

**Address Delivered by The Honourable Coulter A. Osborne, Q.C.
at the Call to the Bar Ceremony, June 16, 2008
London Convention Centre**

Thank you for your generous introduction.

Those who will be called to the Bar today are, needless to say, central to this happy occasion and I am deeply honoured to share this day with you and your families. I am also grateful to the Law Society of Upper Canada for conferring this honour on me. It is important to me that I am able to share this occasion with my family, my wife Barbara and two of our three daughters, Julie and Katie. Without their support I would not be standing here today. And I venture to say that for many of you, without your families' support, you would not be here either.

Today, the world from which I come and the world that you now enter intersect. In a large measure, mine is a world of memory and yours a vision of hope. Although we come from different eras, we do not come from different planets. We have much in common. We are all lawyers. We should express the same values.

When I graduated from the University of Western Ontario, the path to law school was clear and unencumbered. Although there were only two law schools at the time, at least for Osgoode Hall Law School there were but two entrance criteria – you had to show up with your undergraduate degree and you had to have the \$300 tuition fee. That was it. After articling and the completion of our fourth year of Law School, we had no bar admission course requirements. We had to pass an oral examination and we were on our way. I feel confident in saying that we were not as well equipped to practice law as you are today. In our class of I believe 255 first-year students, fewer than 10 were women. Six of them were called to the Bar 4 years later in 1959. I think it was in the year 2000 that for the first time there were more women called to the Bar in Ontario than men. I call that progress.

In 1959, in obtaining employment as an associate in a law firm was not difficult. Again, for the most part, all you had to do was show up. I showed up in Kitchener in 1959 and practiced there until 1978 when I was appointed to the Bench. As the years rolled forward I came to realize that, notwithstanding rumours to the contrary, there are places other than Toronto where lawyers carry on the successful, fulfilling and rewarding practice of law.

Today things are different. Having one lawyer in our family I know something of the mountains you have climbed, and how, at least in some cases, your parents and families have sacrificed so that you could be where you are today. It is my hope that you will not forget those sacrifices.

But there are some constants, some core values or principles that have not changed and I hope will not change. Let me briefly refer to three of them – respect for the rule of law, compassion and civility within the legal profession.

It is beyond any doubt that one of the pillars of a free and democratic society is the rule of law, which in its most basic form expresses the principle that no one is above the law. It has been referred to as the glue that binds our society and it represents the social contract by which we live and work together. Our legal system is an essential part of the rule of law. While the rule of law as an over arching value is a constant, how we give effect to it may, and I think must, change to accommodate the contemporary reality generally and access to justice concerns in particular. You will, I hope be a part of that change.

In Canada and the United States and in other western democracies we accept the core value of the rule of law with what some view as a sense of moral superiority. But the facts on the ground are sometimes different. For example, the Canadian government, acting, or not acting, in the alleged interest of national security appears to have been an enabler in the rendition and torture of Maher Arar. Abu Ghraib, has presented a distasteful menu of torture, degradation and detention without trial. We

have seen ad hoc abolition of rights that we take for granted such as the right to counsel and the right to make such answer and defence. These rights have been suspended, again in the interest of national security.

In a more Canadian context we appear to be content to sit back and let Omar Kadar, a 21-year old detainee at Guantanamo Bay and a Canadian citizen be tried under a process and by a tribunal that offends almost every element of the rule of law. This young man, whatever he may have done, was 15 years old when the offences with which he is charged were allegedly committed. Surely there is a better way.

In the United States it was the recent intervention of the Supreme Court of the United States, which, in the case of Boumediene v. Bush held last Thursday that the executive and legislative steps taken in 2006, which virtually eliminated access to Habeas Corpus were unconstitutional. In Boumediene, Justice Kennedy, writing for the majority, said:

The laws and constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled within the framework of the law.

I find it difficult to disagree with Justice Kennedy's comments on the rule of law and the role since 1679 of Habeas Corpus. I note, however, that four of Justice Kennedy's colleagues expressed their disagreement with his assessment of the rule of law and the right of Habeas Corpus.

I referred to compassion a few moments ago. I speak of it today in the context of pro bono services and other work outside your day jobs that is in the public good.

As you enter the practice of law, you will, I hope, commit to helping those who need it through pro bono programs such as those organized by Pro Bono Law Ontario, a charitable organization that was established in 2002. It provides pro bono services for persons of limited means. Many lawyers have responded to the call.

When I recently reviewed the non-family law segment of the civil justice system, it appeared to me that more lawyers and more law firms have committed to providing pro bono legal services than was the case even 5 years ago. Larger firms in and out of Toronto have come to realize that offering pro bono services will make the firm more marketable to articling students and younger lawyers who want an opportunity for first hand experience in conducting an action or a defence.

I recognize that not all lawyers and not all law firms can afford to take on pro bono work. Indeed, in a Town Hall meeting in the course of the Civil Justice Review with which I was recently involved a lawyer from a smaller centre explained: “I already do a lot of pro bono work. It’s called my accounts receivable”. I know what he meant. He acted for those who he knew could not pay because they were part of his community. Like that lawyer, you have, each in your way, the capacity to act in the public good. How you do it will be up to you.

Lastly, I turn to civility. You will hear much more on this subject from others in the coming months. All I want to say now is that:

Litigation in the adversary system too frequently gives rise to underlying partisan conduct by members of the bar. Too often, the “I’m the toughest gun in town” mentality is a part of some lawyers’ marketing of their services and conduct.

The overworked maxim – “a lawsuit is not a tea party” – should not remotely be taken to justify uncivil or unethical behaviour.

Judges have every right to demand that counsel act in a civil manner in court in dealing with both the court and opposing counsel. Unacceptable in-court conduct should give rise to sanctions, which include contempt citations and cost orders. Having been there, it continues to amaze me how some lawyers (a very distinct minority) seem to think that conduct that will reasonably be seen by others, including

the trial judge and jury, as unduly aggressive actually benefits their clients. In short, it is bad advocacy.

Despite the increased focus in recent years on civility in continuing legal education, in some law schools and in codes of conduct drafted by professional associations, stories of uncivil behaviour among lawyers are all too common. The issue of civility is particularly important for a self-regulating profession in which rules and standards are developed and collectively applied by members of the profession itself.

Civility as a value extends beyond the courtroom. It includes the manner in which you relate to others. This is especially important in relation to your interaction with those who provide services for you as opposed to with you. Whether you deal with those who in hierarchical terms are below you, consideration and respect is how you will be measured as a person.

Thank you for allowing me to share this special day with you. I salute each one of you and wish you well in whatever you choose to do as you move forward. There will on occasion be a gap between expectations and reality. Follow the general advice to deal with the bad news first. The good news will take care of itself.

And to your parents and grandparents I say congratulations on the good children you have raised and cared for.