

# PROFESSIONAL OPPORTUNITIES: A SURVEY OF THE ONTARIO LEGAL PROFESSION

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## *Introduction*

The Ontario legal profession encompasses about one-half of all lawyers in Canada and traditionally has enjoyed a close relationship with the nation's centers of political and economic power. Despite its importance, little research attention has been devoted to the internal structure of the profession and its relation to the larger society. Apart from a 1971 telephone survey of one hundred Toronto lawyers conducted by H.W. Arthurs, J. Willms, and L. Taman,<sup>1</sup> little factual knowledge has been available on the characteristics of law graduates that are associated with success in the profession. For example, a recent survey commissioned by the Canadian Bar Association explicitly refrained from posing questions which "respondents might regard as overly sensitive or confidential, such as ethnic background, income".<sup>2</sup>

We mailed questionnaires to the entire 1974 graduating class of Ontario law schools<sup>3</sup> in order to examine their progress after five years in the profession. Five years indicates a degree of "maturity" in the profession as about forty percent of the Canadian legal profession has been in practice for less than five years while two-thirds have been in practice for ten years or less.<sup>4</sup> The 1974 class is also among the first

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<sup>1</sup> H.W. Arthurs, J. Willms and L. Taman, *The Toronto Legal Profession: An Exploratory Survey* (1971), 21 U. of T. L.J. 498.

<sup>2</sup> Canadian Bar Association, *Survey of Canadian Lawyers, #1, 1978-79 (1979)*, p. 2, hereinafter referred to as CBA survey.

<sup>3</sup> With the exception of the French-language programme in *droit civil* at the Université d'Ottawa which is directed almost exclusively to practice in Québec.

<sup>4</sup> *Op. cit.*, footnote 2, p. 4.

to graduate sufficient numbers of women to allow comparisons with their male colleagues.

The questionnaire elicited information about the 1974 graduates and their employers since graduation. The characteristics of employers of 1974 graduates are summarized in Part II of this article; the characteristics of the graduates are set out in Part III. The study explores the correlations between characteristics of the graduates. (for instance sex, ethnos, religion, grades, school attended, and so on) with their current status in the profession as reflected by characteristics of their employment. The most outstanding correlations are reported in Part IV. Methodological considerations follow in Part I.

### I. Methodology.

Four hundred three (403) replies were received from the 725 alumni of the 1974 class, yielding a response rate of 55.6%.<sup>5</sup> This response rate is considered to be high for a mail survey.<sup>6</sup> To ensure the highest possible response, questionnaires were mailed a second time to non-respondents and every attempt was made to trace current addresses when questionnaires were returned by the post office. Nevertheless, we failed to locate nine members of the 1974 graduating class which accounts for 1.2% of the total. The questions asked of the graduates elicited information on a range of points likely to be significant predictors of professional status and mobility. The questionnaire avoids "subjective" measures. Rather than questioning the respondent's *perception* of his or her success or seeking *experiences* of discrimination, the study employs objective measures of status: the income of the respondent and the status of the respondent's employer.<sup>7</sup> In the absence of a common ranking of law firms and other employers of lawyers, we devised a measure of law firm status based on three criteria:

- (1) *size* of the firm;
- (2) relationship of the firm to the governance of the profession ("benchers");
- (3) ties of the firm to major corporations ("elite" firms).

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<sup>5</sup> This response rate compares to the response rate of 48% for Ontario for the recent CBA survey, *op. cit.*, footnote 2, p. 29.

<sup>6</sup> See Thomas Heberlein and Robert Baumgartner, Factors Affecting Response Rates to Mailed Questionnaires: A Quantitative Analysis of the Published Literature (1978), 43 Am. Soc. Rev. 447.

<sup>7</sup> See *e.g.*, the CBA survey; Arnold Bruner, Survey Finds Times are Tougher for Law Graduates—Especially Women (Nov. 27th, 1978), *Globe and Mail*, p. 16; R.A. Tomasic and C.G. Bullard, *Lawyers and Their Work*, Appendix B (The Law Foundation of New South Wales, Sydney 1976).

*Size* of law firm (that is number of members) is a traditional measure used in all previous studies of the legal profession. *Benchers* are selected as governors of the profession and are drawn from the ranks of experienced and respected lawyers; they regulate admission to and exclusion from the profession in the execution of the profession's duty to regulate itself. The concept of the *elite law firm* is used to identify firms with the closest relationship with the Canadian corporate elite. An *elite* firm is defined as a law firm where one or more partners serve as directors or senior executives of a *dominant* corporation in Canada. A *dominant* corporation is defined as a corporation with assets of greater than \$250 million and income of over \$50 million, in accord with Wallace Clement's *The Canadian Corporation Elite*.<sup>8</sup> All other law firms are defined as *non-elite*.

It is important to stress that this definition of elite status is standard in the study of social stratification. It is a structural or objective standard and cannot indicate personal or subjective characteristics such as the desirability of a firm for any individual or the quality of services rendered. "Elite" refers only to the direct association of one or more members of a law firm to one or more of the largest 113 corporations in Canada, an association which likely indicates relative degrees of assured access to clients and thus professional and personal security for the members of the firm. Not all lawyers will necessarily equate these measures with "success". The income of respondents and the status of respondents' law firms do provide a rudimentary guide to the respondents' status in terms of access to economic power in the larger society, the internal governance of the legal profession and monetary rewards.

The study isolates the graduates of a single year: (1) to guard against a historical bias in the findings and (2) to generate results that take an entire graduating class into account. This study examines *contemporary* employment practices, whereas a sample of the entire profession would yield results confused by the inclusion of career patterns no longer typical of the profession. As well, a sample of the entire profession would exclude those individuals who are potentially

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<sup>8</sup> Wallace Clement, *The Canadian Corporate Elite: An Analysis of Economic Power* (1975). The Report of the Royal Commission on Corporate Concentration (1978) was consulted to compensate for any "datedness" in Clement's list of dominant corporations. The list of elite law firms in Canada was compiled by using the Financial Post Directory of Directors (Maclean-Hunter 1979) to identify directors who are members of Canadian law firms. The list of law firms with members who hold directorships in dominant Canadian corporations was further compared for errors and omissions to the list of elite law firms compiled by Jorge Niosi, *The Economy of Canada* (1978). It should be noted that we retained Clement's narrower definition of a dominant corporation in contrast to Niosi's broader definition. Thus our list of elite law firms is not as extensive as Niosi's.

of great interest—individuals who are educated and qualified as lawyers but who are no longer part of the profession.

In summary, the methodology of this study is to analyze the employment of a "slice" of the profession. The employment practices which generated the data reported herein were carried out between 1973 and 1979, the period of time during which the 1974 graduating class interviewed for articling positions, completed professional admission requirements and entered the ranks of the profession.<sup>9</sup>

## II. The Structure of the Profession.

The three measures of law firm status prove, in fact, to be closely related. Very large firms are much more likely to be *elite* firms than small firms are. Indeed, less than 2% of respondents who enter law firms of less than twenty members thereby enter *elite* firms. More than 63% of respondents who enter law firms of twenty or more members thereby enter *elite* firms.

TABLE 1

*Law firm status by law firm size*

		<i>Law firm size</i>	
		<i>less than 20</i>	<i>20 or more</i>
Law firm status	non-elite	245	14
	elite	4	24

No response = 62

Similarly, less than 6% of law graduates who are currently in law firms *without* benchers are also in *elite* firms, while more than 63% of respondents in law firms *with* benchers are in *elite* firms.

TABLE 2

*Law firm status by law firms with benchers*

		<i>Law firms with benchers</i>	
		<i>without benchers</i>	<i>with benchers</i>
Law firm status	non-elite	248	8
	elite	14	14

No response = 65

<sup>9</sup> Cf. *op. cit.*, footnote 2.

We can complete the triad by comparing size of law firms with having benchers. Again, less than 2% of respondents who are in law firms of less than twenty members are in law firms with benchers, while 45% of respondents who are in law firms of twenty or more members are in firms with benchers.

TABLE 3

*Law firm size by law firms with benchers*

Law firm size		<i>Law firms with benchers</i>	
		<i>without benchers</i>	<i>with benchers</i>
firm	less than 20	272	5
	20 or more	23	19

Not in law firm or no response = 57

Fifty per cent of all elite firms that employ 1974 graduates have benchers. Lawyers in non-elite firms are poorly represented in the governing structure of the profession—only 3% of the lawyers in non-elite firms are in firms with benchers.

The correlations among these three indices suggest a high concentration of power in a few firms and indicate a highly stratified profession as a whole. Law firms with members who are directors of the Canadian corporate elite (as defined by Clement) are typically the

TABLE 4

*Areas of specialization by law firm size*

Area of Specialization	Law firm size			
	Solo	2-4	5-19	20 or more
corporate-commercial	7% *(5)	9% (10)	18% (15)	31% (13)
civil litigation	6% (4)	25% (29)	31% (26)	36% (15)
taxation	— (0)	1% (1)	1% (1)	5% (2)
real estate	51% (36)	37% (42)	21% (18)	10% (4)
family	20% (14)	20% (23)	11% (9)	2% (1)
criminal	17% (12)	4% (5)	6% (5)	10% (4)
total	100% (71)	100% (115)	100% (84)	100% (42)

\*These are *column* percentages: 7% of respondents who are solo practitioners report "corporate-commercial" as their most time-consuming area of specialization. Column totals may not add up to exactly 100% due to rounding.

largest firms and appear to exert the greatest influence over the internal workings of the legal profession itself.

This profile of a highly stratified profession is further clarified by examining respondents' areas of specialization and income. Respondents in large, elite firms report that their most time consuming areas of specialization are civil litigation, corporate and commercial law. Middle size and non-elite firms report more real estate law, while solo practitioners are confined to real estate, family and criminal law.

Finally, comparison of respondents' income with the measures of law firm status reveal that graduates who are affiliated with large and elite firms earn higher incomes. The relationship is highly statistically significant.

Unless there is reason to believe that the law firms which hired 1974 graduates differ systematically from those which did not, these

TABLE 5  
*Law firm status by income*

		Income	
		less than \$25,000.00 per annum	\$25,000.00 or more per annum
Law firm status	no response, not in l.f.	35	26
	non-elite	142	97
	elite	7	21

Chi square = 12.10261 with 2 degrees of freedom.

Significance = 0.0024.

*Law firm size by income*

		Income	
		less than \$25,000.00 per annum	\$25,000.00 or more per annum
Law firm size	not in l.f., no response	30	21
	solo	47	21
	2-4	61	52
	5-19	44	35
	20-49	8	15
	50 or more	3	16

Chi square = 21.39871 with 5 degrees of freedom.

Significance = 0.0007.

tests of statistical significance virtually guarantee that all of the above statements hold true for all law firms.

From this preliminary sketch of the internal structure of the profession, we turn to a profile of the respondents.

### III. *Characteristics of the Respondents.*

The following general characteristics emerge from the sample of 403:

- (1) median age of thirty (in 1979).
- (2) sex: 15% are female.
- (3) ethnic background: British or Irish, 57.8%; Jewish, 15.4%; German, Dutch or Scandinavian, 9.4%; East European, 6.2%; Native Indian, 4.5%; French, 3.7%;<sup>9</sup> Italian, Spanish or Portuguese, 1.7%; Asian or African, 0.9%; no response, 0.2%.
- (4) religion: United Church of Canada, 22.1%; Roman Catholic, 20.8%; Anglican, 17.4%; Jewish, 15.4%; no religion, 10.4%; other Protestant, 8.4%; other religions, 5.2%; no response, 0.2%.
- (5) marital status: 77% of male respondents are married; 69% of female.
- (6) children: 54.3% report no children in their household; 22.1% report one child; 17.4% report two children; and 6.1% three or more.
- (7) sexual orientation: heterosexual, 91.1%; no response, 7.4%; bisexual/homosexual, 1.5%. This is a relatively new question in social surveys. Despite guarantees of anonymity, it is clear that few are willing to risk revealing a homosexual or bisexual orientation on a questionnaire. Estimates of the numbers of gay people in the general population typically run about 8-10%.<sup>10</sup> We note the large "no response" rate in this context. That the respondents who did indicate bisexuality/homosexuality represent only the most open segment of gay lawyers is clear from their listing of gay movement organizations among their group affiliations. Even among those few willing to indicate bisexual/homosexual orientation, one-half fail to name their current law firm. This response should be compared with the finding

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<sup>10</sup> Alfred Kinsey et al., *Sexual Behavior in the Human Male* (1948, 1968) and *Sexual Behavior in the Human Female* (1953) estimate rates of homosexuality on a scale from 4% of the male population who are exclusively homosexual to 37% who have had at least one orgasmic homosexual experience after the age of sixteen. The comparable figures for women are 2% and 13%. Comparing these figures with studies of people who identify themselves as "gay" or "lesbian" reveals that only one-half of gay men and one-quarter of lesbians are exclusively homosexual in behavior. See Marcel Saghir and Eli Robins, *Male and Female Homosexuality* (1973).

that women, another "at risk" minority in law, fail to identify their current law firm twice as often as men.<sup>11</sup>

(8) vote in 1979 federal election: Progressive Conservative, 39.5%; Liberal, 36.0%; New Democratic Party, 11.9%; no response, 8.7%; did not vote, 4.0%.

(9) rank in graduating class: 55.8% report "top third", 31.5% report next "two thirds", and 12.7% indicate no response. There is clearly a significant upward skew with 55.8% indicating their rank in the top "third". Either more higher-ranking graduates responded to the survey or there is a retrospective inflation of rank by respondents.

(10) law school: Osgoode, 27.5%; University of Western Ontario, 18.6%; University of Windsor, 15.1%; Queen's University, 12.9%; University of Toronto, 11.9%; University of Ottawa (common law), 7.2%; no response, 6.7%. Response rates to this survey did not vary significantly by school.

(11) father's occupation when respondent was fifteen: professional/managerial, 46.4% (most frequent in this category are: business executives, lawyers, physicians, engineers, accountants and civil servants); self-employed businessmen, 19.4%; farmers, 3.7%; white-collar workers, 9.9% (most frequently salesmen, clerks and insurance agents); blue-collar workers, 4.7% (most frequently foremen, machinists and carpenters); unskilled workers, 6.5%; retired, 1.2%; deceased, 2.7%; and no response, 5.5%.

(12) mother's occupation when respondent was fifteen: professional/managerial, 11.4% (most frequently teachers and registered nurses); self-employed, 2.7%; white-collar workers, 10.9% (most frequently secretaries and clerks); blue-collar workers, 0.7%; homemakers, 67.7% (of these, more than half were married to men in professional/managerial occupations and one quarter to self-employed men (including farmers)); retired or deceased, 0.5%; no response, 5.0%.

(13) father's education: graduate or professional degree, 19.6%; bachelor's degree, 11.9%; some postsecondary education, 9.7%; secondary school, 37.2%; primary school, 17.1%; no response, 4.5%.

(14) mother's education: graduate or professional degree, 4.5%; bachelor's degree, 15.6%; some postsecondary education, 15.6%; secondary school, 47.4%; primary school, 12.9%; no response, 4.0%.

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<sup>11</sup> Cf. Barry D. Adam, *Stigma and Employability: Discrimination by Sex and Sexual Orientation in the Ontario Legal Profession* (1981), 18 *Can. Rev. of Soc. and Anthro.* p. 216.



(15) respondent's current occupation: lawyer (solo or law firm), 82.4%; civil servant (including government lawyers), 5.0%; assistant crown attorneys, 2.7%; professors, 1.2%; not working in a legal capacity, 3.0%; no response, 4.2%.

(16) status of current law firm: elite, 7.0%; non-elite, 64.3%; not in a law firm, 16.4%; no response, 12.4%.

(17) current law firm: with benchers, 6.0%; without benchers, 73.7%; not in law firm, 14.9%; no response, 5.5%.

(18) size of law firm: more than 50, 4.7%; 20-49, 5.9%; 5-19, 21.6%; 2-4, 29.5%; solo, 18.6%; not in law firm, 13.6%; no response, 6.0%.

(19) income (1978): \$40,000.00 or more, 6.9%; 30,000.00-39,999.00, 12.9%; 25,000.00-29,999.00, 21.3%; 20,000.00-24,999.00, 22.6%; 15,000.00-19,999.00, 16.9%; 10,000.00-14,999.00, 6.5%; 5,000.00-9,999.00, 2.5%; less than \$5,000.00, 1.2%; no response, 9.1%.

(20) most time consuming area of specialization: real estate, 26.8%; civil litigation, 19.1%; corporate/commercial, 13.9%; family, 12.7%; criminal, 9.7%; not currently working in legal capacity, 2.2%. Other specialities are reported by less than 3% of respondents.

#### IV. *Legal Opportunities.*

In this section, the four measures of status—income and the three measures of law firm status—are correlated with the characteristics of the respondents to reveal a pattern of traits which predict "success" in law.<sup>12</sup> The outstanding quality of these correlations is their stability over time. In particular, the lawyers who enter elite firms immediate-

TABLE 6

*Law firm status after five years by  
law firm status immediately after  
admission to the bar*

		Initial entry status	
		non-elite	elite
Law firm status after 5 years	non-elite	208	2
	elite	1	19

Not in law firm or no response = 71.

<sup>12</sup> This article presents only the most outstanding correlations. More detailed breakdowns of mobility factors at each career stage are forthcoming in Canadian sociological journals.

ly after admission to the bar are the same lawyers in elite firms five years later. The data reveals *very little* mobility either in or out of elite firms during the first five years. Nineteen lawyers with positions in elite firms immediately following admission to the bar retain positions in elite firms; 208 remain in non-elite firms. Only two respondents move from elite to non-elite firms over this period, while just one moves from non-elite to elite.

These findings confirm studies of the United States bar which also note that initial entry status into the profession predicts later status.<sup>13</sup>

#### A. Women and income.

Comparison of the status of women and men in the legal profession indicates that women among the 1974 graduates are not under-represented in elite and large law firms in Ontario.<sup>14</sup> This apparent lack of discrimination against women makes income comparisons especially striking. The income gap between men and women among Ontario lawyers five years into the profession is sizeable and statistically significant. In comparing the means of men's and women's income, it is clear that women in the legal profession incur an average penalty of \$2,946.00 in annual income.

TABLE 7  
*Comparison of mean incomes by sex*

		Mean income	Standard deviation
Sex	male	\$21,855	\$2,603
	female	\$18,909	\$2,975

t = 2.629 with 364 degrees of freedom.

Significance = 0.0089.

<sup>13</sup> Cf. Jerome Carlin, *Lawyer's Ethics: A Survey of the New York City Bar* (1966), p. 34; Malcolm Spector, *The Rise and Fall of a Mobility Route* (1972), 20 Soc. Prob. 175.

<sup>14</sup> Other studies suggest that the status of women in the legal profession may be deteriorating. See, e.g., Arnold Bruner, *op. cit.*, foot note 7. For other studies of women in the Canadian legal profession, see Harvey Cameron, *Women in Law in Canada* (1970), 4 Man L.J. 9; Linda Dranoff, *Women as Lawyers in Toronto* (1972), 10 Osgoode Hall L.J. 177; Lynn Smith, Marylee Stephenson and Gina Quijano, *The Legal Profession and Women: Finding Articles in British Columbia* (1973), 8 U.B.C. L.J. 137; Jennifer Bankier, *Women and the Law School: Problems and Potential* (1974), 22 Chitty's L.J. 171; James White, *Women in the Law and Cynthia Epstein, Women Lawyers and their Profession in Athena Theodore, ed., The Professional Woman* (1967); Ellen Bradford and Catharine Sitzer, *Women Lawyers—Equal in the Law* (1976), 50 Fla Bar J. 15; Frank Read and Elisabeth Petersen, *Sex Discrimination in Law School Placement* (1972), 18 Wayne L. Rev. 639.

### B. Religion and professional mobility.

Anglicans are significantly over-represented in elite and large firms and significantly under-represented among solo practitioners.

TABLE 8  
*Law firm status by religion*

		Religion	
		Anglican	non-Anglican
Law firm status	not in l.f., no response	9	57
	non-elite	45	213
	elite	12	16

Chi square = 12.10399 with 2 degrees of freedom.

Significance = 0.0024.

This is in accord with the broader stratification pattern of Canadian society which also shows a significant preponderance of Anglicans in elite positions.<sup>15</sup>

Jews, by contrast, though over-represented in the legal profession as a whole when compared to the overall population of Ontario, are *significantly under-represented* in elite law firms. Indeed, in this sample, Jews are totally absent in elite firms. Jews, however, are not over-represented among solo practitioners in this sample, which contrasts with earlier studies of the United States bar.

TABLE 9  
*Law firm status by religion*

		Religion	
		Jewish	non-Jewish
Law firm status	not in l.f., no response	13	53
	non-elite	40	218
	elite	0	28

Chi square = 6.11461 with 2 degrees of freedom.

Significance = 0.0470.

The Ontario legal profession manifests a barrier to the mobility of its Jewish members which is paralleled in the United States bar<sup>16</sup> and in

<sup>15</sup> Cf. *supra*, footnote 5.

<sup>16</sup> *Op. cit.*, footnote 1, at p. 521; Carlin, *op. cit.*, footnote 13, pp. 28, 34; Jack Ladinsky, *Careers of Lawyers, Law Practice, and Legal Institutions* (1963), 28 Am.

the larger stratification system of the United States and Canada. Though well integrated into professional occupations, the highest positions of wealth and power appear to remain closed to Jews.

The other religious categories do not show significant variance from expected proportionality.

### C. *School and professional mobility.*

The figures in Table 10 indicate representation in elite law firms and in law firms with benchers according to school. Thus, graduates of the University of Toronto are 3.2 times more numerous in law firms with benchers than would be expected if every school were proportionately represented. The University of Ottawa (common law) and the University of Windsor are proportionately represented among law firms with benchers. Similarly, the University of Toronto and Osgoode Hall contribute a disproportionate amount of the membership of elite law firms.

Table 10  
*Representation by school in elite law  
firms and law firms with benchers*

	<i>elite</i>	<i>benchers</i>
University of Toronto	2.5* (7,26)	3.2 (9,32)
Osgoode Hall	2.5 (9,67)	0.9 (6,78)
University of Western Ontario	1.1 (6,53)	0.4 (2,58)
University of Ottawa (common law)	0.5 (1,19)	1.1 (2,21)
University of Windsor	0.4 (2,42)	1.0 (4,47)
Queen's University	0.3 (1,35)	0.3 (1,39)

\*1.0 = proportional representation of graduates of this school in elite law firms or firms with benchers. Any number greater than 1.0 indicates over-representation of this school's graduates; any number less than 1.0 indicates under-representation. The first number in parentheses refers to number in elite firms or number in firms with benchers. The second number in parentheses refers to number of non-elite firms or number in firms without benchers.

### D. *Law school grades and income.*

Finally, we note that rank in graduating class correlates positively with income. By dichotomizing the responses to the question concerning "rank" into "first third" and "next two thirds", it is clear that law graduates with better grades are more likely to work in large firms and to earn higher salaries.

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Soc. Rev. 49; Albert Goldberg, *Jews in the Legal Profession: A Case of Adjustment to Discrimination* (1970), 32 *Jewish Soc. Stud.* 148. Also Erwin Smigel, *The Wall Street Lawyer* (1969), pp. 37, 44-46; John Young, *The Jewish Law Student and New York Jobs—Discriminatory Effects in Law Firm Hiring Practices* (1964), 73 *Yale L.J.* 625.

TABLE 11  
*Income by rank in graduating class*

		Rank	
		first third	next two-thirds
Income	less than \$25,000.00	98	81
	\$25,000.00 or more	111	40

Corrected chi square = 11.62002 with 1 degree of freedom

Significance = 0.0007

### *Conclusion*

This first report of a 1979-80 survey of the 1974 alumni of Ontario law schools reveals considerable variability in the distribution of rewards in the legal profession. Factors predicting "success" in law typically reflect the mobility criteria evident in other high status occupations in Canada. Whether these are desirable criteria for the distribution of legal rewards in the profession is a question that should be considered carefully.