Inclusion and Advancement of Diverse Lawyers: How to Ensure Success After the Hire and What We Can Learn from Our North American Neighbors

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Introduction

The legal profession has moved at a slow pace in addressing issues of diversity and inclusion. Reports in the U.S. and Canada indicate that lawyers of color, lawyers with disabilities, LGBTQ2+ lawyers and women lawyers (collectively, for purposes of this article, “diverse lawyers”) are not well-represented in the profession, particularly at the partner level or in leadership or management roles.

The American Bar Association reported in 2018 that 85% of lawyers in the U.S. were Caucasian/white and 36% identified as female.1 A 2018 Report on Diversity in U.S. Law Firms by the National Association for Placement2 reported that:

- overall representation of women, minorities3 and minority women saw only small gains in 2018;
- representation of Black/African-American lawyers among partners has barely increased since 2009;
- minority women continue to be the most underrepresented group at partnership level;
- there are wide geographic disparities in the number of LGBT lawyers, with a majority being accounted for in densely populated cities such as New York City, Washington, DC, Los Angeles, and San Francisco; and
- reporting of lawyers with disabilities is scant at both partner and associate levels.

In Canada, demographic data is not as readily available. The Canadian legal profession has transformed over the course of the current decade, however, diverse lawyers continue to be

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3 Minority lawyers include those whose race or ethnicity is Black, Hispanic, American Indian/Alaskan Native, Asian, Native Hawaiian or other Pacific Islander and those of multi-racial heritage.
underrepresented. The Canadian Bar Association partnered with the Canadian Centre for Diversity and Inclusion to conduct a survey tracking law firm diversity in Canada. The study reported that women, lawyers with disabilities and racialized lawyers are significantly underrepresented and there is a continued trend of those in senior leadership positions being Caucasian males.\textsuperscript{4}

**Challenges faced in retention and advancement**

In recent years, law firms and corporate legal departments have improved recruiting and hiring practices, but inclusion and retention have been more difficult to address. While individual merit plays a key role in advancement, it is not often the reality. Barriers exist in both the U.S. and Canada that impede the retention and advancement of diverse lawyers, which include in-group bias, unconscious bias and stereotyping, diversity fatigue and the lack of a sponsor or champion. In order to increase inclusion and retention, the legal profession must first address these underlying issues.

**Diversity and inclusion in the U.S. and Canada**

A true comparison of the U.S. and Canadian experience is not possible given the historical and cultural differences in both countries. Nevertheless, both countries are facing similar challenges in recruitment, retention and advancement and can benefit from their respective experiences and strategies.

Best practices that can be used in the U.S. and Canada include:

- Active and meaningful participation and support of senior leadership and management. It is difficult to effect change where those in leadership are not supportive of or active in addressing the challenges. The involvement of those in leadership plays a significant role in the law firm or organization’s culture and is imperative for having an inclusive workplace.

- Client requirements for outside legal teams to be diverse. RFPs, open letters and other public support of diversity and inclusion are steps in the right direction. However, genuine strategy must be put in place to monitor outside counsel’s diversity efforts and to hold them accountable. Meaningful strategies should include a thorough examination

of the members of the legal team, the percentage of work allocated to diverse lawyers, and the representation of diverse lawyers in senior positions within the firm. Many large financial institutions require quarterly reporting on these items which allows them to track the outside firm’s commitment to and focus on diversity and inclusion.

- A concerted focus on inclusion. This includes creating and maintaining a culture and work environment that is truly welcoming and allows lawyers to bring their full (professional) selves to the workplace. Inclusion also requires ensuring that diverse lawyers have equal access to advancement opportunities.
- Hiring from a broad pool of candidates to recruit diverse talent and training those interviewing and hiring lawyers (e.g., unconscious bias training). Within and outside of the law schools, there are a number of organizations with which firms can create relationships with to tap into the respective organization's candidate base.
- Accountability measures such as tying compensation to efforts of diversity and inclusion are an important solution to address the systemic issues in the legal profession.
- Law schools implementing diversity strategies, such as The Coelho Center for Disability Law, Policy & Innovation.⁵

Conclusion

It is well known that the legal profession in each country faces challenges related to diversity and inclusion. The data generated from reports highlights the need to formulate and implement appropriate strategies to address these issues. The initiatives of law firms and organizations in the U.S. and Canada have played a significant role in the diversity discourse and there are best practices that both countries should draw upon and apply to enhance the recruitment, retention, and advancement of diverse lawyers.

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⁵ https://www.lls.edu/coelhocenter/.