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HOW TO INCREASE MIGRANT RESILIENCE IN CANADA: WHAT THE LEGAL
SYSTEM CAN DO TO HELP

By

Po Kwan Tara Chan

A Major Research Paper
Submitted to the Faculty of Graduate Studies
through the Odette School of Business
in Partial Fulfillment of the Requirements for
the Degree of Master of Business Administration
at the University of Windsor

Windsor, Ontario, Canada

2020

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How to Increase Migrant Resilience in Canada: What the Legal System Can Do to Help
by

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June 9, 2020

DECLARATION OF ORIGINALITY

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ABSTRACT

Immigration is important to Canada. Migrants replenish our declining population, help drive our economy, and contribute to our labour market. By 2036, almost half of the Canadian population will be either first-generation or second-generation immigrants. While the migrant experience varies, it is recognized to be deeply challenging. Among these barriers is often the need to engage with the complex legal system during and after the settlement process.

This paper uses the literature to better understand the benefits of migrants in Canada, concept of resilience, benefits of diversity in the workplace, and how law firms can leverage diversity to perform better. This paper demonstrates how law firms can benefit simultaneously while they help migrants foster higher levels of resilience by increasing their access to legal services. Research is used to provide both practical steps to take when incorporating diversity and metrics to consider when assessing the effectiveness of these efforts.

Current news regarding corporate decisions are used to demonstrate the directions corporations and society are taking regarding their views on diversity. Recommendations are made to both the government and legal field to help address issues regarding access to legal services.

DEDICATION

I would like to dedicate this major paper to my brave parents, Shu Chan Chan and Yuen Bing Law, for their decision to move their young family to Canada in search for a better life. I do not think I would have had my mother's tenacity to move to a place where her education was unrecognized nor my dad's courage to live in a place where the language was completely foreign. Their sacrifices made everything I have today possible.

I would also like to dedicate this achievement to my dearest friends. Anita, your actions have always spoken louder than your words. Thank you for always being there and looking out for me. Betty, you are the best partner I could have ever asked for. I admire your humour and maturity and I am grateful to have you in my life. Cathleen, our friendship is my longest and that speaks volumes of your importance to me. I know you are always just a phone call away. Joanna, your kindness and selflessness never fail to amaze me. I cannot begin to count the number of lessons you have taught me over the years. You kind, brilliant, and amazing women each helped me get by in more ways than you could ever understand. Thank you for helping me get to where I am today.

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TABLE OF CONTENTS

DECLARATION OF ORIGINALITY	iii
ABSTRACT	iv
DEDICATION	v
ACKNOWLEDGEMENTS	vi
LIST OF TABLES	x
LIST OF APPENDICES	xi
CHAPTER 1 INTRODUCTION	1
CHAPTER 2 RESEARCH METHODOLOGY	3
Data Collection.....	3
CHAPTER 3 MIGRANTS IN CANADA	5
General Canadian Statistics.....	6
Benefits of Having Migrants in Canada.....	6
Table 1: Canadian Population and Immigration Trends	7
Challenges of the Migrant Experience	8
Concept of Resilience.....	9
Government-Funded Services	12
CHAPTER 4 ACCESSIBILITY TO LEGAL SERVICES	14
Making Access to Justice a Priority	18
Implications for Policy Makers	19
British Columbia Civil Resolution Tribunal	19
CHAPTER 5 ETHICAL DUTIES OF LAWYERS	22
Rules of Professional Conduct	22
Cultural Competency.....	23
CHAPTER 6 IMPLICATIONS FOR LAW FIRMS	25
Retaining Diverse Talent.....	25
Increased Performance	26
Enabling Duty of Care.....	27

Expanding the Client Pool.....	27
CHAPTER 7 DISCUSSION AND RECOMMENDATIONS	29
Research Question 1(a): How might access to government-funded services help migrants in Canada foster higher levels of resilience?	29
Research Question 1(b): In what ways is access to legal services likely to foster resilience?.....	31
Research Question 2: Do law firms benefit from making the services more accessible?.....	32
Cultural Competency through Diversity.....	33
Continuing Professional Development for Ontario Lawyers	34
Research Question 3: How can law firms leverage diversity to perform better?	36
Benefits from Diversity Not Automatic	36
Costs with Implementing Diversity and Inclusion	38
Getting Ahead of the Movement	39
International Experience.....	43
CHAPTER 8 LIMITATIONS AND FUTURE RESEARCH	45
CHAPTER 9 CONCLUSION	48
CHAPTER 10 CONTRIBUTIONS TO RESEARCH	50
Research Question 1(a): How might access to government-funded services help migrants in Canada foster higher levels of resilience?.....	50
Research Question 1(b): In what ways is access to legal services likely to foster resilience?.....	50
Research Question 2: Do law firms benefit from making the services more accessible?.....	51
Research Question 3: How can law firms leverage diversity to perform better?	51
REFERENCES	52
APPENDICES	67
Appendix A: Mutualistic Migrant-Law Firm Model	67
Appendix B: Composition of Ontario Population.....	68
Appendix C: Class Profiles of Ontario Law Students (Gender)	68
Appendix D: Class Profiles of Ontario Law Students (Racialized)	68
Appendix E: Lawyers Licensed in Ontario	69
Appendix F: Composition of Practicing Lawyers in Ontario	71

VITA AUCTORIS 72

LIST OF TABLES

Table	Page
Table 1: Canadian Population and Immigration Trends	7

LIST OF APPENDICES

Appendix	Page
Appendix A: Mutualistic Migrant-Law Firm Model	67
Appendix B: Composition of Ontario Population	68
Appendix C: Class Profiles of Ontario Law Students (Gender)	68
Appendix D: Class Profiles of Ontario Law Students (Racialized)	68
Appendix E: Lawyers Licensed in Ontario	69
Appendix F: Composition of Practicing Lawyers in Ontario	71

CHAPTER 1

INTRODUCTION

Canada is the destination country for many migrants. In fact, Statistics Canada projects that by 2036, almost half of the Canadian population will be either first-generation or second-generation immigrants (Morency et al., 2017). Access to legal services is a big issue in Canada, especially with ensuring equal access for all. As our population continues to diversify, it is important to have legal structures and processes to include and represent new Canadians. Despite this, there has been limited research on the diversity within the legal practice and how this might support migrant resilience. Implementing measures to help migrants has also been commonly associated with the idea that it only benefits the receiving party. This perspective needs to change. It needs to be recognized that providing migrants with the support they need to thrive can bring benefits to multiple stakeholders. Accordingly, this paper will examine the following three research questions that have been split into four parts: Does access to government-funded services help Canadian migrants foster higher levels of resilience? In what ways is access to legal services likely to foster resilience? Do law firms benefit from making the services more accessible? How can law firms leverage diversity to perform better?

This paper argues that increasing diversity in the legal field can increase resilience levels in migrants and be a good business model for law firms. A literature review will look at how important immigration is to Canada, several models of resilience, and issues with access to legal services. I will cite research on how corporations are currently leveraging diversity and explore how law firms can benefit from these practices. Trends in industries will also be reviewed to demonstrate the potential value for law firms to increase cultural competency through better incorporating diversity and inclusion.

The paper will illustrate the contrast between the current composition of practicing Ontario lawyers and the general Ontario population. Building on secondary research, I will explain how better representation can allow law firms to increase performance and lawyers to improve the execution of their duties to clients. The paper will examine the challenges facing migrants when it comes to navigating the legal system and explore the benefits that flow to migrants, lawyers, and law firms if there were higher levels of diversity in the legal field. Recommendations will be made to the Ontario

provincial government, Law Society of Ontario, and the legal profession to help reduce the impact the inaccessibility of legal services has on migrants.

CHAPTER 2

RESEARCH METHODOLOGY

Data Collection

The secondary research providing information on migrants in Canada and their challenges were largely drawn from publications by the Government of Canada and other affiliated agencies that help migrants. Key words targeting Canadian statistics and information were initially used, but the research was expanded to incorporate relevant research from the United States and other parts of the world. Articles from various Canadian and American bar associations, peer-reviewed articles, and Canadian agencies like the National Self-Represented Litigants Project were used to better illustrate the challenges migrants face when dealing with the legal system and the steps organizations have used to reduce these barriers.

Theories of resilience were largely drawn from research that relied on the protective factor resilience model (Garmezy et al., 1984) while some ideas were borrowed from the challenge model (Garmezy et al., 1984). This hybrid approach does not appear to be infrequent as the models are not mutually exhaustive. Business journals and studies focusing on human resources and management were sought out for information regarding how to best facilitate diversity in order to reap its benefits. Recognition and support for diversity were gathered from a variety of sources to better illustrate how diversity is generally accepted as a concept. Resources cited include speeches made by Members of Parliament during discussions of bills, statistics disclosed by public corporations like banks, large studies done by organizations and Statistics Canada, peer-reviewed journals, examples of shareholder activism, and news reports.

Quantitative data about the Canadian population are drawn from Statistics Canada and other government web pages and publication. Ontario's "Rules of Professional Conduct" is the set of rules selected for the purposes of this paper as Ontario lawyers are the target group (Law Society of Ontario, n.d.). Though there are variations in the rules between the Canadian provinces and territories, it is recognized that each rule set should reflect the national "Model Code of Professional Conduct" set out by the Federation of Law Societies of Canada (2017). Because of this requirement, research that aids Ontario lawyers to fulfil their ethical duties can be broadly applicable to Canadian lawyers

practicing outside Ontario. Class profiles of Ontario law schools were pulled from each of the school's publicly available information. Only five of the eight had information that could be located. Data on the legal field in Ontario were extracted directly from the official annual reports issued by the Law Society of Ontario which was also formerly known as the Law Society of Upper Canada.

CHAPTER 3

MIGRANTS IN CANADA

The term “migrant” is not defined in Canadian legislation under the *Department of Citizen and Immigration Act* (1994), *Citizenship Act* (1985), or *Immigration and Refugee Protection Act* (2001). The non-existence of a definition is likely due to the term’s lack of precision that is often required in law. The United Nations Refugee and Migrants (n.d.) department recognizes that there is no formal legal definition for the term. The UN International Organization for Migrants (n.d.) considers a migrant as anyone who moves from their habitual residence to another state or country regardless of their legal status, reason, length of stay, and whether it was voluntary. This paper will adopt this broad definition and use the term to include immigrants, refugees, and anyone who is moving to a new country with the intentions to stay for a longer period of time.

There are 11 different pathways for migrants to come to Canada (Government of Canada, 2020); thus, it would be false to assume that all migrants are vulnerable or lack consumer power. The pathways are as follows: express entry for skilled workers, family sponsorship, provincial nominees, Quebec-selected skilled workers, Atlantic immigration pilot, caregivers, start-up visa, self-employed, rural and northern immigration pilot, agri-food immigration pilot, and refugees (Government of Canada, 2020). While it is recognized that migrants’ experiences can vary greatly as groups and as individuals, this paper will not address different classifications of migrants individually. Rather, commonly shared characteristics for newly arrived migrants are drawn upon for analysis and will be the focus of this paper.

This paper examines migrants who can afford to hire private lawyers and those who cannot. Both groups would be relevant for the first research question. The second and third questions are geared more towards private law firms, and hence may be more relevant to migrants who are able to afford lawyers. Migrants who are not able to hire lawyers privately may qualify for government-funded legal aid services. In Canada, the generation of revenue through clients is not a concern legal aid clinics consider in their operations. Access to government-funded and private legal services will both be discussed in this paper.

General Canadian Statistics

An estimated 37.6 million people lived in Canada as of July 1, 2019 (Statistics Canada, 2019a). Immigrants made up 20.7% of the Canadian population in 2011 and is expected to increase to a range between 24.5% to 30% by 2036 (Morency et al., 2017). The percentage of the population made up of first- and second-generation immigrants is also expected to jump from 38.2% in 2011 to 49.7% by 2036 (Morency et al., 2017). Similarly, the percentage of people with a mother tongue language not English or French, will increase from 20% in 2011 up to a projected high of 30.6% by 2036 (Morency et al., 2017). However, it should be noted that many people can still be fluent in English or French without claiming these languages as their mother tongue.

Benefits of Having Migrants in Canada

The Government of Canada recognizes the economic benefits of immigrants (Government of Canada, 2019c). Many immigrants go on to become active community members: one in three migrants volunteers and two in three are involved in social organizations (Government of Canada, 2019c). It is estimated that Canada's workforce would shrink by 0.1 per cent a year if immigration was to be halted completely (McArthur-Gupta et al., 2019). In contrast, increasing immigration from the current rate of 0.8% to 1.0% would greatly benefit Canada's economy by adding 5.3 million workers and "one-third of the economic growth rate between 2018 and 2040" (McArthur-Gupta et al., 2019, p. 5). A notice released in late 2018 about Canada's immigration plan is to increase immigration admissions to 350,000 in 2021 which would be close to 1% of the population (Government of Canada, 2018b). The table below illustrates how open Canada has been to receiving immigrants and how the Canadian population can be expected to change over the next couple of decades. The increased and increasing diversity of the country's population should prompt corporations to evaluate their current operations and adjust to better reflect the composition of the population.

Table 1: Canadian Population and Immigration Trends

	Canada's Population	Number of Immigrants Landed	Number of Foreign- Born Canadians	Percentage of Foreign- born in Population	Number of Visible Minorities	Percentage of Visible Minorities in Population
1971	21,465,000	121,900	3,295,530	15.3	-	-
1981	24,665,355	128,600	3,843,335	16.0	1,131,825	4.7
1991	27,854,861	232,800	4,342,890	16.1	2,525,480	9.4
2001	30,824,441	250,600	5,448,480	18.4	3,983,845	13.4
2011	34,166,099	248,700	6,775,770	20.6	6,264,750	19.1
2016	35,871,136	323,192 (2015/2016)	7,540,830	21.9	7,674,580	22.3
2021 (projected)	-	350,000	9,036,000	23.7	9,679,000	25.4
2036 (projected)	-	-	12,363,000	28.2	15,069,000	34.4

Note. Values are drawn from Statistics Canada, 2020 for population estimates; Statistics Canada, 2016 for data on immigrants landing; Statistics Canada, 2017c for foreign-born statistics; Statistics Canada, 2019a for 2015/2016's estimation for landed immigrants; Statistics Canada, 2017d for minority population.

Canada has relied since 1971 on immigrants to replace the population due to low fertility rates (McArthur-Gupta et al., 2019). Immigrants are strongly relied upon to replenish the labour force. This is especially important as all baby boomers will have reached legal retirement age by 2030 (McArthur-Gupta et al., 2019). As this large segment retires, implications surrounding health care costs and the ratio of pension contributors to collectors will be concerns that the government will need to address.

The issue is troubling. Statistics show that the ratio of worker to retiree was 6.6:1 in 1971, 4.2:1 in 2012, and is estimated to be 2:1 by 2036 (Immigration, Refugees and Citizenship Canada, 2017a). It is also projected that 11.8 million people will leave school and enter the workforce between 2018 and 2040, but this is not enough to replace the

13.4 million workers who will be leaving (McArthur-Gupta et al., 2019). It is suggested that initiatives to encourage women, Indigenous people, and people with disabilities can further add 2.2 million people to the workforce, but immigration is needed to bring an additional 3.7 million workers (McArthur-Gupta et al., 2019). These numbers should clearly demonstrate the importance of immigration, along with the importance of ensuring that barriers limiting migrants' active participation in the labour market are reduced or removed.

Challenges of the Migrant Experience

This paper recognizes that no migrant experience is the same. People move for various reasons, and the amount of social and physical capital migrants have can vary greatly. However, there are some challenges that are commonly shared among migrants. A large study conducted over a period of four years between 2001 and 2005 on 12,000 Canadian immigrants found an inadequate job, linguistic and cultural adaptations, lack of social support, and recognition of foreign credentials as some of their most difficult challenges (Schellenberg & Maheux, n.d.). In 2017, it was determined that the median entry wage of immigrants who landed in 2016 to be \$25,900, while the Canadian population's median wage was \$36,100 (Statistics Canada, 2019b). The three most cited reasons as barriers for obtaining employment were a lack of Canadian work experience, lack of contacts in the job market, and a lack of recognition of foreign experiences and qualifications (Schellenberg & Maheux, n.d.).

It is estimated that out of 844,000 Canadians facing credential recognition challenges, over 524,000 are with international credentials (Grant, 2016). These challenges result in reducing migrants' ability to find employment or employment related to their field and deter them from pursuing higher education (Grant, 2016). Because barriers to recognition often leads to unemployment or underemployment, it is estimated that Canada could "gain \$13.4 to \$17 billion through better-employed human capital resulting from enhanced learning recognition" (p. iv).

The numerous barriers for migrants are sizeable. It was found that lower income, education, and barriers with Canada's official languages were associated with lower citizenship rates (Hou & Picot, 2019). Precarious living conditions are made worse because permanent residents generally have fewer rights than Canadian citizens. For

example, non-citizens are not allowed to vote or run for office, may get fewer social benefits, and they are also barred from certain employment that may need higher security clearance (Government of Canada, 2019e). Permanent residents can also get deported much easier than citizens. A conviction of certain crimes, even if no jail time is served, can be sufficient (Community Legal Education Ontario, 2017). People with higher levels of resilience are able to see challenges as learning opportunities and are more able to take advantage of resources and opportunities to take positive actions (Zolkoski & Bullock, 2012). Helping migrants build higher levels of resilience is important when these systemic barriers and challenges are so common.

Concept of Resilience

There is no universal definition for resilience, but the definition of resilience as “a dynamic process encompassing positive adaptation within the context of significant adversity” appears to be widely used (Luthar et al., 2000, p. 543). Although often equated with resilience, the concepts of positive adjustment and coping are, instead, outcomes of resilience (Fergus & Zimmerman, 2005). It has been argued that “a key requirement of resilience is the presence of both risks and promotive factors that either help bring about a positive outcome or reduce or avoid a negative outcome” (p. 399). While the reduction and the avoidance of a negative outcome may not necessary equate to a positive outcome, it should be interpreted as a variation of a positive outcome. An example that may better illustrate this concept is of a person who fails to obtain the legal status needed to work in the country but still understood enough of the rules and provisions needed to obtain temporary relief while an appeal is filed. While the outcome is not satisfactory, the person is still able to find ways to reduce that negative outcome and obtain a positive outcome for the time-being.

Other definitions include Ungar’s (2008) where he argues that resilience should be defined in three parts: the capacity of individuals to “navigate their way to resources that sustain well-being,” the “capacity of individuals’ physical and social ecologies to provide these resources,” and “the capacity of individuals and their families and communities to negotiate culturally meaningful ways for resources to be shared” (p. 22-23). The general notion of ecology in the study of resilience stems from Urie Bronfenbrenner’s (1979) Ecological Systems Theory, which explains how a child’s

development is influenced by the interactions between the inherent qualities of individual children and their physical and social environments.

Garmezy et al. (1984) conducted a study on children and their personal traits and the impact stress had on their adaptation from which the researchers developed three main models of resilience: compensatory, challenge, and protective factors. The compensatory model conceptualizes compensatory factors as working directly against risk factors to produce an outcome (Fergus & Zimmerman, 2005; Garmezy et al., 1984). The model usually employs multiple regression analysis to examine the direct effects of compensatory factors on risk factors (Fergus & Zimmerman, 2005).

The second model is based on the role of challenges, where low and high levels of risks are associated with negative outcomes. In contrast, moderate levels of risks are viewed as beneficial as they are enough for people to engage with while not being overwhelmed (Fergus & Zimmerman, 2005; Garmezy et al., 1984). The challenge model studies the same variable both as a risk and as a promotional factor to study its effects (Fergus & Zimmerman, 2005).

The third model is the protective factor model. This model sees protective factors as ways to help engage with risks to reduce negative outcomes (Fergus & Zimmerman, 2005; Garmezy et al., 1984; Rutter, 1987). This paper is not engaging with factors to see how they interact directly with risks or to analysis variables to determine whether they act as risk or promotional factors. Hence, this paper will mainly focus on the protective factor model while bringing in some ideas of the challenge model to explain why certain changes can help migrants better engage with risks. It is important to note that the models are not mutually exclusive (Zimmerman & Arunkumar, 1994).

O'Leary (1998) suggests that a protective factor interacts "with a risk factor to reduce the probability of a negative outcome" (p. 428). While resilience is often applied to studying certain demographics like children or aging adults, resilience can be applicable to other populations including organizations and societies (O'Leary, 1998). Protective factors are categorized into internal and external factors. Internal factors are those that are more individualized and innate, like hardiness, coping skills, or cognitive resource, whereas external factors are external to the individual, and they include examples like relationships and social services (O'Leary, 1998). Promotive external

factors do not necessarily have to be government-funded services. Other informal external resources can include community or religious associations where individuals can get help with linguistic barriers, financial support, or legal support (Roberto & Moleiro, 2016).

Risk factors can include variables like low self-esteem, low self-efficacy, and a lack of close relationships (Rutter, 1987). Others can be more external and include community trauma, divorce, or an increased number of life events in a short period of time (Rutter, 1987). Protective factors can be developed through successful attempts with engaging with risks and other difficult tasks (Rutter, 1987). Individuals can also be better protected when demands of tasks that brings out risks are reduced (Rutter, 1987). Special attention must be paid to turning points in a person's life (Rutter, 1987): if challenges and tasks are engaged with and dealt with successfully, the "accomplishment may change the life course onto a more adaptive trajectory" (p. 328). Reducing the barriers needed for migrants to better engage with legal problems will help develop higher levels of resilience.

The following three principles of resilience facilitation (Ungar, 2012) will be used to guide this paper:

1. Facilitative environments can be more influential than individual-level variables to the processes associated with resilience.
2. The characteristics of environments that are most facilitative of resilience reflect the ease with which individuals, families, and communities are able to navigate to resources, the availability and accessibility of resources, and the meaningfulness of the resources provided.
3. The greater the exposure to risk, the more likely an individual is to benefit from protective factors that respond to the specific risks faced.

While individual traits are important, it has been argued that external resources in the community can be more important when individuals are faced with extreme adversities (Ungar, 2012). The related notion of "navigational capital" refers to someone's ability to navigate through social institutions (Yosso, 2005). Navigational capital is not always used to develop resilience, but it is necessary if it is needed to help migrants either reduce negative outcomes or successfully engage with certain challenges.

Using the challenge model, if formal institutions are too complex and well beyond the navigational capital of migrants, then the absence of community support that can reduce challenges to moderate levels can hinder the development of resilience. It is generally difficult to foster resilience if the resources needed to successfully engage with risks are simply not available or accessible (Ungar, 2008). Much of the groundwork is already in place in terms of providing general services to migrants. However, some essential services vital to the successful settlement for migrants, like legal services, may need to be modified or adjusted to reduce accessibility issues.

Government-Funded Services

There are many government-funded services that help migrants settle. For instance, Immigration, Refugee and Citizenship Canada's (IRCC) (2017b) Settlement Program provides migrants with services under six main areas: Needs Assessments and Referrals, Information and Orientation, Language Assessments, Language Training, Employment-Related Services, and Community Connections. Six other support services are also funded by the IRCC (2017): Care for Newcomer Children, Transportation, Translation, Interpretation, Disability Support, and Crisis Counselling. Legal services are not one of the areas, however. Concerns regarding legal matters are generally referred out to legal aid and other similar organizations that use migrants' financial status as their main requirement when determining eligibility.

The services that migrants first obtain upon arrival in Canada are often seen as the most important, and the current system reflects that notion because most funding and programming are dedicated to the initial stages of settlement (Omidvar & Richmond, 2003). However, settlement cannot be treated as just one stage. Migrants face different issues at different times, and so settlement should be broken down into three stages: initial, middle or intermediate, and long term or final stage (Mwarigha, 2002). The initial stage involves basic necessities like food, clothing, and shelter (Mwarigha, 2002). The middle stage is about accessing services like health services or legal assistance with the main intention to get into the labour market (Mwarigha, 2002). The final stage is about accessing equal participation in various realms of society, but it is within the initial and intermediate stages where formal services carry the highest impact (Mwarigha, 2002). Since migrants have varied backgrounds, those in the middle or final stages may not be

getting the support they need when most of the funding is allocated towards the initial stages.

As explained earlier, the needed resources and services must be available and accessible to help develop resilience (Ungar, 2008). Cultural and prior experiences may play a part in perceiving services as being not feasible to attain. Factors like language barriers and both perceived and real hostilities against immigrants have been recognized as obstacles for immigrants in accessing formal systems (Vesely et al., 2017). Essential services have to be made accessible enough so that migrants can successfully navigate their way through the procedures and processes needed to access key resources. Environments must be created or changed to allow individuals to easily obtain the meaningful resources they need in order to best facilitate resilience development (Ungar, 2012).

CHAPTER 4

ACCESSIBILITY TO LEGAL SERVICES

Accessibility to legal services can be challenging for many reasons. It can be a monetary issue, a mismatch of business hours, the presence of language barriers, or just the inability to recognize when and how to access these services. When it comes to matters in front of the immigration and refugee board, litigants do not have a right to counsel. This is the case even when the results can be life-changing. Under the *Immigration and Refugee Protection Act*, section 167(1) states that “a person who is the subject of proceedings before any Division of the Board and the Minister may, at their own expense, be represented by legal or other counsel.” This means if litigants do not have the means to hire a lawyer, they would need to proceed unrepresented. Furthermore, constant budget cuts to immigration and refugee services for legal aid further decreases levels of accessibility (Caruso, 2017; CBC News, 2019).

In an open letter addressed to the Minister of Justice and Attorney General of Canada from the Chair of the CBA Immigration Law Section, concerns were expressed about the general lack of funding and budget cut trends to immigration and refugee legal services (Caruso, 2017). The letter also pushed for claimants to be granted the same right to equal treatment as other Canadians and argued that studies showed “refugee claimants represented by a lawyer have a 230% greater chance of approval of their case as compared to unrepresented claimants” (p. 4). In the United States, the Public Counsel’s Immigrants’ Rights Project argued that asylum seekers are five times more likely to be successful for asylum applications if they are represented (Balaban et. al., 2018). Matters that speak to individuals’ legal status can be seen as one of utmost importance, so the significance of any increase to the chance of success cannot be overstated.

Accessibility to legal service is vital to all Canadians. However, migrants may experience additional hurdles when accessibility is reduced or denied. While it is true that other Canadians are often unrepresented in legal proceedings as well, migrants face issues that citizens do not typically face like issues regarding deportation or whether or not they are allowed to legally work or access services. The inability to attain the right status in Canada could be detrimental in migrants’ journeys to become self-sufficient. When migrants fail to adequately represent themselves to remain in the country, migrants

may become undocumented migrants and pushed into precarious work. Circumstances like these may force immigrants to find work that may increase their dependency on others or worse, be exploitive or illegitimate. Before July 2019, Canada only collected entry data of everyone entering the country but not when they left. This means the government did not know how many visitors and migrants had overstayed. There were 48,000 active warrants in October 2019, most of which were issued for deportation, but the Government of Canada actually did not know how many of those people were still in the country. However, Canada Border Services Agency (2019) recently announced that they have been given the authority through Bill C-21 to collect information from people leaving Canada by land and air.

Improving access to legal services does not necessarily mean reducing cost barriers. Monetary concerns play just one part in the problem. For example, it is often overlooked or forgotten that many migrants are allowed to stay or were selected to enter because of their economic power. While immigrants make up roughly 20% of Canada's population, they make up roughly 50% of all STEM degree-holders in Canada and are determined to be more entrepreneurial than other Canadians (Immigration, Refugees and Citizenship Canada, 2017a). Statistics Canada shows that after four to eight years of being in Canada, immigrants are more likely to own private businesses than other Canadians (Green et al., 2016). The study cites that only 12% of immigrants entered Canada through the business class, while the majority of 40% were from the economic class (Green et al., 2016). Other trends included the observations that immigrants from English-speaking countries and those with more education were more likely to become business owners, although almost half of the owners had some high school education equivalent or less (Green et al., 2016). The research results suggest that the business owners likely possessed higher levels of resilience due to their increased navigational capital and resources.

High costs associated with hiring a lawyer and the income requirements for legal aid are barriers for legal representation. Even when income levels may qualify immigrants for legal aid, not all areas of law are covered. The National Self-Represented Litigants Project's (NSRLP) recently issued a report in which 173 self-litigants voluntarily answered questions about their background information and experience with

the legal system (Fragomeni et al., 2020). The report found 75% of respondents listed English as their first language, 68% had post-secondary education, and over 65% identified as Caucasians (Fragomeni et al., 2020). Challenges and barriers identified include the emotional challenges of the process; the steep learning curve of knowing necessary legalese, legal research, and case law; unclear required paperwork; and the risk of paying legal fees of the other party if unsuccessful (Fragomeni et al., 2020). Though the sample size is not large and there is likely a self-selection bias since the survey was not mandatory, the selected comments in the report provide a glimpse into the common challenges often experienced. Another report issued by the NSRLP stated that a majority of respondents felt overwhelmed by the process, and only a small number of them felt that they could represent themselves again if needed (Macfarlane, 2013).

To better demonstrate the difficulty the average Canadian likely has with the legal system, a law student was asked to file a divorce application in three different provinces after taking the relevant courses (Macfarlane, 2013). Even with her legal training, she found the language and terminology challenging, the documents required unclear, and the complexity and vagueness of the forms overwhelming (Macfarlane, 2013). The inability of a trained law student to navigate the system, even to understand her next steps, made her question how self-litigants without any legal training would be able to understand the process (Macfarlane, 2013). Two other examples can help dispel the idea that because the law student was a student, her age may have been a factor (even though her age was not disclosed). The first case is a practicing lawyer in a family matter who found representing himself was causing such distress that he went to the emergency room (Macfarlane, 2013). It is unclear from the report whether or not the nature of the family matter played a significant part in his distressing experience. The second instance is of a well-educated businessman in his 50's who broke down in tears during his interview when asked to recall his experience with asking the court for an adjournment so he could have time to retain a new lawyer (Macfarlane, 2013).

Social justice is foundational when it comes to the study of resilience (Ungar, 2008). These examples of self-represented litigants arguably have one of the highest levels of navigational capital but still struggled through the process. This is an issue

recognized and addressed by former Chief Justice Beverley McLachlin when she made the following comment at a lecture:

"Lost in a system they don't understand, and that seems incompatible with their reality, the accused lose faith in the system and in justice itself, and they give up. Is that access to justice? I don't think so" (Bailey, 2017, para. 6).

Migrants lacking similar levels of navigational capital are likely to have a tougher time navigating the legal system. A case study of 35 participants concluded that one of their biggest challenges was understanding how formal structures like the border services worked in order to get the proper legal recognition (Roberto & Moleiro, 2016). The linguistic barriers, lack of information about the process, and the complexity of the documents were also contributing factors (Roberto & Moleiro, 2016). For example, one of the participants mentioned how "[Foreigners and Borders Service] asked me for a document, which I then would obtain and when I arrived with it, it wasn't the right document. And I would come back with everything again" (p. 937).

In 2017, the Supreme Court of Canada released a decision recognizing the challenges that self-represented litigants often have to face. In the Alberta Court of Appeal decision of *Pintea v. Johns* (2016), Pintea, an educated self-represented litigant with a disability and language barrier, was found in contempt of the court when he did not appear for his case management meetings. The court found his lack of familiarity with court procedures which resulted in his failure to update both the court and opposing counsel of his updated address to be inexcusable. The Supreme Court of Canada (2017) overturned the finding of contempt when it could not be proven beyond a reasonable doubt that Pintea had received the notices but still failed to attend the meetings. The key part that came out of the case was the court's endorsement of the *Statement of Principles of Self-represented Litigants and Accused Persons*. These principles are meant to advise different parties in the legal system of ways to help "foster equal access to justice and equal treatment under the law" (Canadian Judicial Council, 2006). By endorsing the principles, the highest court in Canada is formally acknowledging the challenges self-represented litigants often face, and it is directing Canadian courts to take reasonable steps to help them through the process.

The legal system can be a useful tool to help migrants legally obtain their entitled rights and settle their disputes. The opportunity to be represented by a lawyer would help shift the legal system from a complex and inaccessible system to an environment where meaningful resources can be attained with relative ease. This idea refers back to the second principle of understanding how to best build resilience (Ungar, 2008). Lawyers are potential resources for everyone. If they take steps to better understand the challenges migrants face, can they not be considered strong external protective factors to help migrants foster higher levels of resilience?

Making Access to Justice a Priority

Ontario introduced cuts in April 2019 that amounted to one-third of funding to Legal Aid Ontario (Tumilty, 2019). The cuts resulted in the elimination of provincial funds for both refugee and immigration cases. The action led to an uproar within the legal community and with the public. As a response, Prime Minister Trudeau announced that the federal government would ensure that legal aid for immigrants and refugees continued in Ontario (Jackson, 2019). Later in the year, Ontario announced that the planned budget cuts to Legal Aid Ontario had been canceled, but the budget cuts that had already been implemented for 2019-2020 would remain the same (Ministry of the Attorney General, 2019). The chain of events demonstrates how the public can influence public policy.

Only the most marginalized in society qualify for Legal Aid Ontario. Yet, the Ontario government announced the unprecedented cut to funding. The disconnection between government policies and what the public needs begs the question of whether the composition of the government is representative of society. In order to form a government that holds a better understanding of the needs of society, it is important to have policy makers who have lived experiences who can better understand the ramifications of their top-down decisions. All levels of government should not reduce or eliminate essential programs accessed by the most marginalized— which often includes migrants.

As of 2019, only six provinces in Canada have legal aid funding allocated for immigration and refugee matters (Government of Canada, 2019d). Even though the six provinces are the ones where most migrants are likely to settle, the arrangement

eliminates legal aid as a potential resource for those who settle in other provinces. Instead of not having available funds, it may be more reasonable to allocate a smaller amount of funds, reflective of the lower migrant numbers in those provinces.

Implications for Policy Makers

Legal issues permeate the lives of everyone indiscriminately. The Canadian Forum on Civil Justice believes that 48.4% of “Canadians over 18 will experience at least one civil or family justice problem over any given three-year period” (Farrow et al., 2016, p. 14). In Canada, Pro Bono Ontario (2019) claims that every dollar spent on their programs yield \$10 in investment through economic benefits. Richard Fowler from the Canadian Council of Criminal Defence Lawyers also testified in Parliament that “studies have consistently shown, as my colleague said, that for every dollar invested in legal aid, there are economic benefits of between two to seven dollars” (House of Commons, 2016, para. 7). According to a report funded by the Task Force on Justice, every \$1 USD invested in civil legal aid programs yielded up to \$5 USD back in New York, \$10 USD in North Carolina, and \$11.21 USD in Tennessee (Moore & Farrow, 2019). In New York, access to civil legal aid was determined to help ease burden on courts and self-litigants, save litigants’ money, save time and money from income-earning activities, and reduce demand for government-funded and local welfare programs (Moore & Farrow, 2019). The literature appears to be consistent in that investing in ways to increase access to justice ultimately helps save money for litigants and the government.

British Columbia Civil Resolution Tribunal

The establishment of the British Columbia Civil Resolution Tribunal (CRT) has been received as an innovative way to help address access to justice issues in British Columbia (Alton, 2019; Salter, 2017). It is Canada’s first online tribunal and started hearing cases in 2016 (Government of British Columbia, 2017). Section 2(2)(a) and 2(2)(d) of the *Civil Resolution Tribunal Act* (2012) places emphasis on certain core elements to help ensure practices align with ways that help address access to justice. These sections are as follows:

Civil Resolution Tribunal mandate and role

2(1) The Civil Resolution Tribunal is established, consisting of the chair and other tribunal members appointed in accordance with this Act.

(2) The mandate of the tribunal is to provide dispute resolution services in relation to matters that are within its authority, in a manner that

- (a) is accessible, speedy, economical, informal and flexible,
- (b) applies principles of law and fairness, and recognizes any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded,
- (c) uses electronic communication tools to facilitate resolution of disputes brought to the tribunal, and
- (d) accommodates, so far as the tribunal considers reasonably practicable, the diversity of circumstances of the persons using the services of the tribunal.

The most distinctive feature of the CRT is that claimants are able to work continuously on their file on their personal devices. This level of access means unlike traditional courts or tribunals, the CRT is not restrained by business hours. Documents can be submitted online, and claimants do not need to physically go to court. So, time would not need to be taken off work.

The CRT mainly covers four areas with additional subareas under each: condominiums, motor vehicle accidents and injuries, societies and cooperative associations, and small claims under \$5000. Moving these areas under the jurisdiction of the CRT means that claimants can now bypass the intimidating route of going to court. Now, claimants can just go online to the CRT's website, see if the tribunal covers their area of concern, follow simple steps, and try to work it out with the other party. If parties are unable to resolve issues themselves, the CRT steps in to help facilitate the process of negotiation and then make a binding decision. Most issues can be resolved through a written hearing and the submission of evidence, but if needed, meetings can also be done through online platforms as well.

However, because the tribunal is relatively new, migrants may not know it exists or understand that it is a simpler route to pursue their legal claims. Another thing to note

is that while the CRT is slowly increasing its jurisdiction to cover a variety of issues, the establishment of the tribunal may be seen as an extra process migrants need to understand. For example, while housing issues are generally under the jurisdiction of the Residential Tenancy Branch, the CRT has jurisdiction over a limited number of housing issues involving strata properties. Claimants would now need to understand if their legal issues fall under the jurisdiction of the courts, the Residential Tenancy Branch, or the CRT in order to pursue their matter. So while the establishment of the CRT is a way to address access to legal services, it should be recognized that there are still barriers.

Ontario established the online Condominium Authority Tribunal (CAT) at the end of 2017, but it is unclear when they heard their first case. As of mid-2020, it appears that the CAT currently only deals with condominium-related matters that involve records disputes and enforcing settlements (Condominium Authority of Ontario, n.d.). It is unclear if the CAT plans to expand their jurisdiction into other areas. The current jurisdiction of the CAT may be too limited in scope to divert enough matters away from the formal court system to make a significant impact on the experience of migrants in Ontario. However, the issue of potential impact is worthy of more study.

CHAPTER 5

ETHICAL DUTIES OF LAWYERS

Canadian lawyers are part of a profession that is regulated by their respective provincial law societies. Students generally need to write the Law School Admission Test and have a university degree before they can be accepted into law school. Graduates then have to go through a process which typically includes a licensing exam and an articling placement that varies in length between the provinces.

The decision as to whether applicants can be admitted into the profession is made by their respective provincial law society. Lawyers who want to remain in the profession must abide by the rules of the law society or risk having their licenses suspended or revoked. While some of these rules are ethical in nature, others include obligations like paying licensing fees and ensuring that their continuing education hours are completed.

Rules of Professional Conduct

Lawyers are strongly encouraged to make legal services accessible. It could take the form of not charging or charging a reduced fee for their services. In this case, commentary 2 of rule 4.1-1 under Making Legal Services Available of Ontario's "Rules of Professional Conduct" encourages lawyers to take cases *pro bono* or to reduce or waive fees when doing otherwise would deprive a potential client of representation (Law Society of Ontario, n.d.). The rule reminds lawyers to recognize the constraints of money and to encourage lawyers to consider the underlying principles of the justice system like fairness.

According to rule 3.1-1(h) under Competence, lawyers have to be able to recognize their limitations in handling matters and take steps to ensure that their client's interests are properly served (Law Society of Ontario, n.d.). An important question arises. If cultural incompetency is an issue, would it not raise questions regarding lawyers' competence? What steps are necessary for lawyers to take to ensure their cultural incompetency is not serious enough to affect their competency to represent their clients' interests? Commentary 4 under rule 3.1-2 under Competence notes that the standard of competence is of a general practitioner, and commentary 15 states that the standard is not one of perfection (Law Society of Ontario, n.d.). If the standard of cultural competency for lawyers is of a general practitioner and the existing levels are not acceptable, should

the standard of a general practitioner still be the standard against which they should be evaluated?

It is important to note that cultural competency is not defined in the rules. However, it is often argued that lawyers still have an obligation to “read in” this duty under a lawyer’s obligation to be competent (Voyvodic, 2005). Voyvodic (2005) defines a culturally competent lawyer as someone who understands how cultural differences shape the way clients perceive the legal system; is able to understand the potential impact of assumptions and stereotypes on themselves and clients; and is willing to take steps to reduce those negative influences in order to pursue justice for their clients. Would the level of cultural competency in the legal profession increase if the composition of the legal field better matched the Canadian population? If so, what can law firms do to increase their cultural competency?

Rule 2.1-1 under Integrity states that a lawyer “has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity” (Law Society of Ontario, n.d., p. 12). Increasing the level of cultural competency in law firms may make it easier for lawyers to discharge their responsibilities to their clients. Matching clients with lawyers who best understand their language and values would allow lawyers to provide better representation and strengthen the duty of care discharged. Providing clients with an increased sense of being understood would help instill higher levels of confidence the public has in our legal system. Moreover, the closer match with clients to ensure that their interests and needs are best represented aligns with lawyers’ obligations to “encourage public respect for and try to improve the administration of justice” according to rule 5.6-1 under Encouraging Respect for the Administration of Justice (Law Society of Ontario, n.d., p. 112).

Cultural Competency

An injustice is done to a large group of vulnerable people in society when the justice system is not accessible. The legal profession should serve everyone in Canada and not just the demographics who can afford it. When law firms have higher levels of cultural competency, they may be equipped to match clients with lawyers who share cultural backgrounds and who may better understand their needs and thought processes.

This shared mentality is indispensable to providing better representation when lawyers want to fully execute their ethical duties. Some practices law firms may use to overcome barriers include doing research on the cultural backgrounds of their clients, paying for cultural sensitivity training, or hiring more diverse administrative staff or practicing lawyers.

As mentioned above, cultural competency should be read in as an obligation for lawyers, but what does it mean in the context for the legal field? Is it enough for lawyers to be open-minded and become familiar with other cultures? How important is the ability to speak a common language or to come from the same culture? Is it enough to fully overcome language barriers and receive well-informed instructions when documents are translated into a client's native language? Arguably, no. Community-based work has demonstrated that the translation of documents is not enough to promote resilience as not all immigrants are literate in the translated language (Vesely et al., 2017). Barriers can make systems too complex for individuals to navigate and, subsequently, affect their ability to build resilience (Vesely et al., 2017).

CHAPTER 6

IMPLICATIONS FOR LAW FIRMS

There is an abundance of research on the benefits of having diversity in the workplace. Dany Assaf, a partner at Torys LLP, believes that diversity positively impacts productivity because “if people believe there’s a system where you can succeed on merit, they will be more productive – when people see more people like them succeed, they will go the extra mile” (Momani & Stirk, 2017, p. 11). What people may fail to realize is that the benefits of research on diversity that other corporations reap can also apply to law firms. Hiring while keeping diversity in mind should be recognized as essential to a business’s success. Its dual purpose has both an external and internal component. Externally, the business could build a better brand and show the public they are being socially responsible. Internally, fostering diverse perspectives and an inclusive environment can lead to better talent retention, higher performance, enhanced service levels, and broader market appeal. Of a list of the 500 largest Canadian law firms (Lexpert, 2020), the ten largest firms all had statements on diversity and inclusion, with the largest five being Borden Ladner Gervais LLP, Fasken Martineau DuMoulin LLP, Gowling WLG, Norton Rose Fulbright Canada LLP, and McCarthy Tétrault LLP. Their statements to the public on diversity should be indicative of the importance this role is perceived to play in building or maintaining their brand.

Retaining Diverse Talent

Diverse workplaces implemented in inclusive environments are known to lower turnover rate, attract talent, and increase access to diverse client pools (Mor Barak, 2000). The Retention of Women in Law Task Force (2009) believes the costs associated with lawyers leaving large law firms to be around \$315,000. These calculations by Catalyst only took into consideration “hard costs” like investment and separation costs and does not include “soft costs” like opportunity costs or other impacts to efficiency resulting from their departures (Retention of Women in Law Task Force, 2009). In 2017, an American Bar Association article quotes \$200,000 to \$500,000 as the estimated costs associated with losing a lawyer (Weiss, 2017).

Law firms are not the only ones negatively impacted by high turnover rates. Clients may experience delays in their cases as new lawyers need time to familiarize

themselves with their cases and re-establish the solicitor-client relationship. These expenses should encourage law firms to make stronger efforts to reduce their turnover rates by fostering a more diverse and inclusive workplace.

Increased Performance

In 2017, the Centre for International Governance Innovation issued a special report which depended on data drawn from a discontinued survey done by Statistics Canada from 1999 to 2005 on 7,900 workplaces (Momani & Stirk, 2017). The study found that an increase of one percent in ethnocultural diversity was generally “associated with an average of 2.4 percent increase in revenue and half a percent increase in workplace productivity” (p. 1). The study does not specifically address law firms directly but it concluded that the relationship was strongest in sectors that depended on creativity and innovation, which includes business, law, and professional services (Momani & Stirk, 2017).

Diverse workplaces are associated with increases in both creativity and innovation levels which also lead to improved decision-making processes (Roberge & van Dick, 2010). When properly implemented, diversity has been shown to increase financial performance as well, and make workers feel valued and connected (Deloitte, 2017; Hunt et al., 2018). A diverse workforce is more likely to bring on broader perspectives, skills, and abilities than homogenous groups (Roberge & van Dick, 2010). Properly integrated diversity can also reduce conflicts, improve collaboration, increase loyalty, and help companies build a global image (Hunt et al., 2018). A study of over 1000 companies in 12 countries found that “companies in the top-quartile for gender diversity on their executive teams were 21% more likely to have above-average profitability than companies in the fourth quartile” (p. 8). Similar results were found where top-quartile companies with high ethnic/cultural diversity were 33% more likely to be profitable than their fourth quartile counterparts (Hunt et al., 2018). In contrast, companies in the fourth quartile of both gender and ethnic diversity were 29% more likely to underperform in profitability when compared to their counterparts (Hunt et al., 2018).

Enabling Duty of Care

Diversity can help lawyers better execute their duty of care and reduce liability due to cultural insensitivities, misunderstandings, and inadequate representations. When it comes to language barriers, there could be miscommunications even with the use of certified translators. There are often no direct translations for certain words, so lawyers would need to rely on translators to process input communications and do their best to translate that into output that they think best reflects the intended meaning. Instead of lawyers directly communicating with clients, the reliance on translators who may not be legally trained may be a source of miscommunication. There are often additional safeguards in place to reduce that risk and to get proper instructions from clients. However, if lawyers share the same mutual languages as clients, the risk can be greatly reduced. The D.C. Bar Pro Bono Program, for instance, recognizes the issue and has recruited a database of volunteers which includes lawyers to help reduce the difficulties associated with working with interpreters who are not legally trained (Reynolds, 2005). Eliminating the use of translators can help foster better communication and trust and reduce both costs and delay.

Expanding the Client Pool

A mismatch of the composition of law firms and the population may hurt the ability of law firms to attract clients who do not reflect their ethnic composition. As clients become more engaged in tackling societal issues, clients increasingly request law firms to include information about the firm's diversity in their proposals. For example, Facebook has made it a requirement for law firms who would like to work with them to have women and ethnic minorities make up at least 33% of their workforce (Rosen, 2017). Aside from having the numbers to show, firms also have to demonstrate the women and minorities hired are given clear leadership opportunities (Rosen, 2017). In the same year, MetLife used the incentive of their \$100 million annual legal budget to force their external legal partners to propose a formal plan to retain and promote diversity in their firm or be fired (Sullivan, 2017). If MetLife finds them unacceptable, external firms are given one chance to revise and resubmit their plans (Sullivan, 2017). At a roundtable of employers, a participant attributed her success in winning a multi-million-dollar bid to the fact her law firm employed a diverse team while their counterpart did not (Momani &

Stirk, 2017). The trend demonstrates that clients do care about diversity practices in law firms. Furthermore, Canadian law firms that are already diverse may be better positioned to attract international business from the United States which may give firms an edge in at least two different markets.

CHAPTER 7

DISCUSSION AND RECOMMENDATIONS

This section will build upon the literature review to examine the three research questions that have been split into four parts: Does access to government-funded services help Canadian migrants foster higher levels of resilience? In what ways is access to legal services likely to foster resilience? Do law firms benefit from making the services more accessible? How can law firms leverage diversity to perform better? Recommendations will be made to key stakeholders to help them play bigger roles in helping migrants foster higher levels of resilience while also illustrating how they can benefit in the process.

Research Question 1(a): How might access to government-funded services help migrants in Canada foster higher levels of resilience?

Migrants often have a difficult time settling in Canada. When faced with severe adversities, internal promotive factors may not be sufficient to help migrants when tasks are beyond their navigational capital (Ungar, 2012). External factors like government-funded services are generally more tailored towards helping this target population settle in Canada than migrants' personal social networks and resources. A report evaluating settlement programs in Canada found that many other countries also saw these services as essential and migrants agreed that their social networks were no substitutes for the specialized training these services provided (Immigration, Refugees and Citizenship Canada, 2017b). Therefore, the availability of these services and the ease of access to help reduce challenges to a manageable level are important in the development of resilience. During the settlement process, it has been found that understanding how to navigate through the legal system to obtain the proper legal status is one of the bigger challenges facing migrants (Roberto & Moleiro, 2016). Access to legal aid services are one of the most important government-funded services that can help migrants reduce the demands needed to successfully navigate through the complex legal system.

Unfortunately, it is difficult to be eligible for legal aid. The financial eligibility for Ontario Legal Aid as of April 2020 for a one-person family is \$18,795, \$32,131 for a two-person family, and \$39,352 for a three-person family (Legal Aid Ontario, 2019). This means a person working full-time for 40 hours a week at a fast-food chain making the minimum wage rate of \$14 would make \$26,880 in a year and could be ineligible for

legal aid. In fact, working 28 hours or more at a hourly rate of \$14 would already disqualify an individual under the category of a family of one. The eligibility requirements are set to allocate limited resources to help the most vulnerable in society, but a fast-food worker should not be deemed able to afford to hire a private lawyer, when the national average of a two-day civil trial in 2015 was found to be around \$31,330 (McKiernan, 2015). These thresholds and calculations should give a clear indication as to how many Canadians would fall under the category of not being eligible for legal aid while not having the means of hiring a lawyer. The numbers are large.

The IRCC's Settlement Program funds many services to help migrants settle in Canada but neglects their legal needs. There are other agencies that provide legal advice and services to migrants, but they appear to use financial eligibility as the main assessment criteria, and these thresholds are not publicly disclosed. Other agencies state they will refer individuals to appropriate services, but the low thresholds of financial eligibility appear to simply be requirements that cannot be bypassed.

The financial eligibility amounts are thresholds set for general legal matters for Canadians. Other areas that have been found to be deserving of additional consideration are domestic abuse and criminal cases. These legal matters are addressed by Ontario Legal Aid by having a separate financial threshold for domestic abuses cases that allows more people to get help. For criminal matters, duty counsels are available at court to help defendants for criminal cases. Migrants are often vulnerable as well. Legal aid financial thresholds should be modified to reflect the additional challenges migrants often have to face.

The House of Common Standing Committee on Justice and Human Rights (2017) recognized the need to better understand the issues surrounding access to justice and called on many expert witnesses for their thoughts. Ten recommendations were made to improve accessibility to legal services in Canada. The recommendation most relevant for migrants is the following:

“The Committee recommends that the Department of Justice Canada work with the provinces and territories to enhance the number of individuals eligible for legal aid by examining how to better use client contributions on a sliding scale based on income to maximize access to justice” (p. 71).

Assuming legal aid can accept the increased capacity without significantly increased delays, this recommendation would definitely help capture more individuals who would otherwise not be able to afford representation. Accessing legal aid through government services is different from working with private lawyers on multiple levels. Once individuals are determined to be eligible, they are helped the same way as everyone else. Billable hours and clients' ability to pay would not play a role in the services given to clients. Government-funded legal aid services would be resources available for eligible migrants to draw upon for help regardless of an individual's personal resources. And, as stated, legal aid services that cover immigration and refugee matters are only available in six provinces in Canada (Government of Canada, 2019d). This means migrants who do not reside in the six provinces would lack an important protective resilience-building resource in their external environment.

Research Question 1(b): In what ways is access to legal services likely to foster resilience?

Engagements with the legal system are often points in people's lives where important legal issues are dealt with. Special attention must be paid to these "turning points" where if these important tasks are dealt with successfully, may help change someone's life towards a more adaptive trajectory (Rutter, 1987). Depending on the risks at stake, it is important that migrants have the best odds possible at engaging with these tasks successfully. For example, successfully obtaining the legal recognition needed to stay in the country, to work, or to be eligible to receive social benefits can mean the difference between a life headed towards a stable future versus one that may become increasingly precarious. Having access to legal services as an external promotive factor can help with those odds. Appendix A helps illustrate the routes migrants often take when dealing with legal issues that are beyond their navigational capital and the role access to legal services plays in the process of helping or hindering the fostering of resilience.

Tribunals like the CRT should be rolled out across Canada to address similar issues that the CRT has been created to tackle. This model may also be instrumental in helping increase resilience levels in migrants by reducing barriers through lower filing fees, not needing to miss work, resolving their legal issues on an accessible platform, and taking their legal disputes out of the court system (which may be perceived as more

intimidating). Moving more issues out of the traditional court system and into a more relaxed system like tribunals can increase migrants' ability to access the legal system by reducing the threshold of navigational capital. Section 20(1) of the *CRT Act* generally does not permit parties to have legal representation unless special permission is allowed. This arrangement helps to even out the power between parties by not allowing parties to be represented by hired professional help. Unlike traditional courts and tribunals, by allowing parties to deal with their issues outside of business hours, parties may be able to better get the support they need by bringing their cases to trusted people in their support network. By eliminating the need to file documents in person and by reducing the chance of an oral hearing, claimants can now utilize their social supports to overcome language barriers instead of needing to respond to court clerks or in court in real-time. The reduction of the demands of tasks while increasing the likelihood of successful engagement are both ways to build resilience (Rutter, 1987).

Research Question 2: Do law firms benefit from making the services more accessible?

Migrants are often vulnerable, but this does not mean that none of them can afford private legal services. The assumption should not be made that making legal services accessible is a pure social responsibility. While research questions 1(a) and 1(b) largely concentrate on increasing accessibility of legal services for people who may have higher levels of dependence on government-funded services, questions 2 and 3 place a stronger emphasis on migrants who have more economic power who may be able to afford hiring private lawyers. This deliberate shift is to help better illustrate how making legal services more accessible can bring benefits to law firms on an organizational level and to lawyers on an individual level.

Making legal services accessible through increasing diversity in law firms can be a viable business model by increasing revenue, making ethical duties easier to discharge to clients, and satisfying professional obligations. By ignoring a large group in Canadian society, law firms are effectively missing out on an untapped market. This may be particularly relevant to migrants because the Refugee Law Office claims 60 percent of refugee claimants who use a private lawyer retain counsel through word-of-mouth (Ministry of the Attorney General, n.d.). Making legal services more accessible to

migrants can therefore lead to an increase in revenue and create a network of great referrals. This network can lead, in turn, to loyal and diverse client bases both domestically and internationally.

Aside from the increased streams of revenue, lawyers also have a duty to uphold confidence in the administration of justice. This can be done through various ways like reducing fees to help migrants achieve a sense of justice or forming better solicitor-client relationships in which clients feel like they are understood and well-represented. Increasing levels of cultural competency in firms allow lawyers to fulfil their duties relating to competence and to fully discharge their responsibilities to all parties in society. The abilities of a firm to be culturally sensitive can also reduce liability due to miscommunication or unintentional insensitive behaviours. Increased accessibility means lawyers are better equipped to connect culturally with clients. This connection reflects migration trends and international needs as the world becomes increasingly connected with the increased use of technology. Making legal services accessible to mirror the composition of the population helps to reflect the needs of the population, which contributes to building a viable business.

Cultural Competency through Diversity

From a human resources perspective, increasing cultural competency can reduce liability when cultural insensitivities are better managed. There are companies with entire business models based on educating others to be culturally sensitive so they do not unintentionally cause offense. These services are often tailored to business professionals to enable them to increase their chances of making successful deals. Though people can sit through classes and be educated on what practices to avoid, these ideas are not innate and have to be consciously practiced. On the other hand, the practices may already be ingrained in lawyers who share similar cultural backgrounds as target populations and may come across as less rehearsed and foster better solicitor-client relationships.

Law societies usually leave the responsibility of being more culturally competent to individual lawyers and law firms. However, certain cultural competencies are difficult to attain through diversity when, for example, the number of Indigenous practicing lawyers are low compared to their representation in the legal system. In 2016, 1.7% of all

lawyers in Ontario were Indigenous (Law Society of Upper Canada, 2016). Though Indigenous people only represented 4.9% of the Canadian population in 2016 (Statistics Canada, 2017a), they made up 30% of those admitted to provincial and territorial custody and 29% of those to federal custody (Government of Canada, 2019b). The issue surrounding cultural competency with Indigenous people was deemed to be so important that the Law Society of British Columbia (2019) decided to compel all lawyers in the province to take a free six-hour course on Indigenous intercultural competency training starting in 2021. British Columbia is the first province in the country to require the training after the governing board of benches decided that it will better equip lawyers to advise Indigenous clients (Carolino, 2019).

Embracing diversity creates better brand value and appears to be more appealing to both prospective clients and talent. Law firms that are homogenous could be seen as less appealing because the composition may be harder to relate to the needs of clients. As noted earlier, there has also been an increased trend in clients choosing law firms based on their perceptions on the firm's commitment to diversity. Higher diversity seems to dispel the perception that the firm values practices that may be discriminatory. In response to the compulsory training implemented in British Columbia, regional firm Clark Wilson LLP (2019) in downtown Vancouver immediately released a statement which claimed the title of being one of the first regional law firms in Canada to already be conducting similar training for their lawyers. Their commitment was quickly captured and advertised positively in a well-known Canadian magazine for lawyers (Carolino, 2019). This type of positive press will reflect well on the firm when clients and lawyers search for firms with which to do business.

Continuing Professional Development for Ontario Lawyers

The Law Society of Ontario (n.d.) requires Ontario lawyers to fulfill 12 Continuing Professional Development (CPD) hours each year, which consists of a minimum of three Professionalism hours and up to nine Substantive hours. An explanation of what is required is as follows:

“Between January 1, 2018 and December 31, 2020, lawyers and paralegals must complete a total of 3 Professionalism Hours that focus on advancing equality,

diversity and inclusion in the lawyer and paralegal professions. Each year thereafter, lawyers and paralegals must complete one Professionalism Hour that addresses issues of equality, diversity and inclusion. These hours count towards the three Professionalism Hours required each year” (Law Society of Ontario, n.d., para. 2).

Though the explicit emphasis on education on issues addressing equality, diversity, and inclusion is a good start, an average of one hour a year is not enough. When looking at the general principles that determine what qualifies for accreditation as a Professional Hour, one of the factors used for that determination is whether or not the program or activity has a minimum of 15 minutes allocated to professionalism content (Law Society of Ontario, n.d.). This means that of the one hour required annually of lawyers to listen to research, trends, or pressing issues regarding issues of equality, diversity, or inclusion, the content used to educate lawyers may be as short as just 15 minutes a year or 45 minutes over three years. This requirement appears to be inadequate to help inform lawyers of new research or reinforce the importance and severity of the issues.

More CPD hours should be required of lawyers to keep pace with the ever-growing research, migration trends in Canada, and growing unrest with issues regarding social inequality. When looking at the CPD courses offered for 2019 on the Law Society of Ontario’s website, topics on the benefits of diversity hiring, cultural sensitivity, access to justice for migrants, and challenges migrants have with the legal system appear to be lacking. With the range of courses available for further professional development, it is understandable that lawyers would want to develop a deeper understanding of issues surrounding their specific area of practice or of areas affiliated with their own. Aside from forcing lawyers to take more than their annual one Professional Hour on the issues, how can we incentivize lawyers to want to take more hours on these topics?

CPD courses can be framed to make lawyers engage in a cost-benefit analysis regarding the benefits their practice can reap socially, professionally, and financially when they better understand and address current trending issues. Faced with credible research that demonstrates the benefits of diversity hiring and making people recognize innate biases or misconceptions could prove to be good reflective exercises. It is

important lawyers are informed with updated research in order to better position both individual lawyers and the legal profession as a whole to tackle current and pressing social issues. However, sitting in a course about equality, diversity, and inclusion can only go so far. Lawyers should be encouraged to see the incorporation of diversity as a way for law firms to meet a part of their professional obligations.

Research Question 3: How can law firms leverage diversity to perform better?

As established earlier, diversity can bring many benefits to corporations that take steps to properly incorporate diversity. Law firms are not excluded from these benefits. Parallels can be drawn between law firms and other similar profit-driven corporations like banks. The section “Implication to Law Firms” in Chapter Six illustrates a variety of examples as to how the legal profession can benefit both at a firm level and at an individual level from properly implemented diversity practices. This section will discuss what steps to take to make sure these benefits materialize, an overview of the financial costs of diversity, and what trends to note and consider.

Benefits from Diversity Not Automatic

However, benefits from diversity are not automatic and may bring conflict and decrease group cohesiveness if diversity is not properly managed (Roberge & van Dick, 2010). Diversity does not automatically bring benefits to the workplace. Before it is integrated throughout the workplace, “diversity must be accepted, respected, and valued by all employees” (Ewoh, 2013, p. 115). While diversity is a buzz word that is often promoted, inclusion is either neglected or thought of as synonymous to diversity. Deloitte (2017) uses diversity expert Verna Meyer’s widely cited quote to distinguish the difference between diversity and inclusion as: “Diversity is being invited to the party. Inclusion is being asked to dance” (p. 15). While diversity is important, the benefits will only flow if there is inclusion as well (Deloitte, 2017; Sherbin & Rashid, 2017). Deloitte (2017) developed a framework to explain how an inclusive culture should make all staff feel connected to the organization and its values, feel they belong to the organization, and are given the support needed to grow their careers. If diversity is integrated properly, benefits in the workplace include increased creativity, problem-solving abilities,

flexibility with handling obstacles, and being better able to meet organizational goals and objectives (Ewoh, 2013).

There are other challenges to diversity. Lau and Murnighan (1998) have been widely cited for their theory on group faultlines and what group composition considerations may be best when it comes to maximizing group performance. Group faultlines are defined as “hypothetical dividing lines that may split a group into subgroups based on one or more attributes” (p. 328). The strength of faultlines depends on “the number of individual attributes apparent to group members; their alignment, and, as a consequence; the number of potentially homogenous subgroups” (p. 328). When this last aspect is neglected, faultlines may contribute to an increase in conflicts and group politics (Lau & Murnighan, 1998). Managerial groups like Boards of Directors are also not immune to the effects of group faultlines (Van Peteghem et al., 2018). While group faultlines is a concept that should be considered, the absence of faultlines may not be a positive thing because it could just mean that there is no diversity and the work group is a homogenous group (Lau & Murnighan, 1998). Group faultlines is just another consideration to keep in mind when firms bring in lawyers who are different from the current workforce in order to reduce group mentality and maximize group performance.

Individuals considered different from the majority cannot be brought into a corporation and met with the expectation that they can assimilate on their own (Ewoh, 2013). Diversity needs to be brought into all levels of management and “integrated into the agency’s overall operating plans and strategies” (p. 118). Based on their own research, Deloitte (2017) proposes Canadian businesses take five concrete steps to create a more inclusive environment. First, businesses should set specific expectations relating to inclusive practices and make all leaders accountable (Deloitte, 2017). Next, organizations should increase diversity in management and other roles with qualified candidates to avoid tokenism and to “protect against a diversity backlash” (p. 6). Thirdly, leaders should ensure that all voices are heard through the proper engagement and empowerment of staff (Deloitte, 2017). Organizations should then analyze their current practices and processes and look for room to improve now and not later (Deloitte, 2017). Lastly, leaders are encouraged to practice and stand up for inclusive behaviours both inside and outside of the office (Deloitte, 2017).

A survey by Deloitte found that the top three reasons organizations chose to invest in diversity and inclusion were to increase engagement among employees, improve ability to acquire talent, and to build a better brand with the public (Garr & Shellenback, 2014). The same report found that the five most often metrics used by companies to evaluate their efforts were turnover rates, representation levels throughout the organization, data from surveys on organizational engagement and culture, promotion rates, and how often offers are accepted when acquiring new talent (Garr & Shellenback, 2014).

While it is important for organizations to understand why they are engaging in these practices and have the metrics in place to measure their efforts, the Center for Talent Innovation found that leaders have to have “two-dimensional (2D) diversity” to truly unlock innovation (Hewlett et. al., 2013). Leaders are deemed to have 2D diversity if they exhibit “at least three kinds of both: inherent diversity (gender, race, age, religious background, socioeconomic background, sexual orientation, disability, nationality) and acquired diversity (cultural fluency, generational savvy, gender smarts, social media skills, cross-functional knowledge, global mindset, military experience, language skills)” (p. 3). The report also found that organizations with 2D leadership are 70% more likely to capture a new market and 45% more likely to improve market share than their counterparts without 2D leadership (Hewlett et. al., 2013). Employees of inclusive organizations generally report that 2D leaders display behaviours that ensure everyone gets heard, create a safe space to propose ideas, empower staff to make decisions, take advice and implement feedback, give actionable feedback, and share credit when the team succeeds (Hewlett et. al., 2013). While diversity is important, it is clear that the steps taken after its implementation to create an inclusive environment is equally important.

Costs with Implementing Diversity and Inclusion

It is clear that strong efforts have to be in place to ensure diversity and inclusion practices are properly implemented in the workplace. These efforts cost corporations both time and money. Financial costs associated with implementing diversity generally fall under the implementation and execution of programs (European Commission, 2003).

Training may be needed to ensure the internal culture is ready to help retain and develop diversity and opportunity costs can result from managers having to divert their time to these efforts (European Commission, 2003). These practices are on-going and would need to be maintained, assessed, and potentially improved for corporations to better understand the effectiveness of their efforts.

Getting Ahead of the Movement

Societal trends show that inequality, discrimination, and a lack of diversity are some of the areas garnering more attention. These movements are showing the corporate world that consumers will no longer stand for the status quo and demand that corporations address issues. The effects of shareholder and consumer activism on the corporate world are prime examples of what the public can force companies to do by threatening to withhold their investments. Some of the most notable cases of shareholder activism in recent years include the pressure for policy changes by companies like Institutional Shareholder Services and Glass, Lewis & Co's. The activists stated they would generally recommend either to withhold their vote or to vote against the chair of the board of public companies listed on certain exchanges if there was not at least one female director on the board or if a rationale or firm commitment was not disclosed (Glass Lewis, 2019). Along the same trends, the Ontario Teachers' Pension Plan (2017) issued a press release recognizing the role of diversity in achieving better business outcomes and called on public companies listed on both the S&P and TSX composite indexes to have women make up 30% of boards and executive teams by 2022. As one of Canada's largest institutional investors, it would be in the best interests of corporations to comply in order to continue to do business with them.

There are many more examples, but the ones given are just some of the more notable ones. The calls to increase diversity in leadership positions in public corporations are likely only going to continue. Instead of corporations taking reactive measures to do better, there may be benefits to taking a proactive approach to voluntarily incorporate diversity practices. For example, instead of bringing on a woman to the board and then issuing a press release acknowledging the company has now complied with the demands, it would arguably be better press to release a statement applauding the push and remind

the public how the company has already been complying for years because diversity is a core value.

These examples of shareholder activism may appear to be isolated instances and targeted and hence not a reason to reconsider existing business models. However, the federal government has also taken legislative steps to push for better representation in the economy. Bill C-25 was passed to amend the *Canada Business Corporations Act (CBCA)* (1985), and the clauses that make public corporations governed by the *CBCA* disclose information regarding their diversity starting from January 1, 2020 (Government of Canada, 2019a). These corporations are now legally required to disclose to their shareholders information on how many women, Indigenous peoples, persons with disabilities, and members of visible minorities are among their directors and senior management or explain why they are refusing to comply (Government of Canada, 2019a). This amendment should give a strong indication of the stance Canada is taking. Having the law changed to ensure compliance speaks to the strong view society is taking regarding diversity. However, the impact on migrants will be negligible unless the increased diversity is able to help reduce barriers for migrants in their settlement process.

During the Second Reading of Bill C-25 on November 25, 2016, the Member of Parliament (MP) Mrs. Gladu, stated that there were currently around 270,000 corporations governed by the *CBCA* and many would be affected by the change (Parliament of Canada, 2016a). Even though most were privately held companies, it was noted that the *CBCA* also governed a lot of Canada's largest public corporations (Parliament of Canada, 2016a). MP Malcolmson made the following statement:

“We do well when our federal boards and commissions actually reflect the diversity of our country. When we prioritize gender-balanced appointments, we find those good candidates who have not been appointed up to that point” (p. 7269).

Passing Bill C-25 may seem like an effective way to push for change, but there are gaps not addressed. MP Caron recognized this as well in his opinion expressed during the Second Reading on December 9, 2016 below, which suggests that though it is a good step for Parliament to take, more needs to be done.

“The ‘comply or explain’ or ‘trying to shame’ approach is to try and ensure that corporate boards be accountable for diversity or lack of diversity.

In passing, I would note another element that is missing from the bill, and that is a definition of diversity. We want more diversity, but how is that word defined?

That is a fundamental question that is passed over. However, ‘comply or explain’ is good only in those cases where there are shareholders or a group of militant shareholders who are really interested in issues related to administration, and who attend general meetings. For companies that have few attending shareholders or those with a high percentage of proxy voting, there will not be much impact on this issue” (Parliament of Canada, 2016b, p. 7889).

Banks are not covered under the *CBCA* (Government of Canada, 2018a), and this means they are not covered under this “comply or explain” provision. Even though law firms may be incorporated provincially or federally as well, the new clause generally does not apply to them. Section 172.1(1) of the *CBCA* for the disclosure relating to diversity only applies to “prescribed corporations.” Section 72.2(2) of the *Canada Business Corporations Regulations* (2021) describes prescribed corporations as only distributing corporations. Therefore, only law firms that may be under *CBCA* and also issue shares would have to comply.

Despite the exclusion, the Canadian Bankers Association (2020b) claim that they “are leaders in building representative workforces.” Similar to law firms and other big corporations, many Canadian banks also proudly boast about their support and commitment to diversity and post relevant data on their websites. The Canadian Bankers Association (2020b) believes that having more women in senior roles in the workplace is a question of equality and that “organizations that achieve gender diversity also outperform by almost any measure those that don’t” (n.p.). In 2018, women made up 37.7% of senior management and 48.0% of middle management across the six largest Canadian banks, but measures like adopting policies, incorporating training to battle unconscious bias, creating special programs, and ensuring proper development plans will continue to be implemented in order to further increase representation (Canadian Bankers Association, 2020c). Visible minorities made up 16.8% of senior management positions and 31.6% of banks’ middle management positions in 2018 (Canada Bankers

Association, 2020c). In 2020, statistics show that women occupied an average of 39% of the board of directors across their six largest Canadian banks (Canadian Bankers Association, 2020b). Banks are large professional institutions that make informed business-driven decisions. The legal field should draw comparisons between both types of corporations and make similar informed decisions.

The six largest banks in Canada are the Bank of Montreal (BMO), Canadian Imperial Bank of Canada (CIBC), National Bank of Canada, Royal Bank of Canada (RBC), Bank of Nova Scotia (Scotiabank), and Toronto-Dominion Bank (TD) (Canadian Bankers Association, 2020a). Each bank discloses a varying amount of information about the composition of their staff. Unfortunately, because of the drastic differences in the way the data is categorized, it is difficult to compare how each bank is doing regarding their commitment to diversity and inclusion. In 2018, the Bank of Nova Scotia reported that senior management was made up of 37.5% women and 18.8% visible minorities, while middle management had 45.6% women and 19.8% visible minorities. They also claim that many of their employees are well suited to help immigrants because they also share similar experiences (Scotiabank, 2018). The Royal Bank of Canada (2019) reported that women represented 43% of the directors at RBC and that 40% of executive appointments in 2019 were women, while 27% of these appointments were minorities. In 2018, women made up 44% of senior managers, 40% of middle and other managers at the Bank of Canada. Visible minorities made up 0% of senior managers and 16% of middle and other managers in the same year (Bank of Canada, 2018). While most of these data show how well banks are generally doing, there is still room for improvement.

Not only do companies inherent the internal benefits of having diversity in the workplace, but they can also use it to market themselves as a great employer. Law firms that have inadequate levels of diversity miss out on the inherent benefits and further lag behind when their counterparts all adopt diversity. Lagging behind in diversity initiatives can be damaging to firms when they miss out on both the benefits and lose the market shares that their diverse counterparts are able to further obtain. Instead of finding your company in a position where it is forced to take on diversity, intentionally pursuing it may bring on more positive results earlier on.

International Experience

Gender and ethnic diversity are the two areas that often come into mind when it comes to diversity in the legal field, but there is a qualified group of people who are often overlooked: internationally trained lawyers. While some Canadians choose to study law in another country, many internationally trained lawyers come as migrants and face similar problems migrants face. The difficulty of having foreign credentials recognized is often one of those challenges.

Incorporating well-managed diversity in the context of gender and ethnic diversity to increase an organization's performance is a common topic and has been discussed earlier. A less discussed group that may bring specific benefits to law firms are internationally trained lawyers. Their legal experience gained from working in other jurisdictions may be indispensable, especially with the ever-increasing international scope of the field. Internationally trained lawyers can cut out both the need for translators and the reliance on lawyers in another country to help close certain deals. Industries like banking and legal services have indicated that their top-performing employees were often those who had international perspectives (Momani & Stirk, 2017). Furthermore, participants in an employer roundtable identified ethnocultural diversity and international experience as keys to accessing and operating in international markets (Momani & Stirk, 2017).

In order for internationally trained lawyers to be recognized in Canada, they have to go through a process governed by the National Committee on Accreditation (NCA). The organization assesses each applicant individually and determines whether or not the applicant must take a certain number of law classes or exams or to redo all three years of school at a Canadian law school. The process has to be completed within five years of starting, and it can be as short as 10 months, but it takes an average of two years, along with tens of thousands of dollars to complete (National Committee on Accreditation, n.d.). Each applicant has to be assessed by the NCA regardless of the years of relevant experience obtained or which foreign school in which they were trained.

The Alberta Branch of the Canadian Bar Association (2016) recognizes that this subset of internationally trained lawyers faces significantly higher barriers than

domestically trained lawyers for different reasons, including the stigma of being an outsider of “the club of Canadian graduates.” A systemic bias based on the “Canadian experience” exists, which makes it more difficult to work as a lawyer in Canada is amplified in an article distributed by LexisNexis (Jerome, 2019). Bencher Isfahan Merali was quoted saying “the [Ontario] Human Rights Commission has looked at this issue and, in my view, that term ‘Canadian experience’ is code for other things, which are really just stereotypes and bias about someone’s ethnic origin or country of origin” (Jerome, 2019). Internationally trained lawyers make up 30% of all licensed applicants in 2018, but this statistic is not reflective of the number of internationally trained lawyers working in the legal field (Jerome, 2019). A report in 2010 using data from 2006 showed that while 69% of Canadian born and trained lawyers were employed in their profession of training, it was only 12% for internationally educated lawyers (Zietsma, 2010). Using data from 2011, the figure was 65% for Canadian born and educated lawyers, while it increased slightly to 14.3% for internationally educated immigrant in Ontario and 13.3% in the rest of Canada (Augustine, 2015).

But, the process to be accredited by the NCA is both costly and time consuming. Lawyers who attend a foreign law school and then potentially go through law school a second time just to stay in the field should be an indication of their passion for the field and the perseverance they each possess. Increasing the availability of internationally trained lawyers in the Canadian legal system can potentially better help the migrant population because of their shared backgrounds and aid in managing the expectations clients may have acquired from the legal system back home.

CHAPTER 8

LIMITATIONS AND FUTURE RESEARCH

Resilience in migrants is an area that is understudied. Primary research establishing links between levels of resilience in migrants and the accessibility of legal services needs to be carried out to better advocate for change. While performance information relating to diversity efforts can be more readily attained for public corporations, law firms do not generally disclose similar information. While the literature mentions the categories of costs associated with implementing diversity, actual quantitative numbers were also difficult to find. This may be because of the difficulty with calculating costs like opportunity costs or just a general lack of information regarding diversity training practices and programs.

With existing literature illustrating what the best practices are for implementing and evaluating diversity efforts, it would be beneficial for law firms to adopt these practices and to assess the impact of increased cultural competence and diversity within firms. This data can be used internally and externally. Internally, the data could help drive hiring decisions and assess firm performance. Externally, the data could be disclosed to bolster transparency and ethical practices. While this voluntary data would likely be selective to put firms in a positive light, it would help increase the available data on diversity among law firms and help with the movement to push for increasing diversity in the legal profession.

Statistics from Ontario were chosen for this paper due to the availability and transparency of the statistics put out by the Law Society of Ontario. However, it is still difficult to assess whether the legal profession is getting more diverse without access to the necessary data. Appendix B breaks down the population of Ontario in 2016 into four categories according to gender and if people identified as visible minorities or Indigenous. When compared to five of the eight law schools in Ontario that had information available about their incoming class profiles, it was encouraging to see how gender proportions reflect the general population. This data can be found in Appendix C. Moreover, when comparing the information between Appendix B and D, we see that a much larger portion of incoming students identified as visible minorities or racialized than the general population. However, the conclusions have some doubts attached. The

data are disclosed voluntarily. As a result, the information may be selectively reported, biased to create the best possible profile for the organizations. All Canadian schools should be strongly encouraged to release the information regularly in full, and to collect a standardized set of data across the country.

A way to mitigate the lack of information is to look at the breakdown of lawyers who are licensed in Ontario every year in Appendix E. However, because of the way the numbers are reported in the Law Society of Ontario's annual reports, the numbers may vary, due to the fact that the indication of whether lawyers transferring from other jurisdictions are included are not always present.

A few interesting observations can be made from Appendix E, however. The difficulty in finding available information tracking racialized and Indigenous lawyers in the practice before 2010 indicates how certain issues may not have been seen as pressing issues. The addition of these categories is an indication of how the legal field is changing. From 2010 to 2014, the percentages only represented the applicants going through the licensing process. These may not be the same as the number of lawyers who were successful in the process. A piece of data to note is that even though a large proportion of incoming law students are identifying as racialized in Appendix D, these numbers are not reflected in Appendix E or F. The numbers may be unusually high because only the law schools that reported high numbers chose to disclose this data or because a significant number choose to not go through the licensing process. A law degree is versatile. Graduates may go into business, academia, non-legal careers, or decide to be licensed in another province. These possibilities are not exhaustive and are only speculations.

When looking at the practice of law, it can be easy to assume that generally more men go to law school than women. When analyzing data of practicing lawyers according to their ages, it was difficult to know if the difference was because women entered the field late or if it was because of other reasons. Because the data for incoming law students found only go back a few years depending on the school, it was also difficult to understand when there were more women than men going to law school. The data collected in Appendix E may provide the insight needed to better understand when this started. According to the data found, 2001 was the first year more women were licensed as lawyers than men in Ontario. Knowing the year of when more women became lawyers

than men is important because it allows a better understanding of when the numbers of men and women practicing law in a table like Appendix F should start to better reflect both the numbers of women remaining in the field as senior lawyers and becoming partners in law firms. Current data on partners in the field according to gender was included as a metric only in recent years and do not show the expected surge of women making partners yet. Lawyers need time to work their way up to become partners at law firms so this data should be monitored for future research when assessing diversity levels in the legal practice in Ontario. It may be also helpful to keep that milestone year of 2001 in mind when analyzing similar data and when conducting future analysis.

CHAPTER 9

CONCLUSION

Canada welcomes migrants for many important reasons. These include the need to replace our declining population and the benefits they bring in boosting and maintaining our economy (McArthur-Gupta et al., 2019). Though the migrant settlement experience varies for everyone, it is known to be peppered with deep challenges. Resilience is built when there is a presence of risks and promotional factors that can either reduce negative outcomes or to enable individuals to successfully complete tasks (Rutter, 1987). When systems are too complex to navigate, negative outcomes are likely to result (Fergus & Zimmerman, 2005). Challenges can be better dealt with if migrants operate in facilitative environments where they are able to access the resources available to successfully engage with these tasks (Ungar, 2012). Government-funded services can be one of these resources. Among the many challenges migrants face on their settlement journey, the legal system is likely the most important and complex system migrants need to navigate. It is important to support migrants at these “turning points” to give them an increased chance to succeed and create an environment that best facilitates the fostering of resilience.

The benefits of improved access to legal services do not just flow to migrants. Other parties also benefit. Investing in legal aid has been shown to bring cost-savings to the government, and this needs to be widely recognized. Although there are both government and non-government agencies providing settlement services, legal services for migrants is an area that is often lacking. Engagements with the legal system to obtain the appropriate legal status to work or stay, to apply for citizenship, or to deal with personal matters are issues that can be complex and lengthy. Unfortunately, the allocation of funds dedicated to help with immigration issues at legal aid clinics are not available in all the provinces, and the threshold to qualify for aid are difficult to pass. As discussed earlier, Canadians, who do not face the same barriers as migrants, and who choose to represent themselves in legal proceedings, also had great difficulties in successfully navigating through the legal system.

Migrants come from all walks of life, are at different stages in their settlement journey, and hold varying levels of economic power. Increasing the accessibility of legal

services does not necessarily mean *pro bono* work and can benefit the legal profession. Increasing accessibility can be through increasing diversity in law firms to improve lawyers' levels of cultural competency. While migrants can receive better services as clients, law firms can gain access to new clients, better discharge their ethical duties, fulfill their professional obligations, and reduce miscommunications. If diversity is properly managed and an inclusive work environment can be maintained, law firms can also reap all of the well-recognized and researched benefits that come with having diverse workplaces. At the same time, migrants can foster higher levels of resilience by having their challenges reduced from a level beyond their navigational capital to one that they can handle and be able to better develop resilience (Fergus & Zimmerman, 2005).

Resilience is important not just to migrants but to all Canadians. Canada benefits from having a resilient and self-efficient population to maintain a strong economy and reduce social service dependency. Individuals need to understand the negative impacts that inaccessibility of government services have on migrants. When governments cut essential services like legal aid, it is up to informed individuals in society to let their governments understand that these cuts need to be reversed. This paper recommends individuals take on actions analogous to shareholder activism where they will vote against governments responsible for disregarding their concerns. In recent years, the push to help marginalized groups become better represented and included in all realms of life has increased with the widespread use of social media. As studies promoting equality and diversity continue to be published and creative initiatives like the CRT continue to be created, the hope is that more institutions will become accessible to all Canadians.

CHAPTER 10

CONTRIBUTIONS TO RESEARCH

Research Question 1(a): How might access to government-funded services help migrants in Canada foster higher levels of resilience?

The notion of resilience was unpacked and the environments that were most facilitative of resilience were discussed to understand how to best help migrants. While individual promotive factors are important, it may be insufficient when dealing with severe adversities. Social networks can be resources but government-funded services have the expertise that are tailored to help population groups like migrants. This paper tried to fill in the gaps in the literature that connect the level of resilience in migrants and accessibility to legal services. Both the protective factors and challenge models were used to illustrate how access to government-funded services like legal services can help foster higher levels of resilience in migrants.

Research Question 1(b): In what ways is access to legal services likely to foster resilience?

Prior literature has largely treated the struggles faced by migrants, the benefits of diversity in the workplace, and the lack of diversity in the legal field each as discrete areas of research. This paper sought to connect these areas. While the financial aspect is important to accessing legal services, other ways were suggested to help foster higher levels of resilience in migrants. Increasing access through improving diversity and cultural competency are two ways suggested. Whether it is obtaining the legal status needed to stay in Canada or to find work, migrants often have to engage with the legal system. Examples of experiences from migrants and other self-represented litigants were drawn to illustrate the challenges of this feat. Resilience is built when tasks can be engaged with successfully (Rutter, 1987) and reducing the complexity of the legal system is vital in migrants' settlement process. A model that can demonstrate this mutually benefiting relationship between migrants and law firms when access to legal services is improved can be found in Appendix A.

Research Question 2: Do law firms benefit from making the services more accessible?

Modern examples were used to illustrate how taking steps to better align with public sentiments regarding diversity can put law firms in advantageous positions to compete for clients. Specific Rules of Professional Conduct (Law Society of Ontario, n.d.) for Ontario lawyers were also examined to understand how increasing accessibility can help lawyers better execute both their professional obligations and their duty of care to clients.

Research Question 3: How can law firms leverage diversity to perform better?

Unlike public corporations, law firms are private corporations and do not generally disclose data on financial performance or diversity like public corporations. The literature on the benefits on diversity in the workplace is generally applied to public corporations and not to private law firms. This is likely because of the lack of available information among firms in the legal field. This paper drew parallels between law firms and other for-profit corporations to present best practices that law firms can adopt in order to reap the same benefits that other diverse corporations are able to enjoy. Increased talent retention, broader market appeal, better financial performance, and reduced liabilities were some of the benefits identified that law firms can take advantage of if they take steps to ensure diversity is properly implemented in the workplace.

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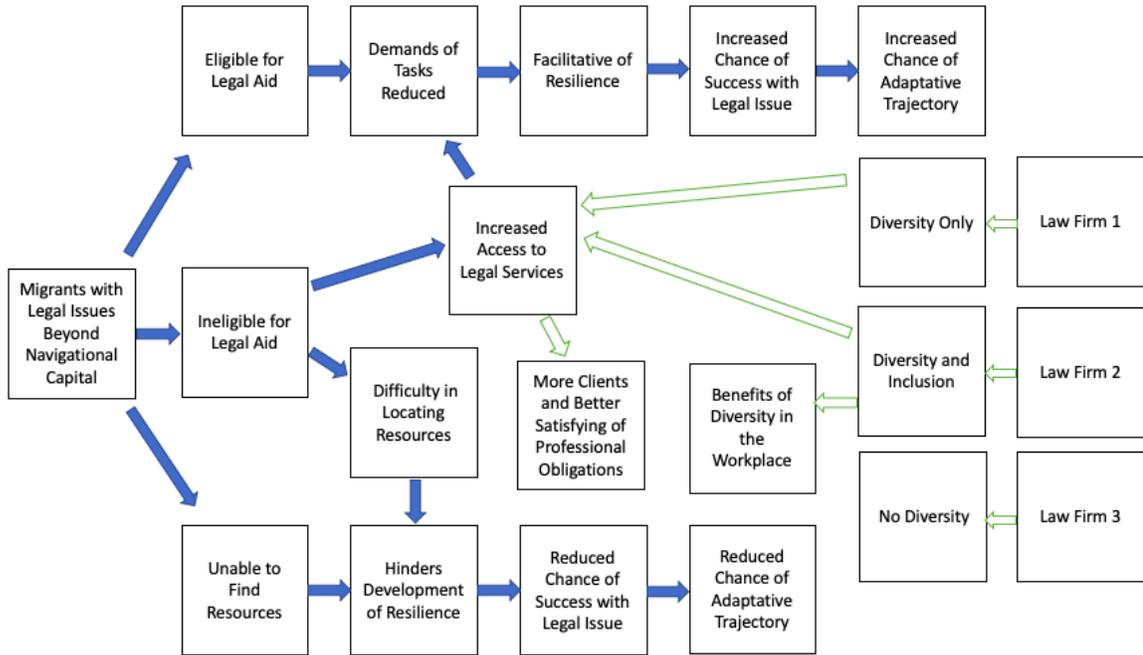
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APPENDICES

Appendix A: Mutualistic Migrant-Law Firm Model



Note. This model encapsulates the mutually beneficial relationship migrants and law firms have when accessibility to legal services is increased. The solid arrows illustrate research questions 1(a) and 1(b) and the hollow arrows illustrate questions 2 and 3.

Appendix B: Composition of Ontario Population

	Ontario Population	Female	Male	Visible Minority	Indigenous
Total Numbers	13,448,495	6,559,390	6,889,105	3,885,585	374,395
Percentage of Population	100%	48.8%	51.2%	28.9	2.8

Note. Values are drawn from Statistics Canada, 2017b

Appendix C: Class Profiles of Ontario Law Students (Gender)

Graduating Class	Queen's University		University of Toronto		Western University		University of Windsor		York University	
	% F	% M	% F	% M	% F	% M	% F	% M	% F	% M
2020	51	49	53	46	47	51	59.4	40.2	-	-
2021	48	48	50	49	50	49	58.9	39.4	55	43
2022	46	49	53	45	53	45	59.1	39.7	56	41

Note. Values are drawn from available data on each law school's website

Appendix D: Class Profiles of Ontario Law Students (Racialized)

Graduating Class	Queen's University	University of Toronto	Western University	University of Windsor	York University
2020	-	40%	33%	54.4%	-
2021	-	47%	20%	53.4%	44%
2022	39%	43%	29%	50.2%	44%

Note. Values are drawn from available data on each law school's website

Appendix E: Lawyers Licensed in Ontario

	Female	Male	Racialized	Indigenous
2000	537 (50%)	537 (50%)	- -	- -
2001	539 (51.5%)	508 (48.5%)	- -	- -
2002	1,246 (52.3%)	1,135 (47.7%)	- -	- -
2003	729 (53.1%)	645 (46.9%)	- -	- -
2004	517 (54.2%)	437 (45.8%)	- -	- -
2005	607 (57%)	457 (43%)	- -	- -
2006	592 (52.5%)	536 (47.5%)	- -	- -
2007	633 (56.5%)	488 (43.5%)	- -	- -
2008	762 (51.5%)	717 (48.5%)	- -	- -
2009	815 (53%)	729 (47%)	- -	- -
2010	836 (51%)	815 (49%)	- 19%	- 2%
2011	868 (50.7%)	842 (49.2%)	- 22%	- 2%
2012	963 (51.4%)	912 (48.6%)	- 24%	- 2%
2013	989 (49.6%)	1,005 (50.4%)	- 23%	- 2.6%

2014	1,049 (52.9%)	935 (47.1%)	- <u>23.8%</u>	- <u>1.4%</u>
2015	1,129 (51.3%)	1,072 (48.7%)	- (20.4%)	- (1.67%)
2016	1,148 (52.5%)	1,040 (47.5%)	- (22.2%)	- (1.74%)
2017	1139 (52%)	1052 (48%)	- (23.23%)	- (1.26%)
2018	1,306 (54.7%)	1,083 (45.3%)	587 (22.94%)	40 (1.56%)

Note. Underlined values indicate applicants entering the licensing process and not data of lawyers who were licensed

Note. No actual values were provided for 2001

Note. Values were drawn from the Law Society of Ontario's Annual Reports (The Law Society of Upper Canada changed its name to the Law Society of Ontario on January 1st, 2018).

Appendix F: Composition of Practicing Lawyers in Ontario

	Practicing Ontario Lawyers	Female Lawyers	Male Lawyers	Female Partners	Male Partners	Racialized Lawyers	Indigenous Lawyers
2010	42,169	16,336 (38.7%)	25,833 (61.3%)	-	-	-	-
2011	43,393	17,066 (39%)	26,327 (61%)	-	-	-	-
2012	44,642	17,841 (40%)	26,801 (60%)	-	-	-	-
2013	46,054	- (40%)	- (60%)	- (4%)	- (15%)	-	-
2014	47,428	- (42%)	- (59%)	- (4%)	- (14%)	-	-
2015	49,040	20,333	28,707	1,635	5,347	17.6%	1.5%
2016	50,588	21,248 (42.0%)	29,340 (58.0%)	1,696 (24.3%)	5,273 (74.7%)	18.6%	1.5%
2017	52,155	22,142 (42.5%)	30,013 (57.5%)	1,715 (24.8)	5,206 (75.2%)	19.3%	1.5%
2018	53,732	23,088 (42.9%)	30,644 (57.0%)	1,770 (25.5%)	5,168 (74.5%)	-	-

Note. Values were drawn from the Law Society of Ontario's Annual Reports (The Law Society of Upper Canada changed its name to the Law Society of Ontario on January 1st, 2018).

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