

# **“THE GREYING OF THE BAR”**

**Address**

**by**

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## THE GREYING OF THE BAR

And so what of this “greying” of the Bar, the topic I have been asked by your association to address this evening. As you might imagine, from an exclusively personal perspective, I prefer to call it the “balding” of the Bar. However, such a title would be gender biased and egocentric. Therefore, the topic shall remain the greying of the Bar.

Definitionally, the Oxford English Dictionary might define the “greying” of the Bar, as “the demographically disproportionate trend of the increase in the median age of practising lawyers in Ontario in comparison to the median age of workers in that society generally”. In short, there are more old lawyers than young ones when compared with the population generally. Also, the greying of the Bar is scenario dependent upon locality and practice choice. Specifically, the greying of the Bar is far more prevalent in smaller and medium sized communities and among sole practitioners and small firms than it is in Toronto, the GTA or among larger firms. As you know, small firms are those having between two and five lawyers. Specifically, the statistics are startling:

- The LSUC observes that those practising as sole practitioners or within small firms are older in age than those in large firms and are disproportionately located outside of Toronto and the GTA;
- A comprehensive membership survey of the Hamilton Law Association published recently illustrates the following:
  - More than 61% of its members are at least 45 years of age and 47% of its members are above 50;
  - The average age is almost 48 years, higher than in 2004;
  - Younger lawyers are more likely to work in larger firms -- 35% of lawyers aged 25-34 practise in firms with more than 15 lawyers; More than 45% of lawyers 55-64 are sole practitioners and only 8% work in firms of 15 or more.

Interestingly, Hamilton has a population of 500,000 people. Moving to less urban centres, as one might expect, results in more dramatic disparity.

In fact anecdotally, in most counties outside of the GTA, Golden Horseshoe and the NCR, the average age of private bar lawyers is well above 55 years of age. The average working age of members within the community generally is in its mid forties. This means our profession (even in light of the educational requirements giving rise to a later start) is entirely off balance with societal demographics.

But the greying of the Bar phenomenon is also related to practice choice. In short, the private practice Bar is the disproportionately ground zero for greying of the Bar when compared to the lawyers joining government, practising as in-house counsel and other non-private practice roles.

Demographically, as we see from the Hamilton Law Association survey, it is also true that the discipline choice of younger lawyers is not simply to practise in large centres but to join large firms. Large law firms are garnering and attracting younger practising lawyers interested in practising in private practice to the near exclusion of sole practitioners and small firms, both within the large urban centres and without. Proportionally, more new lawyers practice in the GTA, in large firms and outside of private practice than ever before.

Is the greying of the Bar a problem? It is a problem because, as a profession, we are essential to the proper functioning of these communities, their social fabric, and, not to be alarmist, their goal of having a knowledgeable and democratic populace. Practising lawyers allow people to peaceably settle their disputes. We defend those subject to the overly grasping power of the state, those wrongfully accused and those seriously aggrieved. We assist those interested in buying the single largest asset of their life or buying and selling small businesses and other property. In less than a decade citizens will find very few practitioners on the other side of the office door in smaller communities --- unless the problem is highlighted and steps are taken.

Moreover, if only institutional and government bureaucrats, the rich and the large city dwellers have access to lawyers, then the legal system itself will succumb to runaway-self representation (a drag on the system which we all know, too well), lack of access to speedy justice and, perhaps most ominously, the resorting of persons to self-help and a belief that access to justice will not occur for them and that solving problems extra-judicially is a viable and perceived expedient option.

Apart from the societal impact, the consequence to our profession is equally clear, if not stark. The practice of law *per se* is based upon the theory of historical precedent and experience, mentoring younger members of the Bar and a duty to educate those succeeding to one's practice and calling. If there aren't young lawyers in our communities to whom we can impart and deliver that knowledge, experience and history, then there is a rupture of the continuum of the profession which has otherwise survived in this province, born and bred in these very communities where it now withers, for two hundred years.

So you say to me. You've identified the problem. What are you doing about it? Let me tell you what CDLPA is doing about it.

Firstly, we have recommended in respect of sole practitioners and small firm practices in smaller communities the following:

We have identified the need to make small law practices economic. To do so, we have and shall continue to focus upon Legal Aid Ontario in order to pressure for an increase the Tariff, to broaden the scope of work and types of files covered by certificates and to freezing the number of LOA funded Criminal Law Offices (currently 3) in predominantly smaller communities.

Secondly, CDLPA has recommended to the Law Society that it consider reducing levies; membership fees; and E & O insurance rates, for those new lawyers in sole and small firm environments in geographically identified areas (namely small and medium sized towns).

Thirdly, we have recommended approaching the major banks regarding Young Lawyer “Start Up” Credit Facilities. Most chartered banks in Ontario view professional lawyers as creditworthy customers, good consumers of bank service and, in some instance sources of referrals. Banks also now manage retail banking operations on a regionally and provincially marketed basis. Not unlike the “pre-packaged” university graduate banking product, an effort should be made with the major banks to establish a somewhat “pre-packaged” credit facility applicable to lawyers recently called who seek to practice as Soles and Smalls in identified geographic areas.

Secondarily, in terms of increasing new practising lawyers, CDLPA has suggested ways to make entry into small town and small firm practice more attractive. These suggestions include:

The refocus and highlighting of Joint Regional Articling Resources. In conjunction with the LSUC, proposals and templates regarding the collective hiring of articling students on a county wide or even multiple county basis (where resources are scarce) are presently developed by the LSUC, but require highlighted dissemination among the practising Bar in various communities. Coupled with proper support and mentoring, this may introduce young students-at-law and, ultimately lawyers, to geographic regions where no exposure has existed for some time.

Local and Regional Mentoring Committees through CDLPA’s structure and its Regional Representatives, regional and local mentoring systems for young lawyers and articling students will hopefully be established. This can also include contact with local chambers of commerce, economic development officers and other community promoters to educate them on the need for attracting young lawyers and thereafter enlisting these agencies’ resources and information services into the effort.

CDLPA supports educating the practising bar on succession. All CDLPA Presidents will have a standing item placed on each Plenary Agenda relating to the “state of practice” in the counties with a critical element being succession, the recruitment of young lawyers and support for initiatives to encourage same.

All of these recommendations were contained in a written report, brought forward by Orm Murphy and myself before plenary in November 2007. It received Plenary approval. We then took it to the Sole Practitioner and Small Firm Working Group of the LSUC upon which we both sit. I am please to say that all of the recommendations

sanctioned by Plenary have been adopted and will be recommended (in one form or another) by the LSUC Working Group to committee and ultimately to Convocation.

So much about the nuts and bolts of practice. What about the judicial system? In terms of insuring those practising in smaller communities have access to adequate judicial resources; CDLPA has identified the problems and recommended solutions with the release of the CDLPA Judicial Resources Survey just this month. The recommendations constitute various concrete proposals, benchmarks and standards that, if followed, we believe will result in a measurable improvement in available judicial resources, increased speed in accessing same and reasonable expectations in primarily smaller communities, where judicial resources have been dramatically eroded, cutback or atrophied in recent years. The need for access to justice in Haldimand, Lambton, Kenora, Renfrew or anywhere else in Ontario is quantitatively as necessary as in large urban centres. Qualitatively, there is absolute moral equivalency between small counties and large centres. These residents live in the same “free and democratic society” referred to in Section 1 of the Charter as those who are large urban dwellers. Moreover, enhancement of judicial resources in those counties will increase the attractiveness of these localities to young lawyers who might relocate there.

Licensing and accreditation is another area, where CDLPA is suggesting it can help the Law Society through the LSUC’s Articling Placement Office. Specifically, at Plenary in May in Windsor, CDLPA made suggestions for improving the licensing and accreditation program. This, as you know, includes the articling program. In the next week, I will be meeting with representatives of the Licensing and Accreditation Task Force of the Law Society, to deliver to that group some of these revised proposals coming out of Plenary. These proposals include working in a coordinated fashion with the Law Society and with other legal organizations, such as the Ontario Bar Association, to provide for a common approach to finding and completing articling placements, mentoring opportunities and marketing program development in smaller communities.

What new opportunities can we use? The internet is an amazing thing. Although embryonic in planning, CDLPA will try to enhance network communication of the attractiveness of sole practice, small firm practice and community life through the World Wide Web. Law school job fairs, career opportunities, job articling positions may all be communicated through a joint communications program delivered instantaneously on the internet. This will include, if we can swing it, an interactive virtual web network, involving County and District Law Presidents’ Association and each and every county law association throughout the Province. In addition, there will be key links to accessing assistance from the Articling Placement Office of the Law Society, tool kits regarding the establishment of new practices and information relating to each and every County and District Law Association in the Province of Ontario. Such a website will also detail financial assistance in the form of start-up capital and other discounts made available to practitioners establishing themselves in sole practice or small firms.

CDLPA, as mentioned will continue to fight for the expansion of legal aid certificates, the enhancement of the legal aid tariff, increased attention to the suggested

real estate fee guidelines and the enforcement of the regulation of paralegals to ensure that standards of practice to which the Bar is subject are applied with equal fervour to both paralegals and practising lawyers alike. Moreover, in the context of regulating paralegals, on CDLPA's watch, there will be no expansion of paralegal licences beyond the present limited scope of services.

This is what CDLPA has tried to do with your help, support and assistance, but we plan and will do more.

To have success in addressing the greying of the Bar, we must recognize that young professionals are now making choices in large numbers to opt for quality of family life, for localities which are not within large urban centers and for adherence to a lifestyle which is more balanced and less demanding in terms of work time. It's an odd irony that a generation that wants these goals also largely seeks to practice in large firms in large centres. Therefore, in addressing the greying of the bar CDLPA's goal is and remains, to marry the desire among the younger generation to have a quality of life with that very quality of life that is offered by being a sole practitioner or in a small firm or in a smaller or medium sized town.

Frankly, this connection has just not happened yet. On this issue, CDLPA intends to play matchmaker. We must ensure that the desires in column A of young graduand lawyers match up against the desirable attributes of small and medium size private practice in column B. To improve such future law practices, we must also ensure that current practitioners get the support and guidance they deserve. Stay tuned, provide us with your assistance and attention and we will be back to you shortly. CDLPA will strive to address the issue of the greying of the Bar through enhanced matching of opportunities and lifestyle to the desires of the new generation of young lawyers. With your help, some time and luck, together we will give the greying heads of the Bar a healthy dollop of grecian formula. Thank you.