

"The History of Blacks in the Law Society of Upper Canada"

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In few areas has the universal struggle for equality by Black people been more pronounced than in the legal profession. The following short essay, in recognition of the many accomplishments of Black lawyers in the Law Society of Upper Canada, will illuminate this relatively shrouded area of history.

The first Black called to the Bar of Upper Canada was Delos Rogest Davis in 1885. Born in 1846 in Maryland, he arrived in Canada in 1850 with his parents. A resident of Amherstberg, which had been a terminus on the Underground Railroad, he was one of the leading Black citizens of the community. His achievement however, was not accomplished without strenuous effort. For years he had attempted to become an articling student without success. Finally, in frustration, Delos Davis petitioned the Ontario Legislature to be granted special permission to be called to the bar without the necessary period of articles of clerkship.

The petition of March 25, 1884, cites, in part:

... that ever since the year one thousand eight hundred and seventy-three, and from before that time he has endeavoured and has been anxious to enter the profession of the law; that in consequence of prejudices against his colour and because of his being of African descent he has not articulated to any attorney or solicitor, or served any articles...

It continues by explaining that for eleven years Delos Davis had studied law and had practised as fully as he could without being a solicitor. He had already been appointed in 1871, a commissioner for taking affidavits, affirmations and recognizances of bail in the Court of Queen's Bench and in 1873 he had become a duly appointed and constituted Notary Public for the Province of Ontario.

The petition, therefore enacted the following:

It shall and may be lawful for the Supreme Court of Judicature for Ontario, at any time hereafter, to admit the said Delos Rogest Davis

to practise as a solicitor of the said court,
upon paying the proper fees in that behalf and
passing at any time or times the final examination
for admission prescribed by the rules of the Law
Society of Upper Canada...

The next year, on May 19, 1885, he was admitted to the bar as Ontario's first Black lawyer. This achievement was followed in 1910 with his appointment as King's Counsel, the first Black King's Counsel in the British Empire. His son, Frederick Homer Alphonso Davis, was the second Black to be called to the bar in 1900. Together, father and son practised law in Amherstberg while Delos also served as a town councillor. Delos Davis died in 1915 and his son, Frederick Alphonso Davis died in 1926.

Between 1900 and 1923 no Blacks were called to the Bar in Ontario. The next to be called was Ethelbert Lionel Cross in 1924. His career was short-lived when, in 1937, after encountering professional difficulties, he left the practice of law. The reasons from this are unclear but there can be little doubt that the Great Depression may have had a great influence.

A call to the Bar in no way automatically ensured prosperity either to whites or blacks. The opportunity for Blacks however, was made all the more difficult for several reasons. During the period as it is today, the most lucrative form of practice was that dealing with real estate transactions and commercial or corporate representation. Since Blacks did not have ready access to such clients the ability to earn a prosperous living was greatly diminished.

Furthermore, Blacks were not welcomed into traditional partnerships with whites and were thus barred from another means of doing well in the profession. The one area available for Blacks to practise was in criminal law. This however, was of little consolation since Legal Aid did not exist and most people facing criminal trials were poor and had few resources with which to pay. In light of such pressures, the practice of law for Blacks was not necessarily an inviting one. Moreover, the necessary education and payment of fees was beyond the means of most Blacks.

The next lawyer to be called to the Bar was Bertrand Joseph Spencer Pitt in 1928. He was a brilliant orator and a highly regarded defence attorney. Born in Grenada in 1892, the sixth of twelve children of a prosperous mercantile family, he came to Canada in 1926 to study law at Dalhousie. He arrived with the belief that after graduation he would be able to practise anywhere in the British Empire. Upon graduation he sadly discovered that he was restricted to practise only in Nova Scotia.

In dissatisfaction he sailed for London where he spent a year at Middle Temple, studying International Law and Constitutional History. He once again met with disappointment after discovering he would have to wait another eighteen months before being called to the English Bar. In exasperation he decided to come to Ontario to practise. He petitioned the Law Society of Upper Canada and on March 15, 1928, after paying the healthy sum

of seven hundred and fifty dollars for fees, he was sworn as a member of the Ontario Bar. His Toronto practice was a varied one and the bulk of his clients were Canadians of Polish descent.

Perhaps the most famous case in which he acted as defence counsel was the Newell Murder Case. In October, 1940 Aune Newell was found murdered on Centre Island. Her husband, Bill Newell, was charged with the crime and eventually convicted and hanged. It took three trials to convict Bill Newell and Spencer Pitt acted as defence counsel in the last trial.

In the final judgement, Mr. Justice Hope charged the jury to look for “substantial doubt.” B.J. Spencer Pitt criticized this decision vociferously and asserted that the term “substantial doubt” rather than “reasonable doubt” confused the jury and allowed them greater room to convict. His outspoken nature, at a time when Blacks were generally extremely respectful towards white professionals, elevated his stature within the Black community.

One incident which took place in February 1942 illustrates some of the hazards faced by a Black lawyer. At that time Spencer Pitt, acting as defence counsel, sought to interview a client in jail. He was prevented from doing so when a police officer seized him by the throat and threw him out of the room. In the face of such an indignity however, he did not publicly accuse the police or other law enforcement officials of racism. He did comment however, in an interview in the *Montreal Standard* of February 1942:

I have always been on the best of terms with officers of the law, and that has been true of my relations with the police force ... yet, if I could suffer such an indignity when I was not even in the role of a prisoner, what then?

B.J. Spencer Pitt was an extremely active lawyer. For many years he was the president of the United Negro Improvement Association in Toronto. He also acted as a mentor to many young Blacks and provided free legal services to many members of the Black community. In later years suffered from failing health which would later total incapacitate him and confine him a hospital until his death. Around the year 1954 Pitt left Canada with his wife to seek treatment in the United States. He later died in June 18, 1961 in Corona, New York.

Many of the Black lawyers following Pitt articulated with him. These included such notable Black lawyers as James Watson, Q.C., the former Solicitor for the City of Windsor, Myrtle Smith (nee Blackwood), Ontario's first Black woman lawyer and His Honour Judge George Carter, Ontario's second Black judge. During the 1940's and 1950's the

number of Black lawyers in Ontario, practising mostly in Toronto, numbered no more than five. Of these two were disbarred, one in 1948 and the other in 1953.

At this time, and well into the 1950's, the only people with whom Blacks or other visible minorities could article, though admittedly their numbers were sparse, were under the direction of other Blacks or Jews. The traditional members of the bar, despite their good will and interest, were reluctant to be of assistance.

Following World War Two the number of Black lawyers began to increase. Judge Carter was called in 1949. Three lawyers of some note from this period include Lloyd Perry, Q.C., called in 1950, Lincoln Alexander, Ontario's Lieutenant Governor, who was called in 1953, and Leonard Braithwaite, called in 1957, the first Black elected to the Ontario Legislature in 1963. Although a small number of Black lawyers had preceded them, their task was not easy.

A graduate of Osgoode Hall Law School and a former gold key winner and President of the Legal and Literacy Society, Leonard Braithwaite found the legal profession a cold world for a Black lawyer to join. Despite his Bachelor of Commerce degree from the University of Toronto and an M.B.A. from Harvard, he was unable to find a position articling in a downtown Toronto firm.

While a student in 1957, he was also almost not accepted as a member of the legal fraternity, *Phi Delta Phi*. Only after a vigorous debate during a late night meeting of the fraternity did they agree upon his admission. These circumstances reveal that Blacks were not readily welcomed into the legal community, either professionally or socially.

With the sweeping changes to social mores and attitudes in the 1960's and 1970's, as well as increased educational opportunities, many more Black men and women became lawyers. Marva Jemmott, Ontario's first Black woman to be honoured as Queen's Counsel in 1984, was called to the bar in 1971. The elevation of Blacks to the bench however, was more slow to follow, principally because of a lack of numbers of older lawyers. In 1969, Maurice Alexander Charles, Canada's first Black judge was appointed to the Provincial Court (Criminal Division). Born in Guyana and educated at home and in England, he came to Canada with impeccable credentials as a former justice of the High Court of Ghana from 1959 to 1967. He has remained in the Provincial Court as an outspoken member of the bench and a staunch defender of civil rights.

In 1980, more than a decade after the first appointment, Judge George Carter was elevated to the Provincial Court (Criminal Division) as Ontario's second Black judge. In fact, of the five black judges presently serving in Ontario, he is also the only one born in Canada. Furthermore, four of the five have been appointed in the 1980's. The remaining three are Judge Vibert Lampkin of the Provincial Court, the Honourable Judge Keith Hoilett of the District Court and the Honourable Mr. Justice Julius Isaac of the Supreme Court of Ontario (Trial Division). Appointed only last February 24th, he had served as Assistant Deputy Attorney General (Criminal Law) in the federal Department of Justice.

In Toronto the Delos Davis Law Guild is the professional association to which many Black lawyers belong. Formed in 1978, it meets throughout the year holding luncheons and dinners and inviting guest speakers. Last year it was the host of a luncheon for the Attorney General, the Honourable Ian Scott and held a dinner for Mr. Justice Isaac. Once activist in orientation, it is now principally a social and professional organization.

The legal profession has undergone many changes since Delos Davis was called to the bar in 1885. His accomplishment and the achievements of those who followed have laid the foundation for a legal profession which will someday be representative of the population as a whole. The history of the Black men and women who, through their tenacity and determination, were called to the bar and practised successfully, demonstrates clearly that in the face of adversity, the struggle for equality can yet be won.