

THE  
*Canadian Bar*  
REVIEW

VOL. XXVII

December 1949

NO. 10

A New Year's Message: The Aims and  
Achievements of The Canadian Bar  
Association

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Tradition lays upon the President the agreeable duty of addressing to the members of the Association through the *Canadian Bar Review* his good wishes at the New Year. In a normal New Year the President reviews what has been, and what he hopes will be, accomplished during his term of office. I observe, however, that this is an extraordinary New Year, for it is the New Year of 1950 — the half-way mark of this amazing Twentieth Century — and I am moved to attempt an exceptional message: Greetings for 1950, by all means and of the warmest! But let me on this occasion lay before you a lengthier and more ambitious review and forecast than is usual — one, in fact, that embraces the aims of the Association as they were originally conceived, as they have been carried out, and as I contemplate them in the years ahead; and let me call it the Aims and Achievements of the Canadian Bar Association.

The growth of Canada during the forty years preceding the First Great War was phenomenal; but there was so much to do, and changes were so rapid, that inevitably the members of the bench and bar in the different provinces — and this was equally true of the East as of the West — were developing and being moulded as separate units. Their interests tended to be circum-

scribed by the limits of their own provinces; there was little association between the members of the Profession in different provinces. How serious a threat this was to a united Canada must be apparent.

It was to correct these conditions that The Canadian Bar Association was formed. The declared objects, as set out in the preamble to the Act of Incorporation, clearly reveal the concern of the founders over the factors making for disunity: "to promote uniformity of legislation throughout Canada so far as is consistent with the preservation of the basic systems of law in the respective Provinces; to foster harmonious relations and co-operation among the incorporated law societies, barristers' societies and general corporations of the Bars of the several Provinces and cordial intercourse among the members of the Canadian Bar". Mark the emphasis on uniformity, on harmony and co-operation, and on cordial intercourse. There were other objects as well: "to advance the science of jurisprudence, to promote the administration of justice, to uphold the honour of the profession of the law, and to encourage a high standard of education, training and ethics" — but these, although of the highest significance and importance, were more general and what might be found in the objects of any society of lawyers. The objects I have named first were surely those regarded by the founders as vital to Canadian unity. Let us consider how they have been accomplished.

Little time was lost in advancing the uniformity of legislation throughout Canada. The Association recommended that each provincial government appoint commissioners to attend conferences to promote uniformity. In 1918 the recommendation was acted on by provincial governments and the Conference of Commissioners on Uniformity of Legislation in Canada organized. Thirty-one annual meetings have been held. The work of the Commissioners has been of the highest quality and, in addition to advancing their special object of uniformity by preparing over thirty model statutes, many of which have been enacted generally, they have set a standard that has improved notably the draftsmanship of Canadian legislation. Much credit for advocating the revision of the Criminal Code, a monumental work now proceeding under the chairmanship of Chief Justice W. M. Martin of Saskatchewan, must be given to the Section of the Conference on Criminal Law and Procedure, established in 1944. Throughout, the Conference and the Canadian Bar Association have worked in the closest harmony. Each year the Conference makes a progress report to the Association and its officers are members

ex-officio of the Association. The Association takes pride in the notable record of achievement of the Conference.

It was the Canadian Bar Association, acting by its President Sir James Aikins, that initiated in 1925 the establishment of the Conference of Representatives of the Governing Bodies of the Legal Profession in Canada. Thus progressed another of the original aims of the Association. At their twenty annual meetings the Representatives have discussed many problems of common concern to lawyers throughout Canada. Some problems they have solved, and even where they have failed to reach agreement they have gained enlightenment from the pooling of ideas and an understanding of one another's point of view that have removed many misunderstandings. Undoubtedly, the higher standard for admission to the study of law has come in no small measure from the deliberations of the Representatives of the Governing Bodies. They have fixed attention on the advantages and difficulties of the interchange of membership between the provincial bars on a reciprocal basis, the establishment of funds to restore defalcations, the nomination and restricted appointment of King's Counsel, and many like matters of professional interest and concern. The successive members have done their work well and have emphasized the clear-sighted wisdom of the founders of the Canadian Bar Association, who called them to their task.

In no single way has the Canadian Bar Association been more successful in advancing its aims than by fostering cordial intercourse among the lawyers of the different provinces, many of them of different languages. If Canada is a nation, can we not claim that in this way the Association has done much to advance the welfare of Canada? Canadian lawyers suffer from the lack of common meeting places. We have no Inns of Court, and even the lawyers of a single province convene rarely as a craft. Almost invariably we meet on business, frequently of a litigious kind. And our need to know one another and understand one another's problems is great, if we are to create a united and harmonious country. This aim of fostering cordial relations, so well understood by the founders of the Association, has been realized, and is being increasingly realized, by our annual meetings and the mid-winter meetings of council. Many members will recall them, and the friendships they have formed at them, as among their most cherished memories. One of the pleasantest features has been the opportunity for friendly and informal intercourse between the bench and bar. Members of the bench by their interest have added greatly to the prestige of the Association, and by their

counsel and service have contributed much to its effectiveness.

In 1922 the Association founded *The Canadian Bar Review* as its official organ, and for the twenty-seven years of its existence has sustained it. The Review has served a dual purpose with great and increasing success: it has advanced the science of jurisprudence, one of the main objects of the Association, by encouraging the study of the law for its own sake, and it has provided, in the words of the present Editor, "a forum through which men can pass on to others their acquired knowledge, experience and humanity". It has attracted contributions from eminent writers and thinkers on the philosophy of law and its practical problems. Some have been, and it is to be hoped an increasing number will be, Canadians. Non-Canadian contributors of international distinction have availed themselves of the Review as a journal worthy of them. It is doing much as a representative of our two great legal systems, the Common law and the Civil law. Closely linked with the work done by the Association through the Review has been its establishment of an essay competition open to all practising lawyers and teachers of law in Canada. This competition, it is believed, will advance in a marked way Canadian jurisprudence.

It has been largely through its sections and committees that the other original aims of the Association have been promoted.

The annual reports of the Section on the Administration of Civil Justice have stimulated keen debate, as they have urged the removal of many alleged defects in our law and the adoption of suitable remedies. The Section on the Administration of Criminal Justice has to its credit much acute criticism of the Criminal Code and suggestions for its improvement and the promotion of the recodification of the criminal law of Canada. Other sections which have advanced the administration of justice are those on Commercial Law, on Industrial Relations, on Insurance Law and on Taxation. Their work has been of lasting value. They have focussed the attention of the members of the Association on the portions of their fields of timely importance. Each has circulated numerous valuable statements and has provided a forum for the discussion of vital topics under expert direction. By way of illustration only, one may refer to the excellent work done by the Section on Industrial Relations in 1948, when the revision of the Industrial Relations and Disputes Investigation Act was before Parliament. A new and most promising development has been the co-operation between the Association, acting by its Taxation Section, and the Dominion Association of Chartered Accountants,

which has brought into being the Canadian Tax Foundation. The joint efforts of the Insurance Section and the Superintendents of Insurance have already produced admirable analyses of portions of the law of insurance and constructive recommendations for their improvement. Such combined efforts between our sections and other professions or groups must be most beneficial to the public. The suggested establishment of a Medico-Legal Committee to study problems common to the legal and medical professions is the latest example of this development.

In none of the original aims of the Association have the members shown a keener interest than in Legal Education and Training. Excellent reports have been read and discussions held at the annual meetings of the section set up to promote this aim. Thus teachers of law have been enabled to make known their objectives and methods, and practising lawyers to express the views formed by experience. When solutions of the problems considered have not emerged the cause is their inherent difficulty rather than any lack of effort in the section.

A Code of Legal Ethics, drafted by a special committee and approved by the Association at its fifth annual meeting, has been adopted by many of the provincial law societies, and has served ever since as a correct, if not exhaustive, statement of the ethical principles that should be observed by the members of the Profession throughout Canada.

The work of the Civil Liberties Section has been most valuable. While still only a committee, small but most vigilant, it watched critically the use of the widely extended powers of the executive branch of government during and after the Second World War, and drew immediate attention to any exercise that appeared excessive or unnecessary.

Another committee of the Association that did memorable public service during the Second World War was the Special Committee on War Work. It gave legal aid to members of the armed forces and their dependents in more than 9,300 recorded, and an unknown number of unrecorded cases. It is noteworthy that not a single complaint was received that any of the matters distributed by the committee through its established channels was mishandled.

A committee appointed at a late stage of the war, on the codification of international law, has acted in close harmony with a like committee of the American Bar Association, and urged successfully the continuance of the World Court and its recognition under the Charter of the United Nations.

Other valuable services rendered by the Association, which, although not directly within the original aims, have contributed much to the advancement and the prestige of the Profession, may be referred to:

(i) Throughout the thirty-five years of its existence the Association has given its members opportunities to meet and hear the most distinguished members of the bench and bar of Great Britain, of the United States and of France.

(ii) Largely through the efforts of a special committee of the Association, in 1947 all judicial salaries were substantially increased, and for the first time a system of pensions for judges' widows established.

(iii) As a mark of our feeling of respect and cordiality for the members of the English bar and of sympathy for the very serious losses they suffered through enemy action during the recent war, we have raised \$14,000 towards the Restoration Fund of the Inns of Court.

These in the main have been the achievements of the Canadian Bar Association since its establishment in 1914. They have been of no mean order, and we may congratulate those who have effected them and ourselves as their successors and beneficiaries. Rightly to judge the value of the work we should ask: What would have been the position of our Profession in Canada had we not had the Canadian Bar Association to unite us in friendship and understanding and to direct our organized efforts to worthy goals?

Before we look at the future and at what it holds for the Association we may pause to remind ourselves that only by intense and sustained effort, wisely directed, has the Association achieved its aims. We may take pride that our 4,300 members comprise over one half of all the lawyers in Canada and that our reputation is mounting. We may take pleasure, too, in the improved financial position of the Association. Let us remember, however, those to whose hard, unceasing, sound work, often unsung and unrewarded, credit is due.

Our membership is large but not large enough. We must press on and persuade, if we can, substantially more of the lawyers of Canada to join us: then as a profession we shall speak with a firmer, a stronger voice, and our influence will be magnified immensely. Notaries from the province of Quebec are now eligible for membership and we should like to see a larger number participating in the Association's work. Our immediate objective for the current year should be a membership of 5,000. It is in the in-

terest of the public as well as of ourselves that we should speak with authority on large matters of law. No body or group knows Canadian law as do the members of the Association. None has a keener sense of the merits and defects of the law, as it is, or of any proposed changes.

Undoubtedly, the Association may face the future with confident hope of continued and increasing achievement. We must keep the original aims of the founders steadily before us and secure them by unceasing effort. The work of the Conference of Commissioners on Uniformity of Legislation in Canada and of the Conference of Representatives of the Governing Bodies of the Legal Profession in Canada gives every promise of continued fulfilment, and, although outside the direction and control of the Canadian Bar Association, will receive its whole-hearted support. We shall continue by our annual meetings and mid-winter meetings of council to foster amongst the members of the Profession throughout Canada the good relations that in the past have been of such immeasurable value. We must support, too, the Canadian Bar Review and ensure that, so far as our resources permit, it keeps pace with our progress and is worthy of our growing stature as an Association.

In the future, as in the past, many will test our achievements by the work of the sections and committees. Here, too, we have sound reason for sanguine confidence. Never have the sections and committees attracted more support, never have they been more constructive or bolder in facing the real issues that confront lawyers and the administration of justice than during the year just concluded. This is not the place to deal in detail with the work so accomplished, and I trust I shall not be misunderstood and thought partial if, by way of illustration only, I refer to the firm views expressed at the last annual meeting by the Section on the Administration of Civil Justice on such topics as the abolition of appeals to the Privy Council, on the appointment of judges and on the retirement of judges. It may be that few of these views, although they were approved by the Association, will be adopted at once, but if we as an Association endorse them and press for them unflinchingly and without relaxation we shall eventually succeed. It is stimulating indeed to have had the Association record its view that no appointment to the bench of any province should be made by the Government of Canada without consulting a committee consisting of the chief justice of the province, the chief justice of the trial division and representatives of the benchers of the law society in the province.

Moreover, the Association approved the retirement of all judges at the age of seventy-five. To promote such aims no agency is so fit as the Canadian Bar Association.

Consideration may well be given by sections and committees to methods of expediting and making less costly the determination of civil cases by the courts. This may be accomplished in some measure by the simplification of procedure and the revision of the laws of evidence, and these demand searching inquiry and action. Whatever reflects on the administration of justice today is especially serious, for there are now other tribunals, presided over by quasi-judges, that have won much popular favour by their simple procedure, by their inexpensiveness and by their promptness. It behooves us to do our utmost to remove all valid reasons for unfavourable comparison of the courts with administrative tribunals. This is one of the major problems of our Profession today, and the sections and committees of the Association may well apply themselves to its solution.

Another problem that will require study and action by the Association is legal aid to less well-endowed citizens. In Canada far-seeing lawyers in different communities have initiated and carried out such schemes with excellent results, but their efforts have been uncoordinated and confined to few communities. In Great Britain a comprehensive plan of legal aid has been worked out and, although established and in part financed by the government, is free from government control. In the United States the American Bar Association has launched on a national scale a plan of legal aid, which was set up in Los Angeles twelve years ago and has been adopted and tried in twenty-nine cities. Legal reference offices established in each municipal area will direct persons of moderate means to lawyers most competent to handle their particular problems, and will ensure that the initial fee is nominal and the total fee moderate. This is work, when organized, that may well receive the special support of our Junior Bar Section, but its initiation will entail most careful study by the senior members as well, and the enlisting of the interest of provincial law societies. Effective action on this problem cannot be delayed.

It is noteworthy that the action taken by the American Bar Association on legal aid followed closely upon a report of its Legal Survey Committee. In Canada, through the initiative of the Canadian Bar Association, an independent and autonomous Council, generously supported by the Carnegie Corporation and the Nuffield Foundation, has embarked on a like survey of the



legal profession in Canada. There is every reason to believe that this survey will bring to light problems of not less urgent importance to the Profession than legal aid. These the Association is equipped to face and solve through its sections and committees.

The effectiveness of the Association depends on the interest, the industry and the competence of its members. It will not be irrelevant to my main theme if I conclude with some observations that apply to all of us as members of the Canadian Bar Association.

Lawyers must fit themselves by reading and thinking to regain the place they have held in the past as leaders of public thought. No other class of men is so well fitted to grapple with problems of government in all its branches. But government today is not merely a matter of technical law: it is closely linked with problems of economics, of sociology and of political theory. Lawyers who are narrow specialists are ill equipped under modern conditions to advise on matters of government, and matters of government are increasingly matters of business. Suggestions are made that the law schools should train their students to deal with such problems, and no doubt the law schools, or more properly the universities in pre-legal education, can do much by laying a foundation and creating an interest for later self-education by their students; but primarily this knowledge must be acquired by lawyers themselves in various ways: from books, from intercourse with members of legislative bodies, with civil servants and with clients whose interests are affected, and finally from personal observation and experience. Only lawyers so trained and developed can meet adequately present-day problems of public life — but such lawyers can meet them as can the members of no other calling. Equally, such lawyers can instruct and mould public thought. That the leaders in the Profession today do it less than the leaders of the past is due in large part to the increasing demands of professional and of public life: where, formerly, one man might carry the double burden, now no lawyer can continue in large practice and at the same time serve as a member of parliament, let alone of a government. And, under the impact of taxation, few lawyers can accumulate sufficient means from their practice to devote their experience and their trained minds to public service exclusively. Much will be gained both by the Profession and the State when, if ever again, they can do so.

Now that Canada has a recognized place of influence in international affairs, it is essential that Canadian lawyers master the

subject matter and technique of international law. Heretofore, few Canadian lawyers have done so; but, if we as a Profession are to have a prestige in international councils comparable to the status of Canada among the nations, we must direct our minds to this unfamiliar topic. And, when we have this knowledge, we must pass it on to the public so that they may gain an interest in and understanding of international affairs now lacking. No better way can be devised for arousing a broad-based support for two of the best instruments for maintaining world peace: the United Nations and the World Court.

And, as ever, we must master the principles of constitutional law. There are few material rewards to be had by the ordinary practitioner from this branch of the law, but it will be a sorry day for Canadian freedom when Canadian lawyers lose their instinct and passion for the legal principles on which freedom rests. I say passion, and I mean no less: no lawyer can read of the battles fought by his predecessors in the past, by such men as St. John and Somers and Erskine, without a glow of pride and a feeling of deep gratitude. It is always so easy to truckle to authority, and so distasteful to be classed with the cranks and faddists, but thoughtful lawyers know how freedom must be guarded and are ever watchful in its behalf. Their zeal, however, must be matched with the knowledge which only the deep study of the general principles of constitutional law will bring.

The Association has a proud record of achievement. Never was it better fitted by numbers, by resources or by spirit for further good work. There is useful work at our hand. Let us do it.

### The Lawyer's Function

Our men of the Law have not been wise to let slip a standing which, in this country, they used to have.

They used to be, as of course (along with preachers, prophets, and successful generals), the people on whom other people called to tell them what any trouble was all about. They used, also, and again as of course (along with political leaders), to be the people to whom other people turned when they wanted to know how to get things done. A century or so ago, names like John Adams, Alexander Hamilton, Andrew Jackson, Daniel Webster, Abraham Lincoln, carried a sure flavor of knowing whither and of telling how, for *All-of-us*. Such knowing of whither and such discovering of how, for *All-of-us*, is still of the essence. It is, in essence, what the institution of law and the men of law are for. Both we and those whom we exist to serve should get that clear.

But it seems that things have gotten in the way. (Karl K. Llewellyn: *Law and the Social Sciences — Especially Sociology*. Harvard Law Review, June 1949)