

# **Convocation Address**

## **Call to the Bar of the Province of Ontario, Ottawa**

### **February 27, 2001**

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As a former Bencher of the Law Society, I am overwhelmed with pride at the recognition which is afforded me by this Honorary Degree. It is entirely undeserved. However, I chose to interpret it, in my case, as a device adopted by the Society to do honour to the legal profession and, more specifically, the practising Bar by the recognition of an ordinary lawyer whose contribution to the profession is measured more in years of service than extraordinary accomplishments.

As in the case of our dedicated Treasurer and his fellow Benchers, I love our profession, its role in society, and its contribution to social order. Après quarante (40) ans dans la pratique du droit, c'est un privilège très spécial pour moi de pouvoir m'adresser à cette nouvelle garde d'avocats et d'avocates dont vous êtes, qui se préparent à entreprendre des carrières juridiques très certainement dynamiques et enrichissantes. [I consider it to be a very special privilege, from my vantage point of almost 40 years in practice, to address an assembly of the new guard of lawyers about to embark on what will undoubtedly be dynamic and fulfilling careers at the Bar.]

On the occasion of this address, I would like to say something about our profession and provide you, hopefully to a useful purpose, with some ideas as to those qualities which will help to ensure for all of you careers of service and personal fulfilment in the years ahead. Presently you are graduates of your respective law schools. In a few short moments, having been called to the Bar, you will be members of a truly noble profession. As part of the rite of passage, identification of important values, which I believe will play a role in your future development, might well be beneficial.

To consider where the focus should lie at this moment in your lives, it is useful to identify those elements common to most of you in your personal and intellectual profile. What has your aptitude for, and years of training in, the law made of you? Many of these elements will be readily recognizable. You are now possessed of a substantial inventory of legal concepts, ideas and principles supplemented by a heavy stock of rules and regulations of an extremely heterogeneous kind. Your legal experience is rooted in history. You have been trained to compartmentalize principles of law in accordance with their historical context. You are insistent on precision in thought and expression. You demand consistency in approach and predictability in outcome. You tend to rely on traditional modes of thought. You search for the principle and explore its application.

You are extremely comfortable, indeed preoccupied with, the spoken, and, to an only slightly lesser extent, the written word. You crave discussion and relish debate. You embrace the underlying adversarial nature of such debate. Perhaps unconsciously you tend to be insistent on being in control. During the cool-down period after a successful intellectual encounter, you

enjoy, albeit imperceptibly, a modicum of self-satisfaction. When the debate is over, you are ready for the next encounter.

My question for your partners, spouses, family and friends...is the picture familiar?

While it is amusing to focus on these characteristics, there is a serious side to the analysis. In order to identify some of the qualities which will guide you in your future professional life, you must first identify, with precision, the matrix of attributes which reflect your own personality. In this way, one may learn how better to emphasize one's strengths and modify one's weaknesses in the development of the quintessential lawyer. Self-absorption must be put to one side and a personal commitment of a high order made in order to ensure that, instinctively and behaviourally, we create the right conditions best suited for optimum professional development.

What are some of the key qualities that you might well reflect upon and consider including in your inventory of resolutions for the future? A listing of these qualities will take you well beyond your current inventory of skills, including intelligence, knowledge of the law and a finely tuned capacity for legal reasoning.

The attributes of which I will shortly speak are no less important, whatever your pursuit as a lawyer. Will you be a commercial lawyer; a tax lawyer; a trial lawyer a transaction lawyer; a trade lawyer; an intellectual property lawyer? Will you be a sole practitioner; a lawyer in a large firm; an in-house lawyer or a government lawyer; or indeed a member of the Bar engaged in some entirely unrelated activity? Whatever road you travel, you are all professionals and the qualities which I turn to will, I believe, be important ones in the measurement of your success at the Bar.

And so the list...a top ten list perhaps!

## **Integrity**

You will understand the meaning of professional honour and will be determined to build a reputation for integrity. You will want to be consulted not because of a willingness to compromise principle to meet the client's needs, to turn a blind eye to the rights and wrongs of the situation, but because of your reputation for integrity. In the words of Thomas Erskine, "You will forever at all hazards assert the integrity of the Bar." You will be a lawyer's lawyer. You will not squander what you have now achieved.

## **Imagination**

You will be resourceful in the service of your clients. You will abjure precedential thinking and writing and use your vision to develop ideas, approaches and solutions for your clients. You will be notorious for your refusal to parrot the work of others. Your thinking cap will be firmly in place. Your work product will be a constant source of anticipation for its creativity by your clients, colleagues and adversaries. You will not, in the words of Learned Hand, "...make a fortress out of tradition." Instead, you will use your imagination to advance the interests of your clients' and the development of the law.

## **Judgment**

An unreliable resource in some and yet the lawyer's most important tool...good judgment. You will be very careful about judgment in the beginning and alert to its vagaries and thus, with its repeated exercise, sharpen your capacity for sound judgment. You will remember that the opinion is the easy part, hedged as it is traditionally with qualifiers. The hard part is the advice. The advice may more often than not be, not what the client wants to hear, but what she needs to hear. Overwhelming interest in the outcome distorts judgment. Yet, possessed of good judgment, what you assert to your client and the court will be the wise course, the sustainable course, the course driven by true best interests, as opposed to what might well transpire, to the client's disadvantage, in the absence of your good judgment. In honing this quality, follow the Talmudic principle...examine the contents and not the bottle.

## **Commitment**

What is commitment? In the lawyer it is loyalty; it is recognition of the professional responsibility which is spawned by consultation. It is acceptance of the dependence and reliance which comes with engagement. It means unremitting loyalty. In Henry Brougham's words, spoken in the 18th century, "it is the sacred duty which the advocate owes his client and none other." It imports the notion of trust and confidence. The lawyer maintains the client's confidences and defends the client's reputation. In the client, the notion of commitment is the sense that his lawyer is dedicated to his interest and cause and will leave no stone unturned in seeking to realize it. It is the client's comfort zone, it is the antidote to cynicism and superficiality. As professionals, it is that which sets you apart.

## **Energy**

The client's interests are best protected if you "pick them up rather than drag them along." The client who is met indifferently, lethargically or unenthusiastically is not served professionally. Achievement, nine times out of ten, flows from an energetic response. Energy is enthusiasm and enthusiasm is the legitimate identification by the lawyer with the interests of the client. The lawyer must build the client's confidence as part of his professional role. Without energetic synergies, confidence will disappear. Energy delivers momentum. Energy is infectious and in overabundance has never been the cause of failure.

## **Humility**

This virtue ought not to be so pronounced as to undermine self-confidence. Nonetheless, it impedes the development of arrogance and eccentricity, characteristics not unknown in the ranks

of the professions. Egotism is incompatible with effective persuasion and advancement of the client's interest. The point is perhaps best captured by Hilaire Belloc's poem:

Godolphin Horne was Nobly Born;  
He held the Human Race in Scorn,  
And lived with all his Sisters where  
His father lived, in Berkeley Square.  
And oh! the Lad was Deathly Proud!  
He never shook your Hand or Bowed,  
But merely smirked and nodded thus:  
How perfectly ridiculous!  
Alas! That such Affected Tricks  
Should flourish in a Child of Six!

## **Discipline**

Discipline in this analysis is largely self-discipline. Self-discipline will infect your work habits. It will constrain your emotions in the face of provocation. Amongst the myriad of problems encountered by the Law Society in the governance of the profession, lack of self-discipline would be the cause of most. You will harness your efforts and supervise them yourself. You will discipline yourself so that others will not have to. Your ordered professional life will be a source of fulfilment and satisfaction.

## **Independence**

The independence of the institution of the Bar is guaranteed by governance free of influence by the state. Thus the Treasurer and the Benchers here assembled, lawyer and layperson alike, are the mainstay of an independent Bar. They are the instrument by which you, as individual members of the Bar, are enabled to exercise your own independence. You will be independent of government control which would otherwise impair your ability to fearlessly represent your clients. You will be independent of your client so that you can discharge your duties free of inappropriate direction or instruction. You will be independent of the courts so that you can properly assert your client's rights free of unwarranted judicial restraint. You will not delude yourself into thinking that this is an esoteric discussion. Your independence will be a live subject for you before you know it. Will you be subjected to pressure, as in-house counsel, to paper a transaction you know to be inappropriate? Will you be threatened with an order to pay costs personally as a deterrent to asserting a procedural entitlement? Will the interests of others, your partners or friends deter you from acting in a particular case or transaction? In every case, you will adopt the appropriate course because of your professional independence.

## **Civility**

Much of your work as a lawyer will have an adversarial aspect, whether you are engaged in transactional undertakings or labour in the courts and administrative tribunals. The adversarial nature of your work and your single-minded duty to advance your client's interests are assessed by some as the underlying cause of the public's impression of the lawyer as overbearing. In truth, it is not the substance of the role, it is the offensive aura with which it is sometimes charged that the public identifies, relentlessly, with lawyers. Incivility is at the root of the problem. Your habit of civility will set you apart. Civility advances your reputation and the interests of your client. It

relieves the tension. It contributes to effective communication and results in an efficient and less costly process. Civility is not faintheartedness or lack of commitment. As has been said, it means “listening to things you know about, from someone who doesn’t.” You will all make resolutions today that your reputation will be built on underpinnings of civility and respect. In honouring this resolution, professionalism will be assured.

## **Service**

I leave service to the end because its generic character encompasses all of the qualities catalogued heretofore and so many others unmentioned. In most traditional lists of the professional qualities of lawyers, service is understated or indeed absent. In terms of client satisfaction, the subject of serving our neighbours, serving our clients, serving society is infrequently the focus of professional discussions. I would argue that this is so because of our training, our focus and our tradition. Still, “service” is everything and perhaps the least understood of most professional qualities. The legal profession is a service profession. Its stock in trade is a societal or social service. We have a duty to make those whom we serve comfortable and satisfied with the manner in which they are served. The roots of professional satisfaction grow deepest in the soil of service. Our highest ambition ought to be to lose ourselves in the service of others.

As a final note, may I say this. Your education and experience will have conditioned you to expect to hear much that is uncomplimentary about lawyers. Whether this criticism is informed or otherwise is something that you should not anticipate deflecting either by orchestrated public relations efforts or elaborate counter-arguments. As Aldous Huxley noted, “several excuses are less convincing than one.” Rather, you should rely on the persuasive force of your own high standards in professional life. As has often been said, what cannot be done by advice can be done by example. Contribute to the public’s determination to embrace your role as a lawyer by the standards which you set for yourself.

Après réflexion, vous conviendrez sans doute que la formation que vous recevez à l’école de droit n’est pas centrée sur les qualités et caractéristiques énumérés dans ma liste des dix (10) premières qualités. Ces qualités deviendront le point central de votre développement professionnel. Évaluez-les donc avec attention. [On reflection, you may agree that the qualities and characteristics catalogued in my top ten list are not the focus of one’s law school education. They will become the focus of your professional development. Assess these qualities carefully.] I believe that their recognition and adoption will be the source of joy in your professional life. They will contribute to the sense of overwhelming pride, which is your experience to come, now that you are lawyers.