

Barriers to the Profession: Inaction in Ontario, Canada and its Consequences

AVNER LEVIN*
ASHER ALKOBY*

Levin, A. and Alkoby, A., 2013. Barriers to the Profession: Inaction in Ontario, Canada and its Consequences. *Oñati Socio-legal Series* [online], 3 (3), 580-594. Available from: <http://ssrn.com/abstract=2283823>



Abstract

The province of Ontario, Canada, has not had a new law school in almost 40 years. Barriers limiting access to the profession have increased during this time due to a combination of factors discussed in this paper. Diversity within the legal profession has not improved, leading to the perception of a profession dominated by “old white males” whose services are increasingly unaffordable. The paper argues that barriers should be removed and that access to the profession should be greatly increased.

Key words

Ontario; legal profession; diversity; articling; barriers

Resumen

La provincia de Ontario, Canadá, no ha tenido una nueva facultad de derecho en casi 40 años. Las barreras que limitan el acceso a la profesión han aumentado durante este tiempo debido a una combinación de factores que se analizan en este artículo. La diversidad dentro de la abogacía no ha mejorado, lo que lleva a la percepción de una profesión dominada por “viejos hombres blancos”, cuyos servicios son cada vez más prohibitivos. El artículo defiende que se deben eliminar las barreras y que se debe aumentar el acceso a la profesión.

Palabras clave

Ontario; abogacía; diversidad; barreras

Article resulting from the paper presented at the workshop “Too Many Lawyers? Facts, Reasons, Consequences and Solutions” held in the International Institute for the Sociology of Law, Oñati, Spain, 19-20 April 2012, and coordinated by Eyal Katvan (College of Law and Business, Ramat Gan) , Carole Silver (Indiana University) and Neta Ziv (Tel Aviv University).

*Associate Professor and Chair, Law and Business Department, Ted Rogers School of Management, Ryerson University. 350 Victoria Street. Toronto, Ontario M5B 2K3. Canada. avner.levin@ryerson.ca

*Associate Dean, Ted Rogers School of Management, Ryerson University. Ryerson University, Ted Rogers School of Management. 350 Victoria Street. Toronto, Ontario M5B 2K3. Canada. aalkoby@ryerson.ca



Table of contents

1. Introduction.....	582
2. Ontario information.....	582
3. Factors.....	584
4. The implications for diversity.....	585
5. Possible action	587
6. Conclusion.....	589
Bibliography	591

1. Introduction

Ontario, the largest English province in Canada, has not had a new law school open since 1969, when the University of Windsor started its law program. By the time a new law school at Lakehead University in northern Ontario opens its doors in 2013, forty four years will have passed.

During this time the population of Ontario has increased by a third, and it therefore comes as quite a surprise, especially given the international context, to realize that lawyers in Ontario are concerned about the “flooding of the profession” and about an “articling crisis” (Gray 2011, Todd 2011). The frequent response given by the regulators of the legal profession to the claim that Ontario needs more lawyers is that there may not be enough articling positions for graduating students (Lunau 2009). The attempts by the Law Society of Upper Canada (the regulator) to address the articling placement shortage during 2010-2012, we argue, could provide no more than a limited response to the fundamental problems of accessibility and affordability of legal services in the province.

This paper follows the structure set out by the workshop *Too Many Lawyers? Facts, Reasons, Consequences and Solutions* (International Institute for the Sociology of Law, Oñati, Spain, April 19-20, 2012) where it was first presented. Information and figures on the legal profession in Ontario, as well as some recent developments in the debate on barriers to entry into the profession, are discussed first. The second part discusses the factors that contribute to the problems the legal profession in Ontario faces, followed by a discussion of the lack of diversity caused by these factors. We conclude with an overview of some suggested actions to rectify the long period of inaction in Ontario. We submit that in contrast to the lawyerly conventional wisdom in the province, there are too few lawyers in Ontario. The modest revision to the articling process being considered by the provincial regulator would largely fail to address the more fundamental challenges the legal profession faces: affordability of legal education, accessibility of legal services, and diversity within the legal profession.

2. Ontario information

There are six law schools currently operating in Ontario. In 2011 they graduated 1330 students (Law Society of Upper Canada 2011, p. 10). 220 students are admitted on average to a law school in Ontario each year, with actual year sizes ranging from 160 to 300 among schools. The number of practicing lawyers in Ontario is just under 32,000 in 2011 (Law Society of Upper Canada 2011, p. 10). For a population of just under 13 million that is roughly a ratio of 1 lawyer for every 402 Ontarians (Statistics Canada 2011). This ratio puts Ontario above some jurisdictions, such as South Africa (McQuoid-Mason 2013), at par with other jurisdictions, such as the United Kingdom, New Zealand (K. Economides, personal communication, Oñati International Institute for the Sociology of Law, 2012) and France, but well below the United States with its ratio of 1 lawyer per 260 residents (Leichter 2011), and Israel with its ratio of 1 lawyer to roughly 170 residents (BdiCoface 2011, Katvan 2013). Put differently, twenty thousand lawyers need to join the profession in Ontario to bring it to American per-capita levels.¹

Comparatively, therefore, it is difficult to argue that Ontario is “flooded” by lawyers. The perception of “flooding” appears to be linked to the sense that Ontario is undergoing an “articling crisis” because an increasing number of students are unable to secure articling placements upon graduation. But a closer look at the

¹A recent study claims that even in the US, there are too few lawyers from an economic efficiency perspective, and that barriers to entry into the profession set by the American Bar Association keep the number of lawyers artificially low. Deregulating the profession, the authors argue, would make legal services more accessible and more affordable. \$64 Billion of the \$171 billion spent on lawyers every year in the US, they claim, is a premium produced by “market distortions”(Winston, Crandall and Maheshri 2011, see also Green 2013, Pearce and Nassery 2012)

facts reveals a more complicated picture. Articling is mandatory in Ontario in order to be licensed and practice law. While informally applicants interview with law firms in a process that starts as early as first-year law school, it is the Law Society of Upper Canada (LSUC) that formally places applicants in articling positions. More than a third of the current articling placements in Ontario are with large law firms (namely a firm with more than 50 lawyers) and a quarter are with medium-sized firms – 11-50 lawyers (Law Society of Upper Canada 2011, Appendix 4, 5). The smaller law firms place roughly a fifth of the successful applicants (Law Society of Upper Canada 2011, Appendix 4, 5). Corporate (in-house) legal departments place only 1%, while the public sector and judiciary together place 16% (Law Society of Upper Canada 2011, Appendix 4, 5).

As of 2009 there were just over 8200 law firms (of all sizes) practicing in the Province of Ontario. In response to a survey conducted by LSUC, more than 7000 replied that they do not place articling students within their firms (Law Society of Upper Canada 2011, Appendix 4, 7). Taking into consideration the number of firms that replied to the survey, the percentage of firms that do not take in articling students is 91%.

Although LSUC does not track articling positions,² it does track the employment of lawyers at the time they are called to the Bar. In 2010 55.5% of the candidates called to the bar had secured employment, a decrease from all-time highs of around 80% in 2001 (Law Society of Upper Canada 2011, Appendix 4, 9), and lending to the perception that the profession is flooded, although in 2011 the percentage increased to 69% which is a bit higher than the traditional Ontario portion of two-thirds (Law Society of Upper Canada 2011, Appendix 5, 10).

In order to ascertain the diversity of the Articling cohort applicants are asked by LSUC to voluntarily disclose their membership in one or more of the following groups: Aboriginal, Francophone, GLBT, Disabilities, and Visible Minorities. The latter is an umbrella designation, also referred to as Racialized Communities, which LSUC further breaks down into Arab, Black (African-Canadian, African, Caribbean), Latin American, Hispanic, Chinese, East-Asian (Japanese, Korean), South Asian (Indo-Canadian, Indian), South-East Asian (Vietnamese, Cambodian, Thai, Filipino) and West Asian (Iranian, Afghan). Slightly more than a quarter of the 2010/2011 articling cohort self-identified as belonging to one (or more) of the groups above (Law Society of Upper Canada 2011, Appendix 5, 4). Sixteen percent, just under two-thirds of the entire equity-seeking group, identified as visible minorities (Law Society of Upper Canada 2011, Appendix 5, 4).

During the 2010/2011 placement year (i.e., from July 2010 until June 2011) LSUC tracked, on a monthly basis, the number of applicants without articling positions. The ratio peaked during the winter of 2011, with 1762 looking for articling positions, and 223 not finding one, a portion of 12.6% (Law Society of Upper Canada 2011, Appendix 5, 6). This portion a dramatic increase from 5.8% in 2007/2008 (Law Society of Upper Canada 2011, Appendix 4, 4). By the end of the year the portion had dropped slightly to 10% (Law Society of Upper Canada 2011, Appendix 5, 6). Amongst applicants that did not self-identify (meaning they could have been members of one of the groups, but chose not to disclose that)³ the portion at the end of the year was lower, and stood at 7.6% (Law Society of Upper Canada 2011, Appendix 5, 6). Of those that did identify, 13.6% of the members of the LGBT group could not find an articling position, and almost 15% of the visible minority group could not find an articling position as well (Law Society of Upper Canada 2011, Appendix 5, 6).

² The Law Society of British Columbia, in contrast, is able to better track articling positions because candidates must seek a position before entering the admissions stream (Todd 2011).

³ Anecdotal evidence, some of which is discussed below, suggests that many young aspiring professionals prefer to form their identity around their knowledge and skills rather than their membership in one of the aforementioned groups.

There is no information on the career paths of applicants that fail to secure positions in a given year since LSUC does not track applicants continuously. We could speculate that some move into non-legal careers, and that some may continue to seek articling in years to come. Finally, grades are not an indicator of placement, and the distribution of unsuccessful articling applicants roughly correlates to the normal grade distribution ("bell curve") (Law Society of Upper Canada 2011, Appendix 7). That infers that non-merit considerations are at play when articling decisions are made.

To conclude, although the legal services market in Ontario does not appear to be saturated when compared to other jurisdictions, the facts suggest that there is a growing number of graduates who are unable to complete the mandatory articling requirement. Members of equity-seeking groups, the numbers further suggest, are more unlikely to secure an articling position than the rest of the cohort even when their academic performance is superior. Further, a decline is also observed in the number of new lawyers that are able to find employment after completing the licensing requirements. The next section discusses the possible reasons for these developments.

3. Factors

Differential access to legal education remains the primary gatekeeper to the profession. Law is not an undergraduate program in Ontario. Aspiring lawyers need to complete at least two years of post-secondary education before they are eligible to apply to law school (Federation of Law Societies of Canada 2011, p. 48). Typically, due to the limited size of law school enrolment numbers, almost all applicants complete a four-year undergraduate degree. Ontarians, as a result, view the study of law as the study of a profession, and legal education is perceived as necessarily leading to the practice of law. In other jurisdictions, where law is an undergraduate degree, students may choose to study law out of academic interest, and may contemplate and choose a different occupation after completing their legal studies.⁴ In Ontario, as is the case in several other North American jurisdictions (Silver 2013), even the pursuit of a post-graduate law degree, such as the LL.M., is often attempted by internationally-trained legal professionals as a gateway into the Canadian practice of law, despite the clear requirements for a J.D. or LL.B. set out by the Federation of Law Societies of Canada (Federation of Law Societies of Canada 2011).⁵

Since articling is mandatory, and since all law school graduates are assumed by default to want to enter the profession, lawyers consider it a failure of the system and a crisis when graduates fail to find a position. In other jurisdictions there are alternatives to articling, or no articling requirement at all, leading to lessened concerns over the inability of graduates to find articling positions.

The increase in the cost of tuition is another barrier to entry into the profession. Due to several reasons, not least of which was the successful lobbying by professors of law, tuition cost has increased significantly in Ontario since it was deregulated in 1997-1998. In that last academic year of government oversight, tuition stood at \$3,808 at the University of Toronto's Faculty of Law (King, Warren and Miklas 2004, p. 39). For 2011-2012, students paid \$25,389 at the same institution. That is an increase of 567%. The cost of living in Toronto increased by roughly 30% over the same period of time (Statistics Canada 2012). Despite the availability of scholarships and loans, the high cost of tuition corrals and

⁴ It should be noted that the instruction of law as an undergraduate degree has been criticized as well, and that several jurisdictions, such as Japan and Spain, are in the process of transforming law into a post-secondary degree (Carballo Piñero 2012, Chan 2012).

⁵ The attitude of American law societies towards such international newcomers, described by Silver eloquently as a form of "colonial hangover", is an accurate portrayal of the traditional Canadian attitude as well (Silver 2013).

discourages students from learning law except for the purpose of working in the profession (presumably so that they may at least pay off their student loans).

The high cost of tuition has also contributed to the increase in the annual salaries of articling students. Salaries for the ten-month articling period at the big downtown Toronto firms (in which the bulk of current articling positions are found) were roughly \$75,000 in 2011.⁶ This has made positions with smaller law firms, who are often unable to afford similar compensation levels, less attractive to students, and has led LSUC to contemplate capping articling salaries at \$45,000 (Law Society of Upper Canada 2011, p. 45). Reducing the cost of articling positions, it was suggested, could also incentivize big firms to offer more articling positions. Meanwhile, it is mostly large firms that can afford to train and pay students-at-law, and even then, firms that employ hundreds of lawyers hire only two dozen or so students each year.

All these reasons create, in combination, a funnel. Almost no one in Ontario studies law out of societal or academic interest. Students already have an undergraduate degree, and undertake significant debt to enter law school as a result of the deregulation of tuition fees in professional programs. These students expect, quite understandably, to enter the legal profession. While law schools have been graduating more students, law firms have been eliminating articling positions, and concentrating them within the already-competitive big downtown firms. The result, within the Ontario context, is an 'articling crisis'.⁷

A combination of factors therefore appears to have contributed to the articling and employment shortages in the Ontario legal profession. The structure of the legal education system, the mandatory articling requirement which is difficult for many students to secure in the current market conditions, and the cost of tuition in many universities offering a law degree have all created an entry funnel into the profession and have made alternative career choices to legal practice difficult to pursue.

4. The implications for diversity

A major consequence of the way in which the profession is currently accessed has been the experience of visible minority and Aboriginal lawyers. There is a significant variation in the numbers of visible minorities and Aboriginal lawyers relative to the size of their communities. In 2006 there was one lawyer in Ontario for every 377 people.⁸ In comparison, there were, for example, one Black lawyer for every 750 members of the Black community, one for every 627 South Asians, one for every 755 members of the Chinese community, and one for every 749 Aboriginal persons. These numbers were of course affected, and continue to be affected, by the number of university graduates in the respective groups (Orenstein 2010, p. 9). The numbers suggest that the legal profession is yet to mirror Ontario's changing demographics.

Further to that, equity-seeking groups encounter barriers not only in entering the profession, but within it as well. Women lawyers, and especially visible minority women, earn significantly less than their white counterparts (Orenstein 2010, pp. 26-29).⁹ Women and visible minority lawyers are less likely to be partners in law firms and more likely to work in government. A 2011 study examined the

⁶ At Gowlings, one of the big firms, salary was \$75,400. See <http://www.iwantgowlings.com/ArticlingProgram/keyFacts.asp?id=3>

⁷ Although Alice Woolley argues (albeit in passing) that "after admittance to law school the barriers to entering the Canadian profession are relatively insignificant" (Woolley 2008, p. 114). For the reasons discussed in this paper, we disagree.

⁸ As noted above the ratio for 2011 was 1 lawyer for 402 students. The 2006 ratio is for comparative purposes with the VM groups.

⁹ The difference in the median earnings of racialized and white lawyers, for example, is \$4,000 per year for lawyers between 25 and 29, and it grows to more than \$40,000 by ages 40 to 44.

representation in leadership among judges, governing bodies and law schools, partners in law firms, and Crown and deputy Crown attorneys in Ontario and the Greater Toronto Area (GTA). It was found that overall, only 6.8% of the legal practitioners in leadership positions were visible minorities. Representation of partners in law firms varied substantially between firms. Some firms had almost 11% visible minorities in partner positions while other firms had as low as 1% (Cukier *et al.* 2011). Diversity on the bench is even lower (Makin 2012, Cukier *et al.* 2011), and the impact of the lack of diversity in legal leadership positions on the diversity of the lower levels of the professional pyramid cannot be over-estimated (R4 2012, 9-10).¹⁰

The resulting call to diversify the legal profession, and to promote the advancement of individuals belonging to equity-seeking groups to leadership positions within the profession, can rest on different rationales. The “business case” for diversity has gained some advocates in recent years, although the research supporting is not conclusive (Cukier *et al.* 2011, Wilson 2011). Of more interest to the legal profession from the perspective of the regulating body, however, is the argument that creating more inclusive and equitable legal workforce advances the cause of justice and the rule of law.

As part of a separate project (Alkoby and Levin 2012), we interviewed influential figures in the local legal community who started an initiative they called Legal Leaders for Diversity and Inclusion (LLD 2012), to promote diversity in the legal profession.¹¹ Several reasons were raised by participants as possible explanations for the difficulty of diversity to gain traction in the profession. First, it is noteworthy that some participants did not acknowledge that the articling crisis and diversity in the profession are causally connected, but rather viewed these as distinct issues (R3 2012, p. 9, R6 2012, p. 6, R7 2012, p. 12, R9 2012, p. 13, R10 2012, p. 7).¹² Second, participants considered the problem of the diversity of the articling class as one part of the larger problem of diversity in the profession (R1 2012, p. 9, R3 2012, p. 13, R7 2012, p. 18). This larger problem was seen, in turn, as originating in decisions made by equity-seeking individuals during their secondary education, in their choice of undergraduate programs, and in their elimination of law as a career option (R3 2012, p. 13, R4 2012, p. 7). Third, participants observed (anecdotally) that self-identifying students were not interested in pursuing the corporate commercial route and therefore in the articling positions made available by the big Bay Street firms (R3 2012, p. 6, R6 2012, p. 6, R9 2012, p. 14). This, in turn, meant that they would be competing for a much smaller pool of positions that focused on areas of practice in which students felt they could give back to their communities, such as human rights law, criminal law and immigration law (R3 2012, p. 7, R4 2012, p. 13, R9 2012, p. 14).¹³ Fourth, participants observed (anecdotally again) that students interested in mainstream corporate law careers in the big downtown firms preferred not to form their professional identity around their sexual orientation or racialized community (R1 2012, p. 5). These students wanted to be judged on merit, and did not self-identify to LSUC when seeking placements (R9 2012, p. 5, R10 2012, p. 2). Fifth, while some participants believe that cultural affinities still play a significant, if unconscious role, in articling offers (R4 2012, p. 7, R6 2012, p. 6, R8 2012, p. 3) others do not. According to those who do, the phenomenon of “like likes like”, i.e., that members of a certain community identify and relate to each other more strongly than they do to

¹⁰ Respondent R4 (see *infra* note 11) commented it is common practice to match bar to bench routinely in terms of gender, ethnicity etc.

¹¹ Respondents were coded for confidentiality purposes and are cited below by their code and transcription document page number. A list of participants and all transcriptions are on file with the authors and are available upon request (subject to the approval of any such request by the university's research ethics board).

¹² But see (R1 2012, p. 8) which created a new articling position designated for equity-seeking groups.

¹³ In some jurisdictions, such as South Africa, “access to justice” is synonymous with access to criminal legal representation (McQuoid-Mason 2013, pp. 566-567).

members of other communities, plays a significant role within the legal profession where the dominant community is still that of older white males (R2 2012, p. 16, R4 2012, p. 8).

If the anecdotal observation of participants, that self-identifying students are less interested in placements with large law firms is correct, then the difficulty of these students to find a placement is related to the fact that the smaller law firms (10 lawyers and under) place only 20% of the articling cohort for the year. Legal clinic and public sector placements (not including clerkships) amount to only 10% of placements overall. In 2008, 1171 lawyers in Ontario were registered principals (out of approximately 31,000 lawyers). This is a 4% participation rate of the profession in the training of new lawyers (Licensing and Accreditation Task Force 2008, 14). The current structure of the articling program and its requirements, coupled with the interests of self-identifying students, leads therefore to a higher percentage of unsuccessful self-identifying students. Furthermore, if the inability of 10% of articling-seeking students to find a position is indeed a crisis, then the inability of 15% of the visible-minority group to find a position should be viewed as a dire crisis. Restated (somewhat sensationally) this fact means that the chances of a student to secure an articling position are reduced by 50% if the student self-identifies as a visible minority. That is indeed, quite a problem, and articling in this sense acts as a double bottle-neck in Ontario. It prevents entry to the profession as a whole, and it causes more difficulties for self-identifying applicants specifically.

As a result, the large law firms, that are the popular target for seekers of diversity in the legal profession, have an articling class that is less diverse than the corresponding law school class. The smaller law firms are limited in their current ability to offer articling placements and a meaningful alternative to the Bay Street experience, as are the legal clinics and the public sector. For the general population seeking affordable legal representation on non-corporate-commercial issues such as family law, immigration law, criminal law, small claims and others, the outcome is increasingly difficult. Half of the respondents to a recent survey assessing civic legal needs in Ontario (discussed below) stated that they did not think they could afford a lawyer or qualify for legal aid (Ontario Civil Legal Needs Project 2010, p. 40).

5. Possible action

There are many possible solutions to Ontario's current 'crisis' in the legal profession. Of course, they depend on a shared understanding and definition of the crisis in question. For example, is the emergence of a thriving paralegal profession in Ontario a solution? Following several years of political debate, reminiscent of the struggles around defining the legal profession in other jurisdictions such as Israel (Ziv 2013), the Ontario government decided to have paralegals regulated and licensed by LSUC, and to allow them to provide their services in many of the areas identified above, such as small claims and criminal law, but at a significantly lower cost. There are roughly 3500 paralegals in Ontario, with about 800 entering the profession every year (Law Society of Upper Canada 2010, p. 16). Notably, in order to work as paralegals candidates must pass a licensing exam, but there is no articling post-graduate program. Instead, students are placed for 120 hours in a "legal services environment" as part of their college or university program (Law Society of Upper Canada 2010, p. 3). Whether any law school graduates that fail to secure articling positions end up working as paralegals is unknown.

To those that perceive the crisis to be the inability of all articling applicants in any given year to secure placements, the solution is to increase the number of articling positions available, or to change the structure and requirements of the articling program. As mentioned above, LSUC is in the midst of consultations about such options (Law Society of Upper Canada 2011).

Among the options considered in the LSUC Consultation Report are the elimination of articling altogether (unlikely, as LSUC reaffirmed the need for articling in 2010);

the introduction of a practical legal training course as part of law school or after graduation, similar to the practice in Australia and South Africa (McQuoid-Mason 2013, p. 565, Thornton 2012); and a hard salary cap on articling positions of \$45,000 (Law Society of Upper Canada 2011, pp. iv-v). These discussions are framed as an attempt to address the issue of articling placements shortage in keeping with the principles of competence (how to ensure that licensees receive proper transitional training) and fairness (how to ensure that licensees receive training that is transparent, objective, impartial and fair). The consideration of access to justice and how to improve it is not central to the debate, although it is the Society's principal duty under the governing legislation.

The Law Society Act states that the Society's duties are "to maintain and advance the cause of justice and the rule of law" and "to act so as to facilitate access to justice for the people of Ontario," (Government of Ontario 1990, sections 4.2.1, 4.2.2). The function of ensuring competence "should be proportionate to the significance of the regulatory objectives sought to be realized" (Government of Ontario 1990, section 4.2.5). Clearly, if the quality of legal services to Ontarians is maintained (by ensuring that licensees are competent), an important public interest is served. However, there are many, albeit perhaps unpopular (within the profession), ways to maintain quality, such as, for example, re-certification (Green 2012, pp. 201-203). Care must be taken that maintaining quality does not become a proxy for gate-keeping the profession, aggrandizing legal education, and aspiring for artificial professional homogeneity, as was the case until recently in jurisdictions such as England and Israel (Katvan 2013, Sherr, Thomson 2013).

Instead, if one recalls that Ontario is not really "flooded" with lawyers as some other jurisdictions are, easing the current restrictions on entry to the profession could, in and of itself, improve the affordability of legal services and facilitate access to justice in that sense, and in a deeper sense, for Ontarians.¹⁴ In other words, for those who see the articling bottle-neck as the symptom of more fundamental issues, other solutions to the legal profession's 'crisis' come to mind, such as reducing the cost of legal education, either by re-regulating the existing law programs or by allowing for new, cost-competitive law programs to be opened. Law students will thus be able to develop an interest in a variety of legal careers and careers outside the law, all of which would benefit society more than the current focus on white-shoe firms. Otherwise, opening up more articling spaces in the way LSUC proposes is not likely to result in more small firm or public interest placements, because debt-ridden graduates would continue to seek lucrative yet scarce corporate articling positions.¹⁵

For those seeking to improve diversity in the legal profession, all of the suggestions above contribute somewhat, yet still fail to get at the fundamental barriers to entry into the legal profession. Participants in our study on diversity enhancing strategies in the legal profession were divided as to what would be the most effective solution in this regard, since there were different views on where the 'real' problem exists. For some, the problem starts as early as high school, when potential lawyers belonging to equity-seeking groups elect not to pursue an undergraduate education, or to pursue undergraduate programs that lead to other careers. Such choices are indicative of broader societal issues and "solving" them may be beyond the reach of advocates for diversity in the legal profession. For other participants, the problem to be solved is the supposed disinclination of equity-seeking law students to pursue articling positions on Bay Street, and to limit themselves to less-lucrative careers. Since articling positions with smaller law firms are more difficult

¹⁴ Of course, the correlation between an increase in the number of lawyers, and a decrease in legal costs, is yet to be demonstrated and may be difficult to ascertain, for the reasons discussed by Woolley (2008).

¹⁵ Although interestingly, there appears to be little correlation between the practicality of legal education and the choice of practice. In Australia, the model of practical legal education roughly half of eligible lawyers choose not to enter private practice (Thornton 2012, p. 267).

to secure, students end up seeking a career that both pays less and is more difficult, ironically, to enter directly. However, it is difficult to tackle this problem, to the extent that it exists, without verifiable data.

Still others argue that diversity within the legal profession will be enhanced through the procurement of legal services. There are many diversity, equity and inclusion-related initiatives within the Canadian legal profession (Chow 2011). We discussed above one leading Canadian initiative (LLD 2012). Another, A Call to Action Canada (ACTAC 2009) is modelled after a popular American approach (A Call to Action), and advocates diversity as an explicit condition for procurement, and calls for corporations to commit to procure a portion of their legal services from women and minority-owned firms, through a website the organization has set up, as is becoming common practice in the United States (ACTAC 2012).

Other advocates of diversity, the various associations of equity-seeking groups, have focused on advancing and supporting their members as a way of fostering greater diversity in the legal profession.¹⁶ They have not targeted the articling process or the hiring practices of the big law firms, although some are formulating suggested solutions to the articling “crisis” that will address the equity gap (The Canadian Association of Black Lawyers 2012). We are in the midst of research to attempt and determine whether their work will have an effect on the diversity of the articling class in the short term.

Finally, and returning to the paralegal example with which we opened this section, there are of course solutions that involve the re-definition of the legal profession, or the re-definition of activities that are limited to members of the profession, or the narrow application of “unauthorized practice of law” (UPL) rules in a manner that would open up such activities to broad societal participation. Several jurisdictions have experimented, or are in the process of experimenting, with such reformulations, most notably England, in which non-lawyer investments in law-firms will now be permitted, and the giant retailer Tesco has announced its intention to open up such legal shops (Sherr, Thomson 2013, Menkel-Meadow 2013). In other jurisdictions, such as Israel, the classification of certain activities as legal and therefore the exclusive domain of the legal profession has been the subject of diligent litigation by the Israeli Law Society (Ziv 2013, Section 4). Of course, the struggle between lawyers and paralegals in Ontario could be perceived as a struggle over the definition of such activities and UPL, and comparisons with other professions, such as the medical profession, and their definition and regulation of ‘unauthorized’ activity, are instructive as well (Ziv 2013, Section 6). As Ziv points out, the wider the reach of UPL rules, the greater the pressure to enter the exalted ranks of those authorized to practice (Ziv 2013, p. 433).

6. Conclusion

The delivery of legal education in Ontario has not evolved since the late 1960s. A system has developed that serves the interest of the large corporate commercial firms, at the expense of the smaller firms and independent lawyers. A lucrative legal career on Bay Street (the popular nickname for the big Toronto firms) is today’s Holy Grail for law students, attracting the best and the brightest and removing other legal careers from consideration. This is a state of affairs that Bay Street has little incentive to change. Consequently, clients in areas of law traditionally served by the smaller firms have suffered increased legal costs, increased delays and limited competition over their business. While the factors that

¹⁶ See e.g., The South Asian Bar Association <http://www.sabatoronto.com/saba/>; The Hispanic Ontario Lawyers Association <http://www.h-ola.ca/>; The Iranian Canadian Lawyers Association <http://www.icla.ca/O10-Home/>; The Canadian Association of South Asian Lawyers <http://www.casal.ca/web/>; The Korean Canadian Lawyers Association <http://www.kclaw.ca/>; The Association of Chinese Canadian Lawyers of Ontario <http://www.fccpontario.com/ProfessionalSections/SectionLegal.asp>.

determine legal costs, and the market for legal services, are economically complex (Woolley 2008), it is clear that access to the legal system, let alone access to justice, has been increasingly out of the reach for the average Ontarian.

Ironically, the last decade has seen somewhat of an increase in the amount of law school graduates seeking to enter the profession, due to increased class sizes in several schools. However, this increase has not translated into better legal services due to the reasons enumerated above. An articling bottle-neck exists in Ontario, at the same time that law school graduates are being corralled toward legal careers. Consequently, when a graduate of a Canadian legal program is unable to find an articling position, this is viewed as a crisis, whereas in other jurisdictions, such as Japan, the expectation and tradition have been that quite a few graduates would not actively seek articling (Chan 2012).

The initiatives reviewed above are aimed at ensuring that legal professionals are more representatives of the public the profession serves, thereby advancing the cause of justice in society in a deep sense. Arguably, the body regulating the profession should take further action, beyond its review of the articling process, to facilitate access to justice however such access is defined. It could lobby the provincial government to increase legal aid, and assist not only Ontarians with a lower income through the extension of legal aid, but through a more meaningful effort to make legal services accessible to all. But perhaps more significantly, it should consider accrediting more universities who wish to open new faculties of law, and increase the number of lawyers in Ontario as a result. LSUC could also do more to ensure that the various diversity-promoting groups and initiatives are supported and endorsed, so that women, visible minorities, LGBT individuals, and other equity-seeking groups are represented in the legal profession and that they are more likely to be found in leadership positions.

LSUC has a legislated duty "to act so as to facilitate access to justice for the people of Ontario" (Government of Ontario 1990, section 4.2). For the lay-person "access to justice" means affordable legal representation. For the aspiring lawyer in Ontario, "access to justice" means the equal chance to study and practice law. The articling process, and the profession's entry barriers imposed by the law society, must reflect and serve this duty and how it is understood. Not only in the immediate and important sense of the civil needs and affordability of legal services and legal representation in Ontario (for there is growing consensus among legal professionals in Ontario that the difficulties that applicants face in securing articling impede Ontarians' access to justice and that the Law Society must take corrective action in order to comply with its legal obligations) but equally, and perhaps more importantly, in the deep sense of a just society. In a very fundamental way access to justice correlates with access to the profession not because more lawyers will bring down legal costs, but because in a just society there should be no discriminatory barriers and the legal profession (and indeed most professions) should reflect society as it is composed of diverse constituencies and groups.

The transformation of the legal profession in Israel, as discussed by Limor Zer-Gutman, Eyal Katvan and Neta Ziv, is instructive in this regard (Katvan 2013, Ziv 2013, Zer-Gutman 2013). The profession in Israel, following the lowering of barriers to entry in 1995, is on the whole more diverse and more representative of Israeli society, as opposed to the previous judicial-professional elite (Zer-Gutman 2013, Katvan 2013, pp. 417-420). Significantly, there are no data to suggest that opening up the profession has resulted in a lower quality of legal services or in an increase in unethical or unprofessional activity (Zer-Gutman 2013). These findings from Israel support the argument made by Russ Pearce and Sinna Nassery (Pearce and Nassery 2012). As they persuasively argue, there is societal virtue to be found in lowering the barriers that currently impede entry into the legal profession. A society in which legal education is readily available, and not the domain of a privileged few, is a society in which liberal democratic values flourish, in which

human rights are valued, and in which members of society are not alienated from the legal system on some prejudicial basis. It is a society in which access to justice is not conditional on access to legal education and to the legal profession. It is a society to which Ontario and Canada should aspire.

Bibliography

- ACTAC, 2009. *A Call to Action Canada*[online]. Available from: <http://www.acalltoactioncanada.com> [Accessed 22 July 2012].
- ACTAC, 2012. *Canadian Women and Minority Law Firms*. Available from: <http://www.cwmlf.ca/> [Accessed 22 July 2012].
- Alkoby, A., and Levin, A., 2012. Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach. *In: Law and Society Association, Annual Meeting. Sociological Conversations across a Sea of Islands*, June 5-8, Hawai'i.
- BdiCoface, 2011. *2011 Lawyers*[online]. Available from: http://www.bdicoface.co.il/Page_HEB/836/%D7%A2%D7%95%D7%A8%D7%9B%D7%99%20%D7%93%D7%99%D7%9F%202011 [Accessed 22 July 2012].
- Carballo Piñeiro, L., 2012. Legal Education in Spain: Challenges and Risks on Devising Access to the Legal Professions. *International Journal of the Legal Profession*, 19 (2-3), 339-355.
- Chan, K.-W., 2012. Setting the Limits: Who Controls the Size of the Legal Profession in Japan. *International Journal of the Legal Profession*, 19 (2-3), 321-337.
- Chow, J., 2011. A Call to Diversify the Legal Profession. *University of British Columbia Law Review*, 44 (1), 25-54.
- Cukier, W. *et al.*, 2011. *Diverse City Counts 3: A Snapshot of Diverse Leadership in the GTA* [online]. Toronto: Diversity Institute, Ryerson University. Available from: <http://diversecitytoronto.ca/wp-content/uploads/CountsReport3-full.pdf> [Accessed 21 June 2013].
- Ensminger, C.J., 2011. Accessing Justice: The Legal Profession's Role in Serving the Public's Diverse Legal Needs. *University of British Columbia Law Review*, 44(1), 71-89.
- Federation of Law Societies of Canada, 2011. *Common Law Degree Implementation Committee Final Report* [online]. Ottawa: Federation of Law Societies of Canada. Available from: <http://www.flsc.ca/documents/Implementation-Report-ECC-Aug-2011-R.pdf> [Accessed 21 June 2013].
- Government of Ontario, 1990. *Law Society Act. R.S.O. Vol. Chapter L.8* [online]. Available from: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l08_e.htm [Accessed 21 June 2013].
- Gray, J., 2011. Law Profession Faces Articling Crisis. *The Globe and Mail* [online], 1 Nov. Available from: <http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/law-profession-faces-an-articling-crisis/article4250405/> [Accessed 22 July 2012].
- Green, B.A., 2013. The flood of US lawyers: natural fluctuation or professional climate change? *International Journal of the Legal Profession*, 19 (2-3), 193-207.
- Katvan, E., 2013. "Overcrowding the Profession" – An Artificial Argument?. *Oñati Socio-legal Series* [online], 3 (3), 409-429. Available from: <http://ssrn.com/abstract=2298419> [Accessed 28 July 2013].

- King, A.J.C., Warren, W.K. and Miklas, S.R., 2004. *Study of Accessibility to Ontario Law Schools*. Toronto: Social Program Evaluation Group.
- Law Society of Upper Canada, 2010. *Fair Registration Practices Report - Paralegals* [online]. Toronto: Law Society of Upper Canada. <http://www.lsuc.on.ca/pa33memFairRegPracticesParalegal/> [Accessed 21 June 2013].
- Law Society of Upper Canada, 2011. *Articling Task Force Consultation Report* [online]. Toronto: Law Society of Upper Canada. Available from: <http://www.lsuc.on.ca/articling-task-force-consultation-report/> [Accessed 21 June 2013].
- Leichter, M., 2011. Lawyers per Capita by State. *The Law School Tuition Bubble: (an amateurly illustrated think tank of one)* [online]. Available from: <http://lawschooltuitionbubble.wordpress.com/original-research-updated/lawyers-per-capita-by-state/> [Accessed 22 July 2012].
- Licensing and Accreditation Task Force, 2008. *A Report to Convocation*. Toronto: Law Society of Upper Canada [online]. Available from: http://www.lsuc.on.ca/media/convsep08_licensing.pdf [Accessed 25 June 2013]
- LLD, 2012. *Legal Leaders for Diversity and Inclusion* [online]. Toronto: Ryerson University. Available from: <http://www.ryerson.ca/about/generalcounsel/pdfs/LLD%20PosterJune%2082011.pdf> [Accessed 22 July 2012].
- Lunau, K., 2009. Where's a Lawyer When You Need One? *Maclean's* [online], 2 Feb. Available from: <http://www2.macleans.ca/2009/02/02/where%E2%80%99s-a-lawyer-when-you-need-one/> [Accessed 22 July 2012].
- Makin, K., 2012. Of 100 New Federally Appointed Judges 98 are White. *The Globe and Mail* [online], 17 Apr. Available from: <http://www.theglobeandmail.com/news/politics/of-100-new-federally-appointed-judges-98-are-white-globe-finds/article4101504/> [Accessed 22 July 2012].
- McQuoid-Mason, D., 2013. Access to Justice in South Africa: Are there Enough Lawyers?. *Oñati Socio-legal Series* [online], 3 (3), 561-579. Available from: <http://ssrn.com/abstract=2272640> [Accessed 28 July 2013].
- Menkel-Meadow, C., 2013. Too many lawyers? Or should lawyers be doing other things?. *Oñati Socio-legal Series* [online], 3 (3), 378-408. Available from: <http://ssrn.com/abstract=2269818> [Accessed 28 July 2013].
- Ontario Civil Legal Needs Project, 2010. *Listening to Ontarians*. Toronto: Law Society of Upper Canada.
- Orenstein, M., 2010. *Racialization and Gender of Lawyers in Ontario*. Toronto: Law Society of Upper Canada.
- Pearce, R., and Nassery, S., 2012. The Virtue of Low Barriers to Becoming a Lawyer: Promoting Liberal and Democratic Values. *International Journal of the Legal Profession*, 19 (2-3), 357-378.
- R1, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).
- R10, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).
- R2, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).

- R3, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).
- R4, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).
- R5, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).
- R6, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).
- R7, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).
- R8, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).
- R9, interview by Author. *Strategies for Enhancing Diversity in the Legal Profession: The Canadian Approach* (2012).
- Sherr, A., Thomson, S., 2013. Tesco Law and Tesco Lawyers: Will our Needs Change if the Market Develops? *Oñati Socio-legal Series* [online], 3 (3), 595-610. Available from: <http://ssrn.com/abstract=2293660> [Accessed 29 July 2013].
- Silver, C., 2013. Holding onto 'too many lawyers': Bringing international graduate students to the front of the class. *Oñati Socio-legal Series* [online], 3 (3), 533-560. Available from: <http://ssrn.com/abstract=2298682> [Accessed 28 July 2013].
- Statistics Canada, 2011. *The Canadian Population in 2011: Population Counts and Growth*[online] Ottawa: Government of Canada. Available from: <http://www12.statcan.ca/census-recensement/2011/as-sa/98-310-x/98-310-x2011001-eng.cfm> [Accessed 21 June 2013].
- Statistics Canada, 2012. *E-Stat Table 326-0021 - Consumer Price Index*[online]. Ottawa: Government of Canada. Available from: <http://www5.statcan.gc.ca/cansim/a31?lang=eng&actionMode=tableDefinitions&id=2301>[Accessed 25 June 2013].
- The Canadian Association of Black Lawyers, 2012. *Articling Taskforce Consultation Questions* [online]. Toronto: The Canadian Association of Black Lawyers. Available from: http://www.cabl.ca/PDF/CABL_Articling_Taskforce_Consultation_Questions_Feb_8_12.pdf [Accessed 21 June 2013].
- Thornton, M., 2012. The New Knowledge Economy and the Transformation of the Law Discipline. *International Journal of the Legal Profession*, 19 (2-3), 265-281.
- Todd, R., 2011. The Elusive Brass Ring. *Canadian Lawyer Magazine* [online]. Available from: <http://www.canadianlawyermag.com/3846/the-elusive-brass-ring.html> [Accessed 22 July 2012].
- Wilson, B., 2011. A Dividend Diversity: The Impact of Diversity on Organizational Decision Making. *University of British Columbia Law Review*, 44 (1), 9-24.
- Winston, C., Crandall, R.W. and Maheshri, V., 2011. *First Thing We Do, Let's Deregulate all the Lawyers*. Washington: Brookings Institute.
- Woolley, A., 2008. Imperfect Duty: Lawyers' Obligation to Foster Access to Justice. *Alberta Law Review*, 45 (5), 107-141.

Zer-Gutman, L., 2013. The Acceleration in the Number of Lawyers in Israel- What have Changed?. *Oñati Socio-legal Series* [online], 3 (3), 512-532. Available from: <http://ssrn.com/abstract=2276872> [Accessed 28 July 2013].

Ziv, N., 2013. Production of Lawyers in Israel – What Does Unauthorized Practice of Law Have to Do With It?. *Oñati Socio-legal Series* [online], 3 (3), 430-449. Available from: <http://ssrn.com/abstract=2281810> [Accessed 28 July 2013].