

# THE CANADIAN BAR REVIEW

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## LAWYERS AND PUBLIC SERVICE \*

My first word is one of thanks for the high honour the members of this Association bestowed upon me a year ago in unanimously electing me to be the President of the Association. It is not usual for a President to have to wait until the time of his retirement from office to express personally his thanks but it was impossible for me last year to remain in Halifax throughout the meetings on account of the conflicting dates of an invitation I had accepted from Harvard University before the time of our own Annual Meeting had been determined. There was something peculiarly pleasing to me, however, in the fact that the telegram notifying me of my election to the Presidency was received and handed to me in Cambridge by Professor Samuel Williston, that distinguished legal scholar and author of the monumental American work on Contracts, whose guest I was. I should like to repeat with the emphasis of my own voice what I said in my telegram in reply that it was with a deep sense of the great honour and responsibility involved that I accepted the presidency, and that I recognized my election as an expression of good will toward the judicial members of this Association, though I appreciated at the same time the personal element and found great satisfaction and pride in the honour which you had conferred upon me because I believe that the highest reward that can come to a lawyer is the esteem of his professional brethren. The word "Bar", for the purposes of this Association, means and was always intended to mean the whole of that society which includes in a common fraternity both judges and lawyers, and the selection of a judge at times as your President (as you did here in Toronto in 1927 in the election of the late Chief Justice Martin of the Province of Quebec) is rightfully accepted as a gesture of good will

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\* Presidential address of the Honourable Mr. Justice Davis before the Canadian Bar Association at its Twenty-Second Annual Meeting.

toward the judicial members and tends to cement the cordial feelings that happily exist in this country between the members of the Bench and the Bar.

My first official duty was to represent this Association during the week following our Halifax Meeting at the Annual Meeting of the American Bar Association in Boston. In an address that I was invited to make I took occasion as the President of this Association for the time being to recall the memorable Annual Meeting of the American Bar Association which was held in the City of Montreal in September, 1913, when their special guest was that great English lawyer, scholar and statesman, Lord Haldane, then the Lord Chancellor of England. It was that meeting in Canada of the American Bar Association that directly led to the formation of this the Canadian Bar Association, and I presumed in addressing the members of the American Bar Association to offer the suggestion that before long we should have a great joint assembly at some convenient time and place to renew our friendships and to pledge our efforts to a furtherance of those great purposes and ideals which move us as lawyers and to celebrate our unity in the faith and brotherhood of the law. In the belief that it is the elements which connect us and not the elements which divide us that are strongest and most permanent, I left the suggestion for the consideration of the Executives of the two Associations. I am happy to say to you today that the American Bar Association very quickly took up the suggestion and have appointed a committee under the chairmanship of Mr. Arthur T. Vanderbilt, of Newark, N.J., to consider ways and means of giving full effect at an early date to my suggestion. The matter has already been officially discussed and considered. There are practical difficulties in the selection of a time and a place for such an event but I am satisfied that before long the proposed meeting will be held, to the mutual benefit of the lawyers of both countries. The members of the Canadian Bar Association I am sure will be most pleased to learn of the interest and enthusiasm shown by the Executive of the American Bar Association in taking up the suggestion which I ventured to leave with them in Boston.

Resolving that I would make the year of my holding office as constructive and useful a one for the Association as, consistent with the discharge of my judicial duties, could reasonably be done, I visited officially during the year, Winnipeg, Regina, Moose Jaw, Calgary, Victoria, Edmonton and Saskatoon and

met and addressed the local members of our profession. I sought at each place to bear a message of good will from the members of the Association in the east to the members of the Association in the west. I was greatly affected everywhere I went by the evidence of the liveliest interest in and the strongest support of the work of the Association by judges and lawyers alike. I found the members of our profession in all the parts of the country I visited keenly alert to the professional and national importance of the work of this Association. Pleasant as the personal contacts were wherever I went, the visitations involved a good deal of work and a great deal of strain. Is it not plain that while serving as a judge of the Supreme Court of Canada I would not have accepted the office of President of this Association and undertaken what I did had I not profoundly believed that the work was worth doing, that the objects and ideals of this Association were worth perpetuating, that the Association formed a most necessary link between the members of the profession who serve in the judiciary and those who serve at the Bar, that the members of the profession across our far-flung country should be more closely united in bonds of friendship and of understanding, and that lawyers should continue to yield, as they have in the past, a great and good leadership in the national affairs of this country. The members of our profession, both judicial and lay, have made in the past a most creditable and substantial contribution to the public service of the nation. No wonder the 'Manchester Guardian', in reporting some discussions that took place at the Halifax Meeting last year, referred to the Association as "the powerful Canadian Bar Association". Not powerful in any political sense, if we use that term in its popular journalistic meaning, but powerful in the service its members have rendered and are rendering in the development of the law and for the better administration of law and order for the public benefit.

It is somewhat difficult, you will appreciate, for me to deliver the customary presidential address because it would not be fitting for me to discuss concrete questions of law or national problems. Soon after my appointment as your President last year I received a memorandum from a distinguished member of the profession whose mature judgment guided me many a day while I was in practice here in Toronto, warning me against making public speeches. The memorandum read as follows :

I should like to say that the best opinion is that the place and occasion where judges may expound the law is on the bench, and in causes before the court. Even distinguished justices may not safely expound the law at bar dinners because they involve themselves in politics.

The admonition was really, I think, unnecessary, but it was the sound warning of a wise and experienced friend. With his opinion I entirely agree.

A few months ago I sought as a special guest for this Annual Meeting the presence of an American jurist who has become an international figure. I knew you would like to meet him and hear him, and while I appreciated that the present year might present peculiar difficulty to his public appearance, I ventured to suggest that he might come to us. He wrote that he was honoured by the invitation to address "my Canadian brethren" at the meeting in Toronto, but he said that he had found it necessary to renounce public speaking, "partly for the reason that statements of abstract theory are often related in the public mind to controversial issues of the day".

Both observations have tended to silence me, and rightly so, but I offer them in extenuation of any criticism you may have that I have put my presidential address upon a rather personal basis. Judges may well adopt and apply the truth of the following words :—

If wisdom's ways you would early seek,  
Five things observe with care,  
To whom you speak, of whom you speak,  
And how, and when, and where.

But I can surely give no offence if at this time I say a word upon the subject of the office of a judge. In this audience before me are many men who entertain the hope of becoming members of some branch of the judiciary in this country. That is not telling you something that you do not already know. But it is a noble ambition for the lawyer, and he should cherish that hope if it is founded upon a desire to to serve his country in one of the noblest fields of public service. I am inclined to regard the lawyer who has never had any yearning some day to serve upon the bench as alien to his profession. His thoughts and his purposes may not be far removed from the mercenary. It is a perfectly natural thing that a lawyer should look forward with some hope to sitting some day upon the bench. And in the ordinary and natural

course of events many of you gentlemen within the sound of my voice will no doubt in due course be appointed judges. What then will be your conception of the office of a judge? Do you look forward to the appointment as rounding out your career? Do you regard it as reaching the top of a ladder? Do you regard it as a time of relaxation and leisure with certain comforts that the strenuous life of the practising lawyer has withheld? Or do you grasp the vision of the commencement, upon your appointment, of a new career opening out to you a different field of work but necessarily involving more intense study and more thoughtful deliberation? That, I take it, is the true conception of the office of a judge. It is not an office to be regarded as clothed with certain social advantages but rather an office of high calling where not only the members of your profession at the Bar, but the public whom you serve, will expect from you real hard work and the greatest care and the most thoughtful consideration of every case that comes before you, an intensive study of the vast authorities that lie available to you and a thorough understanding of the facts of the particular case; in short — a competent discharge of the duties of your office. What an ambition for any lawyer! What an ambition for any judge! Not that I have framed my conception of the office in any beauty of rhetoric — but is it not in substance the true and worthy conception of the public service which the Bar and the people at large expect and are entitled to demand from those who sit upon the bench? May I quote from Lord Bacon's essay "Of Judicature":

Judges ought to remember that their office is '*jus dicere*', and not '*jus dare*', to interpret law and not to make law, or give law; . . .

Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue. . . .

Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the Bar; or to show quickness of conceit in cutting off evidence or counsel too short, or to prevent information by questions, though pertinent. . . .

The place of justice is an hallowed place; and therefore not only the bench, but the foot-pace and precincts and purprise thereof ought to be preserved without scandal and corruption. . . .

May those of us who are judges and those of you who in the ordinary course of events become appointed to the bench, so magnify the office that the public may have a transfigured sense of the value of the judiciary. May we always so conduct

ourselves that when we, as we shall, give way to another generation, it can be said of us justly that in our hands the judicial office has been enriched and that its lustre has not been dimmed. May our work and our lives as Canadian judges be such that reverence of the law may become in Canada, to use the words of the great Abraham Lincoln, "the political religion of the people".

And now may I say a word of wider application. The most significant fact in connection with the growth and activities of this Association during the last five years, as I see it, is the remarkable increase in the attendance and interest of the younger men of the Bar. That, I take it, is evidence that the younger members of our profession do not regard the practice of the law as a mere workaday task but have a vision that they may make their lives count, in their day and generation, by assuming a creative function in the development of the law of their country that it may not fail to meet the changed and changing social and economic conditions which the law exists to regulate and in which it must work. These younger men are not interested in legal conundrums; they are interested in law as one phase of life itself. Earl Baldwin, in his last public address to a large audience while still Prime Minister of England, said this :

In the next quarter of a century, when you come to play your part in the great world, the big problems will be problems of government.

These words are well worth reiteration. And we in this country have very real problems in government. Lawyers — and even judges — may differ as to their understanding and interpretation of the British North America Act and of the exact constitutional status of Canada within the British Empire, following upon the Statute of Westminster 1931, but they will lay the emphasis not upon strictly legal theories but upon the fact that Canada has in the evolution of its constitutional development acquired the largest possible measure of political independence short of what is legally an independent sovereign nation. The full implications of that position have to be faced and the practical problems that are necessarily involved are tremendous problems of government, domestic, imperial and international. Few of our citizens, I venture to think, have given to the existence or solution of these problems more than a passing thought. And yet these problems demand the weightiest consideration. It would be inappropriate for me to even mention

some of the pressing problems that occur to me but, gentlemen of the Bar, you know them better than I do. From you, with your minds trained in the study of law and with your practical knowledge of the working of things, the nation is entitled to leadership in the creation of a sane and sensible public opinion. You may differ as to the methods to be employed but you will all agree, I feel confident, that it is your duty as lawyers to give wise and independent leadership in everything that is affected with the public interest. To the younger men especially, I would say use this association for meeting and mingling with your professional brethren from all the provinces of Canada—exchange ideas, debate the public matters and give leadership to the people. Eschew a narrow and selfish conception of the obligations that rest upon you as young Canadian gentlemen learned in the law.