BAR ADMISSION—ALBERTA'S EXPERIMENT

Alberta this year will introduce a new Bar Admission Program for students under articles. This Program follows upon a series of amendments to The Legal Profession Act, authorizing the Bar Admission Course, and comes at a time when it is expected the Society will take over, under the control of the Universities' Co-ordinating Council, the examinations (other than the so-called "special examinations") administered to those seeking admission to the profession. In 1969, the Law Society asked for a special report from its Education Committee on the Bar Admission Course. The Education Committee recommended that a Director of Bar Admission be appointed, and suggested the implementation of a six-week Bar Admission Program of a residential nature. This 1969 report was based on a study of the Bar Admission Programs functioning in other provinces, and was modelled, to some extent, on the program now operating in Saskatchewan.

Acting on the basis of this report, the Society commissioned the author of this note to make recommendations as to the feasibility of implementing the recommendations of the Education Committee. Surveys were conducted, both of principals and students, and special consideration was given to the elimination of some of the problems inherent in a six-week residential program. A series of new recommendations were made by the Education Committee, which were adopted by the Society at the June Convocation.

Other Canadian Bar Admission Programs

While little help can be gained from the United Kingdom and the United States, where conditions of entry into practice differ from the Canadian situation, other provinces have a large measure of experience in the fields of Bar Admission.

Ontario provides a Bar Admission Program with a teaching period of six months after twelve months of articles. The administrative staff is paid, and the students are charged a substantial fee, covering the costs of the program and the materials supplied therewith. There are courses in real estate, civil procedure, creditors' rights, commercial transactions, legal aid, professional conduct, corporation law, administration and estate planning, domestic relations, landlord and tenant, and criminal procedure. The course is given in Toronto.

In Manitoba, there is a two-week orientation period, followed by 11 1/2 months of articles, and six weeks of seminar sessions. During the articles, tutorial classes are given weekly, in the evening. The subjects dealt with include labour relations, criminal procedure, civil procedure, conveyancing, and building contract law, estates and trusts, corporation law, commercial law, administrative law, legal relations, and domestic relations. The Program is centred in Winnipeg. The students are charged a substantial fee. The director and administrative staff are paid.

In Saskatchewan, students take a six-week course, normally at the end of articles, and in any event they must have served six months of articles before taking the course, which is given at the College of Law in Saskatoon. A part-time Director is paid an honorarium, and the students are charged a fee, which appears to meet the cost of the operation of the Course. The subjects covered in Saskatchewan include

criminal procedure, oil and gas conveyancing, practice (including medical and expert evidence), estate planning, landlord and tenant, divorce, commercial transactions, adjustment of insurance claims, conveyancing, company law, and municipal law.

British Columbia is presently operating a program which involves tutorial sessions in Vancouver.

Nova Scotia has recently introduced a program which will be given in Halifax, in a number of separate sessions during the articling year. It will deal with such topics as the organization of the legal profession, probate and administration of estates, real estate transactions, and landlord and tenant, creditors' rights and personal property security, civil litigation, criminal procedure, administrative practice, corporations, domestic relations, taxation, and expropriation.

The Purposes of a Bar Admission Program

There is a considerable divergence of opinion as to the proper role of a bar admission program.

What follows is, therefore, the author's personal view of the function of a bar admission program.

Experience in this country has tended to show that the best method of ensuring qualification for practice is academic instruction followed by articleship. Other methods have, of course, been tried, but now, without exception, the return has been made to this particular pattern—university plus articles.

The purpose of articles is to integrate the learning of law school with the practice of law and to provide a knowledge and understanding of the profession, so that the admitted student is qualified to accept employment by the public.

The teaching of law as an academic discipline should, it is suggested, be left to the professional law teacher. It ought not to be the function of a bar admission program to make up for real or imagined deficiencies in the curriculum of the law school. When academic subjects are taught within the framework of a bar admission program, there is a tendency for both the students and the subject to suffer. This is not to say that adjectival subjects do not have a place in the law school. The law of evidence, for example, is a subject worthy of academic study and a subject which has benefitted greatly from the work of academics in that field. Bar admission is, then, no substitute for a sound law school education, and it should not try to be one. This is not to be taken as suggesting that the profession should have no concern about the law school's curriculum, but that concern must not be manifested in the attempt to create a second law school, masquerading as bar admission.

It has often been said, and with a measure of truth, that a student with perfect articles would not need a bar admission course. Unfortunately, we cannot give every student perfect articles, and the experience elsewhere has shown what our own students have felt, that there should be some organized program available to make up the deficiencies in articles. Hitherto, the students organized it themselves—by evening lectures. The need for such a program is now becoming more apparent. With increasing numbers entering the profession, more inexperienced principals are taking students. Smaller offices

are taking students. There is some tendency towards specialization, and some students are choosing to specialize, with the result that they are not being exposed to the wide range of practical experience that used to constitute a good set of articles. It is felt that since everyone admitted is entitled to hold himself out as qualified to practise law, every student should have an exposure to the fundamentals of practice. In addition, the profession must have a responsibility to ensure that its students have an opportunity to examine various aspects of the profession, so that they can fairly decide their own future. Finally, the entire profession depends upon its members' developing a keen sense of professional responsibility. A proper bar admission course, by bringing the students together with experienced members of the profession, should contribute to an appreciation of that responsibility.

It may be said, not entirely in jest, that bar admission is a "necessary evil". It is, we feel, necessary to ensure a minimum standard of instruction. There is considerable value in bringing students together for a full and open discussion with knowledgeable members of the Bar. Experience elsewhere has shown the value of tutorial programs. It is evil if the program is wasteful to anyone involved. Let us take, for example, the capable student with excellent articles. It would be wasteful to subject him to a program which was a mere repetition of the things he already knew. It is probably wasteful, too, to subject any students to pure lectures. With the introduction to Xerograph, it should be unnecessary to require the students to attend straightforward lectures. Instead, the lecturer might dictate his comments in advance and have them published for the students' use.

Again, it would be wasteful to require a student to read a lecture on a subject which he knew perfectly well. It would be wasteful to both student and principal to have a bar admission program which took a substantial amount of the student's time. It must not be forgotten that most principals do make some sacrifice in taking a student, and it would be unfair to penalize them for doing what is often done as a professional responsibility.

It is my view that a bar admission program should reduce compulsory demands on time to a minimum. The student should, to a large extent, be able to decide for himself those subjects in which his articles are deficient. He should, wherever possible, be able to study on his own, so that he can allot his study time with as much flexibility as possible. This seems to be a fundamental object of a good bar admission course.

An ideal bar admission curriculum would assume that all students gained nothing from articles. Such as assumption is not accurate, and a program based on it would be a disservice—costly in terms of money, productivity, and student interest. Every bar admission course has within it the seeds of its own destruction, namely, that it is of very little value to the able student with excellent articles. If the course is designed for him, it fails to remedy the deficiencies of others; if it is designed for the others, it is likely to be of little value to him. It is this writer's view that a bar admission program must recognize this inherent dilemma.

Experience Elsewhere: Its Lessons to Us

There are mixed views on the bar admission programs operated in other provinces. We can, however, gain here from the experience elsewhere. We should consider the genuine criticism of other programs and the factors peculiar to this province which make mere transplantation undesirable.

One important factor in this province is that it is impractical to operate a program based in one city. The cost to the students and principals is just too high. In addition, the students outside of the cities of Edmonton and Calgary must not be penalized by a program which demands their absence from their office for prolonged periods of time.

The main criticism found in students who have experienced the more elaborate programs elsewhere is the cost, in terms of both money and time. There is a strong feeling among the students elsewhere that some bar admission programs do just what we fear: namely, attempt to compensate for deficiencies in substantive law subjects, cover ground which has been covered before, and leave no flexibility for student or principal.

The Proposed Bar Admission Program: Curriculum

The basic questions that have to be asked in determining curriculum are: What is the minimum acceptable degree of training we expect from articles? To what extent has that been provided? Is the magnitude of the omission sufficient to justify inclusion?

The Law Society of Alberta conducted a survey of both students and principals, in an effort to obtain some guidance. One might postulate a test: If you assume that the average student will take advantage of his right to engage in practice, what experience is necessary for him, so that he can adequately represent his client on those subjects in which the public would fairly expect him to be qualified?

In deciding what subjects were to be brought within our curriculum, we had to attempt to determine the extent to which the need was being filled in the average office, and to ask ourselves the question of whether or not the omission was of sufficient significance to justify the inclusion. In that regard, the ommission may be significant because of the number of students with the deficiency, or because of the importance of the subject.

In attempting to decide a curriculum, the Education Committee of the Law Society had regard to the results of the questionaires sent to both students and principals, and to their own experience. They also had available the results of an earlier survey by the legal education section of the Alberta Branch of the Canadian Bar Association. In addition, material was available from other sources. It is clear that the curriculum must be criticized and revised from time to time. To that end, a method of obtaining continuing informed criticism should be devised.

The topics selected for inclusion in the proposed program are as follows:

1. *Corporations* (Memoranda and Articles of a private company, initial organization of the company, including shareholders'

agreements, and securities regulations). Over two-thirds of those polled recommended the inclusion of this subject.

2. *Real Property* (The Real Estate Sale, the operation of the Land Titles system, mortgages, foreclosure and specific performance, planning and subdivision). Most offices appear to feel that their students get adequate instruction, and the students, for the most part, are inclined to agree. The topic is, however, of sufficient importance that it was felt it should be included, so that there would be no one who did not have familiarity in the area. The majority of those polled requested instruction in foreclosure and specific performance.
3. *Landlord and Tenant* (The residential lease, the commercial lease, termination of tenancies, and distress). There was a strong demand for instruction on the commercial lease, and the other subjects had a substantial interest, which, coupled with their importance, rendered their inclusion desirable.
4. *Commercial Transactions* (The sale of a business, bulk sales, conveyancing, commercial security transactions). Between 65% and 70% of those polled recommended instruction.
5. *Wills and Administration* (Will drafting, practical problems in estate planning, surrogate grants, estate tax returns and assessments, and transfer and transmission of assets). Although nearly all the students had experience, over fifty per cent suggested that Will drafting be included, and over three-quarters suggested inclusion of some instruction in estate planning. There was a majority in favour of instruction in probate practice, and the absence of textbook material militated in favour of its inclusion.
6. *Domestic Relations.* A majority recommended instruction in this area, and in view of the volume of this kind of work and the frequency with which it comes before the general practitioner, it has been included.
7. *Creditors' Rights* (Bankruptcy, Mechanics' Liens, Judgment and Execution). Over two-thirds recommended inclusion of material on bankruptcy practice and mechanics' liens. Over forty per cent indicated a lack of experience in the area of judgment and execution, and that alone was felt to justify its inclusion.
8. *Civil Procedure* (Pleadings, Chambers, Discovery, Trial, Appeals). Over half recommended instruction in these areas, with almost three-quarters suggesting instruction on the conduct of a trial.
9. *Criminal Procedure* (Pleas, Election and Bail, procedure and preliminaries of trial: criminal appeals and Crown practice). Over two-thirds recommended inclusion of these subjects.
10. *Administrative Procedure* (Practice and Procedure before major provincial tribunals, practice and procedure in labour law). Over seventy per cent indicated a lack of experience and sixty per cent recommended inclusion.
11. *Law Office Management* (Law office management, including accounts, and the Rules of the Society). Around one-half of the students recommended some instruction in this area; and in

view of the fact that legal accounting is no longer a compulsory law school course in law school an introduction to the Society's Rules regarding accounts is considered essential.

12. *The Legal Profession* (Professional responsibility, ethics, professional negligence, the operation of legal aid). Over two-thirds of the students indicated a desire for instruction, and it is generally felt that ample opportunity for discussion of problems in this area should be provided.

Method of Instruction

Although excellent articles may ensure a student adequate instruction in all of the subjects chosen for our curriculum, the objective is to attempt to be certain that adequate instruction is available for those who need it.

Various methods of instruction are available. On one hand, one could require compulsory attendance at 40 lectures, or on the other hand, prescribe a syllabus and examine the student on it.

The Education Committee in its earlier report, has suggested a residential program of three to six weeks. This proposal was included in the questionnaires, and both students and principals were asked for their comments. Less than half of those polled were in favour of the residential program. The main objections raised were that it was costly in terms of time and money, difficult to organize in most offices, and imposed an unnecessary burden on students outside the residential centre.

In general terms, students resent a program which they feel wastes time. They object to having to listen to a lecture. They object to having to do again what they did in law school. They object to repeating what they have already learned in their own offices. They are, however, anxious to have useful practical instruction. Other questions were put to those polled. The bulk of students and principals seemed to feel the course should come during articles, preferably during the sixth and ninth months. Around two-thirds preferred written material and seminars over oral lectures.

It was felt that regard must be had to the fact that any prolonged period of lectures is an imposition on both student and principal, because there is a cost of absence from the office, a cost of accommodation, and disorganization of the articling program within the office itself. In taking a student, the principal assumes a burden. If the program were at the end of articles, a new incoming student would fill the gap, but his predecessor would not be available to assist in orientation. It would seem that the shortest time necessarily out of the office, and the giving of courses during articles, is strongly preferred for valid reasons.

It is planned that, wherever possible, formal instruction will be given through written material. Required attendances should be restricted to discussion, demonstration or tutorial periods. In this way, the student who needs instruction will have material available to him, and the student who does not need instruction will not be obliged to take it. The issue of written material also enables the student to do some of his work on his own schedule. There is an added advantage that the lecturer or instructor coming into a formal session can assume

that the people there have a certain knowledge of the subject, either because they've learned it in articles, at law school, or through the reading of material.

In order to provide material for discussion, and to ensure that students have examined the material, it has been suggested that assignments on the various subjects be provided in advance of the scheduled sessions. These assignments would generally be discussed at the formal session. This would replace the present take-home Bar Admission exam. Attendance at the formal sessions would be compulsory. There remains a power in the Education Committee to exempt persons from attendance, and it may be that people from outlying areas could be exempted where the Committee was satisfied that they would receive adequate instruction locally.

The written material should consist of lectures, statutory references, precedents, check-lists, case lists, and commentary. A student will decide for himself how much of the material he has to study, having regard to his own experience. The formal sessions would be offered in both Edmonton and Calgary, and should take about ten days, made up of two five-day sessions. A comprehensive written Bar Admission Examination will be written by all students. This examination will, it is planned, replace the old practice and bar admission exams.

Staff

The staff for this program will, of course, be appointed by the Society. It will depend, for effective operation, upon the co-operation of highly qualified members of the Bar. For each subject a Head will be appointed, to have responsibility for the subject for the entire province. There will also be instructors appointed for each subject in Edmonton and Calgary, who will assume responsibility for the conduct of the formal sessions, and for assignments. They may also contribute to the written material. In addition to these persons, the Society can also name "Special Lecturers", who will contribute to the program either by supplying written material, participating in formal sessions, or both.

The success of the program will depend upon the full co-operation of the members of the legal profession, who will be asked to donate time for this purpose. Members of the profession are finding increasing demands on their time for various public service activities, activities of the Society and the Canadian Bar Association, and Legal Aid. It is hoped that members of the profession will accept these responsibilities in the same way that they have risen in the past to assist other Society programs. The experience elsewhere has indicated that members of the legal profession who have become involved in these programs have found them stimulating and rewarding.

Financing the Program

Even with donated time from members of the legal profession, the program will be costly to operate. If material is supplied in the quantities which we hope can be produced, the cost of reproduction and distribution will be substantial. Adequate lecture facilities will have to be provided. There may be expenses for travel, videotape facilities, and incidental expenses. There will be considerable stenographic

services required. It was also felt that the Director would have to be paid because of the large amount of time that would be required, and the Society has resolved to pay the Director an honorarium based on his time contribution. It may be that less time will be required of a Director once the program is organized. The Society's office will, wherever possible, handle administration.

It was felt that if the cost of this operation were passed directly on to the students, it would add a substantial burden to a group of people who can least afford to bear it, or result in an additional charge to principals, who, after all, have already assumed the other responsibility of that role. Consideration has been given to a deferred charge. As students already make a contribution on enrolment as a student, and again on admission, it was felt that the cost of this operation, which would benefit the whole Society, ought to be levied against the whole Society, and it will be a charge on the general operations.

It is hoped that this plan will succeed in attaining its objective. If it fails, the Society will, no doubt, be compelled to reconsider the introduction of the kind of plan used elsewhere.

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