Legal Education in Manitoba: 1913-1950

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The Survey of the Legal Profession presently being conducted in Canada has again focussed a fierce white light on the always debatable subject of Legal Education. When so many others are delivering themselves of their views I can see no reason why I should refrain.

After all, I can speak from a rather lengthy experience, and if I have not by this time clarified my ideas I probably never shall do so. I took some small part in the discussions in 1913 and 1914 leading up to the foundation of the Manitoba Law School. I began to lecture to the School in September 1915 and, except for a few years, have lectured continuously, and am still lecturing. I have been a member of the Board of Trustees since 1937, and chairman since 1947. I was also a member of the Senate of the University from 1936 to 1942. During all this time until I was appointed to the Bench I was also actively engaged in the practice of law.

While I intend, primarily, to give an account of the changes, experiments and developments in legal education in Manitoba during the last thirty-six years, I know I shall have to look much further afield; but I shall endeavour not to run down too many primrose-studded lanes and by-ways, enticing as they may be.¹

The Manitoba Law School opened on October 5th, 1914. It owed its existence, primarily, to the energy and vision of the late Chief Justice Robson who, in 1913, enlisted the enthusiastic support of the President and Council of the University, and of the President and Benchers of the Law Society. In 1914 the two corporations entered into an agreement to establish the Law School, and that agreement has remained in force ever since. Under it the School is administered by a Board of five trustees—two appointed by the University, two by the Society, and a fifth, the chairman, by the corporations. Chief Justice Robson was the first chairman, and continued as such until his death in 1945.

¹ Shortly after writing this sentence I read Judge Jerome Frank's latest book, Courts on Trial, and I shall not be able to resist referring to it and discussing some parts of it in this article.
The first Board consisted of the Chairman, and the Rev. Dr. G. B. Wilson and E. Loftus, K.C., nominated by the University, and Isaac Campbell, K.C., and J. H. Munson, K.C., nominated by the Society. Since 1922 the President of the University, except in the case of the short interim term of President Armes, has always been a member of the Board, and Presidents J. A. McLean, Sidney Smith, A. W. Trueman, and A. H. S. Gillson, in that order, have rendered invaluable service to the School.

At no time has there been anything but the utmost harmony on the Board; and there has been the closest and most effective co-operation between the two corporations and the Board, and between the corporations themselves. The decisions made by the Board have always been unanimous. Everything that has been done has been done by mutual agreement of all concerned after the fullest and most careful consideration and discussion.

The formation of the Law School as a joint undertaking of the University and the Law Society was a new idea and a rather bold experiment. It has been a most successful one, and one that has emboldened us to try other experiments. In some respects we have been pioneers. This is, I think, not to be wondered at when we have had, in addition to the help and advice of those I have already named, the counsel and assistance of such men as the late Sir James Aikins, the late Hon. Mr. Justice Bergman, one time Chairman of the Board of Governors of the University and for some years a member of the Board of Trustees, and of the Hon. Mr. Justice A. K. Dysart, now for some years Chancellor of the University and a member of the Board of Trustees, of Isaac Pitblado, K.C., M.A., LL.B., LL.D., and many others.

We in Manitoba have been fortunate in other ways. The spirit of fraternity of the Bar is, and has always been, excellent, and almost without exception the lawyers of Manitoba have been keenly interested, and anxious to do their part, in fostering and improving legal education.

The Bar of Manitoba has never been overcrowded. Indeed for many years its membership has been decreasing. As a result, the enrolment at the School has rarely been too high. I use the expression “too high” deliberately, because I am of opinion that in legal education it is desirable to have comparatively small classes so that, in effect, it is possible to have a modified tutorial system. If the teacher is able to know each student intimately, and his strengths and weaknesses, his problems and difficulties, he can teach and assist that student in a more constructive and useful way. At times some of the classes have been too small; once we
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got down to a graduating class of two. After the two wars the classes naturally became large, by our standards, but such a state of affairs, which presents some real though temporary problems, lasts only for a few years. Nearly three-quarters of the legal profession of Manitoba practise in Winnipeg, and it is only in the immediate post-war years that a student has any difficulty in getting into an office. There are, of course, a few exceptions, but nearly all of the practising lawyers in Manitoba have always shown a keen sense of their responsibilities towards the students articled to them. While the School has always offered two courses, one leading to the degree of LL.B., the other to call and admission, the number taking only the degree course has, over the years, been very small.

The agreement under which the School operates contains a provision that in so far as the course of study, the curriculum, and examinations, relate to the practice of law in Manitoba, and the preparation and qualification therefor, they shall be subject to the approval of the Law Society of Manitoba. Actually the Law Society has always given the Board a completely free hand; it has accepted the recommendations of the Board in every instance, and has never in any way attempted to dictate its policies.

In 1914 the Board adopted what has been called the “dual system” by which students proceeding to call or admission served under articles concurrently with attending lectures at the School. This system continued in operation until 1921.

In 1915 the newly-formed Canadian Bar Association first set up its Committee on Legal Education, with Chief Justice Rohson as chairman. This Committee made a very thorough study of the whole question of legal education and especially of the following matters: Admission to Study, Period and Course of Study, Transfer of Students, and Admission to Practice.

It was not ready to present a report in 1916, and there was no meeting of the Canadian Bar Association in 1917 because of the war. The Committee did however present a draft report to the Council of the Association in 1917, which referred it to the next Annual Meeting. The draft report was printed in (1918) 38 Canadian Law Times 257, with comments by Dr. R. W. Lee, D.C.L., at that time Dean of the Faculty of Law of McGill University, later Reader in Roman Law to the Inns of Court and Fellow of All Souls, Oxford, who had become convener — as the designation then was — of the Committee.

The report in its final form was presented to the annual meet-
ing of the Association in 1918 and appears in the Year Book. After a long and vigorous debate, lasting over parts of three days, it was referred to the incoming Committee. The report, with some changes made by the Committee, was again presented to the Association at the 1919 meeting. After another debate the Association adopted the report with further changes.

I shall make frequent reference to these reports because they inaugurated a new period of study of legal education by the members of the Bar and the teaching authorities, on a Canadian-wide basis. That study has continued ever since and, while new points of view have from time to time been presented, the discussions always seem to get back to certain fundamental questions. I shall also make frequent reference to the opinions expressed by Dr. Lee because anything he said deserved, and usually received, most careful consideration. As I shall show, we in Manitoba did more than merely consider his views.

One of the matters most fruitful of debate is that of the period and course of study in law schools, which presents the questions of law school and office attendance. In introducing the report in 1918, Dr. Lee said:

Then we come to the extremely important paragraph dealing with the period and course of study, and there we took our stand very firmly on the ground of the essential importance of law school teaching, where provision for law school teaching exists; and further, we pronounce with all the emphasis of which we are capable, against the system which makes office attendance run concurrently with attendance at the law school. Experience has demonstrated completely and entirely, that if you are content to acquiesce in that dual system, law school attendance and the office attendance running concurrently, you will not get good results, either out of the law school or out of the office. That, I, personally — and I believe I express the view of the whole of my committee — look upon as absolutely fundamental.

Towards the conclusion of the debate Dr. Lee said:

Why is it that we are so behind our neighbours of the United States of America in legal education, as we undoubtedly are? I will tell you the reason in a few words. The reason is that fifty years ago the people at Harvard made the great discovery, that if we are to get any results in legal education, you must have the students in the law school, and that was the starting point of the enormous development of legal education in the United States. There is one point on which they fell short, and there you have the advantage. They have not paid sufficient attention, not even today, to the claims of office attendance. Now what I offer to you, and what this committee offers to you, is a system which is just as good as any they have in the United States of America, and I venture to say that this is the standard that this Dominion of Canada ought to set for

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9 Vol. 3, p. 171.
93 Y.B., p. 12.
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itself. I say this is the standard which this Dominion ought to set for itself, not only in legal education, but in everything else—not to follow the example of our neighbours, of the Old Country, or anyone, but to pick out what is good in their systems and improve upon it. The Committee recommended, amongst other things, a three year law school course, to be followed by two years' service in an office (one year in the cases of graduates of an approved university).

Let me consider for a moment the substance of Dr. Lee's presentation. He told us, first, that we were "far behind the United States" in legal education. But the sole reason he gave was that we had not taken advantage of the great Harvard "discovery" that "you must have the students in the law school". Then he went on to say that in one point they fell short and we had the advantage: they did not pay sufficient attention to the claims of office attendance, and, by inference, we did. Accordingly Dr. Lee and his committee made the suggestion I have already set out. But he added that the system they were offering was "just as good as" any they had in the United States. I should have thought that on his own showing Dr. Lee would have claimed his proposed system was better than any they had in the United States. But he refrained from stating the conclusion to which his own statements irresistibly led.

At that time there were, as there still are, many systems of legal education in the United States, but Dr. Lee clearly had in mind the system evolved at Harvard under Dean Langdell, which is the one usually referred to by those who still maintain that we in Canada are far behind the United States in legal education. For the sake of brevity I shall refer to that system as the American System. There are three distinctive features of the American System. The first is that the student must spend all his time in the school, throughout the course; the second, that all legal education must be obtained in the school; the third is that the only way to teach law is by the case system—which Judge Frank refers to as the "Langdell-Harvard method".¹

One of Dr. Lee's statements I considered, and still consider, was a particularly pertinent and valuable one: namely, that we in Canada should not follow the example of our neighbours, of the Old Country, but should pick out what is good in their systems and improve upon it. That is what we have attempted to do in Manitoba, having due regard to our local conditions and requirements.

¹ Pp. 68-69.
² Frank, Courts on Trial (1949) 227.
Here I should like to offer a few observations on Dr. Lee's statement that in Canada we are behind the United States in legal education. As his remarks are studied it will be observed that he made certain qualifications. But we still hear the proposition laid down without any qualification whatsoever. Modesty is sometimes a virtue, but for some reason many Canadians seem to make a cult of self-depreciation. I suggest it is time to call a halt to this kind of thing. To me it was most refreshing to read what our Minister for External Affairs, the Hon. Lester B. Pearson, said to the students of Stanford University on June 19th last:

We may, of course, be wrong, but somehow or other we feel that our political and social and legal institutions are better, for us, than yours would be.

For years, now, I have sought for the evidence that would justify the statement about our backwardness: I have not found it.

The primary purpose of legal education is, I take it, to educate lawyers. I know how many schools of thought there are as to what a lawyer should be. Leaving that debatable land for a moment, let us apply a practical test. The lawyers and judges of the United States are the products of their legal education: the lawyers and judges of Canada are the products of our legal education. Not being afflicted by the false modesty with which Canadians are sometimes charged, I have no hesitation in expressing my own opinion, the correctness of which I think can be demonstrated, that Canadian lawyers and judges are as good lawyers and judges as those of the United States. There I leave the matter for the present, merely remarking that, if this be the commonsense test of the comparative virtues of American and Canadian legal education, we in Canada have met the test.

Let me now consider further Dr. Lee’s suggestion that we should take advantage of the Harvard “discovery” that “you must have the students in the law school”, read in the light of his statement about paying sufficient attention to the claims of office attendance. He and his committee, in the 1918 report, endeavoured to solve the problem by the plan they then proposed. As I have mentioned, that report was referred to the incoming committee, of which Dr. Lee was chairman, and in 1919 the committee presented another report in which it accepted the principle of office attendance during the whole course, but added the qualification that students need not go to the office while actually attending the law school. This report, amended in other respects not relevant here, was adopted.

* 4 Y.B., pp. 152, 153.
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The discussions at the Bar Association meetings, and the views put forward by Dr. Lee and a number of others who had written on the subject, received the most earnest consideration of our Board of Trustees, who canvassed the matter with the teaching staff and then with the Benchers.

The School had opened in the first year of World War I and because of conditions developing over the next few years no dean had been appointed. In 1921, J. T. Thorson (now President of the Exchequer Court of Canada) K.C., B.A., LL.D., J.D., a Manitoba Rhodes Scholar, who on his return from active service in 1919 had been appointed to the teaching staff, became the first dean — a position he held until 1926.

At that time the Board recommended to the Benchers that the system advocated by Dr. Lee should be adopted and given a fair trial. The Benchers at once agreed, the University expressed approval, and commencing with the fall term of 1921 the student was required to give his full time to the work of the school, and, after he had completed his course, to attend one year continuously in the office of his principal before being called or admitted. This policy was adhered to for nine years, but it did not work out satisfactorily in Manitoba. In April 1927 certain modifications were made, but in March 1931 the experiment was abandoned and we reverted to the former system of concurrent attendance at Law School and service under articles — actual attendance at lectures counting as service.

During this period Dean Thorson, who had been elected to the House of Commons in September 1926, was succeeded as dean by E. H. Coleman, C.M.G., K.C., LL.B., LL.D., a graduate of the School, later Under Secretary of State, and presently Canadian Minister to Cuba.

I do not think anyone can say that the system did not receive a fair trial. That it was not acceptable to anyone concerned was beyond doubt. Our experience in Manitoba led us to the conclusion that, however successful the American system might be in the United States, neither it, nor the modified system advocated by Dr. Lee’s committee, would give the results that we in Manitoba desired to achieve. We observed, too, that the American system was under criticism in the United States — a criticism that became more widespread each year. As a result of this criticism changes were made and experiments were tried in many American law schools, but Judge Frank has returned to the attack in a most forceful way. I refer particularly to his chapter

7 Y.B., p. 42.
on Legal Education in *Courts on Trial*.
I read anything written by Judge Frank with pleasure, and I hope with some profit, and while he puts forward many views with which I can not agree, some of the criticisms contained in his book seem to me, in the light of our Manitoba experience, to be sound, and I have heard most of them put forward by a large number of the leading members of the American Bar with whom I have had the opportunity of discussing problems of legal education over the last thirty years.

I was impressed by a recent article in the *American Bar Association Journal* by Bertram S. Silver, who took his B.A. degree from the University of California in 1944 and graduated from Harvard Law School — where he was an editor of the *Harvard Law Review* — in 1947. He is dealing with the necessity for a law student gaining at least some practical experience before graduating from law school. He is apparently expressing the views of many who received the same legal education he did and he supports a plan to encourage a law student to gain at least a modicum of practical experience *during* his period of legal theorizing rather than *after*. This is a moderate article, well written, and it, and the plan suggested, are well worth study. In his article Mr. Silver quotes Dean Nicholson of Northeastern University School of Law as saying:

Law schools are on the defensive for their failure to do anything effective to bring legal education in law schools closer to actual practice in law offices. The transition from law in books to law in action is a drastic one.

Before dealing with the criticisms of the American system and its weaknesses, there are several matters that should be dealt with. We should think consider what kind of a lawyer the law school should be expected to produce, the standards of admission to law school that should be required, and the age at which students should be permitted to enter.

What kind of lawyer should a Canadian law school try to produce? We are inundated with advice and many of our advisers quarrel amongst themselves — and not always in the most temperate language. Here again I suggest a little common sense is helpful.

The Canons of Ethics of the Canadian Bar Association, approved by the various Law Societies, put the matter thus:

The lawyer is more than a mere citizen. He is a minister of justice, an officer of the court, 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,

* (1949), 35 A.B.A.J. 991 et seq.
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. He owes a duty to the State to maintain its integrity and its laws and not to aid, counsel or assist any man to act in any way contrary to those laws.

It is, I think, unnecessary to say that everyone in Canada, and particularly the members of the legal profession — and none more than those charged with the responsibility for legal education — subscribe to the above statement. That is the type of lawyer the schools have endeavoured to produce, and, I suggest, the type that, with gratifyingly few exceptions, the schools have produced.

We have found in Manitoba that the students-at-law fall into several categories: (1) those who intend to practise law, (2) those who intend to become teachers of law, (3) those who intend to go into business, (4) those who intend to go into politics, and (5) those who take the law school course as a general education. The larger number of students in Manitoba intend to engage in the active practice of their profession. While the needs of all groups must receive the fullest consideration, I suggest that the primary function of any law school is to qualify the men to whom the members of the public will come for advice and assistance to give that advice and assistance in the most competent manner possible.

It would, I think, not be incorrect to say that the ordinary citizen is not interested in law as it is, or law as it should be, except as it is applied to himself in some particular case. He then wishes to know what law applies to him, and he expects his lawyer to tell him. If the law is favourable to him it is a good law; if it is unfavourable to him it is a bad law, it is not “justice” — that is, it is not his idea of justice, and it should be changed. But, after some grumbling and complaining, it usually ceases to occupy his mind.

Despite a certain amount of regimentation and control, the ordinary Canadian is still very much of an individualist. No two clients are alike and the lawyer in his practice has to deal with a bewildering variety of human beings. Today he must be not only a legal adviser, he must also be a business adviser and a counsellor in human relations. He must acquire, as soon as he can, a knowledge of human nature and of business affairs. Much of this cannot be learned from books; it must be acquired by experience, by seeing first how things are done and then by doing them. A lifetime is not too long to learn some things.

This poses the problems: at what age should a prospective lawyer begin to study law and human affairs, and what educational training should he have before he enters law school? Prior
to 1913 a student in Manitoba was entitled to become articled upon passing his junior matriculation, and when the Law School was opened this was adopted as the standard of admission. This I believe was then the general standard in Canada. In 1918 the Committee on Legal Education of the Canadian Bar Association recommended that the age of entry should be raised from 16 to 18, and this recommendation was adopted by the Association in 1919. In Manitoba, however, we have always admitted students if they have attained the age of sixteen years, and have had no reason to change this requirement. The majority of students entering the School are somewhat older than eighteen. In the immediate post-war years the percentage of older students naturally is larger.

The Committee also stated that it was recommending the matriculation standard but that it preferred a higher one, and in 1919 it recommended that the student should have at least one year's university training. This also was approved by the Association. But in 1917 the Board of Trustees of the Manitoba Law School had recommended to the Benchers that the entrance standard should be raised from junior matriculation to completion of the first year in Arts at a university. The Benchers concurred by resolution passed in October 1917. Manitoba and Nova Scotia were the first two law schools to adopt this higher standard. However, the Board was of opinion that a higher standard of admission was desirable and in 1921, with the concurrence of the Benchers and the University, raised the standard so that completion of the second year in Arts was required, commencing with the session of 1922-23. McGill Law Faculty, at about the same time, announced its intention to adopt similar standards. I believe — though I am not sure — that Manitoba was the first province actually to put the new standard into operation.

It was twenty-eight years ago — about the time Manitoba took the same step — that the American Bar Association established a minimum standard of two years college work as a preliminary requirement to entering on the study of law. Gradually this standard was accepted by the great majority of the American law schools and by most of the state bar examiners.

The House of Delegates of the American Bar Association at its last mid-year meeting voted to adopt the standards of six years of study — either three years in college followed by three years in law school, or two years in college followed by four years in law school. It is expected that this will be approved by the Association in September next and that similar action will be
taken by the Association of American Law Schools at its next meeting. It is believed that the bar admission authorities will concur.

As early as 1927 it was decided to extend the three year course in the Manitoba Law School to four years, and since then the Manitoba student has had at least six years of study. In this matter, again, Manitoba can claim to be a pioneer.

From time to time the Board has given consideration to raising the standard of admission by requiring the entering student to have an Arts degree from the university, or its equivalent, but for various reasons it has not yet been considered advisable to take that step in Manitoba. The university graduate is however only required by the Law Society to serve four years under articles, while the non-graduate serves five.

It has become apparent some years ago that many students in Canada are not attracted to the Arts courses in the universities. As Dr. Sidney Smith, then President of the University of Manitoba and a member of the Board of Trustees of the Law School, wrote in Queen's Quarterly, under the title "The Liberal Arts: An Experiment": "In the two decades between the two world wars, Canadian universities were asking with concern: 'Is the Arts course losing ground?' The answer was invariably in the affirmative." Dr. Smith discussed some of the causes for a "picture" which he described as 'sombre enough before the outbreak of the war in 1939', adding: "Today it is black". He said:

> There was a time in Canada when the Arts course was the only door to faculties which prepared recruits for the learned professions. That is no longer true. Relatively few parents, school teachers and young people regard a preliminary Arts course as necessary for any of the professions. Fewer still would consider an Arts course as a basic preparation for commercial or industrial careers. The baccalaureate diploma in Arts — to invoke the language of the market place — is no longer negotiable. Indeed, it is sometimes thought discreet for a Bachelor of Arts seeking industrial or commercial employment to refrain from submitting his sheepskin. Universities have catered to this attitude by attaching to what could be considered as a good Arts course a new tag, such as a Bachelor of Commerce degree. Many able students, reflecting the attitude of society towards a liberal education which does not make directly for technical skill or professional efficiency, regard any portion of an Arts course, when required for entrance to a professional faculty, as a hurdle to be jumped over as quickly as possible rather than as an opportunity to be eagerly seized.

I do not know whether the recent proposals of the American Bar Association are looked on as final or whether it is intended,
ultimately, to require the student to have a degree in Arts or some comparable degree. If the requirement were to be adopted in Manitoba it would mean that the student would have to spend eight years from the time he is ready to enter university instead of the minimum of six presently required in Manitoba. The view here is that the law-school course should remain a four year course. Actually however our experience has been that if we omit the immediate post war years, when so many returned men who had only two years Arts were anxious to graduate in law as soon as possible, the number of students entering the law school as graduates since its commencement has exceeded the number of non-graduates — the proportions being about 55 to 45.

An examination of our records shows that the graduate students have a better scholastic record in the School than the non-graduates, that they have a lower percentage of failures and take a higher percentage of honours. This, of course, is only one test and other factors enter into a consideration of any such statistics. It does indicate however that, generally speaking, and over the average, it is an advantage from the academic point of view, at least, to have a university degree. There are however an appreciable number of students with only two years Arts who have as good an academic record as any of the graduates, and in the practice of law there seems to be little to choose between them. It is not always the medallist or even the honours graduate who makes the best lawyer.

On the whole the present standard of admission seems to be satisfactory, but the question is one that must not be lost sight of.

I now come to the methods of teaching in the School. The battle that raged around the body of Patroclus, dead, was a peaceful affair compared to the battles that rage over the proper method of teaching law. The principle casus belli is the "case system". Let us first hear Judge Frank, who writes: 36

Langdell invented, and our leading law-schools still employ, the so-called 'case system'. That is, the students are supposed to study cases. They do not. They study, almost entirely, upper court opinions. Any such opinion, however, is not a case, but a small fraction of a case, its tail end. . . .

In such a school, that which is not in books has become 'unscientific'; it may perhaps have truth but it is a lesser truth, relatively unreal; true reality is achieved by facts only when reported in books. To be sure, Dean Pound, many years ago, spoke of 'law in action'. That awakened hopes. But has Harvard been showing its students 'law in action'? The students have had the opportunity to read in books and law review articles about some very limited phases of 'law in action'. But that, at most, is 'law in action' in the library.

Let me further quote Judge Frank:  

The essence of his [Langdell's] teaching philosophy he expressed thus: 'First that law is a science; second, that all the available materials of that science are contained in printed books'. This second proposition, it is said, was 'intended to exclude the traditional methods of learning law by work in a lawyer's office, or attendance upon the proceedings of courts of justice'. . . . 'What qualifies a person to teach law', wrote Langdell, 'is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of causes, not experience, in short, in using law, but experience in learning law'. . . .

Judge Frank is of course considering only the state of affairs existing in the American law schools as he conceives it to be. In Manitoba we have approached the matter from somewhat the same viewpoint as Dr. Lee. In 1916, while the Committee of the Canadian Bar Association was working on the report to which I have already referred, Dr. Lee wrote two articles on "Legal Education: Old and New '" in which he said:

It is in this department of legal education that the case method of the American Law Schools has proved so fruitful of good results. It is claimed for it not only that it is the best (some say the only) way of learning the Common Law, but more than this, that it affords an unexampled legal gymnastic and mental training. All this may be conceded, but it remains none the less a discipline in a single system. The principles which it establishes are secondary principles. 'That is our law' said Sir George Jessel in a reported case, (Willis v. Smith (1882) 21 Ch. D. at p. 257). If it were not our law its absurdity would be apparent.' Lord Halsbury too has more than once declared that English Law (and this applies to the Common Law everywhere) is not a scientific system. The fact indeed is patent to everyone who has studied it. Your rules may be a jumble of odds and ends. But for the case lawyer they are reality. Finality of this kind, however, is not the last word in legal study.

The draft report of the Committee on Legal Education presented to the Council of the Canadian Bar Association in 1917 was commented on by Dr. Lee as follows:

For Heaven's sake leave the Law Schools alone! The very soul of education consists in individual effort in teacher and taught. Every teacher who is worth anything has his own methods, which, if sound, his colleagues will esteem and encourage. In the judgment of the writer the Canadian Bar Association should prescribe nothing whatever except the subjects of examination.

As early as 1914 the Board of Trustees decided to see how, and to what extent, the case system could be used to advantage in the School. A committee of teachers and lecturers was set up

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13 (1918), 38 Canadian Law Times 297.
under the direction of Chief Justice Robson and J. B. Hugg, K.C., one of the lecturers to the School, and in 1915 two case books were produced. These were published by the Carswell Company, Limited, under the titles: "Leading Cases on Public Corporations — Robson & Hugg", and "Leading Cases on Company Law — Robson & Hugg", and were used in the School.

The Committee of the Canadian Bar Association in its report to the 1919 meeting recommended "that a sub-committee be appointed to consider and bring in a report on the method of teaching in law schools". This recommendation was adopted but the report was made by the main committee to the 1921 Annual Meeting. The report contained, amongst others, the following suggestions:

METHODS OF TEACHING: That careful attention be given to working out the best methods of teaching to be employed in the School, particular regard being had to the results obtained by the use of the case method of instruction in a number of the leading law schools in the United States of America. TEACHING MATERIALS: That it be one of the objects of the School to provide, not only for the use of students at the School but for the use of students at other law schools throughout the Empire, suitable teaching material in the way of case books, source books and text books, especially designed for the use of students.

Everyone, I think, agrees that the study of case law is an important part of legal education. The differences of opinion seem to arise in regard to how, and to what extent, it should be studied.

I agree with Judge Frank and the others who share such views that law is not a "science", although it may be described as an "art." I subscribe to his statement that "to reject the idea of a 'legal science' does not mean rejection by lawyers of the use of the products of any science". When he adds: "Nor does it entail the rejection of the 'scientific spirit'" I am not sure I understand him. If he means that the study of law must be in the "scientific spirit" only, I seem to see a contradiction, or, at least, a non sequitur. If he means that the approach should be made in as scientific a spirit as possible, taking all other factors into consideration, I should not be inclined to disagree with him.

Surely it does not need the authority of a Halsbury or a Holmes to establish the fact that the life of the law has not been logic but "experience". How could it be otherwise when legislators must make laws for all sorts and conditions of men and

14 4 Y. B. 151.
14 6 Y. B. 241.
14 Ibid., p. 245.
courts must deal with the infinite variety of ordinary human beings. With respect I suggest that in our consideration of this subject we too often forget that almost all cases are decided on a state of facts, not necessarily the actual facts, but the facts as they have been proved in court. Every practising lawyer knows that until the facts are proved, and found, it is not always possible to say what the law applicable in the instant case may be. And every practising lawyer knows how difficult it often is to prove the facts as he believes them to be. The experience to which Holmes refers is the accumulated experience of a people; but the individual’s experience, and especially the experience of the lawyer, is also of great importance. How and where should the student, and later the lawyer, obtain his experience?

If the law is not a science, then it seems to follow that Langevell was not on entirely sound ground in his approach to the problem, and the case method remains a “discipline in a single system” and “the principles which it establishes are secondary principles”.

I now turn to Judge Frank’s criticisms of the American system, to see if in those criticisms we can find anything to assist us in Manitoba. In considering the views of any American writer on legal education, and in fact on “law” generally, we must always remember that he is dealing with conditions which in many respects differ greatly from those prevailing in Canada.

Not only is their population much greater than ours but the elements of that population are not the same as ours. Our system of courts is much simpler than that in the United States with its complex of state and federal courts. We are fortunate in that our criminal law is uniform throughout Canada while theirs varies from state to state. The civil law of the common-law provinces is, on the whole, remarkably uniform not only in matters within the jurisdiction of the Dominion Parliament but in matters of property and civil rights. We have only the decisions of the courts of ten provinces to cope with: they have a vast mass of judicial decisions pouring forth from the courts of many states and territories.

The Canadian system of appointment of judges is, on the whole, superior to that in the United States. Judge Frank states it as something to be taken into consideration that “some trial judges are corrupt or subject to dictation by political bosses”.

He says: “A lawyer should know which judges are corrupt, or susceptible to political influence, so that, when possible, he may

keep his clients' cases from coming before those judges'. There are similar references, but I need only say that this is a state of affairs that does not exist in Canada.

One of the reasons for our happier condition is, I think, to be found in the fact that all lawyers in Canada are members of some incorporated law society which is entrusted with a control over its members, their discipline, their admission, and their education. I have yet to meet an informed member of the American Bar who did not speak with some envy of such an arrangement; and the American lawyers are striving to achieve a somewhat comparable result by means of the "Integrated Bar".

The rules of practice and procedure in all Canadian courts are, and have always been, much simpler than those in the American courts, and our practice is much less technical. One of Judge Frank's proposals, namely, the abolition of jury trials in all except major criminal cases, has really been anticipated in Canada. Here very few civil cases are now tried with juries and the county judges' criminal courts dispose of the bulk of criminal cases in which there have been committals for trial.

We are, in my opinion, also fortunate in Canada, in that our Supreme Court is not charged with the interpretation of constitutional provisions in the course of which they are required to be legislators and not judges. In his chapter on "Constitution — The Merry-go-Round", Judge Frank has much to say about this.

His criticism that under the case system students study almost entirely "upper court opinions" requires consideration. He devotes a short chapter to what he calls "The Upper Court Myth" and refers to it elsewhere in his book. The bold propositions are advanced that the trial court is more important than courts of appeal and that the duties of trial judges demand far more ability than do those of "higher" court judges. He proposes that a "talking movie" should be made of each trial so that the upper court judges could form their own, independent, impressions of that trial; and he adds that upper court judges would "become trial judges and . . . would then need training in trial judging". He then goes on to say: 56

The case system, so far as it is retained, should be revised so that it will in truth and fact become a case-system and not a mere sham case-system. A few of the current type of so-called case-books should be retained to teach dialectic skill in brief-writing. But the study of cases which will lead to some small measure of real understanding of how suits are won, lost and decided, should be based to a very marked extent on

reading and analysis of complete records of cases—beginning with the
filling of the first papers, through the trial in the trial court and to and
through the upper courts. A few months properly spent on one or two
elaborate court records, including the briefs (and supplemented by reading
of text books as well as upper court opinions), will teach a student
more than two years spent on going through twenty of the case books
now in use.

Judge Frank is writing as an “upper court” judge who, ap-
parently, has never sat in a trial court. He is a lawyer who had
an active practice at the Bar and has had teaching experience in
a law school. With respect, I disagree with him about the “upper
court myth”. I do not believe that the trial court is more im-
portant than courts of appeal. Each is a necessary part of our
legal system: each is important, but the importance of each is a
different importance. It is true that in the trial courts the parties
and their witnesses and friends are present and can see justice
being administered. It is also true that in a percentage of cases—
perhaps a large percentage—the case goes no farther and the
judgment as to the parties is final; for them it is “a” law. The
function of appellate courts is to determine whether, in any case
brought before them, there is error. It is for the ultimate court of
appeal to declare, finally, the law applicable to any particular
case. For that reason it is essential that the student should study
the judgments of the courts of last resort in his effort to extract
legal principles. But I suggest he should also study the judgments
of the courts below. The final court may be wrong and, at a later
date, may have to overrule or “distinguish” itself. I am sure that
if there were an appellate tribunal to review the decisions of the
House of Lords, or the Privy Council, at least some of the deci-
sions of those august bodies would be reversed.

When I come to his point about how a case should be studied,
I feel Judge Frank is on sounder ground. His suggested method
may be the only one which will achieve the desired result in the
United States. I think we have a simpler method in Manitoba
because of our “dual system”. The moment it becomes apparent
in the office of a principal that litigation is about to commence,
the students in the office become intensely interested. There is
very little that goes on in a law office in Winnipeg that the law
students do not know about. There are very few students who do
not hope that their side will win. They talk and speculate, they
see the pleadings as they are drawn, the interlocutory skirmish-
ing, the process of production and discovery, the interviewing of
witnesses, the search for possible or lost witness, and the pre-
paration for trial. In many of these activities they play some part. They get the “feel” of the case.

By the time the case is ready for trial they know a great deal about it: the strong points, the weak points, the dangers. Then, if not actually attending classes, and sometimes even skipping classes, they watch as much of the trial as they can. And there they may see things happen they never dreamed of. The witness on whom their client’s hopes depended may go to pieces, the client may turn out to be other than they thought he was, the case may go off on a point that had not been anticipated, the decisions on which reliance was placed may in the opinion of the court be distinguishable or inapplicable. Worse still, it may be discovered when the case has been closed, that some material fact has not been proved.

I could elaborate on this theme at length. I only ask, how better can a student learn what he must at some time learn than in this practical way? Again, he can learn how difficulties arising in the course of a trial can be overcome, how a change of front can be made when necessary, and how a case which at some stages may appear hopelessly lost can be won. These things cannot be satisfactorily taught by, or learned from, teachers who have had no forensic experience. Judge Frank writes: 31

A considerable proportion of teachers in any law school should be men with not less than five to ten years of varied experience in actual legal practice. They should have had work in trial courts, appellate courts, before administrative agencies, in office work, in dealing with clients, in negotiations, in arbitrations. Their practical experience should not have been confined chiefly to a short period of paper work in a law office. I do not mean that there are not some highly capable teachers with little or no such practical experience; some such teachers, who are brilliantly intuitive, partially make up for their deficiencies by imaginative insight. Nor do I say that mere experience in legal practice will make a man a good law teacher. By and large teachers are born, not made.

With all of this as applied to full-time law schools I think most of us can agree. But under the dual system it is possible to have many subjects taught by men who are, at the same time, in active practice. With only three or four exceptions, every member of the teaching staff of the Manitoba Law School — over the years, sixty-seven in all — has wide experience in active practice. Our judges have always taken a great interest in the School and many of them have lectured on one or more subjects. Those who lectured in the past were Mr. Justice Metcalfe, a Judge of the Court of King’s Bench and later of the Court of Appeal; Mr.

Justice Trueman, formerly of the Court of Appeal; the late Mr. Justice Fullerton of the same court, later President of the Canadian National Railways; Mr. Justice Adamson, for many years on the Court of King's Bench, and now of the Court of Appeal, and the late Chief Justice Robson. At present Mr. Justice Campbell, Mr. Justice Kelly and I lecture to the School. Mr. Justice Locke of the Supreme Court of Canada lectured to the School for several years when he practised in Manitoba.

I cannot see that barristers who practise or have practised in the courts, and the judges who preside in the courts, are any less qualified to teach students and to instruct them in the use of case law than other teachers might be. It is one thing to determine in class what a case decides; it is a far different thing to demonstrate it to a judge, or to a bench of judges, under the watchful eye of opposing counsel. Many a beautiful brief, built up in the library, looks far less beautiful after it has been submitted to such an ordeal. Many a leading case establishing some principle has been brushed aside because the facts upon which the case was decided differ so materially from the facts in the case being argued that it is not applicable.

While there are many case books, our experience has taught us that there are few that are really satisfactory. The selection of cases requires much skill and experience, the decision as to what judgments or parts of judgments in the selected cases should be printed is fraught with danger, and in these days of rapid development in many branches of law, many case books require yearly revision.

Our experience in Manitoba has led us to the conclusion that the case system is useful in teaching certain subjects but is only one way of teaching those subjects, and that the method of instruction should be left largely to the discretion of the individual teachers. The Board and teaching staff meet in full conference five times a year and at these meetings methods of teaching are always discussed and re-considered.

Case books are used, including some prepared for use in other Canadian law schools, such as Cases in Equity, by Dr. Sidney E. Smith and Professor Horace E. Read, Cases on Contract by Dr. C. A. Wright, and Cases on Trusts by Dr. Sidney E. Smith. Many of the English collections of leading cases on various subjects are also in use. Full use is also of course made of English, American and Canadian textbooks. In addition to the case books by Robson and Hugg already referred to, various members of the teaching staff have published legal textbooks. These are: Corroboration in
Criminal Proceedings, by R. B. Graham, K.C., and Professor Fred Read, Distress Clauses in Mortgages, by R. B. MacInnes, K.C., and J. J. Milne, K.C., Canadian Law of Landlord and Tenant (two editions) and Manitoba King’s Bench, Annotated, the two latter by myself.

Manitoba, like other schools, has made full use of moot courts, often presided over by a judge, with and without a jury, or by the referee in chambers, and sometimes staffed by the court officials. We still think the moot court is a useful method of training. Judge Frank quotes the following of “Moot Courts” from the Centennial History of Harvard Law School:15

Such experiments have been more successful in affording amusement than in substantial benefit to the participant. A fact trial now and then is well worth while, but only as a relief to the tedium of serious work.

He then adds, among other comments: “One cannot but agree, in part, with that writer. Such fake trials are poor substitutes for careful observation of actual trials. . . . They are not the equivalent of serious lawyer-work. It is interesting to note that Mr. Justice Douglas, formerly Professor Douglas, agrees with me on this score.” In Manitoba, however, the situation is different. The student taking part in moot courts has usually had some actual court experience. He has almost certainly handled some work in magistrates’ and petty debt courts and has appeared in county courts doing such work as a student can do, and in chambers in the Court of King’s Bench where students are encouraged to appear. Such a student will get more out of a moot court than one who has not had such practical experience and who probably has never been in a court room.

It is sometimes said that too great emphasis is laid upon practical training in court work, as many lawyers never go into court. I suggest that this criticism loses much of its point when it is remembered that everything a lawyer does may later come before the courts, that he must do his office work with that possibility always in mind, and must test his work by thinking what a court may eventually have to decide about it.

We found that the students who passed through the School during the 1921-1931 period almost without exception felt that they had lost something by not having had any office training during their academic years. Although they had passed all the examinations entitled them to be called and admitted, they realized that they were not yet ready to practise law. They found,
too, that the members of the profession generally preferred students who combined their academic work with practical experience in an office. There was, too, a very practical matter that entered into their consideration, and that was the salary they could earn as law students in an office. Articled students in Manitoba are paid salaries which increase year by year. The amount of salary paid varies with the student and to some extent with the office, but it is usually a matter of some importance to the student.

When the Board finally decided to return to the dual system it arranged that all lectures should be given in the mornings five days a week so that the student would be able to attend in his office in the afternoons. Three lectures are given each morning from 9 to 9.50, 10 to 10.50 and 11 to 11.50. The only departure from this schedule is that for special reasons two lectures a week are given to the Third Year and one a week to the Fourth Year from 5.15 to 6.05 p.m.

(To be concluded)

The Professions Today

Accordingly, I seem to see four sources of menace to the professional ideal in the society of today. One, the exigencies of the individual economic existence, has always been with us. It is simply magnified in the crowded world of the time. A second is the multiplication of detail in every branch of learning, and notably in the learned arts pursued by the members of a profession. Nowadays these details are multiplied beyond what the individual practitioner can hope to master completely. There is consequent need of co-operation of practitioners leading to partnerships of increasing size and conceivably even to corporations in which individual responsibility may become merged.

Thirdly, when this stage has been reached it is difficult to resist the pressure of business methods, which easily become the methods of competitive acquisitive activity. Fourthly, all this goes along with and is given impetus by the advent of the service state and consequent growing tendency to rely on official rather than on individual private initiative and to commit all things to bureaus of politically organised society. (Roscoe Pound, The Professions in the Society of Today. The New England Journal of Medicine, September 8th, 1949)
Legal Education in Manitoba: 1913-1950*

E. K. WILLIAMS
Winnipeg

Let me now turn to the always debatable and difficult question of curriculum. The Canadian Bar Association, the Conference of Governing Bodies of the Legal Profession in Canada, and governing bodies and staffs of the various law schools have been giving earnest consideration to this matter for many years. At the outset we are met with the fact that the systems of legal education in the various provinces differ considerably. In Manitoba, with the dual system and a four-year course, our curriculum must be one that in our opinion gives the most satisfactory results.

At the 1919 meeting of the Canadian Bar Association it was decided to set up a special sub-committee to prepare and submit a standard curriculum which might be recommended for adoption by the law schools in the common-law provinces. This sub-committee made its report to the 1920 meeting and, with a few amendments, the report was, after debate, adopted for recommendation. The report and the standard curriculum have been printed, with notes by Dr. Lee, the chairman of the Committee, who, describing how the Committee had worked and what it had found out, said: 13

With regard to the course of procedure of the Sub-Committee it was felt that its task would not be to frame a rigid curriculum and to recommend it for universal acceptance, but to see if an agreement could not be arrived at as to the subjects which could most properly be studied in the first, the second, and the third year of the course. If this method of procedure proved successful, the result would be to suggest a skeleton or framework of legal study which it was thought might prove generally acceptable. As regards some of the subjects proper to be included in the curriculum, there might be difference of opinion as to the year to which they should be assigned. In regard to this each law school should feel itself free to adopt any course it might think best.

13 5 Y.B. 250, at p. 252.
In 1921 Manitoba adopted the standard curriculum with the exception of the subjects of “Shipping-and-or-Railway Law” in the Third Year. Since then there have been some changes, mostly re-adjustments, some made necessary by changing the course from a three-year to a four-year course.

The present curriculum, which may be compared with the “standard curriculum”, follows:

First Year:
1. Contracts
2. Torts I
3. Real Property I
4. Personal Property I
5. Criminal Law I and Criminal Procedure I
6. Practice and Procedure (Civil) I
7. History of Law

Second Year:
1. Equity I
2. Wills, Probate and Administration
3. Personal Property II (including Sale of Goods)
4. Bills and Notes
5. Agency and Partnership
6. Practice and Procedure (Civil) II
7. Real Property II (including Mortgages and Landlord and Tenant)
8. Torts II

Third Year:
1. Equity II
2. Corporations
3. Canadian Constitutional Law
4. Evidence
5. Practice and Procedure (Civil) III
6. Domestic Relations
7. Drafting and Conveyancing
8. International Law

Fourth Year:
1. Practice and Procedure (Civil) IV, Part I
2. Conflict of Laws
3. Jurisprudence
4. Criminal Law II and Criminal Procedure II
5. Taxation
6. Practice and Procedure (Civil) IV, Part II
7. Legislation
8. Labour-Management Relations
9. Accounting

This curriculum, however, is the subject of continuous study by the Board and teaching staff. It may be said that we do not favour a rigid curriculum. Now that a post-graduate course in law has been instituted, the School curriculum may require some alteration.

Ever since 1915 we had been desirous of making arrangements by which a post-graduate course leading to a further degree in law might be established. The members of the profession were also anxious that this should be done. In 1930 strong recommendations to that effect were made by the Bar and a committee was set up by members of the Junior Bar to study the matter in conjunction with the Board.

This was just at the onset of the depression of the thirties and it was found impossible, for financial reasons, to establish such a course. During the depression the salaried members of the staff willingly submitted to reductions and the other members of the profession who were lecturing to the School volunteered to continue without any remuneration. The financial situation had not improved sufficiently to permit the course to be instituted when World War II began and the matter had to stand in abeyance until after the war.

As soon as possible it was again taken up and, in co-operation with the University, such a course was instituted in 1949 and the first lecture were given in October of that year. Seven barristers have completed the first year of the course, which they are continuing, and it is anticipated that at least the same number will enter the first year of the course in September next.

The present regulations of the University provide that to be eligible for enrolment an applicant must possess the degree of LL.B. from the University of Manitoba, or must hold an equivalent degree from another approved institution. If the applicant is accepted he will be required to pursue a course of studies in three subjects selected from the following list: (1) Comparative Law, (2) Jurisprudence, (3) Evolution of Law, (4) International Law, (5) Taxation, (6) Insurance, (7) Constitutional Law, and (8) Corporations. At least one subject must be selected from (1), (2), (3) and (4).

The courses consist of lectures and class work carried on in the evenings and extending over a period of at least two academic sessions of twenty-seven weeks each. At the end of this time the
student is required to pass a written examination in each of the three subjects of his programme, and, at the discretion of his instructors, he may be required also to take an oral examination in each, or all, of his subjects. The student is also required to prepare and submit a thesis on an approved topic related to his course of studies. Instruction in this course is given by members of the teaching staff of the School, appointed by the University on the recommendation of the Board.

It is, I believe, generally conceded that curricula and methods of instruction must be considered in relation to the examinations, which are intended to ascertain if possible to what extent the student has profited by his instruction. It is also, I think a matter of agreement that examinations of some kind are necessary, but there is no general agreement on what kind of examination is best. Much has been written on this subject. It has received and is receiving anxious consideration in Manitoba. It will not, I imagine, be seriously disputed that when a student graduates from the School, he has only completed one phase of his legal education and as he enters into practice he is entering on another phase that will last the rest of his life.

There are some conclusions at which we have tentatively arrived. We feel that an examination should not be a mere memory test. Too many examinations put a premium on the ability to memorize. There is still much truth in the often repeated statement that no lawyer can be expected to know all the law but that a good lawyer should know where to find the law. We are therefore experimenting with a plan by which the examinations in certain subjects are being written with some of the books available to the student. We hope that with improved accommodation some examinations will be written in the library with liberty to the student to consult any volume he wishes. In other subjects the students are advised about a month before examination that two or more certain questions will be on the paper and that a very high degree of accuracy of statement in as condensed a form as possible will be expected in the answers to these questions.

These and other experiments are being tried. At present all that can be said is that the results are encouraging.

This brings me to a consideration of our library facilities. I agree with Judge Frank[14] that the library is not the “heart” of a law school. Surely the heart of any school, if the term is appropriate at all, is to be found in the group of teachers and taught. But a good library is undoubtedly an essential part of the teach-

ing equipment of a law school. Here the American schools have an advantage over us in Canada. If we were not forbidden to covet, we all would, I know, envy them their magnificent buildings and wonderful libraries. The library at Harvard is undoubtedly the finest law library in the world.

In Manitoba we have no law school building. During the first few years lectures were given in the Y.M.C.A. building; during the first World War some space was made available in the University buildings. Later, with the co-operation of the Provincial Government, the School moved into the present — the “new” — Court House. Later it transferred to one of the former court houses, where we were given space which provided lecture halls, reasonably good library accommodation and common rooms for staff and students. In September next we shall move back into the “new” Court House, where we shall have excellent accommodation including most satisfactory library rooms.

The School is financed only in part by the fees paid by the students; its yearly deficit is paid by the University and the Society, who contribute equally. In such circumstances building up the library, which the Board set out to do as far back as 1916, has been a slow process. In the last few years substantial progress has been made and at present the School has a well-selected library of over 15,000 volumes. This does not count a substantial number of textbooks which have over the years been replaced by new editions — a wastage that every library must reckon with. Each year substantial additions are being made and we are satisfied with our progress in this respect.

The Society has assisted the School greatly by allowing the students to make reasonable use of its Great Library for their studies. This will not be so necessary when we get into our new quarters. Of course many of the students do a certain amount of library work for their principals and this is a decided advantage to the students.

Many years ago I started to compile a bibliography of the books and articles on legal education and to read as much as possible of what was written. The bibliography attained large proportions and the works to be read continued to come out in ever-increasing numbers. At times while reading I felt as if I was in a land of fantasy.

All educational institutions, and the law schools particularly, are constantly reminded that it is their duty to train men for leadership. I think the Canadian law schools have never been unmindful of that responsibility. Not every law student has a capa-
city for leadership — that is not given to all — but perhaps the best test of the effectiveness of the work of any law school in that field is to see what its graduates have done. I am not suggesting the School is entitled to all, or even a lion’s share, of the credit. Much must go to the other educational institutions which have shared in training the graduate, and full consideration must be given to the natural qualifications of the man himself. But I feel satisfied that the law school in which the student obtained his last formal education at a time when he was emerging from adolescence into manhood can safely claim to have done its share.

I therefore content myself with remarking that the graduates of the Manitoba Law School have established a record second to none by what they have achieved in the legal, political, social, business and economic life not only of Manitoba, but of Canada. Over the years we find amongst them a Provincial Premier, a Dominion Cabinet Minister, many Provincial Cabinet Ministers, members of the Dominion Parliament, and of the Provincial Legislature, members of School Boards and Municipal Councils, Deputy Ministers at Ottawa and Winnipeg, and men holding important positions under various governments or in many business and financial undertakings, and all playing an important part in all charitable and social undertakings for the common weal.

In 1924 Jules Prud’homme, K.C., Corporation Counsel to the City of Winnipeg, contributed an article to the Canadian Bar Review on Legal Aid Societies, which was most favourably received. The question of establishing such a society in Manitoba was discussed from time to time but it was not until 1934 that an article by A. Wallace Johnson, a graduate of, and at that time a lecturer to, the School, in the Manitoba Bar News (March 1934) resulted in definite action being taken. A committee under the joint chairmanship of R. B. Maclnnnes, K.C., presently a lecturer to the School, and C. K. Guild, K.C., then a lecturer to the School, made a comprehensive report as a result of which in 1938 provision was made for free legal aid in civil matters to needy persons.

Two committees were set up by the Law Society — an Advisory Committee which sits weekly to interview applicants for assistance, and a Certificate Issuing Committee — and provision was made in the Rules of Court to assist in carrying out the plan. The Advisory Committee has always been composed of graduates of the School and in June 1968 the Board of Trustees recommended that the senior students should make a practice of attending...
the meetings of this Committee whenever possible. Many of them
did so, and today some of those same students, now in practice,
are members of the Committee. It not infrequently happened
that some of the cases approved by the Committees were assigned
to senior students, who acquitted themselves creditably and in
this way gained additional valuable experience. This practice is
still being followed.

The latest report (to March 31st, 1950) shows that 1,999 per-
sons have been interviewed since the formation of the committees
and that 613 certificates have been issued. The plan was so suc-
cessful in civil matters that last year, after careful consideration,
another committee was set up to provide for legal services to
indigent persons in criminal matters. The same procedure is being
followed as in civil matters, and, while it is still in the experi-
mental stages, senior students are doing useful work in this field.

The number of practising lawyers in Manitoba as at Dec-
ember 31st, 1932, was 605; as at December 31st, 1949, it was 536.
One of the reasons for this drop is that many of our graduates have
gone into business or other activities, or are practising their pro-
fession in other provinces or in the United States. We have kept
in close touch with most, if not all, of these and find that they
are most successful in their chosen fields. The School is proud of
its graduates and with good reason.

Before the termination of hostilities in the last war the School,
in consultation with the Society, had completed its plans to give
refresher courses to returning barristers and solicitors who might
desire them, and to cope with the problems of the education of
the students whose courses had been interrupted by the war and
of the large number of returned men whom it was known would
enter the School.

Refresher courses were not required on the scale we antici-
pated. Some of the returned lawyers attended lectures in some
subjects, the hours of instruction being arranged to suit their con-
venience as much as possible. The Manitoba Bar Association and
the Manitoba Section of the Canadian Bar Association, in co-
operation with the School, arranged several series of special lec-
tures, which were made available in mimeographed form, and
the School and Society also made available such of the lectures
given in other provinces as were published.

After the war there was a heavy enrolment in the School.
Following World War I concessions had been made to returned
men in the way of shortened courses and reduction of time of
service under articles. It was the later view of the men who com-
completed their legal education at that time that it would have made things much easier for them in their practices if they had been required to complete the full course. In the light of their experience it was decided that all returned men should be required to complete the full four years of instruction, although the Society did shorten the term of service under articles. Many of the returned men had been on active service for several years and were naturally anxious to complete their legal education as soon as possible.

In order to assist them to do this and to obtain the advantage of the reduction in the term of service, it was decided that each summer the full third-year course would be offered to every student completing his Second Year who had seen active service. This meant that on completion of the Second Year in April there would be a break of about ten days, after which the student would commence the third-year course. The third-year course would be completed in September and the student could enter on the fourth-year course in October. The experiment has proved satisfactory and successful. It could not have been done without the self-sacrificing help of the members of the teaching staff who lectured to the Third Year. I was not one of them.

The first of these special summer courses was given in 1945-46; the last is being offered this year and is being taken by thirty-five veterans.

Because of the large number of students entering the School in the last few years it has not always been possible for some of them to get into offices at once. To meet this difficulty a "practice class" was formed under the direction of Mr. David Golden, B.A., LL.B., a Hong Kong veteran, a gold medallist of the School, and a Manitoba Rhodes Scholar. The members of this class do work similar to what they would do in an office. This has solved the problem and we have found that most of the students in the practice class are before long placed in an office.

The students of the School have never published a magazine, although at times such an undertaking has been discussed. Two years ago the Board arranged with the Manitoba Bar Association that four or more pages of the Manitoba Bar News — the official publication of that Association — now in its twenty-second year, should be made available to the students. The Law School agreed to pay for all space that might be used. It was suggested to the students that they set up an editorial board and they were advised that there would be no editing of their contributions by Board or staff. They were also advised that criticisms and sug-
gestions would be welcomed and given careful consideration. It was thought that in such a way it would be possible to find out the student’s views on legal education, although the relations between the student body, the staff and the Board were sufficiently close to enable us to know, rather well, what those views were.

So far there has been one contribution. This does not however indicate inertia in the student body, which has always been a virile one. When the editors of the Canadian Bar Review, in 1948, made the suggestion that students in the final year of the School should, under the general supervision of the faculty, prepare digests of articles in legal periodicals for publication in the Review, the students eagerly responded. In fact there was considerable competition for this work. The first of the digests appeared in 1949 in the January number and the Dean in announcing the arrangement said:

Hitherto each student in the fourth and final year of the course has been required to submit a satisfactory thesis on a subject approved by the faculty. For the current year the students are being permitted to choose between submitting a thesis, as in the past, or reviewing a specified number of legal articles. The articles will be chosen by the students but the reviews will be read and checked for accuracy by the faculty. The material published will be almost wholly in the nature of a summary. The students have undertaken this responsibility realizing that they will be the chief beneficiaries, but with the hope also that they can be of some service to readers of the Review.

The arrangement is continuing, the students have benefited, and I am sure those who have read their summaries will agree that they have done good work.

I have referred to a land of fantasy into which it seems some writers on legal education invite us to enter. In his chapter XVII, “Training for Trial Judges”, Judge Frank, who makes it clear that his suggestion is not limited to trial judges, writes:

To put it bluntly, I urge that each prospective judge should undergo something like a psycho-analysis. I say ‘something like’ because the theory and techniques of the art of psycho-analysis are being constantly revised, and some adequate, less prolonged and complicated, substitute may soon appear. I do not believe that, through such self-study or otherwise, any judge will become aware of all his prejudices or always able to control those of which he is aware. But such self-knowledge, I think, can be of immense help in reducing the consequences of judicial bias.

From his following elaboration of these ideas, it seems that after his appointment a judge should “be required periodically to consult government psychiatrists”.

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If there is merit in Judge Frank's proposal, should it not be extended to all teachers of law, to all lawyers, from whom the judges are chosen, and to all prospective lawyers? And why should it be confined to judges, and teachers of law, and lawyers and prospective lawyers? Why should it not be applied as universally as possible, at least to all professions? At what stage should it begin and how often is "periodically"? And why should the consultation be with "government" psychiatrists? What would happen if there were a change of government and a change of "government" psychiatrists? What power to control the thoughts of people this would place in the hands of the government of the day.

With all respect to those who are working in the field of psycho-analysis, it is true that their theories and techniques are being constantly revised. I do not know what Judge Frank means by "something like a psycho-analysis". I am aware that similar proposals have been made by others and also that it is urged by some that teachers of law should have a knowledge of, should apply, and should teach, psychology.

In certain philosophical circles it seems to have become fashionable to decry common-sense as being merely the sum of the opinions of the "common" or "uninstructed" man. In other fields of thought there is a recognition that in some sciences there has been a transition from common sense. Bertrand Russell says: "Modern physics is further from common sense than the physics of the nineteenth century". His evaluation of psycho-analysis well repays study; he is not one who depreciates common-sense, and he is fully aware that the methods which must be used "in the law courts" differ somewhat from those used in science.

I had thought we had in our deliberations given consideration to every factor requiring consideration in studying legal education, but I must confess that we had not pursued the subject as a problem in psycho-analysis. It will be an interesting topic to put on the agenda for our next meeting, but I feel almost certain that — for the present at least — we shall be inclined to rely on such common-sense as we possess.

There is much more on legal education in Judge Frank's book — and I refer to it so frequently because it is the latest work — with which I should like to deal. I can, however, say little more about it in this article, which is primarily the history of the Manitoba Law School with an explanation of what we in Manitoba have tried to do, and our reasons for doing it.

For some years I have had the intention of writing the story of the School, as I am now the only one who has been continuously connected with it since it came into existence. Much has happened in thirty-seven years and some things have already been forgotten. My original idea was to collect my material but not to publish it until I was no longer connected with the School. I should like to complete the story, which will naturally contain many things of merely local interest, for our fortieth anniversary. Because of the Survey now being made I thought this account might be of some present interest.

Let me emphasize that this is primarily an account of what we have done or tried to do in Manitoba. I realize that there are many other views, and many conflicting views, on every topic I have dealt with. The system we have adopted in Manitoba is the one we consider most satisfactory for us, having regard to our local conditions. There has, of necessity, had to be some criticism of other systems in explaining why we have adopted one method or the other, but I hope it has been criticism without asperity.

May I be permitted to say that I think there is too much acrimony on the part of some writers on legal subjects, particularly those who write on legal education? Judge Frank refers to Mr. Justice Holmes' recommendation "that some high-flown, unrealistic, legal notions be 'washed in cynical acid'". In his Introduction he says:

I have dwelt on the importance of avoiding, as far as possible, prejudice and dogmatism; but doubtless here and there I have been swayed by my own prejudices and dogmas. I urge the reader to be on the watch for my hidden biases. As I have discussed a large and difficult subject, of course I have made blunders. I shall be grateful to those who point them out, for, if there is ever another edition of this book, I shall try to correct them.

Notwithstanding this excellent introduction, Judge Frank permits himself to write:

For contemporary law-school teaching got its basic mood at Harvard, some seventy years ago, from a brilliant neurotic, Christopher Columbus Langdell.

With great respect I submit that this is not the spirit in which to approach any serious and controversial subject. Whether we accept or reject, in whole or in part, Dean Langdell's ideas, a man who left the impress of them on three generations must have had the elements of greatness in him. I wonder what Judge Frank

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would reply to a counsel appearing in his court who asked him to disregard a decision of a judge because he was a brilliant neurotic?

Bertrand Russell, in his reminiscences of an old friend, wrote last year:

Philosophically I owed much to him, encouragement and stimulus in early years, and later, when I had come to disbelieve everything that he taught, the psychological understanding of how such opinions could be held by a sane man.

Is not this a wiser attitude? I have just finished reading Professor L. C. B. Gower’s article, “English Legal Training”, and was somewhat pained by his reference to “the best of law schools” in Canada and the United States “attacking” each other’s ideas. I do not know where Professor Gower obtained his information about conditions in Canada, but if “attacking” the ideas of other law schools is the, or a, criterion of a “best” law school, then Manitoba is not in that favoured class. It is not our practice in Manitoba to “attack” the “ideas” of other law schools. We consider and discuss them and if we cannot agree with them we disagree in a friendly spirit and without recrimination. We have never claimed more than that we consider our system is the best system for us.

We have always felt particularly happy about the cordial and close relationship between the University and the Law Society, bodies which we believe should share in the responsibility for legal education — each having a different, but equally important function to fulfill. The faculty of the School is not a Faculty of the University, but the School and the University have steadily grown closer. In 1915 legislation was obtained empowering the University and the Law Society to make mutual arrangements for legal education and validating the provision therefor already made. In 1928 the University Act was amended to provide for the election to the University Council (which became the Senate in 1936) of one representative by members of the Law Society who are graduates of the University. Then, by the University Act of 1936, it was provided that the Dean of the School should be a member of the Senate which then replaced the Council. The Dean is also a member of many of the Senate Committees, including the Committee on Post-Graduate Studies.

The content of the Arts course given at the University should be mentioned. The Arts curriculum makes available to the student, amongst others, courses in Economics, Logic, Philosophy and Psychology, and in addition, in the senior years, Government and

\(^n\) (1950), 13 Mod. L. Rev. 137.
Sociology. Every student entering upon the course for the LL.B. degree must have standing in both the first and second year of his university course in one of the following languages: Greek, Latin, French or German. Close attention is given by the University and the School to instruction in the use of English—a matter in which lawyers are particularly interested and one in which it is apparent that the fundamental instruction which should be given in public and high schools sometimes has not been as effective as could be wished.


The two members of the Board of Trustees at present representing the University are the Hon. Mr. Justice Dysart, B.A., M.A., LL.B., LL.D., of the Court of Appeal, Chancellor and formerly Chairman of the Board of Governors, who did postgraduate work at Oxford and Harvard, and President A. H. S. Gillson, O.B.E., M.A. (Oxon). The representatives of the Law Society are B. C. Parker, K.C., B.A., LL.B., and F. J. Turner, K.C., LL.B., the latter a graduate of the School.

There is much more that I should like to say on the subject of legal education in Manitoba, but while we presently have a number of matters under consideration I shall defer any comment on them until the necessary decisions have been made.