced in equity already dealt with in 48 lectures in the second year), 54 on Conflict of Laws and 48 on Constitutional Law in the third year. The foregoing indicates a possibility of reducing the number of lectures in some subjects without serious disadvantage to the student. Your Committee is of opinion that a rearrangement of the curriculum and a change in hours of lectures will be of important advantage to the students, having special regard to widening the opportunity for practical training.

In connection with this subject, your Committee feel that they should draw attention to a growing tendency on the part of many solicitors and students to disregard the provisions of Section 9 of The Solicitors Act, which provides that no student shall be admitted or enrolled as a solicitor unless :

(1) During the time specified in his articles of clerkship he has duly served thereunder and except while attending the course of lectures at the Law School and undergoing examinations as prescribed by the Rules of the Society he has been during the whole of such time of service actually employed in the proper practice of a solicitor by the solicitor to whom he has been bound, and that he must also furnish a certificate by the solicitor to the effect that during the whole of such period of the articles of clerkship the student has faithfully and diligently served the solicitor as his clerk in the business, practice and profession of a solicitor, except during the time when he was in attendance at lectures at the Law School and on leave in the Christmas and summer vacations granted by the solicitor, and that the student was not at any time during the said period of service to the knowledge or belief of the solicitor, engaged in any profession, business or employment other than that of such clerk;

(2) The student files an affidavit in which he swears to a state of facts similar to those certified by the solicitor.

Your Committee is of opinion that if the requirements of The Solicitors Act, above referred to, are strictly complied with and reasonable opportunity is afforded for attendance in an office during the Law School term, a student really desirous of obtaining a practical office training can, even under modern conditions, obtain experience that will fit him to perform satisfactorily the usual legal tasks that fall to him.

#### METHODS OF STUDY

This is a technical subject and one on which the views of the Dean and his staff are of great value. It has, therefore, been fully discussed with them. During the last few years most of the lecturers in many, though not in all subjects, have employed what is known as the Case method. This system which involves a detailed discussion of decisions of the Courts rather than the use of text books and the discussion of principles with reference to leading cases was at one time very generally favoured, and was employed in the important Law Schools in the United States.



There is no doubt that it stressed one very important feature of study, namely the extent to which those practising in the Courts must examine and analyze precedents which have been instrumental in forming the basis upon which legal principles are founded. The present methods adopted in the Law School are to some extent, if not largely, the result of a Report of a Special Committee to Convocation on 20th March, 1924, in which it was said :

"Methods of instructions must of course be left generally to the discretion of the individual members of the teaching staff, but your Committee believes that the increase of the staff and the lengthening of the session will facilitate an improvement in teaching methods.

"Under the present system the share which the students take in their own legal education at the law school consists chiefly in taking notes during the hours of lectures, and in preparing for examinations by reading these notes and the prescribed text books. In the case of some students, at least, the process consists in attending the lectures and in preparing for examinations by reading typewritten notes purchased from their predecessors.

"This system doubtless furnishes the students with a certain store of legal principles, but it is doubtful whether it affords a sufficient training of the students' minds so as to enable them to apply legal principles to the complicated series of facts which arise in practice. Your Committee believes that, to some extent, the old system of lecturing might advantageously be replaced or supplemented by some method of instruction which will demand a larger share of intellectual effort from the students, and that the teaching staff should be encouraged to try experiments with this object in view. In some subjects, at least, it would seem worth while to substitute for ordinary lectures the discussion of cases by the students under the direction of the lecturer."

There are signs, your Committee thinks, that the great favour with which the Case method of teaching law has been regarded is somewhat on the wane, and your Committee recommends that this topic should be re-examined by the Legal Education Committee with the assistance and co-operation of the Dean and his staff with a view to a possible modification of the system. The advantage of a study of authoritative text books and the orderly arrangement of general principles of law should not be unduly minimized.

Your Committee considers that the curriculum at present in force and which in general outline has been adopted for some years requires reconsideration, not only with a view to allowing more time for office practice as already suggested, but also to provide for a better balanced course of study. There is, for instance, in the first year, no general survey by way of introduction to the Common Law, and the principles of Equity. The English Common Law as a specific topic is not dealt with at all in the curriculum, and the general subject of Equity only appears in the second year. The curriculum might also with advantage lay greater stress upon the reading and study of standard elementary works on various branches of the law which have been written for purposes of study, some of which are also of high literary merit. Your Committee suggests that the standing Legal Education Committee, with the assistance of the lecturers, give to this topic its serious consideration. Specific suggestions made to your Committee which appear to be valuable, are that the Law of Insurance, Construction of Statutes, Quebec Law and practical and elementary instructions in bookkeeping be included.

#### GENERAL

Your Committee has considered many other matters affecting Legal Education in Ontario, but those dealt with under the above heads are of major importance requiring special reference. It is a satisfaction to be able to report that the Law School is well conducted, that the relationship existing amongst members of the faculty and between them and the students is of the highest order and that the students have received excellent training in academic work and in practice, so far as that subject can be dealt with in lectures. Suggestions have been made to the Dean that may result in further improvement; for instance, it is suggested that no lecturer should have sole responsibility for the examination paper set on his subject but should have the advice and assistance of the Dean or at least one other lecturer to ensure that the questions are clearly expressed and are fair as tests. The further suggestion is made that the curriculum and time table for lectures should, before adoption, be submitted to the Legal Education Committee for approval and that the organization, methods of study and examinations be at all times under the control of the Committee. The responsibility resting on the Benchers with regard to Legal Education cannot be discharged properly without the exercise of a real control over the work of the Law School and, if this report is adopted, its recommendations can only be carried out in the manner and to the extent con-

templated by the Committee by a continuance of full and hearty co-operation between the Legal Education Committee and the faculty.

All of which is respectfully submitted.

Dated at Osgoode Hall this 14th February, 1935.

(Sgd.) M. H. LUDWIG,  
Chairman.

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RESOLUTION OF LEGAL AND LITERARY SOCIETY OF OSGOODE  
HALL CONCERNING THE FOREGOING REPORT.

WHEREAS, the Special Committee on Legal Education appointed by the Benchers on June 15, 1933, "to investigate the subject of Legal Education in all its aspects and report their conclusions and recommendations" has published its report dated at Osgoode Hall, the 14th day of February, 1935, under the hand of its chairman, M. H. Ludwig, K.C.;

AND WHEREAS, the report deals with matters pertaining to the welfare of the students at Osgoode Hall and purports to be in respect to their wishes and for their benefit;

AND WHEREAS, the said report recommends inter alia that lectures be held at 9 o'clock in the forenoon and 4.40 o'clock in the afternoon;

BE IT RESOLVED, that the Legal and Literary Society of Osgoode Hall go on record as registering with the utmost respect its disapproval of such recommendation on the following grounds, namely :

(a) THAT holding lectures at such hours will break the continuity of both the academic and practical phases of the students' education.

(b) THAT lectures at such times will unduly inconvenience many of those students who through no fault of their own are not in a position to obtain employment in offices since they will be obliged to return to their homes between lectures.

(c) THAT the lecture to be held at 4.40 o'clock will be given at a time when the students' mental receptivity will not be as great as in the forenoon.

AND BE IT FURTHER resolved that the Legal and Literary Society of Osgoode Hall feels that it is necessary to register its objection immediately so that no change will be made before

the 1935-1936 term commences, and its action is not to be construed as waiving any further objections it may have to the other recommendations in the said report.

AND BE IT FURTHER resolved that a copy of this resolution be sent to each and every member of the Special Committee on Legal Education.

\*\*In order to obtain a more complete expression of student opinion on the matter, an open vote was conducted in the various class-rooms at Osgoode Hall on Friday, April 26, 1935. The following were the results:

	Total Enrolment.	Those in favour of 4.40 Lectures.
First Year.....	159	7
Second Year .....	108	2
Third Year .....	90	4
	—	—
	349	13
	—	—

There were approximately 29 students absent, which makes a total of 320 in favour of the present system of morning lectures, and 13 in favour of the proposed change. This means that approximately 96% of the students are opposed to the change.

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