

The First Woman Lawyer in Canada: Clara Brett Martin

On raconte la façon dont Clara Brett Martin a été
graduellement reconnue et acceptée comme la première avocate de l'Ontario.

The history of women's entry into professional ranks is often recounted as the story of a few extraordinary women who broke through the barriers imposed by sex discrimination to achieve some type of equality with men. Often, however, the barriers were successfully challenged while the prejudices that supported them remained firmly entrenched. It must be remembered that 19th century public opinion supported clearly differentiated definitions of the masculine and feminine natures. Women were granted superiority in the moral and spiritual realm — that is, the private sphere. Men were considered to be intellectually superior and reigned in the public sphere. Therefore, in terms of women's history, it is important to trace the story of the gradual acceptance and recognition of women in male-

dominated, male-oriented professions, as it describes the gradual erosion of these rigorously defined conceptions of femininity and masculinity. The history of women lawyers in Ontario illuminates this trend clearly, and begins with the story of Clara Brett Martin, the first woman lawyer in Canada and the British Empire. The women who followed her certainly didn't have to struggle against the stone wall of prejudice that she faced, but they did have to wage a quiet battle against an insidious type of discrimination.

As a profession, law is often compared with medicine in terms of education, status and responsibility, yet for women it is really quite different. Though women had serious problems getting into medical schools both in England and

Canada, medicine was considered a much more acceptable profession for women. It was seen as an extension of the nurturing 'mother' role. Though many mid-Victorian critics felt the profession demanded an intellectual ability which was beyond a woman's capacity, it could not be denied that caring for the sick and helpless was a natural function of the feminine disposition.

Law was another matter entirely. It required a discreet nature, a logical and quick mind and a tough skin — none of which were 'feminine' traits. Consequently, Clara Brett Martin had a very hard time getting admitted into law school. Also, perhaps because of this aura of masculinity which surrounded law, very few women followed her into the legal profession.

In 1896 the June issue of the *Canadian Law Journal* referred to this distinction between the legal and medical professions in reference to women's membership: 'There is some reason for the admission of women to the medical profession, but we know of no public advantage to be gained by their being admitted to the Bar, whilst there are many serious objections on grounds which are scarcely necessary to refer to. As a matter of taste, it is rather a surprise to most men to see a woman seeking a profession where she is bound to meet much that would offend the natural modesty of her sex.' Clara Brett Martin showed incredible determination and self-confidence when she approached the Law Society of Upper Canada and later the government of Ontario to demand that she be admitted to the law school. Her actions must have shaken many people's preconceived notions about the weaker sex.

In 1890, Clara graduated from Trinity College at the University of Toronto with high honours in mathematics. She was 16. She began to teach school, but after a year she decided her ambition extended beyond the classroom. Early in 1891, she approached the Law Society of Upper Canada to inquire about being admitted into the law school. The Benchers, an elected and appointed body which governs the profession, glibly replied that their regulations only allowed for 'persons' to be admitted into the law school and under the BNA Act 'persons' did not include women. Clara countered with a formal petition in April, 1891. The Benchers decided to form a special committee to consider the application. This obvious delaying tactic allowed Clara ample time to gather her forces and mount her campaign. She approached Sir Oliver Mowat, then the Attorney-General of Ontario and an *ex officio* Benchers, to ask his support. He sympathized with her cause and decided to

petition the legislature to amend the admission regulations and allow women into the law school. Clara's determination must have impressed him and we can assume that Sir Oliver felt it was politically expedient to support her, but only a few newspaper references can be found recounting her initial struggles. In 1894, the *Toronto News* and the *Buffalo Herald* began to show an interest and their attitude was very sympathetic.



In 1894, an act of the Ontario legislature was passed allowing women to be considered for admission to the law school, though a restriction was appended that allowed them to practise as solicitors only. In September of that year, the special committee of the Law Society brought down its decision. Regardless of the act, the society felt that it was 'inexpedient to frame rules for the admission of women to practise as solicitors.' Clara appealed to Sir Oliver Mowat, who threatened the Benchers that he would pass a compulsory act if she were excluded any longer. On June 26, 1893, Clara Brett Martin was admitted to law school.

As the first female law student she sparked a great deal of interest. Her first appearance in court in September, 1894 was reported in the press, and in 1896, she entered Osgoode Hall for her one term of studies prior to taking the examinations. A male classmate of Clara's recounted that her presence at the law school was not looked upon kindly by her male peers, and a hiss could be heard around the class-

room whenever she entered.

It is clear, however, that she was not the type to be discouraged easily. In 1896 she applied to the Benchers, petitioning to be admitted to the bar as a full-fledged barrister. The press was supportive. The ingenuity of the Benchers had been taxed to its limits by her previous demands and, unable to find any reasons for disallowing her petition, they agreed to admit her to the bar as a barrister.

An interview which she gave to the *Buffalo Express* in 1896 reveals the ambition and determination that motivated her.

'If it were not that I set out to open the way to the bar for others of my sex, I would have given up the effort long ago. You would not believe how many obstacles I have had to overcome, single-handed. I was articled to one of the largest firms in Toronto, and when I put in my appearance I was looked upon as an interloper, if not a curiosity. The clerks avoided me and made it as unpleasant for me as they possibly could, and for a time it looked as if I were doomed to failure through a source with which I had not reckoned. Finally, however, I had the satisfaction of beating them all in the examinations.'

Clara's strong identification with her sex and her obvious commitment to women's rights reveals a general inclination to serve others and a personal recognition of her own worth. These two elements of her character seem to have been shared by most of the women who followed her into the profession.

On February 2, 1897, Clara was called to the bar. The *Telegram* on that day reported, 'This afternoon, Miss Clara Brett Martin was presented to the Judges of Osgoode Hall and was sworn in as a barrister. She wore a black gown over the regulation white tie and bore her honours modestly.'

In congratulating her on her call, the *Canadian Law Journal*

wrote:

'It would now be ungenerous to withhold our congratulations to (shall we say our 'brother' or our 'sister') Miss Clara Brett Martin on the success of her persevering efforts to attain the object of her ambition in being called to the Bar of Ontario. We would therefore express the hope that she may be successful in the profession she has chosen. At the same time it will not be disloyal to her as now one of the brethren of the gown, also to express the hope that she may be the one brilliant exception to the time-honoured rule which has hitherto closed our ranks to those who are not of the male persuasion.'

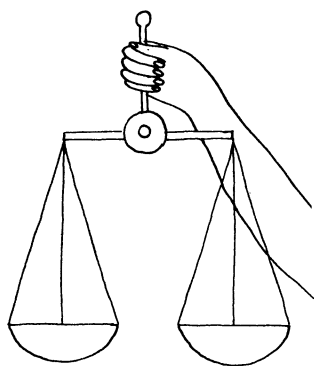
The legal community in Toronto could accept her by viewing her as an exception or an oddity, but her entrance into the profession did not in any way alter men's conception of the feminine character. The limits they imposed on women still held and she suffered from this discrimination throughout her career.

By opening the doors of the legal profession to women, Clara posed a threat to the *status quo* that extended beyond the confines of the legal community. If women could practise as lawyers then they could also become judges, and it would only be a small step from there to a seat in the Legislature. Her presence in the legal establishment could easily undermine the rationale which supported the exclusion of women from suffrage. However, the determination with which she challenged one male preserve (the law) did not extend to another (the voting booth).

One cannot help but feel that Clara was disappointed in the type of work she was forced to accept. As might be expected of a woman lawyer, she handled many cases of domestic relations — drawing up settlements and agreements — and the greatest part of her business consisted of conveyancing, mortgages, and wills.

Her success in presenting her case to a hostile body of legal authorities, the Benchers, must have been due, in large measure, to her courtroom talent. Her successful campaigns for school board positions also reflect her talent as a public speaker and her desire for positions of greater responsibility. Yet, regardless of her talent, it does not seem that she was offered much litigation work. Most likely this was due to the prejudice with which the general population and the legal community still viewed the idea of a woman lawyer. A woman lawyer was acceptable if she operated within the confines of her office, aiding and advising people in the reordering of their affairs, but she was unacceptable as an opponent in a legal debate.

In December, 1919, Clara was asked to give a talk at a dinner meeting of the women law students at Osgoode Hall. She told her



audience to remember that 'there was no sex in law.' Apha Hodgins (who graduated from Osgoode in 1919) wrote of this meeting:

'Victories are seldom enjoyed by those who win the battles. It is later generations who may benefit. I would say that my impression of Clara Brett Martin, on the one occasion I saw her at anything like close range, was that it had not brought her the satisfaction she had expected, and that the younger women lawyers who appeared heading for greater success than she had, were not particularly aware of what she had had to take.'

Clara's commitment to women's rights may have waned under the daily pressures of her legal work and she withdrew from public life in 1907, resigning from the Toronto Board of Education. However she did have a woman articling student, Lorna Wilson Bridgen, in 1921 and 1922. Lorna recalled Clara telling her, 'You've entered a man's profession; never expect them to wait on you.'

Clara's best known case was the defence of John Doughty, accused of the murder of millionaire Ambrose Small in 1920. Her case was successful though she herself did not undertake the courtroom work. A cold she caught while working on this case left her permanently weak, and she died of a heart attack at 46, in October, 1923.

A tribute in the *Globe & Mail* marked the occasion.

'The funeral of Miss Clara Brett Martin which took place yesterday from her late residence in Roxborough Street to St. James Cemetery was marked by a simplicity which was in perfect accord with the life of the deceased.'

Clara Brett Martin had battled against the most stalwart body of legal minds to gain acceptance of women within the legal profession. She had single-handedly persuaded the Attorney-General to support her cause and the Legislature had passed an act that opened the doors of the legal profession to women. She was the first woman lawyer in the British Empire. Her life was anything but simple.

The Benchers of Ontario need not have worried about the radical effect which the presence of women would have on the legal profession. Five years after Clara Brett Martin was called to the bar, Eva Maude Powley ('02) followed her. Five years after Miss Powley, Geraldine Robinson was called to the bar. In fact, at the time of Clara Brett Martin's death in 1923, only 35 women had been called to the bar in Ontario.®