

ADVOCATES SOCIETY SYMPOSIUM ON PROFESSIONALISM

A Lawyer's Duty to the Profession

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You should take part in the actions and passions of your time or you will be at risk, at peril of being judged not to have lived at all.²

Learn. Participate. Engage. Lead. These are tenets central to a lawyer's duty to the profession. But what is a duty? And what is this profession such that a duty can arise to it?

Duty is rooted in the idea of obligation, to serve or give something in return. Cicero said that one of the sources of a citizen's duty arises in an organized society "with rendering to every man his due, and with the faithful discharge of obligations assumed."³ Duty conveys a sense of ethical and intellectual commitment to someone or something. The commitment is the sort that requires a deliberate choice and results in action; it is not a matter of passive feeling or mere recognition. Once a duty is acknowledged and embraced, that person commits himself/herself to the cause involved without considering the self-interested courses of actions that may have been relevant previously. Performing and fulfilling one's duty therefore may require sacrifice but it inevitably enriches the lives and community of those who benefit from the discharge of the duty and also that of the one who fulfils the obligation.

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² Oliver Wendell Holmes, as quoted by C.J.O. McMurtry in support of his view that lawyers are uniquely positioned to make a special contribution to the debates related to the public issues of the day. Remarks of C.J.O McMurtry at the 3rd Chief Justice's Colloquium on Professionalism, October 2004, p. 1-39

³ Cicero. *On Duties*. Book I, Chapter 5.

Law is a classic example of a profession. The term embraces a set of attitudes, skills, behaviours, attributes and values which are expected from those to whom society has extended the privilege of being considered a Professional. The underlying assumption that necessitates professionalism in law is the understanding that practicing law (in the broadest sense of the term) is an endeavour central to the operation of a just society. In the service of that noble and challenging endeavour, a lawyer is required to bring to bear a rigorous application of scholarly and ethical standards in combination with skills training and the ability to advocate for individuals in need of representation. A member of the legal profession is expected to:

1. have mastered a body of knowledge and skills, and this knowledge and training is to be used in the service of others;
2. uphold the highest standards of ethical and professional behaviour in all their actions and activities; and
3. maintain the compact of trust between client and lawyer, and society and lawyer – a compact that enables the profession to regulate itself and members to govern themselves accordingly.

Membership in this profession has its privileges – and they are many. Members in this profession, accordingly have duties and obligations to it. These duties to the profession can be said to include dedication to honesty, integrity and self-improvement commitment to compassion, empathy, and altruism, and deliberate action that models these traits for others and/or those new in the profession. These duties are not a burden but an opportunity, in their faithful discharge, to serve and to mark gratitude.

In this paper, and in an effort to apply the above principles to practice, we propose that a lawyer's duty to the profession requires lawyers to: (a) recognize the special status and respect that lawyers have in society and the benefits that flow from that; and (b) work

to earn, maintain and enhance that status and respect by participating, learning, engaging and leading in the profession. For the advocate, “getting involved” can be accomplished by adopting a variety of best practices. We discuss some of these best practices below and challenge members of the profession to resolve to implement them as much as they can and on a continuing basis.

Much is Given, Much is Required: A Lawyer’s Duty to the Profession Considered

To understand a lawyer’s duty to the profession involves recognizing the special status that lawyers have been afforded in society. Lawyers are privileged to enjoy an occupation that combines public avowals of high purpose with a dedication to service and selflessness. The public avowals of high purpose are embodied in the oath that lawyers took upon their admission to the Bar: to uphold the standards of the profession.⁴ The dedication to service and selflessness is a reflection of how lawyers engage their clients, their colleagues, the bar and the public.

Even with these high ideals, the public’s perception of the legal profession appears to be on the decline.⁵ The increasing complexity, delay and cost of legal services have caused the public to question its trust in lawyers. The need for lawyers to renew their commitment to the legal profession has never been more important. That commitment, as we discuss in this paper can best be achieved by “getting involved”.

⁴ Jordan Furlong. *Professionalism Revived: Diagnosing the Failure of Professionalism among Lawyers and Finding a Cure*. Paper presented at the 10th Colloquium on the Legal Profession: March 28, 2008. p. 1-2

⁵ Margaret A. Ross. *Challenges to the Standards of Professionalism in the Legal Profession*. Paper presented at the 10th Colloquium on the Legal Profession: March 28, 2008.

It is challenging to generate an exhaustive list of elements that form a lawyer's duty to the profession. A very thorough list has been prepared by a number of others in the Chief Justice of Ontario's colloquia on professionalism.⁶ Some of the elements that are relevant to a lawyer's duty to the profession are:

Scholarship – The high standards of the profession are best served and maintained when lawyers educate themselves regularly to understand and develop the law. Lawyers must see the profession as a life long learning experience and actively engage in continuing legal education. There are also many other forms of scholarship that lawyers can be involved in. Lawyers can teach other lawyers, clerks and law students – they can do this through professional organizations, in their own firms and in and through contact with lawyers on files. Lawyers engage in discourse by publishing articles and participating in symposia.

Integrity, Honour and Pride – Society has delegated self-regulatory powers to the legal profession on the understanding that the profession will exercise those powers in the public interest. Lawyers must exhibit integrity, honour and pride in both how they engage the public in their practice and how they engage the profession as a whole. These qualities are often illustrated by a lawyer's service to a client's unpopular or provocative cause. These qualities are also illustrated by a lawyer's service to other lawyers in need.

⁶ See Working Group on the Definition of Professionalism. *Elements of Professionalism*. Chief Justice of Ontario Advisory Committee on Professionalism. October 2001 (Revised June 2002).

Leadership – Lawyers are often called upon by the legal profession and the broader public to provide leadership. Historically, lawyers have occupied leadership positions in business, politics and academia. Practicing leadership can be achieved in many ways such as joining a professional committee, sitting on the board of a company or a charity, providing assistance to social organizations, working on law reform or providing pro-bono services. Leadership is also exemplified in smaller day to day ways by modelling for new lawyers what it means to be a professional and to be in the profession.

Civility and Collegiality – Lawyers are expected to act courteously and with civility toward the public, other members of the profession and the judiciary. This responsibility is to the administration of justice and serves to protect the high standards of the profession. Practicing civility and collegiality involves both developing one's own skills and helping to develop the skills of other lawyers.

Mentoring – Mentoring of new lawyers and law students is an important duty for all lawyers. Mentoring not only helps to improve skills, but also serves as a valuable tool to enhance civility and collegiality in the profession.

Legal Scholarship

Because the law is always changing, to best serve their clients and maintain their exclusive franchise on the practice of law, lawyers must stay current on the law they practice. New statutes, changes to the common law and changes to the rules of the

profession are developments that all lawyers should follow. Advocates, in particular, must keep current, in order to effectively and passionately argue their client's cases.

Legal scholarship can take a variety of forms. Lawyers should read the Ontario Reports and other legal periodicals. Continuing legal education is also very important. Lawyers should participate in and encourage other lawyers to participate in continuing legal education seminars. Lawyers should also be encouraged to work on advanced certifications and degrees. Educated professionals will lead to an even stronger profession.

Teaching is another important type of legal scholarship. The Advocates Society and the Ontario Bar Association depend on the volunteer efforts of their members in order to teach continuing legal education programs.⁷ Law schools draw on members of the profession in order to provide advanced courses on different areas of the law. Law schools also heavily depend on lawyers to mentor and teach in advocacy programs and serve as judges in moot competitions.

Another area of legal scholarship is the development of advocacy skills. Advocates must work to keep their advocacy skills strong and polished in order to argue their cases passionately and resolutely. Unfortunately, many advocates do not gain adequate exposure to opportunities to develop their advocacy skills due to the realities of modern practice. Advocates can and should look to opportunities outside their regular

⁷ In the fall, the Advocates Society offers a course to teach lawyers how to serve as instructors in other educational programs. This course offers lawyers valuable instruction on how to teach other lawyers.

practice in order to gain valuable advocacy skills. An important way to develop advocacy skills is by participating in the provision of pro-bono legal services.

Pro Bono Legal Ontario has established a variety of initiatives for lawyers to gain advocacy experience in the Small Claims Court, the Superior Court of Justice and the Court of Appeal for Ontario.⁸ Other pro-bono initiatives where lawyers can gain advocacy skills are the Child Assistance Program and serving as duty counsel before the Law Society of Upper Canada's disciplinary tribunal. Advocates who participate in these programs enhance their own advocacy skills while providing the public and professional with a valuable service.

Academic discourse is another type of legal scholarship. Lawyers play an important role in strengthening the profession by writing articles for scholarly journals and legal periodicals. Lawyers should also be encouraged to participate in symposia and colloquia, because participation fosters dialogue, and dialogue on how to improve the profession will lead to tangible results.

Integrity, Honour and Pride

The public rightly expects that lawyers will exercise their position of privilege and respect in society by acting with integrity, honour and pride.

⁸ For more details, see <http://www.lawhelpontario.org>

One way in which lawyers practice these qualities are in a lawyer's limited ability to reject work. Known as the "cab-rank" rule, lawyers like taxi drivers, are supposed to accept work on a first come, first serve basis. Lawyers should not turn away work from unpopular clients or on behalf of unpopular interests. Embodied in a lawyer's duty to the profession is to ensure access to justice to all clients – popular and unpopular.⁹

Advocates play a central role in upholding this principal of the profession. Participation in innocence projects and serving as *amicus curae* in criminal cases are important examples of how advocates help to provide representation to those who may have difficulty obtaining it elsewhere. Advocating on behalf of vulnerable persons and community organizations is another way in which advocates can help.

Lawyers must also help other lawyers to practice with integrity, honour and pride. One way this is achieved is through the development of assistance programs for other lawyers in need. Building a strong profession involves not only helping oneself, but helping others in the profession. Lawyers can participate in many programs such as the Ontario Bar Assistance Program, duty counsel before the Law Society's disciplinary tribunal and mentoring.

Leadership

⁹ Earl A. Cherniak, Q.C. and Shelby Austin. *Standing for Justice: The Lawyer's Role in the Client Selection Process*. Paper presented at the 7th Colloquium on the Legal Profession: October, 2006.

Historically, lawyers have often been called upon to serve in advisory or leadership positions in business, politics and academia. It is important for lawyers to participate in these activities because they encourage the public's respect for the legal profession at a time when the public has questioned its trust in lawyers.

There are numerous and different ways that lawyers can get involved and participate in the community. Often a good place to start is getting involved with a charity or non-profit organization. Most charities and non-profit organizations have limited resources and welcome the unique skills that a lawyer can offer.

Another way to get involved is by participating in organizations within the profession. There are countless different professional programs and organizations for lawyers to get involved with. Lawyers should educate themselves as to the opportunities that are available and get involved.

Advocates, in particular, have a wide variety of opportunities to get involved in professional organizations. The Advocates Society offers its members many different ways to get involved such as participating in committee work, serving as a director or on the executive or participating in the young advocates committee. Members also take advantage of the opportunity to intervene in important court cases on behalf of the Society, participate in policy submissions to the government and work on law reform. Other members may enjoy developing social activities or working on relations between

the profession in the public. The important thing is to find an interest or an issue that you are passionate about and “get involved”.

Civility and Collegiality

Lawyers are expected to act courteously and with civility toward the public, other members of the profession and the judiciary. This responsibility is to the administration of justice and serves to protect the high standards of the profession.¹⁰ Practicing civility and collegiality involves both developing one’s own skills and helping to develop the skills of other lawyers.

Learning to practice with civility and collegiality is an incremental and ongoing process that begins in law school and continues throughout a lawyer’s practice. Lawyers learn about civility and collegiality by understanding the rules of professional conduct, taking courses in legal ethics, and participating in legal symposia. Lawyers also learn about civility and collegiality in the ways that they interact with their clients, their peers and the court.

For the advocate, civility and collegiality is especially important because of the adversarial situations that advocates practice. Clients may vigorously hate each other, but opposing counsel must still get along in order to work together to resolve the case efficiently. It is important for advocates to lead by example and demonstrate best practices to other lawyers.

¹⁰ *Supra* note 5 at p. 7.

Mentoring

Mentoring of new lawyers and law students is an important duty for all lawyers. Mentoring not only helps to improve skills, but also serves as a valuable tool to enhance civility and collegiality in the profession. Mentoring also serves as an important force in passing the bar from one generation to the next.

Mentoring can take a wide variety of different forms and involve a wide variety of time commitments. The most formal type of mentoring is for a lawyer to serve as an articling principal. The Law Society of Upper Canada also has a number of other, less formal mentoring programs for lawyers and articling students.¹¹ Most of Ontario's law schools also have programs that match lawyers with students interested in shadowing their practices.

In addition to participating in organized mentoring programs, lawyers can informally mentor other lawyers both within and outside their firm. Lawyers can offer younger colleagues advice on difficult files (as necessary on a no-names basis), and provide them with opportunities to observe senior counsel argue complex cases. Mentoring is a crucial and practical example of how lawyers work together to improve the profession.

For the young advocate, mentoring is of critical importance. As discussed above, many young advocates lack sufficient opportunities to develop and practice their

¹¹ <http://rc.lsuc.on.ca/jsp/mentorship/index.jsp>

advocacy skills. Mentoring can play a large role in remedying this deficit. Senior advocates should always, where possible, bring their juniors with them to Court to observe and assist. Some motions or examinations may not be of critical importance to a case, but nevertheless may be excellent opportunities for young advocates to hone their skills. Senior advocates should be encouraged to delegate such opportunities to their younger colleagues.

Why me?

The legal profession is far more than the sum of every lawyer's practice. To ensure that the legal profession continues to thrive and grow and change, each individual lawyer must recognize and work to fulfil their duty to support and enhance the profession. It only takes a little bit of effort to get started and there are many ways to "get involved". Learn. Participate. Engage. Lead. Such worthwhile objectives require not only degrees of technique but even more so traits of character – character best exemplified by those who have the courage to act and the wisdom to act well. The rewards benefit the individual lawyer and nourish and sustain a strong and vibrant profession.