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Cravath by the Sea: Recruitment in the Large Halifax Law Firm, 1900-1955

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The traditional view is that regularized, meritocratic hiring in Canadian law firms had to wait until the 1960s, with the rise in importance of Ontario university law schools. There was, however, more regional variation than this view allows. After an overview of the rise of large firms in the U.S. and Canada, and of the modern hiring strategies (the "Cravath system") that developed in New York in the early twentieth century, the author considers whether Halifax firms were employing these strategies between 1900 and 1955. Nepotistic hiring continued unabated; however, the three large firms of the period recruited young students with good academic records with increasing regularity, in the New York manner. The article concludes by proposing that the difference between firms' hiring in Toronto and Halifax might be explained by the enthusiasm with which the bar in each of these cities adopted modern professional views on legal education.

L'opinion la plus répandue est que, dans les cabinets d'avocats canadiens, il a fallu attendre jusqu'aux années 1960 et l'importance accrue des facultés de droit des universités ontariennes pour que soit adoptée l'embauche régularisée et selon le mérite. Les différences entre les régions étaient cependant plus marquées que cette opinion ne le suggère. Après avoir étudié l'émergence des grands cabinets aux É.-U. et au Canada et les stratégies modernes d'embauche élaborées à New York au début du vingtième siècle (le « système Cravath »), l'auteur considère si des cabinets de Halifax appliquaient ces stratégies entre 1900 et 1955. L'embauche fortement teintée de népotisme est restée la méthode la plus répandue; par contre, les trois grands cabinets de l'époque recrutaient de plus en plus souvent de jeunes étudiants brillants, comme cela se faisait à New York. En conclusion, l'auteur avance que la différence entre les méthodes d'embauche des cabinets à Toronto et à Halifax pourrait s'expliquer par l'enthousiasme avec lequel les Barreaux respectifs ont souscrit aux vues professionnelles modernes sur l'éducation juridique.

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Introduction

On February 28, 1930, Frank Manning Covert was called to the Nova Scotia bar. He had recently finished his term as an articled clerk under James McGregor Stewart, K.C,[1] who, in the words of his biographer, was the "fastest-rising star in the Halifax legal firmament."[2] With the 1927 death of William Alexander Henry, he had become the senior partner of the large Halifax law firm of Henry, Stewart, Smith & McCleave—a firm that would later bear Covert's name. After the ceremony, Covert spoke with his mentor: "Stewart asked me where I was going to practise; I said I did not know but thought I might go up to Kings County. He said that was too bad, that they could use a lawyer. I said, 'If you mean that, you've got a boy.'"[3] Thus began an almost fifty-year-long career with the firm that saw Covert rise to principal partner and take his place among Canada's business élite.[4]

Why hire Covert? From among the thirteen men called to the bar in 1930,[5] only he and Joseph J.A. Powell found places in large Halifax law

1. Bar application of Frank Manning Covert, Halifax, Nova Scotia Archives and Records Management [NSARM] (RG 39 "C", SC 1930 1584).
2. Barry Cahill, *The Thousandth Man: A Biography of James McGregor Stewart* (Toronto: University of Toronto Press, 2000) at 153.
3. Frank Manning Covert, *Fifty Years in the Practice of Law*, Barry Cahill ed. (Montreal and Kingston: McGill-Queen's University Press, 2005) at 28.
4. *Ibid.* at vii.
5. Nova Scotia Barristers' Rolls, Halifax, NSARM, RG, Series "M", vol. 24a.

firms. This essay seeks to uncover the strategies that Covert's firm and its two large Halifax contemporaries employed in recruiting lawyers over the first half of the twentieth century. More specifically, it asks whether the recent New York revolution in law firm hiring had made an impression on a regional Canadian centre. Accepted wisdom is that the effects of these American developments were not felt in Canada until after the Second World War—that is, until the rise in importance of Ontario university law schools. But Halifax, with its long-established academic approach to legal training, was different, as this examination of the three large Halifax firms that are now Stewart McKelvey, McInnes Cooper, and Burchell Hayman Parish will demonstrate. During the early twentieth century, these three élite Halifax firms eschewed the haphazardness of the bad old days and increasingly adopted forward-thinking, meritocratic hiring practices. They thus displayed the pervasive influence of new professional ideals in Halifax, and took important steps towards institutionalization and long-term growth.

I. *The legal profession in transition*

1. *The growth of the law firm*

Between 1890 and 1930 North American society saw a major shift. Having previously been made up of discrete, inward-looking communities, it began to move towards what Wayne Karl Hobson calls an "organizational" model, in which large bureaucracies began to take the place of individual enterprise.[6] This phenomenon signalled the retreat of the Weberian "Protestant Ethic," characterized by individual competition. Replacing this was a nascent "Social Ethic," characterized by a belief in people's power to accomplish more in large groups than as individuals and by an accompanying yearning for the security that comes with membership in established organizations.

One manifestation of this paradigm shift was the rise of the large law firm. Prior to the 1870s, lawyers generally practised alone, or in partnerships of two or three.[7] Soon, however, some of these partnerships would become "large firms," which Hobson describes in the American

6. Wayne Karl Hobson, "Symbol of the New Profession: Emergence of the Large Law Firm 1870-1915" in Gerard W. Gawalt, ed., *The New High Priests: Lawyers in Post-Civil War America* (Westport: Greenwood Press, 1984) 3 at 3-5.

7. *Ibid.* at 11.

context as firms with five or more lawyers.[8] These firms first appeared in New York, and soon they spread across the United States.[9]

The growth of large firms in Canada was neither as pervasive nor as meteoric as it was in the United States. What Hobson terms the "law factory" (firms with ten partners or more, staying at that size for at least ten years)[10] would not truly emerge in Canada until the later part of the early twentieth century, several decades after they had in the United States. But very notable growth did occur, beginning at around the same time as it did south of the border.[11] Toronto was Canada's New York, in that it was initially the home to all of Canada's large firms; however, as in the United States, big firms quickly became both more widespread, and more sizeable. In 1900, there were twenty-four large firms in Toronto, with "large" defined by Wilton in the Canadian context as four lawyers or more.[12] There were more than fifty firms of five or more lawyers in the country in 1912.[13] By 1942, the largest firm in the country had twenty-five lawyers, and among the largest ten firms in the country were firms in Montreal and Winnipeg.[14] The face of the legal profession in this country was changing.

The growth of firms did not occur at random; rather, growth depended on a firm's clientele, which, in turn, depended on the status of that firm's lawyers. As corporations—the most prestigious of clients—grew in the late nineteenth and early twentieth centuries, their needs changed. Élite nineteenth-century practice had focused on litigation; lawyers gained prominence by fighting great battles in the courts.[15] Lawyers of the early twentieth century, by contrast, came increasingly to gain prominence by

8. *Ibid.* at 5.

9. A quick survey of figures gives a good impression of the rapidity of large firms' spread and growth. In 1872, New York had four large firms, and no such firms existed elsewhere in the United States. By 1915, New York had 51 large firms, while 69 other American cities had at least one. The largest New York firm in 1872 comprised six lawyers, while in 1915 the New York firm of Caldwalader, Wickersham & Taft comprised 23: *ibid.* at 7 and 11. By 1949, five firms in New York had 50 lawyers or more: Erwin O. Smigel, *The Wall Street Lawyer* (Bloomington: Indiana University Press, 1969) at 43.

10. Wayne Karl Hobson, "The American Legal Profession and the Organizational Society, 1890-1930" (Ph.D. thesis, Stanford University, 1977) at 162.

11. For an example of an important firm which bridged the period of transition from traditional to large-firm practice, see Curtis Cole, *Osler, Hoskin & Harcourt: Portrait of a Partnership* (Toronto: McGraw-Hill Ryerson Ltd., 1995) at 1-27.

12. *Ibid.* at 20.

13. Carol Wilton, "Introduction" in Carol Wilton, ed., *Inside the Law: Canadian Law Firms in Historical Perspective* (Toronto: University of Toronto Press for the Osgoode Society, 1996) 3 at 14.

14. Cole 1995, *supra* note 11 at 300-301.

15. Hobson 1977, *supra* note 10 at 189; Britton Bath Osler and D'Arcy McCarthy, for example, took on jobs such as the high-profile prosecution of Louis Riel to drum up business for their firm: Cole 1995, *supra* note 11 at 37-47.

demonstrating the kind of business acumen that sophisticated corporate clients required. Élite lawyers metamorphosed from litigators into business advisors—in Wilton's words, underwent a "transition from courtroom to boardroom."[16] They became "anonymous organization men," focusing on incorporations, corporate restructuring, securities and finance.[17] Of course, these trends were not absolute. In the opening years of the twentieth century, juniors in large New York firms were still conducting simple title searches and drawing up wills for individual clients,[18] and litigation was never entirely absent from the large firms, since large clients always required it. Still, there was a decided shift in emphasis, such that Robert Swaine, the lawyer-historian of the Cravath firm, could write that in that firm,

> Over the years litigation tended relatively to lessen, and by the close of the Seward period [i.e. 1900] the great corporate lawyers of the day drew their reputations more from their abilities in the conference room and facility in drafting documents than from their persuasiveness before the courts.[19]

Along with this shift in practice focus came the need for specialization. As corporate clients became larger and more complex, so too did their legal needs. Catering to these needs required the kind of expertise that no generalist could claim. Individual lawyers serving these clients therefore had to narrow their practice. If larger clients were to have all of their requirements met by a given firm, that firm had to grow, with each lawyer specializing in one area of practice. Only thus could a firm as a whole meet its clients' expectations.[20] In Halifax we consequently see Frank Covert being ushered towards an exclusively corporate practice soon after joining

16. Carol Wilton, "Introduction" in Carol Wilton, ed., *Beyond the Law: Lawyers and Business in Canada 1830 to 1930* (Toronto: University of Toronto Press for the Osgoode Society, 1990) at 20. For discussion of this phenomenon see Hobson 1977, *supra* note 10 at 141-143. The paradigmatic one-man example of this courtroom-to-boardroom shift is that of the late nineteenth-century attorney Elihu Root. Root was a top New York litigator, and served larger corporate clients who could afford to pay his fees. After fighting off tort claimants and competitors in court, a lawyer like Root "would suddenly find himself counsel to an extensive consolidated empire": Robert Gordon, "A Perspective from the United States" in Wilton 1990 at 431.

17. Hobson 1977, *supra* note 10 at 200.

18. Hobson 1984, *supra* note 6 at 8.

19. Robert T. Swaine, *The Cravath Firm and its Predecessors, 1819-1947, Volume I: The Predecessor Firms 1819-1906* (New York: Ad Press Ltd., 1946) at 371.

20. Dale Brawn, "Dominant Professionals: The Role of Large-Firm Lawyers in Manitoba" in Wilton 1996, *supra* note 13 at 402-403. See also Hobson 1977, *supra* note 10 at 203-208.

the Stewart firm,[21] while his young colleague Clyde Winston Sperry soon began to practise in no area but real estate.[22]

The firms that became large, then, were those that served large, prestigious corporate clients. This meant that it was through membership in these firms that lawyers ascended to the pinnacle of their profession. Large-firm lawyers could amass small fortunes. In the 1890s, for example, D'Arcy McCarthy was earning between $25,000 to $30,000 per annum, and in the 1950s the top three partners of the McCarthy firm each made over $100,000.[23] In addition to income from practice, large-firm practitioners also found opportunities in business and public service. During the early twentieth century corporate lawyers often sat on the boards of corporations that courted their expertise.[24] Halifax lawyers were no exception, with senior counsel such as James McGregor Stewart, Charles J. Burchell, J.L. Ralston and Hector McInnes all holding major corporate directorships or important public offices.[25] Directorship opportunities arose from close contact with large corporate clients, while opportunities for public office arose from the experience large-firm lawyers garnered in serving sophisticated clients and from the prestige of large-firm practice.

This prestige within the profession, it is argued, soon became available only to large-firm practitioners. Hobson writes that, since the largest clients went to the large firms, the days of the self-made lawyer, rising to the top of the profession with nothing more than talent and hard work, were over.[26] In order to gain the professional status that major clients

21. Covert 2005, *supra* note 3 at 51.

22. Frank M. Covert, notes for *A Short History of Stewart, MacKeen & Covert, 1867-1979*, Halifax, Stewart McKelvey Archives. For examples of specialization in the large Montreal firm that is now Ogilvy Renault, see Douglas Tees, *Chronicles of Ogilvy, Renault: 1879-1979* (Montreal: Pow & Watts Printing Canada Ltd., 1979) at 85.

23. Christopher Moore, *McCarthy Tétrault: Building Canada's Premier Law Firm, 1885-2005* (Vancouver: Douglas & McIntyre, 2005) at 39 and 85.

24. For a Toronto example, which may have instigated the Osler-McCarthy split, see *ibid.* at 43. For a Montreal example, see Doug Mitchell and Judy Slinn, *The History of McMaster Meighen* (Montreal: Private Publication, 1989) at 65. It should be noted that, somewhat unusually, Paul Cravath actively discouraged the lawyers of his New York firm from holding directorships, on the theory that such outside interests would cause lawyers' work for the firm to suffer: Robert T. Swaine, *The Cravath Firm and its Predecessors, 1819-1947, Volume II: The Cravath Firm since 1906* (New York: Ad Press Ltd., 1948).

25. A few examples among Halifax large-firm lawyers: Hector McInnes was a vice-president of the Bank of Nova Scotia (obituary of Hector McInnes, *Halifax Chronicle* (21 June 1937)); James McGregor Stewart was briefly president of the Canadian Bar Association and Coal Administrator under the Wartime Prices and Trade Board (Cahill, *supra* note 2 at 65 and 126); Lt. Col. James L. Ralston was Minister of National Defence during the Second World War (obituary of James L. Ralston, *Halifax Chronicle* (24 May 1948)); and Charles J. Burchell became consecutively the Canadian High Commissioner to Australia, Newfoundland and South Africa (obituary of Charles J. Burchell, *Halifax Chronicle-Herald* (14 August 1967)).

26. Hobson 1977, *supra* note 10 at 199.

conferred one had to find a place in a major firm. Dale Brawn's innovative study of the Winnipeg legal profession demonstrates the effects of this prestige, with large-firm lawyers disproportionately garnering judicial appointments and Manitoba Law Society positions.[27] Philip Girard and I have shown that in Halifax over the twentieth century large firms did not exercise similar dominance over their city's legal institutions. In Halifax, Barristers' Society regulations and the law school's healthy respect for the pedagogical skills of the small-firm practitioner prevented it.[28] Still, the benefits of practising in one of the city's large firms would have been undeniable.

2. *Large firms in Halifax*

Like other large Canadian urban centres, Halifax saw the growth of several law firms in response to the growth in size and complexity of its economic actors. The firms at the centre of this essay are the three that grew and flourished over the first half of the twentieth century: the Stewart firm, the McInnes firm, and the Burchell firm. This article will use a variety of sources[29] in order to produce a detailed, statistically based picture of these firms' hiring practices over the 1900 to 1955 period.

The first large firm fitting Wilton's definition of "large" as four or more lawyers was Robert Borden's firm, in 1885 called Graham, Tupper, Borden & Parker. The firm's size was modern, but its practice and longevity were not. The firm concentrated on litigation, and dominated Nova Scotia appellate practice: an examination of the *Nova Scotia Reports* for 1890 reveals that a Borden firm lawyer appeared in thirty-four of fifty-eight cases.[30] Often this was Borden himself. Furthermore, with Borden's departure for politics, his firm lapsed into a three-lawyer partnership and then a two-lawyer partnership between W.B.A. Ritchie and T.R. Robertson. It was therefore one of the transitional large firms that Hobson describes as growing to large-firm size and then shrinking with the departure of one or

27. Brawn, *supra* note 20.

28. Philip Girard & Jeffrey Haylock, "Stratification, Economic Adversity, and Diversity in an Urban Bar: Halifax, Nova Scotia, 1900-1950" in Constance Backhouse & W. Wesley Pue, eds., *The Promise and Perils of Law: Lawyers in Canadian History* (Toronto: Irwin Law, 2009).

29. *The Canadian Almanac* (Ottawa: various publishers, 1913-1955); *McAlpine's Halifax City Directory* (Halifax: McAlpine Publishers, 1885-1915); obituaries from the *Halifax Chronicle*, the *Halifax Herald*, and the *Halifax Chronicle-Herald*; Frank M. Covert, *A Short History of Stewart, MacKeen & Covert, 1867-1979* [unpublished, archived at Stewart McKelvey]; Harry Flemming, *A Century Plus: A History of McInnes, Cooper & Robertson* (Halifax: private printing, 1989); Nova Scotia Vital Statistics, online: <http://www.novascotiagenealogy.com>; Dalhousie Student Register 1883-1950, Halifax, Dalhousie University Archives; and information provided by Thomas Burchell, Q.C.

30. (1890) 22 N.S.R.

more partners.[31] However, other, more ambitious firms were ready to take the full leap towards corporate work and institutionalization.

Gregory Marchildon has described in detail the role that Robert E. Harris and Charles H. Cahan, members of the firm later headed by Stewart, played in the business dealings of John F. Stairs and Max Aitken around the turn of the century.[32] Theirs was truly cutting-edge practice: élite lawyers providing complex legal services to sophisticated clients. For these lawyers, the line between work in law and business became a fine one at best. In a later article, Marchildon and Barry Cahill show a later head of the same firm, James McGregor Stewart, doing similar work—in this case for industrialist Izaak W. Killam.[33] As head of the firm for over thirty years beginning in 1927, Stewart attracted and retained large corporate clients such as the Canada Life Assurance Company, the Canadian Pacific Railway and the Eastern Trust Company, while simultaneously training young protégés like Frank Covert to do the same.[34]

Like Stewart, Hector McInnes was at the head of a firm that had been founded long before him, and, like Stewart, McInnes was heavily involved with his business clients, such as the Bank of Nova Scotia.[35] Charles J. Burchell founded his own firm, along with Alexander K. Maclean, and J. L. Ralston. All three men participated in politics over their lifetimes, Maclean acting as an MLA and MP;[36] Ralston as an MLA, MP, and Minister of National Defence; and Burchell as a high-level diplomat, though he, like his counterparts Stewart and McInnes, also held many corporate directorships.[37]

The practitioners in these three firms made up between twenty and twenty-five percent of the Halifax bar between 1900 and 1950. Many of them taught at the Dalhousie Law School and participated fully in the activities of the Nova Scotia Barristers' Society. This participation,

31. Hobson 1984, *supra* note 6 at 5.
32. Gregory Marchildon, "International Corporate Law from a Maritime Base: The Halifax Firm of Harris, Henry, and Cahan" in Wilton 1990, *supra* note 16. The Stewart firm had a long and distinguished history, having been founded by William Alexander Henry and Malachy Bowles Daly in 1866. Henry had been a Father of Confederation and later become a puisne justice of the Supreme Court of Canada. Daly would later serve as MP for Halifax and then as Lieutenant-Governor of Nova Scotia. Of the firm's heritage, John Erskine Read—himself eminently distinguished—wrote to Covert, "When I was an articled clerk we used to brag about our antiquity to the lesser lights of Bedford Row." If by "lesser lights" Read meant the lawyers of the McInnes firm, he was mistaken, as that firm was even older.
33. Gregory Marchildon & Barry Cahill, "Corporate Entrepreneurship in Atlantic Canada: The Stewart Law Firm, 1915-1955" in Wilton 1996, *supra* note 13 at 280.
34. Cahill, *supra* note 2 at 152-157 and 178.
35. Flemming, *supra* note 29 at 49.
36. Obituary of Alexander K. Maclean, K.C., *Halifax Herald* (1 August 1942).
37. Cahill, *supra* note 2 at 91.

though, was generally not far out of proportion with their numbers, in contrast to Brawn's account of their large-firm counterparts in Winnipeg.[38] In 1900, the Stewart firm—then Harris, Henry & Cahan—counted three members. The McInnes firm—then Drysdale & McInnes—counted four. The Burchell firm began as Maclean, Burchell & Ralston in 1912, and within two years had added one more partner. By the end of our period, in 1955, the Stewart firm counted twelve members, and the McInnes firm and Burchell firms seven each. The remainder of this paper seeks to explore the recruitment by which this growth took place.

3. *Large-firm recruitment in the early twentieth century*

In Canada, the traditional line has been that hiring practices based on academic ability had to wait until the 1950s to take hold in Canada.[39] The literature does document some examples of university gold medallists earning places in large Montreal law firms,[40] but Wilton dismisses these as mere tentative steps towards meritocracy in a field bedevilled by chance and nepotism.[41] Much of the work that has analyzed or described hiring in Canadian law firms in the early twentieth century supports Wilton's assertion. The story of the Osler and McCarthy firm starts with a union of families—two senior partners, each joined by two younger relatives. After the Osler and McCarthy families split in 1916, each family controlled its respective firm. Until 1943, the senior partner in the Osler firm was an Osler. After this, the senior partner was Hal Mockridge, Britton Osler's nephew. Indeed, in 1954, five of eleven partners were related to the Osler family, and of the three partners admitted to the firm in 1955, one was the son of a partner, and one the son of a major client.[42] In the McCarthy firm, there was no non-McCarthy partner until 1929, and the firm was headed by a McCarthy until 1947.[43] Similar nepotism has been reported at the Blake[44] and Rowell Reid[45] firms in Toronto and at the Meredith firm in

38. Girard & Haylock, *supra* note 28.
39. Wilton 1996, *supra* note 13 at 33.
40. See Mitchell & Slinn, *supra* note 24 at 50 and 58; Declan Brendan Hamill, "The Campbell, Meredith firm of Montreal: A Case-Study of the Role of Canadian Business Lawyers, 1895-1913" in Wilton 1996, *supra* note 13 at 128; Tees, *supra* note 22 at 68.
41. Wilton 1996, *supra* note 13 at 15.
42. Curtis Cole, "A Family Firm in Transition: Osler, Hoskin & Harcourt in the 1950s and 1960s" in Wilton 1996, *supra* note 13 at 359. It should be noted that this article is based on a chapter in Cole 1995, *supra* note 11, but is different in some content and emphasis.
43. Moore 2005, *supra* note 23 at 70.
44. D. Regehr, "Élite Relationships, Partnership Arrangements, and Nepotism at Blakes, a Toronto Law Firm, 1858-1942" in Wilton 1996, *supra* note 13 at 205.
45. Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers, 1797-1997* (Toronto: University of Toronto Press, 1997) at 198.

Montreal.[46] Chance, too, played a role in the hiring process, with the Osler firm engaging as articling students both an office boy and a boy fresh from high school who simply walked in off the street.[47]

Change, however, was in the air. In his account of how David Fasken reformed the old, nepotistic Beatty Blackstock, Kyer pays particular attention to recruitment that intentionally avoided hiring based on family connections. Fasken's strategy, put into place around 1910, was to hire established lawyers, often from outside Toronto, and certainly from outside the family circle of the firm's partners.[48] In this way, Fasken revived the firm by improving the quality of its practitioners. This practice of hiring older lawyers with excellent track records tended to be the strategy of choice among new law firms with high aspirations, on both sides of the Canada-U.S. border.[49]

Curiously, in his discussions on recruitment Kyer does not mention the roughly contemporary revolution in that field that was occurring in the United States. Beginning in the 1880s with Louis Brandeis in Boston, firms with long-term plans for growth and institutionalization began to hire top graduates from top U.S. law schools, in the hopes that these students would develop into the best lawyers.[50] Paul Cravath applied this strategy to his New York firm, developing what has become known as the Cravath System. He began with a simple premise:

> [T]he best men...are to be found in the law schools which have established reputations by reason of their distinguished faculties and rigorous curricula [read: primarily Harvard, Yale and Columbia], and which, by that very fact, attract the more scholarly college graduates... [A] man who had not attained at least the equivalent of a Harvard Law School "B" either had a mind not adapted to the law or lacked purpose or ambition.[51]

An Ivy Leaguer with an "A" was even better.

The central notion of the Cravath system was that only top young graduates would enter the firm. Partners would be chosen only from among these men, who had proved themselves in that particular firm's

46. Hamill, *supra* note 40.
47. Cole 1995, *supra* note 11 at 94-95.
48. C. Ian Kyer, "The Transformation of an Establishment Firm: From Beatty Blackstock to Faskens, 1902 to 1915" in Wilton 1996, *supra* note 13 at 187.
49. See, for example, Harold M. Hyman, *Craftsmanship and Character: A History of the Vinson and Elkin Law Firm, 1917-1997* (Athens: University of Georgia Press, 1998) at 39-40; and Lincoln Caplan, *Skadden* (New York: Farrar Straus Giroux, 1993) at 162.
50. Hobson 1977, *supra* note 10 at 185-186.
51. Swaine 1948, *supra* note 24 at 2-3.

environment, had been properly trained, and would be loyal.[52] Associates were constantly cycled through, and often induced to leave after several years' employment. Particularly able associates became partners, thereby perpetuating the firm.[53] The treatment of training, specialization, and associate compensation under the Cravath system do not particularly concern our investigation, and the Cravath system's approach to partnership is of interest to this study only in that it prevented lateral hiring.[54]

Swaine reports that other firms initially saw Cravath's requirements as "somewhat eccentric—not to say stuffy."[55] In 1915, some large New York firms were still recruiting lawyers in nepotistic or haphazard ways,[56] but by the 1920s hiring at most New York firms had been regularized in the Cravath manner, lateral hiring having become a thing of the past.[57] In American cities outside New York, the Cravath system made inroads, but more slowly, and the system was less strictly observed, especially with regard to the "up-and-out" policy for associates not making partner and with regard to strictures against lateral hiring.

II. *Recruitment in the large Halifax law firm*

The above discussion of recruitment in the large American and Canadian law firms of early twentieth century leads to the central questions posed in this article. The inquiry will begin by determining whether large Halifax firms were hiring laterally in an effort to fill in gaps and build their rosters quickly by hiring experienced practitioners, or were taking a more long-term approach, hiring young associates with a view to training them for the partnership like the Cravath firm in New York. After this, the inquiry will proceed to the question of whether young lawyers gained their places in large Halifax law firms during the early twentieth century by virtue of nepotism, chance, or merit, by looking into the family connections and academic records of the firms' hires over the period.

52. Hobson 1977, *supra* note 10 at 201.

53. Swaine 1948, *supra* note 24 at 8. In examining the copious data presented in Swaine 1946, *supra* note 19 and 1948, *supra* note 24, Marc Galanter and Thomas Palay report that between 1906 and 1946, only forty-four of 462 associates became partners, and only sixteen of the remaining 418 lawyers stayed with the firm as permanent associates: *Tournament of Lawyers: The Transformation of the Big Law Firm* (Chicago: University of Chicago Press, 1991) at 26 and 29.

54. Cravath advocated broad training for young lawyers, so that they could find their aptitudes and so specialize in the most suitable area of practice. He also advocated compensating young lawyers well to keep them loyal and to prevent their being diverted by the need to earn money outside the office: Swaine 1948, *supra* note 24 at 4-6.

55. *Ibid.* at 3.

56. Galanter & Palay, *supra* note 53 at 14-15.

57. *Ibid.* at 14-15 and 23; and Hobson 1977, *supra* note 10 at 201-203.

I should emphasize at the outset that I do not assume that every young law student in the early twentieth century aspired to large-firm practice. In a study conducted not long after this article's period of interest, Smigel cites some measure of disinclination from large-firm practice among Ivy League law students not wanting to "get lost in those factories."[58] Other examples also suggest that not all Haligonian lawyers had the same type of practice in mind. In his unpublished firm history, Covert lists a "surprising" number of "casualties," who at first worked for the firm but decided to leave it, including Henry B. Stairs, who left the firm in 1910 after three years of practice to manage the Halifax branch of the Royal Trust Company; future Supreme Court Justice Roland Ritchie, who left after the Second World War to found his own firm; and Walter Selby Kennedy Jones, who left the big city in 1949 for small-town practice in Liverpool, Nova Scotia.[59] At the McInnes firm, senior partner Joseph B. Kenny left in 1920 to form a two-lawyer partnership,[60] while Russell McInnes, nephew of senior partner Hector McInnes, declined an offer to work under his uncle and instead set up a two-lawyer practice in the city.[61] However, because membership in large firms opened doors to wealth, power and influence, how law firms recruited should be a worthwhile inquiry.

1. *Lateral hiring*

At the heart of the Cravath system were the recruitment of young law school graduates and an accompanying disinclination to bring senior lawyers into the firm. Cravath believed that this kind of hiring would ensure loyalty, provide uniform training, and give a firm's partners the best opportunity to observe candidates for promotion into their ranks.[62] Halifax law firms seem to have been animated by similar concerns, as an investigation of the recruitment of the Stewart, McInnes, and Burchell firms demonstrates a clear and increasing preference for young graduates.

In the first decade of the twentieth century, the Stewart and McInnes firms together hired four of five recruits laterally, rather than as recent graduates. In the second decade, nine of fourteen lawyers hired by the three large firms were veteran counsel.[63] In hiring experienced lawyers, the three firms were following the practice that David Fasken followed when renewing Beatty Blackstock in Toronto.[64] This makes a great deal of

58. Smigel, *supra* note 9 at 48.
59. Covert unpublished, *supra* note 29 at 5.
60. Obituary of Joseph B. Kenny, *Halifax Chronicle* (20 November 1946).
61. Flemming, *supra* note 29 at 47.
62. Swaine 1948, *supra* note 24 at 2-3; Hobson 1977, *supra* note 10 at 201.
63. I have not included the three founders of the Burchell firm in my count of lateral recruits.
64. Kyer, *supra* note 48 at 187.

sense. In 1900, the Stewart firm comprised only three lawyers, while the McInnes firm comprised four. Like the Fasken firm, or the later Skadden firm of New York,[65] these were relatively small firms with lofty ambitions, as Marchildon makes clear in the Stewart firm's case.[66] The fastest, most effective way in which to grow was to bring in proven lawyers, as the McInnes firm did with senior litigator Lawrence A. Lovett K.C. in 1919. This desire to build a firm quickly and effectively pertained to the newly founded Burchell firm even more strongly, explaining why all three of its recruits during the 1910s were lateral hires.

There was also a kind of holding pattern involved in the early recruitment of seasoned lawyers. Prominent Amherst lawyer and Nova Scotia Barristers' Society Council member Tecumseh Sherman Rogers came into the Stewart firm from Amherst, Nova Scotia, very soon after Charles H. Cahan and H.A. Lovett left. Similarly, experienced Halifax lawyer William Chisholm MacDonald joined the McInnes firm in 1913, immediately after the departure of the short-lived recruit D.C. Sinclair.[67] At a time when these firms were relatively small, the departure of even one lawyer must have left a gap so large that a recruit fresh out of law school could not fill it. Lateral hiring was the better answer.

In his history of his firm, Covert wrote that one of the principles by which Stewart operated was that "you should not bring in a man to fill a vacancy—you should move up and someone new is added at the bottom,"[68] but even where there had been no recent vacancy and no pressing need to grow, hiring seasoned lawyers was occasionally in a firm's best interest. In 1925, Stewart violated his "add at the bottom" principle when he lost a case at the Supreme Court of Canada to Charles B. Smith, a Sydney litigator and brother to Burchell firm lawyer Francis D. Smith.[69] On the train ride home to Halifax, the impressed Stewart offered Smith a job, which he took then and there.[70] However, after Stewart acceded to the head position of the firm in 1927,[71] the data demonstrate that he took his Cravath-worthy principle seriously. Indeed, it seems that around that time all of the large firms adopted an informal stricture against lateral hiring.

65. Caplan, *supra* note 49 at 162.
66. Marchildon, *supra* note 32.
67. Flemming, *supra* note 29 at 44.
68. Covert unpublished, *supra* note 29 at 32. All four of Stewart's principles were "1. A firm is no stronger than its youngest junior. 2. You should not have to pay to become a partner. 3. You should not bring in a man to fill a vacancy—you should move up and someone is added at the bottom. 4. The young people in the firm should judge the newcomer—not the 'old men'."
69. Nova Scotia Vital Statistics, *supra* note 29.
70. Covert unpublished, *supra* note 29 at 39.
71. Cahill, *supra* note 2 at 55.

In the 1930s, the three firms hired a total of ten lawyers. All of them were recent graduates, many of whom, including Frank M. Covert, Clyde W. Sperry of the Stewart firm, and Arthur Gordon Cooper of the McInnes firm, would go on to play leading roles in their respective firms.[72] Similarly, between 1950 and 1955, the three firms hired a total of ten students, and only one experienced lawyer, similarly signalling an almost wholesale adoption of this particular element of the Cravath approach. Covert later referred to the 1950s as the "golden age of recruitment," during which he had hired such figures as J.W.E. Mingo and Henry Rhude; in Covert's view, the students he had hired in the 1950s had been responsible for the firm's later growth and success.[73] As in the Cravath firm, by the 1950s Halifax law firms were hiring young graduates with a view to breeding them for the partnership. The contrast between this and the lateral hiring practices of the early 1900s is strong.

In all of this, the 1940s seem to be a slight anomaly, interrupting what would otherwise have been a smooth transition towards hiring students along Cravath lines. Of the eleven lawyers the three firms hired during this decade, four were seasoned veterans. However, in his short history of the McInnes firm, Flemming suggests that the cause of this lateral hiring was wartime expediency: lawyers George Robertson and John Dickey had left for combat, and the McInnes firm required an experienced lawyer such as Gerald P. Flavin to take their place.[74] Covert writes of similar upheaval at his firm during the war. He, Stewart, Ritchie, and Frank McDougall had all left for wartime service. Clyde W. Sperry, normally a real-estate practitioner with the firm, had had to fill some of these lawyers' roles and became a "great pinch hitter" who "tackled everything that he was presented with."[75] To make up for the departure of the firm's experienced lawyers more fully than Sperry alone could do, Stewart brought former law professor Gordon Cowan into his firm.[76]

Furthermore, the number of potential candidates dropped drastically during the war, with the flow of young men into the Nova Scotia bar slowing to a trickle. Whereas in 1934 twenty-four men had signed the barristers' rolls, ten years later only five did,[77] and, presumably, most of these put off finding permanent careers in law in favour of temporary careers in arms.

72. For Covert's high opinion of Sperry, see Covert 2005, *supra* note 3 at 31; for information on the role that Cooper played in the McInnes firm, see Flemming, *supra* note 29 at 63-64.
73. Covert unpublished, *supra* note 29 at 7.
74. Flemming, *supra* note 29 at 57.
75. Covert notes, *supra* note 22.
76. Covert unpublished, *supra* note 29 at 7.
77. Nova Scotia Barristers' Rolls, *supra* note 5.

The aberration of the 1940s is therefore easily explicable. Lateral hiring in the 1940s was intended to pick up the slack that sudden wartime absences had created. Only lateral hires could fill the places that key figures in the firms had left vacant. This hiring was a stop-gap measure, never intended to fit into the plans for long-term growth that the recruitment of the 1930s and 1950s represented. At the same time, with fewer young men coming to the bar, and even fewer seeking jobs in Halifax's law firms, pickings must have been slim. For a time, lateral hiring was the only viable option.

2. *Nepotism*

As related above, recruitment in the large firms in Toronto and Montreal during our period aimed in large part to advance the careers of partners' family members. In New York, managing partners struggled against a similar desire of partners to give places to their relatives, and by the mid 1920s had successfully instituted hiring based largely on academic ability.[78] Toronto firms, such as the Osler firm, instituted similar anti-nepotism policies, but much later.[79] The avoidance of nepotism demonstrates a clear desire to hire meritocratically—to build a practice out of the best talent available—and so was central to Paul Cravath's policy of recruitment.

Unlike the situation with lateral hiring, the nepotism record of the three large Halifax firms shows no clear trend in one direction or the other. Between 1900 and 1909, the Stewart firm hired both of the sons of John F. Stairs, a major Maritime entrepreneur with whom senior partner Robert Harris had had significant business dealings.[80] Harris also hired his nephew, Reginald V. Harris, recently returned from Winnipeg.[81] The Stewart firm's hires in the 1910s were all unconnected with the firm or its clients. In 1921, though, the firm hired on William Marshall Rogers, son

78. Galanter & Palay, *supra* note 53 at 14-15. Smigel, *supra* note 9 at 37-40, reports that in the early 1960s, New York firms specifically tried to avoid hiring the family members of partners, though firms still did emphasize a "proper" upper middle class background. In this essay, I have decided to forgo the examination of social background because of the sheer difficulty in assessing and quantifying it, especially when a father is listed as "merchant" or "farmer," which could encompass a whole range of positions in the community. It can be pointed out, though, in a qualitative way, that some of the recruits over the period we are concerned with came from what appear to have been lower class backgrounds. Alexander William Jones, whom the McInnes firm recruited as a student in 1913, was the son of a carpenter (Nova Scotia Vital Statistics, *supra* note 29), and Arthur Gordon Cooper, whom the McInnes firm hired in 1938, had to work for several years before attending university due to lack of funds: Flemming, *supra* note 29 at 56. For an example of an attempt to analyze the class backgrounds of early-twentieth-century lawyers based on parental occupation, see Gerard W. Gawalt, "The Impact of Industrialization on the Legal Profession in Massachusetts, 1870-1900" in Gawalt 1984, *supra* note 6 at 97.

79. Cole 1996, *supra* note 42 at 385 and Regehr, *supra* note 44 at 239.

80. These business dealings were mainly through the Nova Scotia Steel and Coal Company and the Eastern Trust Company: Marchildon, *supra* note 32 at 208 and 210.

81. Obituary of Reginald V. Harris, *Halifax Chronicle-Herald* (2 August 1968).

of former partner Tecumseh Sherman Rogers, who himself had recently been called to the bench.[82] In 1934, the firm hired future Supreme Court Justice Roland A. Ritchie. Ritchie's family connections to the Stewart firm stretched back to Thomas and J. Norman Ritchie, who had practised with it in the mid-nineteenth century.[83] Finally, in the early 1950s, the firm hired both Robert J. McCleave, son of deceased former partner Robert D. McCleave,[84] and A.L. Macdonald Jr., whom I have classified as a nepotistic hire because of the close relationship between his father, long-time Nova Scotia Premier Angus L. Macdonald, and Frank Covert.[85]

In the McInnes firm, we see only two examples of nepotistic recruitment: the 1919 hiring of Hector McInnes's daughter Caroline, and the 1926 hiring of his son Donald. Likewise, in the Burchell firm we see only two examples of the hiring of family members: William Harry Jost[86] and Charles William Burchell, Charles Jost Burchell's son.[87]

Overall, then, nepotistic hiring in the three firms ranged from 0% in the 1940s to 50% in the first decade of the twentieth century, with no clear trends over the period. Given the relatively high numbers of nepotistic hires seen throughout, it would seem that the firms in Halifax were subject to personal interests that interfered with rational, effective recruitment. In this, the Halifax firms resembled their Toronto counterparts. About large Toronto firms, Moore writes that "the more 'establishment' a firm became, the more vulnerable it was to heirs and protégés who expected a large income for indiscernible contributions."[88] Firms were the victims of their own success. Successful partners had the means to create familial sinecures, and they had sons who expected as much. Similar dynastic concerns seem to have influenced Halifax legal families such as the Rogerses, the Burchells, and the McInneses.

It is worth pointing out, though, that the generally high academic achievement of the lawyers who were hired would have gone some way towards mitigating—and maybe entirely negating—any adverse impact that nepotistic hiring practices might have had on the three firms. Among

82. Covert unpublished, *supra* note 29 at 43-44. According to Covert, W.M. Rogers became wealthy by investing in the stock market soon after being called to the bar and thereafter practised in no more than a half-hearted fashion.
83. *Ibid.* at 23.
84. *Ibid.* at 50.
85. Covert 2005, *supra* note 3 at 53.
86. I have presumed, based on the fact that Jost was the senior Charles Burchell's middle name, and the fact that both hailed from Sydney, that there was a relation between the two. Despite my best efforts I was unable to find any information that confirmed or invalidated this assumption.
87. Dalhousie Student Register 1937-38, Halifax, Dalhousie University Archives.
88. Moore 2005, *supra* note 23 at 198.

the Stewart firm's recruits, Gilbert S. Stairs was a Rhodes Scholar,[89] William Marshall Rogers won the Dalhousie University Medal in Law,[90] and future Supreme Court Justice Roland A. Ritchie held a B.A. in law from Oxford.[91] Caroline McInnes had come third in her graduating class at the Dalhousie Law School,[92] and one of the Burchell hires had an excellent academic record.[93] Many of the nepotistic hires therefore came to their family firms as excellent recruits by Cravath's criteria; the Halifax firms' deviation from modern hiring practices seems to have been more apparent than real.

3. *Academic records*[94]

The Cravath system did not only favour the hiring of students: it favoured the hiring of students with top marks from top east coast law schools.[95] This attitude toward recruitment pervaded New York law firms by the end of our period. During the few years running from 1955 to 1957, almost one-half of the Harvard graduates hired by large New York firms had finished in the top ten percent of their class, and only nine percent of those hired had finished with an average below a "B." At this same time seventy-one percent of the partners in the same firms had law degrees from Harvard, Yale, or Columbia.[96] In Canada, however, Wilton reports that Canadian law firms did not pay close attention to the academic records of their potential juniors until the 1960s, when the Tory firm began asking for the help of Professor Bora Laskin at the University of Toronto. With reference to the development of Canadian law schools, Girard writes, "recent scholarship out of Ontario has suggested that 'prior to the 1920s...developments in the United States had little discernable effect on Canadian legal education.' This observation may be appropriate to the Ontario experience, but is quite wrong when applied to the Maritimes."[97] Wilton's assessment of Canadian hiring may suffer from a similarly Ontario-centric point of view.

89. Covert unpublished, *supra* note 29 at 23.

90. Christian L. Wiktor, *Dalhousie Law School Register: 1883-1983* (Halifax: 1983) at 201.

91. Thomas Stinson, "Mr. Justice Roland Ritchie: A Biography" (1994) 17 Dal. L.J. 509 at 513.

92. Minutes of the Dalhousie Law School Faculty Council, May 1919, Halifax, Dalhousie University Archives; her brother Donald's transcript is no longer extant.

93. Dalhousie Law School Academic Transcript, Halifax, Dalhousie University Archives.

94. I am grateful to the Dalhousie Archives for access to these sources. Because of the sensitive nature of the information contained in them, I will try in this section to avoid linking academic records to names, except in the case of University Medal winners or other top academic performers.

95. Swaine 1948, *supra* note 24 at 2-3.

96. Smigel, *supra* note 9 at 38-39.

97. Philip Girard, "The Roots of a Professional Renaissance: Lawyers in Nova Scotia 1850-1910" (1991) 20 Man. L.J. 148 at 162, quoting from C. Ian Kyer and Jerome E. Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario 1923-1957* (Toronto: Toronto University Press for the Osgoode Society, 1987) at 22.

In the early twentieth century, a Halifax lawyer who had not attended Dalhousie Law School was rare. Indeed, the only two non-Dalhousie students recruited by large Halifax firms between 1930 and 1955 were Roland Ritchie and Arthur Cooper, both of whom went to Oxford.[98] Dalhousie's academic records, which provide nearly full information from 1930 on, therefore provide an almost complete picture about what kinds of students large Halifax firms were hiring in the second quarter of the twentieth century.

It may well be that scholastic merit played into large firms' considerations from an even earlier date. Several of the recruits from before 1930—Vincent C. MacDonald and James Gordon Fogo of the Burchell firm, and Robert D. McCleave, W.M. Rogers and Frank Covert of the Stewart firm—won the Dalhousie University Medal in Law.[99] But these students' grades are only recorded and accessible because of their awards, and it is difficult to generalize from the hiring of these students.

After 1930, though, the record is largely complete. In some years, such as 1930, the top graduating average at Dalhousie Law School was below 80%, and an examination of the Dalhousie Law School Faculty Council minutes between 1920 and 1950 reveals that the top mark in each year tended to hover around that figure, though sometimes it could descend as low as 73%, and sometimes it could ascend as high as 90%.[100] Normally about five students failed each course. Students' transcripts reveal that the marking scheme gave first-class honours for 75% or above, second-class honours for a mark between 65% and 75%, and a simple pass for a mark between 50% and 65%. Transcripts very rarely bear class rankings, though in 1952, two did, with a mark of 63.8% ranked 38th and a mark of 68.6% ranked 18th in a class of 58.[101] This all reinforces the notion that a Dalhousie Law School mark of 65% can be considered as equivalent to Cravath's "Harvard B."

An examination of recruits' averages after 1930 is revealing: almost every student hired over the period received a cumulative average of over 65%. In most cases, the average was considerably higher. The average grade of the students entering large Halifax law firms in the 1930s was 72%, for those entering in the 1940s 68%, and for those entering in the

98. Stinson, *supra* note 91 at 513; Nova Scotia Barristers' Rolls, *supra* note 5. Audrey Ellis, "Searching for Uniformity Differences in Legal Education Methods Throughout Canada" (unpublished paper, 2004) reports that between 1900 and 1935 approximately 80% of those called to the bar held LL.B. degrees from Dalhousie.

99. Wiktor, *supra* note 90 at 201.

100. Minutes of the Dalhousie Law School Faculty Council, 1920-1950, Halifax, Dalhousie University Archives.

101. Wiktor, *supra* note 90 at 32-33.

1950s 73%—almost first-class honours. Between 1950 and 1955, three of the six students the Stewart firm hired had averages in the 80s.[102]

Stewart's dictum that partners should come from below required that those coming from below be capable, and it seems that on the whole the three firms equated capability with scholastic achievement. The large firms of Halifax were, indeed, paying attention to academic performance, though the trend was not universal. There were four hired students not graduating with second-class honours or better over the course of the twenty-five years.

How can we explain the four outliers? Joseph Patrick Connolly was hired too early to figure into this part of the analysis, but his story might go someway towards explaining how some students with less-than-stellar academic records came to be hired. Connolly had been an office boy at the Stewart firm before fighting in the First World War.[103] Upon his return to Canada, he embarked on a mediocre course of study at the Dalhousie Law School, but managed, nevertheless, to secure a place with his former employer.[104] Though he became partner,[105] his career was lacklustre. As Covert wrote laconically, "If he had gone to Hollywood in his youth, he would have made a fortune. Law was not his forte."[106] Connolly was hired because of prior connection to the firm, and lasted there as long as he did because of his close friendship with Stewart.[107] It may well be that the four below-average students hired during the 1930s and 40s had similar personal connections to their eventual firms that I have not managed to uncover.

Another answer may lie in the paths students took to the bar. In New York, there was no articling period and the hiring of summer associates was uncommon before the 1960s.[108] Academic performance was therefore the best—if not only—indicator that large New York firms had of students' suitability for the practice of law. In Halifax things were different. Over our period of interest aspiring Nova Scotia lawyers had to article with a member of the bar. At the beginning of the century students were typically under articles for three years, often serving during the summers and for a period of time after graduation. Beginning during the Second World War,

102. Dalhousie Law School Academic Transcripts 1930-55, Halifax, Dalhousie University Archives.
103. Covert 2005, *supra* note 3 at 30.
104. Covert unpublished, *supra* note 29 at 44.
105. Covert relates that the other partners refused to include Connolly's name alongside theirs in the name of the firm.
106. Covert 2005, *supra* note 3 at 31.
107. Covert unpublished, *supra* note 29 at 45.
108. Galanter & Palay, *supra* note 53 at 24.

students typically served during the summer after their second year of law school, and for a period of time after graduation.[109]

Firms therefore had the chance to gauge potential hires by the quality of their work rather than simply by the quality of their transcripts. Between 1900 and 1955 approximately 250 students would have articled at the three large firms. The firms would have been spoilt for choice, especially after the Second World War, and in the main they opted for known commodities. Of the forty-two students that the three firms hired between 1900 and 1955, articling information is available for thirty-six. Of these, only three (eight percent) had not articled at their eventual firms: Frank C. McDougall,[110] R.A. MacKimmie,[111] and A. Gordon Cooper.[112] Oxford graduate Cooper's academic achievements would have presented obvious attractions to the McInnes firm, and his having been hired is easily explicable. The reasons that led the Stewart firm to hire McDougall and MacKimmie remain unclear. The very uncommonness of these aberrations, though, does point to the firms using articling performance as a second test of ability—a test that almost all potential hires had to pass.

Frank Covert, whose transcript was anything but lacking, seems to have passed this second test with flying colours. In his memoirs he relates several episodes of his having impressed his employers before his call to the bar. Stewart was so taken with him that he even made him an incorporator of Izaak Walter Killam's new major venture, the Mersey Paper Company, in 1929.[113] So when Stewart asked Covert to join the firm, he must have had Covert's performance in the office in mind as much as his academic record. If Covert's experience is typical, it would seem that firms did not make offers of associateships until near the end of their articling students' tenures, that is, until after students had shown their stuff. It stands to reason, then, that a student articling at one of Halifax's large firms would

109. The *Barristers and Solicitors Act*, R.S.N.S. 1923, c. 112, s. 12(a) demanded that prospective lawyers holding a university degree serve three years of articles before admission to the bar, and demanded that prospective lawyers without a university degree serve four. During these periods students were free to study at the law school. This Act was repealed by the *Barristers and Solicitors Act*, S.N.S. 1939, c. 9. Section 44(a) of this Act gave the NSBS Council the power to make regulations about the admission of lawyers to the bar.

110. Bar application of Frank C. McDougall, Halifax, NSARM, (RG 39 "C", SC 1935 6211). McDougall articled with former McInnes firm lawyer D.C. Sinclair, who was then practising in New Glasgow, Nova Scotia.

111. Bar application of R.A. MacKimmie, Halifax, NSARM, (RG 39 "C", SC 1941 10789). MacKimmie articled with J. McNeil of Sydney, Nova Scotia, and later went on to great success in Alberta, being elected a bencher of the [illegible]w Society and as president for 1962-63 of the Canadian Bar Association: Covert unpublished, [illegible] note 29 at 49.

112. Bar application of Arthur Gordon Cooper, Ha[illegible], NSARM, RG 39 "C", SC 1938 8118.

113. Covert 2005, *supra* note 3 at 28.

have had the opportunity of impressing his prospective employers enough to negate the significance of his poor academic performance.

Conclusion

Citing the off-the-cuff manner in which the McCarthy firm hired some of its juniors, Moore states that the meritocratic Cravath system had still not gained a foothold at that major firm in the 1930s.[114] We have seen above that Wilton believes this to have been generally true across Canada, but the analysis herein has presented a somewhat more complex picture.[115] In the early twentieth century, Halifax firms instituted long-term plans for growth by hiring young graduates, rather than seasoned veterans. The better to ensure their future success, these firms also made sure that their new lawyers were academically proficient. This raises an important question: what differentiated Halifax from the rest of Canada's legal community, which hired lawyers in more haphazard, nepotistic ways? A look at the situation in Toronto, which seems to have been as far from the Cravath model as was any large city in Canada, may provide some answers.

A possible suggestion for Toronto firms' relative disinterest in academic merit during the early twentieth century is the unique system of legal education that then prevailed in Ontario. In 1889, the benchers of the Law Society of Upper Canada had founded the Osgoode Hall Law School, instituting a system which required students to attend lectures and to article simultaneously for a period of three years. Admission was open to high school graduates, just as articling had been before the school's foundation. Because of the liberal standards of admission, Langdell's case method, which demanded students of an academic bent, was deemed inappropriate. Instead, instruction tended strongly towards the practical, and lecturers tended to be practitioners, not academics.[116]

In an era when the profession across North America was struggling with how best to train its new members, the benchers' system was not an implausible option. But as the twentieth century progressed, Ontario's decidedly unacademic programme began to appear anachronistic, lacking as it did the prestige that universities throughout the continent were conferring on the professions. Nova Scotia had had university legal education since 1883, as had the prairie provinces since the beginning of the twentieth

114. Moore 2005, *supra* note 23 at 62-63.

115. As noted earlier in this essay, though, large Montreal firms hired several McGill gold medallists. Without detailed study, it is impossible to say for certain, but Wilton's generalization may not hold for Montreal much better than it does for Halifax. If not, the reasons would presumably be much the same as those I suggest for Halifax.

116. Moore 1997, *supra* note 45 at 168-171.

century.[117] In the 1920s, the Canadian Bar Association officially endorsed a university LL.B. curriculum—an endorsement that was seconded by the élite Lawyers' Club of Toronto.[118] Osgoode Hall was out of step. Even Osgoode faculty members, led by Cecil Wright, complained of "Osgoode Hall's stodgy lectures."[119] The would-be reformers even doubted the significance of Osgoode's academic medals, because the students who received them were almost invariably those with articling positions so lax that they had extra time for study.[120] The academics' remonstrations, however, fell on deaf ears: in 1931 the benchers actually repealed a short-lived entrance requirement of two years of university education, and in 1935 they reduced classroom instruction to allow students more time to spend in law offices.[121] The Law Society's control of curriculum and the primacy of hands-on training had been reaffirmed.

Over the course of the early twentieth century, therefore, there were two camps in the Ontario bar: those who believed the best legal training was to be had in the office, and those who believed the best legal training was to be had in the university. Neither can have regarded performance at Osgoode as being predictive of success in private practice. The one camp, which was in the majority, had not bought into the ethos of professionalism that had moved legal training into the academy, and so would not have considered academic proficiency to be of particular importance. The other camp, which called for a more rigorously academic approach to legal education, would have had little respect for Osgoode success. It is therefore unsurprising that it was not until the early 1960s—about ten years after University of Toronto Law students were given a partial exemption from study at Osgoode, and several years after the Society gave full recognition to university LL.B.s—that the Tory firm in Toronto began the trend of paying close attention to the academic records of recruits.[122] It was only then that Ontario underwent the paradigm shift that had already occurred almost everywhere else.

Halifax's lawyers' approach to and respect for legal education was quite different. In a careful study of the growing number of Nova Scotians

117. W. Wesley Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water" (1995) 23 Man. L.J. 654 at 662-674.

118. *Ibid.* at 674-675; Moore 1997, *supra* note 45 at 215.

119. Moore 1997, *ibid.* For an in-depth account of Wright's struggles, see Kyer & Bickenbach, *supra* note 97. For criticism of the "out-of-touch practitioner versus enlightened academic" paradigm into which discussion of Osgoode Hall's history often falls—and which the brief summary of this essay admittedly but necessarily adopts—see Pue, *supra* note 117, especially at 657-660.

120. Moore 1997, *supra* note 45 at 228.

121. *Ibid.* at 218-221.

122. Wilton 1996, *supra* note 13 at 33.

seeking legal education at Harvard and bringing their training back with them, Girard has convincingly argued that in the Nova Scotia of the 1870s and 80s university education in law became an increasingly common expectation.[123] This expectation led to the 1883 foundation of Dalhousie Law School. This foundation was in line with contemporary American trends, and informed by contemporary American thinking on the role of lawyers in society.

Broadly speaking—and this occurred in medicine and engineering too[124]—the legal community began to see itself as a body exercising specialized knowledge in the public interest, rather than as a gentlemanly caste. Precipitating this shift in mindset was a new view of the law, which Robert Gordon terms simply "the Ideal."[125] The law was prized as an internally consistent body of principles that maintained good social order. Where the law was deficient there should be reform, initiated by the legal profession itself. One consequence of this view of lawyers' responsibilities was the growth of bar associations where none previously existed, and the growth in importance of bar associations where they already did.[126]

The situation in Halifax was much the same, with the Nova Scotia Barristers' Society transforming "from social club to organ of professional self-government."[127] In 1885, membership in the society extended from the Halifax élite to all lawyers in the province, upon whom the Society could then keep a more watchful eye.[128] A perusal of the minutes of the NSBS Council during the early twentieth century does, indeed, show a growing concern on the part of the society with discipline. This perusal also shows an increasing concern with the accreditation of newcomers to

123. Girard, *supra* note 97 at 179.

124. For lengthy discussion of comparable trends of professionalization in these professions, see Hobson 1977, *supra* note 10 at 76-98.

125. Robert Gordon, "'The Ideal and the Actual in Law': Fantasies and Practices of New York City Lawyers, 1870-1910" in Gawalt 1984, *supra* note 6 at 52. In his chapter, Gordon discusses inconsistencies between the professional ideal and the growth of corporate large-firm practice. As we have seen above, the legal élite was increasingly beholden to one interest group, and was brokering deals more than it was shaping the law in the courtrooms. The "Ideal," in Gordon's view, was partly a lament for what practice had once been, and a welcome mental escape from legal practice as it actually was.

126. See, *inter alia*, Michael J. Powell, *From Patrician to Professional Elite: The Transformation of the New York City Bar Association* (New York: Russell Sage Foundation, 1988); John A. Matzko, "'The Best Men of the Bar': The Founding of the American Bar Association" in Gawalt 1984, *supra* note 6; and Moore 1997, *supra* note 45 at 147-152. Moore gives a brief overview of the conflicting views of professionalism in the literature, *viz.*, professionalism as selfless idealism and professionalism as self-interested monopoly.

127. Girard, *supra* note 97 at 150.

128. *Ibid.* at 157.

the bar.[129] This concern with credentials points to a further salient aspect of professionalism, which was the growth of the law school.

Around the turn of the century, the curriculum at the top American law schools was changing. Over the course of his tenure at Harvard between 1870 and 1895, Dean Christopher Columbus Langdell lengthened the course by a year, raised admission standards, and altered the manner in which students learned the law. No longer did they read textbooks and attend lectures on local practice; now they learned broad principles of the law—the law as science—by an examination of key cases. These cases were distilled for them by a nascent professoriate.[130] The new methodology had spread to all élite law schools across the United States by the early 1900s. This new form of training did not allow recent graduates to hang up their shingle and hit the ground running, but since these graduates were expected to join larger firms where they could learn the ins and outs of practice without immediately being able to earn their keep, law school was an ideal time, the reformers believed, during which lawyers-to-be could turn their minds to higher pursuits.[131]

At the same time as the law school curriculum was changing, law schools themselves were becoming more numerous. In 1870, there were thirty-one law schools in the United States, with a total of 1,653 students among them. By 1920, those respective figures were 143 and 27,000. The real explosion of growth occurred during the 1890s.[132] With its foundation in 1883, the Dalhousie Law School was somewhat ahead of the North American game, and it signalled a new conception of legal training in Canada.

Halifax lawyers had found a new self-image as an educational élite. By founding its law school, Halifax had already shown its strong commitment to nascent professional ideals. Evidently, this commitment ran deep, changing the ways in which firms assessed potential recruits. The notion that university-level legal study was the best means by which to educate burgeoning lawyers had led to an obvious corollary: the best students must make the best lawyers. This corollary found increasing acceptance across the continent, including in Halifax. By the middle of the twentieth century,

129. Nova Scotia Barristers' Society Council Minutes 1900-1930, Halifax, NSARM, Reel 14743.
130. Hobson 1977, *supra* note 10 at 116 and 127.
131. *Ibid.* at 129. Of course, such reasoning did not apply to those intending to practise alone or in small partnerships. Many law schools sprang up to cater to these aspiring lawyers, many of whom were immigrants or sons of immigrants. In this process, the profession was opened up to many who could not have found apprentices in the old manner, though the existence of more and less academically minded law schools also contributed to the stratification of the profession to which the growth of the large law firm was already contributing: *ibid.* at 123-126.
132. *Ibid.* at 108.

the Stewart, McInnes, and Burchell firms were well on their way towards modern hiring practices in line with the Cravath system. Soon, the system would be fully entrenched. At the beginning of this paper we saw the Frank M. Covert of 1930, exemplifying everything that the modern recruit should be. In 1977, by then the most eminent member of the Halifax bar, he spoke in an interview about the type of students his firm had come to look for: "Generally speaking he's got to come within the top ten," he said "or we don't look at him."[133]

133. Interview with Frank M. Covert conducted by Joanne Bell, date unspecified, 1977, Halifax, Stewart McKelvey Archives.