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Are There Too Many Lawyers--Introductory Remarks

Bruce Feldthusen

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Introductory Remarks

*by Bruce Feldthusen**

THE PAPERS WHICH follow were originally presented to a conference entitled "Are There Too Many Lawyers?", held at the University of Western Ontario, November 12 and 13, 1981. The conference was sponsored jointly by the Faculty of Law at the University of Western Ontario and the Canada - U.S. Law Institute, with additional financial support granted by the Social Sciences and Humanities Research Council. Participants included practising lawyers, legal academics, civil servants, and social scientists from Canada and the United States.

The conference was designed to achieve a number of different goals. First, it was intended to address the very topical question of whether there were too many lawyers engaged in the private practice of law in the Province of Ontario. Secondly, it was intended to explore the same question on a national rather than provincial basis. The market for graduates of common law law schools in Canada is more accurately described as a national rather than provincial market. Therefore, one objective was to determine whether the perception of a number's problem in Ontario existed across the country, and whether the perceived problem would disappear when analysed from a national rather than a provincial perspective. Although these issues may seem of peripheral interest to readers in the United States, I am confident that they will find both the information and the analysis relevant to similar issues in the United States, just as the Canadian audience appreciated the analysis provided by the American participators at the conference.

The organizers also attempted to design the conference so that the numbers question would serve as a useful vehicle for examining a broader range of social phenomena. Throughout the papers which follow the readers will find different analyses concerning the relations between and among the profession, the law schools, the relevant government departments, and the members of the public and observations about their mutual interdependence. Similarly, these particular issues served as useful models for analysing the relationships between other self-regulating professions and the public interest.

Although the conference topic is probably familiar to readers from the United States, where the subject has been debated exhaustively, the question has only recently received a great deal of public attention in Canada. Beginning in the late 1970's, many members of the practicing bar

* Associate Professor of Law, University of Western Ontario. LL.M., University of Michigan, 1977. LL.B., University of Western Ontario, 1976. B.A., Queens, 1971.

began to assert publicly that there were too many lawyers in Ontario. Of these, many favoured the imposition of entry controls by either the law schools, or by the Law Society of Upper Canada, the governing body of the profession in Ontario. It has been suggested that such controls would be in the interest of both the profession and the general public. More significantly, the Law Society has taken a formal step to address this issue for the first time since 1855, by striking a "Special Committee on Numbers in the Profession". The Committee has not yet reported, and the topic continues to be discussed vigorously within the profession and elsewhere.

A number of papers concentrate upon the Ontario experience, thus responding to current interest, but also permitting a focus upon specific data gathered over a long time. The manner in which this data is interpreted and used to support different views is, of course, a matter of general application. In addition, several speakers were specifically requested to compare and contrast experience in other provinces or in the United States to broaden the scope of the conference.

In designing the conference the organizers attempted to invite speakers who would analyse the issues from different perspectives. Roger Yachetti, the first speaker at the conference, chairs the Special Committee and understandably his remarks were directed almost exclusively to the specific issue of whether there are too many lawyers in private practice in Ontario. His remarks provided an excellent foundation for all the papers which follow. Yachetti strongly believes that there are too many lawyers. He noted the extremely rapid growth in the profession in the past ten years, and discussed a number of possible indicators of oversupply in the profession, including lower incomes, lower standards, and general de-professionalization. Although some lawyers in the audience were critical of Yachetti's conclusions, his views appear to enjoy solid support within the profession.

The next paper was given by Rodney White, a sociologist who specializes in the study of the professions. White's paper is particularly interesting in that he indicated that many of the phenomena which Yachetti attributed to an overupply of lawyers exist in other professions today. White addressed the general trend towards deprofessionalization in society, and considered some of its implications for the legal profession.

Curtis Cole, a historian with particular interest in the legal profession, presented the result of his study of the Law Society's records. From 1881-1936, he observed no particular concern about numbers in the profession and no correlation between disciplinary actions and growth in the profession. Furthermore, he noted a much greater concern over competition from outside the profession, rather than from within, than is evident today.

The next paper was presented by Allan Leal, formerly the Deputy Attorney-General for the Province of Ontario. Leal addressed a number of issues, but his paper is included because it presents the more recent

history of the numbers question in Ontario in the 1950's. Leal brought the issue to life by reminding lawyers about the tremendous changes which both the profession and legal education have experienced since that time.

David Stager, a manpower economist, generated considerable interest by suggesting that lawyers' relative earnings were roughly the same as they had been over the past fifty years. He analysed the growth data and suggested that it was as consistent with an undersupply in the 1960's as with an oversupply in the 1980's. He suggested that the main factor influencing the demand for legal services is real economic growth, and he predicted that given an upturn in the economy, Ontario would soon have too few, rather than too many, lawyers.

Jerold Auerbach, a historian with particular interest in the legal profession, provided a complete change of pace. He focused exclusively on the historical experience with the numbers question in the United States. He referred to the possibility that in the United States supply controls may have originated as, and may again become, a device to deny political power to specific minority groups. Similar observations appear in other papers.

The next two speakers were asked to address the numbers question from the point of view of the consumer of legal services. Dean Ianni concentrated largely upon the individual or household consumer, as opposed to the business consumer. He summarized the many studies which had indicated a large untapped demand for legal services within that group. Andrew Roman, a public interest lawyer, attacked what he termed a number of "myths" about the market for legal services and asserted that a large supply of lawyers was not necessarily a benefit to consumers. Roman's paper is quite invigorating because he presents his views without any apparent bias, and moves freely to attack positions asserted by lawyers and academics alike.

The next presentation was made by Lawson Hunter, Assistant Deputy Minister, Bureau of Competition Policy and Director of Investigation and Research, Combines Investigation Act, of the Government of Canada. Hunter pointed out that in general, restraints on competition are detrimental to the public interest. He noted that there may be legitimate reasons for self-regulating professions to control numbers, but he cast a skeptical eye on present claims, and outlined the possible legal implications of any unwarranted attempts to control entry to the legal profession.

Dean London of the University of Manitoba focused on legal education, and gave particular attention to the relationship between the practicing bar and the law schools. London was able to offer a different point of view, having initiated a voluntary reduction in the size of the entering class in his own faculty. London asserted that this step was taken to improve the quality of legal education, and discussed the interesting processes of negotiation and cooperation among members of the univer-

sity community, the law schools, and the legal profession.

Murray Fraser, formerly a practitioner in Nova Scotia, and presently a professor of law and ex-Dean of the University of Victoria, was given the unenviable task of attempting to speak to this issue from a national rather than provincial perspective. Although he professed to find it difficult to add anything to what had already been said, I am sure readers will disagree. He presented some very interesting results of an informal survey which he himself conducted prior to the conference. Fraser was also the first to openly question why the incumbent members of the bar would have a better claim than the prospective new entrants, if numbers were to be controlled.

The last presentation was by W. Reece Smith, Jr. immediate past president of the American Bar Association. Smith considered the important role of the legal system and the legal profession in the United States. He reviewed growth in the profession in the United States, and the results of the professional task forces which were struck to study the questions. He concluded, as did those studies, with a strong statement opposing arbitrary limitations on the number of persons permitted to pursue a legal education.

It is not possible to summarize by offering a list of universal conclusions. Participants were selected to present different information and ideas, and they have done so. What follows instead is an interesting and useful contribution to the question of numbers in self-regulating professions generally, and the legal profession in particular.