

October 3, 2005  
Peter W. Hogg

UNIVERSITY OF MONTREAL HONORARY DEGREE  
(Acceptance speech for ceremony on October 6, 2005)

Introduction

Monsieur le Recteur, Madame la doyenne, professeurs, étudiants de la promotion, familles et amis ici présents.

[Mr Rector, Madame Dean, professors, members of the graduating class, their families and friends.]

Je vous remercie de cet honneur. Je suis très reconnaissant de le recevoir. Je suis fier de détenir un diplôme de l'Université de Montréal, qui est une institution tellement prestigieuse. En particulier, les professeurs qui enseignent et publient dans mon domaine de spécialité, le droit constitutionnel, sont les meilleurs au Canada. Les étudiants qui obtiennent leur diplôme aujourd'hui ressentiront la même fierté d'être membres d'une grande université.

[Thank you for this honour. I am very pleased to receive it. I am proud to hold a degree from the Université de Montréal, which is such a distinguished institution. In particular, the professors who teach and write in my field of constitutional law are the best in Canada. The students who are graduating today will feel the same sense of pride to be members of a great university.]

My French was learned in New Zealand and perfected in Toronto!

I have always felt a warm friendship with the Université de Montréal, because of the close relationship with the Osgoode Hall Law School of York University. We were the first two law schools in Canada to have a French-English, civil law-common law, exchange program for our students. Many students from both schools have participated in this program. There is also much collaboration between the professors of the two schools. In my first year as Dean of the

Osgoode Hall Law School, which was 1978-79, the Dean of the faculté de droit at Montréal, who was then Professor Claude Fabien, invited the Osgoode faculty to Montreal for a joint faculty seminar, which was a very successful event. And a couple of years later, when Professor Fabien had been succeeded by Professor Jacques Frémont, I reciprocated by inviting the Montréal faculty to Toronto for a seminar there. So I know that I am among friends today.

I congratulate the students who are graduating today. You have had to work very hard. And I also congratulate the many relatives and friends who are here today. I know that their affection and support played a big role in your achievement.

### The role of lawyers

A law degree is a wonderful credential in that it can form the basis for many different careers. Some of you will choose to practise law in a private law firm. Others will practise in government. Some will practise in community legal clinics. Some will not practise at all. You may teach in a university, or go into business. Whatever you do, your career will be interesting. But it will also be useful to society. The legal profession plays a fundamental role in organizing a civil society. As a constitutional lawyer, what I want to talk about today is the constitutional function of the legal profession. I want to answer this question: why is it important for a society to have lawyers?

If you pay attention to lawyer jokes, you would have to conclude that lawyers do not serve any useful purpose, and sometimes Shakespeare is quoted to the same effect. There is a line in Shakespeare that reads: “The first thing we do, let’s kill all the lawyers.” The implication that is usually drawn from this statement is that Shakespeare had a low opinion of lawyers. The statement appears in Henry the Sixth, Part 2, (Act IV, Scene II, line 83) which is one of the histories. The statement is made by a character called Dick the Butcher to Jack Cade, who is the leader of a rebellion against the King. Jack is commanding an army to seize the throne and abolish Parliament. He says “My mouth shall be the parliament of England.” (Act IV, Scene VII, line 17) He agrees with Dick the Butcher that he needs to kill all the lawyers in order to supplant the existing King and the existing laws.

What Shakespeare was really saying about lawyers was that they protected a society ruled by law. He recognized that the rule of law could easily be set aside by a tyrant if there did not exist lawyers who would insist on observance of the

law, and lawyers who would be willing to act for individuals who have been arbitrarily or unjustly treated.

In Canada we rightly value our civil liberties, which have their roots in longstanding French and English legal traditions, and which have been enhanced by our democratic legislative bodies. Many of them are now guaranteed by the Charter of Rights. But the truth of the matter is that nearly all countries have something like a Charter of Rights, and that includes the most brutal and oppressive dictatorships. As Shakespeare recognized, the reality of the protection of civil liberties depends upon the existence of an independent legal profession which is willing to represent those whose civil liberties are taken away. There must also be an independent judiciary that is willing to uphold the law even against the government or the wealthy.

The essential contribution of lawyers to society is to uphold the “rule of law”. That is a very vague phrase, and one that has been criticized as being nothing but meaningless rhetoric or even a smokescreen to conceal a system of oppression. But I am using the phrase in a very simple sense, meaning a society with a system of reasonably just laws where the law is generally obeyed, not only by the citizens at large but also by governments, government officials and police officers, as well as by wealthy individuals and corporations. It is a society in which corruption is absent or highly unusual, and where a breach of the law is met with impartial enforcement.

It used to be common to hear people say something like the following. The rule of law is just fine for wealthy countries, but it is a luxury that poor countries cannot afford. One of the contributions of the law and economics movement has been to show that the proposition is completely wrong. The correct proposition is as follows: A country cannot be successful unless it has the rule of law.

It is not hard to see why this is so. Property cannot be developed unless property rights are protected. Large scale commercial activity cannot take place unless long-term contracts are enforced. Banking, insurance and the rest of the infrastructure of commercial life are all based on the protection of property and the enforcement of contracts. Even agricultural activity that goes beyond subsistence requires the borrowing of money and the purchase of manufactured equipment. Without the rule of law, there is no security for property or contract, and commerce cannot flourish except at the level of the bazaar or with the cooperation of gangsters. Honest people will not invest in a country where the investment is not protected by law.

My point is that the role of the legal profession goes far beyond holding government to the law and protecting civil liberties. Those are admittedly dramatic functions of lawyers. But lawyers are implicated in nearly all of society's activities, and certainly in all of the economic activity in the private sector. By holding everyone to the rule of law--not by any means just government--lawyers make economic development possible. Capital can be safely accumulated, property can be developed, energy can be produced and transported, railways, roads and airports can be built, businesses can be organized, goods can be manufactured and sold, taxes can be collected, and with those taxes hospitals, schools and universities can be established. We take these things for granted, but they are not taken for granted, and are not possible, in many of the countries of the world.

Obviously, economic development is the product of many factors, but one essential ingredient is the rule of law, and the rule of law is administered by the legal profession.

The conclusion is that the legal profession is one of the critical institutions of our society, not only in protecting our civil liberties, but also in keeping the economy working. You will soon be joining this institution, and you can now play the role that suits your tastes and capabilities in building the future of Quebec and of Canada.

Félicitations et bonne chance!

[Congratulations and good luck!]

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