Canadian Centre for Diversity and Inclusion
Centre canadien pour la diversité et l'inclusion

# Diversity by the Numbers: The Legal Profession

Unpacking hegemonic masculinity in the culture of private practice law

# Contents

# Culture and exclusion in the Legal Profession.

Conversations in the media in the past few months have focused on the culture of law firms in Toronto, propelled by an essay by Hadiya Roderique.[1] In it, Roderique outlined why, as a Black Woman lawyer, she felt unwelcome in private practice, describing experiences with subtle forms of racism and sexism, as well as having to conform to certain norms and behaviours to fit in.

The findings from the four years of data collection we have done for our *Diversity by the Numbers: The Legal Profession* project support the experiences she laid out in her essay.[2] Our project collects demographic data from private practice firms across Canada, and we have consistently found that the strongest barriers to leadership are experienced by Women and Racialized lawyers. Women who are also Racialized have significantly more barriers, with their representation in leadership being miniscule.

Because of the strength and persistence of these trends in our reports, we devoted the past eight months to qualitative research aimed at better articulating the stories behind these numbers. As a result, we provide an outline of the obstacles that private practice culture creates for lawyers who are not Men and not Caucasian. Due to our report's deep investigation of these topics, this year's findings provide a timely complement to experiences that have recently been gaining a strong voice in the media.

## Key components of culture.

Culture is a very broad concept. What are the important aspects to understand when speaking about it? To simplify a comprehensive field of research, social psychology investigates culture through a few processes that influence behaviour:

- » **Culture is created within and between identity groups**. People connect with each other through a shared identity; for example, people of the same religious background talking about how they will celebrate a holiday. However, people also feel distance with each other based on differences in identity. In-groups and out-groups are a product of different identities coming together in an environment, with the dominant culture strongly supporting the interests of in-groups.
- » **Culture is supported by rules.** A person's behaviour is guided by what other people say or do in interactions, and through established rules. A rule can be explicit (client information is strictly confidential) or unspoken (not participating in workplace social events reflects lack of commitment to the company). Shared rules on "appropriate" behaviour then become cultural norms.
- » **Culture shapes perspective.** Culture informs how people process and make meaning out of their experiences. This is a cyclical process – the way people think is guided by culture, and people shape culture together through social interaction.

Why do we consider these components of culture when investigating Gender and Race in the workplace? A main reason is that the components lead to exclusionary behaviour, each part

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[1] Hadiya Roderique, "Black on Bay Street: Hadiya Roderique had it all. But still could not fit in", *The Globe and Mail*, November 4, 2017, accessed November 14, 2017. https://www.theglobeandmail.com/news/toronto/hadiya-roderique-black-on-bay-street/article36823806/.
[2] To view the 2016 Diversity by the Numbers report, click here.

working together to create settings in which people feel like they belong, or in which they do not feel they have a place.

## Why are Women and Racialized lawyers best suited to outline the culture of private practice?

To understand a workplace culture, our research could focus on the identities that orchestrate that culture (i.e. analyze people that benefit most from the culture and that have the most decision-making power). Investigating culture by focusing on those whose interests it serves and whose behaviour it closely reflects seems the most straightforward approach. The issue with this approach is that when you fit in with a culture, you are more apt to take for granted its character; its features become normalized to the point of being invisible.

To gain a more vivid understanding of culture, social theorists have outlined how its characteristics are made more apparent from outsiders who are unacquainted with the culture's norms.[3] [4] A clearer definition of a culture formulates when those from outside the culture enter the unfamiliar environment; awareness of culture is more visible to those for whom the norms are not considered 'normal'. Because they are more likely to feel the main components of a culture they did not create, the perspectives of Women and Racialized lawyers are the barometer best suited to explain the culture of private practice in our analysis.

## What does qualitative research add to the conversation on culture?

The experiences of those facing barriers in private practice are of primary importance to understanding the larger issue of the lack of diversity and inclusivity in the Legal Profession. However, what the culture *is* at the systemic level, including the underpinning mechanisms that support it, need to be brought forward to create sweeping change. As a first step, the privilege associated with being part of the culture's in-group needs to be voiced by those who are disadvantaged by it. From there, we can build an understanding of the ideologies that legitimize that privilege.

The qualitative research of this year's project analyzes exactly that: it explores systemic beliefs that create barriers for certain groups by anchoring common behaviours in private practice in masculinity theory. The analysis links masculinity to what is understood in private practice as 'how things are done' – an established fact. In so doing, the analysis gives shape to the masculine perspective that (years ago) created and (currently) directs the Legal Profession.

Given recent conversations in media and society that are bringing masculinity to account, the findings come at a time when ears may finally be receptive to the need for contestation and

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[3] Georg Simmel, "The Stranger," in *The Sociology of Georg Simmel*, trans. Kurt H. Wolff (Glencoe, Illinois: The Free Press, 1950): 402-408.
[4] Anthony P. Cohen, *Belonging: Identity and Social Organisation in British Rural Cultures* (Manchester: Manchester University Press, 1982): 4-6.

change. As an important addition to media stories on Gender and Race in law, this research asked respondents from marginalized groups to outline changes they would make to the profession that could lead it to become more inclusive. Hopefully the current conversations on the culture of firms will integrate their voices, allowing them space to help build a new work culture and chip away at the barriers that affect them most sharply.

## Results of qualitative research in Diversity by the Numbers: The Legal Profession.

As stated above, *Diversity by the Numbers: The Legal Profession* project has analyzed the demographics of private practice lawyers across Canada since 2014. Every year, results show that Women and Racialized lawyers are strongly represented as Articling Students and Associates, but their numbers greatly reduce in Partner and Senior Leader Roles.

As part of the 2017 *Diversity by the Numbers: The Legal Profession* project, we undertook focus groups and interviews with twelve Women and Racialized lawyers who have experience in private practice law in Canada, to further investigate how the culture of private practice affects career trajectories of lawyers from minority groups.[5]

Ultimately, the experience described by our respondents aligned private practice culture with hegemonic masculinity, where groups with certain "masculine" characteristics benefit while others are disadvantaged.[6] This culture helps maintain power for this beneficiary group.

### What is hegemonic masculinity?

In brief, hegemonic masculinity theory states that multiple conceptions of what is "masculine", or how to "be a man", exist in different environments. "Masculinity" is a shifting set of behaviours, practices and characteristics that depend on context. For instance, a college fraternity may idealize a different kind of masculinity from a company in Silicon Valley. Often, hegemonic masculinity cannot realistically be embodied, but is an ideal towards which to work.

Hegemonic masculinity theory describes a hierarchy: within any given context, certain masculine identities are idealized and therefore dominate over all others, especially feminine ones. This domination is normalized, and consequently, it becomes imperceptible. Both Men and Women can be pressured to enact and strive towards this dominant masculinity. If they cannot or do not adhere to the dominant masculinity, they are marginalized.[7]

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[5] An explanation on data collection can be found on page 18.
[6] This report does not mean to imply that all private practice firms have the same culture. We spoke to lawyers from firms of different sizes and regions and found general commonalities between their responses that describe how Race and Gender can impact career trajectories in private practice law.
[7] R.W. Connell, "Understanding Men: Gender Sociology and the New International Research on Masculinities", *Social Thought and Research* 24, no. 1&2 (2002): 13-29.

### How does hegemonic masculinity play out in private practice law?

In the workplace, hegemonic masculinity can create barriers for those who do not fit with the dominant masculinity in that environment. Hegemonic masculinity is reflected in traditional law firm culture, and it continues to shape how private practice law looks and functions today. This can be seen through the "gentlemen's club" or the "Old Boys Club" in law firms, where those in positions of power (i.e. Partners) are predominantly Caucasian men. [8] [9]

The lawyers in our interviews and focus groups revealed that the culture of private practice law prioritizes specific masculine behaviours that create a hierarchy between Caucasian, upper-middle-class Men and those from other groups. These affect lawyers who do not wish to or cannot conform to them, typically Women and Racialized lawyers, which prompts them to exit the profession or to avoid entering private practice. In turn, masculine cultures in private practice can continue, so that leadership and partnership remain largely homogenous.

### Entrepreneurialism.

Entrepreneurialism, also called competitive masculinity, is a set of norms and behaviours where workers are valued based on their ability to prioritize all their time and resources for economic efficiency and profit, for example through working as many hours as possible. Entrepreneurialism is based on the presumption that workers have no other responsibilities but work, that their sole preoccupation is breadwinning, and that if they have family, someone else is taking care of them.[10]

Entrepreneurialism is difficult on Women who are in a childbearing age range, as well as anyone who is childrearing, a task which still disproportionately falls on the shoulders of Women. However, such organizational culture is also resistant to hiring, retaining or promoting any person who might not be able to dedicate all their time to their job, including Men who wish to take time away for fatherhood. When Men or Women make such decisions to focus on family, they are perceived as not enacting or adhering to the dominant entrepreneurial masculinity.

The comments given by private practice lawyers below demonstrate entrepreneurialism in private practice law firms through their emphasis on results, the necessity of working long hours, and their lack of flexibility.

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[8] David Collinson and Jeff Hearn, "Naming Men as Men: Implications for Work, Organization and Management", *Gender, Work and Organization* 1, 1 (1994): 2-22.
[9] Ann C. McGinley, "Masculine Law Firms", *Scholarly Works* 924 (2013).
[10] Collinson and Hearn, 1994.

### Results-focused work culture.

When asked to describe their organizational culture, many lawyers in our study suggested that attaining results are of utmost importance at their firms, often more important than people, leading to a constrained environment.

One Associate explained, "There's always this unspoken [idea that you] don't waste other people's time if you can find the answer easier from someone at a lower level. That could just be efficiency, but it does seem kind of stiff." Another Associate similarly described that "sometimes you feel like you come in in the morning, you sit in the office, and you leave. It feels like you're selling time. Everyone's time is at a premium, and therefore you feel like you're bothering people if you actually want to get to know them. You feel more like a cog in the system as opposed to a valued, contributing member on a day to day basis."

This emphasis on results affects how day-to-day life at work plays out. As discussed in the next section, this means that getting to know others and forming relationships is often based on getting ahead at work.

### Worth measured by hours worked.

Several lawyers in our study described the necessity of being hardworking in private practice, where hardworking equates to spending extremely long hours in the office.

For example, when asked what the most valued qualities of Associate lawyers were, one lawyer said that if Associates "could show that [they're] willing to drop everything for the practice, for client demands, [they] were seen in a really high regard. Especially if that meant sacrificing vacations and weekends and evenings."

Respondents also implied that it is simply accepted that all junior lawyers in private practice must work long hours, and if they can endure, eventually their hours will reduce. A Partner in a large firm discussed how she did not like having such long hours, but now expects it from Associates. This suggests that her perspective shifted to adhering to expectations of firm culture. She stated, "I worked from eight 'til eight every day. I can remember more than one Christmas where I was in the office. And the fact that fifteen years later I still think about it, shows how I definitely hated it…but I'll say if I walk around the office at five o'clock and all the Associates are gone, it does make me question, because I know there's work to be done."

Similarly, a counsel lawyer said that "[The most] valued asset is people who are willing to just work non-stop…Everybody goes through that. It's kind of a rite of passage. When you first start, there are expectations. You can't really turn down work. You do kind of have to do it. You work hard and work a lot of hours, and incrementally, a couple of things happen: you get more efficient at what you're doing so that cuts down on the hours of work."

#### Sacrificing advancement by taking leave.

A consequence of this culture is that work-life balance tends to be deprioritized, particularly in a setting where long hours and client relationships are paramount. This becomes clear when employees wish to take long periods of leave, such as parental leave. Note that policies depend on firms. Some lawyers we spoke to said that there are no issues taking long periods of leave at their firms, particularly for issues like illness. However, the majority discussed instances where it could have damaging consequences, and led to lawyers being replaced, or exiting.

For example, a Woman Associate lawyer stated that, "I actually haven't heard of any Associates taking extended leave and not suffering from [consequences]…you just won't be on the files that you think you will be on. You end up having to come back and work, having to re-establish yourself and convince people that you're back for good." Others at the firm have to be reassured of the leaver's commitment. Another Woman lawyer told us that she had heard a conversation at her firm about recruiting younger Women so that they wouldn't have to "worry about mat leave."

One Partner at a large firm stated that it was necessary to be on top of her files even when she was on maternity leave, an option that might not be available to all mothers. She said, "You take six months or a year off and there's a ramp-up and a ramp-down time, and you're six months or a year behind your colleagues. They've gone on to form client relationships…When I was on maternity leave, I had fully reviewed all of my emails, so I knew exactly what was happening on all of my files, and would occasionally chip in. That was my choice, and it's a choice that I would recommend, bluntly, for any professionals who are contemplating a mat leave."

Respondents also discussed how leadership at their firms is not quick to change gendered ideas about who should be taking parental leave, so that Men who take leave are ostracized. This exemplifies how entrepreneurialism conforms to specific gendered norms about who should be breadwinning (Men) and who should be in charge of family (Women). A lawyer who had left private practice at the Associate level told us that, at his former firm, "Only one male ever took [parental leave]. After returning back from that leave he was shortly let go. It signaled to Associates that paternity leave policy was more idealistic on paper than it was to take, and the consequences of taking that leave could result in irreparable damage to your career. I think it showed to the Partners that he made his family a priority, and not really the client. Or the firm. There might have been some sexism, like 'why was it he was taking the leave and not his wife'?"

#### Informalism.

Compounded with entrepreneurialism is a workplace masculinity behavior called "informalism", where social connections are made between people in an in-group, resulting in the exclusion of

others without the same social advantage.[11] Law as a profession has historically been exclusionary, excluding minority groups from practicing.[12] Senior leadership and partnership in private practice is still primarily made up of Caucasian Men. Therefore, the dominant group in private practice are almost always Caucasian, upper-middle-class males, who potentially already have connections in the profession and share similar interests. These may include sports requiring wealth like golf and sailing, as well as attending activities that include alcohol.

### Exclusionary social events.

Those who feel excluded from the in-group in private practice law tend to be Women, Racialized, and immigrant lawyers, particularly if these lawyers do not have class privilege.

For instance, one Racialized lawyer described that at his former firm, "there used to be weekly get-togethers like Drink Fridays, and Partners would sit around -- I was a summer student then – and I was sitting there and they were discussing yachts and golf. I felt the pressure to try and fit in or discuss an area that simply just wasn't part of my culture and has never been part of my culture."

Many other Racialized and Women lawyers similarly discussed how they felt like outsiders at social occasions. A Muslim respondent stated that "I don't know if I could be myself 100% of the time. Being Muslim, and Friday being…a day of significance for Muslims, taking the evening off and skipping the firm social to go to the mosque was just kind of unheard of in the profession. Not attending the firm social was looked down upon. There was [also] a bit of awkwardness around people who weren't drinking, and kind of a stigma that they weren't fun to be with."

A Racialized Woman lawyer explained how golf is used in the profession to get ahead, benefiting those who already have skill or knowledge of the sport. She stated that, "I remember being a Junior Associate and the Senior Partner at the firm was looking for people to go for a client golf event. I think I'd golfed once before and hated it, but I volunteered. I volunteered because that was the opportunity to spend an entire day with a Senior Partner...It sucked, but it was great from the perspective of having face time with a Partner. There weren't a lot of other social opportunities that I personally would enjoy, that would be offered as an ability to spend that amount of time with a Partner." Note that these social situations link to entrepreneurialism, because social relationships are formed with a focus of getting ahead at work.

### Effects of lack of connections.

While such forms of social exclusion can seem trivial, they can have real impacts on lawyers' careers. Those with natural connections to the profession already start off with an advantage because it is easier for them to learn and understand the often-obscure workings of private practice. One respondent stated that "if your dad's a lawyer, if your mom's a judge…You can understand almost a secret code of how practices work. Because [firms are] not always

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[11] Collinson and Hearn 1994.
[12] Constance B. Backhouse, "Gender and Race in the Construction of 'Legal Professionalism': Historical Perspectives", 2003, http://www.lsuc.on.ca/media/constance_backhouse_gender_and_race.pdf

necessarily transparent about how the business works, how the nitty gritty dollars work, how you bring in business."

Many lawyers also discussed how mentorship and coaching opportunities arise from informal networks and relationships. For instance, a Racialized Woman Partner said that being part of an out-group made her lose out on opportunities. She gave an example, explaining that "there was a particular file involving both litigation and employment, and by that time I was probably the only Associate [at the firm] that really knew both areas of law like the back of my hand...[but] the people who were asked to help on it were the same old buddies…I do think there was an element of Gender, and an element of religious affiliation going on as well…The people who were in the in-group were all White Jewish Men, and the people in the out-group were not."

Such connections facilitate lawyers' advancement on the partnership track. As one of our respondents described about her difficult experience in finding an articling position, "if you were well off, you probably already knew people at the law firms…me, as a first-generation immigrant, had no connections, no one higher up that I could even get a reference letter from to make myself look better."

Another Woman lawyer said that she did not become a Partner because "The situation was that when you're coming up to the ranks to partnership, there are tick boxes where you have to hit. You need to have heavy hitters in the firm vouching for you to be invited to apply for partnership…The only way you can get those people rooting for you, is if you worked for them…Again, it goes back to my world view that boys like hanging with boys."

Out-groups therefore must compensate for not having the same advantages that those in positions of privilege do. One Associate discussed how she feels Women at her firm constantly have to be likeable in order to succeed and get the work they want, such as by always appearing to be a team player through taking on as much work as possible, something that she did not perceive Men have to do. Another Racialized Woman Partner affirmed the same sentiment, where Women and minorities have to prove their credibility and do twice as much work to get ahead as Caucasian, affluent Men.

Even becoming a part of formal networks like the Canadian Bar Association, where lawyers have a chance to connect with others in the Profession, can be exclusive. A Racialized Woman Sole Practitioner we spoke with discussed how joining associations or going to conferences can cost several hundreds of dollars, which she often cannot afford due to the expenses of running her own practice.

### Paternalism.

The last type of masculine culture that was evident in our study was paternalism. Through paternalism in the workplace, "family-like" relations play out through a distinct hierarchy where certain people, usually Men, are in power, but their decisions are viewed as doing what is best for employees. This creates a basis of mutual trust and loyalty, even though they may conduct leadership in an authoritarian way. A lack of transparency is then justified, because it is

assumed that those in charge are making the right decisions.[13] Paternalism can create a closed-door culture that does not allow room for interruptions or change.

### Hierarchical structures.

Almost all lawyers in our study discussed hierarchy in their firms, where roles are very clear-cut. Some examples included that that billing rates are based on year of call, that Partners' time should not be wasted, and that even in emails, the most senior lawyer's name should be first.

One Partner explained that at her firm, "it's very much a top-down approach of what Partners want the business to be like, but not necessarily applying that to themselves. Things like a dress code. Stuff like that is dictated from above, which I find super strange in the year 2017. I don't understand that…And it goes all the way to billings, and targets, and how much business development is being done, and how many dollars are being brought into the firm…There is almost more accountability for some groups than there are for others." She implied that those who make decisions are not necessarily accountable to their own rules.

This "top-down" approach was repeatedly echoed by respondents. Others mentioned "closed-door meetings", "opaque decision-making", and not seeing "the reasoning behind certain things being done". As described below, this lack of transparency mixed with the importance of loyalty in firms can maintain the current culture.

### Importance of loyalty to firms.

Despite clear hierarchy, some lawyers brought up how loyalty to the firm is a vital quality, particularly for Partners. One respondent said that any disagreements and arguments between firm members have to be kept hidden, and that her "firm is the kind of firm that touts the fact that only one Partner in X number of decades has ever left. There's a notion that goes beyond business development and targets and money that's about a notion of family, a notion of loyalty."

Another lawyer mentioned how attending social events at firms can create a sense of a loyal firm member. He said that "Every firm says that they have the best culture, and participating in these events adds to the culture…So if you're not participating in the events, you're not adding to the culture, or it shows you don't value the culture." This concept coincides with informalism, because, as discussed above, people in out-groups may not feel comfortable or like they fit in at certain firm events or spaces.

One consequence of paternalism is that, due to hierarchies, lack of transparency, and the importance placed on loyalty, it is up to those at the top of the hierarchy to propagate any change, including change relating to Diversity and Inclusion barriers in the workplace. As one respondent stated, "there are too many potential consequences for speaking your opinion" in

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[13] Collinson and Hearn 1994; Rosslyn Reed, "Entrepreneurialism and Paternalism in Australian Management: A Gender Critique of the 'Self-Made' Man" in *Men as Managers, Managers as Men*, ed. David Collinson and Jeff Hearn, SAGE Publications 1996; David Wray, "Paternalism and its Discontents: A Case Study", *Work, Employment and Society* 10 no. 4 (1996).

private practice. Change therefore must be undertaken by the people in power, and it is difficult for this to happen when they are benefiting from the paternalist culture in the first place.

### How do out-groups cope with hegemonic masculinity at work?

When lawyers in the profession do not feel like they fit in with the masculine ideals as described above, they have two choices in an "up or out" structure like private practice. The first is to conform to the ideals as laid out above and move up within the profession. The second option is to not conform, and to deal with potential consequences. The third option is to leave.

#### Moving up.

In terms of "moving up" by conforming to certain ideals, it is important to note that performing masculine identity does not affect only Racialized and Women lawyers, but anyone who does not feel like they can meet the idealized behaviours. However, as stated above, private practice has been structured in a way that privileges Caucasian upper-class Men, so it is more likely that out-groups would experience the effects described below.

Lawyers and scholars Carbado and Gulati have written about how minority groups "work" and "perform" their identities to conform to institutional ideals, i.e. by compromising or negotiating with their sense of self to pass as what is more acceptable and comfortable in the institution.[14] This can entail, but is not limited to, pretending to like things they do not, changing the way they dress or wear their hair, foregoing activities that they enjoy to prioritize work, and negating stereotypes about their Race or Gender by explicitly acting in the opposite way.

#### *Effects on personal lives.*

When lawyers choose to perform to fit certain ideals, they can face dangerous consequences on their personal lives. A chief one that came up from many respondents is consequences on their health. Two lawyers brought up how the focus on alcohol at events does not make them feel comfortable and is not healthy; another mentioned that he has seen how common it is for lawyers, particularly younger ones, to abuse alcohol as a "coping mechanism" for stress. A Woman Associate mentioned that because work takes up so much of her life, she finds it difficult to make time to exercise, and feels like she has "let her health slide". One lawyer talked extensively about mental health issues and how she knows large firms would not accommodate her if she needed to take time off due to anxiety and depression.

Other respondents brought up that they dislike how work in private practice takes over their lives entirely. An Associate discussed how hours are so long and often unpredictable that it's difficult to make a dinner plan, and that in general her life feels "half on hold." In fact, another lawyer we spoke to left private practice for a position in general counsel because he needed to feel like he "could have some kind of control over [his] personal life."

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[14] Devon W. Carbado and Mitu Gulati, "Working Identity", *Cornell Law Review* 85 (2000): 1259-1308.

*Effects on sense of self.*

Some respondents expressed feeling like they do not belong, to the point that they undergo changes or experience negative outcomes on their identity.

Indeed, the lawyer mentioned above, when asked how having to conform to private practice culture affected him, stated that "I feel like there's a lot of times where I sold out, and didn't necessarily stay true to what my kind of values were…I was forced to assimilate with the culture that was promoted at the firm." This included foregoing dietary restrictions and religious events. Another lawyer told us that as an articling student, she felt that her lack of belonging was connected to her merit and therefore affected her self-image. A Racialized Woman Partner similarly felt in her early years that she had "imposter syndrome" and that she "wasn't very good" at being a lawyer. Those who feel like they do not belong may have to struggle with unfounded feelings of failure.

*Choosing not to conform.*

Lawyers in private practice may choose not to conform to masculine ideals of private practice culture; this may have consequences on their careers. We heard one example from a Woman lawyer who interviewed with a corporate law firm and the interviewer asked where she saw herself in five years. She answered honestly that she would do corporate work, but she also wanted work that would be emotionally and personally satisfying, and she didn't want to only be putting money into large companies' pockets. She did not get the job, which she attributes to the interviewer not seeing her as worth investing in if she wasn't fully focused on company results. Another example is described on page 8, where one of our respondents described how a male Associate chose to take parental leave and later was fired. Neither lived up to the entrepreneurial masculine expectations of these respective firms.

Not every lawyer we spoke to felt like they changed themselves to succeed. This perception may be based on whether people feel negatively about having to work to meet masculine ideals. Some people may not perceive it at all, or may accept that they have joined an existing system that they cannot or do not want to change. Indeed, some lawyers we spoke to mentioned that they feel like they can be themselves at work, and have progressed to partnership. However, nobody mentioned that they did not face barriers due to Race and / or Gender during this progression.

Moving out.

The other option for lawyers who are unsatisfied with the culture and working environment of private practice culture is to leave and become general counsel, work in government, open their own firms, and other options that allow more control over their work. Most of these positions allow for more work-life balance and shorter hours. However, the lawyers in our study brought up their concerns for the lack of retention of Women and Racialized lawyers in the profession.

*Ghettoization of Racialized lawyers as Sole Practitioners.*

Several of our respondents pointed out a trend they have noticed, where Racialized lawyers become Sole Practitioners because they are unable to succeed in law firms. These Sole Practitioners usually attempt to service their own communities. In fact, we spoke to a Racialized Woman lawyer who successfully started her own practice because she found that the private practice culture she had experienced previously was "toxic."

Starting one's own practice without experience is incredibly difficult. She described her experience with starting her own firm as the following: "I didn't even know filing procedures, or opening and closing a file, and law society compliance. All of that was really, really overwhelming, when I started my own practice…I'm sure people would have given up in their first two years of practice if they'd gone through the circumstances that I did. I literally [worked] eighteen-hour days…No health, no sanity, no sleep, no exercise, nothing but work. For that many hours, for that many days, for two years solid, seven days a week."

Inexperienced lawyers who start their own firms also do not have the same access to mentors, instruction, or the ability to collaborate that those in larger firms do, and law school does not necessarily teach business skills or specific training that is learned in practice. Thus, respondents discussed that they have observed how Sole Practitioners can be prone to mistakes or even more serious errors. According to our respondents, these cases can crop up in the media, leading to "stigmas and misconceptions" as well as "stereotypes" about Racialized lawyers' abilities.

*Inability to serve diverse peoples.*

On a broader level, lawyers in our study brought up that when Racial and Gender diversity is not represented in private practice, it cannot properly serve a diverse clientele. For instance, the Sole Practitioner mentioned previously once worked in a small firm whose primary lawyer did not understand the advantages diverse talent could bring to the firm. The Sole Practitioner discussed a case where "[the lawyer's] success obviously could have been exponentially accelerated if she had someone of [an Iranian client]'s culture, language, training…when you don't have that cultural sensitivity, there's a whole market section that you can't have access to."

Beyond the potential business that is lost, law firms are powerful institutions that represent and defend Canada's diverse population. It follows that the general population should be represented within firms. As one Partner stated, law firms "have tremendous political influence in our communities. They are given a great deal of respect. We want to make sure that those organizations are reflective of the general diversity of our country."

Similarly, an Associate told us that "The profession talks about access to justice all the time. But if we're all just worried about our bottom line and our billable hours, and if I'm getting pressured because I don't meet my target, which means I don't spend time doing pro bono work…how does that benefit the public? And how does that solve the issues we always have?"

The lack of diversity in private practice law begs the question as to whether powerful yet homogenous law firms and their leaders can and do serve Canada's population in the most effective way.

**What are potential solutions?**

The idealization and dominance of certain masculinities in private practice law need to change, to prioritize a culture that is inclusive of groups that are marginalized in the profession. Ideas about Race and Gender are created in larger society, and to suggest that change can only come from actions inside law firms is not realistic. However, there are concrete initiatives that our respondents told us law firms can undertake to mitigate the subtle bias and discrimination that plays out through entrepreneurialism, informalism and paternalism.

Training and third-party assistance.

Several respondents pointed out that leadership needs to understand how to combat inequitable hiring and advancement within their firms. For example, one Partner pointed out that unconscious bias plays a major role in who receives guidance and attention from Partners, but Partners do not realize this. Undertaking activities like unconscious bias training would allow for Partners to learn about how their own biases influence the diversity in their firms.

Two respondents also discussed how having independent, third-party human resources professionals at firms would be helpful in this regard, particularly people who are experienced in cultural counselling. This way, more junior lawyers would be able to bring up diversity-related concerns without necessarily feeling like they will face consequences.

The first step to any of these changes, however, is for leadership to acknowledge and accept that Racialized and Women lawyers do face barriers to succeeding in private practice. One respondent explained that "people in charge of making change or having that power have to see [lack of diversity] as a problem. And unfortunately, it still seems like we're in the phase of trying to show that it's a problem."

All Partners should guide younger lawyers.

The importance that connections with Partners play in career progression in private practice law cannot be understated. All our respondents told us that mentorship has played a vital role in their career development and that they would not be where they are without guidance from someone more experienced, both in terms of teaching them technical aspects of law as well as soft skills, advice on career direction, and other important information.

As discussed in the section on informalism, some lawyers come into the profession advantaged because of previous connections, or because of social advantages through being able to make connections with people in power.

Thus, Racialized and Women lawyers need Partners to take an active interest in their careers to succeed in firms that still carry an Old Boys Club culture. Many respondents stated that leadership should take responsibility for guiding all young lawyers, so they have an equal

chance to succeed, not merely the ones who share their interests in golf. One respondent noted that decision-makers at firms, who are usually Caucasian Men, need to reflect and ask themselves, "how do you pick who you want to mentor? Part of the solution is maybe looking at different skills you have in common with somebody who's not also a White man, and seeing there is common ground somewhere." An Associate echoed that "management can certainly afford to spend a bit more time in bringing up the next generation."

Another lawyer pointed out that mentorship processes should be formalized. As a Partner, she has noticed that Associates leave because they feel like they are not getting support. She noted that "we need to create formal processes to somehow even out the scales, or to address the deficit that people have because they don't have the social connections…But they have the skills and the talent and the desire and the drive and the discipline to be phenomenal lawyers." She added that Partners should be taught how to be good mentors and sponsors, because these aren't always skills that come naturally to everyone.

<span style="color:red">Law Society, law schools, and clients.</span>

It is not only firms but also external bodies that can play a large role in making change in private practice culture. The Law Society of Upper Canada is currently doing comprehensive work on equality, diversity and inclusion for Racialized licensees, including requiring mandatory human rights and diversity policies in firms.[15] Respondents have suggested that both law societies and law schools should do more to make the experience of privileged and disadvantaged groups looking to enter private practice more equivalent.

As one Partner stated, it is important to ensure that all law students coming out of school have skills such as "business development", "networking" and other soft skills, "[b]ecause the people who are advantaged…will find somebody who will help them with it. But the people who are coming in with disadvantages, you know they won't." She believes there needs to be a switch to a model where students gain practical skills so that everyone is on "a more level playing field" when they begin working.

Clients can also make a significant difference in making firms pay attention to diversity. One lawyer mentioned that "the public needs to have teeth to measure how firms are doing [in terms of diversity]…corporations need to demand it, in order for change to occur." He referenced Simon Fisch, General Counsel of the Bank of Montreal, who has required that law firms report on their diversity before choosing lawyers and firms to work with. Another Associate stated that "I like that some big organizations are imposing a hold-back on legal fees when a diversity number is not there, because management is only going to pay attention to something when it affects the bottom line."

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[15] "Equality, Diversity and Inclusion", Law Society of Upper Canada, accessed Nov. 20, 2017, https://www.lsuc.on.ca/edi/

**Moving forward.**

While many firms have recognized the imperative of more diverse and inclusive firms, we are yet to see this change permeating private practice. It is therefore vital that leaders and decision-makers of firms are held accountable for change, including taking concrete measures like revisiting mentorship processes, ensuring everyone entering the firm has a chance to succeed.

Further, these findings suggest that there are social and behavioural norms within private practice culture that lawyers accept and internalize to succeed in the profession. These norms need to be continuously questioned within firms for outgroups to experience a more inclusive environment. One might begin by questioning which of the behaviours described above are, in fact, necessary for private practice to function.

Overall, however, the strategies to shift the culture of private practice voiced by our respondents show that change to this culture needs to happen from both inside and outside of firms. Only through a combination of various actions and external pressures will Women and Racialized lawyers be better represented in the partnership track in private practice.

## Appendix I: Data collection and analysis.

In order to find respondents for our focus groups and interviews, we used purposeful sampling to find Racialized, Women, and Racialized Women lawyers who have experience in private practice from across Canada, past or present, and were willing to discuss their experiences. We did this in two ways: by reaching out to Racialized lawyers' associations with a call for participants and by directly contacting lawyers who might be interested. Data was collected over a period of two months, from July to August 2017

We contacted the following associations:

Arab Canadian Lawyers Association
Canadian Association of Black Lawyers
Canadian Muslim Lawyers Association
Canadian Hispanic Bar Association
Canadian Association of Somali Lawyers

Canadian Association of Muslim Women in Law
Federation of Asian Canadian Lawyers
South Asian Bar Association

In total, we received interest in participation from sixteen lawyers. However, due to lawyers' last-minute unavailability, we only spoke to twelve lawyers. Titles of Respondents included Associates, In-House Counsel, Partners and Sole Practitioners. Two had left private practice. None of the participants took part in both a focus group and an interview. No participant was from the same firm or company.

The methods used were two focus groups and four semi-structured interviews. Because participants were located across the country, we did our focus groups using a web meeting platform and teleconference bridge simultaneously. In this way, participants could answer polls, see questions on their screen, and use a virtual chat box to answer a question if they did not feel comfortable speaking aloud. Interviews were conducted over the phone. Both focus groups and interviews were recorded.

After data collection was complete, we transcribed all audio files into text. We coded the transcriptions according to themes based each of the questions asked. This way, we could see how respondents' answers related to each other, and whether there were similarities or differences in their answers. We then grouped granular themes into larger themes, particularly based on how they fit into various conceptions of masculinity.

## Canadian Centre for Diversity and Inclusion (CCDI)

CCDI has a mission to help the organizations we work with be inclusive, free of prejudice and discrimination – and to generate the awareness, dialogue and action for people to recognize diversity as an asset and not an obstacle. Through the research, reports and toolkits we develop and our workshops, events and workplace consultations, we're helping Canadian employers understand their diversity, plan for it and create inclusion.

CCDI's leadership has a proven model that's cultivated trust as an impartial third party. Our expertise is focused on the topics of inclusion that are relevant in Canada now and the regional differences that shape diversity.

A charitable organization that thinks like a business, we have created a niche with our innovative research technology and data analysis that brings a deeper understanding of Canadian diversity demographics and mindsets at any given moment.

CCDI is grateful for the support of our over 100 Employer Partners across Canada.

## Contact us

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CCDI is grateful for the ongoing support of our Founding Partners.