ADDRESS

TO:

THE LAW SOCIETY OF UPPER CANADA
BAR ADMISSION, OTTAWA

WEDNESDAY, MARCH 28, 1990

BY:

THE HONOURABLE JOHN SOPINKA
SUPREME COURT OF CANADA

Law Society of Upper Canada
Bar Admission, Ottawa
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Today, after a long and often difficult road, you have entered the legal profession. It is only natural that, at last, you look forward to the financial rewards that were at least partly the motivation for the years of living off pizza and beer and living in cramped quarters. But I am going to ask you to briefly interrupt those thoughts and pause to reflect on what you can do for the profession to make it the kind of profession you would like it to be.

Vous êtes sans doute au courant que traditionnellement, les avocats n'ont pas une grande place dans l'affection du public. La littérature fait état du ressentiment provoqué par l'avocat rusé. On nous dépeint souvent, comme étant retors et sans coeur. En fait, certains ont recommendé l'abolition de la profession. Un récent sondage aux États-Unis a révélé que les avocats, aux yeux du public, allaient de pair avec les vendeurs de voitures d'occasion.

Nevertheless, this public attitude concealed a grudging admiration, mixed perhaps with a tinge of jealousy for the lawyer. Although not always applauding the result, the public has always been fascinated by the lawyer's clever twist of logic to achieve his or her result.

Literature records the odd occasion when the technical lawyer's skills are employed to achieve a just result. A famous example occurs in the Merchant of Venice. Shylock is insisting on the letter of the bond, nothing

but a pound of flesh. Enter the lawyer, Portia. She first attempts the feminine, gentler approach to the solution of the problem: "The quality of mercy is not strained." But Shylock insists on the letter of the law. She then assumes the role of the lawyer who, by a stroke of genius, uses a technical argument to carry the day. The bond requires that exactly one pound of flesh be taken and not one jot of blood.

More often than not, however, the story about the lawyer is the use of the technical argument to achieve a result that is not applauded. Even then, the public reaction is a mixture of condemnation and envy. Take the story of the wealthy miser lying on his deathbed. He contemplates the millions he will leave behind him. But he has been studying Egyptology. The Pharaohs were buried with their wealth. He calls to his bedside his priest, his physician and his lawyer. He advises them of his recent interest in Egyptology and hands each an envelope. He explains: "It contains $50,000, and I want each of you to place it in my coffin at the funeral." Although all three protest that this is futile, they agree to carry out the mandate. In due course, the inevitable occurs and the three attend the funeral. Each is seen placing an envelope in the coffin. Leaving together, the priest initiates the conversation: "I have to confess that the idea was so preposterous that I took the liberty of keeping out $10,000. After all, we are in dire need of a new chapel." Encouraged, the doctor also confesses, but he kept out $20,000 to be applied to renovations in the hospital. The lawyer is incensed. "How could you break your solemn promise to the deceased? This is disgraceful. I want you to know," he says, "that I wrote him a cheque for the full amount." The use by the

lawyer of all the technicalities of the law to achieve a result for the client was, in the past, an important factor in the love-hate relationship with the public. This is something with which we could cope. Our professional code demands that the duty to the client come before any personal judgment as to the consequences. I believe that this is as valid today as it was in the days of Lord Erskine when, in defence of Thomas Paine, he reminded the public that when an advocate allows his personal opinion to be interposed between him and his duty to his client, the days of liberty in England will be at an end. The public applauds when the use of the technical argument accords with its notion of justice (as in the Merchant of Venice), but is harsh in its criticism of lawyers if the result does not do so.

Although often buffeted by public opinion, lawyers could always take refuge in their dedication to professionalism. As you begin practice, you will encounter, as I did in my latter days at the bar, a trend that is more serious. It is a trend that threatens to strike at the lawyer's professionalism as the practice of law becomes more and more engulfed in a sea of commercialism.

This commercialism is becoming more and more prevalent in the era of the mega-firm. There are many manifestations of it, and I will deal with only a few. It demands that young lawyers docket an unrealistic number of billable hours. Many firms consider 2200 to 3000 hours a reasonable goal for a single year. Three thousand hours would require that a young lawyer account for 10 hours per day, 6 days per week for 48 working weeks. All

of this is to be charged to the client. There appears to be no concern for the fact that some of this time must be discounted because the lawyer is training on the job. Such a requirement allows for no pro bono work, no time for other community work, or to enable the young lawyer to read outside the law to broaden his or her perspective. It allows little, if any, time to enjoy life and spend time with family.

That does not mean that in the past young lawyers did not work long hours. They did. But they did it because they wanted to, spurred on by the desire to do a good job or just interest in the work. They were not profit driven.

The drive for profits and the fact that a first-year lawyer is paid between $40,000 and $60,000 means that his or her hourly rate commences at the unrealistic figure of $75 to $110 per hour. By the time the lawyer reaches senior status, the rate may go up as high as $350 to $500 per hour. This threatens to price the practice of law out of existence and certainly makes the services of a lawyer an unattainable objective for the average person.

This phenomenon has a deleterious effect on the training of young litigators. It is essential to that training that the young lawyer appear in court unassisted by the supervision of a senior. This is not possible if fledgling counsel are not permitted to take non-paying or less profitable cases. The demand for billable hours makes this impossible. As a result, some litigators don't get into court on their own for as long as five years.

This long period of training makes litigation less attractive for the graduate lawyer and more expensive for the public.

This emphasis on the bottom line is reflected in the ethics of the profession. The law firm becomes more a profit centre than a professional body. With the emphasis on bigness, often the left hand doesn't know what the right hand is doing. Even the partners will not all know each other. The conduct of a big biller will seldom be questioned on ethical grounds. The important committee is the business promotion committee rather than the ethics committee, the latter often being subservient to the management committee.

Increasingly, the corporate-commercial element of a firm controls the running of it. With the major emphasis on business promotion and profit, the distinction between the ethics of the profession and the marketplace is blurred.

These are a few of the concerns that are troubling an ever-increasing number of people in the profession, including leaders of the profession. We in this country are not alone in having these concerns. Let me quote from Foster D. Arnett,* a partner in the Knoxville, Tennessee, firm of Arnett, Draper & Hagood, and Dean of the International Academy of Trial Lawyers.

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* Defense Counsel Journal, January 1990, p. 75

> The mega law firm has emerged as a new and important institution within the legal profession. But quaere: How can such a firm -- or any such financially driven organization-- afford to represent a continuum of the little old ladies in tennis shoes in landlord-tenant controversies when the newest associate in that firm earns $65,000 to $75,000 a year and is expected to generate a substantial minimum of billable hours?

You may very well ask, why tell us about these things; who don't you address them to those who can do something about it. The answer is that the legal profession is not a monolithic body. Graduates in the last 5 years represent 25% of the total number of lawyers in Ontario. This represents considerable influence and power.

This happy occasion is not the time or place for me to lecture to you on specific measures. No doubt the major responsibility lies with the senior members of the profession. Young lawyers, however, are the life blood of any firm. A firm's success is heavily dependent on the quality of its young lawyers. Witness the money that is spent on recruiting students. If the trends that I have mentioned are to be reversed, young lawyers must stand up and be counted - the message must be conveyed that you are not just number-crunchers and that life is not measured in the number of billable hours.

If you have entered the profession just to make money, then forget what I have said. If, however, as I believe, you want to be proud to belong to an honourable and respected profession, then I hope you will think and talk about these matters as you launch into your new careers.

Congratulations on your achievements and may you enjoy happiness and prosperity as a member of this great profession.