PRACTICAL TRAINING FOR THE LAW STUDENT: THE APPRENTICE SYSTEM OR LEGAL CLINICS

In the March and April numbers of *The Scottish Law Review*, Mr. Sinclair Shaw dealt with two problems, under the title *Legal Education and Legal Clinics*, which have from time to time been the concern, not only of the Canadian Bar Association, but of the profession generally throughout Canada. The subject of the apprentice system of training law students is one that is still debatable in many provinces in Canada. As arguments in its favour are usually drawn from the reputed success of the system in England and Scotland, Mr. Shaw's article should be of interest in this country as indicating another side to the question. The linking of legal clinics with the problem of education is one which deserves serious thought as well. For this reason, with the kind permission of *The Scottish Law Review*, several excerpts from Mr. Shaw's article are here reproduced.

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In examining the present system of legal education in Scotland and the defects of that system, it is important to remember the changes introduced by the Act of Sederunt of 12th March, 1926, for the changes so introduced are capable of forming the foundation of a new and improved system of legal education. Prior to 1926 an apprentice could complete his indenture without ever having resided in a university town or attended university classes. Since 1926 attendance at law classes in a university has become compulsory for all apprentices and in the vast majority of cases this must involve living in a university town.

In considering the defects of the present system, it may be helpful to sketch briefly the career of the average law student. Students who intend to become solicitors are required to serve an apprenticeship with a practising solicitor, which may be of three or five years' duration, depending on whether the student has or has not a degree in arts or law. Under the Act of Sederunt the apprentice must have attended and duly performed the work of the classes of Scots Law and Conveyancing for a full session in a Scottish university. As it would be physically impossible to attend both these classes at the same time at either Edinburgh University or Glasgow University, and as it is improbable that the average student at Aberdeen or St. Andrews could cope with the work of both classes if he attended them in the same year, this regulation involves the apprentice in residence in a university town for a minimum period of two years. It necessarily follows that the country apprentice must spend at least two years of his apprenticeship with a solicitor practising in Aberdeen, Edinburgh, Glasgow, or Dundee, provided he can find a solicitor in one of these towns willing to take him in. Students who intend to become advocates usually spend a year in a solicitor's office while they are taking their law degree, and some at least of these students serve a three years' apprenticeship. In short, the present system has a double base. It is the

intention of the system that the student should be instructed in the principles of the law by compulsory attendance at university law classes and that he should gain an insight into the practice of the law by working in a solicitor's office. Let us suppose for the moment that this is the best system for training lawyers. How does it work out in practice? There are a number of objections to the system of apprenticeship. The most obvious objection is that the question of whether an apprentice will learn anything about the practical application of the law depends almost entirely on the sense of duty of his employer. At present none of the legal societies regards it as part of its duty to strictly supervise the work done by apprentices in law offices. No questionnaires are issued to apprentices by the legal societies which would enable an assessment to be made of the work done by apprentices in the law office. As a result there are from time to time rumours of apprentices spending their whole apprenticeship in the cash-room of a law office. But even if all employers had a high sense of duty, or if the legal societies strictly supervised the work of apprentices, the evil would not be completely remedied. The purpose of an apprenticeship is, presumably, to gain an insight into, and some acquaintance with, all the various branches of law, a knowledge of which is necessary to the practising lawyer. If the work of a solicitor's office may be classified as falling into, roughly, five departments, Court work, conveyancing, trust and executry work, factoring, and income-tax work, of how many offices can it truthfully be said that they do all five classes of work, and that if they do, the volume of work in each is sufficient to ensure that in a period of three or five years the apprentice will gain any real grasp of the particular subject? It seems fairly obvious that so long as the system of apprenticeship persists, there will always be a fairly high percentage of apprentices who will at the termination of their indentures be wholly or very largely ignorant of one or more branches of the law. But the object of apprenticeship is surely to instil a wide, if necessarily superficial, knowledge of the law, not to encourage a specialized knowledge of one or more branches: the time for specialization comes, if at all, after, not during, the apprenticeship. A wide knowledge of the law is not, however, the sole requisite for success in the law. The successful lawyer must acquire the faculty of inspiring and retaining the confidence of his clients, and in this respect the system of apprenticeship makes practically no provision for the training of the student. A knowledge of human nature and of the best method of handling clients can only be gained by actual contact. In law offices, however, contact with clients is necessarily and properly the sole prerogative of the employer, not the apprentice. Unless, therefore, the law office has a considerable volume of Court work, which will involve meetings with witnesses, whether friendly or hostile, and direct contact with the solicitors on the other side, in which work it may be possible to allow the student to share, it may safely be said that the student or apprentice obtains no experience of that personal aspect of his profession which is at least as important as any other aspect. This is particularly to be regretted when it is remembered that the absence of such experience necessarily means that the apprentice enters upon his professional life with absolutely no guidance, whether theoretical or practical, in regard to those problems, whether of professional etiquette or ethics, which will inevitably confront him from time to time. Finally, it may be said that the regulation which requires all apprentices to attend the classes of Scots Law and Conveyancing at one of the Scottish

universities has accentuated the evils which appear to be inherent in the system of apprenticeship. The regulation requires a concentration of apprentices in the four large cities. The number of apprentices which any one law office can take in is limited; it may be doubted whether there are really enough legal firms in these four cities to cater for the number of apprentices taking university classes, and it seems fairly certain that the number of offices with a volume and variety of work sufficient to be entirely satisfactory, from the point of view of thoroughly educating the apprentice, is inadequate.

What of the training in the theory and principles of the law provided at the universities for apprentices taking the classes in Scots Law and Conveyancing or for students taking one or other of the law degrees? While there are admittedly signs of reform, it is merely stating the truth to say that in the four Scottish universities to-day the Faculties of Law are wholly unworthy of the name of faculty and are in reality nothing better than rather inefficient technical colleges. If it be the function of a Faculty of Law to be not merely a depository of a historical knowledge of the law in ancient times and a school for propounding the law as it stands to-day, but, in addition, if it be part of its function to emphasize the value of comparative law, to be a fountain of criticism of the many and glaring injustices, inconsistencies, and obscurities contained in the present law, an agency for helping to reduce the time lag between public opinion and the reflection of that opinion in statutory law and an instiller of the high duty which the legal profession owes to the community, then it is asserted that the congeries of law classes in a Scottish university has no claim to the title of a Faculty of Law. How feeble and inadequate the teaching of law in the Scottish universities is to-day is at once realized when the activities of what are styled the Faculties of Law in the Scottish universities are compared with the activities of Faculties of Law at certain universities in the more progressive countries. It is not to be supposed, however, that the blame for the present state of affairs is to be attributed wholly or even principally to the inadequacies of individual members of the teaching staffs of the Faculties of Law. The fault lies with the system rather than with the teacher. If the Faculties of Law at the Scottish universities are to become faculties in fact as well as in name, then the question of finance must be squarely faced. At present, the chairs in Scots Law alone excepted, there are at the four universities no lecturers or professors who receive adequate salaries : the lectureships are part-time posts whose holders are usually engaged in practice in one or other branch of the profession. It is plain that, unless and until the great bulk of the teaching staffs in the Faculties of Law are composed of men who can devote their whole time and energy to teaching law, the faculties will simply remain technical colleges. But such a reform necessarily implies the paying of salaries adequate to support the teacher without forcing him to supplement his salary by engaging in active practice. It may be said that whole-time teaching staffs will result in too great a divorce between the theory and the practice of law. The answer seems to be that such has not apparently been the experience of universities with living schools of law, and that in any event the teaching staffs would probably continue to be recruited largely, if not wholly, from practising lawyers. The substitution of whole for part-time teaching staffs immediately raises the question of whether they could command a sufficient amount of the

students' time to make the change over worth while. Under the present system the great majority of students, whether studying for a degree in law or with a view to passing the law agents' examinations, are apprentices or are working for varying periods in law offices without serving a formal apprenticeship. Any increase in the time spent in attending university classes can only be at the expense of attendance in the office, and a stage might easily be reached when the time actually spent in the office would be so limited and so irregular as to render it of little real value.

If the criticisms made above are sound, what is the remedy? It is believed that the true solution lies in the creation in the Faculties of Law of whole-time teaching staffs receiving adequate salaries, accompanied by a very radical modification, if not indeed a complete abolition, of the present system of apprenticeship. At present no one can qualify as a solicitor unless he has served a three or five years' apprenticeship and has either a degree in law or has passed the law agents' examinations. This method of becoming a solicitor should be abolished and the sole qualification in future should be a degree in law. It is suggested that students with an arts degree or with an honours degree in law might be excused apprenticeship entirely, while students with the B.L. degree would be required to serve a two years' apprenticeship after graduating, the distinction being made on the ground that it is desirable to encourage the student to equip himself with the most liberal education possible. It is emphasized, however, that all law students would require to graduate before working in an office and that the budding lawyer would cease to be, as at present, a part-time university student and become instead a whole-time one. . . . .

Would the abolition of the system of apprenticeship be opposed by the legal profession as a whole? It is suggested that if there were such opposition, whatever the nominal grounds for it, the real grounds would be two. The apprenticeship system may be, and sometimes is, abused by employers who regard it, consciously or unconsciously, not as a system designed to fit the apprentice for professional life, but as a means of running the office on the cheap, and who sacrifice the apprentice to that end. Secondly, the employment of apprentices probably tends to keep at an unduly low level the scale of remuneration of the qualified law clerk. The greatest objection to the radical modification or complete abolition of the apprenticeship system is that it would appear to turn out solicitors who might have a considerable theoretical knowledge of the law but who would be entirely ignorant of the practical side of it. This, however, need not be the case as is shown below.

It must be reiterated that under the present system of apprenticeship the practical experience gained by each apprentice is, to say the least of it, not uniform. The creation of whole-time teaching staffs and the making of a law degree the sole qualification for admission as a solicitor must obviously be accompanied by provision for practical experience, not merely on the scale attained under the present system of apprenticeship but, if possible, in a manner more uniform, more comprehensive, and more continuous. This practical experience can be gained by the institution of legal clinics working either as an integral position of the university's law faculty or in co-operation with, and in subordination to, legal dispensaries where such exist. It must be remembered that while agents for the poor are legally compelled to conduct litigation for poor persons they are under no legal obligation to advise or help in any way in non-

litigious cases: that while there is a legal dispensary in Edinburgh sponsored by the Edinburgh legal societies and manned by Edinburgh lawyers which gives advice and help in legal matters to poor persons, it is the only dispensary in existence in Scotland: and that it has been the experience of every civilized country that where legal-aid facilities are provided a steadily increasing use of them is made by poor people. The institution of legal clinics would serve the purpose of rounding off the curriculum of the law degree, of ensuring a wider and more uniform contact with the practical application of the law than it is believed is either usual or possible under a system of apprenticeship, of teaching the student how to handle clients, and of aiding poor people to obtain justice. . . . . .

How would a legal clinic be instituted in Scotland and in what manner would it operate? The first step would be to organize a legal-aid clinic association in the particular city in question. The board of directors of the association would be composed of lawyers, certain members of the University Senatus, certain members of the Town Council, and representatives of the various social agencies. Anyone would be entitled to become an ordinary member of the association on payment of a small annual subscription and there would be a moral duty on all lawyers living in the vicinity to join the association. The association would be a benevolent corporation having as its function the establishment and maintenance of a legal-aid clinic. The primary responsibility of its board of directors would be to provide the necessary financial support, to make the activities of the clinic as widely known as possible, and to enlist the sympathy of the general public. The actual direction, control, and government of the clinic would be vested in the Dean of the Faculty of Law who would, however, probably content himself with a general supervision, entrusting the day-to-day responsibility to a director who might be a whole-time and adequately paid assistant of one of the law professors. Provision would require to be made for the setting aside of three or four rooms for interviewing clients and to house the office equipment and records of the clinic. A full-time and adequately paid secretary would be essential to ensure that there would always be an authoritative person in attendance who would be responsible for the organization of the office work and ensure the continuity of the same and that adequate records were kept of all cases. If funds permitted, one or more typists to assist the secretary in purely clerical work would obviously be advantageous.

Attendance at the clinic would be compulsory for all students and work in the clinic would form an integral part of the curriculum. The clinic would be open every afternoon and perhaps two evenings a week for the convenience of those poor persons who could only visit the clinic in the evening. Every student would be required to be on duty at least once a week for an entire afternoon. Assuming that there were seven students on duty each afternoon, three might interview clients, three could be assigned to the secretary to assist in the actual office work, and one might be assigned to the director to act as his understudy. If the number of students was very large, it might be necessary to make the students work in couples which would in any case be advantageous where junior students are concerned. It is convenient at this stage to differentiate between cases where advice, guidance, and negotiation ultimately lead to an amicable settlement and cases where advice and negotiation prove fruitless and litigation must be resorted to. In both types of case the first

essential is to collect all the relevant evidence. The student in his first interview with the client would collect as much information as possible. After the interview he would consider the information so collected, decide on whether it was relevant, whether it was sufficient, whether it was reliable, what the law applicable to the particular circumstance was, and what the next step should be. He would be expressly prohibited from giving any advice to the client at the first interview. Having studied the data collected at the first interview, the student would then consult his adviser. The advisers would be fully qualified lawyers who had volunteered to assist the clinic. No doubt the ideal method would be for the adviser to be present at the first interview along with the student. As advisers would, however, be practising lawyers engaged in earning their living, they could hardly be expected to sacrifice working afternoons for this purpose. It would probably be necessary to set aside two or three evenings a week in which advisers and students could meet and study the data collected. It is unlikely that there would be any difficulty in obtaining qualified lawyers to act as advisers. At least the Edinburgh Legal Dispensary, with its record of continual expansion, has not found the difficulty insuperable, and if difficulty were in fact experienced, the legal society of the city could make it compulsory for its members to take it in turn to perform this service. After a study by the adviser of the data collected, he would discuss the case with the student and advise him as to whether the evidence was relevant, sufficient, and likely to be reliable, and would approve or disapprove of the course of action suggested by the student. Where the adviser decided that further evidence was necessary, or that the reliability of the evidence adduced should be tested, the student could either undertake the task himself, or if this would involve too great an expenditure of time, the assistance of students taking the diploma of social study, who in any event must undertake a certain amount of social investigation, could be enlisted. At the second interview the student would advise the client of his rights and as to the best method of proceeding and obtain the client's consent thereto. Thereafter the case would be conducted by the student, under the supervision of his adviser, to a conclusion. Where it proved necessary to write letters to the party on the other side, or his lawyer, all such letters, though written by the student, would have to be approved and signed by the director. Similarly, any formal agreement, where such was necessary, embodying the terms of the settlement, though drafted by the student, would require to be approved by the adviser and director. The clinic would be so organized that each student on receiving a case would handle it until its conclusion.

So much for the purely advisory cases. What of the cases which cannot be settled without litigation? The aid of the agents for the poor would have to be sought. The ideal would be for all poor persons to resort first of all to the clinic, and if the clinic concluded that litigation were necessary, the case would be remitted to an agent for the poor. The student in charge of the case would personally transmit the file to the agent for the poor. As the student would already be familiar with the case, his knowledge of its details might well prove of real assistance to the agent. The agent, after reading the file, might conclude that further evidence was necessary, and it is probable that most agents for the poor would be delighted to have the assistance of a student in collecting it. The agent for the poor would conduct the litigation in the normal way until

judgment was pronounced. He would, however, associate the student with each step in the case and explain to the student any intricacies of procedure or other difficulties which might arise. This is not to throw an undue burden on the agent because the assistance rendered by the student would result in such a saving of time as to more than compensate for any time expended by the agent in giving explanations. A student assisting an agent for the poor might also be allowed to appear in Court in incidental motions, thus gaining confidence while saving the time of the agent. The agent would be encouraged to submit a termly report on the work of the student, and in the event of his reporting gross negligence on the part of the student, the university authorities would take such disciplinary measures as they thought fit.

How far would this practical training benefit the student? Besides giving him an insight into the day-to-day working life of the lawyer, it would encourage him to use his judgment, to defend his conclusions when reached, and to realize the underlying principles of the law upon which the details of his case are based. A class might be held once a week to which every student would come primed with all the facts of a particular case in his charge. The director would then, without warning, call upon a student to narrate the facts of his case. When this had been done, any student would be entitled to attack the manner in which the case was being handled or to ask for explanations on any point of detail. The first student would then reply, defending his conduct of the case. Finally, the director might sum up the discussion of the case in question and endeavour to illustrate the general principles of law applicable to the case. A great merit of the clinic is that careful keeping of the records of every case provides in time an invaluable mine of information as to the manner in which the law or its deficiencies affects the life of the community. At present there is no grouping of all cases pertaining to any particular branch of the law, with all the facts relevant to such cases, immediately accessible to the social or legal investigator. The collection of case records in a clinic under suitable headings enables students who are studying, *e.g.*, the law relating to instalment purchase, to examine the case records in the clinic, and essays can be set upon the subject in which the student is encouraged to evaluate and criticize the law and to suggest reforms which the case records show to be desirable. These case records, moreover, are not merely helpful to the student, but should prove invaluable to the teaching staff of the law faculty, when they are pressing for reform in some branch of the law, in providing examples and statistics with which to arouse public opinion and impress legislators. In the improbable event of the clinic having insufficient cases to provide adequate material for the students, the clinic might undertake library assistance. Every country lawyer when considering a question of law must at times have left handicapped by being unable to examine all the authorities because of limited library facilities. In such cases the country lawyer, after having exhausted the facilities at his command, could be invited to send in the question of law with the authorities already unearthed and the clinic would endeavour to discover whether there was any further authority on the question. . . . . To give first-year students clinical work would undoubtedly be difficult. It would certainly be desirable in the interests of the student himself, but care would have to be taken to see that the client did not suffer thereby. A solution might be found by allowing the first-year student to participate

in purely advisory work to the extent of allowing him to be present at interviews and at the weekly class where reports of cases were made and criticized. He might, in short, act as a sort of apprentice to a second or third-year student.

In conclusion, it must be emphasized that the legal clinic does not compete in any way with the working lawyer. The primary task of the legal clinic is legal education : it is incidental to that work that it assists indigent persons by giving free legal service. It would thus relieve agents for the poor in the four large cities of that large volume of purely advisory work which they voluntarily undertake and which is becoming more and more onerous. The clinic, it is believed, would in time formulate general principles in the art and technique of practice which would result in the production of a lawyer with a more complete grasp of practice than can ever be evolved under the present system of apprenticeship. Lastly, it would instil into the student, at the most receptive period of his life, the duty incumbent upon the legal profession of ensuring justice for the weak, the defenceless, and the indigent, and of endeavouring to have removed by statutory enactment those inconsistencies and shortcomings of the law which the passage of time inevitably reveals and which bear hardly upon any member of the community whether rich or poor.