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DEMOGRAPHIC **TRENDS**



THE CANADIAN
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INFLUENCE. LEADERSHIP. PROTECTION.

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INTRODUCTION

It is not one bit surprising that describing the future of the practice of law is a challenge. It is however a bit surprising that there is so little information about the present state of the legal profession in Canada. Like any good computer mapping program, if you want to know where you are headed, the computer needs to know where you are starting from.

The purpose of this paper is to analyse current demographic data about the practice of law in Canada. During the process of collecting and analysing the data, thirteen distinct issues emerged. This paper is organized around those issues. Each section contains discussion of relevant demographic data and concludes with a brief statement of a demographic trend.

Most of the information on demographics for this paper came from the Federation of Law Societies of Canada's (FLSC) extremely useful *Annual Statistical Reports*. Although there were some small inconsistencies in reporting in some categories from year to year, the FLSC's data remains the most comprehensive source of information about the lawyers in Canada. Therefore, the main source of data for this paper was the 2000, 2005 and 2010 FLSC *Annual Statistical Reports*.¹ Other data was gleaned from reports from the Canadian government, individual Canadian law societies and the American Bar Association.

1 Federation of Law Societies of Canada. *2000 Law Societies Statistics; 2005 Law Societies Statistics; 2010 Statistical Report*, online: Federation of Law Societies of Canada. <<http://www.flsc.ca>>. [FLSC 2000, 2005, 2010].

1. LAWYER POPULATION

The number of lawyers in Canada increases every year, but how does this compare with the general population? One basic measure is the proportion of practising lawyers to members of the public. In 2000 in Canada there were 449 citizens for every practising lawyer, which fell to 419 in 2005 and 396 in 2010. Over this period, the number of practising lawyers increased at a rate almost five times higher than the rate of increase in the general population.²

A comparison of American Bar Association and United States Census Bureau figures for 2010 shows about 256 United States citizens per lawyer.³

TREND — The number of practising lawyers is growing faster than the general population, although Canada has not yet reached the lawyer saturation rate of the United States.

2. EXPERIENCE

Much has been said about the greying of the legal profession⁴, and the annual FLSC reports support the supposition that the proportion of senior to junior lawyers has increased over time. In 2001⁵, 20.4% of lawyers had more than 25 years' experience, and in 2010 that proportion rose to almost 31%. At the same time, the proportion of lawyers with five years or less of experience declined slightly from 19.8% in 2000 to 18.8% in 2010. The largest decline was in lawyers with six to ten years' experience, which went from 18% in 2000 to 14.6% in 2010.

TREND — The overall age of practising lawyers will continue to skew older until the most senior cohort decides to retire.

2 *Ibid.*; Statistics Canada. *Population, urban and rural, by province and territory (Canada)*, online: Statistics Canada <<http://www.statcan.gc.ca>>. [Statistics – Census].

3 American Bar Association. *Total Licensed Lawyers 2010*, online: American Bar Association <<http://www.americanbar.org>>; United States Census Bureau. *Population Change for the United States, Regions, States, and Puerto Rico: 2000 to 2010*, online: United States Census Bureau <<http://www.census.gov>>.

4 See for example Retention of Women in Law Task Force, *The Business Case for Retaining and Advancing Women Lawyers in Private Practice*, online: Law Society of British Columbia <www.lawsociety.bc.ca>...page 4.

5 Note that FLSC figures for 2001 were used for this topic, as in 2000 the *Barreau du Québec* used different categories to report data. Because of this discrepancy in the data, the analysis would not have been based on nationally consistent figures.

3. JOB MARKET

Despite dire predictions about the future of the job market for lawyers, official predictions are fairly positive. The median age of the occupational group including lawyers is reported to be 45.6, significantly older than other occupational groups, and average retirement age for the occupational group is around 75⁶. Although there has been a short term impact as new graduates must wait for older lawyers to retire, over the longer term it is predicted that there will be jobs as the older generation moves into retirement. To quote the most recent analysis of the Human Resources and Skills Development Canada's Labour Market Survey for 'Judges, Lawyers and Quebec Notaries':

Based on projections and considering that there was a shortage of labour in this occupation, the number of job seekers is expected to continue to be insufficient to fill the job openings over the 2011-2020 period. The shortage of workers will, however, be small. The main reason for labour market pressure in this occupation is the increased need for new workers to replace those who are retiring. The workers in this occupation are, on average, much older than in other occupations, but they retire much later so the retirement rate is similar to the average for all occupations. However, expansion demand will be much weaker than over the 2001-2010 period. During that period, this occupation, like the majority of occupations in professional business services, was supported by the strong performance of the national economy. However, economic growth in Canada will slow down slightly over the next few years, meaning that the demand for professional services will be lower than over the previous ten years. Growth in this sector will still be among the strongest for all the industries.⁷

This analysis is reinforced by FLSC figures for 2010, which show 45,161 members with over 20 years of experience, compared to 20,276 members in the zero to five year category.⁸

TREND — Depending on when the members of the former category decide to retire, there should be improved opportunities for younger lawyers, primarily in replacing older members leaving practice.

4. ADMISSIONS

Admissions are the clearest indication of whether the profession is on track to renew itself. Nationally, there were 2838 new members in 2008, rising by 8% in 2005 to 3062 and by 16% in 2010 to 3553. By comparison, the overall population of practising lawyers increased by a little over 5% for each of the periods in question.

TREND — Given the discussion in Job Market above, once the senior cohort retires there should be sufficient room to accommodate the present rate of admissions.

6 Human Resources and Skills Development Canada, "Judges, Lawyers and Quebec Notaries." *Canadian Occupational Projection Summaries*, online: Human Resources and Skills Development Canada <<http://www.hrsdc.gc.ca>>.

7 *Ibid.*

8 FLSC, *supra* note 1.

5. URBAN V. RURAL

Commentators and regulators have raised concerns about law practice being increasingly centred in large cities. As small town lawyers are about to retire, fewer young lawyers are choosing to move outside urban centres to take over these rural practices⁹. Most of the discussion on this issue cites anecdotal stories or provincial trends, and there are variations among provinces. The Law Society of Alberta surveyed its members in 2010 and found that 88% of lawyers surveyed practised in Calgary or Edmonton.¹⁰ The Law Society of Saskatchewan reported that in 2011, 28.6% of their lawyers practised outside major urban centres¹¹, and according to The Law Society of Manitoba, 13.7% of practising members worked outside Winnipeg.¹²

There are some recent national statistics on the proportion of relatively new lawyers practicing in major centres and those who practice elsewhere. Nationally, lawyers with zero to five years of experience report that they practise in the following environments:

Urban	82.6%
Suburban	8.7%
Rural	8.7% ¹³

Statistics Canada reports that in 2006,¹⁴ 80% of Canada's population lived in urban settings. Note however that in that census, an urban population was defined as over 1000 persons, which limits the usefulness of this specific comparison of lawyer density.

TREND — Although it is difficult to match law society figures with census figures, it is likely that the proportion of lawyers choosing to practice outside major centres is not consistent with changes in the general population.

9 Michael Litchfield, "Demographics and Justice in Rural Canada." *Slaw*. (17 June 2010), online: www.slw.ca.

10 Law Society of Alberta, "Profile of Sole Practitioners and Small Firms Emerge from Survey." *The Advisory*: Vol. 9 No. 1, online: Law Society of Alberta, <www.lawsociety.ab.ca>.

11 Law Society of Saskatchewan, *2010 Annual Report*, online: Law Society of Saskatchewan <www.lawsociety.sk.ca>.

12 Law Society of Manitoba, *Annual Report 2012*, online: Law Society of Manitoba <www.lawsociety.mb.ca>.

13 National Admissions Standards Project, *National Entry to Practice Competency Profile Validation Survey Report*, online: Federation of Law Societies of Canada <www.flsc.ca>.

14 Statistics - Census, *supra* note 2. 2006 is the last year for which full Statistics Canada census data is currently available.

6. MOBILITY

Are lawyers becoming increasingly mobile in a global society? Canadian law societies opened up the transfer process between provinces with the National Mobility Agreement in 2002, and over time the data supports an acceleration of mobility between provinces. There was a 16% increase in admissions by transfer between 2000 and 2005, and between 2005 and 2010 there was a much larger increase of 87% in transfer applications. Anecdotally, the National Mobility Agreement's impact is likely even more significant for temporary mobility. Lawyers now can practise in any province in Canada for up to 100 days a year, but since no formal check-in with regulators is required, there is no hard data available on temporary mobility.

International mobility is growing exponentially according to the FLSC's National Committee on Accreditation. The volume of applications to the NCA grew 97% between 2000 and 2005, and a further 129% by 2010.¹⁵ The NCA issued 66% more Certificates of Qualification for bar admission program entry over 2000 and 2005, and the volume of Certificates exploded a further 256% by 2010.¹⁶

TREND — Inter-provincial (both permanent and temporary) and international mobility has been increasing significantly, especially since the implementation of the law societies' National Mobility Agreement.

7. PRACTICE ENVIRONMENT

Data from FLSC annual reports offers limited insights on practice environment, as the only figures consistently reported though to 2010 are the number of firms, not the individuals practising within them. Further, there is little data available on non-private practice environments. The most recent demographic data on this issue comes from the FLSC survey of lawyers with zero to five years' experience, which showed new lawyers practising in:¹⁷

Government	19%
In-House	10.8%
Private Practice	63.6%
Other	6.5%

Overall, private firms seem to remain the primary environment for legal practice. The Law Society of Saskatchewan reported in 2011 that 63.6% of its practitioners were in private practice.¹⁸

15 National Committee on Accreditation, *NCA Assessments Received 1999-2011*. Federation of Law Societies of Canada.

16 National Committee on Accreditation, *Certificates of Qualification final 1999-2011*. Federation of Law Societies of Canada.

17 National Admissions Standards Project, *supra* note 13.

18 Law Society of Saskatchewan, *supra* note 11.

This demographic was virtually the same in the FLSC survey of lawyers with zero to five years' experience¹⁹, which also shows that 19% of new lawyers worked for government and nearly 11% were in-house counsel.

It may be useful to compare these findings with figures from the United States. The American Bar Association reported that in 2005, 75% of lawyers were in private practice, and government and private industry made up 8% each of the total.²⁰

TREND — More study is needed nationally to determine the distribution of lawyers among practice environments. Based on the data currently available, about two thirds of Canadian lawyers are in private practice.

8. FIRM SIZE

Data on the number of lawyers who practice on their own or in small firms raises an interesting trend. The proportion of solo practitioners and those in firms of up to ten lawyers have risen from just under 20% in 2000 to over 30% in 2010. It seems that even in the age of the mega-firm, more and more lawyers are setting up on their own or working in relatively small shops. Further analysis shows that the proportion of solo practitioners has remained about constant — most of the growth is in small firm settings.

In contrast, according to the American Bar Association, 49% of US lawyers were sole practitioners in 2005, and 20% practised in firms of two to ten lawyers.²¹

TREND — There is significant demographic growth in small firm practice.

9. PRACTICE FOCUS

The FLSC annual summaries do not include information on practice focus of lawyers. They have, however, reported recent data on lawyers in the first five years of practice. Those new lawyers report that their primary areas of practice are:

Aboriginal	2.4%
ADR / Mediation	0.9%
Administrative	8.4%
Bankruptcy	1.3%
Civil Litigation	20.5%
Criminal	12.6%
Employment	5.1%

19 National Admissions Standards Project, *supra* note 13.

20 American Bar Association, *Lawyer Demographics*, online: <www.americanbar.org>. [ABA Demographics].

21 *Ibid.*

Environmental	1.1%
Family	10.0%
Immigration	1.8%
Intellectual Property	2.2%
Legal Policy	1.5%
Real Estate	7.8%
Securities	2.7%
Tax	2.9%
Wills Estates	4.1%
Obligations (Quebec)	1.6% ²²

Most new lawyers are apparently practising civil litigation, family law and criminal law. Query whether this aligns with predictions about the future of practice, and whether legal education is positioned to support these priorities. Query further what is happening to solicitor's work among young lawyers?

There is some practice focus data available from provinces, for example the Nova Scotia Barristers' Society publishes a statistical snapshot each year. The 2012 report shows practice focus as a percentage of time, and the primary subjects were:

Civil litigation	15.8%
Criminal	14.3%
Real Estate	12.5%
Corporate	11.6%
"Other"	11.4%
Family Law	9.8%
All Others	24.6% ²³

With the exception of real estate, the Nova Scotia list is remarkably consistent with the national data on new lawyers.

TREND — The data available indicates that the highest proportion of lawyers report that they practice litigation.

22 National Admissions Standards Project, *supra* note 13.

23 Nova Scotia Barristers' Society, *Statistical Snapshot 2012*, online: Nova Scotia Barristers' Society <<http://nsbs.or>

10. FEES

Available data shows that the hourly rate charged by lawyers increased significantly over the last few years. An analysis of figures included in *Canadian Lawyer's* annual compensation surveys shows that national average fees for newly-called lawyers went up 42.3% between 2005 and 2010, and a further 23.8% between 2010 and 2012. For lawyers with 10 years of experience, the increase for the same periods was 34.9% and 28.7% respectively.²⁴ In contrast, the national Canadian Consumer Price Index rose 12% between 2005 and 2010, and 8.9% between 2010 and 2012²⁵.

The reported national average fees for some specific services also show rates of increase in excess of the relevant Consumer Price Index:

- Uncontested divorce
- Simple will
- Real estate purchase
- Small business incorporation

The highest rate of increase within this list was for uncontested divorces and simple wills.²⁶

TREND — On the available data, lawyer's fees have been increasing faster than the rate of inflation for other consumer goods and services.

24 Kirsten McMahon, "The Going Rate 2005" *Canadian Lawyer* Sept. 2005 25; Robert Todd, "The Going Rate 2010" *Canadian Lawyer* June 2010 36; Robert Todd, "The Going Rate 2012" *Canadian Lawyer* June 2012. 32 [McMahon, Todd].

25 Statistics Canada. "Consumer Price Index, historical summary", online: Statistics Canada, <<http://www.statcan.gc.ca>>.

26 McMahon, Todd, *supra* note 24.

11. COMPENSATION

Canadian Lawyer has published an annual survey on associate compensation since 2005²⁷, but it is difficult to compare earlier data as median compensation rates were not included in their 2005 article. Median compensation in 2010 for recently-called lawyers in private practice was \$62,000 and in 2012 was reported as \$72,500 — an increase of just under 17%. During the same period, newly-called corporate counsel received \$85,000, going down to \$77,500 in 2012. No explanation is apparent for this anomaly, which could be due to sample size.

The *Canadian Lawyer* articles go on to report that compensation for private practice calls eight years and above went from \$100,000 to \$250,000. At the same time similarly-experienced corporate counsel were compensated \$140,000, increasing to \$167,500 per year. Increases in both categories were well over the Consumer Price Index for those years.

TREND — On the data available, lawyer compensation in private and in-house practice is generally increasing at a higher rate than the Consumer Price Index. It would be helpful to gather more comprehensive data to determine if this is a clear trend across the profession.

12. GENDER

FLSC's annual statistical reports show that, among the total population of practising lawyers, females made up 33% in 2000 and 37% in 2010. On the surface, not much has changed since the 1994 Bertha Wilson Report on Equality.

However, closer analysis of data sub-categories reveals more encouraging trends. Female representation is strongest among new admissions (54% female in 2000 and 2010) and lawyers with zero to ten years of experience (48.6% in 2000 and 54.5 % in 2010). For lawyers who chose non-practising status in 2000, the proportion of female non-practising lawyers was just over 37% and in 2010 the proportion increased to nearly 41% female lawyers. A similar trend is reflected among practising, insurance exempt lawyers (commonly corporate or government counsel). In 2000, 46% of insurance-exempt lawyers were female, increasing in 2012 to just over 50%.

Overall, then, the relatively small increase in female members generally is attributable primarily to the significant proportion of males in the very large 20+ years of practice category. This is what skews the overall gender demographics.

By comparison, the American Bar Association reports that in 2005, 30% of lawyers were female.²⁸ The ABA data is not broken down further by practice experience or practice environment, so it is difficult to draw more detailed comparisons with practice in Canada.

TREND — Gains are being made towards gender equality, but primarily for newer lawyers and those who choose non-traditional practice environments.

27 Kirsten McMahon, "The 2005 *Canadian Lawyer* Compensation Survey" *Canadian Lawyer* June 2005 26; Andi Balla, "The 2010 *Canadian Lawyer* Compensation Survey" *Canadian Lawyer* Sept. 2010 35; Heather Gardiner, "The 2012 *Canadian Lawyer* Compensation Survey" *Canadian Lawyer* July 2012 35.

28 ABA Demographics, *supra* note 20.

13. DIVERSITY

The American Bar Association reports that in 2010, 88.1% of lawyers were “white, not Hispanic”.²⁹ This means just 11.9% of legal practitioners fall outside of that category.

There are currently no national statistics in Canada related to diversity or the proportion of equity-seeking groups. However, the Law Society of Upper Canada, Law Society of British Columbia and the Nova Scotia Barristers’ Society have reported data on diversity in recent provincial reports. The Ontario 2010 Statistical Snapshot showed that 17% of lawyer respondents to their survey were from racialized communities compared to 23% of the general population in Ontario.³⁰ Ontario recently paid particular attention to diversity issues in relation to a detailed examination of articling,³¹ and found “[i]n the Task Force’s view, however, the limitations of the available statistics leave the issues [of equality-seeking groups] somewhat unclear and undefined”.³²

The annual reports of the Nova Scotia Barristers’ Society include a Statistical Snapshot of its members. The 2012 summary³³ showed that, although 26% chose not to answer the relevant question on the annual report form, 10.8% self-identified as belonging to equality-seeking groups. 61.6% self-identified as ‘None of the above’.

The Law Society of British Columbia issued a comprehensive report on diversity in the legal profession in 2012.³⁴ That report finds that in BC in 2006, 14.6% of lawyers were of a visible minority, compared to 25.3% of the provincial population. At the same time, 32.6% of visible minority B.C. residents were university graduates with an occupation.

TREND — According to the localized statistics available, progress on increasing diversity in the legal profession is not consistent with the make-up of the general population. An effort should be made to collect relevant data on a national basis.

29 *Ibid.*

30 Law Society of Upper Canada, *Statistical Snapshot of Lawyers in Ontario 2010*, online: Law Society of Upper Canada, <www.lsuc.ca>.

31 Law Society of Upper Canada, *Articling Task Force, Final Report: Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*, 2012 online: Law Society of Upper Canada <www.lsuc.ca>.

32 *Ibid.*, at 37.

33 NSBS, *supra* note 23.

34 Law Society of British Columbia, *Towards a More Representative Legal Profession: Better Practice, Better Workplaces, Better Results*, 2012 online: Law Society of British Columbia <www.lawsociety.bc.ca>.

CONCLUSION

So where does this leave us? We know a little about the characteristics, admissions, prospects and mobility of the practising bar in Canada. We have some data about where and what lawyers practise and how they organize themselves. Finally, we are starting to gain some insight into the profession's progress on gender and diversity issues.

Although existing Canadian data is limited, it is clear that change is happening. In some areas it is accelerating faster than many might have imagined. The question is, what can we do with these demographic insights? Further, how can we improve data collection to refine our understanding of the change that is upon us, and to meet the challenges of the future of legal practice in Canada?

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