

The Case of the Missing Sisters

I began law school in 1977, nine years after leaving university as an Arts graduate. One day, during that first year back at school, our criminal law professor engaged the class in a role playing exercise. He gave us a hypothetical fact situation, then asked one group of students to speak for the prosecution, another to speak for the defence, and a third to give judgment on the case. As he came along the row of 'judges,' one student began his remarks with a by-then-familiar phrase: 'I concur with my learned brother . . .' This raised some laughter in the class, not only because the student he referred to was a woman, but because the phrase itself seemed curiously anachronistic; looking around the room, one could see almost as many women as men.

Times had changed. Back in the 1960s, when I first went to university, very few women even thought of a career in law. It was a profession dominated by men, and the macho image of courtroom gladiator was a difficult one for many women to reconcile with their social role. Although a handful of women did enter law (some were the daughters of lawyers and judges), they rarely reached the upper levels of the hierarchy. The legal establishment appeared to be an exclusive club, an elite brotherhood. But where were the sisters?

This was a question raised with increasing emphasis by the women's liberation movement. Feminists perceived that the law exerted a far-reaching influence on the lives of all women, and they used the sex segregation of the profession both as evidence that women were second class citizens, and as a call to action. If women were oppressed because men controlled society's power structures, then the movement of women

into these structures might lead to social change. This battle was to be fought on behalf of all women, not merely for the benefit of individuals seeking access to a privileged field.

A decade later, it seemed that the agitation of the women's movement had achieved amazing results. The Royal Commission on the Status of Women had found that, in the early 1960s, only three per cent of Canadian lawyers were women.¹ In 1977, women accounted for almost 40 per cent of my first year class at the University of Toronto.²

We still faced a number of barriers, to be sure. We were inheriting an ancient tradition that had not yet adjusted to our presence, and the transition was going to be difficult. Very few judgments in our casebooks had been written by women, because women are seldom appointed to the superior courts where 'law-making' decisions are made. Very few women were on faculty. And we still encountered sexism on a day-to-day basis.

Sexism at the law school was both explicit and implicit. The professors were more restrained that the visiting practitioners who told off-colour stories and advised us to wear see-through blouses to court. But among the professors, for example, there was one who illustrated every point of criminal law with a reference to rape, one who made a minor career out of attacking a particular judgment written by a female member of the Ontario Court of Appeal (who he always referred to by her first name, and never as 'Madam Justice'), and one who seemingly suffered from a perceptual handicap (he could see only the male students who had raised their hands, not the female students).

Nevertheless, we looked forward to a bright future —

the transformation of the legal profession seemed to be just a matter of time. Simple arithmetic suggested that our 40 per cent would soon become 50 per cent; in 20 or 30 years, therefore, half the judiciary and half of the law school faculties would be female. While our numbers offered no automatic guarantee of equality for women, it seemed reasonable to expect that equal representation in the profession would lead to sweeping changes in the law itself.

Since that time, a number of clouds have appeared on the horizon. It is becoming increasingly clear, first of all, that even if women do someday make up half of the legal profession, the other half is likely to remain 'more equal.'

A survey undertaken at the University of Toronto in 1978 not only found that 'discrimination against women in the legal profession is still present'; it also indicated that such discrimination might be on the increase. This survey, based on 388 responses from recent graduates of the Faculty of Law, found that the starting salaries of women were generally lower than those of men, and that women were having increasing difficulty in finding permanent employment after being called to the bar: 'In 1973 both males and females found jobs immediately with an equal frequency (78 per cent). By 1976 the male frequency had increased to 84 per cent while that for women decreased to 43 per cent.' In addition, the number of women returning to their articling firms had declined from 47 per cent in 1973 to 18 per cent in 1976: 'Part of this drop may be explained by the fact that women tended to article in smaller firms. In a slow economic climate these firms would be more likely to suffer.'³

This study underlines the differences between equality

of opportunity in theory and in fact. A woman cannot be denied a place in law school if she meets the entrance requirements, but she does not find a clear path to advancement once she graduates. If she aspires to judicial office, she faces many more obstacles than a man of similar ability would encounter. The Royal Commission on the Status of Women reported that in 1969, 'there were 889 judges and magistrates in Canada; 14 of them were women, of whom only one was a member of a superior court.'⁴ Although this situation is slowly changing, it seems a far-off fantasy to imagine a Supreme Court of Canada represented by as many women as men.

There are also some indications that female job ghettos may be developing in law, as in other areas of employment. The concern is not so much that women will gravitate towards family law; this area does not suffer from particularly low status or low pay, and it will be a field of great interest and activity as the reform legislation being enacted by the provinces is interpreted in the courts. It would be distressing, however, to see the work of lawyers in community clinics become stereotyped as women's work, more akin to social service than to 'real' law. Women lawyers may also find themselves streamed into bureaucratic or administrative jobs — in research, government, or personnel, for example — that could then be devalued by an emerging, sexual division of labour.

While the struggle for equality of status remains an uphill battle, it no longer seems inevitable that women will even achieve equality of numbers within the legal profession. The preliminary findings of a study being conducted by the Queen's Caucus of the National Association of

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Women and the Law⁵ suggest that the entry of women into law school may now be leveling off. In looking at their statistics for Ontario, I note that my own first year class was particularly well represented by women, and that a 30 per cent figure was closer to the general average in 1977-78. However, the total registration of women in Ontario law schools has increased only slightly since that time.

If, in fact, the influx of women into law school has reached a highwater mark at roughly one-third of total enrolment, it is interesting to speculate on the reasons for this phenomenon. Are women no longer interested in law school? Is the women's movement losing ground? Or has the progress of women as a group been blocked by lack of opportunity?

Many women are deterred from entering law by the same material considerations (lack of money, lack of day care, and so on) that prevent them from participating as equals in other areas of life. Law school is an expensive proposition, and government assistance has been cut back. In Ontario, for example, the 1978 policy change limiting student grants to four years of post-secondary education has made it very difficult for students without private means to contemplate graduate school or professional training. Because of her inferior earning power, a woman attempting to put herself through law school is at a disadvantage. It is also very difficult to combine domestic responsibilities with a legal career, and women who expect family life to be part of their future may hesitate before committing themselves to the long years of training and the long hours of work that the occupation demands.

Problems still exist, therefore, for women who wish to enter law or to establish themselves within the profession. But what of the early hopes of

the women's liberation movement, that saw the participation of women in law as part of a general strategy for social change? From one point of view, the changing image of the profession can be seen as a major victory for women; in little more than a decade, the number of women entering law has increased tenfold. But what does this change mean for the majority of women — the wives, workers, clients, and citizens whose lives are affected by the law?

Our optimism over the enrolment statistics must be tempered by one very important fact. As I discovered in my first weeks as a law student, most of the women in law school are not feminists. (Some are quite anti-feminist: I was not present when a guest speaker advised us to lean forward towards the jury in our see-through blouses; I heard about the incident from another female student, whose distaste and outrage was directed towards 'some women's lib types' who had objected to his remarks.) Although a number of active feminists have been attracted to law, an even larger number of women view it simply as a rewarding career option. They want to join the establishment, not shake it.

Looking back, my disappointment that this should be the case seems very naive. At the time, however, it seemed that a woman's decision to enter law school could be considered a political act. It was the women's movement, after all, that had so recently made this choice an acceptable one for large numbers of women. Shirley Greenberg, an Ottawa lawyer, makes the following comments about her experiences as a law student during the '70s.

'My first shock was that the women students were not more aware of the issues confronting women. I thought that if women were entering this so-called "male field" — and it

has been historically exclusively male — that they would realize that they were breaking barriers. I really looked to women in law exercising leadership on behalf of women. But these women didn't want to do that. At the same time they felt it was their right to be trained as lawyers, their right not to be discriminated against. As a feminist, I related this to the position of all women. But most of the women I knew related it only to themselves. In other words, the political and social dimension was absent."⁶

Among the law students who consider themselves feminist, only some are politically active. A colleague from McGill writes, 'Student membership in the Women and the Law Association has never been higher than 15 in any year. Most women law students are no more feminist than the general population. I would say that about half have feminist sympathies and identification but do not wish to become actively involved in a group, usually because of a heavy workload, etc. The rest are either indifferent, or are "queen bee" types who feel that our group is totally useless, fanatic, "judgmental," and so on.'⁷

My own experience has been that feminism in law school can have many faces. It can encompass hard-working organizers of workshops, panels, marches, and newsletters, or women whose feminism may not extend much further than defending their own right to a legal career. Immediate self-interest plays a role, of course, in determining student response. (We had a much larger turnout for a panel discussion of discrimination against women lawyers than for a workshop on women's double workload.) And a law student, like anyone else, will adapt her feminist ideals to her general political views. It should be remembered that law students look

forward to a privileged future and often come from a relatively privileged background as well. Because they do not have the same personal stake in wage scales or day care assistance as the average woman, many law students are indifferent to such concerns. It is quite common for feminists in law school to support only a narrow range or an eclectic assortment of women's issues. On the broad topic of women and work, for example, I have known women law students who, while describing themselves as feminists, preferred to keep an open mind on affirmative action, saw equal pay legislation as undue government interference in industry, and viewed the unionization of working women as an exclusively 'left' issue.

The presence of women in law school, then, is not an unqualified feminist victory. Some feminists would argue that it is better to see a woman in a position of power — any woman — than a man. They claim that things will be different for women when there are more women lawyers, judges, politicians, and so on. While this change will make it more comfortable for women to practice law, it may not make a great difference to all the women who are affected by the law.

Some of the women in law school feel virtually no identification with women's concerns, even at the most basic level. They are the ones who shun women's activities, laugh at sexist jokes, and listen carefully when male lawyers tell them how to dress and behave. They want to be accepted. (And this is an understandable goal, given the barriers that women lawyers still face.) Part of the problem may be that we are still searching for role models. Shirley Greenberg notes, of her first year in law school, 'that only the women who were already feminist-oriented were able to work with other women. The

others, when they were forced to make a choice of being woman-identified or man-identified, chose men.⁸

Students who demonstrate a stronger identification with other women may nevertheless go to extreme lengths to avoid appearing 'biased' on feminist issues. And feminists themselves may be affected by the conservatizing influences of the legal establishment. In law, one must often conform in order to succeed — whether that means representing your client as effectively as possible, or advancing your own career. Lawyers who display their feminism too openly, or on inappropriate occasions, may find themselves discred-

ited and excluded from positions of influence within the profession. On the other hand, these women may find it easier to take strong positions if they are supported 'from below' by public opinion, women's groups, and political agitation.

My purpose in making these remarks is not to detract from the very real gains that women have made in the field of law. Women are being treated more fairly in the courts, and a number of new statutes have enshrined the principle of 'equal status.' It is because we have come so far, however, that we can step back and begin to evaluate our achievements.

Clearly, we cannot measure our progress simply by the number of women within the profession — a 'queen bee' on the Supreme Court of Canada will not be of much help to the majority of women. Nor should we be content to count our

victories, without analyzing the reasons for our defeats. Why, for example, has the reform movement had much greater success in the area of marital property than of equal pay?

We must continue the struggle to create a sisterhood within the legal profession of women who look beyond themselves and their own interests to the interests of women as a whole. To a large extent, this struggle cannot be separated from the broader efforts of the women's movement, any more than the law schools can be separated from the larger society in which they are rooted. We must persevere in our lobbying, organizing, consciousness-raising, and political activism — from inside and outside the legal establishment. We have come a long way since the 1960s, but the battle has just begun. ©

Notes

¹ *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: Information Canada, 1970), p. 79.

² When that class graduated in 1980, six women and four men were on the 'honours list.'

³ Bram Costin, 'The Future for Law Graduates,' *The Advocate* 13, no. 1 (1978), Students' Law Society, Faculty of Law, University of Toronto, pp. 27-30.

⁴ *Report of the Royal Commission on the Status of Women in Canada*, p. 342.

⁵ I am indebted to Susan Heakes for sending me copies of the statistics NAWL has collected concerning women law students and women law professors.

⁶ Interview with Shirley Greenberg and Cathy Aitken, *Upstream* (September 1978), p. 16.

⁷ Letter to the author, May 1980.

⁸ *Upstream* (September 1978), p. 16.

The National Association of Women and the Law L'Association Nationale de la Femme et du Droit

The founding convention of NAWL/ANFD was held in Winnipeg in 1975. Since that time, it has grown to an association of over 600 members, with 17 local caucuses across the country. Its activities are directed towards condemning sexual discrimination, proposing legal changes, and presenting these proposals to government. Policy resolutions of NAWL/ANFD include:

- *effective enforcement of human rights legislation*
- *equal pay for work of equal value*
- *removal of abortion from the Criminal Code*
- *reform concerning Native women's rights*
- *specific proposals for the reform of the sexual assault provisions of the Criminal Code*
- *reform concerning divorce, alimony and maintenance*
- *implementation of community of property as the underlying principle in provincial matrimonial property regimes*
- *elimination of sexual discrimination in the areas of credit, pensions, and income tax.*

Membership is open to all persons who support the objectives of the Association, and its organization includes both local caucuses and members at large. Policy-forming conferences are held every two years. The theme of the next national conference, to be held in early spring, 1981, is 'The High Cost of Being a Woman.' If you would like to join the Association or learn more about it, please write to NAWL/ANFD, c/o Deborah Acheson, 999 Fort St., Victoria, B.C. V8V 3K3.