



Office of the  
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Universities

Mowat Block  
Queen's Park  
Toronto, Ontario  
M7A 1L2  
416/965-5277

NOTES FOR AN ADDRESS BY  
THE HONOURABLE BETTE STEPHENSON, M.D.  
MINISTER OF EDUCATION  
MINISTER OF COLLEGES AND UNIVERSITIES  
ON THE OCCASION OF THE  
SPECIAL CONVOCATION  
LAW SOCIETY OF UPPER CANADA  
O'KEEFE CENTRE  
THURSDAY, APRIL 10, 1980

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MY LORD CHIEF JUSTICE, MY LORDS, CHIEF JUDGE  
COLTER, DISTINGUISHED GUESTS, GRADUANDS, LADIES AND  
GENTLEMEN.

IT WAS WITH SOME TREPIDATION THAT I ACCEPTED  
THE INVITATION OF THE TREASURER OF THE LAW SOCIETY OF  
UPPER CANADA TO ADDRESS THIS CONVOCATION TODAY. I WAS  
CONCERNED THAT I MIGHT HERE BE HELD ACCOUNTABLE TO THIS  
JURY FOR ALL THE GRIEVANCES THE GRADUANDS MAY HAVE ABOUT  
THEIR EDUCATIONAL EXPERIENCE. I CONSULTED MY COLLEAGUE,  
THE ATTORNEY GENERAL ABOUT MY CHANCES OF BEING ACQUITTED.  
HE TOLD ME I HAD REASON TO BE OPTIMISTIC. THIS MANY  
LAWYERS, HE SAID, WOULD NOT BE ABLE TO REACH A UNANIMOUS  
VERDICT ON ANYTHING.

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MY PORTFOLIOS HAVE MADE ME CONSCIOUS THAT THERE IS MUCH DISCUSSION ABOUT THE QUALITY AND RELEVANCE OF EDUCATION AT ALL LEVELS. MOST OF YOU HAVE RECEIVED AT LEAST TWENTY YEARS OF EDUCATION, AND - AT THE POINT OF BEING CALLED TO THE BAR - ARE ANXIOUS TO KNOW IF YOUR INVESTMENT HAS BEEN SOUND. MANY OF YOU HAVE GRAVE RESERVATIONS ABOUT THE FORM AND STRUCTURE OF EDUCATION FOR LAW - PARTICULARLY ABOUT THE BAR ADMISSION COURSE - AND SOME ANTICIPATE WITH APPREHENSION DECREASING PROFESSIONAL PRACTICE POSSIBILITIES RESULTING FROM THE GROWING POPULARITY OF LAW AS A CAREER CHOICE.

I CAN PREDICT WITH SOME ACCURACY THAT OF THOSE GRADUATING TODAY MOST WILL SUCCEED IN PROFESSIONAL PRACTICE, SOME MAY MOVE DIRECTLY TO OTHER ACTIVITIES AND, OTHERS, WILL LATER DIRECT THEIR EFFORTS TOWARDS OTHER FIELDS.

HOWEVER, EACH ONE OF YOU TODAY BECOMES A MEMBER OF AN HONOURABLE LEARNED PROFESSION IMPORTANT IN OUR PROVINCE BECAUSE IT IS THE CUSTODIAN OF THE LEGAL FOUNDATION AND STRUCTURE UPON WHICH OUR SOCIETY IS BUILT.

I WONDER WHAT HENRY I OF ENGLAND WOULD HAVE TO SAY ABOUT THE LAW SOCIETY OF UPPER CANADA OR ABOUT ANY PROFESSION, FOR THAT MATTER, FOR IT WAS DURING HIS REIGN (1068 - 1135) THAT THE FIRST GLIMMERS OF THE SELF-

GOVERNING PROFESSION WERE SEEN. IN FACT, THE PROFESSION OF LAW WAS THE FIRST TO WIN THE RIGHT OF SELF-GOVERNMENT. THEIR EXPERIENCE SET THE PATTERN FOR MY PROFESSION, FOR ENGINEERS AND FOR ALL OTHERS.

UNTIL HENRY, ALL LAWYERS WERE PRIESTS, ADMINISTERING CANON LAW IN THE ECCLESIASTICAL COURTS.

IN 1113, HENRY INITIATED THE ESTABLISHMENT OF COMMON LAW, COMMON THROUGHOUT ENGLAND, AS DISTINCT FROM LOCAL, CANON OR ROMAN LAW. AT THIS POINT, LAWYERS BEGAN TO MOVE OUT OF THE PRIORY, INTO THE PUBLIC AND SET IN MOTION THE PROCESS FROM WHICH EVOLVED THE CONCEPT AND THE FACT OF SELF-GOVERNING PROFESSIONS.

HENRY II, THE FIRST HENRY'S NEPHEW, CONSOLIDATED THE COMMON LAW SYSTEM AND ESTABLISHED THE COURT OF COMMON PLEAS IN 1178, TO HEAR ALL MATTERS NOT DIRECTLY INVOLVING THE CROWN. BY 1300, THE LAWYERS WHO DEALT WITH COMMON LAW HAD TOTALLY SEPARATED THEMSELVES FROM BOTH THE CHURCH AND THE KING, AND HAD FOUNDED THE INNS OF COURT, THE FIRST RECORDED SELF-GOVERNING PROFESSION.

INCIDENTALLY, HENRY II ALSO LEGITIMIZED PROSTITUTION, WHICH AS YOU KNOW, IS GENERALLY CONSIDERED TO BE THE OLDEST PROFESSION - HOWEVER, IT IS NOT SELF-GOVERNING.

SELF-GOVERNING PROFESSIONS MADE A GREAT DEAL OF SENSE IN THAT MEDIEVAL PERIOD. ONLY A VERY SELECT MINORITY WERE ABLE TO READ ANYTHING LET ALONE READ THE LAW OR UNDERSTAND IT. BECAUSE OF THE CHASM BETWEEN THE LEARNED LAWYER AND THE AVERAGE CITIZEN, NO ONE OTHER THAN A LAWYER COULD UNDERSTAND OR JUDGE ANOTHER LAWYER. EDUCATION IN THE LAW WAS THE RESPONSIBILITY OF THE PROFESSION, INDEED OF THE INDIVIDUAL PROFESSIONAL. THE BODY OF KNOWLEDGE OF THE MEDIEVAL LAWYER WAS BOTH LIMITED AND MONOLITHIC, AS EACH LAWYER HAD COMPARABLE SCOPE OF COMPETENCE.

THERE HAVE BEEN MONUMENTAL CHANGES IN THE LEVEL OF KNOWLEDGE AND SKILL IN BOTH THE LAYMAN AND THE LAWYER DURING THE INTERVENING CENTURIES. BUT THE UNIQUE AND PRIVILEGED RELATIONSHIP WHICH THE SELF-GOVERNING PROFESSION HAS SHARED WITH SOCIETY SINCE THAT PERIOD IS NOT UNLIKE THE RELATIONSHIP JEAN JACQUES ROUSSEAU ENVISIONED SHOULD EXIST BETWEEN THE PUBLIC AND ITS GOVERNMENT - A RELATIONSHIP WITHIN WHICH SOCIETY TACTLY AGREES TO ABRIDGE SOME OF ITS RIGHTS IN FAVOUR OF ANOTHER BODY-GOVERNMENT OR A SELF-GOVERNING PROFESSION - A SOCIAL CONTRACT BETWEEN THE SOCIETY AND THE PROFESSION.

ESSENTIALLY, THE PUBLIC HAS GIVEN UP ITS RIGHT TO JUDGE THE DAY-TO-DAY CONDUCT OF THE PROFESSION

AND GRANTED THE PROFESSION THE RIGHT TO GOVERN ITSELF. IN EXCHANGE FOR THE PRIVILEGE, THE PROFESSION HAS ASSUMED AS ITS PRIMARY RESPONSIBILITY, SERVICE TO THE PUBLIC FOR THE BENEFIT AND PROTECTION OF SOCIETY.

THIS MUTUALLY ACCEPTABLE AND BENEFICIAL EXCHANGE OF RIGHTS AND RESPONSIBILITIES BETWEEN THE PROFESSIONS AND SOCIETY IS A SOCIAL CONTRACT WHICH HAS BEEN LARGELY UNQUESTIONED FOR CENTURIES.

NOW, HOWEVER, IT APPEARS THAT THERE ARE THOSE WITHIN SOCIETY WHO WANT TO RE-OPEN NEGOTIATIONS ON THAT CONTRACT.

THE PROPRIETY OF GRANTING TO THE PROFESSION PRIVILEGES NOT ENJOYED BY OTHER GROUPS OR BY THE GENERAL PUBLIC IS FREQUENTLY QUESTIONED. THERE IS INCREASING CRITICISM OF THE PROFESSIONS - PARTICULARLY OF THE TWO WITH WHICH INDIVIDUALS HAVE TRADITIONALLY HAD THE CLOSEST RELATIONSHIP - YOURS AND MINE.

THE UNWAVERING, IMPLICIT TRUST IN MY PROFESSION--AND ITS MEMBERS--WHICH WAS ENJOYED JUST THREE OR FOUR DECADES OR SO AGO, SIMPLY DOES NOT EXIST TODAY. DOCTORS HAVE BEEN TESTED AND WE HAVE BEEN FOUND, IT PAINS ME TO SAY, TO BE HUMAN.

IT IS ENTIRELY POSSIBLE THAT THE CURRENT CRITICAL ASSESSMENT OF THE PRIVILEGE OF SELF-GOVERNANCE IS ROOTED IN A LACK OF UNDERSTANDING OF THE CONCEPT OF PROFESSIONALISM. THE WIDESPREAD SLOVENLY MISUSE OF THE WORD "PROFESSION" IN APPELLATION OF A MULTITUDE OF HUMAN LABOURS HAS DISTORTED THE IMPORT AND THE ESSENCE OF PROFESSIONALISM IN THE PUBLIC MIND -- AND I FEAR TOO OFTEN WITHIN THE PROFESSIONAL MINDS AS WELL.

WHAT IS A PROFESSION? I SHOULD LIKE TO SHARE WITH YOU A DEFINITION PROVIDED BY A LEARNED AND REVERED PHYSICIAN-PHILOSOPHER.

A PROFESSION IS A VOCATION FOUNDED UPON PROLONGED AND SPECIALIZED TRAINING WHICH ENABLES AN EXPERT SERVICE TO BE PROVIDED.

THE MEMBERS OF A PROFESSION ARE BOUND TOGETHER IN A COMMON DISCIPLINE, DEDICATED TO SERVICE TO THE PUBLIC, LINKED BY A SPIRIT OF FRATERNITY AND COMMITTED INDIVIDUALLY AND COLLECTIVELY TO THE SCHOLARSHIP NECESSARY TO INCREASE AND IMPROVE THE BODY OF KNOWLEDGE UPON WHICH THE DISCIPLINE IS BASED.

THE PROFESSIONAL PRACTITIONER DEALS ON AN INDIVIDUAL BASIS WITH CLIENTS IN A CLOSE RELATIONSHIP RATHER THAN AT ARMS LENGTH. THE RULE OF CAVEATEMPTOR CANNOT APPLY WHEN THE EXPERT PRACTITIONER SELLS HIS SERVICES TO THE LAYMAN BECAUSE THE CONSUMER OF THAT SERVICE IS AN INDIVIDUAL IN NEED OF EXPERT ASSISTANCE - NOT AN OPPONENT IN A GAME OF TRADE. THE PROFESSIONAL PRACTITIONER EXPECTS

TO PROVIDE SOME GRATUITOUS SERVICES AND IS EVER MINDFUL OF HIS DUTY TO SUSTAIN THE HONOUR AND INTEGRITY OF HIS PROFESSION IN ALL CONDUCT.

THE MEMBERS OF A PROFESSION MUST NOT SIMPLY MAINTAIN THE STANDARD OF MORALITY AND ETHICS GENERALLY ACCEPTED BY SOCIETY - THEY MUST STRIVE TO PRACTICE AT LEVELS SUPERIOR TO THOSE COMMONLY FOLLOWED.

THE RESPONSIBILITIES OF THE PROFESSION ARE FORMIDABLE - THE ESTABLISHMENT OF CRITERIA FOR SELECTION OF CANDIDATES TO THE PREPARATORY EDUCATIONAL PROGRAMME - THE FORM AND CONTENT OF THAT EDUCATIONAL EXPERIENCE - THE PROCESS OF EVALUATION OF STUDENT PERFORMANCE - THE ADMISSION OF GRADUANDS TO THE PROFESSION - THE PROVISION OF BOTH PROGRAMMES OF CONTINUING EDUCATION AND THE STIMULI TO ENCOURAGE THE PARTICIPATION OF ITS MEMBERS IN THOSE PROGRAMMES TO ASSIST IN PROFESSIONAL UPGRADING AND THE MAINTENANCE OF COMPETENCE AND VIGILANT SURVEILLANCE OF SERVICE PROVIDED BY THE MEMBERS AND WHERE NECESSARY - DISCIPLINE.

EACH MEMBER OF A PROFESSION HAS A RESPONSIBILITY NOT ONLY TO FULFIL DAILY THE REQUIREMENTS OF ETHICAL PROFESSIONAL PRACTICE, BUT TO ASSIST THE PROFESSION IN THE DISCHARGE OF ITS ONEROUS DUTIES AS WELL. THOS RESPONSIBILITIES YOU ASSUME TODAY AND I WOULD URGE ALL NEWLY MINTED LAWYERS WITH PARTICULAR CONCERNS ABOUT ADMISSIONS TO LAW SCHOOL OR THE LENGTH, STRUCTURE AND CONTENT OF THEIR EDUCATIONAL EXPERIENCE, TO BEGIN THE DISCHARGE OF THEIR PROFESSIONAL OBLIGATION BY PRESENTING THOSE CONCERNS

TO THE APPROPRIATE COMMITTEES OF THE LAW SOCIETY OF  
UPPER CANADA TOMORROW!

DISCIPLINE, HOWEVER, IN THE EYES OF THE PUBLIC  
IS THE MOST IMPORTANT DUTY OF THE PROFESSION - AND  
PUBLIC DISBARMENT OR CANCELLATION OF THE LICENSE OF  
A FELLOW PROFESSIONAL IS THE MOST PAINFUL TASK THE  
PROFESSION MUST CARRY OUT.

BUT IT MUST BE DONE. ABSCISSION OF AN UNETHICAL  
OR INCOMPETENT MEMBER IS ESSENTIAL FOR THE PROTECTION  
OF THE PUBLIC GENERALLY, THE PROFESSIONS' PRESENT AND  
FUTURE CLIENTS, AND OF ALL THOSE WHO COULD BE AFFECTED  
BY THE PROFESSIONAL'S WORK.

THE RIGHT AND RESPONSIBILITY TO DISCIPLINE ITSELF  
TO PROTECT THE PUBLIC, PAINFUL AS IT IS, IS THE KEYSTONE  
OF THE SELF-GOVERNING PROFESSION, AND OF THE SOCIAL  
CONTRACT BETWEEN THE PROFESSION AND THE PUBLIC.

BUT TODAY THE PUBLIC IS ASKING THESE QUESTIONS:  
ARE THE PROFESSIONS LIVING UP TO THEIR PART OF THE  
BARGAIN? ARE THEY FULFILLING THEIR PUBLIC RESPONSIBILITIES?  
IF THEY ARE FAILING -- OR IF THEY ARE SEEN TO BE FAILING --  
THE PUBLIC WILL BE LESS THAN WILLING TO CONTINUE TO EXTEND  
THE RIGHT OF SELF-GOVERNMENT.



FOR THE PUBLIC GOOD, THE PROFESSION MUST ENSURE THAT THE ANSWER TO THESE QUESTIONS IS A CLEAR AND UNEQUIVOCAL "YES".

THE SELF-GOVERNING PROFESSION IS THE BULWARK OF OUR SOCIAL SYSTEM - A VITAL CORNERSTONE OF A DEMOCRATIC SOCIETY. IT IS THE VISIBLE EXAMPLE OF THE FRUITFUL MARRIAGE OF PRINCIPLED PERSONAL INDEPENDENCE WITH DEDICATION TO PUBLIC SERVICE WHICH PROVIDES AN EFFECTIVE BARRIER AGAINST THE EVER POSSIBLE THREAT OF TYRANNY BY THE STATE. THAT THREAT IS ALWAYS PRESENT NO MATTER HOW BENEVOLENT THE STATE. THE WORTH OF THE CONTRIBUTION OF THE SELF-GOVERNING PROFESSIONS TO THE DEVELOPMENT OF OUR SOCIETY AND THE QUALITY OF OUR LIVES IS INCALCULABLE.

REMOVE THE SELF-GOVERNING PROFESSION AND YOU DISMEMBER THE SOCIETY. YOU KNOW THAT AND I KNOW THAT. BUT DOES THE PUBLIC KNOW THAT?

THEY SHOULD. IF THEY ARE BEING ASKED TO MAINTAIN THEIR PART OF THE SOCIAL CONTRACT, THEY SHOULD BE FULLY INFORMED ABOUT WHAT THEY ARE RECEIVING IN EXCHANGE.

I KNOW THAT MOST PROFESSIONS CONSIDER VIGOROUS PUBLIC RELATIONS ACTIVITY TO BE UNPROFESSIONAL AND INIMICAL TO THE PROFESSION'S INBRED CONSERVATIVE DESIRE FOR ANONYMITY.

YET IT WAS NOT CONSIDERED UNPROFESSIONAL BY SIR EDWARD COKE IN HIS CAMPAIGN TO OPPOSE THE REACTIVATION OF THE PREROGATIVE COURTS. HE WOULD HAVE URGED THE ENTRANCE OF PROFESSIONAL ASSOCIATIONS INTO QUESTIONS OF PUBLIC POLICY AS A HOPEFUL MEANS OF BRINGING THE EXPERT INTO THE SERVICE OF DEMOCRACY.

THE PROFESSIONS MUST CAREFULLY CONSIDER THE PRECIOUS PRIVILEGE OF SELF-GOVERNMENT DEVELOPED OVER THE 900 YEARS SINCE HENRY I, THE COUNTERBALANCING RESPONSIBILITIES IMPOSED ON THE PROFESSIONS BY THE AGREEMENT WHICH ROUSSEAU DESCRIBED AS A SOCIAL CONTRACT AND THE EXAMPLE SET BY SIR EDWARD COKE BY HIS COMMITMENT TO BOTH HIS PROFESSION AND HIS SOCIETY.

I ENCOURAGE THE LEGAL PROFESSION TO RAISE IN THE PUBLIC FORA THE ISSUES WHICH ARE OF IMPORTANCE TO SOCIETY, SUCH AS:

- \* THE PUBLIC'S EXPECTATIONS OF THE SELF-GOVERNING PROFESSIONS AND THE CONVERSE - THE PROFESSIONS' EXPECTATIONS OF THE PUBLIC THEY WERE ESTABLISHED TO SERVE.
- \* THE APPROPRIATE DIRECTIONS FOR SOCIETY IN PURSUIT OF THE GOALS OF RATIONAL GROWTH, AN HUMANE AND SUPPORTIVE ENVIRONMENT AND JUDICIOUS HUSBANDRY OF ALL OF OUR RESOURCES, BOTH HUMAN AND NATURAL.
- \* THE FUTURE OF OUR ECONOMIC SYSTEM AND THE ROLE OF THE PROFESSIONS IN IT.

AS A PROFESSIONAL YOU MUST SPEAK OUT. TO THE PUBLIC YOU SAY EVERYTHING WHEN YOU SAY NOTHING. THERE IS AN ELOQUENCE TO YOUR SILENCE.

NOT ALL OF YOUR POSITIONS WILL MEET WITH THE UNQUALIFIED SUPPORT OF THE PUBLIC. IF IT WERE OTHERWISE, THERE WOULD BE NO ISSUES. BUT DIRECT DIALOGUE WITH THE PUBLIC -- THE STIMULATION IT CAN BRING TO BOTH THE PUBLIC AND THE PROFESSION -- IS ESSENTIAL.

THE PROFESSION -- LIKE ANY INSTITUTION -- CAN DRIFT AWAY FROM THOSE IT IS DESIGNED TO SERVE, INTO ISOLATION. WHEN THAT HAPPENS, THE PUBLIC SEES THE PROFESSIONAL, NOT AS AN ALLY, BUT AS AN ADVERSARY. CERTAINLY YOU WILL BE FACED WITH ETHICAL DILEMMAS IN ATTEMPTING TO INTEGRATE THE PUBLIC'S NEED WITH THOSE OF THE PROFESSION. BUT IT IS ESSENTIAL THAT THE PUBLIC RECOGNIZE THAT YOUR PRIMARY CONCERN IS THE PUBLIC INTEREST AND THAT YOU ARE STRIVING TO FULFIL YOUR RESPONSIBILITY TO THEM.

EACH PROFESSION MUST NOT ONLY RECOGNIZE AND DISCHARGE ITS PROFESSIONAL RESPONSIBILITIES, IT MUST BE SEEN TO DO SO.

EACH PROFESSION MUST BE ACTIVELY INVOLVED IN CONTINUING THOUGHT PROVOKING COMMUNICATION WITH THE PUBLIC IF IT IS TO REMAIN VITAL, RESPONSIVE AND PROGRESSIVE.

EACH MEMBER OF A PROFESSION MUST FUNCTION AS THE PROFESSION'S MOST INCISIVE CRITIC AND AT THE SAME TIME ITS MOST ETHICAL CHAMPION.

FOR FAR TOO LONG THE SELF-GOVERNING PROFESSIONS HAVE HIDDEN THEIR LIGHTS UNDER BUSHELS - IF THIS CONTINUES, THOSE LIGHTS - WHICH HAVE ILLUMINATED OUR WORLD WILL FALTER - GUTTER AND MAY DIE. FOR THE SAKE OF OUR SOCIETY THIS MUST NOT BE ALLOWED TO HAPPEN.

YOU, THE GRADUANDS OF TODAY, HAVE REACHED A MOMENTOUS MILESTONE IN YOUR CAREERS. FROM YOUR VANTAGE POINT OF ADMISSION TO ONE OF THE FOREMOST LEARNED PROFESSIONS LET US CONTEMPLATE A FUTURE MILESTONE. WHAT WILL YOU HAVE ACHIEVED AT THE THRESHOLD OF THE TWENTY-FIRST CENTURY?

IF AT THAT TIME ONTARIO'S CITIZENS ARE FREE TO PURSUE THEIR INDIVIDUALLY CHOSEN CAREERS IN A SOCIETY WHICH HONOURS IN BOTH CONCEPT AND DEED THOSE VALUES WHICH BUILT OUR CIVILIZATION - LOVE, RESPECT FOR OTHERS, TRUE HUMAN CHARITY, PERSONAL INTEGRITY, THE HONOURING OF CONTRACT, AND THE INTRINSIC WORTH OF PRODUCTIVE WORK; IF OUR SOCIETY IS STILL WELL PROTECTED BY DUE PROCESS AND NATURAL JUSTICE; IF OUR PROFESSIONS ARE STILL SELF-GOVERNING - YOU WILL HAVE SERVED YOUR SOCIETY AND YOUR PROFESSION WELL.

I CONGRATULATE EACH ONE OF YOU ON YOUR ACHIEVEMENT AND WISH YOU EVERY SUCCESS IN YOUR CAREER IN LAW.