

## MINUTES OF SPECIAL CONVOCATION

Toronto – Thursday, 20<sup>th</sup> July, 2006  
9:00 a.m.

The Treasurer (Gavin MacKenzie), benchers and their guests proceeded to the auditorium at Roy Thomson Hall for the Call to the Bar ceremonies of 274 candidates listed in the Report of the Professional Development, Competence and Admissions Committee.

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## CONVOCATION WAS CALLED TO ORDER AT 9:00 A.M.

A quorum of Convocation was present.

The body of the auditorium was occupied by the candidates and their guests.

The Treasurer asked all present to stand for the National Anthem sung by Gail Morgan.

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CONFERRING OF AN HONORARY DEGREE

Ms. Beth Symes, a representative of the Professional Development, Competence and Admissions Committee introduced the Doctoral candidate Clayton Ruby, C.M., and read the following citation:

“Treasurer, may I present to you and to this Convocation Clayton Ruby, C.M. and request that you confer upon him the degree of Doctor of Laws, *honoris causa*.

Clayton Ruby has dedicated his professional career to ensuring that those who are underprivileged and those who face discrimination are given equal access to the legal system of this country. A well-respected and well-known civil and human rights lawyer, he has never been afraid to defend the unpopular, to argue a controversial viewpoint or to challenge that which has simply been accepted.

He has been an elected Bencher of the Law Society of Upper Canada for twenty-nine years, surpassed by only one other in our history. He has taken his duties as a Bencher seriously participating regularly on disciplinary panels, chairing both the Finance and Professional Regulation Committees and providing his leadership as Acting Treasurer when called upon to do so. Underlying his work as a Bencher, however, has always been his determination to challenge his profession and its governing body to evolve and adapt with society.

Mahatma Gandhi wrote that life is a series of attempts to reach the truth. Clayton Ruby has demonstrated that if you persevere you can leave the world a better place than you found it, and for him that is the ultimate truth.

He is most deserving of the highest honour this Society can give and I request you, Sir, to confer upon him the degree of Doctor of Laws, *honoris causa*.”

The Treasurer admitted Mr. Ruby to the degree of Doctor of Laws, *honoris causa*.

Mr. Ruby then addressed the candidates and their guests.

“I do not want you to think that I am without experience in these matters. Three years ago my youngest daughter graduated from high school, and I was thrilled that the school asked me to deliver a commencement address to the graduating students and their families. I thought to urge the students to emulate two distinguished Canadian oceanographers who had for the first time mapped world fish populations and disclosed that the largest fish were in universal decline – a decline that could only be caused in so many places at once by over fishing. These scientists had used their education, I thought, to make the world a better place...and so I talked about fish.

If you are ever asked, do not give a commencement address about fish! I do not blame the dismal reception my fish address received on the faulty P.A. system, which ensured that only the first four rows heard my speech. They were no less bewildered than those who could not hear at all, as I soldiered on about the importance of the dwindling large fish population. Unfortunately, my daughter was in the first four rows, and has ever since reserved her greatest contempt for “that fish speech”, a phrase which is daughter-code for fathers who misread their audiences.

At the risk of blowing yet another opportunity, I am going to tell you about a lawyer you have never heard of, in another country, in another time.

Arthur Kinoy was a distinguished American radical lawyer of the last half of the last century, one of the founders of the Center for Constitutional Rights in New York City. He was a white Jewish lawyer from the north who worked with the Montgomery bus boycott that occurred when Rosa Parks refused to sit in the back of the bus. Eventually he combined his practice with a professorship at Rutgers University Law School.

In the summer of 1953, late at night, Arthur Kinoy took a phone call from Manny Bloch, who was the lawyer for Julius and Ethel Rosenberg. Julius and Ethel Rosenberg had been convicted as communists of spying for the Soviet Union and passing on to them then secret information about how to make an atomic bomb. At the time, only the United States had that information and the bomb had ended World War II. These were public enemies number 1 and 2 and President Eisenhower had refused to commute their death sentences. All normal appeals had been exhausted. Every newspaper and radio station clamoured for their execution. Their lawyers had been vilified. It was an age when communists were feared and an earlier version of our present “war on terror” had been fashioned.

A last minute appeal to the United States Supreme Court for a stay had been granted by William O. Douglas but, in an unprecedented move, then Chief Justice Fred Vinson had called the entire court back from their summer vacations to overrule the stay of execution. The execution was rescheduled for 8 p.m. the next day. By then Kinoy was in the Chambers of Chief Justice Swan of the Second Circuit Court of Appeal in New Haven, Connecticut seeking another stay. A Conservative Judge, Swan listened. And he said: “Okay. You’ve got a point. But I can’t grant a stay on my own after the entire Supreme Court vacated Justice Douglas’ stay, but I’ll convene an emergency panel of three to rule on these arguments if you can convince one other judge of my court that

this has merit.” But who was in New Haven in dead of summer? Where to find a judge at noon on the day of execution?

“Ah”, said Swan. “Jerome Frank is in New Haven.” Kinoy’s heart leaped with joy.

Jerome Frank was the leading liberal judge in the northeast, the architect of Franklin Roosevelt’s new deal. Author of its most humane legislation. He was a truly great professor of law who, when he had taught at Yale, practically invented clinical education for law schools.

Chief Justice Swan lent Kinoy his car and chauffeur and off they went to see Jerome Frank who greeted them at the door and told them that a phone line had been opened up between Chief Justice Swan’s office and Sing Sing, the prison where the electrocution was to take place.

Kinoy argued as he had never argued before. When he tried to cut any point short, worrying about the time, Justice Frank would interrupt, saying, “No, develop that point.” Then he would say “Fine. Develop the next point.” They argued for more than an hour. Then he said words that Kinoy would never forget: “If I were as young as you are, I would be sitting where you are now and saying and arguing what you are arguing. You are right to do so, but when you are as old as I am you will understand why I” – and he repeated ‘why I’ – “cannot do what you ask. I cannot do it.”

Kinoy knew that Justice Jerome Frank, deep in his heart, had decided that it would jeopardize his role as a liberal and as a Jew, in an increasingly conservative society, to rule in favour of the Rosenbergs, who were also Jews.

As he drove back to New York City, Kinoy heard the radio announcement that the execution had taken place. The Rosenbergs were dead.

Kinoy was unable to speak of this incident for many years. It marked him deeply. It illustrated for him the difference between a radical lawyer and a liberal lawyer: a liberal lawyer has an overriding commitment to his or her place in the system and that makes it impossible to base decisions purely on justice.

I tell you this story because I want you to be Arthur Kinoy. But you knew that. I want you to act without fear, determined to make this world a better place through your legal skills, whatever kind of law you practice, and whether that effort turns out to be hugely significant, or as was Kinoy’s effort here, utterly futile. Know what is right, and do that. You must struggle for the courage to take difficult and unpopular positions whether you are just beginning as a lawyer, or, like me, a part of the legal establishment. There is little shortage of excuses for lost courage. Silence is easy. But quiet acceptance of injustice quickly becomes a way of life. As Albert Camus said: “People get used to anything, even shame and stupidity.”

I have tried to resist the temptation to settle into an approving old age. And that brings me to my point. There is a marked parallel between the “war on communism” that warped the economic, military, political and emotional life of the last half of the last century, and the “war on terror” presently on offer at much the same price by much the same people. There were dangerous communists, but not very many, and certainly they were not dangerous enough to justify the suppression of debate in so many areas of

public life. Today, we are learning to fear Muslims, and those of Arab descent. This is a time when once again it takes courage to speak up and act for the values of liberty and justice. There is a danger when a tiny few seek by violence to create a religious dictatorship, but it is even more dangerous when a majority takes advantage of our fear to pass laws that are inconsistent with the right to counsel, the right to silence, the presumption of innocence, freedom of speech and expression, laws inconsistent with the rule of law itself.

I have burdened you with Camus before. Indulge me. I love Camus. He understood that we can as lawyers and citizens do better than this, better than the constant sacrifice of human rights for security, of freedom for safety. Albert Camus said: "Between freedom and justice there seems to exist a state of contradiction. How could there not be? Freedom for each also means freedom for the rich and ambitious; that invites injustice. Justice for all means the submission of the individual to the collective good. The question for all of us is how to reconcile justice with freedom. The goal we must pursue is to make life free for the individual but just for all."

I know that you will find the courage to carry on the traditions of our profession in refusing arbitrary measures, in refusing to accept discrimination impelled by fear. We can learn from our recent past. It is what makes our profession great -- and the Kinoy story has enabled me to avoid the difficult subject of fish, for which my daughter Kate is very grateful."

### CALL TO THE BAR

Ms. Laurie Pawlitzka, Ms. Heather Ross, Mr. Alan Silverstein and Mr. Robert Topp presented to the Treasurer 274 candidates for the Call to the Bar as follows:

#### 274 CANDIDATES FOR CALL TO THE BAR

(Enclosed in Convocation file is a list of the candidates for Call to the Bar)

The Treasurer conferred upon the candidates the degree of Barrister-at-law and called them to the Bar of Ontario.

The Treasurer addressed the new Barristers.

#### CONVOCATION ADJOURNED

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Following Convocation a Special Sitting of the Court of Appeal for Ontario and the Superior Court of Justice convened, with The Honourable Madam Justice Karen M. Weiler, Court of Appeal for Ontario, presiding.

The candidates were presented to Justice Weiler before whom they took the Oath of Allegiance, Barristers Oath and Solicitors Oath and acknowledged their signatures on the Rolls in the presence of the Court.

Madam Justice Weiler then addressed the new Barristers and Solicitors.

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At the conclusion of the formal proceedings, the Treasurer and benchers held a reception and luncheon for their guests at Osgoode Hall.

Confirmed in Convocation this 28<sup>th</sup> day of September, 2006.

Treasurer