

**Tab 1**

**The Chief Justice of Ontario's  
Advisory Committee on Professionalism**

**The Legal Profession and Public Service**

Remarks by:  
The Honourable Chief Justice R. Roy McMurtry  
Chief Justice of Ontario

**Third Colloquium on the Legal Profession**

## **THE LEGAL PROFESSION AND PUBLIC SERVICE**

Remarks by  
The Honourable Chief Justice R. Roy McMurtry  
Chief Justice of Ontario

I AM, OF COURSE, VERY PLEASED TO PARTICIPATE IN THIS THIRD COLLOQUIUM HOSTED BY THE ADVISORY COMMITTEE ON PROFESSIONALISM AND THE MANY LEGAL ASSOCIATIONS WHO ARE LISTED IN THE PROGRAMME.

AT THE OUTSET OF MY REMARKS, I WOULD LIKE TO THANK DEAN BRUCE FELDTHUSEN AND HIS COLLEAGUES AT THE FACULTY OF LAW, COMMON LAW SECTION AT THE UNIVERSITY OF OTTAWA.

JE SERAI TOUJOURS TRÈS RECONNAISSANT DU DOCTORAT HONORAIRE QUE J'AI REÇU DE L'UNIVERSITÉ D'OTTAWA EN 1983. IL M'ÉTAIT DÉCERNÉ EN LARGE PARTIE EN RECONNAISSANCE DE LA CRÉATION D'UN SYSTÈME JURIDIQUE BILINGUE EN ONTARIO.

QUAND JE SUIS DEVENU LE PROCUREUR GÉNÉRAL DE L'ONTARIO EN 1975, DEUX DES MES BUTS PRINCIPAUX ÉTAIENT DE CRÉER UN SYSTÈME JURIDIQUE BILINGUE ET DE VENIR BILINGUE MOI-MÊME. ÉVIDEMMENT, IL Y A EU PLUS DE SUCCÈS RELIÉ À MA PREMIÈRE PRIORITÉ QU'À MA DEUXIÈME.



IN ANTICIPATION OF THIS THIRD COLLOQUIUM, I HAVE REREAD THE PAPERS PRESENTED AT THE FIRST TWO COLLOQUIA AND WAS ONCE AGAIN IMPRESSED BY THEIR BREADTH, SCHOLARSHIP AND PROFESSIONALISM. IT IS IMPORTANT THAT THESE PAPERS WILL CONTINUE TO BE AVAILABLE TO LAW STUDENTS AND MEMBERS OF THE LEGAL PROFESSION IN COUNTY LAW LIBRARIES, LAW SCHOOL LIBRARIES AND ON WEB SITES. WE ALSO HOPE THAT LAW TEACHERS IN ONTARIO AND ELSEWHERE WILL BE PREPARED TO USE THEM AS PART OF THEIR COURSE CONTENT.

IN DELIVERING MY PAPER THIS MORNING, I REALIZE THAT THE BENCH MARK HAS BEEN SET HIGH BY THE PAPERS DELIVERED AT THE FIRST TWO COLLOQUIA. IN ANY EVENT, MY TOPIC "*THE LEGAL PROFESSION AND PUBLIC SERVICE*" IS, OF COURSE, A VERY BROAD SUBJECT. AT THE SAME TIME, I MUST CONCEDE MY STRONG PERSONAL BIAS AT THE OUTSET AS THE MOST SATISFYING ASPECTS OF MY OWN LEGAL CAREER HAVE BEEN RELATED TO PUBLIC SERVICE. THIS IS NOT TO SUGGEST FOR ONE MOMENT THAT I DID NOT ENJOY THE PRIVILEGE OF SERVING PRIVATE FEE-PAYING CLIENTS.

NEVERTHELESS, I HAVE COME TO BELIEVE THAT ANY LAWYER'S CAREER THAT DOES NOT INCLUDE A SIGNIFICANT COMPONENT OF PUBLIC SERVICE COULD ULTIMATELY LEAD TO A REAL DEGREE OF DISSATISFACTION.

I WAS, OF COURSE, CALLED TO THE BAR IN A MUCH SIMPLER AGE. THE RANKS OF OUR PROFESSION WERE MUCH SMALLER AND THERE WAS UNDOUBTEDLY LESS OF THE OFTEN FEROCIOUS COMPETITION THAT I HAVE HEARD ABOUT FROM TIME TO TIME IN MORE RECENT YEARS. THE LARGEST LAW FIRM IN CANADA THE YEAR OF MY CALL WAS ABOUT 25 LAWYERS. THE CONCEPT OF BILLABLE HOURS WAS LARGELY UNKNOWN AND IT WAS, I REPEAT, A MUCH SIMPLER AGE. HOWEVER, I DO RECALL THAT THE CONCEPT OF THE PROFESSION AS A HELPING PROFESSION WAS PERHAPS MORE DEEPLY ENTRENCHED THAN TODAY WITH THE RESULT THAT THE LEVEL OF JOB SATISFACTION MAY HAVE BEEN SOMEWHAT GREATER.

CERTAINLY, I DO SENSE A TENSION THAT EXISTS BETWEEN THE TRADITIONAL FEATURES OF THE PRACTICE OF LAW AS THEY RELATE TO PUBLIC SERVICE AND THE DICTATES OF MODERN BUSINESS PRACTICES WHICH REQUIRE LAWYERS OF TODAY TO SERIOUSLY ADDRESS COST FACTORS AND "BOTTOM LINE"

CONSIDERATIONS ON A DAILY BASIS. AS A RESULT, MANY LEGAL OBSERVERS HAVE EXPRESSED THEIR CONCERN THAT AN UNDUE EMPHASIS ON ECONOMIC FACTORS HAS LED IN RECENT TIMES TO A LESSENING OF RECOGNITION OF THE IMPORTANCE OF THE ETHICS AND CULTURE OF PUBLIC SERVICE.

I BELIEVE THAT THESE CONCERNS ARE MORE THAN SIMPLY A NOSTALGIC HANKERING FOR A RETURN TO THE “GOOD OLD DAYS” OF LEGAL PRACTICE WHICH MAY NOT HAVE ALWAYS BEEN PARTICULARLY GOOD FOR THE CONSUMER.

NEVERTHELESS, SOME OF THE MORE SCEPTICAL IN OUR PROFESSION HAVE SUGGESTED TO ME THAT MY ANXIETY MAY SIMPLY BE A LAST DESPERATE EFFORT TO KEEP ALIVE THE FLAME OF PROFESSIONALISM IN THE FACE OF OVERWHELMING EVIDENCE THAT THE LEGAL PROFESSION IS MOVING IN THE DIRECTION OF A BUSINESS AND THAT THE IDEALISM AND SELFLESSNESS OF PROFESSIONALISM IS SIMPLY DYING OUT.

AT THE SAME TIME, THE IPSOS REED SURVEY PRESENTED AT THE ANNUAL CBA MEETING IN WINNIPEG THIS YEAR FOUND THAT LAWYERS WERE MORE DISSATISFIED THAN OTHER PROFESSIONALS.

IT CONCLUDED THAT LAWYERS WHO FEEL MISERABLE IN THEIR JOBS ARE “FAR FROM AN ENDANGERED SPECIES”.

MANY OF THE CAUSES OF DISSATISFACTION ARE OBVIOUSLY RELATED TO LONG HOURS, LITTLE TIME FOR ONE’S FAMILIES AND OUTSIDE INTERESTS. WHILE THE REMUNERATION MAY OFTEN BE GENEROUS, THERE IS OFTEN A FEELING THAT THE WORK IS GENERALLY NOT PARTICULARLY RELEVANT TO SOCIETY AS A WHOLE.

I RECENTLY ENCOUNTERED A BOOK BY FORMER DEAN ANTHONY KRONNAN OF THE YALE LAW SCHOOL TITLED, “*THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION*”. IT HAS CAUSED A GREAT DEAL OF CONTROVERSY IN THE UNITED STATES AS IT CONTRASTS THE PURPORTED IDEALISM, PUBLIC SPIRIT AND WISDOM OF THE AUTHOR’S EARLY YEARS WITH THE SCENE HE OBSERVED AS HEAD OF ONE OF THE NATION’S FINEST LAW SCHOOLS AND I QUOTE:

THIS BOOK IS ABOUT A CRISIS IN THE  
AMERICAN LEGAL PROFESSION. THE  
MESSAGE IS THAT THE PROFESSION NOW

STANDS IN DANGER OF LOSING ITS SOUL.  
THE CRISIS IS IN ESSENCE A CRISIS OF  
MORALE. IT IS THE PRODUCT OF GROWING  
DOUBTS ABOUT THE CAPACITY OF A  
LAWYER'S LIFE TO OFFER FULFILLMENT TO  
THE PERSON WHO TAKES IT UP. DISGUISED  
BY THE MATERIAL WELL-BEING OF  
LAWYERS, IS A SPIRITUAL CRISIS THAT  
STANDS AT THE HEART OF THEIR  
PROFESSIONAL PRIDE.

THE AUTHOR REGRETS THE FACT THAT THE BEST GRADUATES  
USUALLY GRAVITATE TO VERY LARGE AND "IMPERSONAL LAW  
FIRMS" WHERE IN HIS WORDS "THEY ARE PUT IN A CORNER AND  
TIME CHARGING IS THE RULE". HE REGRETS THE "GROWING  
ASCENDANCY OF THE ECONOMIC VIEW OF LAW AND A DECLINE OF  
ITS SELF IMAGE AS A HELPING PROFESSION".

FORMER HARVARD PRESIDENT AND LAW SCHOOL DEAN, DEREK  
BOK WROTE RECENTLY THAT THERE WAS EVIDENCE OF  
CONSIDERABLE AND RISING DISSATISFACTION AMONG U.S.  
LAWYERS. EXISTING STATISTICS INDICATE THAT LEVELS OF

DIVORCE, DEPRESSION, SEVERE STRESS, SUICIDE, ALCOHOL ABUSE AND DRUG ADDICTION ARE HIGHER AMONG LAWYERS THAN AMONG THE POPULATION AS A WHOLE.

PRESIDENT EMERITUS BOK CONCLUDED THAT LAW SCHOOLS “NEED TO CONSIDER WAY OF HELPING THEIR STUDENTS THINK ABOUT HOW THEY CAN LIVE A FULFILLING LIFE IN THE PROFESSION” AND THAT THE LAW SCHOOLS COULD ALSO “GENERATE FRESH INTEREST IN THE QUALITY OF LEGAL WORK BY PROVIDING A FORUM IN THEIR PUBLICATIONS FOR DISCUSSING NEW INITIATIVES BY INDIVIDUAL LAW FIRMS TO MAKE PRACTICE MORE HUMANE OR MORE REWARDING TO THEIR MEMBERS ... AND TO THINK MORE DEEPLY ABOUT HOW BEST TO HELP THEIR STUDENTS THINK CREATIVELY ABOUT THE CHALLENGE PUT FORTH BY JUSTICE HOLMES NAMELY “HOW TO LIVE GREATLY IN THE LAW”.

NOW CANADA IS NOT THE UNITED STATES AND OUR CULTURE HAS GENERALLY AVOIDED THE EXTREMES WHICH ONLY TOO OFTEN CHARACTERIZE MANY OF THE ATTITUDES OF OUR GOOD FRIENDS SOUTH OF THE BORDER. HOWEVER, THE CONCERNS OF THE FORMER DEANS OF THE YALE AND HARVARD LAW SCHOOLS SHOULD BE A WAKE-UP CALL FOR THE LEGAL PROFESSION IN CANADA

PARTICULARLY AS THEIR CONCERNS HAVE BECOME A MORE COMMON THEME OF LEGAL ARTICLES THAT HAVE BEEN PUBLISHED ON A REGULAR BASIS IN THE ENGLISH-SPEAKING LEGAL WORLD.

AT THE SAME TIME, I RECOGNIZE THAT LAWYERING TODAY IS PROBABLY OF A HIGHER QUALITY THAN WHEN I WAS CALLED TO THE BAR MORE THAN 40 YEARS AGO. LAWYERS GENERALLY ARE BETTER EDUCATED AND LAW FIRMS ARE CERTAINLY MORE EFFICIENT TODAY. TO SOME EXTENT THIS IS AN INEVITABLE PRODUCT OF NEW TECHNOLOGY AND NEW APPROACHES TO OFFICE MANAGEMENT. CERTAINLY, YOUNG LAWYERS GENERALLY MAKE MORE MONEY THAN IN MY EARLY YEARS AT THE BAR. BUT NEVERTHELESS, THERE APPEAR TO BE MANY DISSATISFIED YOUNG LAWYERS.

IN ANY EVENT, I PRACTICED LAW AS BOTH A CIVIL AND CRIMINAL LITIGATOR FOR 17 YEARS BEFORE I ENTERED THE UNCERTAIN WORLD OF POLITICS. THEY WERE VERY HAPPY YEARS EVEN IF A LITTLE STRESSFUL ECONOMICALLY AS I CELEBRATED MY FIRST DECADE IN PRACTICE WITH THE ARRIVAL OF OUR SIXTH CHILD.

A GREAT DEAL OF MY PERSONAL SATISFACTION WAS BASED ON THE FACT THAT AS WELL AS ENJOYING MY FAMILY, I WAS ABLE TO COMMIT A SIGNIFICANT PORTION OF MY TIME TO PRO BONO LEGAL AND TO COMMUNITY SERVICE GENERALLY. THE FEE FOR SERVICE LEGAL AID PLAN DID NOT ARRIVE FOR NINE YEARS AFTER I WAS CALLED TO THE BAR AND PRO BONO CRIMINAL DEFENCE WORK WAS QUITE COMMON IN THE PROFESSION. IN TORONTO, THE PRO BONO CRIMINAL LEGAL AID WAS ADMINISTERED BY ONE LADY IN THE SHERIFF'S OFFICE. WHILE STILL A LAW STUDENT, I WAS ABLE TO PERSUADE HER THAT MY REPRESENTATION OF SOMEONE IN CUSTODY OFTEN CHARGED WITH A SERIOUS OFFENCE WOULD NOT BE TOO MUCH OF A DISASTER.

IT WAS CLEARLY A VERY UNSATISFACTORY SITUATION AS MANY ACCUSED PERSONS DID NOT HAVE ANY LEGAL REPRESENTATION WHATSOEVER. HOWEVER, THESE OPPORTUNITIES MADE ME FEEL THAT I WAS SUPPORTING THE FINEST TRADITIONS OF THE BAR IN PROVIDING HELP TO THE OFTEN POOR AND FRIENDLESS.

IN MY EARLY YEARS AT THE BAR, I WAS ABLE TO TAKE ON A LARGE NUMBER OF PRO BONO CASES INCLUDING THE MOST SERIOUS OF CRIMINAL CASES. HOWEVER, IT WAS LESS OF AN INTERFERENCE



WITH MY FEE PAYING CASES THAN IT WOULD HAVE BEEN IN LATER YEARS AS THE MOST SERIOUS OF CRIMINAL CASES SELDOM LASTED MORE THAN A WEEK.

MANY LAWYERS ALSO WOULD SERVE ON THE WEEKLY CIVIL LEGAL AID PANELS THAT WERE HELD AT THE OLD CITY HALL. IT WAS SIMPLY ASSUMED THAT OUR PROFESSION WAS A HELPING PROFESSION AND THAT PRO BONO WORK WAS PART OF OUR PROFESSIONAL RESPONSIBILITY.

I AM NOT SUGGESTING FOR ONE MOMENT THAT THE PRO BONO TRADITION EVER DISAPPEARED AND I KNOW THAT MOST LAWYERS HAVE PROVIDED PRO BONO SERVICES FROM TIME TO TIME ON AN *AD HOC* BASIS. HOWEVER, THIS HAS BECOME MORE DIFFICULT, DARE I SAY, BY THE TYRANNY OF THE BILLABLE HOURS REGIMES. TO DESCRIBE THE BILLABLE HOURS CONCEPT AS SUCH MAY BE A LITTLE EXTRAVAGANT GIVEN THE CHALLENGES OF MODERN DAY LAW FIRM ADMINISTRATION. HOWEVER, I AM NOT CONVINCED THAT THE PUBLIC HAS ALWAYS BEEN WELL SERVED BY THIS MODERN DAY REALITY.

THE ISSUE OF GENERAL COMMITMENT TO PRO BONO WORK HAS ALSO BEEN COMPLICATED BY THE FACT THAT ONTARIO HAS ONE OF THE WORLD'S BEST LEGAL AID PROGRAMS INCLUDING A HIGHLY DEVELOPED LEGAL AID CLINIC SYSTEM. WHILE SOMETHING TO BE PROUD OF, IT UNFORTUNATELY HAS PRODUCED AN ATTITUDE THAT GOVERNMENT FUNDED LEGAL AID SHOULD PROVIDE ALL OF THE NECESSARY LEGAL RESOURCES NEEDED BY THE NEEDY IN OUR SOCIETY.

THE REALITY IS, OF COURSE, THAT THERE WILL NEVER BE ADEQUATE GOVERNMENT FUNDING TO MEET ALL OF THE LEGITIMATE NEEDS IN OUR COMMUNITIES. PRO BONO LAW ONTARIO WAS THEREFORE INCORPORATED ALMOST THREE YEARS AGO TO ADDRESS THESE MANY UNMET NEEDS AND I AM PLEASED TO BE THE CHAIR OF ITS ADVISORY COMMITTEE. THE STRATEGY OF PBLO IS TO PARTNER WITH EXISTING SOCIAL SERVICE AGENCIES AND LEGAL AID CLINICS. I AM ENCOURAGED BY THE FACT THAT MANY LAWYERS HAVE COMMITTED TIME TO THESE INITIATIVES.

AN EVER-INCREASING NUMBER OF COMMUNITY AND SPECIALITY LEGAL AID CLINICS HAVE RECOGNIZED THAT PBLO'S EFFORTS HAVE A DIRECT IMPACT ON THEIR CAPACITY TO SERVE THEIR

CLIENTS. PBLO'S EFFORTS HAVE BROUGHT VALUABLE PARTNERS TO THE TABLE – RANGING FROM TORONTO'S LARGEST LAW FIRMS TO LOCAL BAR ASSOCIATIONS – SO CLINICS CAN BETTER CARRY TEST CASE LITIGATION FILES, PROVIDE PUBLIC LEGAL EDUCATION PROGRAMS, AND PROVIDE BRIEF SERVICES IN AREAS THAT WERE CONSTRAINED DUE TO MANDATE AND FUNDING RESTRICTIONS. IN THE PAST, LAWYERS IN COMMUNITY LEGAL CLINICS OPERATED LARGELY IN ISOLATION FROM THE PRIVATE BAR. NOW LEGAL CLINIC LAWYERS ARE OFTEN MEETING THE LAW ASSOCIATIONS, BENCHERS AND REGIONAL SENIOR JUSTICES IN THEIR COMMUNITIES FOR THE FIRST TIME.

PBLO'S PROJECT DEVELOPMENT STRATEGY IS TO TARGET SPECIFIC POPULATIONS – UNITED BY DEMOGRAPHIC FACTORS SUCH AS ETHNIC BACKGROUND, GEOGRAPHIC LOCATION, AGE, LEARNING DISABILITIES OR HIV+ STATUS – AND MOBILIZE MEMBERS OF THE PRIVATE BAR TO PROVIDE TAILORED PRO BONO LEGAL SERVICES TO FILL GAPS IN EXISTING SERVICES. PBLO DEVELOPS ITS PROJECTS ACCORDING TO TWO GUIDING PRINCIPLES:

1. THE PROJECTS SHOULD ALL COMPLIMENT, BUT NEVER DUPLICATE, SERVICES OFFERED BY LEGAL AID ONTARIO.

2. THE PROJECTS SHOULD ALL BE COMMUNITY BASED AND COMMUNITY DRIVEN.

WHENEVER POSSIBLE, PBLO HAS INVOLVED THE ACTIVE PARTICIPATION OF SPECIALITY AND COMMUNITY LEGAL CLINICS. IN FACT, OF PBLO'S 33 LAW FIRM, REGIONAL AND GOVERNMENT INITIATIVES, 16 HAVE SPECIALITY AND COMMUNITY CLINICS AS ACTIVE PARTNERS OR CONSULTANTS.

THE MAJOR CHALLENGE PERHAPS IS FOR LAW FIRMS TO AGREE THAT PRO BONO SERVICES SHOULD BECOME PART OF THE MAINSTREAM OF THE FIRM'S PRACTICE. TO EXPECT YOUNG, GENERALLY OVERWORKED LAWYERS, TO FIND ADDITIONAL HOURS FOR VOLUNTEER WORK IS UNREALISTIC. AS A RESULT, A NUMBER OF LAW FIRMS HAVE AGREED THAT PRO BONO WORK BE COUNTED AS BILLABLE HOURS. THIS IS A CONTINUING CHALLENGE HOWEVER AS THE FINANCIAL BOTTOM LINE MENTALITY HAS BECOME FIRMLY ENTRENCHED IN OUR LEGAL CULTURE.

I AM PLEASED TO NOTE THAT ONTARIO LAW SCHOOLS ARE ENCOURAGING THEIR STUDENTS TO SEEK OUT LAW FIRMS WITH A PRO BONO STRUCTURE. LARGE CORPORATIONS ARE ALSO

BEGINNING TO DEMONSTRATE A PARTICULAR INTEREST IN WHAT THEIR SERVICE PROVIDERS GIVE BACK TO THE COMMUNITY.

RECENTLY, THE ATTORNEY GENERAL OF ONTARIO, THE HONOURABLE MICHAEL BRYANT ANNOUNCED THAT THE 1300 LAWYERS EMPLOYED BY HIS MINISTRY WILL BE SEEKING OPPORTUNITY TO BE ENGAGED IN PRO BONO WORK.

THE UNITED STATES PRO BONO EXPERIENCE HAS A SOMEWHAT LONGER HISTORY PARTLY AT LEAST BY REASON OF THE UNAVAILABILITY OF ADEQUATELY FUNDED LEGAL AID PLANS. MAJOR LAW FIRMS HAVE HIGHLY STRUCTURED PRO BONO PROGRAMS IN WHICH THE HOURS VOLUNTEERED ARE COUNTED AS BILLABLE HOURS. IT HAS GENERALLY BEEN A “WIN-WIN” SITUATION AS IT HAS STRENGTHENED THE MORALE OF THE FIRM AS WELL AS ATTRACTING FAVOURABLE PUBLICITY. FOR EXAMPLE, PRO BONO NEWSLETTERS ARE DISTRIBUTED ON A REGULAR BASIS. SOME FIRMS HAVE EVEN ADOPTED INNER-CITY SCHOOLS WHERE BOTH THE LAWYERS AND THE NON-LEGAL STAFF PROVIDE NON-LEGAL SERVICES SUCH AS LITERACY PROGRAMS AND GENERAL MENTORING.

THE PRESTIGIOUS U.S. PUBLICATION, *THE AMERICAN LAWYER*, ANNUALLY PUBLISHES AN “A” LIST OF ONLY 20 LAW FIRMS. IT IS INTERESTING TO NOTE THAT THE CRITERIA FOR MAKING THE “A” LIST IS RELATED TO A SHORTLIST OF FOUR CORE PROFESSIONAL VALUES:

1. SUCCESSFUL LAW PRACTICES
2. PRO BONO PERFORMANCE
3. DECENT TREATMENT AND DEVELOPMENT OF NEW LAWYERS
4. THE DIVERSITY OF THE WORK FORCE

I PERSONALLY APPLAUD THEIR EMPHASIS ON PRO BONO AS A CORE PROFESSIONAL VALUE. AS A RECENT PRESIDENT OF THE AMERICAN BAR ASSOCIATION STATED: “THERE ARE MANY REASONS FOR SUCH SERVICE, APART FROM THE COMMON DECENCY OF HELPING THOSE IN NEED. MUCH HAS BEEN GIVEN TO OUR PROFESSION; IT SEEMS RIGHT TO GIVE SOMETHING BACK – INDEED, IT IS AN ETHICAL OBLIGATION. AND IF WE ARE A PROFESSION COMMITTED TO JUSTICE, THEN WE SHOULD WANT TO PARTICIPATE IN MAKING JUSTICE ACCESSIBLE. FINALLY, PRO BONO SERVICE ALMOST

ALWAYS TURNS OUT TO BE A MATTER OF GREAT SATISFACTION IN A PROFESSION THAT HAS ITS SHARE OF PAIN AND TEDIOUSNESS.”

MY OWN WORK AS THE CHAIR OF THE TORONTO MAYOR’S ADVISORY PANEL ON COMMUNITY SAFETY HAS DRAMATICALLY DEMONSTRATED TO ME THE TREMENDOUS NEEDS IN MANY OF TORONTO’S COMMUNITIES. IF WE DO NOT PAY MORE ATTENTION TO OUR VULNERABLE YOUTH, WE WILL INDEED INHERIT A WHIRLWIND.

I AM OPTIMISTIC ABOUT THE FUTURE OF PRO BONO IN ONTARIO BUT BELIEVE THAT IT WILL REQUIRE A GREAT DEAL OF LEADERSHIP PARTICULARLY FROM THE YOUNGER MEMBERS OF THE BAR.

ANOTHER IMPORTANT OPPORTUNITY FOR PUBLIC SERVICE BY LAWYERS AND INDEED JUDGES IS PROVIDED BY THE ONTARIO JUSTICE EDUCATION NETWORK. IN BRINGING ABOUT THE CREATION OF THE NETWORK, I WAS SIMPLY TRYING TO ADVANCE THE OBVIOUS AND COLLECTIVE VIEW OF OUR PROFESSION THAT PUBLIC CONFIDENCE IN THE ADMINISTRATION OF JUSTICE IS ESSENTIAL TO ANY VIBRANT DEMOCRACY. THE FIRST STEP WAS TO CONTACT EDUCATORS TO DISCUSS A MORE MEANINGFUL

COLLABORATION BETWEEN THE EDUCATION COMMUNITY AND THE LEGAL PROFESSION. THE ENTHUSIASTIC RESPONSE OF EDUCATORS LED DIRECTLY TO THE ESTABLISHMENT OF THE CLASSROOMS AND COURT ROOMS PROGRAMME.

WHILE CLASSES OF STUDENTS HAVE BEEN VISITING COURT HOUSES FOR YEARS, THEY SELDOM HAD ANY DIRECT CONTACT WITH LAWYERS AND JUDGES. FOR THE PAST TWO YEARS, MANY THOUSANDS OF STUDENTS HAVE BEEN VISITING COURT HOUSES THROUGHOUT THE PROVINCE WHERE THEY ARE MET BY LAWYERS AND JUDGES IN COURT ROOMS AN HOUR BEFORE THE COMMENCEMENT OR CONTINUATION OF A TRIAL. THE ROLES OF THE VARIOUS PARTICIPANTS IN A TRIAL IS EXPLAINED AND A WIDE-RANGING DIALOGUE OCCURS BETWEEN THE STUDENTS AND THE LAWYERS AND JUDGES. LAWYERS AND JUDGES ARE ALSO INVITED TO ADDRESS LAW CLASSES IN ONTARIO HIGH SCHOOLS.

FOR THE PAST THREE SUMMERS, OJEN HAS ORGANIZED SUMMER LAW INSTITUTES FOR HIGH SCHOOL LAW TEACHERS. THEY ARE ADDRESSED BY LAWYERS, LAW TEACHERS AND JUDGES AND PROVIDED WITH MATERIAL TO AUGMENT THEIR TEACHING RESOURCES. THESE INSTITUTES HAVE TAKEN PLACE IN TORONTO,



OTTAWA, LONDON, WINDSOR AND SUDBURY. WE HOPE THAT NEXT SUMMER, THE UNIVERSITY OF OTTAWA WILL BE HOSTING A SUMMER LAW INSTITUTE FOR LAW TEACHERS WHICH WILL INCLUDE A FRENCH LANGUAGE COMPONENT.

THE NETWORK HAS ALSO CREATED A WEB SITE WHICH PROVIDES A RICH VARIETY OF LEGAL MATERIALS AND INFORMATION. THIS MATERIAL HAS BEEN RECENTLY IMPRESSIVELY AUGMENTED BY AN IMPORTANT EDUCATION RESOURCES PROVIDED BY THE CANADIAN SUPERIOR COURT JUDGES ASSOCIATION ENTITLED "YOU BE THE JUDGE". OJEN ALSO CO-ORDINATES MOCK TRIALS IN MANY ONTARIO COURT HOUSES AND WORKS DIRECTLY WITH THE ONTARIO BAR ASSOCIATION IN THE ANNUAL LAW DAY AND LAW WEEK ACTIVITIES.

OJEN RECENTLY RECEIVED A GRANT FROM THE ONTARIO TRILLIUM FOUNDATION TO WORK WITH ABORIGINAL, FRANCOPHONE, AND IMMIGRANT COMMUNITIES AND YOUTH AT RISK IN CERTAIN TARGETED AREAS. THESE COMMUNITIES WERE SELECTED IN ORDER TO ENSURE THAT OJEN PROGRAMMING REFLECT THE IDENTITIES OF THESE COMMUNITIES. AT THE SAME TIME, OJEN WISHES TO ENSURE THAT THE "MAINSTREAM" SCHOOLS ARE

EXPOSED TO JUSTICE ISSUES RELATED TO ABORIGINAL RIGHTS, LANGUAGE RIGHTS AND MINORITY RIGHTS INCLUDING ANTI-RACIST EDUCATION.

MANY OJEN RESOURCES ARE NOW AVAILABLE IN BOTH OFFICIAL LANGUAGES AND THE BILINGUAL RESOURCES WILL, I EXPECT, BE EXPANDED DRAMATICALLY.

I WOULD LIKE TO EXPRESS MY APPRECIATION TO THE VOLUNTEER EFFORTS OF HUNDREDS OF LAWYERS AND JUDGES WHO HAVE MADE BOTH PRO BONO LAW ONTARIO AND THE ONTARIO JUSTICE EDUCATION NETWORK SUCCESSFUL INITIATIVES. AT THE SAME TIME, NEITHER PBLO NOR OJEN WOULD EXIST WITHOUT THE ENTHUSIASTIC AND GENEROUS SUPPORT OF THE LAW FOUNDATION OF ONTARIO.

I WOULD LIKE TO SPEAK BRIEFLY ABOUT ANOTHER AREA OF PUBLIC SERVICE WHICH HAS TRADITIONALLY BEEN WELL SERVED BY THE LEGAL PROFESSION, NAMELY THE FASCINATING IF OFTEN UNCERTAIN WORLD OF POLITICS.

WHEN I ENTERED THE PRACTICE OF LAW, THE IDEA OF EVER ENTERING POLITICS HAD SIMPLY NEVER ENTERED MY MIND. IN FACT, I HAD BEEN EDUCATED BY MY LAWYER FATHER TO BELIEVE THAT IN HIS WORDS “THE LAW IS A JEALOUS MISTRESS” AND LEFT LITTLE TIME FOR ANY OTHER INTERESTS WITH THE EXCEPTION, OF COURSE, OF ONE’S FAMILY. INDEED, I HAD BEEN CALLED TO THE BAR FOR MORE THAN SEVEN YEARS BEFORE I FIRST VENTURED INTO A MEETING OF ANY POLITICAL PARTY.

I WON’T BORE YOU WITH THE CIRCUMSTANCES THAT CONSPIRED TO LEAD ME TO SEEK ELECTION TO THE PROVINCIAL LEGISLATURE. IN ANY EVENT, MY PARTNERS THOUGHT ME TO BE MORE THAN A LITTLE CRAZY FROM A FINANCIAL POINT OF VIEW AND OTHERS SIMPLY BELIEVED THAT POLITICS WAS A “MUGS GAME”.

I HAVE NEVER THOUGHT OF MY POLITICAL SERVICE AS A PERSONAL SACRIFICE BECAUSE MY DECADE IN THE ONTARIO LEGISLATURE WAS A VERY REWARDING PROFESSIONAL EXPERIENCE, IF NOT FROM A FINANCIAL STANDPOINT. I WAS PARTICULARLY FORTUNATE TO HAVE BEEN THE ATTORNEY GENERAL DURING A MOST INTERESTING DECADE THAT INCLUDED MAJOR LAW REFORMS INCLUDING FAMILY LAW REFORM, THE CREATION OF A BILINGUAL

COURT SYSTEM AND THE PATRIATION OF THE CONSTITUTION WITH AN ENTRENCHED *CHARTER OF RIGHTS*.

TODAY, LAWYERS SERVE AS OUR PRIME MINISTER, PREMIER, AND MAYOR OF TORONTO. FOR ALMOST ALL OF THE PAST 60 YEARS, OUR ONTARIO PREMIERS HAVE BEEN LAWYERS AS HAVE OUR NATION'S PRIME MINISTERS. NEVERTHELESS, I SENSE A LESSENING OF ENTHUSIASM ABOUT PARTICIPATION IN THE POLITICAL PROCESS BY LAWYERS AND INDEED BY MEMBERS OF THE PUBLIC GENERALLY.

IT IS VERY UNHEALTHY FOR OUR DEMOCRATIC SOCIETY THAT THE PUBLIC'S TRUST IN POLITICIANS HAS DECREASED SOMEWHAT DRAMATICALLY IN RECENT YEARS. VOTER TURNOUT AT ELECTION TIME HAS THEREFORE NOT SURPRISINGLY DECREASED. CANADA IS AMONGST THE MINORITY OF NATIONS THAT ENJOYS GENUINELY FREE ELECTIONS AND WHAT WE TAKE FOR GRANTED IS ONLY A DISTANT DREAM IN MANY COUNTRIES OF THE WORLD.

WHILE LAWYERS STILL PLAY MAJOR ROLES IN THE POLITICAL PROCESS, IT SHOULD NEVER BE FORGOTTEN THAT THE UNIQUE DIMENSIONS OF A LEGAL EDUCATION PROVIDE VALUABLE TOOLS

FOR MAKING A SIGNIFICANT CONTRIBUTION TO OUR POLITICAL SYSTEM. LAWYERS' ACCOMPLISHMENTS MAKE THEM UNIQUELY QUALIFIED TO PURSUE BOTH INTERESTING CAREERS AND TO MAKE CONTRIBUTIONS TO THE WHOLE COMMUNITY.

I WAS FORTUNATE TO SERVE AS ONTARIO'S ATTORNEY GENERAL DURING WHAT WAS PERHAPS AS I HAVE ALREADY SUGGESTED AN UNPRECEDENTED DECADE OF LAW REFORM. THIS WAS TO A LARGE EXTENT AS THE RESULT OF THE VERY IMPRESSIVE WORK OF THE ONTARIO LAW REFORM COMMISSION AND THE FACT THAT THE POLICY DIVISION OF THE MINISTRY OF THE ATTORNEY GENERAL CONTAINED A NUMBER OF OUTSTANDING POLICY ORIENTED LAWYERS.

THERE WERE ALSO A NUMBER OF LAWYERS IN THE PRIVATE BAR WHO WERE VERY COMMITTED TO CERTAIN AREAS OF LAW REFORM. THEY WERE QUITE WILLING TO CONTRIBUTE THEIR TIME ON A VOLUNTARY BASIS AND AS A RESULT THE PUBLIC WAS WELL SERVED BY THE PARTNERSHIPS BETWEEN THE LAW REFORM COMMISSION WHICH ALSO INCLUDED VOLUNTEER LAWYERS, GOVERNMENT LAWYERS AND THE PRIVATE BAR.

THE AREAS OF LAW REFORM IN THOSE YEARS WHERE LAWYERS IN THE PRIVATE SECTOR MADE A SPECIAL CONTRIBUTION IN PARTICULAR WERE FAMILY LAW, ESTATE LAW AND THE REPLACEMENT OF THE FORMER *MECHANICS LIEN ACT* BY THE *CONSTRUCTION LIEN ACT*.

CERTAINLY, ONE OF THE MOST FOOLISH DECISIONS IN RECENT YEARS WAS THE DECISION OF A RECENT ONTARIO GOVERNMENT TO ABOLISH THE ONTARIO LAW REFORM COMMISSION.

ALTHOUGH GOVERNMENT HAS BECOME LESS FLEXIBLE IN RECENT YEARS, I STILL BELIEVE THAT THERE ARE IMPORTANT OPPORTUNITIES FOR THE PRIVATE BAR TO SERVE THE PUBLIC INTEREST WITH RESPECT TO LAW REFORM. IN THIS CONTEXT, I THINK PARTICULARLY OF THE IMPORTANCE OF CONTINUING PROCEDURAL REFORM TO MAKE CIVIL LITIGATION LESS COSTLY AND ADDRESSING THE DELAYS IN CRIMINAL LITIGATION AND REDUCING THE NUMBER OF THE MEGA CRIMINAL TRIALS WHICH ARE LEADING TO A GROWING PUBLIC DISENCHANTMENT.

WHEN WE SPEAK OF THE LEGAL PROFESSION AND PUBLIC SERVICE, IT IS IMPORTANT TO NOTE THE LARGE NUMBER OF LAWYERS WHO

HAVE CHOSEN TO SERVE THE PUBLIC AS GOVERNMENT LAWYERS. THERE ARE 1300 LAWYERS IN THE ONTARIO PUBLIC SERVICE ALONE AND THEY ARE, OF COURSE, ABSOLUTELY ESSENTIAL TO THE ROLE OF GOVERNMENT AS ARE THE LAWYERS IN THE FEDERAL AND MUNICIPAL GOVERNMENTS.

THE GOVERNMENT LAWYER, AS ANY GOVERNMENT OFFICIAL, IS IN FACT THE GOVERNMENT IN THE EXERCISE OF HIS OR HER POWERS. SHE OR HE HAS GREATER INDEPENDENCE, MORE DISCRETION IN THE EXERCISE OF THEIR SKILLS AS A LAWYER AS WELL AS A BROADER RESPONSIBILITY THAN THE PRIVATE LAWYER.

THEY HAVE INDEPENDENCE BECAUSE THEY ARE NEITHER AIDED NOR HAMPERED BY THE WISHES OF A CLIENT AND THEIR DUTY IS ONLY TO FULFILL THE OBLIGATIONS OF THE OFFICE. GOVERNMENT LAWYERS ARE FREE TO USE THEIR BEST JUDGMENT AS A REPRESENTATIVE OF THE PEOPLE. THEY ARE NOT SIMPLY A GOVERNMENT EMPLOYEE BUT ARE INDEPENDENT PROFESSIONALS.

A CRUCIAL ASPECT OF THEIR INDEPENDENCE IS OF COURSE THEIR INDIVIDUAL DISCRETION WHICH IS MADE NECESSARY BY THE COMPLEXITIES OF THE TASK. THE PRIVATE LAWYER IS USUALLY

CONCERNED ONLY WITH THE PARTICULAR SITUATION AS IT AFFECTS HIS CLIENT. THE GOVERNMENT LAWYER MUST BE CONCERNED NOT ONLY WITH THE SPECIFIC SITUATION, BUT ALSO WITH ALL SIMILAR SITUATIONS. THEIR PRIMARY CONCERN IS THE IMPLEMENTATION OF SOUND POLICY FOR THE FUTURE, WHEREAS, THE PRIVATE LAWYER UNDERSTANDABLY ATTEMPTS TO GET THE BEST POSSIBLE RESULT IN THE INDIVIDUAL CASE.

THE BROADER RESPONSIBILITY OF THE GOVERNMENT LAWYER IS A NECESSARY ASPECT OF A GOVERNMENT'S ENORMOUS POWER, AND IN THE EXERCISE OF THAT POWER, THE LAWYER ALSO HAS A DUTY OF RESTRAINT.

THE CONTINUED EXPANSION OF GOVERNMENTAL ACTIVITIES HAS BEEN ACCOMPANIED BY AN INCREASED EMPHASIS ON THE CIVIL RIGHTS OF THE CITIZEN IN HER RELATIONS WITH GOVERNMENT AND ITS REPRESENTATIVES AS DRAMATICALLY ILLUSTRATED BY OUR ENTRENCHED *CHARTER OF RIGHTS*. THE GOVERNMENT LAWYER THUS HAS A DUTY TO ACT ONLY IN ACCORDANCE WITH THE LAW AND TO ENSURE THAT EACH PERSON WITH WHOM THEY DEAL IS TREATED IN ACCORDANCE WITH DUE PROCESS.



THE GOVERNMENT LAWYER'S RESPONSIBILITY, ALSO REQUIRES THEIR BEST JUDGMENT TO DETERMINE TO WHAT EXTENT THE RESOURCES OF THE GOVERNMENT SHOULD BE BROUGHT TO BEAR ON A PARTICULAR PROBLEM. THE ISSUE IS ESSENTIALLY ONE OF FAIRNESS AND A RESPONSIBLE EXERCISE OF POWER.

A GOVERNMENT LAWYER MUST USE SOUND JUDGMENT IN WEIGHING AND BALANCING SUCH FACTORS AS THE EFFECT OF THE CONDUCT INVOLVED ON THE WELFARE OF SOCIETY, THE STATUS OF THE PARTIES INVOLVED, AND THE DUTY OF THE GOVERNMENT TO ACT. THE CREATION OF A BUSINESS MONOPOLY IN VIOLATION OF THE LAW OBVIOUSLY CALLS FOR ACTION AGAINST THE VIOLATORS TO THE LIMIT OF THE LAW. THE PROBLEM OF THE INDIGENT WIDOW SEEKING TO OBTAIN WELFARE PAYMENTS IS A WHOLLY DIFFERENT ONE AND MAY REQUIRE ASSISTANCE TO AID THE CLAIMANT AGAINST THE GOVERNMENT WHEN THE CLAIM IS DENIED ON DUBIOUS GROUNDS.

THE GOVERNMENT LAWYER GENERALLY APPEARS IN COURT IN TWO DIFFERENT CAPACITIES, AS PROSECUTOR IN CRIMINAL CASES AND AS ADVOCATE IN CIVIL CASES. THE TWO ROLES REQUIRE THE SAME SKILLS, AND WHILE EACH HAS ITS SPECIAL CHALLENGES,

THEY CAN INVOLVE COMMON PROBLEMS. FOR EXAMPLE, THERE MAY BE A PSYCHOLOGICAL DILEMMA FOR THE GOVERNMENT LAWYER WHO MUST FIGHT HARD, BUT ALSO BE FAIR. THE COMMON LAW ADVERSARY SYSTEM WAS DEVELOPED FOR THE RESOLUTION OF DISPUTES BETWEEN INDIVIDUALS, NOT BETWEEN INDIVIDUALS AND THE GOVERNMENT. THE ADVANTAGES OF THE GOVERNMENT IN RESOURCES, PRESTIGE AND POWER ARE SIMPLY TOO GREAT FOR THE TRIAL TO BE CONDUCTED WITHOUT THE GOVERNMENT LAWYER ACCEPTING SPECIAL RESPONSIBILITIES.

IN MY OPINION, THERE CAN BE NO MORE IMPORTANT PUBLIC SERVICE ROLE FOR A LAWYER THAN THAT OF A CROWN ATTORNEY. THE FAIRNESS AND INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM DEPENDS ON THE MAINTENANCE OF A BODY OF PROFESSIONAL WOMEN AND MEN WHO APPRECIATE THEIR ROLE AS LOCAL MINISTERS OF JUSTICE IN THE CARRYING FORWARD OF CRIMINAL PROSECUTIONS.

THE RESTRAINT THAT THE CROWN ATTORNEY'S POSITION CALLS CAN BE DIFFICULT AS THEY ARE TRAINED IN THE ADVERSARY ROLE WHICH MAKES NO PARTICULAR ALLOWANCE FOR THE PROSECUTORS SPECIAL ROLE.

WHETHER THE LITIGATION IS CRIMINAL OR CIVIL, ITS IMPACT ON THE INDIVIDUAL IS IN NO WAY COMPARABLE WITH THE IMPACT ON THE GOVERNMENT. FOR THE INDIVIDUAL, THE RESULT OF THE LITIGATION COULD WELL MEAN BANKRUPTCY, THE RUIN OF A CAREER, THE DESTRUCTION OF A CAREER OR PRISON.

AS THE REPRESENTATIVE OF THE GOVERNMENT AND WITH A SPECIAL DUTY TO SERVE THE PUBLIC INTEREST, THE PRIMARY RESPONSIBILITY OF GOVERNMENT COUNSEL SHOULD THEREFORE NOT BE IN SIMPLY WINNING OF THE CASE BUT ALSO IN ATTEMPTING TO ASSURE THAT JUSTICE IS DONE.

ANOTHER AREA OF VALUABLE PUBLIC SERVICE IS THAT PERFORMED BY LAWYERS WORKING IN LEGAL AID CLINICS. THEY SERVE THE PUBLIC BY ENABLING INDIVIDUALS TO HAVE ACCESS TO THE LEGAL ASSISTANCE THAT IS ESSENTIAL FOR THE UNDERSTANDING AND ASSISTANCE OF INDIVIDUAL RIGHTS AND OBLIGATIONS UNDER THE LAW.

WE LIVE IN A HIGHLY SOPHISTICATED SOCIETY WITH A HIGHLY DEVELOPED SENSE OF THE NEED FOR POSITIVE INTERVENTION TO

PROTECT THE BASIC RIGHTS AND FREEDOMS OF THE DISADVANTAGED AND TO ENSURE CONTINUING ACCESS TO THE RIGHTS AND FREEDOMS WHICH WE PROCLAIM AS FUNDAMENTAL TO A CIVIL, HUMANE AND JUST SOCIETY.

IT IS A SAD REALITY TODAY THAT WE HAVE NOT ONLY TOO MUCH POVERTY IN THIS PROVINCE, BUT AS WELL TOO LITTLE UNDERSTANDING OF THE DESPERATE STRAITS POVERTY CREATES FOR SO MANY PEOPLE. THE HARDENING OF ATTITUDES ABOUT POVERTY IN RECENT YEARS IS SOMETHING THAT ALL OF US WITH ACCESS TO PUBLIC OPINION MUST STRUGGLE TO COUNTER.

IN THIS CONTEXT, THE VIEWS EXPRESSED IN A JUDGMENT OF MADAM JUSTICE JOAN LAX ARE MOST RELEVANT:

IT IS WELL RECOGNIZED TODAY THAT THE ECONOMIC CONDITION OF POVERTY IS INEXTRICABLY LINKED WITH DESPAIR AND HOMELESSNESS.

WE WHO LEAD MORE PRIVILEGED LIVES HAVE GREAT DIFFICULTY UNDERSTANDING

HOW OVERWHELMINGLY DISHEARTENING  
AND LONELY [THE STRUGGLE FOR DAILY  
LIVING FOR THE POOR] CAN BE.

WE MUST REMEMBER THAT PEOPLE DON'T  
CHOOSE TO BE POOR AND THEY DON'T  
WANT TO BE POOR. UNWRITTEN HISTORIES  
OF NEGLECT, ABUSE, MALNUTRITION,  
EARLY CHILDHOOD DISADVANTAGE AND  
DISCRIMINATION UNDERLIE THE  
CIRCUMSTANCES OF THOSE WHOM MANY  
SEEM TO WANT TO EXCLUDE FROM THE  
HUMAN COMMUNITY.

THE OVERALL IMPACTS OF THE BROAD, AND WORSENING, "SOCIAL  
EXCLUSION" FACED BY THE POOR, IS OF COURSE AT THE HEART OF  
THE ROLE OF THE CLINICS IN TRYING TO ENSURE THAT AT LEAST  
THE LEGAL SYSTEM IN THIS PROVINCE LIVES UP TO THE IDEALS OF  
DIGNITY AND EQUALITY FOR ALL.

INDEED, OUR LAWS AND FREEDOMS WILL ONLY BE AS STRONG AS  
THE PROTECTION THAT THEY AFFORD TO THE MOST VULNERABLE

MEMBERS OF OUR COMMUNITY. IN AFFORDING THIS PROTECTION, LEGAL AID CLINICS DO MAKE A DEEP AND ESSENTIAL CONTRIBUTION TO OUR SOCIAL FABRIC AND INDEED TO OUR VERY WAY OF LIFE.

STEPHEN WEXLER, WHOSE WRITINGS INSPIRED MANY OF THE LEADERS OF THE CLINIC MOVEMENT IN CANADA, EXPOSED THE PHILOSOPHY BEHIND THE CLINICS VERY SIMPLY WHEN HE SAID:

POOR PEOPLE ARE NOT JUST LIKE RICH  
PEOPLE WITHOUT MONEY. POOR PEOPLE  
ARE ALWAYS BUMPING INTO SHARP LEGAL  
THINGS.

THE WOUNDS FROM THESE “SHARP LEGAL THINGS” ARE USUALLY DISPROPORTIONATELY FELT. BECAUSE OF THE SYSTEMIC DISCRIMINATION FOUND IN MANY OF OUR INSTITUTIONS. THE WOUNDS ARE GENERALLY INFLECTED ON RACIAL AND OTHER MINORITIES, WOMEN, ABORIGINAL PEOPLE, AND THOSE WITH LITERACY, LEARNING OR OTHER DISABILITIES.

BECAUSE OF THE CRITICAL ROLE OF THE COMMUNITY IN SHAPING

THE MODEL, WE KNOW THAT ONLY COMMUNITY CLINICS CAN ADDRESS IN A COMPREHENSIVE FASHION THE LEGAL NEEDS OF POOR PEOPLE.

GIVEN THE VERY IMPORTANT ROLE OF LEGAL AID CLINICS, PRO BONO LAW ONTARIO HAS GIVEN PRIORITY TO ENCOURAGING LAWYERS IN PRIVATE PRACTICES TO VOLUNTEER THEIR SERVICES TO CLINICS THEREBY STRENGTHENING THE CLINICS TO BETTER SERVE THE POOR AND DISADVANTAGED.

IN SERVING THE PUBLIC, IT IS ALSO VITAL THAT MEMBERS OF THE LEGAL COMMUNITY RECOGNIZE THE NEED TO HAVE A PROFESSION THAT MIRRORS THE RICH DIVERSITY OF OUR POPULATION. IF OUR PROFESSION IS TO TRULY SERVE THE PUBLIC, OUR RANKS MUST REFLECT THE MULTICULTURAL CHARACTER OF CANADA.

IN PROFESSOR CONSTANCE BACKHOUSE'S PROVOCATIVE ADDRESS ENTITLED "*GENDER AND RACE IN THE CONSTRUCTION OF 'LEGAL PROFESSIONALISM': HISTORICAL PERSPECTIVES*" SHE STATED THAT "THE VERY CONCEPT OF PROFESSIONALISM HAS BEEN INEXTRICABLY LINKED TO MASCULINITY, WHITENESS, CLASS PRIVILEGE AND PROTESTANTISM". IN HER WORDS, THE "VERY

NOTION OF 'PROFESSIONALISM' EMBODIED THE IMAGE OF A TIGHTLY KNIT COMMUNITY, WITH SHARED CULTURE, TRADITIONS AND EXPECTATIONS. ESTABLISHED LAWYERS HIRED FAMILY AND FRIENDS AND THE DYNASTIC LEGACIES LENGTHENED.

IT IS IMPORTANT THAT WE BE REMINDED OF THOSE DAYS WHERE THE CONCEPTS OF PRIVILEGE AND PROFESSIONALISM WERE CLOSELY INTERTWINED. IT IS MOST REGRETTABLE THAT BARRIERS RELATED TO GENDER, RACE AND RELIGION CONTINUED TO ALMOST THE MIDDLE OF THE TWENTIETH CENTURY.

THERE IS STILL THE REALITY TODAY THAT SOME MINORITIES FACE GREATER BARRIERS THAN OTHERS IN JOINING THE MAINSTREAM OF THE LEGAL PROFESSION.

IN THIS CONTEXT, I HAVE RETAINED A COPY OF A 1998 ARTICLE BY MICHAEL ST. PATRICK BAXTER ENTITLED "BLACK BAY STREET LAWYERS AND OTHER OXYMORA".

MR. BAXTER'S ARTICLE MAKES BOTH COMPELLING AND DISTURBING READING. MR. BAXTER IS A 1979 GRADUATE OF WESTERN LAW SCHOOL, WAS ON THE DEAN'S HONOUR LIST,



ARTICLED ON BAY STREET, FINISHED IN THE TOP ONE PERCENT OF THE BAR ADMISSIONS COURSE, CLERKED FOR THE CHIEF JUSTICE OF ONTARIO, WON A CANADIAN COUNCIL DOCTORAL FELLOWSHIP AND ATTENDED GRADUATE SCHOOL AT HARVARD. WHAT IS VERY DISTURBING IS THAT EVEN WITH THESE IMPRESSIVE CREDENTIALS, HE FAILED TO SECURE EMPLOYMENT NOTWITHSTANDING APPLYING TO OVER 50 TORONTO LAW FIRMS.

AT THE SAME TIME, IT IS IMPORTANT TO NOTE THAT HE EXPRESSED THE VIEW THAT THE BARRIERS WERE NOT AS A RESULT OF ANY INTENTIONALLY HELD RACIST VIEWS, OR THAT THE DISCRIMINATION WAS AS A RESULT OF MALICE OR ILL WILL TOWARDS BLACKS.

MR. BAXTER'S VIEWS AS TO WHY BLACK LAWYERS HAVE A PROBLEM GAINING ACCESS TO BAY STREET FIRMS WERE IN PART AS FOLLOWS AND I QUOTE DIRECTLY FROM HIS ARTICLE:

WHY BLACKS HAVE A PROBLEM ON  
BAY STREET FIRMS IS SUBJECT TO  
DEBATE. MY OWN VIEW IS THAT THE  
PROBLEM IS ATTRIBUTABLE IN LARGE

PART TO THE FACT THAT THE PEOPLE WHO, HISTORICALLY, HAVE CONTROLLED THE PORTALS OF THE BAY STREET FIRMS HAVE SUFFERED FROM A LACK OF PERSONAL EXPERIENCE WITH BLACKS. THESE "GATEKEEPERS" GENERALLY HAVE HAD LITTLE INTERACTION WITH BLACKS. INDEED, THEIR FIRMS MAY NEVER HAD HAD A BLACK LAWYER. THEIR INTERACTION WITH BLACKS IS USUALLY LIMITED TO BLACKS IN SUBORDINATE POSITIONS. WITHOUT THE BENEFIT OF SUBSTANTIAL PERSONAL INTERACTION WITH BLACKS, THE GATEKEEPERS TEND TO RELY ON THE STEREOTYPES SO READILY AVAILABLE THROUGH THE MEDIA AND HAVE A TENDENCY TO MAKE CONSCIOUS OR UNCONSCIOUS ASSUMPTIONS ABOUT BLACK LAWYERS BASED ON THESE STEREOTYPES.

IN ANY EVENT, TODAY MR. BAXTER IS A PARTNER IN ONE OF WASHINGTON, D.C.'S MOST PRESTIGIOUS LAW FIRM.

THE LAW SOCIETY OF UPPER CANADA DESERVES CREDIT FOR ACKNOWLEDGING IN ITS BICENTENNIAL REPORT, THE EXISTENCE OF SYSTEMIC DISCRIMINATION AND INEQUALITY WITHIN THE LEGAL PROFESSION AND FURTHER FOR ACCEPTING THE RESPONSIBILITY TO TAKE THE LEAD IN ELIMINATING DISCRIMINATION AND RACISM IN THE PROFESSION.

I WOULD LIKE TO COMMENT BRIEFLY ABOUT THE VERY IMPORTANT ISSUE OF LAWYERS JOINING THE JUDICIARY.

WE ARE INDEED FORTUNATE THAT A LARGE NUMBER OF HIGHLY QUALIFIED LAWYERS ARE PREPARED TO SERVE AS JUDGES, OFTEN LEAVING VERY LUCRATIVE LAW PRACTICES. AT THE SAME TIME, I BELIEVE THAT IT IS A SIGNIFICANT PRIVILEGE TO SERVE AS A JUDGE AND I AM ENCOURAGED BY THE FACT THAT THIS IS RECOGNIZED BY THE GREAT MAJORITY OF OUR PROFESSION.

INDEPENDENT AND IMPARTIAL ADJUDICATION IS, OF COURSE, ESSENTIAL TO A FREE AND DEMOCRATIC SOCIETY. IN HIS IMPORTANT TEXT, *A PLACE APART*, PROFESSOR MARTIN FRIEDLAND QUOTES FROM A CANADIAN SENATOR SPEAKING IN A DEBATE IN 1894 AS FOLLOWS:

THE SAFETY AND HAPPINESS AND PEACE OF EVERY COMMUNITY DEPEND LARGELY ON THE CONFIDENCE THAT PEOPLE HAVE IN THE JUDICIARY. PEOPLE SHOULD FEEL THAT THEIR RIGHTS ARE SAFE UNDER THE LAW AND THAT THE JUDICIARY GIVE WISE AND IMPARTIAL JUDGMENTS.

THE SENATOR WAS ECHOING A VIEW EXPRESSED TWO CENTURIES EARLIER BY JOHN LOCKE THAT THE AVAILABILITY OF IMPARTIAL JUDGES TO SETTLE DISPUTES WAS THE FUNDAMENTAL REASON FOR PERSONS TO QUIT THE STATE OF NATURE AND LIVE UNDER CIVIL GOVERNMENT.

ONE FINAL THOUGHT AND THAT IS THAT I BELIEVE THAT EVERY LAWYER DOES SERVE THE PUBLIC INTEREST BY MAINTAINING HIGH

STANDARDS OF PROFESSIONALISM IN THEIR DAY TO DAY PRACTICES. IT IS ALSO ESSENTIAL THAT THE LEADERS OF THE BAR CONTINUE TO STRENGTHEN THE STANDARDS OF EDUCATION, TRAINING AND PROFESSIONALISM. THIS PROFESSIONALISM, OF COURSE, INCLUDES THE MAINTENANCE OF MUTUAL RESPECT, UNDERSTANDING AND TRUST THAT I BELIEVE EXIST BETWEEN THE BENCH AND BAR.

THE MAINTENANCE OF THIS MUTUAL RESPECT CANNOT BE TAKEN FOR GRANTED AS THE OBJECTIVES OF COUNSEL AND JUDGE IN ANY TRIAL ARE BY NO MEANS THE SAME.

COUNSEL'S TASK IS, OF COURSE, TO DO ALL THAT SHE OR HE MAY TO ACHIEVE A RESULT FAVOURABLE TO THE CLIENT. THE TASK OF A JUDGE IN A JURY TRIAL IS TO ENABLE THE JURY TO ARRIVE AT A FAIR VERDICT BUT THAT VERDICT WILL ALMOST CERTAINLY BE UNWELCOME TO ONE PARTY OR THE OTHER. IN A TRIAL WITHOUT A JURY, THE JUDGE'S TASK IS TO FIND THE RIGHT ANSWER BUT THE RIGHT ANSWER WILL MORE OFTEN THAN NOT BE THE WRONG ANSWER FOR ONE PARTY OR THE OTHER. IT IS THEREFORE IMPORTANT TO RECOGNIZE THAT IN THE ADMINISTRATION OF JUSTICE THE EXISTENCE OF MUTUAL RESPECT, UNDERSTANDING

AND TRUST IS ALL THE MORE PRECIOUS AS IT ARRIVES IN THE CONTEXT OF AN ADVERSARIAL SYSTEM.

FOR MEMBERS OF THE PROFESSION WHO DO NOT PRACTICE IN OUR COURT ROOMS, THE PUBLIC INTEREST REQUIRES A HIGH DEGREE OF CIVILITY BETWEEN SOLICITORS WHICH ALSO INCLUDES THE MAINTENANCE OF MUTUAL RESPECT AND TRUST.

LAWYERS HAVE BEEN GIVEN THE INTELLECTUAL EQUIPMENT TO INFLUENCE THIS COUNTRY'S IMPROVEMENT. INDIFFERENCE IS THEREFORE INTOLERABLE. LAWYERS ARE CERTAINLY UNIQUELY QUALIFIED TO MAKE A SPECIAL CONTRIBUTION TO THE DEBATES RELATED TO THE PUBLIC ISSUES OF THE DAY. IN THIS CONTEXT, I AM REMINDED OF THE WORDS OF THE GREAT JURIST, OLIVER WENDELL HOLMES, WHO A HUNDRED YEARS AGO URGED LAWYERS TO MAKE A PASSIONATE COMMITMENT TO THE COMMUNITIES IN WHICH THEY LIVE AND WORK STATING: "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".