

LEGAL EDUCATION—WHICH TREND?

The Editor of the CANADIAN BAR REVIEW having requested a short article of a general nature on the problem of legal education in Canada, it is submitted that a report recently presented to the Benchers of the Law Society of Upper Canada provides a convenient starting point. It may be explained that on June 15, 1933, a special committee was appointed by the above Benchers in Convocation assembled "to investigate the subject of Legal Education in all its aspects and report their conclusions and recommendations." The report of this committee¹, bearing date February 14, 1935, is styled, "Report of the Special Committee on Legal Education." It will be referred to briefly as the Ontario Report.

A report on legal education which represents the considered view of the Governing Body of the legal profession of Canada's most populous province is in itself a significant matter. The eminence of the lawyers who composed the committee is some guarantee that the report does not represent a merely cursory examination of the problem. The present article is in no sense a criticism of the report, a report which professes to deal with the situation in Ontario only. Indeed the members of the committee have shown a very commendable interest in the Bar of the future and have considered the matter with thoroughness. It is submitted, however, that the report is illustrative of a distinct attitude which is debatable. To this attitude reference will be made below.

AN ATTITUDE WITH REFERENCE TO LEGAL EDUCATION

In the Ontario Report many matters, such as the content of the curriculum and methods of teaching are touched on, and many of the questions raised deserve consideration in any province. For the purpose of this article, however, it is considered that two recommendations are of extreme importance :

1. The Committee is unable to recommend that the standard of admission, in terms of college years, be increased². The standard in Ontario is to remain as before, in substance University of Toronto matriculation, that which has been formerly called senior matriculation. Two recommendations look to a stiffening of the standard for the matriculant class : (a) an increase of the pass requirement from 50% to 60%; (b) that the student

¹ Adopted by Convocation, Feb. 21, 1935.

² Ontario Report, page 6.

after being enrolled and before entering the Law School be required to pursue a course of preliminary study and satisfy prescribed tests³.

2. A greater opportunity for practical training is to be provided. As to the need for this no one will seriously doubt. But the recommendation does not call for a period of office service after graduation and before call. Aside from an excellent suggestion with reference to the duties of solicitors to their articulated clerks it seems that the result is to be achieved by a re-arrangement of the Law School curriculum so that the student may be present in his office during the whole or the major part of the time during which business is being transacted. The exercises in the Law School are to be conducted early in the morning and late in the afternoon. "Thus, if lectures are at 9 a.m. and at 4.40 p.m., the student will be available for office work during office hours." Also the curriculum is to be somewhat shortened. "The foregoing indicates a possibility of reducing the number of lectures in some subjects without serious disadvantage to the students⁴."

It is submitted that the attitude of the Committee towards legal education, as expressed in this report, is unmistakable. It is an attitude which not only emphasizes the matter of technical craftsmanship in litigation and office routine—it makes this craftsmanship an exclusive and narrow end in itself. This is by no means a new attitude; it is to be found, more or less, in legal circles everywhere. The Ontario Report has been selected merely as a convenient illustration. The writer is prepared to agree that no practising lawyer can perform his duties to the public unless he is entirely competent along these lines. But a question of considerable magnitude is raised which will later be adverted to. The question is this: Shall the lawyer of the future be merely an office craftsman?

LENGTH OF PRELIMINARY COURSE

In passing it may be said that the members of the Ontario Committee had the courage of their convictions in refusing to recommend a higher admission standard, for a considerable body of opinion was to the contrary. To quote from the report⁵: "The York Law Association and other County Associations, students' representatives and a majority of the members of the Lawyers' Club all advocated the single standard of a degree

³ *Ibid.* page 7.

⁴ *Ibid.* page 8.

⁵ *Ibid.* page 6.

from an approved university. The Dean and Faculty of the Law School are of the same opinion." It may also be stated unofficially that the majority of the members of the Committee on Legal Education of the Canadian Bar Association favour a university degree and that there is a virtual unanimity of opinion in favour of the two year standard as a minimum.

In the Ontario Report it seems that considerable reliance was placed on the report of a Committee presided over by the Rt. Hon. Lord Atkin, presented to the Lord High Chancellor in July 1934.⁶ Lord Atkin's Committee concluded that it was not practicable to restrict admission to the Bar to members of a university.⁷ It may be suggested, however, that the educational horizon of the average student in England, when he begins his legal studies, is much wider than that of the average matriculant in Canada. In England, also, very old traditions have to be reckoned with, and the Atkin Report proceeded on the basis of procuring greater co-operation between the Council of Legal Education and the universities. It may, moreover, be pointed out that the report just referred to contained this significant passage⁸: "Though it may be impossible to insist upon graduation at a University as a necessary qualification for admission to the legal profession, there can be little doubt that it is to the advantage of the professions that as many members as possible should have had the benefit of the more extended education connoted by a degree."

The so-called two year standard of admission was recommended by the Canadian Bar Association in 1922. This recommendation was gradually adopted by the various provinces and had become universal in Canada when it was abandoned by Ontario in 1932. The Ontario Report after intimating that the adoption of this standard was consequent to similar action by the American Bar Association states that "the recommendation seems to have been more fruitful in Canada than on the native soil⁹." A "recent annual review of Legal Education by the Carnegie Foundation" is quoted to the effect that the two year standard had then been adopted by only 11 out of the 48 American States¹⁰. It seems that the number is increasing in the United States. By the end of 1934 at least eighteen States had adopted two years or more as a minimum, four States

⁶ *Ibid.* pages 4 and 6.

⁷ Report of Lord Atkin's Committee, page 4.

⁸ *Ibid.* page 6.

⁹ Ontario Report, page 5.

¹⁰ *Ibid.*

having joined that group during 1934¹¹. Of much greater significance, however, is the fact that in 1921 the Association of American Law Schools provided that member schools should, beginning September 1, 1925, require two years of college work for entrance thereto.¹² The Association of American Law Schools embraces seventy-seven member schools¹³. No one will seriously contend that these member schools do not represent the flower of legal scholarship in the United States. Several of these schools require a college degree for admission thereto.

It is readily admitted that the fact that other communities or institutions are raising the standard of legal education is not completely persuasive. The writer recognizes no magic in a B.A. degree and is prepared to admit that the course of study behind the degree may often be of no value to the prospective lawyer. The question of the content of preliminary education will be touched on later. Just now it is urged that there several general considerations which indicate that the requirement of a college degree as a pre-requisite to legal studies should not be rejected lightly if the legal profession is to continue as a learned profession, a profession giving scholarly leadership to society.

1. There can be little doubt that a college course serves to eliminate many of the intellectually unfit. With these students out of the way the task of the law teacher is much simplified and the intellectual level of the law school is raised. This argument applies more forcibly, perhaps, to the two year standard, since most failures in an Arts course occur during the first or second year. Experience has abundantly proved that the student who has successfully completed one or two years in college is much more likely to be able to complete a law course than is the mere matriculant.

2. In recent years other professions have very definitely increased their educational requirements. The medical profession is one example. Not only has the medical course itself been stiffened but preliminary requirements in many cases are such as to embrace most of the work required for a degree in Arts or Science. Ought the legal profession to lag behind?

3. The educational level of the general population is becoming higher every year. University attendance is increasing very rapidly and each year shows an increase in the number receiving

¹¹ Annual Review of Legal Education, 1934 (Carnegie Foundation).

¹² Handbook-Association of American Law Schools, 1934, page 40.

¹³ *Ibid.*, page 41.

degrees. These statements are fully warranted by the reports released by the Dominion Bureau of Statistics under Authority of the Minister of Trade and Commerce. The latest complete figures available are for 1933 and it is interesting to compare the records of that year with those of a decade earlier. In 1923 the total number of degrees and diplomas from all universities and colleges in Canada was 5,166. For 1933 the corresponding number was 7,412. In 1923 the number of B.A. or equivalent degrees was 1,195—in 1933 it was 2,845. These figures are significant. They mean something. University graduates are filling positions of trust and responsibility to a preponderant degree. It must be that they learn something while in college. The situation then is that lawyers are being thrown into a world of action in which the people with whom they must deal are becoming better informed every year. Can the legal profession afford to stand by under such conditions? Is it not fairly evident that something must be done by way of raising the level of legal education in Canada? Are we to be satisfied with merely the traditional legal technique that produces the "competent" office man?

The answer may perhaps be made that the way is open for the prospective lawyer to attend a university, that he may even be urged to do so. Such an answer will not do if our argument for a more highly educated Bar is sound. Every educator is familiar with the almost immediate response to a change in admission requirements, whether that change be by way of increasing or decreasing the standard. An illustration seems to be at hand in the Province of Ontario where the standard for admission to Osgoode Hall Law School was lowered in 1932. In the issue of the CANADIAN BAR REVIEW for May 1933 there appears a short note on a memorandum prepared by *Obiter Dicta*, the organ of the law students at Osgoode Hall. The following paragraph is significant¹⁴: "The report reveals that the percentage of university graduates at Osgoode Hall Law School at present is 89.6 with 10.4 per cent. of the students two-year men. Since the lowering of standards on May 12th, 1932, the percentage of university graduates who have articulated has fallen to 49.28." These figures are rather dramatic and one is inclined to suspect that the ultimate change will be less pronounced.

PRESENT CONDITIONS AND ANTICIPATIONS

The society which confronts a lawyer today seems to differ markedly from that of a few years back. No longer is everything

¹⁴ 11 C.B.R. 348.

to be regulated by the magic of a legal right in the strict sense of analytical jurisprudence. Many lawyers do not like this. Many lawyers are convinced that a prerogative of the profession is being destroyed and that the world is in a bad way. Perhaps the world is in a bad way but the fact remains that we have with us a large number of Boards, mainly described as administrative. Local Government Boards, Minimum Wage Boards, Workmen's Compensation Boards, Boards of Review under the Farmers' Creditors Arrangement Act, just to name a few of them. And the end is not yet. Witness the very elaborate machinery proposed for making effective the social legislation now before Parliament at Ottawa. Whether we like it or not we are in a period of economic adjustment, and to many acute observers the reign of administrative law is, in a measure, inevitable.

The situation is not improved by scornful invective to the effect that rules as administered by these boards do not represent law. The writer is sufficient of a heretic to suggest that all authoritative rulings whereby the lives of human beings are regulated should be characterized as law, although freely admitting that this view may be at variance with the niceties of certain traditional conceptions. Definitions, however, will not solve the problem. These boards are here and more of them are in prospect. Some people are bold enough to say that the growth of administrative law is due to the inadequacies of the law as administered in the courts. If this charge be true, and the writer expresses no opinion, then is it not very arguable that the legal profession must have been lacking in vigour or knowledge, or both? Surely the task of the lawyer does not cease with a mechanical application of the existing rules of law as found in the books. Must these rules not be made to conform reasonably with current needs and the prevailing philosophy of life? Then it may be concluded that the lawyer should be equipped with the necessary knowledge and vigour to do so. This equipment cannot be supplied by the mere intellectual inbreeding of law offices and law reports.

Let us look at the matter in another way. Lawyers are doing work with these administrative boards and will continue to do so. A few evenings ago a lawyer remarked to the writer: "To-morrow I have two appearances before the Board of Review, one in the District Court and one before the Local Government Board." The experience of this lawyer is not altogether unique. The following extract from a speech recently delivered by Mr. James Grafton Rogers may be of some interest¹⁵:

¹⁵ Handbook of the Association of American Law Schools (1934) page 111.

“The more intangible changes have already been sufficiently suggested. The Bar is year by year more involved in administrative law. An estimate made the other day in one of the Midwest cities was that sixty per cent. of the energy and time of the lawyers in that city was going into administrative as distinguished from common-law work.” The question now arises whether the lawyer, brought up exclusively on the common law and office diet, is of any particular value around these tribunals. Not long ago the writer had the pleasure of a conversation with a gifted lawyer, a graduate of Osgoode Hall Law School and now occupying an important administrative position. The gentleman explained that his son wanted to study law at once. But the father insisted on a completion of the Arts course with an emphasis on economics. As he puts it, the world needs lawyers, but it needs lawyers equipped with a knowledge that will be helpful to people. So once again we come to the need of additional educational qualifications for the legal profession. An ability to solve the cross-word puzzle of common law decisions is of indispensable value. But without a wider cultural background and without some additional knowledge the lawyer’s usefulness is greatly cut down. And if the lawyer cannot give the services demanded there are others who will.

A year ago it was hoped that an adequate survey of the legal profession of Canada, particularly with reference to the alleged over-supply of lawyers, would be undertaken by the Committee on Legal Education of the Canadian Bar Association. This prospect has been temporarily abandoned due to the fact that a survey of conditions, in any way adequate, would involve an expenditure of three or four thousand dollars. Very incomplete information would indicate, however, that fifty per cent. of the lawyers of Canada could handle all the legal work of the country, the work of the traditional type, and these lawyers would not be overworked. They would still have sufficient leisure time for bridge, golf and other gentlemanly diversions. This is probably a very conservative estimate. Now let us turn again to the trend of the Ontario Report. It is again submitted that the manifest trend of that report is to confine legal education to the narrowest of traditional grooves. The student is to be kept in the office during office hours. No attempt is to be made to secure for him any knowledge outside the narrow field. But at the same time a greater overcrowding is to be made possible since entrance requirements must not be increased, not even to the minimum agreed upon by the Canadian Bar Association in 1922. In passing it may be noted that according to figures

published by the Carnegie Foundation the autumn attendance at Osgoode Hall Law School for the past three years is as follows: 1932—255; 1933—311; 1934—354.

LEGAL EDUCATION FOR THE FUTURE

Certain propositions have been advanced above merely in skeleton form. In the opinion of the writer these propositions are capable of elaboration into a serious indictment of the attitude of the profession towards the problem of legal education in Canada to-day. It might also be pointed out that the legal profession has customarily been a recruiting ground for political leaders. There is still a great demand for leaders and the government services are becoming wider year by year. Does it not seem reasonable that every effort should be made to ensure that the level of education of members of the legal profession, particularly in matters of economic organization, should be at least a little higher than that of the man in the street?

Despite the outstanding ability and eminence of hundreds of our lawyers, despite the devoted public services that are being rendered by many of them, despite the honesty of purpose of the great mass of lawyers, the opinion is quite generally expressed that the legal profession, as a practising profession, is sick in Canada today. To many a practitioner the future is very dark indeed. To the writer, however, we are on the threshold of better days. The Bar of the future, though perhaps somewhat smaller, will enjoy a greater degree of prosperity, will be held in higher esteem and will be more effective in its service to mankind. The initial and most important factor in this improvement will be a changed attitude in the matter of legal education and an emphatic insistence upon a higher and more scholarly standard for admission to the Bar.

A forcible analogy is to be found in the case of the medical profession. In Canada, and perhaps in most countries, the medical men are certainly in the top profession today, in enthusiasm, in scholarship, in cohesion and in popular acclaim. It is submitted that this has been achieved largely by an insistence upon high and higher standards. In Canada a very convenient system of co-operation has been worked out among medical schools, Colleges of Physicians and Surgeons in the various provinces and the Medical Council of Canada. The result would do credit to the organizing ability of any lawyer. In general, it can be said that not only has an extensive course of study been prescribed but a high standard of achievement is demanded

of the individual student. Medical courses have been lengthened and the standard of performance raised. The preliminary requirements have been increased and tend to include such items as will give a foundation for later study, Chemistry for example. Many schools definitely restrict the number to be admitted each year and from the applicants select the more brilliant and promising students. The result of an emphasis upon scholarship has been that a more competent practitioner is being admitted to practice, medical men pride themselves on being members of a learned group and the public at large respect them. Nothing succeeds like success. As a trade union based upon scholarship, and a little propaganda, perhaps, the medical profession offers an example to the world. In an address already quoted from, Hon. James Grafton Rogers makes the statement that the medical profession is two decades ahead of the legal profession in educational development¹⁶. As applied to Canada it would seem that a period much longer than two decades separates the two professions in this respect.

As to the legal profession the statement of an able Canadian lawyer and educator which appears in the report of the Committee on Legal Education of the Canadian Bar Association for 1934 will bear repetition. The statement of this gentleman was as follows: "I must say that what I think it lacks most is scholarly interest in law. The lawyer seems to me to acquire quickly enough the technical tricks of his trade, and a knowledge of those business methods which are really tending to destroy the liberal character of the profession. Law is far too much regarded by law students as an avenue to eminence in big business. Where I think our legal education breaks down worst is in its failure to inculcate a love of law and the lawyer's work as a liberal mode of life." The question will be asked, can the ideal of a scholarly profession in the best sense, a scholarly profession giving service to society, be realized? The answer is that it can and will be realized. It will be realized when the law schools and professional societies take stock of the situation with a determined desire to put the legal profession at the top as a group of cultured gentlemen qualified to give the service that the modern world requires. If the other trend be followed one might make the prediction that thirty or forty years from now the lawyer will be regarded merely as an odd survival, the priest of a discarded religion.

¹⁶ Handbook Association of the American Law Schools, (1934), p. 111.

The details of any scheme of educational rehabilitation are naturally beyond the scope of this article, but general suggestions may be offered. The Law schools should co-operate in working out a plan whereby there will be a substantial guarantee that only students of first rate ability will be graduated. The professional associations should render every assistance in this or take the initiative if the schools do not. It is imperative also that only students of a wide general education shall be admitted to the study of law, and in this regard it is conceived that the requirement of a degree in Arts is a very modest one if the lawyer of the future is to give cultural and practical leadership in a society in which the level of education is rapidly rising.

Of course, as stated earlier in this article, there is no particular magic in a B.A. degree. If the same result can be achieved by means of a longer law course which is made to include certain subjects not included in the standard law curriculum, there would seem to be no theoretical objection, although many practical difficulties might arise. The degree in Arts, however, would seem to offer a fair prospect of solving part of the difficulty. But if a degree in Arts is required ought it not to include certain prescribed studies? Just as Chemistry and Biology are prerequisites to Medicine, are not Economics and Political Science, for example, natural prerequisites to law? It is difficult to understand how a lawyer can be of any great assistance in the modern world without some knowledge other than that found in the reports and the statutes. A college is a good place to get that knowledge, although ambitious and interested people read it up for themselves.

It seems that the fight is on and indications are not lacking that a group of determined individuals will carry it through. In the vernacular of hockey the time is ripe for a power play on behalf of the legal profession. We must discard some of the legal fashions of the gay nineties. "Men of wealth and power can play the new tunes as well as the old, and have the additional comfort of not being laughed at by their own young fellows who have had a little more schooling¹⁷." Many readers of the REVIEW will recall the eloquent and stirring address of Hon. James Grafton Rogers before the Canadian Bar Association at Ottawa in 1933. Mr. Rogers spoke of the changed conditions with which the lawyer of today and tomorrow must contend. In a more recent address this gentleman has envisaged the lawyer of the future, and many of us are anxiously awaiting his arrival.

¹⁷ Morris R. Cohen : *Law and The Social Order*, page 18.

"The lawyer who has been in this country somewhat of a rigid doctrinaire in the eyes of others will be a much more flexible and facile personality. The law will rejoin its old companions, literature, history, and the arts¹⁸."

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¹⁸ Handbook of the Association of American Law Schools (1934) page 113.