
GENDER, LAW, AND THE LEGAL PROFESSION: A REFLECTION ABOUT “QUIET REBELS”¹

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I JUSTICE AND GENDER

How just is gender? Why is it that when we turn to contemporary theories of justice, we do not find illuminating and positive contributions to this question? How can theories of justice that are ostensibly about people in general neglect women, gender, and all the inequalities between the sexes?²

These questions are especially significant for issues about justice and gender equality in law, legal professions, and legal education. To what extent do laws and members of legal professions engage effectively with gender challenges? And do women lawyers experience justice in their work as legal professionals? *Quiet Rebels* examines these questions in the stories of Ontario women lawyers from 1897 to 2024.

When I graduated from law school at Queen’s University in 1970 (the only woman in my class of 100 law students), ideas about gender equality were generally absent in the curriculum at Canadian law schools. It was only in the mid-1970s—in the context of increasing feminist activity among women law students and political debates about a Canadian Charter of Rights and Freedoms—that gender issues began to emerge in course offerings at Canadian law schools. And even though I had no academic expertise about gender equality in law, my female gender was undoubtably the catalyst for a request from the dean at Osgoode Hall Law School to teach its seminar on “Women and the Law” in 1975. At the time, this assignment presented significant research challenges because there were all too few (successful) reported cases about gender equality in Canada. Thus, my initial course materials included early equality decisions

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¹ Mary Jane Mossman, *Quiet Rebels: A History of Ontario Women Lawyers* (Waterloo: Wilfrid Laurier University Press, 2024) [Mossman, *Quiet Rebels*].

² Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989) at 8. See also Martha Minow, “Foreword: Justice Engendered” (1987) 101:1 Harv L Rev 10.

pursuant to the US constitution, along with readings about gender equality in sociology, philosophy, and law. Significantly, these early course materials also included the few cases in which some women had challenged exclusion from legal professions in Canadian provinces. By the early 1980s, most law schools were offering similar courses, and I enjoyed support and inspiration from women law professors teaching about gender equality in other law schools.³ Looking back now, my initial course about women and the law fifty years ago was the spark that ignited my long-standing engagement with gender issues in law—and with the history of women lawyers.⁴

A decade later, in 1986, the Law Society of Upper Canada (now the Law Society of Ontario) hosted an inaugural program that was focused on women, law, and the legal profession. The program attracted nearly 200 women lawyers (and two men); I remember well the sight of so many Ontario women lawyers in one room—probably for the first time—and how it created a buzz of excitement. The program involved special speakers and panel discussions on a variety of current topics about gender and lawyering. It was at this event that I first presented a paper about the early (and often challenging) history of women lawyers in Canada, and posed some important questions:

What is the significance of a profession which has been exclusively male being rapidly transformed into one composed equally of men and women? . . . [Perhaps we should] try to imagine what would be the definition of “lawyer” if women as well as men had been involved from the beginning in articulating it . . . Beyond the value of liberty for women (like men) to have individual choices and opportunities for satisfying work, do women as lawyers have anything to offer now that is different from the contributions men have made historically? . . . Will women who become lawyers be just like men who are lawyers, or will they bring a new dimension to lawyering?⁵

Such questions suggested a need for information about the histories of early women lawyers, both in Canada and in other jurisdictions. How did early women lawyers succeed in gaining entry to legal professions and, in some cases, engaging in legal practice? To what extent did some aspiring women lawyers receive support from male lawyers or judges, while other women lawyers’ aspirations were ignored or resisted? Did women lawyers identify with the norms of lawyering by male lawyers, and did they engage in the same kinds of legal practice—or were they confined to specific areas of law deemed appropriate for women? And to what extent did women lawyers marry or have children, and if so, did they continue to practise law?⁶ Engaging with these questions eventually resulted in my interest in identifying

³ See Jane Banfield Haynes, *Women and the Law Course Offerings* (archived at York University, 1977–1980).

⁴ See Mary Jane Mossman, “‘Otherness’ and the Law School: A Comment on Teaching Gender Equality” (1985) 1 CJWL 213; Mary Jane Mossman, “Feminism and Legal Method: The Difference It Makes” (1987) 3 Wis Women’s LJ 147.

⁵ See Mary Jane Mossman, “Portia’s Progress: Women as Lawyers—Reflections on Past and Future” (1988) 8 Windsor YB Access Just 252 at 261, 266; this is the published version of my presentation.

⁶ Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Oxford: Hart Publishing, 2006), a study of the first women lawyers in the United States, Canada, Britain, New Zealand and Australia, India, and three European countries: Italy, Belgium, and France.

gendered patterns in the historical experiences of women lawyers—and a major research project, *Quiet Rebels*.

II HIDDEN FROM HISTORY: RESEARCHING ONTARIO WOMEN LAWYERS⁷

By definition, those who have been barred from entry into, or effective participation in, the legal world rarely occupy a prominent position in the official reports of cases or commentaries which form the basis of much legal scholarship. . . . Claims that these lives cannot be adequately charted because of insufficient information about them inevitably leads to a double marginalization: that which occurs during the lifetime of the subject and that when revisionist accounts of [only “important” lives are written].⁸

My research about the history of Ontario women lawyers, many of whom were not regarded as “important,” presented many challenges. As Mary Kinnear concluded, while there is often considerable information about women who did “first things,” those who followed left few written records about their lives, they did not preserve their letters, and very few wrote biographies.⁹ In contrast, the story of Clara Brett Martin’s success in becoming the first woman to be called to the Ontario bar in 1897 is relatively well known. Yet Martin’s success in becoming a lawyer also involved challenging encounters because of her gender. Her initial application for admission as a law student in 1891 was rejected by Law Society benchers, necessitating legislative action by Premier Oliver Mowat’s government. Then, as a student at Osgoode Hall, Martin experienced “harassment at the hands of both instructors and students,”¹⁰ and when she was eventually called to the bar, the legal press expressed hope that she would be “the one brilliant exception.”¹¹ It seems significant that although she initially practised law with a few other lawyers, she eventually established her own firm, where she provided articling opportunities for women law students.¹²

Stories about early women lawyers in Ontario intersect with Ontario’s history of legal education, which differed from arrangements in other Canadian provinces where university law schools had been established in the late nineteenth and early twentieth centuries. In contrast, the Law Society of Upper Canada established its own law school at Osgoode Hall in 1889, where students attended a few lectures presented by practising lawyers in the early mornings

⁷ Sheila Rowbotham, *Hidden from History: Rediscovering Women in History From the 17th Century to the Present* (New York: Pantheon Books, 1974).

⁸ Linda Mulcahy & David Sugarman, “Introduction: Legal Life Writing and Marginalized Subjects and Sources” (2015) 42:1 JL & Soc’y 1 at 4.

⁹ Mary Kinnear, *In Subordination: Professional Women, 1870–1970* (Montreal & Kingston: McGill-Queen’s University Press, 1995) at 22–23.

¹⁰ Cecilia Morgan, “‘An Embarrassingly and Severely Masculine Atmosphere’: Women, Gender and the Legal Profession at Osgoode Hall, 1920s–1960s” (1996) 11 CJLS 19 at 31.

¹¹ “Editorial Review” (1892) 12:5 Can L Times 110 at 111. See also Constance B Backhouse, “‘To Open the Way for Others of My Sex’: Clara Brett Martin’s Career as Canada’s First Woman Lawyer” (1985) 1:1 CJWL 1.

¹² *Ibid.*

and late afternoons, but they spent most of their days articling in law firms. Some initial changes occurred in 1950, but it was not until 1957 that Law Society benchers finally agreed to accredit university law schools in Ontario to provide three years of academic legal education, along with a similar program at Osgoode Hall, followed by articles and bar examinations. Thus, while some law students continued to attend the law school at Osgoode Hall in Toronto, many others obtained university law degrees at various Ontario universities.¹³

In the six decades between Martin's admission in 1897 and these new arrangements for legal education in 1957, only 187 women were called to the Ontario bar. Thus, both as law students and lawyers, women constituted a tiny minority, and they were often the only woman in classes and then the only woman lawyer in their community. Most left no records of their lives and their work. Thus, the discovery by an excellent student researcher of a typed "List of Women Barristers and Solicitors in Ontario (1897–1975)" in the Law Society's archives was fortuitous—and critically important for my research. Created by an employee of the Law Society, Eileen (Major) Huckle, the list included the full names of women lawyers and the exact dates of their calls to the Ontario bar. And significantly, it was carefully annotated by Huckle to include women lawyers' married names (essential for following their careers), locations of their legal practices (if any), and in some cases their dates of death. All the same, since most of these 187 names were initially unfamiliar, the process of tracking down the stories of these women lawyers required the assistance of a host of student researchers over many years.

In this context, the archives of both the Law Society and the Women's Law Association of Ontario (WLAO)—an organization established in 1919 at a time when male legal organizations completely excluded women—provided much useful information about the history of early women lawyers.¹⁴ In addition, the Ontario Gazette, books and articles about Ontario lawyers and law firms, and oral histories of the Osgoode Society for Canadian Legal History provided important details. And significantly, some local archives and museums in Ontario communities proved extremely useful. For example, the Thunder Bay Museum and its staff generously shared archival details about the second woman called to the Ontario bar: Eva Powley, from Port Arthur, who was called to the bar in 1902, five years after Martin.¹⁵ Powley's story not only reveals her intelligence and intrepid determination to join the legal profession, but also the challenges faced by a young woman from northern Ontario who was required to attend lectures at Osgoode Hall in Toronto in the late nineteenth century. Interestingly, Powley was accompanied by her married sister when she initially travelled to Toronto, and she resided in a woman's college at the University of Toronto, where she was also enrolled for a degree. Powley graduated first in her class at the university and also succeeded in her examinations at Osgoode Hall. She then returned to Port Arthur to article at the firm of Francis Henry Keefer; and in 1902, she joined Keefer's firm to practise law.¹⁶ Although there is no information about why Powley resigned from the firm in 1912 after a decade of legal practice, it is possible that her experience in practice was not entirely positive. The Keefer firm had grown significantly,

¹³ Brian D Bucknall, Thomas C H Baldwin & J David Lakin, "Pedants, Practitioners and Prophets: Legal Education at Osgoode Hall to 1957" (1968) 6:2 Osgoode Hall LJ 139 at 228.

¹⁴ The WLAO celebrated its 100th anniversary in 2019 with a gala event in Toronto.

¹⁵ Powley was called to the bar with 65 male graduates: see LSO Archives for Eva Maude Powley; Mossman, *Quiet Rebels*, *supra* note 1 at 82–89.

¹⁶ Francis Henry Keefer was a prominent lawyer and later a member of Parliament (1917–1923) and also a member of the Ontario Legislature (1923–1926); see "Obituary for Francis Henry Keefer," Port Arthur News Chronicle (5 December 1928).

with several male lawyers joining Keefer and Powley; yet, although the firm's name regularly changed to add the names of these new male lawyers, Powley's name was never included. It seems possible that, as Clara Brett Martin had discovered, the practice of law presented challenges for woman lawyers, perhaps particularly in these early years in northern Ontario.¹⁷

III BEYOND SUCCESS STORIES: A “GROUP BIOGRAPHY” OF EARLY WOMEN LAWYERS¹⁸

Modern readers [of biography] . . . know that women's lives are complex, and that region, period, personality and circumstance crucially influence what a subject is able to make of herself. . . . And modern women lawyers know that the biographies of women who chose to locate their professional lives in the law are likely to be stories of piecemeal progress and circumscribed success.¹⁹

Carol Sanger's comment about women lawyers' biographies confirms that early women lawyers often experienced challenges, based on gender, as they entered the “gentleman's profession” of law. *Quiet Rebels* documents these experiences for the 187 women (law students and legal practitioners) up to 1957. In doing so, the book aims to document the range and persistence of many gendered patterns in the early history of Ontario's legal profession—patterns that confirm “the processes and decisions, the choices and unique pain, that lay behind the life stories of these women.”²⁰

Quiet Rebels tells the stories of this early cohort of women lawyers and their differing responses to gendered exclusions. As law students, many of them remained silent in classrooms, and their allocated seating in the front row meant that instructors standing on a high lecture pulpit were prevented from seeing women students at all. Some women students were subjected to pranks from male students, and one woman missed part of a course after she was injured by a boot thrown at her by a male student. Women were frequently denied articling opportunities well into the 1980s, and for decades they were excluded from male clubs and legal organizations, including the Canadian Bar Association and the Lawyers Club. Moreover, although women campaigned for election as benchers for decades, it was not until 1975 that Laura Legge became the first woman bencher and then treasurer of the Law Society in 1983. Although Helen Kinnear was appointed to the county court in 1943, it was not until 1971

¹⁷ There were few women lawyers in northern Ontario until later in the twentieth century. Although Edyth Dyke (called to the bar in 1921) practised in Fort William, and Ruby Wigle Fish (called to the bar in 1926) eventually practised in several northern communities, it was not until after World War II that Mary Gallagher Gauthier (called to the bar in 1940) began to practise law with her husband in Timmins; Mossman, *Quiet Rebels*, *supra* note 1 at 240, 266.

¹⁸ See Ruth Franklin, “Splinters and Mosaics: On Women's History and Group Biography,” *Harper's Magazine* (June 2020), online: <<https://harpers.org/archive/2020/06/splinters-and-mosaics-francesca-wade-square-haunting-maggie-doherty-the-equivalents>>; see also a review of Francesca Wade, *Square Haunting: Five Writers in London Between the Wars* (New York: Tim Duggan Books, 2020).

¹⁹ Carol Sanger, “Curriculum Vitae (Feminae): Biography and Early American Women Lawyers” (1994) 46:5 *Stan L Rev* 1245 at 1257 [emphasis added].

²⁰ Carolyn G Heilbrun, *Writing a Woman's Life* (New York: Ballantine Books, 1989) at 31. See also Rosemary Auchmuty, “Recovering Lost Lives: Researching Women in Legal History” (2015) 42:1 *JL & Soc'y* 34 at 43–4.

that Mabel Van Camp was appointed to the Supreme Court of Ontario. Yet, as Van Camp explained in a speech in 1990, most early women lawyers chose to remain quiet because “it was more important to fit in, to deny the differences.”²¹ Indeed, many early women lawyers claimed that they were “lawyers,” not “women lawyers,” and their small numbers meant that male lawyers and judges rarely encountered them. Their claims also ignored societal differences in the lives of men and women, especially marriage and family responsibilities. Thus, many early women lawyers who practised law did not marry, and those who married often did not practise law.²²

As Huckle’s “list” revealed, only a few women were called to the Ontario bar each year up to 1957.²³ After 1957, with more entry points in Ontario for legal education, the number of women lawyers increased, gradually at first and then more steadily. Significantly, in contrast to the 187 women called to the bar in six decades up to 1957, there were 365 women called to the Ontario bar between 1958 and 1975, fewer than two decades. Moreover, by 2018, the number of women called to the Ontario bar exceeded the number of men called in that year.²⁴

In addition to telling the stories of the 187 women who were called to the Ontario bar up to 1957, *Quiet Rebels* also explores several significant changes in Ontario’s legal profession in later decades up to 2024. For example, the Law Society’s accreditation of university law schools made it possible for aspiring law students, including many women, to study law in different locations in Ontario. In addition, second-wave feminism increased women’s interest in social and legal changes for women, and the enactment of equality guarantees in the Canadian Charter of Rights and Freedoms offered new opportunities for legal action to accomplish such changes. At the same time, the roles and organizational arrangements of law firms and the nature of legal work itself were changing dramatically at the end of the twentieth and into the twenty-first centuries. In this context, research about the legal profession, including reports by the Law Society, documented how new forms of inequality were emerging, not only for women. For example, major changes in the organization of legal work, especially in large law firms, created new hierarchies—some of which tended to exclude women lawyers. As well, a significant increase in racialized and Indigenous lawyers resulted in a need for more complex responses to differential opportunities for members of the legal profession. Thus, while we can celebrate how some white, middle-class women have now achieved success as members of the legal profession and the judiciary, challenges remain for some racialized and Indigenous women lawyers, as well as those who are dis/abled, immigrants, lesbian/transgender, or members of religious minorities. For these women and other “outsiders,” both “quiet” and “less quiet” rebellions may be needed.

²¹ Women’s Law Association of Ontario, “A Profile: Madam Justice Mabel M Van Camp” (1990) 3:1 Without Prejudice 1 at 3.

²² See Mossman, *Quiet Rebels*, *supra* note 1 at 445.

²³ In fact, there were only two years up to 1957 when as many as nine women were admitted to the Ontario bar—in 1921 and 1948—in each case, three years after the end of the two World Wars (*ibid* at 257). In these years, women (and their fees) were apparently welcomed at Osgoode Hall’s law school while male students were absent during the wars (*ibid* at 257).

²⁴ Law Society of Ontario, Annual Report 2018 (Ontario: LSO, 2018) at 34.

IV GENDER AND RESEARCH IN LAW: A PERSONAL CONNECTION

My research in the WLAO archives revealed an unexpected personal connection to the organization's annual meeting held in April 1927. Such meetings always involved formal toasts, and this 1927 dinner included two quite special toasts: one celebrated the thirtieth anniversary of Clara Brett Martin's call to the Ontario bar, while the second acknowledged sixty years since Canadian Confederation. But significantly, there was also a final toast—focused not on the past, but on the future. Proposed by Aileen Silk Bicknell (called to the bar in 1919) and responded to by Florence Daley Harkins (called to the bar in 1922),²⁵ the final toast looked ahead to Osgoode Hall sixty years in the future:

To the graduates of Osgoode Hall Law School in 1987 ... when only a few stray men would be called the Bar and ... all the judges would be women.²⁶

The audacious hopefulness in this final toast, so different from others at WLAO celebrations, was startling. But its focus was also intriguing—because Osgoode Hall Law School (located at York University by 1987) had faced a significant human rights complaint in 1987, specifically focused on gender discrimination against a woman lawyer. At issue was the decision by the university president to appoint a new dean at Osgoode Hall (a male) rather than the only other candidate (a woman)—me. The controversy was very public and resulted in a complaint to the Ontario Human Rights Commission, presented by a large number of women lawyers and law students. Thus, discovering this 1927 toast in the WLAO archives was an extraordinary surprise—viscerally connecting my 1987 experience to my research work about earlier generations of Ontario women lawyers.²⁷

Thus, historical research about gendered patterns in the experiences of early women lawyers in Ontario may still be relevant to contemporary challenges in the legal profession. In this context, the conclusions of historian Judith Bennett about patterns of continuity (rather than transformation) in women's work status remain all too relevant for some current women lawyers. According to Bennett, although women's work experiences may change, there is more often continuity rather than transformation in their work status—relative to men, that is. Thus, Bennett suggests that women's history must move beyond “[s]tirring tales of strong women who accomplished marvellous deeds against great odds” and be more attentive to continuities in exploring strategic lessons about the history of women's work.²⁸

Moreover, telling stories about earlier women lawyers in a group biography not only reveals hidden gendered patterns in decades past, but they may also help to grapple with current experiences and similar stories in the twenty-first century.

²⁵ Mossman, *Quiet Rebels*, *supra* note 1 at 7. By 1927, both women had married and ceased to practise law—factors that may have encouraged their “rebellious” toast.

²⁶ The Ideal Scrapbook (1923–1938), LSO Archival Fonds and Collections, Women's Law Association of Ontario fonds (scrapbook vol 2).

²⁷ See Mossman, *Quiet Rebels*, *supra* note 1 at 453; Mary Jane Mossman, “‘Herculean Obstacles and Intrepid Complainants’: The Sex Discrimination Complaint at Osgoode Hall Law School, 1987-1994” in Ulrike Schultz, Gisela Shaw, Margaret Thornton & Rosemary Auchmuty, eds, *Gender and Careers in the Legal Academy* (Oxford: Hart Publishing, 2021) 425 at 427.

²⁸ Judith M Bennett, “Theoretical Issues: Confronting Continuity” (1997) 9:3 *J Women's History* 73 at 74; Judith M Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (Philadelphia: University of Pennsylvania Press, 2006) at 5. See also Mossman, *Quiet Rebels*, *supra* note 1 at 21, 456–57.