

A LAWYER'S DUTY TO SOCIETY

By **Sylvia Corthorn**, Kelly Santini^{LLP} and
Reena Goyal, Fraser Milner Casgrain^{LLP*}

*Sylvia and Reena would like to thank their respective articling students, Michael D'Aloisio and Adrienne Silk, for their assistance with the research for this paper.

A LAWYER'S DUTY TO SOCIETY

Introduction

It has been argued that the defining feature of a profession is a commitment to promote and preserve the public good ... that the interests of society are advanced by the existence of a genuine legal profession rather than a legal industry in which lawyers operate businesses in the Law ...

The challenge faced by the profession is to instil, in difficult times, the sense of a corporate responsibility based on a genuine belief that the practise of the Law is a noble calling and not just a job.¹

This very event – a Symposium on Professionalism – is evidence of the belief of The Advocates' Society that lawyers are something more than service providers operating a market-driven business; lawyers are members of a profession. Your role as a participant in this event is to assist The Advocates' Society in defining what it means to be a member of the legal profession.

The legal profession does not exist as of right. As are members of other professions, lawyers are afforded privileges as part of a bargain with society, "in which they promise conscientiously to serve the public interest – even if to do so may, at times, be at their own expense."² These privileges include the right to self-regulate, the exclusive right to perform certain functions, and special status.

The special status which lawyers enjoy in society is referred to a number of times in the Rules of Professional Conduct of the Law Society of Upper Canada ("the Law Society"). For example, Rule 1.03 provides that "a lawyer has special responsibilities by virtue of the privileges afforded to the legal profession and the important role it plays in a free and democratic society and in the administration of justice ...". In a commentary to another Rule, it is stated definitively that, "A lawyer's responsibilities are greater than those of a private citizen."³

¹ Simon Longstaff, *The lawyer's duty to the community*, St. James Ethics Centre, 1995.

² *Ibid.*

³ See the commentary to Law Society Rule 4.06(1), Encouraging Respect for the Administration of Justice.

Few would argue that the special status of the legal profession in society has over time been eroded:

I know of no occupation more interesting, than to attempt to hold up to the lawyer, a faithful picture of his [or her] real mission. It then will be seen, that a large number of the lawyers are delinquents to society, not with malice prepense, but from a failure to appreciate the real and full nature of their professional duties.⁴

The goal of this symposium is to establish 'Principles of Professionalism'. Your group is being asked to develop principles which specifically address a lawyer's duty to society.

Framework for Discussion

Accepting that lawyers have 'bargained' with society in exchange for certain rights and privileges, the terms of the bargain must be examined and, perhaps, renegotiated from time to time; "society" is not a static entity.

What does 'Duty to Society' mean in the twenty-first century? Your examination of this duty is being made:

- At a time when mistrust of institutions is widespread. Lawyers have historically fallen below bankers and financiers in popular opinion polls of trustworthiness. Given the events of the past year, the legal profession (through no efforts of its own) might move ahead a few positions if such a poll were taken today;
- In the context of globalization. Lawyers today work with clients whose interests are international and who deal with individuals, institutions, and governments which may function without regard for democracy and/or the Rule of Law;
- With respect to a population that has changed significantly in the past half-century. Ethnic diversity in Canada has significantly increased. Progress in terms of gender issues has been made, but problems remain; and

⁴ John R. Dos Passos, *The American Lawyer: As He Was - As He Is - As He Can Be* (New York: The Banks Publishing Co., 1907) at 4-6; see also: Kenneth M. Rosen. "Lessons on Lawyers, Democracy, and Professional Responsibility", (Winter 2006) 19 Geo. J. Legal Ethics 155 at 159 (Lexis).

- In an era in which ‘corporate social responsibility’ is increasingly important. The public purse no longer provides for the welfare of every member of society. Corporate philanthropy has become part of the main stream. Individuals and institutions (corporate or otherwise) are being asked not only to consider the well-being of the people who live on this planet but of the planet itself.

The Rule of Law⁵

The ‘Rule of Law’ is a term to which reference is frequently made. The focus of the 2008 Advocates’ Society international trip was the rule of law. Yet, it is doubtful that every member of the legal profession is capable of articulating the meaning of the term.

To define “Rule of Law” for the purpose of this Symposium, we need look no further than the most recent edition of The Advocates’ Journal. A 2006 speech by The Right Honourable Lord Bingham of Cornwall, “*Fundamentals of the rule of law*”, is reprinted therein. He defines the principle in a single sentence as:

All persons and authorities within the state, whether public or private, should be bound by, and entitled to, the benefit of laws publicly and prospectively promulgated and publicly administered.⁶

Lord Bingham expands upon this definition by providing eight sub-rules. Not every one of the eight sub-rules is relevant to the discussion which this Symposium is intended to foster. The sub-rules that may be meaningful to the discussion are:

- That the law must afford adequate protection of human rights;
- That the laws of the land should apply equally to all, save and except that objective differences justify distinction; and
- That the rule of law requires compliance by the state with its obligations in international law.⁷

⁵ A phrase which has its origins in the late nineteenth century (1885).

⁶ The Advocates’ Journal, Winter 2008, page 3.

⁷ *Ibid.*, at pages 3, 4 and 5.

Lord Bingham concludes his discussion of the rule of law, referring to it as, “a principle of such manifest and fundamental importance as to animate not only our professional lives, but our lives as members of our respective societies.”⁸

Commitment to the Rule of Law

Both the Law Society Rules of Professional Conduct and the CBA Code of Professional Conduct include the following passage in commentaries to their respective provisions relating to the administration of justice:

The admission to and continuance in the practice of law implies on the part of a lawyer a basic commitment to the concept of equal justice for all within an open, ordered, and impartial system.⁹

The Canadian legal system is rooted in the two pillars of democracy and the rule of law. If lawyers are the officers and/or guardians of the Canadian legal system, then they arguably have a professional responsibility to support, and even stand up for those principles. In late 2007, lawyers from across Canada did just that in response to the plight of their colleagues in Pakistan.

These supportive demonstrations came in response to the decision of former Pakistani President General Musharraf to declare emergency rule. The declaration was precipitated in part by the decision of the Pakistani Supreme Court to hear a challenge to the ability of President Musharraf to run for another term as head of state while he remained head of the Pakistani military.¹⁰

⁸ *Ibid.*, at page 6.

⁹ *Supra*, footnote 3, and Chapter III, Commentary 1, CBA Code of Professional Conduct.

¹⁰ Calotta Gall and Jane Perlez, “For Musharraf, Reduced Power as the President” *The New York Times* (29 November 2007) online: *The New York Times*.

<http://www.nytimes.com/2007/11/29/world/asia/29pakistan.html>

Note: President Musharraf subsequently resigned his position as head of the Pakistani military.

The state of emergency included the suspension of the country's Constitution, the dissolution of the Supreme Court and the four provincial High Courts, the detention and house arrest of the Chief Justice of the Supreme Court, the detention of judges in the High Courts and other judicial officers, and the silencing of privately owned television news channels.¹¹

Amongst those arrested and held behind bars, one in four was a lawyer. Eighty per cent of the judiciary was jailed.¹²

In December 2007, over 300 members of the Canadian legal community marched through Ottawa in support of their legal and judicial colleagues in Pakistan. They carried with them a banner that read "Lawyers defending the rule of law". CBA president Bernard Amyot made the following remarks at the Ottawa march:

Today, in front of the Supreme Court of Canada - a symbol of the rule of law - we express our outrage at the treatment endured by our colleagues in Pakistan. We wish to reaffirm our commitment to the fundamental principle of the independence of judges and lawyers, and of the rule of law in a free and fair society.¹³

In Toronto, more than 400 lawyers (members of the Law Society and/or the Ontario Bar Association) participated in a gathering in front of Osgoode Hall.¹⁴ The LAW SOCIETY issued a news release in which it stated that:

The Law Society stands with its colleagues in Pakistan who are engaged in upholding the Rule of Law at this difficult time. We recognize that lawyers have a unique role to play in sustaining and developing democratic principles and commend our colleagues for their vigilance and their courage. The erosion of respect of the rule of law elsewhere threatens its tenuous position even in the most democratic societies.¹⁵

¹¹ Jane Perlez and David Rhode, "Pakistan Attempts to Crush Protests by Lawyers" *The New York Times* (6 November 2007) online: *The New York Times*.

<http://www.nytimes.com/2007/11/06/world/asia/06pakistan.html>

¹² Helen Burnett, "Lawyers support colleagues in Pakistan" *Law Times* (December 3, 2007) online at: *Law Times*. <http://www.lawtimesnews.com/Headline-News/Lawyers-support-colleagues-in-Pakistan>

¹³ *Ibid.*

¹⁴ Ontario Bar Association news release issued November 30, 2007: "The Law Society of Upper Canada and the Ontario Bar Association hold gathering calling for the return of the rule of law in Pakistan".

¹⁵ Law Society of Upper Canada, Media Release, "The Law Society of Upper Canada expresses grave concerns about the dismantling of the rule of law in the Islamic Republic of Pakistan" (November 9, 2007).

To date, many of the judges and other judicial officers who were removed by President Musharraf have still not been reinstated by (now) President Zardari.¹⁶ The Law Society issued a news release in November 2008 addressing the failure on the part of the current government of Pakistan to restore the Chief Justice of Pakistan and 14 Supreme Court judges to their respective positions, noting:

... with dismay that the elected government has tacitly accepted General Pervez Musharraf's unconstitutional actions, and has taken no substantive steps to reverse the unconstitutional actions of November 3rd, 2007. The Law Society of Upper Canada urges the government of Pakistan to reinstate all members of the judiciary who were summarily dismissed by former President Musharraf, and to work with both judges and lawyers to ensure the full operation of the rule of law and constitutional entitlements in Pakistan.¹⁷

Other examples of the commitment of members of the legal profession to the rule of law include the creation of, continued promotion of, and participation in Canadian Lawyers Abroad. This organization facilitates lawyers and articling students to work on overseas projects by brokering relationships with entities such as the Kosovo Law Centre.¹⁸ Another example is the CBA program, "Engaging Civil Society in Democratic Development". In this project, Canadian lawyers work in conjunction with the Nepal Bar Association. The goal of the program is to assist Nepalis in exercising their democratic rights and advocating for laws that protect these rights in a manner that reflects the culture, traditions and preferences of all Nepalese citizens.¹⁹

Lawyers, at least to some degree, accept and internalize the principles of democracy and the rule of law. The professional responsibility to understand and support these principles arises by virtue of the critical role that lawyers play in democracy and the rule of law.²⁰ Given recent world events, including those in Pakistan, does the definition of professionalism require a re-dedication to or re-statement of that role?

¹⁶ Law Society of Upper Canada, Media Release "The Law Society of Upper Canada expresses its support for lawyers and judges in Pakistan following the first anniversary of ouster of judges in Pakistan" (November 11, 2008).

¹⁷ *Ibid.*

¹⁸ For more information regarding international initiatives of Lawyers Working Abroad see: www.cla-ace.ca/klc.html

¹⁹ See www.cba.org/CBA/idp/programs/nepal.aspx

²⁰ One author suggests that a re-dedication by lawyers to meeting their responsibility to democracy might help to alleviate public scepticism of the legal profession.

Moral versus Legal Advice

Is a lawyer required to make an assessment of the ethics of client behaviour and, in doing so, provide moral in addition to legal advice? As long as the conduct of the lawyer in carrying out his or her work is not illegal, does it matter that the end result of providing the service is wrong in the context of the morals of society?

Consider these questions against the backdrop of an example taken from the post 9/11 political climate. In 2002, two White House counsel, John Yoo and Jay S. Bybee, were asked to provide a legal analysis of whether the interrogation methods used by the CIA on captured enemy combatants violated the Convention Against Torture And Other Cruel, Inhuman, Or Degrading Treatment (the “Torture Convention”), or otherwise created grounds for prosecution under domestic laws or by the International Criminal Court.²¹ Messrs. Yoo and Bybee issued an 81-page legal memorandum, commonly referred to as the “Torture Memo”. They argued that in order for an act to constitute torture the act must cause extreme pain.

They defined “extreme pain” as being equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or death.²² The definition was derived, not from consideration of international human rights law, or law of war, but from United States federal health-care laws concerning emergency medical conditions for the purpose of providing health benefits.²³

The Torture Memo proved to be the basis for coercive techniques used against several detainees at Guantanamo Bay as well as in Iraq and Afghanistan.²⁴

21 U.S. Department of Justice, Office of the Deputy Assistant General, “Memorandum for William J. Haynes II, General Counsel of the Department of Defense, Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States”, (the “Torture Memo”) at page 1.

See online: The Washington Post.

<http://media.washingtonpost.com/wp-srv/nation/pdfs/OLCMemo20-39.pdf?sid=ST2008040102264>

22 *Ibid.* at page 38

23 *Ibid.*

24 Milan Markovic, “Can lawyers be war criminals?” 20 *Geo. J. Legal Ethics* 347, (Spring 2007) at page 2.

Critics of Messrs. Woo and Bybee focus not on the fact of the advice being provided but on the manner in which it was provided – without consideration for what the client (the U.S. Government) was going to do with the advice. Critics suggest that the Torture Memo was written with complete disregard of the consequences of undermining both U.S. and international laws which prohibit torture and cruel, inhuman or degrading treatment. The authors of the Torture Memo are said to have been, “indifferent as to how their legal advice would be applied in the real world by the Bush administration.”²⁵

It is arguable that the authors of the Torture Memo served their client’s interests above all others. One author has described this approach to a lawyer’s obligations as a component of the ‘thin view’ of professionalism.²⁶ Adherents to the thin view argue that there is no residual duty to society if the lawyer’s duties to the client, the courts, and the Law are discharged.

The authors of the Torture Memo may have believed that they balanced their duty to their client against their duty to society on the basis that although some individuals might be harmed as a result of the advice given the client, the aggregate of this harm would be less than would exist if the authors failed to diligently serve the interests of their client – the U.S. Government (and, by extension, the people of the United States) in the post-9/11 era.

In contrast, the ‘thick’ view of professionalism requires that the lawyer’s duty to society is paramount to the lawyer’s duties to the courts and to the Law. To act in a way that might reasonably be foreseen to be contrary to public interest is inconsistent with the defining characteristic of a profession.²⁷ Therefore members of the legal profession who, when acting for clients, support harmful activity demonstrate a failure to understand that which is required to fulfill the profession’s duty to society. Following the thick view of professionalism would require that a lawyer provide moral advice to a client and, at the very least, not ignore what his or her client is going to do with that advice.²⁸

25 *Ibid*, at page 2.

26 *Supra*, footnote 1.

27 *Supra*, footnote 1.

28 *Supra*, footnote 22 at page 355.

The Law Society Rules of Professional Conduct arguably place the lawyer's duty to society above the duty to the client by requiring that the lawyer consider the end result of his or her advice in terms of the morals of society. Rule 4.01(2) states that, "When acting as an advocate, a lawyer shall not knowingly assist or permit the client to do anything that the lawyer considers to be dishonest or dishonourable."

Are lawyers in Ontario, by virtue of their membership in the Law Society, proponents of the 'thick' view of professionalism? If so, must the 'Principles of Professionalism' to which you have been asked to contribute include a statement that the duty to society is paramount to the duties to the client, the court, and the Law?

The Lawyer in a Global Society

To inquire as to the nature of a lawyer's duty to society begs the question, "Which society?" In recent months, in particular in relation to the impact of the economic crisis in the United States or the economies of the rest of the world, journalists have repeatedly referred to matters in terms of "geo-politics". In an era of globalization, with law firms having offices and clients not only throughout the country, but throughout the world, lawyers might be described as 'geo-professionals'.

What are the responsibilities and obligations of the legal geo-professional? This paper provides an example, from recent world events, as the basis for discussion of this question: A corporation, with operations throughout the world, assists a foreign government to investigate (if not prosecute and convict) a journalist for doing nothing more than send an e-mail message with news of events in the journalist's home country.

The Global Client

Should the 'Principles of Professionalism' include reference to work with clients whose interests are international and which may require dealing directly or indirectly with governments and/or laws which run contrary to the rule of law or, at a minimum, fall short of the rights and freedoms enjoyed in Canada?

Consider for example, the case of the Chinese journalist, Shi Tao, working for the newspaper *Contemporary Business News*. He was warned by the Chinese government not to overplay the 15th anniversary of the Tiananmen Square massacre. Mr. Tao subsequently used a Yahoo! e-mail account to relay the anniversary events to a New York website called Democracy Forum. The Chinese government sought to prosecute the Chinese journalist. Yahoo!'s Hong Kong division readily gave the Chinese government the e-mail account information for Mr. Tao. Mr. Shi was prosecuted for "illegally providing state secrets abroad" and sentenced to ten years imprisonment.²⁹

Yahoo! claimed that it was simply following the Chinese law. It is unclear whether Yahoo's action was voluntary or carried out in response to a Court order. Some argue that Yahoo! played a crucial role in linking the contents of the e-mail to Mr. Shi. Others argue that the e-mail account information was merely supplemental to the investigation, as the Chinese authorities had enough information to convict Mr. Shi without the information provided by Yahoo!

Regardless of the significance of the information provided by Yahoo!, the question for consideration is the conduct of Yahoo! in acceding to a request for information which it knew if provided would support the efforts of a repressive regime.

It is clear that Yahoo!'s motivation in carrying on business in China is economic and not the promotion of human rights or international law. As a member of the business 'community' in China, was the only requirement for Yahoo! that it follow local, albeit oppressive, law? Or, were the company's responsibilities and obligations under customary international laws and principles paramount? What advice is a lawyer to give the client when faced with the option of advising a client to adhere to the local law of an oppressive regime or to abide by and conduct itself in accordance with the rules and principals of international law?

29 James Heffernan, "An American in Beijing: an Attorney's ethical considerations abroad with a client doing business with a repressive government" (Summer 2006) *19 Geo. J. Legal Ethics* 721.

The Profession Reflects Society

It has been said that one of the “building blocks” of professionalism is leadership.³⁰ Does that leadership role encompass acting as “catalysts to influence change”³¹ in an effort to ensure that the makeup of the profession changes as the makeup of society changes?

The Law Society of Upper Canada Rules of Professional Conduct and the CBA Code of Professional Conduct both contain provisions which prohibit discriminatory practises.³² However, in neither document is there a provision which requires members of the profession to specifically promote diversity within the profession.

The Law Society of Upper Canada recently embarked upon a consultation process directed towards the retention of women in the profession. The end result is a report which addresses not only the increasing number of women who are leaving the profession but the “historic underrepresentation” of women who are members of Aboriginal, Francophone, and/or equality seeking communities. The authors unequivocally state that, “It is in the public interest for the providers of private legal services to reflect the makeup of the society in which we live.”³³ The authors of the report clearly take the obligations of the profession with respect to diversity further than does either of the Law Society Rules and CBA Code.

If the providers of private legal services are to reflect the makeup of society, then diversity within the profession must be based on more than gender alone and include diversity of individuals based on race, ethnicity, sexuality, etc.

Is the “makeup” of society limited to the personal characteristics of its members? Or, does the “makeup” of society also refer to changing societal norms and prevailing philosophies?

30 Chief Justice of Ontario Advisory Committee on Professionalism, Working Group on the Definition of Professionalism, December 2001, *the Gazette, Professionalism: A Century of Perspectives*, 2002, at 28-38.

31 Law Society, Consultation Report – Retention of Women in Private Practice Working Group (Executive Summary), Overview, Item 5 (February 21, 2008).

32 See rule 5.04(1) of the Law Society Rules of Professional Conduct and Chapter XX of the CBA Code of Professional Conduct.

33 *Ibid.*

Some would argue that the profession has been extremely remiss in responding to the changing family norms in society. Until the past half-century the working force, both professional and non-professional, was dominated by men with stay-at-home spouses. As a result, members of the legal profession were able, and perhaps even expected, to devote the vast majority of their time and their energy to their role as lawyers.

Lawyers today include not only men (and women) with stay-at-home spouses, but lawyers with spouses and/or partners who are also professionals or have otherwise demanding jobs, single parents, divorced parents, and individuals with the demands of significant elder care. Many young lawyers in particular – whether male or female – share equally in the parenting and household roles that historically fell to the stay-at-home wife. Reference to the term ‘work-life balance’ is more often than not made by the younger and/or newer members of the profession. With life expectancies increasing, older lawyers find themselves with the significant demands of elder care. In summary, traditional ‘family’ roles have changed in the past 50 years.

In “Elements of Professionalism”,³⁴ professional success is said to be about, “attitudes and character, and [to require] energy, drive, initiative, commitment, involvement and – above all – enthusiasm.” It is also suggested therein that what separates professionals from non-professionals is that the former provide a service as a matter of obligation. Is it possible for a member of the profession to ‘balance’ the fulfillment of all of these attributes with increased demands in relation to home and family?

Is the current demand – regardless of its source – for a less demanding culture and/or work environment a reflection of the erosion of the importance of professionalism in today’s society? Or, does the demand for such change signal that it is time to re-consider the terms of the bargain as to what professionalism means based on current societal norms?

34 Chief Justice of Ontario, Advisory Committee on Professionalism, “Elements of Professionalism”, October 2001.

“Corporate Social Responsibility”

Traditionally

A lawyer’s opportunity to fulfill his or her duty to community has historically been fulfilled through active participation in the governance of community affairs.³⁵ For example, by participation in local political activism, sitting on boards of local institutions, or spearheading and participating in legal education efforts. The latter might include speaking at local bar association education seminars or accepting a teaching position on the law faculty of a local university. It may also include providing legal services on a voluntary or *pro bono* basis at local legal clinics.

In today’s society, is there a requirement to do something other or more than the traditional to fulfill the profession’s social responsibilities?

Philanthropy

The title of this section of the paper is taken from an article which appeared in the Business Section of the December 17, 2008 Globe and Mail. The article focused on the importance to corporations of philanthropic activities in the communities in which they do business. It was therein suggested that the ‘standard’ level of corporate giving is one per cent of pre-tax profits.

As noted in the ‘framework’ section of this paper, the increasing emphasis on corporate philanthropy is in part a result of the decrease in government spending in support of various charitable and other non-profit activities. In today’s economic climate and for the foreseeable future, that decrease is unlikely to be reversed. Is the decrease in government support for such activities yet another change in the norms of society leading to the requirement to re-consider the terms of the bargain which the legal profession has with society?

35 Rosen, *Supra* note 3, at page190.

That is not to suggest that members of the legal profession – whether individually or through firm donations – have been uncharitable to date. To the contrary, members of the legal profession are among community leaders in terms of their support of charitable and non-profit organizations. However, the economy is not what it once was. Harbingers of doom suggest that there is risk of not only a lengthy recession but an economic depression.

Even in difficult economic times, lawyers are likely to remain, for the most part, members of the middle to upper classes. In these changing economic times, is there a requirement to specifically identify the philanthropic obligations of the legal profession? Should the legal profession promote a ‘standard’ level of philanthropy amongst its members (whether it is one per cent of pre-tax profits or otherwise)? What opportunities, other than through financial contributions, are there for the legal profession to make philanthropic contributions? Should those non-monetary opportunities also be reflected in a Principle of Professionalism?

It Isn’t Easy Being Green ³⁶

Former Vice-President Al Gore won an Academy Award and was a leading member of the organization which won the Nobel Peace Prize for work with respect to climate change. He is in large part responsible for making the environment and climate change part of the main stream consciousness. In our everyday lives we ‘think green’ in some way; whether it is through our use a blue box at home and in our offices, a donation to a wildlife fund, or the decision to use public transit, a bicycle, or our feet instead of driving our cars.

Does the duty to society require something more than the use of a blue box in our offices?
How ‘green’ must the profession become?

36 Signature song of Muppet, Kermit the Frog.

Legal publications are replete with articles on the ‘greening’ of offices. The August 2008 issue of Canadian Lawyer Magazine includes an article titled, “*Going green; The not so inconvenient truth about how to reduce your firm’s environmental impact*”. The article provides six tips on how to initiate a green movement within law firms. The sidebar to the article makes reference to CBA and American Bar Association ‘green’ initiatives.³⁷ The CBA initiatives began at least 17 years ago and include the 1993 *Eco-Practicum: The Canadian Bar Association Guide to the Environmentally Responsible Law Office*. The CBA is working on updating the practicum.

In a 2008 Harvard Business Review article, “*Should Managers Have a Green Hippocratic Oath?*”, it is stated that the next generation of business managers will, because of the scope of the challenge which climate change presents, have to become more socially oriented. In support of that statement, the authors of the article suggest that:

Management, in other words, will have to become more like the learned professions of medicine and law. Professions such as these are, at least in theory, characterized by an orientation to serving society - and they have something the profession of management does not have – a normative code or oath that encourages leaders to consider the broader implications of their actions.³⁸

Few would argue that an awareness of climate change and the damage which humans are doing to the planet is not a ‘norm’ of society today. Is this a new societal norm to which the legal profession must respond? Is the response so significant that it is to be incorporated into the Principles of Professionalism?

Conclusion

The matters discussed in this paper are intended as a starting point for our discussion of the duty which members of the legal profession have to society. The Advocates’ Society looks forward to having you share your views on the subjects discussed in this paper and on any other matters that you believe are relevant to the issue of the profession’s duty to society. In addition, The Advocates’ Society asks that you consider the principles you want to see included in the Principles of Professionalism to be identified at the conclusion of the Symposium.

37 See www.abanet.org/environ/claimatechallenge and www.cba.org/practicelink/greenlaw.

38 Harvard Business Review, website posting dated April 1, 2008.

This paper was prepared jointly by Sylvia Corthorn of Kelly Santini ^{LLP} and a member of the Board of Directors of The Advocates' Society and Reena Goyal of Fraser, Milner, Casgrain ^{LLP} and a member of the Young Advocates' Committee.

Sylvia and Reena would like to thank their respective articling students, Mike D'Aloisio and Adrienne Silk, for their assistance with the research for this paper.

December 23, 2008