

# LAWYERS IN PRIVATE PRACTICE IN 2021



Report of the Committee  
on Current Issues in Private  
Practice and the Future  
of the Profession

**Barreau**  
du Québec 

## **THE MISSION OF THE QUÉBEC BAR**

To ensure the protection of the public, the Québec Bar seeks to forge bonds of trust between lawyers, governments and the public. In pursuit of that goal, the Québec Bar oversees professional legal practice, supports member practitioners, fosters a sense of belonging within the membership and promotes the rule of law.

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## Summary

The *Lawyers in Private Practice in 2021* report has multiple objectives and aims to analyze the essentials of the area commonly referred to as the legal services industry. Here are the main objectives of the study:

- To analyze the socioeconomic environments of this new millennium;
- To examine the practice of law in certain jurisdictions;
- To gather information on the private practice segment of the legal services industry;
- To propose a diagnostic of private practice conditions;
- To elaborate hypotheses on the likely evolution of both lawyers and of private practice markets and to build scenarios capable of describing the evolution of this sector;
- To adopt one scenario and propose a plan of action consistent with the Québec Bar's Strategic Plan.

Among other components of private practice environments, the Committee on Current Issues Related to Private Practice identified globalization and information technology (IT) as being the predominant forces of change affecting the profession.

After a rigorous analysis of the socioeconomics of law and of the environment surrounding private practice, we drew up three prospective scenarios in order to develop a specific vision of the future of the profession.

Three scenarios were developed based on the retained hypotheses:

1. "Textile manufacturer": lawyers do not adopt the technological shift that is essential to the development of the profession and are uninterested in the new possibilities stemming from globalization;
2. "Compact disc": The future of the legal profession rests mainly in protecting the profession using a repressive approach of surveillance to curb illegal practice and controlling access to the profession;
3. "Bombardier": Faced with the significant changes that society has undergone, innovation is unavoidable. Lawyers must adapt in order to benefit from the many advantages offered by information technology. Globalization is not a threat, but rather an opportunity to be seized.

# Background of the Committee on Current Issues in Private Practice

Over the course of his Presidency of the Bar, M<sup>e</sup> J. Michel Doyon (2007-2008) wished to begin a conversation about the future of the private practice law profession in Quebec in the context of the globalization of legal services and the globalization of markets. This discussion is in keeping with the preceding Report on the Future of the Profession (better known as the “Singapore Report”) produced by the Bar in 1996.

To that end, in October 2007, a first Committee on Current Issues in Private Practice (the “Committee”) was created with the mandate of “...targeting current issues in private practice, analyzing them and developing strategies for the future in order to respond to them adequately.”

Conscious of the fact that issues and challenges differ according to firm size, the Administrative Committee (formerly the Executive Committee) agreed to divide the Committee into three subcommittees: large, mid-sized and small firms.

## **The members of the three subcommittees created in 2007 are as follows:**

### **Representatives of large firms**

- 1.** M<sup>e</sup> François Morin, subcommittee chair
- 2.** M<sup>e</sup> Patrick Ferland
- 3.** M<sup>e</sup> Paul Routhier
- 4.** M<sup>e</sup> Louis Carrière
- 5.** M<sup>e</sup> François Vallières
- 6.** M<sup>e</sup> Raymond Nepveu
- 7.** M<sup>e</sup> Marc Dorion
- 8.** M<sup>e</sup> Josée Noiseux
- 9.** M<sup>e</sup> Serge Bourque
- 10.** M<sup>e</sup> Chantal Châtelain
- 11.** M<sup>e</sup> Suzanne Côté

### **Representatives of mid-sized firms**

- 1.** M<sup>e</sup> Sonia Paradis, subcommittee chair
- 2.** M<sup>e</sup> Marc Simard
- 3.** M<sup>e</sup> Caroline Malo
- 4.** M<sup>e</sup> François Demers
- 5.** M<sup>e</sup> Judith Rochette
- 6.** M<sup>e</sup> Paul Larochelle

7. M<sup>e</sup> Marc Choquette
8. M<sup>e</sup> Francis Gervais, president of the Bar
9. M<sup>e</sup> Serge Poupart
10. M<sup>e</sup> David Rhéaume

#### Representatives of small firms

1. M<sup>e</sup> Madeleine Lemieux, president of the Bar, subcommittee chair
2. M<sup>e</sup> Pierre V. LaTraverse
3. M<sup>e</sup> Benoit Lapointe
4. M<sup>e</sup> Robert Daigneault
5. M<sup>e</sup> Marie-Anne Paquette
6. M<sup>e</sup> Jacques G. Bouchard
7. M<sup>e</sup> Alain Michaud
8. M<sup>e</sup> Dominique Bertrand
9. M<sup>e</sup> Paul Yanakis
10. M<sup>e</sup> Richard Poitras

M<sup>e</sup> Renée Delaquis and M<sup>e</sup> Dyane Perreault, Committee secretaries

The Committee submitted its report to the General Council in March 2008. The report identifies ten (10) issues and proposes twenty-five (25) recommendations, including:

“To go further by giving a second mandate to a limited Committee:

- to analyze in greater detail the issues listed in the March 2008 report;
- to propose strategies that could favour the granting of large-scale mandates to Quebec lawyers and the retention of corporate clientele;
- to reflect upon the tools that Quebec lawyers could put to good use in order to be in a position to respond to legal service offerings as effectively and competently as possible;
- to reflect on the true quality of life of lawyers in private practice.”

In accordance with this recommendation, on August 21, 2008, the Executive Committee formed a second “Committee on Current Issues in Private Practice,” a limited committee largely made up of members who had participated in the work of the first committee:

1. M<sup>e</sup> Jean-Pierre Casavant (Montreal)
2. M<sup>e</sup> Suzanne Côté (Montreal)
3. M<sup>e</sup> Caroline Malo (Montreal)
4. M<sup>e</sup> Moïse Moghrabi (Montreal)

5. M<sup>e</sup> François Morin (Montreal)
6. M<sup>e</sup> Sonia Paradis (Montreal)
7. M<sup>e</sup> Tonya Perron (Longueuil)
8. M<sup>e</sup> Claudia P. Prémont, Ad. E. (Quebec)
9. M<sup>e</sup> Annie Quimper (Quebec)
10. M<sup>e</sup> Martin F. Sheehan (Montreal)
11. M<sup>e</sup> Paul Yanakis (Laurentides / Lanaudière)
12. M<sup>e</sup> Alain Michaud, president (until his nomination to the Bench in May 2010).

The secretarial staff was provided by the Service for Members:

M<sup>e</sup> Dyane Perreault, director

M<sup>e</sup> Laurent Fafard

M<sup>e</sup> Fanie Pelletier, Equity advisor

M<sup>e</sup> Pascale Vigneau, interim Equity advisor (January-September 2010)

In the summer of 2010, the Committee decided that it needed to support its work with an economic analysis of legal markets. It is at this point that the Committee retained the services of Mr. Pierre Boucher, economist at the Observatoire des services professionnels.

The current report is the fruit of nearly four (4) years of work by two committees made up of some 40 lawyers from every segment of private practice all across Quebec. It rests on an economic analysis and proposes a proven methodology (prospective analysis) to not only make observations about the current state of the private practice of law, but also and especially to allow the Bar and the profession to project themselves into the future to ensure the development and the influence of private practice by Quebec lawyers.

**PART I**

## **SETTING THE STAGE**



**Report of the Committee  
on Current Issues in Private  
Practice and the Future  
of the Profession**

**Barreau**  
du Québec





# 1 Introduction

## 1.1 CONTEXT OF THE STUDY

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Over half of Québec Bar members are in private practice. The Committee on Current Issues Related to Private Practice (CPPP), a Québec Bar advisory committee, was given the mandate of analyzing the current state of affairs in this sector.

Conscious of great upheavals stemming from economic, political and social forces, the CPPP broadened its analysis and carried out a prospective evaluation of private practice. Besides providing a diagnostic, the CPPP's approach included a look at the future of the profession.

## 1.2 THE OBJECTIVES OF THE REPORT OF THE COMMITTEE ON CURRENT ISSUES RELATED TO PRIVATE PRACTICE

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The objectives of the report entitled “Lawyers in Private Practice in 2021” are many and seek to analyze the essential features of the area commonly referred to as the legal services industry. Here are the main objectives of the study:

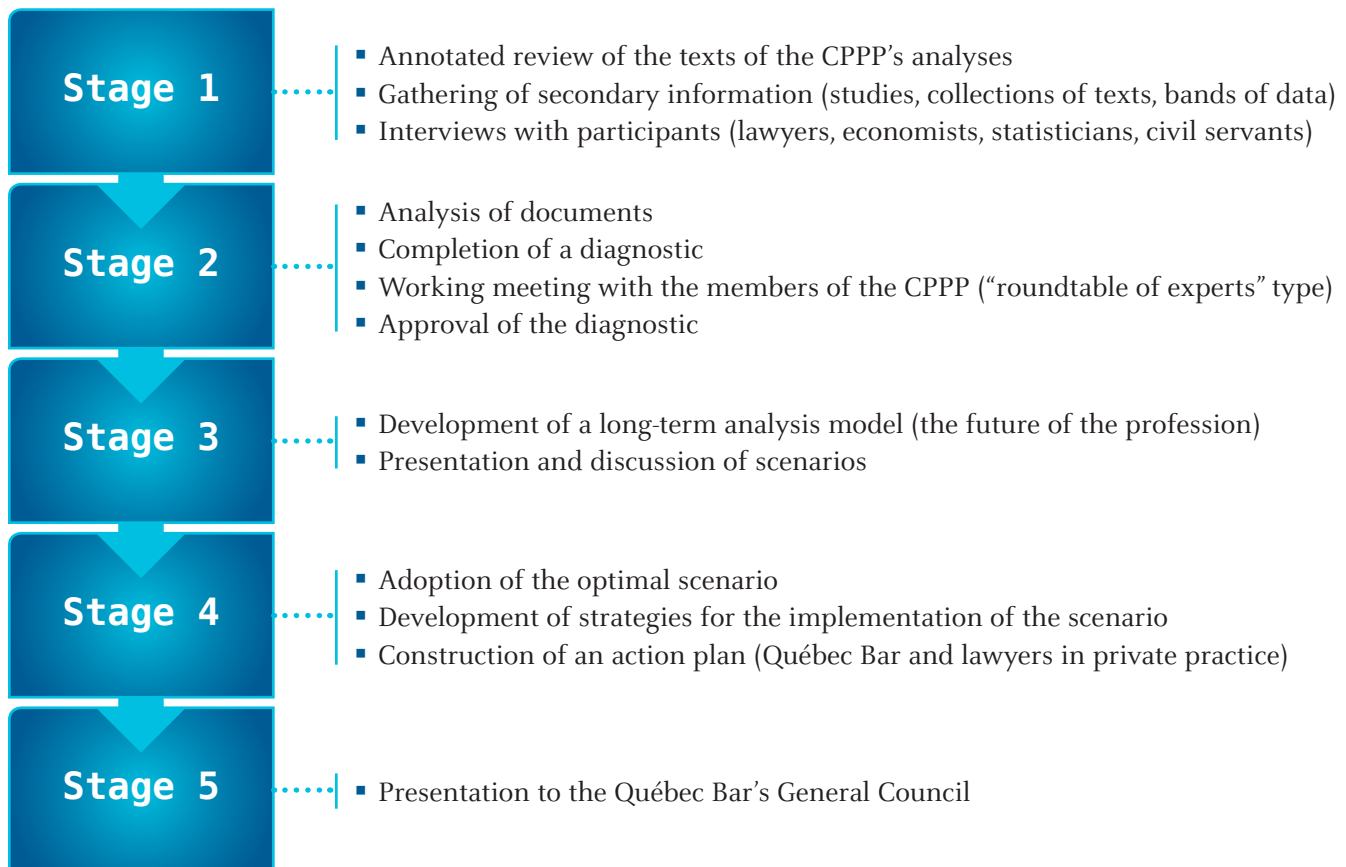
- Analyze socioeconomic environments at the start of the new millennium;
- Examine legal practices in certain jurisdictions;
- Gather information on the private practice sector of the legal services industry;
- Offer a diagnostic of the current state of private practice;
- Set out hypotheses regarding likely changes that will affect both lawyers in private practice and private practice markets and develop scenarios to describe the evolution of this sector;
- Adopt one scenario and propose an action plan consistent with the Québec Bar's Strategic Plan.

### 1.3 THE METHODOLOGY USED IN CARRYING OUT THIS STUDY

In order to achieve the objectives described above, a methodology was developed and proposed to the CPPP. The following diagram of the logical progression of the study summarizes the main elements of the approach.

#### DIAGRAM 1: Logical progression of the study

The diagram lists five stages.



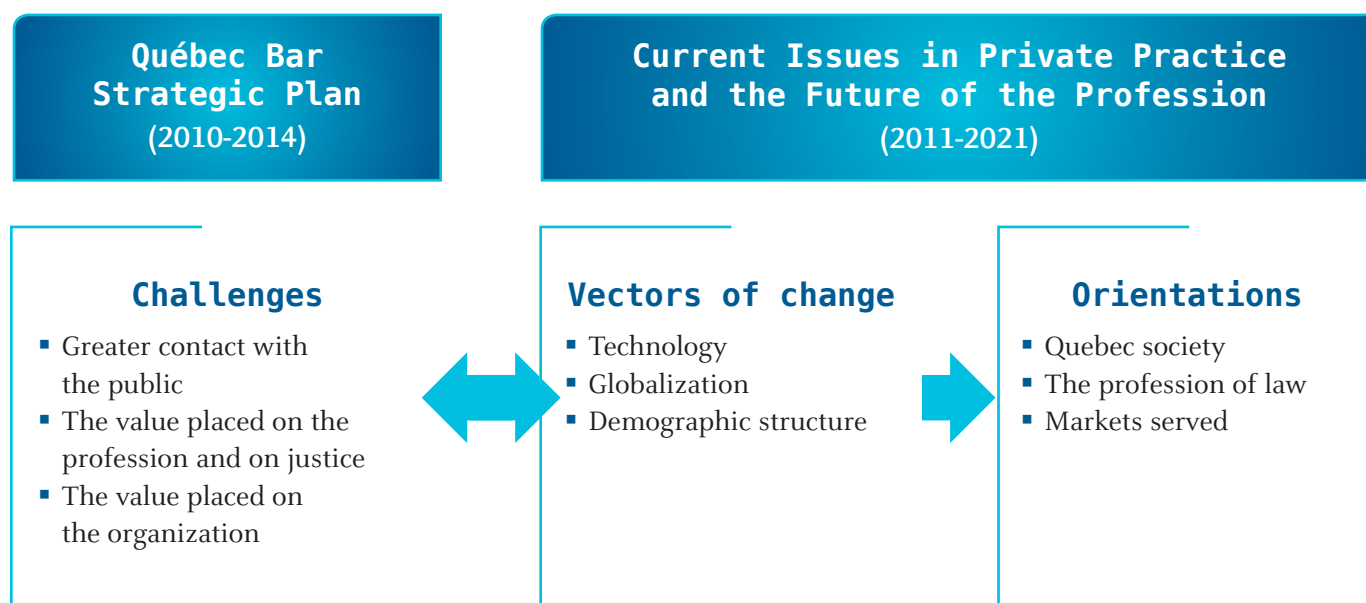
The Québec Bar’s Member Services team ensured that the project proceeded smoothly. Its lawyers proceeded diligently both with the logistics of the study and with the critical reading of the various intermediate reports and other working meetings. Given the socioeconomic aspects of private practice, the CPPP enlisted the collaboration of the Observatoire des services professionnels in order to complete the report.

## 1.4 THE QUÉBEC BAR'S STRATEGIC PLAN AND THE CPPP'S PROSPECTIVE ANALYSIS APPROACH

In June 2010, the Québec Bar's General Council adopted the "2010-2014 Strategic Plan" submitted by the Strategic Planning Committee.<sup>1</sup> In parallel with this Committee, the CPPP was carrying out its work on the future of private practice. It is important to note that the work of these two committees is complementary. On the one hand, the Strategic Plan directs the development of the institution and its members in their mission to protect the public. On the other hand, the CPPP report allows the reader to grasp, to understand and to absorb the major trends that could have an impact on the evolution of the legal services industry and lawyers working in private practice.

For the benefit of Bar members, it is obviously important to properly position these works.

### DIAGRAM 2: Strategic planning and socioeconomic forecasting



The diagram shows the complementary link between the two approaches. The Strategic Plan establishes specific orientations and fixes certain objectives both for the Bar and for lawyers. The prospective analysis uses a likely scenario to sketch a portrait of the evolution of the environments in which lawyers practice, within the context of current and/or emerging markets.

To that end, the two reports cover common ground analyzed from the perspective of the Bar or from the development of the legal services industry. Whether regarding the professional role and skills of lawyers, the demand for legal services, the organization of professional practice or socioeconomic trends, the analysis was adapted as a function of the objectives to be achieved.

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1 Québec Bar, "Plan stratégique 2010-2014," Comité de planification stratégique, 2010.



**PART II**

**THE SOCIOECONOMICS OF LAW**



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## 2 The instability of socioeconomic environments and the practice of law in the 21st century

The committee on current issues in private practice (CPPP) painted a detailed picture of the difficulties faced by lawyers in this sector in Quebec. Recall that nearly 54% of Québec Bar members are in private practice, a total of around 12,600 lawyers.<sup>2</sup>

Among other components of private practice environments, the CPPP identified globalization and technology as being the dominant forces behind the changes affecting the profession. The scope of certain other current issues, as it were, stems from these two vectors of change. We hypothesize that the search and the exploitation of new markets, the retention of an optimal pricing model for legal services and better access to justice for all Quebecers are objectives that will be realized if and only if private practice adapts to the changing realities stemming from globalization and from the development of information technology (IT).

The first part of this report aims to verify to what extent globalization and IT will have an impact on lawyers in private practice. The results of this analysis will allow for, if necessary, an orientation in the case of legal services in private practice according to the research on underserved and/or emerging markets, all while including an analysis of the remuneration of services as well as access to justice.

It goes without saying that various narrower aspects of current issues in private practice identified by the committee will be addressed in the elaboration of the larger themes formulated above. Consider, among other things, the feminization of the profession, visible minorities, the increasing demographic weight of immigrant Quebecers, the aging of the population and its impact, not only on Quebec society, but more specifically on Québec Bar members.

### 2.1 THE “GLOBAL VILLAGE” SOCIETY

In the context of a prospective socioeconomic approach, a quotation deserves our attention here.

*“We look at the present through the rear-view mirror. We march backwards into the future”*

– Marshall McLuhan

Marshall McLuhan was born in Edmonton, Alberta in 1911. Following studies in English literature (University of Manitoba) and literary criticism (Cambridge, U.K.), he taught at various schools in the United States before joining the faculty of the University of Toronto where he taught literature and the sociology of communication. McLuhan’s work deals with the development of theories about the impact of technology on culture and communication.

Among his most well known publications, *The Gutenberg Galaxy* (1962) and *Understanding Media* (1964) contributed to McLuhan’s international reputation. In *The Gutenberg Galaxy*, McLuhan unequivocally declared the end of the printed medium and stated among other things: “*We are moving from the Gutenberg Galaxy to the Marconi Galaxy.*” In *Understanding Media*, the central idea deals with the fact that the medium is more important than the

.....  
2 Québec Bar, “Enquête socioéconomique auprès des membres du Barreau du Québec en 2008,” CIRANO.

message itself. The medium exerts a profound influence upon the individual, specifically on the physical organs and the nervous system.

One of the structuring concepts of McLuhan's heritage deals with the idea that information technology profoundly influences the individual, and indirectly, the intrinsic self-conception of a society and its achievements. Ahead of his time in the 1960s, McLuhan predicted that communication technology would have a rapid and profound influence on society. McLuhan stated that the impact of communication technology would be to create a "global village" within which societies would be interconnected on a planetary scale. The term "global village" rapidly became one of the most fashionable phrases in both academic and business circles.

McLuhan was therefore a peerless visionary who foresaw the impact of technology on the development of society. We refer to this sociologist in order to show, within the framework of the current exercise, the importance of making judicious use of "socioeconomic forecasting" to anticipate the future.

Nonetheless, it is important to correctly situate the context of prospective analysis. For example, we should be clear that McLuhan never referred specifically to the Internet, the medium that is responsible for the interconnection of socioeconomic agents on a planetary scale (the concept of the global village). McLuhan was not a "futurologist." However, he did sense the lightning-fast development of information technology that was coming, and he was quite right about this. Forecasting aims to understand environments and anticipate various futures using different scenarios, which McLuhan was able to do.

With regard to the field of law, McLuhan remarked on the fact that justice would need a certain amount of time to adapt to the new socioeconomic realities.<sup>3</sup> According to him, law is reactive when it comes to socioeconomic developments, which is, let's admit it, emblematic of the profession.

## 2.2 FROM MARSHALL MCLUHAN TO PROSPECTIVE ANALYSIS AT THE QUÉBEC BAR

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### 2.2.1 Strategic forecasting since 1995

At the Québec Bar, the report commonly referred to as *The Future of the Profession* was first and foremost a prospective analysis of the evolution of the practice of law.<sup>4</sup> Recall that the Committee on the Future of the Profession was set up in 1994 following an opposing movement with regard to the growing difficulties experienced by lawyers in private practice to obtain mandates. Competition was becoming stronger, so there were too many lawyers in Quebec. The solution put forward by the supporters of this report was simple to propose a quota, in short, to limit access to the profession.

From the time work began, the members of the committee unanimously endorsed the report's socioeconomic orientation, and especially its working dynamic centered around forecasting. The committee also approved the concept according to which anticipating the future only made sense if its purpose was to lead to action. This gave rise to an action plan to accompany the adopted scenario (the Singapore Scenario). This action plan was intended not only for the Québec Bar but also for lawyers.

The clash of ideas over social, political and economic changes, and also over the role of lawyers, is encumbered by recurring questions that resurface periodically regardless of the arguments put forward to try to answer them or

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3 McLuhan said during a conference in 1967: "Whereas convictions depend on speed-ups, justice requires delay."

4 Québec Bar, "La pratique du droit au Québec et l'avenir de la profession," 1996.

provide solutions for them. Therefore, some of the questioning and/or statements from the CPPP are of a recurring nature, as it were.<sup>5</sup> Is this a sign that the Action Plan adopted in 1996 has had little impact? This is unlikely, and we will return to this question later.

On the face of it, it seems that the recurrence of questions comes mainly from the evolution of the aforementioned issues highlighted by the committee. What was perceived as a strong trend in 1996 may have become a very acute problem in 2010, hence the recurrence effect. Therefore, the results of the research and exchanges coming out of the work of the CPPP will be integrated into a prospective analysis approach.

Finally, recall the utility of the strategic forecasting approach, especially in terms of stimulating the imagination, reducing incoherence, creating a common vision and language, and in the long run, structuring the thinking of a majority of lawyers in private practice. The purpose of this approach will be to allow this majority to appropriate the content of the report and related actions.

### 2.2.2 The impact of experts

Notwithstanding the foregoing, let us recall once again that the strategic forecasting approach for lawyers in private practice conducted in a context that encompasses the socioeconomic dimension will need to make reference to models. However, within the framework of this strategic forecasting, it will be necessary to keep a distance from popular opinion, avoid intellectual fashions, which is to say theories or solutions of the moment proposed by preachers, futurologists and gurus.

The most popular strategists fall into two categories.

- On the one hand, the generalist develops a theory that becomes the success of the moment and applies this single approach to all economic sectors without regard to their specifics and realities.
- On the other hand, there is the specialist in one sector who works only in that specific sector and has developed a very precise expertise.

Recall that when the 1996 report was produced, the following people were considered the experts of the hour: Don Tapscott and Daniel Burris (technological trends), Gary Hamel (innovation of management concepts), Faith Popcorn (social trends) and Nuala Beck (the new economy).

Although these and other authors did inspire, to varying degrees, the committee's work, it had opted for the forecasting approach developed among others by Frenchmen Michel Godet of the Laboratoire d'investigation et de prospective stratégique (LIPS) and Hugues de Jouvénal of the Futuribles Group.

Now, in 2010, who are the most sought-after specialists, gurus and thinkers? In the area of law, the Englishman Richard Susskind is a major player. The professionals with the American firms of Altman Weil and Hildebrandt International are consulted by a majority of large companies in the industrial world. And there are always the generalists.

Obviously, this warning is not meant to discriminate against anybody. Its goal is rather to calibrate the influence of "specialists" and their theories on those lawyers in private practice working in developed economies like the province of Quebec. Contemporary analyses of the legal services industry from reputed professionals will obviously be considered.

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5 Québec Bar, "Rapport du Comité sur les problématiques de la pratique privée," 2008, 2010, Québec Bar Member Services.

### 2.2.3 An analysis of the link between globalization, IT and access to justice

Richard Susskind, with degrees in law and computer science, has an avant-garde interpretation of legal practice. His 1996 and 2008 publications explore the different impacts of technology on the practices of lawyers in every sector, from private practice to corporate legal departments to the general public (access to justice).<sup>6</sup>

Right from the outset, as stated by the author, Susskind's thesis is first and foremost aimed at businesses large enough to have their own legal departments.<sup>7</sup> Nonetheless, the legal services delivery model envisioned by the author can be applied to all lawyers, regardless of the size of their practices. In the legal services industry's new configuration, it is the innovative lawyer who will enjoy the best opportunities to position his or her services.

Susskind's central thesis deals with the evolution of legal services as a "product." The issue concerns the speed at which numerous legal services are becoming obsolete, as it were, which is to say that they are reduced to simple "commodity products" for a growing number of clients.<sup>8</sup> This author's central idea of commodity services explains why clients will no longer pay high prices for legal services available by other means.

In the legal services industry, IT dominates the development of client services. Legal services that are conveniences will always be transferred to lower cost centres. Traditional administrative services (finance, accounting, computer support) are increasingly entrusted to subcontractors in developing countries by large businesses of all kinds, including law firms.

Mexico, Brazil and India are the countries that have benefited the most from this first phase of service relocation. In this next phase, it was foreseeable that certain types of legal services would also be subcontracted to lower cost centres. According to Susskind, three stages characterize the evolution of legal services.

- First of all, services of a repetitive nature requiring little depth in terms of legal knowledge and expertise are likely to become products of convenience fairly quickly. The price for these services diminishes over time. This phenomenon is accelerated by the continued development of IT.
- Second, in addition to the foregoing, the life cycle of the application of technological innovations to legal practice, namely from the creation and marketing phase up until the phase in which the legal service becomes a commodity product, is getting shorter and shorter. When the price of IT falls, and the price of the legal service falls in turn, lawyers' corporate and individual clients quickly and cheaply gain access to quality information from a variety of providers, both lawyers and non-lawyers.
- Finally, according to the English author, alternatives to the services of lawyers for various methods of conflict resolution offer real advantages for everyone. The development of IT and its application to the practice of law, in addition to clients' increased ability to differentiate between legal services of convenience and high value-added services, broadens the spectrum of substitutes to the services traditionally offered by lawyers.

6 See in this regard, Susskind, R., "The Future of Law," Oxford University Press, 1996 and "The End of Lawyers," Oxford University Press, 2008.

7 Susskind, R., "The End of Lawyers," Oxford University Press, 2008, page 229.

8 Susskind, R., "The End of Lawyers," Oxford University Press, 2008, page 28.

Susskind states that the evolution of delivery methods for legal services will also affect all litigants. One part of Susskind's thought deals specifically with access to justice. On the basis of what follows, the public will have better access to justice. The structure of Susskind's approach rests on the building blocks described below.<sup>9</sup>

- Members of the public, empowered to do so, handle certain kinds of legal problems themselves and can, if the need arises, collaborate more effectively with those who advise them on such issues. The Info-Santé model could migrate toward an Info-Juridique version (self-diagnosis).
- A streamlined legal services industry makes optimal use of multisource technology, promotes the development of legal services of convenience, offers *pro bono* services and actively collaborates with alternative sources of legal services.
- The legal community recognizes that certain litigants simply need an attentive listener for questions of marginal importance, which lawyers provide empathetically.
- New providers of legal services, possessing a new entrepreneurial spirit, offer new possibilities, and a cohort of professionals therefore improves the traditional provision of services. Efficient legal information systems are put in place. Original methods of financing are developed for clients who are unable to pay current service providers.
- The authorities promote access to legal information for all clients.

Susskind's approach has certain merits. However, in the specific case of access to justice, the costs related to access are not the only obstacle. There are other obstacles with regard to access to justice, and not only in the case of the least well-off clients.

Let us recall, then, a few of these obstacles, especially that legal language is complex and full of abstract concepts; that laws and regulations are constantly evolving; that for certain litigants, the justice system is intimidating, and for others, mistrust is often appropriate, or again, that delays in the administration of justice are often too long.<sup>10</sup>

Notwithstanding the foregoing, in keeping with the perspective formulated by Susskind regarding access to justice (the building blocks), the Québec Bar is acting as an agent of change. Indeed, the various Édulcoi and Bar Foundation initiatives in terms of legal information, the publication of articles in the Protégez-vous magazine, the broadcasting of information capsules (Droit de savoir), the promotion of legal insurance and the development of conflict resolution methods are all positive actions that have helped demystify certain aspects of the legal services industry over the years. These are achievements that deserve to be acknowledged.

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9 Susskind, R., "The End of Lawyers," Oxford University Press, 2008, page 237.

10 Justice Québec, "Rapport du Comité sur la réforme de la procédure civile" 2001.

## 2.2.4 Different analyses of the legal services industry

On the basis of unique expertise in the industry, reputed consultants like Altman Weil and Hildebrandt International produce for law firms legal services, models and business solutions that seem, at the end of the day, universal and applicable to all firms.

Apart from the size of the firm, the publications (corporate brochures, bulletins), the Web pages, the organization of practice groups and the statements of the distinctive skills of law firms and lawyers show a homogeneity that can only come from advice received and applied. Firms that do not call on consultants copy those that do.

Is the legal services industry not then becoming too homogenous in the way it functions? Is there innovation in the development of new delivery methods for value-added legal services? How are legal services differentiated from one firm to another, from one practice to another, from one lawyer to another? The answers are clear: undifferentiated legal services, and little or no innovation.

As for the production function for legal services, lawyer recruitment and service pricing methods (important components of this function) have changed very little. Why is it so hard for law firms to modify the lawyer recruitment model introduced by Cravath Swaine & Moore in the 19<sup>th</sup> century in the United States, which led to the adoption in the 1960s of the billable hour lawyers in private practice?

In the particular case of hourly billing, most people, both within the legal services industry and outside of it, know very well that this pricing model for services is no longer justified from an economic point of view, namely from the perspective of efficiency. As Susskind pointed out, the high cost of commodity services has unintended consequences for the legal services industry. The outsourcing of legal services to emerging economies like India, a country with a common law tradition, is one manifestation of these high prices. The price differentials are unequivocal: a lawyer costs less than \$30,000 a year in India versus \$160,000 in New York for a young lawyer just learning the trade.<sup>11</sup>

If this trend seems slow to take root with Canadian and Quebec law firms, American multinational corporations (MNCs) like Del Monte Foods, Microsoft and Cisco Systems have no qualms when it comes to outsourcing commodity services. And what American head offices establish as their purchasing policy for legal services will be adopted by their Canadian subsidiaries.

The business model of these MNCs will be copied by a growing number of participants, large and small, that gravitate around these organizations.<sup>12</sup> Companies that outsource thereby increase the competitive intensity for a country's lawyers. If a Quebec manufacturer SME can buy from suppliers located in Europe, Latin America or Asia, mid-sized law firms and even sole practitioners can also import services.

This practice of importing legal services is here to stay. Several authors have addressed these new business models that, in fact, are not overseen by professional orders in any Canadian province or American state.<sup>13</sup> It is a safe bet that these business models will soon take hold in Canada. Quebec's civil law approach will not serve as a "barrier to entry" against the practice of importing legal services. If it is costlier to do business in Quebec, commodity legal services will be performed elsewhere, by other suppliers or in emerging economies.

11 Altman Weil, "Outsourcing to India," 2008.

12 Contemporary analyses of the evolution of economic sectors often refers to the analysis of Porter. In this model, five forces determine how a sector or industry evolves. These are consumers, suppliers, products, technological developments and new arrivals on the market. We can also add rivalry between businesses, which determines the degree of competitive intensity.

13 Daly, M. C., Silver, C., "Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law Related Services," *Journal of International Law*, 2007.

So, it is evident that lawyers in private practice can be classified in terms of both image and function, what the specialists call “branding,” into one of two categories, namely generalists and specialists. Large firms (almost always multiservice), mid-sized firms (multiservice or boutique) and lawyers practicing solo or in nominal partnerships project an image that is not very different other than belonging to one of the two categories (with the exception of boutique firms).

The packaging of this service offering goes against what is observed in many other professional service sectors, where numerous products have been developed to target different clienteles. Analyzing the legal services industry as a specialist provides only a limited view of the situations that lawyers in private practice go through. From this perspective, the approach adopted by the Committee, while remaining a forecasting method, relies not only on specific knowledge of the legal services industry, but also on a familiarity with the professional world in general and on a practical knowledge of the mechanisms of economic development.

Prospective analysis allows us to survey a much larger terrain than sector-based analysis. For instance, we need to identify and measure the potential of emerging legal services, one of the Committee’s objectives, and we need to know the expressed unsatisfied needs of different clienteles. The exercise requires models from sociology, economics and marketing.

## 2.3 THE RAPID DEVELOPMENT OF INFORMATION TECHNOLOGY (IT)

### 2.3.1 A brief review of the evolution of IT

Technological development has made a quantum leap in the last 30 years. The resulting changes have made “multi-sectoral and global” information available and accessible in real time at ever lower costs. To properly express the magnitude of this change, recall that the Gutenberg press was developed in 1438 and rapidly spread across Europe and throughout the world. Humanity went from manuscript documents prepared by scribes to the printed word. Subsequently, five and a half centuries passed before the arrival of the first personal computer in the early 1980s.

Three decades later, in 2010, the progress of microcomputing has nothing in common with prior periods when it comes to the spread of communication technology. This IT accomplished in a few decades what Gutenberg took several centuries to do. McLuhan considered this paradigm shift as the transformation of one galaxy (Gutenberg) into another (Marconi).<sup>14</sup> It is important to remember that the time lapse is from the end of the 1930s to the start of the 2000s, less than 70 years.

Nonetheless, the start of the 1970s marks a turning point with the invention and the marketing of the first microchip.<sup>15</sup> The memory capacity of microchips explains the rapid development of computer hardware. According to Moore’s Law, the number of transistors that can be placed on an integrated circuit at very low cost doubles every two years and therefore grows exponentially.

The development of Pentium chips by Intel (1994) accentuated miniaturization.<sup>16</sup> This phenomenon should continue until around 2020. Moore’s Law explains the phenomenal development of numerous digital technologies as well as their falling prices.

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14 Guglielmo Marconi, Italian businessman, was the inventor of radio transmission (wireless telegraphy) in 1896.

15 See the chronology of this evolution in Annex II.

16 Note that the introduction of super efficient LITHIUM batteries by TOSHIBA (1993) promoted the development and the increasing usage of portable computers.

Gordon Moore, cofounder of Intel, developed this theory in 1965. According to this scientist, the miniaturization trend cannot continue *ad infinitum*. Starting in the year 2020, the memory capacity of microchips, in order to maintain the current rate of increase, would have to reach the atomic level, which could be disastrous according to the theory's author. However, nanotechnology, which concerns the design, production and application of structures and systems by controlling shape and size on a nanometric scale can modify the thinness of the etching of a micro-processor, and therefore increase memory capacity to such a level that Moore's conclusion would be obsolete.

To illustrate the evolution of the memory capacity of computer hard drives (central processing units or CPUs), in the year 2000, the number of transistors on an average CPU was 37.5 million. In 2010, this number had grown to 904 million, but again, Moore foresaw a limit to this growth.

Miniaturization (Moore's Law) explains in large part the staggering developments in every sphere of economic development. The legal services industry has not escaped these developments. Technology has modified the practice of law and the expressed needs of various clientele. And yet, since the 1980s, a time when a good number of professionals were increasingly making use of new technology (think of accountants, engineers and architects, to name just a few), the legal profession has been very timid in assimilating that technology.

### 2.3.2 Lawyers in private practice and IT

The results of various economic surveys of Bar members indicate that adoption was rapid between 1998 and 2008, but with a certain lag compared to other professions and to the economy in general. At the end of the 1990s, email had become a part of the daily working environment for a majority of Quebec professionals.

The following table traces the evolution of this usage for Quebec lawyers.

**TABLE 1: The evolution of the use of email among lawyers (%)**

Year	At least once a day	At least once a week	At least once a month	Never
1997	46	12	9	33
2003	84	8	3	5
2008	96	2	0,8	1,2

Source: Québec Bar, "Enquête économique auprès des membres du barreau," Reports for the years 1998, 2003 and 2008.

A decade came and went before the majority of lawyers adopted this IT. Even in 2003, it is surprising to find that the daily use of email was not more widespread. Let us recall here again that it was often clients or perhaps the lawyer's work environment outside of private practice (government, corporate legal department) that led lawyers to familiarize themselves with and adopt the technology. However, this situation will change radically with the new generations of lawyers.

The other available electronic tools (REJB, CAIJ, SOQUIJ) saw their rates of penetration stabilize between 2003 and 2008.<sup>17</sup> The report of the 2008 economic survey of Bar members does not allow us to sketch a portrait of the rates of penetration among lawyers in private practice of IT like intranets, extranets or mobile terminals (BlackBerry), tools that are almost universally used in the business world.

If intranet use is very widespread in large and mid-sized businesses, organizations of every size are increasingly connected with each other in real time through the use of extranets. A simple consumer can pay for everyday transactions online thanks to the extranets that banks have put at their disposal. This trend is spreading rapidly among corporations.

This business model is developing slowly within the legal community. Even large Canadian law firms are very timid when it comes to technological innovations with regard to their service offerings.

### 2.3.3 IT and legal architecture

We cannot refer to the propensity to use IT in the legal services industry without mentioning the Cyberjustice Laboratory,<sup>1</sup> an innovative project whose primary objective is to develop software that can resolve various problems plaguing the justice system. A virtual courtroom will be attached to the laboratory. The Université de Montréal's Faculty of Law has been interested in these aspects of the practice of law and technology for over 15 years. Recall in this respect the CyberTribunal (1996) and the ÉCODIR pilot project (2001). The Laboratory is in keeping with this tradition.

The project does not aim to recreate the current judicial process. It is implicitly concerned with the issues of delays and costs in the justice system. The Laboratory has no other objective than to connect the resolution of conflicts to the virtual world using efficient technological tools. Judges will be the primary beneficiaries.

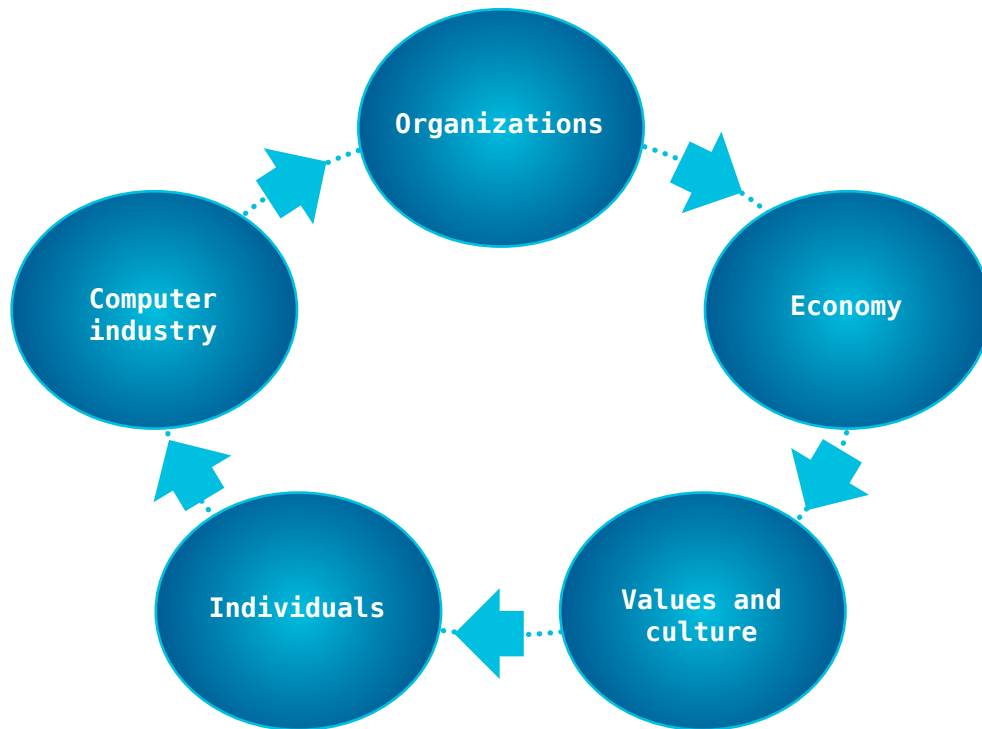
The Laboratory constitutes a first and is drawing keen interest from the legal community. Procedures requiring paperwork will be replaced by methods that are more economical and efficient. The physical presence of intervening parties from different geographic locations will also be required less often.

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17 Barreau du Québec, « Enquête socioéconomique auprès des membres du Barreau du Québec en 2008 », CIRANO, 2009.

## 2.4 IMPACT ON SOCIETY

New information technology (IT) has a significant impact on the group of sectors represented in the following diagram.

**DIAGRAM 3: The impact of new IT**



Individuals use information systems on a daily basis, in every facet of their lives: bank transactions, health care, entertainment, household appliances and the Internet, for example. In 1970, the computer was in daily use for corporations and governments. The wave rapidly reached the other spheres.

Numerous groups expressed a certain skepticism with regard to the increasing use of technology. This was the case for, among others, artists, musicians, doctors, and designers who did not think the technologies could serve them given the nature of their work.

Recall once again that in the early 1990s, in the legal services industry, a majority of lawyers in private practice were resistant to using IT. The relatively high prices of computers and accessories at the time was enough to justify their rejection. The complexity of using computer software during this period and the fact that few people in the legal services industry were using computers cemented this block regarding the adoption of this technology. Again, it was generally lawyers' clients who literally forced them to adopt IT.

The increasing usage of IT was facilitated by the diminishing prices of products, the improvement of maintenance services, their rapid spread among all economic actors in every industrialized country, reduced production costs for businesses and the multiplication of technologies designed for personal use. Today, IT determines the way the next generation of students is trained, methods of access to art and culture, the way businesses perform locally and abroad—in short, how individuals communicate among themselves on a daily basis.

Moreover, the quasi-universal use of cellphones confirms the penetration of technology in modern lifestyles. As indicated above, the convergence of IT on efficient devices (BlackBerry) has brought lawyers into permanent contact with their clients, hence the expression “24/7.” This does raise some questions regarding many aspects of private practice, however. Other than telephones, emails, photos, games and agendas, ever more efficient devices are now equipped with GPS. In addition to making lawyers available 24/7, they can now be located at any moment. These changes to the practice affect not only a lawyer’s availability, but his or her professional liability as well.

Notwithstanding the caveats of the foregoing section regarding the work of experts and their models, the theories of Susskind and others will prove very useful when coupled with the socioeconomic environments of private practice.

## 2.5 THE GLOBAL/CONTINENTAL ECONOMY OF THE 21ST CENTURY

### 2.5.1 The meaning of globalization

For certain authors, the phenomena of globalization and continentalization are omnipresent in human history, though to varying degrees depending on the means of communication available and on their reliability and cost. For example, the Inca Empire, whose territory encompassed several Andean countries, has a network of roads for merchants, soldiers and “runners,” which were messengers who transmitted information rapidly by travelling the Empire from one end to the other, sometimes covering as much as 400 kilometres a day. These roads were to the Incas what *Via Appia* was to the Ancient Romans: a means of communication that connected the regions of the empire and allowed not only individuals to get around efficiently, but goods and services as well.

We know the next chapters in the evolution of the means of transportation and communication. The successive developments of these means have grown ever faster: the horse, the sail, steam, Morse code, the train, the internal combustion engine, the airplane, the telephone, and more recently, the computer have all in turn connected villages, cities, countries and continents, and done so more and more quickly.

Globalization and continentalization are defined by the integration of markets for goods and services, including of course money markets. Pushed further, this free movement also includes individuals. In sum, three major forces have facilitated globalization throughout the ages.

First, there is the reduction of transportation and communication costs. The progress of technological innovation has constantly lowered the costs of various modes of transportation and methods of communication. Between 1920 and 2000, the cost of ocean cargo fell from \$95/tonne to \$20/tonne. In 1930, the cost of air freight was \$0.68/mile versus \$0.11/mile in the year 2000. Again in 1930, a three-minute telephone call between London and New York cost \$244.65 compared to \$3.32 in the year 2000.

Second, to facilitate trade, public policy allowed goods and services to be more accessible everywhere on the planet. In the aftermath of the Second World War, integration was promoted by a gradual lowering of tariff and other barriers. International organizations were created for this purpose. Set up through the United Nations (UN) in 1947, the General Agreement on Tariffs and Trade (GATT) was eventually replaced by the World Trade Organization in 1995. There remain certain sticking points, but successive rounds of negotiations have contributed to the further liberalization of trade.

Finally, the wider definition of globalization must absolutely make reference to an international expansion of knowledge, whether of consumer tastes and preferences (Coca-Cola, McDonald’s, sushi), or of ideas (human rights, environmental activism, accounting standards, ISO standards, price growth targets).

Some globalization specialists believe that the phenomenon is in a perpetual state of flux. Indeed, globalization is far from finished and numerous barriers remain against its expansion. These barriers can be economic, political, cultural, social or religious. Add to these barriers monetary integration, which can be painful, as euro-zone countries are currently discovering. Just imagine the difficulties that would accompany monetary integration on a planetary scale.

In the end, certain authors believe that globalization is neither irreversible nor indispensable. Without returning to self-sufficiency, numerous models of commercial partnership could develop between nations, among others. Economists have long analyzed the benefits of global and continental free trade. Unfortunately, the negative effects associated with free trade are too often minimized if not ignored altogether.

The main unintended consequence of current models is always the unavoidable distribution of wealth between nations. Already in the 1980s, experts from the World Bank foresaw an explosion in the number of refugees and, consequently, an increase in population migration due to natural disasters, wars, and increasingly, economic problems.

### 2.5.2 The shifting of politico-economic zones of influence

Politico-economic zones of influence are characterized, from era to era, as a function of the dominant economic powers, or again as the result of political conflicts. The period from 1945 to 1990 was a bipolar world dominated by the United States and the former Soviet Union. The fall of the Berlin Wall brought home the enhanced role of technology. Individuals, businesses and governments around the world can now interact among themselves with a speed and efficiency that was still unimaginable just a few years ago.

Thanks to technology, Quebecers and Canadians must see themselves as in direct competition with Chinese, Indians and Brazilians as far as employment is concerned. Jobs are largely exportable toward lower cost regions, hence the importance of innovation and productivity, upon which are based the development of economic policies.

Following the rise in economic power of Japan in the 1970s, that of the “tigers” (Hong Kong, Singapore, South Korea, and Taiwan) in the 1980s and the “dragons” (Malaysia, Thailand, Indonesia, and the Philippines) in the 1990s, the new zones of influence are now found in the BRIC countries (Brazil, Russia, India, and China). The BRIC represents 2.5 billion people and its economic power is growing substantially. Even though the United States and Great Britain are still dominant in the capital markets, their leadership role may fade away in the coming decades.

Long anticipated by various authors, the rise of India and China is considered a profound transfer of zones of influence.<sup>18</sup> The 21<sup>st</sup> century, although marked in its first decade by several armed conflicts, is first and foremost about the arrival of China on the scene. It represents a major shift in the global zone of influence which has been dominated since the Industrial Revolution by the West.

### 2.5.3 The environment and sustainable development

The negative effects (externalities) of human activity on the environment are now well documented. The growth of human activity is closely correlated to pollution levels, to resource depletion and to environmental degradation. Repeated ecological disasters have led countries to make a concerted effort to fight these negative externalities. To varying degrees, all industrialized countries now conduct environmental evaluations in order to encourage economic development projects that are sustainable.<sup>19</sup>

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18 See in this regard: Thurow, L., “Head to Head,” W. Morrow & Co., 1992.

19 The notion of sustainable development takes into consideration the public interest of populations with regard to economic growth while also taking into account the environmental impacts of this growth on the planet.

The debate over the growth of nations, although very committed, is often relegated to second place when the time comes to consider the costs and benefits of sustainable development. Tough economic times and the increasing energy needs of industrialized countries, or the requirements of basic development in poorer countries, often trump sustainable development policies, despite the good intentions of public bodies and leaders.

Notwithstanding the foregoing, sustainable development is now a feature of all economic development models. Industrialized nations have sustainable development policies and organizations for international cooperation obviously support such policies.

In Quebec, the government passed a sustainable development law.<sup>20</sup> A strategy was worked out to implement this policy for the period from 2008 to 2013.<sup>21</sup> The purpose of this policy is to ensure the durability of economic development. The Quebec government (provincial departments and public organizations) serves as a vehicle for the implementation of this policy.

#### 2.5.4 Globalization/continentalization and lawyers in private practice

Globalization and IT are the two major forces affecting political, economic and social development in recent decades. The legal sector has inevitably kept up with these evolving trends. Theories related to the development and the impact of globalization and IT are well documented both by professionals from the legal world (Susskind, Altman Weil, etc.) and by other market actors or consultants (Boston Consulting Group, KPMG, SECOR, etc.).

If globalization and continentalization have been the subject of numerous works by economists, management consultants, sociologists and political scientists, when we examine the contribution of lawyers, the literature deals especially with large firms. In fact, Anglo-American firms are ahead of the pack not only in the area of international law, but also in law within importing countries. Transnational law is dominated by these firms. For example, between 1993 and 2003, American exports of legal services grew by 134%. However, during this same period, imports of legal services to the United States grew by 174%, which means that the country has a negative trade balance for these services.

The reality of private practice in Quebec is that a majority of lawyers belong to small organizations. If globalization and continentalization constitute a reality for large firms, what about sole practitioners and lawyers in nominal practice? There are approximately 4,500 of them entered on the Québec Bar Roll of the Order, which corresponds to 36.2% of the total number of lawyers in private practice.

We hypothesize that globalization and continentalization have an impact on all lawyers in private practice in Quebec, regardless of organizational structure. We adopt the approach of professor Terry to validate this hypothesis.<sup>22</sup> The University of Pennsylvania professor makes reference to the convergence factors of globalization developed by Friedman.<sup>23</sup> The term Flat World from Friedman evokes an integrated world in which geographical borders have less and less meaning. These convergence factors are three in number.

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20 Government of Quebec, "Sustainable Development Act," 2006.

21 The indicators of Quebec's policy deal with social capital (active population, health, schooling, a sense of belonging, civic participation, equity, culture), produced capital (infrastructure and equipment, real estate), financial capital (household assets, Quebec government assets) and natural capital (biodiversity, agricultural land, forests, water, air, climate).

22 Terry, L.S., "The Legal World is Flat: Globalization and Its Effect on Lawyers Practicing in Non-Global Law Firms," *Journal of International Law & Business*, 2008.

23 Friedman, T., "The World is Flat: A Brief History of the Twenty-First Century," Farrar, Strauss & Giroux, 2005.

- First, a multitude of factors (flatteners) promoted the creation of a Web platform that, in turn, has promoted multiple forms of collaboration among individuals.
- Second, businesses and individual skills in this integrated world optimize global production (horizontalisation).
- Finally, the last convergence factor deals with the multiple contributions of a global community to innovation.

Let us go over these factors.

**TABLE 2: Globalization and lawyers in solo or nominal practice**

Attendant factors	Meaning	Impact for lawyers (solo or nominal practice)
The end of the bipolar world	The fall of the Berlin Wall changed international relations irreversibly.	The practice of all lawyers is affected by the repercussions of this change, notably the rise of China as a superpower.
NETSCAPE	The listing of NETSCAPE on the stock market in 1995 brought the Web within the reach of everyone with NETSCAPE NAVIGATOR.	Is there a single lawyer in Quebec who does not use the Internet?
IT	The expansion of IT promoted the appearance of international standards. HTML and TCP/IP protocols allowed users to exchange not only emails and Word documents but also Web pages. The SMTP protocol allowed users of different systems to exchange emails. IT is to professional services what the assembly line (H. Ford) was to manufacturing.	Every lawyer in every OECD country has access to the same office tools. Lawyers can work virtually from any location (cottage, office, home, hotel).
Multi-access information	Economic actors can easily and at negligible cost promote their products and ideas (blogs, Web pages, Wikipedia, free software).	Now, legal services are no longer offered exclusively by lawyers. Also competing are other suppliers (consultants) and other sources of information (Internet) for households and businesses.
Subcontracting production functions	The famous "Y2K" bug required massive investment in fibre optics. This crisis situation positioned India as a supplier of high calibre but low cost engineers and computer specialists. The subcontracting of professional services to emerging economies had taken off.	The subcontracting of legal services to emerging economies is in its infancy. Nonetheless, opposition to this phenomenon is gradually fading. Lawyers must take notice.

Attendant factors	Meaning	Impact for lawyers (solo or nominal practice)
The relocation of manufacturing	The relocation of manufacturers to lower cost centres is well documented.	The first reflex of lawyers will be to state that such a relocation is impossible in the case of legal services. We agree, but only in the medium term. Let us not forget that the Chinese are training hundreds of future lawyers in “transnational” law. These lawyers will be bilingual, Chinese and English. We need to analyze the potential impact of this situation. Even if Quebec lawyers will not really be threatened by Chinese lawyers, a strong globalization trend must concern them. The relocation of business mergers and acquisitions shrinks the pool of institutional clientele for lawyers. The transfer of economic power from West to East will set up other suppliers.
Suppliers’ value chain	The life cycle of innovative products (services) is getting shorter and shorter. When the products (services) arrive at the “commodity product” stage, their prices fall. Constant innovation is therefore required. Competition is global and client demand is volatile to say the least.	In an economic world that is becoming more complex, the changing needs of clienteles will require “multidisciplinary and interdisciplinary” approaches. These forms of partnerships, which already exist in different forms, will quickly grow in importance.
Subcontracting of internal expertise within a business	Businesses have learned to export their expertise (core business function) to other, “related” economic sectors.	Law firms have developed the “Ancillary business” model. Certain law firms, large ones mostly, are now adding non-lawyer professionals to their teams. It is a safe bet that this trend will quickly touch all sizes of organizations either formally or informally.
Automatic information	Individuals and businesses have access to a practically unlimited sources of information (Google, MSN, Yahoo). This new state of affairs provides various clienteles with the tools to compare professional service offerings.	More and more buyers of legal services know the difference between a commodity service and a value-added service.
The perpetual development of technologies (digital, personal, virtual)	Nanotechnology will soon accelerate the IT development cycle even further.	Lawyers risk becoming information managers who must present formatted services (“packaging”) and tailor them to the needs of their clienteles.

Source: Terry, L.S., “The Legal World is Flat: Globalization and Its Effect on Lawyers Practicing in Non-Global Law Firms,” *Journal of International Law & Business*, 2008.

Obviously, professor Terry’s analysis has to be taken with the benefit of hindsight. Nonetheless, it is essentially sound with regard to the impact of globalization and IT. All lawyers in private practice are affected by these phenomena. Whether practicing in the Eastern Townships, in Montreal or in the Laurentians, solo or in a mid-sized firm, all lawyers are affected.

## 3 Law in different jurisdictions

### 3.1 INDUSTRIALIZED, EMERGING, AND DEVELOPING ECONOMIES

#### 3.1.1 Economic systems

Since the fall of the Berlin Wall, the division of a bipolar world between communist and capitalist ideologies has faded. In fact, since the advent of the Soviet system in 1917, very few countries connected with one of these two conceptions of socioeconomics had any strict allegiance to the great thinkers. It is rather the level of government intervention in the economy that has always determined the degree of social democracy in a country. China, last bastion of communist orthodoxy, has since the start of the new millennium integrated the performance of a very capitalist market with a centralized, communist, one-party political system.

The world economy develops as a function of the productivity and innovation of nations. The United States still leads the way in this area. However, high production costs are forcing American companies to relocate to emerging economies, most obviously China. Between these two poles, the rest of the planet can be found, from the poorest countries to the select group of rich countries.

#### 3.1.2 The state of development in the world

Each year, the World Bank publishes a diagnostic of the state of development in the world. With regard to globalization, the Bank recently wrote: “*Globalization is a messy process that requires adjustment and creates significant challenges and problems. But the evidence is pretty clear: integration (with the world economy) offers powerful net benefits for developing countries.*”<sup>24</sup>

The experts at the World Bank believe that countries can decide for themselves their method of integration into the world economy. “*It is not simply an either-or choice. Countries can open up to trade and direct investment while managing other aspects of their relationship with the larger world economy.*”<sup>25</sup>

From this perspective, we must not forget that nearly three billion people live in the emerging countries that make up the “new globalists.” During the 1990s, this group registered per capita growth rates of 5 percent as opposed to a mere 2 percent managed by rich countries. The number of extremely poor people living on less than \$1 a day among the new globalists fell by 120 million between 1993 and 1998.

But this same World Bank Report also demonstrates that the globalization process has bypassed many other developing countries accounting for nearly two billion people. “Clearly for this massive group of people, globalization is not working,” stated the authors of *Globalization, Growth and Poverty*.<sup>26</sup>

This can be explained in part by the fact that these countries were saddled with geographic handicaps. But in many cases, weak governments, institutions and policies were real obstacles (the absence of the rule of law). In others, if globalization did not prove to be beneficial, it is mainly due to civil wars.

Fighting poverty in marginalized countries would require the implementation of a set of political reforms to create

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24 World Bank “Globalization, Growth and Poverty,” 2005.

25 Ibid.

26 Ibid.

better conditions for investment, development and assistance in order to address the problems of education, health and the exodus toward more favourable regions, whether within national borders or outside them. Obviously, these are challenges requiring enormous resources.

### 3.2 THE DISTRIBUTION OF WEALTH: UNLIMITED NEEDS AND SCARCE, NON-RENEWABLE RESOURCES

In order to flesh out the picture of the state of development in the world and the costs and benefits of globalization, we have chosen to highlight certain indicators connected to the distribution of wealth among nations. An indicator often used is a country's aggregate production. The gross domestic product (GDP) measures the market value of goods and services produced in an economy over the course of a year. Once translated into purchasing power parity (PPP), a country's GDP provides a certain measure of its wealth.

National production, or GDP, includes household spending, investment, government spending and net exports (exports minus imports). This production requires, depending on the size of the economy, a certain combination of capital and labour. Production from the primary sector (natural resources, agriculture), the secondary sector (construction, manufacturing) and the tertiary sector (services) indicates the capital and labour needed to attain a certain level of production.

Comparing the GDP of the G7 countries with that of the rest of the planet gives us an indication of the distribution of wealth. Observe the following table.

**TABLE 3: Distribution of wealth (2008)**

G7 countries	GDP (\$ million)	Population
United States	14,256,300	309,913,000
Japan	5,067,526	127,380,000
Germany	3,346,702	81,757,600
France	2,649,390	65,447,374
Great Britain	2,174,730	62,041,708
Italy	2,112,780	60,340,328
Canada	1,336,067	34,199,000
<b>TOTAL G7</b>	<b>30,943,495</b>	<b>741,079,010</b>
<b>Global GDP/population</b>	<b>58,133,309</b>	<b>6,707,000,000</b>
<b>Weight of the G7</b>	<b>53%</b>	<b>11%</b>

Source: World Bank, 2009.

The G7 countries by themselves produced 53% of global GDP in 2008. This indicator shows us two things. On the one hand, the efficiency of the advanced industrialized economies is indisputable. On the other hand, the population of these countries represents just 11% of the global population, which gives rise to several questions.

Now let's see the case of the BRIC countries (Brazil, Russia, India, China).

**TABLE 4: The distribution of wealth and the BRIC countries (2008)**

BRIC countries	GDP (\$ million)	Population
Brazil	1,571,979	193,330,000
Russia	1,230,726	141,927,297
India	1,296,726	1,184,344,000
China	4,909,280	1,339,060,000
<b>TOTAL</b>	<b>9,008,711</b>	<b>2,858,661,297</b>
<b>Global GDP/population</b>	<b>58,133,309</b>	<b>6,707,000,000</b>
<b>Weight of BRIC countries</b>	<b>15%</b>	<b>43%</b>

Source: World Bank, 2009.

With 43% of the world's population, these countries represent just 15% of global GDP. There is a clear discrepancy between countries with advanced economies and countries with emerging economies (BRIC). The GDP per capita for G7 countries is \$41,755 versus \$8,668 for the planet as a whole and \$3,151 for the BRIC countries. Let's look at a few scenarios.

If we readjust the global GDP by attributing to China the per capita GDP of G7 citizens, China's GDP jumps from \$4,909,280 million to \$51,003,170.3 million. Per capita, this represents an increase from \$3,666 per year to \$41,755. China's readjusted GDP added to that of the other nations would bring global production up to \$104,277,199.3 million. All other things being equal, it seems a safe bet that the pressure on the planet's natural resources, on capital stocks and on the environment would be unsustainable unless radical changes were made to consumption and production patterns, changes required especially in rich countries.

Is this mere futurology? In the second quarter of 2010, China overtook Japan to become the world's second largest economy as measured by GDP. It is only a matter of time before China takes first place away from the United States. And let us not forget the economic growth of the other BRIC countries, notably India. This is where globalization is headed in the medium term.

Recall finally that the flow of economic refugees is only just beginning. IT spreads information about the advanced economies. The peasant from a remote region of Sri Lanka can easily be sensitized to the wellbeing of a G7 country. Smugglers are on the lookout.

## 3.3 RESPECT FOR LAWS AND REGULATIONS

### 3.3.1 The globalization of law

In the world of the 21<sup>st</sup> century, (virtual) borders no longer exist. Information regarding quality is available to economic agents (consumers and businesses) at little cost. In this context, law is omnipresent in the globalization process. So how do national laws and regulations adapt themselves to the realities of the international community?

There exist very few analyses of the globalization of law. The analysis of Halliday and Osinsky sheds new light on this question.<sup>27</sup> According to these authors, the globalization of law proves to be a complex process resting on four components, namely opposing players, proposed mechanisms, actors' powers and structures.

Opposition to the globalization of law comes from various spheres. This challenge is often linked to the regulation of global markets, crimes against humanity, neoliberal policies and women's rights. If globalized legal norms diverge radically from the cultural norms of a given country, the gap will be difficult to bridge regarding the eventual globalization of law.

The path to planetary legal integration is dependent on a homogenization of global and local norms. For example, the globalization of law cannot be understood without the protection of ideas, or again, without the protection of vulnerable populations.

### 3.3.2 Observed trends

According to contemporary analyses of globalization, there exist large gaps in levels of economic development. For instance, constructing a legal model of global economic development is an enormous challenge for both industrialized and emerging economies.

The harmonization of laws facilitating international trade rests on the development of a transnational regulatory regime that governs the commerce of MNCs. Conflict resolution methods must accompany these regimes. Moreover, conflicts between rich nations and poor nations will only make this regime more complex. Sustainable development will not mean the same thing for a poor economy as it does for an industrialized country.

The globalization of law will therefore only be possible in the context of a better distribution of wealth, which of course constitutes a significant challenge.

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27 Halliday, T.C., Osinsky, P., "Globalization of Law," Annual Review of Sociology, 2006.



**PART III**

**PRIVATE PRACTICE**



**Report of the Committee  
on Current Issues in Private  
Practice and the Future  
of the Profession**

**Barreau**  
du Québec





## 4 The legal services industry in private practice

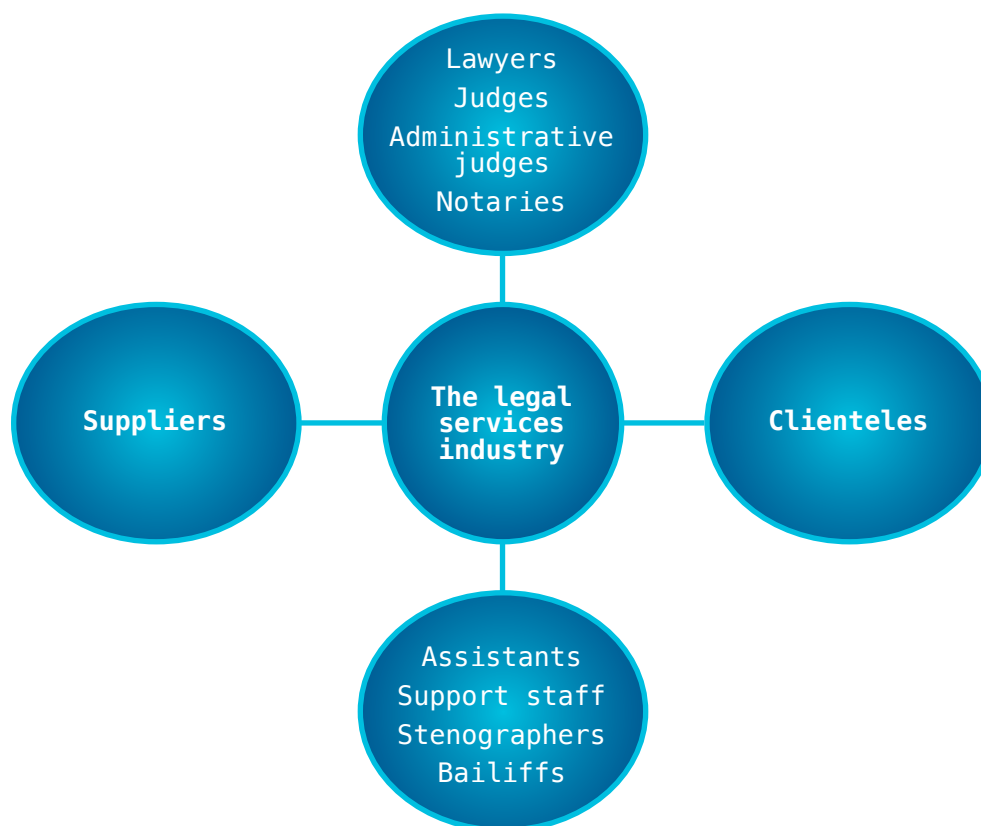
### 4.1 THE LEGAL SERVICES INDUSTRY

#### 4.1.1 Industry players

The following section sketches the economic profile of the legal industry in Quebec. An employment profile and a summary of the market value of this sector's activities show intense activity for the province. The legal services industry includes a large number of workers connected to the production function.

The diagram below summarizes the flow of industry players.

**DIAGRAM 4: The legal services industry**



On the vertical axis are the components of the legal services production function. This axis is in fact the profile of the legal structure of the economy. The horizontal axis corresponds to (on the left) the inputs of suppliers of goods and services to the industry.

The range of suppliers of goods and services to the industry includes dedicated producers that only serve the legal sector like software designers, editors of books/collections/magazines, personnel recruitment services and insurers, to name just a few. At the same time, lawyers in private practice buy a varied range of goods and services for the same reasons as other business professionals, like computer hardware and office furniture.

### 4.1.2 Legal workers

The previous diagram provides an overview of the industry's employment sectors. Whether with regard to legal professionals or support staff, the industry obviously generates a non-negligible level of employment.

The table below provides an overview of this employment.

**TABLE 5: Employment in the justice system**

Types of human resources*	Number
Judiciary (Superior Court, Court of Québec, Québec Court of Appeal, Municipal Court, Human Rights Tribunal, TAQ, Tribunal des professions)	637
Judicial support staff	993
Justice Québec and Justice Canada (lawyers)	1,043
Justice Québec and Justice Canada (support staff)	1,627
Lawyers	22,727
Support staff (for Quebec lawyers)	35,455
Bailiffs	429
Official stenographers	158
Notaries	3,420
Support staff (for Quebec notaries)	5,335
Support staff (for bailiffs)	670
Total direct employment	72,336
Other employment in the Quebec economy (indirect – secondary jobs)	40,508
<b>TOTAL EMPLOYMENT RELATED TO THE SECTOR</b>	<b>113,002</b>

\* The statistics were adjusted to avoid the double counting of jobs.

Sources: annual reports, Internet sites of Ministries, Office des professions, and author's compilation using employment multipliers from the Quebec Institute of Statistics (ISQ) model.

The legal services industry provides employment to over 113,000 people. Different sources show that over 80% of these jobs are full-time equivalent (FTE). In sum, 72,000 of these jobs stem directly from the legal system's infrastructure while 40,000 others are associated with different activities closely related to the field of law.

## 4.2 THE SUPPLY OF LEGAL SERVICES

The changing number of lawyers belonging to the Bar is presented in the following table.

**TABLE 6: Number of lawyers belonging to the Québec Bar**

Year	Number of lawyers	Variation (%)
1987	11,399	–
1992	14,432	26.6
1997	17,690	22.6
2003	19,768	11.7
2008	22,575	14.2

Source: Québec Bar (2009)

The table shows that the number of members entered on the Roll of the Order grew by 11,176 members between 1987 and 2008. Over this 20-year period, there was 75.1% growth.

### 4.2.1 The demographics of the profession

The face of the profession has changed considerably in 20 years. In 1990, one lawyer in three was a woman; in 2010, it has risen to one in two. In twenty years, the number of female lawyers went from 4,000 to 11,000, a 174% increase. During the same period, the number of male lawyers went from 9,000 to 12,000, an increase of 32%.

This feminization trend seems to be continuing. For the past 20 years, the majority of graduates from the École du Barreau have been women. In 2010, they made up 62% of graduates.

Young members, which is to say lawyers with 10 years or less of experience in practice, represent over a third of the total number of lawyers, or around 8,000 members. Of these, 60% are women.

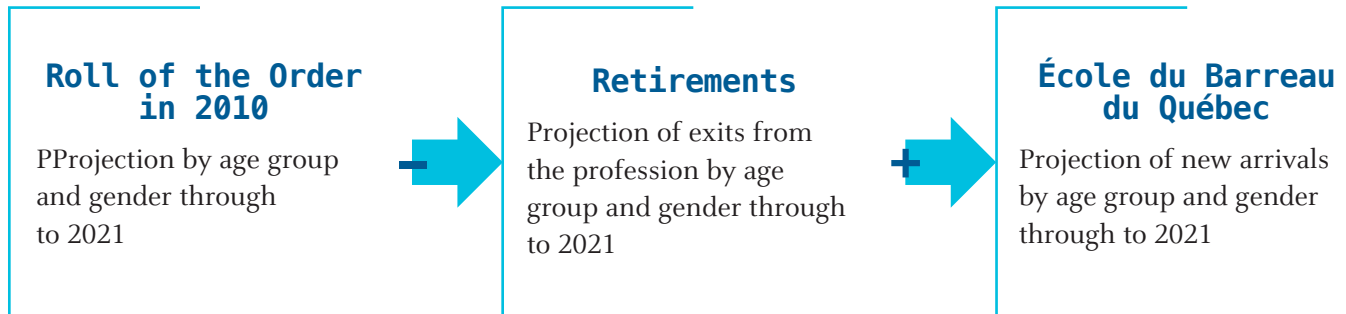
Nonetheless, women do not seem to be represented equally in all types of positions. They are notably underrepresented in private practice. Notwithstanding the foregoing, it is not a question of attracting enough of them, since women enter into private practice in the same proportion as their colleagues. It is rather a problem of retention within firms.

At this stage in the study, it is a good time to proceed to a projection of the number of members registered with the Québec Bar.<sup>28</sup> To estimate the change in the numbers entered on the Québec Bar Roll of the Order between 2011 and 2021, we have taken into account three series of data: first, Roll of the order numbers for 2010; next, expected retirements between now and 2021; and finally, the expected number of graduates from the École du Barreau between now and 2010.

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28 The model of the Observatoire des services professionnels was used to arrive at these projections.

The following diagram illustrates the method adopted.

**DIAGRAM 5: Estimate of the number of lawyers in 2021**



This is the standard model used for the projection of workforces. We will now set out the hypotheses stemming from the model.

### The Roll of the Order in 2010

The following tables show the total number entered on the Québec Bar Roll of the Order in 2010. The first table shows the total workforce by age group and gender.

**TABLE 7: The number of male and female lawyers entered on the Roll of the Order in 2010.**

Age group	Male lawyers	Female lawyers	Total
20-24	103	211	314
25-29	877	1,679	2,556
30-34	1,235	1,986	3,221
35-39	1,284	1,946	3,230
40-44	1,367	1,579	2,946
45-49	1,469	1,453	2,922
50-54	1,499	1,128	2,627
55-59	1,576	800	2,376
60-64	1,423	422	1,845
65-69	739	149	888
70 +	608	53	661
<b>Total</b>	<b>12,180</b>	<b>11,406</b>	<b>23,586</b>

Source: Québec Bar

The following table illustrates the relative distribution of this workforce as a function of age group and gender.

**TABLE 8: Percentage distribution of male and female lawyers entered on the Roll of the Order in 2010**

Age group	Male lawyers	Female lawyers	Total
20-24	0.4	0.9	1.3
25-29	3.7	7.1	10.8
30-34	5.2	8.4	13.7
35-39	5.4	8.3	13.7
40-44	5.8	6.7	12.5
45-49	6.2	6.2	12.4
50-54	6.4	4.8	11.1
55-59	6.7	3.4	10.1
60-64	6.0	1.8	7.8
65-69	3.1	0.6	3.8
70 +	2.6	0.2	2.8
<b>Total</b>	<b>51.6</b>	<b>48.4</b>	<b>100.0</b>

Source: Québec Bar (special compilation)

In 2010, the average age of lawyers in Quebec was 44.8 years. There is an equal distribution of male and female lawyers in the 45-49 year age group. As expected, in the younger age groups, the number of female lawyers exceeds the number of male lawyers.

Based on these data, we projected their evolution through to 2010, factoring in mortality rates per age group in Quebec.<sup>29</sup> We assumed that the life profile of Quebec lawyers was similar to that of the province's population as a whole. As a result, their mortality rates are also homogenous.

## Retirement for lawyers

The Québec Bar's 2008 socioeconomic study notes the age at which male and female lawyers wish to retire. The following table shows their expressed intentions.

**TABLE 9: Expected retirement age for male and female lawyers in Quebec**

Age	Male lawyers	Female lawyers
55	8.6	14.5
60	28.0	40.3
65	34.7	30.5
70	14.0	7.8
never	14.8	6.8
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>

Source: Québec Bar, 2008 Socioeconomic Study

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 29 According to the Quebec Institute of Statistics (ISQ) in 2010.

We hypothesized that between 2011 and 2021, male and female lawyers would leave the profession in accordance with the ages indicated in the above table. The proportions were established in consequence.

### Graduates of the École du Barreau

Based on the statistics obtained, we hypothesized that the number of graduates of the École du Barreau would be 1,100 per year between 2011 and 2021, of which 38% would be male and 62% would be female. In addition, the distribution of graduates by age group was established as a function of the numbers entered on the Roll of the Order in 2010 for age groups from 22 to 27 years. The results are shown in the following table.

**TABLE 10: Projected number of graduates of the École du Barreau by age and gender between 2011 and 2021 (annual average)**

Age	Male lawyers	Female lawyers
22	1	2
23	16	37
24	57	90
25	91	159
26	120	182
27	133	212
<b>Total</b>	<b>418</b>	<b>682</b>

Source: Observatoire des services professionnels

Assuming that all graduates of the École du Barreau are entered on the Roll of the Order, the impact of the number of graduates on the change in total workforce is fairly automatic. For instance, if the average number of graduates was 1,000 instead of 1,100, there would be 1,000 fewer lawyers in the overall workforce in 2021 compared to our projection (29,381 instead of 30,381). On the other hand, an average of 1,200 graduates per year over the period would imply an increase in the overall workforce of 1,000 lawyers (31,381 instead of 30,381).

Notwithstanding the foregoing, we have confirmed the data used for forecasting by using statistics on CEGEP student numbers.<sup>30</sup> According to forecasts from the Ministère de l'Éducation du Québec (MEQ) for pre-university college students as a whole, the number of students should go from 86,359 in 2010 to 71,355 in 2021. This represents a 17% drop in first-year numbers.

As for student graduation, the MEQ estimates that it should be around 40% for those who complete the programs within two years. These are the main clientele for law faculties. There is therefore little change to be expected in the numbers. Moreover, again according to the MEQ, enrolments for university programs that are popular with students will hardly be affected. All else being equal, it looks as though law will not experience any substantial drop in enrolments over the time period under consideration.

30 Ministère de l'Éducation du Québec, "Prévisions du nombre d'élèves inscrits au collégial – Ensemble du collégial" and "Taux d'obtention d'une sanction des études collégiales," 2004.

## The results of the economic model

Based on the hypotheses put forward, the following table shows the changes in the overall workforce in the profession between 2011 and 2021.

**TABLE 11: Change in the overall workforce between 2011 and 2021**

Year	Total
2011	24,225
2012	24,879
2013	25,511
2014	26,108
2015	26,695
2016	27,330
2017	27,963
2018	28,574
2019	29,177
2020	29,764
2021	30,381

Source: Observatoire des services professionnels.

So, over the next ten years, the total workforce will increase by almost 6,000 members. This growth corresponds to an average annual increase of 2.3%. The two following tables show the distribution of the workforce between male and female lawyers in 2016 and 2021.<sup>31</sup>

**TABLE 12: The number of male and female lawyers entered on the Roll of the Order in 2016**

Age group	Male lawyers	Female lawyers	Workforce in 2016
20 to 24 years	92	170	262
25 to 29 years	1,708	2,826	4,534
30 to 34 years	1,466	2,586	4,052
35 to 39 years	1,168	1,969	3,137
40 to 44 years	1,299	1,977	3,277
45 to 49 years	1,341	1,657	2,998
50 to 54 years	1,419	1,464	2,883
55 to 59 years	1,328	971	2,299
60 to 64 years	1,042	492	1,534

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31 Annex III of the present report includes two tables showing the respective distributions of the clientele for 2016 and 2021.

Age group	Male lawyers	Female lawyers	Workforce in 2016
65 to 69 years	837	297	1,134
70 + years	1,027	193	1,220
<b>TOTAL</b>	<b>12,728</b>	<b>14,602</b>	<b>27,330</b>

Source: Observatoire des services professionnels.

The second table shows the changes to the workforce in 2021.

**TABLE 13: The number of male and female lawyers entered on the Roll of the Order in 2021**

Age group	Male lawyers	Female lawyers	Workforce in 2021
20 to 24 years	92	170	262
25 to 29 years	1,702	2,803	4,505
30 to 34 years	2,087	3,427	5,514
35 to 39 years	1,460	2,579	4,040
40 to 44 years	1,162	1,961	3,123
45 to 49 years	1,287	1,962	3,250
50 to 54 years	1,320	1,638	2,959
55 to 59 years	1,264	1,231	2,495
60 to 64 years	917	564	1,481
65 to 69 years	635	328	963
70 + years	1,369	420	1,789
<b>TOTAL</b>	<b>13,296</b>	<b>17,084</b>	<b>30,381</b>

Source: Observatoire des services professionnels.

What is important to highlight here is the reinforcement of the strong feminization trend for the profession. This trend has aroused the interest of legal services industry observers since the start of the 1990s. Gradually, the number of female lawyers in the profession has grown.

Recall that in 2010, 48% of Bar members were female. In 2016, this proportion will rise to 53%, and it will have reached 56% by 2021. This is a tendency that will be extremely difficult to reverse, or even to stabilize.

Finally, let us note that the average age of members of the profession will fall over the period studied. While it was 44.8 years in 2010, it will be 44.0 years in 2016, and 43.8 years in 2021. This interpretation is entirely in keeping with the demographic structure of Quebec lawyers, most of whom are baby boomers who, as of 2012, will gradually start retiring.

Recall that over 50% of lawyers in private practice expect to continue practicing after the age of 65. This behaviour is contrary to what is observed, for example, among civil service lawyers and those practicing within corporate legal departments, who are highly likely to retire at 65.

## 4.2.2 The presence of women in private practice

The following table concerns the changing distribution of members in private practice by gender.

**TABLE 14: Bar members in private practice (by gender)**

Year	Male lawyers (%)	Female lawyers (%)	Index* (1976 = 100)	
			Male lawyers	Female lawyers
1976	47	35	100	100
1981	56	39	109	104
1984	68	52	112	113
1987	70	54	110	111
1992	68	54	108	111
1998	65	49	105	96
2003	62	47	101	94
2008	58	45	98	92

\* The index was devised in order to represent the changing distribution over a period of 20 years.

Source: Statistics drawn from different Québec Bar studies (1981 to 2008).

The table indicates that regardless of gender, the value of the index reveals a situation characteristic of the entire legal community, namely that in the late 1980s, the proportions of both male and female lawyers in private practice peaked. This situation is more pronounced among female lawyers given that they make up a smaller portion of the total workforce. The index shows that at the end of the 1980s, a greater number of female lawyers were choosing private practice. Subsequently, their participation rate declined more rapidly than did the rate for male lawyers. Over the course of the following decade, the decrease continued.

It seems obvious that the structural evolution of the legal services industry has provided new opportunities for Quebec lawyers. Jobs for which lawyers used to be overlooked have opened up to the profession. This phenomenon can partly explain the displacement of cohorts of lawyers toward corporate work, the public sector or simply toward positions that lie entirely outside the legal sector properly speaking.

But the question remains: Why did female lawyers abandon private practice more decidedly than male lawyers during this 35-year period? Numerous committees and researchers have addressed this issue, as much in Canada and Quebec as in the United States.<sup>32</sup> As it turns out, the Canadian and American studies on this subject arrive at essentially the same conclusions. A certain number of factors limit, and even restrain, the rate of participation of women in private practice.

Of all of the economic sectors into which women have integrated themselves in greater numbers since the early 1970s, certain sectors are still overrepresented by men in the year 2010. In two diametrically distinct sectors, there are still fewer women in the workplace, namely engineering (the sciences – quantitative) and private practice law

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32 A detailed bibliography on this subject is annexed to this report. Nonetheless, recall the recent work of the Québec Bar, which produced a bibliography and a web document: “L’Équité et la diversité dans la profession juridique,” 2010, from the LAW SOCIETY OF UPPER ANADA, “The Retention of Women in Private Practice Working Group,” 2008, as well as the New Jersey State Employment & Training Commission report, “Legal Talent at the Crossroads,” Centre for Woman and Work, State University of New Jersey, 2009.

(the humanities – qualitative). To demonstrate the complexity of this issue, note that few women are enrolled in engineering schools, while they represent the majority of students in law faculties. The situations observed at the beginning of university training and at the point of arrival on the job market are therefore diametrically opposed in the cases of engineering and law.

The recurring factors on this subject are presented below.

**TABLE 15: Criteria underlying the lower participation of women in private practice**

Criteria	Meaning
The “male model” of private practice	A majority of current partners were formed under a bygone model from another era. Male camaraderie is omnipresent in firms. To succeed under this model, one needs to be a part of the “Old Boys’ Club” network.
A hectic working pace	The pace of work in private practice is hectic. The average number of hours worked in a week varies for female lawyers in private practice, with 38.7% working between 41 and 50 hours a week and another 20.6% working over 50 hours a week. This means nearly 60% of female lawyers work over 40 hours a week (Socioeconomic Study of Bar Members – 2008).
Isolation	Women who are in the minority in their work environments, especially in the upper echelons, have a tendency to be isolated in a firm. Contacts happen primarily among men, and career paths are also structured for men.
The maternity wall	Maternity leaves prevent women from being continually present in the sector, while paternity usually creates little or no interruption in a male lawyer’s career. Access to partnership after around 7 years, and so around the age of 30, which is the typical career path, coincides perfectly with the period during which women are likely to experience maternity (in Quebec, the average age at which women have a first child is 29 years). In addition to maternity leaves, childcare and management of home life are still primarily taken care of by women, who therefore have less time to devote to work or to clientele development.
Poor management of maternity leave departures and returns (ramping down and ramping up)	The difficulties a female lawyer faces in getting her files and her clients back upon her return affect her performance and her ability to generate revenue and attract new clients.
Intergenerational conflicts	The majority of decision-makers in law firms are from the baby boomer generation (1946-1964). As a result, they are at odds with the values and expectations of generation X (1965-1976) and generation Y (1977-1998). For the generations that followed them onto the labour market, the office is no longer the preferred place to shine out; it is rather “lifestyle” that is important. These two generations, X and Y, reject the established order or at least redefine it.
Barriers to business development	Business development still appears to be a primarily male phenomenon. Referrals are common among men, but it remains rare for male lawyers to refer business to their female colleagues. The average number of hours devoted to business development is higher for men (105) than for women (68). This is a 54% difference (Socioeconomic Study of Bar Members – 2008).
Opportunities for promotion	To a certain extent, male lawyers have a career path laid out before them that under certain conditions ensures that they will develop their clientele and ultimately make partner. This path seems less obvious, if not nonexistent, for female lawyers.

Criteria	Meaning
Billable hours targets	Billable hours targets represent a real obstacle to the professional development of female lawyers. Indeed, the annual evaluation, and hence the lawyer's career development, rests in large part on revenues generated by the number of hours worked, and not necessarily on the quality of the work.
Family life	Working over 40 hours a week, even over 50 hours a week, is a workload that obviously encroaches upon family life.
Flexible schedules	The "customer is always right" mentality might justify the need for a lawyer's constant presence at the firm. The client cannot wait on the availability of the lawyer, which is why flexible schedules are problematic. However, IT has substantially altered the landscape in this regard.
Pay inequity	Several studies show large income disparities between male and female lawyers. In 2008, there is an annual income differential of \$9,000 for a female lawyer possessing more experience and working more hours than her male colleague (Québec Bar, "2008 Economic Survey of Members"). The lack of transparency for remuneration policies in private practice can contribute to these gaps. In the public sector workplace, transparent remuneration methods (collective agreements, pay scales) often smooth out these differences.
Sexual harassment	Sexual harassment is a subject that remains taboo, and the available statistics on reported incidents are probably an underestimate of the reality. In 2009, 4% of respondents to a survey of members of the Young Bar Association of Montreal reported cases of harassment. The Ontario Bar Association has an Ombudsman for matters of harassment and discrimination. Over the last seven years, 26% of all complaints concern sexual harassment on the part of a male lawyer toward clients, employees or female lawyers. ( <a href="http://www.dhcounsel.on.ca/pdf/1erjanvier31decembre2009.pdf">http://www.dhcounsel.on.ca/pdf/1erjanvier31decembre2009.pdf</a> ).
Psychological harassment	The pace of work and the pressures of competition have a clear impact on the work environment. According to the Québec Bar's 2008 socioeconomic study, 29% of female lawyers report having experienced psychological harassment at work, versus 16% of male lawyers.

Source: Authors' compilation.

Without going over all of the elements presented in the table above, we can see that a majority of them are directed at the legal services industry's ubiquitous business model. This is the approach developed by Cravath, an American who shaped the way business was done in the second half of the 20<sup>th</sup> century. The thing to keep in mind about this business model is the omnipresence of baby boomers who have kept it going. The culture in place is therefore one with which they are comfortable.

On the other hand, the younger generations have a vision of work and of life in general that differs considerably from that of their elders. What is most remarkable about these demographic changes is the fact that the boys and the girls are unanimously in favour of this new socioeconomic model. We are witnessing a major paradigm shift.

In this context, given that the proportion of women in the workforce has grown substantially since the start of the 1970s, it is useful to recall that many jobs and professions have become more feminized. Other than the example of law, there are the fields of education and health. It is in fact the greater proportion of women in certain professions that is provoking this change in the way things are done. The new cohorts of young professionals want exciting jobs, but want them to be part of a full, balanced life.

For example, tomorrow's doctors, more than half of whom will be women, want to practice medicine in a stimulating environment, but also want to keep a normal schedule. There are big problems looming for this intense sector beset by excessive demand. The same will be true for law firms where both genders expect work environments that are diametrically opposed to the business model that still prevails in the legal profession. The classic model based on masculine values must be replaced.

If the practice of law does not adapt, it is the quality of services offered that will suffer:

*“Women’s realities, which often include childbirth and taking on a significant share of the family responsibilities, impact on the choices they make in their professional lives. [...] the failure of the profession to adapt to what is not a neutral reality will inevitably affect the quality and competence of the legal services available to the public.*

*“The departure of women from private practice means that the legal profession is losing a large component of its best and brightest in core areas of practice.”<sup>33</sup>*

The reports addressing these questions reflect the similar viewpoints of the managing partners of those firms that were consulted.<sup>34</sup> All believe in equal opportunity, in fairness, and in the need to modify the established ways of doing things. The day-to-day reality often seems quite different. The low number of women in private practice who reach the level of partner testifies to this. Indeed, women account for fewer than 20% of partners, regardless of firm size.

Nevertheless, those female baby boomers who feel they have succeeded in private practice are very candid about having simply copied the firm's “male model.” Some regret that they sacrificed the opportunity to have a family, others that they had children but hardly saw them grow and blossom.

The Québec Bar and the legal community have actually noted the new realities regarding the reconciliation of work and family. Signed first in 1995 and updated in 2010, the Declaration of Principles for the Reconciliation of Work and Family was adopted by all participants. It represents a commitment to do everything required to reach a fair balance between professional and familial responsibilities.<sup>35</sup>

### 4.2.3 Diversity within the Bar

In 2010, 3% of Québec Bar members (around 735 members) declared that they belonged to one or another ethnic minority group.<sup>36</sup> Fewer than one hundred members declared themselves Native and fewer than one hundred declared themselves handicapped.

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33 LAW SOCIETY OF UPPER CANADA, “The Retention of Woman in Private Practice Working Group,” 2008, Executive Summary. [http://www.lsuc.on.ca/media/convmay08\\_retention\\_of\\_women\\_executive\\_summary.pdf](http://www.lsuc.on.ca/media/convmay08_retention_of_women_executive_summary.pdf)

34 LAW SOCIETY OF UPPER CANADA, “The Retention of Woman in Private Practice Working Group,” 2008. See Section IV regarding the discussion group results (GANDALF GROUP). [http://www.lsuc.on.ca/media/convmay08\\_retention\\_of\\_women\\_consultation.pdf](http://www.lsuc.on.ca/media/convmay08_retention_of_women_consultation.pdf)

35 <http://www.barreau.qc.ca/actualités-medias/communiqués/2010/20100331-travail-famille.html>.

36 According to an optional question in the annual members' Declaration.

More precisely, the typical portrait of a lawyer from an ethnic minority is the following:

- This group is much younger (average age of 37) and more feminized (61%) than Bar members as a whole;
- The “North African or Arab” group (36%) and “Black” group (26%) account for over 60% of members from ethnic and cultural minority groups;
- 76% of members in this group are registered with The Bar of Montreal;
- Only 42% have French as their mother tongue (vs. 81% for all Bar members);
- Generally speaking, members of ethnic and cultural minorities are slightly more likely to work in solo practice than Bar members on average and are less likely to work at an LLP or a joint-stock company.

Cultural diversity is increasing. In fact, 16% of students at the École du Barreau report belonging to an ethnic minority group.

These trends follow the demographic curves in Quebec. In 2006, 9% of the Quebec population and 16.5% of the population of Montreal reported belonging to a visible minority. This segment of the population is rising faster than the population as a whole. Between the last two five-year censuses (2001-2006), its growth rate was seven times greater than that of the population as a whole.

Statistics Canada estimates that visible minorities will represent 20% of the Canadian population in 2017 and nearly 33% in 2031. This is a strong trend that will affect not only the composition of the membership of the Bar but also of the clientele and their needs.

Just like women, lawyers from minority groups sometimes experience discrimination. It can take the form of direct discrimination (harassment, comments, attitudes) or the barriers of so-called “systemic discrimination.” For instance, lawyers who classify themselves as “black” are almost entirely absent from firms structured as joint-stock companies or LLPs (13% versus 29% for all lawyers). Conversely, they are overrepresented in solo practice (22% versus 14% for all lawyers) and in the civil service (26% versus 21% for all lawyers).

Generally speaking, lawyers from visible minorities are underrepresented not only in large firms but also in the higher levels of the Québec Bar and among the judiciary.

Another trend that is emerging among clients concerns the advantages of diversity. The Canadian Institute of Chartered Accountants has in fact just produced a report on this subject.<sup>37</sup>

On the legal side, corporate legal departments will also be applying pressure to expand the diversity of firms. Indeed, these clients of the larger firms will ask or even request that their legal service providers make concrete commitments to increase diversity at the supply level (women and minorities in key partnership positions). This is the thrust of the initiative entitled “A Call to Action – Diversity in the Legal Profession” first introduced in the United States and spreading to Canada in recent years.<sup>38</sup>

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37 Diversity Briefing: Questions for Directors to Ask, July 8, 2010. <http://www.cica.ca/about-cica/media-centre/media-releases-and-backgrounders/2010/item40380.aspx>

38 <http://www.acalltoactioncanada.com/>

## 4.2.4 The number of lawyers

At the start of this section, it was shown that over 20 years, there was a large increase in the number of lawyers in Quebec (Table 7), which raises several questions. The first obviously concerns supply. Are there too many lawyers in the province? The literature on this topic stipulates that when a profession (a type of job) has too many workers, the market takes care of adjusting the supply. Individuals are rational and they are not going to be attracted to a profession or a job with few prospects or whose income levels do not justify the investment of years of university. Have lawyers acted according to this logic?

Contemporary Quebec society is complex. Each year, new laws and new regulations are passed and adopted in Quebec and in Ottawa. Municipalities, within their areas of jurisdiction, also increase the regulatory burden. This is without taking into account international trade and other agreements that have an impact on economic and social life in Canada.

It is within this context that the supply of legal services must be appraised. But before drawing any conclusions about the number of lawyers, let us see how the profession's workforce is distributed elsewhere in Canada.

The most populous Canadian provinces have been selected for comparison purposes. These provinces account for 55.4% of the country's total population. The table below summarizes the situation.

**TABLE 16: Distribution of the number of lawyers in certain provinces (2008)**

Variables	Quebec <sup>1</sup>	Ontario <sup>2</sup>	Alberta <sup>3</sup>	British Columbia <sup>4</sup>
Number of lawyers (2008)	22,575	39,864	8,336	11,630
Population (2008)	7,717,300	12,688,000	3,382,900	4,293,900
Number of notaries (2008)	3,412	n/a	n/a	n/a
Number of paralegals (2008)	n/a	2,283	n/a	n/a
Lawyers (per 100,000 residents)	292	314	246	271
Legal professionals (per 100,000 residents)	336	332	246	271

1 Québec Bar / 2 Upper Canada Law Society / 3 Alberta Law Society / 4 British Columbia Law Society

The distribution of the number of lawyers in the Canadian provinces mentioned above is relatively homogenous. By taking into account just the number of lawyers, Quebec occupies second place in the distribution of these professionals per 100,000 residents. By including notaries, which corresponds better to the reality in English Canada where there is no distinction between lawyers and notaries, Quebec takes first place. Note that Ontario has a large number of paralegals entered on the Roll of the Upper Canada Law Society.

Let us observe the situation for other jurisdictions with a common law and/or a civil law tradition, all of them members of the OECD. These countries have a direct influence on the socioeconomic development of Canada.

**TABLE 17: Number of lawyers per 100,000 residents (2009)**

Variables	United States	New Zealand	Spain	Italy	Germany	France	Canada
Population	310,729,000	4,367,700	46,030,309	60,418,711	81,757,600	65,447,374	34,818,000
Number of lawyers	1,143,358	10,523	120,691	198,000	138,679	48,461	99,846
Number of lawyers (per 100,000 residents)	368	241	266	332	170	75	287

Source: The European Commission for the Efficiency of Justice, "European judicial systems," 2010; and authors' compilations.

So the average number of lawyers/100,000 residents in the countries under consideration is 277. The concentration of lawyers in the United States, Canada and Quebec is above this average. The table below highlights Quebec's position in this regard.

**TABLE 18: Distribution of the number of lawyers/100,000 residents**

Below the mean	Mean	Above the mean
France (75), Germany (170), Italy (201), New Zealand (248), Spain (248)	Group of countries (248)	Canada (287), Quebec (336), United States (368)

Source: Authors' compilation.

The situation described in the tables above offers only an indirect answer to the question regarding the number of lawyers, which is whether or not there is an equilibrium between the supply of and the demand for legal services. The only thing the tables really show is the lack of homogeneity among jurisdictions when it comes to number of lawyers. The distribution varies between France (75) and the United States (368). Considerations specific to each jurisdiction could explain the sizes of the workforces in these professions. The case of France is particular and would merit further analysis. Indeed, international law firms consider that country the most promising one for the development of business.<sup>39</sup>

The number of lawyers in a jurisdiction does not by itself allow us to conclude whether the supply of legal services is in a state of surplus or shortage. Other methods of analysis are required to answer this question on the needs of litigants and the number of lawyers.

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 39 Marliere, L., "How to Develop the French Legal Market," SCIPION.

## 4.2.5 Are there too many or too few lawyers in Quebec?

Although answering this question is not an easy matter, there are a few tools of analysis that allow us to provide possible responses.

### The growth of economic activity

An impressive number of variables have an influence on the determination of the supply of legal services. But for many authors, economic growth constitutes the best indicator for explaining the rate of absorption of new lawyers onto the market.<sup>40</sup> Continued growth allows the market to absorb the new arrivals, while in the contrary case (recession), departures to other jobs would be more numerous (abandoning the profession). Note that a recession does require specific legal services (bankruptcy). Nonetheless, growth generates more activity.

The following table highlights the evolution of these two growth rates.

**TABLE 19: Growth in the number of lawyers and of economic activity**

Year	Number of members registered with the Bar	Quebec's GDP (\$ million)	Growth rate of the number of members (%)	Growth rate of Quebec's GDP (%)
2002	19,315	241,448		
2003	19,768	250,752	2.3	3.9
2004	20,384	262,761	3.1	4.8
2005	20,899	272,049	2.5	3.5
2006	21,384	282,505	2.3	3.8
2007	22,068	295,928	3.2	4.8
2008	22,575	302,748	2.3	2.3
2009	22,989	303,747	1.8	0.3
2010	23,434	311,036	1.9	2.4
<b>AVERAGE FOR THE PERIOD</b>			<b>2.4%</b>	<b>3.2%</b>

Source: Québec Bar (number of members) and Statistics Canada, Provincial Economic Accounts – 2009.

Without going over the growth rates for each year, the ten-year averages seem significant. On the one hand, the average rate of growth for the workforce was 2.4%, while the rate for GDP was 3.2%. The only year in which the rate of increase in the number of lawyers was greater than GDP growth was 2009, the year that followed the last recession. The fact that the number of lawyers increases even in a recession can be explained by the adjustment period required by markets. The training of a lawyer is spaced out over four years. Adjustments to market conditions therefore require some time.

There is no doubt that economic activity partially explains the growth of the legal workforce. But other considerations must also be examined.

40 Emploi Québec, "Le marché du travail au Québec, Perspectives professionnelles 2009-2013," Information sur le marché du travail, 2009.

## The labour market perspectives of Emploi Québec

Emploi Québec has an excellent reputation when it comes to its analyses of labour and the labour market. The organization also carries out sector-based evaluations, which allow us to follow the development outlooks for several hundred technical and/or professional jobs.<sup>41</sup> The “Lawyers and Quebec Notaries” category (NOC CODE: 4112) is analyzed by Emploi Québec economists.

The following observations stand out in the analysis:

- Nearly 93% of people are employed full-time versus 81% for all professions in Quebec.
- The average annual income for full-time work is far higher than the overall average: \$110,000 compared to \$45,000 for all professions.
- Although the demand for labour for this profession is moderate (related to job creation but greater than 19.6%), job prospects are good given the low unemployment rate (less than 5.7%). So, according to Emploi Québec, *“Considering the anticipated change in the demand for labour and the unemployment situation at the start of the period, the prospects for integration into the labour market are good.”*

The results of Emploi Québec’s analysis therefore corroborate the aforementioned connections between the workforce and economic growth. There does not seem to be a surplus of lawyers currently in Quebec. If there is the appearance of surplus, it is that too many members practice in overexploited niches, which is quite different.

### 4.2.6 The types of employment held by lawyers

In the year 2008, lawyers in private practice represented 54% of members of the Order. To generalize, the profession is mostly made up of private practitioners.

The table below shows the results for a decade.

**TABLE 20: Main types of practice for Quebec lawyers**

Years	1997 (%)	2003 (%)	2008 (%)
Private practice	53.8	54.0	54.0
Professor/researcher	1.9	0.8	1.4
Public corporation legal department	1.7	6.4	7.1
Member of a government board	7.0	1.1	3.5
Private corporation legal department	5.6	6.0	5.9
Corporate executive or manager	4.3	2.6	4.8
Federal government	5.3	3.7	5.0
Legal Aid worker	3.8	3.6	2.2
Provincial government	9.8	13.0	7.2

41 Emploi Québec, “Le marché du travail au Québec, Perspectives professionnelles 2009-2013,” Information sur le marché du travail, 2009.

Years	1997 (%)	2003 (%)	2008 (%)
Municipality	3.2	2.7	2.8
Provincial Deputy Attorney General	1.0	1.1	1.2
Municipal court worker	1.8	0.2	0.5
Other	9.7	4.6	6.1
<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: "Socioeconomic survey of Québec Bar members," for the years 1997 (MARCON), 2003 (Boucher, P., Beaugregard, H.), 2008 (CIRANO).

In fact, the employment profiles change very little over 10 years. Certain profiles nonetheless undergo significant variation. For example, being a member of a government board changes considerably from 2003 onward.

Within the framework of the current study, let us note the relative stability of the proportion of members in private practice. However, given the increase in the total number of members, the number of lawyers in private practice has also grown. It went from 9,517 in 1997 to 11,158 in 2003 and to 12,836 in 2008. In 2003, the five-year growth rate was 17.2%, while it was 15% for the next five-year period.

Private practice is a window on the profession, so to speak. This segment of practice allows all litigants to observe the presence of lawyers in their immediate environments, whether they live in a rural or an urban setting.

### 4.3 THE INDUSTRIAL STRUCTURE OF THE LEGAL SECTOR

Economists define the type of competition between businesses in a single sector according to industrial structure. In the case of private practice legal services, the number and the sizes of the companies present in the market provide reference points and basic information both about clientele and about current price levels. Barriers to entry or simply obstacles encountered in trying to offer legal services to clients also constitute indicators of the industrial structure that prevails.

In an ideal world, the industrial structure of the legal sector would be transparent, consumers would be well informed about the quality and the related costs of services offered, and several participants could provide services. In the real world, things are a bit different. Gaining access to the market as a supplier requires belonging to the professional order (mandatory membership in the Québec Bar), which represents a significant barrier to market access. Recall that the Bar's primary mission is to ensure the protection of the public, which is what justifies barriers to entry. This monopoly has a direct impact on the prices of services, or the fees, most of which are determined on an "hourly basis." The prices of legal services are opaque and vary considerably from one professional to another. Finally, as for consumers, perceptions vary with regard to justice and lawyers. For a majority of litigants, the law is complicated and its language, obscure.

Let us return to the price of legal services in the industry. The fee paid by a client for a legal service varied around a median value of \$175/hour in 2008.<sup>42</sup> Fees can be either very low relatively speaking, or at the other extreme, relatively high. The price of legal services rendered by lawyers has been the subject of numerous debates over the course of the past 15 years. This question of the price of services will be taken up later in this study.

42 Québec Bar, "2008 Socioeconomic Survey of Québec Bar Members," CIRANO, 2009.

The number of lawyers in private practice corresponded more or less to just over half of Québec Bar members in 2008. The bulk of the supply is characterized by small production entities, while large organizations occupy the market's other extreme.

The beginning of the 2000s was marked in Quebec (and across Canada), as well as in the whole group of industrialized countries, by a wave of law firm mergers. The largest Canadian firm, Borden Ladner Gervais, had nearly 800 lawyers in 2010. In contrast, certain small firms have simply disappeared, unable to remain competitive or to adapt to clients' new realities. Recall the recent cases of firm restructuring, notably Desjardins Ducharme, Pouliot l'Écuyer, Grondin Poudrier, Flynn Rivard, Bélanger Sauv   and Marchand M  lan  on Forget, just to name a few.

This tendency for mid-sized firms to disappear was already pointed out in 1996 by the Qu  bec Bar's Committee on the Future of the Profession.<sup>43</sup> According to this committee's report, hyper-specialized "boutique" firms of modest size would be as capable as large multiservice firms of adapting to the rhythms of clients' needs. A careful reading of the current situation confirms the predictions of the day.

In parallel, and in a globalized context, certain firms are enormous compared to those that exist in the Canadian market. In 2009, the British firm Clifford Chance included 3,600 lawyers and 3,200 professionals. The firm's global network included 29 offices in 20 countries. Its income was US \$2.66B.

The statistics on the evolution of the location of law firms for the first decade of the 21<sup>st</sup> century reinforce the previous observation regarding the trend in private practice firm size.

**TABLE 21: Geographic evolution in the location of law firms (2000-2010)**

Regions	2000	2005	2010
Number of lawyers belonging to the Bar	18,848	20,899	23,434
Number of lawyers in private practice	10,140 53.8%	11,285 54.0%	12,654 54.0%
Distinctiveness of the lawyer (solo/nominal business)	2,990 28.7%	3,675 31.8%	4,445 35.1%
Law firms in Montreal (1) (Montreal, Laval, Longueuil)	339 52.5%	274 55.0%	223 51.0%
Law firms in Quebec City (2)	100 15.5%	82 16.5%	76 17.4%
Law firms in the rest of the province of Quebec (3)	207 32.0%	142 28.5%	138 31.6%
<b>TOTAL (1-2-3)</b>	<b>646 100%</b>	<b>498 100%</b>	<b>437 100%</b>

Source: Qu  bec Bar, 2010.

The number of lawyers belonging to the Bar increased by 21.4% over this decade. The number of members in private practice kept up with this trend (21.7%). Nonetheless, the industrial structure of the sector changed on account of

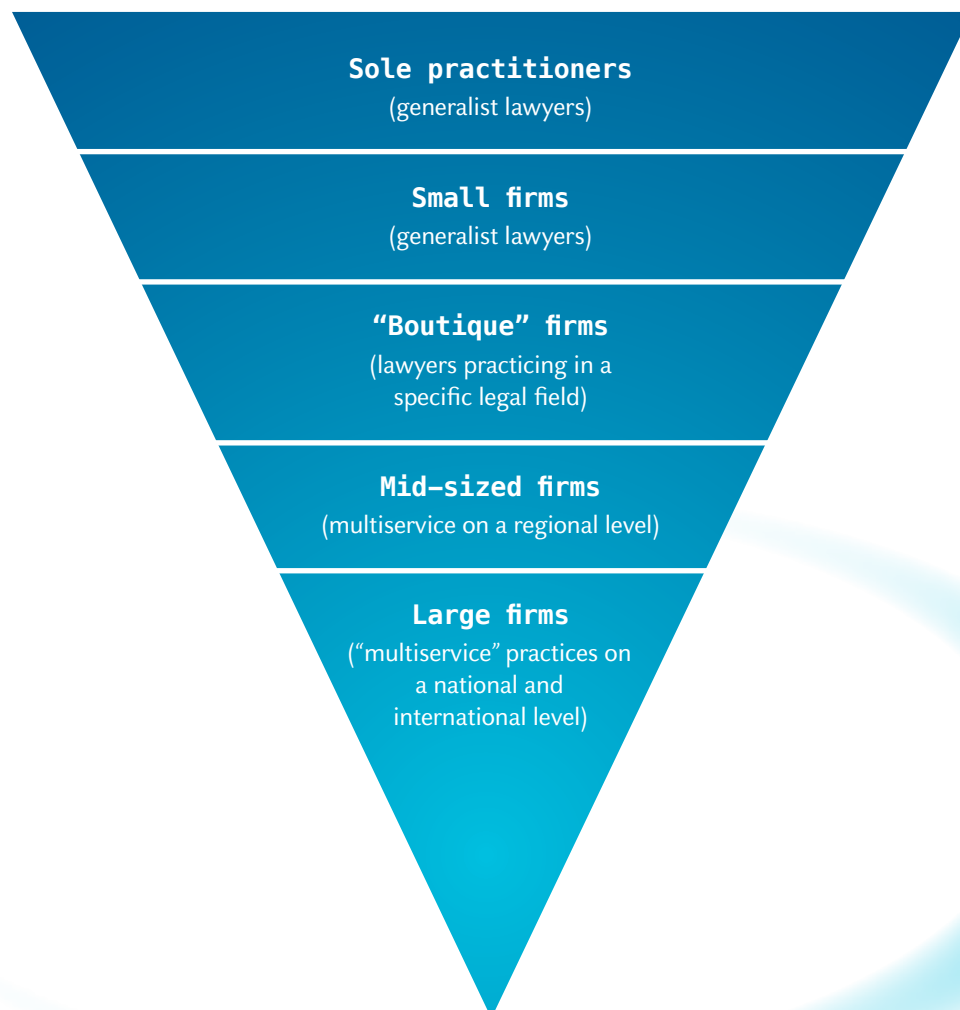
43 Qu  bec Bar, "La pratique du droit au Qu  bec et l'avenir de la profession," Report of the Comit   sur l'avenir de la profession, Boucher, P., and Beaugard, H., 1996.

the widespread consolidations, the total number of firms having decreased by nearly a third (32.5%) over the period. We should note that the proportion of lawyers practicing solo or in a nominal partnership went from 28.7% (2000) to 35.1% (2010), which is not insignificant.

Note also a difference between Montreal and Quebec City regarding the decrease in the number of firms. Over the decade, consolidations made 34.2% of Montreal firms disappear versus 24% in Quebec City. The explanation lies in the fact that Montreal experienced more of the effects of the industry trends coming from Toronto, which itself is experiencing the repercussions of reorganizations in New York. These consolidations are directly correlated with globalization and the displacement of economic activity west due to natural resources and access to the Pacific Ocean, gateway to Asia.

As underlined above in this text, lawyers' service offerings are quite varied. In fact, the areas of law occupied by lawyers (nearly 40) can be practiced for all kinds of clientele (individuals, corporations, government). The diagram below illustrates the service offerings of lawyers with regard to the distribution of the legal workforce.

**DIAGRAM 6: The service offerings of lawyers in private practice**



The diagram illustrates a feature of the market with respect to the distribution of lawyers in private practice. The lawyers in these different forms of organization serve transversal clienteles but are often very specialized. Lawyers who devote themselves to a particular field of practice usually belong to large organizations or to boutique firms (hyper-specialized).

The following table sketches the profile of these organizations.

**TABLE 22: Profile of service offerings (2008)**

Kind of practice	Number of members	Proportion (%)	Clientele served
Solo <sup>1</sup>	4,445	36.5	Individuals, very small businesses (VSBs), underprivileged clienteles (Legal Aid)
Small firm <sup>2</sup>	3,090	25.3	VSBs, SMEs, municipalities, and less commonly, individuals
“Boutique” firm <sup>2</sup>	1,132	9.3	Very narrow market segment like intellectual property, immigration, and labour law
Mid-sized firm <sup>2</sup>	1,530	12.6	SMEs, large corporations on a very regional level (Montreal, Quebec, Trois-Rivières, etc.)
Large firm <sup>3</sup>	1,993	16.3	Pan-Canadian and international clientele of large corporations and other organizations of the same calibre
<b>TOTAL</b>	<b>12,190</b>	<b>100.0</b>	

1 Laval University Professor. / 2 Québec Bar. / 3 LEXPERT, “The 30 Largest Law Firms in Canada” (2008).

The table demonstrates an eloquent result. Most lawyers practice in small entities. Lawyers with solo practices and those in small firms represent 61.8% of the organizational structure of the market. Adding boutique firms that are also structurally small, this proportion rises to 71.1%.

Mid-sized and large firms therefore account for 28.9% of Bar members in private practice. So nearly a third of Bar members in this sector practice law in organizations with at least 20 lawyers.

## 4.4 COMPETITION AND LAWYERS: LEGAL SERVICE OFFERINGS AND THE PROTECTION OF THE PUBLIC

### 4.4.1 The lawyer monopoly

The professional world in Quebec is made up of 45 professional orders. For the 2009-2010 period, there were around 340,264 professionals. Since 2001-2002, the total number of professionals has increased by 54,601 or 18.2%. Over the same period, the membership of the Québec Bar increased by 3,674 lawyers or 17.6%. Indeed, 8% of Quebec’s labour force belongs to a professional order.

All of the professional orders have in common a mission to “protect the public.” The protection of the public is guaranteed by high standards with regard to the competence of members and ongoing training. The sphere of activity of a member of a professional order is allegedly complex, and the public does not possess the information needed to evaluate competence. This is what economists call “information asymmetry,” and it represents a flaw in the way professional service industries function. Hence was born the theory of the protection of the public to correct this flaw.

For other economists, this theory of the protection of the public is instead a “capture theory”: the monopolistic capture of a market is acquired by an industry for its own benefit.<sup>44</sup> From this perspective, a professional order limits entry into the profession, increases the prices of services, weakens competition and thus creates monopolistic distortions of the market. In fact, from the viewpoint of the theory of the protection of the public, the cost of services must be reduced to a minimum, or at least be reasonable. According to the capture theory, cost is maximized for the benefit of members.

According to the results of economist Pagliero’s study, the social cost stemming from barriers to entry for new lawyers on the Canadian market translates into a \$10,000 premium added onto starting salary. In terms of the welfare of society, this amounts to a cost of \$3 billion.

For Quebec, assuming that the social cost is identical to what it is in Canada as a whole, the impact on the welfare of society is on the order of \$36.74 million for the first decade of this century.<sup>45</sup> Obviously, salaries and job conditions in Canada and the United States differ somewhat. Nonetheless, there is a cost and clarifying what it is requires the application of the British economist’s model to the Quebec case.

The evolution of markets driven by IT is going to modify the state of affairs for the provision of legal services. According to various sources, non-lawyers will play a decisive role over the coming years.

Indeed, it is becoming increasingly common to call into question the rightfulness of the professional order monopolies, at least for certain parts of them.<sup>46</sup> If the Canadian Competition Bureau recognizes the necessity of regulating professional services, it does so with certain caveats.

For the Bureau, the restrictions imposed by the professional orders must not represent an obstacle to competition and become in effect a barrier to lower prices for consumers of services. In addition to questions regarding access to the profession, the organizational structure of practices, advertising and service pricing, in the specific case of lawyers, the Bureau proposes a series of recommendations in order to promote access to high quality services that are affordable for different clientele.

#### 4.4.2 Multidisciplinarity among lawyers

This subject is still very much in the news in OECD member countries. In fact, a study group has just submitted a report on the matter in France.<sup>47</sup> The following table lays out the different concepts currently in use when it comes to work among holders of different professional titles.

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44 Pagliero, M., “What is the Objective of Professional Licensing? Evidence from the US Market for Lawyers,” *Journal of Economic Literature*, (JEL), 2005.

45 This figure was obtained using the value estimated by the economist Pagliero and the number of new members of the Québec Bar between 2001-2002 and 2008-2009.

46 Competition Bureau of Canada, “Self-regulated professions — Balancing competition and regulation,” 2007.

47 Commission Darrois, “Vers une grande profession du droit,” *Rapport au président de la République*, 2009.

**TABLE 23: The notions of work among professionals from different disciplines**

Terminology	Meaning
Multidisciplinarity	Combining two or more disciplines without integrating them in a unique way of functioning.
Interdisciplinarity	Symbiotic work of two or more disciplines that in the long term could lead to a decrease or an increase in the number of disciplines.
Transdisciplinarity	Voluntarily eliminating the boundaries of expertise between two or more disciplines with the explicit goal of developing and investigating new frontiers.

The first two concepts are more well-known. The socioeconomic changes of recent decades, driven by the quantum leap of IT (Internet) and the globalization of markets, have irreversibly modified the traditional boundaries of knowledge. The impact on professional workers goes beyond anything seen before.

Pushed by the increasing fragility of boundaries between disciplines, many professional orders have of necessity looked at this issue. The practice of law is no exception. In the 1990s, the Québec Bar reacted to this set of problems by forming several committees, notably on the future of the profession, mediation (now known as the Committee on Participatory Justice) and multidisciplinarity. The Committee on the Future of the Profession submitted a report from which numerous legal societies in Canada and the United States have drawn inspiration.<sup>48</sup>

The difficulty of working between disciplines has to do with the fact that the resulting work carried out is always the product of a new synthesis of expertise. The obstacles to work among professionals from different disciplines are therefore numerous. The scientific literature on this topic enumerates four of the most important ones, namely language (the jargon unique to each discipline), methods (different methods of investigation), institutional constraints (professional orders) and finally, cognitive constraints (basic knowledge of another discipline).<sup>49</sup>

What about multidisciplinarity among lawyers? In order to carry out certain mandates, lawyers must necessarily appeal to the expertise of other professionals. Basically, lawyers collaborate with fewer than ten other kinds of professionals.

**TABLE 24: Services rendered by lawyers in collaboration**

Professionals	2003 Most frequent collaboration (%)	2008 Lawyers who say they work with other professionals (%)
Accountants	31	61
Notaries	21	42
Psychologists	14	14
Social workers	10	11
Management consultants	5	10
Human resources professionals	4	8

48 Québec Bar, "La pratique du droit au Québec et l'avenir de la profession," Report of the Comité sur l'avenir de la profession, Boucher, P., and Beaugard, H., 1996.

49 Heintz, C., Origgi, G., "Repenser l'interdisciplinarité," Séminaire, 2004.

Professionals	2003 Most frequent collaboration (%)	2008 Lawyers who say they work with other professionals (%)
Market intermediaries	4	12
Other	11	30
<b>TOTAL</b>	<b>100%</b>	<b>n/a</b>

Source: Québec Bar, "Economic survey of members," 2003, 2008.

The results for 2003 and 2008 show two incommensurable types of information. For example, in 2003, lawyers in private practice who collaborated with other professionals indicated that 31% of the time, this other professional was an accountant. In 2008, respondents indicated that 61% of lawyers collaborated with accountants.

The results are incommensurable because of the survey questions. Nonetheless, in both cases, accountants and notaries occupied first and second place among collaborators in cases of multidisciplinary.

The fact that in 2008, lawyers collaborated more with notaries and market intermediaries can be explained by the economic conditions of real estate and financial markets. However, the significant weight of the "other" category in the 2008 survey merits further research.

In the case of interdisciplinary practices, lawyers are authorized to work with other professionals subject to very strict constraints (association, professional secrets, honorarium sharing, etc.). Consequently, we cannot speak of real multi- or interdisciplinary.

Working with other professionals will become unavoidable for Quebec lawyers. For many Quebec lawyers, globalization is still a fuzzy concept that applies to large firms working on the international stage or just means the massive importation of manufactured goods from emerging economies. Possessing a practical understanding of the commercial exchanges emanating from BRIC<sup>50</sup> economies will require an interdisciplinary approach, if only because of the complexity of those exchanges.

Whatever Quebec lawyers may say, other jurisdictions are moving forward on this issue. Other than the omnipresent influence of the United States on the Canadian scene, Great Britain decided to consider the practice of law a commercial activity. Since the late 1970s, the notion that legal services are in any way distinct has been contested. Lawyers in England have set off to conquer foreign markets in the United States and in continental Europe thanks to freedom of establishment and soon to the Directive on services in the internal market. The 2007 Legal Services Act deregulated the profession and allowed for the creation of new legal structures authorizing the grouping of practitioners of different disciplines, which will facilitate the financing of firms by foreign public capital if necessary.

On the economic level, the results are eloquent: in 2007, legal activity represented a volume of market activity of around 26 billion pounds for England, or 2.3% of the country's gross domestic product (GDP). From 1991 to 2006, the export of legal services from England was multiplied by a factor of six, going from 445 million to 2,612 million pounds.

.....  
50 The BRIC countries are Brazil, Russia, India and China.

On the one hand, globalization favours the convergence of judicial systems, and on the other hand, bijuralism has inspired numerous Latin American, continental European, Asian and Middle Eastern countries. So how can we explain the fact that Quebec legal professionals have so little economic presence in the rest of Canada and around the world, and operate so little in foreign markets? Outside of the network of large firms and Canadian or Quebec government organizations, this is unfortunately the state of things.

## 4.5 THE VALUE OF LEGAL SERVICE DELIVERY

In the classification of economic activities (NAICS), legal services industry activities are combined into the category “Professional, Scientific and Technical Services.”<sup>51</sup> This category is very broad and includes among other things legal services, accounting services, architecture, engineering, land-surveying, cartography and lobbying. Obtaining a more precise measure of the value of the industry requires a much more fine-grained approach. A model was developed in order to measure the size of different market segments. The following results were obtained.

**TABLE 25: The legal services industry**

Types of clientele	2003	2008	Variation (2008-2003 %)
Households	\$448,271,910	\$593,223,565	32.3
Businesses	\$1,410,963,669	\$1,448,840,925	2.7
Governments/Municipalities	\$311,477,759	\$276,080,990	(11.4)
<b>TOTAL</b>	<b>\$2,170,713,338</b>	<b>\$2,318,145,480</b>	<b>6.8%</b>

Source: Statistics Canada (Special compilation based on “Survey of Household Spending,” 2008). Author’s compilation.

In 2008, the market value of legal services sold in Quebec was \$2.318 billion, 6.8% more than five years earlier. Only the public sector saw the value of its service provision fall. Businesses represented over 60% of the value of activity in the industry.

Note that for households, given the source used (Survey of Household Spending), the statistics are slightly biased. Indeed, Statistics Canada does not distinguish between expenses for the honorariums of notaries and lawyers. They are combined. Therefore, part of the 32.3% growth in value is directly attributable to the activity of the construction industry for the purchase and resale of private residences, which require the intervention of a notary.

Neither is there a distinction between honorariums and fees covered directly by households and those covered by Legal Aid in cases when this is permitted. Nonetheless, the order of magnitude of this market segment is realistic.

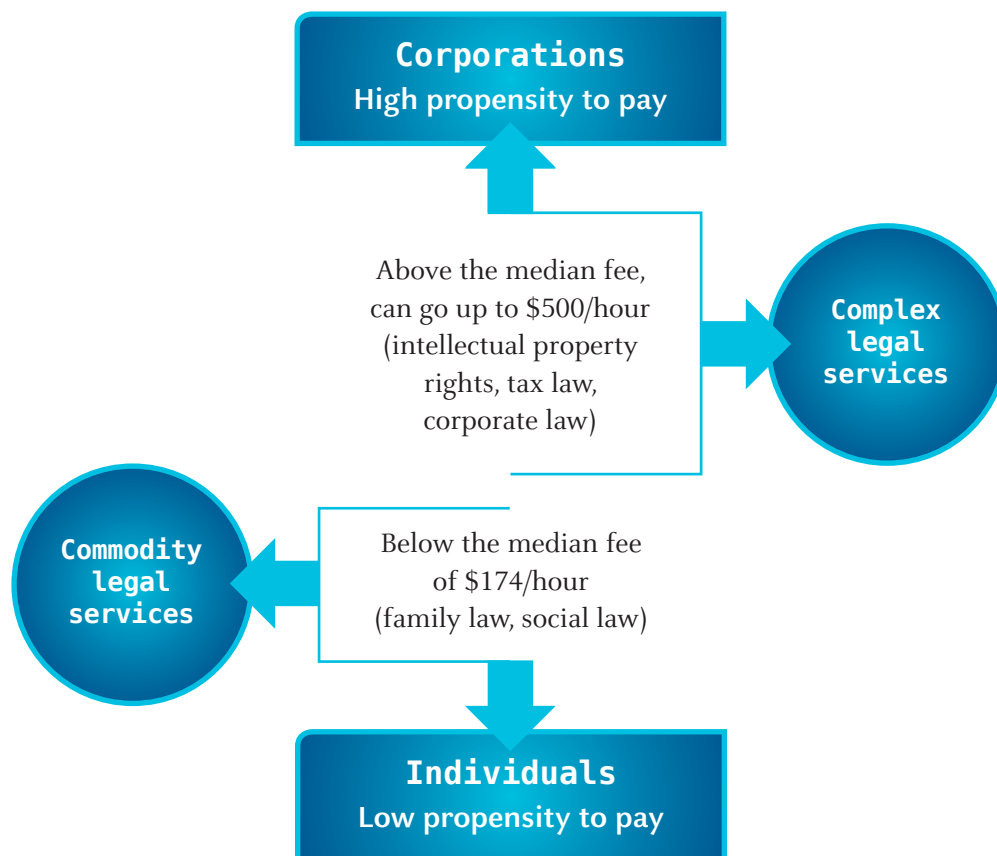
.....  
51 North American Industry Classification System (NAICS).

## 5 Legal services and “hourly billing”

### 5.1 LAWYERS’ INCOMES AND SERVICE PRICING

Lawyers’ incomes are closely correlated with factors like scarcity of expertise and volume of services rendered. The following diagram highlights certain considerations that have an effect on clientele’s propensity to pay in various markets.<sup>52</sup>

**DIAGRAM 7: Legal services markets and fees**



Specialized services should, all other things being equal, command higher prices. The capacity of clients to pay also influences the prices paid.

52 For hourly fees, Québec Bar, “Socioeconomic survey of Québec Bar members – 2008,” CIRANO, 2009.

## 5.2 LAWYERS' INCOMES

The fact that a so-called “liberal” profession commands above average incomes is a widespread perception in our society. University training and criteria for access to the profession (Professional Order) justifies the income level as it were. The changing incomes of lawyers in private practice in Quebec over different periods is presented in the following table.

**TABLE 26: Average incomes of lawyers in private practice (1997-2008)**

Years	Average income (\$)	Variation (%)	Inflation (%)
1992	84,640	–	–
1997	106,000	25	14
2003	122,819	16	12
2008	139,940	14	7.5

Source: Québec Bar, “Economic survey of members,” various years (see the annexed bibliography).

The average income of lawyers in private practice in Quebec went from \$84.6 thousand in 1992 to \$139.9 thousand in 2008. A number of observations stand out.

First, let us note that overall, the average income growth rate is greater than the inflation rate for these years, which signifies that standard of living has increased. Purchasing power has risen, which is to say that income growth has exceeded cost of living increases.

Second, the results of different economic surveys of the Québec Bar show a large asymmetry in the income distribution for lawyers in private practice. The results of the 2008 survey indicate that most lawyers in private practice earn less than \$90,000.<sup>53</sup> Incomes above \$90,000 vary significantly, reaching up to \$500,000 and more.

Again according to the 2008 survey, the income gap between male and female lawyers in private practice is also significant. Male lawyers are overrepresented in income categories of \$150,000 and above, while female lawyers are overrepresented in income categories of \$50,000 and less.

## 5.3 THE INCOMES OF LAWYERS IN PRIVATE PRACTICE: “HOURLY BILLING”

### 5.3.1 The origins of the legal services billing model

Generally speaking, the economic concept of added value is used to refer to a service that is unique, highly differentiated or again the contribution of a range of services. Value-added legal services do not cannibalize other services offered. The added value of a service or range of services commands a “premium” that clients accept to pay.

In this sense, what a certain service is worth both to the lawyer and to the client should be determined based on an equation in which a certain number of variables are taken into account, such as the time required for the work, the comparability of costs/fees between lawyers in the legal community, the real cost of production with regard to

.....

<sup>53</sup> Québec Bar, “Economic survey of Québec Bar members in 2008,” 2009, CIRANO.

the expected result, the time required to do the work, the degree of service substitution (other supplier), as well as the experience and the reputation of the lawyer. It seems obvious here that, similarly to other kinds of professional workers, time remains the central element in the evaluation of the price/fee of a good or service.

Nonetheless, it was not until the 1950s in the United States and the 1960s in Canada that the “hourly vector” became the determining factor in the evaluation of lawyers’ fees. Before then, lawyers did take into account references to time allocated to various tasks in the form of handwritten notes in the file, but other considerations also entered into the equation (experience, repetitive nature of the service, client’s ability to pay, location of the lawyer). Starting in this period, the industry quickly understood the highly lucrative connection between number of hours billed and income. In the early 1970s, introduced by large firms, hourly billing became the norm for the majority if not for all lawyers in private practice.

The hourly pricing model worked well in the 1970s and 1980s. However, in the 1990s, flaws appeared in the workings of the model. It is the American Bar Association that addressed a warning to the profession regarding this dysfunctional economic model that no longer responds to the expectations of clients, and is even less in tune with economic efficiency.<sup>54</sup>

### 5.3.2 The billing methods of Quebec lawyers

Before addressing the effects of the hourly billing model, it is worth having a look at the billing profiles of Quebec lawyers. The table below presents the billing methods in use between 2003 and 2008.

**TABLE 27: Billing profile of lawyers in private practice (%)**

Billing methods	Year	
	2003	2008
Hourly rate depending on experience	61	65
Overall amount determined ahead of time	12	11
Variable rate depending on task and lawyer	7	5
Hourly rate decreasing with volume guaranteed	4	1
Fixed hourly rate regardless of participant	5	15
Amount paid depending on success	6	3
Adjusted	5	0
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

Source: Québec Bar, “Economic survey of members,” different years (see annexed bibliography).

For lawyers in private practice, income generated comes from the generalized hourly billing model. For the profession, this model seems, a priori, entirely in accordance with the reality of a professional’s work. And indeed, most professionals are remunerated by the hour. The notion of time employment always returns to this form of evaluation of value for remuneration.

.....  
54 American Bar Association, “ABA Commission on Billable Hours Report,” 2002.

In 2008, over 65% of lawyers in private practice used this remuneration method. Lawyers are very reticent to abandon this model. Yet it corresponds less and less with the reality of the current economic environment. The use of this model has regularly kept lawyers from progressing in terms of business models and in terms of developing partnerships with their clients.

Practical experience in several sectors proves it: it is always the client who informs the lawyer that the fee demanded for a given repetitive intervention is no longer justified. It is the client who proposes to the lawyer a certain number of files for a given, fixed price (“commodity product”). The examples are many: mortgage repossession, prospectus production for initial public offerings, class actions for plaintiffs and various forms of contracts, just to mention a few examples.

### 5.3.3 The harmful effects of hourly billing on the profession

In the early 2000s, the American Bar Association (ABA) set up a Commission on Billable Hours. A report was produced in 2002.<sup>55</sup> This commission traces its origins to various sources of discontent among buyers of legal services in the business world.

On the one hand, corporate legal department lawyers expressed their dissatisfaction with regard to the fact that they find it harder and harder to see the value of services rendered. The work is carried out, and the invoice sent, with no connection to the volume of work and/or its complexity.

On the other hand, changing technology in terms of the management tools available to corporate legal departments demonstrates ever more clearly the incoherence of the practices of private firms with regard to hourly billing. In fact, lawyers in private practice run their businesses with a zero risk level, which is becoming increasingly incompatible with the conduct of business in today’s world.

Over the course of the 1990s, this single model of hourly billing gave birth to a gradual process of discontent among clientele and led to the establishment of the ABA Commission. A growing number of ABA managers believe that hourly billing will, in the long run, quite simply “kill the profession,” hence the urgency of reacting firmly and quickly.

The negative effects of hourly billing are well documented in the ABA report. The fact that this voluminous report was prepared for the profession in the United States does nothing to alter its relevance for the profession in Canada and Quebec.

Some of the effects of this economic model are summarized below.

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55 American Bar Association, “ABA Commission on Billable Hours Report,” 2002.

**TABLE 28: Hourly billing and its negative effects on the profession**

Factors to consider	Effect on the profession
Law firm culture	The widespread policy of hourly billing has imposed a frenetic pace of work on law firms. More hours are required to offset higher costs. This has an effect on legal culture. Certain talented lawyers are abandoning private practice.
<i>Pro bono</i> work	Little free time to devote to <i>pro bono</i> work. The lawyer's priority is billable hours.
Work planning	From day one, the lawyer learns about his or her responsibilities with regard to a "budget of hours." The goal is not efficiency but rather billable hours. It is not every case that lawyers cannot plan ahead for number of hours. Repetitive cases can be planned out ahead of time.
Estimation of costs for the client	The client has a hard time predicting the cost of a case.
The "value added" for the client	The outcome is often inappropriate given the costs incurred.
Decreases the efficiency of the productive lawyer	Lawyers tend to be less productive, because by being productive, they will have to bill fewer hours (therefore less income).
Discourages lawyer/client communication	Client communications involve tenths of hours depending on the duration of communications. Minimizing costs means minimizing lawyer/client communications, even to the detriment of the case.
Eliminates the notion of risks/benefits	Few lawyers present an objective evaluation of the risks and benefits of a client's case.
Lawyer/client conflict of interest	Lawyers have annual billing targets. This is not the objective of the client, who wants to minimize costs. There is therefore a conflict of interest between the parties.

Source: American Bar Association, « ABA Commission on Billable Hours Report », 2002.

The statements about the effects of hourly billing presented in the table do not apply to all cases, nor to all areas of practice. It is nonetheless clear that the widespread hourly billing model promotes a certain grey zone with regard to the efficiency of services and fees. As underlined above in the text, over and over again, it is clients who inform lawyers of the absence of any connection between the costs of a case and the value added by the lawyer.

Finally, aside from the effects indicated in the table, hourly billing generates a significant level of risk for clients every day:

- The calculation of time on an hourly basis does not take into account inefficient hours, errors made by a young lawyer, and so on. Yet clients will usually be billed for this time.
- Clients are often billed for the on-the-job training of young lawyers. Is it necessary to point out that the client is paying for expertise, not for training?
- When there is turnover/departure of young lawyers or partners, the takeover of a case by a new lawyer requires hours of familiarization that will be charged to the client all over again.
- Finally, billing pressures for partners and non-partners alike let it be understood that a line can easily be crossed in terms of hours devoted to a case. Obviously, every lawyer will dispute this observation, but clients who scrutinize their bills regularly refuse to pay items billed without cause.

To conclude this topic of hourly fees, let us underline that there are enormous differences in the application of this model within the profession. To be sure, sole practitioners will not feel that most of the effects presented in the table apply to them. Lawyers working in large firms will appeal to professional responsibility, to codes of ethics, and so on. Nonetheless, nearly two thirds of members of the practice use a model that does not respond to clients' requirements.

The notion of "time" will remain a part of the fee evaluation function for lawyers in private practice. But time must be adjusted. Simple hourly billing will have to be applied to specialized cases with high levels of risk and managed by seasoned lawyers justifying high fees and this billing method.

### 5.3.4 A few considerations for Quebec lawyers

The negative effects stemming from hourly billing merit special attention for two elements, namely hourly billing for female lawyers in private practice and *pro bono* work.

#### Hourly billing for women

In the case of hourly rates for men and women, the results of the 2008 economic survey are unequivocal: "*For the most well represented cases in the survey, we observe that the average hourly rates of men are higher, with the exception of those in family law.*"<sup>56</sup> The fact that there is a gap between the hourly rates of male and female lawyers with similar career profiles is hardly surprising.

This situation obviously partly explains the income gaps observed between the two genders. Even aside from hours worked, the situation affects the profession. Women are penalized in terms of remuneration.

#### *Pro bono* work

In Canada and in the United States, the various Bars either recommend or require, as the case may be, that their members carry out *pro bono* work. In the case of Quebec lawyers in private practice, the latest survey indicates that out of an average 1,391 hours worked per year, 25.8% are devoted to activities other than "billable" work.<sup>57</sup>

These hours are allocated among other things to training (4%), business development (6.4%), management (11.7%) and finally *pro bono* work (3.7%). This means that less than 15% of lawyers' non-billable activities are *pro bono* work. Not surprisingly, women do fewer hours than men, namely 46 hours compared with 56 hours. Obviously, this kind of work constitutes a significant opportunity cost for lawyers. At the median hourly rate of \$175, the opportunity cost is \$9,100 per lawyer.<sup>58</sup>

56 Québec Bar, "2008 Economic survey of Québec Bar members," 2009, CIRANO, (page 61).

57 Québec Bar, "2008 Economic survey of Québec Bar members," 2009, CIRANO, (page 36).

58 The number of hours devoted to work and/or leisure is limited in time. The "opportunity cost" corresponds to the value accorded to, say, one hour of time allocated to one or another of these activities. An hour of work serving as a reference for the cost of time, the lawyer obtains or forgoes \$175, as the case may be. By devoting hours to *pro bono* work, the opportunity cost (cost of the option) is equal to \$175 an hour. This approach is commonplace in economics, finance and accounting.

### 5.3.5 What does the future hold for billing?

Recall that technology is going to continue creating different ways of accessing legal information in real time and at little cost. The time spent on a case or a request therefore loses its meaning. It is the notion of “value” that will determine what a lawyer’s service is worth.

Here we see the keenness of the results of Susskind’s analysis. The development trends of the global economy that have an effect on the development of entire continents and regions are unequivocal. The global socioeconomic development model both for OECD economies and for emerging economies rests on the notion of a “chain of value.” The OECD indicates that from now on, SMEs will be included in this process.

Lawyers will need to learn to modify the way they bill their clients, and they will need to do so quickly. The options to examine can more or less be summarized by four elements.

**TABLE 29: Billing options to examine**

Billing method	How it works
Based on tasks	This method takes into account the complexity of the tasks to be carried out. The notion of “value added” enters into the equation, in which the legal service is remunerated based on expertise and experience.
Based on results	This billing method cannot work in a recurring fashion. The lawyer can accept certain mandates of this kind, but they must be combined with other mandates.
Fixed terms	This billing method is well suited for commodity services. The lawyer knows what is required to carry out these repetitive services.
Hybrid methods	Hybrid billing is well suited to a modern practice in which the lawyer offers a range of varied services. Remuneration is adapted to his or her expertise and to the client.

Source: American Bar Association, “ABA Commission on Billable Hours Report,” 2002.

This is a necessary transition for the profession. Certain large firms have already set up project (mandate) evaluation models where the value of the services to be rendered to the client is determined at the start of the mandate. This estimation includes strategic aspects of the client’s operations, a measure of his risk tolerance, exchanges regarding expectations of results, and especially the value that the client himself or herself places on the contract to be negotiated, the analysis of the legal problem or the dispute to be resolved.

This model conforms to Susskind’s reading of the evolution of legal services into two categories, namely commodity services and specialized, value-added services. In the long run, this model will spread to all private practice and will become the norm in the legal services industry. Even the sole practitioner will have to adhere to this model, which will correspond better to the economic value of legal services.

## 6 Economic activity and areas of practice

### 6.1 DEFINING A MARKET

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A legal services market includes lawyers and clients within the context of exchanges. Exchanges can take the form of consulting, advice, research or any other form of intervention calling upon a lawyer's expertise. Consequently, there are dozens of markets, each with their own particularities. Let us specify that the forty or so areas of practice for lawyers that are listed in the surveys carried out by the Québec Bar every five years are not properly speaking markets.<sup>59</sup> They are in fact different services that can, depending on the case, be offered by lawyers in a market for a target clientele.

In general, economists classify markets on the basis of economic sectors. Thus, the large sectors of economic activity taken together constitute markets. These are classified as a function of production in the economy and are grouped by the "North American Industry Classification System" (NAICS).<sup>60</sup> The sum of economic activity in all markets constitutes the gross domestic product (GDP). GDP is the primary indicator of economic activity. In OECD member countries, GDP is broken down not only by large economic sector but also, in the case of Canada and Quebec, by province and by administrative region.

The NAICS is rather macroeconomic in nature and provides an order of magnitude for a given economic activity. To define a market component in the context of the development of a legal service, we obviously need a more refined approach. The specific analysis of a market and the development of strategies to penetrate it (marketing) are microeconomic in nature. This topic will be covered later on in this text.

The diagram below presents the main components of Quebec markets. It represents a measure of total production in Quebec for the year 2010.

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59 Québec Bar, "Economic survey of Québec Bar members," Versions from 1998, 2003 and 2008.

60 The NAICS replaced the "Standard Industrial Classification" (SIC) with the signing of the North American Free Trade Agreement (NAFTA). This trade agreement groups together Canada, the United States and Mexico. The establishment of NAICS aimed to harmonize the classification systems for economic activities.



Lawyers in private practice, just like accountants, engineers and architects, belong to groups in competition according to market segment. For the last twenty years or so, market dynamics have changed. Law, being more complex, has developed significantly in certain areas of practice like consumer, competition, finance, environmental and intellectual property law, just to mention a few. Law has also penetrated further into certain areas, notably the labour sector. Lawyers have been called upon to intervene more often to help individuals and businesses make decisions within their rights.

The information available to lawyers on the topic of “client development” is vast and varied. Yet very little is said about markets properly speaking. According to certain articles, Internet sites, blogs, specialized reviews, webinars, bulletins, books and seminars, one thread emerges. Lawyers are mostly provided with criteria related to communication and public relations.<sup>61</sup> This “marketing” information industry aimed at lawyers seems to take it for granted that lawyers are familiar with the various markets and their respective potentials, and furthermore that lawyers know the comparative advantages of their practices and can position themselves favourably in their target markets.

The table below presents the more common mistakes made by lawyers and firms in their business (market) development approaches.

**TABLE 30: Market development: the most common mistakes made by lawyers**

Type of mistake	What it means...
Minimizing the importance of marketing	Lawyers in private practice devote 99% of their time to learning or perfecting their skills (how to do the work), but very little time on how to obtain recurring mandates.
Blindly copying what is done in other firms	The size of the practice (solo, small firm, boutique firm, national firm) as well as the lawyer’s personality and the firm’s culture will determine the appropriate type of business development. Simply transplanting what others do is inefficient, if not pointless.
Not devoting enough time to development	Lawyers in private practice must devote between 15% and 30% of their time to clientele development. Otherwise...
Marketing strategies based on “me”	Clients do not want to hear about the lawyer, only about the solutions that the lawyer can provide.
Uncomfortable discussing service costs	In North American culture, two subjects are taboo: money and sex.
Too little knowledge of clients	To know one’s clients, one needs to familiarize oneself with their industry (GDP, jobs, main stakeholders, potential, constraints, risk factors).
Unclear development goals	What are the firm’s or the lawyer’s goals when it comes to number of clients, income, etc.?
Vague or imprecise messages conveyed	The message conveyed to clients is closely related to the positioning adopted by the lawyer, firm or practice. Otherwise, the message will be lost in the sea of competition.
Uncomfortable closing the sale	While it is obviously not advisable to seem too insistent, one must deal with objections and very clearly transmit to the client the wish to reach an agreement.
Lack of follow-up (or poor follow-up method)	Maintaining contact with clients constitutes the very essence of market development and references.

Source: Authors’ compilation based on various articles on the topic.

61 We are referring here to associations like the Legal Marketing Association (LAM), Hildebrandt International, and to the array of books on the sale and marketing of professional services in general and of legal services in particular.

This compilation of typical mistakes comes from various articles on the topic. The main thread comes down to the lack of knowledge of techniques for market identification and development. The themes addressed in these sources of marketing information for the legal services industry certainly address strategy, the profitability of firms, work organization, business decline/growth depending on the sector, but in most cases they are focussed on “communication.” Canada’s large firms have recently become interested in a new term that has become fashionable, namely “competitive intelligence.”

All lawyers in private practice should familiarize themselves with the competitive intelligence approach and adapt it to their level of practice. Broadly speaking, the concept of competitive intelligence consists of profiling competitors, defining business opportunities with existing clients and structuring presentations with potential clients. Lawyers must switch paradigms with regard to business development. In the business environment of the 21<sup>st</sup> century, lawyers must absolutely abandon their largely transactional kind of work and become solution storehouses (placing special emphasis on results). This is the very essence of the kind of market development that economists advocate and that certain legal visionaries have put forward.<sup>62</sup>

The road that needs to be travelled to change the current state of affairs remains long. The current, widespread structure of hourly remuneration does not facilitate change in the way lawyers do their work. Lawyers will only understand that the hourly billing model is no longer suitable once clients have already moved on to other ways of buying and paying for legal services, most likely through other providers of legal services.

In sum, lawyers are not in the habit of questioning their ways of doing things or their results. A sense of self-criticism is not one of the tools of the trade. For example, when lawyers learn about the results of surveys of their clientele, and see that satisfaction rates are high for lawyers and practices, it’s normal and they already knew it. However, lawyers and firms very rarely consult the client that was lost or the issuer of a call for tenders that they did not win.

Recall also that business development does not come naturally to everyone. True virtuosos when it comes to sales are rare, hence the need to work in teams and, once again, the unavoidable condition of modifying the billing model, and as a result, the remuneration of lawyers. A highly strategic personality can prove a very poor salesman/communicator with clients, but might still constitute a sure advantage for business development. Lawyers will need to assimilate the market development function and proceed accordingly.

## 6.3 MARKET DEVELOPMENT AND THE MISSION OF “PROTECTING THE PUBLIC”

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Quebec lawyers have long devoted themselves to exclusive acts, which still remain the heart of their practice. Their code of ethics evolved as a function of this mission to ensure the independence and the integrity of their practice, which is indispensable to the proper functioning of justice. They have long preserved very strict rules limiting, for example, displacements on the part of their clients, or again the solicitation of fees. Twenty-five years ago, those who devoted themselves to corporate law were treated with suspicion, even mistrust, by their colleagues.

Most lawyers are not yet sufficiently open to extralegal services. Many people, including those who run businesses, especially SMEs, have a specific image of the lawyer as exclusively a “dispute professional.” But the future does not lie in disputes.<sup>63</sup>

62 See in this regard, Richard Susskind, “The End of Lawyers?” Oxford University Press, 2008.

63 The number of cases registered with trial courts has decreased considerably over the past 30 years, except for cases with the Family Division of the Superior Court of Québec (see Table 32).

Nonetheless, divisions remain. These must be overcome in order for lawyers to be able to take their destinies in hand and be proactive in helping to develop the economy and the proper functioning of justice. A certain number of recent analyses on this topic agree with the thrust of this message. They will be that much more useful when lawyers realize that exclusive acts are in no way incompatible with the negotiation and conclusion of a settlement among their clients.

The introduction of “participatory justice” is a strong trend. It supposes that the willingness to defend to the best of one’s abilities the interests of the client does not lead the lawyer to systematically rely upon the decision of the judge. The lawyer must on the contrary place his or her abilities in the service of the search for an appropriate solution for the client. While this approach has existed for a long time, it is not highly developed, but the procedures of mediation, conciliation and arbitration are a field of activity that lawyers should develop. In this endeavour, lawyers’ experience in litigation is a unique advantage. Their knowledge of the judiciary and of procedures allows them, more than other professionals, to help their clients resolve conflicts. Lawyers can anticipate the reasons that might give rise to a conflict and put forward the solutions that could be reached by the justice system. They can try, as much as possible, to arrive at a reasonable settlement, avoiding lawsuits that would only increase the intensity of the passions and the unrealistic expectations that translate into disappointment with the justice system and its associated costs.

Defending clients, in civil and commercial matters, can happen today with lawsuits, but the future increasingly lies in advice, negotiation and mediation.

In conclusion, from the perspective of the economist, let us recall again that the current billing method for legal services prompts litigants to question indirectly the very notion of the protection of the public. From the individual to the corporation, it is these actors from different legal markets that have brought to the attention of lawyers the fact that certain interventions on their part do not translate automatically into a value equal to the price.

Recall that IT has transformed a good number of legal services into “commodity products.” Examples of this abound. Think of, among other things, the composing of a will or a lease, the obtaining of a mortgage, the realization of shares for a financial institution or the issue of a prospectus for an initial public offering. It is clients who dictated the market value of these services to lawyers, not the other way around.

How and why did lawyers substitute fixed prices for their normal hourly billing method in these cases? That is an interesting question about the reorganization of the production of commodity legal services. Clienteles would have liked it if lawyers had adopted a proactive approach and told them, “Thanks to the evolution of our working methods, to the use of technological tools and to increased efficiency, we can now offer this kind of service at lower prices.” Lawyers could then have focused on developing new, more lucrative markets.

Today, households and corporate managers are better educated, better informed. Consequently, they wish to obtain information and solutions from suppliers of professional services, be they lawyers, optometrists or doctors.

## 6.4 MARKET DEVELOPMENT

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One thing is clear when it comes to market development for Quebec lawyers. Quebec is still a distinct society, for several socioeconomic reasons. Language, bijuralism and the culture all have an influence on business development for Quebec lawyers. Business development trends and the appearance of new business models take root in American law firms. These models make their way into English Canada with a delay of two or three years. It is only after this delay that the approaches will be “Quebecified.”

From this perspective, competitive intelligence spread throughout the United States during the first decade of this century. In English Canada at least, large national firms that position themselves as “complete service” legal entities and that serve a clientele of major institutional clients familiarized themselves with the approach out of necessity. Certain firms created positions for Chief Information Officer or Knowledge Manager – Marketing. These executive positions reveal how much importance firms place on a profound knowledge of markets and of business development in general.

Quebec lawyers today, whatever their area of practice, whether they practice solo or within a firm and whether they serve individuals or businesses, must see their clienteles as markets to develop. Private practice at all levels adapts itself to the rate of change of clienteles, and lawyers must possess the necessary information to ensure the economic progress of their practices. It is unlikely that lawyers who do not see the provision of legal services in this way will be successful.

Certain intellectuals maintain that lawyers have a particular social mission that requires them to keep a distance from “commercial” aspects of selling their services, notably in terms of advertising. This perception is obviously mistaken. Acting upon it will simply allow other non-lawyer professionals the leisure of serving the clienteles in several legal areas, except of course for the representation of clienteles before tribunals, which in any case is an exclusive act that is either stable or decreasing in number.

For example, recall that Quebec SMEs buy a non-negligible quantity of legal services from non-lawyer professionals.<sup>64</sup> The question of marketing or advertising does not come up. If the provision of legal services is to be rigorous and focused on the protection of the public, then the anticipated annual revenues of legal professionals will have to correspond to expectations factoring in level of education, experience and production costs. And that goes for all private practice markets.

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64 Boucher, P., “L’employabilité des avocats et avocates du Québec auprès des PME,” Québec Bar, 2003.

## 7 The legal services market

### 7.1 THE IDENTIFICATION OF MARKETS

As mentioned earlier, some forty areas of practice were identified from the 2008 economic survey of members. Litigation is not a market, no more than all the other areas of practice. A market corresponds to an economic sector, for example food. A market segment within this market could be concerned with SMEs. A narrower segment would be manufacturing SMEs, and so on. The following matrix presents a summary of the analysis to be carried out for each potential market.

**TABLE 31: Market potential**

Legal services	Legal markets						
	Economic sectors				Social sectors		
	Construction	Services	Food	Health	Immigrants	Individuals	Delinquents
Litigation							
Corporate law							
Labour law							
Intellectual property							
Competition							
Tax							
Social law							
Family law							
Environment							
Municipal law							

The NAICS covers all economic activities. Each activity is exhaustively indexed. To know which markets have growth potential, they must be analyzed. The number of potential market studies that could be produced is therefore very high.

For example, the evolution of IT has driven intellectual property law forward. Little-known in the early 1990s, this area of practice is now part of the arsenal of services offered by every large firm. But this legal service covers a wide range of economic sectors like pharmaceutical products, software writing, food and so on. Other legal services can be sold in these industries.

In order to determine the needs for legal services in an economic sector, it is important to know what market participants in that sector do, what the current legal issues are, which lawyers are present, what prices are paid, and so forth. It is equally important to understand how the sector behaves, in other words, to verify the evolution of activity in the industry and to design a service offering that will be original and that will respond to the needs that have been expressed but only partially satisfied or not at all.

## 7.2 THE TRADITIONAL AREAS OF PRACTICE AND THE EMERGING AREAS

### 7.2.1 The traditional areas

By traditional areas is meant those areas that are known to all participants and in which the way things are done seems to remain constant. For example, the number of legal disputes has diminished considerably over the past 25 years. Some of the reasons for this drop include the length of delays and the perceived lack of connection between the costs of litigation and the economic value of the issue being disputed. This is a traditional area of law.

**TABLE 32: Number of cases opened in trial courts**

Year	Court of Québec Small Claims	Court of Québec Civil Division	Superior Court Civil Division	Superior Court Family Division (04)	Superior Court Divorce (12)	TOTAL
1980	75,776	105,042	34,402	10,441	20,439	246,100
1985	57,026	85,675	24,626	13,642	19,667	200,636
1990	50,490	95,779	38,342	15,580	24,499	224,690
1995	45,228	65,311	31,767	19,796	20,583	182,685
2000	29,934	55,427	23,718	18,626	18,848	146,553
2001	28,441	60,467	24,998	17,910	18,885	150,701
2002	29,044	60,868	19,088	17,049	19,028	145,077
2003	28,415	54,521	13,738	15,982	16,643	129,299
2004	28,025	52,885	13,853	16,163	17,099	128,025
2005	27,611	52,055	13,826	15,551	16,639	125,682
2006	26,060	52,485	14,895	14,668	16,097	124,225
2007	23,681	49,163	15,851	14,479	15,176	118,890

Source: Justice Québec, Direction générale des services de justice

Looking at the statistics for the litigation market, a few things become clear:

- Over a period of fewer than 30 years, the overall number of cases opened in trial courts has fallen by 52%.
- There is just one exception, namely the Family Division, which saw a 39% increase in the number of cases.
- A surprising fact stands out in this table, namely the fall in the number of small claims cases. These fell from 75,776 in 1980 to 23,681 in 2007. The decrease was constant. The activities of the citizen's tribunal, where lawyers are not authorized to assist litigants, decreased by 69%.

This analysis of the table is not meant to imply that lawyers must no longer be interested in litigation. The market for litigation has changed considerably. Socioeconomic environments are much more complex; each year, new laws and regulations are passed and enacted. However, the functioning of administrative tribunals, the presence of an ombudsman or having recourse to the tools of participatory justice have had a clear effect on the activity levels of trial courts. Also, let us not forget the question of costs and delays often cited as factors leading litigants to abandon the case.

There will always be lawyers to meet the demand for litigation. However, in most economic sectors, litigation is considered a solution of last resort, hence the tendency to resort to mediation and arbitration in all socioeconomic sectors. There is nonetheless a question of optimal timing in all markets. A few years ago, the Bar promoted the development of this sector. The results were mixed. Still, despite the delays in appropriating this legal service in various economic sectors, this substitute to litigation will continue to develop, and in the long run, conditions favourable to its expansion will be of benefit to lawyers. Lawyers must also promote services to different clienteles.

Economic sectors evolve, adjust and even disappear with socioeconomic change. In the example mentioned above, it is not that litigation has disappeared; it is that economic actors increasingly forego litigation.

## 7.2.2 The appropriateness of socioeconomic changes in law

It was emphasized in the first chapter that globalization does not just affect businesses. The generation that follows the baby boomers is heavily “globalized.” Inexpensive real-time communications (Internet) have a real and profound impact on society. Legal services markets are therefore affected both at the corporate and at the individual level.

The efficiency of our means of communication has brought the continents closer together and encouraged real-time commercial exchanges between economic actors. Technology has also increased the efficiency of the production of goods and services. The pressure of holders of capital for sustained profit growth requires the servicing of ever larger and now planet-wide markets. Perpetual cycles of mergers and acquisitions follow, first among profitable SMEs, and then among MNCs. All markets having a temporary saturation point, these corporate policies become unavoidable.<sup>65</sup>

Canada and Quebec are hemorrhaging big businesses, which in order to keep growing must access vast markets and be able to count on readily available capital. Different schools of thought clash over this issue. All observers agree on the following point, however: the narrowness of the Canadian market is such that foreign MNCs acquire Canadian businesses for the sole purpose of serving the local market.

Large law firms are following the relocation of business and of decision-making centres. In a word, lawyers follow their clients. The scale of international law firms allows them to determine the extent of the preceding terms. To manage, and in fact to facilitate, commercial exchanges between SMEs and MNCs situated on all continents, contracts are required to manage the circulation of goods and services.

The following table shows the largest firms on a global level.

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<sup>65</sup> The maximum number of consumers for a product or service is determined by the physical size of the market, i.e., the total number of buyers (new demand and replacement demand), regardless of their special location. In effect, modern means of transportation and trade agreements (WTO, NAFTA) have eliminated as it were the geographic boundaries to accessing planet-wide markets.

**TABLE 33: Size of the 100 largest international law firms**

Country of origin	Number of firms	Revenue
Australia	4	\$361.5 to \$457.0 million
Canada	1	\$532.5 million
France	1	\$414.0 million
Netherlands	1	\$386.5 million
Spain	1	\$354.5 million
Great Britain	15	\$372.5 to \$2,358.5 million
United States	77	\$349.0 to \$2,188.0 million

Source: Global Policy Forum (2007, statistics).

So of the 100 largest law firms in the world, 77 are American. If we add to this number the British firms (15), the Australian firms (4) and the single Canadian firm (1), the number of firms having common law systems is 97 out of 100. It is therefore reasonable to hypothesize that the legal architecture of trade agreements between countries adhering to international agreements as well as all legal work of a transactional nature between MNCs is subject to the influence of common law. Recall that the local legal structures of the different countries where these transactions take place are strongly influenced by the colonial history of France and/or Great Britain.

In this context, the emerging economies of the BRIC countries disrupt the global economic order. The phenomenon of corporate relocation that affects the OECD economies, however, hides a reality that is often neglected by analysts. Yes, well-paid jobs are displaced toward these countries with low production costs. But legal and accounting services in particular remain mostly dominated by rich countries.

To not identify and analyze the impacts of globalization on Canadian and Quebec society is neither more nor less than to abandon all effort to understand and assimilate the emerging needs of businesses and individuals for legal services. The effects of globalization are omnipresent and the speed of their progression is lightning-quick. In short, whether we're talking about the modalities of financial transactions, about human rights, about immigration or about current consumption, the evolution of our laws and regulations is subject to the influence of globalization.

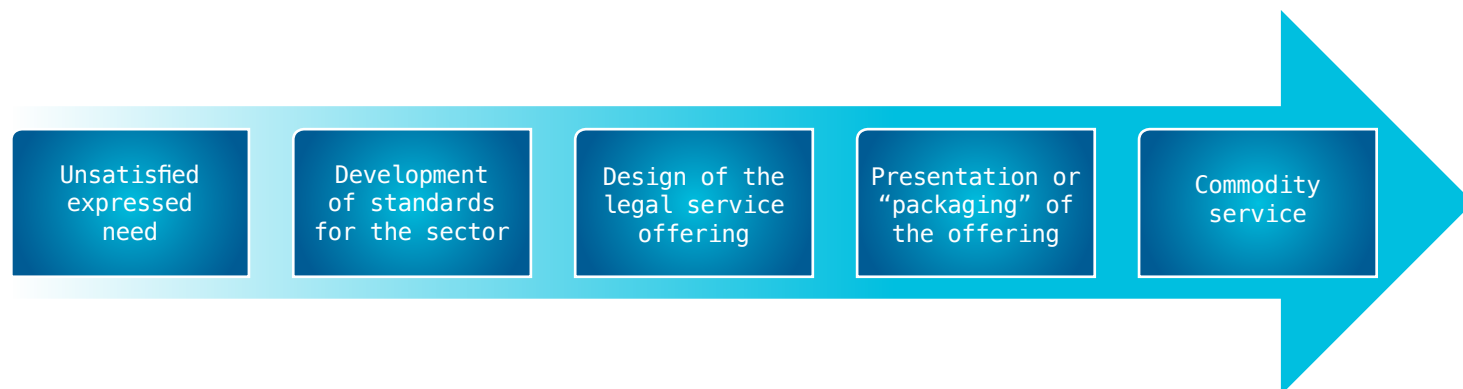
These facts indicate that sole practitioners and lawyers in nominal partnerships must not take for granted the current context, for it is in a state of flux. It is always important to appreciate the prospective nature of societal change. The legal context is lagging behind new contextual events in society. Globalization is provoking unprecedented social mutations. The legal frameworks of our societies are adapting piecemeal.

Examples of this abound. The most progressive jurisdictions in the West influence others that sooner or later will be subject to the effects of their decisions and legislative and regulatory changes. For instance, the legalization of certain drugs (Netherlands) and euthanasia on demand (Switzerland) are subjects that will become increasingly important in our country. Without advocating one solution or another, it is obvious that drugs wreak terrible havoc on our youth and that the aging of the population will lead authorities to manage the health care system's scarce resources rigorously. It is debatable whether the applicable laws in these areas do anything to resolve these issues. The legal system must investigate possible solutions that are adaptable to the new realities. These constitute emerging legal services.

### 7.2.3 The emergence of a new legal service offering

The future of the legal services market resides in new formulations of the service offering.<sup>66</sup> The following diagram presents the steps in designing this kind of original offering.

**DIAGRAM 9: Innovative legal services**



The high added value of an emerging legal service is implicated in the first step (unsatisfied expressed need) and the fourth step (presentation or “packaging” of the offer). The other steps refer to activities required to develop the product, the final step being its marketing. It is at this step that the lifespan of the new service will be determined. The more the offering is geared toward a clientele that requires a complex service, the longer the life cycle will be, and the higher the revenues. The opposite situation will arise if the offering is easily substitutable. But recall that the recurring progression of IT will shorten the time it takes for a legal service to become a commodity product.

This approach shows the possibility of developing a value-added service and including it in the value chain of a client in a given economic sector. The lawyer demonstrates the economic value of his or her service offering. The client can see at which step the legal service inserts itself and identify the advantages that it confers. Billing is therefore adapted to the client’s business reality.

In the case of individuals, the development of an offering aims to help them understand the environment of their legal issues when they spring up. Society’s average educational level allows people to appreciate the components of situations in which cutting edge legal information will allow them to measure the risks involved.

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66 Diagram adapted from Susskind, “The End of Lawyers,” Oxford University Press, 2008.

## 8 Clients' access to justice

This section deals with access to justice. In general, the wealthy and the very poor have access to justice. Between these two extremes, individuals do what they can to assert their rights. Nonetheless, certain tools are available for this majority, namely the middle class, to be able to finance their potential legal service needs. Legal insurance, information and legal clinics are among the less expensive means.

Here, we will be discussing access to justice for the least fortunate.

Legal aid was introduced at the start of the 1970s. In 2009, of the requests for aid filed with the Commission, 53% dealt with civil matters and 47% with criminal matters. Thanks to noble objectives of equality and fairness, most OECD countries offer this kind of help to the most destitute.<sup>67</sup>

### 8.1 MARKETS FOR PRIVATE GOODS AND PUBLIC GOODS

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Many categories of private goods are exchanged on the market between producers and consumers. The quantities of private goods are limited. The price mechanism determines not only the types of goods and/or services (necessity, luxury) exchanged but also their quantity and their circulation. In the case of public goods, price becomes an abstract, vague concept, even at times completely absent from popular perceptions and language. As for quantities of public goods, contrary to perceptions, their supply is very limited and is closely linked to collective wealth.

In the market for public goods, taxpayers will say that their contributions to the tax system gives them de facto authorization to enjoy these goods since they pay for the privilege of using them. As for those who do not pay income taxes, and there are many in Quebec who do not, they justify their "right" to the basket of public goods by their low incomes. The progressive nature of our tax system, namely consumption taxes and the individual income tax, are such that individuals with moderate incomes still benefit from the health care system, education, public security and so on, as much as more fortunate individuals. This is an important part of the redistributive character of Canadian and Quebec society. Nothing being perfect, as the recent history of economic systems demonstrates, there nonetheless exists here as in other jurisdictions a transfer of wealth from the more affluent to the underprivileged.

The following table shows the distribution of the tax burden in Quebec. The level of government revenues determines the range of public goods.

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<sup>67</sup> Bowles, R., Perry, A., "International Comparisons of Publicly Funded Legal Services and Justice System," United Kingdom Ministry of Justice, 2009.

**TABLE 33: Distribution of the individual income tax in Quebec**

Income brackets	Proportion of total income taxes paid (%)	Proportion of total income (%)	Proportion of all taxpayers (%)
0 – \$49,999	40.0	59.3	86.3
\$50,000 – \$99,999	37.5	27.7	11.7
\$100,000 or more	22.5	13.0	2.0
TOTAL	100.0	100.0	100.0
Proportion of taxpayers who pay no taxes (%)	39.8		

Source: Ministère des finances, “Statistiques fiscales des particuliers en 2007,” Québec Government, 2010.

Without dwelling too much on the data in the table, it must be pointed out that those earning \$50,000 or more make up 13.7% of all taxpayers yet shoulder 60% of the tax burden. According to the slogan too often heard in progressive circles, making the rich pay is specifically aimed at this category of workers, at least if we assume that an income of \$50,000 makes one “rich.” At the other extreme, the table indicates that nearly 40% of Quebec taxpayers pay no income tax.

If we focus on taxpayers and we exclude other forms of income from various taxes and from indirect taxation, it is workers earning \$50,000 or more who contribute the most to paying for public goods. Therefore, an increase in the supply of public goods implicitly touches the ability to pay of a minority of taxpayers.

Clearly, this is not the picture of a wealthy society.

The reason that Quebecers often see themselves as “rich” is precisely the province’s generous “social safety net.” The distribution of income generated by individuals does not justify this qualifier. In fact, a recent study very clearly shows that neither raising income or other taxes nor larger federal transfers will be able to guarantee the preservation of benefits for Quebecers without a major readjustment of the tax level and deficit control.<sup>68</sup> Only wealth creation through innovation can grow or even maintain the current basket of public goods. The fact that the author of the study is a left-of-centre Quebec economist adds even more credibility to these results.

68 Fortin, P., “Staying the Course,” C.D. Howe Institute, 2011.

## 8.2 THE SUPPLY OF PUBLIC GOODS FROM THE QUEBEC GOVERNMENT

Now what about the monetary value of public goods in Quebec? The following table summarizes the structure of the supply of public goods.

**TABLE 34: The budgetary operations of the Quebec Government**

Items	2001	2006	2008
Total expenditures (millions of \$)	49,251	63,368	67,094
Economy and environment (%)	12.2	11.7	12.1
Education and culture (%)	22.0	21.2	21.5
Health and social services (%)	33.4	37.5	37.9
Family support (%)	9.9	8.3	8.1
Justice (%)	7.2	8.6	8.4
Debt service (%)	15.3	12.7	12.0
Total revenues (millions of \$)	50,628	65,361	68,744
Taxes on income and assets (%)	51.1	44.1	42.8
Taxes on consumption (%)	18.7	19.7	19.1
Duties and permits (%)	2.8	2.5	2.4
Other revenue (%)	4.6	5.8	6.3
Crown corporations (%)	6.8	6.7	7.3
Transfers from the Government of Canada (%)	16.0	18.3	21.4
Budget balance (millions of \$)	1,377	1,993	1,650
Accumulated deficit (millions of \$)	81,042	96,124	94,171
Total debt (millions of \$)	104,848	122,600	125,915

Source: Quebec Institute of Statistics (2009)

A few observations regarding the table:

- First, even though the budgetary balance is positive, the table indicates that the Quebec government is going further into debt in order to continue to offer the same basket of public goods, and even to increase it. The Balanced Budget Act promoted creativity on the part of accountants. In fact, following the adoption of this law, the public debt grew from \$104 billion (2001) to \$125.9 billion (2009). One need not be an actuary to understand that the Quebec government's ability to pay for public goods exceeds what our collective wealth can afford.
- Second, as every observer of the public scene knows, the education and health budgets are absorbing larger and larger proportions of public funds. The combined proportion of these budgetary items grew from 55.4% in 2001 to 59.4% in 2008.

The question of access to justice is on a level with all other “public goods” like education, health, transportation, culture, etc. The demand for public goods is infinite, while the supply from various levels of government is determined by the level of collective wealth, i.e., by GDP.

The table shows that the budget for justice never exceeded 8.6% of the Quebec Government’s expenditures. In fact, it has decreased, taking into account the growth of the government’s overall expenditures. This explains why the Legal Aid budget has not gone up since the mid-1990s. It will not go up in the future either, and we shall explain why.

Demands for increased government funding are numerous. The reason for this is fairly simple. The lobbies that are the most powerful and the most popular with public opinion rank first. Doctors, nurses, and daycare technicians place well in these rankings. Lawyers and justice are nowhere to be seen.

The facts and the Quebec government’s actions on the ground testify not only to chronic cost overruns, but also to an excessive range of public goods offered:

- The roads and bridges of Quebec up until very recently were in a lamentable state; the costs of upgrading them are pharaonic.
- Quebec’s universal drug plan form includes a range of ineffective medications because they are cheap.
- The operating costs of the \$7-a-day daycare system are now a bottomless financial pit; and yet, the system is still lacking a minimum of 8,000 places, which corresponds to hundreds of millions of dollars.
- Students with difficulty are very expensive for the government, so they are being reintegrated into normal classes.
- People suffering from mental illness are being returned to their homes.
- The health care system is collapsing from its inefficiency and yet Quebec is one of the jurisdictions in which per capita expenditures are the highest.
- The concept of paternity leave is gaining in popularity and recent “mini baby booms” accentuate the deficits of this program.
- Let us not forget the government’s unionized employees, who are benefiting from a new collective agreement.

So, arguing for increases in the justice budget or again for increasing access to legal aid for the underprivileged is not among the top priorities of the purveyors of public goods. The current leitmotif among analysts of the provincial scene with regard to the “welfare state” is not to cut but to do more with current resources. The watchword is productivity growth.

### 8.3 A NEW SERVICE OFFERING FROM QUEBEC LAWYERS

Concerned with protecting the public interest, Quebec lawyers must introduce new ways of doing things in order to broaden access to justice, and not only for the most destitute, but also for the entire middle class. The development of a Quebec model of access to justice inspired from Susskind's "building blocks" could be a good place to start.<sup>69</sup> At least it would be good to analyze the feasibility of this kind of approach.

The strategies to develop are many:

- identifying new ways of doing things (integrated legal services);
- taking stock of new business models;
- daring to step off the beaten track:
  - delegating routine legal actions;
  - auctioning off blocks of legal services in the case of Legal Aid, which would fetch a better price from practitioners interested in this clientele;
  - accentuating the development of "legal insurance" products, which are very popular in other jurisdictions;
  - developing new sources of financing;
  - developing appropriate conflict resolution methods;
  - etc.

69 Susskind, R., « The End of Lawyers », Oxford University Press, 2008, p.235.

**PART IV**

**LAWYERS IN QUEBEC IN 2021**



Report of the Committee  
on Current Issues in Private  
Practice and the Future  
of the Profession

**Barreau**  
du Québec





## 9 Lawyers in Quebec in 2021: The development of prospective scenarios

### 9.1 THE REASONS BEHIND THE SCENARIOS

The analysis of the issues affecting private practice has allowed us to propose a diagnostic for this segment of the legal services industry. The results of this stage must now serve to plan the development of the profession within a given temporal horizon, namely a decade in this current study (2011-2021).

The construction of scenarios about the future of the profession is what is now required to complete the prospective analysis. The use of forecasting for lawyers in private practice in Quebec constitutes a look to the future designed to illuminate the present actions of the participants in this area of practice. At this stage of the work, it is a matter of describing the characteristics of the future context in which the internal and external environments of private practice will evolve.

Nonetheless, the construction of prospective scenarios brings up a major problem, namely that of taking action (strategies and scenarios) by relying on the Québec Bar's ability to convince members of the profession in private practice to determine the full extent of the changes to be introduced to the industry and to stimulate their willingness to react and adapt to these new market situations. This is no mean task. In fact, lawyers belong to one or another of the profiles described below.

**TABLE 35: Attitudes of professional lawyers regarding change**

The "reactive" lawyer	The "proactive" lawyer
<ul style="list-style-type: none"> <li>■ Conservative but sees himself or herself as realistic</li> <li>■ Rather sensible in the short term</li> <li>■ Nature of objectives not obvious because of uncertainty</li> <li>■ Not inclined to action</li> <li>■ Transposition of the past onto the future</li> <li>■ Negation of strong tendencies</li> <li>■ Logic of the moment</li> <li>■ No value judgments</li> </ul>	<ul style="list-style-type: none"> <li>■ Avant-garde and can seem unrealistic</li> <li>■ Thinks long term</li> <li>■ Pays attention to objectives</li> <li>■ Accounts for the unforeseen, for sudden changes of context, for new situations</li> <li>■ Inclined to action</li> <li>■ Prepares for the future</li> <li>■ Thinks in a voluntaristic manner</li> <li>■ Sometimes sets sights on vague goals</li> </ul>

Source: "La prospective dans les services," Groupe Futuribles, 2009.

Reactive lawyers will not provoke change, they will be subject to it. It is rather the forces of change that lead these types of professionals to modify and adapt their ways of doing everything while they miss the security and comfort of the old ways. The prospective approach implies a good dose of proactivity. The approach necessarily implies

action. This does not mean that we must abandon rigour. It is not enough to describe uncertainties like the state of the economy and the changing number of lawyers, or to document the greater number of women in the profession. With the scenarios, we must carry out a task designed to structure the way lawyers in private practice in Quebec see their future environment. The Québec Bar's room for manoeuvre highlights the main risks and opportunities with which the order will be faced over the next ten years.

The prospective approach borrows certain components from scientific inference, namely rationality and logic in the analysis of facts, which necessarily implies the rejection of *a priori* thinking. But recall that the future of private practice is not "knowable" in the normal sense of that term. Still, the scenarios about private practice and the future of the profession were developed by the CPPP according to the following rules:

- The critical spirit of members;
- An informed view of the challenges of private practice;
- An enlightened reflection on new ideas with particular attention paid to events likely to modify the state of the situation;
- A transcendence of individual interests;
- A realization of evolving techniques and changing professional and societal values;
- An openness to groups, organizations (both within the Bar and outside it) likely to stimulate reflection on the future of the profession;
- Carefully listening to people from all walks of life who can express a vision of justice different from the one held by lawyers;
- Attempting to integrate the actions of Québec Bar members to a global context through prospective reflection.

## 9.2 THE RECENT PAST: THE "SINGAPORE SCENARIO" (1996)

In 1994, in reaction to some soul-searching about the practice of law, especially with regard to the number of members, the loss of market share and the difficulty certain members have of generating adequate revenue, a Committee was set up to determine the components of this real or apparent set of problems.<sup>70</sup> From the start, the Committee adopted the prospective approach to analyze the context of the practice of law and its development. The report submitted by the Committee and adopted by the General Council in June 1996 would serve as a reference both for Quebec lawyers and for other professional orders.<sup>71</sup> Recall that a good number of professional orders of lawyers both in Canada and in the United States drew much inspiration from the Quebec study.

The construction of scenarios regarding the future of the practice of law requires a determination of the major issues facing the profession. The Committee had documented a certain number of issues:

- Quebec's economic performance (GDP);
- The development and the impact of IT;

70 This refers to the "Comité sur l'avenir de la profession."

71 Québec Bar, "La pratique du droit au Québec et l'avenir de la profession," 1996

- The predominance of corporations among the clientele of the legal services industry;
- The number of lawyers will continue to grow, which creates employment pressure and competition;
- Competition from other professions will increase;
- Driven by IT, the practice of law will change radically and will require adaptation on the part of practitioners.

From these issues, scenarios and hypotheses were developed. The rules of the game for forecasting require a minimum of two scenarios with regard to the analysis of a given situation. The Committee therefore developed three scenarios. The following table reproduces the wording of the hypotheses of the last exercise and establishes their relevance in 2010.

**TABLE 36: The relevance of the trends (1996)**

Scenario hypotheses	Meaning	Relevance in 2010
Permanent structural changes	Changes that happen every 50-60 years (IT for current ongoing changes).	Structural changes are effectively permanent.
Permanent globalization	"Global village."	The effects of globalization are recurrent: delocalization, economic migration, instant planetary information, etc.
Weak GDP growth	Very weak forecast (immediate cause of structural changes).	Economic growth was spectacular in Canada and Quebec from 2002 to 2007. The 1996 forecasts proved to be accurate in the short term, less so in the long term.
Government budget crises	The size of the public debt cannot be maintained long term.	The problem has gotten worse.
The wealth level of the population	Growing gap between the rich and the poor.	The rich are getting richer and the poor are getting poorer. Because of the size of the public debt, the government will have a hard time continuing to play its "welfare" role.
Permanence of new technologies	A change that will affect all economic actors.	What to think? In 1996, email was not even available, much less the Internet!
Aging of the population	The first wave of baby boomers is 50 years old.	The first wave is now 65 years old!
The image of lawyers leaves much to be desired	Negative image in the eyes of all clienteles.	This situation has changed little.
The number of lawyers in the market is relatively high	Hard for some lawyers to find work.	The rate of growth has slowed over the past 15 years.
Competition in the practice of law is fierce	An economy that is restructuring accentuates competition (among lawyers and with non-lawyers).	Perception that varies from lawyer to lawyer and by area of practice.
The volume of needs for legal services is growing	Growing needs but issues of ability to pay and "value added."	It is undeniable that needs have increased. Access is still a problem.

Source: Québec Bar, "La pratique du droit au Québec et l'avenir de la profession," 1996

Except for the hypotheses regarding economic growth, almost all of these hypotheses are still valid in 2010. What has changed in 2010 since the 1996 report is rather the intensity of the challenges for the practice of law.

There are issues upon which the Bar had minimal ability to act, if at all. The hypotheses upon which the Québec Bar was able to act at least in some measure are collected below.

**TABLE 37: The actions of the Québec Bar**

Hypotheses	Actions of the Québec Bar
The impoverishment of the population	The destitute and those with low incomes have a hard time accessing justice. The actions of the Bar with regard to access to justice are numerous: representations to the Ministère with regard to Legal Aid, Legal Insurance, Édualoi, the publications of the Fondation du Barreau, etc.
IT	The CAIJ was set up in the early 2000s in order to create a “virtual library” for the benefit of all Quebec lawyers. It goes without saying that lawyers in private practice, especially those who practice solo or in a nominal business, were the primary beneficiaries. A cost/benefit evaluation carried out in 2005 indicated a value of \$10,200 in access to information stemming from the value of subscribing.
The image of lawyers	The Bar’s Communications Service acts on a daily basis to improve the image of lawyers held by various audiences.
The practice of law and ongoing training	The Bar’s ongoing training service holds a large number of training sessions (courses, conferences, seminars) on specific topics in order to respond to member demand.

1) Vaillancourt, F. Dr., Boucher, P., “Les avocats du Québec et le CAIJ – Estimation des coûts et des bénéfices découlant de la cotisation annuelle,” Québec Bar, 2005.

In sum, the Québec Bar has responded to the needs expressed by its members. The order acted on the issues upon which it could intervene in some way. Among other accomplishments presented in the table, the CAIJ was able to standardize legal information by merging into a single entity the law libraries of Quebec. Thus, all Quebec lawyers have access to a single source of high quality information.

The preceding committee on the future of the profession had developed three scenarios. These are synthesized in the following table.

**TABLE 38: The scenarios (1996)**

Scenario	Description of functioning	Impacts
STATUS QUO	The evolution of the profession will be modelled on the past and as a function of the predominant socioeconomic variables (GDP, number of members, competition). The Bar carries out its mission well.	The integration of new members into the profession will not allow them to occupy as much space as they could occupy. The image of the profession and working conditions will continue to deteriorate.
ALBANIA	Specific actions from the Bar will restrict access to the profession. Limiting the arrival of new lawyers will improve the economic conditions of existing members.	Lawyers have been dislodged from certain areas of practice. Consumers looking for less expensive legal services have broadened competition. Therefore, restricting the number of members will only accentuate this tendency.

Scenario	Description of functioning	Impacts
SINGAPORE	The profession assimilates IT, produces quality services at lower costs, works in a multidisciplinary manner, improves its skills (image).	Lawyers assimilate IT into the daily working of their practice. Lawyers make market development a permanent process. Routine legal acts are left to well-trained but non-lawyer personnel (standardization of certain services).

The committee on the future of the profession proposed that the Québec Bar accept and adopt the “Singapore” scenario. The General Council adopted the report in June 1996.<sup>72</sup>

On the one hand, it is refreshing to find in this report a certain number of statements and propositions that are currently found in the discourse of legal services industry “gurus.” On the other hand, the changes anticipated 15 years ago with regard to the regulatory framework are on the way to being realized in other jurisdictions. Think of the situation in Great Britain or in Australia with regard to the qualification of members, the gradual elimination of lawyers’ monopoly, modifications brought to business structures, the start of real multidisciplinary practices and finally, the opportunity for firms to have recourse to public financing.<sup>73</sup>

### 9.3 SCENARIO DEVELOPMENT ORIENTATIONS

In 2011, the CPPP established the framework of expected changes and integrated them into the timeframe adopted. In sum, it was a question of establishing what the profession should look like in ten years.

#### DIAGRAM 10: Development outlook



72 Québec Bar, “La pratique du droit au Québec et l’avenir de la Profession,” 1996 (page 107).

73 Ministry of Justice of England and Wales, “Legal Services Act,” 2007.

This view of the changing profession requires the elaboration of a certain number of hypotheses with regard to society, the profession and the markets to be served by private practice members.

### 9.3.1 Quebec society

#### **HYPOTHESIS 1**

##### **The aging of the population**

The population of Quebec is aging. Between 2015 and 2020, a large number of Quebecers from the baby boomer generation will reach the age of 65. The multiple effects of this group are increasingly documented. Analyses and commentaries are legion: falling tax revenues, future retirees' lack of financial resources, transfer of the public debt onto future generations—in short, there is no lack of soul-searching.<sup>74</sup> This is without counting the treatment of the elderly, who will enjoy greater life expectancy. The generalized indifference of the population to “old people” constitutes a significant challenge with regard to the care and the attention they will require in coming years.

#### **HYPOTHESIS 2**

##### **The irreversible alteration of the socio-cultural fabric**

Post-war immigration to Canada and Quebec was mostly European, Catholic or Anglican/Protestant and ethnically white. The recognition of the aging of the population in the early 1970s led the Canadian government to adopt one of the most liberal immigration and refugee policies in the western world. Immigrants settled down primarily in big cities like Vancouver, Toronto and Montreal. The socio-cultural fabric of the census metropolitan area (CMA) of Montreal changed radically. Certain cities and/or agglomerations of Montreal register high rates of households in which the primary language spoken at home is neither French nor English. Heading the list is Dollard-des-Ormeaux, where the rate is 64% of households.

#### **HYPOTHESIS 3**

##### **Increased social problems due to growing gaps in the distribution of wealth**

The gap between the rich and the poor in terms of income is getting wider in Quebec.<sup>75</sup> This gap is the largest it has ever been in 30 years and could well continue growing. In addition to increasing income inequality, the poorest work more without improving their economic conditions. Quebecers worked more, and the economy grew by 71% over this period, but it is not everyone who benefited equally from this growth. The lion's share went to the richest 10%, while the majority of Quebecers – the bottom 70% – receive less income.

#### **HYPOTHESIS 4**

##### **The omnipresence of IT in every sphere of society**

The penetration rate of IT has been phenomenal since the start of the millennium. In fact, 76% of Quebec households use the information highway at home, 98% have a telephone at home and 60% have a smartphone. The omnipresence of IT is no longer in any doubt.

74 Voir à cet effet, Fortin, P., « Garder le cap : le défi de l'équilibre budgétaire du Québec », CD HOWE INSTITUTE, M2011.

75 Voir à cet effet, l'Institut de recherche et d'informations socio-économiques (IRIS) et du Centre canadien de politiques alternatives (CCPA), 2010.

## **HYPOTHESIS 5**

### **The growing integration of lifestyles and fashions in the western world**

The specific languages and customs of different countries maintain a certain national identity. Still, fashion, music, arts and lifestyles have made the western world a lot more homogenous. The Internet has accelerated this strong trend. This homogeneity has repercussions on the daily lives of economic actors.

## **HYPOTHESIS 6**

### **The systematic exhaustion of the “welfare state” and its imminent inability to supply public goods**

The astronomical costs of Quebec’s social safety net, which keep on rising, are leading to the verge of failure. For instance, the health budget has grown by 6% per year since 2001 while the average growth rate of the economy has been 2.5%. The health budget takes up nearly 45% of government expenditures. Demand is infinite and resources are limited. Choices will have to be made with regard to parental leave, tuition, daycare, retirement, the economy, the elderly, etc.

## **HYPOTHESIS 7**

### **The overvaluation of popular public goods to the detriment of investments in justice and the rule of law**

The underfunding of justice is well documented. The system is taken for granted. A gulf is growing between the annual growth of legal activity (number of laws and regulations) and of the complexity of society compared to the budgets allocated to the Justice Department and to various proceedings. The disequilibrium between the level of resources required to satisfy the growing needs and the amounts allotted both by governments and by individuals and/or corporations is an ideal recipe for reaching a failure threshold that Quebec is not prepared for.

## **9.3.2 The lawyer as professional**

## **HYPOTHESIS 8**

### **The feminization of the profession of law**

The feminization of the profession is well documented. The proportion of candidates admitted to the practice of law includes a growing number of women. With the exception of engineering, there is much in common with a good number of other professions. For the practice of law, the aspirations of lawyers match neither more nor less with the existing models, which were configured in a time when practitioners were mostly men. Business models will need to change radically. Certain firms are experiencing recruitment problems. Companies specializing in the recruitment of lawyers confirm this trend.

## **HYPOTHESIS 9**

### **The values of new cohorts of lawyers in private practice**

The desire for changes in terms of working conditions in private practice is no longer the sole prerogative of women. The new generation of male lawyers are also abandoning the model of their elders. The values of these cohorts are more about quality of life than about earning high incomes and a life focused on work. Profound changes are coming.

## **HYPOTHESIS 10**

### **The changing demographic structure of the profession: age, gender, ethnic origins**

If Quebec is liable to experience major changes in terms of demographics, this occurrence at the individual level will necessarily have an impact on the future composition of the members of the order. It seems obvious that we need to avoid having these future lawyers only wanting to practice for immigrant clientele. This would contribute to the ghettoization of Quebec, which is obviously not desirable.

## **HYPOTHESIS 11**

### **The adaptation of members to IT**

It seems useless to doubt the opportunity of using IT in the daily practice of law. And yet, a significant number of lawyers do not have email addresses, which seems unbelievable in 2011. The literature on the use of technology by the legal professions is clear on this topic. Contrary to most economic sectors, the legal services industry never invested heavily in IT. Lawyers have always lagged behind when it comes to technological advances. Companies that specialize in the sale of computer services see lawyers and law firms using software packages rather than software. Adaptation is still evolving for lawyers.

## **HYPOTHESIS 12**

### **Members' understanding of the management of a professional practice**

Lawyers in private practice are first and foremost business professionals. The surprising income gaps among members in private practice measured by the median annual income is partly due to the fact that lawyers do not have a good understanding of the workings of business. Being in business requires a practical understanding of the legal services production function. Lawyers' training does not take into account the management of human resources, finance, market development, etc. These elements must be taken into account for the successful development of practices.

## **9.3.3 The markets served**

## **HYPOTHESIS 13**

### **The narrowness of many of the markets currently served by lawyers**

Successful businesses arrive first in new markets. As soon as the competition gets set up, the product (good/service) reaches maturity and its price falls. Legal services are not exempt from this basic rule. Lawyers are among the only professionals not to resort systematically to market analysis. Public relations and/or communications dominate their business development. Very few in the profession are interested in the in-depth analysis of market potential and the identification of emerging markets, which explains why certain market segments are saturated.

## **HYPOTHESIS 14**

### **Increased competition from new business models in professional services**

The business models that prevail in other jurisdictions will sooner or later spread to Quebec. Think of the advances in Great Britain and Australia that are bound to have an impact in the United States and in English Canada. Quebec lawyers will have no choice but to follow suit, otherwise they will lose their decision-making powers in a good number of industry segments.

### **HYPOTHESIS 15**

#### **Weakening of lawyers' areas of practice (reserved actions) in a growing number of western jurisdictions**

Professional orders are increasingly on the defensive when it comes to the intrusion of other professions into their respective fields of activity. A professional order bases its monopoly on the protection of the public and the fact that informational asymmetry prevents the consumer from making an enlightened choice between a charlatan and a competent professional. IT helps spread high-quality information while technological advances allow professionals to feel competent to offer services once reserved to another type of professional. Certain jurisdictions are evaluating this set of issues.

### **HYPOTHESIS 16**

#### **The clear trend of the preponderance of common law and “transnational” law with regard to codified law**

The reconfiguration of the global economic space will be influenced by new leaders from emerging economies; this is a strong trend. Codified law will not disappear. But since the Chinese favour common law and the English language for their international transactions, there is no doubt that “American law” will have precedence, which is bound to entail risks for Quebec lawyers.

### **HYPOTHESIS 17**

#### **The permanent displacement of centres of influence from West to East: from North America and Europe to China and India**

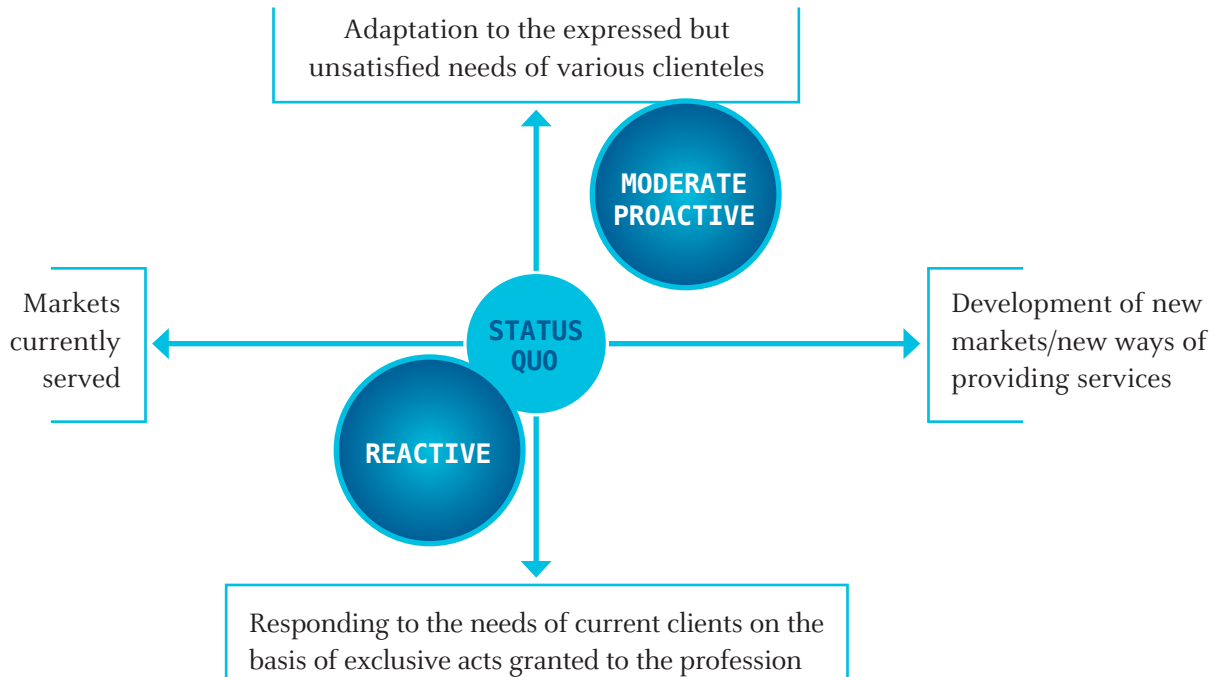
Is Quebec ready for the new centres of influence? There is no longer any doubt that economic power is tipping toward Asia. Yet still in 2011, over 85% of Quebec exports go to the United States. The challenge is enormous.

## **9.4 THE DEVELOPMENT OF THE SCENARIOS**

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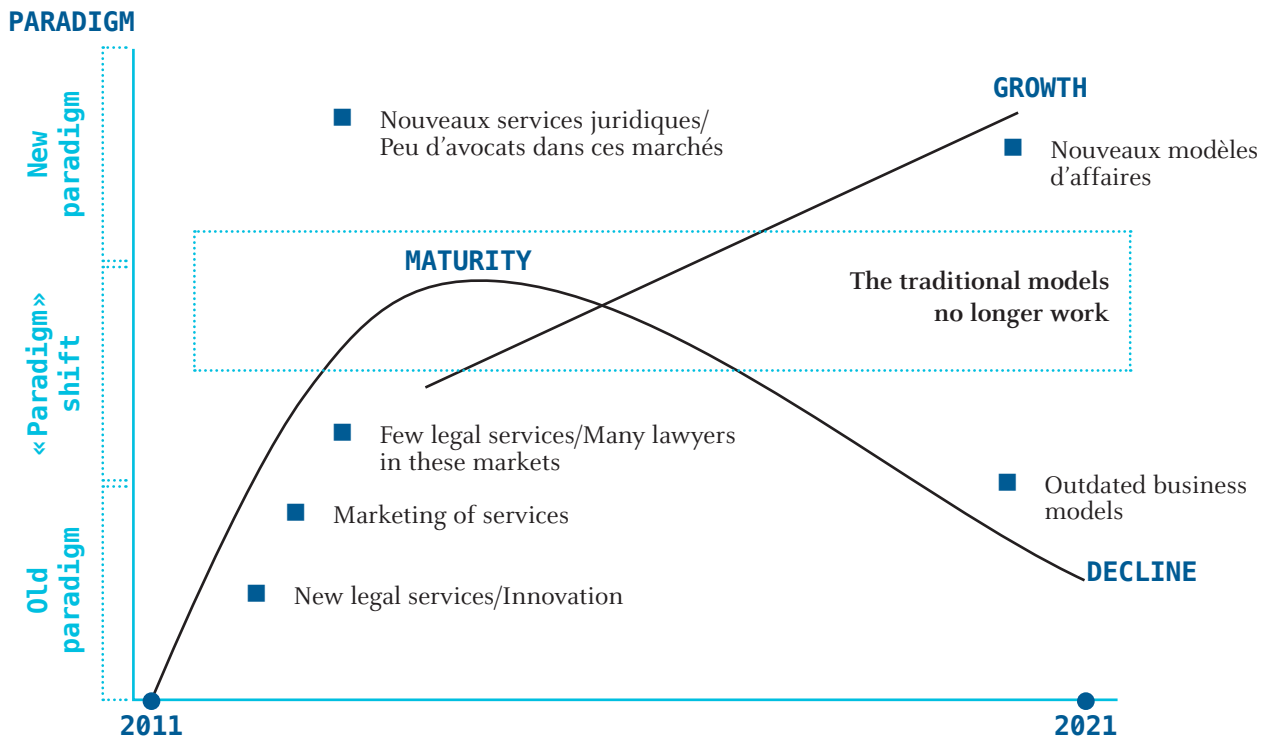
The CPPP developed three scenarios for the prospective analysis of the profession. The following diagram presents these scenarios. The results of the diagnostic of private practice led to certain observations from which came the working hypotheses of the preceding section. The diagram shows the strategic importance of clients' unexpressed needs and consequently of the development of new markets for lawyers in private practice.

**DIAGRAM 11: Future scenarios for the profession**



The central element in choosing the best scenario has to do with the identification and the development of new markets with regard to the provision of legal services. The diagram below presents the situation.

**DIAGRAM 12: The evolution of legal services in the economy**



The fluid nature of market situations is closely correlated with a paradigm shift that can sometimes prove brutal for the lawyer. The success of private practice in 2021 depends on the ability of members to adopt new business models, to develop a multidisciplinary approach, and therefore to exploit new markets. The paradigm shift corresponds precisely to this approach to the development of private practice in a context in which, as soon as a legal service becomes a commodity product, the number of competitors, both lawyers and non-lawyers, is high. The market then quickly reaches maturity and becomes saturated for the service in question. To gain new momentum, legal services therefore require a good dose of added value. Clienteles perceive this value and accordingly accept to pay a premium.

### 9.4.1 The “TEXTILE MANUFACTURER” scenario

#### Introduction

In the first scenario, the offer of legal services is perceived as being functional. It is useless to attempt to correct the observed gaps in terms of ways of doing things, productivity, innovation, etc. Certain market shares are conceded to new competitors from other professions.

#### Functioning

The variables that influence the development of the profession are not a serious threat. Quebec came through the last recession brilliantly; economic growth is returning. Most lawyers are working and earning a good living. Lawyers use IT according to their own abilities. Competition from other professionals is either isolated or limited. As for the changing demographics of the province, of clienteles and of the profession, there does not seem to be any major soul-searching. The aging of the population is a great opportunity for younger people. As for immigration, it compensates for the observed decline.

The Québec Bar fully assumes its mission of protecting the public. The situation leads one to think that the market – and the profession – will self-regulate.

#### Impacts

It has been observed that IT and globalization have helped eliminate borders. No economic sector can make progress self-sufficiently. Pretending that inertia will provide solutions to all the sets of problems observed risks leading to the gradual erosion of markets served and making penetration into new markets extremely difficult, given that they may already be occupied by other non-lawyer professionals.

### 9.4.2 The “COMPACT DISC” scenario

#### Introduction

In the second scenario, lawyers perceive the Act respecting the Barreau du Québec as a guarantee that lawyers will always occupy a predominant place in the provision of legal services. If there is a problem, it resides in the fact that there are too many lawyers in the market. As for illegal practice on the part of other professionals, the Bar has tools to check them.

## Functioning

Law is the purview of lawyers entered on the Roll of the Order. This kind of scenario automatically sets out a repressive approach. It is the Syndic's Office and Professional Inspection that direct the future, no more, no less. This approach requires colossal amounts of human and financial resources.

## Impacts

No economic sector can effectively raise sufficient barriers to hold back the waves of new ideas and new players and the coming paradigm shift. Refusing to change and attempting to block change causes immediate harm. The risk is that lawyers will gradually lose their distinctive skills, to the benefit of innovative professionals and to the detriment of the profession.

### 9.4.3 The "BOMBARDIER" scenario

#### Introduction

In the third scenario, lawyers believe that certain structural shocks are irreversible. The profession must take into account IT and globalization as vectors for change in the industry. These changes affect both clientele and service providers. Research and development and innovation are unavoidable for lawyers.

#### Functioning

The Québec Bar takes into account change at all levels. It improves its conception of the issues affecting members such as feminization, aging, competition, IT, and especially the favourable prospects provided by globalization. All Bar authorities have received clear and precise directives on strategic directions with regard to the future of the profession.

#### Impacts

The Québec Bar declares its leadership as an agent of change not only within the legal professions but also within the wider professional world. The great social issues being pregnant with legal content, the Bar is for all socio-economic orientations.

Lawyers in private practice take advantage of this leadership to identify and adopt new business models, for they are at the forefront as agents of change and well aware of the challenges and possibilities of emerging markets. The members of the Bar occupy the competitive space that falls to them on account of their training and their proactivity.

All members of Quebec's professional system recognize the place occupied by the Québec Bar and its "formative" role when it comes to the legal service needs of their respective members. Thus the Bar becomes indispensable in terms of multidisciplinary and of the identification of Quebecers' expressed but unsatisfied needs.

## 9.5 THE “BOMBARDIER” SCENARIO

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For reasons that seem obvious, the members of the CPPP believe that the Québec Bar must be neither inert nor reactive when it comes to the future of the profession for lawyers in private practice. The Bombardier scenario focused on a proactive approach fits in with the results of the final exercise on the future of the profession.

This scenario is concerned with change and the adaptation of the profession to the major underlying currents that have an immediate impact on private practice.

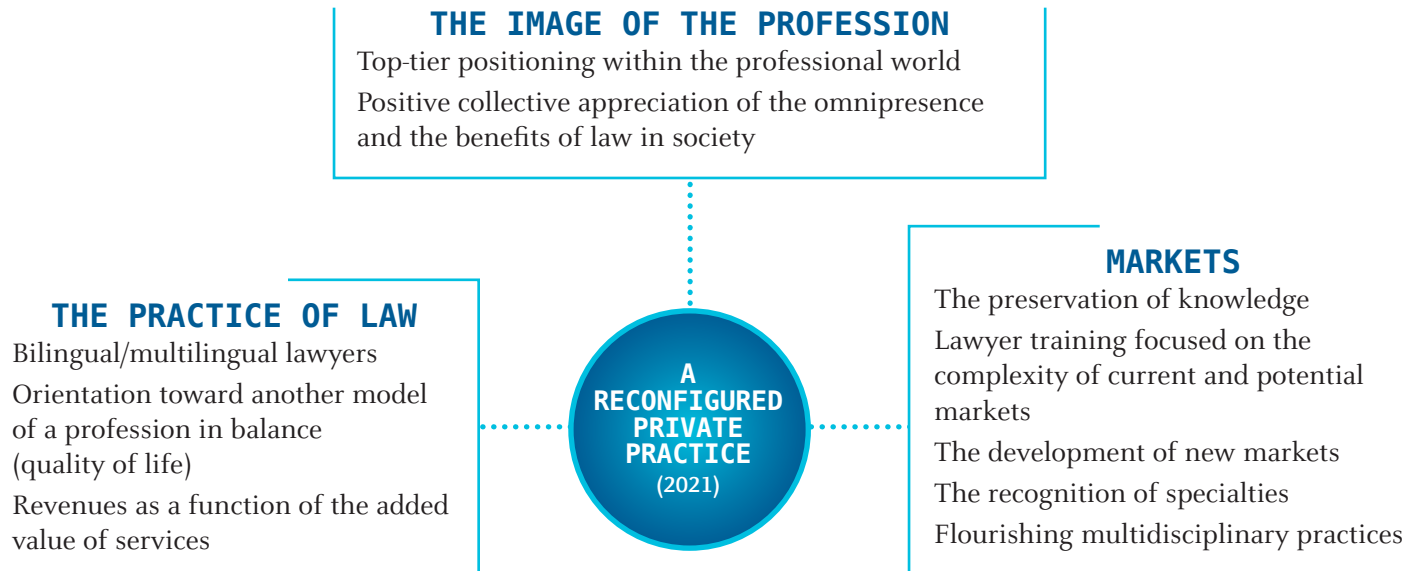
### 9.5.1 The content of the scenario

The Bombardier scenario aims to transpose healthy objectives through to the year 2021. These objectives are taken from prior declarations, and the probability that they will be achieved rests on the implementation of strategies and actions from the Bombardier scenario. What lawyers in private practice need to accomplish is summarized below:

- Improvement of the image of the profession
- Lawyer training focused on the complexity of current and potential markets
- Bilingual/multilingual lawyers
- Preservation of knowledge
- Development of new markets
- Top-tier positioning within the professional world
- Orientation toward another model of a profession in balance (quality of life)
- Revenues as a function of the added value of services
- Recognition of specialities
- Flourishing multidisciplinary practices
- Positive collective appreciation of the omnipresence and the benefits of law in society

These objectives essentially revolve around three axes:

- Improving the image of the profession
- Improving the practice of law
- Developing markets

**DIAGRAM 13:** Private practice in 2021

### 9.5.2 Strategies and actions

The strategies and actions are grouped together. They will subsequently be split up.

#### IMPROVING THE IMAGE OF THE PROFESSION...

##### OBJECTIVES FOR IMPROVING THE IMAGE OF THE PROFESSION

- Top-tier positioning within the professional world;
- Positive collective appreciation of the omnipresence and the benefits of law in society.

##### STRATEGIES AND ACTIONS FOR THE BAR

###### FOCUS

Documenting the place of law in society, the value of the profession and of legal institutions, similarly to the other great missions of government, i.e., health and the durability of the economy and of Quebec society, which are closely correlated with the healthy evolution of justice and its institutions.

Specific, recurring actions aimed at setting in motion representations to target groups (governments, pressure groups, professional orders).



## STRATEGIES AND ACTIONS FOR LAWYERS

### FOCUS

Lawyers are aware of the new discourse regarding the positioning of the profession. They are becoming agents of change. They are a critical mass of 12,000 messengers who convey to all spheres of society the strategic importance of law and of private practice.

## THE PRACTICE OF LAW...

### OBJECTIVES FOR THE PRACTICE OF LAW

- Bilingual/multilingual lawyers;
- Orientation toward another model of a profession in balance (quality of life);
- Revenues as a function of the added value of services.



## STRATEGIES AND ACTIONS FOR THE BAR

### FOCUS

Future cohorts of lawyers are equipped with the latest technological tools and are perfectly bilingual. They have a good knowledge of the rudiments of business and are apt to provide as many commodity services as specialized services that command high prices. The Bar favours the values of the new generations and displays a spirit of openness.

All Bar authorities are contributing to this change of culture. A knock-on approach is developed to achieve a certain homogeneity in methods of functioning.



## STRATEGIES AND ACTIONS FOR LAWYERS

### FOCUS

A majority of lawyers adopt the contents and the prerequisites of new methods of providing legal services. Atypical service provision models are numerous and adapted to the needs of various situations. A constant search for value-added services distinguishes the lawyer from other potential providers of legal services.

**MARKETS...****OBJECTIVES FOR MARKETS**

- The preservation of knowledge;
- Lawyer training focused on the complexity of current and potential markets;
- The development of new markets;
- The recognition of specialties;
- Flourishing multidisciplinary practices.

**STRATEGIES AND ACTIONS FOR THE BAR****FOCUS**

Certain markets should be favoured even if they are considered to be mature. The question of markets and their development for lawyers in private practice having been ubiquitous in recent decades, the Bar sets up a permanent LOOKOUT service to keep track of markets and their evolution.

The Bar also favours experimentation with new business models in conjunction with partners from the academic, social and business worlds.

**STRATEGIES AND ACTIONS FOR LAWYERS****FOCUS**

Lawyers are gradually abandoning ineffective business models (hourly billing, litigious approach, etc.). In harmony with a chosen market segment, lawyers specialize and become known for their specialties, which allows them to experiment with new business models and to explore emerging markets. This new approach allows lawyers to be effective even in the provision of services to mature markets, which will always be a part of the provision of services.

## 10 Conclusions of the study: Quebec lawyers in 2021

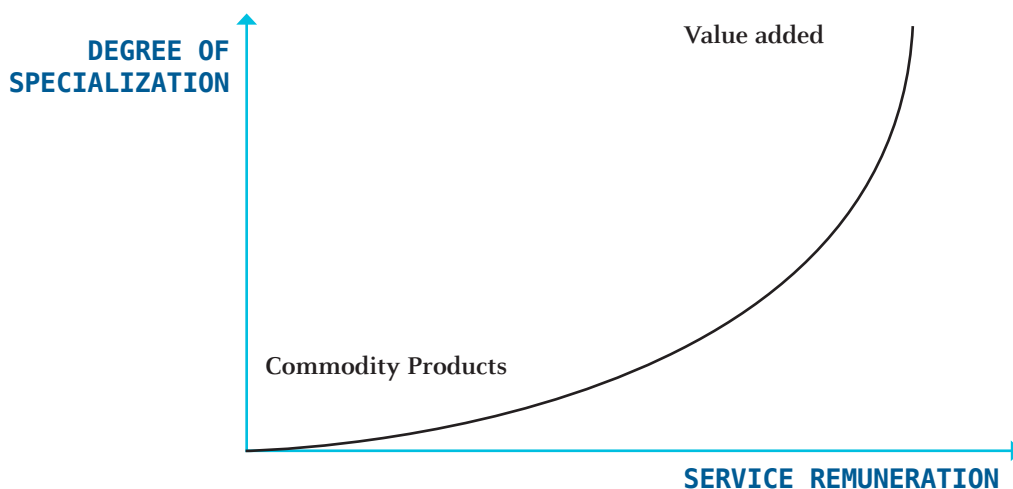
The conclusion that stands out from this report on the future of the profession requires that we take stock of the profile of Quebec lawyers and of markets in 2021. The broad strokes of this profile are summarized below.

First of all, the Quebec lawyer in 2021 is most often a woman. In that year, 56% of members will be women. Indeed, at the start of the next decade, a majority of Bar members under the age of 55 will be women. The cohort of male baby boomers who have dominated the legal workforce in the post-war period will be in the minority and on the verge of exiting the field.

These lawyers in 2021 will have a very different conception of work. Workaholics, male or female, will still be found in the profession. However, they will no longer be the norm, but rather the exception. The industry's significant productivity growth, driven by IT, will allow for this equilibrium, which is rooted in new values. Moreover, a large proportion of Bar members will be from minorities. This change will alter the practice of law.

Technological advances will allow lawyers to choose among different practices depending on the kind of legal service offered based on different clienteles. The market will be divided into "commodity products" and "specialties."

### DIAGRAM 14: Legal services and remuneration



Specialized lawyers who will know how to identify and serve the unsatisfied needs of clients will be able to generate substantial incomes from both business and individual clients. This latter segment is a priori less lucrative due to individuals' ability to pay and to the fact that commodity products will have a large role to play.

This is a sign that the question of access to justice will have been resolved, but only partially. Society's wealthiest will always have access to considerable means for the defence of their rights. The poorest will still need to turn to government for help. In 2021, the government will certainly be in the eye of the storm in terms of public finances. There will not be any additional funds allocated to Legal Aid.

As a result, and this holds for all public goods, it is impossible to adhere to the principle that all Quebec citizens should have unlimited access to health care, education or justice, especially with regard to the poorest. Some choices will have to be made.

Just like other producers of goods and services, lawyers will need to demonstrate the costs and benefits of justice and of the legal system in order for additional sums to be allocated to them both by the public and by the private sector. It will be a matter of allocating scarce resources to meet unlimited needs. Will legal services be indispensable for the proper functioning of the Quebec economy? That is for lawyers to answer.

To arrive at this new positioning, emerging markets for legal services need to be identified and developed. It was established above that the provision of services will be either specialized or unspecialized. In 2021, there will be few large firms of global calibre, but they will be gigantic compared to today. And yet, the degree of internationalization of these megafirms will have as a counterpart their opposites who will have chosen to remain within the national market.

The following table supports this verdict.

**TABLE 39: Large international firms in 2021**

Firms	Profit/partner (\$)	Gross revenues (\$B)	Number of lawyers (n)	Internationalization index (%)
Wachtell	15,677,000	3.4	400	0
Latham & Watkins	5,774,000	22.75	11,066	39.6
Skadden Arps	6,023,000	15.97	6,745	23
Cravath	9,635,000	2.59	832	5.7
Baker & McKenzie	2,501,000	12.13	13,512	89

Source: Georgetown University Law Center for the Study of the Legal Profession, 2009.

Neither size nor degree of internationalization are guarantors of a firm's profitability. The large size of firms is however a sign of titanic battles in terms of clients. Globalization will definitely have interconnected the continents. But there will still be room in the market in 2021 for lawyers who will have chosen to practice only in Quebec and Canada. However, these Quebec lawyers will have to be on the cutting edge in terms of technological tools and be in contact with actors in other jurisdictions.

Besides the importance of market segments and of the positioning of lawyers in private practice, the remuneration model will look very different. The evaluation of time on an hourly basis will still be used to establish the remuneration of lawyers. However, it will no longer be the predominant vector for establishing income.

In 2021, the profession will be esteemed and recognized by all of Quebec society and the professional world. Lawyers in the next decade will be bilingual and in tune with the values of other cultures. Finally, lawyers in 2021 will be specialists in a multidisciplinary work environment.

# ANNEXES



## Report of the Committee on Current Issues in Private Practice and the Future of the Profession



# Annex I

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## Annex II

# Chronology of the evolution of IT

Year	Event
1938	Professor John Atanasoff from Iowa State College and a graduate student named Clifford Bell design the first computer.
1942	The Pentagon develops the Electrical Numerical Integrator and Computer (ENIAC). For security reasons, its existence will only be revealed in 1946, in the aftermath of the Second World War.
1969	ARPANET (predecessor to the Internet) is launched.
1971	The first “microchip” is produced by INTEL.
1972	Companies XEROX, WANG and VYTEC put on the market the first word processing systems.
1973	IBM designs the first computer to use a graphic interface and a mouse.
1981	IBM puts on the market the first personal computer to use the WINDOWS operating system.
1983	The switchover to the TCP/IP protocol marks the debut of the global Internet.
1985	MICROSOFT markets the WINDOWS operating system.
1989	The WORLD WIDE WEB project is presented to the European Organization for Nuclear Research (CERN).
1990	WINDOWS 3.0 from IBM offers a stable graphic interface for its personal computer.
1995	Usage of the Internet spreads quickly.
1998	Appearance of electronic commerce.
2000+	<p>Multiplication of pocket computers and of convergence. Expansion of multifunction social media:</p> <ul style="list-style-type: none"> <li>▪ FACEBOOK allows events to be put on the calendar, among other things.</li> <li>▪ TWITTER is useful for coordinating these events.</li> <li>▪ YOUTUBE allows them to be broadcast in cyberspace.</li> </ul>

Source: Meadowcroft, B. “The Impact of Technology on Work and Society,” 2005.

## Annex III

# Distribution of male and female lawyers in 2016 and 2021

### DISTRIBUTION IN PERCENTAGE TERMS OF MALE AND FEMALE LAWYERS ENTERED ON THE "ROLL OF THE ORDER" IN 2016

2016	Male lawyers	Female lawyers	Total
20 to 24 years	0.3	0.6	1.0
25 to 29 years	6.2	10.3	16.6
30 to 34 years	5.4	9.5	14.8
35 to 39 years	4.3	7.2	11.5
40 to 44 years	4.8	7.2	12.0
45 to 49 years	4.9	6.1	11.0
50 to 54 years	5.2	5.4	10.6
55 to 59 years	4.9	3.6	8.4
60 to 64 years	3.8	1.8	5.6
65 to 69 years	3.1	1.1	4.1
70 years and +	3.8	0.7	4.5
<b>TOTAL</b>	<b>46.6</b>	<b>53.4</b>	<b>100.0</b>

Source: Observatoire des services professionnels.

### DISTRIBUTION IN PERCENTAGE TERMS OF MALE AND FEMALE LAWYERS ENTERED ON THE "ROLL OF THE ORDER" IN 2021

2021	Male lawyers	Female lawyers	Total
20 to 24 years	0.3	0.6	0.9
25 to 29 years	5.6	9.2	14.8
30 to 34 years	6.9	11.3	18.1
35 to 39 years	4.8	8.5	13.3
40 to 44 years	3.8	6.5	10.3
45 to 49 years	4.2	6.5	10.7
50 to 54 years	4.3	5.4	9.7
55 to 59 years	4.2	4.1	8.2
60 to 64 years	3.0	1.9	4.9
65 to 69 years	2.1	1.1	3.2
70 years and +	4.5	1.4	5.9
<b>TOTAL</b>	<b>43.8</b>	<b>56.2</b>	<b>100.0</b>

Source: Observatoire des services professionnels.

## Annex IV

### Distribution of the main economic sectors in Quebec (2009)

Economic Sectors (NAICS)	Value (\$ million)	Weight of the sector/GDP (%)
Agriculture, Forestry, Fishing and Hunting	4,938.6	1.7
Mining and Oil and Gas Extraction	1,368.1	0.4
Utilities	10,333.0	4.0
Construction	14,866.3	5.7
Manufacturing	40,451.4	19.0
Wholesale Trade	13,457.1	5.4
Retail Trade	17,756.1	4.2
Transportation and Warehousing	11,311.6	4.2
Information and Cultural Industries	9,748.6	3.9
Finance, Insurance, Real Estate	46,195.6	17.1
Professional, Scientific and Technical Services	11,795.4	4.4
Administrative Services	6,385.8	2.7
Educational Services	13,250.3	5.2
Health Care	19,383.5	7.3
Arts, Entertainment and Recreation	2,586.1	1.1
Accommodation and Food Services	5,853.3	2.3
Other Services	6,944.6	2.6
Public Administration	17,870.3	6.3
Other	5,702.7	2.5
<b>TOTAL</b>	<b>255,452.4</b>	<b>100.0</b>

Source: Quebec Institute of Statistics, "Québec Handy Numbers," 2009 Edition.

# Annex V


## Variables used for the construction of the scenarios

### ENDOGENOUS VARIABLES

1. The number of lawyers in private practice
2. The aging of members
3. The adequacy of legal training in the needs of the market
4. Specialization
5. The École du Barreau
6. Ongoing training
7. Work environment
8. Workload
9. Technology in the workplace
10. Access to legal information
11. Services rendered to members by the Bar
12. Income level
13. Remuneration methods
14. The omnipresence of hourly billing
15. The added value of legal services
16. The growing presence of women
17. Ethno-cultural minorities in the profession
18. Solo practices
19. Practices in nominal partnership
20. Large firms
21. Multidisciplinary practices
22. The legal district (geography of the practice)

23. Employability in the profession
24. Financial management
25. Business development
26. The values of young people aged 20-35 years
27. The value accorded to work-family balance

### **EXOGENOUS VARIABLES**

1. The satisfaction of “individual” clientele
  2. The satisfaction of “business” clientele
  3. The size of the “individual” market
  4. The size of the “business” market
  5. Classic legal services (commodity products)
  6. The cost of services
  7. Emerging legal services (markets)
  8. Declining legal services
  9. The evolution of technology
  10. New legal service offerings
  11. Competition from social workers
  12. Competition from accountants (CA-CGA-CMA)
  13. Competition from notaries
  14. Competition from management consultants
  15. Competition from human resources consultants
  16. The delegation of legal actions to other jurisdictions
  17. The deregulation of professional services
  18. The deregulation of certain legal services
  19. The agreement with France on professional labour mobility
  20. The hiring of lawyers by business
  21. The hiring of lawyers by public and parapublic organizations
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