

CALL TO THE BAR CEREMONY
LONDON, APRIL 11, 1983.

"TREASURE THE CLIENT!"

Mr. Treasurer, distinguished guests, ladies and gentlemen and especially you who have just been called to the Bar:

I would like to thank the Treasurer for his kind words and to say how much I appreciate the honour the Law Society has conferred on me—I am touched and deeply moved by it.

But this day belongs to you, your friends and families. Although I should like to be considered as one of your classmates on this memorable day, it should not be overlooked that my degree has been conferred, but your status as members of the Bar has been earned by much hard work and sacrifice.

Let me then first offer my warmest congratulations to you ladies and gentlemen who have successfully earned your call and admission today. For you, the day marks the end of long years of sacrifice, preparation and just plain hard work—

years marked by study and the all too frequent agony of examinations. Certainly your friends and families can be excused if they choose to observe these proceedings with mingled feelings of undisguised pride, and - sheer relief!

Convocation brings to an end one phase of your life in the law and marks the beginning of a new one. I envy you, the excitement and challenge facing you on the threshold of your career.

But I should caution you, you are not likely to find your future any less arduous than the past. Success and recognition in your field will only be achieved after continuous hard work, self-denial and sacrifice on your part and, regrettably, sometimes on the part of your family as well. You will discover, however, as generations of lawyers before you have, that ours is a truly great profession and despite the demands and sacrifices involved, in the end it will all be worthwhile.

The practice of law is generally stimulating, frequently exciting and sometimes even good fun. Part of the excitement in being in general practice is that the lawyer

never knows when he goes to the office in the morning what he may hear or be called upon to do before the day is over.

Because of your legal training you will be held in high regard by members of your community and you will frequently be called upon to advise and direct on matters involving community, church and social affairs. You will soon discover, as you settle into an established practice that there are just not enough hours in the day to do all the things one seeks to do. There will be times when you will cherish those rare moments when you can escape the tyranny of the telephone and retreat to a law library to study in solitude some complex legal problem and to find out what judges and scholars have written about it.

For those of you who have decided to be trial lawyers, the road to success will be no less difficult. Rarely will the client bring to you a case in which the facts are neatly organized and supported by witnesses, ready and willing to cooperate and attend at trial. Preparation, the key to success in trial work, means getting out of the office

and frequently involves running around at all hours. There are times when, to paraphrase Holmes, you will work alone in hope and darkness and despair, trusting to your own unshaken will. But there are magical moments that occur in every trial lawyer's career, that more than pay the price. For the trial lawyer to sense a favourable response in the minds and hearts of others to the words he chooses and the way he chooses to use them and to succeed on behalf of his client against all odds in what appeared at first to be a hopeless case, is the final justification for all of the dull and arduous preparation, that preceded ~~it~~. As trial lawyers you will be given a rare opportunity to enrich the lives of many others as well as your own.

"All well and good", you are no doubt saying, for the judge in his exalted and insulated position, to regale you with the virtues, the demands and ideals of our noble profession. But what of the hard realities of the day? Well informed people are predicting that in the future there will

be drastic changes in the practice of law which will make it less than ideal. There are those who continue to predict, for example, the demise of the personal negligence field, of the adversarial system in matrimonial matters and even of that most sacred of all sacred cows, the Land Registry system. Others, like my good friend, the former Mr. Justice Haines, have forecast that the practice of law, as we now know it, will, in the foreseeable future, undergo radical changes. In his opinion, future lawyers will practice as "social scientists" working with other disciplines to solve the social ills of mankind.

Should predictions of this kind discourage you or cause you to wonder whether the profession of law is a career that will retain the qualities that attracted you to it in the first place? My answer to all of this can be expressed to you in one word - "Relax!" The practice of law, as we have known it, is not likely to change overnight and

become something quite different from that for which you have so arduously prepared yourself.

Whether one considers it good or bad, it is a fact that our profession is a conservative one, slow to change and generally anxious to maintain the status quo. For over 50 years, for example, there have been those who would advocate the elimination of the adversarial element in the automobile accident field and yet that system has been maintained, modified and improved.

Changes will occur in the practice of law as well they should. But these changes, I suggest, will evolve slowly and you will be able to make the adjustment. In fact, I expect that as practising lawyers, you will play a major role in fashioning such changes.

There is a more pressing issue that faces you. We have been graduating large numbers of lawyers during the past few years and it is only natural that you should share the widespread concern that the field has become so crowded

that there may not be enough work to go around. The concern is certainly valid, but the problem of an overcrowded profession is a complex one of many facets, to which there is, to my mind at least, no easy solution.

I do confidently suggest, however, that those of you who persevere and serve whatever clients initially come your way with diligence, competence and integrity, need have no fear of the future. There will be other clients seeking your services. You will survive and succeed.

In 1977 the American Bar Foundation conducted a study on "The Legal Needs of the Public". According to the study, there were a surprisingly large number of clients who had been dissatisfied for one reason or another with the services rendered to them by their lawyers. Fifty per cent or more had the following complaints:

(a) lawyers do not communicate well with their clients and do not seem to care whether the client fully understands what needs to be done and why;

(b) lawyers are generally not very good at keeping their clients informed of progress on their case;

(c) lawyers are not prompt about getting things done; and

(c) lawyers' fees are not usually fair to their clients regardless of how they figured the fee.

These complaints constituting a serious indictment of the legal profession, are not, in my experience, confined to the American lawyer. In the past few years, these very complaints are the ones most frequently voiced to me by people unhappy with their lawyers. The Law Society receives a significant number of complaints of this nature each year by disgruntled clients who complain, in particular, that their solicitors are "doing nothing" and are "not replying to telephone calls and letters".⁽¹⁾

Success in your practice is more likely to be ensured if you strive to avoid having these particular

(1) See C.I. Scott - "On Keeping Clients Informed",
1973, 1 Gazette, 35.)

complaints levelled at you. Somewhat, apologetically, I offer you your final "lecture" consisting of some very basic, simplistic, elementary rules for success. In general, my theme will be to - treasure the client - treat him as a human being - render him honest, prompt and efficient service - and above all - keep him informed. The suggestions I offer have application to all clients whether group, corporate or individual. Clients, after all, as you will find, come in all sizes, shapes and gendres.

COMMUNICATING WITH THE CLIENT

There is no profession, not even medicine, that is so intensely personal as the practice of law. Unlike any other, it is eclectic and comprehensive, cutting across the entire panoply of human experience. The successful practice is predicated upon creation at the first meeting between lawyer and client of a strong and trusting relationship.

The average client tends to be uneasy and far from relaxed when he first meets with his lawyer. The very

problem that brought him to the office in the first place may itself be disquietening, but, unfortunately as well, public surveys indicate that most clients are frightened at the very prospect of meeting with the lawyer, that member of such an arcane and mysterious profession.

At the outset, it is important that you be hospitable to your client and require your secretary and receptionist to be the same. Your client should be made to feel welcome and relaxed in your office. It is a good idea to let your receptionist know whom you are expecting and when so that she may greet the client by name. A cup of coffee and a current magazine will make the wait for the meeting more acceptable. In short, it is not a bad idea to give to the client from the outset the same message that a certain muffler installation company strives to convey—that, at your office "He is a somebody".

When the client comes to consult you he has paid you the greatest compliment in your professional world because he has selected you to assist him with his problem.

His confidence in you demands the very best in return. He is entitled to receive your direct and undivided attention.

Telephone calls are held. All unnecessary papers and files are removed from the desk to avoid the temptation of shuffling papers in the presence of the client or even, heaven forbid, reading the mail as the client talks. He is entitled to the assurance that at that moment his problems are the only ones of concern to his lawyer.

The successful practitioner deals with each client on an individual, person to person basis. He doesn't see the client as just another "divorce case" or another "real estate deal". He sees each individual as different. The lawyer who cannot see the individuals apart from the mass tends to become bored with his practice and, in time, will describe his work as "just the same old thing over and over".

May I suggest that your interest should be beyond the client. Know something about his family, interests and predilections, so that your relationship may be more than perfunctory and coldly business-like. Be aware of what your

client's goals and ambitions are and take the time to discuss these with him. Nothing is so important as the purely human dimension. Even the most coldly brilliant entrepreneur has strictly personal aspirations, likes and dislikes, emotional upheavals, sadnesses and joys. While he is no doubt looking to the lawyer primarily for sound advice arising out of equally sound professional competence, he is a rare bird indeed if he does not also appreciate the opportunities to air some of his innermost thoughts with someone he trusts.

There is a tendency, particularly in larger firms, towards the increasing use of para-legals for legal assistance. They are, in fact, probably becoming indispensable and they most assuredly will have an increasingly important role to play in the future. However, the client rightly expects to deal with his lawyer face to face and to receive first-hand counsel and advice. If lawyers do nothing more than serve as an intelligent sounding board, they are relieving the client's anxiety and performing a highly professional function. I therefore suggest that you should avoid erecting any barriers,

whether in the form of para-legal, secretaries or otherwise between you and the client.

Some of your back-up staff may serve an important purpose in keeping the client informed, but that is a different matter.

Apparently and sadly, it needs to be said that the lawyer must always be forthright and honest in dealing with his client. Individual integrity is still the cornerstone upon which the profession is built. The code of professional responsibility that governs you and is set out in the Law Society Professional Conduct Handbook is the distillation of high principles hammered out on the anvil of hard experience. The canons and disciplinary rules can be and must be honoured. Never do or say anything that might appear suspicious or devious to your client. Above all do not become involved in any underhanded practice on behalf of a client, however important that client may be. No single client is worth the sacrifice of one ounce of your integrity.

The canons of legal ethics require that you be candid and honest when advising your client, particularly on his chances of success or failure in any contemplated litigation. There is always the risk that the fear of alienating the client or worse, what is described as "the lawyer's pocketbook pang" may result in pandering reinforcement of the client's unjustified expectations. When the lawyer does not give his client a down-to-earth appraisal of his chances in any litigation, he does the client an enormous disservice. The financial cost, to say nothing of the psychological effects on the client of an adverse verdict in our courts today may be enormous.

Finally, may I give you this advice on the matter of your ethical relations with the client. If you should make a mistake, admit it to the client. Do not attempt to conceal it or hope that it will go by unnoticed. You are, after all, human and most mistakes are not irreversible if caught in time. Most clients, like most human beings, are

forgiving, and so long as you do not charge them for your mistakes, they will be understanding.

RENDERING SERVICE

It should come as no surprise to you that a good deal of the legal service that you will be called upon to render, particularly in general practice, will not necessarily require exceptional or unique legal talents. Within a short period of time you will be as competent as most to render service to the client on most matters on which you are consulted. Why, then, does the client seek one lawyer in preference to another to deal with his routine legal problems? The answer is that the lawyer who renders prompt and efficient service is the one most sought after. In my experience, when a lay person speaks in highly complimentary terms of his lawyer, the first matter he mentions is the speed and efficiency with which the lawyer renders service.

You must recognize that you are part of a service industry. The burden is upon you if you are to compete successfully to perform services for your client in such a

manner that he will not be inclined to seek another lawyer's help the next time around. This sometimes means that you will have to inconvenience yourself, put yourself out. It means, as I have said earlier, that if you are to be successful, you must be prepared to make sacrifices, to spend long hours where necessary to see that your client's interests are served.

It is or should be axiomatic that lawyers should remain professionally competent and thoroughly capable of rendering the services, that they represent to clients they are capable of performing. No lawyer should have to be told to keep abreast of the latest developments in the law and yet, it appears to be true that many lawyers do not take advantage of the constant opportunities for continuing legal education that now abound. If you refuse to keep yourself attuned to the latest developments, your ignorance will catch up with you and with your client and, wholly aside from the question of malpractice liability, your practice will suffer.

The word gets around. I strongly urge that you attend continuing legal education seminars. Register for the Canadian Bar Association convention and meetings. Read the appropriate professional publications. Keep up on the law!

KEEPING THE CLIENT INFORMED

One of the most frequent complaints is that the lawyer, particularly the busy lawyer, fails to keep his client informed of what is happening. This silence so far as the client is concerned can be very disturbing. The client is entitled to know what is going on in connection with any matter that you are handling. For most clients, litigation, whether criminal or civil, poses a crisis of major proportions in their lives and yet, too often, their basic right to be kept informed of the progress of the litigation so as to at least minimize their anxiety, is overlooked and neglected. Frequently, after the initial interview, the client is kept in the dark for weeks or months until suddenly he receives a request to participate in examinations for discovery or attend the preliminary hearing.

Many practising lawyers have adopted the expedient of having a secretary or clerk keep the client advised of the progress of the matter at hand. The secretary or clerk will telephone the client from time to time to keep him abreast of the progress of the litigation; to tell him what investigation is being carried out and when the client may reasonably be expected to next appear at the office. The cost of these efforts is minimal to preserve the client's peace of mind but he is entitled to at least that. Others send the client copies of correspondence or pleadings relating to the case, with a short covering letter suggesting that the client call if he has any questions concerning the nature of any of the enclosed documents. All of the foregoing are simple yet recommended methods of fulfilling your duty to keep the client informed.

A final note on the subject of communication - always return the telephone calls of the client. Nothing is so irritating to the client as the deliberate failure to return

a telephone call. It is not only the courteous thing to return all calls but professionally expedient as well. If you fall into the practice of ignoring telephone calls, you will inevitably be requested in strong terms to explain and attempt to justify your position to the Law Society.

THE MATTER OF THE FEE

May I suggest to you that nothing can be more devastating to the lawyer/client relationship than a misunderstanding about fees. There are time-worn rules designed to avoid these misunderstandings but no matter how often they are repeated they seem, nevertheless, to be honoured more in breach than in obedience.

Why is this so? Probably in large part because lawyers are so reluctant to demean their professional function by measuring it in terms of lucre. Regardless of feelings about money, however, the lawyer simply must face the fact that there are certain basic rules about fees which must be discussed. Those rules require that he discuss the fee at the initial meeting with the client and, to the extent

possible, give an estimate as to what the charges will be and the basis of the charge.

The successful practitioner will in appropriate cases bill periodically, monthly or quarterly, to avoid hitting the client with a statement for a large amount which might be less manageable than it would be if billed at intervals. The lawyer should never refuse to discuss the question of his fee with his client but must at all times be ready and willing to enter into candid discussions.

RELATION WITH OTHER LAWYERS

Nothing is quite so important to initiating and improving good client relationships as your relationship with fellow lawyers. Your "standing" in the profession is easily determinable. If your fellow lawyers speak well of you, if they refer matters to you, if they seek your judgment, these facts become generally known among laymen. It may be heartwarming to have someone say about you, "He's a nice guy" but nothing is so rewarding as to have a fellow lawyer say, "He's a good lawyer".

That kind of judgment comes, of course, only after some years of experience and exposure and the practice being what it is, it is generally not universal. But it can be earned with honest, straightforward dealings, demonstrated competence and the presence of good grace in both winning and losing situations. Clients usually appreciate knowing that their lawyer stands high among his peers.

Whether or not you ever will be able to advertise your services in an open manner remains a debatable issue. One thing, however, is abundantly clear, and that is that many lawyers over the years have managed to acquire a significant clientele without open advertising. They have relied on the word of mouth recommendations of satisfied clients. If you listen carefully to your clients, to what they have to tell you, if you show concern for their welfare, if you maintain an open relationship with them, if you are trustworthy and if you demonstrate professional competence—if, in short, you are a good lawyer, your clients will let others know, and you will never have any difficulty obtaining clients.

I have spoken too long in delivering this "lecture". What I have been trying to convey to you is that it is not sufficient for you to simply drift along in the hope that success and the abundant life will come your way. There is a need for a careful survey and planning from the very outset of your journey, in which your approach to the client relationship becomes all important.

Then finally, when you begin to succeed and are tempted to practice largely in pursuit of wealth or status symbols, I would suggest that you stop and consider the words of Henry Van Dyke when he said, "Remember that what you possess in the world will be found at the day of your death to belong to somebody else; but what you are will be yours forever".

I wish each of you happiness in the practice of your profession, success and good fortune, but above all that you may find joy in the doing of your chosen work.