

THE EIGHTH COLLOQUIUM ON THE LEGAL PROFESSION
Lawyers in the Community

By Claude Pensa, Q.C.

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In this intervention the theme remains leadership but outside the strict confines of law practice; and so what do we do as professionals having stepped away from our offices, our boardrooms and our courtrooms and into the larger community, be it involvement in non profit, pro bono, the multifaceted charitable community or just plain helping others?

No one would argue with the proposition that lawyers should assume fundamental moral responsibility for their actions when they represent clients and the destination of that representation and the methods by which it is achieved. Is there as well a broad overriding ethical and moral premise that lawyers, the recipients, partly through societal largesse, of the beneficent gift of a legal education, and they, having achieved a measure of success in their practice and equipped with useful skills, now have a duty to help those less fortunate than themselves? While one might say that this duty derives not from their professional status but rather from their humanity, the duty that emerges is relative to the capacity and opportunity to act. So how should that thought impact on a lawyer's conduct?

As has been put by Professor Eberle:

“A second foundation of legal ethics is community. The community foundation consists of the lawyer's character, obligations to the legal system as officer of the Court, and, more broadly, guardian of the law, and obligations to society at large, as public servant. In this way, a lawyer is guided by a professional ideal consisting of fidelity to the virtue of good character and to the concept of a just system of law, as compared to the loyalty to clients characteristic of the autonomy foundation.”

¹ Gratefully, assisted by Melinda Vine

“These community ideas are the concepts through which a lawyer personally influences and affects people, making, moulding, and shaping the community of law?”²

Integrity is what impels lawyers beyond the borders of their profession to do good. They realize, that having been placed in a preferred position in society, albeit through their assiduous efforts, but also through the good fortune of being a member of a community in which good law schools impart to them a lifetime gift of knowledge, judgment, discernment and professional skill, they are called upon to serve that community.

As a profession we have had to face the reality of the general opprobrium which some in society holds for our profession. This is so in part, to be sure, because we are frequently in the ordinary course of practice, placed in the center of disputes which paints us in some manner as the enemy. It is not the place of this discussion to identify the varied sources of public disquiet concerning our profession but in my view we have moderated that disquiet and increased our level of respect within the community because of the efforts of lawyers in a whole variety of circumstances to involve themselves in what goes on there.

The philosophy motivating that involvement need not be complicated. It need only be a sincere desire to help the fellow members of the community.

In this regard I am reminded of an encounter between a dear friend, who does not share a belief in the afterlife, and a person of strong religious belief who peppered him with questions about his beliefs. Finally in frustration the questioner said “Well what do you

² Three Foundations of Legal Ethics by Edward J. Eberle, Georgetown Journal of Legal Ethics, Vol. 7:59, p89 at 109

believe in?” My friend responded “I believe in helping those who are less fortunate than myself.”

As Gavin McKenzie in “Lawyers and Ethics” points out, the purpose of the requirement of good character in our rules of professional conduct is to protect the public, to maintain high ethical standards and to maintain public confidence in our legal profession and its ability to regulate itself.

So how do we capitalize on those skills, abilities and motivations of which we are now possessed to generate good?

A good beginning is in the non profit sector. In every community there is a host of non profit organizations in need of both charitable and other legal advice.

There is no question that the non-profit sector looks to the legal profession. In today’s world we lean on our non-profit sector more than ever to provide essential assistance to those in need. These non-profits provide health care, housing, food and an array of other services.

We can help by offering our legal expertise to the non-profit sector. The increasingly complex nature of business and corporations, which includes many non-profits, requires the same supports that the for-profit sector utilizes and relies on for success. On top of the general legal risks that are involved with carrying on business, there are also legal issues and risks that are unique to the non-profit sector. There are complicated tax issues, compliance with statutory requirements, fundraising requirements and obtaining and maintaining charitable status.

Some non-profits assume that the rules do not apply to them or perhaps no one will notice. Usually it's not misfeasance that causes non-profits problems but more ignorance of the laws and rules. In other cases the people managing the non-profits are so busy fulfilling their mission that they don't have time to address legal problems.

Lawyers can do their part by providing different types of assistance and protection to non-profits. One way they can do this is by becoming a member of the board of directors and guiding the non-profit in the decision making process.

Lawyers can also provide pro bono legal services. Pro Bono Law Ontario, a charitable organization encourages large firms to develop pro bono policies in which lawyers are allowed to count their pro bono time as billable hours so that each associate can get credit for up to 50 hours of pro bono work a year which are deducted from their billable targets.

The Law Society of Ontario has developed the Volunteer Lawyers Service (VLS) which offers free legal support to eligible charitable and non-profit organizations in Ontario. VLS matches community agencies with volunteer lawyers who can help with a range of services such as incorporation, charitable registration, board governance, contracts, or trademark registrations. VLS also provides educational seminars and online support material to help community agencies strengthen their business practice.

A structured regime of assistance to the public has become a reality. We have a responsibility and recognize that we must provide legal services to those unable to pay and so each lawyer needs to become involved in the problems of the disadvantaged.

Looking after these people can be one of the most rewarding experiences in the life of a lawyer. Many law firms have standards by which each lawyer should devote annually a specific number of hours to pro bono services.

I can speak more personally about pro bono work. When I first started in practice with a single partner, the name of the game was to get people into your office, that is a living, breathing client. You didn't much care how minor or trivial the problem was – what you cared about was that you had a client. Sometimes referral agencies, perhaps your accountant or friend, would send somebody to you who were being pursued by a whole bunch of creditors. This kind of legal work was the bottom end of the trade. So you would apply for what was called in those days, a Consolidation Order (maybe it still is) whereby all of the debtors' obligations were consolidated into one monthly payment.

This is just one example of the type of work that a young lawyer took on with little expectation of payment.

As an aside, later on I tried a number of cases which, because of the result, accidentally fell into the pro bono category.

Over time, I did notice a somewhat surprising result of some of these pro bono cases. It was the gratitude of the client who knew that you had exerted yourself to get them out of a jam and so they became eternally grateful; you established a bond with that person. On more than one occasion the fortunes of that grateful client changed and came back and became good and remunerative client.

I think this is frequently the experience of those who do pro bono work; that there can indeed be a double dip of payment. First in the satisfaction of doing something for someone less fortunate than yourself and secondly, you have gained the goodwill of that person whom you may later return the favour.

The other benefit of pro bono work is that it gives young lawyers experience in the ring so to speak because these days, with the complication and complexity of law, young lawyers do not always get opportunity to handle things by themselves. As a young lawyer I was in, what was then called Division Court (now Small Claims Court), a day or two a week with three or four trials, each of which required exercising the skills, preparation and techniques that later would be utilized in matters of greater substance. Pro bono work can yield a similar opportunity which confers an immediate benefit on the lawyer in both satisfaction and experience. Offer your time in Small Claims Court cases.

Many lawyers choose to assist by volunteering their time, manpower or money to many great causes.

Another reason why Lawyers should volunteer and give back to the community is because it feels good. Many lawyers reach a point in the career where they experience the “mid career doldrums.” Once tackling the legal world and establishing your career many people begin to feel uninspired and unsatisfied. After achieving personal material well being, it takes something more to feel a sense of satisfaction and personal pride and this is where volunteerism helps.

Last year marked my 50th year in practice and perhaps some of the activities I have enjoyed outside my practice might serve to illustrate the theme of this colloquium.

Those activities might usefully be divided into three categories namely politics, charity and pro bono. I have already touched on pro bono.

The political profession is not always held in high regard by the public. It does not always occur to the average citizen that politicians and lawyers in the constitutional sense are bulwarks of a democratic society; so without apology or regret I have been involved in the political process most of my professional life. My good friend and colleague here, David Nash, has enjoyed a similar experience although at some point in his career met a fork in the road and made the wrong choice of joining the “other” party. We both have been campaign workers, campaign managers, fundraisers and ardent supporters of the political process.

It is honourable and important for any citizen to work within a party structure thereby helping to ensure the health of the democratic process. Lawyers have special aptitudes and skills to offer the political process either as candidates or workers. Their integrity and dedication contributes to the democratic process.

As well, I have been involved in charities. From the beginning of my days in practice I was called to get involved with the heart fund, cancer campaigns and a host of other charities. Each of these organizations needs the wisdom and experience of the legal profession.

There are some 750 practicing lawyers in London. Those lawyers individually and collectively are involved in a host of charitable activities ranging from the Boys & Girls Club, the Men’s Mission, the Food Bank, diverse locations serving meals in churches

and halls, and of course the Heart, Cancer, Diabetes, Cerebral Palsy and other disease initiatives which call upon their fundraising efforts and their direct services to the needy community.

Now a word about the London Lawyers Feed the Hungry. It is a major charitable project to help make sure that no homeless person, child or family will be deprived of adequate and nutritious food.

I suppose what is unique about it is that the London Bar is entirely responsible for it. It administers the program, raises the money and in consultation with the charitable agencies allocates the funds to the needy. Its beginnings were in late 2002 and over time has grown so that it raises some \$40,000.00 per year to the cause. The goal of the program was to obtain from each lawyer in London, \$100.00 annually. It has a number of projects through which it raises money. The most prominent is a spring event called "The Courthouse Rocks" which is an evening of entertainment in a local bar where the diverse talents of London's lawyers are displayed on stage. Some of them extremely good. That event by itself raises \$20,000.00 to \$25,000.00. The rest of the money comes from solicitations to the bar through the year. The program has the endorsement of the Middlesex Law Association. All the monies are dispensed through the Law Society Foundation which issues tax receipts. The Toronto Bar, of course also has a highly successful Feed the Hungry Program.

So why was it important for the London Bar to initiate such a program? To be sure it is a good PR gesture which receives adequate recognition in the local media and thereby tends to raise the esteem the public might have in the profession. But it has more important effects as well. It has bound the London bar in a common endeavour, a worthy

and charitable endeavour, thereby resulting in a good measure of satisfaction to those who participate.

So join us each March 30, at the Courthouse Rocks and enjoy the heretofore undiscovered talent of our Bar.

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