

## MINUTES OF SPECIAL CONVOCATION

Toronto – Thursday, 16<sup>th</sup> June, 2011  
9:00 a.m.

The Treasurer (Laurie H. Pawlitz), benchers and their guests proceeded to the auditorium at Roy Thomson Hall for the Call to the Bar ceremonies of 300 candidates listed in the Report of the Director of Professional Development and Competence.

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## CONVOCATION WAS CALLED TO ORDER AT 9:00 A.M.

A quorum of Convocation was present.

The body of the auditorium was occupied by the candidates and their guests.

The Treasurer asked all present to stand for the National Anthem sung by Erica Huang.

The Treasurer welcomed the candidates and their guests.

CONFERRING OF AN HONORARY DEGREE

Mr. McDowell, a representative of the Professional Development and Competence Committee introduced the Doctoral candidate, the Honourable Robert J. Sharpe, and read the following citation:

“Treasurer, may I present to you and this Convocation, The Honourable Justice Robert J. Sharpe and request that you confer upon him the degree of Doctor of Laws, *honoris causa*.

Robert Sharpe was raised in Picton. Called to the Bar in 1974, Robert Sharpe has led a distinguished legal career. He was a law professor at the University of Toronto (1976-95) also serving as its Dean (1990 – 95). For a generation of students, he personified the “reasonable man”. He was Executive Legal Officer at the Supreme Court of Canada (1988 – 90). In 1995 he was appointed to what is now the Ontario Superior Court of Justice. He has been on the Court of Appeal since 1999.

A highly acclaimed author, he has published scholarly articles and books on law and legal history, receiving the Mundell Medal for Excellence in Legal Literature, the Canadian Law and Society Association Book Prize, the John Wesley Dafoe Book prize and the Walter Owen Book Prize. His scholarly interests are far-ranging and include legal biography, substantive law studies and social history. His book on Injunctions forms part of every barrister’s library.

He was elected a Fellow of the Royal Society of Canada (1991) and Senior Fellow Massey College, University of Toronto (2006), and received the Ontario Bar Association Distinguished Service Award in 2005.

Robert Sharpe is deserving of the highest honour this Society can bestow and I ask you to confer upon him the degree of Doctor of Laws, *honoris causa*.”

The Treasurer admitted the Honourable Robert J. Sharpe to the degree of Doctor of Laws, *honoris causa*.

Justice Sharpe addressed the candidates and their guests.

“Treasurer, Benchers, Justice Ducharme, new members of the bar, ladies and gentlemen

It is a great honour to receive this degree from the Law Society of Upper Canada and to share this day of celebration with all those who are called to the bar today. I congratulate the families and friends of those being called to the bar. You have provided encouragement, emotional and material support. You deserve credit for the accomplishment they mark today and I know that you will take pride in the successes that will inevitably follow.

I congratulate those being called to the bar. You become members of a learned profession that has deep roots in the history of this province. As lawyers, you are privileged. You should always remember with that privilege brings a duty – the duty to serve the public according to the Law Society’s high standards of ethical and professional conduct.

Canada aspires to be a just society. Canada’s laws, legal institutions and lawyers are a central feature of that aspiration. A sound legal system is essential to peace, prosperity and our democratic way of life. As men and women learned in the law, you hold the key that unlocks the door to justice. Without your knowledge and skill, the ordinary citizen cannot enter. When you take the barrister’s oath, you will promise that: “you shall neglect no one’s interest” and that “you shall not refuse cases of complaint reasonably founded”. As you take up your task and accept all the benefits of your legal education please remember that you also undertake the duties of a custodian to serve the public interest by serving your clients.

One of the central pillars of the Canadian aspiration to be a just society is the ideal of equality. We are a diverse society. We see our diversity as a source of strength. Our commitment to accommodate and respect difference is perhaps the most fundamental value we share as Canadians.

As you will learn before this ceremony ends, the Treasurer, Justice Ducharme and I, together with two individuals being called to the bar today and their families, have special reason to associate this ceremony with the ideal of equality. I have had a sneak peek at what the Treasurer and Justice Ducharme propose to say and I will not spoil this morning's story by giving away the ending now except to say, listen carefully, it is a great story and it has a happy ending.

The two cases they will describe serve as examples of the steps Canadian law has made on the road to equality. Equality is a fundamental value in a democratic society and yet, like so many other fundamental values, its precise meaning is elusive. Equality is an ideal, difficult to define and constantly changing in its application to different social circumstances. As one equality scholar has written: “[W]e all have an intuitive grasp of the meaning of equality...[y]et the more closely we examine it, the more its meaning shifts.”<sup>i</sup>

This is not the time or place for a lecture on the meaning of equality. But I would like to suggest that we view our commitment to equality as a one aspect of a more general commitment to keep an open mind, constantly to re-examine settled attitudes and beliefs. The two cases you will learn about challenged long-held beliefs about the roles of men and women and the nature of the family. Most equality cases require us to rethink well-accepted views and opinions. It is no accident that it was an equality case<sup>ii</sup> that gave us the metaphor of the constitution as a “living tree, capable of growth and expansion within its natural limits.”<sup>iii</sup> Over 80 years ago Lord Sankey coined that phrase in the *Persons* case, deciding that women, were indeed, “persons”, eligible for appointment to the Senate, and the notion that “The exclusion of women from all public offices [was] a relic of days more barbarous than ours”.<sup>iv</sup> He argued that it would be quite wrong: “to apply rigidly to Canada of today the decisions and the reasons therefor which commended themselves, probably rightly, to those who had to apply the law in different circumstances, in different centuries, to countries in different stages of development.”<sup>v</sup> The *Persons* case, the “living tree”, and the quest for equality remind us that to maintain a healthy legal system, one capable of serving the needs of our age and delivering on its lofty promises of justice for all, we must always keep an open mind. We must be prepared to listen to reasoned criticism and we must constantly strive for improvement. Many today find it shocking that the “famous five”, the determined and courageous women who fought the *Persons* case believed in the innate superiority of white European culture and espoused the cause of eugenics and the sterilization of those suffering from mental illness and disability. We regard those views as highly antithetical to the ideal of equality and ask “How could they have thought that?” But the question we really should be asking is this: what views do we hold that our great-grandchildren will ask in 80 years time: “How could they have thought that?”

The tree of justice and equality may never be fully grown, but we must be mindful that it is capable of growth and expansion only within its natural limits. As we nurture it, perhaps even prune it from time to time, we must take special care with its roots, the fundamental principles and values of our democratic way of life.

Today you become the custodians of a very good justice system - one of the best in the world. We have excellent law schools to educate young lawyers and to push the law to

new limits through scholarly research. We have an independent bar and judiciary, free of corruption and capable of delivering impartial justice in accordance with the law and based on evidence led in a public proceeding. We have a sound system of laws based legislation and the wisdom of centuries of common law jurisprudence. Canadian law promises equality and justice to all and we should be very proud of that promise.

But we must always be prepared to recognize the shortcomings of our justice system. My generation of lawyers and judges has left lots of work for yours to do.

One of our most pressing concerns is our failure to provide many Canadians with affordable access to our justice system. The Canadian justice system produces a very high quality product but it does so at a cost that is often beyond the means of ordinary people. And as Chief Justice Beverly McLachlin has stated: "The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical."<sup>vi</sup>

The road to justice and the road to equality is long and difficult. We are far from the end and the very nature of our ideals virtually guarantees that we may never reach the final destination.

But you are a diverse group that reflects the reality of Canadian society in the 21<sup>st</sup> century. To arrive at this point in your careers, you have all demonstrated a capacity for hard work and high intellectual achievement. I admire the spirit and ambition of your generation. You do not and you should not blindly accept things as they are. I am confident of your willingness and your capacity to take up the challenge that every new generation of lawyers faces: to make Canadian law and Canadian society more just, more equal and more accessible to all. I am very proud to share this occasion with you. I thank you Treasurer and I thank the Benchers of the Law Society for the honour I have received today. But most importantly, I wish you who are called to the bar every success in the future."

### CALL TO THE BAR

Ms. Boyd, Mr. Conway, Ms. Minor and Mr. Sandler presented to the Treasurer 300 candidates for the Call to the Bar as follows:

#### 300 CANDIDATES FOR CALL TO THE BAR

(list of candidates in Convocation file)

The Treasurer conferred upon the candidates the degree of Barrister-at-law and called them to the Bar of Ontario.

The Treasurer addressed the new barristers.

CONVOCATION ADJOURNED

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Following Convocation a Special Sitting of the Court of Appeal for Ontario and the Superior Court of Justice convened, the Honourable Justice Todd Ducharme presiding.

The candidates were presented to Justice Ducharme before whom they took the Oaths and acknowledged their signatures on the Rolls in the presence of the Court.

Justice Ducharme addressed the new barristers and solicitors.

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<sup>i</sup> Sandra Fredman, *Discrimination Law* 2<sup>nd</sup> ed. (Oxford: OUP, 2011) p. 1.

<sup>ii</sup> *Edwards v. Attorney General for Canada*, [1930] A.C. 124.

<sup>iii</sup> *Ibid.* at 136.

<sup>iv</sup> *Ibid.* at 128.

<sup>v</sup> *Ibid.* at 134-5.

<sup>vi</sup> Right Honourable Beverley McLachlin, P.C., “The Challenges We Face” Empire Club of Canada. Toronto, March 8, 2007.

Confirmed in Convocation this 22 day of September, 2011.

Treasurer