Why don't they hire lawyers?

by Diane S. Diel

The headline in the Vancouver Sun was catchy. "Lawyers could go the way of the dodo, magazine suggests" was splashed right there on page A5 of the July 7, 2008, edition. The story reported on an article printed in National, the official magazine of the Canadian Bar Association. The story focused on family courts throughout Canada, and stated that in Ontario the rate of self-represented litigants in family law cases is approximately 60 percent, bringing with it the crowded docket and court congestion familiar to Wisconsin lawyers. The National article continued:

"The system is in crisis - and no one is entirely sure what to do about it. Because it isn't just a problem of access to justice, of litigants unable to pay lawyers' fees, although that is a major issue. It's also because a lot of people experiencing marriage breakdown simply don't want to hire a lawyer at all."

In Wisconsin, Judge Mary M. Kuhnmuench, the presiding judge in Milwaukee County family court, reports that in 2006, 49 percent of divorce cases in the county involved no lawyers, and 83 percent of divorce cases had at least one self-represented party. In a whopping 96 percent of paternity cases, neither parent had a lawyer, and in another 3 percent of paternity cases, only one party was represented. That means that both parents had lawyers in only 1 percent of paternity cases. Just as in Canada, the problem isn't just one of access to justice in Wisconsin. Beyond affordability, what is the problem?

The National identified many possible reasons for high numbers of self-represented litigants. First, people feel confident with their ability to use Internet tools and government Web sites to find the information they need to address their legal issues. Also, some self-represented parties may disagree with the advice they have received from lawyers, have a vengeance motive, want to drive up their former spouse's or partner's legal fees, or want to cross examine the other party themselves. The article argues that, generally, people simply are no longer in awe of institutions and do not feel a need for legal expertise.

The now-extinct dodo is not the only bird to be evoked by the Canadian journalists. National editor Jordan Furlong, in commenting on the family law story, said, "I'm coming to think that family law is the canary in the coal mine. Every day, more things that used to be the exclusive bailiwick of lawyers are automated, down-marketed and commoditized by non-lawyers. You already know this if your practice involves transactional matters like wills and real estate. But the pro se trend in family court shows that litigators aren't immune either...."

Furlong identified the two unspoken reasons lawyers aren't hired as, first, the "unacknowledged and disproportionately high cost of hiring a lawyer" and second, the fact that, however slow and cumbersome the process, the courts still function despite the high volume of self-represented individuals.

It is clear that the growth in the number of pro se litigants is partly attributable to the many accommodations made by the courts for them. The availability of self-help clinics, mandatory legal forms found online, and easy Internet research are among the factors contributing to the increase in the number of self-represented litigants. Those accommodations have combined to create the "commoditization" of legal services referenced by Furlong. This is not a criticism of these programs. These programs do, however, pose a challenge to all Wisconsin lawyers.

We lawyers must find a way to demonstrate that we provide more than any "commoditized" package can. Lawyers can start with the idea that increasing the availability of civil legal services to the poor will help us demonstrate the value of being represented by a lawyer. Unless legal services and lawyers are available to all people, lawyers will become more and more irrelevant. By expanding the availability of our services, our services will become more valued. Professional self interest is not the only reason to support the many projects the State Bar developed in response to the "Bridging the Gap" study, but it is one of them.

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Other legal news

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The headline in the now familiar article printed in the Vancouver Sun suggests "Lawyers aren't immune either. County involved no more litigants able to pay justice, why are more litigants choosing to represent themselves?" If it is not only a problem of access to justice, why are more litigants choosing to represent themselves?“

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