

# THE PUBLIC RELATIONS OF THE LEGAL PROFESSION

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Mr. Chairman, My Lords, Mr. Solicitor, Distinguished Guests, Ladies and Gentlemen:

The words that I am about to address to you are imposed upon me—and you—by the Constitution of the Canadian Bar Association, which provides that, at each Annual Meeting of the Association “the President shall deliver a Presidential Address upon such topics as he may select”. Faced with the necessity of complying with that categorical constitutional obligation I have during the past year re-read the addresses with which in past years my distinguished predecessors have discharged it. I pay willing and deserved tribute to the learning and eloquence which all of them have brought to the fulfilment of their constitutional duty. The thoroughness with which your Presidents of other days have performed this task poses for me a difficulty which I hope you will appreciate and for which I pray at the very outset your generous indulgence. My predecessors have tilled in so many fields that at one time it seemed to me that the fruits of their husbandry were so abundant that they had left to me no little plot in which I might plow even my shallow furrow. But the fields of the law are vast and I hope that what I have to say to you this morning will not be entirely the pillaged gleanings from previous harvests but may to some extent give to my fellow members of the Canadian Bar Association some food for thought and reflection.

When I was giving consideration to the subject which I should chose for this presidential address I have to confess that I pondered over a number of topics that might be of interest. There are many questions of importance affecting our profession today and although the constitutional provision which I have already quoted

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permits the President to speak on "topics", I feel I ought to confine myself to one. After all there will be other presidential addresses.

I must confess that I share the views of Mr. Justice Devlin, who in a recent paper read before the Bentham Society in London said that the hardest task of a speaker was to choose a subject and that he envied the musical composer who merely had to give his composition some such title as "Sonata in F". In spite of that difficulty I have had the temerity, perhaps you may think the effrontery, to dignify this address with the title "The Public Relations of the Legal Profession". I speak to you on that subject for two principal reasons.

The first is that this question of public relations has been a subject of lively discussion among Canadian lawyers for many years. Very often, perhaps too often, this discussion has taken the form of an endeavor to ascertain how best we can prevent encroachments upon the practice of law by those outside the profession. In any event I am sure that the question of the proper relationship between the members of our profession and the lay public is important, not only to us but in my view, at all events, it is of paramount importance to the public. In what I have to say on this subject I hope to speak more from the standpoint of the lay public than from our own professional viewpoint.

The other reason why I have chosen this subject is a more personal one. During my year of office I spoke at, among many other meetings, the Mid-winter Meeting of the Ontario Section of the Canadian Bar Association at Niagara Falls. Speaking at a dinner attended only by lawyers and their ladies, I spent two or three minutes in the opening part of a speech that lasted about forty minutes in making a few observations which I intended to be humorous and which I think were so accepted by the audience, but which I admit were subject, divorced from their context and from the circumstances under which they were delivered, to the interpretation that I thought that our profession was an unpopular one. I soon learned from the press reaction how dangerous it is to assay a flight of would-be humour and how beset with hidden danger is the path of the half-wit. One must be dull if he is not to be misunderstood. I have a feeling that before I have finished this morning you will realize how closely I have taken this lesson to heart.

And so this morning, speaking from this manuscript, I want to say as emphatically as I can that my own experience and observation do not justify any conclusions that lawyers are unpopular

or that ours is an unpopular profession. The evidence to my mind is all the other way. Let me lead some evidence. Every lawyer in this room knows that in the aggregate there are countless thousands of satisfied clients who go to their family or business lawyer with all their difficulties and problems that require in their solution the advice of the trained professional lawyer, and they continue to go because they have perfect confidence in his ability and integrity. Every lawyer here knows that he is the recipient of confidential communications from clients, secrets which would not be revealed to anyone in whom the client had not the most complete confidence. These facts, and they are facts within the knowledge of us all, do not bespeak unpopularity of our profession.

Or let us look at the position of lawyers in the public life of Canada. They are elected to Parliament year after year in greater numbers than are those of any other profession or group. More important still they are elected and appointed by their neighbors to positions of great trust and responsibility in the communities in which they live and to which they would neither be elected or appointed if they were unpopular or suspect.

What then is the basis for the belief that we are an unpopular profession. If it exists at all it exists, I am sure, not among those who from time to time consult lawyers but among those who do not. If it exists it is nourished by the jokes that have grown up around lawyers in much the same manner that the constant repetition of jokes about the Scottish people and their descendants have encouraged the altogether mistaken view that the Scotch are an unduly parsimonious race.

And may I say this. If it indeed were true that lawyers are regarded with suspicion and distrust it would be a far greater tragedy for the lay public than it would be for lawyers. The reason for that is that any tendency to disparage lawyers tends also to bring the law itself into disrepute, and that would be tragedy indeed. It is right that the public should be reminded, and I think that it is our duty to remind them that law and law alone insures for them those liberties and freedoms whose handmaiden law is. It is well that the public should be reminded and it is our duty to remind them that it is under the protecting shield and aegis of the law that men and women are free to go about their daily activities, to carry on their daily tasks, and to go about their lawful occasions without let or hindrance. The correlative of law is order and the opposite of both is chaos.

We have only to look at other lands to see the plight of the

individual when the foundations of law as we know them are destroyed. If there is any lack of appreciation on the part of the public of the debt that they owe to the law and to the courts which maintain it, it is our duty as a profession to use every means in our power to dissipate it.

I realize that there may be a section of the public, I hope a small one, which purports to think of the law as a mass of technical rules drawn up in language designed to be incapable of being understood, and divorced from the realities of everyday life. There may be too those who believe or profess to believe, that the tribe of lawyers, as they like to describe us, are pettifoggers whose aim is to profit ourselves by fomenting litigation, defeating the plain course of justice and using our talents in the language of Milton "to perplex and dash maturest counsel". They profess to believe that the law countenances technicalities and artifice in order to defeat the course of true justice.

If there be such let them be reminded that the law in many cases, imposes standards of duty that march far in advance of the ordinarily held code of good moral conduct. One example is the rule in *Keech v. Sandford*. There you will remember a trustee of a lease for an infant of the profits of a market, sought renewal of the lease for the infant but the landlord refused to grant it. Thereupon the trustee took the renewal for himself. There was nothing in the trustee's conduct that could have possibly been condemned by the strictest moral code. Nevertheless the courts refused to let him hold the profits of the market for his own benefit, notwithstanding that he was the only person in the world who could not have done so. So too with the whole wide range of fiduciary relationships where the courts have consistently held that they will not enquire into the honesty of a transaction between a trustee or constructive trustee and the cestui que trust. The law, moving far in advance of the strictest moral code, will not permit a trustee to reap advantage from his trusteeship, even though he has acted in the utmost good faith.

You may think that I have wandered afield from my subject, but my concern so far has been to demonstrate that our profession ought to stand high in public esteem. Whether or not I have been correct in my appraisal of the attitude of the public to the Bar, the supremely important question for us is not so much whether we do in fact enjoy public confidence. The vitally important question for us is "Do we deserve public confidence?" I turn now to a discussion of means by which the public may be made more fully

aware of its debt to our profession and to indicate some ways in which we may merit that esteem to an even greater degree than we do today.

When it comes to the question of what steps we as an organized bar should take to improve our public relations, I should like to state that in my view we have thousands of public relations counsellors in this Association from one end of Canada to another. These are the lawyers who from day to day, in cities, towns and villages, attend to the interests that their clients commit to their care with competency, honesty and at reasonable cost. That is a lawyer's first duty, and if the day should ever come when any appreciable number should fail in it, no amount of advertising or propaganda, no matter how skilfully contrived, could be effective to stem the tide of public disapproval. It is because so few have failed in the discharge of that duty that I have been able today to speak as confidently as I have about our public relations. Let every lawyer in Canada realize that he is the custodian of the honour and reputation of the Bar and act accordingly, and he will have laid a lasting stone in the foundation of our public relations. That is the responsibility of each member of the legal profession, and it is his primary task. If that is neglected nothing else can succeed.

But having done that as individual lawyers there are other tasks that must be done by the corporate Bar, if our public relations are to remain on a firm basis. I will mention only a few:

First in importance, I think, is the scrutiny of those who seek to enter the profession. If the Bar of Canada is to become better with growth, as all human institutions should strive to do, it is of the essence that those who seek admittance to it are qualified by education and entitled by virtue of their character to enter a profession whose learning must be broad as well as technical, and whose character must be of such integrity and honesty as will ensure that they can resist the temptations, sometimes subtle indeed, which are sure to meet them in their practice.

With regard to legal education, I should like to make some reference to the complaint of Dean C. A. Wright, voiced in his partial dissent from the report of the Association's Committee on Legal Research. Dean Wright said, in the course of his dissent "There is considerable evidence that many members of the legal profession do not regard the law schools as centres of legal research, so much as a place for training, rather than educating, future members of the profession as skilled operators". In other

parts of his dissent Dean Wright further criticizes the attitude of the profession to legal education. The learned dean expresses himself, as is his custom, in trenchant terms. I do not agree with his view that the legal profession is not interested in the work of the law schools and I most emphatically disagree with his view that our profession do not want law students to be educated in the broad sense, but only require skilled legal technicians. On the other hand, I do feel that we as a profession have not taken the interest in legal education that we should. The reason for that attitude is not altogether discreditable to us. I believe it has been due to a feeling among our membership that the law schools did not require our assistance. It would appear that they would welcome it. If that be so the profession should take a more active interest in legal education and the work of the law schools to ensure, so far as possible, that those who seek admission to the profession should enter it with a sound, general and legal education, and particularly that they should have on their admission to the Bar a broad general knowledge of the great objects which the law seeks to serve. It is altogether possible that closer co-operation between the members of the profession and the teachers in our law schools would be welcomed by both and would be of mutual advantage both to the law schools and to the profession. If our assistance is needed in legal education, there is no field in which we should more gladly give it.

In the matter of the character of those who seek admission to the Bar nothing can be more important, and certainly nothing is more difficult than to ascertain it before admission. The members of the legal profession are recruited from the ranks of men and women, the great majority of whom are honest, but among whom unfortunately there is a small element of the crafty, the dishonest, and the unworthy. It is a sad thing for our profession and a sad thing too for the public, when such a one gains admittance to the Bar. Far better that he should be stopped on the threshold than that he should have to be thrown out in disgrace later on. It is difficult to suggest steps that should be taken to ascertain the true characters of those who seek admission to the Bar. What the right technique is I do not profess to know but I do suggest that it is a field where the law schools and the law societies must closely co-operate.

I suggest to you too that the corporate Bar must continue to take the lead in law reform. Law has been defined from one aspect as that body of rules which governs the relations in men and women

living in an organized society. Those relationships and the social and economic changes in society require changes in the law to meet new conditions. Law is not static. It is a living growth and one of the finest things about the two great systems of law which we have in Canada is that they are capable of change and growth to meet changing conditions. Let me give you only one example from the common law. The doctrine of common employment was frowned upon by the courts for decades as unjust but the judges, bound by precedent, were unable to abrogate it. The denunciation of the rule by the courts finally led to its abolition by I think, practically every legislature in jurisdictions where it was in effect.

We have to recognize that today the role of the courts in law reform is necessarily limited. Indeed, in the opinion of some eminent authorities, it has passed to the legislatures, but that does not mean that the role of our profession is ended. It is our duty to be constantly vigilant to see that obsolete and out-moded laws are repealed or amended, and that the law serves amid changing conditions to continue to be a great instrument for the doing of justice between man and man. This applies, of course, both to substantive and procedural law.

In this task we lawyers must take the lead. We dwell within the temple of the law, we know the purposes which the law is designed to serve, and we know where it falls short of which it ought to do, and where it has lagged behind the rapidly changing lives.

If lawyers are to properly do their work as reformers of the law and discharge their role as leaders in the work of law reform, they must, by legal research, know the background of the law as it is and the facts that either tell for or against a change in it.

Fortunately, we in the Canadian Bar Association have had the great advantage of the reports of our Legal Research Committee under the Chairmanship of Professor Scott, to whom and to the members of whose Committee this Association owes a deep debt of gratitude. Time does not permit me to say more about that report this morning than to express the hope that the Association will endeavor to implement its recommendations at the earliest possible moment.

May I now say a word or two about the methods of ensuring that the public have a proper appreciation of the law and lawyers. We have had much discussion, not only in meetings of this Association but in the various Provincial Law Societies and Associations about this matter, and many media, the press, radio, television,

films, have been advocated. I think it is right to say that there are differences of view, sometimes strongly expressed, as to the value of these media. For myself I have no strong conviction about the media that are used. All of those that I have mentioned may serve useful purposes, but about one thing I do have a strong conviction. I sincerely believe that no so called propaganda can be effective if it is motivated by a selfish desire to benefit either the profession as a whole or any individual member of it. Particularly it should not be used for self-advertisement. I believe that publicity put out by the legal profession should be directed to teaching the lay public something about the nature and purpose of law and the debt they owe to it. It may also quite properly call attention to the services that lawyers can render. This latter may seem like a contradiction of what I have already said, but too many of us have seen the costs and trouble incurred by a client because he did not seek legal advice earlier, not to feel that the public should be given some knowledge of the occasions and circumstances on which he should consult a lawyer. If we were mere selfish money-grubbers, we would, of course, welcome the litigation that so often follows the unskilled drawing of a will or the muddling of a real estate transaction. On the contrary, every lawyer knows the feeling of enraged frustration when he is consulted about a problem which, had he been consulted earlier, could have been adjusted without any difficulty.

Let us use whatever means of mass communication are available, but let the communication be conceived in the interest of the public and in that interest alone. Only then can it be helpful.

And there is no occasion for its being apologetic in tone. We do not claim to be infallible or that we are free from those human frailties to which all mankind in greater or less degree is subject. But we may with truth claim that we as a profession, have not been unfaithful to the great trust that has been imposed upon us and those who have preceded us in the long years in which the law has developed as custodians of those great principles which the law seeks to serve.

Perhaps I can summarize what I have been trying to say this morning by putting it in this way: public confidence in our profession can only be obtained if we as a profession deserve it. I have tried to indicate to you some reasons why I believe we do deserve it, and some steps that we should take in order to preserve it and to continue to merit it.

Many times during the past year in speeches that I have made to members of the profession in different Provinces of Canada, I



have used a quotation from Pollock's "The Genius of The Common Law". Many of you, therefore, have heard it, but I make no apology for quoting it again, because it seems to me to convey a sense of the dignity of our profession and of our great mistress—the law. Pollock says:

For if there is any virtue in the Common Law whereby she stands for more than intellectual excellence in a special kind of learning, it is that freedom is her sister, and in the spirit of freedom her greatest work has ever been done. By that spirit our lady has emboldened her servants to speak the truth before kings, to restrain the tyranny of usurping license, and to carry her ideal of equal public justice and ordered right into every quarter of the world. By the fire of that spirit our worship of her is touched and enlightened, and in its power, knowing that the service we render to her is freedom, we claim no inferior fellowship with our brethren of the other great faculties, the healers of the body and the comforters of the soul, the lovers of all that is highest in this world and beyond. There is no more arduous enterprise for lawful men, and none more noble, than the perpetual quest of justice laid upon all of us who are pledged to serve our lady, the Common Law.

I venture also to repeat a quotation that I have also used many times before. This one from Bacon:

I hold every man to be a debtor to his profession from the which as men of course do seek countenance and profit so ought they, of duty, to endeavour themselves by way of amends to be a help and an ornament thereunto.

Let us then, as we go about our daily tasks as lawyers, be highly resolved that we shall be something more than mere warriors of the working day. Let us continue to serve our clients with honest fidelity and care and let us as well do what we can to advance the science of law and to make it an ever increasingly powerful weapon in the armory of those who seek to promote the cause of justice. Thus we will continue to deserve the confidence of those interests which the law and we its ministers, are designed to safeguard and advance.

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