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"a Learned And Honorable Body": The Professionalization Of The Ontario Bar, 1867-1929

Curtis Johnson Cole

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"A LEARNED AND HONORABLE BODY": THE PROFESSIONALIZATION OF THE ONTARIO BAR, 1867-1929

By

CURTIS JOHNSON COLE

Department of History

Submitted in partial fulfillment
of the requirements for the degree of
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Faculty of Graduate Studies
The University Western Ontario
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FOR JOANNE AND RYAN

ABSTRACT

This dissertation analyses the development of the Ontario bar during the late nineteenth and early twentieth centuries. Ontario lawyers, like many other groups in post-Confederation Canada, were faced with a rapidly changing world. The bar was no longer a small cohort of gentlemen whose relationships with each other and the rest of society could be comfortably governed by informal custom. Major structural changes, such as industrialization and urbanization, produced a new and different society and an environment of uncertainty for lawyers.

The bar responded to these changes by attempting to professionalize. Professionalization is defined here as a striving for occupational autonomy. This study argues that during the late nineteenth and early twentieth centuries, lawyers in Ontario tried to establish, formalize, and justify the bar's occupational autonomy. The analysis focusses on four specific ways in which Ontario lawyers sought to establish and entrench the bar's indigenous control over the practice of law.

Firstly, the bar attempted to secure a monopoly over the supply of legal services in two ways. Its governing body, The Law Society of Upper Canada, tried to establish itself as the sole agency of admission by preventing the legislature from issuing private statutory licenses to practise law. It also sponsored legislation to prohibit non-lawyers from offering advice concerning conveyancing.

Secondly, in 1889, the Law Society established a mandatory law school at Osgoode Hall in Toronto. It did so in order to justify its claims to professional status but, unlike its American counterparts, it refused to delegate any of its authority in the field to the universities. In this way, the legal profession maintained a higher degree of autonomy.

Similarly, between 1876 and 1923 the Ontario bar achieved the ability to maintain autonomous self-discipline by transferring this authority from the courts, an agency of the state, to the Law Society, an agency of the bar itself.

Finally, between 1879 and 1914, lawyers in Ontario established a network of bar associations at the county, provincial, and national levels to, among other things, provide vehicles and forums to justify its autonomy.

ACKNOWLEDGEMENTS

There are a number of individuals and organizations to whom I would like to express my gratitude. Officials of the Law Society of Upper Canada, particularly Dr. George Johnston, Q.C. and Roy Schaeffer, the Middlesex Law Association, and the staffs of the University of Western Ontario Law Library and Regional History Collection provided access to research materials. The Osgoode Society, the Social Sciences and Humanities Research Council of Canada, and the University of Western Ontario Department of History and Faculty of Graduate Studies all provided generous financial assistance. Greg Farrant read the manuscript in draft and offered invaluable advice on style, and Bob Gidney offered crucial advice on thematic structure. Most important of all, however, my friend and mentor David Flaherty provided the essential supervision, advice, and patience (and occasional prodding) to see the project through to its conclusion.

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CHAPTER ONE: INTRODUCTION

During the late nineteenth and early twentieth centuries the legal profession in Ontario underwent a virtual transformation. Between Confederation and the onset of the Great Depression the provincial bar became more professionalized in four specific respects:

1. It made a series of concerted attempts to establish a monopoly over the supply of legal services;

2. It made a program of classroom instruction in law mandatory for all law students, and it maintained indigenous control over all aspects of legal education;

3. It succeeded in transferring the authority to maintain professional discipline among lawyers from the courts to its own corporate body, the Law Society of Upper Canada; and

4. It established a network of professional associations.

This thesis examines these four areas of change and argues that in response to, and in conjunction with, the many changes taking place in society, the Ontario bar became

more professionalized by expanding and entrenching its institutional autonomy.

In 1987 there are approximately 21,000 lawyers in Ontario.[1] Each is licensed to practise law in the province by the Law Society of Upper Canada, the governing body of the profession founded in 1797.[2] All lawyers in Ontario are members of the Law Society, which is governed by a body of directors known as Convocation. The members of Convocation, most of whom are elected by the bar, are known as the Benchers. The chief officer of the Law Society is the Treasurer.

Although most lawyers still use the terms barrister and solicitor (mostly on letter-head and business cards), the profession in Ontario, like the rest of Canada, is fused. The terms are rooted in the English tradition of a divided profession. Under the British system, barristers - the upper branch of the profession - are qualified to plead before the superior courts but may not deal directly with clients. Solicitors - the lower branch of the legal profession - provide direct legal advice to clients and

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1. In 1981 there were 15,294, and the net rate of growth is about 930 per year. Roger D. Yachetti, "The Views of The Practising Bar," Canada-United States Law Journal 6 (1983), 103.

2. An act for better regulating the practice of the law, 37 Geo. III (1797), c.13.

act as intermediaries between clients and barristers. All lawyers in Ontario are officially qualified to provide both types of service.

The word attorney, still the more formal term used for a lawyer in the United States, is not generally used in Canada. Prior to the late nineteenth century fusion of the common law and equity in Britain and Canada, the lower branch of the legal profession consisted of solicitors, who practised in Chancery, and attorneys, who practised in the courts of common law. The term solicitor was not required in Upper Canada until the establishment of the Court of Chancery in 1837. Between then and 1881, when the Judicature Act fused the superior court, the terms solicitor and attorney were used interchangeably, because admission to practice in one court automatically included admission to the other two courts. Since 1881 the term solicitor has been used exclusively.[3]

Research began on this project following a premise of the new legal history (discussed in detail below) that law and legal institutions cannot be fully understood in

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3. For an explanation of the reasons for the "fused" legal profession in Ontario, see J.D. Arnup, "Fusion of The Profession," Law Society of Upper Canada Gazette 5 (1971), 71. For an outline of the history of the Ontario court structure and an explanation of the Judicature Act, see Margaret A. Banks, "The Evolution of The Ontario Courts, 1788-1981," David H. Flaherty (ed.), Essays In The History of Canadian Law, Vol. II (Toronto, 1983), 492-572.

isolation but must be studied within the context of society as a whole. Because law and its institutions, including the bar, are a part of the wider social fabric, they cannot avoid being influenced by wider historical trends.

The decades bracketing the turn of the twentieth century were a time of great change in Ontario. They were a period of rapid industrialization, urbanization, and economic growth, and all segments of society were affected. The goal of this research has been to analyse the evolution of the legal profession in the province during this period of social change.

The main research materials used to conduct this analysis were the Law Society's Minutes of Convocation and the three law journals published in Ontario during the late nineteenth and early twentieth centuries. The Minutes of Convocation were the official records and debates of the meetings of the Benchers, the Law Society's governing body. The Benchers, a body of thirty lawyers elected by the members of the provincial bar every five years, met at Osgoode Hall in Toronto four times a year. Their meetings would usually last a matter of days, and the minutes included the debates of the group as a whole and the reports of various standing and special committees

established to deal with policy matters within the Law Society's authority.

The law journals researched included: the Canada Law Journal, The Canadian Law Times, and the Canada Law Review.[4] Unlike today's law journals, which are essentially scholarly publications of articles, case comments, and book reviews, the law journals of the late nineteenth and early twentieth century were much more like trade journals. They contained news and information of interest to the profession, as well as editorial opinion, letters to the editor, and official notices.

At an early point in the research, it became obvious that the Ontario legal profession took part in a number of significant events during the late nineteenth and early twentieth centuries. During that time the bar increasingly protested the provincial legislature's habit of issuing private statutes to license certain individuals to practise law. Similarly, lawyers in the province waged a protracted battle with a group they termed "unlicensed conveyancers" for control over the market for certain

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4. The Canada Law Journal (hereafter CLJ) began publication in 1855 as The Upper Canada Law Journal And Municipal Gazette. The Canadian Law Times (hereafter CLT) began publishing in 1881. The Canada Law Review (hereafter CLR) began publishing in 1900. In 1909 the CLR merged with the CLT, and in 1923 the CLJ and CLT merged to form the Canadian Bar Review. All of the journals were published in Toronto.

legal services such as advice concerning sale of property and title registration.[5]

In 1889 the Law Society resolved a pedagogical and regional debate over how, where, and by whom legal education should be provided. Rejecting a number of arguments presented by some of the provincial universities and various practitioners, the Benchers established a mandatory law school at Osgoode Hall in Toronto.[6]

In 1876 the provincial legislature passed An Act To Amend The Law Respecting The Law Society, which granted that body authority over "...all matters relating to the interior discipline and honour of the members of the Bar."[7] In 1906 the Ontario Bar Association was founded. Ontario lawyers were instrumental in the formation of the Canadian Bar Association in 1914; and between 1879 and 1909 lawyers in the province established a total of twenty-five county and district law associations.[8]

Once it became apparent that substantial and significant change in the institutional structure of the

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5. See Chapter Three, below.

6. See Chapter Four, below.

7. 39 Vict. (1875-76), c.31, s.1. See Chapter Five, below.

8. See Chapter Six, below.

bar did take place during a period of rapid change in the provincial society as a whole, the question became how to explain it. A number of interpretations could be tested.

The pattern of changes the legal profession underwent might simply be termed modernization, because it allowed the bar to adapt to its changing environment, and because the profession took on many of the attributes which it has today. Such a characterization is unsatisfactory, however, because it offers little more than a Whig interpretation of inevitable progress, and it allows for little or no analytical distinction between lawyers and any other group in society.

Similarly, the process could be termed bureaucratization, because the changes created more complex organizational structures within the bar; but many groups and organizations became more complex during the late nineteenth and early twentieth centuries. Governments, corporations, and labour unions all experienced substantial internal structural growth and change. An adequate explanation to interpret the changes which the bar underwent must be more narrow and specific than simply modernization or bureaucratization. The one which most satisfies these requirements is the sociological concept of professionalization.

PROFESSIONALIZATION

Although they have only recently been discovered by historians, professions and professionalization have long been subjects of inquiry and vociferous debate by sociologists. For a number of decades sociological researchers have tried to determine what distinguishes the professions from other occupational groups and to analyse the process by which certain occupations achieve professional status.[9]

In the English language the term "professional" can have a number of different meanings. As an adjective, we use it to describe activities which are carried on for income, as opposed to those which are merely amateur or recreational. In a related vein, the term "professional" can also be used to describe something of a particular quality. In the vernacular, something which is done professionally is done very well.

Both the income and quality related meanings of the word "professional" can be used to describe a particular occupation; a professional activity is one which both earns income and involves high standards. The Oxford English Dictionary defines profession as a:

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9. I am grateful to R.D. Gidney and W.P.J. Millar for many of the ideas in this section and for many of the references which accompany it.

> Declaration, avowal...; declaration of belief in a religion; vow made on entering, fact of being in, a religious order; vocation, calling, esp. one that involves some branch of learning or science...; the body of persons engaged in this.[10]

But something more than the simple dictionary definition is needed in order to understand why certain occupations are unique in society. A more detailed theory which explains how and why professional occupations differ from other forms of employment is needed.

Originally the need for a theory of professions and professionalization was prompted by the desire to understand how and why a number of modern occupational groups such as nurses, pharmacists, and veterinarians attempted to imitate the acknowledged professions of medicine, law, and the clergy. In order to determine if these former groups were truly "professions," it was necessary to accurately define the term "professional." Once this was determined, it followed that "professionalization" is simply the process by which professional status is achieved. As yet, however, sociologists have been unable to agree on a universal, or even widely accepted, definition of either of these terms.

Initially, sociologists seeking to define the term "professional" constructed models based on key traits or

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10. The Concise Oxford Dictionary, 5th ed., s.v. "professional."

attributes possessed by the acknowledged professions and measured the would-be professions against the models. Unfortunately, most such models have been open to criticism, because they either simply accepted the self-imposed definitions offered by the professions themselves, or they were arbitrarily based on an observer's contemporary assumptions or on some limited set of data. The results have been definitions which usually exclude at least one occupation generally recognized as a profession both indigenously and by society at large; and such definitions are often highly parochial with respect to both national boundaries and time.

The earliest model cited in most of the literature dealing with the professions was that offered by Abraham Flexner in his 1915 article "Is Social Work A Profession?" Flexner defined professional activities as being intellectual and learned rather than manual or routine, practical rather than academic or theoretical, having a specific technique which could be taught in some form of professional education, and being strongly organized internally. Most importantly, however, he argued that the true professional was motivated primarily by altruism

rather than personal gain.[11]

Although in Flexner's opinion social work did not live up to this model, he felt that the final attribute, altruism, or as he termed it, "professional spirit," could overcome the absence of one or more of the others, and he was optimistic about social workers' potential of entering the beatified professional ranks.

> What matters most is professional spirit, all activities may be prosecuted in the genuine professional spirit.... The unselfish devotion of those who have chosen to give themselves to making the world a fitter place to live in can fill social work with the professional spirit and thus to some extent lift it above all the distinctions I have been at pains to make.[12]

To the modern cynic, conditioned to view the self-justifications of power and position with skepticism, this view is certainly questionable, but is a useful starting point in the search for an understanding of professionalization.

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11. Abraham Flexner, School and Society 1 (1915), 901-11; Proceedings of The National Conference of Charities and Correction (Chicago, 1915). Flexner's definition is cited by H.S. Becker, Sociological Work (Chicago, 1970), 87, Robert Dingwall, "Accomplishing Profession," Sociological Review N.S. 24 (1976), 331-49, at 331-2, and Eliot Freidson, "The Theory of Professions: State of The Art," Robert Dingwall and Philip Lewis, (eds.), The Sociology of The Professions: Lawyers, Doctors And Others (London, 1983), 19-37, at 21.

12. H.S. Becker, Sociological Work (Chicago, 1970), 88; Robert Dingwall, "Accomplishing Profession," Sociological Review N.S. 24 (1976), 331-49, at 332.

Flexner's article presaged the subsequent development of the question of defining the term "professional" in two important ways. The first involved his obvious positive opinion of the social value of the professions based on his apparent acceptance of their self-declared altruism. Although most of the early writers echoed this sentiment, the trend in recent years has been much more critical. Secondly, Flexner's emphasis on a single overriding aspect which may serve to define the term more than any other was indicative of another more recent trend towards the search for an ideal type which will be discussed below. This latter conceptualization appears particularly useful in trying to understand the legal profession.

Since Flexner, a great many other sociologists have offered their own definitions of what constitutes a profession. These have all differed in one way or another, but the basic elements that most agree on are:

1) A recognized, exclusive authority in a particular area of expertise, delegated to the holders of an esoteric body of knowledge and skills linked to the central needs and values of society,

2) A formalized system of higher education and process of qualification for admission to practice,

3) A self-administered disciplinary procedure based on some sort of code of ethics, and

4) A network of occupational associations.[13]

Like Flexner, the proponents of this type of definition were and are almost entirely uncritical of the social role of the professions. They seem to simply accept the professions' own justifications for special status and authority.

William Goode exemplified this uncritical view in a 1957 article in which he characterized the professions as "communities of the competent." Goode explained that society grants professionals positions of power and prestige because of the social value of their knowledge or

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13. Herbert Blumer, "Preface," Howard M. Vollmer and Donald L. Mills (eds.), Professionalization (Englewood, N.J., 1966); Theodore H. Caplow, The Sociology of Work (Minneapolis, Minn., 1954); A.M. Carr-Saunders and Paul Wilson, The Professions (London, Eng., 1933); M.L. Cogan, "Toward A Definition of Profession," Harvard Educational Review 23 (1953), 35-50; William J. Goode, "Community Within A Community: The Professions," American Sociological Review 22 (1957), 194-200; Oswald Hall, "The Place of The Professions in The Urban Community," Urbanism And The Changing Society, ed. S.D. Clark (Toronto, 1961); J.A. Jackson, (ed.) Professions And Professionalization, (Cambridge, Eng., 1970); R. Lewis and Angus Maude, Professional People, (London, Eng., 1952); Geoffrey Millerson, The Qualifying Associations: A Study in Professionalization, (London, Eng., 1964); William E. Moore, The Professions: Roles And Rules, (New York, 1970); Talcott Parsons, "Professions," International Encyclopedia of The Social Sciences, ed. David Stills (1968). v.XII, 536-47; J.E. Smith, "The Criteria For Professional Status," Canadian Chartered Accountant, 58 (1951), 271; Ansell Straus and Rue Bucher, "Professions in Process," American Journal of Sociology 66 (1961), 325-34.

expertise and because they are "devoted to the service of the public," above and beyond material incentives."[14]

Subsequent scholars seriously questioned interpretations like Goode's. Led by Everett Hughes, the "Chicago School" of critical sociologists argued that professions are not communities of competence, but "communities of self-interest," which use special claims to knowledge as weapons in competition with other social groups for wealth, prestige, and power. In this interpretation, the professionals' self-proclaimed devotion to public service rather than personal gain is simply an ideological construct created in order to justify a privileged position in this competition.[15]

The Chicago School's interpretations prompted another, more recent model. Like Flexner's, it involves a single overriding definitional element but, like Hughes',

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14. Goode, above note 13, as cited by Andrew Barlow, "Boston Brahmins And The Professionalization of The Law, 1870-1920," unpub. paper presented to the annual meeting of The Social Science History Association, Rochester, N.Y., 1980, and M.S. Larson, The Rise of Professionalism: A Sociological Analysis (Berkeley, Cal., 1977), x. The concluding phrase is Larson's.

15. Everett C. Hughes, The Sociological Eye, 2 vols. (Chicago, 1971), as cited by Larson, above note 14, x; Terence Johnson (Professions And Power, London, Eng., 1972) and Larson present similar critical analyses of the professions' relationship with political and economic elites. Larson's is a Marxist analysis which describes the professions as a capitalist class "fraction."

it is critical of the professions' self-justifying posture. In a ground breaking analysis of the medical profession, Eliot Freidson of New York University argued that occupational autonomy is the overriding aspect which best explains how and why the professions seek to differentiate their positions in the occupational hierarchy. In Freidson's view, the professions seek to gain the positions of power Hughes described by achieving and maintaining indigenous control over their own fields. Wealth, prestige, and power may be the ultimate ends of professional status, but occupational autonomy is the common mean which explains each of the elements of the professional definition.[16]

Freidson's theory provides the best model to characterize the changes in the Ontario legal profession during the late nineteenth and early twentieth centuries, as the following chapters will make clear. Ontario lawyers' attempt to establish a monopoly over the supply of legal services was an effort to gain market autonomy.

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16. Eliot Freidson, Profession of Medicine: The Sociology of Applied Knowledge (New York, 1970). See also his monograph Professional Dominance (Atherton, New York, 1970), his collection of articles, co-editied with Judith Lorber, Medical Men And Their Work (New York, 1972), and his recent article "The Theory of Professions: State of The Art," in Robert Dingwall and Philip Lewis (eds.) The Sociology of The Professions: Lawyers, Doctors and Others (London, Eng., 1983), 19-37.

The Law Society decided to open its own law school in order not to relinquish autonomy to the universities. It wrested control over discipline from the courts for the same reason. And Ontario lawyers founded a network of law associations during this period in order to continue establishing autonomy and to justify its acquisition.

Freidson applied his theory of professional autonomy in a critical study of the American medical profession. This dissertation adopts Freidson's theory and applies it to the Ontario bar, but the resulting analysis is not intended solely as a social critique of the province's legal profession. The idea of professional autonomy as a means to an end is quite ambiguous. From a critical point of view, indigenous power is exercised by the members of certain occupations which have gained professional status simply as a collective conspiracy to increase their own wealth. From a sympathetic viewpoint, professionals need to be autonomous because the nature of their work is such that only those who have the necessary knowledge and training are capable of making decisions concerning it.

The Ontario legal profession experienced this ambiguity about the nature of professionalism while it attempted to increase and maintain its autonomy during the late nineteenth and early twentieth centuries. Certainly there were some lawyers in the province who were

interested only in personal gain, but on the whole, the bar saw its autonomy - its professionalization - as being in the public interest. In this way the notion of professionalism was like the fable of the Emperor's new clothes. The profession's interests may often conflict with society's needs, and the Emperor is actually naked. But the Emperor actually believes that he is clothed. In trying to convince the public that professional autonomy is socially justified, the professionals also seem to have convinced themselves. A conspiracy theory condemning lawyers for knowingly defrauding society by grasping professional autonomy seems, therefore, not justified.

The notion of autonomy as the dominant element which defines professionalism has come under some attack. In 1972 D.G. Gill and G.W. Horobin published an article in the Sociological Review which argued that although the British National Health Service denied autonomy to the medical profession, no one could argue that British doctors are no longer professional.[17] This criticism can be countered, however, if one thinks of autonomy not as a finite prerequisite of professional status, but as a

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17. D.G. Gill and G.W. Horobin, "Doctors, Patients and The State: Relationships and Decision-Making," Sociological Review 20 (1972), 505-20, as cited by Dingwall, above note 9, 333.

relative, abstract ideal type, which is an occupational goal.

Seen in this way, the important question is not whether a particular group has autonomy and is, therefore, a profession, but rather, how much autonomy has it gained? How professionalized is it? Many British doctors, particularly expatriates now practising in North America, argue that by limiting their autonomy the National Health Service made them less professionalized, but they were still members of a profession - in their own minds as well as the public's. Similarly, during the 1980s Canadian doctors may oppose the efforts of the federal and provincial governments to limit physicians' ability to charge fees in excess of those set by the provincial health insurance plans because their autonomy is further limited. They may be forced away from the professional ideal type, but they are still professional.[18]

In this way, the changes instituted by the Ontario bar between 1867 and 1929 can be characterized as a movement towards a professional ideal type. By reforming the institutional structure of the bar, Ontario lawyers

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18. Sociologists describe this type of reduction of autonomy as "deprofessionalization." See Eliot Freidson, "The Changing Nature of Professional Control," Annual Review of Sociology 10 (1984), 1-20; and Richard L. Abel, "The Decline of Professionalism?" The Modern Law Review 49 (1986), 1-41.

were attempting to increase and maintain their collective occupational autonomy. The question then becomes why did they see the need to do so at that time? Again, the sociological literature suggests an answer. To many sociologists, contemporary professionalization - the efforts of nurses, veterinarians, and other occupational groups to attain professional status - is an attempt to cope with the rapid pace of change in modern society. To Herber Blumer it represents "an indigenous effort to introduce order into areas of vocational life which are prey to the free-playing and disorganizing tendencies of a vast, mobile, and differentiated society undergoing continuous change."[19] To the historian this contemporary analysis seems remarkably similar to Robert Wiebe's description of the impact of change on U.S. society in The Search For Order, 1877-1920.[20]

In his book Wiebe argues that after the Civil War, Americans constantly searched for ways to rationalize the social changes wrought by forces such as urbanization, industrialization, and the increasing complexity of social relations. His interpretation was, of course, consistent with Max Weber's analysis of the rationalization of

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19. Blumer, above note 13, xi.

20. Robert S. Wiebe, The Search For Order, 1877-1920, (New York, 1967).

society during the late nineteenth century.[21] Neither Wiebe nor Weber dealt specifically with the professions, but the changes which took place among the professions in general, and the Ontario bar in particular, are consistent with their analyses.[22]

2. THE NEW LEGAL HISTORY

As well as being a study in social history focussing on the development of a particular group in society, this study is a venture legal history and, in keeping with the interdisciplinary approach described above, it adopts the research imperatives of what has become known as the "new legal history." The last few decades have witnessed the re-emergence of legal history as a serious field of inquiry among scholars in the United States and Great Britain. More recently this trend has also been evident in Canada, but research and writing in Canadian legal history is still extremely limited. The material which

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21. Max Weber, The Theory of Social And Economic Organization, trans. Talcott Parsons (New York, 1964).

22. Wiebe noted in a chapter entitled "A New Middle Class" that doctors and lawyers attempted to organize and gain professional control of their markets and describe this as professionalization. A number of other historians have written about professionalization in other occupations. Citations for these works may be found in the Bibliography below.

has been published is, however, very promising. The range of disciplines from which both authors and readers of this material are drawn is particularly encouraging. For the first time in recent memory, researchers from history and law are borrowing topics and methods from each other with results that are of substantial value to scholarship in both fields.

For most of this century the academic disciplines of law and history in Canada have had very little scholarly interaction. Canadian lawyers have traditionally published articles and monographs concerning the historical development of various areas of law and legal institutions.[23] For the most part, however, such research

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23. The Concise Oxford English Dictionary, 5th ed., defines "institution" as, among other things, an "organization for promotion of some public object...." Similarly, Black's Law Dictionary, 4th ed., defines it as, among other things, "An establishment, specially one of public character or one affecting a community. ... It may be private in its character, designed for profit to those composing the organization, or public and charibable in its purposes." The legal profession is, therefore, a legal institution. The latter aspect of the Black's definition seems particularly appropriate in light of the ambiguity in the nature and purpose of the bar's autonomy, discussed above.

dealt only with narrow substantive issues.[24] Similarly, Canadian historians often touch on legal matters in their writing, but almost invariably deal with law only as the legislative expression of political policy, or a landmark constitutional court decision.[25] In recent years, however, this mutual exclusivity has begun to break down.

The new legal history has attracted scholars and readers from law, history, and other disciplines. In many ways its emergence is indicative of the interdisciplinary trend evident in historical literature. Social and quantitative history owe much to the theory and methods of sociology and statistics. Similarly, historians who have a growing sense of the historical significance of law have been attracted to legal history, and many legal scholars

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24. For evidence of the general lack of historical context in the Canadian legal literature, see for instance, Edward Koroway, "Habeas Corpus in Ontario," Osgoode Hall Law Journal 12 (1975); Mark MacGuigan, "The Development of Civil Liberties in Canada," Queen's Quarterly 72 (1965); Alan Mewett, "The Criminal Law, 1867-1967," Canadian Bar Review 45 (1967); Donald Schmeiser, Civil Liberties In Canada (Toronto, 1964); and Walter S. Tarnopolsky, The Canadian Bill Of Rights, (2nd ed., Toronto, 1975).

25. Some examples of this type of literature are: Ken Adachi, The Enemy That Never Was (Toronto, 1976); Ernest Forbes, "Prohibition And The Social Gospel In Nova Scotia," Acadiensis 1 (1971); J.L. Granatstein and J.M. Hitsman, Broken Promises: A History of Conscription in Canada (Toronto, 1977, 1985); and W. Peter Ward, White Canada Forever: Popular Attitudes And Public Policy Toward Orientals In British Columbia (Montreal, 1976).

are becoming interested because they appreciate law's wider historical context. Researchers from both fields are dealing with issues regarding the historical relationship between law and the social, economic, and political systems in which it operates: They have begun to ask questions about the influence of law and legal institutions on the development of these systems, and the corresponding influence of social, economic, and political forces on law and its institutions.[26]

The intellectual father of the new legal history is J. Willard Hurst, a member of the Faculty of Law at The University of Wisconsin who has been teaching and writing legal history for over four decades.[27] Hurst and his followers argue that the scholarly significance of the history of law lies particularly in its relationship with external social, economic, and political forces. Hurst's most noted works include Law and The Conditions of Freedom in The Nineteenth Century United States, which outlined

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26. For a detailed discussion of the new legal history and its potential in the Canadian context, see David H. Flaherty, "Writing Canadian Legal History: An Introduction," in Essays In the History of Canadian Law, vol. 1 ed. Flaherty (Toronto, 1981), 3-42.

27. There have been a number of laudatory articles written about Hurst's contribution to American legal history. For a list of such articles and his work, see "A Bibliography of Works By And About Willard Hurst," Law And Society Review 10 (1976), 325-33.

some of the main values expressed by Americans in using and moulding law in society, and his mammoth Law And Economic Growth: The Legal History of The Lumber Industry in Wisconsin, 1836-1915, which expressed his broad theory that the function of nineteenth century American law was the release of human energy. He argued that this was evident in two basic principles. The first was the promotion and protection of economic enterprize, and the second was the maintenance of economic freedom.[28] His 1950 monograph, The Growth of American Law: The Law Makers will be discussed below in Chapter Two.

Hurst's work has spawned that of a number of prominent legal historians who share his concern with both the internal and external aspects of legal history. Robert Gordon, formerly Hurst's colleague at Wisconsin now teaching at Stanford Law School, explained his approach to the subject in a 1976 article in which he used the analogy of a legal box to distinguish between internal and external legal history. Law and purely legal things - statutes, cases, doctrine, and procedure - are inside the box. The rest of human experience - politics, economics, social and intellectual trends - are outside of the box. Traditional legal historians dealt only with the

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28. J. Willard Hurst, Law And The Conditions of Freedom... (Madison, Wisc., 1956); Law And Economic Growth... (Cambridge, Mass., 1964).

substantive historical development of internal legal things and limited their analysis and sources to what was inside the box. In order to more fully understand how and why law and legal institutions developed, Gordon argued, legal historians must also look outside of the box.[29]

The analytical process traditional legal historians followed was similar to that of judges following the common law rule of statutory construction which forbids citation of legislative records, or anything other than the text of an act itself, in determining the legislative intent behind a particular statute. This restrictive approach may be appropriate to judges, who must base their interpretation of a statute on what they see as the collective will of the legislature and not on the individual view of a sponsor of a bill. However, such a limited scope of inquiry inhibits the historian who must deal not only with how a particular historical phenomenon took place, but why it took place. The answer to this question for the legal historian often lies outside of the box.

In searching for external causes of internal legal phenomena, however, the legal historian should be careful not to focus his attention entirely outside the box and

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29. Robert W. Gordon, "J. Willard Hurst And The Common Law Tradition In American Legal Historiography," Law And Society Review 10 (1976), 44-55.

underestimate the importance of internal factors when dealing with the question of why change took place. Lawrence Friedman, another of Hurst's followers, has been criticised for doing this. Friedman argued in the preface of his 1973 survey A History of American Law that the causes of law's internal development lie in the external forces which surround it; that law is, in fact "a mirror of society."[30] Mark Tushnet, also formerly of Wisconsin and now teaching at The Georgetown Law Center, criticized Friedman for over-emphasizing the external influences on the development of American law and for ignoring the corresponding impact that internal legal forces have had on society as a whole.[31] Like many other emerging fields of inquiry, the legal historiographical pendulum has swung both ways. Friedman's mirror metaphor was a reaction to traditional internal approaches to legal history. Tushnet's criticism was a caution against swinging the

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30. Lawrence Friedman, A History of American Law (New York, 1973), 11. Friedman reaffirmed this position in the preface to the second edition of this work. "I retain the general bias set out in the preface to the first edition. Nothing since then has shaken my confidence in the underlying assumptions. Work done since the early 1970s, in the main, only confirms me in my stubbornness." (2nd edn., New York, 1985), 16.

31. Mark Y. Tushnet, "Perspectives On The Development of American Law: A Critical Review of Friedman's A History Of American Law," Wisconsin Law Review 1977, 81-109.

pendulum too far. A moderate synthesis which heeds Friedman's advice as well as Tushnet's warning seems the most logical approach at this point.

As Canadian legal historians conduct research using the methodologies and approaches of the new legal history, they can learn from the American historiographical experience. They can accomplish this by focussing on questions of how and why our own law and legal institutions have developed, using both internal and external sources and analysis, without exaggerating the importance of either.

Canadian authors have studied the historical development of a few specific legal topics in this way.[32] There are, however, a number of important topics which have not yet been explored. The history of the legal profession is foremost among these. To understand the relationship between law and society in its historical context, it is essential to know more about the institution which arguably has been most actively involved in shaping that relationship. The lack of research dealing with the legal profession is a serious deterrent

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[32] See, for instance, Leslie Katz, "Some Legal Consequences of The Winnipeg General Strike of 1919," Manitoba Law Journal (1970); Jennifer Nedelsky, "Judicial Conservatism in An Age of Innovation: Comparative Perspectives On Canadian Nuisance Law." in Essays In The History of Canadian Law, Vol. II, ed. David H. Flaherty (Toronto, 1983), 200-47.

to the formation of general concepts about the history of law in Canada.

It is also necessary, in the interest of Canadian social history, that we understand more about the development of the professions in general and the bar in particular. Until fairly recently Canadian history traditionally focussed on political and constitutional topics. The most prominent Canadian historians, scholars such as A.R.M. Lower and Donald Creighton, focussed on themes such as our attainment of responsible government and progress from colonial to national status. The current generation of Canadian historians is more concerned with social history, and in an effort to counteract the previous generation's emphasis on elites, they are rewriting Canadian history "from the bottom up." The most notable recent works, such as Michael Katz's The People of Hamilton, Canada West and Gregory Kealey's Toronto Workers Respond To Industrial Capitalism, 1867-1892, focus largely on the working class.[33]

This historiographical trend away from a narrow, elite focus has greatly increased our understanding of Canadian society, but a large gap still remains. We now

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33. Michael Katz, The People of Hamilton, Canada West: Family And Class In A Mid-Nineteenth Century City (Cambridge, Mass., 1975); Gregory S. Kealey, Toronto Workers Respond To Industrial Capitalism, 1867-1892 (Toronto, 1980).

know much about the top and bottom of society, but we know very little about the nineteenth and twentieth centuries' fastest growing group, - the middle class. Certainly, as Kealey demonstrates, general structural changes such as urbanization and industrialization dramatically affected the lives of working class Canadians, but surely the same changes affected the middle class as well. It has become an historical truism to say that the nineteenth and twentieth centuries witnessed the rise of the middle class, but Canadian historians have not yet studied the extent or nature of this phenomenon. In terms simply of the demographics of this group, it is logical to assume that growth in industry, capital, and population would increase the demand for non-manual service labour. Similarly, an increase in the demand for, and therefore the number of, service workers would prompt individual and collective attempts to deal with change. This study of the Ontario legal profession is intended to begin the process of understanding this phenomenon.

CHAPTER TWO:

THE CONTEXT OF THE RESEARCH

1. THE LITERATURE

Although Canadian historians have written extensively about a small number of very prominent lawyers such as Sir John A. Macdonald and Edward Blake, they have invariably focussed on their subjects' political careers rather than their life as lawyers.[1] Canadians seem to have an implicit belief that lawyers have always held an

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1. See, generally, Donald Creighton's two volume biography John A. Macdonald: The Young Politician and John A. Macdonald: The Old Chieftain (Toronto, 1952, 1955), and P.B. Waite's Macdonald: His Life And World (Toronto, 1975). J.A. Roy's "John A. Macdonald, Barrister and Solicitor," Canadian Bar Review XLV (1948), 415-32, outlines his legal career quite well, but it is written from an internal perspective. This article is incorrectly cited in J.L. Granatstein and Paul Stevens A Reader's Guide To Canadian History, Vol. II: Confederation to Present (Toronto, 1982), 7, as C.B.R. 1945. On Blake, see Joseph Schull's two volume work Edward Blake: The Man of The Other Way, and Edward Blake: Leader In Exile (Toronto, 1975, 1976), and Margaret Banks, Edward Blake: Irish Nationalist (Toronto, 1957).

inordinately large degree of power in society, but as yet we have almost no historical analysis of the legal profession as a social institution. If we wish to understand how political and other power is distributed in society, surely we must know more about supposedly powerful groups such as the legal profession.

The present volume of literature dealing specifically with the history of the Canadian legal profession is very small. It is largely narrative and anecdotal, and although a small number of scholars have conducted systematic, analytical research in the field, with very few exceptions this material is highly internal legal history.

Recent studies such as Dale and Lee Gibson's Substantial Justice: Law And Lawyers in Manitoba, 1670-1970 and John Willis' A History of Dalhousie Law School are useful and informative sources but leave many important questions about the causes of professional evolution unanswered. The Gibson volume certainly provides some interesting insights into judicial and professional development in Manitoba, particularly the roles played by newly arrived French and English speaking lawyers in determining the nature of the young province's legal institutions during the early 1870s, but it is an

essentially narrative account.[2] Similarly, Willis described his book as a "more or less chronological record of events" in the history of Canada's oldest common law university law school, but despite the author's renown as a legal scholar and educator, it offers relatively little historical analysis.[3]

The volume of literature dealing with the history of the Ontario legal profession is large compared to that of the other provinces, but it is also primarily internal.

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2. Dale and Lee Gibson, Substantial Justice: Law And Lawyers In Manitoba, 1670-1970 (Winnipeg, 1972). See especially pp. 65-98 for an account of the province's legal beginnings and the roles of emigre Quebec and Ontario lawyers in early French-English tensions. Lee Gibson also published "A Brief History of The Law Society of Manitoba" in Cameron Harvey (ed.), The Law Society of Manitoba, 1877-1977 (Winnipeg, 1977). With the exception of Lee Gibson's article and "An Anecdotal Sampler" by Dale Gibson, this volume is a collection of essays dealing with contemporary subjects.

3. John Willis, A History of Dalhousie Law School (Toronto, 1979), 10. Both the Willis and Gibson books are, however, very useful as comparative sources. Similarly useful are Andre Vachon, Histoire du notariat Canadien 1621-1960 (Quebec, 1962), Alfred Watts, Lex Liberorum Rex: History of The Law Society of British Columbia, 1869-1973 (n.p.,n.d.), E.C. Common, "The role of the notary in the Province of Quebec," Canadian Bar Review 36 (1958), 33, A.W.G. MacAlister, The Bench and Bar of the Provinces of Quebec, Nova Scotia and New Brunswick, (Montreal, 1907), E. Meredith, "Communism and the British Columbia Bar," Canadian Bar Review 28 (1950), 893, E.F. Surveyer, The Bench and Bar of Montreal, (Montreal, 1907), E.F. Surveyer and D.A. Heneker, The Bench and Bar of Quebec, (Toronto, 1931).

During the early twentieth century Mr. Justice William Renwick Riddell, who sat in the High Court and later the Court of Appeal of Ontario, wrote prolifically about historical legal topics, including two books on the history of the Ontario legal profession. The Legal Profession in Upper Canada In Its Early Periods and The Bar and The Courts of Upper Canada, or Ontario are interesting and informative, but Riddell's approach was essentially narrative and internal and took no account of the influence of external political events or ideology.[4] Some of Riddell's contemporaries also wrote on the history of the Upper Canada and Ontario bar. None were as prolific as Riddell but, not surprisingly, all wrote from a similarly internal viewpoint.[5]

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4. W.R. Riddell, The Legal Profession ... (Toronto, 1916); The Bar And The Courts ... (Toronto, 1928). The latter volume is divided into two parts, paginated separately. Subsequent references are to the section on the bar. Riddell's other writings are listed in Hilary Neary, "William Renwick Riddell: A Bio-Bibliographic Study," (M.A. thesis, Univ. of Western Ontario, 1977).

5. See James C. Hamilton, Osgoode Hall: Reminiscences of Bench and Bar (Toronto, 1905); David B. Read, The Lives of The Judges of Upper Canada and Ontario, From 1791 To The Present Time (Toronto, 1888); C.W. Robinson, Life of John Beverley Robinson Bart., C.B., D.C.L., Chief Justice Of Upper Canada (Edinburgh, 1904); and George Wilkie, ed., The Bench And Bar of Ontario (Toronto, 1905).

Riddell titled one of the chapters of his book on the Upper Canadian bar and courts "1837 And After," but in his discussion the most significant event of 1837 was not the rebellion but the establishment of a Court of Chancery. His only reference to the rebellion was contained in the following one-sentence paragraph:

> The short lived Mackenzie rebellion which broke out in December, 1837 caused the permanent loss to the profession of one of its most distinguished members, Marshall Spring Bidwell.[6]

The footnote to this paragraph quotes the Law Society's "Minute Book" for December 4, 1837: "McKenzie's (sic) insurrection broke out this night and in consequence of which the Convocation assembled no more during this Term."[7]

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6. Riddell, The Bar..., above, note 4, 91.

7. Ibid. Marshall Spring Bidwell (1799-1872) was a very prominent Upper Canadian Reform politician and lawyer. He sat in the Legislative Assembly from 1824 to 1836. In 1836, as part of an effort to conciliate and co-opt prominent Reformers into the Government which saw Robert Baldwin sit for a time as a member of the Executive Council, the Colonial Office recommended that he be appointed to the Court of King's Bench. The events of 1837 precluded his appointment, and although he played no active part in the Rebellion, his name was closely associated with Mackenzie's group, and on the advice of Lt.-Gov. Sir Francis Bond-Head he fled the colony. Despite attempts by his former Reform colleagues to convince him to return to Upper Canada, he remained in New York State until his death in 1872. He practised law in New York City and frequently lectured at Columbia University. (Dictionary of Canadian Biography, vol. X, Toronto, 1972, s.v. Bidwell).

Surely the events and political development of the Upper Canadian reform movement had some impact on the bar, but because these questions lie outside the bounds of the internal definition of legal history, Riddell, like most subsequent Canadian legal historians, did not consider them important.

The internal approach was the rule in much of the literature dealing with the history of the Ontario legal profession. This material provides very little systematic historical analysis, but it does serve as an excellent research resource.[8]

Some more recent literature provides excellent systematic analysis of the contemporary legal profession in Ontario, but it lacks historical perspective. In 1977 the Ontario Ministry of The Attorney General established a Professional Organizations Committee to review the

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8. Law Society of Upper Canada, Osgoode Hall: A Short History of The Hall, 1832-1932, (Toronto, 1932); L.S.U.C., A Short Account of the History of The Law Society of Upper Canada, (Toronto, 1947); C.H.A. Armstrong, The Honourable Society of Osgoode Hall (Toronto, 1952); John Honsberger (ed.), Law Society of Upper Canada, 1797-1972 (Toronto, 1973), also published as a special supplement to the Law Society of Upper Canada Gazette, 6 (1972); David H. Hughes and Thomas H. Purdom, History of The Bar of The County of Middlesex (London, Ont., 1912); Francis G. Carter, The Middlesex Bench and Bar (London, Ont., 1969); H.A. Aylen, "County Bar Associations in Ontario," Fortnightly Law Journal 5 (1935), 103; E.H. Coleman, "The Canadian Bar Association," Canadian Bar Review 26 (1948), 3.

provincial legislation regulating a number of professions including law. This committee, which was chaired by H. Allen Leal, the former Dean of the Law Society's Osgoode Hall Law School, completed a series of reports which provide an excellent contemporary analysis of professional regulation but no historical background beyond a statutory chronology.[9]

Mark Orkin's impressive D.Jur. thesis, "Professional Autonomy and The Public Interest: A Study of The Law Society of Upper Canada," does provide a good historical background. Completed at York University in 1972 under the supervision of Professors Graham Parker and Harry

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9. The committee completed its main report, Professional Regulation: A Staff Study of Accountancy, Architecture, Engineering and Law in Ontario, Prepared For The Professional Organizations Committee, edited by Michael J. Trebilcock, Carolyn J. Tuohy, and Alan D. Wolfson in 1979. This report provides a comprehensive analysis of contemporary professional regulatory issues such as advertising, fees, competence, specialization, and competition, but offers almost no historical background to the issues. It did include an appendix document entitled "History and Organization of The Legal Profession in Ontario," but this amounted to a rather superficial statutory history. Another excellent study of a contemporary aspect of professionalism is Sheila Arthurs' 1970 article "Discipline In The Legal Profession in Ontario," Osgoode Hall Law Journal 71, 235. This article was based on her M.A. thesis in sociology completed at the University of Toronto in 1967 ("Disbarred Lawyers: A Study of Discipline in the Legal Profession in Ontario,) and analyses the data collected in a study of the Law Society's Discipline Committee in disbarment proceedings between 1945 and 1960.

Arthurs of Osgoode Hall Law School, Orkin's thesis examined the self-governing function of the profession in Ontario and concluded that the maintenance of professional autonomy was not always compatible with the public interest. Orkin examined the historical development of this aspect of the Law Society, its structure and composition, and the process by which reform in the government of the profession has been brought about. In evaluating the success of this process he focussed on the introduction and performance of the Compensation Fund established in 1954 to protect against lawyers' misappropriation of clients' funds.[10]

Although Orkin dealt with the substantive historical development of the autonomy, structure, and composition of the Law Society in great depth, he ignored the influence of external factors on the process. The reader is presented with an excellent internal account of how these aspects of the profession's governing body have evolved, but not why.

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10. Mark Orkin, "Professional Autonomy and The Public Interest: A Study of The Law Society of Upper Canada" (D. Jur. thesis, York Univ., Toronto, 1972). Orkin also wrote an LL. M. thesis at York entitled "Some Aspects of Professional Self-Government: A Comparative Study of The Disciplinary Powers of The Law Society of Upper Canada," (1967), and is the author of a treatise entitled Legal Ethics (Toronto, 1957).

J.F. Newman's "Reaction and Change: A Study of The Ontario Bar, 1880-1920" did approach the issue of external influences on internal development but was based on very limited research, and consequently achieved little more than superficial analysis.[11] Newman used editorials and articles published in The Canadian Law Times between 1881 and 1920 as evidence of the impact on the profession of external factors such as urbanization, industrialization, and changes in social thought. He concluded that the influence these changes had on the profession included an awareness of a threat to the social status of lawyers, a call for the formation of national and provincial bar associations, and some degree of acceptance of the need for a code of ethics and increased specialization in practice.

Newman's argument of reaction to change is quite plausible, but the lack of substantive internal analysis of the profession, in contrast to Orkin's thesis, makes it little more than an interesting hypothesis. However, this type of theoretical external interpretation, when coupled with the depth of internal analysis which Orkin began, does have substantial scholarly potential. It is the intent of this author to exploit this potential.

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11. University of Toronto Faculty of Law Review 32 (1974), 51-74.

A number of American legal historians have successfully combined external theory and internal substance in their work. As is the case with most topics in Canadian legal history, the established American literature provides both useful conceptual models and valuable comparative information applicable to the study of the legal profession in Canada.

A comparative perspective is particularly appropriate in Canadian legal history for two reasons. Firstly, like any subject of historical inquiry in Canada, it is usefully understood within its relative international context. Was a particular phenomenon unique to Canada or did it also take place elsewhere? The answer to this question is an essential prerequisite to the search for the causes of any historical phenomenon.

The second reason for adopting a comparative approach to Canadian legal history is that our law and legal institutions have been substantially influenced by external forces - particularly British and American forces. The British influence was, in part, a function of Canada's colonial status, because until 1949 Canadian courts operated within an Imperial judicial hierarchy with the Judicial Committee of The Privy Council exercising ultimate appellate jurisdiction. But external influences are also a function of Canada's historically dependant

status in the global economy. Since the earliest settlement we have exported primarily staple products, and we have imported population, technology, and ideas. It is, therefore, imperative that the history of other legal professions be taken into account before formulating Canadian research questions.

In the American literature Willard Hurst's 1950 monograph The Growth of American Law: The Law Makers contained one of the first, and perhaps still the best, history of the U.S. bar.[12] In this pioneering study, Hurst outlined the historical development of each of the American legal institutions from the Colonial period to the mid-twentieth century, including the legal profession, and emphasized the interplay between each institution and its social, economic, and political milieu.

The most prominent trend which Hurst saw in the development of the U.S. legal profession was one of adaptation to general social and economic change. This was particularly evident during the late nineteenth and early twentieth centuries. Although a post-revolutionary reaction to British colonial institutions gave the early nineteenth century American bar an apparently democratic, individualistic structure, after the Civil War the legal profession began to adapt to the increasing complexity of

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12. (Boston, 1950).

society and the economy.[13] Within this theme of adaptation, Hurst examined the development of a number of characteristics of the American bar including the marketplace for legal services, legal education and admission to practice, and the rise of bar associations.

During the late nineteenth century American lawyers felt increasing competition for clients from outside the bar, or at least they thought that they did. The 1880s and 1890s saw increasing numbers of non-lawyers doing what the bar considered legal work, particularly in real estate transactions and debt collection. In the early twentieth century this trend continued. Trust companies were advising clients on estates and trusts and drafting wills. Accountants provided advice on tax matters, and automobile associations offered assistance in traffic violation and negligence litigation questions.[14]

Although lawyers felt that this competition from outside the bar represented incursions into their

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13. These assumptions are those which appear in Hurst's work as well as that of the more traditional legal historians such as Charles Warren A History of The American Bar (New York, 1911, 1968), Alfred Z. Reed, Training For The Public Profession of The Law (New York, 1921), Roscoe Pound The Lawyers From Antiquity To Modern Times (St. Paul, Minn., 1953), and Anton Herman Chroust The Rise of The Legal Profession In America 2 vols. (Norman, Okla., 1965).

14. Hurst, 319-20.

legitimate field, much of it seems to have been the product of new business. Life in industrializing and urbanizing America was becoming much more complicated, and economic relationships between and among individuals, corporations, and governments was becoming much more complex. The result was a vastly increased demand for specialized advice in all areas of life. Lawyers' work was, in fact, increasing, but they resented the fact that others were assuming responsibilities they felt should be theirs.[15]

American lawyers fought back against this perceived threat of lay competition:

> Between 1919 and 1940 the state statute books grew to include an impressive list of bans on the unlicensed activity of real estate brokers, tax adjusters, collection agents, claim adjusters, notaries, conveyancers, probate attorneys, law students, law clerks, and legal aid associations, as well as of banks, trust companies, title companies, collection agencies, mercantile associations, insurance companies, and incorporated legal aid societies.[16]

The success which American lawyers had in the state legislatures contrasted with that of their Ontario counterparts (discussed in Chapter Three, below), but much of this protective legislation was vaguely worded, simply forbidding the named agencies from engaging in "the

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15. Ibid.

16. Ibid., 320-1.

practice of law."[17] Most importantly, the American legal profession seems to have been very reluctant to use these statutes to protect itself and press charges for fear of unfavourable reaction.[18]

In examining the development of American legal education during this period Hurst focussed on the transition from apprenticeship to the law school, and within the law school, from the lecture to the case study method. Although prior to the Civil War the vast majority of American lawyers had apprenticed with a practising member of the bar before entering the profession, by the turn of the twentieth century the university LL.B. program was the dominant route of entry to the bar.[19]

The earliest law schools were private institutions which had grown out of enlarged lawyers' offices whose primary function was to provide apprenticeship positions for fee-paying students.[20] University law faculties, offering lectures, replaced these proprietary institutions during mid-century, and beginning in 1870 university law

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17. Ibid., 321.

18. Ibid., 323-4.

19. Ibid., 259.

20. Ibid.

schools turned to the case study method based on the Harvard model.[21]

In Hurst's opinion the introduction and rise in popularity of the case study method of legal education was a reaction to the demands placed on the bar as a result of the rapid industrialization, urbanization, and concentration of wealth in late nineteenth century America. Because of these changes, American lawyers could no longer be simply constitutional thinkers or black letter conveyancers; the complexity of commerce demanded practitioners who had a "thorough and rigorous intellectual training in the law." This fundamental change in market demand, coupled with a rising faith in science evident in all aspects of American thought, prompted educators led by Harvard's Christopher Columbus Langdell to portray law as a science and legal education as the teaching of scientific legal principles.[22]

On the subject of bar admission, like the lawyer's popular image, Hurst focussed on the equivocal nature of a limited, privileged group in a supposedly democratic society. This ambivalence was evident in the Indiana state constitution, which from 1851 to 1933, held that

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21. Ibid., 261-2.

22. Ibid., 264-5.

"every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice." Almost anyone could practise law, but one had to be admitted to do so. This implied the setting of some sort of standards and, therefore, some criteria for exclusion from the bar. He described the slow raising of bar admission standards during the late nineteenth century as a part of a "new emphasis on the rationalization of private and then of public affairs."[23]

Although Hurst did not discuss professionalization in any systematic way, in his opinion "improvement in standards for admission to the bar was part of a general movement in which old callings regained professional status and new ones sought it."[24] By regaining professional status Hurst meant that the bar had to improve the quality of its incoming members, but at the same time it had to justify its increasingly limited position in society.

Despite having substantial success in both these efforts, American lawyers were not successful in gaining the ultimate professional attribute:

> At no stage in this country was formal control of bar admissions given to the

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23. Ibid., 250, (emphasis added).

24. Ibid., 277.

> profession itself. This was the more notable because it departed from the strong contrary English tradition of guildlike organization of lawyers under their own discipline. On the other hand, we showed the English inheritance in the fact that control of the profession did not come to rest in the schools, as it did in large degree on the Continent.[25]

In this, as in most other aspects of the development of the American bar, the Canadian comparisons and contrasts are striking.

As will be outlined in Chapter Three, below, the Ontario legal profession did enjoy virtual control over admission to the bar, and during the late nineteenth and early twentieth century they strongly protested the occasional legislative breach of this professional prerogative. And as Hurst correctly pointed out, unlike their European counterparts, the American university law schools did not hold controlling power, but as will be outlined in Chapter Four, below, the Ontario bar allowed the universities no "control of the profession."

During the early twentieth century the American legal profession tried to raise the standards of admission to practice and to increase its own ability to control admission through bar associations. During the pre-Revolutionary era many northern colonies had prominent, and powerful, bar associations, but these

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25. Ibid., 278.

organizations had largely died out during the Jacksonian period. Towards the end of the nineteenth century, however, bar associations began to re-emerge on the national, state, and local level.[26]

When American lawyers began to reorganize bar associations after the Civil War, they did so for many reasons. The first associations formed in the largest cities. In 1870 a group of Manhattan attorneys formed the Association of the Bar of the City of New York, primarily to combat the municipal corruption of "Boss" William M. Tweed. In 1874 the Chicago Bar Association was founded to fight "a notorious fringe of unlicensed practitioners," and between 1870 and 1878 sixteen other city and state bar associations were formed.[27] In 1878 seventy-five prominent lawyers founded the American Bar Association at a meeting at Saratoga Springs, New York. By 1925 every state and territory had a bar association, and Hurst

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26. Ibid., 285. See also, Gerard W. Gawalt, The Promise of Power: The Emergence of The Legal Profession in Massachusetts, 1760-1840 (Westport, Conn., 1979).

27. Ibid., 286. See also George W. Martin, Causes and Conflicts: The Centennial History of The Association of The Bar of The City of New York, 1870-1970 (Boston, 1970), and Chapter Six, below.

estimated the total number of city and county associations at over 1,100.[28]

Despite the growth in number of bar associations, membership in them was still limited. Hurst felt that the greatest fault of the organized bar was the "ill-considered adoption of the practice of a select instead of an all-inclusive membership."[29] In his opinion, by the late nineteenth century the American bar had been far too long without organized standards.

> Quite naturally, therefore, those who started the new bar organizations invited only selected lawyers to join. [Until the 1920s] the firm tradition was that the individual lawyer had neither the right nor the duty to join a bar association; membership was a privilege, conferred by election of the existing membership.[30]

In 1880 the A.B.A. could claim less than one percent of U.S. lawyers within its ranks, and by 1910 this figure was still only three percent. The ranks of other bar associations were not as exclusive, but in 1915 only twenty percent of all lawyers were members of state

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28. Hurst, 287-8. See also Edson R. Sunderland, History of The American Bar Association And Its Work (n.p., 1953).

29. Hurst, 288.

30. Ibid.

associations, and only about thirty percent had joined any bar association.[31]

During the 1920s certain state bar associations campaigned successfully for legislation establishing what was known as the "integrated bar." This meant that membership in the state bar association was mandatory for all lawyers practising in the state. Although the economically advantageous prospects of what was, in essence, a "closed shop," must have evident to the proponents of this type of legislation, Hurst felt that the "integrated bar" plan was advanced primarily in order to maintain better discipline over lawyers' relations with clients.[32]

Up to that point the only remedy to discipline American attorneys was the inflexible procedure of disbarment, which was administered by the courts, not the profession itself.

> For it the integrated bar laws substituted a range of measures, from disbarment to suspension or reprimand. Old-style disbarment called for cumbersome proceedings in court; in place of these, the new type of law authorized proceedings by agencies of the bar itself, to apply the various remedies provided. Court proceedings inevitably meant publicity which might greatly damage the accused even if he were finally found innocent. In place of this the

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31. Ibid., 289.

32. Ibid., 292.

> new laws provided unpublicized proceedings carried on within the organized bar.[33]

One might also add, of course, that the inevitable publicity of a public examination of alleged wrongdoing by a member of the bar would not simply harm the accused but the entire profession.

In reading Hurst's interpretation of the motivations behind plans such as the integrated bar and in camera disciplinary proceedings, one is reminded that he published this analysis of the history of the American legal profession in 1950. The late Stephen Botein of Harvard accurately described him as a proponent of "the so-called 'consensus' school in American history writing, which flourished in the 1950s."[34] Citing a 1959 article by John Higham, Botein defined the members of the consensus school as those historians who,

> seemingly impressed and relieved by the failure of both right- and left-wing European ideologies to win American converts during the Depression, ...advanced a version of their national past that emphasized appreciatively the "seamlessness" of a society in which almost no

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33. Ibid.

34. Stephen Botein, "Professional History Reconsidered," The American Journal of Legal History, 21 (1977), 60-79, at 65.

> one was thought to have been either very rich or very poor and conflict appeared minimal.[33]

The more recent literature, although loyal to Hurst's law and society approach to the study of the history of the American bar, is certainly not of the consensus school.

The best known, and most controversial study of the American legal profession is Jerold Auerbach's Unequal Justice: Lawyers and Social Change in Modern America.[34] In this book Auerbach deals with the same historical developments, but his conclusions are much more critical than Hurst's.

In discussing the marketplace for legal services Auerbach is not concerned with the bar's competition with laymen; rather his concern is with what he sees as patently unfair competition within an overtly stratified American legal profession. In his view the most significant development of the twentieth century American bar has been the ability of an elite group of lawyers to

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[33]. Ibid, citing John Higham, "The Cult of The 'American Consensus'," Commentary, 27 (1959), 93-100. Botein felt that this description particularly applied to Hurst's Law and The Conditions of Freedom in The Nineteenth Century United States, (Madison, Wisc., 1956).

[34]. Jerold Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (New York, 1976).

structure all aspects of intra-professional competition in its own interest.[37]

The legal elite, particularly corporate lawyers, university law teachers, and prominent members and officers of bar associations, rationalized this stratification within a self-professed democracy in the same way as the rest of American society did; but Auerbach argues that differentiation within the bar was not based on "hard work, self-discipline, inductive reasoning skill, and academic achievement," but on "race, religion, class, color, sex, education; educational opportunity, and social origins."[38] Where Hurst was critical of the bar's hesitation in raising standards of education and admission, and therefore the quality of the profession, Auerbach looks at who engineered the changes and questions their motives.

In examining the market for legal services Auerbach analyses the ways in which the elite members of the bar structured the rules of competition within the profession. Rather than competition from outside the bar, Auerbach sees the articulate lawyers' greatest concern in this area as the threat from "[what they called] 'a horde of

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37. Ibid., 4.

38. Ibid.

pettifogging, barratrous, ...ambulance chasers' and 'shysters'."[39]

Similarly, by raising standards of education, the American legal elite was able to differentiate itself from the "rabble." Although they were unable to gain control of admission to practice, they were able to limit access to the top by identifying certain institutions as reputable law schools. The graduates of the member schools of the Association of American Law Schools, an organization of thirty-five institutions founded in 1900, had much easier access to lucrative practice.[40]

Auerbach leaves little doubt about the Association of American Law Schools' purpose in promoting reforms such as the three-year, full-time day school LL.B. program. "Educational reform was an effective vehicle for the exclusion of ethnic minority-group members whose access to the profession was eased by [earlier] minimal educational requirements."[41] The antebellum democratization of American society had also made access to the professions much too easy, at least in the view of the legal elite.

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[39] Ibid., 41, quoting from George Sharswood, Essay on Professional Ethics, (n.p., 1854).

[40] Auerbach, 87-8.

[41] Ibid., 108.

They could not reverse the levelling process completely by closing off access to the bar itself, but they succeeded in isolating its upper strata from the "horde."

Auerbach's assessment of the rise and evolution of bar associations is similarly critical. In his view, they were simply "caretakers of elite interests." The reforms which they sponsored, particularly the American Bar Associations Canons of Professional Ethics of 1906, were intended generally to improve the public image of the bar as a whole and specifically to establish selective standards of conduct which were economically beneficial to the elite and detrimental to those lawyers in the lower strata of the profession.[42]

Many members of the American legal profession began to call on the A.B.A. early in the twentieth century to institute some form of code of ethics in order to combat what they saw as "commercialization" in the bar. This phenomenon was evident at both ends of the social scale of the profession. At one end were the new elite, the corporate counsel who had usurped the traditional courtroom advocates as the leaders of the bar. These men were criticized for being subservient to business interests - and their companion - the profit motive. At the other end of the scale a struggling group of poor,

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42. Ibid., 62.

often ethnic lawyers served a clientele from their own socio-economic group. A code of ethics would supposedly return the standards of professional conduct to some pristine model of the past, and both the corporate elite and the ethnic "ambulance chasers" would be taken to task.

When the A.B.A. did institute its Canons of Ethics in 1906, however, only the lower strata lawyers were singled out for moralistic attack. The A.B.A. chose standards which clearly benefitted those at the upper end of the scale and penalized those at the lower end.[43]

> The A.B.A. Canons of Ethics were aimed at an influx of new lawyers who pursued an "eager quest for lucre" [and] diverted the bar from its traditional standards and from its "pristine glory." A code of ethics, drawing upon the wisdom of the past, "should provide a beacon of light on the mountain of high resolve to lead the young practitioner safely through the snares and pitfalls of his early practice up to and along the straight and narrow path of high and honorable professional achievement."[44]

Among other things the Canons prohibited advertising by lawyers and, although they could not ban them, denounced contingent fee arrangements between attorneys and clients.

By prohibiting advertising and public expression of specialization, the Canons harmed the small, single

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43. Ibid., 41-3.

44. Ibid., 41, quoting from, "Report of Committee on Code of Professional Ethics," American Bar Association Reports, 29 (1906), 600-3.

practitioner who lacked the social and business connections and organizational advantages of the large, established, and integrated law firm.[45] The Canons could not prohibit the contingent fee, whereby a lawyer would take on a client's cause for a percentage of the judgement or settlement, because the Supreme Court had sanctioned them in 1877, but they placed them under the supervision of the courts. In doing so they had to overcome the very strong principle of freedom of contract, which made measures such as minimum wage and maximum hours legislation very difficult to institute. The result was an unfair limitation of access to justice for people who may have has meritorious claims of action but lacked sufficient funds for a retainer.[46]

The basis of Auerbach's criticism of the American legal profession is that it is too autonomous, and certain members have used this freedom to their own advantage. His argument is, essentially, one of economic determinism. Given the opportunity, and the power, individuals will act in their own best economic interest. The only solution, if a society wishes to live up to its professed values of

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45. Auerbach, 43.

46. Ibid., 47-8.

equal justice, is "public regulation of the legal profession in the public interest."[47]

Understandably, Auerbach's book was very widely reviewed and criticized in the United States and Canada. Harry Arthurs, writing in the University of Toronto Law Journal, felt that although there is little reason to doubt that some degree of comparable stratification has existed in the Canadian legal profession, there are some points of contrast between the Canadian bar and what Auerbach described.[48]

Reiterating Auerbach's description of reforms in legal education as filtering devices to exclude less desirable recruits, Arthurs argues that, in this respect at least, "the Canadian bar is in fact less culpable, although not necessarily by design." When Canadian legal educators did demand higher standards of professional

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47. Ibid., 308.

48. Harry Arthurs, University of Toronto Law Journal, 27 (1977), 513-18. See also, reviews by Stephen Botein, above, note 34; Jonathan Prude, Harvard Civil Rights-Civil Liberties Law Review, 12 (1977), 207-18; James R. Silkenat, Columbia Law Review, 77 (1977), 338-44; Terrance S. Carter, Osgoode Hall Law Journal, 15 (1977), 293-5.

training, they "did so in opposition to the bar, not in collusion with it."[49]

The essence of Arthurs' criticism is that he finds Auerbach's analysis too simple. "The exercise appeals both to my intellect and my instinct; I am impressed; I want to believe... [but] I, too, find the role of the legal profession in U.S. society 'an altogether more complex phenomenon' than Auerbach suggests."[50] This is a fairly standard criticism of revisionist history.

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49. Arthurs, 514, citing Brian Bucknall, et. al., "Pedants, Practitioners, and Prophets: Legal Education At Osgoode Hall To 1957," Osgoode Hall Law Journal, 6 (1968), 139-229.

50. Arthurs, 517. In making this point Arthurs quotes from Grant Gilmore's review of another controversial revisionist legal history, Morton Horwitz's The Transformation of American Law, 1780-1860 (Cambridge, Mass., 1977), "From Tort to Contract: Industrialization And The Law," Yale Law Journal, 86 (1977), 788, at 797. Horwitz argued that an active American appellate judiciary transformed the common law during the Antebellum period to favour industrial growth. He termed this use of the law "instrumentalism" and asserted that the more rigid formalism of the late nineteenth century represented an effort by the judiciary to maintain conditions favourable to industry. Arthurs quotes Gilmore's comment that nineteenth century American doctrinal evolution was "an altogether more complex phenomenon than Professor Horwitz's reconstruction makes it out to be.... It may be that we are currently witnessing a revival of formalistic thinking and writing.... What principally disturbs me in Professor Horwitz's excellent book is that he seems to be proposing a formalism of the left which I find quite as distasteful as the more familiar formalism of the right...."

Auerbach has revised an outdated self-congratulatory history of the bar but in the process the pendulum has swung too far. His generalizations are too sweeping, and his conclusions beg further, deeper analysis.

The most recent scholarship of the American legal profession begins this process. In The New High Priests: Lawyers in Post-Civil War America, a collection of essays edited by Gerard W. Gawalt of the Library of Congress, the researchers ask more complex and specific questions about the development of the American legal profession and its relationship to social change. The editor describes this collection as an examination of the most critical period in the professionalization of the bar, the post-Civil War era, "when law replaced religion as the controlling element in American society, and lawyers... became the new high priests of an increasingly legalistic, industrial society."[51]

The essays in Gawalt's collection deal with specific aspects of the development of the American legal profession during the late nineteenth century, including the emergence of the large law firm, the careers of judges, and the development of bar associations. They also focus on specific regions of the United States,

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51. Gerard W. Gawalt (ed.), The New High Priests: Lawyers In Post-Civil War America, (Westport, Conn., 1984), vii.

including New York City, Massachusetts, California, Texas, and Virginia.[52]

The best of the essays in Gawalt's collection is Robert Gordon's "'The Ideal and the Actual in the Law': Fantasies and Practices of New York City Lawyers, 1870-1910."[53] In this piece Gordon examines the intricacies of the urban elites' attempts to rationalize what they believed the role of the law and lawyers should be and what in reality it was. The "Ideal" which these elite lawyers believed in included:

> The development of legal "science" consisting of general "principles" derived from philosophical reflection and historical scholarship; the application of the principles to training law students, to proposing changes in procedure or substantive law, to settling international disputes through arbitration, and, above all, to arguing or deciding cases; and the sponsorship of "reform" - meaning the purification of legislation, judicial decisions and appointments to office of corrupt influence; and the displacement of politics in some fields altogether by expert professional (or nonpartisan amateur) administration.[54]

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52. In addition to the editor, the contributors to this volume include: Wayne K. Hobson, Kermit L. Hall, Robert W. Gordon, John A. Matzko, Gordon Morris Bakken, Maxwell Bloomfield, W. Hamilton Bryson and E. Lee Shepard, and Michael de L. Landon. Full citations for these articles may be found in the bibliography, below.

53. Gawalt (ed.), above note 51, 51-74.

54. Gordon, above, note 53, 52.

Gordon points out that the most recent analysis of these and other Progressive era reforms concentrates on the self-interested motivations of their proponents, but he feels that the story is more complex.[55] He sees these elite attorneys as being ambivalent - "as having 'ideal interests' as well as material ones."[56]

In this way Gordon's analysis seems to represent a post-revisionist model concerned with atomistic complexity. Although Canadian analysis of the legal profession does not seem to have gone through a revisionist phase, researchers in this country would be wise to learn from the maturity of the American historiography.[57]

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55. Gordon cites Auerbach (above, note 34) as well as Larson (above, note 12) and David B. Tyack, The One Best System: A History of American Urban Education, (Cambridge, Mass., 1974).

56. Gordon, 53.

57. Many of the most important articles dealing with the history of the American legal profession can be found in Kermit Hall's recently published collection, The Legal Profession: Major Historical Interpretations (New York, 1987). Full citations of these articles may be found in the bibliography, below. Hall's collection is part of a twenty-volume series, edited by Hall, entitled United States Constitutional and Legal History (New York, 1987), which republishes a very large part of the material published in article form in this field.

The American literature discussed above is extremely useful to the researcher interested in learning about the historical development of the Canadian legal profession within a broad social context. The theoretical models the American analysts employ are of value because the conclusions they reach about the profession in the U.S. prompt many of the questions which must be asked about our own bar. It can also be argued that no area of Canadian legal history can be adequately appreciated without some knowledge of the equivalent areas in comparable jurisdictions. This thesis adopts such a comparative perspective.

2. THE ERA

By focussing on the province of Ontario, the greatest depth of analysis is possible without sacrificing a broad perspective. Because regulation of the professions is a provincial concern, the province is the largest political unit which can be dealt with while maintaining an identifiable and uniformly defined subject area. A study limited to the legal profession in a smaller area might yield a more detailed account of the development of the bar of a single county or town, but would be unable to deal with broader geographical issues such as the role of the legal profession in the development of economic

relationships among competitive urban centres. Similarly, a study of the entire Canadian profession could approach broader national issues but would involve research into a number of differing jurisdictions, and at this point would run the risk of achieving little more than superficial comparisons.

The end of the nineteenth century and the beginning of the twentieth was a time of very rapid social and economic change. It was, therefore, a particularly relevant time period in which to centre this research. Following the premise of the new legal history that law and legal institutions should be studied within a broad historical context, it is apparent that the development of the legal profession during a period of rapid social, political, and economic change is of substantial historical significance.

During the late nineteenth and early twentieth centuries Ontario underwent a transformation involving virtually all aspects of society and the economy. In 1880 it was a largely rural province in the early stages of industrialization. By 1920 it had experienced tremendous demographic and economic growth; the majority of Ontarians lived in urban centres, and manufacturing and service industries had replaced agriculture as the largest sectors in the provincial economy.

Between 1881 and 1921 the provincial population grew by over 50 percent from just under two million to almost three million. As the population grew, it also became increasingly urbanized. In 1881 only 31 percent lived in urban centres, but by 1921 58 percent of the people lived in cities, towns, or villages. Moreover, the population was becoming increasingly centred in the largest cities. In 1881 the populations of Toronto, Hamilton, Ottawa, and London accounted for less than 10 percent of the provincial total. By 1921 this figure was 27 percent. Toronto alone accounted for only 5 percent of the provincial population in 1881, but 18 percent in 1921. At the same time, the provincial population was expanding rapidly into the vast northern area known as "New Ontario." In 1881 the total population of the northern districts was less than 3 percent of the provincial total. By 1921 it was approaching 11 percent.[88]

The economic changes taking place were equally as dramatic as the demographic ones. Although very little provincial economic data have been compiled for this period, economic historian O.J. Firestone estimated that between 1880 and 1920 the Canadian gross national product grew from about $580 million to over $5.5 billion.

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88. Canada Census 1931 vol. II, Table 12, 61-87. See also Appendix A, below.

Agriculture was the dominant sector of the national economy in 1880, accounting for 32 percent of the GNP. Service industries and manufacturing produced only 22 and 19 percent respectively. By 1920 agricultural production had declined in proportional volume to only 19 percent of the GNP, while the service and manufacturing sectors had grown to 35 and 24 percent.[1]

Although these figures represent national trends, if anything they probably underestimate the relative growth of Ontario manufacturing and service industries. By far the greatest growth in agricultural production during this period was in western Canada where previously unexploited lands were opened up by the railways. In Ontario, with the exception of new areas such as the Timiskaming Clay Belt, there was very little acreage left for agricultural expansion. While the total value of Ontario farm products in 1920 was two and half times that of 1900, the national

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1. M.C. Urquart and K.A.H. Buckley (eds.) Historical Statistics of Canada (1st edn., Toronto, 1965), 141. Although a second edition of this work was published in 1983, it did not include this table, which was originally compiled by O.J. Firestone and published in his volume entitled Canada's Economic Development, 1867-1953 (London, Eng., 1958), 281.

agricultural sector of the GNP was almost four times greater in 1920 than it had been twenty years earlier.[60]

Similarly, the total railway track in service in Canada grew from only 7,000 miles in 1880 to over 50,000 miles in 1920.[61] The total assets of Canadian banks in 1880 was roughly $184 million. By 1920 it was over $3 billion. The capital invested in Ontario industries alone increased from about $80 million in 1880 to over $1.7 billion in 1920; and possibly most significant of all, particularly for the legal profession, the Ontario Provincial Government budget grew over 1,000 percent during these years from $2.5 million in 1880 to $26 million in 1920.[62]

Canadian historians have studied this general transformation in a few specific areas of society and the economy, but with the exception of R.C.B. Risk's and Jamie Benidickson's recent essays on workers' compensation and

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60. Ibid.; Ontario Bureau of Statistics and Research, A Conspectus of The Province of Ontario (Toronto, 1947), 224.

61. Urquart and Buckley, above, note 59, 528, 532.

62. Dominion Bureau of Statistics The Canada Year Book, 1922-23 (Ottawa, 1924), 417, 674, 819.

riparian conflicts, the literature has largely ignored the legal aspects of this change.[63] In order to more fully understand this important period of transformation in Canadian history, much more must be known about law and legal institutions, particularly the legal profession.

The late nineteenth and early twentieth centuries was also a time of great structural change in the legal profession and in legal practice. The number of lawyers practising in the province grew substantially, and the volume of litigation increased. But, more importantly, the rates of growth in the profession and the volume of litigation fluctuated greatly during this period. This is

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63. Benidickson, "Private Rights and Public Purposes in The Lakes, Rivers, and Streams of Ontario, 1870-1930," Risk, "'This Nuisance of Litigation': The Origins of Workers' Compensation in Ontario," both in Flaherty, Essays..., vol. II, 365-417, 418-91. See also, T.W. Acheson, "Changing Social Origins of The Canadian Industrial Elite, 1880-1910," in Glenn Porter and Robert Cuff (eds.), Enterprise And National Development: Essays in Canadian Business And Ecohomic History (Toronto, 1973); G.W. Bertram, "Economic Growth in Canadian History, 1870-1915: 'The Staple Model And The Take-Off Hypothesis," Canadian Journal of Economics And Political Science [1963]; Michael Bliss, A Living Profit: Studies In The Social History of Canadian Business, 1883-1911 (Toronto, 1974); J. M. Gilmour, Spatial Evolution of Manufacturing: Southern Ontario, 1851-1891 (Toronto, 1972); R. C. Brown and Ramsay Cook, Canada, 1898-1921: A Nation Transformed (Toronto, 1974); H.V. Nelles, The Politics of Development: Forests, Mines And Hydro-Electric Power in Ontario, 1849-1941 (Toronto, 1974).

particularly evident when growth in the legal profession is considered in relation to that of the general population and when the increase in litigation is considered in relation to that of the number of lawyers practising in the province.

As Figure 2.1 indicates, the number of lawyers in the province grew from 1,201 in 1881 to 1,899 in 1921, but as Figure 2.2 shows, the rate at which the profession grew varied significantly from 24.7% during the 1880s to minus 0.7% during the first decade of the twentieth century.[64]

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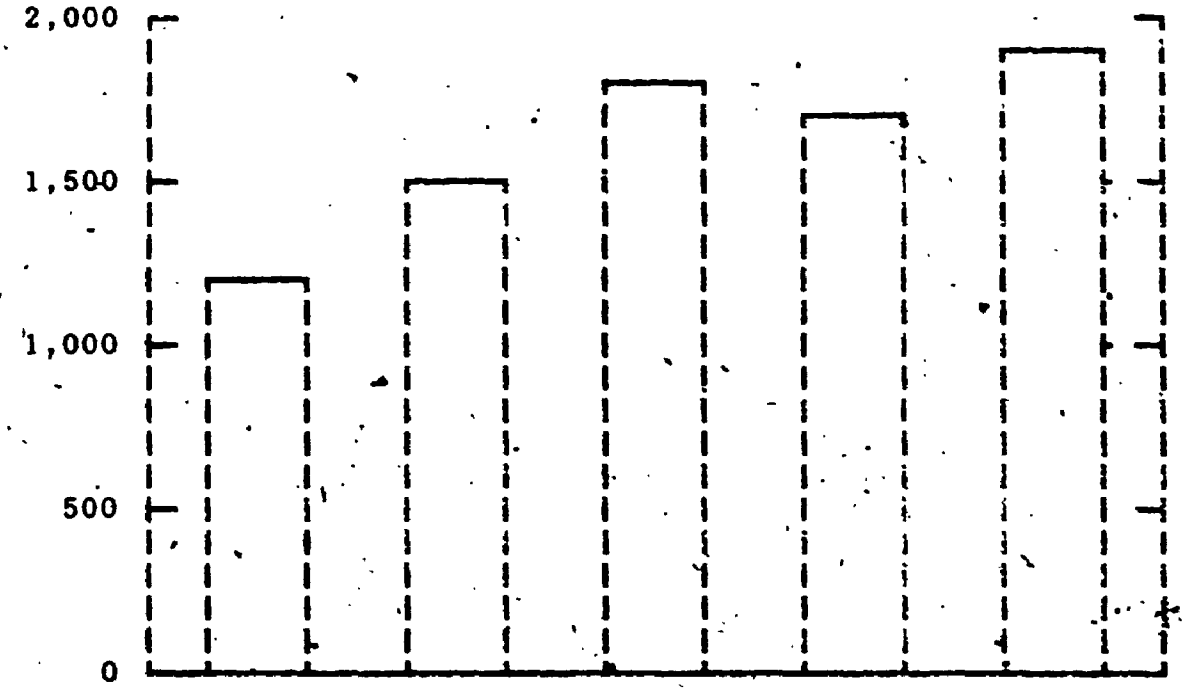
64. For a detailed discussion of the historical numbers question in the context of the recent controversy, see Curtis Cole, "A Developmental Market: Growth Rates, Competition, and Professional Standards in The Ontario Legal Profession, 1881-1936," Canada-United States Law Journal, 6 (1983), 125-39; 7 (1984), 231-45.

FIGURE 2.1

GROWTH IN THE ONTARIO
LEGAL PROFESSION, 1881-1921



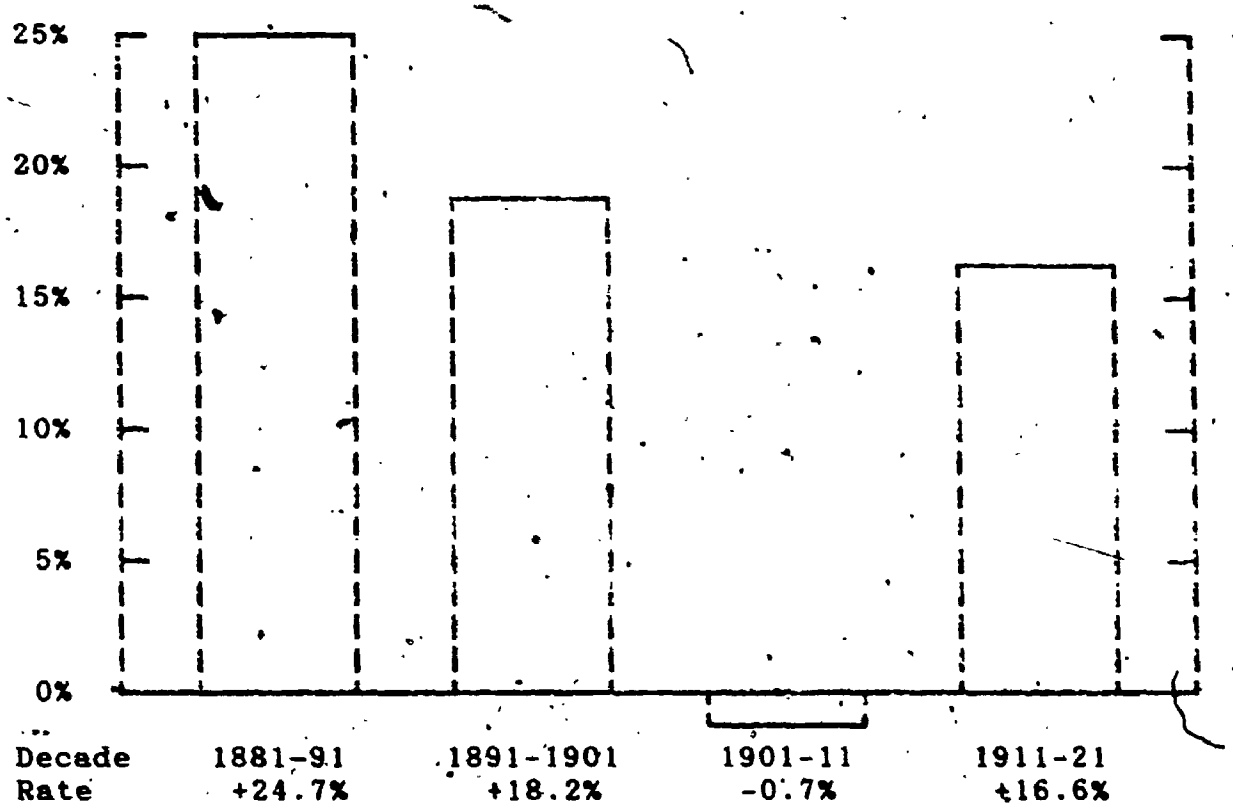
Year	1881	1891	1901	1911	1921
Lawyers	1,201	1,497	1,770	1,638	1,899

Sources: The Ontario Law List, (Toronto, 1880); The Canadian Law List, (Hardy's), (Toronto, 1891-1921).

Note: The data from which this figure is taken are much more fully outlined in Appendix A, below.

FIGURE 2.2

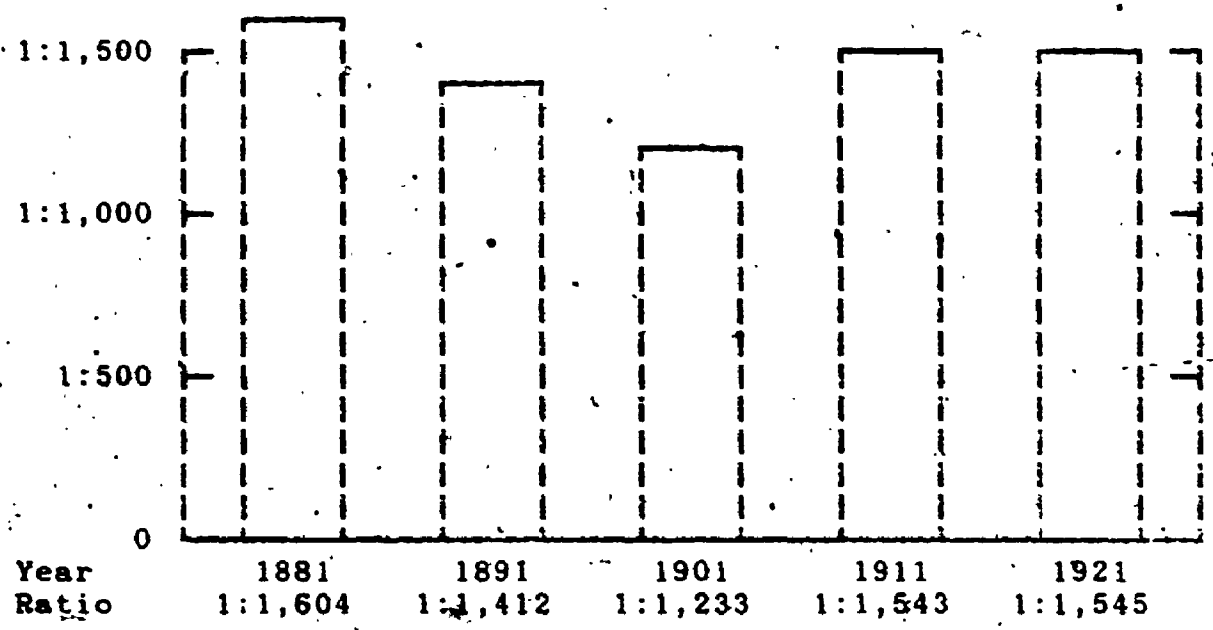
RATE OF GROWTH IN THE ONTARIO LEGAL PROFESSION, BY DECADES, 1881-1921



More important than the number of lawyers in the province and the rate at which the profession grew, however, was the potential for business represented by the ratio of lawyers to provincial population. As Figure 2.3 indicates, this value also fluctuated dramatically during the late nineteenth and early twentieth centuries. In 1881 there were 1,604 people for every lawyer in Ontario. By 1901 there were only 1,233 people per lawyer; but within ten years the ratio was back up to 1:1,543.

FIGURE 2.3

RATIO: POPULATION PER LAWYER IN ONTARIO, 1881-1921



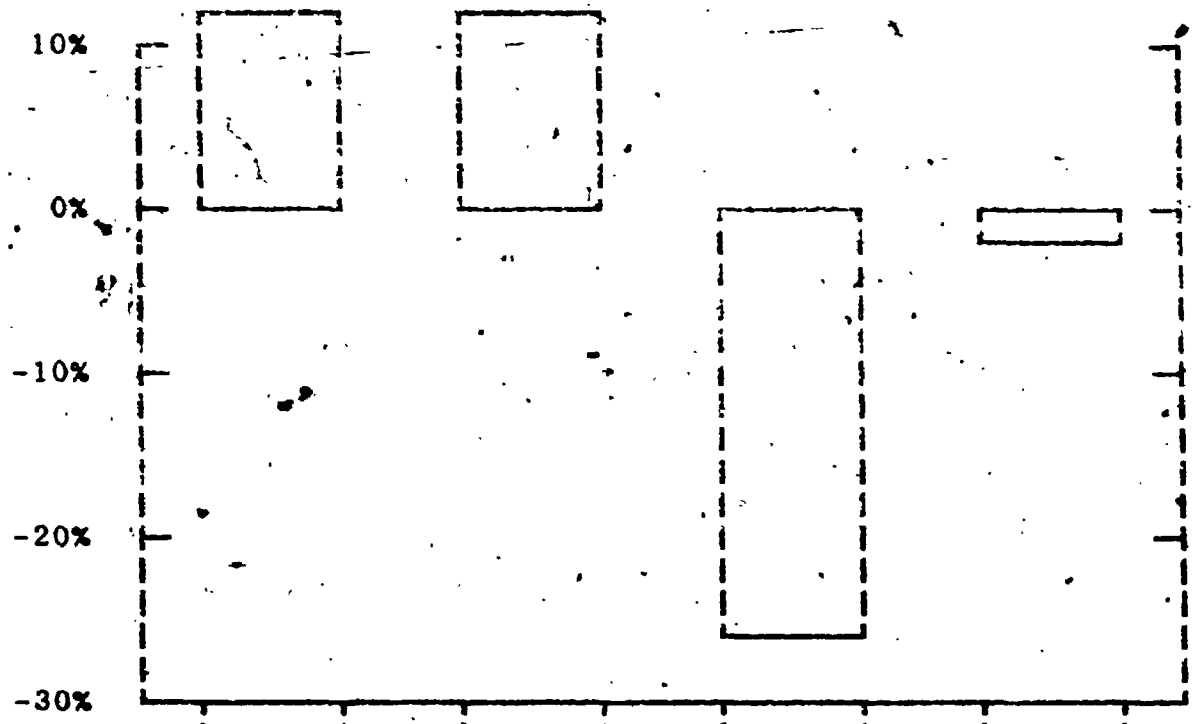
Sources: The Canada Year Book, (Ottawa, 1942); The Ontario Law List, (Toronto, 1880); The Canadian Law List, (Hardy's), (Toronto, 1891-1921).

The dramatic fluctuation in potential business for lawyers in Ontario is most evident in Figure 2.4. What might be termed the "real" rate of professional growth can be seen in the rate of growth in numbers of lawyers relative to that of the general population. During the 1880s and 1890s the legal profession grew at a steady rate roughly 12% above that of the general population. From 1901 to 1911, however, the growth rate among lawyers fell behind that of the general population by over 25%. In the

following decade the rate of professional growth kept pace with population growth, trailing it by only 1.0%.

FIGURE 2.4

GROWTH RATE OF THE ONTARIO LEGAL PROFESSION RELATIVE TO THAT OF THE GENERAL POPULATION, BY DECADES, 1881-1921



Decade	1881-91	1891-1901	1901-11	1911-21
Rate	+11.9%	+12.6	-25.1%	-1.0%

Sources: See Figure 2.3

In attempting to explain the causes of similar trends in the relative growth rate of the American legal profession, economists in recent years have viewed such

factors as the scale of government regulation of industry and growth in real gross national product as influential.[65] Although a quantitative economic analysis of the supply and demand for legal services is beyond the scope of this dissertation, it is clear that the marketplace in which Ontario lawyers tried to make a living during the late nineteenth and early twentieth centuries was highly unsettled.[66]

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65. See Peter Pashigian, "The Market for Lawyers: The Determinants of the Demand for and Supply of Lawyers," Journal of Law And Economics, 20 (1977), 53-85.

66. In contrast to the vocal debate in recent years in Ontario, the profession voiced relatively little concern about its rate of growth during this period. The size of the practising bar was, however, of considerable concern to its members during at least two other periods. In 1846, potential immigrant lawyers were warned, "Lawyers are not wanted: Canada swarms with them; and they multiply in the province so fast, that the demand is not by any means equal to the supply." (Smith's Canadian Gazetteer, Toronto, 1846, 250). The Benchers debated the question of growth between 1840 and 1855, when Convocation decided to limit entry into the profession by substantially increasing the requirements for call to the bar. (G. Blaine Baker, "Legal Education in Upper Canada, 1785-1889: The Law Society as Educator," in Flaherty, Essays... vol. II, 49-142.) But there was little serious discussion of the size of the legal profession for almost a century following this decision; the matter was not considered again until 1949 when the Canadian Bar Association commissioned a survey of the profession to determine if there was a shortage of lawyers in the country. (C.P. McTague, "Survey of The Canadian Legal Profession," Canadian Bar Review, 27 (1949), 951-7.)

The ways in which lawyers made their living were also changing at this time, and the rate at which this process took place fluctuated greatly. The volume of litigation in the provincial courts increased between 1881 and 1921, but like the growth in numbers of lawyers, the rate of this increase varied considerably. This is evident in the numbers of legal actions entered in the Division Courts and County Courts in the province. These were the two inferior courts of original jurisdiction, where most litigation began.[67]

As Figures 2.5 and 2.6 indicate, the total number of suits entered in the province's Division Courts increased from 53,843 in 1881 to 70,115 in 1921, and the total number of County Court actions more than doubled from 633 in 1884 to 1,391 in 1921. In each case, however, the volume of litigation did not increase at a steady rate. Both courts heard fewer cases in 1901 than they had two decades earlier.

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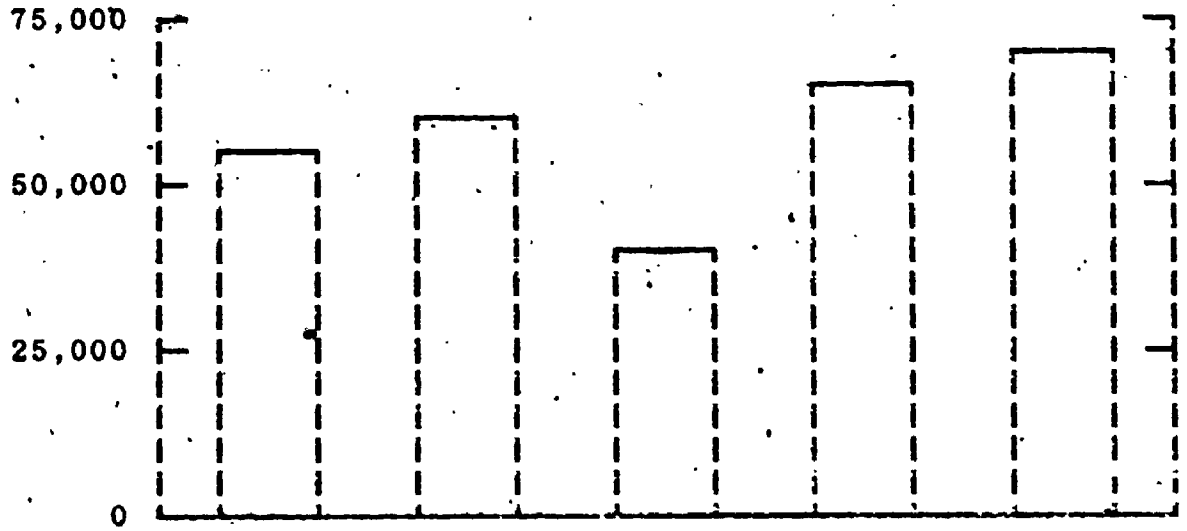
67. Although the provincial superior courts also held some original jurisdiction, it was limited to causes of substantial value. The vast majority of civil litigation originated in the Division and County Courts. For a very detailed explanation of the Ontario court hierarchy, see Margaret A. Banks, "The Evolution of The Ontario Courts, 1788-1981," in Flaherty, Essays..., vol. II, 492-572.

FIGURE 2.5

SUITS ENTERED IN ONTARIO DIVISION COURTS, 1881-1921



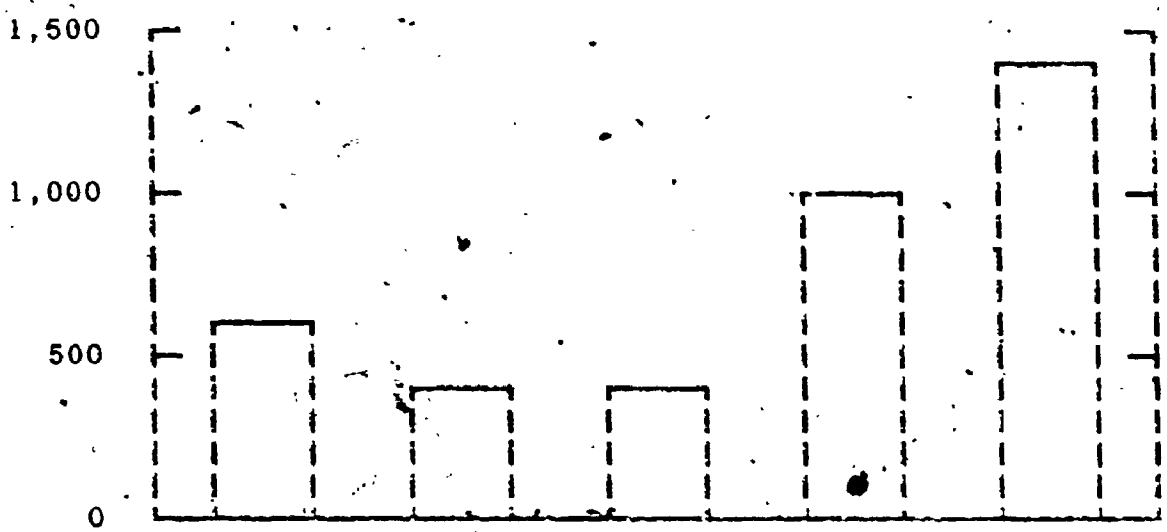
Year	1881	1891	1901	1911	1921
Suits	53,843	59,510	39,681	65,373	70,115

Sources: "Report of The Division Court Inspector," 1881, 1891, 1901, 1911, 1921, Ontario Sessional Papers, 1883, vol. XV, no. 10, 2-39; 1892, vol. XXIV, no. 28, 2-41; 1902, vol. XXXIV, no. 33, 6-19; 1912, vol. XLIV, no. 5, 6-19; 1921, vol. LIII, no. 5, 10-23.

Note: These data are broken down by county and district in Appendix B, below.

FIGURE 2.6

ACTIONS ENTERED FOR TRIAL IN
ONTARIO COUNTY COURTS, 1884-1921

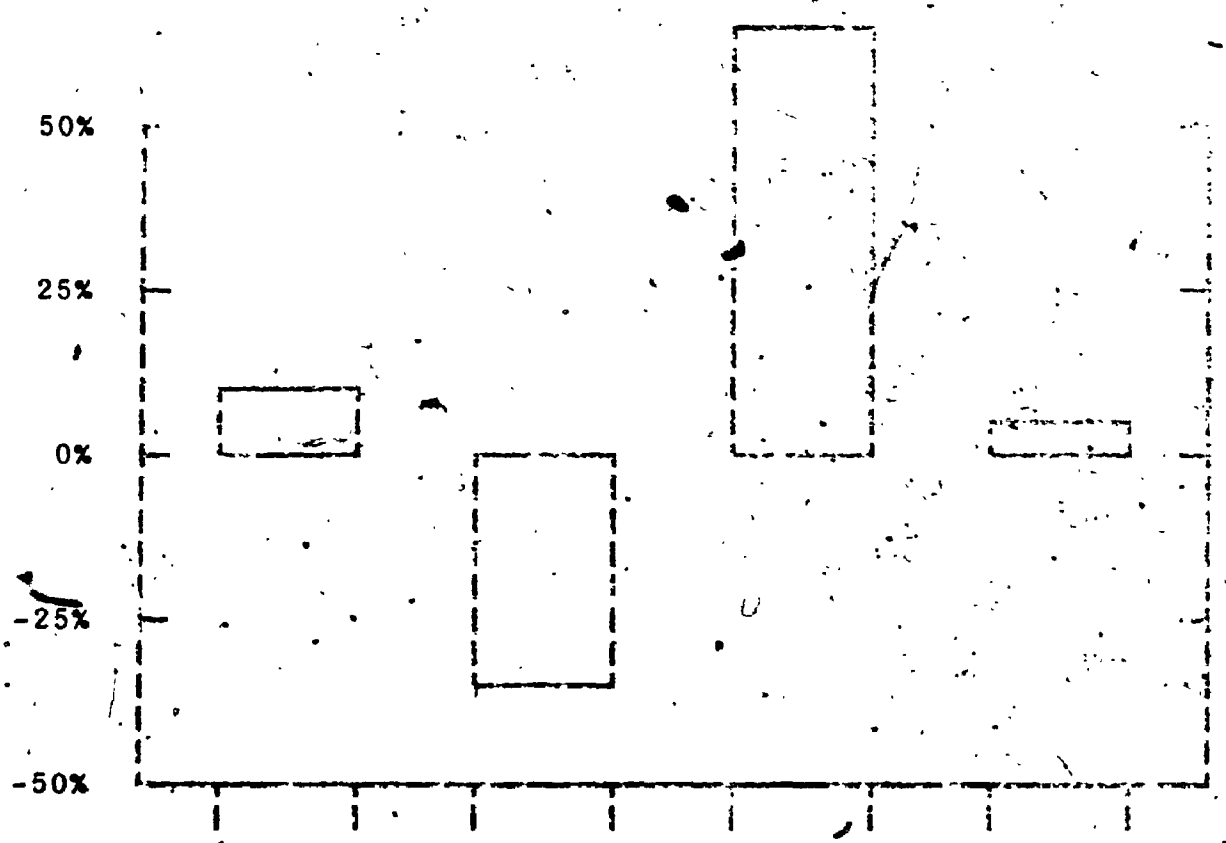


Sources: "Report of The Inspector of Legal Offices," 1884, 1891, 1901, 1911, 1921, Ontario Sessional Papers, 1885, vol. XVII, no. 89, Appendix F (not paginated); 1892, vol. XXIV, no. 27, 26; 1902, vol. XXXIV, no. 34, 22; 1912, vol. XLIV, no. 6, 24; 1922, vol. LIV, no. 6, 30.

The fluctuating rate of change in the number of lawsuits in each court is graphically indicated in Figures 2.7 and 2.8. During the 1880s the volume of Division Court litigation decreased by 55%. In the following decade Division Court litigation declined at a rate of 33.3% while the County Courts held about even. Both courts saw substantial increases between 1901 and 1911 and smaller increases between 1911 and 1921.

FIGURE 2.7

RATE OF CHANGE IN NUMBER OF DIVISION COURT SUITS IN ONTARIO, BY DECADES, 1881-1921

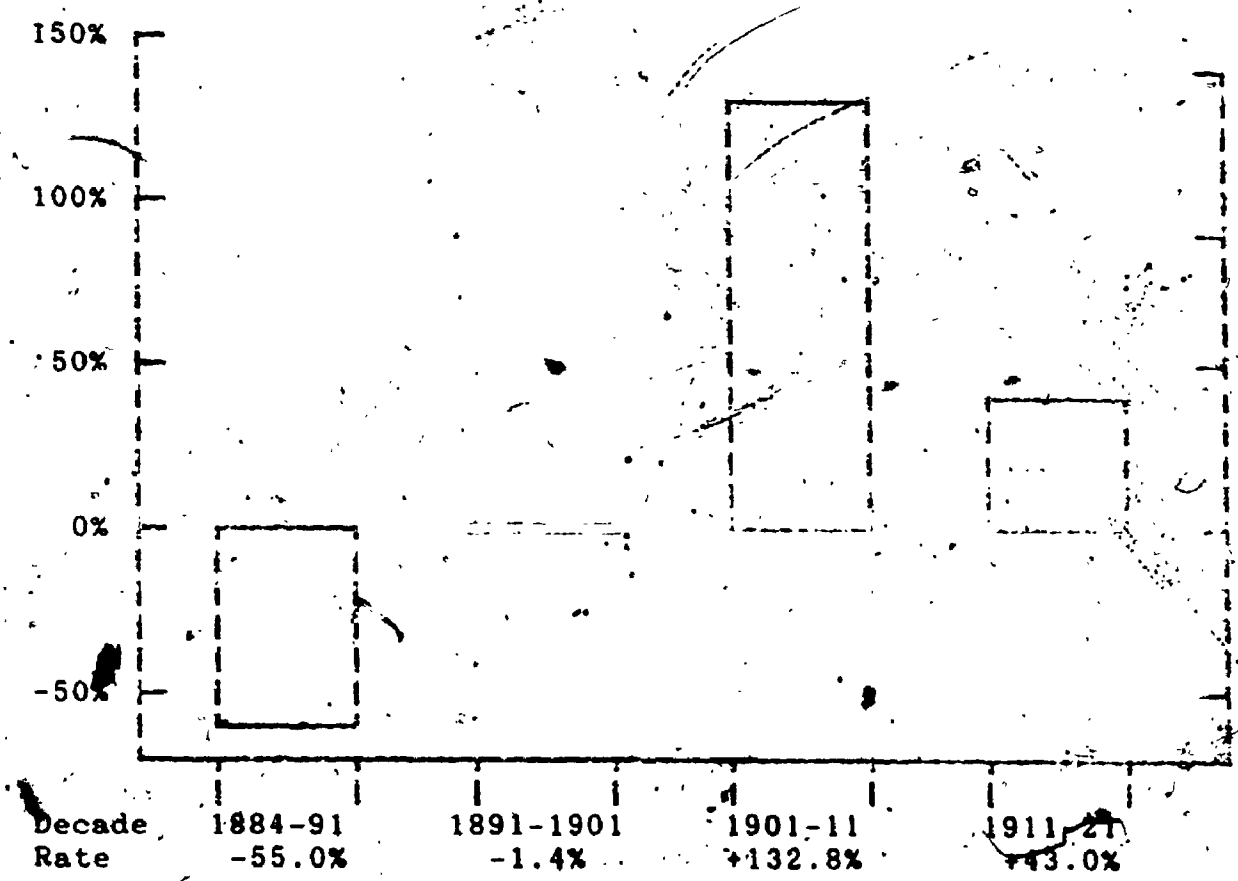


Decade	1881-91	1891-1901	1901-11	1911-21
Rate	+10.5%	-33.3%	+64.7%	+7.3%

Sources: See Figure 2.6

FIGURE 2.8

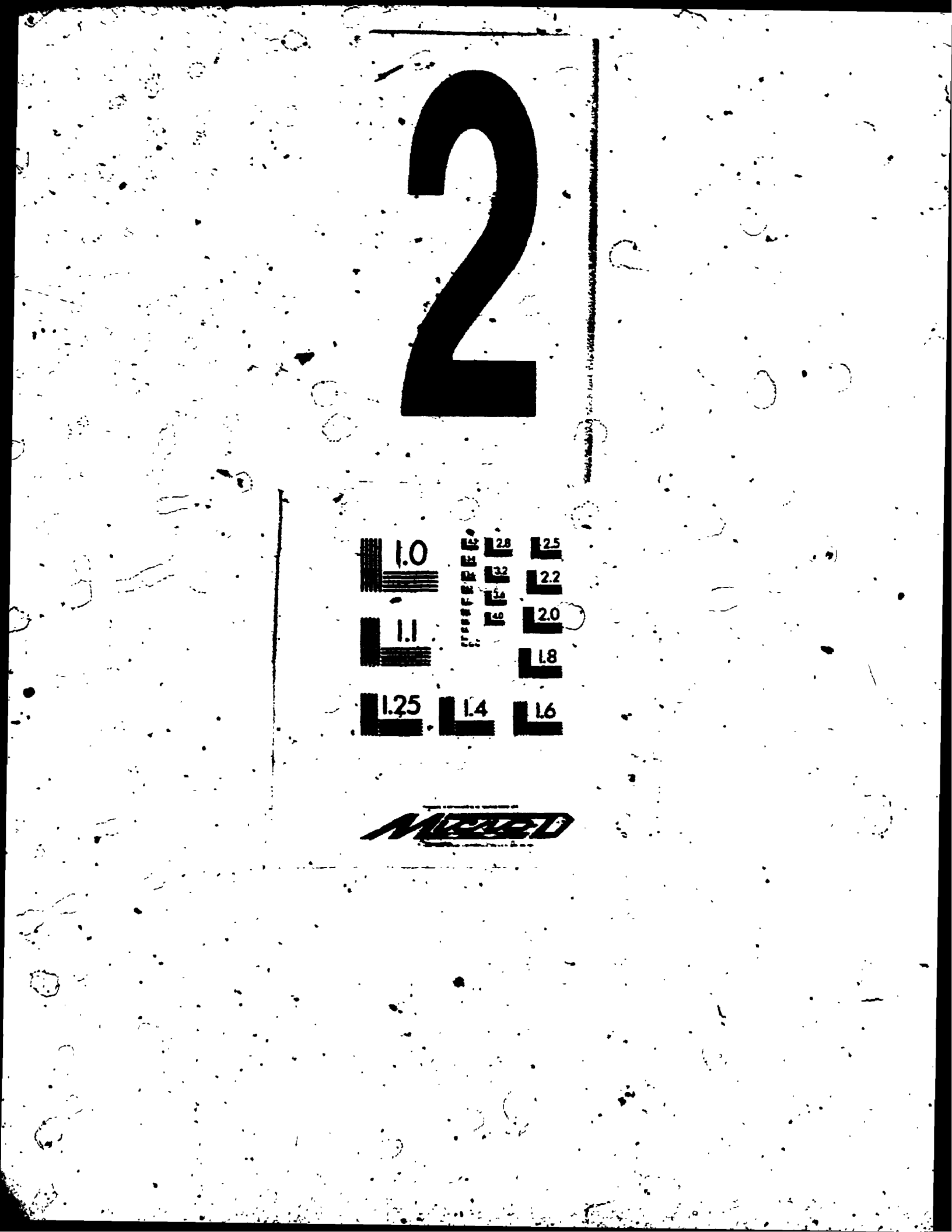
RATE OF CHANGE IN NUMBER OF COUNTY COURT ACTIONS IN ONTARIO, BY DECADES, 1884-1921.

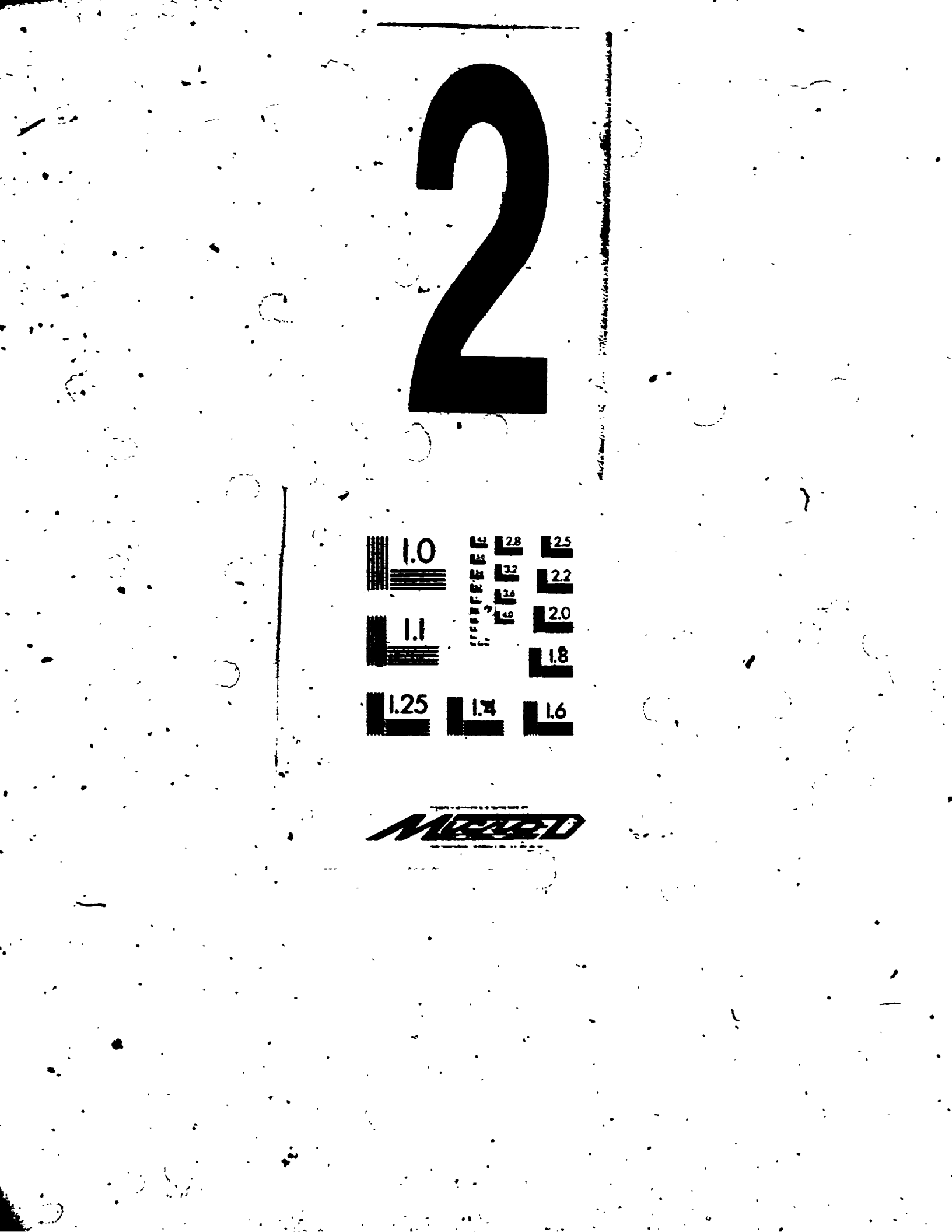


Sources: See Figure 2.6

Note: The earliest published data for County Court actions was from 1884. The rate of change during the six-year period between 1884 and 1891 was 33.0%. For comparative purposes, this is expressed as an equivalent, per decade, rate of 55.0%.

Figures 2.7 and 2.8 represent absolute numbers of lawsuits and rates of change in those numbers. In order to show how the volume of court work available to each lawyer changed during the four decades, Figures 2.9 and

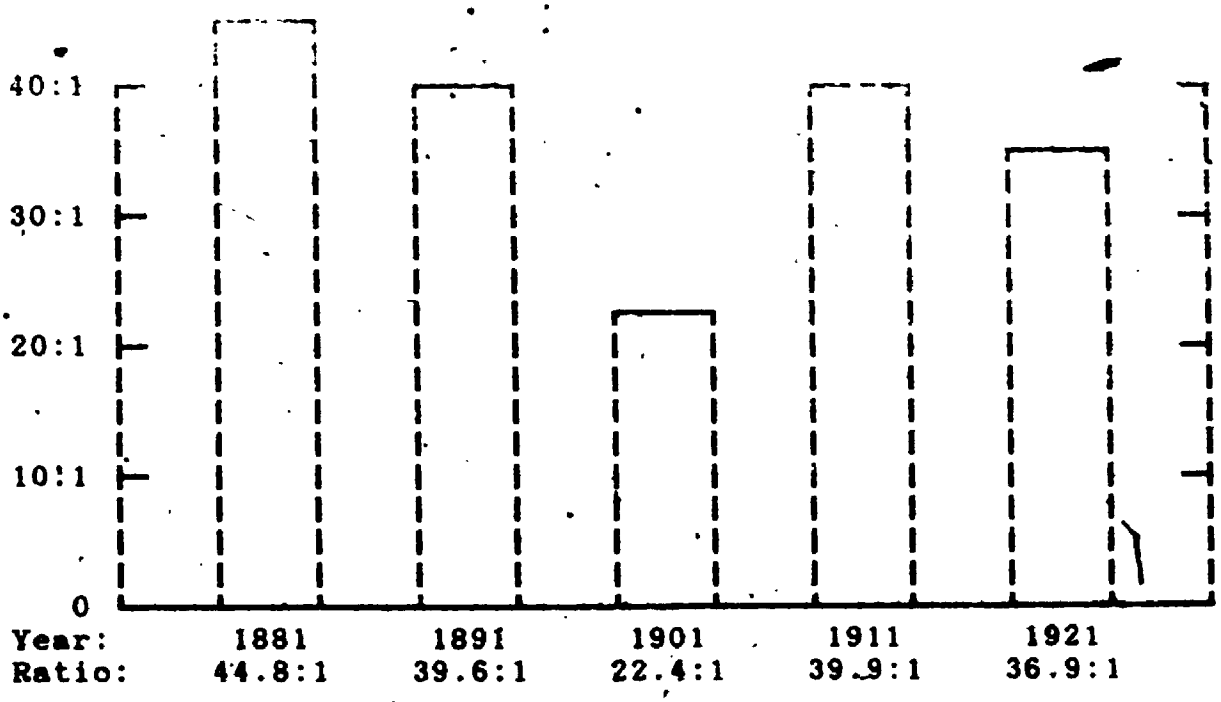

2
1.0
1.1
1.25
1.4
1.6
2.0
2.2
2.5
2.8
3.2
3.6
4.0
MICROCOPY


2
1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0

2.10 express these data in relative terms. In both cases the pattern of fluctuation is repeated. In the province's Division Courts, there were 44.8 suits for every lawyer in 1881. By 1921 this figure was only 36.9. In the County Courts, there were 0.54 actions per lawyer in 1884 and 0.73 in 1921; but in each case the volume of litigation per lawyer declined during the 1880s and 1890s and increased between 1901 and 1921.

FIGURE 2.9

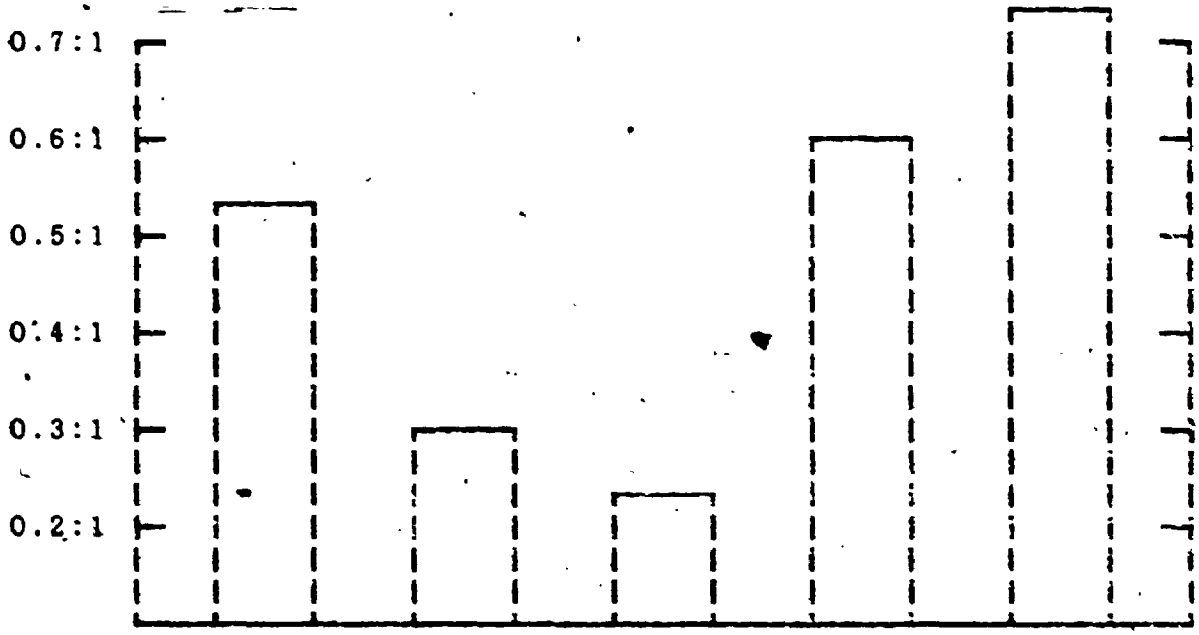
RATIO: DIVISION COURT SUITS PER LAWYER IN ONTARIO, 1881-1921



Sources: See Figures 2.1 and 2.5

FIGURE 2.10

RATIO: COUNTY COURT ACTIONS PER LAWYER IN ONTARIO 1884-1921



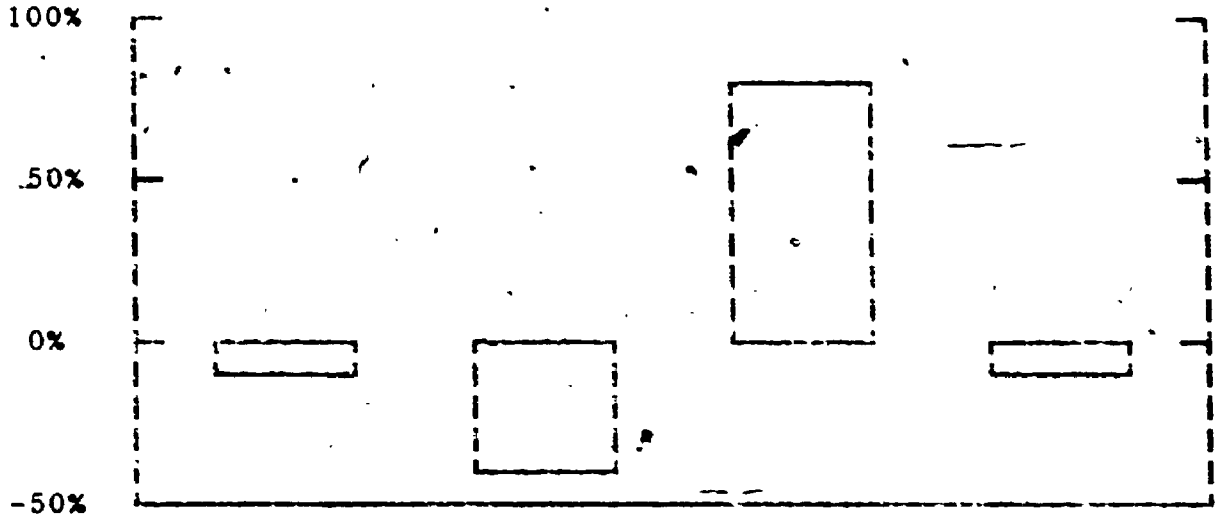
Year:	1884	1891	1901	1911	1921
Ratio:	0.54:1	0.29:1	0.24:1	0.59:1	0.73:1

Sources: See Figures 2.1 and 2.6

The rate at which these ratios changed is indicated in Figures 2.11 and 2.12. These graphs present the best evidence that Ontario lawyers experienced considerable uncertainty in their ability to make a living during the late nineteenth and early twentieth centuries. During the last two decades of the nineteenth century the volume of court work available to the average lawyer in the province declined, but between 1901 and 1911 it increased sharply.

FIGURE 2.11

RATE OF CHANGE IN THE RATIO OF DIVISION COURT SUITS PER LAWYER IN ONTARIO, BY DECADES, 1881-1921

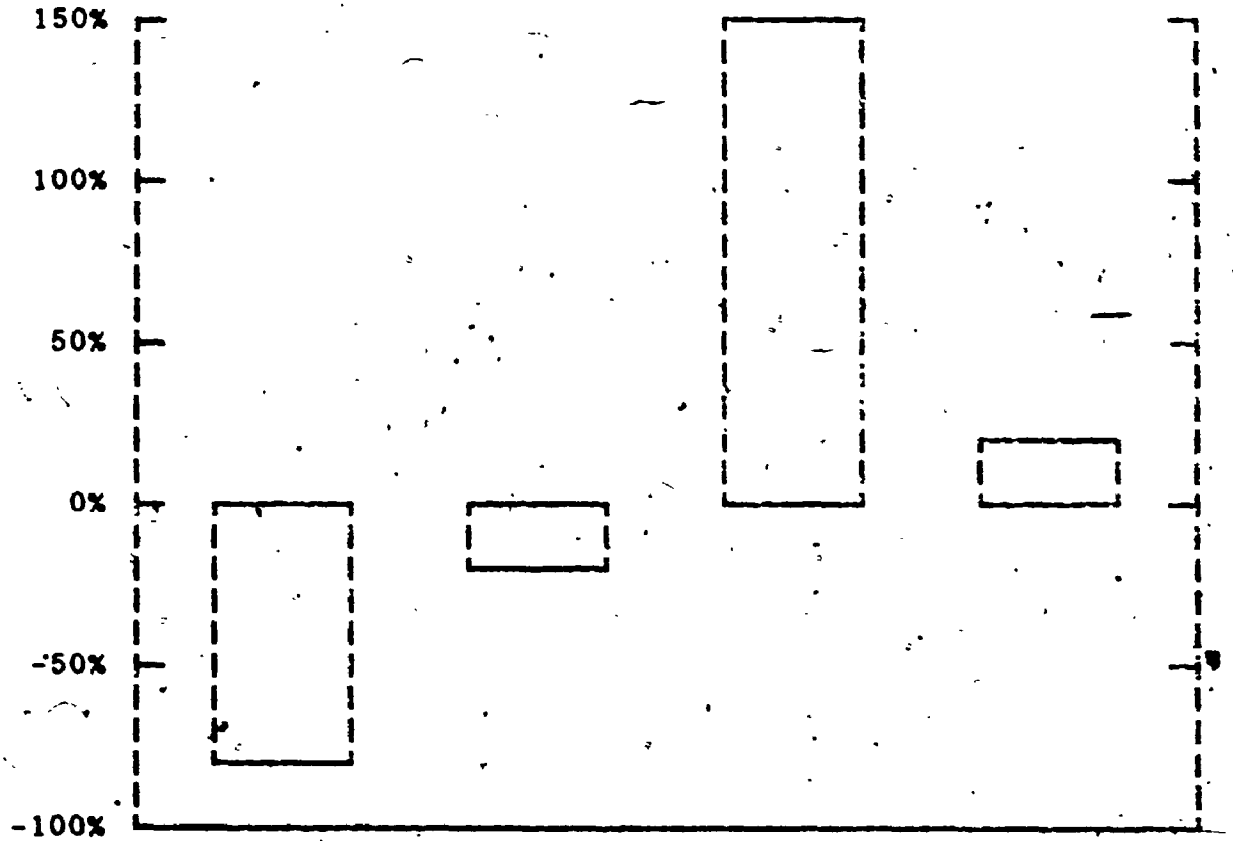


Decade:	1881-91	1891-1901	1901-11	1911-21
Rate:	-11.6%	-43.4%	+78.1%	-7.5%

Sources: See Figures 2.1 and 2.5

FIGURE 2.12

RATE OF CHANGE IN THE RATIO OF COUNTY COURT ACTIONS PER LAWYER IN ONTARIO, BY DECADES, 1884-1921



Decade:	1884-91	1891-1901	1901-11	1911-21
Rate:	-78.8%	-16.6%	+151.6%	+23.2%

Sources: See Figures 2.1 and 2.6

Note: The earliest data for County Court Actions was from 1884. The rate of change between 1884 and 1891 was -47.3%. For comparative purposes, this is expressed as an equivalent, per decade, rate of -78.8%.

Clearly Ontario lawyers experienced a period of rapid and fluctuating change in their professional lives during the late nineteenth and early twentieth centuries. Their response to this uncertainty was, much like those aspects

of American society which Robert Wiebe described, a search for order.[88] But it was a search for a special kind of order. It was an attempt, largely successful, at professionalization.

The chapters which follow outline how the bar in Ontario attempted to professionalize by enhancing and justifying its institutional autonomy in the legal marketplace, in education, in disciplinary matters, and by establishing a network of occupational associations.

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88. Robert S. Wiebe, The Search For Order, 1877-1920, (New York, 1967).

CHAPTER THREE

"THE GREAT BATTLE OF LIFE": THE BAR'S ATTEMPTS TO ESTABLISH A MONOPOLY OVER THE SUPPLY OF LEGAL SERVICES

1. INTRODUCTION

The ability to exercise a monopoly over the supply of a specific set of services is clearly an important aspect of professional autonomy. Sociologists define this element of the professional ideal type as a recognized, autonomous authority in a specific area of expertise, delegated by the state in the public interest to an occupational group. This means that the service provided by the professional is so fundamentally important to society that the state identifies certain individuals as competent to provide the service and grants them the sole right to do so. Implicit in this is the argument that if only certain people are competent enough to understand

something so important, they must also be the only ones qualified to judge who should be allowed to practise in the field. The justification for granting such a monopoly is that it is in the public interest not to allow free competition in the supply of professional services.

At first glance one would assume that lawyers in Ontario achieved a monopoly over the supply of legal services almost as soon as the province was founded. The statute creating the Law Society of Upper Canada in 1797 required that all persons wishing to practise law in the province must first be admitted to do so by the Society.[1] In light of this, one might assume that the bar had gained the required autonomous authority, because membership in the Law Society was a prerequisite to practice, and the Society itself controlled entry into its ranks. However, this was true only to a limited extent.

Throughout the nineteenth century the profession's monopoly over the supply of legal services in the province was limited in two ways. Firstly the profession did not have complete control over the admission of new lawyers. Although this limitation was not economically significant, it was symbolically significant to the profession. The 1797 statute did not delegate absolute authority over

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1. An Act For The Better Regulating The Practice Of The Law, 37 Geo. III (1797), c.13, ss.v,vi (U.C.).

admission to the Law Society but maintained the legislature's residual power to do so. The provincial Assembly occasionally exercised this power throughout the nineteenth century and, as recently as 1939, individuals who had not been approved by the Law Society were admitted to practise law by special statute.

Secondly, although lawyers were consistently recognized as the only legitimate providers of legal services, the term "legal services" was not always fixed or universally defined. A specific service, such as the preparation of an instrument for the sale of land, might seem to a lawyer to be within the definition, and therefore within his exclusive area of authority. A real estate agent or banker, on the other hand, might argue that the same service was simply clerical and therefore within his area of responsibility. The existence of this definitional overlap limited the profession's monopoly over the supply of legal services.

Throughout much of the nineteenth century, lawyers in the province were apparently not concerned by the fact that their monopoly was incomplete. Towards the latter part of the century, however, they expressed increasing concern about these two limitations on their monopoly. They made efforts to gain more complete control over the admission of new lawyers to practice and they tried to

prevent outside competitors from performing functions which lawyers felt should be theirs exclusively.

The bar's increased desire to establish its monopoly over the supply of legal services by controlling admission and eliminating external competition occurred at the same time as the changes in society and legal practice outlined in Chapter Two. Although the elimination or reduction of lay competition clearly held an economic advantage for lawyers, the locus of authority over admission to practise law did not. Unless the provincial legislature began to pass many more special statutes of admission, the small number of lawyers entering practice by this route would have only a negligible affect on the supply of legal services. However, both aspects of the monopoly question held substantial symbolic significance. If the bar could succeed in gaining indigenous control over licensing new lawyers, and if it could succeed in thwarting the threat of lay competition, it would become more professionalized.

2. LEGISLATIVE ADMISSION TO PRACTICE

As Figure 3.1 indicates, since the inception of the Law Society of Upper Canada in 1797 the provincial legislature exercised its residual prerogative to license individuals to practise law a total of sixty-five times. With one exception, the first forty-four of these evoked

no response from the legal profession. Beginning in 1881, however, both the Law Society and the provincial legal journals began to characterize them as unacceptable infringements of the rights of the profession.

FIGURE 3.1

LAWYERS LICENSED TO PRACTISE BY SPECIAL STATUTE OF THE LEGISLATURES OF UPPER CANADA, THE UNITED PROVINCE OF CANADA, AND ONTARIO SINCE 1797

1.	Wm. Warren Baldwin	43 Geo. III (1803), c.3	(by Lt. Gov.)
2.	William Dickson	" "	" "
3.	D'Arcy Boulton	" "	" "
4.	John Powell	" "	" "
5.	William Elliott	" "	" "
6.	John Boswell	3 Geo. IV (1823), c.23	(barrister)
7.	W. C. Keele	6 Wm. IV (1836), c.25	(attorney)
8.	John Prince	1 Vict. (1837-8), c.62	(bar. & att.)
9.	John Bristowe	2 Vict. (1839), c.33	(solicitor)
10.	Adam Ainslie	" " c.34	(att. & sol.)
11.	John Ford Maddock	3 Vict. (1840), c.29	(attorney)
12.	Peter T. Pousette	26 Vict. (1863), c.66	" "
13.	John H. Dumble	27 Vict. (1863), c.94	(att. & sol.)
14.	Michael H. Foley	27-28 Vict. (1864), c.171	(barrister)
15.	John T. Huggard	" " c.172	(bar. & att.)
16.	Henry H. Coyne	29 Vict. (1865), c.118	(att. & sol.)
17.	Richard T. Walkem	" " c.119	" "
18.	Hewitt Bernard	29-30 Vict. (1866), c.173	(barrister)
19.	Wm. Lynn Smart	" " c.174	" "
20.	John R. Bawden	" " c.175	(att. & sol.)
21.	John Whitly	31 Vict. (1867-68), c.79	(barrister)
22.	Frederick Allenby	32 Vict. (1868-69), c.55	" "
23.	Charles Gamon	" " c.84	" "
24.	Wm. D. Pollard	" " c.85	" "
25.	Wm. H. Steele	34 Vict. (1870-71), c.103	" "
26.	Daniel Brooke Jr.	" " c.104	" "
27.	John N. Blake	" " c.105	(att. & sol.)
28.	Edward Stonehouse	35 Vict. (1871-72), c.117	(barrister)
29.	Wm. H. L. Gordon	" " c.118	(att. & sol.)
30.	James Fleming	" " c.119	" "
31.	Charles John Fuller	36 Vict. (1873), c.159	(barrister)
32.	Charles Gream	" " c.160	(att. & sol.)
33.	John P. McMillan	" " c.161	" "

FIGURE 3.1 (cont.)

34. Wm. Robert White	" "	c.162	" "
35. Robert Wardrope	" "	c.163	" "
36. Wm. H. Dellaney	37 Vict. (1874),	c.98	" "
37. Benjamin V. Elliott	" "	c.99	" "
38. Joseph J. Gormully	" "	c.100	" "
39. John McSweyn	" "	c.101	" "
40. B. H. Vidal	" "	c.102	" "
41. John Wright	" "	c.103	(barrister)
42. Francis Elkington	38 Vict. (1874),	c.92	(att. & sol.)
43. Wm. George Murdoch	" "	c.93	(barrister)
44. Edward Stonehouse	" "	c.94	" "
45. Francis Hew Eccles	44 Vict. (1881),	c.91	" "
46. Thomas C. Atkinson	46 Vict. (1883),	c.71	(solicitor)
47. George Wm. Ross	" "	c.72	" "
48. Delos Rogest Davis	47 Vict. (1884),	c.94	" "
49. " "	49 Vict. (1886),	c.93	(barrister)
50. Wm. Walter Pope	52 Vict. (1889),	c.101	(solicitor)
51. George M. Gardiner	62 Vict. (2nd) (1899),	c.119	" "
52. Wm. Edgar Foster	5 Edw. VII (1905),	c.131	(bar. & sol.)
53. James B. Mackenzie	" "	c.133	" "
54. George M. Gardiner	6 Edw. VII (1906),	c.148	(barrister)
55. H. Ernest Redman	" "	c.150	(bar. & sol.)
56. James Albert Ellis	4 Geo. V (1915),	c.97	" "
57. Charles B. Labatt	6 Geo. V (1916),	c.118	(barrister)
58. John Dale O'Flynn	10-11 Geo. V (1920),	c.164	(bar. & sol.)
59. James Petrie Platt	11 Geo. V (1921),	c.140	" "
60. Thomas L. Robinette	12-13 Geo. V (1922),	c.154	(barrister)
61. Harold H. Willson	13-14 Geo. V (1923),	c.111	" "
62. Dan Solomon Denberg	" "	c.112	(bar. & sol.)
63. Alex C. Lewis	2 Geo. VI (1938),	c.57	" "
64. Wm. E. MacDonald	" "	c.59	(barrister)
65. Aurelien Belanger	3 Geo. VI (1939),	c.56	(bar. & sol)

Sources: William Renwick Riddell, The Bar And Courts of Upper Canada or Ontario, (Toronto, 1928), Part II; Statutes of Upper Canada, 1797-1866; Statutes of Ontario, 1867-1939.

* Edward Stonehouse received a second statute to be licensed as a barrister in 1874 in order to correct a technical error in the wording of his 1872 statute. (Journals of The Legislative Assembly of The Province of Ontario, Vol. VIII (1874), 128.)

As noted above, the legislation of 1797 did not delegate absolute authority to the Law Society to control admission to practice. Section five provided that

> ...no person other than the present practitioners, and those hereafter mentioned, shall be permitted to practise at the bar of any of His Majesty's courts in this province, unless such person shall have been previously entered of and admitted into the said society... according to the constitutions and establishment thereof....[2] (emphasis added)

"Those hereafter mentioned" included immigrant members of the bars of England, Scotland, Ireland and the other North American colonies who did not require the Law Society's blessing but were authorized to practise at the Upper Canadian bar upon presentation of "...testimonials of character and conduct to the satisfaction of the Judges of the King's Bench;..."[3] In effect, it was up to the Court, and not the Law Society, to decide whether the applicants' previous careers made them worthy of becoming members of the Upper Canadian bar.

Six years later the legislature provided more evidence that the Law Society did not hold complete authority over admission to practice. In 1803 the provincial legislature passed an act granting the Lieutenant Governor the right to license six men to

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2. Ibid., s.V.

3. Ibid.

actise law.[4] This legislation split authority over admission among three bodies. Firstly, it authorized the Lieutenant Governor to issue the licences. Secondly, it required that each licensee obtain a certificate of his ability and fitness to practise from the Court of King's Bench. Thirdly, it required each licensee to become a member of the Law Society; but the Benchers were allowed no discretion in the matter because admission to the Law Society was mandatory for any applicant who obtained executive and judicial approval.[5]

No one in the Law Society evidently objected to the passage of the 1803 act or to the licensing of the five men who applied to be admitted under its authority. The Benchers apparently felt neither the need nor the power to protest this breach of the Law Society's professional

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4. An Act To Authorize The Governor, Lieutenant Governor, or Persons Administering The Government of This Province, To License Practitioners In The Law, 43 Geo. III (1803), c.3, (U.C.).

5. Ibid. s.2.

prerogative.[6] This contrasted sharply with the opinions and events of the years nearer the end of the century.

In 1822 the legislature further limited the Law Society's responsibility to license new lawyers when it amended the Law Society Act. The amendment removed the Law Society's authority to admit attorneys to practice and placed it in the hands of the justices of the Court of King's Bench.[7] Again, the Benchers offered no objection to this measure. In fact, as will be discussed below,

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6. William Renwick Riddell, The Bar And Courts of Upper Canada or Ontario, (Toronto, 1928), 52. This volume is printed in two parts, paginated separately. All references here are to the first part of this book. According to the text of the statute the legislature passed it in order to alleviate the "great inconvenience ...in several parts of this province [caused by] a want of a sufficient number of persons duly authorized to practise the profession of the law..." Riddell argued that this could not have been the true reason behind the passage of the bill, because all of the five licensed under its provisions intended to practise in areas already well served. (52-3) Mark Orkin ("Professional Autonomy and The Public Interest," unpub. D.Jur. thesis, York Univ., 1972, 34) and Brian Bucknall, et al ("Pedants, Practitioners, And Prophets: Legal Education At Osgoode Hall To 1957," Osgoode Hall Law Journal, 6 (1968), 143), suggest that it may have been intended to allow specific, otherwise unqualified men, to begin practising. It is not clear whether they were qualified at the time, but they certainly became very prominent members of the profession.

7. An act to repeal part of and amend an act passed in the thirty-seventh year of his late Majesty's reign, entitled, "An act for the better regulating the practice of the law," and to extend the provisions of the same. 2 Geo. IV (1822), c.5, s.3, (U.C.).

strongly supported it because they hoped it would help towards separating the upper and lower branches of the profession along the lines of the English model. They felt that the upper branch, the barristers, should only be admitted to practice by the Law Society, but they were quite content to allow the Court to issue licenses to the lower branch of the profession.[8]

The Benchers made their opinion about the admission of barristers quite clear a year later when the Upper Canadian Legislative Assembly passed An Act For The Relief of John Boswell.[9] Boswell was an English attorney who had immigrated to the colony but had not satisfied the requirements for call to the bar. When he submitted his petition to the legislature for a special private statute to call him to the bar, the Benchers passed their own

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8. Riddell, The Legal Profession In Upper Canada In Its Early Periods, (Toronto, 1916), 14. According to Riddell, the Benchers maintained efforts to separate the two branches of the profession over the following two decades. An attempt to pass a rule to this effect failed during Easter Term 1830, a similar attempt failed in 1841 when a bill was introduced in the legislature but was withdrawn prior to second reading.(16-19) The Benchers apparently abandoned their efforts to separate the profession by 1857 when the provincial legislature returned responsibility for the admission of attorneys and solicitors to the Law Society. (20 Vict. (1857), c.63, s.6, (Can.) Despite the Benchers' wishes, throughout the nineteenth century the overwhelming majority of lawyers were both barristers and solicitors.

9. 3 Geo. IV (1823), c.23, (U.C.).

...tion denouncing the plea and instructed Henry Boulton, who was both Law Society Treasurer and Provincial Solicitor General, to argue against the bill in the Assembly. Boulton's efforts failed, however, and the legislature passed the bill. The Benchers felt strongly that the Assembly had usurped their authority, and Convocation delayed for almost two years before complying with the statute and calling Boswell to the bar. Even then, the Benchers voiced their objections by passing a resolution

> ...that the Society feel inclined under the peculiar circumstances of Mr. Boswell's case to admit him to the bar... but in consenting... they feel [sic] it proper to express their fixed determination to resist all future examinations for admission contrary to the existing Laws of the Province.[10]

The Benchers' interpretation of the extent of their authority under the 1797 statute creating the Law Society obviously differed from the legislature's. To the members of Convocation their statutory authority in this regard was (or at least should have been) absolute. To the members of the Legislative Assembly, because the Law Society Act did not specifically delegate all of the legislature's authority to issue licenses to lawyers, it retained a residual authority to do so.

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10. Riddell, The Legal Profession... (above, note 8), 30.

Regardless of whose opinion as to the legislature's authority to license lawyers was correct, the Benchers apparently did not feel strong enough to challenge the Boswell private statute in Court. Neither did they object to the next statute of call to the bar.

Colonel John Prince received his special call to the bar in 1838, according to the statute, as a reward for his patriotic services to the Crown during the rebellion of 1837.[11] He had been a barrister in England prior to immigrating to Upper Canada, and it was probably for this reason, as much as the official one listed in the Act, that the Benchers did not object to this apparent breach of their autonomy.

In 1857 the legislature increased the Benchers' licensing autonomy and returned the authority for the admission of attorneys and solicitors to the Law Society.[12] It did so because the courts, which had

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11. An Act To Authorize The Admission of John Prince, Esquire, To Practise As A Barrister and Attorney Within This Province, 1 Vict. (1837-8), c.62, (U.C.). See also John Prince 1796-1870: A Collection of Documents, ed. R. Allan Douglas (Toronto, 1980), and The Dictionary of Canadian Biography, vol. IX (Toronto, 1976), s.v. Prince. The Law Society offered no objection to the special statute passed for W.C. Keele in 1837 because it only authorized his admission as an attorney.

12. An Act To Amend The Law For The Admission of Attorneys, 20 Vict. (1857), c.63, (Can.).

exercised this responsibility since 1822; imposed considerably less stringent requirements for entry into the lower branch of the profession than the Law Society did for the call of barristers. According to Riddell, a growing number of men took what was viewed as the easy route into the profession and became attorneys and solicitors without becoming barristers.[13] The perceived inferiority of this group of men reflected on the profession as a whole and apparently prompted the Law Society's efforts to gain more complete control over admission. In Riddell's words "The lawyer who 'could not put on a gown' was not infrequently classed with the 'herb-doctor'; too frequently he did not deserve any higher rating."[14] There is no direct evidence, however, in the Minutes of Convocation or the Canada Law Journal to indicate that either the Benchers or members of the provincial bar were concerned about this problem until much later.

For a number of years following the passage of the 1857 statute the Law Society and the rest of the profession was apparently satisfied with the degree of

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13. Riddell calculated that in 1856 only 45% of those admitted as attorneys and solicitors were also eventually called to the bar. (The Legal Profession..., 21).

14. Ibid.

autonomy it had achieved over admission to its ranks. Although, as Figure 3.1 indicates, during the 1860s the provincial legislature granted an increasing number of requests for special acts of call to the bar and admission to practice as an attorney and solicitor, no one in the profession voiced any objection to the practice until 1876, and the Law Society offered no protest until 1884.

During 1873 and 1874 the legislature passed fourteen special statutes of admission to practise law. In February of 1876 the Canada Law Journal published a letter from an angry lawyer. The writer, who signed himself "Union," complained that the latest in a series of bills recently introduced at Queen's Park for the special call of otherwise unqualified gentlemen "...shows the extent to which special legislation is invoked." In Union's mind this alternate route to the bar was becoming far too common, and if allowed to continue, "there is only one step further which the public at large will soon find out and take, i.e., open the profession to all comers...." The Law Journal replied: "There is much in what our correspondent says; but he will see by reference to the Law Society Act of this session... that the case will now be dealt with by the Society."[15]

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15. Canada Law Journal (hereafter CLJ), Feb. 1976, 54-5.

The statute the Law Journal referred to was An Act To Amend The Law Respecting The Law Society, passed by the provincial legislature in January, 1876.[16] Prior to the passage of this act, the minimum requirements for admission and call were defined by statute, and the Benchers had very little discretionary power to make exceptions.[17] An applicant failing to satisfy these requirements, even if considered otherwise admissible by Convocation, had to apply to the provincial parliament for special legislation. The de facto decision-making power about the admissibility of these special cases apparently rested with the legislature as well. When William Murdoch petitioned Convocation for its consent prior to requesting a special statute for call to the bar in 1874, the Benchers refused but offered no comment other than that

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16. 39 Vict. (1875-76), c.31, (Ont.); Journals of The Legislative Assembly of The Province of Ontario (hereafter Journals), vol. IX, (1875-76), 164.

17. These requirements are outlined in Chapter Four, below.

"The [Law] Society declin[ed] to interfere."[18]

Less than a year after they declined to "interfere" in Murdoch's case, however, the Benchers decided that the Law Society should have the authority to make exceptions to the statutory requirements for admission to practice. This was the first step towards eliminating the legislature's symbolic limitation of the profession's autonomy. To gain the authority to deal with special cases, Convocation petitioned the house in 1875 to amend the Law Society Act.[19] Thomas Hodgins, who was both a Bencher of the Law Society and Member of the legislature, introduced the bill on December 14 of that year. Within five weeks the Assembly passed it, and it received Royal Assent on February 10, 1876.[20] The act maintained the minimum statutory requirements but granted the Law Society unlimited authority to make exceptions to admit and/or call individuals who did not meet the minimum. The profession had gained, through its governing body, an

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18. Minutes of Convocation (hereafter Minutes), Dec. 4, 1874; CLJ Jan. 1875, 7. Prior to 1899, summaries of the Minutes of Convocation were published in the Canada Law Journal. The original Minutes have been maintained at the offices of the Law Society at Osgoode Hall on Queen Street West in Toronto. Where possible, the published Minutes have been cited.

19. Minutes, Nov. 16, 1875, CLJ Feb. 1876, 39.

20. Journals vol.IX, 78, 164, 242.

...limited authority to add to its ranks, but the legislation was merely permissive. The provincial Assembly had still not explicitly relinquished its residual power to license lawyers. The Law Society's discretionary power was increased, but its autonomy was still incomplete.

Although the legislature maintained its residual power over admission to practise law, it did not exercise it for five years following the 1876 amendment. However, in August 1881 the Canadian Law Times warned its readers: "An obscure little act, consisting of a preamble and one clause, lurks at the end of the Ontario Statutes for 1881."[21] The odious legislation the Law Times referred to was An Act To Authorize The Law Society of Ontario (sic) To Admit Francis Hew Eccles As A Barrister-at-Law.[22] Eccles had partially fulfilled the requirements for admission as a attorney some twenty years earlier, but he had not completed them; nor had he completed the requirements for call to the bar. He had articled with his father, Henry Eccles, Q.C., but the senior Eccles died before his son could complete the required term. Eccles was then, according to the preamble of the act, forced by

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21. Canadian Law Times (hereafter CLT), Aug. 1881, 485.

22. 44 Vict. (1881), c.91, (Ont.).

...circumstances over which he had no control compelled ...to discontinue the study of the profession...." He showed no justification for his special call to the bar other than the earlier partial fulfillment of the requirements for admission as an attorney, but the Benchers acceded to the wishes of the legislature and ordered him to present himself before Convocation for an examination for call to the bar during November 1881.[23]

The Canadian Law Times immediately denounced the legislation as an unwarranted infringement of the autonomy of the legal profession. In its view the special statute was "...an impudent piece of legislative invasion of the rights of the Society and the Profession...," and the Benchers compounded the offense by meekly accepting it. To the Law Times the only saving grace was that "though the Legislature and the Law Society may by their efforts make a man a barrister, Nature alone can make him a lawyer."[24]

The incident involving Eccles was significant in that it provided some evidence of the practical extent of the

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23. Minutes June 4, 1881; CLJ July 1, 1881, 265.

24. CLT, Aug. 1881, 486-8. Ironically, Eccles apparently either chose not to write the exam, or was unsuccessful, because his name does not appear among those called during Trinity Term 1881, or any subsequent term; nor is it included in any edition of the Canadian Law List.

Society's autonomy over admission to practice. It also demonstrated the attitudinal difference at the time between the Benchers and the Canadian Law Times. Following the statute of 1875-76 the Law Society had the authority to admit whomever it pleased, regardless of his qualifications. A special statute authorizing Eccles' admission was, therefore, not legally necessary. Its purpose was to persuade Convocation to give him special consideration and to reiterate the residual legislative power of admission. Although the Minutes of Convocation are silent on this point, the fact that the Benchers accepted the legislature's persuasion and granted Eccles an examination showed that they were aware that their practical autonomy in this area was not absolute. In the opinion of the Canadian Law Times, this autonomy should have been absolute, but no one among the Benchers voiced this opinion in 1881. Within three years, however, Convocation adopted this position and began to assert their objections to legislative admission to practise law.

In February of 1884, John Crickmore, the chairman of the Law Society's Legal Education Committee, reported to Convocation that two men, John R. Miller and Delos R. Davis, had submitted petitions to the provincial legislature requesting special statutes to authorize the Supreme Court of Ontario to admit them to practise as

solicitors.[25] These men wanted special-legislation in order to circumvent the provision of the 1857 Attorneys Act which required a prospective attorney or solicitor to obtain a certificate issued by the Law Society prior to admission by the Court.[26]

As noted above, the 1857 Attorneys Act had given the Law Society de facto control over the admission of attorneys and solicitors. Special legislation would by-pass the Law Society and remove its power of control. When Crickmore reported this news, the Benchers finally voiced their disapproval of the practice and resolved unanimously that "in the opinion of Convocation no special acts should be passed authorizing call to the Bar or admission to practice as a solicitor, but all calls and admissions should be authorized by Convocation...." They instructed Crickmore and the rest of the members of his committee to "confer with the provincial Attorney General on the subject of this resolution." Although it was worded in the reserved style typical of nineteenth century lawyers, the intent behind the resolution was clear. The

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25. Minutes, Feb. 15, 1884; CLJ, March 15, 1884, 103-4.

26. An Act To Amend The Law For The Admission of Attornies, 20 Vict. (1857), c.63; consolidated as An Act Respecting Attorneys-at-Law, Revised Statutes of Ontario (hereafter RSO), 1877, c.140, ss.9,10.

... Society wanted autonomous control over the admission of new members of the profession.[27]

The Benchers apparently persuaded Miller to withdraw his bill, and he was eventually admitted through the normal channels. Davis persevered and successfully obtained his special statute of admission to practise law, and he became the first Black lawyer in Ontario.[28] The Attorney General was obviously not impressed with Crickmore's efforts. The Attorney General was, of course, a lawyer, and he was an ex officio Bencher of the Law Society. As will be outlined below, however, although the legal profession could claim many of their own as members of the legislature and the government, few of these men could be counted on to use their positions to aid their profession.

Two years later, in 1886, Delos Davis petitioned the legislature for another special statute. This one would authorize his call to the bar. The Benchers responded quickly this time and struck a special committee of Convocation to prepare a petition of protest to the legislature. Their petition strongly objected to Davis's

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27. Minutes, Feb. 15, 1884; CLJ March 15, 1884, 103-4.

28. Journals vol.XVII (1884), 158-9; 47 Vict. (1884), c.94, (Ont.).

...in particular and to special legislation in general.[29] The special committee's protests fell on deaf ears, however, and Davis's private bill for call to the bar passed during the same session of the legislature.[30] It would seem plausible, of course, that the Benchers' opposition to Davis's efforts to become a lawyer was based on the fact that he was Black, but their protest made no mention of his race or his qualification to practise law. Their argument was with the locus of decision-making authority, not the merits of the decision.

The Benchers' failure to maintain their autonomy in the Davis case seemed to increase the rest of the profession's awareness of the issue. When the next controversy over special legislative admission to practice arose three years later, the protests were more vocal and came from an important new source. In February, 1889 a young man named George MacGregor Gardner applied to the provincial legislature for a special statute authorizing his admission to practise as a solicitor. In one of the first instances in which the emerging county law associations aided in the defense of professional autonomy, the County of York Law Association passed a

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29. Minutes, Feb. 12, 1886; CLJ, Aug. 1, 1886, 257.

30. 49 Vict. (1886), c.94, (Ont.).

..rongly worded resolution opposing Gardner's application. The Law Association forwarded this resolution to the Law Society, and the Benchers struck a special ad hoc committee to look into the matter.[31]

Apparently in response to the opposition of both the Law Society and the County of York Law Association, Gardner withdrew his bill in March. The following December, however, he arranged to have another private bill introduced, which would make him both a barrister and a solicitor.[32] Again, the Benchers responded immediately and sent a delegation to Queen's Park to appear before the Private Bills Committee to oppose the bill.[33]

The Canadian Law Times also added its voice to those opposing Gardner's attempt to become a lawyer without the Law Society's blessing. In an editorial headlined "Lawyers By Act of Parliament," the Law Times wrote:

> Our private acts contain not a few instances of this rapid and heroic method of annihilating time, by enabling gentlemen to evade the term of service generally required in order to qualify a candidate for presentation for admission.... It is difficult to imagine a case in which there should be any necessity for pursuing such a course....

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31. Minutes, Feb. 9, 1889; CLJ, April 1, 1889, 178.

32. Journals, vol.XXII, (1889), 92.

33. Minutes, Dec. 31, 1889; CLJ, April 1, 1890, 174-5;

> For the present session notice has been given of an intended application to the Legislature to authorize a certain gentleman to present himself for examination before the Law Society without going through the usual course of education and service. ...The gentleman in question has for some time pretended to be a solicitor, so advertises himself, and practises every branch of the profession that will not subject himself to proceedings for contempt of Court. A similar application to the Legislature by the same gentleman was refused before on the opposition of the Law Society, and it is to be hoped that it will be opposed and defeated again. ...
>
> A more appropriate Act would be one which would make it an offence to pretend to be a solicitor.[34]

The Law Times' comments partially explain why the Law Society was intent on stopping Gardner's attempts to obtain special legislation, and they provide a link between the two aspects of the profession's efforts to gain a monopoly over the supply of legal services. If Gardner was, in fact, practising law without a license, he would attract the Benchers' attention. When he tried to obtain a license without going through what they thought were the proper channels, he attracted their anger. Whatever the reason, Gardner withdrew the second bill.[35] He tried a third time in the spring of 1891, but again the

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34. CLT Feb. 1890, 42-3.

35. Journals, Vol. XXXIII (1890), 40.

Law Society strenuously objected, and he again withdrew his bill.[36]

It is not clear whether Gardner continued to practise law without a license, but he made no further attempts to obtain special legislation admitting him to practice until 1899. In that year, despite the Law Society's strong objections, the legislature passed a private statute authorizing Gardner's admission to practise as a solicitor.[37]

The fact that the Law Society failed to prevent George Gardner from obtaining special legislation enabling him to practise law with approval of the profession's representative body is significant. The Ontario legal profession wanted to protect this symbolic aspect of its autonomy, but it could not. During the twentieth century the Ontario legislature passed fourteen more special private acts of admission to practise and/or call to the

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36. Minutes, June 5, 1891; CLJ Dec. 1, 1891, 588.

37. Minutes, Feb. 7, June 27, Sept. 13, 1899; 62 Vict. (1899) 2nd sess., c.119, (Ont.).

...[38] In each instance the Law Society voiced its opposition, but it was ignored.[39]

As noted above, the significance of the phenomenon of entry into the profession by special act of the legislature had nothing to do with competition in the profession or an unfulfilled need for lawyers in the province. With the exception of the five men licensed by the Lieutenant Governor under the legislation of 1803, the number of individuals added to the ranks of the profession by this route had little effect on the supply and demand for legal services. It was significant, however, as a symbolic limitation of the profession's autonomy. As such, the reaction of the profession was more important than the incidence.

In terms of the profession's monopoly, the Law Journal's strong reaction to legislative admission and the Law Society's attempts to maintain its autonomy are significant. The desire to exercise complete control over admission was an important part of the need to establish

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38. See Figure 3.1.

39. Minutes, Feb. 17, May 18, Dec. 8, 1905, Feb. 8, May 25, 1906, Nov. 18, 1915, April 20, June 16, 1916, March 18, 1920, April 21, 1921, March 16, 1922, Jan. 18, May 25, 1923, March 17, May 19, 1938, March 16, April 20, 1939. See also, Mark Orkin, 'Professional Autonomy And The Public Interest: A Study of The Law Society of Upper Canada,' D.Jur. York Univ., 1972, 37-40.

professional status for the Ontario bar. Unlike the problem of outside competition, there were no economic influences at work in this aspect of the process. Because of the small numbers involved, the question was merely symbolic, but nevertheless a significant one in terms of professionalization. The autonomous control of admission to practice was an essential symbol of professional status, and during this period Ontario lawyers became more determined to achieve that status. The fact that they failed does not detract from the significance of their attempt.

3. EXTERNAL COMPETITION

Unlike the issue of legislative admission to practise law, the problem of external competition, the other aspect of the profession's attempt to gain a monopoly over the supply of legal services, did have substantial economic significance to many Ontario lawyers. And these men were the first to demand protection; but the Law Society's eventual decision to deal with the problem was a function not of economics but of a desire to obtain professional status.

As outlined in Chapter Two, the society and economy in which Ontario lawyers practised changed dramatically during the late nineteenth and early twentieth centuries.

population increased substantially but, more importantly, commercial and financial relations increased in volume and complexity. This resulted in an increased volume of litigation necessary to resolve disputes arising from these phenomena, and even greater increases in the demand for lawyers' services as legal advisors. It was in regard to the latter that lawyers experienced the greatest competition from outside the profession.

External competition was troublesome to lawyers' traditional function as counsellors in litigation. In all courts in the province except the Division Courts (which will be discussed below), the statutes specifically reserved the right of practice to barristers or solicitors and attorneys.[40] In non-litigation practice however, the profession's monopoly was not protected by statute. In matters such as the preparation of wills or documents necessary for the sale or mortgage of land, the consumer was not bound by such constraints in choosing whether to employ a solicitor or what lawyers referred to as an "unlicensed conveyancer." In the 1870s and 1880s, lay conveyancers presented a serious problem to lawyers

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40. An Act Respecting Barristers-At-Law, RSO 1877, c.139, s.1; RSO 1887, c.146, s.1; RSO 1897, c.173, s.1; RSO 1914, c.158, s.3; RSO 1927, c.193, s.2; An Act Respecting Attorneys-at-Law, RSO 1877, c.140, s.1; An Act Respecting Solicitors, RSO 1887, c.147, s.1; RSO 1897, c.174, s.1; RSO 1914, c.159, s.3; RSO 1927, c.194, s.6.

practising in smaller centres outside of Toronto. The latter convinced the law journal editors of the need to deal with the problem, but initially the Benchers remained indifferent. During the 1890s, however, the Law Society adopted the cause and began attempts to establish some degree of monopoly over this area of legal practice. The Benchers' adoption of this policy was significant in terms of professionalization because of the nature of their arguments.

Initially the lawyers who pleaded for protection from outside competition used the argument that, unlike the unlicensed conveyancers, they had paid for their professional status in time and money. They had spent the time to fulfil the requirements to practise law, and they paid annual fees to the Law Society. For this they believed they deserved to be protected from lay competition. Although the law journals soon voiced their support, the Benchers of the Law Society did not. As might be expected during the age of nineteenth century economic liberalism, the Benchers were unwilling to tamper with the free market. They pointed out that as long as the market was left to find its own course the legitimately qualified would eventually prevail over the unqualified. All that was required was a little patience and the unlicensed upstarts would soon fall by the

inside. To the modern cynic, and to the small-town solicitor in nineteenth century Ontario, platitudes like these, coming from the most successful and most affluent of the profession, were self-justifying and hollow. At any rate, they highlighted the practical and ideological divisions within the bar.

Within a few years, however, the country lawyers pleading for protection from lay competition began to use a different argument and, when they did, the Law Society supported them and the profession was united. Rather than simply demanding protection from competition because they had paid for the right to practise law, the lawyers argued that the consumer was in need of protection. This argument acknowledged the general importance of the free market principle, but it held that law, like the other professions, should be an exception.

The lawyers adopting this new public interest argument asserted that the nature of a professional services was such that the client, unlike the consumer of soap or some other commodity, was incapable of determining the quality of the product. For this reason, professional protection from competition was not simply in the lawyer's interest, it was in the <u>public interest</u>. This transition from an argument of economic self-interest by a segment of the profession to an argument of public interest by a

united profession made the process of asserting a monopoly an important part of the professionalization process.

i. Assignees In Bankruptcy

The earliest example of external competition involved the role of assignees in bankruptcy. Under the Insolvency Act of 1864 the creditors of an insolvent debtor could appoint an official assignee, or the debtor could appoint one if his creditors failed to do so.[41] This assignee was expected to act much like a receiver in a twentieth century bankruptcy proceeding, holding the assets of the insolvent in trust and apportioning those assets to creditors as equitably as possible. In a modern bankruptcy the receiver is generally a firm of accountants. In the mid-nineteenth century, however, when the ability of an insolvent debtor to discharge his obligations without going to debtors' prison first emerged, the question of the professional qualifications of assignees was as yet undetermined.[42] Naturally, many

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41. An Act Respecting Insolvency, 27-28 Vict. (1864), c.17, s.2(3), (4), (Ont.).

42. For a discussion of the early development of bankruptcy law in Ontario, see R.C.B. Risk, "Nineteenth Century Foundations of The Business Corporation in Ontario," 23 University of Toronto Law Journal (1972), 270.

the legal community felt that this function should fall within the lawyer's purview.

In March 1868, the Canada Law Journal published a letter from a reader signing himself "Scarboro," complaining of the appointment of non-lawyers as official assignees under the Insolvency Act.

> Everyone knows that the profession of the law is being overcrowded in Canada, and this is not a time when lawyers should silently permit persons who are not lawyers to take the business that legitimately belongs to the profession from them.... Every lawyer who has watched closely the actions of official assignees, especially in Toronto, knows well that these individuals are generally selected by the insolvent to get him through for a certain fee.... This fee is in fact a retainer, and except in special cases of difficulty, a professional man is never thought of. One would have supposed, and such was certainly the intention of the act, that the assignee was peculiarly the officer of the creditors, or at least one who stood perfectly impartial and unbiased between insolvent and creditors. If the assignee is the paid agent, or rather the Pettifogging paid and unlicensed lawyer of the insolvent, it is easy to be seen that he will use every means in his power to slip his client through regardless of creditors. ...now if the assignee has received his fee beforehand from the insolvent... it is in his interest... having no professional responsibility, to get his client through, even if all is not right. And I believe yet that many an insolvent will find to his sorrow, that all his papers are not right.[43]

In Scarboro's opinion, the non-lawyers were both unethical and unqualified to act as assignees, and they served neither the interests of creditors nor insolvents. Only a lawyer, a "professional man," could impartially and

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43. CLJ, March 1868, 83-4, (emphasis in original).

correctly conduct this "business that legitimately belongs to the profession."

The following month the Law Journal printed a reply to "Scarboro" from a writer signing himself "Quinte." In Quinte's opinion the safeguards contained in the Insolvency Act were more than ample to prevent improper action on the part of assignees. He pointed out that the superior courts would oversee the working of the act, but creditors had to act to protect themselves. In his view the maxim caveat emptor still applied. "If creditors neglect to secure professional assistance and permit assignees to deceive them, 'Scarboro' ought to blame the bungling, careless creditors, not the Act."[44]

The difference of opinion between "Scarboro" and "Quinte" apparently represented a wider division within the profession on the issue of external competition. Quinte's viewpoint was the established one - an almost complacent attitude that the market for legal services required no special regulation. Thus there was no need to "shore up the defenses." This position implied a widely held acceptance of the principles of the free market; that in matters of a quasi-legal nature the public would naturally tend towards the best qualified counsel. The corollary of this position was that the mistakes made by

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44. CLJ April 1868, 101-3, at 101.

the unqualified produced more work for lawyers in litigation than they took away in the first place.

Conversely, "Scarboro's" viewpoint represented an exception to the general free market principle. In his view the free market should not apply to relationships in which a professional person was needed. The public, rather than being expected to naturally tend towards the best qualified, required protection from quacks and charlatans. In 1868 "Scarboro's" position was not yet the dominant one. However, over the following decades it became much stronger within the profession. It was ironic that in this instance a lawyer practising near Toronto argued in favour of limiting external competition while a practitioner from outside the city expressed the opposing view. In all other problems of lay competition the geographical division of opinion was reversed. Lawyers practising in smaller towns felt the greatest extra-professional competition, while those in the cities experienced very little..

ii. Branch Law Offices

A complaint which did follow the general geographical pattern involved certain lawyers who opened branch offices staffed only by clerks. Apparently, lawyers practising in larger centres such as London were setting up branch

offices in smaller nearby towns such as Lucan or Lambeth. As far as the Law Society was concerned, these lawyers practised in two centres, but in fact articled clerks did virtually all of the work in the branch office, and the principal visited only on occasion. To the local lawyers who competed with these branch offices, city lawyers were merely selling their qualifications and allowing unlicensed clerks to practise on their own. In the June 1868 Canada Law Journal a reader signing himself "Sum" argued that this practice constituted unfair competition to legitimate professionals.

> Let me ask is not this gross injustice to those who at much expense have fitted themselves for the profession and who naturally tend to turn to it for their stay and support in the great battle of life? Is not the friendly attorney guilty of high crimes and misdemeanors for countenancing for a moment so dread an invasion on the sacred rights of brother- practitioners? ... Has the Law Society no power to stop this villianous (sic) practice on the part of mere students of the profession? If it have (sic) not, the Law should be altered so as to reach them, for I know it is folly to bark, if you can't bite![48] (emphasis in original)

In fact, the Law Society did have the power to act against this practice. Under the Attorneys Act then in force, a summary complaint could be made in any of the superior courts against a solicitor or attorney who allowed his name to be used in agency by an unqualified

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48. CLJ, June 1868, 158.

person acting in any respect as a solicitor or attorney. The act empowered the court to strike the solicitor or attorney from the roll and sentence the unqualified agent to a prison term of up to a year.[46] No such complaints were made, however, because the profession did not yet see the problem of external competition as a threat serious enough to launch such severe proceedings against a "brother practitioner." During the following decades, however, the law journals and the Law society received a growing number of complaints about various forms of external competition, and eventually the editors and the Benchers were convinced that the threat was real and protective action was necessary.

iii. Division Court Practice

Division Court practice was the first form of external competition to become a threat in the 1870s. These courts, established in 1841 to replace the old Courts of Requests, were known as the "Poor Man's Courts." There were, in essence, small claims courts. The Division Courts Act set their jurisdiction at a very low amount, and no provision was made for suitors to be represented by

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46. Consolidated Statutes of Upper Canada (1859), c.35, s.17. This section first appeared as part of An Act To Amend The Law For The Admission of Attorneys, 20 Vict. (1857), c.63, s.16.

counsel.[47] Parties could appear before the Court in person or represented by counsel, but the counsel was not required to be a lawyer.

The appearance of lay counsel in Division Courts was a matter of grievance for some lawyers, as evidenced by an 1872 bill introduced in the provincial legislature "...To Empower Certain Persons To Appear On Behalf Of Others In The Division Courts In The Province Of Ontario." Thomas Deacon, a Pembroke lawyer and the Conservative opposition member for Renfrew North, sponsored the bill.[48] Unfortunately, the text of the bill has not been preserved. However, it appears that it was intended to alleviate the problem either by allowing only legitimate solicitors to practise in the Division Courts, or by granting official status to a limited number of lay counsel, requiring them to pay annual fees and be admitted by the Courts.

Deacon's bill passed first and second reading in its original form, but on its third reading Matthew Crooks Cameron, another Conservative who represented Toronto East and was a Bencher of the Law Society, introduced an

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47. 4-5 Vict. (1841), c.3, (Ont.); Margaret A. Banks, "The Evolution of The Ontario Courts, 1788-1981," Essays In The History of Canadian Law, vol. II, David H. Flaherty (ed.), (Toronto, 1983), 509.

48. Journals vol. V, 1871-72, 32.

amendment to completely change the effect of the bill. Under Cameron's amendment the bill would be titled "An Act To Allow All Persons To Appear On Behalf of Others In The Division Courts In The Province Of Ontario." The amendment passed on a division, Deacon voting against it, and the amended bill then passed.[49] It was significant that a lawyer from outside Toronto introduced the original bill, and that a Toronto Bencher sponsored the amendment. Lawyers outside the provincial capital wanted to limit the competition presented by laymen practising in the Division Courts, but Toronto lawyers were not concerned with the problem. Not surprisingly, the Law Society was unsympathetic to the county solicitors' complaints. Extra-professional competition was a threat in the outlying areas of the province, but not in Toronto, and although not all of the Benchers practised law in the capital, those who did were the dominant members of Convocation.

During the late 1870s the question of competition from non lawyers in the Division Courts came up again. Between 1878 and 1880 proponents of an increase in the $100 maximum jurisdiction of the Division Courts raised the question in the House a number of times. They argued that such an increase would make justice easier to obtain

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49. Ibid., 122; 35 Vict. (1871-72), c.8, (Ont.).

in cases which were beyond the existing jurisdiction of the Division Courts but not valuable enough to bring in County Court. The number of such cases was allegedly increasing, because inflation had shrunk the lower court's actual jurisdiction. For example, if a merchant was owed an outstanding debt of less than $100, he could take the recalcitrant debtor to Division Court, where the services of a lawyer were not required. But if the debt was just over $100, it was not worth the expense of hiring a lawyer to sue the debtor in County Court, and the merchant would have write the sum off as a bad debt.

Raising the Division Courts' jurisdiction would reduce the workload of the County Courts, in which lawyers' services were required, and increase the caseload of the Division Courts, where the services of lay practitioners were available. Lawyers, particularly those practising in the outlying areas of the province, saw this as a direct attack on their livelihoods. The Peterborough and Frontenac County Law Associations denounced the proposal, and the Canada Law Journal published a strongly worded editorial condemning it.

> We almost fancy we can trace in the inception of this movement the hands of some of those "agents" who are, as we think, unhappily allowed to dabble in matters which they are profoundly ignorant, and for which they have undergone no apprenticeship. Unlike the heavily taxed lawyer, these persons pay no fees; and as a general rule, and the extent of their ability,

> bring discredit upon the administration of justice in the Courts where they are found. We shall not insult the Attorney General by supposing that he would pay the slightest attention to pressure inaugurated by this class.[50]

Apparently in response to the lawyers' position, an anonymous layman wrote to the Globe to defend the proposal to extend the "Poor Man's Courts'" jurisdiction. In his opinion, the primary advantage the Division Courts offered was that,

> a lawyer with a large fee is not a necessity; and judgments in that Court are usually given on equitable, not technical points. Occasionally an unwary suitor goes to a lawyer, and suffers to the extent of a five or six dollar fee....
>
> No doubt the legal profession desire a monopoly of everything that will put money in their way, or that can by any stretch of imagination be deemed to come within their province; but I have too much good faith in the common sense of our government, or any government representing the intelligent classes of Canada, to believe that such monopoly will ever be theirs.[51]

The Globe apparently agreed with this sentiment. When the proposal to raise the Division Courts' jurisdiction while maintaining the right of non-lawyers to appear on behalf of clients came before the legislature in the winter of 1880, the Globe published an editorial arguing that:

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50. CLJ Dec. 1878, 313.

51. The Globe, Mar. 1, 1878, 2.

> The laymen in the House will earn the public gratitude if they will take this opportunity of sitting on the lawyers with all the weight they can command.... The judges are infinitely better able to tell whether witnesses are telling the truth when there are no lawyers present to raise a dust and compel honest men to involve themselves in contradictions.... If lawyers are encouraged to put their noses into cases by holding out to them the magificient inducement of five or ten dollar fees, to be exacted from the unfortunate losers of suits, there is an end to the "Poor Man's Courts," and a beginning to eternal squabbling over matters which common sense would settle in a trice.[52]

A majority of the members of the legislature apparently shared the Globe's view, because within a matter of days the Mowat Government amended the Division Courts Act increasing the Courts' jurisdiction from one hundred to two hundred dollars.[53] The Canada Law Journal lamented:

> The Division Court is no longer what it was constituted as - The Poor Man's Court; and the pettifogging pedler has been helped to shove himself one step further into the professional hall door. The Attorney-General and the leaders of the Opposition, together with the Benchers, might as well open it wide and bid him and his conveyancing brother welcome.[54]

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52. The Globe, Feb. 26, 1880, 2.

53. The Division Courts Act, 1880, 43 Vict. (1880), c.8, s.2, (Ont.). Section 17 of this legislation also allowed for appeals from Division Court decisions in certain circumstances. See Banks, above, note 47, 522.

54. CLJ, April, 1880, 98.

The Law Journal's reference to the Benchers' lack of action in the matter was significant. Convocation was obviously aware of the extent of the anti-lawyer sentiment which the Globe and its readers expressed, and the Benchers - the most affluent of the province's lawyers - were unwilling to further antagonize the public by trying to protect the bar's lower echelons, most of whom practised outside of Toronto. This was particularly evident in the debate over unlicensed conveyancers.

iv. Unlicensed Conveyancers

During the following years the split between Toronto and country lawyers increased, as the perceived threat from non-professional competition outside the capital grew. The greatest competitive threat felt by the country practitioners came from what they termed "unlicensed conveyancers." These were men who set themselves up in business offering their services as legal advisors in the preparation of documents such as agreements for mortgage or sale of land. In this way they acted in one of the lawyer's oldest capacities, that of the scribe who simply wrote out his client's papers in a legally prescribed format.

Although it is not possible to determine how many lay conveyancers there were in the province, in January, 1880

a lawyer signing himself "An Old Subscriber" wrote to the Canada Law Journal: "I have been practising law for the last nine years in a country town. Besides myself there are two other professional men and three (at least) so-called 'conveyancers'."[55] The following month a lawyer signing himself "Scriptor Sine Scriptum" replied: "There are two other professional men in our town [besides myself], as in his; he has to contend with three conveyancers and I alas' with thirteen."[56]

During the late 1870s the Canada Law Journal printed increasing numbers of letters complaining about these so-called "invaders of the profession." In February 1877 an articling student from Huron County wrote quoting an advertisement published in the local newspaper by one of these men.

> -------- --------- Conveyancer, Commissioner in B.R., and General Merchant, 12 Main Street, --------- Ontario. Deeds, Mortgages, Leases, Wills, Arbitration papers, Letters of Administration, and everything in the line executed carefully and with dispatch. Money always on hand to lend at reasonable rates.

The writer commented on two aspects of the problem that this type of advertisement represented. He argued that it

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55. CLJ Jan., 1880, 19-20.

56. CLJ Feb., 1880, 62, (emphasis in original).

was unjust to the public, which bore the cost of correcting the blunders of the unlicensed. "Is it any wonder when such persons are allowed to do such as this person asks to be allowed to do, that there are such large sums expended in law costs, to find out what they intended others should understand by their interesting documents?" And he argued that it was unfair to the legitimate solicitor, who must compete with a conveyancer not bound by the standards of a profession. "Surely there should be some protection for those who have expended so much time and money in acquiring their profession from the pilfering of such gentry."[57] This letter writer, like many other law students and practitioners in the small centres in the province, looked upon the lawyer's years of training and the various examination and admission fees the Law Society and the province required him to pay before entering practice as an investment deserving of protection.

However, as will be discussed below, those who held the power to provide protection from external competition did not agree. Neither the Benchers of the Law Society nor the provincial government were convinced that either the public or the profession needed protection.

The Benchers had little sympathy for the plight of the small town solicitor struggling to make a living,

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57. CLJ, March 1877, 94, (deletions in original).

because the successful, prominent lawyers who served in Convocation had no personal economic stake in the matter. They had succeeded quite well in attracting clients and building up practices in the "great battle of life" and they saw no need to retreat from the free market. The bar, therefore, could not act as a unified body to protect its collective interests. As will be discussed below, over the course of the following years the Benchers changed their views on this question and began to fight to limit external competition. When they did, so the bar spoke with a unified voice to protect its collective autonomy. During the 1870s, however, neither the Benchers nor the provincial legislators had any sympathy for the country solicitor.

An absence of personal economic interest may also explain the legislators' lack of sympathy for lawyers struggling in competition with laymen. As is evident in Figures 3.2 and 3.3, throughout the late nineteenth and early twentieth centuries, the legal profession was well represented in both the provincial government and the Legislative Assembly, but the bar received no legislative protection from external competition during these years.

Between Confederation and the Depression, lawyers represented by far the largest occupation group among Ontario cabinet ministers. As Figure 3.2 indicates, 44.6%

of the ministers in the nine provincial ministries in office between 1867 and 1930 were lawyers. The next largest occupational groups in government were businessmen and farmers, representing 20.8% each.

FIGURE 3.2

OCCUPATIONS OF ONTARIO PROVINCIAL CABINET MINISTERS, 1867-1929

Occupation	Number	Percent
Law	45	44.6%
Medicine	8	7.9%
Commerce	21	20.8%
Agriculture	21	20.8%
Other	6	5.9%
Total	101	

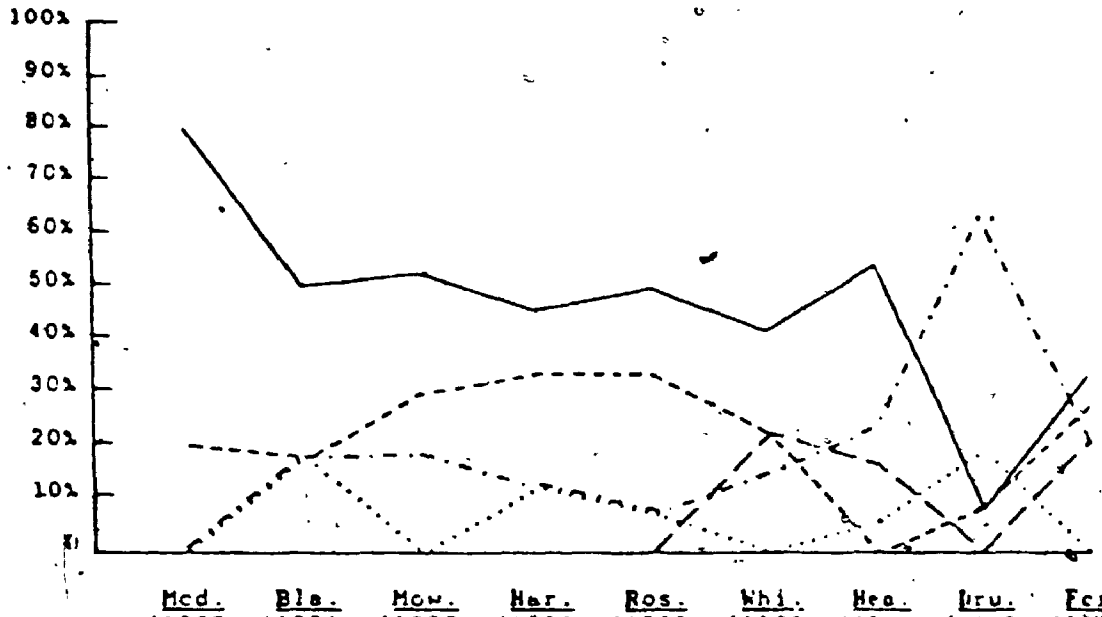
Note: See Appendix D, Ontario Provincial Cabinet Members, 1867-1930 for a complete list of ministers, portfolios, and occupations. Occupational categories are based on those listed in the Canadian Parliamentary Companion and Parliamentary Guide. The Law category includes those listed as barristers, solicitors, and attorneys. The Medicine category includes only physicians. The Commerce category includes those listed as merchants, manufacturers, and businessmen. The Other category includes journalists, teachers, pharmacists, undertakers, dentists, and those whose occupations were not listed.

Sources: The Canadian Parliamentary Companion, Henry J. Morgan, ed., (Montreal, 1869, 1874); C.H. Mackintosh, ed., (Ottawa, 1877, 1880); J.A. Gemmil, ed., (Ottawa, 1885, 1887, 1891, 1897); The Canadian Parliamentary Guide, Arnott J. Magurn, ed., (Ottawa, 1901, 1903); Ernest J. Chambers, ed., (Ottawa, 1908, 1909, 1914, 1915, 1923); A.C. Normandin, ed.,(Ottawa, 1926, 1929).

Moreover, as Figure 3.3 indicates, the relative number of lawyers in the provincial cabinet remained consistently high throughout the period. With the single exception of the 1919-1923 United Farmers of Ontario government led by E.C. Drury - a political anomaly in itself - lawyers held the majority of cabinet positions in every Ontario administration between 1867 and 1930. Yet no government would support the legal profession by reducing lay competition.

FIGURE 3.3

CHANGE IN OCCUPATIONS OF ONTARIO CABINET MINISTERS, 1867-1930



	Mcd. (1867 -71)	Ble. (1871 -72)	Mow. (1872 -96)	Har. (1896 -99)	Ros. (1899 -1905)	Whi. (1905 -14)	Hea. (1914 -19)	Dru. (1919 -23)	Fer. (1923 -30)
Law (——)	80.0%	50.0%	52.9%	44.5%	50.0%	42.9%	53.8%	9.1%	33.3%
Med. (— —)	0%	0%	0%	0%	0%	21.4%	15.4%	0%	20.0%
Com. (- - - -)	20.0%	16.7%	29.4%	33.3%	33.3%	21.4%	0%	9.1%	26.7%
Ag. (— · —)	0%	16.7%	17.6%	11.1%	8.3%	14.3%	23.1%	63.6%	20.0%
Other(·····)	0%	16.7%	0%	11.1%	8.3%	0%	7.7%	18.2%	0%

Sources: See Figure 3.2

It is probably safe to assume that, like the Benchers, lawyers who were cabinet ministers were successful in their legal careers and, therefore, had little to worry about competition for clients from outside the legal profession. Similarly, most lawyers who were members of the Legislative Assembly, but not necessarily of the government, likely had enough local prominence to make a good living practising law. They too would not have a personal economic interest in the competition question.

As is evident in Figures 3.4 and 3.5, although the legal profession did not dominate the back benches as it did the cabinet positions, lawyers were consistently well represented in the legislature.

FIGURE 3.4

OCCUPATIONS OF MEMBERS OF THE ONTARIO LEGISLATIVE ASSEMBLY, 1867-1929

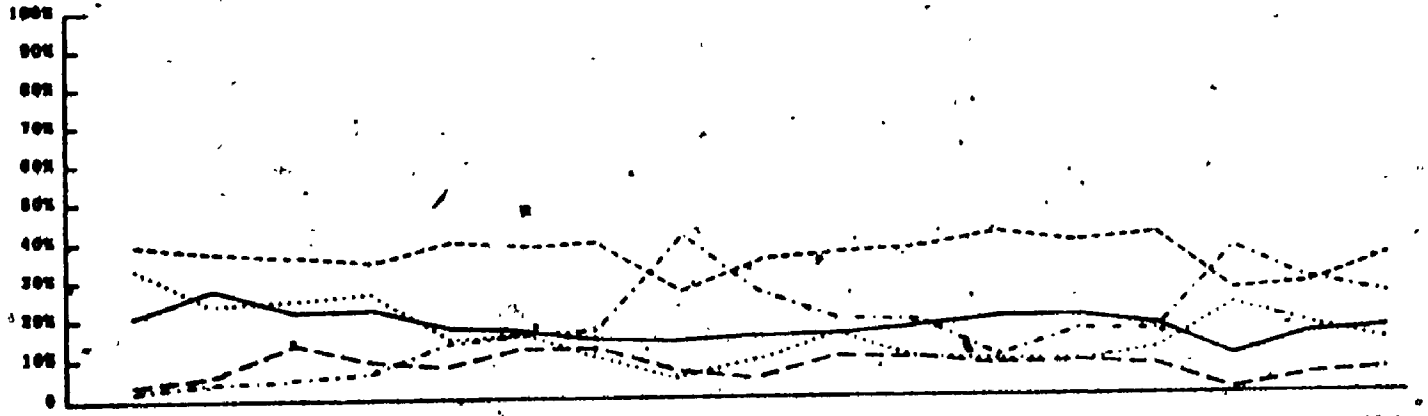
	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	134	154	2	8	298	18.2%
Medicine	53	88	1	1	143	8.7%
Commerce	270	309	5	21	605	36.9%
Agriculture	102	152	58	8	320	19.5%
Other	97	126	14	35	272	16.6%
Totals	656	829	80	73	1,638	

Note: The occupational breakdown of each of the first seventeen legislatures of the province appear in Appendix E, below. Occupational categories and political party affiliations are based on those listed in the Canadian Parliamentary Companion and Parliamentary Guide. The Law category includes those members listed as barristers, solicitors, and attorneys. The Medicine category includes only physicians. The Commerce category includes those listed as merchants, manufacturers, and businessmen. The Other category includes journalists, teachers, pharmacists, undertakers, dentists, and those whose occupations were not listed. For party affiliation, Conservative includes those listed as Conservatives, Unionists, and Liberal-Conservatives. Farmers include those listed as Patrons of Industry, United Farmers of Ontario, People's Party, and Progressives. The Other category includes those listed as Independent, Labour, and those for whom party affiliation was not listed.

Sources: The Canadian Parliamentary Companion, Henry J. Morgan, ed., (Montreal, 1869, 1874); C.H. Mackintosh, ed., (Ottawa, 1877, 1880); J.A. Gemmill, ed., (Ottawa, 1885, 1887, 1891, 1897); The Canadian Parliamentary Guide, Arnott J. Magurn, ed., (Ottawa, 1901, 1903); Ernest J. Chambers, ed., (Ottawa, 1908, 1909, 1914, 1915, 1923); A.L. Normandin, ed., (Ottawa, 1926, 1929).

FIGURE 3.5

CHANGE IN OCCUPATIONS OF MEMBERS OF THE ONTARIO LEGISLATIVE ASSEMBLY, 1867-1929



	1st Leg. (1867 -71)	2nd Leg. (1871 -74)	3rd Leg. (1875 -79)	4th Leg. (1880 -83)	5th Leg. (1884 -86)	6th Leg. (1887 -90)	7th Leg. (1891 -94)	8th Leg. (1895 -98)	9th Leg. (1898 -1902)	10th Leg. (1903 -04)	11th Leg. (1905 -08)	12th Leg. (1909 -11)	13th Leg. (1912 -14)	14th Leg. (1915 -19)	15th Leg. (1920 -23)	16th Leg. (1924 -26)	17th Leg. (1926 -29)
Law (——)	31.4%	27.6%	19.3%	20.6%	18.6%	16.7%	18.6%	14.9%	17.2%	16.5%	17.3%	21.7%	21.7%	18.9%	10.8%	16.3%	17.9%
Med. (— —)	3.6%	6.3%	13.6%	10.2%	9.3%	12.2%	12.8%	7.4%	6.8%	12.4%	12.2%	10.6%	10.4%	9.0%	1.8%	6.8%	6.3%
Com. (- - -)	39.9%	37.5%	38.4%	36.2%	40.7%	40.0%	42.2%	27.7%	36.6%	37.9%	38.8%	43.8%	40.6%	42.3%	36.1%	38.8%	38.6%
Ag. (— · —)	2.4%	8.0%	5.7%	8.8%	10.3%	10.6%	10.9%	43.6%	28.0%	18.6%	19.4%	13.2%	17.0%	18.2%	38.7%	29.8%	29.9%
Other (·····)	33.3%	23.8%	28.0%	27.3%	19.1%	18.6%	11.1%	8.4%	11.8%	15.6%	12.2%	11.3%	10.4%	13.6%	12.6%	19.2%	16.6%

Sources: See Figure 3.2

In addition to the fact that the lawyers in provincial parliament likely had no personal economic interest in improving the bar's ability to control the market, there was likely a more important reason for their lack of support for their profession. Although there is no direct evidence to prove it, it is possible that, as politicians, they did not want to appear to provide further advantages to what the public perceived as an already privileged group. In fact, rather than helping the bar, the legislature seemed intent on reducing the legal profession's share of the market for clients. This was particularly evident in the debate over extending the monetary jurisdiction of the Division Courts, discussed above.

The legislation extending the Division Courts' jurisdiction triggered a storm of protest from lawyers in the province about Division Court agents and extra-professional competition. During 1881, no fewer than twenty-seven letters on the subject appeared in the Canada Law Journal. The correspondence section of the Journal had grown substantially over previous years, and almost all letters were devoted to this issue. In January the editor wrote: "We are pleased to know that our exertions on behalf of our brethren in the country who are afflicted with a plague, not of locusts, but of something almost as

numerous, and, in their way, quite as destructive, to wit, 'unlicensed conveyancers,' is fully appreciated."[58] The following month, apparently impressed by the volume of discontent over the issue, the Law Society took notice.

In February 1881, Convocation finally took the matter in hand. During its Hilary Term meetings, the Law Society struck a committee composed of six Benchers, all but two of whom practised in Toronto, "... to consider some means of putting an end to the performance of conveyancers' work by uncertificated or unlicensed persons."[59] This committee failed to report during Hilary Term, but when the Benchers met again in Convocation during Easter Term, they re-appointed it and added two more Toronto Benchers to its membership.[60]

When the committee finally reported to Convocation the following December during Trinity Term, 1881, it recommended that no action be taken. In the committee members' opinion, legislation limiting conveyancing practice to lawyers would only provoke the public's long-

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58. CLJ, Jan. 1881, 3.

59. Minutes, Feb. 18, 1881, CLJ, March 1, 1881, 101. The committee included John Hoskin, Thomas Benson, Larrat Smith, James Bethune, Charles Moss, and Byron Britton.

60. Minutes, May 17, 1881, CLJ, July 1, 1881, 261. The two new Toronto members were James Fox Smith and James Joseph Foy.

held hostility towards the profession, and the damage created would be greater than the benefits to be achieved by protective measures.[61]

The Canada Law Journal strongly disagreed with the Benchers' analysis of the situation. It acknowledged the danger of increasing public hostility, but it argued that the threat posed by the "invaders" was much greater.

> We feel rather curious to know wherein the profession could be placed in a worse position than they are at present, unless indeed they were compelled to carry on lawsuits and do conveyancing for nothing.... As to the country practitioners, their privilege is to pay twenty dollars per annum for certificates which are, to use a stage simile, a "screaming farce," and for several volumes of reports which are generally useless from lack of business, litigation, -except in Division Courts - being almost nil, and conveyancing being in the hands of outsiders for reasons often referred to. The only course that appears to us in the premises is to abolish the Law Society, sell Osgoode Hall to a "collection bureau," and emigrate to Manitoba, leaving the library to the "invaders," in the Parthian hope that confusion to the public might thereby become worse confounded.[62]

The Law Journal's facetious reference to emigration was prompted by a celebrated Manitoba statute which effectively gave lawyers a monopoly over conveyancing work in that province.

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61. CLJ, Dec. 15, 1881, 459.

62. Ibid. (emphasis in original.)

Understandably, many lawyers in Ontario envied An Act Respecting Conveyancers, which the recently founded Law Society of Manitoba had succeeded in having passed in 1880. This statute limited the "...power of drawing, passing, keeping and issuing all conveyances, agreements, charter-parties and other mercantile documents" to barristers, solicitors, and government-appointed conveyancers. Non-lawyers who wished to practise as conveyancers had to pass an examination for competence before a judge of the Court of Queen's Bench and receive a specific appointment from the Lieutenant-Governor-In-Council. Anyone acting as a conveyancer in the province who was not a barrister, solicitor, or government appointee under the act was liable to a fine of up to twenty dollars.[63]

Australia and Ireland had similar legislation limiting lay access to the conveyancing market, but no other Canadian province had this protection for lawyers. The Canada Law Journal lamented:

> Will such a legal millennium ever arrive in this part of that Empire on which the sun never sets? ... Here, after, as it were, buying a profession, the law allows us to be robbed of our purchase by every impudent quack that has mastered the three great R's.[64]

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63. 44 Vict. (1880-81), c.25, (Man.).

64. CLJ, Nov. 15, 1881, 420; March 1, 1882, 86-7.

Apparently the Law Journal's cries fell on deaf ears, however, because to those who held the power in Ontario, the problem of the profession's public image loomed larger than the threat of outside competition. This was particularly true among the bar's more senior members, from whose ranks the Benchers invariably came. In following the special committee's recommendations of December, 1881, Convocation was very reluctant to offend the public by appearing as greedy shysters, anxious to increase fees by monopolizing clerical work and increasing the cost to the consumer.[65]

However, in response to the growing demand for protective action, in November of 1882 the Benchers formed another committee to examine the problem of external competition. Its six members had all served on the 1881 committee, and with one exception, all were from Toronto. Their mandate was:

> ...to consider some means of putting an end to unlicensed persons acting as conveyancers... [and preventing] persons who are not barristers-at-law from appearing as agents or advocates in those cases in the Division courts which were not within the jurisdiction of such

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65. CLJ Dec. 15, 1881, 459.

court prior to the Division Courts Act, 1880.[66] The committee entered into correspondence on both of these issues with Oliver Mowat, who held the portfolio of Attorney General as well as Premier in the provincial government. The members also held a meeting with a number of M.P.P.'s representing both parties in the legislature to see what success the Law Society might have in attempting to legislate some protection for the province's lawyers in conveyancing and Division Court work.[67]

This committee's efforts at lobbying the government and the legislature apparently came to nothing, because in February, 1883 its chairman reported to Convocation that in the opinion of the M.P.P.'s, "It would not be feasible to get any legislation during the current session and [they] would not advise that any attempt be made at present." To resolve the problem of unqualified agents practising in the Division Courts, the M.P.P.'s suggested that "A representation from Convocation to the County Court Judges

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66. Minutes, Nov. 25, 1882, CLJ, Feb. 1, 1883, 47. The committee members were: Byron Britton, John Hoskin, Larratt Smith, James Bethune, James Fox Smith, and Charles Moss. Only Britton, who had practised in Kingston for over twenty years, was from outside of Toronto.

67. Minutes, Feb. 6, 1883, CLJ, April 1, 1883, 127.

against allowing fees to agents would be acted upon in many cases."[68]

The rest of the Benchers apparently felt that judicial lobbying might meet with more success, because they accepted the committee's suggestion and directed the Secretary of Convocation:

> ...to draw the attention of the Judges and Junior Judges of the County Courts to the practice under the Division Courts Act, 1880 ...of allowing counsel fees to such agents is very injurious to members of the profession, and to request their consideration of the question whether it is desirable that they should in any case exercise the discretion vested in them in favour of agents not being barristers or solicitors.[69]

It is not clear whether the Secretary of the Law Society succeeded in his efforts to lobby the County Court judges in their capacity as judges of the Division Courts to convince them not to allow counsel fees to non-lawyers, or even if he tried, but the problem certainly did not go away.

Throughout the 1880s country lawyers continued to complain about external competition. The Canada Law Journal and the newly founded Canadian Law Times printed scores of letters on the subject during the decade. Significantly, however, the crux of the arguments in these

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68. Ibid.

69. Minutes, Feb. 10, 1883, CLJ April 1, 1883, 131.

letters; and the editorial comments supporting them, began to change. In addition to pointing out that unlicensed conveyancers and Division Court agents unfairly invaded the rightful jurisdiction of those who expended considerable time and money in qualifying for the profession, and who paid substantial annual fees for the right to remain within its ranks, they argued that the work done by the "unqualified" was of poor quality, thus defrauding the unassuming public.

This change represented a significant shift in the policy argument. Rather than arguing that lawyers deserved protection from competition because they had paid for their professional status, proponents of a monopoly for the bar were now arguing that the public deserved protection from unprofessional counsel. This was a key step in the professionalization process. If Ontario lawyers were to be successful in asking for special protected status in the marketplace, they had to justify themselves. They had to prove that their goal was not just personal gain but protection of an unsuspecting public.

As evidence of the harm which amateur conveyancers did, letter writers often cited the document of conveyance of property which required the husband of a female vendor of property to bar his dower in the land. The authors of these letters pointed out that any first year law student

would know that under the common law a dower interest in land could be held only by the wife of a property owner. The wife of a male vendor was required to bar dower in a property to be sold, but to have a husband bar his dower was ludicrous.[70]

Letter writers also cited the "unprofessional" manner in which conveyancers carried on business. Lawyers complained that the unlicensed conveyancers invariably advertised their services (including the low fees which they charged) in local newspapers and handbills, and that they generally combined their practice with activities such as lending money and selling insurance.[71]

An example of this type of argument, noting that the conveyancers' ethical standards were as low as their fees, appeared in a letter in the Canada Law Journal from William Barrett, a barrister and solicitor from Walkerton, Bruce

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70. CLJ, Dec. 1, 1883, 377; Feb. 15, 1884, 73-4. Dower was the name of the common law right which a married woman held in her husband's real property. A surviving widow would have what is known as a life estate, in other words for the remainder of her life, in one third of the land solely owned by her husband. In order to sell a piece of property, a married man had to ask his wife to sign off her right or "bar her dower." The right was abolished in Ontario by the Family Law Reform Act, 1978, SO 1978, c.2, s.70. (H.D. Anger and J.D. Honsberger, Canadian Law of Real Property, 2nd edn. Revised by A.H. Oosterhoff and W.B. Rayner (Toronto, 1985), 175.

71. CLT, April 1886, 179-81; June 1888, 153-4.

County. In reply to a previous letter suggesting that lawyers compete with laymen by lowering their fees, Barrett argued that in the sale of land clients often chose a lay conveyancer over a legitimate solicitor not because of the former's lower fees, but because he would ask fewer questions of potentially fraudulent vendors.

> Those who employ the unprofessional man, do so in most cases, I believe, not on account of any saving, but because they prefer having as few questions asked about their title as possible; lawyers knowing the irresponsibility are, of course, compelled to ask the purchaser if he requires the solicitors to be responsible for the title, and it so frequently leads to difficulties that the seller prefers going to an unprofessional man who will "do the deed" and hold his tongue or if he searches the title be satisfied with a look at the abstract index in the Registry Office. ...In the great majority of cases where a solicitor is employed ...it is at the instance of the purchaser, and not the seller.'[11]

The implication of Barrett's argument was clear. The public interest would be protected by allowing only lawyers to practise conveyancing. References to the interests of the public and the sub-professional nature of external competitors was a direct effort to sidestep the problem of the image of the profession. By emphasizing the fact that lay competitors were shamefully under-skilled and unethical, and they combined their legal work with trades in which profit was the prime motive, lawyers could

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11. CLJ, March 1880, 91.

forestall the image of greed to which they feared their coveting of business would lead.

In addition to changing the focus of the argument, letter writers also argued that continued competition with the conveyancers would harm the profession's image. According to this line of reasoning, because laymen were not limited by ethical standards, they could "cut corners" and charge very low fees. Many solicitors were, therefore, forced to lower their standards and compete on the tradesman's level in order to survive. This occurred in Toronto, when a lawyer advertised that he would do "...conveyancing at one-half the usual charges, cash." After denouncing this type of unprofessional behaviour, the Canada Law Journal remarked:

> One's feeling of disgust at seeing a professional man condescend to the tricks of those "impudent invaders," whose ignorance is their only excuse, is somewhat mitigated by the consideration that the advertiser may, in a certain sense, be acting in self-defense.[73]

A similar editorial chastised a barrister in Northumberland County who regularly advertised his "Law, Loan, and Insurance Practice."

> There can be no doubt that this objectionable style of advertising, on the part of professional man, may have to a great extent been induced by the fact that irresponsible invaders have largely "cut into" the legitimate business of lawyers, and especially so in country places. We need

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73. CLJ, March 1881, 94-5.

> scarcely refer to this matter further, but we have a fresh instance of this sort of thing in an elaborate card now before us, of one who thus advertises his wares, "Dry Goods, Groceries, Commissioner and Conveyancer, Real Estate Agent, Boots and Shoes."

The Journal then went on to call on the Benchers to do something in the name of the profession as a whole to afford some relief to those who were forced to stoop to such levels.[74]

The pressure exerted by the Journal and its correspondents throughout the 1880s was not without impact on the Law Society. The problem of external competition and what to do about it was an issue in the 1886 and 1891 elections of Benchers, but despite efforts to elect members of the junior and country bars, who were more likely to have a first hand appreciation of the competition presented by laymen, the composition of Convocation remained virtually unchanged as a result of both these elections. Following the 1891 election, the Canada Law Journal noted:

> The recent election of the thirty Benchers of the Law Society has not very materially altered the personnel of the body. A strong effort was made to elect members of the bar who were pledged to assist their brethren in endeavouring to protect the profession against unlicensed conveyancers. The result of this was something, but not very marked. In reference to this subject it is well to understand the difficulty which lies in the way of our obtaining justice from the Legislature, the danger being that the government might be induced by the pressure of unlicensed

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74. CLJ, Aug. 22, 1881, 298-9.

> conveyancers, who were also members of the House, to deprive the profession of what little advantage they may now possess.[75]

It is not clear how many members of the legislature could accurately be labeled conveyancers, but as is evident in Figures 3.4 and 3.5, above, throughout these years, with the exceptions of the eighth and fifteenth legislatures (1895-98 and 1920-23), when agrarian political unrest altered the occupational structure of the House, by far the largest percentage of M.P.P.'s were engaged in commerce. Only one of these men, Joseph Rorke, a Conservative representing the riding of Centre Grey, was specifically identified in the Parliamentary Companion as a conveyancer.[76] Whether the Law Journal was correct, and many members of the legislature had a personal stake in the battles between lawyers and conveyancers for clients, the Law Society met with continuing failure in its efforts to get protective legislation over the next fifteen years.

Convocation began this fruitless effort shortly after the election of Benchers in 1891 by forming another special

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75. Since 1871, the members of Convocation, excluding the ex officio Benchers and the Visitors, had been elected by the provincial bar pursuant to An Act To Make The Members of The Law Society of Ontario (sic) Elective By The Bar Thereof, 33-34 Vict. (1870-71), c.15, (Ont.). CLJ, April 15, 1886, 133; April 16, 1891, 193.

76. The Canadian Parliamentary Companion, J.A. Gemmill, ed. (Ottawa, 1887), 215-6; (Ottawa, 1891), 231.

committee to examine the problem of unlicensed conveyancing. Chaired by H.H. Strathy, a newly elected Bencher who had practised for twenty years in Barrie, the committee included eighteen Benchers. In sharp contrast to the committees appointed to study the problem in 1881 and 1882, however, this committee better represented both the bar outside of Toronto and the junior members of Convocation. Of the eighteen appointed, only six practised in Toronto, and twelve were first elected to Convocation in 1891.[77]

In addition, to bolster this new committee's prestige and increase its expected recommendations' chances of success in the legislature, the Benchers included Oliver Mowat in its membership. As provincial Attorney General, Mowat was an ex officio Bencher, but as is evident in the committee's report to Convocation, he apparently did not take part in any of its deliberations.[78]

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77. The committee members were: A.B. Aylesworth, Walter Barwick, Byron Britton, Alexander Christie, William Douglas, Christopher Fraser, Donald Guthrie, Arthur S. Hardy, Charles Moss, William Renwick Riddell, Charles Ritchie, George F. Shepley, James V. Teetzel and George H. Watson. Hardy was a member of Oliver Mowat's cabinet and succeeded him as Premier and Attorney General in 1896 when Mowat left provincial politics to join Wilfrid Laurier's cabinet. (See Appendix D, below.) Minutes, May 29, 1891, CLJ, Dec. 1891, 592.

78. Ibid.

The committee received a number of submissions from various county law associations and individual practitioners complaining of unfair competition and demanding protective action. However, the committee's report, which Strathy presented to Convocation at its half-yearly meeting in December, showed only marginal appreciation of the problem. In publishing it the Canadian Law Times scoffed, "The mountains have been in labour and have brought forth a mouse."[79] The report stated that the members of the committee strongly felt that:

> there are ample grounds for the complaints made and [we] believe that the members of the profession (especially those practising in the country) are entitled to protection in some form against the competition of persons outside the profession, who without having been at any expense to qualify themselves for the work or paid any fees to government or Law Society prepare deeds and documents of various kinds and do other work strictly within the province of members of the profession.[80]

Significantly, the report defined the problem not as an injustice to the public, but simply as an invasion of the rights of the profession.

The committee had gone back to the original, single-facetted argument in favour of protection. Its report made no mention of the public interest reasoning which the Law

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79. CLT Aug., 1892, 191.

80. Minutes, Dec. 29, 1891, CLJ, July 16, 1892, 367.

Journal had adopted earlier. It is notable that, for the first time, a committee of Convocation had admitted that the problem existed. The fact that a majority of the committee members practised law outside Toronto likely had something to do with this. But the fact that their report spoke only in terms of the rights of lawyers also probably had something to do with their lack of success in having the report's recommendations implemented at Queen's Park.

The committee's recommendations outlined three options. The first of these was to amend the Registry Act to provide that no instrument affecting real property could be registered without the signature of a solicitor. Secondly, it recommended an amendment limiting conveyancing to regularly appointed notaries public. Thirdly, it suggested legislation providing for the licensing of all conveyancers and a requirement that they pass an examination directed by the judges of the High Court and pay an admission and annual fee.

In presenting the report, Strathy recommended that the last option, the least drastic of the three, and "...the only one likely to receive consideration from the legislature," be formally presented to the Attorney General as a proposal for a bill. He also noted the similar legislation in force in Manitoba and Ireland, and suggested that, "...if the matter is fairly placed before the

Attorney General it will receive his best consideration and be followed by legislative action calculated to afford relief to the profession."[81]

This committee's report was important in two respects. It was the first time that Convocation showed genuine concern about the problem of lay competition and made a serious effort to limit its impact. In addition, on the committee's recommendation, the Benchers chose the third option, the one they felt would be the least offensive to the public and the legislature. In doing so, however, they opted not for professional monopoly but for control of the "invaders" by an outside agency, examination by the judiciary and licensing by the executive. This would give the conveyancers a status similar to that of lawyers prior to the establishment of the Law Society in 1797.

Perhaps some of the committee members or other Benchers felt that this would eventually lead to the conveyancers' inclusion in an autonomous Law Society, but no such comments appeared in the report or minutes of Convocation. Interestingly, a year later the Canada Law Journal published an article reprinted from the Madras Law

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81. Ibid., 367-8. The statutes relating to Manitoba and Ireland were: An Act Respecting Conveyancers, 44 Vict. (1880-81), c.25, (Man.), (above, note 63), and An Act to amend the Laws relating to Conveyancers, Special Pleaders, and Draughtsmen in Equity practising in Ireland, 27 Vict. (1864), c.8, (U.K.).

Journal describing just such a development. In colonial India an attempt was made to form a law society or association which including advocates and attorneys as well as what were termed vakils or agents. The Canada Law Journal commented that the Indian proposal might

> ...be suggestive in regard to the state of things in this country, at least to the extent of endeavouring to bring under some control and supervision the vast army of irresponsible unlicensed conveyancers and Division Court agents, who not only feed on professional pastures, but do so to the detriment of the public they profess to accommodate.[82]

In attempting to have the conveyancers controlled by the state and not banned from practice or coopted into the profession, the Benchers demonstrated their awareness of the image problem. Not wishing to appear overly zealous, they chose the least attractive of three options. At the same time, however, they employed only a one-dimensional argument to justify the step. In contrast to law journal editors and contributors, the Benchers noted only the unfairness to professional men who paid admission and annual fees for the right to practise, but not the alleged public injustice caused by the unskilled conveyancers. Had they argued that control of external competition would alleviate a public injustice, it might have been easier to

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[82]. CLJ, June 1, 1893, 349.

justify a professional monopoly as an exception to the general rule of freedom of contract.

In any event, despite the bill being "fairly placed" before the Premier, the Law Society's lobbying effort met with little success. In June, Strathy reported to convocation that, "no aid can be accorded to the profession... by reason of the opponent feelings of such a large proportion of the members of the legislature and the strong influence now used by unlicensed conveyancers throughout the province." He could only suggest that members of the profession use as much influence as possible to gain the support of their local M.P.P.'s.[93] Possibly most significantly, the profession lacked either the political power, or the political will, to have its interests protected by the legislature.

One explanation of the legal profession's lack of political power was the politicization of agrarian interests taking place across the continent. Figure 3.5, above, shows the increase in the number of farmers in the Ontario legislature, and the following item, taken from the April, 1894 Canada Law Journal, shows the farmers' attitude towards lawyers:

> The Western Law Times credits the ubiquitous granger - the species being known in this country by the more "tony" name of Patron of Industry.

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93. Minutes, June 28, 1892, CLJ, Nov. 16, 1892, 569.

> with some "amusing antics in the Legislative Assembly chamber: First, he must repeal the Law Society and the Medical Acts, and then he sought to have an Act passed giving time to farmers by way of forcible extensions.... When the Judicature Act was introduced he began to see behind it a new way of making costs; this was enough for him, and the result was that the Act was postponed until next session. After a good deal of talk and annoyance he has at last subsided, and the only apparent result of his session's labours is the increase of the Inferior Court's jurisdiction... which throws a good deal of work on members of a class that are already burdened."
>
> This increase of jurisdiction is a favourite effort on the part of laymen in parliament whereby to immortalize themselves. It is always popular to bring justice to every man's door by enlarging the scope of Division Courts, especially when the result is to cut down lawyers' fees.... We are compelled, unhappily, to pay some attention to the lay element in the House, they have votes, and party politicians exist by these votes. We may consider ourselves lucky if we can keep Osgoode Hall over our heads, and be allowed to conserve for a little longer the limited privileges we enjoy. It should be clearly understood that the interests of the public are bound up with these so-called privileges, which simply means a highly-trained Bench and Bar. Some cannot, or do not care to see that anything which directly or indirectly lowers the standard must work a more serious injury to the profession.[44]

The Law Journal published this comment two months before the provincial election of June 1894; in which 43.6% of the members elected were farmers (see Figure 3.5, above); but beyond the simple number of farmers in political office,

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44. CLJ April 2, 1894, 181-2.

the comment accurately identified a "levelling spirit of the age," which politicians were bound to serve.[85]

Despite the odds against them, lawyers continued to debate the problem of external competition in the pages of the law journals throughout the 1890s. In particular, complainants argued that the cut-throat competition the conveyancers brought about was rapidly lowering the bar's professional standards. A letter published in the February, 1896 Canada Law Journal under the heading "Invaders of The Profession" expressed this argument very clearly.

> Sir, - [I] draw attention to a matter which is really of vital importance to the profession, I mean the question of conveyancing by others than solicitors. This matter has been aired time and again in your journal, but no remedy has been attempted, ...and matters have now come to such a state that if not shortly remedied it will be too late....

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85. On late nineteenth century agrarian political unrest in Ontario, see S.E.D. Shortt, "Social Change and Political Crisis in Rural Ontario: The Patrons of Industry, 1889-1896," in Donald Swainson, ed. Oliver Mowat's Ontario (Toronto, 1972), 211-35. Shortt points out that rather than simply fighting against the inevitable process of industrialization and urbanization and the accompanying decline of rural political power in the province, the Patrons attacked what they saw as the unfairness of this trend - particularly the growth of monopolies. (216) Like their American cousins, they fought monopolies like the railways, but they would not stand for any measure which would increase the economic power of an already privileged group like the lawyers. On the Patrons generally, see also J.D. Smart, "The Patrons of Industry in Ontario in The 1890's," M.A. thesis, Carleton University., 1970.

> It is simply scandalous to read of the number of lawyers who have lately been guilty of misappropriation of trust funds, and of the number who are daily before the Law Society for misconduct, and doubtless there are cases we do not hear of.... Why... do solicitors do all sorts of questionable acts which bring disgrace upon the profession? Is there no relation of cause and effect in these matters? What between political appointments and the struggle for an honest existence, handicapped by country conveyancers who are also private bankers, insurance agents, Division Court clerks, members of the Local Legislature, school teachers and tallow chandlers, it seems impossible, in many cases, to obtain a decent living by honest practice.
>
> I would ask what right these invaders have to carry on two or three or half-a-dozen businesses at once, while solicitors are limited to one... No wonder solicitors are disgusted with having to compete with pedagogues and cut rates - but then they cannot live decently and be honest.... [The lawyer's] income must depend largely on ... conveyancing, and here he has every chance to starve. The temptation to do things which should never even be thought of by a member of an honorable profession is dangerously strong. But he must do these things, or else starve, or give up his profession, after years of study and expense; and give it up to benefit those who can live without it, who were never brought up to it and have been to no expense concerning it, but who must not be offended, as their votes are legion.[66]

To the modern reader these arguments sound much like those which many members of the Ontario bar expressed during the early 1980s. At that time, many lawyers argued that the profession was growing at a rate which was outstripping the demand for legal services in the province. They felt very strongly that there were, in fact, too many lawyers in

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66. CLJ, Feb. 17, 1896, 108-10.

Ontario, and they argued that the increased competition occasioned by this growth had brought about a dramatic lowering of professional and ethical standards within the provincial bar.[87]

In the 1890s Ontario lawyers voiced similar arguments, but rather than blaming the increased competition and alleged consequent decline in ethical standards on growth within the legal profession itself, they blamed them on the unlicensed conveyancers. In fact, based on the number of complaints registered with the Law Society's Discipline Committee, ethical standards among Ontario lawyers may have declined somewhat during the 1890s. Between 1881 and 1890 the Law Society received an average of four complaints concerning the conduct of solicitors. Between 1891 and 1898 this figure doubled.[88] An increase of 100% may seem meaningful, but in this case the numbers are so small that

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87. See the proceedings of a conference on this question hosted by the University of Western Ontario Faculty of Law in November, 1981 and published in the Canada-United States Law Journal, 6 (1983), 98-213, especially Roger Yachetti, "The Views of The Practising Bar," 103-12.

88. The data for this analysis were obtained by counting the complaints received by Convocation and the cases referred to in the reports of the Discipline Committee contained in the Proceedings of Convocation. See also this author's "A Developmental Market: Growth Rates, Competition and Professional Standards in The Ontario Legal Profession, 1881-1936," Canada-United States Law Journal 6 (1983), 125-39; and 7 (1984), 231-45.

it is very difficult to place any significance in them. It seems more likely that either lawyers were acting ethically and very few cases were coming to the attention of the Law Society, or the law journal correspondents were exaggerating.

In any case, a great many lawyers in the province apparently felt very strongly about the problem of unlicensed conveyancers and they demanded that the Law Society do something to protect them. The law journals published dozens of letters on the subject and repeatedly called for actions in their editorials.[89]

Despite these calls for protective action, the Law Society seemed resigned to its inability to affect the situation. Finally, in the spring of 1901, in response to the letters and editorials demanding protection, H.H. Strathy, who chaired the special committee in 1891, wrote to the Law Journal in defense of the Law Society. According to Strathy, the Benchers wanted to do something about the country solicitors' plight, but their hands were tied. He pointed out that Convocation had made numerous efforts to solve the problem since the first committee was appointed to study the issue twenty years earlier in 1881,

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89. In April 1896, the Canada Law Journal added a note to one of these letters: "We cannot begin to publish all of the letters we receive on this subject. The evil is one that needs no further comment." CLJ April 16, 1896, 273.

but they always came up against the obstacle of the legislature. In exasperation, he concluded:

> I would only add, that if any member of the profession can suggest a practical solution of the difficulty in the form of an enactment likely to pass the provincial house, I am satisfied that Convocation will use such influence and power as it may possess to have such measure become law.

The Journal added its own comment acknowledging the difficulty of the situation but pleaded that the attempt not be abandoned.

> We owe it to ourselves and the public not to do so. It is true that we have to fight against a silly popular prejudice as well as against the political influence of a class of many of whom it may truly be said that their self-sufficiency is only equalled by their ignorance of the subjects they assume to deal with. It is true that this ignorance often brings grist to the legal mill. This, however, is one of the reasons why they should not be permitted by the government to thus injuriously affect the public. For every reason the government should throw reasonable protection arbund those who, at great expenditure of time and money, seek to qualify themselves to properly serve the public in all matters affecting the dealing with property and civil rights.[90]

Perhaps in response to this exchange, in June of 1901 the Benchers formed yet another committee to investigate the matter of lay competition for the legal profession.[91] This committee deliberated throughout the summer of 1901 and submitted a detailed report to Convocation in

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90. CLJ March 15, 1901, 180-1, 190-4.

91. Minutes, June 7, 1901, printed vol. III, 195.

September. The main item in this report was a draft bill prepared for submission to the provincial legislature. Under this proposed legislation only lawyers would be legally authorized to:

> ..have, use, or exercise the power of drawing or issuing for another for hire or reward any will or bill of sale or transfer or assignment or mortgage relating to personal property, or any conveyance, transfer, deed, lease, mortgage, indenture, discharge of mortgage, cessation or charge or agreement relating in any way to real property, or of otherwise acting or performing the duties of a conveyancer.[91]

This proposal would solve the country solicitors' competition problems, but if Strathy's explanations were true, it would have no chance of passage in the House. The committee knew this, and included a grandfather clause in the draft bill to try to make it more palatable. Under this clause, non-lawyers already carrying on conveyancing business prior to the passage of the proposed legislation could continue to do so upon filing a statutory declaration with the local registrar and paying a one dollar fee to the provincial Treasurer. After some debate the Benchers adopted the report and ordered the committee to contact each of the county law associations and request that they

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91. Ibid., Sept. 11, 1901, 207.

make every effort to obtain passage of the legislation at Queen's Park.[93]

Over the course of the next two years the Law Society mounted a campaign to gain support for its proposed legislation limiting lay competition with the legal profession. It met with some success, but most lawyers who voiced an opinion about the subject seemed to feel that the draft bill was far too moderate. It would stop the growth of unlicensed conveyancers, but it would provide the established ones with a legal sanction for their existence. The County of York Law Association denounced the proposal for this reason, and a meeting of delegates from all of the county law associations in the province passed a resolution, "That in the opinion of this meeting no action should be taken towards obtaining legislation to licence (sic)...."[94] Obviously the law associations would have preferred much stronger legislation banning the conveyancers altogether, but a measure such as this would have not chance of passage in the House. The Benchers, therefore, pressed forward with their compromise.

On June 4, 1903, Alexander Mackay, the member for Grey North, introduced the Law Society's bill in the

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93. Ibid.

94. CLJ May 15, 1902; Canada Law Review Oct. 1903, 683-4.

legislature.[83] Mackay, who practised law for many years in Owen Sound, was a prominent Liberal. He entered George Ross's Cabinet as Commissioner of Crown Lands in 1904, and he succeeded George P. Graham as leader of the Ontario Liberal Party in 1907.[84] Apparently Mackay anticipated the measure's lack of support, however, because he withdrew his bill the following day.[85]

Almost a year later the Law Society tried again. This time, apparently in an effort to gain non-partisan support, the Benchers convinced a Conservative Member to sponsor the proposal. On March 18, 1904 Henry Carscallen, a lawyer who represented the riding of Hamilton East, introduced the bill again.[86]

Significantly, unlike the effort of 1892, proponents of this measure justified regulation of conveyancers as a measure in the public interest, not simply as the vindication of the rights of the profession. In his motion for second reading, Caracallen argued that the bill was necessary because of the growing volume of litigation

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83. Journals, vol.XXXVII, (1903), 274.

84. The Canadian Parliamentary Guide, Ernest J. Chambers, ed. (Ottawa, 1908), 236.

85. Journals, vol.XXXVII (1903), 306.

86. Ibid., vol.XXXVIII, (1904), 182.

caused by the mistakes of incompetent conveyancers. This argument also gained the support of the Attorney General, John Gibson, who argued that it was "...in the interest of the public that the standard of professional work should be maintained."[99]

Despite having the support of the Attorney General, the motion was defeated by a margin of forty-four to thirty-six.[100] When the committee reported this to Convocation, the Benchers ordered it to continue its efforts and to arrange for the re-introduction of a bill modified so as to increase its chances of success.[101]

The following spring, after the provincial general election of January, 1905 which saw the end of the Liberals' thirty-four year tenure in government and the election of James P. Whitney's Conservatives, the Law Society tried one more time. In May 1905 T.H. Lennox, a back-bench Conservative lawyer recently elected for York North, re-introduced the bill in the legislature. His bill did not include the requirement that practising

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99. The Globe (Toronto), April 8, 1904, 2.

100. Journals, vol.XXXVIII, (1904), 246.

101. Minutes, May 19, 1904, 385.

conveyancers pay a one dollar fee to the province.[102] However, on second reading it was apparent that the bill lacked sufficient support, and Lennox withdrew it.[103] Henry Carscallen tried again in March 1906, but he too withdrew his bill on second reading.[104]

Carscallen's attempt of March, 1906 was Convocation's final effort to deal with the problem of external competition by legislative means. In all likelihood the Benchers simply gave up in the face of political reality. But letters and editorials in law journals expressing concern about the problem also declined sharply at this time. This phenomenon might be traced to a number of causes. As business relationships among individuals and corporations were standardized, so too did the paperwork required for many transactions. A quasi-legal scribe was no longer necessary to prepare a contractual agreement if a standard form could be used.

It is also possible that, around that time, clients increasingly turned to the officially qualified individual for legal advice or assistance rather than to the layman.

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102. Ibid., May 18, 1905, 369; Journals, vol.XXXIX, (1905), 169.

103. Journals, vol.XXXIX, (1905), 222.

104. Journals, vol.XL, (1906), 135, 269.

If this was the case, it is likely that such a shift in consumer preference was due in part to an increased acceptance of professionalization in the public mind as well as that of the profession. Professionalization was as much a posture or presentation of an image as it was an institutional phenomenon. By reforming its institutional structure in areas such as legal education, discipline, and professional associations, which are discussed in the chapters which follow, the bar apparently succeeded in presenting itself as the best provider of legal advice. In this way, a legislatively enforced monopoly was not necessary.

CHAPTER FOUR

"A HAND TO SHAKE THE TREE OF KNOWLEDGE": THE FOUNDING OF OSGOODE HALL LAW SCHOOL

1. INTRODUCTION

The reform of legal education was one of the most significant elements of legal professionalization during the late nineteenth and early twentieth centuries. The training of prospective Ontario lawyers has constantly evolved over the past two centuries, but the most significant and concrete reform took place in 1889. In that year the Law Society of Upper Canada established a permanent, mandatory law school at Osgoode Hall in Toronto.

The Law Society founded its own law school in order to maintain the legal profession's autonomy over legal education and to justify its claim to general professional autonomy. In an effort to justify its claim as the sole legitimate provider of legal services in the province, it

was essential that the bar provide and, more importantly, be perceived to provide, the highest quality training for its incoming members.

The decision to introduce formal academic legal education in 1889 was not unprecedented in the history of the province.[1] It was, however, the first time that this type of instruction was compulsory for all Ontario law students; and, more significantly, by establishing its own institution, unaffiliated with any of the provincial universities, the Law Society maintained the profession's control over all aspects of legal education and admission to practice.

The Law Society's decision to establish Osgoode Hall Law School in 1889 was also not reached in isolation. It was the product of a pedagogical and regional debate extending back over many years. This debate involved three main issues. The first concerned the relative merits of the traditional apprenticeship method of legal education, known as articling, versus classroom instruction. The second was where such a law school or schools should be located within the province; and the third was what institution should control and supervise

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1. See G. Blaine Baker, "Legal Education in Upper Canada and Ontario, 1785-1889: A Study of The Role of The Law Society of Upper Canada as Legal Educator," D.H. Flaherty (ed.), Essays in The History of Canadian Law vol. II, (Toronto, 1983), 49-142.

it. In order to understand the resolution of this debate one must first understand how prospective lawyers were trained prior to 1889.

2. LEGAL EDUCATION PRIOR TO 1889

In September 1871 the Canada Law Journal published an editorial explaining in some detail the program of legal training which the Law Society required of aspiring lawyers. The editor was apparently responding to a number of letters from law students and prospective students seeking his opinion on aspects of entry into the profession. In most cases the requested information was readily available in the provincial statutes and the rules of the Law Society. To remedy an apparent "want of research among those who are just entering the profession," the article specifically outlined all of the steps required of a student in order to be admitted to practice as a solicitor and be called to the bar.[4]

An aspiring lawyer of 1871, provided he was at least sixteen years of age, began his odyssey by filing notice with the Law Society that he intended to sit the primary entrance examination. The exam was held four times a year and students wishing to write it were required to pay a

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4. Canada Law Journal (hereafter CLJ), Sept. 1871, 229-32. The information which follows is taken, except where noted, from this article.

fee of five shillings. As the two branches of the profession were technically not yet fused, it was possible for an applicant to apply for entry into the Law Society as an articled clerk or student-at-law. The former led to admission as a solicitor and attorney, and the latter to a call to the bar as well as admission as a solicitor and attorney.[3] As outlined in Chapter Three, the English distinction between the solicitor, who advised clients directly and instituted process in the courts, and the barrister, who could plead litigation in superior courts, was still maintained on paper at least. Despite earlier efforts to separate the two branches by statute, virtually all of the lawyers in nineteenth century Ontario were qualified to act in both capacities.[4]

The process of qualification reflected this situation. Although the technical admission of solicitors

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3. Lawyers admitted to practise by the Courts of Common Pleas were attorneys, and those admitted by the Court of Chancery were solicitors. The distinction was merely in name, however, because admission by any of the superior courts authorized practice in the other courts. When the Judicature Act fused the courts in 1881, the term solicitor was used exclusively.

4. In 1891 there were 1,497 lawyers in the province. Of these, 226 (15%) were qualified as solicitors only; 36 (2.5%) were qualified as barristers only. The remaining 1,233 (82.5%) were qualified as both barristers and solicitors. (H.R. Hardy,(ed.), The Official Law List, 1891, Toronto, 1891, 7-33.) See also, Chapter Three, above, and Appendix A, below.

remained the responsibility of the courts, the legislature delegated control of solicitors' training to the Law Society in 1857. Under An Act To Amend The Law For The Admission of Attorneys, the superior courts could not admit a solicitor or attorney without his having been granted a certificate of fitness by the Law Society.[5] With the exception of the final examinations, the Law Society's requirements for call to the bar were virtually identical to those required for the certificate of fitness to practise as a solicitor. Therefore most candidates pursued both courses simultaneously and wrote both exams at the end.

The primary examination, established by the Law Society in 1819, tested candidates' general educational background. It consisted of a series of written questions testing the applicant's knowledge of the Odes of Horace and the first three books of Euclid. A candidate who passed the primary examination was admitted to the Law Society as a student-at-law upon payment of a fee of forty-six dollars.

Following the primary examination, the student's next step, if he had not already done so, was to article

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5. An Act To Amend The Law For the Admission of Attorneys, 20 Vict. (1857), c.63 s.6, (Can.).

6. Baker, 68.

himself to a practising solicitor for a period of five years. If he was a graduate of a university, his articling period was only three years.[7] During his three or five year term of service, for which he may or may not have been paid a small salary; the student learned the practical aspects of the profession by performing clerical duties in his principal's office and preparing an occasional legal brief.

A student entering the program in 1871 was also required to write two intermediate examinations - one during his third year and the other during his fourth year of service (first and second for university graduates). Unlike the entrance exams, these were not based on classical and cultural knowledge but tested the student's reading of assigned treatises on common law and procedure.[8] At the end of his term of service the candidate wrote separate examinations for call to the bar

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7. The Law Society set the articling period for prospective barristers at five years in 1799 (Baker, 68). The articling period for prospective solicitors and attorneys, originally set at three years by the Law Society Act of 1797 (37 Geo. III, c.13, s.6), was extended to five years in 1822 (2 Geo. IV, c.5, s.3). The legislature reduced both articling periods for university graduates to three years in 1837 (7 Wm. IV, c.15, ss.3,4,5).

8. These Intermediate exams were introduced in 1828 (Baker, 68).

and certificate of fitness. These exams were also based on assigned substantive readings in law and procedure.[9]

With the exception of special cases such as immigrant British barristers or the occasional solicitor admitted by special licence of the provincial legislature (see Chapter Two, above), the articling period and Law Society exams were the only educational hurdles to be overcome by the prospective lawyer of 1871. To the modern observer, of course, classroom instruction is the most striking absence from this program.

Osgoode Hall Law School, which was the Law Society's legal academy until 1957, opened in 1889.[10] The establishment of this institution marked a turning point in legal education in the province. In its wider context this event represented a major aspect of the general trend towards the increased professionalization of the provincial bar. It was a major turning point because, for the first time, all Ontario law students had to attend centralized classroom instruction in law. This was, of

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9. The call exam was introduced in 1831; the examination for certificate of fitness had been in place since 1857. In order to be fully qualified to deal with all aspects of legal practice, a student had to pass both of these examinations and become a barrister and solicitor. During the latter half of the nineteenth century virtually all students took both exams in the same year.

10. CLJ, Oct. 16, 1889, 481.

course, a large step in the transition from a system of legal education centred primarily on apprenticeship to the modern system centred primarily on the LL.B. degree program. The process can be described as professionalization because it allowed the bar to justify itself as a closed community limited by legitimately demonstrated merit; but, more importantly, it showed that the bar could enhance its professional autonomy by controlling all aspects of admission to practice.

The opening of the Law School in 1889 did not simply begin the transition in Ontario from apprenticeship-based legal training to modern law school instruction. It is true that in the United States the year 1870 apparently represented the key point in such a transition, and this transition was a major component in the professionalization of that country's bar.[11] But the transition in Ontario was not so abrupt, and it defies such a clear-cut model. The establishment of the Law School did not eliminate the articling portion of the Ontario law student's training; indeed a one-year articling period remains a part of that training in the 1980s. Similarly, the classroom instruction provided at the law school was not entirely without precedent.

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11. See Robert Stevens, Law School: Legal Education in America From The 1850s to the 1980s (Chapel Hill, N.C., 1983), cc. 2-4.

Various lecture programs had been available to Upper Canadian law students at times since the 1830s; yet never before had there been a program entirely controlled by the Law Society involving mandatory classroom instruction for all students.[12]

During the 1830s the Benchers established a rudimentary form of classroom instruction in which students read and discussed points of law under the direction of senior barristers. Attendance at these classes was compulsory only for students residing within ten miles of Toronto. During the 1840s William Hume Blake, a prominent Bencher and later Chancellor of Upper Canada; offered a series of lectures in law at King's College, the predecessor of the University of Toronto. Between 1854 and 1868 the Law Society offered lectures at Osgoode Hall. Like their predecessors of the 1830s, they were compulsory only for students articling within ten miles of Toronto. Presented by senior Toronto barristers such as Oliver Mowat and Edward Blake, the lectures focused on substantive legal topics, but they generally

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12. Between 1828 and 1871 students attended the sittings of the superior courts at Toronto for four judicial terms during their articling period. This practice was known as "keeping term." By attending the courts' sittings students ostensibly gained practical and theoretical knowledge by listening to and taking notes on lawyers' arguments and judges' decisions. (Baker, 86-91).

only took up two hours per week and were offered only while the superior courts were sitting.[13]

The establishment of the law school in 1889 was, nevertheless, a significant development in legal education in the province and in the professionalization of the Ontario bar. The program introduced at that time differed substantially from any of its precursors. Unlike the lectures of the 1830s, 50s, and 60s, the course introduced in 1889 made attendance at Osgoode Hall mandatory for all law students in the province.[14]

The establishment of the law school program in 1889 was not an isolated decision of the Law Society. It resulted from an extended debate and struggle among the Benchers and others in the provincial legal and educational communities representing various pedagogical and regional viewpoints. The debate focused on the questions of what constituted a proper legal education, whether that education should include some form of classroom instruction, and what agency was best equipped to provide it. The resolution of the debate in 1889 was significant because it represented acceptance of the primary role of classroom instruction in the training of

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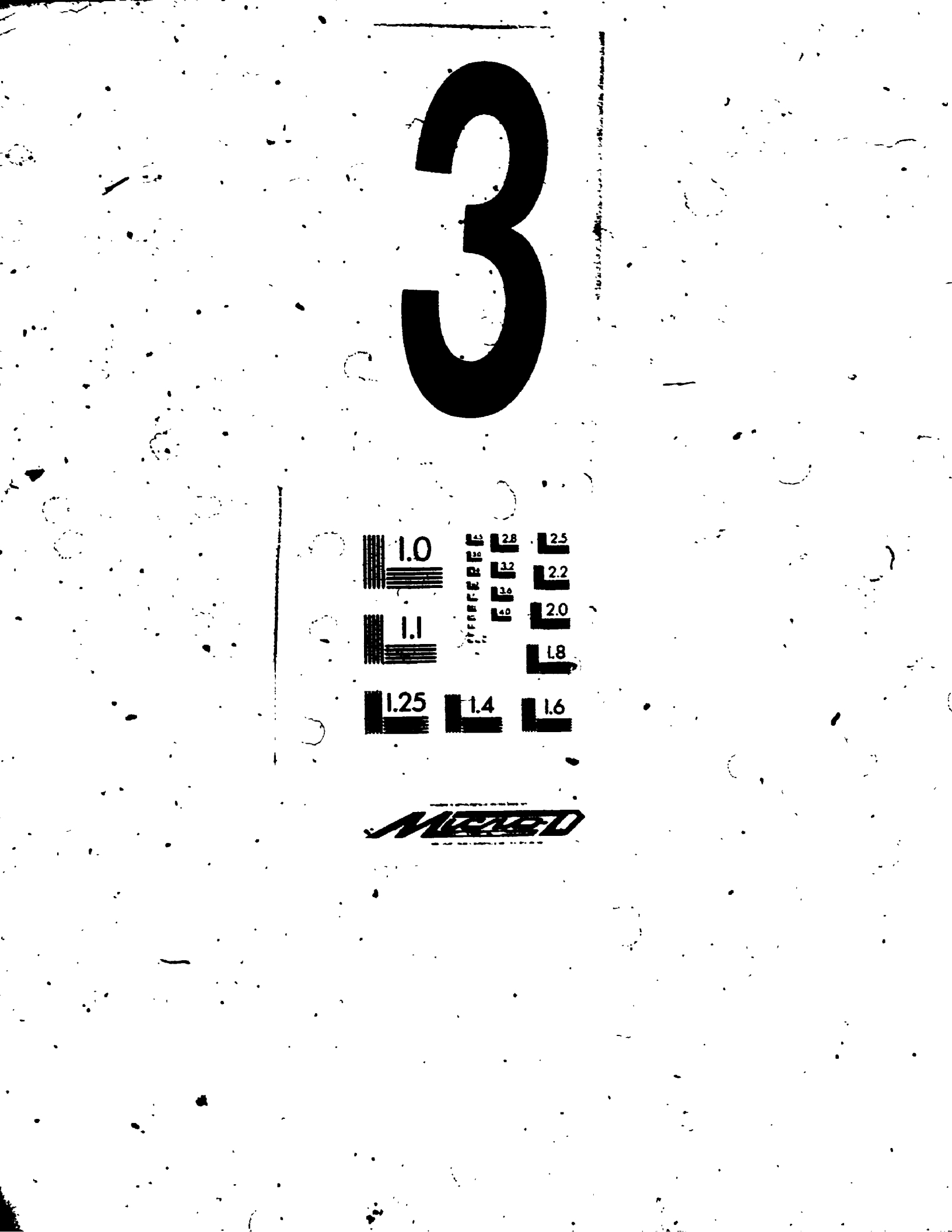
13. Baker, 93-99.

14. CLJ, July 2, 1889, 357-9.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law students and of the Law Society's position as the sole provider of all aspects of legal education.

3. THE BATTLE OVER ACADEMIC INSTRUCTION

The pressure to professionalize legal education came, in part, from the bar's unfavourable comparison with the other professions. In September, 1888, the Canada Law Journal noted the relatively high educational standards of the clergy, medicine, dentistry, pharmacy, and even land surveying, and lamented,

> It affords grave reason for shame-faced regret that the legal profession is the only one which has not directly availed itself of the advances made in all things educational in the last ten years. ...it has received nothing but the ripe fruit that has fallen into its mouth, and has not put out a hand to shake the tree of knowledge.[15]

It went on to argue that the Law Society must "supply means for special legal training, or our ancient and honourable profession... will fail to win respect and to exert the influence which its members look upon as its birthright."[16] The Benchers' acceptance of the Law Journal's position represented the culmination of a debate of some twenty years.

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15. CLJ, Sept. 1, 1888, 419-24, at 420.

16. Ibid., 421.

The cancellation of the earlier lecture program in 1868 was an aspect of this debate. The official reason given for the decision was that the program was not financially viable, but as Baker has pointed out, the income from students' fees offset the cost of the lectures.[17] A more likely explanation is that a majority of the Benchers felt that classroom lectures were simply not a necessary part of legal training.

John Hillyard Cameron, the Law Society's Treasurer, did not share the other Benchers' negative opinion of the value of academic legal instruction. In September of 1867 he vigorously praised the efforts of the students who had recently written the examinations for call and certificate of fitness, arguing that they had written the best papers since the introduction of examinations in 1831. "This is probably owing in great measure to the system of lectures that was introduced some five years ago ...It is at least a coincidence that the majority of those who went up this term are the first who had an opportunity of availing themselves of these lectures."[18] However, the Canada Law Journal spoke for the majority in noting, "The benefits of the lectures in term have proved to be at least

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17. Baker, 100.

18. CLJ, Feb., 1867, 30.

questionable, and productive of little but disorder and 'skylarking'."[19]

It was not long, however, before the proponents of academic instruction took up the battle again. In May 1872 Convocation referred the question of the creation of a law school to its Legal Education Committee.[20] Based on the committee's recommendation Convocation decided to re-establish a program of lectures in 1873. This new program provided two years of classroom instruction at Osgoode Hall from November through May, but enrolment was entirely voluntary. To encourage attendance the Law Society pledged to reduce students' terms of service by up to eighteen months depending on performance.[21]

The new course had only been in place for three years when the opponents of classroom instruction mounted an attack. In September 1876 William Buell Richards, later the first Chief Justice of The Supreme Court of Canada, introduced a motion to abolish the lecture program.[22] Richards' motion was defeated, but the debate over a law

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19. CLJ, June, 1868, 134-5.

20. CLJ, July, 1872, 160.

21. CLJ, Feb., 1873, 43-4.

22. CLJ, Nov., 1876, 303.

school continued, and two months later the Benchers referred the question of its continuation to a special committee.[23] In December 1877 this committee submitted its report and the Law Society did away with the young program.[24]

There is little doubt that the absence from the debate of John Hillyard Cameron, the strongest proponent of classroom instruction, had much to do with the demise of the lecture program in 1877. Richards introduced his original motion to abolish the law school during the Benchers' meetings of Trinity Term 1876 - almost immediately upon Cameron's retirement as Treasurer of the Law Society.[25]

4. THE REGIONAL ELEMENT OF THE DEBATE

In addition to the question of the merits of classroom instruction in legal education, the debate also involved a significant regional element. Although both William Buell Richards and E.D. Armour, the mover and seconder of the 1876 anti-law school motion were from Toronto, the evidence indicates that a growing number of

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23. CLJ, Jan., 1877, 7.

24. CLJ, March, 1878, 78.

25. Baker, 103.

practitioners and law students from outside the capital resented what they saw as an unfair advantage held by those in the city.

This regional feeling was, of course, in large part a manifestation of an anti-metropolitan sentiment increasingly evident among lawyers in the outlying regions of the province during this period. A letter signed "Country Student" published in the February 1878 issue of the Canada Law Journal expressed this sentiment. "Those who are fortunate enough to be in a Toronto office have the full benefit of these lectures which we, as country students, have not. They have the advantage over us. Is there not some way by which we can have the same benefits?"[26] In the 1870s lawyers and law students in the outlying areas of the province did not yet see the common advantages which professionalization held for all members of the profession. As was also the case with regard to control over the market for legal services discussed in Chapter Three, above, proponents of the professionalization of legal education had to overcome the regional division of the bar.

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26. CLJ, Feb., 1878, 68. Similar letters to the editor appeared in the Globe during these years: Jan. 18, 1875, 3; Oct. 9, 1876, 3; Oct. 12, 1876, 2; Oct. 13, 1876, 2; Oct. 25, 1876, 2; Oct. 28, 1876, 2; Nov. 3, 1876, 2; Nov. 10, 1876, 2.

In March 1878, when the Law Journal published the Proceedings of Convocation of Hilary Term 1877, including the decision to terminate the lecture program, the editor commented on the regional aspect of the debate and the negative effect it could have on the interests of the profession as a whole.

> We hope the Benchers have well considered the matter in the interests of the future welfare of the profession. A great step was supposed to have been gained when the school was established, and much thought and labour was expended upon it. We trust that there was no sectional feeling, or decentralizing idea in the matter, for so much injury may result, or at least there may be a loss of much possible good.[27]

Regional jealousy was certainly a factor in the Law Society's decision to end the lecture program in 1878, but the proponents of professionalization continued their efforts and over the course of the following decade they began to overcome the divisive obstacles in their way.

Following the discontinuation of the lecture program in 1878, the question of legal education was the subject of continual debate. In December, 1879 a group of Toronto law students submitted a petition to the Law Society requesting that a law school be established.[28] The proponents of reform in legal education often pointed out

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27. CLJ, March, 1878, 69.

28. The Globe, Dec. 16, 1879, 4; Dec. 20, 1879, 8.

that the Ontario bar was lagging far behind its American and British counterparts. A letter signed "Vindex" in the April 1880 Canada Law Journal complained of:

> ...the total neglect in this province of legal education in its proper sense. ...In almost every state of the Union, law schools exist, and the larger portion of the younger members of our profession in that country have attended such schools... In England, too, of late years, excellent lectures have been delivered in connection with the Inns of Court upon all branches of law... Even in Quebec, advocates of recent admission have invariably attended law lectures in connection with the different universities, principally McGill and Laval. What has been done with us?[29]

In this area, as in many others, late nineteenth century Canadians were well aware of advances made in other jurisdictions, and more and more Ontario lawyers were arguing that they should follow a similar path.

In February of 1881 the Canadian Law Times published a leading article entitled "A Proposition For Law Schools in Ontario," extolling the virtues of a law school centred education for prospective barristers. The article condemned the regional animosity which had caused the abolition of lectures in 1878. In the Times' view, "The usefulness of the Law School was found to be gone when the

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[29] CLJ, April, 1880, 119-20.

crime of 'centralization' was laid in swaddling clothes at its door."[30]

To satisfy what the journal felt was a obvious need for a provincial law school, and yet not offend the regional jealousies of the local bars, it proposed that the Law Society establish a single law school with a main campus in Toronto and a number of satellite campuses in the secondary centres throughout the province. In this way lawyers in cities such as Hamilton, London, Kingston, and Ottawa would retain the services of their clerks, who could attend lectures at the local campuses, travelling to Toronto only when necessary to write exams.[31] Again, this comment showed the importance of the regional element in the debate. If the proponents of professionalized legal education were to be successful, they would have to deal with the problem of a geographical conflict of interest within the provincial bar.

The Law Times' comment also indicated the importance of the continuing debate over the relative merits of classroom instruction and office apprenticeship. Its reference to local lawyers retaining their clerks' services during the months when lectures would be

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30. Canadian Law Times (hereafter CLT), Feb. 1881, 88-91.

31. Ibid.

delivered shows that it considered this scheme as only requiring attendance at lectures for one or two hours a day. Like all earlier lecture programs, in this proposed scheme the majority of students' time would still be spent in solicitors' offices, learning what they could about the profession through practical experience and observation.

Law students also felt that some sort of formal academic legal training was necessary at this time. During the winter of 1880-81 a number of students in Toronto attempted to fill the gap left after the discontinuation of the lecture program by initiating a series of lectures under the aegis of the Osgoode Literary and Legal Society. The Law Journal reported that these lectures saw,

> attendance far beyond the capacity of the examination room at Osgoode Hall. Even standing room was, on some occasions, not to be found; and late-comers found themselves sometimes unable even to get near enough the door to hear what was being said.[32]

Despite the claims of some lawyers in the outlying areas of the province that students had only been interested in the previous Law Society lecture program because attendance would allow them to shorten their articling period and enter practice earlier, students were

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32. CLJ, March 1, 1881, 111-12, at 112. Law students at Hamilton established a similar lecture program at this time. (CLJ, April 1, 1881, 233-4.)

apparently interested in the content of lectures because this program offered no such incentive.

The Law Society responded to this apparent demand among the students and to the other criticisms and suggestions noted above by establishing yet another "Special committee on the subject of the encouragement of Legal Studies by the Law Students in the various parts of the Province." This committee's report, which Convocation adopted in May of 1881, suggested that the Law Society encourage and fund a number of lecture programs at various localities throughout the province similar to those offered by the Osgoode Literary and Legal Society.

Under this proposed scheme the local bars and students would have to provide the initial impetus for establishing lecture programs, but the Law Society's County Library Aid Committee, the standing committee of Convocation which dealt with activities of the County Law Associations, would provide financial assistance and coordination. However, attendance at local lectures would be voluntary and would not interfere with students' primary duties to their articling principals.[33]

The permissive attendance rule was well received in the local centres, but a number of students, particularly those in Toronto, were more interested in obtaining

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[33]. CLJ, July 1, 1881, 263-4.

reductions in their time under articles than the examination prizes offered as incentives under this scheme. The students expressed this sentiment in a petition presented to Convocation in the summer of 1881 requesting that the Toronto lecture program be re-established as it had existed prior to 1878, including the provisions for reduction of students' articling terms.[34] When this petition came before the Benchers in August, Convocation referred it to yet another special committee to report on the expediency of its implementation.[35]

Following this committee's recommendation, Convocation decided to re-establish the Toronto lecture program for a trial period of three years beginning in the fall of 1882. The Canada Law Journal's comments in announcing the Benchers' decision were particularly relevant and indicative of the kind of pressures which had a great deal to do with the increase in support for a full-time law school:

> Apart from all questions of the practical usefulness of such courses of instruction, it must be obvious to all that the more scientific and the more intellectual a lawyer's training, the more keenly he will feel the noble nature of his profession when viewed aright, and the more

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34. CLJ, July 15, 1881, 283-4.

35. CLJ, Sept. 15, 1881, 325.

> impossible he will find it to stoop to any of those "tricks of the trade" which have sometimes in every country, brought discredit and odium on its name.[36]

The idea that incoming lawyers should be imbued with the values of the profession was, as Baker has pointed out, not something new. But as both the bar and the province grew in size and social complexity, it was even more important that the "professional nobility" be distinguished from a mere trade. This was particularly important if the legal profession was to justify its occupational autonomy. The initial three year trial period of the 1882 lecture program lasted in this form until its replacement by the full-time law school in 1889 but, throughout the period, attendance was voluntary and often sporadic. However, the Benchers made no attempts to improve the situation by encouraging students from outside Toronto to attend.[37]

Many students and practitioners outside the capital saw this lecture program as another unfair advantage held by those in Toronto, and they began to demand that the educational benefits, which their Law Society membership fees paid for, be decentralized. However, the proposals which they made represented decentralization on two

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36. CLJ, Dec. 1, 1881, 439.

37. CLJ, Sept. 1, 1888, 421; Baker, 107.

levels. When the Bar Associations of Carleton, Frontenac, and Middlesex Counties attempted to establish local lecture programs during the late 1880s, they were intent on providing legal training outside Toronto, but they also proposed that these regional law schools be formed as faculties of law at Ottawa, Queen's, and [redacted]stern Universities. Their ideas, therefore, represented institutional as well as geographical decentralization.

Professor Baker has argued that commentators are mistaken in identifying this regionalism as an important factor in attempts to establish university law schools outside of Toronto. He points to the recommendation of the 1881 Law Society committee regarding the encouragement of local lecture programs noted above, and suggests instead that the proponents of provincial schools "were not challenging the authority of Convocation but merely seeking to bring themselves within the scope of this permissive rule."[88] It would be misleading, however, to discount entirely the animosity many in the local bar associations felt over what they saw as the unfair centralization of legal education in Toronto.

The Frontenac Law Association met at Kingston in December 1884 and expressed this sentiment in a resolution denouncing the continuation of the lecture program at

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88. Baker, 107.

Osgoode Hall. In the members' opinion the program conferred little or no benefit on students outside of Toronto and was maintained at great cost which could be much better applied elsewhere. In publishing an account of the Kingston meeting, the Canadian Law Times replied to the resolution:

> This is the same old objection which has always been raised to the law school, and which once killed it outright. "If we can't have a law school in every county we won't allow one to exist at Osgoode Hall." A like liberal policy in educational matters would pull down the University of Toronto. Our friends in Kingston went about their grievance in a more manly way some time ago when they made an effort to establish a course of lectures at the University of Queen's College.[89]

The Law Times accurately identified a continuing problem of regional jealously which had to be overcome before the bar could succeed in professionalizing legal education in Ontario.

Regionalism was implicitly evident in the attempts to establish a law school in London in 1884-85. At its annual meeting in November 1884 the Middlesex Law Association struck a committee to consider the question of establishing a faculty of law in connection with the Western University. Significantly, at their previous meeting the members of the Middlesex Association ratified a petition to be sent to Queen's Park concerning the

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89. CLT, Dec. 1884, 569-70.

decentralization of the superior court structure, and during their November meeting they established another committee to deal with the question of more assize sittings at London. Although their motion to establish a law school in London included no explicit evidence of regionalism, the question of court decentralization certainly seems related.[40]

The Middlesex Law Association's law school committee report, presented to the Association in December, recommended the introduction of a three-year course of study. Dealing with substantive legal subjects and operating from September to May, the course would be open to anyone admitted to the Law Society as a student. With reference to the need for some incentive to attract students, such as a remission of time under articles, the report noted that "the school ought to and might receive recognition by the Law Society in some manner which would be of benefit and advantage to students," and recommended that the secretary of the Association contact the Law Society or its Legal Education Committee to pursue the matter. The Association debated the report clause by clause, and after hearing some members voice their opposition to affiliation with Western, and defeating a

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40. Middlesex Law Association Minutes (hereafter MLA), vol. I, 67-76, Nov. 24, 1884.

motion to affiliate the Faculty with\the University of Toronto, passed a motion to implement the report.[41]

The issue of affiliating the London Law School with a university - and which university to affiliate with - was a very significant one in terms of professionalization. As will be discussed below, the bar needed to modernize its program of legal education if it was to justify its

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41. MLA, vol. I, 81-5. The course recommended in the report was very comprehensive, and with a few exceptions, it looks remarkably like that offered in most Canadian law schools a century later. The list of subjects was as follows:

First Year: Criminal Law, Torts, Contracts, Real Property, Personal Property, Jurisprudence of Insanity, Notes and Bills, General Jurisprudence;

Second Year: Evidence, Equity, Agency, Corporations, Sales of Personal Property, Bailments, Easements, Partnership, Domestic Relations, Shipping, Marine and Fire Insurance, Municipal Institutions, Taxation, Tax-Titles, Railways, Forensic Medicine, Constitutional History;

Third Year: Vendors and Purchasers of Real Estate, Wills and Estates of Deceased Persons, Courts Practice and Procedure, Conflict of Law, Constitutional Law, Federal Jurisprudence, Sources of Municipal Law, International Law, Ancient Law, Early Institutions, Roman Constitutional Law, Rise and Growth of Modern Institutions, Modern Civil Law, Comparative Jurisprudence.

See also, the curriculum offered by the Law Society's law school established four years later, below, note 66.

claim to special occupational status. This was a major factor in the increasing prominence of university law schools in the United States at the time.

By affiliating a law school with a major university, lawyers could take advantage of the institution's prestige; but at the same time affiliation with an outside agency such as a university might mean some reduction in the bar's control over legal education and admission to practice. As will be outlined below, these issues were debated when the Law Society established its own law school in Toronto in 1889, but unlike the members of the Middlesex Law Association, the Benchers chose at that time not to affiliate with a university.

The London Law School opened in 1885 and, although the Benchers applied the 1881 funding rule, they were apparently unwilling to allow any remission of time to its students. Nevertheless, along with similar voluntary lecture programs established soon after at Queen's University in Kingston, Victoria University in Toronto, and the University of Ottawa, the London Law School survived until the introduction of the mandatory course at Osgoode Hall in 1889 made it redundant.[42] The existence of these institutions was strong evidence of a desire throughout the province to provide some sort of

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42. Baker, 107.

professional education for incoming members of the bar. Attendance at these programs was entirely voluntary, however, because only the Benchers could make a law school degree a mandatory component of legal education in the province. Before the decade was out they had done so.

5. THE IDEA OF A COMPULSORY LAW SCHOOL

The renewed interest in a compulsory law school can be traced to a proposal originally suggested by the University of Toronto. In June 1887 Convocation received a letter from the Registrar of the University suggesting a combined course of study supervised jointly by the Law Society and the University.[43] The Benchers were intrigued with the idea and agreed to strike a joint committee of members of Convocation and of the Senate of the University. The proposal prepared by this committee called for a four year program. During the first two years students would be enrolled full-time at the university. During the last two they would spend all of their time in service under articles with practising lawyers. Students would be required to write four annual exams. Upon completion of the fourth year they would be

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43. CLJ, Sept. 1, 1887, 228.

granted the degree of LL.B. by the University and called to the bar by the Law Society.[44]

Opponents of the proposal reacted quickly when the Law Journal published it. In a letter to the editor, J.A. Warrell, a practitioner from Ottawa, introduced a subject of perpetual concern in the debate over legal education in the province; that is, the relative merits of general liberal arts and substantive legal subjects in the training of a law student. In Warrell's opinion, "the scheme entirely destroys the incentive which has hitherto existed to men taking the liberal arts course in a university, before entering upon the technical study of law."[45]

Under the system then in force, students wishing to enter the profession could do so in five years after matriculation, or in a total of six or seven years if they took a three or four year arts degree in a university and the reduced three year articling program. If adopted, the proposed scheme would allow students to achieve their goals in only four years. Most importantly, the two year course of lectures in the university would cover,

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44. CLJ, March 16, 1888, 172-3.

45. Ibid., 151-4.

substantive areas of law only, and the profession would soon be devoid of its liberally educated members.[44]

Another correspondent, who signed himself only, "Barrister," was more forthright when he wrote:

> [One] would never imagine that there was any danger of the legal fraternity becoming too few to transact the business of the country, and that the wheels of the car of justice were likely to go slowly from a dearth of practitioners ready and willing to roll the chariot along. Yet such must be the case, for a joint committee of the Law Society and of the Senate of the University of Toronto, have devised a new and short road to the bar, and are anxious to lessen the difficulties in the way of would-be barristers and solicitors, so far as time and study are concerned....
>
> The learned joint committee call this a "proposal for the <u>advancement</u> of legal education," and yet one of the main features of the scheme is to reduce the time of study required before one can enter the (once learned) profession of the law from seven years, (as now demanded of those who desire a liberal education, and so go to a university first), or five years (as now required of those who only wish to know "the three R's" and law), to four years, or rather to two university years, and two years of grace, about thirty-six months in all.
>
> We think the aim of all who have the welfare of the profession at heart should be to lengthen the time of study, and to increase the amount of knowledge required for admission into the ranks of practitioners; so vast is the field of legal knowledge, that a graduate trained to study can scarcely become acquainted with it in his three years' course, while the youth, fresh from the high school, who gives five years to it feels, when he looks at the "final" examination papers, how precious little he knows of the subjects.
>
> Then too, it is proposed "to swap horses" in crossing the narrow stream of four years; and

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44. <u>Ibid</u>.

> half the time the student is to be fed by the Alma mater of Toronto, and half the time by the Law Society. We are told that infants fed upon milks from different cows are apt to have their digestive organs injured....
>
> We think, on general principles, that it is bad to try and lessen the numbers of those who are willing to take a course in arts before they study law, but holding out to them this easily won LL.B. We think, too, that the Law Society is old enough to stand alone, and rich enough to pay all professors and teachers it may need to instruct its youthful members; we deprecate the idea of its forming any alliance with any other teaching body, and we say that it should not lower its dignity by becoming the mere handmaid of Toronto University.[47]

In outlining his objections to the proposed scheme this letter writer identified the two most important elements in the process of professionalization. On the one hand, he was arguing that the law is a complex, highly esoteric body of knowledge, and the incoming members of the bar needed the best possible training in order to master it. A shortened program of instruction would not serve this purpose. On the other hand, he was unwilling to allow the Law Society to relinquish its prestige and control over legal education and admission by affiliating with a university.

When the joint committee brought its proposal before the Benchers in April it also tabled submissions from Queen's University in Kingston, the Law Association of Frontenac County, Trinity College in Toronto, and the

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47. CLJ, April 2, 1888, 172-3.

College of Ottawa. These institutions agreed with the first of "Barrister's" objections; that is the program should not be shortened. They also agreed with the second objection - that the Law Society should not enter into affiliation with the University of Toronto - but not because the Law Society would "lower its dignity" by becoming a "mere handmaid," of the university, but because it would provide a further unjust advantage to the city of Toronto and would be unfair to the other provincial universities.

George Grant, the Principal of Queen's College, maintained that the Benchers would be foolish to shorten the period of study required of law students. In Grant's view, rather than limiting legal training to substantive legal material only, the Law Society should require students to obtain a university degree in arts prior to commencing a period of technical training in law:

> Coming to the merits of the question, I would simply ask:
>
> (1) Is it wise to shorten the time now required from candidates for the profession of law? The great mass of candidates will always prefer a short course, no matter how bad it may be. If a man can get a University Degree and the Degree of Barrister-At-Law, and admission as a Solicitor in four years, how many will take the present course of seven years: Can a man be as well prepared for any profession in four years as in seven?
>
> (2) Why should the Law Society and any University aim at a concurrent Academic and

> Professional course? The Law Society can best assist a University by requiring university standing from candidates, or by giving the present or even more encouragement to take the Degree of B.A. A University can best assist the Law Society by giving the most complete culture to those who intend to be candidates for the legal profession. Let each do its utmost to make improvements in its own department.[48]

Grant obviously wanted to avoid reducing the incentives to law students to finish a university degree. His institution would lose enrolment. But he also apparently genuinely felt that a thorough liberal education should be a prerequisite of entry into a learned profession.

The members of the Law Association of Frontenac County agreed with Grant and sent three resolutions to Convocation to express their feelings.

> Resolved, That the Bar Association of the county of Frontenac, having carefully considered the scheme of Legal Education, submitted by the Law Society, hold that it is wrong in principle, and not calculated to benefit the profession.
>
> Resolved, That no shortening of the time required to be spent by students or articled clerks before being called to the Bar or admitted to practise should be allowed, except where the Degree of Bachelor of Arts has been taken previously.
>
> Resolved, That while we object to any union of the Law Society with any other teaching faculty, we consider that if such a scheme is entered into, common justice demands that the same

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48. CLJ, Aug. 1, 1888, 394.

> privileges shall be granted to all the Universities in Ontario.[49]

These Frontenac County lawyers opposed shortening law students' training period and affiliation of the Law Society with a university, but if the latter were unavoidable they did not want the provincial capital to once again get an unfair advantage.

Trinity College and the College of Ottawa were much more straightforward in pressing their interests. Trinity College simply proposed clause by clause amendments to the committee report making the scheme applicable to all universities in the province.[50]

The College of Ottawa did not object in principle to the union of the Law Society and a university, provided that Ottawa was not left out in the cold. In its memorandum to the Benchers the Senate of the College of Ottawa simply stated that the proposed scheme "contains nothing objectionable..., provided that the same advantages now granted to the University of Toronto be virtually secured to any other University wishing for the same."

Going further, the College of Ottawa claimed "the right of entering into a similar scheme with the Law

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49. Ibid., 397, (emphasis added).

50. Ibid., 395-6.

Society of Upper Canada as soon as said University shall have organized its Law course."[51] The difference between the terms "right" as used by the College of Ottawa and "privilege" as used by the Law Association of Frontenac County was significant. To lawyers, regardless of their regional jealousies, the right to educate law students lay with the profession itself, and any delegation of the authority to provide legal education would provide a privilege.

The question of locus of control over legal education was obviously a contentious one and one in which regional and institutional interests would have to be taken into account. The universities wanted law schools because they would bring prestige and because they would increase enrollment. The local bars did not want to see legal education centralized in Toronto because it offended their sense of local boosterism, and they did not want to lose the services of articled clerks.

In the face of this controversy Convocation took the perennial political option and turned the matter over to yet another special committee of Benchers to make recommendations concerning legal education in general. The Benchers instructed this committee to consider the following specific questions:

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51. Ibid., (emphasis added).

> 1. Whether or not, it is desirable to enter into any arrangement with any University for the joint education of students.
>
> 2. Whether or not, it is desirable in any such scheme to shorten in any way the period of study or service of students.
>
> 3. And whether or not, it is desirable that the Law Society should aid in establishing branches of the Law School in other centres than Toronto, by lectures to be delivered, either under the direction of Local Bar Associations, or of any University domiciled in such centre, the attendance on such lectures where established to be compulsory.[52]

The key factor in the whole issue was identified in the last word of the instructions. Would law school attendance be compulsory?

The Special Legal Education Committee presented its report to Convocation on Boxing Day 1888 and answered the crucial question of compulsory attendance at law school in

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52. Ibid., 397-8. Convocation was obviously aware of the importance of obtaining a provincial consensus on the question of reform of legal education. Of the twenty-one Benchers appointed to the committee, eleven practised outside Toronto. The names and place of practice of the committee members are listed below.

S.H. Blake (Toronto)
Byron Britton (Kingston)
Alex. Bruce (Hamilton)
J.J. Foy (Toronto)
C.F. Fraser (Brockville)
A.S. Hardy (Brantford)
Adam Hudspeth (Lindsay)
Aemilius Irving (Hamilton)
Z.A. Lash (Toronto)
Francis Mackelcan (Hamilton)
Jas. Maclennan (Toronto)
Edward Martin (Hamilton)
D'Alton McCarthy (Toronto)
W.R. Meredith (London)
Charles Moss (Toronto)
H.W.M. Murray (Toronto)
B.B. Osler (Dundas)
T.H. Purdom (London)
C. Robinson (Toronto)
G.F. Shepley (Toronto)
Adam Wilson (Toronto)

the affirmative. It specifically answered "no" to each of the three questions posed in its mandate, but it did recommend the establishment of a compulsory law school at Toronto.

> It is not desirable to enter into any arrangement with any University for the joint education of Students, nor to shorten in any way the period of study or service of Students.... [But] an improved system of legal education for Students-at-Law and Articled Clerks should be provided by the delivery of lectures and otherwise at Toronto.... [and] the attendance of Students at the lectures and other methods of instruction to be adopted should be compulsory....[53]

The committee was more circumspect, however, about the controversial regional question in the debate because it also recommended that "the question of the delivery of lectures in other places than Toronto should be deferred till after experience of the working of the School."[54] Convocation received the report and adopted most of the resolutions, but it postponed debate on the regional question and the equally contentious issue of whether the law school should be affiliated with the university/universities until after the new year.[55]

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53. CLJ, Feb. 1, 1889, 51.

54. Ibid.

55. Ibid., 52-3.

On January 4, 1889 the Benchers re-convened and immediately opened debate on the committee report. Edward Martin, the chairman of the committee, began the debate by moving the adoption of the resolution which would rule out affiliation with any university. William Ralph Meredith then attempted to reopen a battle which he lost in committee by moving that the resolution be amended to read "That it is not expedient at present to express an opinion as to the desirability of entering into arrangements with any University for the joint education of students."[56]

As one of the main sponsors of the London Law School, Meredith obviously wanted to at least keep open the option of affiliation with the provincial universities, including Western, for the future. He knew that the issue was too contentious to try to win his cause outright, but he did not want the Benchers to rule out the possibility of affiliation. Apparently he was able to gain enough support for this compromise proposal because his motion carried by one vote.[57]

The division of opinion among the Benchers over the question of affiliation, as evident in the vote on

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56. CLJ, April 1, 1889, 169.

57. Ibid.

Meredith's motion, did not show any regional correlation.[58] A regional split was clearly evident, however, in the vote over Meredith's next motion. Having succeeded in keeping the possibility of university affiliation alive, he then tried to prevent the complete centralization of the new law school by making attendance by students from outside Toronto optional.

In a motion seconded by A.S. Hardy, the provincial Cabinet Minister who still maintained a legal practice in Brantford, Meredith proposed that

> The attendance at the lectures and other methods of instruction shall be compulsory as follows: Students under service or in attendance in Toronto... shall be required to [attend].... All other students shall not be required, but shall be permitted, if they so desire, to attend the lectures and other methods of instruction.[59]

In the vote on this motion the Benchers divided directly along geographic lines. Four men, all from outside Toronto, voted in favour; twelve men, eleven of whom were

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58. The vote on Meredith's motion was eight in favour and seven against, with four abstentions. Six of the nineteen Benchers in attendance were from outside Toronto. Two voted for the motion (Meredith - London, and A.S. Hardy - Brantford), two voted against it (Edward Martin - Hamilton, and Francis Mackelcan - Hamilton), and two abstained (Aemilius Irving - Hamilton, and Donald Guthrie - Guelph). (Ibid.).

59. CLJ, April 1, 1889, 169.

from Toronto, voted against it, and the motion was defeated.[60]

The die seemed to be cast in favour of compulsory attendance for all students at one law school in Toronto controlled by the Law Society alone, but Meredith did not give up. For the next meeting of Convocation he filed the following notice of motion:

> That where any University of this Province had established a Law Faculty, and provided for a Course of Instruction and Lectures thereat, similar to those adopted at the Law School and to the satisfaction of Convocation, such Law Faculty may be constituted a branch Law School, and it shall be optional with the Students who are required to attend the Law School, to attend the Course of Instruction and Lectures at such branch School....[61]

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60. The division was as follows:

In Favour	Against
W.R. Meredith (London)	Charles Moss (Toronto)
A.S. Hardy (Brantford)	G.F. Shepley " "
F. Mackelcan (Hamilton)	H.W.M. Murray " "
Donald Guthrie (Guelph)	J.H. Ferguson " "
	James Beatty " "
	Z.A. Lash " "
	Larratt Smith " "
	Nicol Kingsmill " "
	J.J. Foy " "
	James Kerr " "
	Alex. Campbell " "
	Edward Martin (Hamilton).

Three Benchers, Hector Cameron (Toronto), Oliver Mowat (Toronto), and Aemilius Irving (Hamilton), abstained. (Ibid.).

61. CLJ, April 1, 1889, 179.

This would mean that all students would attend a law school, but they would not have to be resident in Toronto, and Western, Queen's and the other universities could keep their officially sanctioned law faculties.

When Convocation met on February 15, 1889, Thomas Purdom, another London Bencher who had strongly supported the establishment of Western's law school, presented the motion on behalf of Meredith, who was apparently unable to attend. B.B. Osler, who practised in Dundas, immediately moved an amendment to the motion as follows:

> That where any county Law Association in this Province, except in the County of York, either in conjunction with any University or otherwise, establishes a local Law School and provides for a Course of Instruction and Lectures thereat similar to those adopted at the Law School and to the satisfaction of Convocation, such local School may be constituted a branch Law School, ...and it shall be optional with the Students who are required to attend the Law School to attend the Course of Instruction and Lectures at such branch School. The examinations and certificates connected with such branch Law School shall be the same as in the case of those Students and Clerks who attend the Law School at Toronto, and such branch School shall be entitled to receive such financial aid from the Law Society as may be agreed upon between the Law Society and the County Law Associations, but not less than the yearly fees payable by the Students attending such branch School.[62]

Osler's motion would have had two very significant effects. Firstly, it would allow the profession itself,

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62. Ibid.

through the county law associations, to maintain a substantial degree of control over legal education. Under the Meredith/Purdom proposal the universities would gain some control.

Secondly, Osler's proposal would allow for greater decentralization in that the law association in any county, not just those with universities such as Middlesex, Frontenac and Carleton, could establish its own law school. Purdom withdrew his motion in favour of Osler's, but the latter was defeated.[63]

The Law Society had determined to establish its own compulsory law school, with one campus in Toronto, and unaffiliated with any university. Following some further discussion of minor details the Benchers appointed another committee to draft rules to carry out the resolutions, and on May 30, 1889, Convocation passed the rules for the creation of Osgoode Hall Law School.[64]

In publishing a synopsis of the new rules the Canada Law Journal made the simple understatement, "It must be evident to our readers that these regulations very seriously affect students, and also those members of the

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63. Ibid.

64. Ibid., 180; CLJ, Aug. 1, 1889, 397.

profession who practice outside of Toronto."[65] The synopsis noted that the law school course would last three years from the end of September to the beginning of May, and attendance was mandatory.[66] There were, however, a number of exceptions to the compulsory attendance rule. All students had to take the second and third years of the program, but only Toronto students had to take the first year. In addition, the rules included a number of

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65. CLJ, July 2, 1889, 358.

66. While enrolled in the three-year program, students would attend lectures for part of each week day and serve as articled clerks in law offices the rest of the time. First year students would attend lectures from 3:00 P.M. to 5:00 P.M., second year students would attend from 10:30 to 11:30 A.M. and 2:00 P.M. to 3:00 P.M., and third year students would attend from 11:30 A.M. to 12:30 P.M. and 4:00 to 5:00 P.M. The curriculum was entirely composed of "black letter" subjects as follows:

First Year:	Contracts, Real Property, Common Law, Equity, Statute Law;
Second Year:	Criminal Law, Real Property, Personal Property, Contracts and Torts, Equity, Evidence, Practice and Procedure, Statute Law;
Third Year:	Contracts, Real Property, Criminal Law, Equity, Torts, Evidence, Commercial Law, Private International Law, Construction and Operation of Statutes, Canadian Constitutional Law, Practice and Procedure, Statute Law.

(CLJ, Oct. 16, 1889, 511-16.) Compare the curriculum established by the London Law School in 1885, above, note 41.

grandfather clauses which exempted various students already registered from part or all of the program.[87]

The Journal approved of the scheme to establish a compulsory law school in principle, but it also noted the considerable costs, financial and otherwise, which would have to be justified.

> The expense consequent on attendance at a course of lectures for three sessions in Toronto is considerable and the extra fees charged add to the already heavy expense. Members of the profession outside of Toronto will be deprived of the services of the senior students during the busiest portion of the years in which their service is, by reason of growing knowledge and experience, most valuable.[88]

This comment identified an important aspect of the question which the Benchers had not explicitly considered. Articling students were an important source of labour for practising lawyers. They copied out documents, carried out research assignments including searching property

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87. Students who were university graduates and had completed the first year of their articling period were excused from attendance. University graduates resident in Toronto who had not yet completed one year of articling would have to attend one term of the third year of law school. Non-graduates who had completed the first three years of articling would be exempt. Non-graduates resident in Toronto who had completed the first two years of articling had to attend two terms in the school. All students resident outside of Toronto admitted prior to Hilary Term (August), 1889 would be exempt from attendance. (Ibid., 357-8.)

88. Ibid., 358.

titles, and performed various clerical duties. The law school would deprive lawyers outside of Toronto of much of this labour.

In 1889 there were some five hundred and eighty law students in Ontario. Of these, only two hundred and fourteen, or about thirty-seven percent, lived in Toronto. The remaining three hundred and sixty-six, or sixty-three percent, were scattered throughout the rest of the province.[69] Lawyers outside of Toronto would not lose all of their articling students. The new rules did not change the basic five year (three years for university graduates) term of studentship, and the law school program took three years and required attendance in Toronto from September to May each year. Country practitioners could, therefore, still have the services of non-graduate students for the first two years of his program and any students during the

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69. The following is a table indicating the number of students resident in various centres in the province as of December, 1888:

Toronto	214	Brockville	9
London (incl. Middlesex Co.) ..	45	Guelph	7
		Kingston	7
Hamilton (incl. Wentworth Co.) ..	30	Cobourg	6
		Brantford	5
Ottawa	27	Lindsay	4
Belleville	25	Peterborough	4
Barrie	12	Other Smaller Centres	175
St. Thomas	10		
		Total	580

Source: CLJ, Feb. 1, 1889, 52..

summer months. Nevertheless, the Law Journal was quite correct in pointing out that the changes in legal education would "very seriously affect ...those members of the profession who practice outside of Toronto."

The bar as a whole would have to receive adequate benefit if the practitioners outside of Toronto were to be largely deprived of articling students as a source of trained labour. Professionalization would be the benefit, but if that was to attained the law school would have to live up to very high standards. In the Law Journal's words:

> It is important that the organization and management of the school should be such as to insure most thorough efficiency in every department. If the school is not made thoroughly successful, so that students will receive ample value for their money, and the public and profession be benefited by the increased thoroughness of professional training, there will not be anything like adequate compensation for the expense and inconvenience referred to.[70]

In the Law Journal's view the most important decision in making the law school "thoroughly successful" was the appointment of professional faculty members - starting with the Principal.

> Much depends upon the appointment of the right man as Principal. If a scholarly man of wide legal knowledge, fitted by training and habit to instruct others, is appointed to the position, and if a sufficiently numerous body of

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70: CLJ, July 2, 1889, 358.

> competent lecturers are secured, then those most directly concerned will have the satisfaction of knowing that they are receiving full value for their time and money.
>
> The necessity of great deliberation and care in appointing a Principal, is manifest. We... submit that if a competent local man cannot be found with a sufficiently wide range of knowledge and suited by temperament and training to discharge the duties of the office (and no one has yet been named who can be said to combine in his own person the necessary requirements), it would be well for some of the Benchers, during their summer voyage across the ocean to see what can be done towards finding an efficient Principal in Great Britain. If necessary, some one might be charged with the duty of going over there for the express purpose of seeing what can be done in that direction. We hope that the mistake will not be made of appointing any person not thoroughly qualified to discharge the duties of the office. To do so would be to ruin the school in advance and to waste the time and money of students and inconvenience many members of the profession, without attaining any good result. The appointment of the proper man as Principal of the school, is of vital moment to the profession outside of Toronto. Their interests must not be overlooked, nor heedlessly sacrificed for the sake of a little time and trouble on the part of those who are their trustees in this matter, and to whom they look for protection.[71]

It was interesting that the Law Journal should recommend that the Benchers look to Britain for a Principal. This was probably more a reflection of colonial provincialism than an informed desire to improve legal education in Ontario, since, by all accounts, late nineteenth century British legal education was anything but a model for reform.

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71. CLJ, July 2, 1889, 358-9.

Brian Abel-Smith and Robert Stevens argue that the English legal profession resisted even the most minor attempts to reform any part of the legal system, including legal education. Abel-Smith and Stevens title this part of their study "1875-1939: The Era of Stagnation" and one of the chapters in it "Legal Education: Conservatism Triumphant."[72] Their main thesis in this regard is that conservatism among English lawyers thwarted reform at virtually every juncture during the late nineteenth and early twentieth centuries.

In Abel-Smith and Stevens' view the narrowness of English legal education and training contributed to a general opposition to reform and to specific opposition to improvements in legal education.[73] In this way the failure to reform English legal education was part of a vicious circle. The system bred narrow thinking practitioners who saw no need for change.

Before passing judgement on the English system of legal education and labeling the Canada Law Journal's call to look to the mother country for a Principal as

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72. Brian Abel-Smith; Robert Stevens, Lawyers and The Courts: A Sociological Study of The English Legal System, 1750-1965 (London, 1967). See also, W. Wesley Pue, "Exorcising Professional Demons: Charles Rann Kennedy and the Transition to the Modern Bar," Law and History Review 5 (1987).

73. Abel-Smith and Stevens, 165.

adolescent provincialism, one should note that this era did produce a number of outstanding British legal scholars. Men such as Anson, Dicey, Maitland, and Pollock taught at Oxford and Cambridge, both of which offered an education in law since the mid-nineteenth century.[74] These men would certainly be excellent role models. Perhaps a suitable candidate for the principalship of Ontario's new law school could be found among their graduates.

Unfortunately, it was quite unlikely that the Benchers would find an able scholar and teacher in England because, despite the well deserved high esteem which subsequent generations held men like Anson and Maitland, the established universities graduated "year after year of thoroughly undistinguished students."[75] Law at Oxbridge gained little respect from all quarters, because academic legal studies were neither welcomed by the other university disciplines nor thought of as particularly

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74. The Oxford faculty included Sir William Anson, James Bryce, Sir Henry Maine, A.V. Dicey, and Sir Frederick Pollock. Cambridge could boast F.W. Maitland, and Sir Henry Maine after 1877. Ibid., 165-8; Raymond Cocks, Foundations of The Modern Bar (London, 1983), 184-6.

75. Cocks, 185.

university disciplines nor thought of as particularly valuable by either branch of the practising profession.[76]

Largely as a result of the latter factor, academic instruction in law did not become a mandatory prerequisite to practise law in Great Britain until well into the twentieth century and, although most of the leaders of the bench, the bar, and the Solicitors throughout this century have held degrees from Oxbridge, virtually none of them studied law in university.[77]

The Benchers ignored the Law Journal's advice and decided to appoint a Canadian to be Principal of the new law school. They first offered the position to Samuel Henry Strong, then an Associate Justice of the Supreme Court of Canada.[78] Neither the Minutes of Convocation nor the law journals offer any evidence as to why the Benchers would consider Strong a likely candidate. He offered very little experience in education and by 1889 he was sixty-four years old and had been on the bench for some twenty

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76. Abel-Smith and Stevens, 167-8.

77. Cocks, 186; Abel-Smith and Stevens, 467.

78. CLJ, Aug. 1, 1889, 401.

years.[79] He may have been interested in an opportunity to leave the Supreme Court at that time because his health was apparently failing and he was having difficulty getting along with his fellow justices.

James Snell and Frederick Vaughan, the authors of a recently published study of the Supreme Court, point out that Strong applied for leave from the Court three times during the previous ten years, and he actually tendered his resignation on several occasions between 1884 and 1888, but each time Prime Minister John A. Macdonald convinced him to stay on.[80]

Snell and Vaughan speculate that Strong may have been unhappy with his salary on the Court, which had remained at $7,000 per year since as early as 1878, but the Law Society was not prepared to offer any more than $4,000.[81]

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79. In noting the Law Society's offer of the position to Strong, the Globe simply stated: "he was chosen as a lecturer for the Law Society when quite a young man at the Bar, and his lectures on equity were, even in those early days of his career, considered masterpieces of style. The Globe (Toronto), June 20, 1889, 2.

80. James G. Snell and Frederick Vaughan, Supreme Court of Canada: History of The Institution (Toronto, 1985), 45.

81. Ibid.; Henry J. Morgan (ed.), The Canadian Legal Directory: A Guide To The Bench And Bar of The Dominion of Canada (Toronto, 1878), 259; CLJ July 2, 1889, 357.

Quite possibly for this reason Strong declined the Benchers' offer and remained on the Supreme Court.[82] Three years later he became Chief Justice.[83] Speculation on what kind of Principal Strong would have been is hypothetical, but it is interesting to note that in assessing his tenure on the bench Snell and Vaughan describe him as "intellectually lazy... and irresponsible."[84]

When Strong declined the position, the Benchers offered it to a Toronto Q.C. who did have some experience in legal education. Moreover, he had experience as a practising lawyer both in Toronto and in the hinterland and had extensive professional contact with prominent members of Convocation.

W.A. Reeve was born in Toronto in 1841 and graduated from the University of Toronto in 1861. He articled in Toronto with Stephen Richards, Q.C. and later in Kingston with Byron Britton, Q.C., both or whom were Benchers. He was admitted as a solicitor in 1864 and called to the bar

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82. CLJ, Aug. 1, 1889, 401.

83. Snell and Vaughan, 53.

84. Ibid., 78.

in 1865.[85] He practised in Napanee for seventeen years and served for ten years as Crown Attorney for Lennox and Addington Counties.[86]

In 1882 Reeve moved back to Toronto and entered the firm of Beatty, Chadwick, Blackstock, and Thompson. During the 1880s he lectured on a part-time basis at both Osgoode Hall and Trinity College, and in the early summer of 1889 when the Benchers offered him the position of Principal of the new law school he accepted. The Law Journal commented:

> Of the applicants for the position he was the best man. We are satisfied Mr. Reeve will not be lacking in his efforts to promote the interests of the school, and we hope it may prove a success under his management. At the same time we are still of the opinion that a serious mistake has been made in not going further afield, and taking more time to find a person who, having larger experience and more thorough training, would more fully meet the many requirements of this most important

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85. The Globe (Toronto), May 3, 1894, 3; The Mail (Toronto), May 3, 1894, 6. Ironically, it was Richards who replaced John Hillyard Cameron as Treasurer of the Law Society shortly before the Benchers voted to close one of the early incarnations of the law school in 1876.

86. The Globe (Toronto), May 3, 1894, 3; The Mail (Toronto), May 3, 1894, 6.

position.[87]

Evidently, Reeve was well aware of his own lack of experience and was willing to go "further afield" to learn more about modern methods of legal education. In accepting the position he apparently asked the Benchers to pay his expenses for a trip to a number of American law schools to study their systems.[88] Later that summer he and two Benchers, Edward Martin and Charles Moss, visited Harvard, Boston Law School, Yale, and Columbia.[89]

Reeve's visit to American law schools at the inception of the new law school was very important in terms of the role played by education in the professionalization of the Ontario bar. A number of authors have documented the importance of professionalization in the rise of the American law school during the late nineteenth century.[90]

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87. CLJ, July 2, 1889, 359. In addition to Reeve, the faculty consisted of two lecturers, E.D. Armour and A.H. Marsh, and two examiners, R.E. Kingsford and P.H. Drayton. CLJ Oct. 16, 1889, 511; The Globe (Toronto), Oct. 4, 1922, 18.

88. CLJ, Aug. 1, 1889, 401-2.

89. CLJ, Nov. 1, 1889, 528.

90. See especially, Stevens, above note 11.

Led by Christopher Columbus Langdell of Harvard, prestigious American law faculties instituted the socratic case study method of legal education in the decades following the Civil War. This method, still the predominant style of teaching in North American law schools, uses reported decisions of appellate courts as source materials to present students with the allegedly logical, scientific principles of the common law. This characterization of the law was particularly appealing in late nineteenth century America, and the university law school increasingly became the route of ambitious men to a professional career.

The emergence of the university law school as the predominant route of entry into the American legal profession fits neatly into the classically defined mold of professionalization. It marked the bar's transition from an open-ended occupational group with relatively uncoordinated entry to one having much more systematic methods of pre-professional training and evaluation. The role of the universities as evaluative agents in the process legitimized this professionalization because, in an age of social Darwinism, the legal profession could style itself a meritocracy. It was a limited, privileged

community, but it was a "community of competence," limited only by legitimately evaluated merit.

Professor Baker has argued that the Law Society's establishment of a mandatory law school at Osgoode Hall in 1889 did not represent the same phenomenon of professionalization of legal education. He argues that the post-1889 legal education program in this province was not a drastic change from the past. In Baker's view the emergence of the American law school was "possible and necessary only because ...[it was] ...born in the ashes that Jacksonianism had made of bar admission requirements and legal education between 1800 and 1860."[92] This argument seems quite reasonable at first glance, because controlled entry into the early nineteenth century Upper Canadian legal profession certainly contrasts sharply with

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91. This self-praising interpretation was, until recently, also the standard model of analysis sociologists and historians of the professions offered. See, for instance, Anton-Herman Chroust, The Rise of The Legal Profession in America (2 vols. Norman, Oklahoma 1965), and William J. Goode, "Community Within a Community: The Professions," American Sociological Review 22 (1957), 194-200. More recently, scholars in both disciplines have been much more critical. They argue that the professions were and are simply communities of self-interest. See especially, Jerold S. Auerbach Unequal Justice: Lawyers and Social Change in Modern America (New York, 1976) and Magali Sarfatti Larson The Rise of Professionalism: A Sociological Analysis (Berkeley Cal. 1977).

92. Baker, 119.

that in most antebellum American states, and because the universities did not emerge as the agents of professional evaluation in Ontario in 1889.

Upon closer examination, however, it is apparent that the establishment of the Law School does fit the model of professionalization. A three-year, mandatory course of academic instruction is substantially different from any of the optional lecture programs or term keeping requirements which preceded it. Most important the Law Society did not delegate any of its evaluative authority to the universities.

Occupational autonomy is the most important determinant of professionalization. The extent of a given occupational group's professionalization is measured by its ability to maintain autonomous control over itself -- particularly over entry into its ranks.[93] In contrast to the United States, where the universities took over much of the evaluation of persons entering the legal profession, in 1889 the Ontario bar refused to relinquish its autonomous control over the training and qualification of new lawyers.

The Law Society's statutory control over admission and training precluded the need for an alliance with the universities and safeguarded professional autonomy. The

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93. See Chapter One, above.

existence of the Law Society itself also made such an alliance - and delegation of power - unnecessary. In most jurisdictions in the United States the courts maintained governing authority over the legal profession. The bar itself did not have a powerful, socially legitimate agency of its own to provide "modern, professional legal education." They had to turn the universities. Ontario lawyers did not.

Clearly, academics and practising professionals often have differing and conflicting interests. Where professional autonomy is limited by the involvement of the universities, as it is in Ontario today, the idealism of the latter may conflict with the narrower, more practical interests of the former. This has certainly been the case in recent years in Ontario in the debate over the issue of numbers in the legal profession.[94] Because the Law Society of Upper Canada maintained its autonomy over legal education in 1889, and did not admit the universities into the process until 1957, it can be argued that the establishment of the mandatory Law School program fitted the model of professionalization even more closely than the American experience did.

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94. See the proceedings of the conference "Are There Too Many Lawyers?" in The Canada-United States Law Journal 6 (1983), 98-213.

Unfortunately, in the eyes of many contemporary and subsequent observers, the Law Society did not proceed much further to reform legal education after the Law School opened in 1889. Although Principal Reeve was apparently intent on reforming the traditional lecture curriculum and expanding the Law School's role within the students' required training, he died in May 1894.[95]

Reeve's replacement was a Toronto barrister named Newman W. Hoyles, who held the position until 1923.[96] Despite the protests of those who favoured classroom instruction over office apprenticeship, Hoyles failed to provide any meaningful reform or expansion of the Law School curriculum during his tenure as Principal. Throughout this period, students attended only one or two hours of lectures per day and spent the majority of their time as articled clerks in solicitors' offices.[97]

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95. The Globe, May 3, 1894, 3.

96. The Globe, Nov. 7, 1927, 7. For a good account of Hoyles' tenure as Principle and subsequent developments in legal education in Ontario, see Brian Bucknall, Thomas C.H. Baldwin, and J. David Lakin "Pedants, Practitioners, and Prophets: Legal Education At Osgoode Hall to 1957" Osgoode Hall Journal 6 (1968), 137-229.

97. Ibid., 179. The most prominent faculty member during the Hoyles period was John King, the father of William Lyon Mackenzie King. The Globe, Aug. 31, 1916, 8.

Despite the fact that the Law Society had succumbed to the pressures of professionalization and established the mandatory Law School in 1889, conflicting viewpoints as to the primacy of various components in the training of law students prevailed. As a result, legal education in Ontario remained a hybrid of classroom instruction and articled apprenticeship. Baker is, of course, correct when he argues that the antecedents of this hybrid program lay in the early nineteenth century.

More important in the context of professionalization, however, is Baker's thesis about the uniqueness of the Upper Canadian and Ontario legal education experience. Baker argues that early nineteenth century Upper Canadian legal education was unique in the English speaking world. It seems also that the Ontario bar retained this uniqueness in the latter part of the century. It provided a professional law school for its recruits but, unlike its American counterparts, the Ontario bar maintained autonomous control over admission to practice.

The reform of legal education in Ontario during the late nineteenth century represented professionalization on two levels. Like the American phenomenon, the establishment of a compulsory law school allowed the bar to justify its control of access to professional status, because the Law Society could argue that it was providing

its inductees with the finest modern training. Of course, classroom instruction within the program of legal education offered by the Law Society was not something entirely new, and articled apprenticeship remained a significant part of legal education; but the Ontario bar's maintenance of autonomous control over all aspects of the program, rather than relinquishing the classroom element to the universities, represented the more important aspect of professionalization.

CHAPTER FIVE

"TO PURGE THE PROFESSION OF THOSE WHO BRING DISGRACE UPON THEIR BRETHREN": THE BAR'S ASSUMPTION OF AUTONOMOUS PROFESSIONAL SELF-DISCIPLINE

1. INTRODUCTION

Like control over the supply of professional services and admission to practice, discussed in Chapters Two and Three, the autonomous maintenance of internal discipline among the members of an occupational group by the group itself is essential to the professional ideal type. If the members of this special group are the only legitimate experts in a field which is central to the basic needs of society, they are by definition the only ones qualified to judge not only who has met the standards of entry into the group, but whether an individual member has breached those standards and is no longer qualified to retain membership.

Like the other elements of the professional ideal type, the Ontario bar largely achieved the ability to discipline itself during the late nineteenth and early twentieth centuries. Although the complete process, also like the other elements, took place over a much longer time span, the bulk of it occurred between 1876 and 1923.

Between 1794 and 1970 the Ontario superior courts held a de jure authority to maintain discipline among lawyers in the province. The courts exercised a de facto authority in this area, however, only until 1923. The Law Society of Upper Canada, on the other hand, exercised a de facto disciplinary function over lawyers since its inception in 1797, but it did not receive the de jure authority to do so until 1876. Between 1876 and 1923 both the courts and the Law Society held and exercised de jure and de facto authority to discipline lawyers in the province. It was during this period that the forces of professionalization caused the transfer of disciplinary authority from the courts, an agency of the state, to the Law Society, the bar's autonomous self-governing body.

Prior to 1876 the courts' de jure disciplinary authority rested on the common law jurisdiction of a court over its officers and a 1794 licensing statute allowing the Upper Canada Court of King's Bench to strike a

lawyer's name from the roll of licensees upon proof of "malversation or corrupt practice."[1]

During the same period the Law Society did not possess the legal authority to exercise discipline among its members. However, despite the absence of any statutory or case law authority to do so, the Benchers did exercise de facto disciplinary authority in a small number of cases during the early nineteenth century. In 1820, for instance, Convocation disbarred a lawyer identified only as "no. 46, a practising barrister and attorney of Kingston" after hearing "charges of a very disgraceful and highly criminal nature" against him. Between 1841 and 1851 the Benchers took it upon themselves to suspend three other lawyers from practice.[2]

This confusion of jurisdiction apparently stemmed from the quasi-divided nature of the early nineteenth century Upper Canadian legal profession. As outlined in

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1. An Act to Authorize the Governor or Lieutenant Governor to Licence Practitioners (sic) in the Law 34 Geo. III (1794), c. 4, (U.C.); Mark Orkin, "Professional Autonomy and The Public Interest: A Study of The Law Society of Upper Canada," D.Jur. thesis, York Univ., 1971, 43.

2. William Renwick Riddell The Bar and Courts of Upper Canada, or Ontario (Toronto, 1928), 86, 102-4. This volume is divided into two sections, paginated separately, dealing with the bar and the courts respectively. Unless specified otherwise, page references are to the first section of this volume.

Chapter One, the Upper Canadian legal profession was divided, on paper at least, along the lines of the British model into upper and lower branches. Barristers, the upper branch of the profession, were qualified to plead before the superior courts but could not deal directly with clients. Solicitors and attorneys, the lower branch, provided direct legal advice to clients and acted as intermediaries between clients and barristers.[3]

However, despite the efforts of a number of early Anglophile Benchers, who would have preferred a distinct separation between the upper and lower branches of the profession, lawyers in Upper Canada were never prohibited from obtaining both admission to practice as an attorney and call to the bar. In fact, the majority of Upper Canadian lawyers were both barristers and solicitors.[4]

Nevertheless, in the minds of many of the Benchers, the legal distinction between the two branches of the profession still existed. In their view, the Law Society had jurisdiction over barristers, and the courts had jurisdiction over attorneys and solicitors.

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3. See above, Chapter One, at note 3.

4. Between 1797 and 1840 a total of 436 men practised law in Upper Canada. All of these were admitted as attorneys but only 247, or 57%, were also called to the bar. (Riddell, 102).

The Benchers' legal authority to claim disciplinary power over barristers was anything but clear. In their own view, as expressed by Convocation in 1823, the Law Society was meant to be "exactly similar" to the English Inns of Court and "the power of degradation and expulsion as well as other powers belonging to the Inns of Court in England are also by law vested in this Society."[5] This opinion was apparently never questioned. Although Convocation disbarred three lawyers during the pre-Confederation period, the question of the Law Society's jurisdiction in this area was not dealt with by any of the provincial superior courts until 1888.[6]

Unfortunately there is no record of how many attorneys and solicitors the courts struck from the roll during the pre-Confederation period. Mark Orkin noted that the judges reluctantly exercised their disciplinary powers over the profession and "the private court of the

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5. "Minutes of Convocation" (hereafter "Minutes") vol.1 (1823), as cited by Orkin "Professional Autonomy..." 44.

6. Riddell 86 102-4; Orkin "Professional Autonomy..." 45; Hands v Law Society of Upper Canada, 16 Ontario Reports (hereafter O.R.) (1888), 625; 17 O.R. (1889), 300; 17 Ontario Appeal Reports (hereafter O.A.R.) (1889), 416.

Benchers rather quickly usurped the jurisdiction of the superior courts."[7]

It may be true that the judges hesitated to exercise their disciplinary authority, but the Benchers exhibited a similar reluctance. As noted above, in their view the Law Society's jurisdiction extended only to barristers. In 1829 Convocation received a complaint about the behaviour of an unnamed barrister and attorney, but because the alleged misconduct was related to his function as an attorney, the Benchers informed the complainant that his remedy lay with the courts and not with the Law Society.[8] Even when they felt they did have jurisdiction involving the conduct of barristers as such, the Benchers were reluctant to exercise the disciplinary function in the absence of previous action on the part of the courts.

Between 1841 and 1851 Convocation dealt with nine incidents of alleged professional misconduct by barristers. Of the nine, the Court of Queen's Bench had already struck five from the roll of attorneys. The Benchers were apparently willing to deal harshly with those the Court had dealt with. They disbarred two of the five and suspended another from practice for three months.

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7. Orkin "Professional Autonomy..." 46.

8. Riddell, 83.

They acquitted one and dropped the proceedings against another when the Court restored his name. They simply dismissed the complaints against the other four, whom the Court had not previously disciplined.[9]

The "Minutes of Convocation" show a similar trend of reluctance to discipline lawyers during the first decade after Confederation. From 1867 to 1876 the Law Society disciplined only one practitioner. In November of 1871 Convocation disbarred John Edward Stark, a lawyer practising in Haldimand County, but the Benchers dealt with his case only after the Court of Queen's Bench had struck his name from the roll of attorneys.[10]

2. THE LAW SOCIETY'S STATUTORY DISCIPLINARY POWER

In 1876 the Ontario legislature granted the Law Society the power to discipline all branches of the profession.[11] The reason for this statutory vesting of comprehensive authority in the legal profession's governing body is not entirely clear. Thomas Hoskin, a Bencher in the Law Society and the member for Elgin West,

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9. Ibid., 102-4.

10. "Minutes," Nov. 29, 1871, Canada Law Journal (hereafter CLJ), Jan. 1872, 3.

11. An Act To Amend The Law Respecting The Law Society 39 Vict. (1875-76), c.31, (Ont.).

sponsored a bill which included a provision involving admission to practice as well as discipline. The bill was apparently prompted by a petition which Convocation had directed to the legislature, but the petition made no mention of discipline. It dealt only with a question of admission to practice.[12]

The impetus for the disciplinary aspect of Hoskin's bill is also not evident in the records of the Law Society.[13] Mark Orkin believed that the legislature intended simply to bring the law in line with existing practice. In his opinion:

> It would probably be safe to conclude that, the Benchers having developed a procedure for dealing with discipline and disbarment and the Judges having indicated their disinterest, ...the legislature was merely acknowledging an existing state of affairs by formally vesting jurisdiction in the Law Society.[14]

But Orkin's conclusion seems reasonable only if we assume that the profession was unified. The legislation seemed to acknowledge the existing state of affairs with respect to barristers, but the statute also gave the Law Society

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12. Journals of The Legislative Assembly of The Province of Ontario (hereafter Journals) vol.IX (1976) 78; Minutes' Nov. 16, 1875, CLJ Feb. 1876, 39. See also Chapter Two, above.

13. The "Minutes of Convocation" are silent on the matter.

14. Orkin, "Professional Autonomy...," 47.

the authority to discipline attorneys and solicitors, a responsibility the Benchers had not previously assumed. In this regard the legislation was a substantial break with the past.

Orkin's interpretation explains why neither the legislature nor the judiciary opposed the bill, but not why the proponents of the legislation felt that a formal vesting of authority was necessary at the time, or more importantly, why that authority should be extended to include both branches of the profession.

A possible explanation for a perception that the Law Society should take a more active disciplinary role appeared in the pages of the Canada Law Journal. During the late 1860s and early 1870s the Law Journal published numerous articles and letters to the editor complaining about alleged unprofessional conduct among Ontario lawyers.[15] In one such letter, signed "Etiquette," a lawyer wrote:

> Gentlemen: What has the Bar of Ontario come to, when a person professing to be an "Ontario Barrister" (at least his note paper is so headed) sends a letter to a lady, who he has learned has a claim against a company, asking

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15. CLJ June 1867, 141-2; Jan. 1868, 25-6; Dec. 1868, 327-8; Jan. 1986, 27; Feb. 1869, 31-2; Feb. 1869, 52-4; March 1869, 57-8; June 1869, 167-8; July 1869, 169-70; July 1869, 170; June 1870, 145-6; Dec. 1870, 309-10; Jan. 1871, 6-7; Feb. 1871, 29-30; April 1871, 114; Sept. 1871, 239; Jan. 1872, 5; Jan. 1873, 34-5; Oct. 1873, 278; July 1874, 185.

her to allow him to sue them, and encloses an order for her signature, a copy of which I send to you:

> Sir, I hereby authorize you to collect my claim against _____, on the following terms: all risk and expenses to be taken by you; the undersigned to receive one half of the amount recovered, if successful.
>
> _____
> Signature

Modest, very! Is this touting for business only, or does it amount to champerty?... Your views on the subject of the above "order" might be of service, and I think would do a great deal to stop this sort of practice.[16]

The Law Journal replied:

> We fear that the great increase in the number of practitioners in Ontario is dangerous to professional ethics. A case like this brought before the Benchers, not to speak of the courts, and rigorously dealt with, would have a beneficial effect on those whose necessities are uncontrolled by a sense of what is due to

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16. CLJ Jan. 1873, 34. Black's Law Dictionary defines "Champerty" as:

> A bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. (4th edn., St. Paul, Minn., 1968, s.v. Champerty)

Champerty was an offence against the common law and was included in the Canadian Bar Associations Code of Ethics in 1914. See also Chapter Six, below.

> themselves and to the honourable profession to which they belong.[17]

This might help explain why many lawyers felt that a formal vesting of disciplinary jurisdiction in the Law Society was necessary at the time, but no one had yet raised the subject at Convocation.

Similarly, the extension of the Law Society's disciplinary jurisdiction to include both branches of the profession might be explained by the fact that the distinction between attorneys and barristers was rapidly diminishing and a division of disciplinary jurisdiction was no longer appropriate. Between 1797 and 1840 fifty-seven percent of the province's lawyers were both attorneys and barristers. The remaining forty-three percent were attorneys only. By 1878 seventy-six percent of Ontario lawyers were both barristers and attorneys.[18]

Regardless of the reason for the legislation, the statute of 1876 initiated a consolidation of disciplinary power in the Law Society. The Benchers took the first step in this process in the Winter of 1877. At a meeting

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17. CLJ Jan. 1973, 34-5.

18. Henry J. Morgan (ed.), The Canadian Legal Directory: A Guide To The Bench And Bar of The Dominion of Canada (Toronto, 1878) 39-62. By 1891 the figure was down to 15%. H.R. Hardy (ed.) The Official Canadian Law List, 1891 (Toronto, 1891), 7-33. After the Judicature Act of 1881, the term Attorney became Solicitor.

on February 6 of that year, Featherstone Osler, a recently elected Toronto Bencher, moved that Convocation appoint "...a Committee on Discipline to consider and frame rules relating to the interior discipline and practice of attorneys." Convocation passed the motion and struck a committee consisting of eight Benchers.[19]

Of the eight men on the newly formed Discipline Committee, five practised in Toronto and two practised in Hamilton. Only one, Thomas Benson, who was from Port Hope, practised in a smaller centre, but with the exception of Daniel McMichael, who had been a Bencher since 1863, none had served in Convocation for more than six years. The fact that the dominant personalities among the Benchers of the era did not wish or were not asked to serve on the committee does say something about the relative importance placed on its mandate, but more significant, perhaps, is the fact that these men became some of the most prominent members of Convocation in the era which followed.

In August 1877, Convocation voted to make the Committee on Discipline a standing committee in order to

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19. The eight were: Osler, John Hoskin, Thomas Hodgins, James Maclennan, Francis Mackelcan, Daniel McMichael, Edward Martin and Thomas Benson. "Minutes," Feb. 6, 1877, CLJ March 1877, 61. The fact that the motion mentioned only attorneys is noteworthy. Rules relating to the discipline of barristers already existed.

have a permanent body which could hear complaints regarding the conduct of practitioners and make recommendations to Convocation.[20] At the same time the Benchers appointed Thomas Robertson, a Toronto Bencher who had first been elected to Convocation in 1874, to the membership of the committee, and removed Francis Mackelcan and Edward Martin.[21] Thus, its membership remained predominantly from Toronto and relatively inexperienced.

Over the course of the following two years, the discipline committee dealt with nine complaints regarding lawyers' conduct, but it made no recommendations to Convocation to impose disciplinary sanctions.[22] At the same time the Canada Law Journal published a number of similar complaints, the majority of which involved questionable advertising practices among lawyers. In responding to one such case, the Law Journal pointed out the need for an efficient, speedy method to deal with

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20. "Minutes," Aug. 27, 1877, CLJ Oct. 1877, 290. The other standing committees of the time were: Finance, The Library, Reporting, Legal Education, and Journals. ("Minutes," May 27, 1879, CLJ July 1879, 178.

21. "Minutes," Aug. 27, 1877, CLJ Oct. 1877, 290.

22. "Minutes," Sept. 7, 1877; CLJ Oct. 1877, 291;
"Minutes," Dec. 26, 1877; CLJ March 1878, 28-8;
"Minutes," Feb. 5, 1878; CLJ March 1878, 101;
"Minutes," Nov. 22, 1879; CLJ Jan. 1880, 7-8.

incidents of professional misconduct. In doing so it argued that the legal profession as a whole would stand to benefit.

> If the profession were promptly purged of those who bring disgrace upon their brethren, the public would not judge it by the black sheep only, but would respect it, for what in truth it is, a class most honourable and trustworthy.[23]

To the Journal the legal profession had a public relations problem. Somehow the bar had to deal with the problem by quickly isolating and expelling the few "black sheep."

In February 1880, the Law Journal offered a solution to the public relations problem.

> It does not seem to be generally known, but it is nevertheless a fact, that there is a Committee of the Law Society known as the Discipline Committee, appointed under section 1 of Cap. 31, 39th Vict., which gives power to the Benchers to make by-laws, amongst other things, respecting "matters relating to the interior discipline and honour of the members of the bar." We frequently receive communications on subjects of this nature, and should be glad if, in future, correspondents would authorize us to forward their letters with their names to the Secretary of the Society to be laid before this Committee. Some would probably not like to do this; but every member of the profession owes a duty to his brethren in this matter, which should not lightly be disregarded. The Committee, we understand, do not consider it their duty to take up such cases, unless formally brought before them.[24]

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23. CLJ May, 1878, 137.

24. CLJ Feb. 1880, 42. (Emphasis in original.)

Lawyers in the province were apparently reluctant to institute disciplinary proceedings against their "brethren," possibly because they feared the damage that publicity would do the entire profession; but, the Journal argued, they owed it to all of their brethren to "purge the profession" in order to mitigate the damage.

The Law Journal's plea may have had some effect because over the course of the following nine months lawyers in the province sent a total of seven complaints about professional conduct to the Law Society. Convocation referred each of these to the Committee on Discipline.[25]

The Discipline Committee was apparently unsure, however, of how to deal with these complaints. When Convocation met in December, 1880, John Hoskin, who was the chairman of the committee, moved the adoption of a rule further defining the disciplinary power that the Law Society could exercise. In the words of his motion:

> For the purpose of upholding the honour of the bar and maintaining discipline amongst barristers, solicitors, attorneys, students and articled clerks, Convocation shall have the power in pursuance of sections 38 and 41 of An Act Respecting The Law Society of Upper Canada in any case where a barrister, solicitor,

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25. "Minutes," Feb. 2, 1880; CLJ May 1880, 131;
"Minutes," Feb. 7, 1880; CLJ May 1880, 132;
"Minutes," Feb. 13, 1880; CLJ May 1880, 133;
"Minutes," May 17, 1880; CLJ July 1880, 184;
"Minutes," Nov. 15, 1880; CLJ Jan. 1881, 16.

> attorney, student-at-law, or an articled clerk has been guilty of professional or other misconduct to order that such barrister, ...shall be deprived of or suspended from the exercise of all and singular the rights, powers and privileges belonging to him in this Society as a member thereof ...and Convocation shall have the power to order that the name of any Barrister, ...shall be erased from the books of this Society and notice of such deprivation or suspension shall at once be given by the Secretary to the Superior Courts of law and equity and to such other courts as Convocation may order.[26]

The key phrase in Hoskin's motion was the opening statement of justification. He wanted the Law Society to clarify and exercise its disciplinary function in order to "uphold the honour of the bar." Convocation gave the proposed rule first reading, but because of its importance the Benchers decided to have it printed and distributed to all members of Convocation so that it could be thoroughly debated at the meetings scheduled for February, 1881.[27]

Although Hoskin intended simply to define how the Law Society should exercise its statutory disciplinary powers, the Benchers seem to have been in some doubt about the extent of those powers. The first two sections of the

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26. "Minutes," Dec. 28, 1880; CLJ Feb. 1, 1881. The statute which Hoskin's motion referred to was c.138 of the Revised Statutes of Ontario, (hereafter R.S.O.) 1877. Sections 38 and 41 were the restatement of sections 1 and 2 of 39 Vict. (1875-76), c.31.

27. Ibid.

statute granted the Benchers the authority to "...make all necessary rules, regulations and by-laws ...relating the discipline ...of the members of the Bar, ...Attorneys, Solicitors and Articled Clerks," but section six noted that "...nothing in this Act shall interfere with the present practice of the Courts ...as to their jurisdiction over ...[attorneys and solicitors]... as officers of such Courts."[28] In the view of some of the Benchers, this created a potential conflict between the Law Society's and the courts'. jurisdictions.

In order to clarify the apparent conflict in disciplinary jurisdiction between the Law Society and the courts, Hoskin prepared a draft bill "to define the disciplinary powers of Convocation." When he presented the bill to the Benchers in February 1881, they instructed him to communicate with Oliver Mowat, the provincial Premier and Attorney General, to urge its passage.[29]

Oliver Mowat sponsored the bill in the legislature, and it was passed as An Act To Extend The Powers of The

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28. 39 Vict. (1875-76), c.31, ss.1,2,6.

29. "Minutes," Feb. 12, 1881; CLJ March 1, 1881, 101.

Law Society of Upper Canada.[30] The preamble of the statute noted that:

> ...whereas doubts have arisen touching the powers conferred upon the said Law Society by ...[39 Vict. c.31, ss.1,2; rev'd as R.S.O. 1877, c.138, ss.38, 41]..., and it is desirable that such doubts be removed; ...it is expedient to define the powers of the said Society in reference to the said matters of discipline.

The first section of the act specifically granted the Benchers the power to determine,

> ...after due inquiry by a committee of their number or otherwise... [if a member of Society was] ...guilty of professional misconduct, or of conduct unbecoming a barrister, attorney, solicitor, student-at-law, or articled clerk,... [to] ...disbar any such barrister, and to resolve that any such attorney or solicitor is unworthy to practise as such...; and to expel from the Society, ...any such student or articled clerk....

The second section required the Benchers to notify the superior courts of any such disbarment, and the third section stipulated that any resolution that an attorney or solicitor was unworthy to practise also be forwarded to the courts, "...and thereupon, without any formal motion, an order of the said respective courts may by drawn up,

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30. Journals , vol. XIV (1881), 104; 44 Vict. (1881), c.17. There appears to have been no notable debate surrounding this legislation. Unfortunately, the Ontario Legislative Assembly did not begin publishing it debates until after World War Two. The Toronto newspapers did publish brief synopses of debate in the house, but none of them mentioned any debate over this bill. None of the other sources mentioned any legislative debate over its passage.

striking such attorney or solicitor off the rolls...."[31] The use of the term "may be drawn up" in this section is significant because it left the judges with some discretionary power to ignore a resolution of the Benchers' and allow an individual to continue to practise as an attorney.

In fact, the judges followed the Benchers' recommendation in every case brought to them by the Law Society following the passage of the statute, but the courts did not relinquish their disciplinary authority over the lower branch of the legal profession at this time.

3. THE COURTS' DISCIPLINARY POWER

The legislation of 1876 and 1881 was a turning point in the professionalization of the Ontario bar, but it did not represent a simple transition of disciplinary authority from the courts to the Law Society. Prior to that time a lawyer accused of professional misconduct might be disciplined by either the Law Society, the courts, or both. An individual could register a complaint with the Benchers, and if they were satisfied that the accused was guilty of "conduct unbecoming a barrister" they would disbar him.

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31. 44 Vict. (1881), c.17, ss.1-3. (Emphasis added.)

Conversely a complainant could register a grievance against a lawyer with one of the superior courts of the province. If the judges of this court were satisfied that the lawyer was guilty of "conduct unbecoming an attorney or solicitor," they would ban the lawyer from practice by striking his name from the rolls. As noted above, however, the Benchers would not hear a complaint against an attorney or solicitor as such, and they would resort to disbarment of a barrister only if the courts had already struck his name from the rolls of attorneys.

The statutes of 1876 and 1881 altered this scenario by granting the Law Society the authority to discipline both branches of the profession, but neither of the acts revoked the courts' summary jurisdiction over the lower branch of the profession. Under the Attorneys Act in the Revised Statutes of Ontario, 1877, the courts could strike an attorney or solicitor from the rolls for a number of reasons, including failure to pay out money received by him in the course of his professional duties, or for acting as the agent or partner of an unqualified individual.[32] The same provisions were still in force

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32. R.S.O., 1877, c.140. ss.25, 26.

under the 1887 revision and in fact were not repealed until 1970.[33]

According to Mark Orkin, the courts' exercise of their summary disciplinary jurisdiction declined after 1881 and had become vestigial well before 1970.[34] In terms of this aspect of the process of professionalization, however, it is important to note that the courts did not immediately relinquish their own authority when the legislature granted concurrent jurisdiction to the Law Society. In fact the judges continued to hear motions for summary disciplinary action against solicitors for over forty years after the statutory vesting of jurisdiction in the Benchers. Between 1881 and 1923 there were fourteen reported cases involving motions for summary disciplinary jurisdiction by

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33. The Law Society Act, 1970, 19 Eliz. II (1970), c.19; The Solicitors Amendment Act, 1970, 19 Eliz. II (1970), c.20.

34. Orkin, "Some Aspects of Professional Self-Government," LL.M. thesis, York Univ., 1967.

the courts.[35]

The Law Society did not formally instigate any of these suits, but members of Convocation were involved in at least three of the cases. In 1882 Miss Harriet Wright of Belleville was charged with murder when she shot a man whom she believed to have broken into her house. For her defense she retained L.U.C. Titus, a young lawyer who had practised in Belleville for six years.

When the trial began, Titus told Miss Wright that there were other ways besides "legitimate ways to manage these things." He then asked her for one hundred dollars "to salt the jury with." Later in the trial he asked her for a further hundred dollars because only three jurors had been "fixed" with the first hundred. His efforts at jury tampering apparently failed, however, because Miss Wright was convicted. She was later pardoned, but in the meantime Titus accepted a retainer to represent the family

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35. Re Fletcher et al (1881) 28 Grant's Chancery Reports (hereafter Gr.), 413; Re McCaughey and Walsh (1883) 3 O.R., 425; Re Macnamara (1883), 9 Practice Reports (hereafter P.R.), 497; Re Titus (1884), 5 O.R., 87; Pritchard v Pritchard (1889), 18 O.R., 173; Re Bridgeman (1894), 16 P.R., 232; Re Knowles (1894), 16 P.R., 408; Re Ross, Cameron, and Mallon (1894), 16 P.R., 482; Re McBrady and O'Connor (1899), 19 P.R., 37; Re Solicitor (1916), 10 Ontario Weekly Notes (hereafter O.W.N.), 181, 37 Ontario Law Reports (hereafter O.L.R.), 310; Re Solicitor, East v Harty (1920), 19 O.W.N., 10; Maidlow v McLean (1921), 20 O.W.N., 68; Re Bryant, Isard and Co. (1923), 25 O.W.N., 302; Re Fitzpatrick (1923), 54 O.L.R., 3.

of the man she shot in a civil action against her for wrongful death.[36]

In the course of this suit Titus' bribery attempt became public knowledge, and apparently at the urging of A.H. Marsh, who was a Bencher, Miss Wright brought a motion in the provincial Supreme Court to have Titus summarily struck from the rolls. The grounds for the motion included conflict of interest and breach of the solicitor-client privilege, because Titus had used information obtained from Miss Wright during the course of her criminal defense in the civil action against her. The most important - and the most publicly damning - evidence of unprofessional conduct was his bribery of the jury in Miss Wright's murder trial.[37]

It was significant that Marsh chose the court rather than the Law Society as the forum in which to have Titus disciplined. In the three years since the passage of the 1881 statute, the Discipline Committee had investigated

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36. The Canadian Law Times (hereafter CLT), March 1884, 132.

37. Ibid.

five allegations of professional misconduct but had yet to recommend any disciplinary action to Convocation.[38]

Chancellor G.A. Boyd heard the motion against Titus and on February 20, 1884 issued his decision to strike the solicitor's name from the rolls. Boyd did so because his court had the legal authority and responsibility to maintain discipline among its officers, but he also acknowledged the Law Society's interest in the matter and its duty as the governing body of the legal profession.

Although A.H. Marsh introduced Miss Wright's petition, Chancellor Boyd directed John Hoskin, the chairman of the Law Society's Discipline Committee, to present the argument on behalf of the petitioner.[39] Hoskin argued, on behalf of the legal profession, that Titus had relinquished the privilege to practise law in Ontario. In delivering his judgement, Boyd clearly explained his view of the court's jurisdiction.

> The matter is one which affects the courts and the whole profession of which the solicitor is a member and an officer. It was by the action of the court that he was placed on the rolls, and clothed with the sanction of the court in the transaction of business affecting the person and property of his client, and the court should

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38. "Minutes," June 3, 1882; CLJ 1882, 259; "Minutes," Nov. 21, 1882; CLJ 1883, 46; "Minutes," Dec. 1, 1882; CLJ 1883, 47; "Minutes," Feb. 5, 1883; CLJ 1883, 127; "Minutes," Feb. 16, 1883; CLJ 1883, 221.

39. CLT March 1884, 132.

> divest him of that sanction if his conduct shows that he cannot be trusted to discharge those duties with honor and integrity.[40]

Boyd went on, however, to acknowledge that the legal profession also had a responsibility to maintain itself free from corruption. "It is likewise the interest of the profession to maintain their (sic) honourable body free of suspicion, so as to retain and deserve respect and confidence both at the bar of judicial and of public opinion."[41] Clearly, to Boyd the legal profession had to maintain disciplinary standards to keep its "honourable body free of suspicion," but in his view, the Law Society should simply play the role of prosecutor. He directed Hoskin to argue the petition, not to decide it. The court remained the arbiter.

With one exception, discussed below, the judges maintained Boyd's position on the courts' disciplinary jurisdiction over lawyers in Ontario until 1923. In 1894, for instance, Chief Justice John D. Armour dealt with a case in which a client requested that his solicitor, William Knowles, a young barrister practising in Dundas, be struck from the rolls for failure to pay a debt owed to the client. Armour ordered that Knowles' name be struck

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40. Re Titus (1884), 5 O.R., 87, at 92.

41. Ibid.

from the rolls if he failed to pay the debt within seven days. The Chief Justice made no reference to the Law Society in his judgement, despite the fact that the applicant's counsel was Walter Read, who was also the official solicitor for the Law Society.[42]

The lone exception to the rule that the judges considered it the courts' responsibility to maintain discipline among lawyers occurred in 1883. In that year, John Macnamara, a solicitor who had been struck from the rolls some ten years earlier for failing to pay a debt owed to a client, petitioned Vice-Chancellor William Proudfoot to be readmitted to practice on the grounds that he had now paid the debt.

Proudfoot saw no conflict in his jurisdiction in the matter, but he obviously felt that he should consult the Benchers before making a decision. He ordered that notice of the motion be given to the Law Society and ruled that "if they offer no opposition, the order may go for the restoration of the petitioner to the rolls." Walter Read appeared on behalf of Convocation and offered no opposition to the motion, and the court restored Macnamara's name to the rolls.[43]

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42. Re Knowles (1894), 16 P.R., 408.

43. Re Macnamara (1883), 9 P.R., 497.

The Macnamara case was very important. In all of the other disciplinary cases brought before the courts between 1881 and 1923, including the Titus and Knowles cases, the Law Society, if involved at all, appeared only as a party before the court. The Benchers did not occupy a decision making capacity.

In the Macnamara decision, however, Proudfoot seems to have virtually delegated this authority to the Law Society and deferred to its decision. He may have considered the case as a matter of admission to practice rather than discipline and therefore within the purview of the Law Society, but clearly it is an exception among the cases of this type brought before the courts. In all the other cases the judges showed that they felt that the maintenance of professional discipline among solicitors was a legitimate function of the courts.

As late as 1920 a judge re-iterated this position. In Re Solicitor, East v Harty, the plaintiffs in a garnishee proceeding applied to the Supreme Court of Ontario for a writ of attachment against a solicitor to enforce the terms of a written undertaking.[44] Mr. Justice H.I. Lennox denied the motion on grounds of public policy related to

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44. Re Solicitor, East v Harty (1920), 19 O.W.N., 10. The plaintiffs in the motion had received an order to garnish the wages of a debtor. The debtor's solicitor had agreed with the creditors to collect a regular payment from the debtor and pass it on to them. The purpose of their motion before the Supreme Court was to have this agreement enforced.

the contract, and there was no evidence to indicate that either of the parties questioned his court's jurisdiction in the matter, but he felt it necessary to explain his disciplinary authority over lawyers. In his dictum he noted that "the court is invested with this disciplinary jurisdiction in order to control and direct the conduct of persons connected with the court, and prevent misconduct; and the power is exercised in the public interest...."[45]

Despite the existence of this judicial jurisdiction and the judges' opinion regarding its legitimacy, there were no further motions for its exercise after 1923. The most obvious explanation for this is that, in the view of clients or other parties interested in having solicitors disciplined, the Law Society had become the primary agency from which to seek redress. During the decades between 1881 and 1923 the Benchers exercised their own disciplinary function, independently of the courts, much more frequently.

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45. Ibid. The term dictum refers to what lawyers call obiter dictum. It means literally "a comment made in passing." In law it refers to a passage in a judgement which is not a part of the decision. Black's Law Dictionary defines it as "a remark made, or opinion expressed, by a judge, in his decision upon a cause, 'by the way,' that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument." (4th edn., 1968, s.v. obiter dictum.)

4. THE LAW SOCIETY'S USE OF ITS DISCIPLINARY POWER

Between 1881 and 1923 the courts dealt with fourteen reported motions for summary disciplinary action against lawyers. Of these, only two resulted in solicitors' names being struck from the rolls. As outlined in Figure 5.1, below, during the same period the "Minutes of Convocation" reported a total of two hundred and eleven cases of alleged professional misconduct.

The Benchers levied disciplinary sanctions in forty of these cases. They issued eighteen disbarments, seventeen reprimands, and two limited term suspensions from practice. Two men were struck from the roll of students-at-law, and one practitioner was threatened with disbarment in order to force him to pay his delinquent fees to the Law Society.

FIGURE 5.1

DISCIPLINARY CASES BEFORE THE LAW SOCIETY, 1881-1923

Year	Total Cases	"Remedy In Courts"	No Action	Total Sanctions	Disbarments	Reprimands	Other Sanctions
1881	2		2				
1882	4		4				
1883	1		1				
1884	3		2	1		1	
1885	2			2			2*
1886	4	1	2	1		1	
1887	9	1	7	1		1	
1888	7	2	4	1	1		
1889	5		5				
1890	6	1	5				
1891	7	1	5	1	1		
1892	2		1	1	1		
1893	9	1	6	2		2	
1894	10	2	8				
1895	6		2	4	1	3	
1896	11		6	5		5	
1897	6	3	3				
1898	15	3	11	1			1**
1905	13	6	6	1	1		
1906	10	4	5	1			1***
1907	16	7	9				
1908	12	7	3	2	1	1	
1909	6	4	2				
1910	4		3	1	1		
1911	6		3	3	3		
1912	8	1	7				
1913	0						
1914	1		1				

* two students' expelled;
** seven year suspension;
*** threat to disbar;

cont. ...

FIGURE 5.1 (cont.)

Year	Total Cases	"Remedy In Courts"	No Action	Total Sanctions	Disbarments	Reprimands	Other Sanctions
1915	1			1	1		
1916	8		7	1		1	
1917	1		1				
1918	4		1	3	3		
1919	5		3	2	1	1	
1920	2			2	2		
1921	1			1	1		
1922	1		1				
1923	3		1	2	1		1****
	211	44	127	40	18	17	5

**** two year suspension from practice[46].

46. These totals were drawn from the "Minutes of Convocation" for the years 1881-1899 and 1905-1923. The minutes taken between 1899 and 1906 have, unfortunately, not been preserved, and comment about the disciplinary action of the Law Society during these years cannot be made.

Of the other sanctions imposed (indicated *,**,***,**** in the figure), in 1885 the Benchers expelled a student named J.A. Fleming for hiring an imposter to write a law school examination. ("Minutes," Nov. 16, 1885, Dec. 5, 1885; CLJ 1886, 38, 41) and another named W.H. Sibley for an unidentified criminal offense. In 1898 they suspended Fergus J. Travers, a Toronto solicitor, for seven years for extortion. ("Minutes," June 28, 1898; CLJ 1898, 715.) In 1906 they threatened to suspend John Creighton of Toronto for failure to pay his fees to the Law Society. He paid the ten years' fees he owed, and the Benchers dropped their threat. ("Minutes," May 25, June 8, 1906.) In 1923 they voted to suspend Murray Gillam, a lawyer who had been convicted of automobile theft and sentenced to two years less a day in the Ontario reformatory, for the period of his incarceration. ("Minutes," Jan. 18, 1923, Feb. 8, 1923, April 17, 1924.)

Clearly the Benchers were dealing with a great many more cases and imposing more sanctions than the courts were during this period of concurrent jurisdiction. But if we look at these data more closely the picture is not nearly so clear. Figure 5.2 shows that the number of cases heard by the Benchers increased during the 1890s and the years prior to World War One but sharply declined after about 1914.

FIGURE 5.2

AVERAGE ANNUAL NUMBER OF DISCIPLINARY CASES BEFORE THE LAW SOCIETY, 1881-1923

Period	Total Cases	Average Per Year
1881-1889	37	4.111
1890-1898	72	8.000
1905-1913	75	8.333
1914-1923	27	2.700

Source: Law Society of Upper Canada, "Minutes of Convocation," 1881-1899, 1905-1923.

The most significant aspect of these data is the frequency of recommendations issued by the Benchers that the complainants seek a remedy in the courts rather than with the Law Society. These figures can tell us a great deal about the relative jurisdiction of the Law Society

and the courts, as viewed by the Benchers themselves. Figure 5.3 shows that the total number of recommendations to seek redress in the courts, the average number of these recommendations, and the ratio of cases to recommendations, all increased from 1881 till about 1913. At that point, however, these recommendations stopped altogether.

FIGURE 5.3

AVERAGE ANNUAL NUMBER OF "REMEDY IN COURTS" RECOMMENDATIONS AND RATIO OF CASES TO "R. IN C." RECOMMENDATIONS, 1881–1923

Period	Total # of Cases	Total # of "R. in C." Recommendations	Av./Yr.	Ratio
1881-1889	37	4	0.444	1:0.108
1890-1898	72	11	1.222	1:0.153
1905-1913	75	29	3.222	1:0.386
1914-1923	27	0	0	---

Source: Law Society of Upper Canada, "Minutes of Convocation," 1881-1899, 1905-1923.

The Benchers distinguished between what they considered to be their own disciplinary jurisdiction and that of the courts. If a complaint involved allegations of criminal conduct, they referred the complainant to the courts.

One of the first cases in which the Benchers had to make a decision regarding jurisdiction involved a complaint from the Board of Trustees of the Toronto

General Hospital in November of 1886. The complaint related to the conduct of the solicitor who had prepared a will for one of the hospital's patients. When Convocation heard the complaint, Malcolm Cameron and Byron Britton moved that the Trustees be asked to supply more information regarding the complaint before the Benchers could decide whether to hear the case.

The Benchers had to be satisfied whether the charges constituted "merely professional misconduct cognizable by Convocation, or a more serious charge within the jurisdiction of the criminal courts."[47] When the Trustees supplied the additional information, the Benchers decided that the charges did involve "merely professional misconduct" and instructed the Discipline Committee to conduct an investigation.[48] The committee members apparently felt that the charges were not substantiated, however, because they did not report back about the case.

The Benchers also felt that allegations of tortious negligence were outside their jurisdiction. In November of 1889 they received a complaint from a client alleging misconduct on the part of his solicitor.[49] Convocation

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47. "Minutes," Nov. 26, 1886; CLJ Feb. 15, 1887, 72.

48. "Minutes," Dec. 4, 1886; CLJ Feb. 15, 1887, 74.

49. "Minutes," Nov. 19, 1889, CLJ 1890, 171.

referred the complaint to the Discipline Committee. The Committee considered the case, but in its report it recommended that because the matter related to negligence, the Law Society should advise the client to seek his remedy in the courts.[50]

In these examples the Benchers showed that they did not wish to intrude into the courts' criminal or tort jurisdiction. They also apparently did not wish to intrude into the courts' summary jurisdiction. Many of the cases in which the courts invoked their summary jurisdiction involved solicitors failing to pay over money owed to their clients. During the early part of the period, when complainants brought cases such as this to the Law Society, the Benchers informed them that the courts were the proper forum for redress.

In late December of 1891 the members of a law firm in Barrie registered a complaint with the Law Society. The Benchers heard the complaint, but in Februsry, they informed the complainants that because their case involved "non-payment by [the solicitor] of monies into court, in respect of which the party aggrieved can invoke the summary jurisdiction of the courts, ...this course should

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50. "Minutes," Feb. 8, 1890.

in the first instance be adopted."[51] The Benchers were still reluctant to usurp the courts' disciplinary jurisdiction over its officers. After World War One, however, they changed their opinion.

By the 1920s the Benchers had decided that the same type of professional misconduct alleged in the 1891 case was within their jurisdiction. In March of 1924 the Discipline Committee received four complaints against a lawyer for refusing to pay out money held by him in trust.[52] The following month Convocation found him guilty of professional misconduct in the matter and voted to disbar him.[53]

The 1924 decision is quite significant, because it was the first example of a case in which the Benchers imposed a disciplinary sanction within what they would previously have considered the summary jurisdiction of the courts. Although the law had not changed, and the courts

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51. "Minutes," Dec. 29, 1891; CLJ 1892, 371; "Minutes," Feb. 1, 1892; CLJ 1892, 405. The complainants in this case were members of the law firm of Lount, Hewson, and Creswick, of Barrie. Their complaint was against a solicitor identified only as "J.B."

52. "Minutes," March 20, 1924.

53. "Minutes," April 17, 1924. The lawyer was George S. Bowie, who had begun practise in eastern Ontario in 1893 and sometime after 1900 had moved to the Rainy River District. The "Minutes" offer no other details of the case.

and the Law Society still occupied concurrent jurisdiction over professional discipline, the Benchers had moved to extend their own scope of authority. They had extended the bar's autonomy.

As outlined above, prior to about 1913, whenever the Law Socie - received a complaint involving matters within the courts' jurisdiction, the Benchers informed the complainant that he or she should seek a remedy in the courts; and until at least 1923 the judges would have dealt with it. One cannot assume, however, that after 1923 the judges would have agreed that the Law Society was now the proper forum for professional discipline.

As late as 1920, Justice Lennox made it quite clear in his dictum in Re Solicitor, East v Harty that he felt the courts' summary disciplinary jurisdiction was still valid.[84] Unfortunately, we cannot know how the courts would have dealt with such a question in later years, because despite the fact that the legislature did not formally remove the courts' disciplinary jurisdiction over lawyers until 1970, after 1923 the courts did not receive any further disciplinary applications.

The Law Society had apparently convinced clients and others with grievances against lawyers that it was the appropriate agency with which to seek redress. An

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84. See above, at note 44.

explanation for this is evident in Figure 5.4, which outlines the number of times the Law Society invoked the ultimate sanction of disbarment.

FIGURE 5.4

DISBARMENTS OF ONTARIO LAWYERS, 1881-1923

Period	Cases	Disbarments	Av. Annual Number of Disbarments	Ratio of Cases: Disbarments
1881-1889	37	1	0.111	1:0.027
1890-1898	72	2	0.222	1:0.028
1905-1913	75	6	0.666	1:0.080
1914-1923	27	9	0.900	1:0.333

Source: Law Society of Upper Canada, "Minutes of Convocation," 1881-1899, 1905-1923.

These data show that the number of cases brought to the Benchers' attention declined drastically after 1913, but after 1905 the number of disbarments increased substantially. More importantly the ratio of disbarments per case increased dramatically during the 1905-1913 period and even more so during the 1914-23 period. The increase in cases between 1890 and 1913 shows a heightened public awareness of the Law Society's disciplinary function.

The decline in cases 1913, combined with the dramatic increase in the ratio of disbarments per case, indicates a decline in the number of less serious allegations and a tendency on the Benchers' part to deal severely with lawyers who were guilty of professional misconduct.

In conclusion it is evident that for the most part the Ontario bar achieved the self-disciplinary aspect of professionalization during the late nineteenth and early twentieth centuries. Like the previously discussed aspects of professionalization, a monopoly over the supply of legal services (see Chapter Three), and legal education, (see Chapter Four), the Law Society's assumption of autonomous disciplinary jurisdiction has been a gradual process taking place since its inception in 1797. The bulk of the process took place, however, between 1876 and 1923.

Between 1797 and 1923 the Law Society and the courts occupied a de facto concurrent disciplinary jurisdiction over lawyers. Between 1876 and 1970 they occupied a de jure concurrent jurisdiction. In the period of overlap between 1876 and 1923 both agencies occupied both de facto and de jure jurisdictions, but it was during this transitional period that the important professionalizing process of assumption of autonomous self-discipline by the Ontario bar took place.

CHAPTER SIX

"UNITED FOR MUTUAL PROTECTION": ESTABLISHMENT OF PROFESSIONAL ASSOCIATIONS

1. INTRODUCTION

The establishment of various bar associations was one of the major trends in the history of the Ontario legal profession during the late nineteenth and early twentieth centuries. Between 1879 and 1909 lawyers in Ontario formed a total of twenty-five county and district law associations; they founded the Ontario Bar Association in 1906; and they helped establish the Canadian Bar Association in 1914.[1]

Like the other phenomena dealt with in previous chapters, this trend seems at first glance to fit the classical sociological model of professionalization,

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[1] Canada Law Journal (hereafter CLJ) Jan. 16, 1894, 4-5; March 6, 1896; Feb. 16, 1897, 170; Canadian Law Times (hereafter CLT) Jan. 1910, 88; Canadian Law Review (hereafter CLR) Feb. 1905, 166; Sept. 1905, 480; CLT Oct. 1906, 703-5; CLJ May 1, 1914, 281-93.

because one of the key elements in the model is the creation of the professional association. Indeed, sociologist Theodore Caplow identified the establishment of a professional association as the first step in the archetypal sequence of professionalization.[2] Also like the other phenomena, however, both this element of the sociological model and the historical reality of the establishment of Ontario legal associations were considerably more complicated upon closer examination.

Sociologists regard a professional association as more than simply a collective agency established to promote the interests of an occupational group. In The Qualifying Associations: A Study in Professionalization, Geoffrey Millerson identified the primary functions of professional associations as:

> 1. to organize, 2. to qualify, 3. to further study of a subject and communicate information obtained, 4. to register competent professionals, and 5. to promote and preserve a high standard of professional conduct.[3]

Millerson did not argue that an occupational organization must fulfil all of these functions in order to achieve the status of a professional association, but that certain

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2. Theodore Caplow, The Sociology of Work (Minneapolis, Minn., 1954, 1964), 139.

3. Geoffrey Millerson, The Qualifying Association: A Study in Professionalization, (London, 1964) 28-30.

kinds of associations fulfil some, while others play different roles.[4] In this way, the concept of a professional association is an ideal type, much like the larger concept of professionalization (see Chapter One above). As a particular occupational organization increases the number of these functions it fulfills, it approaches the ideal type of a professional association.

For the purposes of this discussion, the two most important kinds of association which Millerson listed were the qualifying association and the protective association.[5] The qualifying association, which he regarded as the most significant, is primarily intended, of course, to qualify individuals for admission to practice, but in the process it also organizes and registers them. It may also serve to maintain professional discipline and encourage further study among practitioners. As will be outlined below, the Law Society of Upper Canada became a qualifying professional association during the late nineteenth century (see also Chapter Three above).

According to Millerson, protective associations, on the other hand, are primarily intended to provide "an

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4. Ibid., 32-41.

5. Ibid., 33.

organized means of exercising pressure to protect and improve the working conditions and remuneration of the individual professional."[6] As will be outlined below, the various county law associations and the Ontario and Canadian Bar Associations, all of which were established during the late nineteenth and early twentieth centuries, fulfilled this function.

Millerson's explanation of the functions and kinds of professional associations provides a valuable model to help us understand the nature of professional organizations and consequently to evaluate this aspect of the process of professionalization in historical context. However, he does not criticize the roles such associations play within society.

Millerson acknowledged the existence of a division between public and professional interest; but he asserted that the two do not conflict. In a defensive response to the observations of those more critical of professions in modern society, he argued that the purposes of professional associations:

> ...are not insular, selfish aims designed to arm the professional against the public interest. Those using professional services benefit through higher standards of qualification, the stricter control of professional conduct, the

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6. Ibid., 37-41, at 39.

> organized supply of information to the professional.[7]

In arguing this way, Millerson was responding to a group of critical sociologists known as the "Chicago School" led by Everett Hughes, who published "The Professions in Society" in 1960.[8]

Hughes and the other members of the Chicago School looked beyond the professional associations' self-professed purposes to their real purposes. They then assessed the social costs of the exercise of those purposes. To Hughes, the primary underlying goal of professional organization is not to promote the public interest, but to protect the private group interests of the profession. The difference between Hughes' interpretation and that of less critical analysts such as Millerson is one of congruence of interest.

Millerson felt that by promoting the interests of a profession, an association would necessarily be promoting those of the public as well. Hughes, on the other hand, argued that these two sets of interests have often been in

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7. Millerson, 27.

8. Everett Hughes "The Professions in Society," The Canadian Journal of Economics and Political Science, vol. 26, no. 1, Feb. 1960, 54-61, reprinted in Hughes, The Sociological Eye: Selected Papers, (Chicago, 1971), 364-73. For a more detailed discussion of the literature cited in the following three paragraphs, see Chapter One, above.

conflict, and that whenever such a conflict has arisen, professions have always given precedence to their own interests over those of the public.

More recently, still another, more critical school of sociological thought has emerged. The proponents of this school, most notably Magali Sarfatti Larson, argue that professions are not homogeneous interest groups, and that their associations promote not simply the interests of professions at the expense of the public, but those of small elite groups within each profession, to the detriment of those occupying lower professional strata, as well as the public at large.[9]

These analyses provide very good models with which to approach the question of how professionalized specific occupational organizations are and to assess the social roles such organizations play. They are, of course, primarily developed to analyse contemporary professionalization, but they can be equally useful in dealing with this aspect of the process in an historical context. For our purposes they can be particularly valuable in trying to understand the phenomenon of professional association among Ontario lawyers during the late nineteenth and early twentieth centuries.

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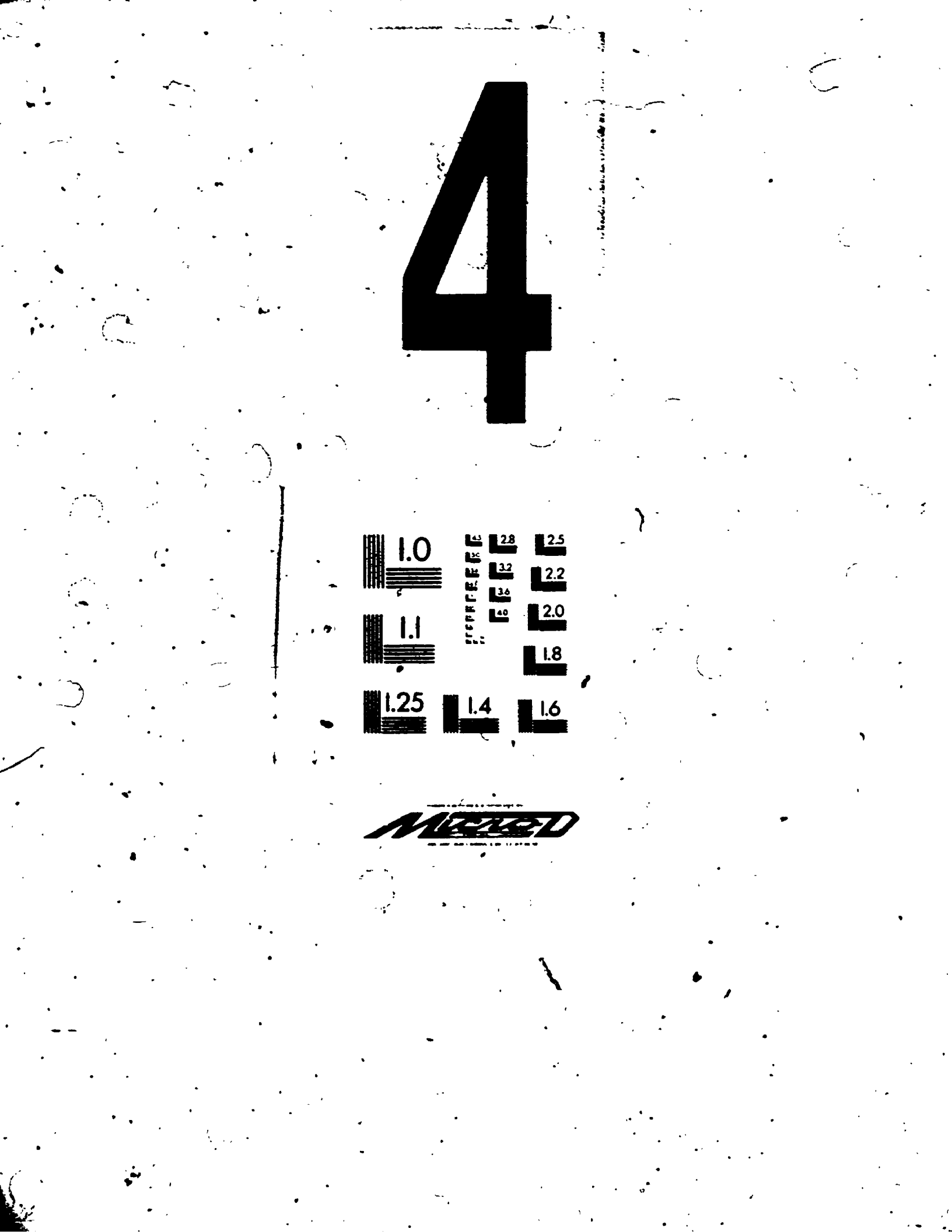
9. Magali Sarfatti Larson, The Rise of Professionalism: A Sociological Analysis, (Berkeley, Cal., 1977), 166-77.

In dealing with this phenomenon of professional organization among Ontario lawyers, the matter seems fairly straightforward. It seems to be simply a question of analysing the formation of various bar associations in light of the sociological models outlined above. There is a problem, however, with this approach. Not all of the organizations of lawyers in Ontario were formed between 1879 and 1914. The Law Society of Upper Canada, clearly the most important legal professional association in the province, was founded in 1797.

An analysis of the formation of bar associations as an aspect of professionalization during the late nineteenth and early twentieth centuries, therefore, must determine to what extent the pre-existence of the Law Society removes the phenomenon from the main period under consideration. To do so, this chapter will firstly examine the functions of the Law Society during its early years within the context of the Millerson model.

Secondly, this chapter will analyse the formation and early development of each of the other legal associations in the province. Thirdly, it will deal with the public interest issue to determine to what extent the professional interests represented by Ontario legal organizations conflicted with those of the general public. And finally, it will assess the question of stratification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2.0
1.8

to determine if the bar associations in Ontario did represent primarily the interests of elite lawyers at the expense of those in the lower strata of the profession.

2. THE LAW SOCIETY AS A PROTECTIVE ASSOCIATION

Looking at the Millerson model, it is apparent that, by the late 1850s, the Law Society acted as a qualifying association. It fulfilled three of the five primary functions which he enumerated, and to a lesser extent, it fulfilled the other two as well. However, it did not act as a protective association. For the most part the provincial bar did not feel the need for a protective professional association until much later.

The Law Society fulfilled the organizing function pursuant to its founding statute of 1797. As outlined in Chapter Three, above, this legislation authorized "...all persons now admitted to practise the law, and practising at the bar of any of His Majesty's courts of this province to form themselves into a society...," and required all barristers to become members of the society.[10] It also required all students and articled clerks to be "on the books" of the society for five years prior to being called

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10. An Act For The Better Regulating The Practice of The Law, 37 Geo. III (1797), c.13, ss.I,IV, (U.C.).

to the bar or admitted to practise as an attorney.[11] The Law Society's founding legislation did not require attorneys who were not also barristers to become members, but by virtue of having been "on the books" while serving under articles prior to admission, they could be said to be members of the Law Society.

Millerson considered the organizing function to be "the most fundamental aim of an association."[12] This is certainly true in a contemporary context, because it must be accomplished before any of the other functions can be fulfilled, but its importance is more apparent in terms of the professionalization of modern, diverse occupational groups such as social workers or management consultants than the small group of fifteen lawyers practising in Upper Canada in 1797.[13] Nevertheless, simply by being established, the Law Society did organize the bar in the young province and, more importantly, it made possible the further professionalization which took place later.

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11. Ibid., ss V, VI.

12. Millerson, 28.

13. William Renwick Riddell, The Bar And The Courts of The Province of Upper Canada or Ontario, (Toronto, 1928), 49. Note: this volume contains two sections, paginated separately, dealing with the bar and the courts respectively. Unless otherwise specified, references are to the first section of this book.

The 1797 statute also required the Law Society to register competent lawyers in the province, because only members of the Society were legally entitled "to practise at the bar of any of His Majesty's courts in this province," and the names of all barristers, students, and articled clerks were to be recorded "on the books" of the society.[14] Despite the fact that Convocation required each member to pay an annual fee of five pounds to the Society, the books, or "rolls" as they were also known, were apparently not kept in very good order.[15]

This lack of concern about the size of the provincial bar is understandable in a very small professional community in which most practitioners are likely to have known each other by name but, as the colony and the profession grew, it became much more important to know how many lawyers there were in the province.

In 1832 the Benchers commissioned a special committee, chaired by the very prominent lawyer and politician Robert Baldwin, to among other things, take a

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14. 37 Geo. III (1797), c.13, ss.V, VI, (U.C.).

15. Riddell, 49.

census of practitioners and "set the rolls right."[16] The Benchers' desire to know the number of lawyers there were in the province was apparently prompted by a sense that professional growth was outstripping the demand for legal services. They had demonstrated this a few months earlier by raising the barriers to entry to the profession by introducing a bar admission examination for the first time.[17]

By 1840 the Benchers had another incentive to ensure that the Province's lawyers were properly registered when the legislature amended the law governing the publication of the Queen's Bench Reports.[18] An 1823 statute provided for the first Upper Canadian case reports, and the province was responsible for appointing and paying a court reporter and publishing his reports. The revenue for this purpose came from the annual fees paid by attorneys, which

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16. Quoted in G. Blaine Baker, "Legal Education in Upper Canada 1785-1889: The Law Society as Educator," David H. Flaherty (ed.), Essays in The History of Canadian Law, Vol. II (Toronto, 1983), 49-142, at 114.

17. Ibid., 113-14. See also, Chapter Four, above.

18. An Act For The Better Regulation of The Office of Reporter To The Court of Queen's Bench in This Province, 3 Vict. (1840), c.2 (U.C.).

the Law Society collected and submitted to the provincial Receiver General.[19]

The 1840 legislation repealed and replaced the 1823 statute and made the Law Society responsible for publishing the Queen's Bench Reports. The Benchers still collected an annual fee from each attorney practising in the province, but rather than handing these fees over to the Receiver General, they paid the reporter's salary and other costs of publication themselves. The Law Society now had a substantially increased incentive to see that all attorneys were registered and their fees paid. The preamble of the act also noted that the province had accumulated a sizable surplus from the collection of attorneys' fees since 1823 and that this surplus could now be turned over to the Law Society.[20] The maintenence of such a surplus was all the more incentive to see that registration was complete.

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19. An Act Providing For The Publication of Reports of The Decisions of His Majesty's Court of King's Bench in This Province, 4 Geo. IV (1823), c.3, ss.I, II, VI, VIII, (U.C.). The first reporter was Thomas Taylor, an English barrister of the Middle Temple. See his Reports of Cases Decided in The Court of King's Bench in Upper Canada (1823-27), (2nd ed., Toronto, 1962).

20. An Act For The Better Regulation of The Office of Reporter To The Court of Queen's Bench in This Province, 3 Vict. (1840), c.2 (U.C.).

As outlined in Chapter Three, above, by 1857 the Law Society also served as the qualifying agency for all Upper Canadian lawyers.[21] The 1797 statute granted the Benchers the authority to call barristers and admit attorneys, but in 1822 the legislature transferred to the Court of King's Bench the authority to admit attorneys to practice.[22] In 1857 the legislature returned this authority to the Law Society.[23]

Aside from the question of the locus of authority for admission to practice, fulfilling the qualifying function, according to Millerson, means establishing some testing criteria or mechanisms which can serve to certify that those admitted to practice are actually qualified. Although, as Chapter Four argues, legal education in

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21. The Benchers' authority in this area was not absolute. As Chapter Three explains, however, the number of practitioners the legislature admitted under its residual power was very low, and the significance of legislative admission to practice, when it became an issue during the 1880s, was largely symbolic.

22. 37 Geo. III (1797), c.13, ss.V, VI, (U.C.); An Act To Repeal Part of An Act Passed in The Thirty-Seventh Year of His Late Majesty's Reign, Entitled "An Act For The Better Regulating The Practice of The Law," and To Extend The Provisions of The Same, 2 Geo. IV, (1822), c.5, s.III.

23. An Act To Amend The Law For The Admission of Attorneys, 20 Vict. (1857), c.63, s.III, (U.C.). See also, Chapter Three, above.

Ontario underwent a radical reformation in 1889, many of its basic components were in place by the 1830s.

The Law Society's 1797 founding statute required prospective attorneys to serve a three year period of articled clerkship under a practising attorney, and in 1799 the Benchers imposed a similar five year requirement on prospective barristers. For the first two decades of its existence, however, the Law Society did not set any sort of examination for either type of student prior to admitting him to practice and/or calling him to the bar.[24] In 1819, the Benchers introduced an entrance examination for incoming students, and in 1831 they established an examination for call to the bar. When the legislature returned jurisdiction over attorneys to the Law Society in 1857, the Benchers imposed a similar examination on articled clerks.[25]

By Confederation, therefore, the Law Society was not only firmly established as the agency responsible for organizing and registering lawyers in Upper Canada, it was also responsible for certifying them as qualified to practise. The early Law Society also fulfilled the other

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24. 37 Geo. III (1797), c.13, s.VI, (U.C.); Baker, 68.

25. Baker, 113, 129.

two primary functions of a professional association listed by Millerson, but to a much lesser extent.

The function which Millerson describes as, "To further study of a subject and communicate information obtained," involves increasing the scope of the body of knowledge which the profession claims exclusive expertise in, and facilitating the exchange of this knowledge among members of the profession. To a limited extent, the early Law Society satisfied Millerson's criteria by publishing law reports and providing a law library for practitioners.

By educating and examining law students, the Benchers did ensure that incoming members of the profession attained a basic level of legal knowledge, but the Law Society did not attempt to extend this function beyond admission to practice. Its role as educator was primarily a part of its function as the qualifying agency for the profession.

Blaine Baker notes that during the 1830s, barristers were encouraged to take part in the Trinity Class, a voluntary, rudimentary instructional course primarily intended for law students, but it is not clear how many practising lawyers actually attended any of the lectures.[26] The Law Society has only recently made

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26. Ibid., 94.

serious attempts to provide any form of continuing education for practising lawyers in the province.[27]

The early Law Society also did not encourage legal research or disseminate knowledge in the field by publishing a scholarly journal. The Canada Law Journal, which first appeared in 1855 under the title The Upper Canada Law Journal And Municipal Gazette, did include information of this sort, largely in the form of material reprinted from American and British sources, but the Law Society had nothing to do with it. It was edited and published, anonymously, by James Robert Gowan, the Judge of Simcoe County Court, and James Patton, Q.C., a prominent member of the local bar in Barrie.[28]

As noted above, the Law Society did begin to publish law reports in 1840. These reports fulfilled the same function as today's law reports do. They presented an edited account of the courts' decisions and, along with the published statutes, allowed practitioners to keep up to date with the law. In this way the law reports served to disseminate legal knowledge, but they were not intended to increase the scope of the general body of legal knowledge.

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27. See a recent article in The Globe & Mail, (Toronto), Aug. 27, 1982, R2.

28. "An Editorial Retrospect," CLJ Oct. 1, 1902, 609-16.

There were also a few treatises and digests published in Upper Canada. In 1840, John Hillyard Cameron published A Digest of Cases Determined in the Upper Canada Court of Queen's Bench, and in 1844 he published The Rules of Court and Statutes Relating to Practice and Pleading in the Court of Queen's Bench, Upper Canada. Although Cameron was later a Bencher and the Treasurer of Convocation, the Law Society did not sponsor or publish his or any other digests or treatises.[39]

The Law Society did, however, provide a law library for its members. Indeed one of the main reasons for building Osgoode Hall was to house the Great Library.[40] In this way the Law Society provided practitioners with access to Upper Canadian law reports, statutes, treatises, and digests, as well as those published in the other colonies, Britain, and the United States.

As outlined in Chapter Five, above, the Law Society also exercised some degree of disciplinary jurisdiction over lawyers, concurrently with the courts, during the early and mid-nineteenth century. Prior to 1876, although they had no statutory or case law authority to do so, the

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39. W. Stewart Wallace, The Macmillan Dictionary of Canadian Biography, (3rd edn., Toronto, 1963), s.v. Cameron.

40. Baker, 134.

Benchers disbarred four barristers. The Law Society would not, however, discipline attorneys per se, preferring to leave them to the jurisdiction of the courts. Furthermore, all of the four barristers they disbarred had previously been struck from the roll of attorneys by the Court of Queen's Bench.[31] Nevertheless, the fact that the Law Society did exercise some degree of disciplinary authority was significant in terms of its role as a professional association during the pre-Confederation period.

It is clear that, using the Millerson model, the Law Society was a qualifying association by Confederation. It organized, qualified, and registered Upper Canadian lawyers and, to a limited extent, it acted as a study and disciplinary agency as well. However, it had not yet acted as protective association. In the years which followed the Benchers tried to act in this capacity. When they failed to do so, lawyers in the province turned to other organizations, including the various county law associations, the Ontario Bar Association, and the Canadian Bar Association to protect their collective interests.

In April, 1895, the Canada Law Journal published an editorial which seemed to express a common sentiment many

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31. See Chapter Five, above.

late nineteenth century Ontario lawyers felt. "The members of the legal fraternity have never united for mutual protection to the extent that [other occupations] have."[32]

The Law Journal was referring to the trend among many groups in Ontario society such as trade unions, retailers, manufacturers, bankers, and other professions, to bind together to protect the members of the groups from competition. Although this trend seemed to run contrary to the spirit of nineteenth century economic liberalism, it was apparently a common one. Historian Michael Bliss has described it as "The Protective Impulse."[33]

Bliss saw the origin of the trend towards collective protection first in the formation of large corporate "trusts," such as the railways. Other business groups, including manufacturers, insurance companies, and wholesalers, responded to this collectivization by binding together in an effort to reduce competition within each group. Similarly, trade unions tried to reduce competition in the supply of labour. The goal of each of these groups was to provide its members with some degree

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32. CLJ April 16, 1895, 223.,

33. Michael Bliss, "The Protective Impulse: An Approach to the Social History of Oliver Mowat's Ontario," Donald Swainson (ed.), Oliver Mowat's Ontario (Toronto, 1972), 174-88.

of economic security by protecting them from the negative effects of competition.

Bliss identified this phenomenon of collectivization in late nineteenth Ontario as part of much wider, international retreat from competition and search for national social and economic structures, and he cited Karl Polanyi, Robert Wiebe, and Samuel H. Beer in support of this point.[34] The evidence surrounding collectivization among late nineteenth century Ontario lawyers seems to indicate that they too were part of this general trend or "protective impulse."

The Law Society acted to protect Ontario lawyers in a number of direct and indirect ways described in the chapters above. By reforming legal education and professional discipline (discussed in Chapters Four and Five respectively, above), the Benchers could indirectly protect the legal profession by improving its public image and justifying its increasing autonomy; but the Law Society's most direct effort to protect lawyers' interests was its attempt to give the bar a monopoly over the supply of legal services.

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34. Ibid., 187-8; Karl Polanyi, The Great Transformation, (New York, 1944); Robert Wiebe, The Search For Order, (New York, 1967); Samuel H. Beer, British Politics in the Collectivist Age, (London, 1966).

As Chapter Three outlines in detail, between 1891 and 1906 the Law Society made a series of attempts to convince the provincial legislature to grant the profession a monopoly over real estate conveyancing. The legislation the Benchers proposed would limit the negative effects of competition from outside the profession by giving lawyers the exclusive right to offer advice to vendors and purchasers of real property. Lawyers practising outside of Toronto demanded this protection from external competition consistently throughout the late nineteenth century. At first the Benchers, most of whom were prominent, successful, Toronto practitioners, ignored the country solicitors' complaints. In the early 1880s the Benchers began to pay some attention to the problem, but it was not until the 1890s that they made any serious efforts to deal with it. Moreover, when they did try to use their influence to have protective legislation passed at Queen's Park, they failed. The result was a growing perception, particularly among lawyers practising outside of Toronto, that the Law Society either could not, or would not protect their interests. Small town Ontario lawyers turned, therefore to other organizations to express their "protective impulse."

3. THE COUNTY LAW ASSOCIATIONS

The first organizations to which Ontario lawyers turned were the county law associations. A group of lawyers practising in Brant County formed an association in 1853, but it was the only such lawyers' organization until 1879, and the majority of these organizations were founded during the 1880s and 1890s. By 1909, there were twenty-six county and district law associations in the province.[35]

Although the original impetus to found lawyers' associations at the local level seems to have been to establish regional law libraries, because the Law Society

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35. The following is a list of the county and district law associations founded in Ontario before World War One:

Brant - 1853	Norfolk - 1887
Bruce - 1879	Perth - 1887
Frontenac - 1879	Carleton - 1888
Hamilton - 1879	Leeds & Grenville - 1889
Middlesex - 1879	Grey - 1891
Peterborough - 1879	Hastings - 1891
Wellington - 1880	Simcoe - 1891
Ontario Co. - 1882	Huron - 1896
Essex - 1884	Waterloo - 1896
Welland - 1884	Lambton - 1905
Lindsay - 1885	Thunder Bay - 1905
York - 1885	Oxford - pre-1906
Elgin - 1886	Rainy River - 1909.

Sources: CLJ Jan. 16, 1894, 4-5; March 3, 1896; Feb. 16, 1897, 170; Canada Law Review (hereafter CLR) Feb. 1905, 166; CLR Oct. 1905, 480; CLR Feb., 1906, 133; CLT Jan. 1910, 88.

would provide funds to do so, the county associations quickly began to serve more overtly protective purposes.

In November, 1877, William Ralph Meredith, the London Bencher who became leader of the Conservative opposition at Queen's Park in 1878 and later served as Chief Justice of Ontario, introduced a motion at Convocation to provide for the establishment of branch law libraries in the counties. Meredith argued that lawyers practising outside of Toronto did not receive fair value for the fees they paid to the Law Society.

Part of all lawyers' mandatory annual fees went to maintain the Law Society's collection in the Great Library but, by reason of geography, non-Toronto practitioners had only limited access to this collection. The volume of legal literature - case reports, statutes, periodicals, and treatises - necessary to carry on legal practice was expanding at a very rapid rate, and only the most successful partnerships could be expected to maintain adequate private libraries. Meredith's solution was to have the Law Society provide funding for local libraries.

In typical fashion, Convocation reacted to Meredith's motion by striking a committee to study the matter.[36] Eighteen months later this committee presented a report to

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36. The Law Society of Upper Canada, "Minutes of Convocation" (hereafter "Minutes"), Nov. 24, 1877; CLJ March, 1878, 78.

the Benchers adopting Meredith's argument. Convocation accepted the committee's report, and set up a fund to provide inaugural and annual grants to associations of lawyers in the various county towns to establish law libraries.[37] Within a year, lawyers in five counties had taken advantage of the Law Society's funding offer and founded county law associations. Among them was the Middlesex Law Association, spearheaded by W.R. Meredith.[38]

Like that of the other county law associations founded in 1879 and 1880, the timing of the Middlesex Law Association's founding was clearly linked to the availability of library funding from the Law Society, but at their first meeting the organizers of the association made it clear that they did not see their organization's goals as limited to buying books.

When the organizers opened the meeting, they passed a motion that the new association be named The Middlesex Law Library Association. After some discussion, however, they

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37. "Minutes," June 24, 1879; CLJ July, 1879, 179-81; The Globe June 27, 1897, 3.

38. Middlesex Law Association, "Minutes" (hereafter MLA), Vol. 1, 1-2. The other associations founded in 1879 and 1880 were in Bruce, Frontenac, Peterborough, Wellington, and Wentworth Counties. Probably because sixty-two of the sixty-nine lawyers in Wentworth County practised in Hamilton (see Appendix A, below), they chose the name Hamilton Law Association. (CLJ Jan. 16, 1894, 4-5.)

passed another motion "that the word 'library' be expunged from the name of the Association, and that the objects of the Association include all matters relating to the welfare of the legal profession in this county."[39]

In its declaration of incorporation, the Middlesex Law Association defined its purpose as providing a law library for local barristers and solicitors and promoting "the general interests of the legal profession and good feeling and harmony among its members."[40] At its first general meeting, held in late November, 1879, the members formed a committee "to confer with other similar associations with a view to obtaining a larger grant from the Law Society and to watch the interests of the Association in any legislation that may take place affecting its interests."[41]

Over the course of the following decades, the various county law associations tried to promote the legal profession's interests. It was obvious, however, that the

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39. MLA, Vol. 1, 2. The other lawyers present at the first meeting of the Middlesex Law Association were: William Horton, Charles Hutchinson, Verschoyle and Benjamin Cronyn, E.J. Essery, Francis Love, Frederick Betts, J.J. Blake, Thomas Purdom, W.H. Bartram, and John and Talbot MacBeth.

40. MLA Vol. 1, 3.

41. MLA Vol. 1, 22.

interests of all Ontario lawyers were not uniform. As the discussion of the debates over lawyers' monopoly over the supply of legal services and the provision of legal education outlined in Chapters Three and Four, above, outlines, there was a strong regional division of interest among lawyers in the province during the late nineteenth and early twentieth centuries. The causes which the county law associations adopted reflected this regional division of interest.

During the 1880s and 1890s, the Middlesex and Carleton Law Associations mounted a campaign to provide more work for lawyers in London and Ottawa by decentralizing superior court litigation in the province. The provincial superior courts, which heard cases most lucrative to lawyers, sat in Toronto.

County Court judges could hear minor superior court motions in local towns. For the most part, however, lawyers practising outside of Toronto whose clients became involved in litigation within the superior courts' jurisdiction had to either travel to the capital to appear before the courts or retain a Toronto lawyer to act as an agent.[42] The county law associations wanted to provide more work, and more income, for their members by

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42. Margaret A. Banks, "The Evolution of The Ontario Courts, 1788-1981," Essays in The History of Canadian Law, Vol. II (Toronto, 1983), 492-572, at 527.

convincing the provincial government to pass legislation allowing the superior courts to sit outside of Toronto.

In its first year of existence, the Middlesex Law Association turned its attention to court-decentralization as part of the general court restructuring process which resulted in the Judicature Act of 1881.[43] In December, 1880, the Association passed a motion that the Judicature Bill provide for,

> the decentralization as far as possible of the business of the courts, and with that object the establishment of the divisions of the proposed High Court in such places in the east, centre, and west of the province as shall be most convenient and suitable with a Court of Appeal at Toronto, [and] a practice which shall include all forms of actions and under which actions shall be conducted as far as possible from their commencement to their termination in the locality in which the litigation shall arise.[44]

The Association then struck a special committee "to communicate with members of the profession in other counties and decide on united action."[45]

The Canada Law Journal responded negatively to the Middlesex Law Association's efforts to decentralize

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43. An Act to consolidate the Superior Courts; establish a uniform system of pleading and practice; and make further provision for the due Administration of Justice, 44 Vict. (1881), c.5.

44. MLA, Dec. 23, 1880, Vol. I, 34-6.

45. Ibid., 36.

superior court business. In an editorial published in its January 15, 1881 edition, the Law Journal wrote:

> We understand that a meeting has recently been held by the Middlesex Law Association looking to relief from the inconvenience and expense of Toronto agency business. ...we must express our belief that the new clauses in Mr. Mowat's amended bill give all the benefit which outside practitioners can reasonably look for, and that they will fully satisfy (as we think they ought) the great body of the profession outside of Toronto. We refer to the clauses giving new and additional powers to County Judges to be exercised in their several localities.[46]

The Canadian Law Times also expressed its opposition to decentralization:

> We are aware that anyone speaking from Toronto is liable to be accused of basing his opinion to a certain extent upon self-interest. But we shall find few so hardy as to deny that, as a general rule, decentralization means weakness, while concentration is indicative of strength....
>
> A large measure of decentralization has already been accomplished by the proposed bill, by which nearly all routine business is to be hereafter transacted by the County Judges. It is to the present necessity for the transaction of this business at Toronto that we understand objections have been made, and that not unjustly.
>
> However, our learned friends have the right to be heard, and if the greatest good can thus be done to the greatest number they should succeed. But the onus is on them to show it.[47]

In writing of the weakness of decentralization and the strength of concentration, the Law Times referred to

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46. CLJ Jan. 15, 1881, 36-7, (emphasis in original.)

47. CLT Feb. 1881, 92-3, (emphasis in original.)

the courts, but it could just as easily have meant the profession.

In 1881, Ontario lawyers' protective associations were decentralized and as a consequence they were unable to gain their objectives. As will be discussed below, however, by the turn of the century, they tried to concentrate their power in larger organizations. In their decentralized form in 1881, the county law associations were unable to gain much advantage in court reform.

Throughout the rest of the 1880s and into the 1890s, the Middlesex Law Association tried, with little success, to lobby both the legislature and the Law Society on the court decentralization issue. London lawyers wanted to increase litigation work for practitioners outside of Toronto by either establishing local sittings of the superior courts or increasing the jurisdiction of the County Courts.[48] They had support in this effort from the Carleton and Frontenac Law Associations, but they met with hostility from the York, Hamilton, and Simcoe Law Associations.[49]

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48. MLA Dec. 11, 1882, Vol. I, 44-7; Dec. 10, 1883, Vol. I, 53-8; Nov. 24, 1884, Vol. I, 67-76; March 7, 12, 24, April 20, 1887, Vol. I, 107-14; May 4, 1888, Vol. I, 124; Dec. 30, 1891, Vol. I, 157-8; Jan. 1892, Vol. I, 160-2; July 28, 1892, Vol. I, 164-5.

49. CLJ Jan. 16, 1892, 26-7; Feb. 1, 1893, 64-8; "Minutes," Feb. 7, 1893,

In 1894, the Middlesex and Carleton Law Associations had a minor success when the legislature passed a statute providing for weekly sittings of the High Court at London and Ottawa, but this also met with opposition from Toronto interests. The 1893 annual report of the Carleton Law Association noted that:

> The subject of decentralizing legal business also received the attention of the Association. An opinion prevails with many members of the profession that the interests of the litigating public would be better served by the residence of one or more of the superior court judges in the districts situate at some distance from Toronto, such as Ottawa and London; that such judges should hear and determine all matters for those districts which must now be sent to Toronto.[50]

Predictably, those who supported the proposal justified it with reference to the public interest. Equally predictably, however, Toronto opinion opposed the idea. In January, 1894, the Canada Law Journal published an editorial denouncing court decentralization as simply an expression of self-interest on the part of lawyers outside of Toronto.

> We regret to see that an agitation is in progress, both in London and Ottawa, having for its end the sitting of a judge of the High Court at those places every week for the purpose of holding court. The true inwardness of the matter is simply that the practitioners at those places desire to save counsel and agency fees, or the travelling expenses which they have to pay in order to transact such business in

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50. CLJ Feb. 1, 1893, 63.

> Toronto. This is not an unreasonable desire on their part; but if the demand be acceded to, it may have consequences far beyond what the promoters of the scheme contemplate. If London and Ottawa are thus favoured, how will it be possible to resist the demand of Kingston, Peterborough, Hamilton, St. Thomas, Brantford, Barrie, Windsor, etc., for similar favours? In short, the Bench of the High Court would in the end become simply an assemblage of peripatetic county judges. Judges cannot be kept running about the country if they are to do their work satisfactorily....
>
> It may be a sacrifice for some members of the profession to place the best and truest interests of the profession and the law above their own private and individual interests, but we think the great majority of them would be willing to make the sacrifice. We devoutly trust that the agitation may come to naught, as we are firmly convinced that it would have a deteriorating effect on the administration of justice.[51]

The Law Journal clearly identified the difference in the interests of lawyers in Toronto and those from the other centres in the province; and understandably, it identified the former with "the best and truest interests of the profession."

The Law Journal's objections went unheeded at Queen's Park, however, because later that spring the legislature passed An Act to Facilitate the Local Administration of Justice in Certain Cases, which provided for sittings by a

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51. CLJ Jan. 16, 1894, 1-2.

single judge of the High Court once a week at London and Ottawa.[52] The Law Journal responded:

> It is much to be regretted that the efforts of those members of the profession who desire to centralize (sic) the business of the courts so as to keep in their own centres has met with undeserved success. ...It is a curious commentary upon political parties in this Province that this radical change should, to a large extent, have been forced upon the conservative Premier of a so-called Reform government by the persistent efforts of the radical leaders of a so-called Conservative opposition. Of course such a change suits that vox populi, but it is, we venture to assert, entirely opposed to the sober, matured thought of those who look only at the general good. It may not be of much importance to that two judges should be inconvenienced by a weekly tramp to the two ends of the Province; but it is of some consequence... that the time of the judges should be wasted for the sake of keeping a few dollars in the pockets of counsel in Ottawa and London.[53]

The "radical leader of a so-called Conservative opposition" was William Ralph Meredith. Meredith was an original trustee of the Middlesex Law Association and led the Conservative caucus in the provincial legislature.[54] He left politics in October, 1894, when he was appointed Chief Justice of the Common Pleas Division of the High

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52. 57 Vict. (1894), c. 20 (Ont.).

53. CLJ June 1, 1894, 331-2.

54. MLA Vol. I, 1.

Court.[55] Presumably, he was then "inconvenienced by a weekly tramp to the two ends of the province."

By working to decentralize the superior court structure, the Middlesex and Carleton Law Associations were trying to protect the interests of their members. They had some success with the establishment of the weekly court, but this would only provide more litigation income for lawyers. In order to provide more general protection for their members' incomes, a number of county law associations tried to reduce competition among lawyers by establishing minimum fee tariffs.

As Michael Bliss pointed out, the primary goal of the various business and labour associations formed during the late nineteenth century was to limit the negative effects of competition among members. Although it would be difficult to argue that the county law associations' primary goal was to limit competition among lawyers, the minimum fee tariffs these groups tried to establish certainly had this purpose.

Fee tariffs were not something new for late nineteenth century Ontario lawyers. The Solicitors Act gave the courts the responsibility to oversee and regulate

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55. Ontario Law Reports 25 (1894), xxix.

lawyers' fees.[56] The market for legal advice, therefore, was not entirely free. A client who felt that his lawyer's bill was too high could apply to the courts to review the bill and revise the fee using the tariff as a guideline.

Lawyers found this court regulation of fees unsatisfactory, because the Judicial fee tariffs set only maximum limits on the price of legal services. Only the market governed the lower limits. The market for legal services in late nineteenth century Ontario was very competitive, particularly in light of the large number of extra-professional competitors - the group the lawyers called "unlicensed conveyancers."

Lawyers tried to fight the unlicensed conveyancers by lobbying for legislation at Queen's Park, and they tried to limit competition from within the profession by establishing minimum fee tariffs of their own through local county law associations.[57] In 1899, the Carleton Law Association drew up a minimum tariff of fees for lawyers practising in Ottawa. In the Association's annual

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56. An Act Respecting Solicitors, Revised Statutes of Ontario, 1897, c. 174, ss. 35, 52, 53. Judicial review of lawyers' litigation fees is known as "taxation," and the officer who reviews lawyers' fees on behalf of the courts is known as the Taxing Master.

57. See Chapter Three, above.

report, however, the trustees had to admit that not all members of the profession in the city had signed the tariff, and it was, therefore, not possible to bring it into force.[58].

The root of the Carleton Law Association's inability to enforce its minimum fee tariff in 1899 lay in the fact that not all of the lawyers in the county were members of the Association. In 1901, there were ninety-one lawyers practising in Ottawa, seventy-three (78%) of whom were members of the Carleton Law Association.[59]

Ten years later the Carleton Association tried again to set a minimum fee tariff; this time they had more luck. Despite the fact that about twenty percent of the county lawyers were not members of the Association, the trustees were able to report in 1909 that all but one or two of the members of the local bar had signed a new fee tariff.[60]

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58. CLT March 1900, 89-90.

59. CLT Feb. 1902, 75. See also, Appendix "A, below. In 1891 there were sixty-four lawyers in Ottawa, and the Association had fifty-one members (80%). The trustees were aware of the problem, but despite suggesting that "the Association should consider the matter, with the view of devising means of inducing at least some of the large number of the profession of Ottawa who are not now members to join the Association," the percentage declined somewhat during the 1890s.

60. CLJ Feb. 1909, 93-4.

Like the trade unions trying to organize at the time, the lawyers in Ottawa knew that solidarity was essential. Differences in perceived levels of quality offered by different lawyers notwithstanding, the Association had to keep the number of non-subscribers to an absolute minimum. By 1909 it appeared that they had been successful.

Lawyers in Hamilton apparently also had success in establishing a minimum fee tariff. In 1907 the Hamilton Law Association appointed a committee to prepare a tariff of fees and resolved that it be "engrossed and signed by the members of the local bar, and that it be printed, issued, and distributed as soon as, in the opinion of the Trustees, it has been subscribed to by a sufficient number."[61]

In April, 1908, the Canadian Law Times published the Hamilton Law Association's "Solicitors' Tariff of Fees for Conveyancing.etc.," which, it reported, "has been approved of by practically all the members of the Bar practising in that city."[62] The Law Times applauded the tariff, and it called on other associations to set their own fee schedules. "Any fair means by which the profession can have an understanding on items of charges is to be

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61. CLT Jan. 1908, 88.

62. CLT April, 1908, 293-6. The Tariff is reproduced in Appendix F, below.

welcomed.... What the Hamilton Bar has done might well be considered and followed by other associations."[63]

The Canadian Law Times' justification for the Hamilton Law Association's 1908 fee tariff seems significant. In recognizing the obvious criticism of lawyers' tariffs as "professional-price fixing," it argued: "The combination certainly cannot be called an 'illegal' one, and it is worthy of note that the company printing the tariff has deemed it fitting to place the union label at the bottom of the poster."[64]

In fact, price-fixing among lawyers was not illegal. The Criminal Code prohibition against "conspiracies in restraint of trade" did not apply to services, and the Combines Investigation Act, which now governs competition in Canada, did not include services until 1976.[65] Moreover, according to Lawson Hunter, the federal Assistant Deputy Minister responsible for the Combines Investigation Act, the purpose of Canadian anti-combines

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63. Ibid.

64. Ibid.

65. Criminal Code, Revised Statutes of Canada (hereafter RSC) 1906, c. 146, ss. 496-8. The Criminal Code also excluded trade unions from the prohibition against conspiracies in restraint of trade. The Federal Government amended the Combines Investigation Act, which now protects competition in Canada, in 1975 to cover services. (23-24 Eliz. II (1974-75), c. 76.).

legislation has not been simply to encourage competition for its own sake, but rather to "prohibit agreements that unduly lessen competition and monopolies that operate to the detriment of the public."[66] Lawyers could, therefore, justify setting minimum fees in the same way that they justified virtually all other aspects of professionalization - by invoking the public interest.

4. THE ONTARIO BAR ASSOCIATION

Like the county law associations, the Ontario Bar Association acted to protect the interests of the profession by, among other things, maximizing lawyers' fees. A group of delegates from various county law associations founded the Ontario Bar Association in 1906 after some ten years of effort by one man.[67]

W.C. Mikel, a young lawyer who had been called to the bar in 1890 and practised in Belleville, wrote to the Canada Law Journal to suggest that

> the profession throughout the Province... consider the advisability of forming a central or Provincial County Law Library Association... having for its objects... securing... reforms beneficial to the profession. It has seemed difficult in the past to procure regulation or

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66. Lawson Hunter, "Are there too Many Lawyers? The Governments' View," Canada-United States Law Journal 6 (1983), 199-205, at 203.

67. CLT Oct. 1906, 703-5.

> legislation beneficial to the profession, particularly outside of Toronto, because the profession has been unable to emphasize their desire in concerted united effort.[68]

He apparently sent the same letter to the Canadian Law Times, which replied, simply, "We do not think that there would be sufficient cohesion amongst the various members to justify the effort."[69]

The following month, Mikel suggested that the county law associations arrange a meeting of representatives to form a "Provincial Federation of the County Law Library Associations," and replied to the Law Times' pessimism. "It is said by some that there is not enough cohesion between the members of the profession in this province to organize such an association. If there are any benefits to flow from it there should be enough cohesion."[70]

In 1896, the Canadian Law Times was right. There was not enough cohesion among the county law associations to form a federation; but by 1899, there apparently was. Beginning in that year, Mikel hosted annual meetings of representatives of various county associations at Osgoode Hall in Toronto to discuss matters such as electing more

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68. CLJ April 1, 1896, 224.

69. CLT April, 1896, 97.

70. CLJ May 15, 1896, 358.

young Benchers, reducing Law Society fees, and increasing the County Courts' jurisdiction.[71] In 1906, this informal group voted to found the Ontario Bar Association.[72]

The O.B.A. held its first annual meeting at Osgoode Hall on November 27, 1907 to elect officers and approve a list of objects of the Association.[73] The objects were:

1. to promote reforms in the law and procedure,
2. to uphold the honour and dignity of the profession of the law,
3. to bring about united action by the profession, [and]
4. to encourage the interchange of ideas and social intercourse among the members of the profession in Ontario and the members of other jurisdictions.[74]

The authors of these objects seemed interested in little more than platitudes, and hence, they offered little

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71. CLT June, 1900, 182; Canada Law Review (hereafter CLR) July-Aug. 1902, 502-3; CLR Nov. 1902, 87-8; CLR Oct. 1903, 683-4; CLR Oct. 1905, 472-5.

72. CLT Oct. 1906, 703-5.

73. The officers were: President - A.H. Clarke, K.C., M.P. (Windsor); Vice-Presidents - F.E. Hodgins (Toronto), R.J. McLaughlin (Lindsay), F.M. Field (Cobourg); Secretaries - W.C. Mikel (Belleville), R.J. MacLennan (Toronto); Treasurer - George C. Campbell (Toronto); Auditors - M.H. Ludwig (Toronto), W.J. McWhinney (Toronto). (CLT Jan. 1908, 83).

74. CLT Jan. 1908, 5.

insight into the reasons for the establishment of a provincial organization of lawyers.

The general discussion at the first meeting, however, did provide some clues as to what those present felt the Association should do. J. Parker Thomas, a veteran lawyer who had practised in Belleville since before Confederation, indicated how he thought the Association might help to "uphold the honour and dignity of the profession of the law":

> I expect to see before long a sufficient membership to enable us to have someone whom we can pay and who will be able to answer some of the criticisms which appear in the public print, where aspersions are cast on the bar. As it is now, in our own journals the public never see them, and if we could get a reasonable membership we could have funds on hand to reply to these general criticisms as well as in watching legislation.[78]

Thomas wanted the new Association to play a public relations role for the profession. If it was to provide protection for the bar, it would have to do something to combat the age-old image problem.

A comment by W.J. McWhinney of Toronto was more revealing. As the meeting closed, he remarked:

> I regret Sir, that the distinguished members of the Toronto bar are not here to take part in this meeting to-day. It is not courageous on their part. They are after the almighty dollar, and instead of giving up a few hours and giving countenance to this association to-day, they

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78. Ibid., 85.

> simply in a sense, ignore it, and it is not right.... We have eminent counsel in Toronto who should have given countenance to this meeting to-day..., as they could well afford to spend two or three hours or even the day here better than the younger members of the bar.[76]

McWinney's comment indicated that the division between lawyers practising in Toronto and those from the outlying counties (evident in the debates over competition from outside the legal profession and legal education discussed in Chapters Three and Four, above) may have been at work in the formation of the Ontario Bar Association.

There is no record of attendance at the O.B.A.'s first meeting, but the list of officers and Council members appointed seems to indicate that, at its beginning at least, elite lawyers from outside Toronto and less established lawyers from the capital led the Association. Of the eighteen officers and Council members, eight were from Toronto, and ten were from outside the capital.[77]

As of 1907, the eighteen officers and Council members had been in practice an average of twenty-three years. Those from Toronto were, on average, slightly less

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76. Ibid., 87.

77. The officers are listed in note 73. The council members were: W.A. Boys (Barrie), J.H. Denton (Toronto), Chas. Elliott (Toronto), M. Houston (Chatham), F.P. Betts (London), George F. Henderson (Ottawa), J. Parker Thomas (Belleville), D. Urquart (Toronto), C.L. Dunbar (Guelph). (CLT Jan. 1908, 83).

experienced (twenty-one years) than those from outside the capital (twenty-four years); but only one of them, A.H. Clarke of Windsor, the President, was a Bencher, and only three men, Clarke, R.J. McLaughlin of Lindsay, and F.E. Hodgins of Toronto, were King's Counsel.[78] Probably most importantly, however, the Association had only about fifty members from among the approximately 1,700 lawyers in the province.[79]

Like all the lawyers' organizations, the O.B.A. had to decide in its early years whether it wanted to limit its membership to the elite of the profession or to encourage a more general membership. The elite option apparently held some attraction, because the most prominent American lawyers' organizations had chosen it.

Both the American Bar Association and the Association of the Bar of The City of New York were "gentlemen's

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78. CLT May, 1906, 364-5. H.J. Morgan, Canadian Men and Women of The Time (2nd edn., Toronto, 1912), 237, 538, 780.

79. CLT Jan 1913, 15. Unfortunately, there is no record of who the original members were; so it is not possible to determine whether the membership showed the same geographic and experience characteristics as the leadership.

clubs," to which membership was by invitation only.[**] Charles Elliott, a member of the O.B.A. Council, had published a long leading article in the Canada Law Journal in 1898 extolling the virtues of the Association of the Bar of The City of New York:

> It is interesting to note the provision made in English speaking countries, other than our own, for the use, convenience and comfort of the legal profession. We had the pleasure recently of learning something of the Association of the Bar of the City of New York (sic), on which occasion its privileges were most courteously extended to the writer.
>
> This association is in fact a club. It is not open to the profession at large, but is only for those who are elected as members, and whose character and reputation are fully vouched for, after the personal scrutiny of the committee....
>
> The new home of the association, No. 42 West 44th st., is a building which is architecturally admirable, and most commodious and perfect in all its details. Whilst we do not feel equal to the task of adequately describing its beauty and completeness, it needs no technical skill to discern that in every part there has not only been lavish expenditure, but the best taste displayed.... Rooms are decorated and furnished in perfect taste, rich, but severe in style, as becomes the solemnity of the law....
>
> We shall, without thinking any the less of our own loved Alma Mater and the many beauties of our hall and its court rooms, have many things to learn from the New York Bar Association, its munificent patrons, liberal-

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**. See, generally, Edson R. Sunderland, History of The American Bar Association And Its Work (n.p., 1953), and George W. Martin, Causes and Conflicts: The Centennial History of The Association of The Bar of The City of New York, 1870-1970 (Boston, 1970).

minded members, and its beautiful and commodious building.[81]

The elite nature of the Association of the Bar of The City of New York obviously appealed to Elliott's sense of nobility, but the majority of the leaders of the O.B.A. felt differently, and in opting to allow all members of the provincial bar to join "for mutual protection," they chose the more "professional" option.

In calling for the formation of an Ontario Bar Association, the Canada Law Review argued, in an editorial entitled "Legal Cohesion," that an organization of all lawyers in the province would allow the bar to overcome its petty, internal differences, for the benefit of all.

> One valuable feature of the Law School is the association of the students with one another. When, however, a student in this province becomes a solicitor and begins practice, he never has the opportunity of coming in contact with the members of the bar except in the ordinary course of business, when frequently each one is kept at arm's length. The result is that Ontario lawyers are mere units. Is there any possibility of welding these units into one body? Unity is strength, we are told, but judging by the present condition of legal affairs in this province, it is not believed, at any rate it is not acted upon. If an Ontario Bar Association were formed as mentioned in the resolutions passed at the recent meeting of the delegates of the county law library associations a body would be brought into existence capable of wielding a great power and of doing an immense amount of good for the profession, and an esprit de corps would be established, which is now a thing entirely unknown, nor will it

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81. CLT May 1, 1898, 287-9.

> ever by produced by the present system. The opinion, however, in favour of a change, is growing. Lawyers in England, in the United States, in fact in other provinces of Canada, have associations and annually meet in conference, but not so the lawyers of this province. Our method is antique. A change is bound to come, and the sooner the better.[82]

The attitude in this editorial contrasted sharply with the attitude Charles Elliott displayed in his ode to the Association of the Bar of the City of New York. Elliott wanted an elite organization. The Canada Law Review, on the other hand, wanted to foster an esprit de corps within the legal profession by encouraging all lawyers to join. The O.B.A. opted for the latter, and in October, 1908 it issued a general appeal for members, explaining that "one dollar a year and your name on the roll of the Law Society is all that is necessary for membership."[83]

By 1908, Charles Elliott had apparently changed his mind and accepted the virtues of an open organization. In the Canada Law Journal describing the Ontario Bar Association's second annual meeting, he wrote:

> This gathering was of interest as it indicated a dawning of a larger esprit de corps in the profession, and the recognition of the need of a

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82. CLR Oct. 1905, 461-2.

83. CLT Oct. 1908, 881.

> more coming together of individual members of it....[84]

He went on from there, however, and tried to justify this professional solidarity by invoking the public interest, arguing that lawyers had come together,

> for greater cohesion not merely for the purpose of protecting the just rights of the profession, but for consultation as to the most efficient ways of securing the speedy administration of justice at the lowest cost compatible with efficiency, a result which is for the benefit of the country at large. The solidarity of the profession in reality makes for the good of the community, a proposition which the ignorant and prejudiced may scoff at, but which is nevertheless a truism to those who have made a study of the subject.[85]

He then went on to happily report that the O.B.A. membership had increased to a total of two hundred and seventy-six.[86]

Over the course of the following years, the O.B.A. continued to grow. In 1912, W.C. Mikel, the retiring President of the Association, was able to report that "the membership has increased to over five hundred and the Association has developed into a force of great strength

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84. CLJ Jan. 1909, 1.

85. Ibid., 1-2.

86. Ibid. This figure may not have been entirely accurate. The Canadian Law Times reported at the same time that the membership total was 257. (CLT Jan. 1909, 75).

and activity, capable of exercising a useful influence in the Province generally."[87] A year later, M.B. Ludwig, retiring after his twelve-month term as President, reported that the Association's membership continued to grow, and "it is confidently expected, very soon, every lawyer in the province will be a member of the Association."[88]

As the membership of the O.B.A. grew, so did its leadership. By 1916, it had a total of thirty officers and councillors. Although the majority of these still practised outside of Toronto, there were more members of the bar's elite, particularly from Toronto, among them. Of the thirty, twelve were from Toronto. Nine of the thirty were King's Counsellors (four from Toronto), eight of the thirty were Benchers (three from Toronto), and they averaged twenty-six years in practice (twenty-five years

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87. CLT Jan. 1913, 15-16.

88. CLJ Feb. 16, 1914, 81. Unfortunately, the O.B.A. annual reports did not include membership figures, and the Presidents' claims can only be taken at face value. Mikel's estimate of "over five hundred," still only represented less than one-third of the lawyers in the province.

among those in Toronto, and twenty-seven among those from outside the capital).**

5. THE CANADIAN BAR ASSOCIATION

In order to promote and protect the interests of the province's lawyers, the Ontario Bar Association had to overcome the inherent geographical and economic divisions within the provincial bar. The next logical step, once they had largely accomplished this, was to establish a national association to promote the interests of all Canadian lawyers.

In 1876 a group of Nova Scotia lawyers tried to organize a Dominion Barristers' Society. They wrote to the various provincial law societies to promote the idea, but despite the fact that the Law Society of Upper Canada expressed a willingness to cooperate, nothing further came

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**. A list of the officers and councilors of the O.B.A. in 1916, indicating place of practice, date of admission to practice, K.C.'s and Benchers appears in Appendix G, below.

of it.[90]

Twenty years later, another group of Nova Scotia lawyers established a national bar association. This group had more success, and managed to hold meetings in Montreal in 1896, in Halifax in 1897, and in Ottawa in 1898. The meetings were, however, very poorly attended and, when the organizers failed to call a fourth meeting, the Canada Law Journal remarked: "Perhaps the time for [a

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90. CLJ Nov. 1876, 303. They identified the objects of the proposed society as:

> to discuss ...such questions of jurisprudence as may from time to time call for an expression of opinion from the Bar; to assimilate the procedure and practice of the Courts, the curricula of legal study, the standards and mode of examination of students, and the tariffs of costs and methods of taxation; to secure the right of counsel in each province to plead in every other province as occasion may require; to promote the circulation of the best law books and law literature; to arrange a system of reporting decided cases, especially on laws common to all the provinces; and generally to promote the advancement and culture, and raise the status of the legal profession throughout the Dominion. (CLJ Oct. 1876, 271-2)

There was also apparently some dispute over whether the inaugural meeting of the organization should be held in Halifax or Ottawa. (CLJ Jan. 1877, 9-10).

Canadian Bar Association] has not yet arrived.[91]

By 1914 the time had apparently arrived. This time the impetus came from Ottawa. At the suggestion of Charles Doherty, the Montreal lawyer who served as Justice Minister in Borden's government, Sir James Aikins, a millionaire lawyer from Winnipeg, called a meeting of what the Canadian Law Times called "probably the most distinguished gathering of Canadian lawyers that ever met together at one time," to discuss the formation of a Canadian Bar Association.[92] The meeting was held in

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91. CLJ Nov. 16, 1899, 697. See also, CLJ Sept. 15, 1896, 567-8; Oct. 15, 1896, 572-5; Nov. 16, 1896, 726; Aug. 15, 1897, 514-15; June 1, 1898, 365-6; Aug. 1898, 534-44. The prime motive behind this effort seemed to be to promote uniformity of laws throughout the country. Interestingly, one of the organizers of the 1896 group was Robert Borden, Prime Minister 1911-20. One of the organizers of the 1876 attempt was John Thompson, Prime Minister, 1892-94. See, generally, P.B. Waite, The Man From Halifax: Sir John Thompson, Prime Minister (Toronto, 1985), and R.C. Brown, Robert Laird Borden: A Biography 2 vols. (Toronto, 1975, 1980).

92. CLT March, 1914, 252. Aikins was the Conservative M.P. for Brandon from 1911 to 1915. Originally from Ontario, he was called to the Ontario bar in 1878 but moved to Winnipeg to practise in 1897. He was the President of the Law Society of Manitoba. In 1915 he resigned his seat in Parliament to become leader of the Manitoba Conservative Party. In 1916 Sir Robert Borden appointed him Lieutenant-Governor of Manitoba, a post his father had held during the 1880s. Aikins remained in this position until his death in 1929. (H.J. Morgan, The Canadian Men and Women of The Time (Toronto, 1912), s.v. Thompson; CLJ 1916, 326; The Globe (Toronto), March 1, 1929, 1.)

Ottawa on March 31, 1914 in a committee room of the House of Commons, and some sixty men attended, all but five or six of whom were K.C.s.[93]

The Canada Law Journal praised this group's decision to establish a national lawyers' organization and called on the rest of the Canadian legal profession to support the effort.

> It is high time that lawyers should assert themselves and realize the dignity and importance of their calling, and that they should put the profession in the first place and party politics in the second place. It is only in this way that the status of both bench and bar can be maintained and improved, and the profession can continue to be, as it has been in the past in this country, a beneficial factor for the general welfare.[94]

The defensive tone of this remark is quite evident. The use of terms like "dignity and importance of their calling" and a plea to regain past status are indicative of an important part of the impetus for lawyers to organize throughout this period.

James Aikins, who was appointed first President of the Canadian Bar Association, echoed this defensive

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93. The Globe, April 1, 1914, 3. The Globe also noted that the new Association's constitution was based largely on the constitution of the American Bar Association.

94. CLJ May, 1, 1914, 284.

sentiment in his remarks before the first general meeting of the Association in Montreal in April, 1915.

> Few indeed have spent energy and time and money in the preparation for admission to the legal profession and have entered it with the primary object of thereby making money. Those who have done so have shewn at the outset lack of judgment and good taste, both essentials to true professional success. It is not a calling or instrumentality suited to that purpose as is the business of the merchant, manufacturer, or miner. Persons who have thus sought to commercialize it, to prostitute it to such an end in itself have lowered the professional tone and so lost the respect and esteem of their fellow-practitioners and of the people. They take no interest in the advancement of our profession and do not possess its spirit.[95]

Aikins clearly wanted to differentiate the legal profession from the what he saw as the lesser, mercantile and manual callings, and to isolate the few lawyers who were giving the bar a bad name. This became the most important function of the Canadian Bar Association during the first years of its existence.

To improve the bar's public image, and to establish a vehicle with which to ostracize those who had "lowered the professional tone" of the calling, the Canadian Bar Association sought to introduce a code of ethics for lawyers. Following the example which the American Bar Association set in 1908, the C.B.A. adopted its own Canons

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95. CLT May, 1915, 372-3.

of Legal Ethics in 1920.[96] As will be discussed below, the Canadian Canons were very similar to the A.B.A. Canons of Professional Ethics.

Like many of the other reactions of the bar during the early twentieth century, the growing sentiment in favour of a code of ethics in both countries was a response to the apparent increasing commercialization of the legal profession. As the communities which the bar served changed and commercial relations became more complicated and institutionalized, professional practice also began to change. The nature of legal services which the bar provided necessarily reflected the demands of its clients. The result of this development was a change in the profession's image of itself, and, it was feared, in the public's image of the bar.

What lawyers called their "service orientation," their alleged devotion to the public good before their own material well-being, cherished by the bar as a justification for its power, prestige, and autonomy, was at risk. To men like Sir James Aikins, those few lawyers who, lacking in "judgement and good taste, ...have thus sought to commercialize...[and] to prostitute" the honour of the bar, had to be shown the error of their ways. The

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96. Mark Orkin, Legal Ethics: A Study of Professional Conduct (Toronto, 1957), 9-10.

best way to do that was to establish a national code of professional conduct.

Ontario lawyers had debated the issue of a written code of professional ethics for a number of years prior to the C.B.A.'s adoption of the Canons in 1920. The basic point at issue in this debate was whether a written code was necessary for members of the honourable profession. To those who still clung to the traditional image of the learned barrister, writing a code of ethical conduct for the lawyer was "like drawing up a Code of Etiquette to make a gentleman."[99] To many other members of the bar, however, this idyllic image of the lawyer was no longer accurate.

In his report to the Canadian Bar Association's annual meeting held at Winnipeg in August, 1919, Angus MacMurchy, the Convener of the newly appointed Committee on Legal Ethics, argued:

> In view of the changed and changing conditions of this country, and the large number of students now admitted to practice, many of whom come from various countries whose traditions and surroundings have not been similar to those of our own and the Motherland, the time may be considered as having arrived when it is necessary to reduce to writing for the information of the members of the Bar and the guidance of our law students some of the

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99. W.R. Riddell, "A Code of Legal Ethics," address to the Canadian Bar Association annual meeting, 1919, CLT 1919, 620-31, at 621.

> most important general principles governing the conduct of the profession.[99]

MacMurchy's comments were indicative of a fear of change in the profession. The clear ethnic bias evident in his remarks is also consistent with Jerold Auerbach's analysis of the impetus behind the American Bar Association's adoption of its own Canons.[99] It should also not be surprising, in light of the fact that MacMurchy was speaking in Winnipeg only three months after the General Strike, which many in the Canadian elite blamed on an insidious foreign element.[100]

More important than the fear of actual change in the legal profession, however, was the fear of change in the bar's public image. As early as 1900, in an address to the students at Osgoode Hall Law School, Justice J.E. Rose of the Ontario Court of Common Pleas noted that a barrister's duty to the public was included in the ethical standards expected of him because it was "more important that the public, as well as the suitors immediately

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99. CLT 1919, 704.

99. Jerold Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (New York, 1976), 41-5.

100. On the Winnipeg General Strike, see generally, David J. Bercuson, Confrontation at Winnipeg: Labour, Industrial Relations, and the General Strike (Montreal, 1974).

concerned, should have confidence in the administration of justice, than that the particular case should be determined with perfect accuracy."[101] Public confidence in the administration of justice was, of course, Rose's explicit justification for his plea, but the bar's public esteem would equally benefit.

Justice Rose explained his point by quoting from a report submitted to the Michigan Bar Association, which had noted that the view that,

> it is an attorney's duty to do everything to succeed in his client's cause has done more than any other in pandering to popular prejudice against lawyers as a class, and withholding from the profession the full measure of public esteem and confidence which belong to the proper discharge of its duties.[102]

The concern with the bar's public image, as well as the American influence, is significant.

The same fear of the legal profession's declining public appeared in the Canadian Law Times in 1910. In an article reprinted from the American publication, The Green Bag, Charles F. Chamberlayne noted that "the legal profession recognizes, with some alarm, the extent to which it is suffering from low idealism."[103] According to

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101. CLT 1900, 59.

102. Ibid., 60.

103. CLT 1910, 135.

Chamberlayne, the abnormally low standard of professional conduct among American lawyers had become a perennial topic of bar association speeches. The panacea most speakers proposed was the written code of ethics.

In Chamberlayne's opinion, however, such a code of ethics would not improve the existing ethical standard within the legal profession unless some degree of idealism was re-instilled in its members. The ideals which many lawyers were exhibiting at the time were not appropriate to an honourable profession such as the law. "The [present] low standards of the profession are the ideals of a trade, a business, a money-getting, power-procuring, success-securing occupation."[104] These were the same ideas which Sir James Aikins expressed in arguing in support of a code of ethics for the Canadian Bar Association in 1919.

In his Presidential Address before the annual meeting of the C.B.A. in Winnipeg in 1919, Aikins noted:

> The dangers of the profession are not from without, but of the internal decadence. It is true that the anarchistic spirit may compass its extermination. Dick, the butcher, expressed the wish of his class by saying, "The first thing we do, let's kill all the lawyers," and Jack Cade: "Nay, that I mean to do." In the recent Winnipeg strike, a prominent leader said 'Damn the lawyers.' The answer of law-abiding citizens of his day was to quarter Cade, and the other day to combine and crush Winnipeg's

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104. Ibid

> incipient rebellion in the shell.... The administration of justice has always touched the nadir of its decline when the profession has been lowest in morals and least educated. In such times there is seen a tendency on the part of practitioners to regard the work of the bar as a trade and not a profession, a thing to be bartered and not a national service to be sought after; there also is found the pettifogger, the ambulance chaser, the fabricator of evidence and the trickster, and the man who is alien to the professional spirit and its traditions, destitute of gentlemanly instincts, disrespectful of his seniors, and slanderer of judges.[105]

Aikins was apparently convincing in his argument, because the Canadian Bar Association adopted the Canons of Legal Ethics at its next annual meeting, held at the Chateau Laurier in Ottawa in September, 1920.[106]

CONCLUSION

In dealing with the first of the issues raised above, it is apparent that to some extent the Ontario bar achieved the associational aspect of professionalization

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105. CLT 1919, 543-5.

106. CLJ 1920, 356. The Globe published a summary of the meeting but apparently did not consider the adoption of the Canons of Ethics particularly newsworthy. In addition to listing the officers of the Association, its story described a speech by Ontario Attorney-General W.E. Raney in which he called for the abolition of appeals to the Privy Council. The members overwhelmingly rejected Raney's suggestion, and many of them considered it in quite bad taste in light of the presence of the Assocation's guest, Viscount Cave of the Judicial Committee. The Globe, Sept. 3, 1920, 15.

well prior to the establishment of the first county law associations in 1879. The Law Society of Upper Canada was what Geoffrey Millerson would term a qualifying association during the pre-Confederation period.

In 1797 the Law Society organized the small number of lawyers practising in the province into a single body, and by 1857 it had become the qualification and registration agency for all new admittants. It also fulfilled the study and disciplinary functions to a limited extent during the preconfederation period. Nevertheless, the Law Society was not a protective association.

Towards the end of the nineteenth century, the Society did begin to act in a protective capacity, but both its success and ability to represent the interests of all of the profession were limited. Because of these limitations, various groups within the profession turned to other organizations at the local, provincial and finally the national level to meet their perceived needs.

Ontario lawyers did this partly in response to economic and public opinion pressures placed on the profession at the time, and partly in imitation of similar trends which they saw in other professions and other jurisdictions. With respect to the second issue, therefore, the associations formed by Ontario lawyers

during the late nineteenth and early twentieth centuries did fit the professionalization model quite closely.

The third issue, the public interest question, is more difficult. Clearly, the policies which Ontario legal organizations adopted and the actions they took were intended primarily to benefit lawyers. There was, however, a curious ambivalence in their justifications for these policies and actions. On the one hand, the leaders of these organizations felt very genuinely that policies which would benefit lawyers, such as establishing a monopoly over what they saw as legitimate legal practice, would also benefit the public, because it would protect unsuspecting clients from unprofessional charlatans.

On the other hand, many lawyers believed that some sort of defensive organization was necessary to combat similar collective protectionism on the part of other competitive groups in society such as manufacturers' and merchants' associations, and trade unions. In light of this ambivalence, one should be careful of blanket criticism of lawyers' disregard for the public interest.

Michael Bliss pointed out that the protective associations many groups in late nineteenth century Ontario formed were "collective conspiracies against the idea of a free market." The members of these groups, therefore, had to find some way to justify their

associations' existence. Most simply asked for the same privileges their competitors had. Other groups in society were being permitted to get away with the same thing. For many, particularly those in commerce, the justification for collective restraint of competition lay in the individual businessman's right to a living profit. They saw the trade association's purpose as providing a safety net to protect individuals from the ravages of unchecked competition. Others, most notably the professions, justified their collective actions with reference to the public interest. Although group action would benefit the members of the group, it would also benefit the general public.[107]

The evidence surrounding the formation and protective activities of various professional associations among late nineteenth century Ontario lawyers is entirely consistent with Bliss' analysis. The April, 1895 Canada Law Journal editorial cited above provided evidence of this. In calling for protective collectivization among lawyers, the Law Journal argued: "our profession suffers from want of cohesion. Our interests, in which is bound up the welfare of the public, are not properly protected, and cannot be

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[107]. Bliss, above note 83, 179-83.

unless the members act together as a whole."[108] In responding to this and other calls for collective action, associations of Ontario lawyers, including the Law Society, consistently invoked the public interest as a justification for professional protection.

The collective policies and actions of Ontario legal associations certainly were intended to benefit lawyers in the first instance and may have indeed been detrimental to the public interest. However, a condemnation of the profession as operating only out of callous self-interest in this respect is not justified.

Finally, the stratification thesis is not born out when applied to Ontario legal organizations. Although M.S. Larson's descriptions of hierarchical professional structures have been convincingly applied in two analyses of the United States bar, the structure of the Ontario legal profession seems to have differed substantially from its American counterpart in this respect.[109] The leadership of all organizations was certainly representative of only the most successful lawyers, but

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108. CLJ April 16, 1895, 224, (emphasis added.)

109. Jerold S. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America, (New York, 1976), 40-73; Andrew Barlow "Boston Brahmins and The Professionalization of The Law 1870-1920," unpub. paper presented to the Social Science History Association annual meeting, 1980, Rochester, N.Y.

for the most part their policies and actions were intended to benefit the membership as a whole.

More importantly, unlike many of the American law associations, Ontario organizations were open to all members of the profession, and most such organizations succeeded in attracting a high percentage of practitioners in their areas as members. Therefore, when they represented the interests of their own membership, they also represented those of all the lawyers in the area who wished to join.

The reasons for these differences stem not so much from the nature of the organizations as from the structure of the profession itself. The Ontario bar, through the Law Society, exercised much greater control over entry into the profession than the various American state bars could. As a consequence, the relative number of lawyers practising in the province was much smaller than in the U.S.[110]

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[110] Willard Hurst estimated that between 1880 and 1920 the ratio of population to lawyers in the United States was 786:1. During the same decades in Ontario the ratio was 1467:1. Hurst based his estimate on the data published by the U.S. Bureau, but he felt that the evidence he gained in a detailed study of the Wisconsin legal profession indicated that the Census [illegible]ely underestimated the number of lawyers in practice throughout the country. J. Willard Hurst The Growth of American Law: The Law Makers, (Boston, 1950) 314. See also, Appendix A, below.

Because, unlike their American professional brethren, lawyers in Ontario were largely able to control the number of new competitors entering their midst, it was not necessary to establish organizational-support mechanisms whose function was to maintain a rigid professional hierarchy. This is not to say that Ontario society was less stratified than that of the U.S., but that the legal profession in this province was smaller and more homogeneous than the American bar.

CHAPTER SEVEN

SUMMARY AND CONCLUSIONS

1. THE ARGUMENT

This dissertation argues that the Ontario bar became more professionalized during the late nineteenth and early twentieth centuries by striving to establish, enhance, and justify its occupational autonomy. The evidence to support this argument lies in its analysis of the bar's attempt to establish a monopoly over the supply of legal services, its reform of legal education, particularly the founding of Osgoode Hall Law School, its assumption of autonomous self-disciplinary powers, and the establishment of a network of bar associations.

A monopoly over the supply of legal services was an essential aspect of the professionalization of the bar, because such control would represent absolute market autonomy. If the legal profession could establish itself as the sole provider of such services, and if it could

gain recognition as the only legitimate judge of who was fit to enter its ranks, it would achieve control over its market.

During the late nineteenth century the Ontario bar tried to secure both of these ends by preventing the legislature from issuing private statutory licenses to practise law and by sponsoring legislation to prohibit non-lawyers offering advice concerning conveyancing. The fact that the legal profession failed in both regards is indicative of its surprising lack of political influence, yet it is significant that the attempt occurred.

The establishment of a mandatory law school at Osgoode Hall in 1889 was also an aspect of the professionalization of the bar. The legal profession wanted to be perceived by both the public and by its own members - as justified in its claims to professional status. In order to achieve this, the Law Society set out to reform legal education but, unlike its American counterparts, it refused to delegate any of its authority in the field to the universities. In this way, the Ontario bar maintained its autonomy and, therefore, approached the professional ideal type more closely than the American bar could.

Similarly, the Ontario legal profession achieved the ability to maintain autonomous, internal discipline among

its members during the late nineteenth and early twentieth centuries. Between 1876 and 1923 the forces of professionalization caused the transfer of this authority from the courts, an agency of the state, to the Law Society of Upper Canada, the bar's self-governing body.

Since its inception in 1797, the Law Society exercised some degree of de facto disciplinary authority over lawyers in the province, and in 1876 this governing body received the de jure authority to do so. Until 1970, the courts held a de jure authority to discipline lawyers but did not exercise it after 1923. Between 1876 and 1923, therefore, both the courts and the Law Society held and exercised both de facto and de jure disciplinary authority. During these years, however, the Law Society gradually enlarged its jurisdiction. By 1923, the bar had achieved autonomy in this area.

Finally, between 1879 and 1914, lawyers in Ontario established a network of bar associations at the county, provincial, and national levels. In the process, the members of the bar had to overcome regional and other conflicts of interest among themselves. Their purpose in doing so was not explicitly to enhance the legal profession's autonomy but to organize the bar to, among other things, provide vehicles and forums to justify its status and autonomy.

2. THE THEORY OF PROFESSIONALIZATION

Scholars are not all in agreement about the value of the concept of professionalization. Many historians are hesitant about adopting the highly theoretical models of contemporary social science and using them to analyse the past. They argue that many sociological interpretations are built on very limited historical understanding. Therefore, historians who rely on such models to conduct their own analysis run the risk of producing teleological interpretations.[1]

The same argument could be made to criticize Canadian historians' use of American models. If one makes assumptions about similarities between the two societies which are not based on sound empirical observation and,

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1. This observation is based on the comments of historians attending a legal education session at the 1985 meetings of the Canadian Historical Association in Montreal and the Canadian Law in History Conference held at Ottawa in June, 1987. Ironically, one might also observe an aspect of professionalism among individual academic disciplines in this discourse. Professionalization seems to provide one with a sense of the paramountcy of one's own qualifications and methods. Just as lawyers felt that they were the only ones qualified to define and provide legal services, many historians, understandably, feel that they are the only ones qualified to interpret the past. It is, of course, more difficult to show an economic aspect, such as competition for clients, in this interdisciplinary rivalry, but the defensive tone is quite evident in the arguments presented.

therefore, applies foreign models inappropriately or inflexibly, the resulting analysis will be flawed.

Anyone trying to interpret the history of the legal profession or any other social group would be wise to heed such criticism. Model building and testing does hold a certain concrete intellectual appeal, but one should be very careful not to try "to fit square pegs into round holes." Unless one is very careful not to establish an hypothesis too soon in the research process, nor to treat an hypothesis as a thesis, one may be overly selective in searching for evidence.[2] This author has tried to heed these warnings, but like any other scholarship the product is open to criticism of its substance and methodology.

Those historians who have accepted the value of the concept of professionalization do not agree on its definition. This author has adopted Eliot Freidson's definition which is centred on occupational autonomy. Freidson argued that occupational groups try to become professionalized because they want to control their markets. Those which achieve some success are to some

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2. For a comparable warning about the necessary balance between evidence and theory see David Flaherty's explanation of Willard Hurst's thoughts on this question in: "Writing Canadian Legal History: An Introduction," Flaherty (ed.), Essays in The History of Canadian Law Vol.I (Toronto, 1981), 3-42, at 5-6.

degree professionalized.[3]

It is important to understand, however, that the definition of "professional" cannot be a finite, attainable thing. It is an ideal type. An ideal type is an abstract concept which does not exist in reality. It is like the concept of infinity in mathematics in that it can be approached, and in fact its distance can be continuously lessened, but it can never be attained. If one thinks of "professional" as an ideal type involving absolute autonomy, one can describe the attempts of certain occupational groups to attain greater degrees of autonomy as "professionalization."

At the same time, it is difficult to ascribe specific, cognizant motivations to members of a large social group. M.S. Larson described the attempts by certain occupational groups to gain greater control over their markets as professional projects. She pointed out that this term,

> does not mean that the goals and strategies pursued by a given group are entirely clear or deliberate for all the members, nor even for the most determined and articulate among them.

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3. Eliot Freidson, Profession of Medicine: A Study of The Sociology of Applied Knowledge (New York, 1970). See also his "The theory of Professions: State of the Art," in Robert Dingwall and Philip Lewis (eds.), The Sociology of The Professions: Lawyers, Doctors, and Others (London, 1983), and "The Changing Nature of Professional Control," American Review of Sociology 10 (1984), 1-20.

> Applied to the historical results of a given course of action, the term "project" emphasizes the coherence and consistence that can be discovered ex post facto in a variety of apparently unconnected acts.[4]

Within this context, this dissertation argues that occupational autonomy was the coherent, if unarticulated, "project" among Ontario lawyers who fought for a monopoly over the supply of legal services, a compulsory law school, control over professional discipline, and bar associations.

Other historians do not agree that occupational autonomy is the best criterion to use to define professionalization. Some would argue that professionalization was really a function of justification of status or an attempt to gain or regain status. To this line of reasoning, the legal profession's attempts to reform legal education during the nineteenth century were intended to justify the bar's claim to exclusive control over the market for legal services.[5]

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4. Magali Sarfatti Larson, The Rise of Professionalism: A Sociological Analysis (Berkeley, Cal., 1977), 6. I am grateful to W. Wesley Pue of Carleton University for this particular reference.

5. See for instance, W. Wesley Pue, "Exorcising Professional Demons: Charles Rann Kennedy and the Transition to the Modern Bar," Law and Society Review 5 (1987), 135-74.

Perhaps, however, the "justification" and "autonomy" concepts of professionalization can be rationalized. In a democratic society which endorses at least the theory of the free market economy, surely the former is a prerequisite of the latter. If any occupational group is to achieve some degree of success in pressing its claim for control over its market, it must justify that claim to those who make political and economic decisions. In this way, "justification" is the means, "autonomy" is the end.

Still other scholars disagree as to the historical timing of professionalization. Wilfrid Prest, an historian of early modern England, has argued that most theories of professionalization mistakenly link it to industrialization. He disagrees with historians such as W.J. Reader, who claims that "...the professions as we know them are a Victorian creation, brought into being to serve the needs of an industrial society."[6] In Prest's opinion, despite the fact that,

> many occupations successfully laid claim to professional status during the classical era of English industrialization by establishing qualifying associations which gained some degree of recognition and protection from the state,

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6. Wilfrid Prest, "Why The History of The Professions Is Not Written," G.F. Rubin and David Sugarman (eds.), Law, Economy and Society: Essays in The History of English Law, 1750-1914 (Oxford, 1984), 300-20, at 303-4, quoting W.J. Reader, Professional Men: The Rise of the Professional Classes in Victorian England (1966), 9.

> [and] ...the onward march of science and technology contributed to this process, as also the expansion of the potential market for professional services during the later eighteenth and early nineteenth centuries. Yet it does not therefore follow that these interrelated developments constituted such a decisive break in the evolution of the professions that we must regard the later eighteenth to mid-nineteenth centuries, as marking a crucial divide between "proto-professions" and modern "professions" properly so-called.[7]

He argues that before concluding that the industrial revolution produced such a crucial divide, "we should need to establish that the quantitative proliferation of self-styled professions in the nineteenth century was accompanied by fundamental qualitative changes in the nature of professions."[8] He correctly points out that we simply do not know enough about pre-industrial professions to reach such a conclusion, but he has found in his own work that some surprising similarities may have existed.

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7. Prest, above note 6, 304.

8. Ibid. See also, Prest, The Rise of The Barristers (Oxford, 1986), and Geoffrey Holmes, Augustan England: Professions, State and Society, 1680-1730 (London, 1982). It is interesting to note that Prest is, in essence, making the same criticism of the historians of the post-industrial period that we have made of the sociologists. We have argued that much of the contemporary sociological theory of the professions lacks sufficient historical underpinnings. Prest is simply extending the argument back in time.

However, if one thinks of the concept of professionalism as an ideal type, it is arguable that many occupational groups have been striving for it for some time. This dissertation does not claim that the Ontario bar professionalized only during the late nineteenth and early twentieth centuries. To sustain such an argument, as Professor Prest points out, one would have to conduct much more thorough research into the periods before and after that era.*

This study does, however, present a link, if not a direct causal one, between the rapid social and economic changes taking place in late nineteenth and early twentieth century Ontario - including industrialization - and the professionalization of the bar. Ontario lawyers of that time felt the changes taking place within society and within the bar itself, and professionalization was a beneficial way to deal with it.

3. SUGGESTIONS FOR FURTHER RESEARCH

This dissertation does not purport to be the definitive study of the Ontario legal profession during the late nineteenth and early twentieth centuries. It

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*. In subsequent discussions, this author and Professor Prest have agreed that our theories on professionalization are compatible if one uses the concept as an ideal type.

simply offers an explanation for some of the institutional changes which the bar underwent during that era. There are many other research avenues to be explored in trying to understand the history of lawyers at that time.

One obvious area which might be investigated is the social composition of the bar. We know that Ontario society as a whole changed dramatically during the post-Confederation period, but we do not know whether the legal profession experienced similar social change. T.W. Acheson found that between 1885 and 1910 the national origins of Canada's industrial elite remained relatively consistent, despite significant changes in the ethnic composition of the population as a whole.[10]

A prosopographic study of lawyers, including such factors as recruitment, ethnicity, education, and property, similar to Gerard Gawalt's study of the late eighteenth and early nineteenth century Massachusetts bar, could help explain whether the demographics of the bar changed as those of the general population did.[11]

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10. T.W. Acheson, "Changing Social Origins of The Canadian Industrial Elite, 1880-1910," Glen Porter and Robert Cuff (eds.), Enterprise And National Development: Essays in Canadian Business And Economic History (Toronto; 1973).

11. Gerard W. Gawalt, The Promise of Power: The Emergence of The Legal Profession in Massachusetts, 1760-1840 (Westport, Conn., 1979).

A comprehensive study of a social group numbering close to two thousand at any given time would, of course, be a major research undertaking. Complete data on at least the basic characteristics of the members of the provincial bar are available, however, in the Law Society's archives. Alternately, a more detailed study employing sampling techniques could be attempted using the Law Society records and other sources of data, such as the manuscript census returns (prior to and including the 1881 return) and municipal assessment rolls.

Similarly, changes in legal practice should be studied. We need to know more about the impact of social and economic change on the types of services which lawyers provided. A study of court records could indicate whether lawyers' litigation practice changed. Such a study could utilize both the summaries of the types of law suits heard by the various courts in the province, published in the Ontario Sessional Papers, and the individual court records held by the Provincial Archives and local archives such as the Regional History Collection at The University of Western Ontario.

In a study of the case dockets of local courts in Boston, Robert Silverman showed the influence of economic change and industrial growth on litigation between 1880

and 1900.[12] Silverman's book could serve as a model for a similar study of Ontario courts, but his work does not deal with changes in lawyers' non-litigation practice nor with the relative importance of such practice to Boston lawyers.[13]

Willard Hurst identified what he felt was the most important trend in American legal practice during the late nineteenth and early twentieth centuries as a general shift from advocacy to counselling. Prior to that period, legal counselling usually involved preparation for litigation, but during that time many American lawyers apparently began to provide advice to their clients, which was primarily intended to avoid costly and time consuming litigation.[14]

A study of similar changes in legal practice in Ontario would require research into the various lawyers' papers held in the Provincial and local archives. The Ontario Archives has the papers of some prominent lawyers including S.B. Harrison and the Blake family as well as

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12. Robert A. Silverman, Law And Urban Growth: Civil Litigation in The Boston Trial Courts, 1880-1900 (Princeton, N.J., 1981).

13. See a review of Silverman by this author in The Urban History Review 10 (1982), 74-5.

14. J. Willard Hurst, The Growth of American Law: The Law Makers (Boston, 1950), 299.

those of less well known practitioners.[15] The Regional History Collection at the University of Western Ontario has an extensive collection of London and area lawyers' papers.[16]

In addition to analysing changes in legal practice, such a study could examine the organization of legal practice. It is generally assumed that the growth of the law firm can be traced to the late nineteenth century and the advent of the comprehensive corporate structure. This assumption could be tested by analysing the data provided in the annually published law lists, which included the names of all lawyers licensed to practise in the province and the name of their firm or partnership.

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15. Samuel B. Harrison (1802-67) was a member of the bar of the Inner Temple who emigrated to Canada in 1837 and practised in Kingston and later in Toronto. He served as a member of the Executive Council and of the Legislative Assembly and later as a judge of the York County Court. The Blake papers are very extensive and include material related to the political and legal careers of William Hume Blake and his sons Edward and Samuel Hume. The Archives also has the papers of Jacob Farrand Pringle, a nineteenth century judge from Cornwall, William Douglas, the Kent County Crown Attorney from 1869 to 1902, Peter Johnson Brown, a solicitor who practised in Ingersoll and Toronto between 1876 and 1904, and those of the Ottawa law firm of Lewis, Pinhey and Pinhey, Christie and Hill, and the Simcoe firm of Kelly and Porter.

16. These include some eighteen different sets of lawyers' papers, some of them very extensive, which include client files, letter books, draft contracts, litigation briefs, conveyancing files, and daybooks.

Clearly there are many more questions to ask about the history of the legal profession in Ontario. There also seems to be an abundant supply of research materials with which to approach these questions. The bar is a very important historical topic to be explored. This dissertation presents one way to interpret the development of the legal profession as a social institution during the late nineteenth and early twentieth centuries. It is hoped that, by doing so, it stimulates further research and other interpretations.

APPENDICES

APPENDIX A

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Algoma					
Blind River	0	0	0	2	1
	-	-	2,656	2,558	1,843
	-	-	-	1:1,279	1:1,843
Bruce Mines	0	0	0	1	1
	172@	750@	891	689	477
	-	-	-	1:689	1:477
*S.S. Marie	2	8	22	16	18
	780@	2,414	7,169	10,984	21,092
	1:390	1:302	1:326	1:679	1:1,172
Thessalon	0	0	3	2	2
	-	1,160	1,205	1,945	1,651
	-	-	1:402	1:973	1:550
District Totals					
Lawyers	3	8	25	21	22
Population	6,934	13,534	25,273	40,962	43,695
District Ratio	1:2,310	1:1,692	1:1,011	1:1,951	1:1,986
Urban Pop.	-	2,574	8,374	20,110	25,063
Percent Urban	0%	19%	33%	49%	57%
Rural Pop.	6,934	10,960	16,899	20,850	18,632
Percent Rural	100%	81%	67%	51%	43%
Brant					
*Brantford	17	18	24	22	21
	9,616	12,753	16,619	23,132	29,440
	1:566	1:709	1:692	1:1,051	1:1,402
Paris	2	2	3	2	3
	3,173	3,094	3,229	4,098	4,368
	1:1,587	1:1,547	1:1,076	1:2,049	1:1,456

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers	1881 Pop.	1881 Ratio	1891 Lawyers	1891 Pop.	1891 Ratio	1901 Lawyers	1901 Pop.	1901 Ratio	1911 Lawyers	1911 Pop.	1911 Ratio	1921 Lawyers	1921 Pop.	1921 Ratio
Brant (cont.)															
County Totals															
Lawyers	19			20			27			24			24		
Population	33,869			36,445			38,140			45,876			53,377		
County Ratio	1:1,783			1:1,822			1:1,413			1:1,912			1:2,224		
Urban Pop.	12,789			15,847			19,848			27,230			33,808		
Percent Urban	38%			43%			52%			59%			63%		
Rural Pop.	21,080			20,598			18,292			18,646			19,569		
Percent Rural	62%			57%			48%			41%			37%		
Bruce															
Chesley	0			0			1			1			1		
	893			1,437			1,743			1,734			1,708		
	-			-			1:1,743			1:1,734			1:1,708		
Invermay	2			0			0			0			0		
	-			-			-			-			-		
	-			-			-			-			-		
Kincardine	3			2			3			3			3		
	2,876			2,631			2,077			1,956			2,077		
	1:959			1:1,316			1:692			1:652			1:692		
Lucknow	2			2			2			1			0		
	1,162			1,285			1,111			967			905		
	1:581			1:643			1:556			1:967			-		
Paisley	2			1			1			1			1		
	1,162			1,328			1,086			830			760		
	1:577			1:1,328			1:1,086			1:830			1:760		
Port Elgin	2			3			3			2			1		
	1,400			1,659			1,313			1,235			1,291		
	1:700			1:553			1:438			1:618			1:1,291		

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Bruce (cont.)					
Ripley	0	0	1	0	0
	-	-	-	-	-
	-	-	-	-	-
Southampton	1	0	0	0	0
	1,141	1,437	1,636	1,685	1,537
	1:1,141	-	-	-	-
Tara	0	1	1	1	1
	561	695	625	551	545
	-	1:695	1:625	1:551	1:545
Teeswater	0	1	1	1	0
	1,098	1,128	930	854	829
	-	1:1,128	1:930	1:854	-
*Walkerton	10	9	7	7	5
	2,604	3,061	2,971	2,601	2,344
	1:260	1:340	1:424	1:372	1:469
Wiarton	0	0	2	2	1
	786	1,984	2,443	2,266	1,726
	-	-	1:1,222	1:1,133	1:1,726
County Totals					
Lawyers	22	19	22	19	13
Population	65,218	64,603	59,020	50,032	44,285
County Ratio	1:2,964	1:3,400	1:2,683	1:2,633	1:3,407
Urban Pop.	13,993	17,195	16,396	15,330	15,464
Percent Urban	21%	27%	28%	31%	35%
Rural Pop.	51,225	47,408	42,624	34,702	28,821
Percent Rural	79%	73%	72%	69%	65%
Carleton					
Metcalfe	0	0	1	0	0
	-	-	-	-	-
	-	-	-	-	-

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Carleton (cont.)					
*Ottawa	52	64	92	98	135
	31,307	44,154	59,928	87,062	107,843
	1:602	1:690	1:651	1:888	1:799
County Totals					
Lawyers	52	64	93	98	135
Population	64,103	77,630	96,904	119,384	148,705
County Ratio	1:1,233	1:1,213	1:1,042	1:1,218	1:1,102
Urban Pop.	28,846	45,330	64,695	90,659	113,580
Percent Urban	45%	58%	67%	76%	76%
Rural Pop.	35,257	32,300	32,209	28,725	35,125
Percent Rural	55%	42%	33%	24%	24%
Dufferin					
Grand Valley	0	0	1	0	0
	-	-	-	-	-
	-	-	-	-	-
*Orangeville	10	4	9	6	3
	2,847	2,962	2,511	2,340	2,187
	1:285	1:741	1:279	1:390	1:729
Shelburne	1	1	2	2	2
	242	1,201	1,188	1,113	1,072
	1:242	1:1201	1:594	1:556	1:536
County Totals					
Lawyers	11	5	12	8	5
Population	22,084	22,332	21,036	17,740	15,415
County Ratio	1:2,008	1:4,466	1:1,753	1:2,218	1:3,083
Urban Pop.	3,580	4,164	4,450	4,228	3,879
Percent Urban	16%	19%	21%	24%	25%
Rural Pop.	18,504	18,168	16,586	13,512	11,536
Percent Rural	84%	81%	79%	76%	75%

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers / Pop. / Ratio	1891 Lawyers / Pop. / Ratio	1901 Lawyers / Pop. / Ratio	1911 Lawyers / Pop. / Ratio	1921 Lawyers / Pop. / Ratio
Elgin					
Aylmer	1	5	5	3	3
	1,540	2,166	2,204	2,102	2,194
	1:1,540	1:433	1:441	1:701	1:731
Dutton	0	0	2	1	1
	-	838	863	836	813
	-	-	1:432	1:836	1:813
Rodney	0	1	1	1	1
	-	-	728	676	756
	-	-	1:728	1:676	1:756
*St. Thomas	14	21	26	22	18
	8,367	10,366	11,485	14,054	16,026
	1:598	1:494	1:442	1:639	1:890
County Totals					
Lawyers	15	27	34	27	23
Population	42,361	43,377	43,586	44,312	44,984
County Ratio	1:2,824	1:1,605	1:1,282	1:1,641	1:1,956
Urban Pop.	11,664	14,847	15,957	20,085	22,265
Percent Urban	27%	34%	37%	45%	49%
Rural Pop.	30,697	28,530	27,629	24,227	22,719
Percent Rural	73%	66%	63%	55%	51%
Essex					
Amherstburg	1	0	4	3	2
	2,672	2,279	2,222	2,560	2,769
	1:2,672	-	1:556	1:853	1:1,385
Comber	0	0	1	0	0
	-	-	-	-	-
	-	-	-	-	-
Essex	0	3	2	1	1
	-	1,709	1,391	1,353	1,588
	-	1:570	1:696	1:1,353	1:1,588

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Essex (cont.)					
Gesto	0	1	0	0	0
	-	-	-	-	-
	-	-	-	-	-
Kingsville	0	1	3	2	2
	863	1,335	1,537	1,427	1,783
	-	1:1,335	1:512	1:714	1:892
Leamington	1	2	2	2	3
	1,411	1,910	2,451	2,652	3,675
	1:1,411	1:955	1:1,226	1:1,326	1:1,225
*Sandwich	0	0	0	0	0
	1,143	1,352	1,450	2,302	4,415
	-	-	-	-	-
Walkerville	0	0	1	1	3
	-	933	1,595	3,302	7,059
	-	-	1:1,595	1:3,302	1:2,353
Windsor	11	19	31	21	49
	6,561	10,322	17,153	17,829	38,591
	1:596	1:543	1:392	1:849	1:786
County Totals					
Lawyers	13	26	44	30	60
Population	46,962	55,545	58,744	67,547	102,575
County Ratio	1:3,612	1:2,136	1:1,335	1:2,252	1:1,710
Urban Pop.	13,206	20,497	23,406	32,351	69,142
Percent Urban	28%	37%	40%	48%	67%
Rural Pop.	33,756	35,048	35,338	33,396	33,433
Percent Rural	72%	63%	60%	52%	33%

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Frontenac					
*Kingston	25	23	27	20	16
	14,091	19,263	17,916	18,874	21,753
	1:564	1:838	1:664	1:944	1:1,360
County Totals					
Lawyers	25	23	27	20	16
Population	42,384	47,009	44,534	42,604	44,494
County Ratio	1:1,695	1:2,044	1:1,649	1:2,130	1:2,781
Urban Pop.	16,320	21,649	20,030	20,810	24,104
Percent Urban	39%	46%	45%	49%	54%
Rural Pop.	26,064	25,360	25,504	12,586	20,390
Percent Rural	61%	54%	55%	51%	46%
Grey					
Dundalk	1	0	1	1	0
	-	696	762	687	675
	-	-	1:762	1:687	-
Durham	2	2	3	2	0
	1,059	1,273	1,422	1,581	1,494
	1:530	1:637	1:474	1:791	-
Flesherton	0	1	0	0	0
	-	-	-	-	422
	-	-	-	-	-
Markdale	0	1	1	3	2
	-	756	892	925	882
	-	1:756	1:892	1:308	1:441
Meaford	4	4	2	3	3
	1,866	1,999	1,916	2,811	2,650
	1:467	1:500	1:958	1:604	1:883
*Owen Sound	12	18	17	17	12
	4,426	7,497	8,776	12,558	12,190
	1:369	1:417	1:516	1:739	1:1,016

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Grey (cont.)					
Thornbury	0	1	1	1	0
	-	920	786	793	820
	-	1:920	1:786	1:793	-
County Totals					
Lawyers	19	27	25	27	18
Population	70,539	71,214	69,590	65,891	59,051
County Ratio	1:3,730	1:2,638	1:2,783	1:2,440	1:3,281
Urban Pop.	7,351	13,123	15,946	20,085	23,030
Percent Urban	10%	18%	23%	30%	39%
Rural Pop.	63,188	58,091	53,644	45,806	36,021
Percent Rural	90%	82%	77%	70%	61%
Haldimand					
Caledonia	1	0	1	0	2
	1,242	968	801	952	1,223
	1:1,242	-	1:801	-	1:612
*Cayuga	4	3	4	3	2
	830	822	771	736	784
	1:208	1:274	1:193	1:245	1:392
Dunnville	4	2	5	3	4
	1,808	1,776	2,105	2,861	3,224
	1:452	1:888	1:421	1:954	1:806
Hagersville	0	0	0	1	1
	-	1,061	1,020	1,106	1,169
	-	-	-	1:1,106	1:1,169
Jarvis	1	0	1	1	0
	-	-	429	510	485
	-	-	1:429	1:510	-

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Haldimand (cont.)					
County Totals					
Lawyers	10	5	11	8	9
Population	24,980	23,440	21,233	21,562	21,287
County Ratio	1:2,948	1:4,688	1:1,930	1:2,695	1:2,365
Urban Pop.	3,880	4,627	4,697	6,165	6,885
Percent Urban	16%	20%	22%	29%	32%
Rural Pop.	21,100	18,813	16,536	15,397	14,402
Percent Rural	84%	80%	78%	71%	68%
Haliburton					
*Minden	0	0	0	0	0
	-	-	-	-	-
	-	-	-	-	-
County Totals					
Lawyers	0	0	0	0	0
Population	5,911	6,350	6,559	6,320	6,209
County Rati	-	-	-	-	-
Urban Pop.	0	0	0	0	0
Percent Urb	0%	0%	0%	0%	0%
Rural Pop.	5,911	6,350	6,559	6,320	6,209
Percent Rur	100%	100%	100%	100%	100%
Halton					
Acton	0	0	3	1	1
	848	1,209	1,484	1,720	1,722
	-	-	1:495	1:1,720	1:1,722
Burlington	1	0	3	2	2
	1,068	1,325	1,119	1,831	2,709
	1:1,068	-	1:373	2:915	1:1,355
Georgetown	3	1	3	1	1
	1,471	1,509	1,313	1,583	2,061
	1:490	1:1,509	1:438	1:1,583	1:2,061

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Halton (cont.)					
*Milton	3	4	7	4	1
	1,302	1,450	1,372	1,654	1,873
	1:434	1:363	1:196	1:414	1:1,873
Oakville	1	1	1	1	1
	1,710	1,823	1,643	2,372	3,298
	1:1,710	1:1,823	1:1,643	1:2,372	1:3,298
County Totals					
Lawyers	8	6	17	9	6
Population	21,919	21,982	19,545	22,208	24,899
County Ratio	1:2,740	1:3,664	1:1,150	1:2,468	1:4,150
Urban Pop.	6,399	7,316	6,931	9,160	11,663
Percent Urban	29%	33%	35%	41%	47%
Rural Pop.	15,520	14,666	12,614	13,048	13,236
Percent Rural	71%	67%	65%	59%	53%
Hastings					
Bancroft	0	0	0	2	1
	-	-	554	625	768
	-	-	-	1:313	1:768
*Belleville	40	37	34	32	18
	9,516	9,916	9,117	9,876	12,206
	1:238	1:268	1:268	1:309	1:678
Deseronto	0	0	1	0	0
	1,670	3,338	3,527	2,013	1,847
	-	-	1:3,527	-	-
Madoc	1	1	3	3	2
	1,065	1,134	1,157	1,058	1,058
	1:1,065	1:1,134	1:231	1:353	1:529
Marmora	0	0	1	1	0
	-	-	961	1,866	948
	-	-	1:961	1,866	-

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Hastings (cont.)					
Stirling	1	0	2	1	1
	874	850	845	848	844
	1:874	-	1:423	1:848	1:844
Trenton	5	8	9	6	4
	3,042	4,363	4,217	3,988	5,902
	1:608	1:545	1:469	1:665	1:1,476
Tweed	0	0	1	1	0
	-	651	1,168	1,368	1,339
	-	-	1:1,168	1:1,368	-
County Totals					
Lawyers	47	46	53	46	26
Population	55,061	59,084	59,291	55,803	57,523
County Ratio	1:1,172	1:1,284	1:1,119	1:1,213	1:2,212
Urban. Pop.	16,167	20,262	20,992	20,642	25,977
Percent Urban	29%	34%	35%	37%	45%
Rural Pop.	15,520	14,666	12,614	13,048	13,236
Percent Rural	71%	64%	65%	63%	55%
Huron					
Brussels	0	3	3	1	1
	1,280	1,204	1,114	902	870
	-	1:401	1:371	1:902	1:870
Clinton	4	3	2	1	1
	2,606	2,635	2,547	2,254	2,018
	1:652	1:878	1:1,274	1:2,254	1:2,018
Exeter	2	4	4	4	3
	1,725	1,909	1,792	1,555	1,492
	1:863	1:452	1:448	1:389	1:481
*Goderich	19	11	13	8	5
	4,564	3,839	4,158	4,522	4,107
	1:240	1:349	1:320	1:565	1:821

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Huron (cont.)					
Hensal	0	0	1	1	1
	-	-	820	792	756
	-	-	1:820	1:792	1:756
Seaforth	3	2	5	3	3
	2,480	2,641	2,245	1,983	1,829
	1:827	1:1321	1:449	1:661	1:610
Wingham	1	4	3	6	4
	1,918	2,167	2,392	2,238	2,092
	1:1,918	1:542	1:797	1:373	1:523
County Totals					
Lawyers	29	27	31	24	18
Population	76,526	66,781	61,820	62,983	47,088
County Ratio	1:2,639	1:2,473	1:1,994	1:2,624	1:2,616
Urban Pop.	16,756	16,321	16,943	15,793	14,509
Percent Urban	22%	24%	27%	25%	31%
Rural Pop.	59,770	50,460	44,877	47,190	32,579
Percent Rural	78%	76%	73%	75%	69%
Kenora					
*Kenora (Rat Portage)	0	1	10	6	4
	-	1,806	5,202	6,158	5,407
	-	1:1,806	1:520	1:1,026	1:1,352
District Totals					
Lawyers	0	1	10	6	4
Population	4,564	4,984	10,369	15,490	16,662
District Ratio	-	1:4,984	1:1,037	1:2,582	1:1,466
Urban Pop.	-	1,806	6,498	8,665	8,880
Percent Urban	0%	36%	63%	56%	53%
Rural Pop.	4,564	3,178	3,871	6,825	7,782
Percent Rural	100%	64%	37%	44%	47%

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers	1881 Pop.	1881 Ratio	1891 Lawyers	1891 Pop.	1891 Ratio	1901 Lawyers	1901 Pop.	1901 Ratio	1911 Lawyers	1911 Pop.	1911 Ratio	1921 Lawyers	1921 Pop.	1921 Ratio
Kent															
Blenheim	0	1,212	-	1	1,708	1:1,708	2	1,653	1:827	2	1,387	1:694	1	1,565	1:1,565
Bothwell	1	965	1:965	1	897	1:897	2	907	1:454	1	690	1:690	0	633	-
*Chatham	13	7,873	1:606	40	9,052	1:226	32	9,068	1:283	22	10,770	1:490	20	13,256	1:663
Dresden	1	1,979	1:1,979	2	2,058	1:1,029	2	1,613	1:807	1	1,551	1:1,551	1	1,339	1:1,339
Ridgetown	2	1,539	1:769	2	2,254	1:1,127	6	2,405	1:401	3	1,954	1:641	2	1,955	1:928
Thamesville	0	740	-	1	798	1:798	2	864	1:432	1	807	1:807	1	800	1:800
Tilbury	0	-	-	0	720	-	4	784	1:196	0	962	-	0	1,123	-
Wallaceburg	2	1,525	1:763	1	2,726	1:2,726	3	2,763	1:921	3	3,438	1:1,146	2	4,006	1:2,003

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Kent (cont.)					
County Totals					
Lawyers	19	48	54	33	27
Population	54,310	57,814	57,194	55,995	57,949
County Ratio	1:2,858	1:1,204	1:1,059	1:1,697	1:2,146
Urban Pop.	15,832	19,415	20,057	21,559	25,582
Percent Urban	29%	34%	35%	39%	44%
Rural Pop.	38,478	38,399	37,137	34,436	32,367
Percent Rural	71%	66%	65%	61%	56%
Lambton					
Alvinston	0	1	1	0	0
	830	1,006	898	806	691
	-	1:1,006	1:898	-	-
Forest	0	1	2	1	0
	1,614	2,057	1,553	1,445	1,422
	-	1:2,057	1:777	1:1,445	-
Oil Springs	0	0	0	1	0
	552	1,138	1,018	646	490
	-	-	-	1:646	-
Petrolia	1	5	6	3	5
	3,465	4,357	4,135	3,518	3,148
	1:3,465	1:871	1:689	1:1,173	1:630
*Sarnia	12	10	16	12	16
	3,879	6,692	8,176	9,947	14,877
	1:323	1:669	1:511	1:829	1:930
Watford	1	2	3	1	1
	1,132	1,299	1,279	1,092	1,059
	1:1,132	1:650	1:426	1:1,092	1:1,059

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Lambton (cont.)					
County Totals					
Lawyers	14	19	28	18	22
Population	52,034	58,810	56,642	51,332	52,879
County Ratio	1:3,717	1:3,095	1:2,023	1:2,852	1:1,404
Urban Pop.	14,900	20,420	19,769	20,255	24,819
Percent Urban	29%	35%	35%	39%	47%
Rural Pop.	37,134	38,390	36,873	31,077	28,060
Percent Rural	71%	65%	65%	61%	53%
Lanark					
Almonte	1	5	5	4	2
	2,684	3,068	3,023	2,452	2,426
	1:671	1:614	1:605	1:613	1:1,213
Carleton Place	1	3	6	4	2
	1,975	4,435	4,059	3,621	3,841
	1:1,975	1:1,478	1:677	1:905	1:1,280
*Perth	9	8	11	9	7
	2,467	3,136	3,588	3,588	3,790
	1:274	1:392	1:326	1:399	1:541
Smith's Falls	1	5	6	5	6
	2,097	3,864	5,155	6,370	6,790
	1:2,097	1:773	1:859	1:1,274	1:1,132
County Totals					
Lawyers	15	21	28	22	18
Population	33,975	37,725	37,232	34,375	32,993
County Ratio	1:2,265	1:1,796	1:1,330	1:1,563	1:1,833
Urban Pop.	9,965	15,362	16,804	16,031	17,444
Percent Urban	29%	41%	45%	47%	53%
Rural Pop.	24,010	22,363	20,428	18,344	15,549
Percent Rural	71%	59%	55%	53%	47%

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers	1881 Pop.	1881 Ratio	1891 Lawyers	1891 Pop.	1891 Ratio	1901 Lawyers	1901 Pop.	1901 Ratio	1911 Lawyers	1911 Pop.	1911 Ratio	1921 Lawyers	1921 Pop.	1921 Ratio
Leeds and Grenville															
Athens	0	-	-	2	904	1:452	1	953	1:953	1	802	1:802	1	726	1:726
*Brockville	10	7,609	1:761	12	8,791	1:733	15	8,940	1:596	15	9,374	1:625	11	10,043	1:913
Gananoque	1	2,871	1:2,871	3	3,669	1:1,223	3	3,526	1:1,175	2	3,804	1:1,902	3	3,604	1:1,201
Kemptville	1	1,188	1:1,188	1	1,226	1:1,226	2	1,523	1:762	2	1,192	1:596	3	1,204	1:401
Merrickville	0	-	-	0	1,072	-	1	1,024	1:1,024	1	993	1:993	0	807	-
Newboro	0	418	-	1	462	1:462	0	432	-	0	469	-	0	346	-
Prescott	5	2,999	1:600	6	2,919	1:487	4	3,019	1:755	4	2,801	1:700	4	2,636	1:659
Westport	0	-	-	0	-	-	0	717	-	1	803	1:803	1	741	1:741

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Leeds and Grenville (cont.)					
County Totals					
Lawyers	17	25	26	26	23
Population	61,175	60,883	58,996	54,298	51,553
County Ratio	1:3,599	1:2,435	1:2,269	1:2,088	1:2,241
Urban Pop.	16,536	20,002	20,795	21,349	21,348
Percent Urban	27%	33%	35%	39%	41%
Rural Pop.	44,639	40,886	38,201	32,949	30,205
Percent Rural	73%	67%	65%	61%	59%
Lennox and Addington					
Flinton	0	0	1	0	0
	-	-	-	-	-
	-	-	-	-	-
*Napanee	11	11	9	9	8
	3,680	3,433	3,143	2,807	3,038
	1:335	1:312	1:349	1:312	1:380
County Totals					
Lawyers	11	11	10	9	8
Population	26,484	24,750	23,346	20,386	18,994
County Ratio	1:2,408	1:2,250	1:2,335	1:2,265	1:2,374
Urban Pop.	5,060	4,611	4,164	3,619	3,803
Percent Urban	19%	19%	18%	18%	20%
Rural Pop.	21,424	20,139	19,182	16,767	15,191
Percent Rural	81%	81%	82%	82%	80%
Lincoln					
Grimsby	0	2	3	1	1
	692	883	1,001	1,669	2,004
	-	1:442	1:334	1;1,669	1:2,004

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Lincoln (cont.)					
Niagara (-On-The-Lake)	3	0	0	0	0
	1,441	1,349	1,258	1,318	1,387
	1:480	-	-	-	-
*St. Catherines	20	19	17	15	16
	9,631	9,170	9,946	12,484	19,881
	1:482	1:483	1:585	1:832	1:1,243
Smithville	0	0	0	0	1
	-	-	-	-	-
	-	-	-	-	-
County Totals					
Lawyers	23	21	20	16	18
Population	31,573	30,079	30,552	35,429	48,629
County Ratio	1:1,373	1:1,432	1:1,526	1:2,214	1:2,701
Urban Pop.	15,376	15,005	15,872	19,389	28,534
Percent Urban	49%	50%	52%	55%	59%
Rural Pop.	16,197	15,074	14,680	16,040	20,091
Percent Rural	51%	50%	48%	45%	41%
Manitoulin					
*Gore Bay	0	0	2	4	3
	-	472	723	703	635
	-	-	1:362	1:176	1:212
Little Current	0	0	1	1	0
	-	-	728	1,208	923
	-	-	1:728	1:1,208	-

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Manitoulin (cont.)					
District Totals					
Lawyers	0	0	3	5	3
Population	8,460	10,794	11,828	11,324	10,468
District Ratio	-	-	1:3,943	1:2,265	1:3,489
Urban Pop.	-	472	1,451	1,911	1,558
Percent Urban	0%	4%	12%	17%	15%
Rural Pop.	8,460	10,322	10,377	9,413	8,910
Percent Rural	100%	96%	88%	83%	85%
Middlesex					
Glencoe	0	3	2	2	2
	801	976	1,034	841	862
	-	1:325	1:517	1:420	1:431
*London	55	67	65	61	57
	26,266	31,977	37,976	46,300	60,959
	1:478	1:477	1:584	1:759	1:1,069
Lucan	1	1	1	1	1
	976	920	848	709	683
	1:976	1:920	1:848	1:709	1:683
Parkhill	2	3	3	2	2
	1,539	1,680	1,430	1,289	1,152
	1:770	1:560	1:477	1:645	1:576
Strathroy	4	4	4	4	4
	3,817	3,316	2,933	2,823	2,691
	1:954	1:829	1:733	1:706	1:673

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Middlesex (cont.)					
County Totals					
Lawyers	62	78	75	70	66
Population	93,081	92,344	92,702	97,065	106,865
County Ratio	1:1,501	1:1,184	1:1,236	1:1,387	1:1,619
Urban Pop.	34,328	42,347	45,762	53,147	67,417
Percent Urban	37%	46%	49%	55%	63%
Rural Pop.	58,753	49,997	46,940	43,918	39,448
Percent Rural	73%	54%	51%	45%	37%
Muskoka					
*Bracebridge	3	2	3	7	3
	1,260	1,419	2,479	2,776	2,451
	1:420	1:710	1:826	1:397	1:817
Gravenhurst	0	1	2	0	0
	1,015	1,848	2,146	1,624	1,478
	-	1:1,848	1:1,073	-	-
Huntsville	1	1	3	3	2
	-	1,159	2,152	2,358	2,246
	-	1:1,159	1:717	1:786	1:1,123
District Totals					
Lawyers	4	4	8	10	5
Population	12,973	15,666	20,971	21,233	19,601
District Ratio	1:3,243	1:3,917	1:2,621	1:2,123	1:3,920
Urban Pop.	1,260	4,426	7,100	7,136	6,975
Percent Urban	10%	28%	34%	34%	36%
Rural Pop.	11,713	11,240	13,871	14,097	12,626
Nipissing					
Latchford	0	0	0	1	0
	-	-	-	-	-
	-	-	-	-	-

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Nipissing (cont.)					
Mattawa	0	0	1	0	0
	322@	1,438	1,400	1,524	1,462
	-	-	1:1,400	-	-
North Bay	0	2	3	9	10
	-	1,848	2,530	7,737	10,692
	-	1:924	1:843	1:860	1:1,069
Sturgeon Falls	0	0	6	2	2
	-	-	1,418	2,199	4,125
	-	-	1:236	1:1,100	1:2,063
District Totals					
Lawyers	0	2	10	12	12
Population	1,774	10,654	17,306	28,066	34,541
County Ratio	-	1:5,327	1:1,731	1:2,389	1:2,878
Urban Pop.	-	3,286	6,135	12,833	17,626
Percent Urban	0%	31%	35%	46%	51%
Rural Pop.	1,774	7,368	11,171	15,233	16,915
Percent Rural	100%	69%	65%	54%	49%
Norfolk					
Delhi	0	0	1	1	1
	-	-	823	825	733
	-	-	1:823	1:825	
1:733					
Port Rowan	1	0	0	1	2
	-	649	657	721	672
	-	-	-	1:721	1:336
*Simcoe	14	10	15	9	10
	2,645	2,674	2,627	3,227	3,953
	1:189	1:267	1:175	1:359	1:395

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Norfolk (cont.)					
Waterford	0	1	1	0	0
	1,118	1,212	1,122	1,083	1,123
	-	1:1,212	1:1,122	-	-
County Totals					
Lawyers	15	11	17	11	13
Population	33,527	30,992	29,147	27,110	26,366
County Ratio	1:2,235	1:2,817	1:1,715	1:1,465	1:2,028
Urban Pop.	4,909	5,748	6,406	6,994	7,943
Percent Urban	15%	19%	22%	26%	30%
Rural Pop.	28,618	25,244	22,741	20,116	18,432
Percent Rural	85%	81%	78%	74%	70%
Northumberland and Durham					
Bowmanville	7	4	6	3	5
	3,504	3,377	2,731	2,814	3,233
	1:501	1:844	1:455	1:938	1:647
Brighton	3	3	2	1	2
	1,547	1,479	1,378	1,320	1,411
	1:516	1:493	1:689	1:1,320	1:706
Campbellford	2	3	4	2	3
	1,418	2,424	2,485	3,051	2,890
	1:709	1:808	1:621	1:1,526	1:963
*Cobourg	11	11	9	8	6
	4,957	4,829	4,239	5,074	5,327
	1:451	1:439	1:471	1:634	1:888
Colborne	1	2	2	2	1
	1,079	1,068	1,017	999	932
	1:1,079	1:534	1:509	1:500	1:932

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Northumberland and Durham (cont.)					
Hastings	1	0	2	2	0
	885	812	815	883	730
	1:885	-	1:408	1:442	-
Millbrook	1	3	2	2	1
	1,148	971	917	793	717
	1:1,148	1:321	1:459	1:397	1:717
Newcastle	2	1	2	1	0
	1,060	787	611	655	599
	1:530	1:787	1:305	1:655	-
Port Hope	9	6	6	4	4
	5,585	5,042	4,188	5,092	4,456
	1:621	1:840	1:698	1:1,273	1:1,111
District Totals					
Lawyers	37	43	35	23	22
Population	77,388	70,462	62,049	60,170	55,914
County Ratio	1:2,092	1:2,135	1:1,773	1:2,407	1:2,542
Urban Pop.	21,183	20,789	18,415	20,681	29,255
Percent Urban	27%	30%	30%	34%	36%
Rural Pop.	56,205	49,673	43,634	39,489	35,659
Percent Rural	73%	70%	70%	66%	64%
Ontario					
Beaverton	1	1	2	1	2
	-	850	855	1,015	933
	-	1:850	1:428	1:1,015	1:467
Cannington	1	1	1	1	1
	922	1,050	1,058	948	869
	1:922	1:1,050	1:1,058	1:948	1:869

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Ontario (cont.)					
Goodwood	0	1	0	0	0
	-	-	-	-	-
	-	-	-	-	-
Oshawa	3	5	5	4	7
	3,992	4,066	4,394	7,436	11,940
	1:1,331	1:813	1:879	1:1,859	1:1,706
Port Perry	4	5	2	3	2
	1,800	1,698	1,465	1,148	1,143
	1:450	1:340	1:733	1:383	1:572
Uxbridge	3	3	5	4	2
	1,824	2,023	1,657	1,433	1,456
	1:608	1:674	1:331	1:358	1:728
*Whitby	12	8	8	7	3
	3,140	2,786	2,110	2,248	3,957
	1:262	1:348	1:264	1:321	1:1,319
County Totals					
Lawyers	24	24	23	20	17
Population	48,812	46,355	40,408	41,006	46,494
County Ratio	1:2,034	1:1,890	1:1,757	1:2,050	1:2,735
Urban Pop.	11,687	12,473	11,539	14,228	20,298
Percent Urban	24%	28%	29%	35%	44%
Rural Pop.	37,134	32,882	28,869	26,778	26,196
Percent Rural	76%	72%	71%	65%	56%
Oxford					
Ingersoll	9	6	8	5	4
	4,318	4,191	4,573	4,763	5,150
	1:480	1:699	1:572	1:953	1:1,288
Norwich	0	2	2	1	1
	1,411	1,255	1,269	1,112	1,176
	-	1:628	1:635	1:1,112	1:1,176

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Oxford (cont.)					
Tilsonburg	3	2	8	4	3
	1,939	2,163	2,241	2,758	2,974
	1:646	1:1,082	1:280	1:690	1:991
*Woodstock	14	20	18	13	11
	5,373	8,612	8,833	9,320	9,935
	1:384	1:381	1:491	1:717	1:903
County Totals					
Lawyers	26	30	36	23	19
Population	50,159	49,849	48,404	47,371	46,762
County Ratio	1:1,929	1:1,662	1:1,345	1:2,060	1:2,461
Urban Pop.	13,657	16,848	17,511	18,844	20,108
Percent Urban	27%	34%	36%	40%	43%
Rural Pop.	36,502	33,001	30,893	28,572	26,654
Percent Rural	73%	66%	64%	60%	57%
Parry Sound					
Burk's Falls	0	0	1	1	0
	-	449@	849	976	981
	-	-	1:849	1:976	-
*Parry Sound	0	2	5	5	5
	1,120	1,802	2,884	3,429	3,546
	-	1:901	1:577	1:686	1:709
District Totals					
Lawyers	0	2	6	6	5
Population	14,231	21,152	24,936	26,547	26,860
District Ratio	-	1:10,576	1:4,156	1:4,425	1:5,372
Urban Pop.	1,120	1,802	5,245	6,874	7,132
Percent Urban	8%	9%	21%	26%	27%
Rural Pop.	13,111	19,350	19,691	19,673	19,728
Percent Rural	92%	91%	79%	74%	73%

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Patricia					
-no urban centres					
District Totals					
Lawyers	0	0	0	0	0
Population	-	-	-	4,017	2,477
District Ratio	-	-	-	-	-
Urban Pop.	-	-	-	0	0
Percent Urban	-	-	-	-	-
Rural Pop.	-	-	-	4,017	2,477
Percent Rural	-	-	-	100%	100%
Peel					
*Brampton	8	12	13	7	7
	2,920	3,252	2,748	3,412	4,527
	1:365	1:271	1:211	1:487	1:647
Cooksville	1	0	0	0	0
	-	-	-	-	-
	-	-	-	-	-
Streetsville	0	0	1	1	0
	755	695	522	543	615
	-	-	1:522	1:543	-
County Totals					
Lawyers	8	12	13	7	7
Population	26,275	24,871	21,475	22,102	23,896
County Ratio	1:3,284	1:2,927	1:1,652	1:3,157	1:3,414
Urban Pop.	4,281	4,690	3,972	4,667	6,944
Percent Urban	16%	19%	18%	21%	29%
Rural Pop.	21,894	20,181	17,503	17,435	16,952
Percent Rural	84%	81%	82%	79%	71%

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers	1881 Pop.	1881 Ratio	1891 Lawyers	1891 Pop.	1891 Ratio	1901 Lawyers	1901 Pop.	1901 Ratio	1911 Lawyers	1911 Pop.	1911 Ratio	1921 Lawyers	1921 Pop.	1921 Ratio
Perth															
Atwood	0	-	-	0	-	-	1	-	-	0	-	-	0	-	-
Listowell	5	2,688	1:538	1	2,587	1:2,587	1	2,693	1:2,693	6	2,289	1:382	3	2,477	1:826
Mitchell	3	2,284	1:761	3	2,101	1:700	3	1,945	1:648	2	1,766	1:883	1	1,800	1:1,800
St. Mary's	4	3,415	1:854	4	3,416	1:854	3	3,384	1:1,128	3	3,388	1:1,129	4	3,847	1:962
*Stratford	19	8,239	1:434	10	9,500	1:950	15	9,959	1:664	10	12,946	1:1,295	9	16,094	1:1,788
County Totals															
Lawyers	31			18			23			21			17		
Population		53,693			51,716			49,871			49,182			50,843	
County Ratio			1:1,732			1:2,873			1:2,168			1:2,342			1:2,991
Urban Pop.		17,188			18,207			18,679			21,789			25,767	
Percent Urban		32%			35%			37%			44%			51%	
Rural Pop.		36,505			34,597			31,192			27,393			25,076	
Percent Rural		68%			65%			63%			56%			49%	
Peterborough															
Havelock	0	-	-	0	-	-	0	894	-	1	1436	1:1436	1	1268	1:1268
Lakefield	0	992	-	1	1,120	1:1,120	1	1,244	1:1,244	1	1,397	1:1,397	0	1,189	-

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Peterborough (cont.)					
Norwood	1	0	2	0	0
	853	1,010	945	811	765
	1:853	-	1:473	-	-
*Peterborough	20	25	25	22	22
	6,812	9,717	12,886	18,360	20,994
	1:341	1:389	1:515	1:835	1:954
County Totals					
Lawyers	21	26	28	24	23
Population	30,472	34,597	36,066	40,783	42,261
County Ratio	1:1,451	1:1,331	1:1,288	1:1,699	1:1,837
Urban Pop.	9,923	13,521	16,059	22,004	24,216
Percent Urban	33%	39%	45%	54%	57%
Rural Pop.	20,549	21,076	20,007	18,779	18,045
Percent Rural	67%	61%	55%	46%	43%
Prescott and Russell					
Alfred	9	5	0	0	0
	-	-	-	-	-
	-	-	-	-	-
Hawkesbury	0	1	2	1	2
	1,920	2,042	4,150	4,400	5,544
	-	1:2,042	1:2,075	1:4,400	1:2,772
*L'Orignal	5	3	4	4	1
	853	1,002	1,026	1,347	1,298
	1:171	1:334	1:257	1:337	1:1,298
Russell	0	0	1	0	0
	-	-	-	-	-
	-	-	-	-	-
Vankleek Hill	0	1	2	2	3
	-	-	1,674	1,577	1,499
	-	-	1:837	1:789	1:500

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers	1881 Pop.	1881 Ratio	1891 Lawyers	1891 Pop.	1891 Ratio	1901 Lawyers	1901 Pop.	1901 Ratio	1911 Lawyers	1911 Pop.	1911 Ratio	1921 Lawyers	1921 Pop.	1921 Ratio
Prescott and Russell (cont.)															
District Totals															
Lawyers	14			10			9			7			6		
Population	35,937			42,462			47,317			48,617			47,599		
County Ratio	1:2,567			1:4,246			1:5,257			1:6,945			1:7,933		
Urban Pop.	2,773			5,855			9,555			11,677			12,814		
Percent Urban	8%			14%			20%			24%			27%		
Rural Pop.	33,164			36,607			37,762			36,940			34,785		
Percent Rural	92%			86%			80%			76%			73%		
Prince Edward															
*Picton	6			11			10			7			5		
	2,975			3,287			3,698			3,564			3,356		
	1:496			1:299			1:370			1:509			1:671		
County Totals															
Lawyers	6			11			10			7			5		
Population	21,044			18,889			17,864			17,150			16,806		
County Ratio	1:3,507			1:1,717			1:1,786			1:2,450			1:3,361		
Urban Pop.	3,573			3,842			4,871			4,959			4,780		
Percent Urban	17%			20%			27%			29%			28%		
Rural Pop.	17,471			15,047			12,993			12,191			12,026		
Percent Rural	83%			80%			73%			71%			72%		
Rainy River															
Fort Francis	0			0			2			3			5		
	-			1,339@			1,163			1,611			3,109		
	-			-			1:582			1:537			1:622		
Rainy River	0			0			0			1			1		
	-			-			-			1,578			1,444		
	-			-			-			1:1,578			1:1,444		

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Rainy River (cont.)					
Wabigoon	0 - -	0 - -	2 - -	0 - -	0 - -
District Totals					
Lawyers	0	0	4	4	6
Population	-	2,210	6,568	10,429	13,518
District Ratio	-	-	1:1,642	1:2,607	1:2,253
Urban Pop.	-	0	1,163	3,189	4,553
Percent Urban	-	0%	18%	31%	34%
Rural Pop.	-	2,210	5,405	7,240	8,965
Percent Rural	-	100%	82%	69%	66%
Renfrew					
Arnprior	2 2,417 1:1,074	3 3,341 1:1,114	6 4,152 1:692	5 4,405 1:881	4 4,077 1:1,019
Eganville	0 - -	0 710 -	3 1,107 1:369	2 1,189 1:595	3 1,015 1:338
Killaloe	0 - -	0 - -	1 463 1:463	0 435 -	0 522 -
*Pembroke	8 2,820 1:352	10 4,401 1:440	12 5,156 1:430	11 5,616 1:511	10 7,875 1:788
Renfrew	1 1,605 1:1,605	2 2,611 1:1,306	6 3,153 1:526	6 3,846 1:641	7 4,906 1:701

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Renfrew (cont.)					
County Totals					
Lawyers	11	15	28	24	24
Population	38,482	46,977	52,715	51,856	51,505
County Ratio	1:3,498	1:3,132	1:1,883	1:2,161	1:2,146
Urban Pop.	6,572	11,063	14,302	16,263	19,106
Percent Urban	17%	24%	27%	31%	37%
Rural Pop.	31,910	35,914	38,413	35,593	32,399
Percent Rural	83%	76%	73%	69%	63%
Simcoe					
Alliston	1	3	2	2	2
	1,099	1,371	1,256	1,279	1,376
	1:1,099	1:457	1:628	1:640	1:688
*Barrie	18	20	22	13	9
	4,854	5,550	5,949	6,420	6,936
	1:270	1:278	1:270	1:494	1:771
Beeton	1	0	1	1	0
	-	771	634	564	582
	-	-	1:634	1:564	-
Bradford	3	2	3	3	2
	1,176	996	984	946	961
	1:392	1:498	1:328	1:315	1:481
Collingwood	3	5	6	6	4
	4,445	4,939	5,755	7,090	5,882
	1:1,482	1:988	1:959	1:1,182	1:1,471
Elmvale	0	0	1	0	0
	-	-	-	-	-
	-	-	-	-	-
Midland	0	2	3	4	4
	1,095	2,088	3,174	4,663	7,016
	-	1:1,044	1:1,058	1:1,166	1:1,754

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Simcoe (cont.)					
Orillia	6	7	10	9	5
	2,910	4,752	4,907	6,828	8,774
	1:485	1:679	1:491	1:759	1:1,755
Penetanguishene	1	3	2	2	2
	1,089	2,110	2,422	3,568	4,037
	1:1,089	1:703	1:1,211	1:1,784	1:2,019
Stayner	1	2	2	3	2
	1,028	1,357	1,225	1,039	972
	1:1,028	1:679	1:613	1:346	1:486
Tottenham	0	0	0	2	1
	-	586	611	517	494
	-	-	-	1:259	1:494
County Totals					
Lawyers	34	44	52	45	31
Population	74,803	82,727	82,315	85,053	84,032
County Ratio	1:2,200	1:1,800	1:1,583	1:1,957	1:2,711
Urban Pop.	17,696	25,241	27,571	35,822	40,878
Percent Urban	24%	31%	33%	42%	49%
Rural Pop.	57,107	57,486	54,744	49,231	43,154
Percent Rural	76%	69%	67%	58%	51%
Stormont, Dundas, and Glengarry					
Alexandria	3	2	5	4	3
	-	1,614	1,911	2,323	2,195
	-	1:807	1:382	1:581	1:732
Chesterville	0	0	3	1	2
	-	775	932	883	967
	-	-	1:311	1:883	1:484

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Stormont, Dundas, and Glengarry (cont.)					
*Cornwall	11	10	18	16	13
	4,468	6,805	6,704	6,598	7,419
	1:406	1:681	1:372	1:412	1:571
Iroquois	1	1	2	1	1
	1,001	1,047	1,097	849	916
	1:1,001	1:1,047	1:549	1:849	1:916
Lancaster	0	1	2	2	1
	-	700	583	624	672
	-	1:700	1:292	1:312	1:672
Maxville	0	1	0	0	0
	-	-	749	759	725
	-	-	-	-	-
Morrisburg	3	7	6	3	3
	1,719	1,859	1,693	1,696	1,444
	1:573	1:266	1:282	1:565	1:421
Williamstown	0	0	2	1	1
	-	-	-	-	-
	-	-	-	-	-
Winchester	0	1	2	1	1
	-	962	1,101	1,143	1,126
	-	1:962	1:551	1:1,143	1:1,126
District Totals					
Lawyers	18	23	40	29	25
Population	66,017	69,735	68,930	63,199	62,961
County Ratio	1:3,368	1:3,032	1:1,723	1:2,179	1:2,518
Urban Pop.	7,188	13,762	14,770	15,277	15,847
Percent Urban	11%	20%	21%	24%	25%
Rural Pop.	58,829	55,973	54,160	48,922	47,114
Percent Rural	89%	80%	79%	76%	75%

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Sudbury					
*Sudbury	0	1	4	9	15
	-	-	2,027	4,150	8,621
	-	-	1:507	1:461	1:575
District Totals					
Lawyers	0	1	4	9	15
Population	-	4,842	16,103	29,778	43,029
District Ratio	-	1:4,842	1:4,026	1:3,309	1:2,869
Urban Pop.	-	0	5,814	9,303	14,265
Percent Urban	-	0%	36%	31%	33%
Rural Pop.	-	4,842	10,289	20,475	28,764
Percent Rural	-	100%	64%	69%	67%
Thunder Bay					
Fort William	0	1	4	14	15
	690@	2,176@	3,633	16,499	20,541
	-	1:2,176	1:908	1:1,500	1:1,369
*Port Arthur	0	8	5	11	11
	1,275@	2,698	3,214	11,220	14,886
	-	1:337	1:643	1:1,020	1:1,353
District Totals					
Lawyers	0	9	9	22	26
Population	4,056	8,000	11,219	39,496	49,560
District Ratio	-	1:889	1:1,247	1:1,795	1:1,906
Urban Pop.	0	2,698	6,847	27,719	35,427
Percent Urban	0%	34%	61%	70%	71%
Rural Pop.	4,056	5,302	4,372	11,777	14,133
Percent Rural	100%	66%	39%	30%	29%
Timiskaming					
Cobalt	0	0	0	6	4
	-	-	-	5,638	4,449
	-	-	-	1:940	1:1,112

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers	1881 Pop.	1881 Ratio	1891 Lawyers	1891 Pop.	1891 Ratio	1901 Lawyers	1901 Pop.	1901 Ratio	1911 Lawyers	1911 Pop.	1911 Ratio	1921 Lawyers	1921 Pop.	1921 Ratio
Timiskaming (cont.)															
Cochrane	0	-	-	0	-	-	0	-	-	1	1,715	1:1,715	4	2,655	1:664
Elk Lake	0	-	-	0	-	-	0	-	-	8	-	-	1	-	-
Gowganda	0	-	-	0	-	-	0	-	-	2	-	-	0	-	-
*Haileybury	0	-	-	0	-	-	0	-	-	10	3,874	1:387	7	3,743	1:535
New Liskeard	0	-	-	0	-	-	0	-	-	1	2,108	1:527	2	2,268	1:1134
Porcupine	0	-	-	0	-	-	0	-	-	3	-	-	1	-	-
South Porcupine	0	-	-	0	-	-	0	-	-	0	-	-	1	-	-
Swastika	0	-	-	0	-	-	0	-	-	0	-	-	1	-	-
Timmins	0	-	-	0	-	-	0	-	-	0	-	-	4	3,843	1:961

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Timiskaming (cont.)					
District Totals					
Lawyers	0	0	0	32	25
Population	-	-	1,252	38,828	52,950
District Ratio	-	-	-	1:1,213	1:2,118
Urban Pop.	-	-	0	14,897	20,899
Percent Urban	-	-	0%	38%	39%
Rural Pop.	-	-	1,252	23,931	32,051
Percent Rural	-	-	100%	62%	61%
Victoria					
Fenelon Falls	3	0	0	0	0
	1,155	1,219	1,132	1,053	1,031
	1:385	-	-	-	-
*Lindsay	16	13	14	13	11
	5,080	6,081	7,003	6,964	7,620
	1:318	1:468	1:500	1:536	1:693
Woodville	0	0	1	0	0
	-	323	458	394	452
	-	-	1:458	-	-
County Totals					
Lawyers	19	13	15	13	11
Population	33,655	32,991	31,952	30,179	27,786
County Ratio	1:1,771	1:2,538	1:2,130	1:2,321	1:2,526
Urban Pop.	7,729	9,328	10,081	9,916	10,755
Percent Urban	23%	28%	32%	33%	39%
Rural Pop.	25,926	23,663	21,871	20,263	17,031
Percent Rural	77%	72%	68%	67%	61%
Waterloo					
Ayr	1	0	0	0	0
	-	1,040	827	823	777
	-	-	-	-	-

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Waterloo (cont.)					
Elmira	0	0	1	0	0
	-	1,069	1,060	1,782	2,016
	-	-	1:1,060	-	-
Galt	5	7	8	6	7
	5,197	7,525	7,866	10,299	13,216
	1:1,039	1:1,075	1:983	1:1,717	1:1,888
Hespeller	0	0	1	0	0
	698	1,482	2,457	2,368	2,777
	-	-	1:2,457	-	-
*Kitchener (Berlin)	5	7	8	6	7
	4,054	7,425	9,747	15,196	21,763
	1:811	1:1,061	1:1,218	1:2,533	1:3,109
New Hamburg	1	1	1	1	0
	1,240	1,335	1,208	1,484	1,351
	1:1,240	1:1,335	1:1,208	1:1,484	-
Preston	0	1	1	1	1
	1,419	1,843	2,308	3,883	5,423
	-	1:1,843	1:2,308	1:3,883	1:5,423
Waterloo	1	1	3	1	3
	2,066	2,941	3,537	4,359	5,883
	1:2,066	1:2,941	1:1,179	1:4,359	1:1,961
County Totals					
Lawyers	13	17	24	19	25
Population	42,740	50,464	52,594	62,607	75,266
County Ratio	1:3,288	1:2,968	1:2,191	1:3,296	1:3,011
Urban Pop.	14,664	24,670	29,010	40,194	43,206
Percent Urban	34%	49%	55%	64%	57%
Rural Pop.	28,076	25,798	23,584	22,413	22,060
Percent Rural	66%	51%	45%	36%	43%

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers	1881 Pop.	1881 Ratio	1891 Lawyers	1891 Pop.	1891 Ratio	1901 Lawyers	1901 Pop.	1901 Ratio	1911 Lawyers	1911 Pop.	1911 Ratio	1921 Lawyers	1921 Pop.	1921 Ratio
Welland															
Clifton	1	-	-	0	-	-	0	-	-	0	-	-	0	-	-
Fort Erie	0	722	-	0	934	-	1	890	1:890	0	1,146	-	0	1,546	-
Niagara Falls	0	2,317	-	4	3,349	1:837	6	5,702	1:950	9	9,248	1:1,028	12	14,764	1:1,230
Port Colborne	1	1,716	1:1,716	0	1,154	-	1	1,253	1:1,253	2	1,624	1:812	2	3,415	1:1,708
*Welland	4	1,870	1:468	5	2,035	1:407	8	1,863	1:233	10	5,318	1:532	13	8,654	1:666
County totals															
Lawyers	6			11			19			22			28		
Population	31,771			30,631			31,588			42,163			66,668		
County Ratio	1:5,296			1:2,784			1:1,663			1:1,917			1:2,381		
Urban Pop.	9,775			11,447			13,503			22,086			38,564		
Percent Urban	31%			37%			43%			52%			58%		
Rural Pop.	21,996			19,184			18,085			20,077			28,104		
Percent Rural	69%			63%			57%			48%			42%		
Wellington															
Arthur	1	1,257	1:1,257	3	1,296	1:432	2	1,285	1:643	2	1,102	1:551	1	1,104	1:1,104
Drayton	0	587	-	2	793	1:397	2	791	1:395	0	706	-	0	600	-

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Wellinton (cont.)					
Elora	3	3	2	1	1
	1,387	1,394	1,187	1,197	1,136
	1:462	1:435	1:594	1:1,197	1:1,136
Erin	1	1	2	1	0
	477	594	511	511	479
	1:477	1:594	1:256	1:511	-
Fergus	1	3	1	1	1
	1,733	1,598	1,396	1,534	1,796
	1:433	1:532	1:1,396	1:1,534	1:1,796
*Guelph	19	17	18	19	14
	9,890	10,537	11,496	15,175	18,128
	1:521	1:620	1:639	1:799	1:1,295
Harriston	3	3	3	2	1
	1,772	1,687	1,637	1,491	1,263
	1:591	1:562	1:546	1:746	1:1,263
Mount Forest	3	3	7	6	3
	2,170	2,214	2,019	1,839	1,718
	1:723	1:738	1:288	1:307	1:573
Palmerston	0	1	3	1	1
	1,828	2,006	1,850	1,665	1,523
	-	1:2,006	1:617	1:1,665	1:1,523
County Totals					
Lawyers	34	36	40	33	22
Population	64,641	59,350	55,646	54,492	54,160
County Ratio	1:1,901	1:1,649	1:1,391	1:1,651	1:2,462
Urban Pop.	21,823	22,663	22,780	25,915	28,216
Percent Urban	34%	38%	41%	48%	52%
Rural Pop.	42,818	36,687	32,866	28,577	25,944
Percent Rural	66%	62%	59%	52%	48%

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
Wentworth					
Ancaster	0	0	1	1	1
	-	-	-	-	-
	-	-	-	-	-
Dundas	7	5	6	4	3
	3,709	3,546	3,173	4,299	4,978
	1:530	1:709	1:529	1:1,075	1:1,659
*Hamilton	62	73	72	72	99
	36,661	48,959	52,634	81,969	114,151
	1:591	1:671	1:731	1:1,138	1:1,153
Lynden	0	1	0	0	0
	-	-	-	-	-
	-	-	-	-	-
County Totals					
Lawyers	69	79	79	77	103
Population	66,952	77,114	79,452	111,706	153,569
County Ratio.	1:970	1:976	1:1,006	1:1,451	1:1,493
Urban Pop.	40,522	53,188	56,429	87,124	119,883
Percent Urban	61%	69%	71%	78%	78%
Rural Pop.	26,430	23,926	23,023	24,582	33,684
Percent Rural	39%	31%	29%	22%	22%
York					
Aurora	0	2	3	0	
	1,540	1,743	1,590	1,901	2,30
	-	1:872	1:530	-	1:2,307
Markham	1	1	3	2	2
	954	1,100	967	909	1,012
	1:954	1:1,100	1:322	1:455	1:506
Newmarket	2	3	5	3	2
	2,006	2,143	2,125	2,996	3,626
	1:1,003	1:714	1:425	1:999	1:1,813

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

County (District) Town	1881 Lawyers Pop. Ratio	1891 Lawyers Pop. Ratio	1901 Lawyers Pop. Ratio	1911 Lawyers Pop. Ratio	1921 Lawyers Pop. Ratio
York (cont.)					
Queensville	1	0	0	0	0
	-	-	-	-	-
	-	-	-	-	-
Stouffville	0	1	6	4	3
	866	1,148	1,223	1,034	1,053
	-	1:1,148	1:204	1:259	1:351
Sutton	0	0	1	1	1
	-	686	646	753	789
	-	-	1:646	1:753	1:789
*Toronto	315	494	534	556	822
	96,196	181,215	209,829	381,833	521,893
	1:305	1:367	1:393	1:675	1:635
West Toronto	0	5	2	-	-
	-	4,518	6,091	-	-
	-	1:904	1:3,046	-	-
Weston	0	0	0	0	1
	-	1,194	1,083	1,975	3,166
	-	-	-	-	1:3,166
County Totals					
Lawyers	319	506	554	566	832
Population	153,113	245,101	272,663	444,234	647,665
County Ratio	1:480	1:484	1:492	1:785	1:778
Urban Pop.	100,009	199,276	226,860	395,121	542,694
Percent Urban	65%	81%	83%	89%	84%
Rural Pop.	53,104	48,525	45,803	49,113	104,971
Percent Rural	35%	19%	17%	11%	16%
Place of Practice Unknown	57	33	14	3	11

APPENDIX A

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

Provincial Totals

	1881	1891	1901	1911	1921
Lawyers	1,201	1,497	1,770	1,638	1,899
Population	1,926,922	2,114,321	2,182,947	2,527,292	2,933,662
Prov. Ratio	1:1,604	1:1,412	1:1,233	1:1,543	1:1,545
Urban Pop.	593,692	828,525	944,454	132,085	170,695
Percent Urban	31%	39%	43%	52%	58%
Rural Pop.	1,333,230	1,285,716	1,238,493	1,203,207	1,226,757
Percent Rural	69%	61%	57%	48%	42%

Note: The breakdown between urban and rural population in each county and district is based on the census definition of urban, which includes only incorporated villages, towns, or cities. This provides a relatively accurate picture of the degree of urbanization in the established counties in southern Ontario, but may be misleading for the rapidly developing northern districts. In Algoma District, for example, using this definition, the total urban population was only 8,374 in 1901. This does not include the 2,656 people living in Blind River, because it was not yet incorporated. Where population figures are listed for unincorporated centres, they are identified by the symbol "@".

APPENDIX A

DISTRIBUTION OF ONTARIO LAWYERS, 1881-1921 (cont.)

SOURCES:

Canada Census, 1931, vol. II, table 12, 61-87.

The Ontario Law Directory, (Toronto, 1880), 115-41.

The Official Law List, 1891, H.R. Hardy, ed. (Toronto, 1891), 7-33.

The Canadian Law List (Hardy's), 1901, H. Cartwright, ed. (Toronto, 1901), 57-85.

The Canadian Law List (Hardy's), 1911, H. Cartwright, ed. (Toronto, 1911), 166-78.

The Canadian Law Law List (Hardy's), 1921, (Toronto, 1921), 175-90.

Note: The Law Lists can be assumed to be accurate. Each contains a notation such as "compiled from the original rolls at Osgoode Hall," or, "To all registrars and clerks of courts: this is the official list for the current year of all barristers and solicitors entitled to practise in the courts of Ontario..."

APPENDIX B

SUITS ENTERED IN ONTARIO DIVISION COURTS, 1881-1921

COUNTY	1881	1891	1901	1911	1921
Algoma	296	870	691	1067	2,793
Brant	607	920	563	773	1,170
Bruce	2,030	1,306	906	809	883
Carleton	1,325	1,915	2,047	2,423	3,974
Dufferin	1,038	690	480	327	336
Elgin	1,397	1,234	951	1,300	1,301
Essex	1,604	2,135	1,417	1,279	2,350
Frontenac	800	992	765	1,050	1,098
Grey	1,831	1,846	942	1,094	1,051
Haldimand	411	510	236	422	423
Haliburton	212	124	106	160	172
Halton	645	562	342	345	597
Hastings	1,255	1,758	997	1,552	1,901
Huron	1,911	1,145	757	703	561
Kenora	-	-	-	289	194
Kent	1,886	2,579	1,186	1,548	1,955
Lambton	1,400	1,978	1,094	1,319	1,304
Lanark	688	1,009	830	755	863
Leeds and Grenville	1,705	2,019	1,283	1,319	1,445
Lennox and Addington	957	637	366	293	370
Lincoln	814	770	544	752	1,185

SUITS ENTERED IN ONTARIO DIVISION COURTS, 1881-1921 (cont.)

COUNTY	1881	1891	1901	1911	1921
Manitoulin	-	209	146	131	69
Middlesex	2,492	2,476	2,450	2,485	3,733
Muskoka	369	414	312	470	199
Nipissing	33	1,001	829	2,823	823
Norfolk	1,405	928	493	461	562
Northumberland and Durham	1,911	1,604	1,008	1,022	1,009
Ontario	1,313	1,290	469	569	692
Oxford	1,730	2,290	1,133	1,696	1,380
Parry Sound	131	511	452	547	518
Peel	914	589	205	177	233
Perth	1,480	1,061	775	904	1,024
Peterborough	755	900	499	809	699
Prescott and Russell	434	956	819	903	789
Prince Edward	931	346	246	551	345
Rainy River	-	180	522	286	243
Renfrew	832	1,186	832	916	967
Simcoe	2,350	2,465	1,248	1,792	2,178
Stormont, Dundas, and Glengarry	1,063	2,173	1,327	1,437	1,339
Sudbury	-	-	-	1,009	1,427
Thunder Bay	64	207	282	1,976	1,203

SUITS ENTERED IN ONTARIO DIVISION COURTS, 1881-1921 (cont.)

COUNTY	1881	1891	1901	1911	1921
Timiskaming	-	-	-	-	2,353
Victoria	1,025	1,037	728	512	418
Waterloo	919	1,316	838	1,157	2,288
Welland	1,071	702	810	1,096	2,247
Wellington	2,053	1,260	1,052	1,067	1,271
Wentworth	2,256	1,757	1,570	1,545	3,642
York	5,389	8,153	4,141	8,465	12,576
Totals	53,843	59,510	39,689	65,373	70,115

SOURCES: "Report of The Division Courts Inspector," 1881, 1891, 1901, 1911, 1921, Ontario Sessional Papers, 1883, vol. XV, no.10, 2-39; 1892, vol. XXIV, no.28, 2-41; 1902, vol. XXXIV, no.33, 6-19; 1912, vol. XLIV, no.5, 6-19; 1921, vol. LIII, no.5, 10-23.

APPENDIX C

ACTIONS ENTERED FOR TRIAL IN ONTARIO COUNTY COURTS, 1884-1921

COUNTY	1884	1891	1901	1911	1921
Algoma	2	8	8	2	17
Brant	6	6	5	11	22
Bruce	18	12	3	10	9
Carleton	27	19	40	43	50
Dufferin	12	1	1	3	2
Elgin	31	5	7	9	9
Essex	12	8	4	24	108
Frontenac	15	8	6	0	14
Grey	11	3	12	13	12
Haldimand	5	2	3	5	5
Haliburton	0	0	0	0	0
Halton	5	0	2	6	4
Hastings	29	22	7	25	16
Huron	N/A	14	25	18	21
Kenora	-	-	-	10	4
Kent	15	0	6	17	20
Lambton	4	5	1	12	17
Lanark	5	3	7	7	12
Leeds and Grenville	9	11	4	13	12
Lennox and Addington	6	2	5	5	3

Actions Entered For Trial In Ontario County Courts, 1884-1921 (cont.)

COUNTY	1884	1891	1901	1911	1921
Lincoln	17	5	6	17	17
Manitoulin	-	7	13	1	3
Middlesex	49	15	13	40	44
Muskoka	-	2	1	6	1
Nipissing	-	-	4	72	15
Norfolk	20	6	1	1	3
Northumberland and Durham	18	11	7	10	7
Ontario	8	4	3	7	10
Oxford	19	12	3	9	10
Parry Sound	-	2	19	3	6
Peel	7	7	5	8	0
Perth	26	10	8	31	28
Peterborough	18	7	8	5	18
Prescott and Russell	4	4	0	2	2
Prince Edward	5	5	4	7	8
Rainy River	-	1	14	5	12
Renfrew	5	3	9	3	5
Simcoe	16	14	10	18	16
Stormont, Dundas, and Glengarry	18	8	3	10	4
Sudbury	-	-	-	34	32
Timiskaming	-	-	-	-	24

Actions Entered For Trial In Ontario County Courts, 1884-1921 (cont.)

COUNTY	1884	1891	1901	1911	1921
Thunder Bay	-	16	3	14	9
Victoria	11	4	11	8	6
Waterloo	4	1	4	13	15
Welland	1	5	5	10	21
Wellington	13	10	3	3	12
Wentworth	28	21	24	74	132
York	134	115	91	329	574
Totals	633	424	418	973	1,391

SOURCES: "Report of The Inspector of Legal Offices," 1884, 1891, 1901, 1911, 1921, (note: These reports began in 1883, but did not include any data until 1884), Ontario Sessional Papers 1885, vol. XVII, no. 89, Appendix F(not paginated); 1892, vol. XXIV, no. 27, 26; 1902, vol. XXXIV, no. 34, 22; 1912, vol. XLIV, no. 6, 24; 1922, vol. LIV, no.6, 30.

APPENDIX D

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930

1. Macdonald Administration: July 1867 - December 1871

Minister	Portfolio	Occupation
John S. Macdonald	Premier, Attorney-General	Law
Matthew C. Cameron	Provincial Secretary (July, 1867 - July, 1871), Crown Lands (July - Dec., 1871)	Law
Edmunde B. Wood	Treasurer	Law
Stephen Richards	Crown Lands (July, 1867 - July, 1871,) Provincial Secretary (July - Dec., 1871)	Law
John Carling	Agriculture, Public Works	Commerce

Totals - Macdonald Administration

Cabinet Members - 5

Law - 4 (80%)
Commerce - 1 (20%)

2. Blake Administration: December 1871 - October 1872

Minister	Portfolio	Occupation
Edward Blake	Premier	Law
Adam Crooks	Attorney-General	Law
Archibald McKellar	Agriculture, Public Works	Agriculture
Alex. Mackenzie	Treasurer (Dec. 1871 - Oct. 1872), Provincial Secretary (Dec. 20-21, 1871)	Journalism
Peter Gow	Provincial Secretary	Commerce

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

Blake Adminstration (cont.)

Minister	Portfolio	Occupation
R.W. Scott	Crown Lands	Law

Totals - Blake Adminstration

Cabinet Members - 6

Law	- 3	(50%)
Commerce	- 1	(16.7%)
Agriculture	- 1	(16.7%)
Other	- 1	(16.7%)

3. Mowat Administration: October 1872 - July 1896

Minister	Portfolio	Occupation
Oliver Mowat	Premier, Attorney-General	Law
Adam Crooks	Treasurer (Oct. 1872 - March. 1877), Education (Feb. 1776 - Feb. 1883)	Law
Timothy Pardee	Provincial Secretary (Oct. 1872 - Nov. 1873), Crown Lands (Dec. 1873 - Jan. 1889)	Law
Arch. McKellar	Agriculture (Oct. 1872 - July 1875), Public Works (Oct. 1872 - April 1874), Provincial Secretary (Oct. 1872 - July 1875)	Agriculture
R.W. Scott	Crown Lands (Oct. 1872 - Nov. 1873)	Law
Christopher Fraser	Provincial Secretary (Nov. 1873 - April 1974), Public Works (April 1874 - Aug. 1894)	Law

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

Mowat Administration (cont.)

Minister	Portfolio	Occupation
Samuel Wood	Agriculture (July 1875 - June 1883), Provincial Secretary (July 1875 - March 1877), Treasurer (March 1877 - June 1883)	Commerce
Arthur S. Hardy	Provincial Secretary (March 1877 - Jan. 1889), Crown Lands (Jan. 1889 - July 1896)	Law
James Young	Agriculture (June - Nov. 1883), Treasurer (June - Nov. 1883)	Commerce
George Ross	Education (Nov. 1883 - July 1896)	Law
A.M. Ross	Agriculture (Nov. 1883 - May 1888), Treasurer (Nov. 1883 - June 1890)	Commerce
Charles Drury	Agriculture (May 1888 - Sept. 1890)	Agriculture
J.M. Gibson	Provincial Secretary (Jan. 1889 - July 1896)	Law
Richard Harcourt	Treasurer (Sept. 1890 - July 1896)	Law
John Dryden	Agriculture (Sept. 1890 - July 1896)	Agriculture
E.H. Bronson	Without Portfolio (Sept. 1890 - July 1896)	Commerce

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

Mowat Administration (cont.)

Minister	Portfolio	Occupation
William Harty	Public Works (Jan. 1895 - July 1896)	Commerce

Totals - Mowat Administration

Cabinet Members - 17

Law	-	9 (52.9%)
Commerce	-	5 (29.4%)
Agriculture	-	3 (17.6%)

4. Hardy Administration: July 1896 - October 1899

Minister	Portfolio	Occupation
Arthur S. Hardy	Premier, Attorney-General	Law
J.M. Gibson	Crown Lands	Law
William Harty	Public Works	Commerce
W.D. Balfour	Provincial Secretary (July - Aug. 1896)	Journalism
Elihu J. Davis	Without Portfolio (July - Aug. 1896), Provincial Secretary (Aug. 1896 - Oct. 1899)	Commerce
Richard Harcourt	Treasurer	Law
George Ross	Education	Law
John Dryden	Agriculture	Agriculture
E.H. Bronson	Without Portfolio	Commerce

Totals - Hardy Administration

Cabinet Members	-	9
Law	-	4 (44.5%)
Commerce	-	3 (33.3%)
Agriculture	-	1 (11.1%)
Other	-	1 (11.1%)

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

5. Ross Administration: October 1899 - February 1905

Minister	Portfolio	Occupation
George Ross	Premier, Treasurer	Law
J.M. Gibson	Attorney-General (Oct. 1899 - Nov. 1904), Without Portfolio (Nov. 1904 - Feb. 1905)	Law
Elihu J. Davis	Crown Lands (Oct. 1899 - Nov. 1904)	Commerce
F.R. Latchford	Public Works (Oct. 1899 - Nov. 1904) Attorney-General (Nov. 1904 - Feb. 1905)	Law
J.R.Stratton	Provincial Secretary (Oct. 1899 - Nov. 1904)	Commerce
Richard Harcourt	Education	Law
John Dryden	Agriculture	Agriculture
J.T. Garrow	Without Portfolio (Oct. 1899 - Jan! 1902)	Law
William Harty	Without Portfolio (Oct. 1899 - Jan. 1902)	Commerce
W.A. Charlton	Public Works (Nov. 1904 - Feb. 1905)	Commerce
A.G. Mackay	Crown Lands (Nov. 1904 - Feb. 1905)	Law
George P. Graham	Provincial Secretary (Nov. 1904 - Feb. 1905)	Journalism

Totals - Ross Adminatration

Cabinet Members - 12

Law - 6 (50%)
Commerce - 4 (33.3%)
Agriculture - 1 (8.3%)
Other - 1 (8.3%)

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

6. Whitney Adminstration: February 1905 - September 1914

James P. Whitney	Premier, Attorney-General (Feb. - May 1905)	Law
Robert A. Pyne	Education	Medicine
Joseph Reaume	Public Works	Medicine
William J. Hanna	Provincial Secretary	Law
A.J. Matheson	Treasurer (Feb. 1905 - May 1913)	Law
S.N. Monteith	Agriculture (Feb. 1905 - May 1908)	Agriculture
J.J. Foy	Crown Lands (Feb. - May 1905), Attorney-General (May 1905 - Sept. 1914)	Law
Frank Cochrane	Lands, Forests, & Mines (May 1905 - Oct. 1911)	Commerce
W.A. Willaughby	Without Portfolio (Feb. 1905 - May 1908)	Medicine
J.J. Hendrie	Without Portfolio	Medicine
Adam Beck	Without Portfolio	Commerce
James J. Duff	Agriculture (Oct. 1908 - Sept. 1914)	Agrioulture
I.B. Lucas	Without Portfolio (June 1909 - May 1913), Treasurer (May 1913 - Sept. 1914)	

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

Whitney Adminstration (cont.)

Minister	Portfolio	Occupation
William H. Hearst	Lands, Forests, & Mines (Oct. 1911 - Sept. 1914)	Law

Totals - Whitney Administration

Cabinet Members - 14

Law	- 6 (42.9%)
Medicine	- 3 (21.4%)
Commerce	- 3 (21.4%)
Agriculture	- 2 (14.3%)

7. Hearst Administration: October 1914 - November 1919

William H. Hearst	Premier, Agriculture (Dec. 1914 - May 1918)	Law
Robert A. Pyne	Education (Oct. 1914 - May 1918)	Medicine
William J. Hanna	Provincial Secretary (Oct. 1914 - Dec. 1916), Without Portfolio (Dec. 1916 - Feb. 1918)	Law
	Agriculture (Oct. 1914 - Dec. 1916)	Agriculture
James J. Duff	Agriculture (Oct. 1914 - Dec. 1916)	Agriculture
I.B. Lucas	Attorney-General (Dec. 1914 - Nov. 1919)	Law
Findlay Macdiarmid	Public Works	Agriculture
G. Howard Ferguson	Lands, Forests, & Mines (Dec. 1914 - Nov. 1919)	Law
Thomas W. McGarry	Treasurer (Dec. 1914 - Nov. 1919)	Law

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

Hearst Adminstration (cont.)

Minister	Portfolio	Occupation
J.J. Foy	Without Portfolio (Dec. 1914 - June 1916)	Law
Richard F. Preston	Without Portfolio (Feb. 1915 - Nov. 1919)	Medicine
George S. Henry	Agriculture (May 1918 - Nov. 1919)	Agriculture
H.J. Cody	Education (May 1918 - Nov. 1919)	Other
W.D. McPherson	Provincial Secretary (Dec. 1916 - Nov. 1919)	Law

Totals - Hearst Administration

Cabinet Members - 13

Law	- 7 (53.8%)
Medicine	- 2 (15.4%)
Agriculture	- 3 (23.1%)
Other	- 1 (7.7%)

8. Drury Administration: November 1919 - July 1923

Minister	Portfolio	Occupation
E.C. Drury	Premier	Agriculture
William E. Raney	Attorney-General	Law
Harry C. Nixon	Provincial Secretary	Agriculture
Peter Smith	Treasurer	Agriculture
Beniah Bowman	Lands & Forests	Agriculture
Manning Doherty	Agriculture	Agriculture
Frank C. Biggs	Public Works	Commerce
R.W. Grant	Education	Agriculture
W.R. Rollo	Labour	Other

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

Drury Administration (cont.)

Minister	Portfolio	Occupation
Henry Mills	Without Portfolio (Nov. 1919 - June 1920), Mines (June 1920 - July 1923)	Other
Dougall Carmichael	Without Portfolio	Agriculture

Totals - Drury Administration

Cabinet Members - 11

Law	- 1 (9.1%)
Agriculture	- 7 (63.7%)
Commerce	- 1 (9.1%)
Other	- 2 (18.2%)

9. Ferguson Administration: July 1923 - December 1930

Minister	Portfolio	Occupation
G. Howard Ferguson	Premier, Education	Law
George S. Henry	Public Works (July 1923 - Sept. 1930), Highways (Sept. - Dec. 1930)	Agriculture
W.F. Nickle	Attorney-General (July 1923 - Oct. 1926)	Law
W.H. Price	Treasurer (July 1923 - Oct. 1926), Attorney-General (Oct. 1926 - Dec. 1930)	Law
Charles McCrea	Mines	Law
F.E. Godrey	Labour (July 1923 - Dec. 1930) Health (July 1923 - Sept. 1930)	Medicine
Lincoln Goldie	Provincial Secretary	Commerce

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

Ferguson Administration (cont.)

Minister	Portfolio	Occupation
J.S. Martin	Agriculture	Agriculture
James Lyons	Lands & Forests (July 1923 - Oct. 1926)	Commerce
J.R. Cooke	Without Portfolio	Agriculture
Leeming Carr	Without Portfolio (July 1923 - 1928)	Medicine
J.D. Monteith	Treasurer (Oct. 1926 - Dec. 1930), Public Works, (Sept. - Dec. 1930), Labour (Sept. - Dec. 1930)	Medicine
William Finlayson	Lands & Forests (Oct. 1926 - Dec. 1930)	Law
F.K.T. Smye	Without Portfolio (Jan. 1929 - Dec. 1930)	Commerce
E.A. Dunlop	Without Portfolio (Jan. 1929 - Sept. 1930), Treasurer (Sept. - Dec. 1930)	

Totals - Ferguson Administration

Cabinet Members - 15

Law	- 5 (33.3%)
Medicine	- 3 (20.0%)
Commerce	- 4 (26.7%)
Agriculture	- 3 (20.0%)

ONTARIO PROVINCIAL CABINET MEMBERS, 1867-1930 (cont.)

Totals - All Administrations, 1867 - 1930

Cabinet Members - 101

Law	- 45	(44.6%)
Medicine	- 8	(7.9%)
Commerce	- 21	(20.8%)
Agriculture	- 21	(20.8%)
Other	- 6	(5.9%)

Note: Occupational categories are based on those listed in the Canadian Parliamentary Companion and Parliamentary Guide. The Law category includes those listed as barristers, solicitors, and attorneys. The Medicine category includes only physicians. The Commerce category includes those listed as merchants, manufacturers, and businessmen. The Other category includes journalists, teachers, pharmacists, undertakers, dentists, and those whose occupations were not listed.

SOURCES: The Canadian Parliamentary Companion, Henry J. Morgan, ed., (Montreal, 1869, 1874); C.H. Mackintosh, ed., (Ottawa, 1877, 1880); J.A. Gemmil, ed., (Ottawa, 1885, 1887, 1891, 1897); The Canadian Parliamentary Guide, Arnott J. Magurn, ed., (Ottawa, 1901, 1908); Ernest J. Chambers, ed., (Ottawa, 1908, 1909, 1914, 1915, 1923); A.C. Normandin, ed.,(Ottawa, 1926, 1929).

APPENDIX E

OCCUPATIONS OF MEMBERS OF THE 1st - 17th LEGISLATURES OF THE PROVINCE OF ONTARIO, 1867-1929

1st Legislature, 1867-1871

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	5	5	0	8	18	21.4%
Medicine	1	1	0	1	3	3.5%
Commerce	12	9	0	12	33	39.3%
Agriculture	1	1	0	0	2	2.4%
Other	6	4	0	18	28	33.3%
Totals	25	20	0	39	84	

2nd Legislature, 1871-1874

	Liberal	Cons.	Far er	Other	Totals	Percent
Law	14	8		0	22	27.5%
Medicine	4	1		0	5	6.3%
Commerce	18	12		0	30	37.5%
Agriculture	2	2		0	4	5.0%
Other	10	8		1	19	23.8%
Totals	48	31		1	80	

3rd Legislature, 1875-1879

	Liberal	Cons.	Far er	Other	Totals	Percent
Law	12	5		0	17	19.3%
Medicine	7	5		0	12	13.6%
Commerce	21	10	0	1	32	36.4%
Agriculture	3	2	0	0	5	5.7%
Other	8	12	0	2	22	25.0%
Totals	51	34	0	3	88	

4th Legislature, 1880-1883

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	12	6	0	0	18	20.5%
Medicine	7	2	0	0	9	10.2%
Commerce	20	11	0	0	31	35.2%
Agriculture	5	1	0	0	6	6.8%
Other	15	9	0	0	24	27.3%
Totals	59	29	0	0	88	

Occupations Of Members Of The 1st - 17th Legislatures Of The Province Of Ontario, 1867-1929 (cont.)

5th Legislature, 1884-1886

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	11	5	0	0	16	18.6%
Medicine	6	2	0	0	8	9.3%
Commerce	16	18	0	1	35	40.7%
Agriculture	9	5	0	0	14	16.3%
Other	9	4	0	0	13	15.1%
Totals	51	34	0	1	86	

6th Legislature, 1887-1890

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	12	3	0	0	15	16.7%
Medicine	7	4	0	0	11	12.2%
Commerce	24	12	0	0	36	40.0%
Agriculture	8	6	0	0	14	15.6%
Other	7	7	0	0	14	15.6%
Totals	58	32	0	0	90	

7th Legislature, 1891-1894

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	11	3	0	0	14	15.6%
Medicine	6	5	0	0	11	12.2%
Commerce	26	12	0	0	38	42.2%
Agriculture	8	9	0	0	17	18.9%
Other	6	4	0	0	10	11.1%
Totals	57	33	0	0	90	

8th Legislature, 1895-1898

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	10	4	0	0	14	14.9%
Medicine	3	4	0	0	7	7.4%
Commerce	21	5	0	0	26	27.7%
Agriculture	14	9	15	3	41	43.6%
Other	5	1	0	0	6	6.4%
Totals	53	23	15	3	94	

Occupations Of Members Of The 1st - 17th Legislatures Of The Province Of Ontario, 1867-1929 (cont.)

9th Legislature, 1898-1902

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	9	7	0	0	16	17.2%
Medicine	2	4	0	0	6	6.5%
Commerce	22	12	0	0	34	36.6%
Agriculture	9	16	1	0	26	28.0%
Other	7	4	0	0	11	11.8%
Totals	49	43	1	0	93	

10th Legislature, 1903-1904

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	8	7	0	0	15	15.5%
Medicine	5	7	0	0	12	12.4%
Commerce	22	14	0	0	36	37.1%
Agriculture	9	10	0	0	19	19.6%
Other	9	6	0	0	15	15.5%
Totals	53	44	0	0	97	

11th Legislature, 1905-1908

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	6	11	0	0	17	17.3%
Medicine	1	11	0	0	12	12.2%
Commerce	11	26	0	1	38	38.8%
Agriculture	4	15	0	0	19	19.4%
Other	4	7	0	1	12	12.2%
Totals	26	70	0	2	98	

12th Legislature, 1909-1911

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	4	19	0	0	23	21.7%
Medicine	1	10	0	0	11	10.4%
Commerce	9	37	0	0	46	43.5%
Agriculture	5	9	0	0	14	13.2%
Other	0	11	0	1	12	11.3%
Totals	19	86	0	1	106	

Occupations Of Members Of The 1st - 17th Legislatures Of The Province Of Ontario, 1867-1929 (cont.)

13th Legislature, 1912-1914

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	5	18	0	0	23	21.7%
Medicine	1	10	0	0	11	10.4%
Commerce	9	34	0	0	43	40.6%
Agriculture	3	15	0	0	18	17.0%
Other	2	8	0	1	11	10.4%
Totals	20	85	0	1	106	

14th Legislature, 1915-1919

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	4	17	0	0	21	18.9%
Medicine	0	10	0	0	10	9.0%
Commerce	15	32	0	0	47	42.3%
Agriculture	4	14	0	0	18	16.2%
Other	3	11	0	1	15	13.5%
Totals	26	84	0	1	111	

15th Legislature, 1920-1923

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	4	7	1	0	12	10.8%
Medicine	0	1	1	0	2	1.8%
Commerce	13	9	2	5	29	26.1%
Agriculture	7	9	24	3	43	38.7%
Other	3	3	11	8	25	22.5%
Totals	27	29	39	16	111	

16th Legislature, 1924-1926

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	4	12	1	0	17	16.3%
Medicine	1	5	0	0	6	5.8%
Commerce	4	24	1	1	30	28.8%
Agriculture	3	19	8	1	31	29.8%
Other	1	15	2	2	20	19.2%
Totals	13	75	12	4	104	

(Note: There were seven vacant seats at the end of the 16th Legislature.)

Occupations Of Members Of The 1st - 17th Legislatures Of The Province Of Ontario, 1867-1929 (cont.)

17th Legislature, 1926-1929

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	3	17	0	0	20	17.9%
Medicine	1	6	0	0	7	6.3%
Commerce	7	32	2	0	41	36.6%
Agriculture	8	10	1	0	29	25.9%
Other	2	12	1	0	15	13.4%
Totals	21	77	13	1	112	

Totals: All Legislatures, 1867-1929

	Liberal	Cons.	Farmer	Other	Totals	Percent
Law	134	154	2	8	298	18.2%
Medicine	53	88	1	1	143	8.7%
Commerce	270	309	5	21	605	36.9%
Agriculture	102	152	58	8	320	19.5%
Other	97	126	14	35	272	16.6%
Totals	656	829	80	73	1,638	

Note: Occupational categories and political party affiliations based on those listed in the Canadian Parliamentary Companion and Parliamentary Guide. The Law category includes those members listed as barristers, solicitors, and attorneys. The Medicine category includes only physicians. The Commerce category includes those listed as merchants, manufacturers, and businessmen. The Other category includes journalists, teachers, pharmacists, undertakers, dentists, and those whose occupations were not listed. For party affiliation, Conservative includes those listed as Conservatives, Unionists, and Liberal-Conservatives. Farmers include those listed as Patrons of Industry, United Farmers of Ontario, People's Party, and Progressives. The Other category includes those listed as Independent, Labour, and those for whom party affiliation was not listed. Figures are based on membership in the Assembly during each legislative term. They do not necessarily represent general election results.

SOURCES: The Canadian Parliamentary Companion, Henry J. Morgan, ed., (Montreal, 1869, 1874); C.H. Mackintosh, ed., (Ottawa, 1877, 1880); J.A. Gemmill, ed., (Ottawa, 1885, 1887, 1891, 1897); The Canadian Parliamentary Guide, Arnott J. Magurn, ed., (Ottawa, 1901, 1903); Ernest J. Chambers, ed., (Ottawa, 1908, 1909, 1914, 1915, 1923); A.L. Normandin, ed., (Ottawa, 1926, 1929).

APPENDIX F

HAMILTON LAW ASSOCIATION FEE TARIFF, 1908

HAMILTON LAW ASSOCIATION

Solicitors' Tariff of Fees for Conveyancing, etc.

Minimum charges in Addition to Disbursements.

1. Negotiating loans, 1/2 per cent. on the amount.

2. Preparing mortgage, examining title and completing loan, 1 per cent. up to $3,000 and 1/2 per cent. on the excess above that amount, but in no case to be less than $10.

   Note: -Fees on amounts in excess of $10,000 may be arranged for.

3. Vendor's solicitor for preparing deed, answering requisitions, and completing sale, 1 per cent. up to $3,000 and 1/2 per cent. on the excess above that amount, but in no case to be less than $10.

   Note: -Fees on amounts in excess of $10,000 may be arranged for.

4. Purchaser's solicitor for investigating title, revising deed and completing purchase, $3,000 and 1/2 per cent. on the excess above that amount, but in no case to be less than $10.

   Note: -Fees on amounts in excess of $10,000 may be arranged for.

5. Short form deed or quit claim deed, $5.00.

6. Mortgage, ordinary, $6.00.

7. Discharge of mortgage, ordinary, $3.00.

8. Partial discharge, $4.00.

9. Chattel mortgage in sums of $100 and upwards, $8.00.

10. Discharge of chattel mortgage, $2.00.

Hamilton Law Association Fee Tariff, 1908 (cont.)

11. Renewal of statement of chattel mortgage, $3.50.

12. Bill of sale in sums of $100 and upwards, $5.00.

13. Assignment for benefit of creditors, $10.00.

14. Mechanics' lien, - $5 up to $200; $10 and upwards over that amount.

15. Discharge of mechanics' lien, $2.00.

16. Notarial certificate, $1.00.

17. Novice to creditors, $2.00.

18. Collection of interest on mortgage, 5 per cent.

19. Negotiating and drawing renewal of mortgages, 1/2 per cent. on the amount, but in no case to be less than $5.00.

Source: Canadian Law Times, April 1908, 293-4.

APPENDIX G

ONTARIO BAR ASSOCIATION OFFICERS AND COUNCILORS, 1916

Officers	Name	K.C.	Place of Practice	Date of Admission	Bencher
Honourary President	Sir George Gibbons	Y	London	1869	Y
President	J.E. Farewell	Y	Whitby	1861	Y
Vice President	George C. Campbell		Toronto	188[illegible]	
Vice President	H.B. Gash	Y	Toronto	1891	
Secretary	C.F. Ritchie		Toronto	c.1905	
Secretary	R.J. MacLennan		Toronto	188[illegible]	
Treasurer	E.J. Hearn	Y	Toronto	1884	
Historian	W.N. Ponton		Belleville	1879	

Councilors	Name	K.C.	Place of Practice	Date of Admission	Bencher
	H. Arrell		Caledonia	1898	
	W.A.J. Bell,	Y	Alliston	1887	
	J.S. Davis		Latchford	c.1905	
	Frank Denton	Y	Toronto	1888	
	H.H. Dewart	Y	Toronto	1886	Y
	Harold Fisher		Ottawa	c.1905	
	G.S. Gibbons		London	c.1905	
	Nicol Jeffrey		Guelph	1894	

Ontario Bar Association Officers And Councilors, 1916 (cont.)

Councilors (cont.)	Name	K.C.	Place of Practice	Date of Admission	Bencher
	F.D. Kerr		Peterboro	1895	
	W.F. Kerr		Cobourg	1887	Y
	Francis King		Kingston	1892	
	A.C. Kingstone		St. Cath.	c. 1895	
	W.S. MacBrayne		Hamilton	1889	
	A.C. MacMaster		Toronto	1893	Y
	J.A. McAndrew		Toronto	1885	
	C.A. Moss		Toronto	1897	Y
	W.S. Ormiston		Uxbridge	1886	
	Wm. Proudfoot	Y	Goderich	1881	Y
	J.H. Rodd		Windsor	1892	
	J.H. Spence		Toronto	1895	
	George Wilkie		Toronto	1891	
	Matthew Wilson	Y	Chatham	1878	Y
Totals	30	9			8

Source: Canadian Law Times Feb. 1916, 124-5.

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