

A CODE OF LEGAL ETHICS

BY

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The Canadian Bar Association honoured me by a request, through the President and Secretary, "to prepare an address on Professional Ethics to be delivered to the Association at its annual meeting in Winnipeg in August;" and the Convener of the Committee appointed at Montreal in 1918 on Professional Ethics, was good enough to call upon me in connection with the request. From what was said by Mr. MacMurchy it appeared that the real matters to be discussed were the advisability of a written Code of Ethics, and the contents of such Code if it should be considered advisable to formulate one. To both the Secretary and Mr. MacMurchy I expressed an opinion adverse to a written Code of Ethics; and both desired me, nevertheless, to prepare an address on the subject.¹

In my own Province for nearly a century and a quarter, jurisdiction over the Bar has been exercised by the Law Society of Upper Canada, organized in 1797 under the authority of the statute of that year of the young Province of Upper Canada—and since that time no advocate has been heard by the Courts unless and until he has been called to the Bar by that Society. Full jurisdiction over the attorney or solicitor the Law Society does not possess: it prescribes the curriculum for, it educates, it examines, it certifies the fitness to be admitted as a solicitor of the candidate, but there its authority and duty end—and even that jurisdiction was not original, but was given by the statute of 1858. But in our system it has always been and is now the case that all but a very small percentage of solicitors are barristers, and of barristers are solicitors.

The first chapter of the first Statute of the Province of Upper Canada (32 Geo. III., c. 1), introduced the laws of England as the rule for decision in all matters of property and civil rights, while the criminal laws of England formally prescribed for the conquered colony by the Royal Proclamation of 1763 had been left untouched by the Quebec Act of 1774 (14 Geo. III., c. 85). Accordingly when the profession in the province was organized the law, civil and criminal, in force was the existing law of England (with a few trifling exceptions).

The Act of 1797 was intended to place the profession of law on much the same basis as in England, but the circumstances of