

Professionalism Revived: Diagnosing the Failure of Professionalism among Lawyers and Finding a Cure

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This paper has been prepared in support of the Keynote Commentary to be delivered at the Chief Justice of Ontario's Tenth Colloquium on the Legal Profession on March 28, 2008 in Ottawa. The subject of the colloquium, and of this paper, is professionalism among lawyers.

1. What exactly do we mean by professionalism?

My thesis is that there are three basic values which merge in a good lawyer: a commitment to competence, which is about skills; a commitment to ethics, which is about decency; and a commitment to professionalism, which transfuses the public interest into the two other values.

Madam Justice Rosalie Abella, "Professionalism Revisited," Opening Address to the Law Society of Upper Canada Benchers' Retreat, October 14, 1999

Before we can embark on any serious consideration of the status of professionalism in the law, we need to be completely clear what it is we're talking about. "Professionalism" is a word that has lost much of its acuity as it has gained in popular usage. Today, we hear people in the workplace speak admiringly of a co-worker who's "a real professional," thanks to that person's demeanour, performance, attitude, and standards of behaviour.

Equally, we will hear people speak disparagingly of colleagues who conduct themselves intemperately, thoughtlessly or irresponsibly as displaying "unprofessional behaviour." "Professionalism" is a powerful word that, judging from its growing use outside of the traditional professions, represents something positive that people want to emulate and incorporate into their own lives.

But what does it really mean? Inquiries of this sort normally begin with a dictionary definition and an etymological investigation. This is what Merriam-Webster has to say about the root word, "profession":

Profession: Middle English *professioun*, from Old French *profession*, from Late Latin & Latin; Late Latin *profession-*, *professio*, from Latin, public declaration, from *profitEri*

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- 1: the act of taking the vows of a religious community
- 2: an act of openly declaring or publicly claiming a belief, faith, or opinion
- 3: an avowed religious faith
- 4: (a) a calling requiring specialized knowledge and often long and intensive academic preparation (b) a principal calling, vocation, or employment (c) the whole body of persons engaged in a calling.

“Profession” comes to us from a religious background – we still see this usage in the phrase “professing a belief,” or, in some religious services, a “profession of faith.” The Latin root *profiteri* might lead one to the uncomfortable thought that profession and profits are etymologically linked. Happily, this is not the case: profit comes from *profectus*, the Latin verb “to advance.” *Profiteri*’s meaning, however, is instructive and resonant for our inquiry:

The word “profession” derived from the Latin combination of *pro* (forth) and *fateri* (confess), meaning “to announce a belief.” Hence the early use of the word concerned open or public avowals of faith or purpose. Religious orders still use the word in its original meaning. In early England, “to profess” was to bind yourself by vow. ...

It was probably inevitable that certain occupations requiring public avowals of faith or purpose should become known as professions. Originally, there were three: medicine, law, and theology. They were dignified by that title and set apart from other occupations because they were more than a livelihood: they represented a calling to some higher satisfaction than a commercial gain. Further, having high purpose, there was the promise of intellectual direction and occupational skill.

The early professions were built around philosophical or ethical codes. The common feature of these codes was some kind of service to mankind. Although rigorous asceticism was seldom required, doctors, lawyers and clergymen demonstrated enough selflessness down through the years to gain general respect.

“Achieving Professionalism,” E.W. Roddenberry, *The Journal of Criminal Law, Criminology, and Police Science*, Vol. 44, No. 1 (May-Jun., 1953), p. 109

Now we come to see how “profession” filtered into secular usage: it was drawn to occupations that combined public avowals of high purpose with dedication to service and selflessness. “Professionals” were people who chose livelihoods steeped in service to others and devotion to a greater good – and who declared that choice openly in front of the community. Lawyers who recall the oath they took upon their admission to the Bar will recognize both this open avowal and the principles they swore to uphold.

It is important to recognize that both these elements were necessary to qualify as a profession. A blacksmith might gather a crowd in the public square to announce his choice of trade, but no one would consider him more than a tradesman. Similarly, a philanthropist might quietly decide that he would devote himself to the greater good, but that qualified him not as a professional but simply as a good person. Devoting your efforts and intellect to the service of others and putting the community on notice that you had taken on this challenge – that was the mark of a professional.

For lawyers, professionalism was not difficult to define: to be a lawyer meant that you worked in the service and towards the betterment of others. It is critical to appreciate that this did not refer solely to the client whom you represented – lawyers served the interests of many people and institutions. Indeed, the ethical ideal of a lawyer as primarily a “zealous advocate” of his client is a relatively recent development, traceable to mid-19th-century America. Before that time, it was understood that while the client was important, the lawyer had obligations to others as well. Consider these remarks by lawyer David Dudley Field to a group of law students in Albany, New York in 1855:

[T]he profession of a lawyer is a means to an end, and that end the administration of justice. His first duty is undoubtedly to his own client, but that is not the only one; there is also a duty to the court, that it shall be assisted by the advocate; a duty to the adversary, not to push an advantage beyond the bounds of equity; a duty to truth and right, whose allegiance no human being can renounce; and a duty to the state, that it shall not be corrupted by the example of unscrupulous insincerity.

“Toward a History of the Legalization of American Legal Ethics – II, The Modern Era,”
Charles Wolfram, *The Georgetown Journal of Legal Ethics*, Winter 2002

No fewer than five duties are enumerated in this speech: to the client, to the court, to opposing counsel, to truth, and to society. The professional status of lawyers was inextricably bound up with duties and service towards others. It was this dedication to service that set the lawyer apart; it was this, as Roddenberry noted in 1953, that formed the basis for the public regard lawyers enjoyed in society. Lawyers acted in the best interests of other people, and that was enough to earn them the mantle of “professional.”

The lawyer’s overriding duty to the interests of others is neither extinct nor archaic. The leading figures and institutions of the law have kept this understanding and maintained this focus to this day. A simple example can be found in the codes of professionalism adopted by lawyers in numerous North American jurisdictions. Here is a typical specimen from North Carolina:

Lawyer’s Professionalism Creed

To my clients, I offer competence, faithfulness, diligence, and good judgment. I will represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail to achieve it, I will make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, truthfulness, and courtesy. I will strive to bring honor to the search for justice.

To the profession, I offer assistance. I will strive to keep our profession a high calling in the spirit of *pro bono* and public service.

To the public, I offer service. I will strive to improve the law and our legal system, serving all equally, and to seek justice through the representation of my clients.

The North Carolina Chief Justice’s Commission on Professionalism

The focus of lawyer professionalism, relentlessly, is on the other, not the self. The image of the lawyer emerging from these descriptions is of a person fully aware of, and obliged to fulfill, duties towards people and institutions in a higher cause. Justice Rosalie Abella, in her 1999 address to the Law Society of Upper Canada “Professionalism Revisited,” notes the American Bar Association’s 1996 *Professionalism Report on Teaching and Learning Professionalism* conclusion that professionalism is about “dedication to justice and the public good.”

Today, “professionalism” has acquired an additional layer of meaning: excellence in standards and performance. It is sometimes mistakenly believed that excellence has substituted for service in the definition of professionalism; in fact, excellence was always considered implicit in professional service, and is best considered service’s natural complement. Excellence without service is merely expertise – attractive, but nonetheless empty, craftsmanship.

The heart of lawyer professionalism is in service to others and betterment of society that places one’s own interests and desires in secondary priority. That is as true in today’s world of mega-firms, billable hour targets, and globalization as it was when the professions first developed centuries ago.

Real professionalism ... implies a pride in work, a commitment to quality, a dedication to the interests of the client, and a sincere desire to help. However, traditional definitions of professionalism are filled with references to status, educational attainments, “noble” callings and things like the right of practitioners to autonomy – the privilege of practicing free of direction. All of these definitions are self-interested. ...

Being a professional is neither about money nor about fulfillment. Both of these are consequences of an unqualified dedication to excellence in serving clients and their needs....

Perhaps it is time for our schools and professional firms alike to stop teaching students that they are the best and the brightest, the special elite in the noblest profession.... Maybe schools and firms should find ways to teach more about what it is to serve a client, and about how to work with people, whether they be your juniors, your seniors or your colleagues.

David Maister, *True Professionalism* (New York: Simon & Schuster, 1997), pp. 18-20

The conclusion seems clear: professionalism in the law is deeply rooted in service to others, in a higher calling to serve the interests of our society, our courts, our colleagues and our clients. Lawyers make things better because we place the good of others above our own self-interest.

Those of us who believe in the law, and who understand that the call to be a lawyer is a call to vocation, feel this truth resonate within us. What good lawyers do — help people, alleviate misery, fight injustice, solve problems, enhance success, validate dreams, improve society— registers deep within us.

Conversely, however, we must also conclude that the more we focus on ourselves, and the less we focus on others, the farther away we get from professionalism. Today, unfortunately, we might be as far away from professionalism as we have ever been.

2. Why we have lost professionalism in the law

The term “profession” has its origins in the Latin root “to profess” and in the European tradition of requiring members to declare their commitment to shared ideals. The American bar has maintained the form but lost the substance of that tradition. Entering lawyers may still profess to serve justice as officers of the court, but that declaration has little moral content in contemporary practice. Efforts to revive a richer sense of professionalism have foundered on the lack of consensus about what those ideals should require and how to reconcile them with more worldly interests.

“Expanding the Role of Ethics in Legal Education and the Legal Profession,” Deborah Rhode, Santa Clara University, California, based upon her book *In the Interests of Justice: Reforming the Legal Profession* (Oxford University Press, 2000)

The proposition that professionalism in the law is in serious decline is generally met with widespread agreement among lawyers, judges, and other stakeholders in the justice system. Indeed, there would not be a Chief Justice’s Colloquium on Professionalism if the consensus view was that professionalism is alive and thriving in the legal world – we are here because we recognize there is a problem and urgently seek solutions.

Unfortunately, explanations for this decline and solutions to address it are diverse and sometimes contradictory. Mostly, this is because we are working from different definitions of professionalism and different assumptions about its sources and effects. Is lack of professionalism reflected in uncivil behaviour by lawyers? Or in lower standards of ethical behaviour? Or in an undue focus on financial gain? Is the focus on money a cause or an effect of professionalism’s decline? What about our poor public image? Our loss of purpose? Access to justice problems? Overwork? A decline in social standards generally?

It is easy to get swept up in the boiling mass of troubles that seem to afflict our profession, and in the confusion that accompanies it. But if, as I have sought to demonstrate, the fundamental feature of professionalism is a dedication to serve the interests of others, then we can find some clarity amid the chaos.

The extent to which lawyers have lost our sense of professionalism is precisely the extent to which we have lost our focus on our duties to others and on serving their best interests – and, not coincidentally, to the meaning and satisfaction of our vocations as lawyers. The less we dwell on others and the more we serve ourselves, the weaker do our bonds of professionalism become.

How did this happen? The unpleasant truth is that responsibility for the decline in professionalism in the law lies entirely with ourselves, in our failure to put the interests of others above our own. Through what we have done and what we have failed to do, both

individually and collectively through our governing bodies, we have neglected or at times even abandoned our commitment to service in the interests of others.

Books have been written on the myriad ways in which lawyers have sacrificed professionalism in pursuit of more self-interested goals. They make for lengthy and depressing reads, and I do not intend to recapitulate their contents here. But I will seek to support this contention by examining two factors identified by Justice Abella in her 1999 presentation: economic pressures and a preoccupation with process. To what extent do these elements hold the key to understanding our professional loss?

Economic Pressures

Justice Abella suggests that economic pressures are polluting the waters of professionalism. I am, entirely respectfully, not in complete agreement with that theory. Most current financial pressures on lawyers can be traced to a far more demanding marketplace, one over which lawyers have little or no control and in which we have not been trained to compete. The costs of failing to keep pace in that marketplace, as well as the rewards of succeeding, are much greater than ever before. There are bigger financial winners, and more abject financial losers, among lawyers these days than we are accustomed to seeing.

But it is difficult to show a causative link, or even a correlation, between rising economic pressures and declining professionalism. It is insufficient to suppose that lawyers in dire financial straits will put their own interests above their clients; indeed, failing to serve clients well is an effective way to make a bad financial situation much worse, and engaging in plain unethical behaviour is a direct route to losing one's licence to practise altogether. A lawyer who conducts himself professionally only when times are good had only a shallow grasp of professionalism in the first place.

Nor can a decline in professionalism be laid at the feet of simple greed, unless we accept that greed is an entirely new phenomenon that has emerged only in the last generation. Throughout the law's long history, there have always been lawyers who made financial gain at any cost their main priority. But their actions and attitudes did not cause a breakdown in professionalism among their contemporaries; if anything, they resolved lawyers to strengthen it. Today's hourly rates and profits-per-partner may seem staggering; but do we believe that if lawyers' fees were capped, professionalism would stage a sudden comeback?

The equation between economic pressure and professionalism makes more sense if we reverse its direction, and consider that it is a decline in professionalism – a failure to properly prioritize service to clients and to others – that directly leads to financial difficulty. New lawyers, to this day, are constantly lectured that success comes to the practitioner who provides excellent service, builds solid client relationships, and maintains standards of professionalism within the legal community. And it takes only a quick review of the sad cases of lawyer discipline in the *Ontario Reports* to find a link between an abandonment of client care and a broken career. In the law, the formula is

simple: service equals success. Professionalism – service to others – was never a mere gilded adornment atop lawyers’ status and success; it did and does lie at its heart.

There is, however, one instance in which lawyers’ pursuit of financial self-interest has arguably damaged our professional obligation to serve the interests of others. It involves the marketplace for legal services, and lawyers’ insistence that we maintain control of it.

Legislation across Canada governing the provision of legal services contains numerous restrictions on who is legally permitted to offer such services. Lawyers either helped enact these restrictions, or support their continued existence. These restrictions exist ostensibly to protect the public from the unscrupulous or incompetent provider – in effect, anyone who is not a lawyer or under the authority of a law society. This is the natural result of lawyers’ conviction that only we are qualified to provide competent and reliable legal services to the public.

Numerous exceptions to lawyers’ exclusivity in legal service provision have been created over time by non-lawyers seeking to break into the market. Lawyers have invariably opposed these efforts (and continue to do so). When pressed to explain why, we maintain that we seek to “protect the public.” It is a mere byproduct that lawyers retain near-exclusive access to legal work as a result, that we need only compete with each other. We have no market incentive to lower our rates, to provide innovative services, or to otherwise upgrade our offerings in response to competitive pressures.

Members of the public might offer a different interpretation of “protecting the public.” They might suggest that it means serving the public’s best interests, which includes allowing people to choose the type of legal services provider they want at the prices they want to pay, and respecting their ability to live with the benefits or consequences of those choices. A competitive marketplace in every industry inevitably brings about more choice, lower prices, more innovation, and a higher quality of offerings. As consumers, lawyers benefit from open marketplaces in every facet of our lives; as lawyers, we deny those same benefits to members of the public. Protectionism is not professional.

Far from worrying about the effects of economic pressures on our levels of professionalism, lawyers should have more confidence that dedication to the best interests of clients and the community is the surest route to financial success. And we should have more confidence in our ability to triumph over non-lawyer competitors by the same expedient – confidence that our fundamental devotion to service is the greatest competitive advantage we could wish to own.

Preoccupation with Process

Justice Abella also states, correctly in my view, that the justice system is too expensive, complicated, plagued by delays, and for all intents and purposes, inaccessible to the great majority of people. She also observes, again rightly, that the breakdown in meaningful access to justice is our responsibility: we are the gatekeepers to the courts and the justice system. Once again, however, I do not believe that a stultified justice system is causing a crisis in professionalism; I believe it is the other way around. The stultified justice system

is a product of lawyers thinking too much of our own preferences and not enough of others’.

There is a fundamental disconnect between how lawyers view the justice system and how clients view it. Lawyers are trained, from the first day of law school, to get the right result, no matter what. The underlying theory of the common-law adversarial system reflects this: two learned advocates, zealously advancing their clients’ cause, will produce for an independent judge the means by which the correct result can be identified and proclaimed. The costs involved in reaching this result, in terms of time, money and impact on lives, are, from the lawyer’s point of view, of secondary importance to the overarching goal of the system: justice must be done.

To see an illustration of this philosophy, consider the discovery process, a major contributor to the length and cost of trials. Lawyers are trained to believe that anything that can be construed as potentially relevant should be made available for them to sift through. Inclined by both nature and training to be thorough to the point of perfectionism, lawyers want access to every stone for the purpose of turning it over. Similarly inclined towards risk aversion, lawyers fear missing any relevant point, no matter how small, and accordingly are driven to ensure that every box has been checked. The result is often a massive overabundance of attention to the trees and little regard for the forest.

Clients, if asked, relate a view of the justice system that is markedly different. Some clients, it is true, have an obsession with vindication and show a dogged determination to see every dispute through to its bitter end. But most clients, when confronted with a legal problem or challenge, only want the problem to go away, as quickly and inexpensively as possible. They want to get on with their lives, their businesses, their personal recoveries, or their careers. They want the legal obstructions to that progress to be removed.

Most clients don’t want to wait longer or pay extra for perfectionism, or style, or the right answer above all else. In fact, many are open to receiving less than they might be due in exchange for expedient resolution. “Good enough” is all that many clients want. Or, as one in-house lawyer once put it, the outside law firm gave her a splendid dining room set with all the best features. But she had asked only for a chair.

In this respect, mediation has to be considered one of the real triumphs of public interest in the law over the last few decades: fast, fair, hands-on dispute resolution. Is it a coincidence that this solution, which works so well for so many people, functions by greatly reducing the role of lawyers and courts in the process and by serving clients’ interests directly? Is it happenstance that the only clients who insist on seeing a matter all the way through the courts are either rich or irrational, or both?

For all the strides that mediation or arbitration has made, lawyers still treat the courts as the default setting for settling disputes; the A in ADR, which stands for alternative, is testament to lawyers’ perspective in this regard. As Justice Abella observed, lawyers have made process king: we are conditioned to follow the traditional trail towards dispute resolution, with all the detail and effort that requires. And by a happy (for lawyers)

coincidence, the billable hour system means that the longer and more complicated the process, the more income lawyers generate.

If we, as professionals, are truly dedicated to the best interests of others (especially our clients), how is it that the court system remains so closely aligned with our preferences and interests rather than what clients want and need? How is that the epidemic of unrepresented litigants – would-be clients despairing of any help from lawyers – is not a burning crisis in our professional conscience? Whose interests is the current approach serving? Professionalism demands a better answer than the one we are looking at now.

3. How can we resuscitate professionalism in the law?

I got a bill from a lawyer today. The bill was for a few hundred dollars – nothing unusual or unreasonable for the services rendered. But at the bottom of the bill, under “Disbursements,” there was the following: “Postage: 0.52.” The postage, I assume, is for the stamp on this bill.

My dentist doesn’t charge me for postage. Neither does my doctor, my accountant, or anyone else who ever sends me a bill. Sure they build it into overhead, but that’s not the issue. Only my lawyer sends me a bill that charges me for the stamp they use to send me their bill. And this is pretty much all you really need to know about why so many people have such strong negative feelings about lawyers.

“They even charged me for the stamp,” blog entry by lawyer Rob Hyndman, October 26, 2007 (www.robhyndman.com)

So far, this paper has sought to establish that professionalism for lawyers lies in serving the best interests of others, and that this is a goal the legal profession largely fails to achieve. What remains is to chart a course back to a place where the law is once again deeply invested with professionalism – or preferably, chart a course forward, because the solution will not be found in old ways or habits. The world and the legal profession have changed dramatically since the foundations of lawyer professionalism were first laid, and so we will have to seek and adopt new approaches that can result in an even higher level of professionalism than before.

The depth and breadth of those changes cannot be overstated. And despite the foregoing assessment of the state of legal professionalism, it is undeniable that there has been a tremendous amount of positive change in the law over the last few decades. Mediation has been a huge step forward in dispute resolution, and clients have benefited from truly innovative advances in the types of solutions lawyers can offer, and the number of intelligent, focused professionals in the bar has never been higher: the quality of legal representation on offer is excellent. Technology allows us to deliver faster, more efficient services, while law practice management services and assistance are much more widely available and utilized than even a decade ago.

But perhaps the most striking positive change in the profession, as Justice Abella notes, is that diversity is a growing reality. The exclusive world of white male lawyers from privileged backgrounds now seems a remnant of a black-and-white-photography age.

More women, more persons of colour, and a wider variety of backgrounds and experiences among practicing lawyers make for a richer, deeper and better bar.

But it is on this very point of diversity that we can start to see where the profession missed an important opportunity to reinforce professionalism.

Diversity in the profession is unquestionably good. But a diverse environment, by definition, is no longer bound by common histories and assumptions – the automatic, “tacit” consensus of which Justice Abella wrote disappears. As a result, we can no longer count on any implicit, generally accepted understandings of what it means to be a lawyer. Our values and purpose now need to be promulgated explicitly and repeatedly at every opportunity. But that is not happening – and it has been not happening for quite some time.

Our legal culture has adopted the myth that if one spends enough time in the practice of law and the company of lawyers, one will eventually pick up, through osmosis, the deeply held values of our profession. This has not been a close-knit, familiar, “gentlemanly” profession for at least two generations, yet our approach to inculcating and enforcing professionalism in the law seems to believe that it is.

This myth must be abandoned. It is simply not good enough to drop new lawyers into the current environment and hope that the characteristics of professionalism will somehow rub off on them. But that is what we have been doing, and we should evince no surprise that as a result, professionalism today is only dimly understood and is practised as the exception rather than the rule. Today, a new lawyer may fairly ask whether there are in fact any deeply held values to which all lawyers subscribe, and if so, where she might go to learn them. We have ignored our obligation to train new lawyers in the ethos of professionalism.

The growth of diversity and the end of tacit assumptions should have been the signal for lawyers to entrench the ethic and practice of professionalism as our new common bond, through extensive education, training and mentoring. It was not. In the result, lawyers who seek inspiration in a sense of professionalism find no guiding light, no overriding sense of purpose, and no greater meaning to absorb and pass on to the next generation. And when higher purpose disappears, the human reaction is to turn one’s attention inwards, towards one’s own interests. That is where we are right now.

Justice Abella is correct to express concerns that if lawyers are seen to be motivated first and foremost by self-interest, then we will lose respect, business, and support for our independent governance. I submit, however, that that ship has already sailed. That is exactly how lawyers are now perceived – acting in our own interests first, in clients’ interests second, and in the interests of the public, the justice system, and doing the right thing much farther down the list, if at all. Accordingly, it should be no surprise that we have lost much of the public’s respect, we are losing their business to non-lawyer legal service providers, and we are hearing the first grumblings about why lawyers should merit special treatment in their governance.

So what should we do? To my mind, the overriding imperative is for the legal profession, through the example and initiative of its leaders, to set professionalism as the fundamental standard of conduct for lawyers. It must be made clear what lawyer professionalism is – the pursuit and service of others’ best interests – and that it is not an optional accessory. Professionalism must be at the core of what we do, or it will not be there at all. To be ingrained in lawyers’ lives, professionalism must be taught from day one – in theory, in practice, and by example – and it must be enforced through the legal community’s standards of conduct.

This standard of professionalism must be communicated and reinforced at all three stages of lawyer development: law school, admission to the bar, and law practice itself.

Law school

Law schools do not teach professionalism, in part because few practicing lawyers teach or choose curricula, and in part because schools wish to keep their distance from the practicing bar. Professionalism is not taught as a separate subject, nor is it ingrained in the teaching of every other course. Law schools teach legal principles, reasoning and analysis, along with the basics of a variety of legal subject areas. In growing numbers, they teach legal ethics, and to a limited extent, they teach jurisprudence and legal philosophy. But they do not teach lawyers’ fundamental purpose: that we use the law to serve the interests of others.

This is not to say that the public-interest role of lawyers never comes up in law school; far from it. Professors speak to students about public service, social justice, and the need to stand up against inequality, often frequently. But service to the public and to clients is not a core subject; it is not even part of the curriculum. In law school, lawyer professionalism is incidental, in the margins, something for which students are not tested, graded or rewarded for mastering. Law schools do not prioritize professionalism, and students treat the subject accordingly.

By the time students finish law school, they will have spent three years learning about the purpose of the law, but not about the purpose of lawyers. It is unacceptable that a lawyer may progress three years into her career without receiving lengthy and illuminating instruction in legal professionalism. If law schools do not provide this instruction, it must be supplied from another source well before students earn their degrees. If lawyers do not understand the nature and importance of professionalism from the start, they will not believe it is important, and they will not practise it.

Law societies

Law societies do not teach professionalism; at least, not very effectively. To be fair, the bar admissions process is brief, an interregnum between law school and passage of the bar. Graduating lawyers do not spend a great deal of time in law societies’ company, and the precise nature of the bar admission process has long been hotly debated.

But if the recent report of the Law Society of Upper Canada's Licensing and Accreditation Task Force is any guide, law schools are providing more skills and professional development training than is the Bar admission course's own professional development program. The task force has recommended the abolition of the Skills and Professional Development portion of the bar admissions process, signaling that professionalism is not poised to be a subject of law society instruction anytime soon.

It might not be feasible for law societies to teach professionalism to new lawyers. But it is without any doubt the law society's responsibility to ensure that it admits no new lawyers who cannot demonstrate a clear understanding that lawyers' purpose is to serve others and the greater good.

The law society's mandate is to govern the legal profession in the public interest. It cannot hope to fulfill that mandate if it licenses new lawyers who have not been trained to understand that serving the public interest is the entire reason for having lawyers in the first place. It is incumbent upon law societies to ensure that the lawyers it admits to practice have received a thorough grounding in professionalism, and if law schools cannot or will not do so, law societies must find, license or create another instructing body that will.

Law practice

The practicing Bar does not teach professionalism: not to new lawyers in their articling year – which currently faces the possibility of abolition in Ontario – and not through the example of practicing lawyers' words, actions, behaviour and priorities.

This can hardly be considered surprising, nor can current members of the bar be held entirely blameworthy. Many received no formal instruction in professionalism and the principles of service, so why would they be expected to teach it themselves? As stated earlier, relying on the myth of "professionalism by immersion" is no substitute for formal training and no excuse for not offering it.

But neither does that justify the failure of the practicing Bar to teach and encourage professionalism the only way it can: through its actions. Every practicing lawyer, through the choices she makes every day, sends a clear message to those around her about how seriously she takes professionalism. Through her interactions with clients, through her dealings with junior lawyers, through her exchanges with opposing counsel, through the time she devotes to *pro bono* work and public legal education, and above all, through the standards to which she holds herself and those around her, a lawyer spends her days delivering a running seminar on professionalism.

Many lawyers do speak of professional behaviour, to their juniors and to each other. There is no shortage of noble sentiment among lawyers in this regard, and those lawyers who reflect it in their activities should be praised and emulated. But it is hardly necessary to repeat the trite observation that actions speak louder than words. We all have witnessed first-hand examples of unprofessional behaviour: hostile exchanges between lawyers, neglect of client inquiries, refusal of *pro bono* entreaties, poor oversight of new

lawyer training, advantage of others taken unfairly, profits prioritized over people, unjust client behaviour overlooked, lawyers satisfied with complacency, and too much more.

Every single one of these instances lowers the bar – in both senses of the phrase. Every violation of high standards of conduct reduces the incentive for others to aim higher in their own behaviour. Every self-serving action turns the profession's focus one more degree inwards. This cannot continue.

4. Conclusion

[T]he individual lawyer should do everything possible to assist the profession to function properly and effectively. In this regard, participation in such activities as law reform, continuing legal education, tutorials, legal aid programs, community legal services, professional conduct and discipline, liaison with other professions and other activities of the governing body or local, provincial or national associations, although often time-consuming and without tangible reward, is essential to the maintenance of a strong, independent and useful profession.

Rule XV, Commentary 4, *Code of Professional Conduct* (Canadian Bar Association: Ottawa, 2006)

What practical steps can we take to turn this ship around? Better minds must address this pivotal issue, but as this paper draws to a close, here are three courses of action that I suggest can and ought to be undertaken immediately.

- a. Professionalism requires a clear definition – we are a profession of service in the interests of others – followed by universal adoption and promotion throughout the country.
- b. Law societies and law schools must meet to determine how professionalism can be taught to law students. If a way cannot be found in law school, a way must be found outside it.
- c. The profession's leaders – law societies, bar associations, courts, the highest-profile law firms, and the most highly regarded lawyers – must provide outstanding leadership by practising, promoting, and demanding professionalism – every day, without exception.

To conclude this paper, allow me to suggest that the crisis of professionalism in the law may be best understood, and resolved, through the prism of our greatest gift: the lawyer-client relationship.

It bears repeating that lawyers, like the laws that enable our livelihoods, exist for the purposes of clients, not the other way around. Our profession, unfortunately, too often sees that in reverse, viewing clients primarily as a means to our own ends rather than as ends in themselves.

Our profession is deeply immersed in the concept of clients as sources of work, suppliers of problems, lifelines of status, fonts of revenue — as entities from whom we receive, rather than to whom we give. Too many lawyers, subconsciously or otherwise, regard clients as holding value only insofar as they provide us with the raw material of lawyering.

Immanuel Kant could have told us how categorically imperative it is to treat people as ends in themselves, that striving to enable another's dignity and happiness is the overriding purpose of human relationships. That, fundamentally, is why law remains an important calling and an immensely fulfilling vocation. When we subvert that fact by placing our own interests before anyone else's, we risk losing the right to call ourselves professionals and we risk losing our clients altogether.

Our clients are gifts to us, but not because of the work they bring us or the intellectual engagement their problems provide us. They are gifts because every day, they take us outside of ourselves – beyond the narrow fortress of our own interests and into the beguiling, bewildering, and sometimes mad world through which we all make our way, and through which we can help them.

Clients remind us that we are here to serve, and through their appreciation of what we do, their loyalty, and even their friendship, they recall to our minds the true rewards of lawyering, the gift of being able to make things better. Whenever we doubt our own professionalism, we should pick up the phone and call a client. The answer starts there.