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ECONOMIC CHANGES AND THE PRACTICE OF LAW.*

The annual meeting of the Manitoba Bar Association seems a fit and proper time and place to raise and discuss matters pertaining to the welfare of the legal profession—our own craft.

I have undertaken to give some of my views and opinions on the practice of law to-day as I find it, and perhaps to make some predictions as to its probable outcome.

Of course it will be difficult to make predictions, and still more difficult for a man of four years standing and three years practice at the Bar, to dictate or even suggest a future course of conduct for members of the profession much older and infinitely more experienced and learned than myself. I will therefore ask your indulgence and hope that you will not consider my remarks too presumptuous or didactic.

A great deal has been said about encroachments and incursions upon the legitimate fields of the practising barrister and solicitor. I will first attempt to outline in some measure a few of the inroads that have been made.

The first incursions are by administrative or institutional bodies. During the last few years as a result of new and changing conditions there have been established a number of boards and commissions for the administration of certain matters. They exercise quasi-judicial powers and although legally trained men may sit as members, the setting up of these tribunals has deprived lawyers of a great deal of work. At the same time we find a new body of statutes, rules and decisions, which may be grouped under the general heading of "Administrative Law."

*Address delivered by J. Ragnar Johnson LL.M., (Harv.), at the annual meeting of the Manitoba Bar Association, Winnipeg, November 14th, 1930.

It seems that some of these bodies have enjoyed a measure of success. An examination of the workings of the Workmen's Compensation Act shows that claims amounting to upwards of two million dollars are dealt with each year by the Workmen's Compensation Board of Manitoba. This constitutes a large percentage of the total amounts involved in the several claims in the Court of King's Bench.

The Public Utilites Commission, Board of Railway Commissioners, Grain Commission, Tax Commission and others are further examples of the substitution of administrative for judicial machinery.

At present, automobile collision and accident cases form a considerable part of the lawyer's work. Automobile "adjusters" are busy men. Would it be too much to suggest that in future all claims arising out of automobile collisions or accidents may be settled by some sort of board? Instead of the cumbersome machinery of the Courts and even instead of the intervention of adjusters is it not conceivable that we may witness in the very near future the institution of a Board of Automobile Accident Commissioners?

The second form of encroachment upon the preserves of the lawyers is by certain private individuals or corporations.

Thus we find conveyancers and notaries public doing a great deal of legal work, looking after real estate transactions, etc.

Real estate offices engage their own legally trained men, who often come in with experience in practice and devote their energies to the drawing of documents and doing legal work generally, even to the extent of incorporating companies. More than one real estate office in Winnipeg engages a lawyer and pays him a fixed salary. This lawyer draws all legal documents, transfers of land, mortgages, etc. He incorporates companies who may purchase a building or more in its corporate name. Yet he is not practising independently but is paid a salary by the firm or corporation which engages him.

Realtors have been so bold as to have their own printed legal forms for various legal transactions.

Collection agencies and "commercial adjusters" are springing up over night and handling the work of collecting accounts in bulk. These people, being engaged in a business and not a profession, can go direct to business houses, ask them for bad accounts, and proceed to collect. As long as these agencies stick to collecting we cannot complain, but very often they have in their organization a solicitor who acts as manager. When the ordinary methods of collecting are exhausted, this party issues writs in his own name and appears in

Court. Of course any fees he earns are turned into the coffers of his principals because he draws a fixed income. The rates charged by collection agencies are greatly in excess of those allowed by the Solicitor's Tariff.

We find assignees in bankruptcy carrying on a large branch of what is after all legal work.

Automobile adjusters are other examples of legal charlatans, bringing about the settlement of "automobile disputes."

Certain work done by Chartered Accountants affords an excellent example of what may be the ultimate effect of the continual and unabating inroads on the field of the practising solicitor. At the time of the passing of the various Income Tax Acts it was natural to consult a lawyer on what was and what was not a taxable income. Pretty soon many solicitors found that giving proper advice on this matter entailed a knowledge of accountancy which they did not possess. At the same time, the accountants made themselves familiar with the provisions of the Acts and were thus soon able to give the required information, as well as make the necessary returns. The result has been that about 95% of income tax returns that are not made by individuals themselves are made by Chartered Accountants.

During the summer I met a Scottish solicitor on an Atlantic liner. He has practised his profession in Aberdeen for many years. With him was his son who was also a solicitor and associated with his father's firm. But the son was also a chartered accountant and was thus able to look after any matters in the office where a knowledge of accountancy was required.

The greatest example of encroachment is afforded by the activities of Trust Companies.

Trust Companies have arrogated to themselves a great deal of legal work and their activities are now so ramified that they seem to be spreading their tentacles around the profession and devouring the entire field of legitimate practice.

Trust companies began to act in fiduciary capacities. Finding this work lucrative they drew wills and continue to draw wills free of cost on condition that they are appointed executors and trustees. This gratuitous work has been widely advertised and some trust companies have even gone so far as to publicly announce that they will give free legal advice in certain matters. Furthermore, they have been known to make appearances in the Surrogate Court in certain matters. Some trust companies maintain a legal staff and

draw all kinds of legal documents and perform all kinds of legal services.

To illustrate the extent of the various incursions from which the profession has suffered, let us take a practical example.

A business man buys a site for a manufacturing plant. It is sold to him through a firm of real estate brokers, which searches the title and draws the agreement for sale. This same firm looks after all contracts in connection with raising a building.

Our business man then wants a loan to buy machinery and to carry on an advertising campaign. He applies to a mortgage company which draws all necessary documents on its own printed forms through salaried employees, who may or may not be qualified to practise law. Some companies even charge a fee for this under the designation of "legal services."

The factory is built and workmen engaged. These workmen must be protected so the manufacturer buys liability insurance covering him against the claims of employees and claims of the public as well. The insurance companies undertake not only to indemnify the insured against claims but to defend him against litigation.

So if a truck belonging to the factory knocks down a pedestrian the insurance company assumes the responsibility for the defence, pays all solicitors' fees, court costs and other expenses. The truck driver in the employ of the manufacturer, who is the litigant, has no control of any litigation which may arise. The policy is practically a contract to render legal services.

As a result the insurance companies handle a great deal of legal or quasi-legal work through salaried employees or perhaps through solicitors who work on a yearly retainer. In any event, such lawyers are not employed by the litigant but by the company.

The manufacturing plant grows. More money is needed. This time the manufacturer decides to incorporate and sell shares. Instead of going to a law office for the service the whole matter is looked after by a financial corporation experienced in all the details of corporate finance.

The manufacturer's collections are handled by a mercantile adjustment bureau. His income tax returns by chartered accountants. His leases to sub-tenants by real estate brokers. Any differences that may arise with other corporations are kept out of the courts if possible and settled by a board of arbitration agreed upon between the disputants. If he goes bankrupt the affairs of the

company are handled by assignees in bankruptcy, and when he dies his personal estate will be handled by a trust company.

These forces which are at work changing and destroying so many forms of business and professional activity are all a part of what Dean Roscoe Pound of the Harvard Law School calls the New Feudalism.

Along with the New Feudalism is another factor which is working to the detriment of lawyers and that is what has been called by the Lord Chief Justice of England the New Despotism.

This consists of the passing of statutes empowering Ministers of the Cabinet and their assistants to issue rules and orders which are to have the instant force of law and are not to be questioned in any Court.

This is a large and important subject in itself and cannot be dealt with here. Besides, you have been made acquainted with it before. Suffice it to say that English liberty depends and always has depended on the doctrine that the ordinary courts are the sole judges of all matters, whether between subject and subject or between a subject on the one hand and the State on the other.

It is against this doctrine that the modern "bureaucracy" is mobilizing its attack. A victory for the Government departments means that the executive emerges as prosecutor, witness and judge in one.

Without committing myself to either side or attempting to declare who is right and who is wrong, the fact remains that the legal profession has suffered by being deprived of a great deal of legal work.

I have attempted to give some of the reasons for the diminution of practice generally. Some may ask why these encroachments and pretensions of corporations are allowed to continue, why they are not summarily squelched. I have heard suggestions that the Benchers ought to do something about it and that legislation ought to be passed prohibiting this or that person or corporation from practising law.

To a large degree the troubles arise from economic causes. The discontent is an economic one. New agencies and new forces are at work. All around us we see amalgamations, consolidations, chain stores, branches of chartered banks, etc. You may go into any of the larger moving picture houses between San Francisco and New York and between Edmonton and Galveston, Tex., and you will find almost the same type of architecture, the same pictures, and

the same general arrangements. This is simply because most of the larger houses on the continent are controlled by the same corporation.

It is an age of mass production and standardization. As a result we may live to see the practice of law standardized. Large corporations will offer to do legal work at so much per hour or so much per unit of service.

The idea is not too remote. Even some of our larger offices are institutions. A visit to some of the larger law offices of New York will reveal a firm consisting of twenty or thirty partners, as many juniors, a dozen or two clerks, and an army of secretaries, stenographers, accountants, office boys, surveyors, process-servers, real estate experts, bailiffs, etc.

The exploitation by corporations of legal work has given rise to the expression, "the law business" and it seems natural for the public to use it.

Twenty-five years ago business was comparatively simple and business men as a whole consulted lawyers only on rare occasions when litigation was in the offing. To-day, however, business is exceedingly ramified and complex and touches law and governmental agencies at so many points. One would naturally expect the business man of large affairs to keep in constant touch with his lawyers with a view through sound legal advice to anticipate any contingencies which might bear the seeds of trouble.

This has given rise to a new type of lawyer known as the "business lawyer." He is essentially an executive, a business engineer. He often heads business organizations and corporations. He is rather scornful of the courts because of their slow motion. His eyes are on the banks, the stock and wheat markets, the boards of trade, the administrative departments. His income is often large for he reaps the profits of organizing energy and brains.

This type of lawyer represents the ambition of most young men. He is the standard of greatest achievement.

But we often find that such men, because of their knowledge of business and consequent success in the business world, often leave practice entirely and are drafted into corporations whose sole purpose is to make money for stockholders. Sometimes he establishes a legal department within the corporation and the next thing we know, the corporation is virtually practising law.

So if corporations are found doing legal work it is often the fault

of the lawyers themselves. It is their fault for letting the work slip out of their hands.

I have just read a case decided in Minnesota in which it is declared that a corporation cannot practice law. A certain attorney went to work for a bank. He was to do legal work and charge for the same but any fees collected were to be turned over to the bank. It was sought to discipline the attorney. In his remarks the presiding judge said that such an arrangement was not proper and that the corporation could neither practise law itself nor could it through its salaried employees do so.

But what is the good of such decisions and what good would repressive legislation do towards keeping the business with the lawyers? Is there any evidence that such laws, once they were on the statute books, would diminish the number of people who would continue to patronize corporations and express a preference for their service?

The only way in which the legal profession can survive in my humble opinion is by giving just as good service to the public as can be given by any corporation or any other person. I have heard it expressed that certain work is rightfully ours. It is only so as long as we can do it and do it well. The moment we slip we have only ourselves to blame.

It is not enough to say that corporations encroach upon private practice. Whatever they can do better and cheaper, and with no countervailing disadvantage to the public, is supported by economic principle. We cannot expect that because our profession has traditionally handled certain kinds of work that it will continue to do so to the extent of stemming the tide of economic advantage.

If corporations can bring to the public a product of capital, industry, experience and skill at a minimum of cost and a maximum of efficiency, why should we object to it? Lawyers as a craft never have blocked the way of economic progress and should be the last to do so now.

The argument that a corporation cannot practise law is a good one in itself. But the general public is not interested in such arguments. The legal profession must prepare itself for a change. The first thing to do is to find out what the public wants and then supply it in good measure.

It should not be necessary to say that what the business man looks for is:

(a) Speed.

(b) Finality.
(c) Efficiency.
(d) Service.
(e) Reasonable cost.

(a) One of the chief reasons given by the business man for his failure to patronize the legal profession is the "law's delay." Slowness in the courts caused by innumerable rules of procedure and technicalities have long been a prolific source of complaint in the business world.

On top of this we have the dilatory attitude of many lawyers who seem to think they have all eternity to decide certain matters and do certain work. We have seen some remarkable improvements since the apocryphal case of *Jarndyce* v. *Jarndyce*, but we can stand many more.

(b) Besides speed the business man wants finality of decisions. This is often difficult to supply. But it is amazing how often the inability to render a competent opinion in a hurry is occasioned by inexperience and lack of knowledge of business methods and business technique.

(c) Efficiency is one thing the business man insists upon, and I believe the profession can stand a few lessons on this subject.

(d) Whatever a lawyer has to do for a client, whoever that client may be, and whether the matter be large or small, every effort should be made to give the very best service at all times.

(e) Costs are always an important and sometimes a puzzling problem. I would be just about the last man to admit that the profession is overpaid, but I believe a serious revision of tariffs and an understanding on the whole matter would be in the interests of the profession.

One of the chief obstacles to the suggestion of any change in our own ranks is the self-complacent, self-pattings on the back by numerous older members and judges who feel that the Bar is completely perfect, who resent any attack upon the profession and who are perfectly certain that all lawyers are capable, learned and upright.

Instead of spending so much time congratulating ourselves on our splendid achievements, our glorious traditions and our state of sanctimonious perfection, we should spend more time in trying to really improve ourselves.

What concrete suggestions can be advanced in regard to remedy?

The Law School might lay more emphasis on law as an aspect of economic and social organization. Law is a form of social control

intimately related to those functions which are the subject-matter of economics and the social sciences generally. The life of the lawyer is shifting rapidly, faster than many of us realize. Some genuine attempt should be made therefore to teach the law student the business, social and economic relations of the lawyer.

Woodrow Wilson said: "Where life changes, law changes—changes under the impulse and fingering of life itself." Those who take it upon themselves to educate young men for the Bar must realize that the law is a progressive and developing science which must be studied in connection with other sciences and in particular, philosophy, sociology, ethics and political economy. These sciences have an inspiring and profound significance on the law, for the law is "a mirror of progressing life and not an unchanging parcel of words graven on tablets of stone."

The profession of the law should be a progressive profession. The administration of justice should march abreast with the times. Changing conditions in the world's economy should be met by changes in the law. Many of the complaints that I have attempted to outline have their source in the failure to appreciate and comprehend the changing conditions, and the apparent inability to cope with and meet that change.

There must be progress in the profession itself. The profession must be kept modern, up-to-date, efficient. Wider activities should be developed in the profession to take the place of things that have been lost. It is necessary to meet the ever changing horizon of world affairs by a constant progressive change in the profession.

The traditions of our Bar have come down from the Inns of Court. We want to maintain and cherish what is best in those traditions. But we must also keep pace with the changing economic conditions in our Western civilization. We must adjust our ideals with an environment which is rapidly changing.

There seems to be evidence that such evolution has to some extent already commenced. Some of the English visitors attending the annual meeting of the Canadian Bar Association in Toronto last August were surprised at the way we mixed law with business. In England, if a man is a lawyer he practises law. He does not go into the City and retain his practice and act on boards of corporations as many of our leaders do.

Further appreciation of changing conditions are the suggestions that have been made regarding the modes of obtaining business, by means of judicious advertising and publicity.

As soon, therefore, as lawyers come to realize that they must exert themselves to keep up with their more progressive brothers, and at the same time retain and observe the basic hereditary professional duties of honesty, fidelity, scholarship and good will, the future of the profession can be assured of success.

TECHNICAL EDUCATION ACT.—The ten-year period during which federal grants were available to the provinces under the Technical Education Act terminated March 31, 1929, but as eight of the nine provinces were unable to earn their entire appropriations during the ten years contemplated by the statute, the Act was, as pointed out in the annual report for the fiscal year ended March 31, 1929, extended for a period of five years in order that those eight provinces might have a further opportunity to earn the balance of the funds to which they were entitled. Ontario was the only province which had earned and received its entire appropriation prior to March 31, 1929, but during the year under review three other provinces, namely, British Columbia, Alberta and Quebec, have received the balance of the amounts to which they were entitled. As Ontario had received its entire allotment prior to the commencement of the present fiscal year, no report has been submitted to this department by that province covering the work for 1929-30.—*Report of Dominion Labour Department for 1929-30.*