

BY JASMINE DAYA

WOMEN IN THE PRACTICE OF LAW

Is

there a glass ceiling in the practice of law in Ontario? A glass ceiling is clear; we can't see it but, for some women, you feel it because you literally crash into it and at first can't penetrate the glass. However, with perseverance, it will shatter. If you are able to penetrate that unfortunate ceiling, the issue will be whether you sustain injury in the process and how that will change you as a lawyer and, overall, as a person.

I attended Queen's Law, graduating in 2005. During my first few weeks, I recall being told that although half our class was comprised of women, there was a low retention rate of women in private practice and that many would leave law altogether. I naively doubted that this statistic would



apply to my class. My own observation during law school was that the girls in my class were generally working much harder than the guys. I observed girls raising their hands more in class, studying longer hours and reviewing right up until the last minute before those dreadful final exams, while our male peers made it look so seamless. I'm certainly not saying that one gender was smarter or did better academically; but rather that the girls seemed so engaged, so how could they not stay in practice?

Fast forward and I was sadly mistaken. The retention rate of women remains lower than men, particularly in private practice. Although I don't have statistics for my graduating class at Queen's Law, I doubt that we are the exception. As a female and member of the Bar for over ten years, I really don't need an article or a study to tell me this, as it's a known fact. I also don't need a study to provide me with the reasons for this fact because as a practicing lawyer, mother of three children and wife, I live the reality and the issues

are blatantly obvious to me. Here's the answer: work-life balance. Practicing law is all encompassing. It consumes you. It's difficult to "shut off" because you care. Your mind will continue to pursue answers on behalf of your clients even when you aren't actively working. Raising young children is also all encompassing.

My observation is that men these days are very engaged with their children and are very good at helping to raise them. My kids are far more excited to see "daddy" because he is so much more "fun" than me, according to them. The reality is, however, that women must bear children. Pregnancy is a long process, and having more than one child multiplies the time component. There can be complications both during and after pregnancy. Children are then born, and while many families are making efforts to split the time required for childcare, often women feel compelled to take time off. Perhaps maternal instinct, tradition or choice. Regardless, that's the reality. In my view, it's not

about right or wrong. Instead, we need to focus on remedying the situation instead of just discussing it. Working groups, studies and analysis tell us what we already know is not creating change. We will not forge ahead by studying the issue but instead require active change to occur within the profession. How many more years do we need to discuss this issue?

The History

Clara Brett Martin was the first female lawyer that was admitted into the British Commonwealth, here in Canada, in 1897. It took courage, a battle and some highly-placed backers.¹ Initially, after "contentious debate", her petition to the Law Society to become a lawyer was

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rejected as only men were permitted to practice law at the time.² In 1895, a bill passed to interpret “person” in the Law Society’s statute to include females. This enabled Ms. Martin to get called to the Bar and practice law.³ It has been over 100 years since women were permitted to practice law in this country, yet many female lawyers are still fighting to be treated as equals to male lawyers. The fight is exhausting and when combined with practicing law itself, bearing children and raising a family, it is no wonder that many women leave private practice or leave the profession altogether.

The Law Society’s Attempts

In 2005, the Law Society’s Retention of Women in Private Practice Working Group was formed “to identify solutions and develop practical tools and best practices to enhance the retention and advancement of women in private practice”.⁴ The Working Group prepared a “landmark report” which encompassed nine recommendations after a province-wide consultation period from March to May 2008. On May 22, 2008, Convocation voted in favour of those recommendations. Over a decade later, we are still discussing the fact that women continue to leave the practice of law for the same reasons as identified back then. The report found that women generally leave the legal profession because the practice of law does not consider “women’s realities” such as childbirth and family responsibilities that women often take on.

In November 2008, the Law Society of Ontario (LSO) established the Justicia Project to “lead the way in the retention and advancement of women lawyers in private practice in Ontario”.⁵ Ontario was the first province in Canada to launch

The Statistics

In Canada in 2016, there were 43,595 women practicing law and 53,257 men practicing law. The following table provides a breakdown of women to men practicing lawyers by province in 2016:⁹

PROVINCE	WOMEN	MEN
British Columbia	49.3%	50.7%
New Brunswick	56.2%	43.8%
Newfoundland and Labrador	55.2%	44.8%
Nova Scotia	52.7%	47.3%
Ontario	51.9%	48.1%
Barreau du Québec	63.2%	36.8%
Chambre des Notaires due Québec	73.9%	26.1%

In Ontario in 2016, the following statistics demonstrate that fewer women are sole practitioners and partners and instead have higher rates at the associate level, government and in-house jobs:¹⁰

PROVINCE	WOMEN	MEN
Sole Practitioner	14.5%	25.8%
Law Firm Partner	9.3%	22.3%
Law Firm Associate	19.0%	16.3%
Law Firm Employee	2.9%	2.8%
Legal Clinic	2.1%	0.7%
In House	13.4%	10.5%
Government	18.1%	9.9%
Education	1.8%	0.9%
Other Employment	6.8%	5.8%
Retired/Not Working	12.2%	5.0%

In terms of salary, even recent graduates see a disparity between men and women. A 2015 study published by the University of Toronto provided the following statistics on average compensation for full-time, second year lawyers in Canada:¹¹

TYPE OF PRACTICE	WOMEN	MEN
Solo	\$47,500	\$60,000
Private Firm (2-20 lawyers)	\$70,000	\$75,000
Private Firm (21-100 lawyers)	\$80,000	\$85,000
Private Firm (101-250 lawyers)	\$76,000	\$86,000
Private Firm (250+ lawyers)	\$100,100	\$110,000
Provincial or local government	\$76,000	\$78,000
Federal government	\$65,000	\$70,000

this project. The page on the LSO's website provides helpful information for firms to address pregnancy leaves, paternal leaves, flexible work arrangements, career advancement to partnership and business development for women lawyers.⁶ I commend the Law Society for providing this information, but it is law firms that must be willing to adopt change before change can occur. The site states that females are now asking whether firms are part of the Justicia project during interviews. I have never had a student or lawyer interview with me and ask that question. Granted, the number of people I have interviewed is a minute sample.

In 2013, a report titled "Leaving Law and Barriers to Re-entry: A Study of Departures and Re-entries to Private Practice" was presented to the LSO. It was based on a study that was conducted to further explore and understand the reasons that lawyers leave private practice. In conducting the survey, the following four themes were identified as being the primary explanations: 1) family responsibilities and establishing/


maintaining a work/life balance; 2) organizational structure; 3) pursuit of other interests; and 4) burn-out.⁷ Of these four themes, it is "organizational structure" that requires further discussion. This term relates to a firm's culture and requirements that are set by a firm as they relate to "high billable hours, financial pressure, socializing at events, [and] discrimination from the old boys networks".⁸

In law school, we are taught the importance of "fit" when searching for a job. As students, however, few have any concept of "fit" and instead are just hoping to secure a position. Over time, lawyers realize that each firm has a distinct culture and that "fit" is in fact extremely important to ensure career satisfaction. I have witnessed first-hand as a lawyer at my former firm, the immense pressure to network, sign more clients and bill. There were days when the stress placed on us became counter-productive and while I persevered, many around me did not. At my former firm however, gender was irrelevant. The same stress

was uniformly placed on everyone. As a small personal injury firm, the pressure to generate revenue was enormous and we were all pitted against each other. A few weeks after having my second child, I recall being told that another lawyer at the firm had out-billed me in the prior month for the first time. Seriously? I had just had my baby. I was devastated and ensured that the one month was the only month that this ever happened. In retrospect, I recognize that my former firm's culture was unhealthy. It was as if we were running on a treadmill at a high-rate of speed, unable to stop or safely disembark, but knowing that one day we would collapse and get thrown off because there is only so long you can go at that speed.

Maternity Leave & Benefits

For many female lawyers, announcing pregnancy to their employer causes stress and anxiety. The law entitles women to take maternity leave but the stigma attached to taking leave at many law firms still exists. Some firms have created parental leave policies, but



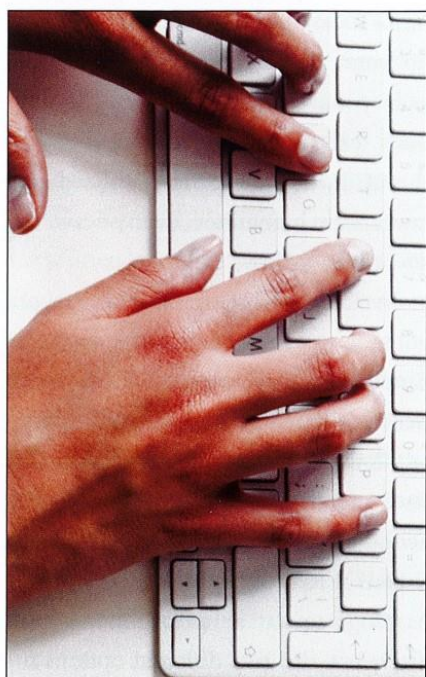
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not all. For a female lawyer, taking some time off is necessary but the reaction from those around you can cause stress and anxiety. Women in every career-type have children, but somehow in law it's difficult to accept. Perhaps it's the concern caused by knowing that an individual taking leave possesses information that cannot be transferred to another individual; thus issues are foreseeable including the unique relationship built with clients that may not be maintained by another lawyer.

I recall being pregnant with my third child and fearing the conversation with my superior. I suggested to my husband that perhaps I wouldn't say anything and instead would just wait until I was awkwardly asked about my increasing size. I was half-joking but the thought most certainly crossed my mind. He thought I was being ridiculous and didn't understand why someone as confident as me was dreading the conversation at work. I told my superior even before reaching the three-month mark because I couldn't bear to hide my secret from

him. To my surprise, he smiled, stood up from his chair and gave me a big hug as he congratulated me. I recall holding back tears as that knot formed in my throat. In that moment, I realized that lawyers are human too, even ones in the so-called “old boys club”.

In Canada, biological mothers are entitled to receive up to 14 weeks of Employment Insurance (EI) maternity benefits. The benefits can be received up to 12 weeks before the anticipated due date and end up to 17 weeks after the actual date of birth. The weekly benefit is paid at 55% of the individual's weekly earnings up to a maximum amount. There are also two different options for EI parental benefits available to new parents. The Standard parental benefit is available for 35 weeks within the 52-week period after the child's arrival. The weekly benefit is 55% of the individual's weekly earnings up to a maximum amount. The Extended parental benefit is available for 61 weeks and must be claimed within the 78-week period after the child's arrival. The weekly benefit rate is 33% of the individual's weekly



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earnings up to a maximum amount. Under both options for parental benefit, the parents must share the weeks available.¹²

Some law firms “top up” and some don’t. Top-up is the practice whereby the law firm will pay the shortfall between the benefits received and your salary. Or, the top-up may represent something less than the differential in order to provide at least some additional funds. There is often a clause that the funds will be repaid if the individual does not return or leaves his or her employment within a certain period of time following return.

The LSO implemented a Parental Leave Assistance Program (PLAP) to “reduce the hardship that arises when a practising lawyer who is a partner in a small firm or a sole practitioner takes parental leave.”¹³ For those lawyers that have less than \$50,000 in net annual income among other criteria, a lawyer can receive a maximum of \$9,000 over 12 weeks under the PLAP. In 2015, 37 members received assistance. In 2016, the number decreased to 23, and in 2017 the number again decreased to 22.¹⁴ Given the downward trend of an already low number of members obtaining assistance from the PLAP, it is difficult to view this program as being a huge success.

Final Word

I have never permitted my gender to prevent me from being a lawyer in private practice but, admittedly, at times it has been difficult. I believe that my experience, however, has likely been easier than some women lawyers, perhaps because I practice in Toronto or perhaps it’s my perspective that makes me blind to how I am sometimes treated. Or maybe it’s because I was shielded to some degree by my mentor. Perhaps it’s

a combination of all these factors and others such as the unwavering support of my parents and my extremely-helpful husband. Regardless, I do not want my female colleagues or my daughters to ever feel that they don’t have a place in law or feel that they are valued less than men in this honourable profession. I don’t believe that the Ontario Bar wants women to feel this way either, so I am at a loss to understand why this is still occurring.

Statistics demonstrate that women are paid less than men in law in the same positions. I realize that women bear children, and that some need more time off than others. However, unless you are on the trajectory of the Duggar’s, it’s a small window of time in the grand scheme of one’s career. A woman should not be penalized by being valued less than male colleagues because she is bearing children for her family. If a woman returns to work and is working just as hard as her male colleague, why are there fewer women in high ranking positions? It is true that in many family situations, women are doing more for children but many men are also extremely involved these days. Not only do they take pride in attending their children’s events, they are also amazing fathers. Why do we as society commend men when they show up while women get that look of disapproval or irritation? There is no Law Society working group or report that is going to change anything. We need to change our attitudes. Each firm must support women as well as men and create a firm culture of acceptance and understanding. Scott Wagner, GoDaddy CEO recently stated that “If we are to offer relevant, innovative products and experiences for our customers, our

employees must reflect the diversity of those who use them”.

The same can be said at your law firm. Change will only occur if you make it happen. Blaze trails for your daughters and granddaughters and all those women that are relying on you to acknowledge that they are valued as equals to men in the practice of law.



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NOTES

¹“The Law Society of Ontario in context: a chronology”, online: The Law Society of Ontario <<https://lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/collections-and-research/chronology>>.

²“Clara Brett Martin”, online: Wikipedia <https://en.wikipedia.org/wiki/Clara_Brett_Martin>.

³Mary Stokes, “Clara Brett Martin: First Woman called to the bar in Ontario (and Canada, and the British Empire)”, online: The Osgoode Society for Canadian Legal History <<https://www.osgoodesociety.ca/encyclopedia/clara-brett-martin-first-woman-called-to-the-bar-in-ontario-and-canada-and-the-british-empire/>>.

⁴“Retention of Women”, online: The Law Society of Ontario <<https://lso.ca/about-lso/initiatives/closed-initiatives/retention-of-women>>.

⁵“Justicia: Leading the way”, online: The Law Society of Upper Canada <<https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/j/justicia14-factsheet-web-eng-final.pdf>>.

⁶“The Justicia Project: Enabling Professional Excellence”, online: The Law Society of Ontario <<https://lso.ca/about-lso/initiatives/the-justicia-project>>.

⁷Kay, Alarie, Adej, “Leaving Laws and Barriers to Re-Entry: A Study of Departures from and Re-entries to Private Practice”, online: The Law Society of Ontario <<https://lawsocietyontario.azureedge.net/>

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⁸*Ibid* at 49.

⁹“Quick Take: Women in Law”, online: Catalyst <<https://www.catalyst.org/knowledge/women-law>>.

¹⁰*Ibid*.

¹¹Ron Dinovitzer, “Law and Beyond: A National Study of Canadian Law Graduates”, online: University of Toronto <<http://individual.utoronto.ca/dinovitzer/images/LABReport.pdf>> at 54.

¹²“EI Maternity and Paternal Benefits: Overview”, online: Government of Canada <<https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental.html>>

¹³“Notice to the Profession- Changes to the Parental Leave Assistance Program”, online: The Law Society of Ontario <<https://lso.ca/about-lso/initiatives/parental-leave-assistance-program>>.

¹⁴Shannon Kari, “A woman’s place”, online: Canadian Lawyer Magazine <<https://www.canadianlawyermag.com/author/shannon-kari/a-womans-place-15861/>> (July 25, 2018).