

# THE CANADIAN BAR REVIEW

---

---

THE CANADIAN BAR REVIEW is the organ of the Canadian Bar Association, and it is felt that its pages should be open to free and fair discussion of all matters of interest to the legal profession in Canada. The Editor, however, wishes it to be understood that opinions expressed in signed articles are those of the individual writers only, and that the REVIEW does not assume any responsibility for them.

It is hoped that members of the profession will favour the Editor from time to time with notes of important cases determined by the Courts in which they practise.

Special articles must be typed before being sent to the Editor at the Exchequer Court Building, Ottawa. Notes of Cases must be sent to Mr. Sidney E. Smith, at the Osgoode Hall Law School, Toronto.

---

---

## TOPICS OF THE MONTH.

**The Fourteenth Annual Meeting of the Canadian Bar Association will be held in the City of Quebec on the 5th, 6th and 7th days of September, 1929.**

\* \* \*

THE ENGLISH BAR AND AMERICAN LAWYERS.—In the correspondence department of this number of the REVIEW will be found a letter from Mr. Barnett Hollander, of the New York Bar, which informs us that a very pleasant courtesy has recently been extended by the General Council of the English Bar—composed of delegates of the Four Inns—to American lawyers in London who desire to be advised by English counsel. It has been a rule of etiquette hitherto that foreign lawyers should not advise with English counsel without the intervention of a solicitor. Mr. Hollander drew the attention of the General Council of the Bar to the inconvenience of the rule as applied to members of the American Bar with the result that the rule was modified in their behalf, and they were put on the same footing as members of the Bar from the Dominions and Colonies of the Empire who are free while in England to advise with English barristers without seeking the intermediary services of a solicitor. The following resolution of the General Council was communicated to Mr. Hollander in the premises:

There is no objection to a barrister in England advising an American lawyer in this country in non-contentious matters (in which no litigation in this country is contemplated or in progress) without the intervention of an English Solicitor.

\* \* \*

USE OF POISONOUS GASES IN WAR.—In the course of debate in the Canadian Senate on a motion for the approval of the Geneva protocol for the prohibition of the use in war of poisonous gases and the use of bacteriological methods, Senator Griesbach, who has a distinguished war record, expressed himself as gravely doubting the value of resolutions and treaties of the kind. After commenting on the apparent lack of interest which characterised the action of the Commons in approving of the protocol, Senator Griesbach declared he would vote for Senate approval but he thought it would be the "height of folly for any person to be misled into thinking that our approval of this protocol settles the question of the use of gases in warfare." Senator Dandurand, in replying to Senator Griesbach, said that:

Covenants of this kind tend to create an opinion which minimises the possibility of war being declared. It was true that some nations might violate their engagements, but nevertheless, treaties had a powerful moral effect.

The whole trend of thought on the part of men who are planning for the future of humanity is towards the betterment of conditions. It might be contended that the preaching which goes on every Sunday in the churches does not abolish sin, but it could not be denied that preaching is one of the great influences that are working to raise our civilisation to a higher level. No one would think of dispensing with the work of the churches.

Senator Dandurand is quite right in his parallel. Christianity has become a frame of mind in the countries where it is the acknowledged religion, the effect of which is to put sin perennially on the defensive.

\* \* \*

FEES OF MEDICAL PROFESSION.—A Canadian Judge has recently seen fit to comment on the rapacity which characterised the charges of a medical attendant of a young person who was injured in an accident and had recovered damages therefor. The Judge suggested that as the restoration to health of the patient was likely to be a prolonged affair he might be taken to a hospital as a means of escaping from the costly attendance of his regular physician, which threatened to absorb the full amount of the damages recovered. In some of the States of the American Union by common

consent of the practitioners the physician's fee is proportioned to the wealth of the patient, and this plan is fairly well carried out. In England, prior to the Medical Act, 21 & 22, Vict. c. 90, physicians could not sue on a claim for their services, but now there, as in most English-speaking countries, his fees are onerary rather than honorary. A very interesting article on the subject was published by the American *Law Notes* in February last.

\* \* \*

AMERICAN LAWYERS AND PROHIBITION.—We learn from the American press that an organisation, known as The Voluntary Committee of Lawyers, Inc., with headquarters at 27 Cedar Street, New York, seeks to secure the repeal of the famous "Eighteenth Amendment" in the interests of good government throughout the republic. It is said that the organisation now numbers more than 550 members of the New York Bar, and that it will offer associate membership to members of the Bar in all the States. It announces that it has ascertained by careful enquiry that the sentiment of the Bar [please note that we use a capital letter advisedly] is overwhelmingly in favour of repeal. The organisation explains its aims in the following circular letter sent out to lawyers:

The Voluntary Committee of Lawyers offers to those members of the Bar who believe that the Eighteenth Amendment and the enforcement Act have created an intolerable situation an opportunity to clarify and influence public opinion by an expression of their views. In the past the public has looked to the Bar for guidance, particularly on questions involving the principles of government, and we believe the Bar should not fail to assume its traditional leadership in the outstanding issue now facing the people.

It is not our purpose to take part in political activities or political controversies. We do not render professional services or give legal advice to those accused of violation of the law. Our present activities are limited to securing the support of representative lawyers throughout the country, and to encouraging Bar associations in the various States to adopt resolutions advocating the repeal of the Eighteenth Amendment.

Resolutions have already been adopted by the Law Association of Philadelphia, the Association of the Bar in the City of New York, the New York County Lawyers' Association and others. The Boston Bar Association will probably have taken similar action by the time this reaches you.

If you approve what we are doing, we will be glad to have you give us your support by signing the enclosed card, thereby becoming an associate member of this committee. Such membership involves no financial obligation. Our expenses are defrayed by voluntary contributions entirely. If you will contribute we shall appreciate it and it will materially aid in carrying on the work, but it is in nowise a condition of membership.

We should be very glad to have your estimate of the sentiment of the Bar in your jurisdiction.

In view of the present lawlessness of the nation being largely attributed to the fact that public sentiment is against the enforcement of liquor prohibition, the action of this organisation must be considered in a serious light.

\* \* \*

CHIEF BARON POLLOCK.—We learn that the publishing house of John Murray are about to release a memoir of the Lord Chief Baron Pollock, written by his grandson Lord Hanworth. The Pollock family have, during the last century and a quarter, attained to eminence and high positions in various branches of service to the State. None has more worthily reached success than the Lord Chief Baron. He began with few advantages of birth or position, but by ability and hard work made for himself a very remarkable career. Lord Hanworth brings into the memoir many interesting facts about the family and also about famous law cases and other notable events of the day with which the Chief Baron was connected.

\* \* \*

UNCLE SAM CONTRA MUNDUM.—The increasing outcry of the nations against the 'self-regarding' policy of the United States is emphasized in an article by Ambassador Orestes Ferrara published in the *North American Review* for June under the title "Cuba Again Asks Justice." He says:

"The twenty per cent. differential duties granted Cuba by the United States, in exchange for a reciprocal differential amounting to twenty, thirty, and forty per cent., in different schedules, granted the United States, has not favoured Cuba . . . Cuban products, and especially sugar, have paid heavy imposts on entering the United States. . . . Duties paid on merchandise entering the United States amount to slightly less than \$600,000,000 annually. Of this sum, goods sold by Cuba's four millions of inhabitants pay about one-fourth, or \$150,000,000 . . . Cuba is struggling under a load that is too great for her to bear."

In view of the political relations between the two countries set up in recent years the word "protection" is taking on a sinister meaning in the minds of the Cuban people.

**SPEAKER LEMIEUX AT THE SORBONNE.**—The Honourable Rodolphe Lemieux, K.C., Speaker of the House of Commons, had the honour of being invited to give a series of lectures on Canada in December last at the Sorbonne. The lectures were delivered in the French language. We understand they are shortly to be published. The last of the series deals with the Political Evolution of Canada, and we are privileged to give a synopsis of it, in English, below:

Our political evolution has been a natural phenomenon. At times we made rapid strides, then came halts. There were epochs of progress followed by stagnation; however, guided by Providence, the Canadian people are more and more approaching the goal of their destinies.

The Minister of Justice, with a lucidity quite characteristic of the French, has recently defined the new Status of Canada. "I have no hesitation," he says, "to lay down the principle that Canada is a State. Such is the position of Canada, as it exists, it is the reality that we must consider so as to establish its international individuality and personality."

The Honourable Mr. Lapointe then carefully reviewed the solemn statement made at the Imperial Conference of 1926, and reached the conclusion that this affirmation of the Status of the British Nations is, in other words, a recognition by equals and associates of a state of things acknowledged by all. The Empire, he says, is a free association of a number of autonomous states that are masters of their own destinies, both internally and externally.

The King is the emblem of the union existing between the members of this association. Indeed, he is the most powerful bond. He acts in Great Britain upon the advice of the responsible ministers of the United Kingdom. In Canada, both in the federal and provincial spheres, he only acts upon the advice of their appropriate ministers. It is the same Crown acting upon the advice of different ministers.

No doubt further beneficial reforms will take place. However, history teaches us that nothing should be hastily done. Our duty is to strengthen and co-ordinate all the various elements which make for a true Canadian nationality. Switzerland presents a striking example of the unity which can be attained in diversity by a composite people. Is it not moreover the history of France under the old monarchy? Is it not that of Great Britain herself?

Coming to the part played by the French Canadians in North America, the lecturer said that they are like institutes under a substitution of old France. They have remained faithful to the traditions bequeathed by their ancestors. These traditions have been the mainstay of a vanquished race, proud in defeat; bearing nobly in the midst of the smouldering ruins of a devastated and impoverished country, brought about by a long and cruel struggle for supremacy. The genius of France, the Latin genius, took root and developed on Canadian soil, but under a modified form, more adapted to the life and particularities of the new surroundings.

All are aware that the national survival will largely hinge on the maintenance of the lofty traditions bequeathed.

The lecturer paid a glowing tribute to the clergy which under the guidance of its bishops and with the support of laymen inspired by the same love

of country, undertook, immediately after the cession, the task of improving the educational institutions. The spreading of education among the masses, the founding of classical colleges at the cost of enormous sacrifices, such was the first act of the upper classes immediately following the conquest. From these untiring efforts have sprung up our great universities, technical institutions and business colleges, wherein burns the inextinguishable flame of teaching.

The French Canadians have a distinctive literature of their own. It expresses itself in a language which does not differ from the literary language of the mother country; the process and forms are similar. However, owing to the subject and inspiration, this literature is quite personal and national in its character. History, poetry, historical novels, legendary narratives, folklore, theological, philosophical and scientific works, in every sphere our writers have achieved a rare and praiseworthy success.

A special trait of the French Canadians is their love of the fine arts. This characteristic has been inherited from their ancestors. The lecturer vividly described the monument of Dollard des Ormeaux by Laliberté, who has to a notable degree synthesized the struggle of the pioneers against barbarism; the high achievement of Napoleon Bourassa and finally the historical fresco of Charles Huot, in which, recalling the three great epochs of our history, the artist has depicted the thrilling poem of our survival in America.

The lecturer went on to say that ancient Greece has handed down to us the beautiful legend of the torch race. This race is still on. The torch has been passed on to our missionaries, artists, writers, poets, to the small French Canadian population faithful to its religious belief from the shores of the pleasant Acadia across the Rocky Mountains to the very coast of the Pacific. This light which shines and is reflected in every corner of the new world will never die out, because we have deeply engraved in our hearts the earnest desire and unshaken hope of following in the rugged and immortal trail of our ancestors.

Owing to the Cession, two races having a glorious history as a background, inhabit Canada. A new civilization is being evolved. In our country, one either descends from English or French stock, one is either a student of the English or French language and literature, without, however, for a moment losing one's individuality, that is the distinct Canadian character.

The union of these two races does not mean uniformity. A people deprived of its characteristics, its strong passions, would not be far from losing its reason for existing.

In inviting the two races to co-operate in the work of civilisation in North America, we cherish the hope of creating an atmosphere of harmony, of admiration for what is beautiful, the dislike for what is repellent, and moreover of setting up a strong bond which, gathering together, as in a cluster, the various elements, will unite at the same time all their common glories.

Canada, admitted yesterday to the League of Nations, can play a noble part. She is in America the depository of a high culture; in Europe the sacred tie between England and France; in the world the robust champion of peace.

"A GREAT CANADIAN JUDGE."—Under this caption *The Solicitors' Journal* of the 11th ultimo publishes an editorial appreciation of the judicial qualities of the Right Honourable L. P. Duff, one of the Judges of the Supreme Court of Canada. We have much pleasure in reprinting it here:

It is to be feared that in this country we know too little regarding those who in the great dominions overseas are administering, and with equal ability, the same law as our judges at home. Among those, however, who are not without honour in their own country and who likewise are esteemed here in England is Mr. Justice Duff, of the Supreme Court of Canada. Quite recently that distinguished judge celebrated what may be called his twenty-fifth judicial birthday, and the occasion was happily signalled by many congratulations being offered to him by various members of the Canadian Bar. In the course of his interesting reply, Mr. Justice Duff, after referring to the happy relations which have always existed between him and the Bar, said that he doubted whether it was as widely understood as it should be the extent to which the efficiency of judicature depended upon an honourable, fearless and competent Bar. Again, too, he emphasised the importance of the practice which prevailed in all English-speaking countries of recruiting the Bench from the ranks of practising advocates—a practice which in his view could not be over-estimated, seeing that it secured the appointment of men trained in loyalty to a great professional tradition, and in a sense of responsibility thereto.

Mr. Justice Duff's distinction as a great judge has been recognised very markedly by the frequency with which he has come over to this country to assist in the disposal of appeals from Canada. This linking up of the Dominion judges with the Judicial Committee of the Privy Council is one of the most valuable developments of recent years, inspiring as it does increased confidence throughout the Dominions in the decisions of the Committee, and, on the personal side, bringing the representatives of the English Bench into pleasant relationship with their confrères of the Dominions.

---