

# THE CANADIAN BAR REVIEW

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## THE PRESIDENTIAL ADDRESS\*

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Toronto

The By-Laws of this Association provide that at each annual meeting the President shall, and I emphasize that the word is "shall" and not "may", deliver a presidential address upon such topics as he may select.

Throughout the past year I have been constantly conscious of the grave responsibility that comes with the high office that you have so generously entrusted to me. At no time has that consciousness been more impressed upon me than at this present moment.

In order to prepare my mind for this task I took the trouble to review the addresses delivered on such occasions as this by all previous Presidents and I repeat with a good deal of sympathy what was said by one of my very distinguished predecessors a number of years ago:

As years go on it becomes increasingly difficult for the President of this Association to address you upon a subject worthy of engaging your attention without merely repeating what has been already very fully dealt with by his predecessors in office.

I had considered addressing you on the Canadian Bar Association, its past and its future, but on investigation I found that had been the subject of at least three previous presidential addresses. I therefore came to the conclusion that the best contribution I could make to the success of this meeting was in the first place to refrain from any unnecessary repetition and, in the second place, to recognize the fact that we are to have the privilege of hearing addresses by four distinguished guests who will deal with subjects related to the profession of the law, and that to trespass on those fields set aside for our guests would not be consistent with the hospitality that we owe to them.

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\* The address delivered at the opening session of the 29th Annual Meeting of the Canadian Bar Association at Ottawa on September 3rd, 1947, by the retiring president, the Hon. J. C. McRuer, L.L.D.

I have, therefore, decided to adopt, in some measure, the procedure often followed by the heads of large commercial organizations by reviewing the year's business and giving some indication of my view of the problems that remain to engage the attention of those who will conduct the affairs of this Association in the future.

May I preface what I have to say about the business of the past year by congratulating the Association on the good fortune that it has had in securing the services of Mr. A. M. Laidlaw as Secretary-Treasurer. I think all of you who have had occasion to follow his work in the re-organization of the Head Office will agree with me when I say that he deserves the commendation of all members for the manner in which he has performed his duties since he took office last October. To this I would like to add a personal word of thanks to Mrs. Gower for the assistance she has given to Mr. Laidlaw and myself during my term of office. I hope the members of the Association will avail themselves of every opportunity to become more closely acquainted with Mr. Laidlaw and his staff.

Immediately following the last Annual Meeting your officers reviewed the membership rolls with a view to determining what the precise strength of the Association was and what the future income might be, so that we would be in a position to know what plans could be safely laid for the future. On this review it was found that a considerable number were being carried on the rolls who had not paid their fees regularly and some who had not paid any fees for many years. These were distinguished in the Law List as Members of the Canadian Bar Association and received the usual issues of the Canadian Bar Review, notwithstanding that their fees had not been paid. It was decided that, in fairness to other members, no member should be carried on the rolls whose fees were in arrear for more than a year. Those in arrear were duly notified and on December 31st, 1946, all whose fees for the year 1946 and previous years were not paid were struck from the rolls. We therefore started this year with a reliable membership list that reflects the true strength of the Association.

For several years it has been increasingly evident that the Canadian Bar Association has been developing out of adolescence into full maturity. For some time your officers have felt very keenly the prime necessity of a revision of the plans of operation attendant on this development. The question present in all our minds has been whether the Association would develop into a vigorous maturity playing the full part that the organized legal

profession ought to play in the national and international life of Canada or whether it would grow into an anaemic maturity with a vision limited by a mere desire for the advancement of professional interests. No one can read the addresses of previous Presidents from the devoted and illustrious founder of the Association, Sir James Aitkins, to my immediate predecessor in office without realizing the determined leadership that has been given for the higher and broader sphere of influence.

For some time it has been quite apparent that the minimum objectives of the Association could not be attained without more adequate financial resources. You will recall that the report of the Honorary Treasurer presented last year showed a deficit of \$8,483.35 which was met by the special contributions of various members. Provision was made at the last annual meeting for an increase in the general membership fee from \$5.00 to \$10.00 without interfering with the fee of \$3.00 per year paid by the members of the Junior Bar. In addition to this a new class of membership was created known as a "sustaining membership". Members of this class pay an additional fee of \$15.00 or a total membership fee of \$25.00. This class is purely voluntary and carries with it no special privileges nor is a separate list of these members published. Opportunity is merely given to those who wish it to support the work of the Association by a special direct contribution. Mr. D'Arcy Leonard, K.C., agreed to accept the chairmanship of the committee to secure sustaining members. It was decided to refrain from a campaign which would do more than present the requirements of the Association and invite members to give their financial assistance. You will be gratified to know that, as a result of this invitation, 570 have become sustaining members. You will be equally gratified to know that under the very efficient direction of Mr. Leonard Sutton, K.C., the Chairman of the Membership Committee, notwithstanding the increase in fees, the membership of the Association on July 31st, 1947, stood at 3,433 as against 3,130 on the 31st of December, 1946. The Secretary-Treasurer advises me that several additional applications for membership have come in during the past month.

As you will see later by the report of the Honorary Treasurer, our financial position now warrants the laying of plans for a more effective organization, which I hope will make a far-reaching contribution to the internal development of Canada and its external relations with the nations of the world.

I wish to add one word to what will be said in the report of the Chairman of the Canadian Bar Review Editorial Advisory

Board, which will be presented to you in due course, by paying my personal tribute to the editor of the Review, Mr. G. V. V. Nicholls, together with Mr. Walter S. Johnson, K.C., the Chairman of the Committee, and those associated with him. Mr. Nicholls has had to perform his duties in extremely difficult circumstances due to conditions arising out of the War. During the past year the members of the legal profession have been unduly pressed by their daily duties and it is only with much personal sacrifice that many of the articles appearing in the Review have been made available to the public. I think not only the members of this Association but the whole legal profession in Canada and, in fact, all those interested in legal scholarship owe a great debt of gratitude to Mr. Nicholls and his associates for the contribution that has been made to legal literature through the pages of the Review during the past year. The demand for it extends to other countries of the world and many reprints of articles are requested from time to time.

The report of the section on the administration of civil justice presented at the last annual meeting recommended that a committee be set up to deal with the subject of industrial relations. The committee has been duly constituted and, as the programme indicates, it is holding open meetings on Thursday of this week. May I direct the attention of all members to the great importance of the work of this committee. We have recently passed into a new era in industrial relations which has been attended by considerable legislation. The passing of new laws demands the immediate attention of the legal profession so that its members may be fully equipped to render all the services the members of the public demand.

During the past year it has been my privilege to visit the members of the Bar in all the provinces of Canada. I wish to place formally on record my grateful thanks for the kind hospitality extended to my wife and me on every occasion. I have found throughout Canada an increasing interest in the affairs of the Canadian Bar Association and a strong desire that the members of our profession unite on a national basis in possessing to the full extent the heritage that is truly ours as a learned profession. To this end I trust this Association will in some measure direct its efforts in the future by seeking every possible means to add to the qualification of our members to discharge the duties which devolve on them as servants of the public. The fact that during the past year the Secretary's office has received several inquiries from abroad about this Association and how it operates

is not without significance. For example, the Law Association in Greece and the Law Association in India have both asked for copies of our incorporation papers and by-laws so that they may be used as a model in setting up organizations in those countries.

The foundations have been well laid in the past but our eyes must be cast towards the future. We now hold in trust for the younger members of the profession and those who will enter it the professional inheritance which we will bequeath to them tomorrow. We are architects of their future. What plans are we delineating?

The subject of legal education is one that has been discussed at almost every annual meeting of this Association. The fact that it has been discussed so often is some indication of a realization that we are far from a satisfactory solution of the problem. It is now the subject of study by several special committees of the governing bodies of the legal profession and the universities of Canada. It has recently been considered by the legislature of at least one province and it will be considered in some aspects at this meeting. The solution of the problem is an extremely difficult one and can only be arrived at by an exhaustive study of all the requirements of the public. I do not feel that I am possessed of sufficient knowledge to express any views as to what the ultimate solution should be. It is sufficient for my purposes if I indicate this: the young people who are entering the practice of law do not feel that they are adequately trained to practise their profession in the light of rapidly changing conditions and special demands that are being made on the lawyers of today. The late Viscount Bennett by his generosity has provided a scholarship to be awarded annually by the Association for post-graduate study in law. The income from that fund has been sufficient to provide post-graduate studies for three students during the last two years. A review of the applications for the scholarship indicates a growing need in Canada for making provision for specialization after graduation. All three graduates to whom the scholarship has been awarded have found it necessary to pursue their studies in the United States of America. I suggest that the time has come for the legal profession in Canada to consider the whole subject of specialization with a view to establishing within Canada adequate post-graduate training for the lawyers of today, so as to better equip them to practise law as it will be practised tomorrow.

Our consideration of legal education ought not to be limited to the matter of post-graduate specialization. There is too the most difficult problem of the best method of teaching students

and young lawyers how to apply law and how to practise it, as distinct from teaching them law. In this respect I am quite sure there is much to be learned by an exhaustive study of the methods that have been proven by their results in Great Britain. The heritage of jurisprudence that Britain has given to the world ought to be sufficient to warrant us in thoroughly informing ourselves of the means by which the legal minds that not only in the past but today are giving leadership to the world in the science of law, have been trained.

In planning to meet the needs of the lawyers of the future our vision must reach far beyond the traditional practice of law in the courts. In saying this I do not minimize the importance of training lawyers to practise in the courts. The efficient presentation of a case on both sides is essential to the just disposition of any case. But it is unnecessary for me to repeat here what has been so often said in the past as to this aspect of professional life. However, with the modern development of government, numerous administrative tribunals have been set up which just as decisively determine the rights of individuals as Courts of Law. The decisions of these tribunals should always be founded on justice and to that end it is essential that there should be adequate presentation of the case on behalf of all parties to the disputes within their jurisdiction. Everyone affected by the decisions of such tribunals has a right to be represented by counsel of his own choice and that right should never be questioned. To be qualified to practise before them is the duty of lawyers. There are indications at times that some believe that the presiding officers of administrative tribunals have a peculiar ability not present in judges to dispense a better form of justice without the assistance of lawyers. This was evidenced in the Industrial Relations and Disputes Investigation Act, recently introduced in the House of Commons but not proceeded with, which contained a clause drastically limiting the right of a lawyer to appear on behalf of a client before a Conciliation Board. The incorporation of this clause in the Bill recalled to my mind that in the early history of Canada, by the Ordinance of 1667, lawyers were excluded from Canada. Baron LaHontan, describing the administration of justice under that Ordinance, said:

I would never say that justice is here more chaste or more disinterested than in France but at least if it is sold, it is sold much cheaper. We do not have to pass through the claws of lawyers, through the talons of attorneys nor through the clutches of greffiers. This vermin has never infested Canada. Each one pleads his own cause.

But strive as they would, they could not get along without lawyers and the King in a very short time amended the decree by permitting four lawyers to enter Canada; so we have the birth of the legal profession in Canada.

But the fact that in the year 1947 a clause was incorporated in a bill presented to Parliament limiting the right of the lawyer to appear before any tribunal on behalf of his client should give rise to critical professional self-examination by our members. Those who supported the clause contended that lawyers sought to gain victories over their opponents by employing vexatious technicalities, often delaying or defeating the object of the inquiry undertaken. That such an objection was taken seriously by the government imposes on the legal profession the duty to see to it that there is no foundation for such a contention and, if there be the slightest, to see that by precept and example it is speedily removed.

The future of this Association will depend on its influence both within and without the profession. Its success will be measured in direct ratio to the breadth and force of that influence on the upward progress of human affairs. The members of the human race, be they in Canada or in the remote villages of Central Africa, in the cities of London or New York, or on the plateaux of Tibet, will not live in static conditions of association with one another or with other societies of individuals. Every change of condition of living and every change of philosophy of life brings with it not only new laws but a new sense of justice, attendant upon which is a constant development of law as distinguished from laws. This development involves changes in the application of law to those subject to the law. A true sense of justice is the vitality of all law. It is a spiritual force that grows with the spiritual development of mankind. The concept of justice of one hundred years ago is not the concept of justice of today. Justice to the slave cannot be made the idea of justice to the labouring man of our generation nor can the idea of justice to a married woman of the Victorian era be perpetuated in this era. A sense of justice is a divine gift to the human race that is born not of power nor of the mind but of the soul. With the growth of the soul it grows.

The function of the members of the legal profession, be they lawyers or judges, is to seek to regulate human relations so that within our all too narrow limitations God's justice may be done throughout the world. "He who seeks justice must believe in justice who, like all divinities, shows herself to the faithful." In our domestic lives we have for centuries been drawing some

lines on the tracing board of history that will guide the legal thought and philosophy of the future. In our international lives we still grope in chaotic darkness. Faint glimmers of hope appear from time to time on the horizon only to be extinguished by armed conflict. Fellow members of the legal profession, we are humble artisans laying the foundation of a temple of justice, the grandeur of which is known only to the Great Architect who holds in His hands the plans that show the proportions, the substructures and the elevations of the edifice to be erected on the foundations we lay. Minute are the details that come to our hands when viewed as part of the omnipotent plan, but our part is always to apply our minds and hearts to each of those details, however trifling they may seem, with a devoted purpose that justice may be done between men. To the eloquent tongue of Daniel Webster we owe these words:

Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands and so long as it is duly honoured, there is a foundation for social security, general happiness and the improvement and progress of our race. And whoever labours on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablature or continues to raise its august dome still higher in the skies, connects himself, in name, and fame and character, with that with which is and must be as durable as the frame of human society.

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#### SING OUT, SWEET LAND !

The nationhood of Canada is not based on the superiority of a single race, or of a single language. Canada was founded on the faith that two of the proudest races in the world, despite barriers of tongue and creed, could work together, in mutual tolerance and mutual respect, to develop a common nationality.

Into our equal partnership of English-speaking and French-speaking Canadians, we have admitted thousands who were born of other racial stocks, and who speak other tongues. They, one and all, have sought a homeland where nationhood means not domination and slavery, but equality and freedom. Without the ideal of equality among men, without the vision of human brotherhood, the Canadian nation could never have come into being. (Rt. Hon. W. L. Mackenzie King in the *International Journal*, Spring 1947)