

MINUTES OF SPECIAL CONVOCATION

Toronto – Wednesday, 16th June, 2010
2:00 p.m.

The Treasurer, (W. A. Derry Millar), benchers and their guests proceeded to Roy Thomson Hall for the Call to the Bar ceremonies of 328 candidates listed in the Report of the Director of Professional Development and Competence.

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CONVOCATION WAS CALLED TO ORDER AT 2:00 P.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 Erica Huang.

The Treasurer welcomed the candidates and their guests.

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CONFERRING OF AN HONORARY DEGREE

Ms. Elliott, a representative of the Professional Development and Competence Committee introduced the Doctoral candidate, Gavin MacKenzie, and read the following citation:

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

Called to the Bar of Ontario in 1977, Gavin MacKenzie has become one of Canada’s most prolific commentators on the subject of legal ethics. He is often retained as an expert witness in both Canada and the United States, and is a frequent speaker at continuing legal education programmes. Through his practice, his writing and his teaching, he elucidates the meaning of professionalism.

In 1995, he was elected a bencher of the Law Society of Upper Canada and then in 2006, he was chosen by his bencher colleagues to serve as Treasurer, an honour he deeply cherished. During his 28-month term he performed his duties with distinction overseeing the implementation of paralegal regulation and creating the Retention of Women in Private Practice Working Group and the Licensing and Accreditation Task Force – major achievements that will stand the Law Society and all its members in good stead in the future.

Gavin MacKenzie is most deserving of this honour and I request you, Sir, to confer upon him the degree of Doctor of Laws, *honoris causa*".

The Treasurer admitted Gavin MacKenzie to the degree of Doctor of Laws, *honoris causa*.

Mr. MacKenzie then addressed the candidates and their guests.

"Treasurer, Justice Karakatsanis, benchers, platform guests and, most importantly, about to be newly-minted lawyers and your families and friends:

It is a great privilege for me to take part in this ceremony that commemorates your call to the bar of Ontario. It is also a great privilege for me to receive an honorary Doctor of Laws degree from this great and venerable institution, the Law Society of Upper Canada, in recognition of my work in the profession. To be recognized by your colleagues is particularly gratifying. I hope the Treasurer and benchers will accept my heartfelt thanks.

But make no mistake, new lawyers – while I am exceedingly proud to be in your company today, this is your day, not mine. As a result of a great deal of arduous effort and sacrifice you earned the credential you are about to receive. All I had to do was agree to make a speech. Please accept my warmest congratulations.

I would be seriously remiss if I were to neglect to congratulate also your parents, partners, families, and friends. Your accomplishment belongs to them too. They are the good people who sacrificed to get you to this moment, the doubters who thought you would never make it, the quiet heroes who had faith in you when you may not have had faith in yourselves. Through their love and support they have nurtured you, encouraged you, put up with you. For them too this is a day of excitement, pride, honour, gratitude and relief – and I mean relief of the "oh my God, I thought it would never happen" variety.

I remember my call to the bar, back in the Paleozoic era. Actually it must have been shortly after the invention of photography, because I have kept a photograph from that day. In the photograph I am wearing my gown and tabs and wing collar for the first time, and I am accompanied by my parents, who are beaming. My parents were rural Ontarians, the offspring of dour Scottish immigrants, and they were not famous for beaming. I was a second generation Canadian but a first generation lawyer. My parents believed in the value of hard working and learning, and that photograph is a treasured memento.

So your families are very proud of you – which leads me to my first piece of advice: this would be an opportune time to ask for money.

This is one thing that I do not remember about my call to the bar, and that is who the Convocation speaker was. Nor do I remember a word that he said. I suspect that I wished that his speech was shorter.

Most Convocation speeches consist of unoriginal advice offered up by a self-important speaker wearing a gown in which he looks ridiculous. I intend to continue that tradition.

So here is my advice. I want to leave you with five thoughts.

First, don't delude yourself into thinking that your education is now over. You have survived elementary and secondary school, university and law school, articling, and the Law Society's licensing examinations. But you are not done yet; and you never will be. This is not the end; it is closer to the beginning of your education. Your life will be a journey from lesson to lesson. That journey will take you in directions you cannot possibly predict.

No one knows how your lives will unfold. I suspect that I am not the only lawyer on this stage who is today considered by some to be an expert in a field he did not even study in law school.

A few years ago, in a graduation address at her alma mater, Wellesley College, the writer and film director Nora Ephron said that the education that she and her classmates had received there was a dress rehearsal for a life they never led. That may have been true of the women who graduated from Wellesley in the 1960's; it was not true of the legal education my contemporaries and I received a decade later, and I am confident that it is not true of your legal education either. But it is true that you cannot know what your future will hold, and what lessons you will have to learn, to be prepared for the unexpected.

So you should always, in the words of the traditional will, be "mindful of the uncertainties of life." And the only way of arming yourself to protect against those uncertainties is to continue your education. Always be a student.

The second thought, and this is related, is that you must adapt to change. Don't allow the healthy respect for our profession's valued traditions to become a constraint. When I was called to the bar, on that day of the beaming parents, the *Married Women's Property Act* was still in force. You could bring an action for the tort of criminal conversation. It was before the enactment of the *Charter of Rights and Freedoms*. If you had told us that by the middle of our careers same sex marriage would become lawful we would have told you that you were hallucinating.

I won't even get into technological change except to say that we would never have imagined that by 2010 we would be communicating with colleagues and clients and sometimes even judges with messages transmitted instantaneously by wireless handheld devices on which we type with our thumbs.

If we hadn't continued our education – and if we hadn't adapted to change – we would still be living in the Palaeozoic era. We would be dinosaurs.

Darwin wrote that it is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change.

The third thought: look at the other side of every argument. In an adversarial system you cannot be an effective advocate without appreciating the other party's case. You cannot be an effective solicitor either, if you don't develop the capacity to empathize, and to understand the thought process that underpins the position of other parties to transactions.

I've been reading *The Bridge* recently, David Remnick's estimable biography of Barack Obama. The author interviewed Obama's law school professors (among many others) and I was struck by what one of them, Christopher Edley, said about Obama as a law student: "For law students it's very important to understand the other side of the argument ... [A] critical skill is trying to anticipate and dissect the best argument your opponent is going to make, so you drill down and understand that argument as well as your own. That gives you a certain humility, because it forces you to face the weaknesses in your own position and to appreciate that any difficult problem has, by definition, good arguments on both sides.

That's where Obama was so strong ... His talent, that habit of mind, was also evident in his openness in engaging people with whom he disagrees. It's antithetical for a good lawyer to have a self-righteous conviction that he has a monopoly on truth. You are trained to have an appreciation for complexity. It's not relativistic, but principled and humble at the same time.

So listen carefully, and try to understand the other side, and don't be too sure that you're right.

Fourth, be an optimist. Lawyers have to be sceptical. That is part of the job description. But don't be cynical. You have to live in the same world whether you are an optimist or a pessimist, but if you are an optimist you will accomplish more, not to mention that you'll probably have more fun.

But your optimism will be tested, so you have to be disciplined. Self-discipline should inform your work habits and restrain your emotions in the face of provocation. Many problems lead lawyers into encounters with the Law Society that are less pleasant than today's, but a lack of self-discipline is the root cause of most. You should discipline yourself so that others will not have to. The pain of self-discipline is less than the pain of regret.

Part of being disciplined is learning to manage the emotional highs and lows that are an invariable feature of the profession we have chosen. Whether you are negotiating and closing deals or arguing cases in court, the highs can be ecstatic but the lows can be devastating.

C. D. Evans, in his biography of his former colleague Milt Harradence, a leading counsel and judge from Alberta, captured that feeling of devastation, with a sprinkle of Western alienation mixed in, in his description of a case they had in the Supreme Court of Canada in the early 1960's. It was an application for leave to appeal a conviction that they both regarded as a miscarriage of justice. "Milt had not had great success as an

advocate before the Supreme Court in Ottawa,” Evans wrote. “In fact, his experiences before that nest of remote and chilly autocrats who peopled its woolsack in the early ‘60’s was discouraging to say the least. I accompanied him once as his junior, and it was a horrible experience. This was an application for leave in a criminal matter, meritorious I say, and the Court was singularly unreceptive.

I marvelled as my Learned Senior crawled uphill on broken glass to be summarily kissed off. Later, (Evans wrote), we walked the icy, windblown streets of the foreign capital, two alienated aliens, strangers in a weird land. Let’s get out of this Godforsaken place’ growled Milt. ‘Let’s get back to Canada’.”

If feelings of devastation afflict even such fine advocates as Milt Harradence, you can imagine their effect on less experienced lawyers. You will often despair of managing the highs and lows. Sometimes you won’t be able to sleep. As Justice Ian Binnie of the Supreme Court of Canada once put it, you may ask yourselves whether there is any point learning the skills of a good lawyer by the age of 34 if, like Mozart, you are dead at 35.

Justice Binnie, in the best lecture on advocacy that I have ever heard, had two pieces of valuable advice for managing the highs and lows. First remember that you are not alone. “We all experience stomach-churning despair,” Justice Binnie said. “It is the glue that binds members of the bar together.” Let me add that lawyers are always flattered to be asked for advice by less experienced lawyers. Don’t be shy about asking for it.

But it is Justice Binnie’s second piece of advice that I want to stress today. It is as simple as this: learn to move on.

My personal recipe,” Justice Binnie said, “was to allow myself one night (or maybe two in the case of a real catastrophe) to curse the darkness, to lie on the floor listing well-founded grievances against both the judges and my victorious opponent ... while ruminating on all the points I had intended to make and forgot.”

He cited as a model for this coping mechanism (as he was a model for so much else) the great John Robinette, Canada’s most renowned counsel. Robinette was for many years the dean of the Supreme Court bar. No one was more respected by the judges, and no one was more successful, in that Court or any other, than he. Yet even the great Robinette did not win them all.

One day in 1968 Justice Binnie, who was then a young lawyer, was waiting for his case to be called in the Supreme Court of Canada. Robinette was arguing one of the appeals ahead of him, and was getting nowhere. The Chief Justice, John Cartwright, in three or four succinct questions, highlighted the weaknesses of the appeal that Robinette had skilfully downplayed.

The appeal was summarily dismissed from the bench at the conclusion of Robinette’s argument. The great counsel quietly closed his book and put it to one side. As Justice Binnie put it, “not a twitch flickered across that leonine brow.” That was the end of it; he had already moved on to the next case. He was the product of a lifetime of moving on.

So that is my advice, too, for maintaining your optimism, for managing the highs and lows, whether they occur in your professional life or your personal life. Move on. Don't brood. Get over it.

And there is one more thing. Always remember that with the high honour of being a lawyer comes the obligation of concern for those who are less fortunate. You may discharge that obligation in an almost endless variety of ways. But you have a duty to your honourable profession to give back. Remember the people who are struggling alongside you, and especially the people who have not had the same opportunities, the same education, the same blessings, as you've had.

So that is my advice: continue your education; adapt to change; always look at the other side, don't be too sure that you're right, be a optimist; be disciplined; move on. Above all, give back.

There have always been many opportunities in the law. There have never been more, and they have never been more varied, than they are today. The possibilities are endless. The legal profession knows no bounds. You have skills and knowledge and habits that can take you anywhere. There is no greater profession, and there is no higher calling than the one you have chosen.

So, my new learned friends, my sincere hope for all of you is that you enjoy your life in the law and find it as gratifying as I have.

Good luck and, again, many congratulations to you all."

CALL TO THE BAR

Mr. Gold, Ms. McGrath, Mr. Pustina and Ms. Strosberg presented to the Treasurer the 328 candidates for the Call to the Bar as follows:

328 CANDIDATES FOR CALL TO THE BAR

(list of candidates in Convocation file)

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 Justice Andromache Karakatsanis presiding.

The candidates were presented to Justice Karakatsanis before whom they took the Oaths and acknowledged their signatures on the Rolls in the presence of the Court.

Justice Karakatsanis then addressed the new barristers and solicitors.

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At the conclusion of the formal proceedings the Treasurer, benchers and guests returned to Osgoode Hall.

Confirmed in Convocation this 29th day of September, 2010.

Treasurer