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A Developmental Market: Growth Rates, Competition and Professional Standards in the Ontario Legal Profession, 1881-1936

Curtis Cole

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The Market for Lawyers in Ontario: 1931 to 1981, and Beyond

by David Stager*

I. THE LAWYERS' LABOR MARKET

There has been increasing concern among some members of the legal profession—not only in Ontario but also in other provinces of Canada and in the United States—that the sharp increase in graduates from law schools has resulted in a “surplus” of lawyers. As evidence of an alleged surplus, some point to the decrease in lawyers' earnings relative to other labor force groups and/or a decline in the quality of legal services provided to the public.

This paper examines historical data on the supply of lawyers, the limited data available on the demand for lawyers, and the earnings of lawyers; then considers whether the current market situation can be described as one of surplus, shortage, or balance; and concludes with an informal forecast for the future state of the market. The major focus throughout the paper is on lawyers in private practice in Ontario. The underlying analysis, however, appears applicable to the rest of Canada and the United States when one looks at the general patterns of supply, demand and earnings.

The notion that there is a “surplus” or “oversupply” of lawyers is usually based on one or more of the following observations:

1. The earnings of lawyers have declined relative to the average earnings for the rest of the labor force or for specific occupations;
2. There has been a slowing down in the annual increase of lawyers' real incomes;
3. There has been an increase in the unemployment rate for lawyers;
4. The rate of return to investment in legal education has declined;
5. The quality of legal services has declined because lawyers must do more work to attempt to maintain real incomes in the context of greater numbers of competitors; and
6. There has been an increase in “unnecessary” legal work generated by lawyers.

Each of these cases represents a possible adjustment when supply is in-

* Professor, Department of Economics, University of Toronto, Canada.

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creasing at a greater rate than demand, but none necessarily is evidence of a surplus.

From the economist's perspective, there is a surplus or a shortage of a particular kind of labor in the short run only if that labor market is not in equilibrium; that is, if the quantity supplied is not equal to the quantity demanded at the prevailing wage or price level. Rising or falling earnings therefore are not necessarily an indication of a shortage or surplus in a labor market since such changes may be a normal adjustment to relative changes in supply and demand.

An increase in the unemployment rate would result if most lawyers were able to resist the downward pressure on fees or if demand for services did not increase as quickly as supply. This could be either a short-run condition until the unemployed lawyers found employment or became self-employed, or it could be a prolonged condition as supply continued to increase faster than demand. The continuing unemployment would likely be signalled to potential law students who would choose other occupations, and hence reduce the rate at which supply was increasing.

The adjustments on the "demand" side are the most difficult to observe and measure. A decline in the quality of service or a contrived increase in demand for services each can take many forms and requires a thorough knowledge of both legal practice and statistical analysis.

This paper deals primarily with the lawyers' labor market, but two other markets are closely associated, namely the market for legal education and the market for legal services. For simplicity in exposition, the markets for lawyer services and for legal services are merged, but in a more extensive treatment of the subject the two markets should be separated so that the participation of paralegal occupations (law clerks, legal secretaries) in the legal services market could be considered fully.

II. SUPPLY OF LAWYERS

The supply of lawyers to private practice in Ontario depends on determinative factors at several stages. The college-age population together with factors influencing career decisions and admission policies determine the number of university undergraduates. These are the source for law school students, and subsequently the entrants to the Bar admission course and the persons called to the Bar. Newly-called lawyers then enter private practice or alternative employment. The supply of lawyer services will be further influenced by lawyers' decisions about where to practice, type of practice and hours of work. Each of these stages in the development of the supply of lawyers will be considered separately.

The base from which university undergraduate enrollments are drawn is the population aged 18 to 24 years. Figure 1 in the Appendix shows this age group for Ontario for 1961 to 1971 and projected to 2001. This university age group is expected to fall from 1982 until 1996 and to

increase thereafter.

The Ontario University full-time enrollment shown in Figure 2 of the Appendix indicates that enrollments are expected to decline from 1982 until the mid-1990's, with a return by 2001 to the enrollment levels of the early 1980's.

Enrollment in law school is primarily based on a decision to invest in human capital which will yield a lifetime stream of annual earnings. The demand for legal education therefore depends on the expected rate of return for that education relative to the expected return for other possible investments; and the expected rate of return on law school education depends on the costs of that education compared with the expected lifetime increase in net income associated with that education.

The supply of legal education is defined by the number of persons who can be admitted each year to the law degree programs. Supply is determined mainly by the provincial government, since it is the major source of income for the universities (apart from tuition fees which are also government controlled). Under the formula-funding arrangement, universities receive additional revenue for each additional student in a specific faculty or program. While the supply of places might seem to be unlimited under this financing arrangement, two factors intervene. Physical plant and other facilities are now virtually fixed due to government restraint on capital expenditures; and second, the allocation of funds within a university is not necessarily related to program enrollments. Moreover, it is exceedingly difficult to obtain approval to hire additional teaching staff. Any further increase in the quantity supplied will occur therefore only to the extent that there currently is excess capacity in the law schools.

Growth of law school enrollment since 1960 is shown in Figure 3. The most rapid increase occurred in 1963 to 1965, when enrollment rose by 16 to 18 percent annually. Law school enrollment doubled between 1961 and 1967. This was not only a response to increased demand for legal services; it was also at a time when university undergraduate enrollment was increasing rapidly. Consequently, law schools—as one of several professional training facilities—received at least their share of the university students. Law schools also experienced the general decline in the universities' growth rate in the early 1970's.

A major component in the enrollment increase in law schools has been the sharply increased proportion of female students, who now represent about one-third of the total enrollment.¹ Such an increase cannot continue at comparable rates, and consequently this factor alone would lead to a slower growth of law school enrollments.

Enrollment increases are approximately matched by increases in the

¹ M. Huxter, *Survey of Employment Opportunities for Articling Students and Graduates of the Bar Admission Course in Ontario*. Toronto: University of Toronto Faculty of Law, 1980.

number of law school graduates, with a lag of three years. The number of Bachelor of Law degrees shown in Figure 3 includes the Civil Law License awarded at the University of Ottawa, and thus includes persons who are not eligible to practice in Ontario. When these are subtracted from the total number of law degrees granted, the number called to the Bar follows closely the number of graduates two years earlier.²

Just as enrollments have remained roughly constant since 1975, so have the numbers of graduates since 1977, and the number of new lawyers since 1978. These plateaus are noteworthy because they are unique in the two decades under review.

Net additions to membership in the Law Society are shown in Figure 4 in the Appendix. This number includes not only the lawyers in private practice in Ontario but also those who practice primarily outside the province, persons employed in education and business, and those who are retired. There is only a weak correlation between the number called to the Bar and the annual increase in Law Society members between 1969 and 1978. Since that time, the number in each category has been roughly constant—about 1050 to 1075 called and about 890 to 910 net addition to the Law Society.

Annual data on the number of lawyers in private practice in Ontario are available only since 1971 (Figure 4). This group is a declining proportion of the Law Society membership, dropping from about 90 percent in the early 1970's to 72 percent in 1981. The net addition to private practitioners during 1971 to 1976 averaged 450 annually while those called to the Bar averaged 790. From 1977 to 1981, the average annual increases were 360 in private practice and 1031 called to the Bar.

III. DEMAND FOR LAWYERS

The determinants of demand for legal services include general factors such as the level of national income and the relative price of legal services as well as specific factors requiring legal attention. The latter would include real estate transactions, separations and divorces, wills and estate settlements, bankruptcies, security issues, patents and trademarks, collective agreements, criminal charges and insurance claims.

A recent American study examining the demand for legal services included several of these variables. It was found that:

[T]he quantity demanded of legal services appears to increase with the level of economic activity [real GNP], and divorce rate, the scale of judicial activity [district court cases], and may decrease with the scale of regulatory activity [real budgets of 15 federal regulatory agencies].³

² Comparison with two years earlier because LL.B. graduates then article for 12-14 months, followed by the Bar Admission Course for 6 months.

³ Pashigian, *The Market for Lawyers: The Determinants of the Demand for and Supply of Lawyers*, 20 J. L. & Econ. 53, 73 (1977).

The latter finding is especially significant because it has been generally thought that an increase in government regulation of business has increased the demand for legal services. The author concluded unequivocally that "the findings of this study suggest that the economic status of the legal profession is closely tied to the performance of the economy and not to the scale of government regulation."⁴

There are at least two other major potential determinants of demand for legal services, namely Legal Aid and prepaid legal services. If the provincial Legal Aid plan were to be expanded in terms of eligibility and funds, there would be an increase in the use of legal services. Similarly, because the ultimate user would pay only a fraction or more of the cost, prepaid legal services provided as an employment fringe benefit would also increase the demand.

The responsiveness of demand to changes in incomes is measured by the coefficient of income-elasticity. This is defined as the percentage change in quantity demanded of (or expenditure for) a commodity resulting from a given percentage change in income. One would expect the demand for legal services to be quite elastic with respect to income because so many circumstances that require legal services are positively related to income levels. Pashigian found this income elasticity coefficient to be 1.8 to 2.0. This means that for each one percentage point increase in real Gross National Product there was approximately a two percent increase in expenditures for legal services.

The current industrial distribution of Law Society members is shown in Figure 5. About 88 percent are employed in Ontario; of these, 82 percent are in private practice. The balance is almost evenly divided between government and other employment. The latter percentages have more than doubled since 1931 when they were approximately 3.5 percent of all lawyers.⁵

IV. LAWYERS' EARNINGS

The interaction of supply and demand for lawyers' services determines their wage rate (or fee) and their annual earnings. To assess the effect of changes in supply and demand, lawyers earnings should be compared with those in other professions or occupations because it is the relative rather than absolute levels which have the stronger influence on career decisions, and hence on future supply.

Long-run changes in earnings of salaried lawyers in Canada are shown in Figure 6 for the period 1931 to 1971. These earnings, when compared with average earnings for the total wage-earner labor force, show a steady decline from 379 percent in 1931 to 211 percent in 1951 and an upturn to 264 percent in 1971. This long-run U-shaped pattern in relative

⁴ *Id.* at 81.

⁵ Census of Canada, 1931.

earnings was also experienced by other professional groups such as physicians, architects and dentists.

Earnings data for self-employed lawyers were not available in the census until 1961. Longer-run data on earnings for self-employed professionals are available from the taxation statistics. These show an increase in the relative incomes of self-employed lawyers from 1951 to 1971 (Figure 7). This was followed by substantial decline to 1978, and then apparently a levelling to 1979. This placed lawyers at about the same relative position in which they had been in the early 1950's. This decline must be viewed cautiously, however, because this is due largely to the lowering of the median age of lawyers following the recent rapid increase in new lawyers.

In the United States, the legal profession had two extended periods of high relative earnings—in the 1920's and in the late 1960's-early 1970's.⁶ The reason for these peaks in earnings was a strong growth in the demand for legal services due to a rapid growth in real national income, with a slow supply adjustment in terms of places or enrollments in law schools.

The conclusion of this study was that there have been "extended periods of adjustment to long-run equilibrium" and that on balance there have been too few lawyers. Pashigian suggests that since at "the present time [1975] the earnings of lawyers appear to be abnormally high," the current concern about a future glut of lawyers should take into account the historical record of long-run adjustments.⁷

V. CONCLUSIONS AND FORECAST

"Are there too many lawyers?" One criterion or approach which has been used in simplistic manpower planning is to calculate the ratio of population per lawyer or number in the labor force per lawyer. While these ratios can indicate differences for special attention in making international or inter-regional comparisons, they are, otherwise, of little significance. To propose a particular ratio is to make an implicit judgment about the price and quantity of service which should be available per capita. Moreover, such a ratio would need to be adjusted for real incomes and other socio-economic differences among regions.

A more appropriate approach is to compare the rate of increase in the number of lawyers in private practice with the real economic growth rate. Figure 8 in the Appendix compares these two growth rates for Ontario from 1951 to 1980. A "warranted" growth rate, which is 1.5 times the real economic growth rate, has also been calculated as a conservative estimate of the rate of growth in demand for lawyers' services. This is based on Pashigian's estimated income-elasticity coefficient of 1.8 to 2, which

⁶ Pashigian, *supra* note 3.

⁷ *Id.*

would imply that the supply of lawyers would increase about twice as fast as the increase in real GNP.

On this basis it would appear that the stock of lawyers grew too slowly in the 1950's, and especially in the 1960's. For most of the 1970's, however, supply has increased more quickly than demand. The result for the whole period is striking. Both the stock of lawyers and real domestic product in Ontario increased by about 120 percent since 1951. These differential growth rates by decade are quite consistent with the data on relative incomes for self-employed lawyers; there was a slight overall increase in their relative incomes in the 1950's, a strong rise in the 1960's, and then a decline in the 1970's. These patterns also coincide with Pashigian's findings of slow long-run supply adjustment to the strong increase in demand in the prosperous period of the late 1950's and the 1960's.

In the next decade the most likely outcome will be that demand increases more quickly than supply. Consider first the supply side. In the past year (1980-81), the stock of lawyers in private practice in Ontario increased by 3.0 percent. During the five years 1976 to 1981 the stock increased at an average annual rate of 4.4 percent while over the previous five years the increase averaged 6.8 percent annually. Even when one allows for some imprecision of the data, there can be little doubt that the number of lawyers in private practice is increasing more slowly each year. The number of lawyers is likely to continue to increase more slowly now than in the 1970's and may indeed remain constant or even decline slightly by the end of the 1980's. This follows from the fact that university undergraduate enrollments likely will not increase after 1981 and could show a substantial decline. This will depend particularly on policies concerning tuition fees, student aid and government grants to universities.

Law school enrollments rose from 2.6 percent to 2.9 percent of the total Ontario undergraduate full-time enrollments from 1970 to 1978. (The long-term proportion has been about 2.4 to 2.6 percent). It seems unlikely that law school enrollments will rise above the 3.0 percent level, especially since the law schools are operating at full capacity and are not likely to be able to increase their staff or facilities unless there are dramatic changes in provincial government educational policies. Consequently, law school enrollments can be expected to follow closely the pattern of university undergraduate enrollments. There is no apparent reason to expect the ratio of law degrees to enrollments to increase, nor is there likely to be any significant change in the ratio of law graduates (LL.B.) to numbers called to the Bar, unless there is a relative increase in alternative employment for law graduates. All available evidence therefore indicates that the number of lawyers in private practice in Ontario will very soon reach a plateau and may even decline slightly.

Now consider the demand for lawyers' services. This is much more difficult to forecast. It is possible that there will be an increase in the

proportion who are employed by governments or corporations. The demand for services of lawyers in private practice will depend primarily on the real economic growth rate, and secondarily on policy changes such as may affect Legal Aid and on the development of demand by private citizens in the middle-income range.

The evidence from Pashigian's study suggests that the demand for legal services would increase at almost twice the rate of increase in real economic growth. If one assumes (very conservatively) that the latter will average about 2 percent annually over the next decade, then the demand for legal services should increase by about 4 percent annually. Compare this (probably minimum) estimate of growth in demand with the (probably maximum) estimate of increase in supply of 3 percent annually. It seems most improbable that there will be a surplus of lawyers in the next decade—unless the performance of the economy deteriorates still further. All of this analysis is based on the implicit assumption that the stock of lawyers in private practice in 1951 represented a market equilibrium. Their rising relative earnings of the 1950's suggests that at least there were not "too many" lawyers at that time, and more likely, there were "too few."

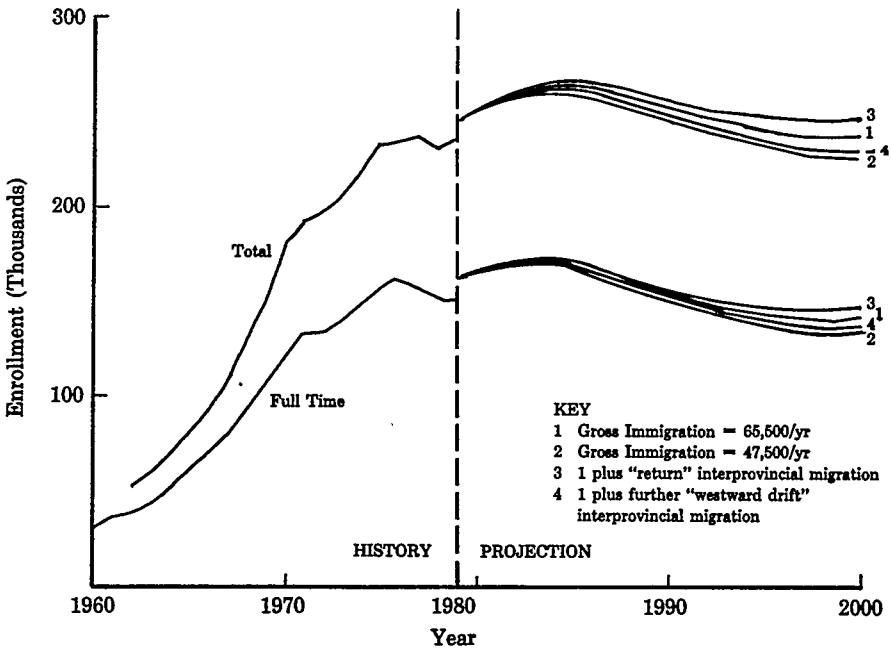
While the total labor market for lawyers appears to be in balance, there is little information by which to assess the regional or local situations. The Law Society now does have continuing data on the geographical distribution of lawyers, but there is no analyzed evidence on the demand side.

One could, however, make inter-regional comparisons of data on socio-economic data such as divorce rates, real estate transactions, real income, proportion of labor force in the service sector, criminal charges and civil suits, and then compare these data with the regional distribution of lawyers in private practice. Although these comparisons would not indicate a "correct" number of lawyers for each region or municipality, they suggest centers of stronger or weaker demand for lawyer services and thus offer guidance to young lawyers seeking a favorable location.

One major public policy action that should be implemented for all of the traditional professions is an increase in quantity and quality of information for students at their career-decision stage. They should be made aware of the cyclical behavior of these markets, of the wide variance around the mean incomes, of the alternative careers that can follow from any given university program—and this information should be kept up to date. Professional associations should take an active role with governments and educational institutions in collecting and disseminating this information.

Figure 2

**Historical and Projected University Enrollment.
Ontario, 1960-2000, Demographic Sensitivity**



Source: David Foot, A Troubled Future? University Enrollments in Canada and the Provinces, in David M. Nowlan and Richard Bellaire (eds.), *Financing Canadian Universities: For Whom and By Whom?* Toronto: OISE Press, 1981, pp. 37-63, chart 4.

Figure 3
Law School Enrollments, Degrees Awarded, and Number
Called to the Bar
Ontario 1960-61 to 1980-81

Year ^a	Full-time ^b Undergraduate Enrollment		Degrees Awarded (LLB and Licence)		Called to the Bar	
	No.	Inc./Yr. %	No.	Inc./Yr. %	No.	Inc./Yr. %
1960	904	-				
61	913	1.0	305	-		
62	1002	9.7	260	-14.8	304	-
63	1181	17.9	249	- 4.2	245	-19.5
64	1375	16.4	298	19.7	257	4.9
65	1627	18.3	315	5.7	235	-8.6
66	1714	5.3	400	27.0	282	20.0
67	1882	9.8	469	17.3	286	1.4
68	2101	11.6	520	10.9	348	21.7
69	2414	14.9	517	-0.6	397	14.1
70	2712	12.3	600	16.1	444	11.8
71	2914	7.4	726	21.0	455	2.5
72	3166	8.6	777	7.0	498	9.5
73	3415	7.9	874	12.5	601	20.7
74	3549	3.9	934	6.9	713	18.6
75	3758	5.9	1067	14.2	839	17.7
76	3796	1.0	1174	10.0	850	1.3
77	3727	-1.9	1255	6.9	945	11.2
78	3730	0.1	1232	-1.8	1008	6.7
79	3809	2.1	1203	-2.4	1073	6.4
80	3983	4.6	1219	1.3	1077	0.4
81	-	-	-	-	1053	-2.2

^a Beginning of academic year for enrollments, and calendar year for degrees and Call.

^b Part-time enrollments are a very small percentage of the total.

Source: Statistics Canada, *Universities: Enrollment and Degrees*, No. 81-204; and Law Society of Upper Canada.

Figure 4

Lawyers in Ontario, 1962 to 1981

Year	Members in Law Society			Lawyers in Private Practice			
	Number	Annual Increase		Number	Annual Increase		As % of Law Society
		No.	%		No.	%	
1962	5,317	-	-	 n/a 			
1963	5,501	184	3.4				
1964	5,651	150	2.7				
1965	5,850	199	3.5				
1966	5,942	92	1.6				
1967	6,136	194	3.3				
1968	6,327	191	3.3				
1969	n/a	527*	8.3*				
1970	7,381	527*	8.3*				
1971	7,666	285	3.9		6,602	-	-
1972	7,610	-56	-0.7	7,078	485	7.3	93
1973	8,668	1,058	13.0	7,597	510	7.2	88
1974	9,277	609	7.0	8,179	582	7.7	88
1975	10,025	748	8.1	8,726	547	6.7	87
1976	10,572	547	5.5	8,850	124	1.4	84
1977	11,542	970	9.2	9,004	154	1.7	78
1978	12,303	761	6.6	9,403	399	4.4	76
1979	13,213	910	7.4	10,019	616	6.6	76
1980	14,118	905	6.8	10,483	464	4.6	74
1981	15,011	893	6.3	10,803	320	3.1	72

* Average for two-year period

Source: The Law Society of Upper Canada

Figure 5

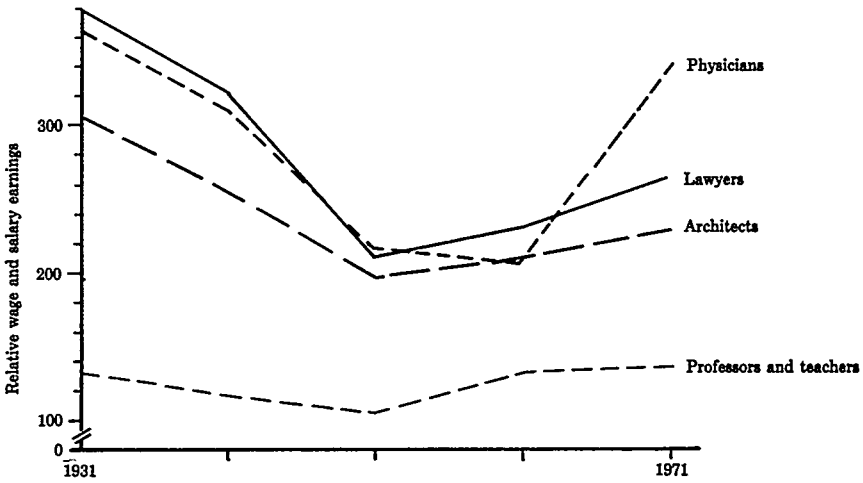
**Distribution of Members of The Law Society of Upper
Canada, 1981**

	<u>No.</u>		<u>%</u>
Private Practice	10,803		81.6
Solo	(3,466)	(32)	
Non-solo	(7,337)	(68)	
Education	177		0.9
Government	1,098		8.3
Other Employment	<u>1,166</u>		<u>8.8</u>
			100.0
Total, Active in Ontario	13,244	88.2	
Retired, Ontario*	1,064	7.1	
Not in Ontario	<u>703</u>	<u>4.7</u>	
Total Membership	15,011	100.0	

* includes unclassified new members

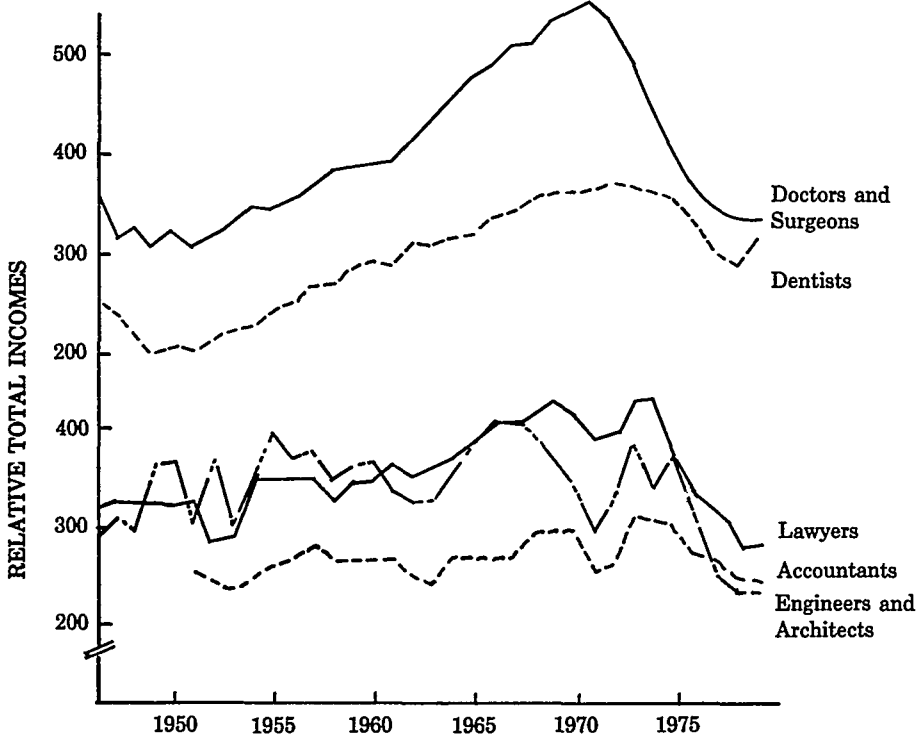
Source: The Law Society of Upper Canada

Figure 6
Patterns of Change in Relative Wage and Salary Earnings in Selected Occupations, 1931-1971



Source: Noah M. Meltz and David Stager, *The Occupational Structure of Earnings in Canada, 1931 to 1975*. Anti-Inflation Board Study. Hull: Supply and Services Canada, 1979.

Figure 7
Relative Total Incomes for Selected
Occupations, Canada 1946-1979
(Self-employed persons)



Source: *Taxation Statistics*, Department of National Revenue, published annually.

Figure 8

**Annual Growth Rates in Supply of Lawyers and Real Income,
Ontario, 1951 to 1981**

<u>Year</u>	<u>Lawyers Annual Growth Rate^a</u>	<u>"Warranted" Annual Growth Rate^b</u>	<u>Annual Increase^c in Real GDP</u>
1951-61	4.5	6.8	4.5
1961-71	4.0	11.3	7.5
1971-79	6.4	4.0	2.7
1972	7.3	10.5	7.0
1973	7.2	7.8	5.2
1974	7.7	2.7	1.8
1975	6.7	-1.4	-0.9
1976	1.4	6.9	4.6
1977	1.7	3.2	2.1
1978	4.4	2.9	1.9
1979	6.6	3.3	2.2
1980	4.6	0	0
1981	3.1	2.4	1.6 ^d

^a Census data for "lawyers and notaries" to 1971; Law Society data for lawyers in private practice for 1972 to 1981.

^b Real economic growth rate multiplied by 1.5

^c Canada's real GNP to 1961; Ontario real GDP for 1961 to 1980.

^d Estimated

Source: Real Gross Domestic Product, Ontario, from Statistics Canada, *Systems of National Accounts, Provincial Economic Accounts, Experimental Data*, annual. No. 13-213.