

SOME PHASES OF LEGAL EDUCATION IN NEW BRUNSWICK*

I

Your invitation to be present this afternoon, at this meeting of the Junior Bar of the Province in convention assembled, is greatly appreciated. Your Chairman prescribed an address on Legal Education in New Brunswick. That is a challenging task. For the course of development is of absorbing interest; and the record of development is not as yet collected together.¹

What is legal education? Various endeavours have been made to define the substance and to formulate objectives:² none transcends in simplicity the requisites inherent in the Canons of Ethics of the profession.³

The lawyer is more than a mere citizen. He is a minister of justice, an officer of the Courts, his client's advocate, and a member of an ancient, honourable and learned profession.

In these several capacities it is his duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to his clients, candid and courteous in his intercourse with his fellows and true to himself.

Legal education, so conceived, is in its initial stages a preparation for a professional life of duty, of competence and of responsibility; the process afterwards remains unremitting.

Three general observations pertain to New Brunswick: first, there has been a general absence of that debate over legal education which elsewhere has engendered controversies of such regrettable proportions; second, the record of development is fairly continuous after 1823 and (comparatively speaking) good; third, legal education in New Brunswick entered a distinctly new phase in 1950. In that year the existing state in England was described as "one of complacent apathy":⁴ in New Brunswick, the Barristers' Society revised to a fundamental extent the requirements for and conditions of admission to the profession; and there began that interest in legal education on the part of Lord Beaverbrook which has come to mean so very much.

* The text of an address delivered, in abbreviated form, on April 16th, 1955, to a convention of the Junior Barristers of New Brunswick at Fredericton.

1. The one extant study is the valuable article by Judge H. O. McInerney, Professor Emeritus of the University of New Brunswick Law Faculty: *Notes on Law School History* (1948), 1 [No. 2] U.N.B. Law School Journal 14.
2. For the most recent Canadian studies see: Cohen, *The Condition of Legal Education in Canada* (1950), 28 Can. Bar Rev. 267; Williams, *Legal Education in Manitoba: 1913-1950* (1950), 28 Can. Bar Rev. 758, 880; Rand, *Legal Education in Canada* (1954), 32 Can. Bar Rev. 387; Cohen, *Objectives and Methods of Legal Education: An Outline* (1954), 32 Can. Bar Rev. 762. For a suggestion of the extensive critical literature, see the references in Cohen. *The Condition of Legal Education in Canada*, *supra*, footnotes 1 and 2, and also *A Symposium on Legal Education in Canada* (1950), 28 Can. Bar Rev. 117-196.
3. From the Canons of Legal Ethics approved by the Canadian Bar Association and adopted by the Barristers' Society of New Brunswick.
4. Gower, *English Legal Training: A Critical Survey* (1950), 13 Mod. L. Rev. 137, at p. 137.

II

The Evolution of Control

1. **Judicial Control.** From the establishment of the province in 1784 until 1903, a comparatively long period, formal control over legal education in the province existed in the Judges of the Supreme Court. The field was neither pre-empted to the profession nor explicitly mentioned in the legislation incorporating the Barristers' Society in 1846 for the purpose "of securing to the Province and the Profession a learned and honorable body";⁵ all regulations of the Society were subject to the sanction of the Judges of the Court or any three of them.⁶ In sanctioning the first rules of the Society in 1847, "touching the examinations of persons as Students at Law and Attorneys", the Judges added to their order the proviso that nothing therein contained should "extend or be construed to impair or interfere with the general superintending power and authority of this Court over all or any of the matters aforesaid".⁷ On two subsequent occasions at least,⁸ before their immediate surveillance ceased with the Barristers' Society Act of 1903,⁹ the Judges withheld sanction from changes proposed in the rules by the Society.

2. **Legislative Control.** For a comparatively long period, from 1863 until 1903, the control both of the Court and of the Society was circumscribed by direct legislative prescription over important aspects of legal education. Commencing in 1863 the Legislature defined the terms of study;¹⁰ in 1867, the fees to be paid on admission as a student or as an attorney were prescribed as well as the interval of time before an attorney might be called to the bar;¹¹ in 1870, the conditions were regulated on which a student might receive remuneration for his services or engage in employment or business without being refused admission as an Attorney.¹² The Legislature in 1893 relaxed, though slightly, a measure of its direct control;¹³ finally, all such measures were

5. 9 Vict. c. 48, s. 1 (An Act to Incorporate the Barristers' Society of New Brunswick); 3 Local and Pr. Stats. 522.

6. *Ibid.*, s. 3. See also (1893) 56 Vict. c. 37, s. 4 and (1902) 2 Edw. VII. c. 21, secs. 1-3, which continued the principle of judicial sanction.

7. R. Mich. 1847, r. 1; Earle, *General Rules and Orders of the Supreme Court*, (1881), pp. 115-117.

8. See Earle, *op. cit.*, at pp. 154-156, 198-199, and 200d.

9. An Act Respecting The Barristers' Society, and Barristers, Attorneys, and Students-at-Law, C.S.N.B. 1903, c. 68. Pursuant to section 13 the Society was empowered with great particularity to regulate legal education in its several respects; by section 24 all regulations made by the Society were to be published in the Royal Gazette.

10. 26 Vict. c. 23 (An Act relating to the admission of Attorneys of the Supreme Court); and see, *infra*, Part IV, s. 2.

11. 30 Vict. c. 7 (An Act in addition to and in amendment of the Act twenty sixth Victoria, chapter 23, intitled An Act relating to the admission of Attorneys of the Supreme Court); and see, *infra*, Part IV, s. 2.

12. 33 Vict. c. 26 (An Act further relating to the admission of Attorneys of the Supreme Court); and see, *infra*, Part IV, s. 5.

13. 56 Vict. c. 37 (An Act in addition to and in amendment of Chapter 33 of the Consolidated Statutes, 'Admission of Attorneys'). The Barristers' Society, in place of the previous maximum fee of Five Dollars, was empowered to require from any person desiring admission as a student at Law a sum not exceeding Ten dollars, and from any person on his admission as an Attorney a sum not exceeding Fifteen dollars. The Society was also empowered to institute a system of multiple examinations. See also 2 Edw. VII, c. 21 and *infra*, Part IV, s. 3.

repealed in 1903, with corresponding power being vested in the Barristers' Society.¹⁴

3. King's College Law School. For a period of thirty years, from 1901 until 1931, King's College Law School and its successor the University of New Brunswick Law Faculty occupied an entirely anomalous position with control over the admission of their graduates vested in a unique body. In 1901 the Attorney General for the time being, the President of the Barristers' Society for the time being and one other member, to be designated from time to time by the Council of the Society, were made¹⁵ (as they remain of the University of New Brunswick Law Faculty)¹⁶ ex-officio members of the Board of Examiners of King's College Law School; and it was provided:¹⁷

From and after the passing of this Act any student-at-law making application for admission as an Attorney of the Supreme Court of this Province, on presentation of a Diploma from the said University of King's College conferring on him the Degree of Bachelor of Civil Law, and a certificate signed by the Dean of the said School of Law and counter-signed by the Attorney-General, or the President of the said Barrister's Society, of his having there satisfactorily passed the examination prescribed by said Faculty and Board of Examiners, and recommending him for admission as an attorney of said Supreme Court, and on said student conforming with the requisites of the byelaws of the Barristers' Society in all other respects, shall be entitled to be admitted as such Attorney without undergoing or passing any other examination.

That legislation was enacted, according to a contemporary account given by a purely impartial observer (a founder of the school), in recognition of the "practical results" obtained by the College;¹⁸ it was in any event enacted with the unanimous approval of the Council of the Barristers' Society.¹⁹

The enactment, though not conceived for broader purposes, did more than exempt graduates of the College from bar examinations: its effect was to vest in the College a substantial measure of independence from the Society and of control over admission to the profession. For a time the right accorded was jealously guarded: in 1922 the College successfully opposed a bill which would have authorized the Society to examine graduates in practice and procedure;²⁰ a year later a committee

14. *Supra*, footnote 9.

15. 1 Edw. VII, c. 17, s. 1 (An Act relating to the admission of Attorneys), as am.; C.S. N.B. 1903, c. 68, s. 14.

16. 21 Geo. V, c. 50, s. 10. (The Barristers' Society Act, 1931, consolidation 1952). The section is not presently invoked.

17. 1 Edw. VII, c. 17, s. 2. In the C.S.N.B., 1903, c. 68, s. 15 the words "at Saint John" were added after the words "School of Law" and the words "of such School" after the words "board of examiners". By (1902) 2 Edw. VII, c. 21, s. 4 graduates of other law schools were to be exempt from the system of intermediate bar examinations therein envisaged; by C.S.N.B., 1903, c. 68, s. 13 (6) the Society was empowered, with respect to such students, to accept, in lieu of any examination prescribed by the Society, the degree of any university subject to such conditions as the Society might prescribe.

18. Letter from Mr. Justice Hanington to the Editor of *The Globe*, Saint John, appended to the Minutes of King's College Law School for 1908-1909.

19. Synoptic Report of Proceedings of the Legislative Assembly of New Brunswick, 1901, p. 138.

20. Minutes of King's College Law School for March 20, 1922, and for May 8, 1922.

of the Faculty was appointed to prepare a bill to secure to the University of New Brunswick Law Faculty, the successor institution, the "same powers and privileges" that King's College Law School had enjoyed;²¹ those powers were obtained in 1924.²² With the revision of the Barristers' Society Act in 1931, and without dissent from the University, control over the conditions of admission of graduates of the University Law Faculty was vested (as earlier it had been over other students-at-law) exclusively in the Barristers' Society.²³ Graduates have been admitted since that date without further examination pursuant to regulation of the Society.²⁴

4. Professional Control.²⁵ The principal organizational units of the profession now concerned with legal education in New Brunswick are three in number:

1. The Barristers' Society with its Council, subject to control by the Society as a whole, empowered from time to time to make regulations respecting "the qualifications, course and manner of study and examinations of students-at-law and the requirements preliminary to their admission as barristers and solicitors and for regulating their admission and enrolment as barristers and solicitors."²⁶

2. The Canadian Bar Association, founded in 1914 as a national association of individual Canadian barristers "to advance the science of Jurisprudence, promote the administration of Justice, and uniformity of Legislation throughout Canada."

3. The Conference of Governing Bodies of the Legal Profession in Canada, consisting of representatives of each of the provincial Law Societies and of the Board of Notaries of Quebec, founded in 1929 "for the consideration of matters of common interest to the Governing Bodies of the Profession and the making of recommendations in respect thereof".

Both the Conference and the Canadian Bar Association have a purely persuasive effect upon the course of developments; both operate by the crystallization of professional opinion. But their work has been, and is, of the utmost importance. The Legal Education Committee of the Canadian Bar Association has had great influence on legal education through its adoption some years ago of recommended standards of admission²⁷ and a uniform Curriculum;²⁸ this is still the initial stage of its influence on the development of continuing legal education. The recent work of the Conference of the Governing Bodies in formulating Uniform Conditions as to the Transfer of Barristers and students-at-law from province to province is familiar to all and it is, on the basis of any evaluation, a major accomplishment.

21. Minutes of the University of New Brunswick Law Faculty for October 5, 1923.

22. 14 Geo. V, c. 20 (An Act to amend Chapter 68 of the Consolidated Statutes, 1903, respecting the Barristers' Society and Barristers, Attorneys and Students-at-Law).

23. See 21 Geo. V, c. 50.

24. *Ibid* under Reg. 36. (consolidation 1952).

25. The section is based in part on MacDonald, *The Professional Aspects of Legal Education* (1950), 28 Can. Bar Rev. 160, pp. 162-163 and 165.

26. 21 Geo. V, c. 50, s. 11 (4) (consolidation 1952).

27. See, *infra*, Part IV, s. 1.

28. See, *infra*, Part IV, s. 4.

Of the three bodies the Barristers' Society is at the apex of professional control. As in the past, the Society is concerned with legal education chiefly in three aspects: (1) the general education which must precede law studies; (2) the professional education which a candidate must have as exemplified by the passing of bar examinations or of an approved law school course; and (3) the practical office training which a candidate must have obtained concurrently with, or subsequent to, his professional education.

III

Organized Instruction

I. The Background: In the record of the arrangements developed in New Brunswick for training in the law, there is some criticism²⁹ and an occasional note of approval.³⁰ The record, however, is one (as intimated earlier) of fairly continuous development after 1823, when the Judges first regulated the period of study and apprenticeship. It is one of comparatively early provision for organized instruction, though such instruction was not made an indispensable prerequisite to admission until 1950.

Pertinent to the record it should be said³¹ that in the England of 1784, when the province was established, the ancient system of instruction carried out by the Inns of Court and Chancery had all but ceased; that instruction in the common law had not been established in the Universities as a vital discipline. In 1846 it could be observed by a Select Committee that "no legal education worthy of the name of a public nature" existed; to the enduring envy of Professors and students alike, the Downing Professor of Law at Cambridge could report that he never lectured at all.

The Select Committee of that year (for a Royal Commission was appointed in 1854 and a further committee under Lord Atkin in 1932) expressed the opinion,³² though it now seems erroneous, that legal education was better provided for on this continent: in fact, though the first professorship of Law in America was established in 1773, the professor at once abandoned his chair;³³ the Harvard Law School, the first to be established in 1817, was not a vital institution until after the 1840's.³⁴ In Canada the record of organized instruction does not go back beyond 1848.³⁵ But there was on this continent one difference:

29. See, e.g., Report of the Legal Education (Committee) Section, 6 Proceedings of the Canadian Bar Association (1921); *Ibid.*, 7 Proceedings (1922); Cohen, The Condition of Legal Education in Canada (1950), 28 Can. Bar Rev. 267.

30. See the reference to the Carnegie Foundation Report in McInerney, *op. cit.*, p. 16.

31. Based on Gower, *op. cit.*

32. *Ibid.*

33. At Columbia (then King's) College; Calendar, School of Law, Columbia University.

34. From 1839 to 1870 the period of study necessary to obtain a degree was one and one-half years or three terms with the lectures for each course given only in alternate years. In 1870 the course prescribed for the degree was lengthened to two years with the subjects being given each year. The present three year course dates from 1877: Calendar of the Harvard Law School. See also Stone, Some Phases of American Legal Education (1923), 1 Can. Bar Rev. 646.

35. The Centenary of the Faculty of Law of McGill University was celebrated in 1948: Cohen, The Condition of Legal Education in Canada (1950), 28 Can. Bar Rev. 267, at p. 269 footnote 6.

the development of legal education was not to be inhibited by the historic reasons³⁶ which in England had led to the separation of the Universities and the profession. In Canada, aside from one instance, the university law schools were to develop with the active support of the profession,³⁷ generally in the absence of organized instruction offered by the bar and even as a substitute for it.³⁸

2. King's College Law School. King's College Law School was established in New Brunswick in 1892 with the full support of the Judges and of leading members of the profession.³⁹ It was established in the absence of organized instruction offered by the bar and within fifteen years of the adoption of the three year law course at the Harvard Law School;⁴⁰ it was founded contemporaneously with the schools of law at Osgoode Hall,⁴¹ Dalhousie University⁴² and at the University of Toronto.⁴³ In the eventual history of the School, it is of interest that the founders, before completing arrangements for its establishment as a part of King's College, endeavoured to secure its organization in association with the University of New Brunswick.⁴⁴ In the original draft of the bill, which resulted in the act of 1901 conferring the special privileges of admission on graduates of King's College, there was by way of anticipation a proviso to confer similar privileges on graduates of the University of New Brunswick should it at any time establish a law school.⁴⁵ In due course the University was to undertake instruction in law and the present Dean of the Faculty, the Honourable Mr. Justice W. H. Harrison, on behalf of the Senate of the University, was in 1912 to propose to the College that arrangement,⁴⁶ which has since subsisted, under which first year law studies may be completed at Fredericton⁴⁷ and students admitted to the second year in the University Faculty at Saint John.

36. See the account given by Blackstone, *Commentaries on the Law of England*, Section 1, of the Study of the Law (Sharswood ed.); see also, *supra*, footnote 34, Stone.

37. See, e.g., the reference to the discussions between the Benchers of Alberta and the University of Alberta in Report of the Legal Education (Committee), Section, 6 Proceedings of the Canadian Bar Association (1921), p. 241; see also, *infra*, footnote 38.

38. For an early account of the interest of the Law Society of British Columbia, which at the time conducted law schools at Vancouver and Victoria, in the establishment of a Faculty of Law at the University of British Columbia, see MacRae, *Legal Education in Canada*, Report of a Canadian Bar Association Committee (1923), 1 *Can. Bar Rev.* 671 at 682 and 683.

39. See McInerney, *op. cit.*, p. 14.

40. *Supra*, footnote 34.

41. Established in 1873, abolished in 1878, re-established in 1881, and re-organized in 1889 with a full time principal: *Handbook of the Osgoode Hall Law School*.

42. Established in 1883: *Calendar, Dalhousie University*.

43. Established in 1887: *Calendar, School of Law, University of Toronto*.

44. *Supra*, footnote 39.

45. *Supra*, footnote 19.

46. Minutes, King's College Law School for May 6, 1912. The arrangement was accepted by King's College and, in accordance with the special act of 1901 governing admission of graduates to the bar, by the Attorney-General and the President of the Barristers' Society: Minutes for May 6, 1912 and November 10, 1913.

47. Lectures were commenced in the fall term: Minutes, King's College Law School for November 8, 1912.

3. **University of New Brunswick Law Faculty.**⁴⁸ In 1923, following the destruction by fire of the parent institution at Windsor (Nova Scotia) and in view of a proposed amalgamation of King's College with Dalhousie University, the President of King's College placed before the Law School, as an alternative to closing, two attractive proposals: one of continuing the School on an independent basis in New Brunswick; the other, of continuing it as a school of the proposed new University in which event King's College Law School and Dalhousie Law School (for the names were to be retained) were to be sister schools under the one central administration. The proposals were not satisfactory to the Law School: by following any one of them it was felt that "the benefit of the advantageous New Brunswick Legislation now applicable to the Law School" would be lost. Following a series of negotiations with the University of New Brunswick, King's College Law School was succeeded by the Faculty of Law of the University of New Brunswick. The arrangements between the University and its new Faculty were not precisely defined until the general revision of the University of New Brunswick Act in 1952.⁴⁹ But the cycle of events had been completed with the provincial university assuming its responsibility to the provincial bar.

IV

Aspects of Legal Education

1. **Pre-legal Education.** It was in 1843 that the first academic prerequisites to admission as a student-at-law were laid down by the Judges in an order requiring an applicant to be examined, as the Judges might direct, before "such and so many barristers" as the Court might appoint in such of the "several branches of education" as the applicant should intimate instruction had been received as indicated in his petition.⁵⁰ Failure by self-selection was the principle invoked. In their first rule, sanctioned by the Judges, touching the subject in 1847, the Barristers' Society defined the disciplines requiring an applicant to be "fully and strictly examined in the English and Latin languages, mathematics, geography and history," by the benchers, or any three of them.⁵¹ That rule did not produce satisfaction: prescribed disciplines were dropped in 1867 and the examination was to be again in such of the branches of learning indicated in the petition as "two members of the Council (one being an examiner)" might determine, subject to the approval of a Judge who was to certify accordingly.⁵² In 1881 the Court approved a rule withdrawing judicial certification of the subject matter of the examination and exempting, in the first such rule of the Society, the graduates of any chartered college from examination.⁵³

48. See *McInerney, op. cit.*, pp. 15-16 and Minutes of King's College Law School for January 22, April 30, August 13 and 23, 1923.

49. See 1 *Eliz. II, c. 14*.

50. See *R. Trin. 1843, r. 1*; *Earle, op. cit.*, pp. 106-107.

51. See *R. Mich. 1847, r. 1*; *By-law 1*; *Earle, op. cit.*, p. 116.

52. See *R. Hil. 1867, r. 2*; *By-law 19*; *Earle, op. cit.*, p. 155.

53. See *R. East. 1881, By-law 19*; *Earle, op. cit.*, p. 200c. See also the by-law of *Mich. T. 1880* which was not sanctioned by the Court: *Earle, op. cit.*, pp. 198 and 200 d.

For all that the prerequisites to legal studies, except for graduates of colleges, remained at a low level in New Brunswick for a considerable period. In 1923 the Legal Education Committee of the Canadian Bar Association was to report that the "examination for applicants for admission as students at law appears to cover even less ground than is required for junior matriculation into the universities."⁵⁴ On successive occasions⁵⁵ subsequent to 1922, when the Legal Education Committee of the Canadian Bar Association adopted a recommended standard equivalent at least to that of second year Arts,⁵⁶ the Law School recommended its adoption to the Society; in due course, the prerequisites became (and in effect for the University Law Faculty) those incorporated in the regulations of the Barristers' Society prior to the 1950 revision.⁵⁷

s. 41. Any person who has passed the matriculation or other examinations entitling him to be entered as a regular student in the arts faculty of the University of New Brunswick or any other university approved of by the council and who has attended as an enrolled student and has passed the examinations permitting him to enter the third year of the arts faculty at such university, or any person who holds a grammar school license granted by the Board of Education of New Brunswick, may be admitted as a student-at-law without being required to pass any further examination in academic subjects.

s. 42. Applicants for admission as students-at-law, except as provided by section 41, shall be required to pass examinations in subjects equivalent to the final examinations of the first and second years in the faculty of arts of the University of New Brunswick, and the syllabus of subjects for such examinations shall be as made by the council from time to time.

The actual questions, where examinations were required under regulation 42, were to be prepared by "some suitable person", (defined as being a professor in the University of New Brunswick or one holding a license of the grammar school class from the Board of Education of New Brunswick), subject to the approval of the examiners of the Society.⁵⁸

In 1950 the regulations of the Barristers' Society were revised to require as at present:⁵⁹

33. The educational requirements for admission as a student-at-law shall be:

(a) Graduation from the faculties of arts or science or such other faculty as the Council may from time to time approve, of any university in the Maritime Provinces or any other university approved by the Council from time to time.

(b) Completion of three years of studies leading to graduation from the faculties of arts or science of any of said universities where such university will grant to the student-at-law a degree in such faculty upon completion of the first-year at an approved law school in which the student-at-law certifies that he proposes to enroll.

54. MacRae, *op. cit.*, p. 672.

55. Minutes, King's College Law School for May 29, 1922; Minutes of University of New Brunswick Law Faculty for October 5, 1923; January 31, 1924; see also June 2, 1924.

56. Report of the Legal Education (committee) Section, 7 Proceedings of the Canadian Bar Association (1922), p. 264. In 1919 the Committee recommended a standard at least equivalent to that attained at the end of the first year of the course leading to the degree of B.A. at an approved university: 4 Proceedings, p. 18.

57. Pursuant to 21 Geo. V, 1931, c. 50 (consolidation 1938).

58. *Ibid.*, Reg. 38.

59. Pursuant to 21 Geo. V, 1931, c. 50, and applicable to students-at-law applying for admission as such on and after September 1, 1951 (consolidation 1952).

Coincident with that revision, corresponding changes were made in the requisites for admission to the University law degree.⁶⁰

In accordance with Regulation 33 (b), the internal regulations of the University were further altered to enable a student in the University to enter the Faculty of Law as a candidate for the degree on completion of the required three years of pre-legal training.⁶¹ Recently, an arrangement was announced to extend within the University Law Faculty the same right of admission to students of Mount Allison University.⁶² Every hope is expressed that similar arrangements will be concluded with other universities: the arrangement is that the university of origin of the student grant to him a degree in his appropriate faculty upon completion of his first year in the University Law Faculty.

The prerequisites to legal studies in New Brunswick are now among the very highest in Canada: the very minimum period is three years of undergraduate work and, in the absence of an arrangement such as described, for the majority of students, four years. There is no want of evidence that great and successful lawyers have been nurtured by self-discipline without the benefit of prescribed pre-legal training; there is even the evidence of Mr. Nelligan that in New Brunswick, Nova Scotia, Ontario and Alberta, the man without a general university training had in the period of his survey an income considerably higher than the man who had three or four years.⁶³ Common agreement dictates, however, that some standard, even if arbitrary, is desirable and necessary. Recently, Mr. Justice Rand added his weight to the four year standard observing that "with a heightening of the value placed on education, in its true sense, commensurate with the increasing stature of the Canadian people in general responsibility it should not be long before such a preliminary training is made the condition of legal study throughout the dominion".⁶⁴ Whatever the prerequisites to legal studies may be, the qualities sought in the prospective law student attract universal approval: habits of intellectual discipline, persuasive expression, and honest thinking. For these qualities are indispensable to the lawyer and the foundation of his calling.

2. The Period of Study. In the terms of study for attorneys, as originally laid down by the Judges in 1823, the distinction appeared between college graduates and non-graduates but not (for it was too early) between graduates in Arts and in Law: the term uniformly prescribed for a student was "four years, if he be a graduate of any college, or if not such a graduate, . . . the term of five years".⁶⁵ In 1858 the privilege accorded graduates was confined to "graduates of some University situate within the British dominions".⁶⁶ That restriction was removed by the Legislature in 1863 and the terms of study were reduced to

60. See the Calendar of the University of New Brunswick Faculty of Law 1950-1951.

61. Calendar of the University of New Brunswick 1955-1956, p. 196. Effective September 1, 1954.

62. Effective September 1, 1955.

63. Nelligan, *Income of Lawyers*, One of a series of reports prepared for the Survey of the Legal Profession in Canada (1951), 29 Can. Bar Rev. 34, at p. 44.

64. Rand, *opt. cit.*, p. 397.

65. R. Hil. 1823, r. 1; Earle, *op. cit.*, p. 25.

66. R. Hil. 1858; Earle, *op. cit.*, p. 142.

three and four years respectively.⁶⁷ From the case of *ex Parte Travis* it is evident that the terms were rigidly applied: on an application to show cause why a mandamus should not issue to compel the Barristers' Society to examine Mr. Travis, a student-at-law, who had interrupted his studies in the province to attend the Harvard Law School and to graduate with the LL.B. degree, Chief Justice Ritchie, for the Court, held that no student could claim to have his time of study reduced unless, during the whole of his period of study, he was a graduate of some legally authorized University or College.⁶⁸

The sequel to the *Travis* case was an enactment in 1867 which not only resolved the special difficulty there presented but also distinguished between graduates in Arts. and in Law. It provided (and retroactively as well) that the term of study was to "be reduced to three years" for any student "who shall have taken the degree of Bachelor of Laws at Harvard University, Massachusetts, or any legally authorized University or College in Great Britain, the United States or the British Colonies, at any time prior to his application for admission as an attorney".⁶⁹ Every junior barrister will recognize the cardinal error made. In amendment to the Act in 1868, the Legislature was to confess that it had "casually omitted" reference therein to "that part of Great Britain and Ireland called 'Ireland'"; it was to extend with great particularity "all the rights, privileges and immunities" granted by the "act" to students at law in the Province "who shall take or have taken the Degree of Bachelor of Laws in Trinity College, Dublin, or in any lawfully authorized University or College in that part of Great Britain and Ireland called 'Ireland'".⁷⁰ So the terms of study—as such—were to remain,⁷¹ though the legal basis for their existence was to change, until 1950 when the four year term disappeared consequent on institutional training becoming the sole basis for the admission of a student-at-law.⁷²

The three year term is (and it has been for quite some time) the accepted term for legal studies in Canada. Three quarters of all lawyers have had three years legal education; some few have had four years; only one in twenty-five has had more than four years.⁷³ When translated into academic terms the period is gravely short for the job to be done: equal in New Brunswick only to the minimum prescribed for pre-legal studies and for most students actually less than that period. But it is certain that the brink of saturation has nearly been reached for legal and pre-legal studies combined: in point of time alone (and other factors would have to be considered to form an opinion in terms of preparation) the present minimum elapsed time before a student trained in the province may be called to the bar is about equal to the period which obtained between 1823 and 1863, before the terms of study

67. 26 Vict. c. 23, s. 1.

68. (1897), 12 N.B.R. (1 Hannay) 30.

69. 30 Vict. c. 7, s. 1.

70. 31 Vict. c. 3.

71. See as consolidated in C.S., 1877, c. 33, Secs. 1-3.

72. Effective as to students-at-law applying for admission as such on and after September 1, 1951.

73. Nelligan, *op. cit.*, pp. 42-43.

were reduced—for there was an interval of two years before an attorney might be called to the bar;⁷⁴ it is longer than any intervening period subsequent to that date.

3. Admission by Examination. It was in 1837 in New Brunswick, just one year after the first examinations for solicitors were introduced in England,⁷⁵ that the Judges ordered that thereafter no person should be sworn as an attorney without the production of a certificate, "testifying his fitness and capacity to act as an attorney", signed by examiners.⁷⁶ The principle of admission by examination (or by approved law school examination) has remained since that date with the provision for the multiple system of examinations, as it obtained for non-law school candidates under the rules of the Barristers' Society before 1950, being first introduced in 1893 by legislative enactment following representations made by the Council of the Society.⁷⁷ Under existing regulations, a student-at-law, other than a graduate of the University Law Faculty, must hold a degree in law from a school approved by the Council and is required to undergo an oral examination in practice and procedure and a written examination on certain prescribed statutes.⁷⁸

In the development of the examination system itself it may be of interest to observe that under the order of 1837 the examiners were to be the Judges of the Court, together with four barristers, or any two of them, whereof a judge was to be one;⁷⁹ in 1847 the examiners became the benchers of the Society or any three of them;⁸⁰ in 1867 the examination results were to be approved by a Judge;⁸¹ in 1881 control reverted to the Society.⁸² It was in 1867 that the Society made its first provision for a regularly constituted Board of Examiners enjoining them to prepare, previous to each term, "reasonable and appropriate questions . . . for the examination of such candidates as may offer" and to "attend their examinations".⁸³ The Board system for bar examinations has since prevailed though, under the regulations adopted by the Society in 1950, the examinations are now conducted by the University Law Faculty with the examiners, in practice, appointed annually by the Council of the Society and reporting to it.⁸⁴

74. As determined by R. Hil. 1823 r. 2; Earle, *op. cit.*, 26. By R. Mich. 1835, r. 13 the interval was reduced to one year for any attorney, who, on his being admitted an attorney, was a graduate of any college; Earle, p. 62. By 30 Vict. c. 7, s. 2, continued C.S., 1877, c. 33, s. 7, the period was made one year for any attorney. Pursuant to present regulations, a student-at-law is admitted and sworn as a Solicitor and Barrister: 21 Geo. V, c. 50, Reg. 40 (consolidation 1952).

75. Introduced in 1836 and made a statutory requirement in 1843: Gower, *op. cit.*, p. 140.
76. See R. Mich. 1837 r. 1; Earle, *op. cit.*, p. 82.

77. See 56 Vict. c. 37, secs. 3-4. Because of the insufficiency of the fees provided for under the Act, the system was not implemented until after 1902: see the preamble to (1902), 2 Edw. VII, c. 21 and secs. 1-4 for the changes made; see also, *supra*, footnote 13.

78. See Regs. 36 and 37 pursuant to 21 Geo. V, c. 50. (consolidation 1952).

79. *Supra*, footnote 76.

80. See R. Mich. 1847, r. 1; By-law 3; Earle, *op. cit.*, p. 116.

81. See R. Hil. 1867, r. 2; By-law 21; Earle, *op. cit.*, p. 156.

82. See R. East. 1881; By-law 21; Earle, *op. cit.*, 200 c-d.

83. To be appointed annually and of the degree of Barristers-at-law and being members of the Council. See R. Hil. 1867, r. 2; By-law 18; Earle, *op. cit.*, p. 155.

84. But see Reg. 38 pursuant to 21 Geo. V, c. 50 (consolidation 1952).

There is in the New Brunswick record, partly because of the absence of organized instruction in the period, nothing comparable to the provision which subsisted in England between 1844 and 1872 when admission to the bar could be obtained either on the basis of attendance at lectures or by submitting to examination: students, of course, chose lectures; the two who had the temerity to present themselves for examination as well were ploughed ignominiously, but were able, notwithstanding, to establish their right to be called.⁸⁵ There was in New Brunswick, however, under the rules of 1837 a right, in a candidate dissatisfied with the examiners, to petition the Court for admission⁸⁶ and, subsequent to 1847, the candidate could petition the whole body of the benchers.⁸⁷ Under the rules of 1867, when the examinations became again the subject of approval by a judge, the student lost his right to appear before the Society, the Judges refusing to sanction a proviso which would have continued it.⁸⁸ So far as is known that right was never regained. Subsequently, detailed provision was to be made for supplemental examinations.⁸⁹

Nothing appears in the formal record to show the conditions attending the early examinations until 1867 when the regulations of the Society were to provide: to the questions prepared by the examiners, the student or students⁹⁰—

shall put the answers to such questions in writing, and during such examination shall not be permitted to refer to any book, or person or other source of information, to assist him in such answers, and shall write the same in a legible hand, in the presence of one of the said Council or the Secretary of the said Society, which written answers shall be submitted to the aforesaid two members of Council for their opinion upon the same, who, after examination, shall submit them for the approval of one of the Judges, such answers to be so submitted and decided on without the said members or Judge knowing the name of the respective parties who gave in the same, such answers being designated by letters or numbers only; and if such Student shall be deemed qualified, he shall receive a first, second or third class certificate, according to the merits of his written answers.

Though the illegible hand was then as now a source of trouble, it may be doubted that it was the reason for the amendment of 1881 to the regulations which provided that the examination might be either "by written questions or orally, or both, at the discretion of the examiners."⁹¹ Without, one ventures to believe, too long an interval, the method of written examination was again adopted for bar examinations except for the oral in practice and procedure.

85. Examinations were introduced by the Inns of Court in 1844 with the requirements becoming uniform in 1852 when the forerunner of the Council of Legal Education was established: see Gower, *op. cit.*, pp. 140-141.

86. R. Mich. 1837, r. 3; Earle, *op. cit.*, p. 82.

87. R. Mich. 1847, r. 1; By-law 4; Earle, *op. cit.*, p. 116.

88. See Earle, *op. cit.*, p. 156.

89. In the University Law Faculty a student who has failed at the regular examinations in not more than two subjects, provided he has made an average of at least 50 per cent on the work of the year, may be granted supplemental examinations in the subject or subjects in which he has failed; a student who has been granted a supplemental in any subject may write it only once: Calendar of the University of New Brunswick, 1955-1956, pp. 197-198.

90. R. Hil. 1867, r. 2; By-law 21; Earle, *op. cit.*, p. 156.

91. See R. East. 1881; By-law 21; Earle, *op. cit.*, p. 200c.

4. **Curriculum.** In their rules of 1847, sanctioned by the Judges, the Barristers' Society would appear to have laid down the first curriculum of studies in the province, prescribing examination "in the elementary principles of the law of real and personal property, forms of action, pleading, evidence, and practice".⁹² The last general curriculum of the Society, as it stood unrevised for some years in 1950, extended to:⁹³ Real Property, Contracts, Torts, Crimes, Sales, Personal Property, Pleading and Practice, Equity, Constitutional Law, Evidence, Personal Property II, Equity II (Trusts), Partnership and Corporations, Criminal Law, Conflict of Laws, Procedure, and Statutes. The present curriculum of the University Law Faculty, revised in 1950, and there were frequent revisions in the years intervening from 1892, extends to:⁹⁴ Torts, Property (Real and Personal), Contracts (including Sales), Criminal Law, Judicial and Legislative Method, Trusts, Constitutional and Administrative Law, Property II (Landlord & Tenant), Wills and Intestacy, Agency and Partnership, Commercial Law (Insurance and Bills and Notes), Corporations, Practice, Taxation, Equity, Evidence, Mortgages and Suretyship, Labour Law, Domestic Relations, Conflict of Laws, Jurisprudence, and Creditor's Rights. Apart from contemporary additions, the curriculum of the University Law Faculty corresponds to and is based (as was that of the Barristers' Society) on the curriculum recommended in 1920 by the Legal Education Committee of the Canadian Bar Association⁹⁵ and uniformly followed in the common law schools.

The curriculum of the University Law Faculty is directed, as it must in any rational sense be so directed, primarily to the local bar. All of the subjects prescribed by the Barristers' Society for students entering under the former system of admission for non-law school candidates are offered; and considerably greater emphasis is given to certain fields, e.g. to legislation and to property and security transactions. Both are mentioned because legislation is now a principal springboard for legal action and, as a recent survey⁹⁶ would suggest, close to 50% of the gross income of law firms, for Canada as a whole, is derived from conveyancing and estate transactions (30% and 20% respectively), followed by corporation practice 18%, litigation (excluding divorce) 11%, and domestic relations 5%. That survey, based on 1948 returns, was related approximately to the conditions of practice in New Brunswick;⁹⁷ it also revealed that about 17% only of the New Brunswick profession devoted more than half of their time to one field of law and that the practice was for the profession as a whole varied.⁹⁸

In the extended description given of New Brunswick curricula, there is some indication of the recurring problem of change. Degrees

92. *Supra*, footnote 80.

93. See Regs. 49-51 pursuant to 21 Geo. V, c.50 (consolidation 1938).

94. Calendar University of New Brunswick 1955-1956, pp. 198-203.

95. See Report of the Legal Education (Committee) Section, 5 Proceedings of the Canadian Bar Association (1920), pp. 250-257.

96. Nelligan, *op. cit.*, pp. 47-49.

97. The percentage response to the Income Questionnaire was for New Brunswick 62% and for Canada as a whole 55%: Nelligan, *op. cit.*, Table I, p. 50.

98. See *Ibid*: Table V, p. 51. Placed at 30% for Canada as a whole.

of emphasis shift and labels change; the bed-rock fact of present curriculum here, as elsewhere in Canada, is in the hard core of the now traditional branches of the law. Even the so-called public law subjects have their traditional roots: administrative law, for example, is very largely a consideration of legal rules once described as "Crown Practice". In the perspective of time the changes made have been more dramatic. For within the space comprised by legal education in this province, the course of the law has altered profoundly, the scope of required knowledge expanded, and the forums for practice varied and multiplied. In his penetrating analysis of the role of "The Lawyer in an Expanding Canadian Economy", Mr. John A. MacAulay, Q.C., in his Presidential Address to the Canadian Bar Association in 1954,⁹⁹ was to suggest that even in the short period since 1939 "the complexion of legal requirement" has changed materially with new legal fields "little explored and vaguely known" opening up; certainly, as he was to suggest, there is today—and it impinges on curriculum development—an increasing diversification of the lawyer's activities in private practice, in business and industry, and in the public service.

There is one problem (and it has ever been present) of legal education in a sense related to curriculum. It is to inculcate into the student a realistic appreciation of the correspondence between his law school training and the dynamics of practice and to impart to him an appreciable degree of competence in the basic skills and mechanics of practice. Such a formulation is preferred to the more familiar coin of distinction between "theoretical" and "practical training". For that distinction, and it was taken even in Blackstone's time,¹⁰⁰ is now perfectly discredited in any reasoned approach to legal education. The concern, both of the University Law Faculty and of the Barristers' Society, must be that a student be trained to the degrees of competence reasonably to be expected, within the time available for preparation, both for his immediate present as well as for his (experienced) future.

Related to matters of curriculum and instruction, there has been for some years past in the University Law Faculty a program of required participation in Moot Courts. In the present year, at the invitation of the Chairman of the Legal Aid Committee of the St. John Law Society, students in the second and third years sat with panels of the Committee and there have been suggestions that this participation might be continued and extended. One of the most valuable of the additional training media is the *Law School Journal*. Though a difficult undertaking for a small school, the Journal is now in its eighth volume. It does afford an outlet for and some stimulus to student writing.

5. Apprenticeship and Office Training. With respect to apprenticeship, the foundation of the ancient system of admission to the profession, there is much in the record to indicate the early nature and effectiveness of the system in New Brunswick. Before 1823, or so it

99. (1954), 32 Can. Bar Rev. 703-712.

100. *Supra*, footnote 30.

would appear, students might practice in a variety of courts and train in offices other than of barristers; for in that year the Judges ordered that thereafter training must be taken in the office of a barrister and that no student was to be permitted to practice "in the name of any attorney, or otherwise, in any inferior Court of Common Pleas in this Province".¹⁰¹ By the simple expedient of engaging students in the offices of the barristers, the attorneys were able to circumvent the order before the door was closed by further order in 1840 that "henceforth no attorney of this Court do employ any student in the office of a barrister of this Court, as his agent in any suit or matter pending in this Court, or in the transaction of any business before a judge, or in the office either of the clerk of the Crown or the clerk of the pleas".¹⁰² In a separate rule in 1840 the Judges intimated that they would "in future expect" in matters of chamber practice that, where the parties did not appear in person, they be attended by a barrister or attorney; or, where that could not be conveniently done, the student employed by a barrister to attend "be of competent experience, skill and knowledge of the business entrusted to him."¹⁰³

The next stage of development followed almost immediately on the revision by the Legislature of the terms of study. In 1867 the Judges sanctioned rule 24 of the Barristers' Society:¹⁰⁴

24. And whereas it is highly necessary, as well for the interest of every person entering upon the study of Law, as for "securing to the Province and the Profession a learned and honorable body," especially in the late curtailed period of study, that Students of the law, during their Studentship, should confine themselves exclusively to the study of their profession, and not receive any emolument or reward for their services, or engage in any other profession, business or employment: No Student, therefore, shall receive any salary or remuneration whatever for his services from the Barrister with whom he studies, nor from any other person, nor shall he be allowed to practice or try causes in any Court, on pain of being refused admission.

It was a stage of short duration for the Legislature intervened in 1870 to provide:¹⁰⁵

1. No Student at Law shall be refused admission as an Attorney for or by reason of his having received any salary or remuneration during the term of his study, or for or by reason of his having practised or tried causes in any Court, or for or by reason of his having engaged in any other business or employment; provided always, however, that no such Student shall during the term of his study engage in any other business or employment, or receive any salary or remuneration from any person whatever, or practice or try causes in any Court, without the knowledge or consent of the Barrister with whom he may be studying at the time.

101. See R. Hil. 1823, rr. 6 and 8.; Earle, *op. cit.*, p. 26.

102. See R. Trin. 1840, r. 5; Earle, *op. cit.*, p. 98. The rule did not extend to prevent the employment by a barrister, himself the agent of any attorney, of any student in his office in the professional business of such attorney.

103. See R. Trin. 1840, r. 6; Earle, *op. cit.*, p. 98.

104. R. Hill. 1867, r. 2; By-law 24; Earle, *op. cit.*, 156-157.

105. 33 Vict. c. 26, ss. 1 and 2; C.S. 1877, c. 33, ss. 4 and 5.

2. If such Student do or shall engage in any other business or employment, or receive any salary or remuneration, or practice or try causes in any Court, without the knowledge or consent of the Barrister as aforesaid, he may be refused admission as an Attorney.

The Society, the record reveals, entertained at one point the possibility of subjecting the requisite approval to be given a student to "the approval in writing of three members of the Council";¹⁰⁶ eventually in 1881 the Society settled for a provision requiring the barrister with whom the student articulated to certify that the particulars of the employment or occupation and salary had been with his "express knowledge and consent".¹⁰⁷

That Legislation was repealed in 1903, but it is a conservative statement to suggest that its effect was lasting until 1950. In the regulations of the Society subsisting immediately before that date the familiar provision was:¹⁰⁸

61. In case a student-at-law during his term of study has been engaged in any other occupation or employment he shall state in his petition for admission what the occupation or employment was and how long he was engaged in it, and his petition shall be accompanied by a certificate from the barrister with whom he has studied, distinctly verifying the statement and declaring that the student had engaged and continued in such occupation and employment during the time stated and received the salary or remuneration therefor with his knowledge and consent.

In 1950 the requirement became:¹⁰⁹

35 (c) Each student-at-law shall serve not less than six months in the office of the barrister with whom he is articulated, or in case of transfer of articles such service shall aggregate not less than six months in the offices of the several barristers with whom such student-at-law has been articulated and prior to admission of a student-at-law as a solicitor and barrister

Office training is now for all a matter to be experienced rather than a mere formality to apprenticeship before admission. The period prescribed is reasonably brief: Mr. Justice Rand has suggested a one year period after graduation with required office attendance between school years.¹¹⁰ Such a requirement would preclude many an aspirant to the profession; but the proposal is symptomatic of current interest in apprenticeship. That interest in Quebec province recently led to a fourth year being added to the three years of academic instruction. As carried out at McGill University, students during the fourth year are placed in offices in Montreal and attend part of their time to office work and for part of the time attend special courses given by members of the profession but organized within the University.¹¹¹ That scheme may have its own bundle of disadvantages.¹¹² It is perhaps too early

106. See Earle, *op. cit.*, pp. 199 and 200 d.

107. See R. East, 1881; Earle, *op. cit.*, p. 200 d.

108. Pursuant to 21 Geo. V, c. 50 (consolidation 1938).

109. *Ibid.* (consolidation 1952). Effective as to students-at-law applying for admission as such on and after September 1, 1951.

110. Rand, *op. cit.*, p. 418.

111. See Meredith, A Four-year Law Course of Theoretical and Practical Instruction (1953), 31 Can. Bar Rev. 878.

112. See e.g., Rand, *op. cit.*, p. 408.

to evaluate the New Brunswick scheme. As yet, there has been no perceptible difficulty in finding office space; there is some indication that the training experienced is not as varied as might be desired.

V

The Benefactions of Lord Beaverbrook

No account can now be given of legal education in New Brunswick apart from the benefactions of Lord Beaverbrook, student of King's College Law School and Honorary Chancellor of the University of New Brunswick. By a single decision, as it were, of interest in 1950 Lord Beaverbrook was to rescue in a short while the University Law Faculty from the Provincial Building in Saint John and to establish it in 1953 in Beaverbrook House with a library of its own. In that single act it may be that Lord Beaverbrook preserved to New Brunswick the very existence of organized legal instruction: for the Law Faculty could not have continued indefinitely in any comparative sense without facilities of its own and a physical existence.

The full impact of Lord Beaverbrook on legal education in New Brunswick cannot be assessed in the present: much more is involved than the physical existence of Beaverbrook House with its library; there is the very provision in this province of facilities for instruction in the law comparable to any in Canada at the undergraduate level. But there is more. Under the terms of the Lord Beaverbrook Overseas Scholarships, established in 1947,¹¹³ eleven graduates of the University Law Faculty have so far proceeded to post graduate studies in England.¹¹⁴ In relation to the total number of graduates, the ratio is possibly the highest in Canada. Beginning this September, Lord Beaverbrook has established on an experimental basis a series of five entrance scholarships to the Faculty each of a value of \$600 and tenable for three years. That benefaction is without example in the field of legal education in Canada.

VI

The University Law Faculty and the Bar

The relationship between the University Law Faculty and the bar of New Brunswick has been intimate since 1892: both in the recognition accorded¹¹⁵ to graduates in their admission to the bar without further examination, and in the service rendered by members of the profession, both in the early days and in the present, on the instructional staff. That service remains vital: not in any sheer economic sense, but because it is a sound precept that the law student, whatever may be his ultimate vocation, should from the initial stages of his study be brought into close contact with the profession itself.

113. See Calendar, University of New Brunswick 1955-1956, pp. 50-51.

114. See (1954), 7 U.N.B. Law Journal, p. 31.

115. Since 1901.

Presently, the Barristers' Society also maintains two annual scholarships in the Faculty, contributes toward the publication costs of the **Law School Journal**, and has centred within the Faculty its arrangements for the examination of candidates for admission who are not graduates of the Faculty. For its part, the University has assumed the financial burden, increasingly greater than when the first modest provision was made in 1923, of providing the basis for organized legal instruction within the province.

In this phase of legal education in the province the relationship between the University Law Faculty and the bar has changed or, more precisely, has deepened in significance consequent on the changes made in the requirements for admission by the Barristers' Society in 1950 and as a consequence of the benefactions of Lord Beaverbrook. The University Law Faculty is the primary training source of candidates for admission to the New Brunswick bar and is able fully to discharge its responsibility.

VII

Mr. Chairman, the title of my address did not require more than a report to you on the present state of legal education in New Brunswick and the course of past development. No prophesies were required. Yet there is one to be made.

If past events and the relationship between students going into higher studies and into law mean anything, it is that within a short time, placed at ten years by competent observers, the number of students in Canadian law schools will more than double present enrolment. There is no doubt that New Brunswick will be a participant in that trend: our arrangements can be matched to the task.

—G. A. McAllister,

University of New Brunswick Law Faculty.