

The First Women Lawyers



A Comparative Study of Gender,
Law and the Legal Professions

Mary Jane Mossman

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THE FIRST WOMEN LAWYERS

This comparative study explores the lives of some of the women who first initiated challenges to male exclusivity in the legal professions in the late nineteenth and early twentieth centuries. Their challenges took place at a time of considerable optimism about progressive societal change, including new and expanding opportunities for women, as well as a variety of proposals for reforming law, legal education, and standards of legal professionalism. By situating women's claims for admission to the bar within this reformist context in different jurisdictions, the study examines the intersection of historical ideas about gender and about legal professionalism at the turn of the twentieth century. In exploring these systemic issues, the study also provides detailed examinations of the lives of some of the first women lawyers in six jurisdictions: the United States, Canada, Britain, New Zealand and Australia, India, and western Europe. In exploring how individual women adopted different legal arguments in litigated cases, or devised particular strategies to overcome barriers to professional work, the study assesses how shifting and contested ideas about gender and about legal professionalism shaped women's opportunities and choices, as well as both support for and opposition to their claims. As a comparative study of the first women lawyers in several different jurisdictions, the book reveals how a number of quite different women engaged with ideas of gender and legal professionalism at the turn of the twentieth century.

*For Mary Estelle
and for
Donna, Stella and Emma*

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Portraits of Women Lawyers

PORTIAS OF TODAY

The Illustrated London News, 13 November 1897.





MRS. MYRA BRADWELL,
U.S.A.



MDLE. KATRINE DAHL,
Norway.



MRS. BELVA LOCKWOOD,
U.S.A.



MDLE. ELSA ESCHELSSON,
Sweden.



MDLE. NANNA BERG,
Denmark.



MDLE. SARMISA BILCESCO,
Roumania.



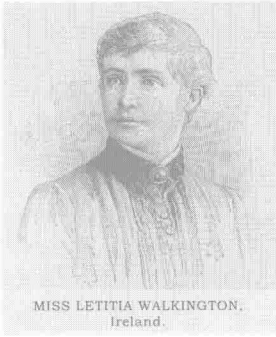
MDLE. MARIE POPELIN,
Belgium.



MADAME SIGNÉ SILEN,
Finland.



MISS CLARA BRETT MARTIN,
Canada.



MISS LETITIA WALKINGTON.
Ireland.



MISS FLORENCE CRONISE.
U.S.A.



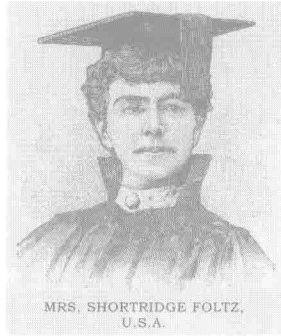
MADAME E. KEMPIN-SPYRI,
Switzerland.



MRS. ELLENA KNOWLESS HASKELL,
U.S.A.



FRÄULEIN ANITA AUGSPURG,
Germany.



MRS. SHORTRIDGE FOLTZ,
U.S.A.



MISS CORNELIA SORABJI,
India.



MISS MARY GREENE,
U.S.A.

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Introduction

The First Women Lawyers

PROLOGUE: CONTEMPORARY QUESTIONS ABOUT WOMEN AS LAWYERS

[What] difference does it make that Clara Brett Martin succeeded in becoming a lawyer in 1897, and what difference should it make that the legal profession increasingly includes large numbers of women as well as men? Beyond the ... careers of individual women lawyers, what impact will the advent of a significant number of women in the legal profession have on the practice of law, on legal rules and concepts, on the roles lawyers play in our society? Most importantly, will women who become lawyers be just like men who are lawyers, or will they bring a new dimension to lawyering?¹

THIS BOOK HAD its beginnings in these questions, first posed in May 1986 in the historic surroundings of Osgoode Hall in Toronto. The occasion was the Law Society's first ever continuing education programme on 'Women in the Legal Profession,'² and the audience included a large number of women lawyers, many of them newly-admitted members of the profession. Passing through the old winding corridors of Osgoode Hall, the heart of the Ontario legal profession for nearly two hundred years, the participants gathered expectantly in the large lecture hall. Even before the programme started, the sight of so many *women*, all of whom were also *lawyers*, confirmed an unprecedented transformation in the demography of the Canadian legal profession. For, although a few women had chosen to become lawyers in earlier decades, the highly accelerated rate of women's entry to the legal profession after 1970 was

¹ MJ Mossman, 'Portia's Progress: Women as Lawyers – Reflections on Past and Future' (1988) 8 *Windsor Yearbook of Access to Justice* 252 at 266. See also Law Society of Upper Canada, *Crossing the Bar: A Century of Women's Experience 'Upon the Rough and Troubled Seas of Legal Practice' in Ontario* (Toronto, Law Society of Upper Canada Archives, 1993) at 41; and RL Abel, 'Comparative Sociology of Legal Professions: An Exploratory Essay' (1985) 1 *American Bar Foundation Research Journal* 5 at 40.

² CLE Programme 'Women in the Legal Profession' (Toronto, Law Society of Upper Canada, 13 May 1986). Similar programmes were later offered by law societies and bar associations across Canada, as well as by the National Association of Women and the Law in Winnipeg in February 1987.

2 Introduction: The First Women Lawyers

'nothing short of revolutionary.'³ Indeed, even taking account of significant expansion in the legal profession between the early 1960s and the 1980s, the rate of expansion for women lawyers was still disproportionately large: while the number of male law students across Canada doubled between 1962–63 and 1980–81, the number of female law students increased twenty four times in the same period.⁴ Reflecting an optimistic future for this 'revolution in numbers' of women in law, Justice Rosalie Abella predicted in her keynote speech that '... with any luck, 15 years from now if someone tries to organise a conference on Women in the Legal Profession, we will wonder what they're talking about.'⁵

Such optimism, however, has been increasingly tempered by a sense of paradox: while individual women have achieved significant success in law, there is continuing evidence of systemic gender barriers. Certainly, there have been some notable achievements, including the fact that nearly equal numbers of men and women are now law students in most Canadian provinces, with even higher proportions of women students in civil law programmes in Québec.⁶ Women have been appointed judges of provincial and federal courts, including Chief Justice of the Supreme Court of Canada;⁷ partners and even managing partners of major law firms; tribunal chairs and CEOs; and deans and professors of law schools.⁸ A woman lawyer was briefly Prime Minister of Canada, and two women

³ RL Abel, 'United States: The Contradictions of Professionalism' in R Abel and P Lewis (eds), *Lawyers in Society: the Common Law World*, vol I (Berkeley, University of California Press, 1988) 186 at 202.

⁴ RL Abel, above, n 1 at 23 and Table 3. See also Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability – the Report on Gender Equality in the Legal Profession* (Ottawa, Canadian Bar Association, 1993) at 25; DAA Stager with HW Arthurs, *Lawyers in Canada* (Toronto, University of Toronto Press, 1990) at 159–60; Cameron Harvey, 'Women in Law in Canada' (1970–71) 4 *Manitoba Law Journal* 9; and L Silver Dranoff, 'Women as Lawyers in Toronto' (1972) 10 *Osgoode Hall Law Journal* 177.

⁵ R Silberman Abella, 'Women in the Legal Profession' in CLE Programme, above, n 2 at 21. See also Cynthia Fuchs Epstein, 'Women in Law: Old Dilemmas, New Dilemmas,' above, n 2 at 16–18.

⁶ Current statistics reveal that women law students constitute 50% or more of most common law programmes at Canadian universities: see 'Key Facts about Canadian Common-Law Schools' in *LSAT Registration and Information Book (Canadian)*, 2003–2004 (Newtown, PA, Law School Admission Council, Inc, 2003) at 60. See also BM Mazer, 'An Analysis of Gender in Admission to the Canadian Common Law Schools from 1985–86 to 1994–95' (1997) 20 *Dalhousie Law Journal* 135.

⁷ See *Touchstones for Change*, above, n 4 at 50–51. Justice Bertha Wilson was appointed to the Supreme Court of Canada in 1982; Justice Claire L'Heureux-Dubé was appointed in 1987 and Justice Beverley McLachlin in 1989. Justice Wilson retired in 1991. Justice McLachlin became Chief Justice of the Supreme Court of Canada in 2000, the same year in which Justice Louise Arbour became a member of the Court. Justice L'Heureux-Dubé retired in 2002 and Justice Marie Deschamps was appointed to the Court. In 2004, Justice Arbour resigned, and Justices Rosalie Abella and Louise Charron were appointed to two existing vacancies; thus, for the first time in 2004, four of nine members of the Supreme Court of Canada were women. See also RM Salokar and ML Volcansek (eds), *Women in Law: A Bio-Biographical Sourcebook* (Westport, CT, Greenwood Press, 1996).

⁸ See *Touchstones for Change*, above, n 4 at chapters 5–9.

lawyers have been appointed federal Minister of Justice.⁹ Beginning in the 1970s, Canadian law schools began to offer courses about women and the law,¹⁰ and women lawyers established a national policy organisation and a national law journal.¹¹ In recent years, moreover, many women lawyers have successfully participated in test case litigation and legislative lobbying on issues about gender equality, particularly in relation to equality guarantees in the *Canadian Charter of Rights and Freedoms*.¹² Indeed, as a special American report published in 1999 concluded, women lawyers were 'the story of the [twentieth] century':

They've gone from being exiled from the corridors of political and corporate power to treading them en masse. Once banished from the nation's law schools (and from Harvard Law School until as recently as 1950) they now make up nearly half of this year's entering class. Women lawyers have forced the most exclusive law firms to open their doors. Just as importantly, they've forced the most entrenched male partners to open their minds. (Well, most of them.)¹³

Paradoxically, however, a stream of academic research, professional inquiries, and judicial task force reports in several jurisdictions has revealed how issues of gender equality in the law and the legal professions continue to present contemporary challenges. A number of academic studies suggest that women lawyers generally remain, in Margaret Thornton's telling phrase, mere 'fringe-dwellers of the jurisprudential community.'¹⁴ For example, in their study of men and women lawyers in large firms in Toronto in the early 1990s, John Hagan and Fiona Kay concluded that women lawyers did not succeed as well as their male colleagues, even when women invested in their careers to the same extent as men; the

¹² Hon Kim Campbell was Prime Minister of Canada (1993), having previously served as the first woman Minister of Justice (1990–1993). Hon Anne McLellan was also Minister of Justice (1997–2002).

¹⁰ According to a survey of course offerings on 'Women and the Law' in Canadian law schools for 1977–80, conducted by Professor Jane Banfield of York University (survey on file), eight law schools were providing such a course; for example, see B Baines, 'Women and the Law: Course Materials' (Kingston, Queen's University Faculty of Law, 1974). See also M J Mossman, '"Otherness" and the Law School: A Comment on Teaching Gender Equality' (1985) 1 *Canadian Journal of Women and the Law* 213.

¹¹ Female lawyers and law students organised the first national conference of Women and the Law in Windsor, Ontario in 1974; the conference resulted in the creation of the National Association of Women and the Law: see LS Dranoff, *Women in Canadian Law* (Toronto, Fitzhenry and Whiteside, 1977) at 87. The first issue of the *Canadian Journal of Women and the Law/Revue Femmes et Droit* was published in 1985.

¹² See S Razack, *Canadian Feminism and the Law: The Women's Legal Education and Action Fund and the Pursuit of Equality* (Toronto, Second Story Press, 1991); and M J Mossman, 'The Paradox of Feminist Engagement with Law' in Nancy Mandell (ed), *Feminist Issues: Race, Class and Sexuality*, 2nd edn (Scarborough, Prentice Hall Allyn and Bacon Canada, 1998) 180.

¹³ 'The Story of the Century,' *The American Lawyer*, March 1999, at 49.

¹⁴ M Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Melbourne, Oxford University Press, 1996) at 3–4. See also M Thornton, 'Feminist Jurisprudence: Illusion or Reality' (1986) 3 *Australian Journal of Law and Society* 5.

authors identified a 'glass ceiling' for women lawyers in many of these firms.¹⁵ The Canadian Bar Association's report in 1993 confirmed this academic research, but also warned that the 'glass ceiling' was often experienced by minority women as a 'steel door,'¹⁶ pointing out how gender intersects with women's race, class, sexual orientation, language, dis/ability, religion, marital and/or parental status, age, and educational background to create additional barriers. Similarly, in her more recent study of men and women lawyers in British Columbia, Joan Brockman found persistent discriminatory attitudes towards women lawyers, not just among older lawyers who were members of the 'old boys' club' and thus 'relics of the past,' but also among the 'baby dinosaurs,' younger male lawyers who were growing up to replace them.¹⁷ Studies in the United Kingdom,¹⁸ in the civil law jurisdictions of Europe,¹⁹ and in the United States²⁰ have reached similar conclusions. Thus, as Judith Resnick gloomily reported about the work of American judicial task forces on gender bias, 'a decade of academic and court-based documentation of deep-seated and endemic unfairness has not undermined the resiliency of legal culture;' although judicial task forces may 'authorize inquiry, ask forbidden questions, [and] obtain information, ... [professional cultures] still remain impenetrable to profound change.'²¹

¹⁵ J Hagan and F Kay, *Gender in Practice: A Study of Lawyers' Lives* (Oxford, Oxford University Press, 1995) at 182. See also K Hull and R Nelson, 'Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions' (1998) 23 *Law and Social Inquiry* 681; and S O'Donovan-Polten, *The Scales of Success* (Toronto, University of Toronto Press, 2001).

¹⁶ *Touchstones for Change*, above, n 4 at 11 and 60–61.

¹⁷ J Brockman, *Gender in the Legal Profession: Fitting in or Breaking the Mould* (Vancouver, University of British Columbia Press, 2001) at 200.

¹⁸ See C McGlynn, *The Woman Lawyer: Making the Difference* (London, Butterworths, 1998); H Sommerlad and P Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (Aldershot, Ashgate/Dartmouth, 1998); and S Fredman, *Women and the Law* (Oxford, Clarendon Press, 1997).

¹⁹ See U Schultz and G Shaw (eds), *Women in the World's Legal Professions* (Oxford, Hart Publishing, 2002). See also C Menkel-Meadow, 'Feminization' of the Legal Profession: The Comparative Sociology of Women Lawyers' in R Abel and P Lewis (eds), *Lawyers in Society: Comparative Perspectives*, vol III (Berkeley, University of California Press, 1989) at 196; and C Menkel-Meadow, 'The Comparative Sociology of Women Lawyers: The "Feminization" of the Legal Profession' (1987) 24 *Osgoode Hall Law Journal* 897.

²⁰ See M Harrington, *Women Lawyers: Rewriting the Rules* (New York, Plume Books, 1995); D Rhode, *Justice and Gender: Sex Discrimination and the Law* (Cambridge, MA, Harvard University Press, 1989); K Berger Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* (New York, Random House, 1986); and C Menkel-Meadow, 'Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change' (1989) 14 *Law and Social Inquiry* 289. See also C Fuchs Epstein, *Women in Law* (New York, Basic Books, 1981) and 2nd edn (Chicago, University of Illinois Press, 1993); R Moss Kanter, 'Reflections on Women and the Legal Profession: A Sociological Perspective' (1978) 1 *Harvard Women's Law Journal* 1; and A Sachs and J Hoff Wilson, *Sexism and the Law: A Study of Male Beliefs and Legal Bias in Britain and the United States* (New York, The Free Press, 1978).

²¹ J Resnik, 'Ambivalence: The Resiliency of Legal Culture in the United States' (1993) 45 *Stanford Law Review* 1525 at 1535. See also B Lentz and D Laband, *Sex Discrimination in the Legal Profession* (Westport, CT, Quorum Books, 1995); and M Thornton, above, n 14.

Such conclusions pose significant challenges: they confirm that even with an unprecedented number of women becoming lawyers, the admission of women to the bar has not engendered the law or the legal professions. Instead, gender remains deeply embedded within traditional legal norms and professional cultures; and as Thornton pointed out, 'neither an increase in the number of women nor the passing of time can provide an automatic remedy.'²² Moreover, as Carrie Menkel-Meadow suggested, the 'success' of individual women in the legal profession may be inversely related to the extent of their commitment to gender issues. As she reflected, 'Are ... women, who act like men, allowed to penetrate the restricted boundaries [of judicial appointment, law firm promotion, and academic success], while those who act more like women are kept out?....'²³ Such questions reveal how Virginia Woolf's claim, that women could enter the professions and 'use them to have a mind of [their] own and a will of [their] own,' remains profoundly contested.²⁴

RETHINKING THE FIRST WOMEN LAWYERS: THEMES OF GENDER, PROFESSIONALISM AND WOMEN'S LIVES

The professional and personal challenges that confront women lawyers today did not have their origins in the 1960s, as many have suggested. Rather, they reach back ... to the pioneer generation of women lawyers who were the first to articulate and grapple with the challenges facing women in the legal profession.²⁵

As Virginia Drachman argued in her study of women's efforts to gain admission to the bar in the United States in the last decades of the nineteenth century, the history of the first women lawyers is relevant to an understanding of contemporary issues of gender and professionalism. In describing how nineteenth century women lawyers struggled to balance their gender and professional identities,²⁶ for example, Drachman explained

²² M Thornton, above, n 14 at 291; according to Thornton, 'clubs, corporeality, and corporatism' represent ongoing sites of contestation for women lawyers.

²³ C Menkel-Meadow, above, n 19 (OHLJ) at 899-900: according to Menkel-Meadow, such questions confront the issue of 'whether women will be changed by the profession, or whether the legal profession will be changed by the increased presence of women.' See also *Touchstones for Change*, above, n 4 at 11.

²⁴ V Woolf, *Three Guineas* (London, Hogarth Press, 1977) 1st pub 1938, at 151. See also JC Foster, 'Antigones at the Bar: Women Lawyers as Reluctant Adversaries' (1986) 10:3 *Legal Studies Forum* 287; C Smart, 'Feminism and Law: Some Problems of Analysis and Strategy' (1986) 14 *International Journal of the Sociology of Law* 109; and M Thornton, 'Feminism and the Contradictions of Law Reform' (1991) 19 *International Journal of the Sociology of Law* 453.

²⁵ VG Drachman, *Women Lawyers and the Origins of Professional Identity in America: The Letters of the Equity Club 1887 to 1890* (Ann Arbor, University of Michigan Press, 1993) at vii.

²⁶ VG Drachman, *Sisters in Law: Women Lawyers in Modern American History*