

The Midwinter Meeting of the Ontario Members of the Canadian Bar Association*

The Midwinter Meeting of the Ontario Members of the Canadian Bar Association, held at the Chateau Laurier Hotel in Ottawa on Friday and Saturday, March 30th and 31st, 1951, demonstrated in a marked degree the fourfold means by which the Association advances the interests of the profession.

In the first place, all members attending on such an occasion enjoy a valuable opportunity to meet and exchange views with other members of the profession in pleasant social surroundings. There are now some 3,030 practising barristers and solicitors in Ontario scattered over considerable distances. The influence of such meetings is especially important because there is no annual meeting of the profession within the province or other occasion for the whole profession to assemble. This year's meeting, although small by comparison with the one held in Toronto in 1950, and with the meeting at Niagara in 1949 when the legal education issue was in the forefront, was attended by 250 members, including about 100 from towns and cities other than Toronto and Ottawa, and had every appearance of being a representative gathering.

Next, the convention provides a forum in which the members of the several Ontario subsections of the Association can report upon their activities and in which they can draw support and direction from the general membership. It is through these subsection activities, studying the several branches or phases of the law and practice, that the greatest opportunity and challenge is presented to the Association and through them, as the meeting demonstrated, much work is being done.

Thirdly, in increasing degree since the 1949 meeting at Niagara, the meetings have offered an opportunity for members to hear lecturers or take part in discussion groups (sometimes called "seminars") given or guided by experienced practitioners or specialists in the various fields of practice. Most of these seminars are of

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immediate and general interest to the practising solicitor, who can gain much useful information at them not available in any text book.

Lastly, in the meetings of Council and of the general session is found a forum for the voicing of all shades of opinion on problems affecting the profession. There are some who question the merit of this, but their criticism is surely not valid. In Ontario the governing body of the profession, the Law Society of Upper Canada, is constituted by statute and functions through benchers elected by the profession quinquennially; a similar system exists in other provinces. Few schemes of electoral representation are entirely free from criticism, and ours is no exception. The benchers' task is a demanding one, calling for extensive and continuous work by the various standing and special committees, official presentation of professional views to government and, of late, the setting up of a scheme of legal aid and the study of the relations between the profession and the public. Generally, the only report received by the profession of the activities of the benchers is the short published minutes of Convocation, and there is no system under which issues arising from time to time are generally debated within the society by lawyers across the province as a whole. There are of course the county law associations, in many cases strongly organized, at the meetings of which the members within the several counties can discuss matters, and views are passed on through representatives at the periodic meetings of the Federation of County Law Associations, a medium for co-ordination of opinion and initiation of demands for action. But it falls to the meetings of the Canadian Bar Association to provide the opportunity for general debate on current issues, to satisfy at least partly the demand for a democratic means of expression. This meeting produced several lively issues.

Friday's general session was opened at 10.30 a.m. by Mr. Arthur Kelly, K.C., the Vice-President for Ontario. The Treasurer of the Law Society, Mr. C. F. H. Carson, K.C., addressed the meeting and gave a statement of recent activities of the Benchers. He reported that the attendance at Osgoode Hall Law School had abated only slightly from its post-war peak, 727 students now being in attendance. This summer for the first time third and fourth year students will start serving as solicitor's clerks under articles; third year will be full time in offices, fourth year part time, when not at lectures; the assistance of solicitors will be required to place some 200 students. After long study a committee has recently brought in a report on the need for improving rela-

tions between the profession and the general public, and a decision has been reached by Convocation to undertake a public relations programme of an educational nature, by taking "page space" in daily newspapers across Ontario for a period of ten months. This was explained as a "trial run", at the expense of the Law Society, and there is no formulated plan for the future. The recently approved legal aid scheme is now beginning to operate; assisting legislation has been brought before the Ontario Legislature. This provincial-wide undertaking is new in Ontario, and presents a challenge to the profession to ensure its successful operation. The Treasurer referred briefly to the method of decentralization to the "County Director", working with and through the county law associations; it falls ultimately on the shoulders of the individual lawyer to do the work, however, and each must carry his share. Activities of various Standing Committees on Unauthorized Practice, Library, Rules and Legislation were touched upon, as well as those of Special Committees on Continuing Legal Education and other matters. This "report" by the Treasurer furnished as usual an opportunity for questions from the floor.

Among the business items of the general session was the announcement by Mr. Kelly that an amendment to the constitution of the Canadian Bar Association is being drafted by the Constitution Committee to provide a means by which the Association may, through its executive or otherwise, give expression to opinions between meetings. It appears that of all the nation-wide associations in Canada the Bar Association is the least articulate on issues of public interest and concern. The amendment is to be considered at the Association's annual meeting this summer.

A resolution was passed that the committee of the Ontario Legislature being set up to investigate the administration of justice be asked to consider the need for more adequate court rooms and general facilities in many of the municipalities; Mr. Edson L. Haines, K.C., gave some figures to indicate the enormous volume of cases handled by the so-called "lower courts" and stressed the importance of ensuring that respect for justice be established at all levels. Confirming what Mr. Haines said, Mr. R. M. Willes Chitty, K.C., expressed the view that lack of proper advice, opportunities and facilities for persons charged in the lower courts probably results in frequent miscarriage of justice.

Discussion on the legal aid scheme was limited, there having been little time as yet to gain appreciable experience with it.

The Saturday afternoon general business session presented a display of oratory and enthusiasm seldom equalled at a meeting

of Canadian lawyers. The issue concerned a resolution presented by Mr. N. L. Mathews, K.C., as part of the report of the Ontario Subsection on Industrial Relations: it was the unanimous opinion of the subsection that, until an appropriate alternative is found, the public should not be deprived of the services of judges on boards of arbitration and of conciliation, and the general meeting was asked to approve a resolution that the national section be requested to give further study to the problem with a view to retaining the services of judges as chairmen of such boards so long as their normal duties in connection with the administration of justice are not prejudiced. It was stated that the resolution had the unanimous backing of the subsection, the members of which in their practice had found that many important industrial relations matters were being greatly delayed because of the difficulty of finding impartial chairmen acceptable to the disputants. Judges are almost always acceptable, usually able and willing to act, and have qualifications possessed by few other acceptable persons, but, since its last annual meeting in September 1950 when the Canadian Bar Association passed a resolution that judges should not be asked to serve on such boards, a number of judges, out of deference to the opinion expressed, have refused to act. The members of the subsection noted that the September resolution had not been acted upon either by the Federal or Ontario governments, which have several times since appointed judges, undoubtedly for want of other qualified persons. In the ensuing debate a point of order was raised that the meeting could not entertain the motion, which, if adopted, would in effect circumvent a resolution of the parent body; this merely warmed the debate until Chairman J. R. MacLaren, K.C., ruled the motion in order, distinguishing it from one negating the September resolution, and pointing out that it only called for further study of the alternatives to the employment of the judiciary. After countless amendments the motion carried in its original form, which is hardly surprising; indeed, it must be remembered that in Washington opinion was well divided and no satisfactory alternative course was proposed, if the resolution against employment of judges were fully implemented. The substantive problem remains to be solved.

The real energy of the Association within Ontario is displayed in the work of the several subsections. Meetings are held by these groups throughout the year and much practical law reform is initiated. Reports of subsections presented to this meeting bore out the value of their work.

Mr. MacLaren presented the report of the Subsection on the

Administration of Civil Justice, of which copies were distributed. Seven meetings have been held in the year by this subsection, which has thirty-eight members. Among matters dealt with or under consideration are: a brief on the bill dealing with the abolition of immunity of the Crown, the practice in relation to mental incompetency and investment powers, the Division Courts Act and costs, the Dependents Relief Act, abolition of dower, and the Rules of Court. Mr. Maclaren expressed the concern felt by the subsection at the apparent inattention of the Rules Committee to recommendations and suggestion submitted. Here was exposed a neat example of the problem of co-ordinating effort to get desired action; the Rules Committee is constituted largely of judges; the benchers are represented on it; suggestions are received from all quarters, whether individuals or associations. The problem considered was the place of the Bar Association in this matter and the most effective channel of communication. The Rules of Court are important to the practising members of the profession, and in some ways peculiarly so when it is considered that they contain tariffs of costs which become so important as the real value of the dollar changes; the Canadian Bar Association, perhaps more readily than other groups, can gather opinion, study suggestions and make considered proposals. There was a strong indication of opinion that nothing would be gained, and something lost, by funneling proposals through Convocation, and, finally, a resolution was passed that the Association's recommendations on the Rules of Court be submitted to the Rules Committee in writing, with a request that representatives of the Association be free to appear before the Committee to speak to them.

The Report of the Ontario Committee on Legal Education was presented by Mr. E. L. Haines, K.C. It dealt with the "Programme for Continuing Education" of barristers and solicitors, on which there has been much discussion of late. The Committee has set up a panel of lecturers, each a distinguished counsel or practitioner in his subject, who have volunteered to give lectures at any centre in the province, when invited by the local county or district law association. These lectures are designed to emphasize practical matters arising from day to day and the "know-how" of dealing with them. The report listed fourteen available lectures covering such a wide range of subjects as Wills and Estate Planning, Domestic Relations, Presentation of Argument, What Every Lawyer Should Know about Insurance Policies. Mr. Haines stated that the plan was meeting with success and that there was a real demand for the lectures; he expressed the appreciation of

the bar for the generous contribution of the lecturers in undertaking the work.

There have previously been efforts made in various circles in Ontario to keep lawyers at large in touch with special ramifications of the law, which seems to become increasingly intricate and demanding of specialization. Organizations such as The Lawyers Clubs of Toronto and of Hamilton have for many years arranged meetings with information talks. The Law Society organized a series of lectures during the last war to cover the administrative fields, rent controls and taxation, on cessation of hostilities a general refresher course, and in each of the past two years a group of ten lectures on related subjects given at Osgoode Hall. The present undertaking is really an extension, making it possible for any county association to have valuable lectures given in its county town to local lawyers who might never otherwise have the opportunity of hearing them.

Mr. Stanley E. Fennell, K.C., submitted the report of the Commercial Law Subsection. Extensive study of the Registry Act is being undertaken and numerous changes in detail are proposed or under consideration. A resolution that all registry offices be open only from Monday to Friday during the hours of 9.00 a.m. to 5.00 p.m. for the purpose of making searches, and 10.00 a.m. to 4.00 p.m. for the purpose of registering documents, was adopted. Amendments to the Short Forms of Conveyances Act, Short Forms of Mortgages Act, Custody of Documents Act, Devolution of Estates Act, Bulk Sales Act, Corporations Tax Act and Mortmain Act are being considered or proposed. A resolution again recommending the repeal of the Dower Act was passed.

Mr. Stuart Thom reported for the Taxation Subsection. He said the policy is not to assume responsibility for initiating and carrying out independent studies of tax problems, but rather to assist the Canadian Tax Foundation, which was established by the joint efforts of the Canadian Bar Association and the Dominion Association of Chartered Accountants (see Canadian Bar Review, February 1951, p. 185), in advancing its studies. Problems of immediate importance are appeal procedure, penalty provisions of the statutes, and matters arising under section 95A of the Income Tax Act.

Mr. J. A. Tuck presented the report of the Subsection on Insurance Law, which has fifty members in Ontario and held seven meetings in the past year. The group has studied such phases of the Insurance Law Revision proposed by the Superintendents of Insurance in 1950 as "other insurance and contributions" and the

"dual position of the agent". Amendments to the automobile part of the Ontario Insurance Act were proposed. The loss of control of a policy of life insurance in the event of disappearance or mental incompetency of a preferred beneficiary was considered, but no conclusions reached. An amendment to section 37 of the Trustee Act was recommended.

The lectures or group discussions, already mentioned, were held both on Friday afternoon and Saturday morning. Each speaker was allowed fifty minutes for his talk and to deal with questions and discussion. Ten subjects were covered in all, two proceeding simultaneously in separate rooms, with an average attendance in each of about seventy. This is a further demonstration of the interest of the profession in continuing legal education, and it does appear that the discussion groups are now accepted as a valued feature of the Ontario Midwinter Meeting. It is impossible here to attempt a comment on each, or any, of those held at the recent meeting, but it seems proper to record the subjects dealt with and the names of those who undertook the work of preparing them: Part I-A, The Income Tax Act — Charles Gavsie, K.C., C.B.E.; Practice and Procedure under the Dominion Companies Act — W. P. J. O'Meara, K.C.; Practice and Procedure in Trade Mark Matters — Christopher Robinson, K.C.; Pension Plans under the Income Tax Act — Stuart Thom; Applications under the Mental Incompetency Act — J. T. Weir; Jurisdiction of the Court of Revision — J. A. R. Mason, K.C.; Picketing: Peaceful and Otherwise — T. R. Wilcox; What to do when your Client is Arrested — Arthur E. Maloney; Maintenance of Wives and Children — Her Honour Judge Helen Kinnear; Presentation of Applications to the Ontario Municipal Board — Melville Grant, K.C.

This year's meeting is the first at which two full days have been allowed for the programme; the attendance was good throughout, and none of the business rushed. One criticism directed at the lack of entertainment for wives of members, who attended in good number, received the answer that the meeting is primarily for business. We did not lack for social occasions. Mr. E. Gordon Gowling, K.C., the President of the Canadian Bar Association, kindly entertained all members at a cocktail party before a luncheon on Friday given by the Carleton County Bar Association. Mr. Lionel Choquette, K.C., the chairman, allowed no after luncheon speeches but treated the assembly to a succession of anecdotes, well-told and entertaining.

On Saturday evening the annual dinner at the Chateau Laurier was attended by some 425 members and guests. The Hon. Lester

B. Pearson, M.P., Secretary of State for External Affairs, addressed the meeting on "The Role of the United Nations in a Two Power World". He called for a re-appraisal of the proper function of the United Nations, and in the strong and lucid manner of a statesman reviewed the problem. A lawyer cannot fail to recognize the fundamental truths that bind us to the underlying theory of the United Nations. Mr. Pearson threw a clear light on the relation between the existing character and capabilities of the United Nations, and the hopes and expectations which the Charter once aroused. Following a brief review of events, he deduced some principles to guide our conduct in a "two-power world": to do what we can to maintain the principle of collective security; not to condemn an aggressor except upon clear impartial evidence and after exhausting conciliatory efforts; after condemnation to limit enforcement action to what is practicable without risking more serious consequences; and to accept our limitations, which is not immoral unless we premise our resolutions with an exaggerated statement of threatened action. Mr. Pearson touched on the application of these principles to the present Korean situation, and stressed his view that strength within the United Nations required free and independent expression and adherence to principles, which alone could bring about true unity of effort.

These notes would convey little of the feeling of the mid-winter meeting without mention of the Ontario Vice-President, Mr. Arthur Kelly, K.C., under whose efficient direction it was organized. Mr. Kelly modestly attributed the organization to Mr. J. R. Maclaren, K.C., and others, but credit must go to him as well. The arrangements were carried through with smoothness, and the meetings started and finished on time. Everyone returned home with the feeling that the meeting had been of real value and had clearly established the useful functions of the Association; those who did not attend missed a valuable experience.

Shakespeare and the Bench

Menenius. You know neither me, yourselves, nor any thing. You are ambitious for poor knaves' caps and legs: you wear out a good wholesome forenoon in hearing a cause between an orange-wife and a fossat-seller; and then re-journ the controversy of three-pence to a second day of audience. When you are hearing a matter between party and party, if you chance to be pinched with the colic, you make faces like mummers; set up the bloody flag against all patience; and, in roaring for a chamber-pot, dismiss the controversy bleeding, the more entangled by your hearing: all the peace you make in their cause is, calling both the parties knaves. You are a pair of strange ones. (William Shakespeare: *Coriolanus*. Act II, Scene 1)