

"The Formation of the Black Law Students' Association (Canada)", Law Society of Upper Canada Gazette, Volume XXVI, Number 2, June 1992, pp. 187-193.

"Whereas Delos Rogels Davis ... ever since the year one thousand eight hundred and seventy-three, and from before that time ... has endeavoured and has been anxious to enter the profession of law; that in consequence of prejudices against his colour and because of his being of African descent he has not be articed to any attorney or solicitor, or served any articles ... is desirous of being admitted to practise as a solicitor in the Supreme Court of Judicature for Ontario ..."

Statutes of Ontario, 47 Vic. Chapter 94
Assented to 25 March 1884

"I pity the poor student of colour who does deserve to be at Osgoode. He's got "affirmative action" stamped on his forehead. He's lumped in with these self-serving fools. He's lucky if he can prove himself on the exams, but these people want to institute a pass/fail marking system! (Doesn't anyone realize they are doing this in order to "dare" the faculty to fail them?) ... Imagine the white student who qualifies but does not make it on account of his colour. You've just created another conservative, ... or maybe a bigot. Remember Marc Lepine? He wanted to be an engineer. He didn't make it into Montreal's Faculty of Engineering. Contrary to the manipulation of this terrible tragedy by the women's movement, Lepine was not out to shoot "women" but "feminists" ... Good luck, Osgooders! I've got my lousy degree and I didn't have to wear a bullet-proof vest to get it!"

Obiter Dicta, February 1992
Anonymous Osgoode *Alumnus* 1988

"Plus ca change, plus c'est la meme chose". It would appear that despite the many changes in the legal profession since the first black, Delos Rogest Davis, K.C., was called to the Bar in 1885, there remain obstinate reactionaries who wish the present would resemble the more culturally homogeneous past. Those students of colour at Osgoode who, as incredulous as it appears, *do* deserve the opportunity to study law, have had more than mere luck at proving themselves on their examinations. Almost contemporaneous with the publication of the infamous Osgoode article, about which we in the legal community and academe have heard so much, the inaugural Black Law Students' Association (Canada) Annual Conference was held in Toronto on February 22 & 23, 1992. Many of those same "lucky" students and their colleagues from around the country gathered for the first ever conference of its kind in Canada. Although the conference has long passed, the real work and fulfilment of the mandate to promote the interests of Black law students through out the country has just begun. This autumn will be its first year of offering support to Black students from Halifax to Victoria.

With the attendance of approximately fifty current black law students, a dozen black articling students, another dozen black lawyers, eight black judges, and two black law professors, the conference clearly demonstrated the rapidly expanding numbers of

Canadians of African origin in every area of the legal profession. What made the conference particularly noteworthy was the gathering, for the first time ever, of eight Canadian judges of African origin. They came from four provinces and three levels of the judiciary. Their presence, including the attendance of the Honourable Chief Justice of the Federal Court of Canada, Julius Isaac, confirmed that there has, in recent years, been much progress in bringing equity to the composition of the Bench throughout Canada. It was also appropriate that the conference was held in February, during Black History Month. It was not just through the efforts of black students and the Delos Davis Law Guild, Toronto's Black Lawyers' Association, that this conference was made possible, but also through the interest and support of the larger legal community. The very presence of the Dean of the University of Toronto Faculty of Law as well as a faculty representative from Osgoode Hall Law School indicated that this conference and the formation of the Black Law Students' Association (Canada) have received, at the outset, valuable recognition and moral support. The generosity of the Law Society of Upper Canada, the Law Foundation, and the Canadian Bar Association (Ontario) directly assisted in making the plans for this historic conference come to fruition.

The Black Law Students' Association (Canada) is modelled on the American Association of the same name. With headquarters in Washington, D.C, it has been on the vanguard of promoting the interests of black law students in the United States for a quarter century. The current national chairperson, Ms. Judith A. Browne from Columbia University's School of Law attended the conference. Canada is unique in that the formation of this association, with chapters throughout Canadian Law Schools, is not mirrored in any way for black lawyers in practice. Given the success of this conference and the determination of Ms Jacinth Herbert, the current president of the Toronto-based Black Lawyers' Association, the Delos Davis Law Guild, whose efforts, among many others, were instrumental in bringing the conference to fruition, a national association for black lawyers may be yet established.

The theme of this first conference was "Access". The number of highly qualified black students from Canadian law schools is increasing and many choose to practise in Toronto. Indeed, this was clearly evident at the conference where black lawyers as well as prospective and current articling and summer students from a wide range of Toronto firms including Blake, Cassels & Graydon; Davies, Ward and Beck; Dutton, Brock. MacIntyre and Collier; Fasken, Campbell & Godfrey; Holden Day Wilson; Shibley, Righton and Tory, Tory, DesLauriers and Binnington attended the conference. A mere forty-years ago, the doors to the predecessors of these and similar firms were closed to blacks.

The introductory remarks to open the conference were made by the Honourable Judge Corrine E. Sparks, of the Family Court in Nova Scotia. Judge Sparks is Canada's only black woman judge who was elevated to the Bench in March 1987. Her Honour pointed out that when she graduated from Dalhousie Law School in 1979, she was one of two students of African origin out of a graduating class of 120 students. She commented favourably upon the expanded number of blacks presently at Dalhousie Law School and praised the changes which are taking place in the legal profession in general. The struggle

for equality must be waged through excellence in practice combined with a vision for the future. As the only black female judge currently on the Bench in Canada, her example was particularly inspiring to the students in attendance.

The keynote speaker at the opening luncheon on Friday, February 21, 1992 was Dr. Howard McCurdy, M.P. His daughter, Linda, was one of the participants and is currently a student at the University of Windsor's Faculty of Law. Dr. McCurdy spoke about the need for blacks to have a "room of their own". In comparing the struggle of blacks to those of women, Dr. McCurdy referred to Virginia Wolfe's 1929 essay, *A Room of One's Own*. In his address, Dr. McCurdy stressed the need for blacks to work together to address the systemic barriers that face all minorities. The problems facing blacks, Dr. McCurdy stressed, must be addressed in the broader social context and must include the amelioration of all people in Canada who have been marginalized socially and economically.

The program of the conference consisted of a variety of workshops conducted by lawyers, professors and black professionals. These workshops included "Career Opportunities", "Access to Law School" and "Employment Equity". Although Toronto's Osgoode Hall Law School and the University of Toronto Law School have no direct affirmative action programs which admit students, special categories of entrance which take into account the particular talents and strengths which black students bring to the study of law, are recognized, and are taken into account in the admission process. One must recognize the barriers which exist in creating a Bar and Bench which are more representative of the population at large. Discussed at the conference was the issue that the process of creating greater opportunities for blacks in the legal profession must begin long before law school and must not stop upon one's call to the bar. The Canadian Bar Association and Law Society of Upper Canada's active interest and support of the creation of the Black Law Students' Association is demonstrable proof that the good will exists for this to happen.

The opening reception to mark the occasion of this historic conference was held at Convocation Hall, Osgoode Hall on Friday, February 21, 1992. Through the generosity and foresight of individuals such as Mr. Donald Crosbie, Under-Treasurer, The Law Society of Upper Canada, Mr. Kenneth Alexander, President of the Canadian Bar Association (Ontario), and Mr. Strachan Heighington, Treasurer of the Canadian Bar Association (Ontario), the conference was an unqualified success. These individuals have done much to bridge the gap between black lawyers and the law students who have not felt fully part of the legal community. In his insightful remarks to the guests, Mr. Heighington encouraged and welcomed blacks to participate in the activities of the Canadian Bar Association. Indeed, the Canadian Bar Association is a natural conduit of bringing blacks together from across the country.

Ms Anne-Marie Stewart, a lay-bencher of the Law Society of Upper Canada and a member of its Equity Committee, who is also an African-Canadian, spoke at the reception. Her warm words of welcome and encouragement further pointed out the steps towards which the Law Society of Upper Canada is undertaking to promote greater

diversity within the legal profession. One might characterize this praise as almost sycophantic, but the current undertakings of the Law Society must be critically compared to the barriers erected against early black lawyers such as Delos Rogest Davis, K.C., Ontario's first black lawyer and B.J. Spencer Pitt, who practised in Toronto in the mid part of this century.

The keynote address at the reception at Osgoode Hall was delivered by Ms. Marva Jemmott, Q.C. Called to the Bar in 1971 and named Queen's Counsel in 1984, the first ever for an African-Canadian woman, Ms Jemmott is in private practice in Toronto at the firm of Jemmott and Associates. She discussed the many historic barriers faced by blacks in the legal profession and pointed out the circumstances surrounding the many "firsts" for blacks. These many "firsts" were only made possible through legislative intervention. She cited the example of Delos Rogest Davis, K.C., who required the passage of a special Act of the Ontario Legislature in order to be admitted to the practice of law in 1885 without serving articles. Additionally, in this century, a special exception was made allowing Canada's first black judge, the Honourable Maurice Charles (Provincial Court), to be elevated to the Bench in 1969.

Ms Jemmott touched upon the recent appointments of blacks to the Bench in Ontario which have taken place since 1980. This has been a response, in part, to the problems blacks have experienced in the judicial system. At present, excluding the Chief Justice of the Federal Court of Canada, there are seven black judges in Ontario; one in the Ontario Court (General Division) and six in the Provincial Court. With current relations between blacks and the police at an all-time low, it would appear that the appointment of black judges remains a crucial necessity.

The conference's second day's activities included workshops on "Blacks in the Community", "Access to Justice" and "Issues Regarding Policing". The panellists on the second day included Judge Selwyn Romilly of the British Columbia Provincial Court, Professors Toni Williams and Michael Mandel from Osgoode Hall Law School and Professor Davies Bagambiire of Dalhousie University Law School. As the only black judge in British Columbia, Judge Selwyn Romilly has been the lone black on the Bench in that province since November, 1974. His Honour was British Columbia's second black lawyer, although the first black lawyer to practise in British Columbia came from the United States in the late nineteenth century and only practised briefly in British Columbia before returning home. Consequently, Judge Romilly had to overcome traditional barriers alone, essentially without the moral reassurance that others had gone before him. One of the highlights of his discussion was the need for black groups to become more involved as intervenors in *Charter* Challenges. As he pointed out, in *Andrews v. The Law Society of British Columbia*, there was a real struggle to finance the legal costs of intervenors. Although much has been discussed in legal literature about whom truly benefits from the *Charter*, Judge Roily pointed out one of the obstacles which he, as a judge, sees in the promotion of equality for blacks and other minority groups, is the very real pecuniary restraints on litigation. A further irony is that in the weeks following the conference, funding for the Court Challenges Program was eliminated in the Federal

Budget. It was one of the principal means of financing innovative litigation on behalf of historically disadvantaged groups.

The crowning achievement of the conference was the First National Black Law Students' Association Dinner entitled "In Praise of Black Judges". The purpose was to honour Canada's black judges. Those in attendance were: the Chief Justice of the Federal Court of Canada, the Honourable Julius Isaac, Judge Corrine E. Sparks of the Family Court in Nova Scotia, from Ontario Mr. Justice Keith Hoillet, Ontario Court (General Division) and Judges Maurice Charles, George Carter and Vibert Rosemay from the Ontario Provincial Court as well as Judge Lionel Jones of the Alberta Provincial Court and from the British Columbia Provincial Court, Judge Selwyn Romilly. Those judges whose previous commitments prevented their attendance were: Judge Raymond Harris of the Manitoba Provincial Court, and Judges Eric S. Lindsay and Vibert A. Lampkin of the Ontario Provincial Court.

The evening's keynote address was delivered by Chief Justice Julius Isaac. His Lordship was recently appointed to the Federal Court on December 23, 1991, filling the vacancy created by the elevation of Mr. Justice Iacobucci to the Supreme Court of Canada. Prior to being named Chief Justice of the Federal Court, Mr. Justice Isaac had been a justice of the Ontario Court (General Division) since his appointment in February, 1989. His Lordship spoke about the general progress of blacks in the legal profession and the environment in which they have practised. He cited the example of B.J. Spencer Pitt who practised in Ontario during the earlier part of this century. He pointed out that many black lawyers today owe a debt to Spencer Pitt, including him and Judge Charles. As a student at the University of Toronto [B.A., 1955, LL.B., 1958] and as an articling clerk and young lawyer, practising at the firm of Joliffe, Lewis & Osler, Mr. Justice Isaac was familiar with Mr. Pitt and his reputation as a litigator and black activist. Pitt provided personal and professional encouragement to him as well as to Judge George Carter.

The Pitt legacy is to be found not only in Canada, where B.J. Spencer Pitt's nephew, Mr. Romaine Pitt currently practises law in Toronto, but in the United Kingdom as well. The present Mr. Pitt followed his uncle to Canada in 1954 and attended the University of Toronto before studying law and being called to the Bar in 1965. His elder brother, a physician, emigrated from Grenada to the United Kingdom. In addition to achieving recognition in his professional field Dr. Pitt also became politically active. In 1975, in recognition of his public service on the London County Council, Dr. Pitt was created a life peer, Baron Pitt (of Hampstead in London and in Grenada). Currently, he is the only black in the English House of Lords. The Pitt family is an example to blacks that excellence in any field or endeavour can be achieved through persistence and tenacity of character despite systemic barriers.

One of the objectives of the Black Law Students' Association (Canada) is "to influence law schools, legal fraternities and associations to utilize their expertise to initiate a change within the legal system that will make it more responsive to the needs and concerns of the black community". A further goal is "to foster and encourage professional competence". Contrary to the opinion expressed by the disgruntled Osgoode

alumnus, black students are under no illusion that excellence is a requirement and not a hoped-for expectation in the legal profession. With the establishment of a national association representing black students, one need not labour under the psychological burden that he or she, as a black law student, is alone. This historic conference has confirmed that there are many other blacks out there who share the same experiences and have the same objectives. The first step is to recognize the shortcomings within the legal profession, which includes legal education, and the second is to take active steps at their emendation. Once a strong internal foundation has been laid, real progress can be achieved without special favours or exceptional intervention.