



THE BUSINESS CASE FOR RETAINING AND ADVANCING WOMEN LAWYERS IN PRIVATE PRACTICE

A report by the Retention of Women in Law Task Force

THE LAW SOCIETY OF BRITISH COLUMBIA
July 2009

THE RETENTION OF WOMEN IN LAW TASK FORCE



Left to right: Jennifer Conkie, QC, Elizabeth Vogt, Richard Stewart, QC, Kathryn Berge, QC (Chair), Gavin Hume, QC, Anne Giardini, Michael Lucas, Maria Morellato, QC, Jan Lindsay and Susanna Tam. Not pictured: Rosanne Kyle.

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LETTER FROM THE CHAIR



I'm pleased to present *The Business Case for Retaining and Advancing Women Lawyers in Private Practice*.

The Retention of Women in Law Task Force was established by the Law Society of BC in April 2008 with a mandate to review issues relating to the retention of women lawyers in private practice, and to prepare a business case in this regard.

In preparing the business case, the task force considered extensive research from jurisdictions across Canada and the US. We spoke with lawyers and experts, and consulted with non-lawyers and other professionals.

The business case is a made-in-BC approach that provides law firms with best practices and resources to help them develop custom solutions to retain and advance their talented lawyers — both women and men. It explains the competitive advantages for firms that foster inclusive and equal opportunity work environments, in recruiting talent, attracting clients and avoiding turnover costs.

As the legal profession in BC ages and as we expect a reduction in the number of practising lawyers in the future, retaining women lawyers in the profession becomes even more important to the public's access to legal services.

I encourage you to read this report and consider how you and your firm can develop and implement solutions to promote and advance women lawyers in your practice.

A handwritten signature in blue ink that reads "K. Berge". The signature is fluid and cursive.

Kathryn Berge, QC
Chair, Retention of Women in Law Task Force

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THE BUSINESS CASE FOR RETAINING AND ADVANCING WOMEN LAWYERS IN PRIVATE PRACTICE

SUMMARY

This business case supports the retention of women in private practice by highlighting the business advantages of retaining and advancing women for small, medium and larger law firms in BC.¹ Retaining and advancing women to leadership in private practice makes good business sense for firms, with the potential to increase revenues by responding to the changing demographics of legal talent and client demands, and to decrease expenses by reducing the monetary and opportunity costs of turnover and attrition.

The companion *Report of the Retention of Women in Law Task Force* calls on the Law Society to implement the following initiatives:

- Adopt, publish and promote the business case;
- Task the Equity and Diversity Advisory Committee with monitoring and promoting existing Law Society programs and resources;
- Enhance existing Law Society programs;
- Consider the feasibility of creating a BC think-tank for regional/mid-size and smaller firms; and
- Consider the feasibility of additional Law Society programs.

This business case calls for proactive engagement and implementation measures on the part of the Law Society and law firms in BC. The next step will be for firms to consider best practices or a “toolkit” to identify and implement strategies for creating effective change.²

INTRODUCTION

The practice of law requires a sound business foundation that allows talented lawyers to serve the firm’s clients based on their skills and abilities, regardless of gender. Given the demographics of the legal profession in BC, and the fact that law firms will continue to need to compete for talent, law firms need to seek and maintain advantages in the competition for talent and for clients. Law firms that fail to engage women lawyers and fail to prevent their departure in disproportionate numbers will be less able to compete against those that do succeed in retaining and advancing women lawyers. Law firms cannot continue to lose talent and incur the costs of lawyer turnover. Keeping and developing talent increases efficiency, client service, lawyer morale and future recruitment ability. The rewards are measured not only through increased profits but also through the development of a stronger and more sustainable firm culture based on merit, flexibility and diversity.

The business advantages of retaining and advancing women lawyers are significant. Firms that are able to provide quality services and value to clients on a consistent basis will be well-positioned to ensure their financial stability and to attract new talent and new clients in an increasingly demanding and diverse market. This holds true during the current unprecedented economic downturn and will remain true for the eventual upswing.

The business case does not advocate special treatment for women, unwarranted costs for firms, or conflicts between lawyer expectations and client expectations. It stresses the competitive advantages of creating firms that retain and advance talented lawyers, with a focus on serving clients in effective ways that make business sense and people sense. It shows the advantages of engaging women and men in creating innovative and positive change in the practice of law.³

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Women represent only 34% of all practising lawyers in BC and 29% of lawyers in full-time private practice.

SETTING THE CONTEXT

Watching women leave private practice

Women have been entering the legal profession in BC in numbers equal to or greater than men for more than a decade and in substantial numbers for 30 years. Yet women represent only about 34% of all practising lawyers in the province and only about 29% of lawyers in full-time private practice.

The under-representation of women in private practice in BC starts with the disproportionate number of women who are no longer practising within five years of call. Of all women called to the bar in 2003, only 66% retained practising status in 2008 compared with 80% of men called in the same year.⁴

While the experience of individual firms may vary, in general women are not reaching partnership positions within firms in significant numbers. A recent survey in Ontario found that almost all firms reported having women in numbers equal to or greater than men at articling and junior associate levels. However, most firms reported a disproportionate loss of women at the senior associate level and significantly fewer women than men as partners.⁵

Canadian and US statistics indicate a range in the proportion of women partners from fewer than 16% of equity partners to about 20% of partners in large and medium size firms.⁶ While the Law Society of BC does not collect partnership data from its members, the Retention of Women in Law Task Force has reviewed the data from other jurisdictions and, for the purposes of this report, considers it reasonable to conclude that partnership proportions in BC are within a similar range.⁷ Despite the hopeful perception that this disparity will resolve itself over time as more women progress through the legal pipeline, in reality the pipeline is leaking lawyers — women lawyers in particular.⁸ Some research suggests that at present rates women will not reach parity with men in law firm partnerships until at least 2088.⁹

Facing a shortage of lawyers

The legal profession in BC is aging. Over the last 10 years, the number of lawyers in the older age ranges (50 – 65) has increased significantly. In contrast, the number of lawyers in the younger age ranges (25 – 40) has remained the same or has declined. In 1998, 77% of BC's legal profession was under the age of 50, the average age was 43, and only about 18% of lawyers were between the ages of 51 – 60. By 2008, only 55% of the profession was under the age of 50, the average age increased to 47, and 29% of lawyers were between the ages of 51 – 60. In addition, out of about 9,800 practising lawyers in BC, over 1,100 were over age 60 and almost 200 were older than 70.¹⁰

If these trends continue, the profession can expect to lose many lawyers to retirement without a corresponding increase in the number of younger lawyers. The result will be a net reduction in the number of practising lawyers at a time when the general population and demand for legal services are both growing. The population of BC is increasing,¹¹ society and business arrangements are growing more complex and litigation is becoming more common. Notwithstanding measures such as more work conducted by para-professionals, more tools for public self-help, greater use of technology, greater reliance on in-house lawyers and legal outsourcing offshore, it is anticipated the demand for legal services will continue to grow for the foreseeable future.

The effects of age and gender may be even greater for smaller firms, where losing just one lawyer can have a significant negative impact. In smaller communities, where there are fewer lawyers available and a smaller percentage of women practising law, lawyer attrition can have great implications for access to legal services. The legal profession is facing a looming shortage of lawyers and, in order to serve the public, needs to stem the outflow of lawyers in general and women lawyers in particular.

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THE BUSINESS CASE

Competing for clients

In terms of corporate work, firms recently surveyed in Ontario noted increased pressure from clients to have greater representation of women. This trend is now being noted in BC. A growing number of Canadian corporate counsel clients are themselves women who expect more diversity in the firms they retain.¹² Larger US corporations and multinational clients, many of which do business in Canada, are also more likely to expect law firms to promote diversity and consider diversity to be an important factor in hiring decisions. In fact, over 100 US-based corporate counsel have signed *A Call to Action – Diversity in the Legal Profession*, a pledge to select outside counsel based “in significant part” on diversity performance. Moreover, they agree to end or limit relationships with firms that consistently fail to show “meaningful interest in being diverse.” Signatories include Wal-Mart, Microsoft, Target, Boeing, Intel, Starbucks, Johnson & Johnson, UPS, Pfizer, Coca-Cola and Xerox.¹³ Some large Canadian firms are already being asked to provide information about diversity in requests for proposals from multinational companies doing business in Canada.¹⁴

Canadian law firms need to remain competitive in the global and regional markets. Firms that commit to diversity may have an important competitive advantage in both the fight for clients and the fight for talent.¹⁵ For smaller firms that are not necessarily competing for multinational corporate clients, retaining women lawyers still provides an important business advantage. Research shows that women entrepreneurs are one of the fastest growing segments of the Canadian economy. Four out of five businesses are started by women and there are more than 821,000 women entrepreneurs in Canada who annually contribute more than \$18 billion to the economy.¹⁶ The number of women-run businesses is rising 60% faster than those run by men.¹⁷ These businesses are a growing segment of the client pool and firms that cannot offer experienced women counsel risk losing work to firms that have better managed their retention issues.

Maximizing business performance

Women are good for business and increase the corporate bottom line. Research has shown that companies with more women board directors outperform those with the least number of women by 53% on return on equity, 42% on return on sales and 66% on return on invested capital.¹⁸ Women have a positive impact on both organizational excellence and financial performance.¹⁹ Having three or more women directors maximizes their positive impact on decision-making, as women tend to consider perspectives of a wide set of stakeholders, to address difficult issues and problems more persistently, and to contribute to a more collaborative boardroom dynamic.²⁰ Law firm management committees, analogous to corporate boards, may equally benefit from greater participation of women decision-makers.²¹

Fighting for talent

Law firms aim to recruit the best lawyers in an increasingly competitive and global market for talent. Women are a significant portion of the top talent. For example, from 2003 to 2008, nine out of twelve Law Society of BC Gold Medal winners for academic achievement were women graduates.²² Recruiting and retaining the best means that firms need to be attractive to women lawyers and create environments in which women succeed and reach partnership and leadership levels.

While older lawyers are retiring, firms are recruiting from a new generation of lawyers, the so-called “Generation Y” or “Millennials.” Members of this generation are more diverse and their expectations about the practice of law differ from those of preceding generations. The majority of these young women and men are seeking equal opportunities, interesting and challenging work, and transparency about advancement to partnership. They are more likely to insist on work-life balance and flexibility. They evaluate firms accordingly and will not join or will leave if their expectations are not met. Firms competing for young talent need to consider how to ensure their work environments effectively engage the new lawyers they need to recruit.

Over 100 US-based corporate counsel have signed... a pledge to select outside counsel based “in significant part” on diversity performance.

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Bearing the costs of lawyer attrition

Lawyers are mobile. The old career model in which a young lawyer would join a firm, work hard for a number of years and then become a partner is no longer the norm in today's economy. A recent survey of Canadian law firms found that 62% of women associates and 47% of men associates intend to stay with their firms for five years or less.²³

While some level of attrition is expected and acceptable given the recruitment model and partnership structure of most firms (in which not every associate will become a partner), many firms nonetheless face unwanted attrition.²⁴ Lawyer turnover costs vary widely, but the average cost of an associate leaving a large firm has been estimated by Catalyst at \$315,000, with an average firm break-even point on an associate estimated at 1.8 years (but ranging up to four years).²⁵ This turnover cost figure represents "hard costs," such as investment costs (e.g. recruitment, training and development) and separation costs (e.g. severance and lost productivity).²⁶ It does not include "soft costs," such as opportunity costs and the effects on client service and firm reputation, which may be even more significant. Clients do not benefit from lawyer turnover and can be expected to resist having attrition costs passed on to them as new lawyers get up to speed on a file, particularly as clients increase focus on value and more efficient resource allocations.

While the lawyer turnover cost figure of \$315,000 was estimated in the context of large firms, the impact of associate turnover is equally if not more significant for smaller firms. This is true not only in monetary terms (estimated by one 15-lawyer firm in Victoria at \$250,000²⁷), but in their ability to provide legal services to their clients. The loss of even one associate can seriously compromise the quality and delivery of client service in a small firm environment.

The average cost of an associate leaving a large firm has been estimated at \$315,000. The impact is equally significant for smaller firms, estimated by one 15-lawyer firm in Victoria at \$250,000.

The attrition of women from the profession at an early stage in their careers represents an incalculable loss of future years of productive and profitable work.

NEXT STEPS

Understanding the economic realities of legal practice and investing in the future

Women leave private practice for many reasons. Researchers in Ontario found that maternity and parenting responsibilities are significant factors leading to the departure of women from private practice, primarily affecting associates who leave before reaching partnership.²⁸ However, research also shows that few women chose to opt out of their legal careers to care for their families on a long-term basis.²⁹ In a recent US survey, only 22% of women who left private practice identified themselves as "not employed." Most did not even leave the legal profession; instead, they left law firms to work in more flexible legal and professional environments, such as government or non-profit organizations.³⁰ In fact, most professional women "off-ramp" for very short periods of time, averaging only 1.2 years in the business sector.³¹

Despite popular perception, research in Alberta has shown that, over time, after controlling for the number of years at the bar, there were no significant differences in billing hours between men with children and women with children. In fact, women without children billed significantly more hours than did either women with children or men with or without children.³² The attrition of women from the profession at an early stage in their careers represents an incalculable loss of future years of productive and profitable work. Law firms need to recognize the value of letting women take parental leaves and return to practice, because of the longer term contributions women make to their firms and to the profession. Some research has suggested that providing parental leaves reduces the risk of women's departure from law practice by 74%.³³

About one out of every two lawyers (both women and men) in Canada report feeling challenged in managing the demands of work and personal/family life.³⁴ When asked what factors would be important to consider in choosing to work at another firm, both women and men reported the same two factors: an environment more supportive of family and personal commitments, and more control over work schedules.³⁵ Part-time or flexible work arrangements that help retain women and men in private practice may or may not, in the short term, cost money.³⁶ However, the costs that are incurred should be seen as investments that

appear to pay off over time. One founding partner of a women-owned firm where all lawyers have flexible work arrangements described the firm's approach: "We sell to our clients that we are creating a work environment where our lawyers never leave — the lawyers they are working with now will be the same lawyers 10 years from now."³⁷

In addition to leaving practice in order to address work-life balance conflicts, women also leave when they do not feel valued, when they do not get good work, or when they face barriers to advancement such as exclusion from informal internal networks and lack of mentoring opportunities, client development experience and role models.³⁸ While there can be a cost to programs that support women's advancement, such as mentoring, networking and business development programs, in many cases those costs appear to be outweighed by women's increased profitability.³⁹

Leading the way in retaining and advancing women in private practice

Despite making significant progress in the legal profession over the last few decades, women still often face numerous unintentional obstacles to equal opportunities for advancement. These obstacles include:

- Hidden bias, stereotypes and assumptions about women and mothers that can significantly and negatively impact women's careers;⁴⁰
- Informal practices such as random free market and "Hey, you" work assignment systems (which allow partners to distribute work to those they know best or feel most comfortable with) that disadvantage women from having access to career-advancing work;⁴¹
- Conflict between 24/7 professional expectations and cultural norms that burden women with a disproportionate share of family and personal responsibilities;⁴²
- Lack of mentors and champions; and
- Lack of access to business development opportunities.

Research and experience in Canada and the US suggest a number of best practices that firms can use to help overcome these obstacles and attract and retain talented women lawyers, including:

- Raising awareness of and correcting unintentional/hidden bias and stereotypes that may inadvertently hold women back in the legal profession.⁴³ For example, research has shown that gender effects in performance evaluations can be improved by using more objective, behaviour-based criteria;⁴⁴
- Ensuring access to high-quality assignments;⁴⁵
- Promoting workplace flexibility.⁴⁶ Research has shown that lawyers who have positive perceptions of a firm's work-life balance generally plan to stay for longer periods of time.⁴⁷ Both women and men are seeking balance these days;⁴⁸
- Promoting meaningful mentoring.⁴⁹ Research has shown that mentoring can be a powerful tool in retaining and advancing women lawyers;⁵⁰ and
- Promoting business development opportunities for women to support their profitability and advancement (creating rainmakers).⁵¹

Firms that adopt measures and programs to retain women distinguish themselves from their peers. Many businesses have enjoyed marked success when they institute specific policies and practices aimed at ensuring the retention and advancement of women in their firms.⁵²

One out of every two lawyers (both women and men) in Canada report feeling challenged in managing the demands of work and personal/family life.

Despite making significant progress in the legal profession over the last few decades, women still often face numerous unintentional obstacles to equal opportunities for advancement... [There are] a number of best practices that firms can use to help overcome these obstacles and attract and retain talented women lawyers.

All strategies will have costs, both in money and in the time that must be devoted to implementing change. They are, however, investments aimed at promoting effective retention strategies that will maximize a firm's key assets — its lawyers, both women and men.

There is no one-size-fits-all answer. Effective strategies will depend on many factors, including firm size, firm culture and location. A large firm in downtown Vancouver will have resources, flexibility and infrastructure to address the issues differently than a 15-lawyer firm in Victoria or a small firm in the Interior. However, research indicates that there are three critical success factors to any strategy:

- Leadership and commitment from senior partners – to set the tone at the top, reinforced by consistent messages,⁵³ and to ensure that women are well-represented and visible in senior leadership positions;⁵⁴
- Measurement and accountability – to set objective benchmarks and measure progress,⁵⁵ and to ensure responsibility for progress on diversity;⁵⁶ and
- Taking action and engaging both men and women lawyers at all levels – to ensure that initiatives are relevant to partners, practice leaders, senior women and aspiring junior women lawyers.⁵⁷

Women lawyers are more likely to stay in work environments when they are satisfied with a number of key factors:

- Advancement opportunities;
- Availability of mentors;
- Management of their organization;
- Professional development opportunities; and
- Control over their work.⁵⁸

Firms have the opportunity to create supportive and inclusive firm environments that retain and advance women lawyers. These firm environments will also help retain men, who are leaving private practice in greater numbers than before, particularly “Millennial” lawyers with greater expectations of work-life balance, flexibility and diversity.

All strategies will have costs, both in money and in the time that must be devoted to implementing change. They are, however, investments aimed at promoting effective retention strategies that will maximize a firm's key assets — its lawyers, both women and men. These investments may be expected to pay off in tangible benefits for firms, by attracting and advancing the best lawyers, by securing the best clients, and by adapting to new economic realities in an increasingly diverse global market.

Taking action now will help firms create more inclusive and more profitable businesses and be better-positioned for the future. Potentially, in terms of both money and opportunities lost, failing to take action may simply cost too much.

FOOTNOTES

- 1 While the Retention of Women in Law Task Force recognizes that the public is best served by a profession that reflects the gender diversity of society, the business case highlights the competitive advantages, profit-potential and business opportunities that can arise with making workplaces more inclusive and maximizing the talent that women and other under-represented groups contribute to success, beyond the moral arguments that diversity is an important social goal or is “the right thing to do.” The task force also recognizes that Aboriginal women lawyers and women lawyers from diverse communities have specific additional concerns that need to be addressed. While the task force did not examine these concerns in detail, law firms are urged to consider the research that has shown the negative and combined effect of hidden biases regarding gender and race as it impacts lawyer retention.
- 2 The reference materials developed for this business case provide some resources and best practices for law firms to consider in developing strategies relevant and appropriate for their specific firm needs.
- 3 It is critical to engage men in gender initiatives and understand how gender bias can negatively affect men and organizations: Catalyst, *Engaging Men in Gender Initiatives: What Change Agents Need to Know* (2009).
- 4 Statistical information compiled from Law Society of BC (LSBC) data.
- 5 Law Society of Upper Canada (LSUC), *Final Report to Convocation – Retention of Women in Private Practice Working Group* (2008), pp. 37-38.
- 6 Partnership data provided in March 2009 by LSUC (women represent 19% of partners) and the Barreau du Quebec (women represent about 20% of partners in large and medium size firms). Women represent fewer than 16% of equity partners and only about 6% of law firm managing partners are women: National Association of Women Lawyers (NAWL), *Report of the Third Annual National Survey on Retention and Promotion of Women in Law Firms* (2008), p. 2. See also Irene Taylor, “Canada’s Top 25 Women Lawyers,” *Lexpert*, September 2003, p. 70, which reported that the percentage of women partners at a select number of Canadian firms averaged 20%.
- 7 LSBC’s former Women in the Legal Profession Task Force also carefully reviewed research from other jurisdictions and accepted their data, in addition to LSBC stats, as sufficiently representative of the situation for women lawyers in BC.
- 8 Catalyst, *Women in Law: Making the Case* (2001), p. 39.
- 9 Catalyst, *Quick Takes: Women in Law* (2009), p. 2. Other research estimates women’s partnership parity by 2115: Women’s Bar Association of the District of Columbia (WBA), *Creating Pathways to Success: Advancing and Retaining Women in Today’s Law Firms* (2006), p. 6.
- 10 Statistical information compiled from LSBC data.
- 11 Recent figures from Statistics Canada released on March 26, 2009 show that Canada’s population growth in the fourth quarter of 2008 (0.19%) was the highest fourth quarter increase since 1992 due to higher net international migration. Specifically in BC, the fourth quarter population growth of 0.33% was the highest fourth quarter increase since 1996: Statistics Canada, *Quarterly Demographic Estimates – October to December 2008*, vol. 22, n. 4.
- 12 LSUC, *Final Report*, *supra*, note 5, p. 36.
- 13 For the full text of and signatories to *A Call to Action: Diversity in the Legal Profession*: www.clocalltoaction.com. Microsoft has taken an additional step – the final 2% of each of their leading law firms’ legal fees are payable as a bonus, contingent on whether they make measurable progress on diversity: “Taking New Steps, Microsoft’s legal department launches new diversity initiative,” *Inside Counsel*, September 2008.
- 14 Heather Greenwood Davis, “The Business Case for Diversity,” *Lexpert*, April 2007 (reprinted with permission by Thompson Carswell).
- 15 For example, the LSUC has developed a “Committed to Justicia” logo for firms who participate in the *Justicia Think Tank* to use for marketing purposes. The logo highlights those firms that have pledged to develop initiatives for the retention and advancement of women lawyers, including parental and flex work policies, and networking, business development, mentoring and leadership programs for women. Participating law firms also agree to collect gender specific demographic data for benchmarking and monitoring progress. See www.lsuc.on.ca/about/b/equity/retentionofwomen.
- 16 RBC Royal Bank, “Women Entrepreneurs Statistics” (2006).
- 17 Canadian Imperial Bank of Commerce, “Women Entrepreneurs: Leading the Charge” (2005).
- 18 Catalyst, *The Bottom Line: Corporate Performance and Women’s Representation on Boards* (2007).
- 19 McKinsey & Company, *Women Matter: Gender diversity, a corporate performance driver* (2007), pp. 12-14. See also Conference Board of Canada, *Women on Boards: Not Just the Right Thing... But the ‘Bright’ Thing* (2002).
- 20 Vicki W. Kramer, Alison M. Konrad and Sumru Erkut, *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance* (2006), p. 3. See also Alison M. Konrad and Vicki W. Kramer, “How Many Women Do Boards Need?” in *Harvard Business Review*, December 2006.
- 21 NAWL, *Report of the Third Annual National Survey*, *supra*, note 6, pp.12-13.
- 22 The Gold Medals are presented to the graduating law students from the University of British Columbia and the University of Victoria faculties of law who have achieved the highest cumulative grade-point average over their respective three-year programs.
- 23 Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (2005), p. 4.
- 24 *Ibid*, p.16. For example, Catalyst’s model is based on a 10% annual “acceptable” level of turnover and a 25% annual “actual” turnover level.
- 25 *Ibid*, p. 9. Other US estimates of turnover costs range from \$280,000 – \$500,000: see Project for Attorney Retention (PAR), “The Business Case for a Balanced Hours Program for Attorneys,” at www.pardc.org/LawFirm/Business_Case.htm
- 26 *Building the Business Case*, *supra*, note 23, p. 10-12.
- 27 This figure is based on the firm’s internal calculations rather than Catalyst’s formula.
- 28 LSUC, *Final Report*, *supra*, note 5, p. 37.
- 29 “Few women lawyers leave the workforce to be at-home moms”: WBA, *Creating Pathways to Success*, *supra*, note 9, p. 7.
- 30 Mona Harrington and Helen Hsi, *Women Lawyers and Obstacles to Leadership: A Report of MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms*, MIT Workplace Center (Spring 2007), p. 10.
- 31 Sylvia Ann Hewlett and Carolyn Buck Luce, “Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success,” *Harvard Business Review*, March 2005, p. 46.
- 32 Law Society of Alberta (LSA), *Final Report on Equity and Diversity in Alberta’s Legal Profession* (2004), p. 87.
- 33 Fiona Kay, “Flight from law: a competing risks model of departures from law firms” (1997), as cited in *Final Report on Equity and Diversity*, *ibid*, p. 8.
- 34 Catalyst, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (2005), p.1.
- 35 Catalyst, *Building the Business Case*, *supra*, note 23, p. 5.

- 36 Economics of part-time models need to be examined in real numbers by individual firms, which may find that a more senior associate billing part-time is more profitable than a new replacement billing full-time at a lower rate. Firms may also find the costs associated with continuously replacing lawyers outweigh decreased revenue from part-time lawyers: PAR, *Business Case for Balanced Hours*, *supra*, note 25. Flexible work arrangements such as compressed work weeks or telecommuting may not incur much cost or any reduced revenue.
- 37 Comment by participant at PAR Second Annual Conference, "Strategies for Advancing Women Lawyers in Turbulent Times," March 5, 2009, Washington, DC.
- 38 Catalyst, *Making the Case*, *supra*, note 8, p. 37.
- 39 NAWL, *Report of the Third Annual National Survey*, *supra*, note 3, p. 20: "Certainly from a purely economic standpoint, the extent to which firms can support and train women lawyers to grow their own books of business has positive financial implications that reach beyond the achievement of equity partnership status and/or holding a leadership position within the firm."
- 40 WBA, *Creating Pathways*, *supra*, note 9, p. 6.
- 41 *Ibid*, p. 21.
- 42 *Ibid*, p. 9.
- 43 Joan C. Williams, "Elimination of Bias," *California Lawyer Magazine*, April 2007, reprinted with permission in PAR Second Annual Conference materials. See also WBA, *Creating Pathways*, *supra*, note 9, p. 32.
- 44 "16 Tips for Writing a Performance Evaluation" and "Bias-Free Evaluation Checklist," excerpted with permission in PAR Second Annual Conference materials from American Bar Association Commission on Women in the Profession, *Fair Measure: Toward Effective Attorney Evaluations, Second Edition* (2008), by Joan C. Williams and Consuela A. Pinto.
- 45 WBA, *Creating Pathways*, *supra*, note 9, p. 21.
- 46 NAWL, *Actions for Advancing Women into Law Firm Leadership* (2008), p. 14.
- 47 Catalyst, *Building the Business Case*, *supra*, note 23, p. 6.
- 48 WBA, *Creating Pathways*, *supra*, note 9, p. 38.
- 49 LSBC has approved accredited mentoring for Continuing Professional Development beginning in 2010.
- 50 NAWL, *Actions for Advancing Women*, *supra*, note 46, p. 10. See also WBA, *Creating Pathways*, *supra*, note 9, p. 24.
- 51 NAWL, *Actions for Advancing Women*, *supra*, note 46, p. 17. See also WBA, *Creating Pathways*, *supra*, note 9, p. 19.
- 52 For example, in the accounting profession, Ernst & Young has significantly increased its percentage of women partners and has reversed the downward trend of retention of women at every level: Hewlett and Luce, "Off-Ramps and On-Ramps," *supra*, note 31, pp. 50-51. See also the experience of Deloitte & Touche as described in LSUC, *Final Report*, *supra*, note 5, pp. 72-76.
- 53 "Tone at the top is necessary, but not sufficient," WBA, *Creating Pathways*, *supra*, note 9, p. 27.
- 54 *Ibid*, p. 33.
- 55 Compiling demographics is one component of assessing needs: WBA, *Creating Pathways*, *supra*, note 9, p. 25. See also note 15: firms participating in LSUC's *Justicia Think Tank* agree to compile demographic data for benchmarking and monitoring purposes.
- 56 Give partners a personal stake in women's success: WBA, *Creating Pathways*, *supra*, note 9, p. 35.
- 57 *Ibid*, pp. 17-18: "road map" is intended to be useful for multiple audiences and identifies cut-across concerns and key action items.
- 58 Catalyst, *Making the Case*, *supra*, note 8, p. 16.

THE BUSINESS CASE: QUESTIONS & ANSWERS

1. Why is it the role of the Law Society to encourage the retention of women in private practice?

As the independent governing body for all BC lawyers, the Law Society protects the public interest in the administration of justice. The Law Society's goals include enhancing access to legal services. The Law Society believes that it is important to improve the retention rate of lawyers because demographics suggest that, within the next decade, there will be fewer lawyers in BC to deliver legal services effectively to a growing population. Increasing the retention of women lawyers would be particularly helpful to address this trend because women have been leaving private practice in significant numbers. The task force also believes that measures that encourage women to stay in or return to private practice will also help to encourage men and lawyers from diverse communities to do so.

Retaining women lawyers supports the public interest by promoting a legal profession that better reflects the society that it serves and supporting the excellence of women lawyers will help the profession better serve the public.

2. Can't we assume that market forces will adjust to keep women in the practice of law?

Research and experience show that market forces alone do not adequately address the issue of retaining women. At least for the present, the impediments to women remaining in or returning to the practice of law are many and some of them can be quite subtle. What appears to be useful is a "toolkit" of approaches, from which firms can pick and choose the measures and approaches that best suit them.

3. Can't we assume that women are retained and advanced on the basis of commitment and merit?

No. Both the task force's experience and the extensive research conducted in this area indicate that the retention and advancement of women requires commitment and hard work on the part of both women themselves and the law firms in which they work. For example, some research has identified subtle but real biases and assumptions — such as assumptions about the commitment of women — that can create obstacles for women. The task force recommends that law firms actively address implicit biases, so that these obstacles are reduced.

It is important to remember that retaining and advancing women does not take away from men's success; it is believed that enhancing the success of women lawyers increases the overall opportunities for everyone.

4. Law firms are highly competitive, both internally and between themselves. Could it be that women are just not as competitive or perhaps that they do not work best in competitive environments?

There are few environments more competitive than our best law schools, where women are thriving and excelling. Law firms also tend to be very competitive and require a high degree of commitment, and they value being perceived as such.

Competitiveness as a trait is widely variable among individuals, both women and men, and is often task dependent. However, no single attribute is more important than all others in the practice of law. All law firms benefit from having a range of talents at their disposal, including intelligence, tenacity, drive, persistence, the ability to work with numbers or with details, a willingness to cooperate and work in teams, and a low threshold of tolerance for unethical business practices or unscrupulous negotiation tactics. Successful law firms offer their clients a wide skill set.

5. What is a business case anyway?

A business case sets out the reasoning for initiating a project or task, in this case the retention of women in private practice, in a manner that addresses the problem and justifies the allocation of resources to the problem. This business case shows that retaining and advancing women to leadership in private practice makes good business sense for firms, because of the potential to increase revenues by responding to changing demographics of legal talent and client demands, and to decrease expenses by reducing the monetary and opportunity costs of turnover and attrition. This business case also refers to best practices or a "toolkit" for firms to consider for developing their own strategies and solutions.

6. Does the business case apply to small law firms?

Yes. Not all of the business case applies to all circumstances; however, among the resources appended to the business case are suggestions and best practices that will be valuable to law practices of all sizes.

7. Are the recommendations and resources expensive?

Some of the recommendations and resources must be funded and some of them are virtually cost-free. The business case concludes that in many cases the recommendations that require funding will be cost-effective because of the avoided costs of *not* having them in place, and because of the benefits of taking action.

8. Aren't women better off taking time away from practice to raise their families or pursue other interests?

Each woman will make her own decisions in this regard; the task force doesn't recommend the *mandatory* practice of law! However, the task force recommendations are designed to address both systemic and on-the-ground issues that can prevent or dissuade women who wish to do so from remaining in practice or returning to practice after a period of time away.

9. Law firms have fixed overheads and accommodating women who want flexible time arrangements makes it difficult to meet these commitments. Does the business case address this?

The task force has gathered a range of tools from which firms of different sizes can select those that are most suited to their circumstances. Research and experience has shown that well-selected measures to retain and promote women will enhance the ability of firms to meet their commitments by reducing attrition costs and increasing women's profitability.

10. Aren't women's expectations somewhat unreasonable? They want high salaries, flexibility and work-life balance. Isn't it impossible to address all of these needs?

The task force is of the view that, while there may be some practitioners — both women and men — who have unreasonable expectations, many recognize that flexibility and work-life balance come at a cost and the cost may be lower or less consistent remuneration. The task force believes that law firms' business models are capable of adjustment in ways that make the practice of law more accommodating to practitioners looking for greater work-life balance — who are more often women who have assumed the larger share of family responsibilities — thus retaining their skills, but without a loss in revenues. The best business models tend to include the avoided costs of recruiting and retraining, as well as the value of senior, seasoned women who are committed to the firm in return for the firm's commitment to them.

11. How do you address the fact that clients' demands are unpredictable? Sometimes there's a deadline and the work just has to get done. If the women with families all go home at 5:00, then the men and single or older women will be left to do the work. Isn't that unfair?

There is no doubt that staffing challenges will occur from time to time in all practices, including for example when men or women lawyers take vacation or attend to political, community and family obligations, but the burden can be managed better than ever these days with increased use of technology (such as cellphones, Blackberries and laptops). Client needs and expectations can also be met by measures such as establishing clear expectations for additional work to be performed during times of unexpectedly heavy workload, and debriefing and planning after such events to ensure that the duties to the clients can continue to be met.

12. How can a law firm promote a woman to partnership, or give her preferred assignments, if the firm can't be sure that she will be there to carry out the responsibilities of a partner or get the preferred work done?

Each lawyer and each situation will be different. Lawyers are professionals, and commitment to clients, the firm and its partners should be measured by the response of the clients, the excellence of the work and profitability, not only by hours billed.

Commitment should be measured with a long view by both law firms and individual lawyers. The business case encourages firms to ensure that they are judging women on their merits and are not — perhaps unintentionally — making assumptions that women won't be able to carry out the responsibilities of a partner or get preferred work done.

13. Aren't women voting with their feet by electing careers in government, non-profits or corporations?

Yes, many are doing so, but the task force is persuaded, first, that it is important to the profession to retain more women in private practice and, second, that with some adjustments to their business model, law firms can persuade more women to stay or return. Going in-house or to non-profits or government is often a good choice for women and those institutions gain women's talent, but these choices can also be lose-lose-lose: for firms who don't get the talent, for clients who don't get the benefit of women's skills, and for women who don't get the opportunity to succeed in private practice.

14. Aren't you asking law firms or their clients to bear additional costs when work is passed from lawyer to lawyer because the woman in charge of a file isn't there?

The task force agrees that clients cannot be asked to bear additional costs unless the client is receiving corresponding value. However, it is important to bear in mind that the monetary and opportunity costs of attrition are to some extent already being felt by clients. The task force is of the view that the standard law firm business model is in most cases capable of revision to encompass flexible or innovative work assignments, in order to avoid attrition costs — such as the cost of losing a well-trained woman associate — or in order to increase revenues, for example, because women working in an arrangement that suits them may be willing to do so on terms that are advantageous to the law firm as well. This is not to say that women should not be recognized and remunerated when they return to a standard practice model.

15. Shouldn't young lawyers be warned in law school or in the Professional Legal Training Course that this profession doesn't lend itself to work-life balance?

Yes. However, the warning should not be designed to dissuade young lawyers from engaging in the practice of law. Rather, the message should emphasize that the profession is still learning ways to meaningfully include and engage all of us — women and men — to ensure that tomorrow's profession is more reflective of the society it serves.

16. Who is on the task force?

The task force is made up of men and women lawyers from large, medium, regional and small firms, as well as in-house practice. These lawyers are experienced practitioners who, in carrying out the work of the task force, have read and analyzed a substantial volume of material on the question of the retention of women in the practice of law, and consulted with non-lawyers and other professionals.

17. Is the experience of other jurisdictions applicable in BC?

Having reviewed a substantial volume of material, the task force believes that the experiences in other jurisdictions as well as the experiences of other professions are highly relevant to the practice of law in BC. The task force found North American research regarding the retention of women in law to be substantially consistent across jurisdictions.

SUMMARY OF RESEARCH SUPPORTING THE BUSINESS CASE

Introduction

During its review of resources to prepare *The Business Case for Retaining and Advancing Women Lawyers in Private Practice*, the Retention of Women in Law Task Force identified relevant research that firms may wish to consider in developing their own strategies and solutions. This reference material outlines some background research related to women in the legal profession and reasons women leave private practice. It explains both the economic and career consequences to women who leave, and how hidden gender bias can create obstacles to women's equal opportunities in the law firm workplace.

Women in the legal profession

Since the early 1990s, a great deal of research regarding women in law has been conducted in BC, Ontario, Alberta and other jurisdictions.¹ In 1993, Madam Justice Bertha Wilson released the CBA *Touchstones for Change* report on gender equality in the legal profession in which she identified the many barriers faced by women:

A growing body of national and international literature has concluded that gender bias exists in the legal profession of most countries. The types of barriers to equality which have been identified include: sexual harassment; salary differentials; difficulties obtaining articles; difficulties in securing good files and problems with work allocation; problems in career advancement in terms of promotion and access to partnership; the lack of women in management and leadership positions; segregation into certain areas of practice; and an unwillingness to accommodate female parents who have family responsibilities.²

While significant progress has been made since that report, the task force recognizes that many of those same barriers to equality still exist today. As the Law Society of Upper Canada's (LSUC's) Retention of Women in Private Practice Working Group noted, "Women have been entering the legal profession and private practice in record numbers for at least two decades. However, they have been leaving private practice in droves largely because the legal profession had not effectively adapted to this reality."³

As described in the business case, women have been entering the legal profession in BC in numbers equal to or greater than men for more than a decade, yet they are disproportionately under-represented in the profession, in private practice and in partnership positions.

Women lawyers still face a significant compensation gap. Research in the US has shown that women start out at the associate level earning about 97% of men's salaries. The gap gets larger at each step up; women non-equity partners earn 91% and women equity partners earn 87% of the compensation of their male counterparts.⁴

Reasons women leave the profession

The Law Society of Alberta's 2004 *Final Report on Equity and Diversity in Alberta's Legal Profession* included research findings from a survey of inactive and active members. Data from surveyed inactive members showed that the majority of both women and men who left the profession in the preceding 10 years did so to look for more

personally rewarding opportunities, to avoid the nature, stress and adversarial approach of the practice of law, or to find more balance with personal life. In fact, only half of the respondents reported that they would become a lawyer, given the chance to do it over again.⁵

The survey of active members also revealed dissatisfaction with many aspects of the practice of law, including hours of work, work-life balance, the "profit-driven" culture and, for members of historically disadvantaged groups, discrimination that impedes career advancement. In fact, 92% of female and 69% of male active members surveyed thought there was some degree of bias or discrimination against women in the profession.⁶ The report added:

Women's advancement in the profession is still seriously hindered by the fact that they bear the children and they are involved in a disproportionate amount of child rearing activities compared to their male counterparts. Little progress has been made in the private sector to accommodate parenting by both women and men, although the consequences are largely borne by women. As a result, women leave the profession in sufficient numbers that they may still be unable to form the "critical mass" required to effect meaningful change in the profession.⁷

LSUC's Retention of Women in Private Practice Working Group reviewed relevant research and identified the following challenges in private practice:

- Although women and men identify time spent with their family as the aspect of their lives that gives them the most satisfaction, maintaining demanding law careers often conflict with family life and is the most common reason for leaving law practice;
- The most immediate issues for women in private practice appear to result from childbirth and parenting responsibilities;
- Women are particularly affected by the unavailability of support and benefits such as part-time partnerships, part-time employment, predictable hours, job sharing and flexibility in hours;
- Women in small firms or in sole practices face unique challenges in part because of the lack of income or benefits during leaves and lack of assistance to maintain the practice during absences; and
- Women from Aboriginal, Francophone and/or equality-seeking communities are often more vulnerable and their experiences and perspectives should be taken into account when developing strategies to retain and advance women in private practice.⁸

Catalyst's research also shows that about one out of every two lawyers in Canada reports feeling challenged in managing the demands of work and personal/family life.⁹ When asked what factors would be important to consider in choosing to work at another firm, both women and men reported the same two top factors: an environment more supportive of family and personal commitments, and more control over work schedules.¹⁰

In addition to leaving practice in order to address work-life balance conflicts, women leave when they do not feel valued, when they do not get good work, or when they face unfair barriers to advancement,

such as exclusion from informal internal networks and lack of mentoring opportunities, client development experience and role models.¹¹

The task force has also concluded, based on consultation with the Law Society Equity Ombudsperson and informal discussions with lawyers, that sexual discrimination and harassment continue to be significant problems for women in some firms in BC, thereby ensuring that the retention of women in these firms will be compromised. While it is perceived that there has been overall improvement in this area since the Hughes report in 1992,¹² any Law Society program aimed at retention of women in private practice must include ongoing educational and disciplinary processes for addressing inappropriate workplace conduct in relation to women lawyers.¹³

Linda Robertson, Chair of the CBABC Women Lawyers Forum and lawyer coach with Phoenix Legal, recently described the attrition of women:

I believe firmly that women are not fleeing the law — women love the law and are good at it. Women are not fleeing their clients — women like their clients and have excellent networking and relationship-building skills. But women *are* fleeing workplaces that they find to be unsupportive, lacking in collegiality and that refuse to recognize that lawyers have lives outside the office that are as important as serving our clients... I also believe strongly that this is not just a women's issue. What women want in the workplace is increasingly what men want in the workplace.¹⁴

Economic and career consequences for women who leave

A recent Statistics Canada report confirmed a substantial earnings gap between women with and without children, and showed that highly educated women face a greater loss of earning power when interrupting their careers to have children compared to women with less education. Depending on age and length of career interruption, the gap can be close to 30%.¹⁵ The Law Society of Alberta's survey of inactive members indicated that 66% of women experienced an average decrease in income of \$55,625 as a result of not practising law.¹⁶

The task force believes that women need to understand the risks and long-term economic consequences of opting out of the legal profession. As reported in a recent US article:

- Half of all marriages end in divorce and the standard of living for women drops by 36% when marriages are disrupted (while men's standard of living increases by 28%);
- One survey found that 90% of women will be the sole financial decision-makers in their households at some point in their lives; and
- Re-entry into the workforce after opting out is difficult and has severe financial penalties – women lose a staggering 37% of their earning power when they spend three or more years out of the workforce.¹⁷

Women who "off-ramp" from their career paths, rather than opt-out of the workforce, overwhelmingly intend to return. Unfortunately, only 74% manage to return to employment and, among those, only 40% return to full-time professional jobs.¹⁸ For women lawyers who manage to "on-ramp" after leaves, the time away from private practice nonetheless has serious career effects, such as lengthening or eliminating the path to partnership, and possibly compromising the likelihood of assuming a leadership role in the profession or being appointed to the Bench.

Understanding and overcoming gender bias

Research in the past 20 years has identified gender bias as a fundamental barrier for women in the legal profession. While much of the overt bias has been overcome, unintentional or hidden bias still impedes women's advancement. For example, unintentional biases or assumptions about mothers' commitment to work can negatively influence a woman lawyer's performance evaluation and decisions about her compensation and advancement. Over time, the cumulative effect of biases can have a significant impact on the trajectory of a woman's career and earnings.

The Project for Attorney Retention (PAR) has extensively studied the impact of hidden bias on the retention of women lawyers. They identify two key patterns of hidden gender bias, the "glass ceiling" and the "maternal wall."¹⁹

Glass ceiling

According to PAR, the glass ceiling pattern sets up double standards and double binds for women and men, including:

- **No competence assumption for women** – studies show that male lawyers enjoy a presumption of competence that women lawyers do not. As a result, women are often held to higher standards and their performance is subject to greater scrutiny. Also, women often have to prove their competence repeatedly;
- **Men are judged on their potential, women on their achievements** – men benefit from the default assumption that they are competent but women need to prove it. For example, a firm making partnership decisions may promote a man because he has the potential for being a good rain-maker but not promote a woman because she does not have a book of business;
- **He's got what it takes, she's just lucky** – men's success tends to be attributed to personal qualities and skills (he is brilliant), while women's successes tend to be attributed to external or temporary situational factors (she drew a good judge);
- **Women have to work twice as hard to get half as much** – because men's success are attributed to personality traits, they tend to receive larger rewards than women for the same accomplishment;
- **He has a lot on his plate, she is disorganized** – conversely, men's failures tend to be attributed to situational factors beyond their control, while women's failures tend to be attributed to their personal qualities;
- **He's direct, she's rude** – the same critical remark will be viewed differently based on stereotypes of "appropriate" men's and women's behaviour;
- **He's self-promoting, she's bragging** – the same behaviour of highlighting accomplishments is viewed negatively for her and positively for him;
- **Shifting standards** – seemingly objective standards for hiring and promotion may change depending on whether they are applied to men or women. For example, when a male can-

didate has stellar educational credentials, evaluators tend to give education more weight than experience to justify hiring him. When a female candidate with similar educational credentials is considered, evaluators place more weight on experience to justify the decision not to hire her; and

- **Race** – women lawyers of colour trigger stereotypes of both race and gender, including two sets of negative competence assumptions. Research shows that when stereotypes of both race and gender operate, the result can be a multiplication (not just addition) of bias effects that impact career advancement.

Maternal wall

PAR also identifies the maternal wall gender bias pattern, which involves a number of assumptions, including:

- **The good mother versus the norm of work devotion** – society thinks of “good mothers” as being available to their children, which directly conflicts with the expectation that lawyers be available 24/7 to clients and the firm. Lawyers who place limits on their availability are considered lacking commitment;
- **Negative commitment assumptions** – supervisors may assume mothers are less committed because they have children, regardless of the facts;
- **Negative competence assumptions** – studies show that, once women have children, assessments of their competence fall sharply, regardless of the facts. One effect of this is heightened scrutiny of work product;
- **Part-time or flexible schedules may trigger attribution** – absence or failure is attributed to schedule, regardless of facts. A woman on a standard schedule is out of the office and everyone assumes she is at a client meeting, but a woman on a part-time schedule is assumed to be at home with her children;
- **Benevolent side-tracking** – assumptions are made that a mother would not want assignments that require overtime or travel, potentially denying her opportunities needed to advance; and
- **Rules applied more rigidly to mothers** – seemingly neutral rules may be applied more rigidly to mothers. For example, a “no leaving early for personal reasons” rule may prevent a mother from attending a school event, but not a man from leaving to play golf. Another example is trying to “catch” a mother leaving early.

The task force recognizes that everyone has unintentional biases. However, it is critical to understand how hidden gender biases function in a workplace context and create barriers for women lawyers. For example, research indicates that firms need to pay particular attention to work assignment systems and evaluation processes. These are two areas where women feel most adversely affected by unintentional bias.²⁰

FOOTNOTES

1. For example: Hughes, E.N., *Gender Equality in the Justice System: A Report of the Law Society of British Columbia Gender Bias Committee* (1992); Kay, F.M., C. Masuch and P. Curry, *Turning Points and Transitions: Women's Careers in the Legal Profession – A Longitudinal Survey of Ontario Lawyers 1990-2002* (Law Society of Upper Canada, September 2004); Law Society of Alberta, *Final Report on Equity and Diversity in Alberta's Legal Profession* (January 2004); Women's Bar Association of DC, *Creating Pathways to Success: Advancing and Retaining Women in Today's Law Firms* (May 2006).
2. The Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability – The Report on Gender Equality in the Legal Profession* (August 1993), p. 55.
3. Law Society of Upper Canada, *Final Report to Convocation – Retention of Women in Private Practice Working Group* (May 2008), p. 4. LSUC data shows that over the last 10 years, women have been leaving at rates two to three times greater than men.
4. National Association of Women Lawyers (NAWL), *Report of the Third Annual National Survey on Retention and Promotion of Women in Law Firms* (2008), p. 14.
5. Law Society of Alberta, *Final Report on Equity and Diversity in Alberta's Legal Profession* (January 2004), p. 169.
6. *Ibid*, p. 169-70.
7. *Ibid*, p. 171.
8. LSUC *Final Report*, *supra*, note 4, p. 6.
9. Catalyst, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (2005), p. 1. See also Mona Harrington and Helen Hsi, *Women Lawyers and Obstacles to Leadership: A Report of MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms* (MIT Workplace Center, Spring 2007), p. 12, which reported that the most cited reason for women at all levels leaving firm practice as “difficulty integrating work and family/personal life.”
10. Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (2005), p. 5.
11. Catalyst, *Women in Law: Making the Case* (2001), p. 37.
12. *Gender Equality in the Justice System*, *supra* note 2. Volume 1, chapter 3 includes a discussion of sexual harassment in the legal profession.
13. The task force notes that LSUC's Discrimination and Harassment Counsel continues to receive complaints based on sex (including sexual harassment) more than on any other ground: *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada*, Appendix 5 to the *Report to Convocation of the Equity and Aboriginal Issues Committee*, May 28, 2009.
14. Linda Robertson, “What Women Want,” presentation at task force retreat on November 15, 2008.
15. Statistics Canada, *Perspectives*, March 2009.
16. LSA, *Final Report*, *supra*, note 6, pp. 25-6.
17. Leslie Bennetts, “Leaving the workforce: myth versus reality,” *The Common Room*, CBA National Women Lawyers forum newsletter.
18. Sylvia Ann Hewlett and Carolyn Buck Luce, “Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success,” *Harvard Business Review*, March 2005, pp. 45-46.
19. Project for Attorney Retention (PAR), “Patterns of Underlying Gender Bias,” conference materials from Second Annual Conference, *Strategies for Advancing Women Lawyers in Turbulent Times*, March 5, 2009, Washington, DC. Also Joan C. Williams, “Elimination of Bias,” *California Lawyer Magazine*, April 2007, included with permission in 2009 PAR conference materials.
20. Catalyst, *Making the Case*, *supra*, note 12, p. 9.

BEST PRACTICES AND RESOURCES FOR RETAINING AND ADVANCING WOMEN IN PRIVATE PRACTICE

Introduction

During its review of resources to prepare *The Business Case for Retaining and Advancing Women Lawyers in Private Practice*, the Retention of Women in Law Task Force identified relevant best practices for retaining and advancing women in private practice. This reference material identifies a number of best practices and additional resources that law firms may wish to consider in developing their own strategies and solutions.

Considering best practices

Research has shown that women leave private practice for many reasons, including family responsibilities, lack of work-life balance and lack of equal opportunities for advancement. Unintentional or hidden gender bias often underlies these reasons.

However, research has also shown that women stay in work environments where they are satisfied with advancement opportunities, availability of mentors, professional development opportunities and control over their work.¹ Firms have the opportunity to create supportive environments and equal-opportunity, bias-free processes to retain and advance women lawyers. Supportive and inclusive firm environments will also help recruit and retain men, who are also leaving private practice in significant numbers, and “Millennial” lawyers, who have greater expectations of work-life balance, flexibility and diversity. Best practices to consider in a “toolkit” include:

- **Address hidden gender bias** – Raising awareness of and correcting for unintentional or hidden biases and stereotypes can help overcome barriers that may inadvertently hold women back in the law firm workplace.²
- **Develop bias-free evaluations** – Research has shown that gender effects in performance evaluations can be improved by using more objective, behaviour-based criteria.³
- **Ensure fair access to assignments** – Research has shown that women feel adversely affected by work assignment systems.⁴ Systems should ensure women’s access to high-quality assignments.⁵
- **Promote meaningful mentoring** – Research has shown that mentoring can be a powerful tool in retaining and advancing women lawyers.⁶
- **Promote workplace flexibility** – Research has shown that lawyers who have positive perceptions of a firm’s work-life balance generally plan to stay for longer periods of time.⁷ Flexible work arrangements may not necessarily involve reduced hours; however, they may include part-time schedules, which do not necessarily cost firms or decrease revenue.⁸ Firms should approach flexibility as a business response to the changing workforce rather than as an accommodation⁹ and ensure there is no related stigma. Highly qualified women find flexibility more important than compensation.¹⁰

- **Promote business development for women** – Business development opportunities support women’s profitability and advancement.¹¹ Business development includes fair credit attribution, legacy systems and partner accountability.¹²
- **Promote networking for women** – Women’s exclusion from formal and informal networks can negatively affect advancement.¹³ Business and client relationships are often handed down through informal networks.¹⁴ Firms should encourage the development of professional networks for women.¹⁵
- **Develop effective workplace policies** – Relevant policies may include workplace flexibility, workplace equality, parental leaves, recruiting/hiring guidelines and respectful language guidelines.¹⁶
- **Create “on-ramps” for women** – Research indicates that there are a number of steps that firms can implement to assist women in returning after leaves, such as creating reduced-hour positions and providing flexibility during the day (which does not involve reduced hours) or over the arc of a career.¹⁷
- **Consider advancing women through succession planning** – Informal systems that depend on individual partners’ decisions about who will inherit clients tend to exclude many talented and qualified women lawyers. Formal succession planning can enhance diversity and encourage partners’ roles in developing the careers of women lawyers.¹⁸

Additional resources

American Bar Association Commission on Women in the Profession. *Visible Invisibility: Women of Color in Law Firms* (2006).

Canadian Bar Association’s Standing Committee on Equity. *Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations* (2008).

Catalyst. *The Double-Bind Dilemma for Women in Leadership: Damned if You Do, Doomed if You Don’t* (2007).

Flex-Time Lawyers & New York City Bar Association. *The Cheat Sheet* (2006).

Heller Ehrman LLP. *Opt-In Project – Project Report* (2007).

Kay, F.M., C. Masuch and P. Curry. *Diversity and Change: The Contemporary Legal Profession in Ontario* (Law Society of Upper Canada, September 2004).

Kay, F.M., C. Masuch and P. Curry. *Turning Points and Transitions: Women’s Careers in the Legal Profession – A Longitudinal Survey of Ontario Lawyers 1990-2002* (Law Society of Upper Canada, September 2004).

NALP – The Association for Legal Career Professionals. *Diversity Best Practices Guide* (2006).

New York City Bar Committee on Women in the Profession. *Best Practices for the Hiring, Training, Retention, and Advancement of Women Attorneys* (2006).

Ornstein, Michael. *The Changing Face of the Ontario Legal Profession, 1971 – 2001* (Law Society of Upper Canada, October 2004).

Sloan, Peter B. *From Classes to Competencies, Lockstep to Levels: How One Law Firm Discarded Lockstep Associate Advancement and Replaced it with an Associate Level System* (2007 Edition).

Williams, Joan C. and Cynthia Thomas Calvert. *Solving the Part-Time Puzzle: The Law Firm's Guide to Balanced Hours* (NALP, 2004).

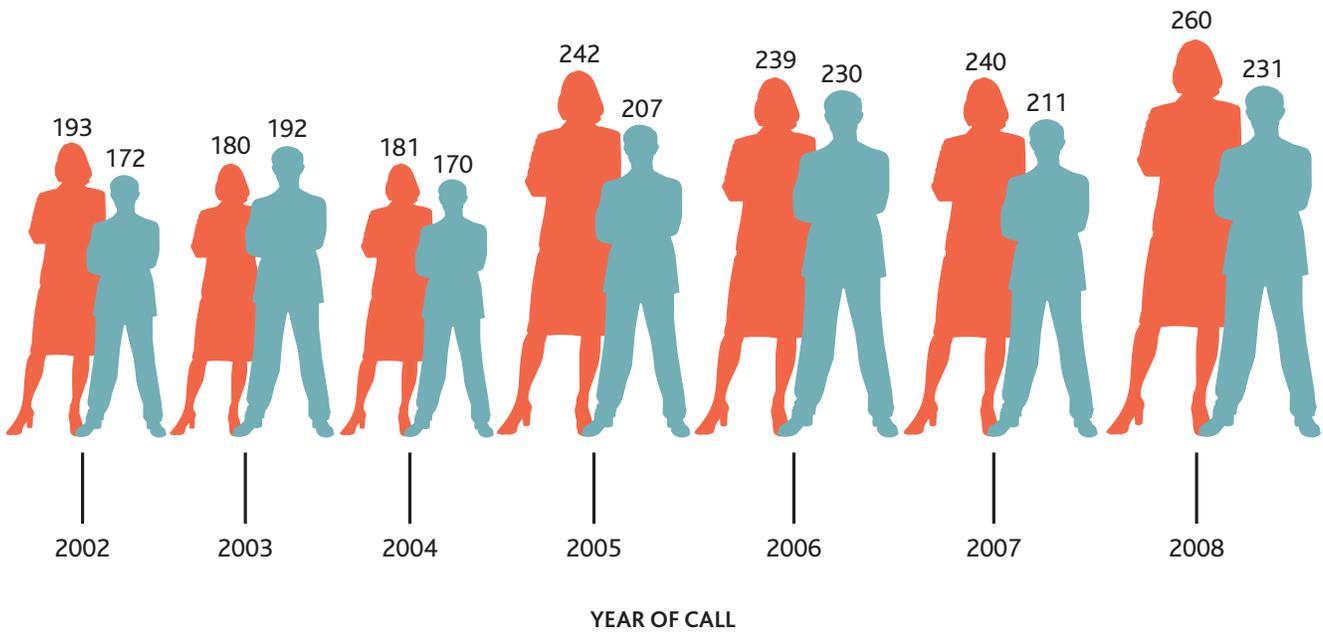
Women's Bar Association of the District of Columbia. *Creating Pathways to Success: Advancing and Retaining Women of Color in Today's Law Firms* (May 2008).

FOOTNOTES

1. Catalyst, *Women in Law: Making the Case* (2001), p. 16.
2. Project for Attorney Retention (PAR), "Patterns of Underlying Gender Bias," in conference materials from Second Annual Conference, *Strategies for Advancing Women Lawyers in Turbulent Times*, March 5, 2009, Washington, DC. Also Joan C. Williams, "Elimination of Bias," *California Lawyer Magazine*, April 2007, reprinted with permission in 2009 PAR conference materials. See also National Association of Women Lawyers (NAWL), *Actions for Advancing Women into Law Firm Leadership* (2008) at pp. 8-10. Take the *Implicit Association Test* (for hidden bias): <https://implicit.harvard.edu/implicit/>
3. American Bar Association Commission on Women in the Profession, *Fair Measure: Toward Effective Attorney Evaluations, Second Edition* (2008), by Joan C. Williams and Consuela A. Pinto.
4. Catalyst, *Making the Case*, *supra* note 2 at p. 9. Women feel most adversely affected by assignment systems and performance feedback processes.
5. Women's Bar Association of DC, *Creating Pathways to Success: Advancing and Retaining Women in Today's Law Firms* (May 2006), p. 21.
6. NAWL, *Actions for Advancing Women*, *supra*, note 3, p. 10.
7. Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (2005), p. 6.
8. Project for Attorney Retention, "The Business Case for a Balanced Hours Program for Attorneys": www.pardc.org/LawFirm/Business_Case.htm
9. WBA, *Creating Pathways*, *supra*, note 6, pp. 37-41.
10. Sylvia Ann Hewlett and Carolyn Buck Luce, "Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success," *Harvard Business Review*, March 2005, p. 51.
11. NAWL, *Actions for Advancing Women*, *supra*, note 3, p. 17.
12. *Ibid*, pp. 18-21.
13. Research indicates that women and lawyers of color are less likely to be central to work based networks, and as a result they have more limited access to network resources: M.J. Tocci, "Measuring for a Purpose: What Law Firms Can't Afford to Ignore," conference materials for the Project for Attorney Retention's First Annual Conference, *Positioning Law Firms for Long-Term Success: New Strategies for Advancing Women Lawyers*, May 15, 2008, Washington, DC.
14. WBA, *Creating Pathways*, *supra*, note 6, p. 9.
15. NAWL, *Actions for Advancing Women*, *supra*, note 3, p. 13.
16. The Law Society of BC has developed a number of model policies for firms: www.lawsociety.bc.ca/practice_support/articles/practice_intro.html
17. Highly qualified women find flexibility more important than compensation: "Off-Ramps and On-Ramps," *supra*, note 11, p. 51.
18. NAWL, *Actions for Advancing Women*, *supra*, note 3, pp. 5-6. See also Ida Abbott, "Transitioning Clients," conference materials for the Project for Attorney Retention's First Annual Conference, *supra*, note 14.

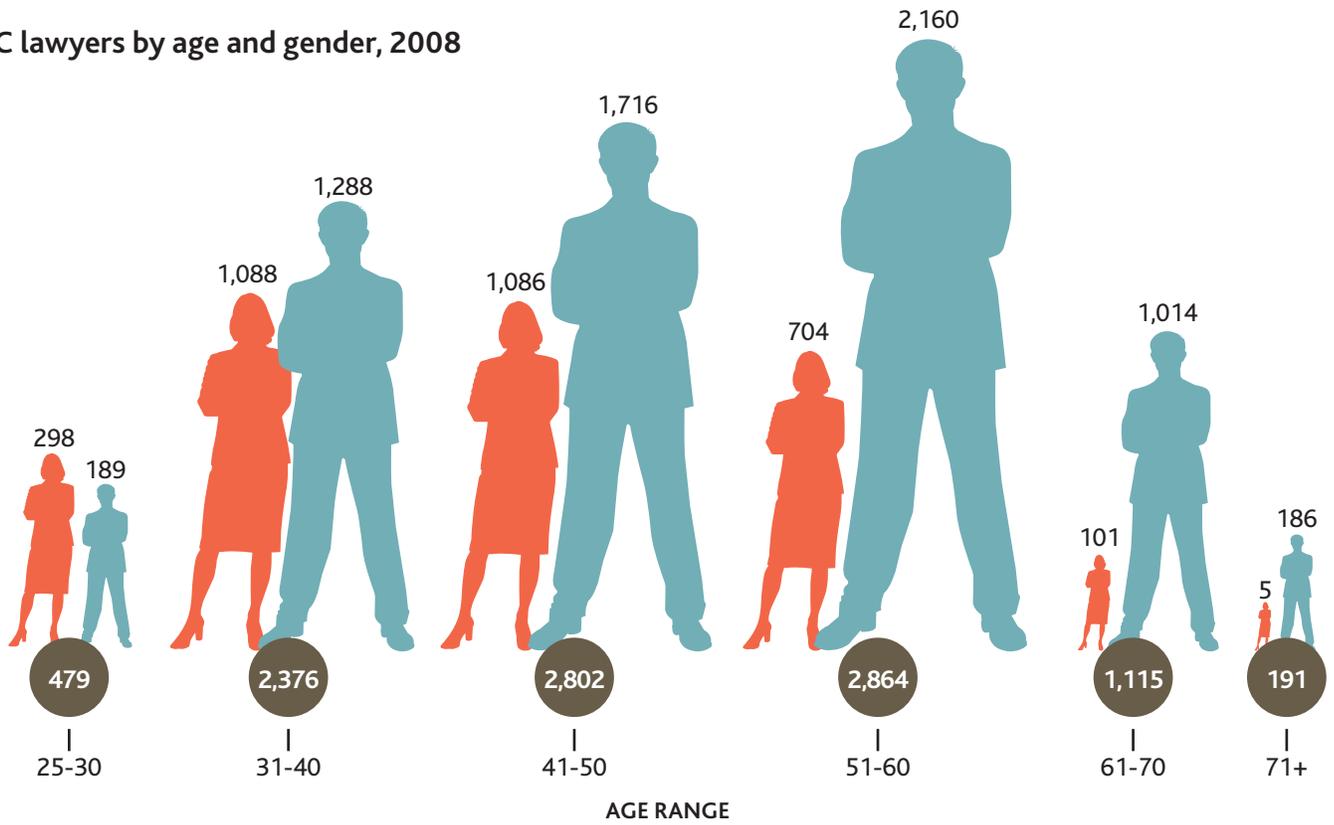
2008 BC LAW FIRM AND MEMBER DEMOGRAPHICS¹

BC lawyers by year of call and gender

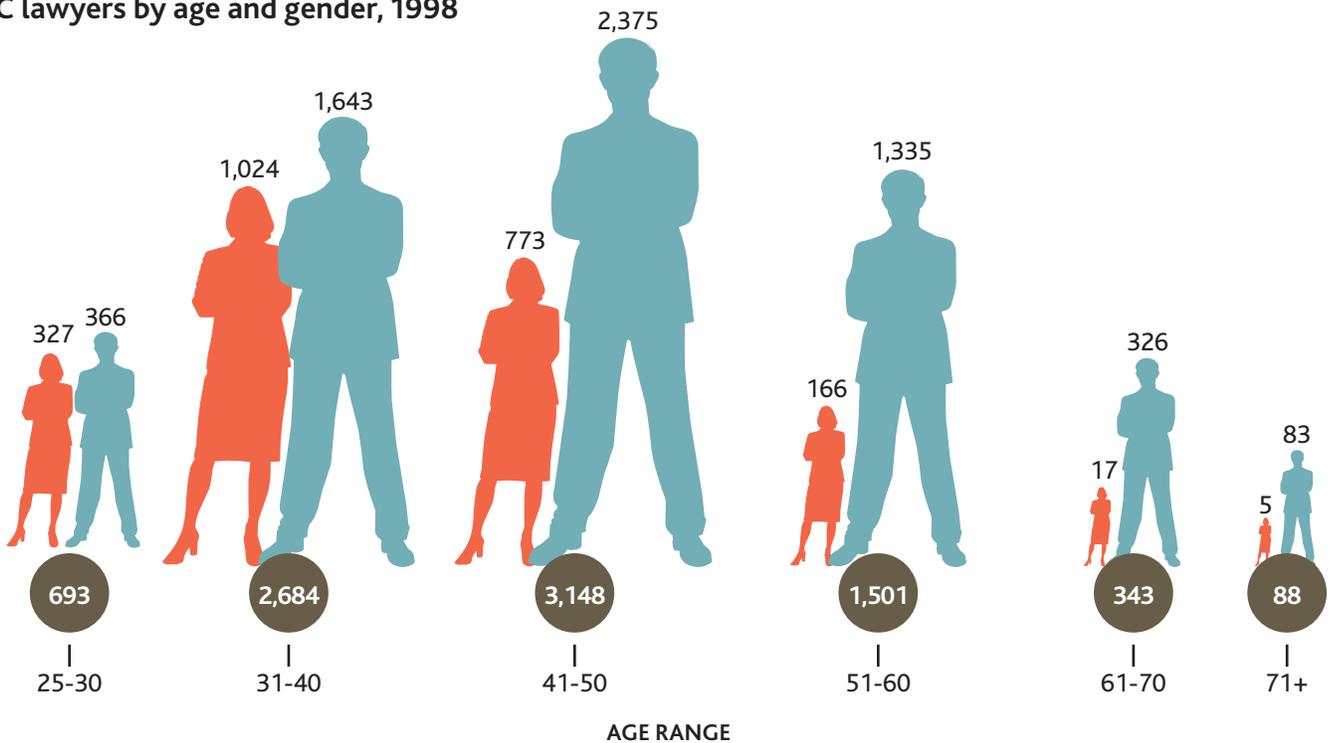


1. These statistics, based on Law Society of BC data, provide a brief snapshot of the legal profession in BC and are presented in support of the business case.

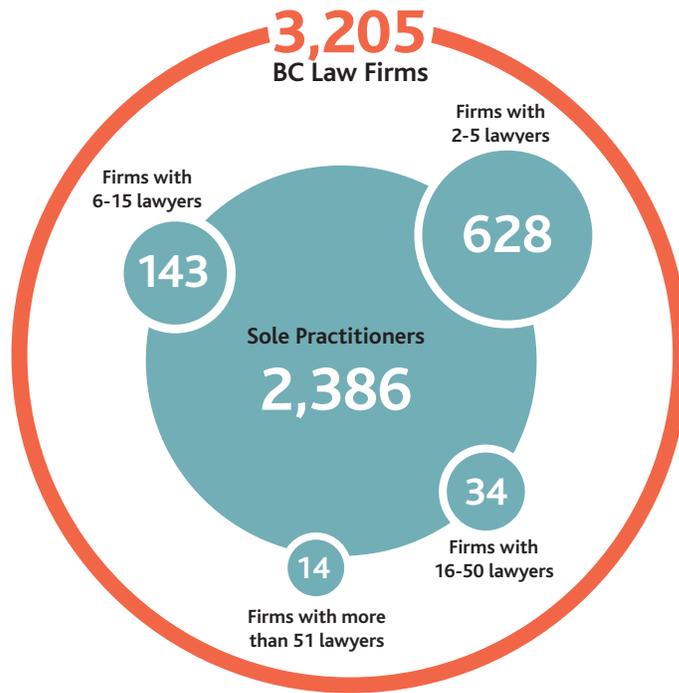
BC lawyers by age and gender, 2008



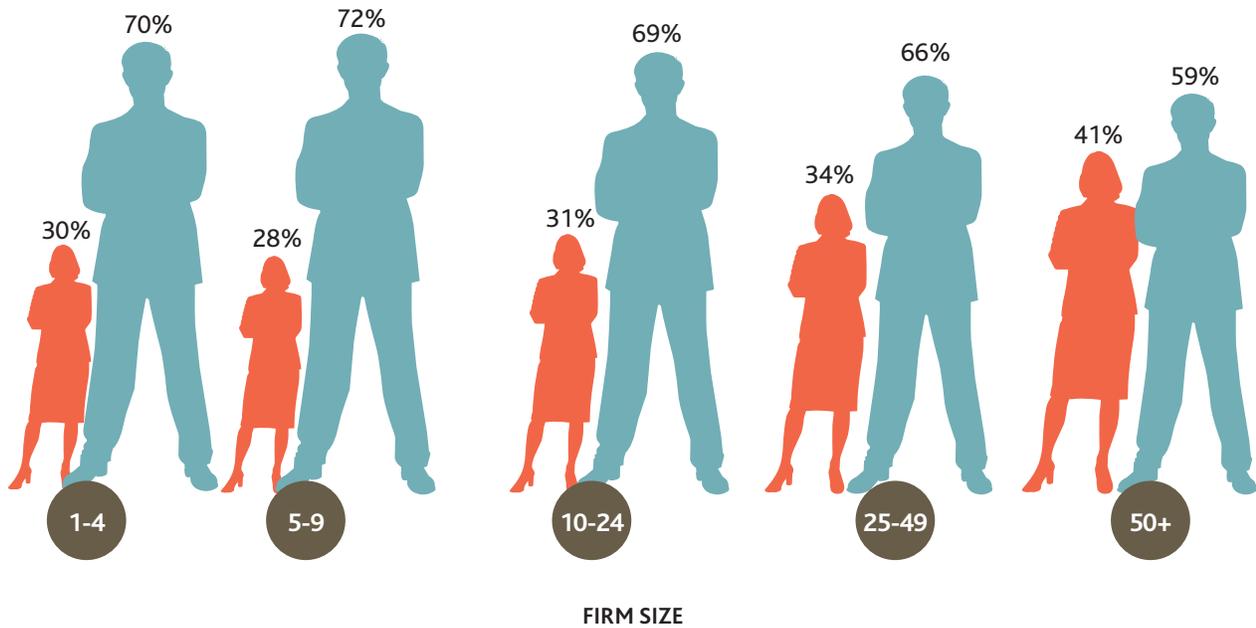
BC lawyers by age and gender, 1998



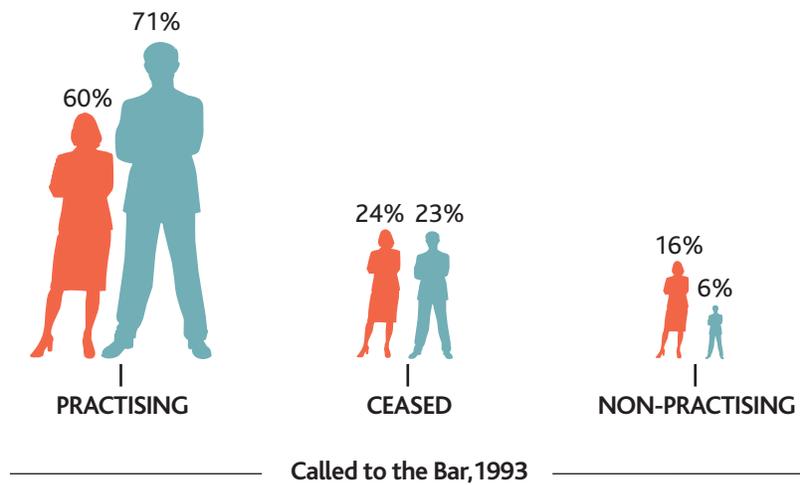
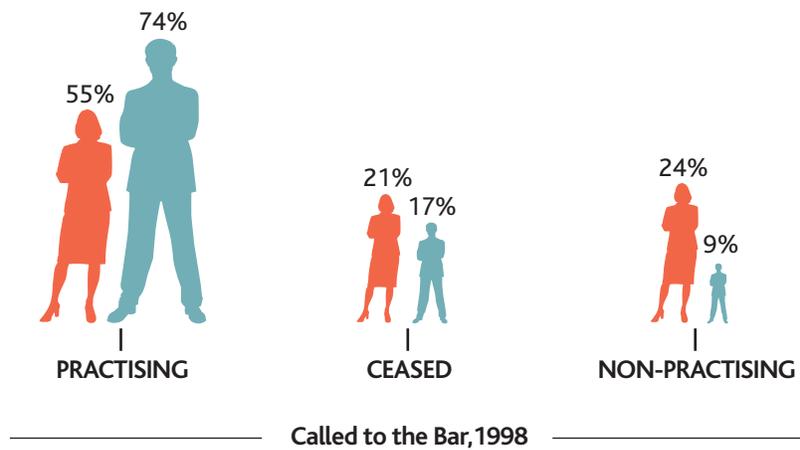
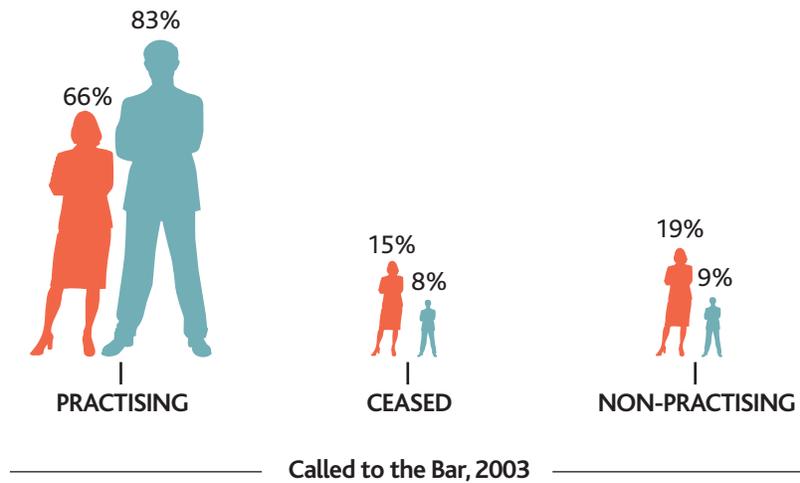
Number of firms, by firm size



Lawyers by gender and firm size, 2008



Lawyers by gender and practising status, 2008



RESPONSE OF THE MINISTRY OF ATTORNEY GENERAL REGARDING RETENTION OF WOMEN

This is the response of the Ministry of the Attorney General to the Law Society questionnaire on Women in the Legal Profession, gathered in the fall of 2007. It shows the length to which at least one provider of legal services is going in order to attract and retain women lawyers.

The Ministry (MAG) has three branches that employ in total over 600 lawyers: The Criminal Justice Branch (CJB), which employs lawyers as prosecutors; the Legal Services Branch (LSB) which employs lawyers as barristers and solicitors providing representation of and legal advice to the executive branch of government; and the Justice Services Branch (JSB) which employs lawyers primarily to provide legal policy analysis. The responses to this questionnaire focus on the lawyers in CJB and LSB.

Each branch operates according to a framework of employment policy that includes central government-wide policy, ministry policy and branch-specific policy. Accordingly, there is some variation amongst lawyers depending on the branch they are employed in the location of their office or the specific practice group that they are part of.

In responding to this questionnaire these differences are described where necessary to give an accurate response to the question.

1. Does your organization have formal programs and/or policies designed to attract, retain and promote female workers?

We believe that the key factors in retention, recruitment and succession planning for all lawyers in government are:

- healthy work environments;
- fair compensation;
- interesting and diverse areas of practice;
- the opportunity to work with first rate legal counsel;
- recognition;
- mentoring; and
- professional development opportunities in a wide range of practice areas.

MAG does not specifically target female employees in its human resource planning, but does have a number of policies and programs that address these factors, and particularly that promote a healthy work environment. However, both the British Columbia Public Service and the Ministry of Attorney General Human Resource Plans specifically identify healthy work environment strategies as important retention, recruitment and succession planning initiatives.

The Public Service Agency's "Flexible Work Arrangements Policy – 6.1" applies to all British Columbia Public Service staff and specifically addresses telecommuting and job sharing. There are also government-wide maternity benefits and parental leave opportunities that are meaningful in that they can be taken without loss of a "practice," such as may be the fear in a private firm setting. Vacation benefits and the availability of deferred salary are also available.

In addition, LSB currently makes a number of flexible workplace arrangements available to professional staff including: telecommuting; job-sharing; reduced time with a corresponding reduction in salary and benefits (both four-day weeks and 10-month years); and earned days off to accommodate heavier than average workloads. LSB is committed to delivering its mandate of provision of excellent legal services to government and views these initiatives and arrangements as means to support excellence in service delivery.

CJB normally grants Crown Counsel requests to work part time. There is no formal policy in place with respect to part-time work, but Branch Management is very aware of the value in granting these requests.

2. What are the key features of these programs and/or policies?

Our response to this question differentiates somewhat between LSB and CJB. The key policies and benefits are the same, but because of the different functions there are some operational differences. These differences stem largely from the fact that Crown Counsel, for the most part, must spend a major part of their work week in Court, while Legal Counsel have more varied locational requirements, which allows for greater flexibility. These flexible arrangements are described first.

LSB lawyers practise in a wide variety of areas of legal practice and providing interesting and diverse work for our lawyers is a part of our day to day operations. We have some of the best lawyers in the province on staff. We also have a variety of flexible work arrangement policies that support work-life balance for our staff. The most critical feature in assessing whether flexible work arrangements are appropriate for LSB lawyers is the cross-government requirement that the arrangements are advantageous to both LSB and the employee. In addition, while not formally adopted as policy, the following principles have been identified as useful benchmarks in assessing healthy workplace initiatives and flexible work arrangements:

Principle	Explanation
Meeting business goals is the organization's top priority.	The business needs of the individual's department, team, work group and clients must be fully addressed when designing and evaluating any flexible working schedule. Moreover, the impact on clients, co-workers and the organization as a whole by the employee's schedule must be positive or neutral and fully understood by both the employee and his or her manager.
Performance is not defined by physical presence.	The organization's commitment to flexible working arrangements underscores the belief that job effectiveness is characterized by employee performance and results rather than hours spent at the office.
Equity does not guarantee all employees the same outcome.	Each request for flexible work arrangements will be evaluated on its own organization-based merits by the individual employee and his or her manager. All employees have the same right to request flexible work arrangements; however, the solution need not, and will not, be the same for all employees.
Flexibility must be a two-way street.	Approved flexible work arrangements must remain flexible to accommodate changing organization, co-worker or client needs.
Employees are not entitled to flexibility.	Requests made in accordance with business needs will be fully considered by management; however, employees must understand that flexible work arrangements are not appropriate for all employees or positions within the organization.
Employee-manager collaboration is critical.	Open dialogue between managers and employees is a crucial aspect of evaluating and assessing requests for flexible work arrangement approval. However, ultimate approval of a request rests with managers.
Performance matters.	Only employees with "meets expectations" performance reviews may request flex-time; some types of flexible work arrangements (working from home) require additional skills and may not be appropriate for all employees or positions.

In addition, Crown Counsel and Legal Counsel working for MAG enjoy the following policies of benefits:

Maternity/parental leave: Maternity leave allowance topped up from employment insurance amount to 85% of salary for the duration of the 15 weeks. The two-week waiting period is paid at 85% of salary. Parental leave topped up to 75% of salary for the duration of the 35 weeks. Government policy also allows for an additional six months leave without pay, with supervisor's permission.

Crown and Legal Counsel also accumulate vacation while on maternity and parental leave. Upon return to work after taking a year off, an employee would have their full vacation entitlement for the upcoming year, as well as the vacation accumulated while on maternity and parental leave. This would allow for a minimum of nine weeks vacation during their first year back from maternity/parental leave.

Vacation benefits: Crown and Legal Counsel with less than five years of employment earn four weeks vacation per year, plus an additional week of earned days off. Crown and Legal Counsel with 25 years of service earn seven weeks of annual vacation, plus an additional week of earned days off for a total of eight weeks.

Deferred salary leave: Deferred salary leave is available to all government employees. Employees can defer their salary for a period of time and have it paid out while on leave for up to one year. A few Crown and Legal Counsel will request and be granted deferred salary leave each year.

Part-time work: As a general rule, where operationally feasible, requests for part-time work, typically at 60% time (e.g. three days per week) are granted. Currently, 25% of all female employees in CJB work part time. This percentage has remained relatively constant for the past eight years.

3. How have these policies and/or programs been received by staff and management?

Our response is given separately for LSB and CJB, which have separate management.

LSB lawyers report that they are generally satisfied with their work environment, with 87% reporting that their work unit is free from discrimination and harassment, 90% reporting that their work is interesting and 85% that it is meaningful. The Branch's healthy workplace and flexible work arrangements have also been well received by staff. A number of lawyers, both male and female, take advantage of the policies and programs already in place. Surveys show that 60% of LSB staff feel that the Branch supports balance between work and personal responsibilities and 77% report that the person they report to is open to flexible work arrangements to accommodate personal needs.

The gender balance for Legal Counsel in LSB is as follows:

Business Unit	Branch/Program	JOB CODE Description	Female	Male	Total
Attorney General	Legal Services Branch	Legal Counsel Level 1	10	4	14
		Legal Counsel Level 2	14	10	24
		Legal Counsel Level 3	48	29	77
		Legal Counsel Level 3B	23	20	43
		Legal Counsel Level 4	8	17	25
Legal Services Branch Total			103	80	183

In CJB, staff generally support of part-time work. It is obviously available to both genders, although based on usage, it is far more attractive to women. Some non-lawyers in the Prosecution Service also work part-time, although it is more common among lawyers. It does present challenges to management, however, as more schedule coordination is required. It is acknowledged by most that the benefits of attraction and retention outweigh any minor operational inefficiency that may result.

4. What value, tangible and intangible, do these programs and/or policies bring to your organization?

LSB’s review of flexible work arrangements suggests that the business case for such arrangements is well developed in the academic literature and that many “employers of choice” adopt effective workplace wellness strategies as part of their retention, recruitment and succession planning strategies. The studies suggest that such arrangements provide an effective means of increasing employee engagement, increasing productivity, improving morale and enhancing the employer’s reputation as a work place of choice. As well, the literature suggests that reducing attrition of lawyers who understand their clients’ business can facilitate the proactive practice of law and increase risk avoidance. LSB’s experience is consistent with these conclusions. The benefits of the policies and approaches relate directly to the Branch and Ministry goals and objectives with respect to employee engagement, retention, recruitment, succession planning, risk management, and excellence in service delivery.

The value of the policies is perhaps best shown by the proportion of women practising with MAG. The LSB stats are provided above and show that 56% of lawyers in the Branch are women. The Crown Counsel population has become gender-balanced over the past decade. In 1999, females comprised 41% of the Crown Counsel population, and they now comprise 51%, a significant increase. These proportions cannot solely be attributed to leave benefits and the availability of part-time work as they also reflect the increase of women in the profession. However, recent hiring statistics indicate that Prosecution Service has become very attractive to prospective women employees. From 2005 to 2007, the hiring of women outpaced that of men by a two to one margin (38 to 19). Because there are no formal policies in place to hire women, and hiring in the public service is based solely on merit, it can reasonably be concluded that more women are applying for positions than men. This has been confirmed anecdotally; however it cannot be strictly confirmed as statistics are not kept with respect to the gender composition of applicants on competitions.

At the senior management level in CJB (Director, Regional Crown Counsel, and Deputies), the success in recruiting and retaining women has had a positive effect on beginning to balance the gender composition. In 1999, 21% (five out of 24) of senior management were women; this has increased to 33% (nine of 27). In 1999, only one Director was a woman (the rest were Deputy Regional Crown Counsel), whereas three are now at the Director or Regional Crown Counsel level. It should be noted that this number was recently reduced by one through a judicial appointment. The women in senior leadership positions in the Prosecution Service are long-time employees, many of whom have taken maternity and parental leaves, and in at least one instance, worked part-time while their children were young.

At the middle management level, Administrative Crown Counsel, who manage at the local level, have shown an increase over the past decade. Women now comprise close to 50% of the Administrative Crown population. Because senior management is typically recruited from the ranks of Administrative Crown, it appears likely that gender balance will be achieved within five to 10 years at the senior management level.

With respect to intangible benefits, although clearly impossible to attribute to the gender composition of either management or the general Crown Counsel population, it can definitely be stated that the Branch has become more focused over the past few years on leadership, and creating a safe and supportive work environment. Examples include an expanded Crown professional development program, facilities projects to improve the physical environment, a health and wellness initiative, and a security program. It is felt that the reputation of the Prosecution Service has grown as a result, which may aid in the recruitment process.

5. What steps does your organization take to audit compliance with, and the effectiveness of, these programs and/or policies?

LSB conducts semi-annual staff surveys and is part of the annual Public Service Working Environment Surveys to, *inter alia*, track staff perception of the indicia of our retention, recruitment and succession strategies, including the effectiveness of work-life balance and healthy workplace initiatives. In addition, the Branch also tracks rates of absenteeism and the use of disability leave and stress leave in order to, in part, monitor the effectiveness of healthy workplace policies and programs.

CJB has no formal compliance audits, but it too participates in the Public Service Working Environment Surveys. Branch management pays a great deal of attention to these surveys. The results have shown that the Prosecution Service does exceptionally well in some areas. The survey is also very informative in indicating areas where more work is required.

6. Do you expect law firms, as a condition of retaining them to provide legal services, to have formal programs and/or policies designed to attract, retain and promote female lawyers?

MAG does not currently include this in its criteria for retaining outside counsel, nor is it likely to. It is the strong preference to use counsel within the ministry wherever possible. When an outside firm is hired, it is for the expertise of the individual lawyer retained. The merit of the lawyer being retained is then the paramount consideration.

7. What impact, if any, would the existence of such programs and/or policies in a law firm play in your organization's decision to retain a firm for provision of legal services?

The criteria used to determine whether to retain a particular firm for provision of legal services are complex and assessment of the impact of this criterion in isolation would be difficult.

8. Do you have any other comments that you might wish to share?

The environment of government, whether LSB or CJB (each of which has its own culture too) is different from that of private law firms. It is generally acknowledged that people leaving post-secondary institutions are more focused now on work-life balance than in the past. Women wishing to start a family may find the MAG to be a welcoming environment, as it provides flexibility during the years when families are young, and has demonstrated that promotions into management and/or senior legal positions are based on merit.

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