

The 1953 Mid-Winter Meeting of Council*

The Mid-Winter Meeting of Council took place at the General Brock Hotel at Niagara Falls on February 23rd and 24th, 1953, in weather unusually warm and sunny for February and in a spirit marked by an equal degree of cordiality and co-operativeness among members from every province. The business of the meeting was dealt with rapidly — indeed it was completed in two instead of the three days allotted — and disclosed few of the cleavages of opinion that have in the past led not only to lengthy but, upon occasion, to apparently fruitless discussions. The formal social activities, in which wives were included, consisted of a dinner tendered by the Government of Ontario, presided over (in the absence of Mr. Porter, the Attorney-General) by Mr. W. K. Warrender, Minister of Planning and Development, a luncheon by the Law Society of Upper Canada with Mr. C. F. H. Carson, the treasurer, in the chair, and a dinner given by the Association itself, under the chairmanship of the president, Mr. André Taschereau, not to mention cocktail parties at which members were the guests of the president and of the Ontario members of Council.

Speeches at these functions were conducted in a manner which, in this reporter's opinion at least, should commend itself to those responsible for the speaking programmes at annual meetings. There was no speech at the luncheon and the dinners saw a return to the concept of the "after-dinner speech". After a day of meetings and a generous meal only the most hardy wish to listen to ponderous and protracted pronouncements, so that Mr. Warrender and Mr. John A. MacAulay, the Dominion Vice-President, who spoke at the two dinners, respectively, left their listeners wishing for more, which is a fairly unusual state of affairs at bar association dinners, love of the sound of one's own voice being, no doubt, an understandable occupational disease of our profession. The meeting also made the happy discovery of a professional colleague, relatively new to the Association, who is the possessor of a most refreshing

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manner of speech, in the person of the vice-president for Newfoundland, Mr. Charles E. Hunt of St. John's. Mr. Hunt moved a vote of thanks to Mr. MacAulay at the Association's dinner and also presented the report from his province at one of the business sessions. It is hoped that he will continue to be heard from.

Mr. D. Park Jamieson of Sarnia, Ontario, appearing in the triple rôle of honorary treasurer, chairman of the Finance Committee and chairman of a special committee on the organization and management of the Association and the Canadian Bar Review, led off the business activities with his reports. Largely because of the gratifying, and to some surprising, increase in receipts from advertising in the Review the Association broke almost exactly even in 1952, instead of having a deficit of over \$6,000 as had been estimated. Due to this increase in advertising and the recently authorized increase in membership fees (which, it was reported, has so far had no adverse affect upon the number of members), the 1953 budget shows an anticipated surplus of several thousand dollars. It was proposed that this surplus be used in making grants to the provincial vice-presidents for the promotion of the interests of the Association in the provinces.

Discussion of the Canadian Bar Review was introduced by the editor, Mr. Nicholls, followed by Mr. Walter S. Johnson, chairman of the Editorial Advisory Board, and Mr. Claude S. Richardson, chairman of the Canadian Bar Review Committee. The editor reported upon the acquisition of a new and more readable type face (in which these words, no doubt, appear) and plans for other improvements in the format. He also disclosed that the important post of editorial assistant is now vacant and invited applications on behalf of persons possessing the necessary qualifications. He outlined the policy of enlarging the scope of the Case and Comment section of the Review from its present size of four or five comments to seven, eight or even more in the hope of making it of still greater use to the profession. This section has been made one of the responsibilities of the editorial assistant and contributions to it, as well as to other departments of the Review, are, as always, solicited from practitioners with something to say. Mr. Richardson, who himself deserves great credit for the healthy increase in advertising revenue, commended the editor and expressed the pride taken by the profession in the Review as one of the finest legal periodicals in the English language.

Reports by the provincial vice-presidents indicated that energetic and enthusiastic leadership continues in most, if not all, the

provincial sections of the Association. The Alberta section, through Mr. Howard T. Emery, proposed a rebate of a proportion of the membership fee where 90% of the active practising lawyers in a province are members of the Association. This provoked some divergent views on how to find a half-way house between the rebate for 100% membership now given British Columbia and the *laissez-faire* system of recruiting members elsewhere. Although the concensus seemed to be that no effort should be spared to encourage full membership, so that the Association may one day speak with authority for the entire profession throughout Canada, the Alberta proposal was referred to the Finance Committee for further consideration.

None of the other provincial reports provoked debate, but the British Columbia report, given by Mr. Walter S. Owen, took most of the honours for its breadth of interest and obvious care in preparation. The part dealing with taxation perhaps deserves particular mention. It noted that the editing of Tax Cases is unsatisfactory because too many cases dealing solely with questions of fact and too many stating no more than well-established rules of law are cluttering the reports. A committee on the Income Tax Appeal Board had made recommendations (subsequently approved by the British Columbia members of Council), and these merit full quotation here:

The immediate and urgent reform required in the constitution of the Board is the appointment of its members by the Crown upon the advice of the Minister of Justice and during their good behaviour rather than as at present by the Minister of National Revenue during his pleasure. National decency requires this change and no person who has given the least consideration to the history of judicial appointments or to the bases of our constitution will think it a proper answer to point to the personal integrity of the members of the present Board. If the public is to respect the Board as a court of justice, and without such respect it will not endure, it must cease to appear as an administrative tribunal set up by the Department of National Revenue as a cheap halfway house to discourage progress from the tax collector to the court. Only by making its members independent of the will of the one party who appears before them on every hearing will this be done.

This committee has not had the advantage of hearing from the committee considering the U.K. Commissioner Systems. Accordingly, it submits, as only a tentative opinion, that the members of the Board should be appointed from able members of the legal profession. The second recommendation shows that in your committee's opinion the Board should function as a court and not as an administrative tribunal. Its members then should act judicially and be trained in the law. It would trespass upon the ground of your committee first named to advance further into this matter. Suffice it to say that we do not

see much benefit to the country, or to deserving litigants, in a board limited to the finding of facts; nor do we think we possess in Canada that peculiarly English ability to 'make-do' which allows bishops to make laws for laymen, laymen to enact prayers for the clergy, and greengrocers, business men and country gentlemen to determine the tax liability of their compatriots.

In the course of his report as chairman of the Executive Committee, the president, Mr. André Taschereau, disclosed that the Association had been asked to name a representative on an advisory committee to plan a meeting of Commonwealth law societies in England for July 1955. Although it appeared that the meeting is to be of individuals and not of the various law societies and associations of the Commonwealth (so that persons attending will represent no one but themselves), a good deal of interest was aroused by Mr. Taschereau's announcement. An old suggestion was revived in subsequent discussion when it was asked whether the annual meeting of the Association in 1955 might not be held in England in conjunction with the projected meeting of the Commonwealth law societies.

Although it is freely admitted that the sections of the Association with their many activities provide the means for the bulk of its accomplishments, there are conflicting opinions upon the proper policy for the creation of new sections. Some hold the view that there are already enough, or even too many, sections and that any increase will of necessity lessen the strength and effectiveness of existing ones. Much can be said for this opinion. Opposed to it is the idea that, once sufficient interest and support can be mustered for a new section, it should be set up forthwith. The latter approach was evident in the discussion of a proposed new section on mines and minerals for, although under the existing by-laws of the Association mining law is specifically allocated to the Commercial Law Section, there were those who did not hesitate to support the creation of an entirely new section. The whisper of a suggestion was even heard that there be a section on petroleum and natural gas law. One imagines that the *reductio ad absurdum* might be (in the light of the recent decision of the Privy Council in *Borys v. Canadian Pacific Railway and Imperial Oil Limited*) a separate section for petroleum and another one for natural gas. For the time being a separate section for mines and minerals was not authorized.

The matter raised at the meeting with perhaps the most far-reaching potentialities, as concerning the jurisprudence of a country that it is now our conceit to consider fully emancipated, was

whether the Supreme Court of Canada should adopt the practice of the Judicial Committee of the Privy Council and deliver only one judgment in each case. The decision of the meeting was that a special committee be appointed by the president to study the question and make recommendations to the next annual meeting. The report to be brought in by the committee will be awaited with interest, but one ventures the possibly irreverent speculation whether it may not contain majority and minority findings.

Mr. Edson L. Haines of Toronto proposed that consideration be given to encouraging participation in Association activities by students either through the formation of a Law Student Association or of a new class of student membership in the Association. The special student subscription rate that has for some years been offered by the Canadian Bar Review already shows what benefits can be conferred in this direction, and the possibilities of good for the student as well as the Association in his suggestion would seem to be almost unlimited. The proposal is being studied and a detailed plan may be expected at the coming annual meeting in Quebec City.

A discussion of legal aid showed that it is not an easy topic upon which to formulate a basic policy for all Canada, or even for a single province. It is a problem that chiefly besets industrial and urban centres, and in such places it often demands co-operation from the entire local bar. Agricultural and other rural areas are not affected in the same way and here it seems usually to be found that the traditional methods of dealing with needy cases through the public spirit of individual practitioners is entirely adequate. A great deal has been accomplished in recent years in large centres, which has not been without its benefit to the profession at large through the favourable publicity that has followed. Various proposals were made: to establish a section on legal aid, to transfer the responsibilities of the existing committee on legal aid to the Special Committee on Public Relations (although there are other sections that would appear to be equally interested) and even to abolish the existing committee.

Mr. Haines also reported as chairman of the special Medico-Legal Committee that groups are now organized and operating regularly in both Winnipeg and Toronto, and he read some specimen questions for discussion by a panel of lawyers and doctors at a coming meeting of the Toronto group.

The Conference of Governing Bodies of the Legal Profession in Canada had met as usual immediately before the Council meet-

ing and Mr. J. C. Miller of Portage la Prairie, first vice-president of the Conference, made a brief statement upon two topics which had engaged the attention of that body and upon each of which it had expressed a unanimous opinion. The first concerned uniform standards of transfer of barristers and students between provinces, a matter that has been under consideration for many years. The proposals were briefly reported in the daily press at the time and are no doubt now being considered in detail by the various law societies. Maximum requirements for transfer, where an applicant has been engaged in active practice for three years or more in another province, are that he should pass certain examinations and pay a transfer fee of \$250, in addition to the usual admission fee. Where the applicant has been practising for less than three years, it is recommended that he pay only the admission fee and serve under articles for at least six months in the admitting province, with the proviso that where the admitting province requires more than six months service under articles, a credit be given towards service in excess of six months equivalent either to the time spent under articles or in practice in the other province. The second recommendation involved occasional appearances of barristers in particular matters in courts of provinces in which they are not members of the bar. It was proposed that in such cases no fee be levied by the law society of the province involved. It will be interesting to see if these recommendations are implemented by the various provinces and, if so, what are the practical consequences.

This report should not end without expressing the appreciation of all present for the excellent conduct of and arrangements for the meeting. Mr. Taschereau made a most efficient chairman and delightful host, while to Mr. Merriam, the secretary-treasurer, and his able staff from Ottawa goes credit for well laid plans that ensured smooth and apparently effortless execution. Since the locale of the meeting was Ontario, a large share of the preparatory work fell upon Mr. Cecil W. Robinson, of Hamilton, the Ontario vice-president, and equal credit is due him. It is to be hoped that such fruits as may be borne by the deliberations at Niagara Falls prove to be no less acceptable than the surroundings out of which they arose.

It is now held by many that an ultimate theory of values cannot be found. We are told that it is unscientific to seek to formulate values. They are held to be purely subjective. Objective valuations cannot be reached. I dislike to surrender to this give-it-up philosophy. (Roscoe Pound, *Justice according to Law*, Green Foundation Lectures at Westminster College, 1950)