

THE LEGAL PROFESSION IN CANADA*

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This occasion always recalls to my mind the members of the bench and bar in Canada, who have filled the office of president of the Canadian Bar Association with distinction and have given it devoted service since its inception. The growth of the Association and its present standing are a tribute to their work.

Many of our past presidents are with us at this thirty-seventh annual meeting, including, of course, our beloved honorary life president, the Prime Minister of Canada.

I have had a pleasant and rewarding year as President of this Association. So often during the year, in addition to having my matrimonial status referred to, I have heard myself described as the first small town lawyer to occupy that position. As such, I am deeply grateful for the honour which was conferred upon me and the trust and confidence you reposed in me. I have tried during my term of office to carry out my duties in such a way as to repay such trust and confidence. I have been greatly helped by the consideration and many kindnesses I have received from members of the Association in all parts of Canada, including, of course, suitable consideration of my unfortunate marital status, and by the unfailing assistance given to me by my executive, members of council and our permanent headquarters staff.

All across Canada and in Great Britain and the United States, I have talked about our profession and its various organizations and associations and especially about our own Canadian Bar Association. With your indulgence, for the few minutes available to me this morning I intend to continue that consideration and to speak upon a subject about which I have some knowledge—The Legal Profession in Canada.

Since September 1954, I have visited all ten provinces and have attended their annual bar or law society meetings. I am told

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that I am the first president to have covered all such meetings in his year of office. I can only recommend to my successors that they continue to do so. Certainly no better way can be found to obtain a true picture of the bench and bar in Canada and to become acquainted with their many problems.

I was also fortunate, as the chairman has said, that in my year of office the first Commonwealth and Empire Law Conference was held in London, England. I was delighted with the extent of the representation from Canada and the real contribution made by our members both by the papers presented and during the discussions at the meetings. Every one present derived a great deal of good from the formal and informal discussions of problems common to us all.

The history of our profession, its traditions and its record of service down through the centuries were again brought home to us. From the opening ceremony in Westminster Hall presided over by the Lord High Chancellor, Viscount Kilmuir, our distinguished English guest of last year, better known to us as Sir David Patrick Maxwell Fyfe, as he then was, to the closing banquet in Guildhall, where the Prime Minister, Sir Anthony Eden, spoke, the occasion was an impressive and memorable one. It could not help but do much to bind our Commonwealth and Empire together and to advance our profession and improve its service to the public.

It would appear that in the not too distant future we shall have the opportunity of acting as hosts at another such conference.

Last week I was in Philadelphia attending the annual meeting of the American Bar Association. Their meeting was the occasion for the opening of the celebrations commemorating the bi-centennial of the birth of that great Chief Justice of the United States, John Marshall. The important place that the American Bar Association occupies in the life of its country was testified to by the fact that the President of the United States, the Chief Justice of the United States, the Vice-President of the United States and other important members of the government were present and spoke, or took part in the discussions. To our distinguished guest from the United States, Mr. Loyd Wright, the President of the American Bar Association during such meeting, must go much of the credit for that important milestone in the life of his Association.

With this background and the information obtained at the various meetings and discussions during my term of office, I have attempted to assess the position of the profession in Canada to-

day in the light of its past history and to consider what its future could or will be. I then found myself in difficulty. There were so many subjects which I would have liked to discuss that if I had touched on them all I fear there would have been no time for any other business today. I therefore decided to confine my remarks to two of the matters which I found were of great interest across Canada, and which seemed to me to require more immediate attention.

In doing so, I thought it appropriate to look back over the last fifty years and ahead for a similar period. Fifty years ago there was, of course, no Canadian Bar Association and there was no Canadian Bar Review. The various provincial law societies were well established and were already doing an admirable job in their own field. Already the need for some additional organization was being felt and various provincial bar associations were being formed. An example is the Ontario Bar Association, which was formed shortly after the turn of the century.

Fortunately there is a record of the earlier proceedings of the Ontario Bar Association. From this it is interesting to note that many of the matters now causing us some concern were discussed and considered at that time. The objects of that earlier association were stated as being to facilitate the administration of justice and to promote reforms in the law and procedure.

Even at that time the profession was concerned with the change of status of the lawyer from that of an old family lawyer to a business man, with the ethics of the profession and with the use of administrative tribunals. But the most important topic of consideration was that of law reform. This included both the efficiency of the courts and the efficiency of the profession.

One of the persons taking part in the discussions was that great practice lawyer, Mr. W. E. Middleton, later Mr. Justice Middleton of the Supreme Court of Ontario. He spoke in part as follows:

I would advocate that instead of any attempt to change the jurisdiction of the courts which at present exist that all the courts should be abolished and there should be one court for the administration of justice in all its departments and branches and that an endeavour should be made to subdivide its jurisdiction so as to meet all kinds of cases. That would involve the abolition of the County Court Judges and the Division Court Judges.

The local judges would exist for the administration of justice in their own counties, and the classes of cases that would fall into their hands would be more readily determined and more easily got at than

at present, because the arbitrary rule by which cases have to be brought in one Court and tried by one tribunal simply depends upon the amount of the claim, and that, I think, is illogical and absurd. Then when you come to the larger question of jurisdiction there would be no sharp and illogical line drawn as between County Court and High Court because as at present all the cases would be started in the one office and then they would naturally sort themselves out into different categories according to the more or less elastic rules which would have to be framed.

Since that time there has been some continuing consideration of the reform of the law itself, that is, of our various statutes, although we have not, as yet, permanent bodies charged with that task as they have in Great Britain and the United States. There has also been some consideration from time to time of the reform of procedure in our courts. But again there are no permanent bodies charged with that task as there are in other countries and states.

The creation of such permanent bodies or commissions is long past due. They are becoming increasingly necessary with the great increase in our population, with fast changing conditions and with the complexity of modern business conditions and taxation.

And then what is the position with respect to our courts themselves? The standard of British justice administered in Canada has never been higher. We are fortunate in the competent and devoted public servants who form our judiciary. But is the organization of our courts such as to assist our judges in providing the most efficient and economical service?

Our courts as presently constituted were organized and provided for the requirements of many years ago. Some additional judges have been added to such courts from time to time. Some attempt has been made to take care of the more glaring inconsistencies by changing the monetary jurisdiction of various courts. But I know of no real inquiry or consideration to determine whether the present organization and distribution of work in our courts is the most efficient and provides the best service to the public since the words which I have quoted earlier were spoken approximately fifty years ago.

Since the turn of the century there has been a great increase in population and it is just a forerunner of further increases in Canada. Indeed, since the close of the last war the population of Canada has increased by over three and one half million people or by roughly the same number as were in this province of Ontario at the start of the last war.

In Canada and within provinces, there has been a constant change or shift of population. Artificial boundary lines are disappearing with modern methods of transportation. The boundary lines of counties and districts have no longer any relation to present legal requirements.

The jurisdiction of our various courts and of our judges within particular courts vary from province to province. But I have found throughout Canada that increasing criticism is being levelled at various phases of our present system of the administration of justice and, particularly, with respect to accommodation in our courts for judges, lawyers, jurors, witnesses and the public; with respect to the present territorial and jurisdictional provisions governing appointment of judges; with respect to the unequal distribution of the work of our judges; and with respect to delays in trials and cost of lawsuits.

All judges are appointed and paid by the federal government. The provisions for the courts themselves and for their jurisdiction and powers lie with the provincial governments. Dual action is therefore required to effect any change.

There are some 300 judges in Canada today. It is a recognized fact that some judges have not sufficient work and that some are over-worked.

As I have said before, I am convinced that judges and lawyers are doing their best to make the present system of administration of justice work. I am also convinced that, having regard to present conditions, generally, the system is not operating as efficiently and with as great economy as would be possible if it was modernized and brought up to date.

As those most familiar with conditions in our courts, we have a particular duty to the public to do everything possible to press for such reforms as may be necessary from province to province in order to maintain the proper respect for our courts and to render the best possible service to the public.

But what about the efficiency of the profession? In travelling across Canada I was delighted to find that the bar, generally, is maintaining the high traditions of the profession and is conscious as members of a learned profession of its duty to serve the public. I was particularly pleased with the great interest the junior members of the bar were taking in the associations of the profession and their evident desire to maintain its high standards.

The practice of the profession of law is not an easy one today. It requires lengthy training and every lawyer is faced with prob-

lems and conditions of practice which were never dreamed of fifty years ago. The increasing programmes of Continuing Education of the Bar in many provinces are helping to keep lawyers up to date. There is, however, a growing scarcity of counsel, and there is a tendency for members of the profession, in some cases, to attempt work for which they are not qualified or not to do sufficient work to qualify themselves in that particular phase of their practice. This might well result in increasing the congestion in our courts.

I do not think that any lawyer in Canada would advocate the separation of the legal profession in Canada into two branches — barristers and solicitors.

I do think, however, that consideration must be given to overcoming some of the difficulties which are now arising due to the fusion of the two branches of the profession and to the conditions under which we practise our profession today.

The time is approaching, also, when we must look at our present system by which the lawyers in each province are maintained in what might be described as a water-tight compartment and must decide whether we should not do away with the artificial boundary lines and provide for some easier and more effective method by which lawyers can obtain the right to practise in any part of Canada.

We are all conscious of the great future which lies ahead of our country — Canada. We are proud of the part that members of the legal profession have played in its past history and of the service which they have rendered, and are continuing to render, in every field of community and national endeavour. The next fifty years will offer a particular challenge to our profession. We must be prepared to meet that challenge.

While we must ensure that the historic traditions of our profession are maintained, we must also be prepared in our courts and in our practice to meet the changing conditions and render to the public that service which is the only justification for our position as members of a learned and honourable profession.

Some of you present today will undoubtedly attend the annual meeting of the Canadian Bar Association fifty years hence. What will you find? Certainly you will find that the wives and sweethearts of the members of this Association are as charming and well dressed as those present at this meeting. I am sure you will find a strong, healthy Association representative of all the Bar of Canada, which has realized the hopes of those who so well conceived it and brought it into being over forty years ago.

I am sure you will find, also, that the members of the legal profession are united as never before and continue to occupy a position of importance and of confidence in the life of our country.

And I hope and fully expect that you will find in this our capital city a great Canadian Bar Association Centre from which the activities of the Association will be directed and in which legal research will play an important part.

I am deeply grateful for the privilege of having served as your President during the last year and, if I have contributed in any small way to the magnificent future which lies ahead, I will be well repaid.

From Another Presidential Address

The law of a country is the responsive expression of its social and business life and it must expand with it, or hamper it. The ever advancing and altering relations of society and individuals, new fields of human activities, new modes of thought, increase in knowledge, demand modification of the old rules and the adoption of new. This has been the teaching of history — "the old order changeth, giving place to the new". Custom may shudder at the lack of veneration for the old, and at the boldness of young enterprise; grey-bearded age leaning on its staff may wonder where all this is going to end. . . .

These new creations need suitable laws and an adequate jurisprudence. Who can provide it? The conditions are not dissimilar to those of Rome in the days of Justinian when the people looked to the lawyers and jurisconsults to aid them. They did not look in vain. What the lawyers did in the time of Justinian surely we, having the advantage of all the past knowledge, can do and more. It is significant that those ancient lawyers and jurisconsults often assembled for discussion at the Temple of Apollo and also that the people of Rome selected a house in a frequented street and gave it to one of their great jurisconsults, Scipio Nasica, that he might be ever accessible to them. They gathered knowledge in the secret places of wisdom and gave it to the people among whom they dwelt. So may it be with our splendid profession in the advancement of jurisprudence and the improvement of the administration of justice.

None can so aid the Canadian people as the members of our Bar. In the common judgment of the people, the profession of the law, as they call it generally, and its learned and gifted members are held responsible for what is weak, uncertain and wrong in the law or defective in its administration, and justly so in our democracy, for on whom else can they depend to advise and pilot them to better things. Let us not then withhold good from those to whom it is due when it is in the power of our hand to do it. Canada has good statesmen and political leaders, but if our skilled lawyers will unite in wisely and energetically carrying out the purposes of the Canadian Bar Association they will confer a benefit upon the country more general and lasting than that of statesmen and politicians. (From the presidential address delivered by Sir James Aikins, K.C., M.P., on March 19th, 1915, during the First Annual Meeting of the Canadian Bar Association held at Montreal)