

LEGAL PROFESSIONAL ETHICS ADDRESS

HON SIR BRUCE ROBERTSON KNZM, VGSM

LIVING WITH AND IN TENSION

There are few topics about which there are more high-sounding platitudes than the important obligations to which those who hold the rights of a lawyer in a society are subject. We are all very good at expressing the fundamental obligations and responsibilities, but from time to time it does us good to pause and consider how these really operate in practice day by day. It is a case of being pulled in several directions that must be recognised and accommodated.

It seems to me that the proper starting point is to remember what the law is about. In other words, why do we have laws, why do we have courts and why do we have lawyers? Constitutional theory properly tells us that there are three branches of government, but we should never lose sight of the fact that the legal branch cannot self-start. As a judge, I cannot wake up in the morning and think this is a good day for me to make some pronouncements about whatever takes my fancy. I am only called upon to assess and adjudicate if someone comes to the Court, lays a charge, commences an action, or initiates a proceeding in some other way.

Courts have a vital role to play in scrutinising human and government activity, but they must be asked to do so, which makes them different from the Legislature and the Executive. Secondly, we need to remember that people generally don't like the law or lawyers. They go to lawyers because they can't see any way of avoiding it. When a situation has been reached in which they can no longer cope alone, they turn in desperation to the law. They need and are entitled to clear and sensible advice about their predicament.

Our systems depend upon, and we are proud of, judicial independence. It is fundamental that those who make decisions do so without 'fear or favour, affection or ill-will', totally objectively and divorced from any interest of those who are involved.

We can all be proud of our independent judicial systems. But the problem is that our systems have become very difficult for many people to access. Their environment is daunting and, for most people, foreign and uncomfortable. The processes are complex and cost an enormous amount of money and it takes far too long to get a decision at all. As one cynic noted, the doors of the Courts, like those of the Ritz Hotel, are open to rich and poor alike, but only the very rich get to go in.

So bearing in mind the need for independence and the problems of access, what are the fundamental requirements for those who operate in the law, whether in court or not?

First and foremost, they have an obligation to get on top of their client's case. We often think in terms of lawyers as being good talkers but, truth to tell, they need to be good listeners also. They need to sit alongside and hear what it is that is being complained about or what it is that a client needs to be protected from or to gain. This requires the most careful preparation from day one. There is no point in issuing proceedings if you do not know or understand your client's case. I suggest that one of the greatest failures of lawyers is that knowing a small part of the matter in contention they promise the world and then find they cannot possibly deliver.

In my view that is a serious breach of their ethical position and does enormous harm to their authenticity and credibility as well as to their client's position.

Throughout the process, an ethical lawyer keeps a constant eye on the best outcome for his or her client. I haven't met anybody in practice who wanted to be used to create a case for the law reports or to advance some high principle. They wanted out as quickly, as cheaply and as painlessly as possible and an ethical lawyer never uses his client as a means of feeding his own ego.

If it is necessary to issue proceedings, make sure they are focused, accurate and intelligible. The kitchen sink approach, employing every sort of creative ingenuity that counsel can imagine, is not beneficial. Equally, when you come to present the case in court, an ethical lawyer speaks up and says what has to be said and then as quickly shuts up and sits down.

When questioned by the court, if you don't know the answer, say so and offer to find out; but never—never—never—fudge, pretend or try to skirt around an uncomfortable point. You are an officer of the court and you have an absolute responsibility to act with integrity at all times. You will not advance your client's position if you get caught out as someone who cannot be trusted.

For me, the other overwhelming ethical issue is the question of timeliness. Lawyers take too long to get cases started, to have them running and then, I regret to say, too often judges take too long in reaching a decision. Of course one should not, because of undue haste, sacrifice proper principle, but people want an answer and a conclusion sooner rather than later. They still have lives to live and the exhausting effect of litigation for even a lower level of dispute can never be minimised. The ethical lawyer at all times will listen as well as speak, disagree without being disagreeable and be utterly transparent in his dealings with opposing parties and with the court.

For me, these rather simple processes are the heart of legal ethics. It is at this simple level of human behaviour that you will be truly professional and best serve our communities. It is always good to remember that courts exist for the community and the people in it and it is regrettable that too often people are made to fit into the norms and requirements of the legal establishment rather than the other way round.