

Law Society of Upper Canada: Call to the Bar, July 15, 2003
Acceptance of Honorary Doctorate of Laws

WHAT DO LAWYERS DO?

Peter W. Hogg*

Mr Treasurer, Benchers of the Law Society of Upper Canada, members of the graduating class, their families and friends.

I want you to know that this is the first time that I have performed as a soloist at Roy Thomson Hall, and I like it!

This is also the first time that I have received an honorary degree. I count it as a very great honour indeed, coming as it does from the Law Society of Upper Canada, which represents all of the members of the legal profession. An honour from one's peers is the nicest honour of all.

I am conscious of the fact that this degree honours not just me but the office that I have had the privilege of holding for the last five years. As Dean of the Osgoode Hall Law School until last month, I am keenly aware of the relationship between the Law School, which has been affiliated with York University since 1969, and the Law Society of Upper Canada, which was the home of the Law School from its founding in 1889 until the affiliation with York University. The Osgoode Hall Law School was the only route to a legal education in Ontario for most of its history. It was only in 1957 that the Law Society agreed that the universities could offer LL.B. degrees which would qualify for entry to the bar after articling and a bar admission course taught by the Law Society. That is the pattern that continues to this day, and it is the path that has been followed by those who are to be called today. It makes for a very long education, but a rigorous one that combines university study with practical training and experience.

Since 1957 there has been a healthy competition between the Law Schools of the province, and of the rest of the country. There are now six law schools in Ontario and ten more common-law law schools in the other provinces. Each law school is required by the Law Society to offer a set of compulsory basic subjects, which are usually taught in first year, and to cover basic areas of law in its optional program. Under this regime, there is room for innovation and experimentation, and each school has in fact developed distinctive courses and programs. The standards are uniformly high. Canadian law schools, Canadian scholars and Canadian students are competitive with the very best in the world.

This is a long way of saying that every person being called today has had an excellent legal education. You have had to work very hard. I congratulate you, and I also congratulate the many relatives and friends who are here today to see your call. I know that their affection and support played a big role in bringing you to this occasion.

You are about to formally enter the legal profession. This is a wonderful new phase in your life, which will be the prelude to many years of interesting work. But the legal profession is much more than the opportunity for interesting work. It plays a fundamental role in organizing a civil society. As a constitutional lawyer, what I want to talk about is the constitutional function of the legal profession.

What is the service that a lawyer performs? That is easy to answer at the micro level. The lawyer helps a client to do something that requires legal knowledge or skills, often the completion of a commercial transaction or the resolution of a dispute. But I am interested in the macro level: what does the lawyer do for society? Or, in other words, why is it important for a society to have lawyers?

If you pay attention to lawyer jokes, you would have to conclude that lawyers do not serve any useful purpose, and sometimes Shakespeare is quoted to the same effect. There is a line in Shakespeare that reads: "The first thing we do, let's kill all the lawyers." The implication that is usually drawn from this statement is that Shakespeare had a low opinion of lawyers. The statement appears in *Henry the Sixth, Part 2*, (Act IV, Scene II, line 83) which is one of the histories. The statement is made by a character called Dick the Butcher to Jack Cade, who is the leader of a rebellion against the King. Jack has invented a genealogy that enables him to claim royal blood, and is commanding an army to seize the throne and abolish Parliament. He says "My mouth shall be the parliament of England." (Act IV, Scene VII, line 17) He agrees with Dick the Butcher that he needs to kill all the lawyers in order to supplant the existing King and the existing laws.

What Shakespeare was really saying about lawyers was that they were protective of a society ruled by law. He recognized that the rule of law could easily be set aside by a despot if there did not exist an independent legal profession willing to act for individuals who have been arbitrarily or unjustly treated.

In Canada we rightly value our civil liberties, which were created by the common law and by our democratic legislative bodies. Many of them are now guaranteed by the Charter of Rights. But the truth of the matter is that nearly all countries have something like a Charter of Rights, including the most brutal and oppressive dictatorships. As Shakespeare recognized, the reality of the protection of civil liberties depends upon the existence of an independent legal profession which is willing to represent those whose civil liberties are taken away. There must also be an independent judiciary that is willing to uphold the law even against the government or the wealthy.

The essential contribution of lawyers to society is to uphold the "rule of law". That is a very vague phrase, and one that has been criticized as being nothing but meaningless rhetoric or even a smokescreen to conceal a system of oppression. But I am using the phrase in a very simple sense, meaning a society with a system of reasonably just laws where the law is generally obeyed, not only by the citizens at large but also by governments, government officials and police officers, as well as by wealthy individuals and corporations. It is a society in which corruption is absent or highly unusual, and where a breach of the law is met with impartial enforcement.

It used to be common to hear people say something like the following. The rule of law is just fine for wealthy countries, but it is a luxury that poor countries cannot afford. One of the contributions of the law and economics movement has been to show that the proposition is completely wrong. The correct proposition is as follows: A country cannot become wealthy unless it has the rule of law.

It is not hard to see why this is so. Property cannot be developed unless property rights are protected. Large scale commercial activity cannot take place unless long-term contracts are enforced. Banking, insurance and the rest of the infrastructure of commercial life are all based on the protection of property and the enforcement of contracts. Even agricultural activity that goes beyond subsistence requires the borrowing of money and the purchase of manufactured equipment. Without the rule of law, there is no security for property or contract, and commerce cannot flourish except at the level of the bazaar or with the cooperation of gangsters. Honest people will not invest in a country where the investment is not protected by law.

My point is that the role of the legal profession goes far beyond holding government to the law and protecting civil liberties. Those are admittedly dramatic functions of lawyers. But lawyers are implicated in nearly all of society's activities, and certainly in all of the economic activity in the private sector. By holding everyone to the rule of law--not by any means just government--lawyers make economic development possible. Capital can be safely accumulated, property can be developed, energy can be produced and transported, railways, roads and airports can be built, businesses can be organized, goods can be manufactured and sold, taxes can be collected, and with those taxes hospitals, schools and universities can be established. We take these things for granted, but they are not taken for granted, and are not possible, in many of the countries of the world.

Obviously, economic development is the product of many factors, but one essential ingredient is the rule of law, and the rule of law is administered by the legal profession.

The conclusion is that the legal profession is one of the critical institutions of our society, not only in protecting our civil liberties, but also in keeping the economy working. You are now joining this institution, and you can now play the role that suits your tastes and capabilities in building the future of Canada. I expect that your role will be unexpected since the future will include many changes and cannot be easily foretold. But I also expect that you will have rewarding and happy lives in this great profession. Congratulations and good luck!

* Peter W. Hogg, O.C., Q.C., L.S.M, F.R.S.C., recently retired as Dean of the Osgoode Hall Law School, where he remains as a Professor of Law. He is currently on leave as the scholar in residence at the law firm of Blake, Cassels & Graydon LLP.