REPRINTED FROM
THE JOURNAL
OF COMPARATIVE LEGISLATION
AND INTERNATIONAL LAW
VOL. XVIII., PART 2

WOMEN AS PRACTITIONERS OF LAW.

[*Contributed by* WILLIAM RENWICK RIDDELL, LL.D., F.R.S. Can., *Justice of the Supreme Court of Ontario.*]

A LITTLE more than a quarter of a century ago a flutter of what in a less dignified body would have been called excitement went through the Convocation Room at Osgoode Hall, Toronto, at a meeting of the Benchers of the Law Society of Upper Canada—a woman had applied to be admitted on the books of the Law Society, a thing without precedent in the century of the Society's existence.

From 1797, the legal profession in this Province has been master in its own house: in that year the Provincial Legislature of Upper Canada passed an Act [1] which authorised all the persons then admitted to practice and practising at the Bar to form themselves into a Society, the "Law Society of Upper Canada," which Society was to prescribe rules and regulations for students and call to the Bar, and generally to have control over the profession. Since the organisation of that Society, no one has been or could be allowed to act as barrister in any of our Courts unless and until he was called to the Bar by the Society.[2]

While there has since 1797 been a distinction between the barrister and the attorney (or solicitor),[3] there has never been any

[1] (1797) 37 Geo. III. c. 13 (U.C.)

[2] Those interested will find a full historical account of the Law Society of Upper Canada in my work published by the Law Society of Upper Canada in 1916, *The Legal Profession in Upper Canada in its Early Periods.*

The Law Society of Upper Canada was incorporated in 1822 by the Provincial Act 2 Geo. IV. c. 5 (U.C.); but its function to call to the Bar was not interfered with.

[3] The attorney practised in the Common Law Courts, the solicitor in Chancery. We had (after 1794) only Common Law Courts for a time and consequently our practitioners in "the lower branch of the profession" were then attorneys (or to use the time-honoured orthography "attornies"); but in 1837, the Provincial Act, 7 Geo. IV. c. 2 (U.C.) instituted a Court of Chancery; and thereafter, till the coming into force of the Judicature Act in 1881, a member of this branch was an "Attorney-at-Law and Solicitor-in-Chancery." The Judicature Act of 1881 abolished the name attorney, and now these are all solicitors.

objection to the same person filling both positions; and from the beginning most barristers were also attorneys and *vice versa*.[1] While the Law Society does not admit the solicitor (to use the present nomenclature), the duty was cast upon it by the Act of 1857[2] to examine and inquire touching the fitness and capacity of an applicant to act as an attorney or solicitor: and ever since, the Law Society examines the candidate and gives a "Certificate of Fitness," on the presentation of which the Court admits him. Without such a certificate the Court cannot admit any one, just as without a call to the Bar by the Law Society the Court cannot hear any counsel. It is necessary before he can obtain a certificate of fitness or be called that the applicant for admission as a solicitor or for call to the Bar must have been on the books of the Society for five years (in the case of a graduate of a British University, for three years).

At the time the disturbing application was made (as now) the Governing Body, the Benchers (who were in fact the real corporation) were mainly elected by the barristers of the Province—a few Benchers *ex officio* being the exception. An election is held every five years, so that the Benchers fairly well represent the sentiment of the profession at large, perhaps the more conservative sentiment.

It was to this body met in Convocation that the petition of Miss Clara Brett Martin to be admitted on their roll was presented. There was immediate opposition; true the applicant was a modest, self-respecting young woman, well-born, well-bred, and well-educated—but she was a woman.

Ontario.—After a little discussion, on June 30, 1891, Convocation decided that they had no power to admit a woman upon their books.[3] Thereupon the Legislature of Ontario at the instance of Sir Oliver Mowat, the Prime Minister,[4] passed an Act[5] in the

[1] From a recent examination which I have made of the Rolls I find that of the practitioners of law in Ontario, all but 4 per cent. are barristers, and all but 2½ per cent. solicitors.

[2] 20 Vic. c. 63 (Can.).

[3] The same decision was come to by the Bar of Montreal a few months ago; and the Courts declined to interfere.

[4] Sir Oliver Mowat, although through all his long and useful life he called himself a Reformer or a Liberal, was quite generally by both political friend and foe (he had none but political foes) believed to be and not infrequently called a Tory or Conservative of the most Conservative type. In the matter now under discussion he was a Radical.

[5] (1892) 55 Vic. c. 32 (Ont.).

following terms: "The Law Society may in its discretion make rules providing for the admission of women to practise as solicitors."

Convocation by a bare majority [1] directed the Legal Education Committee to frame regulations, and on their report being adopted a rule was passed December 27, 1872, to become effective at Hilary Term of the following year.

Miss Martin was duly articled—the regulations for the admission of women as solicitors did not differ from those prescribed for men. She was not satisfied with the lower branch of the profession; but there was no statute permitting her to be called to the Bar.

In 1895, the Ontario Legislature (again at the instance of Sir Oliver Mowat) passed the Act [2] which amended the previous Act by giving the Law Society discretion to call women to the Bar. In the following May, Miss Martin wrote to Convocation, expressing her desire to be called to the Bar; and after a good deal of discussion a rule was passed substantially the same as that for men [3] under which she was called to the Bar, February 2, 1897: she was admitted as a solicitor on the same day.

Since that time there have been seven other women admitted as solicitors and called to the Bar—of the eight, the

[1] The mover was Sir Oliver Mowat (who was a Bencher *ex officio* as being Attorney-General of the Province), the Seconder Hon. S. H. Blake (who was a Bencher *ex officio* as being an ex Vice-Chancellor): the vote was 12 to 11 and would have been a tie, had it not been that one Bencher was on his feet in Court and did not reach Convocation Room until the vote was just being taken. His objection was that the Province cast upon the Benchers of the Law Society the duty of deciding in their discretion what should have been decided by the Legislature as a matter of public policy. Most if not all of those who voted "Nay" were opposed to the principle of admitting women altogether. The Minute Books of the Law Society for 1892, pp. 544, 550, and 551, contain the proceedings of Convocation.

[2] 58 Vic. c. 27 (Ont.).

[3] In Easter Term, May 18, 1896, her application was received; June 5, a motion to direct the Legal Education Committee to frame regulations was voted down by a vote of 9 to 6; June 30, Charles Moss, C.C. (afterwards Sir Charles Moss, Chief Justice of Ontario), gave notice (for Sir Oliver Mowat) that he would renew the motion on the first day of the following Term. In Trinity Term, September 14, the motion passed by a vote of 8 to 4; September 25, the regulations were reported and a Rule framed and read. In Michaelmas Term, November 17, a motion to rescind the Resolution of September 14 was lost, and the following day the Rule received its second and third reading and was passed.

Minute Book, No. 5, pp. 19, 738, 768, 775.
Minute Book, No. 6, pp. 10, 13, 26.

pioneer and five others practise their profession (one in another Province).[1]

It would appear that the number will somewhat increase in the immediate future. There are now four women students in the Law School in the third year, five in the second year, and eleven in the first year, while there are seven matriculants waiting for their time to come to the Law School, four entitled to attend in 1918 and three in 1919; of those in the second and third years in the Law School two have obtained honours and two honours and scholarships; eleven in the Law School have a degree in Arts, ten B.A.'s and one M.A.[2]

[1] I give the list as furnished me by the Secretary of the Law Society—it will be noticed that three have married barristers:

LIST OF WOMEN LAWYERS.

Name.	*Address.*	*When Called.*	*Remarks.*
1. Clara Brett Martin . .	Toronto	H. 1897	Practising.
2. Eva Maude Powley . .	Port Arthur	E. 1902	Practising.
3. Geraldine Bertram Robinson .	Toronto	T. 1907	Married E. W. Wright, Barrister of Toronto; pays Bar fee.
4. Grace Ellen Hewson . .	Toronto	E. 1908	Married, not practising.
5. Jean Cairns . . .	Huntsville	T. 1913	Married P. R. Morris, Barrister of Hamilton, practising at Hamilton, Ontario, with her husband.
6. Edith Louise Paterson (*a*) .	Vancouver	E. 1915	Practising in Vancouver, B.C.
7. Mary Elizabeth Buckley (*b*) .	Toronto	E. 1915	Married H. V. Laughton, Barrister of Toronto, practises a little.
8. Gertrude Alford . . .	Belleville	15 June, 1916	Practising in Trenton, Ontario.

(*a*) Obtained honours and Scholarships.
(*b*) Obtained honours.

[2] As has been said, the Rules of the Law Society require every applicant for Call or Admission to have been five years on the Books of the Society (three years in case of a Graduate of a British University); the last three years, he must attend the Law School at Osgoode Hall (which is entirely supported, controlled, and managed by the Law Society).

The following are the Rules respecting women:

Rules for the Admission of Women to Practise as Solicitors and Barristers-at-Law.

178. (1) Any woman who is a graduate in the Faculty of Arts in any university in His Majesty's Dominions empowered to grant such degrees, and any woman being competent as a student within the requirements of Rules 103 or 104, shall upon compliance with the following Rules, be entitled to admission to practise as a solicitor pursuant to the provisions of The Law Society Act, s. 43 (2), provided that:

(*a*) She has been entered upon the books of the Society in the same manner and

Scarcely half of 1 per cent. of the practitioners in Ontario are women; the profession of law makes by no means the same appeal to them as medicine.

Women as Practitioners.—The women who practise law are not "wild women"; they are earnest, well-educated women who ask

upon the same conditions as to giving notice, payment of fees, and otherwise, as are provided for admission of Students-at-Law of the graduate and matriculant class respectively;

(*b*) She has been bound by contract in writing to serve as a clerk to a practising solicitor for a period of three or five years from the date of her entry upon the books of the society, according as she shall have been entered on the books as a graduate or matriculant:

(*c*) She has actually served under such contract for such period of three or five years, as the case may be;

(*d*) She has complied with the conditions of the statutes and the Rules of the Society with regard to execution and filling of such contract, and any assignment thereof, and with every other requirement of the Society with regard to Students-at-Law, including attendance upon lectures in the Law School, passing of examinations, payment of fees, and every other matter or thing compliance with which by a Student-at-Law is a prerequisite to admission to practise as a solicitor.

(2) The fees payable by such woman upon receiving a Certificate of Fitness to practise shall be the same as those payable by other Students-at-Law.

(3) Upon admission to practise, such woman shall become subject to all the provisions of the statutes and the Rules of the Society with regard to solicitors, and non-compliance with or failure to observe the same or any of them shall subject her to all the disabilities and penalties imposed upon other solicitors.

179. Every woman seeking admission to practise as a Barrister-at-Law under the provisions of the Statute in that behalf shall furnish proof that:

(*a*) She has been entered upon the books of the Society pursuant to the Rules for admission of women to practise as solicitors, and has remained on such books for a period of three or five years, according as she shall have been entered as a graduate or matriculant.

(*b*) She has actually and *bona fide* attended in a barrister's chambers, or has served under Articles of Clerkship for a period of three or five years as the case may be.

(*c*) She has complied with the conditions of the statutes and every requirement of the Rules of the Society with regard to Students-at-Law, including attendance at lectures in the Law School, passing of examinations, payment of fees, and every other matter or thing compliance with which by a Student-at-Law is prerequisite to Call to the Bar.

180. The fees payable by such woman upon admission to practise as a barrister-at-law shall be the same as those payable by other Students-at-Law.

181. (1) Upon admission to practise as a barrister-at-law such woman shall become subject to all the provisions of the statutes and the Rules of the Society with regard to barristers-at-law, and non-compliance with or failure to observe the same, or any of them, shall subject her to all the disabilities and penalties imposed upon other barristers-at-law.

(2) Every such woman appearing before Convocation upon the occasion of her being admitted to practise as aforesaid, shall appear in a barrister's gown worn over a black dress, white necktie, with head uncovered.

no favours but are quite willing to do their share of the world's work on the same conditions as men.

While occasionally one of them has been known to take the brief at a trial, this is not usual; they generally retain counsel for such work and confine themselves to chamber practice. Occasionally a woman takes a Court or chamber motion, but as a general rule her work is that of a solicitor. In my own experience, as in that of judicial brethren whom I have consulted, when she appears in Court or chambers, she conducts her case with dignity and propriety, exhibiting as much legal acumen, knowledge of the law, and sound sense as her masculine *confrère*, and she does not trade upon her sex.

The admission of women to the practice of law has had in Ontario no effect upon the Bar or the Courts; the public and all concerned regard it with indifference; while no one would think of going back to the times of exclusion, no one would make it a matter of more than passing comment that a woman lawyer was engaged in the conduct of legal business. It has prevented any feeling of injustice, sex oppression, or sex partiality—it has made the career open to the talents. Otherwise it has no conspicuous merits and no faults. So far as I can find out, there has never been a charge of dishonesty or unprofessional conduct made against a woman practitioner of law in Ontario (or indeed elsewhere); it is certain that no such charge has ever been brought before the Courts.

Admission in the Other Canadian Provinces.—Of the nine Provinces of Canada, Quebec refuses women the right to practise law:[1] while the question has not arisen in Prince Edward Island, presumably the decision would be that they are excluded, as there is no special legislation. Of the other Provinces, Alberta admits them under general legislation; British Columbia under a special Act,[2] which provides that "women shall be admitted to the study of law and shall be called and admitted as barristers and solicitors upon the same terms as men." Manitoba has also a special statute,[3] which amends the Law Society Act by providing that "the expression persons includes females." New Brunswick in 1906 passed an

[1] A proposal to grant the right to women has been defeated for two successive years in the Quebec Legislature: a Bill for that purpose has been introduced during the present month (December 1917).

[2] (1912) 2 Geo. V. c. 18.

[3] (1912), 2 Geo. V. c. 32, s. 2.

Act[1] in the same terms as the British Columbia Statute above mentioned, and Nova Scotia in 1917 passed a similar Act expressly stating that it was declaratory of the existing law.[2] Ontario we have seen calls and admits under two Statutes—now combined in Revised Statutes.[3] Saskatchewan has a special Statute, the Statute Law Amendment Act 1912–13,[4] which by s. 27 provides: "The Benchers may in their discretion make rules for the admission of women to practise as barristers and solicitors."

The question as to the admission of women to the Bar has not yet come up in the Yukon Territory.[5]

The whole number of women practising law in Canada is very small, perhaps a dozen in all—*e.g.* Alberta has called only one and she got married, Saskatchewan only two; the numbers may be expected to increase, but not rapidly. I do not think that the most fervent advocate of women's rights could claim that the admission of women to the practice of law has had any appreciable effect on the Bar, the practice of law, the Bench, or the people. It is claimed that it was a measure of justice and fair play, that it removed a grievance and has had no countervailing disadvantage. That claim may fairly be allowed: in other respects, the admission of women is regarded with complete indifference by all but those immediately concerned.

United States.—In the United States women have joined the profession in somewhat larger numbers than in Canada—there are now about 1,200.

They are admitted to practise before all the Federal Courts of the United States and all the State Courts except those of Arkansas, South Carolina, and Virginia. Generally they are admitted under general legislation, but in some instances special legislation has been passed—sometimes by reason of adverse decisions of the State Courts, occasionally (it may be) *ex abundanti cautelâ*.[6]

As in Canada, no one in the United States would now think of

[1] 6 Ed. VII. c. 5.
[2] 7 & 8 Geo. V. c. 41.
[3] (1914), c. 157, c. 1-3 (2).
[4] 3 Geo. V. c. 46.
[5] Probably it would be held that they would not be admitted. See *Consolidated Ordinances* of Yukon Territory, cap. 50: "The Legal Profession Ordinance."
[6] In the United States the entry of women into the sacred circle was not always easy: the Courts were in some instances adverse, adhering to the beloved "Common

excluding women when once they were admitted. It cannot, I think, be fairly said that their admission has had any marked effect upon the Bar or the practice of law; their influence on legislation for the protection of women and children is considerable, but not more than that of an equal number of women who have not joined the profession—what influence there is has been, I think, uniformly

Law of England." Where that was the case, the Legislature was attacked with the result stated in the text. I add here a partial account of the course of the campaign.

Mrs. Myra Bradwell was the first woman to meet a rebuff in the State Courts, so far as I have seen in the Reports: she in 1869 applied to the Supreme Court of Illinois for a licence to practise law, but failed. The Court thought itself bound by the Common Law of England to refuse the application unless "the Legislature shall choose to remove the existing barriers and authorise us to issue licences equally to men and women." *In re* Myra Bradwell, (1869) 55 Ill. 535. The Supreme Court of the United States refused to interfere, (1872) 16 Wall. 130. No long time elapsed before such authority was given. On March 22, 1872, an Act was approved "to secure to all persons freedom in the selection of an occupation profession or employment" which by s. 1 enacted "that no person shall be precluded or debarred from any occupation, profession or employment (except military) on account of sex" (see Hurd's *Rev. Stat.* 1915–16, cap. 48, par. 2). In 1874, a further Act was passed "to revise the law in relation to attorneys and counsellors"; and that by s. 1 provided "No person shall be refused a licence under this Act on account of sex" (Hurd, *ut supra*, cap. 13, par. 1).

One of the Federal Courts was equally hostile. Mrs. Belva A. Lockwood in 1873 applied to be admitted as attorney and counsellor-at-law of the Court of Claims at Washington, a Federal Court of the United States. The Court held that the responsibilities of such a position were inconsistent with the holding of an office by a woman, and "a woman is without legal capacity to take the office of Attorney." *In re* Mrs. Belva A. Lockwood, exp. 9 Ct. of Cl. (Nott & Hop.) 346: sustained in the Supreme Court, 154 U.S. 116. Shortly afterwards the Supreme Court of the United States (October Term, 1876) refused to admit Mrs. Lockwood to practise in that Court "in accordance with immemorial usage in England and the law and practice in all the States until within a recent period." (See 131 *Mass. Rep.* at p. 383.)

Very shortly thereafter Congress acted: the Act of Congress, February 15, 1879, chap. 81 (20 Stat. L. 292) provides "Any woman who shall have been a member of the bar of the highest Court of any State or Territory or of the Supreme Court of the District of Columbia for the space of three years and shall have maintained a good standing before such Court and who shall be a person of good moral character shall on motion and the production of such record be admitted to practise before the Supreme Court of the United States." Under that statute, Mrs. Lockwood was admitted to practise in the Supreme Court. She was also admitted to practise in the Supreme Court of the District of Columbia and in certain of the State Courts, but her application was rejected in Virginia. The Supreme Court of the United States gave her no relief, (1893), 154 U.S. 116—and Virginia is still joined to its idols.

Miss R. Lavinia Goodell was no more successful in the Wisconsin Court in 1875: the Chief Justice, Ryan, thought that "reverence for all womanhood would suffer in the public spectacle of woman so engaged"; and in the absence of a statute her application was refused. *In re* Goodell, (1875), 39 Wis. 232.

Massachusetts then spoke to the same effect. Miss Lelia J. Robinson was

good. They have sustained a good reputation in their practice: no charge of impropriety, dishonesty, or unprofessional conduct has ever been laid against them so far as the Court records show.

Their Position as Lawyers.—The remainder of the Bar were slow to accept woman as a lawyer; where she has made her appearance, the Bar seems to have gone through the stages of amused curiosity

refused admission as an attorney and counsellor of the Supreme Court—she was not a "citizen" or a "person," and without "clear affirmative words in a Statute" the Court's hands were tied. *Re* Lelia J. Robinson, (1881) 131 Mass. 376.

The "clear affirmative words" soon came: on April 10, 1882, a statute was approved, c. 139, "The provisions of law relating to the qualification and admission to practise as attorneys-at-law shall apply to women." A similar decision in Oregon, *In re* Leonard, (1885), 12 Oregon 93, refusing admission to Mary A. Leonard led to the passing in 1885 of the statute, "Hereafter women shall be entitled to practise law as attorneys in the Courts of this State upon the same terms and conditions as men." See Lord's *Oregon Law*, s. 1079.

Tennessee in 1893 refused admission as a Notary Public to Miss F. M. Davidson in a decision which was considered to indicate that a woman could not be an attorney—the Act of 1907, chap. 69, made the law clear—"Any woman of the age of twenty-one years and otherwise possessing the necessary qualification may be granted a licence to practise law in the Courts of this State." (See Thompson's Shannon's Code of 1917, s. 5779, a, 6.)

Some other like decisions in the State Courts led to special legislation; but in most States, the Courts interpreting general legislation took a different view. The first admission was in a State in the middle West. Iowa in 1869 admitted Mrs. A. A. Mansfield under a statute providing that "any white male person" may be admitted because the affirmative declaration did not by implication deny the right to women. Missouri came next—the Court admitted Miss Barkalow; Maine admitted Mrs. C. H. Nash in 1872. To make the matter absolutely clear, chap. 98 of the Public Laws of 1899 enacts "No person shall be denied admission or licence to practise as an attorney-at-law on account of sex." In the Federal Court, District of Columbia, Miss Charlotte E. Ray was admitted about 1873; and in 1874 Miss Hewlett was admitted by the Federal District Court (Illinois); and the Federal District Court (Iowa) also admitted a woman. See 39 Wis. at pp. 238, 239.

In New Hampshire, in 1890 the petition of Mrs. Marilla M. Ricker, a widow, to be admitted to practise law was granted, the well-known Chief Justice Doe writing an elaborate opinion with a wealth of learning more or less applicable. He came to the conclusion that a woman was a "citizen" and a "person"; and an attorney not taking an official part in the government of the State (for which women are disqualified by the Common Law) there was no reason why a woman could not be an attorney. *In re* Rikver's Petition, (1890), 66 N.H. 207.

Colorado took the same view in 1891 when Mrs. Mary S. Thomas was admitted to the practice of law; she was a "person" and an attorney did not occupy any "civil office." *In re* Thomas, (1891), 27 Pac. Rep. 707; 16 Colo. 441.

Indiana held the same way in 1893—*In re* Petition of Leach exp., (1893), 134 Ind. 665.

The Connecticut Court of Errors *in re* Mary Hall, (1882), 50 Conn. 131, had gone back to the legislation of 1750 in the attempt to interpret the more recent legislation, and holding that Mary Hall was a "person" admitted her to practise—one learned Judge differing from his three brethren.

turning to real and well-grounded respect. No doubt the conservative part of the profession will always look upon the woman lawyer as unladylike, unwomanly, recreant to her natural position, overturning the laws of God, what not? That is inevitable: but the great body of the profession is beginning—has indeed progressed some distance on the way—to treat her as a desirable and useful part of the profession and the body politic. "The Courts have invariably treated women practising before them with the greatest courtesy and kindness." [1] On inquiry, I find that the Bench can discover no difference in the ability and acumen in man and woman; it is the individual talent and industry which tell, not the sex. While there are exceptions, the rule is that women do not take trial briefs; as in Ontario, they mainly confine themselves to chamber practice. The number of woman lawyers is increasing slowly if at all, and there seems to be no more fear of man losing his lead in law than in the sister profession of medicine—indeed the competition is not so great as in medicine.

If I were to sum up in a sentence the results of the admission of women to the practice of law from my experience and inquiry, I would say that it has done some good, and no harm, while all prophecies of ill results have been falsified; that its effects on the profession and practice of law have been negligible, and that it is now regarded with indifference and as the normal and natural thing by Bench, Bar, and the community at large.

[1] I quote from a letter from Mrs. Mussey, President of the Women's Bar Association of the District of Columbia, to whose kindness I owe some of the facts in the text. The position of women in the District of Columbia is peculiar in that they are admitted to the Bar of the District, but not to the Bar Association and therefore not to the American Bar Association. A prominent member of the Bar Association somewhat maliciously says that this "will suggest a distinction which still exists in the minds of men lawyers." However, the women have their own apparently prosperous Bar Association in the District of Columbia