

**Her Excellency the Right Honourable Adrienne Clarkson
Speech on the Occasion of an Honorary Doctorate of
Laws Degree from The Law Society of Upper Canada
Toronto, Thursday, February 27, 2003**



CHECK AGAINST DELIVERY

I'm delighted to be back among you – The Law Society of Upper Canada – to receive an honorary doctorate of Laws. I feel as if I'm at the source of all doctorates of laws. The rich histories of Osgoode Hall and The Law Society take one back to the early days of this province and the effort to create a civilized society based on the rule of law – at a time when many pioneer inhabitants were still roughing it in the bush.

Not many inhabitants today are roughing it in the bush anymore. But this does not mean that they are not roughing it in their lives in a different way. Nor does it mean that life is not hard or that all the problems of equality and creating an egalitarian society are solved for good. They never can be – not because we've given up striving or that the ideal of an egalitarian, pluralist society is beyond our abilities and our reach. It's because the make-up of the country is changing. Which is not surprising in any society that has – like ours – relied so much, especially over the past century and a half – on large-scale immigration.

But this country is also changing in other ways. It's not the same country as the one that accepted millions of immigrants and displaced persons in the two decades following the Second World War. It's not a country of immigration primarily from European countries, where immigrants could expect to match the incomes and the lifestyle of native-born Canadians within a half a generation or at the most a generation. Our new immigration comes from Africa, South Asia, and China.

And that creates new responsibilities for all our professions – particularly those like the legal profession that are self-regulating. We have to see whether our professions are serving this new Canada and whether or not we are meeting its needs. We can't expect to open our doors to 200,000 immigrants a year and then not pay any attention to them. Or hope that they will simply stumble along a path that wasn't made for the shoes on their feet, a path lit only by flashlights they don't possess.

What I really want to talk to you about today is the kind of society that you in the legal profession must serve. I think it's always a good idea for people who serve an ideal – such as the public good, the administration of justice, the right to competent counsel – to understand who is the Canadian public of today, who are the people needing your services, and why knowing this is in the public interest.

During my time as a lay-bencher of the Law Society of Upper Canada, I tried to bring to the Society a sense of the public's point of view. I wanted to bring an understanding of what the public needs to have in a profession which licenses itself, is responsible for the admission of members to the bar, and which, as your mission statement attests, "governs the legal profession in the public interest".

To my mind, "governing the legal profession in the public interest" is a phrase that is not easy in itself to understand, as it has no clear point of reference. There's no definition of what that public is – or what its interest might be. This phrase doesn't adequately cover the responsibilities that I believe you have to society.

To me, the responsibility of monitoring yourselves as a profession with the numbers of lawyers involved in a province as big as this is an enormous responsibility. To me, it means that you must be particularly vigilant, aware and demanding of yourselves. But more than that.

To be both a self-regulating body and to truly serve the public interest, you have to go beyond questions of disciplining dishonesty and breaking of trust. You have to look at questions of equity within your profession. And you have to look at the role of the profession in the society we have – and the society we are becoming.

Self-regulation must therefore reflect the role of the legal profession in the creation of our citizenry. We must remember: law helps our society to be egalitarian. Anatole France said – rather cynically – that "the law treats everyone equally. In its magnificent equality, it forbids the rich as well as the poor ... to steal bread." That is formal equality of law – and we know what illusory justice it produces. What I am talking about is how law supports egalitarian society. It does so because it supports us to participate in society more fully as citizens. And the legal profession can assist all our citizens – especially the newcomers – in this regard.

That is a more profound and broader ethical responsibility than "ensuring a competent and professional bar [that] serves consumers of legal services" – to quote a Law Society document. Let us think for a moment about those "consumers of legal services" – an unhappy phrase, if I may say so. No, they are not consumers, they are citizens with needs.

We are inviting people to come to this country on the basis that they will become citizens within three to five years. This is unlike any other country in the world. That is why the word "immigrant" does not mean the same thing in Germany or in Sweden as it does in Canada. We have the unspoken and understood concept that immigration means citizenship. To the Europeans, this is not the case. I've only singled out immigrants because I think they are a part of our society as vulnerable as those with little financial resources or social standing. Often it's both for women in difficult situations.

My point is that the Law Society should be more of a mirror of society – and the society we’ve become – if it is to have a truer perception of the public interest and a more self-conscious awareness of its role and responsibility in the creation of our new citizenry. And this starts with greater equity and equality in the legal profession.

That the profession is capable of change and evolution is not in doubt. The kind of systematic discrimination that I remember so well from forty years ago, when friends of mine went out to article in different law firms, has largely disappeared. Those discriminations, those barriers have disappeared and everyone is happy about that. But still there are worries for your profession because, with more than half the law schools being women, you have a great deal of trouble retaining women in the profession. I know this concerns you.

Lawyer friends tell me that this is a question that comes up at Canadian Bar Association meetings when well-meaning senior partners talk about the fact that they have done everything to retain female lawyers and yet don’t seem to be able to do so. My answer is that the legal profession has been built by men for men in a man’s world. It’s not surprising to me that many women find it distinctly uncomfortable after a certain number of years to continue to live within a world which basically grants them certain privileges from the height of the masculine world. The whole structure of the pecking order, the networking, the ways that things are done have nothing to do with the way women would do them.

I call this the “twelve percent factor”. It’s something I’ve observed over the years whenever surveys are done. There always seems to be a difference of twelve percent between men and women. Even last week I saw this same gap in a *New York Times* poll on reactions to the situation in Iraq. And there’ll always be that gap, because women are simply not men. The education, to which we women have all been fortunate to have access, especially over the last fifty years, has given us the right to think – but it has not made women into men. At least not yet. And I hope never.

Following the rules of a man’s world has, to a certain extent, wrought havoc on women. Building a career steadily and strongly to the age of forty can preclude having children. If you do have children, it reduces the size of the steps forward that you can make. Such that, when you come to the 50 to 54 age group, you find that male lawyers earn ninety-four percent more than women the same age. What that means to me is that women are working at least as hard, making compromises with the part of themselves that is most female in order to earn half of what men earn.

There’s something wrong with this. Especially since it seems that as many young women are studying law and entering the legal profession as young men. If the legal profession doesn’t address as a body this discrepancy in earning power and career prospects, it will have a deleterious effect on the profession. Namely, that it fails to reflect the public – of whose interest it purports to serve. At the very least, it will prove to be a waste of public funds in the education of women in a profession in which they cannot reach the top.

But there's another angle to the equity problem in the legal profession. In your analysis *Lawyers in Ontario: Evidence from the 1996 Census*, we are told that 7.3% of lawyers in Ontario are non-white, compared to 17.5% of the population. Only .6% of lawyers are Aboriginal, compared to 1.4% of the population. One can generalize and say that all racial groups, except for the white race, are under-represented in the legal profession. When we look at earnings, this is also reflected in the remuneration of people at their peak ages: between fifty and fifty-four, the average income of white lawyers is \$130,000 versus \$60,000 for non-whites.

I think these figures speak for themselves and you're probably very well aware of them. This is an inequity that is within your profession itself.

However, I want to raise a further point. If we turned the convex into the concave, would we see that those meagre slices of population who produce lawyers from the Aboriginal and non-white groups were also under-served by the legal profession?

Many of our new immigrants come from countries that are not former members of British Empire and therefore do not have the same approach to the right to fair trial and all the distinctions that our law carries for our understanding of civil society. Many are refugees for whom the law of their own countries has failed them miserably and dangerously. Even those who are not refugees have often had experiences in their own societies of arbitrariness and corruption in the justice system and systematic abuses of individual human rights. For them, the law has rendered them vulnerable, not protected.

What does our legal progression say to them now, as they are making a new life in this country? If they are to be trustful of this society, its institutions and authorities; if they want to be able to participate fully as citizens in a democratic country, then we as a society must help to acculturate them. We can do so through language training, through good public education. Each profession can play its part in making this dream come true for these new Canadians; each profession can play its part in raising the new generation of citizens. This is what I mean by "in the public interest". We must ensure that the rights of every citizen, every newcomer, are fully respected; that, as citizens, they can seek legal representation of the best kind.

Think of the many transactions that cannot be done in our society without the help of a lawyer, such as the purchase of a house. The contact of the lawyer with people who perhaps have not had any other contact with the legal profession is very important. The lawyer is supposed to represent their fair treatment in a contractual negotiation. If a couple's marriage breaks down, or if other family or personal crises arise with legal implications, they will need to deal with members of the legal profession. They will turn to somebody who is able to help them at times of emotional and financial turmoil. How they are treated by the legal profession will reinforce their view of society – for the good, hopefully. What immigrants can learn in these small contacts is that there is such a thing as fairness and decency and integrity.

The weak, the vulnerable, particularly those who do not have a voice in the creation of our society at the moment – mostly immigrant, sometimes women – must be thought about. It means being aware of the impact that members of the legal profession have on the life of somebody who needs help, but who can't find the words or anybody to listen. But the Law Society can. To continue to earn the right, the privilege, to be self-governing, you must make sure that you defend the rights of the person who is voiceless. That is how you can help people to not only to become citizens, but also to participate more fully in society as citizens. That is how you make a contribution fundamental to the workings of a democratic, egalitarian and pluralist society.

The society we're becoming is one that will be strongly influenced by the law and by the members of the legal profession. As you deliberate every month and look at the problems that are in front of you, you – the members of the Law Society of Upper Canada – have the opportunity to make a difference. Make a difference not only in how your fellow citizens regard the legal profession as a defender and protector of rights. But also, in how they look at Canada, look at their own role as Canadians, look at their place in society, at the way they treat people and the way they are treated by others. And this is most certainly in the public interest.

This is a huge responsibility for a self-governing profession. But it is one that, I hope, you will take up with vigour.

Thank you.