

## THE ORMROD REPORT AND LEGAL EDUCATION IN NEW ZEALAND—A COMMENTARY

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The fact that the organizers have seen fit to include me in this otherwise distinguished and learned panel is perhaps recognition of a principle which prevails in another educational institution in this city. There, it is said, they admit the sons of old boys in order to leaven the extremely high academic standard which could result from admission based solely on merit. I was encouraged to accept when I learned the identity of the proposed Chairman. Notwithstanding his present judicial eminence, his own academic qualifications which have received some reinforcement from our alma mater, and his wide experience at all possible levels in the field of legal education (like other former students of his in this room), I felt some sense of familiarity which has bred respect. Also on this occasion, I am aware that whilst you, Sir, may listen, criticize, improve and correct, there is, I believe, no question of your awarding marks.

I felt that I should play my part best if as a blunt practitioner, I criticized as trenchantly as possible, Professor Sim's paper. Unfortunately, I cannot do that. The paper (notwithstanding the modesty of its author) represents a scholarly survey of our needs, of the ways that other countries are attempting to meet similar but not identical needs, of the present rate of legal education (not I confess always understood by the busy practitioner) and of likely trends. I found it absorbing and it was only after a fairly close second reading of it, that I appreciated quite how much had been condensed to form it.

It would seem that the present structure of our law degree and the short professional course which follows it, whilst susceptible of improvement, nevertheless is reasonably well suited to the demands of a profession endeavouring to serve the community at the present stage of New Zealand's development. This state of affairs may be due to the wisdom of the Council of Legal Education, but, when one considers the numerous pressures that constantly bear on the development of legal courses, the explanation may also be derived in part from the fact that a piece of rough stone falling into the head waters of a river becomes a fairly smooth pebble by the time the plains are reached. In summary, I therefore, think the present academic qualifications for a lawyer provide not a bad basis upon which to build for the future.

One can only concur that a lawyer needs not only a training in legal knowledge and skills but as Professor Sim says "also the broadest possible non-legal education". He needs this in his professional work and to fulfil satisfactorily the many roles which society expects of the lawyer.

As to the law content of law degrees, all must admit that no theoretical training can cover all fields of law. That means that in the main, teaching must be confined to legal principles and basic subjects. Once those needs are satisfied, then I must say I like the idea of optional courses, which it seems have developed within the limits of the statute, academic staffing and facilities. However, it is not my

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intention to provide an inadequate gloss on what Professor Sim has so much more ably said in this respect but within the time available to examine the aspect of professional training.

The present course of professional subjects is undertaken, in the main, by students part-time whilst they are gaining office experience. When it was first introduced, I think it appealed to some of us because it was reminiscent of the substantially part-time courses which produced a generation of lawyers whose learning in the law and whose soundness in practice no one aged over forty is likely to criticize!

Those of us who have participated in providing this portion of legal education, I suggest, are conscious of its inadequacy and I rather feel that the practical training in legal offices which the students simultaneously undergo may not be as valuable as we think it is, or as it was some years ago.

The pressures of practice grow every year. It is a tribute, I think, to the recently graduated student and his teachers in law, that he reacts as well as he does to the strange environment into which he is nowadays flung. The atmosphere of a busy law office is less like that of a law library and rather more like that of a large city newspaper seeking to "hit the street" by a deadline. The principals of the office can have little time for training and the student learns to cope with swiftly changing situations. He has not the opportunity to build that fund of practical knowledge in the ideal way i.e. in a progression from simple to more difficult tasks. I think the present inadequacies are displayed in the drafting of documents. In that respect I can only add my support to Professor Sim's view of the need in this field to which he points.

I doubt if my own generation would claim the skill of its forebears in this respect. I refer not to literary elegance but to the prime function of good drafting i.e. to cover all possible circumstances and to avoid ambiguity. Today, I think the busy practitioner is perhaps at his best with his back to the wall and a smoking dictaphone microphone in his hand. But these conditions do not make for good draftmanship and this is a pity at a time when important documents may be perused by persons whose function is to strike them down if possible. In the early days of this province, the typical marriage settlement deed after it was duly executed and stamped, resposed unchallenged in the solicitor's strongroom and if there was any question of what it meant, it was generally answered by the man who drafted it. Naturally his understanding of the settlor's intentions was complete and untrammelled by any so called canons of construction! Whatever may have been discussed in Ballygullion, the Rule gainst Perpetuities figured little in the conversations of the early Canterbury run holders. The modern settlement inter vivos and related documents are scrutinized carefully by the Revenue Authorities. They may indicate to the practitioner concerned that a purported assignment of a future equitable chose in action is not in substance valid and thereby avoid the need to melt down the transaction in the crucible of section 108.

In those circumstances our draftmanship should be improving. I do not think that a lengthy articulated clerkship today would be acceptable and whilst fully recognizing the difficulties and the expense, I would be prepared to consider the legal workshop of the type now established in the Australian Capital Territory and to which Professor Sim has referred. I realize that this must be a relatively high pressure course. Therefore, there cannot be that gradual learning which I for one, would

like. In the field of legal education compromise will always be essential.

I propose to close these inadequate remarks with a reference to legal executives to whom Professor Sim finds time for a brief mention at the beginning of his paper. It will be known that recently a survey has been conducted throughout the profession to ascertain the likely demand for such executives. The questionnaire had to be in fairly general terms because no one could promise the exact qualifications which those executives would acquire as negotiations were then and are still pending. The issues should be resolved within the next few months. At present in Auckland, instruction is being provided for those in legal offices who already fulfil the function of legal executives. Some of us feel that facilities for training should be such as to attract from the secondary schools, the type of intelligent competent young man or woman who does not wish to pursue academic studies at university level but who would perform a most useful role in legal offices and find satisfaction in it. Whatever the outcome may be, it is my suggestion that assistance of this type to busy practitioners will be most important and in no way an ill omen for those undertaking law studies at our universities. Indeed they may look forward to a life of practice freed from a lot of more routine legal work which dogs the life of even senior practitioners today. If that object is achieved, then tomorrow's practitioner may have more time for the more complex legal problems about which he must advise his clients and also for the acquisition of the information he requires in so many related fields, both for his work and for the part he is expected to play, and does play, in the community.