An Analysis of Gender in Admission to the Canadian Common Law Schools from 1985-86 to 1994-95

Brian M. Mazer
University of Windsor

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Using statistical data covering a ten year period, this study examines the issue of gender representation in admissions to first year law study at common law schools in Canada. After addressing three identifiable steps in the admission process—applications, offers and registration—the author concludes that while there has been progress and the gap has narrowed, the problem of gender inequality persists.

Introduction

Recently, access to legal education and to the legal profession have been the subject of scrutiny and discussion. One of the first issues of access to be subject to comprehensive study is the “gender question.” Much of the recent work has focused on women in the legal profession, the judiciary and law teaching. With regard to law school admission, it has been noted

* Professor, Faculty of Law, University of Windsor. I am indebted to a number of people for their assistance in the preparation of this article. In particular I would like to acknowledge my colleagues at the College of Law, University of Saskatchewan who, during my sabbatical stay with them, provided suggestions and comments; John Law of the Faculty of Law, University of Alberta, who was chair of CLASSI from 1994-96; my other colleagues at CLASSI; Robert Carr, Director of Data Services at the Law School Admission Council; Neil Gold of the Faculty of Law, University of Windsor; the Law Society of Upper Canada and Paul Kneebone at Carswell.

that by the 1990s almost half the students in the entering classes at the various law schools are female. The ensuing apparent assumption is that, for the most part, gender representation among the cohort of law students is no longer an issue. Little analytical attention has been directed to the various aspects of law school admission.

This paper examines the issue of gender representation as it applies primarily to admission to first year law study at the common law schools. Analysis of relevant data will be undertaken to test the assumption about gender representation in admission to first year law study between 1985-86 and 1994-95.

1. Research Question

Much of the evaluation of gender access to legal education has focused on the quantitative outcome of the admission process; i.e. the number or percentage of women enrolled in and graduated from law school. At one level this is explicable because of course that is the bottom line. If women are not being admitted to or are not graduating from law schools in proportions approximating the representation of women in the adult population, there is no hope that the profession itself will one day mirror that gender distribution. In addition, the data needed to examine other aspects of admission to legal education are not generally available. This paper examines such data, primarily the statistical information shared among the common law schools regarding admission to their first year classes.

3. The Touchstones report notes that approximately 50 percent of law students are women. Touchstones, supra note 1 at 9. In the succeeding chapter the report looks critically at a number of aspects of the law school experience, including some matters of admission. See generally 23-36.
4. This study is limited to analysis of data for the common law faculties primarily because the data available are from the common law schools. It is acknowledged that the situation with regard to gender representation in admission to law school and the legal profession is different among the civil law faculties than among the common law faculties. See e.g. Gender in Practice, supra note 2 at 11. The current common law schools in Canada are: University of Alberta Faculty of Law, University of British Columbia Faculty of Law, University of Calgary Faculty of Law, Dalhousie Law School, University of Manitoba Faculty of Law, McGill University Faculty of Law, Université de Moncton École de droit, University of New Brunswick Faculty of Law, University of Ottawa Faculty of Law Common Law Section, Queen’s University Faculty of Law, University of Saskatchewan College of Law, University of Toronto Faculty of Law, University of Victoria Faculty of Law, University of Western Ontario Faculty of Law, University of Windsor Faculty of Law, York University Osgoode Hall Law School.
The research question proposed is that there has been a narrowing of the gender gap in women's access to law school in the ten year period. The percentages or proportional representation of women in first year law study in the common law schools will also be examined.

However, this study is based upon an assertion that there are three significant stages in the admission process, one of which is enrolment. Additionally, questions regarding the representation of women in the applicant pools will indicate whether in fact law is viewed by women as potentially accessible or at least one which, in the case of the vast majority of applicants, merits consideration to the extent of writing the Law School Admission Test (LSAT) and submitting an application and other required documentation. A third question of relevance to the assertion that the gender gap has been narrowed is the proportion of offers of admission made by the common law schools to women relative to men over this ten year period. The question of the baseline or comparative assumptions will be examined.

II. Data Sources

This study is limited by the nature and scope of available data. The primary source of data on law school admission in Canada is the annual statistical survey of the admission process undertaken by the Canadian law school admission organization, Canadian Law Admission Statistics Services and Innovation (CLASSI).\(^5\)

The CLASSI data are extremely valuable in illuminating the patterns of admission. There are, however, some limitations which the data impose on this study. The first and major limitation inherent in available data is the limited scope. The CLASSI statistical information exchange involves only the common law programs in Canada.\(^6\) The second limitation relates to the time frame available for analysis. CLASSI data are

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5. CLASSI was started in 1976. Membership is open to all the Canadian law schools, though historically the English language common law schools have been its active members. In addition to exchanges of information such as the annual survey, CLASSI activities have included sponsorship of admission oriented activities, such as the Canadian Law Fairs, and liaison with other bodies having an interest in admission to Canadian law schools. The Chair of CLASSI sits as a non-voting participant with the Law School Admission Council's Board of Trustees and reports to the Council of Canadian Law Deans.

6. The civil law programmes do not participate in the activities of CLASSI. An attempt was made a number of years ago to design a statistical information form for admissions to the civil law schools which paralleled the statistical form for admissions to the common law programmes. However the initiative was not completed. Since admission to civil law programmes differs from the common law programme and there is no parallel dataset, this study is limited to the experiences of the common law programmes.
available in a relatively complete state from the 1985-86 admission year. The data for the 1995-96 entering year were being collected during the preparation of this study, but had not yet been compiled and checked. The decision was made therefore to limit the study to the ten year period between 1985-86 and 1994-95.

Although the CLASSI data can be described as the most comprehensive and complete source of statistical information regarding the admission process in common law Canada, their limitations must be acknowledged. The information in the CLASSI database is based upon a statistical form designed by the member schools in CLASSI. Even though the information solicited has changed, the categories of information regarding gender access have remained consistent. The data are self-reported and only limited attempts are made to verify the accuracy of the information provided.

The dataset is also limited by the type of data collected and reported. For this study, examples of limitations which precluded greater depth of analysis are: gender information within the “categories” of applicants, gender information regarding age, “race” or “colour,” socio-economic status, disability and sexual orientation, and gender information about the success of those applicants who attended first year law study the previous year. CLASSI has recently begun to request and report some of this type of data on the annual form. However, there is insufficient historical

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7. The admission year means the academic year of registration in first year law study. So, for example, the 1992-93 year refers to the students who entered first year law in September 1992 and who would have applied for admission in the fall of 1991 or the winter of 1992.
8. The relevant percentages for the 1995-96 year have been included in footnotes.
9. The primary quality control measure is reliance on the participating schools themselves. Drafts of the annual CLASSI statistical reports are sent to the participating schools with the request to correct any inaccurate information. Those corrections are included in the final draft of the report. On occasions when the reported information appears to be inconsistent with other similar data reported in the form from the school or inconsistent with previous information, an informal consultation with the law school will be made. For that reason, there are occasions where the figures or totals do not always reconcile. If the discrepancies were large, the schools would be consulted.
10. The CLASSI form contains the following categories of applicants: “Regular,” “Mature,” “Aboriginal” and “Other.” Each school provides its own definitions or descriptions annually. The definitions are fairly consistent among schools and over time but there are instances of differences or changes over time. The gap in information by gender for each of the categories of admission, combined with the lack of information on age by gender precludes the investigation of a hypothesis that women might be gaining access to legal education in some categories of admission or based on certain criteria disproportionately. Anecdotal and intuitive responses would support that hypothesis. Support for that can be found in the coincidence in time between two events: the expansion by law schools of their notions of relevant criteria for admission, and the significant increase in the representation of women in the first year law classes. Since the data are not available to test this, discussion of the reasons for the hypothesis is brief, and, unhappily, it will remain an untested hypothesis.
information to permit satisfactory examination of these issues at this time.

Data from CLASSI on gender issues in admission to common law schools for the ten year period are comprehensive in terms of the population to be studied. However, not all the common law schools participated in every year of the data collection and, on occasion, a school may have failed or been unable to report a specific piece of information in a particular year. For example, in the first year recorded by the data, 1985-86, one law faculty was not yet participating. As well, data on the gender breakdown of applicants and recipients offered admission were not available from one faculty for a few years. The absence of information in any given year is of some concern. However, since over the ten year period these instances are limited in terms of their frequency both in any given year and by school, study of the admission experiences in common law Canada can be made.  

Although the main source of data will be the CLASSI annual statistical survey for the period covering 1985-86 to 1994-95, reference to other sources of data, such as the Canadian census and the Law School Admission Council, will be made in the discussion.

III. Historical Setting

The admission of women to the legal profession and legal education in Canada has a long and at times less than illustrious history. Clara Brett Martin’s application in 1891 to the Law Society of Upper Canada for admission as a student-at-law and her subsequent admission in 1893 mark the initial success in the struggle regarding the admission of women into the legal profession in Canada.

The admission of women into legal education and ultimately the legal profession has been a slow process. In recent times, the rate of admission of women has increased dramatically. In 1911 there were only seven women lawyers in all of Canada. According to the Canadian Bar Association database, in July 1993 there were 16,043 female lawyers in

11. The objective of this analysis is to discern trends or changes in the broader sense. For this reason percentages are most often discussed. Small numerical differences will not be viewed as changes of significance.
12. Gender in Practice, supra note 2 at 6-11.
15. Gender in Practice, supra note 2 at 8-12.
16. Ibid. at 11.
Canada, which represented 27.1 percent of the profession. The dramatic increase in the admission of women to legal education began in the late 1960s and early 1970s.

For many years, questions of admission to law school were the primary, if not exclusive, domain of the admission professionals, the faculty members on the admission committee and the dean. Questions about who was being admitted were focused mostly on the entrance credentials of the class, on undergraduate grades, and, after the early 1970s, on Law School Admission Test (LSAT) scores in most of the common law schools.

A confluence of factors, such as the recognition of other credentials relevant to admission decisions and the increased number of women being admitted to law schools, informed the law school discourse about who makes up the first year law class.

Historically, admission to the profession was not through the successful completion of a university-based degree program in law, followed by a period of articles with a bar admission course and bar examination. Rather, until the late nineteenth or early twentieth century, access to the profession could be gained through a period of apprenticeship with lectures, sometimes combined with examination requirements.

17. *Touchstones,* supra note 1 at 9. The database indicates a total of 59,310 lawyers in Canada; 43,087 are male.

18. Hagan and Kay state that the most pronounced gains for women in the legal profession occurred in the past two decades, especially since 1971. *Gender in Practice,* supra note 2 at 8. Since law school, articles and bar admission take approximately 4 years, the corresponding starting point for the most notable increase in female representation in the entering law school classes would be about 1967.

19. See e.g. Law Society of Upper Canada, Special Committee on Legal Education, *Report of the Special Committee on Legal Education* (Toronto: Law Society of Upper Canada, 1972) (Chair: B.J. MacKinnon) [hereinafter *MacKinnon Report*]. Recommendation Four proposed that the law schools and the Law Society recognize a “mature” student category for admission to legal education. Prior to this recommendation, the policy of the Law Society, as set out in the 1957 report of the Special Committee on Law Schools, was that the minimum requirements for admission to law school were either completion of two years of university study after senior matriculation or three years of university study after junior matriculation. *MacKinnon Report* at 22-3. Specifically with regard to the recognition of other credentials relevant to admission decisions, the *MacKinnon Report* stated that “[l]aw schools should waive the normal requirements and admit those mature students who on the basis of age, experience, maturity and outstanding qualities as evidenced by their previous careers merit an opportunity to study law.” *Ibid.* at 23.

Additionally the MacKinnon committee recommended that the law schools and the Law Society actively encourage aboriginal people to study law. Recommendation Seven advocated the waiver of formal entrance requirements and the admission of appropriate candidates as mature students. *MacKinnon Report* at 23-4.

criteria for admission apparently were not academic credentials but rather the social and ethical attributes of the "gentleman."\(^{21}\) Over time, minimum academic credentials became at least part of the admission determination.\(^{22}\) In 1957, the establishment in Ontario of the requirement of full time legal study also brought with it a requirement of a minimum two years of undergraduate university study.\(^{23}\) During the mid 1960s, the last two Law Society controlled law schools, in Ontario and in Manitoba, became faculties of York University and the University of Manitoba, respectively.\(^{24}\)

Throughout this evolution in the structure of legal education in common law Canada, competition for positions was not high. Even during the post World War II period which saw large numbers of veterans returning, access to legal education was relatively easy, due in part to significant increases in the size of the classes.\(^{25}\) Barry G. Browning described the difficulty in gaining admission to law study in the 1950s:

> It was sufficient in 1955 for a candidate for entry to prove that he (in those days almost exclusively) had completed the stipulated pre-law studies and that he had a pulse beat. If he played hockey that was a bonus.\(^{26}\)

The 1960s and the early 1970s witnessed dramatic increases in the number of law students. In 1960 in Canada, there were 2,480 law students of whom 5.1 percent were female. By 1970, the number of law students in Canada had increased to 7,205, of whom 12.7 percent were female. The increase in the total number of law students continued through the 1970s. In 1980 the number of law students in Canada was 9,743. The representation of women in the law schools during the 1970s increased substantially. Of the 9,743 law students reported for 1980, 38.2 percent were

\(^{21}\) Ibid. at 116.

\(^{22}\) McLaren describes the various changes in criteria in admission to the two models of legal education—the law society controlled model, as was the case in Upper Canada, and the university based model, started in 1883 with the founding of Dalhousie Law School. Ibid. at 116-29.

\(^{23}\) Ibid. at 132.

\(^{24}\) Ibid. at 133.

\(^{25}\) Full time enrolment in bachelor of laws programmes in Canada increased dramatically immediately following the war. According to Statistics Canada, in 1945 there was an increase of 12.6 percent over 1944. Further 1946 saw an annual percentage increase of 58.9 and then in 1947 there was an annual percentage increase of 29.4. In 1945 there were 1,223 law students (4.4 percent of whom were women). Just two years later, there were 2,521 law students (3.3 percent of whom were women). Statistics Canada, Survey of Higher Education and Universities: Enrolment and Degrees, cited in D.A.A. Stager & H.W. Arthurs, Lawyers in Canada (Toronto: University of Toronto Press, 1990) Table 4.3 at 96-7.

\(^{26}\) B.G. Browning, "A Walk Through the Black Forest or A Study of Criteria Effectively Available for the Selection of Students to Faculties of Law", in R. Matas & D. McCawley, eds., supra note 20 at 611 [hereinafter "The Black Forest"].
female, thus showing a three-fold increase in the percentage representation of women during the decade of the 1970s. By 1985, of the total number of 10,271 law students then in Canada, 45.7 percent were women.\footnote{27}

In recent years, with the increased competition for the limited number of places in first year law study, undergraduate university grades and, since the early 1970s, LSAT scores have become the dominant factors used to make admission decisions at the common law schools. As noted previously,\footnote{28} the \textit{MacKinnon Report} prepared for the Law Society of Upper Canada in 1972 recommended the recognition of a "mature student" category of applicants for whom the "[l]aw schools should waive the normal requirements and admit those mature students, who on the basis of age, experience, maturity and outstanding qualities as evidenced by their previous careers merit an opportunity to study law."\footnote{29} An additional broadening of access to legal education was recommended in order to increase the representation in the legal profession of Aboriginal people.\footnote{30} The report contains no reference to gender issues with regard to access to legal education.\footnote{31}

The representation of women in the law school classes and subsequently in the legal profession rose dramatically in the 1970s. While the proportion of female students increased steadily from 1945 until the late 1960s, the late 1960s and 1970s represented a time of significant gains in proportional gender participation in legal education.\footnote{32} It has been stated that attention to gender issues in the legal profession is due to the heightened scrutiny brought on by the rapid growth of the profession. In particular, the rise in numbers in the profession is attributed, in large part,
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The first year that the percentage of female recipients of a bachelor of laws degree exceeded 20 percent was in 1975, which would indicate that the 1972-73 admission year would be particularly noteworthy for its gender representation.

There are a variety of explanations for these phenomena. It is sufficient here to note that the changes resulted in both an increased awareness and analysis of gender issues in admission to law school and, ultimately, in the greater participation of women in the legal profession.

The tendency might be to conclude that by the mid 1980s the more difficult aspects of proportional representation of women students in the common law schools had been overcome. After all, the 1985 full-time enrolment of law students in Canada boasted 45.7 percent women students. Taking into account the fact that the civil law schools have historically had a higher percentage of women students than their common law counterparts, the representation of women in the common law schools was well over 40 percent. As a result, there was some cause to speculate optimistically that the trend would continue so that proportional gender representation would soon become a generalized reality, limited neither to an individual common law school nor to an isolated admission year.

IV. Gender Representation

An initial issue is the determination of an appropriate measure for the evaluation of proportional gender representation at the various stages of the admission process. An intuitive approach is to set the measure relative to a relevant population distribution.

The measure that is often used is equal representation. Commentators and law schools often make note of the instances where the percentage of women in the first year class approaches or exceeds 50 percent. As a rough measure this would appear to be appropriate, given the proportion of women and men in Canada. According to the 1991 census, 50.7 percent

33. Gender in Practice, supra note 2 at 26.
34. Statistics Canada, Degrees, Diplomas, Certificates Awarded by Degree-granting Institutions, cited in Lawyers in Canada, supra note 25 Table 4.13 at 114-5.
35. This assumes a relatively proportional success rate between the women and men through the three years of law school from 1972-73 to 1974-75. If the success rate for women was in fact worse than for men at that time, the percentage of women first year law students would have had to have been proportionately higher.
36. See e.g. Gender in Practice, supra note 2 at 11.
of the Canadian population is female.\textsuperscript{38} It could be considered more accurate to use the adult population. The 1991 census figures for the population 15 years and over indicate that 51.7 percent are women,\textsuperscript{39} only slightly higher than the percentage of women in the total population.

This measure of approximately equal gender representation will not take into account or compensate for the historic inequities in access to legal education which have resulted in the gender imbalance in the profession. As a result, there are arguments in favour of adopting a measure for evaluation with the representation of women set at a number higher than approximately 50 percent in order to accelerate the achievement of gender balance in the legal profession.

Another view is that historic inequities can only be compensated in an accelerated way by "distorting the balance" in the current and, for the medium term, future law classes. While that argument puts aside the historic distortions, it rests its appeal on contemporary equality, thereby avoiding the difficulties attributed to notions of affirmative action. Therefore over an extended period of time, with equal representation in the first year classes, the legal profession will have better gender balance.

This reasoning involves a number of important assumptions. During this period of time there must be relative equality of representation in the first year classes. Even small deviations resulting in underrepresentation of women will negatively impact the time line in terms of the representation of women in the profession. As well it must be assumed that there will be no substantial gender difference in success in law study. During the past twenty or so years when legal education experienced the tremendous growth in terms of the number of law schools and positions in first year classes, there was also significant competition for the available positions. The intellectual abilities of law students have increased and the failure rate in first year has dramatically declined.\textsuperscript{40} The number of students at the common law schools who are required to discontinue or who voluntarily withdraw is extremely small. According

\begin{footnotes}
\item[38] Statistics Canada, \textit{Age, Sex and Marital Status}. 1991 Census of Canada. Catalogue number 93-310. (Ottawa: Supply and Services Canada, 1992) Table 1: Population by Sex, Showing Selected Age Groups, for Canada, Provinces and Territories 1921-1991. Table 1 reports the actual numbers as: total population: 27,296,855; female: 13,842,280; male: 13,454,580.
\item[39] \textit{Ibid.}, Table 5: Population 15 Years and Over by Five-Year Age Groups Showing Sex and Legal Marital Status for Canada, Provinces, Territories and Census Metropolitan Areas, 1991 - 100 percent Data. Table 5 reports the actual numbers as: total population: 21,604,305; female: 11,066,635; male: 10,537,670.
\item[40] In 1985 the failure rate in first year at the common law schools is reported to have been 2 percent: "The Black Forest," \textit{supra} note 26 at 611.
\end{footnotes}
to the CLASSI Statistics the attrition rate after first year for the common
law students who attended in 1993-94 was approximately 3.3 percent. The
attrition rate for women relative to the 1993-94 total entering class was 1.3 percent while the total attrition rate for men was 1.9 percent. The
total number of students who were required to discontinue from their law
studies after first year represented 1.6 percent of the entering class. Women who were required to discontinue represented 0.6 percent of the
entering class and men who were required to discontinue represented 1 percent of their entering class of 1993-94.

With the current rate of attrition, any gender-based distortion in terms
of the success rate in law school is insignificant. A negative change in the
overall success rate in law school could impact on the time line for
achieving gender proportionality in the profession. However there does
not appear to be any reason to suspect or predict any significant increase
in the attrition rate.

Data regarding attrition after second and third year of law study are not
collected. It has been assumed that any attrition at those stages of law
school is insignificant. The structure of academic regulations, which
generally give students in the upper years a right to repeat a failed year,
would lend support to that proposition.

There are also a number of assumptions which must be made regarding
post-LL.B. stages of professional qualification. The first is that there are
no significant gender differences in access to and successful completion
of articles. There is some reason to doubt the validity of such an
assumption based upon the findings and recommendations of the Cana-
dian Bar Association Task Force on Gender Equality in the Legal
Profession.

Another assumption is that the success rates at the bar admission
courses and examinations are similar for women and men. If the failure
rates at this stage of professional qualification are extremely small then,
as was observed with regard to law school, any gender-based distortion
would have an insignificant impact. However, should failure rates be
significant, an analysis of gender-based success rates would be impor-
tant. Proposals to deal with the "numbers problem" in the legal profession
by using bar examination failure rates increase the importance of moni-
toring and analysing bar passage rates by gender.

41. The attrition rate includes those students who were required to discontinue and those who
    withdrew from first year law studies.
42. Rounding of figures accounts for the slight discrepancy between the total and the sum of
    the women and men.
43. Touchstones, supra note 1 at 39-41.
Currently, a more important assumption is that there is no gender difference in the departure rate from the legal profession. This assumption would appear not to be the case today in the profession. The Canadian Bar Association Task Force on Gender Equality in the Legal Profession reports that women are leaving the legal profession in higher proportions than men.\footnote{The report points to surveys in British Columbia, Alberta and Ontario. \textit{Ibid.} at 51.} The impact of this phenomenon on an objective of numerical gender equality in the legal profession is significant, especially in terms of the selection of proportional gender equality as the benchmark in admission to law school. Although it might be said that a legal education is valuable for careers other than the practice of law, most applicants for law school aspire to the practice of law and do ultimately engage in some form of legal practice. Furthermore, the various provincial surveys referred to report about people who have left legal practice, not those who have chosen at the beginning of legal education or after completion of law school to pursue alternative career goals.

If one accepts that at least some of the assumptions will not be valid, one might well reach the conclusion that a measure or benchmark of equal representation in the first year admission will be insufficient to achieve an ultimate goal of relatively equal gender representation in the profession.

As will be argued later, even if all the assumptions discussed above regarding issues after admission to first year law study are optimistically accepted, should the current achievements in terms of admission of women to the legal profession be maintained but not furthered, the measure or benchmark of equal representation of women and men in the profession will not be reached. Complacency about how far we have come will not enable us to achieve the objective.

\section{V. The Admission Process}

This analysis of the admission process focuses on the three steps of importance from the perspective of the administration of the admission office in the law schools: applications, offers and registrations.

An initial question to which the application stage is germane is whether legal education and the legal profession are perceived as being accessible. Questions regarding the public perceptions of the role of women in the legal profession as well as the profile of women lawyers, judges and other legal professionals in the popular culture could be influential. Additionally, there are other factors such as career counseling of students at the secondary and post-secondary school levels and
outreach initiatives by the law schools and the legal profession which could well affect the perception of accessibility.

To determine whether there is any significant gender imbalance or impact in the sense of creating a systemic gender impediment to admission to law school, it is appropriate to examine a key pre-admission stage. For example, most potential applicants to common law schools must decide to write the Law School Admission Test. Questions regarding the gender proportion of test takers relative to the proportion of law school applicants would provide some insight into whether women have an initial interest in pursuing a legal education in relative proportion to men, and further whether that interest sustains through to the completion of the application to at least one common law school. If there were to be a noticeable drop off in the proportion of women who actually complete an application, one might hypothesize that the LSAT experience or the score result may have been an inhibiting factor. Unfortunately, the data are not available to pursue such an inquiry on the LSAT test taker population or other pre-application situations, such as the proportion of men and women requesting admission information.

VI. Applications to Law School

The submission of an application is the first significant contact between the law schools and their potential students. This is the group from which the first year class will be selected so that in at least the extreme, the gender proportionality of the applicant population can influence the remainder of the admission process. There clearly are other factors which play an important role, such as the admission criteria and the credentials of the applicants relative to those criteria.

The law faculties do not have direct influence or control over the applicant population. Proactive initiatives such as outreach and recruitment are likely have some impact on who chooses to apply to law school and to a particular law faculty. Furthermore, the way in which a law faculty presents itself in publications such as the calendar, the admission bulletin or brochure and the LSAT Registration and Information Book (Canadian Edition) may have a more direct influence on the demographics of the applicant population and are matters over which the law faculty

45. There have been concerns and studies about the LSAT and possible gender differences in terms of test scores. To my knowledge no such study has been carried out exclusively on the Canadian test taker population. This issue is not within the ambit of this analysis.

46. At the extreme, which is unrealistic, the issue is axiomatic. Should a law school receive no applications from women, that school's first year class would have no women.
does have significant control. Aside from university policies and constraints of cost implications, each law school has near autonomy over the style, content and presentation of the faculty calendar and the admission bulletin. The *LSAT Registration and Information Book (Canadian Edition)* is structured with a standard format for each law school but each law school is given flexibility in terms of the content or descriptions of the institution, the programmes at the law school and the admission policy.

These publications are recruiting tools, as well as traditional information sources. One of the purposes is to provide the prospective applicants with information about the school so that they will choose to apply, should the determination be made that in light of the admission criteria there is some chance of receiving an offer of admission into the first year class. From a marketing perspective, it is at least naive to suggest that the content included, the language used in the text and the photographs or other images have no impact on the decisions of potential applicants. It has been reported that the calendars and admission bulletins have influenced some women to choose not to apply to certain law schools in which there was an initial interest and, conversely, have influenced some women to apply to certain law schools to which they were not initially inclined to apply. The degree to which this is a factor is unknown and subject to debate.\(^{47}\) However, without a doubt, the messages conveyed by the recruitment and admissions literature are matters which each law school does control. When it comes to attracting women applicants, the value and emphasis that individual law schools place on the messages in their literature remains unknown.

The data results regarding gender in the applicant population to the common law schools show that there has been a marked improvement regarding gender parity in the applicant population to the common law schools. In 1985-86, approximately 37 percent of the applications were from women. By 1994-95, the female proportion of applications was 47 percent.

The data about applications are considered a proxy for the actual number of individuals who applied to the common law schools. This is so because the information reported by the CLASSI schools contains only

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\(^{47}\) It is possible to attempt some evaluation of this hypothesized impact. An analysis of the publications of the schools which had experienced the greatest increase in terms of the percentage of applications from women over the ten year period contrasting the earlier and more recent publications might provide some evidence of the impact of the publications as a recruiting tool. Further a similar analysis of the publications of the law schools which have the largest proportion of male applications over the ten year span of this study might confirm the value of publications as a recruiting tool. Possibly, this hypothesis could be questioned if it were found that the there was significant similarity between the publications of these two groups of schools.
totals in each of the categories (i.e. female applicants and male applicants). However applicants may, and many do, make application to more than one common law school. There is no reporting in terms of identification of the applicants at each school so it is impossible to know with certainty the actual number of individuals who applied to the common law schools in any year, as opposed to the number of applications received by the common law schools in a given year.

Some support for the use of the gender percentages of total applications from the CLASSI information can be found in the data reported by the Law School Admission Council. This information is self identified by the LSAT test takers. Over 99 percent of test takers self identified gender. The data are reported for individuals who wrote the LSAT and for whom at least one of the English language common law schools had requested a test score, therefore indicating that the persons are applicants. This type of gender breakdown is not available for the entire ten year period. However, a comparison of the final three years of the time span indicates that the annual summary information for total applications reported based upon the CLASSI forms does not differ substantially from the information reported by the Law School Admission Council.48

For 1994-95, according to the CLASSI data, applications from women represented slightly more than 47 percent of the applications, and the LSAC report indicates that slightly less than 49 percent of the applicants to the English language common law schools self identified as female. Similarly the CLASSI data for 1993-94 indicate that slightly more than 46 percent of applications were from women and the LSAC data report that women made up about 48 percent of the applicant population. This differential of less than 2 percent between the CLASSI and LSAC data also occurs in 1992-93. The discrepancy could be a function of a small gender difference in terms of multiple applications. If men make more multiple applications than women, the CLASSI totals of applications would indicate a higher percentage of men than would be reported in the

48. The source of the LSAC data are the "Monthly Applicant Summary Reports for the Canadian English language common law schools." The LSAC information has a very high rate of self identification by gender (over 99 percent). The francophone common law programmes do not require their applicants to write the LSAT and so applicants to only the French language common law schools would not be included in the LSAC reports. However the numbers of applicants to those programmes are small relative to the total common law figures. In 1994-95, for example the number of applications reported by those programmes is about 370 of a total of approximately 21,500 applications reported by all the common law schools. This represents about 1.7 percent of the total number of applications reported by the common law schools in 1994-95. Furthermore, it should be noted that some of the applicants to the French language programmes may well have applied also to an English language common law programme, in which case they would have been included in the LSAC data on applicants.
LSAC Summary Reports. Gender-based data on multiple applications are not available.

Given that the difference in the reported percentages is quite small and consistent (slightly less than 2 percent) for the three years in which the data are available, and given that the CLASSI figures for applications are reported in a consistent manner, it is submitted that the CLASSI data are acceptable as an adequate indication of the trend over a decade in the demographics of female and male applicants to common law schools.49

The CLASSI data indicate a consistent increase in the percentage of applications from women relative to applications from men, between 1985-86 and 1994-95. Figure 1 in Appendix B demonstrates the trend toward gender parity.

During most of this ten year period the common law schools experienced a significant increase in the number of applications but began to experience a noticeable decline in applications beginning in 1993-94. An examination of the actual numbers reported in the CLASSI statistics, reveals that, except for the slight decline of 85 applications for men between 1985-86 and 1986-87, there were net increases in applications from both women and men until the significant decline in applications from both women and men in 1993-94 and 1994-95.50 (See Table 1 in Appendix A.)

Although the increases in applications experienced until 1992-93 may have been a result of a growth in multiple applications, the reported increase in LSAT test takers during that same period would confirm that this phenomenon was due primarily to an increase in the number of people who were applying to common law schools. Furthermore, during this time the common law schools began to impose application fees, which, if anything, would have had a dampening effect on the number of multiple applications.

49. The CLASSI application data are incomplete in terms of the schools reporting the numbers of female and male applicants. From 1985-86 to 1988-89 two of the schools did not report this information. And from 1989-90 to and including 1991-92 one of those schools was still not reporting. The result is that there are noticeable differences in the actual annual totals of applications taking into account the overall increases and decreases of applications over the ten year period. However when one examines the percentages of female and male applications over the ten year period, the trend toward greater representation of women in the applicant population is consistent including the years where there was not reporting from all the schools. This is likely due to the fact that the gender breakdown of the applicants to those schools with missing data was close to the total percentages in those same years for the schools which had reported. This is confirmed by the fact that for the years these schools did report, no significant or noticeable change in the trend lines is discerned. See Figure 1 and Table 1.

50. The net changes from 1988-89 to 1989-90 and from 1991-92 to 1992-93 should be considered artificially high because in each of 1989-90 and 1992-93 one of the law schools which had previously not been reporting gender breakdowns for the applicant population began to report those data.
During the period of increasing applications, the percentage increase occurred, for the most part, as a result of a larger net increase in applications from women than was occurring in the case of applications from men. Similarly, during 1993-94 and 1994-95 when there were net declines in applications, the net decline in applications from women was smaller than the net decline in applications from men.  

The ten year period of common law admissions between 1985-86 and 1994-95 saw a significant narrowing of the gender gap in terms of the representation of women in the applicant population. However, while the gap narrowed, it still did not reach parity. The year where the gap came the closest was in 1994-95 when 47.3 percent of the applications to the common law faculties were from women.

VII. Offers of Admission

The selection of people to whom an offer of a place in the first year class is made is the stage of the admission process over which the law schools, and particularly the admission committees, do have control. The selection is made based upon the admission policy and criteria for each school relative to the credentials presented by the applicants. Common law schools vary in their admission policies, criteria and procedures so it should not be surprising that there are differences in terms of the gender proportionality of the group to whom each school makes offers of admission. The CLASSI totals mask the differences among the various law schools, in that the CLASSI figures give an overall picture of the gender proportionality of those who received an offer of admission from the Canadian common law schools. Changes made by individual law schools in their admission policy and criteria will have an impact on the CLASSI totals across the years.

51. One way to illustrate the changes in applications by women and men each year, taking into account that for some years not all the common law schools reported, is to calculate for each year the mean number of applications from women and men for the common law schools which did report that application data. The 1990-91 admission year is an example of a much larger increase of applications from women, relative to the increase of applications from men. In that year there was an increase of approximately 114 female applications per reporting school, while for male applications the increase was approximately 55 applications per reporting school. In terms of decreases in applications, in the 1993-94 application year approximately 148 fewer applications per reporting school were received from women whereas 190 fewer applications per reporting school were received from men.

52. The gender gap in applications was narrowed slightly in 1995-96 when 47.7 percent of the applications to the common law faculties were from women. The application percentages for that year are based on figures reported by 14 of the 16 common law schools.

53. None of the admission policies state that gender, itself, is a criterion for admission.
The population of recipients of offers will be different from the population of the first year class. Not all persons who receive an offer of a place in the first year law class choose to accept the offer. Furthermore, the multiple application practice also affects this population. Some people will have applied to a number of law schools and will have received offers of admission from more than one school. As they can attend only one school and must make a selection, the pattern of multiple offers will influence the CLASSI totals of recipients of offers.

Similar to the experience with the applicant population, there is a noticeable trend, between 1985-86 and 1994-95, toward gender parity in the group to whom common law schools made offers of admission to the first year class. At the beginning of this ten year period, 40 percent of the offers of admission were made to women. By 1994-95 slightly more than 47 percent of the offers of admission were made to women. Figure 2 illustrates the nature of the trend and Table 2 provides the actual numbers and percentages.54

While there is a noticeable trend or tendency toward gender parity in the group who receive offers of admission over the ten year period, there is also a question whether the trend toward gender parity has “flattened out” in the latter half of the time frame. The 1991-92 admission year was the closest to gender parity when about 48 percent of the recipients of offers of admission were women. Since that year the percentage of offers to women has hovered between 46.2 percent and 47.2 percent.55

VIII. The First Year Class

As mentioned above, most of the attention regarding issues of gender access to legal education focuses on the proportion of women and men who registered in the first year class. There is no doubt that significant strides toward gender parity in the first year law school classes have been made over the decades.

One reason to examine this recent ten year period in particular is to attempt to determine whether the momentum toward gender parity has maintained or dissipated. Furthermore, in light of the changes in the proportion of women and men in the application and offer stages, it is

54. The pattern is quite consistent in the direction of gender parity. In 1990-91, there is a slight aberration from the pattern but overall there is a definite trend toward gender parity in terms of the offers of admission made by the common law schools between 1985-86 and 1994-95.
55. The 1995-96 percentages provide evidence of further progress toward gender parity and may indicate a change from the stagnancy noted in the latter half of the time frame studied. In 1995-96, 49.8 percent of the offers of admission were made to women. The gender percentages of offers of admission are based upon figures reported by 14 of the 16 common law schools.
important to ascertain whether the proportion of female first year students is following those trends.

Figure 3 illustrates the trend toward gender parity in the first year classes in the common law schools.\textsuperscript{56} The pattern is definite and relatively consistent. In 1985-86 approximately 40 percent of the registered first year class was female and ten years later, in 1994-95 women made up about 48.5 percent of the first year classes in the common law schools.

There has not yet been a year in which women represented 50 percent or more of the first year class at the common law schools. However, in two of the years in question the proportion of women in the first year class was 48.5 percent and 48.8 percent. As was noted in the analysis of the gender proportionality of the offers of admission, it may be observed that the advances in gender parity for the first year classes were made at the beginning of the ten year period in question and that the latter half of that time has been a "holding pattern" where female representation falls between 47 percent and 48.8 percent.\textsuperscript{57}

IX. Relationships Among the Three Stages

In addition to an analysis of each of the stages of admission over the ten year period, it is useful to examine the overlap or possible interplay among applications, offers and registrants. For example, it was noted in the discussion of offers of admission that the 1990-91 year was a bit of a deviation from the overall trend toward gender parity. A similar deviation was experienced with regard to the registered students, which supports the propositions that gender representation in law school cannot be examined solely from the perspective of the registered classes and that what occurs in the earlier stages of the process of admission to law school appears to affect the composition of the first year law school class.

Figure 4 presents each of the three stages for each of the years in question. The similarity in pattern between offers of admission and registrants is striking. In 1985-86 the percentages of female offers and registrations were both about 40 percent. The following year, offers to women stayed at about 40 percent, but the percentage of women registered in first year law increased to almost 42.5 percent. After that time, the patterns of change for female offers and registrants are very similar. This

\textsuperscript{56} See Table 3 for the numbers reported.
\textsuperscript{57} The percentage of women in the 1995-96 first year law class was 48.5 percent. The percentages of female and male registrants are based upon figures reported by 15 of the 16 common law schools.
is the case even in the years, such as 1990-91, when the trend toward gender parity is interrupted. 58

This similarity between offers of admission and first year registrants suggests that there may be a noteworthy relationship between what the law schools do, vis-à-vis their admission decision-making, and the end result, in terms of female representation in the first year classes. As Figure 4 illustrates, the changes which occurred in the proportion of offers to women resulted in a comparable change for the proportion of women registered in the first year class. This phenomenon would lend further credence to the proposition that the choices made by the law schools of whom, in gender terms, should receive the offer of a place in the class are significantly determinative of the gender balance in the first year at the CLASSI schools. 59

In terms of the changes in proportional representation of women, Figure 4 indicates that there is a closer relationship between offers and registrants than there appears to be between applications and either offers or registrants. The patterns of change for offers and registrants are more similar over the ten years than is the case between applications and either offers of admission or registrants. Although the overall pattern is similar, there are years where the proportion of applications from women increased but the proportion of offers of admission to women and the proportion of female first year law students actually declined. 60

The explanation for this may be that admission decisions are made based upon the credentials of the applicant relative to the total applicant population. The qualifications of the applicants may well have been different from one year to the next so as to account for the deviations. So for example, in 1990-91, even though the percentage of applications from women increased from 41.4 to 43.8 percent (an increase of 2.4 percent), it is possible that the explanation for the decline in offers to women from 46.5 to 44.9 percent (a decrease of 1.6 percent) is that in that particular year the female applicants presented themselves with slightly lower qualifications relative to the male applicants than had been the experience the year before. The opposite proposition may be proffered in explanation of the 1987-88 year, where the percentage of female applications de-

58. The experience in 1995-96 is anomalous but the inverse of the experience in 1985-86. In 1995-96 the percentage of offers to women increased from 47.2 percent to 49.8 percent while the percentage of women registrants in first year remained the same as 1994-95 at 48.5 percent.
59. It remains to be seen if the 1995-96 experience described in the previous footnote is simply an anomaly or indicative of a change.
60. See the figures for 1990-91, 1992-93 and 1993-94. It should be noted that the differences especially in 1993-94 are not large.
creased but the percentage of offers (and registrants) increased. Data are not available to evaluate the relative qualifications of women and men.

The overlay of the three stages of admission gives some indication of the proportional representation of women in the first year law school classes relative to the group from which law schools make their offers of admission. If there were a systemic bias against the admission of women in terms of the determination of candidates to whom an offer of a place in the first year class is made, one would expect to see women underrepresented in the group of recipients of offers relative to the proportion of applications from women. Figure 4 does not indicate such under-representation. In each of the admission years from 1985-86 until 1993-94 there was a consistently higher proportion of women receiving offers of admission than the proportion of applications from women. In the final two years (1993-94 and 1994-95) the proportion of women receiving offers of admission was almost identical to the proportion of applications by women. This suggests that the admission decision-making at the law schools has not resulted in a systemic disadvantage for women applicants to law school relative to male applicants for the ten years. Employing the logic of the argument above with regard to relative qualifications, one might conclude that the reason that there has been a higher proportion of offers to women compared to the proportion of women in the applicant pool is that women applicants have been more qualified than their male counterparts.

Similarly Figure 4 illustrates no under-representation of women registered in first year law relative to the proportion of applications from women. In each of the ten years there has been a higher proportion of women registered in first year than the proportion of female applications. As well for each of the years, the proportion of women registered in first year law study exceeded the proportion of offers which were made by the law schools to women.

It must be borne in mind that this matter of representation is relative only to the proportion of women in the total pool of applications to law

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61. Similarly, in 1995-96 there was a higher proportion of women receiving offers of admission (49.8 percent) than the proportion of applications from women (47.7 percent).
62. Curiously, the 1995-96 figures are anomalous. While 49.8 percent of the offers were made to women, 48.5 percent of the first year class was female. This is likely due to the fact that the proportion of offers to women in 1995-96 ‘jumped’ from 47.2 percent to 49.8 percent, which is the highest percentage it has been since this information has been collected and the highest annual increase since 1991-92. While the percentage of female applications is also at an all time high and the percentage of female registrants is very near its all time high, they do not represent such a ‘jump’ from the recent years.
school and not to the proportion of women in Canada. This takes the discussion back to the earlier point regarding the need to examine factors which might influence the appearance of legal education as attractive and accessible to women.  

X. Conclusion

The research question posed at the outset was that there has been a narrowing of the gender gap in women’s access to law school during the period of study. The data for all three steps of the admission process—applications, offers and registrations—support that proposition. The experiences of the 1985-86 to 1994-95 admission years indicate continual progress toward gender parity in access to the common law schools. There was greater progress during the earlier portion of those ten years, perhaps due to the fact that the gap was significantly wider.

Nonetheless, the progress is noteworthy and perhaps more significant from a comparative perspective. In the United States, where the admission criteria and practices are not substantially dissimilar to common law Canada, there has been progress in terms of an increase in the percentage of women in the first year law school classes. However the Canadian law schools have experienced greater progress in the ten year period under study. In the 1985-86 admission year women represented 40.5 percent of the first year class at American Bar Association (ABA) approved law schools and 40.3 percent at the Canadian common law schools. In 1994-95 in the United States the first year law school class was composed of 43.6 percent women whereas in common law Canada the proportion of women was 48.5 percent.

Despite the progress toward gender parity in common law Canada, there is some cause for concern. The relative stagnancy during the latter half of the ten year period in both the group to whom offers of admission were given and the registrants in the first year classes raises the possibility that the trend has come to a halt.

63. Based upon the 1991 census, the percentage of women in the adult population of Canada is 51.7 percent but in terms of applications to the common law schools, the highest percentage of applications from women is 47.7 percent, in 1995-96.
64. There were 16,510 women of a total of 40,796 law students in the first year classes in the United States in the fall of 1985. American Bar Association, Section of Legal Education and Admission to the Bar, A Review of Legal Education in the United States Fall, 1985, Law Schools and Bar Admission Requirements (Chicago: American Bar Association, 1986) at 65.
It might be said that gender parity in admission to common law schools has, practically speaking, been achieved.\textsuperscript{66} The gap has in fact narrowed and proportionally there is near parity between women and men in the first year classes. While this fails to address the fact that there has never been a year where for the common law schools as a whole the first year class has been composed of at least 50 percent women, over time there will most likely be that relatively small change resulting in an equal, or slightly higher, number of women in the first year class in a given year.

However, if the gender gap in admission to law school has narrowed but the trend has now "flattened", gender parity or equal representation of women and men within the legal profession will not likely be achievable. Not only will law school admission be unable to correct the historic inequities, there will still be more men than women entering the legal profession every year, although the size of the differential between men and women admitted to the profession will be significantly smaller than in the past. Given the demographics of the profession, as the older lawyers, who are disproportionately male, leave the profession through retirement or death, there will be the potential for a narrowing of the gender gap, and indirectly a correction of historic inequities. However as was discussed earlier, there are a number of other factors, such as the apparent gender imbalance in terms of people leaving the profession for reasons other than retirement or death, which will continue to impact the gender balance in the opposite direction.

While there has been progress and the gap has narrowed, the problem of gender inequity persists. The changes in the law schools through the admission process are a qualified success and appear likely to be sustained, if not advanced moderately. From the perspective of achieving proportional gender representation within the legal profession, primarily through the achievements of law school admission, there appears to be little reason for optimism even in the longer term. The successes of law school admission by themselves cannot be the solution but can however be a foundation on which to build and strive toward the goal.

\textsuperscript{66} An important caveat to bear in mind is that data limitations precluded analysis of gender in conjunction with, for example, "race" or "colour", socio-economic status, sexual orientation and disability. Therefore, while it may be possible to assert that parity, in terms of admission to law school for women generally may have been achieved, it is not possible to examine questions of proportional representation for women of colour, women from various socio-economic strata, lesbian and bisexual women or women with disabilities. Hopefully these and related issues of representation will be examined when adequate data are available. In the meantime, the absence of that information is an impediment to a fuller understanding of the impact of law school admission policies and practices in common law Canada.
### Appendix A: Tables

(Source: CLASSI)

#### Table 1: Applications by Gender 1985-86 to 1994-95

<table>
<thead>
<tr>
<th>Year</th>
<th>Female Applications (%)</th>
<th>Male Applications (%)</th>
</tr>
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<tbody>
<tr>
<td>1985-86</td>
<td>36.86</td>
<td>63.14</td>
</tr>
<tr>
<td>1986-87</td>
<td>38.89</td>
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</tr>
<tr>
<td>1987-88</td>
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<td>1988-89</td>
<td>41.44</td>
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<td>1989-90</td>
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<td>1992-93</td>
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<td>1993-94</td>
<td>46.15</td>
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</tr>
<tr>
<td>1994-95</td>
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<td>52.74</td>
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**Means**
- Female: 42.41
- Male: 57.61

*missing data from one faculty from 1985-86 to 1991-92.
&missing data from one faculty from 1985-86 to 1988-89.

#### Table 2: Offers by Gender 1985-86 to 1994-95

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<tr>
<th>Year</th>
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<th>Male Offers (%)</th>
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<tr>
<td>1994-95</td>
<td>47.24</td>
<td>52.76</td>
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</table>

**Means**
- Female: 44.51
- Male: 55.49

&missing data from one faculty from 1985-86 to 1988-89.
#missing data from one faculty for 1985-86.
^missing data from one faculty for 1994-95.
<table>
<thead>
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<th>Male Registered</th>
<th>Percentage</th>
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& missing data from one faculty from 1985-86 to 1988-89.

### Appendix B: Figures
(Source: CLASSI)

Figure 1

Applications By Gender
1985-86 to 1994-95 (Source: CLASSI)
Figure 2
Offers By Gender
1985-86 to 1994-95 (Source: CLASSI)

Figure 3
Registered by Gender
1985-86 to 1994-95 (Source: CLASSI)

Figure 4
Representation Pattern for Women
1985-86 to 1994-95 (Source: CLASSI)