

WOMEN IN THE LAW

The following is a portion of an address given by M. Louise Lynch, Registrar of the U. N. B. Law School, at the annual Student-Faculty Dinner held in Saint John last April.

Portia is of course the first woman lawyer, in fact the name "Portia" has become synonymous for women lawyers in the English language. Portia had her triumph while wearing boy's clothing and impersonating a young civil doctor of Rome named "Balthasar." It is doubtful if her speech beginning "The quality of mercy is not strained" has ever been equalled or surpassed in legal forensics. Nor would it be easy to match her ingenuity in upholding the justice of honouring Shylock's bond by giving him his pound of flesh and at the same time insisting that it be exacted without shedding one drop of Christian blood—two impossible conditions. It is a bit disappointing to find that Portia has not been a general favorite with critics of Shakespeare who are unanimous in considering "The Merchant of Venice" an excellent piece of work.

William Hazlett writing on the play has this to say:—"Portia is not a very great favorite with us and I object to a certain degree of affectation and pedantry about her which is very unusual in Shakespeare's women but which perhaps was a proper qualification for the office of a civil doctor which she undertakes and executes very successfully."

Turning to modern times and fact instead of fiction we find that Mrs. Belya A. Lockwood was the first woman admitted to the Bar in the United States. At about the age of thirty-eight she began the study of law. Her application for admission to the Columbia Law School was refused on the ground that her presence in the class would "distract the attention of the young men." She continued her studies, receiving a Master of Arts degree from Syracuse University and the following year was admitted to the National University Law School, from which she graduated with a degree of Bachelor of Laws. After a long and spirited controversy she was admitted to the Bar of the Supreme Court of the District of Columbia, where she practiced with success. In 1875 she sought admission to the Court of Claims but was rejected on two grounds, first, because she was a woman and second, because she was a married woman. The next year she sought admission to the United States Supreme Court and was the first woman to be granted that honour. Since that time many women have successfully followed the legal profession in the United States.

And now we shall turn to New Brunswick. We find that Mabel P. French of Saint John was the first New Brunswick woman to embark on a legal career. Miss French was admitted as a student-at-law by the New Brunswick Barristers' Society in 1902 and after having complied with all the requirements of the Society as to study and examination, she duly applied to the Council of the New Brunswick Barristers' Society for admission to the Bar. The Council passed a resolution stating that it was fully satisfied as to her moral character, habits and conduct and that, subject to the opinion of the Supreme Court of New Brunswick as to her sex being under existing laws a barrier to her admission as an attorney, recommended her admission as an attorney of the Supreme Court of New Brunswick.

This resolution, subsequently ratified by the Society, was presented to the Supreme Court of New Brunswick on November 24th, 1905. The Supreme Court held that at common law a woman could not be admitted to practice as an attorney and dismissed the application. Chief Justice Tuck was

most vigorously opposed to the application. He pointed out that if Miss French were entitled to be admitted as an attorney she would in a year be entitled to be called to the Bar and in a few years would be eligible to be appointed to the Bench. In his judgment he pointed out that the argument for Miss French's admission was based chiefly on the advanced thought of the age about the right of women to share with men in all paying public activities, pointing out that no mention had been made either of police constables or the army. Quoting from his judgement . . . "If I dare to express my own views I would say that I have no sympathy with the opinion that women should in all branches of life come in competition with men. Better let them attend to their own legitimate business."

Mr. Justice Hanington was not quite so vehement and I should say that he was cautiously against the proposal. Mr. Justice Barker was also very much opposed to admitting Miss French as an attorney.

His judgment is a lengthy one and in answer to the argument that it was one of the privileges and immunities of women as incident to their citizenship to engage in any and every profession or occupation or employment in civil life, he quoted Mr. Justice Bradley of the Supreme Court of the United States in a judgment in the year 1873 in refusing admission to a married woman to the Supreme Court of Illinois as saying:—

"It certainly cannot be affirmed as an historical fact that this has ever been established as one of the fundamental privileges and immunities of the sex. On the contrary, the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband."

Further on in the report Mr. Justice Bradley proceeds thus:—

"It is true that many women are unmarried and not affected by any of the duties, complications and incapacities arising out of the married state, but these are exceptions to the general rule. The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases."

In the opinion of Mr. Justice Barker, the word "Person" in many cases can be taken as referring to women as well as men, but he was of the opinion that in the case in question no such contemplation was in the minds of the Legislature when the Act was passed regulating the admissions to the Bar in New Brunswick. Mr. Justice McLeod and Mr. Justice Gregory agreed with Mr. Justice Barker. Mr. Justice Landry with true Gallic wisdom took no part.

The following year, March 22nd, 1906, an amendment to the Barristers' Act was passed enabling women to practice law in New Brunswick. Miss French was admitted to the New Brunswick Bar in 1907. She successfully practiced law in the West for several years before she married and retired. It was not until 1921 that the next woman was admitted to the Bar. In that year Muriel Corkery, (now Mrs. William J. Ryan),

was sworn in. She has had a successful career as Trust Officer in the Eastern Trust Company and has also served as Official Receiver in Bankruptcy and Deputy Clerk of the Saint John County Court.

I shall now give you a brief resumé of the various New Brunswick women who have practiced law. Mrs. Ryan was followed by Miss Margaret Teed, who had a brief career in the legal department of a Canadian corporation prior to her marriage, and Miss Lesley Pickett, a former police matron in Saint John, and presently matron of the Coverdale Home for Girls.

When I entered the Law School as a student twenty years ago, Miss Mary Wilson, a Saint John girl, who is now in the legal department of the Attorney General in Fredericton, was a third-year student and two other young women were in my class. One of these gave up her studies after one year, and the other one who was a special student successfully completed the law course but could not receive a degree since she had not satisfied the requirements of two years in Arts. Consequently, I was the only woman in my graduating class of eight. That same year, Mrs. Hume, the former Hamlin Fairweather, was a first-year student. Mrs. Hume has successfully practiced law in Saint John as a member of the family firm ever since her graduation. She was followed by Miss Dorothy Hughes of Fredericton, Miss Barbara Ramsey, Miss Muriel Sargent and Miss Katherine Boyle. Miss Hughes, now Mrs. Colter King, practices in Fredericton and during the war years had a position in Washington. Miss Ramsey's untimely death cut short a most promising career. Miss Sargent was in the office of the Enforcement Council of the Wartime Prices and Trade Board following her graduation. Miss Boyle practiced for a short time before her marriage.

In addition to the graduates of our School, I feel I should mention two other New Brunswick women lawyers who are outstanding in their profession, namely, Mrs. Muriel Ferguson, Fredericton, who has the unique distinction of being the only woman in Canada to be appointed as Regional Director of Family Allowances. Some years ago Mrs. Ferguson very capably filled the office of Judge of Probate for Victoria County and during the war years was Chief Enforcement Counsel of the Wartime Prices and Trade Board in Saint John. Miss Frances Fish is a prominent lawyer in Newcastle. Another Saint John girl, Miss Margaret Drummie, graduated in law from Dalhousie University but never practiced her profession.

I should like to give you a few brief facts concerning the history of the woman lawyer in Ontario. The Law Society of Upper Canada was formed in 1797 and it was one hundred years later before a woman was admitted to the practice of law in Ontario. At this point I should like to tell you an interesting story that I came across in my research.

Miss Phyllis Axford, writing in the "Saturday Night" in 1948 on the subject of "Portias of the Province" says:—

"Although it is only fifty years since women have been recognized as professional lawyers hereabouts, one of the first recorded law cases, a full hundred years before women came to the Bar, was prepared by a woman who appeared in court on behalf of her client. In this case, the client was her husband, and because of the Law Society not having been founded at that time, the conventions of the Constitution dictated that a man involved in litigation or accused of crime could appoint to defend his interests any wise and well-informed person of his own choosing. This defendant selected his own wife. Officially she became his recognized attorney."

During the century many women had applied to Osgoode but had been refused by the Benchers. Finally in the year 1897, Clara Brett Martin was admitted to the Bar. Twelve of the Benchers were for her, twelve against. The chairman cast the deciding vote. He was Mr. Oliver Mowat. A contemporary report of the incident states that "He voted for Miss Martin and shortly afterwards was knighted."

Ten years elapsed before another woman summoned sufficient courage to seek admission to the Bar. However, in the fifty years that have elapsed 112 women have been admitted to the Bar of Ontario. Many of these women have gone into administrative or advisory positions in banks, trusts, insurance or investment companies or in law publishing or law library work. Of the twenty or thirty who have elected to practice, the record has been impressive.

I would like to single out three outstanding women lawyers, each of whom has the unique distinction of having been appointed a K. C. The County and Surrogate Court Judge for Haldimand County is Miss Helen Kinnear, who was a most outstanding and successful lawyer prior to her appointment to the Bench. Miss Margaret P. Hyndman, K.C., of Toronto, is an extremely successful corporation lawyer and widely known throughout legal circles in Europe and the United States as well as in Canada. Miss Hyndman was associated with Mr. Wegenast, an outstanding Canadian corporation lawyer, whom she assisted in writing a most valuable text book on company law. Miss Hyndman recently distinguished herself as one of the barristers appearing before the Supreme Court in the "margarine case." Miss H. B. Palen, K.C., of Toronto, is the Assistant Registrar of the Ontario Supreme Court.

Time does not permit me to tell you of Canadian women in the other Provinces who are eminent in law. Some of these are magistrates. It is just recently that women have been eligible to practice law in Quebec. However, for many years some of the most successful women lawyers in Canada practiced in Quebec firms. These women were members of the Bar of Ontario and did all of the actual work incident to their profession even though they could not appear in Court.

There are also many outstanding women lawyers in England and many of them have attained high positions although no woman has been honoured to date with an appointment to the Supreme Court.

Turning from statistics I would now like to conclude by saying a few words about law as a profession for women in general. It is an exacting profession and must be your great interest in life. The law is a jealous mistress and will not stand for rivals. The hours are long and trying, the responsibility is acute. The women who have succeeded in law spectacularly are those who were good students and were impassioned with the thought of becoming lawyers. They have shown a strong sense of social responsibility and have contributed much to their communities.

It is rather interesting to note at this point that at the present time women lawyers hold the chief executive positions in the Business and Professional Women's Club, an international organization including women in all the businesses, trades, and professions. The president of the Canadian Federation, the vice-president for Canada on the International Federation, the president of the American Federation, and also of the International Federation are all lawyers.

The average woman lawyer must be better than the average man. From my own experience I should say that women are better suited than men for some branches of the law, namely, probate and estate work, conveyancing, and general office routine. I do not consider that women as a rule make as good court lawyers as men although no doubt there are women who could be notable exceptions to the rule.

I would go further and say that I would not consider the field of criminal law would appeal to many women both as to the nature of the work and the type of client that one would come in contact with. Perhaps, however, in this opinion I am prejudiced by my own unsuccessful experiment in this field.

The frivolous and unstable woman, particularly if she is the type that does not know her own mind from one day to the next even if she be clever, and some women are, is not suited for a legal career which requires a lifetime of study and research.

In order to succeed in law, a woman, like a man, must be interested in people and their problems, because almost invariably it will be the man or woman with a problem with whom you will have to deal. A sense of humor is an invaluable asset as is a working knowledge of a great many things totally divorced from law. You will find that you will have to learn quite a bit about many different things. One day will bring you a woodsman as a client, the next day it may be a grocer and your third client may be a very wealthy person who is anxious to make a will which will provide the greatest benefits for his heirs while at the same time be drawn in such a way as to make his estate liable for a minimum amount of succession duties. From this you will see that you will have to combine a knowledge of the grocery business, lumbering and accounting, possibly all in the same day. A high sense of honour is essential since you will receive many confidences which must be kept inviolate.

Even in this enlightened day you will find quite a few people who are prejudiced against women lawyers. From my experience I have found that people living in rural districts are extremely wary of what they refer to as "lawing women." However, after the first initial prejudice is overcome these people often become our staunchest supporters. Strangely enough women are more inclined than men to view with disfavour the woman lawyer, but here again once established you often find your most loyal co-operation. Even some judges are not above being prejudiced against women lawyers.

In closing, I wish to add that many people, I would say the majority, have a definite idea that a woman lawyer should be plain, dowdy, and pedantic, in short, a blue stocking. On the contrary, most of the women lawyers that I have known have been attractive, well-groomed, chic women, very creditable examples of their sex, as well as their profession and yet you will constantly hear if you happen to look even passingly fair, "You don't look a bit like a woman lawyer,"—and this remark is supposed to be a compliment.

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