

## MINUTES OF SPECIAL CONVOCATION

Toronto – Monday, 18<sup>th</sup> June, 2007  
9:00 a.m.

The Treasurer (Gavin MacKenzie), benchers and their guests proceeded to the auditorium at Roy Thomson Hall for the Call to the Bar ceremonies of 281 candidates listed in the Report of the Professional Development, Competence and Admissions Committee.

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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 Genevieve Proulx.

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CONFERRING OF AN HONORARY DEGREE

Ms. Beth Symes, a representative of the Professional Development and Competence Committee introduced the Doctoral candidate Ms. Barbara Jackman, and read the following citation:

“Treasurer, may I present to you and this Convocation Barbara Jackman and request that you confer upon her the degree of Doctor of Laws, *honoris causa*.

Called to the Bar of Ontario in 1978, Barbara Jackman has earned the reputation of being one Canada’s most effective advocates for refugee rights.

Throughout her career, she has shown a commitment to the highest ideals of the legal profession. She takes on the most difficult cases - difficult because of the clients, the legal issues and public reaction. In doing so, she demonstrates a remarkable commitment to persons whose life experiences have been so very different from our own, and she does so without thought of self-interest.

Dedicated to public service she works tirelessly as a mentor, a lecturer, and as a leader and member of numerous community associations.

Barbara Jackman is truly a role model to those who follow her and I request, Sir, that you confer upon her the degree of Doctor of Laws, *honoris causa*.”

The Treasurer admitted Ms. Jackman to the degree of Doctor of Laws, *honoris causa*.

Ms. Jackman then addressed the candidates and their guests.

“Mr. Treasurer, Justice Then, benchers, ladies and gentlemen. Thank you for the honour bestowed on me today. And thank you for the opportunity to speak to those joining the legal profession today.

I am going to talk about the system of justice in Canada, which you have worked so hard over the last years to become a part of, because I believe that in becoming members of the bar, you do not just have a responsibility to practice ethically in the best interests of your client and as officers of the court, you have a responsibility to work on perfecting our system of justice.

Legal systems are only as strong as the individuals who sustain them and those people are products of the societies in which they live. In times of uncertainty or instability, there are stresses on any legal system. One only has to think of what has happened in other countries, Nazi Germany being the best known example, where the courts became part of a repressive regime, giving the sanction of legality to human rights abuses. The one with which I am most familiar is Chile. After the military coup of September 11, 1973, the legal system failed the vulnerable. Judges who had been called to the bar and appointed to the bench under a democracy became apologists for the military dictatorship. While there were judges who resigned or tried to maintain some legal protection for the detained and persecuted, they were not numerous. I met the Chief Justice at that time of the Supreme Court of Chile, Justice Retamal. He was one of the judges often in dissent, who did try to soften the impact of the dictatorship on the justice system. He indicated to me, sadly, that judges were meant to apply the law, not make it. This is, of course a fundamental principle, but a perverse one when the law being applied is unjust and persecutory in nature or the law is being perverted by the practices of despots.

In Canada since September 11, 2001 there have been stresses on our legal system. It is not surprising that the Supreme Court of Canada, four months after September 11 issued its judgement in *Suresh* in which it indicated that Canada cannot return a non-citizen, alleged to be a terrorist, to torture in another country, but left the door open to do so in exceptional circumstances, when our international legal obligations provide for no such exception. It is not surprising that Canadian officials have decided in many cases since the *Suresh* judgement that exceptional circumstances exist to return non-citizens, suspected of being terrorists to face torture. And sadly, it is not surprising that Canadian officials appear to have cooperated with countries like Syria and Egypt in sharing information or seeking it about Canadians, suspected of being involved in terrorism, who were being tortured in those countries to confirm the information received, or to obtain the information sought. We are not immune from the stresses of the current global conflicts.

We are lucky to live in Canada. We have a robust legal system which tries to correct its errors over time, which tries to ensure that private disputes are settled fairly, that government does not unfairly infringe the rights of those within our borders, be they citizens or others, and that, not just the rich, but the weak and vulnerable receive the protection that they need and the respect that they deserve.

But just as our society is not perfect, neither is our justice system. It is flawed. It is flawed because we are human beings. Those that make the laws do not always make just laws. Often they are reactive to events of our time, as with the Anti-terrorism

amendments to the Criminal Code. Judges that apply the laws often bring their own personal biases into their decision making, even if only subconsciously. They often act on the fears of our society. And the players in the system are reflective of their own histories, life experiences and influences. For too long those who participated in the justice system in Canada were mostly men, middle class, and white.

There have been improvements during the time that I have practised law. One is that the profession has become more inclusive and this is one way that the justice system will be better able to resist failure.

When I was called to the bar in 1978, almost thirty years ago, it was a time when women were entering the profession in significant numbers. Today, women lawyers are not only defence counsel, crowns, litigators. There are now many who are judges, Parliamentarians and policy makers. I believe that women are making a difference in the legal profession and in the justice system in Canada. One only has to read the judgements of a woman like the late Madame Justice Wilson, in cases like *Morgentaler*, the right to abortion case, to understand that women can, and often do, bring a feminine perspective to the law that impacts on the rights of all people in Canada.

Over the past several decades there has been another significant change in the legal profession. Reflective of our multi-cultural society, students from visible minorities, and not so visible ones, have been joining the legal profession in significant numbers. Lawyers from different backgrounds are important in both developing awareness within our system of justice of difference and increasing tolerance to it.

Constance Backhouse, a benchler and a law professor published a book in 1999 - *Colour Coded: A Legal History of Racism in Canada, 1900 - 1950*. She indicates from her research: "... the Canadian legal system played a principal and dominant role in creating and preserving racial discrimination. Racism is a deeply imbedded, archly defining characteristic of Canadian history. This is a legacy that has contributed in tenaciously rooted and fundamental ways to the current shape of Canadian society". It has not ended with the admission of persons of colour and other minorities to the legal profession, just as the admission of women has not ended the influence of sexism in the law.

Our courts are addressing racism in society, not just in the civil rights context, such as in relation to housing, employment and services, but also in the human rights context. Recent judgements from the Ontario Courts have recognized racial profiling by the police exists in the criminal justice system and that it is wrong.

But racism is pernicious and it exists in the justice system. It exists in our profession. It is rarely obvious. While I am not a member of a visible minority or indeed any minority, I have spent the past thirty years representing non-citizens, of many distinct cultures and religions. I am aware of the role that racial or other profiling plays in the justice system. In the case of Arab Muslims alleged to be involved with terrorism it is often the profile, with its stereotypical assumptions, which sustains the case against the person. This is not easy to overcome, but I believe that it will improve, if only because our justice system will have to respond as it changes with the inclusion of persons from other backgrounds, cultures and religions. It is your generation that must tackle these problems.

It is of fundamental importance that we all recognize that there are serious problems in our justice system and that we must work to improve it and make it more responsive to the needs of all. The worst that we can do is laud ourselves for what a wonderful system we have. It is good, it is dynamic and it will never be the ideal system of justice that we all want and believe in unless we work at making it so. I think that my generation has contributed to this process. I'm glad that you are joining us in the legal profession and as players in Canada's justice system. I hope and expect that you will continue over the coming years, regardless of what course you take in law, to struggle for a better system of justice in Canada. Good luck."

### CALL TO THE BAR

Mr. Alan Gold, Ms. Judith Potter, Ms. Heather Ross and Mr. Alan Silverstein presented to the Treasurer 281 candidates for the Call to the Bar as follows:

### 281 CANDIDATE 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, with the Honourable Justice Edward Then, Superior Court of Justice presiding.

The candidates were presented to Justice Then before whom they took the Oath of Allegiance, the Barristers Oath and the Solicitors Oath and acknowledged their signatures on the Rolls in the presence of the Court.

Justice Then addressed the new Barristers and Solicitors.

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At the conclusion of the formal proceedings, the Treasurer and benchers held a reception and luncheon for their guests at Osgoode Hall.

Confirmed in Convocation this 20<sup>th</sup> day of September, 2007

Treasurer