

Black History Month

Still room for trailblazers: Falconer

BY MICHAEL MCKIERNAN
Law Times

The Law Society of Upper Canada and the Canadian Association of Black Lawyers marked Black History Month with a joint event celebrating trail-blazing black lawyers in Ontario's past last week.

The two organizations teamed up to produce the event, during which keynote speaker and law society Bencher Julian Falconer told the audience the journey is far from over. "I invite you to become the pioneers and become the trailblazers. It's time," Falconer said.

While modern mountaineers mourn the lateness of their births, after others have conquered all of the most challenging peaks, Falconer said there are still plenty of firsts for black lawyers to aim for. He pointed out that there are no black judges on the Supreme Court of Canada or the Ontario Court of Appeal. The provincial and federal cabinets, which, according to Falconer, are important bodies for lawyers wishing to effect social change, include just one black person between them: Margaret Best, Ontario's minister of health promotion and sport.

The law society itself got its first black bencher just 12 years ago with the election of Leonard Braithwaite.

"You were not born too late," Falconer said. "We have a responsibility, as members of the black community, to change this. Nobody is going to do it for us. There are mountains to climb, there is work to be done. You don't get to say it's been done."

At an earlier roundtable discussion, Patricia DeGuire, the

association's director of professional excellence, paid tribute to Robert Sutherland, the province's first black lawyer who was called to the bar in 1855. "Black pioneers have made some inroads," she said. "But these gains have been marginal, and progress has been slow."

After Sutherland, it took another 30 years before the second black lawyer joined him. It was more than a century before Ontario got its first female black lawyer, Myrtle Blackwood Smith, in 1960.

According to a recent report by the law society, Ontario now has 610 black practitioners, or about 1.9 per cent of the province's lawyers. In the meantime, black people make up about four per cent of Ontario's population. "Even by numbers alone, this is not really a significant representation for peoples who have lived in Canada for 410 years," DeGuire said.

Part of the reason for the gap in time between Ontario's first and second black lawyers was the difficulty black students found in acquiring articling positions. Delos Rogest Davis had to petition the provincial government to grant him an exemption from articling after years of searching for a principal. He was eventually called to the bar in 1885.

"If you were male, from a white Anglo background, you could become a member of the Law Society of Upper Canada," Falconer said.

He sees Davis' experience reflected in that of many recent racialized law school graduates who are disproportionately represented among the ranks of sole



Yola Grant says she benefited from mentoring early in her career as a Crown prosecutor.

and small-firm practitioners. Falconer himself practised alone for many years. "I chose to hang a shingle. Sadly, there are many young lawyers who don't get a choice. They're in not different positions than Mr. Davis was in the 19th century. They can't find

work, they can't find mentors, they can't find guidance. You end up in more regulatory hot water and you end up in more compromising positions when you don't have support. It doesn't matter if your face is white, black, woman, male. Absent support, you get into trouble."

Falconer called on racialized lawyers to donate their time, energy, and money to building those supports for their younger counterparts. "Money has to be spent. Young lawyers are entitled to mentoring. We owe it to them. That's not social networking but mentoring. Mentoring has professional obligations attached."

Yola Grant, a Toronto lawyer who also took part in the roundtable discussion, said she got help from mentors, particularly early in her career, when she worked as a Crown prosecutor with a focus on occupational health and safety violations. "For the first few years of my practice, I really benefited from being around a large group

of lawyers," she noted.

DeGuire takes pride in her mentorship and community work, although she said it has caused her problems as an adjudicator for various administrative law tribunals. In one case, she received an ultimatum in which she was asked to resign from a tribunal or from her posts with the association because of potential conflicts when fellow members of the association appear before her. Another tribunal's unofficial policy was to prevent her from hearing cases in which one side was represented by a black lawyer. These decisions went too far and showed elements of "either misunderstanding or systemic discrimination," according to DeGuire.

"They must have rules of ethics, of course. But often we are hired on the basis of our community involvement, so they cannot ask you to drop it all when you become a member of the tribunal simply because one of your people could appear before you. It's not only perverse, it's highly illogical." ■

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