

A New Concord Between Bar and Academy? The Governor General's Speech to the Canadian Bar Association

By Ian Holloway

It is hardly an everyday occurrence for a viceroy to call publicly for a meeting with law deans to talk about legal education. But that is exactly what happened last week in Halifax. In his speech to the annual conference of the Canadian Bar Association, Governor General David Johnston spoke extremely candidly about what he saw as the challenges facing the legal profession today. He did not mince words; the picture he painted of the reality of legal practice in Canada was not soothing. And he laid a stark challenge before all of us who claim to believe that lawyers are the key to the survival of the rule of law.

Now however rare an occasion like this may have been, there are probably few people better qualified to speak to the topic than David Johnston. He is a double LLB (Queen's and Cambridge), a former law professor (Toronto) and a highly successful law dean (Western Ontario). He was also the chair of the inquiry into the so-called Airbus Affair. So he knows whereof he speaks.

(The Governor General is also surely the only viceroy ever to have been portrayed in a movie starring Ryan O'Neil and Ali MacGraw; one of his friends on the hockey team at Harvard was Erich Segal, who later wrote a hockey-playing character named "Davey Johnston" into the plot of *Love Story*. But that is to digress.)

In his remarks, Governor General Johnston offered Canadian lawyers a challenge: to craft a new definition of the lawyer as professional in time for the sesquicentennial of confederation in 2017. He set out the context of the challenge in succinct terms: "We enjoy a monopoly to practice law. In return, we are duty bound to serve our clients competently, to improve justice and to continuously create the good. That's the deal." He continued: "What happens if we fail to meet our obligations under the social contract? Society will change the social contract, and redefine professionalism for us. Regulation and change will be forced upon us - quite possibly in forms which diminish or remove our self-regulatory privilege."

Many of the problems that face the profession that he recounted are familiar ones: short-term greed clouding our duty of trust (witness the various corporate scandals of the past decade that involved lawyers), the inefficiency and unaffordability of the legal system (to wit the backlogs in trial calendars and the increasing number of unrepresented litigants), and the tyranny of the billable hour (which among other things leads to large firm life being very family unfriendly). But what makes this speech so refreshing is that it comes from someone of David Johnston's stature and experience. The usual form for speeches of this nature is for anodyne remarks,

sometimes bordering on pap. But our Governor General didn't pull his punches. He said, for example, that "for lawyers, education formally begins at the university level. But the foundation of knowledge for this profession is laid as far back as primary school and family experience. We learn about the rule of law, our history as a constitutional monarchy and some details of our legal system. But alas, we don't learn much." Strong words! But as he also said, "the oyster requires the irritation of a grain of sand to produce a pearl."

Turning to law schools, His Excellency said that the problem with legal education is that the gulf between bar and academy has become too wide. What we need to do – collectively, as common members of a craft – is to view the process of professional education as a life-long continuum. He suggested that a starting step in this regard could be the integration of the bar admission program within the LLB (or JD, as it's generally known now in Canada). He also felt that law schools could productively take a leaf from the medical schools in terms of the way in which we do admissions. Rather than simply admitting law students on the basis of raw intelligence (for which the LSAT score and undergraduate grades are used as a proxy), we could probe for things like "wisdom, judgment and leadership" and "ethical sensibility and depth." He spoke in admiring terms of the medical model of education where the schools are "close to the teaching hospitals, and students see patients early on in their education." He noted approvingly the phenomenon of the so-called "white coat ceremonies," which are akin to the Iron Ring ceremonies that take place in engineering schools, which many doctors and dentists and engineers will say serve an important socialization function. It is interesting in that regard that some business schools have begun to have ethical oath-taking ceremonies at the beginning of MBA programs. One wonders what an analogous ceremony for putative lawyers might look like.

It is difficult to take issue with much of what Governor General Johnston had to say. He *is* after all, one of us. And there are some within the academy – perhaps even something venturing close to a majority – who genuinely regret the fact that the bar and the law schools tend to behave as two solitudes. Some of his data points were a bit out of date (for example, some law schools, including Calgary, Windsor and now Osgoode Hall, *do* look at the "whole person" when it comes to admissions). Nor can one ever divorce the current relationship between bar and academy from history – which, particularly in the Governor General's home province of Ontario, tells a story of a bitter and vituperative struggle for control over legal education. Yet the recent discussions concerning the Federation of Law Societies Task Force on the Accredited Law Degree might give one cause for hope. Those discussions, particularly the parts concerning the content of the compulsory curriculum, have not been without drama. Yet on the whole, they've gone more smoothly and collegially than some expected they would. Thanks to the Governor General's challenge, perhaps the time is ripe for a bolder, more ambitious dialogue to begin.

The full text of the Governor General's remarks can be found [here](#).