

The Role of the Lawyer in our Society

D. L. Johnston*

When I was asked by the Treasurer to speak to you today I was quick to accept with a particular pleasure because I have shared with so many of you graduating as lawyers today a number of experiences unique to ourselves.

To put those experiences in more common parlance, for those of you who studied at Western's law school, we entered the law school as rookies in September, 1974, we experienced first year jitters together and now five years later we are rookies again. You face the challenges of professional practice in Ontario at a time when the lawyer's world is more stressful than it was five years ago and I will face the challenges of a new job a little to the East of here where the issues will be of a little different kind, but equally invigorating. May the passage through the rookie year in our respective new adventures be as satisfying and joyful as that passage was for me into succeeding years at Western's law school.

It is that new adventure that I want to speak about briefly today—your role as a lawyer in our society. Like the landscape of most serious adventures, the terrain presents the shadows of initial risks and dangers and there is the threat of storm clouds on the horizon. The most obvious of these shadows may simply be the task of getting a job and earning a living. The statistics look a little ominous—well over 12,000 lawyers presently in the profession with approximately 1,000 new lawyers entering the system each year for a provincial population of under 9 million. To make the skies even darker by comparison, the ratio of lawyers to population in the United Kingdom is about half that of Ontario—that is half as many lawyers to serve each 1,000 people in British society. However, looking at the other end of the horizon, the United States is twice as rich in lawyers per 1,000

* D. L. Johnston, Dean, Faculty of Law, The University of Western Ontario. This the address delivered by him to at the Academic Convocation held in London, April 11, 1979 to call to the Bar the successful candidates of the Bar Admission Course at London.

unit of population as Ontario and in some of the more industrialized states in the U.S.A. the ratio is richer yet again. There are lessons for us in the American experience. While the competition for traditional lawyer positions in Ontario presently is quite fierce, I think we are still working at the frontier to determine what kind of roles individuals with legal skills can perform efficiently and productively in our society. Given the education you have had with its three parts—academic, internship through articling, and the most recent, a practical and intensive bar admission course, an education which is second to none in any English speaking jurisdiction in the world, and given your abilities to function as problem solvers and planners at a high level of sophistication in our society, I believe there is room for gainful and useful employment in our growing society if you are prepared to apply your education vigorously and imaginatively.

I take great comfort from former Chief Justice Gales' remarks to a graduating Bar Admission class several years ago. He graduated in 1932 in the teeth of the Depression. He recalled his class being addressed on their call to the bar by a very senior judge. That judge told them that their prospects were grim indeed. A certain percentage of them would go bankrupt, another fixed percentage would be disbarred, a further percentage would go to jail, another percentage would be forced to find employment outside the profession, and so on. Chief Justice Gale said that he and his fellow graduates left the graduation ceremony suitably awed and depressed until after a little reflection they realized the percentages added up to 105.

The lawyer as a problem solver in our society is much needed today. And a major part of his role as problem solver is to have a sense of the ethical direction of his community and to bring to his position in the community a highly refined set of personal ethics. Unhappily the public image of the lawyer is not always consistent with that. One thinks of the number of lawyers involved in Watergate and the tragic disrespect for legal process shown by the highest legal officers.

And one is only too familiar with the anecdotes which suggest that lawyering and sharp practice are synonymous. For example there is the story of the foreigner travelling in this country and because he had an interest in history walked through a graveyard. He came across a tombstone on which was inscribed "Here lies a lawyer and a gentleman". Puzzling for a moment, he then exclaimed "Good Heavens! In this country they bury them in pairs!".

Or to take another, there is the story of the scientist, missionary and lawyer who were shipwrecked and found themselves occupying the same lifeboat but without any oars. The scientist busied himself in trying to plot the direction of the currents from the stars. The missionary directed his pleas to heaven. The lawyer did neither. After many hours the current

brought the boat within range of an island. When it appeared the current would carry the boat past it the lawyer showing typical enterprise placed a rope between his teeth and jumped overboard to swim ashore. No sooner was he in the water when a fin appeared above the surface, approached the lawyer and disappeared beneath the lawyer. It came up on the other side and went off in another direction so that the lawyer was able to swim safely to land. "There" said the missionary "proof of the power of prayer". "No", said the scientist, "just professional courtesy!"

There is, too, the famous dictum of the French philosopher, Voltaire, directed against lawyers who said: "I have been ruined twice: once when I lost a law suit and once when I won." And Voltaire's phobia for lawyers foreshadowed Charles Dickens' powerful indictment in *Bleak House*, the novel in which the law suit of *Jarndyce v. Jarndyce* occupied twenty years and totally exhausted a substantial estate in legal costs. Some of you will recall Dickens' famous lines in the first chapter:

"This is the Court of Chancery; which has its decaying houses and its blighted lands in every shire; which has its worn-out lunatic in every madhouse, and its dead in every churchyard; which has its ruined suitor, with his slipshod heels and threadbare dress, borrowing and begging through the round of every man's acquaintance; which gives to monied might the means abundantly of wearying out the right; which so exhausts finances, patience, courage, hope; so overthrows the brain and breaks the heart; that there is not an honourable man among its practitioners who would not give—who does not often give—the warning, "Suffer any wrong that can be done you rather than come here!"

These are not the images of the lawyer as an ethical leader in our society. But they belie an image that is all too frequently encouraged by too many lawyers. The good lawyer is one who cherishes the concept of justice which underlines the rule of law, who treasures his reputation for integrity and who shapes it year by year through honesty and responsibility.

Responsibility is a key word. The role of the lawyer involves a sense of responsibility to the community and to the institutions which serve it. Moreover, it is the lawyer who should have a commitment to help these institutions work according to his own sense of social and individual justice. These institutions include the obvious ones—the courts and administrative tribunals—but they cover the spectrum—elected and appointed governmental bodies from local board of education to Canadian House of Commons. And thus it is, for example, if the administration of criminal justice in a community is weak because the policeman on the beat is not properly equipped or brings a warped sense of function to his job or if government

contracts are not tendered properly, it is, above all, the role of the lawyer in the community to perceive and to work constructively to eradicate these cankers.

The burden of my remarks is that the law is a *service* profession. While lawyers must run their practices in a business-like way and along business principles, a law practice is much more than a business. What then does it mean to be a professional and to be part of a serving profession?

First it means that it is not enough that a particular activity pays and it is not against the law. There is the lawyer's canon of ethics, there is the fact that he is an officer of the court, there is the fact that he has a role in the community that has meant over the centuries service, often selfless service. Piero Calamandrei quoted recently in the *Law Society Gazette* put the point this way: "The difference between the true lawyer and those men who consider the law merely a trade is that the latter seek to find ways to permit their clients to violate the moral standards of society without overstepping the letter of the law, while the former look for principles which will persuade their clients to keep within the limits of the law in common moral standards."

Secondly, when we talk about the lawyer as professional we mean that the lawyer must continue to grow, continue to self-educate. The law continually changes. So must the lawyer. It is essential that the lawyer work continuously to grow with the law. The great educational philosopher, Dewey, once said that the essence of a good education is the power to grow. That must be the essence of the good lawyer's education before he receives his call to the bar and it must continue as an integral professional quality for all his years thereafter.

Thirdly, it means that the lawyer has a special responsibility for making the legal system work, and work justly. It means lawyers administering the legal aid system through voluntary, contribution of their time. It means that more senior lawyers who have no need for legal aid clients to balance their practice, remain available to legal aid clients so that there is a balance of experience and expertise amongst those professionals available to serve these clients.

Fourthly, it means service to improvement of laws through contribution of time and expertise to Bar Association sub-committees and legislation task forces, through work on the rules committee in a county to remove delays, through assistance to the law reform sub-committee rewriting a particular statute. It means constant pressure to simplify the law and make it more understandable to lawyer expert and lay citizen alike so that the law does not become the preserve of a priestly few or prohibitively expensive for those who require its professional counsel.

Finally, the lawyer's professional role implies an insistence that the system work for the good of all even at the disadvantage of some of us who have learned it well. Thus if a profession of certified specialists is appropriate in a decade's time, it means willingness on the part of us who might prefer to be "grandfathered at that time" to show ourselves ready to be regularly re-examined, to participate in refresher programs and subject ourselves to appraisal. Thus if we have a substantial real estate practice and a computerized land titles system is available, it means we welcome that improvement in the system and the lower costs to the public of a transfer of title even with the result of a reduction in our professional fees.

Let me summarize this way. St. Augustine once wrote—"If you wish to judge the quality of a city look to see what it cherishes". In our city—as in our country—one thing we do cherish is the rule of law. But it is a fragile plant. And it is the role of the lawyer to cultivate that plant tenderly and lovingly, to take the long view, to apply himself selflessly to the service of his community over the years so that the quality of law from supreme court to small claims court, from national legislation to local by-law will only be enhanced by his efforts and gradually reflect a higher quality of civilization in our society. And it is the vision of the lawyer that the respect for human dignity—each individual having his place in the sun and having the confidence that he belongs there in the sun in his society as much as anyone else—becomes a mirror of reality.

Yet this may be the hardest role of all—to take this long view about building the quality of justice and thus of civilization in one's society. It is hard because the steps seem imperceptible and the journey long, because it takes the trickle of many drops to produce a mighty river, but it is the lawyer, above all, who should see that it is upon such individual commitment over time, to something higher and better than now is, upon which the best civilizations are founded.

One thinks in this connection of the words of Robert Kennedy, "Some men see things as they are and wonder why. I dream of things that are not—and ask why not?" And one thinks of the ancient proverb "Particularly blessed is the man who plants a tree knowing he will not be there to enjoy its shade."

May that proverb serve both as a salute to the graduating class and as a talisman for each of you. Wherever you begin your professional lives you may plant carefully and cultivate well and may your society be particularly blessed by the shade from the trees that grow from your efforts. And if you do I believe that you will experience in your role that deep sense of joy which moved the Greek philosopher several thousands of years ago to express his joy as, "the application of vital powers along lines of excellence in the pursuit of worthwhile goals".