

## WAR AND THE LEGAL PROFESSION

### ACTION NOW

Acting on a suggestion from the Controller of Transport, the 1942 Meeting of the Canadian Bar Association was cancelled at the eleventh hour. A great deal of criticism has been levelled at those responsible for this action, some of it based on the view that it was a further indication of the profession's supineness in the face of ever-increasing encroachments on the liberties of the individual — liberties of which, by a remarkable revelation, the profession was conceded to be guardian by some portions of the press which had previously expressed doubts concerning any or all functions of lawyers; still others criticised the action as an indication that the profession — already moribund — was being asked to, and had agreed to sign its own death certificate. That it was regrettable that the meeting was cancelled, no one will deny. To impugn the motives of those who, acting in the war interests of this and other of the United Nations, cancelled the meeting, is not only to participate in talk which dissipates energy and saps morale, but is at the same time likely to obscure the true function of the profession itself. Let us not be deceived. Those portions of the public press which protested most loudly at the cancellation of this meeting have never been famous for their championship of the legal profession. Further, to state that the legal profession's function in society is in danger of extinction because a meeting is cancelled would be a sorry reflection not only on the profession but on the intelligence of the public. The place of the lawyer and of law in Canada depends upon much more than an annual meeting — it depends on the spirit of the entire profession. An annual meeting, it is true, affords an opportunity for the unified expression of that spirit, and failing that meeting it may be more difficult for the profession to make known to the public at large its opinions and views concerning the many problems of rights of the subject, but it is not impossible. Any meeting of the profession should only be a prelude to action — action in the interests of the community it serves, action in the interests of law by which that community is served. When the public can say that the legal profession failed not merely in expressing views, but failed in making efforts to obtain action on behalf of the public whom it represents, then and then only should charges be laid at the door of the legal profession.

It is true, that with the present war, and the many fundamental changes in the social, economic and governmental structure that followed it, interference with the individual's freedom to live his own life has become, and will become increasingly more marked. As with all such interference the question for the lawyer — because it is of vital concern to the community whose interests he is sworn to champion — is how best to reconcile the demand for maximum unfettered governmental interference with human liberties, which is called for in the name of efficiency, with the minimum interference with the individual, which is called for in the name of human dignity, or man's fight for liberty under law. That this conflict is increasing no one will deny. That to this conflict the legal profession must, to be true to its trust, give more and more thought in order to preserve that which is as essential to the continued existence of "our way of life" as winning the war, is true. For this reason we believe that an annual meeting should have been held, and we believe it will in future be held, but if — and only if — the legal profession in general, and the Association in particular, gives proof of the fact that it is willing to bear the full burden and assume the responsibilities of its position in a country at war. Unfortunately it is true that in many quarters it may appear that since the "butchers, the bakers, the candlestick makers" are allowed to meet without restraint, while the lawyers can or do not, the latter have nothing vital to contribute to the fundamental issues of society comparable to the former. This is a challenge to the legal profession which can not pass unnoticed. There is only one way in which it can be met, and that is by action, not words. If the legal profession so acts now as to show by their works that their faith can be translated into something more than pious resolutions and high-sounding speeches, there need be no fear for future annual meetings or for the fate of the profession. Perhaps, in that light, it was not altogether unfortunate that the annual meeting was called off, for already there are signs that the profession is awakening to a newer sense of responsibility and that action — rather than words — seems the order of the day.

Despite the cancellation of the Annual Meeting, the Council of the Canadian Bar Association did meet at Windsor on August 24th and 25th, and participated in the meeting of the American Bar Association held at Detroit in the same week. Over both meetings, held in the shadow of Dieppe, one could feel a quickened sense of responsibility, together with a feeling of urgency. There was no need to announce any subject for discussion.

Subjects in legal phraseology might appear on programmes, but there was only one subject spoken of — WAR. If one were to pick highlights from the scheduled programme of these joint meetings, I suppose it would be the speeches of the Attorney General of the United States, Hon. Francis Biddle, Sir Walter Monckton, K.C., the representative of the English Bar, and that of our own Ministers of Justice and Defence. These representatives of three United Nations — lawyers all — explained the spirit, the morale, the splendid efforts, the demands which the war was making on their respective countries. Here were facts given to a group accustomed to dealing in facts. The very recital of these facts dispelled doubts created by commercial gossipers, and reaffirmed faith without lulling into any false or easy sense of security. The story of the trial and appeals of the German saboteurs in the United States in the grimmest days of the war, of the furnishing of expert counsel to defend avowed enemies of the State, and of the convening of a special session of the Supreme Court of the United States — all this told by the American Attorney General — was not merely a fascinating legal anecdote. It typified, above all, the distinction between two worlds — ours and “theirs.” In giving even German saboteurs the right of access to the courts, it showed again, that law, the legal tradition and the legal profession were keeping alive those very elements for which we fight.

With such a background, it was only natural that the chief concern of the Canadian meeting was a consideration of how best might the legal profession — not as individuals, for to that extent we can do nothing more or less than any other Canadian, but as a profession — contribute to the problems of the war. The manner in which the American Bar Association assisted in some of these problems was discussed by Colonel E. R. Beckwith in a paper which we had hoped to reproduce in this issue of the REVIEW, but which we are unable to do until October. Already there are indications that the Executive of the Canadian Bar Association is rounding out the plan of campaign for enlisting co-operation of the legal profession in Canada along similar lines.

At the Council Meeting in Windsor, Mr. J. McGregor Stewart, K.C., tendered his resignation as President of the Association due to the pressure of war work, and to fill the vacancy thus created, Mr. G. H. Aikins, K.C., of Winnipeg, was nominated President, with Mr. R. L. Maitland, K.C., of British Columbia, as his Dominion Vice-President. Mr. Aikins has already sent out a memorandum, a copy of which we are

reproducing in this issue of the REVIEW, and he has, in addition, been in Toronto twice in active touch with members of the Ontario Council and the Ontario Committee which has done pioneer work along the lines adopted by the American Bar Association in connection with the war effort. Since then he visited Colonel Beckwith in New York and discussed with him further various details of the American *modus operandi*. Such active leadership cannot fail to enlist the support of the entire Canadian profession, and as an indication of the determination of individual members of that profession to take their part in the important work which lies ahead, we are pleased to publish a letter from an Ontario member dealing with International Law in this issue.

For the work which we are being called upon to do can not be confined to specialized "war work" only. It must, for some time to come, embrace every activity of the profession. It is commonplace to the lawyer that every phase of law bears relation to every other phase. Of necessity this is so because law is nothing more, and nothing less, than an ideal reflection of the aspirations of human conduct and the means of attaining these aims. Given a war such as the present it is easy to see how every aspect of human conduct — every aspect of law — converges and must be coordinated. The first and most obvious problem that the war presents to the lawyer is the manner in which the public can best be acquainted with new duties and changed or altered rights. The man in the armed forces is removed abruptly from his normal surroundings and is no longer in a position to deal with the many daily problems of his civilian life. Yet those problems continue and must be solved, not only in the interests of those he leaves behind him but in order that he himself be free from those clouds of doubts and uncertainties that impede efficient military morale. Not only that, but every able bodied person in the Dominion has new duties laid upon him and is now subject to call in either a military or civil capacity. To whom can the people of the Dominion turn for advice in their bewilderment — for counsel as to their rights and liabilities? Surely, if ever, this is the time for the legal profession to show, in action, that these and countless other similar tasks are the burden which it will gladly bear; that it is ready to assume and perform its role in the administration of justice between man and man, and man and the State which, altered perhaps in emphasis, is as important in time of war as in time of peace.

To the solution of these problems the legal profession must offer its assistance, not in the role of obstructionist, but as a

group who, animated first and foremost by a desire to win the war, are willing to lend their help not only in eliminating the friction produced by misunderstanding on the part of the public of war time regulations, but to an administration of such regulations that gains the utmost efficiency and yet preserves that sense of justice properly administered, without which the spirit of a nation sours and dies. Here is work for the profession that the Canadian Bar Association can, and will do, meeting or no meeting. That work is now going on. More will come, but only if all members of the profession are willing to act together, through local groups, provincial groups and the national association.

In the United States, members of the profession, junior and senior alike, and whether members of the American Bar Association or not, have responded to the call of that body for assistance in carrying out the war services organized by the Association. The result, already apparent, is that there has been a rebirth of public confidence in the profession, a confidence that is stronger than ever before because it has developed in a time of national peril. The Canadian profession can do no less. For today, more than ever, it is important that the public be made to realize that it does not stand friendless before what must seem an all-devouring State. That the people of this country are glad to serve in any capacity toward the common good is abundantly clear. At the same time they are entitled to feel that in the sacrifices they are called upon to make there shall be no discrimination, and no partiality, and that the liberties they will gladly surrender in the face of common danger are liberties for whose ultimate preservation they have friends and champions who are even now on guard. The public are entitled to demand nothing less than this of the legal profession. The profession must assume openly and without shirking nothing less. If the present is the testing time for all men's souls, it is equally true that it is the time for the organized legal profession to rid themselves once and for all of all cheap accusations of double dealing, of playing "with the moneyed crowd," of ignoring the man in the street. It is the man in the street who will win this war, because he has an abiding faith in the rights and dignity of the human spirit. The legal profession, now, as never before, must buttress that faith and must themselves act as a bulwark against any attacks upon it from within our gates. To this end the Canadian Bar Association is pledged. Only by the effective performance of that pledge can the legal profession command the respect of its fellow-Canadians.

THE EDITOR.