

## Book Review Compte rendu

Gender, Identity and Professionalism:  
A Review of *The First Women Lawyers* by Mary Jane Mossman

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### 1. Introduction

In her book *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions*,<sup>1</sup> Mary Jane Mossman situates the life experiences of some of the first women lawyers within the broader context of various aspects of early women's movements in the United States, Canada, Britain, New Zealand, British India and Europe. In this comparative analysis, Mossman provides detailed and often infuriating accounts of the sometimes monumental efforts of women to overcome sexist and racist barriers in order to gain access to legal education and to the legal profession. What is perhaps the most interesting (and simultaneously disturbing) aspect of the analysis is her artful use of the themes of gender, identity and professionalism to connect the disparate stories of women from several jurisdictions around the world. These themes weave together to paint a portrait of battles won and lost by feminist movements, elements of which still remain evident within the profession today. Disappointingly, in some cases those who fought for women's access to legal education and the legal profession strategically chose to isolate their efforts from what were perceived as the more radical goals of suffrage and racial equality. Even after access was gained, many of the first women lawyers consciously worked to be absorbed seamlessly into the profession by distancing themselves from feminist identities and causes in favour of "professional" ones built around the myth of the monastically committed white, upper-class man.

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<sup>1</sup> Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Portland: Hart Publishing, 2006).

Our review of *The First Women Lawyers* is organized into two parts. The first part provides an overview of some of the common hurdles faced by women attempting to gain access to legal education and practice across the various jurisdictions upon which Mossman reports, focusing on situations in which choices were made to distance these efforts from parallel social justice projects that were ongoing at the same time. In the second part, we discuss some of the ways in which Mossman's work demonstrates that these kinds of distancing efforts continued after initial successes in gaining access, perhaps both as a reflection of the relatively elite social status of many of the first women lawyers and as mechanisms for day-to-day survival in a profession imbued with a white, upper-class male identity of its own.

## 2. *Hurdles in Gaining Access*

Access to legal education and admission to professional bar associations were two of the key hurdles faced by women who strove to gain access to the legal profession in the jurisdictions examined by Mossman. Interestingly, although both education and admission to the bar were necessary for formal recognition as a "lawyer," Mossman also documents stories of numerous women in several jurisdictions who performed legal work, often in legal offices, even though they did not enjoy the status of "lawyer." In reading the nineteenth century stories of women practitioners "in fact," such as Elizabeth Orme in Britain,<sup>2</sup> and women who successfully pleaded their own legal claims, such as Elizabeth Freeman and Luce Terry Prince in the United States,<sup>3</sup> it is difficult not to think of the predominantly female law clerks and legal assistants today who are responsible for so many aspects of legal work both within and outside of the traditional law firm setting.

Mossman details nineteenth century women's strategies for gaining access to legal education that were strikingly similar across many jurisdictions – often with strikingly similar results. From Myra Bradwell's court challenge in order to gain admission to the Illinois bar,<sup>4</sup> to the petitions launched by Clara Brett Martin and Mabel Penery French in Canada,<sup>5</sup> to similar challenges launched in France,<sup>6</sup> women seeking access to the legal profession were time and again slammed up against the public and private divide. As Justice Barker of the New Brunswick Superior Court put it in French's case, "The civil law, as

<sup>2</sup> *Ibid.* at 124-25, 132.

<sup>3</sup> *Ibid.* at 25.

<sup>4</sup> *Ibid.* at 41-54.

<sup>5</sup> *Ibid.* at 85.

<sup>6</sup> *Ibid.* at 253-54.

well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. ... [T]he domestic sphere [is] that which properly belongs to the domain and functions of womanhood.”<sup>7</sup>

The idea that women were somehow biologically better suited to identities located within the private sphere, with roles entirely separate from those appropriate to men, cut across geographic jurisdictions and legal traditions, forming a central premise for resistance to women’s entry into the legal profession. A similar ideology, however, acted as a catalyst for women’s generally much earlier entry into the medical profession. As Mossman explains, “[W]omen doctors could claim that their careers were natural extensions of women’s nurturing and healing roles in the home.”<sup>8</sup> In contrast, the identity of the legal professional was defined through masculine characteristics of brashness, confidence and outspokenness, all presumed unsuitable to, and inappropriate for, the members of the so-called “weaker sex.”

Perhaps conscious of the perceived asymmetries between being a “woman” and being a legal professional made evident in numerous court challenges, many of the women pushing for access to the legal profession from across the jurisdictions examined by Mossman adopted strategies other than litigation. These included petitioning for legislative change, as well as more subtle political strategizing that sometimes involved distancing themselves from “radical” perspectives and behaviours, such as those often associated with suffragists and abolitionists.

By shifting their message from a focus on equality to a focus on the “natural” fit between women’s nurturing capacities and public life, and striving to avoid labels such as “strong-minded,” women seeking access to the British legal profession were sometimes able to avoid criticism and even to attract support from less “radical” members of society.<sup>9</sup> Similarly, in the United States, many activists for access to the legal profession tempered their associations with suffrage and abolitionist movements in an ironically role-reinforcing effort to be seen as ladylike and professional in order to quell concerns that women lawyers would be radical and outspoken.<sup>10</sup> In India, Cornelia Sorabji pleaded her case for admission to the bar not as the claim of

<sup>7</sup> *In re French* (1905), 37 N.B.R. 359 (S.C.) at 365-56, cited in Mossman, *supra* note 1.

<sup>8</sup> *Ibid.* at 14.

<sup>9</sup> *Ibid.* at 125, 148.

<sup>10</sup> *Ibid.* at 55, 63.

an “Advanced Woman,” seeking to supplant the services offered by men lawyers, but in order to supplement these services by representing women in purdah.<sup>11</sup>

Women seeking access to the legal profession from across the jurisdictions discussed by Mossman sometimes faced conflicting messaging as to their appropriate identities. On one hand, if one wanted access to the public sphere of law, one was required to exhibit characteristics gendered male. On the other, the voices of women who exhibited those characteristics too strongly faced tensions that sometimes limited their ability to attract the support needed for change. As Mossman discusses, these identity-related conflicts continued well after access to the legal profession was successfully gained. In short, “the removal of legal impediments ... was not the same as creating equal opportunities.”<sup>12</sup>

### *3. Absorption into “Professionalism”*

Though legislation opening the doors to a legal education and to the profession itself was a significant and necessary first step for the first women lawyers, achieving self-sufficiency within the profession presented a further series of obstacles. In telling the histories of several early woman lawyers, Mossman effectively demonstrates that further subversive barriers were present for women wishing to practise law.

The male gender of legal professionalism, and the requirement for early women lawyers to conform to this masculine standard in order to be successful, are themes running throughout Mossman’s book. Furthermore, despite attempts to conform, or arguments that gender, either masculine or feminine, had no bearing on practising law, Mossman’s accounts demonstrate how women were often excluded or marginalized on the basis of gender. The passage of time notwithstanding, these themes continue to cast their spectre in today’s legal atmosphere.

A strong example of Mossman’s thesis, both historically and in contemporary legal environments, is the issue of dress. Mossman argues that women adopted, either by necessity or by “choice,” the traditional male suit as a means of fitting into the profession and doing business. A suit was seen as the traditional garb of a lawyer, as well as

<sup>11</sup> *Ibid.* at 210-11.

<sup>12</sup> Rose Pearson and Albie Sachs, “Barristers and Gentlemen: A Critical Look at Sexism in the Legal Profession” (1980) 43 *Mod. L. Rev.* 400 at 405, quoted in Mossman, *supra* note 1 at 119.

the traditional garb of a man. Even in this way, the practice of law was gendered male. Men practising law retained this aspect of their socialized gender identity, while women practising law found it necessary to abandon feminine clothing in order to be taken seriously within the profession; women could not practise law and continue to present a socialized female gender. In order to succeed within the profession, women had to adopt a male presentation. Indeed, some women were even so successful as to be given the title of “Gentleman” as a sign of acceptance.<sup>13</sup>

Several jurisdictions set standards for women’s dress in court, incorporating the traditional black barrister’s robe and white necktie with a long black skirt.<sup>14</sup> Though perhaps not as overtly masculine as a traditional business suit, the standards of dress set for women in court clearly reflected the male standard, extended and adopted so that women could gain acceptance within the profession, while still being marked as different from the men through the skirt requirement. Women were admitted to the legal profession “on the same terms as men”<sup>15</sup> and maleness was the standard which represented and defined the legal profession. For a woman to be a lawyer she must somehow conform to the male gender – all without exhibiting too many of the characteristics, such as outspokenness, which were considered invaluable to success for men in law, but inappropriate for women in general.

Mossman relates the histories of women from across numerous jurisdictions, all of which demonstrate vividly the hurdles women faced trying to enter the legal profession. Ethel Benjamin, a young Jewish woman, became New Zealand’s first woman lawyer. Benjamin spurred a resolution amongst her male peers as to what women should wear in court, and was the subject of public cartoons (and ridicule) based on her gender, her clothing, and her desire to practise law.<sup>16</sup> Professional obstacles facing Benjamin were by no means limited to dress; her access to the Supreme Court Library was limited during her studies (the University of Otago had no law library of its own at the time, and an arrangement allowed the (male) law students to use the materials at the Supreme Court Library), she was ostracized from Law Society social functions and ceremonies, and her male colleagues refused to refer work to her practice.<sup>17</sup>

<sup>13</sup> Mossman, *ibid.* at 25.

<sup>14</sup> *Ibid* at 171.

<sup>15</sup> *Ibid* at 67.

<sup>16</sup> *Ibid.* at 159-73.

<sup>17</sup> *Ibid.*

Mossman recounts similar stories of early women lawyers in the United States, Britain, Canada and India who faced difficulties in obtaining positions and in developing self-sustaining practices of their own. In efforts to avoid developing reputations that might put off prospective clients and referrals from other lawyers, early women lawyers in Canada, the United States and Britain often found it preferable be absorbed into the profession, which often meant distancing themselves from the women's movement and other social activism.<sup>18</sup> As a result, movements for sweeping change within the profession constituted career-limiting moves and, as Mossman puts it:

the first women lawyers in Canada gained admission to the bar "on the same terms as men;" as a result, they not only existed at the margins of the women's movement – they also remained virtually invisible within the legal profession.<sup>19</sup>

One of the truly valuable aspects found in the histories of these women, as Mossman explains in the final line of her conclusion, is that these issues "remain relevant to contemporary issues about gender and professionalism in the twenty-first century."<sup>20</sup> Many of the problems and issues which confronted the first women lawyers are still present, sometimes in more subtle forms, for women lawyers today. The spectres of the socialized male gender continue to haunt definitions and perceptions of professionalism and evaluations of performance in law. Many women who go into law will feel compelled to conform to these male standards in order to succeed. The mythology of male standards of dress continues to be perpetuated in numerous settings. In some preparatory sessions for interviews with law firms, for example, students are instructed on appropriate dress. In some cases, women continue to be encouraged to find boxy grey or black suits designed to hide feminine curves, to wear long hair in buns and to minimize jewellery. At the same time, many women law students as they prepare for interviews and articling are specifically counselled to wear skirts, which are considered more "appropriate" for women, and serve to better maintain separation along gender-based lines. While many women law students may be in the position to ignore these kinds of advice, others are troubled by the seemingly mixed messaging. In either case, the gendered messaging to students about legal professionalism buried within this advice harks back to the ideal of the male professional evident in the histories Mossman documents.

<sup>18</sup> *Ibid.* at 55, 63, 107, 118.

<sup>19</sup> *Ibid.* at 112.

<sup>20</sup> *Ibid.* at 289.

Mossman discusses some current trends among women lawyers in her introduction, reciting statistics relating to enrolment in law schools, academic achievement, professional development, and overall career success. These facts and statistics are both heartening and distressing. Of particular note is Mossman's description of the evolution of the "old boys club," as "relics of the past"<sup>21</sup> which are being replaced by the "baby dinosaurs"<sup>22</sup> of today's law schools - certain young men who seem to expect women lawyers to tolerate and participate in offensive and degrading conversations in order to "be one of the guys," and at the same time to absorb gender-specific insults to an extreme level. Those who object to this treatment are often further ostracized in a gender-specific manner.<sup>23</sup>

#### 4. Conclusion

Upon reading the histories in Mossman's book, one cannot help but be inspired, and relieved that the initial significant battles for gender equality in access to the legal profession are long over in many jurisdictions. However, the conformity to masculine standards of professionalism that frequently appears to have been, and continues to be, necessary for acceptance and success remains. As Mossman's histories demonstrate, while women's success in gaining access to legal education and to the legal profession were themselves impressive feats, the struggle is far from over.

Mossman's work is both inspiring and frustrating. The overwhelming wall of resistance faced by the first women lawyers, from gaining admittance to law schools to actually running a successful practice, makes the accomplishments of these women an extremely important example for women practising and studying law today. Conversely, the often de-radicalizing and conformist impact that gaining admission had on many of the first women lawyers offers valuable lessons for social justice seekers dedicated to more extensive structural change and to a de-gendering of the profession.

Mossman describes a rich and textured history, while also ensuring that her subjects come off the page as living people. One often feels the intense frustration, the deep sense of hopelessness, and the often-disappointing recognition of the need for compromise that seemed to accompany these women as they battled to gain both admittance and acceptance within the legal world. Women practising law today, who

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<sup>21</sup> *Ibid* at 4.

<sup>22</sup> *Ibid*.

<sup>23</sup> *Ibid* at 4-5.

continue to encounter gender-specific discrimination, including the glass ceiling, can draw strength and wisdom from the battles fought, lost and won, by the women Mossman chronicles. Mossman's book makes it more possible than ever before for women in the legal profession to better understand the trail blazed before us as we imagine the possibilities of the road that lies ahead.