

The Public and the Legal Profession

WILFRID SANDERS*

Toronto

Taking a deep breath, and holding hard to the hand of the Editor, I am going to face up to the legal profession and report this fact:

The general public has a considerably lower regard for the professional motives of lawyers than it has for the professional motives of the medical profession. Nearly two in every three Canadian adults feel that lawyers are "more interested in making money than in actually living up to the best standards of their calling". Less than half the voters think the same way about doctors.

I am hanging on to the Editor's hand, because he asked for it. I was, naturally, delighted that he did so, but at the same time was quite surprised. I'd erroneously thought the legal profession didn't care what the public thought about it.

A very deep respect for the profession, inherited from my father (who for many years practised law in western Ontario), has been augmented by personal experience. But, at the same time, it always has seemed that a wide and deep gulf has existed between the public and the learned profession of the law. That, in itself, might not be so bad, but what has concerned some people is that, ostensibly, the legal profession could not seem to care less—up until fairly recently.

Last November, the Canadian Institute of Public Opinion (known more succinctly as the Gallup Poll) applied its normal techniques, as described later in this article, in an attempt to get an objective analysis, on a comparative basis, of the public's conception of professional standards. The question asked a sample of the voting age public finally evolved from staff discussions and testing in this form:

"Some people say that professional men, like doctors, lawyers, and dentists, are more interested in making money to-day than in actually living up to the best standard of their calling. Others disagree. Just thinking of doctors for a minute, do you think that, in general, they are too interested in making money, or not?"

* Since 1941 Director of the Canadian Institute of Public Opinion, Toronto and Montreal.

The question was repeated for lawyers and dentists by asking: "What about lawyers?" "What about dentists?"

Nationally, as you may have noticed in your newspaper, the results showed up comparatively badly for the legal profession:

	Doctors	Lawyers	Dentists
	%	%	%
Too interested in making money.	48	64	47
Not too interested.....	44	16	41
No opinion.....	8	20	12

What this means in effect, and making allowances for a normal sampling error of perhaps four percentage points, is that while less than half the general public think doctors or dentists are too interested in making money, nearly two thirds feel that lawyers are too interested in making money. Note also that a fifth of the voters had not made up their minds about lawyers, compared with only 8 per cent in the case of doctors.

How should this be interpreted? Wouldn't a reasonable interpretation be something as follows: Traditionally a "profession" denotes, among other things, an organized group dedicated to some ideal, or standards, apart from the ideal of making money. The results of this poll indicate that the public believes the legal profession lives up to its ideals or standards to a lesser degree than the other two professions mentioned.

That is the nub of these findings — *if* you accept them as valid.

Are they valid? What is the Canadian Institute of Public Opinion? How did it operate in this instance?

The Canadian Institute was formed in 1941 by a group of Canadian newspapers and is affiliated with, but in no way subsidiary to, similar organizations in the United States, Britain, Australia, the Netherlands, Sweden, Denmark, Norway, Finland, France, Italy and Brazil.

Its job is to measure public attitudes, biases, prejudices, ignorances, desires and needs.

To believe that this is an important and responsible job, one does not have to believe that Vox Populi is necessarily Vox Dei. All that one has to believe (and after ten years in the business, I believe nothing with more conviction) is that if the public is given the facts about any given situation, it can usually come to fairly sound conclusions about it. Too often, it has not the facts, comes to faulty conclusions, and is immediately charged with being incapable, irresponsible, stupid and unthinking.

The Canadian Institute is a non-profit organization, literally owned by the newspapers who make its work possible. These newspapers, located across Canada, represent most shades of political thinking, and are motivated by the concept that what a man thinks is just as important news as — if not more important than — what a man does.

For ten years, then, the Canadian Institute has been measuring public opinion for these newspapers, on international and national affairs.

Federal elections form part of national affairs, and when one comes along, the Canadian Institute does its normal job of measuring attitudes towards the various contesting parties. In the nature of things, it is news to know, a few days before an election, what the results are going to be, and the spotlight is usually focussed more intensely on the poll at that time than between elections.

Sometimes the argument is heard that publication of these pre-election figures is "bad for the democratic process": that they influence the vote by getting people onto a bandwagon. But obviously, if this were so, the polls would be hoist by their own petard, and would consistently underestimate the strength of the winning side. Moreover, consecutive polls before an election would have to record steadily rising support for the party ahead. But the tide is just as apt to swing away from the top party as towards it. And what happened to the bandwagon idea in the 1948 presidential election in the United States, when every poll forecast a Dewey victory? Strangely enough, the very same academicians who, before 1948, were shouting "Bandwagon!" at the polls, now are trying to claim that these pre-election forecasts "help the underdog".

Actually, Gallup's margin of error in 1948, when he forecast that Truman would receive some 5 percentage points of the popular vote less than he did get, and Dewey some 3 per cent more, was less than in 1936, when his record was 6 percentage points off, but hailed as amazingly accurate. The difference, of course, was that in 1936 the error did not prevent the polls from calling the right man. Personally I am sure that if the polls were 20 points out and called the right winner the non-statistically minded public would be far less critical than they are when the polls are only four or five percentage points out but call the wrong winner in a tight election.

Apart from all this, from the point of view of pure research the important work of the polls occurs between elections. I would hate to have to prove that the announcement of the winning

party three days before a federal election constituted any great contribution to the democratic process.

But even pure researchers find elections important, because what they do provide is a wonderful laboratory in which one can test the accuracy of one's sample and general polling techniques. It is an exceptionally tough test. On most polls, all we claim is that here, within a few percentage points, is what the public feel, at a given time, about a particular issue — say rent controls. But at election time, we have to estimate not only how the public feels at a given time, but what they are going to do about it a week or ten days from that time, when election day comes along. How many are actually going to get out and vote? Will there be any trends between the time interviewing stops and election day — usually a period of ten days? How will weather, last minute developments and election campaigns affect the results?

None of these polling hazards occur in non-election polls.

But in spite of these difficulties, the Canadian Institute has, in some 15 elections since 1941, forecast the result with an accuracy which, we feel, should establish our right to claim accuracy for our between election polls, because the sample design and techniques are the same.

At the end of this article is a table showing the actual record of the Institute in recent elections.

But in addition to predicting the results (admittedly not a profoundly useful function) the Institute has been able at these elections to provide the student or observer with information not available from the ballot boxes. How did young people vote? How did the farmer vote? Which party did labour actually support? Did women vote differently from men? *What* issues were on the minds of the voters as they marked their ballots? In other words, what kind of a mandate, if any, was given the victorious party? All these questions, and many more, are answered by analysis of the poll findings.

In addition to elections, other methods of checking accuracy are daily available to the pollster. One such method is checking his findings against known figures. For example, every questionnaire we put out asks questions about telephone ownership, car ownership, and often membership in a labour union and so on. Good statistics are available on such items, and the questions are included so that we can compare the figures from our sample with the known facts, as a check on accuracy of the sample.

Again, business and industry annually spend many many thousands of dollars using the commercial marketing research agencies

to check up on public preferences for various product components, such as packaging, taste, perfume, size and price. Much of the advertising copy you see and hear has previously been tested on a sample. Manufacturers use sampling to find out what their share of the market is. Business uses it before, during and after public relations efforts, first to find the target and then to measure the success or failure of its efforts. In a great variety of ways, and to an increasing extent, business and industry use polling organizations. In this work, one has to be accurate to stay in the business.

On a national opinion study it is not necessary to have a large sample, if it is a representative one. We use a sample of between 1,800 and 2,500 interviews with Canadians, located all across Canada, and from all walks of life. To get these interviews, we employ the part-time services of some 350 interviewers, all carefully selected, trained and scrutinized. These interviewers are assigned "quotas" on the basis of income, size of community, language, sex and geographic location, so that when all their completed ballots come back they fit, like a giant jig-saw puzzle, into a properly balanced picture of the Canadian population. The interviews obtained by each reporter are not sufficiently numerous to make an accurate cross-section of his or her particular community, but when assembled provincially they are reasonably accurate, and nationally accurate within three or four percentage points.

I should say something about question wording, despite space problems, because it is so vitally important. No one realizes more than the researcher the importance of phrasing the question in as clear cut, psychologically concrete and unbiased a form as possible. For this reason, every question we have put to the public in ten years of operation has first been carefully worked out, and then thoroughly tested on a small sample, to be sure that we have, so far as humanly possible, eliminated ambiguous, emotionally charged words, or bias. As a final precaution, it is a rule in this organization that no results should be published without also publishing the exact question which produced the results. The reader is then able to accept or reject the findings on the basis of his own judgment as to the fairness of the question.

To get back to the specific poll on the professions, it is interesting that all three professions come off worst in Quebec province, where 75 per cent of the sample said lawyers were too interested in making money, compared with 65 per cent in that province who thought the same thing about doctors.

Occupationally, strongest in their views are farmers and the labouring group in the population. In each of these occupations,

the sample indicates, 67 per cent feel that lawyers are too interested in making money. By way of comparison, among business and professional men, 50 per cent think the same thing while, in the vast white collar group, 61 per cent feel the same way.

It might, and probably will be argued: Well, all these figures show is that the public is abysmally ignorant of the rôle and objectives of lawyers in to-day's society. Very true, but two questions remain nevertheless.

First, if the public is ignorant of the aims and rôle of the legal profession, is it a reflection on the public? Has anyone made any concerted effort in the past to inform the public? Business and industry long ago learned that the public can hardly be expected of itself to make the effort of finding out about them. But the public, unlike the bench, will pass judgment with or without evidence.

The second question is this: Does it really matter very much if the public *is* ignorant as to the aims and rôle of the legal profession? Again referring to business and industry, they know that they cannot exist in an atmosphere of prolonged public hostility, no matter how remote their operations are from the ultimate consumer. I am not, of course, suggesting that public attitudes towards the legal profession have reached the stage of hostility or are even approaching it. But I doubt if any professional man would maintain that his profession was in a different position in this respect from business or industry. It may not be a matter affecting income at all, but may exhibit itself in such pronouncements as the recent one from a section of organized labour with respect to the eligibility of judges to preside over labour disputes — despite all the benefits to labour which have stemmed from such situations.

The very stuff of which the legal profession is made is such as to set up this barrier between itself and the general public, *a barrier which does not exist in the case of other professions.*

"Barrier" — the very word has the same root as Bar or as Barrister.

The accoutrements of a court, the tradition, the iron railings, the elevated bench, the gowns, the policemen, the procedures, the "my-learned-friends", the dignity, the austerity — all so familiar to you, nevertheless strike a note of awe, if not of terror, into the minds of the average man who probably enters a courtroom not more than once or twice in his whole lifetime.

Were not these accoutrements originally designed to do this very thing?

Compare this point of contact between lawyer and public with

that between the medical doctor and the public. When you have a fever, the doctor arrives at the house in ordinary clothes, washes his hands in your own bathroom, sits down beside your bed, chats with your wife, perhaps has a glass of sherry with you, and leaves. When did you last see a client in his pyjamas?

All this may seem obvious, and I do not mean to be flippant. God forbid that Canadian courts should ever lose one little bit of their dignity or their austerity. I have no figures, but doubt if the public relations of United States lawyers are any better than those of Canadian, despite the comparative lack of dignity in the lower courts of the United States.

All I am saying is that, desirable as all this dignity and aloofness is, it nevertheless has set up such a gulf between the general public and the law that the public can hardly be blamed for misunderstandings, misapprehensions and false beliefs about your calling.

As I say, I doubt if any professional man would claim that his profession could exist without public opinion — particularly the legal profession, with its traditionally high sense of public responsibility and duty.

Here is the election record, all based on results published before the election, as compared with the actual outcome:

ELECTION	Were parties placed in correct order?	Average deviation per party in percentage points
MANPOWER PLEBISCITE, 1942 ¹	YES	
ONTARIO ELECTION, 1943	YES	2.3
QUEBEC ELECTION, 1944	YES	7.5
FEDERAL ELECTION, 1945	YES	2.1
Quebec results	YES	3.5
Ontario results	YES	3.3
ONTARIO ELECTION, 1948	YES	1.8
FEDERAL ELECTION, 1949	YES	1.2
Quebec results	YES	3.7

¹ Separate forecasts were given for eight provinces, all correct.