

RULE OF LAW REPORT

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WOMEN GENERAL COUNSEL SITTING ON PUBLIC BOARDS GOING UP: REPORT

Terry Davidson
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Women in-house counsel are dominating their male counterparts when it comes to sitting on the boards of public companies, but the number of females tapped to be chief legal officer continues to lag, according to a new report.

Opportunities for Women General Counsel, released earlier in March by Canadian firm Blakes, looks at the state of women general counsel (GC) and their presence on public boards over the last several years.

“I think this report has shown the great progress women GCs have made in terms of getting representation on boards and really shows that boards are viewing women GCs as really strong candidates who are bringing a great set of skills and experience to a world that we know is increasingly complex and heavily regulated,” said McLean.

It found that of 73 GCs on public boards in 2020, 66 per cent were woman – up from 64 per cent in 2019 and 59 per cent in 2016, when Blakes began releasing the annual reports.

This latest report is a sign of progress, says Stacy McLean, a partner with Blakes and part of Women@Blakes, an initiative focusing on the recruitment, professional development and retainment of women.

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representation on boards and really shows that boards are viewing women GCs as really strong candidates who are bringing a great set of skills and

experience to a world that we know is increasingly complex and heavily regulated,” said McLean. “Generally, GCs have deep expertise in governance, compliance and risk management but more recently we have seen their portfolios expanding to cover cybersecurity, ESG [environmental, social and corporate governance] and lots of other areas of business.”

She called general counsel “problem solvers” who, through their roles, have tapped into “all aspects of the business.”

“They’ve seen it all. They’ve also likely been at the board table. They’ve been preparing the materials. They understand what it means in terms of having seen a board function before.”

According to the report, 41 per cent of the GCs holding board positions “are now employed in a non-GC executive role.”

“So, they even get a broader skillset that they bring to the table,” said McLean. “You’re seeing these very mobile lawyers who are doing business, they are doing law, they’ve been in front of boards probably for a good portion of their career. So, if you’re a board and you’re thinking about, Look I’ve got a skills matrix and these people, they’re bringing a lot to the table – and that’s male and female GCs. But also, when you’re looking for diversity on your board, as well, there you go.”

However, when it comes to females who become chief legal officers (CLO), the numbers tell a different story. Of 43 CLOs, 12 per cent were women in 2020 – a three per cent increase from the year before. And male in-house “leaders” are 2.5 times more likely to have the CLO title, the report states.

McLean said it may be the fact there are a smaller number of CLOs across the corporate landscape, overall.

“Lots of organizations don’t have chief legal officers yet, and so that will go to some of it, and then just general advancement of women in

 If you look at in terms of women CEOs and CFOs, the numbers are low there as well.”



organizations,” she said. “If you look at in terms of women CEOs and CFOs, the numbers are low there as well.”

Still, McLean would like to see those numbers increase.

“Titles matter in terms of ensuring that these women GCs are readily identifiable as being in the C-suite. Having the title of [CLO] is very important, so I think that [it] is definitely a work in progress and something that organizations should look to if they don’t have a CLO. Whether or not there is someone that really is filling that role and should have the title, and then also looking to large in-house legal groups as to who is getting supported upwards for those roles.”

McLean was asked if the COVID-19 health crisis will negatively impact numbers going forward.

“I think the pandemic has had an impact on the workforce, and it’s very clear that it’s been disproportionate on women. ... It really is on the flow of the pipeline. How many people will hold themselves back from opportunities? I hope that now we’re getting to the end of it and that people will see the light at the end of the tunnel and just do what they can to keep themselves

in the pipeline and progressing on the same trajectory they were on. But I think there are a lot of unknowns on the long-term impact of COVID-19 in terms of the workforce.”

Still, she remains confident in that, the health crisis notwithstanding, continued progress will be made when it comes to both women GCs sitting on boards and those who are able to grasp the title of CLO.

“If I take out the COVID aspect, all of this is about developing a strong, robust pipeline of candidates who are willing to put themselves forward.”

Those interested in obtaining a copy of the report can place a **REQUEST** through Blakes’ website.

MAJOR LAW FIRMS COMMIT \$1.75 MILLION OVER 10 YEARS TO BLACK FUTURE LAWYERS PROGRAM

John Schofield
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Dave Leonard, the Toronto-based partner and CEO for McCarthy Tétrault LLP, said it only took a 20-minute conversation with Torys LLP managing partner Matthew Cockburn to convince him to sign on to one of the Canadian legal community's largest ever recruiting drives.

Now, 14 of Canada's largest law firms are committing \$1.75 million over the next 10 years to encourage Black students to pursue legal careers and, they hope, to join their firms. The money will fund the expansion of the University of Toronto-based Black Future Lawyers (BFL) program to university campuses in other parts of Ontario and Canada.

Torys and McCarthy Tétrault have been joined by Blake, Cassels & Graydon LLP, Borden Ladner Gervais LLP, Cassels Brock & Blackwell LLP, Davies Ward Phillips & Vineberg LLP, Dentons, Fasken, Goodmans LLP, Gowling WLG, McMillan LLP, Norton Rose Fulbright Canada LLP, Osler, Hoskin and Harcourt LLP and Stikeman Elliott LLP.

Leonard said each firm is contributing an equal amount and the effort will help them meet their obligations as participants in the Black North Initiative, which was launched last year by the the Canadian Council of Business Leaders Against Anti-Black Systemic Racism. The campaign challenges senior Canadian business leaders to commit their companies to specific actions and targets designed to end anti-Black systemic racism and to create opportunities for all of those in the underrepresented Black, Indigenous, People of Colour (BIPOC) community.

One of the seven goals included in the Black North law firm pledge, unveiled last July, is to commit to the goal of achieving 3.5 per cent of executive, board and/or senior leadership roles based in Canada being held by Black or visible minority leaders by 2025.

“We saw this as a very concrete action that would address a significant barrier to Black lawyers entering Bay Street, which is we need more Black university students going into law school, graduating and coming to Bay Street,” Leonard told *The Lawyer’s Daily*.

“I think the unique thing about this is the coming together of these 14 firms,” he added. “We usually compete for talent. But this is a recognition by these firms that this is an area where we need to come together to help remove barriers and at least take steps toward solving what has been a systemic and historic under-representation of Black lawyers on Bay Street — and quite frankly Black people in the legal profession.”

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Konata Lake, a Toronto-based partner with Torys, said its support of the BFL program will help it to develop a pipeline of talented Black-identifying lawyers as part of its overall effort to promote diversity, equity and inclusion at the firm and across the legal profession.

“Torys has proudly been involved in supporting the groundbreaking Black Future Lawyers program since its inception last year, and we were excited to identify an opportunity to leverage our connections with Bay Street firms in furtherance of BFL’s worthy and ambitious objectives,” he said in an e-mail to *The Lawyer’s Daily*. “In addition to our committed financial support to BFL,” he added, “Torys is excited to work with BFL as part of an advisory group that will help shape BFL’s programmatic and expansion goals.”

Lake said that Torys and McCarthy Tétrault are working with BFL to develop a program blueprint for a new business law stream. All of the firms are invited to participate in BFL’s key mentorship program, along with its educational sessions, workshops and conferences.

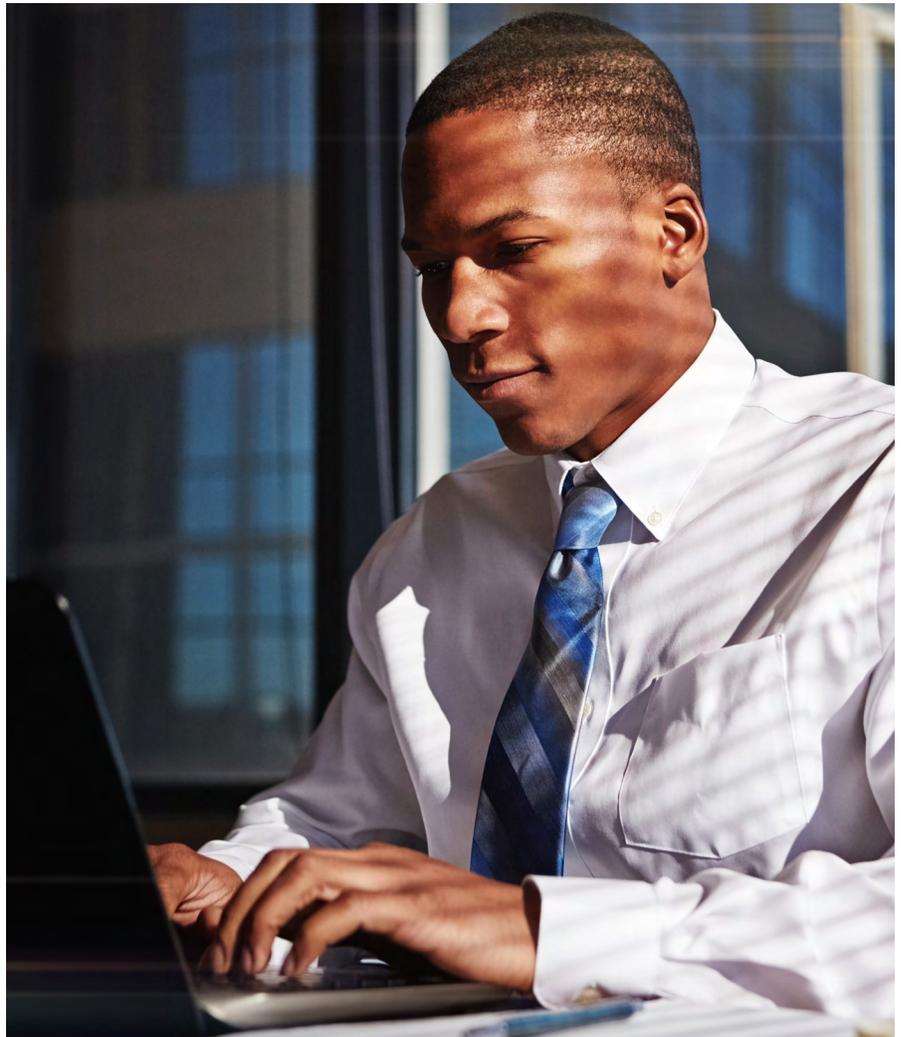
U of T law student Novalee Davy, who serves on two BFL working groups and as co-president of the campus chapter of the Black Law Students' Association, said the additional funding will enable to BFL program support many more Black students. The program has already received funding from the U of T provost's office and Scotiabank, and was able to hire a full-time co-ordinator for this academic year.

Davy said undergraduate chapters have already been launched at Western, York and McMaster universities and the near-term plan is to set up additional undergraduate chapters at the University of

Toronto's downtown, Scarborough and Mississauga campuses and at Ryerson University.

This academic year alone, she noted, more than 130 students signed up for BFL's mentorship program. The Black Student Application Process, a joint initiative between BLSA and the BFL program, has also helped many Black students with law school admissions process.

Josh Lokko, a graduate of U of T's J.D./MBA program who was involved in the founding of the Black Future Lawyers program, said there's no single barrier discouraging Black undergraduates from pursuing legal careers.



“There’s a myriad of different students with a myriad of different experiences that students have before they come to law school,” he told *The Lawyer’s Daily*. “It’s very hard to say there’s a particular one, and that’s why the BFL program has so many different elements.”

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Securing the additional long-term funding now opens up a range of possibilities for the program, added Lokko, who is a Toronto-based associate in the capital markets group at Shearman & Sterling LLP.

“Students have come back year after year who have discussed how much the program changed their opinion on law school, how much it prepared them for it, how much it exposed them to areas of law that they had never heard of before, and also just inspired them to apply for law school when they previously didn’t see themselves there,” he said.

“It’s really exciting to me to think about what the next generation of students is going to be able to achieve now that they have this program behind them making sure they achieve their full potential,” he added.

JUSTICE CLINIC IMPROVES OUTCOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Hariklia Simos
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March is Developmental Disabilities Awareness month and an apt time to shed light on the unique challenges facing persons with developmental disabilities in the criminal justice system. A long-standing challenge has been the equitable and meaningful participation by persons with developmental disabilities in the court process.

Take for instance the case of Robert (pseudonym), a young man with a very severe level of autism. He became violently aggressive towards one of the staff members at his group home, which resulted in his arrest. Robert's autism prevents him from expressing himself or communicating outwardly and makes it difficult for him to understand the criminal charges he faces and to fully participate in a court hearing. Unfortunately, Robert's experience is common to a cluster of related disabilities that when ignored, or not accommodated for, frequently contribute to court delays, missed appearances, failed peace bonds, courtroom outbursts and frustration.

🗨️ They may be unclear on the nuances of courtroom procedure, the solemnity of the process and the behavioural expectations that many of us take for granted. The result is that they are not able to participate in the criminal justice system effectively and meaningfully.”

Persons with developmental disabilities, including autism spectrum disorder (ASD), acquired brain injury (ABI), fetal alcohol spectrum disorder (FASD), intellectual disabilities and/or dual diagnosis (developmental disability with mental health/addictions) present challenges for the criminal justice system because clients rarely understand the various roles of the players in the courtroom, such as the Crown, defence counsel and judge and the way to address each of these players. They may be unclear on the nuances of courtroom

procedure, the solemnity of the process and the behavioural expectations that many of us take for granted. The result is that they are not able to participate in the criminal justice system effectively and meaningfully.

The Justice Clinic is a unique program that was created to bridge the gap between persons with developmental disabilities and the judicial process. The Justice Clinic is a collaboration between the Centre for Behaviour Health Sciences (Mackenzie Health) and Community Networks of Specialized Care Central East (CLH Developmental Support Services) and aims to ensure its clients – persons with developmental disabilities – are afforded full and equitable participatory rights in criminal justice proceedings.



Vicky Simos is one of two dual diagnosis justice co-ordinators through a provincial position with Community Networks of Specialized Care-Central East and the current co-ordinator of the Justice Clinic through the Centre for Behaviour Health Sciences. She explained to *The Lawyer's Daily*: “The Justice Clinic supports clients with a developmental disability by utilizing applied behaviour analysis (ABA), so that they are able to meaningfully participate in the court process from beginning to end. Clients may be the accused, the victim, or a witness.”

Clients referred to the Justice Clinic will usually undergo a functional assessment to determine what supports they require followed by the implementation of an ABA justice plan. Simos stated, “ABA is data driven. During the functional assessment, we collect baseline data, which means we want to know how much the individual knows about the specific skill we want to

teach them. For example, how many conditions of their 810 peace bond do they know? Are they familiar with any justice professionals and their roles? Do they understand appropriate courtroom behaviour for in person as well as virtual court appearances? Can they sign in to virtual court?

“Once baseline is determined, we prepare an ABA justice plan and begin implementing it. The ABA justice plans can take many shapes and forms, and most are implemented on a weekly basis, with the majority currently conducted virtually over BlueJeans, a videoconferencing platform. We have successfully supported individuals with ABA justice plans for the aforementioned situations, as well as preparing for an Ontario Review Board hearing, trial or court ordered curriculum-based content such as anger management, anti-theft and partner assault response programs. All ABA justice plans are based on the individual needs of the client, but we do not coach on any evidence related to court matters.

“For example, Max (pseudonym) was referred to the Justice Clinic by his support staff and lawyer. The Crown in his case offered resolution of an 810 peace bond. Max’s lawyer explained what a peace bond is and provided him with a letter outlining the upfront work he needed to do. Max agreed to an 810 peace bond. The justice specialist (behaviour consultant with the Justice Clinic) was able to take over where Max’s lawyer left off by implementing an ABA justice plan that enhanced his understanding of the peace bond by creating various cues to prompt him on the conditions of the peace bond, such as avoiding person “X.”

Simos stated: “One of the many benefits of the program is that it alleviates parts of the workload of the Crown, the client’s lawyer and the court.”

Charlena Claxton, an Ontario-based lawyer at Claxton Law, had a client who was referred to the Justice Clinic, and found that the supports provided genuinely helped her client. She told *The Lawyer’s Daily*, “as an adviser, lawyers provide clients with an informed understanding of their legal rights, but we don’t always appreciate how much the individual knows and understands about the judicial process as a whole. In especially one of my cases, the program was instrumental in helping my client navigate and better understand the justice system, through their weekly personalized sessions that explained the various roles of justice participants, by fielding my client’s questions about what to generally expect at their trial, and creating a mock practice courtroom.”

The Justice Clinic is even more important as the COVID-19 pandemic has forced court hearings to be held virtually. Persons with developmental disabilities are now expected to learn to navigate a virtual justice system and new technology all at once. Currently, navigating virtual court and virtual court platforms form a part of many ABA justice plans.

Data collected by the Justice Clinic supports the success of this program. Simos stated, “ABA justice plans have been shown to be successful in as little as three to six sessions and 100 per cent of the clients have met their goals. The effects are lasting for second, third or even fourth court appearances as well as everyday interactions thereafter.

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“Joe (pseudonym) was a client of the Justice Clinic. Joe successfully met the goals of his ABA justice plan and applies the skills he acquired through the program daily. On his experience with the Justice Clinic, Joe stated to *The Lawyer’s Daily*, “It was excellent. Helped me with everything for the court. I learned about court.”

Further funding is required to expand the Justice Clinic provincewide to meet the community and court needs. Currently, there is only one justice specialist employed by the Justice Clinic for the province of Ontario, despite a large population of vulnerable persons who require this type of support.

Ultimately, access to justice for persons with developmental disabilities must include the opportunity and ability to meaningfully participate in the justice system. For persons with developmental disabilities the creation and expansion of the Justice Clinic is the first step in the right direction.

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