

## THE LAYMAN IN QUASI-JUDICIAL POSITIONS.

### HOW IT WORKS IN ALBERTA.

This subject is of wide importance to the public generally, and it is from the standpoint of the public weal that the system of appointing Laymen solely to these positions should be approved or condemned, and not looked at from any narrow or selfish viewpoint, as to how it affects the Bar in particular. May I say, that in my opinion, the legal profession takes second place to no other profession, calling, organization or group, in viewing such a problem in a disinterested and unselfish manner.

In reading through the report of the proceedings of the Canadian Bar Association for last year, I came across a quotation from an address of Senator Root to a Conference of Bar Associations held in Washington recently, and his remarks bear directly on the question we have before us at the moment. He says:

Not only has the practice of the law become complicated, but the development of the law has become difficult. New conditions of life surround us; capital and labour, machinery and transportation, social and economic questions of the greatest, most vital interest and importance, the effects of taxation, the social structure, justice to the poor and justice to the rich—a vast array of difficult and complicated questions that somebody has got to solve, or we here in this country will suffer as the people in Russia have suffered, because of the violation of economic law, whose decrees are inexorable and cruel. Somebody has got to solve these questions. How are they to be solved? I am sure we all hope they will be solved by the application to the new conditions of the old principles of justice, out of which grew our institutions. But to do that, you must have somebody who understands those principles, their history, their reason, their spirit, their capacity for extension and their right application. Who is to have that? Who but the Bar?

The training which the lawyer of to-day must follow, previous to entering upon active practice, is exacting and varied. The lawyer must deal with the practical things of everyday life. He is no recluse. His contracts from day to day with every grade of society make him a student of human nature. He learns a sense of proportion and of balance. He readily senses the ridiculous as well as the sublime. Lawyers generally have a sense of humour, although there are occasional variations from this rule. The lawyer understands

that when called upon to act in any quasi-judicial capacity, he must rid his mind of any preconceptions or prejudices concerning the matter under review, that majorities are neither wholly right nor minorities wholly wrong, in short, that there is usually much to say on both sides of a question. And yet withal the practical side, he must ever be a student, a delver into books, that he may be prepared to apply to the new causes which confront him from day to day, those primary principles of justice which have come down to us from the earliest times.

There have been established as a result of new and changing conditions during the last few years—the necessity or non-necessity of which establishment we are not at the moment concerned with—a number of boards or commissions in this Province, exercising quasi-judicial powers. We have in Alberta the Public Utilities Commission, The Workmen's Compensation Board, The Debt Adjustment Board, and the Assessment Equalization Board. We did have functioning a Tax Enquiry Commission, under the chairmanship of Dr. H. M. Tory, former president of the University of Alberta. We have had a coal Commission under the chairmanship of Mr. H. M. E. Evans, a real estate broker in Edmonton. There is a standing Board appointed by the Government to report from time to time on provincial gaols and asylums and make recommendations with regard to their operations and on complaints made by persons confined in these institutions. Look through the personnel of these boards and, with one exception, you will not find a member of the legal profession.

The Workmen's Compensation Board of three members from whose decisions there is no right of appeal to the Courts, and whose jurisdiction cannot even be questioned in the Courts with respect to any matter, deals with questions of the utmost importance to labour. Evidence must be taken and reviewed. Rights fixed by statute must be determined. A large volume of cases, involving huge sums of money each year, must be disposed of. Questions of the rights of injured workmen, equal in importance to or exceeding in importance in many cases rights and remedies which are customarily dealt with by the Supreme Court of the Province—are here summarily and finally determined by three gentlemen, not one of whom has had even a rudimentary training in the law. And more and more the legislature is adding to the jurisdiction of this body and restricting the rights of the workman or his next-of-kin to have his or their rights determined by the Courts of the land.

Then we have the Debt Adjustment Board with its extraordinary powers, and all its ever extending ramifications, injecting itself into differences between debtor and creditor, effecting compromises of rights and liabilities, the real import of which not one member of that Board is qualified to interpret. You will look in vain for any member of the legal profession here. If claims are to be compromised and liabilities reduced or entirely wiped out, have we not a Bankruptcy Court, administered by a Judge of the Supreme Court, with the right of appeal from his decisions? Or if resort to the Bankruptcy Court is unnecessary or inadvisable, have our Courts and their officers not always been most considerate of the position of unfortunate debtors, ready at all times to grant them reasonable extensions of time for payment of their debts. The point I wish to make is that these problems should be dealt with by those whose qualifications enable them to understand properly the rights of the debtor and creditor. Viewed from another angle, I contend that interference in the business affairs of the Province through the instrumentality of a body of laymen functioning under a government department is contrary to the spirit of the constitution, not to mention the duplication of the services provided by the Supreme and District Courts and the Bankruptcy Courts.

My criticism applies with more or less force to the other Boards and Commissions I have previously mentioned except that in the case of the Public Utilities Commission we have, and on the Tax Inquiry Commission we did have a representative of the legal profession in Mr. A. A. Carpenter, whom, I am sure, was of very much assistance to his colleagues in the work entrusted to them.

No member of our profession would contend that the ordinary commission or board should be composed exclusively of lawyers, for there are points of view to be presented which could be more effectively presented by representatives of labour or capital, the farmer or the manufacturer, the layman, as distinguished from the jurist. But where situations, problems and cases come before the bodies I have mentioned, demanding consideration and a solution, and requiring, as they do in all these cases, for their proper understanding, a knowledge of the principles and the intricacies of the law, and the ability to elicit and weigh evidence, surely the assistance of a legal mind is of prime importance.

There is still another angle to the subject. It is the tendency on the part of the legislature of Alberta to assign to Magistrates, only a mere handful of whom are trained lawyers, the disposition of matters

of the most vital importance to the well being of our people. Take for instance, the provision in the Domestic Relations Act empowering a police Magistrate to try an action instituted by a wife for a judicial separation from her husband. The original Act of 1927 specifically provided that there should be no appeal from a decision in such a manner, but it is fair to add that following complaints made, the legislation was amended in 1928, providing for a rehearing by a District Court Judge on the request of either of the parties to the proceeding. Of all subjects which should remain exclusively within the jurisdiction of the Supreme Court, surely this is one. I submit the legislature has opened the door to miscarriage of justice of the gravest kind and respecting a matter which is fraught with dire consequences if mistakes be made. I make no complaint against the Magistrates of the Province, who, for the most part, do their work conscientiously and well, but surely there are reasonable limits within which their jurisdiction should be confined.

Surely, too, the marked tendency hitherto existent in this Province to restrict an aggrieved person from questioning the jurisdiction of or appealing from the decisions of these Boards given such unusual powers, is a dangerous movement. The untrammelled right of the subject to seek redress for his wrongs by way of appeal from inferior Courts or Boards has ever been a well established principle of British justice. The setting up of bureaucracies, absolute and autocratic, is out of harmony with the genius of the British system of law. Why should the decisions of the Workmen's Compensation Board be as final as the laws of the Medes and Persians? Are these three gentlemen infallible? Under the existing legislation their jurisdiction cannot even be called in question. Cases of hardship and injustice must necessarily follow as a result of the present legislation.

Due credit must be given the legislature for the amendment to the Interpretation Act of 1928, providing that where a Judge or an officer of any Court of Record is exercising judicial or quasi-judicial powers by virtue of any Act, he shall be deemed to be exercising these powers in his capacity as judge or officer of the Court, and not as a *persona designata*, unless the Act contains express provision to the contrary. I know of no judicial interpretation yet of the effect of this section, but I think the profession generally understands it to mean that this enables an appeal to be taken from the decision rendered. But if there be provision for appeals from judges who act in quasi-judicial capacities, why not an appeal from laymen who act, for instance, on the Workmen's Compensation Board.

There are many other angles from which these problems might be considered. I have not touched, for example, upon the wide powers conferred upon the Public Utilities Commission, denying to any person or corporation any right of appeal from its decisions, save upon a question of jurisdiction or a question of law. These limitations upon the right of appeal are altogether too restrictive. Why not an appeal, without limitation, to the Appellate Division of the Supreme Court of Alberta? For be it remembered that this Board is dealing with problems of the utmost importance and magnitude. The men who preside on that Board are no more infallible than the Judges of our Courts, from whose decisions in questions of similar magnitude there is an unlimited right of appeal.

But do I hear some one outside of our profession say: "You lawyers run with patience the race that is set before you or stick to your last. The Legislature makes the law. Your function is to administer the law." For answer I would quote the remarks of Lord Buckmaster, former Lord High Chancellor, given expression to not so long back on a visit to this country:

We lawyers also have cast upon us a very grave and serious responsibility. We are not, and ought never to be, people who merely know the law and appear in Courts and plead cases. We ought to be and our historic role has always made us far more than that. We are the people who not merely administer the law, but who ought to shape and help to make the law. No lawyer ought to exclude himself utterly and entirely from the great public life of which he forms a part. He beyond all other men is bound to use his energies, because he knows the way in which the law can be altered and framed for the benefit of all mankind. . . . We are not merely the ministers of justice, great and august as the title must forever be, we should be the guardians of liberty. . . . It lies with us to see that these great expanding powers may be guided, directed and developed so that they may produce a nobler life and an ampler liberty for those who will succeed to our struggles and to the victories that we have won.

That leads us to enquire why the disinclination to accord our profession its proper place? And may I say very definitely that my criticisms is directed not against the present U. F. A. Government or any particular government the Province of Alberta has had, for this state of affairs has been developing throughout the years.

The members of the legal profession are not unresponsive to the demands made upon all good citizens that they shall lend a hand in these movements designed to make conditions of life better and more humane. From day to day we strive to redress wrongs and injustice. How often without monetary consideration for our services few laymen realize. There are voices raised against us here

and there in the land, but they are for the most part the voices of the ignorant and the prejudiced. Often these outbursts against us emanate from some cut-throat or assassin who has been denounced for his villainy, or from some careless or unprincipled debtor who has been forced to pay his just obligations. It is a popular pastime in the legislature of Alberta for certain members to dwell upon the failings of the members of our profession. From their privileged position some of them never lose an opportunity to poison the public mind with exaggerated criticism of our membership. How unmerited their criticism and unjust their attitude as applied to the vast majority of the members of the Bar, we all have had occasion to realize. It is this criticism from a clamant minority that has tended to deny to us our rightful place in the quasi-judicial bodies I have referred to and that from time to time influences the legislature in placing restrictions on the field of our practice. But time is with us. Prejudice cannot for long outbalance our right to fair treatment. A solid front to these assaults, dignified protests from the leaders of the Bar against these injustices, an even greater effort to maintain the high ideals of the profession, these in the long run, will remedy a situation existing today which is not in the best interests of the Province, and which has left among the members of the Bar a rankling sense of unfairness.

Edmonton.

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