

Canadian Machinery for the Advancement of Maritime Law*

During the past year there has been a number of significant developments in the organization of persons interested in maritime law in Canada. It is the purpose of this article to report them to the legal profession.

In the first place, the point should be made that organizational developments in the field of maritime law, as in many other fields, are the result of vital changes that have taken place and are continuing to take place in our national life. These are reflected not only in the pace and direction of public life, in the press, in public interest and in business, but in every lawyer's office. Two changes in particular are directly related to the establishment of the Maritime Law Section of the Canadian Bar Association and to the organization of The Canadian Maritime Law Association. These are the national status of Canada as a free and independent kingdom in the community of nations, and the fabulous growth in the amount and variety of Canadian trade.

The new status of Canada has led her to take part directly in organizations concerned with the legal rules governing maritime commerce among nations. Canada is asked for her opinion, is urged to take action, and has needed an organization, similar to those in other countries, to give voice to the views of persons who are interested or engaged in Canada in maritime trade. The oldest of these organizations is the Comité Maritime International, with which the Canadian Maritime Law Association will be particularly concerned. Other international organizations in related work are the International Law Commission of the United Nations and the International Law Association.

The growth in Canada's trade has led to the development of many more agencies of trade in Canada and to a vast increase in the importance and number of ships, docks, shipments, traders, insurance brokers, adjusters and everything concerned in maritime

* Prepared for the Canadian Bar Review by Mr. Peter Wright of Toronto, who took a leading part in the formation of both the Maritime Law Section and the Canadian Maritime Law Association.

trade. The Canadian International Trade Fair is a symbol of this development.

Thus it may be said that there has developed a need for common action and mutual understanding in this field in Canada. Needs of this kind in Canada always imply organization because of the dispersion of the country and the disparity of many of its local interests. It is necessary in almost every case, and sometimes with great difficulty, to form national bodies that can speak authoritatively on matters of common interest and give national expression to important local qualifications. In maritime law these needs in Canada have recently been met by two organizations, the Maritime Law Section of the Canadian Bar Association and the Canadian Maritime Law Association.

The Maritime Law Section of the Canadian Bar Association

There is a perverse joy, or a wry humour, in the sight of the bald headed barber, the unpainted home of the decorator, or the outhouse of the plumber. Humourists in other professions are afforded a similar joy by contemplating the constitution of the Canadian Bar Association and the efforts and arguments of its members over it. It has, of course, other merits than those of the battlefield, and one of them is the procedure by which members may be authorized to form themselves into sections dealing with particular branches of law.

In May 1951, after some preliminary work by members of the profession, the then president of the Canadian Bar Association, Mr. E. Gordon Gowling, Q.C., of Ottawa, appointed a special committee of the Association to consider matters pertaining to maritime law. As a result of the appointment, a meeting was called during the annual meeting of the Association held in Toronto in September 1951, at which the thirty-five persons who attended proceeded to organize themselves as a Maritime Law Section of the Association, with the approval of the Council. Representatives from every province have been authorized and provincial subsections formed in Nova Scotia, New Brunswick, Quebec, Ontario and British Columbia. These have met during the year and are preparing papers for discussion at the next meeting of the section during the annual meeting of the Association to be held in Vancouver in September 1952. This work has gone forward under the chairmanship of the Hon. C. J. Burchell, P.C., Q.C., who kindly consented to undertake the initial responsibility and who has devoted himself to it unceasingly. The activity and experience of the first year have amply justified the organization of the section,

which seeks to include within its numbers all lawyers concerned with problems of maritime law in Canada. Its function is to study Canadian maritime law and to express the views of the members of the Association specially interested. Some of these problems will be discussed later.

At present the directing committee of the section is composed of the Honourable C. J. Burchell, P.C., Q.C., Halifax, chairman, and J. I. Bird, Vancouver, secretary. Newfoundland is represented by P. J. Lewis, Q.C., Prince Edward Island by the Hon. W. E. Darby, Q.C., Nova Scotia by His Honour V. J. Pottier, D.J.A., New Brunswick by Colin B. Mackay, Quebec by R. C. Holden, Q.C., Ontario by Peter Wright, Manitoba by A. H. Warner, Q.C., Saskatchewan by H. W. Pope, Q.C., and Alberta by S. Bruce Smith, Q.C.

The Canadian Maritime Law Association

At the organization meeting of the Maritime Law Section of the Canadian Bar Association held in September 1951 a resolution was passed that the newly formed section "should promote the formation of a Canadian Maritime Law Association", and this project was referred to a committee composed of Mr. Burchell, Mr. Léon Lalonde of Montreal and Mr. Peter Wright of Toronto. The committee prepared a proposal which set out the existing situation with regard to other national associations and the Comité Maritime International as follows:

There exist in most maritime countries Maritime Law Associations which are members of the Comité Maritime International. The Comité meets every two years and representatives of the national associations attend to discuss conventions, treaties and understandings in connection with the rules and law governing maritime transport throughout the world. These meetings have led to the adoption of the collision regulations, the convention on assistance and salvage at sea, the Hague rules relating to bills of lading, revisions in 1924 and 1950 of the York-Antwerp rules on general average, and similar international agreements dealing with important practical matters affecting all maritime commerce. When the terms of an agreement have been reached at meetings of the Comité, they are submitted to a diplomatic conference convened by the Belgian Government. The secretariat of the Comité is in Antwerp. Leading associations are the British Maritime Law Association and the Maritime Law Association of the United States. Canada has no national association and has had no representation in the Comité. The British association is constituted largely by the representatives of interested bodies, such as Lloyd's Underwriters Association, Association of Average Adjusters, Chamber of Shipping of the United Kingdom, Federation of British Industries, Association of British Chambers of Commerce, Protection and Indemnity Associations, the Law Society and a number of similar bodies.

On the other hand, the American association is composed of individual members, of whom 90% are lawyers and 10% are non-lawyers, *e.g.* underwriters, average adjusters.

The proposal then referred to the work of the late Mr. T. W. Waugh of Montreal in the formation of a Canadian association and to the approval of the Maritime Law Section of the Canadian Bar Association. It pointed out that the course of discussion at the section meeting favoured an association on the British model representing the various interests concerned with maritime trade in Canada. Those invited originally to become constituent members were: Association of Marine Underwriters of British Columbia, Canadian Bankers Association, Canadian Bar Association, Canadian Board of Marine Underwriters, Canadian Chamber of Commerce, Canadian Exporters Association, Canadian Importers and Traders Association, Inc., Canadian Manufacturers Association, Dominion Marine Association, Shipping Federation of Canada, Inc., Vancouver Chamber of Shipping. Of these all but the Canadian Bankers Association and the Association of Marine Underwriters of British Columbia are constituent members of the Canadian Maritime Law Association.

An organization meeting was held in Montreal on December 5th, 1951, at which all the constituent members were represented, together with some members of the bar and others who were prepared to become associate members. A constitution was adopted, which provided that the objects and purposes of the Association are to:

- (a) promote the study and the advancement of maritime law and its administration in Canada;
- (b) promote and consider with other associations proposals for the unification of the maritime law and practice of different nations;
- (c) afford opportunities for the discussion and consideration of matters of interest to members of the Association and to undertake or to assist in the preparation and promotion of agreements and arrangements in respect of such matters;
- (d) do all such other lawful things as are incidental to or conducive to the attainment of the other objects or of any of them.

There are two classes of regular members, constituent members, with voting power, and associate members, who are "any person, association, society or body corporate resident in Canada interested in the objects of the Association and who may be elected as such at the general meeting of the Association". Only the officers of the Association and the representatives of the constituent mem-

bers are entitled to vote. Honorary memberships are authorized for persons "who may render special services in the advancement of the objects of the Association". The officers, together with not more than six other members or representatives of constituent members, are to form the Executive Committee. In general the constitution of the British Maritime Law Association was followed.

Since its organization the Association has applied for membership in the Comité Maritime International, and the executive has dealt with a number of matters, including arbitration in salvage and collision cases and the draft Naples Convention on the arrest of seagoing ships, and has established friendly relations with the Maritime Law Association of the United States. The first annual meeting of the Canadian Maritime Law Association was held in Montreal on May 23rd, 1952, and the following officers were elected: President - Honourable C. J. Burchell, P.C., Q.C.; Vice-Presidents - Honourable Mr. Justice J. V. Clyne and Mr. A. L. Lawes (also chairman of Executive Committee); Honorary Treasurer - Mr. F. S. Symons; Honorary Secretary - Mr. L. Lalande. Six members of the Executive Committee were elected, and in the result there are four lawyers and seven non-lawyers conducting the affairs of the Association. The Canadian Bar Association is represented officially by Mr. R. C. Holden, Q.C., of Montreal. There are seventeen associate members. Applications for membership may be made to the Honorary Secretary, Mr. Léon Lalande, 410 St. Nicholas Street, Montreal, Que.

A special general meeting of the Canadian Maritime Law Association will be held in Vancouver during the first week of September 1952 at the same time as the meeting of the Canadian Bar Association. A matter for discussion at that meeting will be the draft Naples Convention on Arrest of Ships.

When the Canadian association is admitted to the Comité Maritime International an important phase of its work will begin. The great practical work of the Comité is to prepare and advance uniform codes of law on matters affecting maritime trade. It has achieved remarkable success. The status of Canada and its increasing activity in international and trade affairs require that she should have a voice in the formulation of international codes and should express an informed opinion on those already in existence. The Canadian association can help to discharge this responsibility and as such its organization has been welcomed by the Department of External Affairs.

Comité Maritime International

The heart and soul of effective international co-operation in maritime law has been the Comité Maritime International. It was organized in Brussels in 1897 and its objects are to: (a) further by conferences, publications and divers works the unification of maritime law; (b) encourage the creation of national associations for the unification of maritime law; (c) maintain between these associations regular communication and united action. The Comité is composed of what are called titular members and of delegates from national associations. The titular members are the founding members, together with the persons elected by the Comité to fill a vacancy on the death of any founding member. There are about one hundred titular members, including representatives from most of the maritime countries of the world. Represented on the Comité are the national associations of the Argentine Republic, Belgium, Denmark, France, Great Britain, Greece, Italy, The Netherlands, Norway, Finland, Portugal, Sweden and the United States.

Every two years an international conference of the Comité has been held. Through the national associations recommendations for unification of maritime law are worked out. These are discussed and passed on at the conferences of the Comité and, if approved, are forwarded to the Belgium Government. That government distributes the recommendations to all countries, with the suggestion that a convention should be held to consider the recommendations. A diplomatic conference may then be held and if agreement is reached the recommendations may be brought into force in the approving countries by legislation. The general character of the work of the Comité was described by its secretary on its fiftieth anniversary in 1947:

Limiting its efforts to the realm of the sea, carefully measuring its objects the International Maritime Committee also had a peculiar structure: at its basis the national associations, grouping in every maritime country prominent personalities of business and law circles, labouring at the elaboration of law texts, always anxious to conciliate national and universal interests; at the top: a central organization (the International Maritime Committee) assembling and confronting the reports of the associations, inciting their labours, convening at regular intervals the delegates to international conferences where they frame draft-conventions to be submitted to the Belgian Government in order to be referred to the Diplomatic Conferences convened periodically in Brussels. In this manner, the drafts become international treaties and often are even substituted to the national and not seldom discordant laws of the various countries, thus realizing uniformity on the international as well as on the national plane.

As to the special character of the work, which proved the source of its success, it could not be defined better than by him who has been for forty years its animator [Louis Franck, a Belgian lawyer]:

'It is in order to overcome the numerous resistances, to make away with the national peculiarities, in order not to solve by means of abstract and theoretical solutions, but to do so in accordance with the requirements of practice, so as to have the ear of parliaments, that we thought fit to appeal not only to lawyers interested in questions of maritime law, but to the very parties who have to undergo in their interests and their daily cares, the consequences of good or bad laws. We have considered that in our work, the shipowner, the merchant, the underwriter, the average adjuster, the banker, the parties directly interested should have the leading part; that the task of the lawyer was to discern what in this maritime community was the general feeling, which, among these divergent interests, is common to all; to discern also which of the various solutions is the best; to contribute to the common work his science and his experience, but that ultimately the lawyer had to hold the pen and that the man of practice should dictate the solution.'

This fruitful conception has always guided the labours of the International Maritime Committee and has yielded results unprecedented in the history of the unification of private law.

Many draft conventions have been prepared at conferences of the International Maritime Committee. Of these six have been adopted at diplomatic conferences:

1. The Convention on collision and salvage adopted on September 23rd, 1910. This convention was incorporated in the Maritime Conventions Act, R.S.C., 1927, c. 126, and is now found in sections 519(1), 532(4), 539, 640, 641, 642, 643, 646, 647 and 648 of the Canada Shipping Act, 1934.

2. The Convention on bills of lading, on August 25th, 1924. This convention has been adopted by most countries of the world, including the United States, the United Kingdom and all countries of the Commonwealth. In Canada it was embodied in the Water Carriage of Goods Act, 1936. The convention was the immediate result of the meeting of the International Law Association held at The Hague in September 1921, which formulated and approved the body of rules known as "The Hague Rules 1921", but its work followed closely on the work of the Antwerp Conference of the Committee held in July 1921.

3. Convention on limitation of shipowners' liability, August 25th, 1924. This convention has been adopted by about twelve countries only, but other countries have it under consideration.

4. Convention on maritime mortgages, April 10th, 1926. This has been adopted by about fifteen countries and others have it under consideration.

5. Convention on maritime liens, also on April 19th, 1926. It

has been adopted by about fifteen countries and others are still considering it.

6. Immunity of State-owned ships, April 10th, 1926. This has been adopted by about fifteen countries.

In addition to the six listed achievements, the work of the Comité Maritime International led to the revision of the York-Antwerp Rules at the Amsterdam Conference in 1949, which gave rise to the York-Antwerp Rules 1950. This was a signal triumph because for the first time in history the United States of America agreed to accept an international code on general average. Then the British Maritime Law Association initiated a gold clause agreement in respect of the limitation of the carrier's liability, negotiated between shipowners and cargo interests, to which many continental interests have become parties. Finally, in Naples in 1951 a new international convention on the arrest of ships was discussed. It was submitted to a diplomatic conference in Brussels in May of 1952, at which the Canadian government was represented by an observer.

One of the basic objects of the Canadian Maritime Law Association is to perform Canada's part in the work of the Comité Maritime International and to be in a position to submit to the Canadian government advice, material and opinions on the conventions considered at diplomatic conferences.

The Tasks of the New Organizations

In maritime law there are more common sense and more uncommon law than in any other branch of law. The common sense comes from the fact that the world's trade has been organized and developed by businessmen interested in the most expeditious and sensible way of carrying on their businesses, having regard to conditions as they exist. The uncommon law has come from the ancient jurisdiction of the admiralty, the international character of the relationships arising in maritime commerce, and the fact that most of the questions involve the liability of underwriters on both sides, who are disposed to settle questions on advice as practical matters rather than in costly litigation. In Canada the situation is complicated by the constitutional division between the Dominion and the provinces and by the elimination in the Statute of Westminster, 1931, of the power of the parliament of Great Britain to legislate on maritime matters for the British Commonwealth.

These underlying factors create groups of problems which call

or will call for solution. These groups may be classified for convenience as follows:

(a) problems which arise because of the lack of uniformity among the laws of the maritime nations, and notably between the laws of Canada and the United States, and Canada and continental countries;

(b) problems which arise because of the comparatively small amount of admiralty litigation and the fact that neither the statutes nor the rules are sufficiently attuned to the modern problems which must come before the courts;

(c) problems of particular application to Canada raised by the crowded and exceptional commerce on the Great Lakes, by the recreational use of inland waters, by the use of water transport in the Canadian North, and by the severe climatic differences between seasons.

Within these general classes there are a number of specific problems which have arisen or are arising, and which will be engaging the attention of one or both of the new organizations. Some of these are:

(1) the support of a modern and authoritative statement of the jurisdiction and doctrines of admiralty law in Canada, the last work of authority being Mayer's *Admiralty Law and Practice in Canada*, published in 1916;

(2) the support and development of legal education in the field of maritime law;

(3) the adaptation of Canadian admiralty jurisdiction to the problems created by Canada's federal structure, so that the Exchequer Court of Canada may enjoy an admiralty jurisdiction at least as ample as the corresponding courts in Great Britain or the United States of America;

(4) practical steps leading to a reform and revision of the *Canada Shipping Act, 1934*, on a basis which would maintain the general uniformity of the shipping laws of all Commonwealth countries;

(5) the revision and reform of the Admiralty Rules of the Exchequer Court of Canada and of the present appellate procedure;

(6) practical measures which would lead to the determination of matters of maritime trade, particularly counterclaims and set-offs, in one court in Canada;

(7) a more modern definition of the position of the Crown with regard to salvage, limitation of liability, and many other important aspects of admiralty jurisdiction;

(8) the clarification of the proper law applicable to loss and damage involving the choice of law of two or more countries;

(9) the development of a common code of maritime law and procedure in the Great Lakes and other waters where national jurisdictions meet and conflict;

(10) the application to Canada of the international conventions, past and future, relating to maritime commerce;

(11) the maintenance of close and harmonious relations with the Maritime Law Associations of other countries;

(12) the creation or extension of admiralty districts to cover in the aggregate all the navigable and navigated waters of Canada.

These tasks lie ahead. Many of them must be completed if the maritime law of Canada is to keep pace with its maritime trade. By the organization of the Maritime Law Section and the Canadian Maritime Law Association the means have been provided. The development of Canada implies not only that Canadians enjoy rights and privileges but that there are duties and responsibilities they must discharge.

Annuities of Judges

22. (1) The Governor in Council may grant to a judge of a superior court who has continued in office as such for at least fifteen years or is afflicted with some permanent infirmity disabling him from the due execution of his office, if he resigns his office, an annuity not exceeding two-thirds of the salary annexed to the office held by him at the time of his resignation, to commence immediately after his resignation and to continue thenceforth during his natural life.

(2) Local judges in Admiralty of the Exchequer Court shall be deemed to be judges of a superior court, within the meaning of subsection one of this section.

24. The Governor in Council may grant to

- (a) a judge of a county court or the Circuit Court of the District of Montreal who has continued in office as such for at least twenty-five years or is afflicted with some permanent infirmity disabling him from the due execution of his office, if he resigns his office, or

- (b) a judge of a county court who is compulsorily retired pursuant to subsection one of section twenty-five,

an annuity not exceeding two-thirds of the salary annexed to the office held by him at the time of his resignation or retirement, to commence immediately after his resignation or retirement and to continue thenceforth during his natural life.

28. No annuity shall be granted under subsection one of section twenty-two or under section twenty-four of this Act unless the Governor in Council is of opinion that it is in the public interest that such judge should resign his office. (The Judges Act, 1946)