



CBA LEGAL **FUTURES** INITIATIVE

CONTRIBUTING PERSPECTIVE

VOICES OF CHANGE CANADIAN SOCIAL MEDIA AND OTHER WRITINGS ON THE FUTURE OF LEGAL PRACTICE

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INTRODUCTION

○ THE AIM

This paper attempts a survey and synopsis of some of the current Canadian writing about the challenges facing the legal profession in Canada, with a focus on those challenges that are likely to persist into the coming decade. It forms one small and preliminary part of the important CBA Inquiry into the Legal Futures Initiative.

This aim is overambitious for a brief, or indeed any, paper: the discourse is too plentiful and directed at too many facets of practice to admit a clear synthesis or even an adequate description within the limits of an essay. But if some of the main features present in the discourse can be conveyed here, and if some readers are persuaded to enter, themselves, the continuing conversations noted in the paper, I will consider it a success.

I should add that even though the paper examines Canadian voices, much of what these voices say draws from and is directed at circumstances that are not confined within the boundaries of Canada. Particularly, the appetite (and market) for analysis of the future of legal practice is stronger in the United States than it is here. This generous scope in the discourse is itself a marker of the globalized nature of the factors shaping practice now and in the imagined futures.

○ SOURCES

We find the richest Canadian “futures” discourse in legal blogs. This is the form of social media that best allows for the short essay, that in turn suits best the speculative, argumentative, and occasionally polemical approach found in legal “prophesy¹.” To be sure, there is some talk of the challenges facing practice in the other social media. But Twitter’s 140 character limit is better suited to exchanging news and brief expressions of opinion than it is to developing complex ideas; and the “walled garden”² services such as LinkedIn, Google Plus and Facebook, while they could entertain sustained development of an idea, find themselves used principally for briefer conversations or as places to point to matters of interest elsewhere.

Sadly, there are few recent journal articles from Canadian legal academics on the challenges facing legal practice. There is, however, a group writing on legal ethics, and their thoughts will contribute at points to this synopsis. As well, there is some academic writing about the current challenges to legal education, and I will refer to this as well.

Lawyers here are a cautious breed, and so the bulk of what they write that is not client-specific tends to be anodyne and barely critical even of yesterday’s law, let alone of the state of affairs governing practice. Thus firm newsletters and other firm publications are of no real benefit to this exercise.

1 I take the view that a prophet is someone who is able to see clearly what is happening now. Fervour may or may not be attached to that vision, and dire consequences are also optional in my sense.

2 “A closed platform, walled garden or closed ecosystem is a software system where the carrier or service provider has control over applications, content, and media and restricts convenient access to non-approved applications or content.” Wikipedia, online: http://en.wikipedia.org/wiki/Closed_platform

Two further sources would, in my view, be useful in the larger project: the various earlier research reports from organizations that have directly tackled the future of legal practice or dealt it a glancing blow; and some professional development material. The latter is not freely or easily available (to me, at least). And the former would take this paper considerably further afield than is appropriate.³

○ THE VOICES

A few voices stand out above the rest. Indeed, when looked at as a whole, the relevant discussion in the blogs presents a version of the power law or, perhaps, the 80-20 rule⁴: very few writers discuss the trends, challenges and possible futures for the practice of law a lot, and a large number of writers mention these matters only rarely. Thus, there will be much here from the few and the occasional reference to writers occupying “the long tail.”

It is perhaps appropriate at this point to mention that although I am quite familiar with the writing in Canadian law blogs,⁵ it is not possible for me to know every such blog⁶ let alone what it contains. Indeed, even where the prominent commentators are concerned there is much that I must neglect here: Jordan Furlong, for example, the most vocal “prophet” writing now, has 400 relevant entries on his blog, Law21, and another 60 or so referenced in his online bibliography.

But having exculpated myself to some degree, I should note that it is an important feature of blogs that they form a kind of network, and this gives me confidence that I am unlikely to have overlooked vital or even significant material. Each blogger will have a set of blogs she or he consults more or less regularly; part of the practice of bloggers is to refer to interesting material found on other blogs; these “consulted sets” will form overlapping circles, as it were, making it likely that important contributions will eventually become widely distributed.

It remains only to say that the voice most frequently heard here will be my own. Occasionally I will use it to present views that I hold; more commonly, however, you will hear me expressing as best I can the views of others. I will anchor my summaries as much as possible with references to the original sources, while trying to avoid the bottom-heavy feel of the typical law journal article weighed down with footnotes.

○ STRUCTURE

This paper falls into three Parts. The first (Four Forces) draws on the various sources just referred to and attempts a broad and more or less traditional analysis of the plight of the Canadian legal market and practice within it. The second Part (Furlong’s Five Stages) animates the analysis along a timeline, pushing us into the future with acts of imagination. And the final Part (Non-Market

3 I have, however, attempted to gather some of the references to these reports in Appendix 1.

4 “The Pareto principle (also known as the 80–20 rule, the law of the vital few, and the principle of factor sparsity) states that, for many events, roughly 80% of the effects come from 20% of the causes.” Wikipedia, online: http://en.wikipedia.org/wiki/Pareto_principle

5 You will find a brief outline of my experience in Appendix 2, attached to this paper.

6 There are just over 400 law blogs in Canada at the time of writing. According to rough data kindly supplied by Stem Legal, the number of legal blogs in this country continues to grow, doubling approximately every two years: see Figure 1 in Appendix 3.

Factors), offers me space to talk about ideas and commentary that lie outside the typical market analyses but that I would have this Project take into serious account nonetheless.

FOUR FORCES

Obviously when dealing with human behaviour at the peak of its sophistication, as we are when we talk of the practice of law, it is hubristic, if not almost impossible, to single out controlling forces as they determine the legal market. Yet without a degree of confident analysis of the factors and forces at work, planning becomes impossible. Fortunately, there is some agreement in the discourse that there are at least four large forces or vectors of change that impinge on the legal market and the practice within it, and that the exploration and understanding of these are important for any corporate response to the current and future difficulties besetting Canadian lawyers.

More important, perhaps, is the sense in the discourse that even if this list is too long, too short, or simply wrong, the exercise of coming to grips in a sustained way with forces of this magnitude will be beneficial. That is, these topics will at least serve to put in play the large and interlocking issues, however labeled, that must be tackled if the profession is not simply to get drenched as the future rains down on it willy-nilly.

The four forces discussed here are conservatism, globalization, the economy, and technology. They will be introduced and briefly established in this Part; in the following Part we will see them as players in interaction, as they arguably operate within Jordan Furlong's "five stages" of the legal market.

○ CONSERVATISM

The natural tendency for us all is to assume that history will repeat itself, that what has happened yesterday and the day before will happen as well tomorrow and the day after. Indeed, we work hard at all levels to ensure day-to-day continuity in our lives. This tendency is all the more the case for a practice and a profession in which the past is a touchstone of sorts within an intellectual structure — think precedent and the fact that laws are always matters of history — and for which predictability is an important desideratum.

Add to this the truth that the past has been good to lawyers, by and large, rewarding them with power, prestige and fortune over a great many years, and it is easy to understand how the pr

things. Thus, complacency (with a large dose of wishful, not to say magical, thinking added) is one of the factors at work in the plight of practice. Here is Jordan Furlong on the matter:

More and more, month by month, the market is acting in new and unfamiliar ways that don't follow the traditional script. Yet most of us keep acting as if nothing has really changed, or as if the change that we do perceive is merely minor and fleeting. We choose to ignore the growing evidence of new behavioural patterns among our clients.

The only reason I can think of to explain this is the serene confidence of incumbency. Lawyers still own this market, and we've owned it for longer than anyone can remember, a happy fact that we ascribe to our natural superiority. We feel a deep and untroubled assurance of our continued dominance over legal services.⁷

But complacency is not the only reason for the persistence of traditional forms past their "best by" dates. There is a natural uncertainty even within that portion of the profession ready to consider change as to what the best courses of action may be.⁸ Leadership and planning on a broad scale are needed, if the profession is to cope with the vicissitudes of change. Yet here we encounter a second besetting feature of the profession's conservatism, the fractioning inherited from traditional structures.

Broken into jurisdictions and corresponding regulatory societies, the Canadian profession lacks a strong national authority, and consequently the ability to move in bold directions as a whole in the way that England and Wales appear to have done, with the introduction of their *Legal Services Act*, for example.

The inertia that is based in multiple jurisdictions is compounded, in my view, by the very nature of the profession. Each practitioner might appropriately be considered as an "individual institution," owing personal professional duties to, variously, society, the court, and clients. Each has her own practice in some meaningful senses.⁹ Taken together with the fact that the nature of practice varies so widely across the notion of "legal services," this makes it difficult to engender a useful, stable sense of community among all lawyers in Canada.

This diversity and independence-mindedness is reflected in the structures available at the national level to lead the debate and the changes. Two obvious contenders are the Federation of Law Societies and the Canadian Bar Association. Yet each has authority over only a part of the

7 Jordan Furlong, "The confidence of the dinosaurs," online: Law21, August 29th, 2012, <http://www.law21.ca/2012/08/the-confidence-of-the-dinosaurs/>. See also the exchange following a post on Slaw by Mitchell Kowalski, "London Calling – but Are We Listening?", online: <http://www.slaw.ca/2012/10/18/london-calling-but-are-we-listening/comment-page-1/-comment-880050> acknowledging the problem of conservatism in the Canadian profession but offering hope that things are changing.

8 "I think some of the silence you've noticed here in Canada is about fear of change and about lawyers not knowing where to start." Fred Headon, comment on Kowalski, "London Calling – but Are We Listening?", online: <http://www.slaw.ca/2012/10/18/london-calling-but-are-we-listening/comment-page-1/-comment-880083>

9 See the discussion of the lawyer vs. the firm below at p.18ff.

situation.¹⁰ Each has done work in recent times aiming to address aspects of what ails legal practice in Canada, yet adequate concrete changes have not taken place.

More telling, perhaps, is the fact that we lack reliable data concerning the legal market in Canada. No national body (indeed no organization of any purview) provides data about the market, its size, its makeup, who is spending what on what services, and who is profiting. As a private correspondent has said to me:

For me, the dominant theme of the Canadian legal market is the absence of authority and transparency of information about it. The largest and most well-known firms in the country don't know any more than the rest of us and make major business decisions based on heavily anecdotal data; key information is still exchanged at closed-door breakfast meetings of managing partners, which might as well cast us back to the 1970s. It's worse for small firms and solos: nobody knows what the benchmarks are for financial performance or practice management; nobody really knows the health of the profession or the depth of the market (served and unserved).¹¹

The CBA Futures Legal Initiative, of which this paper is a part, aims to correct some of this past inaction, of course.

Finally, I see a third difficulty embedded in law's tradition to add to those of complacency and want of authority, and that is the perennial tension between the twin value systems animating the practice of law. These are often expressed by saying that law is a profession *and* it is a business. Given that much of what is written about the future of law is directed at the legal market, the discourse tends to emphasize the business aspects of law. This is understandable, after all, because it is where the challenges are coming from by and large. Moreover, the tradition of law has tended to slight the business aspects of practice as somehow unworthy of serious attention.¹² Yet, the economy, though it may be the main thing, is not the only thing. And a project on the future of law needs to find a place to honour and re-invigorate the ethics that gave law and lawyers their value in the first place.

10 See, e.g., Adam M. Dodek, "Conflicted Identities: The Battle Over the Duty of Loyalty in Canada," (November 24, 2011). *Legal Ethics*, forthcoming. Available at SSRN: <http://ssrn.com/abstract=1964458>: "The CBA is the authoritative voice of the legal profession in Canada; the Federation is the national voice of the legal regulators. They have different mandates but they are each proposing competing codes of conducts with contrasting conflict rules which reveal different visions of lawyer loyalty."

11 Private communication, January 7, 2013.

12 This is seen, for example, in the near total reluctance of the legal academy in Canada to pay respectful attention to the business of practice. (See, Jordan Furlong, "The evolution of the legal services market: Stage 1," November 5, 2012, Law21, online: <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-1/> : "Legal education, meanwhile, underperforms its potential: most faculty have little experience with practice, and almost all faculty view the practicing Bar with a certain degree of contempt . . ." "There is much here in the classic tension that would repay close examination. On a practical level, it should be noted that part of the reluctance within the profession to innovate may have to do with the sense of some that the innovations called for would damage their professional values. On the other side, ethical standards and social values associated with the rule of law will still be important at some level even to the most market-minded — and will still be resistant to commodification, I would suggest.

○ GLOBALIZATION

Writing in the social media discusses three main aspects of the complex process glossed here as “globalization”. The first of these is the matter of national jurisdiction and its breakdown in a number of respects. The second has to do with the business consequences of the increasing permeability of jurisdiction and other protective laws. And the third is concerned with attempts to regulate practitioners, domestic and foreign, in this new international regime.

As jurisdiction divides the profession into units, so it protects these units from “outside” competition to some degree; it is a geographical monopoly to parallel the services monopoly still enjoyed here. We in Canada have good reason to appreciate this point, given our federal system’s division into provinces and territories and the difficulty lawyers face in moving from one provincial Bar to another despite the clearly comparable quality of legal education in each jurisdiction and the great similarity in actual laws (Quebec’s civil system excepted, of course).

In this respect, it is important to note the Federation of Law Societies of Canada’s work¹³ to establish mobility agreements among the various jurisdictions as being both a marker of the pressure on jurisdiction and a measure of some movement towards the reduction of its exclusive nature.

On the international level, the focus is not so much on the formal requirements for legal practice as it is on trade protections, commercial treaties and other intergovernmental arrangements, the effect of which is to reduce barriers to, and generally promote, trade among nations. At a macro level we have seen a worldwide interpenetration of jurisdictions in pursuit of the benefits of trade, the European Community being the most advanced example. Here in Canada we have the example of NAFTA and, currently, a concerted effort by the Canadian government to forge a wide-ranging free trade deal between Europe and this country. Examples, however, abound.

The point is the impact that these global arrangements have on national law and law-related systems, which are the results of the exchange (or blurring) of sovereignty in return for profit. One consequence for legal practice is that the stock of knowledge of national laws is now no longer sufficient, and expertise must be obtained and maintained across a wide range of legal systems, both public and private. This places expensive burdens on Canadian firms — as it does on foreign firms as well.

The other side to the matter of freer trade is the inflow of competition. As has always been the case, along with trade come the associated cultural artifacts and facilitators. Bluntly put, deals in this (almost) free-exchange world can be done anywhere. And given the enhancement of the private international law aspects of many of these deals (as sovereign protective public laws are softened or suppressed) each “side” is as capable as the other of crafting and fostering the legal arrangements.

This is not the occasion to go into it, but Jane Jacobs’ book *Systems of Survival* (New York: Doubleday, 1994) identified two fundamentally incompatible value systems onto which the two sides of practice map quite well; she talked about the difficulties encountered in moving between them and, indeed, the impossibility of marrying them harmoniously.

13 Federation of Law Societies of Canada, National Mobility of the Legal Profession, online: <http://www.flsc.ca/en/national-mobility-of-the-legal-profession/>

A powerful illustration of this can be found in the very recent report¹⁴ that Singapore is considering setting up an international commercial court. According to the Chief Justice of Singapore:

From my preliminary consultations, it appears there will be strong interest in this from the community of legal corporations operating throughout Asia. This promises to be an exciting and important step in our efforts to grow the legal services sector and to expand the scope for us to internationalise and export Singapore law.

Finally, there is the overarching problem of regulation. As domestic regulatory bodies confront the import and export of legal services (and personnel) they are faced with the task of crafting regulations that will at one and the same time accommodate diverse “alien” methods and forms of practice and yet maintain the sensible and robust ethical strictures that clients — and professionalism — require.¹⁵ And, as we have seen, reciprocal pressures will increase that in this case jeopardize the ability of Canadian lawyers to control their own ethical fate, as it were. Adam Dodek discusses this point and, with regard to “incursions” made by the U.S. Securities and Exchange Commission, among others, has this to say¹⁶:

. . . Canadian lawyers who deal with the SEC are now subject to its regulatory authority as well. All of these incursions on the collective power of Canadian lawyers find their source in the increasingly globalized nature of our society, including the practice of law. Pressures on self-regulation of lawyers in Canada due to globalization are likely to continue.

14 Yun Krieglner, “Singapore looks to set up International Commercial Court,” *The Lawyer*, January 7 2013, online: <http://www.thelawyer.com/singapore-looks-to-set-up-international-commercial-court/1016302.article>. Note that the president of the Singapore Law Society addresses a reciprocal side, the matter of the “import” of legal talent: “The spectacular growth in the number of foreign lawyers practising in Singapore emphasises the need for our foreign brethren to lock hands with local lawyers, not in competition, but in cooperation and integration.”

15 In this regard, consult the good survey article Laurel S. Terry, Steve Mark, & Tahlia Gordon, “Trends And Challenges In Lawyer Regulation: The Impact Of Globalization And Technology,” (2012) 80 *Fordham Law Review* 2661, online: <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4806&context=flr>

16 Adam Dodek, “Lawyers, Guns, and Money: Lawyers and Power in Canadian Society,” in *Why Good Lawyers Matter*, David L. Blaikie, Thomas A. Cromwell, & Darrel Pink, eds. (Toronto: Irwin Law, 2012), at p. 80.

○ THE ECONOMY

There has been a good deal of assertion in the Canadian legal social media that economic times are tough, that profits are down, and that even tougher times are ahead. What there is not a great deal of, however, is hard data.¹⁷ It is far beyond the scope of this brief paper — and even more beyond my competence — to venture into proofs or arguments about the actual state of affairs.

That there was a global recession, that its return threatens Europe and the United States to some degree, that the Canadian economy is somewhat better off than most others' — these are things everyone "knows." Interest rates are as low as they can possibly go and yet the Canadian economy barely makes it into the black.¹⁸ So it seems a safe assumption that the "slowdown" is having an impact on the demand for legal services (of the traditional sort, at least).

But this is merely inferential sand and a poor foundation on which to build a plan for the future. For all that it gets wrong, economics, both micro- and macro-, works best with actual numbers.

Until these numbers are produced in Canada, it remains to do what we so often do in this country, and that is to look at data from south of the border and perform those adjustments on the figures that we believe to be sensible.

One very useful U.S. source is the blog / online magazine, *The American Lawyer*. For example, a piece from a few months ago concerning the revenue and profit of the "second hundred" American firms in 2011¹⁹ presented an absolute wealth of precise information (as is routinely the case on this site), including the gross revenues of identified firms and the percentage change in revenue from 2010, the revenue per lawyer, profits per partner, and the actual compensation per partner.²⁰ Here, to pick another example from the same site, is the summary associated with the most recent survey of the top 100 firms with respect to performance in 2011²¹:

All the key financial metrics for The Am Law 100 rose by single digits last year: gross revenue, revenue per lawyer, and profits per partner. Eighty-three firms posted revenue gains — 25 more than in the previous year. And the terrifying days of mass layoffs seemed to be over: Firms reversed course and added to their head count. Even equity partners, who sometimes seem like an endangered species, grew their ranks on average after two years of flat or negative growth. But as a rule, income inequality continued to plague the rankings.

17 See also above, at p.7.

18 "The Gross Domestic Product (GDP) in Canada expanded 0.10 percent in the third quarter of 2012 over the previous quarter." Trading Economics, online: <http://www.tradingeconomics.com/canada/gdp-growth> See the linked page for a helpful dynamic chart of GDP over time.

19 "The 2012 Am Law 200," May 30, 2012, online: http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202494427064&The_2012_Am_Law_200&slreturn=20130009160205

20 Some of the data is free and some available only upon subscription.

21 "The Am Law 100 2012," May 1, 2012, online: http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202489912232&The_Am_Law_100_2012

It is hard to know what to make of this and other modestly upbeat reports from the United States. Is there still a problem? Or are the efforts now in motion aimed at responding to hard times for legal practice simply out of phase?

If parlous times in the national economy were the only source of anxiety, it might be tempting to talk of cycles²² and to say, "Let's wait and see." But, as we have just seen, globalization remains an active and disruptive force. And as we are about to see, technological change makes watchful waiting a very poor strategy indeed.

○ TECHNOLOGY

If one force alone were seen to be driving changes in the legal market, that force would be the rapid — and accelerating — developments in the field loosely known as information technology. The interconnectedness of all the players across the globe is, thanks to the Internet, no mere metaphor: it is a solid fact. It is a small exaggeration to say that geography has been removed as an obstacle to business and other arrangements. With geography goes jurisdiction and, indeed, some measure of national sovereignty, for it is information technology that greases the skids of globalization.

Legal practice cannot hope to remain as it has been in a world where data, information and knowledge may be sent from any point to any other point on the planet with, at the moment, a negligible transaction cost.

It is not the marvel of the Internet alone that is driving change, however. Moore's law²³ is being "obeyed," with the consequence that computing power continues to grow exponentially. And it is no longer science fiction to claim that with the imminent development of quantum computing,²⁴ the capability of machines will soon advance at a rate that is difficult indeed for us to imagine.

Already information technology, at its present stage of sophistication, is being marked as the disruptive force in the legal market. And while no one in Canadian legal social media is suggesting

22 While we're in the American legal social media, I should point you to a blog entitled "Adam Smith, Esq. . . . An inquiry into the economics of law firms" and in particular to a multi-part series on the blog called "Growth is Dead." You may find it easiest to access the various parts by using the handy table of contents created by Connie Crosby on Slaw.

23 "Moore's law is the observation that over the history of computing hardware, the number of transistors on integrated circuits doubles approximately every two years. . . . The capabilities of many digital electronic devices are strongly linked to Moore's law: processing speed, memory capacity, sensors and even the number and size of pixels in digital cameras. All of these are improving at (roughly) exponential rates as well. . . . This exponential improvement has dramatically enhanced the impact of digital electronics in nearly every segment of the world economy. Moore's law describes a driving force of technological and social change in the late 20th and early 21st centuries." Wikipedia, online: http://en.wikipedia.org/wiki/Moore's_law

24 See "Quantum Computing 101, An introduction to the basics of quantum computing," University of Waterloo Institute for Quantum Computing, online: <http://iqc.uwaterloo.ca/welcome/quantum-computing-101>: "Another of the many tasks for which the quantum computer is inherently faster than a classical computer is at searching through a space of potential solutions for the best solution. Researchers are constantly working on new quantum algorithms and applications. But the true potential of quantum computers likely hasn't even been imagined yet. . . .

[F]uture uses of quantum computers are bound only by imagination."

that machines will replace good lawyering, they are fairly universally arguing that these marvelous “machines” (and all that is associated with them) will require us to revisit radically notions of good lawyering.

The social media discourse is making a number of closely related points here: The advance in information technology has revealed that much work now done by lawyers is capable of being routinized; this sort of work may be done skillfully by those without full legal training, both with and without the aid of computers; market efficiencies will compel this sort of work to be performed at the lowest appropriate cost, which will in almost all cases mean not by a lawyer and certainly not by a lawyer using the billable hour.

In Jordan Furlong’s estimation:

We’re at least 10 years away, probably more, from machines that can completely replace lawyers. But we’re already in the era when machines can **displace** lawyers — take on some aspects of their work, some percentage of their tasks, bump them aside, jostle into their seats, force them to go do something else. And that percentage is going to grow. I can’t tell you at what rate, or how quickly. It will be different for different markets and different types of work.²⁵

This cannot be fresh news to a profession that has for years used computerized databases of cases and statutes and has seen the computerization of land transactions in Ontario, for example, from the heights of cadastral mapping all the way to the basic details of conveyancing — and this mediated by a private corporation.²⁶ Simply put, there is a general recognition in the social media that many tasks we thought were lawyers’ work can in fact be done, and better done, by algorithms and processors available to us now; and that this devolving onto smart machines (and their allied smart controllers), together with the consequent suitability for “commodification” that this devolution implies, will continue until an irreducible core of “true” legal work remains.

And here is the upside of this seismic shift: thanks to the gift of massive computational power, the profession has the opportunity to create and refine stimulating and satisfying ways of practicing that eliminate much drudgery, offer clients more precisely what is needed, and thrust forward those services that lawyers can uniquely provide.

FURLONG’S FIVE STAGES

It is time to see how various writers in the social media treat the forces just outlined, to see how the discourse believes they interrelate and impinge on the legal market. I have chosen Jordan Furlong’s recently described “five stages” as the organizing principle here because a temporal scheme has the merit of cutting across the analytical separations commonly used in discussing the future of legal practice — and, indeed, the very approach taken above. This requires that the forces put in

25 “And the walls came down,” Law21, blog entry, online: <http://www.law21.ca/2012/10/and-the-walls-came-down/>

26 “[Teranet] developed, owns and operates Ontario’s Electronic Land Registration System (ELRS) and facilitates the delivery of electronic land registration services on behalf of the Province. The ELRS is the means by which ownership of real property and interests on title are searched, recorded and transferred in the Province of Ontario.” Website, online: <http://www.teranet.ca/our-company/about-teranet>

play be addressed as strands, as it were, that twine in various ways, making the discussion more closely resemble the complexity of the real world.

As well, a progression through time like this directs our attention to the future, which, after all, is the central concern of the current Project. Furlong's schema, as he develops it, places a narrative structure on events that is hopeful, using the \cup shape of "comedy" rather than the inverted \cap of "tragedy." In this narrative, we overcome adversity and rise again to be reunited happily with society. To me this is very important: that though we need to be as fully cognizant as possible of the dangers that beset the practice of law, we ought not to be driven forward by fear of loss but rather drawn into the future by the lure of a greatly improved role for lawyers. As we will see, creativity will be an essential characteristic of the successful lawyer and of the profession, too, if it wishes to prosper. Despite the nostrum that necessity is the mother of invention, fear makes a lousy seedbed for creativity.

Finally, as I have noted earlier, Furlong's voice is the clearest and most persistent of those in Canadian social media that talk about the future of the legal market, an achievement that merits his central, organizing role in this Part.

○ 1. THE CLOSED MARKET (— - 2008)

This is a stage that according to Furlong is now past. It was the "good old days." He uses it to establish a baseline and to highlight the elements that made it possible, the elements that are either no longer in existence or that operate far more weakly than they once did. Here is his description of its features:

- Law is a protected industry, with one legitimate, authorized, self-regulating provider (lawyers).
- Legal knowledge and tools are largely inaccessible without lawyer involvement.
- Lawyers regulate the market, policing their own conduct but also investigating and eliminating non-lawyer competition.
- Lawyers "compete" with each other in genteel fashion, rarely undercutting other practitioners on rates or introducing systemic improvements to methodology or workflow.
- Lawyers, facing no real competition and under no real pressure to innovate, create inefficient enterprises to deliver legal services, measure cost in hours, and price their services on a cost-plus basis.

- Lawyer jobs increase proportionately, if not out of proportion, to legal service demand — the lawyer population grows year after year, like an expanding balloon.
- Most legal services are expensive, and most lawyer careers are highly remunerative.
- Legal technology is almost entirely “sustaining,” offering more convenient ways of carrying out traditional tasks without re-engineering those tasks.
- Legal education is almost entirely academic and delivered to baccalaureate standards; professional experience is gained through on-the-job training, at clients’ expense.²⁷

There is little need, perhaps, to cite others who attest to these truths. They are self-evident to anyone who entered practice a couple of decades ago, for instance. It is in the following stage — the present, in effect — that we find most of the commentary, as it marks the dissolution of these certainties.

○ 2. THE BREACHED MARKET (2008 – 2016)

This is more or less where we find ourselves today. The end of the Boom And Bubble Era (roughly 1985-2008) creates a lengthy period of de-leveraging and tepid economic growth that (a) forces clients to cut back on legal spending generally and (b) gives them the opportunity and ammunition to renegotiate terms with their legal service providers.²⁸

As pressure is put on certain (but not all) portions of the legal market, cracks develop: some client spending is sent overseas, some withdrawn in house; legal services are broken up — “unbundled” — in some areas; the billable hour is heavily criticized; innovative ways of providing legal services, in large measure an outgrowth of information technology, enter the picture; legal education comes under heavy criticism; and non-lawyer capital enters the picture in the form of Alternative Business Structures in England and Wales.

New businesses have begun nibbling at the “bottom end” of the legal market, applying computerization to relatively routine tasks and offering cheaper “products” to the public. Chief among these in the United States is LegalZoom, not yet active in Canada, which targets small businesses and certain needs of the middle class. Something similar in the Canadian market, though not of the same scale, is My Legal Briefcase, a site that offers online service in the preparation of wills, contracts, and forms for Small Claims Court.

It would be wrong, I think, to ignore these and other startups as unimportant because they are currently restricted to the least profitable end of the legal services market. Clayton Christensen,

27 Jordan Furlong, “The evolution of the legal services market: Stage 1,” Law21, November 5, 2012, online: <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-1/>

28 Jordan Furlong, “The evolution of the legal services market: Stage 2,” Law21, November 6, 2012, online: <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-2/>

author of the seminal book *The Innovator's Dilemma*,²⁹ makes an important point about disruptive technologies summarized here in a recent *New Yorker* article³⁰:

In industry after industry, Christensen discovered, the new technologies that had brought the big, established companies to their knees weren't better or more advanced — they were actually worse. The new products were low-end, dumb, shoddy, and in almost every way inferior. The customers of the big, established companies had no interest in them — why should they? They already had something better. But the new products were usually cheaper and easier to use, and so people or companies who were not rich or sophisticated enough for the old ones started buying the new ones, and there were so many more of the regular people than there were of the rich, sophisticated people that the companies making the new products prospered.

As the upstarts prosper, their power over the market increases, their products improve, and displacement of the incumbents occurs.

In another area, the practicing profession has begun a sustained criticism of legal education.³¹ Some of it is directed at the law schools' role in producing what is regarded as an oversupply of candidates for admission to the Bar.³² But the bulk of criticism claims that law schools ill-prepare students for practice, the principal contention here being that they should teach practical skills to a greater extent than they do³³ (or exclusively³⁴). This in turn likely emanates from three sources: the frustration of graduates who feel ill-equipped to go quickly into practice; the annoyance of

29 Christensen, Clayton M. *The Innovator's Dilemma: When New Technologies Cause Great Firms to Fail*, (Boston, Mass: Harvard Business School Press, 1997)

30 Larissa MacFarquhar, "When Giants Fail," *The New Yorker*, 88.13 (May 14, 2012), p. 84

31 "[T]hese are hard times for Canadian law faculties. Their current successes are threatened by an economic crisis that is choking off much-needed resources, by the reassertion of professional control over legal education, and by the revival of legal fundamentalism." Harry Arthurs, "'Valour Rather Than Prudence': Hard Times in the Legal Academy" paper delivered at the Future of Law Conference, College of Law, University of Saskatchewan, November 2012; to be published in the *Saskatchewan Law Review*.

32 This is to a degree prompted by an unsupported sense among some practitioners that there is too much competition for the shrinking market for legal services, and it was likely brought to a head by the recent debate in Ontario about the difficulty many students have in finding articling positions under the then regime.

33 See, e.g., Bruce Feldthusen, "Legal profession in turmoil: Let's blame the law schools," *Canadian Lawyer*, December 3, 2012, online: <http://www.canadianlawyermag.com/4429/legal-profession-in-turmoil-lets-blame-the-law-schools.html> and the ensuing discussion in the comments. As well, see Adam Dodek, "Blaming Law Schools," December 3, 2012, *Slaw*, online: <http://www.slaw.ca/2012/12/03/blaming-law-schools/> and the comments on that entry. See also Andrew Langille, "Who let the dogs out? A rebuttal to Bruce Feldthusen," December 3, 2012, *Youth and Work*, online: <http://www.youthandwork.ca/2012/12/who-let-dogs-out-rebuttal-to-bruce.html>

34 Most extreme, perhaps, is Mitchell Kowalski's argument for a (partial) return to an apprenticeship program akin to the Chartered Institute of Legal Executives program in England: "The End of Law Schools," November 15, 2012, *Slaw*, online: <http://www.slaw.ca/2012/11/15/the-end-of-law-schools/>

law firms which feel the burden of training students in the immediately necessary skills; and, most disinterestedly, the worry of those who believe that law faculties are not doing enough to equip students not merely to cope but to thrive and innovate in these difficult times.

The recent move by the law societies to re-assume control over university legal education without involving law faculties dramatically incarnates this criticism and effectively “breaches” the academy’s market.³⁵ In my view it is folly for the same people who are unable to exercise the skills and leadership necessary to modernize the legal profession to expand their purview. Instead, the profession should recognize the critical importance at this juncture of a broad-based and deep education of new members and the value of outside perspectives, even (or especially) ones with which it commonly disagrees. It is not the recreation of the old ways, today’s skills, in effect, that will answer to the novel demands being placed on the legal market.³⁶

This is not to say that the legal academy should remain unchanged:

The very fact that forty years of progressive legal education has produced a generation of leading lawyers hostile or indifferent to the institutions that educated them must give the academy pause. So too must the continuing failure of law faculties to convince their students that the education offered them is in their best interests not only as citizens but as future lawyers.³⁷

What is wanted is a more open, exploratory dialogue, important in every respect in a time of great uncertainty.

○ 3. THE EVOLUTION OF THE LEGAL SERVICES MARKET (2016 – 2024)

This stage is the logical conclusion of the period of creative destruction that began in Stage 2. The legal market is long overdue for some serious disruption, and much of this pent-up activity should be released late this decade and early next. Again, the key elements driving change are the lowering of barriers to non-lawyer ownership capital and competition, and the explosion of technology that displaces, or occasionally fully replaces, lawyers. Incumbents will have a hard time of it.³⁸

35 The report of the Federation of Law Societies of Canada Task Force on the Canadian Common Law Degree has been approved by all law societies “and work is underway, in close consultation with Canada’s law schools, to ensure that the recommendations are implemented.” FLSC, “National Admission Standards,” online: <http://www.flsc.ca/en/national-admission-standards/> - Common Law Degree programs

36 This has the flavour of Santayana’s definition of fanaticism, which “consists of redoubling your efforts when you have forgotten your aim.”

In an ironic twist, I recollect that it was Osgoode Hall Law School that effectively launched the legal aid clinic movement with its establishment of Parkdale Community Legal Services 41 years ago; and it was the Law Society of Upper Canada that sought to shut it down on the basis, among others, that one was not allowed to practice law for free.

37 Arthurs, see note 31.

38 Jordan Furlong, “The evolution of the legal services market: Stage 3,” Law21, November 7, 2012, online: <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-3/>

This is the “nadir,” as Furlong says. Increasingly work that was traditionally done by lawyers is taken by others; computers become smarter and pick up much of the routine work; the traditional regulating societies lose some control over the legal services market; non-law school legal education increases; new forms of firms (e.g. “mobile virtual solos and streamlined mega-firms”) make their appearance here and there as both massive size and nimble smallness prove competitive; lawyers lose control within law firms.

This last point, effectively the tension between the lawyer and the firm, has received a fair bit of comment. Mitchell Kowalski argues that the partnership model is doomed to fail. He puts it this way, at one point³⁹:

In a law firm, lawyers go out and do their own thing in their own self-interest, year after year. Getting clients where they can, billing time, collecting fees and taking out profits at the end of the year. And, if they do that, lawyers all believe that the firm will be in good shape; that their individual actions when put together will keep the firm afloat in perpetuity.

However in terms of long-term strategy, this is a completely irrational way to act.

The short term goals of individual lawyers do not automatically lead to the long-term viability of the firm because individual lawyers do not care what happens to the firm after they leave.

Furlong, too, sees the model in trouble, predicting that:

a fundamental conflict at the heart of the private legal market will start to be addressed this year: the core, critical, and maybe irresolvable conflict between a law firm and its lawyers.⁴⁰

He sees evidence of this in the matters of mergers and the reluctance of lawyers to engage in cross-selling, both of which might benefit individual lawyers but which are not really rational from the point of view of the firm as an entity. He caustically asserts:

39 Mitchell Kowalski, “End of Days for Law Firm Partnerships?” April 26, 2012, Slaw, online: <http://www.slaw.ca/2012/04/26/end-of-days-for-law-firm-partnerships/>

40 Jordan Furlong, “The Lawyer vs. the Law Firm,” December 19, 2012, Law21, online: <http://www.law21.ca/2012/12/the-lawyer-vs-the-law-firm/>

Because a law firm in which this [i.e. a lawyer's working for herself] is the dominant cultural belief is not a business. It is not a functional commercial enterprise in any sense with which we are familiar. It is, to be blunt, **nothing**. It's a warehouse where lawyers share rent, utilities, and a library, but not risks, rewards, or professional aspirations. It's a farmer's market; a neighbourhood yard sale; a souk. Some lawyers still feel like debating the old saw, "Is law a profession or a business?" I'll tell you this: the typical law firm described above is **neither** a profession **nor** a business. It's a cheap knockoff of both that behaves like neither.⁴¹

Both Furlong and Kowalski see it as important to the prospering of legal practice that the legal business should rule, and so be able to make long term plans that might in the short run not benefit employees (once partners) but that would ultimately redound to the benefit of the enterprise.

Regulation of the profession and the market will be increasingly problematic in this phase, and it seems likely that the current law societies will be forced to suffer intrusions or indeed ouster by governments. After all, as Alice Woolley has observed, "Canada is, arguably, the last bastion of unfettered self-regulation of the legal profession in the common law world."⁴²

Government action may be due in part to the reluctance of law societies to regulate the firm in addition to the individual lawyers within it. (Here, too, is evidence of the neglect, as it were, of the firm-business as the important structure.) As Dodek says, "the absence of firm regulation may be the Achilles heel of self-regulation in Canada."⁴³

Another likely source of government regulation will be the increasing introduction of foreign capital and structures into the legal services market. And though the Law Society of Upper Canada has accomplished the regulation of paralegals, regulators may find themselves unwilling, or jurisdictionally unable, to encompass the new players in the legal market.

○ 4. THE EXPANDING MARKET (2019 - ?)

[L]ower prices expand markets. More people and businesses can now afford more legal services than they could before: the latent legal market is finally cracked. Moreover, thanks to the attrition of the past few brutal years, the number of lawyers in the profession is much reduced, setting up a new supply-and-demand dynamic. . . . Only a handful of companies worldwide now provide legal knowledge, documents and processes . . . [P]roactive lawyering that manages risk and reduces problems discovers its market value. . . . The authority, clarity and precision of lawyers now become a necessary and valuable presence in the market. Freed from our previous dependence on paper and product, we return to our higher purpose and our more valuable business and social roles.⁴⁴

41 Idem

42 Quoted in Adam Dodek, "Regulating Law Firms in Canada," [2011] 90 Canadian Bar Review 383, at 399 (available for download from SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1984635)

43 Ibid. p. 440

44 Jordan Furlong, "The evolution of the legal services market: Stage 4," Law21, November 8, 2012, online: <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-4/>

This is the beginning of better times for the survivors, a space not much commented on in the social media or other writings. It is repeatedly asserted that new forms, accommodations and practices must come into being and that imagination will be required now and in the future to conceive and sustain these forms, accommodations and practices. But specifics are unsurprisingly rare: it is, after all, to be a process, a coming into being.

Mitchell Kowalski's recent book, *Avoiding Extinction: Reimagining Legal Services for the 21st Century*,⁴⁵ however, offers a sustained vision appropriate for this stage. Written much like a work of fiction, the book explores an ideal practice from the points of view first of a general counsel considering engaging the firm and second of a new recruit to the firm.

This novelistic format makes it impossible to précis the book without doing an injustice to it. Let me only say a few words here that describe the material and point you to an excerpt online⁴⁶ that will give you something of a feel for the method Kowalski uses.

The general counsel part is a sustained critique of the way in which law firms offer their services to corporate clients, with the billable hour at the core of the critique, and a set of suggestions as to how the relationship should be improved. An essential element is the shifting of greater explicit control to the client and the keying off the client's understanding of its needs.

These elements are echoed in the book's reciprocal description of the imagined new law firm, which "sells results — not time." Status trappings are reduced or eliminated, along with much overhead; indeed, good use of technology permits the firm to disport its lawyers in a wide range of places as their own and the firm's convenience dictates. Most dramatically, perhaps, Kowalski has the firm leader say at one point:

We know that we can only ride each innovative wave for so long before we need to find the next one, so we place innovation above profitability; we continually invest in ourselves. We redeploy our capital to ensure that we always do find that next innovation. We reward those who create value for the firm no matter how that value is created.⁴⁷

Furlong, for his part, sees the likelihood that two sizes of firm might emerge in the prior stage to prosper in this penultimate, creative-responsive phase. One is the solo or very small specialist firm, nimble enough to respond to technological and market fluctuations and expert enough to become part of many clients' assembled solutions, or, indeed, like a general contractor, to broker and assemble the team to meet the clients' needs at the moment. The other lies at the opposite end of the scale: a truly massive, global firm, containing within its corporate embrace all the components necessary to meet clients' needs whatever they may be and at whatever level of price and sophistication or elaboration.

45 Chicago: American Bar Association, 2012

46 "Thursday Thinkpiece: Kowalski on Legal Services," January 3, 2013, Slaw, online: <http://www.slaw.ca/2013/01/03/thursday-thinkpiece-kowalski-on-legal-services/>

47 Ibid. note 45, at p. 9

○ 5. THE MULTI-DIMENSIONAL MARKET

Stage 5, if and when it happens, is when lawyers reinvent themselves. We evolve beyond our long-standing self-identification as document approvers, transaction facilitators, and dispute resolution shepherds. We saw our traditional inventory taken away by competitors, so we seek out new functions, new social and business purposes.⁴⁸

If stage four called for difficult acts of imagination, this final apotheosis is radically speculative, susceptible of description really only in the most general terms, and calling for “lateral thinking and creative brainstorming, anchored by a clear-eyed assessment of both our own strengths as professionals and the evolving needs of a globalized society.”⁴⁹

More important, stage five invites us at the same time to consider the hearts of our purpose — at least so far as the market is concerned.⁵⁰ Furlong would have us ask:⁵¹

Why do people turn to us? What do we bring to the table? With which traits and skills are we associated, and for which of these are we most valued? What do we offer that matters in an interconnected, unstable, and hopelessly complicated world?

And he provides some answers in his “Stage 5” piece, which, though important perhaps in and of themselves, are meant more, I think, to act as a prod to our own imaginations. Thus, to take merely a few examples as illustrative, he suggests these traits, among others, as ones lawyers are valued for: “fairness, honesty, independence, logical reasoning, order, pattern recognition . . .” And as for possible roles that might embody these marketable values, he suggests, among others;

- *Civics Trainer*: Roving instructor retained to inculcate the rule of law, rights and responsibilities, and other fundamental legal principles to students, employees and citizens.
- *Competitive Analyst*: Provider of sophisticated business intelligence operations, infused with deep knowledge of laws and regulations and employing rigorous organizational analytics.
- *Mobile Arbiter*: Conflict resolution facilitator called in to troubleshoot everyday disputes at homes or in the workplace before they become full-blown fights: “preventive ADR” on a moment’s notice.

48 Jordan Furlong, “The evolution of the legal services market: Stage 5,” Law21, November 9, 2012, online: <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-5/>

49 Idem

50 Wielding whole futures in such a brief place as this paper tempts me into gross simplification: law and consequently lawyers might have two main and rather disparate social purposes. One is to assist in the creation of wealth; and the other is to countervail state (and quasi-state) power, most commonly seen within the practice of criminal law. (See these paralleled in Jacobs’ two value systems, referred to in note 12.) Although these functions are different, they share some important features at base, and it would be short-sighted to construct a future for market lawyers in a process that ignored the role and values of their cousins.

51 Note 48

NON-MARKET FACTORS

The market is not everything, a truth that is perhaps difficult to credit nowadays, when faltering growth prevents us from letting the economy recede comfortably into the background and other social issues to emerge as focal. Yet lawyers, beneficiaries and champions of the rule of law as they are, should need no persuading that social factors beyond profit and loss are important. And though the clear emphasis of the larger Initiative is on the legal market, it would be a mistake to ignore non-market factors in any planning process aimed at extricating the profession from its plight, real and predicted. At the highly ambitious level of study and planning set by the Initiative, the observed world is profoundly complex and subtly interconnected, calling upon not merely the knife blade of analysis, so skilfully employed by the lawyer, but the artful sculpting talent of synthesis as well.

○ DIVERSITY

It is important to have the legal profession adequately reflect the makeup of Canada's population. So long as that population keeps changing in character, there will always be a lag in the profession's response, if only because of the time it takes an individual to acquire the training to become a lawyer. But it is clear that in many respects the profession is failing to open itself to all Canadians.

One stark deficiency is the relatively poor representation of women in the profession at all levels of experience and power.⁵² Here, as in other areas of professional work, women face the unhappy conflict of socially assigned gender roles and a marketplace that by and large ignores these.

Linda K. Robertson has written extensively on Slaw⁵³ about issues involving women lawyers. She argues that it is in law firms' interests to pay attention to the reasons why women leave practice as these may signal the changes in the wider market that firms must eventually face:

52 "The BC Law Society reports that 36 per cent of women leave the profession in their first five years in practice compared to 22 per cent of men." Linda K. Robertson, "Law Firm Partnerships and the

Retention of Women Lawyers," December 21, 2011, Slaw, online:

<http://www.slw.ca/2011/12/21/law-firm-partnerships-and-the-retention-of-women-lawyers/>

53 See the archive of her blog posts: <http://www.slw.ca/author/robertson/>

Workplaces will change not when women leave the profession in ever increasing numbers, but when law firms start to feel sufficient financial pressure to make the changes that many women are seeking.⁵⁴

This is not the place to embark on a full argument for a nuanced interpretation of equality. Others have made the case — repeatedly — and empirical studies from within the profession are available to form a foundation for action.⁵⁵ I would, however, like to make two related points in the current context, which is one of study, planning and innovation.

Any bias, structural or otherwise, against certain groups in society deprives the legal profession of a source of talent and imagination. In these parlous times, the profession cannot “afford” to spurn or neglect any source of these qualities. We cannot know in advance where inspiration might come from, nor can we judge in advance the ideas that may come from this or that quarter.⁵⁶

Concomitantly, the profession may have difficulty attracting and retaining the full range of people within society needed to make it a robust, flexible and responsive institution for the very reason that until those neglected segments obtain the power to influence the shape and nature of the profession it will be less appealing to those segments.⁵⁷

The coming time of great change in the profession presents unique opportunities to cut across this vicious circle and to work aggressively at inclusion — and benefit massively from inclusion.

○ ACCESS TO LAW

The CBA Legal Futures Initiative is one of two Canadian Bar Association Studies currently or soon underway. The other examines access to law, a serious problem in Canada for individuals, especially those of middle to low income, and for those living in rural or remote areas. While acknowledging that corporate and commercial practice is substantially different from “high street” practice and certainly from rural and poverty law practices, I would argue that there must be communication between the two Projects. Indeed, in my view, one of the reasons the commercial

54 Linda K. Robertson, “Women Lawyers: At the Edge of Change,” July 31, 2012, Slaw, online: <http://www.slaw.ca/2012/07/31/women-lawyers-at-the-edge-of-change/>

55 See, e.g., Michael Ornstein, *Racialization and Gender of Lawyers in Ontario*, Report for the Law Society of Upper Canada (April 2010) and F.M. Kay, C. Masuch, and P. Curry, *Turning Points and Transitions: A Longitudinal Survey of Ontario Lawyers 1990-2002*, Report to The Law Society of Upper Canada (September 2004).

56 I observe that at the start of my working lifetime artificial barriers within the profession existed that, looked at with hindsight now, make no rational sense: Upon graduation from law school I was met with the fact that there were Jewish law firms and non-Jewish law firms. The divide was on the point of being removed, as firms started to realize that they needed the best and brightest hires possible regardless of ethnicity. We would be mistaken, I think, to believe that all such irrational obstacles to admission have been eliminated in the succeeding forty or so years. And the fact remains that the profession needs the best and brightest members available to it.

57 See, for example, the findings of the New York City Bar “2011 Diversity Benchmarking Study,” October 2012, as interpreted by Vivia Chen, “Women on Top — Isn’t It About Time?” *The Careerist*, November 29, 2012, online: <http://thecareerist.typepad.com/thecareerist/2012/11/put-women-on-topnow.html>

practice of law in Canada requires the profound re-examination argued for by the commentators has to do with its view of itself as “other” (I will not say “more important”) than the rest of legal practice. By letting itself become infatuated with profit and power, it has forgotten its base in the social values that Jordan Furlong reminds us of, just referred to in the previous section, a base if not entirely shared with all legal practice, then at least containing many congruent features.

Practically speaking, there is a danger in neglecting what happens at the financially low end of the market, for it is here that innovation will find it easier to gain traction. I have made this point above, when talking about Christensen’s research into disruptive technology and the intrusion of technology enhanced businesses into the legal market. I would add now that new dispute resolution practices and mechanisms have begun to enter the market⁵⁸ and with time will almost certainly proceed into the realm of the corporate and the wealthy.

58 See, for example, British Columbia’s recent Bill 44 — 2012, the *Civil Resolution Tribunal Act* that mandates a tribunal with powers to hear and resolve disputes through the use of “electronic communication tools.” See as well, Karim Benyekhlef and Nicolas Vermeys, “Don’t Be Afraid of ODR,” October 10, 2012, Slaw, online: <http://www.slaw.ca/2012/10/10/dont-be-afraid-of-odr/>



APPENDIX 1 – SOME USEFUL BACKGROUND RESEARCH PAPERS

The following are merely a few of the many research papers produced by law societies and the Bar Association in Canada in recent years that bear upon the future of legal practice. The ones noted here were those that proved relevant during my research for this paper; they are arranged by date of publication.

Barreau du Québec, **La pratique du droit au Québec et l'avenir de la profession**, Juin 1996
<<https://www.barreau.qc.ca/pdf/medias/positions/1996/199606-avenirprofession.pdf>>

Canadian Bar Association, **The Future of the Legal Profession: The Challenge of Change, Report of the Young Lawyers' Conference**, August 2000
<<http://www.cba.org/cba/news/pdf/future.pdf>>

F. M. Kay, C. Masuch, & P. Curry, **Women's Careers in the Legal Profession: A Longitudinal Survey of Ontario Lawyers 1990 – 2002, A Report to the Law Society of Upper Canada**, September 2004
<<http://rc.lsuc.on.ca/pdf/equity/womenTurningPoints.pdf>>

Canadian Bar Association, **Crystal Clear: Strategic Directions for the CBA Report of the CBA Futures Committee**, August 2006 <http://www.cba.org/cba/futures/pdf/crystalclear_2006.pdf>

Ab Currie, **The Legal Problems of Everyday Life – The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians, Report Prepared for the Department of Justice Canada**, May 12, 2009
<http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07_la1-rr07_aj1/index.html>

Federation of Law Societies of Canada, **Task Force on the Canadian Common Law Degree, Final Report**, October 2009
<http://www.flsc.ca/_documents/Common-Law-Degree-Report-C.pdf>

Michael Ornstein, **Racialization and Gender of Lawyers in Ontario, A Report for the Law Society of Upper Canada**, April 2010
<http://www.lsuc.on.ca/media/convapril10_ornstein.pdf>

Barreau du Québec, **Lawyers in Private Practice in 2021, Report of the Committee on Current Issues in Private Practice and the Future of the Profession**, June 2011
<<http://www.barreau.qc.ca/pdf/publications/avocat-2021-en.pdf>>

The Law Society of British Columbia, **Towards a More Representative Legal Profession: Better Practices, Better Workplaces, Better Results**, June 2012
<http://www.lawsociety.bc.ca/docs/publications/reports/Diversity_2012.pdf>

APPENDIX 2 – BRIEF BIO OF SIMON FODDEN

I taught law at Osgoode Hall Law School for thirty years. For the last four years at Osgoode I was Associate Dean, responsible for the running of the LL.B. programme. I took early retirement in 1999 and since that time have devoted myself to examining aspects of information technology and to publishing Slaw.

I founded Slaw in 2005. Originally begun as a weblog focusing on legal research and technology, the cooperative enterprise soon expanded both its membership and its scope, and now publishes writing on all aspects of law. Slaw remains a collective of writers who volunteer their efforts.

Over the years more than 200 lawyers and others have written for Slaw, some as one-time guest bloggers, others on a regular basis. Currently we have two dozen regular bloggers and 60 regular columnists (among whom are writers in the United States, England, the Netherlands, Australia, and Hong Kong) who contribute to its success. Our thousands of readers come principally from Canada and the United States, though we are read throughout the globe.

APPENDIX 3 – GROWTH OF CANADIAN LAW BLOGS





