

## FACULTY OF ADVOCATES

### Regulations as to Intrants

New regulations governing the admission of intrants to the Faculty were approved by the court on 18th July 1968. Transitional provisions have been made to safeguard the position of those who have bona fide planned their careers (at university or otherwise) on the basis of the previous regulations. The purpose of this note is to give a brief explanation of the new regulations for the benefit of the profession. Detailed information, including information as to the transitional provisions, can be obtained from the Clerk of Faculty.

#### *Historical background*

The new regulations represent an almost complete departure from the form and content of the old, but the significance and extent of the changes can only be understood in a historical context.

The two methods of training intrants in the eighteenth century are described in Boswell's *Journals* and Scott's *Redgauntlet*. For the fortunate, like Boswell, there was a period of study of the civil law on the continent followed, or sometimes preceded, by a study of Scots law in Scotland. The less fortunate, like Scott, studied the Civil law and Scots law in Scotland. The prerequisites for a career at the Bar in either case were a working knowledge of Latin and the Civil law and a working knowledge of the theory and practice of Scots law. The training was fairly rigorous and standards appear generally to have been high.

By the middle of the nineteenth century the position had deteriorated. Standards had declined and the training was patchy and incomplete. The reasons for the decline were probably: (a) the French Revolution and Napoleonic Wars, which closed the continental universities to Scots students and destroyed the tradition of study on the continent; (b) the greater availability of Scots law reports and legal textbooks, which made it less necessary to search for authority in the Civil law; and (c) the abandonment of the old system of written pleadings which, for all its delays and inconveniences, gave scope for the legal scholar, like Thomas Thomson or George Joseph Bell, to exercise his talents in "chamber" practice. (It is significant that in the early nineteenth century the Faculty was a larger body than it is today, and that many, if not most, practitioners rarely, if ever, appeared in court).

During the Deanship of John Inglis (1852-1858), a Faculty committee was set up to re-examine the requirements for admission.

The regulations drawn up by this committee set the pattern for the next 100 years. The essential features of these regulations were: (1) the private examination in general scholarship, (2) the private examination in law, and (3) the public examination (i.e., the Latin thesis). The public examination had, however, already become a ritual formality and it was retained for sentimental rather than practical or academic reasons until its abolition in 1966.

The standard and content of the private examination in general scholarship was that of the Scots M.A. Express exemption from this examination was given to those who held certain specified British and Irish degrees (including English law degrees). When it is remembered that there was in those days no national examination like the Leaving Certificates or the G.C.E., and that students regularly started the M.A. course at a Scottish university at the age of 16, it is apparent that the Faculty's insistence on an M.A. degree or its equivalent was no more than an insistence on a minimum standard of literacy measured according to the only objective and national standard available at the time. The private examination in law was initially a purely Faculty examination but, with the introduction of the Scots LL.B., it became normal for intrants to qualify by taking that degree, and the "LL.B. standard" was adopted as the standard of the Faculty examinations.

No provision was made for professional training, but this was, for practical purposes, made compulsory by provision for the so-called "idle year" before admission and other provisions which had the effect of delaying the intrant's examination in law.

This system worked reasonably well until the present decade and had the practical virtue of ensuring that nearly all intrants had received some full-time university education. The requirement of the "double degree" (M.A., LL.B.) was not unduly onerous because it was possible to combine professional training with the study for the part-time LL.B. The only intrants for whom the regulations created real difficulty were Scottish solicitors who had qualified by way of the old B.L. degree. These solicitors, if they wished to join the Faculty, had to sit the general scholarship examination, the standard of which rose (although it did not really keep pace) with the standard of the Scots M.A.

#### *The position in the 1960's*

The requirements of the old regulations took on a completely new complexion with the introduction of the full-time Scots LL.B. This meant that, in order to obtain the double M.A.,

LL.B. degree, an inrant was committed to a full-time course of study extending to five years or more, during which he could not undertake any practical training in a solicitor's office or as a "devil". He could, of course, take the Faculty examinations while doing some practical training, but this was not (and is not) a satisfactory means of qualifying, except for the inrant who has already taken a university degree to a reasonably high standard and is capable of applying himself properly to private study. The full-time LL.B. without the preliminary M.A. also became the most obvious and suitable university course for the intending solicitor.

The introduction of the full-time LL.B. thus led to two serious and undesirable results:— (a) the temptation for intrants to skimp their practical training, particularly the traditional training in a solicitor's office; and (b) ever-increasing difficulty for the solicitor who wished to become an advocate.

A different, but extremely difficult, problem was created by applications for exemption from the general scholarship examination. The plethora of degrees offered by British, not to speak of Commonwealth and foreign, universities, and the widely varying standards of those degrees, some of which were clearly inferior in standard to the full-time Scots LL.B., presented the Faculty with problems which it was simply not qualified to solve. How, for instance, could one compare the relative merits of an ordinary B.A. in industrial management and an Honours B.Sc. in civil engineering? The former degree entitled its holder to automatic exemption from the general scholarship examination simply because it was called a "B.A." degree; the latter did not. The Faculty could not have abolished the automatic exemption for holders of arts degrees and said that all degrees would be "considered on their merits", since that would have resulted in there being no objective standard whatever. It would also have resulted in a quite unmanageable number of applications for exemption, each one of which would have required individual consideration.

These were the main reasons for which the Faculty undertook complete revision of the regulations in 1968.

#### *The 1968 regulations*

The main features of the 1968 regulations are that the general scholarship examination has been abolished and practical professional training has, for the first time, been made compulsory.

The general scholarship examination has been replaced by a requirement that every

inrant must at the outset satisfy the Clerk of Faculty that he holds the academic qualifications necessary to enter upon a curriculum for a degree of law at a Scottish university (or that he has obtained such a degree). In other words, he must show that he is qualified to embark on the course for the full-time LL.B. (or the B.A. (Law) at Strathclyde). This, at first sight, suggests a lowering of standards. But when it is remembered that the level of academic attainment necessary for entry to a Scottish university is now higher than the level required for an ordinary M.A. degree not many years ago, this argument loses some of its force. (The syllabus for the general scholarship examination in force until 1946 would be regarded as inadequate for the "O" level examinations of today!) Moreover, the full-time LL.B. now gives the sort of university education which was impossible with the old part-time degree.

The Faculty has in fact reverted to entry requirements which involve (a) a minimum standard of literacy tested according to an objective and national standard, and (b) for practical purposes, some full-time university education.

So far as professional training is concerned, the requirement is that every inrant, who does not obtain exemption, must do twenty-one months' training in a solicitor's office followed by about nine months' "devilling". This is very much what was, by convention, done by intrants in the days of the old LL.B. Automatic exemption from nine months of the period of training in a solicitor's office will be given to those who hold Scottish LL.B.'s with first and second-class Honours, and there is provision for similar exemption on a discretionary basis for those whose academic, professional or other qualifications and experience justify it. (Applications for the latter, discretionary, exemption may be thought to raise the same problems as applications for exemption from the old general scholarship examination. This will not be so, since the test to be applied will not be "Is this man sufficiently qualified in general scholarship?" but "Can this man be regarded as properly qualified with less than twenty-one months' training in a solicitor's office?")

No exemption from the prescribed period of devilling will be granted except to those who do not intend to practise as advocates in Scotland immediately after admission.

The opportunity has been taken in the new regulations to make changes in the procedure for the examination and admission of intrants, to spell out in much greater detail the subjects covered by the Faculty examinations in legal scholarship, and to make some minor adjust-

ments in the financial requirements. The details of these changes are really too numerous to fall within the scope of this note, but it is perhaps worth observing that the financial requirements for admission are now less onerous than they have been since 1919.

One significant feature of the new regulations which must be mentioned is that they require the active co-operation of the Law Society and solicitors who train "Bar apprentices" and of the University Law Faculties. The help and advice which the Faculty received from the Law Society and the University Law Faculties in the framing of the regulations was very real and very necessary, and marks a growing recognition that solicitors, university law teachers and advocates are members of three branches of the same profession rather than members of three separate professions.

[*Note:* Although it will now be easier for Scottish solicitors to transfer to the Faculty, the standard of the Faculty examinations remains the LL.B. standard. Also, the subjects covered by the Faculty examinations are more numerous than those covered by the minimum LL.B. course or the Law Society professional examinations. This means that only a solicitor who has passed all the prescribed subjects plus two subjects from the optional list at LL.B. standard will be able to transfer without further examination. It is anticipated that most intrans will still qualify in law by taking an LL.B. degree including passes in the subjects covered by the Faculty examinations in legal scholarship.]

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## THE JURY

(Contributed)

MY one and only experience of jury service was not merely, as I had expected, interesting, instructive and at times boring. It was also morally, physically and mentally wearing. The seriousness of the crime, which was a particularly brutal murder, and the length of the trial, which lasted for three days (eight to nine-hour sittings), put a severe strain on all members of the jury. The moral strain was, of course, an inevitable part of a conscientiously performed duty. The physical strain of sitting for long hours on cramped benches in a badly ventilated courtroom, and eating and waiting in a fairly small jury room, could perhaps only be alleviated by a complete rebuilding of the premises. Many of these discomforts must also be endured by witnesses, accused, lawyers and

all those concerned with the conduct of the case.

There are, however, a few ways in which the mental strain to which we were subjected might have been reduced and the effectiveness of the jury improved. Such improvements could, for the most part, have been achieved by the provision of more appropriate and adequate information. Considerable anxiety would have been allayed had we been given instruction at the beginning as well as at the end of the trial. Our duties as judges simply of "the fact" should have been stressed at this stage. This would have prevented a good deal of misleading speculation about the possible motives of the accused. We might also have been told that we were not to speculate about the accused's previous record and character. These points were stressed before we retired to the jury room, at the end of the trial, but by that time there had already been plenty of opportunity for conversations in which many false trails had been explored.

At the beginning of the trial there was also considerable bewilderment amongst the jury about the conduct of the case. Few of us seemed to be aware that a trial in a Scottish court does not begin with speeches from the prosecutor and the defence counsel in which the facts of the case are made explicit. Most of us, even those born and bred in Scotland, had derived our knowledge of court procedure from trial scenes in English films or television plays. We did not expect to have to piece together the facts of the case and the relationships of those involved merely from the testimony of witnesses. Perhaps the complicated unravelling of the case encouraged some of us to concentrate our attention more rigorously for fear of missing relevant facts. But it may also have caused others to lose interest or despair of remembering all the details of the case. After all, jurors are ordinary people whose intelligence is never tested. They should receive as much help as possible in performing a difficult task. A brief explanation of the procedure might have enabled us to understand the significance of the repetition of certain details and the lack of weight given to others.

Finally, at the end of the trial we might have benefited from some guidance on the way in which the discussion in the jury room should be conducted. The jury on this occasion was divided between those who thought that we should make up our own minds individually without trying to influence each other, and those who thought that the discussion was important as an occasion for recalling and assessing important points that witnesses had