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Excerpts from Proceedings of the Third Annual Meeting of the Canadian Bar Association Held at Montreal, Quebec 3, 4, 5 September, 1918*

CANADIAN BAR ASSOCIATION

Excerpted:

Pages 18-26: Minutes of the Annual Meeting that pertain to the
Legal Education

Pages 171-172: Report of the Committee on Legal Education and
Ethics

* Canadian Bar Association, *Proceedings of the Third Annual Meeting of the Canadian Bar Association Held at Montréal, Quebec 3,4, 5 September, 1918* (Toronto: The Carswell Co., Ltd., 1918) at 18-26, 171-172.

Text boxes used to blur areas in order to highlight areas of concern; otherwise the photos have not been altered from their originals.

There is only one criticism I have to make of the report, and that is with reference to part 2 of the report under the heading "Period of course of study," beginning with the word "inclusive" in the 5th line of part 2. Doctor Lee has explained to us what that means. It means that normally on matriculation a non-graduate student must attend three years in a law school. He must also attend two years in an office, but, in fact, only one of those years need be actually subsequent to the three years in the law school, that is to say, that he can work in an office during the summer months of the three years which he is at the law school, and make up a year of office attendance in this way.

Now, that is, I submit, placing too great a weight upon the conscience of the solicitor to whom the student is articled. Some solicitors would be willing to give a certificate saying that a certain student had attended in their office during four months each of three years, although in fact that student had one or two months' holidays each year. Therefore, Mr. Chairman, I move that the Committee be directed to amend this report by striking out the words "inclusive of any periods of service during that part of the year in which the law school is not actually in session," and that subject to this amendment the report be accepted. The effect, Mr. Chairman, is that there will be then an absolute standard of three years in a law school, followed by two years or one year in office attendance, as the case may be.

MR. MIGNAULT: Is this amendment seconded.

DR. D. A. MACRAE (Halifax): Mr. Chairman and gentlemen, I take the opportunity of seconding the amendment which Mr. Falconbridge has proposed, and while I am on my feet may I beg again to express my conviction that the subject with which we are dealing now is one of the utmost importance, an importance

which is not exceeded, and in my opinion cannot be exceeded, by any subject which may come up for consideration by this learned body. The subject of legal education, and the action that has been taken upon it at this time is of importance for this reason, that it is a thing which is to be permanent. Other matters are more or less of a transient nature, but the matter of legal education is one of permanent and enduring importance, and I would deprecate any attempt to deal with the matter hurriedly, or to shelve or put it to one side without making provision for its discussion at some later time.

I agree with Mr. Falconbridge that what we all want, when we deal with a subject of this kind, is to elevate rather than to lower the standard of education. As citizens of Canada we want to be able to say to any man from any part of the world, that the standard of legal education in Canada is high, as high as and perhaps higher than the standard of legal education is anywhere else in the world.

The elevation of the standard of education throughout the Dominion inevitably involves certain other considerations, and first, the consideration of standardization of legal education throughout the Dominion.

I make bold to hold that it will be possible for at least the common law provinces to arrange for the standardization of legal education, and that it will be afterwards possible to arrange for some mutuality of dealing between the common law provinces and the Province of Quebec. I do not think it is proper for us, who are members of the bars in common law provinces, to come to the Province of Quebec and ask to be allowed to practise in the Province of Quebec, when we do not know anything about their Code or the peculiar law of the Province of Quebec, neither I am sure will it be fair for my confreres of the Province of Quebec to come to the Provinces of Ontario, Nova Scotia, or New Brunswick and ask to be permitted to

practise common law, when they are not familiar with the cases of the common law of England, as it prevails in these provinces. I mention that as an obstacle we have to deal with.

I may say that along with that standardization should come a certain measure of elasticity. I do not think we should impose a very rigid standard on our provinces throughout the Dominion. There are local conditions to which regard must be had, and for that purpose I think this Association in any recommendation that it will make, should have regard to the advisability of a certain amount of elasticity, of adaptability to the various conditions of affairs in this province.

If you will permit me—I do not know whether I am digressing the time, but I wish to go on and discuss the report. I am sure I would like to have the opportunity, and I am sure there are others who would like to discuss it more fully before final action is taken by this Association. Am I permitted to go on?

MR. MIGNAULT: I think we had better, if possible, continue the discussion on this important subject and then we shall have, I think, to take up company law at a subsequent meeting of the Association, because we have accepted the invitation of the Montreal Bar to a reception at the Hunt Club. However, I do not wish to interrupt Doctor MacRae.

DOCTOR MACRAE: Do I understand we are permitted to discuss this matter of legal education now?

MR. MIGNAULT: Well, it is just as the meeting decides. Dr. Lee's motion is to adopt the report. The only amendment so far proposed is to strike out a few words in the report, which implies the adoption of the rest. The amendment is to strike out the words "Inclusive of any period of service during that part of the year in which the law school is not actually in session."

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I understand Mr. Patrick has not yet moved an amendment, but I can see, as there is now an amendment, the other amendment which might be in order would be an amendment holding final decision of both the motion and amendment for another time.

DR. LEE: If it will clear the ground, I am quite willing to accept the amendment.

A VOICE: I think we are all agreed that this is an important subject. It seems a pity to postpone it until the next meeting of the Association.

MR. MIGNAULT: We have still twenty minutes. I can see that there is no more important subject than the one which we are now discussing. It is my privilege to practise under a system of law which is different from the system of law under which most of my hearers practise. We have not the system of case law. While cases in the Province of Quebec are entitled to the very highest consideration, and while cases of the higher Courts are considered as binding, we go rather on principle than on cases. Our law is contained in the Civil Code, which is largely modelled on the Code Napoleon, and we give a greater weight to the opinion of text writers than do the other provinces of the Dominion.

Now, this is a very important subject. Whether the student should remain in an office, deriving what knowledge he may derive from the practise of the law as he sees it carried on in his office, or whether he should devote several terms entirely to the study of the principles of law, and when he is sufficiently grounded in these principles, then take what is a practical course. If I may just add these words with reference to the system followed in France; a lawyer in France follows a course of study leading up to the title of Doctor of Laws, and when he has graduated and has his title, before he is allowed to practise, is attached to a practising barrister, and there acquires a practical knowledge of the law. This is very near to what Dr. Lee has proposed, as I understand it.

I understand Dr. Lee has accepted the amendment, so the only question now before you is the question of the adoption of the report.

DR. MACRAE: I sincerely hope that everybody who has anything to contribute to this discussion will have an opportunity of contributing to it, because, as I said before, it is a matter of the utmost importance, and deliberation on it should be slow.

With regard to the first proposition of admission to study. We in Nova Scotia require that a person, before he is admitted to study law, shall have attained the equivalent not only of matriculation into a university, such as Osgoode Hall, but the equivalent of the educational standing that students attain at the end of one year of Arts in a university. I should hope that this Association, inasmuch as what it is dealing with is only a matter of recommendation, will make a recommendation in that direction rather than a recommendation in favour of the *status quo*.

It might be wise and prudent for us to recognize existing conditions and not travel faster than the conditions warrant, and inasmuch as what we are dealing with is a matter of recommendation, I would, in order to test the feeling of this meeting, go so far as to recommend and move that the Committee be instructed to improve the standard, to elevate the standard of admission to the study of law, so as to put it upon the basis of an educational standing equivalent to that which a student attains at the end of one year at least of an Arts' course in an approved institution.

Then dealing with the next item, "No student to be admitted to study who has not reached the full age of eighteen years," I say that the object and purpose of that recommendation is not so much to secure a better law student, but is rather in the direction of what I might call a broad public policy in the interest of general education, so that a student who, at the age of sixteen or seventeen years, is in a great hurry, bent upon the study of law, might be given two years in

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which to pursue his Arts course, and this is in line with what Mr. Justice Russell stated on this subject, that they should not only be experts in law, the work they have to do, but should also be men capable of taking their position in any of the more important fields which lawyers may be called upon to discharge, and I am in favour of that.

Coming to the next paragraph, the period and course of study, the recommendation here involves some propositions on which some of us are not altogether in agreement. Without entering into details, there is just one thing for which I stand, that is, that a student who has obtained his LL.B. or B.A. degree, should put in one year of consecutive study in a law office, and nothing else.

You may be surprised perhaps that I, a teacher in a law school, ask for that. I ask for it advisedly. I am fully convinced that the teachers would be benefited. The interest of the employee, as was stated here, is opposed to the interest of the employer. In the end the interest of the employer would be better served.

So far as the report of the committee recommends that an exception should be made in favour of the man who holds a B.A. degree, exempting him from one year of office practice, I am opposed to that.

In the Province of Ontario the system is, in the case of a non-graduate (and by non-graduate I mean a man who has no B.A. degree), that he has to put in two years in an office, running errands, filing writs, serving papers. Then at the end of the two years of that work he is allowed to put in three years at the law school and then gets admission to the Bar. This report recommends the reversal of that. It recommends that the student put in time at Osgoode Hall and two years afterwards of office practice.

Personally, from the point of view of a teacher of law, I should rather be open to the suggestion that the student might put in one of those two years in the law school before being ready to take his course in a

law office, for this reason, that he would have a certain acquaintance with the external objects of his profession before he came to the law school, and begin to absorb principles which regulate the working of those particular objects with which he is dealing.

So far as the report recommends that the two years should follow the three years instruction of the law school, I should be disposed to accept the suggestion the other way.

Referring to the second page of the report: "A recognized law school means a law school or faculty in a faculty approved for this purpose by council." I don't know what is meant by council. Does it mean the council of this association, or does it mean the provincial council? What we mean by the council in Nova Scotia is the council of the Barristers' Society of Nova Scotia, and I think that needs to be elucidated.

As to admission to practice. I don't know what is in the mind of the committee, because unfortunately I have not been able to attend sessions, being somewhat remote from the centre in which they meet, but I wonder whether it is not possible that some time or other an examining board for the Dominion might be devised, prescribing examinations, and that a student who passes the examination of that board should thereby become entitled to be admitted to the bar of any of the Provinces of the Dominion, subject of course, to passing examination on local procedure, or local statute law, as might be required.

I suggest that the committee be asked to report on the possibility of appointing an examining board, whose certificate of having passed the examination shall entitle the student to be admitted to the Bar of any of the various provinces, with a view to ascertaining the view of the Bars of the different provinces.

MR. MIGNAULT: Do I understand that Dr. MacRae moves an amendment. I understood Dr. MacRae seconded Mr. Falconbridge's amendment, which Dr. Lee

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has accepted. Now, do I understand that you propose another amendment?

MR. ORDE: It is quite evident there is no time this afternoon for discussion of the subject. May I move now that the further discussion of Dr. Lee's report take place at some later hour, when this association meets during the next two days, to be named by the President.

MR. POULIOT: This subject is of extreme importance, but in this question as in all others which have arisen since the beginning of the world, there are differences of opinion. The difference in some respects is not so great as it may seem at first sight. Perhaps the difference after all is more apparent than real. By chance I had occasion two years ago to spend five months in the United States. I attended lectures at different universities, the University of New York, the University of Washington and the University of Pennsylvania. I also had occasion to attend the sittings of the Court of Appeals and of the Supreme Court of the United States. I listened with pleasure to the gentleman who spoke on Case Law and on the broadening of the studies. I believe that if a man is really educated, if his standard is high, he will become a good lawyer, either in France, England, Saskatchewan, Quebec, or anywhere else. But he will have to study the particular law of the province, and I fully agree with the gentleman who spoke here, that it would not be fair for any French-Canadian to go to Alberta or to Manitoba, and say, "now you must admit me as a member of your Bar, because I have studied in Toronto or elsewhere during five years." That is first evidence that you have the presumption in your favour that you are a qualified man, that you want to practise in Manitoba or Alberta, but he must be satisfied that he will be able to discharge his duties towards his clients. You are not here only to make money, but must be able to advise your client, to represent the Bar, to do honour to the Bar, either in Manitoba, or

Alberta, or elsewhere, and to give some evidence that you are able to fulfil your duty.

I heard a lecture at the University at Washington on the Constitution of the United States. Full faith and credit is to be given to the judgments of any Court of any State, so that a judgment rendered in the State of Pennsylvania could be carried out in the State of New York. It is just the same thing with our universities. When we come to procedure it is absolutely the same thing with but very few differences. There is a saying from the Roman law, that a man cannot enrich himself at the expense of another. That is reason, that is justice, and this is sound principle. We find that in the articles of our Code, so the difference is not so great as we would think, and as this question is extremely important, I think we should postpone the discussion of it, and we will then be able to do what is best in the interest of the students.

MR. MIGNAULT: I understand that Mr. Pouliot seconds Mr. Orde's motion, that the consideration of this subject be continued at a subsequent time to be named by the President.

Whereupon the motion of Mr. Orde was adopted.

The meeting then adjourned until 10.30 to-morrow morning, Wednesday, the 4th September.

REPORT OF THE COMMITTEE ON LEGAL
EDUCATION AND ETHICS.

A.

LEGAL EDUCATION.

In connection with this important subject your Committee has taken into consideration the existing law and practice in the several provinces and submits a scheme which it trusts may be found suitable for general adoption. Its features are:

1. To adhere in the main to the existing system which is essentially the same throughout Canada;
2. To remove unessential differences;
3. To leave to the several provinces a wide discretion in matters of detail.

The subject is dealt with under the four heads of:

- (1) Admission to Study;
- (2) Period and Course of Study;
- (3) Transfer of Students;
- (4) Admission to Practice.

(1) ADMISSION TO STUDY.

Your Committee recommends that every candidate for admission to study be required to have passed a matriculation examination of an approved University, or an equivalent examination prescribed or allowed by the authority of the province in which he seeks to be admitted to study.

No student to be admitted to study who has not attained the full age of 18 years.

(2) PERIOD AND COURSE OF STUDY.

Your Committee recommends that the course of Study shall consist in attendance for at least three sessions, one in each academic year, at an approved law school together with service in the office of a practising Barrister or Solicitor for at least two years, inclusive of any periods of service during that part of the year in which the law school is not actually in session: provided that service for one year shall be sufficient in the

case of students who at the time of their admission to study are graduates of an approved University.

An approved University and an approved Law School mean respectively a University and a Law School, or the Law Faculty in a University, approved for this purpose by Council.

(3) TRANSFER OF STUDENTS.

In order to provide for the case of students who may desire to continue or to complete their course of study in a province other than that in which they have been admitted to study, your Committee recommends that any student who has duly completed one year or two years of study in an approved Law School shall, subject to any necessary readjustment of curriculum, be qualified for admission to equivalent standing in any other approved Law School, and that in any province in which no approved Law School exists the period of study required of any student before admission to practice be reduced by the time, not exceeding three years, during which such student shall have duly followed a course of study in any approved Law School or Law Schools.

(4) ADMISSION TO PRACTICE.

Your Committee recommends that the examinations to be passed by students before admission to practice remain as heretofore under the direction and control of the constituted authority in each province. It is suggested, however, that the Provincial Authorities be invited to co-operate with this Association with a view to securing a reasonable degree of uniformity and effecting other improvements in the examinations, and in the prescribed courses of study.