

The Thirty-fifth Annual Meeting of the Canadian Bar Association*

Almost exactly three hundred years to the week since the French made peace with the Iroquois at Quebec, the Canadian Bar Association held, during the week of September 7th to 12th, 1953, its thirty-fifth annual meeting at the Ancient Capital. Although there was no conscious commemoration of this tercentenary, the great number of persons attending the meeting, in all eleven hundred and eighty-nine, might have led our gracious hosts to believe that a new, though it is hoped somewhat less terrifying, invasion had befallen them. But the life of a lawyer is such that he must be able, without notice, to turn quickly from the light to the serious, from play to work. This he did in abundance at this year's annual meeting of the Association. Many and serious were the issues presented to him for his study and opinion.

The highlights of the opening session on September 9th were the vigorous, yet gracious, words of welcome from the Prime Minister of the Province of Quebec, Hon. Maurice Duplessis, Q.C., and the presidential address by Mr. André Taschereau, Q.C., whose treatment of the origins of Quebec law gave fresh impetus to the increasing realization among jurists that the province of Quebec, with its blend of law sources, British, Continental and American, is an ideal forum for the study of comparative law. As if to personify this theme, the Association's guests on the platform with the president included distinguished representatives from England, France and the United States, in the persons of the Rt. Hon. Lord Simonds, the Lord High Chancellor, Me Georges Chresteil, Bâtonnier of the Paris Bar, and Mr. Robert G. Storey, Immediate Past President of the American Bar Association. Another friend, and an honorary member of the Association, Sir Godfrey Russell Vick, Q.C., was also present and addressed the opening session.

Of the reports submitted at this session, special note should be

*This account has been specially prepared for the Review by Mr. J. Brendan O'Connor, of Robertson, Abbott, Brierley and O'Connor, Montreal, and the Editor is grateful to him for his collaboration.

taken of the statement of the Conference of Commissioners on Uniformity of Legislation in Canada. In accordance with its tradition, the Conference met and deliberated during the week immediately preceding the Association's annual meeting and the progress of its work was outlined at the opening session by Mr. G. S. Rutherford, Q.C., the Conference's president. The fact that the Reciprocal Enforcement of Maintenance Orders Act, sponsored by this body, has now been adopted in nine provinces and in the Northwest Territories is alone evidence of the value and necessity of the Conference's work. Among the many other subjects which have been receiving the Conference's attention and study are: uniformity in the rules of the road, the Uniform Wills Act, uniformity of laws on commercial paper, and the Juvenile Delinquents Act. Recommendations for amendments to the Prisons and Reformatories Act, the Lord's Day Act, the Visiting Forces Act and the proposed new Criminal Code have been forwarded to the Department of Justice.

The most significant development within the Association during the past few years has been the marked increase in the work accomplished by the provincial sub-sections. Many of these, active throughout the year, are now making real contributions to the value and efficacy of the Association. The results of the year's work of the provincial sub-sections were reflected in the quality of the papers presented to the sections at the annual meeting and the large attendance at their sessions. No longer is the main attraction at the annual meeting the entertainment furnished by the addresses of distinguished guest speakers. Although these continue to be given, they probably must be of an "after-dinner" variety in view of the mixed audience to whom they are directed. The members, who are becoming increasingly eager to participate in sectional activities, having as often as not taken some part in the deliberations of one or other of the provincial sub-sections, have shown where their interest lies by their strong attendance at section meetings.

In the Section on the Administration of Civil Justice a matter of high national importance was raised. At its annual section meeting Professor Gilbert D. Kennedy of the University of British Columbia spoke on the amendment of the Canadian Constitution. Stemming from the discussion on this topic, a resolution was later passed at a plenary session of the Association calling for the appointment of a committee to consider the advisability of constitutional changes in Canada and to make such specific recommendations as it thinks proper, among other things as to the method of

implementing any alterations it may recommend. It will be noted that the resolution is double-barrelled, attacking the problem from the point of view of both substance and procedure. No one can seriously question the propriety of the national association of Canadian lawyers studying and speaking on constitutional changes in Canada and the report from the committee to be appointed will be awaited with great interest. Although the thorny problem of constitutional amendment must, of necessity, be aired from the political platform before any final decision is taken, the nation will have been rendered a great service if, in due course, the Association can offer a thorough preliminary study.

Another aspect of law reform was brought forcibly to the Association's attention by this section. Through it, members have asked a question which has almost become a perennial at annual meetings, but which is still a fair question, and still largely unanswered. Not unmindful of previous frustrations, members ask questions of this kind: What happens to all our resolutions recommending improvements in the law to the proper officers in the various governments? In some cases we see that action has been taken, but what of the others? Are they simply pigeon-holed? It is clear that an efficient system for following up resolutions should be put into effect and, with this in mind, the Association approved a recommendation that efforts be made to institute regular consultations between the law officers of the federal and provincial governments and the sections of the Association and that, where considered appropriate, a law officer or officers be included in the membership of sections and provincial sub-sections. Whether this recommendation is sufficiently detailed and specific to achieve the desired purpose remains to be seen.

Mr. Jacques Viau, Q.C., of Montreal, also addressed the section on the subject of the delegation of judicial power to administrative bodies in the federal and provincial fields, a topic which has been assigned to the provincial sub-sections for study during the coming year. Concurrent studies on the course of this development in Canada are being carried on by the Survey of the Legal Profession and the findings of both bodies should provide valuable data.

Showing the results of a very active year, the Section on the Administration of Criminal Justice presented no less than twenty-two resolutions. Most of these consisted of suggested amendments to the Juvenile Delinquents Act, the revision of which is understood to be imminent. The Minister of Justice and his advisers should be greatly assisted in their work of revision by the many

improvements suggested in the wording and content of this statute. A further resolution suggesting an amendment to the Canada Evidence Act, to restrict the present practice in Canada of permitting questions to be put to an accused tending to show previous convictions or bad character, provoked considerable discussion at the plenary session. A majority of the members felt that under the present rule the accused could not be assured of a fair trial, and approved the resolution, which would be an adaptation of the English practice. Mr. A. J. MacLeod, of the Department of Justice, Ottawa, reviewed for the section the new version of the Criminal Code.

The Civil Liberties Section is the special watch-dog of the Association. Here, any legislation or want of legislation found to be a trammel on Canadians is considered and reported on. At its meeting this year Professor F. R. Scott, of McGill, developed a point which he had already made in these pages.¹ It involves the extent to which the provincial legislative power may control the exercise of the right of discussion in public meeting and through the press, circulars or other media. Instances were given where municipal by-laws had been used to control the distribution of circulars issued by political parties before the last federal elections. All the facets of this problem have yet to be polished by our courts. Three of the six judges of the Supreme Court of Canada sitting in the *Alberta Press* case expressly declined to give their opinion on the full issue and that court's recent judgment, yet to be reported, in *Saumur v. The City of Quebec*, involving the Jehovah's Witnesses, with dissents commanding notice, can hardly be regarded as a definitive statement on the distribution of legislative power in Canada so far as the first freedom is concerned. The members will look forward to the recommendations which a committee appointed from this section has been asked to make at its next meeting. At that time another committee will report on the restrictions on Canadian citizens arising out of the present wording of the Immigration Act. This committee, headed by Mr. John H. McDonald of Ottawa, has already submitted to the section the results of its first year's study of the statute.

The Section on Commercial Law is continuing to study the draft acts on assignments of book debts, bills of sale, bulk sales and conditional sales referred to it by the Conference of Commissioners on Uniformity of Legislation. The following papers were delivered at the meeting: "Various Aspects of the Quebec Mining

¹ (1953), 31 Can. Bar Rev. 591.

Act and Comparison with Other Provincial Mining Acts", by Mr. Paul Ouimet of Montreal; "Important Changes Contemplated by the New Ontario Companies Act", by Mr. A. Kelso Roberts, Q.C., of Toronto; and "Legal Problems in Secured Aircraft Financing", by Mr. W. R. Noble of Montreal.

A mere enumeration of the papers prepared for delivery to the Comparative Law Section is sufficient to indicate the quickened interest of the Canadian lawyers in this subject. They were: "A Comparative Study of Causes for Annulment of Marriage", by Mr. Paul Fontaine, Q.C., Assistant Deputy-Minister of Justice, Ottawa; "Anti-Monopoly Legislation", by Professor W. Friedmann, School of Law, University of Toronto; "Special Phases of Notarial Practice in the Province of Quebec, by Mr. Georges Sylvestre, President of the Board of Notaries of the Province of Quebec; "A Comparative Survey of Criminal Legislation Relating to Juvenile Offenders", by Miss Marguerite Choquette, LL.D., of Quebec; "The Notion of Public Order and Good Morals in Private Law", a report on behalf of the British Columbia Sub-section, by R. A. Wootton, Victoria; "Death as a Cause of Action", a report on behalf of the Manitoba Sub-section, with the co-operation of Mr. André Nadeau on the civil law, by Rowland K. Williams, Winnipeg; a report on behalf of the Ontario Sub-section, by Professor Bora Laskin, of the School of Law, University of Toronto; "The Law of Contributory Negligence", a report of the Saskatchewan Sub-section, by E. C. Leslie, Q.C., of Regina. This section has had its ups and downs in the history of the Association and it is pleasant to be able to record the growing realization of the importance of its work among both practitioners and scholars.

Of the resolutions brought forward by the Section on Industrial Relations, none provided greater discussion, then or subsequently in the press, than the one which was passed, on division, in these terms:

Resolved that the Canadian Bar Association recommends that legislation be enacted by the Parliament of Canada and by the respective provincial legislatures to enable the Governor in Council or the appropriate Lieutenant-Governor in Council to withdraw the rights of strike and lockout and to substitute further compulsory binding arbitration in the case of any specific labour dispute where such authority considers that the health or safety of the general public would be placed in jeopardy.

Those who opposed this resolution urged that, although there should be a limitation on the right to strike in cases of extremity, it should be effected only by statute passed by the representatives

of the people. Some members considered that it was dangerous to transfer to the executive arm of government the power to decide whether a strike should be banned, fearing that such a power might be misused for political purposes. In any event, they urged, it ill-behoves the Association, which purports to combat the trend from government by law to government by administrative decree, to sponsor such a delegation of power. Most of the members, however, viewed the protection of the public as of paramount consideration and approved the resolution. The main difficulty of course, quite apart from the question whether restrictions on the right to strike should be a matter of parliamentary or executive action, is to decide when the safety and health of the people are in jeopardy, the recent "milk strike" in New York City being a case in point. The other resolutions dealing with industrial relations passed by the Association were:

Resolved that the Canadian Bar Association recommends that legislation be enacted by the Parliament of Canada and by the respective provincial legislatures to provide that a lawful strike or lockout may not be put into effect until after forty-eight hours written notice, specifying the time after which such strike or lockout will commence, has been given.

Resolved that the Canadian Bar Association recommends that legislation be enacted by the Parliament of Canada and by the respective provincial legislatures to provide that trade unions shall be legal entities and that the Industrial Relations Section should consider further and report upon the manner in which their rights and responsibilities may be defined and made effective.

Resolved that the Canadian Bar Association recommends that legislation be enacted by the Parliament of Canada and by the respective provincial legislatures to provide that picketing in support of a sympathetic or jurisdictional strike shall be unlawful and prohibited.

Resolved that the Canadian Bar Association recommends that legislation be enacted by the Parliament of Canada to provide that the only types of industry under federal jurisdiction for the purposes of labour relations should be those listed in section 91 of the B.N.A. Act and that undertakings declared to be for the general benefit of Canada should, for the purpose of wages, working conditions and industrial relations, be under provincial jurisdiction unless the declaration specifically provides otherwise.

If attendance is the criterion by which to judge the interest of members, the panel discussion sponsored by the Insurance Law Section held for them the most attraction. Well organized and effectively presented, the panel of five lawyers, each from a different province, under the chairmanship of Mr. Edson L. Haines, Q.C., of Toronto, considered fifteen separate problems arising in the practice of insurance law. These had previously been distributed to

the audience in the form of a printed questionnaire. By the variety of the problems dealt with, the interjections of the chairman and the interchange of views among the panel members, the close interest of the large audience was maintained throughout the session. It is expected that the content of the symposium will soon appear in the *Canadian Bar Review*. Although the panel discussion of legal topics is not a novel procedure, the success attained by the Insurance Law Section should lead other sections to make fuller use of the medium. It possesses many attractive features which are not found in individual papers, no matter how well prepared or effectively delivered they may be. At the ordinary meeting of the section, the provincial sub-sections were reported active throughout the year, having devoted a large part of their time to the consideration of recent decisions of the Supreme Court of Canada bearing on insurance law. Largely as a result of the interest shown in a paper delivered by Mr. John W. Graham, of Toronto, on beneficiaries under life insurance policies, a suggestion was made that a sub-section on life insurance should be formed. Mr. Louis Philippe Pigeon, Q.C., of Quebec, also addressed this section on automobile liability insurance.

The report of the Junior Bar Section indicates that the younger members are finding their niche in the Association's structure. Working separately or assisting directly in the senior sections and committees, the members of the Junior Bar Section are making known the viewpoint of the young lawyer. During the week of the meeting a Junior Bar luncheon was held at which Mr. John G. Higgins, Q.C., of St. John's, Newfoundland, was the guest speaker. Sir Godfrey Russell Vick, Q.C., also addressed the Junior Bar meeting on the conduct of advocates. Legal ethics was the subject of a resolution emanating from the section and later passed by the Association. It urges that instruction in legal ethics should form part of the curriculum of the law societies and law schools in Canada.

The Section on Legal Education and Training was the forum for some stimulating addresses. Dean W. C. J. Meredith, Q.C., of McGill University, Mr. D. Park Jamieson, Q.C., of Sarnia, Dean Horace E. Read of Dalhousie University, Professor Roger Courtois of the University of Montreal and Professor Marie-Louis Beaulieu, Q.C., of Laval University, all contributed ideas, not necessarily compatible, on the much discussed subject of legal education. The papers of Dean Meredith and Mr. Jamieson are published elsewhere in this issue and it will be interesting to learn what Mr. Justice I. C. Rand will have to say on the subject in the report it is

understood he is preparing for the Survey of the Legal Profession in Canada.

The youngest, but not the least active, of the sections is the Maritime Law Section. Already it has wrestled with the intricacies of an international convention (the Brussels Convention of May 10th, 1952, on the arrest of sea-going ships) and has weighed the changes that will be required in Canadian legislation upon its ratification, which the section urged. Its resolution of recommendation to this effect was passed by the Association, as well as one recommending amendments to the Canada Shipping Act to place the Crown in the same position as the subject with regard to the limitation of liability provisions. Among the papers prepared for delivery to this section was a report of the Manitoba Committee on "The Grain Trade in Canada", which dealt with grain movements up to and including the loading of the grain in vessels.

A major part of the Taxation Section's work continues to be carried on jointly with the accounting profession through the Joint Taxation Committee of the Canadian Tax Foundation. As an indication of the effectiveness of this approach to taxation problems, it was noted in the chairman's report that seventy per cent of the recommendations urged upon the federal government last February by the committee had been acted upon. One of the recommendations, which has yet to be accepted by the taxing authorities and which, if adopted by them, would remove a discrimination presently existing, is of personal interest to lawyers. This was the proposal that the Income Tax Act be amended to relieve the self-employed professional or business man by permitting in their cases the same deferred income taxation on contributions to pension and retirement plans as the salaried person now enjoys (if enjoyment can ever be associated with taxation). A renewal of this recommendation was strongly urged in one of the seven resolutions on taxation passed by the Association at the final plenary session.

We have not heard the end of the proposal that the Supreme Court of Canada should give one reasons for judgment only—and it is good that we haven't. The Association has not yet taken a position on this question, although the report presented to it by the special committee appointed to study the proposal stated that a practice on the part of the Supreme Court of Canada of delivering one reasons for judgment only would not find favour with the members of the Association. The finding is apparently the result of an informal canvass of members, but it does not enlighten the Association as to the opinion of the distinguished members of the

committee charged with the study of the subject. Council had the benefit of the views of the Chief Justice of Canada, who expressed himself in favour of the single-opinion proposal, and a thoughtful analysis of the subject has appeared in this Review.² The report has been referred back to the committee to consider whether a distinction should be made between civil and criminal cases, and it is hoped that the committee will take the opportunity of expressing its own considered view, irrespective of any public opinion poll it may have conducted.

In a report received from the Medico-Legal Committee, the main objective of which is to create a better understanding between the two professions, a disturbing problem arising from our trial procedure and expert evidence rules was emphasized. The report referred to the view of many physicians that medical testimony can be presented more efficiently before such administrative bodies as workmen's compensation boards than it can before a court of law. They urge that the spirit of controversy common in the courtroom is foreign to the rôle of a doctor, whose opinion, if disputed by another doctor, should be referred to a third medical man rather than to a judge or jury. The medical man's evidence must often be a judgment as to probability rather than a finding of fact and it is asserted that many reputable physicians are loath to appear as expert witnesses for fear that their credibility and reputation will be attacked. This problem has been referred for study to the Section on the Administration of Civil Justice, which has been asked to consider whether a partial solution could be found by the appointment of independent experts chosen by the court, who would confer with the experts for the parties. This should tend to reduce or even resolve differences of medical opinion.

Announcement was made at the meeting of the names of the prize winners in the Canadian Bar Association Essay Competition for 1953. The first prize, of \$750, was won by Professor W. Friedmann of the University of Toronto for his essay on "Stare Decisis at Common Law and under the Civil Code of Quebec",³ and Mr. C. W. Edwards, visiting lecturer in the Faculty of Law, University of British Columbia, was awarded the second prize, of \$375, for his essay on the same subject; no third prize was awarded this year. Both the prize-winning essays, the judges reported, were well writ-

² Edward McWhinney, *Judicial Concurrences and Dissents: A Comparative View of Opinion-writing in Final Appellate Tribunals* (1953), 31 Can. Bar Rev. 595.

³ This essay has since appeared as a leading article in the August-September issue of the Review (1953), 31 Can. Bar Rev. 723.

ten and showed originality of thought and a careful study of the relevant judgments and literature. The number of contestants was again small: only four persons throughout Canada submitted essays. Why so few? The prizes are not unhandsome—the competition is well publicized—the subjects are of general interest. It is difficult to assign any reason other than an over-modest reluctance on the part of the Canadian lawyer to commit his ideas to paper; unless the state of legal scholarship in Canada is indeed at a low ebb.

Although it would be impossible in this brief review to report on all the subjects dealt with at the annual meeting, a new by-law of the Association enlarging the requirements for membership so as to include law students deserves publicity. As passed at the meeting, it reads:

(a) The purpose of this by-law is to encourage the interest of law students in the Canadian Bar Association, including the objectives to which it is dedicated, and to extend to law students all aid that the Association can feasibly render to them.

(b) A law student, who has qualified to enter the second year in, or has graduated from, a university or law school whose graduates are eligible for admission to the bar of a province of Canada, is eligible to apply for membership in the Canadian Bar Association.

(c) A student associate membership shall be granted to an eligible law student who applies if he pays in advance a fee fixed at \$3 per year.

(d) A student associate member is entitled during his period of membership to:

(1) attend and participate in all functions and meetings of the Association;

(2) receive the Canadian Bar Review; and

(3) receive whatever aid, services and counsel the Association deems feasible and desirable.

(e) A student associate member is not entitled to vote.

(f) A student associate member may be dropped or suspended for any of the reasons for which other members may be dropped or suspended.

(g) A student associate member ceases to be such a member:

(1) if he fails to be admitted to the practice of law within two years after termination of his study of law at a university or law school; or

(2) when he is admitted to the practice of law.

(h) Except when a student associate member requests otherwise, when he is admitted to the practice of law in a province of Canada he becomes ipso facto a junior member of this Association.

Heartening to all those interested in the progress of the Association were the reports of the Membership, Finance and Canadian Bar Review Committees. With a total membership now over five

thousand, with its finances on a satisfactory basis and with its publication enjoying an ever-growing stature among the world's legal periodicals, the Association, although it cannot rest its oars, can with pride report progress to the Canadian community which it serves.

The social functions held in connection with the annual meeting will be long remembered with pleasure by the attending members. The bar and notarial profession of Quebec City, with their charming chatelaines, spared no effort to make the members' stay in their beautiful old city a most enjoyable one. Although the Association has appropriately recorded its gratitude by resolution, no report of the annual meeting would be complete without a word of appreciation to them, as well as to the University of Laval, the Government of the Province of Quebec, His Honour the Lieutenant Governor of the Province, His Excellency the Governor General of Canada and the Bar of the Province of Quebec.

The chief executive officers of the Association for the coming year are: President—Mr. J. A. MacAulay, Q.C., Winnipeg; Dominion Vice-President—Mr. D. Park Jamieson, M.B.E., Q.C., Sarnia; Honorary Secretary—Mr. L. E. Langis Galipeault, Q.C., Quebec; Honorary Treasurer—Mr. Arthur Kelly, Q.C., Toronto; and Registrar—Mr. E. C. Leslie, Q.C., Regina.

Other People's Meetings

During the summer, the American Medical Association held its 101st annual meeting in Chicago. Only a few cities in the country have convention facilities large enough to house the 765 scientific and commercial exhibits that made an attractive side show for the 14,000 physicians who attended. It was impossible for a doctor to hear all 400 of the scientific papers presented by top-notch physicians from all parts of the country, but with stamina he could cover the more than two miles of exhibits. While he was resting, a doctor could view medical motion pictures or closed-circuit color telecasts of operations taking place in a Chicago hospital.

The general public is not admitted to these annual meetings of the A.M.A.—which originally was little more than a medical debating society for the discussion of current problems. There's still no shortage of problems, but some of the solutions have helped lengthen our life expectancy from 49 years in 1900 to 67 years today. More progress has been made since 1935 than at any time in medical history; yesterday's 'wonder drugs' are household words today. That's why there's growing interest in news items that come out of these meetings of the medical profession. (There's news in medicine.—Better Homes and Gardens, September 1952)