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Gender, Law, and the Legal Profession

Mary Jane Mossman

**A Book Review of
Mary Jane Mossman's *Quiet Rebels***

Melis Guzel

**Fifty Years of Substantive
Equality for Women**

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Women Judges in Northern Ontario**

in conversation with
Hailey Hayes & Natasha Latina

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INTRODUCTION: SPECIAL ISSUE

REFLECTING ON THE PAST, SHAPING THE FUTURE

Tenille E. Brown,^{*} Natasha Latina,^{**} Hailey Hayes^{***}

For many decades, the legal profession was categorized as a “gentleman’s profession.”¹ In fact, the year 2025 marks 150 years since the first woman in Canada received a university degree, 128 years since the first woman in Canada was called to the bar, 108 years since women in Manitoba received the right to vote, 96 years since women were considered under the legal definition of the word “persons,” and only 65 years since all women in Canada received the right to vote.² These statistics are provided by Mary Jane Mossman as she sets the foundation for her milestone book, *Quiet Rebels: A History of Ontario Women Lawyers*.³ In *Quiet Rebels*, Mossman carries out a historical deep dive into the lives of 187 early women lawyers in Ontario, Canada. *Quiet Rebels* is impactful because it reflects on the work of Ontario’s first individual women lawyers, charting them within the broader context of the Ontario legal profession starting in the late nineteenth century. Beginning in 1897 with the story of Clara Brett Martin, the first woman admitted to the Law Society of Upper Canada (now the Law Society of Ontario), the stories of early women lawyers demonstrate the tense negotiations such pioneer women made as they navigated barriers, sometimes making compromises, and often finding alternative paths on their way to being called to the bar.

Quiet Rebels inspired us, the guest editors, to put together this special issue on the topic of women and the law. It is not lost on us that the author of *Quiet Rebels*, Mary Jane Mossman, is herself a trailblazer in the advancement of women’s rights. This can be seen in her book *Quiet Rebels*, her earlier work on *First Women Lawyers*,⁴ and in the many papers and articles she has written on gender, equality, and feminism. It is also apparent through her engagement with initiatives aimed at addressing inequality in the profession, such as by contributing to the

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^{1.} Mary Jane Mossman, *Quiet Rebels: A History of Ontario Women Lawyers* (Waterloo: Wilfrid Laurier Press, 2023) at 2 [Mossman, *Quiet Rebels*].

^{2.} Canada, “Women in Canadian History: A Timeline” (last modified 23 October 2024), online: <<https://www.canada.ca/en/women-gender-equality/commemorations-celebrations/womens-history-month/womens-history-canada-timeline.html>> [perma.cc/3NRA-T26Y].

^{3.} Mossman, *Quiet Rebels*, *supra* note 1.

^{4.} Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Oxford: Hart Publishing, 2006).

Canadian Bar Association's landmark 1993 *Touchstones* report,⁵ a study on gender equality in the profession chaired by Madam Justice Bertha Wilson and for which Mossman provided the thematic paper on work and family in the legal profession.⁶

This special issue is our call to consider the current experiences of women in the profession and of those served by the profession, and to look outward to consider the centuries of inequality, marginalization, and abuse that has been and continues to be experienced on a gendered basis. Inspired by woman legal scholars and professionals, this special issue weaves the lived experiences of women in the profession with the hope of creating meaningful future change in this space.

The first paper in this special issue is a reflection on her book *Quiet Rebels* from Mary Jane Mossman herself.⁷ In this piece, Mossman reflects on how women's stories are pieced together, about the availability of historical material, and the importance of documenting the growth, challenges, and successes of early women lawyers from 1897 to 1957. Mossman brings attention to the second woman lawyer called to the bar in Ontario, Eva Maude Powley, a woman from Port Arthur, Ontario, which is now Thunder Bay, the location of the Bora Laskin Law School where the guest editors went to law school, teach, and from which we now write. Eva Powley's work getting called to the bar—and that she likely studied in Port Arthur and went to Osgoode Hall in Toronto to write her law exam—is strikingly familiar for our current student body and local practising bar, who navigate their work in the northern region of Ontario, with often deep connections elsewhere. That the second woman lawyer in Ontario was from present-day Thunder Bay is also no surprise to us, the guest editors, and we are proud to be writing from this space.



Figure 1: Eva Maude Powley.
Undated. Credit Archives of the
Law Society of Ontario

⁵ Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability. The Report on Gender Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1993), online: <cbc.org/CBA/media/PDFs/Sections/touchstonesForChange.pdf>.

⁶ Mary Jane Mossman, "Work and Family in the Legal Profession: Re-Thinking the Questions" (Paper delivered at the CBA National Conference of the Task Force on Gender Equality in the Legal Profession, 1992).

⁷ Mary Jane Mossman, "Gender, Law and the Legal Profession: A Reflection about "Quiet Rebels," (2026) 7:2 Lakehead LJ 93.

The second paper is a book review written by then-law student Melis Guzel.⁸ The placement of this book review at the centre of this special issue is a reflection of the importance of the voices and perspectives of the most junior members of our legal profession—law students, articling students, and later junior lawyers. Guzel’s deep engagement with Mossman’s book also highlights the importance of *Quiet Rebels* and the need to reflect on women’s stories. Guzel details the methodology in *Quiet Rebels* and highlights key insights provided by the book, such as the quiet tone of rebellion among early women lawyers. This book review asks the audience to think critically about Mossman’s book, on today’s current legal profession, and how disparities between men and women lawyers currently manifest.

The third paper, “Fifty Years of Substantive Equality for Women: Chronicling the Legacy of the National Association of Women and the Law (NAWL),” is written by Meghan Tibbits-Lamirande and Suzanne Zaccour.⁹ This article begins with a reflection on the first-ever National Conference on Women and the Law, organized by women from the University of Windsor Faculty of Law in March 1974, which led to the formation of NAWL by University of Ottawa law students Shirley Greenberg, Lynn Kaye, and Peggy Mason. The piece emphasizes the interconnected legal and political landscapes, from the 1960s to the present, and analyzes NAWL’s interventions to support the feminist development of law in areas such as rights to marital property, economic fairness through equal pay, ongoing stereotypes of women that are used against them in incidents of sexual violence, rights of equality under the *Indian Act*,¹⁰ and more. These interventions directly supported women’s substantive equality before the law and are a realization of NAWL’s ongoing work of bringing systemic feminist change.

The fourth paper, “Creating Reflective Spaces for Change: Building a More Inclusive Legal Culture by Centring Women Lawyers’ Voices through Storytelling and Reflective Practice,”¹¹ provides a unique perspective on understanding women lawyers’ voices through storytelling and reflective practices. The article reflects on the work that developed from a forum on “Diversity and Inclusion in the Legal Profession” hosted at the University of Saskatchewan College of Law that led to several initiatives, including a podcast and further reflections focused on women. This article highlights that amplifying the experiences of women and of other equity-seeking groups is a powerful tool for systemic transformation, and this process might well require adoption of new metrics for success in the legal profession.

The next paper is written by Professor Emerita of Law, Jonnette Watson Hamilton, titled “Still a Signpost of Inequality: An Update on Hysteria in the Courts.”¹² This article is a rare opportunity to revisit scholarship written over 20 years ago, as Watson Hamilton reflects on her 2002 article “The Use of Metaphor and Narrative to Construct Gendered Hysteria in the

⁸ Melis Guzel, Book Review “Paving the Way: A Book Review of Mary Jane Mossman’s *Quiet Rebels: A History of Ontario Women Lawyers*,” (2026) 7:2 Lakehead LJ 100.

⁹ Meghan Tibbits-Lamirande and Suzanne Zaccour, “Fifty Years of Substantive Equality for Women: Chronicling the Legacy of the National Association of Women and the Law (NAWL),” (2026) 7:2 Lakehead LJ 109.

¹⁰ *Indian Act*, RSC 1985, c I-5.

¹¹ Brea Lowenberger, Leah Howie, Judy Jaunzems-Fernuk, and Lawren Trotchie, “Creating Reflective Spaces for Change: Building a More Inclusive Legal Culture by Centring Women Lawyers’ Voices through Storytelling and Reflective Practice” (2026) 7:2 Lakehead LJ 130.

¹² Jonnette Watson Hamilton, “Still a Signpost of Inequality: An Update on Hysteria in the Courts” (2026) 7:2 Lakehead LJ 152.

Courts.”¹³ Watson Hamilton assesses the reliance on “hysteria” in judicial decisions since 2002, providing an examination of the ongoing instances of parties, witnesses, and others being labelled as “hysterical” in Canadian courtrooms and showing that this labelling process has expanded to include children in custody cases. This article reminds readers that inequality is entrenched in Canadian law, as demonstrated through the continued reliance on the trope of “hysteria” and all that it has come to mean both within law and Canadian society at large.

The final paper brings us full circle on the themes underlying this special issue to reflect on the experience of women judges. We, Natasha Latina and Hailey Hayes, then 3L students at Bora Laskin Faculty of Law and the student managing editors of the *Lakehead Law Journal*, were honoured to host a roundtable discussion with five female justices of both the Ontario Court of Justice and the Superior Court of Justice in Thunder Bay, Ontario, in January 2025. We were fortunate to be in conversation with Justice Claudia Belda (OCJ), Justice Elaine Burton (OCJ), Justice Chantel Brochu (SCJ), Justice Tracey Nieckarz (SCJ), and Justice Helen Pierce (SCJ). This final paper is an edited copy of our conversation. During this discussion, the Honourable Justices spoke to us about their experiences as female lawyers in the profession and provided unique insights on their careers as they were called to serve as judges. From commenting on experiences during their respective calls to the Ontario bar, to observations of new trends within the courtroom, we are grateful for the Honourable Justices’ candour, time, and advice for the next generation of female legal professionals.

At its core, this special issue highlights the meaningful contributions women have made to the legal profession, and it looks to the future to predict remaining gaps. As the Canadian legal landscape continues to grow and adapt to change, it is necessary to remember the countless battles women lawyers have fought just to be able to contribute to the legal profession. These battles continue. As Mossman so well highlights in *Quiet Rebels*, attention to women’s stories requires that we acknowledge that women lawyers exist with their own histories, perspectives, and agency.¹⁴ Being a “quiet rebel” is an individual experience, and for many this has meant navigating life as a working lawyer for oneself within one’s own agency. Importantly, trailblazing women lawyers might have held views that do not meet the current standards of non-discrimination.¹⁵ Still, these women *did* pave a path for future women lawyers.

As the papers in this special issue demonstrate, the achievements of women lawyers are many, but there is still much to be done for women working in the profession and for the women the profession serves. The authors of articles in this special issue are members of the bench, academics, community workers, legal professionals, and junior members of the bar, and together they ask us to reflect on the past so that we may better understand the future. By reflecting on these issues and listening to the experiences of women legal professionals, these works provide an opportunity to think about our own steps to address inequalities embedded in the legal profession.

¹³ Jonnette Watson Hamilton, “The Use of Metaphor and Narrative to Construct Gendered Hysteria in the Courts” (2002) 1:2 JL & Equality 155.

¹⁴ See, Mossman, *Quiet Rebels*, *supra* 1, “epilogue.”

¹⁵ *Ibid* at 448.

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

Mary Jane Mossman*

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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.

PAVING THE WAY: A BOOK REVIEW OF MARY JANE MOSSMAN'S *QUIET REBELS: A HISTORY OF ONTARIO WOMEN LAWYERS*

Melis Guzel*

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I INTRODUCTION: A HISTORY OF WOMEN LAWYERS IN ONTARIO

The legal field is gradually and continuously changing, and the profession is shifting away from differentiating between a “lawyer” and a “woman lawyer.” It is therefore crucial to acknowledge the pioneering women who paved the way for future generations of lawyers in Ontario.¹ In *Quiet Rebels: A History of Ontario Women Lawyers*, Mary Jane Mossman, professor emerita at Osgoode Hall Law School, recounts the stories of the early women who paved the way in the legal profession in Ontario. Mossman tells the stories of these women, highlighting the contributions they made that have led the legal profession to where it is now. Mossman has compiled meticulous research on the early women in the legal profession and captures the reader's attention by painting a picture of progress through different eras. Ultimately, Mossman's book, without directly saying it, highlights why the earliest women lawyers decided to remain quiet when being targeted in the profession, as an intentional and necessary strategic move that created the conditions for future generations of women lawyers to be able to speak openly on gender discrimination.

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^{1.} Mary Jane Mossman, *Quiet Rebels: A History of Ontario Women Lawyers* (Waterloo: Wilfrid Laurier University Press, 2024) at 20.

This book is an extensive 528 pages and recounts the stories of the 187 women who were called to the Ontario bar between 1897 and 1957.² This review is divided into four parts, in chronological order, and focuses on select lawyers and themes discussed throughout the book. It is recommended that readers read the book in its entirety to understand and appreciate the issues raised that are not covered by this review. This book may be of particular interest to law students and feminist legal scholars, as Mossman provides a clear outline of the progression that has occurred within the Ontario legal field toward accepting women as lawyers, as well as context on the professional culture and how it affects women differently. Awareness of these patterns ultimately demonstrates that inequality within the legal profession is embedded in institutional structures, such as hiring within firms, promotions, pay, and work-life balance.

A. Methodology: How the Story is Told

By using a collective biography framework, Mossman delves into the lives of 187 women and explores how ingrained gendered beliefs were within a culture that upheld male exclusivity—the hallmark of the “gentleman’s profession of law”—for many years.³ The biographies are categorized thematically to highlight the effects of environmental pressures and societal attitudes toward gender that impacted the legal profession and shaped how women reacted to related barriers. This is an effective methodology, because it helps the reader understand the specific barriers women faced in their respective eras while also highlighting common, consistent barriers that remained throughout the years—such as the number of women who left practice once they got married. For example, Frances (Fay) Feldman was asked in an interview why she was looking to work when her husband made enough money “to keep [her].”⁴ Although this book did not explicitly state the reason why each woman decided to leave the practice once married, it can be assumed that reasons were due to lack of funds for childcare and societal pressure to conform to marital gender roles.

To emphasize the changes in the legal profession, Mossman highlights the stories of pioneering women to convey the impact of their resilience and determination throughout the years to break down gender discrimination by examining “the strategies adopted by earlier cohorts of women lawyers to confront them, [which] may have continuing relevance for contemporary women lawyers.”⁵ This book critically examines not only the experiences of the early women trailblazers, but also the experiences of women from diverse backgrounds.⁶

² *Ibid* at 2, 19–20.

³ *Ibid* at 2.

⁴ *Ibid* at 281.

⁵ *Ibid* at 392.

⁶ *Ibid* at 424. In particular, this included the intersection of race, sex, and social class and how it impacted women lawyers who had increased barriers.

II BREAKING BARRIERS: WOMEN TRANSFORMING THE PROFESSION

In the first few pages of *Quiet Rebels*, Mossman shares a quote from a toast delivered by Aileen Silk Bicknell at the 1927 Women's Law Association of Ontario (WLAO)⁷ dinner. The toast stated that by 1987 “only a few stray men would be called to the Bar and . . . all the judges would be women.”⁸ With this quote, Mossman raises an important question: “What was the meaning of this toast for women lawyers” at the 1927 WLAO meeting?⁹ Was the toast simply intended to be a light-hearted joke, or was there a deeper meaning to it: symbolizing the hope and desire for a reimagining of gender roles present in the legal profession?¹⁰

With this quote, Mossman sets the tone of the book: the quiet rebellion of early women in the legal field, who “quietly signal[ed] their hope for a different future for later cohorts of women in law.”¹¹ Although this toast was intended to be humorous, there is much more to uncover. It acknowledges the shared experiences of the early women lawyers who hoped for a future where gender discrimination was eliminated and women outnumbered their male counterparts.¹² The theme of quiet rebellion is consistent throughout the book because it highlights how earlier women had to remain silent to be allowed into the profession.¹³ While their silence prevented them from standing up against inequality in the legal profession, it helped create a space for future generations of women lawyers to be vocal and advocate for equality in the profession. It is the reviewer's opinion that this silence suggests that vocalizing gender discrimination during the earlier years would bring negative attention to these trailblazer women lawyers and prevent them from establishing themselves. Their silence allowed generations of women lawyers to establish a space in the legal field, which eventually allowed future generations of women lawyers to feel comfortable being vocal for women's rights in law.

A. The Beginning of Women Lawyers in Canada: 1897–1918

On February 2, 1897, Clara Brett Martin was officially called to the bar, making her the first woman lawyer in Ontario.¹⁴ For many years, Martin was known as the “one brilliant exception” because she was the only woman in the legal field up until 1900.¹⁵ However, Martin was also seen as a threat to her male counterparts because she challenged the idea

^{7.} *Ibid* at 5–7. The WLAO is an organization that serves to support women lawyers in Ontario (*ibid*). Still to this day, the WLAO continues to serve as a resource that supports women in law by “providing leadership and support to advance the status of women in the legal profession.” Women's Law Association of Ontario, “History” (last visited 15 September 2025), online: <<https://wlao.on.ca/about/history/>>.

^{8.} Mossman, *ibid* at 7.

^{9.} *Ibid*.

^{10.} *Ibid*.

^{11.} *Ibid* at 453.

^{12.} *Ibid* at 452–53.

^{13.} *Ibid*.

^{14.} *Ibid*.

^{15.} *Ibid* at 49–50, 452–53.

of law being a “gentleman’s profession.”¹⁶ In response to her own experiences navigating an almost exclusively male-dominated profession, Martin offered articling positions in her office exclusively to women lawyers, further contributing to paving the way for future generations of women lawyers.¹⁷

Slowly, after the 1900s, the number of women lawyers in Ontario started to increase.¹⁸ As men were called to serve in the military during World War I, women had more opportunities available to them in the legal profession.¹⁹ However, after World War I, women law students faced difficulties in classes, such as indignities by their male classmates.²⁰ Grace Hewson experienced this when her male classmates released a mouse in the lecture hall, with their entire plan hinging on assumptions about how a woman would react (“lack of self-control”) versus a man (“manly dignity and courage”).²¹ Hewson’s reaction in this situation emphasizes the use of silence as a strategy to avoid unnecessary attention so she could continue to “fit in” with her male counterparts.²² This is one of the many stories that must be shared, because they illustrate the changes in gender patterns within the legal profession.²³

B. Women’s Impact During the Interwar Years: 1919–1939

During the interwar years, supportive spaces were created for women in the legal profession, such as legal organizations that encouraged support among the women.²⁴ The WLAO hosted their inaugural meeting, welcoming women who were currently practising law or who had left law, which served as a supportive environment for these women.²⁵ Acknowledging the women who ceased practice hints at the troubling trend of women leaving law upon marriage.²⁶ This was due to society’s encouragement of conforming to gender norms and the public opinion that married women should not need to work.²⁷ Many successful women lawyers during these years were not interested in marriage because it meant giving up their “income and economic independence.”²⁸

Gender discrimination during the Great Depression intensified, because women were blamed for taking opportunities away from returning veterans.²⁹ Due to the struggling economy, it was expected that women would give up their spots in law school and return to

^{16.} *Ibid* at 49.

^{17.} *Ibid* at 50.

^{18.} *Ibid* at 49–50.

^{19.} “[T]wenty women were called to the bar in just three years between 1919 and 1921”: *ibid* at 76.

^{20.} *Ibid* at 81, 93.

^{21.} *Ibid* at 92.

^{22.} *Ibid* at 92. Grace Hewson remained quiet as the mouse was running over her boots (*ibid*).

^{23.} *Ibid* at 81.

^{24.} *Ibid* at 131, 134.

^{25.} *Ibid* at 134.

^{26.} *Ibid*.

^{27.} *Ibid* at 235, 241–42.

^{28.} *Ibid* at 241–42. There were some exceptions to this, as Mossman references a few women lawyers between 1919 and 1939 who continued to work at firms with their spouses (*ibid* at 241).

^{29.} *Ibid* at 121.

their “traditional female jobs.”³⁰ However, women gained valuable skills during these years, further proving that they served as more than just an alternative to their male counterparts.³¹

Between 1919 and 1930, women were beginning to take on more prominent roles in the legal profession. For example, Vera Parson was the first woman defence lawyer in Ontario to work on a murder case, and Edith Sheppard became the first woman to work at a big firm in downtown Toronto.³² Although these accomplishments are celebrated now, they were not easy to achieve back then. In 1926, during the call to the bar, Justice Logie commented that it was “constitutionally impossible” to openly welcome women into a profession where there was “no room” for them.³³ Two women were in attendance during this ceremony, and yet they remained silent despite negative comments made about their hard work and continued to enjoy the ceremony.³⁴ Mossman excellently illustrates the power of using silence as a form of rebellion to ensure women did not jeopardize their position in the legal profession during those years.³⁵

Notably, the theme of silence as oppression versus silence as rebellion is explored throughout the book. Biographies written about men are adopted as a “quest plot,” where there is a hero who must overcome difficulties through “courage, endurance, cunning, and moral strength.”³⁶ However, women’s stories are written differently, because they had to conform to the acceptable stereotype of women, which resulted in downplaying their accomplishments, avoiding highlighting strategies, and making it seem like success “just happened.”³⁷ Women often avoided openly acknowledging the discrimination they dealt with to conform with their environment and become successful—that is, to get law school acceptances, work promotions, or new clients. That is why, when reading Mossman’s book, the reader must read between the lines of these women’s experiences and not simply look at what is written, but also what is missing in their stories and to question how silence played a role in their success. The earlier silence of women was what allowed them to enter the legal profession, by “fitting in.” Some women were using silence to reach success and be accepted, while other women, such as Emily Murphy and her four colleagues, who were working on the “Persons” case, vocally fought to give women rights.³⁸ Put together, these two different forms of activism allowed women to enter the profession and continue to expand the inclusion of women lawyers.

^{30.} *Ibid.*

^{31.} *Ibid* at 122, 130.

^{32.} *Ibid* at 166, 169.

^{33.} *Ibid* at 170–71.

^{34.} *Ibid.*

^{35.} *Ibid.* “[Margaret] Hyndman reported that she and [Ruby] Wigle ‘stood there smiling and said nothing,’ although Hyndman later learned that her father had been irate at the judge’s remarks” (*ibid.*).

^{36.} *Ibid* at 15.

^{37.} *Ibid* at 15–17.

^{38.} *Ibid* at 192–93.

C. War And Post-War Reforms: 1940–1957

By 1940, during World War II, women had increased opportunities in the legal profession to expand their skills and gain confidence, largely because their male counterparts were leaving to serve in the military once again.³⁹ However, upon the return of the male veterans, women were expected to return to their domestic responsibilities, and they continued to experience discrimination for being in the legal profession after World War II.⁴⁰

Surprisingly, most women reported that prejudice from their male classmates during law school was not a common occurrence.⁴¹ Rather, prejudicial treatment came mostly from male counterparts in the professional world, with one lawyer, Wong Grant (1946), sharing her experience of being “elbowed out” by her peers.⁴² Additionally, gender discrimination was common among male and female clients who refused to seek help from a woman lawyer.⁴³

These trailblazers made strides in the legal profession, building the path for later generations of women lawyers.⁴⁴ For example, Van Camp served as a Superior Court judge until 1995, and Laura Down (later Laura Legge) established a sole practice to have more flexibility with her family, later becoming the first woman to be elected as a Benchers of the Law Society.⁴⁵ And, although it is important to recognize the progress of women in the legal profession during these years, it is also necessary to acknowledge that these accomplishments did not come easily; they came with obstacles of ingrained sexism in the profession and the prioritization of returning male veterans.⁴⁶

D. Making A Change In Gender Patterns: After 1957

In 1957, there was a significant change: Osgoode Hall introduced its three-year program, followed by York University adding an additional program in 1968.⁴⁷ This contributed to the increase in women lawyers: Women began to attain positions as senior partners, benchers, and judges, symbolizing an exceptional shift in the hierarchy of the profession.⁴⁸

However, gender disparities persisted in the legal profession in many areas, including parental and maternity leave policies.⁴⁹ Despite the Law Society of Upper Canada (now the Law Society of Ontario) introducing maternity benefits in 1944, these benefits disproportionately affected women who still felt the need to prove themselves in the work environment.⁵⁰ This also disproportionately affected women’s ability to maintain status in

^{39.} *Ibid* at 251, 253.

^{40.} *Ibid.*

^{41.} *Ibid* at 284–85, 289.

^{42.} *Ibid* at 293.

^{43.} *Ibid* at 318.

^{44.} *Ibid* at 386.

^{45.} *Ibid* at 302, 310–12.

^{46.} *Ibid* at 331.

^{47.} *Ibid* at 352, 378.

^{48.} *Ibid* at 392–93.

^{49.} *Ibid* at 416.

^{50.} *Ibid* at 415–16, 418.

the workplace, ultimately finding themselves at the bottom of the professional hierarchy.⁵¹ Additionally, during the 1960s and 1970s, sex discrimination was recognized as a human rights issue through the impact of second-wave feminism.⁵² It is the reviewer's opinion that this is where a shift occurs, with women lawyers slowly beginning to vocalize discrimination against gender, rather than remaining silent.

Moreover, diversity within the legal profession continued to be a serious problem. Women entering the bar were predominantly middle-class white women.⁵³ Women such as Myrtle Blackwood (1960) and Marva Jemmott (1971) not only dealt with gender discrimination but also had to overcome racial bias in the profession.⁵⁴ In a 1977 press report, Jemmott expressed that she had not experienced any barriers in the profession.⁵⁵ In later years, Jemmott was more candid on her experience of racial discrimination, which suggests her comment in 1977 was guarded and used as a strategy to "fit in" to the profession, rather than a reflection of her actual experience.⁵⁶

In 2024, a statistical snapshot of Ontario lawyers was released to compare the representation of Indigenous and racialized lawyers to see whether the legal profession reflects broader societal diversity by comparing it to the population of university graduates in 2021.⁵⁷ As of 2024, Indigenous lawyers (including First Nations, Inuk, and Métis) make up 1.75 per cent of all lawyers, 54 per cent of whom are women, in comparison to the 1.10 per cent of Indigenous university graduates working.⁵⁸ Racialized lawyers make up 30.3 per cent of all lawyers, with 58 per cent of them being women, in comparison to the 45.66 per cent of racialized university graduates working.⁵⁹ White lawyers make up 68 per cent of all lawyers, with 50 per cent being women, in comparison to the 53.25 per cent of university graduates working.⁶⁰ These data suggest that there is increased participation of women in the profession and the profession is becoming more diverse, but it still does not reflect the diversity of Ontario's educated population and there are still gaps that need to be addressed, especially among Indigenous and racialized groups.

Although Mossman's book analyzed the general experience of early women lawyers, it should be noted that Indigenous women also encountered unique barriers when entering the legal profession. Marion Ironquill was called to the bar in the 1970s and created organizations such as the Indian and Métis Friendship Centre in Canada.⁶¹ Helen Pierce (1982) became the first Métis woman lawyer in Ontario to be appointed to the Superior Court of Justice.⁶² Although there were milestones accomplished among women in general in the legal

^{51.} *Ibid* at 416, 418.

^{52.} *Ibid* at 408.

^{53.} *Ibid* at 424.

^{54.} *Ibid* at 424, 426, 432.

^{55.} *Ibid* at 428.

^{56.} *Ibid*.

^{57.} Law Society of Ontario, *Statistical Snapshot of Lawyers in Ontario* (Ontario: LSO, 2024) at 3.

^{58.} *Ibid*.

^{59.} *Ibid*.

^{60.} *Ibid*.

^{61.} Mossman, *supra* note 1 at 432–33.

^{62.} *Ibid* at 436.

profession at this point, Indigenous women lawyers continued to face discrimination in the legal profession.

While there were notable changes for women in the legal profession post-1957, these changes were often not extended to women who faced racial discrimination.⁶³ When advocating for equality for women in the legal profession, there needs to be an ongoing acknowledgement of the intersectionality of inequalities that women may face.⁶⁴

III POINTS FOR CONSIDERATION

A critical question persists: Have we truly created a legal profession where disparities between men and women no longer exist?

In short, the answer is no. The Women in Law Summit in 2020 stated that gender disparities still remain within the legal profession.⁶⁵ Notably, throughout the book Mossman highlights marriage as a barrier for women lawyers. Ruhana Chowhan points out that although the treatment of women in workplaces has improved, women in law still face challenges in maintaining work-life balance, especially after becoming a mother.⁶⁶ These challenges often involve being responsible for daycare and having other obligations related to family and household responsibilities.⁶⁷

Furthermore, Chowhan's study reveals a decrease in female lawyers holding senior positions at law firms.⁶⁸ Firms must implement programs and strategies that support women in advancing their careers within the workplace.⁶⁹ In fact, an Ontario study revealed that only 1,770 out of 17,982 women lawyers were partners at firms, compared to 5,168 out of 23,596 men lawyers.⁷⁰ Additionally, even if women were promoted, they are more likely to be assigned to less prestigious salary positions or non-equity partnerships.⁷¹ To address this issue, firms must implement programs and strategies that support women in advancing their careers within the workplace. These programs could include encouraging senior positions for women within firms, mentorship programs, embracing the continuous changes in the legal profession, and adapting to those changes.⁷² Overall, although earlier women lawyers worked hard to lead the way for future generations of women lawyers, there are still barriers and disparities that need to be addressed.

^{63.} *Ibid* at 439.

^{64.} *Ibid* at 440.

^{65.} *Ibid*.

^{66.} Ruhana Chowhan, "The Rise of Female-Led Law Firms in Canada," CBA (8 April 2025), online: <<https://www.cba.org/sections/women-lawyers/member-articles/the-rise-of-female-led-law-firms-in-canada>>.

^{67.} *Ibid*.

^{68.} *Ibid*.

^{69.} *Ibid*.

^{70.} *Ibid*.

^{71.} Margaret Thornton, *Law and the Quest for Gender Equality* (Canberra: ANU Press, 2023) at 200–01.

^{72.} Chowhan, *supra* note 66.

IV CONCLUSION: FINAL THOUGHTS ON MOSSMAN'S BOOK

Quiet Rebels is an excellent and thought-provoking read. It reminds us to be aware of the experiences of earlier generations of women lawyers because they can help us recognize patterns and make changes for current and future generations. Mossman does an exceptional job of illustrating not only how the earlier women lawyers fought against inequalities in the legal profession, but also how they used silence as a form of rebellion and the impact it had. In earlier decades, women often remained silent in the legal profession to avoid being perceived as a threat and to continue to advance their careers. Ultimately, these silent rebels are the reason why so many women were able to enter the legal profession in Ontario today, and they illustrate how we got to where we are today.

“Knowledge of the past can fortify us in the present.”⁷³ While we should recognize and celebrate the achievements of the pioneering women in law, this book also serves as a reminder that the journey to equality is far from over. Mossman demonstrates that disparities still exist in the profession, such as bias in hiring or promotions at firms, pressure to fit into work culture, as well as barriers with race, class, religion, and disability.⁷⁴ As the legal profession continues to change, we should not only be aware of the inequalities embedded in the legal profession, but also take steps to address them.

⁷³. Mossman, *supra* note 1 at 392.

⁷⁴. *Ibid* at 440–42.

FIFTY YEARS OF SUBSTANTIVE EQUALITY FOR WOMEN: CHRONICLING THE LEGACY OF THE NATIONAL ASSOCIATION OF WOMEN AND THE LAW (NAWL)

Meghan Tibbits-Lamirande* & Suzanne Zaccour**

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Abstract

The National Association of Women and the Law (NAWL) formed in 1974 as a network of women legal professionals dedicated to research, education, and women's rights advocacy. This article uses historical records from the Women's Archives at the University of Ottawa Library to highlight the impact and power of feminist law reform and to emphasize NAWL's ongoing relevance. We will analyze NAWL's interventions in important areas of law that deeply impact women's substantive equality: labour and economic justice, violence against women, and constitutional law. First, we narrate how NAWL fought for pay equity and economic justice, and against the legal devaluation of women's work. Then, we examine NAWL's struggle against biased and prejudicial legislation, especially in cases involving violence against women. Finally, we recount NAWL's influence on sections 15 and 28 of the *Canadian Charter of Rights and Freedoms*. Ultimately, we conclude that despite NAWL's early successes, feminist law reform remains an ongoing project crucial to promoting women's substantive equality and ensuring rights and protections for the most vulnerable.

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I INTRODUCTION: A VISION FOR WOMEN'S EQUALITY

On March 14, 1974, women from the University of Windsor Faculty of Law made history by convening Canada's first-ever National Conference on the Law and Women. Women students in the faculty sought to highlight the law's infringement of women's rights and illuminate gender discrimination in Canadian courts. In an introductory statement for the conference, coordinator Gabriella Lang outlined its aims and motives, noting that treatment of the subject would be "exploratory, educational, and consciousness-raising."¹ In referencing "consciousness-raising," Lang's opening remarks made use of activist terminology popularized by US feminists in the late 1960s to describe the analysis and understanding of patriarchy through the sharing and politicizing of personal experiences. Lang thus underscored the conference's role not only as a networking space for women lawyers and legal professionals, but also as a feminist call to action aimed at rectifying the economically and socially inferior status of women in Canadian society—a status that, Lang claimed, "is not only reflected in the laws of this country but is preserved by them."²

Prior to convening, conference organizers had been galvanized by the Supreme Court of Canada's controversial *Murdoch v Murdoch* decision in 1973.³ In this marital property case, on appeal from the Supreme Court of Alberta, Irene Murdoch claimed half the interest in her husband's land following the breakdown of their marriage because of domestic violence. Irene Murdoch had worked for years on the family cattle ranch, often managing the ranch while her husband was away for months at a time. Her work involved "haying, raking, swathing, moving, driving trucks and tractors and teams" and performing other forms of hard farm labour.⁴ The Supreme Court's decision shocked the public when four of five justices dismissed her claim, stating that "her labour in the fields merely amounted to the work expected of any ranch wife."⁵ For many in the women's liberation movement, this case represented the law's extreme devaluation of women's labour and demonstrated the extent to which long-standing, discriminatory assumptions about gender roles had shaped the judiciary at every level. When asked by male panellist Sydney Robins, who advocated patience in achieving equality for women in law, "What more do you want?" the group of 300 female law students shouted back "ACTION!"⁶

The National Association of Women and the Law (NAWL) formed out of an ad hoc luncheon at the Windsor conference and grew into a network of women legal professionals dedicated to research, education, and action. The organization's early objectives, summarized here by cofounder Shirley Greenberg, remain in effect today: "Briefly, we would devote ourselves to improvement of women's status, using whatever professional talents we could,

¹ Gabriella Lang, "Introduction," paper delivered at the National Conference on the Law and Women (Windsor ON, 14-16 March 1974), box 9, file 11, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

² *Ibid.*

³ *Murdoch v Murdoch*, 1973 CanLII 193 (SCC) [*Murdoch*].

⁴ Julien D Payne & Terrance J Wueter, "Presentation at the National Conference on the Law and Women" (Windsor ON, 14-16 March 1974), box 9, file 11, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

⁵ *Ibid.*

⁶ Kathleen Rex, "Law Society Opposes Sex Bias in Articling Jobs," *Globe and Mail* (18 March 1974), box 9, file 11, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

but also involving the community at all levels.”⁷ Considering the present rise of politically regressive movements in Canada and elsewhere, NAWL remains a crucial fortification against forces that seek our return to an era of social and economic dependence on men. In what follows, we use historical records from the Women’s Archives at the University of Ottawa Library to highlight the impact and power of feminist law reform and to emphasize NAWL’s ongoing relevance in 2026.

NAWL hosted their first official conference the following year. Although 1975 had been dubbed International Women’s Year, the continued discrimination of women under Canadian law served to bolster NAWL’s claim that the country’s commitment to women’s equality was largely superficial. Themed around “Women and Work,” NAWL’s inaugural conference not only outlined and critiqued laws that functioned to preserve women’s inferior economic status, but also defined and ratified a multitude of resolutions that gave form and shape to the organization.⁸

Resolutions passed at the 1975 “Women and Work” conference included a philosophy of solidarity with all working women; the creation of a constitution to serve as a model and guide for women seeking to organize trade unions; a strategy for implementing better equal pay laws; endorsement of affirmative action; advocacy for full rights and protections for domestic and part-time workers; affirmation of the right for legal secretaries to organize and bargain collectively; improvement of existing human rights legislation; support for the rights of Métis and non-status Indigenous women; commitment to study the issues faced by immigrant women workers; demands for legal equality in marriage and recognition of housewives’ economic contributions; endorsement of free, government-funded childcare; recognition of abortion as the “inalienable right of all women”; and insistence that a complainant’s sexual history be inadmissible in assessing credibility during sexual offence trials.⁹ Furthermore, the women of NAWL outlined their intention to form a national network with an emphasis on local organization by forming caucuses in the law schools of each province, which they accomplished before adopting their official constitution in 1977.¹⁰

In her introduction to the “Women and Work” conference, NAWL cofounder Lynn Kaye emphasized the organization’s role within the wider women’s liberation movement: “The task seems obvious,” she stated, “to translate the ideas and aspirations of the movement into language which can be transformed into legislation, and to organize to get legislation that can affect change.”¹¹ To this day, NAWL’s core mandate of systemic change has enabled the organization to spearhead widespread social and legislative transformation despite scarce resources. Although the organization was defunded by Stephen Harper’s federal government in 2006, leading to a decade of reduced activity and without paid staff, since 2017 the organization was re-funded and reconstructed around its original mandate.

7. Shirley Greenberg, “Saving Our History” (1977), box 9, file 19, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa [Greenberg, “Saving Our History”].

8. National Association of Women and the Law, *Women and Work Conference Program* (Winnipeg MB, 30 January–2 February 1975), box 9, file 12, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

9. *Ibid.*

10. Greenberg, “Saving Our History,” *supra* note 7.

11. Lynn Kaye, “Introduction,” *Women and Work Conference Program* (Winnipeg MB, 30 January–2 February 1975), box 9, file 12, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

Since its formation by University of Ottawa law students Shirley Greenberg, Lynn Kaye, and Peggy Mason following Windsor's 1974 "Women and the Law" conference, NAWL has advocated tirelessly for dismantling legal barriers to women's equality. According to Greenberg, "no group ever before" had been "formed specifically to deal with the legal aspects of women's existence."¹² After their founding conference on "Women and Work" in 1975, NAWL would go on to effect positive legislative change in many areas of "women's existence," helping to transform the Canadian judicial system and its treatment of women as legal subjects.

This article analyzes NAWL's interventions in important areas of law that deeply impact women's substantive equality: labour and economic justice, violence against women, and constitutional law. NAWL has worked in several additional areas of the law (e.g., marriage equality and Indigenous women's rights); however, labour law is of particular interest given that NAWL's earliest writing emphasized economic justice as the central tenet of women's liberation. Likewise, NAWL's work in criminal law warrants further analysis given how legislation historically treats gender-based violence differently from other crimes through consolidated cultural assumptions about male dominance. We also examine how the *Charter of Rights and Freedoms*, which should in theory protect women from biased interpretations of the law in all areas, remains an unrealized dream for NAWL and other feminist legal reformers. In Section II, we narrate how NAWL fought for pay equity and economic justice, and against the legal devaluation of women's work. Then, in Section III, we examine NAWL's struggle against biased and prejudicial legislation, especially in cases involving violence against women. Finally, Section IV recounts NAWL's influence on sections 15 and 28 of the Charter. Ultimately, we conclude that feminist law reform remains an ongoing project crucial to promoting women's substantive equality and ensuring rights and protections for the most vulnerable.

II ECONOMIC JUSTICE AND "WOMEN'S WORK"

Cofounder Lynn Kaye's address to the inaugural conference on "Women and Work" reflected NAWL's understanding that legal reforms for women, until that point, had largely benefited upper- or middle-class white women and neglected to address issues for those who were marginalized in multiple ways or did not own property. As she explained, the last major legislative change to fundamentally alter the status of women had occurred nearly 100 years previously, when the *Married Women's Property Act* was enacted in the late nineteenth century. This *Act*, though crucial to women's suffrage and the recognition of women as full citizens, "was really enacted for the benefit of propertied women."¹³

According to Kaye, while the 1970s saw more women than ever participating in the paid labour force, "the wage differentials between male and female workers" had increased and "the female labour force" had "become concentrated in single occupational categories."¹⁴ Therefore, Kaye argued,

¹² Shirley Greenberg, "Why Bother?" Draft article (February 1977), box 9, file 19, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa [Greenberg, "Why Bother?"].

¹³ Lynn Kaye, "Herstory: Women, Their Work, and the Law" (30 January–2 February 1975), online (pdf): <<https://nawl.ca/wp-content/uploads/1975/01/WomenandWork.pdf>>.

¹⁴ *Ibid* at 3.

our demands should address the social issue at the time. If there are no men in a certain job category, then equal pay for equal work is an irrelevant demand. It is the undervalued nature of women's work that is the basic social problem. We should be careful to distinguish the social and legal issues with a view to formulating the best policy to benefit the largest number of women.¹⁵

Recognizing "the undervalued nature of women's work" as "the basic social problem" meant that NAWL did not limit the scope of their law reform efforts to work performed outside the home. Their concerns with domestic labour reflected the importance of the *Murdoch* family law case for feminist organizing in Canada.¹⁶ For the women's legal reform movement, the *Murdoch* decision represented discriminatory standards set by decades of Canadian law.¹⁷ More specifically, separate property regimes established by the *Married Women's Property Act* in 1882 positioned husband and wife in a master-servant relationship and affirmed the husband's implied legal ownership over his wife's capacity to labour.¹⁸ *Murdoch* denied the economic value of women's work, which historically freed husbands from domestic responsibility and allowed men, as a group, to invest more time and energy in money-making ventures. Per Justice Bora Laskin's dissenting argument, "the wife has . . . established a right to an interest which it would be inequitable to deny and which, if denied, would result in the unjust enrichment of her husband."¹⁹ In Justice Laskin's view, the court's denial of Irene Murdoch's claim thus equated her "strenuous labours" with "mere housekeeping chores."²⁰ Significantly, however, Justice Laskin's opinion was based on Irene Murdoch's extensive non-domestic labour, and his dissent reiterated that domestic work did not entitle wives to common matrimonial property,²¹ illustrating NAWL's concerns about the devaluation of women's work when considered as a wife's "normal" duties.

Throughout the 1970s, status of women organizations across Canada educated women about their legal rights (or lack thereof) with reference to *Murdoch*. Knowledge and advocacy by NAWL members supported provincial campaigns for reform, and members submitted briefs to legislative bodies and assessed proposed legislation at their annual conferences. At NAWL's conferences, women law students built their skills in debating, organizing, and public speaking;

^{15.} *Ibid.*

^{16.} *Murdoch*, *supra* note 3.

^{17.} See Lori Chambers, "Women's Labour, Relationship Breakdown, and Ownership of the Family Farm" (2010) 25:1 CJLS 75 [Chambers]; Mysty S Clapton, "*Murdoch v Murdoch*: The Organizing Narrative of Matrimonial Property Law Reform" (2008) 20:2 CJWL 197 at 204 [Clapton].

^{18.} Clapton, *ibid* at 211–12; Constance Backhouse, "Married Women's Property Law in Nineteenth Century Canada" (1988) 6 L & Hist Rev 211; Constance Backhouse, "Pure Patriarchy: Nineteenth Century Canadian Marriage" (1986) 31 McGill LJ 264.

^{19.} *Murdoch*, *supra* note 3 at 457.

^{20.} *Ibid.*

^{21.} Clapton, *supra* note 17 at 202; Chambers, *supra* note 17 at 82–83. Clapton explores how Canadian feminists turned the *Murdoch* case into a narrative about domestic labour. Chambers argues that the women's movement largely ignored Irene Murdoch's specificity as a farm woman. Thus, while women's organizations used the case to agitate for equitable matrimonial property laws, farm women remain marginalized by laws governing division of the family farm enterprise. See Barbara Heather et al, "Women's Gendered Identities and the Restructuring of Rural Alberta" (2005) 45:1 Sociologia Ruralis; and Parvin Ghorayshi, "The Indispensable Nature of Wives' Work for the Family Farm Enterprise" (1989) 26:4 Can Rev Sociology & Anthropology.

exchanged information with women lawyers in different parts of the country; and created productive environments for drafting policy. At the same time, NAWL's provincial chapters functioned as community resources: members mobilized their legal knowledge through speakers' bureaus, writing and distributing pamphlets on women and the law, sponsoring public workshops, and organizing legal aid clinics for women.²² In Ontario, NAWL members at the University of Ottawa Law School spent long nights of intense effort rewriting the proposed *Family Law Reform Act* ahead of hearings by the Committee on the Administration of Justice at the Toronto legislature in December 1976.²³ "It was evident," reported Greenberg, "that our contribution introduced new material that members of the Justice Committee had not before considered."²⁴

Alongside the Canadian Advisory Council for the Status of Women (CACSW), NAWL advocated for the legal definition of marriage as an equal economic partnership, and for family law provisions that would codify this concept through equal sharing of accumulated assets upon marriage breakdown. NAWL's Manitoba chapter was the first to report on the introduction of significant reforms in 1977,²⁵ when the provincial NDP government determined that all property acquired during marriage or with marriage in mind should be shared equally upon separation, with some exceptions.²⁶ Although these reforms were scrapped with the transition from NDP to Conservative government later that year, feminist lawyers, including NAWL's Manitoba chapter, had laid a roadmap for other provinces to follow over the coming years.²⁷ In the late 1970s, provinces including Ontario, Manitoba, Saskatchewan, and Alberta introduced or passed legislation adopting a standard matrimonial regime of deferred sharing upon marriage breakdown. In Manitoba, another version of the *Marital Property Act* was assented to on July 20, 1978.²⁸ The *Act* recognized domestic labour by determining that each spouse is responsible for supporting the other either by providing financial support, looking after the home and family, or a combination of both, and giving spouses the right to "have their assets divided equally" upon separation.²⁹

From the 1970s onward, NAWL maintained its focus on women's economic liberation in work and marriage, convening numerous conferences and public education workshops on

²² Greenberg, "Why Bother?" *supra* note 12.

²³ Shirley Greenberg, "Making Our Mark on New Legislation" (February 1977), box 9, file 19, NAWL fonds (10-036) Archives and Special Collections, University of Ottawa.

²⁴ *Ibid.*

²⁵ Alice Steinbart, "A Hindsight View on Changing Family Law," *Newsletter of the National Association of Women and the Law* (December 1977) at 14–17.

²⁶ Alice Steinbart & the Manitoba Caucus, "Reports on Family Law Reform," *Newsletter of the National Association of Women and the Law* (June 1977) at 2–4.

²⁷ Cameron Harvey, "Manitoba Family Law Reform Legislation and Succession" (1979) 9 Man LJ 247; *The Family Law Reform Act*, 1978, SO 1978, c 2; *The Matrimonial Property Act*, SA 1978, c 22; *The Matrimonial Property Act*, SS 1979, c M-6.1.

²⁸ The Manitoba Conservative government's *Matrimonial Property Act* differed from previous NDP legislation by expanding the scope of judicial discretion for splitting assets. See "Summary of Current and Proposed Provincial Matrimonial Property Law in Canada," Women and Property: Third Biennial Conference of the National Association of Women and the Law" (Calgary AB, 22–25 February 1979), box 2, file 4, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

²⁹ *The Family Property Act*, CCSM c F25, s 13 [originally *The Marital Property Act*, SM 1978, c 24 (M45), s 12].

affirmative action, women and credit, parental benefits and childcare, women and property, women in the workforce, domestic workers, income tax, and women on welfare. At a public workshop in 1975, NAWL cofounder Peggy Mason emphasized that “economic liberation has got to be the core of the women’s liberation movement.”³⁰ Similarly, NAWL’s early focus on labour and family law reflected Shirley Greenberg’s 1975 assertion that the most important legal areas for women were marriage laws that regulated the relationship between husband and wife and employment laws that regulated the relationship between employer and employee.³¹

According to pioneering lawyer Eileen Mitchell Thomas, panellist at the Windsor Women and the Law conference of 1974, although women had been entering the legal profession since the late 1800s,³² Canadian courts still frequently sanctioned discrimination against women.³³ As an example, Thomas cited the 1968 wage discrimination case *Beckett v City of Sault Ste Marie Police Commissioners et al*, during which a judge of the Supreme Court of Ontario ruled that “[the plaintiff] is not being discriminated against by the fact that she received a different wage, different from male constables, for the fact of difference is in accordance with every rule of economics, civilization, family life, and common sense.”³⁴ According to Thomas, such rulings evidenced how the courts upheld male dominance and kept women economically dependent on men.³⁵

In 1977, the *Canadian Human Rights Act* made it illegal to maintain wage differences between male and female employees who performed substantially similar work of “equal value” in the same establishment.³⁶ However, NAWL noted that its complaint-based approach proved “ineffective and inaccessible for the majority of women in Canada” because “its ambiguous terminology, unspecified methodology and lack of enforcement mechanisms” created “extensive delays, unacceptably long waits for wage adjustments and, in many cases, a complete lack of alternatives for women with pay equity complaints.”³⁷ Moreover, the open-ended designation of “equal value” failed to address the social devaluation of jobs that were considered “women’s work.” For these reasons, NAWL advocated for a proactive as opposed to complaints-based approach to pay equity. Proactive legislation would address issues of

³⁰ Peggy Mason, quoted in Claudia Baskerville, “Laws ‘with Teeth’ Goal of Women,” *Ottawa Journal* (29 September 1975), box 1, file 9, Shirley E Greenberg fonds (10-185), Archives and Special Collections, University of Ottawa [Mason].

³¹ Shirley Greenberg, “Why Does Sex Discrimination Persist?” NAWL Booklet (1975), box 1, file 2, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

³² See Constance Backhouse, *Two Firsts: Bertha Wilson and Claire L’Heureux-Dubé at the Supreme Court of Canada* (Toronto: Second Story Press, 2019); Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Portland, OR: Hart Publishing, 2006); Mary Jane Mossman, *Quiet Rebels: A History of Ontario Women Lawyers* (Waterloo: Wilfrid Laurier University Press, 2024).

³³ *Conference Program*, National Conference on the Law and Women (Windsor ON, 14–16 March 1974), NAWL fonds (10-036), Archives and Special Collections, University of Ottawa [*Conference Program*].

³⁴ Eileen Mitchell Thomas, “Sisters-in-Law,” Presentation at The National Conference on the Law and Women (Windsor ON, 14–16 March 1974), box 9, file 11, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

³⁵ *Conference Program*, *supra* note 33.

³⁶ *Canadian Human Rights Act*, RSC 1985, c H-6, s 11(1).

³⁷ National Association of Women and the Law, “Summary of NAWL Recommendations to the Pay Equity Task Force” (December 2002), online (pdf): <<https://nawl.ca/pay-equity>>.

wage discrimination before they arose as opposed to requiring workers to pursue lengthy legal proceedings.

In their 1980 submission to the Standing General Government Committee of the Legislature of Ontario Concerning Bill 3—*An Act to Amend the Employment Standards Act*, NAWL's Osgoode Law School caucus highlighted substantial gaps in the proposed equal pay legislation: "The requirement that men and women be paid equally for substantially the same kind of work cannot possibly assist the vast number of women who are employed in female job ghettos" given that "there are no men working in substantially similar jobs to whom their work can be compared."³⁸ As such, women workers had "no protection under the present provisions even though their work may require substantially the same skill, effort, and responsibility as a higher paid but dissimilar male dominated job."³⁹ Across the country, NAWL pushed for reforms that were eventually enacted federally under the *Canadian Human Rights Act* by the *Equal Wage Guidelines* of 1986.⁴⁰ These regulations defined four factors to assess "work of equal value" performed by employees in dissimilar jobs: skill, effort, responsibility, and working conditions.⁴¹

Throughout the early 2000s, NAWL continued to push for proactive legislation at the federal level and advocated that government policy should acknowledge "the specific problems faced by visible minorities and by persons who are differently abled" and "make pay equity procedures accessible to non-unionized women, as well as part-time, casual, seasonal and contractual workers."⁴² The nationwide *Pay Equity Act* came into force in 2021, forty-six years after NAWL's "Women and Work" conference identified the need for proactive pay equity legislation. In many ways, NAWL's 1975 conference paved the way for these reforms by convening to discuss labour and human rights law from the perspective of women workers.⁴³ NAWL's mandate to study law from women's viewpoint, with an eye toward removing discriminatory legislation and practices, was at that time a new and unique addition not only to the women's movement but also to the legal profession itself.⁴⁴

NAWL were trailblazers in this regard, given that the first national, interdisciplinary conference on the relationship between judicial neutrality and gender equality was not held until May 1986.⁴⁵ As Greenberg argued in 1977, bias not only stems from judicial behaviour but is also "built into the law—a result of centuries of oppression of women and confinement

³⁸ Osgoode Hall Caucus, "Brief for Submission to the Standing General Government Committee of the Legislature of Ontario Concerning Bill 3—An Act to Amend the Employment Standards Act," *Newsletter of the National Association of Women and the Law* 3:4 (1980) 11.

³⁹ *Ibid.*

⁴⁰ *Equal Wages Guidelines*, SOR/86-1082.

⁴¹ While this legislation only applies to federally regulated employers, provinces such as Quebec (*Pay Equity Act*, CQLR c E-12.001) and Ontario (*Pay Equity Act*, RSO 1990, c P.7) later also adopted proactive pay equity statutes.

⁴² Louise Aucion, "Pay Equity: Required Changes in Federal Jurisdictions" (16 October 2002), online: <<https://nawl.ca/pay-equity-required-changes-in-federal-jurisdictions/>>.

⁴³ *Pay Equity Act*, SC 2018, c 27.

⁴⁴ Greenberg, "Why Bother?" *supra* note 12.

⁴⁵ This conference convened judges, academics, practising lawyers, and experts in anthropology, political science, sociology, and social welfare to discuss gender bias and judicial behaviour. See Bertha Wilson, "Will Women Judges Really Make a Difference?" (1990) 28:3 Osgoode Hall LJ 507 at 516 [Wilson].

to domesticity and a generally restricted life.”⁴⁶ Throughout their history, NAWL identified countless judicial decisions based on sexist biases and assumptions. Yet members of the judiciary and politicians resisted recognizing these biases in the law. In a piece of internal correspondence written on March 5, 1992, NAWL’s Manitoba chapter even reported that they were “unofficially” told by the Manitoba selection committee for judicial appointments “that significant involvement in the women’s movement is likely to disqualify one on the basis that one is likely biased in favour of women.”⁴⁷ Throughout this period, NAWL demonstrated how patriarchal legal traditions had inundated Canadian courts with anti-women prejudice and chauvinism. Per Bertha Wilson, Canada’s first woman justice on the Supreme Court, such biases were particularly evident in family law (as discussed above) and in criminal law, especially in cases of sexual violence.⁴⁸

III VIOLENCE AGAINST WOMEN AND STEREOTYPES IN COURT

The social perception of women judges, and especially feminist judges, as biased, unintelligent, and radical becomes strikingly obvious in analysis of public discourse surrounding the 1999 Supreme Court case *R v Ewanchuk*.⁴⁹ Writing of anti-feminist backlash against Justice Claire L’Heureux-Dubé, political scientist Joanne Wright argues that Canadian society at this time was “so skeptical of feminism that the assertion that basic liberal principles should apply to women [was] equated with radicalism.”⁵⁰ In this case, Justice L’Heureux-Dubé wrote a decision that noted the trial judge promulgated dangerous myths about women’s sexuality by relying on the principle of “implied consent,” which did not exist in Canadian law following *Criminal Code* reforms of 1992. Justice L’Heureux-Dubé stated plainly that consent could not be inferred from the 17-year-old complainant’s past sexual behaviour or from the way she was dressed, especially considering she repeatedly stated the words “no” and “stop.” Nevertheless, as the second woman ever appointed to the Supreme Court of Canada, her decision launched an “extreme and unprecedented” public furor against perceived feminist influence over the court.⁵¹ This backlash demonstrates that NAWL was far ahead of public opinion and the majority of legal professionals in their mandate to assess the *Criminal Code*’s impact on women’s bodily autonomy.

In the 1980s and 1990s, NAWL was actively involved in important reforms of the *Criminal Code* to protect women from sexual violence and domestic abuse. Before 1983, the marital rape exemption, the requirement of corroboration (having additional witnesses other than the victim), and the recent complaint doctrine (which presumed that a late disclosure was false)

⁴⁶ Greenberg, “Why Bother?” *supra* note 12.

⁴⁷ Manitoba Association of Women and the Law, Correspondence to the National Office (5 March 1992), box 58, file 14, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

⁴⁸ Wilson, *supra* note 45 at 512–15.

⁴⁹ 1999 CanLII 711 (SCC). See Joanne Wright, “Consent and Sexual Violence in Canadian Public Discourse: Reflections on *Ewanchuk*” (2001) 16:2 CJLS 173 [Wright]; Constance Backhouse, “The Chilly Climate for Women Judges: Reflections from the Backlash on the *Ewanchuk* Case” (2003) 15:1 CJWL 167 [Backhouse (2003)].

⁵⁰ Wright, *ibid* at 194.

⁵¹ Backhouse (2003), *supra* note 49 at 167.

either denied women the right to their own bodies or denied their credibility as witnesses to the sexual crimes committed against them.⁵² Improving the laws regarding sexual violence—particularly prohibiting the defence from making use of a victim’s prior sexual history with “rape shield” legislation—had been part of NAWL’s mandate since its founding conference. Through research, writing, lobbying, passing resolutions, submitting briefs to legislative bodies, drafting proposed legislation, and public education, NAWL drew increased attention to legal mechanisms that permitted or excused men’s violence against women. Such mechanisms also included implied consent (at issue in the *Ewanchuk* case) and the defence of provocation.

In the fall of 1981, NAWL authored a brief entitled “A New Image for Sexual Offences in the Criminal Code.”⁵³ Written by fifteen members of NAWL, this brief included their largely positive response to the establishment of new sexual assault provisions in Bill C-53—*Protection of children, evidentiary and procedural reforms, and prostitution*.⁵⁴ On August 4, 1982, the House of Commons adopted Bill C-127—*An Act to Amend the Criminal Code in relation to sexual offences and other offences against the person*, which contained the provisions on sexual assault originally introduced in Bill C-53. In addition to repealing the marital rape exemption (the most politically controversial aspect of sexual assault reform, according to NAWL), this legislation reclassified rape and indecent assault into three new offences: sexual assault; sexual assault with a weapon, threats to a third party, or causing bodily harm; and aggravated sexual assault.⁵⁵ Demonstrating the organization’s political influence, these new offences were nearly identical to the resolutions on sexual assault passed by NAWL’s 1979 conference three years earlier.⁵⁶ Unlike the former offence of “rape,” which was based on penetration, the new sexual assault offences were differentiated based on the degree of risk and the use or threat of violence.⁵⁷ As NAWL explained, “the new offences

^{52.} *Criminal Code*, RSC 1970, c C-34, s 139 [*Criminal Code*]. For 1982–83 amendments, see *An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof*, SC 1980-83, c 125, s 5. For a review of the reforms of 1983. See Maria Los, “The Struggle to Redefine Rape in the Early 1980s” in Julian V Roberts & Renate M Mohr, eds, *Confronting Sexual Assault: A Decade of Legal and Social Change* (Toronto:University of Toronto Press, 1994).

^{53.} Shirley Greenberg et al, *A New Image for Sexual Offences in the Criminal Code: A Brief in Response to Bill C-53* (October 1981), online: <<https://nawl.ca/a-new-image-for-sexual-offences-in-the-criminal-code-a-brief-in-response-to-bill-c-53/>> [Greenberg et al].

^{54.} Contributors to this brief are listed in the following order: Shirley Greenberg, Wendy King, Céline Lacerte Lamontagne, Lois Lowenberger, Margaret Mason, Mary-Anne Nixon, Stuart Russell, Vicki Schmolka, Gwen Brodsky, Mona Brown, Monique Charlebois, Nancy Doray-Bolton, Cynthia Hastings-Zinck, Lois Hoegg, and Tamra Thomson.

^{55.} See Peggy Mason, “Sexual Assault Bill Disappears (Again),” *Newsletter of the National Association of Women and the Law* 3.3 (January 1980) at 21–22; Monique Charlebois, “Comments of the National Association of Women and the Law on Bill C-127,” *Newsletter of the National Association of Women and the Law* 4.4 (November 1982) at 9–12 [Charlebois]. Legal scholars note that significant challenges remain for the prosecution of marital rape. See Ruthy Lazar, “Negotiating Sex: The Legal Construct of Consent in Cases of Wife Rape in Ontario, Canada” (2010) 22:2 CJWL 329 at 333.

^{56.} Greenberg et al, *supra* note 53 at 3 (“1979 National Association of Women and the Law Resolutions on Sexual Assault”).

^{57.} Sample letter to Minister of Justice Jean Chrétien, *Newsletter of the National Association of Women and the Law* 4.1 (August 1981) 20.

properly emphasize the violent nature of the crimes, as opposed to the sexual aspects.”⁵⁸ Additionally, the bill enacted a prohibition on inferring consent from lack of resistance.

For NAWL, however, this legislation did not go far enough as it did not preclude the use of a complainant’s sexual history by the defence. NAWL argued that “evidence of past sexual conduct with a person other than the accused . . . is totally irrelevant to a complainant’s credibility and should be inadmissible, as it is an extension of a presumption that ‘loose women lie.’”⁵⁹ NAWL consistently advocated the necessity of rape shield legislation to ensure that evidence of a complainant’s past sexual history with a person other than the accused could never be brought before the court. Per NAWL, such evidence was often deployed in an irrelevant and prejudicial manner, through “fishing expeditions” in preliminary examinations and subsequent attacks on the complainant’s credibility.⁶⁰ NAWL and other women’s groups successfully lobbied then Justice Minister Kim Campbell for rape shield legislation with the passing of Bill C-49—*An Act to amend the Criminal Code (sexual assault)* in 1992, which protects sexual assault complainants from cross-examination regarding their past sexual behaviour.⁶¹ With these 1983 and 1992 reforms, Canada’s positive conception of consent and increased protections for complainants became “the envy of rape reformers in other countries.”⁶²

As the 1999 *Ewanchuk* case and backlash demonstrates, however, significant work remained to be done. Following rape shield reforms of 1992, NAWL advocated for further protections against what they had defined in 1975 as “an aggressive practice of seeking private, personal records of complainants in sexual assault trials” to be viewed by the defence counsel and the accused himself. These included medical records, psychiatric records, past disciplinary records (such as those obtained through schooling), personal diaries, and the notes written by counsellors at rape crisis centres.⁶³ NAWL was particularly appalled by the 1995 Supreme Court Decision in *O’Connor v The Queen*, which set a precedent for the easy retrieval of complainants’ personal information.⁶⁴ In *O’Connor*, on appeal from the Court of Appeal of British Columbia, the four complainants were Indigenous women who attended a residential school in which the accused was their priest, principal, and eventually their employer. At trial, O’Connor’s defence counsel had obtained a pretrial order requiring the Crown to disclose complainants’ “entire medical, counselling and school records.”⁶⁵ The trial judge had ordered a stay of proceedings when the Crown failed to disclose a portion of the requested information.

⁵⁸ Charlebois, *supra* note 55 at 9.

⁵⁹ *Ibid* at 11.

⁶⁰ In their 1981 brief *A New Image for Sexual Offences in the Criminal Code*, NAWL cites *Forsythe v R*, 1980 CanLII 15 (SCC), in which the Supreme Court permitted use of a complainant’s past sexual history to attack her credibility. See Greenberg et al, *supra* note 53 at 32–33.

⁶¹ *An Act to amend the Criminal Code (sexual assault)*, SC 1992, c 38; Rosemary Cairns Way, “Bill C-49 and the Politics of Constitutionalized Fault” (1993) 42 UNB LJ 325.

⁶² Wright, *supra* note 49 at 186. See also Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Oxford: Hart Publishing, 1998) 121; and Simon Bronniti, “The Direction of Rape Law in Australia: Toward A Positive Consent Standard” (1994) 18:5 Crim LJ 249 at 251–53.

⁶³ National Association of Women and the Law, “Notes on Resolutions Passed in Discussion Workshop” (January 1975), box 2, file 2, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

⁶⁴ *R v O’Connor*, 1995 CanLII 51 (SCC).

⁶⁵ *Ibid*.

While the Court of Appeal had allowed a new trial, the Supreme Court restored the stay of proceedings, meaning that the accused could no longer be tried, and defined broad evidentiary rules for the retrieval of complainants' personal records.

Following *O'Connor*, NAWL published a guide for sexual assault counsellors who were likely to be faced with subpoenas to produce their clients' counselling records. In this guide, University of Manitoba law professor Karen Busby summarized the consequences of *O'Connor* and its broad legal rationale for retrieving complainant records as follows:

According to the Supreme Court of Canada, records may be relevant if they contain or could lead to evidence about: the complainants' credibility at large, motive to fabricate, prior inconsistent statement or lack of corroboration, and recent complaint; inconsistencies on collateral issues; on a therapist's influence or false creation, recovery, hardening or contaminating of the complainant's memory or the decision to bring charges, or, take the defence on a train of inquiry leading to other evidence.⁶⁶

Busby also argued that the court reinforced "discriminatory stereotypes" by subjecting sexual violence complainants' credibility to a degree of scrutiny "unparalleled in any other criminal proceeding."⁶⁷ The majority opinion (with Justice L'Heureux-Dubé among those dissenting) refused to consider equality rights at all.⁶⁸

It wasn't just women's equality at stake in *O'Connor*, but also the rights of Indigenous women subjected to decades of genocidal state violence. In response to the *O'Connor* decision, Teresa Nahanee of the Aboriginal Women's Centre emphasized its protection of the accused over and above the right of the victims: "We cannot understand how the Court failed to recognize the inherent offensiveness of records that were produced in an institution dedicated to the annihilation of Aboriginal people. A truly equal justice system would not demand unlimited access to these women's entire life histories as their purchase price for obtaining white justice."⁶⁹ NAWL agreed and argued that this "liberalized disclosure regime" not only discouraged women from reporting sexual assault, but also "increased the vulnerability and decreased the protections afforded to those with mental health histories and to those who had been extensively documented by state agencies, including aboriginal women, women living in poverty and women with disabilities."⁷⁰ Rape crisis centres and other women's organizations expressed similar concerns throughout the 1980s and 1990s; some rape crisis centres even

⁶⁶ Karen Busby, *Discriminatory Uses of Personal Records in Sexual Violence Cases: Notes for Sexual Assault Counsellors on the Supreme Court of Canada's Decisions in R v O'Connor and LLA v AB* (Ottawa: National Association of Women and the Law, 1996) at 13, online: <<https://nawl.ca/discriminatory-uses-of-personal-records-in-sexual-violence-cases-notes-for-sexual-assault-counsellors-on-the-supreme-court-of-canadas-decisions-in-r-v-oconnor-and-lla-v-ab>>.

⁶⁷ *Ibid* at 16.

⁶⁸ *Ibid* at 18.

⁶⁹ Teresa Nahanee, quoted in NAWL press release, "Supreme Court Dodges the Issues in Records Decisions, Women's Groups Claim" (14 December 1995), box 25, file 6, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa [NAWL (1995)]. See also West Coast Legal Education and Action Fund, "Stay Overturned in Trial of Bishop," *Thriving* (Summer 1994), box 25, file 7, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

⁷⁰ NAWL, 1995, *supra* note 69.

engaged in civil disobedience by shredding their clients' confidential files and subsequently faced legal action.⁷¹

In 1997, Bill C-46—*An Act to amend the Criminal Code (production of records in sexual offence proceedings)* received royal assent and established a strict two-stage procedure for the production of complainants' private records. However, to this day, challenges remain in protecting women's personal records and sexual history from undue scrutiny and stereotypical reasoning by the defence.⁷²

Importantly, NAWL's work in fighting sexist myths and stereotypes in criminal law did not stop at legislative reform efforts; it also aimed to reduce instances of sexist judicial behaviour. In the 1980s and 1990s, NAWL collected numerous examples of Canadian judges' biased comments from the bench, which the organization related to a lack of women's representation on the Supreme Court of Canada⁷³ and throughout the judiciary. Ending this type of biased behaviour would require a three-pronged approach:

- 1) mandatory anti-sexism and anti-racism training; 2) more women being appointed to the bench, which will help to ensure that women who come into contact with the justice system will not be subjected to this type of biased thinking; and 3) comprehensive programming in law schools to ensure this sort of thinking is exposed and challenged.⁷⁴

Despite sustained efforts by NAWL and other human rights groups starting in the early 1980s, there were many who fought against these kinds of reforms on the grounds of judicial independence. As illustrated by the *Ewanchuk* decision and subsequent backlash, discriminatory laws, patriarchal traditions, biased interpretation, and outright sexism from the bench combined to represent the status quo position as a common sense coalition against correspondingly radical feminist reformers.⁷⁵

NAWL's 1990s and early 2000s advocacy against the defence of provocation, section 232 of the *Criminal Code*, exemplifies how discriminatory legislation combines with biased judicial interpretation to effectively legitimize male dominance.⁷⁶ Per Andrée Côté, NAWL's director of legislation and legal reform, writing in 1996, the statutory defence of provocation "partially

⁷¹ See Dahlia Relch, "Centre Vows to Protect Client Files," *London Free Press* (10 December 1994), box 25, file 7, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa; and Sean Fine, "Civil Disobedience Backfires for Ontario Rape Crisis Centres," *Globe & Mail* (6 December 1994), box 25, file 7, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

⁷² For examples of failed applications of rape shield provisions, see Suzanne Zaccour, "'I'm Telling You, She Likes It Rough': Sexual History Evidence, Consent and the BDSM Defense in Canadian Sexual Assault Trials" (2021) 4 *Child & Family LQ* 347. For more on the state's routine intrusion into complainants' private sexual history, see Elaine Craig, "Irrelevant and Invasive Police Inquisitions into Sexual History of Sexual Assault Complaints" (2025) 51:1 *Queen's LJ* 66; Elaine Craig, "Private Records, Sexual Activity Evidence, and the Charter of Rights and Freedoms" (2021) 58:4 *Alberta L Rev* 773.

⁷³ National Association of Women and the Law, "Presentation to the Joint Committee on the Constitution" (December 1980), box 1, file 20, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

⁷⁴ National Association of Women and the Law, "Response to the Comments of Judge Bienvenue" (1995), box 58, file 13, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

⁷⁵ Wright, *supra* note 49 at 183–86.

⁷⁶ *Criminal Code*, RSC 1985, c C-46, s 232 [*Criminal Code*].

excuses murder committed in a fit of anger, if the accused lost his self-control and if the legal authority is of the opinion that an ‘ordinary man,’ in the same circumstances, would also have been provoked by the victim to the point of losing his self-control and killing his spouse.”⁷⁷ Invoked as a means of reducing charges from first- or second-degree murder to the lesser charge of manslaughter, NAWL noted that “provocation bestows on anger a special status in criminal law,” and that “the vast majority of reported cases on provocation, including most of the Supreme Court rulings on provocation concern situations of spousal homicide.”⁷⁸

NAWL found that the defence of provocation had steadily widened in scope throughout the second half of the twentieth century, effectively permitting men’s violent, coercive control over their partners.⁷⁹ By way of evidence, NAWL cited a selection of Canadian cases in which provocation was accepted as a legitimate defence for situations involving infidelity, separation, divorce proceedings, and verbal disputes within couples, including *Galgay* (1972),⁸⁰ *Carpenter* (1993),⁸¹ *Thibert* (1996),⁸² and *Stone* (1999).⁸³ In their brief on the defence of provocation published in April 2000, NAWL argued that “these cases point to a jurisprudence that considers women’s autonomy—her drive for independence, self-respect, and security—as provocative insults . . . vindicates men’s proprietary interest in their spouses, and legitimates murderous ‘loss of self-control’ as a response to a woman’s attempt to assert her autonomy.”⁸⁴

Indicating a clear gendered bias in the application of this defence, NAWL noted their inability to find cases in which women had successfully used the defence of provocation after killing their abusive spouses, since Canadian law had “narrowly interpreted provocation to consist of a single ‘sudden’ or ‘immediate’ provoking event.”⁸⁵ Thus, women who killed to stop the abuse of themselves or their children were not permitted to invoke the defence of provocation.⁸⁶ Furthermore, NAWL’s brief criticized homophobic applications of provocation, which reduced sentences for men convicted of killing other men due to perceived homosexual advances. Despite NAWL’s contention that the defence of provocation should be abolished entirely, this defence was only curtailed in 2015 with the passage of Senate Bill S-7, *Zero Tolerance for Barbaric Cultural Practices Act*.⁸⁷ Since then, provocation can only be used when

77. Andrée Côté, “Violence conjugale, excuses patriarcales et défense de provocation” (1996) 29:2 *Criminol* 89 at 89.

78. Andrée Côté, Diana Majury & Elizabeth Sheehy, “Stop Excusing Violence Against Women: NAWL’s Position Paper on the Defence of Provocation” (April 2000) at 4–5, online (pdf): <https://nawl.ca/wp-content/uploads/attachments/Pub_Report_Provoc00_en.pdf> [Côté et al].

79. *Ibid.*

80. *R v Galgay*, 1972 CanLII 590 (ONCA).

81. *R v Carpenter*, 1993 CanLII 8591 (ONCA).

82. *R v Thibert*, 1996 CanLII 249 (SCC).

83. *R v Stone*, 1999 CanLII 688 (SCC); Côté et al, *supra* note 78 at 6–8.

84. *Ibid* at 9.

85. *Ibid.*

86. More recently, Sheehy writes of the difficulty of invoking the defence of provocation for abused women who kill their spouses. She also discusses the merits and drawbacks of abolishment versus using the defence to strengthen protections for these women. See Elizabeth Sheehy, *Defending Battered Women on Trial: Lessons from the Transcripts* (Vancouver: University of British Columbia Press, 2013).

87. *Zero Tolerance for Barbaric Cultural Practices Act*, SC 2015, c 29. Sheehy describes this as a “largely rhetorical piece of legislation” that in addition to amending the defence of provocation, “arguably racializes the practices of polygamy, child and forced marriage, and ‘honour killing’ as ‘foreign,’ originating in the

the provoking conduct would constitute an indictable offence and excludes infidelity and separation as triggers for “provoked” murder.⁸⁸

Across different areas of the law, momentum for feminist law reform increased with the coming into force of the *Canadian Charter of Rights and Freedoms* in 1982. However, the aforementioned Supreme Court cases in criminal law, family law, and equality rights that took place following the Charter’s entrenchment illustrate the complexity of redressing women’s inferior status before the law.

IV CHARTER RIGHTS FOR WOMEN, THEN AND NOW

In the early 1980s, NAWL was instrumental in shaping sections 15 and 28 of the *Canadian Charter of Rights and Freedoms*.⁸⁹ Section 15 of the Charter, titled “Equality Rights,” states that “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”⁹⁰ NAWL was one of several women’s organizations that led the onslaught against the first draft of section 15, which many feminist groups viewed as weak and potentially harmful to women given that it merely guaranteed “equality before the law.”⁹¹ NAWL often referenced the Supreme Court cases of *Canada v Lavell* (1973)⁹² and *Bliss v Canada* (1978),⁹³ two sex discrimination lawsuits in which the courts ruled that discriminatory laws did not violate the principle of “equality before the law” as outlined by the *Canadian Bill of Rights*, which was in effect prior to the Charter.⁹⁴

In *Lavell*, Jeannette Vivian Corbiere Lavell (Wikwemikong Band) and Yvonne Bédard (Six Nations of the Grand River) set out to challenge section 12(1)(b) of the *Indian Act*, which held that First Nations women lost their property, status, and treaty rights if they married non-status men.⁹⁵ The same was not true for First Nations men, who retained their status following marriage and conferred it onto their non-status wives. In a 5–4 decision written by Justice Roland Ritchie, the Supreme Court ruled that “equality before the law . . . guarantees only equality in the administration and enforcement of a law; it does not stand in

religious and cultural beliefs of entrants to Canada.” As Sheehy argues, amendments to the defence of provocation were intended to prevent racialized “honour killings” in Canada, even though “not a single successful defence of provocation on these grounds could be identified.” See Kate Fitz-Gibbon & Elizabeth Sheehy, “The Merits of Restricting Provocation to Indictable Offences: A Critical Analysis of Provocation Law Reform in Canada and New South Wales, Australia,” (2019) 31:2 CJWL 197 at 230.

⁸⁸ *Criminal Code*, *supra* note 76, s 232(2); *Zero Tolerance for Barbaric Cultural Practices Act*, *ibid*.

⁸⁹ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, ss 15, 28 [Charter].

⁹⁰ *Ibid*, s 15.

⁹¹ Kerri Anne Froc, “The Untapped Power of Section 28 of the Canadian Charter of Rights and Freedoms” (PhD Dissertation, Queen’s University 2015) at 139 [Froc].

⁹² *Attorney General of Canada v Lavell*, 1973 CanLII 175 (SCC) [*Lavell*].

⁹³ *Bliss v Attorney General of Canada*, 1978 CanLII 25 (SCC) [*Bliss*].

⁹⁴ Froc, *supra* note 91 at 139.

⁹⁵ *Indian Act*, RSC 1985, c I-5, s 12.

the way of discriminatory laws being passed.”⁹⁶ Similarly, in *Bliss* the court ruled that denying unemployment benefits to pregnant women did not constitute sex discrimination under the *Bill of Rights*. The Supreme Court ruled that the *Unemployment Insurance Act* did not violate the principle of “equality before the law,” given that these sections were “concerned with conditions from which men are excluded.” In his now infamous and oft-quoted ruling, Justice Ritchie wrote that “any inequality between the sexes in this area is not created by legislation but by nature.”⁹⁷ For many feminist advocates, these two landmark Supreme Court cases effectively permitted discriminatory laws under the 1960 *Bill of Rights*.⁹⁸

Represented by members Deborah Acheson, Tamra Thompson, Pamela Medjuck, and Monique Charlebois, NAWL opened their presentation to the Joint Committee on the Constitution by stating emphatically that “we cannot and do not endorse the entrenchment of a Charter as poorly articulated and substantively inadequate as this one.”⁹⁹ They rejected the section’s original title—“Non-Discrimination Rights”—and argued that section 15 should set an affirmative standard as opposed to one of negation. As Acheson stated during NAWL’s presentation to the Joint Committee, “the value-charged word ‘discrimination’ implies something bad. Much of the discrimination which offends women may be fairly described as paternal benevolence.”¹⁰⁰ NAWL further argued that the phrase “Everyone has the right to equality before the law and to the equal protection of the law” should be changed to include “and equal benefit of the law.”¹⁰¹

NAWL also suggested that section 15 should include reference to “marital status, physical or mental disability, political beliefs, sexual orientation, and previous conviction.” If these categories could not be included, NAWL argued that the language of section 15 should be left open-ended, to ensure the Charter could be applied to any form of discrimination. The government revised section 15, citing the influence of women’s groups including NAWL, the National Action Committee on the Status of Women (NAC), and the Canadian Advisory Council on the Status of Women.¹⁰² Significantly, section 15 now guarantees “equal benefit of the law without discrimination” and includes the open-ended language of “analogous grounds,” which has been used to extend the Charter’s protection to 2SLGBTQ+ people, among others. In *Egan v Canada* (1995), for example, the Supreme Court of Canada held that although “sexual orientation” is not listed as a ground for discrimination in section 15, it constitutes an equivalent ground on which claims of discrimination may be based.¹⁰³

Despite changes to the language of section 15, the women of NAWL did not believe it would adequately protect women. They therefore lobbied for a separate “purpose clause” at the

^{96.} *Lavell*, *supra* note 92.

^{97.} *Bliss*, *supra* note 93.

^{98.} For more on failures of the 1960 *Bill of Rights*, see Mary Eberts, “The Fight for Substantive Equality: Women’s Activism and Section 15 of the Canadian *Charter of Rights and Freedoms*” (2015) 37:2 *Atlantis* 100 at 111 [Eberts].

^{99.} Canada, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 22 (9 December 1980) at 51.

^{100.} *Ibid.*

^{101.} *Ibid.*

^{102.} Eberts, *supra* note 98 at 106.

^{103.} *Egan v Canada*, 1995 CanLII 98 (SCC).

start of the Charter to guarantee the equal rights of men and women to all Charter rights.¹⁰⁴ This clause eventually became section 28 of the Charter, which now states: “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.” After section 33 was added to the draft Charter—the section permitting governments to adopt rights-offending provisions “notwithstanding” certain rights and freedoms—section 28 was revised to read “Notwithstanding anything in this Charter except section 33 . . .” In other words, governments would have been able to derogate from the guarantee of equal rights between women and men. However, sustained advocacy by NAWL and other feminist groups resulted in Parliament and the provinces unanimously agreeing to maintain the original language of section 28, ensuring it was not subject to the section 33 override.¹⁰⁵

Despite NAWL’s best efforts to secure strong gender equality protections in the Charter, it would take until 2018—31 years after the coming into force of section 15—for women to obtain their first Supreme Court case recognizing a violation of section 15 based on sex discrimination. This legacy seems to confirm NAWL’s initial doubts about the ability of section 15 to truly protect women. At the same time, courts and jurists have often sidelined section 28, relegating it to a historical artifact of little legal value.¹⁰⁶ To date, the litigants in just two cases have been able to successfully claim sex discrimination in *Centrale des syndicats du Québec v Quebec* (2018) and *Fraser v Canada* (2020). In both cases, however, the courts ignored section 28 in their decision and focused largely on section 15.¹⁰⁷

Today, section 28 of the Charter has returned to the forefront of NAWL’s legislative efforts because of governments’ increased use of section 33, passing legislation notwithstanding fundamental rights. One example is Alberta’s use of the notwithstanding clause to shield anti-trans legislation. The *Protecting Alberta’s Children Statutes Amendment Act, 2025*¹⁰⁸ restricts gender-affirming care, requires parental permission for schools to use young trans students’ preferred names or pronouns, and bans trans women and girls from participating in certain sports.

Another is Bill 21—*An Act respecting the laicity of the state*.¹⁰⁹ Passed by the Quebec government in 2019, Bill 21 prohibits people working in certain professions from wearing religious symbols in the exercise of their functions, including teachers and lawyers employed by the state. The Quebec government passed Bill 21 “notwithstanding sections 2 and 7 to 15” of the Charter to disable sections 2(a) and 15 from rendering the law unconstitutional based

¹⁰⁴. Froc, *supra* note 91 at 139–41.

¹⁰⁵. *Ibid* at 214, 220–21.

¹⁰⁶. Froc, *supra* note 91 at 277, 369.

¹⁰⁷. For more on the Supreme Court’s sidelining of s 28, see Beverley Baines, “Section 28 of the Canadian Charter of Rights and Freedoms: A Purposive Interpretation” (2005) 17:1 CJWL 45; Sandra Burt, “The Charter of Rights and the Ad Hoc Lobby: The Limits of Success,” (1988) 14:1 Atlantis 74; Froc, *supra* note 91; Penny Kome, *The Taking of 28: Women Challenge the Constitution* (Toronto: ON: The Women’s Press, 1983); Marilou McPhedran & Michele Landsberg, “The Fight for the Charter,” (2007) 26:2 Can Women’s Studies 80.

¹⁰⁸. SA 2025, c 24; Government of Alberta, News Release, “Protecting Alberta’s Children Statutes Amendment Act” (18 November 2025), online (pdf): <<https://www.alberta.ca/system/files/jus-protecting-alberta%27s-children-statutes-amendment-act.pdf>>.

¹⁰⁹. CQLR c L-0.3.

on, respectively, a violation of freedom of religion and a disproportionate discriminatory effect on Muslim women.¹¹⁰

Governments' increased use of the section 33 override has rendered NAWL's work to secure a strong section 28, which is not subject to section 33, more relevant than ever. NAWL intervened in the Supreme Court case on the matter, fighting the Quebec government's proposed interpretation of section 28 as purely interpretive and vindicating its feminist framers' intent to ensure strong protections for all women.¹¹¹

V CONCLUSION: WHERE DO WE GO FROM HERE?

Like many second-wave feminist organizations that coalesced in the late-twentieth century, NAWL had to contend with its own biases and worked toward full inclusion for bisexual women, trans women, and Indigenous, Black, and racialized women in its legislative efforts. For example, in their writing about rape shield legislation for sexual assault victims, NAWL noted that immigrant women, Indigenous women, and women on welfare were particularly susceptible to privacy violations because they are often subject to extensive legal surveillance and record keeping by the state.¹¹² Before they were defunded by Stephen Harper's federal government in 2006, NAWL fought tirelessly for marriage equality and began learning about the kinds of legislation that affected trans women. While this work led to challenges and heated debate between members, NAWL's archival materials demonstrate that the organization did not shy away from hard conversations required for organizational change.

Throughout their history, NAWL strove to address racial discrimination in the legal profession and the judiciary, often reaffirming their opposition to racial stereotypes that perpetuated myths about violence against women. NAWL's campaigns for criminal law reform attempted to balance their desire for more serious sanctions in sexual violence cases with their understanding that racialized men were often subject to biased proceedings and received the harshest sentences—a tension that exists to this day in the feminist movement, including debates regarding the criminalization of coercive control.¹¹³

In 2017, NAWL was re-funded by Justin Trudeau's federal government and immediately renewed its efforts for feminist law reform across the country.¹¹⁴ It would take until 2021—following outcry over a judge who, in 2014, asked a sexual assault victim why she didn't "keep her knees together"—for Canada to legislate that lawyers applying to become Superior Court judges must agree to participate in training on matters related to sexual assault law,

^{110.} *Ibid*, s 30.

^{111.} *English Montreal School Board, et al v Attorney General of Quebec et al* (12 August 2025), SCC 41231 (Factum, Attorney General of Quebec at para 216).

^{112.} NAWL (1995), *supra* note 69.

^{113.} See Constance Backhouse "A Feminist Remedy for Sexual Assault: A Quest for Answers" in Elizabeth Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012) at 725.

^{114.} During its decade of defunding, NAWL had to significantly reduce its activities but survived and continued its law reform efforts thanks to dedicated volunteer members of its National Steering Committee: see "Rightfully Hers: Five Decades of Feminist Law Reform in Canada" (March 4, 2024), online: <<https://www.youtube.com/watch?v=7dy0sFUMjGQ&t=401s>>.

systemic racism, and systemic discrimination.¹¹⁵ Shortly thereafter, in 2023, Canada would see its first female-majority Supreme Court, following Justin Trudeau's appointment of Justice Mary Moreau.¹¹⁶

Despite improvements in both the laws regarding violence against women and women's representation on Canadian courts, fighting legally entrenched gendered myths and stereotypes remains at the core of NAWL's work. Throughout the 2020s, NAWL has been engaged in an ambitious campaign to reform family law and protect victims of domestic violence from accusations of "parental alienation." In family court, "parental alienation" is a label used to describe children who reject a parent—often an abusive father—when they are considered to have been influenced to do so by their other parent—often a protective mother.¹¹⁷ NAWL has denounced the judicial practice of using pseudoscientific concepts such as "parental alienation" to revictimize women and children. Leading a coalition of nearly 300 women's organizations in all provinces and territories, NAWL is calling for amendments to federal and provincial family law legislation to stop this practice, which may result in children attending court-ordered "reunification therapy," being forced to reside with an abusive father, or being banned from all contact with their mother for months or years.¹¹⁸ NAWL's work led to the introduction of Bill C-223, the *Keeping Children Safe Act*, a private member's bill introduced by Liberal Member of Parliament Lisa Hepfner.¹¹⁹ NAWL's tireless campaign to stop accusations of parental alienation is a continuation of its 1980s work to remove stereotypical reasoning from sexual assault cases. This campaign shows how myths and stereotypes are still pervasive in cases involving violence against women. It also emphasizes the importance of not relegating work on violence against women to criminal law, when other areas of law—especially family law—deeply affect women's lives and safety.

Today, women's economic security also remains a core focus of NAWL. In 2024, assisted by a working group of representatives from organizations in various equity-seeking communities, NAWL identified income benefits legislation as a key priority to lift women out

¹¹⁵. Ashifa Kassam, "Canada Judge Resigns over 'Keep Your Knees Together' Comment in Rape Trial," *The Guardian* (9 March 2017), online: <<https://www.theguardian.com/world/2017/mar/10/canada-judge-resigns-keep-your-knees-together-comment-rape-trial>>; *An Act to Amend the Judges Act and the Criminal Code*, SC 2021, c 8.

¹¹⁶. Peter Zimonjic, "Alberta Francophone to Be Appointed Next Supreme Court Justice," *CBC News* (26 October 2023) online: <<https://www.cbc.ca/news/politics/mary-moreau-supreme-court-1.7008666>>.

¹¹⁷. Suzanne Zaccour, "Does Domestic Violence Disappear from Parental Alienation Cases? Five Lessons from Quebec for Judges, Scholars, and Policymakers" (2020) 33:2 Can J Fam L 301 at 357; Elizabeth Sheehy & Susan B Boyd, "Penalizing Women's Fear: Intimate Partner Violence and Parental Alienation in Canadian Child Custody Cases" (2020) 42:1 J Soc Welfare & Fam L 80 at 91; Suzanne Zaccour, "Parental Alienation in Quebec Custody Litigation" (2018) 59:4 C de D 1073 at 1111; Linda C Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (Fredericton & Vancouver: Muriel McQueen Fergusson Centre for Family Violence Research & FREDA Centre for Research on Violence Against Women and Children, 2018).

¹¹⁸. National Association of Women and the Law, "Stop Parental Alienation Accusations," online: <<https://nawl.ca/stop-parental-alienation-accusations>>; see House of Commons, Standing Committee on the Status of Women, "Coercive Control in Canada" (November 2025) at 22, online (pdf): <<https://www.ourcommons.ca/Content/Committee/451/FEWO/Reports/RP13740927/feworp01/feworp01-e.pdf>>.

¹¹⁹. Bill C-223, *An Act to amend the Divorce Act*, 1st Sess, 45th Parl, 2025 (first reading 18 September 2025). At the time of writing, the bill is at consideration in committee in the House of Commons.

of poverty.¹²⁰ NAWL's advocacy on the Canada disability benefit highlights how improperly designed regulations prevent women from accessing poverty-relieving measures.¹²¹ For example, NAWL is critical of the choice to tie benefit admissibility to a couple's combined income and tax returns, based on the assumption that couples pool their resources as an economic unit.¹²² NAWL argues that this policy provides a further lever of control for violent men—an important consideration given that more than half of disabled women who have been in an intimate relationship have experienced intimate partner violence.¹²³ NAWL also argues for an increase to the Canada disability benefit, not only because its amount is insufficient to lift Canadians with disabilities out of poverty, but also because economic pressures often keep women trapped in violent relationships.¹²⁴

Alongside Mouvement Action-Chômage and the Women's Legal Education and Action Fund (LEAF), NAWL also advocates against discriminatory rules in the *Employment Insurance Act*. At the time of writing, the law prevents recipients from accumulating more than 50 weeks of benefits, including parental leave. As such, individuals who lose their jobs while on parental leave may be ineligible for regular employment insurance benefits.¹²⁵ NAWL thus argues that the *Employment Insurance Act* negatively and disproportionately affects women, who are more likely to take extended parental leave and are at high risk of termination during that period.¹²⁶ Recognizing that not all women can or do work throughout their lives, NAWL is also advocating and working in coalition for guaranteed basic income to protect all women from poverty.¹²⁷

Ultimately, the goal of substantive equality for women has yet to be achieved, and women continue to face significant economic disadvantages. In times marked by economic uncertainty and an ideological backlash against women's rights, NAWL and other feminist groups face new hurdles and challenges. The current trade war between the United States and Canada has created a political climate in which strong economic growth is viewed as oppositional to the progressive social programs that predominantly serve women and children. As such, NAWL and other feminist organizations must convince politicians that women are an integral part

¹²⁰. National Association of Women and the Law, *2024/2025 Annual Report* (Ottawa: National Association of Women and the Law, 2025) [NAWL, *Annual Report*].

¹²¹. Amanda Therrien, "What Good Is a Social Safety Net That Doesn't Catch You?" *The Hill Times* (7 July 2025), online: <<https://www.hilltimes.com/story/2025/07/07/what-good-is-a-social-safety-net-that-doesnt-catch-you/466240/>>.

¹²². NAWL, *Annual Report*, *supra* note 120.

¹²³. Statistics Canada, *Intimate Partner Violence: Experiences of Women with Disabilities in Canada*, 2018, by Laura Savage (Ottawa: Statistics Canada, April 2021), online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00006-eng.htm>>.

¹²⁴. National Association of Women and the Law, "Submission for the Pre-Budget Consultations in Advance of the 2025 Federal Budget" (1 August 2024), online (pdf): <<https://www.ourcommons.ca/Content/Committee/441/FINA/Brief/BR13232312/br-external/NationalAssociationOfWomenAndTheLaw-e.pdf>>

¹²⁵. *Employment Insurance Act*, SC 1996, c 23, ss 10(2), 12(6).

¹²⁶. Allison Venditti, "15% of Canadian Mothers Are Laid Off During Maternity Leave: We Have the Data," *Moms at Work* (2 June 2025), online: <<https://thisismomsatwork.com/15-of-canadian-mothers-are-laid-off-during-maternity-leave-we-have-the-data/>>.

¹²⁷. See e.g. National Association of Women and the Law, "In Conversation with NAWL—Dignity, Safety, and a Guaranteed Livable Income" (19 February 2026) online: <<https://nawl.ca/in-conversation-with-nawl-dignity-safety-and-a-guaranteed-livable-income/>>.

of Canada's economic health: A Canada where women are poor and disenfranchised is not a strong economy. To reiterate Peggy Mason's 1975 assertion, "economic liberation has got to be the core of the women's liberation movement."¹²⁸ It is likely that this statement will continue to shape NAWL's mandate as it grapples with the needs of increasingly besieged populations, including women, children, and immigrants. NAWL's continued existence is therefore imperative to ensuring that the twentieth-century movement toward women's equality in the family and in society will not be blocked or reversed by discriminatory legislation and policies.

¹²⁸. Mason, *supra* note 30.

CREATING REFLECTIVE SPACES FOR CHANGE: BUILDING A MORE INCLUSIVE LEGAL CULTURE BY CENTRING WOMEN LAWYERS’ VOICES THROUGH STORYTELLING AND REFLECTIVE PRACTICE

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* The first two authors, alongside Dr. Beth Bilson, KC, are the original developers of both Resources shared in this article created through CREATE Justice (the Centre for Research, Evaluation, and Action Towards Equal Justice at the University of Saskatchewan). Dr. Judy Jaunzems-Fernuk and Lawren Trotchie are two women who were invited to the table to advance the conversation. Article written in honour of the late Dr. Beth Bilson, KC, first woman dean of the University of Saskatchewan College of Law and partner on the Resources who passed during the writing of this paper. We will terribly miss having her at the many tables she occupied, but her spirit lives on in the Resources. We thank Michael Bergen, third year University of Saskatchewan College of Law student for his research assistance with this article. Finally, we are grateful to those who provided feedback at the People-Centred Justice Symposium on May 29, 2025, in Vancouver, British Columbia, at which this paper was workshopped.

Abstract

Focusing on the impact of a reflective storytelling initiative, this paper explores how centring women lawyers' voices supports meaning-making and validation within a context of persistent gender disparity. Women, especially those from equity-seeking groups, continue to face systemic barriers in the legal profession.¹ Though we centre the voices of women lawyers collectively, we do not treat "women" as one homogeneous category. We recognize that gender is experienced through intersecting structures of race, Indigeneity, and institutional power. Women enter "the legal profession and private practice in record numbers," however, they also "leave private practice in disproportionate numbers."² This imbalance raises questions about how a more equitable, person-centred justice system could support a healthier profession and a fair and accessible justice system.

One promising avenue lies in creating reflective spaces that centre the voices of equity-seeking groups, validate lived experiences, and challenge systemic norms. To explore this, two initiatives were launched to centre women's voices: *Creating a Seat at the Table: Reflections from Women in Law* (2023) and *Dear Beth . . . A Women in Law Podcast* (2023–2024). We then conducted a survey (2024) evaluating their impact. Results of the survey found that ninety-four per cent of participants reported positive outcomes from engaging with the initiatives.

These results suggest that reflective storytelling is more than a tool for personal validation; it can serve as a catalyst for professional inspiration and broader systemic transformation. By amplifying women's and members of other equity-seeking groups' experiences, such initiatives have the potential to shift legal culture toward greater inclusivity, equity, and sustainability in the profession, and support the culture shift required for a healthy legal profession and healthy justice system, capable of providing access to justice for all citizens. This paper presents the original survey data, situates the initiative within a theoretical framework, and makes an argument about the conditions necessary—*vulnerability and authenticity, trust and safety, courage, and humility and empathy*—for reflective spaces to drive systemic change and how these elements relate to the book and podcast.

¹. Saskatchewan Justicia Project, *Workplace Policies and Practices for Lawyer Retention and Advancement: Results of Two Surveys of the Members of the Law Society of Saskatchewan* (Regina: Law Society of Saskatchewan, October 2016), online (pdf): <<https://www.lawsociety.sk.ca/wp-content/uploads/2020/04/Justicia2016onlinefinal.pdf>> [Justicia Project].

². *Ibid* at 5.

I INTRODUCTION

*Stories . . . are a way that we can talk to each other without having barriers between us.*³

—Maria Campbell

Canadian society is diverse, with communities composed of a range of genders and cultural, ethnic, and racial groups. As such, Canadian law schools, law societies, and other justice-sector leaders and organizations have a unique responsibility to ensure their professions are sufficiently representative of the communities they serve. In Saskatchewan, as of 2024, only forty-two per cent of active lawyers were women.⁴ This figure is slightly below national trends, which reflect a near numerical equality, yet ongoing disparities in representation as senior leaders persist.⁵ Ensuring the legal profession is representative of Canadian society will help to foster a more inclusive justice system.⁶ In sociopolitical contexts, such as the legal profession, there exists a tension, shaping whose experiences are recognized and whose remain marginalized—highlighting the need for approaches such as the reflective spaces explored in this study. A more inclusive justice system is one that uplifts the voices of those often silenced, enhancing decision-making processes with different perspectives, experiences, and ideas at the table.⁷ Lawyers occupy influential leadership roles within legal institutions and across the broader justice system, shaping not only legal outcomes but also professional norms—improved client relationships, whereby clients may be more likely to trust and feel comfortable with legal professionals who understand their cultural or individual needs⁸ (i.e., gender-based) increases employee engagement and fosters a better workplace culture for all in the system.

An inclusive and equitable legal culture will lead to a more diverse legal profession. A diverse legal profession is a necessary component of improving access to justice (A2J). The judiciary and the legal profession are vital public institutions that rely on the public's trust to maintain their legitimacy.⁹ This legitimacy is premised on the notion that the legal

³ Maria Campbell, “What Reading and Storytelling Means to Maria Campbell,” on *The Next Chapter* (CBC Radio One broadcast, 1 August 2020), online: <<https://www.cbc.ca/radio/thenextchapter/full-episode-aug-1-2020-1.5341254/what-reading-and-storytelling-means-to-maria-campbell-1.5341409>>.

⁴ Law Society of Saskatchewan, *2024 Annual Report Regulating the Practice of Law in the Public Interest* (Regina: Law Society of Saskatchewan, 2025) at 20 [Law Society SK Report].

⁵ See generally, Canadian Bar Association, “The Rise of Female-Led Law Firms in Canada” (2025), online: <<https://www.cba.org/sections/women-lawyers/member-articles/the-rise-of-female-led-law-firms-in-canada>>; Ruhana Chowhan, *Statistics Report 2022* (Ottawa: Federation of Law Societies of Canada, 2023), online (pdf): <<https://flsc.ca/wp-content/uploads/2023/10/FederationStatisticsReport2022.pdf>>; Law Society of Ontario, *Annual Report 2024* (Toronto: Law Society of Ontario, 2024), online: <<https://lso.ca/about-lso/governance/annual-report/annual-report-2024>>.

⁶ Justicia Project, *supra* note 1.

⁷ See generally Joyce Green, ed, *Making Space for Indigenous Feminism* (Black Point, NS: Fernwood Publishing, 2007).

⁸ See generally Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989) 1 U Chicago Legal F 139 [Crenshaw].

⁹ Zoe Johansen-Hill, Larissa Meredith-Flister & Coleman Owen, *Diversity and Inclusion in the Legal Profession* (Saskatoon: Dean’s Forum on Access to Justice and Dispute Resolution, 2019) at 3–4 [Johansen-Hill et al (2019)].

profession will protect the public interest and is also accompanied by the responsibility and privilege to self-regulate.¹⁰ Some of the key components of the legal profession that uphold this legitimacy include professionalism, civility, and equal access to the law by the communities the profession and institutions serve.¹¹ Ensuring and maintaining diversity is fundamental to these components because a diverse legal profession is essential to ensure access to the legal system by all members of the community and that each member and group is served equally.¹² A more diverse legal profession better ensures that the diverse needs of clients and communities are met, as firms and institutions are better equipped to understand these needs.¹³

Despite equal numbers of women entering law schools since the 1980s, women continue to leave the legal profession, particularly private practice, at disproportionate rates.¹⁴ This attrition is often linked to gender discrimination, systemic bias, and the challenge of balancing personal and professional responsibilities.¹⁵ These barriers are even more pronounced for women with intersecting marginalized identities, including Indigenous women, women of colour, members of the 2SLGBTQIA+ community, and women with disabilities. These barriers reflect the history of Canada's legal profession as being "one of the exclusion of women, Aboriginal peoples, ethnic and racialized groups, and those from less privileged classes."¹⁶

¹⁰ Carman J Overholt, "Diversity and Professionalism in the Practice of Law" (2011) 44:1 UBC L Rev 91 at 94.

¹¹ Law Society of Saskatchewan Equity and Access Committee, "Promoting Equity, Diversity and Inclusion" (6 May 2021), online: <lawsociety.sk.ca/diversity-inclusion-equity/promoting-equity-diversity-and-inclusion> [perma.cc/9FAA-WRY4].

¹² *Ibid.*

¹³ Hon Phyllis D Thompson, "Focus on Diversity: Why Diversity Must Matter to the Bar Admissions Community," online: (2020) 89:1 Bar Examiner <thebarexaminer.ncbex.org/article/fall-2020/why-diversity-must-matter-to-the-bar-admissions-community> [perma.cc/6UEH-9BUQ].

¹⁴ Beth Bilson, Leah Howie & Brea Lowenberger, *Creating a Seat at the Table: Reflections from Women in Law* (Regina: University of Regina Press, 2023) at xxiii [Bilson et al (2023)]; see footnotes 3–4 at xx for some examples of the extensive body of research that now exists concerning women in the legal profession. There is a voluminous body of literature which is available to draw on (especially in the areas of feminist legal studies, storytelling and narrative, marginality in the legal profession, EDI, and racial dominance). See e.g. Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993); Susan Robertson, *A Study of Gender and the Legal Profession: A Report to the Law Society of Saskatchewan 1990–1991*, (Saskatoon: Canadian Bar Association Saskatchewan Branch and the College of Law, University of Saskatchewan, 1992); Beth Bilson, Susan Robertson & Elizabeth Quinlan, *Women and the Legal Profession in Saskatchewan: National and Historical Comparisons: A Report to the Law Society of Saskatchewan, Canadian Bar Association, Saskatchewan Branch and the Law Foundation of Saskatchewan* (Saskatoon: University of Saskatchewan, 2013) [Bilson et al (2013)]; Law Society of Saskatchewan, "Saskatchewan Justicia Project" (13 March 2023), online: <sk.ca/initiatives/saskatchewan-justicia-project> [perma.cc/758A-UYJR].

¹⁵ See generally Fiona M Kay, Stacy L Alarie & Jones K Adjei, "Undermining Gender Equality: Female Attrition from Private Law Practice" (2016) 50:3 Law & Soc'y Rev 766 [Kay et al (2016)]; Law Society of British Columbia, *The Business Case for Retaining and Advancing Women Lawyers in Private Practice* (Vancouver: Law Society of British Columbia, 2009), online (pdf): <https://www.lawsociety.bc.ca/getContentAsset/5c33d867-c627-41b1-b67c-f4851d41e37f/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/Retaining-women-business-case.pdf>.

¹⁶ Joan Brockman, *Gender in the Legal Profession: Fitting or Breaking the Mould* (Vancouver: UBC Press, 2001) at 3.

While the presence of women in legal spaces is no longer considered unusual, full professional equality remains elusive.¹⁷ Numerous reports, including those from, for example, our local regulator, the Law Society of Saskatchewan, have identified key areas for action: hiring and advancement, mentorship, consultation, and training.¹⁸ Yet, despite decades of awareness, profession-wide change has been slow, and many of the same barriers persist.¹⁹

This paper summarizes an initiative undertaken following the 2019 meeting of the Dean's Forum on Access to Justice and Dispute Resolution at the University of Saskatchewan College of Law (the Forum) that focused on "Diversity and Inclusion in the Legal Profession."²⁰ During the Forum, some participants identified that "despite knowing this problem exists and wanting to address it for decades, there has been little profession-wide change over the years" and the "same barriers and disadvantages continue to persist."²¹ Following the Forum, three of the attendees launched two initiatives: *Creating a Seat at the Table: Reflections from Women in Law* (2023) and *Dear Beth . . . A Women in Law Podcast* (2023–2024) (the Resources). Grounded in three interrelated frameworks—reflective practice, transformative learning theory, and allyship—the Resources aimed to validate lived experiences, build community, and inspire systemic change. The initiative, further described below, was anchored in inviting reflections from eighteen women graduates of the University of Saskatchewan College of Law.

A. Summary of the Initiative

The initiative centred on publishing *Creating a Seat at the Table: Reflections from Women in Law* (2023), followed by producing *Dear Beth . . . A Women in Law Podcast* (2023–2024). *Creating a Seat at the Table* is a collection of works written by women who have graduated

¹⁷. There is an extensive body of research and commentary on the experiences of women in the legal profession. For further information on this topic, see generally Constance Backhouse, "Gender and Race in the Construction of 'Legal Professionalism': Historical Perspectives," in Adam Dodek and Alice Woolley (eds), *In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession* (Vancouver: UBC Press, 2016); John Hagan and Fiona Kay, "Hierarchy in Practice: The Significance of Gender in Ontario Law Firms," in Carol Wilton (ed), *Essays in the History of Canadian Law, vol. 7, Inside the Law: Canadian Law Firms in Historical Perspective* (Toronto: Osgoode Society for Canadian Legal History, 1996); Kay et al, *supra* note 15 at 766; Fiona M Kay, "Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec" (2002) McGill LJ 47; Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Profession* (Oxford: Hart, 2006); Fiona Kay, Christi Masuch, and Paula Curry, *Diversity and Change: The Contemporary Legal Profession in Ontario* (Toronto: Law Society of Upper Canada, 2004); John Hagan and Fiona Kay, *Gender in Practice: A Study of Lawyers' Lives* (New York: Oxford University Press, 1995); Elizabeth Sheehy and Sheila McIntyre, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006); and Fiona M Kay, Stacey L Alarie, and Jones Adei, "Leaving Private Practice: How Organizational Context, Time Pressures, and Structural Inflexibilities Shape Departures from Private Law Practice" (2013) 20:2 L & Soc'y Rev 1223

¹⁸. Law Society SK Report, *supra* note 4.

¹⁹. Adam Dodek suggests that law firm diversity and inclusion initiatives have had, at best, limited success "because discrimination against those who don't fit the profession's image of a lawyer is deeply entrenched in the profession and in society." Adam Dodek, *Heenan Blaikie: The Making and Unmaking of a Great Canadian Law Firm* (Vancouver: UBC Press, 2024) at 175.

²⁰. Johansen-Hill et al (2019a), *supra* note 9; Zoe Johansen-Hill, Larissa Meredith-Flister & Coleman Owen, *Follow-Up Report & Summary Notes: Diversity and Inclusion in the Legal Profession* (Saskatoon: University of Saskatchewan College of Law, 2019) [Johansen-Hill et al (2019b)].

²¹. *Ibid* at 7.

from the University of Saskatchewan College of Law. In 2019–2020, the Resource creators identified eighteen women who were graduates of the law school, which included an equal number who were well-established in the profession, some just starting out, and others mid-career. More recent graduates were invited to write a letter to their future self, or someone in the future, reflecting on the personal course they are anticipating, on what their experience in legal education and the legal profession has meant for them, and on how their gender may affect their experiences. Mid- and later-career legal professionals were, contrastingly, invited to write a letter to their younger selves reflecting on the course their career has taken and on how their gender may have affected their experiences. The stories share vulnerable experiences, hard lessons learned, career advice, and more. The central theme of the book is aptly described by the Honourable Beverly McLachlin in the foreword as follows: “What is it like to be a woman in law? That is the question at the heart of this book, a collection of candid letters written by women who have walked the walk and talked the talk of a profession in the law.”²²

The letters were compiled and circulated among the contributors in advance of a one-day workshop in Saskatoon in June 2022. Contributors were invited to examine both what they have in common with others and what is distinctive about their own experience, as well as to read about reflective practice in advance of the workshop. The gathering began with a writing bundle workshop with Maria Campbell, who reminded participants about the power of stories and storytelling. Contributors were also invited to engage in “transformative scenario planning,”²³ which involved imagining a five-year and thirty-year plan for change. Specifically, in small groups, contributors were invited to imagine a future where none of the challenges they identified in their letters exist, and what their hopes are for the future practice of law. After contributors completed the exercise, they were invited to post their list of aspirations on the wall. Once the small groups established what a possible future could look like, the Resource creators asked what this utopian scenario says about what the legal profession can and what it must do.

The discussion and ideas for next steps identified at the workshop were used by the Resource creators as the basis of our own contribution to the initiative, the introductory and concluding chapters of the book, which drew out the main themes arising from the stories and from the discussion itself and placed them in a social and historical context.

Alongside publishing the book in the fall of 2023, the Resource creators also obtained funding and started and finished Season 1 of “Dear Beth . . . A Women in Law Podcast” in fall 2023–spring 2024.²⁴ The goal in creating the podcast was to build on and bring the book “to life” to create space for brave and honest conversations. Most episodes feature one of the contributors to the book and a letters segment in which Dr. Beth Bilson, KC, responds to messages sent in by listeners.

This initiative, as a whole, supported an iterative process of reflection (the book), followed by the transformation of this reflective practice into active dialogue (the podcast), and then empirical research to assess its impact (the survey). This is the first time something like this

²² Bilson et al (2023), *supra* note 14 at xv.

²³ Adam Kahane, *Transformative Scenario Planning: Working Together to Change the Future* (San Francisco: Berrett-Koehler, 2017).

²⁴ Brea Lowenberger et al, “Dear Beth . . . A Women in Law Podcast: Sweeping Away the Cobwebs” (14 July 2024), online (podcast): <directory.libsyn.com/episode/index/show/2a2bf592-8b65-4182-bfcc-0bff9909a205/id/29932538> [perma.cc/KYA8-M773].

has been done in Saskatchewan. Given the evolutionary nature of this work, the survey (2024) revealed that the Resources resonated deeply with participants (ninety-one per cent women), offering emotional validation, professional inspiration, and a call for change. This paper presents our evolving story, active insights, and subsequent research through the following four sections: Section II, Our Why; Section III, Theoretical Foundations; Section IV, Data Insights on the Impact of the Book and Podcast; and Section V, Reflections and Conclusions on the conditions necessary for reflective spaces to drive systemic change. We intentionally break from the traditional presentation of empirical research and have chosen an illustrative lens through which to tell the story of this work.

Through the first two sections, we present the context, problem, and conceptual framing, with embedded participant quotes highlighting the power of this work, situating participant voices upfront. The final sections share an empirical lens, highlighting the methods, results, and a data discussion in more depth. This framing allows us to respect the arc of storytelling situating people first. The findings argue that reflective storytelling is a powerful tool for advancing equity, diversity, inclusion, and belonging in the legal profession, and explores how reflective spaces, created through storytelling, dialogue, and community, can support the retention, empowerment, and leadership development of legal professionals. The paper concludes with four conditions for reflective spaces for change—*vulnerability and authenticity, trust and safety, courage, and humility and empathy*—derived from interactions with the survey respondents, the participants, and the authors as a launching point for further reflection and action.

II OUR WHY: CELEBRATING THE SUCCESS OF WOMEN IN THE LEGAL PROFESSION AND INSPIRING ACTION TOWARD A HEALTHIER LEGAL PROFESSION AND JUSTICE SYSTEM

At the time of launching this initiative, the concept of wellness in the legal profession and justice system and its connection with A2J was top of mind. The three women who edited the book and created the podcast (the Resource creators) are all law school graduates who have had their own unique experiences and have practised law at some point during their professional careers, and thus they have a personal interest and connection to women's journeys through the practice of law. The Resource creators were also aware of the connections between the individual well-being of legal professionals, the health of law firms and organizations, and a healthy, well-functioning justice system that is accessible to all citizens.

The same year that the Dean's Forum addressed equity, diversity, and inclusion (EDI) in the legal profession and its relation to A2J in 2019, the Federation of Law Societies of Canada's annual conference highlighted a lack of well-being in the legal profession and an urgent need for systemic changes.²⁵ As findings from a related study that was launched following the conference, "Towards a Healthy and Sustainable Practice of Law in Canada" (2020–2022),

²⁵ Federation of Law Societies of Canada, "Wellness of the Legal Profession" (Federation of Law Societies of Canada, 2025), online: <<https://flsc.ca/what-we-do/wellness-of-the-legal-profession>>.

also known as the “Sherbrooke Report,”²⁶ would confirm, women in the Canadian legal profession scored in the highest levels of psychological distress (63.7 per cent),²⁷ anxiety symptoms (42.6 per cent),²⁸ and burnout (specifically, “[w]omen legal professionals under 40 years of age [67.4 per cent]).²⁹ As two survey respondents, one near the beginning and one near the end of their careers, noted:

I strongly believe that we have a problem in our profession with how we treat women and why so many women choose to leave the profession within a few short years of practice. The time pressures and stress of this profession has made me think about not being a lawyer in the future, particularly if I have children.³⁰

It’s a constant struggle and I feel like I’ve been in this career for as long as I possibly can and it’s time to pull the ejection seat. I guess this is what burnout feels like. In [province], there has been talk throughout my entire career . . . of the importance of retention of women in the practice of law, and yet, nothing has changed in over a decade. I still feel like I can’t succeed as a mother and a lawyer. For me, the choice is clear, and I will choose my family and mental health. The problem is finding an alternative position that will still financially support my family.³¹

The report highlighted the gender gap in wellness in the legal profession, finding that “[t]here is a significant difference between men and women for all of the mental health indicators used in this study—psychological distress, anxiety, depressive symptoms, and burnout ($p \leq .001$).”³² Findings confirmed “women in the legal profession may be more affected by mental health issues than their counterparts who are men.”³³

Legal professionals across Canada increasingly recognize that diversity, inclusion, and belonging are essential not only for equity within the profession but also for improving A2J. As the Law Society of Saskatchewan’s 2021 study revealed, a majority of members believe that challenges faced by equity-seeking groups directly affect A2J.³⁴ Similarly, the Canadian Bar Association has called for more inclusive judicial appointments, emphasizing that justice must not alienate those it serves.³⁵

²⁶ Nathalie Cadieux et al, *Towards a Healthy and Sustainable Practice of Law in Canada* (Sherbrooke: Université de Sherbrooke, 2022).

²⁷ *Ibid* at 27.

²⁸ *Ibid* at 34.

²⁹ *Ibid* at 47.

³⁰ *Ibid* at 166.

³¹ *Ibid* at 165.

³² *Ibid* at 185.

³³ *Ibid* at 185.

³⁴ Law Society SK Report, *supra* note 4 at 3.

³⁵ Canadian Bar Association, “CBA Joins National Call for More Diversity in Judicial Appointments” (14 September 2020), online: <<https://www.cba.org/news/canadian-bar-association-joins-national-call-for-more-diversity-in-judicial-appointments/?feed=2017>>.

Yet inclusion is not just about representation; it's about retention, well-being, and creating spaces where women and other marginalized professionals can thrive. This paper responds to that call by exploring how reflective spaces—through storytelling, dialogue, and community—can support women in law and catalyze systemic change. Through the *Creating a Seat at the Table* anthology and *Dear Beth . . .* podcast, this initiative offers a model for fostering belonging, amplifying voices, and building a healthier legal profession.

III THEORETICAL FOUNDATIONS: REFLECTIVE PRACTICE, TRANSFORMATIVE LEARNING, AND ALLYSHIP AS DRIVERS OF CHANGE

The Resources are grounded in three interrelated conceptual and practice-based foundations: reflective practice, transformative learning, and allyship. While we refer to these as interrelated foundations, we recognize that they operate at different levels: transformative learning offers a formal theoretical account of how perspectives change, whereas reflective practice and allyship function as applied frameworks that guide such learning in this context. Together, these concepts form a framework for understanding and addressing systemic barriers in the legal profession. Transformative learning enables individuals to critically reflect on and reframe underlying assumptions leading to intentional shifts and deeper meaning³⁶; reflective practice fosters self-awareness and collective insight³⁷; and allyship translates reflection and learning into sustained, equity-driven change.³⁸ Each is essential, not only for personal growth, but for building a legal culture that supports inclusion, belonging, and justice. The following sections define the theoretical foundations and how the Resource creators moved this work from “theory” to “action” through developing the Resources.

A. Reflective Practice

Reflective practice was first coined by Schön in describing how professional competence can be engendered through a dialogue of “thinking and doing through which [one] becomes more . . . skillful.”³⁹ The term has been further developed and refined beyond this original reflection on practice to include critical reflection, self-reflection, and collective reflection.⁴⁰

To briefly summarize, *reflection on practice* could involve the legal practitioner learning in action, whereby their technical competence is improved through reflection on experience and learning from their practice, including skill, technique, and expertise; *self-reflection* requires building a capacity for self-awareness and self-knowledge to strengthen one's professionalism; *critical reflection* leads to the creation of new professional knowledge through reflecting

³⁶ Jack Mezirow, *Transformative Dimensions of Adult Learning* (San Francisco: Jossey-Bass, 1991).

³⁷ Donald Schön, *The Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books, 1983).

³⁸ Lucy De Souza & Toni Schmader, “When People Do Allyship: A Typology of Allyship Action” (2025) 29:1 *Personality & Soc Psychology Rev* 3 at 5.

³⁹ Michele Leering, “Conceptualizing Reflective Practice for Legal Professionals” (2014) 23:1 *J of L and Soc Pol'y* 83 at 85 [Leering].

⁴⁰ *Ibid* at 99–101.

on the role of law in society and unpacking assumptions through the deconstruction of current knowledge.⁴¹ Finally, *collective reflection* is “reflecting in community” by challenging assumptions and beliefs to create new understandings through dialogue. All three aspects of reflective practice are important:

A reflective legal practitioner integrates all three aspects of reflection through a continuous spiraling from one aspect to another, developing additional insight, knowledge and wisdom, enhancing professional competence, and fostering authenticity . . . The integrated reflective practitioner is self-aware and critically reflects on practice and theory as a self-directed lifelong learner, reflects collectively and in community, and takes action to improve his or her practice. Reflective practice becomes a “way of being.”⁴²

The concept of reflective practice has since been adopted by professions such as medicine, education, nursing, architecture, and social work, but it has only recently begun to gain a foothold in legal education, scholarship, and professional development in the legal profession.⁴³ Beyond other professions, reflective practice also has a place in cultures outside of this Western conception, including in Indigenous ways of learning.⁴⁴

In relation to the Resources, contributors and readers/listeners were invited to engage in self-reflection, critical reflection, and collective reflection on the topic of women in law. Individual and collective reflection has the potential to foster real change by taking the issue of diversity personally and reflecting on how behaviours, personally and organizationally, contribute to or even create barriers:⁴⁵

The capacity to reflect collectively with peers, colleagues, and others increases the rigour of reflection, interrogates assumptions, and supports learning from others. It also builds the capacity for generative dialogue to create new knowledge and envision new possibilities: this capacity is crucial for tackling access to justice challenges. A final component is “praxis”—making sure one acts on the insights gleaned from reflection.⁴⁶

At the 2019 Dean’s Forum, themes of reflective practice and leadership, “a new standard of professionalism and sense of accountability to each other,”⁴⁷ emerged as imperative to the culture shift needed to more meaningfully advance EDI in the legal profession. The follow-up report from the Forum, which was an impetus for our approach to the initiative, emphasized the role for reflective practice in improving EDI in the legal profession:

^{41.} *Ibid* at 93–98.

^{42.} *Ibid* at 105.

^{43.} *Ibid* at 85.

^{44.} *Ibid*.

^{45.} Johansen-Hill et al (2019b), *supra* note 20 at 8.

^{46.} Michele Leering, “Enhancing the Legal Profession’s Capacity for Innovation: The Promise of Reflective Practice and Action Research for Increasing Access to Justice” (2017) 34:1 Windsor YB Access Just 189 at 198.

^{47.} Johansen-Hill et al (2019b), *supra* note 20 at 8.

A strong theme of individual and collective reflection emerged. We hope that this theme will continue to resonate and build moving forward. We think that taking the issue personally and reflecting on how our own behaviours, personally and organizationally, contribute to or even create barriers for others is an important component of change. Blaming individuals, blaming society, or relying on future generations has not proven to create the changes necessary.⁴⁸

As indicated, thus far, “blaming individuals, society, and institutions, or relying on future generations, has not proven to create the changes necessary [to improve EDI in the legal profession].”⁴⁹ Greater integration of rigorous reflective practice across the legal education continuum (i.e., during and after law school) would better foster the development of a “reflective muscle” in law students and legal professionals, enabling them to learn from and act upon reflective insights, including transformative learning, and move toward active allyship.

B. Transformative Learning

Critical reflection further supports transformative learning, which in turn supports a “nascent inclination for social justice, helping law students [and professionals] develop a perspective on professional responsibility that includes a desire to increase access to justice.”⁵⁰ The transformative learning process involves transforming taken-for-granted frames of reference to make them more inclusive, open, capable of change (emotionally), discriminating, and reflective, thereby generating beliefs and opinions that prove to be more true or justified to guide action.⁵¹ Transformative learners become more critically reflective about their assumptions, more critically involved in reflective discourse with others, and better prepared to take action based on new understandings. Furthermore, some legal professors feel that “the more opportunities that there are for self-critical reflection, the more aware people will become of social justice and A2J issues.”⁵²

According to Jack Mezirow, transformative learning has ten phases: (1) disorienting dilemma—a person’s current meaning structure does not match a previous experience; (2) self-examination—learners do a self-test of their beliefs and understandings and think about how past experiences connect to the recent dilemma, whereby a perspective transformation may result when they realize their perspective may not be the only perspective; (3) a critical assessment of assumptions; (4) recognition that others have shared a similar transformation; (5) exploration of new roles or actions; (6) development of a plan for action; (7) acquisition of knowledge and skills for implementing the plan for action; (8) trying out the plan; (9) development of competence and self-confidence in new roles; (10) reintegration into life on the basis of new perspectives.⁵³

⁴⁸. *Ibid.*

⁴⁹. *Ibid.*

⁵⁰. Leering, *supra* note 39 at 97.

⁵¹. Jack Mezirow et al, *Learning as Transformation: Critical Perspectives on a Theory in Progress* (San Francisco: Jossey Bass, 2000) at 7–8.

⁵². Leering, *supra* note 39 at 97.

⁵³. John M Dirkx, “Transformative Learning Theory in the Practice of Adult Education: An Overview” (1998) 7 PAACE J of Lifelong Learning 1.

How these phases unfolded in contributors' accounts in the Resources and in those who have engaged with the Resources is outlined in Section 3.

C. Allyship

Allyship refers to actions taken by individuals who belong to an advantaged group and is characterized as support where there is unequal status between individuals.⁵⁴ Allyship is an action oriented practice that expands beyond calls to action.⁵⁵ Allyship actions can occur at the intrapersonal, interpersonal, and institutional levels. Intrapersonal *reactive* allyship focuses on self-regulation to address personal biases and aims to reduce the harm caused by one's own biases; whereas *proactive* allyship involves actively engaging with marginalized groups to broaden one's perspectives and aims to increase cultural competence.⁵⁶

Majority groups can be engaged, trained, and supported to act as "active allies."⁵⁷ Allyship is not a title, but rather involves taking action, which is necessary to shift individuals to be more inclusive and to transform systems into more equitable ones.⁵⁸ The Equity Ally Activation Model can be used to activate and support equity allies and aid in advancing the rate of change toward gender equity in male-dominated fields.⁵⁹ The model consists of four stages: *awareness* is the stage where individuals become aware of inequities to themselves or others; the *support-seeking* stage is where people will question and seek to understand their experiences with inequity; in the *realizing* stage, individuals may process past experiences, grow skills, and find community and acceptance over inequities they have witnessed or experienced; and finally, in the *leading change* stage, activated allies are skilled and motivated to practise inclusion and work to shift the perspective of others.⁶⁰ In reference to these four stages, the Resources contribute to the first three—awareness, support-seeking, and realizing—with the hope of readers/listeners moving into the fourth *leading change* stage.

In practice, this can take many different forms: leadership, allyship, mentorship, and collaboration. Raising awareness may require encouraging reflection on privilege and intersectionality⁶¹ via workshops or self-guided learning, with case studies or surveys as means of surfacing inequities.⁶² Supportive environments will help foster safe spaces to do this work and may involve providing access to therapy, peer networks, or cultural support.⁶³ Structured training and self-guided learning can help facilitate the processing and growth that occur in the realization stage.⁶⁴ Finally, allyship actions should be encouraged by amplifying marginalized

⁵⁴ De Souza & Schmader, *supra* note 38 at 5.

⁵⁵ *Ibid* at 5.

⁵⁶ *Ibid* at 9–10.

⁵⁷ Jocelyn Peltier-Huntley & Jovita Dias, "Insights from Equity, Diversity, and Inclusion Allies: Results from the Second Phase of an Interdisciplinary Study on the Retention of Underrepresented People in Mining" (2022) [unpublished] [Peltier-Huntley & Dias].

⁵⁸ *Ibid* at 2.

⁵⁹ *Ibid* at 7.

⁶⁰ *Ibid* at 7–8.

⁶¹ See generally Crenshaw, *supra* note 8.

⁶² Peltier-Huntley & Dias, *supra* note 57 at 4–6.

⁶³ *Ibid* at 5–6.

⁶⁴ *Ibid* at 6–8.

voices, advocating for inclusive policies, and challenging discriminatory norms.⁶⁵ It is important that performative allyship is avoided and that substantive action is prioritized over symbolic gestures, which includes centring marginalized voices in decision making.⁶⁶

Legal professionals exercise forms of leadership through influence, decision making, and participation in legal systems. Within this context, reflective practice and transformative learning support critical self-examination and shifts in perspective, while allyship provides a relational framework for acting on these insights in ways that support others and contribute to more equitable professional environments.

IV DATA INSIGHTS ON THE IMPACT OF THE BOOK AND PODCAST

This presentation of data takes two forms. The first is in a collective account of contributions made throughout the creation of the book and podcast, and the second is through a survey, sampling a group of individuals who had engaged with the Resources once published. The Resource creators received feedback on the impact of the Resources from the contributors to the book at a workshop held in spring 2022. Informally, they also received feedback from individuals who reviewed the book prior to publication, from guests on the podcast, and in many personal conversations the Resource creators had with readers and listeners to understand their experience and inform their work. The Resource creators were also interested in more formally learning about the impacts of the Resources, however, and exploring what some “conditions” were for actualizing authentic “reflective spaces for change.” The survey was designed and launched to assess particular questions in the fall of 2024. This section summarizes the key insights gained from these various data points regarding the impact of the Resources, including the conditions—that is, *vulnerability and authenticity, trust and safety, courage, and humility and empathy*—identified for reflective spaces for change.

A. Positionality

The researchers, as creators and users of the book and podcast, occupy an insider position in relation to the work under study. This proximity shaped data collection and interpretation and was approached reflexively, with attention to potential bias and the limits of the data. Our positions are inherently a part of this work, and our interest in reflective practice as an instrument of change urged us to engage in a reflective cycle to analyze the impact of this work. We claim no bracketing from the interpretations or results, as we feel this proximity provides rich, contextual insight.

^{65.} *Ibid* at 7.

^{66.} *Ibid* at 2–4

1. Methodology and Scope

a. Phase 1: Collective Contributions—Preliminary Data Gathering (Informal)

The first component draws on a collective account of contributions and feedback generated throughout the development of the book and podcast, including workshop discussions, pre-publication review, and informal conversations with contributors and audiences. While this material provides valuable practice-based insight, it was not collected systematically and is therefore presented as contextual and illustrative rather than as formal empirical data.

b. Phase 2: Survey—Post Publication (Formal)

This portion of formal data gathering employed a qualitative survey, approved by an institutional ethics review board, to gather participants' perspectives on the impact of the book and podcast. Responses were analyzed using reflexive thematic analysis.⁶⁷ A limited amount of quantitative data was collected; however, given the scope of the dataset, these data are reported descriptively and used to provide contextual insight rather than to support statistical inference. The survey was voluntary and shared via email to a variety of networked members who participated in various initiatives related to the Resources. Participants were asked to describe the impact of experiences with the Resources, as well as general life experiences that led them to the point they're at today. The participants were also asked to provide qualifying statements or examples of experiences or connections to the book (stories, etc.). Lastly, participants provided input or recommendations to support further development of these and other materials for various stakeholders.

The survey was distributed to a purposive sample of approximately 100 individuals who had engaged with the Resources: book contributors, original book sponsors, law school deans/professors, law students, lawyers, podcast participants, related mailing lists, and via social media accounts of CREATE Justice and the researchers. We also asked justice organizations such as the Law Society of Saskatchewan and the Canadian Bar Association Saskatchewan Chapter to share the survey. We were interested in feedback from anyone who had read the book or listened to the podcast. A total of twenty-four respondents participated, the majority of whom identified as female ($n = 22$), with one male and one non-binary participant. Participants represented a range of professional contexts—including academic institutions (law and non-law), community organizations, law firms, and government—and varied in legal experience from non-lawyers to practitioners with over 30 years in the field.

2. Limitations

This study is limited by a small, self-selected sample, an unknown sampling frame, and limited quantitative data, constraining the scope and generalizability of the findings, though generalizing was not a goal. The researchers' dual role, as related to the book and podcast and as analysts, introduces the potential for bias in both data generation and interpretation. These limitations were addressed through a reflexive analytic approach that emphasized transparency, collective discussion about developing themes, reflection, critical self-awareness, and caution in our claims. Given that the purpose of this process was to reflectively examine

⁶⁷. See generally Virginia Braun & Victoria Clarke, "Using Thematic Analysis in Psychology" (2006) 3:2 *Qualitative Research in Psychology* 77.

our own work in relation to the theoretical framing and to share a narrative grounded in our practice, the close connection between researchers and the subject matter is both appropriate and methodologically intentional. What follows are data insights intended for those interested in the impact of reflective practice through meaningful allied action, such as storytelling and participation in collective/reflective discussion.

a. Initial Data Insights (Phase 1—Informal): Reviewers, Contributors, and Podcast Guests

This section provides a sample of data insights from reviewers, contributors, and podcast guests, linking these perspectives to the theoretical foundations of reflective practice, transformative learning, and allyship described in Section III, and illustrating the conditions necessary for reflective spaces to drive systemic change. Reflective practice approaches were used throughout the project: contributors to the book were provided prompts and invited to engage in a creative reflective writing exercise through composing a letter; contributors were invited to engage in collective reflection through the workshop; and readers were invited through the book to engage in reflective practice as well as collective reflection at book club events. The same can be said for those who appeared on and listened to the podcast and were invited to engage in individual and collective reflection.⁶⁸ As defined in Section III, the aim with a reflective practice approach is ultimately toward advocacy (for self and others) and allyship.

For example, a sample account of *collective reflection* that occurred at the workshop from a contributor to the book, Kate Bilson, highlights hope and greater *authenticity* in a more inclusive legal profession:

What I learned in the workshop, however, is that all stories are worthy of being told, including those that illustrate hope. As we reimagine what utopia might look like for the legal profession—ideally, it is one that embraces diversity and showers acceptance, support, compassion, and flexible thinking—my wish is that my own career story will thread the possibility of hope for a professional environment where every member, regardless of background, client base, or identity, can be a valuable part of the dance troupe.⁶⁹

Book reviewers also commented on the impact of how *reflective practice* was used in the book. Dr. Michele Leering stated, “[The book contributors’] candid reflections about their struggles and triumphs moved me deeply. I feel appreciative of how the power of presence and place created the space to reflect collectively, and how reflective writing became a catalyst for unearthing such heartfelt insight.”⁷⁰ Gemma Smyth’s response to the book also highlighted the promise of culture shift through the theoretical foundations used in the book: “Ultimately a hopeful book, the authors indeed invite us into a narrative about how ‘the power of individual and collective reflection [can] lead to action and change.’”⁷¹

⁶⁸ See generally Leering, *supra* note 39.

⁶⁹ Bilson et al (2023), *supra* note 14 at 173.

⁷⁰ *Ibid* at Front Matter.

⁷¹ *Ibid*.

The contributors' reflections in the Resources and readers'/listeners' reactions to the Resources align with the various *ten transformative learning phases* discussed previously.⁷² The first reactions received in relation to the book, for example from the Honourable Beverley McLachlin, speak to phase 2, self-examination: "[A] lot of women practising law will, at some point in their careers, ask themselves the big question: was I right to choose the law?"⁷³ Other reflections on the book, such as those of Dr. Jaime Lavallee, speak to phase 4, the recognition that others have shared a similar transformation: "Read this book to know you're not alone."⁷⁴ Professor Gemma Smyth's reflections speak to phase 6, an invitation into developing a plan for action: "*Creating a Seat at the Table* creates community through storytelling. . . . [T]he authors indeed invite us into a narrative about how 'the power of individual and collective reflection [can] lead to action and change.'"⁷⁵

Brock Melnyk, a law student and podcast guest, identified the conditions of *humility* and *empathy* and the transformative potential of *Creating a Seat at the Table*, stating: "I think these young males entering law school, you know, some of them have had no work experience. And so, they don't know what it's like out in the world . . . I think reading books . . . like this book, *Creating a Seat at the Table*, it's so pivotal for their transformation into who they should be as a legal professional in that sense."⁷⁶

The most obvious place where the Resources fit into the *Equity Ally Activation Model* is in the awareness stage. Through the sharing of experiences of women in law, both Resources raise awareness of the inequities faced by women in law. They also fit into the support stage, as they can help individuals better understand their experiences with inequity. Similarly, the Resources can assist in the processing of past experiences that are found in the realizing stage. Allies may also begin to find community through the projects, for example, through book club discussions of the Resources. Although the Resources may not neatly fit into the leading change stage, they nonetheless can serve as an example of what "leading change" might look like as we work to shift the perspectives of those in the field of law through multiple mediums.

Observations from male podcast guests suggested that the Resources *raised awareness about the challenges experienced by many women in the legal profession*. Reflecting on the impact of *Creating a Seat at the Table* as a podcast guest, Professor Dwight Newman observed:

Early in the book there's reference to the idea that stories are the way that we can talk about things and bring attention to things. In a way that reaches across between people. I think it's also a way that really might bring statistics to life . . . We've all read about statistics about women in the legal profession. But here we have actual stories of women in the legal profession and what it's like to be there. So, we're not just reading about statistics.⁷⁷

⁷² See generally Jack Mezirow, *Transformative Dimensions of Adult Learning* (San Francisco: Jossey-Bass, 1991).

⁷³ Bilson et al (2023), *supra* note 14 at xvi.

⁷⁴ *Ibid* at Front Matter.

⁷⁵ *Ibid*.

⁷⁶ Brea Lowenberger et al, "Dear Beth . . . A Women in Law Podcast: You Can't Self-Help Your Way Out of Inequality, Oppression or Exhaustion" (15 April 2024) online (podcast): <directory.libsyn.com/episode/index/show/2a2bf592-8b65-4182-bfcc-0bff9909a205/id/30808693> [perma.cc/YQ59-F7P2].

⁷⁷ *Ibid*.

Similarly, Brock Melnyk, a male law student and podcast guest, highlighting *humility* and *empathy*, stated:

I think it was just very interesting to see all the different perspectives from women from all different backgrounds, walks of life in different areas of life and then just understanding their perspective a little bit better, I mean, I'll never fully be able to understand, but it's just nice to be able to try to put myself in their shoes . . . [R]eading this book as a young male entering the law industry, it really helped me put a grasp more on what are the potential issues that I may run into or things that I may not have noticed beforehand.⁷⁸

The Resources also increased awareness around some of the additional *challenges facing Indigenous women lawyers*. Courtenay Phillips, a book contributor and podcast guest, discussed the hope she experienced from the *courage* of her colleagues' reactions to her contribution:

I've also been really impressed with my colleagues that have reached out and said, you know what, we should do better. Like I had no idea that that was the experience of Indigenous law students. And I thought it was very brave for them to reach out. And I thought it gave me a lot of hope, in terms of thinking, okay, well, if this is reaching non-Indigenous people in a way that they aren't getting offended, where they're actually engaging with the ideas and thinking about how they can do better as lawyers. And that gave me both, I would say it gave us both hope in terms of now we're closer as colleagues. And that was something that I didn't expect.⁷⁹

The Resource creators were also encouraged by feedback from reviewers, contributors, and participants suggesting that the Resources were having an impact on their *well-being*. Dr. Rachel Loewen Walker, a book reviewer, stated: "I found myself jotting down quotes on scrap papers, feeling my eyes well up at times, and wanting to photocopy entire letters to share with future students. These are stories of tenacity, failure, and resilience, of disappointment, disillusionment, and inspiration. They are a chorus of resonant experiences."⁸⁰ Gemma Smyth observed that "*Creating a Seat at the Table* creates community through storytelling" and the *trust* and *safety* conditions book contributors had modelled, highlighting the "vulnerability, honesty and nuance in narratives where practical career advice co-exists alongside personal tragedy, all told through feminist lenses that invite the personal into the professional."⁸¹ Michaela Keet highlighted the *authentic* elements of the initiative, describing the book as containing "the warm words of friends and mentors—as if we were sitting together over a cup of coffee, sharing the real stories of our own lives, affirming each other's experiences, releasing it all."⁸²

^{78.} *Ibid.*

^{79.} Brea Lowenberger et al, "Dear Beth . . . A Women in Law Podcast: The Otherside: What Does Being an Accomplice Look Like?" (15 December 2023) online (podcast): <<https://directory.libsyn.com/episode/index/show/2a2bf592-8b65-4182-bfcc-0bff9909a205/id/29091218>> [perma.cc/T85S-7K8S] [Lowenberger].

^{80.} Bilson et al (2023), *supra* note 14 at Front Matter.

^{81.} *Ibid.*

^{82.} *Ibid.*

The Resource creators were also informed that the Resources were being used by the University of Saskatchewan College of Law's Well-Being Coordinator, Dr. Judy Jaunzems-Fernuk, when meeting with students: "I recommend the read and the podcast to every young woman who pops in for a visit, especially if she feels isolated or alone. This series is powerful, and it gives me an anchor for showing young women who will be the world's future lawyers that they have a community."⁸³

Michif lawyer and part-time assistant Professor Lawren Trotchie also reflected on her reaction to the *vulnerability*, *authenticity*, and *courage* conveyed in *Creating a Seat at the Table*, particularly Courtenay Phillips' contribution to the book:

Prior to the podcast I read Courtenay Phillips' reflection. Little did I know that I would be peering ahead into a journal that resembled all too closely my own journey as an Indigenous legal academic and lawyer. It hit me personally. As I read Courtenay's reflection, I had several emotions, including feelings of resemblance and similarity, feelings of sadness and loss, but also feelings of resilience, hope, guidance, and perseverance. When reading Courtenay's piece, I felt as though I was not alone for the first time. Sadly, a feeling that is all too common in my own path as an Indigenous lawyer. I knew before going to the podcast that I was going to be meeting a legal warrior, a legal giant as we call them, but more importantly, I knew I was pulling a seat up to a table where a woman just broke over 50 years of silence.⁸⁴

These same feelings were encountered again by lawyer and part-time assistant professor Lawren Trotchie during "The Otherside" episode of the *Dear Beth . . .* podcast with Courtenay Phillips. While speaking with Phillips and reflecting on the reading in the podcast, Trotchie stated: "And it was the first time that I could pick a piece up and read it, and actually really relate to it as an Indigenous lawyer, as an Indigenous student."⁸⁵

b. Survey Data Insights (Phase 2—Formal)

Encouraged by the insights and observations shared by contributors, participants, readers, and listeners, the authors set out to more formally study and measure the impacts of the Resources and to further explore what some "conditions" are for effective "reflective spaces for change" in a survey launched in the fall of 2024. The survey focused on reader/listener professional and personal lives, as well as their potential to foster reflective spaces for change within the legal profession (or broader communities).

The 2024 survey evaluating the Resources yielded insights into the impact of reflective spaces on women in the legal profession. As one participant noted, "[r]eflective spaces create genuine understanding and empathetic conversations," with another stating, "[t]hese spaces are critical for mental health and inclusivity." As indicated, engagement was limited but strong. One participant noted the *authenticity* of the stories, that is, "comfort and validation from

⁸³. Beth Bilson, Brea Lowenberg & Leah Howie, "Creating a Seat at the Table: Reflections from Women in Law," Newsletter (Summer 2024), online (pdf): <<https://law.usask.ca/createjustice/documents/projects/creating-a-seat-newsletter-summer-2024.pdf>>.

⁸⁴. Lowenberg, *supra* note 79.

⁸⁵. *Ibid.*

shared stories, alongside frustration about systemic issues,” which prompts a reaction. Of the data collected ($n = 24$), seventy-eight per cent had read some or all of the book, eighty-three per cent had listened to podcast episodes, and nearly half attended events. Notably, ninety-four per cent reported positive outcomes. Although this is a small dataset, it is important to highlight the overwhelmingly positive connections to the materials. Respondents expressed interest in future applications, including the use of the Resources in classrooms and professional training, and in developing companion workbooks and presentations.

The limited set of quantitative data revealed priority themes, including mentorship and sponsorship (fifty-eight per cent), systems change (fifty-two per cent), confronting unconscious bias (forty-seven per cent), and self-advocacy (fifty-eight per cent). Qualitative analysis reinforced these findings, identifying six interconnected themes: emotional response, empowerment and autonomy, mentorship and community, transformative potential, diversity and inclusion, and recognition of both progress and ongoing challenges. Participants described, for example, the *vulnerability* and *authenticity* of the stories, feeling validated (“The book and podcast boosted my sense of self and worth”) and being inspired (“Women have the freedom to own their stories”). And “[a]s female practitioners, we should be each other’s biggest cheerleaders,” while also emphasizing systemic barriers and the need for inclusive, accessible spaces that amplify underrepresented voices. Overall, the results demonstrate that reflective storytelling validates lived experience, fosters empowerment, and creates momentum for cultural and systemic change within the legal profession.

V REFLECTIONS AND CONCLUSIONS

The purpose and goal of the Resources were always intended to be action oriented and to be a useful tool going forward. To that end, we have continuously reflected on the following questions since the Resources were launched:

1. Did the Resource creators, achieve what they set out to do?
2. What do we, the authors of this paper, suggest comes next?

A. Did the Resource Creators Achieve What They Set Out to Do?

As outlined previously in Section IV, yes, the Resource creators did achieve what they set out to do. The Resources are being used for collective and individual reflection with the intended audience (legal educators, practitioners, and researchers interested in well-being, professional identity, and A2J within the legal profession), and the initiative had a marked impact on well-being. We are aware of the following uses of the Resources:

- Well-being advising in the College of Law (2023–present)
- Judicial training in Alberta (2024)
- EDI-focused in-house learning opportunities (2024)
- EDI-focused government learning session (2024)
- Added to corporate resource library collections (2024)
- Being discussed among colleagues in private and public practice (2024–present)

- Book clubs being hosted in Saskatchewan [law firm], Alberta [law firm], Vancouver [CBA Women's Forum] (2024–present)
- The podcast is consistently in the top fifty per cent of podcasts in Canada (more than thirty-two downloads within seven days of release means a podcast episode is in the top fifty per cent of podcasts).⁸⁶ For example, episode “Sweeping Away the Cobwebs” attained eighty-seven downloads the first week it was released (2024)

The extent to which the Resources can lead to a culture shift via reflective practice, transformative learning, and increasing allyship in the legal profession requires a longitudinal study; however, the data we have gathered to date suggests the Resources have the potential to do both.

B. What Do We, the Authors of This Paper, Suggest Comes Next?

To answer this second question, we invited a couple of other women, both of whom were podcast guests and University of Saskatchewan College of Law colleagues, to “pull up a seat at the table.”⁸⁷ Drawing on our study of the Resources’ impact so far, we further describe below some of the “conditions” for “reflective spaces for change,” grounded in our interactions with survey respondents, participants, and our own experience:

- *vulnerability and authenticity*
- *trust and safety*
- *courage*
- *humility and empathy*

These conditions warrant further examination in future research. They should also be explicitly integrated into teaching and learning within legal education, both during and after law school. Respondents expressed interest in expanding the Resources through classroom use, professional training, and companion materials such as workbooks and presentations, which could more intentionally foster integration of the conditions in legal education settings. Below, we synthesize our observations on the four conditions for reflective spaces for change to help inform what could come next.

Our findings underscore the transformative potential of storytelling. We have learned that sharing stories in a *vulnerable* and *authentic* way can lead to reflective practice and transformative learning, and activate allies and support individual well-being. Readers and listeners consistently expressed how impressed, surprised, and grateful they were for the *vulnerability*, *authenticity*, and related *courage* embodied in the Resources. Two of the book’s initial reviewers made the following observations, alluding to the conditions:

This book weaves together humour, hard-wrought wisdom, and vulnerability with political insights from inside the practice of law. The authors range in years of experience and come from different starting places, including being

⁸⁶ Buzzsprout, “Buzzsprout Platform Stats” (May 2024), online: <buzzsprout.com/stats?date=2024-05-01> [perma.cc/C4L4-BTRG].

⁸⁷ Although Beth is not a named author, this section and a final bonus episode of the podcast is inspired by many conversations the authors shared with Beth on this topic during our writing dinner clubs of Fall 2024.

Indigenous or LBGTQTIA2S+, and all are courageous and generous in these revealing chapters.⁸⁸

—Dr. Val Napoleon, Cree legal scholar, professor, and Law Foundation Chair of Indigenous Justice and Governance

This collection of intimately candid and vulnerable narratives by diverse women in the legal profession exemplifies the art of storytelling at its best.⁸⁹

—Angela Ogang, on behalf of the CBA Women Lawyers Forum

In a profession where *vulnerability* can be seen as a weakness and where *authenticity* may run counter to the traditional norms around “what a lawyer looks like and how a lawyer acts,” it is not surprising that many readers and listeners took notice of the *vulnerability* and *authenticity* running through many of the contributions to the Resources.

At the end of the book, the Resource creators asked the following question: “How will you claim your seat at the table, create a seat at the table for the women coming behind you, or build an entirely new table altogether?”⁹⁰ The question the authors of this paper are now posing is *how can the legal profession enable and empower its members to create and support creating the conditions for reflective spaces for change in increasingly turbulent times?*

One pathway to better understand others’ perspectives can be fostered through developing “story stewardship.”⁹¹ Story stewardship involves *humility* and *empathy*, honouring the sacred nature of story and recognizing that we have been entrusted with something valuable that should be treated with respect and care.⁹² It requires curiosity and the intentional building of the conditions of narrative *trust* and psychological *safety* with someone as they tell you about what it is like to be in their shoes.⁹³ Second, we are hoping that striving toward creating these conditions will contribute to women and other equity-deserving groups to not only claim a seat at the table, but to “take your place and take the floor”⁹⁴ and be an ally in supporting others in doing so.

To build this capacity, reflective practice, including the conditions of *courage* and *empathy*, as employed in the Resources, play an important role. Lawren Trotchie, for example, expressed story stewardship in honouring the path that Courtenay Phillips paved in her contribution to *Creating a Seat at the Table* during “The Otherside” podcast:

And it was nice to, it was nice for you to create that bridge for me and for other Indigenous students that are coming from the law school. So, I saw the risk that you put into that. I felt the risk that you put into that and it’s sad to

⁸⁸. Bilson et al (2023), *supra* note 14 at Front Matter.

⁸⁹. *Ibid.*

⁹⁰. *Ibid* at 256.

⁹¹. Brene Brown, “The Practice of Story Stewardship” (5 December 2021), online: <brenbrown.com/articles/2021/12/05/the-practice-of-story-stewardship> [perma.cc/WRJ2-68W2].

⁹². *Ibid.*

⁹³. *Ibid.*

⁹⁴. This quote is based on the title of an exhibit on chairs: *Taking Your Place, Taking the Floor* (2025) held at the Canadian Museum of History.

say this, but often what ends up happening is that when we want big change, it takes people who are brave enough like you to actually move that.⁹⁵

Trotchie came away with several thoughtful, *empathy-driven* questions after her experience in the podcast: “After the podcast, I kept asking myself, what do we need do as a legal profession to ensure that voices like Courtenay’s and my own are not silenced? How do we create safe spaces to amplify the voices of women and particularly Indigenous women in the legal profession?” While there are several avenues to explore in answering these questions, we can begin by advancing the conditions for reflective spaces for change. These conditions must be developed with an explicit recognition that, in minority contexts, expecting those affected to do the teaching places an unfair burden on those already navigating inequity.⁹⁶ This in turn prompts a critical question: *Whose responsibility is it to create reflective spaces for change, and what role do you play in shaping those spaces?*

“Vulnerability is the birthplace of innovation, creativity and change.”⁹⁷ This moment marks an opportunity for a meaningful cultural shift within the legal profession—one that prioritizes *vulnerability and authenticity, trust and safety, courage, and humility and empathy*—fostering both individual growth and systemic change. Building on our findings, this paper offers concrete suggestions for future directions, including the intentional integration of reflective storytelling spaces within legal education and professional development to support well-being, professional identity formation, and more equitable legal practice.

⁹⁵. Bilson et al (2023), *supra* note 14.

⁹⁶. See generally Joyce Green, *Making Space for Indigenous Feminism* (Black Point: Fernwood Publishing, 2007); bell hooks, *Feminist Theory: From Margin to Center* (Boston: South End Press, 1984).

⁹⁷. Brené Brown, “Listening to Shame,” TEDxHouston (2013), YouTube, online: <<https://www.youtube.com/watch?v=psN1DORYYV0>>.

STILL A SIGNPOST OF INEQUALITY: AN UPDATE ON HYSTERIA IN THE COURTS

Jonnette Watson Hamilton*

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Abstract

More than twenty years ago, I examined the use of the label “hysterical” to discredit the testimony of witnesses in several areas of the law, including personal injury, criminal law – especially sexual assault crimes – and child custody cases. The labels were quite effective, especially against the testimony of women and girls who did not conform to cultural expectations about how individuals in their situations should behave. This study updates that research and asks whether anything has changed. Is the use of hysteria as a label still gendered? Does its use still successfully suggest that women and girls are not credible or reliable witnesses? The results of this study give little reason for optimism. Eighty percent of all of those labelled hysterical are still female. The proportion of female witnesses found to be credible and reliable despite being labelled hysterical remains at just over one-half of those women and girls. Most changes have been in the wrong direction. While thirty percent of the predominantly female victims of crime were dismissively labelled hysterical two decades ago, that proportion has increased to forty-five percent. The gendered paradigm of when hysteria is seen as rational because it conforms to cultural expectations—and when it is seen as irrational for not conforming—seems entrenched in Canadian law and Canadian society.

* Professor Emerita, Law, University of Calgary. I gratefully acknowledge the research assistance of Daniella Marchand, who helped me set up the necessary framework and databases for this project and initially analyzed the first 300 cases, as well as the research assistance of Steven Prysunka, who continued the initial analysis on the next 120 cases. I am also grateful for the help of my colleague Jennifer Koshan, who read an early draft of this article, and for the constructive comments of the three reviewers.

I INTRODUCTION

More than twenty years ago, I examined the use of “hysteria” in Canadian courtrooms.¹ As I explained then, I chose to focus on hysteria because it was understood as the epitome of irrationality and because it has, throughout history, been an important site of inequality based primarily on gender stereotyping.² In our courtrooms, it has been a label most often used to attack the credibility and reliability of women’s testimony.³ The label of hysteria has been a signpost signalling gendered inequality in our legal system.

My 2002 article, “The Use of Metaphor,” primarily described the results of a discourse analysis of 128 cases that used cognitive theories of conceptual metaphors to determine how, why, and when that labelling worked to discredit the testimony of women in Canadian courtrooms.⁴ However, a small portion of that article provided some percentages and numbers about the types of cases in which hysteria was most often used, who used that label to try to discredit others, who was labelled hysterical, and whether persons labelled hysterical were found to be credible and reliable witnesses.

Twenty years after the publication of “The Use of Metaphor,” I wondered whether its numerical data could be repurposed and the use of “hysteria” in Canadian courtrooms updated to see if anything had changed. There would be limitations on what an update could show because the earlier numbers had been collected only to provide context for the discourse analysis. Still, I was curious about whether a multitude of efforts directed toward greater substantive equality in Canadian courtrooms—efforts such as Justice L’Heureux-Dubé warning in *R v Seaboyer*; *R v Gayme* about the myth of the “emotionality of females” that prevailed in sexual assault cases,⁵ and optional educational courses offered to the judiciary and lawyers⁶—had made a perceptible positive impact over the past twenty years. Unfortunately, the results of this update looking at 438 newer cases are discouraging.

In Part II of this article, I describe the history, theory, and methodology informing the 2002 article. Part III sets out the methodology I used to locate and analyze the post-2002 cases. Part

¹ Jonnette Watson Hamilton, “The Use of Metaphor and Narrative to Construct Gendered Hysteria in the Courts” (2002) 1:2 JL & Equality 155 [Watson Hamilton, “The Use of Metaphor”].

² *Ibid* at 160–167. See also Cecilia Tasca et al, “Women and Hysteria in the History of Mental Health” (2021) 8 Clinical Prac & Epidem in Mental Health 110 [Tasca et al]; Linda L Berger & Kathryn M Stanchi, “Gender Justice: The Role of Stories and Images” in Michael Hanne & Robert Weisberg, eds, *Narrative and Metaphor in the Law* (Cambridge: Cambridge University Press, 2018) at 157.

³ See e.g. Suzanne Zaccour, “Crazy Women and Hysterical Mothers: The Gendered Use of Mental-Health Labels in Custody Disputes” (2018) 31:1 Can J Fam L 57 [Zaccour]; Lindsay M Orchowski et al, “Barriers to Reporting Sexual Violence: A Qualitative Analysis of #WhyIDidntReport” (2022) 28:14 Violence Against Women 3530 [Orchowski].

⁴ Discourse analysis is a collective term for various qualitative research methods that explore what is said and how it is used in its social and cultural context; see LaiYee Ho & Alex Limpaecher, “What Is Discourse Analysis? An Introduction & Guide” (1 November 2023), online (blog): <delvetool.com/blog/discourseanalysis> [perma.cc/38TT-Y5UB].

⁵ *R v Seaboyer*, 1991 CanLII 76 (SCC) [Seaboyer].

⁶ Some courses were offered by the National Judicial Institute, such as its family law seminars, which included topics such as assessing credibility in matters involving intimate partner violence (see National Judicial Institute, “NJI Course Descriptions: January–December 2024” at 21, 25, 28, online (pdf): <nji-inm.ca/index.cfm/judicial-education/course-descriptions/course-descriptions-2024/?langSwitch=en> [perma.cc/7JY6-D2AP].

IV presents a comparison between the two sets of numerical results. Part V delves into one difference between the two sets of findings in greater detail, focusing on the “hysterical” child in child custody cases. The conclusion summarizes how little has changed in the labelling of parties, witnesses, and others as hysterical in Canadian courtrooms.

II “THE USE OF METAPHOR AND NARRATIVE TO CONSTRUCT GENDERED HYSTERIA IN THE COURTS”

I chose hysteria as the focus of my 2002 study because it has, for more than twenty centuries, been a site of inequality for women that is firmly tied to the notion that they are not to be believed. The following summary of the historical literature reviewed in the 2002 article supports that point.

That brief history is followed by an even shorter description of the cognitive theory of metaphor that I applied to the pre-2002 cases where someone had been labelled as hysterical and the stock story that I discovered lay behind the use of that label. How and why the label of hysteria works is not the subject of this update, but some familiarity with my findings in that earlier article will help in understanding why the label continues to be employed to disproportionately discredit women in Canadian courtrooms.

At the end of this part, I describe the methodology I used to locate and categorize the 128 pre-2002 cases, the results of which I contrast with the post-2002 results in Part III. That methodology was secondary to the application of the cognitive theory, which only required a large enough group of cases to analyze. As a result, there are some limitations in the earlier methodology that are replicated in this update to make the results comparable.

A. A Very Brief History of Hysteria

The word “hysteria” is derived from the Greek word for “uterus.”⁷ It arose in the second century when influential Greek physicians thought of the uterus in terms of an animal that moved around to explain the emotional instability of women with “wandering wombs.”⁸ It was not until the seventeenth century that the cause of hysteria was thought to be a brain disorder and a diagnosis of hysteria became available for both women and men.⁹ However, as a disorder, it was still diagnosed more often in women than men, and this was attributed to a perceived weakness in women’s anatomic nervous constitution and their insatiable sexual

⁷ Ilza Veith, *Hysteria: The History of a Disease* (Chicago: University of Chicago Press, 1965) at 1 [Veith]; the Greek adjective *hysterikos* means “from the womb” (see Helen King, “Once Upon a Text: Hysteria from Hippocrates” in Sander L Gilman et al, eds, *Hysteria Beyond Freud* (Berkeley: University of California Press, 1993) 3 at 6 [King]).

⁸ King, *ibid* at 22–24; Francis Adams, *The Extant Works of Aretaeus, the Cappadocian* (London: Sydenham Society, 1856) at 285–87, quoted in Phillip R Slavney, *Perspectives on “Hysteria”* (Baltimore: Johns Hopkins University Press, 1990) [Slavney] at 14; Rudolph E Siegel, *Galen on the Affected Parts*, (Basel: S Karger AG, 1976) at 184–86, quoted in Slavney at 15. Others have attributed the identification and naming of hysteria to Hippocrates in the fourth century (see e.g. King, *ibid* at 3).

⁹ Henri Ey, “Hysteria and Analysis of the Concept,” in Alec Roy, ed, *Hysteria* (Chichester: John Wiley & Sons, 1982) 3 at 5.

appetites, as well as their domestic situations—domestic situations favourable to hysterical excesses.¹⁰ The dominance of the nerve-based explanation based in the brain faded in the nineteenth century, replaced by the idea that physical symptoms or illnesses were caused by psychological factors and based in the mind.¹¹ Sigmund Freud was of this school of thought, believing that hysteria was caused by unconscious and repressed conflicts and best treated by psychoanalysis.¹² Relocating the source of hysteria from the brain to the mind reduced it to a deceit perpetrated by women for many in the medical professions.¹³ Although one twentieth-century version of hysteria as deceit was unequivocally linked to men—men characterized as suffering from “shell shock” in World War I and seen by military authorities as malingerers or cowards¹⁴—sociological theory put forward an explanation of the “sick role” for women to describe how women who were unable to cope with their families and society denied and disassociated their way into a role where others needed to care for them.¹⁵ One author explained that the predominance of the “sick role” among women and the young and immature was due to the commonalities between those roles and the roles of a child and an invalid who were dependent on men and lacking in power.¹⁶ By the mid-twentieth century, with hysteria firmly located in the mind, hysteria became linked to a vulnerability in an individual’s personality, making hysteria something a person was, and not something they did or had.¹⁷ The hysterical personality type was typified by emotional instability, over reactivity, attention-seeking behaviour, seductive self-dramatization, immaturity, self-centredness, vanity, and dependence on others.¹⁸ The concept of a hysterical personality type has been controversial, with one critic suggesting it was nothing more than a description medical professionals used to label “irritating female patients.”¹⁹

This brief summary of the literature review in the 2002 article illustrates the continuity across more than twenty centuries in the ways that hysteria has been reasoned and talked about, and displays the role of gender in the construction of hysteria through the centuries.

¹⁰ GS Rousseau, “A Strange Pathology: Hysteria in the Early Modern World, 1500–1800” in Sander L Gilman et al, eds, *Hysteria Beyond Freud* (Berkeley: University of California Press, 1993) 91 at 142–74.

¹¹ Slavney, *supra* note 8 at 34–35.

¹² Gerald L Klerman, “Hysteria and Depression,” in Alec Roy, ed, *Hysteria* (Chichester: John Wiley & Sons, 1982) 211 at 213.

¹³ See e.g. Roy Porter, “The Body and the Mind, The Doctor and the Patient” in Sander L Gilman et al, eds, *Hysteria Beyond Freud* (Berkeley: University of California Press, 1993) 225 at 227; Augustus W Thornton, *Hysterical Women: Their Trials, Tears, Tricks and Tantrums* (Chicago: Donohue & Hennebury, 1893).

¹⁴ Elaine Showalter, “Hysteria, Feminism, and Gender” in Sander L Gilman et al, eds, *Hysteria Beyond Freud*, (Berkeley: University of California Press, 1993) 286 at 321–22.

¹⁵ Talcott Parsons, *Social Structure and Personality* (New York: Free Press of Glencoe, 1964) at 274–75; Talcott Parsons, *The Social System* (New York: Free Press of Glencoe, 1951) at 436–37.

¹⁶ RE Kendall, “A New Look at Hysteria” in Alec Roy, ed, *Hysteria* (Chichester: John Wiley & Sons, 1982) 27 at 33 [Kendall].

¹⁷ Slavney, *supra* note 8 at 41, 55.

¹⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 3rd ed (Washington: American Psychiatric Association, 1980) at 313–14 [DSM-III]. See also Kendall, *supra* note 16 at 28.

¹⁹ King, *supra* note 7 at 10–11.

While hysteria is said to have disappeared in the twentieth century,²⁰ and the word itself has vanished from official diagnostic use,²¹ the use of hysteria in Canadian courtrooms since 2002 indicates that “[n]o term so vilified is yet so popular; none so near extinction appears in better health.”²²

B. Theory

Metaphors are fundamentally about conceptualizing some type of thing as some other type of thing—a kind of analogizing.²³ In cognitive theory, metaphor refers to mappings between cognitive domains where part of the structure of one domain (the “source domain”) is projected on to another domain (the “target domain”), and the inferences we draw from the source domain are projected onto the target domain. For example, consider a computer virus: “*viruses* are programs covertly *implant[ed]* in other programs”; “*infections* can *spread* from computer to computer”; and “files are *contaminated*.”²⁴ Concepts from the source domains of health, biology, and medicine—that viruses are present but unwanted, replicate, disrupt normal operations, and are harmful—are used to talk and reason about the target domains of computers and programming. We have these source domain features available to us in an integrated and elaborate network that fits and highlights certain aspects of one type of computer problem. The fit of this metaphoric mapping has been so good that we now talk and think about this type of computer problem not just as if harmful programs are *like* biological viruses; we also act upon those thoughts by creating options for dealing with those problems *as* viruses.

The most important points are that conceptual metaphors within their elaborate networks are used to reason, and, unless a metaphoric mapping is very new, our use of conceptual metaphors is usually unconscious.

²⁰ Veith, *supra* note 7 at viii; Sander L Gilman et al, eds, *Hysteria Beyond Freud* (Berkeley: University of California Press, 1993) at vii.

²¹ What had been labelled “conversion hysteria” in the 1968 second edition of the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 2nd ed (Washington: American Psychiatric Association, 1968)) became known as “conversion disorder” in the 1980 *DSM-III* (*supra* note 18), and the second edition’s “hysterical” personality type became the “histrionic” personality type in the third edition. These category labels remained in the revised third edition (*DSM-III-R*), which appeared in 1987 (American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 3rd ed, revised (Washington: American Psychiatric Association, 1987)), in the *DSM-IV*, which replaced it in 1994 (American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed (Washington: American Psychiatric Association, 1994)), and in the replacement text revision, *DSM-IV-TR* (American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed, revised (American Psychiatric Association, 2000)).

²² Slavney, *supra* note 8 at 3. For recent studies, see e.g. Tasca et al, *supra* note 2; Cecily Devereux, “Hysteria, Feminism, and Gender Revisited: The Case of the Second Wave” (2014) 40:1 *Engl Stud in Canada* 19; Richard A Kanaan, “Freud’s Hysteria and Its Legacy” (2016) 139 *Handbook of Clinical Neurology* 37; Cecilia Maria Esposito & Giovanni Stanghellini, “The Power of Images: Hysterical Symptoms as Representations of the Self” (2024) 36:6 *Intl Rev Psychiatry* 647.

²³ George Lakoff & Mark Johnson, *Metaphors We Live By* (Chicago: University of Chicago Press, 1980) at 5.

²⁴ Gilles Fauconnier, *Mappings in Thought and Language* (Cambridge: Cambridge University Press, 1997) at 18.

My analysis of the conceptual metaphors used to talk and think about hysteria revealed metaphoric networks that are widespread and relatively stable in English Canadian culture. Those metaphoric networks included the “divided selves” (e.g., our struggle to gain control over ourselves, which is a struggle between our rational Subject and our emotional Self);²⁵ the “states are locations” network favoured by the medical profession (e.g., being on the *verge* of hysteria);²⁶ and the “attributes are possessions” network favoured by lay witnesses (e.g., a personality disorder *remains with* the patient).²⁷

The paradigm of rational hysteria is constructed from an idea basic to our concept of emotions—that is, the conceptual metaphor that emotional impacts are physical attacks. When I examined the pre-2002 case, I found that credibility and reliability assessments tended to depend on whether a person followed or deviated from a stock story (i.e., a master narrative or paradigm).²⁸ In this stock story, hysteria is presented as a series of rational, expected, and reliable reactions to stressful events or emotional blows.²⁹

Put briefly, the stock story of rational hysteria concedes that all of us can be—and sometimes should be—overcome by strong emotions triggered by traumatic events. But, although temporarily overcome, we can and should battle our strong emotions head on and quickly conquer them. Individuals who conform to the stock story of rational hysteria are seen as purposive agents with legitimate aspirations. The hero of the rational hysteria stock story is the knight riding through the woods who is suddenly attacked by a highwayman or the sheriff leading a posse through a coulee who is ambushed by outlaws. The valiant knight or stalwart sheriff may initially struggle to beat back their foes, but they are soon victorious. The enemy is vanquished, and the world is set right.

Our use of the stock story of rational hysteria is usually unconscious, which means that a great deal of the testimony in court and the findings of fact and inferences drawn are not based on rational argument, or any argument at all. They are based on the taken-for-granted, so-called common sense and “what everyone knows.”³⁰

Deviations from the stock story of rational hysteria elicit judgments that the individuals, by diverging from our settled expectations about how they should behave, are irrational. Their behaviour and testimony are looked upon with suspicion.

The paradigm of rational hysteria can be deviated from in two different ways. In the first, hysteria is seen as irrational if it was not caused by traumatic-enough events, or if the hysterical individual did not triumph quickly (or at all), or if they did not face their foe directly. Those whose story did not match the paradigm were judged to be irrational, their inherent nature

²⁵ Watson Hamilton, “The Use of Metaphor,” *supra* note 1 at 175, 181–84.

²⁶ *Ibid* at 176–77, 180.

²⁷ *Ibid* at 178–79.

²⁸ *Ibid* at 184–90.

²⁹ For examples from the post-2002 cases, see e.g. *R v KK*, 2003 SKQB 241 (the accused’s “genuine state of panic verging on hysteria” at para 15, was not surprising and it was “unlikely she invented the many details” at para 74(b)); *R v Murphy*, 2015 YKSC 30 (the witness “said she was hysterical at that time. And wouldn’t she be?” at para 37); *R v JMS*, 2022 SKPC 11 (“[a]s soon as they were alone, she said the complainant was emotional to the point of hysteria” at para 65).

³⁰ Watson Hamilton, “The Use of Metaphor”, *supra* note 1 at 157.

The 128 cases in English in which “hysteri!” appeared more than once were divided into different categories to provide context for the discourse analysis. It is this categorization exercise that is being repurposed in this article.

First, cases were assigned to categories based on the type of case: personal injury, criminal, or family law.³⁶ The criminal cases were then divided between those where the person labelled was the victim of a crime (usually a sexual assault) or a person accused of a crime (typically someone claiming they were not criminally responsible or advancing a defence of non-insane automatism).

Second, cases were categorized by who did the labelling.³⁷ Lay witnesses, healthcare professionals, and police officers did most of the labelling. There were also some people labelling themselves, usually the accused in a criminal case. There were only two cases in which the judge introduced the hysteria label themselves, rather than simply using it while quoting a witness.

Third, cases were divided by whether those labelled were male or female.³⁸ Gender was determined based on judges’ descriptions of individuals as “male” or “female,” the pronouns judges used, and other ways in which gender was indicated, such as by a relationship to others involved in the case (e.g., as a “mother” in a custody case). Names were not relied upon. There were only three cases in which it was not possible to determine the gender of the individual labelled as hysterical. The type of case that each gendered individual was involved in was also noted.

The male and female categories were also divided into children and adults where that information was available, as it was in the family law cases. In the post-2002 cases, an attempt was made to note other aspects of identity in addition to gender and age, as had been done to a limited extent in the earlier research.³⁹ However, remarkably few post-2002 cases described parties by their education level, their place of birth, their employment, their race, or their Indigenous status—all aspects of identity noted in the pre-2002 cases—and so that attempt was abandoned.⁴⁰

Metaphors Cross Cultures” (2015) 6:1 J Language Teaching & Research 204; Hassan Banaruee et al, “Metaphors Across Cultures” (2024) 60:2 Poznan Stud Contemp Linguistics 133). A researcher would need to be proficiently bilingual and bicultural to apply cognitive theories of conceptual metaphors in both English and French, particularly as English is a member of the Germanic language family and French is part of the Romance language group (see Hassan Banaruee et al at 224–226). Although I may have been able to do this fifty years ago, I am no longer qualified.

³⁶ Watson Hamilton, “The Use of Metaphor,” *supra* note 1 at 169.

³⁷ *Ibid.*

³⁸ I recognize that gender is not a male/female binary, but Canadian courts describe people as male or female. Of the 463 individuals labelled as hysterical in the 2002–2022 cases, only five were identified as gay, lesbian, or non-gender conforming.

³⁹ Watson Hamilton, “The Use of Metaphor,” *supra* note 1 at 171–72.

⁴⁰ Most other aspects of the identity of those labelled hysterical were not discussed in the cases, whether before or after 2002. For example, in the 438 cases in the 2002–2022 period, only 28 (6 per cent) of the individuals labelled as hysterical were racialized. These percentages are well below Canadian share-of-population percentages. The 2021 census indicated that 7.1 per cent of Canadians identified as South Asian, 4.7 per cent as Chinese, and 4.3 per cent as Black (see Statistics Canada, *Census Profile, 2021 Census of Population*, Catalogue No 98-316-X2021001 (Ottawa: Statistics Canada, 15 November 2023)).

Finally, the impact of labelling was assessed by whether the person labelled was found to be both a credible and reliable witness. It was not unusual for people labelled hysterical to be found to be credible but not reliable.⁴¹ If testimony needed to be corroborated before it was considered credible or reliable or both, that testimony was categorized as discreditable or unreliable or both.

III METHODOLOGY

In order to update the data in the 2002 research, the post-2002 searches, categorizations, and analyses were duplicated as much as possible. The post-2002 case limitations (to cases in English⁴² and cases where “hysteri!” was used more than once) were adopted for the updated research.

The limitations built into relying on published court decisions were also reproduced. The Quicklaw Canadian Judgments database no longer exists, as LexisNexis acquired Quicklaw in July 2002.⁴³ The equivalent today of a search in the Canadian Judgments database is a Lexis+ Canada search confined to the fields of “CAN jurisdiction” and “Cases.”⁴⁴

A search for “hysteri!” in the Lexis+ Canada database confined to Canadian cases decided between May 1, 2002, and April 30, 2021, turned up 1,586 unique cases. This is not substantially more than the 1,253 cases retrieved in the May 2002 search, which was focused primarily on cases from the 1980s and 1990s. However, when cases were limited to those where the search term appeared more than once, the pre-2002 results had been reduced to 128 cases (about 10 per cent), whereas post-2002 cases were reduced to 438 (about 28 per cent).⁴⁵ As another limitation, it is important to remember that the 2002 data (and inferences drawn based on that data) were built on only one-third as many cases as those underlying the post-2002 results.

My research assistants and I then read the 438 cases and categorized the same elements of each as had been categorized for the pre-2002 cases, if applicable: type of case, who did the labelling (lay witnesses, healthcare professionals, police officers, the accused or the victim of a crime, or the judge), whether those who were labelled were male or female and children or adults, and whether the person labelled was found to be both credible and reliable.

⁴¹ *R v TT*, 2020 ONCJ 368, Justice Harris: “Credibility relates to a witness’s sincerity, whether he is speaking the truth as he believes it to be. Reliability relates to the actual accuracy of his testimony” (at para 12); *R v HC*, 2009 ONCA 56, Justice Watt: “A credible witness may give unreliable evidence” (at para 41).

⁴² Because the criteria were decisions written in English, seventeen cases from Quebec were included.

⁴³ Lexpert Business of Law, “LexisNexis Butterworths Canada Acquires Quicklaw” (1 September 2002), online: <lexpert.ca/big-deals/lexisnexis-butterworths-canada-acquires-quicklaw/343383>.

⁴⁴ The Lexis+ Canada database appears to be much larger than the Quicklaw Canadian Judgments database because, not only is every case reported by Canadian legal publishers since 1970 included, but so are the pre-1970 cases that are cited in the post-1970 decisions (see LexisNexis, “Practice Area: Commercial Law” (last visited 18 May 2026), online: <lexisnexis.com/en-ca/content/commercial-law> [perma.cc/PB4X-CFW2]).

⁴⁵ I am unsure of how to account for this difference in the percentage of relevant cases retrieved. My guess—and it is just a guess—is that judges are writing longer judgments thanks to technical advances. Many of the post-2002 cases used the search term in the judges’ summaries of witnesses’ testimony and then again when giving reasons for their findings. This repetition was especially noticeable in criminal and family law cases, which together accounted for 87.5 per cent of the cases.

IV COMPARING THE RESULTS

In the earlier research, the individuals labelled hysterical were primarily found in four different legal contexts. They were those involved in personal injury actions, those who were victims of crime, those who were accused of crimes, and those entangled in child custody disputes, in both the family law and child protection contexts.⁴⁶ Instances of the use of the label were fairly evenly distributed among these four categories in the pre-2002 cases, with victims of crime making up 30 per cent of the 128 cases and those accused of crime making up 18 per cent of the total.

In the 438 cases reported between 2002 and 2022, the number of personal injury cases had decreased slightly, from thirty-three to twenty-nine cases, but as a percentage of total cases they dropped from 28.5 per cent to 6.5 per cent. This may be partly because of the rise of no-fault insurance and the increased use of alternative dispute resolution methods for personal injury claims.⁴⁷ The percentage of child custody cases also fell as a percentage of total cases, from 24 of 128 (20.5 per cent) to 62 of 438 (14 per cent). In contrast, the number and proportion of cases in the crime victims and accused categories increased dramatically, the former from 35 of 128 (30 per cent) to 196 of 438 (45 per cent), and the latter from 18 (15.5 per cent) to 96 (22 per cent). In addition, the number of third-party witnesses to crimes who were labelled as hysterical increased enough to make up a new category of 28 cases (6.5 per cent). This left 6 per cent of the cases in a miscellaneous category. Overall, while 45.5 per cent of all the cases making use of the hysteria label before 2002 were criminal law cases, that percentage rose to 73.5 per cent in the 2002–2022 cases.

Figures 1 and 2 display these differences between the two time periods.

Figure 1: Percentage of Cases
by Type: Pre-2002

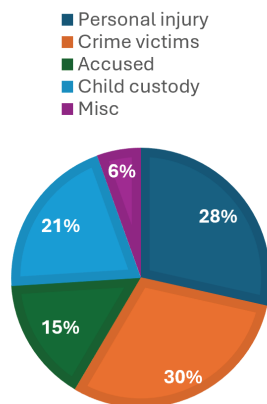
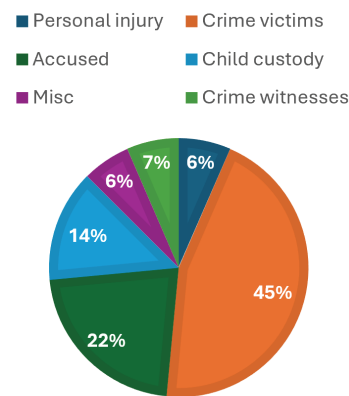


Figure 2: Percentage of Cases
by Type: 2002–2022



⁴⁶ Watson Hamilton, “The Use of Metaphor,” *supra* note 1 at 169.

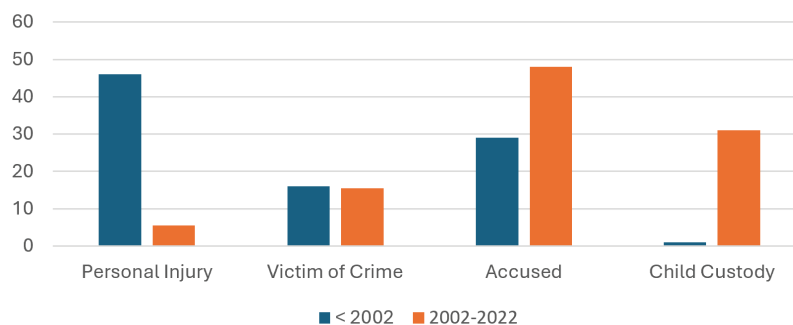
⁴⁷ Most notably, Ontario introduced a partial no-fault system in 1990, an entirely no-fault system in 1994, and returned to the partial no-fault system in 1996 (see Craig Brown, “No-Fault Automobile Insurance in Ontario: A Long and Complicated Story” (1998) 66:3 *Assurances* 399). Ontario and Alberta require mediation, and alternative methods of resolving disputes have increased in popularity due to problems with accessing courts (see Kairos Anggadol, “Personal Injury Lawsuits in Canada: What You Need to Know,” *Canadian Lawyer* (6 July 2023), online: <canadianlawyermag.com/practice-areas/personal-injury/personal-injury-lawsuits-in-canada-what-you-need-to-know/377636>).

I also looked at the gender of those labelled hysterical by lay witnesses, the accused or complainant, health care professionals, police officers, judges, or others in each type of case. Two things stayed the same. First, 80 per cent of all of those labelled hysterical in both the pre-2002 and the 2002–2022 cases were female. This was disappointing, but not a surprise. It was disappointing, particularly in the context of sexual assault victims, because Justice L’Heureux-Dubé’s oft-quoted warning in *R v Seaboyer*; *R v Gayme* about the myth of the “emotionality of females” that prevailed in sexual assault cases was delivered in 1991.⁴⁸ However, as will be discussed later in this part of the article, it is primarily non-lawyers—plaintiffs and defendants, victims and those accused of committing crimes, and other witnesses—who labelled people as hysterical in both the pre-2002 and post-2002 cases. Its enduring popularity with those not legally trained suggests that both the rational and irrational stock stories continue their gendered hold on “what everyone knows” and “common sense.”

Second, the proportion of adults and minors remained the same for both male and female individuals labelled hysterical. Of the 20 per cent of males so labelled, about one-third were minors in both time periods. As I noted in the 2002 article, those who are called hysterical are often thought of as child-like because of their limited rationality.⁴⁹ Labelling male children as hysterical is therefore not as dismissive of their cognitive abilities or reliability as is the labelling of adult males.⁵⁰ Of the females so labelled, only about one-fifth were minors in both time periods. To sum up the data on gender and age in both studies, almost two-thirds (64 per cent) of all of those called hysterical in courtrooms were women—not men, boys, or girls.

There were two major differences between the two time periods in the contexts in which males were labelled hysterical, as illustrated in Figure 3. Of all of the men and boys labelled hysterical, seven of twenty-four (29 per cent) were in the accused category in the pre-2002 cases, and that percentage rose to 48 per cent in the 2002–2022 cases. There was also a large increase in the child custody category—from two of twenty-four (1 per cent) to twenty-eight of ninety (31 per cent) of males labelled hysterical—where almost three-quarters of the males said to be hysterical were minors.

Figure 3: Type of Case Where Males Were Labelled
(by percentage of males labelled)

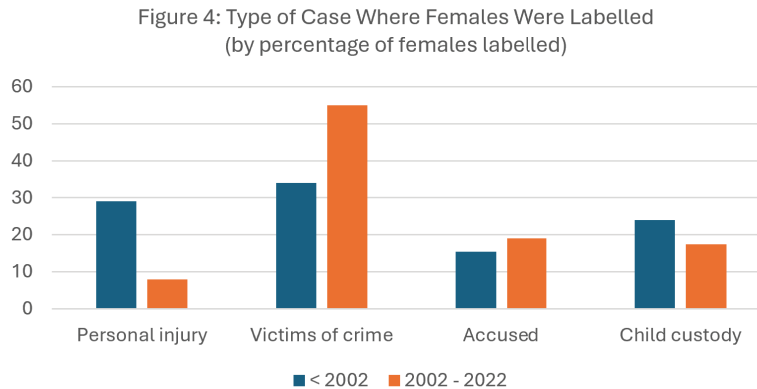


⁴⁸ *Seaboyer*, *supra* note 5. Justice L’Heureux-Dubé explained the myth of the emotionality of females as follows: “The expectation is that if a woman is raped, she will get hysterical during the event and she will be visibly upset afterward. If she is able to ‘retain her cool,’ then people assume that ‘nothing happened’” (at 653). This quotation is an example of the “rational” hysteria stock story. Rape myths and misconceptions about sexual violence persist; see Orchowski, *supra* note 3.

⁴⁹ Watson Hamilton, “The Use of Metaphor,” *supra* note 1 at 171.

⁵⁰ *Ibid.*

In the much larger number and percentage of women and girls labelled hysterical, we see the same decrease in personal injury cases as a percentage of total cases as was the case for males, but no similar large increases in the accused or child custody categories. The proportion of minors to adults in the child custody category for females was only 44.5 per cent, a much smaller proportion than for males. Adult women were much more likely to be the ones labelled as hysterical in child custody cases than were adult men: 75 per cent of those labelled in this context were adult women. The most significant increase in female numbers and proportions was in the victims of crime context, which rose from 34 per cent of all cases to 55 per cent. Figure 4 illustrates some of these findings.



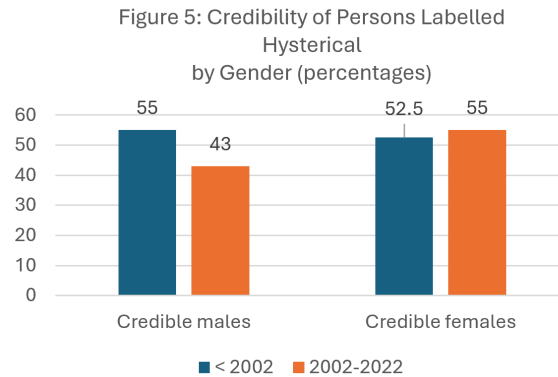
I also specifically examined the gendered percentages involved in sexual assault cases in the crime victim category.⁵¹ Only 18 per cent of the very small number of male victims of crime who were labelled hysterical in both the pre-2002 and the 2002–2022 cases were victims of sexual assaults.⁵² In the cases before 2002, 74 per cent of the female victims of crime were victims of sexual assaults, but that percentage dropped to 60 per cent in the 2002–2022 cases.

There was no significant change in the proportion of females found to be credible and reliable in the 2002–2022 time period in the 438 cases. The percentage of credible and reliable witnesses who were female in the pre-2002 cases was very similar to the percentage who were credible and reliable in the 2002–2022 cases: 52.5 per cent and 55 per cent, respectively.

In terms of gender and credibility, the only major difference between the two time periods was in the courts' assessment of males labelled hysterical, as indicated in Figure 5. While 55 per cent of males labelled hysterical were found to be credible and reliable pre-2002, in the 2002–2022 cases only 43 per cent of the males were.

⁵¹ A sexual assault case was defined for this research as a case that included a charge of sexual interference, sexual assault, sexual assault causing bodily harm, or sexual assault with a weapon.

⁵² In Canada, between 2009 and 2014, 87 per cent of victims of sexual assaults were female, particularly young women and girls, and one in four victims were children aged 13 and younger (see Statistics Canada, *Police-Reported Sexual Assaults in Canada, 2009 to 2014: A Statistical Profile*, by Cristine Rotenberg, Catalogue No 85-002-X (Ottawa: Statistics Canada, October 2017) at 3). In the pre-2002 cases, there were only 11 male victims of crime labelled hysterical, and only two of them were victims of sexual assaults. In the 2002–2022 data, there were only 10 male victims of crime labelled hysterical, and only six of them were male victims of sexual assault, with four of them being minors. The percentages were the same and the numbers stayed small.



The substantial decrease in the proportion of female victims labelled hysterical in sexual assault cases as compared to all criminal cases and the slight increase in the number of female witnesses found to be credible in all types of cases appears to be good news. However, a closer look at the 2002–2022 cases in some of the categories—those contexts that have a history of being sites of inequality for women and girls—tells a different story.

First, looking at only female victims of crime, I found that 69 per cent of those labelled hysterical were assessed as credible and reliable in the 2002–2022 period.⁵³ Narrowing that category further to consider only female victims of sexual assault crimes, 67 per cent of those labelled hysterical were found to be credible and reliable. Of those who were minors at the time of the sexual assault in the 2002–2022 cases, 69 per cent were credible and reliable witnesses. Considering the winnowing process that occurs between a sexual assault, reporting, charging, and trial,⁵⁴ the fact that the testimony of 33 per cent of all female victims was not believed is a high percentage.

The other category with concerning findings in 2002–2022 was the category of child custody cases, which included forty-five cases in the family law context involving fifty-six individuals labelled hysterical, and seventeen child protection cases involving twenty labelled individuals.⁵⁵ Both of these categories of cases were highly gendered. Of the fifty-six individuals in the family law context labelled hysterical, thirty (53.5 per cent) were children, twenty (36 per cent) were mothers, and six (10 per cent) were fathers. Labelling parents—most frequently

⁵³. As noted in the methodology section in Part II, witnesses whose testimony was accepted only if it was supported by other testimony or forensic evidence were categorized as neither credible nor reliable.

⁵⁴. Sexual assault is the most underreported violent crime in Canada, with a small percentage, perhaps only 5 per cent, of incidents reported by victims to police in 2014 (see Statistics Canada, *Self-Reported Sexual Assault in Canada, 2014*, by Shana Conroy & Adam Cotter, Catalogue No 85-002-X (Ottawa: Statistics Canada, July 2017) at 17). The rate of police-reported sexual assaults did increase 38 per cent between 2017 and 2022 (see Statistics Canada, *Recent Trends in Police-Reported Clearance Status of Sexual Assault and Other Violent Crime in Canada, 2017 to 2022*, by Shana Conroy, Catalogue No 85-002-X (Ottawa: Statistics Canada, April 2024) at 3). When compared with physical assaults between 2009 and 2014, sexual assaults were far more prone to disappear from the criminal justice system between reporting to the police and court: 75 per cent of physical assaults proceeded to court after charges were laid, but only 49 per cent of sexual assaults did (see Statistics Canada, *From Arrest to Conviction: Court Outcomes of Police-Reported Sexual Assaults in Canada: 2009 to 2014*, by Christine Rotenberg, Catalogue No 85-002-X (Ottawa: Statistics Canada, October 2017) at 3).

⁵⁵. There are more individuals than cases because in some cases both a parent and one or more children were labelled hysterical.

mothers—as hysterical is often done to attack their credibility and their capacity to be a good parent and appears to be a common phenomenon in what are often referred to as “high conflict” custody cases.⁵⁶ This finding tracks with the research conducted by Suzanne Zaccour on the use of gendered mental health labels in custody cases.⁵⁷ A significant percentage of the 2002–2022 cases were seen as high conflict. Of the custody contests in the forty-five family law cases, sixteen (35 per cent) involved allegations or findings of family violence⁵⁸—another finding that supports Zaccour’s results⁵⁹—thirteen (29 per cent) involved allegations or findings of parental alienation,⁶⁰ and five (11 per cent) included both of these allegations.

The child protection context, although involving relatively few cases, revealed very different percentages for the labelling of children and their mothers. Thirteen (65 per cent) of those described as hysterical were mothers, one was a grandmother, five (25 per cent) were children, and only one was a father. As almost all of these cases involved the contested temporary or permanent loss of custody of children by a mother—and not loss by a father or return of a child to their mother’s custody—these too are gendered cases. Eighty-three per cent of the mothers labelled hysterical in this context were found to be not credible.

Indeed, in both types of child custody cases, the proportion of females labelled hysterical who were found to be not credible witnesses (55 per cent) was greater than those found to be credible (45 per cent). This is significantly higher than the results in Zaccour’s study, where 25 of 120 custody cases (21 per cent) saw mothers discredited by the use of mental illness labels such as “crazy,” “hysterical,” “insane” or “emotionally unstable.”⁶¹ Nevertheless, the credibility of women and girls in the post-2002 cases was significantly better than that of the males labelled hysterical in this context, as only 27 per cent of males were found to be credible witnesses. This percentage suggests that describing male witnesses in child custody cases as hysterical did more damage to their credibility than in other contexts. However, it must be noted that in two-thirds of the cases of adult males being accused of acting hysterically, it was

⁵⁶ The term “high conflict” has been critiqued for often masking family violence (see Jennifer Koshan, “Challenging Myths and Stereotypes in Domestic Violence Cases” (2023) 35:1 Can J Fam L 33 at 52 [Koshan]).

⁵⁷ Zaccour, *supra* note 3.

⁵⁸ See Mass Casualty Commission, *Turning the Tide Together: Final Report of the Mass Casualty Commission*, vol 3 (Ottawa: Public Works and Government Services Canada, 2023) at 7–11, comparing different terms used to discuss violent behaviour and its consequences in the family law context. I use the term “family violence”—meaning “any form of abuse, mistreatment, or neglect that a child or adult experiences from a family member or from someone with whom they have an intimate relationship”: *ibid* at 9—rather than “intimate partner violence” because some of the victims of violence were children or stepchildren of the perpetrators of violence, not partners.

⁵⁹ Zaccour, *supra* note 3 at 73.

⁶⁰ Previous Canadian studies have found that allegations and findings of parental alienation are gendered, see e.g. Linda C Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (Vancouver: FREDA Centre for Research on Violence Against Women and Children, 2018) at 11; Elizabeth Sheehy & Susan B Boyd, “Penalizing Women’s Fear: Intimate Partner Violence and Parental Alienation in Canadian Child Custody Cases” (2020) 42:1 J Soc Welfare & Fam L 80 at 81–82; *cf* Barbara Jo Fidler & Nicholas Bala, “Concepts, Controversies and Conundrums of ‘Alienation’: Lessons Learned in a Decade and Reflections on Challenges Ahead” (2020) 58:2 Fam Ct Rev 576.

⁶¹ Zaccour, *supra* note 3 at 69–70. On credibility in cases with claims of parental alienation, Nicholas Bala’s work found that fathers made three times as many unsubstantiated claims as did mothers (see Nicholas Bala, Suzanne Hunt & Carolyn McCarney, “Parental Alienation: Canadian Court Cases 1989–2008” (2010) 48:1 Fam Ct Rev 164 at 168).

a medical professional who did the labelling,⁶² and it was done as part of a diagnosis of a histrionic personality disorder.⁶³

What also needs to be emphasized when discussing the credibility and gender of those labelled in the child custody cases is the age of those labelled. In most instances where a minor was labelled hysterical—thirty cases—there was no finding of credibility. When findings were made, 29 per cent of the credible female witnesses labelled hysterical were minors, as were 19 per cent of the female witnesses who were not credible. All of the male witnesses found to be credible were minors, as were 55 per cent of those found not to be credible. If minors are excluded, this is a story about women being hysterical in court cases involving their children.

These dismal credibility results, where more of the witnesses are disbelieved than believed, are even more marked in the child protection context, as illustrated in Figures 6 and 7.

Figure 6: Credibility of Persons Labelled Hysterical in Both Types of Child Custody Cases, by Gender, 2002–2022 (percentages)

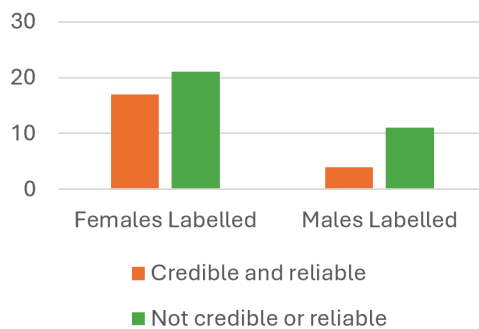
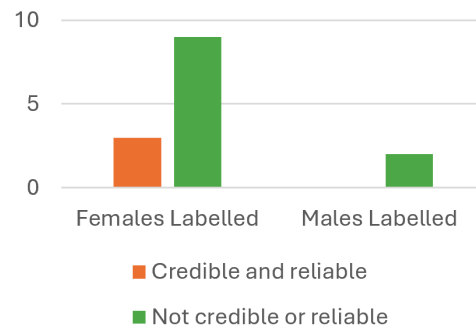


Figure 7: Credibility of Persons Labelled Hysterical in Child Protection Cases by Gender, 2002–2022 (percentages)



As can be seen in Figure 7, only two of the twelve women (eleven mothers and one grandmother) were found to be credible and reliable witnesses in the child protection context. Neither of the two men (fathers) were considered credible. These numbers are too small to make much of, but they do suggest that the child welfare context is unique.⁶⁴

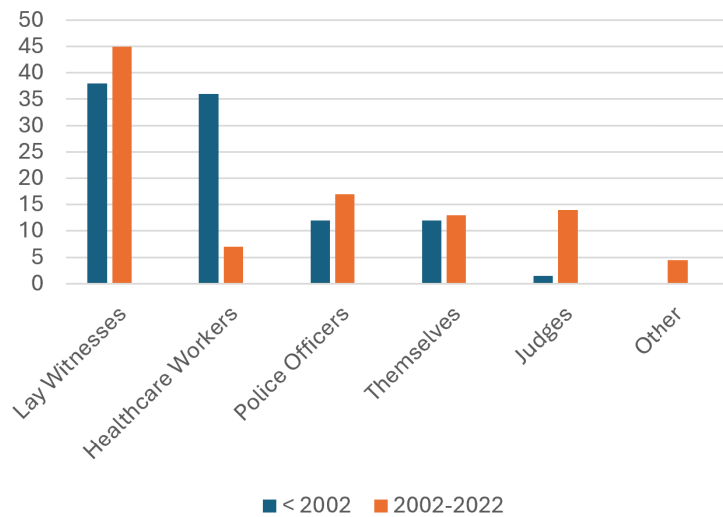
The last element that I compared focused on who did the labelling. Figure 8 compares the pre-2002 cases with the 2002–2022 cases in the frequency of labelling by lay witnesses (which here included the parties in the cases, such as mothers and fathers in child custody cases and the accused and the victim in criminal cases), healthcare professionals, police officers, individuals who labelled themselves, judges, and a few miscellaneous others.

⁶² A medical diagnosis was only made in the case of one adult female in the child custody context, and in that case the diagnosis of transitory hysterical psychosis was made by a doctor who had never met the mother and whose report was not allowed into evidence (see *Veneris v Koh Veneris*, 2018 ONSC 4164 at paras 18–20).

⁶³ A histrionic personality disorder was described as “a pervasive pattern of excessive emotionality attention seeking” (see *Jenkins v Jenkins*, 2010 ONSC 6 at para 93).

⁶⁴ See e.g. Nico Trocmé et al, “Urgent Protection versus Chronic Need: Clarifying the Dual Mandate of Child Welfare Services across Canada” (2014) 3:3 J Soc Sciences 483; Barbara Fallon et al, “The More We Change the More We Stay the Same: Canadian Child Welfare Systems’ Response to Child Well-Being” (2023) 137 J Child Abuse & Neglect 106031.

Figure 8: Who Did the Labelling (percentages)



The most notable difference is the decrease in use of the hysteria label by healthcare professionals from 36 per cent to 7 per cent. The most likely reasons for this decrease include the smaller number of personal injury cases and the change in diagnostic labels from “conversion hysteria” to “conversion disorder” and from “hysterical personality type” to “histrionic personality type” (discussed in Part II). Only 40 per cent of the cases involved a diagnosis preceding the labelling, with most of those in the child custody cases.

The increase in the use of the hysteria label by judges from 2 of 128 (1.5 per cent) to 56 of 404 (14 per cent) of those doing the labelling is also notable—and disappointing. Not included in the count of labelling by judges in Figure 8 are the times that judges adopted, repeated, or reported the labelling done by a witness. Of the instances when the judges were the only one to apply the label, 30 per cent were based on the judges listening to or watching an audio or video recording of a child.

Of course, there are examples of judges pushing back against the use of a hysteria label by a testifying witness.⁶⁵ One of the best examples involved a charge under a municipal noise bylaw that was laid against a woman who participated in a demonstration in Montreal:

In his testimony, Officer Peixe described the defendant as “*hystérique*” (hysterical). This unfortunate choice of word should be considered with great caution. The word “hysterical” is derogatory and suggests that a person is out of control. Its etymology shows that it comes from the Greek word for *uterus* and was used for decades to describe a mental disorder allegedly suffered by women which today is no longer even recognized by scientific literature in medicine or psychology. The word continues to be accepted by dictionaries in a broader sense, but, more often than not, it is used in a derogatory manner

⁶⁵ See e.g. *R v Billyboy*, 2016 BCPC 405 (judge including the police labelling of the complainant in an assault case as part of a “somewhat troubling absence of investigatory vigilance in this case” at para 54); *R v Contreras Ramirez*, 2016 BCPC 475 (judge very careful not to use the language of hysteria when summarizing the testimony of the accused and the police, both of whom labelled as hysterical a complainant in a sexual assault case who was found to be credible).

to describe a woman. Far too often, shouting men are described as loud, and shouting women are dismissed as hysterical. Officer Peixe did not use this word in his description of events in his abridged offence report written in 2012, but he added it on during his testimony in 2015. For all of these reasons, I will not give any weight to this part of Officer Peixe's description.⁶⁶

Overall, it is worth noting that lay witnesses' use of the label hysteria increased from 38 per cent to 45 per cent of all uses. Almost half the labellers are accused individuals talking about their victims or other witnesses to their crimes, witnesses to crimes talking about the victims of crime or the accused, and parents talking about each other or their children.

Two other differences are also worth pointing out. First, of the lay witnesses doing the labelling in the post-2002 cases, 36 of 182 instances (16 per cent) involved the accused labelling the crime victim. Only once did a crime victim label the accused as hysterical. Within the category of people labelling themselves, it was mostly the accused who did so in the cases that pre-dated 2002. This changed dramatically in the 2002–2022 cases, where 80 per cent of those labelling themselves were either the victims of crime or, much less frequently, the plaintiffs in personal injury actions. These self-labellings by victims and injured plaintiffs are examples of individuals recognizing, perhaps unconsciously, that the first chapter in the stock story of rational hysteria requires them to be overcome by strong emotions triggered by traumatic events.

V HYSTERICAL CHILDREN IN CHILD CUSTODY CASES

Recall that of the fifty-six individuals labelled as hysterical in the forty-five family law cases with parenting issues, thirty (53.5 per cent) were children.⁶⁷ In this section, I look more closely at the labels of hysteria that targeted children, in part because work has already been done on the labelling of mothers in child custody contexts.⁶⁸ However, my primary reason for this focus is that children are *not* characters in the stock story of rational hysteria. They can certainly be overcome by strong emotions, but they are not expected to immediately resist those emotions and quickly conquer them.⁶⁹

Sometimes children are merely labelled as hysterical in much the same way they would be described as “upset” or “emotional,” particularly by lay witnesses who are usually their parent or another relative. However, more commonly, the role that a child labelled as hysterical by one

⁶⁶. *Montreal (City of) c Nelson*, 2015 QCCM 146 at para 82.

⁶⁷. This overrepresentation of children was not seen in the child protection context, where only five of the seventeen individuals labelled hysterical were children (29 per cent).

⁶⁸. For an analysis of 120 cases involving the gendered use of mental health labels that were rendered by Canadian courts between 2000 and 2016, see Zaccour, *supra* note 3. My searches for “hysteri!” turned up only four cases after 2016 where mothers were labelled hysterical, and there is nothing in those few cases that adds anything new to Zaccour's analysis. See also Judith Mosoff, “A Jury Dressed in Medical White and Judicial Black: Mothers with Mental Health Histories in Child Welfare and Custody” in Susan B Boyd, ed, *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997) 227; Odelia Bay, “In the Matter of the Female Mind: An Analysis of the Supreme Court of Canada's Approach to Women and Mental Health” (2011) 3 Crit Disability Discourses 1.

⁶⁹. Expectations vary by the age of the child, but only two of the children in these cases were teenagers and almost half were only age four or five at the time of the hearing.

parent appears to play in the stock story of rational hysteria is that of a weapon used to attack the other parent.⁷⁰ The results of weaponizing children in parenting disputes are usually very damaging to the children, who are my focus in this part. For example, Justice Pazaratz in *KM v JR*, discussing the *Divorce Act* requirement that parents protect children from conflict related to court proceedings, stated: “This is a vitally important reminder that while parents in family court always say they are ‘fighting for the sake of the child’, the reality is that children often end up being *collateral damage*.”⁷¹ The judge’s solution in that case—or at least his attempt to put an end to the latest “*skirmish in an unending war*”⁷²—was to require the parents to arrange their access exchanges in a neutral setting so that they never interacted with each other in the presence of their child,⁷³ a version of a demilitarized zone between warring parties.

More significantly, the labelling of children as hysterical often played a role in the courts’ negative assessments of the credibility of the person who did the labelling—something not found in the other contexts. This was most evident in cases involving antagonistic access exchanges, a group of cases that made up 30 per cent of the total and involved 60 per cent of the children labelled hysterical. Sometimes a parent’s account of their child’s hysteria and its cause—usually the conduct of the other parent—was entirely discounted.⁷⁴

Twice as many mothers were found to be responsible for their children’s hysteria immediately before, during, or after access exchanges than fathers, with only one case attributing the impact on the child to both parents. In all but one case, the parent found to have caused the child’s hysteria lost their application and the other parent was granted all or most of what they asked for.⁷⁵

Out of the fourteen cases in which children were labelled hysterical in the context of access exchanges, nine included allegations of parental alienation, with seven alleging the mother was alienating the children from their father.⁷⁶ Six included allegations of family violence, all said

⁷⁰ Metaphors of war are prevalent in Anglo-American adversarial systems and are often encountered in family law cases. See Jonnette Watson Hamilton, “Metaphors of Lawyers’ Professionalism” (1995) 33:4 *Alta L Rev* 833 at 839–43; Leslie Bender, “A Lawyer’s Primer on Feminist Theory and Torts” (1988) 38:1/2 *J Leg Educ* 3 at 6.

⁷¹ *KM v JR*, 2022 ONSC 111 at paras 58–60 [*KM v JR*] (emphasis added), discussing the *Divorce Act*, RSC 1985, c 3 (2nd Supp), s 7.2. It is not clear which parent described the child as hysterical or if both did, but the judge did so several times after listening to audio recordings of exchanges: *ibid* at paras 186(d), 190, 203(a), 353(c), 353(e).

⁷² *Ibid* at para 406 (emphasis added).

⁷³ *Ibid* at para 455.

⁷⁴ See, e.g. *DR v EPR*, 2014 BCSC 2558 at paras 25, 118, 138; *KM v JR*, *ibid* (finding the mother “lied outright in a deliberate attempt to deceive the Court and advance her position in this litigation” at para 107); *WC v CE*, 2010 ONSC 3575 at para 46 [*WC v CE*] (noting that statements in affidavits filed by the mother later proved to be “false or misleading”); *GF v CM*, 2009 NSSC 159 at para 310 (concluding that if the mother continued her current conduct of “sabotaging access” she might lose unsupervised parenting time).

⁷⁵ In that one case, the lower court’s order that changed the location of access exchanges was the source of the problem (see *Welch v George*, 2011 SKCA 33 at para 9(3)).

⁷⁶ For cases of allegations of alienation against the mother, see *KM v JR*, *supra* note 71 at para 22; *WC v CE*, *supra* note 74 at para 60; *Jackson v Mayerle*, 2016 ONSC 72 at 628 [*Jackson v Mayerle*]; *REG v TWJG*, 2011 SKQB 269 at para 74 [*REG v TWJG*]; *AF v JW*, 2013 ONSC 4272 at para 2 [*AF v JW*]; *Scott v Lloyd*, 2014 ONCJ 639 [*Scott v Lloyd*]; *Smith v Smith*, 2015 ONSC 4046 at para 13. For cases

to have been perpetrated by the father.⁷⁷ In addition, four of those nine cases included both allegations of parental alienation against the mother and intimate partner violence against the father,⁷⁸ and one involved allegations of both types of behaviour by the father.⁷⁹ Children's hysteria thus has a strong link to parental alienation and family violence claims, both of which are highly gendered.

There were wide variations in the relationship between children's hysteria and the exchanges that allegedly triggered the hysteria. In some cases, a child seen as initially hysterical at the prospect of going with the other parent eventually went with them willingly.⁸⁰ If a parent was found to have been experiencing overwhelming emotions before a change in custody, some children were seen as responding in kind to begin with, but their hysteria was said to have disappeared once they were transferred to the other parent's care.⁸¹ In other instances, parenting exchanges were accompanied by children's prolonged or overpowering hysteria.⁸² However, changes in arrangements were not necessarily ordered as a result of the children's reactions.⁸³

In many of the exchange cases, courts directly addressed the harm done to children. In one case, the trial judge held that the child could not continue to be subjected "to the hysterical access exchanges, to this battle any further [because she] deserves stability, permanence and emotional security."⁸⁴ Most of these cases see mothers as primarily responsible for their children's hysteria. However, some children, especially those who were older, withdrew from both parents because of the emotional and psychological harm caused by their parents' conflict.⁸⁵

of allegations of alienation against the father, see *LAI v KBZ*, 2014 BCSC 652 at para 30 [*LAI v KBZ*]; *Zantinge v Abdulrahman*, 2022 ONSC 1159 at paras 6–8 [*Zantinge v Abdulrahman*]).

⁷⁷ See e.g. *KM v JR*, *supra* note 71; *WC v CE*, *supra* note 74; *OA v AMEV*, 2013 ONSC 5997; *LAI v KBZ*, *supra* note 76; *REG v TWJG*, *supra* note 76; *Jackson v Mayerle*, *supra* note 76.

⁷⁸ *KM v JR*, *supra* note 71; *WC v CE*, *supra* note 74; *REG v TWJG*, *supra* note 76.

⁷⁹ *LAI v KBZ*, *supra* note 76.

⁸⁰ See, e.g. *APV v JLR*, 2012 ONCJ 658 at para 65 [*APV v JLR*].

⁸¹ *MEL v PRH*, 2010 NBQB 436 at para 332 [*MEL v PRH*]; *DML v DBL*, 2016 BCSC 925 at para 202 [*DML v DBL*]; *KH v JT*, 2006 ABPC 364 at para 166; *Scott v Lloyd*, *supra* note 76 at paras 69, 169; *AVP v JLR*, *supra* note 80 at para 23.

⁸² See e.g. *KM v JR*, *supra* note 71 at paras 186(d), 355; *AF v JW*, *supra* note 76 at para 135; *Chomos v Hamilton*, 2016 ONSC 5208 at paras 67–71; *Zantinge v Abdulrahman*, *supra* note 76 at para 5.

⁸³ See e.g. *WC v CE*, *supra* note 74 at paras 106, 121; *LAI v KBZ*, *supra* note 76 at paras 32, 46; *Fraser v Logan*, 2012 ONSC 4087 at paras 9, 51.

⁸⁴ *APV v JLR*, *supra* note 80 at para 66 (the mother was found to be responsible for the child's hysteria: *ibid* at paras 33, 65). See also *AF v JW*, *supra* note 76 at para 132 (mother's attempts to alienate the children from their father held to be severe emotional abuse of the children); *JWM v JLM*, 2007 BCSC 1405 at paras 35, 40, 58 (custody transferred to father to safeguard the children's well-being); *MEL v PRH*, *supra* note 81 at paras 98, 111 (judge describing child as "emotionally crumbl[ing]" under the influence of his mother); *DML v DBL*, *supra* note 81 at paras 172, 207 (mother did not acknowledge the child was harmed by the rage she displayed against the father in front of the child but did seek out and received anger management counselling).

⁸⁵ See e.g. *Jensen v Mains*, 2007 BCSC 506 at paras 144, 167. The youngest of two children was labelled hysterical by the mother during the course of one access exchange: *ibid* at paras 86–88).

Overall, while there are a significant number of cases involving children being labelled hysterical, it is often the parents who suffer the consequences of labelling their children and being seen as causing their children's hysteria. Children are not characters in the stock story of rational hysteria, but their parents—and most often their mothers—are.

VI CONCLUSION

In 2002, I was asked to revise my conclusion in “The Use of Metaphor and Narrative to Construct Gendered Hysteria in the Courts.” It was said to be “too bleak” in its assessment of the ways in which the labelling of individuals as “hysterical” worked to inflict such harm in courtrooms. I did revise that conclusion to be as optimistic as I felt the case law warranted at that time. Part of what I concluded was that

the power of dominant norms such as the paradigm of rational hysteria is that they are invisible to those who fit them and therefore assume those norms are universal. When someone tells a story of irrational hysteria, the difference is assumed to be in the individual labelled hysterical; they are weak or deceitful. The difference is considered intrinsic to the person. That allows for an individualistic solution to a systemic problem, which is no solution at all. The inequality is not even recognized as inequality.⁸⁶

This update to the use of the label “hysteria” gives very little reason for optimism. Eighty per cent of all of those labelled hysterical both before and after 2002 were female; the percentage remained unwaveringly gendered. Indeed, 64 per cent of all those labelled hysterical in Canadian courtrooms were women—not girls, boys, or men, but women. The proportion of cases in which the victims of crime were dismissively labelled as hysterical increased from 30 per cent of all labelled individuals before 2002 to 45 per cent in 2002–2022. The percentage of female witnesses found to be credible and reliable despite being labelled hysterical rose only slightly from 52.5 per cent in the pre-2002 cases to 55 per cent in 2002–2022. In sexual assault cases from that later period, the testimony of 33 per cent of female victims seen as hysterical was found neither credible nor reliable. That is one-third(!) of victims—despite the well-known underreporting and attrition rates of police-reported sexual assaults and the repudiation of myths and stereotypes by Justice L'Heureux-Dubé in *Seaboyer*⁸⁷ and those who have expanded on her message.⁸⁸

⁸⁶ Watson Hamilton, “The Use of Metaphor,” *supra* note 1 at 202.

⁸⁷ *Seaboyer*, *supra* note 5.

⁸⁸ See e.g. Koshan, *supra* note 56; Lise Gotell, “The Ideal Victim, the Hysterical Complainant, and the Disclosure of Confidential Records: The Implications of the Charter for Sexual Assault Law” (2002) 40:3 Osgoode Hall LJ 251; Susan Ehrlich, “Perpetuating—and Resisting—Rape Myths in Trial Discourse” in Elizabeth A Sheely, ed, *Sexual Assault in Canada* (Ottawa: Ottawa University Press, 2012) 389; Melanie Randall, “Sexual Assault Law, Credibility, and ‘Ideal Victims’: Consent, Resistance, and Victim Blaming” (2010) 22:2 CJWL 397; Lisa Dufraimont, “Myth, Inference and Evidence in Sexual Assault Trials” (2019) 44:2 Queen’s LJ 316; Lisa Dufraimont, “Current Complications in the Law on Myths and Stereotypes” (2021) 99:3 Can Bar Rev 536. Justice Martin, for the majority, thoroughly discussed myths and stereotypes in two sexual assault cases involving issues of appellate intervention in trial judges’ credibility and reliability findings and the role of common sense in assessing the evidence of witnesses (see *R v Kruk*, 2024 SCC 7).

The increase in the use of the hysteria label by judges from 2 of 128 (1.5 per cent) to 56 of 404 (14 per cent) is particularly discouraging. Although the absolute numbers are not large, they only include the times when judges initiated the use of label; they do not include all the times judges adopted, repeated, or reported the labelling done by a witness.

There is no reason for optimism about the possibility of greater gender equality in these outcomes. Women and girls labelled hysterical in many different legal contexts are still seen as deceitful. The gendered story of rational hysteria and its counterpart, irrational hysteria, appear to be as entrenched in Canadian law and Canadian society as they have always been.

AN EVENING WITH WOMEN JUDGES IN NORTHERN ONTARIO:

Her Honourable Justices Brochu,¹ Belda,² Nieckarz,³ Pierce,⁴ & Burton⁵

in conversation with Hailey Hayes⁶ & Natasha Latina⁷

INTRODUCTION

On January 30, 2025, Hailey Hayes and Natasha Latina, who were the then student co-managing editors of the *Lakehead Law Journal*, attended a special evening with the Honourable Justices of the Northwest Region, an event where female law students of the Bora Laskin Faculty of Law met with judges in a small setting for connection and conversation. Hayes and Latina had begun thinking about the *Lakehead Law Journal*'s Special Edition, "Women and the Law in Canada," and as part of a reflection on their experiences in law school and soon to be in practice, they wanted to learn about the experiences of women in one of the most esteemed positions in the law, judges. The law journal team was fortunate to interview five women justices of the Northwest Region in a private roundtable discussion that focused on their experiences, challenges, and achievements as women legal professionals. The opportunity to discuss with Her Honours in a frank and intimate setting was one of the highlights of their law school experience. The Honourable Justices in conversation with Hayes and Latina are Brochu J. (SCJ), Belda J. (OCJ), Nieckarz J. (SCJ), Pierce J. (SCJ), and Burton J. (OCJ).

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- ^{1.} Madam Justice Chantal Brochu was appointed to the Ontario Court of Justice in 2017 and was the Local Administrative Judge for Thunder Bay. In 2025, she was elevated to the Superior Court of Justice in Thunder Bay.
 - ^{2.} Madam Justice Claudia Belda was appointed to the Ontario Court of Justice in 2021. She was called to the bar in 2004.
 - ^{3.} Madam Justice Tracey Nieckarz was appointed to the Superior Court of Justice in 2018. She is the Local Administrative Judge (Family) and sits on several province-wide judicial committees.
 - ^{4.} Madam Justice Helen Pierce was appointed to the Superior Court of Justice in 2001, becoming the first female judge on the Superior Court in the Northwest Region. She served as Regional Senior Justice of the Northwest Region between 2009 and 2014. Madam Justice Pierce retired from the Ontario Superior Court of Justice in 2025 in Thunder Bay.
 - ^{5.} Madam Justice Elaine Burton was appointed to the Ontario Court of Justice in 2017. She was called to the bar in 1996 and worked in the Crown's office until her appointment to the bench.
 - ^{6.} JD, BA (Hons). Hailey Hayes works for the non-profit organization Women In Crisis (Algoma) Inc. in Sault Ste. Marie, practising primarily family law.
 - ^{7.} JD, BA (Hons). Natasha Latina clerked at the Ontario Superior Court of Justice in 2025–2026 and currently works as an Assistant Crown Attorney in Thunder Bay. Note: This introduction is written in my personal capacity and does not in any way reflect the views of the Ontario Superior Court of Justice or the Ministry of the Attorney General.



Figure 1 (left to right): Brochu J, Belda J, Nieckarz J, Latina, N., Pierce J, Burton J, Hayes, H.

The *Lakehead Law Journal* team was extremely fortunate to get this opportunity. Our sincerest gratitude for the Honourable Justices' candour, time, and advice for the next generation of female legal professionals.

QUESTION ONE

Hailey: This interview is going to be part of the Lakehead Law Journal's Special Edition focusing on women in the law. The issue was partly inspired by Mary Jane Mossman's book Quiet Rebels,⁸ which discusses the experience of the first women lawyers in Ontario. As part of the special issue, we felt it was important to hear from female practitioners, especially in Northern Ontario, about their experiences working in the Canadian justice system. Thank you for reflecting on your experiences in the legal profession with us today. Between 1982 and 2004, all of you were called to the Ontario bar. Can you reflect on your journey from entering the legal profession as junior members to your current position as justices? What was that process and experience like for each of you?

Belda J: I think a lot has changed and yet, at the same time, everything is kind of still somewhat the same. When I started working and when I started articling, I did go into an all-male firm and it was always a little bit weird because they always treated me as, well, as a woman. The reason that I say that is because we had other articling students who were male, and it was very easy to see that I was treated differently. I was treated differently in the [kinds] of jobs that I was given or the value that my work was given. At one point I was working with somebody who had been called about five years after me and I found out he

⁸ Mary Jane Mossman, *Quiet Rebels: A History of Ontario Women Lawyers* (Waterloo: Wilfrid Laurier Press, 2023).

made more money than me. In my experience, it changed for me when I got appointed because there were so many women already sitting on the bench and it was nice to see that. We were actually the majority when I got appointed. So, it was a whole different dynamic from when I was working in firms.

Brochu J: I think, perhaps the experience varies to a certain degree with respect to what field you are in and what kind of law you are practising. I have always felt comfortable at the firm. I was there my entire legal career. I felt supported by the men that were there.

There are times that are more difficult. As women, we are the ones having the children and we are the ones having to take time off to do that. That is something I struggled with when I had my first child, where I thought I was Super Woman. I thought I was going to be able to take a few months off and come back to work, and I kind of worked my parental leave around that, with my husband at the time taking another part of it and kind of splitting it off, and that was the worst thing I could have ever done. I have always told people after that, don't do that! With my second child, I took ten months off and I actually enjoyed being off and enjoyed having the time with my son. During my previous parental leave, I just felt like I was all over the place and not doing anything right. In adapting to your new roles, you feel sometimes as though you are not a good wife, you are not a good lawyer, and you are not a good mother. You have the weight of all that on your shoulders because that is what we do, often, as women. We try and please, we try to make sure everybody is okay. That is kind of a personal struggle of mine. I continued to learn and to try and balance everything as I progressed further into my career. I still managed to get where I wanted to get professionally and met the goals that I had set for myself, going from associate to partner, and then applying at the OCJ and then [becoming] a judge.

Nieckarz J: For the most part, I can say that my journey is a blur. It's been 30 years, but it feels like it was just yesterday when it all started. When I went to law school, law schools were just starting to approach a level at which women were making up at least fifty per cent of the student body if not more. Unfortunately, the practice of law had not yet reflected this changing demographic. Coming out of law school and coming to practice in a smaller community, the major firms all had male partners. Until Justice Pierce came along, the judges were all male. For me, I was very fortunate. I had good mentors who were invested in my success.

There were still times that I struggled with various things, just as Justice Brochu said. You have significant family responsibilities, and sometimes I think that was difficult for some of the partners to understand because they often had stay-at-home spouses, whereas we did not and had to juggle accordingly. But I've always been very fortunate because both in the legal community and in the firm I was working at I always found groups of other supportive women. There were struggles along the way; there were things that were different—for example, golf tournaments and such events were common occurrences. But for me, I don't play golf—plus, I didn't want to go spend four hours on the golf course because that meant I would have to spend an extra four hours on the weekend working, and I wanted to be home with my children. With those types of opportunities, it wasn't that I couldn't take advantage of them, I just chose not to. But by making that choice, I often missed out on opportunities to network with other professionals and other partners. For the most part, I found a really good group of men and women and felt very supported as a lawyer and on my journey to becoming a judge.

Burton J: I feel like I came into law at a really good time—at the turning point. When I started law school at the University of Toronto in 1991, that was the first year that class was

fifty-per-cent-plus women. There weren't very many people of colour, maybe four or five, but as I said to one of the groups—you know, one barrier at a time—there were fifty-per-cent-plus women. When I came to Thunder Bay, there weren't a lot of women practising law, but I lucked into landing in the laps of some of them. I articulated at Petrone's [law firm], and at the time there were two women lawyers there, Eija Peltokangas and Martha Petryshyn, and they were fabulous role models of strong independent women, as anyone around the table here can attest to. The men at that firm, too, were also very supportive, in fact, they'd all gone to high school together and with my husband, so that was a great environment. Later I was in the Crown's office, and there were two very strong women role models there as well, Shari Frennette, who is still practising, and Marlene Wilson. So I found I wasn't having to break a lot of barriers; I didn't have to prove that a woman could be a good Crown.

Pierce J: Well, obviously I am the oldest here. Call me Grandma . . . I'm the 1982 call. When I was at law school, about a third of our class were women. The professors were very accepting, and I felt like we weren't treated any differently than the men. Some of the best students in the class were women. So that was a good launch. I went to practise in Sault Ste. Marie, Ontario, where there were then a few women who were my age but not many who were older than us. So I would like to echo Justice Brochu's experience, in terms of trying to have it all, and do it all, and thinking that you can be a class 'A' mom and the best lawyer in the city and a good wife and all of these things. I think that sat on our shoulders, the other women, and myself. I think of a friend of mine who was pregnant and she went to family court and the staff there, who were women, said to her, "You are in labour, go home." She didn't really want to be less of a lawyer because she was, you know, nine months' pregnant and about to give birth. So, sometimes we try too hard, and when I look back on those years, I took about six weeks off when our first child was born, which I feel now was unfair to him, and maybe unfair to me. The second child, I took a little longer, but not near long enough. And it is that feeling that you have to prove yourself.

The women in Sault Ste. Marie, the women in practice, also supported one another. We had parties, and whenever there was a special occasion—someone was getting married, having a baby, or just because we needed cheering up—we would arrange a party at somebody's house, and it would be a potluck. Several times we hosted at our place. I realized, at one point, that my son's exposure to lawyers was through those parties, because one time he said, "Mom, can boys be lawyers?" He didn't know any male lawyers. "Yes, son. They can be lawyers." But we were certainly aware of the novelty of being women in the practice of law.

QUESTION TWO

Hailey: In the book Quiet Rebels, Mary Jane Mossman writes about the 187 Ontario women lawyers who were called to the bar between 1897 and 1957 and the unveiled discrimination and contempt shown toward them when they were entering what Mossman describes as a "gentleman's profession."⁹ The year 2025 marked 150 years since the first woman in Canada received a university degree, and as Mossman's research shows the 150 year history of women in the profession reflects the circumstances and experiences of women as they fought for women's inclusion "in a culture of male exclusivity."¹⁰ status of women's rights

⁹. *Ibid* at 2.

¹⁰. *Ibid*.

in Canada broadly. It has been 150 years since the first woman received a university degree, 96 years since women were included under the legal definition of the word “persons,” and only 65 years since all Canadian women received the right to vote.¹¹

Did you experience gender disparity in the early days of your career or throughout it? Have you felt the need to prove yourself more because of your gender?

Pierce J: I have two stories that I would like to tell you. One that dates back to 1982. After I was called to the bar, I went back to the law firm where I had articulated. I interviewed with the senior partner, and the interview was something of a formality because they had invited me to come back and I was quite willing to do that. I don’t know what possessed me, but I said to the senior partner, “What is your maternity leave policy?” And he looked at me like I had grown horns. I don’t know why I asked him, because I wasn’t even dating anyone. He said these words to me, “Nobody likes a part-time partner.” So, I have to say that he was honest, that he certainly let me know where I was at.

The second story dates from the first day of my articles. Back in those years, examinations for discovery were held at the courthouse, and lawyers went and conducted the examinations, and the witnesses were sworn in, and a transcript was made of their examination, and that was part of the lawyer’s day. On my very first day of articles, I was dispatched with one of the senior lawyers, not the “part-time partner” lawyer, to go and observe as his articling student during this examination for discovery. There was the opposing counsel, who was from Toronto. All went well, but then at the end, the Sault Ste. Marie lawyer said to the visiting lawyer, “Come on and I’ll take you for a drink at the Algoma Steel Club.” And then he said to me, “Sorry, you can’t come.”

I was new in town, but I later learned that the Algoma Steel Club was a men’s only club.¹² I was shocked, because I knew in my heart that if I had been a male articling student, I would have gone along with my betters and I would have heard the war stories—it would have been part of my education. I would have been included. But I had only just met my articling principal that day, so I was not in a position to question his decision to take the visiting lawyer to some place that I couldn’t go.

Sometime later, when I got to know the lawyer better, I must have mentioned this to him—I don’t have a clear recollection of that. Later during the articling year, I had a birthday and he invited me along with the staff at the law firm and we went to go for a drink. And you know where he took me? The Algoma Steel Men’s Club. So that was his way of apologizing. That was a truce, as far as I was concerned, and he more than made it up to me when he became a

¹¹ Canada, “Women in Canadian History: A Timeline” (last modified 23 October 2024), online: <<https://www.canada.ca/en/women-gender-equality/commemorations-celebrations/womens-history-month/women-history-canada-timeline.html>> [perma.cc/3NRA-T26Y].

¹² The men’s club was established in 1900 and located on Bay Street in John Martin Stephen’s home, until it was sold to the Sault Business Club in 1907. The Businessmen’s Club went bankrupt during the Great Depression and was eventually purchased by Algoma Steel in 1940. The name was changed to the Algoma Steel Men’s Club, and in 1974 a new building was constructed for the club on the bank of the St. Marys River. The Algo Club opened in 1975 with a membership of about 400 men. Women were not permitted to join the club until the early 1980s, and unionized employees were also historically excluded from membership. Algoma Steel sold the club to its members in 1987, and it closed permanently in 1995. See SooToday, “Remember This? ‘Strictly a Men’s Club’” (14 May 2017), online: <sootoday.com/columns/remember-this/remember-this-strictly-a-mens-club-614711> [perma.cc/W4WT-C8QQ].

judge here at Thunder Bay and encouraged me to apply for the bench. He then enrolled me in his school for judges; I was the only student at the time, and he was quite a wonderful mentor. We all change, and he changed, and we became very good friends.

Burton J: [My stories] are not quite so dramatic. I recall a number of times when I was sitting at the counsel table as a Crown and I'd have a male detective next to me and somebody would come up and start talking to the detective, just assuming that he was a Crown and he's in charge. I sometimes had issues with uniformed officers understanding the fact that I was in charge, but I never had an issue with the detective understanding who's in charge and they always would redirect. I never had any explicit instances of—well, that kind of behaviour—that I can recall from senior counsel or from the judge's bench. I did get groped once by a justice of the peace who had just retired, and there wasn't even any alcohol involved (because that's a whole other bunch of war stories). I was pretty fortunate in that regard.

Nieckarz J: I'll start with did I ever feel that I had to work harder to prove myself. Yes, not because I was a woman, but because I was a mom. I did not want anyone thinking that I wasn't as dedicated to my practice and to the firm because I had children. There was that initial period after having children, where I felt the need to do that. It did wear off, as I realized, "I'm a good lawyer. I work hard, I do my job, I bill enough that no one ever has to carry me, and the fact that I've had children and I have family responsibilities doesn't change that."

As far as war stories, I can't say there was a lot (fortunately). My first articling interview was with a senior partner at a local firm, and I went fully prepared: I memorized my transcripts and had gone through sample interview questions they gave me in law school to prepare for articling interviews. He sat down and he wanted to talk about my shoes. I like to wear heels. He also wanted to talk about the length of my skirt and how many children I thought I was going to have. I walked out of there, a little shell shocked, thinking, "I will never work there!" Fortunately, later that day I had another interview with another senior male lawyer in a firm that was the total opposite. He was respectful, he was focused on the law, he was focused on what I did in law school, my career goals, aspirations, and overall, the types of questions you would expect. That's where I articulated and had a very good work experience.

Brochu J: I will start by saying that at least in my early career, I very much felt as though I had to prove myself. I had to prove myself more as a woman. Perhaps it is the area of law that I chose. I did insurance defence work, litigation at the time. As I grew in the practice and with time, there were more women in those roles. But when I began practising insurance defence work in Thunder Bay, it was mainly male lawyers that worked in this area. A lot of lawyers came from Toronto, came from Sudbury, came from elsewhere. They were all much older than me, and very experienced, and I always felt I was not treated the same as the other male colleagues.

I remember my first experience in small claims court as I finished my articles, I remember it was close to Christmas, and I had this trial to do in small claims court. It was in a basement at the courthouse on Camelot Street and the other lawyers—the ones that were representing the plaintiff and another co-defendant, who were both senior lawyers—were trying to bully me before I even got into the courtroom. We got into the courtroom, and they had taken up all the space on the counsel table. So I went in the middle of them, and then moved their stuff, and I said, "I'm a woman, we take a lot of space," and I sat down. That is an example of something I had to do. If it would have been my male counterpart, the same age at the same place, he would have been a buddy to them, and he would not have had to do that.

I felt at times that way with some of the judges. As an example, the partner that I mainly worked with had never been good at delegating. We worked well together; he was giving me some files and sending me to court on some matters. I remember I was at a pre-trial conference and the judge asked, “Where’s so and so?” and “Why is he not here? We’re not going to accomplish anything.” I was thinking, “I know this file,” because I knew it better than the male partner I was working with, but the judge said, “No, next time he comes.” Next time, I went to court with the male partner. We were sitting there and picking trial dates, and the judge asked my colleague to look at his calendar, but he said “I’m not looking at my calendar, she’s doing the trial.” At another appearance on the same file I remember that judge finally said, “Hey, she knows what she’s talking about.” It’s experiences like that when I find that I earn respect, but I’m not sure that it was an exercise I should have had to do.

Pierce J: Shouldn’t have happened though.

Brochu J: It should not have. I graduated very young and went straight into the practice of law. I found it was the same even with clients, who would say, “When do I get to see the lawyer?” assuming you are the secretary, because you are young and female, and you would state, “I’m the lawyer.” I also did a lot of work for individuals that worked in the logging industry, and a lot of them were French. I remember the first time one of these guys came to see me, he had been referred to me by Bob Mullen. Bob Mullen was this tall, big man who did not speak French. The look on the guy’s face when he saw me, he was like, “Oh, he sent me to see this little woman.” They were trying to explain to me how “You know, in the bush, it’s not like in the grocery store . . .” But I was in a logging family and knew what they were talking about. I remember one who said this to his accountant—and he said it in French—but he referred to me and said, “She’s a woman, but she’s good.” So, you know, things like that, I had to take it.

Even for people in charge to ask how old you are. Turning 30 for me was kind of a blessing, because all of a sudden it was like, “oh, okay, you’re not as young.” I don’t know how it is for new members coming in, but I felt as though you should not have to do that. For some people it may be discouraging to always have to be on your A game, always having to be ready to stand your ground and to pounce. I find that I did very much experience that sensation of having to prove myself to work harder.

Pierce J: I’m sorry it was so tough for you; that is horrible.

Brochu J: Yes, and I am not meek. I am someone that is of strong character, and I am capable of holding my ground. I stayed, and I really enjoyed what I did.

Nieckarz J: I have to admit that there were times when, rightly or wrongly, I used negative assumptions to my advantage. As a lawyer, you quite often get people at parties hitting you up for legal advice. When they find out or know you’re a lawyer, invariably I would get: “Oh, I’ve got this problem,” or someone they knew had a legal problem they wanted to talk to me about. So sometimes when I just really did not want to deal with that and I’d be asked what I did, I would just say “I work in a law firm.” You could tell that oftentimes people assumed I was an administrative assistant or clerk and wouldn’t ask any more questions. Now I say, “I work at the courthouse.”

Brochu J: Even as a young female judge sometimes, I have had it happen to me. I was at a conference. I was by the elevator, and it’s the gala night, so I’m all dressed up, and a couple comes up and the male judge asks me whose wife I am. And I went, “I am a judge” and his wife says to him, “Oh, take your foot out of your mouth.” [laughs]

Belda J: I feel like I'm the repository of horror stories. I mean, some are funny, some are not, and some are self-inflicted. I've also had a similar experience to Justice Brochu in that I went up to another community, I got off the plane, and I started a conversation with the police officer. We were just talking over all sorts of random things, and then we go into our courtroom, and he was like, "When's the judge getting here?" And I'm like, "I'm the judge." And then he was like "Oh, my God, I am so sorry." I think he thought I was the court reporter.

I guess if I had to say one of the self-inflicted ones that I had, it was very early on, I was at a firm where, again, it was all males. They always went out every Friday after work to have drinks. I've never been that great of a drinker, but I would go because I didn't want to feel left out. They would always talk about files, and that was when you found out what you were going to be doing the following week. I would go and drink, and I would try to keep up with them. I was lucky that one of the other lawyers there would wait with me till the very end because he knew I couldn't get out of my seat. He would then drive me home and pick me up in the morning to go get my car, so that nobody would know I was so completely plastered. But that was my fault because I wanted to be part of, you know, everything that was going on.

But a horror story would have been when we had a meeting at our firm, and I was a very junior lawyer, and we were having a number of lawyers come in because they were having some settlement discussions. We were all getting comfortable and then one of the lawyers that did not work for our firm asked me to go get him some coffee and I was like, "Okay, yeah, I mean, that's not my job." But one of the senior partners was like, "Yeah, go get him some coffee." Then, when I turned around to go get the coffee, this lawyer—and I kid you not—gave me a smack in the butt and said "Thank you, honey." Oh, yeah, that was lovely. I mean, he's passed away now, so it doesn't really matter, but that was awful.

Nieckarz J: But hey, look where we are now, right?

[Everybody nods and murmurs in agreement.]

Brochu J: I remember that saying, what doesn't kill you makes you stronger, right?

Hailey: Or really sick . . .

Burton J: I just want to add something here. I'm the only one here who doesn't have kids, and I've always admired people who can run a family and run their jobs and essentially run their lives. Even with my hubby, who has always been very supportive and a 50/50 partner around the house, I don't know how people with kids do it because we can't get ourselves out the door and dressed and clean most days. My husband had major back surgery a couple of months ago and I was looking after him and, it was all on me. Like all of the housekeeping, all of the cleaning, all of the cooking, all the grocery shopping, all of the errands, all of the bill paying, and it really hit home, like, this is all on me. And I don't know how these gals have done it. I just wanted to put that out there. It's hard enough as a married couple without kids to keep your life together, and how these guys have done it with kids, too, I don't know.

QUESTION THREE

Natasha: Thank you so much. I wanted to touch on the class gender divide. We looked at different statistics, and just as Justice Pierce mentioned that there were one-third that were women in her class, Hailey and I, in our class, the majority are women—there is sixty-three per cent women, which is really nice to see for the class of 2025. In addition, Hailey and I will also be first-generation female lawyers ourselves, which brings another set of challenges around

what we might not know about the profession because we don't have older family members to help guide us.

In recent years, the rise in the number of female lawyers can in part be attributed to admission policies that have been adopted by law schools. However, despite this increasing number of female law students, we know that a lot of women are being admitted to the profession, but they're not necessarily continuing their practice and moving on to partnership roles and other leadership roles.¹³

My question for all of you is twofold: First, have you noticed any of these trends within your career in the courtroom? And second, what do you think can be done to mitigate the early withdrawal of women from the legal profession?

Pierce J: Okay, well, I don't think we're ever going to get past biology in this, unless the choice is not to have children at all, which is a legitimate choice that people may make for obvious reasons. But one of the things that's been so refreshing, for me, is to see women in a courtroom, on the bench, in the law school, and to see their growing confidence at being here. I know sometimes people feel they have imposter syndrome. I had it too. I really thought that somebody would discover that they let me in a law school by mistake and then they would throw me out. But I fooled them, and I graduated, and they didn't figure it out. So I really think that retention has to be a strategy—to balance life and women's biology, if they are raising families—but not just children, women often are the default caregivers for elderly parents or people in their family who may need extra care. So I think we need to value women's contribution to the law more than just in terms of billable hours

Burton J: I think part of the question refers to, you know, what can the profession do? And I think if you wait for the profession to do something, you'll be retired before anything actually happens. Something I'd like to see the profession look at is, for instance, setting down some kind of regulation about articling pay and articling student hours, because that can be such a grind in and of itself. I don't think there's even a minimum wage law that applies and that kicks some people out the door right away. I think seeing more women in the law and on the bench, in and of itself, may contribute to retention. I see that I can do that, and there's somebody who looks like me who's doing that, and hopefully that will be something that prompts women to stay. When Justice Brochu and I got appointed, we made five out of seven on our bench women. The numbers have changed a little bit now, but I think that was kind of a landmark.

I think you have to take charge of your own work/life balance and how much time you are going to spend doing this. One suggestion I make is to find some aspect of your life that you can allocate to somebody else. So, for us, it was getting a housekeeper or a house cleaner, as soon as we were able to do it. Because nobody wants to spend the weekend cleaning the house when you're both working. So as soon as we were able to afford that, just short out right out of law school pretty much, we got a house cleaner. For some people, it's getting meal services. For some people, it's getting lawn care. Divest whatever you can onto somebody else,

¹³ Margaret Thornton, "Who Cares? The Conundrum for Gender Equality" in Margaret Thornton, *Law and the Quest for Gender Equality* (Canberra: ANU Press, 2023) 199; International Bar Association Legal Policy & Research Unit, the Canadian Bar Association and the Federation of Law Societies of Canada, *Raising the Bar: Women in Law Project* (London, UK: International Bar Association, 2026).

so that you've got more of that time to spend. That should hopefully assist with the workplace balance. But if you don't take charge of it on your own, you're going to get steamrolled.

Nieckarz J: I think the retention of women in the legal profession has been an issue for quite some time. One of our now retired judges in Thunder Bay, Justice [Bonnie] Warkentin, was a benchler before she was appointed as a judge. One of her responsibilities was the retention of women. It was a task force that travelled around the province and met with women to discuss issues associated with the retention of women. I remember her coming here to Thunder Bay and speaking to women in the profession. Her report would have predated the 2020 report,¹⁴ so it is something that the Law Society has been studying for some time. It is an ongoing issue and concern as to why we are still losing a disproportionate number of our bright and dedicated female lawyers. As a judge, I will see a really good, bright young lawyer come to court and do an exceptional job for their client, but then all of a sudden they're not coming anymore. Often I will ask someone else in the profession what happened to them, only to learn that they have left private practice and found a different avenue in law, or have just left law all together. So it's still an issue that the profession is struggling with.

I, too, had my moments as a lawyer where I did not want to be a lawyer anymore. Luckily, they were fleeting and I got past it, but it usually boiled down to a couple of things. One, as Justices Brochu and Pierce were talking about, is that the feeling of often being overwhelmed can be challenging. I think a lot of us tend to have perfectionist personalities and want to do really well at everything. We want to be the best lawyer, we want to be the best mom, and sometimes we feel like we're doing a great job of either. Sometimes it feels like all the balls are staying in the air, and then the next week it feels like all the balls are crashing down around you and you're not doing anything well. So there was that aspect to it. And then the other part of it, the practice of law in general really needs to look at how it values the contributions of the lawyers within their firms. It can't always be based only on collected billings. Different practice areas are very different. For example, in family law, quite often, we have to work one-and-a-half hours to be able to collect one hour. Whereas a corporate practice may be very different. There are different values that different practice areas bring to a firm, or there might be the contribution that a lawyer makes out in the community that brings more recognition to the firm. Some lawyers take on more administrative tasks within a partnership, or the tasks that take up more of the time. Recognizing that value is more than just monetary is an ongoing issue, but one that I hope is turning around. It was starting to turn when I was practising, and hopefully it will continue as more women are taking leadership roles in law firms

Brochu J: I echo a lot of what my colleagues have said. Retention of women has been something that I've been hearing about since I was an articling student. I was active at the OBA.¹⁵ I was active with AJEFO.¹⁶ I was involved in a lot of discussions regarding the retention of women in the profession. The Law Society has made a mandate to try and change the way some of the benefits are [administered] and things of that sort in order to retain women.¹⁷ At

¹⁴ University of Toronto Faculty of Law, "Leaders Discuss Retention, Advancement Issues Facing Women in Private Practice" (30 January 2009), online: <law.utoronto.ca/news/leaders-discuss-retention-advancement-issues-facing-women-in-private-practice>.

¹⁵ The Ontario Bar Association, see online: <<https://www.oba.org/home>>.

¹⁶ The Association des juristes d'expression française de l'Ontario, see online: <<https://www.ajefo.ca>>.

¹⁷ See e.g. the Law Society of Ontario, "Women's Resource Centre" (undated), online: <<https://lso.ca/lawyers/women-s-resource-centre>>.

the end of the day, as Justice Nieckarz said, the solution will likely not come until the head changes—because you have a system that relies on prestige, and it is prestige associated with billable hours and associated with the amount that is brought in.

I have some hope that once that whole mentality, which still exists at the top of those big firms, changes, then perhaps we will have more of a balance and the retention-of-women aspect will be addressed to a certain extent. But in the meantime, or as we are going through it, a lot of it is what you make of it. And we have seen it. I have had some friends that were working at the big Bay Street firms, and then they have a baby, and then they have a second baby, and then they decide to have a third and I go, “How is she going to manage that?” And all of a sudden you get the email with a change of email address. “Now working in the policy department here” or “Now working for the government,” and it is choices that are made to stay in the legal profession by changing the work venue.

It can also be an advantage of working in smaller areas of practice, smaller cities, like Thunder Bay. My mother-in-law, when I was in practice, she lived in Oshawa and would have loved that I came down to work on Bay Street, Toronto, and I said to her, “You think I work a lot now? The kids would never see me if I worked there.” And that is a choice that we also make and that is a choice that a woman can make as far as retention and how you stay in the profession. The way that I was able to work my practice was to have some flexibility to it. I have never missed one of my children’s school plays; my daughter danced competitively, and I have never missed one of her competitions. But I booked my calendar and my agenda around that, on setting some priorities and then trying to find some balance in that. I could go from court all the way to École Catholique Franco-Supérieur, where my kids were in school, in 10 minutes. I think I was in front of Justice Pierce on a motion, and the other lawyer was from Toronto, and we took a break (back then the courthouse was on Camelot Street, which was right by my daughter’s school), and I said, “I’ve got to run, I have all the teacher’s gifts in my vehicle and I am going to school and I’ll be right back.” He said, “Uh, we only have an hour?” and I’m like, “Oh, yeah. No problem.” I got back in plenty of time. I had the ability to do that because of the lifestyle I chose and things like that. It is finding that balance that is important. I think that it is getting better.

Nieckarz J: It’s a culture shift. It’s started; it’s just not fully there yet.

Belda J: I don’t know that there’s much that I can add to it because everybody has mentioned a lot of things that I think are very common to all of our experiences. But I think it also depends on what area of law you participate in, which, I think, changes your perspective a little bit. I think that any of us that came from a family law background would probably be used to working with more women than men. I always knew, for example, that criminal law was mostly a male-dominated area. I do see that changing; now there are a lot of women that are doing both criminal and family [law].

Maybe I can tell you a little bit about my experience. When I was articling, I was so focused on articling that I actually didn’t even realize I was pregnant until halfway through my articling. We went from discussing what my role was going to be when I was called, to then having a meeting the following week where they told me they had to let me go. The thing that hurt the most was that when they said goodbye to me, they said, “We hate to see you go, but you’re going to be a really great mom.” To me that was so insulting. Basically, it was saying, “you are never coming back, right?” I guess partly they were right in that, because I was going to be the primary caregiver and I didn’t think I was going to be able to come back. It wasn’t

until much later when I moved on from the idea of having a private practice that I went to work for other organizations that were really family oriented. I went to work for legal services, and everything from the second I got there was family oriented. If you needed time, you took it. We had full benefits. The focus was specifically on making sure that we all had family time. So, just like Justice Brochu, I never missed anything with my family. It wasn't until later, until I was able to find a life partner that was able to take over the childcare, and, you know, I don't cook, I will never cook. He makes sure that, you know, meals are on the table for everybody at the right time. That is what allowed me to eventually go back to private practice. I don't know that without the supports and without knowing there was something different that I ever would have come back.

Plus the fees were killing me. You have to still pay legal fees and law society fees if you are doing something else that is somewhat legal. So, your choices are, you pay this money to do a job that is not paying you anywhere near enough, or just completely getting out of [legal practice]. And I think if you completely get out, the chances of you coming back are much lower. So, yes, it is about choices, but [it's also about] whether you have the ability to make those choices at the time. I think it's really difficult.

Nieckarz J: And sometimes you resent the fact that you have to make certain choices. There are some choices that you're willing to make, such as whether you practice in a smaller community versus a big city. But with other choices, you sometimes resent the fact that you have to make them because you know that it does not need to be that way.

Burton J: I've recently made the decision to retire, and it literally took me years to get my head around "quitter" mentality. Do I owe it to the profession to stay here? Do I owe it to my colleagues? I love you, but no, I don't. It's taken a long time to overcome that mentality, which I think is part of the era that I grew up in, in the practice of law, and so it's a personal mindset, personal choice to make it, but you've got to make them.

CONCLUSION

Hailey: We want to thank you so much for taking the time to speak with us. I think this is going to be really important to have on record. It is going to be a great point for reflecting on this time in history. Your Honours have done amazing work. The Thunder Bay bar, in general, is really well regarded, especially in terms of the support there is for young female lawyers coming in, and that's due in large part to the work you have all done in paving the way. We hope that the law journal is going to be around for many years, and maybe one day they'll go through the archives and they'll find this piece, and they'll find it so shocking that gender disparity used to happen at all or that this was even a conversation that needed to be had. So, thank you so much for taking the time. We really appreciate it.