



Past 40 years marked by **a** **changing** **mix of** **lawyers**



Josée Bouchard

Ontario's legal profession has experienced significant changes over the last 40 years. In the mid-1970s a critical mass of women began joining the profession in record numbers. Then, in the 1980s, lawyers from Aboriginal, Francophone and

equality-seeking communities began entering the profession.¹ Today, the province's legal profession continues to grow and evolve at a rapid rate.

As part of its commitment to promote equality and diversity in the legal profession, and to ensure that the Ontario community is served by a representative profession, the Law Society of Upper

Canada conducts research and collects data on the composition of the profession.

Since 2009, lawyers have been asked to indicate in the Lawyer Annual Report whether they identify as members of equality-seeking communities, including Francophone, Aboriginal, racialized, lesbian, gay, bisexual or transgender (LGBT), and whether they have a disability.

The Law Society also relies on Canada Census data and quantitative and qualitative research to identify trends and develop policies, resources and programs to support lawyers.² This article provides some insights into how the composition of the profession has changed over the last four decades.

¹ *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, 1997).

² For example, see Professor Fiona Kay, *Leaving Law and Barriers to Re-entry* (Toronto: A Report to the Law Society of Upper Canada, 2013) and Professor Michael Ornstein, *Racialization and Gender of Lawyers in Ontario* (Toronto: A Report to the Law Society of Upper Canada, 2010).

A terminology primer

There are various terms used to describe members of equity-seeking communities. While these terms are widely used, not everyone may be familiar with their definitions. The term Aboriginal includes First Nations, Inuk or Inuit, Métis, Status Indian, or Non-Status Indian. The LGBT community also includes transsexual, intersex, queer, questioning and two-spirited communities.

The term ‘racialized’ expresses race as the process by which groups are socially constructed, as well as modes of self-identification related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), East-Asian (e.g. Japanese, Korean), South-Asian (e.g. Indo-Canadian, Indian Subcontinent), South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino) and West Asian (e.g. Iranian, Afghan) persons. It is preferable to use racialized instead of “visible minority.”

Gender

As mentioned above, women have been entering the legal profession en masse since the mid-1970s. In 2012, 52 per cent of the lawyer licensing candidates were women. However, women still account for only 40 per cent of lawyers in the profession, 33 per cent of lawyers in private practice and 22 per cent of law firm partners.

Although the legal profession is adapting to the entrance of women in the profession, research findings show that women lawyers leave private practice in larger numbers than their male counterparts. One of the most immediate issues for women in private practice appears to result from childbirth, parenting responsibilities and the lack of flexible work hours and work arrangements.³

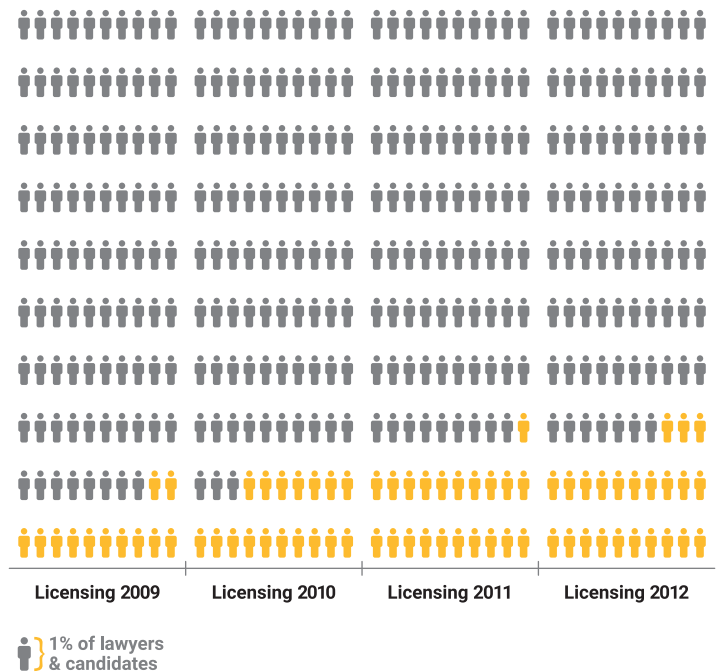
Racialized, Aboriginal and Francophone lawyers

While 23 per cent of Ontario’s population was racialized in 2010, just 17 per cent of the legal profession was composed of racialized lawyers. The highest representation of racialized lawyers included members of the South Asian, Chinese and Black communities.

Today, the representation of racialized lawyers continues to increase as the numbers of racialized licensing candidates are now more in proportion with racialized members of the general population.

Interestingly, Ontario’s Aboriginal lawyers are representative of the population they serve, with between one and two per cent, compared with two per cent of the Ontario population that is Aboriginal. As professor Michael Ornstein notes “[...] for Aboriginals who graduate from university the legal profession is a preferred destination.”⁴

Percentage of racialized lawyers and candidates



women
account
for

40% of lawyers
in the profession

33% lawyers in
private practice

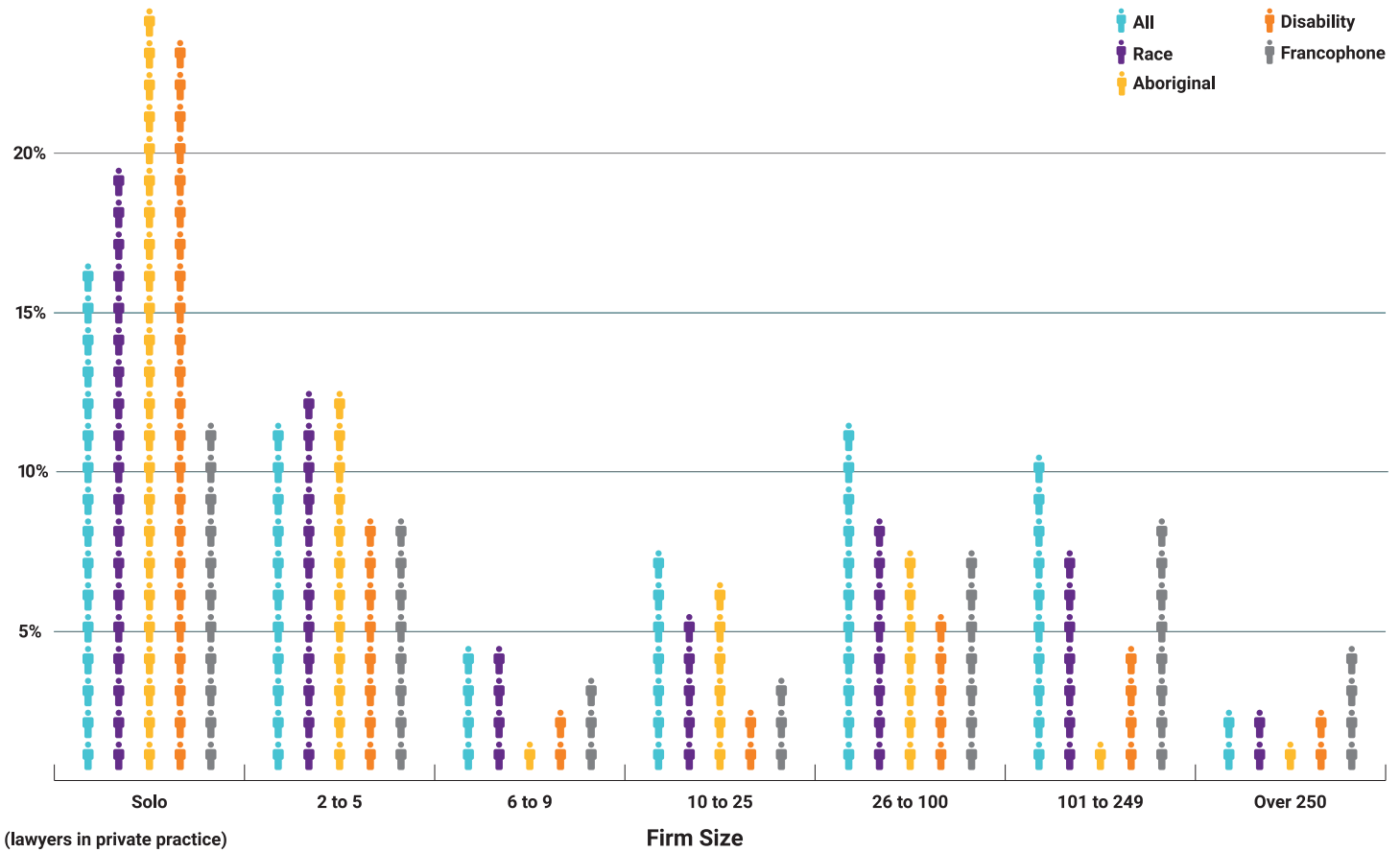
22% of law firm
partners

Francophone lawyers are represented in greater proportions than the Ontario Francophone population. In fact, seven per cent of Ontario lawyers self-identified as Francophone in the 2010 Lawyer Annual Report, compared with Ontario’s Francophone population of 4.8 per cent. In addition, 13 per cent of Ontario lawyers indicate they can communicate and provide legal advice to their clients in the French language.

³ Final Report of the Retention of Women in Private Practice Working Group (Toronto: Law Society of Upper Canada, 2008).

⁴ Professor Michael Ornstein, *supra* note 6 at 8.

Diversity by firm size – in percentages



Practising in sole practice and small firms, years of call and areas of practice

Since these communities began entering the legal profession only fairly recently, the majority of racialized, Francophone and Aboriginal lawyers were called to the bar less than 20 years ago.

Aboriginal lawyers, racialized lawyers, and lawyers with disabilities are also more likely to practise in sole practice and small firms.

This is also the case for men as compared to women lawyers – 70 per cent of sole practitioners are men and 30 per cent are women. Licensing candidates admitted via the National Committee of Accreditation process – administered by a standing committee of the Federation of Law Societies of Canada to accredit lawyers trained abroad for practice in Canada – are also more likely to become sole practitioners.

The Law Society has also conducted qualitative studies of the changing face of the profession. Professor Fiona Kay, for example, conducted a survey with the legal profession and found that women are more likely than men to practise family law, while men are much more likely than women to practise real estate law and slightly more likely to practise civil litigation. Racialized and non-racialized lawyers have approximately the same likelihood to practise civil litigation and corporate commercial law, but racialized lawyers are slightly more likely to practise criminal law, immigration law and poverty law.⁵

A Law Society study of the Aboriginal bar noted that the main areas of practice for Aboriginal lawyers are criminal law, employment and labour law, administrative law and “other.”⁶ At the time of the study, the category of Aboriginal law was not included in the choices of areas of law.

⁵ Professor Fiona Kay, *The Contemporary Legal Profession in Ontario* (Toronto: A Report to the Law Society of Upper Canada, 2004).

⁶ *Aboriginal Bar Consultation* (Toronto: Law Society of Upper Canada, 2009).

Interestingly, the average law school debt at graduation is \$55,000 and that figure is similar for men, women and racialized lawyers.

LSUC initiatives that respond to diversity

The Law Society of Upper Canada has adopted a number of initiatives to continue to monitor trends in the profession and to ensure that it responds to the increased diversity. An Equity Initiatives Department is responsible for promoting equity and diversity in the legal profession and for providing expertise to the standing committee of Convocation – the Equity and Aboriginal Issues Committee. Some additional Law Society initiatives are listed below.

Reflecting the population

The legal profession's increasing diversity makes it more reflective of the public it serves. It is important for law firms, legal organizations, legal associations and others to recognize the changing demographics of the profession. This will help them be more responsive to the needs of the diverse communities that make up the profession, and will also help with access to justice for the people and institutions which the profession serves. ■

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Partial list of Law Society of Upper Canada diversity initiatives

Retention of Women in Private Practice Report

Recommendations included the creation of a career coaching program for women in sole practice or small firms to help them plan and transition effectively into a maternity, parental or compassionate care leave and return to practice.

The Justicia Project

Created with the participation of 57 law firms of all sizes and throughout Ontario to develop resources to assist in the retention of women in private practice.

The Parental Leave Assistance Program

Assists sole practitioners and partners in firms of five lawyers or fewer with financial assistance for maternity, parental or adoption leaves for those who have no access to financial parental benefits under public or private plans.

Contract Lawyers' and Paralegals' Registry

An online list of lawyers and paralegals from across the province who are available to provide legal services on contract.

Equity and Diversity Mentorship Program

Helps lawyers and paralegals find experienced legal professionals to provide advice about their careers.

Aboriginal Bar Consultation

Expansion of the Lawyer Annual Report to include a practice category for Aboriginal law and led to the development of mentoring and networking programs for Aboriginal law students, licensing candidates and lawyers.

Continuing Professional Development courses and the development of a Certified Specialty in Aboriginal Law

For lawyers and paralegals who provide legal services to Aboriginal clientele.

Challenges Faced by Racialized Licensees Working Group

Consulted with stakeholder groups, researched best practices for creating an inclusive profession, held interviews and focus groups, and conducted an online survey to develop strategies for inclusion at all career stages. It is expected that in the fall of 2014, the Law Society will consider recommendations to enhance service.