

Call to the Bar – National Arts Centre, Ottawa
Speech by Professor Elizabeth Sheehy, LL.D.
July 13, 2005

Mr Treasurer, Chief Justice Cunningham, Benchers, colleagues, our next generation of lawyers, families and friends: C'est un honneur et un plaisir de partager ce beau matin d'été, en cette journée mémorable, avec vous et les personnes qui vous sont chères. Vous intégrez aujourd'hui la profession. Vous joignez nos rangs en tant que collègues. My warmest congratulations to each and every one of you.

For those of you about to be Called to the Bar, today marks the end of four years of formal legal education, and the beginning of a lifetime of self-directed education as you rise to the challenge of a legal landscape whose only constant is change. You all know that while it was you alone who prepared for classes, took examinations, and completed your articles, you were supported every step of the way by your family's love, the tolerance of your friends as you became a different person than the one they thought they knew, your community's faith in you, and the public's investment in your higher education. Nous sommes vraiment fiers de vous et nous avons de grandes attentes à votre égard!

As I look out at your faces, I am struck by your diversity—in age, sex, cultural background. I marvel at how the face of the profession is changing and what this generation of lawyers has to offer the Ontario public. Une diversité de personnes vous consulteront : des pauvres, des chefs de petites entreprises, des lesbiennes, des gais, des francophones, des personnes handicapées, des municipalités, des autochtones, des organisations sans but lucratif, des Canadiens et des Canadiennes d'ascendance africaine, des syndicats, des détenus, des sociétés commerciales, des personnes vulnérables placées en institution et d'autres encore. All of your skills as well as self-awareness of your own experiences and limitations will be needed to see with clarity the complexity of your clients' legal issues.

Here you will need to seek wise counsel from senior members of the profession, the Law Society, and most importantly, your colleagues here today, for no one is capable of brilliant legal work in isolation. Virginia Woolf made this observation most eloquently: “[M]asterpieces are not single and solitary births; they are the outcome of many years of thinking in common, of thinking by the body of the people, so that the experience of the mass is behind the single voice.”

The “masterpieces” in legal work are produced by the synergy of “thinking in common” and the efforts of at least one, if not more, agitator. Le terme « agitateur » peut alarmer les gens, en particulier les juristes. But the title agitator is in fact a badge of honour. The dictionary defines an agitator as one who agitates -not very helpful- or a machine for stirring or shaking- which is only somewhat more illuminating. So we turn to the verb, to agitate, which is defined as “to upset, disturb, to arouse interest in a cause by the written or spoken word, to discuss, debate, to

ponder over, to plan. " All of this sounds very much like lawyers's work, even though the state produced- "agitation" defined as "disturbance, commotion, perturbation," might not sound like something anyone would pay you for!

However, the central role of the agitator was acknowledged in a famous judgment of Justice Lionel Murphy of the High Court of Australia reversing a sentence of six months hard labour given to an Aboriginal activist for swearing and spitting:

That Mr Neal was an agitator or stirrer in the magistrate's view obviously contributed to the severe penalty. If he is an agitator, he is in good company. Many of the great religious and political figures of history have been agitators, and human progress owes much to the efforts of these and the many who are unknown. As Oscar Wilde aptly pointed out "Agitators are a set of interfering, meddling people, who come down to some perfectly contented class of the community and sow the seeds of discontent amongst them. That is the reason agitators are so absolutely necessary. Without them, in our incomplete state, there would be no advance towards civilisation." Mr Neal is *entitled* to be an agitator.

We have countless shining examples of homegrown agitators who have challenged the *status quo* and thereby contributed to Canadian legal development. Nous trouvons de telles personnes parmi les témoins, les clients et clientes, les membres de jury, les détenus, les juristes et même les juges!

Consider Nellie Lane, a waitress subpoenaed by the Crown in the criminal prosecution of Quong Wing in Saskatchewan in 1912 for violation of the prohibition on the employment of white women by Chinese men. Professor Backhouse reports that Ms Lane was the only witness to resist labelling the accused on a racial basis. Écoutez son brave témoignage :

What nationality was Quong Wing?

Well, I treat him as myself.

I know, but what is he?

I don't know what he was, only what people told me.

What language does he speak?

He can speak two, he can speak English and he can speak Chinese.

Is he English?

No, he is not English, but I could not tell you where he came from, it would be hard for me to say, but he is as good as me.

Or recall a very famous client who fought back when her equality rights and dignity were trampled upon. Jane Doe was attacked by a serial rapist when Metro Toronto Police failed to believe his first three victims and therefore neither properly investigated the crimes nor warned Jane Doe of her endangerment. She was told by lawyers that her claim against the police for sex discrimination and negligence didn't have a hope of success. That only increased her resolve to

make legal history and win –and win she did– on terms any agitator would be proud of: using language accessible to non-lawyers, feminist legal analysis, and expert testimony on male violence against women. Her victory enriches our law tremendously.

Or consider the men and women jurors in Québec who effectively brought to a close what has been called an “orgy of prosecution” of Dr Henry Morgentaler for performing abortions in his clinics in violation of the then *Criminal Code* prohibition. Three successive juries listened to the evidence that clearly proved that he had violated the criminal law, and thumbed their noses at the prosecutors by acquitting him time and again, based on the law’s unfairness as well as the danger posed to women’s health by the restrictions on abortion. Although it was not until 1988 that this law was declared unconstitutional for the benefit of all Canadian women, the actions of 36 ordinary agitators participating in the democratic institution of the jury had already persuaded the Québec Minister of Justice 12 years earlier that it was a “bad law.”

Recall too the prisoners in the Prison for Women who agreed to the public broadcast of a video that depicted them being strip-searched in segregation. The women gave up what little privacy they had left in order to prove they were in fact stripped and searched by male corrections officers, contrary to all official assertions. The ensuing media storm resulted in the appointment of Her Honour Justice Louise Arbour to head the Commission of Inquiry into these shameful events. The women’s testimony defied the personal consequences each would face in their continued imprisonment and influenced the Commissioner, who insisted that these women, like other citizens, were entitled to the benefit of the rule of law and the *Charter of Rights*.

Or, consider Joanna Gualtieri and John Guenette, local lawyers for Foreign Affairs who attempted to curb 2 billion dollars worth of waste, and violation of Treasury Board spending guidelines. Frustrated by internal stonewalling, they released the information publicly and launched a lawsuit with a punitive damages claim that would fund a non-profit, advocacy organization. But they have not waited for their day in court: Joanna Gualtieri spearheaded FAIR, the Federal Accountability Initiative for Reform, and aspires to found Canada’s first organization to advocate whistleblowers’ rights.

Or Sharon McIvor, counsel for the Native Women’s Association of Canada, which, in coalition with the Canadian Association of Sexual Assault Centres and the Women’s Legal Education and Action Fund, intervened in the prosecution of Archbishop Hubert O’Connor to argue against his access to the counselling and school records of the Aboriginal girls he was accused of sexually assaulting. She stood before the Supreme Court of Canada and, drawing upon our history of sexual exploitation of Aboriginal women as part of colonization, advanced the most radical legal position opposing disclosure that was possible: “No records, No time, No reason.” The Coalition lost the battle, but won the war when new legislation was passed that vindicated much of their position.

Enfin, pensons aux nombreux juges, qui sûrement refuseraient le badge d’agitateur, mais qui n’hésitent pas à remettre en question le *statu quo* pour faire évoluer le droit. Judge Corinne

Sparks, for example, of the Nova Scotia Youth Court, provided us with a marvellous example of contextual judging in her decision in *RDS*, when she relied upon experiential knowledge of the policing of African Canadian youths in finding a young man not guilty of assaulting a police officer and resisting arrest. The appeal of her decision provoked a national debate on the meaning of judicial bias and produced a precedent that declares that it is not biased to integrate an equality analysis into one's judging. Or consider Justice Harry LaForme who infuriated REAL women by writing a significant decision supporting same sex marriage, or Justice Claire L'Heureux-Dubé's uncompromising judgment in *Ewanchuk*, the "no means no" case.

Notre civilisation évolue de façon tangible grâce à ces changements juridiques. Yet none was possible without the meddling of countless courageous citizens and counsel. I wish for each of you the opportunity to participate in legal masterpieces, the moral courage you will need to agitate in the public interest, the colleagues who will remind you of your commitments to justice, and an abundance of so-called "difficult clients" who will not accept the ordinary wrongs as natural and inevitable and who will challenge you to deliver law that lives up to its promise of justice.

I leave you with the wisdom of Frederick Douglass, the African-American agitator for the abolition of slavery. I hope that his words, written in 1857, will remind you that if you are agitating others, you are probably on the right track:

If there is no struggle there is no progress. Those who profess to favour freedom, and yet deprecate agitation, ...want crops without plowing up the ground. They want rain without thunder and lightening. They want the ocean without the awful roar of its many waters. This struggle may be a moral one; or it may be a physical one; or it may be both moral and physical; but it must be a struggle. Power concedes nothing without a demand. It never has and it never will.

Profitez maintenant des fruits de vos labeurs! Enjoy this wonderful day to its fullest! Bravo for you all!