

Blacks sorely missing in power positions – Falconer

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Lance Talbot, Patricia DeGuire, Justice Hugh Fraser and Yola Grant

By RON FANFAIR

There's no denying the fact that African-Canadians have made major strides, but they still have a long way to go, benchner and civil rights lawyer Julian Falconer said in his keynote address at the Canadian Association of Black Lawyers (CABL) annual Black History Month reception at the Law Society of Upper Canada (LSUC) last week.

Falconer noted that Blacks are sorely missing in representation and inclusion in the most meaningful forms of social change and expression power in Canada's key establishments.

He said there are 94 positions in Canada in four major institutions - the Supreme Court of Canada, the Ontario Court of Appeal and the federal and provincial cabinets - that represent an opportunity to engage in meaningful social change.

Ontario's Health Promotion & Sports Minister Margaret Best is the only Black holding one of these powerful positions.

"This province is home to nearly 60 per cent of the Black population in Canada and there is just one cabinet minister in 25," said Falconer whose father was born in Jamaica.

"There is tremendous work to do. When I say that, I look at what I consider the major indicators of who runs our society and where power and influence lie...There are mountains to climb and we, as members of the Black community, have a responsibility to change this.

"No one is going to do it for us. In fact, frankly, for the most part with very few exceptions, roadblocks represent the reality. There are partnerships that are essential to getting the job done because no human being can get by without alliances, partnerships, friendships and family. The Law Society and CABL have formed a partnership that is meaningful. It's clear from where you sit and from the society's interest and support that the partnership is important. But here's the thing. You have to spend money."

Falconer said there are far too many young Black and other visible minority lawyers that are terribly and disproportionately represented in sole and small firms across Ontario. He made it clear that these young lawyers are entitled to mentoring that has professional obligations attached to it.

"They are in no different position than Mr. Davis (Delos Rogest Davis was the first Canadian-born Black lawyer and his great grandson Lloyd Dean is an Ontario Court judge in Windsor) in the mid-19th Century," he said. "They can't find work, they can't find mentors and they can't find guidance.

"It's not by social networking, tea parties or wine and cheese events that you get people mentors and guidance. It's by spending money.

"The day that we as CABL rise to the challenge and insist on our colleagues within CABL and our colleagues outside CABL, showing the initiative and pushing hard to climb those mountains and at the same time insisting on our representative body that is now the law society spending money, the day that happens we will see more progress...When you don't have this support, you end up in more regulatory hot water and you end up in more compromising positions and you get into trouble."

CABL's director of professional excellence Patricia DeGuire acknowledged the importance of mentoring at a panel discussion that preceded last week's reception.

She's an active member of the LSUC mentorship program and a mentor-coach for myriad young people and adults in the legal and other professions. She also founded the At-Risk Youths Education Forum.

"I chose to become a mentor because my experience as an articling student was a nightmare," said DeGuire, a CABL co-founder and member of the federal government tribunal since May 2008. "I took that negative experience and used it as a tool to enhance other young female Black lawyers. Mentoring is very important in this profession, whether it's formal or informal."

The panellists, which also included Justice Hugh Fraser and lawyers Lance Talbot and Yola Grant, addressed some of the challenges that Black members of the Bench and tribunals face when their community roles are restricted by their legal appointments.

"One of the things we discussed about our practice as Black lawyers is the way in which our Blackness must define us as practitioners in terms of how we deliver legal services, to whom we deliver them and how that has a bearing on who we define as our community," said Jamaican-born Grant who specializes in employment, labour, human rights and constitutional law.

"What I have found in my experience is that there are always others who are not Black attempting to circumscribe my notion of who is my community and what is of interest to me in terms of my having a life as a citizen and my role in enriching the Black community with my skills."

DeGuire, who has been a member of tribunals since 1995, said she was asked to resign from CABL because one of the organization's board members made frequent appearances before the tribunal on which she now sits.

"I said O.K, if that board member appeared, I would just recluse myself," said the former Human Rights Tribunal of Ontario and the Pay Equity Hearings Tribunal vice-chair. "I was told that was not good enough and that I should resign. I then went and spoke to one of my colleagues about the policy and the code of ethics, and we decided that my function with CABL as treasurer was not in conflict of interest with my code of ethics...We later went to a COBA (Conference of Ontario Boards & Agencies) conference where a Justice of the Appeal Court was on the panel and the question was posed to him by my colleague. The judge, in his response, said that was none of the person's business and he could not see any conflict of interest.

"It's great to work on tribunals. They must have rules of ethics because we must have ethical considerations in our interactions with human beings. But because you are hired on the basis of your community involvement, one cannot ask you to drop it all once you have become a member of the bench or tribunal simply because one of your people could appear before you.

"It's not only perverse, but it's highly illogical and I think it has elements of either misunderstanding or systemic discrimination."

The CABL event honoured Black pioneers in Canada's legal profession. Jamaican-born Robert Sutherland was Canada's first Black lawyer, having been called to the Bar in 1855 while Davis was called to the Bar without articling after appealing to the Ontario legislature to allow him to write the exams.

Violet Henry, Canada's first female Black lawyer, was called to the Alberta Bar in 1954 while Guyanese-born Maurice Charles became Canada's first Black judge in 1969. Leonard Braithwaite, who was called to the Bar in 1958, was this country's first Black bencher 12 years ago.

"Canadian legal history has shown that Black pioneers have made some inroads in gaining access to justice and the administration of justice by becoming lawyers," said DeGuire. "These gains have been marginal and the progress has been slow...It's fitting that we commemorate the sacrifices, the struggles, the suffering and the successes of the trailblazers. Their legacies are the impetus to a continued commitment to give back to our communities."

Talbot, who practices exclusively in the areas of family and criminal law, recalled there were just eight Black lawyers when he was called to the Bar 17 years ago while Justice Fraser remarked that he was the only Black student in his first three years in university.

"I am starting to encourage those who I think might be excellent candidates by planting that seed," said Jamaican-born Fraser who represented Canada in the 1976 Montreal Olympics in the 200-metre and 4 x 100-metre events.

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