LEGAL EDUCATION IN ONTARIO, 1935.

The Benchers of the Law Society of Upper Canada have recently adopted in Convocation the Report of the special Committee appointed by them to investigate some aspects of legal education in Ontario which have been the subject matter of considerable discussion and controversy. The matters investigated include such subjects as the proper standards of admission to the Law School and the legal profession, and the adjustment of the practical training in offices to the theoretical training in the Law School. The Report represents the considered opinion of the body governing legal education in this Province after careful and prolonged investigation.

It is hoped that this article, which is a criticism of the Report, perhaps rather too detailed a criticism, will not appear too provincial in its scope to readers of the CANADIAN BAR REVIEW in other Provinces, who may possibly find in the conclusions of the Committee and the criticisms here expressed, useful material for comparison with the existing situation in their own Province.

The merits or demerits of any system of legal education are too extensive in their effects to allow the sincere respect felt for members of the Committee to interfere with a critical analysis of their conclusions.

The gravamen of the criticism directed against the Committee by many members, and especially the younger members, of the profession is this: the Committee recognizes the problems involved, and indicates the appropriate remedies, but shrinks from their application.

The Report deals first with standards of admission to the Law school, an extremely controversial subject.

There are three possible standards mentioned in the Report, the highest being the "University standard". This requires a university degree from an approved university as preliminary to entrance to Law School. The Committee states that this standard was advocated by the Dean and Faculty of the Law School, the County of York Law Association and other County Law Associations, a majority (seventy-five per cent) of the members of The Lawyers' Club of Toronto, and by the students' representatives. These representations are said in the Report "to have borne strongly on the Committee."

The second standard mentioned is known as the "two year college standard" recommended by the American Bar Association in 1922 and adopted in eight out of nine Provinces in Canada.

This requires all entrants to the Law School to have spent at least two years at a university and to have passed the examination entitling them to enter the third year university course. This standard was adopted in Ontario in 1927 and remained in force until 1932, and has from year to year been prescribed as a minimum standard by the Legal Education Committee of the Canadian Bar Association.

The third and lowest standard is the "matriculant standard", in force in Ontario since 1932, which admits to the Law School, firstly university graduates, and secondly, those who, after obtaining fifty per cent. in certain prescribed subjects in the Middle and Upper School matriculation examinations, have spent two years in legal offices as clerks articled to solicitors.

After noting these three standards of admission the Report proceeds :

> "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.
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> "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."

It will be observed that the Committee has not seen fit to adopt the recommendations of the various groups which it consulted in Ontario, or the minimum standard advocated by the Canadian Bar Association. It is however fortified by a reference to the Report of Lord Atkin's Committee in regard to Legal Education in England (1934). The passage referred to reads as follows :

> "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."

On its face this observation would appear inapplicable to conditions in Ontario. Could it fairly be said that in Ontario those who come to the Law School without a university education come after a previous experience in business, in a solicitor's office, in the civil service at home or abroad, in local government service, trade union work, journalism, or the like (unless indeed the two years spent in a legal office after matriculation is to be considered equivalent)?

It would lengthen this article unduly to suggest in detail other differences between conditions in England and those in existence in Ontario. These differences make the opinion of the English Committee dealing with the situation in England of doubtful weight in its application to the situation in Ontario.

The decision of the Committee on the standards of admission is to be regretted, for there can be little doubt that, in the words of the Committee, "a good cultural background for all intending lawyers is important", and the unanimous opinion of the bodies consulted by the Committee was that a university training is the most practicable method in this province of assuring in some measure at least such a "cultural background".

The Committee refers to the advantages which students may and ought to gain from the two years spent by matriculant students in offices before attendance at the Law School. It is doubtful whether the Committee can be cognizant with the actual facts in this regard. In the opinion of the writer, who was himself a "five year student", one of the most vicious features of the five year course is that young men who have, in some cases at least, avoided a university course through dislike for intellectual pursuits, spend two years in an office doing nothing more stimulating to the mind than serving subpoenas and filing pleadings, a routine whose mysteries can be learned by an intelligent person within the course of a month or two. For this reason one feature of the Report will meet with general approval. The matriculant, while an articled clerk, is not to be permitted to rest entirely from intellectual efforts, but will be required to pursue a course of preliminary study, the details of which are to be formulated later. The Profession will also

welcome as a step in the right direction the raising of percentage required in the matriculation examinations from fifty to sixty per cent.

Despite the strictures of the Committee who refer to the "ulterior motive" of those who desire to restrict numbers, a strong argument for a higher standard of admission can be based upon the accepted view that too many lawyers are being produced by the Law School. Over production results in excessive competition. To this excessive competition the unfortunate frequency of disbarments and the lowering of the standard of ethics in the profession are not unrelated. The imposition of the university standard would bring about a reasonable and proper restriction of numbers, a restriction, moreover, coming into effect at the right moment, that is, before the student wastes time and money by at least one fruitless year at the Law School.

The objection has been made that to impose such a standard would restrict the right of entrance to the profession to the wealthier classes, and would exclude a brilliant child of a working class or impoverished family. This objection on its face appears to have more substance than a careful examination supports.

The solution of the difficulty does not lie in low standards of admission to the Law School. It lies in cheaper education, and in more liberal scholarships affording to everyone an opportunity to enjoy a university education. In any event, there must be few of those who can afford at the present time to attend the Law School and enter a profession in which they are likely to earn very little for some few years at least of their early practice who could not, if put to it, afford to attend a university.

The next important subject is the relationship between office work and the Law School. The objective of any system of legal education should be, as the Committee states, that everyone who is called to the Bar should have had a previous training in the practical routine of office work. A lawyer whose training has been exclusively academic, will obviously be at a loss when confronted with a client or some of the other problems that require the immediate attention of a practising lawyer.

On the other hand the importance of a sound academic training at the Law School in the principles of law cannot be overrated if our legal system is to be satisfactorily administered by the Bench and Bar. The problem is to reconcile these two necessary but contrasted methods of training.

The present system is that the student attends lectures at Osgoode Hall Law School in the morning from nine to eleven,

and then proceeds to the office of the solicitor to whom he is articled for such work as the solicitor may see fit to entrust to him. This system may once have worked well, but it has now undoubtedly broken down. There are, for one thing, more students than there are available opportunities in offices. The result is that many students do not make any pretence of working in offices, and are called to the Bar without any practical training. The attendance of others is spasmodic and unsatisfactory to solicitors, and many students are therefore employed solely in mechanical tasks. From the point of view of academic training at the Law School, the system is unsatisfactory for it is practically impossible for the student who does work hard in his office—and there are still some of these—to devote the necessary energy to the preparation for lectures. Such preparation is indispensable to obtaining the full benefit of the lectures.

To meet this situation the Committee is content to express the hope that students and solicitors will not continue 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.
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> "(2) The student files an affidavit in which he swears to a state of facts similar to those certified by the solicitor."

It is a curious commentary on the present situation that the Committee "feel that they should draw attention" to the growing tendency of solicitors and students to disregard the provisions of the section by furnishing certificates and filing affidavits that the student has during the whole of the period of articles, faithfully and diligently served the solicitor, when this is not the fact.

The Committee's sanguine expectations are expressed in the following paragraph from their report :

> "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."

To meet this situation, the Committee also recommended two minor changes in the present system. The first is the alteration of the hour of the second lecture in the day from ten o'clock in the morning to four-forty o'clock in the afternoon, and the second is a slight reduction in the number of lectures. It is at least questionable whether these changes will have the desired effect. The afternoon lecture was discarded some years ago because it was considered unsatisfactory, and it is very doubtful whether the hour gained in the morning will compensate for the loss of the hour in the afternoon when the students are often more busily employed in their offices than at any other time of the day. The change is extremely unpopular with the student body who have petitioned the Benchers against it.

In any event, neither the change in the hour of the lecture nor the reduction of their number, can be expected to solve the problem. There will continue to be a surplus of students, and many working in no offices at all. There will still be a division of energies between the Law School and the office, and there will still be a disturbing lack of continuity in the students' services in offices.

The Committee's Report refers, however, to a statement in the Report of the Legal Education Committee of the Canadian Bar Association of 1932-1933 that the present tendency seems to be in the direction of office service after graduation but before call, but the Committee makes no comment, nor does it refer to the resolutions and representations of the Lawyers Club of Toronto in favour of a "full time Law School" followed by a year of service in solicitors' offices before call.

Here surely is the solution. All that is learned now in three years at the Law School under the present system could, one would think, be more satisfactorily acquired in two years without the distractions of office work. One year could then be spent as articled clerks in offices before call. The number of available students would be cut down to at least a third of the present number, and the time necessarily spent in Toronto by those who live elsewhere reduced. The student in the office would have the advantage of a knowledge of the principles of law, and would

be available for the whole day. In such conditions it is unlikely that solicitors would not take their obligation to train their students seriously, and there would be no excuse for evasions of the Solicitors Act.

In this way there would be some likelihood that the practical training upon which the Committee rightly place so much importance would be obtained by all and the theoretical training, of at least equal importance, strengthened and improved.

The Committee's Report deals briefly with methods of study, and indicates a tendency to depose the case method from its pedestal in favour of the study of authoritative text books, a natural tendency if there is not to be a "full time" Law School where students have ample opportunity to read the cases before lectures on them are delivered.

Reference is also made in the Report to the interesting subject of the curriculum, but no radical changes are suggested. It is regrettable that there is no mention of a course in jurisprudence. In these days of transition it seems unfortunate that the Law School courses should be regarded exclusively as a training in the actual rules of law applied in the Courts, and no time at all allotted to a consideration of the purposes of law as an imperfect but ever changing instrument of social justice.

In conclusion it is to be hoped that public opinion in the legal profession, which it is believed is in the main in accord with the views expressed in this article, will bring its influence to bear upon those in authority, and require in the not too distant future a reconsideration of the important matters dealt with by the Report. Higher standards of admission, a reasonable restriction of numbers, and the proper adjustment of academic and practical training should be the aim of all interested in the improvement of legal standards.

A comparison with the requirements of another great profession, the medical profession, indicates, it is believed, that members of the legal profession need not be alarmed at the prospect of restricting the right to enter the profession to those who have undergone a long and arduous training, both academic and practical in its nature.

It would be a tragedy if in Ontario or any other Province of Canada such an exacting profession as the legal profession, and one occupying so important a place in the life of the community, should be flooded by those who seek admission because its standards of admission are easy and the barriers low.

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