

*Speech by Anna K. Fung, QC at the Women in Law Conference  
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## **One lawyer's perspective on the role of women in the practice of law today**

Thank you very much for giving me this opportunity to share with you some insights and lessons that I have learnt from practising law now for 21 years in British Columbia. I should begin with a couple of disclaimers. First of all, although I am privileged to be the current President of the Law Society of British Columbia, the views that I am going to express here are not those of the Law Society, but my own. Secondly, my experience is from the perspective of a Chinese Canadian who has practised law in large downtown law firms and large companies in Vancouver which are predominantly male and predominantly white. I should also warn you that my insights will not strike you as particularly profound or earth-shattering, but I hope they will give you some food for thought and a basis for deciding whether you wish to continue in the practice of law, or at least change the way that you approach the practice of law from now on.

First of all, we should remember just how far we have come as women in the practice of law. As Law Society Past President Bill Everett, Q.C., noted in his President's Column in 2006, less than a century ago in 1908, the then Secretary of the Law Society of British Columbia, Oscar Bass, wrote to an Ontario colleague in these terms:

“I beg to say that the fair sex have not yet threatened to invade the legal profession in British Columbia. The Benchers not yet having had to consider the application of a modern Blackstone in petticoats to enter the profession, it is difficult to say what their feelings would be or what decision they would reach.”

A few years later, when the Benchers of the day, all males of course, had occasion to ponder the issue, they concluded that they had no power to “admit ladies to the practice of law”. It wasn't until April 1, 1912, that one determined woman, Mabel Penery French, broke new ground by pushing the provincial government to pass *An Act to remove the Disability of Women so far as relates to the Study and Practice of Law* and in doing so, became the first woman to be called to the British Columbia bar.

Around the same time, in the first part of the 20<sup>th</sup> Century, ethnic Chinese Canadians, male and female alike, were not allowed in the professions, even after they had graduated from universities with professional degrees. The few who persevered and eventually became lawyers were “ghettoized” by eking out a living as sole practitioners working in Chinatown serving only Chinese clients.

What has changed since? A lot in some ways and not so much in others regrettably. As we know, our perception of our surroundings, and of the world we live in, are profoundly influenced by where we come from and the type of circumstances we grew up in. As women, most of us grew up in a generation of women's liberation movement that has

taught us that we can be anything that we want to be and that we should expect and demand equality in all respects, including the workplace. Then we get into the workplace and discover that perhaps the message we were raised with is not reflective of the truth out there. What happens then?

Today, female students make up more than 50% of Canadian law schools and more often than not, the gold medallists are female. Women manage to get hired by law firms as much as men do. Yet, there appears to be a much higher attrition rate for women leaving law than there is for men. Female lawyers in general still earn less money than their male counterparts, and they are less likely to be in positions of power and influence compared to their male peers. Why is that, and why should we care? Surely, these bright and assertive women are capable of making choices that are right for them. If they choose to leave the practice of law of their own volition or not run for positions of power, why should anyone else care?

There is a lot of speculation as to the causes of the exodus of women from the practice of law. The first is that women leave the practice of law because they want to have children. I have heard from some women who told me that they did not feel that they could continue in private practice once they had children because of the lack of support from the partners in their law firm for the decrease in billings and billable hours that were associated with maternity leave and having to juggle the demands of a family with their law practice.

As those who are in private practice know all too well, the private practice of law today is becoming more and more a business rather than a profession, and the single biggest driver for any successful business is the amount of profit it manages to generate for its owners, in the case of a law firm, its partners. The way that law firms earn a profit is to maximize its billings to clients, and because lawyers are slaves to charging by the hour, the impetus is for firms to urge their lawyers to maximize the number of hours worked. To expect a firm to put the demands of family obligations above the earning of profit is in my view unrealistic and asking for the impossible unfortunately.

In my experience, law firms are just as brutal on male associates whose billings don't meet the established billing targets for whatever reason as they are on females who don't do so for "family" reasons. In short, most law firms today, given the high salaries that lawyers command, will not tolerate under-performing associates, even under-performing partners, regardless of the reasons for that underperformance.

You may argue that not billing 2000 hours a year because you want to spend time with your children is not underperformance but you have to remember that from an economic perspective, it is irrelevant to the firm what the cause of that failure to bill 2000 hours is. The fact is that an hour not billed is an hour that the other lawyers in the firm have to subsidize. That is the brutal truth. The more enlightened lawyers, of course, recognize that that type of subsidy is worthwhile for societal reasons and are prepared to accept that as the price to pay to keep women in the practice of law. The less enlightened lawyers say no accommodation at all should be made for women to choose to spend less time at

work for “personal” reasons. Notwithstanding that, law firms are starting to recognize the needs of young lawyers, male and female, who want both a family and a career, and who want the chance to enjoy both to the best of their ability, so they are offering such things as paid parental leave and longer parental leaves than in the past. But we should not be naïve about this.

The reality is that in most law firms, you take lengthy parental leave at peril to your standing in the firm, career advancement prospects and retention of existing clients. One litigation partner in a large national law firm discovered just that, upon her return from maternity leave following the birth of her second child. While her partners were seemingly supportive of her 1<sup>st</sup> maternity leave, they were distinctly less so of her second, and when she returned to work, she discovered that many of her clients had been referred to other lawyers in the firm who were determined to hang onto them. Shortly thereafter, she left the comfort of the large firm and started her own sole practice, working from her home. She is now blissfully happy and financially sound as a sole practitioner.

Now, for the good news. I know of one partner in a downtown firm who voluntarily left the partnership to raise her children while they were young and then came rejoined her old firm years later, first as an associate and then as a full partner, after her children were grown. Similarly, I know of several, although admittedly not many, perfectly capable and competent partners in large law firms who are happily practising law and raising young children at the same time. They are able to do so generally because they have supportive spouses and access to resources, like nannies or good day care, that allow them to ensure that their children are well taken care of while they pursue their legal careers at the same time. They have learnt that they can have it all, as long as they accept, as Lisa Vogt, the managing partner in the Vancouver office of McCarthy Tétrault says, that they don’t have to *do* it all themselves. They have learnt to delegate to others those things that don’t necessarily require their personal attention, like laundry or baking cookies for the school bake sale, and to concentrate on those that do, like going to their children’s school plays. They have also learnt to be clear and honest with themselves and others about their priorities, and they are, to continue to be as good a lawyer and professional as they can be while also being an equally good mother and spouse. They have also learnt to let go of the need for perfection, and manage the constant guilt of feeling like they are not spending quite enough quality time with their children as they ought to, without at the same time succumbing to that guilt or beating themselves up about it. In short, they have learnt to let go of the myth of Superwoman in favour of being a woman who simply does the best she can when she can, and being proud of it. For some tasks, “good enough” is enough. Of course, these women are also fortunate to work for law firms that are smart enough to recognize that they must change the demands and structures of the traditional law firm model to bring them into closer harmony with the reality of the modern world, where men and women share family responsibilities and both are expecting, and in some cases demanding, a better balance between their work and family responsibilities.

This leads me to the first of the truths that women in law must learn, which is to know yourselves and be true to and honour yourselves and your core values. Be crystal clear

and brutally honest with yourself about what you value most in your life, and then live your life accordingly. I really believe that is the key to true happiness and success in life. Put another way, if you follow your passion, the rest may or may not follow, but at least you won't be wondering at the end of your life, "what if I had lived my life differently?"

I recently met with an articled student who was clearly unhappy with her articling experience in her law firm and struggling to find a way out. When I suggested to her that life was much too short for her to continue to be miserable doing what she was doing and that perhaps she ought to seriously consider whether law was the right career for her, she replied that she felt that she owed it to her parents, who had funded her law school education after a short stint as a teacher, to give it a honest try to pack before packing it in. On one level, I truly admired her tenacity, but the thought did occur to me that pursuing a career as a lawyer in order to meet her parents' expectations was perhaps the wrong reason for being a lawyer. If I had simply done what my parents wanted me to do, I would have been a doctor and been thoroughly miserable at it.

There is no question that the practice of law is demanding, stressful and requires the devotion of a lot of time to it. There is no question as well that not everyone is suited to the practice of law by temperament or inclination. There is no shame in admitting that. The practice of law demands a great deal of intellectual rigour, sound and mature judgment, a genuine caring about others, good problem solving skills and the ability to persuade others. Not everyone is capable of meeting those requirements or making the personal sacrifices that are needed to become "successful" lawyers. Sometimes, it is important to have the courage to admit that to yourself and move on to other pursuits that better suit you and what you value most in life.

I recall a junior litigation associate who, after representing a moving company in a claim against an elderly lady who had refused to pay the moving company that had broken some of her items during a move over Christmas, told me that she finally admitted to herself that she simply could not continue to engage in that type of practice, as her personal sympathies were entirely with the defendant rather than her client. In short, her personal values conflicted with her professional duties, and she was smart enough to accept what was more important to her. Similarly, if having children and being a mother are important to you, then you may not want to wait until you are fully established in your legal career before you do so, because by the time you have concluded that the time is right, it might just be too late. So, a word of advice to those who are starting out in your legal careers, if a firm's maternity leave policy or the availability of flex time or part time work arrangements is important to you, you need to do the due diligence on this before you join the firm, not after.

That leads me to the second of the truths for women in law, and that is, do not define or limit yourself by others' stereotypes and perceptions of what women ought to be, or by your own mistaken perceptions of what you ought to be. Be strong enough to resist societal norms or myths that limit women's achievements. Not all women want or are cut out to be mothers or caregivers. Too often, women are taught or socialized to be compliant pleasers who do not and should not aspire to be leaders. Assertive women are

sometimes portrayed and joked about as “ball busters” or “pseudo-men”. That sometimes leads women to downplay our abilities and skills at work, because we want to be popular or well-liked, and we don’t want to be one of “those” women in law firms who are denigrated for not having a life or family outside of work. By doing so, we short-change ourselves because we fail to set our goals high enough or bold enough.

One woman, who was a managing partner at a national law firm, tells the story of a job interview shortly after her high school graduation. She was asked by her male interviewers what she wanted to be some day. When she replied, the “CEO of a company”, they laughed at her outright. Well, today, she is the CEO of a large national drug store chain. Similarly, when it was suggested to me that I should consider running for the presidency of the Law Society of BC, I was initially reluctant to do so for two reasons. In the entire history of the Law Society, there had not been one single person of visible minority who had served as President. I was also conscious of the fact that I was not in mainstream private practice, having moved on to being corporate counsel after seven years of private practice. I felt that those two would be deadly strikes against me. Then, of course there was that 3<sup>rd</sup> strike -- I was a woman, and there had only ever been 3 female Presidents in the 120 plus year history of the Law Society. How could I possibly win against my male Caucasian candidates?

If I had listened to my own misgivings and foreclosed my own opportunity to run for the Presidency despite others’ encouragement, I would not be President today. So, it is important for all of us to take a chance once in a while and dare to be bold and risk failure, to spur us on to greater achievement. I say that because the 1<sup>st</sup> time that I ran for the Law Society presidency, I was unsuccessful and I was crushed by my failure, but I put my pride aside and ran again for the position the following year, and lo and behold, I won against the other candidate, my former male articling principal no less!

The 3<sup>rd</sup> truth of women in law is to recognize that you cannot do it alone, nor should you. The practice of law is a monolithic institution, and you cannot change the structure of institutions overnight. To make any change, you need the support and assistance of many people, men and women alike. Not everyone you meet will see the need for change, or want it. But it is important for you to develop allies in and outside of the law that you can count on to be a sounding board and promoter and supporter of issues that matter to you. Never underestimate the power of a strong, vocal, diverse and loyal network.

My own personal view is that lawyers generally want to do the right thing, but they have to believe it is the right thing to do and for the right reason, and not because they are motivated by guilt or manipulated or bullied into it. Remember, male lawyers are not necessarily the enemy nor should they be treated as such. I have known and have had the benefit of strong male mentors who were far more feminist in their thinking and had much more sympathy for the struggles that female lawyers face than many of their female counterparts. Take heart in the fact that fair minded people will always value equality and respect the rights of others, and that attitudes, no matter how antiquated, can and do change over time.

The fourth thing that women should recognize is to not rely on the law to satisfy all of our needs. For some people, the law provides all they need and want in life on a personal and professional level. For the rest of us, we need to find other outlets for our creativity, abilities and energy. The law may give us occasional gratification in meeting a particularly difficult legal challenge or receiving words of thanks or praise from our colleagues or clients. But, by and large, those rewards are infrequent and even expected by us so that they lose their value or impact. What we need to do is to seek out those things or those people that will add quality, not simply quantity, to our lives, whether it is writing a novel, doing pro bono work, volunteering in ways that are meaningful to us, accompanying our child on his/her school field trip, or simply finding time to visit a sick friend or elderly parent.

The final thing that I want to emphasize is that for women who are struggling to remain in law, we can choose to respond in various ways to the existence of what is an apparent glass ceiling in the workplace. We can sit back and adopt a “victim mentality” and blame the fact that we are born female for that missed promotion and that failure to make partner or get the corner office or land that lucrative client. We can hide our identity and pretend that we are exactly the same as any male lawyers and behave like pseudo-males in the workplace, thereby denouncing our womanhood. We can choose to march to our own drum by going out on our own or establishing small independent law firms with like-minded people and thereby remove ourselves from competing in the traditional male dominated firms. Or we can do the most difficult thing that there is to do, to continue to make our mark in the established law firms, being actively involved in the legal community and politics, and speaking out, not only to the converted but more importantly to the doubters, about the need to fully integrate and assist women to continue in the practice of law and the management of law firms, and thereby help to effect larger, institutional change for the betterment of *all* women. You will not be surprised that I am an advocate of this fourth option above all else.

The four options that I have mentioned are drawn from the historical experience of Chinese Canadians, which parallel in many respects the struggle of women in the law, as being subject to what appeared to be systemic discrimination on the basis of something over which we have no control, our skin colour in the one case and our gender in the other. As Senator Vivian Poy noted in a speech at this year’s gala dinner of the Association of Chinese Canadian Professors in May, 2007, in the Chinese Canadian communities, there were those who responded to racial discrimination by adopting a “victim mentality” or rejecting their Chinese heritage by pretending and acting as if they were white, coining the term “bananas”, yellow on the outside and white on the inside. Then, there were those who chose not to compete in the larger community and learnt not rely on others. They set up their own independent businesses for themselves and their families by running laundromats, restaurants, and corner groceries. These were the only businesses that the Chinese were allowed to fill in a predominately white society. However, to do so was to accept that we were still second class citizens or outcasts, and to perpetuate a safe but nonetheless isolated enclave, as the early Chinese Canadians practising law in Vancouver’s Chinatown did. It is not until we fully proclaimed our rightful place in the broader Canadian society, by actively engaging in the leadership

ranks of our profession, and by becoming involved in our communities and in the political arena to effect change, that we can say that we are not part of the complacency that perpetuates stereotypes and discrimination.

For women in law, I believe it is time to move on beyond lamenting the presence of barriers to women succeeding in law. Feeling victimized means we are perpetually stuck. Instead of accepting the existence of a glass ceiling for women, we should each and every one of us have the confidence and the courage to say “no” to the acceptance of that as the status quo. We can do that by speaking out publicly for the contributions that women make to the practice of law, by encouraging and supporting women to stay in the practice of law, being a mentor to female junior lawyers, and gathering political and financial support for the advancement of women in all arenas. We can each of us make a difference by deliberately choosing to hire a female lawyer over a male lawyer (all other things being equal), by holding our heads up high, and by saying “no” to situations that we find intolerable, like sexual harassment in law firms or inappropriate questions in articling interviews.

For those of us who are more senior and therefore in a position to help or guide others, we must pave the way for others to follow. Too often, it is those who attain relative success or prominence that seem to forget the ones who need a helping hand, or exhibit an uncaring attitude that conveys the message that “I made it without any help along the way, so why should it be any different for you”. Good female mentors are greatly needed in the legal profession, and many of us in this room can and should take the lead.

The important thing to remember, and above all believe, is that we are anyone’s equal, and in fact, as one of my male colleagues told me, we are superior to male lawyers in many respects. So, be proud that you are female and that you have the perseverance, the stamina, the courage and the heart to remain in a difficult profession that is devoted, above all, to service to others.

I applaud you all, and thank you for listening.