



## Lift Nozzle and Squeeze Handle: Is Self-Service Law Really the Answer?

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**T**he University of Toronto hosts an international symposium on the provision of legal services to people who do not qualify for legal aid. In Ontario, public legal institutions study civil access to justice as a serious democratic deficit. All of a sudden, why are we so interested in law for the middle class?

In post-war 1950's Ontario, industry and commerce defined legal needs. Civil cases in the law reports reflected the parties associated with having lawyers: railways, mining, branch plants, banks and insurers. The 50's were also the origins of our first legal aid plan, and lawyers worked for free. While lawyers had a long tradition of good works, the bar suddenly saw an institutional need for providing legal services to a broader cross-section of society. The bar made an important choice. As democratic institutions grew, access to our expertise could enable public participation. On the other hand, it could be an obstacle, leading to calls for the profession's independence to end.

Sixty years later, the commercial law workload of our courts has been pushed out and into private arbitration. Courtrooms fill up with family conflicts, personal injury victims and employment disputes. Given the delays and inefficiencies of the civil justice system, the economics of pro bono legal services has been unsustainable for decades. When times are tough, ordinary people want more law. People from all walks of life fend for themselves and encounter the law's sharp edges. Well-intentioned leaders in the bar have proposed alternatives to private practice lawyers and law firms, such as 'unbundled' legal services (a mixture of self-help and lawyer-help), websites, and other self-serve and semi-self-serve access points. Enabling more self-help, however democratic, will also fuel the demand for judicial resources. Such demand, without providing for resources to meet them, only makes it more difficult for lawyers to act for clients in the courts.

Unfortunately, these informational alternatives assume vastly more legal literacy than the average lay person possesses. Instead of devising processes that cut lawyers' services into small bites, or seek to replace lawyers with websites or call centers, now is the time to enable lawyers to deliver the services only lawyers can deliver. Self-help is really not a solution but a last resort, and usually a problem. The law deficit for the low-to-middle income earners is not limited to litigation. Small businesses, franchisees and others are denied justice if they organize their affairs without being able to afford legal advice. Failure to have a lawyer draft a separation agreement early on leads to fights over money and children in the courts. In short, put a lawyer in a community where once there was no one, and you have a net gain in a society's access to justice. (This is not a mere hypothesis. Justicenet.ca, for example, provides a match-making service for clients seeking lawyers for more modest hourly rates. Lawyers have the will. They just need the means.)

Community access to justice also benefits law firms whose business model is national or global. Think about it. While the individual large-firm lawyer may not be aware of their reliance on their retail counterparts, any managing partner or law firm CEO has to see the need to support the entire bar. As did the 1950's lawyers who created legal aid, we must not forget the well from which we all draw sustenance is a common one: the licence to practice in a self-regulated profession. Unless we all help put new lawyers in Cochrane or Rainy River instead of recruiting them all to Toronto, attrition will ensure demise of the profession's ability to provide access to law. Like solicitor-client



privilege or credible conflict of interest rules, access to justice is a bread-and-butter issue. It is not just for bleeding hearts. Our profession as a whole is threatened if we do not live up to the public's expectation of access. The real solution must be found in support for the local lawyer. As the lawyers' association, finding the solution is the OBA's work.

This brings me to the skill-testing portion of this President's Message. Which one of these businesses is not like the other?

- (a) dry cleaners;
- (b) doctors' offices;
- (c) dental offices; or
- (d) law offices

If the criterion is access to small-business tax incentives, the answer is "(d)." Doctors and dentists have been permitted to incorporate and split their income as dividends with non-professional family members. Lawyers, in contrast, can do so only up to the value of actual services rendered by the family member. By virtue of subsection 61.0.1(4) of the Law Society Act (LSA), lawyers cannot issue shares in professional corporations to non-lawyers. As an exception to the Business Corporations Act, subsection 61.0.1(4) is nothing less than a tax on legal professional corporations. In essence, Ontario taxes access to justice. Last September, the OBA created a special task force chaired by our First Vice-President Paul Sweeny, to start a long-needed campaign to seek the elimination of this provision in the LSA. Every member of the OBA can help the work of the task force by communicating the message to his or her local MPP. If you need OBA to help do this in your community, we will be there.

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