



On the Path to Equity for Women in Law

Roundtable

April 29, 2022

Co-hosted by:

The Law Society of British Columbia
The Canadian Bar Association, BC Branch
International Association of Women Judges

This background document is intended to support participant dialogue at the “On the Path to Equity for Women in Law” roundtable event on April 29, 2022. The views expressed in this document are not necessarily those of the event co-hosts.



International Association of Women Judges
Advancing Human Rights and Equal Justice for All



**THE CANADIAN
BAR ASSOCIATION**
British Columbia Branch

The Law Society
of British Columbia



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Introduction

Women lawyers are making progress along the path to equity in the legal profession, as we continue to increase in numbers, power, and representation. However, we still have a very long way to go. Gender equity has not been achieved in important areas such as pay equity, progression to leadership roles, and retention of experienced women lawyers, nor has it been achieved equally for all women.

On April 29, 2022, the Canadian Chapter of the International Association of Women Judges, the Canadian Bar Association of British Columbia, and the Law Society of British Columbia will co-host a roundtable discussion for lawyers and law students committed to advancing gender equity in the legal profession. To support those discussions, this document provides a high-level summary of several issues and recommendations found in prior reports. Information specific to British Columbia is provided, along with various findings from other Canadian and international jurisdictions where applicable. As a high-level summary, this document is necessarily brief and is not exhaustive of all issues, or even of the issues highlighted. We look forward to hearing the perspectives and recommendations that participants may share at the roundtable.

Retention and Representation

Where We Stand

Women have made progress towards proportionate representation in the legal profession generally. As of 2020, the gender ratio for practising lawyers in British Columbia up to 15 years of call is near parity (approximately, 49% men and 51% women).¹ Since 2017, more new lawyers in British Columbia have been women than men, and in the 20-39 age group, practising women lawyers outnumber practising men lawyers.² In terms of broader aspects of diversity, which are important to understanding the representation of women lawyers with intersectional identities, there has also been a very small increase (or maintenance) from 2016 to 2020 in the percentage of lawyers in BC who self-identify in the Law Society's annual survey as being Indigenous (remained 2.7%), racialized/person of colour (increased from 13.7% to 17.5%), LGBT (increased from 2.8% to 3.8%), and/or a person living with a disability (increased from 1.8% to 2.3%).³

However, we still have a long ways to go. More women than men are leaving the profession entirely (ceasing practice) as they enter into their 30s. As a result, the percentage of women lawyers begins to decrease for 15 to 19-year calls (approximately 57% men to 43% women),⁴ and the

¹ Law Society of British Columbia, Equity Diversity and Inclusion Advisory Committee, [Maternity Leave Benefit Loan Program: Pilot Program Review Report](#) (2020) at 132. (“LSBC Maternity Leave Benefit Loan Program Report”)

² Law Society of British Columbia, [2020 Annual Report](#) at 14. (“LSBC 2020 Annual Report”)

³ [LSBC 2020 Annual Report](#), supra, at 16.

⁴ [LSBC Maternity Leave Benefit Loan Program Report](#), supra, at 132.

gender disparity becomes more pronounced at higher years of call.⁵ People who self-identify in the annual survey as Indigenous, racialized/person of colour, LGBT, or living with a disability remain underrepresented in the legal profession relative to the broader population. The information we have is also limited, as one in five BC lawyers chooses not to answer self-identification demographic questions on the annual survey.⁶

Departing Private Practice

Although the data in British Columbia indicates gender parity among practising lawyers up to 15 years of call, such parity may not be uniform across all practice settings and disciplines.

Several Canadian reports indicate that women may be departing from private practice in greater proportions than men, and that they may be doing so earlier in their careers. A Canadian survey reported in 2005 that 62% of women associates intended to stay with their firms for five years or less (compared to 47% of men associates).⁷ This is consistent with a report from Ontario in 2015, which noted that women's departures from private practice are elevated during early career years and can be described as an initial "rapid exodus" followed by a steady stream of women leaving over time. In comparison, men's departures from private practice peaked at about 7-8 years after entering private practice.⁸ Similarly, in Ontario, a report in 2016 noted that women under 45 years of age with no dependents are more likely to be leaving private practice than their male counterparts.⁹ Interestingly, the data in Canada appears similar to that seen in other jurisdictions such as Australia, where reports have noted that the proportion of women lawyers in private practice decreases over time compared to men, largely occurring during the first five years of practice (where attrition of women is greater than men), followed by a long period of relative stability.¹⁰

The departure of women lawyers from private practice settings may also disproportionately affect lawyers with diverse identities. The data on this in Canada appears limited. However, a recent survey of law firms in the United States noted that women of colour, Black lawyers and Asian lawyers were disproportionately leaving private practice. Although women of colour represented less than 10% of all lawyers surveyed, they represented more than 13% of the lawyers who left

⁵ Law Society of British Columbia, Equity and Diversity Advisory Committee, [Retrospective Analysis of Gender in the Legal Profession in BC \(1992-2017\)](#) (2018) at 2. ("LSBC Retrospective Analysis of Gender in the Legal Profession in BC")

⁶ [LSBC 2020 Annual Report](#), supra, at 16.

⁷ Catalyst, [Beyond a Reasonable Doubt: Building the Business Case for Flexibility: The Catalyst series on flexibility in Canadian Law Firms](#) (2005) at 4. ("Catalyst, Beyond a Reasonable Doubt Report")

⁸ Law Society of Upper Canada, Fiona M Kay, Stacey Alarie & Jones Adjei, [The Diversification of Career Paths in Law: Tracking Movement out of Private Practice Among a Recent Two Decade Cohort of Law Graduates](#) (2015) at 3, 98. ("Law Society of Upper Canada, Diversification of Career Paths Report")

⁹ Law Society of Upper Canada, Retention of Women in Private Practice Working Group, [2013-2015 Law Society of Upper Canada Change of Status Report: Report of Key Findings](#) (2016) at 69. ("Law Society of Upper Canada, 2013-2015 Change of Status Report")

¹⁰ Law Society of New South Wales, [Thought Leadership: Advancement of Women in the Profession](#) (2011) at 17. ("Law Society of New South Wales, Thought Leadership Report")

their law firms in 2019. Similarly, Black and Asian lawyers represented under 4% and 8% of the lawyers surveyed, respectively, but represented more than 6% and 10% of departures.¹¹ The data from these reports suggest that considering the additional barriers that women lawyers with multidimensional identities may experience is also important to ensuring retention and representation of all women.

Women's departure from private practice may also be more pronounced in some areas of law over others. A 2015 report from Ontario noted that lawyers in litigation (both men and women) were less likely to leave private practice compared to other legal disciplines.¹² Another report from Ontario focusing on criminal law practices observed in 2016 that women were leaving the private practice of criminal law at greater rates than men, and were more likely than men to no longer be doing any criminal law work after a few years of call.¹³ A more nuanced analysis of the factors influencing the retention and representation of women lawyers may also require consideration of the specific experiences of women lawyers in varying practice areas.

In British Columbia, it appears that when women lawyers leave private practice, they most often go to work in-house (40.2%), in government positions (33.9%), or in non-profit organizations (14.3%).¹⁴ This trend is consistent with that seen in other jurisdictions, such as in Australia, where data indicates that the proportion of women lawyers in in-house corporate and government practice generally increases over time.¹⁵

The most common reasons women lawyers in BC stated for leaving private practice included: billable hours expectations and after-work functions, not having mentorship opportunities, being given menial or administrative tasks, lacking flexibility in work type, and no perceived career growth or limited recognition.¹⁶ In contrast, women lawyers were more likely to stay in work environments when they are satisfied with: advancement opportunities, availability of colleagues and mentors, management of their organization, professional development opportunities, and control over their work.¹⁷

The Path Ahead

Prior reports recommend a broad range of actions to increase the retention and representation of women in the legal profession. Many of these suggestions relate to specific areas discussed later

¹¹ Vault and Minority Corporate Counsel Association, [Law Firm Diversity Survey Report](#) (2020) at 6. (“Vault/MCCA Law Firm Diversity Survey Report”)

¹² [Law Society of Upper Canada, Diversification of Career Paths Report](#), supra, at 4.

¹³ Criminal Lawyers' Association of Canada, Natasha S Madon, [The Retention of Women in the Private Practice of Criminal Law: Research Report](#) (2016) at 8.

¹⁴ Justice Education Society of BC, [Mapping Her Path: Needs Assessment Report](#) (2016) at 13. (“JESBC, Mapping Her Path Report”)

¹⁵ [Law Society of New South Wales, Thought Leadership Report](#), supra, at 18.

¹⁶ [JESBC, Mapping Her Path Report](#), supra, at 14.

¹⁷ Law Society of British Columbia, Retention of Women in Law Task Force, [The Business Case for Retaining and Advancing Women Lawyers in Private Practice](#) (2009) at 8.

in this report, such as pay equity and career progression, childcare, maternity and eldercare, sexual harassment and discrimination, and flexible and remote work.

One theme that emerges across the various discussion areas is the importance of highly visible women leaders at all levels of an organization, leading by example, supporting each other, and calling upon their organizations for change. The presence of women leaders can both attract and empower other women to leadership. A recent international study noted that young women lawyers (40 or under) were over 20 percentage points more likely than young men lawyers to consider gender representation at the management level when evaluating whether to join an organization.¹⁸

Various reports have also emphasized the importance of mentorship and sponsorship (where a mentor takes an active role in advocating for and assisting a younger lawyer in advancing their career). In British Columbia, women lawyers have identified a lack of mentorship opportunities as having impacted their ability to succeed. For example, women reported not being offered the same informal mentorship opportunities at work, receiving less exposure to clients or trial experience through mentors, or not being invited to certain client development opportunities, compared to men.¹⁹ These results are similar to those in other jurisdictions, such as the United States, where 46% of women lawyers recently surveyed noted their lack of access to sponsors, compared to only 3% of men.²⁰ Mentors and sponsors can support women lawyers in many important ways, including by providing access to informal networks, sharing the “unwritten rules” or opaque processes that can impact career advancement or compensation, or advising younger lawyers on how to navigate the biases or discriminations that they may encounter in the profession. It remains important to support mentorship and sponsorship programs, including programs within firms and those provided by organizations such as the Canadian Bar Association’s Women Lawyers Forum.

Another theme that emerges across the discussion areas is the continued impact of both conscious and subconscious biases on women lawyers. The use of subjective evaluation criteria in the recruitment and promotion of lawyers may create additional barriers to women lawyers, including those belonging to other underrepresented groups. For example, referral-based hiring may replicate existing demographics within a firm, vague references to “fit” may allow for improper subjective assessments unrelated to merit, and assumptions about women lawyers’ career preferences or capabilities may all create barriers to women achieving equity in the legal profession. Conversely, the use of specific, work-related criteria for evaluating performance, refining workplace equity policies, regular anti-bias training for all, and reliance on human resources professionals and others trained to spot biases in hiring and promotion, may assist in mitigating bias.

¹⁸ International Bar Association, Legal Policy and Research Unit, [IBA Young Lawyers’ Report](#) (2022) at 23. (“IBA Young Lawyers’ Report”)

¹⁹ [JESBC Mapping Her Path Report](#), supra, at 18.

²⁰ American Bar Association, Roberta D Liebenberg & Stephanie A Scharf, [Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice](#) (2019) at 8. (“ABA, Walking Out the Door Report”)

Resources

- Canadian Bar Association of British Columbia, Women Lawyers Forum, [Mentoring Program](#).
- Canadian Bar Association, [Unconscious Bias Resources](#) (2020).
- Law Society of British Columbia, [Indigenous Lawyers Mentorship Program](#).
- Law Society of British Columbia, various reports:
 - [Diversity Action Plan](#) (2020);
 - [Retrospective Analysis of Gender in the Legal Profession in BC \(1992-2017\)](#) (2018);
 - [Towards a More Representative Legal Profession: Better Practices, Better Workplaces, Better Results](#) (2012); and
 - [The Business Case for Retaining and Advancing Women Lawyers in Private Practice](#) (2009).
- UC Hastings College of Law, Center for Worklife Law, [Effective Policies and Programs for Retention and Advancement of Women in Law](#) (2013).
- Law Society of England and Wales, James Hinde, David Marchant & Emma Lay, [Race for inclusion: the experiences of Black, Asian & Minority Ethnic solicitors](#) (2020).

Pay Equity and Career Progression

The Gender Wage Gap

On average, women in Canada earn \$0.87 for every dollar that men earn for comparable work.²¹ The gender pay gap tends to be wider for women who are Indigenous, living with a disability, racialized, or newcomers.²² Unfortunately, women lawyers are not immune to the gender pay gap. Although Canadian data is limited, recent reports provide a glimpse into existing disparities. One report identified that women equity partners at a national law firm were paid 25% less than men equity partners,²³ whereas another report showed that women working in-house were paid 11% less than men holding the same positions (with the gap becoming greater as women reach more senior levels).²⁴ Notably, in-house lawyers that identify as either racialized or living with a disability report having lower salaries, on average.²⁵ The Canadian Bar Association recently reported that 98.5% of survey respondents believed that there is gender pay disparity in the legal profession. Qualitative analysis identified several factors contributing to pay inequity, including: lack of compensation transparency, penalization for the capability of having children, denial of

²¹ Simon Fraser University, BC Priorities Project, Megan Bowers et al, [Mind the Pay Gap: A Legislative Approach to Ending Pay Discrimination in BC](#) (2020) at 6. (“SFU, Mind the Pay Gap Report”)

²² Canadian Women’s Foundation, [Fact Sheet: The Gender Wage Gap in Canada](#) (2018) at 2.

²³ Robyn Doolittle, “Wage gap between male, female equity partners at top law firm averages \$371,596”, [The Globe and Mail](#) (30 September 2021).

²⁴ Counsel Network and Canadian Corporate Counsel Association, [2020 In-House Counsel Compensation & Career Survey Report](#) (2020). (“Counsel Network/CCCA 2020 In-House Counsel Survey Report”)

²⁵ [Counsel Network/CCCA 2020 In-House Counsel Survey Report](#), supra.

opportunities and unfair allocation of files, and undervaluing women lawyers' contributions to the workplace.²⁶

More robust data available from the United States indicates that there is a persistent pay gap between men and women in law firms, and that the pay gap is even worse for women of colour.²⁷ The average compensation at US large firms was higher for men lawyers than women lawyers across all levels (associates, non-equity partners, and equity partners), despite there being no significant difference between the hours worked by men and women.²⁸ Recently, 93% of firms surveyed in the US noted that their most compensated partner is a man, and of the top 10 compensated partners in the firm, either one or none is a woman.²⁹

Unfair pay has consequences. The American Bar Association recently reported "pay disparity" as the most frequently cited reason for experienced women lawyers (with at least 15 years' practice experience) leaving their firms.³⁰ Ensuring pay equity is vital at all levels, including to retain experienced women lawyers who contribute significant books of business, leadership, and mentorship to their organizations.

A key area of concern relates to how compensation is determined. Issues reported include (a) women being paid less than men despite having a comparable book of business, and (b) other partners being credited for a woman's originations, specifically where (i) women are not credited for expanding or maintaining a client relationship, or (ii) women are part of a pitch team but do not receive credit when the firm is retained by the client.³¹ Reports have also identified concerns that non-billable contributions to the firm are rarely or inadequately financially rewarded, even when they are essential to the success of the firm. This can have a disproportionate impact on women who may be pressured to take on these kinds of contributions.

Men are more likely to be aware of, and be satisfied with, compensation methods than women. A recent US survey noted that only 46% of women lawyers were satisfied with the methods by which compensation at their firms was determined, compared to 69% of men.³² In the United Kingdom, men are more likely than women to consider the pay and reward structure at their firms to be transparent (34% of men vs. 14% of women).³³

²⁶ Canadian Bar Association, Women Lawyers Forum, [Pay Equity in the Legal Profession](#) (2021) at 5, 10, 15.

²⁷ American Bar Association, Joyce Sterling & Linda Chanow, [In Their Own Words: Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession](#) (2021) at 4, 8. ("ABA, In their Own Words Report")

²⁸ National Association of Women Lawyers, [Survey Report on the Promotion and Retention of Women in Law Firms](#) (2020) at 32-36. ("NAWL, Survey Report on Promotion and Retention of Women in Law Firms")

²⁹ [ABA, Walking Out the Door Report](#), supra, at 1.

³⁰ [ABA, In Their Own Words Report](#), supra, at 8.

³¹ [ABA, In Their Own Words Report](#), supra, at 11.

³² [ABA, Walking Out the Door Report](#), supra, at 6.

³³ Law Society of England and Wales, [Influencing for Impact: The need for gender equality in the legal profession](#) (2019) at 16. ("Law Society of England and Wales, Influencing for Impact Report")

Women in Power

In British Columbia, the proportion of women Benchers has increased significantly in the last 30 years from 18% (1992) to 55% (2022), with several women serving as President of the Law Society, including current President Lisa Hamilton, QC.³⁴ However, we do not have BC-specific data regarding what proportion of law firm partners, general counsel, practice group leaders, or other senior leaders in law are women.

Nationally, men significantly outnumber women in senior legal roles. A survey reported in 2016 found that men make up over 75% of “senior leaders” in the legal profession and about 73% of equity partners across Canada.³⁵ A more recent survey of firms conducted by the Canadian Bar Association indicates that women make up only 30% of partners and that, on average, only one in four partners on a compensation committee or on a management committee is a woman.³⁶ When examining the intersectional experiences of gender and race, an even greater disparity emerges. The 2016 survey, noted above, found that over 90% of senior leaders, and over 88% of equity partners, are Caucasian. Caucasian men were seven times more likely than racialized women to be an equity partner.³⁷

The power gap for women lawyers in Canada appears relatively consistent to that seen in comparable jurisdictions. In the US, recent data similarly shows the significant underrepresentation of women in partnership roles, with only 31% of non-equity partners and 21% of equity partners being women. The US data also shows that women are under-represented in other positions of power within law firms, such as on governance committees (28% women), compensation committees (29%), as firm-wide managing partners (19%) and as office managing partners (28%).³⁸ Women of colour and LGBTQIA+ lawyers are even further under-represented in these roles.³⁹

Disparity in career progression is also acute in particular practice areas and settings. In the US, women are consistently underrepresented in lead counsel roles in litigation, with men three times more likely to be lead counsel in a civil case. In US criminal cases, lawyers appearing as lead counsel are 67% men and 33% women. When women do appear as lead counsel in criminal cases, 69% of them are appearing as government prosecutors.⁴⁰

³⁴ Note, at the time of writing there were four appointed Benchers.

³⁵ Canadian Centre for Diversity and Inclusion, in partnership with the Canadian Bar Association, [Diversity by the Numbers: The Legal Profession](#) (2016) at 15. (“CCDI, Diversity by the Numbers Report”)

³⁶ Canadian Bar Association, Women Lawyers Forum, [Partner Compensation Survey Report](#) (2020) at 4. (“CBA, Partner Compensation Survey Report”)

³⁷ [CCDI, Diversity by the Numbers Report](#), supra, at 15.

³⁸ [NAWL, Survey Report on Promotion and Retention of Women in Law Firms](#), supra, at 9.

³⁹ [NAWL, Survey Report on Promotion and Retention of Women in Law Firms](#), supra, at 9. See also American Bar Association, Destiny Peery, Paulette Brown & Eileen Letts, [Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color](#) (2020).

⁴⁰ American Bar Association, [First Chairs at Trial: More Women Need Seats at the Table](#) (2015) at 13.

The distribution of power is not merely due to historic promotion practices. Today, men may still be more likely to be promoted into partnership and leadership positions than women. The data in Canada is limited, however, a survey of US law firms reported in 2020 that although women made up 47.3% of all associates in law firms in 2019, only 41.1% of the lawyers promoted to partnership that year were women.⁴¹

In prior surveys, women lawyers report facing several forms of bias which hinder their career progression. These include the “maternal wall bias” where mothers are assumed to be not as committed or competent as others, “double standards” such as when men are praised for assertiveness whereas women are criticized for the same conduct, “ambivalent sexism” where women are stereotyped into “feminine roles” or assumed to not want to become leaders or partners, and “prove-it-again bias” where women have to go above and beyond to get the same recognition and respect as men. The differing degree to which women and men experience these biases is stark. In a recent survey, 63% of women reported having been perceived as less committed to their career, compared to only 2% of men.⁴²

Unsurprisingly, men are more likely than women to be satisfied with their firm’s efforts to promote women. In the US, a 2019 report indicated that when asked whether their firms are succeeding in advancing women into equity partnership, 78% of men vs. 48% of women agreed. When asked whether their firms were actively promoting women into leadership roles, 84% of men vs. 55% of women agree.⁴³

Closing the Gap

Reports recommend a mixture of data-driven, systemic, group, and individual approaches to addressing the barriers to women lawyers’ career progression and pay equity. At an individual basis, women lawyers have been encouraged to create leadership plans, take leadership training, seek out role models, and “take charge” of their career advancement through planning and productivity. Women and allies can help by becoming mentors or sponsors to more junior women, as described in the preceding section on retention and representation. This includes providing credit and support to those who take on the role of mentorship and sponsorship.

On a systemic and organizational basis, firms can ensure that access to high-quality, career-defining assignments are fairly assigned, women are supported in their business development and networking efforts, and that formal and bias-free performance evaluations are used. Clear and specific performance criteria should be directly related to job requirements, and credit should be given for non-billable work that advances the organization. Firms can also ensure that women are proportionately represented in senior and powerful roles within the firm, including on compensation and management committees, with women advanced through succession planning

⁴¹ [Vault/MCCA, Law Firm Diversity Survey Report](#), supra, at 9.

⁴² [ABA, Walking Out the Door Report](#), supra, at 8.

⁴³ [ABA, Walking Out the Door Report](#), supra, at ii.

and the use of formalized, inclusive procedures for selecting candidates for leadership positions throughout the organization.

On pay equity, prior reports emphasize the importance of diversity on compensation committees to reduce “in-group” favouritism, and developing fair policies for pay that recognize women’s contributions. For example, give credit for non-billable work, establish transparent rules for granting and splitting origination credit, reassess billable hours targets, and clearly state what drives compensation decisions at the firm. Consider designing compensation systems that do not penalize part-time workers (e.g. with non-pro-rata compensation adjustments). When hiring women into the firm, stop asking for disclosure of previous compensation as doing so may cement existing pay disparities.

Improved transparency around the gender wage gap and the number of women lawyers in positions of power within organizations and across BC may inform where disparities are most severe, allow policies to be refined, and track progress. The Canadian Bar Association’s Women Lawyers Forum has recommended research into how Canadian law firms can be influenced to include their gender equity statistics in reporting, as seen in other jurisdictions such as the UK, and actively querying gender equity policies at the provincial and national levels of law organizations.⁴⁴ Other organizations have advocated for the introduction of pay transparency legislation (to reveal hidden pay disparities and identify pay discrimination), and pay equity legislation (to address the undervaluation of women-dominated occupations which have been historically marginalized and underpaid).⁴⁵ This year, on International Women’s Day, the British Columbia government announced that it will begin consultations on new pay transparency legislation.⁴⁶

Resources

- Canadian Bar Association, Women Lawyers Forum, [*Pay Equity in the Legal Profession*](#) (2021).
- Canadian Bar Association, Women Lawyers Forum, [*Partner Compensation Survey Report*](#) (2020).
- Justicia, [*Career Advancement into Partnership: Associate Guide*](#) (2015).
- Justicia, [*A Guide to Business Development for Women Lawyers*](#) (2015).
- Law Society of Upper Canada, [*Justicia Guide to Women’s Leadership in Law Firms*](#) (2013).
- Continuing Legal Education Society of BC, [*Free Video Series on Business Development*](#).

⁴⁴ [*CBA, Partner Compensation Survey Report*](#), supra, at 13.

⁴⁵ [*SFU, Mind the Pay Gap Report*](#), supra, at 1. See also West Coast Leaf, [*Mind the Pay Gap: How Legislation Could Help End Pay Discrimination in BC*](#) (6 May 2020).

⁴⁶ BC Government News, [*B.C. moves towards pay transparency measures*](#) (8 March 2022).

Family: Childcare, Maternity, Eldercare

Women Carrying the Load

Despite progress, when it comes to family life, women lawyers may continue to bear more responsibilities than men lawyers do. For example, women lawyers continue to be much more likely than men lawyers to be solely responsible for multiple dimensions of childcare. A recent US report noted that women lawyers were more likely to be solely responsible for: arranging childcare, 54% of women vs. 1% of men; leaving work for childcare, 32% of women vs. 4% of men; attending children's extracurricular activities, 20% of women vs. 4% of men; or providing evening childcare, 17% of women vs. 4% of men.⁴⁷

Impact on Retention

In British Columbia, we do not have clear statistics regarding the percentage of women that leave the practise of law due to family commitments. More women than men under the age of 50 are going to non-practising status, but more women than men in that age range also return to practise (which may reflect more women than men taking parental leaves). Specifically, recent BC data indicate that women in the 20-49 age-range made up approximately 60% of lawyers that transitioned from practising to non-practising status, and this group also made up 56% of the lawyers returning to practise.⁴⁸ This suggests that women aged 20-49 who go non-practising are slightly less likely than men in that age-range to return to practise.

Data from Ontario provides a clearer view of women with childcare responsibilities leaving private practice. A Law Society of Ontario report in 2016 noted that women with dependants under age 6 in their households, and who were filing a change in practising setting, were less likely to be staying in private practice (a retention rate of 0.81 vs. 0.88 for men). The private practice retention rate increases for women with dependents once the youngest dependent is 6-12 years old, with the private practice retention rate becoming positive (at 1.35) when the youngest dependent is 13 years of age or older.⁴⁹

As women progress through their careers, they may also face eldercare or other caretaking commitments. In the US, "caretaking commitments" was the reason experienced women lawyers (those practising for 15 years or longer) most commonly cited as having an important influence on leaving their firms.⁵⁰

⁴⁷ [ABA, *Walking Out the Door Report*](#), supra, at 12.

⁴⁸ Law Society of British Columbia, unpublished data.

⁴⁹ [Law Society of Upper Canada, *2013-2015 Change of Status Report*](#), supra, at 6.

⁵⁰ [ABA, *Walking Out the Door Report*](#), supra, at 10.

Impact on Career Progression

Women lawyers surveyed in British Columbia noted that, even when there are effective maternity leave policies in place, leaving a position for several months or more can have devastating effects and lead to one being taken less seriously in the firm.⁵¹ When they return to practise, women lawyers who are mothers may experience “maternal wall bias” – the assumption that mothers are not as committed or competent as others, or that one cannot be a competent mother and a successful lawyer at the same time. Surveys in the US noted that women lawyers of all races reported being treated worse after they had children, for example being passed over for promotions, given “mommy-track” low-quality assignments, being demoted or paid less, and/or being unfairly disadvantaged for working part-time or with flexible schedules. White women and women of colour reported having their commitment or competence questioned after they had children at a rate 36 and 29 percentage points, respectively, higher than white men.⁵²

Gaining Balance and Respect

Reports recommend a number of steps to address the biases that women lawyers encounter related to childcare, maternity leaves, and eldercare, and to create more supportive environments for all lawyers with families and personal commitments. Subconscious biases that pigeonhole women into “mommy-track” roles may be alleviated through anti-bias training and through transparent and equitable processes for assigning work. Open and regular communication with women lawyers on an individual basis to respect what *they* would like their careers to look like, rather than making assumptions for them, is also important. Not all women lawyers will want the same thing just because they are mothers or caregivers, and individual circumstances may change over time. Normalizing and encouraging all lawyers to take parental leaves, and to make use of flexible and remote work policies may also reduce the biases and stigma women lawyers experience when they are mistaken as the only ones doing so. Other relevant biases are discussed in the sections on Pay Equity and Career Progression, and Flexible and Remote Work.

Supportive working environments are highly valued. A survey of Canadian lawyers reported in 2005 that “an environment more supportive of my family and personal commitments” was identified by 84% of women as an important or very important reason to choose work at another firm (compared to 66% of men).⁵³ A more supportive environment can be created through big and small changes. For example, considering the timing of meetings and social gatherings may allow for greater inclusion of those with caring responsibilities or part-time workers, who may otherwise miss early morning or afternoon meetings that conflict with drop-off and pick-up duties. Lawyers on leave may feel supported if the firm makes efforts to help them stay connected to colleagues

⁵¹ [JESBC Mapping Her Path Report](#), supra, at 15.

⁵² Minority Corporate Counsel Association and the American Bar Association Commission on Women in the Profession, [You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession](#) (2018) at 6. (“MCCA/ABA, You Can't Change What You Can't See Report”)

⁵³ [Catalyst, Beyond a Reasonable Doubt Report](#), supra, at 5.

and clients through invitations to optional continuing professional education or networking opportunities. On the return to work following a leave, having the option of a gradual on-ramping period or part-time work may be appreciated by some. Flexible and remote work options may also support women lawyers balancing work and family commitments.

Resources

- Justicia, [Parental Leave Model Policy for Associates](#).
- Justicia, [Parental Leave Model Policy for Partners](#).
- Justicia, [Parental Leave Frequently Asked Questions](#).
- Law Society of British Columbia, [Locum Registry](#), to assist with finding temporary cover for parental leave absences.
- Law Society of British Columbia, websites on discounted insurance for those [practising part-time](#) and [returning to practice](#).

Sexual Harassment and Discrimination

****Content warning: The following section includes information regarding sexual violence****

Us Too

Many of us have experienced, are experiencing, or will experience, sexual harassment and/or sex discrimination in the course of our legal careers. As a reminder, the Supreme Court of Canada has broadly defined sexual harassment in the workplace as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment.⁵⁴ Sexual harassment in the workplace is an abuse of power that demeans and affects the dignity and self-respect of the victim both as an employee and as a human being.⁵⁵

In British Columbia, respondents to a survey reported in 2016 noted the frequency of inappropriate comments sexualizing women in the workplace, referring to a woman as “girl” or “young lady”, clients preferring to work with men, and male partners not selecting women for work assignments.⁵⁶ In the same survey, 35% of respondents (in all years of call) said they had experienced gender-based or sexual harassment in the legal profession.⁵⁷ Response rates vary across the country, and may reflect differences in how sex discrimination and sexual harassment are described in the surveys. In Saskatchewan, 48% of women respondents indicated they had experienced sex discrimination in a legal workplace, and 25% of women respondents had

⁵⁴ [Janzen v Platy Enterprises Ltd](#), [1989] 1 SCR 1252.

⁵⁵ [Janzen v Platy Enterprises Ltd](#), supra.

⁵⁶ [JESBC, Mapping Her Path Report](#), supra, at 16.

⁵⁷ [JESBC, Mapping Her Path Report](#), supra, at 22.

experienced sexual harassment.⁵⁸ A more recent survey in Quebec noted that 50.2% of women lawyers had experienced sexual harassment (of those, more than 50% had experienced the sexual harassment in the previous 5 years).⁵⁹ Sadly, in the Quebec survey, 20.6% of women respondents said that someone had tried in the course of their professional practice to establish an intimate or sexual relationship with them despite their efforts to discourage it, and nearly one woman in 20 who experienced sexual violence reported having suffered negative experiences due to refusing to engage in sexual activities. Members of the LGBTQ+ community and racialized individuals experienced more sexual harassment and violence.⁶⁰

Various studies in the United States provide further examples of the types of gender-based discrimination and hostility that women lawyers face. For example, respondents to a study in 2021 recount incidents where men enjoyed “instant credibility” with clients even though they were more junior to a woman lawyer on a file, or where experienced women lawyers were advised to colour their hair or dress “livelier”.⁶¹ In the same survey, lawyers who are women of colour reported being mistaken for administrative staff, court personnel, or janitorial staff at a level 50 percentage points higher than white men,⁶² while in an earlier related survey, white women reported experiencing these biases 44 percentage points more than white men.⁶³ Importantly, even if a remark is not directed towards a woman, it may still create a hostile environment. In the US, a report in 2018 noted that more than 70% of lawyers encountered sexist comments, stories, or jokes during their careers.⁶⁴

Impact on Retention and Career Progression

Sex discrimination and sexual harassment pose a barrier to the retention and advancement of women in the legal profession. The effects may be cumulative and not readily apparent in circumstances where sexual harassment has not been identified or reported. In Quebec, 68% of women lawyers who had experienced sexual harassment said they avoided contact with the perpetrator. In the same survey, one in five women lawyers said they had experienced various difficulties in pursuing their professional activities, and one in five women lawyers also said they

⁵⁸ Law Society of Saskatchewan, Data Collection Working Group, [Workplace Policies and Practices for Lawyer Retention and Advancement: Results of Two Surveys of the Members of the Law Society of Saskatchewan](#) (2016) at 21.

⁵⁹ Université Laval, the Barreau du Québec and the Fonds de recherche société et culture du Québec, Isabelle Auclair et al, [Survey on Sexual Harassment and Violence in the Practice of Law](#) (2021) at 6, 30. (“Quebec Survey on Sexual Harassment and Violence in the Practice of Law”)

⁶⁰ [Quebec Survey on Sexual Harassment and Violence in the Practice of Law](#), supra, at 6.

⁶¹ [ABA, In Their Own Words Report](#), supra, at 20-21.

⁶² [ABA, In Their Own Words Report](#), supra, at 23.

⁶³ [MCCA/ABA, You Can't Change What You Can't See Report](#), supra, at 5-6.

⁶⁴ [MCCA/ABA, You Can't Change What You Can't See Report](#), supra, at 7.

had changed their career path as a result.⁶⁵ A report from the US in 2019 noted that 16% of women reported losing work opportunities as a result of rebuffing sexual advances.⁶⁶

Prohibitions, Programs, Policies, and Solidarity

Over the years, some progress has been made. In 1992, the *Code of Professional Conduct for British Columbia* was amended to explicitly prohibit sexual harassment and discrimination.⁶⁷ These provisions incorporate the principles of human rights laws and related case law into the standard of conduct expected of lawyers. In 2020 and 2021, the Federation of Law Societies of Canada's Standing Committee on the Model Code engaged in consultations with law societies on further amendments to the Code provisions on sexual harassment and discrimination.⁶⁸ The Law Society of British Columbia takes complaints regarding lawyers' conduct seriously. Several citation hearings are pending regarding the conduct of lawyers towards their employees or clients⁶⁹ and past citation hearing outcomes regarding sexual harassment and discrimination are searchable on CanLII.

In 1995, the Equity Ombudsperson Program was launched to assist in resolving discrimination and harassment complaints within the legal profession.⁷⁰ This program was brought into the Law Society's Practice Advice Department in 2017, with ongoing efforts to provide lawyers with relevant education, resources, and support. Other sources of support include the Lawyers' Assistance Program of British Columbia, which provides confidential counselling, peer support and referral services.⁷¹ Ensuring that support services outside of one's own organization are available and well-advertised is important, as a recent survey of women lawyers in Quebec noted that the majority of respondents preferred external resources for assistance.⁷²

Law firms and organizations have also taken steps to reduce sexual harassment and discrimination in their workplaces. The International Bar Association reported in 2019 that 84% of Canadian survey respondents indicated that their workplaces had bullying or sexual harassment policies, and respondents were 27 percentage points less likely to be sexually harassed if their workplace had a sexual harassment policy in place.⁷³ The ameliorative impact of such policies was not seen in all countries, however, suggesting that merely having a policy, without training and enforcement, is

⁶⁵ [Quebec Survey on Sexual Harassment and Violence in the Practice of Law](#), supra, at 7.

⁶⁶ [ABA, Walking Out the Door Report](#), supra, at 8.

⁶⁷ *Code of Professional Conduct for British Columbia*, rule 6.3. See also [LSBC Retrospective Analysis of Gender in the Legal Profession in BC](#), supra, at 1.

⁶⁸ Federation of Law Societies of Canada, [Model Code Consultation Report](#) (2020) and *Model Code of Professional Conduct: Second Consultation Report on Discrimination, Harassment and Ex Parte Proceedings* (2021).

⁶⁹ Law Society of British Columbia, [Current citations and discipline hearings](#).

⁷⁰ [LSBC Retrospective Analysis of Gender in the Legal Profession in BC](#), supra, at 1.

⁷¹ [Lawyers Assistance Program of British Columbia](#).

⁷² [Quebec Survey on Sexual Harassment and Violence in the Practice of Law](#), supra, at 56.

⁷³ International Bar Association, [Us Too? Bullying and Sexual Harassment in the Legal Profession](#) (2019) at 71, 76.

not sufficient. Rather, organizations are encouraged to regularly review their workplace anti-sexual harassment and anti-discrimination policies for effectiveness and better implementation.

Various reports recommend continuing to raise awareness about the problems of sexual harassment in the legal profession, and to raise solidarity through increased dialogue, sharing best practices, and the use of regular, customized training. The role of confidants and peer supporters has also been recognized. In Quebec, a recent survey noted that 22% of women lawyers disclosed sexual violence to their superior, 22% of respondents said they witnessed an incident, and 29% of women respondents said that someone in their professional circle had confided in them.⁷⁴

Resources

- Canadian Bar Association, [*Not Just a Bystander: A CBA Podcast on Sexual Harassment and Sexual Assault*](#) (2017).
- Justicia, [*Respectful Workplace Model Policy*](#).
- Law Society of British Columbia, [*Equity Ombudsperson Program*](#).
- [*The Lawyers Assistance Program of British Columbia*](#).

Flexible and Remote Work

A Career that Fits

Women lawyers have long-expressed the desire for increased options for flexible and remote work, and a career that will fit their individual circumstances, priorities, and aspirations. In British Columbia, a survey of women reported in 2016 that “increased flexibility”, “change in work culture” and “possibility of part-time work” were the three top issues within private practice that respondents felt warranted change.⁷⁵ This is a sentiment expressed around the world, and which may be especially prevalent in younger lawyers. In the UK, a recent survey showed that 91% of respondents felt that a flexible working culture was critical to improving diversity in the legal profession,⁷⁶ and, in an international survey reported in 2022, a majority of young lawyers (40 or under) felt that flexible working arrangements are key to the long-term continuity of the legal profession.⁷⁷ Without flexible and remote work options, attracting and retaining talented women lawyers may become increasingly challenging.

In the past several decades, incremental advances have been made towards increasing flexible and remote work options. The option of part-time practising status and a reduction in liability insurance for those practising part-time was introduced in British Columbia in the early 1990s.⁷⁸ Numerous organizations, such as the Law Society of British Columbia and Justicia, have developed resources

⁷⁴ [*Quebec Survey on Sexual Harassment and Violence in the Practice of Law*](#), supra, at 7-8.

⁷⁵ [*JESBC Mapping Her Path Report*](#), supra, at 24.

⁷⁶ [*Law Society of England and Wales, Influencing for Impact Report*](#), supra, at 22.

⁷⁷ [*IBA Young Lawyers' Report*](#), supra, at 6.

⁷⁸ [*LSBC Retrospective Analysis of Gender in the Legal Profession in BC*](#), supra, at 1.

and model policies to support flexible and remote work arrangements. Over time, the technology required to seamlessly work from anywhere has also improved and became more widespread. New options for conducting various legal tasks remotely have also appeared, from electronic real estate filings with the Land Title Survey Authority to options for client identification and verification in non-face-to-face transactions.⁷⁹

Prior to the COVID-19 pandemic, however, the movement towards greater flexibility and remote work options appears to have been slow. A survey conducted in the US shortly before the pandemic reported that although nearly all firms reported offering flexible and part-time work schedules (93% and 99%, respectively) far fewer lawyers actually took advantage of those policies (50-53% and 6-13%, respectively).⁸⁰ When fewer lawyers choose to work remotely, on flexible schedules, or part-time, those who do may be more likely to experience disadvantages in relation to receiving lucrative work assignments, being promoted, or achieving higher pay. This may be due to biases that assume a remote worker is not as committed or diligent as those in-office, or structural barriers that may exist if organizational processes and procedures favour in-person communications (e.g. where work is assigned on an ad hoc basis to the lawyers who are readily accessible in-person, or where mentorship is limited to unscheduled conversations).

As we all know, the COVID-19 pandemic introduced a rapid shift to working remotely for many legal workplaces. The longer-term positive and negative impacts of this shift on women lawyers, and lawyers with children or other family commitments, are still being understood.

The New Normal

Even before the pandemic, various reports have recommended increasing flexible and remote work options as a means to attract and retain talented lawyers, including women, and have recognized that a failure to provide these options may result in lawyers looking to work elsewhere. A Canadian survey reported in 2005 that “more control over my work schedule” was identified as being an important or very important reason to choose to work at another firm by 81% of women lawyers (compared to 67% of men).⁸¹

To support flexible and remote work options, organizations should encourage their uptake by all (lawyers of all genders, senior and junior lawyers). This may require buy-in and leading-by-example from firm leadership, promoting the value of flexibility, making flexible working arrangements available to everyone without the need to provide justification, providing support for supervisors on how to manage teams remotely, and developing flexibility principles and policies as needed. Some reports have also identified the need to ensure that workers have the technology (hardware and software), technological support, home office equipment, and other

⁷⁹ Law Society of British Columbia, [Client ID and Verification](#).

⁸⁰ [NAWL, Survey Report on Promotion and Retention of Women in Law Firms](#), supra, at 22.

⁸¹ [Catalyst, Beyond a Reasonable Doubt Report](#), supra, at 5.

office processes and systems they need to ensure flexible and remote work is seamlessly integrated with in-office work.

Prior reports have also noted the linkages between flexible or remote work and other aspects of career progression and compensation. For example, policies for assignment of work may need revision to ensure remote workers are not disadvantaged, procedures for reviewing billable hours may be needed to ensure part-time workers are not overloaded, and pay policies may need to take into consideration whether those working flexibly or part-time are proportionately compensated. Any remaining technological or regulatory barriers to the efficient delivery of remote legal services should also be identified and addressed.

Resources

- Justicia, [Flexible Work Arrangements Model Policy](#) (2014).
- Law Society of British Columbia, websites on:
 - [videoconferencing technology information and home office considerations for lawyers](#);
 - [remote witnessing of documents in the context of the pandemic](#); and
 - [remote options for client identification and verification](#).
- Law Society of New South Wales (Australia), [Flexible Work](#) website, which provides information to assist lawyers and law practices considering flexible work arrangements, including its report, [Flexible Working: A more flexible, more diverse profession at all levels](#) (2012), as well as tip sheets, and sample flexible work plans.

Reading List

The following reading list is provided for information only, without endorsement.

1. International Bar Association, Legal Policy and Research Unit, [IBA Young Lawyers' Report](#) (2022).
2. Canadian Bar Association, Women Lawyers Forum, [Pay Equity in the Legal Profession](#) (2021).
3. American Bar Association, Joyce Sterling & Linda Chanow, [In Their Own Words: Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession](#) (2021).
4. Federation of Law Societies of Canada, [Model Code of Professional Conduct: Second Consultation Report on Discrimination, Harassment and Ex Parte Proceedings](#) (2021).
5. McKinsey & Company, [Women in the Workplace](#) (2021). Report download requires registration or membership, but webpage provides summary.
6. Robyn Doolittle, “Wage gap between male, female equity partners at top law firm averages \$371,596”, [The Globe and Mail](#) (30 September 2021).

7. Université Laval, the Barreau du Québec and the Fonds de recherche société et culture du Québec, Isabelle Auclair et al, [Survey on Sexual Harassment and Violence in the Practice of Law](#) (2021).
8. American Bar Association, Destiny Peery, Paulette Brown & Eileen Letts, [Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color](#) (2020).
9. Canadian Bar Association, Women Lawyers Forum, [Partner Compensation Survey Report](#) (2020).
10. Counsel Network and Canadian Corporate Counsel Association, [2020 In-House Counsel Compensation and Career Survey Report](#) (2020). Report download requires registration or membership, but webpage provides summary.
11. Federation of Law Societies of Canada, [Model Code Consultation Report](#) (2020).
12. Law Society of England and Wales, James Hinde, David Marchant & Emma Lay, [Race for inclusion: the experiences of Black, Asian & Minority Ethnic solicitors](#) (2020).
13. National Association of Women Lawyers, [Survey Report on the Promotion and Retention of Women in Law Firms](#) (2020).
14. Simon Fraser University, BC Priorities Project, Megan Bowers et al, [Mind the Pay Gap: A Legislative Approach to Ending Pay Discrimination in BC](#) (2020).
15. Vault and Minority Corporate Counsel Association, [Law Firm Diversity Survey Report](#) (2020).
16. American Bar Association, Roberta D Liebenberg & Stephanie A Scharf, [Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice](#) (2019).
17. International Bar Association, [Us Too? Bullying and Sexual Harassment in the Legal Profession](#) (2019).
18. Law Society of England and Wales, [Influencing for Impact: The need for gender equality in the legal profession](#) (2019).
19. University of Saskatchewan Dean's Forum on Access to Justice and Dispute Resolution, Zoe Johansen-Hill, Larissa Meredith-Flister & Coleman Owen, [Diversity and Inclusion in the Legal Profession](#) (2019).
20. Canadian Women's Foundation, [Fact Sheet: The Gender Wage Gap in Canada](#) (2018).
21. Law Society of British Columbia, Equity and Diversity Advisory Committee, [Retrospective Analysis of Gender in the Legal Profession in BC \(1992-2017\)](#) (2018).
22. Minority Corporate Counsel Association and the American Bar Association Commission on Women in the Profession, [You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession](#) (2018).
23. Canadian Bar Association, [Not Just a Bystander: A CBA Podcast on Sexual Harassment and Sexual Assault](#) (2017).
24. Canadian Centre for Diversity and Inclusion, in partnership with the Canadian Bar Association, [Diversity by the Numbers: The Legal Profession](#) (2016).

25. Criminal Lawyers' Association of Canada, Natasha S Madon, [*The Retention of Women in the Private Practice of Criminal Law: Research Report*](#) (2016).
26. Justice Education Society of BC, [*Mapping Her Path: Needs Assessment Report*](#) (2016).
27. Law Society of Saskatchewan, Data Collection Working Group, [*Workplace Policies and Practices for Lawyer Retention and Advancement: Results of Two Surveys of the Members of the Law Society of Saskatchewan*](#) (2016).
28. Law Society of Upper Canada, Retention of Women in Private Practice Working Group, [*2013-2015 Law Society of Upper Canada Change of Status Report: Report of Key Findings*](#) (2016).
29. American Bar Association, [*First Chairs at Trial: More Women Need Seats at the Table*](#) (2015).
30. Justicia, [*A Guide to Business Development for Women Lawyers*](#) (2015).
31. Justicia, [*Career Advancement into Partnership: Associate Guide*](#) (2015).
32. Law Society of Upper Canada, Fiona M Kay, Stacey Alarie & Jones Adjei, [*The Diversification of Career Paths in Law: Tracking Movement out of Private Practice among a Recent Two Decade Cohort of Law Graduates*](#) (2015).
33. UC Hastings College of Law, Centre for Worklife Law, [*Disruptive Innovation: New Models of Legal Practice*](#) (2015).
34. Law Council of Australia, [*National Attrition and Re-engagement Study \(NARS\) Report*](#) (2014).
35. Law Society of Upper Canada, [*Justicia Guide to Women's Leadership in Law Firms*](#) (2013).
36. UC Hastings College of Law, Center for Worklife Law, [*Effective Policies and Programs for Retention and Advancement of Women in Law*](#) (2013).
37. Law Society of British Columbia, [*Towards a More Representative Legal Profession: Better Practices, Better Workplaces, Better Results*](#) (2012).
38. Law Society of New South Wales, [*Flexible Working: A more flexible, more diverse profession at all levels*](#) (2012).
39. Law Society of New South Wales, [*Thought Leadership: Advancement of Women in the Profession*](#) (2011).
40. Minority Corporate Counsel Association, Joan C Williams & Veta T Richardson, [*New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*](#) (2010).
41. Law Society of British Columbia, Retention of Women in Law Task Force, [*The Business Case for Retaining and Advancing Women Lawyers in Private Practice*](#) (2009).
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43. Canadian Bar Association, [*Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations*](#) (2007). This resource requires a CBA membership to access.
44. Catalyst, [*Beyond a Reasonable Doubt: Building the Business Case for Flexibility: The Catalyst Series on Flexibility in Canadian Law Firms*](#) (2005).

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46. Law Society of British Columbia, [*Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*](#) (2000).