David Edward, QC, President of the CCBE, addressed the National Conference of the Law Society of England and Wales on 12th October last. The following is the text.

This is the first time that the President of the CCBE has had the privilege of addressing the annual conference of the Law Society. I bring to you the greetings of our body and of all those whom we represent in the nine member states of the Community, and I would like immediately to acknowledge the very great contribution to our work which has been made by the Law Society, by the members of the Council who have played a part in the United Kingdom delegation, and by members of the Law Society Secretariat who do a very great deal of work for the CCBE.

I suppose this is also the first time that a Scottish advocate has been given the privilege of addressing this conference, and I have been asked to bring you the greetings and good wishes of the Dean and Faculty of Advocates in Scotland, and to express their thanks to the Law Society and to their Secretariat for the help given in running the United Kingdom delegation and in particular the unstinted generosity of that help.

I think I should express a special greeting to our Welsh colleagues who share the good luck or the misfortune (according to taste) of not being devolved and also, in both capacities, to our colleagues in Jersey. As a Scottish advocate, I find myself at home because the lawyers here are called advocates too; but from a European point of view, events have occurred within our lifetime on the land of these islands which give particular significance to the words of the preamble of the Treaty of Rome '... to preserve and strengthen peace and liberty and calling upon the other peoples of Europe who share their ideal to join in their efforts...'.

The Royal Commission dealt with matters about which the arguments and the issues are familiar to you. They were predictable arguments; many of the recommendations were predictable and many of the consequences are predictable, at least in national terms.

My subject concerns issues which are new and very hard to define. The consequences of our accession to the European Economic Community are uncertain and very hard to predict. My personal belief is that the fact of accession will have consequences quite as profound for our profession as any recommendations of the Royal Commission.

First, let me say what, as I understand it, are the problems of the practitioner in facing the new challenge of the European Community. It has been said to me that the average practitioner is simply scared silly by the prospect of being inundated by new laws and new procedures. He is afraid of competition from foreign lawyers. He is afraid that the English system—the common law system—will simply be absorbed into the civil law system of the Continent. He is afraid that there will be a loss of the role and status of the British solicitor. He is afraid of mindless metrification of the profession and what it stands for. Court practitioners are afraid of the effect on court work and many lawyers in the provinces are afraid that there will be an increased dominance of the profession by London, and perhaps also by Paris and Brussels.

Leaving aside fears, practitioners ask themselves: what does it mean for me? Have I a chance to extend the scope of my practice? Provincial lawyers ask: will this perhaps redress the balance between London and the provinces, and in any event what action should I or my firm take to cope with this new challenge?

These fears are shared and these questions are asked by lawyers in all the member states of the Community. You are not alone in having those fears and you are not alone in asking those questions. I will try to help to answer the questions. I will within limits try to allay the fears, but I cannot be wholly reassuring and I cannot answer all the questions in the time available.

The starting-point seems to me to be this. As far as the law is concerned, our membership of the European Community is not, as some politicians appear to think, either temporary, provisional or optional. It is a fact that the United Kingdom is a member state of the European Community. That fact has clear and, within limits, definable legal consequences, and as lawyers we cannot afford to ignore those legal consequences. The speed of future development of the Community may depend on the will of politicians, but many of the legal consequences are here now and, as I say, as lawyers we cannot afford to ignore them.

It is sometimes suggested that the European Community is just a super free trade area and the Treaty of Rome is just another international treaty. That in my opinion is a fallacy and a dangerous fallacy. Community law is part of our national law. It affects directly the rights and obligations of us as lawyers and of our clients in the national context—not only in a transnational or international context. For example, in a recent judgment of the Court of Justice in Luxembourg dealing with a directive on the rights of self-employed persons in manufacturing and processing industries, the Court said that that directive can be relied on by the nationals of all member states even against the state of which they are nationals. That means that a person who is entitled to the benefit of that directive can claim that benefit against his own government.

Another fallacy in my opinion is, 'Community law is difficult and we can leave it to the specialists.' I suggest that, in the mouth of a solicitor, that is like saying, 'Tax law is difficult and can be left to the specialists.' How can you go to a specialist if you don’t know that a specialist problem exists? And if you are a solicitor in daily practice, there must be time to go to the specialist and perhaps the client’s problem can't
In a case of conflict otherwise than as mentioned. Many have a nose for the existence of the problem in order to see is 10 per cent knowledge and 90 per cent nose. You must have the nose to enable you to find your way.

I would suggest that the notion that Community law can be left to the specialist might be looked at in the light of an analogy. In 1873, Parliament effected a formal fusion of law and equity and decreed that the rules of equity were to prevail in a case of conflict otherwise than as mentioned. Many common lawyers, including some judges, continued to maintain that they knew nothing of the rules of equity, and 100 years later there are still specialist problems about equity which demand the attention of the denizens of Lincoln's Inn. But could a solicitor in daily practice, either then or now, claim to say, "I can in safety to myself and my client ignore the rules of equity. I am a common lawyer and I know nothing of them and I care nothing for them?"

I suggest that Community law is rather the same.

Another attitude sometimes expressed is, "Well, that may be so, but Community law does not affect my practice. It's really concerned with agriculture, tariffs and customs, and restrictive practices."

Let me give you a few examples. Your client goes to France on holiday and he has a car accident and he is detained in hospital. What are his rights? Does he have a right to medical treatment in France? The same client in France on holiday has his car repaired. The repair has been badly done. On the way back on the Dover to London road the car bursts into flames. Where should he sue?

A Dutchman has come to work on the North Sea oil rigs. His family has been with him resident in temporary accommodation for eight months. His son wants to go to university. Can he get a student grant? Can he be refused a student grant?

Your client is a citizen of the Republic of Ireland. He has been convicted of a criminal offence in England. Can he be deported?

You are a solicitor in a coastal town and a Dutch fishing-boat is brought in, being accused of breaching British fishing regulations. Can you challenge those regulations, and, if so (and this is the point at which the aspect of urgency comes in), can the English court require the boat to remain in port with its catch until you have argued the issue of Community law?

An English manufacturing company comes to you and asks you to draft a distributorship agreement with an English distributor—an English contract between an English manufacturing company and an English distributor. The manufacturing company already has a distributor in France. Can you include in the contract with the English distributor any provision which will protect the agreement with the distributor in France, so that the English distributor is not to sell the products sold to him in France?

You are in a law centre or you are advising one of those for whom the Royal Commission rightly has expressed concern in relation to the need for better legal services. Your client is an Englishman. He has been refused social security because of the interpretation put on a statutory instrument or a ministerial direction by the man behind the counter in the social security office. That action or that interpretation appears to be intra vires according to English law. Can you attack it under Community law?

Lord Denning said that 'the Treaty is like an incoming tide. It flows up the estuaries and up the rivers. It cannot be held back'. May I carry that analogy a bit farther? The analyst may be able to separate the river water from the sea water, but does that matter to the man who goes swimming? If he can't swim he will still drown. The examples I have given will, I hope, show how Community law—because each of the examples raises a point of Community law—may affect any practitioner even dealing with the humblest client in the most everyday circumstances.

Now, faced with this, you may say, "Well, what can I do?" and here I can only give you a little advice from my own experience because I have had to do it too. Community law has not hit Scotland in any big way and it has hardly hit my practice at all, but because of my position now I have had to come to terms with it.

First of all, could I suggest that you spend one evening with the text of the Treaty of Rome. You don't need to have a book about Community law. You don't need to have an annotated text with references to hundreds of cases. Just get the Queen's Printer's copy of the Treaty and read it, because it is not written in the obscure terms of an English statute. In general, it is written in terms which are clear and which it is possible quite easily to understand.

Another thing you might do is to look at a book recently published by the College of Law, the series of lectures called 'EEC: A Tool Kit for the General Practitioner'. You might like to read the lectures by Lord Mackenzie Stuart on 'The European Communities and the Rule of Law'. Take out the All England Reports or Weekly Law Reports and look at some of the judgments of the European Court which are printed there. See how the judgment fits together; see how the Court approaches the problem and what the judgment looks like. Much of Community law is to be found in something called the Official Journal. At least find out where you can get access to a copy and look at one or two issues of it to see how it is laid out, to see the form of the texts which are published there. Join the Solicitors' European Group and subscribe to its excellent Newsletter. And I've been asked to say also, contact the Law Society if you need help; and if you need help on where to look for your law or how to start a law library of Community law, speak to the Librarian at Chancery Lane.

Above all, I would say, don't be scared. It isn't all that difficult to get the smell of what you are talking about if you bear one or two things in mind. First, don't read the texts of Community law—the Treaty, directives and regulations—as if they were an English statute or a statutory instrument. In Community law the intention is more important than the literal meaning of the words which are used; and in an analysis of whether a particular act is or is not in conformity with Community law, the reality of what is happening is more important than any theoretical legal analysis. The Court will ask the question in relation to a provision of national law, 'What is its practical effect? Does it obstruct the aims of the Treaty, even although the precise words of the Treaty don't appear to apply?'

Second, Community law is not 'law' in the narrow sense in which I think we have tended to become accustomed to use it in Britain. The United Kingdom Parliament has progressively removed whole tracts of social and economic life from the reach of law and lawyers, perhaps because lawyers in the UK have taken too restricted a view of what law is and what it ought to do for society. That is not so in the Com-
munity and here Community law owes a lot particularly to German law. Germany has a complete structure of courts dealing with many matters which here would not be dealt with by courts, as such, at all—finance courts, administrative courts, constitutional courts, labour courts and social courts. Issues are seen as legal issues, but that doesn't mean that these involve the application of 'law' in the sense in which we tend to think of it.

The third point: the European Court of Justice does make 'political' decisions. Its role can be compared with that of the United States Supreme Court. Don't press that parallel too far, but you know how the United States Supreme Court approaches the problems of discrimination and so on in the United States. To a certain extent the European Court of Justice is approaching the matters which come before it in the same way.

And, most important, remember that the Treaty of Rome is based, however defective its current practice, on the ideals represented in the preamble: '... determined to lay the foundations of an ever-closer union among the peoples of Europe; resolved to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe; ... resolved by thus pooling their resources to preserve and strengthen peace and liberty. ...' Whether you agree with these ideals or not, they are highly relevant to the interpretation and application of the Treaty and in particular the ideal of individual freedom—the right of the individual to live where he wants, to work where he wants, to sell his goods where he wants. The Court has said, 'The right of nationals of member states to enter the territory of another member state and to reside there for the purposes mentioned in the Treaty follows directly from the Treaty or from the provisions adopted for its implementation.' I don't believe that the rights given to individuals by the Treaty of Rome are rights which we as lawyers should regard as unimportant.

Now, can I turn to the effect on the profession? The effect, I think, is incalculable but what is unquestionable is that as a result of the Treaty, British lawyers have acquired new rights in other countries and lawyers from those countries have acquired new rights here.

In a case concerning the legal profession, the Court said that 'Freedom of establishment, subject to observance of professional rules justified by the public interest, is one of the objectives of the Treaty'. Now that may mean competition from a new source but the right is given by the Treaty.

And then it is said, 'The practical enjoyment of the right of freedom of establishment can depend upon national practice or legislation. ... It is therefore incumbent on the competent public authorities of the member states—including legally recognised professional bodies—that means, including the Law Society—to ensure that such practice or legislation are applied in accordance with the objective defined by the provisions of the Treaty.'

The Royal Commission has said that, in the light of their investigations, the right to provide services in other member states or the right of lawyers from other states to provide services here will probably not be used much because of the differences in the legal systems. That may be so. But what about, to begin with, the Republic of Ireland? And what about the interests of the client?

If you have a right to represent your client in another country—for example, if he is taken into custody on a charge of drunk driving—why not use that right at least to go and see him in prison and give him advice? It may be that the person best able to put forward a successful plea in mitigation, provided the court is prepared to hear him in his own language, is a lawyer who knows that client from of old.

It may be very far fetched to imagine that a German lawyer will come and conduct a long witness action in an English court. I don't think it follows that Irish lawyers will not use the rights which they are given in the United Kingdom or that you should not attempt to use the rights which you are given in other countries.

Another feature of this is that the problems dealt with or created by the Treaty of Rome are not Community problems only; they are not legal problems simply created by the Treaty. In many ways, they are world problems. The United States of America has very much the same problems about practice between states, and so does Australia. The mobility of lawyers is a new and growing problem for the professional bodies of nearly all countries, and that is because of the speed of communication and the speed of personal movement which makes it possible for a lawyer to be advising one client in London in the morning and another in Washington in the afternoon.

Law itself is becoming less national and the national qualifications of the lawyer are becoming less relevant to the service which he can provide in many situations. If you have a contract to build a hospital in the Gulf states where the contractor is a consortium of Scottish, French and Swedish companies, where the contract price is payable in Swiss francs, the performance bond is granted by a German company and English law is to apply to the interpretation of the contract, who is the best person to advise on that package? Many problems which are dealt with by lawyers nowadays simply defy analysis in purely national terms, and this is a problem which the profession must, I think, face.

But the Treaty also raises a different sort of problem, because it confers rights, and those rights involve corresponding obligations. If a lawyer has a right to practise in another country, the client is entitled to the same guarantee of competence and integrity which he can get from lawyers in his own country because of the professional rules which apply to them. I think that in the context of practice in the EEC, there is going to be a greater need (and this has been underlined by the Royal Commission) for rules to be capable of being ascertained because they are written down. We must attempt to create an effective system of discipline for lawyers who practise in other countries, whether temporarily or permanently, and we must ensure that the client in any country has an effective remedy against negligence or defalcation by the lawyer. That is one of the main problems with which the CEC is currently concerned.

Other problems created by the Treaty. The Royal Commission has said that they do not recommend inter-professional partnerships. The European Parliament in its report in the first directive on lawyers' services recommended the setting up of a system of international practices staffed by lawyers of different nationalities. How does one relate to the other? That is a problem we will have to face.

Education and training of the lawyer who is already qualified, must now take account not only of the lawyer's need to understand Community law as part of his national law, but also of the obligations to the public, the profession and his client which flow from the fact that he has the right at any time to practise law in eight other countries whose laws and legal systems are different from his own. Now it may be perfectly true that the wise lawyer will not enter upon the
national legal problems of another member state; but one problem which we have to face is, to what extent, whether he is wise or not, has he the right to do so and what preparation should we give him to be able to know at least where and how the law of another member state is liable to be different from his own? These are the kind of problems which we are seeking to deal with in the CCBE.

There is a tendency for people in the member states who are not very much interested in, and perhaps a bit frightened of, the effect of the EEC on practice, to think that those who are dealing with these questions at the Community level are blind believers in the European ideal and that we are not properly concerned with the interests of the profession in this country. Personally, I believe fervently in the European ideal but I am not blind to the defects of what happens at the moment. Just because I believe in it, that doesn't mean that I approve of wine lakes or butter mountains. It doesn't mean that I think it is a wise thing to try to control the noise of lawnmowers. In fact the more one becomes involved in this, the more conscious one becomes of its defects.

Having said that, I think that it is extremely unwise for us to attempt to confine the application of the Treaty within strict limits. That is not only inconsistent, as I have said, with the way in which the European Court approaches interpretation of the Treaty, but also, as I have sought to show elsewhere and I don't want to repeat, I believe that an attempt to limit application of the Treaty to the profession, to restrict its application and to preserve ourselves within our national boxes, is in fact the surest way to metrication of the profession.

I can assure you that those of us who are engaged in work for the profession at the Community level have it as our principal aim to protect your interests and the interests of your clients. For that we need your help and support, and I would like in conclusion to join my plea to that of Sir Henry Benson that every practitioner in the country should feel the need to support what his professional body is trying to do for him.