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## The Lawyer in an Expanding Canadian Economy\*

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Let me assure you at the outset that in my opinion the Canadian Bar Association is resting on a firm foundation. It has been the beneficiary of the industry, enthusiasm and courage of many accomplished and distinguished lawyers. The aims and objects of the Association were adequately defined by the founders, who succeeded in crystallizing and implementing their aspirations for a national organization for all Canadian lawyers. The record speaks for itself. A history of accomplishment, however, cannot alone sustain us. A new history and a new record of accomplishment must always be in process. The contribution of the past presents the challenge for the present and for the future. Let us resolve to be willing stewards, and to follow excellent example.

I have selected for my subject, "The Lawyer in an Expanding Canadian Economy". Since Canada's expansion is in the first flush of intoxication, with no terminal date indicated, my remarks will be addressed particularly to the younger members of the Association, who have most of their working lives ahead of them. Theirs will be the responsibility. I hope, however, that the accusation will not be levelled against me of lecturing to the many mem-

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\*In slightly abbreviated form, the presidential address delivered by Mr. John A. MacAulay, Q.C., on September 1st, 1954, to the 36th Annual Meeting of the Canadian Bar Association at Winnipeg, Manitoba.

bers of the bar—including younger members—who are better qualified to appraise, assess, instruct and advise.

One writer has made reference to three expanding economies. The first was in England, from the accession of Queen Elizabeth I in 1558 to the Grand Exposition in 1851, and the second in the United States, from the outset of the Civil War in 1861 to the beginning of the depression in 1929. The third is in Canada, beginning in 1939. I agree with this writer's suggestion that it would be most interesting to compare and contrast these expanding economies, though I doubt if I am in entire agreement with his choice of dates.

The period of England's greatest expansion, then, commences with the reign of Queen Elizabeth and continues some years after the accession of Queen Victoria. No country ever experienced a longer period of expansion, with hardly a threatening contender on the economic horizon. The ambition of Queen Elizabeth was to keep peace within and without her borders and to give Englishmen a free field to realize their purposes. Here was her great achievement. This philosophy, this approach, was responsible for the beginning of England's greatest era of prosperity.

The economic expansion that began in Elizabeth's reign continued for some 250 years after her death. The period is better understood if it is related to some of the outstanding historical events, the names prominent in history, the scientific discoveries and the progressive social reforms. This was the period of the Spanish Armada, the War of the Spanish Succession, the War of the Austrian Succession, the War of American Independence and the Napoleonic Wars. It was the period of Shakespeare and Milton, of Drake, of Pitt and Burke, of Nelson and Wellington. It was the period of the discovery of terrestrial magnetism, of the great discovery of the circulation of the blood, of the founding of experimental chemistry, of the discovery by Newton of the law of gravity. Although they were widely separated in point of time, it was also the period of the Habeas Corpus Act, the Bank of England Act, the abolition of slavery and the repeal of the corn laws.

On the economic frontier, beginning with the reign of Elizabeth and extending throughout the period, better methods of cultivating the land were developed. Agriculture became more and more important and profitable. Linen and woollen manufacturing and silk weaving gradually assumed large proportions. English commerce began and continued the expanding career that was to

make England the carrier of the world. The dream of a northern passage to India opened up trade with a land hitherto unknown. Three great continental wars threw wealth into English hands. Trade between Spain and Flanders was carried on solely in English ships and the English flag also covered trade between Portuguese ports and the colonies in Africa, India and the Pacific. After 1776 British profits on trade with the new American nation were much greater than they had previously been with the thirteen colonies.

The gradual but steady increase in prosperity was reflected in better homes and a higher standard of living. The old notions of thrift melted before the strange revolutions of fortune wrought by the new world. England enjoyed a lengthy and notable period of economic expansion.

The period of expanding economy indicated for the United States is from 1861 to 1929. During these years the United States became the world's greatest economic power. For any nation to attain such a position in so short a space of time is a staggering achievement. Already in 1860, when Europe was exhausting its supplies of raw materials and being forced to turn to new sources in Africa and the Far East, the United States possessed half the richest continent on earth. Its incalculable wealth of natural resources was virtually untapped. Some 350,000 square miles of coal were waiting for the miners' picks; the huge stores of oil still lay locked in the ground; the country's supplies of iron, copper and other base materials had been barely scratched; and more than one-third of the country was covered by every variety of timber needed for industrial and domestic purposes.

In Europe there was a seemingly limitless supply of labour anxious to emigrate to a country rich in resources and largely in the temperate zone. While the Civil War was still being fought, the federal government embarked on a policy of mass immigration to settle the land and provide labour for factories. Immigrants with initiative, or a trade, or small capital, refused to work in factories and either entered business for themselves or took up land in the West. It was only the unskilled who remained available for factory work. Faced with this problem, American industrialists simplified their manufacturing processes and developed new types of machines, which enabled American industry to produce large quantities of goods at low cost. Men with organizational ability rose quickly to positions of power.

American manufacturers not only enjoyed a protected market

but a market rapidly expanding as the population increased. Between 1860 and 1900—forty years—the national wealth of the United States doubled, its iron and steel production tripled and its railroad mileage increased six-fold. There were further rapid increases after the turn of the century. And so it went. Hungry masses of people poured on to the vacant land, which could be obtained from the government at nominal cost, and gouged out its riches. They sold their products to 'an ever-increasing population and themselves became customers for manufactured goods. In 1914, the value of American exports was two and a half billion dollars and by 1919 this figure had more than tripled. By 1929 the United States was an economic colossus.

Canada's economic expansion took form in 1939 under the impetus of war. Canada, with its 3,750,000 square miles, comprises more than seven per cent of the total land surface of the globe. She has less than 16,000,000 people, half of whom live in the southern strip within one hundred miles of the American border. In all the vast regions of the Canadian northland, the population averages less than one person for every square mile.

Even when we confine our attention to the southern belt of denser population, there is a tendency to think of Canada in terms of endless fields of waving grain. Such a picture is misleading. Canada is proud of her agricultural development and proud of her contribution during the last half century to the feeding of Europe. We must recognize, however, that Canada's agricultural potentialities are sharply defined. Agriculture now accounts for less than twenty per cent of the Canadian population who are gainfully employed. At the present time the pattern of Canada's economy is of an accelerating industrial revolution rather than of agricultural stability.

To those interested in trends, the change was already apparent during the years between the two world wars, when the pulp and paper industry moved ahead rapidly to a position of world prominence. During this period too Canadian mining ventures began to attract attention outside her borders. There was substantial progress in fishing and shipping and in chemicals, engineering, textiles and iron and steel.

Under the pressure of the Second World War the process of industrial activity was accelerated to a degree that would have been considered impossible in the early thirties. Even though some Canadians complained that the industrial development was concentrated in Ontario and Quebec (with scattered outposts in

British Columbia and the Maritimes) the country as a whole applauded the industrial war effort. Since the war industrial development has spread to other provinces.

Analysis of industrial development alone, however, misses the most exciting part of the drama—those natural resources which encouraged hardheaded businessmen to build factories. The raw products of other lands are processed and the finished products re-exported to all parts of the world. The simple answer to anyone looking for the reason is found in Canada's hydro-electric power, much of which has been harnessed in our generation.

But water-power is only one of many assets. The discovery of oil in Alberta not only revolutionized the economic life of that province but opened up prospects to the whole world when the geologists suggested that, if men went deep enough, oil would also be found under the soil of Saskatchewan and Manitoba. These prophecies are rapidly becoming realities. If we turn to iron and steel, the development of ore deposits, some of which, on the Arctic borders, are among the largest yet found, add considerably to the world's supplies.

The new uranium deposits found in northern Saskatchewan, when added to the original Canadian deposits at Great Bear Lake, give Canada a leading place in the atomic age. It is obvious that the result of the discovery of uranium in quantity must be to make nuclear energy, in many locations, cheaper than energy generated from conventional fuels. The demand for power on this continent shows a tendency to double every decade and accordingly we should have no difficulty in finding a customer for every ounce of uranium discovered. It seems almost fantastic that the elements providing nuclear energy enjoy a half-life of four and a half billion years, which means that an alert government can, at comparatively small cost, build up its energy reserves and be completely independent of coal and oil almost for eternity.

This is an inadequate account of the natural resources that constitute the basis of Canada's industrial revolution, but it is enough to excite the imagination of private enterprise and should warm the hearts of all nations that share with Canada the inheritance of Magna Carta. The northern bastion of democracy has great potential strength, the exact measure of which at the moment Canada does not herself know.

History reveals the mistakes made by other countries since the industrial revolution of the western world began to change the pattern of society two centuries ago. Similar mistakes might be

avoided here if time were taken and wise plans developed. Eleven years ago, the Committee on Reconstruction emphasized in its report the urgent need for a careful survey by the Canadian government of the country's vast industrial resources and the formulation of considered plans for their utilization. A comprehensive survey of our resources and wise plans are still needed. The sooner they are made, the sooner will Canada be able to use her full strength for the benefit of mankind and the defence of human liberties. Their lack cannot, however, interrupt the progress of our industrial revolution.

What, then, is the responsibility of the lawyer, particularly the young lawyer, in Canada's expanding economy? In a recent toast proposed to Canada, the following among other observations were made: "What real greatness Canada possesses is its heritage from adventurers who, seeking new knowledge or new opportunities, dared unknown trails and rivers. . . . It is the product of those who sought not ease but achievement; who spent themselves to duplicate here the farms, the industries, the churches, the schools, the useful institutions, the free ideas of other lands; who did not seek the easy way but in response to some mysterious divine call chose to travel the hard way."

A sense of the frontier is part of the heritage of this continent. It is natural to us—part of the air we breathe—a state of mind as much as a fact of geography. We in this room are inheritors from the frontiers of the past. In a more immediate sense, we are children of the North American geographic frontier.

Fifty years ago, prophets saw the end of our great forests. Today, substitutes for wood, which might have been seen then, just beyond the horizon, have forced lumbermen to specialize their products in order to find new customers. At about the same time experts saw the end of coal supplies. Today, because of oil and electricity, which were always available just beyond the horizon, there is a glut of coal for fuel, and wider uses are being found for it in the new world of industrial chemistry. Chemists saw famine close at hand as the fertility of the soil diminished. Today, with the discovery of new fertilizers, the utilization of improved machinery and the cultivation of new regions that had long lain unplowed beyond the horizon, farmers can hardly find markets big enough to absorb their bumper crops.

What, then, may lie beyond the horizon of today, with the discovery of nuclear energy and all the other staggering discoveries and developments of the past fifty years? Canada's immense

and rapid expansion should remind us that there are always new horizons beyond. Horizons open out for those who climb to the higher altitudes and look upon the broader world spreading below.

It is an all too common mistake to fix one's gaze upon a near horizon and refuse to believe that anything of value lies beyond. We do wrong to measure achievement by obsolete standards or to think in terms of finality. All the streets will never be laid, all the houses will never be built, all the great tasks that stretch to the horizon will never be done, for the horizon eternally lifts to new, unexplored horizons beyond.

The sound barrier in aviation has been penetrated, and the heat barrier is being attacked. Matter has been converted into energy, the nature of light is being re-examined and the possibilities of travel through outer space are being energetically investigated. In almost every phase of life the human mind and spirit are thrusting outward and the boundaries of the known, as well as the unknown, are being broadened.

An important duty is cast upon lawyers to keep pace with the changing times. We must be sensitive to scientific, industrial and economic changes. We must keep ourselves fully informed. Today there is no lack of information, no lack of opportunity for information; we are inundated with facts on every conceivable subject. In a single generation, the total of scientific and technical knowledge available to those with the inclination and energy to acquire it has increased beyond measure. We have exalted the power to know.

In doing so we have also exalted the power to act. The lawyer must always be informed and competent to do the job. The really important person in the world today is the one who is competent to do the job.

The lawyer has always occupied a prominent place in the country's industrial and economic life. It is not a matter of accident, but of qualification, that lawyers direct many of Canada's leading industrial and financial organizations. They have played a leading part in the development of her natural resources, her mines, her oil, her natural gas. This is merely an intimation of the diversification of the lawyer's activities in business and industry and of the various ways in which he can and does make a contribution to Canada's development.

No lawyer ought ever to exclude himself entirely from the public life of which he forms a part. He, beyond most men, is

bound to direct his energies in that direction because he knows the ways in which the law can be altered for the benefit of mankind. The equipment of the lawyer should be such that his horizon is a broad one. When it is, the lawyer steps rapidly and naturally from service to his client to the ampler forum of service to his neighbours and his nation.

Ever since Confederation a large percentage of the members in Parliament and in the provincial legislatures have been lawyers. Lawyers also occupy many of the more exacting positions in government service. Lawyers should continue to render service in the field of politics and in all the other fields of public life of which they form part.

The changes in our economy have made necessary, and will continue to make necessary, changes in the law. The law is never fixed and static; it is something live and virile. It evolves as men's ideas flourish and men's affairs develop. Thomas Jefferson said:

I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.

New legal fields are being opened up as a result of new discoveries and changing circumstances. A multitude of new enactments are being placed annually upon the statute books of every legislative body. Since the beginning of Canada's economic expansion in 1939, the complexion of legal requirement has changed materially. Many problems in legal fields little explored and vaguely known present themselves in a fast-moving economy.

Lawyers have cast upon them a very grave and difficult responsibility. We are not and never should be people who merely know the law and represent clients, whether in or out of court. We should be, our historic rôle has made us, far more than that. Not merely are we people who administer the law. We ought also to help shape and help make the law.

It is our duty to preserve what is best from the past by restating ancient principles and formulas in terms of the needs of the present. Life is always a compromise, a balance, a trading of good to avoid evil, a sacrifice of old treasures to new needs. The new programmes will remould the lawyer and law as they do other groups of men and doctrines, but they deserve and need the



lawyer's skill and understanding, and the light of his professional experience. The nation requires his seamanship in this new venture of the fleet on glamorous but uncharted oceans.

It is also our responsibility to ensure, with the welfare of humanity first in our thoughts, that justice is fairly and evenly administered. This is of course a responsibility requiring constant endeavour and vigilance. We are the guardians of the law, imbued we hope with its spirit and confident of its power. The fascination of any legal contest lies not merely in the assessment of facts against the background of established law. Rather it is that some new facet of the human mind and spirit may be revealed and a new relationship established or a rooted tyranny exposed.

It is essential that we should emphasize a wholesome respect for the law. Our people must be constantly reminded that law is vital in the preservation of human liberty. We are the custodians of almost all the rights and privileges that in our day constitute peace, order and good government.

As we reach for new horizons, we should remember continually that law must be kept a profession of high character and courage—a profession that exacts, not only fidelity to the client, but fidelity to truth and to the authority and institutions of the nation.

Professor Toynbee has explained civilization in terms of challenge and response. We, as lawyers, are faced with a challenge, an opportunity. A mass response stirring in all levels of society is required. Are there demands for ease, evasions of responsibility, disinclination to act in a spirit of service, a satisfaction with mediocrity when excellence is within reach, a willingness to compromise that denies the existence of absolutes, a confusion between happiness and folly, an absence of historical awareness or indebtedness, a disinterest in appraising experience and a view that life consists of a series of emotions or sensations, as though we were passive rather than creative agents? This condition may be normal and in some strange way may even result in great advances; but the reverse is more likely to occur.

We lawyers are in a great tradition, which strives to reconcile the ideal with the practical, the claims of one man with those of another, the wisdom of the past with the understandings of the present, the cargo of yesterday with the sails of the future and theoretical rights with practical conclusions. In our daily activities, we are judged as well as judges; advocators as well as advo-

cates; the criticized as well as the critics of the actions of other men.

A great era lies ahead for Canada. It should encourage the utmost of the initiative and enterprise of the younger members of the profession. Achievement will be attained by those who are ready to make the necessary sacrifices, working harder and longer; studying and planning more assiduously; dreaming dreams, and making the dreams come true.

During the periods of expansion in England and the United States great contributions were made by members of the legal profession. Those economies benefited by the labour and wisdom of some of the greatest legal minds in history. I express the confidence that the lawyers of Canada will likewise keep pace with Canada's expanding economy and will at all times be sensitive to their opportunities and their responsibilities.

The Canadian Bar Association stands on the threshold of further accomplishment and of further service to our country.



### Est-ce bien là le progrès du droit?

Le rêve d'un avenir meilleur, c'est tout simplement, pour la plupart, le désir d'une vie matérielle plus confortable et plus large. L'augmentation générale du bien-être, la propension à la dépense, le dégoût de l'économie, le déclin de l'idée religieuse ou simplement de l'idéalisme, poussent la plupart des hommes à ne plus s'occuper que de la défense des biens matériels. Et comme la possession et la jouissance des biens est continuellement troublée, ce qui intéresse surtout les esprits, c'est le maintien et l'amélioration des situations individuelles.

Le législateur, qui représente cette foule, n'a pas la prétention de susciter le dévouement, de réveiller la foi, de créer un idéal. Il ne peut même pas, bien qu'il le dise, et parfois le veuille, faire régner la vertu. Il exprime les intérêts et les volontés et tâche de donner satisfaction à tous ceux qui s'adressent à lui.

Par là-même il transforme le droit, et, comme on a commencé par poser ce principe que toute transformation est un progrès, notre époque a la conviction profonde que cette législation nouvelle, faite au gré des intérêts et des passions d'un jour, est par elle-même un progrès.

Ainsi semblent marcher ensemble la civilisation matérielle et la civilisation morale. (Georges Ripert: *Le régime démocratique et le droit civil moderne* (2ième éd., Paris, 1948) p. 42)